



REGERE SECUNDUM
E Q U I T A S
VIRGINIA TECH 04.16.07
L E G A L R E P O R T

E Q V T L R v 6
FINAL REVISION

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FINAL REVISION

EQUITAS VIRGINIA TECH 04.16.07 LEGAL REPORT v.6

EQVTLRv6 provides final amendments effectively terminating the EQUITAS legal analysis of circumstances surrounding the Virginia Tech massacre - see *Updates* section for amendments.

It is advised to solely rely on this version for any current and/or future judicial review.

I M P O R T A N T

As of April 16, 2010, this Legal Report shall cease providing amendments.
 This Legal Report may be accessed for personal use only - please read Disclaimer.

VIRGINIA TECH 04.16.07

- *Legal Logistics* -**01** INTERNATIONAL LAW**Vienna Convention on the Law of Treaties** ¹

01/01 Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, entered into force Jan. 27, 1980. ²

01/02 The United States signed the treaty on April 24, 1970. The U.S. Senate has not given its advice and consent to the treaty. The United States considers many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on the law of treaties. ³

01/03 Article 18 of the *Vienna Convention on the Law of Treaties* imposes obligations on State parties pending Treaty ratification :

01/04 *Article 18*

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when :

a. It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

b. It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

ICESCR - International Covenant on Economic, Social and Cultural Rights ⁴

01/05 The International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification and accession by U.N. General Assembly resolution 2200A (XXI) of 16 December 1966. ⁵

01/06 The United States is Signatory to the International Covenant since October 5, 1977 ; ⁶
Note: *The United States has not yet ratified the ICESCR.*

ICESCR Part II - The Nature of States Parties Obligations (art. 2)**01/07** *Article 2*

1. Each State Party to the present Covenant undertakes to take steps, individually and

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through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Comments - The nature of States parties obligations (Art. 2, par.1) : . 14/12/90 ⁷

01/08 3. The means which should be used in order to satisfy the obligation to take steps are stated in article 2 (1) to be "all appropriate means, including particularly the adoption of legislative measures". The Committee recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable. . . .

01/09 5. Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable. The Committee notes, for example, that the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies. Indeed, those States parties which are also parties to the International Covenant on Civil and Political Rights are already obligated (by virtue of arts. 2 (paras. 1 and 3), 3 and 26) of that Covenant to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, "shall have an effective remedy" (art. 2 (3) (a)). In addition, there are a number of other provisions in the International Covenant on Economic, Social and Cultural Rights, including articles 3, 7 (a) (i), 8, 10 (3), 13 (2) (a), (3) and (4) and 15 (3) which would seem to be capable of immediate application by judicial and other organs in the many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain.

ICESCR Part III - Health and Safety (art.7)

01/10 *Article 7*

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

. . .

(b) Safe and healthy working conditions.

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ICESCR Part III - Right To Education (art.13)**01/11 Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

...

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

Comments - The right to education (Art.13) : . 08/12/99 ⁸

01/12 46. The right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfill. In turn, the obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide.

01/13 47. The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfill (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education.

ICCPR - International Covenant on Civil and Political Rights ⁹

01/14 The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. ¹⁰

01/15 The United States has signed (Oct 5, 1977) and ratified (Jun 8, 1992) this International Covenant. ¹¹

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ICCPR Part II - Obligations of State Parties towards individuals (art. 2)**01/16 Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

...

Comments - Nature of the General Legal Obligation Imposed on States Parties to the Covenant : . 26/05/2004 ¹²

01/17 3. Article 2 defines the scope of the legal obligations undertaken by States Parties to the Covenant. A general obligation is imposed on States Parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction (see paragraph 10 below). Pursuant to the principle articulated in article 26 of the Vienna Convention on the Law of Treaties, States Parties are required to give effect to the obligations under the Covenant in good faith.

01/18 13. Article 2, paragraph 2, requires that States Parties take the necessary steps to give effect to the Covenant rights in the domestic order. It follows that, unless Covenant rights are already protected by their domestic laws or practices, States Parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. Where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees. Article 2 allows a State Party to pursue this in accordance with its own domestic constitutional structure and accordingly does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law. The Committee takes the view, however, that Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order.

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ICCPR Part III - Protection against arbitrary or unlawful interference (art. 17)**01/19 Article 17**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honor and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Comments - The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17) : . 08/04/88 ¹³

01/20 1. Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honor and reputation. In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.

ICCPR - United States Reservations, Understandings and Declarations ¹⁴

01/21 United States Understandings

“(5) That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.”

01/22 United States Declaration

“(1) That the United States declares that the provisions of articles 1 through 27 of the Covenant are not self-executing.”

01/23 (Reserved)

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*- Legal Logistics -***02** NATIONAL LAW**20 U.S.C. 1092** (Jan 2, 2006) ¹⁵**02/24** **Title 20** - Education

Chapter 28 - Higher Education Resources and Student Assistance

*Subchapter IV - Student Assistance***Part F** - General Provisions Relating to Student Assistance Programs ¹⁶

02/25 (3) *Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.*

02/26 (4)(A) *Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including -*

(i) *the nature, date, time, and general location of each crime;*

and

(ii) *the disposition of the complaint, if known.*

02/27 (B)(i) *All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority. (ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department. (iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.*

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Code of Federal Regulations (July 1, 2006) ¹⁷**02/28 Title 34 - Education**

Sec. 668.46 Institutional security policies and crime statistics. ¹⁸

...

02/29 (b) *Annual security report. An institution must prepare an annual security report that contains, at a minimum, the following information:*

(1) *The crime statistics described in paragraph (c) of this section.*

02/30 (2) *A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including —*

(i) *Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section;*

(ii) *Policies for preparing the annual disclosure of crime statistics; and*

(iii) *A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purpose of making timely warning reports and the annual statistical disclosure.*

...

02/31 (9) *Statistics from police agencies. In complying with the statistical reporting requirements under paragraphs (c)(1) through (4) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.*

02/32 (d) *Separate campus. An institution must comply with the requirements of this section for each separate campus.*

02/33 (e) *Timely warning. (1) An institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are —*

(i) *Described in paragraph (c)(1) and (3) of this section;*

(ii) *Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(2) of this section or local police agencies; and*

(iii) *Considered by the institution to represent a threat to students and employees.*

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- 02/34** (2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.
- 02/35** (f) Crime log. (1) An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include —
- (i) The nature, date, time, and general location of each crime; and
 - (ii) The disposition of the complaint, if known.
- 02/36** (2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.
- 02/37** (3)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would —
- (A) Jeopardize an ongoing criminal investigation or the safety of an individual;
 - (B) Cause a suspect to flee or evade detection; or
 - (C) Result in the destruction of evidence.
- 02/38** (ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.
- 02/39** (4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.
- 02/40** (5) The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection. (Approved by the Office of Management and Budget under control number 1845–0022) (Authority: 20 U.S.C. 1092) [64 FR 59069, Nov. 1, 1999, as amended at 65 FR 65637, Nov. 1, 2000; 67 FR 66520, Oct. 31, 2002]

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- *Legal Logistics* -

03 STATE LAW

Virginia Constitution ¹⁹

03/41 **Article V** - Executive

Section 7. Executive and administrative powers.

The Governor shall take care that the laws be faithfully executed.

03/42 **Article VIII** - Education

Section 9. Other educational institutions.

The General Assembly may provide for the establishment, maintenance, and operation of any educational institutions which are desirable for the intellectual, cultural, and occupational development of the people of this Commonwealth. The governance of such institutions, and the status and powers of their boards of visitors or other governing bodies, shall be as provided by law.

Code of Virginia (July 2007) ²⁰

Title 23 - Educational Institutions ²¹

Chapter 4.10 - Restructured Higher Education Financial and Administrative Operations Act ²²

03/43 § **23-38.38**. *Eligibility for restructured financial and administrative operational authority.*

B. The Board of Visitors of a public institution of higher education shall commit to the Governor and the General Assembly by August 1, 2005, through formal resolution adopted according to its own bylaws, to meeting the state goals specified below, and shall be responsible for ensuring that such goals are met, in addition to such other responsibilities as may be prescribed by law. Each such institution shall commit to the Governor and the General Assembly to:

...

12. Seek to ensure the safety and security of the Commonwealth's students on college and university campuses.

...

E. A covered institution and the members of its governing body, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be enti-

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ted if the institution were not governed by this chapter; provided further, that the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) and its limitations on recoveries shall remain applicable with respect to institutions governed by this chapter. (2005, cc. 933, 945; 2006, c. 775.)

Title 23 - Educational Institutions ²³

Chapter 11 - Virginia Polytechnic Institute and State University ²⁴

03/44 § 23-130. Curriculum.

The curriculum of the Virginia Polytechnic Institute and State University shall embrace such branches of learning as relate to agriculture and the mechanic arts, without excluding other scientific and classical studies, and including military tactics. (Code 1919, § 856; 1970, c. 98.)

03/45 § 23-114. Board of visitors a corporation and under control of General Assembly.

The board of visitors shall be and remain a corporation under the name and style of the Virginia Polytechnic Institute and State University and shall at all times be under the control of the General Assembly. All acts and parts of acts and statutes relating to Virginia Polytechnic Institute, its predecessors by whatever name known, or to the boards of visitors thereof, shall be construed as relating to the Virginia Polytechnic Institute and State University. (Code 1919, § 860; 1944, p. 341; 1970, c. 98.)

03/46 § 23-122. Powers and duties of board generally; expenses.

The board shall be charged with the care and preservation and improvement of the property belonging to the University, and with the protection and safety of students and other persons residing on the property, and in pursuance thereof shall be empowered to change roads or driveways on the property or entrances thereto, or to close temporarily or permanently the roads, driveways and entrances; to prohibit entrance to the property of undesirable and disorderly persons, or to eject such persons from the property, and to prosecute under the laws of the state trespassers and persons committing offenses on the property.

The board shall regulate the government and discipline of the students; and, generally, in respect to the government of the University, may make such regulations as they deem expedient, not contrary to law. Such reasonable expenses as the visitors may incur in the discharge of their duties shall be paid out of the funds of the University. (Code 1919, § 864; 1924, p. 143; 1970, c. 98.)

NOTES

03/47 § 23-232. *Establishment authorized; employment of officers.*

A. The governing board of each public institution of higher learning named in § 23-14, hereafter sometimes referred to in this chapter as "institution," is authorized to establish a campus police department and to employ campus police officers and auxiliary forces upon appointment as provided in §§ 23-233 and 23-233.1. Such employment shall be governed by the Virginia Personnel Act, as set forth in Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. . . .

(1977, c. 79; 1991, c. 711; 1996, cc. 905, 1046; 2000, c. 720.)

03/48 § 23-233.1. *Establishment of auxiliary police forces; powers, authority and immunities generally.*

The governing boards, for the further preservation of public peace, safety and good order of the campus community, shall have the power to establish, equip, and maintain auxiliary police forces. When called into service pursuant to procedures established by the governing board, members of these auxiliary forces shall have all the powers, authority, and immunities of public institutions of higher education campus police officers. (1991, c. 711.)

03/49 § 23-234. *Powers and duties; jurisdiction.*

A campus police officer appointed as provided in § 23-233 or appointed and activated pursuant to § 23-233.1 may exercise the powers and duties conferred by law upon police officers of cities, towns, or counties, and shall be so deemed, including but not limited to the provisions of Chapters 5 (§ 19.2-52 et seq.), 7 (§ 19.2-71 et seq.), and 23 (§ 19.2-387 et seq.) of Title 19.2, (i) upon any property owned or controlled by the relevant public or private institution of higher education, or, upon request, any property owned or controlled by another public or private institution of higher education and upon the streets, sidewalks, and highways, immediately adjacent thereto, (ii) pursuant to a mutual aid agreement provided for in § 15.2-1727 between the governing board of a public or private institution and such other institution of higher education, public or private, in the Commonwealth or adjacent political subdivisions, (iii) in close pursuit of a person as provided in § 19.2-77, and (iv) upon approval by the appropriate circuit court of a petition by the local governing body for concurrent jurisdiction in designated areas with the police officers of the county, city, or town in which the institution, its satellite campuses, or other properties are located. . . . (1977, c. 79; 1985, c. 386; 1991, c. 711; 1992, c. 187; 2002, c. 97.)

NOTES

03/50 § 23-235. *Officers to comply with requirements of Department of Criminal Justice Services.*

All persons appointed and employed as campus police officers or as members of auxiliary forces pursuant to this chapter shall comply with the requirements for law-enforcement officers as established by the Department of Criminal Justice Services pursuant to Chapter 1 (§ 9.1-100 et seq.) of Title 9.1. (1977, c. 79; 1984, c. 779; 1991, c. 711.)

03/51 § 23-238. *Security departments and other security services.*

Nothing in this chapter shall abridge the authority of the governing board of an institution to establish security departments, whose officers and employees shall not have the powers and duties set forth in § 23-234, in place of or supplemental to campus police departments or to rely upon municipal, county or state police forces or to contract for security services from private parties. (1977, c. 79.)

