



STUDENT SUCCESS

UNIVERSITY AT ALBANY

State University of New York

Clery Act Compliance

Presented by:

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- Sexual Misconduct
- Investigations
- Judicial Training
- Psychological Distress
- Disruptive Students
- Culture Change Initiatives
- Campus Safety
- Hazing
- Sexual Harassment
- Problem Drinking
- Drug Abuse
- Student Organization Risk Management
- Student Suicide

NCHERM has provided services to over 500 school, college and university clients, including programs for campus and school district administrators, faculty and staff training, sexual assault and Title IX case management, risk management for fraternities and sororities, workshops and seminars. In addition to his consulting activities, Mr. Sokolow has also provided awareness and education programs for students at over 1,400 colleges, high schools and military institutions. Through NCHERM, Mr. Sokolow has published numerous books and articles on student affairs and risk management topics. He provides expert witness services, and lobbying efforts for campus crime and sexual assault-related legislation.

Mr. Sokolow holds memberships to the National Association of Student Personnel Administrators (NASPA), the Association for Student Judicial Affairs (ASJA), the University Risk Management and Insurance Association (URMIA), the International Association of Campus Law Enforcement Agencies (IACLEA), the American College Personnel Association (ACPA, where he is Vice President for Education of Directorate Body of the Commission for Campus Judicial Affairs and Legal Issues), the Association of College and University Housing Officers- International (ACUHO-I) and the Council on Law in Higher Education (CLHE), where he serves as a member of the Board of Trustees. He serves on the Advisory Board of the Higher Education Program at Old Dominion University. He is Editor Emeritus of the *Report on Campus Safety and Student Development* published by the Civic Research Institute. He served on the Editorial Advisory Board of the *College and University Legal Advisor*, also published by the Civic Research Institute. He served as Legal Issues Editor of the CLHE Student Affairs Law & Policy Weekly and was the Founder and Editor-in-Chief of *The NCHERM Chronicle of Campus Conduct*, which is now out-of-print.

The Clery Act At-A-Glance

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In 1990, Congress enacted the Student Right-to-Know and Campus Security Act or more simply, the Clery Act¹ as part of its annual Higher Education Reauthorization Act. The Clery Act offers colleges broad strokes on both campus security requirements and approaches that colleges should be taking with regard to campus sexual assault. The Clery Act promulgates five main requirements:

- 1) Publishing annually 26 campus crime and security policy disclosures;
- 2) Annual statistical publication of 15 crime/incident categories over 3 years in four locations;
- 3) Timely warning provisions;
- 4) Provision of substantive policy, procedural and victim's rights provisions; and
- 5) Maintenance and access to open campus police logs.

Should you become aware of any report or incident, you must notify your supervisor. They or you are also responsible for making sure that notification is given to Campus Security, the Dean of Students or, in the case of employee misconduct, the Director of Human Resources [**add others to this list as necessary**]. The Clery Act requires colleges to maintain and report statistical information for crimes that occur in the following locations:

On campus:

"any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor)."

Non-campus buildings and property:

"any building or property owned or controlled by a student organization recognized by the institution; and

any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution."

On public property:

"...all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes."

¹20 U.S.C. 1092f

The Clery Act requires colleges to collect statistical information for the following 15 offenses and any crime involving bodily injury that manifests intentional selection of the victim on the basis of race, gender, religion, sexual orientation, ethnicity or disability.

- Murder & Non-Negligent Manslaughter--The willful killing of one human being by another.
- Negligent Manslaughter--The killing of another person through gross negligence.
- Robbery--The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.
- Aggravated Assault--An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)
- Burglary--The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.
- Motor Vehicle Theft--The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned, including joyriding.)
- Arson--Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.
- Arrests for Weapon Law Violations--The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned.
- Arrests for Drug Abuse Violations--Violations of State and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (Demerol, methadones); and dangerous nonnarcotic drugs (barbiturates, Benzedrine).
- Arrests for Liquor Law Violations--The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all attempts to commit any of the aforementioned. (Drunkness & driving under the influence are not included in this definition.)
- Disciplinary Referrals for Weapon Law Violations
- Disciplinary Referrals for Drug Abuse Violations
- Disciplinary Referrals for Liquor Law Violations
- Sex Offenses Forcible--Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.
- Sex Offenses-Nonforcible--Unlawful, nonforcible sexual intercourse.
 - Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.²

² 34 C.F.R. Part 668, Appendix E to Part 668.47.

Better Late Than Never: The Handbook for Campus Crime Reporting

By: Brett A. Sokolow, JD

In July, we received a gift from the Department of Education. Beware of bureaucrats bearing gifts, or something similar goes the saying. Actually, the Handbook for Campus Crime Reporting is helpful, overall. We've only had to wait fifteen years for it (the Clery Act was enacted in 1990), and by this point, many campuses are figuring out the intricacies of compliance on their own. For those that have not, or who want to make sure that each t is crossed and each i dotted, there is a new resource available, and it is free (well, it cost us taxpayers a rumored \$750,000).

When I wrote my Clery Act Compliance Manual in 1998, it ran to a dizzying 57 pages, and I don't recall it costing me \$750k to compile. Astoundingly, the DOE Handbook is 136 pages in length (200 with the Appendices), so the cost must be on a per-page basis. Remember, the actual law is only seven pages long, but its complexity means we need a 200 page tome to explicate it. This article is not meant as a book review of the Handbook. Instead, it is more like a Cliff's Notes version of the Handbook for those of us too busy to curl up with the entire thing one night. In summarizing, I decided to use bullet points, rather than a narrative, and the content was chosen based on the fact that its publication in the Handbook was either a first or the information had been relatively obscure prior to publication. So, the following list assumes familiarity with the Clery Act and its compliance on the part of the reader. The list assumes you have kept up with the available publications and letters from the DOE. What follows is what the Handbook has added to our current understanding of Clery compliance (some of the points are taken directly from the Handbook text):

