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IN THE COURT OF APPEALS OF THE STATE OF OREGON

JANE DOE,

Plaintiff-Appellant,

vs.

MEDFORD SCHOOL DISTRICT 549C,

Defendant-Respondent.

Jackson County Case
No. 07-3765-E2

Court of Appeals No. A137804

APPELLANT’S NOTICE TO THE
COURT THAT NEW LEGAL
AUTHORITY EXISTS

Comes now appellant, by and through counsel, who notifies the Court that a new article has been published. That article was written by David B. Kopel. Its title is Pretend “Gun-free” School Zones: A Deadly Legal Fiction. The article was published on March 30, 2009 at <http://ssrn.com/abstract=1369783>.

For the convenience of the Court, appellant encloses ten copies of the article herewith.

Dated this 14th day of April 2009.

JAMES E. LEUENBERGER PC

James E. Leuenberger, OSB 891542
Attorney for Appellant

I sent a copy of this document and one copy of the above-referenced article to Timothy C. Gerking, Brophy, Mills, Schmor, Gerking, & Brophy, LLP, PO Box 128, Medford, OR 97501, Anna M. Joyce, DOJ, 1162 Court St NE, Salem, OR 97301-4096; Bruce L. Campbell, Miller Nash LLP, 111 SW 5th Ave Ste 3400, Portland, OR 97204-3699; and Rebekah R. Cook, 1201 Court St NE Ste 400, Salem, OR 97301

Pretend “Gun-free” School Zones: A Deadly Legal Fiction

By David B. Kopel¹

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 persons under the age of 21 in most states.

Part I of this Article surveys the legal, factual, and political background. Part II describes current programs, in the United States and elsewhere, in which teachers or students are allowed or required to carry firearms for defense. Part III examines empirical evidence about whether armed defenders can deter or interrupt mass killers at schools, and whether armed defenders have done so. Part IV 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 IV also addresses the topic 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 the Utah law, which allows firearms carrying and possession by anyone with a concealed handgun carry permit—including in dormitories (for students aged 21 or over). On the other hand, there is the Nevada Board of Regents proposal to allow carry only by full-time staff who have undergone

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Johnny Beski provided research assistance for this Article, while he was serving as an intern at the Independence Institute. He earned a B.A. from Yale University in 2007.

I would like to thank Don & Che Kates for helpful suggestions.

the same training as deputy sheriffs, and who have actually been deputized. There are many options in-between the Utah and Nevada models. The Article does suggest that complete prohibition of armed defense on school campuses by all faculty and by all adult students is irrational and deadly.

I. 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 targeting shooting after school.² When Antonin Scalia was growing up in New York City in the 1950s, he would carry a rifle on the subway on this way to school, for use as a member of his school's rifle team.³

However, in recent decades, many legislatures or school administrators banned the possession of firearms on school property. All 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 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 they 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 suggests that those policies should authorize on-campus carry by at least some people who are already authorized under state law to carry in public places in general.

In the public debate over campus carry, a frequently-mentioned but mostly irrelevant law is the federal Gun-Free School Zone Act (GFSZA). That law, enacted in 1990, sharply restricted guns at K-12 schools, and within a thousand foot radius around the schools.⁴ In the 1995 *Lopez* case, the U.S. Supreme Court found the law unconstitutional, because the law was based on Congress's power to regulate interstate commerce, but the regulated activity

² See, e.g., John Lane, *Permit guns in school to stop massacres*, CHARLOTTE OBSERVER, Jan. 22, 2008 (“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.”)

³ Associated Press, *Scalia says don't link guns only to crime*, SEATTLE TIMES, February 27, 2006 (reporting Scalia's speech to the annual meeting of the National Wild Turkey Federation).

⁴ 18 U.S.C. §§ 921(a)(25) (defining “school zone”), 922(q) (restricting guns in school zones).

had no meaningful connection to interstate commerce.⁵ In 1996, Congress re-enacted the law, this time limiting the law's application to guns which at some point after their manufacture had been moved in interstate commerce.⁶ (That is, virtually all guns.)

The federal law contains several exceptions. For example, the ban within the thousand foot radius does not apply on private property.⁷ Even on the property of a K-12 school, carrying is allowed under federal law if the carrier has a state-issued handgun carry permit.⁸

Critics of the GFSZA point out that before the 1990 law, there had been only seven shootings at an American school in the previous 214 years since the creation of the United States America. In the 17 years following the GFSZA, there were 78 such incidents.⁹ However, it seems unlikely that the GFSZA itself imposed any dramatic changes regarding 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 also was enacted in many states in the 1980s and 1990s: objective standards for the issuance of permits to carry handguns for lawful protection.¹⁰

The first state to enact an objective licensing law had been Washington, in 1961.¹¹ The trend became national after 1988 Florida's 1988 similar law.¹² Today, in 40 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 40 states, a permit cannot be denied simply because the official in charge of issuing the permits does not think that people should be allowed to carry guns for lawful self-defense.¹³

⁵ *United States v. Lopez*, 514 U.S. 549 (1995). For an analysis of the interstate commerce clause issues raised by *Lopez*, see David B. Kopel & Glenn H. Reynolds, *Taking Federalism Seriously: Lopez and the Partial Birth Abortion Ban Act*, 30 CONN. L. REV. 59 (1997).

⁶ 18 U.S.C. § 922(q), and (q)(2)(A) and (q)(3)(A)(new language restricting law's application to a person with a "firearm that has moved in or that otherwise affects interstate or foreign commerce").

⁷ 18 U.S.C. § 922(q)(2)(B)(i).

⁸ 18 U.S.C. § 922(q)(2)(B)(ii).

⁹ *Disarmed in "Gun-Free School Zone"*, HARD CORPS REP., Sept./Oct. 2007, at 4.

¹⁰ See, e.g., David B. Kopel, *The Licensing of Concealed Handguns for Lawful Protection: Support from Five State Supreme Courts*, 68 ALBANY L. REV. 305 (2005); David B. Kopel & Clayton Cramer, *"Shall Issue": The New Wave of Concealed Handgun Permit Laws*, 63 TENN. L. REV. 679 (1995).

¹¹ WASH. REV. CODE ANN. § 9.41.070 (2007).

¹² FLA. STAT. § 790.06 (2006).

¹³ 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 gives 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.

In contrast to the 40 “Shall Issue” states with objective standards for license issuance, there are eight states where the issuing authorities have unlimited discretion.¹⁴ In some of these eight states (e.g., California, New York), permit issuance varies widely from county to county. In other such states (e.g., New Jersey) it is essentially impossible for anyone except a retired police officer to obtain a permit. 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., hunting¹⁵), in certain places (e.g., in one’s domicile¹⁶), or for persons of a certain legal status (e.g., security guards, detectives¹⁷).

In all the 48 states that issue permits to carry handguns for protection, the presumption is that the permit is valid throughout the state. Most states list at least a few places (e.g., 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 universities. In other states, there may not be a specific statutory exclusion, but schools boards or higher education administrators have imposed their own bans.

Thus, in 48 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 (or is it harmful?) to carve out educational institutions as special “no-carry” zones? The argument is most relevant in the 40 Shall Issue states, where public policy has already determined that the vast majority of adults should be authorized to carry almost everywhere in public—providing 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

¹⁴ California, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Rhode Island. 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 Attorney General. *See* Kopel, ALBANY L. REV., *supra*.

¹⁵ 720 ILL. COMP. STAT. ANN. § 5/24-2(b).

¹⁶ 720 ILL. COMP. STAT. ANN. § 5/24-1(a)(4). Wisconsin state law allows for open, unlicensed carry, but forbids concealed carry in all circumstances, except by police officers. The Wisconsin Supreme Court ruled that the concealed carry ban could not be constitutionally applied in a person’s home or place of business, because of the state constitutional right to keep and bear arms. *See* Kopel, ALBANY L. REV., *supra*.

¹⁷ 720 ILL. COMP. STAT. ANN. § 5/24-2(a).

being able to apply for a permit is 21. There are half a dozen states in which the minimum age is 18.¹⁸

A. What does the Constitution require?

In 2008, the Supreme Court ruled that the District of Columbia handgun ban was a violation of the Second Amendment.¹⁹ Whether the Second Amendment is incorporated in 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 applies directly.

The school issue was directly addressed in *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...²⁰

At the oral argument in *Heller*, 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 be constitutional.²¹

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 which teach defensive gun use or which teach hunting skills.

But for purposes of this Article, let us assume that the Second Amendment does not generally constrain policy-makers' choices regarding firearms at most schools, and let us likewise assume that the 44 state constitutional rights to arms also impose no constraints on policy choices.²²

¹⁸ Indiana, Maine, Montana, New Hampshire., North Dakota, South Dakota. A number of states allow open carry at age 18, without need for a permit, but they are irrelevant to this Article, which focuses on concealed carry licensees.

¹⁹ *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

²⁰ *Id.* at 2816–17.

²¹ The author was one of three attorneys joining Gura at the Supreme Court counsel table for the presentation of the oral argument.

²² For the text of these provisions, see David B. Kopel, *What State Constitutions Teach about the Second Amendment*, 29 NORTHERN KY. L. REV. 845 (2002).

B. The push for carry rights on campuses

The night after the massacre of 35 unarmed students and teachers Virginia Tech University in April 2007, an activist organization called Students for Concealed Carry on Campus (SCCC) was formed. The group has grown very rapidly. As of March 2009, it had over 35,000 supporters on its Facebook page, plus more than 350 chapters at colleges and universities.²³ There are approximately 300 additional campuses where the group has members but not an established chapter.²⁴ SCCC has attracted significant media attention, including an interview on ABC's *Good Morning America*,²⁵ and an article for *Newsweek*. The group holds annual "empty holster protests," in which students wear empty holsters one day on campus, to protest the campus gun bans. In November 2007, there were 110 such protests nationwide.²⁶

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 Center, 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,²⁷ Michigan,²⁸ Nevada, Ohio,²⁹ South Carolina,³⁰ and Washington.³¹ In 2008, they were

²³ <http://www.concealedcampus.org/faq.php>.