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*- Connecting The Dots -***04** ANALYTICAL REVIEW

04/52 *This Section attempts to reveal a chronology of events that transpired in Virginia between 1993 and April 16, 2007, with emphasis on the impact of relevant anti-terrorism policies administered within Virginia State and Virginia Polytechnic Institute and State University (Virginia Tech). Nothing in this section alludes to procedural or substantive analyses related to mental health issues or gun control. It is anticipated that this Analytical Review bring to light relevant indicia helpful in aid for the judicious assessment of governing acts and omissions. For sake of brevity, pertinent sections of data is being made available - it is advised to follow url links for complementary analysis and review. Readers are reminded that past legal principles may not necessarily reflect current usage of Law. An EQ commentary may follow at end of each numbered article.*

01-00-93 | Domestic Terrorism: A National Assessment of State and Local Preparedness ²⁵

04/53 A RAND national assessment comprised of a 24-month research effort to survey and analyze the key problems and issues confronting state and local law enforcement agencies in countering the threat of terrorism in the United States indicates that a sizable majority of state and municipal law enforcement organizations consider terrorism, or the threat thereof, to be a problem. Of particular note is that many state and local law enforcement organizations consider a wider range of activities and acts terrorist, or potentially terrorist, than the FBI. Thus, although official FBI terrorist statistics point to low levels of terrorist activity, attribute many recent terrorist activities to Puerto Rican nationalists, and until 1993 did not count many threatening acts by organizations such as the Skinheads as terrorist, states and municipalities are equally adamant in identifying right-wing (Neo-Nazi, anti-Semitic, anti-federalist) and issue-specific (anti-abortion, animal rights, environmentalist) organizations as the most threatening actual and potential terrorist sources. While in agreement that terrorism presents a challenge to law enforcement organizations, states and municipalities diverge in their approaches to the problems. The findings demonstrate compellingly that smaller jurisdictions, which may house sensitive facilities such as nuclear power plants, communications nodes, and so forth, have different approaches to terrorism preparedness than large cities. These differences are evident in areas ranging from development of terrorism guidelines and contingency plans, to training and operations.

NOTES

04/54 The [survey] response rates for the local law enforcement agencies was lower than the rate of the state agencies. Eighty-four municipalities from the population-based pool responded, from a total of 160 queried, resulting in a 53 percent response rate. Sixty-four agencies from the targeted group responded, from 139 sampled, resulting in a 46 percent response rate. A number of factors explain the lower response rates at the municipal and county levels. In many cases the agency respondents erroneously assumed that because they had no terrorist groups and no special training, their participation was not desired. Others noted that theirs was not the appropriate agency.

State Law Enforcement Agencies

04/55 Nearly 80 percent (31 of 39) of the state law enforcement agencies responding to the survey noted the presence of an identified terrorist threat in their jurisdiction. Moreover, nearly 90 percent of the respondents reported the presence of terrorist sympathizers and supporters within the state's borders.

State Law Enforcement Reports of State-Level Terrorist Groups (N=39)

GROUP	No	%
Right-wing	34	87
Left-wing	8	21
International	5	13
Ethnic	13	33
Issue-specific	23	59
Other	4	10

Emergency Preparedness Organizations

04/56 Emergency preparedness organizations report results that are similar to those obtained from state law enforcement organizations. Sixty-five percent (24 of 37) of the responses from emergency preparedness organizations indicate that terrorist groups have been identified in their states. Again, right-wing (57 percent; 21 of 37) and issue-specific organizations (54 percent; 20 of 37) are most frequently mentioned, and ethnic groups are a strong third (35 percent; 13 of 37). Additionally, 57 percent (21 of 37) of the state emergency management organizations identified supporters of terrorist groups as residing in their states.

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Municipal Law Enforcement Agencies

04/57 Approximately one-third of the municipal law enforcement agencies surveyed identified terrorist groups in their jurisdictions, and an additional one-third are aware that terrorist groups operate within their states. Additionally, 43 percent of the respondents reported that supporters and sympathizers of terrorist groups were active in their jurisdictions. Combined, a total of 83 percent (123 of 148) of local-level respondents noted the potential for terrorist threats in their states and municipalities. The percentages were approximately the same for both the targeted and population-based groups.

Municipal Reports of State-Level Terrorist Groups (N=148)

GROUP	No	%
Right-wing	91	61
Left-wing	26	18
International	22	15
Ethnic	38	26
Issue-specific	84	57
Other	8	5

Regional Variations

04/58 According to FBI reports, actual incidents of terrorism have been disproportionately concentrated in Puerto Rico and the Western and Midwestern United States. The responses from the population-based portion of our sample indicate that municipalities' terrorist perceptions generally follow the same pattern. That is, 85 percent of Midwestern jurisdictions (17 of 20 from the population-based sample) and 79 percent of Western jurisdictions (23 of 29) report the presence of terrorist threats, whereas only 46 percent (6 of 13) Northeastern jurisdictions report the same. In one potentially significant break from the regional patterns the FBI reports, nearly 70 percent (15 of 22) of Southern jurisdictions report a terrorist presence, compared to zero incidents recorded by the FBI in the South between 1989 and 1993. Since our population based sample excluded Puerto Rico, and since the FBI reports Puerto Rican terrorism separately, this finding cannot be related to Puerto Rican violence.

Reported Terrorist Threat and Municipality Size

04/59 In a pattern that will be evident across a number of dimensions of terrorism perceptions and preparedness, small and large cities differ in their interpretations of terrorism.

NOTES

Smaller cities, those with populations less than 100,000, are much less likely to report the presence of local terrorism threats than are large cities. Moreover, smaller cities are less likely to report a local problem, regardless of the individual terrorism category considered. As in the state-level samples, however, right-wing and issue-specific groups are most frequently mentioned as potential sources by smaller municipalities. This pattern holds, with appropriate caveats because of the small sample sizes, when the targeted sample, which is more likely to experience terrorist threats, is eliminated and only the population-based sample is considered.

- 04/60** Over the past five years, few municipal law enforcement agencies have been called upon to address terrorist incidents. Only 7 percent of the municipal forces surveyed report that there are ongoing investigations of terrorist groups within their jurisdictions. This finding is not surprising, given that the FBI has authority over, and responsibility for, investigation of all terrorist incidents in the United States and given that the FBI would assume jurisdiction over a case if a local investigation revealed a terrorism connection.

Summary

- 04/61** Right-wing and issue-specific groups are identified with the greatest frequency by all types of organizations. That is, all of the elements surveyed—state law enforcement, state emergency preparedness, and local law enforcement organizations—identified right-wing and issue-specific organizations as the two most prominent threat sources. These two types of terrorist organizations are not only the most frequently identified in terms of existence but also are most frequently identified as having committed specific acts of terrorism. These perceptions of terrorism are spread throughout the United States, in communities large and small.

Comment

- 04/62** *EQ - This 1993 RAND Assessment reflects, inter alia, past perceptions understood by various State and municipal authorities concerned with domestic terrorism including the implementation of relevant emergency preparedness plans. It is recommended that Readers assess the RAND file in its entirety before reviewing the remaining sections of this Report.*

03-10-93 | College Officials Warned to Minimize Campus Security Risks ²⁶

- 04/63** Presidents, student affairs' administrators, campus police chiefs and legal advisers representing 20 Virginia public colleges and universities heard presentations on colleges' legal and moral responsibilities by two prominent lawyers at the daylong conference.

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- 04/64** Mr. Bickel, the morning's featured speaker, reviewed the judicial application of the doctrine "in loco parentis" (a term coined by British jurist Sir William Blackstone in 1770 to describe the parental delegation of certain rights and duties to the schoolmaster) in court cases involving conflicts between college officials and students.
- 04/65** Beginning in 1866, when an Illinois court invoked "in loco parentis" to support the disciplinary authority of Wheaton College in forbidding its students from joining secret societies, up until the 1960s, the courts have used this doctrine to affirm colleges' and universities' rights to exercise supervisory control over students' behavior, said Mr. Bickel.
- 04/66** During the tumultuous '60s, court rulings weakened the doctrine's force. "Students became more litigious in pursuing civil rights previously denied them. The landmark 1961 decision of the federal circuit court in "Dixon v. Alabama State Board of Education," overturned the expulsion of six black students denied due process for their participation in civil rights demonstrations. The court held that public, tax-supported universities may not infringe on the constitutional rights of students on the sole ground that the University has authority to discipline them," said Mr. Bickel.
- 04/67** Following the Dixon ruling, the doctrine of "in loco parentis" was further eroded in a series of U.S. Supreme Court rulings that upheld the right of public school and college students to engage in constitutionally protected speech, association and publication, he said.
- 04/68** "The student rights' movement of the 1960s brought about political and judicial recognition that, for the most part, persons above the age of 18 are legally adults and not in the custody of college officials, as are public or private elementary or secondary students. However, these decisions said nothing about the public or private college's duty to exercise reasonable care toward the maintenance of a safe learning environment," Mr. Bickel said.
- 04/69** Some legal commentators have misinterpreted the "abatement" of "in loco parentis" in "the student rights' cases" as meaning colleges no longer have an obligation to provide a safe learning environment, according to Mr. Bickel. He cited "Bradshaw v. Rawlings" (1979) as illustrating this "flawed perspective." "In this case, a federal appellate court ruled that a college could not be held accountable for the alcohol-related injury of one of its students, even though the college was aware of, and provided the funds for the purchase and consumption of beer by underage students at a sophomore class picnic. Despite the college's rules prohibiting possession or consumption of alcoholic beverages on college property or at college-sponsored events, the Court recognized no private right of action against the college for failure to minimize the risk of injury to students as a proximate result of illegal consumption of alcohol."

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- 04/70** Mr. Bickel criticized the court's "retaliatory language" and message. "It was as if the court said, `You want to be free. Fine, you're free of protection from your college as well. No court has ever said a college has to assure the safety of its students. It is preposterous, however, to believe that a college would not have any obligation," he said.
- 04/71** The Bradshaw decision effectively abolished the custodial relationship between a college and its students, he noted. And in "Beach v. University of Utah" (1986) the court described the relationship as "educational, not custodial."
- 04/72** "While the college's legal relation with its students may not be custodial, it is certainly more than merely educational," Mr. Bickel contended. "The college has a traditional legal relation with its students, at least as owner and operator of its premises, as landlord, and as provider of instructional and extracurricular services and activities. This relationship under traditional tort concepts, [a tort being a private or civil wrong or injury] imposes liability on the college for negligent failure to provide safe premises, including residence halls," he said.
- 04/73** In "Mullins v. Pine Manor College" (1983), a case involving an assault on a female student on campus by a nonstudent assailant, the Massachusetts Supreme Court found the private college liable for negligent security. While acknowledging the decline of "in loco parentis," the court opined "Parents, students and the general community still have a reasonable expectation, fostered in part by the colleges themselves, that reasonable care will be exercised to protect resident students from foreseeable harm."
- 04/74** In Mr. Bickel's view, the Mullins opinion offers the "best perspective on college's moral and legal responsibilities regarding safety on campus."
- 04/75** He continued, "Tort doctrine accepts the premise that the college is not the insurer of the student's safety, any more than the landlord is the insurer of a tenant's safety. However, tort doctrine does support a duty of the college to regulate and supervise foreseeable dangerous activities occurring on its property, including the negligent or intentional acts of third persons."
- 04/76** "Furek v. University of Delaware" (1991), a case involving a student being injured in a fraternity hazing incident, illustrates this point, he said. The court ruled that "To the extent that the university is involved in regulation of student conduct, it takes on a duty to execute reasonable care to minimize risk to students," Mr. Bickel explained. "The court said that the university's policy against hazing constituted an assumed undertaking which the university was bound to carry out with reasonable care. This duty was breached when university police failed to stop an open act suggesting hazing activities."