- The Clery Act imposes reporting requirements on property that is "owned or controlled" by your institution. When I wrote my Compliance Manual, I drafted a multipart definition to help determine control, in the absence of guidance from the Department. Subsequently, my inquiries resulted in a more restrictive definition from DOE than the one I conjured, and it has been committed to writing in this Handbook. "A building or property that an institution owns, rents or leases is considered to be 'controlled by' the institution." Handbook, p.12.
- The "on campus" definition only includes fraternity and sorority houses that are owned or controlled by the institution. This does not include fraternity or sorority houses on your campus that are owned or controlled by the fraternity or sorority. These would be classified under the "non-campus buildings and property" category. UNLESS, the campus owns the land upon which the fraternity-owned and controlled (or sorority-owned and controlled) house sits, in which case land ownership trumps control, and the crimes that occur there DO belong in the "on-campus" category. A rare exception, to be sure. And this from a resource that proclaims that it does not expand the law or regulations. Try to find this nuance in the regulations, folks. Handbook, pp.12, 14.
- As a subset of the "on campus" category, crimes reported in the "dormitories or other residential facilities for students on campus" category must be less than or equal to the number of reported crimes for the "on campus" category. While the regs make this reality clear, it has never been stated as a rule or formula before. Handbook, p. 13.
- Do not include faculty-only residence facilities in the "dormitories or other residential facilities for students on campus" category. It falls under the "on campus" classification. Handbook, p. 13.
- Examples of non-campus buildings and property. Handbook, p. 15.
 - "A publicly owned athletic stadium that is leased by the institution for football games. Report crimes that occur during the time the facility is used by your students. If your institution leases parking space

associated with this facility, you must also disclose reports of crimes occurring there during the time of use by your institution.”

- “Institutionally owned research vessels (ships) carrying students participating in institutional programs”
- If you lease a floor of a building as class space on Tuesdays and Thursdays between the hours of 6:00 a.m. and 10:00 p.m., you must disclose crimes that occur in that space during those times, only. You must disclose crimes that happen at those times, even if you are not occupying the space at the time. Any spaces associated with the leased space, such as parking, access hallways and stairwells, is also included.
- Preferred landlord lists for off-campus housing do not create an obligation to report crimes that occur involving students who rent from those recommended landlords. Handbook, p. 17.
- Public property—include the sidewalk across the street from your campus, but do not include the public property beyond the sidewalk. You do not have to include public property that surrounds non-campus buildings or property. If a large public park is immediately adjacent to and accessible from your campus, reporting park crimes within a one mile distance of your campus is as far as you will likely need to go. This rule applies only to parks and similar areas, not all public property. Handbook p. 17.
- A branch campus is a specific DOE designation. What you consider to be a branch is not a branch for Clery purposes unless it designated as such by DOE. See p. 19 for the definition.
- If your institution shares ownership or control of a campus with another Title IV institution, each must comply separately with the Clery Act. Do not divide the property for reporting purposes. (Great, we are now institutionalizing inaccuracy). Handbook, p. 19.
- More on branch campuses: “If your institution has multiple campuses each located in different geographically separate buildings that are rented or leased by your institution, compliance requirements must be met separately for each location. Remember to disclose reports of crimes occurring on public property for each location.” Handbook, p. 20.
- And even more on branch campuses: “If your institution’s campus consists solely of rented classroom space on the campus of another institution, you must disclose crimes that occur in that classroom space while it is occupied by your students.” This rule works differently than if the same space fell under the non-campus buildings and property category. Handbook, p. 20.
- Distance education locations are not required to comply with Clery. Handbook, p. 20.
- Campus security authorities must believe that a crime report was made “in good faith” in order to include it for Clery purposes as a statistic. “In good faith means there is a reasonable basis for believing that the information is not simply rumor or hearsay. That is, there is little or no reason to doubt the validity of the information.” Handbook, p. 23. In practice, I have not found that DOE program reviewers pay this requirement much heed. If you hear about it you report it seems to be a more accurate representation of their expectations, in my experience.
- If a student slipped a rape drug into another student’s drink, but there was no consumption of the drink, and no subsequent sexual contact, the Handbook says to score that as an Aggravated Assault rather than as an attempted forcible sex offense, because there is no evidence of the perpetrator’s intent. Handbook, p. 28. That’s an interesting hair to split, though it is apparently the FBI, and not DOE, who has made that interpretation.
- In an aggravated assault where a number of people are involved in a dispute or disturbance (riot), and the aggressors cannot be distinguished from the victims, count the number of persons assaulted as the number of offenses you report for Clery purposes. Handbook, p. 33.
- If one burglar breaks into four residence hall rooms all in a row successively, count four burglaries. If the same burglar breaks into four offices all in a row successively in an academic building, count one

burglary. Handbook, pp. 34, 35. I'm just the messenger, remember. I'm sure this makes sense to someone.

- "It is the perception of the perpetrator, not the perception of the victim, that determines whether a crime is classified as a Hate Crime." Handbook, p. 43.
- "If local police do not comply with your request to provide you with statistics, document this. Be sure to retain any written correspondence to and from the police agencies." Handbook, p. 54.
- There is an additional geographic location that applies exclusively to the crime log: reports of crimes that occurred within the patrol jurisdiction of the campus police or security department. Handbook, p. 67.
- "Note that your institution is not required to update the disposition of a crime log entry after 60 days have passed. This means 60 days after the entry was made in the log—not 60 days after the crime occurred." Handbook, p. 70.
- Your institution may withhold information from a crime log on the basis of four reasons that are clear within the statute. The Handbook adds that the individual making the judgment to withhold information should document at the time the reason for doing so. P. 70.
- "Only sworn or commissioned law enforcement authorities that investigate the crime can make a determination that it is unfounded. A crime cannot be determined to be unfounded by a campus security authority other than a law enforcement authority." Handbook, p. 70. This has profound implications for colleges without campus police forces.
- If an individual is arrested for one type of weapon, drug or liquor law violation, and referred for disciplinary action for a different type of weapon, drug or liquor law violation during a single incident, count only the arrest. Handbook, p. 76.
- If a person is arrested for multiple violations during a single incident (liquor and drugs, for example), law enforcement discretion should determine which violation should be counted. The Handbook recommends documenting the justification for this determination. Handbook, p. 76.
- Arson is exempt from the Hierarchy Rule. We know that when another crime is committed in addition to an arson, we report both. "When multiple offenses are committed during the same distinct operation as the Arson offense, the most serious is reported along with the Arson." Handbook, p. 79.
- The Handbook recommends that "...schools add a caveat to the entire statistical disclosure section stating that reported crimes may involve individuals not associated with the institution." Handbook, p. 80.
- "Now that you know more about defining, classifying and counting crimes, you may be concerned that, due to more accurate reporting, your current crime statistics will show a significant increase or decrease from the prior year's numbers...If this is the case, you may provide an explanation to readers that the increase or decrease may be due to your institution's better understanding of the regulations regarding how crimes should be classified and counted, and is not due to an actual increase or decrease in reported crimes." Handbook, p. 81. I'd run that by legal counsel, first.
- "Zero (0) is a statistic. Do not leave any cells blank even if you have no crimes to disclose for a particular category." Handbook, p. 83.
- Arrests and referrals are exempt from Hate Crime reporting. Handbook, p. 84.
- If your compliance is being audited, I strongly recommend downloading the Program Review Guide, which is the handbook for your reviewers. It is public information, and is posted at www.ifap.ed.gov

