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## Article

# Pretend "Gun-Free" School Zones: A Deadly Legal Fiction


DAVID B. KOPEL



*Most states issue permits to carry a concealed handgun for lawful protection to an applicant who is over twenty-one years of age, and who passes a fingerprint-based background check and a safety class. These permits allow the person to carry a concealed defensive handgun almost everywhere in the state. Should professors, school teachers, or adult college and graduate students who have such permits be allowed to carry firearms on campus?*

*In the last two years, many state legislatures have debated this topic. School boards, regents, and administrators are likewise faced with decisions about whether to change campus firearms policies. This Article is the first to provide a thorough analysis of the empirical evidence and policy arguments regarding licensed campus carry. Whether a reader agrees or disagrees with the Article's policy recommendations, the Article can lay the foundation for a better-informed debate, and a more realistic analysis of the issue.*

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# Pretend "Gun-Free" School Zones: A Deadly Legal Fiction

DAVID B. KOPEL*

## I. INTRODUCTION

This Article analyzes the law and policy regarding the licensed carrying of firearms in K–12 schools and in colleges and universities. The Article suggests that absolute bans have proven to be extremely dangerous, because they turn schools into uniquely attractive targets for mass murderers. The Article focuses on prohibitions applied to people who have already been licensed to carry a handgun for lawful protection in public places. The Article does not address the bans as applied to persons who have not obtained or could not obtain such a permit—such as those under the age of twenty-one in most states.

Part II of this Article surveys the legal, factual, and political background. Part III describes current programs, in the United States and elsewhere, in which teachers or students are allowed or required to carry firearms for defense. Part IV examines empirical evidence about whether armed defenders can deter or interrupt mass killers at schools, and whether armed defenders have done so. Part V analyzes various objections to campus defense, with particular attention to the argument that faculty and/or adult students are so dangerous that they should not be allowed to carry arms. Part V also addresses the issue of unarmed victims being told never to fight back.

This Article does not argue in favor of one particular method for authorizing already-licensed people to carry firearms on campus. On the one hand there is Utah law, which allows firearms carrying and possession by anyone with a concealed handgun carry permit—including in dormitories for students aged twenty-one or over.[1] On the other hand, there was the Nevada Board of Regents proposal to allow carry only by

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[1] *See infra* note 76 and accompanying text.

full-time staff who have undergone the same training as deputy sheriffs, and who have actually been deputized.[2] There are many options in between the Utah and Nevada models. This Article suggests that complete prohibition of armed defense on school campuses by all faculty and by all adult students is irrational and deadly.

## II. THE LEGAL AND FACTUAL SETTING

During most of America's history, there were no particular restrictions on the possession of firearms on school property. It was not uncommon for students to bring guns to school, stored in their lockers or automobiles, to use for hunting or target shooting after school.[3] When Antonin Scalia was growing up in New York City in the 1950s, he would carry a rifle on the subway on his way to school, for use as a member of his school's rifle team.[4]

However, in recent decades, many legislatures and school administrators have banned the possession of firearms on school property. All of the state laws apply to K–12 public schools, and almost all of them also apply to K–12 private schools. Some of the laws also apply to public institutions of higher education, and a few even apply to private higher education. Almost all of the laws allow gun possession pursuant to authorization from the governing body of the school or, depending on the state, from a school principal or other administrator.

Accordingly, in almost all states, school officials could—and this Article suggests should—allow some on-campus carrying of firearms by properly trained and licensed persons. In addition, legislatures, regents, and school boards have the authority to set broad policies for public education institutions, and this Article advocates that those policies should authorize on-campus carry by at least some people who are already authorized under state law to carry in public.

In the public debate over campus carry, a frequently-mentioned but mostly irrelevant law is the federal Gun-Free School Zone Act

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[2] *See infra* text accompanying notes 67–69.

[3] *See, e.g.*, John Lane, *Permit Guns in School to Stop Massacres*, CHARLOTTE OBSERVER, Jan. 22, 2008, http://web.archive.org/web/20080127100554/http://www.charlotte.com/171/story/456971.html. Lane observes:

> I grew up in the 1940s and 1950s. . . . [F]or one "show and tell" I brought to school a Walther PPK pistol . . . . Later, when we were older, it was not uncommon for several of us to have shotguns in our vehicles while at school. Usually they were there because we had been in the woods at sun-up hunting. We didn't have time to take them home before school, so we left them in our trunks. . . . In researching this column, I attempted to find a "school shooting" from that era. I came up empty.

*Id.*

[4] *See* Associated Press, *Scalia Says Don't Link Guns Only to Crime*, SEATTLE TIMES, Feb. 27, 2006, http://community.seattletimes.nwsource.com/archive/?date=20060227&slug=scalia27 (reporting Scalia's speech to an annual meeting of the National Wild Turkey Federation).

("GFSZA"). The law, enacted in 1990, sharply restricted guns at K–12 schools and within a one thousand foot radius around the schools.[5] In the 1995 case *United States v. Lopez*, the U.S. Supreme Court found the GFSZA unconstitutional because it was based on Congress's power to regulate interstate commerce, but the regulated activity had no meaningful connection to interstate commerce.[6] In 1996, Congress re-enacted the law, this time limiting its application to guns which at some point after their manufacture had been moved in interstate commerce[7]—that is, virtually all guns.

The federal law contains several exceptions. For example, the ban within the one thousand foot radius does not apply on private property.[8] Even on the property of a private K–12 school, carrying is allowed under federal law if the carrier has a state-issued handgun carry permit.[9]

Critics of the GFSZA point out that before the 1990 law, there had been only seven shootings at American schools in the previous 214-year history of the United States. In the seventeen years following the adoption of the GFSZA, there were seventy-eight such incidents.[10] However, it seems unlikely that the GFSZA itself dramatically changed lawful firearms possession at schools. By the time it was enacted, many states and school districts had already imposed their own bans, so the federal ban was superfluous.

Along with gun bans at schools, another type of gun law was enacted in many states in the 1980s and 1990s: objective standards for the issuance of permits to carry handguns for lawful protection.[11] The first state to enact an objective licensing law was Washington in 1961.[12] The trend became national after Florida adopted a similar law in 1988.[13] Today, in forty states, an adult who passes a fingerprint-based background check and, in most states, a safety class can obtain a permit to carry a handgun for lawful protection. In those forty states, a permit cannot be denied simply because the official in charge of issuing the permits does not think that

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[5] *See* 18 U.S.C. §§ 921(a)(25), 922(q) (2008) (defining "school zone" and restricting guns in school zones).

[6] United States v. Lopez, 514 U.S. 549, 551 (1994); *see* David B. Kopel & Glenn H. Reynolds, *Taking Federalism Seriously:* Lopez *and the Partial Birth Abortion Ban Act*, 30 CONN. L. REV. 59, 68–70 (1997) (analyzing the interstate commerce clause issues raised by *Lopez*).

[7] 18 U.S.C. § 922(q)(1)(B)–(C), (G), (I), (2)(A), (3)(A) (2008) (containing new language restricting law's application to a person with a "firearm that has moved in or that otherwise affects interstate or foreign commerce").

[8] *Id.* § 922(q)(2)(B)(i).

[9] *Id.* § 922(q)(2)(B)(ii).

[10] *Disarmed in "Gun-Free School Zone,"* HARD CORPS REP., Sept./Oct. 2007, at 4.

[11] *See* Clayton E. Cramer & David B. Kopel, *"Shall Issue": The New Wave of Concealed Handgun Permit Laws*, 62 TENN. L. REV. 679, 742 (1995); David B. Kopel, *The Licensing of Concealed Handguns for Lawful Protection: Support from Five State Supreme Courts*, 68 ALB. L. REV. 305, 334–35 (2005).

[12] WASH. REV. CODE ANN. § 9.41.070(1)–(4) (West 2006).

[13] FLA. STAT. ANN. § 790.06(1)–(3) (West 2007).

people should be allowed to carry guns for lawful self-defense.[14]

In contrast to the forty "Shall Issue" states with objective standards for license issuance, there are eight states where the issuing authorities have unlimited discretion.[15] In some of these eight states (e.g., California, New York), permit issuance varies widely from county to county.[16] In other such states (e.g., New Jersey), it is essentially impossible for anyone except a retired police officer to obtain a permit.[17] In Illinois and Wisconsin, there are no permits issued for gun carrying; carrying is lawful without a permit when engaged in certain activities (e.g., hunting),[18] in certain places (e.g., in one's domicile),[19] or for persons of a certain legal status (e.g., security guards, detectives).[20]

In each of the forty-eight states that issue permits to carry handguns for protection, one may presume that the permit is valid throughout the state. Most states list at least a few places, such as courthouses, where the permits are not valid. In some states, K–12 schools are specifically excluded from the right to carry, and some states also exclude colleges and

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[14] Thirty-five states follow the standard "Shall Issue" model. In Alaska and Vermont, a permit is not necessary, but a person may still apply for a permit (since having a permit issued by one state allows for carrying in other states which have reciprocal recognition of licenses issues by some other states). Alabama, Connecticut, and Iowa have statutes which nominally give greater discretion to the issuing authority; in practice, in these "Do Issue" states, almost all adults (Alabama, Connecticut) or most adults (Iowa) who would qualify for a "Shall Issue" permit are issued the slightly discretionary permits. *See* Posting of David Kopel to The Volokh Conspiracy, http://volokh.com/archives/archive_2006_03_26-2006_04_01.shtml#1143873304 (Apr. 1, 2006, 12:35 EST).

[15] These states are California, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Rhode Island. *See* N.J. STAT. ANN. § 2C: 58-4 (West 2005); Cramer & Kopel, *supra* note 11, at 684; Kopel, *supra* note 11, at 305. The situation in Rhode Island is somewhat more complicated, with the state having two separate licensing statutes, one discretionary and one mandatory—but the latter one has been effectively nullified by the Rhode Island Attorney General. Kopel, *supra* note 11, at 325–26.

[16] *See* Cramer & Kopel, *supra* note 11, at 683–85 (discussing "haphazard" issuance standards in California and New York); *see also* Blog O'Stuff, http://blogostuff.blogspot.com/2004/12/percentage-of-adults-with-carry.html (Dec. 21, 2004, 09:29 EST) (providing state statistics related to adults with licenses to carry).

[17] *See In re* Preis, 573 A.2d 148 (N.J. 1990) (denying permits to former police officers who were working for private detective agencies on behalf of a tugboat company during a violent labor conflict. Someone had already fired a bullet through a tugboat window. Permits denied because "a need to protect property alone" is not a "justifiable need" for carrying a handgun.); Siccardi v. State, 284 A.2d 533, 538 (N.J. 1971); Doe v. Township of Dover, 524 A.2d 469, 471 (N.J. Super. Ct. App. Div. 1987) (denying a permit for jeweler who had to carry diamonds in an area where other jewelers had been robbed); EVAN P. NAPPEN, NAPPEN II: NEW JERSEY GUN, KNIFE & WEAPON LAW 84 (2000); John C. Lenzen, Note, *Liberalizing The Concealed Carry of Handguns by Qualified Civilians: The Case for "Carry Reform,"* 47 RUTGERS L. REV. 1503, 1516–17 (1995).

[18] 720 ILL. COMP. STAT. ANN. § 5/24-2(b) (West 2003).

[19] 720 ILL. COMP. STAT. ANN. § 5/24-1(a)(4) (West 2003); *see also* WIS. STAT. ANN. § 941.23 (West 2005); Kopel, *supra* note 11, at 323–24 (discussing a Wisconsin Supreme Court ruling that concealed carry ban could not constitutionally be applied in a person's home or place of business, because of state constitutional right to keep and bear arms).

[20] 720 ILL. COMP. STAT. ANN. § 5/24-2(a) (West 2003).

universities.[21] In other states, there may not be a specific statutory exclusion, but school boards or higher education administrators have imposed their own bans. Thus, in forty-eight states, it has been agreed that there is some category of adults who can be trusted to be responsible about carrying a concealed handgun for lawful protection in almost all public places.

This Article does not argue for or against these laws, but takes them as a given. Rather, the Article focuses on a particular question: Once society has concluded that it is not harmful and may be beneficial for some people to be licensed to carry handguns for protection, does it make sense to carve out educational institutions as special "no-carry" zones, or is such a policy harmful? The argument is most relevant in the forty "Shall Issue" states, where public policy has already determined that the vast majority of adults should be authorized to carry almost everywhere in public—provided that they pass a safety class and a fingerprint-based background check.

Because this Article focuses on educational institutions, it is important to note that in the large majority of "Shall Issue" states the minimum age for being able to apply for a permit is twenty-one. There are six "Shall Issue" states in which the minimum age is eighteen.[22]

### A. *What Does the Constitution Require?*

In 2008, the Supreme Court ruled that the District of Columbia's handgun ban violated the Second Amendment.[23] Whether the Second Amendment is incorporated into the Fourteenth Amendment, and therefore binds state and local governments, remains to be resolved. Even without incorporation, the issue of Second Amendment rights in schools is relevant to schools in the District of Columbia and other federal property and territories where the Bill of Rights directly applies.

The school issue was directly addressed in *District of Columbia v. Heller*: "[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings . . . ."[24] At oral argument,

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[21] *E.g.*, CONN. GEN. STAT. § 53a-217b (2009) (providing for a general ban on guns at K–12 schools, with no exception for licensed carry); FLA. STAT. § 790.06(12) (2006) (stating that handgun carry permits are not valid on college and university property).

[22] IND. CODE ANN. § 35-47-2-3(g)(2) (West 2004); ME. REV. STAT. ANN. tit. 25, § 2003(1)(A) (2007); MONT. CODE ANN. § 48-8-321(1) (2007); N.D. CENT. CODE § 62.1-02-01(1)(d) (Supp. 2009); S.D. CODIFIED LAWS § 23-7-7.1(1) (Supp. 2009). New Hampshire's statute does not list a minimum age for licensed carry. N.H. REV. STAT. ANN. § 159:6 (2009). However, the state does prohibit the sale of firearms to minors. *Id.* § 159:12. A number of states allow open carry at age eighteen, without need for a permit, but they are irrelevant to this Article, which focuses on concealed carry licensees.

[23] District of Columbia v. Heller, 128 S. Ct. 2783, 2821–22 (2008).

[24] *Id.* at 2816–17.

Justice Stevens asked if the Second Amendment would allow guns to be banned in college dormitories; Alan Gura, the lawyer arguing against the D.C. handgun ban, affirmed that a dormitory ban would possibly be constitutional.[25]

It would not make sense to read the Supreme Court's dicta as if it were a statute. There might be some circumstances in which a gun ban for a school would obviously be unconstitutional—such as a ban on guns at specialized private institutions that teach defensive gun use or that teach hunting skills. For the purposes of this Article, it will be assumed that (1) the Second Amendment does not generally constrain policy makers' choices regarding firearms at most schools, and (2) the forty-four state constitutional rights to arms also impose no constraints on policy choices.[26]

### B. *The Push for Carry Rights on Campuses*

The night after the massacre of thirty-five unarmed students and teachers at Virginia Tech University in April 2007, an activist organization called Students for Concealed Carry on Campus ("SCCC") was formed.[27] The group has grown very rapidly. As of September 2009, it had over 35,000 supporters on its Facebook page, plus more than 350 chapters at colleges and universities.[28] There are approximately 300 additional campuses where the group has members but not an established chapter.[29] SCCC has attracted significant media attention, including an interview on ABC's *Good Morning America*,[30] and an article in *Newsweek*.[31] The group holds annual "empty holster" protests, in which students wear empty holsters on campus in order to protest the campus gun bans. In November 2007, there were 110 such protests nationwide.[32]

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[25] *See* Transcript of Oral Argument at 76–77, *Heller*, 128 S. Ct. 2783 (No. 07-290). The author was one of three attorneys joining Gura at the Supreme Court counsel table for the presentation of the oral argument.

[26] For the text of these state constitutional right to bear arms provisions, see David B. Kopel, *What State Constitutions Teach about the Second Amendment*, 29 N. KY. L. REV. 827, 829–50 (2002).

[27] Students for Concealed Carry on Campus Frequently Asked Questions, http://www.concealedcampus.org/faq.php (follow "How was the SCCC started" hyperlink) (last visited Sept. 8, 2009).

[28] *Id.*

[29] Kimberly Miller, *Guns on Campus? FAU Students Push for Advocacy Group*, PALM BEACH POST, Aug. 15, 2008, at 1A.

[30] *Good Morning America: Right to Bear Arms? Do Guns Belong on Campus?* (ABC Television Broadcast, Feb. 16, 2008), *available at* http://abcnews.go.com/video/playerIndex?id=4300805.

[31] Ben Whitford, *Armed for Class*, NEWSWEEK, Aug. 11, 2008, at 62.

[32] *See, e.g.*, Eric Ferreri, *Holster-Packin' Students Protest*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 25, 2008 (describing a protest at UNC-Chapel Hill); Steve Fry, *Students Armed with Words in Guns-On-Campus Protest*, TOPEKA CAPITAL-JOURNAL, Apr. 24, 2008, at 1A (describing a protest at Washburn University and three other Kansas colleges); Adriana Garza, *Holsters on Campus Put Gun Topic on Forefront*, CORPUS CHRISTI CALLER TIMES, Apr. 25, 2008, at 1 (describing the protest at Texas A&M); Michelle Roberts, *Members of Student Group Push for the Right to Carry Concealed Weapons on College Campuses*, ASSOCIATED PRESS FIN. WIRE, Nov. 21, 2007 (describing the widespread nature of protests); *College 'Empty Holster Protest' Hits Campuses, Draws Attention*, GUN

SCCC has played an unusual role in the national gun control debate. Usually, the public campaigns to change gun control laws are initiated by professional "pro-gun" organizations (such as the National Rifle Association or Gun Owners of America) or professional "anti-gun" organizations (such as the Brady Campaign or the Violence Policy Center). The campus carry issue is different in that it has been brought into the public debate by a spontaneously self-organized, amateur group of citizen activists. The professional pro/anti-gun lobbies have found themselves playing catch-up.

In 2007, bills to authorize licensed carry at state institutions of higher education or in public schools were introduced in Alabama,[33] Michigan,[34] Nevada,[35] Ohio,[36] South Carolina,[37] and Washington.[38] In 2008, bills were introduced in Alabama,[39] Arizona,[40] Georgia,[41] Idaho,[42] Indiana,[43] Kentucky,[44] Louisiana,[45] Ohio,[46] Oklahoma,[47] South Dakota,[48] Tennessee,[49]

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WEEK, Nov. 15, 2007, at 4; *Some UW Students Want to Carry Guns*, SEATTLE POST-INTELLIGENCER, Apr. 24, 2008, http://seattletimes.nwsource.com/html/localnews/2004370761_apwacampusguns.html?syndication=rss (describing a protest at University of Washington).

[33] Pauline Vu, *Va. Tech Shooting Spurs Changes at Colleges*, STATELINE.ORG, Sept. 6, 2007, http://www.stateline.org/live/details/story?contentId=237774.

[34] *Id.*

[35] *See infra* text accompanying notes 67–69.

[36] Vu, *supra* note 33.

[37] *Id.*

[38] *See* S.B. 6860, 2007 Leg., 60th Reg. Sess. (Wash. 2007) (prohibiting municipal bodies like public colleges from adopting campus bans).

[39] S.B. 18, 2008 S., Reg. Sess. (Ala. 2008) (applying to universities, for students in ROTC with no misdemeanor or felony convictions); S.B. 27, 2008 S., Reg. Sess. (Ala. 2008) (applying to professors only); S.B. 271, 2008 S., Reg. Sess. (Ala. 2008) (applying to professors only).

[40] S.B. 1214, 48th Leg., 2d Reg. Sess. (Ariz. 2008); H.B. 2628, 48th Leg., 2d Reg. Sess. (Ariz. 2008) (repealing law against licensed carry on school grounds).

[41] H.B. 915, 149th Gen. Assem., Reg. Sess. (Ga. 2008).

[42] S.B. 1381, 59th Leg., 2d Reg. Sess. (Idaho 2008) (sponsored by Senator Curt McKenzie).

[43] S.B. 12, 116th Gen. Assem., 1st Reg. Sess. (Ind. 2008).

[44] H.B. 114, 2008 H.R., Reg Sess. (Ky. 2008) (applying to parking lots for university employees).

[45] H.B. 199, 2008 H.R., Reg. Sess. (La. 2008) (allowing universities to establish policies for authorizing licensed carry, while affirming that universities can regulate storage of guns on campus). The bill passed the House Criminal Justice Committee 11-3. Editorial, *Tote Books, Not Guns*, TIMES-PICAYUNE, May 3, 2008, at 6. It was pulled from the House floor after Rep. Ernest Wooton estimated that he would have only forty-six of the necessary fifty-three votes to pass the bill through the 105 member chamber. Ed Anderson, *Campus Weapons Proposal Pulled*; *Sponsor Says He'll Keep Pushing Plan*, TIMES-PICAYUNE, June 10, 2008, at 2.

[46] S.B. 318, 127th Gen. Assem., Reg. Sess. (Ohio 2008).

[47] H.B. 2513, 51st Leg., 2d Sess. (Okla. 2008). The bill would allow people with law enforcement or military background over age 21 to carry on public college campuses. The bill passed the House 65-36, but stalled in the Senate. Mick Hinton & Barbara Hoberock, *Senate Holsters Gun Bill*, TULSA WORLD, Apr. 1, 2008, at A1.

[48] H.B. 1261, 83rd Leg. Assem., Reg. Sess. (S.D. 2008). The bill to allow licensed carry on state university campuses passed the House of Representatives by a 63-3 vote, but was defeated in the Senate 14-17. Michele Linck, *No Guns on South Dakota Campuses, for Now*, SIOUX CITY J., Feb. 16, 2008, http://www.siouxcityjournal.com/articles/2008/02/16/news/local/660b198e85dff68a862573f10016cba7.txt.

Virginia,[50] and Washington.[51] In 2009, bills were introduced in Indiana,[52] Louisiana,[53] Michigan,[54] Texas (with over seventy cosponsors),[55] South Carolina,[56] South Dakota,[57] and North Dakota.[58] In many states, the bills have been passed out of committee, and in some states they have passed one chamber, but defeated in the other. Conversely, some states have seen the introduction of bills to ban guns on college campuses, or in student apartments, and those bills have also been defeated.[59]

In 2009, the Arizona legislature enacted a law to forbid employers from prohibiting employee guns in locked cars in parking areas.[60] Accordingly, the regents of Arizona's public colleges and universities changed their campus regulations to permit such guns.[61] To avoid conflict with state law, Michigan State University's governing board has authorized persons with concealed carry licenses to carry guns while walking or

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[49] H.B. 3014, 105th Gen. Assem., 2d Sess. (Tenn. 2008) (allowing full-time faculty or staff at schools and universities to carry pursuant to a permit).

