

Issues from Virginia Tech

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Tort Law/Negligence Liability

- Elements

- Duty
- Breach
- Causation
- Damage

- Standard of care: Act as a reasonable person would under the same or similar circumstances

- Reasonableness and foreseeability



Lessons from Virginia Tech

- “Information silos”
 - [FERPA](#)
- Coordination, internally and externally
 - Risk-management teams
 - Timely and accurate reporting
 - Clery Act warnings/timely communication
 - Admissions processes
 - Involuntary leaves/readmission policies
- Intervention, despite rule or legal violations
- Riskscapes, not landscapes
- Science-based strategies



Overarching Philosophy: Facilitator Model

- Robert D. Bickel & Peter F. Lake, *The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life?* (1999).
- Student development
- Shared responsibility
- Values and principles
- Proactive, not reactive
- Reasonable care to create a safe learning/living environment



Dangerous Persons

■ Suicide-to-homicide continuum

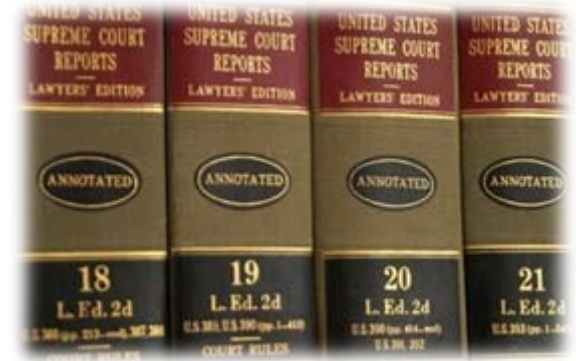
- Seung-Hui Cho
- Sanjay Jain
- (possibly) Elizabeth Shin

■ Historical protections

- Immunities
- Reluctance to hold third persons liable for another's suicide (duty and causation theories)
- Exceptions:
 - Person actually causes the suicide (e.g., malicious use of codes; hazing; providing drugs)
 - Special relationship (landlord-tenant?)
 - Custody and control
 - University-student relationship generally not "special"

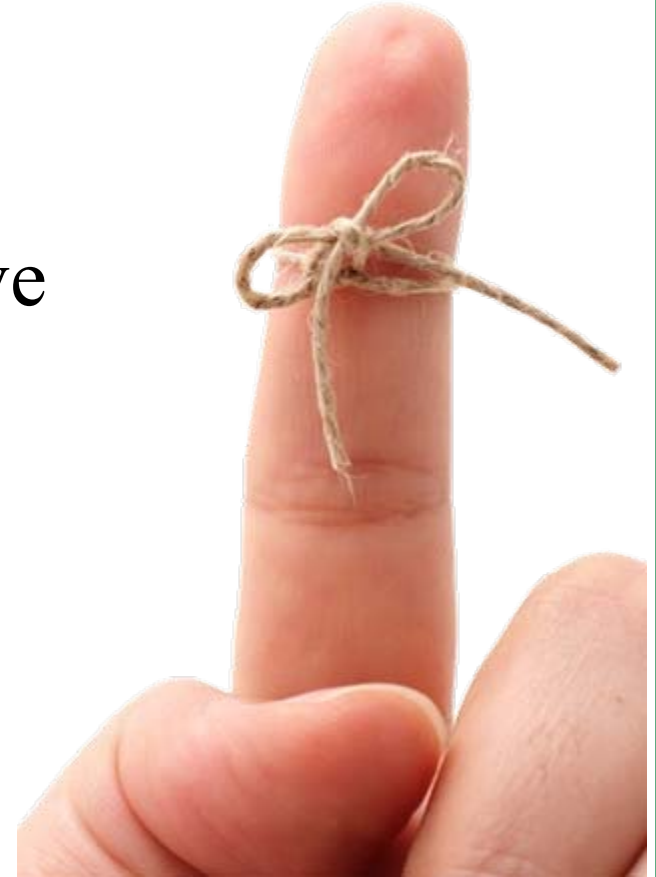
Recent Cases Regarding Suicide

- *Jain v. Iowa* (2000)
- *Schieszler v. Ferrum College* (2002)
- *Shin v. MIT* (2005)
- *Mahoney v. Allegheny College* (2005)
- *Clark v. Bash* (2006)