All information offered in this publication is the opinion of the author, and is not given as legal advice. Reliance on this information is at the sole risk of the reader.

THE NATIONAL CENTER FOR HIGHER EDUCATION RISK MANAGEMENT

2002 WHITEPAPER

COMPLYING WITH THE CLERY ACT: THE ADVANCED COURSE

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This Whitepaper is offered for the purpose of assistance in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. This Whitepaper is not offered as legal advice, and should not be taken as such. Before acting on any of the ideas and suggestions contained herein, readers are cautioned to consult with licensed counsel in their own jurisdictions.

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Complying With The Clery Act: The Advanced Course

By: John Wesley Lowery, Ph.D., Brett A. Sokolow, JD and Douglas F. Tuttle, MPA

This Whitepaper has been co-written by three people who have extensive involvement with and knowledge of Clery Act compliance issues. The authors have identified some of the tougher questions they have been asked, and have written short explanations to twelve complicated Clery Act issues. To indicate which segment has been written by which author, that author's initials follow the segment.

How should “unfounded” complaints be addressed?

The documentation requirements for unfounded complaints stand as examples of areas where the interplay of the Clery Act's requirements and the procedures that police agencies follow when completing Uniform Crime Reports (UCR) can cause confusion. Let's first consider the disclosure requirements related to the institution's Crime Log.

Each institution that has a campus police or 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, in or on noncampus buildings or property, on public property, or within the patrol jurisdiction of the campus police or security department and is reported to that campus department. The crime log must include--

- (i) The nature, date, time, and general location of each crime; and
- (ii) The disposition of the complaint, if known.

“Complaint”, in this instance, is police-speak for “case.” So every crime that is reported to a campus police or security agency as having occurred within one of the listed geographic areas must be recorded in the crime log. If a complaint is determined to be “unfounded” (false or baseless – meaning that the offense neither occurred nor was attempted), then “unfounded” is the disposition that should be recorded for the case in the crime log. UCR protocol stipulates that a decision to “unfound” a complaint can only be made by the investigating police agency. The assignment of this disposition would be appropriate in an instance where the investigation has established that the initial report of the offense was fabricated.

An example is a case from several years ago where a woman reported that a knife-wielding assailant had sprung from the bushes and made an unwitnessed attempt to sexually assault her as she walked past a fraternity house on her way to a morning French exam. Through investigation it was eventually determined that her “slashed” shorts had been cut with scissors, and that her report had been motivated by a lack of preparedness for the exam. Circumstances such as these are relatively infrequent and should not be confused with situations where a report might be described as “unproven”, perhaps because of investigators' inability to solve a case due to a lack of sufficient evidence, to apprehend a suspect, or to obtain a conviction in court - none of which would render a complaint “unfounded”. Nor would a victim's unwillingness to cooperate, the fact that the value of the property loss involved may be small, or the subsequent recovery of stolen property result in an “unfounded” case.

Given this standard, a disposition of “unfounded” could not appropriately be assigned to any case that was not referred to law enforcement personnel – on campus or off – for investigation. It should be noted that a

determination that the disposition of a case is “unfounded” will rarely be reached within two days of the initial report of a crime, so virtually all such cases will initially be logged by the campus agency with a disposition of “pending”, and that disposition will subsequently need to be updated (within two days of the determination of the change in case status). More about the 2-day crime log time frame later.....

Although every crime that is reported to a campus police or security agency must be “logged”, the requirements that govern the inclusion of crime statistics in the annual report are in some ways more restrictive – and in some ways less so.

Unfounded complaints - those cases in which appropriate law enforcement officials conclude that the crime did not occur with the same degree of certainty they would require for purposes of reporting under the FBI's Uniform Crime Reporting System - need not be disclosed in the annual campus security report. However, this standard [articulated in the Final Rule of April 24, 1994, and still relevant to the annual report aspect of the Clery Law] requires the inclusion of any reports of occurrences of the statute's itemized list of crimes that were made known to campus security authorities other than campus law enforcement – and that were not subsequently reported to and investigated by law enforcement personnel. So, no law enforcement investigation = no possibility of a disposition of “unfounded”, and therefore no justification for deleting a reported offense from the annual statistical tally. Put another way, there is no explicit requirement in the Clery Law for investigation and substantiation of all statistical reports. They are reports, and just that, not verified crimes. This is what allows campus judicial cases and anonymous reports from counselors to be eligible for statistical counting despite the fact that campus law enforcement has not investigated. DFT

Forcible v. non-forcible sex offenses.

I visited a college recently that reported 19 non-forcible sex offenses last year. While it is possible that this institution experienced a rash of incest or statutory rape cases, it is much more likely that these incidents were misclassified. And this isn't just happening at this one institution. Many people assume non-forcible sex offenses to have the intuitive meaning of sex offenses in which physical force is not used, such as in many date and acquaintance rapes. In reality, non-forcible sex offenses don't involve force, but they don't include consent-based offenses, such as date or acquaintance rape. The FBI's Uniform Crime Reporting (UCR) System is the source of the definitions that we use for Clery Act reporting. According to the Appendix E to Part 668 of the Student Assistance General Provisions, forcible and non-forcible sex offenses are defined according to the National Incident-Based Reporting System (NIBRS) of the UCR Program. Nonforcible sexual intercourse, which are defined to include, only:

- A. Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- B. Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Most sex offenses that colleges and universities will report are forcible sex offenses, which is a broad category under the NIBRS system. Forcible sex offenses include, “Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.” This definition is interpreted broadly to include the offenses we address on campuses as date and acquaintance rapes or assaults, because in nearly all such offenses, the act was against the will of the victim and/or where the victim was incapable of giving consent, often as a result of the use of alcohol or other drugs. In fact, the NIBRS definition is interpreted to cover offenses in which a victim

was incapable of giving legal consent, which is not the same as factual consent. As we know, some people may give factual consent as a result of the use of alcohol, drugs or rape drugs, but not be legally capable of so doing.

