

MURDER AT UVA:

Preventing the Preventable

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Condolences

The family of Yeardeley Love is suffering the unimaginable. The University of Virginia has experienced the unthinkable with her murder. The untimely end of a promising life is the antithesis of the mission of higher education. We owe her family and her memory the very best of our efforts and resources to prevent future acts of relationship violence on our campuses. But, what are the right efforts and the most effective resources?

Reporting from Local Police

Some commentators have suggested that colleges need to improve relations with local police departments, or lobby for legislation that will channel information on student arrests from law enforcement to college administrators. This has merit, as greater flow of information from external entities to colleges could empower them to act where otherwise a vacuum of information would exist. Yet, we must acknowledge that no amount of reporting by local law enforcement to college officials would have likely prevented the acts of George Huguley or Amy Bishop (University of Alabama, Huntsville), who both had minor legal scuffles prior to their murderous acts. While these off-campus crimes might have resulted in on-campus disciplinary action, neither was likely serious enough to result in a separation from campus for Huguley or Bishop. Would an off-campus drunken threat and resisting arrest result in separation on your campus? Would separation assure that violence would not follow? UVA already had an excellent policy in place, requiring students to report off-campus arrests to the administration, but where a student like Huguley fails to do so, a mechanism that does not rely on student self-reporting would be beneficial. Still, many campuses do not have such a policy, and it is needed. Reporting off-campus arrests, no contact orders, PFAs, custody and restraining orders should be mandated of members of our communities. Centralizing and tracking those reports within your campus behavioral intervention team makes a lot of sense.

Limitations of Criminal Background Checks

Recently, those grasping for solutions have reached for criminal background checks. Again. The thoughtful report by the University of North Carolina System prompted in the aftermath of several murders by students who had criminal histories declined to impose system-wide criminal background checks of incoming students, and its reasoning still holds sway. Criminal background checks are not the solution, for the following reasons:

- Unlike the UNC murders, most campus violence is perpetrated by individuals whose criminal backgrounds would not indicate a potential for the violence to come. Simply, a criminal history is not predictive of future campus violence. Neither Huguley nor Bishop had documented criminal histories that would have flagged them as potentially dangerous students or employees at the time of admission or hiring, despite Bishop's prior involvement in the allegedly accidental death of her brother.
- Most college applicants have no significant criminal history, and even if they do, for "traditional age" students, it might be sealed as the record of a crime by a minor.

- If the University of Virginia imposes criminal background checks on all incoming freshmen, the applicants with criminal history will apply to colleges and universities that don't require them.
- A one-state check like what has been proposed for the University of Virginia is free, quick and easy, but will disproportionately affect applicants who are Virginia residents. Will out-of-state students and international students get a free pass?
- Many who have criminal records have pled to lesser crimes, and the criminal history is therefore a poor indicator of their criminal propensities and potential lethality.
- Criminal background checks will disproportionately affect applicants on the basis of race and socio-economic status, raising the specter of pretextual discrimination and potential lawsuits.
- Any state-wide scheme for criminal background checks would disproportionately affect community colleges, which by-the-way do not have higher crime rates than four-year institutions.
- 50 state and federal checks are more comprehensive, but they are expensive. They also usually invoke the use of a contracted service to perform the checks, which brings to bear the implications of the Fair Credit Reporting Act and possible federal legal entanglements.
- Most campuses are ill-equipped to determine which kinds of criminals, or what kinds of histories, should make an applicant ineligible, eligible, or eligible with restrictions. So, if we adopt an exclusionary policy, do we risk denying to a minor criminal the second chance that higher education may represent?
- A comprehensive set of admissions screening questions can likely dissuade or identify most applicants with a criminal past, without the expense and squandering of resources a comprehensive criminal background check scheme would engender.

More Effective Admissions Screening

Here is a list of recommended questions to add to your admissions screening process. Any applicant who answers "yes" should then be subject to a criminal background check and secondary admissions screening.