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- 04/77** Mr. Bickel emphasized that court decisions holding colleges legally responsible for criminal acts are "rare." He also noted that the doctrine of sovereign immunity [a common law principle that a government cannot be sued without its consent. Most states, including Virginia, have limited the doctrine so as to allow private individuals to sue public agencies under certain circumstances.] may limit the tort liability of public universities. He nevertheless warned, "Universities that are attempting to shield their liability by saying they have no duty are going to lose. The risk you take in enhancing your security programs -- courts could hold you more accountable -- is less than the risk you take by running from duty. And don't use fiscal problems as an excuse to slash security and maintenance budgets. Defective premises are the oldest liability you have."
- 04/78** In the afternoon session, Pennsylvania attorney Joseph M. Fioravanti gave the plaintiff's perspective on the issue of university liability arising out of breaches of security on campus. Mr. Fioravanti represented Howard and Connie Clery whose daughter Jeanne was raped and murdered in a Lehigh University dormitory room seven years ago. The Clerys charged Lehigh with failing to enforce campus security regulations prohibiting dormitory residents from propping open outer doors. College authorities were aware that students were ignoring this rule and did nothing. Ms. Clery's assailant, fellow student Josoph Henry who lived off campus, was able to slip through four propped-open doors before reaching her room.
- 04/79** The case was settled out of court for a substantial sum, according to Mr. Fioravanti. He maintained that the Clerys initially had no interest in suing the university, but sought redress when affronted by administrative insensitivity and self-serving actions. "The Clerys were mortified that university officials never extended a hand to them," especially in criminal court proceedings against Henry. Lehigh also blanketed the media with press releases exonerating itself and "insisting Jeanne failed to take care of herself."
- 04/80** Mr. Fioravanti cautioned conferees against ignoring the families of student-victims. "You don't have to make an admission of liability to show compassion."
- 04/81** "The Clerys have changed the landscape of campus security," said Mr. Fioravanti. "At their insistence, electronic entry systems were installed at Lehigh dormitories soon after their daughter's death. Today they are standard safety equipment on most campuses."
- 04/82** The Clerys have also established Security on Campus, Inc., an organization based in Gulph Mills, Penn., to lobby for federal and state campus crime reporting laws, Mr. Fioravanti said. As a result of their efforts, a federal law went into effect last fall that requires all colleges and universities to have a campus security plan, to annually report campus crime statistics to the FBI and to distribute this report to all current students, incoming students and employees. Colleges are further required to report crimes to the campus community "in a timely manner." Failure to comply with the law may result in a cut-off of all forms of federal aid.

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04/83 "Campus security is now a matter of competition for attracting students as well as faculty," said Mr. Fioravanti. "Don't hold anything back. I would inundate my campus with statistics and document how I disseminated this information."

Comment

04/84 **EQ** - *In general, today's Tort Doctrine has evolved considerably with regards to liabilities involving negligence; wrongful death; etc. Sovereign Immunity is no longer a defense State agencies can solely rely upon. When faced with fewer options, Defendants attempt to opt out of lengthy court battles by offering out-of-court settlements.*

11-05-93 | VA HJR 513 Report: Security on Virginia's Campuses ²⁷

04/85 House Joint Resolution 513, sponsored by Delegates Purkey, Croshaw, Rhodes, Rollison, and Senator C.A. Holland, directed the Council of Higher education to study campus security enhancement at Virginia's public institutions of higher education. An advisory committee with representatives from the Council, the Department of Criminal Justice Services, and campus police departments directed the study. In order to better understand the range of campus environments and because the committee wished to present an in-depth portrait of policing at higher education institutions across Virginia, the committee selected fourteen public and private institutions for intensive analysis.

04/86 Overall, campus security and police departments offer a wide range of services to students in Virginia. Those institutions with police (as opposed to security) departments offer students many of the services of a municipal police department. In addition, the campus police and security departments provide services unique to a campus environment, such as escort services, emergency phones, crime-prevention programs, Rape Aggression Defense (RAD) training, bicycle patrols, residence-hall security, and control of access to the campus. To control campus crime, campus police and security departments coordinate their efforts with students, administrators, and local police.

04/87 Police and security personnel believe that their presence and visibility on campus deter crime but feel constrained by a lack of resources. The need to patrol and conduct other police functions limits the number of programs campus police and security departments can offer, such as crime-prevention programs. Given the current climate of limited resources, institutional security is a service requiring continuous evaluation.

Comment

04/88 **EQ** - *Virginia Polytechnic Institute and State University (Virginia Tech) was not included for the purposes of the above survey. The HJR 513 Directive and subsequent Campus Security Report exposes security measures loosely implemented at the time.*

NOTES

05-07-02 | Virginia Tech Policy: Campus Security ²⁸1. *Purpose*

- 04/89** Virginia Polytechnic Institute and State University is committed to providing a safe and secure environment for students, faculty, staff and visitors in all buildings and grounds, owned and/or operated by Virginia Tech. This policy outlines the responsibility of the University Police, the Physical Security Program of the university. Specifically, this policy addresses elements of compliance with the Crime Awareness and Campus Security (CACS) Act of 1990.

2. *Policy*

- 04/90** ENFORCEMENT AUTHORITY: The University Police Department is a full-service law enforcement agency empowered by the Code of Virginia to enforce federal, state and local laws, to make arrests, conduct criminal investigations, etc. The department Directives Manual delineates the character of working relationships with other law enforcement agencies. University Police, state and local police agencies have mutually agreed to provide timely information to appropriate university officials concerning results of all monitoring and recording of criminal activities at all off-campus student events of student organizations recognized by Virginia Tech and engaged in by students attending Virginia Tech, including student organizations with off-campus housing facilities. The University Police shall be responsible for researching, implementing, and administering any security policy or procedure that affects physical facilities' security, human safety, or technological advancement security at this university.
- 04/91** REQUIRED REPORTS: University Relations and the University Police will make the campus community aware of crimes, which have occurred and necessitate caution on the part of students and employees, in a timely fashion and in such a way as to aid in the prevention of similar occurrences. . . .

Comment

- 04/92** **EQ** - *This Policy contains the latest campus security measures pre-04.16.07 adopted and enforced since May 7, 2002. Directives emanating from the U.S. DOE investigation (1997) of a Policy complaint against Virginia Tech for non-compliance to the Campus Security Act has had a regulatory effect.*
(See: http://dl.dropbox.com/u/3135191/DOE_VT97.pdf).

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10-06-04 | DHS / DOE Domestic Terrorism Advisory ²⁹

- 04/93** The recent terrorist attack against a school in Beslan, Russia, was obviously a shocking incident worldwide. Understandably, the horror of this attack may have created significant anxiety in our own country among parents, students, faculty, staff and other community members, particularly in light of the graphic details that many of us saw in the news. Today, I am writing to share information with you regarding some lessons learned from the Beslan school incident in an effort to better understand how it happened and apply lessons that might be used to protect U.S. schools. - *U.S. Department of Education*

Comment

- 04/94** **EQ** - *The Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) told the U.S. Department of Education (DOE) “that there is no imminent threat to U.S. schools and that the group that conducted the operation in Russia has never attacked or threatened to attack U.S. interests.” The DHS and FBI recently sent an analysis of the Beslan incident to their constituents in the law enforcement field. The DOE distributed information to constituents in the education community. Among those to whom the DOE sent the information are: school police and school security personnel; school resource officers; emergency response and crisis management grantees; chief state school officers; members of boards of education; organizations representing principals; institutions of higher education; and various groups representing non-public schools. DOE intent was to inform all appropriate school-related constituencies, all types of schools, whether public or non-public, and institutions of higher education. According to the DOE Advisory, the Department of Homeland Security’s Office of Domestic Preparedness published a series titled *Campus Public Safety: Weapons of Mass Destruction and Terrorism Protective Measures in April 2003*. The document describes affirmative steps colleges and universities can take to prevent, deter or effectively respond to an attack by weapons of mass destruction (See Annex of DOE Advisory).*

11-29-04 | National Summit on campus public safety ³⁰

- 04/95** The aftermath of September 11, 2001 prompted the reexamination of the nation's defenses and vulnerabilities in light of new realities. Every sector of society, particularly those who protect the well being of communities, required change. Safety and security operations on the nation's college and university campuses are no exception.
- 04/96** Like any thriving community, colleges and universities experience myriad problems and issues related to sustaining a safe, secure campus environment for students, faculty, staff,

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and others. In addition, new issues related to terrorist threats and the effects of September 11, 2001 have emerged on college and university campuses. In some jurisdictions, threat assessments have cited colleges and universities as potential primary targets of terrorist activity, while in other jurisdictions they have been ignored in homeland security planning and activities.

- 04/97** Twenty key issues were identified from a review of literature and interviews with campus police and security officials, supervisors and executives in police and sheriffs departments, college and university administrators, fire officials, students (including student groups representing minority and special populations), and others :
- 04/98** 1. Since September 11, 2001, coordination between senior executives (president, provost, vice presidents, deans, directors, chairs) within colleges and universities and those charged with implementation of safety and security practices (police and security officials) remains weak.
- 04/99** 2. Attrition among front-line personnel in campus police and security agencies creates instability and a loss of institutional knowledge essential to effective prevention, problem solving, and crisis intervention.
- 04/100** 3. Allocation of resources by municipal and state police agencies rarely consider college and university campuses, particularly in urban areas.
- 04/101** 4. There is a need for model mutual aid agreements, memoranda of understanding (MOU), and related policies and procedures.
- 04/102** 5. There is inconsistency in prevention and response strategies when more than one college or university exists in a jurisdiction.
- 04/103** 6. There is a wide variance in the number, role, structure, and professionalism of security and police operations occurring on college and university campuses. One-size-fits-all programs, policies, laws, and grants do not work.
- 04/104** 7. Universities and colleges are not considered in many local and regional evacuation plans and are excluded from other homeland security efforts.
- 04/105** 8. Local, county, and state police officers lack knowledge and understanding of the potential risks, threats, and needs associated with campuses.
- 04/106** 9. Local, county, and state police agencies do not give adequate attention to community colleges when developing prevention, problem solving, and response strategies.
- 04/107** 10. Off-campus sites lack security and local police attention.
- 04/108** 11. Colleges and universities maintain an open environment to support ongoing research, movement of people, and transport of goods and materials.

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- 04/109 12. Securing chemical, biological, and radiological materials in an accessible environment, 24 hours a day, 7 days a week, creates a unique set of security concerns and compounds risk.
- 04/110 13. Police and security operations in some of the nation's largest college and university systems are highly fragmented.
- 04/111 14. Reassuring and guiding students, parents, faculty, administrators, and staff regarding safety and security, gaining their cooperation, and managing their fear requires planning, analysis, education, and marketing. Changing the campus culture to embrace prevention and response strategies cannot be accomplished with brochures, fliers, and a web site.
- 04/112 15. Special events (sports, lectures, graduation) occur frequently, draw thousands of people to campuses, and create vulnerability.
- 04/113 16. Few college and university leaders are adept at defining and demonstrating the value and success of safety and security functions. Rather, safety and security are measured by statistical reports (incidents increase or decrease) and the absence of problems.
- 04/114 17. Campus police and security personnel lack access to high-quality, affordable education and training.
- 04/115 18. Colleges and universities have been slow to accept and incorporate the cost of homeland security.
- 04/116 19. There are no national standards, similar to those of the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), to guide campus police and security operations.
- 04/117 20. There is no national center or institute dedicated to serving campus police and security agencies or the continuous education of college and university police and security executives, supervisors, and officers.

Comment

- 04/118 **EQ** - *During the period covering February 2 through June 30, 2004, FBI/NICS terrorism-related background checks revealed one or more valid matches with terrorist watch list records reflecting known or suspected terrorists who could pose homeland security risks within the State of Virginia, among others, and who were not prohibited in receiving or possessing a firearm (See: <http://www.gao.gov/products/GAO-05-127>). Prior to that period and well into 2007, Virginia State was home to the nation's highly prioritized post 9/11 criminal prosecution of Virginia-based jihadists linked to Al-Queda (See: <http://www.washingtonpost.com/ac2/wp-dyn/A2730-2003Sep25?language=printer>). The National Summit on campus public safety emphasized the need for anti-terrorist*

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measures to be adopted in replacement for existing and outdated campus security policies. Key issues discussed above illustrates the need for preparation against acts of terrorism -- an indepth analysis of the state of emergency preparedness within college and university campuses accompanies each key issue made available in this Summit Report.

05-00-05 | Virginia Tech Emergency Response Plan ³¹

Introduction

04/119 An emergency situation can arise at Virginia Tech at any time and from many causes. Emergencies range from chemical spills, fires and bomb threats to explosions, natural disasters, and civil disturbances such as riots or potential strikes. Virginia Tech's Emergency Response Plan (ERP) is a procedural document for organizing, coordinating and directing available resources toward the control of an emergency. The plan includes a chain of command establishing the authority and responsibility of various individuals. In emergencies, procedures sometimes must be changed at an instant's notice; therefore, responsible and knowledgeable persons who know the procedures must have the authority to make necessary modifications.

04/120 Virginia Tech's emergency response priorities are:

- Protect life safety.
- Secure our critical infrastructure and facilities which are, in priority order:
 - buildings used by dependent populations,
 - buildings critical to health and safety,
 - facilities that sustain the emergency response,
 - classroom and research buildings, and
 - administrative buildings.
- Resume teaching and research programs. . . .

Situation Level Definitions

04/121 This plan identifies four emergencies levels as follows:

- Level 0 covers a short-term internal "routine" emergency involving only university facilities and employees. Limited outside agency involvement may be required.
- Level I includes an emergency with a predictable duration at a single site involving the university and a single outside agency such as the fire department.
- Level II involves an emergency with an unpredictable duration with a multi-agency response.
- Level III relates to a widespread emergency impacting a large segment of the university with long-term implications.

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04/122 The following level definitions should be used as a guide to defining the magnitude of an emergency incident and the potential impact on Virginia Tech.

