THREAT ASSESSMENT IN PRACTICE: CURRENT CHALLENGES AND OPPORTUNITIES

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CAMPUS THREAT ASSESSMENT 2023:
AUDIT AND UPGRADE THE TAM PROGRAM, THEN STAY THE COURSE

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I.   Introduction

It seems that hardly a week goes by without yet another targeted violence incident on our campuses, in our schools, or in our public spaces. A 2010 multi-agency federal report, *Campus Attacks: Targeted Violence Affecting Institutions of Higher Education*, identified 272 incidents of targeted violence connected with higher education institutions from 1900 to 2009, 74% of which occurred in the 1980-2009 period, and 59.5% of which occurred in the 1990-2009 period. A 2021 Federal Bureau of Investigation report, *Active Shooter Incidents 20-Year Review, 2000-2019*, noted that 62 of the 333 active shooter incidents[1] that occurred in that time period (i.e., 19%) occurred in education environments. Memories of more recent tragedies, including incidents of homicidal intimate partner violence, domestic terrorism and hate-fueled violence on campus and in other settings, are fresh and painful enough that they do not need to be chronicled here.

So how should higher education institutions respond to novel and all-too-familiar threats of targeted violence in 2023? One sound approach would focus on an institution's: 1) auditing its behavioral threat assessment and management ("TAM") programs to ensure that the institution is on a path consistent with best and promising practices; 2) changing course and upgrading the program as necessary, depending on the results of the audit; and 3) staying the course by actually <u>using</u> institutional TAM capacities fully and whenever potentially necessary to assess and manage those threats.

This paper will, through the text below and links to publicly- or readily-available foundational resources, offer some suggestions for how institutions could audit, upgrade and effectively utilize their TAM programs to enhance campus safety in 2023 and beyond.

II.   Preparing for the Audit

Before conducting a TAM program audit, those involved should ensure that they have a grounding in basic TAM principles and methodologies. The resources cited and linked to in footnote 2 below may be helpful,[2] or if these concepts are new to those involved, or they

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[1] The FBI defines "active shooter" as "one or more individuals actively engaged in killing or attempting to kill people in a populated area. Implicit in this definition is the shooter's use of one or more firearms. The 'active' aspect of the definition inherently implies the ongoing nature of the incidents, and thus the potential for the response to affect the outcome." *Active Shooter Incidents 20-Year Review*, 2000-2019 at 2.

[2] For resources that are available to the public or NACUA members at no charge, see: Marisa R. Randazzo and Ellen Plummer, *Implementing Behavioral Threat Assessment on Campus: A Virginia Tech Demonstration Project* (2009); *Guide for Developing High-Quality Emergency Operation Plans for Institutions of Higher Education* (multiple

anticipate that the TAM program will need substantial upgrading, they may wish to consult with a TAM practitioner about fundamental TAM concepts and/or engage a TAM practitioner to conduct or assist with the audit.

III.   The Information-Gathering Process

A.   Documentation Review

When working with colleges and universities to audit their TAM programs and present related training, I often begin by reviewing relevant documentation, such as, for example:

- Any internal TAM program-related policies, procedures or protocols;

- Any externally-focused descriptions of the TAM program;

- Any communications to faculty, staff, students and external constituencies that encourage the reporting of concerning behavior to the TAM team and/or other campus functions (e.g., campus public safety or police);

- Any technology-enabled reporting mechanisms and related messaging;

- Any curricula used previously for educating faculty, staff, students and external constituencies (e.g., parents attending an orientation session) about the TAM program and how to report concerning behavior;

- Any curricula used previously for educating TAM team members about TAM principles and methodologies; and

- The structure of any system used to maintain TAM-related records, and a sampling of records created in specific TAM cases.

This list is intended to suggest that ideally, a college and university will have documentation in each of the categories listed. If that is not the case, part of the program audit should include a consideration of whether the institution's TAM program should include policies, procedures,

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federal agencies 2020); Jeffrey J. Nolan, Marisa R. Randazzo, and Gene Deisinger, *Campus Threat Assessment and Management Teams: What Risk Managers Need to Know Now* (2011 URMIA Journal Reprint); Jeffrey J. Nolan, *Implementing Threat Assessment and Management Best Practices in the Higher Education Workplace* (NACUA 2013 Annual Conference); Jeffrey J. Nolan, Marissa R. Randazzo, Gene Deisinger, *Campus Threat Assessment and Management Teams in 2012: Current Standards of Care And an Outline of Best and Promising Practices* (NACUA 2012 Annual Conference); United States Department of Justice, *Making Prevention a Reality: Identifying, Assessing and Managing Targeted Attacks* (2017); and United States Department of Justice and Federal Bureau of Investigation, *Workplace Violence: Issues in Response.* For resources that are available for purchase, see: Gene Deisinger, Marisa Randazzo, Daniel O'Neill, and Jenna Savage, *The Handbook for Campus Threat Assessment & Management Teams*, Applied Risk Management, LLC (2008); and J. Reid Meloy and Jens Hoffman (Editors), *International Handbook of Threat Assessment*, 2d. Edition, Oxford University Press (2021).

