

CAMPUS CRIME

Third Edition

CAMPUS CRIME

Legal, Social, and Policy Perspectives

Edited by

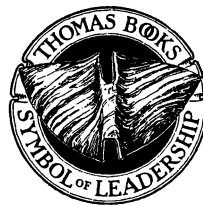
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To Nick, Olivia, and Camille with many thanks for their endless encouragement and inspiration.

B.S.F

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Thank you to all our students who over the years have listened to our respective campus crime lectures and been an invaluable source of “new” thinking about campus crime and security.

*J.J.S.
B.S.F*

PREFACE

This volume is the third edition of *Campus Crime: Legal, Social, and Policy Perspectives*. That a third edition is warranted – more than 15 years after publication of the first edition in 1995 – underscores that interest in the legal, social, and policy contexts of campus crime has not waned. Congress, and to a lesser extent the states, have maintained their interest in campus crime and security through passage of, and amendments to, laws addressing these issues. Scholars from a variety of disciplines continue to publish peer-reviewed research examining the full spectrum of campus crime and security topics, ranging from the extent and nature of student victimization to postsecondary institutional compliance with federal and state legislative mandates. Campus law enforcement and security professionals face not only traditional challenges such as how to best serve and protect the campus community 24 hours a day seven days a week, but new challenges involving the security of sensitive information routinely compiled by universities, not to mention planning for and responding to a mass casualty event such as an active shooter on campus or a bombing.

Among the purposes for assembling a third edition of *Campus Crime: Legal, Social, and Policy Perspectives* is our desire to share with readers the advancements that have occurred in understanding campus crime, especially the dynamics of college student victimization, and efforts to effectively address campus security issues. For the sake of continuity with the first and second editions, we maintain the three sections to the volume: Part I – The Legal Context of Campus Crime, Part II – The Social Context of Campus Crime, and Part III – The Security Context of Campus Crime. Within each section are chapters that address what we believe are the most pressing crime and security issues confronting postsecondary institutions at the dawn of the new millennium. Some of these chapters address “long-standing” topics such as the sexual victimization of college women and the role of campus police departments in securing postsecondary institutions. Other chapters address “new” issues in campus crime and security, such as the challenges posed by “high-tech” crimes such as cybercrime, cyberstalking, and identity theft that involve

campus community members as both victims and offenders.

Nearly 25 years have passed since Congress passed landmark campus crime legislation, now known as the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (20 U.S.C. 1092[f]). *Clery*'s requirements have generated both critical discussion and empirical analyses that raise questions about the legislation's effectiveness at reducing campus crime and enhancing campus security as stated goals of the legislation. Researchers continue to unravel the dynamics surrounding college student victimization, particularly the key role played by students' lifestyles and routines, including the use (and abuse) of alcohol. While this body of research has answered many questions about college student victimization, it has also given rise to still more questions that need answers before researchers fully understand the extent, nature, and spatial aspects of student victimization. Further, state legislatures and Congress have criminalized two behaviors, stalking and "high-tech" abuses such as computer hacking and identity theft, which pose both unique victimization risks and opportunities for offending, and create security and policing challenges for campus administrators far different from "traditional" types of violent and property crime. Finally, the burgeoning use of intelligence-led or intelligence-based policing on many campuses has ushered in a new era which gives rise to new training, practices, and challenges.

Section I of the book examines the legal context of campus crime by presenting five chapters whose focus is on *Clery* and its state-level progenies. *Clery* and its state-level counterparts created important obligations for postsecondary institutions including annually reporting campus crime statistics and publicly reporting institutional processes designed to enhance campus security and provide assistance to campus crime victims. The chapters acquaint the reader with: (1) the genesis and evolution of *Clery*; (2) the current state of research concerning public awareness of *Clery* and its impact; (3) results and implications of the only national-level evaluation of the sexual assault reporting requirements of *Clery*, the *National Campus Sexual Assault Policy Study*; (4) how *Clery*, *Title IX of the Higher Education Amendments of 1972*, and case law have shaped the responses of postsecondary institutions to peer-related on-campus sexual assaults; and (5) a national-level comparative analysis of state-based *Clery*-style legislation.