LEVEL 0

04/123 **Definition:** An unplanned event of short duration that is not likely to adversely impact or threaten life, health or property. Control of the incident is within the capabilities of university employees and the response is made in accordance with departmental emergency plans. The university ERP is not activated for Level 0 events.

04/124 **Criteria:** The incident can be resolved by university employees with assistance or advice from Environmental, Health and Safety Services, the VTPD, Risk Management and/or Facilities.

- An outside agency may be involved as a precaution or as part of standard university procedures.
- A written report is filed with the VTPD and other appropriate university departments as deemed necessary.
- No outside medical assistance needed.
- Little involvement of university insurance is required.
- Establishment of an Incident Command Center is optional, and the ERP would not typically be activated.

Examples: Automatic fire alarm, small chemical spill, localized water pipe break affecting a portion of a building, a localized undetermined odor problem, minor flooding from excessive rain, labor disruption, or student demonstration.

LEVEL I

04/125 **Definition:** An unplanned event that may adversely impact or threaten life, health or property within a single area. Control of the incident may be beyond the capabilities of university employees. Outside agency assistance may be necessary. Departments are to follow the procedures outlined in their departmental emergency plan when responding. The ERP would not typically be activated for Level I emergencies.

04/126 **Criteria:** Resolution of incident involves both university and/or outside agency personnel.

- Evacuation is short term and affects the immediate localized area only.
- The incident is of short duration (e.g. 2 hours or less).
- Security procedures will need to be established to protect occupants, evacuees, and/or property.
- Medical response may be required.

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- Some involvement of university insurance may be required.
- An Incident Command Center is established at or near the scene of the emergency.
- A written report, including a narrative, damage estimates, injury report, and agencies involved is prepared.
- Members of the university who participated in the response may hold an incident debriefing/critique.

04/127 **Examples:** A localized fire or explosion in a residence hall or academic building, a chemical spill that causes a disruption of services and a hazardous materials response, a suicide, a water main break involving most of a building or one which threatens critical services, a trench cave-in, an odor requiring evacuation, or loss of heat or power to a building.

LEVEL II

04/128 **Definition:** An unplanned event of unpredictable duration that may adversely impact or threaten life, health or property on a large scale at one or more locations within the university. Control of the incident will require specialists in addition to university and outside agency personnel. Long-term implications may result.

04/129 **Criteria:** Resolution of the incident involves both university and outside agency personnel.

- Evacuation is long-term and affects an entire building, a group of buildings and/or a significant number of employees or students.
- The incident response may require an extended period of time before it is completely resolved.
- Security procedures will need to be established to protect occupants, evacuees and/or property.
- Significant involvement of university insurance may be necessary.
- Large-scale medical response may be required.
- An Incident Command Center is established at or near the scene of the emergency.
- The Emergency Operations Center is established and the ERP is activated.
- Members of the university that participated in the response will hold an incident debriefing/critique.

04/130 **Examples:** A water main break involving service to multiple buildings or a break affecting an entire academic or residential building, loss of heat or power to multiple buildings, a fire affecting an entire residential or academic building, a chemical release causing the evacuation of one or more buildings, large scale civil unrest on university property, threatened acts of terrorism, or acts of violence on or near campus that have broad implications for university operations. . . .

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LEVEL III

- 04/131** **Definition:** An incident occurring at the university that adversely impacts or threatens life, health or property at the university on a large scale. Control of the incident will require multiple agencies and multiple university departments working together. Long-term implications are expected.
- 04/132** **Criteria:** Resolution of the incident requires multi-agency response and long-term business disruption is expected.
- Serious hazard or severe threat to life, health and property.
 - Resolution of incident involves community multi-jurisdictional and university multi-departmental involvement.
 - Major evacuation involving implementation of the university relocation plan, interfacing with community plans.
 - Significant and long-term involvement of university insurance will be necessary.
 - Duration of event is unpredictable.
 - Security procedures established to protect evacuees and property.
 - Large-scale medical response implemented using both university and community resources.
 - An Incident Command Center is established at or near the scene of the emergency.
 - The Emergency Operations Center is established and the ERP is activated.
 - Communications center established to coordinate media and university related communications.
 - Long-term recovery plan established.
 - The Emergency Operations Center is established and the ERP is activated.
 - Written report is prepared.
 - All agencies that participated in the response will hold an incident debriefing/critique.
- 04/133** **Examples:** Flood from Stroubles Creek that involves the Drillfield and surrounding buildings, large-scale chemical release affecting a significant portion of the university, earthquake, tornado, major power outage, and building collapse.

Emergency Operations Command Structure

- 04/134** The university coordinates its emergency preparedness planning with the Towns of Blacksburg and Christiansburg, Montgomery County, and other adjacent localities, agencies and organizations to ensure that the campus procedures are consistent with current government practices, and that Virginia Tech is able to maintain effective emergency communications and coordination during an incident.

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04/135 Virginia Tech's ERP partitions emergency decision-makers into functional groups to maximize efficiency. These groups are as follows:

- The Policy Group, composed of lead administrators, establishes policies and procedures as needed to support emergency operations, and determines business recovery and resumption priorities. See the next section and Appendix 1 to Annex A for additional information.
- The Emergency Response Resource Group (ERRG) directs resources in support of emergency response operations, assures the continuity of critical business functions, and implements business recovery and resumption activities. The ERRG is composed of lead administrators and support personnel from departments that have an emergency response and/or business continuity or business recovery role. See Appendix 2 of Annex A for functional role assignments for members of the ERRG. The ERRG convenes at the Emergency Operations Center (EOC).
- Satellite Operations Centers (SOCs), located in the administrative headquarters Deans, Vice Presidents and Vice Provosts, gather emergency impact data from their constituent departments, account for their personnel, transmit reports to the EOC, disseminate emergency instructions to constituents, and develop and implement business continuity, resumption, and recovery plans.

In addition to functional groups, three specific roles are assigned as follows:

- The Emergency Response Coordinator (ERC) serves as a single point of contact within the ERRG and is Chief of Staff to the Vice President in Charge during emergency response. Requests for personnel, equipment, supplies, information and assistance from the Incident Command Center are coordinated with the ERC.
- The Vice President in Charge provides the communications interface between the ERRG and the Policy Group.
- The Incident Commander (IC) is the individual directing immediate response efforts at the scene of the emergency. The IC role may be established by Virginia law, for example, the Fire Chief will serve as the IC for emergencies involving fire response. Note that for smaller scale emergencies, the IC may also serve as the ERC. The Emergency Response Coordinator and Vice President in Charge roles are assigned based on the established order of succession outlined in Appendix 4 to Annex A.

Policy Group

04/136 The Policy Group will convene to coordinate policy and procedure issues specific to response and recovery activities necessitated by the nature of the event. Policy Group members shall remain accessible to the EOC for updates and guidance as necessary. Communication with their liaison at the EOC shall be maintained by telephone if possi-

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ble or by radio, cell phone or other means as necessary. When necessary, the Policy Group will convene at the EOC.

Purpose of the Policy Group

04/137 The Policy Group provides centralized direction and control of any or all of the following functions as they pertain to Virginia Tech:

- Evaluate the institutional effects of the emergency;
- If necessary, authorize a temporary suspension of classes, or a campus closure or evacuation;
- Frame emergency-specific policies as needed. Examples: Emergency personnel policies, special financial assistance for employees or students, etc;
- Assure that functions critical to the continuity of university business operations are maintained;
- Address legal issues associated with the emergency;
- Collect and analyze information provided by SOCs and the EOC on the impact of the event on departmental and university operations;
- Determine and convey business resumption priorities and business recovery plans to the EOC, and via the EOC to SOCs.

Key members of the Policy Group

- 04/138**
- President
 - Executive Vice President
 - Associate Vice President, University Relations
 - University Provost and Vice President for Academic Affairs
 - Vice Provost, Academic Affairs
 - Vice President, Business Affairs
 - Vice President, Information Technology
 - Vice President, Student Affairs
 - General Counsel
 - Support Staff (Administrative/Clerical)

Emergency Response Resource Group

04/139 The Emergency Response Resource Group (ERRG) will convene to provide support for emergency operations, address the safety and welfare of students, employees and visitors, and assure, as best possible, the continuity and timely resumption of university

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operations. The ERRG consists of the directors and/or lead administration of those departments and areas that are involved in responding to the emergency. Additional personnel may be assembled as necessary to address specific emergency conditions and as needed to support EOC operations.

Purpose of the ERRG

04/140 The ERRG shall be used to provide centralized direction and control of any or all of the following functions as they pertain to Virginia Tech:

- Determine the scope and impact of the incident;
- Prioritize emergency actions;
- Deploy and coordinate resources and equipment;
- Adjudicate conflicting claims and/or requests for emergency personnel, equipment and other resources;
- Designate responsibilities and duties as necessary to maintain the integrity of the university and its primary mission;
- Provide support to emergency operations at the Incident Command Center;
- Issue communications and warnings through University Relations;
- Request additional resources from outside agencies and implement mutual aid agreements;
- Coordinate with local, state and other governmental agencies;
- Monitor and continually evaluate conditions;
- Analyze damage assessment data, identify business recovery priorities and associated resource needs, and convey this information to the university administration, the Incident Command Center and SOCs;
- Implement university business continuity and resumption plans.

Key members of the ERRG

- 04/141**
- Vice President in Charge (VPIC)
 - Virginia Tech Police Department (VTPD)
 - Environmental Health and Safety Services (EHSS)
 - Facilities
 - University Relations
 - Risk Management

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- General Counsel
- Office of Student Programs (OSP)
- Registrar
- Communication Network Services (CNS)
- Personnel Services
- Purchasing
- University Unions and Student Activities
- Athletics (for sheltering and large assembly events)
- Recreational Sports (for sheltering and large assembly events)
- Support Staff (Administrative/Clerical)
- Technology and Computer Support

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Plan activation

- 04/142** In most situations, the Virginia Tech Police Department (VTPD) will serve as the initial contact for reporting all emergency situations (as defined by this plan) and as the central point of communication during the response and resolution of all emergencies on the local campus. Outbreaks of contagious disease, a utility outage that impacts business operations, and weather events are examples of emergencies where the plan may be activated by someone other than the VTPD.
- 04/143** Upon being contacted, the Police Officer in Charge will make an initial judgment about the level of response necessary and communicate with personnel as outlined in the plan. As appropriate, the roles of Incident Commander, Vice President in Charge, and Emergency Response Coordinator will be assigned as outlined in Appendix 4 to Annex A. The ERC will confirm the level of response needed and situation level of the emergency. The ERC will make the appropriate contacts within the Administration as outlined in the ERP and notify the VTPD to begin staging for the emergency.
- 04/144** If an emergency situation begins to escalate, the ERC will notify any additional internal and external personnel and will take appropriate action as outlined in the ERP to respond to the changing conditions.

Plan De-Activation

- 04/145** When emergency conditions are stabilized and normal university operations can resume, the Emergency Response Plan will be de-activated by the ERC with the concurrence of the university President and Provost. A formal announcement will be disseminated, using all emergency information and notification systems.

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Maintenance and administration of the Plan

- 04/146** EHSS is responsible for coordinating the preparation and continuous updating of the ERP, and for assuring the compatibility of the plan with similar Federal, State, and local (county and municipal) plans. In addition, some departments, such as Facilities, EHSS, VTPD, AIS, and the Office of Student Programs, are tasked with the development and maintenance of certain Annexes of the ERP.
- 04/147** Each department, agency or individual specified in the ERP, and each department/area that will play an active role in responding to a campus emergency (see Annex A), is expected to prepare and continuously update their area plans as needed to ensure the timely and effective delivery of disaster response and recovery services by that organization during a disaster. When an area plan is updated, a copy shall be submitted to EHSS.
- 04/148** The ERP and each area plan are to be updated as soon as practicable after changes in organizational structure or resources occur. As a minimum, this plan and each area plan shall be reviewed annually. Each identified area coordinator will sign and date their respective area plan and/or Annex after the annual review to certify that it is accurate, current and comprehensive.
- 04/149** The plan will be exercised periodically. The test may involve all or part of the plan as necessary. Results of exercises will be evaluated and changes to the plan made as deemed appropriate to keep the plan current and effective.

Revisions

- 04/150** Revisions to the basic plan will be distributed by EHSS to all parties that hold controlled copies. Revisions will be dated. A record of revisions shall be maintained by EHSS. The basic plan will be made available via electronic access at <http://www.ehss.vt.edu/>. Area Coordinators are responsible for revisions to area plans, assigned Annexes (if applicable), specific response protocols and standard operating procedures. Updates, as made, are to be forwarded to EHSS.

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Program administration

- 04/151** Virginia Tech's Board of Visitors has overall responsibility for policy decisions affecting pre-disaster activities, emergency operations and recovery operations of all divisions, as well as the coordination of emergency support provided by other Federal, State and local agencies. The President of the University is responsible to the Board of Visitors as their representative, and represents the Board while directing and supervising all activities of

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the university during pre-disaster and recovery phase operations. The President is responsible for assuring that an adequate Emergency Response Plan is maintained.

