

# **Guns On Campus: Navigating The Legal Maze**

By Daniel H. Handman

For seven days in March 2012, a jury pored through a moment-by-moment timeline of the events that took place at Virginia Tech University on April 16, 2007. Before a mentally unstable student went on a rampage that eventually killed 30 people on campus that day, he shot two students in a dormitory. At trial, the university took the position that it was justified in choosing not to provide a campus-wide warning. In four short hours, the jury found Virginia Tech negligent and awarded \$4 million to each of the families of the students who were killed.

This horrific event set off a national debate about guns, and in particular guns at schools – a debate that only intensified after last year’s massacre at Sandy Hook Elementary School and the recent shootings at Santa Monica College. In 2007, no state had a law requiring colleges and universities to allow guns on campus.

Since Virginia Tech, six states including Virginia have passed laws requiring colleges and universities to allow licensed students to carry concealed weapons on campus and several state legislatures are now considering bills which would do the same. These laws fly in the face of near universal opposition from school administrators, campus police and public health officials. Among others, the International Association of Police Chiefs, the National Education Association, the American Council on Education and hundreds of college presidents and leaders have publicly endorsed a complete ban of guns on campus.

Yet, the laws remain decidedly mixed. Aside from the six states which outlaw campus gun bans, in 23 states a college can decide whether guns can be permitted on campus, and in 21 states colleges must ban all students from bringing guns on to campus.

## **Special Risks**

Because of the unique nature of college life and a college’s enhanced responsibility for the safety of its students, the usual gun control arguments are set aside. On campus, gun control debates focus on three specific issues: (1) frequency of binge drinking by college students; (2) the high rate of suicide on campus; and (3) the rate of crime from college dormitories and on-campus parking.

Gun control advocates maintain that these unique features of college life heighten the risk of guns on campus. To be sure, any person – in a college setting or otherwise – can operate a gun under the influence of alcohol or obtain a gun when suicidal, but gun control advocates ask – understandably – why colleges would assume that risk when there is a heightened chance of adverse consequences.

## **Constitutional Right?**

The NRA steadfastly maintains that any restriction on the rights of students to carry concealed weapons on campus runs afoul of the Second Amendment. But does the Constitution unconditionally protect the rights of students to carry guns on campus?

That precise question has not been resolved by the courts, but when the U.S. Supreme Court found that the Second Amendment protected the right of an individual to carry a gun in *Heller v. District of Columbia*, the entire court agreed that at the very least restrictions on possession of guns in “sensitive places” were “presumptively lawful.” Since *Heller*, the lower courts have upheld restrictions on gun possession in places of worship, parking lots of post offices, airplanes and national parks. Surely then a college campus is also a “sensitive place” free of Second Amendment entanglements.

In 2011, the Virginia Supreme Court seemingly answered that question when it rejected a Second Amendment challenge to George Mason University’s ban on weapons in campus buildings and at campus events because *Heller* foreclosed any challenge to that ban in such sensitive places. It found that a college campus was a particularly sensitive place because “parents who send their children to [the] university have a reasonable expectation that the university will maintain a campus free of foreseeable harm.”

But one year later, a group of student gun rights activists at the University of Colorado scored a victory at the Colorado Supreme Court. *Regents of the University of Colorado v. Students for Concealed Carry on Campus*, 2012 CO 17 (March 5, 2012). The students made two clever – and ultimately successful – strategic decisions: (1) They brought the case under the *state* constitution, as *Heller* only applies to cases under the U.S. Constitution; and (2) they limited their challenge solely to their ability to keep guns in locked vehicles on campus, rather than focusing on the “sensitive places” at issue in the George Mason case. The Colorado Supreme Court rewarded that creativity and ordered the university not to enforce a gun ban on student vehicles.

There have been no decisions on the constitutionality of campus gun bans from other states since the University of Colorado case (although the Oregon Court of Appeals invalidated a campus-wide gun ban on other grounds), leaving the constitutionality of gun bans on campus somewhat uncertain. Still, if one trend can be taken from these cases, it is that except in the six states which now prohibit gun bans, campus administrators are well within their rights, at the very least, to ban guns in sensitive places like dormitories, libraries, student unions and buildings housing classrooms.

### **Legal Risks**

The jury’s verdict in the Virginia Tech case serves as a reminder of the risks of allowing guns on campus. It was premised entirely on the law of negligence, namely that people owe one another a duty not to engage in conduct that could lead to “foreseeable harm.” Indeed, some courts have found that colleges have a special relationship with their students – a relationship that triggers a heightened duty of care, particularly at college-sponsored events or in college buildings.

As a result, it is not hard to imagine how the law of negligence could come into play with gun violence on campus. What if guns were used at a fraternity party that involved drugs or alcohol? Or if a student with a known mental disability used a gun on campus? Or if a gun was stolen from a campus dormitory or parking lot where there had been incidents of theft? A judge would be hard-pressed to find such risks unforeseeable and to dismiss a case before a jury trial. One need only look to the Virginia Tech verdict to get a sense of the amount of the verdict that could be expected in such a case.

## **Navigating This Legal Maze**

From a legal perspective, despite the conflicting decisions and the patchwork quilt of various state laws about guns on campus, no court has yet to invalidate a ban on guns in sensitive places on campus. And, while the Virginia Supreme Court has just decided to hear an appeal brought by Virginia Tech, the costs of defending that litigation – both tangible and intangible – add extra incentive to impose a broad gun ban to the greatest degree possible.

Putting aside the competing arguments and studies about gun control, the law certainly cautions against allowing guns on campus. Colleges and universities act not only as educators, but also as landlords, health care providers, and indeed, as the George Mason court suggested, as substitute parents. Whatever one's view on gun control may be, those pronounced risks up the legal ante on schools who allow guns on campus. Just ask the administrators at Virginia Tech.

*Daniel H. Handman is a partner in Hirschfeld Kraemer LLP's Southern California office. He can be reached at [dhandman@HKemploymentlaw.com](mailto:dhandman@HKemploymentlaw.com), or via the firm's website - <http://www.HKemploymentlaw.com>.*

Originally published in the *Los Angeles/San Francisco Daily Journal*, June 18, 2013. Copyright 2013 Daily Journal Corporation, reprinted with permission.