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## Jurisdictional Confusion That Rivals Erie: The Jurisdictional Limits of Campus Police

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## JURISDICTIONAL CONFUSION THAT RIVALS *ERIE*: THE JURISDICTIONAL LIMITS OF CAMPUS POLICE

Jamie P. Hopkins\* & Kristina Neff\*\*

### I. INTRODUCTION: SETTING THE JURISDICTIONAL LIMITS OF CAMPUS POLICE JURISDICTION

For many fortunate college students, it is easy to reflect on encounters with campus police officers with a good-natured laugh. The time your friend received an underage drinking citation while walking to a frat party with a Solo cup—from a police unit that jumped out of the bushes. Or the time your friend was detained in the campus police office for drunkenly knocking over a trashcan and stop sign. Or the time when you showed a campus police officer your license to demonstrate you were lawfully drinking at the school's lake campus—and the police officer promptly dropped your license in the lake. Or perhaps less colorfully, the time you stayed up until 4:00 a.m. studying at the library and received a police escort to your car.<sup>1</sup>

In light of incidents like these, it can often be easy to forget the reality that serious crimes affect college campuses across the country with relative—and alarming—frequency.<sup>2</sup> Though almost six years have passed,

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1. These anecdotes are all drawn from personal experiences with campus police officers, as well as experiences of friends and family members. However, one need only look at campus police blotters to recognize the often humorous run-ins between co-eds and campus police officials. See e.g. *Campus Police Blotter*, The Davidsonian (Sept. 2, 2009) (available at <http://www.davidsonian.com/mobile/news/campus-police-blotter-1.1859670>) (“Officers observed a male and female running totally nude across the courtyard of Martin Court-F. Officers gave chase, and the officer apprehended a Davidson student at the southeast corner of the building. The other officer cut through the center of the building, apprehending one student at the northwest corner of the building. She stated that she had to run nude because she had to make good on a bet she lost.”) (indicating the wide range of issues that campus police investigate); *Campus Watch*, The University of Texas at Austin Police Dep’t (Mar. 6, 2012) (available at <http://128.83.40.122/police/campuswatch/archives/report.php?date=Mar+06+2012>) (“Criminal Mischief: A UT staff member discovered an unknown subject had micturated inside the elevator. Discovered on: 3-05-12, at 3:41 PM.”) (setting forth the reported and investigated potential campus security issues at University of Texas).

2. See James H. Noonan & Malissa C. Vavra, *Crime in Schools and Colleges: A Study of Offenders and Arrestees Reported Via National Incident-Based Reporting System Data*, Fed. Bureau of Investigation (October 2007) (available at <http://www.fbi.gov/about-us/cjis/ucr/nibrs/crime-in-schools-and-colleges>) (stating property destruction, assault, and rape are three common campus crimes).

few can forget the grisly April 2007 shooting massacre at Virginia Tech that left 32 people dead and 17 wounded.<sup>3</sup> In 2006, a 22 year old Eastern Michigan nutrition major was found dead in her dorm room. She had been raped and killed.<sup>4</sup> More recently, an armed robbery occurred in an Ohio State campus building in December 2011,<sup>5</sup> and in 2012, a student at Indiana University-Purdue University Indianapolis (IUPUI), reported he was attacked and forced to perform sexual acts in a university restroom.<sup>6</sup> This is, of course, a highly abbreviated list of recent incidents of campus crime. Like police officers in the “real world,” campus police are regularly called on to address extremely serious crimes like these.

In addition to the recent serious and high-profile campus crimes, campus police have been in the spotlight because of nationally-covered university investigations.<sup>7</sup> For example, the Pennsylvania State University sexual abuse scandal has, at times, put the campus police at the front and center of some very important questions.<sup>8</sup> In 1998, before the sexual abuse scandal became public, Pennsylvania State University campus police completed a “thorough” investigation of one of the alleged victim’s allegations.<sup>9</sup> As such, the role and jurisdictional bounds of campus police are evolving under increased public scrutiny.

While the importance of competent police investigations and responses are crucial to the safety of college students, faculty, and visitors, it is often forgotten that these campus police officers are just that—*campus* police officers.<sup>10</sup> This important distinction puts significant, though often uncertain,

3. Joanne Kimberlin, *For Virginia Tech’s Wounded: Triumph After Tragedy*, *The Virginian-Pilot* (Apr. 17, 2011) (available at <http://hamptonroads.com/2011/04/virginia-techs-wounded-triumph-after-tragedy>) (discussing death toll and wounded survivors).

4. Russell Goldman, *School Accused of Covering Up Student’s Murder*, *ABC News* (June 20, 2007) (available at [http://abcnews.go.com/US/story?id=3296170&page=1#.T1gZKWAm\\_LY](http://abcnews.go.com/US/story?id=3296170&page=1#.T1gZKWAm_LY)).

5. Sarah Pfledderer & Alex Antonetz, *Buckeye Alert Issued for Armed Robbery in Campus Building*, *The Lantern* (Dec. 4, 2001) (available at <http://thelantern.com/2011/12/buckeye-alert-issued-for-armed-robbery-in-campus-building/>).

6. Aishah Hasnie, *Student feels unsafe after attack on IUPUI campus*, *LA Times* (Mar. 6, 2012) (available at <http://www.latimes.com/wxin-student-feels-unsafe-after-attack-on-iupui-campus-20120306,0,1842996.column>).

7. See Steve Rosenbloom, *Notre Dame Calls that an Investigation?* *Chicago Tribune* (Jan. 21, 2013) (available at [http://articles.chicagotribune.com/2013-01-21/sports/chi-rosenbloom-notre-dame-teo-investigation-20130121\\_1\\_manti-te-o-irish-football-life-lesson](http://articles.chicagotribune.com/2013-01-21/sports/chi-rosenbloom-notre-dame-teo-investigation-20130121_1_manti-te-o-irish-football-life-lesson)) (raising questions around Notre Dame campus police’s investigation of the Manti Te’o “catfish” saga and the unfortunate suicide of a Notre Dame student after allegations of sexual assault).

8. Justin Pope, *Penn State Scandal Puts Campus Police in Spotlight*, *Huffington Post* (Nov. 17, 2011) (available at [http://www.huffingtonpost.com/2011/11/17/penn-state-scandal-puts-c\\_0\\_n\\_1100031.html](http://www.huffingtonpost.com/2011/11/17/penn-state-scandal-puts-c_0_n_1100031.html)) (stating the Penn State sexual abuse scandal thrust the campus police into the spotlight for performing a prior investigation into the subject matter).

9. *Id.* (noting the campus police investigation has received serious scrutiny for its lack of substantial findings).

10. Note, however, that in the minority of cases, municipal or city police forces will provide schools with actual police support.

restraints on their police power.<sup>11</sup> As such, very important constitutional, procedural, and other legal questions are raised. Can a campus police officer always arrest someone for a crime on campus, or must he call local law enforcement to effectuate the arrest?<sup>12</sup> What happens when a campus police officer witnesses a crime on campus, but the perpetrator of the crime then flees the scene? Does the campus police officer have the power to arrest the fleeing perpetrator?<sup>13</sup> What happens when a campus police officer is off-campus and witnesses someone driving suspiciously? Does the campus police officer have lawful jurisdiction to pull the individual over and arrest them for a DUI?<sup>14</sup> What happens when the school is a private religious university? Do arrests by private religious university campus police violate the Establishment Clause of the First Amendment?<sup>15</sup>

This article examines the scope of lawful campus police jurisdiction and the power of campus police officers. Police jurisdiction has become a particularly thorny, though increasingly relevant, issue as colleges and universities continue to experience both intense population and physical growth culminating in a large amount of distance learning and commuting students, challenging the historical concept of an insular campus.<sup>16</sup> Part II of this paper provides a historical overview of campus police powers and discusses the means by which campus police are granted police powers. Part III sets forth the aspects common to most campus police authorization statutes and their accompanying concerns. Part IV examines current campus police authorization statutes granting full police jurisdiction, as well as those granting limited jurisdiction. Part V reviews campus police authoriza-

11. See Villanova University, *Crisis Response Procedures*, [http://www1.villanova.edu/villanova/studentlife/crisis\\_response.html](http://www1.villanova.edu/villanova/studentlife/crisis_response.html) (last accessed March 7, 2012) (“While our Public Safety officers are well-trained professionals, they do not have the authority to arrest anyone on campus. The department, however, maintains excellent relationships with both the Lower Merion and Radnor Police Departments, the latter of which has jurisdiction on campus to respond to criminal behavior and can provide immediate response when necessary.”).

