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● Testing realities of an active shooter incident

Analysis

The Montana University System and Firearms Authority, Policy, Discussion and Conclusions

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I. Introduction

This paper will discuss the treatment of firearms by the Montana university system, the authorities available, the policies applied, discussion of the reasonableness of any regulatory effort, and conclusions.

Excluded from this discussion will be laws and policies relating to regulating campus security personnel and the firearms they are allowed to carry.

● In the wake of the tragedy at Virginia Tech, there is renewed interest in the role of firearms on university and college campuses, and in regulation of firearms on campus. This is an issue of national interest. University and college administrators desire to make campuses as safe as possible for students and employees, and may have a legal duty to do so. Some believe that adopting campus policies limiting or banning firearms will make campuses safer for everyone. Others believe that those intending Virginia Tech-type assaults will not be deterred by mere campus policies, the only effect of which will be to insure a defenseless pool of unarmed victims incapable of mounting effective resistance to mayhem.

This has been a matter of policy debate in Utah for several years, and is the subject of proposed legislation in Virginia, South Dakota, Arizona and other states. What is the status of this discussion in Montana?

II. Authority

Montana Constitution. The chief controlling authority in Montana is the Montana Constitution. The right of individuals to bear arms in Montana is secured from government intrusion by the people of Montana with a clear statement at Article II, Section 12 of the Montana Constitution. It is worth repeating that declaration of right here in full:

● Section 12. Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally

summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Several points are worth noting about this declared right.

- 1) The Montana Supreme Court has said that the individual rights reserved by the people to themselves in the Montana Constitution are specifically a direct bar to government actors. (St. v. Long, 216 M 65, 700 P2d 153, 42 St. Rep. 643 (1985))
- 2) There is no question but what the Montana university system is a government entity - a creation of government -, and that its employees and managers are government actors. It is funded by government and its structure and activities are determined and governed by Montana law, including the Montana Constitution. The university system exists only as authorized by law, perhaps an exact definition of a government entity.
- 3) The wording of the right to bear arms in the Montana Constitution is unchanged since the adoption of the territorial constitution in 1884 and the statehood constitution in 1889, including with the Montana constitutional revision in 1972.
- 4) The right to bear arms in Montana is a personal and individual right under the Montana Constitution, and no sort of right of government as is sometimes argued about the Second Amendment to the U.S. Constitution.
- 5) The right to bear arms clearly contemplates the right of "any person" to defend himself or herself, and to defend their home, whatever their home may be.
- 6) The right to bear arms does not include a right to carry concealed weapons, defined in the law as concealed by an article of clothing, a practice in Montana that is a privilege granted by the Legislature.
- 7) The right to self defense and the right to possess the necessary tools for that purpose is well-supported by other provisions in the Declaration of Rights in the Montana Constitution, including Sections 3, 4, and 10. [1]

The Montana Constitution says at Article X, Section 9:

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

While this is a broad grant of constitutional authority, it does not grant the Board of Regents authority to dismiss, ignore or override other parts of the Constitution. Also, there has been tension between the Board of Regents and the Legislature concerning the extent of the authority of each over the university system, especially concerning funding by the

Legislature. The courts have supported the Board of Regents in resolving this tension, saying that the Legislature may not assert control with budgeting action that is given to the Board of Regents by the Constitution in Section 9.(2)(a).

Other relevant authorities of the university system. In addition to the foregoing, the university system has some other common authorities. These include an employer's authority over employees as a part of the employer/employee contract, a landlord's authority over tenants as a part of the landlord/tenant relationship, and it includes some authority over enrolled students as a condition of enrollment. All of these authorities may be tempered by whatever effect is produced from the restraint upon government actors by reserved constitutional rights. For example, the Montana Constitution reserves the right for citizens to bear arms to defend their homes. Given this constitutional right, and given that the property a tenant rents becomes his home and castle, may the university system, acting as a government agent, bar tenants in university housing from possessing firearms to defend themselves and their homes? Probably not, but this is not settled law.