Departmental planning

- 04/152 Departmental Emergency Action Plans are prepared by the individual campus departments to detail response by on-site personnel to such localized events as fires, bomb threats, hazardous materials incidents, etc., on the premises. A template to assist departments with the development of these plans can be downloaded from <http://www.ehss.vt.edu/>.

Exercises and training

- 04/153 Trained and knowledgeable personnel are essential for the prompt and proper execution of Virginia Tech's Emergency Response Plan and sub-plans. Virginia Tech will ensure that all response personnel have a thorough understanding of their assigned responsibilities in a disaster situation, as well as how their role and responsibilities interface with the other response components of the ERP. All personnel will be provided with the necessary training to execute those responsibilities in an effective and responsible manner. Training will generally be coordinated by EHSS.
- 04/154 Exercises will be conducted as needed to allow all persons involved in emergency response to practice their roles and to better understand emergency operations and their responsibilities under emergency conditions. University-wide exercises will be held at least once per year, and will consist of tabletop, practical and full-scale staged events as deemed appropriate. Such exercises will be coordinated by EHSS. Smaller-scale exercises will also be held as needed to allow defined work groups to practice their functional roles under emergency conditions.

Comment

- 04/155 **EQ** - *On 04.16.07, the Virginia Polytechnic and State University carried an Emergency Response Plan (the "ERP") dated May 2005 (rev. 3). The ERP was designed "to outline a plan of action so that emergencies can be dealt with immediately in a logical and coherent manner. The intent of this plan is not to establish policy, but to create a framework that will allow an immediate response to an emergency without impeding the initial response or requiring policy decisions to first be made."*
- 04/156 *The ERP provides levels of response relative to certain criteria -- a crisis involving a suicide, for instance, will initiate a Level I response while "Security procedures will need to be established to protect occupants, evacuees, and/or property." (See: ERP at: p. 2-3).*

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However, a Level of response reflecting an unresolved shooting incident (multiple homicide -- whether the perpetrator remains at large or not) has not been defined.

08-23-05 | Virginia Tech Policy: Campus and Workplace Violence Prevention Policy ³²

1. Purpose

- 04/157** It is the intent of Virginia Polytechnic Institute and State University to provide a safe and secure environment for university employees, students, and visitors by establishing preventative measures, holding perpetrators accountable, and providing assistance and support to victims. This policy specifically addresses the university's position on the prevention, reduction, and management of violence to provide a safe working and learning environment for our students, employees, and visitors at all university owned, controlled, or leased properties, including satellite locations. In implementing this policy, the university is guided by the Commonwealth of Virginia's Policy 1.80 Workplace Violence and Policy 2.30 Workplace Harassment.
- 04/158** The conduct of students is covered, in depth, by the University Policies for Student Life. The Division of Student Affairs, Office of Judicial Affairs is responsible for the implementation of the UPSL. Nothing in this policy amends the University Policies for Student Life.

2. Policy

- 04/159** This policy applies to the personal conduct of an employee while functioning in the course and scope of employment, whether on or off-campus, and to any off-duty violent conduct that adversely impacts a university employee's ability to perform his or her assigned duties and responsibilities. . . .

2.4 Prevention and Risk Assessment

- 04/160** As part of a larger and institution-wide commitment to a safe campus and workplace environment, the university is committed to the development of preventative measures, including a campus and workplace threat and risk assessment and prevention team, security planning for at-risk employees, pre-employment screening, and general programs to increase employee awareness.

2.5 Identifying and Reporting Risks

- 04/161** All individuals are encouraged to be alert to the possibility of violence on the part of employees, former employees, students, customers, and strangers. Employees and students shall place safety as their highest concern, and shall report all acts of violence and threats of violence. All reports of violence will be handled in a confidential manner, with information released only on a need-to-know basis within the campus community and in accordance with federal and state laws and regulations. . . .

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2.6 Responsibilities

- 04/162** It is the responsibility of every administrator, faculty member, staff member, and student to take any threat or violent act seriously and to report acts of violence or threats to the appropriate authorities as set forth in this policy.
- 04/163** Department heads, directors, and supervisors are also responsible for communicating the policy to all employees under their supervision, ensuring that facilities are as safe as feasible, identifying and providing violence prevention training to employees as appropriate, and ensuring that all employees are aware of how to report potential threats.
- 04/164** The Virginia Tech Police Department will coordinate all university action in case of a violent incident on campus or in the work place, establish and publish procedures for campus and work-place violence prevention and threat assessment, and investigate threats or incidents of violence.

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Comment

- 04/165** **EQ** - *This Policy reflects the University's intent to curb violations from within the workplace. Article 2 emphasizes the need to regulate "the personal conduct of an employee while functioning in the course and scope of employment, whether on or off-campus, and to any off-duty violent conduct that adversely impacts a university employee's ability to perform his or her assigned duties and responsibilities." It is worth adding that according to Section III.A., of the University Policies for Student Life (UPSL) : "The president of Virginia Tech is ultimately responsible for the discipline of all students at the university. Administrative authority and responsibility for judicial policies and procedures is delegated to the vice president for student affairs. Within the Division of Student Affairs, direct supervisory jurisdiction of disciplinary matters involving violations of University Policies for Student Life is assumed by the Office of Judicial Affairs. The director of judicial affairs serves as the chief judicial officer for the university." Finally, Section V.A. of the UPSL -- Access To Campus -- reads : "Any person who engages in unlawful or disruptive conduct or violates university policy may be asked by a university official to leave campus."*

12-31-05 | HJR 122 Final Report: Study on Campus Safety ³³

- 04/166** During the 2004 Session of the Virginia General Assembly, Delegate Phillip A. Hamilton introduced House Joint Resolution 122 (HJR 122), which directed the Crime Commission to study campus safety at Virginia's public and private institutions of higher education. Specifically, the resolution directed the Commission to examine the following areas: (i) current Virginia policies, procedures and programs used to promote safety at institutions of higher education; (ii) nature of criminal offenses at Virginia's public and private institutions of higher education; (iii) use of best practices or models

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for campus safety nationally; and, (iv) need to develop statewide procedures to ensure the dissemination of information pertaining to best practices for campus safety to Virginia's public and private institutions of higher education. . . .

Comment

04/167 **EQ** - *Virginia Tech was a participant to this Study. For obvious reasons of security, no critical sensitive Data belonging to each participating Institution is provided -- authors of this Study provide global percentages without mentioning the ratings of any jurisdiction or participating institution of higher education. In brief, campus Police and security departments cited the increased growth and demands for service on their campuses evidenced in both an increase in student enrollment and additional buildings to secure (Virginia Tech average number of Police officers per 1000 students is 1.2). Low salaries offered to campus police departments hinders the recruitment and retention of quality officers. Campus police and security department administrators were concerned with the perception of police and security officers and their status being minimized by the community. The Virginia General Assembly took notice of a few recommendations proposed in the Study which prompted the enactment of rules governing the establishment of minimum standards for (i) employment, (ii) job-entry and in-service training curricula, and (iii) certification requirements for campus security officers (Code of Virginia - An Act to amend and reenact § 9.1-102 of the Code of Virginia).*

10-00-06 | Virginia Tech Annual Security Report 2006 ³⁴

Campus Security - A Shared Responsibility

04/168 Virginia Polytechnic Institute and State University is Virginia's largest University. It has a student population of over 25,000 on its main campus and serves over 2,300 students at extension campuses located throughout the Commonwealth. Surrounded by the Town of Blacksburg, Virginia Tech is situated on 2,600 beautifully landscaped acres that provide areas for serene meditation such as the Duckpond, areas of physical activity that include the South Recreation Field, plus the Library Mall and Squires Student Union for social or intellectual interaction. Located in the New River Valley and only a short drive from the scenic Blue Ridge Mountains, the Appalachian Trail, and the New River itself, there are numerous activities for the outdoor enthusiast to enjoy. Virginia Tech is convenient to reach from interstate I-81 and only 4 to 5 hours from either Virginia's beaches or the Nation's Capital, Washington D. C.

04/169 The Town of Blacksburg's crime rate is below the nation's average and is below the State's average for a university community. Virginia Tech benefits from this location, however, crime and unsafe behavior can occur here just as they do anywhere else in the country.

NOTES

04/170 Virginia Tech is committed to providing the members of the campus community and visitors with the safest and most secure environment possible, however, even the most extensive initiatives cannot succeed without the awareness and cooperation of the community members who work, study and live on campus. The following information contains safety tips, resource phone numbers and a brief overview of the many services the university provides. Keep this information where it can be easily located; it provides you with a useful reference source of information.

Policies and Regulations

04/171 Virginia Tech has designed policies and regulations in order to create a safer and more harmonious environment for the members of its community. All campus community members and visitors of the university are required to obey these regulations. These policies not only reflect the university's high standards of conduct, but also local, state and federal laws. Observed and enforced, they create a high degree of safety for the university community. . . .

Virginia Tech Police

04/172 The Virginia Tech Police Department is a nationally accredited professional organization staffed by highly trained men and women. The department consists of 40 sworn officers and a full time support staff of 20 employees. Numerous seasonal employees supplement the support staff during the academic year. Virginia Tech Police operate 24 hours a day and provide full police service to the university community. The officers are state certified and empowered to enforce all federal, state, and local laws on university property. They have full authority to make arrests and carry firearms. In addition to patrol, investigation, and crime prevention, the department answers calls for assistance such as vehicle breakdowns or keys locked in vehicles.

04/173 The Virginia Tech Police maintains a close working relationship with the Virginia State Police, Blacksburg Police Department, Montgomery County Sheriff's Office and Christiansburg Police Department as well as other law enforcement agencies throughout the state. As a participant in the National Crime Information Center (NCIC) and the Virginia Crime Information Network (VCIN), Virginia Tech Police are able to transmit and receive crime information with other police agencies throughout the United States. Through its membership in related professional organizations, the department is able to keep abreast of new or developing ideas and has a medium for the exchange of information on law enforcement issues. The Virginia Tech Police Department has a news form "What's Happening" and is published each morning (except Sat. and Sun.) that lists all incidents of crime within the past 24 hours. A copy is E-mailed to all administration with a need to know and to the local media stations.

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04/174 At times it may be necessary for “timely warnings” to be issued to the university community. If a crime(s) occur and notification is necessary to warn the university of a potential dangerous situation then the Virginia Tech Police Department should be notified. The police department will then prepare a release and the information will be disseminated to all students, faculty and staff and to the local community. . . .

Investigative Unit

04/175 Virginia Tech Police Department has an investigation unit that provides follow up services on cases that need more intensive investigation time than a patrol officer can provide or that require the specialized skills these investigators have been trained for. Examples of training the investigators have received are drug interdiction, investigation of arson, forensics, and sexual assault. Investigators also provide educational programming, upon request on their areas of expertise.

Access and security of buildings and residence halls

04/176 The Virginia Tech Police Department works closely with the Physical Plant and The Office of Residential and Dining Programs to maintain security in all university buildings and residence halls. Security and safety hazards may be reported to the University Police at 231-6411 or to the Physical Plant at 231-4300. Employees of the physical plant inspect campus facilities regularly, promptly making repairs affecting safety and security, and respond to reports of potential safety and security hazards, such as broken windows, doors and locks. The Virginia Tech Police also work in cooperation with Office of Student Programs staff members to provide security and controlled access to the university residence halls. The "Campus Watch" program places patrol personnel around the residence hall areas, during the hours of 10pm until 6am. Only residents and their escorted guests are admitted after the buildings are locked. Professional staff is available 24 hours a day, seven days a week to respond to emergency situations. All student rooms are equipped with telephones capable of reaching the police dispatcher via the 911, and all student rooms are equipped with door viewers to provide an extra dimension of security.

