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ALERT FEATURED TOP STORY

State investigation of UVa shooting differs from that of Virginia Tech

Sydney Shuler Feb 18, 2023 0



A bus idles behind police tape during an active shooter situation at the University of Virginia in Charlottesville, Va., on Monday, Nov. 14, 2022. MIKE KROPP, THE DAILY PROGRESS



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Sydney Shuler

After the 2007 shooting at Virginia Tech that claimed 31 lives, then-Governor Tim Kaine assembled an independent review panel of eight experts to investigate the incident.

After the Nov. 13 shooting at the University of Virginia that left three student-athletes dead, the commonwealth has hired lawyers from the global law firm Quinn Emanuel Urquhart & Sullivan to conduct an independent investigation that could cost as much as \$1.5 million, according to documents The Daily Progress obtained through the Freedom of Information Act.

As the university and the community await the findings, The Daily Progress interviewed several legal, law enforcement and political experts to shed light on such an investigation and what it might involve and ultimately mean.

While the responses from both state universities differ greatly, the facts surrounding both tragedies also vary greatly, legal experts noted.

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Hiring a law firm that specializes in investigations not only was sensible in UVa's case but also suggestive of UVa's commitment to get to the facts, said Zack Buck, law professor at the University of Tennessee who formerly practiced in Big Law.

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"You want the experts who do this all the time for a living," Buck said.

At the heart of the matter for UVa is the need to know how one of its students, Christopher Darnell Jones Jr., came to have guns in his dorm room that he allegedly used to kill D'Sean Perry, Lavel Davis Jr. and Devin Chandler on Nov. 13—and what, if anything, it could have done differently to prevent the tragedy.

The deaths broke the collective heart of the university, and students are still grieving and healing. Just last week, a professor of Perry's discussed an art exhibit of Perry's work that she and others are planning for this spring to honor his talent.

"He was about to graduate. He was an absolutely fantastic student. He should have had that UVa graduation experience. He should have had that senior show," said Victoria Valdes, assistant director of the visual resources collection at UVa.



A total of 9,075 people made their way to the John Paul Jones Arena at the University of Virginia for a heartfelt memorial to celebrate the lives of Devin Chandler, Lavel Davis, Jr. and D'Sean Perry on Saturday. Teammates who played with the victims for the Virginia Cavaliers football team shared their favorite memories with the three they called teammates, friends and brothers.

[Sydney Shuler](#)

A lawyer for the Perry family said the family hopes that answers emerge so that no other family has to endure what they have experienced.

“The Perry family, just like so many families, want to do everything they can so that other parents aren’t robbed of their absolute, most proud accomplishment in their lives, which is their child.”

Kaine guides Tech response

While Kaine became immediately involved with the Virginia Tech response and investigation, Gov. Glenn Youngkin did not do so with the UVa shootings; Ryan “invited” the state to become involved, UVa officials have said. Since then, Attorney General Jason Miyares has been the lead for the state. Youngkin has not stated why he has not been involved.

On Dec. 8, Miyares announced that the commonwealth had decided to outsource special counsel to the prestigious law firm and a former U.S. attorney for the Eastern District of Virginia.

In an interview with The Daily Progress, Kaine said that when he heard about the April 16, 2007, shooting on Virginia Tech’s campus, he was on a trade mission in Japan. He cut the trip short and traveled to Blacksburg to attend an April 17 vigil at the university.

Then-President George W. Bush and then-Virginia Tech President Charles Steger also attended, Kaine said.