12. See *Penn Police Dep’t*, The University of Pennsylvania Division of Public Safety, <http://www.publicsafety.upenn.edu/UPPD/> (accessed March 12, 2013) (“All personnel of the UPPD are full-time sworn municipal police officers . . . and retain general law enforcement authority and order maintenance for the area in which the University of Pennsylvania is situated.”) (noting University of Pennsylvania campus police only have general law enforcement capabilities over campus issues but can effectuate arrests on campus).

13. *E.g. Pa. v. Mitchell*, 554 A.2d 542 (Pa. Super.1989) (reflecting this fact pattern); *Pa. v. Roberts*, 630 A.2d 869 (Pa. Super. 1993) (reflecting this fact pattern).

14. *E.g. Pa. v. Holderman*, 425 A.2d 752 (Pa. Super. 1981) (reflecting this fact pattern); *Tex. v. Carroll*, 855 S.W.2d 128 (Tex. App. 1993) (reflecting this fact pattern); *Sullivan v. Ga.*, 706 S.E.2d 618 (Ga. App. 2011) (reflecting this fact pattern).

15. *E.g. Myers v. Indiana*, 714 N.E.2d 276 (Ind. App. 1999) (reflecting this fact pattern); *N.C. v. Yencer*, 718 S.E.2d 615 (N.C. 2011) (reflecting this fact pattern).

16. Jeffrey S. Jacobson, *The Model Campus Police Jurisdiction Act: Toward Broader Jurisdiction for University Police*, 29 Colum J. L. & Soc. Probs. 39, 41–42 (1995) (discussing problems with assertion of campus police jurisdiction on large, noncontiguous campuses).

tion statutes that grant extended police jurisdiction. Part VI considers the challenges that have been posed to campus police officer jurisdiction in courts throughout the United States. Lastly, part VII examines how campus police procedures could impact the school's reputation and student safety as jurisdictional controls and educational institution needs continue to evolve.

## II. A BACK-STORY TO CAMPUS POLICE AND CONFERRAL OF POLICE POWER

### A. *From Watchman to Policeman: The Evolution of Campus Police*

Campus police have been a facet of university life for nearly 110 years; albeit at first, they were nothing more than glorified custodians.<sup>17</sup> Only in the past 40 years, however, have campus police squads begun to resemble professional security forces.<sup>18</sup> The necessity for further expanding and formalizing campus police powers has surfaced in recent years as serious safety concerns such as the Virginia Tech shootings signaled to universities across the nation that bolstering campus police forces was imperative to improving campus safety and security.<sup>19</sup> Yale University became the first university to employ a campus security force when it hired two New Haven city police officers in 1894.<sup>20</sup> Yale hired the police officers in response to tense relations between students and city police officers.<sup>21</sup> The Yale campus police officers were originally charged with the modest task of patrolling the grounds.<sup>22</sup> As often happens, other universities took notice of Yale's policies and began to follow suit.<sup>23</sup>

Campus policemen were initially referred to as campus "watchmen," wielding little legal authority or training.<sup>24</sup> While Yale's campus police

17. John J. Sloan, *The Modern Campus Police: An Analysis of their Evolution, Structure, and Function*, 11 Am. J. Police 85, 85 (1992) (stating campus police were akin to glorified custodians for the first 80 years of their existence in the U.S. university and collegiate atmosphere).

18. *Id.* at 87 (noting that in the 1970s, campus police began to take the shape of a real police force); Jacobson, *supra* n. 16, at 46 (stating that for many decades campus police were not well organized or trained).

19. Midwestern Higher Education Compact, *The Ripple Effect of Virginia Tech: Assessing the Nationwide Impact on Campus Safety Security Policy and Practice* (May 2008) (available at <http://files.eric.ed.gov/fulltext/ED502232.pdf>) (discussing changes among campus security and police force initiatives in wake of Virginia Tech shooting).

20. James C. Wada, et. al., *Betwixt and Between: The Perceived Legitimacy of Campus Police*, 33 Policing: An Int'l J. of Police Strategies & Mgmt. 1, 114 (2010) (describing the history of campus police).

21. *Id.* (articulating the reasons behind hiring local police officers to specifically patrol Yale's campus).

22. *Id.* (stating the original duties of Yale's campus police officers).

23. *Id.* (indicating other colleges and universities soon began to hire their own police forces).

24. Sloan, *supra* n. 17, at 86 (describing the limited training of early twentieth century campus policemen).

were former local police officers, the majority of campus watchmen were not police officers, had no formal training in law enforcement, and typically had retired from other, non-law enforcement professions.<sup>25</sup> Until around the mid-1930s, watchmen were charged with purely “custodial duties” such as “closing and locking doors, tending the boilers and performing other maintenance-related tasks,” and protecting campus facilities from property damage.<sup>26</sup> However, universities gradually began to empower campus police officers with some “social control functions”—primarily, the ability to enforce campus rules and regulations, slightly broadening their authority and jurisdiction.<sup>27</sup>

The professionalization of campus police forces emerged in the 1950s as a response to changing college demographics and increased student activism.<sup>28</sup> During that decade, colleges and universities experienced an increase in student enrollment and physical size.<sup>29</sup> As one scholar observes:

Swelling student enrollments . . . resulted in an ever-larger number of people on campus . . . . Universities, to meet the demands of increasing enrollments, hired additional faculty and staff, built new classroom buildings and dormitories, and scheduled more activities on campus. As a result of these changes, many college campuses became small cities, complete with all their problems: congestion, crowding, and most important, crime.<sup>30</sup>

Administrators recognized this growth brought new security needs and began to hire retired police officers to direct campus security efforts.<sup>31</sup> While this era saw an increase in professional campus police forces, most campus police officers remained glorified custodians, with non-law enforcement backgrounds.<sup>32</sup>

However, it was the social unrest of the 1960s and 1970s that truly marked the birth of the modern campus police department.<sup>33</sup> The anti-Vietnam War movement sparked an “atmosphere of confrontation between students and administrators,” where there was “no method of social control.”<sup>34</sup>

25. *Id.* (stating that most campus police officers were originally not law enforcement trained personnel).

26. Jacobson, *supra* n. 16, at 46 (noting campus police were often glorified custodians); Sloan, *supra* n. 17, at 86 (describing the duties performed by campus police in the early 20th century).

27. Sloan, *supra* n. 17, at 86 (stating how campus police powers grew slowly over time).

28. *Id.* (describing the professionalization of campus police).

29. *Id.* (noting the rapid growth in secondary school enrollment).

30. *Id.* at 87 (articulating why a growth in school enrollment led to increased campus police powers).

31. *Id.* (stating campus police officer positions started to become a favorable destination for retired police officers and security guards).

32. *Id.* (noting campus police officers remained significantly less authoritative than police even after they underwent an increased professionalism overhaul).

33. See Sloan, *supra* n. 17, at 87 (discussing the impact of social movements on the development of campus police).

34. *Id.* at 87–88 (noting that before well-trained campus police forces, social unrest on college campuses was difficult if not impossible to control).

As such, administrators were forced to rely on police agencies and the National Guard to combat social disorder on campus.<sup>35</sup> In response, colleges began to create university police forces, complete with well-educated, law-enforcement-trained police officers responsible for full-fledged law enforcement on campus.<sup>36</sup> Administrators were not the only body to respond; perhaps most significantly, state legislators began adopting police authorizing statutes that vest campus police forces with power and authority.<sup>37</sup>

### B. Vesting Police Power in Campus Police Forces

As the role of the campus police officer switched from “watchman” to law enforcement official, significant legal challenges arose. Municipal, state, county, and federal police officials derive their police power from complex and fragmented sources.<sup>38</sup> While power may be derived from varying sources—be it statutory, deputization, or designation—police powers are always derived from governing bodies.<sup>39</sup>

The term “police” in “police powers” most likely originated from the Latin word “polis” or “politia,” meaning “the condition of the state,” or in essence, its policy.<sup>40</sup> As such, police powers are essentially the powers to enforce policy.<sup>41</sup> While police powers have been an essential historical concept in American constitutional law, the term itself is found nowhere in the U.S. Constitution and was not the basis of a Supreme Court case until 1877.<sup>42</sup> However, the police power remains an important constitutional law tenet, derived from the Tenth Amendment. As one scholar has explained:<sup>43</sup>

The police power of a State, in a comprehensive sense, embraces its system of internal regulation, by which it is sought not only to preserve the public order and to prevent offenses against the State, but also to establish for the inter-

35. *Id.* at 88 (stating colleges and universities were forced to rely on government-supplied officers to deal with issues on campus).

36. *Id.* (noting the responses by academic institutions to quell social unrest); Jacobson, *supra* n. 16, at 46 (issuing the same sentiment).

37. Jacobson, *supra* n. 16, at 46 (articulating how state governments responded by passing laws to enable colleges to police their own campuses and people). For further discussion of state authorizing statutes, see *infra* nn. 30–59 and accompanying text.