Part II examines the social context of campus crime. The six chapters contained within Part II describe and explain the extent and nature of college student victimization by addressing salient topics of interest to researchers, campus administrators, and students and their parents. The chapters address topics such as whether college students suffer higher rates of victimization than nonstudents; the utility of routine activities and lifestyle theories for explaining college student victimization; how alcohol use (and abuse) are key correlates to college student victimization; the on-campus spatial distribution of fre-

quently occurring offenses such as alcohol and drug violations, and vandalism; an overview of the extant literature on the sexual victimization of college women; and an analysis of the extent, nature, and impact of stalking and cyberstalking behaviors perpetrated against and by college students.

Section III of the book focuses on the security context of campus crime and consists of four chapters. Two of these chapters focus on the evolution, organization, and practices of campus law enforcement agencies, while one chapter addresses the challenges faced by campus law enforcement in enforcing alcohol laws. The final chapter in the section examines the challenges posed to campus security and campus law enforcement by high-tech crimes and offers suggestions for how postsecondary institutions can address new forms of illegal behavior involving the Internet, information systems, and technology.

Although we added new topics to and updated others for this edition, we remain committed to providing as timely a compilation of topics as possible to an audience of students, parents, academicians, practitioners, service providers, and postsecondary administrators. In organizing the chapters, our goal was to bring together authors who could provide a current picture and a critical analysis of issues concerning the legal, social, and policy contexts of campus crime and security. We believe the chapters found in this volume offer critical analyses and insightful discussion, raise relevant policy questions, and provide plausible explanations for and responses to campus crime and security, a social problem that continues to affect students, their parents, and postsecondary institutions on a daily basis throughout the year

Bonnie S. Fisher
John J. Sloan, III
August 1, 2012

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We again thank our editor, Michael Payne Thomas, for his guidance and patience with us in putting together this third edition. We are also grateful to each of our contributors, both returning and new, for producing high-quality chapters and adhering to our deadlines with not only professionalism but also a sense of humor. Their enthusiasm for this volume and dedicated efforts in producing their chapters give us hope that future researchers can better inform the development and implementation of effective proactive and preventive responses to campus crime.

John thanks Tavis for her enduring support and his colleagues at UAB, both past and present, for their willingness to serve as sounding boards and informal reviewers. I also want to thank Frank Cullen for serving as a superb role model, and Bonnie Fisher for her wonderful friendship and fabulous collaboration over the years. It has been an honor to know them both.

Bonnie thanks Nick for encouraging her to follow her passion for engaging in college student victimization and prevention research. She thanks her daughters, Olivia and Camille, for their insights, for helping her understand how the world works from a teenager's perspective and for making her laugh aloud and think critically every day. She thanks her "campus victimization" colleagues for their insights and support throughout the years, especially her coauthors, Emily Clear, Ann Coker, Frank Cullen, Leah Daigle, Suzanne Swan, and Corrine Williams. Many thanks also to her undergraduate and graduate students for providing her ideas about and insights into *why* and *how* college student victimization occurs. Also, many thanks to John Sloan whose passion for conceptualizing ideas and eloquent writing has influenced her professional development over their 20-year collaboration.