[50] H.B. 1371, 2008 H.R., 2008 Sess. (Va. 2008) (applying to faculty and adult students); H.B. 424, 2008 H.R., 2008 Sess. (Va. 2008) (applying to full-time faculty). Del. Robert Marshall, whose two sons attend George Mason University, said that he introduced the bill after a George Mason police officer contacted him with concerns that the campus police could not fully defend the school. Dorn Peterson, a physics professor at James Madison University, favored the bill. Pete DeLea, *Should Profs Pack Pistols?*, DAILY-NEWS REC., Jan. 17, 2008, http://www.dnronline.com/news_details.php?AID=14449&CHID=1.

[51] S.B. 6860, 2008 S., 2d Sess. of the 60th Reg. Sess. (Wash. 2008).

[52] S.B. 12, 116th Gen. Assem., 1st Reg. Sess. (Ind. 2009).

[53] H.B 27, 2009 H.R., Reg. Sess. (La. 2009).

[54] S.B. 747, 95th Leg., 1st Reg. Sess. (Mich. 2009).

[55] H.B. 1893, 81st Leg. (Tex. 2009). For the list of sponsors and cosponsors, see Texas Legislature Online, 81(R) Authors for H.B. 1893, http://www.legis.state.tx.us/billlookup/Authors.aspx?LegSess=81R&Bill=HB1893 (last visited Oct. 3, 2009).

[56] S.B. 347, 118th Gen. Assem., 1st Reg. Sess. (S.C. 2009).

[57] S.B. 82, 84th Leg. Assem., 2009 Reg. Sess. (S.D. 2009).

[58] H.B. 1348, 61st Leg. Assem. (N.D. 2009). The bill would allow gun possession in campus apartments (but not dormitories) and their associated parking lots by persons who have been issued a concealed carry permit, or who have passed a hunter safety class. It passed the North Dakota House of Representatives by a 48-46 vote. Janell Cole, *N.D. House Narrowly Passes Campus Gun Bill*, GRAND FORKS HERALD, Feb. 19, 2009, http://www.grandforksherald.com/event/contentEmail/id/107174/type/article/. The bill was defeated in the Senate. *See* Journal of the Senate of North Dakota for 2009, at 1238.

[59] *See* S.B. 6841, 2008 S., 2d Sess. of the 60th Reg. Sess. (Wash. 2008) (banning carry on college campuses, including private ones); Jordan Blum, *Bill Would Allow Guns on College Campus*, THE ADVOCATE (Baton Rouge, La.), Mar. 29, 2008, at A1 (explaining that Louisiana colleges ban guns in dormitories as a matter of policy, and that violating the rule could get a student expelled, but that such storage is not a crime; a bill to criminalize dormitory possession was defeated in 2007); Chet Brokaw, *House Panel OKs Bill Allowing Guns on Campuses*, RAPID CITY J., Jan. 30, 2008, http://www.rapidcityjournal.com/articles/2008/01/30/news/local/doc47a0dd2608aab504773184.txt (stating that a bill to create a statutory ban on guns on South Dakota college campus was unanimously defeated in a state House committee); Vu, *supra* note 33 ("Louisiana lawmakers killed a bill that would have banned guns in college dorms . . . .").

[60] ARIZ. REV. STAT. ANN. § 12-781 (2009).

[61] Becky Pallack, *Concealed Guns in Locked Cars Are OK at AZ Public Colleges Beginning Today*, ARIZ. DAILY STAR, Sept. 30, 2009, http://www.azstarnet.com/sn/education/311182.

driving through campus, but not to bring the guns into buildings or stadiums.[62]

Texas Governor Rick Perry has endorsed college students and public school teachers being able to carry on campus. At least in Texas, things are moving his way. In August 2008, the school district in Harrold, Texas, authorized licensed carry by school teachers.[63] District Superintendent David Thweatt said, "When the federal government started making schools gun-free zones, that's when all of these shootings started. Why would you put it out there that a group of people can't defend themselves? That's like saying 'sic 'em' to a dog."[64] A year later there had been no problems at the school, although a methamphetamine lab had been discovered in a house fifty feet away from school property, indicating that criminals with guns may have been much closer to the school than anyone realized.[65]

Michigan is hardly as "pro-gun" a state as Texas. Its gun control laws are much stricter, and it was among the last of the forty states to enact a "Shall Issue" law. Yet even in Michigan, a survey of public middle and high school principals found that one third favored the idea of allowing teachers to carry concealed firearms at school. That third was evenly split between principals who simply favored the proposal and those who favored the proposal along with restrictions.[66]

## III. REAL-WORLD PROGRAMS

A standard tactic of opponents of campus carry is to unleash a litany of frightened speculation. For example, in 2007, the Board of Regents for Nevada's public universities considered, but ultimately did not adopt, a Regent's proposal which had been brought forward by the four police chiefs of the state's eight campus university system.[67] Under the campus police chief's proposal, university faculty or staff members could volunteer to be trained and armed as members of a special reserve officers corps.[68] A

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[62] *See* Robin Erb, *Guns on Campus*, DETROIT FREE PRESS, June 20, 2009, at 1A.

[63] *See* James C. McKinley, Jr., *In Texas School, Some Teachers Carry Books, Chalk and Pistols*, N.Y. TIMES, Aug. 29, 2008, at A1 ("The school board decided that teachers with concealed guns were a better form of security than armed peace officers, since an attacker would not know whom to shoot first . . . . Teachers have received training from a private security consultant, and will use special ammunition designed to prevent ricocheting . . . .").

[64] *North Texas School District Will Let Teachers Carry Guns*, HOUSTON CHRON., Aug. 15, 2008, http://www.chron.com/disp/story.mpl/front/5945430.

[65] Ann Work, *Harrold Marks Year of Guns in Schools*, TIMES REC. NEWS (Wichita Falls, Tex.), Aug. 5, 2009, http://www.timesrecordnews.com/news/2009/aug/05/harrold-marks-year-of-guns-in-schools.

[66] *Weapons in Schools Strike a Nerve*, GRAND RAPIDS PRESS, Sept. 12, 2007, at A1.

[67] Lenita Powers, *Nevada, Other States Eye Guns on Campus*, RENO GAZETTE-J., Mar. 7, 2008, at A1; *see also* Vu, *supra* note 33 ("In Nevada, the Board of Regents approved a plan by the university system's four police chiefs to train and deputize faculty and staff volunteers to have more guns on campus to combat a shooter.").

[68] Kevin Johnson, *Universities Rethink Unarmed Police*, USA TODAY, Sept. 20, 2007, at 1A.

volunteer would have to pass a physical and psychological examination and a comprehensive background check. The volunteer would then pay to take classes on firearms, defensive tactics, and juvenile justice at Nevada's Law Enforcement Training Academy. The volunteer would also pay for his or her academy uniforms and equipment. Upon completion of the Law Enforcement Training Academy curriculum, the professor or staffer would receive $3000 annually in extra pay as an auxiliary law enforcement officer and would be authorized to carry a handgun on state university property.[69] In the Nevada legislature, a bill for a similar auxiliary police training system to K–12 teachers was introduced but defeated.[70]

Now consider one teacher's objection to the proposal:

> On reading the "Teachers who get police training could get extra pay, carry guns" article Wednesday, I was astounded!
>
> Having been a teacher for 40 years, I am a product of the "old school," which stressed that teachers are to be impeccable models for their students. That Clark County School District teachers would be encouraged to aspire to be eligible candidates for serving as reserve campus police officers by being paid an additional sum of $3,000 is an insult to academia.
>
> This idea would be turning our schools into war zones. The concept is barbaric! It is illogical! It is sick! Youth wishing to prove their manhood would find a way to challenge those teachers with guns. Would students feel respect or fear for the teachers with guns? Would the students who are in gangs not feel even more threatened and retaliate? Would not district schools be adding fuel to the fire by bringing additional guns to the school campuses?
>
> These are but a few of the arguments against the proposal that certain district teachers carry guns into their classrooms.[71]

The above response is by no means atypical of objections to campus carry. That is to say, the objection amounts to a list of worst-case scenarios, asserted as if they are near-certainties. One can find similar conjectural objections in many newspaper editorials opposing licensed

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[69] Emily Richmond, *Teachers Who Get Police Training Could Get Extra Pay, Carry Guns*, LAS VEGAS SUN, Aug. 8, 2007, http://www.lasvegassun.com/news/2007/aug/08/teachers-who-get-police-training-could-get-extra-p/.

[70] *Id.*

[71] Mary Gafford, Letter to the Editor, *Teachers + Guns = A Very Bad Idea*, LAS VEGAS SUN, Aug. 14, 2007, http://www.lasvegassun.com/news/2007/aug/14/letter-teachers-guns-a-very-bad-idea.

carry on campus.

When policy makers must make decisions, especially decisions which could have life or death consequences, pure speculation is unlikely to be helpful. A better approach is to examine empirical evidence to see whether a particular policy has been tried elsewhere, and if so, what the results have been.

In fact, there are many real-world experiments where defensive policies have already been tried. In these places, there is not a single example of even one of the hypothetical objections ever coming true. This Article now examines the policies which have been adopted at some schools in the United States as well as in Israel, Thailand, and Norway.

### A. *Schools in the United States*

In 2003, the Alliance for Justice (a leftist legal advocacy organization) surveyed the 150 largest colleges and universities in the United States regarding gun possession by students.[72] Slightly over half (eighty-two) of the institutions had comprehensive gun bans. Twenty-five schools allowed student guns, but required that the guns be stored in particular places. Twenty-seven allowed guns only for specific activities, such as a competitive shooting team, ROTC, or another campus program. Twenty-two required prior authorization for bringing a gun on campus. Five simply required that the gun be registered (but two of the five also required designated storage).[73]

The Alliance for Justice survey did not ask about gun possession or carrying by faculty or other staff. In the United States, one can find schools as diverse as Dartmouth College and Boise State University where gun carrying by faculty is permitted.[74] At Virginia's public colleges and universities, the governing bodies have banned licensed carrying by staff and students, but they do not have the legal authority to ban carry by campus visitors.[75] Thus, everyone with a Virginia state permit can carry at the Virginia public universities *except* for staff and students.

#### 1. *Utah*

In Utah, anyone with a concealed handgun permit may carry at any K–

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[72] Alliance for Justice, National Survey of College Campus Gun Possession Policies (2003), *available at* http://web.archive.org/web/20060213203944/http://www.allianceforjustice.org/student/student_resources/college_survey.html.

[73] *Id.*

[74] John R. Lott, Jr., Editorial, *Columbine to Va. Tech to NIU: Gun-Free Zones or Killing Fields?*, INVESTOR'S BUS. DAILY, Feb. 25, 2008, http://www.ibdeditorials.com/IBDArticles.aspx?id=288832885191506.

[75] *See* Jeff Branscome, *NRA: Let Students Carry*, FREE-LANCE STAR (Fredericksburg, Va.), Apr. 25, 2008, *available at* http://fredericksburg.com/News/FLS/2008/042008/News/FLS/2008/042008/04252008/374535 (noting the situation at the University of Mary Washington).

12 public school, and at any of the nine campuses in the Utah state college system, including in dormitories.[76] Utah's "Shall Issue" statute was enacted in 1995. The concealed handgun permit is issued by the Criminal Investigations and Technical Services Division of the state Department of Public Safety. The licensee must be at least twenty-one years old and must pass a safety class and a fingerprint-based background check.[77] For people who do not have permits, guns are prohibited from school zones in Utah.[78] School zones are broadly defined to include kindergartens through universities, as well as any parks, stadiums, or the like being used by a school, and a one thousand foot radius therefrom.[79]

There are exceptions to the Utah school zone weapons ban, including gun possession on private property (e.g., in a home or automobile within one thousand feet of school), or with approval from school administrators. Most important, there is a complete exception for any person who has a valid concealed carry permit.[80] Thus, under Utah law, since 1995, any person with a concealed carry permit has been able to carry a handgun in Utah K–12 public schools. Lawful carriers include teachers, as well as any other licensed adult, such as a parent visiting the school to pick up a child.

Although the 1995 Utah statute specifically authorized licensed carry in school zones, the University of Utah persisted in prohibiting licensed carry on campus. In 2004, the Utah legislature enacted supplemental legislation making it clear that the state university was required to follow the same carry statutes applicable to all other public educational institutions in Utah.[81] The University of Utah sued, claiming that the statute violated academic freedom.[82] It was something of a stretch to assert that "academic freedom" means that government schools can violate the constitutional rights of students or faculty,[83] and the Utah legislature had made it clear that licensed carry is part of the Utah constitutional right to

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[76] *See* UTAH CODE ANN. § 76-10-505.5(3) (2008) (creating an exception to firearms prohibition in school zones for, among others, persons authorized to possess firearms by virtue of concealed carry permit).

[77] *Id.* § 53-5-704.

[78] *Id.* § 76-10-505.5.

[79] *Id.* § 76-3-203.2.

[80] *Id.* § 76-10-505.5.

[81] *Id.* § 53-5A-102(2).

[82] Univ. of Utah v. Shurtleff, 144 P.3d 1109, 1112 (Utah 2006). For an argument in favor of the university policy, see Kathy L. Wyer, Comment, *A Most Dangerous Experiment? University Autonomy, Academic Freedom, and the Concealed-Weapons Controversy at the University Of Utah*, 2003 UTAH L. REV. 983, 985, 1007–08 (2003) (arguing that the state university has a right to autonomy, even against an express legislative enactment, and that the university is not bound to comply with the opinions of the state Attorney General).

[83] *Cf.* Coal. to Defend Affirmative Action v. Granholm, 473 F.3d 237, 247–48 (6th Cir. 2006) (rejecting claim that academic freedom includes the power to violate the state constitution's prohibition on racial discrimination).

arms.[84]

Did the law requiring the university to allow licensed gun carrying amount to a violation of the university's academic freedom to express its viewpoint about guns? The argument was difficult to reconcile with the U.S. Supreme Court's decision in *Rumsfield v. Forum for Academic and Institutional Rights*.[85] There, the Court held that when the government compels the law school to allow on-campus interviews by military recruiters, the government has compelled conduct, not speech, on the part of the law school.[86] Thus, even though military recruiters speak when on campus, the mere act of allowing them to rent space in an on-campus recruiting room was not compelled "speech" by the law school. *A fortiori*, when the government requires colleges to allow people to carry concealed firearms on campus, the college has not been forced to propound any "speech" in violation of its academic freedom.

After losing in the Utah Supreme Court, the university filed suit in federal district court. The lawsuit was withdrawn in 2007 after the legislature passed a bill allowing students in university dormitories to choose a roommate who does not have a firearm.[87] Among the groups who lobbied for campus carry in Utah were Second Amendment Students at the University of Utah.[88] However, thus far, hardly any students have exercised the option to be guaranteed a disarmed roommate.[89]

Thus, faculty at Utah public universities may possess licensed handguns in their offices or automobiles, and may carry those handguns on campus.[90] Students aged twenty-one years or older, the minimum age for a concealed handgun permit, may do the same, and may keep their handguns

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[84] *See* UTAH CODE ANN. § 53-5a-102(2) (2008) ("The individual right to keep and bear arms being a constitutionally protected right under Article I, Section 6 of the Utah Constitution, the Legislature finds the need to provide uniform civil and criminal firearm laws throughout the state.")

[85] 547 U.S. 47 (2006).

[86] *Id.* at 61.

[87] S.B. 251, 57th Leg., 2007 Gen. Sess. (Utah 2007), amending UTAH CODE § 53B-3-103; Sheena McFarland, *U of U Guns-on-Campus Suit Dismissed*, SALT LAKE TRIB., Mar. 14, 2007.

[88] Brian Maffly, *Pro-Gun Students Push for Right to Openly Carry Firearms on U. Campus*, SALT LAKE TRIB., Dec. 7, 2007; Sheena McFarland, *Stats Show Few Guns Found on Utah College Campuses*, SALT LAKE TRIB., Aug. 27, 2007.

[89] McFarland, *supra* note 87; Brian Maffly, *U. Gun Policy: Student Whose Roommate Has Gun Permit May Ask for a Reassignment*, SALT LAKE TRIB., Dec. 10, 2007 (on file with author).

[90] At Weber State University, anthropology Professor Ron Holt teaches the safety course in the Continuing Education Program (not for credit) for members of the university community, as well as other qualified adults, which is necessary for CCW applicants. John Hollenhorst, *Weber State University Offering Concealed Weapons Class*, KSL-TV, Oct. 21, 2007, http://www.ksl.com/index.php?nid=148&sid=2012831. A more advanced course, "Use of Force and Judgement Training," is taught at Lehigh Carbon Community College, in Pennsylvania. It too is a non-credit course. Genevieve Marshall, *Don't Shoot . . . ! . . . Without Training. LCCC Offers Simulation*, MORNING CALL (Allentown, PA), Mar. 2, 2009, at B1.

in their dorm rooms.[91] The data from Utah campuses reveal no incidents of the slightest misuse of a firearm by a person with a legal permit.[92] Nor is there any record of misuse of a firearm by a permit-holder in a K–12 school anywhere in Utah. There have been no instances of attempted mass murders at any school in Utah.

One might argue that Utah is an atypical state. Sixty percent of Utah's population is Mormon,[93] and members of the Church of Jesus Christ of Latter Day Saints are not supposed to consume alcohol.[94] Accordingly, one might expect that the risk of alcohol-related gun misuse by students would be lower in Utah than in other states. This is undoubtedly true, but it should also be noted that a rather large percentage of Utah's population (and, presumably, its public college and university students), is *not* Mormon, and there is no evidence of any gun misuse by the licensed non-Mormon students either.

Moreover, there are many situations in which Mormons' abstemious practices in regards to alcohol are irrelevant. For example, one can see from personal observation that in the United States, it is very rare for a public school teacher (whatever his or her religion might be) to show up at school under the influence of alcohol. Accordingly, one might expect that Utah public school teachers are drunk at work about as often—that is, almost never—as teachers everywhere else.

There are no known cases of any Utah public school teachers who legally have guns in school ever threatening a student. Nor are there any known cases of Utah high school students taking guns to school because they are afraid of their teachers. Nor are there any reports of any student, teacher, or professor at any educational institution anywhere in Utah reporting that they felt less willing to speak up in a classroom because they were afraid of licensed gun permitees. In sum, there has been a natural experiment which has lasted fourteen years in the Utah public schools, and for the same length of time in the Utah public colleges, except for one recalcitrant school, which finally started complying with the law several years ago. There have been zero instances of the slightest evidence of any harm to academic freedom, let alone any case of misuse of a firearm by a licensed permit-holder.

Accordingly, when someone unleashes the parade of horribles that

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[91] There is one remaining subject of contention. The Utah carry licensing statute allows the licensee to carry concealed or openly. The University of Utah, however, forbids licensed open carry. Maffly, *Pro-Gun Students*, *supra* note 88.

[92] McFarland, *supra* note 87.

[93] *Utah's Mormon Population Declines*, ASSOCIATED PRESS, Nov. 20, 2008.

[94] DOCTRINES & COVENANTS OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 89:5–7 ("That inasmuch as any man drinketh wine or strong drink among you, behold it is not good, neither meet in the sight of your Father, only in assembling yourselves together to offer up your sacraments before him. And, behold, this should be wine, yea, pure wine of the grape of the vine, of your own make. And, again, strong drinks are not for the belly, but for the washing of your bodies.")

would supposedly result from allowing licensed carry on campus, then a legitimate follow-up question would be "Why are professors, schoolteachers, or higher education students in this state more irresponsible than their counterparts in Utah?" Perhaps someone could offer reasons to believe that high school teachers in Oregon are more likely to commit gun crimes than high school teachers in Utah; that college professors at the University of Missouri are more likely to shoot students than are professors at Weber State; or that the graduate students at the University of Connecticut are more likely to get drunk and cause a gun accident than are their non-Mormon counterparts at the University of Utah. This Article does not suggest that such arguments could not be persuasively offered—just that over a decade of empirical experience in Utah suggests that if a person cannot persuasively show that the relevant group in the other state is less likely to be responsible than their Utah counterparts, then there is little reason to fear adverse consequences from licensed campus carry in that other state.

It is also important to remember that the comparison is not for entire state populations (e.g., Florida vs. Utah). Rather the comparison is for only a small percentage (under ten percent and usually under five percent)[95] of the Utah and other state population which has been granted a permit to carry a handgun for lawful protection. As discussed in Part IV, this is a population subgroup that in every state is far more law-abiding than is the general population.

There is some empirical evidence that people at campuses outside Utah are capable of matching the virtues of Utah citizens—at least for the simple virtue of not committing gun crimes even when the person has a gun. At Colorado State University (whose campus in Fort Collins, Colorado has 25,000 students), licensed carry by faculty, students, and visitors is allowed. The only difference from Utah is that students may not keep guns in dormitories. Licensed carry is also allowed for faculty, students, and visitors at Blue Ridge Community College (three campuses; enrollment of about 4000 at the largest campus) in rural Virginia. Colorado's "Shall Issue" law was enacted in 2003, and Virginia's in 1995. Again, there are no reported instances of gun misuse by licensees at these institutions.[96]

### B. *Israel*

From kindergarten through graduate school, the schools of Utah have been safe from any attempted attack by mass murderers. The same is true

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[95] Cramer & Kopel, *supra* note 11.

[96] *See* Kopel telephone interview with Colorado State University campus security head (Nov. 5, 2007); Podcast: The Virginia Tech Tragedy: Shedding Light on Campus Carry (Mar. 16, 2009), *available at* http://audio.ivoices.org/mp3/iipodcast271.mp3 (interview with Virginia Tech SCCC chapter leaders).

of Colorado State and Blue Ridge. Of course it is impossible to know for sure whether the licensed carry policies at these campuses have had a deterrent effect. There is another place, however, where arming teachers plainly has saved lives. The nation with the most experience in preventing mass murders in schools is Israel.