²⁴ Kimberly Miller, *Guns on Campus? FAU students push for advocacy group*, PALM BEACH POST, Aug. 14, 2008.

²⁵ *Right to bear arms? Do guns belong on Campus?* GOOD MORNING AMERICA, Feb. 16, 2008.

²⁶ *E.g., Members of student group push for the right to carry concealed weapons on college campuses*, INT'L HERALD TRIB., Nov. 21, 2007 (A.P.); *College 'Empty Holster Protest' Hits Campuses, Draws Attention*, GUN WEEK, Nov. 15, 2007; Eric Ferreri, *Holster-packin' students protest*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 25, 2008 (UNC-Chapel Hill); Adriana Garza, *Holsters on campus put gun topic on forefront*, CORPUS CHRISTI CALLER TIMES, Apr. 25, 2008 (Texas A&M Corpus Christi); *Some UW students want to carry guns*, TRI-CITY HERALD, Apr. 24, 2008 (Univ. of Washington)(Associated Pr.); Steve Fry, *Students arm with words in guns-on-campus protest*, TOPEKA CAPITAL-JOURNAL, Apr. 24, 2008 (Washburn Univ. and three other Kansas colleges).

²⁷ Pauline Vu, *Va. Tech shooting spurs changes at colleges*, STATELINE.ORG, Sept. 6, 2007.

²⁸ Pauline Vu, *Va. Tech shooting spurs changes at colleges*, STATELINE.ORG, Sept. 6, 2007 (colleges).

²⁹ Pauline Vu, *Va. Tech shooting spurs changes at colleges*, STATELINE.ORG, Sept. 6, 2007.

³⁰ Pauline Vu, *Va. Tech shooting spurs changes at colleges*, STATELINE.ORG, Sept. 6, 2007 (colleges).

³¹ S.B. 6860 (to prohibit public colleges from adopting campus bans).

introduced in Alabama,³² Arizona,³³ Georgia, Idaho,³⁴ Indiana,³⁵ Kentucky,³⁶ Louisiana,³⁷ Michigan, Ohio, Oklahoma,³⁸ South Carolina, South Dakota,³⁹ Tennessee,⁴⁰ Virginia,⁴¹ and Washington. In 2009, bills have been introduced in Indiana,⁴² and North Dakota.⁴³ In many states, the bills have been passed out of committee, and in some states they have passed one chamber but been 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.⁴⁴

³² S.B. 18 (for universities; only for students in ROTC with no misdemeanor or felony convictions); S.B. 27 (2008)(professors only); S.B. 271 (2008)(professors only); Dan Whisenhunt, *State senator introduces bills to allow college students, teachers to carry weapons on campus*, ANNISTON STAR, Feb. 15, 2008.

³³ S.B. 1214 (2008); H.B. 2628 (2008)(to repeal law against licensed carry on school grounds); Scott Wong, *Guns in schools considered*, ARIZ. REP., (Phoenix), Feb. 16, 2008, at B1.

³⁴ Sponsored by Sen. Curt McKenzie.

³⁵ Pam Tharp, *Guns at colleges could save lives, state senator says*, PALLADIUM-ITEM (Richmond, Ind.), Feb. 4, 2008. The bill fell one vote short of passage in the state senate.

³⁶ Art Jester & Ryan Alessi, *Campus gun bill stirs furor*, HERALD-LEADER (Lexington, Ky.), Jan. 17, 2008 (parking lots for university employees).

³⁷ Rep. Ernest Wooton, House Bill 199 (to allow universities to establish policies for authorizing licensed carry, while affirming that guns can be banned in dormitories). The bill passed the House Criminal Justice Committee 11-3. *Tote books, not guns*, TIMES-PICAYUNE (New Orleans), May 3, 2008 (editorial). It was pulled from the House floor after estimating that he would have only 46 of the necessary 53 votes to pass the bill through the 103 member chamber. Ed Anderson, *Campus weapons proposal pulled*, TIMES-PICAYUNE, June 10, 2008.

³⁸ H.B. 2513. To 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.

³⁹ H.B. 1261 (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 JOURNAL, Feb. 16, 2008.

⁴⁰ H.B. 3014/S.B. 3014. To allow full-time faculty or staff at schools and universities to carry pursuant to a permit Anthony Welsch, *Proposal would allow faculty to carry guns in classrooms*, WBIR-TV (Knoxville), Feb. 16, 2008.

⁴¹ H.B. 1371 (faculty and adult students); H.B. 424 (full-time faculty). Peter DeLea, *Should Profs Pack Pistols*, DAILY NEWS REC., Jan. 17, 2008 (Del. Robert Marshall, whose two sons attend George Mason, 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. Don Peterson, a physics professor at James Madison University, favored the bill.)

⁴² S.B. 12.

⁴³ The bill would allow gun possession in campus apartments (but not dormitories or Greek housing) and their associated parking lots by persons who have been issued a concealed carry permit, or who have passed a hunter safety class. It has passed the North Dakota House of Representatives by a 48-46 vote, and awaits Senate action. Janell Cole, *N.D. House narrowly passes campus gun bill*, GRAND FORKS HER., Feb. 19, 2009.

⁴⁴ Louisiana: Pauline Vu, *Va. Tech shooting spurs changes at colleges*, STATELINE.ORG, Sept. 6, 2007; Jordan Blum, *Bill would allow guns on campus*, THE ADVOCATE, Mar. 29, 2008 (explaining that Louisiana colleges ban guns in dormitories as a matter of policy, and that

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 schoolteachers.⁴⁵ District Superintendent David Thweatt said “When the federal government started making schools gun-free zones, that’s when all these shootings started. Why would you put it out that a group of people can’t defend themselves? That’s like saying ‘sic em’ to a dog.”⁴⁶

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 40 states to enact a Shall Issue law. Yet even in Michigan, a survey of public high school and middle school principals in Michigan, 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.⁴⁷

II. Real-world Programs

A standard tactic of opponents of campus schools 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 to adopt⁴⁸), a Regent’s proposal which had been brought forward by the four police chiefs of the state’s eight campus university system. Under the campus police chiefs’ proposal, university faculty or staff members could volunteer to be trained and armed as members of a special reserve officers corps.⁴⁹ The volunteer would have to pass a physical and psychological examination and a comprehensive background check. The volunteer would then pay to take

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).

South Dakota: Chet Brokaw, *House panel OKs bill allowing guns on campuses*, RAPID CITY J., Jan. 30, 2008 (bill to create a statutory ban on guns on college campus was unanimously defeated in a state House committee).

Washington: S.B. 6841, in 2007, would have banned carry on college campuses, including private ones.

⁴⁵ N.Y. TIMES, Aug. 29, 2008. “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, Mr. Thweatt said. Teachers have received training from a private security consultant, and will use special ammunition designed to prevent ricocheting, he added.”

⁴⁶ Associated Press, *North Texas school district will let teachers carry guns*, S.F. CHRON. Aug. 15, 2008.

⁴⁷ *Proposal for weapons in schools strikes a nerve*, GRAND RAPIDS PR., Sept. 12, 2007.

⁴⁸ Lenita Powers, *Nevada, other states eye guns on campus*, RENO GAZETTE-JOURNAL, Mar. 7, 2008.

⁴⁹ Pauline Vu, *Va. Tech shooting spurs changes at colleges*, STATELINE.ORG, Sept. 6, 2007; Kevin Johnson, *Universities Rethink Armed Police*, USA TODAY, Oct. 12, 2007.

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 \$3,000 annually in extra pay as an auxiliary law enforcement officer, and would be authorized to carry a handgun on state university property.⁵⁰ In the Nevada legislature, a bill to for a similar auxiliary police training system to K-12 teachers was introduced, but defeated.⁵¹

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.⁵²

The above response is by no means untypical 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 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, we have 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. Let us examine the

⁵⁰ Emily Richmond, *Teachers who get police training could get extra pay, carry guns*, LAS VEGAS SUN, Aug. 8, 2007.

⁵¹ Pauline Vu, *Va. Tech shooting spurs changes at colleges*, STATELINE.ORG, Sept. 6, 2007.

⁵² Mary Gafford, *Teachers + guns = a very bad idea*, LAS VEGAS SUN, Aug. 14, 2007 (letter to the editor).

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.⁵³ Slightly over half (82) 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).

The Alliance for Justice survey did not ask about gun possession or carrying by faculty or other staff. In the U.S., one can find schools as diverse as Dartmouth College and Boise State University where gun carrying by faculty is permitted.⁵⁴

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.⁵⁵ Thus, everyone with a Virginia state permit can carry at the Virginia public universities *except* for staff and students.

In Utah, anyone with a concealed handgun permit may carry at any K-12 public school, and at any of the nine campuses in the Utah state college system, including in dormitories.

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 21 years old, and must pass a safety class and a fingerprint-based background check.⁵⁶

For people who do not have permits, guns are prohibited from school zones.⁵⁷ School zones are broadly defined to include kindergartens through universities, as well as any parks, stadiums, etc. being used by the school, and a one thousand foot radius therefrom.⁵⁸

There are exceptions to the school zone weapons ban gun possession on private property (e.g., in a home or automobile within 1,000 feet of school), or

⁵³ Alliance for Justice, *National Survey of College Campus Gun Possession Policies* (2003).

⁵⁴ John R. Lott, Jr., *Columbine to Va. Tech. to NIU: Gun-Free Zones or Killing Fields?* INVESTOR'S BUS. DAILY, Feb. 26, 2008.