Much has been made of the fact that college policies do not often coincide in terms of terminology with the NIBRS standards. Often college policies make reference to issues of consent and incapacity. But, for Clery Act purposes, a campus offense must be evaluated based on the NIBRS definition, not the campus definition. The requirement that the sexual activity be against the will of the victim is not a requirement for proof of resistance, but for a showing that the sexual activity took place without the victim's consent. A campus hearing or criminal trial is not required for a reported incident to qualify as a Clery Act statistic, as long as the reported act meets the definition of the offense. Clery does not require substantiation that a crime took place, only that a crime was reported and not unfounded (see discussion of unfounding, above).

As a practical note, it is also helpful to know that though the Clery Act is unclear on this point, forcible and non-forcible sex offenses are not intended to be reported together in the same tally, and must be separate sub-categories of the sex offense category, with their respective statistics distinct from each other. BAS

What if an “acquaintance rape” involves a minor – how is this classified and does the hierarchy rule apply?

The purpose of the UCR Hierarchy Rule is to isolate a single aspect of a criminal incident as its “defining characteristic” – specifically, the “most serious” offense committed during an incident is the statistic that gets counted. A classic example would be a robbery of the campus bookstore during which a clerk is struck with the butt of the robber's weapon, and then the getaway is accomplished in a car that's stolen from the curbside in front of the store. This criminal incident involved three “Part I” UCR offenses: robbery, aggravated assault, and motor vehicle theft. Although many criminal charges may be leveled once the perpetrator is apprehended, under the hierarchy rule the incident would be classified as a robbery.

The hierarchy rule actually has no bearing on the classification of a case involving the “acquaintance rape” of a minor. Whether the alleged perpetrator of the offense was an “acquaintance” of the victim or not, if the sexual act was directed against the victim forcibly and/or against that person's will, or if the victim was incapable of giving consent, the crime would be generally be classified as a forcible sex offense. If, however, the crime involved sexual intercourse with a victim who was under the statutory age of consent in a given jurisdiction, then the offense would be classified as non-forcible sex offense if there was no use or threat of force. If force was used or threatened, the offense would be classified as a forcible sex offense, regardless of the age of the victim. DFT

Who is a campus security authority?

A recent campus visit revealed a college with over 7500 community members, and no more than 100 total reported Clery Act statistics. This might be believable if it was a seminary, but it was a medium-sized rural public institution. I suspect that campus police were recording for statistical purposes only those incidents reported directly to them. Partly, the definition of campus security authority is counter-intuitive, because it covers much more broadly than just those who are campus law enforcement or public safety personnel. A campus security authority is:

- 1) Anyone the college designates as someone to whom crimes should be reported;
- 2) Campus and local law enforcement or public safety;
- 3) Any official of the institution who has significant responsibility for student and campus activities, except for pastoral and professional counselors as defined by regulation;
- 4) Nonpolice individuals responsible for campus security.

Clergy are exempt, when they meet the regulatory definition of a pastoral counselor. Licensed professional and pastoral counselors functioning within the scope of their counseling/clergy roles are exempt. And, people with medically-conferred confidentiality, such as health center nurses and doctors, are likely to be exempt. Other than these few exceptions, colleges must ensure that the annual security report includes available statistics collected from: student affairs, judicial affairs, student activities, residence life (including RA's), Greek advisors, campus law enforcement, local law enforcement, affirmative action, campus health educators, non-counseling rape crisis staff, team coaches, athletic directors, and any other official whom your institution may have self-defined as having significant responsibility for student and campus activities. Faculty members will also be considered campus security authorities when their level of student involvement reaches beyond the basic requirements of their professional roles, such as when faculty serve as advisors to student groups, clubs, organizations, or run internship programs, study-abroad activities, or other programs which add to the level of responsibility faculty members have for student and campus activities. BAS

What is the difference between non-campus buildings/property and a branch campus?

A client conducts classes in an office building 120 miles from its main campus. The classes are given by the college's professors at this remote location five nights a week. The college considers the site an extension campus, and leases or owns the space. If a crime occurs there, should it be listed by the college in its Annual Security Report as an incident at a branch campus, and therefore on an independent statistical grid from its main campus statistics, or should it be listed on the main campus statistical grid as having taking place in the category of Non-Campus Buildings and Property? What is the difference between a branch campus and Non-Campus Buildings and Property, and how do we know what to classify where? Quite simply, crimes are placed on separate branch campus grids only when those crimes take place at a site that has applied for and been granted branch campus status by the Department of Education. A branch campus is defined in Section 600.2 of the Title IV (Higher Education Act) Institutional Eligibility Regulations.

Thus, our crime at the remote office building site would only be classified as having taken place at a branch campus if that site was recognized by the Department of Education as a qualified branch campus. Simply because the college considers it to be a branch or extension campus does not make it so. The next question is whether the crime qualifies for inclusion in the main campus' Annual Security Report as an incident occurring in/on Non-Campus Buildings or Property. Included in the definition of Non-Campus Buildings or Property are five elements pertaining to institutionally owned or controlled property (as opposed to student organization owned or controlled property):

1. any building or property (other than a branch campus);
2. that is owned or controlled by an institution of higher education;
3. that is used in direct support of, or in relation to, the institution's educational purposes;
4. is frequently used by students;
5. and is not within the same reasonably contiguous geographic area of the institution.