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CAMPUS CRIME

Chapter 1

CAMPUS CRIME POLICY: LEGAL, SOCIAL, AND SECURITY CONTEXTS

BONNIE S. FISHER AND JOHN J. SLOAN, III

INTRODUCTION

In 1990, Congress passed and President George H.W. Bush signed into law the landmark *Student Right-to-Know and Campus Security Act of 1990* (20 U.S.C. 1092[f]). This legislation, for the first time in history, required postsecondary institutions to, among other mandates, annually report crimes known to campus police and other authorities. Subsequently this act was renamed the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (20 U.S.C. 1092[f]; henceforth *Clery*) in 1998, in remembrance of Jeanne Clery who was murdered by a fellow student while she slept in her dorm room at Lehigh University in 1986. The legislation has been amended multiple times and created additional requirements for postsecondary institutions since its initial passage. The 1990s also saw colleges and universities being held liable for “foreable” criminal victimizations occurring in dormitories or other on-campus locations, while state legislatures began passing their own *Clery*-type legislation. Since the early 1990s, colleges and universities not only professionalized their campus security and law enforcement agencies, but also began experimenting with new technologies such as crime mapping and hot spots analyses. Finally, social science researchers began systematically studying crime and security issues on postsecondary institutions. Their findings revealed startling realities about life in the “ivory tower” and underscored the importance of further investigation into the legal, social, and security issues that are at the nexus of understanding and effectively addressing campus crime and security.

These events form the backdrop of what we describe as the legal, social, and security contexts of campus crime and form the basis for campus administrators to develop, implement, and evaluate policy relating to campus crime. Importantly, a change in one of these three contexts often affects the others, thus making them inextricably linked. For example, research shows that a sizeable portion of college students, especially college women, experience criminal victimization while on campus (the social context). This fact, in part, became the rationale for passage of *Clery* to require postsecondary institutions to report their crime data and create prevention programs and procedures for dealing with victims (the security context). Another example is research that examines postsecondary institutional compliance with state and federal legislation relating to campus crime and security (the legal context). Thus, while one is certainly able to examine each context separately, being mindful of linkages among them and of their relationship to campus crime policy is equally important.

This chapter presents an updated overview of the legal, social, and security contexts of campus crime. Our two goals for the chapter are to give readers a broad-based overview of key issues we see related to each context and show readers important linkages among these contexts. By doing this, we introduce readers to the kinds of issues that are identified in the remaining chapters of the book.

We begin the chapter by updating the legal context of campus crime which includes activities occurring in both the judicial and legislative arenas. Here, we examine leading state court decisions since 2007 that have repeatedly held colleges and universities liable under civil law for criminal victimizations occurring on campus and examine the prominent legal theories used to justify holding schools liable. We then examine legislative developments relating to campus crime and security issues at the federal and state levels of government. Next, we examine the social context of campus crime which includes important social scientific studies of campus crime and security. Following this, we examine the security context of campus crime which includes examining administrative models for campus law enforcement agencies, issues relating to their development, and the increasingly important role that information technology security plays on college campuses. We conclude the chapter by presenting important linkages across the three contexts.

The Legal Context of Campus Crime

The legal context of campus involves activities arising from the judicial and the legislative branches of government. In the former instance, the courts have helped shape campus crime policy via their rulings in lawsuits filed by students (and/or by their parents) over on-campus victimizations. In the latter

instance, legislation passed by the states and Congress also helps shape policy by imposing various mandates on postsecondary institutions relating to campus crime statistics, student disciplinary proceedings arising from on-campus victimizations, security plans, or crime prevention activities.

Since the late 1970s, state courts have been increasingly willing to hold colleges and universities liable for on-campus victimizations using several different legal theories involving the legal duties owed by schools to their students. In some instances, the courts have held that common-law based theories of negligence are sufficient to hold schools liable while in other cases, the courts have relied more on contract law (see Burling, 2003; Lake 2001). In the legislative arena, Congress continues to amend *Clery*, while the U.S. Department of Education has become more involved in enforcing *Clery* through various regulations it passed and sanctions levied on schools for failing to follow the law's mandates. Simultaneously, media reporting of campus victimizations, victims' testimony at Congressional hearings, and campus advocacy groups (which came to forefront during the late 1980s and early 1990s), continue to influence legislative responses to campus crime (Fisher, Hartman, Cullen, & Turner, 2002; Fisher, Sloan, Cullen, & Lu, 1998; Sloan & Fisher, 2011). To better understand these issues, below we review recent developments in the legislative and judicial arenas of campus crime and explore their policy implications.