⁵⁵ *E.g.*, Jeff Branscome, *NRA: Let Students Carry*, FREE-LANCE STAR (Fredericksburg, Vir.), Apr. 25, 2008 (noting situation at University of Mary Washington).

⁵⁶ UTAH CODE ANN. § 53-5-704 (2007).

⁵⁷ UTAH CODE ANN. § 76-10-505.5 (2007).

⁵⁸ *Id.*

with approval from school administrators. Most important, there is a complete exception for any person who has a valid concealed carry permit.⁵⁹

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 had 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.

The University of Utah sued, claiming that the statute violated academic freedom.⁶⁰ It was something of a stretch to assert that “academic freedom” means that government schools can violate the constitutional rights of students or faculty.⁶¹ (And the Utah legislature had made it clear that licensed carry is part of the Utah constitutional right to arms.)

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 *Rumsfeld v. Forum for Academic and Institutional Rights*.⁶² There, the Court had 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. So 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 court district court. The suit 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.⁶³ Among the groups who lobbied for

⁵⁹ *Id.*

⁶⁰ *University of Utah v. Shurtleff*, 144 P.3d 1109 (Utah 2006). For an argument in favor of the University policy, see Kathy L. Wyer, Comment & Note, *A Most Dangerous Experiment? University Autonomy, Academic Freedom, And The Concealed-Weapons Controversy At The University Of Utah*, 2003 UTAH L. REV. 983 (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).

⁶¹ *Cf. Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237 (6th Cir. 2006)(rejecting claim that academic freedom includes the power to violate the state constitution’s prohibition on racial discrimination).

⁶² 547 U.S. 47 (2006).

⁶³ Utah S.B. 251 (2007), amending UTAH CODE § 53B-3-103. Sheena McFarland, *U of U Guns-on-Campus Suit Dismissed*, SALT LAKE TRIB, Mar. 14, 2007.

the law which resulted in the withdrawal of the lawsuit were Second Amendment Students at the University of Utah, and Students for Concealed Carry on Campus at Brigham Young University.

Thus far, hardly any students have exercised the option to be guaranteed a disarmed roommate.

Thus, faculty at Utah public universities may possess licensed handguns in their offices or automobiles, and may carry those handguns on campus.⁶⁴ Students aged 21 years or older, the minimum age for a concealed handgun permit, may do the same, and may keep their handguns in their dorm rooms.⁶⁵

The data from Utah campuses reveal not any incident of the slightest misuse of a firearm by a person with a legal permit.⁶⁶ 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,⁶⁷ and the members of the Church of Jesus Christ of Latter Day Saints are not supposed to consume alcohol.⁶⁸ 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 Mormon's abstemious practices in regards to alcohol are irrelevant. For example, throughout the United States, it is very, very rare for a public school teacher (whatever his or her religion might be) to show up at school under the influence of alcohol.

⁶⁴ At Weber State University, Anthropology Professor Ron Holt also 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, Salt Lake City, Oct. 21, 2007.

⁶⁵ 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. Brian Maffly, *Pro-gun students push for right to openly carry firearms on U. campus*, SALT LAKE TRIB., Dec. 7, 2007.

⁶⁶ Sheena McFarland, *Stats show few guns found on Utah college campuses*, S.L. TRIB., Aug. 27, 2007.

⁶⁷ *Utah's Mormon population percentage shrinks*, Associated Press, Nov. 30, 2008.

⁶⁸ DOCTRINES & COVENANTS 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.")

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 of the public school teachers who legally have guns in school ever having threatened 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 the state of Utah reporting that they felt less willing to speak up in a classroom because they were afraid of licensed gun permittees.

In sum, we have a natural experiment which has gone for 14 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. We have 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 horrors that 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 are 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, or why college professors at the University of Missouri are more likely to shoot students than are teachers at Weber State, or why 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.

I am not suggesting 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 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 important to remember also that the comparison is not for entire state populations (e.g. Florida vs. Utah). Rather the comparison is for only a small percentage (under 10%, and usually under 5%) 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, below, this is a population subgroup which in every state is far more law-abiding than is the general population.

We do have some empirical evidence that people at campuses outside Utah are capable of matching the virtues of Utahans—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 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 4,000 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.⁶⁹

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 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 in Israel.

Palestine Liberation Organization 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.⁷⁰

⁶⁹ Author's telephone conversation with CSU campus security head, Nov. 5, 2007; *The Virginia Tech Tragedy: Shedding Light on Campus Carry*, IVOICES.ORG, Mar. 16, 2009 (podcast interview with Virginia Tech SCCC chapter leaders), available at <http://audio.ivoices.org/mp3/iipodcast271.mp3>.

⁷⁰ *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

Israel at the time had some severe anti-gun laws, 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 to 16-year-old kids in gun 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.⁷¹

After a while, "When the message got around to the PLO groups and a couple infiltration attempts failed, the attacks against schools ceased."⁷²

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 up 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.⁷³ 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."⁷⁴

research office of the RAND corporation, and for several years he published a German gun magazine. *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Terrorist Attack Foiled in Shavei Shomron*, ISRAEL NATIONAL NEWS, May 31, 2002, available at

<http://web.archive.org/web/20060924230716/www.israelnationalnews.com/news.php3?id=24440>.

⁷⁴ *Id.*

The Israeli policy does show a strong deterrent effect. But Israel's policy went vastly further than the 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 you get 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 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 innocents 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 schools by suicidal people can be deterred, if the schools are protected by armed citizen defenders. Because the Israeli defense system was so comprehensive, we 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.

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."⁷⁵

"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."

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.

But though Thailand's government is extremely hostile to gun ownership in general, it has recognized that teachers ought to be able to safeguard their students and themselves.

⁷⁵ *Thailand allows teachers in restive south to carry guns for protection*, ASSOCIATED PRESS, Apr. 27, 2004.

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 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."⁷⁶

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."⁷⁷

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 schoolteachers in Thailand as ranking high among the world's "pro-gun" constituencies. However, 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.

The Thailand example shows that armed teachers are not necessarily, in themselves, sufficient to fully protect schools. As of September 2008, the terrorists had destroyed 300 schools, with arson and bomb attacks.⁷⁸ 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.⁷⁹ Nor did the

⁷⁶ Rungrawee C. Pinyorat, Associated Press, *Teachers in Thailand under fire--and learning to shoot back*, INT'L HERALD TRIB., Sept. 10, 2006.

⁷⁷ Thomas Fuller, *Southern Thai towns increasingly rely on militias*, INT'L HERALD TRIB., Mar. 19, 2007.

⁷⁸ Slow Motion Violence, STRATEGYPAGE.COM, Sept. 19, 2008, available at <http://www.strategypage.com/qnd/thai/articles/20080919.aspx>.

⁷⁹ *Eye On The Problem*, STRATEGYPAGE.COM, Mar. 14, 2009 (two college students were murdered; terrorists are suspected), available at <http://www.strategypage.com/qnd/thai/articles/20090314.aspx>; *Power To The People*, STRATEGYPAGE.COM, Feb. 28, 2009, available at <http://www.strategypage.com/qnd/thai/articles/20090228.aspx>.

armed protection program in Israel lead to the instant cessation of attacks on schools.⁸⁰

Both Israel and Thailand faced large, well-organized, and internationally-funded terrorist organizations. Fortunately in the United States, schools have not (at least not yet) some 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.⁸¹ The University Centre in Svalbard is the northernmost institution of higher education in the world. There, students are mandated to practice rifle shooting.⁸²

III. Empirical evidence of defense and deterrence

The previous Part 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 on campus is not simply “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 Part presents evidence indicating that campus carry would likely improve campus safety:⁸³ First, American data show that ordinary violent criminals (e.g., the type who might perpetrate an attack in a campus parking

⁸⁰ *supra*.

⁸¹ Nina Berglund, *Armed for first day of school: Hundreds of thousands of students had their first day of school on Monday. Some of them had to learn to carry guns and be prepared to shoot -- polar bears*, AFTENPOSTEN, Aug. 20, 2007.

⁸² Agence France Press, *Svalbard, where man and polar bears share the art of living*, SPACEDAILY.COM, Mar. 16, 2008.

⁸³ Arguments that campus carry would cause other problems are addressed in Part IV.

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 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. Wright had already editorialized in favor of much stricter controls. Rossi would later become president of the American Sociology Association. Daly would later win her the Hindelang Award, the highest prized bestowed by the American Society of Criminology, for her feminist perspectives on criminology. When the NIJ authors rigorously examined the data, they found no persuasive evidence in favor of banning handguns or self-defense.⁸⁴

Wright and Rossi produced another study for the National Institute of Justice. Interviewing felony prisoners in 11 prisons in 10 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.
- 39% 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.

⁸⁴ JAMES WRIGHT, PETER ROSSI & KATHLEEN DALY, UNDER THE GUN: WEAPONS, CRIME, AND VIOLENCE IN AMERICA (1983).

- 74% agreed with the statement that “One reason burglars avoid houses where people are at home is that they fear being shot.”⁸⁵

Notably, “the highest concern about confronting an armed victim was registered by felons from states with the greatest relative number of privately owned firearms.”⁸⁶ 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.”⁸⁷

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.⁸⁸ Notably, research indicates that Shall Issue laws led to an 89% drop in multiple-victim (two or more fatality) public shootings.⁸⁹ 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).

Although there is debate on whether there is a statistically significant crime reduction, there is unanimity that there is no statistically significant *increase* in crime caused by the acts of the licensees. (The argument that licensees are dangerous is discussed in more detail in Part IV, *infra*.)

⁸⁵ JAMES WRIGHT & PETER ROSSI, ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS 146, 155 (expanded ed. 1994).

⁸⁶ *Id.* at 151

⁸⁷ *Id.* at 237.