Authorities not derived from the Board of Regents. The Montana preemption law at 45-8-351, M.C.A. generally prohibits local government entities, cities and counties, from regulating firearms. It does allow cities and counties to prohibit the carrying of concealed or unconcealed firearms into public buildings and other places. At (2)(a) this statute says:

A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

Under this statute, a school is a K-12 school as defined in other Montana law. It is at most a misdemeanor to violate a city ordinance. Most first class cities in Montana have adopted an ordinance to implement the authority granted under 45-8-351(2)(a), M.C.A., and most, perhaps all, of the campuses of the Montana university system are located at those cities. Some question may exist about whether or not some campuses have been annexed into the cities in question, and, therefore, whether or not a local city ordinance is enforced or enforceable on campus.

The Montana "prohibited places" law at 45-8-328, M.C.A. makes it a misdemeanor for a person to carry a concealed weapon into a staffed building used by a local or state governmental entity, but it does not apply to unconcealed carrying of firearms in the places it covers (including bars and banks).

Application of these state laws may be problematic given the historic resistance by the Board of Regents to legislative authority. That is, it may not be possible for the Board of Regents to both claim full autonomy from legislative authority and claim authority from the Legislature. Certainly the Board of Regents allows some expression of legislative authority on university system campuses, such as prosecution by the state of a person committing theft

on a university campus. But, even the Constitution offers the Board of Regents no police power, such as the power to criminalize prohibited conduct and punish violators with imprisonment. The question of the extent to which 45-8-351, M.C.A. and 45-8-328, M.C.A. may be relied upon by the university system to address firearm issues on campus may remain a murky area of law.

Other state laws remain in effect on campuses, laws that criminalize the misuse of a firearm for a criminal purpose, such as murder, assault, robbery and endangerment (title 45-5-201, 213 M.C.A.). Also in effect are laws prohibiting discharge of a firearm inside city limits, except in self defense (45-8-343, M.C.A.), prohibiting carrying of a concealed firearm by an intoxicated person (45-8-327, M.C.A.), and carrying a concealed firearm inside city limits without a permit (45-8-315, 316, 317, M.C.A.).

Civil Liability. It is assumed that the chief concern of university managers is the safety of students and employees. In addition to their personal interest, managers may even have a legal duty to provide for a reasonable climate of safety. As a secondary issue, managers cannot ignore the issue of civil liability for safety issues that are untreated or addressed inappropriately. For example, if the fire exits on a campus public assembly were chained shut (perhaps to avoid unwanted ingress) and deaths from a fire resulted, the civil liability implications would be huge. If there were a catastrophic incident on campus involving what law enforcement call an "active shooter," having denied students and employees the means to defend themselves by university policy might be seen as analogous to having chained fire exits closed.

Prior restraint. In our system, we try to avoid prior restraint of the exercise of rights. Rather, we rely generally on punishment afterwards for rights exercise abuse. For example, we don't put duct tape over the mouths of theatergoers fearing that some unrestrained person will shout "fire" in a crowded theater. Rather, we punish someone afterwards if they should, without valid reason, shout "fire" in a crowded theater. Other avenues than prior restraint are required by case law. For example, rather than gag the press to prevent inflaming community sentiment about a heinous crime and resulting taint of the jury pool, jurists must order public officials to silence, sequester jurors if necessary, or move a trial to a location where an unbiased jury pool is available and free from influence by pre-trial publicity. Preventing exercise of the right to bear arms in advance on the theory that some of those allowed to exercise their right may abuse the right is in conflict with the practice of avoiding prior restraint.

III. Policy

The area of policy is more easily discussed. The Board of Regents has established minimal policy concerning firearms. What policy exists is announced at:
<http://mus.edu/borpol/bor1000/1006.htm>

Sections 1, 2, and 3 of this policy relate only to carrying of firearms by university security personnel and contract security personnel. Section 4 leaves discretion over remaining

firearms issues to the separate units of the university system.