This definition functions as a set in which each of the five elements must be satisfied in order for the categorization to be made. Under this definition, our off-campus office building would meet the test as a Non-Campus Building, because it satisfies all five elements. It is a building other than a branch campus that is controlled (see discussion of control, below) by the institution. It is used in direct support of, and in fact as a part of the institution's educational mission, and is frequently used by the institution's students. And, it is 120 miles from campus, so that it is not reasonably contiguous to the main campus. BAS

The Making of the Clery Act Annual Report

For some reason, it slipped under the radar screens of many colleges that in addition to new statistical reporting requirements, the 1998 amendments to the Clery Act added several new policy disclosure mandates. One of those requirements is to include a description in the Annual Report of the institution's procedures for preparing the annual disclosure of crime statistics. The disclosure need not be overly detailed. It need only provide a general description of the process for preparing the report, including the offices surveyed. There is no requirement to disclose every detailed step in the report's preparation. I suggest that the statement include the basics on:

- What office is responsible for compiling the annual statistical information and policy disclosures;
- Who reports crime incident information to that office;
- How double counting of incidents is minimized;
- How crimes are classified;
- How crimes are substantiated;
- How anonymous reports are addressed;
- Whether a reporting form is used.

BAS

What conditions must be met for web disclosure?

One of the most beneficial changes included in the new regulations for the Campus Security Act makes it much easier for institutions to utilize the Internet for disseminating the Annual Security Report. This change was facilitated by a regulatory distinction between notice and disclosure. Institutions are still required to provide direct written notice to all enrolled and prospective students and current and prospective employees. This notice must contain the following information:

- A statement of the report's availability;
- A brief description of the report's contents;
- The exact electronic address at which the information is posted; and
- A statement that the institution will provide a paper copy of the information on request.

The Department of Education has provided the following sample notice statement:

A copy of [name of institution]'s annual security report. This report includes statistics for the previous three years concerning reported crimes that occurred on campus; in certain off-campus buildings or property owned or controlled by [name of institution]; and on public property within, or immediately adjacent to and accessible from, the

campus. The report also includes institutional policies concerning campus security, such as policies concerning alcohol and drug use, crime prevention, the reporting of crimes, sexual assault, and other matters. You can obtain a copy of this report by contacting [name of office] or by accessing the following website [address of website].

By mailing this notice statement to students and employees, the institution may meet the disclosure requirements of the law through placing the full contents of the Annual Security Report on the web. JWL

What to do if our institution has no reported hate crimes?

One of the difficulties in complying with the Campus Security Act lies in the regulations which were developed to apply to all institutions of higher education in the United States from major research universities to community colleges. Smaller institutions often struggle with how best to report or address those areas of the statistical reporting which do not apply to their situation or for which no crimes have been reported. For example, one of the institutions that the Department of Education cited for failing to comply with the legislation had failed to present the required information regarding hate crimes. The institution had not had any hate crimes reported, but failed to address the issue at all. If the institution does not have any hate crimes, the annual security report should include either a statement that clearly explains that none have been reported or simply present the table with 0 in each cell of the table. In addition, institutions which do not have residence halls or non-campus buildings or property should either include empty cells in the tabular presentation of the data or clearly state that those categories do not apply to the institution. JWL

What is more important under Clery – the date of occurrence of a crime or the date when it was reported?

The Final Rule of November 11, 1999 has clarified what was a confusing situation on some campuses. Previously, at least one program review had faulted an institution for not amending its crime statistics from the previous year to reflect a late report that was filed some time after December 31st. In response to comments received during 1999 regarding the proposed rules, the FBI's crime reporting standard was adopted and clearly articulated: "An institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority." Similarly, the daily crime log entries are to be recorded "by the date the crime was reported". This practical approach recognizes that fact that many crimes are discovered after they occur, making the date of occurrence unknown or uncertain. It also eliminates any need to amend published numbers for a prior calendar year in the event of a late report. DFT

What exactly is the "two day rule" regarding the Daily Crime Log?

Institutions must make an entry or an addition to an entry to the Daily Crime Log within two business days [defined as Monday through Friday, excluding any day when the institution is closed] of the report of the information to the campus police or security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim. This permitted 2-day "lag" between the making of the initial report and the preparation of the crime log will not generally be required at most institutions, but it should be used to the extent required to ensure some level of supervisory review of the crime log prior to its public release. Not every crime is correctly classified when it is initially reported, and not every event that is reported to – and

generally documented by – campus police or security department is a crime. Institutions should regard the 2-day window as “quality control” time.

The statute does permit an institution to temporarily withhold some of the information required to be included in the campus crime log 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.

The institution may withhold only that information that would cause the adverse effects described above, and must disclose any such temporarily withheld information once the anticipated adverse effect is no longer likely to occur. A separate and distinct 2-day period applies to the public’s access to the Daily Crime Log, once it has been prepared. Crime log entries for the most recent 60-day period must be open to public inspection during normal business hours. This means that the relatively current information contained in the Daily Crime Log must be produced for inspection at the time of a request if it is during normal business hours. It is not necessary for the lone officer patrolling campus on the midnight shift to return to and open the security office to accommodate the campus media’s need to meet their deadline – but it is necessary to respond directly and immediately to office-hour walk-in requests from anyone. Any portion of the log older than 60 days must be made available within two business days of a request for public inspection. This requirement currently applies to all campus crime logs entries recorded since October of 1998. DFT

Do you report alcohol/drug/weapons violations by category of location? What happens if you take campus judicial jurisdiction over an offense that is not within these geographical zones? Do you still report it?

Some institutions have been unclear as to whether the geographical categories for the reporting of major crimes also apply to the liquor, drug, and weapons law arrests and referrals for disciplinary action. They do. Institutions that have disciplinary authority over alcohol, drug or weapons violations that occur in areas beyond these geographic categories are not required to include this information in their Annual Security Report. For example, if the institution took disciplinary action against a student for a liquor law violation which occurred at a public bar off-campus, or a student was arrested in a public bar off-campus, this information would not be included. JWL

What is included within the scope of liquor law violations?

When I present on complying with the Campus Security Act at conferences and in other training settings, I can almost always predict what statement will produce the most surprise in my audience. In speaking about defining alcohol violations, I discuss clearly that public drunkenness and driving under the influence of alcohol are NOT liquor law violations. The definition from the Uniform Crime Reporting Handbook clearly states:

The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public

conveyance; and all attempts to commit any of the aforementioned.
(Drunkenness and driving under the influence are not included in this definition.)