Comment - *Adaptation of DOE Handbook on Annual Disclosure Requirements*

04/177 **EQ** - *The official campus security policy in effect on 04.16.07 was VT Policy #5615, v.3, issued May 7, 2002. This Annual Security Report (the “Security Report”) discloses campus security information provided to students as required by the Jeanne Clery Act. According to the DOE Handbook on “Annual Disclosure Requirements” (See: Handbook (2005); section 4, p.73 at: <http://www.ed.gov/admins/lead/safety/handbook.pdf>), there are two major Clery Act requirements with which all institutions must comply on an annual basis—the annual security report and the Web-based data collection.*

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04/178 *The Clery Act mandates that all Title IV institutions, without exception, prepare, publish and distribute an annual security report. An annual security report consists of two basic parts: 1) disclosure of the institution's crime statistics for the past three years; and 2) disclosures regarding the institution's current campus security policies. In addition, all Title IV institutions must complete a Web-based data collection each year. The data for this collection are taken from the statistical portion of the institution's annual security report.*

04/179 *The Annual Security Report must be published and distributed by Oct. 1 each year. This is a firm deadline. There is no grace period. Clery Act requirements must be met individually for each separate campus. An institution may publish a single document covering all campuses as long as information and crime statistics that vary by campus are clearly presented. [34 CFR 668.41(e)]*

Crime Statistics - 34 CFR 668.46(c)(2)

04/180 *An Annual Security Report must include statistics for the three most recent calendar years (i.e., a year 2005 Report must contain statistics entered separately for 2002, 2003 and 2004). This version of the Security Report includes statistics for the years 2003, 2004, 2005 (this version contains no date of issuance). This Security Report is deemed issued in Autumn 2006 (the succeeding Annual Security Report issued September 2007 lacks campus security statistics).*

Policy Statements - 34 CFR 668.46(b)(2)(i)–(b)(11)(vii)

04/181 *A major requirement of the Clery Act compliance is disclosing policy statements in the annual security report. Statements or descriptions of policies must accurately reflect the institution's current procedures and practices. This Security Report lacks a Policy Statement addressing preparation of disclosure of crime statistics (34 CFR 668.46(b)(2)(ii)). Surprisingly, VT Policy No. 5615 v.3 dated May 2002 does reveal the obligation of the Chief of Police to "publish and make generally available an annual report of campus security policies and crime statistics (covering the period August 1 to July 31)*

04/182 *The Annual Security Report must contain a statement of current policies concerning: security of, and access to, campus facilities, including:*

- a. Security of and access to campus facilities, including campus residences; and*
 - b. Security considerations used in the maintenance of campus facilities.*
- [34 CFR 668.46(b)(3)]

04/183 *This Security Report lacks pertinent details concerning secured accessibility (scheduled, conditional, emergency, etc.). Surprisingly, VT Policy No. 5615 v.3 dated May 2002 provides pertinent details which are lacking in this Security Report.*

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- 04/184** *The Annual Security Report must describe procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. [34 CFR 668.46(b)(4)(iii)]*
- 04/185** *This Security Report mentions some details regarding disclosure to counselors but lacks any mention of procedures aimed at encouraging counselors to inform persons on crime reporting.*
- 04/186** *The Annual Security Report must provide a statement of policy concerning the monitoring and recording, through local police agencies, of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities. [34 CFR 668.46(b)(7)]*
- 04/187** *This Security Report makes no mention whether VT uses local police to monitor recognized off-campus student organizations (the fact that there are no recognized off-campus organizations must also be present in the Security Report).*
- 04/188** *The Annual Security Report must provide a statement of policy regarding the possession, use and sale of illegal drugs and enforcement of federal and state drug laws and a description of any drug or alcohol abuse education programs as required under Section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials it uses to comply with section 120(a) through (d) of the HEA. [34 CFR 668.46(b)(9); 34 CFR 668.46(b)(10)]*
- 04/189** *This Security Report provides a global policy statement relative to substance abuse and redirects readers to external url links that provide detailed informative content relative to the above.*
- Sex offender registration information*** - 34 CFR 668.46(b)(12)
- 04/190** *The Annual Security Report must provide a statement advising the campus community where law enforcement agency information provided by a state concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address. [34 CFR 668.46(b)(12)]*
- 04/191** *This Security Report states that “The law requires institutions of higher education to issue a statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained” but does not specify through which local law enforcement agency (i.e., VTPD; Blacksburg Police) and/or a computer network address (URL) this type of information can be accessed.*

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Timely Warning - 34 CFR 668.46(e)

- 04/192 *In order to keep the campus community informed about safety and security issues on an ongoing basis, an institution must alert the campus community of certain crimes in a manner that is timely and will aid in the prevention of similar crimes. These crimes must include all Clery Act crimes that are: a) - Reported to campus security authorities or local police agencies; and b) - Are considered by the institution to represent a serious or continuing threat to students and employees.*
- 04/193 *In addition to making timely warnings, an institution is required to have a timely warning policy. All Title IV institutions are subject to the timely warning regulation. There are no exceptions. Timely warnings can be issued for threats to property, as well as for threats to persons. It is irrelevant whether the victims or perpetrators are members of the campus community. The Clery Act mandates timely warnings only for Clery Act crimes, but nothing in the Clery Act prohibits timely warnings for other crimes that may pose a serious or continuing threat to the campus community (e.g., kidnapping).*
- 04/194 *The warning should be issued as soon as the pertinent information is available because the intent of a timely warning is to alert the campus community of continuing threats especially concerning safety, thereby enabling community members to protect themselves. Although the format for the warning has not been mandated, the notice must be timely and reasonably likely to reach the entire campus community and aid in the prevention of similar crimes. Therefore, timely warnings must be issued in a manner that gets the word out quickly communitywide. They may be e-mailed, posted around campus, or otherwise distributed according to the institution's policy. A combination of dissemination methods may be used. Timely warnings may not be issued in a manner or posted in a location that requires the campus community to make requests for them or to search for them. The responsibility for the warning rests solely with the institution.*

Information to be included in the warning

- 04/195 *Clery Act regulations do not specify what information should be included in a timely warning. However, because the intent of the warning is to enable members of the campus community to protect themselves, the warning should include all information that would promote safety. An institution's policy regarding timely warnings should specify what types of information will be included.*
- 04/196 *This Security Report states that "At times it may be necessary for "timely warnings" to be issued to the university community. If a crime(s) occur and notification is necessary to warn the university of a potential dangerous situation then the Virginia Tech Police Department should be notified. The police department will then prepare a release and*

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the information will be disseminated to all students, faculty and staff and to the local community.” This Security Report lacks specifications regarding the type of information to be found in any form of timely warning.

- 04/197** *VT Policy No. 5615 v.3 dated May 2002 provides that “University Relations and the University Police will make the campus community aware of crimes, which have occurred and necessitate caution on the part of students and employees, in a timely fashion and in such a way as to aid in the prevention of similar occurrences.” That Policy lacks specifications regarding the type of information to be found in any form of timely warning.*

Making the decision to issue a timely warning

- 04/198** *The issuing of a timely warning must be decided on a case-by case basis in light of all the facts surrounding a crime, including factors such as the nature of the crime, the continuing danger to the campus community and the possible risk of compromising law enforcement efforts. DOE recommends that the institution meets beforehand with its security personnel and with local and state law enforcement authorities to discuss what is reasonable in terms of the timely reporting of crimes. An institution’s policy on timely warnings should specify who or which office is responsible for issuing the warnings.*

Crimes Exempt From the Timely Warning Requirement

- 04/199** *An institution is not required to provide a timely warning for crimes reported to a pastoral or professional counselor. There are no other exemptions. [34 CFR 668.46(a); 34 CFR 668.46(e)(2)]*

The Family Educational Rights and Privacy Act (FERPA) and the Timely Warning Requirement

- 04/200** *The Clery Act does not require confidential reporting of crimes. Although personally identifiable information is generally precluded from disclosure, this information may be released in an emergency situation. ED’s May 1996 Dear Colleague Letter on Campus Security Issues reads in part:*
- 04/201** *“FERPA does not preclude an institution’s compliance with the timely warning provision of the campus security regulations. FERPA recognizes that information can, in case of an emergency, be released without consent when needed to protect the health and safety of others. In addition, if institutions utilize information from the records of a campus law enforcement unit to issue a timely warning, FERPA is not implicated as those records are not protected by FERPA.” [34CFR. 99.31(b)(6) and 99.36; 20 USC 1232g(b)(6)]*

It is imperative that an institution’s written policy describing timely warning procedures accurately reflects the timely warning report system currently utilized by that institution.

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01-12-07 | Establishing Preparedness Initiatives in State Government ³⁵

- 04/202** VA EXECUTIVE ORDER 44 (2007) “With the obligation to protect the citizens of the Commonwealth as my primary duty, and by the virtue of authority vested in me by article 5, sections 1 and 7 of the Constitution of Virginia and by 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, I hereby direct all executive branch agencies, including institutions of higher education, to include emergency preparedness planning, training and promotion as a core component of their mission. This order affirms each agency's responsibility, under the guidance of their Emergency Coordination Officer, to actively plan, train and act in the interest of the protection of the citizens of the Commonwealth and its infrastructure. ... This Executive Order works in conjunction with Executive Order 65 (2004), which assigns each designated state department or agency to appoint a lead and one alternate Emergency Coordination Officer for the agency. Included in their responsibilities is the coordination on emergency preparedness, response and recovery issues. Please reference Executive Order 65 (2004) for more information on the Emergency Coordination Officer duties.” - VA Governor Tim Kaine

Comment

- 04/203** EQ - *The aforementioned Executive Order (EO) is the latest in the series of current VA EOs related to the development and coordination of emergency preparedness initiatives within designated state agencies. EO 41 (1999) relates to emergency management relative to acts of terrorism; EO 65 (2004) issues and promulgates the Commonwealth of Virginia Emergency Operations Plan; EO 69 (2004) seeks to enhance the Commonwealth's prevention, preparedness and response and recovery capability for natural disasters and emergencies of all kinds, including terrorist attacks, while EO 102 (2005) pertains to the adoption of the National Incident Management System (NIMS) and the National Preparedness Goal for use by localities and state agencies in all preparedness activities in the Commonwealth of Virginia including but not limited to deterrence, prevention, response, recovery and mitigation efforts. All above-mentioned EOs were in effect during 04.16.07.*

02-28-07 | Virginia Tech Policy: Health and Safety ³⁶**Comment**

- 04/204** EQ - *This policy requires all members of the Virginia Tech community to conduct university operations in compliance with applicable federal, state, and local regulations, and EHSS requirements.*

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VIRGINIA TECH 04.16.07

*- Drawing The Line -***05** SUMMARY

- 05/205** The VT incident was born out of the nefarious will of an individual determined to terrorize and destroy the lives of many. It makes utterly no difference whether that individual was mentally ill; incapacitated or harboring hatred -- the fact that this individual (or for that matter, any individual) could easily access relevant VT buildings and provoke mass casualties of the sort obviously demonstrated the unhindered ability in carrying on terrorist attacks ;
- 05/206** As judiciously ascertained in this Legal Report, VT was made fully aware *or was in the obligation to be fully aware* of possible threats and consequences of domestic terrorism. This Legal Report underlines -- between 1993 through April 16, 2007 -- liability issues VT would face when confronted with defective premises and redundant campus security policies. How VT suffered a Level II incident has already been generously ascertained in the various VA State / VT Reports -- *why* VT egregiously failed to prevent an act of terrorism is a legitimate question this Legal Report attempts to elucidate ;

Key Indicators

- 05/207** Careful scrutiny of relevant indicia contained in this Legal Report provides the reasonable and well-informed person the means to *connect the dots* and *draw the line* as to why the State of Virginia and VT both failed in securing procedural and substantive safeguards recognized by international and domestic Law. *Inverse analysis* of recommendations proposed in both VA State and VT-sanctioned investigative Reports also reveals overwhelming evidence of governing deficiencies in the planning and maintenance of structural security integrity and adequate emergency planning against man-made disasters such as Level II incidents involving acts of terrorism and mass casualties ;
- 05/208** The perpetrator who instigated the attacks on April 16 was 23 year old Seung-Hui Cho, a South Korean-born VT student who had an interest in Engineering studies. *Comparing similarly situated circumstances can be revealing*: another South Korean-born VT student of the name Yong Ki Kwon, an Engineer, was indicted and sentenced by a Virginia Court for conspiracy to commit terrorist attacks against the U.S. That individual collaborated with other Virginia-based Jihadists well known to Federal and VA State authorities. One such Jihad member was Randall Todd "Ismail" Royer (See: <http://news.findlaw.com/hdocs/docs/terrorism/usroyer603ind.pdf> - p.5, 6.) who attended a gathering at Yong Ki Kwon's house on September 16, 2001 (See: http://www.investigativeproject.org/documents/case_docs/521.pdf - p.3).