38. See Albert T. Reiss, Jr., *Police Organization in the Twentieth Century*, 15 *Crime & Just.* 51 (1992) (noting the police power for campus police officers has a complex origin).

39. Reiss, *supra* n. 38, at 62 (stating the authority for police powers).

40. Santiago Legarre, *The Historical Background of the Police Power*, 9 *U. Pa. J. Const. L.* 745, 748–749 (2007) (discussing the origins of the word police).

41. *Id.* (noting the English term police was originally used as a synonym for policy).

42. David A. Thomas, *Finding More Pieces for the Takings Puzzle: How Correcting History can Clarify Doctrine*, 75 *U. Colo. L. Rev.* 497, 501 (2004) (noting the lack of an explicit mention of police powers in the U.S. Constitution and early court decisions).

43. *Hamilton v. Ky. Distilleries & Warehouse Co.*, 251 U.S. 146, 156 (1919) (“[T]he police power . . . was reserved to the States by the Tenth Amendment[.]”) (holding that the federal government does not have a general police power as this right was reserved for only the states).

course of citizen with citizen those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others.<sup>44</sup>

As such, state and private educational institutions cannot merely establish campus police offices with full police power and authority on their own initiative; it must be granted through some type of state authority.

At least 44 states have statutes that authorize campus policing.<sup>45</sup> Some statutes directly confer campus police forces with certain (though sometimes full) police powers.<sup>46</sup> For example, the Pennsylvania Code contains an explicit provision authorizing the creation of campus police forces titled “Capitol Police, Commonwealth Property Police and Campus Police.”<sup>47</sup> The Pennsylvania statute directly confers certain police powers upon “[s]ecurity or Campus Police of all State colleges and universities, State aided or related colleges and universities and community colleges.”<sup>48</sup> The Georgia Code devotes a chapter to “Campus Policeman” and directly confers them with the “the same law enforcement powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such campus.”<sup>49</sup> Massachusetts also has a section explicitly dedicated to campus police, titled, “Employees of colleges, universities, other educational institutions and hospitals; appointment as special officers.”<sup>50</sup> However, under the Massachusetts statute, campus police officers must be appointed at the request of the university.<sup>51</sup>

Nevertheless, numerous universities do not derive the power to operate a campus police force directly from statute, either because the school is a private university located in a state that only grants this authority to public institutions, or because the state has no authorization statute at all.<sup>52</sup> In these instances, campus police typically gain authority and jurisdiction over

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44. Thomas M. Cooley, *A Treatise on the Constitutional Limitations which Rest Upon the Legislative Power of the States of the American Union* 572 (Little, Brown and Co. 1874) (describing the police power).

45. Bromley, *supra* n. 45, at 5 (Bromley’s survey was published in 1996; further research shows the number of states with enacting statutes remains accurate for 2012).

46. *E.g.* 71 Pa. Consol. Stat. § 646 (2013) (granting campus police officers broad police powers).

47. *Id.* (noting the importance of campus police powers in its title).

48. *Id.* (conferring police powers to Pennsylvania campus police officers).

49. Ga. Code Ann. §20–8–2 (2012) (granting campus police officers jurisdiction over campus grounds).

50. Mass Gen. Laws ch. 22C § 63 (1991) (setting forth Massachusetts campus police “police power” granting statute).

51. *Id.* (limiting the jurisdiction of universities to hire and authorize campus police officers).

52. Jacobson, *supra* n. 16, at 65 (noting the variety of methods from which campus police officers can derive their police powers).

campus related legal matters via municipal deputization.<sup>53</sup> For example, Connecticut's authorization statute pertains only to public universities.<sup>54</sup> However, Yale University, a private university, has all of its police officers commissioned by the City of New Haven.<sup>55</sup> One scholar elaborates on the arrangement as follows:

After completing all training requirements for municipal police in Connecticut, and after approval by the New Haven Board of Police Commissioners, Yale officers receive badges and shield numbers identifying them as New Haven (not Yale) police. Their jurisdiction is thus concurrent with the city limits. However the area in which Yale officers may proactively patrol (i.e. the central campus, plus portions of several New Haven neighborhoods where the university owns property) is set forth in a memorandum of understanding between the university and the city.<sup>56</sup>

As such, universities not directly covered under a State legislative authorization statute have comprehensive mechanisms to ensure the legitimacy and efficacy of their campus police forces.<sup>57</sup>

### *C. Campus Police Under the Media Spotlight*

While campus unrest escalating to the level of anti-Vietnam War protests is currently uncommon, serious criminal actions on campus have become an ever increasing and prevalent problem.<sup>58</sup> However, universities have become cities unto themselves, and are often in need of a full-time police force.<sup>59</sup> There are over 4,500 degree granting post-secondary educational institutions in the United States.<sup>60</sup> The growth of enrollments in colleges and universities has been tremendous, marking a 37% increase in enrollments between 2000 and 2010.<sup>61</sup> As of 2010, there were over 21 million

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53. *Id.* (stating private colleges' campus police are often deputized through municipal level authorities, enabling the police to exercise state police powers over a specified jurisdictional area, both in physical and legal arenas).

54. *See* Conn. Gen. Stat. Ann. § 10a-142 (2006) (setting forth the police power authorization statute for Connecticut state college police officers).

55. Jacobson, *supra* n. 16, at 65 (explaining how Yale University deputizes its police force to ensure they can enforce campus policies through the state's police power).

56. *Id.* (describing Yale's campus police deputization).

57. *Id.* at 65-66 (Jacobson indicates that, even in many instances where state authorization statutes exist, numerous universities seek deputization to evade statutory jurisdictional limitations.).

58. *See* Bromley, *supra* n. 45, at 1 (noting greater frequency of crimes committed on and around college campuses).

59. *Id.* ("The university is like a city as far as crime is concerned.") (noting educational institutions operate like a small city and, as such, have a significant amount of crime).

60. U.S. Department of Education & National Center for Education Statistics, *Fast Facts: Educational Institutions, How many educational institutions exist in the United States?* <http://nces.ed.gov/fastfacts/display.asp?id=84> (2012) (listing the total number of U.S. based educational institutions).

61. U.S. Department of Education & National Center for Education Statistics, *Fast Facts: Enrollment*, <http://nces.ed.gov/fastfacts/display.asp?id=98> (2012) (stating the total amount of enrollees at post-secondary degree granting institutions); U.S. Department of Education & National Center for Education

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students enrolled in these programs, creating over \$470 billion in revenue in 2010.<sup>62</sup> As such, there are a significant number of people under the watchful eye of their campus security forces and under an educational institution's umbrella rules.

In addition to the sheer size of the educational population, the expansion of crime has created even greater demand for campus police efforts.<sup>63</sup> According to data collected by the U.S. Education Department and the FBI, there were over 33,000 reported criminal offenses in 2011 on campuses.<sup>64</sup> While burglaries make up the majority of crimes, motor vehicle theft, aggravated assault, and sexual crimes also make up a significant portion.<sup>65</sup> Perhaps more telling is the amount of unreported criminal actions that take place on campus. For example, some studies have shown that roughly one out of every four female college students will be subject to some form of sexual assault during their four-year college timeframe.<sup>66</sup> These statistics illustrate that campus crimes present a serious challenge to how campus police forces need to be regulated, organized, trained, and supervised.

Moreover, the increase and prevalence of serious campus crimes have created significant challenges in determining the boundaries of campus policemen's ability to assert lawful authority on campus and the surrounding area. In 2009, the U.S. Department of Education in conjunction with the FBI began to examine existing campus security reports from a number of different universities.<sup>67</sup> Ultimately, the investigation resulted in three universities being flagged as having violated the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).<sup>68</sup> The Clery Act requires colleges and universities that participate in federal

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Statistics, *Digest of Education Statistics*, [http://nces.ed.gov/programs/digest/d11/ch\\_3.asp](http://nces.ed.gov/programs/digest/d11/ch_3.asp) (2011) [herein after *Digest of Education Statistics*] (setting forth specific college and university enrollment data).

62. *Digest of Education Statistics*, *supra* n. 61 (stating the total number of student enrollees and revenue).

63. See Bromley, *supra* n. 45; see generally Reiss, *supra* n. 38, at 62 (noting that, not unlike the evolution of campus police, municipal, county, state, and federal police organizations have become more sophisticated and professionalized in the face of population growth and urbanization).

64. U.S. Department of Education, *Criminal Offenses, On Campus—2011*, <http://ope.ed.gov/security/GetAggregatedData.aspx> (select "Any" Institution State or Outlying Area, "Any" Institution Enrollment, "Any" Type of Institution, and "Any" Instructional Program and "Any" location of campus) (2013) (setting forth the total number of reported criminal offenses on U.S. post-secondary campuses).

65. *Id.* (breaking down on-campus crimes by each specific criminal act).