- Have you ever been charged or convicted for any felony in any state or country (unless expunged)?
- Have you ever been charged or convicted for behavior involving violence in any state or country (unless expunged)?
- Have you ever been charged or convicted for any behavior involving harm to others? (e.g. stalking, domestic violence, assaults, etc.) In any state or country (unless expunged)?
- Have you ever been suspended, dismissed or expelled from any college or university?
- Are you facing current disciplinary charges at any high school, college or university?
- Other (explain)

Misrepresentation in answering these questions would be grounds for revocation of the offer of admission, and would not be a conduct issue per se. Presently, most campuses use their conduct office

or a committee (often untrained) for secondary admissions screening. We recommend using your campus behavioral intervention team for secondary admissions screening. It is proficient in assessment of the potential for violence and threat, and has the right skill set to determine who is an eligible applicant and what restrictions or conditions on admission should be imposed.

Pre-Admission Prevention v. Post-Admission Assessment

Even if a comprehensive admissions screening or criminal background check scheme is implemented for students, all we now know is the history and/or potential patterns that history may evidence. Are we safer yet? No. We are still missing the main ingredient that will protect our communities. What does the individual intend to do, how, when, and where? Knowing that would be the only thing that would make a difference for the victims of Amy Bishop, George Huguley, and any other perpetrator of campus violence. How are we supposed to divine that information? Our behavioral intervention and threat assessment teams are set up to help us make such determinations, but the key gap at Huntsville and UVA and anywhere else where preventable violence wasn't prevented is the channeling of the information from those who have it to those who need it. Violent actors almost always leak. They drop crumbs. They raise concerns prior to their acts. Members of our campus and larger communities have the information, but it is our job to create the pathways that readily and proactively get their information into the hands of campus behavioral intervention and threat assessment teams.

Rather than spending its time and energy on criminal background checks of students, UVA and any other campus intent upon preventing preventable violence should focus on empowering their campus cultures of reporting. Here's the NCHERM roadmap for how to do it.

What Is a "Culture" of Reporting?

A willingness to report concerning behaviors exists on all college campuses, with some members of the community, in certain situations, and to certain individuals. That willingness exists because of the attention-getting nature of the situation, the proactive nature of the reporter, or the trust between the reporter and the person with whom they share what they know. That isn't a reporting culture. It's an inconsistent and subjective reporting cell, and it exists on a micro level and only when the right circumstances are present. A reporting culture exists on a macro level, transcending severity, proactivity and personal relationships. It gets the right information to the right people in real time most of the time. At its best, the reporting occurs early enough that it allows a team to get out ahead of violence.

In a culture of reporting, we report what we know because that's what we do, and it is emblematic of who we are. We have internalized the notion of community and our interconnectedness within it. We are certain in our role as stakeholders who have responsibility for the safety of our community.

Do the members of our campus communities feel that way? No, not most of them. How do we shift consciousness from "Not in my backyard" indifference to "If you see something, say something" engagement? What follows is our best thinking on how to reshape your cultures for this purpose.

Practical Approaches to Get You There

Teach Your Community a Common Language for What to Report, to Whom, When, and How

Are we looking for disruptive behaviors? Concerning behaviors? What is “concerning?” What are signs of suicidality? How do we know if someone really means it when they make an offhand suicidal reference? Should we be concerned about student writing? In class? Online? What is a red flag? You need to be able to answer all of these questions, and teach the members of your community the answers. Use the available venues. Teach students at orientation, hall programs, and in College 101 classes. Teach parents via mailings and at orientation. Use the resources of your parent outreach office and alumni networks. Train faculty at new faculty orientation, at classroom management sessions, with brochures, online training and other professional development opportunities. Train employees at new employee orientation, through regular training opportunities, through briefings to supervisors, and don’t forget to include custodial staff, facilities, and administrative support staff. They see all, often more than you do. Do not forget your adjunct professors, graduate teaching assistants, distance education instructors and other part time employees. Tie training and reporting to Clery Act compliance and the need to report for statistical and timely warning purposes. Teaching gatekeeper methods is a well-regarded means of establishing a common language for recognizing and responding to mental health-related concerns. Common programs include QPR from Eastern Washington University¹, Campus Connect at Syracuse University² and the U.S. Air Force Suicide Prevention Program³.