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Key Indicators (continued)

A package sent to NBC -- comprised of Cho's manifesto -- contained the name "A. Ishmael" as Sender ("Ishmael" and "Ismail" are same, and according to muslim scholars, are symbols of sacrifice) ;

- 05/209** Haunting indicia common to both aforementioned South Koreans simply cannot be ignored: They were VT students of same nationality; both related to Engineering studies; both shared interest with "Ismail/Ishmael" (one teamed with a Va Jihadist called "Ismail" -- the other had the words "Ishmael" inscribed on his arm); both were from Fairfax County; and both were inclined to provoke mass casualty attacks (one is currently jailed for conspiracy to commit acts of terrorism -- the other committed suicide after slaying 32 lives and wounding 25 others on Jewish Holocaust Memorial day, Date for Yom Hashoah: April 16, 2007) ;
- 05/210** It would be absolute foolishness to argue that VA State and VT administration were both unaware *or have not been made aware* of the dangers of any form of domestic terrorism within their relevant jurisdictions :
- 1- Virginia Tech president Charles Steger was a member of the *Virginia Preparedness and Security Panel* where he sought to have adopted DRM expertise regarding implementation of cost effective and reliable technologies for early warning disaster prevention and mitigation (See: <http://www.drmonline.net/news/#march2002>) ;
 - 2- Virginia Jihad Network associates of Lashkar-e-Taiba (LeT - a terrorist organization linked to Al-Qaeda) were under police surveillance since 2002 and subsequently charged and brought to justice for their role in conspiring and abetting acts of terrorism against the U.S ;
 - 3- FEMA, the DOE and DHS sent Advisories to their respective constituents warning them to prepare against any possible terrorist attack.
(See: <http://www.ed.gov/policy/elsec/guid/secletter/041006.html>) ;
 - 4- People on terrorist watch lists were apprehended at Lake Anna near the nuclear power plant; suspicious individuals were spotted photographing bridge structures in Hampton Roads
(See: *JLARC Report and Staff Briefing* at: <http://jlarc.virginia.gov/inbrf/inb322.htm>) ;
 - 5- Governor Kaine endorsed a NIMS-compliant Emergency Response Plan
(See: http://dl.dropbox.com/u/3135191/EO_44.pdf) ;
- 05/211** VT Annual Security Report (2006) provides that "*At times it may be necessary for "timely warnings" to be issued to the university community. If a crime(s) occur and notification is necessary to warn the university of a potential dangerous situation then the Virginia Tech Police Department should be notified. The police department will then prepare a release and the information will be disseminated to all students, faculty and staff and to the local community*" yet on April 16, 2007, an ill-suited multi-level chain

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Key Indicators (continued)

of command was adopted across the VT Board -- in the case of any emergency requiring timely warnings, the Director of Campus Security and Chief of Police first had to report to the Vice President for Administrative Services who in turn had to report to the Executive Vice President who then consulted with a *Policy Group* before relaying back a decision to the source ;

05/212 The latest version of the VT Emergency Response Plan (the “ERP”), dated 2005, hints on an onerous decision-making process and ill-suited structure of command which compounded the impediment of ground-level life-saving efforts of first responders. The first VT shooting incident reflected a Level I decision-making process that excluded a suicide and involved a double-shooting (a male victim dead at the murder scene; a female victim survived for three hours while treated at two hospitals) with the shooter still on the loose. According to the ERP, the proper Level I response suggests that “*The ERP would not typically be activated for Level I emergencies*” therefore the VT Chief of Police should have enjoyed the supervising role of disseminating timely warnings to the university community and ensure that “*Security procedures ... need ... be established to protect occupants, evacuees, and/or property*” as mentioned in the ERP and according to the “*timely warning*” policy of the VT Annual Security Report 2006. Because of VTPD’s inexperience in homicide investigations compounded by the adoption of an inconclusive rationale relative to the current state of affairs of the West Ambler Johnston Hall double-shootings, including the incongruent decision-making interoperability plan implemented between the VTPD and VT coupled with the unsubstantiated fear of chaos supposedly witnessed during the handling of the Morva incident*, a Level I *reaction* with Level II *implications* had been drawn -- the burden to provide the university community for timely warnings fatally resting on the supervising ability of the VT administration. As observed in the Commonwealth of Virginia’s *Report of the Review Panel*:

05/213 “*The police did not have the capability to use the university alerting system to send a warning to the students, staff, and faculty. That is, they were not given the keyword to operate the alerting system themselves, but rather they had to request a message be sent from the Policy Group or at least the associate vice president for University Relations, who did have the keyword. The police did have the authority to request that a message be sent, but did not request that be done. They gave the university administration the information on the incident, and left it to the Policy Group to handle the messaging.*”

05/214 “*The university administration failed to notify students and staff of a dangerous situation in a timely manner. The first message sent by the university to students could have been sent at least an hour earlier and been more specific. The university could have notified the Virginia Tech community that two homicides of students had occurred and that the shooter was unknown and still at large. The administration could have advised students and staff to safeguard themselves by staying in residences or other safe places until further notice.*”

(See: <http://www.governor.virginia.gov/TempContent/techPanelReport.cfm>)

* See: <http://www.google.ca/search?q=%22Morva+incident%22+%22Virginia+Tech%22>

NOTES

Key Indicators (continued)

- 05/215 According to the DHS, “A balance must be struck between the ability to adapt procedures based on the situation and the need to standardize them. However, the urgency and circumstances of an incident often demand decisions and actions. Waiting for complete knowledge of the situation can have serious consequences, as well.” (See: http://www.fema.gov/pdf/nims/eop-sop_state_online.pdf , p. 7) ;
- 05/216 Some members of the VT Policy Group reacted swiftly to the pending danger long before broadcasting of the first VT official public warning message: two Policy Group members notified their families of the shootings; another Policy Group member advised a colleague, through email, of “a gunman on the loose” adding: “this is not releasable yet”, and later reminding recipient “just try to make sure it doesn’t get out” (See: *Addendums to the Report of the Review Panel*, November - December 2009) ;
- 05/217 Prior to broadcasting of the first VT official public warning message and before the Norris Hall attack, Blacksburg public schools locked down until more information was made available about the incident at Virginia Tech. School superintendent notified school board of this by e-mail. The Center for Professional and Continuing Education as of the Virginia Tech veterinary college locked down. VTPD cancelled bank deposit pickups and trash collection. WAJ residence Hall was also locked down by police in order to process the crime scene (See: *Addendums to the Report of the Review Panel*, November - Decembre 2009) ;
- 05/218 Although the emergency notification system allowed for an audible message, a protocol for how to respond when the siren is activated was not in place prior to April 16, 2007. Also, outdoor loudspeakers adjacent Norris Hall initially announced to “find shelters immediately” over 3 hours after the first shooting incident (over 45 minutes after the second shooting incident - Please hear *R. E. Denton* at: <http://dl.dropbox.com/u/3135191/VTPProfRDent.wav>) ;
- 05/219 Email notification of text alerts -- initially made available more than two hours after the double-shooting at West Ambler Johnston Hall -- were void of any informative content prescribed by Law and arrived too little, too late at their target destinations. An overwhelming majority of subscriber-based recipients of email alerts would have never guessed to access any form of timely text-based warning without intercepting prior visual and/or audio announcement of the existance of their publication ;
- 05/220 Events prior to Norris Hall mass shooting offer hints of a planned attack: Bomb threats aimed at Torgersen, Durham and Whittemore Halls -- encountered between April 1 - 13, 2007 -- may have been a staged provocation aimed at testing the security response; the 04.16.07 West Ambler Johnston Hall double-shooting provoked a fatal diversion sufficient enough to deflect police activity away from the site (Norris Hall) of the planned massacre ;

NOTES

Conclusions

- 05/221** VT Blacksburg news conference following the massacre provides revealing testimony from VT officials relative to campus security measures implemented at the time. When questioned why campus closure procedures had not been undertaken after the first shootings, VT Police Chief Flinchum argued “The information we had on the first incident led us to make the decision that it was an isolated event to that building. And the decision was made not to cancel classes at that time.” Later, he added: “We had information from witnesses and the evidence at the scene that led us to believe the shooter was no longer in the building and more than likely off campus.” President Steger reiterated the Policy Group’s decisional rationale observed before the massacre at Norris Hall: “We had no reason to suspect any other incident was going to occur.” (See: <http://edition.cnn.com/TRANSCRIPTS/0704/16/sitroom.01.html>) ;
- 05/222** For a variety of reasons, VA State and Virginia Tech failed to capitalize on both the individual and collective significance of available information that appears relevant to the events of April 16, 2007. As a result, VA State and Virginia Tech missed opportunities to disrupt the April 16 plot through heeding of warnings from legal authorities and specialists in the field of Campus Security; timely implementation of security measures advised by the DRM, FEMA, the DOE and DHS; timely enactment of relevant State legislative measures; timely attempts at unravelling the plot through surveillance and other investigative work within the university community; and, finally, through timely warnings to the university community which would have provoked a heightened state of alert hardening the broad Va Tech and Blacksburg community against a Level II incident. No one may ever know what might have happened had timely connections been drawn between the bomb threats and the Perpetrators’ motives. The important point is that Va State as well as the Virginia Tech Board and police authorities egregiously neglected -- for a variety of reasons -- to bring together and fully appreciate a range of information that could have greatly enhanced their chances of uncovering and preventing the attacker’s plan to commit an act of terrorism.

Securing the Truth and ensuring Restorative Justice can only be attained through an independent and impartial judicial hearing whose task of exposing the crux of the matter would contribute in resolving the question as to why VA State and VT egregiously neglected to implement and administer valid procedural and substantive safeguards aimed at securing the broad Va Tech and Blacksburg community against Level II type incidents involving acts of terrorism and mass casualties. - EQ

NOTES

VIRGINIA TECH 04.16.07

- *Legal Logistics* -**06 SOVEREIGN IMMUNITY****Federal Tort Claims Act** ³⁷

- 06/223** In 1946, by the adoption of the Federal Tort Claims Act, Congress gave its consent for the United States to be sued in the district courts, and waived its governmental immunity, "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b) ;
- 06/224** The statute of limitations applicable to actions under the Federal Tort Claims Act is found at 28 U.S.C. § 2401(b) and states: A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented ;
- 06/225** Under *Ex parte Young*, 209 U.S. 123 (1908) and its progeny, a suit challenging the legality under federal law of a state official's action in enforcing state law is not a suit against the State, and hence is not subject to state sovereign immunity. *Id.* at 159-160. Since the State cannot authorize its officers to violate federal law, such officers are 'stripped of [their] official or representative character and are subjected in [their] person to the consequences of [their] individual conduct.' *Id.* *Ex parte Young* relief is limited to actions seeking prospective relief against state officials in their official capacity; actions for retroactive relief against state officers sued in their official capacity are regarded as actions against the State itself for Eleventh Amendment purposes. *Edelman v. Jordan*, 415 U.S. 651 (1974) (see also: *Alden v. Maine*, 527 U. S. 706, 756 (1999) (observing that only arms of the State can assert the State's immunity)) ;
- 06/226** State sovereign immunity bars actions for damages against the State for past violations of federal law. *Natural Res. Def. Council v. Cal. Dept. of Transp.*, 96 F.3d 420, 422 (9th Cir. 1996) (federal court may not award retroactive relief that requires payment of funds from state treasury) ;

NOTES

Federal Tort Claims Act (continued)

- 06/227** Sovereign immunity itself does not violate due process. "For when a state law creates a cause of action, the State is free to define the defenses to that claim, including the defense of immunity, unless, of course, the state rule is in conflict with federal law." *Ferri v. Ackerman*, 444 U.S. 193, 198, 100 S.Ct. 402, 406, 62 L.Ed.2d 355 (1979); see *Martinez v. California*, 444 U.S. 277, 280-283, 100 S.Ct. 553, 556-558, 62 L.Ed.2d 481 (1980) ;
- 06/228** Regardless of the confusion, controlling law makes it abundantly clear that a County enjoys neither Eleventh Amendment nor state law sovereign immunity. As to the former, it is by now well established that "[t]he bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, but does not extend to counties and similar municipal corporations." *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977) (citation omitted). Accordingly, "the Court has consistently refused to construe the [Eleventh] Amendment to afford protection to political subdivisions such as counties and municipalities, even though such entities exercise a 'slice of state power.'" *Hess*, 513 U.S. at 43 (citation omitted); see also *Hutton v. Strickland*, 919 F.2d 1531, 1542 (11th Cir. 1990) ;
- 06/229** Since the Court has held that municipal corporations and similar governmental entities are 'persons,' see *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 663, 98 S. Ct. 2018, 2021-22, 56 L. Ed. 2d 611 (1978); cf. *Will[v. Michigan Dep't of State Police*, 491 U.S. 58, 69 n.9, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989)]; *Mt. Healthy City Bd. of Education v. Doyle*, 429 U.S. 274, 280-281, 97 S. Ct. 568, 572-573, 50 L. Ed. 2d 471 (1977), a state court entertaining a § 1983 action must adhere to that interpretation. "Municipal defenses -- including an assertion of sovereign immunity -- to a federal right of action are, of course, controlled by federal law." *Owen v. City of Independence*, 445 U.S. [622, 647 n. 30, 100 S. Ct. 1398, 63 L. Ed. 2d 673 (1980)]. "By including municipalities within the class of 'persons' subject to liability for violations of the Federal Constitution and laws, Congress -- the supreme sovereign on matters of federal law -- abolished whatever vestige of the State's sovereign immunity the municipality possessed." *Id.*, at 647-648, 100 S.Ct., at 1413-14 (footnote omitted). *Howlett*, 496 U.S. at 376; accord *Hufford*, 912 F.2d at 1341 n.1 ;
- 06/230** A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality. A custom is a practice that is so settled and permanent that it takes on the force of law. *Sewell v. Town of Lake Hamilton*, 117 F.3d 488, 489 (11th Cir. 1997). "Only those officials who have final policymaking authority may render the municipality liable under § 1983." *Hill v. Clifton*, 74 F.3d 1150, 1152 (11th Cir. 1996) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481, 106 S. Ct. 1292, 1299 (1986) (plurality opinion)) ;