communications and education programs that encourage reporting, technology-enabled reporting mechanisms, training programs and record-keeping systems as suggested. If that is the case, the audit should include an assessment of whether any of the documentation can be improved to more effectively encourage reporting and the functioning of the TAM team. This assessment should be informed in part by information gathered in the interview process suggested immediately below, by reference to foundational resources like those cited in footnote 2 above, and consultation with a TAM practitioner as necessary.

B.   <u>Interviews of Key Stakeholders</u>

The next step in a TAM audit could include interviews of key stakeholders who are: 1) involved in the TAM program as TAM team members, case managers or supervisors of the TAM program; 2) responsible for other campus functions that interact regularly with the TAM team (e.g., student of concern/CARE team members, counseling center/EAP personnel, public safety/police officers; Title IX Coordinators); and/or 3) representatives of stakeholders who do not interact regularly with the TAM team but who are essentially "clients" of the services provided by the TAM team (e.g., faculty representative, student and residential life staff, selected supervisors. The overall point of these interviews is to provide participants with the opportunity to reflect and share their perspective on:

- What about the TAM program is working well;

- What about the TAM program is not working well;

- How well the TAM team functions internally; and

- How well the TAM teams interacts with and shares and exchanges information with other campus functions.

An interviewer who is knowledgeable about TAM can also use the interviews to gauge, at a deeper level:

- TAM team members' knowledge of TAM methodologies and principles, and their commitment to the work of the TAM team;

- Which TAM team members are the right people for the job (regardless of position at the institution), and, if applicable, which are not;

- Which individuals on the TAM team and those in campus functions that interact regularly with the TAM team effectively enable TAM team/other function interactions, and which do not;

- How much client stakeholders actually know about the capacities and function of the TAM team;

- How much client stakeholders know about reporting mechanisms and what types of concerns they should be reporting to the TAM team; and

- How much trust client stakeholders have in the TAM team.

C.　　Identifying Common Challenges

In executing the documentation review and interview audit steps, institutions may wish to be particularly vigilant about identifying the presence of challenges that commonly affect the functioning of TAM teams. They can include, for example:

- Inadequate education for TAM team members and faculty, staff and students regarding the TAM program, what it is, and when it should be utilized;

- Inadequate publication of technology-enabled and other reporting mechanisms;

- Failure to effectively encourage the reporting of concerning behavior;

- A misunderstanding of Family Educational Rights and Privacy Act concepts by faculty and staff, which misunderstanding can unnecessarily hamper initial reporting of concerning behavior and appropriate sharing of information with the TAM team after a threat assessment process is initiated;

- A hesitancy to actually initiate the TAM process based on initial reports;

- A failure to dovetail the work of the TAM team and student of concern/CARE team; and

- A failure to dovetail the work of the TAM team and the Title IX Office.

The next section will include some suggestions about addressing these challenges.

IV.　　Assessing Audit Results and Upgrading As Necessary

Obviously, to the extent that the information gathered through an audit reveals challenges in the functioning of an institution's TAM program, the institution should, to the extent practicable, upgrade their programs. Some suggestions for how to address particular challenges include the following.

- If internal TAM policies and procedures appear to need an update, the institution could update internal documents as necessary to conform to standards outlined in the resources cited in footnote 2 above.

- If externally-focused policies, procedures and messaging that encourages reporting need improvement, the institution could review and adapt the best and most applicable language from the web sites of institutions that appear to have robust TAM programs and effective messaging.

- If necessary, any glitches in technology-enabled reporting mechanisms can be fixed, additional reporting modalities could be added, and the TAM team or a responsible administrator could request that a "Report a Concern" or similar link be promoted to an upgraded spot in the institution's always-coveted web page hierarchy.

- The TAM team and/or institutional communications professionals could lead focus group discussions with trusted faculty, staff and student representatives regarding ways to enhance the effectiveness and relatability of existing curricula and messaging for faculty, staff, and students about the TAM team and reporting mechanisms.