Palestine Liberation Organization ("PLO") attacks on Israeli schools began during Passover 1974. The first attack was aimed at a school in Galilee. When the PLO terrorists found that the school was closed because of Passover weekend, they murdered several people in a nearby apartment building. Then, on May 15, 1974, in Maalot:

> Three PLO gunmen, after making their way through the border fence, first shot up a van load full of workers returning from a tobacco factory (incidentally these people happened to be Galilee Arabs, not Jews), then they entered the school compound of Maalot. First they murdered the housekeeper, his wife and one of their kids, then they took a whole group of nearly 100 kids and their teachers hostage. These were staying overnight at the school, as they were on a hiking trip. In the end, the deadline ran out, and the army's special unit assaulted the building. During the rescue attempt, the gunmen blew their explosive charges and sprayed the kids with machine-gun fire. 25 people died, 66 wounded.[97]

Israel at the time had some severe anti-gun laws, which were left over from the days of British colonialism, when the British rulers tried to prevent the Jews from owning guns. After vigorous debate, the government began allowing army reservists to keep their weapons with them. Handgun carry permits were given to any Israeli with a clean record who lived in the most dangerous areas: Judea, Samaria, and Gaza. All over Israel, guns became pervasive in the schools:

> Teachers and kindergarten nurses now started to carry guns, schools were protected by parents (and often grandpas) guarding them in voluntary shifts. No school group went on a hike or trip without armed guards. The Police involved the citizens in a voluntary civil guard project "Mishmar Esrachi," which even had its own sniper teams. The Army's Youth Group program, "Gadna," trained 15–16 year old kids in gun

[97] *Proven Solutions To ENDING School Shootings: A Telephone Interview with Dr. David Th. Schiller, Anti-Terror Expert*, JEWS FOR THE PRESERVATION OF FIREARMS OWNERSHIP (1999), *available at* http://www.jpfo.org/filegen-n-z/school.htm. Schiller was born in West Germany and moved to Israel, where he served in the military as a weapons specialist. He later returned to Germany, and was hired as a counterterrorism expert by the Berlin police office, as well as by police forces of other German cities. For a while he worked in the terrorism research office of the RAND corporation, and for several years he published a German gun magazine. *Id.*

> safety and guard procedures and the older high school boys got involved with the Mishmar Esrachi. During one noted incident, the "Herzliyah Bus massacre" (March '78, hijacking of a bus, 37 dead, 76 wounded), these youngsters were involved in the overall security measures in which the whole area between North Tel Aviv and the resort town of Herzlyiah was blocked off, manning roadblocks with the police, guarding schools kindergartens etc.[98]

After a while, "[w]hen the message got around to the PLO groups and a couple infiltration attempts failed, the attacks against schools ceased."[99]

Although the PLO gave up its school attacks, there was at least one subsequent instance of a lone terrorist targeting a school. On May 31, 2002, a terrorist threw a grenade and began shooting at a kindergarten in Shavei Shomron. Then, instead of closing in on the children, he abruptly fled the kindergarten and began shooting around the nearby neighborhood. Apparently he realized that the kindergarten was sure to have armed adults, and that he could not stay at the school long enough to make sure he actually murdered someone.[100] Unfortunately for the terrorist, "David Elbaz, owner of the local mini-market, gave chase and killed him with gunshots. In addition to several grenades and the weapon the terrorist carried on him, security sweeps revealed several explosive devices that he had intended to detonate during the thwarted attack."[101]

The Israeli policy shows a strong deterrent effect. But Israel's policy went vastly further than the current American campus carry proposals. Israel essentially guaranteed that all schoolchildren would be protected at all times by armed defenders. The American proposals would allow for possibility of protection, but would not guarantee it. It is true that in "Shall Issue" states, when there is a large enough crowd, it becomes statistically very likely that at least one and probably several people in the crowd will have concealed carry licenses, and that some of them may be carrying at that moment. But this is not the same as ensuring that all schools are protected all the time. It is well-known that many terrorists have no intention of surviving their terror attack. Yet the Israeli experience does suggest that even people who are intent on dying can be deterred. After all, their objective is to kill as many innocent victims as possible. If a potential target is well-protected by civilian defenders, then the terrorists seem to abandon that target.

Accordingly, the Israeli experience demonstrates that even attacks on

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[98] *Id.*

[99] *Id.*

[100] *See Terrorist Attack Foiled in Shavei Shomron*, ISRAEL NAT'L NEWS, May 31, 2002, http://web.archive.org/web/20060924230716/www.israelnationalnews.com/news.php3?id=24440.

[101] *Id.*

schools by suicidal people can be deterred, if the schools are protected by armed citizen defenders. Because the Israeli defense system was so comprehensive, one cannot say for sure whether a much more casual defensive system in American schools would have such a strong deterrent effect.

### C. *Thailand*

Muslim extremists in Thailand's southern provinces of Narathiwat, Yala, and Pattani have been carrying out a terrorist campaign, seeking to create a Taliban-style Islamic state independent of Thailand, whose population is predominantly Buddhist. Most teachers are Buddhists, and they have been a key target of the terrorists.[102]

On April 27, 2004:

> Interior Minister Bhokin Bhalakula ordered provincial governors to give teachers licenses to buy guns if they want to even though it would mean bringing firearms into the classrooms when the region's 925 schools reopen May 17 after two months of summer holiday. . . . Pairat Wihakarat, the president of a teachers' union in the three provinces, said more than 1,700 teachers have already asked for transfers to safer areas. Those who are willing to stay want to carry guns to protect themselves, he said.[103]

Gun-control laws in Thailand are extremely strict and were tightened even more because of three school shootings (perpetrated by students) that took place in a single week in June 2003; two students were killed.[104]

While Thailand's government is hostile to gun ownership in general, it has recognized that teachers ought to be able to safeguard their students and themselves.[105] As of 2006, thousands of teachers in the three southern provinces were carrying guns, according to Sanguan Jintarat, head of the region's Teachers' Association. Because the permitting process takes months, many teachers were carrying illegally, without a permit. The government, for its part, was running defensive handgun combat training classes for teachers, and selling them 9mm Steyr semi-automatic pistols for one-fourth of the street price. Teachers' determination to be armed intensified after a July 2006 murder of a teacher. According to the

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[102] *Thailand Allows Teachers in Restive South to Carry Guns for Protection*, ASSOCIATED PRESS, Apr. 27, 2004.

[103] *Id.*

[104] David Kopel, *Follow the Leader*, NAT'L REV., Sept. 2, 2004, http://www.nationalreview.com/kopel/kopel200409022215.asp.

[105] Jocelyn Gecker, *Teachers in Thailand Under Fire—And Learning to Shoot Back*, ASSOCIATED PRESS, Sept. 11, 2006.

Associated Press, "Prasarn Martchu, a 46-year-old Buddhist, was standing at his blackboard teaching a morning Thai-language class when a gunman walked in disguised as a student, fired twice and escaped while the two armed guards on duty were scared off by the gunfire, according to school officials."[106]

The government has also allowed villages in the south to form citizen militias to patrol the area, and to protect their village from terrorist attacks. The militias are supplied with rifles donated by the government. "I don't care what anyone says," said Thailand's Queen Sirikit, according to one of her advisors. "We must help the people there to survive. If they need to be trained, train them. If they need weapons, give them weapons."[107] "Give them weapons" is exactly what the government has been doing. In March 2009, the *Bangkok Post* reported that "[t]he Royal Aide-de-Camp Department plans to buy 4700 pistols and rifles for use by teachers, security officers and village defence volunteers working in the troubled South."[108]

Culturally, it is not surprising to hear that there are many people in Israel, Utah, Colorado, or Virginia who are comfortable with a culture of defensive handgun carrying. However, few people think of Buddhist school teachers in Thailand as ranking high among the world's "pro-gun" constituencies. The fact that permits in Thailand are sought by Buddhist teachers indicates that the strong desire to protect oneself and one's students is something of a universal trait.

The Thailand example shows that armed teachers are not necessarily, by themselves, sufficient to fully protect schools. As of September 2008, the terrorists had destroyed three hundred schools with arson and bomb attacks.[109] By early 2009, the terrorist violence had declined significantly, as the terrorists had alienated most of the local Muslim population, and been ground down as the military and police captured terrorist leaders. But the armed teachers policy did not lead to an instant end to the murder of teachers.[110] Nor did the armed protection program in Israel lead to the instant cessation of attacks on schools.[111]

Both Israel and Thailand faced large, well-organized, and

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[106] *Id.*

[107] Thomas Fuller, *Southern Thai Towns Increasingly Rely on Militias*, N.Y. TIMES, Mar. 19, 2007, *available at* http://www.nytimes.com/2007/03/19/world/asia/19iht-thai.4958722.html.

[108] *Defence Plans to Arm Teachers*, BANGKOK POST, Mar. 27, 2009, http://www.bangkokpost.com/news/local/14053/defence-plans-to-arm-teachers.

[109] *Slow Motion Violence*, STRATEGY PAGE, Sept. 19, 2008, http://www.strategypage.com/qnd/thai/articles/20080919.aspx.

[110] *See Eye on the Problem*, STRATEGYPAGE, Mar. 9, 2009, http://www.strategypage.com/qnd/thai/articles/20090314.aspx (noting that terrorists are suspected in murder of two college students); *Power to the People*, STRATEGYPAGE, Feb. 28, 2009, http://www.strategypage.com/qnd/thai/articles/20090228.aspx.

[111] *See supra* text accompanying note 97.

internationally funded terrorist organizations. Fortunately in the United States, schools have not (at least not yet) come under attack from such groups. If they did, the Israel and Thailand experience suggests that an armed teachers program might be an important component of increasing school safety, but that such a program should not be expected to result to an instant halt in attacks by terrorist organizations.

### D. *Norway*

In upper Norway's Svalbard archipelago, a ban on polar bear hunting has led to surge in the polar bear population—and some people have been killed by polar bear attacks. Accordingly, students are required to carry shotguns when traveling to and from school, and to take shooting classes at school.[112] The University Centre in Svalbard is the northernmost institution of higher education in the world. There, students are mandated to practice rifle shooting.[113]

## IV. EMPIRICAL EVIDENCE OF DEFENSE AND DETERRENCE

Part III of this Article described situations in the United States and around the world where professors, teachers, and students participate in programs to carry guns for lawful protection; the research found no evidence that the gun-carriers have harmed or threatened anyone (other than terrorists or man-eating bears). But the argument of Students for Concealed Carry on Campus is not simply that "We won't hurt you." Rather, the argument is that "We will make you safer." That is, a college professor, public school teacher, or adult college/graduate student who has a lawful concealed handgun, and who happens to be present when an attack begins, would make the situation better rather than worse, from the viewpoint of innocent victims.

This section presents evidence indicating that campus carry would likely improve campus safety.[114] First, American data show that ordinary violent criminals—the type who might perpetrate an attack in a campus parking lot—are significantly deterred by the risk of confronting an armed victim. Second, police studies show that mass killers who attack schools kill so rapidly that waiting for the police to arrive is guaranteed to lead to mass death; further, mass killers who attack schools tend to kill themselves as soon as they face armed resistance (because they are cowardly, and

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[112] Nina Berglund, *Armed for First Day of School*, AFTENPOSTEN (Norway), Aug. 20, 2007, http://www.aftenposten.no/english/local/article1948234.ece.

[113] Agence France Press, *Svalbard, Where Man and Polar Bears Share the Art of Living*, SPACE DAILY, Mar. 16, 2008, http://www.spacedaily.com/reports/Svalbard_where_man_and_polar_bears_share_the_art_of_living_999.html; The University Centre in Svalbard, http://www.unis.no (last visited Oct. 2, 2009) (noting that the campus is "the world's northernmost higher education institution").

[114] Arguments that campus carry would cause other problems are addressed *infra* Part V.

because they are intent on suicide anyway). Third, there are three cases in which an armed teacher, student, or nearby adult have stopped mass killers on an American campus.

### A. *Deterrence*

We know that, in general, criminals are deterred by armed citizens. Intending to build the case for comprehensive federal gun restrictions, the Carter administration awarded a major National Institute of Justice ("NIJ") research grant in 1978 to University of Massachusetts sociology professor James Wright and his colleagues Peter Rossi and Kathleen Daly.[115] Wright had already editorialized in favor of much stricter controls.[116] Rossi would later become president of the American Sociological Association.[117] Daly would later win the Hindelang Award, the highest prize bestowed by the American Society of Criminology, for her feminist perspectives on criminology.[118] When the NIJ authors rigorously examined the data, they found no persuasive evidence in favor of banning handguns for self-defense.[119]

Wright and Rossi produced another study for the NIJ. Interviewing felony prisoners in eleven prisons in ten states, Wright and Rossi discovered that:

> 34% of the felons reported personally having been "scared off, shot at, wounded or captured by an armed victim."
>
> 8% said the experience had occurred "many times."
>
> 69% reported that the experience had happened to another criminal whom they knew personally.
>
> 40% had personally decided not to commit a crime because they thought the victim might have a gun.
>
> 56% said that a criminal would not attack a potential victim who was known to be armed.
>
> 74% agreed with the statement that "One reason burglars avoid houses where people are at home is that they fear being

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[115] JAMES D. WRIGHT, PETER H. ROSSI & KATHLEEN DALY, UNDER THE GUN: WEAPONS, CRIME, AND VIOLENCE IN AMERICA xi (1983).

[116] *Id.* at xiv–xv.

[117] American Sociological Association, Peter H. Rossi, http://www.asanet.org/cs/root/leftnav/governance/past_officers/presidents/peter_h_rossi (last visited Oct. 2, 2009).

[118] American Society of Criminology, Michael J. Hindelang Award, http://www.asc41.com/mjaward.html (last visited Oct. 2, 2009).

[119] *See* WRIGHT ET AL., *supra* note 115, at 149, 321.

shot."[120]

Notably, "the highest concern about confronting an armed victim was registered by felons from states with the greatest relative number of privately owned firearms."[121] Furthermore:

> The authors concluded "the major effects of partial or total handgun bans would fall more on the shoulders of the ordinary gun-owning public than on the felonious gun abuser of the sort studied here . . . . [I]t is therefore also possible that one side consequence of such measures would be some loss of the crime-thwarting effects of civilian firearms ownership.[122]

The survey of criminals provides strong evidence that allowing people on campuses to have licensed handguns for protection would deter some crimes. Whether "Shall Issue" laws in general lead to statistically significant reductions in crime is a topic that has been the subject of extensive debate among econometricians.[123] Notably, research indicates that "Shall Issue" laws led to an eighty-nine percent drop in multiple-victim (two or more fatality) public shootings.[124] However, this finding depends on a narrow definition of such shootings—a definition which excludes shootings that are part of another crime (e.g., a robbery in which the victims are killed) or which are gang-related (e.g., a drive-by shooting).[125]

Although there is debate on whether there is a statistically significant crime reduction as a result of "Shall Issue" laws, there is unanimity that there is no statistically significant *increase* in crime caused by the acts of

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[120] *See* JAMES D. WRIGHT & PETER H. ROSSI, ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS 146 tbl.7.1, 155 tbl.7.5 (expanded ed. 1994).

[121] *Id*. at 151.

[122] *Id*. at 238.

[123] *See, e.g.*, JOHN R. LOTT, JR., MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN-CONTROL LAWS 19–20 (1998) (noting statistically significant reductions in all homicide, assault, rape, and robbery); NAT'L RESEARCH COUNCIL, FIREARMS AND VIOLENCE: A CRITICAL REVIEW 2 (2005) (stating that the current level of research does not allow strong conclusions about whether "Shall Issue" laws have positive effects); Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 STAN L. REV. 1193, 1201–02 (2003) (noting no statistically significant effects); Carlisle E. Moody & Thomas B. Marvell, *The Debate on Shall-Issue Laws*, 5 ECON J. WATCH 269, 288 (2008) (reviewing other articles that had critiqued or supported Lott's research; adding additional years and variables to the Ayers-Donohue analysis indicates that the only statistically significant long-term effect is a reduction in assault).

[124] John R. Lott, Jr. & William M. Landes, *Multiple Victim Public Shootings, Bombings, and Right-to-Carry Concealed Handgun Laws: Contrasting Private and Public Law Enforcement* 9, 32 (Univ. of Chi. Law Sch. John M. Olin Law & Econ. Working Paper No. 73, 1999). A revised version of this paper is incorporated in JOHN R. LOTT, THE BIAS AGAINST GUNS: WHY ALMOST EVERYTHING YOU'VE HEARD ABOUT GUN CONTROL IS WRONG 108–14 (2003).

[125] LOTT, BIAS AGAINST GUNS, *supra* note 124, at 104.

the licensees.[126] There is also extensive evidence of particular cases in which licensees have used their permitted handguns to save their own lives, or the lives of other people, or to thwart other serious violent crimes.[127]

Even if these life-saving acts are not statistically significant, they are immensely significant for the victims and their families. Saving even one life, or thwarting even one other violent crime, is a very good thing. Accordingly, allowing licensed carry on campuses makes sense for the purpose of general reduction in violent crime. Of course if the harms of this crime reduction outweighed the gains, then we would have a different answer, but as detailed in Parts II and V, there is no evidence that self-defense laws are harmful, including in the campus context.

But what about deterring mass killers? It is sometimes claimed that such people are undeterrable because they are mentally ill. Whatever else may be said about the mental states of such killers, most of them have demonstrated their ability to be quite rational and calculating in planning the details of their attack. For example, the murderer at Virginia Tech planned the killing over many months, and among the tools he brought for his murder spree was a heavy chain lock for doors, which significantly increased the time it took for the police to get into the part of the building where the killer was active.[128] Likewise, the Columbine murderers planned their crime for at least a year, and successfully executed a plan to use explosives and fire alarms to create confusion among the victims; they also started their attack when the school resource officer was off-campus having lunch—an indication that they preferred not to confront armed resistance.[129]

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[126] For the argument that licensees are dangerous, see *infra* Part V.C.1.

[127] *See* ROBERT A. WATERS, THE BEST DEFENSE: TRUE STORIES OF INTENDED VICTIMS WHO DEFENDED THEMSELVES WITH A FIREARM 109–11, 211 (1998) (reviewing stories of victims using self-defense); Buckeye Firearms Association, Ohio CHL-Holders Acting in Self-Defense, http://www.buckeyefirearms.org/printable/node/4546 (last visited Nov. 16, 2009) (providing summaries of self-defense cases reported in the newspapers in which the paper identified the defender as having an Ohio Concealed Handgun License). For another compilation of self-defense cases involving concealed carry permitees, see Clayton Cramer's "Civilian Gun Self-Defense Blog," discussed *infra* at notes 204–05.

[128] *See* VA. TECH REVIEW PANEL, MASS SHOOTINGS AT VIRGINIA TECH, APRIL 16, 2007, at 26 (2007), *available at* http://www.governor.virginia.gov/TempContent/techPanelReport-docs/FullReport.pdf (noting the murderer chained three entrances to the engineering building).

[129] *See* David B. Kopel, *What If We Had Taken Columbine Seriously?*, THE WEEKLY STANDARD, Apr. 24, 2000, at 20. The murders began outside an entrance to the school. Early in the attack, outside the school building, the School Resource Officer returned from lunch, and engaged in a long-distance exchange of gunfire with the killers. The killers retreated into the building, and then began killing people inside. Instead of pursuing the killers, the officer stayed outside, and took no further action against the killers. Inside the building, in the school library students were told by a 911 operator to stay where there were and not to leave (even though the library had its own exit directly to the outside). As a result, most of the people at Columbine who died were those who were methodically executed in the library. Because of the open 911 line, the police officers who had arrived at the scene knew what was going on the library, but they stood idle several feet away, outside the building. The police were acting

It is also important to remember that although some mass killers, such as the ones at Columbine, attack a school because of personal animosity towards students or teachers, other mass killers are adults who have no connection to the school. These would include the thirty-year-old who attacked a second-grade classroom in Winnetka, Illinois in 1988,[130] or the pederast who murdered sixteen kindergarteners and a teacher in Dunblane, Scotland.[131]

One reason why some adult sociopaths choose to attack schools—schools to which they have no particular connection—is that schools are easy targets. It is not surprising that police stations, hunting-club meetings, NRA offices, and similar locations known to contain armed adults are rarely attacked.

### B. *Need for Speed in Responding to Active Shooters*

Whenever there is a public debate on campus defense against mass murderers, there is almost certain to arise a vast amount of commentary from people who have no expertise with defensive tactics, yet who announce with certitude that campus police or security guards, or police arriving at the campus, will always provide sufficient protection. The view of actual experts is somewhat different.

*Police Marksman* is a professional periodical for police officers that focuses almost entirely on police tactics involving firearms. It presents close analysis of incidents in which officers were attacked by armed assailants, and the tactics that did or did not work in response. *Police Marksman* also covers topics such as police sniper work in hostage

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under the standard doctrine of the time, which placed officer safety above all other values. The doctrine stated that only a S.W.A.T. team should enter the building, and that even the S.W.A.T. should not search for the killers immediately, but should methodically establish a perimeter, and then slowly tighten that perimeter room by room. *Id.*

[130] JOEL KAPLAN, GEORGE PAPAJOHN, & ERIC ZORN, MURDER OF INNOCENCE: THE TRAGIC LIFE AND FINAL RAMPAGE OF LAURIE DANN 228–35 (1990). This Article purposely avoids mentioning the names of the killers, except when necessary to do so in a citation. Mass killers are frequently motivated by the desire for posthumous publicity, and the mass media's providing of such publicity often has a direct effect leading to more mass murders. *See* LOREN COLEMAN, THE COPYCAT EFFECT: HOW THE MEDIA AND POPULAR CULTURE TRIGGER THE MAYHEM IN TOMORROW'S HEADLINES 1–5 (2004) (noting the epidemics of similar behaviors after suicides and school shootings); Clayton E. Cramer, *Ethical Problems of Mass Murder Coverage in the Mass Media*, 9 J. MASS MEDIA ETHICS 26, 29 (1994) (case study indicating that coverage by media sources encourages copy cat behavior).

On the Jewish holiday of Purim, the Book of Esther is read. The story is about a thwarted plot to kill all the Jews living in the Babylonian empire. Whenever the would-be genocidaire's name is read, the audience drowns it out with noisemakers and shouts. This is a better policy than putting a mass killer's publicity video of himself on national television news and publishing a still photo from that video on the front page of most newspapers—as the American media irresponsibly did after the Virginia Tech murders. *See* Dave Kopel, *Airing, Publishing Killer's Photos, Rants Reckless; Publicity a Fresh Inducement to Mass Murderers*, ROCKY MOUNTAIN NEWS, Apr. 21, 2007, at 30.

[131] SANDRA UTTLEY, DUNBLANE UNBURIED 14 (2006) (explaining how sixteen children and their teacher were murdered, and another twelve children and three teachers injured, during a school shooting).

situations, and other issues involving police use of firearms to protect the public.

A 2007 issue of the magazine was devoted to the problem of the "active shooter." Before Columbine, the standard police tactic for dealing with an armed criminal inside a building was to establish a perimeter, and then gradually constrict the perimeter, safely clearing one room at a time.[132] That was the tactic used at Columbine, with the result that eleven of the thirteen people who were murdered (including teacher Dave Sanders, who bled to death over the course of several hours) were killed while the police were methodically setting up the perimeter outside.[133] Many more people might have been killed if the Columbine perpetrators had not committed suicide.

Post-Columbine, police tactics began to change in regards to the "active shooter"—the term used by defense experts for Columbine-type attackers. Establishing and constricting the perimeter might be fine in a case where a bank robber is holding hostages inside a building. It is not the right response to the active shooter who is killing one person after another.