The various units of the university system have implemented this grant of authority by the Board of Regents by adopting policies for specific campuses. Generally, these policies specify under what narrow circumstances those subject to campus policy may possess and store certain types of firearms, and forbid other types of firearms.

As stated previously, the university system has some authority over students as a condition of enrollment, including required good behavior conducive to a learning environment and conducive to safety for all. The system also has some authority over employees as a feature of the employer/employee relationship, and over tenants (students living in campus housing) as an element of the landlord/tenant relationship. These authorities will be affected by the rights all citizens possess under the Montana Constitution and the Regents' lack of police power. Further, it appears that the university system lacks any authority over persons not employees or students, and must rely on legislated authority concerning firearms possession by persons not employees or students, and that current legislated authority applies only inside public buildings on campus.

IV. Discussion

It is assumed that university system administrators have the motive, even the duty, to keep all personnel within their purview as safe as can reasonably be done. Safety has many aspects, including building safety, fire safety, accident prevention, safety in laboratories, safety in residential life and more. Some safety issues are easily quantifiable. For example, building codes prescribe how many fire exits a building must have in relation to building size, use and capacity. Other safety issues may not be so simple to quantify and resolve. Whether or not to allow firearms on campus, and under what conditions, likely falls into this category.

In observation of discussion among university administrators considering firearm policy, it becomes apparent that there are two distinct types of risk to be considered.

One type of risk concerning university managers is the potential for a Virginia Tech-type mass murder, which we may call a "catastrophic incident" for the sake of this discussion. The other type of risk of concern let us call an "isolated incident," a single event of misuse of or misadventure with a firearm, such as an accidental discharge, use of a firearm to threaten another person, or an emergency report of a firearms sighting that may be an innocent event except for an unwarranted assumption on the part of an uncultured or panicked person making the report. Before discussing these separate types of risk, some comment about the background against which these are assessed is in order.

Background/culture. The Montana university system exists in a culture of high traditional acceptance of firearms. The first recorded travelers to Montana, the members of the Lewis and Clark expedition, were well-equipped with firearms, and depended on firearms for their survival. The ubiquity of firearms has not changed much since Lewis and Clark traveled

here.

It is estimated that over 90% of the homes in Montana contain firearms. It is also estimated that the average home in Montana that does contain firearms probably has about 27 firearms. Montana has a higher percentage of residents purchasing hunting licenses than any other state, significantly higher than the number two and three states, Alaska and Wyoming. Montana has a very strong and entrenched firearm culture. The employees of the university system live amid this firearm culture, and many university system students come from Montana and are steeped in this culture. The income of the university system is derived primarily from people who are a part of Montana's firearm culture.

Competitive shooting sports activity in Montana is common and pervasive. Active practice and competition occur in trap, skeet, sporting clays, highpower, bullseye, smallbore, cowboy action, mounted cowboy, practical pistol (IPSC and IDPA), long range precision rifle, blackpowder silhouette, metallic cartridge silhouette and others. Active training with firearms in Montana includes ROTC, National Guard, military reserve forces, law enforcement, self-defense, hunter education for youth and all of the shooting disciplines mentioned preceding. Hunting with firearms may be done in any month in Montana. When limited seasons are not open for deer, elk, moose, mountain sheep, mountain goats, antelope, bear, lion, ducks, geese, pheasants, or grouse, a person may hunt coyotes, Prairie Dogs, Columbia Ground Squirrels, Richardson Ground Squirrels, and others. Lots of Montana citizens possess firearms in order to be able to defend themselves - to be able to choose not to be victims. The U.S. Department of Justice has estimated that, nationwide, there are 1.5 million defensive uses of firearms each year.[2] 16,000 Montanans have concealed weapons permits (CWP) (45-8-321, M.C.A.) issued by county sheriffs after training and background checks. Many university system employees and students engage in these activities.

The university system campuses do not exist in isolation. They are a part of the Montana social landscape and the local communities in which they exist. University employees live in the Montana culture as do many students, and many university students are derived from our Montana culture. Against this cultural background, how can university managers realistically assess risk associated with firearms, and how can any such risk be managed?