Create and Maintain Feedback Loops

If an employee or community member reports a concern to your team, and it disappears into a vacuum of privacy, confidentiality or dysfunction, you have harmed the reporting culture you are trying to build. Reporters need to be reassured that you are taking prompt, appropriate and competent action. Faced with a vacuum, it will be too easy for a reporter to assume concern was lost, disregarded, or devalued. A simple (even automated) message, “Thank you for bringing this information to the attention of the Behavioral Intervention Team. Your report will be assessed and evaluated within 24 hours, and a team member will contact you to follow-up” can be very reassuring. But then, you must actually follow-up. FERPA allows you to create a feedback loop with officials of your institution and subcontractors whom you deem to have a legitimate educational interest, by sharing some BIT-related aspects of a student’s education record. Or, you may be able to obtain a student’s consent. Diagnosis, treatment, and intervention details are often inappropriate to share, but FERPA will allow you to say (as an example), “Johnny is experiencing a significant (mental

¹ <http://www.qprinstitute.com/>

² <http://counselingcenter.syr.edu/index.php/campus-connect/>

³ <http://afspp.afms.mil>

health/family/relationship/coping/stress/unspecified) crisis. The team is fully informed, as is his family. Appropriate interventions have been deployed, but if you continue to see (disruptive/concerning/suicidal/abusive/insubordinate/harassing) behaviors, we ask you to share that with the team at once. We could not have acted as promptly without your report. Thank you for taking ownership in the safety of this community.” Depending on state employee record privacy laws, you may be able to share more or less about employees than you can about students.

Violence Prevention Experts Already Exist on Your Campus. Draw on Their Expertise

More and more, we are coming to recognize the commonality of the prevention of targeted violence to the prevention of other violence common to college communities, such as hazing and sexual assault, and to prevention generally with respect to alcohol, drugs, tobacco, eating disorders, etc. Constructs of primary prevention, secondary prevention and tertiary prevention are cognates to the threat assessment phases of pre-threat prevention, threat-parallel intervention and post-threat response (post-vention). The intersection is made even more explicit by the research of David Lisak, Christine Gidycz, Antonia Abbey and Stephanie McWhorter, who are giving us tremendous insight into patterns of violence that very accurately characterize a serial rapist, and just as readily describe the violent patterns of Seung-Hui Cho, Stephen Kazmierczak, and Dr. Amy Bishop. As much as we need to be availing ourselves of access to researchers like those mentioned above, we also need to look to our own professors of psychology, criminology, or criminal justice, or violence prevention specialists who work in campus crisis centers, health/wellness and prevention programs. What they know is directly relevant to what behavioral intervention and threat assessment teams do, when you view prevention holistically.

Empower Anonymous Reporting

Many members of our communities want to share with us what they know. But, not if it means becoming personally involved. Anonymous reporting capacities will empower those individuals to share what they know while preserving their privacy and potentially shielding themselves from personal involvement. When we first advocated for exploration of anonymous reporting capacities on college campuses, for the reporting of sexual assault, for silent witness programs within campus law enforcement, and for behavioral intervention teams, our clients raised their concerns for abuse of such capacities. We responded that even if such systems were abused, receiving false reports and attempts to assassinate character, anonymous reporting still had value. We would need policies to address the abuse, but the potential for abuse was not reason enough to give up on anonymous reporting. And then a funny thing happened on the way to the online anonymous forum...the abuse never occurred. While there is an occasional libelous submission, the level of abuse is so low that the value of such systems clearly outweighs any downside. The fear of abuse is simply a phantom fear. Why? Apparently, it is too much work to

go the trouble of false reporting. Some campuses and school districts are even piloting anonymous free text tip lines with great success. One of the downsides of anonymous reporting is that we lose the ability to deputize the reporter as an agent of an effective intervention, but technology has even addressed that. Many of the online reporting systems now available allow team members to continue a dialogue with anonymous reporters without compromising their anonymity. Safer living through science!

