Threat Assessment Team Negligence: Cleveland vs. Taft Union

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For those of you trying to convince senior management to commit sufficient resources for a credible and sustained best practices protocol – show them this feature by Reid Meloy and our colleague Molly Amman. Another sign that with the increase in risk of violence in organizational settings comes increased exposure to claims of negligence

In February, 2012, a California high school student named Bryan O. threatened to both shoot students and bomb his auditorium while returning to school from a bus trip to Universal Studios. Chaperones overheard this conversation, and filed reports with the assistant principal, the designated leader of the school threat assessment team. Other team members were the school psychologist and the school resource officer. Bryan was suspended for five days, and a threat assessment was initiated. A determination was made that there was "insufficient evidence of violence potential, sufficient evidence for the unintentional infliction of emotional distress upon others." Bryan would be allowed to return to school, and have counseling for a month by the school psychologist. The psychologist met with Bryan, but sometimes the counseling was waving at him on the campus and asking how he was doing. His bedroom was also searched with the consent of his mother a month later, and no lethal weapons were found. So far, somewhat adequate.

Over the course of the next year, parents and students expressed fears concerning their own safety in relation to Bryan's escalating behavior: he made other threatening statements, he made drawings of school shootings, there was a rumor of a "hit list" but only one person had seen it, he posted a story of a "psychopath" who carried out acts of sadistic revenge against those who had bullied him, and he made stabbing gestures with a pencil in class.

And then there was Sandy Hook. On December 14, 2012, twenty-eight people died in a massacre, including 20 children, six adults, and the perpetrator in an elementary school, plus the mother of the perpetrator at their shared home. It shook the emotional and moral foundations of the country. Bryan had his backpack and books stolen that same day too. His backpack was found a few days later, but no one counseled him about this humiliation or his reaction to Sandy Hook.

Multiple adults and students visited the assistant principal to report these events over the year, but a threat assessment had already been done in February. There was a sense of, "No worries, we've got this." There were no follow-up threat assessment team meetings to manage any ongoing risk, no further meetings with his mother, and no contact with other family members. And then his older brother bought a 12 gauge shotgun for sport shooting.

On January 10, 2013, Bryan O. came to his first period class with the shotgun. He severely wounded one student in the chest, targeted another and missed, and surrendered to a school supervisor. Bryan O. was criminally convicted and sentenced to 27 years in prison. The day before, Bryan had warned several friends to not come to school since "something bad was going to happen." *They didn't believe he would do anything because the assistant principal had told them for almost a year that Bryan wouldn't do anything*. After all, a threat assessment had been done. How can an adolescent trust his own judgment and feelings of fear when the adults in the room tell him not to worry?

Then came the civil suit, culminating in a trial by jury concerning threat assessment and management. The school district failed in its attempt to shield itself in the cloak of legal immunity. The jury and district court, affirmed by the California Court of Appeals in March 2022, found that school district employees involved in the threat assessment and management process were 54% responsible for the $3.8 million in total damages sustained by the plaintiff, Bowe Cleveland. This is very significant—the district, in its failures, was deemed more responsible than the shooter.

In his opinion as an expert for the plaintiff, Dr. Meloy testified that the threat management team breached their duty of care because (1) the threat assessment was not carried out by the team collectively; (2) the school resource officer (i.e., the law enforcement officer assigned to the school) should have been a core member of the team; (3) the threat assessment team failed to communicate among themselves about Bryan; (4) the threat assessment team failed to adequately communicate with Bryan's parent; (5) the threat assessment team failed to recommend counseling to Bryan's parent as an intervention technique; and (6) the threat assessment team did not continue to collectively monitor Bryan and reassess the safety plan.

The appellate court further opined, "The multiple failures of District employees to handle information with ordinary care combined (i.e., concurred) to cause the assessment team's failure to adequately address the threat Bryan posed, resulting in plaintiff's injuries. This is not a case of an unknown assailant where the trier of fact had to guess how the unidentified assailant might have been stopped. Here, the causal chain was identified by Meloy, who testified that if the threat assessment team had operated within the standard of care, it was more likely than not that the shooting would have been prevented (p. 44)."

Critically, the appellate court accepted the standard of care articulated by Dr. Meloy, under the facts and circumstances of this case, in relation to school threat assessment and management in the State of California. This begs the question of whether this case will hold influence in other jurisdictions. *Cleveland v. Taft Union* was only the second school shooting case to go to a civil trial in the country. The appellate court also held that in the context of statutory immunity relating to psychiatric examination of an identified student of concern, there was no blanket immunity to the school district for all the actions of the threat management team. The lessons here? Follow recognized threat assessment and management protocols. Communicate. When considering minors or students, don't cut parents out of the loop. Continually reassess—no case should ever be considered 'one and done' in the face of evolving facts or fresh concerns.

We think this case, although limited to a particular state, may have eventual legal ramifications throughout the country. Time will tell. After all, we have long believed that employers, for example, will increasingly be obligated to take notice of the relatively consistent annual increase in mass shootings and workplace assaults and to take the steps to provide a safe working environment. Willfully ignoring this increase, or failing to meet an achievable standard of care to mitigate it, could figure into a finding of negligence. *Taft Union*, albeit in the educational environment, punctuates that belief with emphasis. But the case is also significant for another reason: the assistant principal's confirmation bias—she had already determined he was not a risk for violence—precluded her from reassessing Bryan's escalating tempo of risk over the course of the following year. This failure to treat threat assessment and management as a dynamic, changeable process as new information becomes available was catastrophic. That opinion is now embedded in California civil law, as *Bowe Cleveland v. Taft Union High School District*, F079926 (Super. Ct. No. S1500CV279256).

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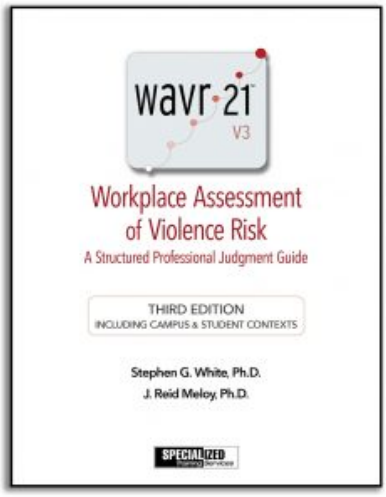

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