The Judicial Arena: Institutional Liability

Student victims of campus crime and their parents have repeatedly sued postsecondary institutions for damages resulting from injuries received during the criminal incident. Smith (1995) indicates that these lawsuits first began appearing in the late 1970s, but that postsecondary institutions did not feel a significant impact from this litigation until the 1980s. By the end of the 1980s, according to Smith (1995), this type of litigation had become more frequent at least in part because plaintiffs were winning their lawsuits. By the 1990s and into the first decade of the new millennium, colleges and university responded to the threat of such lawsuits by changing institutional practices. Throughout the period, legal scholars argued over which of the principles courts were using in these cases were most appropriate.

THEORIES OF LIABILITY. Lawsuits arising from on-campus victimizations of students will typically claim the institution knew – or should have known – about conditions that were in place that would likely give rise to the incident, and failed to address them (Burling, 2003). Because of this failure, the student suffered physical injury and/or loss of property. In short, the claim being made is the college or university (or its representative(s)) had acted *negligently*.

To prevail in a case claiming negligence on the part of the institution, the plaintiff's attorney must prove four elements: (1) the university *owed the student a duty of care*; (2) the university *breached that duty*; (3) the *student suffered damages* (e.g., injury, death, property loss, etc.) and (4) the *breach caused the damage* (Yeo, 2002). The greatest obstacle facing student plaintiffs in these cases is with establishing the existence of a duty owed them by the postsecondary institution against whom the lawsuit is being filed. Importantly, determining whether the duty existed is a question of law and is thus decided by the judge – not the jury (Burling, 2003). For the trial to commence, the judge must first rule that, *as a matter of law*, the institution owed a duty to the student. Remaining questions, including a weighing of the evidence, become matters of fact for the jury to decide (Burling, 2003; Yeo, 2002). The issue that has generated a nontrivial amount of discussion among scholars of higher education law is the legal principle(s) courts have used to guide them when determining that a duty is owed by a postsecondary institution to the on-campus victim (Lake, 2001).

IN LOCO PARENTIS. Until the 1960s, all postsecondary schools in the U.S. operated under the legal doctrine of *in loco parentis* (“in the place of the parents”) (Melear, 2002). As Swartz (2010) notes, this meant colleges and universities were free to create and enforce any rule or regulation that pertained to student conduct, especially those relating to students’ social lives. *In loco parentis* resulted in the courts deferring to the institution in determining what was best for students in cases involving suspension, dismissal, or other sanction and limited judicial intervention since doing so “. . . could undermine school authority and impinge the student-university relationship” (Swartz, 2010, p. 109). Courts were, however, willing to impose a legal duty on colleges and universities “. . . to protect the morals and personal safety of their students” (Yeo, 2002, p. 79).

The turbulent 1960s eventually resulted in a dismantling of *in loco parentis* and the legal duties it had established beginning with a 1961 landmark decision by the Fifth U.S. Circuit Court of Appeals in the case *Dixon v. Alabama State Board of Education* (294 F.2d 150). In *Dixon*, the court ruled that college students were entitled to various due process rights when facing expulsion, including the right to notice of the hearing and the right to present evidence on their behalf. Over the course of the next two decades, state courts repeatedly ruled postsecondary institutions had a duty to *not* interfere with students’ speech, behavior, etc. and to interfere would result in negative consequences for the institution. Some legal scholars (e.g., Bickel & Lake, 1999; Lake, 2001) describe this period as one in which courts decided that colleges and universities would assume a new legal role as “bystander” in the lives of students, such that no legal duty toward the student was legally assumed by the institution (Bickel & Lake, 1999; Lake, 2001; Yeo, 2002).