- Any curricula used for educating TAM team members about TAM principles and methodologies could be compared with the resources cited in footnote 2 above, and/or reviewed and enhanced by a TAM practitioner.

- Any identified gaps in the TAM team's knowledge could be addressed through responsive training.

- Any issues with the TAM team's record-keeping system could be addressed with, obviously, the advice of counsel, who will assess the system's security, access permissions, consistency with FERPA requirements, and whether documentation is being created and maintained optimally (i.e., with enough objective detail to support the team's ongoing assessment and management of cases, while avoiding gratuitous comments that could be taken out of context in the event of a related dispute).

- If the audit reveals that there are members of the TAM team who are not committed to the work of the team and/or are not the right people for the job (even if their position at the institution would suggest that they should be), they could be counseled out of team membership (which for most members will just mean that they have one less "volunteer" committee responsibility), and replaced by another person from the same or a similar functional area.

- If the audit reveals that there are individuals on the TAM team and those in campus functions that interact regularly with the TAM team who are hampering information-sharing and/or otherwise interfering with the effectiveness of the team, the institution could conduct a joint, didactic and scenario-based training session that would emphasize the circumstances in which privacy laws such as FERPA permit information-sharing, and emphasize the potentially dangerous consequences of failing to share information and work together as a campus community to address behavior of concern.

- If the audit reveals that there is a misunderstanding of FERPA concepts by faculty and staff that could unnecessarily hamper initial reporting of concerning behavior and appropriate sharing of information with the TAM team after a threat assessment process is initiated, the institution could facilitate education about FERPA exceptions and concepts that permit information-sharing in certain circumstances (e.g., legitimate educational interest, health and safety emergency, law enforcement unit record, personal observations are not records concepts).

  o More information about FERPA exceptions and concepts that is written from a perspective of encouraging appropriate, FERPA-compliant information-sharing may be found in the *Information Sharing Guide for Institutions of Higher Education*, Virginia Department of Criminal Justice Services (2021), and the Department of Education resources cited in that publication. The 2011 URMIA

article cited in footnote 2 above also contains a discussion of FERPA issues that are relevant to threat assessment and management.

- If the audit reveals that the work of the TAM team and the student of concern/CARE team is not sufficiently dovetailed, protocols for optimizing the transfer of student concerns back and forth between the teams, and/or simultaneous involvement of both teams in assessing, managing and supporting a student of concern, could be refined, and joint training of both teams could be conducted to explain the refined protocol and work through common scenarios.

  o Optimizing the transfer of student concerns back and forth between TAM and student of concern/CARE teams is crucial, to avoid situations where a student falls between the proverbial cracks and is not being assessed, managed and supported by either team, or a situation where the issues of concern are being addressed by the team that is less able to address them. The FBI's *Active Shooter Incidents 20-Year Review, 2000-2019* cited above notes that 119 of the 345 shooters (i.e., 35%) involved in the 333 incidents studied died by suicide. Further, one of the key inquiry questions set forth in The Handbook for Campus Threat Assessment & Management Teams cited above asks whether the person of concern is experiencing hopelessness, desperation, and/or despair. Thus, while the overwhelming majority of individuals who experience suicidal ideation pose no risk to anyone but themselves, the handling of a case involving a person who does pose a risk to others as demonstrated through a threat assessment inquiry, and who also may be suicidal, requires particularly careful coordination between TAM and student of concern/CARE teams. Optimizing protocols that dovetail the work of such teams through a deliberative process is, obviously, far preferable to working out the kinks in the midst of a fast-moving case.

- Likewise, if the audit reveals that the work of the TAM team and the Title IX Office is not sufficiently dovetailed, protocols for optimizing the involvement of the TAM team and the use of TAM methodologies where appropriate in sexual assault, domestic violence, dating violence and stalking cases could be refined, and joint training with TAM team and Title IX Office personnel could be conducted to explain the refined protocol and work through common scenarios.

  o These issues are addressed in detail in Jeffrey J. Nolan, *Addressing Intimate Partner Violence and Stalking on Campus: Going Beyond Legal Compliance to Enhance Public Safety*, Aspatore (2015). This book chapter emphasizes that the initiation of a Title IX investigation does not necessarily lessen the risk of future violence (and may increase that risk in some cases), and discusses ways in which TAM teams and threat assessment and management methodologies can inform a Title IX Coordinator's decisions in several areas, such as whether to initiate an investigation even if a complainant declines to participate fully, how to implement no contact orders and other supportive measures, and how to coordinate disciplinary proceedings and complainant safety planning.