Institutions should understand clearly how the statistics for persons referred for disciplinary action should be compiled. First and foremost, if a student is arrested and referred for disciplinary action for an offense meeting the definition, only the arrest would be counted. Only if a person is not arrested, but only referred for disciplinary action is the statistic included in this category. Under the current regulations, only a student can be referred for disciplinary action. However, the Department of Education has revised the definition to include any person referred for disciplinary action because the statute uses the word person, thereby not limiting referrals to students only. The Department will post the revised regulations at <http://ifap.ed.gov> when they are cleared by the appropriate parties. For example, a student referred for public drunkenness or a student over the age of 21 referred for violating a campus ban on the possession of alcohol would not be including in these statistics. It should be noted that some groups including Security on Campus, Inc., have advocated expanding the definition of liquor law violations to include public drunkenness and driving under the influence. However, no proposals have been introduced to date. JWL

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THE CLERY ACT QUIZ

by Brett A. Sokolow, J.D.

NCHERM published the original Clery Act Quiz in 2000. This is an updated and expanded version for 2006. The answers to these questions are given according to the National Center for Higher Education Risk Management [NCHERM]. NCHERM is not affiliated with, and does not speak for the U.S. Department of Education, which has the final say on Clery Act Compliance.

- 1) Q: Colleges must have timely warning policies in place, but the Clery Act does not require the college to publish that policy in the Annual Security Report. TRUE or FALSE?

A: FALSE, COLLEGES ARE REQUIRED TO HAVE A TIMELY WARNING POLICY, AND TO PUBLISH IT IN THE ANNUAL SECURITY REPORT.

- 2) Q: Miami University in Ohio was recently required by the Department of Education to release hearing outcomes to sexual assault victims in writing in accordance with the Clery Act. TRUE or FALSE

A: FALSE. IT IS TRUE THAT MIAMI UNIVERSITY WAS REQUIRED TO RELEASE HEARING OUTCOMES TO SEXUAL ASSAULT VICTIMS IN WRITING, BUT ONLY BECAUSE THE DEPARTMENT OF EDUCATION REQUIRED THEM TO FOLLOW THEIR OWN POLICY, WHICH REQUIRED WRITTEN NOTIFICATION. WRITTEN NOTIFICATION IS A BEST PRACTICE (SO THAT YOU CAN PROVE YOU DID IT), BUT THE CLERY ACT DOES NOT REQUIRE THAT NOTIFICATION BE IN WRITING.

- 3) Q: The largest fine ever imposed for violating the Clery Act is:

- a. \$15,000
- b. \$27,500
- c. \$385,000
- d. \$250,000

A: SALEM UNIVERSITY WAS FINED \$250,000, PAYABLE OVER FIVE YEARS, FOR MULTIPLE CLERY ACT VIOLATIONS. THE RECOMMENDED FINE WAS \$385,000, BUT \$250,000 WAS THE FINE ULTIMATELY IMPOSED (this Quiz pre-dated the Eastern Michigan University finding).

- 4) Q: The Dean of Students was previously Director of Counseling, and is a certified professional counselor in the state of PA, though he no longer has any counseling duties on campus. A student comes to the Dean to discuss judicial options regarding a sexual offense, and asks the Dean if he would keep the report confidential. The Dean agrees to, citing that the student came to him in a counseling capacity, and does not make a Clery Act statistical report. Is this permissible? YES, NO, OR MAYBE?

A: NO. THE DEAN MAY BE A COUNSELOR, BUT HE IS NOT FUNCTIONING WITHIN THE LICENSE AND SCOPE OF HIS CERTIFICATION FOR THE PURPOSES OF THIS REPORT.

- 5) Q: The college has designated a list of people, in its annual security report, to whom crimes should be reported. In the section on sex offenses, the college also directs victims of sexual misconduct to contact the local rape crisis center and the on-campus student peer-counseling group as reporting and support resources.

- a. Can the college report statistics from these two organizations? Yes, No or Maybe?
- b. Must it report statistics from these two organizations? Yes, No or Maybe?
- c. Must the organizations supply statistics to the college? Yes, No, or Maybe?

A:

- a. YES, THESE ORGANIZATIONS MAY SUPPLY NON-PERSONALLY IDENTIFIABLE STATISTICAL INFORMATION WITHOUT CONCERN FOR BREACHING CONFIDENTIALITY.
- b. YES, IF THE COLLEGE DESIGNATES INDIVIDUALS AS REPORTING AUTHORITIES, THEN THEY ARE REPORTING AUTHORITIES.
- c. NO. THE COLLEGE CANNOT REQUIRE REPORTING BY THE LOCAL RAPE CRISIS CENTER. ASSUMING THE PEER COUNSELING GROUP IS FUNCTIONING UNDER A STATE CONFIDENTIALITY LAW OR THE LICENSE OF A PROFESSIONAL COUNSELOR, REPORTING IS ALSO VOLUNTARY FOR THEM.

- 6) Q: The Clery Act may only be enforced by the US Department of Education through fines and required corrective action. TRUE or FALSE?

A: UNFORTUNATELY, THE ANSWER MAY BE NO. THE DEPARTMENT OF JUSTICE HAS ASSERTED THE RIGHT TO PUNISH NON-COMPLIANCE WITH THE CLERY ACT UNDER THE FALSE CLAIMS ACT, A FEDERAL LAW USED TO RECOVER GOVERNMENT FUNDING FROM ENTITIES WHO MAKE ASSURANCES OF LEGAL COMPLIANCE, ACCEPT GOVERNMENT FUNDING IN RETURN, AND THEN FAIL TO COMPLY. THE POTENTIAL FINES COULD BE IN THE MILLIONS OF DOLLARS. WHILE FALSE CLAIMS ACT SUITS HAVE BEEN THREATENED, THE DEPARTMENT OF JUSTICE HAS NOT YET APPLIED THIS REMEDY TO COLLEGES.

- 7) Q: Where an incident occurred off-campus, in a house three miles from campus, that was owned by the institution, used for housing the chemistry department's primate lab, and where professors frequently conducted animal testing without the knowledge of students, would the Clery Act require the reporting of that statistic? Yes, No, or Maybe?

A: NO. THERE IS NO FREQUENT USE BY STUDENTS, AS REQUIRED BY THE CLERY ACT.