Final Thoughts

- Greater scrutiny and accountability
- What is “reasonable” may have changed
- Environmental approaches
- Collaboration



FERPA

- History (1974)
- 20 U.S.C. § 1232g; 34 C.F.R. § 99.1 et seq.
- Protects educational records
- College students hold their own FERPA rights, even if under 18
 - FERPA waivers and helicopter parents
- No private right of action – individuals cannot sue for money damages



- A school official may generally share with a parent information that is based on that official's personal knowledge or observation of the student.

FERPA and Student Health Information

Postsecondary institutions that provide health or medical services to students may share student medical treatment records with parents under the circumstances described above. While these records may otherwise be governed by the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, the *HIPAA Privacy Rule* excludes student medical treatment records and other records protected by *FERPA*. The Department plans to issue further guidance on the interplay between *FERPA* and *HIPAA*.

FERPA and Student and Exchange Visitor Information System (SEVIS)

FERPA permits institutions to comply with information requests from the Department of Homeland Security (DHS) and its Immigration and Customs Enforcement Bureau (ICE) in order to comply with the requirements of SEVIS. Officials who have specific questions about this and other matters involving international students should contact the U.S. Department of Education's Family Policy Compliance Office.

Transfer of Education Records

Finally, *FERPA* permits school officials to disclose any and all education records, including disciplinary records, to another institution at which the student seeks or intends to enroll. While student consent is not required for transferring education records, the institution's annual *FERPA* notification should indicate that such disclosures are made. In the absence of information about disclosures in the annual *FERPA* notification, school officials must

make a reasonable attempt to notify the student about the disclosure, unless the student initiates the disclosure. Additionally, upon request, the institution must provide a copy of the information disclosed and an opportunity for a hearing. See 34 CFR § 99.31(a)(2) and § 99.34(a).

Contact Information

For further information about *FERPA*, please contact the Family Policy Compliance Office or visit its Web site.

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-5920
202-260-3887

For quick, informal responses to routine questions about *FERPA*, school officials may e-mail the Family Policy Compliance Office at FERPA@ED.Gov.

For inquiries about *FERPA* compliance training, contact FERPA.Client@ED.Gov.

Additional information and guidance may be found at FPCO's Web site at: <http://www.ed.gov/policy/gen/guid/fpc/index.html>.



Balancing Student Privacy and School Safety: A Guide to the *Family Educational Rights and Privacy Act* for Colleges and Universities



Educational Records – Not!

- Teachers' and administrators' records that are in the sole possession of the maker and are not accessible or revealed to any other person, except a substitute
- Records maintained by a law enforcement unit of the educational institution that were created by that unit for the purpose of law enforcement
- Employment records for individuals who are not students
- Most student medical records
 - student at least 18
 - records are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in that capacity
 - records made, maintained, or used only in connection with providing treatment to the student
 - records are not available to anyone other than the persons providing treatment, except as provided to a physician or other appropriate professional of the student's choice

Must Be a “Record”

- E-mail messages can be a record
- But, FERPA does not cover information obtained through personal observation or knowledge.

Release Without Consent

- To other school officials, including faculty, whom the institution has determined have “legitimate educational interests”
- To officials at another college where the student seeks or intends to enroll
- In connection with a health or safety emergency
- In connection with a disciplinary proceeding at the institution
- “To the parent of a student under 21 if the student violates any federal, state, or local law, or any institution policy concerning alcohol or other drugs that result in a disciplinary action”
- Information regarding registered sex offenders

Health and Safety

- Including in a student's education records appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community
- Disclosing appropriate information to teachers and campus officials who have a legitimate educational interests in the student's behavior
- Sharing appropriate information with teachers and campus officials at other schools who have a legitimate educational interest in the student's behavior

FERPA “Bottom Line”

- Campus officials and faculty can share student information if health and safety legitimately are at issue
- Observations \neq educational records
- Law enforcement records \neq educational records
- University not liable for money damages
- Collaborate!
- Which lawsuit do you want?