66. Melissa J. Himelein, *Risk factors for sexual victimization in dating: A longitudinal study of college women*, *Psychol. of Women Q.*, 19:31, 41(1995) (conducting a study on sexual assault of college women).

67. Allie Grassgreen, *U.S. Finds Violations of College Crime Reporting*, *USA Today* (May 17, 2011) (available at [http://usatoday30.usatoday.com/news/education/2011-05-17-crime-compliance-reports-colleges\\_n.htm](http://usatoday30.usatoday.com/news/education/2011-05-17-crime-compliance-reports-colleges_n.htm)) (discussing the Department of Education's investigation into college crime reporting).

68. *Id.* (stating the use of the Clery law to investigate educational institutions was a new use for the law).

aid programs to collect and report on campus crime.<sup>69</sup> In addition, the Clery Act requires schools to keep track of crimes near the campus and to report these crimes, expanding the jurisdiction of the campus's watchful eye.<sup>70</sup> Virginia Tech is noted for two high profile incidents, the 2007 mass shooting and a 1990s sexual assault case, while Northern Iowa and Vermont were singled out for having inaccurately reported their campus crimes.<sup>71</sup> Furthermore, in 2012 six California-based schools were found to have violated the Clery Act.<sup>72</sup> Additionally, the Department of Education is currently investigating whether Penn State officials violated the Clery Act by failing to properly report claims of sexual abuse in connection with Jerry Sandusky.<sup>73</sup> Ultimately, the Clery Act, popular media stories such as the Penn State sexual abuse scandal, and other prominent campus crime related incidents will put more pressure on the jurisdictional bounds of campus police.

### III. COMMON FACETS OF CAMPUS POLICE AUTHORIZATION STATUTES

The statutory grants of state police powers to campus police officers vary widely among state statutes; however, most statutes possess certain similar attributes. First, most of the statutes identify whether they apply to public or private institutions.<sup>74</sup> For example, Georgia's campus police statute provides in its definitional section that "campus" includes the grounds owned or operated by a "college or university."<sup>75</sup> A "college or university" is then defined as "an accredited, nonproprietary, public or private educational institution of higher learning located in this state."<sup>76</sup> In contrast, New York vests State University Trustees with the power to appoint university police officers only to members of the state university system.<sup>77</sup> North Car-

69. 20 U.S.C. § 1092(f) (2013) (setting forth the Clery Act's requirements).

70. *Id.* at § 1092(f)(1)(F) (expanding the scope of the institution's reporting requirements to off-campus locations).

71. Grassgreen, *supra* n. 67.

72. Andrew Mytelka, *6 California Colleges Found to Have Violated Federal Campus-Crime Law*, *The Chronicle* (October 16, 2012) (available at <http://chronicle.com/blogs/ticker/6-california-colleges-found-to-have-violated-federal-campus-crime-law/50734>) (discussing the six California colleges that were found to have violated the Clery Act).

73. Jenna Johnson, *Did Penn State officials violate the Clery Act?* *The Washington Post* (Nov. 9, 2011) (available at [http://www.washingtonpost.com/blogs/campus-overload/post/did-penn-state-officials-violate-the-clery-act/2011/11/09/gIQAh0CZ6M\\_blog.html](http://www.washingtonpost.com/blogs/campus-overload/post/did-penn-state-officials-violate-the-clery-act/2011/11/09/gIQAh0CZ6M_blog.html)) (questioning whether Penn State officials might have violated the Clery Act).

74. *See* Bromley, *supra* n. 45, at 4 (noting state authorization statutes distinguish between public and private educational institutions for purposes of bestowing police powers).

75. Ga. Code Ann. § 20-8-1(1) (2010) (defining "campus" for purposes of § 20-8-2).

76. *Id.* at § 20-8-1(3) (defining "college or university" for purpose of clarifying the definition of "campus").

77. N.Y. Educ. Law § 355(1)-(2) (McKinney 2011) (setting forth New York's statute for disseminating police powers to campus police officers).

olina provides one statute setting forth the powers of both public and private universities.<sup>78</sup> Elsewhere in its statutory scheme, North Carolina provides a second provision that addresses the power of the university system's Board of Trustees to appoint and manage state university campus police.<sup>79</sup> A 1994 survey conducted by Max Bromley (Bromley Survey) found that the "vast majority" of statutes confer campus police power to public institutions only.<sup>80</sup>

Second, campus police authorization statutes typically specify the nature of police powers granted.<sup>81</sup> For example, the Pennsylvania statute permits campus police officers to: (a) "enforce good order" on university property; (b) protect university property; (c) "to exclude disorderly persons" from university property; and (d) "to exercise the same powers" as are exercised by the police of "the municipalities where said colleges, universities, and community colleges are located."<sup>82</sup> Perhaps more succinct, the Oklahoma statute provides that, except as limited by law and the statute's jurisdictional grant, campus police "shall have the same authority as a municipal police department."<sup>83</sup> The Bromley Survey found that, subject to jurisdictional constraints, "campus police officers had virtually the same powers as their municipal counterparts."<sup>84</sup>

Third, campus police authorization statutes typically contain officer training requirements.<sup>85</sup> The Pennsylvania statute requires that security and campus police exercise their police powers "only and after they have completed a course of training including crisis intervention and riot control as approved by the Department of Education."<sup>86</sup> The Tennessee statute, which extends only to public universities, provides that the board of regents and board of trustees of the state university system "may establish additional qualifying factors, training standards, and policies for employees holding a police officer's commission."<sup>87</sup> At minimum, Tennessee campus police of-

78. N.C. Gen. Stat. § 74G-6 (2011) (noting North Carolina's dual purpose statute).

79. *Id.* at § 116-40.5(a) (stating North Carolina's manner of distributing police powers to campus police officers).

80. Bromley, *supra* n. 45, at 5 (Bromley's survey was published in 1996; further research shows the number of states with enacting statutes remains accurate for 2012).

81. *Id.* at 7 (specifying the nature of the police powers authorized by state statutes for campus police officers).

82. 71 Pa. Consol. Stat. § 646 (2003) (listing the Pennsylvania statute's authorizations).

83. Okla. Stat. tit. 74, § 360.17(C) (2011) (providing that campus police officers have the same police powers as any other municipal officer).

84. Bromley, *supra* n. 45, at 7 (noting that it was common to provide campus police officers with the same police powers as other state police officers).

85. *Id.* (stating campus police authorization statutes usually require some level of campus police officer training).

86. 71 Pa. Consol. Stat. § 646 (noting the training requirements of campus police officers).

87. Tenn. Code Ann. § 49-7-118(a), (b) (2012); Bromley, *supra* n. 45, at 7 (characterizing Tennessee's language as relatively typical of training provisions of campus police authorizing statutes).

ficers must meet the “minimum certification requirements of the peace officer standards and Training Commission.”<sup>88</sup> Bromley notes that there is “no single set of national standards regarding the hiring, qualification, and training required for campus law enforcement officers” but observes that most large colleges and universities (15,000 students and larger) typically employ certified police officers.<sup>89</sup>

The fourth feature of campus police authorization statutes, and largely the most divergent among state statutes, is a statement of the physical jurisdiction in which campus police officers may exercise their police authority.<sup>90</sup> As Bromley notes, defining the physical parameters where a “normal” police officer may exercise jurisdiction is “very important since it defines the geographic boundaries for the exercise of police powers.”<sup>91</sup> However, defining the territorial boundaries of campus police officers is far more difficult, even when defined by statute, because the boundaries of the modern college campus can be difficult to define.<sup>92</sup> This is particularly so with non-contiguous urban campuses that may be dispersed throughout a city. Bromley roughly categorizes jurisdictional provisions as providing limited, extended, and full jurisdiction.<sup>93</sup>

#### IV. LIMITED AND FULL JURISDICTION

Limited jurisdiction statutes typically provide campus police officers with jurisdiction on property or facilities that are owned or operated by the college or university. The Pennsylvania statute confers limited jurisdiction.<sup>94</sup> Campus police officers in Pennsylvania have jurisdiction over “grounds and buildings” of the particular Pennsylvania university at which they are employed.<sup>95</sup> In some instances, limited jurisdiction may make sense—particularly, where the campus is a relatively cohesive, contiguous campus. However, Pennsylvania’s limited jurisdiction statute has posed numerous problems in the urban campus setting at schools such as the University of Pennsylvania and the University of Pittsburgh.<sup>96</sup>

88. Bromley, *supra* n. 45, at 7

89. *Id.* (discovering there is no national standard for campus police officer training or certification).

90. *See id.* at 6 (noting the jurisdiction of campus police officers ranges drastically across the country).

91. *Id.* at 5 (stating the importance of being able to define a campus police officer’s jurisdictional bounds).

92. *Id.* at 6 (stating the difficulty of defining the bounds of a college campus).

