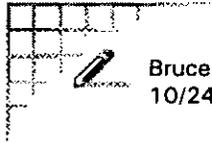


NLWJC - Kagan

DPC - Box 009 - Folder 016

Crime - Campus Crime



Bruce N. Reed
10/24/97 10:36:09 AM

Record Type: Record

To: Jose Cerda III/OPD/EOP, Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP

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Subject: ivory towers

This may be a phony issue, but maybe not. In any event, it's the sort of phony issue we would normally be doing a lot about.

COLLEGE COP-OUT: CLOSING THE BOOKS ON CAMPUS CRIME

By Robyn Gearey

You're a high-school senior, or maybe the parent of one, and you're weighing an application to the University of Pennsylvania. It's Ivy League all right, but it's an urban campus--right there in the heart of Philadelphia--and, well, it doesn't have the greatest reputation for safety. So you ask the school for a copy of its crime statistics. When the university obliges, you find that there were no murders, just a handful of rapes in the past three years, and a mere eighteen armed robberies in 1995. That doesn't sound quite as bad as you thought.

But it turns out the University of Pennsylvania has neglected to inform you of a few small things. Like the fact that, according to campus police logs, the number of armed robberies in 1995 was closer to two hundred. Like the fact that these statistics do not include the shooting of Patrick Leroy, a senior who was shot on one of the main walkways through campus on September 25, 1996. Why has Penn been so circumspect? Maybe because it's trying to keep up with the competition.

Schools neglect to report as many as 75 percent of the crimes committed on their campuses, according to one recent study. A handful of watchdog groups, led by the Pennsylvania-based Security on Campus (SOC), are trying to change this: in 1990, pressure from the group helped convince Congress to pass the Student Right-to-Know and Campus Security Act (CSA). The law requires schools to compile annual crime statistics from both campus police and other school officials, and then distribute the data to students and staff--as well as any prospective students or staff who request it. But based on interviews with activists, federal officials, and college administrators, it seems clear that only a small percentage of colleges are in full compliance with the law.

College officials complain, with some reason, that they face conflicting legal mandates: while CSA requires schools to make information about crime public, there is also the 1974 Family Educational Rights and Privacy Act (ferpa), which prevents schools receiving federal funding from releasing a student's educational record without his permission. Many college officials have interpreted that to extend to records of disciplinary proceedings concerning alleged crimes committed on campus. But two state supreme courts have ruled--quite rightly--that ferpa's privacy provisions don't preclude reporting anonymous statistics. And it's hard to believe the colleges have only the students' interests at heart when they fail to meet even the less controversial demands of the law. A 1996 study conducted by University of Cincinnati professor Bonnie Fisher and her colleague Chunmeng Lu

found that just 37 percent of the 785 schools surveyed complied with the unambiguous requirement that crime statistics be made available to prospective students.

Recently the Department of Education has investigated a handful of schools accused of not complying with the law. According to the Department, Moorhead University, a Minnesota school with over 6,000 students, underestimated its annual crime rate and under reported illegal incidents at fraternities. After some back-and-forth between the school and the government, federal officials reexamined Moorhead's compliance several months later. Again, the university failed to pass muster: "We believe that the institution has not demonstrated a serious commitment to its obligations under the Campus Security Act and has discounted the seriousness of the issues raised by this office."

Soon the Education Department cited other schools: Virginia Tech had neither "accurately compiled" nor "accurately disclosed" crimes at its Blacksburg, Virginia, campus; in particular, the school had not disclosed an alleged rape in September 1994. Miami University of Ohio was cited for violating six separate CSA provisions: it had "fail[ed] to properly gather the required crime statistics from all pertinent sources," and its office of judicial affairs was not reporting crimes "as a general policy."

The University of Pennsylvania is one of two schools that remain under scrutiny (the other is Clemson University in South Carolina) and it's not hard to see why. According to The Philadelphia Inquirer, the school routinely fails to report crimes that occur on the streets and sidewalks connecting campus buildings as well as on property the school leases to businesses. For example, there are the discrepancies, reported by the Inquirer, between university police records on robberies and Penn's 1995 crime report. And then there is the fact that Penn excluded the shooting of Patrick Leroy from its report the following year. The university's explanation for the omission: technically speaking, the shooting was on a public walkway that traverses the campus.

Penn is also awaiting another judgment: the Daily Pennsylvanian newspaper reports that a former student is suing the school on grounds that university officials neither reported nor acted on a rape charge she filed with a university police officer in November 1994. The plaintiff claims that she was dissuaded from filing criminal charges because the university assured her it would handle the matter. According to the article, the university claims the rape never occurred, despite a statement from the officer at the time that a sexual assault complaint had been made.

One can certainly sympathize with college officials struggling to balance the requirement to release crime figures and the need to protect student privacy. Indeed, representatives from the colleges under investigation counter the Education Department's charges by saying that the reporting requirements are ambiguous. For example, CSA does not explicitly say that crimes committed on public roads or walkways need to be reported--even if those paths are heavily traveled by students and within campus boundaries. And many college officials also realize that violating a student's right to privacy invites lawsuits.