In the article *Rapid Deployment: Version 2.0*, police trainer Dick Fairburn details the problem of effective police response to the active shooter. While the active shooter phase of Columbine lasted thirteen minutes,

> [m]any of the active shooter incidents we examined were over in three to four minutes, much quicker than four officers could be assembled as a rapid deployment team and hope to find and neutralize the shooter. This suggests that the only hope for stopping the shooter and saving lives in most active shooter events, will come from someone who is at the scene when the shooting starts.[134]

Simply put, by the time the S.W.A.T. team arrives, it will be too late.

This means that neutralizing the active shooter will be up to a single School Response Officer ("SRO") already stationed at the high school, or the college campus police, or perhaps a nearby patrol officer who quickly arrives at the scene. *The Police Marksman* article states that sometimes,

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[132] *See* Kopel, *supra* note 129.

[133] *Id.* In 1993, a mass killer attacked a law firm at 101 California Street in San Francisco. The killer committed suicide when he heard the police coming. The police found his body in a stairwell, but did not realize he was the perpetrator. Accordingly, they sealed off the area and refused to allow emergency medical personnel to enter. As a result, victim Deborah Fogel bled to death over the course of an hour. Leslie Goldberg, *Did Victim Have to Die? Family Sues for Answer: SFPD Must Defend Actions in Tragedy at 101 California*, S.F. EXAMINER, Mar. 26, 1995, http://www.sfgate.com/cgi-bin/article.cgi?f=/e/a/1995/03/26/NEWS5499.dtl&hw=arrived&sn=215&sc=130.

[134] Richard Fairburn, *Rapid Deployment: Version 2.0*, POLICE MARKSMAN, Sept./Oct. 2007, at 21, *available at* http://www.policeone.com/pc_print.asp?vid=1675030.

armed citizens may be the right, and only, response:

> Lacking an SRO or first arriving officer, the only hope for saving lives may fall to citizens who are on-scene when the attack begins. . . . [A]ctive shooters have been stopped by untrained citizens. In states where concealed carry is legal, the odds of a citizen being equipped to deal with an active shooter are enhanced. The Virginia Tech officials have been criticized for banning concealed weapons permits on their campus. Many universities still refuse to arm their campus police officers. The [Columbine killers'] generation that wreaked havoc in high schools are now at universities—this is a dangerous time.[135]

Another article in the same issue observes that "[t]he sooner someone—anyone—effectively intervenes through an act of courage, the fewer funerals will result. In past incidents, active shooters have been thwarted by police officers, security guards and school teachers."[136]

A police study describes some consistent patterns of active shooters. The report, released by the Force Science Research Center at Minnesota State University-Mankato, observes that the average post-Columbine "rapid mass murder episode" lasts about eight minutes.[137] The short time period makes it close to impossible for police to use the preferred tactic of deploying a four-man team, and makes it unlikely that even a two-officer team will be available in time.[138] But "[u]nlike conventional criminal predators, who often have no reluctance about attacking police," active shooters are "cowardly." Report author Ron Borsch explains:

> They choose unarmed, defenseless innocents for a reason: They have no wish to encounter someone who can hurt them. They are personally risk- and pain-avoidant. The tracking history of these murderers has proved them to be unlikely to be aggressive with police. If pressed, they are more likely to kill themselves.[139]

Accordingly, the tactics that make sense in most situations, such as a gun battle with an armed robber or kidnapper trying to escape, are not appropriate for an active shooter. Instead, even a lone officer should

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[135] *Id.* at 21. This Article alters the quote to avoid printing the killers' names. *See supra* note 130.

[136] Dan Marcou, *5 Phases of the Active Shooter Incident*, POLICE MARKSMAN, Sept./Oct. 2007, at 31, *available at* http://www.policeone.com/pc_print.asp?vid=1672491.

[137] *Ohio Trainer Makes the Case for Single-Officer Entry Against Active Killers*, POLICEONE.COM NEWS, May 14, 2008, http://www.policeone.com/pc_print.asp?vid=1695125 (reprinting report from *Force Science News*). In 2008, *Police Marksman* ceased print publication, and its subscribers were transferred to the PoliceOne website, which deals with police tactics and training.

[138] *Id.*

[139] *Id.*

"close in and finish the fight with aggression . . . . The idea is to keep the adversary off-balance by always forcing him to react to your actions, rather than, after contact, reacting to him."[140]

The challenge of a single officer finding the killer in a large building may be complex. But once the killer is located, Borsch explains, officers should understand that "this bad guy is one of the easiest man-with-gun encounters they will ever have."[141] Indeed, "[m]ost officers have already faced worse opponents from a personal safety standpoint . . . ."[142] Or as another article, analyzing the 2007 murders at an Amish schoolhouse in Pennsylvania, suggests, "[a] running gun-battle at the early stages of an armed invasion is preferable to allowing a murderous predator unrestricted control of the environment."[143]

In short, by far the best response to an active shooter is for someone to start shooting back. If there is a policeman nearby who can start shooting back, wonderful. But if the killer has selected the targeted victims in a way so there is no police officer immediately at the scene, lives will be saved if one or more victims starts shooting back.

But what if someone misses a shot? Well, if we only think about that risk, then the proper response to an active shooter would be to make sure that no police officers ever go to the scene. After all, police officers only hit their targets eight percent of the time,[144] or a third of the time,[145] or less than twenty percent of the time.[146] So the police officer who is shooting at the killer might miss and hit an innocent bystander.

Of course, the idea of not calling the police is self-evidently absurd. The tangible risk that the policeman's shot might hit an innocent is far outweighed by the enormous danger of allowing the killer to act at will. Moreover, the missed shot rate is not really the point; the miss rate may be high, but the number of misses which hit an innocent bystander, let alone kill him, is much smaller.

The data about police accuracy should also be considered in light of the fact that police who engage a target are trained to do so while staying fairly distant—twenty to thirty feet away. For personal self-defense

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[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] Rick Armellino, *Revisiting the Amish Schoolhouse Massacre*, POLICEONE.COM, Aug. 22, 2007, http://www.policeone.com/columnists_internal.asp?view=1271208&vid=1290372 (discussing police tactics).

[144] Tom Teepen, *Gun Lobby's Call to Arms is Way Off Target*, COX NEWS SERVICE, Feb. 18, 2008.

[145] *Good Morning America*, *supra* note 30.

[146] BRADY CENTER TO PREVENT GUN VIOLENCE, NO GUN LEFT BEHIND: THE GUN LOBBY'S CAMPAIGN TO PUSH GUNS INTO COLLEGES AND SCHOOLS 10 (2007), *available at* http://www.bradycampaign.org/xshare/pdf/reports/no-gun-left-behind.pdf (citing Gregory B. Morrison, *Deadly Force Programs Among Larger U.S. Police Departments*, 9 POLICE Q. 331, 332 (2006) (reporting hit rates of about one in five shots)).

situations, a defensive shot from a civilian is usually fired at distance of shorter than seven feet—a distance from which it is much easier to hit a stationary target.

If the victims fire back several shots from a longer distance, it is likely that some would miss the killer, but extremely unlikely that any would kill an innocent person. Even if the latter risk were much greater, that risk is small compared to the risk of allowing the killer to take *aimed* shots again and again and again. Moreover, if one or more potential victims are firing at an attacker, even if the victims miss, being shot at is, to say the least, very distracting. An attacker who is under fire will have much less freedom to aim his own shots carefully and kill his intended victims. And as the Force Science Institute study explains, active shooters tend to crumble at the first sign of active resistance.[147]

### C. *When Have Citizens Stopped Mass Killers at Schools?*

The first incident was in 1997. A sixteen-year-old Satanist slit his mother's throat, and then took a deer-hunting rifle to Pearl High School, in Pearl, Mississippi. He murdered his ex-girlfriend and her friend and wounded seven other students at his high school. Joel Myrick was the Assistant Principal of Pearl High School:

> The moment Myrick heard shots, he ran to his truck. He unlocked the door, removed his gun from its case, removed a round of bullets from another case, loaded the gun and went looking for the killer. "I've always kept a gun in the truck just in case something like this ever happened," said Myrick, who has since become Principal of Corinth High School, Corinth, Miss.
>
> [The killer] knew cops would arrive before too long, so he was all business, no play. No talk of Jesus, just shooting and reloading, shooting and reloading. He shot until he heard sirens, and then ran to his car. His plan, authorities subsequently learned, was to drive to nearby Pearl Junior High School and shoot more kids before police could show up.
>
> But Myrick foiled that plan. He saw the killer fleeing the campus and positioned himself to point a gun at the windshield. [The killer], seeing the gun pointed at his head, crashed the car. Myrick approached the killer and confronted him. "Here was this monster killing kids in my school, and the minute I put a gun to his head he was a kid again,"

[147] *Ohio Trainer Makes the Case for Single-Officer Entry Against Active Killers*, *supra* note 137.

Myrick said . . . .

> In Pearl, federal, state and local laws helped [the killer] shoot nine students. The deer rifle had to be reloaded after every shot. To hit nine students, [the killer] needed time. The moments it took Myrick to reach his gun are what allowed [the killer] to continue shooting and almost escape. Gun laws, and nothing else, gave [the killer] that time.[148]

Just a few days later in Edinboro, Pennsylvania, a fourteen-year-old went to a Friday night junior high graduation dance, wielding a handgun he had taken from his father. On the patio of the restaurant where the dance was being held, he fatally shot a science teacher in the head. The killer then entered the building, and fired several shots, wounding two students. The killer fled through a rear exit, pursued by the restaurant's owner, James Strand, who had grabbed a shotgun. Strand caught up with the killer in a nearby field, and forced him to surrender.[149]

At Appalachian Law School, in Grundy, Virginia, in 2002, a former student went to the office of two professors, and killed them both at close range with a handgun, and also killed a student. Law student Tracy Bridges, formerly a sheriff's deputy, ran to his automobile and retrieved his .357 magnum revolver. Another student, Mikael Gross, a police officer from North Carolina, went to his car and got his semi-automatic pistol and body armor.[150] Gross and Bridges did not know about each other; they confronted the killer when he had left the building. Bridges shouted an order to the killer to drop his gun. The killer dropped the gun, and was wrestled to the ground by other law students, including Ted Besen and Todd Ross. According to Besen's version of the story, the killer had already dropped the gun by the time that Bridges shouted his order. Bridges remembers that the killer dropped the gun only after the order. Considering the fast-moving and chaotic situation, it is possible that both Besen and Bridges may be sincere in recounting their version of events. They were, understandably, not focusing their attention on each other, but on the killer.[151] It appears that Besen did not claim that the killer had

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[148] Wayne Laugesen, *A Principal and His Gun*, BOULDER WKLY., Oct. 15, 1999, http://www.keepandbeararms.com/Information/XcIBViewItem.asp?ID=1344.

[149] *Pennsylvania Students Cope With Shooting Spree*, CNN, Apr. 25, 1998, http://www.cnn.com/US/9804/25/school.shooting.pm/.

[150] Rex Bowman, *Helping to Stop a Killer: Students Went After Law School Gunman*, RICHMOND TIMES DISPATCH, May 5, 2002, at A8; James Eaves-Johnson, *Law School, Guns, and a Media Bias*, DAILY IOWAN, Jan. 24, 2002; Laurence Hammack et. al., *Shooting Hits Many Lives*, ROANOKE TIMES, Jan. 20, 2002, at A1; Jon Ostendorff, *Area Officer Helps Wrestle Law School Gunman to Ground*, ASHEVILLE CITIZEN-TIMES, Jan. 19, 2002, at 1B; Diane Suchetka, *Ex-Charlottean: I Helped Nab Suspect*, CHARLOTTE OBSERVER, Jan. 18, 2002, at 2A.

[151] Bowman, *supra* note 150.

already put down his gun until about two months after the attack.[152]

Schools are not the only places where citizens with lawfully-owned guns have stopped mass murderers. For example, in Colorado Springs, Colorado, in December 2008, a sociopath entered a large church, and began shooting people. But he was quickly engaged by fire from Jeanne Assam, a church member who was volunteering to provide security at the church, and who was carrying a handgun pursuant to a "Shall Issue" license issued under Colorado law. After a brief exchange of gunfire, the murderer either was killed by the guard's shots, or had killed himself.[153]

When the Tennessee state legislature considered a bill to allow faculty licensed campus carry, Carole Borges (a former faculty member at several colleges[154]) spoke in opposition: "It just escalates. Violence is not the solution to violence."[155]

It depends on what one means by "solution." If one considers saving the lives of many innocent people to be a positive outcome, then swift and violent defense against campus killers has already proven to be an outstanding solution.

## V. OBJECTIONS TO CAMPUS DEFENSE

This section examines various objections to campus carry. The objections can be broken into four major categories, each of which will be addressed in order. The first objection is that campus carry is unnecessary, either because campuses are already safe, or because other approaches to campus security can be taken. A second objection is that campus victims who resist an attack by an active shooter would actually cause more harm than good—either because they are incapable of using firearms competently or because police arriving at the scene would find a gun battle to be more confusing than a scene in which one person is executing victims methodically. The third objection is that even if licensed carry on campus was successful at deterring mass murder attacks, or in stopping such attacks in progress, the overall harm would exceed the good. That is, the reduction in mass murders would be outweighed by the harms caused by

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[152] John Lott, *Missouri Becomes 36th State With Right-to-Carry Law*, JOHN LOTT'S WEBSITE, Sept. 11, 2003, http://johnrlott.tripod.com/postsbyday/9-11-03.html. The Brady Center calls Appalachian State "the one example often cited by the NRA and gun lobby groups." BRADY CENTER, *supra* note 146, at 9. This statement is plainly false, since such groups also frequently point to Pearl, Mississippi, and Edinboro, Pennsylvania. Surprisingly, the Brady Center report mentions these latter two incidents in its litany of school shootings, but does not acknowledge how those attacks were stopped. *Id.* at 32.

[153] Nicholas Riccardi & DeeDee Correll, *Guard Saved Untold Lives, Officials Say*, L.A. TIMES, Dec. 11, 2007, at A16.

[154] Knoxville Writers' Guild, Profile of Carole Borges, http://www.knoxvillewritersguild.org/borges.htm (last visited Nov. 16, 2009).

[155] Anthony Welsch, *Proposal Would Allow Faculty to Carry Guns in Classrooms*, WBIR-TV (Knoxville), Feb. 16, 2008, http://www.wblr.com/print.aspx?storyid=54632.

faculty or adult students who were licensed to carry guns: the teachers and students, if allowed to use their existing CCW (Carrying a Concealed Weapon) permits on a campus, would commit violent gun crimes on the campus. Closely related is a fourth objection: academic freedom would suffer because teachers and students with CCW permits would intimidate people from speaking up about issues being debated in classrooms.

## A. *Campus Carry is Unnecessary*

### 1. *Schools Are So Safe that No Additional Precautions Are Necessary*

Over twenty percent of college students have been the victim of at least one crime on or near campus.[156] Older teenagers and young adults (persons aged sixteen to twenty-four) are victimized by violent crime at a higher rate than any other age group.[157] College students are victimized by violent criminals eighty-one percent as often as non-students in the same age group.[158] So even though college students are nineteen percent less likely than people in the same age group to be attacked by violent criminals, they are still far more likely to be attacked than are persons in any age group twenty-five or older.[159] Accordingly, it appears that college students have a *greater* general need to be able to defend themselves than do older people.

About nine out of ten victimizations of college students take place off-campus.[160] This is good news for campuses, and it indicates that college students have a much greater need to be able to protect themselves from violent crime off-campus than they do on-campus. This fact militates against campus policies that significantly interfere with the ability of adult students to protect themselves off-campus; for example, if a college prohibits adult commuter students from leaving firearms locked in their cars, then the students cannot protect themselves when traveling to or from campus. Some states that have laws restricting guns in higher education institutions have a provision to explicitly protect the right of adult students to have firearms in locked cars. Similarly, most states restrict guns at K–12 schools, and some have exceptions for guns owned by non-student

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[156] Wesley G. Jennings et al., *Are Institutions of Higher Learning Safe? A Descriptive Study of Campus Safety Issues and Self-Reported Campus Victimization among Male and Female College Students*, 18 J. CRIM. JUST. EDUC. 191, 200 (2007).

[157] U.S. DEP'T OF JUSTICE, BUR. OF JUSTICE STATISTICS, TEENS AND YOUNG ADULTS EXPERIENCE THE HIGHEST RATES OF VIOLENT CRIME, *available at* http://www.ojp.usdoj.gov/bjs/glance/vage.htm (reporting National Crime Victimization Survey data for 1973–2006).

[158] KATRINA BAUM & PATSY KLAUS, U.S. DEP'T OF JUSTICE, BUR. OF JUSTICE STATISTICS, VIOLENT VICTIMIZATION OF COLLEGE STUDENTS, 1995–2002 2, tbl.1 (2005), *available at* http://www.prisonandjail.org/bjs//pub/pdf/vvcs02.pdf (providing National Crime Victimization Survey data for 1995–2002).

[159] U.S. DEP'T OF JUSTICE, *supra* note 157.

[160] BAUM & KLAUS, *supra* note 158, at 5.

adults and stored in locked, parked cars.[161] A well-written automobile exception, either by statute or by campus regulation, should include all automobiles driven onto campus by an adult, especially by an adult with a concealed carry permit. The exception would take care of much of the problem of school administrators interfering with off-campus lawful self-defense by college students, as well as by university staff, and by K–12 teachers.

However, the automobile exception does not address the problem of on-campus violent crimes against students, of which there are over thirty thousand annually[162]—hardly a trivial number. Nor does an automobile exception fully address the problem of school mass shootings.[163] Some reform opponents point out that, depending on the year, the number of victims of mass murders on American campuses is not too far different from the number of students who are killed from football injuries (seventeen football deaths in 2006, thirteen in 2007).[164] Mass homicides are not, however, the sole part of the homicide problem on college campuses. From 1991 through 2003, there were at least ten homicides on American college campuses every year, and sometimes as many as twenty-four.[165] Most of these were not mass murders, but more ordinary crimes,

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[161] The following is a list of car-specific exemptions. It does not include statutes which allow carrying (or carrying pursuant to a permit) in general in K–12 schools or in higher education. ALASKA STAT. § 11.61.210 (a)(7) (2008), ARIZ. REV. STAT. ANN. § 13-3102(I)(1) (2001), CAL. PENAL CODE § 626.9(c)(2) (West 1999), COLO. REV. STAT. § 18-12-105.5(3)(a) (2008), FLA. STAT. § 790.115(2)(a) (2007), GA. CODE ANN. § 16-11-127.1(c)(17) (2009), IDAHO CODE ANN. § 18-3302D(4)(e) (2004), IOWA CODE §§ 724.4, 724.4B (2001), LA. REV. STAT. ANN. § 14:95.6B(5) (2004), MICH. COMP. LAWS § 28.425o(1)(a) (2009), MINN. STAT. § 609.66(1d)(e) (2008), MO. REV. STAT. § 571.030(3) (2000), MONT. CODE ANN. § 45-8-361(1) (2007) (school ban applies only to K–12 buildings, not parking lots), NEB. REV. STAT. § 28-1204.04(1)(c) (2008), N.M. STAT. § 30-7-2.1(5) (2004), N.D. CENT. CODE § 62.1-02-05(2) (2003), OHIO REV. CODE ANN. § 2923.126 (West 2006), OR. REV. STAT. § 166.370(3)(f)(B) (2007), VT. STAT. ANN. tit. 13, § 4004 (1998) (K–12 gun ban applies to buildings only, not parking lots), VA. CODE ANN. § 18.2-308.1(B) (2009), WASH. REV. CODE § 9.41.280(3)(f) (2008), W. VA. CODE ANN. § 61-7-11A(b)(2) (West 2009), WIS. STAT. § 948.61(3)(e) (2007–08).

[162] BAUM & KLAUS, *supra* note 158, at 5 & tbl.4.

[163] *See supra* Part IV.C. (noting that guns stored in automobiles were used to help stop school shootings in Pearl, Mississippi and at Appalachian Law School).

[164] Frederick O. Mueller & Bob Colgate, Annual Survey of Football Injury Research, 1931–2007 (Nat'l Ctr. for Catastrophic, Sport Injury Research 2009), at tbl.II, *available at* http://www.unc.edu/depts/nccsi/FootballAnnual.pdf. An important distinction is that football is a known risky activity in which participants choose to assume the risks. Attending classes for a Master's Degree program in history, or teaching a tenth grade algebra class, are not supposed to be activities in which a participant knowingly assumes a risk of death or crippling injury. One approach to reduce football deaths would be to vastly expand shooting sports programs in high school and junior high, and aim to entice students to participate in competitive shooting instead of football. The death and injury rates from participation in competitive shooting is zero, making it far safer that almost every other sport, and vastly safer than football. NAT'L SAFETY COUNCIL, INJURY FACTS (2009 ed.). **[AQ: We are unable to locate this report. Could you please provide us with a copy or, alternatively, the proper pincites for gun and football accidental deaths? Thank you.]**

[165] Peter Wood, *Homicides in Higher Education: Some Reflections on the Moral Mission of the University*, 20 ACAD. QUEST. 277, 293 (2007) (compiling data from *Chronicle of Higher Education*, FBI *Crime in the United States*, U.S. Dept. of Educ. *Summary of Campus Crime and Security Statistics*, and Security on Campus, Inc.).

such as killing a robbery victim, for example.[166]

Besides, the fact that the general violent crime rate on campus is lower than in many other locations, or that the total number of murder victims on campus is no more than several dozen per year (and often less) is hardly a reason not to take steps to reduce the victimization rate. After all, nobody says, "The death rate from AIDS in our county is lower than in most other counties. Therefore, we should not consider policies which might further reduce the county's AIDS rate."

Here, one might draw an analogy to churches. The crime rate in churches, synagogues, mosques, and other religious sites is also low. But most state governments do not enact laws specifically outlawing gun-carrying in churches. They leave the policy up to the church itself.[167] There has never been a known case where a person with a CCW permit committed a violent crime in a church. There has been a case, however, where a person with a CCW permit saved many lives.[168]

Of course if adult students and faculty are too incompetent to use defensive arms safely[169] or are dangerous characters who would commit gun crimes if they had a gun,[170] then the crime-reductive effects of campus carry might be outweighed by other harms. However, if faculty and adult students are neither incompetent nor dangerous, then the fact that campus crime is relatively low compared to crime elsewhere is not a good reason for failing to adopt measures which would improve campus safety.[171]

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[166] *See generally id.* (discussing violence on college campuses).

[167] Thanks to the First Amendment's Establishment Clause and its parallel provisions in many state constitutions, and to American public sensibilities, there are no state-supported churches in the United States. If there were (as there are in many European nations), then it would not be improper for the legislature to determine the firearms-carrying policy for the state churches, while leaving the independent churches to set their own policies.

[168] In December 2007, parishioner Jeanne Assam, legally carrying a handgun pursuant to a CCW permit, stopped an active shooter's attack on a church in Colorado Springs. *See* Riccardi & Correll, *supra* note 153, at A16.

[169] *See infra* Part V.B.

[170] *See infra* Part V.C.