93. *Id.* (describing varying types of campus police jurisdictional authority).

94. 71 Pa. Consol. Stat. § 646 (noting Pennsylvania’s limited jurisdictional authority of campus police officers).

95. *Id.* at § 646(b); *but see Commonwealth v. Holderman*, 425 A.2d 752, 756 (Pa. Super. 1981) (recognizing fresh pursuit exception to jurisdictional constraints).

96. *E.g. Commonwealth v. Roberts*, 630 A.2d 869, 871–872 (Pa. Super. 1993) (challenge to police authority exercised by University of Pittsburgh police officer); *Pa. v. Mitchell*, 554 A.2d 542, 547–548

In contrast, full jurisdiction statutes confer campus police statewide jurisdiction and police powers. In Wyoming, campus police officers are designated as peace officers vested with full, statewide jurisdiction.<sup>97</sup> Very few states grant campus police officers such vast jurisdiction.<sup>98</sup> Nevertheless, certain statutory mechanisms, when pieced together, may have the effect of granting campus police officers virtual statewide jurisdiction.<sup>99</sup>

## V. EXTENDED JURISDICTION STATUTES

Extended jurisdiction statutes come in many formulations and are difficult to generalize. These jurisdictional grants afford campus police officers with some jurisdiction beyond campus property, but they do not grant jurisdiction throughout the entire state. Extended jurisdiction statutes more adequately address that the modern campus, in actuality, goes beyond purely university owned properties—for example, to private residences where students are the dominant population, local bars, and restaurants.<sup>100</sup> Further, they reflect that even with more insular campuses, students and their parents weigh the safety of both the campus and surrounding neighborhoods when choosing what college to attend.<sup>101</sup> However, extended jurisdiction statutes are difficult to dissect and apply because they may provide extended jurisdiction in one or all of the following three ways.

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(Pa. Super. 1989) (challenge to police authority exercised by University of Pennsylvania police officer). See also Parker R. Conrad & Garrett M. Graff, *Crossing the Line: Is Public Accountability the Price of a Safe Campus?* The Harvard Crimson (Sept. 15, 2000) (available at <http://www.thecrimson.com/article/2000/9/15/crossing-the-line-ptake-a-ten-minute/?print=1>) (“Harvard’s property is non-contiguous. The University owns a big patch of property on the Boston side of the Charles River, sizable acreage in Cambridge and buildings scattered across two counties. Its Medical School is in the Longwood area of Boston, and it owns acres of land in Southborough and Hamilton. Without any additional powers, an [Harvard University Police Department] officer crossing the street from Harvard Yard to the Holyoke Center would have no more legal authority to stop a crime in progress (and make the accompanying arrest) than an ordinary citizen.”).

97. Wyo. Stat. Ann. §§ 7–2–101(a)(iv), 102 (2011) (granting campus police statewide jurisdiction).

98. Bromley, *supra* n. 45, at 6 (noting most states limit the jurisdictional authority of campus police to less than full state jurisdiction as an officer of the peace).

99. See generally *id.* (discussing concurrent jurisdiction).

100. Jacobson, *supra* n. 16, at 48 (“The legislative definition of campus, however, may well differ from a student’s understanding of the same term. Hence a university police officer, acting somewhere a student might consider on campus, might find her actions subject to legal challenge for having occurred off-campus.”) (noting the different possible definitions of “on-campus” and “off-campus” and the legal ramifications of these varying definitions for both students and for campus police officers).

101. *Id.* at 49–50 (describing the decision making process of students and family members when choosing a school by factoring in safety concerns of surrounding areas).

A. *Extended Jurisdiction Provided With Reference to  
Property or Measurement*

First, extended jurisdiction statutes may provide jurisdiction over defined public roads or spaces that adjoin campus, in addition to the jurisdiction provided by limited jurisdiction statutes.<sup>102</sup> For North Carolina, this extension is defined with reference to the campus's physical property; campus police have jurisdiction over "[r]eal property owned by or in the possession and control of the institution employing the officer" as well as "any portion of any public road or highway passing through" the real property owned by the institution.<sup>103</sup> In contrast, Florida's statute defines an officer's extended jurisdiction by reference to measurement, providing that jurisdiction extends "within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of the state university, a direct-support organization of such university, or any other organization controlled by the state university."<sup>104</sup>

B. *Is it Hot in Here?: In Fresh Pursuit of Extended Jurisdiction*

Second, jurisdiction may be extended with the provision of a "hot" or "fresh" pursuit provision.<sup>105</sup> These provisions provide campus police officers with the ability to apprehend those who commit offenses on campus and subsequently flee beyond the campus police officer's jurisdiction.<sup>106</sup> Both North Carolina and Florida have "hot pursuit" exceptions.<sup>107</sup> North Carolina's statute permits campus police officers jurisdiction over "any other real property while in continuous and immediate pursuit of a person for an offense committed" upon property within the officer's primary jurisdictional grant.<sup>108</sup> Florida provides that jurisdiction may be exercised off-campus where the "hot pursuit" originated within the campus officer's jurisdiction.<sup>109</sup>

102. *E.g.* N.C. Gen. Stat. § 74G-6 (2013) (setting forth an extended jurisdictional authority for campus police in North Carolina).

103. *Id.* at § 74G-6(b) (extending jurisdiction for campus police to adjacent roads and property).

104. Fla. Stat. § 1012.97(2) (2011) (extending campus police jurisdiction based on a distance measurement from campus grounds and property).

105. *Id.* (providing for an immediate pursuit exception to expand jurisdiction off of campus property and past the extended distance jurisdictional limits of the statute).

106. *Id.* (enabling the campus police force to extend their jurisdiction to arrest and apprehend criminals fleeing beyond the campus limits).

107. *Id.*; N.C. Gen. Stat. § 74G-6(b)(3) (providing for a hot pursuit exception to the extended jurisdiction statute limitation).

108. N.C. Gen. Stat. § 74G-6(b)(3) (allowing for extended jurisdiction over property when in immediate pursuit).

109. Fla. Stat. § 1012.97(2) (allowing for extended jurisdiction pursuant to the hot pursuit exception).

*C. Extended Jurisdiction by Mutual Agreement*

Third, jurisdiction may be extended by way of mutual agreements with other area police forces.<sup>110</sup> Mutual aid agreements permit campus police “concurrent jurisdiction” with other police departments in a designated area agreed upon by the departments.<sup>111</sup> While these agreements will vary depending upon the particular agreement between police units, they may have the effect of authorizing campus police jurisdiction within the entire municipality, county, or even state in which the campus is situated.<sup>112</sup> North Carolina grants the governing body of colleges and universities the authority to enter into agreements with any municipality, county, or with any other university operating a campus police force to extend campus police officer jurisdiction into that other jurisdiction.<sup>113</sup> Florida permits the Board of Regents and Trustees to enter into a mutual aid agreement with a “law enforcement authority.”<sup>114</sup>

## VI. JURISDICTION IN ACTION: CAMPUS POLICE JURISDICTION IN THE COURTS

Given the countless combinations of jurisdictional grants available, on top of the typical problems associated with statutory construction, the jurisdiction of campus police officers is difficult to ascertain and untangle. Not surprisingly, many challenges have reached state courts concerning whether a campus police officer’s authority was lawfully exercised based on jurisdictional grounds and some have even reached state supreme courts.<sup>115</sup> For example, in 2010, a Boston University campus police officer was found to have exceeded his jurisdictional bounds as a special state officer when he randomly ran a check on an individual’s license plate number, finding an

110. *E.g.* Va. H. 965, Robert B. Bell, *HB 965 Campus Police, mutual aid agreements with local law-enforcement agencies and State Police*, Virginia State Legislature (2012) (available at <http://leg1.state.va.us/cgi-bin/legp504.exe?121+sum+HB965>) (“Requires campus police to enter into mutual aid agreements with an adjacent local law-enforcement agency or the State Police for cooperation in providing assistance with the investigation of deaths and alleged rapes occurring on college campuses.”) (mandating that campus police officers provide assistance to local law enforcement agencies in the event of specific crimes).

111. *See e.g.* Ben Mathes, *Police Departments Re-sign Mutual-aid Agreement*, The Post (Nov. 5, 2012) (available at <http://thepost.ohiou.edu/content/police-departments-re-sign-mutual-aid-agreement>) (discussing the mutual aid agreement between Ohio University and the local Athens Police Department).

112. *Id.* For further discussion of how expansively mutual aid agreements may extend campus police power, see *infra* nn. 113–114 and accompanying text.

113. N.C. Gen. Stat. § 74G–6(c) (describing mutual aid agreements).

114. Fla. Stat. § 1012.97(2) (enabling mutual aid agreements between Florida police agencies); Fla. Stat. § 23.1225 (“Law enforcement agency” for purposes of this provision is defined as “any agency or unit of government that has authority to employ or appoint law enforcement officers.”).

