

Campus Safety After Virginia Tech

Entry for the 2007-08 Benjamin & David
Sharps Award

Rachel C. John

Senior, Political Science

State University of New York at New Paltz

Effective coordination and information sharing, using tools already available under current federal law, must be undertaken by university officials and local law enforcement in order to guarantee students' privacy rights, and to fulfill schools' responsibilities to do all they can to ensure the safety of students while engaged on-campus. Under FERPA, information regarding students' health and education may be shared with appropriate persons, including teachers and parents, without the consent of students, when that information is relevant to the health and safety of the student or those around them. Information sharing among various official actors involved in a possibly troubled student's education is necessary to ensure that important information, relating to their health and well-being does not become isolated and the larger scheme of events obscured.

Much has been made since the unfortunate events of September 11th, 2001 of the necessary balance that must be forged between the government's responsibility to protect civil liberties and individual privacy rights, while maintaining a high level of security against terrorist threats within the United States. Just under a year ago, Seung-Hui Cho, a student at Virginia Tech, having just hours prior killed two other students in a dormitory across campus,, walked through the halls of a campus classroom building, killing 30 people before taking his own life. His actions brought attention to the difficulty schools face in fulfilling the same responsibilities for their student communities.

Laws and school policies designed to prevent such tragedies were already in place when Cho began his shooting spree, but school and local government officials lacked a thorough understanding of current federal law, as well as practical experience and training necessary to recognize warning signs increasingly apparent in Cho's behavior towards teachers and fellow students. Although the responsibility for his actions ultimately lay with Seung-Hui Cho himself, local officials failed to understand and enforce laws requiring that individuals who had previously been involuntarily committed, and deemed a danger to themselves, be reported to the Central Criminal Records Exchange (CCRE), the state police agency charged with conducting background checks in the State of Virginia for firearms purchases. Additionally, school officials' implementation of a coordinated emergency management plan failed to disseminate information effectively, but could otherwise have alerted students to the danger of a campus shooter after the first shooting incident, or avoided the incident entirely by intervening forcibly to require treatment when Cho began showing serious mental health problems,. School officials and teachers, any of whom could have contacted health officials or even Cho's parents, under the Department of Justice interpretation of the Family Educational Rights and Privacy Act (FERPA),¹ were unable to place their own disturbing experiences with Cho in context due to the overly cautious privacy protections thought necessary by the administration.²

The events of April 16, 2007 were a culmination of a long series of missed chances and failures in communication among school officials and among government agencies. Cho's behavior in the year before his death showed "clear signs of mental instability."³ He struggled at school, argued with professors, and was even involuntarily committed to outpatient treatment. While this was known to some administrative and health services at the school, the information was scattered, with no official or professor able to see the larger picture. Administrators and professors dealing personally with Cho lacked training or ability to recognize

¹ 20 U.S.C. § 1232g; 34 CFR Part 99

² United States Department of Education, "Balancing Student Privacy and School Safety: A guide to the Family Educational Rights and Privacy Act for Colleges and Universities." 2007.<http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/index.html> (accessed 03/23/2008).

³ The Virginia Tech Review Panel, "The Virginia Tech Review Panel Report to the Governor." August 2007.<http://www.vtreviewpanel.org/report/index.html> (accessed 03/20/2008).

serious warning signs, which included writing fixated upon violence, isolationism and anger at "fictitious" peers. Teachers who reported concern over Cho's in-class behavior and writings, had no access to information regarding incidents reported to the campus police, which included charges of stalking and hints that he wished to commit suicide. In the wake of the first shooting, two hours earlier at a dormitory, the school failed to provide notice to students, and local and campus law enforcement were overly confident that their "person of interest" had left campus. In another missed opportunity, and failure to comply with regulations already in place, Cho obtained both weapons legally, one month apart. Federal law prohibits the sale of firearms to individuals who have been involuntarily committed, but inadequate follow-up procedures by the local clerk's office and a misunderstanding of both the law and reporting procedures, resulted in a special justice's order involuntarily committing Cho to outpatient treatment not being reported to the CCRE.⁴

Students' rights to privacy and control over their records can, and should be upheld.

