

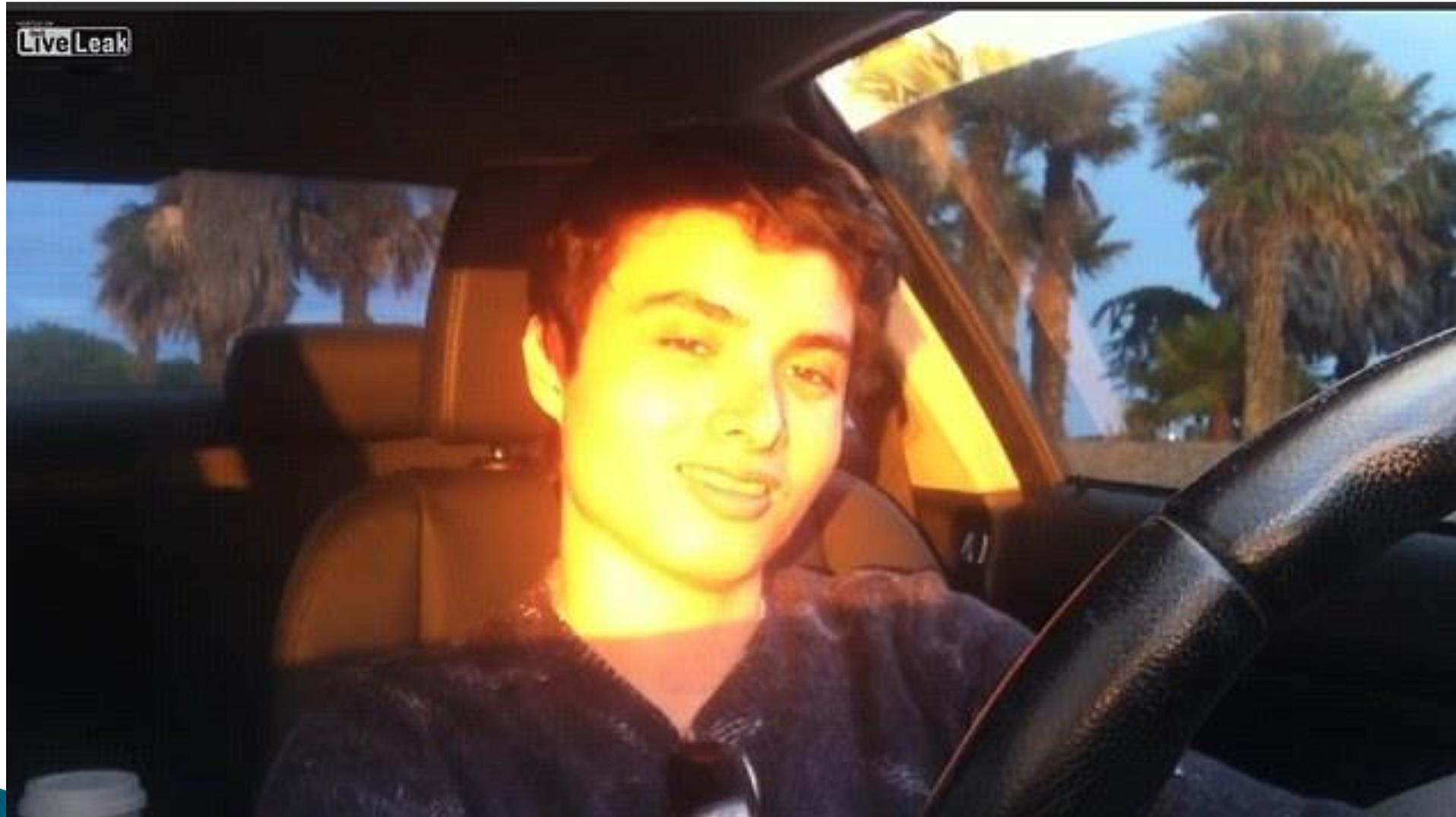
Strategic Information Sharing and Safeguarding Between Risk Management Professionals and Disciplines

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Strategic Information Sharing and
Safeguarding Between Risk
Management Professionals and
Disciplines ATAP 2014

Why is information sharing important?



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Did you recognize them?