⁸⁸ *See, e.g.*, JOHN R. LOTT JR., MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN-CONTROL LAWS (statistically significant reductions in all homicide, assault, rape, and robbery); NATIONAL RESEARCH COUNCIL, FIREARMS AND VIOLENCE: A CRITICAL REVIEW (2004)(current level of research does not allow strong conclusions about whether Shall Issue laws have positive effects); Ian Ayres & John Donohue, *Shooting Down the More Guns, Less Crime Hypothesis*, 55 STANFORD L. REV. 1193 (2003)(no statistically significant effects); Carlisle E. Moody & Thomas B. Marvell, *The Debate on Shall-Issue Laws*, 5 ECON J, WATCH 269 (2008)(reviewing other articles which 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).

⁸⁹ JOHN R. LOTT, THE BIAS AGAINST GUNS: WHY ALMOST EVERYTHING YOU’VE HEARD ABOUT GUN CONTROL IS WRONG (2005). The book incorporates a revised version of the paper 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*, John M. Olin Law & Economics Working Paper No. 73, April 1999, University of Chicago Law School.

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.⁹⁰

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 Part II, *supra*, and Part IV, *infra*, there is no evidence the 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. Well, 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. 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.⁹¹

⁹⁰ See, e.g., ROBERT A. WATERS, *THE BEST DEFENSE: TRUE STORIES OF INTENDED VICTIMS WHO DEFENDED THEMSELVES WITH A FIREARM* (1998); Buckeye Firearms Association, *Ohio CHL-holders acting in self-defense* (n.d.), available at <http://www.buckeyefirearms.org/Ohio-CHL-holders-acting-in-self-defense> (summaries of self-defense cases reported in the newspapers in which the paper identified the defender as having an Ohio Concealed Handgun License).

⁹¹ 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 they 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 in the library, but they stood idle several feet away, outside the building. The police were acting 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. See, e.g., David B. Kopel, *What If We Had Taken Columbine Seriously?* *THE WEEKLY STANDARD*, Apr. 24, 2000.

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 30-year-old who attacked a second-grade classroom in Winnetka, Illinois, 1988;⁹² or the pederast who murdered 16 kindergarteners and a teacher in Dunblane, Scotland.⁹³

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, stateside army bases, 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, focused almost entirely on police tactics involving firearms. It presents close analysis of incidents in which officers were attacked by armed assailants, and the tactics which did or did not work in response. *Police Marksman* also covers topics such as police sniper work in hostage 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 criminal with a gun inside a building was to establish a perimeter, and then

⁹² JOEL KAPLAN, GEORGE PAPAJOHN, & ERIC ZORN, MURDER OF INNOCENCE: THE TRAGIC LIFE AND FINAL RAMPAGE OF LAURIE DANN (1990).

In this Article, I avoid mentioning the names of the killers. 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 (2004); Clayton Cramer, *Ethical Problems of Mass Murder Coverage in the Mass Media*, 9 J. OF MASS MEDIA ETHICS 26 (1993-94).

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 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 David B. Kopel, *Airing, publishing killer's photos, rants reckless*, ROCKY MOUNTAIN NEWS/DENVER POST, Apr. 21, 2007.

⁹³ SANDRA UTTLEY, DUNBLANE UNBURIED (2006).

gradually constrict the perimeter, safely clearing one room at a time. That was the tactic used at Columbine, with the result that 11 of the 13 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.⁹⁴ 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: The active shooter phase of Columbine lasted 13 minutes. “Many 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.”⁹⁵ Simply put, by the time the SWAT team arrives, it will be too late.

This means that neutralizing the active shooter will be up to a single School Response Officer 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, 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.⁹⁶

⁹⁴ In 1993, a mass killer attacked a law firm at 101 California, 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.

⁹⁵ Dick Fairburn, *Rapid Deployment Version 2.0*, THE POLICE MARKSMAN, Sept./Oct. 2007, at 21.

⁹⁶ *Id.* at 21. I altered the quote to avoid printing the killers' names. *See supra* note __.

Another article in the same issue observes, “The 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.”⁹⁷

Another 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. 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.⁹⁸

But “Unlike 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.”⁹⁹

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 “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.”¹⁰⁰

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 guy is one of the easiest man-with-gun encounters they will ever have.” Indeed, “Most officers have already faced worse opponents from a personal safety standpoint than these creeps.”¹⁰¹

Or as another police-written article, analyzing the 2007 murders at an Amish schoolhouse in Pennsylvania, suggests, “A running gun-battle at the

⁹⁷ Dan Marcou, *5 Phases of the Active Shooter Incident*, THE POLICE MARKSMAN, Sept./Oct. 2007, at 31.

⁹⁸ *Ohio trainer makes the case for single-officer entry against active killers*, POLICEONE.COM NEWS, May 14, 2008 (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.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

early stages of an armed invasion is preferable to allowing a murderous predator unrestricted control of the environment.”¹⁰²

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 hit their target 8 percent of the time,¹⁰³ or a third of time,¹⁰⁴ or less than 20 percent of the time.¹⁰⁵ 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 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 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.

¹⁰² Rick Armellino, *Revisiting the Amish schoolhouse massacre*, POLICEONE.COM, available at http://www.policeone.com/columnists_internal.asp?view=1271208&vid=1290372 (discussing police tactics).

¹⁰³ Tom Tepeen.

¹⁰⁴ *Right to bear arms? Do guns belong on Campus?* GOOD MORNING AMERICA, Feb. 16, 2008 (host Mike Guzman citing NY Police Dept. data).

¹⁰⁵ Brady Center to Prevent Gun Violence, *No Gun Left Behind: The Gun Lobby’s Campaign to Push Guns Into Colleges and Schools* 10 (May 2007), citing Gregory B. Morrison, *Deadly Force Programs Among Larger U.S. Police Departments*, 9 POLICE Q. 331, 332 (2006)(hit rates of about one in five shots).

C. When have citizens stopped stop mass killers at schools?

The first incident was in 1997. A 16-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," 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.¹⁰⁶

Just a few days later in Edinboro, Pennsylvania, a 14-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 then fled through a rear exit, pursued by the restaurant's owner, James Strand,

¹⁰⁶ Wayne Laugesen, *A principal and his gun*, BOULDER WEEKLY, Oct. 15, 1999, available at <http://www.keepandbeararms.com/Information/XcIBViewItem.asp?ID=1344>.

who had grabbed a shotgun. Strand caught up with the killer in a nearby field, and forced him to surrender.¹⁰⁷

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.

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, focusing their attention on each other, not on the killer.¹⁰⁸ It appears that Besen did not claim that the killer had already put down his gun until about two months after the attack.¹⁰⁹

Schools are not the only place 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 killed himself.¹¹⁰

¹⁰⁷ *Pennsylvania students cope with shooting spree*, CNN.COM, Apr. 25, 1998, available at <http://www.cnn.com/US/9804/25/school.shooting.pm/>.

¹⁰⁸ Rex Bowman, *Helping to Stop a Killer: Students Went After Law School Gunman*, RICHMOND TIMES DISPATCH, May 5, 2002; Diane Suchetka, *Ex-Charlottean: I Helped Nab Suspect*, THE CHARLOTTE OBSERVER, Jan. 18, 2002, at 2A; *Shooting Hits Many Lives*, ROANOKE TIMES & WORLD NEWS, Jan. 20, 2002, at A-1; *Area officer helps wrestle law school gunman to ground*, ASHEVILLE CITIZEN-TIMES; James Eaves-Johnson, *Law school, guns, and a media bias*, THE DAILY IOWAN, Jan. 24, 2002.

¹⁰⁹ John Lott, *Missouri Becomes 36th State with Right-to-Carry Law*, JOHN LOTT'S WEBSITE, Sept. 11, 2003, available at <http://johnlott.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 ____, 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 acknowledge how those attacks were stopped. *Id.* at 32.

¹¹⁰ Nicholas Riccardi and DeeDee Correll, *Guard saved untold lives, Colorado authorities say*, L.A. TIMES, Dec. 11, 2007.

When the Tennessee state legislature considered a bill to allow faculty licensed campus carry, Carole Borges (a former faculty member at several colleges¹¹¹) spoke in opposition: “It just escalates. The solution to violence is not violence.”¹¹²

It depends on what one means by “solution.” If the 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.

IV. Objections to Campus Defense

This Part examines various objections to campus carry. The objections can be broken into four major categories, which will be addressed in order: First, that campus carry is unnecessary, either because campuses are already so safe, or because other approaches to campus security can be taken.

A second objection is that campus victims who were resisting 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 was executing victims methodically.

The third objection is that even if licensed carry on campus were 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 faculty or adult students who were licensed to carry guns: the teachers and students, if allowed to use their existing CCW 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 about 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 20 percent of college students have been the victim of at least one crime on or near campus.¹¹³ Older teenagers and young adults (persons aged

¹¹¹ “Carole Borges,” *available at* <http://www.knoxvillewritersguild.org/borges.htm>.

¹¹² Anthony Welsch, *Proposal would allow faculty to carry guns in classrooms*, WBIR-TV (Knoxville), Feb. 16, 2008.

¹¹³ Wesley G. Jennings, Angela R. Grover & Dagmar Pudrzynska, *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).

16-24) are victimized by violent crime at a higher rate than any other age group.¹¹⁴ College students are victimized by violent criminals 81% as often as non-students in the same age group.¹¹⁵ So even though college students are 19% 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 25 or older.¹¹⁶ Accordingly, it appears that college students have a *greater* general need to be able to defend themselves than do older people.

About nine of ten victimizations of college students take place off-campus.¹¹⁷ 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. The fact militates against campus policies which significantly interfere with the ability of adult students to protect themselves off campus; for example, if a campus 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 which 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 of them have exceptions for guns owned by non-student adults and stored in locked, parked cars.¹¹⁸ 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. That 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.

¹¹⁴ U.S. Dept. of Justice, Bur. of Just. Stats., *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).