Risk assessment. Any valid risk assessment must first separate actual, historical or quantifiable risk from perceived risk. For example, a person with a phobia of spiders might argue for an expensive program to fumigate all university buildings to protect against the risk of spider contacts and spider bites. Because of extreme concern about spiders, this person might be willing to ignore the expense, which might detract from financial ability to address more well-documented risks, might overlook the potential health consequences to people of the fumigants used to kill spiders, and might not even think about the possibility that spiders could help control even more dangerous pests. An accurate assessment of any risk associated with firearms in the university setting must guard against bias not founded in quantifiable information, and must consider both intended and unintended consequences of measures taken to manage the risk.

It is supposed that risk assessment for an academic setting would be more rather than less likely to be driven by a cool, rational consideration than in other settings. For example, a recent news story examined existing policies of banning firearms in national parks and recent political pressure to revise those policies. A park manager was quoted as saying that continuation of the decades-long prohibition of firearms in national parks is necessary to prevent poaching of wildlife in parks, and that poaching has increased nearly every year since the prohibition has been in effect.[3] It is difficult to admire this as fully rational thinking when the advocate posits continuation of past behavior with the assumption that repeat of this historic behavior will somehow generate a different outcome than it always has before.

While information may not be available to assess the actual or historic risk of misadventure with firearms on university campuses, there certainly is data to allow assessment of firearms risk in the Montana culture in which Montana university campuses exist, as compared with the nation as a whole and other parts of the nation. Whether the estimate cited above (that over 90% of Montana homes contain an average of 27 firearms) can be scientifically proven, there is little doubt that Montana has firearm densities per capita near the greatest in the nation, if not the greatest. If the mere presence of firearms caused misadventure (accidents) or misuse (crime), then Montana would have among the highest incidents of those in the Nation. Yet notwithstanding the ubiquity of firearms in Montana, we enjoy much lower crime rates than many other places where firearms are difficult or impossible to possess legally. [4]

Also, for risk assessment purposes it is useful to know that all recent occasions of catastrophic firearm incidents, such as the tragedy at Virginia Tech, happen in what are called "gun-free zones," such as schools and other places where the intended victims have been prohibited the means to defend themselves. We may or may not be able to conclude from this that gun-free zones are especially dangerous places. What we can conclude is that those deranged individuals bent on mayhem appear to select gun-free zones as a relatively successful venue to commit their mayhem.

This thought experiment is offered for risk assessment associated with firearms: If you and your family members were being stalked by a person known to be intending personal violence (assault, rape, kidnapping or murder), would you feel more or less safe for having planted a sign in your yard announcing "No guns in this home"? The answer to this question is one that university managers should integrate into consideration of the actual risk of firearms in the university setting.

Types of incidents. With this background it is time to evaluate the two different types of risk that university managers need to address. As offered previously, these are catastrophic incidents and isolated incidents. Let us first discuss catastrophic incidents. While rare, such incidents are horrendous. Rather than discuss fires and earthquakes, this discussion will be limited to catastrophic incidents involving firearms.

Catastrophic incidents. A catastrophic incident is typified by the massacre at Virginia

Tech. The hallmark of this and similar incidents is that, no matter how much they wish it were otherwise, the authorities always arrive too late to save those who die. While this analysis is under preparation, another such incident occurred at Northern Illinois University, perpetrated by a person not a student and not a university employee. While NIU claims success because only five victims have died so far (unlike the 30-something dead in Virginia), that assurance is slim comfort to the next of kin of the dead victims.

At NIU, authorities brag that they were on site within two minutes of the onset of the incident. In a video demonstration for television news [5], this author fired 36 accurate shots in 30 seconds from a revolver, firearm technology that dates back to the 1800s. This rate of fire is sustainable for two minutes. Each round fired is potentially fatal. This means that a madman with similar skills could kill up to 120 people during NIU's touted two-minute response time.