115. *See Commonwealth v. Hernandez*, 924 N.E.2d 709 (Mass. 2010) (discussing the jurisdictional limits of campus police officers).

outstanding warrant, and therefore effectuating an arrest, all of which occurred off of campus property.<sup>116</sup>

### A. *Campus Police Jurisdiction Influencing DUIs*

Campus police officers are frequently called on to enforce traffic infractions.<sup>117</sup> An oft-litigated issue in the area of campus police jurisdiction is the authority of campus police officers to arrest both students and the general public for driving under the influence.<sup>118</sup> This issue alone provides a rich study in the complexities and technicalities of campus police jurisdiction and is illustrative of how limited and extended jurisdiction regimes operate in reality.<sup>119</sup> Furthermore, states that offer extended jurisdiction for campus police officers, such as Michigan, see a significant amount of DUI-related arrests by campus police.<sup>120</sup>

A limited jurisdiction statute often does not address whether campus police officers have jurisdiction over roadways that pass through or adjoin university property.<sup>121</sup> In those instances, a campus police officer generally cannot pull over and arrest someone he suspects of driving under the influence of alcohol. Nevertheless, the “hot pursuit” (“fresh pursuit”) exception may still provide jurisdiction for campus police officers that observe suspicious driving on campus, even where the authorization statute contains no explicit reference to a “hot pursuit” exception. In *Pennsylvania v. Holderman*, the Pennsylvania Superior Court recognized that campus police officers are not statutorily granted the power of “fresh pursuit” under the cam-

116. *Hernandez*, 924 N.E.2d at 710–711 (setting forth the facts of the case and identifying that all of the relevant police actions occurred off-campus).

117. See Brandon Howell, *Drunk Driving Arrests by Campus Police Vary*, MLive.com (Sept. 14, 2012) (available at [http://www.mlive.com/news/index.ssf/2012/09/drunken-driving\\_arrest\\_rates\\_by.html](http://www.mlive.com/news/index.ssf/2012/09/drunken-driving_arrest_rates_by.html)) (noting the prevalence of drunk driving on and near college campuses and how campus police deal with these situations).

118. See generally *id.*; see also *Commonwealth v. Smeaton*, 992 N.E.2d 243 (Mass. 2013) (noting the jurisdictional challenges associated with traffic stops conducted off-campus by a campus police officer).

119. See Howell, *supra* n. 117 (stating that Michigan campus police arrest a comparatively high number of people for DUI). Thus, many of the examples discussed in this section specifically reference campus police jurisdiction in reference to driving under the influence. However, the principles apply generally to the commission of any crime, and not just the crime of driving under the influence.

120. *Id.* (noting that Michigan campus police arrest a high number of people driving under the influence as compared to campus police officers of other states); The Michigan Daily, *Policing out of bounds: Campus police should not have off-campus jurisdiction* (Jan. 30, 2002) (available at <http://www.michigandaily.com/content/policing-out-bounds-campus-police-should-not-have-campus-jurisdiction>) (stating the Michigan courts and legislative branch have provided campus police officers with wide ranging jurisdictional bounds, enabling them to enforce laws off of campus property).

121. *E.g.* 71 Pa. Consol. Stat § 646 (2003) (making no reference to jurisdiction over roads adjoining and passing through campus).

pus police authorization statute.<sup>122</sup> However, the Superior Court held that because the campus police authorization statute permitted campus police to exercise the same police power exercised by police in the municipality where the university is situated, campus police officers may avail themselves of the “fresh pursuit” provision provided to municipal police officers.<sup>123</sup> The caveat is that in the drunk driving context, the officer must observe the suspicious driving *on campus* in order to lawfully arrest someone pursuant to the “hot pursuit” exception.<sup>124</sup>

An extended jurisdiction state provides campus police officers with a greater perimeter to lawfully apprehend those driving under the influence. Recall that Florida’s authorization statute extends campus police jurisdiction within 1,000 feet of university property.<sup>125</sup> This means a campus police officer in Florida may lawfully arrest someone for drunk driving that occurs within 1,000 feet of the university property.<sup>126</sup> Florida also has a “hot pursuit” provision.<sup>127</sup> Thus, if a campus police officer observes suspicious driving in an area not on campus property, but still within 1,000 feet of campus property, the campus police officer may follow the vehicle beyond the 1,000-foot limit in “hot pursuit” and lawfully effectuate an arrest. Moreover, jurisdiction may further be extended to cover the entire municipality in which the campus is situated via mutual agreement or court designation. In that instance, a campus police officer may effectuate an arrest for driving under the influence not only within a certain distance of the campus, but throughout an entire municipality.<sup>128</sup> As such, this can eventually lead to lawful jurisdiction of campus police multiple municipalities away from the campus.<sup>129</sup>

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122. *Holderman*, 425 A.2d at 755 (holding campus police officers in PA do not have the jurisdictional expansion of fresh pursuit).

123. *Id.* (finding an exception for fresh pursuit under local municipal laws).

124. *E.g. Commonwealth v. Savage*, 589 A.2d 696 (Pa. Super. 1991) (finding hot pursuit exception not available to campus police officer because suspicious driving leading to driving under intoxication arrest did not originate on campus). This same principle applies to the commission of crimes generally. Where the hot pursuit exception applies generally, the commission of the crime must begin within the campus police officer’s jurisdiction in order for him to make a lawful arrest outside of his jurisdiction pursuant to the hot pursuit exception.

125. Fla. Stat. § 1012.97(2) (setting forth Florida’s campus police jurisdiction).

126. *Id.* (stating Florida’s campus police jurisdiction extends 1,000 feet off-campus).

127. *Id.* (allowing for extended jurisdiction in times of hot pursuit).

128. *E.g. Boatwright, IV v. Commonwealth*, 647 S.E.2d 515, 517 (Va. App. 2007) (noting pursuant to court order, campus police at the University of Virginia have power to effectuate arrests throughout entire city of Charlottesville, Virginia).

129. *Id.* (describing the broad jurisdictional bounds of the University of Virginia campus police).

B. *Is the Lemon Test a Lemon for Campus Police Limitations?*

An interesting jurisdictional challenge has emerged regarding DUI charges effectuated by campus police officers of private, religiously-affiliated universities.<sup>130</sup> Defendants in these cases have challenged DUI charges on the grounds that the “delegation and subsequent exercise of state police power by an officer employed by such an institution” violates the Establishment Clause.<sup>131</sup> In North Carolina, Michigan, and Indiana, courts have considered whether state conferral of campus police power on private, religiously-affiliated universities violates the Establishment Clause of the First Amendment of the Constitution.<sup>132</sup> The First Amendment of the United States Constitution provides, in relevant part, “Congress shall make no law respecting an establishment of religion.”<sup>133</sup> The Establishment Clause became binding on all 50 states via the Due Process Clause of the Fourteenth Amendment.<sup>134</sup> As a result, no state may seek to establish a state religion.

In *State v. Yencer*, a Davidson College campus police officer observed the defendant driving suspiciously on streets adjoining Davidson’s campus.<sup>135</sup> Pursuant to North Carolina’s authorization statute, which permits campus police to exercise jurisdiction on roads adjoining campus, the campus police officer had statutory authority to pull over the defendant’s vehicle.<sup>136</sup> The officer did so, and after administering two breath alcohol tests, the officer arrested the defendant for driving while impaired.<sup>137</sup> The defendant filed a motion to suppress, contending that since Davidson has Presbyterian ties, it is a “religious institution” for Establishment Clause purposes.<sup>138</sup> The defendant argued that the exercise of police power by a relig-

130. *E.g. Mich. v. Van Tubbergen*, 642 N.W.2d 368 (Mich. App. 2002) (Two campus police officers from Hope College, a private religious college, arrested an individual off-campus for drunk driving. The courts upheld the arrest and the evidence obtained from it as lawful as the campus police officers were properly deputized through the local municipality to enforce laws throughout the municipality and not merely on campus.).

131. *E.g. Joseph R. Pope, North Carolina Court of Appeals Rules that Constitution Prevents Davidson Campus Police from Arresting DWI Suspect*, Williams Mullen (Oct. 6, 2010) (available at <http://www.williamsmullen.com/blog/north-carolina-court-appeals-rules-constitution-prevents-davidson-campus-police-arresting-dwi>) (noting defendants may successfully challenge the exercise of extended jurisdiction by religious college’s campus police as a violation of the Establishment Clause).

132. *See Van Tubbergen*, 642 N.W.2d 368; *N.C. v. Yencer*, 718 S.E.2d 615 (N.C. 2011); *Myers v. Indiana*, 714 N.E.2d 276 (Ind. App. 1999) (revolving around the campus police jurisdiction of campus police officers employed by private religious educational institutions).