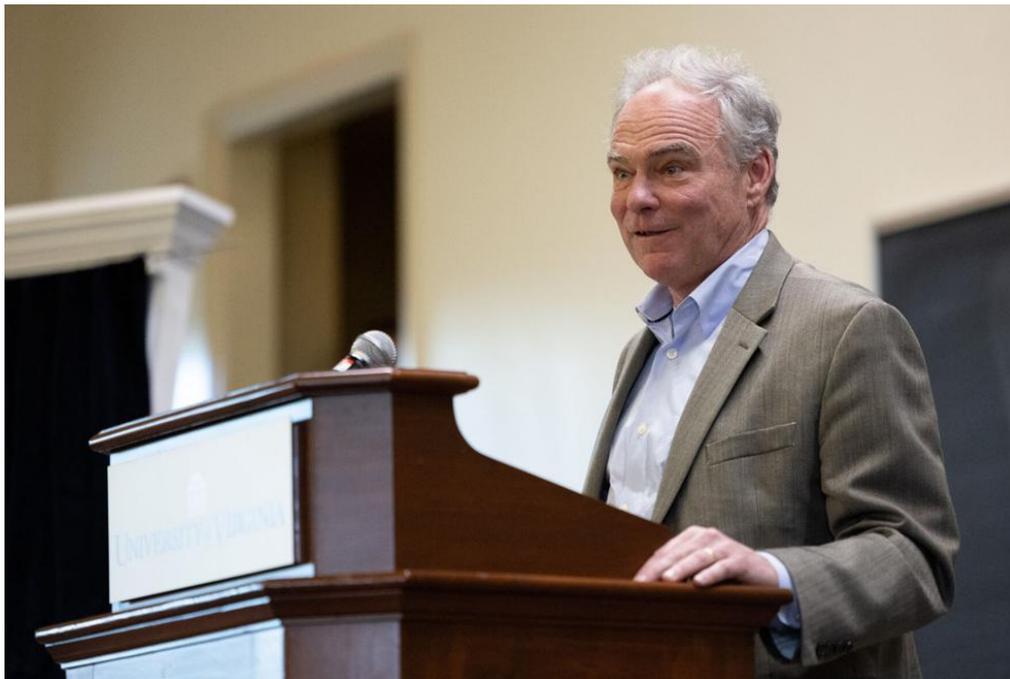
“I told Charlie that night that we needed to put together an investigatory panel that would dig into everything that happened: what went right, what went wrong, what we could do differently,” Kaine told The Daily Progress.

Kaine said Steger told him the school was “already planning on doing that.”

“I said, ‘Charlie, if Tech does it, people will not feel that it’s objective, so I’m going to do it.’”

Three days after Steger agreed to the panel review, Kaine began building the panel. By the end of April 2007, Kaine had selected eight panel members who were not affiliated with the university, the shooting’s victims or the shooter to ensure an objective investigation.

Kaine told The Daily Progress that he was committed to pulling together a group of nationally respected “experts of the experts” in criminal justice, campus safety and adolescent psychiatry.



Democratic Sen. Tim Kaine speaks at the John W. Warner Hall dedication ceremony on Friday, Jan 20, 2023.

The Virginia Tech panel was headed by retired State Police Superintendent Gerald Massengill and included former U.S. Homeland Security Secretary Tom Ridge as well

as deans and a judge. The report it ultimately produced was called “The Massengill Report.”

Kaine said victims’ family members pushed back on his decision because they wanted representation on the panel, but he maintained that objectivity was crucial.

He tasked the panel with completing its public report by August 2007 to ensure that it would be ready for presentation to the state legislature in December.

The panel met the deadline. It concluded, among its more than 20 major findings, that the Virginia Tech Police Department “did not take sufficient action to deal with what might happen if the initial lead proved erroneous.”

That was not the end of the matter.

On June 17, 2008, then-Circuit Court Judge Theodore J. Markow approved an \$11 million settlement in a suit against the state of Virginia by 24 of the 32 victims’ families.

On March 29, 2011, the U.S. Department of Education fined Virginia Tech for waiting too long to notify students of the initial shootings. The fine was overturned, reinstated and reduced over the next three years before Virginia Tech announced it had paid a total of \$32,500 in 2014, saying it was closing “this chapter on the tragedy of April 16, 2007.” The college’s announcement did not admit any wrongdoing.

The Massengill Report also called for stronger background check requirements for purchasing firearms. Kaine said it is considered the catalyst for the federal law passed in 2008 that garnered the support of the National Rifle Association and expanded the federal database used to screen gun buyers to include an estimated 2 million-plus people, including felons and the mentally ill, who are ineligible to buy firearms.

After the Massengill Report was released, some victims’ families called on Kaine to relieve Steger as well as the college’s police chief, Wendell Flinchum, of their duties.

