

Health Care/Intellectual Property Law

Gun Control Is Not Enough: Early Identification and Intervention for Those At Risk Means Safety and Security Before It's Too Late

After every horrific shooting across America, students, community members and state governments want to know what they could have done differently or whether they could have prevented the incident. After the recent school shooting at Marjory Stoneman Douglas High School in Parkland, Florida, this latest courageous community has again opened the debate on making legislative changes to the existing gun laws.¹ There is no question that access to assault weapons must be severely curtailed and background checks must be stricter. However, every time the debate focuses on enforcing stricter gun laws to prevent a person from purchasing a gun, we are missing the point.² School shootings are a significant, but rare, component of school violence across America. Even when they do occur, perpetrators often obtain the weapon legally³ or from a family member.⁴ Instead of focusing solely on gun control, we must implement preventa-

tive measures to ensure that at-risk individuals receive timely intervention and treatment before they even think of getting a gun. Once the individual obtains a weapon, it is often too late.

The core issue within each school community is the failure to share information.⁵ The school administration may have one piece of information about a troubled student, such as poor attendance or a failed class, but not enough to take action. A friend or fellow student may have noticed bizarre or erratic behavior in recent weeks, but maybe not enough to report it. Parents might have observed their son isolating himself in his bedroom,



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not socializing, changes in his mood, but ultimately, nothing too alarming for a teenager when viewed in a vacuum. Law enforcement might have had contact with him, but maybe it never led to an arrest. What if everyone stepped out of their silos and

put all of these pieces together? Each of the community members in this hypothetical scenario are not alone in determining whether a real threat exists and implementing an appropriate response to manage that risk. The school or campus Threat Assessment Team, which may be known as a Behavioral Intervention Team, Care Team, or another name, can help

school community members identify and address behavior that might pose a threat of violence, before the next incident of violence occurs.⁶ This centralized group of trained professionals puts each piece of the puzzle together, collecting the information, analyzing it, and intervening appropriately.

School shooters very often exhibit "red flag" behavior for the weeks, months, or even years leading to a shooting incident.⁷ It is rare for an individual to simply "snap" before engaging in violence. The idea that an individual may exhibit warning signs, revealing clues that a violent act is coming, is sometimes known as leakage.⁸ One of the best tools that a school administration can use to create and sustain a safe environment, identifying such behavior and intervening before a violent act, is a Threat Assessment Team. Every school, K-12, college or university campus, must

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have a team that meets regularly to evaluate information received about potential threats or students at risk.

Many college campuses across America set up these teams after the shooting at Virginia Tech. The failure to share information at Virginia Tech contributed to the inability of the university to identify Seung-Hui Cho as a potential threat and prevent the shooting in April 2007.⁹ The police, Cho's parents, his high school teachers and college professors and classmates each had small pieces of this larger puzzle including bizarre behavior, a history of mental illness, and complaints of stalking and unwanted communications. The inability to put these bits of information together to see the big picture, to connect the dots, prevented the community from being able to intervene and get him appropriate treatment before it was too late.

In 2008, Virginia and Illinois were the first states to enact legislation requiring higher education institutions to adopt policies creating threat assessment teams.¹⁰ Virginia took these teams one step further and in 2013, became the first state to require local school boards to adopt policies to create threat assessment teams in K-12 schools.¹¹ Many states either already have enacted legislation requiring these teams or are in the process of doing so.¹² It is recommended that every state require such teams in their K-12 schools as well as in their higher education institutions to ensure that these teams are formally trained and operate in accordance with accepted best practices.

Among the potential risks that can be identified and prevented by a Threat Assessment Team are suicide, alcohol and drug use, physical abuse, dropping out, and criminal activity, including school shootings.¹³

Creating and Implementing a Threat Assessment Team

The first step is to create an interdisciplinary Threat Assessment Team. Select members of the administration and faculty should sit on the team as well as a mental health professional, school staff member and representative from the guidance counselor's office. A senior member of the administration should chair the team.