In response to this NIU incident, Citizens Committee for the Right to Keep and Bear Arms asserted that this incident was "another failure of the 'gun free zone' mentality that has created a false sense of security on college campuses and other public venues across the country." CCRKBA Chairman Alan M. Gottlieb continued, "This giant loophole in public safety is becoming a national disgrace and it is time to dramatically change our perspective on self-defense in this country. This incident is particularly distressing because it happened in Illinois, one of two remaining states in which anti-gun state lawmakers and equally-anti-gun governors have repeatedly thwarted common sense efforts to put law-abiding citizens on a level playing field with criminals and crazies by adopting right-to-carry laws," Gottlieb stated. "Illinois ... lawmakers have chosen to leave their citizens at the mercy of killers who have no mercy." [6]

It is obvious that "gun-free zones" are only gun-free for victims. Such zones create only an illusion of safety, but no actual safety (witness Virginia Tech and NIU). Illusion will not stop a madman bent on mass murder. Only another person with a firearm is likely to be able to stop such a madman. This is exactly why police (who can rarely be there) carry guns. Since authorities are at best two minutes away, disarming victims is surely not the answer. For the disarmed potential victims of such a madman, fervent prayer that the madman will kill someone else becomes the most viable solution to the first minutes of such a threat. (See "Testing realities" of an active shooter incident.)

It is worth noting that police have no legal duty to respond at all to these type of incidents, much less respond quickly. This question has been litigated repeatedly and the courts have routinely held that police have only a duty to provide a general level of protection to the community, but have no legal duty to respond to specific incidents or protect any individual.

There is an alternative. Montana is one of 37 states that has authorized law abiding and trained people to carry concealed firearms for self-defense. There is a vast amount of empirical data about the millions of people who have been authorized to carry concealed weapons over the past 30 years. As a class of people, they have a lower incidence of misadventure with firearms and misuse of firearms than the general public at large (most of

whom don't carry firearms), and lower than any other known class of citizens about which data exist. The theory that CWP holders are somehow dangerous just because they possess firearm is a myth, perhaps slander. They are less dangerous than the average member of the general public, except to criminals. This author is not aware of any CWP holder in Montana who has been convicted of a crime for misuse of his or her concealed firearm in the 16 years that Montana's modern CWP law has been in effect - this despite approximately 136,000 permittee-years of CWP experience and exercise in Montana. [7]

Further, in his book, *More Guns, Less Crime*, [4] Professor John Lott examines FBI crime data in every county in America reaching back 19 years. He statistically analyzes the effect on crime when states adopt the sort of CWP laws Montana now has (45-8-321, M.C.A., et. seq.). Lott discovered that by adopting such laws, and without spending any money, legislatures confer a considerable boon of increased safety upon all citizens. The major interpersonal crimes of violence such as murder, rape, robbery, kidnapping and assault decrease significantly in states adopting "shall-issue" CWP laws, not because lots of criminals are getting shot, but because criminals have a strong preference to avoid victimizing a person who may be armed. In about 75% of defensive firearm instances, a shot is never fired and the threat is dissuaded via a defensive display or warning. [8]

Lott discovered an even greater societal benefit of such shall-issue laws. In states adopting such laws, the incidence of mass murder drops on the order of 80%, except in artificially created gun-free zones where this dynamic is not allowed to operate. Said differently, the risk of mass murder is five times greater in gun-free zones where trained and approved people are not allowed to exercise CWPs than in areas where CWP-holders may exercise their permits. This difference in risk has been quantified and documented.

There are two accepted reasons for this dramatic reduction of risk. The first is that a mass murderer seeks success and notoriety. The mass murderer is less likely to achieve these goals if he is stopped before he can accomplish a truly horrendous crime. That's why mass murderers do not attempt their crimes in police stations, at shooting ranges, or on military installations. The likely presence of armed persons able to immediately interdict the event would rob the mass murderer of the opportunity for success and the notoriety he requires, so he avoids occasions and locations where interference would be likely.