Kaine refused, saying at the time that the school’s officials had “suffered enough.”

Another shooting, another response

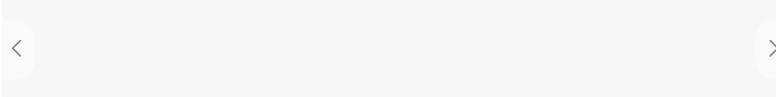
At the time of the Nov. 13 UVa shooting, Jones was under investigation for telling someone in September, 2022 that he had a gun, according to UVa officials.

The university did not know at the time that Jones had been convicted for a concealed weapons violation in a separate incident in 2021. The Rockingham judge who sentenced Jones to one year in jail also commuted his sentence to time-served.

Miyares declined to comment on the gun charge, but [tweeted](#) his opinion on the Feb. 13 shooting at Michigan State University when a gunman killed three students and

himself and injured five additional victims.

“Monday’s horrific attack in Michigan could have been prevented, had it not been for the county’s progressive prosecutor,” Miyares said in a tweet. “The suspect had a 2019 felony weapons charge dropped to a misdemeanor—allowing him to be out on the streets and buy a gun.”



As part of an initial investigation after the murders, UVa learned of Jones’ concealed weapon violation in 2021. Jones failed to report the conviction to the university as required by student policy.

In addition, according to UVa spokespeople, Jones did not cooperate with the investigation into the September report that Jones had said he had a gun. The school’s police department has said that Virginia law did not give it the authority to enter Jones’ room or confiscate a weapon, despite school policies banning firearms on Grounds.

UVa Board of Visitors Rector Whittington Clement told UVA Today that the university requested the review because it needed to take a “hard look at what circumstances led up to the event and, how the University responded in the moment.”

Miyares said that the co-chairs of the firm’s Crisis Law and Strategy Group, William Burck and Crystal Nix-Hines, now lead the review. Miyares also appointed Zachary Terwilliger of the D.C.-based Vinson & Elkins law firm as special counsel to review any federal, state and local law enforcement issues surrounding the shooting and events that preceded the tragedy. Terwilliger previously served as U.S. attorney for the Eastern District of Virginia.



Burck is a co-managing partner at Quinn Emanuel. He is also former Special Counsel and Deputy Counsel to former President George W. Bush for nearly four years and was a federal prosecutor in New York City.

QUINN EMANUEL

In January, a spokeswoman for Miyares said in a statement that he has “full confidence that Mr. Burck, Ms. Nix-Hines, and Mr. Terwilliger will conduct the thorough and professional external review requested by the University of Virginia” and promised a report on the shooting will be released “at the appropriate time.”

According to information obtained through a Freedom of Information Act request, Burck will receive \$1,701 per hour; Nix-Hines will receive \$1,416 per hour; and Terwilliger will receive \$1,100 per hour for their work on the review. The scope of work caps Burck's and Nix-Hines' combined earnings at \$1.2 million while limiting Terwilliger's earnings to \$300,000 or about 272 hours of work.

Clement told UVA Today that the university and attorney general's office will not release the full review as it will include "protected student information or other confidential details," but will share a summary report that breaks down the key findings of the review once it is complete.

Experts weigh in



Crystal Nix-Hines is a Partner in the Quinn Emanuel Los Angeles office, where she specializes in class action litigation, internal investigations, data privacy and security, complex business disputes, intellectual property and sovereign dispute litigation.

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Choosing to hire an outside law firm that conducts internal investigations is not unusual, legal experts said. Huge, global law firms known in Big Law routinely conduct detailed, non-biased investigations into their clients' handling of difficult issues.

They work for corporate, nonprofit and educational institutions.

"I've been called upon by universities, day schools on all sorts of issues that may or may not have been criminal but because of unique laws in those settings that may provide all sorts of special protections," said William Shepherd, a partner in the white collar and investigations division of another Big Law firm, Holland and Knight. "To go with a place like Quinn would seem like a natural thing."

Carliss Chatman, an associate professor at Washington and Lee School of Law who specializes in corporate and commercial law, said that when she practiced law, she was most likely to suggest her clients call in an external law firm or review panel if they are concerned about conflicts of interest.