After creating the team, all members must be properly trained in their roles and responsibilities and how to conduct a threat assessment inquiry. Training must be specifically tailored to the school environment whether it is an elementary school or a college campus. Training should include hands-on instruction on how to identify, investigate, assess, and manage a broad range of disruptive, threatening, or dangerous behaviors.

It is important to include all members of the school community in the process of creating a safe school environment. Students, teachers, staff, administration, parents, and law enforcement, among others, must know about the existence of the team as well as the policies and procedures for reporting and investigating threats. Information about the team should be available online and disseminated in hard copy. The team and its function should be discussed at student orientation, "back to school"

parent nights, faculty and administration training sessions, community forum meetings, and in any other way possible. The team should have contact with and receive information from local community organizations such as Girl or Boy Scouts, local sports teams, and religious organizations.

The reporting procedure should be simple and easily accessible, both online and in person. It is recommended that an anonymous reporting option be made available to potential reporting sources so as not to deter anyone from filing a report.

Disruptive vs. Dangerous Behavior

Once the reports start coming in, the team is responsible for reviewing and investigating reported information and assessing whether the individual of concern poses a threat of violence and/or requires mental health or social services support in the community. Such an evaluation may include identifying and interviewing corroborating sources. When analyzing an individual's behavior, the team must differentiate between "disruptive" and "dangerous" behavior. Examples of disruptive behavior include, but are not limited to, using smartphones in class, inappropriate clothing, interrupting or carrying on side conversations, poor personal hygiene, inability to focus or pay attention, being intoxicated in class, or eating or drinking in class.¹⁴ "Dangerous" behaviors may require the team to take a higher level of action. Such behavior might include: racist or sexist comments; bullying behavior; direct threats to others; passive-aggressive behavior such as crossed arms, glaring, staring, or refusing to speak or respond to directives; self-injurious behavior such as cutting or burning; physical assault; throwing objects or slamming doors; and conversations about weapons, killing or death.¹⁵ In order to determine whether an individual poses a threat or risk, the Team must understand the behavior in the context of the individual and the environment. This means considering past behaviors and experiences and the nature of the current situation.¹⁶

Recommendations and Interventions by the Team

The team must then implement a response or intervention strategy to reduce or eliminate the threat, if any, or properly address the concerning behavior.

The team can recommend and enforce appropriate responses to both types of behavior, disruptive or dangerous. Recommendations may include whether the individual can stay in school, what alternatives to school may be needed, how and when to notify families, if and when to involve law enforcement, and what mental health, social service, and school-based interventions are required to correct the behavior and/or reduce the risk for violence.¹⁷ The assessment process can incorporate referrals to appropriate mental health and social services, such as a residential treatment facility or substance abuse program.

If it is determined that the individual poses a serious threat of harm to self and/or others, the police should be contacted immediately to provide assistance to reduce the threat. A plan must be developed to control or contain the situation to prevent a possible incident of violence, protect potential targets of the threat, and provide support to the at-risk individual.

The plan cannot end with suspension or expulsion from school. There must be support and monitoring in the community. Simply removing the individual from the school environment is not sufficient and certainly not therapeutic. There must be a smooth transition from the school discipline system to law enforcement, if necessary, and/or communication between the school and alternative schools or residential programs, as well as

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periodic follow-up with parents or guardians. These students cannot fall through the cracks. There must be a system to monitor their progress and rehabilitation, provide mental health or social services in the community, and share information between the school, the community and the justice system to ensure these students are not isolated and unsupported.¹⁸ For the more complicated and dangerous situations, a single intervention is likely not sufficient.

Conclusion

Communities and state legislatures continue to push for stricter gun control such as restricting the purchasing of guns by individuals of a certain age or with a certain criminal or mental health history, increased security on campuses and in K-12 schools, and other related measures. While these gun control efforts are important, these communities would be better off focusing on the importance of early identification and intervention, mental health treatment and support services, and proper monitoring and follow up. These preventative measures will significantly reduce the threat of violence by allowing for timely and appropriate intervention before the individual even thinks of finding or purchasing a gun.