- ▶ Seung-Hui Cho
- ▶ Adam Lanza
- ▶ James Holmes
- ▶ Dylan Klebold
- ▶ Eric Harris
- ▶ Jared Loughner
- ▶ Elliot Rodger

Why re-invent the wheel....

- ▶ National Strategy for Information Sharing and Safeguarding – 2012
 - “...*National Strategy for Information Sharing and Safeguarding* (Strategy) aims to strike the proper balance between sharing information with those who need it to keep our country safe and safeguarding it from those who would do us harm. While these two priorities—sharing and safeguarding—are often seen as mutually exclusive, in reality they are mutually reinforcing. This Strategy, therefore, emphasizes how strengthening the protection of classified and sensitive information can help to build confidence and trust so that such information can be shared with authorized users.”
- ▶ FBI Information Sharing and Safeguarding Report – 2012
- ▶ Department of Homeland Security – Sharing and Safeguarding Strategy – 2013

An information sharing and safeguarding strategy has three core principles

1. Information as a Local and National Asset
2. Information Sharing and Safeguarding Requires Shared Risk Management
3. Information Informs Decision-making

Information as a Local and National Asset

- ▶ “departments, agencies, and private sector stakeholders have achieved an unprecedented ability to gather, store, and use information consistent with their missions, policies and applicable legal authorities;
- ▶ correspondingly they have an obligation to make that information available to support the local and national security missions.”

Asset.....

- ▶ a useful or valuable thing, person, or quality
 - synonyms:
 - benefit, advantage, strength, forte, virtue, recommendation, resource, bonus, plus

Information Sharing and Safeguarding Requires Shared Risk Management

- ▶ “Sharing and safeguarding are not mutually exclusive. Policies, practices, and methods for information sharing and safeguarding can enable appropriate confidentiality while increasing transparency.”
- ▶ “In order to build and sustain the trust required to share with one another, we must work together to identify and collectively reduce risk, *rather than avoiding information loss by not sharing at all.*”
- ▶ “To realize the benefits of sharing information, stakeholders mitigate and manage risk by taking appropriate measures to build trust in the processes that safeguard information from compromise.”
- ▶ “As the mission imperative for sharing increases, so too does the need to improve interoperable safeguarding techniques.”

Information Informs Decision-making

- ▶ Informed decision-making requires the ability to discover, retrieve, and use accurate, relevant, timely, and *actionable* information
- ▶ the value of responsible information sharing is measured by its contribution to proactive decision making.

What is actionable information?

- ▶ Providing accurate (vetted) information
 - Knowable and reliable information
- ▶ To the right people
 - Have a process in place, with the right stakeholders
- ▶ At the right time
 - Delays in the process can have deadly consequences



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This is not a new concept, “The Final Report and Findings of the Safe School Initiative”

Formulate strategies for preventing attacks
should focus on two principle areas

- developing the capacity to pick up on and evaluate available or knowable information that might indicate that there is a risk of a targeted attack; and
- employing the results of these risk evaluations or “threat assessments” in developing strategies to prevent potential school attacks from occurring

- (Fein, Vossekuil, Borum, Modzeleski, Reddy, – 2002)

Memorandums of Agreement (MOA)

- ▶ “...developing interagency information sharing agreements is often a critical step in the success of cross–agency collaboration. Unfortunately, this step is often protracted as agencies attempt to determine mutually agreeable requirements and restrictions related to information access, handling, and use based on differing missions, requirements, restrictions, and authorities. Creating a template, based on common legal and policy compliance requirements would streamline the process, facilitate issue resolution, and enhance partnerships”

Privacy Laws or Potential Barriers

- ▶ Healthcare Information Portability and Accountability Act – HIPAA
- ▶ Federal Education Right Protection Act – FERPA
- ▶ Criminal Offender Information – CORI
- ▶ Tarasoff

Healthcare Information Portability and Accountability Act – HIPAA

- ▶ **Protected Health Information.** The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected health information (PHI)."¹²

HIPAA cont...

- ▶ “Individually identifiable health information” is information, including demographic data, that relates to:
 - the individual’s past, present or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

HIPAA cont.....

- ▶ The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g

HIPAA cont.....

▶ De-Identified Health Information.