Make Amnesty an Accepted Norm and Mean It

We'll admit to some frustration on this topic, up front. Formalized Amnesty, Immunity and/or Good Samaritan policies ought to be in place on every college campus, and that should have happened ten years ago. More and more campuses are coming along, but the pace has been glacial. Amnesty is debated in ways that are defeatist, and we're hoping to change the nature of that debate. Some form of Amnesty is good for your community. Accept that. It's true. Amnesty and Immunity foster a culture of reporting. It is appropriate to send a message to your community that there are some infractions so harmful to health and safety that reporting them and institutionally addressing them is more important than incidental infractions by the reporter themselves. But, then the debate shifts to abuse of the Amnesty, and paralysis sets in. Shift the debate away from the perfectionist fallacy. Accept the need for it, and then we can debate effective remedies for abuse. For example, most campuses that offer Amnesty or Immunity do so only for minor violations of alcohol and drug policies, or other lower-level infractions. Drug use is eligible, drug dealing is not. The health hazard of dealing is too great to ignore. Other campuses debate whether individuals or groups can receive Amnesty. Groups can, but immunity may be limited to group or individual sanctions, depending on the circumstances. Some campuses adopt partial or limited Immunity rather than full Amnesty, reserving the right to impose educational consequences, but waiving conduct sanctions. Other campuses limit the number of times you can invoke Amnesty. Amnesty ought to extend to those who need assistance and those who render it, but some campuses draw the line at immunizing someone who created a danger (as in serving someone alcohol who is under age and then later calling an ambulance for that person when they drink too much). We can see that logic, and suggest that the aid may be a mitigation of the sanction, but can still see the need for a sanction in such a case. Still, some level of Amnesty is in play. If you want those with valuable, potentially life-saving information to share it with you, you need to be willing to dismantle some of the major impediments to reporting. Now, once you have conduct Amnesty in place, explicitly apply it to reporting to your behavioral intervention and threat assessment teams.

Empower Bystander Intervention

Again, we encourage you to take a page from the research-based, demonstrated effective prevention efforts on college campuses around the country, and those experts on our own campuses who are already implementing programs like "Step Up! Be a Leader and Make a

Difference”⁴, Bringing in the Bystander™⁵ and “No Zebras, No Excuses”⁶. These programs have been used for years to promote bystander empowerment as a tool of sexual violence primary prevention. Do we accept that many members of our community choose to be bystanders rather than intervene in emerging violence, mental health and concerning behaviors, just as they might with sexual violence? If so, how might we adapt these models to broader violence prevention in addition to sexual violence? These programs are built on methods that overcome barriers to intervention including recognition of risk factors, debunking common bystander assumptions, imparting safe engagement tools and techniques, and modeling successful interventions. Those steps will work with alcohol, sexual harassment, hazing, eating disorders, and targeted violence, too. Asking our community members to report is not enough; we have to teach them to be interveners first.

Destigmatize Mental Health Issues

On most of our campuses, students have paved the way for us. It is generally their culture to be more open about mental health needs, and to be very open about their use of counseling, medication, and accommodation. While some notable exceptions exist, even in those cultures, the level of sharing is higher than it was twenty years ago. Our messages should honor their openness, and encourage their awareness, access and use of our campus resources and those in the larger community. The aforementioned Gatekeeper approaches can achieve much in reducing fear of mental illness, increasing awareness, aiding identification, and knowing how to respond to awkward, bizarre, threatening or dangerous situations. Resources from the Jed Foundation⁷ and the Bazelon Center⁸ are indispensable on many campuses. At the same time that we work to destigmatize mental health issues, we need to work in tandem to destigmatize disability issues, as they often present hand-in-hand. We hear of faculty and staff who are afraid to refer a student to disability service fearing some legal reprisal for forcing a student to disclose a disability. Forcing someone to disclose a disability as a condition of admission, for example, would be problematic, but that is far different from informing someone of the resources available to them, and encouraging them to make use of them. In fact, what could be more caring and supportive than to point a student to a resource designed expressly to assist them? That is what the ADA is designed to foster, in fact. The critical balance is to raise awareness without stigma, and that tightrope walk is made more challenging by the fact that factors exacerbating mental health instability -- such as erratic medication use, alcohol use, and

⁴ Created by Becky Bell at the University of Arizona <http://www.stepupprogram.org/>

⁵ Implemented successfully at the University of New Hampshire by Victoria Banyard
<http://www.unh.edu/preventioninnovations/index.cfm?ID=BCC7DE31-CE05-901F-0EC95DF7AB5B31F1>

⁶ Central Michigan University model developed by Steve Thompson
http://www.cmich.edu/SAPA/Programs/No_Zebras.htm

⁷ <http://www.jedfoundation.org/professionals/programs-and-research>

⁸ <http://www.bazelon.org/>

high stress -- are more common in college environments, and each successive campus shooting more intimately associates mental illness and violence in the public mindset.