The reason for the difference in risk reduction between crimes of victimization of individuals and the crime of mass murder relates to the density of firearms among a criminal's potential targets. In Montana, for example, approximately 2% of the adult public have CWPs. If a criminal is attacking one individual, there is a one in 50 chance that the victim will be armed and able to resist effectively - to choose not to be a victim - a definite risk to the criminal but not daunting odds. However, if a criminal attacks a crowd of 50 people, there is a near certainty that someone in the crowd will be armed and able to thwart the attack, at least outside of a gun-free zone.

Collateral damage. The argument is sometimes made that if a madman is killing people in a university setting and a legally armed student or employee should attempt to stop the

killer, there is an unacceptable risk that the legally armed individual may inadvertently injure others. This argument rests on several assumptions not substantiated by analysis or history.

The first assumption is that the killer will voluntarily stop killing without intervention, so that any inadvertent injury caused by a legally armed individual will be greater than the injury not caused by the killer who voluntarily stops. The reality is that the type of killers who committed multiple murder in Virginia Tech and NIU do not stop voluntarily. They continue to run up the numbers of slain until stopped by another armed person. So, the assumption that inadvertent injuries that might be caused by an intervening legally armed individual would be greater than the injuries likely to be caused by an unstoppable mass murderer is an incorrect assumption. It ignores the established fact that a mass murderer will not stop voluntarily - he is only stopped by another person.

Second, an assailant would likely be physically separated from his victims, making him a lone target for an intervening armed private person. Thus, any missed shots by a legally armed intervenor would be less likely to injure another person. By contrast, an assailant in a university setting is more likely to encounter a clustered group of victims, facilitating mass injury by the assailant. The theory of unacceptable collateral damage from self-defense does not take this juxtaposition into account.

The third assumption is that if the victims just wait long enough, those still surviving will no longer be at risk once police finally arrive. This is simply not true. The national data for the effectiveness of police shooting indicates that police officers involved in gunfights actually connect with one out of thirteen rounds fired (on average; the studies vary in result, from about one in seven to as much as one in thirty, depending on which study one selects). These missed shots by police go somewhere, and injury to innocent bystanders is not uncommon. Conversely, the "hit rate" by legally armed citizens is one in two, much better odds indeed for the safety of innocent bystanders.

Finally, a historical note is in order. Historically, legally armed private citizens have injured nobody else when interfering in the killings by a would-be mass murderer. This includes actual case histories of shootings in a high school in Mississippi, in a mall in Utah, in a church in Colorado, and recently at a university in Israel.

Therefore, the claim that an armed citizen interfering with a mass murderer may cause more injury than the murderer, albeit accidentally, is not either an informed or rational argument.

The role of antidepressants. It is definitely worth noting that nearly all cases of mass murder in recent U.S. history, and many other acts of violence, have been linked to use or misuse of antidepressant drugs. These include "Selective Serotonin Reuptake Inhibitors" (SSRIs), of which Prozac was the first. Other SSRIs are Zoloft, Paxil (Seroxat), Celexa, Sarafem (Prozac in a pink pill), Lexapro, and Luvox. Other newer antidepressants included in this list are Remeron, Anafranil and the SNRIs Effexor, Serzone and Cymbalta as well as the dopamine reuptake inhibitor antidepressant Wellbutrin."[9]

Isolated incidents. The type of isolated incidents of firearm misadventure or misuse which university system managers must analyze and address are varied. There are both real problems and problems of perception only.

The real problems probably include an accidental discharge of a firearm, a student using or threatening to use a firearm to solve an interpersonal conflict, the theft or loss of a firearm inadequately secured, the misuse of a firearm by a person under the influence of alcohol or drugs, or the misuse of a firearm in an irresponsible, playful or prank manner.

The problems of perception may include false reports of pending violence because of a firearm sighting by a person not accustomed to Montana culture, concerned reports of conversations about firearms, mock or actual firearms used for display only, such as museum displays or theatrical productions, and other similar events in which the perception of risk is greater than the reality of risk.

