

The Clery Act and Prior Crimes Evidence: Proving Foreseeability in Campus Crime Cases

By Jim Ferguson and Trisha Monroe

Crime on college and university campuses is frighteningly widespread. Many thousands of students become victims of crime every year. According to the U.S. Department of Education, more than 380,000 serious crimes were reported on or around college campuses in 1999.ⁱ Students and others are increasingly using civil lawsuits as a means of seeking justice in the wake of being victimized at school.

A common defendant in such suits is the college or university itself. Campus crimes can often be attributed, at least in part, to inadequate security or to a school's failure to follow or enforce its own safety rules. Recently, courts have held that, like landlords or business owners, universities can have a duty to implement reasonable measures to protect students from foreseeable criminal acts.ⁱⁱ Victims who sue schools under a negligence theory must, therefore, be able to prove that the underlying crime was foreseeable.

One of the most common and effective means of proving foreseeability is prior crimes evidence.ⁱⁱⁱ Fortunately for plaintiffs in suits against colleges and universities, there is a federal statute which compels schools to compile and publish precisely the types of information which are necessary to make a strong prior crimes showing. The statute, the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act"^{iv} (the Clery Act), is tied to participation in federal financial aid programs, and therefore, applies to most public and private institutions of higher learning in the country. A thorough understanding of the Clery Act is essential for effective investigation and discovery in crime-based negligence cases against colleges or universities.

A Brutal Crime

On April 5, 1986, freshman Jeanne Ann Clery was raped and murdered while asleep in her dorm room at Lehigh University. The perpetrator, Joseph Henry, was a fellow student who lived off campus. Henry was able to easily enter Stoughton Hall, Clery's dormitory. Although Stoughton's doors were equipped with automatic locks, residents had propped open three doors with empty pizza boxes, providing a convenient entry for both residents and non-residents. Henry was eventually convicted and sentenced to death.^v

Lehigh University did its own investigation of this brutal crime. It concluded that there had been no negligence on the school's part, and that Lehigh's current safety policies were sufficient. Howard and Connie Clery, Jeanne's parents, responded by suing Lehigh for negligent security and failure to warn. The suit eventually settled, but in the process the Clerys learned disturbing information.^{vi}

The school administration knew about, but kept from the student body, a significant history of criminal activity. Between 1983 and 1986, thirty-eight violent crimes, including rape, robbery, and assault, had been committed on the Lehigh campus.^{vii} In addition, there had been 181 reports of doors being propped open in Stoughton Hall in the four months before the murder.^{viii} The Clerys also discovered that security on the Lehigh campus was inadequate. The school only employed twelve security guards to monitor and protect 5,400 students. In settling with the Clerys, Lehigh agreed to make substantial improvements to its campus security.^{ix}

The Clerys began a nationwide campaign to change laws and force colleges and universities to disclose information about campus crime. They began their efforts in Pennsylvania, lobbying for the enactment of a campus crime reporting law. After

Pennsylvania adopted the law, the Clerys turned their attention towards the enactment of a national law. They also created Security On Campus, Inc., an organization founded on the simple premise that “crime awareness can prevent campus victimization.”^x

The Clery Act

The Clery’s efforts bore fruit when on November 8, 1990, President Bush signed into law the “Student Right-To-Know and Campus Security Act.” The act was amended several times in the ensuing years and was eventually named after Jeanne Clery. Essentially, the act amends the Higher Education Act of 1965 by requiring that all institutions of higher learning that participate in federal student aid programs publicly disclose three years of campus crime statistics and basic security policies.^{xi}

Schools must issue annual reports which contain crime statistics and other information. The reports have to be made available to all current students and school employees. (The report can be published on a website as long as hard copies are also made available.) Applicants for enrollment or employment must also be informed about the report and given an opportunity to obtain one.^{xii}

In the reports, schools must provide statistics on the crimes of murder, manslaughter, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. The reports also must include numbers for liquor law violations, drug-related violations, and incidents of weapons possession if such acts resulted in an arrest or a referral to the school’s disciplinary process.^{xiii} The data must also be grouped into certain geographic categories including “on campus,” “on campus, in

residence halls,” “non-campus buildings,” and “public property.”^{xiv} The statistic cannot identify the victims or the perpetrators.^{xv}

