

U.S. confidentiality laws—is it time for a change?

Aftermath of the Virginia Tech killings brings out limitations in the legal system

By Amit Agarwal



It is only natural human behavior to dig for faults after a ghastly incident which could have been prevented.

However, this one incident does deserve a closer look.

The Virginia Tech shooting sheds light on the limitations of the U.S. legal system. College officials at a number of universities contend that they are restricted by law to divulge any confidential details such as mental issues, health problems, or the grades of students 18 years and older.

Gunman Cho Seung-Hui, a senior majoring in English, had shown signs of emotional and mental troubles. In December 2005, after two incidents attracting the campus police, Cho was ordered to undergo medical examination at a psychiatric hospital. Cho allegedly made annoying calls and sent irritating computer messages to two women. Secondly, he was reportedly suicidal.

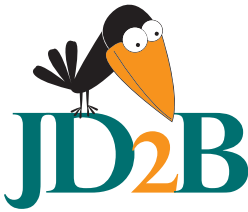
Federal privacy laws, along with ethical codes, prevent disclosure of such nonviolent disciplinary information, even to parents. Parents are thus unaware of a student's grades or whether the student is undergoing mental problems at college.

The Family Educational Rights and Privacy Act (FERPA) transfers parents' rights of their children's education records to the students themselves when they reach adulthood (18), or when the students attend college after completing high school.

The Act implicitly says that schools must have written permission from adult students in order to disclose information from their education record. The Act does, however, lay down disclosure to certain parties without students' consent.

Also, a provision under the Health Insurance Portability and Accountability Act (HIPAA) addresses the security and privacy of health data. The privacy rule under the Act lays down regulations for use and disclosure of Protected Health Information (PHI).

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However, things change when an individual says or does something that might constitute a direct and violent threat, whether it is homicide, child molestation, or suicide.

The confidentiality barrier can then be broken, and the “duty to warn” law is awoken.

In a California case in 1974, an Indian graduate student told campus health officials that he wanted to kill his girlfriend Tatiana Tarasoff after she had told him that she wanted to date other men. He then went ahead and actually stabbed the girl.

When Tarasoff’s parents sued the campus police and the health center for not warning Tarasoff of the man’s desires, the school contended that they had followed the doctor-patient confidentiality rule. The California Supreme Court, however, ruled that it was the doctor’s duty to warn the girl or alert the police. This famous judgment became known as the Tarasoff Doctrine.

That said, Cho’s case is not that similar. He had not threatened the two women; he had just “annoyed” them. The medical analysis conducted on Cho in December 2004 shows that Cho denied having suicidal tendencies and a mental disorder. The examination said that his insight and judgment were normal.

Every semester, college staff faces students who behave strangely. It is difficult for them to ascertain whether bizarre or unusual conduct is dangerous or harmless.

But, should there be more disclosure allowed against students who behave strangely? Does the law really need an amendment?

In the coming days, these questions are sure to do the rounds amongst legislators and policy makers.