[171] It should also be noted that for some opponents of campus carry, the argument about the low rate of campus crime is transparently hypocritical: the Brady Center to Prevent Gun Violence argues against campus carry because crime rates are low on campus, and argues against employees being allowed to store guns in workplace parking lots because crime rates are high at work. *See* BRADY CENTER, *supra* note 146, at vi (arguing that guns increase the risk of violence at schools); BRADY CENTER TO PREVENT GUN VIOLENCE, FORCED ENTRY: THE NATIONAL RIFLE ASSOCIATION'S CAMPAIGN TO FORCE BUSINESSES TO ACCEPT GUNS AT WORK iii (2005); CENTER TO PREVENT HANDGUN VIOLENCE, GUNS & BUSINESS DON'T MIX: A GUIDE TO KEEPING YOUR BUSINESS GUN-FREE i–ii (1997) (arguing again that guns in the workplace increase violence). Thus, low crime rates and high crime rates are both a justification for banning guns. For truth in advertising, the moniker "to Prevent Gun Violence" might accurately be written "to Prevent Gun Ownership." This is true in regards to workplaces and campuses, where the Brady Campaign (and its legal action arm, the Brady Center) advocate for gun prohibition.

### 2. *Alternative Approaches Obviate Any Benefits to be Gained From Campus Carry*

#### a. More Gun Control

Some argue that instead of allowing licensed carry on campuses, there should be greater gun control. This is a false dichotomy. There is no rule that prevents a legislature from passing a bill to protect campus carrying *and* from also passing another bill which increases restrictions on guns or gun owners,if the legislature believes that both bills can help reduce mass murders at schools.

Imagine this argument:

> Gallant: "Let's improve the health of infants. We should repeal the law which prohibits breastfeeding on government property."
>
> Goofus: "That's crazy! You are a pro-breast extremist. We should improve infant health by enacting a law to mandate the use of car seats for children."[172]

The obvious fallacy of Goofus's argument is that his proposal and Gallant's proposal are not mutually exclusive. Likewise, a legislature could re-legalize campus carry (or override administrative bans on campus carry) *and* make gun control laws more restrictive, such as by making background checks more extensive, or by registering all guns, or by banning particular models of guns. Assuming *arguendo* that a particular gun control proposal would impose campus safety, nothing prevents a legislature from enacting that gun control law *and* at the same time re-legalizing campus carry.

Whether a particular gun control proposal would help save lives on campus would, of course, be subject to debate. However, there is no reason why the desire to have that debate should preclude the enactment of campus carry legislation.

Only two proposed gun controls are incompatible with campus carry. The first is banning all handguns, a proposal which would require repeal of the Second Amendment and of its many state constitution analogues. The other incompatible proposal would be repeal of a state's "Shall Issue" law. As long as the law allows some people to own some handguns, then the "Shall Issue" law will ensure that most people who can legally own handguns can obtain a license to carry them, if they are willing to pay a fee, pass a safety class, and submit to fingerprinting.

So unless an advocate is proposing an (unconstitutional) ban on all

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[172] The names are two characters in a comic strip in the children's magazine *Highlights.* Gallant always provides the good example, and Goofus the bad one.

handguns, or an (unpopular) repeal of "Shall Issue," there is no reason why a legislative body cannot enact campus carry reform *and* a new gun control bill, presuming that the legislature believes that both laws will improve public safety.

b. More Security Guards and Metal Detectors

This other proposal is also not incompatible with campus carry. Presumably, if campus carry were re-legalized, then the metal detector personnel would authorize passage of a person with a licensed carry permit—just as schools with metal detectors currently authorize passage of security guards and police, or as airports allow passage of pilots who have authorization to carry firearms in flight.

Senators Charles Schumer and Barbara Boxer have introduced legislation to provide federal funding for security at high schools and colleges.[173] The proposal is not incompatible with campus carry, although it might arguably be inconsistent with federalism.[174] If security guards or police were willing to engage aggressively and immediately against an active shooter (rather than just calling for the S.W.A.T. team), then they might well be able to stop a campus shooting in progress. But unless the security level is so dense that there is at least one guard in every building that is in use, and several guards in every multi-story or large building, then there may be considerable carnage and death before any guard has time to respond. After all, at Northern Illinois University in February 2008, campus police arrived within minutes of a shooting outbreak. However, they did not arrive quickly enough to stop five people from being murdered, and many more from being wounded.[175]

Colorado's "Shall Issue" law states that a government building may be declared a gun-free zone, and made off-limits to licensed carry, if and only if the government makes it a true gun-free zone, by setting up metal detectors at every entrance.[176] The metal detectors should prevent a

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[173] *See* Press Release, Senator Charles E. Schumer, After Series of Tragic School Shootings and Scares at NYC Area Schools, Schumer Calls for Passage of Key Legislation and Massive Federal Mobilization to Stem Rash of School Violence, Protect the Million [sic] of Kids at NYC Schools (Feb. 16, 2008), *available at* http://schumer.senate.gov/new_website/record.cfm?id=293534.

[174] After all, federal funds are simply funds which are raised from taxpayers in various states (or, in case of a deficit, debt imposed on future generations). Accordingly, if security guards are a cost-effective way to improve campus safety, the spending might as well take place at the state and local level, where balanced budget requirements often succeed at ensuring that the current year's spending desires are matched with the current year's revenue.

[175] *Gunman Kills Five, Injures 16 in Attack at University*, VIRGINIAN-PILOT, Feb. 15, 2008, at A1.

[176] COLO. REV. STAT. § 18-12-214 (2008). The statute states, in relevant part, that:

> (4) A permit issued pursuant to this part 2 does not authorize a person to carry a concealed handgun into a public building at which:
>
> (a) Security personnel and electronic weapons screening devices are permanently in place at each entrance to the building;
>
> (b) Security personnel electronically screen each person who enters the

criminal from bringing a gun into the building. Only then, according to Colorado law, is it fair to tell licensed citizens that they cannot carry their defensive arms. A similar policy would be fair on campus. If a building is genuinely secured with metal detectors, then banning licensed carry within the building is reasonable.

As a practical matter, metal detectors have several limitations. First, at K–12 schools, almost all students arrive at the school for the first period within a narrow time window. Processing hundreds of students and teachers so quickly is very difficult, unless the school is willing to pay for staff to monitor multiple lines, as at airports. Second, at airports and at secured government office buildings, metal detectors are not simply staffed by a single person who looks at the TV monitor. Every checkpoint is manned or backed up by two or more armed officers. This reduces the risk that an attacker will simply kill the unarmed employee at the metal detector and then proceed inside for further attacks.[177]

Many American college campuses are sprawling facilities covering hundreds of acres. Preventing public access onto these campuses is impossible—unless one were to surround the campus with high fencing, and allow access only through a few checkpoints.[178] Some college campuses do consist of just a few buildings whose entrances could be genuinely secured by metal detectors backed up with armed guards. So for any school, or building within a school, which is genuinely secured, the need for licensed carry is greatly reduced. Accordingly, this Article's proposal for licensed carry on campus need apply only to campuses and school buildings which are not effectively secured—which is to say, almost all of them.

A real "gun-free zone" is fine. A pretend "gun-free zone" is a deadly legal fiction. The pretend zone—that is, a zone which exists by administrative declaration but is not enforced by metal detectors with

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building to determine whether the person is carrying a weapon of any kind; and

(c) Security personnel require each person who is carrying a weapon of any kind to leave the weapon in possession of security personnel while the person is in the building.

*Id.*

[177] This is what happened at Red Lake High School in Minnesota in 2005. A neo-Nazi student murdered his grandfather (a police officer) and the grandfather's girlfriend, then stole the grandfather's service weapons, and drove his police car to the school. There, the killer murdered an unarmed metal detector operator, and then entered the school to murder six more victims. David Hancock, *Tales of School Shooting Bravery: Slain Security Guard, Wounded Student Saved Others From Teen Gunman*, CBSNEWS, Mar. 24, 2005, http://www.cbsnews.com/stories/2005/03/24/national/main682915.shtml?source=search_story; *Victims, Key People in Story*, GRAND FORKS HERALD, Mar. 21, 2006.

[178] College campuses in Ethiopia are in fact secured this way, although the motivation is not so much student security as the dictatorship's intent to exclude outsiders who might criticize the government. Interview with Habtamu Dugo, Senior Fellow in Human Rights, Indep. Inst. (Mar. 2008). Dugo is a former Ethiopian college professor who fled to the United States and was granted political asylum.

armed guards—is simply a zone where the people who follow the rules are made into easy victims for mass killers.

c. "Alternative Survival Options"

The leading lobby against campus carry is the Brady Campaign. The group's legal research arm is known as the Brady Center. Arguing for gun prohibition on all campuses, the Brady Center writes that "there are numerous survival options for students, faculty, and staff when confronted with an armed attacker that do not involve carrying a gun and firing back at him."[179] This is a rather callous remark.

In a footnote in its report, *No Gun Left Behind: The Gun Lobby's Campaign to Push Guns into Colleges and Schools*, the Brady Center cites a security expert's five recommendations: "(1) try to get away, (2) lock the door and barricade it, (3) concealment, (4) play dead and (5) fight back if you're sure you'll be shot."[180] These are indeed tactics which have helped some people survive some mass shootings. But quite obviously, these "numerous survival options" did not result in survival for the victims at Virginia Tech, Northern Illinois University, Columbine High School, and elsewhere.

The best way to increase the survival rate is to have *all* the survival options available. Since only a small percentage of the adult population has a CCW permit (well under ten percent in most states, and far less in other places),[181] then it is good that people be aware of all the survival options.

It would be a bad idea to exclude *any* survival action simply because an organization found it ideologically offensive; for example, a legislature should not make it illegal to "fight back" just because some pacifists are opposed to all forms of violence. Likewise, a legislature should not make it illegal to defend oneself with a firearm, simply because some people abhor gun ownership. The more survival options that are available, the more survival there will be.

## B. *Self-Defense Will Fail*

Another set of arguments against campus carry contends that campus defenders are incapable of competent defense against active shooters. First, teachers are "overwhelmed" and thus they cannot achieve competence at any additional task. Second, campus defenders will accidentally kill more innocent people than murders would kill

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[179] BRADY CENTER, *supra* note 146, at 10.

[180] *Id.* at 41 n.97 (citing Bill Redeker, *Surviving a School Shooting*, ABC NEWS, Apr. 17, 2007, http://abcnews.go.com/US/story?id=3050247&page=1).

[181] *See* Blog O'Stuff, *supra* note 16 (providing state statistics related to adults with licenses to carry).

intentionally. Third, campus defenders would confuse police arriving at the scene. Finally, citizen defenders do not have as much training as the police.

1. *Teachers are Already "Overwhelmed"*

As discussed above, the Nevada Board of Regents and Nevada legislature considered proposals to allow campus carry by professors and public school teachers who would undergo the same training as police officers and then be deputized as reserve officers.[182] This proposal would eliminate the school safety monopoly currently enjoyed by full-time security officers. Ken Trump, president of a for-profit company, National School Safety and Security Services, which sells consulting services to schools, did not like the idea. He urged that the government instead spend more money on companies such as his own:

> "Teachers get into education to teach, not to be cops," Trump said. "Teachers are already overwhelmed with all of the academic, behavioral and administrative tasks they have to perform. To say you're going to add a whole other role and mind-set is unrealistic."
>
> Debate about arming teachers surfaces periodically in other states, usually in the wake of a high-profile campus shooting, Trump said.
>
> "Rather than off-the-wall proposals, how about our legislators focus on stopping the cuts to funding for school safety and emergency preparedness, mental health services and support programs," Trump said. "That might actually provide an improved learning environment, instead of trying to make teachers into cops."[183]

If we accept Trump's argument that teachers get into education to teach, not to be cops, then teachers should never be taught how to perform first aid or CPR, since teachers get into education to teach, not to be doctors.

As for the argument that "[t]eachers are already overwhelmed," perhaps not all teachers throughout Nevada are as "overwhelmed" as Trump claims. Significantly, no teacher would be forced against her will to participate in the program. Given that participation would be 100% voluntary, it was fatuous for Trump to object that teachers are too "overwhelmed."[184]

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[182] *See supra* text accompanying notes 67–70.

[183] Richmond, *supra* note 69.

[184] A similar point was expressed by Gannett News national columnist DeWayne Wickham: "If school officials in Harrold want to make schoolchildren more secure, they should give that responsibility to trained personnel instead of pushing it onto gun-toting teachers. Those teachers have

2. *Selfless Courage Must be Discouraged*

Every major world religion lauds people who charitably accept grave risks to themselves in order to protect other innocent citizens. Yet some educational administrators actively attempt to discourage such actions. For example, the University of Colorado tells students that, in case of an attack by a mass killer, "Do not be a hero. Be a good witness."[185] Arguably, the university should not pressure people to act courageously. But why should the university *discourage* selfless courage?

Several school shootings have been stopped by people who acted heroically against an armed killer. Examples include not only the three school shootings that were stopped by armed citizens (Pearl, Miss.; Edinboro, Penn.; and Appalachian Law School, all discussed *supra*).[186] In 1998, at Thurston High School in Springfield, Oregon, a killer was stopped when he was tackled to the ground by Jake Ryker, with the assistance of his younger brother Robert and three fellow Boy Scouts. "Jake Ryker gave credit to the fact that he had taken a marksmanship and safety training program given by the National Rifle Association."[187] Because of the firearms safety training, the brothers were familiar with firearms; so they watched for when the killer paused to change magazines in his gun, and at that point they acted aggressively, and heroically, and stopped the killer.[188] Two people had already been fatally wounded, and many more likely would have been if not for the Boy Scouts' heroism.

When Minnesota's Red Lake High School was attacked in 2005, sophomore Jeffrey May saved several other students by grappling the killer, and attacking him with a pencil.[189] May was shot in the right cheek, causing a stroke which partly paralyzed the left side of his body. Thanks to physical therapy, he was eventually able to walk again without a cane, but his left arm remains partially paralyzed. The readers of *Reader's Digest* magazine voted May the 2005 Hero of the Year.[190]

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enough to do as it is." DeWayne Wickham, *Guns in Class? Maybe School Officials Should Start Doing Their Jobs*, Gannett News Service, Aug. 26, 2008. For more on Harrold, Texas, see *supra* note 63. There are many teachers who would not want to carry a firearm; of that group, some would, however, be interested in training with and carrying defensive sprays, or in learning some basic techniques of unarmed combat—particularly, how to disarm someone when his attention is distracted.

[185] Kirk Mitchell, *Colorado Campuses Respond to Illinois Rampage*, DENVER POST, Feb. 15, 2008, http://www.denverpost.com/food/ci_8271956; University of Colorado Denver Emergency Announcement, https://lists.ucdenver.edu/cgi-bin/wa?A3=ind0802&L=EMERGENCY-ANNOUNCEMENTS&E=quoted-printable&P=3693&B=------_%3D_NextPart_001_01C86F63.7E72E361&T=text%2Fhtml;%20charset=US-ASCII (last visited Oct. 6, 2009) (posting emergency notification sent on the day of the attack on Northern Illinois University).

[186] *See supra* Part IV.C.

[187] Reed Irvine & Cliff Kincaid, *Does Anyone Remember Jake Ryker?*, MEDIA MONITOR, June 15, 1999, http://www.aim.org/media_monitor/ does-anyone-remember-jake-ryker/.

[188] *Id*.

[189] Hancock, *supra* note 177.

[190] *Victims, Key People in Story*, *supra* note 177.

Under the University of Colorado's mandate, the Ryker brothers and Jeffrey May should have simply paid careful attention while their classmates were slaughtered one after the other; later, the attentive but inactive bystanders could have been given a Good Witness Certificate. But the University of Colorado campuses are home to thousands of student-athletes, as well as a general student body which is highly interested in outdoor sports and fitness—precisely the kind of young men and women who would have a good chance of overpowering the unfit sociopaths (i.e., an unhealthy mind in an unhealthy body) who are typical perpetrators of school shootings.

Even after the mass murder at Virginia Tech, the university strove to make sure that no one on its campus acts like the Ryker brothers did. The Virginia Tech campus policy tells employees "What to Do When Violence Occurs." The rules include "Avoid challenging body language such as placing your hands on your hips, moving toward the person, or staring directly at them. If seated, remain in your chair and do not turn your back on the individual." and "Never attempt to disarm or accept a weapon from the person in question. Weapon retrieval should only be done by a police officer." [191]

Under the Virginia Tech rules, Assistant Principal Joel Myrick would have been a bad employee when he took the gun which was being surrendered by a killer who had already murdered his mother, shot several students, and was on his way to kill more—until Myrick stopped him.[192]

One set of values says: Don't be a hero; don't try to stop the gunman; don't even accept the gun if he tries to give it to you. A different set of values says: Choose to save the lives of innocents, even if you risk your own by doing so. What would we think of a university that told its employees and students, "Don't be a hero. If you see someone choking to death, or drowning, don't try to save them. Be a good witness. Just call the police. Never mind whether you are trained in first aid, or whether you are an intercollegiate swimmer with training in water rescue. Don't be a hero."? We would call such instructions monstrous. The instructions are no less monstrous in the context of stopping an active shooter. Of course the circumstances can vary. A person who is strong enough to throw an active shooter to the ground might not know how to swim. Plunging into the water, or moving toward an active shooter involves a decision to risk one's own life—although in the case of an active shooter, one's life is already in extremely grave peril if one does not use counter-force. On the

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[191] Virginia Polytechnic Institute and State University, Environmental, Health and Safety Services, Workplace Violence, http://www.ehss.vt.edu/programs/EPP_workplace.php (last visited October 31, 2009). A web search for the above-quoted words found them in the policies of Northwestern University, George Mason University, the University of Michigan, and John F. Kennedy University.

[192] *See supra* text accompanying note 148.

other hand, accepting a gun from someone who is trying to surrender it takes no skill at all; everyone who has at least one arm with the strength to hold a few pounds can do so.

Are Americans "a nation of cowards"? Attorney General Eric Holder recently said that they are because they do not have frank discussions about race.[193] He observed that one reason that such discussions do not take place often enough is "that certain subjects are off limits and that to explore them risks, at best embarrassment, and, at worst, the questioning of one's character."[194] Certainly organizations such as the Foundation for Individual Rights in Education have documented many cases in which administrators have punished students or faculty for violations of political correctness, including on issues of race.[195]

In a famous 1994 essay in *The Public Interest*, attorney Jeffrey Snyder also called Americans "A Nation of Cowards."[196] He chose that title for the essay because he argued that too many Americans refuse to take personal responsibility for their own safety. Rather than having a firearm in the home which they know how to use (and he points out that becoming solidly proficient with a firearm is far easier than learning how to play a musical instrument), many people expect the police to protect them in an emergency. This attitude is immoral and selfish, he contends. He argues that it is wrong to expect a police officer to risk his life to save yours , if you are not willing to take responsibility for defending your own life.[197] Thus, for the First Amendment rights of freedom of speech and of the press, or the Second Amendment right of self-defense, some universities seem determined to create a nation of cowards.

The debate over campus carry exposes a much broader cultural divide: the divide between traditional American attitudes of self-reliance, confidence, and readiness to take personal action, versus a desiccated feeling that individuals are victims of their circumstances, and not capable of changing them, except perhaps by asking the government to change their circumstances for them. One expression of the latter attitude is to assert with certainty—even though the person making the assertion knows virtually nothing about defensive firearms tactics, or about any form of active self-defense—that armed citizen defenders would necessarily make any situation worse. For example, after a campus carry bill passed out of a state House committee, an editorial in the *Shreveport Times* warned, "The

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[193] Remarks as Prepared for Delivery by Attorney General Eric Holder at the Department of Justice African American History Month Program, Feb. 18, 2009, *available at* http://www.usdoj.gov/ag/speeches/2009/ag-speech-090218.html.

[194] *Id*.

[195] For examples, see the Foundation for Individual Rights in Education's website at http://www.thefire.org/ (last visited Nov. 16, 2009).

[196] *See* Jeffrey R. Snyder, *A Nation of Cowards*, PUB. INT., Fall 1993, at 40.

[197] *Id*. at 43–44.

picture that arises here is of concealed-carry-permitted students and faculty missing the bad guy and shooting each other."[198]

Again, this is an argument that has arisen frequently over the past two decades, as "Shall Issue" laws have become the national norm. The experience of armed defenders shows the inaccuracy of the prediction that armed defenders are incompetent. Had the *Shreveport Times* merely examined the situation in its own state of Louisiana, it would have found that since 1996,[199] there have been over 27,000 Louisiana citizens who have been issued concealed carry permits.[200] Most of them have never had to use the gun for self-defense, and for those who have, the mere display or brandishing of the firearm has been sufficient to encourage the criminal to stop the attack and leave the scene. According to the 2007–08 Louisiana State Police Annual Report to the legislature (the only report which is available online), in the last reporting year, there were no "documented accidents or deaths involving concealed handgun permittees."[201]

Nationally, in our "Shall Issue" nation, the story is much the same. There are hundreds of reported instances of CCW licensees actually firing their guns and, in so doing, successfully stopping a violent crime in progress. The reported instances of an innocent bystander being shot are few.[202]

Again, this Article does not attempt to re-open the general debate on "Shall Issue" in the United States. That debate took place over the last two decades, and it has been resolved against advocates who insist that Americans are a nation of klutzes—that ordinary citizens who have taken a training class will be so incompetent with a gun that their attempts to stop a violent crime in progress will do more harm than good.

Writer Clayton Cramer is perhaps best known as the scholar who did the most to expose the hoax of Michael Bellesiles, a temporarily award-winning author whose book *Arming America* claimed that guns were rare in America until shortly before the Civil War, but whose purported

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[198] Editorial, *Concealed-carry Guns Have No Place On College Campuses*, THE TIMES (Shreveport, La.), May 6, 2008, at 1B.

[199] *See* LA. REV. STAT. ANN. § 40:1379.3 (2008) (providing that as of April 1996, the Department of Public Safety and Corrections would be responsible for rules and regulations for issue of handgun permits).

[200] CONCEALED HANDGUN PERMIT UNIT, OFFICE OF STATE POLICE, LA. DEP'T OF PUB. SAFETY, ANNUAL LEGISLATIVE REPORT 2007–2008, at 1 (2008), *available at* http://www.lsp.org/pdf/chAnnualReport07-08.pdf.

[201] *Id*. at i.