¹¹⁵ Katrina Baum & Patsy Klaus, *Violent Victimization of College Students, 1995-2002* (U.S. Dept. of Justice, Bur. of Just. Stats., Jan. 2005, NCJ 206836), at 2, table 1 (National Crime Victimization Survey data for 1995-2002).

¹¹⁶ *Teens and young adults*, *supra*.

¹¹⁷ Baum & Klaus, *supra*, at 5.

¹¹⁸ 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) (2006); ARIZ. REV. STAT. § 13-3102(D)(1) (2007); CAL. PENAL CODE § 626.9(c) (2006); COLO. REV. STAT. § 18-12-105.5 (2006); FLA. STAT. § 790.115(2)(a) (2006); GA. CODE ANN. § 16-11-127.1(a)(17) (2006); IDAHO CODE § 18-3302D(4)(e) (2007); IOWA CODE §§ 724.4 & 724.4B (2007); LA. REV. STAT. ANN. § 14:95.6B(5) (2006); MICH. COMP. LAWS SERV. § 28.425o (2007); MINN. STAT. § 609.669(e)(4) (2007); MO. REV. STAT. § 571.030(3) (2006); MONT. CODE ANN. § 45-8-361 (2005) (school ban applies only to K-12 buildings, not parking lots); NEB. REV. STAT. § 28-1204.04(1)(c) (2006); N.M. STAT. § 30-7-2.1(5) (2006); N.D. CENT. CODE § 62.1-02-05(2); OHIO REV. CODE § 2923.126 (2007); OR. REV. STAT. § 166.370(3)(f) (2005); VT. STAT. ANN. tit. 13 § 4004 (2006) (K-12 gun ban applies to buildings only, not parking lots); VA. CODE ANN. § 18.2-308.1 B; WASH. REV. CODE ANN. § 9.41.280(28) (2007); W. VA. CODE § 61-7-11A(b)(2) (2006); WIS. STAT. ANN. § 948.61(b)(3) (2007)(unloaded, encased guns, whether or not they are in cars).

However, the automobile exception does not address the problem of on-campus violent crimes against students, of which there are over thirty thousand annually¹¹⁹—hardly a trivial number.

Nor does an automobile exception fully address the problem of school mass shootings.¹²⁰ 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 (17 football deaths in 2006, 13 in 2007).¹²¹ Mass homicides are not, however, the sole part of the homicide problem on college campuses. From 1991 through 2003, there were least ten homicides on American college campuses every year, and sometimes as many as 24.¹²² Most of these are not mass murders, but more ordinary crimes, such as killing a robbery victim.¹²³

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.”

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.¹²⁴ There has never

¹¹⁹ Baum & Klaus, *supra*, at 5, table 4.

¹²⁰ As detailed in Part III, C, guns stored in automobiles were used to help stop school shootings in Pearl, Mississippi, and at Appalachian Law School.

¹²¹ National Center for Catastrophic, Sport Injury Research, *Annual Survey of Football Injury Research, 1931 – 2007* (Feb. 27, 2007), available at <http://www.unc.edu/depts/nccsi/FootballInjuryData.htm>.

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 10th 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 than almost every other sport, and vastly safer than football. NATIONAL SAFETY COUNCIL, INJURY FACTS (2009 ed.).

¹²² 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.).

¹²³ Wood, *supra*.

¹²⁴ 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.

been a known case where a person with a CCW permit committed a violent crime in a church. There has been a case where a person with a CCW permit saved many lives, when parishioner Jeanne Assam, legally carrying a handgun pursuant to a CCW permit, stopped an active shooter's attack on a church in Colorado Springs in December 2007.¹²⁵

Of course if adult students, and faculty, are too incompetent to use defensive arms safely (discussed in section B, *infra*) or are dangerous characters who would commit gun crimes if they had a gun (discussed in section C, *infra*), 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.¹²⁶

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.”¹²⁷

¹²⁵*supra*.

¹²⁶ 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. Brady Center, *supra*; Brady Center, *Forced Entry: The National Rifle Association's Campaign To Force Businesses To Accept Guns At Work* (2005); Brady Center, *Guns & Business Don't Mix: A Guide to Keeping Your Business Gun-Free* (1997). Thus, low crime rates and high crime rates are both a justification for banning guns.

Some critics have suggested that for truth in advertising, the moniker “...to Prevent Gun Violence” would accurately be “...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.

¹²⁷ 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.

The obvious fallacy of Goofus's argument is his proposal and Gallant's proposal are not mutually exclusive. Likewise, a legislature could relegalize campus carry (or over-ride 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 relegalizing campus carry.

Whether a particular gun control proposal would help save lives on campus would, of course, be subject to debate. But 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 or 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 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 another proposal which is 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 of carry firearms in flight.

Senators Charles Schumer and Barbara Boxer have introduced legislation to provide federal funding for security at high schools and colleges. The proposal is not incompatible with campus carry, although it might arguably be inconsistent with federalism.¹²⁸ If security guards or police were willing to engage aggressively and immediately against an active shooter (rather than just calling for the SWAT team), then they might well be able to stop a

¹²⁸ After all, federal funds are simply funds with 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.

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 as quickly as possible after they had been summoned by the first person to escape from the classroom and then make a cell phone call. But not quickly enough to stop five people from being murdered, and many more from being wounded.

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.¹²⁹ The metal detectors should prevent a 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 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.¹³⁰

¹²⁹ COLO. REV. STAT. § 18-12-214.:

(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 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.

¹³⁰ 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*,

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.¹³¹ 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 genuinely secured. Which is to say, almost all of them.

A real “gun free-zone” is fine. A pretend “gun-free zone” is deadly legal fiction. The pretend zone—that is, a zone which exists by administrative declaration but it not enforced by metal detectors with 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.”¹³² This is a rather callous remark.

The Brady Center footnote 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.”¹³³

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

Wounded Student Saved Others From Teen Gunman, CBSNews.com, Mar. 24, 2005, available at

http://www.cbsnews.com/stories/2005/03/24/national/main682915.shtml?source=search_story.

¹³¹ 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. Author's conversation with Habtamu Dugo, March 2008. Dugo is a former Ethiopian college professor who fled to the United States and was granted political asylum. He is currently Senior Fellow in Human Rights at the Independence Institute.

¹³² Brady Center, at 10.

¹³³ *Id.* at 41, n. 97, citing Bill Redeker, *Surviving a School Shooting*, ABC News, Apr. 17, 2007, available at <http://abcnews.go.com/US/story?id=3050247&page=1>.

CCW permit (well under 10% in most states, and far less in some places), 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 so cannot achieve competence at any additional task. Second, campus defenders will accidentally kill more innocent people than murders would kill 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 detailed *supra*, the Nevada Board of Regents and Nevada legislature have considered proposals to allow campus carry by professors and public school teachers who undergo the same training as police officers, and who are then in fact deputized as reserve officers. This proposal would, it seems, 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.”¹³⁴

¹³⁴ Emily Richmond, *Teachers who get police training could get extra pay, carry guns*, LAS VEGAS SUN, Aug. 8, 2007.

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 “Teachers 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 percent voluntary, it was fatuous for Trump to object that teachers are too “overwhelmed.”¹³⁵

2. Selfless courage must be discouraged

Every major world religion lauds people who charitably accept grave risks to themselves in order to protect other innocents. 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.”¹³⁶

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 did act 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*). In 1998 at Thurston High School in Springfield, Oregon, the killer was stopped when he was tackled to the ground by Jake Rykar, with this assistance of his younger brother Robert and three fellow Boy Scouts. “Jake Rykar gave credit to the fact that he had taken a marksmanship and safety training program given by the National Rifle Association.”¹³⁷ Because of the firearms safety training, the

¹³⁵ A similar point was expressed by Gannett News national columnist DeWayne Wickham: “If school officials in Harrold want to make children more secure, they should give that responsibility to trained personnel instead of pushing it onto gun-toting teachers. These teachers have enough to do as it is.” DeWayne Wickham *No good will come of these bad ideas*, GANNETT NEWS SERVICE, Aug. 25, 2008. For more on Harrold, Texas, see *supra* note _.

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. I would not advise anyone to bring pepper spray to a gunfight, but any form of skilled, practiced resistance is better than passively allowing students to be lined up against a blackboard and executed.

¹³⁶ Kirk Mitchell, *Colorado campuses respond to Illinois rampage*, DENVER Post, Feb. 15, 2008; University of Colorado emergency announcement, available at 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 (sent on the day of the attack on Northern Illinois University).

¹³⁷ Reed Irvine & Cliff Kincaid, *Does Anyone Remember Jake Ryker?*, MEDIA MONITOR (June 15, 1999), available at http://www.aim.org/media_monitor/A3310_0_2_0_C.

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.¹³⁸ 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.¹³⁹ 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 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.¹⁴⁰

Under the University of Colorado's mandate, the Rykar brothers and Jeffrey May should instead 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.

Yet 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 (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 Rykar brothers did. The 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."¹⁴¹

By 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.

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.

¹³⁸ *Id.*

¹³⁹ Hancock, *supra*.

¹⁴⁰ *Victims, key people in story*, GRAND FORKS HERALD (N.D.), Mar. 21, 2006, 2006 WLNR 4633547.

¹⁴¹ Virginia Polytechnic Institute and State University, Environmental, Health and Safety Services, *Campus and Workplace Violence Prevention Policy*, Aug. 23, 2005, available at http://www.ehss.vt.edu/programs/EPP_workplace.php. 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.

A different set of values says: Choose to save the lives of innocents, even if you risk 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 even know how to swim. Plunging into the water, or moving towards 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 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.¹⁴² 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.”¹⁴³ 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.¹⁴⁴

In a famous 1994 essay in *The Public Interest*, attorney Jeffrey Snyder also called Americans “A Nation of Cowards.”¹⁴⁵ He chose that title for this 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 own life to save yours, if you are not willing to take responsibility for defending your own life.¹⁴⁶

¹⁴² *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>.