Many of these problems, both real and perceived, should yield to education, an endeavor that is the strong suit of a university. While education may not eliminate the potential problem altogether, education can be used to manage the problem to within acceptable limits of risk. The educational approach is accepted for other types of risk management, such as fire drills for fire safety and water safety training to address risk issues around water. Firearm safety training is commonly done for young hunters in Montana, has been done for generations, and is an accepted and productive practice.

Before educational approaches can be initiated to manage any risks associated with firearms, the nature and reality of the risk must be assessed. For example, it would be misleading to assume the need for specific risk management because someone says, "I am afraid that XYZ could happen." Rather, it would be appropriate to examine the history of whether or not a particular risk actually occurs, with what frequency, over what period, and how the density of that risk occurs in the demographic examined, and how the seriousness of that risk compares with other known risks.

For example, it is very traumatic physically and emotionally to be struck by lightning. It is sometimes fatal. Yet it is also very rare. Does that mean we don't need to tell people to not stand under a tree during a lightning storm? No. But, should we require everyone to graduate from a six-week class on lightning avoidance before being allowed to go outside? That would not be a wise use of time and resources given the density of risk. And, should the lightning avoidance training be required in lieu of training about use of seat belts in automobiles? The comparative densities of risk would not support that allocation of time and resources.

Once any risk associated with firearms is assessed in an objective manner, then consideration may properly be applied to risk management through education, and through regulation.

Youth and firearms. Discussion is in order about the theory that young people are more prone to act irresponsibly, and that allowing students to possess firearms will result in misadventure with those firearms. Available data does not support this theory, at least when applied to young adults with CWP's. In Montana a person is allowed to apply for and obtain a CWP if they are 18 years old or older. In CWP classes instructed by this author, with nearly 1,500 graduates over 15 years, it is estimated that about 15% of graduates are 21 years old and younger. So, we know that there are people in the 18-21 age range who are obtaining CWP's in Montana. These people have the same incidence of misadventure with firearms as all others - zero. This does not prove young people generally are as responsible and trouble-free as those who are older. It does demonstrate, however, that young people who take the required training to obtain a CWP, who submit to the required background check, who pay \$50 to apply for the permit and who provide a photograph and fingerprints have a documented history of behaving as responsibly as older CWP-holders.

V. Conclusions

"We can't solve problems by using the same kind of thinking we used when we created them." - Albert Einstein

The legal authority of the Montana university system to address firearm issues is murky. While the Montana Constitution gives the Board of Regents extensive authority to manage the university system, it does not offer or confer authority to abrogate constitutional rights reserved by the people to themselves. The right of "any person" to bear arms in defense of self or home is clearly reserved as a right of individual citizens in the Montana Constitution. The level of judicial review of this right is specified within the right as "shall not be called in question."

The university system has some authority over employees as an aspect of the employer/employee relationship, as it does over those living in campus housing as a part of the landlord/tenant relationship. And, the university system has some authority over students in order to avoid disruption, and to maintain safety and a suitable learning environment. These employer, landlord and administrative authorities are far from absolute, and are tempered by the constitutional rights enjoyed by all citizens and by the doctrine that constitutional rights act as a direct bar to government actors. The university system appears to have no authority over persons not employees or students.

The university system may rely on local or legislated authority that prohibits carrying firearms in state-owned buildings, but those laws do not apply to the areas of campus outside buildings.

The only policy about firearms that the Board of Regents has adopted leaves discretion over firearms, other than campus security, to the individual campuses of the university system.

In minimizing any risk associated with catastrophic incidents, the most effective policy has proven to be to allow especially law-abiding people to possess firearms for defense, and to

avoid creating the gun-free zones that are demonstrated to be such fertile ground for mayhem.

To address risks associated with isolated incidents of firearm misuse or misadventure, education would seem to be the best tool for risk management, especially in a university setting. Educational efforts must be based on objective risk assessment and not cater to unsupported or irrational fear.

Finally, all of these issues must be examined and perceived through the lens of a firearms culture that is ubiquitous in Montana and embraced by the Montana Constitution.