NOTES

Virginia Tort Claims Act ³⁸

- 06/231** The Virginia Tort Claims Act constitutes an express limited waiver of sovereign immunity from Tort claims. The Virginia Tort Claims Act provides that: *the Commonwealth shall be liable for claims for money . . . on account of . . . personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his employment under circumstances where the Commonwealth . . . , if a private person, would be liable to the claimant for such . . . injury or death* ;
- 06/232** In *Bates v. Commonwealth*, 593 S.E.2d 250--VA (2004), the court noted that the limitation upon the waiver of sovereign immunity expressly addressed by statute which provides that "every claim cognizable against the Commonwealth ... shall be forever barred unless the claimant or his agent, attorney, or representative has filed a written statement of the nature of the claim, which includes time and place at which the injury is alleged to have occurred [in] the agency or agencies alleged to be liable." ;
- 06/233** A suit against the Commonwealth might not be barred by sovereign immunity if the state, in its role as a "landlord," is not performing a "government function" and is thereby deemed to have consented to be held to the standard of conduct of private landlords, e.g., *Drake v. State*, 97 Misc.2d 1015, 416 N.Y.S.2d 734 (1979), *aff'd sub nom. Madigan v. State*, 73 A.D.2d 1031, 425 N.Y.S.2d 532 (App.Div. 1980), and *Drake v. State*, 75 A.D.2d 1017, 432 N.Y. S.2d 676 (App.Div. 1980); *Cosgrove v. State*, 278 A.D. 596, 102 N.Y.S.2d 353, 354 (1951); or, even if considered a government function, its decision to provide campus security created a "special relationship" between it and students as well as faculty members from which an enforceable duty may arise. See: *Dudas v. Glenwood Golf Club, Inc.* 261 Va. 133,138 (2001); See also: *Poysa v. State*, 102 Misc.2d 269, 423 N.Y.S.2d 617 (1979); *Heisler v. State*, 78 A.D.2d 767, 433 N.Y.S.2d 646, 648-49 (1980). Cf. *Hongisto v. Mercure*, 72 A.D.2d 850, 421 N.Y.S.2d 690, 693-94 (1979) (Acting Commissioner's decision concerning rehabilitation of inmates immune from local zoning ordinances) ;
- 06/234** Virginia courts construed Virginia law as imposing liability on a state employee for the negligent performance of a ministerial act. Even if Virginia law may not be "certain [. . .]," separate op. p. 3, as to the immunity of state employees for the negligent performance of discretionary acts, it is certain that state employees negligently performing ministerial acts are not entitled to immunity. See, e.g., *Lawhorne v. Harlan*, 214 Va. 405, 200 S.E.2d 569, 571-572 (1973). For the reasons stated by Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat. 264 (1821), Va courts are not bound to follow their dicta in a prior case in which a point at issue was not fully debated. See *id.*, at 399-400 ("It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision") ;

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VIRGINIA TECH 04.16.07

- *Legal Logistics* -**07** LIABILITY*Negligence and Duty of Care*

07/235 In Virginia, in order to recover for negligence, the plaintiff must establish: 1) that the defendant was under a duty to use care not to injure the plaintiff; 2) that the defendant breached this duty; 3) that this breach of duty was a legally recognized cause of and 4) actual injury to the plaintiff. In other words, to constitute actionable negligence, there must be a duty, a violation thereof, and a consequent injury. See, *Chesapeake & Potomac Tel. Co. v. Dowdy*, 235 Va. 55, 365 S.E.2d 751 (1988). Whether a duty of care exists is “a pure question of law”. See, *Burns v. Johnson*, 250 Va. 41, 45 (1995). If the allegations are legally sufficient to establish a duty as a matter of law, then it becomes a matter for the jury to determine -- based on the evidence -- “whether the duty has been performed”. *Yuzefovsky v. St John’s Wood Apartments*, 261 Va. 97, 106, (2001) (quoting *ACME Markets, Inc. v. Remschel*, 181 Va. 171, 178 (1943)) ;

Contributory and Comparative Negligence

07/236 Contributory negligence is a complete defense in Virginia. *Morris v. Dame's Ex'r*, 161 Va. 545, 171 S.E. 662 (1933). Contributory negligence shall not constitute a defense unless pleaded or shown by plaintiff's evidence. Rule 3:16 (d) Rules of Supreme Court of Virginia. Contributory negligence and assumption of the risk are concepts which occasionally overlap but are generally distinguishable; 'contributory negligence' connotes carelessness; 'assumption of the risk' connotes venturousness voluntarily incurring risk, nature and extent of which are fully appreciated. *VEPCO v. Winesett*, 225 Va. 459, 303 S.E.2d 868 (1983) ;

Joint and Several Liability

07/237 The law in Virginia was stated in *Maroulis v. Elliott*, 207 Va. 503 (1966). "Where separate and independent acts of negligence of two parties are the direct cause of a single injury to a third person and it is impossible to determine in what proportion each contributed to the injury, either or both are responsible for the whole injury." *Maroulis*, 207 Va. at 511. The negligence of those two parties need not occur simultaneously, as long as they concur in proximately causing a single indivisible injury for joint and several liability for the entire damage claimed. The question of whether there is such concurring negligence that proximately causes a single indivisible injury is a question for the jury to decide. *Dickenson v. Tabb*, 208 Va. 184, 193 (1967) ;

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Vicarious Liability

- 07/238 Vicarious liability is the situation created when a person or entity is held liable for the injuries caused by another even though that person or entity itself was not actually at fault or committed any wrong. When a person or entity is held vicariously liable that person or entity is being held liable despite the fact that he/it is not guilty of any wrongdoing; he/it is being held liable for what someone else did. A finding of vicarious liability depends upon the existence of some relationship between the actual wrongdoer and the person or entity being deemed vicariously liable ;

Wrongful Death

- 07/239 Virginia allows a personal representative to bring an action for a claim for wrongful death. The general class of beneficiaries for a wrongful death claim are the surviving spouse, the children of the deceased, and any child of the deceased's children, or if there be none such, then the parents, brothers and sisters of the deceased, or if the decedent has left both surviving spouse and parent or parents, but no child or grandchild, the award shall be distributed to the surviving spouse and such parent or parents. Damages include sorrow, mental anguish and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent, compensation for the recently expected loss of income of the decedent, and service protection and care and assistance provided by the decedent (there must be some showing that the decedent provided funds, money or support to the beneficiaries) expenses for the care, treatment, hospitalization of the decedent, incident to the injury resulting in death, reasonable funeral expenses and punitive damages. There is no cap on damages for wrongful death in Virginia ;

Punitive Damages

- 07/240 In Virginia, a jury may, but is not required to, award an additional amount as punitive damages. Punitive damages are recoverable 'only where there is misconduct or actual malice, or such recklessness or negligence as to evince a conscious disregard of the rights of others.' *Giant of Virginia, Inc. v. Pigg*, 207 Va. 679, 685, 152 S.E.2d 271, 277 (1967). In determining the amount of such an award, a jury is instructed to use its sound judgment and discretion to arrive at an amount which it believe will punish the defendant and deter the defendant and others from similar conduct ;

State Statutory Liability

- 07/241 Under Virginia law, violation of a statute or ordinance may constitute 'negligence per se.' In order for the statutory violation to be negligence per se, the violation must be the proximate cause of the plaintiff's injury. Where the statutory violation is the proximate cause of the injury, the violation will support a recovery because the violation 'is the failure to exercise that standard of care prescribed by a legislative body.' See, *Moore v. Virginia Transit Co.*, 188 Va. 493, 50 S.E.2d 268 (1948). Although negligence per se is a common-law doctrine, the General Assembly of Virginia has codified it in Virginia Code Section 8.01-221 ;

NOTES

Legal Review

- 07/242 Nonsuits: *Their effect upon Virginia-based Civil Litigation and Personal Injury cases***
Section 8.01-380 of the Code of Virginia provides the basis for non-suits. The Section allows a plaintiff to dismiss his claim, with the right to bring it back, at any time before a final decision is made. Some restrictions apply: the first non-suit is taken as a matter of right. This entails that the presiding Judge must grant a non-suit request -- no objection to the taking of the first non-suit can stop it. Second non-suits are only given at the discretion of the Judge. After taking the non-suit, the action must be re-filed within 6 months. The re-filing must be done in the same Court (See also Virginia case law on nonsuits: <http://valawyersweekly.com/?s=nonsuit>) ;
- 07/243 International Law and Agreements: *Their effect upon U.S. Law***
This report provides an introduction as to the roles that international law and agreements play in the United States (See: <https://www.policyarchive.org/handle/10207/2174>) ;
- 07/244 Beyond Abrogation of Sovereign Immunity: *State Waivers, Private Contracts, and Federal Incentives***
Few judicial decisions in recent years have captured the attention of lawmakers, practitioners, and academics more than the Supreme Court's decisions dealing with state sovereign immunity. Holding that Congress may not abrogate state sovereign immunity from federal statutory claims when acting pursuant to its Article I regulatory powers, those decisions seriously limit an individual's ability to enforce rights against state defendants, creating a gap between right and remedy that arguably impairs the rule of law (See: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1143462) ;
- 07/245 Legislative, Discretionary, Quasi-judicial, and Ministerial Acts (Va)**
This chapter identifies the characteristics and qualities of legislative, discretionary, quasi-judicial, and ministerial acts and how each is different from one another. The distinctions are important because, among other things, certain acts are presumptively valid or correct, and certain acts are cloaked in various state and federal immunities from the consequences that may follow (See: http://www.albemarle.org/upload/images/forms_center/departments/county_attorney/forms/Land_Use_Law_Handbook_Chapter10_Legislative_Judicial.pdf) ;
- 07/246 Can we secure the hallowed halls of Academe?**
Once upon a time life in the Academy was casual. Our colleges and universities have weathered storms, survived natural disasters, and shown great resiliency in overcoming a myriad of challenges. As Columbine, Virginia Tech and other tragedies highlight, we need to worry about campus security, specifically random acts of mass violence.
(See: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1010710) ;

NOTES

Updates

Amendments

This Legal Report shall cease to be amended as of April 16, 2010. This final version of the Legal Report contains major amendments located within section 4 - *Analytical Review*, page 27 (04/123) through page 35 (04/154) of document. Those changes have caused text reflow via addition of numbered paragraphs causing additional page count. Other relevant amendments are located at page 50 (05/221); page 53 (06/233); page 54 (07/235); page 56 (07/242), including this page.

Latest on VT lawsuits

01.12.10 | Pryde and Peterson families granted lawsuit against Virginia Tech

The families of Julia Pryde and Erin Peterson alleged enough facts about gross negligence by the university, president Charles Steger and former executive vice president James Hyatt to allow a case against them to proceed, Judge William H. Alexander II ruled (for access to case details, see below).

Justice W. H. Alexander II ruling:

http://dl.dropbox.com/u/3135191/VA_SovereignImmunity_01.12.10ruling.PDF

12.04.09 | Virginia Tech faces another major lawsuit requesting \$43M in damages relative to a student's suicide prompted by the effects of 04.16.07

The family of the Virginia Tech student accuses the university of negligence in its response to a warning that their son was suicidal. Daniel Kim committed suicide on Dec. 9, 2007, about a month after the university's counseling center closed its review, according to the lawsuit last week in Fairfax County Circuit Court by Kim's parents, Elizabeth and William Kim of Reston. According to the suit, by neglecting to follow up on concerns about Kim's safety, including the school's failure to comply with its own policies, the university "missed the opportunity" to discover that Kim was "of unsound mind and a threat to his own safety" (See: <http://www.google.ca/search?q=%22Daniel+Kim%22+Virginia+Tech+suicide>).

Kim complaint: <http://dl.dropbox.com/u/3135191/Kimcomplaint.pdf>

04.17.09 | Pryde and Peterson families instigate a lawsuit against Virginia Tech relative to the massacre of 04.16.07

Accessing Case Details: For access to current case details, login through the case management system for circuit courts in Virginia website (See: <http://wasdmz2.courts.state.va.us/CJISWeb/circuit.html>), then select the relevant Division (choose *Civil*) and, via the *Case Number* input box, type in case number CL09005525-00 (for Peterson file) or CL09005526-00 (for Pryde file). Press the adjacent *Case Number Inquiry* button to activate this type of search. Remember to *log off* before permanently exiting page.

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Notes

Appendix

UN Treaty Collection - Chapter XXIII / Law of Treaties (Certified True Copies)

Vienna Convention on the Law of Treaties

Vienna, 23 May 1969

Source: <http://treaties.un.org/Pages/CTCTreaties.aspx?id=23&subid=A&lang=en>

UN Treaty Collection - Chapter IV / Human Rights (Certified True Copies)

International Covenant on Economic, Social and Cultural Rights

New York, 16 December 1966

International Covenant on Civil and Political Rights

New York, 16 December 1966

Source: <http://treaties.un.org/Pages/CTCTreaties.aspx?id=4&subid=A&lang=en>

Virginia Constitution (Current)

Source: <http://legis.state.va.us/Laws/search/Constitution.htm>