Since Seung-Hui Cho's rampage there have been calls to loosen privacy protections for students, with headlines, like "Laws Limit Colleges' Options When a Student Is Mentally Ill"⁵ looming just days after the tragedy, but the laws and policies needed to minimize these incidents are already in place. Local and school officials need to be made aware of the applicability of current law, which gives adequate leeway for the sharing of information with other officials and even parents in circumstances where officials and administrators see reason for concern about a student's ability to cope effectively with the rigors of campus life. According to a Department of Education information pamphlet, part of a widespread push since the tragedy to educate school and local officials on FERPA's restrictions (and its allowances), a post-secondary school may even contact and share with a parent information that is "based on that official's personal knowledge or observation of the student," without a student's consent.⁶ The purpose of the legislation was to protect student's privacy from unnecessary disclosures, so that they might feel safe seeking treatment without fear of exposure and stigmatization for their ailments. That privacy should be protected, especially at a time when record numbers of students with learning disabilities or mental health problems are enrolling in post-secondary institutions, able to achieve greater academic success with the help of new treatment options and accommodations, like those provided for in the Americans with Disabilities Act.⁷

Students at post-secondary educational institutions, and those eighteen years or older, have access to, and basic control over the disclosure of their educational records under FERPA. As provided for in the legislation, most

⁴ The Virginia Tech Review Panel, "The Virginia Tech Review Panel Report to the Governor."

⁵ Lewin, Tamar. "Laws Limit Colleges' Options When a Student Is Mentally Ill." *The New York Times*, April 19, 2007, Late Edition.

⁶ USDOE, "Balancing Student Privacy and School Safety: A guide to the Family Educational Rights and Privacy Act for Colleges and Universities."

⁷ 42 U.S.C. §§12101 *et seq.*

circumstances require written consent from post-secondary education students, and those 18 year of age and older, before schools can disclose student's records, or personal identifying information. For students under 18 and not enrolled in a post-secondary education institution, parental consent is required. Contrary to widely held beliefs prior to the deaths at Virginia Tech, school officials may share information from student's files in-house to those who have a "legitimate educational interest"⁸. Additionally, the act specifically stipulates that information may be disclosed in the event that "knowledge of the information is necessary to protect the health or safety of the student or others."⁹

In examining the events leading to the deaths at Virginia Tech, State and Federal investigators discovered that school officials were overly cautious in disclosing information to non-student parties. The Department of Health and Human Services, in conjunction with the Department of Education and Attorney General Alberto Gonzales, reported in 2007:

Education officials, healthcare providers, law enforcement personnel, and others are not fully informed about when they can share critical information on persons who are likely to be a danger to self or others, and the resulting confusion may chill legitimate information sharing.¹⁰

Teachers who expressed concern about Cho's behavior, one of whom even refused to have him attend their class, were not aware of any further incidents outside the classroom, although his reputation was well known within the English department. When the school finally intervened, and Cho was evaluated involuntarily, he lied about his history of mental health problems and previous treatments. Although the information health officials and the special justice needed to verify his statements was in his file, it appears that information was not shared between the school and local officials, despite the school's involvement in the intervention.¹¹

The Department of Education reports that a school may notify parents in accordance with FERPA without a student's consent when the student is dependent for tax purposes, in the event of a health and safety emergency, or when a student under the age of twenty-one has violated any law or school policy regarding alcohol or illegal substances, in addition to individual administrator's and official's ability to relay personal knowledge of a student. Prior to his attendance at Virginia Tech Seung-Hui Cho received years of counseling, and was even briefly medicated. He was diagnosed with severe social anxiety disorder, and throughout high school he received personal attention from administrators, teachers and therapy in a coordinated effort to make allowances for this disability. Upon leaving home and enrolling at Virginia Tech, this support network fell apart. Cho's interaction with his parents, who had previously been integral part in getting Cho treatment and further

⁸ FERPA, §99.36(b)(2)

⁹ Ibid. §99.36(a)

¹⁰ Leavitt, Michael O., Margaret Spellings, Alberto R. Gonzales. "Report to the President on Issues Raised by the Virginia Tech Tragedy." June 13, 2007. <http://hhs.gov/vtreport.html#key> (accessed 03/25/2008).