Sell the Message That Your BIT's Purpose Is Caring and Preventive

One of the key ideas here is to be in charge of framing your message. What is the purpose of your team? What is it designed to do? Will your community define your team for you, or will you define it for your community? If the sense is that the team is intended as a Big Brother, tracking people and incidents so that we can kick students out, we will inhibit the culture of reporting, stigmatize mental health, and characterize the team's function as punitive. Our message from the outset needs to counter any tendency toward that perception, and the best way to do that is with a simple, consistent message about the team. Our purpose is to be caring and preventive. Buy-in is easy on that concept. Stakeholders will take stakes in those outcomes. It's non-threatening, positive, and possible. Your marketing task is to convince the members of your community of the benevolence of your purpose. If you do, they will invest in your team and its worthy goals.

Consider a Campus Reporting Mandate

We debate this idea here at NCHERM. We see one argument that a policy requiring reporting of all concerning incidents by all (non-privileged) employees forces people do so something, rather than motivating them to report voluntarily and cooperatively. For that reason, an imposed mandate may be met by resistance and some level of non-compliance or reticence. It's more powerful and effective to encourage reporting through buy-in. We also see another argument, which is that asking our employees to report what they know is reasonable, and if it is part of their job, we should say so, and make our expectations clear to them. Many employees already are required to report crimes, and asking them to report concerning behaviors too is not significantly more burdensome. Legally, what our employees know will often be imputed to the institution, and if we're going to be held legally accountable for knowing what they know, we might as well impose a duty on them that will allow us to satisfy an institutional duty of care. Perhaps creating a policy-based expectation rather than a mandate is a workable middle ground that allows clarity without the heavy hand of imposition? Finally, there is an unintended benefit to teaching your employees to think about issues (not just behavioral ones) in this light. In essence, when they learn about their duties to report BEHAVIORS that may pose a risk, they may begin to look for NON-behavioral risks to the community as well. In short, you have created a bunch of mini-risk-managers for your campus (imagine how happy your campus risk manager will be!).

Teach Parents About Your Team

"Hi, this is Johnny's mom calling. You Chair the BIT, right? Well, I wanted you to know that I'm worried about Johnny. He seems different. More distant. His friends have noticed, too. He

may be depressed. Do you know if something happened to him at school? He won't tell us anything. Don't tell him I called you, but I was hoping you could keep an eye on him?" Deans of Students know these calls well. They are another good source of information. Not only do teams need to be adept at knowing when to reach out to parents, but we can also teach parents that they can reach out to the team as a resource. If you have an orientation for parents, have an office for Parent Liaison, can provide information to parents during opening, or otherwise communicate electronically, by brochure, or through students, we recommend that you convey the following:

- We have a behavioral intervention team. It is caring and preventive.
- It is designed as an early identification system for at-risk students.
- It is the only resource collecting information holistically about student mental health, disability and coping challenges.
- If you're concerned about your son or daughter, their roommate, or one of their friends, you should feel welcome to share your concerns with the team.
- The team accepts anonymous reports.
- Here is the website for our team. It will introduce you to our members, our operating protocol, and how to contact us...
- In an emergency, do not contact them team. Call ###-###-####.

Ensure the Community-at-Large Can Report to Your Team

In addition to opening the doors to parents, a culture of reporting can be empowered by accepting reports from outside the campus community. We recommend that you establish MOUs with local agencies, organizations and resources who may be aware of critical information. They need to know that you have a team, that their reports are welcome, and that your team may be the only resource community-wide that is centralizing information about an individual who is rapidly unraveling. Family members, roommates, employers and other local and extended community members may know more about the status of someone who is on your team's radar screen than your team does, and opening the flow of information from them (e.g., Amy Bishop's husband) could provide critical pieces of the puzzle that your team needs to act appropriately and swiftly. This is particularly critical to schools with significant numbers of student who work in a small geographic community – community colleges, rural four year institutions, and those who "dominate" the town in which they are located. Colleges with clinical or practical sites should establish these communication paths as well.