But one reason to question the colleges' explanations is that many institutions actively discourage victims from reporting crimes--even to campus police. A 1992 survey of campus police and security personnel conducted by William Whitman, director of the Campus Safety and Security Institute, found that "students who were victims of reportable violent crimes" were encouraged "not to report the crimes to campus police/security. If the attacker was another student, they encouraged the victim to use the campus judicial system"--where, of course, it's easier to keep things quiet. Sheldon Steinbach, vice president and general counsel for the American Council on Education (ACE), denies that schools would do that, but Whitman reported that "several [college] Directors of Security were told they could look for a new job if they ever revealed the institution's true statistics." The Education Department hasn't always helped matters, either. According to a March General Accounting Office report, "the Department has been slow to monitor compliance" with CSA and was over a year late in submitting a required report on campus crime to Congress. More seriously, GAO charged that, although the Department and independent auditors had identified violations at sixty- three colleges

since the law's enactment, the Department failed to impose sanctions against any of the violators.

The Education Department blames these failures on a confusion over reporting requirements and difficulties getting complete data from colleges. However, Department officials have also contributed to the general confusion over what colleges are required to do under CSA. In April of 1994, the Department ruled that privacy laws should not prevent schools from releasing statistics of how many crimes occurred, so long as those statistics did not include names or other identifying details. Then, this July, the Ohio supreme court issued a broad ruling that disciplinary records do not qualify as educational records--and, thus, cannot be kept confidential. You'd think the Education Department would applaud such a ruling. Not so. Apparently alarmed that a state court had made too sweeping a rejection of the privacy provisions in ferpa, an Education Department official sent a letter to several colleges in Ohio, criticizing the court's ruling. Whatever the intent of that letter, the effect was to give colleges added credibility in their claim that ferpa laws trump crime reporting laws.

Congress may soon step in to rectify what the universities and the Department of Education have not. The reason has a lot to do with Ben Clery and his parents, Howard and Connie, who, in 1987, founded Security on Campus after Ben's sister Jeanne was beaten, raped, and murdered in her dorm room at Lehigh University. Through its sponsorship of the CSA, the group has almost single-handedly forced the issue of campus crime into the spotlight. Before CSA was passed, most colleges did not compile crime statistics at all: fewer than 5 percent submitted information to the FBI's voluntary crime reporting program.

Because many colleges still seem to be shirking their reporting responsibilities, Security on Campus is now promoting another measure: the Accuracy in Campus Crime Reporting Act (accra), introduced this February in the House by Tennessee Republican John Duncan. In theory, accra would clear up any lingering confusion over just what CSA covers. accra would say explicitly which campus officials must document criminal incidents for inclusion in the CSA-required annual report. It also would require that colleges submit these statistics to the Education Department, which would make them available to the public. The bill's more controversial provisions would require colleges to maintain open crime logs and to make campus judicial hearings open to the public. And, for the first time, violations of the law would provoke mandatory sanctions: at least 1 percent of the school's federal funding per violation.

Congress held preliminary hearings on the proposal in July, in conjunction with the reauthorization of the Higher Education Act, and more hearings are scheduled for later this month. But while the bill has fifty-nine co-sponsors in the House, it has a formidable opponent in ACE, which represents some 3,600 postsecondary schools. "Some [of the law's proposals] are highly destructive," says ACE's Steinbach. Especially in hard-to-prosecute sexual assault cases, he argues, a campus court may be the only recourse available--and many victims even prefer it. "Students often want the judicial procedure because it's a confidential setting," says Steinbach, who is similarly troubled by the open-court requirement: "Imagine this," Steinbach says ominously, "you're alleging a rape and all the guy's frat brothers show up at the hearing. How willing are people going to be to testify if they're intimidated?"

On the issue of reporting crime, Steinbach is equally skeptical. These officials "aren't trained in how to determine what is a crime." Furthermore, he points out, "Some students may want to talk to someone [about an incident] but not report it. This could discourage students from seeking counseling" and, in cases where a crime is only reported to a school counselor, "threaten the doctor-patient relationship."

ACE has been lobbying hard against the bill, as have such smaller groups as the National Association of Student Personnel Administrators. In a four-page letter to accra's sponsor, several of the measure's opponents wrote, "We are concerned that [accra] may not provide the most effective solution" to campus crime problems. The bill's reporting requirements, the letter said, would have a

"chilling effect on victims" and be "unduly burdensome" for college authorities. Having the Education Department act as a central repository for annual crime reports is "a waste of taxpayer money"; and opening records of criminal activity "will have a devastating impact" on accused students.

Concern over the proposal to open campus disciplinary proceedings to the public may be plausible, but opposition to the reporting of anonymous statistics seems pretty indefensible. Students and parents have a right to know how prevalent crime on campus is. Several courts have said so, as has Congress. Steinbach scoffs that "Security on Campus is obsessed with reporting as if reporting is a panacea for campus crime." But the disclosure laws are not about reducing crime--they're about making educated choices more effective. You'd think that's a goal universities and colleges would support.

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