[202] *See generally* WATERS, *supra* note 127 (describing stories of people who have saved themselves from harm by use of a firearm); *see also* Howard Nemerov, *Brady Campaign: Biased, Inaccurate Research*, AUSTIN EXAMINER, Apr. 12, 2009, http://www.examiner.com/x-2879-Austin-Gun-Rights-Examiner~y2009m4d12-Brady-Campaign-Biased-inaccurate-research (questioning the credibility of the claims made in BRADY CENTER, *supra* note 146).

evidence (such as probate records) turned out to have been fabricated.[203] Cramer also maintains a "Civilian Gun Self-Defense Blog" which collects media reports of lawful self-defense by persons with firearms.[204] The blog does not purport to provide the full picture of armed self-defense, only a fairly thorough collection of the instances which are reported in the media. The blog was created in 2003 and by 2009 had collected 4000 cases. At that point, Cramer tabulated some cumulative data. He found that of the 4000 cases there were six incidents in which a criminal took a gun from the defender. There was one incident of a defender mistakenly shooting at someone (police who were investigating a burglary at an auto dealership started shooting at an employee, and he returned fire). And, while most self-defense incidents occurred in a place where carry permits are not needed (e.g., one's home, one's own business, or, in some states, one's automobile), there were 212 self-defense cases with licensed carry permit holders.[205]

We know from experience that the millions of Americans who carry licensed handguns almost everywhere in their states are not a nation of klutzes. Accordingly, one must ask whether the millions of Americans who do not act incompetently when the need for armed self-defense arises will somehow turn into dangerous buffoons if the attack takes place on a college campus. To emphasize again, the question involves only persons who are *already* licensed by the state to carry almost everywhere within the state.

On college campuses, by far the most common type of violent crime is similar to that which occurs off-campus: a young woman is assaulted and raped in a parking lot, a young man is surrounded by some gangsters who rob him and then beat him up for fun.[206] The graduate teaching assistant who works late at school, and who wishes to defend herself from an attack in the school parking lot, is no less competent to do so there than she is in the parking lot of the grocery store. If she is capable of responsible self-defense in the grocery store parking lot (and the state has already

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[203] *See* MICHAEL A. BELLESILES, ARMING AMERICA: THE ORIGINS OF A NATIONAL GUN CULTURE (2000); CLAYTON E. CRAMER, ARMED AMERICA: THE REMARKABLE STORY OF HOW AND WHY GUNS BECAME AS AMERICAN AS APPLE PIE xii—xvi (2006). The former book was eventually withdrawn by its publisher Alfred A. Knopf.

[204] Civilian Gun Self-Defense Blog, http://www.claytoncramer.com/gundefenseblog/blogger.html (last visited Oct. 8, 2009).

[205] Clayton Cramer, *A Milestone: The 4000th Entry on the Civilian Gun Self-Defense Blog*, http://www.claytoncramer.com/weblog/2009_04_19_archive.html#6156324322914958524 (Apr. 21, 2009, 08:12 EST). In one notable off-campus incident in College Park, Georgia, two masked men attacked a birthday party in a student apartment, apparently intended to rob, rape, and murder them. One student grabbed a gun from his backpack, and shot one of the attackers. The other attacker fled. "I think all of us are really cognizant of the fact that we could have all been killed," remarked student Charles Bailey. *College Student Shoots, Kills Home Invader*, WSBTV, May 7, 2009, http://www.wsbtv.com/news/19365762/detail.html.

[206] BAUM & KLAUS, *supra* note 158, at 2.

determined that she is), she is equally capable in the school parking lot.

An active shooter situation at a school is more complicated. Compared to an ordinary violent crime, there are likely to be many more people in the area. Depending on the particular circumstance, the armed defender might be just a few feet away from the attacker (a distance that is typical for ordinary self-defense situations), or the defender might be on the other side of a large room.

But even in the latter situation, the balance of risks favors active self-defense. Imagine a scenario in which all of the killer's victims are either lying on the ground (following the Brady Center's advice to "play dead")[207] or are running in panic. Nobody is trying to stop the killer; all the victims are following the university rules of "Don't be a hero" and "Never attempt to disarm" a violent attacker. For the people on the ground, the killer can inflict a head shot at close range that will very likely be fatal. Hitting a moving target is more difficult. Of course the killer's chance of inflicting a fatal or crippling wound on the moving target are much better if he is concentrating on accurate shooting.

Now consider a second scenario. This time, someone is shooting back at the killer. It is been said that "when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully."[208] So does being shot at. It is much more difficult to shoot accurately if someone is shooting at you. If the net result is that attacker and the defender both end up firing a lot of inaccurate shots, the result is likely to be a large net savings of lives. The killer will never have the time for an accurate head shot on a close-range victim, and his chances against the mobile victims will diminish greatly. Maybe a stray shot from the killer will hit someone, but that shot is less likely to be an accurate one which would inflict a fatal or crippling injury. There would be a risk that a third party could be injured by a stray shot from the defender. But the defender would have not been aiming at the third party and trying to kill him, so there is some chance that the stray shot would not inflict a critical injury. Massively degrading the lethal accuracy of a shooter who is intent on mass homicide is likely to save many more lives than might be lost because one or two of the intended victims were fighting back.

### 3. *The Police Will Kill People Because of Mistaken Identity*

Some campus police chiefs worry that police officers coming on the scene will not know if the shooter is a legitimate defender, or is the attacker. Identifying the "kid without a plan" would take up police time while they took him into custody. Or he might be mistakenly shot by

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[207] *See* discussion *supra* notes 179–80 and accompanying text.

[208] JAMES BOSWELL, 2 THE LIFE OF SAMUEL JOHNSON 152 (1st pub. 1791) (attributing the aphorism to Johnson).

police.[209]

These objections, however, do not just apply to campus defense. They are applicable in any case where police come upon a crime scene in which the victim is resisting successfully. Already in most of the United States, concealed permit holders can carry almost everywhere in public. The risk of police confusion or mistake is no greater on a campus than it is anywhere else in a state. After decades of experience with licensed carry around the nation, opponents of licensed carry cannot point to frequent instances of the police harmfully mistaking an armed victim with a carry license for a perpetrator.

Indeed, quite apart from citizens having guns for self-defense, police often face situations where they have to make a quick decision about who is the attacker and who is the victim. Encountering a brawl in a bar, a domestic violence incident, or a robbery in which the victim is fighting back, the police may not know immediately who is the perpetrator and who is the victim. The police are specifically trained to deal with such situations, and this training helps them avoid shooting the victims by mistake.

Moreover, in a "Shall Issue" state, the legislature has already decided that in almost all public places, the benefits of armed resistance by victims far outweigh the potential risk of a police mistake. If a would-be mass murderer starts trying to kill people at a shopping mall, or a public park, then the "Shall Issue" law makes it entirely possible that by the time the police arrive, one or more victims will have already started shooting back.

But the most important fact is that the police are fairly unlikely to encounter the active shooter. In the large majority of active shooter incidents at schools, when the perpetrator hears that the police are close by, he kills himself.[210] Not every single active shooter incident ends this way, but the number of cases in which the imminent arrival of the police leads to suicide by the active shooter far outnumber the cases in which the active shooter fights it out with the police.[211] So, by the time the police get there,

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[209] Michele Linck, *No Guns on South Dakota Campuses, For Now*, SIOUX CITY J., Feb. 16, 2008, http://www.siouxcityjournal.com/articles/2008/02/16/news/local/660b198e85dff68a862573f10016cba7.txt (discussing views of Art Mabry, Police Chief of Vermillion, South Dakota); *see also* Geoff Fox, *UCF Student Group Seeks Guns Rights*, TAMPA TRIB., Apr. 4, 2008, at 1 (reporting on the University of Central Florida police chief asking "How are the police supposed to know the good guys from the bad guys?"); Israel Saenz, *Students Wearing Holsters Trigger Debate at A&M-CC*, CORPUS CHRISTI CALLER TIMES, Apr. 23, 2008, http://www.caller.com/news/2008/apr/23/students-wearing-holsters-trigger-debate-at-am/ (questioning campus police chief saying that his force of sixteen officers would find it "hard . . . to differentiate between the good guys and the bad guys").

[210] *See supra* text accompanying note 114.

[211] For an example of such a response by an active shooter, see *supra* note 139. MSNBC commentator Clint Van Zandt (formerly the FBI's Supervisory Special Agent during the Waco siege) writes:

> I totally agree that a number of armed students, faculty or staff on the Tech campus could have made a difference during [the murderer's] killing spree, but I'm not sure

the shooting will probably be over. This will either be because the killer heard the police coming and killed himself, or it will be because somewhat earlier, a victim was able to fight back and the killer was stopped sooner. In case the police burst in on a gun battle in progress, the killer's prompt suicide may well end any confusion.

4. *Training*

Every one of the competence arguments that has been deployed against "Shall Issue" laws in general, or campus carry in particular, can be used against the principle of police officers having guns. After all, police officers do occasionally make mistakes. They shoot the wrong person, or they aim at the right person, and hit the wrong person. Or an off-duty or undercover police officer starts firing at a violent criminal, and then when uniformed police arrive, they are confused about who is the bad guy. These situations do happen, albeit not frequently. Society sensibly decides that the net public safety benefit of armed police far outweighs the statistical certainty (over the long run) of occasional police errors.

In the forty "Shall Issue" states, the legislatures have made a similar determination about the public safety benefit of armed citizens in general. "But the police are trained!" comes the opposition refrain. The answer in most states has been to require that concealed handgun permitees also be trained. The training does not need to be as extensive as that which a police officer receives; to carry a handgun for lawful protection, citizens do not need to know how to conduct vehicle pursuits or how to interrogate a suspect without violating his *Miranda* rights. The citizens are trained to know the self-defense laws of their state, particularly those involving lethal force, and to know the fundamentals of gun safety and defensive gun use. Experience has shown, nationally, that this level of training is fully sufficient so that the parade of horribles offered by opponents of "Shall Issue" does not come true.

One way to test the sincerity of the argument, "But the police have training" is to meet it. That is precisely what the Nevada Regents did,

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> the difference would have resulted in a better outcome. Would the armed students know who, among those with guns, was the real shooter that needed to be stopped? How should the police officers who flooded the campus looking for the shooter have responded when confronted by one or two or 50 students and others wielding guns as they ran helter skelter across the campus quad? Could the situation, as terrible as it was, have become even more tragic were innocents to have shot other innocents in the haste of a moment, trying to identify the real shooter as they looked down the barrel of their own gun while their heart beat so loud they couldn't hear themselves think?

Clint Van Zandt, *Would Students Be Safer If They Carried Guns?* MSNBC, Aug. 20, 2007, http://www.msnbc.msn.com/id/20301979// (killer's name deleted). It takes more than a string of rhetorical questions to seriously imagine a scenario in which the confusion resulting from two (or fifty) students resisting a mass killer would result in *more* deaths than the thirty-five for which the killer had free rein against defenseless victims.

before they changed their minds. Under the plan that won initial approval in Nevada, the only people who could carry on Nevada public higher education campuses would be professors and other full-time employees who, at their own expense, underwent the training necessary to become reserve police officers, and who were then formally sworn as such officers.[212]

The furious opposition to this proposal from some persons in Nevada higher education suggests that the opposition to campus carry may sometimes arise from visceral hostility to guns or to self-defense, rather than to the actual harm that campus carry could cause. While this Article argues in favor of campus carry, it recognizes that political realities and cultural norms differ widely. So while the ideal approach might be to follow the Utah policy, a much narrower policy, such as the Nevada plan, would be much better than nothing.

5. *Killers Will Adopt New Tactics Which Make Resistance Futile*

According to the Brady Center, armed defense would be futile, because attackers might respond by "wearing flak jackets."[213] This seems unlikely. First of all, the real-world experience is that criminals do run the risk of encountering an armed victim when they break into an occupied home (since about half of the homes in America have guns),[214] and likewise the risk of encountering an armed victim outside the home in the forty states with "Shall Issue" laws. The resulting problem of criminals wearing what the Brady Center calls "flak jackets" has not emerged.[215] Certainly criminal use of body armor has not made it futile for police or ordinary citizens to possess firearms for lawful defense.

Moreover, body armor (or a "flak jacket") does not mean that the bullet bounces off harmlessly, as when comic book criminals try to shoot Superman. The body armor will stop the bullet from penetrating, but the force of the bullet can still be enough to break a rib, or knock a person to

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[212] *See supra* notes 67–70 and accompanying text.

[213] BRADY CENTER, *supra* note 146, at 10.

[214] *See* David B. Kopel, *Lawyers, Guns, and Burglars*, 43 ARIZ. L. REV. 345, 349–52 (2001).

[215] Presumably, they mean bullet-resistant body armor. Flak jackets are a type of obsolete military gear, although the term is sometimes loosely used for modern body armor. *See* Apparel Search, Flack Jacket Definition, http://www.apparelsearch.com/Definitions/Clothing/flak_jacket.htm (last visited Nov. 16, 2009).

> [Flak jackets were] originally developed by the Wilkinson Sword company during World War II to help protect Royal Air Force (RAF) air personnel from the flying debris and shrapnel thrown by German anti-aircraft guns' flak (Fliegerabwehrkanone), a type of exploding shell. The jacket consisted of titanium plates sewn into a waistcoat made of ballistic nylon (a material engineered by the DuPont company); therefore, flak jackets functioned as an evolved form of plate armour . . . . Ultimately, however, the jackets proved to be tragically ineffective, and are now generally considered to be inferior to body armor. In modern usage, the term flak jacket sometimes refers to contemporary bulletproof vests.

*Id.*

the ground.[216] Either result would impair the killer at least temporarily and thereby provide more opportunity for victims to escape, or to pin the killer to the ground. And a broken rib, or similar injury, stands a very good chance of greatly degrading the killer's accuracy.

The Brady Center also predicts that having armed teachers "would simply make the teacher the likely first victim."[217] This is opposed to the current situation, where the teacher might be the second, third, or fourth victim. If we hypothesize that the Brady Center scenario came true, and an attacker killed a teacher by surprise, the killer would have no element of surprise against the other armed adults who might be in the building. Their prompt actions might well prevent the killer from methodically murdering defenseless schoolchildren.

### C. *Faculty and Adult Students Are Incipient Killers*

Even if licensed campus carry did save lives by deterring or terminating mass homicides, the question remains as to whether the net result would be more deaths on campus, because teachers and/or students would commit so many more crimes because they were legally carrying firearms. Empirical evidence suggests not.

#### 1. *People Licensed to Carry Handguns for Lawful Defense Are Very Dangerous*

If people with concealed carry permits were already known to be a menace to society, we would not want them on campus. Conversely, if permitees had already demonstrated themselves to be highly law-abiding, then we would want to exclude them from campus only if there were some reason why they might become abnormally dangerous on campus. So the first issue is whether CCW permitees are dangerous in general.

Several states require a state police agency or the Attorney General to compile an annual report about CCW licenses, as well as revocations of permits, and the behavior of permitees. These state requirements are examined below.

##### a. Minnesota

In Minnesota, the Department of Public Safety must produce an annual report detailing concealed carry license issuances, denials, and revocations.[218] As of December 31, 2008, there were 56,919 valid permits

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[216] *See* L. Cannon, *Behind Armour Blunt Trauma—An Emerging Problem*, 147 J. ROYAL ARMY MED. CORPS 87, 87 (2001) (discussing effects of projectile impact on body armor).

[217] BRADY CENTER, *supra* note 146, at 10.

[218] MINN. STAT. ANN. § 624.714 (West 2009).

in the state.[219] In 2008, twenty-one permits were revoked; most of the revocations were not for conduct with the firearm, but because the person was discovered to be ineligible by law to possess firearms (e.g., marijuana was found in the person's home), or because the sheriff, using discretion which exists in the Minnesota "Shall Issue" statute, had made a factual determination that the applicant was a danger to himself or others. There were two revocations for carrying a firearm while intoxicated, and one revocation for a felony conviction for a crime involving use of a firearm.[220] Since the Minnesota law went into effect, there have been 454 crimes committed by permit holders. (Because a permit holder may be charged with more than one crime for a particular act, the number of permit holders who were convicted of crimes is lower, although the exact number is not clear from the report.) These crimes range from "Address change—failure to notify" to "Traffic—other" (comprising sixty-seven of the crimes). The report also states whether the person was known to have "used [a] pistol" in the crime. There are forty such crimes, although "used" must be interpreted liberally; for example, three of the "used [a] pistol" crimes are for driving while intoxicated.[221] Presumably, the intoxicated driver had the handgun in his car (the permit allows a person to possess the gun while in an automobile, but possession while intoxicated is always forbidden), but it seems doubtful that the handgun was actually "used" for the act of driving while intoxicated.

Thus, since 2003, we have 56,919 permitees, and forty handgun crimes, or about one such crime per 1423 permitees. It would be difficult to find a significant demographic group in the United States with a *lower* rate of handgun crimes.

b. Michigan

According to the Michigan State Police report, there were 312 permit revocations in Michigan between July 2007 and June 2008. The report also tracks crimes involving concealed carry permitees. Again, it compiles all cases in which someone was charged, including instances in which the person was acquitted, or the charges were dismissed, or charges are still pending and have not been resolved.[222]

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[219] BUREAU OF CRIMINAL APPREHENSION, DEP'T OF PUBLIC SAFETY, STATE OF MINN., *Permit to Carry Valid Permits Report*, *in* 2008 PERMIT TO CARRY REPORT 1 (Mar. 1, 2009), *available at* http://www.dps.state.mn.us/bca/CJIS/Documents/CarryPermit/2008PTSReport.pdf.

[220] BUREAU OF CRIMINAL APPREHENSION, DEP'T OF PUBLIC SAFETY, STATE OF MINN., *Revocations Explanation Report*, *in* 2008 PERMIT TO CARRY REPORT 1–2 (Mar. 1, 2009), *available at* http://www.dps.state.mn.us/bca/CJIS/Documents/CarryPermit/2008PTSReport.pdf.

[221] BUREAU OF CRIMINAL APPREHENSION, DEP'T OF PUBLIC SAFETY, STATE OF MINN., *Section 5b Reporting Requirement*, *in* 2008 PERMIT TO CARRY REPORT 11–12 (Mar. 1, 2009), *available at* http://www.dps.state.mn.us/bca/CJIS/Documents/CarryPermit/2008PTSReport.pdf.

[222] MICH. STATE POLICE CRIMINAL JUSTICE INFO. CTR., *Statewide Totals*, *in* CONCEALED PISTOL LICENSURE: ANNUAL REPORT, JULY 1, 2007 TO JUNE 30, 2008, at 1–22 (2008), *available at*

The Michigan report lists 161 total charges (involving permitees) for "Brandishing or Use of Pistol" during the previous fiscal year.[223] Because of overlapping charges, this involves fewer than 161 criminal acts. Out of these 161 charges, the data suggest that the number of convictions would be approximately forty-five.[224] Accounting for overlapping charges, the actual number of criminal acts might be between twenty-five and thirty-five. The report does not specify whether the alleged crime occurred in a place where the license might have facilitated the crime (e.g., while the gun was being carried on a public sidewalk) or elsewhere (e.g., a crime in the home).

Michigan's "Shall Issue" licensing law went into effect on July 1, 2001. Licenses are valid for five years and may not be renewed before the final year of the licensing period.[225] Thus, the total number of valid licenses in Michigan (as of the date of the last report, June 30, 2008) would be somewhere between the number of licenses issued in the previous four years (172,140) and the number issued in the last five years (203,261).[226] Even if it was assumed that every "charge" merited a criminal conviction, and that every charge involved a separate person (that is, there were no duplicate charges filed), there were 161 misdeeds in 2007 and 2008 out of

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http://www.michigan.gov/documents/msp/CPL_Annual_Report_2007-2008_269128_7.pdf.

[223] *Id.* at 22.

[224] The category "Carrying or possessing firearm when committing or attempting to commit felony" (a sentence enhancer which would presumably involve most of the separately-listed non-regulatory crimes, such as burglary), lists seventy-nine cases of "Total charges." MICH. STATE POLICE CRIMINAL JUSTICE INFO. CTR., *supra* note 222, at 15. Of these, forty-six are still pending; twenty-two of the charges were dismissed; two are classified as "Not Guilty/Not Responsible"; nine are classified as "Conviction/Found Responsible." *Id.* Thus, in over half the cases, the charges are unresolved; in the cases that were resolved, a little over a quarter of persons charged (nine out of thirty-three) were convicted. Yet, on the same line, listing the fact that there were only nine convictions, there is a listing of twenty-seven instances of "Brandishing or Use of Pistol" during the crime. *Id.* Based on the Report's rate at which charges turn into convictions, we could estimate that slightly over one-fourth of these cases (that is, seven or eight) would result in a determination that a licensee used a pistol in a felony or an attempt to commit a felony in Michigan between July 1, 2007, and June 30, 2008.

[225] MICH. COMP. LAWS ANN. § 28.425l (West 2009).

[226] MICH. STATE POLICE CRIMINAL JUSTICE INFO. CTR., *supra* note 222 (The number of licenses issued was 56,919. The number of licenses revoked was 312.); MICHIGAN STATE POLICE CRIMINAL JUSTICE INFO. CTR., CONCEALED PISTOL LICENSURE: ANNUAL REPORT JULY 1, 2006 TO JUNE 30, 2007 (2007), *available at* http://www.michigan.gov/documents/msp/CCW_Annual_Report_2006-2007_228850_7.pdf (The number of licenses issued was 23,790. The number of licenses revoked was 163.); MICH. STATE POLICE CRIMINAL JUSTICE INFO. CTR., CONCEALED PISTOL LICENSURE: ANNUAL REPORT JULY 1, 2005 TO JUNE 30, 2006 (2006), *available at* http://www.michigan.gov/documents/msp/CCWAnnualReport_181416_7.pdf (The number of licenses issued was 36,754. The number of licenses revoked was 108.); MICH. STATE POLICE CRIMINAL JUSTICE INFO. CTR., CONCEALED PISTOL LICENSURE: ANNUAL REPORT JULY 1, 2004 TO JUNE 30, 2005 (2005), *available at* http://www.michigan.gov/documents/CCWAnnual_Report 2004_2005_143245_7.pdf (The number of licenses issued was 54,677. The number of licenses revoked was 121.); MICHIGAN STATE POLICE CRIMINAL JUSTICE INFO. CTR., CONCEALED PISTOL LICENSURE: ANNUAL REPORT JULY 1, 2003 TO JUNE 30, 2004 (2004), *available at* http://www.michigan.gov/documents/CCW_Annual_Report_108680_7.pdf (The number of licenses issued was 31,121. The number of licenses revoked was 119.). The grand total would be reduced by the number of revocations in each year.

an approximate Michigan licensed population of 190,000 people. This is a rate of less than one per one thousand; once the conviction rate is factored in, and duplicate charges eliminated, the rate approaches one in five thousand.