The annual reports also have to provide information on policy and procedure matters, including:

- _ campus procedures for reporting on-campus crimes and other emergencies, and campus policies about responding to such reports;
- _ school policies on security and access to campus facilities, including dormitories;
- _ current policies on campus law enforcement, including the enforcement authority of security personnel and the timely reporting of all crimes to campus police;
- _ a description of programs that serve to inform students and employees about crime prevention and campus security procedures and policies;
- _ campus policies on alcohol and drug use, as well as any information on substance abuse programs; and
- _ school policies about the monitoring and recording of criminal activity at off-campus student organizations.^{xvi}

Finally, the report must describe a school’s policies regarding campus sexual assault programs, and it must detail the procedures to be followed once a sexual assault occurs. Included in this latter element is the requirement that schools must inform students who become sexual assault victims that they have the right to report the crime to the local police, as opposed to just pursuing the case through on-campus disciplinary

proceedings.^{xvii}

In addition to the annual reports, the Clery Act requires schools to produce two other types of crime reports which could be essential in building the foreseeability portion of a negligent security case. First, schools must provide “timely reports” about crimes which are considered to constitute an ongoing threat to other students and employees. There are not a lot of specific requirements about what form such reports should take, other than that they must be timely and published in a manner that will help prevent similar crimes.^{xviii} Second, colleges or universities which maintain a police or security department of any kind must maintain a daily log recording all crimes occurring within the department’s patrol jurisdiction which have been reported to the department. The logs are supposed to include information such as the nature, date, time, and general location of each crime, and the disposition of the complaint. Except in limited circumstances involving issues like victim confidentiality and safety, log entries are to be made open to public inspection within two days of the receipt of the report.^{xix}

The U.S. Department of Education has the responsibility of implementing and enforcing the Clery Act. Individuals can file administrative complaints with the department if they believe that schools are violating the act. If a school fails to comply with the act’s requirements, the department can either issue a civil penalty up to \$25,000 per violation or suspend the school’s federal aid programs.^{xx}

Unfortunately (at least from a victim’s perspective), the Clery Act expressly states that it cannot be used to create a civil cause of action against a college or university, nor can it be used to establish a standard of care.^{xxi} Despite these prohibitions, there are still well-established common law causes of action through which

a school can be held liable for things like inadequate security and failure to warn. It is in such negligence-based suits that the information produced under the Clery Act can be a tremendous resource in helping to build a victim's case.

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Security On Campus, Inc., co-founded in 1987 by Connie & Howard Clery, is a grassroots organization dedicated to safe campuses for college and university students. The organization is a moving force in changing laws and in empowering the public to respond to campus crime. Security on Campus's website, www.campussafety.org, is a useful resource for anybody concerned about the safety of our colleges and universities.

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- i. *Campus Crime Policy & Reporting News*, CAMPUS WATCH, Fall/Winter 2000.
 - ii. See, e.g., *Nero v. Kansas State Univ.*, 861 P.2d 768 (Kan. 1993); *Williams v. State*, 786 So.2d 927 (La.App. 2nd Cir. 2001).
 - iii. See Jeffrey P. Fritz & Daniel P. Hartstein, *Prior Criminal Acts Evidence in Negligent Security Cases*, VICTIM ADVOCATE, Spring 2000.
 - iv. 20 U.S.C. § 1092(f).
 - v. Howard & Connie Clery, *What Jeanne Didn't Know*, www.campussafety.org/aboutsoc/didntknow.html.
 - vi. *Id.*

vii. *Clery Act History*, www.campussafety.org/congress/cleryhistory.html.

viii. www.campussafety.org/aboutsoc/didntknow.html.

ix. *Id.*

x. *Id.*

xi. 20 U.S.C. § 1092(f)(1).

xii. *Id.*

xiii. 20 U.S.C. § 1092(f)(1)(F).

xiv. 20 U.S.C. § 1092(f)(12).

xv. 20 U.S.C. § 1092(f)(7).

xvi. 20 U.S.C. § 1092(f)(1).

xvii. 20 U.S.C. § 1092(f)(8).

xviii. 20 U.S.C. § 1092(f)(3).

xix. 20 U.S.C. § 1092(f)(4).

xx. 20 U.S.C. § 1092(f)(13).

xxi. 20 U.S.C. § 1092(f)(14).