¹⁴³ *Id.*

¹⁴⁴ The group’s website is <http://www.thefire.org/>.

¹⁴⁵ Jeffrey Snyder, *A Nation of Cowards*, *THE PUBLIC INTEREST* (Fall 1993).

¹⁴⁶ *Id.* at .

Thus, whether the subject is 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: it is a 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 picture that arises here is of concealed-carry permitted students and faculty missing the bad guy and shooting each other.”¹⁴⁷

Again, this is an argument which has arisen frequently over the past two decades, as Shall Issue has 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 1996,¹⁴⁸ there have been over 27,000 Louisianans who have been issued concealed carry permits.¹⁴⁹ 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 on-line), in the last reporting year, there were no “documented accidents or deaths involving concealed handgun permittees.”¹⁵⁰

Nationally, in our Shall Issue nation, the story is much the same. There are hundreds and hundreds of reported instances of CCW licensees actually firing their guns, and do so successfully to stop a violent crime in progress. The reported instances of an innocent bystander being shot are close to nil.¹⁵¹

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 is has been resolved against advocates who insist that Americans are a

¹⁴⁷ *Concealed-carry guns have no place on college campuses*, SHREVEPORT TIMES, May 6, 2008 (editorial).

¹⁴⁸ LA. STAT. § 40:1379.3.

¹⁴⁹ Louisiana Department of Public Safety, Office of State Police, *Concealed Handgun Permit Unit, Annual Legislative Report 2007 – 2008*, at 1 (2008), available at <http://www.lsp.org/pdf/chAnnualReport07-08.pdf>.

¹⁵⁰ *Id.*, at i.

¹⁵¹ WATERS, *supra*.

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.

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 are similar to those which occur off-campus:¹⁵² 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.

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 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 circumstances, 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 the killer's victims are either lying on the ground (following the Brady Center's advice to "play dead"), 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."¹⁵³ 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

¹⁵² Baum & Klaus, *supra*, at 2, table 1.

¹⁵³ JAMES BOSWELL, *THE LIFE OF SAMUEL JOHNSON* (1st pub. 1791) (attributing the aphorism to Johnson).

inaccurate shoots, 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 will 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, 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 police.¹⁵⁴

The 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 the 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 (or any) 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 frequently encounter 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, or 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.

Besides, 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

¹⁵⁴ Michele Linck, *No guns on South Dakota campuses, for now*, SIOUX CITY JOURNAL, Feb. 16, 2008 (views of Vermillion, South Dakota Police Chief Art Mabry); *see also* Israel Saenz, *Students wearing holsters trigger debate at A&M-CC*, CORPUS CHRISTI CALLER TIMES, Apr. 23, 2008 (campus police chief says that his force of 16 officers would find it “hard...to differentiate between the good guys and the bad guys.”); Geoff Fox, *UCF Student Group Seeks Guns Rights*, TAMPA TRIB., Apr. 4, 2008 (University of Central Florida police chief asks “How are the police supposed to know the good guys from the bad guys?”).

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. At the large majority of active shooter incidents at schools, when the perpetrator hears that the police are close by, he kills himself.¹⁵⁵ 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.¹⁵⁶

So by the time the police get there, 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.¹⁵⁷ 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 shoot at the right person, but they hit the wrong person. Or an off-duty or undercover police officer starts firing at a violent criminal, and then when uniformed

¹⁵⁵ *supra*.

¹⁵⁶ *supra*.

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 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.com, Aug. 20, 2007, available at <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 35 for which the killer had free rein against defenseless victims.

¹⁵⁷ *supra*.

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 40 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 concealed handgun permittees also be trained. The training does not need to be as extensive as what 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, particularly those involving lethal force, of their state, 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 horrors offered by opponents of Shall Issue does not come true.

One way to test the sincerity of the argument “But that police have training” is to meet it. That is precisely what the Nevada Regents did, 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 expenses, underwent the training necessary to become reserve police officers, and who were then formally sworn as such officers.¹⁵⁸

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 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.

6. 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.”¹⁵⁹ This seems unlikely. First of all, we have the real-world experience of criminals running the risk of an armed victim they break into an occupied home (since about half the homes in America have guns),¹⁶⁰ and likewise the risk of an armed victim outside the home in the 40 states with Shall Issue laws. We have not seen a resulting general problem of criminals wearing what the Brady Center calls

¹⁵⁸ *supra*.

¹⁵⁹ Brady Center, at 10.

¹⁶⁰ *See, e.g.,* David B. Kopel, *Lawyers, Guns, and Burglars* 43 ARIZ. L. REV. 345 (2001).

“flak jackets.”¹⁶¹ 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 the ground.¹⁶² Either result would impair the killer at least temporarily—and thereby provide some 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.”¹⁶³ As opposed to the current situation, where the teacher might be the second, third, or fourth victim.

If we hypothesize that the Brady 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, would the net result 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 permittees had already demonstrated themselves to be highly law-abiding, then we would

¹⁶¹ Presumably, they mean bullet-resistant body armor. Flak jackets are type of obsolete military gear, although the term is sometimes loosely used for modern body armor. *See Flack Jacket Definition*, APPAREL SEARCH, available at http://www.apparelsearch.com/Definitions/Clothing/flak_jacket.htm (“...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.”)

¹⁶² *See, e.g.*, L. Cannon, *Behind armour blunt trauma--an emerging problem*, 14 J. ROYAL ARMY MED. CORPS 87 (2001).

¹⁶³ Brady Center, at 10.

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 permittees 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 permittees. Let us examine them.

a. Minnesota

In Minnesota, the Department of Public Safety must produce the annual report detailing concealed carry license issuance, denials, and revocations.¹⁶⁴ As of December 31, 2008, there were 56,919 valid permits in the state.¹⁶⁵ 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 his 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.¹⁶⁶ 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 67 of the crimes). The report also states whether the person was known to have “used pistol” in the crime. There are 40 such crimes, although “used” must be interpreted liberally; for example, three of the “used pistol” crimes are for Driving While Intoxicated.¹⁶⁷ 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 permittees, and 40 handgun crimes, or about one such crime per 1,423 permittees. It would be difficult to find significant demographic group in the United States with a *lower* rate of handgun crimes, except perhaps for cloistered nuns.

¹⁶⁴ MINN. STATE STAT. § 624.714(20).

¹⁶⁵ State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension, *2008 Permit to Carry Report* (Mar. 1, 2009), at “Permit To Carry Valid Permits Report”, at 1, available at <http://www.dps.state.mn.us/bca/CJIS/Documents/CarryPermit/2008PTSReport.pdf>. (The document is comprised of several different “reports,” which are not consecutively paginated. In Adobe Reader, the cited data are on page 224 of the master document.)

¹⁶⁶ *Id.* at “Revocations Explanation Report” (Adobe pages 262-63).

¹⁶⁷ *Id.* at “5b) Reporting Requirement” (Adobe pages 265-66).

b. Michigan

According to the Michigan State Police report, in Michigan there were 312 permit revocations between July 2007 and June 2008. The report also tallies crimes involving concealed carry permittees. Again, it comprises 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.¹⁶⁸

The Michigan report lists 161 total charges (involving permittees) for “Brandishing or Use of Pistol” during the previous fiscal year.¹⁶⁹ Because of overlapping charges, this involves fewer than 161 criminal acts. Out of these 161 charges, we might expect the number of convictions to be somewhere in the 40s. Accounting for overlapping charges, the actual number of criminal acts might be in the twenties or thirties. 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 not (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.¹⁷⁰ So the total number of valid licenses in Michigan (as the date for the last report, June 30, 2008) would be somewhere between the number of licenses issued in the previous four years (172,100) and the number issued in the last five years (203,221).¹⁷¹ Even if we assumed that every “charge” merited a criminal conviction, and that every charge involved a separate person (that is, there were no duplicate charges filed), we

¹⁶⁸ 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 79 cases of “Total charges.” Of these, 46 are still pending; 22 of the charges were dismissed; two are classified as “Not Guilty/Not Responsible”; nine are classified as “Conviction/Found Responsible.” So in over half the cases, the charges are unresolved; in the cases that were resolved, a little over a quarter of persons charged (9 out 33) were convicted. Yet on the same line listing the fact that there were only 9 convictions, there is a listing of 27 instances of “Brandishing or Use of Pistol” during the crime. 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, 7 or 8) would result in a determination 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. Michigan State Police, Criminal Justice Information Center, *Concealed Pistol Licensure: Annual Report, July 1, 2007 To June 30, 2008*, at 15 (Adobe page 17), available at

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

¹⁶⁹ *Id.* at 22 (Adobe page 24).

¹⁷⁰ MICH. COMP. LAWS SERV. § 28.4251 (2007)

¹⁷¹ The annual reports are available at http://www.michigan.gov/msp/0,1607,7-123-1591_3503_4654-77621--,00.html. The number of licenses issued annually were 56,919 (2007-08 report); 23,790 (2006-07 report); 36,754 (2005-06 report); 54,677 (2004-05 report); and 31,121 (2003-04 report). The grand total would be reduced by revocations, which amount to: 312 (2007-08 report); 163 (2006-07 report); 108 (2005-06 report); 121 (2004-05 report); and 119 (2003-04 report).

have 161 misdeeds in 2007-08 out of a Michigan population comprising approximately 190,000 people. This is a rate of less than one per thousand; once we consider the conviction rate, and eliminate duplicate charges, the rate comes closer to about one in five thousand.