Train on FERPA, HIPAA and Confidentiality to Break Down Silos and Artificial Impediments to Information Flow

Too often on campuses, we hear "I can't tell you that...FERPA." What we need to be hearing is, "If I don't tell you that, people might get hurt, or killed." FERPA is the lesser concern in that

context. FERPA was never meant to impede the flow of internal institutional communication, and certainly not crisis communication. Some registrars and other administrators have wrapped themselves in FERPA armor, and expect everyone else to coat education records with Teflon, but we're over-protecting. FERPA has become an excuse to silo information, and forgive the Reagan-esque reference, but Mr./Ms. Registrar, tear down those walls. We need to shift our consciousness from worrying about violating a well-meaning, important, but painlessly-enforced statute to creating a free flow of necessary information. Student privacy is important. So is student safety. We have talked about the need to rebalance institutional priorities in an era of increasing violence, and this is one of those areas. To registrars, FERPA should be sacrosanct. To others, especially BIT team members, FERPA does not and should not impede critical communication flow.⁹ Over the last decade, the Foundation for Individual Rights in Education (FIRE)¹⁰ has made a mark by elevating the importance of individual rights in higher education. With 33 deaths, Seung-Hui Cho has forced our focus from individual rights to community well-being and safety. We're not suggesting that individual rights aren't of concern, but right now, community safety has to have primacy. Will that compromise individual rights in some circumstances? Inevitably, and that's okay. It's not an excuse to move to wholesale compromising of individual rights, but the pendulum must swing back to a reasonable position where safety is acknowledged in this new environment where self injury and injury to others is more prevalent. We can't use pre-2000 methods to deal with a post millennial population. We're not here to tell you what the right balance of individual rights and community safety is for your campus. We are here to catalyze that debate within your community, because we all need to be discussing what we need to do to balance and safeguard two important priorities that can be directly at odds with each other.

HIPAA, the Health Insurance Portability and Accountability Act, doesn't cover the activities of most campus health and counseling services. If it does, it really doesn't protect the records of those services any more than the professional ethics and state confidentiality laws in place already do. None of those records would flow to a team whether HIPAA applied or not, unless there was an emergency, for which state laws and HIPAA have provisions. But, don't throw up a HIPAA wall if it doesn't apply to you¹¹. If HIPAA does not cover your campus, your team may still need to protect certain documents it receives that are HIPAA-protected, such as hospital records or the results of outside mental health assessments. For most campuses, though, HIPAA provides no more of an impediment to information flow than would FERPA¹².

Counselor confidentiality should create some silos, intentionally, but we need to be precise about how much. We've written much on this topic already, but some simple reminders here

⁹ Revised 2009 FERPA Regulations lend this perspective strong support. See <http://ed.gov/policy/gen/reg/ferpa/index.html>

¹⁰ www.thefire.org

¹¹ HIPAA's applicability is discussed in our previous Whitepaper, available at: http://www.nabita.org/docs/whitepaper_risk_mitigation.pdf

¹² <http://www.hhs.gov/ocr/hipaa/HIPAAFERPAjointguide.pdf>

may be useful. Administrators, don't ask counselors for information that you know state law or professional ethics forbid them from sharing, but do give them information that might make them aware of an imminence-threshold of severity and would allow them to make appropriate release of information to prevent the impending harm. Counselors, don't overprotect that which isn't protected. What you know from your client about your client is confidential, but what you may know about your client from a dean, a parent, the Internet, a roommate or other non-client, non-confidential source is potentially shareable. Directing reporting of campus concerns to counselors may make sense because counselors are good resources, but can impede information flow and timely action because counselors may not report out what they get in. But, if the information isn't about a client, again it can be shared. Also, you may want to make sure you are a "counselor" – for mental health treatment purposes – first. Just because you are licensed doesn't mean that was what you were hired to do. You may be exposing yourself and/or your institution if you are inappropriately "treating" clients. Behavioral intervention teams and campus counselors are hard at work around the country negotiating and navigating how information can and should flow between them. That's a valuable and ongoing area of conversation well-worth your time and attention.

Establish an Anti-Retaliation Policy to Protect Those Who Report

Policies may not protect people, but failing to have them can expose people. While this kind of policy is unlikely to prevent retaliation, knowing there is recourse is important. Assuring members of your community that your team values and protects its sources may engender freer flow of information from those sources, while also giving critical tips on how to minimize the risk of retaliatory actions against a reporter.

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