- **There are no restrictions** on the use or disclosure of de-identified health information.¹⁴ De-identified health information neither identifies nor provides a reasonable basis to identify an individual. There are two ways to de-identify information; either: (1) a formal determination by a qualified statistician; or (2) the removal of specified identifiers of the individual and of the individual's relatives, household members, and employers is required, and is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.

HIPAA Exceptions.....

- ▶ To comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or a grand jury subpoena.
- ▶ To respond to an administrative request
- ▶ To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person; but the covered entity must limit disclosures

HIPAA Exceptions.....

- ▶ This same limited information may be reported to law enforcement:
 - About a suspected perpetrator of a crime when the report is made by the victim who is a member of the covered entity's workforce
 - To identify or apprehend an individual who has admitted participation in a violent crime
- ▶ To respond to a request for PHI about a victim of a crime, and the victim agrees
 - Child abuse or neglect may be reported
 - Adult abuse, neglect, or domestic violence may be reported
- ▶ To report PHI to law enforcement when required by law
- ▶ To alert law enforcement to the death of the individual

HIPAA Exceptions.....

- ▶ **When responding to an off-site medical emergency, as necessary to alert law enforcement about criminal activity,**
 - specifically, the commission and nature of the crime, the location of the crime or any victims, and the identity, description, and location of the perpetrator of the crime (45 CFR 164.512(f)(6)). This provision does not apply if the covered health care provider believes that the individual in need of the emergency medical care is the victim of abuse, neglect or domestic violence; see above Adult abuse, neglect, or domestic violence for when reports to law enforcement are allowed under 45 CFR 164.512(c).
- ▶ **When consistent with applicable law and ethical standards:**
 - To a law enforcement official reasonably able to **prevent or lessen a serious and imminent threat to the health or safety of an individual or the public** (45 CFR 164.512(j)(1)(i)); or
 - To identify or apprehend an individual who appears to have escaped from lawful custody (45 CFR 164.512(j)(1)(ii)(B)).

Federal Education Right Protection Act – FERPA

- ▶ The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA cont.....

- ▶ Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
 - School officials with legitimate educational interest;
 - Other schools to which a student is transferring;
 - Specified officials for audit or evaluation purposes;
 - Appropriate parties in connection with financial aid to a student;
 - Organizations conducting certain studies for or on behalf of the school;
 - Accrediting organizations;
 - To comply with a judicial order or lawfully issued subpoena;
 - Appropriate officials in cases of health and safety emergencies; and
 - State and local authorities, within a juvenile justice system, pursuant to specific State law.

FERPA exceptions.....

- ▶ **Appropriate officials in cases of health and safety emergencies; and**
 - In some situations, a school may determine that it is necessary to disclose non-directory information to appropriate parties in order to address a disaster or other health or safety emergency. FERPA permits school officials to disclose, without consent, education records, or personally identifiable information from education records, to appropriate parties in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of the student or other individuals. This exception to FERPA's general consent requirement is temporally limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from the student's education records.
- ▶ **Under the health or safety emergency provision, who is considered an “appropriate party”?**
 - law enforcement officials, public health officials, trained medical personnel, and parents

FERPA exceptions.....

- ▶ **State and local authorities, within a juvenile justice system, pursuant to specific State law.**
- Another provision in FERPA that permits disclosure without consent is a disclosure that is necessary to comply with a lawfully issued subpoena or judicial order. A school generally must make a reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student to seek protective action, unless certain exceptions apply. 34 CFR § 99.31(a)(9). *This exception could be used when an emergency no longer exists or the party seeking personally identifiable information from students' education records would not typically be considered an "appropriate party" under the health or safety emergency exception to general consent.*

FERPA exceptions...

▶ Law Enforcement Unit Records

- FERPA regulations draw a distinction between records created by a school law enforcement unit for law enforcement purposes, such as the enforcement of local, state, or federal law, and records created by a school law enforcement unit for non-law enforcement purposes, *such as the enforcement of school policies concerning behavior or disciplinary actions.*

Criminal Offender Information – CORI

- ▶ **Criminal Offender Information (CORI) Ca. Penal Code 11075–11081**
 - 11075. (a) As used in this article, "criminal offender Record information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.
 - b) Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto.

CORI cont....