As in other states, Michigan licensees are not absolutely perfect. As a group, however, they seem to be overwhelmingly law-abiding, *especially* with regard to their licensed carry pistols.

c. Ohio

The annual report of the Ohio Attorney General provides less detailed information. As of December 31, 2008, the state sheriffs had issued 142,732 permanent licenses[227] since the Ohio law went into effect in 2004.[228] Since then there have been 639 revocations.[229] Sheriffs do not report the reason for a revocation, and among the causes for a revocation are that the license-holder moved out of state, died, or no longer desired to have the permit.[230] The Ohio report does not specify how many of the 639 involved revocations were for conviction of a crime, or how many involved misuse of a firearm.

d. Louisiana

In Louisiana, there have been 27,422 permits issued since the Shall Issue law went into effect in 1996.[231] Per capita, the figure seems surprisingly low compared to Michigan, Minnesota, and Ohio. The explanation is probably that Louisiana (like most states in the South and the West) does not require a permit in order to carry a firearm in an automobile for protection. Accordingly, people in Louisiana (unlike people in Minnesota, Michigan, or Ohio) who only want to carry a defensive firearm in their automobile do not need to spend the money and time to obtain a CCW permit.

Since 1996, there have been 259 permit revocations in Louisiana.[232] Prior to July 15, 2004, the state police computer did not record the reason for a revocation. Since then, there have been 137 revocations for which the causes are known. Only one was for the following reason: "[p]ermittee convicted of a crime of violence."[233] There were twenty other revocations

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[227] RICHARD CORDRAY, OHIO ATTORNEY GEN., OHIO'S CONCEALED HANDGUNS LAW: 2008 ANNUAL REPORT 3 (Mar. 1, 2009), *available at* http://www.ohioattorneygeneral.gov/getattachment/74fa629f-0bb9-48e1-9d81-7c27be9bbc57/Concealed-Carry-Weapons-Annual-Report.aspx.

[228] OHIO REV. CODE ANN. § 2923.1213 (LexisNexis 2006).

[229] CORDRAY, *supra* note 227, at 5. There were 42 revocations in 2004, 75 revocations in 2005, 194 revocations in 2006, 171 revocations in 2007, and 157 revocations in 2008, totaling 639 revocations since the implementation of the Ohio law.

[230] *Id.*

[231] *See* CONCEALED HANDGUN PERMIT UNIT, *supra* note 200, at 1.

[232] *Id.* at 14.

[233] *Id.*

where the cause was the permittee being charged with a bill of information for a felony offense (but not necessarily convicted). There was one other case in which the revocation was because the permittee was the subject of a domestic restraining order. The Louisiana report does not specify which, if any, crimes involved the use of a firearm. The rest of the revocations involve situations in which the permittee became ineligible to continue to hold the permit, but the category had nothing even theoretically to do with the misuse of a gun.

So twenty-two of the 137 revocations (sixteen percent) described above *might* have involved gun misuse. If one applies a similar proportion to the 122 unclassified pre-2004 revocations, then one would have about twenty more cases that *might* have involved gun misuse. This would be forty-two out of 27,422 people over a twelve-year period, or slightly more than one in one thousand permitees. If taken into account that some people who are indicted of a crime are not found guilty, and that the large majority of felony crimes do not involve misuse of a gun, then the number of cases of gun misuse for Louisiana permittees would be much less than one in one thousand.[234]

e. Texas

In Texas, the Department of Public Safety produces an annual report which details the total number of Texas convictions for various crimes and the total number of such convictions among Concealed Handgun License ("CHL") holders. It includes burglary, violent crimes, sex offenses, weapons offenses, and various other serious crimes, but not drug crimes or most white collar crimes. The latest report, for 2006, shows 61,539 total convictions of these crimes in all of Texas, with 144 attributable to CHL holders. Thus, licensees accounted for two-tenths of less than one percent of the Texas convictions.[235] The Texas report does not indicate which crimes were perpetrated with guns.[236]

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[234] *Id.* at 10. There were also 417 license suspensions since the Louisiana law went into effect. Of those, 211 were pre-2004, and hence the reasons for the suspensions were not recorded. Of the 216 suspensions with known reasons (that is, after July 15, 2004), none involved gun misuse. The overwhelming reason was failure to comply with the Louisiana statute requiring a permitee to notify the deputy secretary of public safety services if he is arrested for any cause, including for a misdemeanor. Failure to do so results in a ninety day license suspension. *See* LA. REV. STAT. ANN. § 40:1379.3(R)(1), LA. ADMIN. CODE tit. 55 § 1313(B)(5) (2009).

[235] REGULATORY LICENSING SERV., CONCEALED HANDGUN LICENSING BUREAU, TEX. DEP'T OF PUB. SAFETY, CONVICTION RATES FOR CONCEALED HANDGUN LICENSE HOLDERS 4 (2009), *available at* http://www.txdps.state.tx.us/administration/crime_records/chl/ConvictionRatesReport2006.pdf. Again, as with the Michigan report, many of these crimes appear to involve multiple charges growing out of a single criminal act.

[236] For offense names that include the use of a weapon that might be a firearm, the conviction figures for CHL holders were as follows: Deadly Conduct Discharge Firearm, 1; Unlawful Carrying Weapon, 24; Unlawful Carry Handgun License Holder, 10 (presumably this offense involves carrying the licensed handgun in violation of permit restrictions; the previous offense would involve carrying some other weapon); Aggravated Assault W/Deadly Weapon, 9. *Id.* at 1–3.

As of 2006, there were 258,162 active license holders in Texas.[237] The estimated Texas population in 2006 was 23,507,783.[238] This computes to a Texas crime rate (counting the crimes in the Texas report) of 0.00262 per capita; that is, 262 such crimes per 100,000 Texans. In contrast, the per capita crime rate for CHL holders is 0.00054; that is, about fifty-four such crimes per 100,000 CHL holders. So, a Texan CHL is only about twenty-one percent as likely as a non-CHL holder to be convicted of one of these crimes.

This is consistent with other research findings that compared to a CHL holder, a male Texan in the general public is 7.9 times more likely to be arrested for a violent crime than a male Texan CHL holder; for females, the figure is 7.5 times more likely.[239] Of the CHL holders who were arrested, 22% were convicted of the crime for which they were arrested, 32% were convicted of a lesser offense, and 46% were not convicted of any offense.[240] Of course the vast majority of the general public does not perpetrate serious crimes. Only a tiny minority does so, and among CHL holders, the minority is even smaller.

f. Florida

In Florida, as of July 31, 2009, there were 607,977 active concealed handgun licensees; since October 1, 1987, there have been 1,565,251 licenses issued. Since 1987, there have been 4927 licenses revoked. Of the revocations, 4209 were for "Crime After Licensure." Among those, 167 were for a crime with "Firearm Utilized."[241] Thus, the per capita firearms crime rate for licensed Floridians was 0.00027. That is 27 firearms crimes per 100,000 licensed Florida residents.

g. The Brady Center's Claims

The Brady Center argues vehemently that people with carry licenses are much too dangerous to be allowed on campus. However, the Brady

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[237] REGULATORY LICENSING SERV., CONCEALED HANDGUN LICENSING BUREAU, TEX. DEP'T OF PUB. SAFETY, STATISTICAL INFORMATION PERIOD: AS OF 12/31/2006 ACTIVE LICENSE HOLDERS AND CERTIFIED INSTRUCTORS, *available at* http://www.txdps.state.tx.us/administration/crime_records/chl/PDF/ActLicAndInstr/ActiveLicandInstr2006.pdf.

[238] TEX. DEP'T OF STATE HEALTH SERVS., ESTIMATED TEXAS POPULATION BY AREA, 2006 *available at* http://www.dshs.state.tx.us/chs/popdat/ST2006.shtm (last visited Aug. 31, 2009).

[239] WILLIAM E. STURDEVANT, AN ANALYSIS OF THE ARREST RATE OF TEXAS CONCEALED HANDGUN LICENSE HOLDERS AS COMPARED TO THE ARREST RATE OF THE ENTIRE TEXAS POPULATION 1996–1998, REVISED TO IINCLUDE 1999 DATA (Sept. 1, 2000), *available at* http://www.txchia.org/sturdevant.htm.

[240] *Id.*

[241] DIV. OF LICENSING, FLA. DEP'T OF AGRIC. AND CONSUMER SERVS., CONCEALED WEAPON/FIREARM SUMMARY REPORT: OCTOBER 1, 1987–JULY 31, 2009, *available at* http://licgweb.doacs.state.fl.us/stats/cw_monthly.html; FLA. DEP'T OF AGRIC. AND CONSUMER SERVS., DIV. OF LICENSING, NUMBER OF LICENSEES BY TYPE AS OF FEBRUARY 28, 2009, *available at* http://licgweb.doacs.state.fl.us/stats/licensetypecount.html.

Center does not cite any government data, such as the data presented above, about crime rates for licensees. Instead, the Brady Center asserts that "thousands of people with CCW licenses have committed atrocious acts of gun violence."[242] The only support for this claim is a citation to the appendix of another one of its monographs, which is said to list "dozens of criminal offenses committed by CCW licenses in Florida alone,"[243] plus a *Los Angeles Times* article which identifies four violent crimes perpetrated by Texans with licenses.[244]

The cross-cited Brady monograph lists the criminal offenses behind 105 Florida permit revocations in 1987–97.[245] Most of these listings provide no indication that the person whose permit was revoked had committed any crime with a gun, let alone an "atrocious act of gun violence."[246] To the contrary, only thirteen listed offenses include use of a firearm as an element, such as "adjudication withheld on felony assault with a deadly weapon," "adjudication withheld on felony aggravated assault with a firearm," or "convicted of felony possession with intent to distribute cocaine, possession of a firearm during drug trafficking offense." Indeed, for the vast majority of the offenses—such as assault or drug sales—the absence of a firearms count would seem to indicate that a firearm was *not* used. Likewise, there is no indication that a firearm was used in the many offenses of simple possession of marijuana, passing fraudulent checks, or other non-violent crimes.

In short, the Brady Center's self-cited data, even if extrapolated nationally, do not come remotely close to supporting its allegation that "thousands of people with CCW licenses have committed atrocious acts of gun violence."[247]

In the Brady Center policy paper opposing campus carry, Appendix A

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[242] BRADY CENTER, *supra* note 146, at iv.

[243] *Id.* at 34–35.

[244] William C. Rempel & Richard A. Serrano, *Felons Get Concealed Gun Licenses Under Bush's 'Tough' Law*, L.A. TIMES, Oct. 3, 2000, at A1 (noting also that more than 3000 licensees had been arrested, although the article did not provide information about whether the arrests led to a conviction or whether the alleged crimes had anything to do with a gun). Other research has found that forty-six percent of Texas licensees who were arrested were not convicted of any crime. *See* STURDEVANT, *supra* note 239.

[245] *See* CENTER TO PREVENT HANDGUN VIOLENCE, *supra* note 171, at 1C–4C (noting crimes committed by Florida licensees since the passing of Florida's CCW law in October 1987).

[246] BRADY CENTER, *supra* note 146, at IV.

[247] It seems that the only way that the claim that "thousands of people with CCW licenses have committed atrocious acts of gun violence" could literally be true would be if every act of lawful self-defense by a CCW licensee were counted as "an atrocious act of gun violence." Regarding self-defense as "atrocious gun violence" would not be inconsistent with Mrs. Brady's professed view: "To me . . . the only reason for guns in civilian hands is for sporting purposes." Tom Jackson, *Keeping the Battle Alive*, TAMPA TRIB., Oct. 21, 1993. Mr. Brady takes the same view; when asked if handgun possession was permissible, he replied, "For target shooting, that's okay. Get a license and go to the range. For defense of the home, that's why we have police departments." James Brady, *In Step with: James Brady*, PARADE, June 26, 1994, at 18. (The author James Brady and the interview subject James Brady have no relation, other than sharing the same name.)

asserts that a CCW permit "in no way guarantees public safety. In fact, it can often be a license to kill."[248] Of course there are no policies that "guarantee" public safety; the question is whether the policy improves public safety. As for the "license to kill," the Brady Center provides a litany of twenty-nine cases from around the country,[249] presumably the most atrocious ones it could find.

Now, if every one of these involved a criminal homicide, these twenty-nine cases (out of a national CCW licensee population of about five million) would mean that CCW licensees have a criminal homicide rate far below that of the general population. But most of the twenty-nine most atrocious CCW stories that the Brady Center could find do not even involve conduct with a gun that was carried pursuant to a CCW permit.[250] Of those that do, not all of them are exactly the stuff of "a license to kill." For example, United States Representative John Hostettler forgot to take his handgun out of his bag when going through airport security; he pleaded guilty to a misdemeanor.[251] A former judge made the same mistake and also pleaded guilty to a misdemeanor charge.[252] In Virginia, a school teacher left a handgun locked in a car while the car was parked on school property; he was charged with violating the Virginia law against firearms on school property.[253] And in Pennsylvania, the transportation director for a school district was suspended for several months for, among other charges, what the district described as "unintentionally bringing a loaded firearm onto school property" when he left a handgun in a motorcycle saddlebag.[254]

The Brady Center lists some cases in which a person was arrested after a shooting, but almost never reports dispositions. The Brady Center thus treats a case that was not prosecuted, because an investigation established that the defendant acted in lawful self-defense, as equivalent to a case of criminal homicide. For example, the Brady Center writes: "Fort Lauderdale, Florida, January 1, 2006. Rogelio Monero [sic], 49, allegedly shot and killed Victor Manuel Villanueva, 17, during a New Year's altercation as Moreno tried to stop a fight between Villanueva and a third party. Moreno was charged with manslaughter."[255] Yet an *Austin Examiner* phone call to the Fort Lauderdale Police Department revealed

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[248] BRADY CENTER, *supra* note 146, at 22.

[249] *Id.* at 22–26.

[250] *Id.*

[251] *See id.* at 24 (citing Jason Riley, *Congressman Guilty in Gun Case*, LOUISVILLE COURIER-J., Aug. 11, 2004, at 1B).

[252] *Id.* at 25.

[253] *See id.* at 24 (citing Maria Glod, *Va. Teacher Accused of Taking Gun to School; Loaded Weapon Found in Locked Car*, WASH. POST, Apr. 27, 2005, at B01).

[254] *Id.* at 25.

[255] *Id.* at 23.

that the shooting had been determined to be a justifiable homicide.[256]

Another Brady Center story:

> Vancouver, WA, October 3, 2006. Jon W. Loveless, unemployed for ten years, daily marijuana smoker, and father of two children—said that he shot "until my gun was empty" at Kenneth Eichorn [sic, Eichhorn], because Eichorn [sic] had "a weird look" on his face. Loveless also claimed that Eichorn [sic] held a handgun, but the Eichorn [sic] family disputes the claim. Loveless was charged with one count of second-degree murder.

Missing from the Brady account is the conclusion to the story, which was reported October 5, 2006, in the same newspaper that the Brady Center had cited:

> Jon W. Loveless was exonerated Thursday on charges of second-degree murder and was to be released from the Clark County Jail. . . .
>
> On Wednesday, [Senior Deputy Prosecutor] Fairgrieve indicated he had yet to see evidence that would support a second-degree murder charge. He said the standards police use to arrest a suspect are lower than what prosecutors use to file charges, and by law charges against a person in custody must be filed within 72 hours of the suspect's first court appearance.[257]

The Brady Center monograph reports four cases of gun accidents, two of them fatal. As for criminal homicides by people who actually had CCW permits (not people whose permits had earlier been revoked, although the Brady Center lists these), there is only one that was committed in a public place (where the permit would even be relevant), and one more that was committed at home. There are three other cases of misusing a gun against another person (making an improper threat, or carrying it while impersonating a police officer, and a robbery perpetrated by a police officer's wife).[258]

Are CCW permittees perfect? No, but they are much more law-abiding than the general population, as the government data indicate. Indeed, "[e]ven off-duty police officers in Florida were convicted of

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[256] Nemerov, *supra* note 202; *see also* Press Release, City of Fort Lauderdale Police Dep't, Shooting At New Year's Eve Party Leaves One Dead (Jan. 1, 2006), *available at* http://ci.ftlaud.fl.us/police/pdf/2006/january/06-01%20New%20Year%20shooting.pdf.

[257] *Loveless Exonerated in CB Shooting*, CLARK COUNTY COLUMBIAN (Vancouver, Wash.), Oct. 5, 2006.

[258] BRADY CENTER, *supra* note 146, at 22–23, 25.

violent crimes at a higher rate than permit-holders."[259] So, should off-duty police be allowed to carry concealed firearms when on school property? If the answer is "No, because they might commit a violent crime against a teacher or student," then one could, with logical consistency, also oppose campus carry by CCW licensees (although the fear of licensees would have a weaker empirical basis than the fear of off-duty police). On the other hand, if one thinks that the potential anti-crime benefit of allowing off-duty police to carry on campuses outweighs the (miniscule) risk that an off-duty officer might commit a crime, then one would have even less reason to be afraid of a CCW licensee.

But what is it about permitees, although generally less dangerous than off-duty police, that makes others fear that they will become much more dangerous in a campus environment? That is the topic of the following sections.

2. *Faculty Members Are Very Dangerous*

As the previous subsection demonstrates, the Brady Center works assiduously to collect information about every possible misdeed by people with concealed handgun licenses. One may be fairly confident that if any instance of misuse was reported in a newspaper, the Brady Center would know about it, and would not be reticent about publicizing it. Yet in a forty-four page paper composed of frantic warnings about what licensed carry permitees *might do* on campus, the paper conspicuously lacks any report of anything improper which a permittee on campus *has done*.[260]

In Utah, a state with a population of over three million, any licensee (not just a teacher or an adult student) has been allowed to carry at kindergartens, grade schools, and universities since 1995.[261] In the Brady Center report, there is not one example of the slightest misdeed by any of these people. Nor is there any notation of misdeed by individuals at the large campus of Colorado State University, or the three campuses of Virginia's Blue Ridge colleges, who are licensed to carry. From the arctic islands of Norway, to the deserts of Israel (a quarter-century of experience) to the jungles of southern Thailand (five years of experience), one can see very diverse real-world experiments with teachers and students being required or strongly encouraged to carry guns. And neither the Brady Center nor any other anti-carry organization has brought forward even one example of gun misuse in those countries.

In this and the following two subsections, this Article examines the claims of the Brady Center and like-minded people that licensed carry on

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[259] John R. Lott, Jr., Gun Control Advocates' Credibility on Line, http://johnrlott.tripod.com/credibility.html (last visited Sept. 1, 2009).

[260] *See generally* BRADY CENTER, *supra* note 146.

[261] *See supra* text accompanying notes 76–81.

campuses would lead to catastrophe. Although the arguments will be addressed in detail, it is important to remember a larger point: these arguments are purely speculative. The advocates who demand a campus ban on licensed carry rely on sheer conjecture, while the advocates of campus carry can point to extensive real-world experience, in which not an iota of the malicious conjecture has proven valid.

A review of academic-linked homicides over the last twenty years revealed a few cases in which a professor had murdered someone on campus.[262] Interestingly, there was only one case (at the University of Arkansas, by a graduate student) in which a killing was perpetrated by somebody with teaching responsibility in the humanities.[263]

Some people fear that an angry teacher might shoot a student. But if parents believe that their children's teachers might kill their child if they had a weapon, then why would those parents leave their child in the custody of those teachers for many hours a week?

> Gallant: "Is your little daughter Brittany going to school now?"
>
> Goofus: "Oh yes, she really likes her classmates, but she seems afraid of her teacher Ms. Springelschnitz."
>
> Gallant: "Do you like Ms. Springelschnitz?"
>
> Goofus: "Hmmm. I think that if Ms. Springelschnitz had a gun, she might murder Brittany. Or at least she would threaten Brittany with the gun. But as long as the school district prohibits teachers from having guns, I don't have a care in the world."

If parents sincerely believe that the most important reason by a child's teacher has not murdered their children yet is that the district policy forbids the teacher to have a gun at school, those parents should immediately transfer their children to a different school. But realistically, although there might be too many mediocre teachers in some schools, American teachers are not borderline killers.

Other people worry that a student might steal a teacher's gun. Putting aside the fact that it is not that difficult for a determined person to get a gun somewhere else (e.g., stealing from someone's home), the risk could be addressed through policies requiring that the gun always be carried on the teacher's body or secured in another manner.[264]

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[262] *See* Wood, *supra* note 165, at 277–82 (discussing the prevalence of student- versus professor-caused murders on college campuses). "[A]ccounts of faculty members resorting to deadly force are relatively rare." *Id.* at 281.

[263] *Id.* at 286.

[264] For example, guns are often stored in quick-lock safes, which can be opened in several seconds. Some of the safes use a biometric identifier, usually a fingerprint scan. The trade-off is that

In 2006, the President of the Utah Education Association, Kim Campbell, said, "I would be opposed to guns in school, period. . . . No matter where I would put a gun in a classroom, a class full of little people would find it. And if it were locked up for safety, there would be no chance to get it."[265] Perhaps Ms. Campbell is accurate in her self-assessment of her inability to prevent her students from getting hold of anything she brings into the classroom, even something that she is wearing concealed underneath her clothing. Presumably, she never brings her own medicines into the classroom because her students would make off with her pills and liquids. However, teachers throughout Utah—including, almost certainly, members of Ms. Campbell's union—have been carrying guns in K–12 classrooms since 1995, and there has never been a known incident of a student taking a teacher's gun.[266] Ms. Campbell's strong lack of self-confidence in her own abilities to keep control of the items in her personal possession does provide an example about why the government should not mandate that a teacher be armed.

During the Nevada debate over allowing campus carry by K–12 teachers and college professors who completed a background check and training equivalent to that of a reserve police officer, the *Las Vegas Sun* highlighted the following concern:

> [W]ould a classroom teacher who is trained as an officer be allowed to use more aggressive tactics in controlling an unruly student? And if a situation arises in another part of the school that requires the attention of a teacher-officer, does that teacher simply leave his class unattended? . . . And in addition to these concerns, there is one very real consequence of having teachers double as officers: Children as young as 5 or 6 could be in classrooms where loaded guns are present.[267]

To answer these questions, no, a teacher would not be allowed to use unusually forceful tactics on unruly students; the police are taught not to use chokeholds or to draw their weapons unless there is a public safety

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the gun would not be instantly available if an attack began in that particular room, but the gun could be retrieved if an attack began elsewhere in the building. As for the constitutionality of requiring that a gun be locked up, see *infra* note 290 and accompanying text.

[265] Caitlin A. Johnson, *After Shootings, Some Teachers Get Guns*, CBS NEWS, Oct. 16, 2006, http://www.cbsnews.com/stories/2006/10/17/earlyshow/main2096721.shtml?source=RSSattr=HOME_2096721.

[266] Teachers do sometimes lose keys or cell phones. But unlike classroom keys or cell phones, a concealed firearm is typically worn in a special holster concealed on one's body. And unlike keys and cell phones, a person does not remove a concealed handgun for ordinary use several times a day. If a teacher puts on a concealed handgun in a concealed holster at 7 a.m., when she is getting ready to go to school, she is not going to misplace the gun when she uses her keys to open the gymnasium at 9 a.m., or when she receives a cell phone call from her husband during lunch.