Since university managers are limited in their authority to restrict firearms on system campuses, and since firearm prohibition only creates fertile ground for criminal acts, perhaps the best outcome could be obtained through an open tolerance of firearms coupled with safety and skill instruction for those willing to undertake the responsibility of firearm possession.

End

Endnotes

[1] See: "Concepts within the Montana Constitution relating to the right to bear arms", 2008, by Gary Marbut

[2] National Institute of Justice, NCJ 155476, May 1997

[3] <http://www.missoulain.com/articles/2008/02/13/news/local/news02.txt>

[4] More Guns, Less Crime, Professor John R. Lott, Jr.; University Of Chicago Press; 2nd edition (June 15, 2000); ISBN-10: 0226493644; ISBN-13: 978-0226493640

[5] <http://www.marbut.com/videos> - Assault Weapons

[6] <http://www.ccrkba.org/pub/rkba/press-releases/NorthernIllinoisShooting.htm>

[7] Montana currently has 16,000 CWP's issued. See:
<http://www.missoulain.com/articles/2008/02/03/news/local/news03.txt>
Montana's shall-issue CWP law was adopted in 1991, for 17 years in effect. Assume zero CWP in 1991 (underestimate), with an average of 8,000 CWP's in effect each year for 17 years = 136,000 man years. The number will actually be a bit larger because there was a surge of CWP issuance in 1991, 1992, and 1993 when the new law took effect.

[8] Gary Kleck and Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun," Journal of Criminal Law and Criminology 86(1):150-187, Fall

1995.

[9] <http://www.ssristories.com/index.html>

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Article by John Lott, Jr.

Columbine To Va. Tech To NIU: Gun-Free Zones Or Killing Fields?

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CCRKBA SAYS PRESS PURPOSELY DOWNPLAYS KEY ROLE OF ARMED STUDENT IN JERUSALEM

BELLEVUE, WA – An armed student at Jerusalem's Mercaz Haray seminary played a crucial role in stopping a gun-wielding terrorist Thursday, but the American press is downplaying his heroism because it proves that armed students can stop campus gunmen, the Citizens Committee for the Right to Keep and Bear Arms said today.

Yitzhak Dadon, 40, was described as "a private citizen who had a gun license and was able to shoot the gunman with his pistol" by reporter Etgar Lefkovitz with the Jerusalem Post. However, many news agencies in the United States are downplaying Dadon's decisive role in the incident.

"Yitzhak Dadon is a hero," said CCRKBA Chairman Alan Gottlieb, "and he is living proof that armed students have a place on college campuses. Thankfully, his quick action was reported by the international press, including Mr. Lefkovitz, so unlike incidents here in the United States where the press was able to completely ignore the actions of armed students or teachers, the truth about this incident will not be suppressed.

"Mr. Dadon is not going to become a victim of this conspiracy of silence," Gottlieb continued. "Elitist American college administrators, the national press, nor anti-gun politicians can sweep this incident under their rug."

Internationally published reports say Dadon studies at the yeshiva, and had his pistol when

the shooting erupted. When the gunman emerged from a library, Dadon reportedly shot him twice in the head. The gunman was subsequently shot by the off-duty soldier.

“Yitzhak Dadon’s apparently well-placed bullets interrupted a rampage,” Gottlieb said. “What a pity that someone like Mr. Dadon was not in class last April at Virginia Tech. What a tragedy that anti-gun extremism would keep him from attending class at Northern Illinois University. He would never be allowed to teach at Columbine High School, hold a job at Trolley Square in Salt Lake City, or go shopping at Omaha’s Westroads Mall.

“America’s acquiescence to anti-gun hysteria has led to one tragedy after another,” Gottlieb stated. “This disastrous policy has given us nothing but broken hearts and body counts, and it’s got to end. The heroism of an armed Israeli seminary student halfway across the world sends a message that we needn’t submit to murder in victim disarmament zones. That’s why his actions are getting such short shrift from America’s press. It’s a story they are loathe to report because it affirms a philosophy of self-reliance that they despise.”

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