- ▶ **CA Penal Code....**

- ▶ 11076. Criminal offender record information shall be disseminated, whether directly or through any intermediary, only to such agencies as are, or may subsequently be, authorized access to such records by statute.

- ▶ Many states have similar laws which restrict access to Criminal Offender Information
 - Right to know, need to know

Other Privacy Laws....

- ▶ Employment Laws
- ▶ Education Laws
- ▶ Contractual Laws
- ▶ Corporate Laws
- ▶ Codes of Ethics
- ▶ Policies and Procedures
- ▶ And.....?

Tarasoff v. The Regents of the University of California

In 1976, in the landmark case of *Tarasoff v. The Regents of the University of California*, the California Supreme Court imposed a legal duty on psychotherapists, enforceable by a civil suit for damages, to warn a person who may become a victim of a violent act by a patient. Courts and legislatures in other jurisdictions soon began to examine the subject, and within a decade or so the “duty to warn” became law across much of the United States and an integral part of mental health training and practice. ¹

Since its institution the application of this law and its requirements as set forth are confusing at best and often misapplied. *This often leaves victim’s unwarned, law enforcement unaware and clinicians unprotected.*

¹ Journal of the American Academy of Psychiatry and the Law 2002; 30:275–281

Tarasoff

Pursuant to 8100(b) WIC

- ▶ Person who communicates to a licensed psychotherapist (1010 (a)–(e) CA Evidence Code) a serious threat of physical violence against a reasonably identifiable victim
- ▶ Psychotherapist reports to law enforcement (8105 (c) WIC)
- ▶ Law Enforcement reports to California Department of Justice (CADOJ)
- ▶ CADOJ notifies individual by certified mail of five-year firearms prohibition
- ▶ *Call CADOJ for Tarasoff Report Forms*

Case Study.....

- ▶ Officers receive a call from a large hospital stating that they want to report a criminal threat made by one of the employees against other employees in the lab where he works. The reporting party stated that the employee had gone to an Employee Assistance Program (EAP) counselor in regards to personal and work related issues. The employee was very troubled and blamed the hospital and his co-workers for causing his problems. He had received a poor performance review and did not feel his co-workers had not shown support when he had gone to management. He told the counselor, who is a licensed mental health professional that he was having bad thoughts. He had set up a mockup of his lab in his garage at home and with his handgun he had simulated shooting each of his co-workers and his supervisor. He believed it was what they all deserved for ruining his life. The counselor asked if he was going to carry out his threat and the employee wouldn't answer any further.
- ▶ The EAP counselor reported this threat to the Human Relations manager, who called police. The lab technician was arrested for Criminal Threats.

Case Study cont....

- ▶ Was there a crime committed? Or not?
- ▶ What obligations did the EAP counselor have? Or not have?
 - Did the counselor fulfill her obligations under the Tarasoff ruling?
 - Does notifying the HR manager complete the mandated Tarasoff notifications?
- ▶ Do the victims of the threats have a right to be notified?
- ▶ Will arresting the lab technician make him a prohibited possessor of firearms? Is this important?

Case Study cont.....

- ▶ If the case is not filed and the suspect is released, what are the obligations of :
 - The Hospital
 - The EAP clinician
 - The Law Enforcement Agency
 - The District Attorney / Courts

- ▶ The outcome – integrated intervention from a multi-disciplinary team



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Panel Discussion....

- ▶ Charles Lennon, Law Enforcement Program Head, Los Angeles County Department of Mental Health
 - CLennon@dmh.lacounty.gov

- ▶ Ailleth Tom, Coordinator, Crisis Counseling and Intervention Services, Los Angeles Unified School District
 - ailleth.tom@lausd.net

Remember.....

- ▶ Information is a Local and National Asset
- ▶ Information Sharing and Safeguarding Requires Shared Risk Management
- ▶ Information Informs Decision-making

- ▶ Our safety and security depends on our ability to share the right information, with the right people, at the right time.....

Say what you mean and mean what you say.....

- ▶ Interdisciplinary linguistics and competence can be the difference between a good and/or negative outcome.....

Let me explain...



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Los Angeles Police Department
Crisis Response Support Section
Mental Evaluation Unit

at

213-996-1300

Los Angeles County Department of Mental
Health

Emergency Outreach Bureau

ACCESS Center

1-800-854-7771

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FERPA / HIPAA

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