[267] Editorial, *Teachers Packing Heat?*, LAS VEGAS SUN, Aug. 15, 2007, http://www.lasvegassun.com/news/2007/aug/15/editorial-teachers-packing-heat.

need to do so. Teachers trained like police officers would be trained to the same standard of conduct. Next, yes, if there is an active shooter in the north part of the school building, the teacher in the south building might leave her classroom, confront the shooter in the north, and thereby leave her students unattended; this result is based on the premise that being unattended while being defended from a homicidal maniac is better than being attended while being murdered. And finally, yes, children as young as five or six would be in classrooms where loaded guns are present. Half of the children in America already live in homes where guns are present. If a gun-phobic parent cannot handle the thought of his child being in a classroom with an armed defender, the parent could be offered the option of transfer to another class.

The Brady Center has another fear: "In one recent school year, 2,143 elementary or secondary school students were expelled for bringing or possessing a firearm at school. In how many of those instances would an armed teacher have been tempted to shoot the student because of a perception of danger?"[268] Again, one can look to evidence. From the 1996–97 school year through the 2003–04 school year, there were 428 instances in which students in Utah have been expelled for possessing a firearm at public K–12 school.[269] And since 1995, almost every public school teacher in Utah has had the right to obtain a concealed carry permit, and to use that permit on campus. There is no known example of any Utah teacher drawing a gun on, let alone shooting, any of the 428 students who illegally brought a firearm to school.

The Brady Center also asks, "And what about fist or knife fights that occur at schools? Should teachers be drawing their guns and trying to intercede?"[270] Indeed, we would want a teacher to intercede with a firearm under the same circumstances in which we would want a person with a CCW permit, or police officer, or anyone else lawfully possessing a firearm, to act: according to the state law regarding the use of deadly force. In most states, that would mean that deadly force would be allowed to stop a knife fight or a brawl if the teacher reasonably believes that the victim is in imminent danger of death or serious bodily injury *and* the teacher also reasonably believes that no lesser force will suffice to save the victim.

### 3. *Adult College and Graduate Students Are Very Dangerous*

Before even considering the arguments against students possessing arms on campus, let us remember that such arguments are no reason to

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[268] BRADY CENTER, *supra* note 146, at 10.

[269] KAREN GRAY-ADAMS, U.S. DEP'T OF EDUC., REPORT ON THE IMPLEMENTATION OF THE GUN-FREE SCHOOLS ACT IN THE STATES AND OUTLYING AREAS SCHOOL YEAR 2003–04, at 12, tbl.5 (Apr. 2007), *available at* http://www.ed.gov/about/reports/annual/gfsa/gfsa03-04rpt.pdf. In Utah, as in other states, many of the expulsions were modified to a lesser punishment. *Id.* at 13, tbl.6.

[270] BRADY CENTER, *supra* note 146, at 11.

prohibit middle-aged and older faculty from having guns. The desire to prevent twenty-two-year-olds from being armed is no reason to impose disarmament on fifty-year-olds.

Second, in only eight states are concealed carry permits issued to eighteen-year-olds.[271] Most states impose an age limit of twenty-one years old or greater. The experience of the six states does not indicate that licensed, trained eighteen-year-olds are incapable of bearing arms responsibly. After all, they bear arms with enormous responsibility if they enlist in the United States armed forces.

a. The Brady Center Assertions

If all you knew about college students was what the Brady Center told you, you might think that the safest thing to do would be to immediately surround them all with barbed wire and convert them into penal institutions. The Center warns about "introducing guns among binge-drinking, drug-using, suicide-contemplating, hormone-raging college students."[272] The Center thus predicts "[g]reater potential for student-on-student and student-on-faculty violence."[273] According to the Brady Center, colleges face the imminent risk of being forced by "the gun lobby" to accept "students bring[ing] their AK-47 assault rifles with them to show off while guzzling beer at college keggers."[274] The scenario is ludicrous.

First of all, the AK-47 is an automatic combat rifle—a type of machine gun. Although the gun is ubiquitous in some nations (e.g., Yemen and Iraq), there are no more than a few hundred in the United States, many of them in museums. To purchase one would cost many thousands of dollars, and require a licensing process (pursuant to the National Firearms Act of 1934) involving signed permission from one's local police chief or sheriff, plus fingerprinting, a $200 tax, and months of paperwork.[275] One can assume that few college students have the means to purchase an AK-47.[276]

Second, a "concealed carry permit" is a permit to carry a *concealed* weapon. A rifle of any type is too large to be carried concealed. Third, if we somehow imagine that an extremely wealthy student bought an actual

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[271] *See* CAL. PENAL CODE § 12026(a) (West 2009); DEL. CODE ANN. tit. 11 § 1441 (2007); IND. CODE ANN. § 35-47-2-3(g) (West 2007); IOWA CODE ANN. § 724.8 (West 2003); ME. REV. STAT. ANN. tit. 25 § 2003 (2008); MD. CODE ANN., Pub. Safety § 5-306 (West 2003); MONT. CODE ANN. § 45-8-321 (2009); S.D. CODIFIED LAWS §§ 23-7-7.1, 23-7-44 (2009).

[272] BRADY CENTER, *supra* note 146, at 14.

[273] *Id.* at 5.

[274] *Id.* at V.

[275] 26 U.S.C. §§ 5811(a)–(b), 5812(a)–(b) (2006); *see also* U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Application for Tax Paid Transfer and Registration of Firearm, ATF Form 4 (as revised Mar. 2006) (requiring certification by a "Chief Law Enforcement Officer").

[276] The Brady Campaign works energetically to ban so-called "assault weapons," some of which *look* like an AK-47. But none of these guns are machine guns; they just fire one bullet when the trigger is pressed, as does every other standard gun.

AK-47, and that this super-rich student were also super-sized, so that the rifle could in some ingenious manner be concealed under his clothing, then "showing off" the AK-47 at the kegger would be a violation of the carry permit terms, and the permit could be revoked. Moreover, many states prohibit the possession of any firearm while under the influence of alcohol.[277]

Yet remember, the Brady Campaign is the most influential anti-gun lobby in the United States. Its absurd and fantastic claims (e.g., that there are thousands of atrocious gun crimes perpetrated by CCW licensees and that students will carry AK-47 rifles to keggers) are the claims made to terrify legislators and administrators against allowing licensed adults to exercise their rights on campus. The Brady Campaign also mistakenly describes the law in Utah, claiming that it provides for unlimited gun possession on public college and university campuses, and authorizes seventeen year-olds to stockpile rifles in dorm rooms.[278] To the contrary, the law applies solely to persons carrying handguns pursuant to a permit issued by the Utah State Police. Utah law requires that such a person be at least twenty-one years old.

The Brady Center tells us (on the basis of a citation that does not support the claim) that ages eighteen to twenty-four are the peak years for the commission of "violent gun crimes, including homicides."[279] It is all the more notable then, that in the Brady Center's Appendix, in this very same report listing the various crimes it can find committed by CCW licensees, the Center cannot list a single violent gun crime committed by anyone in the eighteen to twenty-four age bracket.[280] Again, the evidence shows that CCW permitees are a group whose gun misuse is microscopic, and far below the rate of gun misuse in the general population.

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[277] *See, e.g.*, S.D. CODIFIED LAWS § 22-14-7 (2009) (criminalizing possession of a loaded firearm while intoxicated as a misdemeanor); MO. REV. STAT. § 571.070 (2000) (prohibiting habitually intoxicated persons from possessing firearms).

[278] BRADY CENTER, *supra* note 146, at 4.

[279] *Id.* at 6 (citing BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUST., SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE (2005), *available at* http://www.albany.edu/sourcebook/pdf/t472005.pdf). However, the cited table (of arrests in 2005) provides no data for violent gun crime. The only gun-related category is "Weapons; carrying, possessing, etc." For these regulatory offenses, the peak years are actually 15–21, with persons aged 15, 16, or 17 having much higher numbers of arrests than persons 22, 23, or 24. As for the four major categories of violent crime (for which the cited table does not include any subcategory indicating weapon use), the raw arrest data for homicide is higher for ages 18–24 than for other years. For forcible rape, 17-year-olds were arrested more often than persons aged 23 or 24. For robbery, persons aged 15, 16, or 17 were arrested more often than persons aged 21, 22, 23, or 24. For aggravated assault, the peak years were ages 18–24. The data are raw arrests; the cited table provides no information about arrest *rates* for particular ages, which would take into account the number of people in the age group in 2005.

[280] BRADY CENTER, *supra* note 146, at 26. There is one crime by an Arizona citizen who reportedly said (a year before the crime) that he had an Arizona CCW permit, but further investigation found no evidence to substantiate this assertion.

b. Scholarly Research

A study in the *Journal of American College Health*, by Matthew Miller and two colleagues, collected mail-in surveys from slightly less than 11,000 undergraduates at 119 colleges and found that 4.3% reported at some time having had a working firearm at college.[281] The study did not ask about where the gun was possessed—such as in a dormitory, in a campus police storage locker (as many colleges allow and encourage), in an off-campus apartment, or in an automobile. Nor did the study attempt to distinguish between students whose gun possession was legal (e.g., a hunter who checked his rifle with the campus police) from those who possession was illegal (e.g., a student with an illegal handgun who carried the handgun for confrontations with rival gangs at nightclubs). The study found that, in general, gun owners were more likely to engage in various misdeeds than non-owners.[282] However, the study's findings were presented in a manner which exaggerated problem behaviors. For example, there are data which purport to show that students who possessed firearms for protection are more likely to "binge and drive" than are other students.[283] But this category captures people whose alcohol consumption and driving may have been entirely lawful and responsible, because it defines "binge" as five drinks for a male, or four for a female, regardless of circumstances. Having five shots of tequila on an empty stomach in fifteen minutes, and then going driving, certainly means that one is driving while intoxicated or impaired. Having five light beers while watching a football double-header (about six hours) with some friends, and while eating a pizza and chips, will leave a person well below the legal limits against driving while impaired. For a woman, the supposed "binge" drinking level is set at four drinks—meaning that a woman who attends a four-hour Passover Seder, and drinks the ritual four cups of wine, along with a large festive meal, and then drives home (entirely within the legal limits for blood alcohol content), is labeled by the study as someone who drives after binge drinking. The Miller study makes no distinction.

Likewise, the finding that students who own guns for protection may be more likely to have smoked at least one cigarette in the last thirty days[284] is not particularly important for public policy determination. Smoking cigarettes is legal, and unless one is going to argue that defensive

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[281] *See* Matthew Miller et al., *Guns and Gun Threats at College*, 51 J. AM. C. HEALTH 57, 57–59 (2002). The study is a re-run of a previous similar study: Matthew Miller et al., *Guns at College*, 48 J. AM. C. HEALTH 7 (1999). For similar studies, see Philip W. Meilman et al., *Analysis of Weapon Carrying Among College Students, by Region and Institution Type*, 46 J. AM. C. HEALTH 291 (1998); Cheryl A. Presley et al., *Weapon Carrying and Substance Abuse Among College Students*, 46 J. AM. C. HEALTH 3 (1997).

[282] *See* Miller et al., *Guns and Gun Threats at College*, *supra* note 281, at 62–63.

[283] *See id.* at 60 tbl.1.

[284] *See id.*

gun ownership causes smoking (this would be a "smoking gun theory"), then the finding may allow some public health tut-tutting about the kind of people who own guns, but nothing else.

Notably, the study collected no evidence about gun misuse, and the authors acknowledge that their study "contains no data . . . on whether guns at college cause or prevent problems."[285] Most importantly, the study did not inquire whether the gun possessors had a valid CCW permit. Accordingly, it would be dangerous to draw conclusions about college students with CCW permits (who would be over twenty-one years old in most states) based on a study which makes no distinction between lawful and unlawful gun possession, and which, as a random sample of undergraduates, included a large number who were under twenty-one. We know that CCW permit holders are much more law-abiding than the general population.[286]

c. Does Going to College Make Adult Students More Dangerous?

We know that the rate of *gun* crime perpetrated by CCW licensees is close to zero. Scott Lewis, a board member of SCCC, argues that "under our proposal the same trained, licensed individuals who are not getting drunk and shooting people off of college campuses are the same trained and licensed individuals who are not going to be getting drunk and shooting people on college campuses."[287] The empirical data are indisputable that when twenty-one year-olds (in most states) or eighteen year-olds (in a half-dozen states), exercise their right to licensed carry, they do not cause a crime problem.

The logical question, then, is whether the circumstances of campus carry make licensed carriers unusually likely to misuse firearms. After all, college campuses, unlike other places, are places where a large number of young adults congregate, and perhaps young adults are more likely to perpetrate crimes when they are in the company of large numbers of persons in their age bracket. The experience of Utah, Colorado, and Virginia, however, provides no evidence to support this hypothesis. Perhaps young adults in the company of other young adults are more likely to drink lots of alcohol, or to engage in promiscuous sex. But they are not more likely to perpetrate gun crimes.

If the primary concern is about students drinking, it should be noted that these days, most drinking occurs off-campus, where the college has no power to prevent licensed carry. To the extent that young adults with

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[285] Miller et al., *Guns and Gun Threats at College*, *supra* note 281, at 64.

[286] *See* Lott, *supra* note 259; *see also supra* at notes 218–41.

[287] Suzanne Smalley, *More Guns on Campus*, NEWSWEEK, Feb. 15, 2008, http://www.newsweek.com/id/112174 (web exclusive).

concealed carry permits do drink, they are required to comply with existing state laws which forbid possession of any firearm while under the influence of alcohol. Some states even forbid carrying a licensed firearm into a restaurant where alcohol is served, even if the person is merely having dinner, and not ordering a drink.

On-campus drinking tends to take place in dormitories, not in classrooms. Accordingly, concerns about drinking could be dealt with by adopting the Colorado State University policy: allow licensed carry on campus, but forbid gun possession or carrying in dormitories.[288]

d. Stolen Guns

When CCW permitees are allowed to store their licensed guns in a dormitory room, do the dormitories turn into shopping malls for gun thieves, as the Brady Center warns?[289] The experience at Utah's nine public institutions of higher education provides no support for this hypothesis. However, it would be reasonable for colleges to require that guns not be left in dormitories when vacant, such as during Christmas vacation. A college might also require any gun in a dormitory be stored in a secured locked box, small safe, or similar unit.[290] If these measures are considered insufficient, then the answer would be to prohibit gun possession in dormitories, not to forbid professors from having licensed guns locked in their offices, or adult graduate students from having licensed guns locked in their automobiles.

e. Sporting Events

It is also argued that if campus carry is legal, students, alumni, and other fans will kill each other at sporting events, especially at important football games.[291] Putting aside the fact that throughout most of the history

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[288] Telephone interview, *supra* note 96.

[289] BRADY CENTER, *supra* note 146, at 8–9.

[290] *Cf.* District of Columbia v. Heller, 128 S.Ct. 2783, 2822 (2008) (invalidating gun lock law in District of Columbia). In October 2008, the New York Supreme Court (the general trial court in New York) in Suffolk County ruled that the New York rule requiring that licensed handguns be locked up when not in use was an unconstitutional violation of *Heller*. *See* Colaiacovo v. Dormer, No. 08-020230 (N.Y. Sup. Ct. Oct. 30, 2008), *available at* http://www.nysrpa.org/files/colaiacovo_v_dormer.pdf. A district court in Massachusetts came to a similar conclusion. *See* Commonwealth v. Bolduc, No. 0825 CR 2026 (Mass. Dist. Ct. Feb. 19, 2009), *available at* http://volokh.com/files/bolduc.pdf. The District Attorney agreed that the district court was correct, and did not appeal. *See* David E. Frank, *It's (not) A Lock: Massachusetts Judges Split over Supreme Court Gun Ruling*, MASS. LAWYERS WEEKLY, Mar. 16, 2009 (noting that another district court in the state had reached a contrary result).

Hypothesizing that *Heller* eventually leads to a general ban on gun-lock laws, a requirement that guns in dormitories (or teacher guns in classrooms) be locked up might still be constitutional under *Heller*'s "sensitive places" exception. *See supra* note 24 and accompanying text.

[291] Philip Rawls, *Alabama Senate Committee Blocks Campus Gun Bills*, BIRMINGHAM NEWS, Mar. 26, 2008, http://blog.al.com/spotnews/2008/03/Alabama_senate_committee_block.html (reporting on Gordon Stone, Executive Director of the Alabama Higher Education Partnership, worrying about potential violence at the Alabama-Auburn game).

of scholastic athletic competition in the United States, there have been no laws against the possession of defensive arms, and no problem of extensive violence perpetrated by the fans. And let us further ignore the argument that America's culture of responsible individualism, of which responsibility for self-defense is an important component, produces a more mature, self-restrained citizenry than is produced by the nanny-state, gun-banning culture of England, and its attendant soccer hooligans and yobs.

The simple solution is to ban guns at sporting events, at least events with large crowds where there are an ample number of armed security guards and police, who could immediately (not several minutes later) take action against a killer. Concerns about the football game on Saturday afternoon can be addressed in a narrowly tailored fashion, without eliminating the self-defense rights of the professor working late on Tuesday night.

### D. *Academic Freedom*

The final major argument against campus carry is that it would infringe upon academic freedom. One prong of the argument is that one part of the college's own communication of ideas is the prohibition of defensive firearms possession by anyone on campus. This argument was discussed in Part II.[292]

The more conventional argument about academic freedom is that persons with licensed carry permits will intimidate other people on campus from speaking freely. The Brady Center forecasts that "allowing students to possess and use firearms on college campuses will likely breed fear and paranoia."[293] Given the Brady Center's frantic and factually inaccurate efforts to promote fear and paranoia about CCW licensees, no one can charge that the organization lacks chutzpah.

University of Kentucky engineering professor Kaveh Tagavi worries that licensed carry would destroy trust between faculty and students, and that students might shoot professors after an intense discussion of a controversial topic.[294] But if University of Kentucky students and professors are already worried that the only reason that they are not shooting each other is that they are not allowed to have guns, then there is no trust at the present.

"No matter how hard you try, someone is going to see that concealed weapon," claims Jim Spice, campus police chief at the University of

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[292] *See* discussion *supra* note 81–90 and accompanying text (discussing University of Utah's "academic freedom" argument in attempting to ban handguns).

[293] BRADY CENTER, *supra* note 146, at 14.

[294] Art Jester & Ryan Alessi, *Campus Gun Bill Stirs Furor*, LEXINGTON HERALD-LEADER, Jan. 17, 2008, at A1; *see also* Van Zandt, *supra* note 211 ("Students need to fight for their ideas and beliefs, ones honed over the blazing fires of verbal discourse and debate. But their fight should be with words, not bullets.").

Colorado at Colorado Springs. Then, "[t]hey no longer feel free to express whatever thought, whatever topic they happen to be debating at the time."[295] Yet, if one drives just a few hours north on Interstate 25 to Colorado State University, where licensed carry is allowed in classrooms, there has been no evidence of any diminution of academic freedom. Nor are there reports of any impairment of academic freedom at the nine public colleges and universities in Utah, at the three Blue Ridge campuses in Virginia, or in Israel, Thailand, or Norway.

The only reported conflicts between campus carry and academic freedom involve people being persecuted for simply expressing support for the idea of campus carry. For example, Hamline University suspended student Troy Scheffler and ordered him to have a mental health evaluation because, after Virginia Tech, he wrote the administration an e-mail criticizing the school's policy against licensed guns on campus. The free-speech academic group Foundation for Individual Rights in Education ("FIRE") took up this case.[296] Another example: in October 2008, at Central Connecticut State University, John Wahlberg and two classmates made a presentation in Professor Paula Anderson's communication class. Assigned to discuss a "relevant issue in the media," the three students argued that fewer people at Virginia Tech would have died if the victims were armed.[297] Professor Anderson reported Wahlberg to the police, who summoned him to the police station that night. After interrogating him about where he keeps his registered firearms (in a safe in his home twenty miles off-campus), the police let him go. Robert Shibley, vice president of FIRE, said, "If you go after students for just discussing an idea, that goes against everything a university is supposed to stand for."[298]

After the Columbine murders in 1999, a public school superintendent in Ohio was forced to resign because he had suggested that Columbine-style massacres might be avoided if teachers were allowed to posses arms. He even had to fight off efforts to strip him of his earned pension, because of the claim that his public expression of an idea constituted gross professional misconduct.[299]

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[295] Laura Forbes, *UCCS Students Want Concealed Carry Permits*, KXRM FOX 21 (Colorado Springs, Colo.), Mar. 31, 2008, http://www.coloradoconnection.com/news/news_story.aspx?id=115314.

[296] *Student Advocates Gun Rights, Gets Suspended*, WORLDNETDAILY, Oct. 11, 2007, http://www.wm.com/index.php?fa=PAGE.printable&pageId=43961.

[297] Maxim Lott, *Professor Takes Heat for Calling Cops on Student Who Discussed Guns in Class*, FOX NEWS, Mar. 4, 2009, http://www.foxnews.com/story/0,2933,504524,00.html.

[298] *Id*.

[299] *See* John R. Lott Jr., *Creating Hysteria Over Guns*, WASH. TIMES, Jan. 30, 2000, at B4 (including Ohio example among other cases of anti-gun hysteria in schools).

## VI. CONCLUSION

Sometimes, a campus gun ban may be accompanied by a sign proclaiming the area as a "Weapon-free and Violence-free School Safety Zone."[300] But despite what the sign proclaims, the "weapons-free" part really means "free of weapons carried by law-abiding persons." And unfortunately, the "violence-free" declaration may be a cruel hoax. A Canadian history professor observes that "[t]he fundamental problem with making a campus legally 'gun-free' is that the rule cannot be enforced unless the campus is surrounded by high walls with only a limited number of entrances, all of them guarded and equipped with metal detectors."[301]

Gun prohibition on campuses is a deadly policy, and the number of victims of that policy is already far too high. The case against licensed carry on campus is based on conjecture and far-fetched hypotheticals. The case in favor of licensed carry is based on the empirical experience of the places where licensed campus carry has already been implemented, and on the experience of forty states where licensed, trained adults are allowed to carry firearms for lawful protection almost everywhere except on campus.

In designing a campus carry policy, legislators and educational administrators are not required to copy the Utah example, under which any person twenty-one years or older may, after being issued a license to carry a concealed handgun, carry that handgun on any public school property, or possess it in a university dormitory. Although that policy has proven harmless in Utah, decision makers in other states could adopt more restrictive policies, such as forbidding gun in dormitories, or allowing only teachers and professors, but not adult students, to carry. Or even, as was proposed in Nevada, allowing licensed carry only by teachers and professors who underwent the same training and background check required for police officers.

Any change would be an important step towards greater safety. Campuses should be safe zones for students and teachers—not for predators who are legally guaranteed that their victims will be defenseless.

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[300] *E.g.*, GA. CODE ANN. § 16-11-127.1(g) (2008).
[301] Kenneth H.W. Hilborn, *Packing Heat*, 21 ACAD. QUEST. 136, 136 (2008).