

Guns on Campus: A Chilling Effect

by *Kenneth M. Mash*

One afternoon last semester, I entered the classroom to find three students engaged in a tense discussion about whether women should be allowed to serve in combat. The conversation was terse and heated; one of the students was red faced and clearly angry. The situation was not peculiar; in my 18 years of teaching political science I have encountered dozens of discussions of this type during, before, and after class, and I imagine that they happen by the scores every day in classrooms across the country.

As the students engaged, several thoughts raced through my mind: How can I turn this argument into a reasonable conversation? How might this be a teachable moment about evidence-based arguments? Could I quickly adjust my lecture to constructively discuss the topic? One thought never crossed my mind: does one of these students have a gun?

In *Keyishian v. Board of Regents of the University of the State of New York* (1967), the U.S. Supreme Court asserted that the college “classroom is peculiarly the ‘marketplace of ideas,’” and it has pointed to the necessity of training leaders to consider a variety of perspectives.¹ The common expectation of the college experience is one where faculty will challenge students’ beliefs and students will challenge each other. We expect that engaging tough conversations about deeply held beliefs can result in intellectual growth. But this is the type of activity that often also results in emotional responses and high tempers. Successfully navigating these stormy waters can be a challenge, and not everyone allows those conversations and challenges to take place because of the risks. Throw in the possibility that some-

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one is armed with a deadly weapon, and one might reasonably ask whether it is worth the potential risk to themselves or to other students.

Creating a true marketplace of ideas free from offensive language, as any professor can attest, is a challenge. There are even disagreements about the conditions that will best lead to an atmosphere that is conducive to open and honest discussion. Whatever our perspectives, there can be no doubt that, at minimum, there should not be any fear on the part of the students or faculty that they could be subject to violence or the threat of violence brought about by the use of a deadly weapon. Many have written on the overall topic of safety with regard to allowing

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guns on college campuses. However, not much has been said about how allowing the possession of deadly weapons can create a “chilling effect” on academic discussions. The Supreme Court has frequently used the notion of a “chilling effect” to strike down laws that potentially punish speech and that potentially keep people from expressing their views out of fear that they will have to litigate to protect their free speech rights. To the degree that allowing people to carry weapons on campus stifles open discussion, limits the marketplace of ideas, and hinders training students about engaging difficult ideas that challenge their core values, it also creates a “chilling effect.”

CONSIDERING GUN POLICIES ON CAMPUS

The Board of Governors of the Pennsylvania State System of Higher Education (PASSHE) has recently reconsidered the gun policies on the campuses of Pennsylvania’s 14 state-owned universities. Prompted by threat of litigation over the Second Amendment, the board set up a taskforce to examine whether university policies comport with recent Supreme Court decisions. Early reports were that the taskforce was set to enact a policy that would allow those with permits to carry their weapons on campus, except in sensitive areas, which presumably means dormitories, university events, and classrooms. As it turns out, the majority of PASSHE universities’ official policies are not currently very restrictive toward carrying deadly weapons. However, the general perception by the university communities has been that weapons were not allowed on campus except for educational purposes. The prospect that guns might be allowed on college campuses brought a quick and negative reaction from several student organizations, the faculty union, and even the PASSHE university presidents. To date, the board has not yet released a policy.

Several other universities and systems across the country have reexamined their policies related to dangerous weapons in the wake of the Supreme Court's decision in *District of Columbia v. Heller*. In *Heller*, the Supreme Court sought to end speculation over whether the Second Amendment's right to bear arms was an individual right or whether it was a right that pertained only to use in a militia. After reviewing the framers' intent and the legal history, the Court held that the right to bear arms was, in the majority's opinion, clearly an individual right and that the right of an individual to possess a weapon was protected by the Bill of Rights.² That part of the opinion made news across the country.

This is the fundamental question: What is it that college is about and how does possession of a deadly weapon impact that expectation?

Less understood about *Heller* is that in writing for the Court, Justice Antonin Scalia noted that, "Like most rights, the right secured by the Second Amendment is not unlimited" and that nothing in the opinion should "cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."³

RIGHTS HAVE RESTRICTIONS

Rights, even the First Amendment's protection of freedom of speech, are subject to regulation. For example, the government can impose content-neutral, reasonable time, place, and manner restrictions on the freedom of speech, and campuses across the country have wrestled with issues of freedom of speech with regard to speech codes and free-speech zones. Limiting the right of someone to exercise their Second Amendment right is more unclear, because there has not yet been much litigation on the issue. However, as Justice Scalia notes, states have restricted possession in schools, and some of the same logic that applies to public schools can apply to colleges and universities, that is, there are clearly minors who attend college classes, events, and sports camps.

Beyond the simple analogy between public schools and college campuses lies the more fundamental question about what is it that college is supposed to be about and how does possession of a deadly weapon impact that expectation. In *Abrams v. United States* (1919), Justice Oliver Wendell Holmes gave the Court's first explanation of the marketplace of ideas. He stated that "the ultimate good desired is better reached by free trade in ideas" and that the best ideas will survive the competition of the market.⁴ To the degree we desire that the college campus is

the prime location for the marketplace of ideas, that is, to the degree that a college education services Holmes' conclusion that "the best test of truth is the power of the thought to get itself accepted in the competition of the market," one must consider the degree to which the possession of deadly weapons on campus services that end.⁵ One could even posit that there could be a "chilling effect" on faculty being willing to share any of their controversial research with their students if they fear that the research might evoke an emotional reaction.

Of course, these concerns go beyond the actual classroom. What of bringing controversial speakers to campus? What of publishing controversial topics in student newspapers? What of controversial college radio broadcasts? When it comes to our core expectations about what should occur on campus, the "chilling effect" has the potential for substantial damage.

However, with the Court's assertion that the right to bear arms is protected by the Bill of Rights comes hurdles to its limitations. Under the strictest standard of scrutiny, the regulation of fundamental rights demands that government provides a compelling interest for the regulation and that the law be narrowly tailored to meet that compelling interest. If one of the core functions of colleges and universities is to be a marketplace of ideas, then clearly that could and should be a compelling interest. However, how to narrowly tailor a policy does understandably become a matter of concern. Justice Scalia recognized there can be limits to possession in "sensitive place."⁶ The question then turns to whether there is any "place" on a college campus that could not be considered "sensitive." Given that discussion occurs on all quarters of a campus, and, in fact, we praise campuses that create that kind of atmosphere, it would seem that the only logical conclusion is to prohibit weapons on campuses entirely. The free flow of students into academic buildings and dorms, classes held outdoors, discussions over coffee at the student center all should be entitled to protection.

Rather than run from litigation, those responsible for setting policy on college campuses should seek to fully protect their institutions' core role in hosting the marketplace of ideas. This requires that any sort of chilling effect on the free exchange of concepts be warded off. There is much at stake when we cannot properly train our future citizens to be free, thoughtful, and critical thinkers. nea

ENDNOTES

1. *Keyishian v. Board of Regents of the University of the State of New York*, 385 U.S. 589, at 603 (1967).
2. *District of Columbia v. Heller*, 554 U.S. 570 (2008).
3. *District of Columbia v. Heller*, 554 U.S. 570, at 626 (2008).
4. *Abrams v. United States*, 250 U.S. 616, at 630 (Holmes, J., dissenting) (1919).
5. *Abrams v. United States*, 250 U.S. 616, at 630 (Holmes, J., dissenting) (1919).
6. *District of Columbia v. Heller*, 554 U.S. 570, at 626 (2008).