133. U.S. Const. amend. I (setting forth the Establishment Clause).

134. *Id.* at amend XIV.

135. *Yencer*, 718 S.E.2d at 616; *see also* Pope, *supra* n. 131 (setting forth the facts of the case).

136. *Yencer*, 718 S.E.2d at 616; *see also* Pope, *supra* n. 131 (describing North Carolina’s authorization statute).

137. *Yencer*, 718 S.E.2d at 616.

138. *Id.*

ious institution violates the U.S. Constitution.<sup>139</sup> The trial court denied the defendant's motion to suppress, and the Court of Appeals of North Carolina reversed.<sup>140</sup> The court of appeals held that Davidson is a religious institution and that the North Carolina authorization statute impermissibly delegated police authority to a religious institution.<sup>141</sup>

However, on appeal, the Supreme Court of North Carolina, applying the *Lemon* Test, reversed, determining there was no violation of the Establishment Clause.<sup>142</sup> The court of appeals noted that religious institutions need not be insulated from public benefits available neutrally to all.<sup>143</sup> To survive an Establishment Clause challenge, the conferral of a public benefit to a religious institution must pass the three-prong *Lemon* test.<sup>144</sup> First, the "statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion."<sup>145</sup> The defendant conceded that the statute had a secular legislative purpose.<sup>146</sup> The Court moved to an examination of whether conferring police power on Davidson campus police had the "primary effect of advancing religion" and constituted an "excessive government entanglement with religion."<sup>147</sup> The Court noted that Davidson's ties with the Presbyterian Church were largely historical, and that its institutional characteristics were highly secular in nature.<sup>148</sup> As such, conferring campus police the authority to enforce state laws did not have the primary effect of advancing religion.<sup>149</sup> Further, because the Davidson campus police were delegated limited police powers, there was no excessive entanglement of church and state.<sup>150</sup> Therefore, the Davidson campus police were found to have lawfully exercised police power, and the defendant's conviction was upheld.<sup>151</sup>

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139. *Id.*

140. *Id.* (articulating the trial court's reasons for finding in favor of defendant).

141. *Id.* (reciting decision of court below).

142. *See id.* at 617, 622–623 (reversing the lower court, finding no violation of the establishment clause); *see also Myers v. Indiana*, 714 N.E. 2d 276 (Ind. Ct. App. 1999) (coming to same conclusion in similar case based on similar reasoning).

143. *Yencer*, 718 S.E.2d at 617 (restating the appellate court's rationale).

144. *Id.* (noting public benefits bequeathed to religious institutions need to pass the *Lemon* test in order to not violate the Establishment Clause).

145. *Id.*

146. *Id.*

147. *Id.* at 618.

148. *Id.* at 618–619 (noting Davidson is a private liberal arts college, not a church; that students are admitted regardless of religious beliefs; that students need only complete one course of religious study; that faculty and staff come from a wide diversity of faiths; and that attendance at religious services is not compulsory).

149. *Yencer*, 718 S.E.2d at 621–622.

150. *Id.* at 621.

151. *Id.* at 622.

C. *What Constitutes Campus Property in Limited Jurisdiction States: Statutory Interpretation and Limited Jurisdiction Statutes*

Limited jurisdiction statutes theoretically set forth identifiable property over which campus police officers may lawfully exercise their jurisdiction.<sup>152</sup> Nevertheless, the property and premises covered by the statute may be difficult to determine.<sup>153</sup> For example, at least one statute indicates police power may only be exerted on campus, but never defines what the term “campus” encompasses.<sup>154</sup> Other statutes specify that jurisdiction may be exercised over property owned and operated by the campus; however, challenges have been raised that such jurisdiction is limited to property owned and operated in conjunction with the university’s educational mission.<sup>155</sup> Even where a statute specifies that jurisdiction may only be exercised on campus property dedicated to the educational mission of the university, it can be difficult to identify what property is sufficiently dedicated to the educational mission such that a campus police officer may lawfully exercise jurisdiction.<sup>156</sup>

As with most statutes, limited jurisdiction statutes are particularly susceptible to varying statutory interpretations that are eventually challenged in the courts.<sup>157</sup> One such example is the 1987 case *Pennsylvania v. Mitchell*.<sup>158</sup> In *Mitchell*, a University of Pennsylvania student reported to campus police officers that two young men had attempted to steal her wallet.<sup>159</sup> A campus police officer on foot patrol received a radio dispatch regarding the reported attempted robbery and immediately observed two young men matching the description of the perpetrators.<sup>160</sup> With the help of an officer called in for back-up, the officer briefly escorted the young men to a donut shop on university-owned property.<sup>161</sup> The young men eventually broke

152. See e.g. 71 Pa. Consol. Stat. 71, § 646(b) (setting forth a limited jurisdiction statute).

153. See e.g. *id.* (“To protect the property of the Commonwealth in State Grounds and Buildings . . . and in the grounds and buildings of all State colleges and universities, State aided or related colleges and universities and community colleges.”) (setting forth extremely vague but limited jurisdictional statute).

154. Jacobson, *supra* n. 16, at 56 (discussing jurisdictional clause under Nevada campus police authorization statute).

155. *Id.* at 56–57 (noting the wide range of limited jurisdictional statutes).

156. *Id.* (noting the difficulty in distinguishing the proper bounds of property covered by campus police enforcement).

157. *Id.* (stating the jurisdictional statutes are often challenged in court because of their broad and vague nature).

158. *Mitchell*, 554 A.2d 542 (examining the jurisdictional bounds of campus police under Pennsylvania’s limited jurisdiction statute).

159. *Id.* at 544.

160. *Id.*

161. *Id.* at 544, 548.

free of campus police control and gave flight.<sup>162</sup> They were apprehended shortly thereafter.<sup>163</sup>

The defendants challenged their arrests as unlawful, arguing that the University of Pennsylvania campus police lacked jurisdiction to arrest them.<sup>164</sup> According to one of the defendants, the campus police authorization statute, which grants jurisdiction “only on the premises of the . . . colleges and universities” at which the campus police are employed, limited campus police jurisdiction to the “campus, i.e., the educational and residential grounds of a school.”<sup>165</sup> The defendant continued that jurisdiction did not extend to the university’s “commercial property used for investment purposes.”<sup>166</sup> The Pennsylvania Superior Court rejected the defendant’s interpretation and held that the University of Pennsylvania police officers lawfully exercised jurisdiction over the defendants. Judge Olszewski observed:

A college or university is not limited to academic and residential areas. In addition to the library, classrooms and labs, there are commercial establishments, *i.e.*, bookstores, banks and food services owned or operated by a college or university . . . . We find the legislature would not have created a situation where it would have ignored the realities of the college or university campus and make campus police territorial jurisdiction contingent upon whether an offense or arrest takes place in a library as opposed to a college or university bookstore.<sup>167</sup>

Interestingly, while the Pennsylvania statute considered in *Mitchell* is relatively narrow, the Pennsylvania Superior Court interpreted the statute with sensitivity to the needs of modern, noncontiguous campuses.<sup>168</sup> However, neither the Pennsylvania authorizing statute nor *Mitchell* extends the jurisdiction of campus police to non-campus areas popularly frequented by students—another typical aspect of modern colleges and universities.<sup>169</sup> In any event, *Mitchell* demonstrates how limited jurisdiction statutes, while facially clear as to jurisdiction, may be highly susceptible to varying interpretations.<sup>170</sup>

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162. *Id.* at 544.

163. *Id.* at 544–545.

164. *Mitchell*, 554 A.2d at 546.

165. *Id.* at 546–547.

166. *Id.* at 547.

167. *Id.* at 547–548.

168. *Id.* at 546–548.

169. *Id.* at 548.

170. *Mitchell*, 554 A.2d at 547–548.

*D. Layered Concurrent Jurisdiction: A Case for Statewide  
Campus Police Power*

As noted earlier, the jurisdiction of campus police officers may be extended by a mutual aid agreement with other local law enforcement forces.<sup>171</sup> Campus police officers are not the only law enforcement officials that may lawfully extend their jurisdiction under such an agreement.<sup>172</sup> Most other law enforcement officials can enter into these agreements as well.<sup>173</sup> It is not uncommon for bordering municipal police forces to enter into a mutual agreement that permits them to exercise at least some, though sometimes complete, jurisdiction in the other municipality.<sup>174</sup> State statutes may also grant local law enforcement officials extended jurisdiction within a certain distance of their primary jurisdiction.<sup>175</sup>

Thus, a campus police force may exercise concurrent jurisdiction with a bordering municipality, and in turn, that municipality may have entered into a municipal agreement with another bordering municipality.<sup>176</sup> Can a campus police officer, lawfully permitted to extend jurisdiction in municipality A by mutual aid agreement, avail himself of a municipal agreement between municipality A and B—thereby permitting the campus police officer to further extend his lawful jurisdiction into municipality B? The Virginia Court of Appeals, though not squarely addressing the issue, suggests that the answer to this in Virginia is yes.<sup>177</sup>

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171. Roy Cooper, Attorney General of the State of North Carolina, *Mutual Aid Agreements Between Law Enforcement Agencies in North Carolina* (Feb. 2009) (available at <http://www.ncsheriffs.org/documents/Mutual-Aid-Agreement-Oct2008.pdf>) (setting forth North Carolina's mutual aid agreements between law enforcement officials).