¹¹ Virginia Tech Review Panel Report to the Governor" Chapter XI.

support services, also declined, given the distance of the school from their home, hours away.¹²

Seung-Hui Cho's ability to purchase the semi-automatic handguns used in the Virginia Tech killings should prompt Congress to reform national reporting laws.

The most glaring failure surrounding the lead up to the deaths of 33 students on April 16th of 2007 was the legal purchase of two hand guns used in the deaths. The Federal Gun Control Act¹³ prohibits the sale of firearms to anyone who has been "adjudicated as a mental defective," which the act defines as anyone who has been determined by a court or other judicial body to be a danger to himself or others, or otherwise involuntarily committed. According to the Virginia Tech Review Panel Report, Virginia law is "less clear," with the prohibition based upon an inability to care for oneself. Despite this prohibition, only 22 states report relevant mental health background to the federal database, used by states to conduct background checks for persons banned federally from purchasing firearms. Reasons for this discrepancy are often financial, with states reporting that they lack the resources to keep detailed records. In Cho's case, a lack of clarity within the court clerk's office itself, and possible confusion over whether involuntary outpatient treatment required reporting, led to his judgment not being reported to the CCRE.¹⁴

Virginia's Governor has issued an executive order requiring information on involuntary outpatient treatment to be reported and treated as disqualification for the purchase of firearms. This will do little or nothing to prevent the other 28 states from complying with this provision of the Federal Gun Control Act. Nor will it ensure that those states which do report some information regarding mental health records are reporting information matching these criteria, as Virginia's did not. There is a clear need for requiring states to report relevant mental health records in light of Seung-Hui Cho's actions. Given this loop-hole in avoiding federal gun laws, Virginia Tech's cautious inability to force Cho into treatment truly turns to tragedy. It seems unlikely that, had this loop-hole been closed, Cho would have had the means to snuff out the lives of 32 students. Given that the school had achieved a judgment in favor of treatment, they had fulfilled a large part of their obligation to ensure that students, who need help, get help, and closed off access to weapons that allowed him to kill as many people as quickly as he did.

Conclusions.

Legally, there was nothing preventing the school or Cho's teachers from contacting his parents to inform them of these disturbances. Unfortunately, there was a widely held perception that such an action would be illegal, making the school liable to funding cuts and possible civil actions against them. In response to

¹² Virginia Tech Review Panel Report to the Governor, Chapter IV.

¹³ 18U.S.C. §922(g)(4)

¹⁴ Virginia Tech Review Panel Report to the Governor, Chapter VI

this misconception, the Department of Education is now attempting to clarify some of the more vague provisions of FERPA, providing an interpretation that attempts to be fair by allowing for students to challenge attempts to disclose their personal information in non-emergency situations, but reassuring schools and local officials that they have broad leeway in cases where there is suspected danger to students, to determine when they can disclose information. There is still a line to be walked. Judges have, for instance, sided with students banned from their dormitories after suicide attempts or other extreme acts of depression. On the other hand, they may be held liable for failing to act when students exhibit signs of severe mental illness, like those exhibited by Cho in his final months.¹⁵ The school has in fact offered a settlement of potentially disastrous lawsuits from victims' families. In all, schools have a wide margin within which to act reasonably, such as requiring students reported for any time of harassment towards their fellow students to meet with counselors, and should the situation escalate, consulting with parents or other close relatives to intervene before a situation arises.

¹⁵ Lewin, Tamar. "Laws Limit Colleges' Options When a Student Is Mentally Ill." *The New York Times*, April 19, 2007, Late Edition.