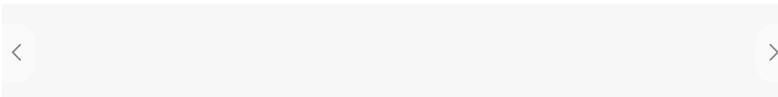
"Generally with my clients, we would want to do the law firm investigation before there's a risk of a government agency investigation," Chatman said. "So we want a real look at what the worst case scenario is and we want that to be protected by attorney-client privilege.

Harvard Law graduate Nix-Hines, as chair of her firm's education practice, represents, counsels and conducts internal investigations for colleges and universities in the U.S. According to her professional profile, she has represented Michigan State University, Duke University, the University of Pennsylvania and others.

UVa spokesman Brian Coy told The Daily Progress Nix-Hines did not represent the university prior to being appointed to the external review.

Yale Law graduate Burck does not list any universities on his professional profile. Among the list of Burck's high-profile former clients is former Trump White House strategist Steve Bannon. Burck dropped Bannon as a client in 2020 without giving a reason.

Burck and Nix-Hines did not respond to a request for comment from The Daily Progress.



At Vinson & Elkins, Terwilliger's profile highlights "piloting clients and their corporate entities through the tumultuous and complex waters of internal and government investigations is our role." His resume reflects a career serving on both sides of courtroom, both leading investigations into public and private entities as well as defending them.

The William & Mary law graduate lists "representing a major university system in connection with an investigation by Congress and a state legislature" among his "experience highlights."

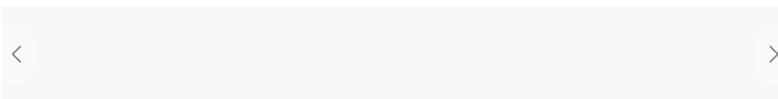
Terwilliger's profile also states he earned his bachelor's degree at UVa in 2003.

Terwilliger directed all inquiries from The Daily Progress to the state attorney general's office.

"Mr. Terwilliger has been a federal prosecutor for the last decade and has always had to remain impartial regardless of his background, educational history, or previous employment," Victoria LaCivita, a Miyares spokeswoman, said in a statement. "Additionally, his role primarily focuses on law enforcement and the criminal justice system – not the University."



In addition to his role as the Senate-confirmed U.S. Attorney for the Eastern District of Virginia, Terwilliger has served as an Assistant U.S. Attorney and Associate Deputy Attorney General within the U.S. Department of Justice.
VINSON & ELKINS LLP



The findings are unlikely to influence families' decisions to file lawsuits against UVa, Chatman said.

"There's no way, when you have dead college students, that there's not going to be a lawsuit," Chatman said. "The question is how big. When you're doing crisis lawyering in that scenario, you're not going to avoid a lawsuit. You're just going to make the number smaller."

How a review might work

Nix-Hines, Burck and Terwilliger have an extensive task in front of them, said, as they will be expected to assess several areas concerning the events that led up to the shooting, the shooting itself and the university's response.

Jennifer Zeunik, the senior director of the National Policing Institute, served on the after-action review panel of the mass shooting at the University of North Carolina at Charlotte on April 30, 2019, when a gunman killed two people and injured four more.

Zeunik said university leadership requested on Aug. 30, 2019, that the National Policing Institute lead the review. The panel, which included five researchers from the institute and 10 external experts.

She described to The Daily Progress how reviews work.

"We try to guide the scope of work a bit and provide some expertise in that area because, sometimes, the institution may not know exactly what they should be looking for," said Zeunik. "Sometimes it's broad because when you start peeling back the layers of the onion, there's more that has to be looked into."

The group met with university leaders—including the president, provost and chief operating officer—to gain a "high level" understanding of their expectations for the review and their perspective on the institution's response to the incident.

That panel then analyzed the university's policies and emergency communications center operations as well as the individuals who are involved with both.

Once the team had all requested materials to conduct the review, they finalized its list of witnesses and involved parties.