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1. See Alia Wong, *The Parkland Students Aren't Going Away*, *The Atlantic* (Feb. 24, 2018), <https://theatlantic.com/20wJaLp>.
2. See generally Carolyn Reinach Wolf & Jamie A. Rosen, *Missing the Mark: Gun Control Is Not the Cure for What Ails the U.S. Mental Health Sys.*, 104 *J. Crim. L. & Criminology* 851 (2014).
3. For example, on February 14, 2018, Nikolas Cruz killed 17 people at Marjory Stoneman Douglas High School in Parkland, Florida using an AR-15 rifle that he legally purchased. Larry Buchanan et al., *How They Got Their Guns*, *N.Y. Times*, Feb. 14, 2018, <https://nyti.ms/2I8lj1j> (stating that most guns used in recent mass shootings were bought legally and with a federal background check).
4. On December 14, 2012, Adam Lanza shot and killed his mother in their home and then killed 26 people, mostly children, at Sandy Hook Elementary School in Newton, Connecticut. The guns used in this horrific tragedy were obtained from his mother's collection of weapons that were acquired legally and registered. Matt Flegenheimer & Ravi Somaiya, *A Mother, a Gun Enthusiast and the First Victim*, *N.Y. Times* (Dec. 15, 2012), <https://nyti.ms/2G7Vmcc>.

5. NaBITA 2017 Whitepaper: Managing Disruptive and Dangerous Behavior on Campus 4 (2017), <https://bit.ly/2I9Id8E>.
6. *Id.* at 4.
7. The 1999 Safe School Initiative (SSI), developed by the U.S. Secret Service and U.S. Dep't of Educ. in response to the shooting at Columbine High School, reviewed past incidents of targeted violence in schools and determined that in most cases the subject had either directly or indirectly revealed his/her intentions to others. U.S. Secret Service and U.S. Dep't of Educ., *Prior knowledge of potential school-based violence: Information students learn may prevent a targeted attack* 3

8. Rebecca Bolante & Cass Dykeman, *Threat Assessment Teams for Institutions of Higher Education: A Review of Key Ideas and Practices for Professional Counselors*, *Vistas Online* 10, <https://bit.ly/2Kgg2kG>.
9. Richard Brusca & Colin Ram, *A Failure to Communicate: Did Privacy Laws Contribute to the Virginia Tech Tragedy?*, 17 *Wash. & Lee J. Civil Rts. & Soc. Just.* 141, 144 (2010).
10. Va. Code Ann. § 23.1-805 (2016); 110 Ill. Comp. Stat. Ann. 12/20 (2010).
11. Va. Code Ann. § 22.1-79.4 (2016).
12. See Conn. Gen. Stat. Ann. § 10a-156a (2012) (requiring the formation of trained threat assessment teams in all institutions of higher education); Fla. Stat. Ann. § 1006.07 (2017) (requiring every school in Florida to have a threat assessment team, increasing the sharing of information between police and behavioral health providers to better coordinate services, and enacting several provisions to restrict the purchase of guns, among other measures). In Minnesota, for example, a bill requiring school districts to implement threat assessment teams is moving through the legislature. Brian Bakst, *School threat team proposal advances in Minn. House*, *Capitol View* (Mar. 13, 2018), <https://bit.ly/2IAN2ae>.
13. Threat Assessment for School Administrators & Crisis Teams, National Association of School Psychologists, *available at* <https://bit.ly/2G7Vzfu>.
14. NaBITA *supra* note 5, at 5.
15. *Id.* at 6.
16. *Id.* at 4.
17. *Supra* note 13.
18. Ron Avi Astor, 7 Ways to Help Prevent School Shootings, *CNN* (Feb. 21, 2018), <https://cnn.it/2Iwt2pb>.

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