- 8) Q: The Clery Act requires colleges to release the final results of hearings on sexual assault to the alleged victim. Because of this, victims cannot have a right of appeal because they are not entitled to know the result of the hearing until it is a final result, and all appeals have been exhausted. TRUE or FALSE?

A: FALSE. THE DEPARTMENT OF EDUCATION CONSIDERS THE OUTCOME OF AN INITIAL HEARING TO BE A FINAL RESULT, REGARDLESS OF SUBSEQUENT APPEALS. WE SHOULD BE MINDFUL THAT OUR DUTY TO NOTIFY ALLEGED VICTIMS EXTENDS NOT ONLY TO INITIAL HEARING RESULTS, BUT TO APPEALS OUTCOMES AS WELL.

- 9) Q: If an incident occurred on public property right next to an academic building that was on-campus, but occurred between two non-students, is there any obligation to report it? Yes, No, or Maybe?

A: YES. THE STATUS OF THE PEOPLE INVOLVED IN THE INCIDENT IS IRRELEVANT UNDER THE CLERY ACT.

10) Q: An RA enters a student room to find two underage students in possession of open beer cans, and a third underage student who is present but not in possession of any beer. There is, however, an open half-full beer can on the table in front of this student. The RA completes incident reports for possession for the two beer-holders, and completes an incident report for the third student for "being in the presence of alcohol." The college security officials should count this as 2 alcohol disciplinary referrals when reporting their Clery statistics. TRUE, FALSE or MAYBE?

A: MAYBE. WE ARE REQUIRED TO REPORT ALCOHOL VIOLATIONS UNDER THE "DISCIPLINARY REFERRAL FOR LIQUOR LAW VIOLATIONS" CATEGORY ONLY WHEN THE ALCOHOL INCIDENT IS BOTH A VIOLATION OF OUR CODE AND A VIOLATION OF LAW. MANY COLLEGES DO NOT CONSIDER "PRESENCE OF ALCOHOL" CONDUCT CODE VIOLATIONS TO BE VIOLATIONS OF LAW. BUT, IN MANY JURISDICTIONS, THERE ARE STATUTORY CONSTRUCTIVE POSSESSION LAWS REGARDING ALCOHOL. CHECK YOUR STATE STATUTES. IF YOU HAVE A CONSTRUCTIVE POSSESSION LAW, IT LIKELY COVERS THIS SCENARIO, AND THEREFORE YOUR DUTY WOULD BE TO REPORT THREE REFERRALS, NOT TWO.

11) Q: Should campus law enforcement unfind a reported incident when the case goes to trial locally and the defendant is found not-guilty? Yes, No or Maybe

A: IT DEPENDS ON WHETHER, DESPITE THE TRIAL RESULTS, CAMPUS LAW ENFORCEMENT STILL HAVE A GOOD FAITH BELIEF THAT THE INCIDENT HAPPENED. A CRIMINAL NON-GUILTY VERDICT WILL NOT UNFOUND A REPORT OF A CRIME IN WHICH THE POLICE STILL HAVE A GOOD FAITH BELIEF, AFTER THE TRIAL. ADDITIONALLY, ONLY POLICE CAN UNFOUND A CRIME. IF YOU DO NOT HAVE A SWORN POLICE DEPARTMENT, YOUR ABILITY TO UNFOUND THE REPORT IS MORE LIMITED.

12) Q: Recently, the US Department of Education published The Handbook for Campus Crime Reporting. This handbook describes Liquor Law Violations on p.48. In that description, violations include the:

- a) manufacture,
- b) sale,
- c) purchase,
- d) transportation,
- e) possession or
- f) use of alcoholic beverages.

Which of these six alcohol-related behaviors was added in this Handbook without explanation and without any prior inclusion in the Clery Act, its amendments, or regulations?

A: F. USE OF ALCOHOLIC BEVERAGES WAS ADDED IN THE HANDBOOK. THIS HAS IMPLICATIONS BECAUSE SOME STATES HAVE ENACTED POSSESSION BY CONSUMPTION LAWS, SUCH AS MISSOURI.

13) Q: An incident is reported to an adjunct professor of psychology. This professor teaches two classes, and provides academic advising to four students. Must the campus police include statistics from this faculty member in the annual security report? Yes or No?

A: NO. THIS PROFESSOR'S LEVEL OF CAMPUS INVOLVEMENT DOES NOT RISE TO THE LEVEL OF SIGNIFICANT RESPONSIBILITY FOR CAMPUS LIFE AND ACTIVITIES. HOWEVER, THE POLICE MAY INCLUDE STATISTICAL INFORMATION SUPPLIED BY EMPLOYEES WHO TECHNICALLY FALL OUTSIDE THE DEFINITION OF "CAMPUS SECURITY AUTHORITIES" THOUGH THEY ARE NOT REQUIRED TO.

14) Q: A student is found responsible in a campus hearing of violating the policy on non-consensual sexual intercourse. How, if at all, should this be categorized, as a Clery Act statistic?

- a) Forcible sex offense.
- b) Non-Forcible Sex Offense.
- c) Forcible Rape.
- d) Does not qualify as a Clery Act offense.

A: A. THIS IS CATEGORIZED AS A FORCIBLE SEX OFFENSE.

B. IS THE WRONG ANSWER BECAUSE THIS CATEGORY INCLUDES ONLY STATUTORY RAPE AND INCEST, DESPITE IT BEING NAMED IN A WAY THAT MAKES IT SOUND LIKE IT APPLIES TO DATE RAPE.

C. IS WRONG BECAUSE FORCIBLE RAPE IS NOT A CLERY CATEGORY.

D. IS WRONG BECAUSE IT DOES QUALIFY AS A CLERY ACT OFFENSE IF THE ACT WAS AGAINST THE WILL OF THE VICTIM, AND OCCURRED IN ONE OF THE FOUR GEOGRAPHICAL AREAS COVERED BY THE CLERY ACT.

15) Q: An incident occurs off-campus, in an area where Clery Act reporting is not mandated. But, the college decides to take judicial jurisdiction over it, and hears the complaint in an on-campus hearing. Must the college then report that incident in its annual statistics? Yes, No, Maybe?