Zeunik said that the after-action review panel presented the first draft of its report and findings to a group of key stakeholders, who assessed the report for "factual accuracy," like dates and times. The stakeholders, who may include university leaders or victims' loved ones, are people that the reviewers have determined to have "the most information" about the incident. Zeunik said that the input of those stakeholders does not necessarily prompt any edits to the final version, but that it ensures accuracy.

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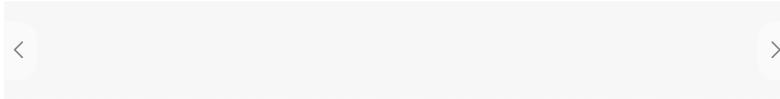
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The public may never see some parts of the investigation, experts said.

"Some states have privacy concerns when it comes to confidential documents that would come out in the final product of an after-action review," said Eric Plummer, Chief of Police at Radford University, chair of the Domestic Preparedness Committee at the International Association of Campus Law Enforcement and UVa law lecturer. "There's certain information that they will release and there's certain information that they'll only release as high-level points of what went well and what were some of the weaknesses identified that they could learn from or maybe prepare differently in the future."

Governor Glenn Youngkin and President Jim Ryan told The Daily Progress that they expect the review's findings to provide "more clarity and more information" that will help the commonwealth and university better understand the events that led to the Nov. 13 shooting.

"If we step back, so much of our behavioral health effort is to provide the right help," Youngkin told The Daily Progress last month. "The investigation I can't comment on because it's ongoing, but there are so many things we're working on now that I think can come to support students across the commonwealth and at UVa."



Families have their own 'remedies'

Michael Haggard of the Haggard Law firm, who is representing the Perry family as well as several other victims of gun violence, said Miyares' office told him to expect a final version of the independent review this spring.

While Haggard said he is hopeful that the lawyers will conduct an impartial investigation, he also said that the results of the review will not be binding to the victims' families or their attorneys who "have remedies" if they find that the review was not objective.

Haggard said that the Perry family hopes the review at the minimum will reveal the truth about the events that led to the shooting as well as the way the university handled the event's aftermath.

"I think it's pretty evident that the university had notice of this assailant's problems, of the evidence that he had a weapon, that he wasn't cooperating with the university's investigation and he was in university housing," Haggard said. "When you have a threat like that on campus, you need to act."

Haggard said he is confident the review will show that UVa's initial threat assessment of Jones was not conducted properly, despite the school's police department's claims that state laws were not strong enough for them to act more aggressively.

That said, Haggard said that the Perry family supports any initiative to strengthen laws to prevent future gun violence. He said he and the Perry family hope the review will inspire legislative change at the state and federal level as well as policy adjustments at colleges and universities around the country.

"It would be nice if protocols and procedures were uniform across the country and I think UVa has an opportunity to be a great leader on this subject," he said.

Editor Lynne Anderson contributed.



Jones



Davis



Perry

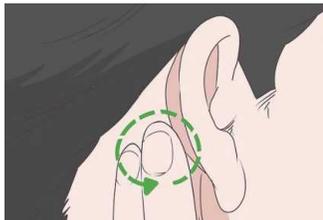


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Unlike his prior charges, the new aggravated murder charges carry no chance of release.



Independent review of UVa shooting completed

The details of that report will not be made public until later.



UVa withholds report on deadly 2022 shooting

It has been nearly a year since the Nov. 13 tragedy that took three lives.



UVa to host 'dialogue' on gun violence on anniversary of shooting

Four speakers are expected to attend, including Happy Perry, the mother of one of the slain.

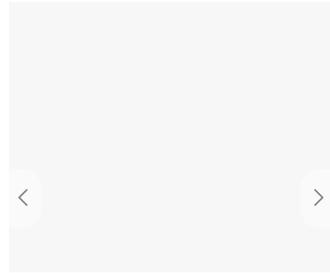


One year later, Virginia football players keep the memories of their fallen teammates close

"Here, we have a promise to our three who've passed."



'Every day I am reminded': UVa remembers and reflects on anniversary of shooting



The bell in University Chapel's tower rang three times, once for each life lost a year ago.



UVa says it won't release review of 2022 shooting until after trial

The university said Friday releasing the report could compromise the criminal trial.



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The school's critics include a former U.S. attorney for the Western District of Virginia.

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