172. *See id.* (noting that a variety of law enforcement officials are covered under North Carolina's mutual aid agreement, outside of merely campus police).

173. *See e.g.* Fla. Stat. § 23.1225(1) (2011) (permitting mutual aid agreements between “law enforcement agencies”); N.Y. Gen. Mun. Law § 119–n–o (McKinney 2011) (permitting mutual aid agreements among municipalities for “the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis”).

174. *See e.g.* Thomas Dimopoulos, *Greenwich Approves Inter-municipal Police Contract*, Post Star (Sept. 2013) (available at [http://poststar.com/news/local/article\\_e5a087ec-bfa0-11df-a5a5-001cc4c03286.html](http://poststar.com/news/local/article_e5a087ec-bfa0-11df-a5a5-001cc4c03286.html)) (reviewing mutual aid agreement between two New York State villages which permits officers of each village complete jurisdiction in opposing village).

175. *See e.g. id.*

176. *Id.* (demonstrating the ability to have continual concurrent jurisdiction).

177. *See Boatwright v. Va.*, 647 S.E.2d 515, 517 (Va. App. 2007) (discussing campus police jurisdiction exceptions and extensions).

### 1. *Boatwright v. Virginia Provides Campus Police Additional Jurisdiction*

The Virginia campus police authorization statute is applicable to both public and private universities.<sup>178</sup> The Virginia statute authorizes campus police jurisdiction on any property owned or controlled by the institution as well as on the streets, sidewalks, and highways immediately adjacent.<sup>179</sup> Virginia permits campus police departments to enter into mutual aid agreements with local law enforcement.<sup>180</sup> Similarly, the statute permits circuit courts to approve petitions for concurrent jurisdiction.<sup>181</sup> The Virginia statute also extends jurisdiction for “hot pursuit.”<sup>182</sup> Another statute provides that the jurisdiction of law enforcement officials of a town or city extends for one mile beyond the limits of such town or city.<sup>183</sup> Therefore, a town police officer in Virginia may lawfully exercise jurisdiction one mile beyond the town by which he is employed.<sup>184</sup>

The University of Virginia (UVA) is a public university located in Charlottesville, Virginia.<sup>185</sup> In 2005, the Charlottesville Circuit Court approved a petition by UVA and the City of Charlottesville for an order granting the University and the City concurrent jurisdiction within Charlottesville.<sup>186</sup> Pursuant to Section 19.2–250(A) of the Virginia Code, Charlottesville police officers may lawfully exercise jurisdiction one mile beyond the outer limits of Charlottesville.<sup>187</sup> In a 2007 opinion, the Virginia Court of Appeals held that campus police officers could avail themselves of the one-mile jurisdictional extension.<sup>188</sup>

In *Boatwright v. Virginia*, a UVA police officer followed the defendant’s car within the limits of Charlottesville around 2:00 a.m.<sup>189</sup> The police officer witnessed the defendant’s car hit the curb twice and cross over the white line.<sup>190</sup> As the vehicle came close to hitting the curb a third time, the officer pulled the defendant over.<sup>191</sup> However, at the time of the traffic

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178. Va. Code Ann. §§ 23–232, 23–232.1 (2013).

179. *Id.* at § 23–234(A).

180. *Id.* at § 23–234.

181. *Id.* at § 23–234(A).

182. *Id.* at § 19.2–77.

183. *Id.* at § 19.2–250.

184. Va. Code Ann. § 19.2–250(A).

185. Barry T. Meek, *The Virginia Court of Appeals Clarifies Jurisdiction of Campus Police Officers Acting Under a Concurrent Jurisdiction Order with an Adjoining Locality*, <http://www.radford.edu/content/va-chiefs/home/september-2007/concurrent-jurisdiction.html> (Sept. 2007).

186. *Id.*

187. *Id.*

188. *Boatwright*, 647 S.E.2d at 516.

189. *Id.*

190. *Id.*

191. *Id.*

stop, both the defendant's car and the police vehicle were two hundred yards outside of Charlottesville into the adjacent Albermarle County.<sup>192</sup> The defendant subsequently failed a series of field sobriety tests and was arrested.<sup>193</sup>

The defendant moved to suppress the results of the field sobriety test on the grounds that the stop was illegal.<sup>194</sup> According to the defendant, because the stop occurred outside of Charlottesville, the campus police officer was without jurisdiction to arrest him.<sup>195</sup> The trial court denied the motion, finding that the campus police officer could avail himself of the one-mile jurisdictional extension permitted by Section 19.2–250, and the court of appeals affirmed.<sup>196</sup> The court of appeals observed that the 2005 order permitted UVA campus police officers jurisdiction within the entirety of Charlottesville.<sup>197</sup> The court of appeals then referenced the campus police authorization statute, noting that it permits campus police officers to “exercise the powers and duties conferred by law upon [other] police officers of cities, towns, or counties.”<sup>198</sup> According to the court of appeals, this provision “deemed” the UVA campus police to be the same as Charlottesville police, and thus, subject to the same jurisdictional constraints.<sup>199</sup> As a result, because the campus police officer was within one mile of Charlottesville when effectuating the stop and arrest, his jurisdiction was lawfully exercised over the defendant pursuant to 19.2–250.<sup>200</sup>

## 2. *Implications of Boatwright*

*Boatwright*'s implications may be read narrowly. First, it unquestionably applies only in the state of Virginia.<sup>201</sup> Additionally, it may apply only when campus police officers are operating under a judicial grant for concurrent jurisdiction—as opposed to an agreement for concurrent jurisdiction made by mutual agreement.<sup>202</sup> Finally, even if *Boatwright* applies equally to judicial grants for concurrent jurisdiction and mutual agreement, it only permits campus police officers with a one-mile jurisdictional extension—as opposed to an extension into another municipality in its entirety.<sup>203</sup>

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192. *Id.*

193. *Id.*

194. *Boatwright*, 647 S.E.2d at 516.

195. *Id.*

196. *Id.* at 516–517.

197. *Id.* at 517.

198. *Id.*

199. *Id.* (treating campus police identical to municipal city police).

200. *Boatwright*, 647 S.E.2d at 517.

201. *Id.* at 516–517.

202. *Id.* at 517 (noting there was concurrent jurisdiction).

203. *Id.*

However, *Boatwright*'s implications can also be read very broadly. Other states may adopt reasoning similar to the Virginia Court of Appeals. Further, Virginia and other states may affirmatively extend the *Boatwright* principles where concurrent jurisdiction among university and local police forces exists by mutual agreement. Most importantly, the additional jurisdictional grant—between local police with whom the university is in agreement and another local police force to which the university has no association—may be much broader than that in *Boatwright*, particularly if this additional grant is set by mutual agreement between the two municipalities rather than by statute. Theoretically, the additional jurisdictional grant could permit campus police officers to properly exercise jurisdiction on campus, in the entire municipality in which the campus rests, and the entire municipality beyond which the adjoining municipality rests.<sup>204</sup>

*Boatwright* poses many interesting questions with few answers at this juncture. It demonstrates that campus police officers may be able to significantly increase the scope of their jurisdiction by “layering” concurrent jurisdictional grants; however, this argument is not one on which a campus police officer can reliably depend at this time.

## VII. CONCLUSION

As noted at the beginning of this article, it is often easy to make light of the exercise of campus police power. Nevertheless, campus police are often called on to address serious criminal problems and wield very real police power that often can extend far beyond the boundaries of campus. Likewise, campus police may wield absolutely no power in areas thought to be part of a university's campus. The jurisdictional issues facing campus police are incapable of neat generalizations and need to be understood in the larger framework of a state's police powers. Deputizations and municipal agreements can drastically expand the bounds of campus police jurisdiction. Additionally, as crime on campus continues to evolve and as the modern campus continues to whittle away the notion of an “insular” campus, these jurisdictional issues will become more pressing and a fertile field for litigation. Further, popular media stories such as the Penn State scandal and Establishment Clause challenges to private religious institution's campus police jurisdiction will likely continue as campus police jurisdiction continues to evolve.

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204. This also raises serious questions. Where does the extension stop? What if the “once removed” municipality has a mutual agreement with a “twice removed” municipality? Can campus police avail themselves of *that* mutual agreement as well?