As in other state, Michigan licenses are not absolutely perfect. But as a group, they seem to be overwhelmingly law-abiding, *especially* in 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 licenses¹⁷² since the Ohio law went into effect in 2004.¹⁷³ Since then there had been 639 revocations.¹⁷⁴ 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, or died, or no longer desired to have the permit.¹⁷⁵ The Ohio report do 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 1996.¹⁷⁶ 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.¹⁷⁷ Prior to July 15, 2004, the state police computer did not record the reason for a revocation. Since then, there have been 137 revocations, and the cause is known for these. For only one was the reason “Permittee convicted of a crime of violence.” There were 20 other revocations whose cause was the permittee was 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

¹⁷² There is also a provision for 90-day emergency temporary licenses. OHIO REV. CODE § 2923.1213.

¹⁷³ Richard Codray, Ohio Attorney General, *Ohio's Concealed Handguns Law: 2008 Annual Report* (Mar. 1, 2009), available at http://www.ag.state.oh.us/le/prevention/concealcarry/docs/08_cc_annual_rpt.pdf.

¹⁷⁴ *Id.* 42 (2004), 75 (2005), 194 (2006), 171 (2007), 157 (2008). (The report does not have page numbers, but the data appear on the 5th Adobe page.)

¹⁷⁵ *Id.*

¹⁷⁶ *Supra*, at i.

¹⁷⁷ *Id.* at 14.

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 22 of the 137 revocations (that is 16%) described above *might* have involved gun misuse. If we apply a similar proportion to the 122 unclassified pre-2004 revocations, then we would have about 20 more cases which *might* have involved gun misuse. This would be 42 persons out of a group of 27,422 people over a 12 year period. In other words, slightly more than 1 in 1,000 permittees. 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 a thousand.¹⁷⁸

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 of 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 140 attributable to CHL holders. Thus licensees accounted for 2/10 of 1% of the Texas convictions.¹⁷⁹ (Again, as with the Michigan report, many of these crimes appear to involve multiple charges growing out of a single criminal act.) The Texas report does not indicate which crimes were perpetrated with guns.¹⁸⁰

¹⁷⁸ There were also 417 license suspensions since the law went into effect. Of those, 211 were pre-2004, and hence the reason was not recorded. Of the 216 suspensions for 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 permittee 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 90 day license suspension. LA. REV. STAT. § 40:1379.3(R)(1); L.A.C. § 55:I:1313.B.5.

¹⁷⁹ Texas Dept. of Pub. Safety, Regulatory Licensing Svc., Concealed Handgun Licensing Bureau, *Conviction Rates for Concealed Handgun License Holders. Reporting Period : 01/01/2006 - 12/31/2006*, available at http://www.txdps.state.tx.us/administration/crime_records/chl/ConvictionRatesReport2006.pdf.

¹⁸⁰ For offense names which include the use of a weapon which might be a firearm, the conviction figures for CHL holders were: Deadly Conduct Discharge Firearm, 1; Unlawful Carrying Weapon, 23; 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.*

As of 2006, there were 258,162 active license holders in Texas.¹⁸¹ The estimated Texas population in 2006 was 23,507,783.¹⁸² Thus, we have 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 54 such crimes per 100,000 CHL holders. So a Texan CHL is only about 21% as likely as a non-CHL holder to be convicted of one of these crimes.

This is consistent with other research finding 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.¹⁸³ Of the CHL holders who 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.¹⁸⁴ Of course the vast majority of the general public is does not perpetrate serious crimes. Only a tiny minority does so, and among CHL holders, the minority is even tinier.

f. Florida

In Florida, as of February 28, 2009, there were 547,530 active concealed handgun licensees; since October 1, 1997, there have been 1,461,778 licenses issued. Since 1987, there have been 4,571 licenses revoked. Of the revocations, 3,855 were for “crime after licensure.” Among those, 166 were for a crime with “Firearm Utilized.”¹⁸⁵

Thus, the per capita firearms crime rate for licensed Floridians was 0.00011. That is 11 firearms crimes per 100,000 licensed Floridians.

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 Center

¹⁸¹ Texas Dept. of Pub. Safety, Regulatory Licensing Service, Concealed Handgun Licensing Bur., *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.

¹⁸² Texas Dept. of State Health Services, *Estimated Texas Population by Area, 2006*, available at <http://www.dshs.state.tx.us/chs/popdat/ST2006.shtm>.

¹⁸³ 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 include 1999 data*, Sept. 1, 2000, available at <http://www.txchia.org/sturdevant.htm>.

¹⁸⁴ *Id.*

¹⁸⁵ Florida Dept. of Agricultural & Consumer Services, Division of Licensing, *Concealed Weapon / Firearm Summary Report: October 1, 1987 - February 28, 2009*, available at http://licgweb.doacs.state.fl.us/stats/cw_monthly.html; Florida Dept. of Agricultural & Consumer Services, Division of Licensing, *Number of Licensees by Type As of February 28, 2009*, available at <http://licgweb.doacs.state.fl.us/stats/licensetypecount.html>.

does not cite any of the government data, such as the data presented above, about crime rates by licensees.

Instead, the Brady Center asserts that “thousands of people with CCW licenses have committed atrocious acts of gun violence.”¹⁸⁶ 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,”¹⁸⁷ plus a *Los Angeles Times* article which identifies four violent crimes perpetrated by Texans with licenses.¹⁸⁸

The cross-cited Brady monograph lists the criminal offenses behind 105 Florida permit revocations in 1987-97.¹⁸⁹ 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.” To the contrary, only 13 listed offenses include use of a firearm as an element, such as “adjudication withheld on felony assault with a deadly weapon” or “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.”¹⁹⁰

In the Brady Center policy paper opposing campus carry, an appendix asserts that a CCW permit “in no way guarantees public safety. In fact, it can

¹⁸⁶ Brady Center, at IV.

¹⁸⁷ *Id.* at 34 n. 6.

¹⁸⁸ William C. Rempel and Richard A. Serrano, *Felons Get Concealed Gun Licenses Under Bush’s ‘Tough’ Law*, L.A. TIMES, Oct. 3, 2000 (the article also noted that more than three thousand licensees had been arrested, although it did not provide information about whether the arrest led to a conviction, or whether the alleged crime had anything to do with a gun.) Other research has found that 46% of Texas licensees who were arrested were not convicted of any crime. Sturdevant, *supra*.

¹⁸⁹ Brady Center, *Guns and Business*, *supra*, at 2C-4C.

¹⁹⁰ It seems that the only way that 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 that “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; 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.)

often be a license to kill.”¹⁹¹ Of course there are no policies which “guarantee” public safety; the question is whether the police improves public safety. As for the “license to kill,” the Brady Center appendix provides a litany of 29 cases from around the country, presumably the most atrocious ones it could find.

Now, if every one of these cases involved a criminal homicide, these 29 cases (out a national CCW licensee population of several million), would mean that CCW licensees has a criminal homicide rate far below that of the general population.

But most of the 29 most-atrocious CCW stories that the Brady Center can find do not even involve conduct with a gun that was carried pursuant to a CCW permit. 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 his bag when going through airport security; he pleaded guilty to a misdemeanor.¹⁹² A former judge made the same mistake, and also pleaded guilty is misdemeanor.¹⁹³

In Virginia, a schoolteacher left a handgun locked in a car, while the gun was parked on school property; he was charged with violating the Virginia law against firearms on school property.¹⁹⁴ In Pennsylvania, the transportation director for a school district was suspended for several months for what the district described as “unintentionally bringing a loaded firearm onto school property” when he left a handgun in a motorcycle saddlebag.¹⁹⁵

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 which was not prosecuted because an investigation that the person acted in lawful self-defense as equivalent to a case of criminal homicide.

There are 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 Brady lists these), there is only one which 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).

Are CCW permittees perfect? No, but they are much more law-abiding than the general population, as the government data. Indeed, “Even off-duty police officers in Florida were convicted of violent crimes at a higher rate

¹⁹¹ Brady Center, at 22.

¹⁹² Brady Center, at 24, citing *Congressman Guilty in Gun Case*, LOUISVILLE COURRIER-J., Aug. 11, 2004.

¹⁹³ Brady Center, at 25, citing *Lawyer Fined for Gun in Airport*, HERALD-LEADER (Lexington, Ky.), Mar. 3, 2004 (Donald Byrom).

¹⁹⁴ Brady Center, at 24, citing *Va. Teacher Accused of Taking Gun to School: Loaded Weapon Found in Locked Car*, WASH. POST, Apr. 27, 2005 (Timothy D. Fudd).

¹⁹⁵ Brady Center, at 25, citing *Boldien v. Chartiers Valley School Dist.*, 869 A.2d 1134 (Pa. Commonw. Ct. 2005).

than permit-holders.”¹⁹⁶ So should off-duty police be allowed to carry concealed firearms when on school property? If your answer is “No, because they might commit a violent crime against a teacher or student,” then you 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 you think 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 you would have even less reason to be afraid of a CCW licensee.

But what is permittees, although generally less dangerous than off-duty police, became 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 44 page paper composed of frantic warnings about what licensed carry permittees *might do* on campus, the paper conspicuously lacks any report of anything improper which a permittee on campus *has done*.

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. In the Brady Center report, there is not one example of the slightest misdeed by any of these people. Nor for licensed carry at the large campus of Colorado State University, or the three campuses of Virginia’s Blue Ridge colleges. 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), we have 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 this section 2 (faculty) and then in sections 3 (adult students) and 4 (academic freedom), the Article examines the claims of the Brady Center and like-minded people that licensed carry on campus 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-

¹⁹⁶ John R. Lott, Jr., *Gun control advocates' credibility on line*, MINNEAPOLIS STAR-TRIB., May 4, 2003.

world experience, in which not an iota of the malicious conjecture has proven valid.