A: NO. THE TAKING OF OFF-CAMPUS CONDUCT JURISDICTION DOES NOT BRING AN OFFENSE UNDER THE CLERY ACT. IT MUST OCCUR IN ONE OF THE FOUR CLERY GEOGRAPHIC ZONES TO QUALIFY AS A STATISTIC, REGARDLESS OF HOW THE REPORT IS PROCESSED BY THE COLLEGE OR UNIVERSITY.

16) Q: A person under the age of 17 is violently sexually assaulted on-campus. How should this offense be classified for Clery purposes?

- a) Forcible sex offense.
- b) Non-forcible sex offense.
- c) Forcible Fondling.
- d) Sexual Assault of a Minor.

A: A. UNDER THE HIERARCHY RULE, THOUGH THIS QUALIFIES AS A STATUTORY RAPE, AND THEREFORE A NON-FORCIBLE SEX OFFENSE, IT WAS ALSO A FORCIBLE SEX OFFENSE, WHICH OUTRANKS A NON-FORCIBLE OFFENSE.

17) Q: A bicycle belonging to a student is stolen from a rack on-campus. Is this a reportable Clery Act statistic?

- a. No. It's a theft.
- b. Yes. It's a theft.

- c. No, It's a burglary.
- d. Yes, It's a robbery.

A: NO. IT'S A THEFT (LARCENY)

- 18) Q: A master's student in psychology is interning in the college's counseling center, working under the license of a supervising counselor, and receives a report from a client of an aggravated assault. What are that intern's reporting requirements?
- a. Does not need to report.
 - b. Must report.
 - c. Can voluntarily report.
 - d. Must tell supervisor, only.

A: C. COUNSELORS ARE VOLUNTARY REPORTERS UNDER CLERY, AND AN INTERN IS COVERED BY THE LICENSE OF THEIR SUPERVISING COUNSELOR, ACCORDING TO THE HANDBOOK FOR CAMPUS CRIME REPORTING.

- 19) Q: There is a parking garage that shares a common wall with an academic building on campus. But, the parking garage is owned by the city and not on campus property. There is no access to the garage from the campus side of the building. If an incident occurs there, must the campus police report it as a statistic? Yes, No or Maybe?

A: NO, IT IS IMMEDIATELY ADJACENT TO, BUT NOT IMMEDIATELY ACCESSIBLE FROM THE CAMPUS.

- 20) Q: An RA catches a student drinking beer in the residence hall. The RA takes the student to the head resident, who verbally rebukes the student, but does nothing more. No record is made or kept. Is this alcohol offense to be counted as a Clery Act Disciplinary Referral statistic? Yes or No?

A: NO. THIS DOES NOT COME UNDER THE CLERY DEFINITION OF A DISCIPLINARY REFERRAL BECAUSE NO DISCIPLINARY ACTION WAS INITIATED AND A RECORD WAS NOT KEPT.

- 21) Q: A date-rape occurs on campus. Must a timely warning be issued to the campus community about it?
- a. Yes, without question. Students have a need to know.
 - b. No, never. It's just a date-rape.
 - c. Not likely, unless the incident poses a threat of substantial harm to students.
 - d. Yes, unless it would jeopardize the victim's confidentiality.

A: THERE ARE TWO RIGHT ANSWERS TO THIS QUESTION. C. IS THE BEST ANSWER ACCORDING TO THE SPECIFIC TEXT OF THE CLERY REGULATIONS. HOWEVER, A. IS NOT A BAD ANSWER, ACCORDING TO THE DEPARTMENT OF EDUCATION. IN TWO CLERY ACT INVESTIGATIONS, THE DEPARTMENT HAS TAKEN ISSUE WITH THE FAILURE OF THE INSTITUTION TO MAKE A TIMELY WARNING ABOUT DATE RAPE SITUATIONS, TO "GENERALLY HEIGHTEN AWARENESS AND PROMOTE SAFETY." THE ONLY LIMIT ON THIS IS WHEN MAKING A WARNING WOULD JEOPARDIZE THE VICTIM'S CONFIDENTIALITY.

- 22) Q: Rick, a junior, rapes his date, Jennifer, and as he's leaving the room, tells her that he's going to get the rest of her stuck-up prissy sorority sisters, next.

- a. Must a timely warning be issued? Yes or No?
- b. Can/should/must it contain Rick's name? Yes or No?
- c. Bonus: Would this violate FERPA if the college released his name? Yes or No.

A:

- a. YES.
- b. IT CAN, IT SHOULD, AND I WOULD CONSIDER IT A MUST, AT LEAST AS SUPPLIED TO THE SORORITY.
- c. BONUS: NO. FERPA'S HEALTH AND SAFETY EXCEPTION APPLIES HERE TO PERMIT RELEASE.

23) Q: Martin, a campus newspaper reporter, walks into the campus police station, and asks to see the campus police log entry on a crime that was reported last week. The clerk tells him under federal law, she has two business days to produce the log entry for Martin. True or False?

A: FALSE. THE POLICE MUST PRODUCE THE ENTRY WHEN IT IS REQUESTED. THE CAMPUS POLICE HAVE TWO BUSINESS DAYS TO ENTER THE REPORT IN THE LOG FROM THE TIME IT IS REPORTED, BUT THAT TIME PERIOD HAS ALREADY PASSED.

24) Q: John, a resident student, reports that his IPOD has been stolen from his room. He believes his roommate took it, but there is no evidence to support that. His room door was unlocked at the time, and the IPOD was visible and lying on a table. Is this to be classified as a burglary or a theft?

A: BURGLARY. UNDER A QUIRK OF THE UCR, BURGLARY IS THE DEFAULT WHEN YOU CANNOT CLASSIFY A TAKING AS A THEFT OR ROBBERY. IF THE ROOMMATE CONCLUSIVELY TOOK THE IPOD, THIS COUNTS AS A THEFT, BECAUSE THE ROOMMATE WAS AUTHORIZED TO BE PRESENT AT THE SCENE OF THE TAKING. HOWEVER, IN THIS EXAMPLE, WE DO NOT KNOW WHO TOOK THE IPOD, OR WHETHER THAT PERSON WAS AUTHORIZED TO BE PRESENT OR NOT. THEREFORE, IN THE ABSENCE OF THAT KNOWLEDGE, THE UCR RULE DEFAULTS TO BURGLARY.

All information offered in this publication is the opinion of the author, and is not given as legal advice. Reliance on this information is at the sole risk of the reader.