A review of academic homicides over the last twenty years revealed a few cases in which a professor had murdered someone on campus.¹⁹⁷ Interestingly, there was only one case (at the University of Arkansas, by a graduate student) in which a killing was perpetrated by anyone with teaching responsibility in the Humanities.¹⁹⁸

Some persons are fearful that an angry teacher might shoot a student. But if you think that your children's teachers might kill your child if they had a weapon, then why have you left your child in the custody of those teacher for many hours a week?

Gallant: "Is you little daughter Brittany going to school now?"

Goofus: "Oh yes, she's 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 you sincerely believe that the most important reason why you child's teacher has not murdered your child is that the district policy forbids the teacher to have a gun at school, you should immediately transfer your child 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's 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.¹⁹⁹

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."²⁰⁰

¹⁹⁷ Wood, *supra*.

¹⁹⁸ Wood, at 286.

¹⁹⁹ 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 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* text at note _.

²⁰⁰ Caitlin A. Johnson, *After Shootings, Some Teachers Get Guns*, CBS NEWS, Oct. 16, 2006, available at

Perhaps Ms. Campbell is accurate in her self-assessment of her inability to prevent her students from getting ahold of anything she brings into the classroom, even something that he 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.²⁰¹ 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* worried:

[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.²⁰²

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 need to do so. Teachers trained like police officers would be trained to the same standard of conduct.

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

http://www.cbsnews.com/stories/2006/10/17/earlyshow/main2096721.shtml?source=RSSattr=HOME_2096721.

²⁰¹ 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.

²⁰² *Teachers packing heat? Guns should not be on the back-to-school lists of Nevada's classroom teachers*, LAS VEGAS SUN, August 15, 2007 (editorial), available at <http://www.lasvegassun.com/sunbin/stories/sun/2007/aug/15/566626565.html?"teachers%20packing%20heat">.

is based on the premise that being unattended while being defended from a homicidal maniac is better than being attended while being murdered.

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 home where guns are present. If a gun-phobic parent cannot abide the thought of his child being 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?”²⁰³

Again, we can look to evidence. From the 1996-97 school year through the 2003-04 school year, there were 528 instances in which students in Utah have been expelled for possessing a firearm at public K-12 school.²⁰⁴ 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 528 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?”²⁰⁵

Well, 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 seriously 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 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.

²⁰³ Brady Center, at 10.

²⁰⁴ Karen Gray-Adams, U.S. Dept. of Educ., *Report on the Implementation of the Gun-Free Schools Act In the States and Outlying Areas School Year 2003–04*, at 12, table 5 (April 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, table 6.

²⁰⁵ Brady Center, at 11.

Second, in only six states are concealed carry permits issued to eighteen-year-olds. Most states impose an age limit of twenty-one or greater. The experience of the six states does not indicate that 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 claims

If all you know 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.”²⁰⁶ The Center thus predicts “Greater potential for student-on-student and student-on-faculty violence.”²⁰⁷

According to the Brady Center, colleges face the imminent risk of being forced by “the gun lobby” to accept “students bringing their AK-47 assault rifles with them to show off while guzzling beer at college keggers.”²⁰⁸ The scenario is ludicrous.

First 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, most of them in museums. To purchase one would cost many thousands of dollars National Firearms Act of 1934, and require a licensing process (pursuant to the) involving a signed permission from one’s local police chief or sheriff, plus fingerprinting, a \$200 tax, and months of paperwork.²⁰⁹ One can assume that few college students have the means to purchase an AK-47.²¹⁰

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 AK-47, and that the super-rich student were also super-sized, so that 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 permit could be revoked. Besides that, that vast majority of states prohibit the possession of any firearm while under the influence of alcohol.

Yet remember, the Brady Campaign is the most influential anti-gun lobby in the United States. Its absurd and fantastic claims (that there thousands of atrocious gun crimes perpetrated by CCW licensees, that students will carry

²⁰⁶ *Id.*, at 14.

²⁰⁷ Brady Center, at 5.

²⁰⁸ *Id.*, at V.

²⁰⁹ 26 U.S.C. ch.53

²¹⁰ 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 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 misdescribes the law in Utah, claiming that it provides for unlimited gun possession public college and university campuses, authorizing 17-year-olds to stockpile rifles in dorm rooms.²¹¹ 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 21 years old.

The Brady Center tells us (on the basis of a citation that does not support the claim) that ages 18-24 are the peak years for the commission of “violent gun crimes, including homicides.”²¹² It 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 18-24 age bracket.²¹³ Again, the evidence shows that CCW permittees are a group who gun misuse is microscopic, and far below the rate of gun misuse in the general population.

b. Scholarly research

A study in the *American Journal of Public 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.²¹⁴

²¹¹ Brady Center, at 4.

²¹² *Id.*, at 6. The Brady Center citation is to Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics Online*, 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 the 2005.

²¹³ There is one crime by an Arizonan 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.

²¹⁴ Matthew Miller, David Hemenway & Henry Weschler, *Guns and Gun Threat at College*, 51 AM. J. PUB. HEALTH 57 (2002). The study is a re-run of a previous similar study: Matthew Miller, David Hemenway & Henry Weschler, *Guns at College*, 48 J. OF AM. COLL. HEALTH 7 (July 1999). For a similar study, see Cheryl A. Presley, Philip W. Meilman & Jeffrey R. Cashin, *Weapon carrying and substance abuse among college students*, 46 J. OF AM. COLL. HEALTH 3 (July 1997)(survey of college students asking if they had “carried a weapon (gun, knife, etc.)” in the last 30 days; the authors guessed that respondents had not answered “yes”

The study did not ask about where the gun was possessed—such as in a dormitory, or in a campus police storage locker (as many colleges allow and encourage), or 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 whose 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. 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. But this category captures people whose alcohol consumption and driving may have been entirely lawful and responsible. Having five shots of tequila on an empty stomach in 15 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. The Miller study makes no distinction.

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.

Likewise, the finding that students who own guns for protection may be more likely to have smoked at least one cigarette in the last 30 days is not particularly important for public policy determination. Smoking cigarettes is legal, and unless one is going to argue that defensive 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.”²¹⁵

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 21 in most states) based on a study which makes no distinction between lawful

if they had carried weapons such as pepper spray or Mace); Philip W. Meilman, Jami S. Leichter & Cheryl A. Presley, *Analysis of Weapon Carrying Among College Students, by Region and Institution Type*, 46 J. OF AM. COLL. HEALTH 291 (May 1998)(letter to editor providing additional information about the 1997 study; noting that weapons carrying was more common among Southern students).

²¹⁵ *Id.*, at 64.

and unlawful gun possession, and which, as a random sample of undergraduates, included a large number who were under 21. We know that CCW permit holders are much more law-abiding than the general population.²¹⁶

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 Students for Concealed Carry on Campus, 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.”²¹⁷

The empirical data are indisputable that when 21-year-olds (in most states) or 18-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 provides not a shred of 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 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.²¹⁸

d. Stolen guns

When CCW permittees are allowed to store their licensed guns in a dormitory room, do the dormitories turn into shopping malls for gun thieves,

²¹⁶ See *supra* text at notes --.

²¹⁷ Suzanne Smalley, *More Guns on Campus*, NEWSWEEK, Feb. 15, 2008 (web-only article).

²¹⁸ *supra*.

as the Brady Center warns?²¹⁹ The experience at Utah's nine public institutions of higher education provides no support for this hypothesis.

However, it would be reasonable for college to require that guns not be left in dormitories when they 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.²²⁰ 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.²²¹ Let us put aside the fact that throughout most of the history 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 jobs.

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.

²¹⁹ Brady Center, *supra*, at _.

²²⁰ *Heller* invalidated a gun lock law in the District of Columbia. *Heller*, *supra*, at _. In October 2008, the New York Supreme Court (the general trial court) 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 *Colvaiacolo v. Dormer*, (N.Y. Sup. Ct. 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. 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 (also 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. *supra*.

²²¹ Philip Rawls, *Alabama Senate committee blocks campus gun bills*, BIRMINGHAM NEWS, Mar. 26, 2008 (Associated Press) (Gordon Stone, Executive Director of the Alabama Higher Education Partnership, worrying about the Alabama-Auburn game).

D. Academic freedom

The final major argument against campus carry is that it would infringe 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 *supra*, in Part I.²²²

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."²²³ 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.²²⁴ 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 Colorado at Colorado Springs. Then, "They no longer feel free to express whatever thought, whatever topic they happen to be debating at the time."²²⁵

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 the 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. 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

²²² Text at notes - .

²²³ Brady Center, at 14.

²²⁴ Art Jester & Ryan Alessi, *Campus gun bill stirs furor*, HERALD-LEADER (Lexington, Ky.), Jan. 17, 2008; *see also* Van Zandt, *supra* ("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.")

²²⁵ Laura Forbes, *UCCS students wants concealed carry*, KXRM Fox 21 (Colorado Springs), Mar. 31, 2008.

licensed guns on campus. The free-speech academic group Foundation for Individual Rights in Education (FIRE) took up this case.²²⁶

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.

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 20 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."²²⁷

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 possess 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.

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."²²⁸ 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: "The 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."²²⁹

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

²²⁶ *Student advocates gun rights, gets suspended: Church-affiliated university to require mental evaluation before return allowed*, WORLDNETDAILY, Oct. 11, 2007, available at <http://www.worldnetdaily.com/index.php?pageId=43961>.

²²⁷ Maxim Lott, *Professor Takes Heat for Calling Cops on Student Who Discussed Guns in Class*, FOXNEWS.COM, Mar. 4, 2009, available at <http://www.foxnews.com/story/0,2933,504524,00.html>.

²²⁸ *E.g.*, GA. CODE ANN. § 16-11-127.1(g) (2006).

²²⁹ Kenneth H.W. Hilborn, *Packing Heat*, 21 ACAD. QUEST. 136 (2008)(letter to the editor from Professor Emeritus at University of Western Ontario).

where licensed campus carry has already been implemented, and on the experience of 40 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 21 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.