o It is also noteworthy that the emergency removal section of the May 2020 Title IX regulations provides in pertinent part that institutions may remove a respondent from its education program or activity on an emergency basis, "provided that the [institution] undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal." 34 C.F.R § 106.44(c). While subject to revision, it is also noteworthy that the emergency removal section of the proposed Title IX regulations outlined in the July 2022 Notice of Proposed Rulemaking states that a respondent may be removed "provided that the [institution] undertakes an individualized safety and risk analysis, determines that an immediate and serious threat to the health or safety of students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal." Proposed 34 C.F.R. § 106.44(h) (see Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Federal Register Vol. 87, No. 132, Tuesday, July 12, 2022, at 41574. Threat assessment methodologies can be utilized by institutions to perform an individualized safety and risk analysis in a way that both satisfies Title IX regulatory requirements, and promotes campus safety.

• If there appears to be a hesitancy to initiate the TAM process based on initial reports, that could be addressed through the suggestions below.

V. <u>Staying the Course</u>

Once an institution has assessed and upgraded its TAM program, it should stay the course and be vigilant in ensuring that the program is actually <u>used,</u> fully and whenever potentially necessary, including to address cases that may involve intimate partner violence and stalking, domestic terrorism, hate-fueled violence, and other types of violence. While the public and media attention paid to one type of threat or another will vary depending on recent events, threat assessment and management as described in the varied resources cited in footnote 2 above is designed to address any type of targeted violence from within or outside an institution, so long as the institution receives some advance information about the person of concern that would allow it to initiate the process. As noted above, effectively encouraging reporting is therefore crucial.

If an institution's audit suggests that its TAM team may be applying too high a threshold in deciding whether to convene the team and/or initiate a full inquiry, the institution could engage the team in training to align its triage protocol and threshold with the best and promising practices described in the resources cited in footnote 2 above.[3] To illustrate the importance of this, it is at least noteworthy that one of the reasons a California appellate court found that triable

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[3] For example, The Handbook for Campus Threat Assessment & Management Teams cited above recommends at pages 54-56 that upon receipt of a report, a TAM team should engage in an initial, limited information-gathering process and answer several screening questions to determine whether a full threat assessment court inquiry is necessary.

issues of fact existed as to whether a university breached a duty of care to an injured student was: 1) a reasonable jury could have found that there may have been an "unreasonable failure of communication and lack of coordination among the various professional teams responsible for responding to situations of the type presented by [the attacker]"; and 2) the plaintiff's experts concluded that university personnel should have referred the attacker to the university's Violence Prevention Team, "which could have then conducted a formal threat assessment and recommended interventions that would have mitigated the threat he posed to students."[4]

Except in emergency situations where only an armed police response can address a threat, behavioral threat assessment and management remains our best tool for reducing the risk of targeted violence. Effectively encouraging campus communities to report concerns, and consistently using an audited and upgraded TAM process to assess and manage them, will help promote safety on campuses in 2023 and beyond.

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[4] *Regents of the University of California v. Rosen*, 29 Cal.App.5th 890, 913-14, 240 Cal.Rptr. 675 (Cal.App. 2d Dist. 2018) (emphasis added). Of course, it must be emphasized that this was only an intermediate ruling on the triable issues of fact question, not a determination by the court or a fact-finder that the University actually breached a relevant standard of care. A fuller discussion of the *Rosen* case may be found in Jeffrey J. Nolan, *Let's Work Together: ADA Issues on Campus*, 2019 NACUA Annual Conference Paper.

Related Resources

Student Mental Health
- Student Mental Health and the Law a Resource for Institutions of Higher Education (The JED Foundation) https://www.nacua.org/docs/default-source/legacy-doc/conference/june2012/08f_v-12-06-17.pdf?sfvrsn=cd7a89bf_12

Establishing a Threat Assessment Team
- Marisa R. Randazzo and Ellen Plummer, Implementing Behavioral Threat Assessment on Campus: A Virginia Tech Demonstration Project https://www.academia.edu/es/69204048/November_2009Implementing_Behavioral_Threat_Assessment_on_Campus
- United States Department of Education. Guide for Developing High- Quality, Emergency Operation Plans for Institutions of Higher Education https://www.ready.gov/sites/default/files/2020-03/emergency-operations-plans_institution-higher-education.pdf

Threat Assessment Teams
- Jeffrey J. Nolan, Marissa R. Randazzo, and Gene Deisinger, Campus Threat Assessment and Management Teams: What Risk Managers Need to Know Now (2011 URMIA Journal Reprint) https://www.higheredcompliance.org/wp-content/uploads/2018/10/NolanRandazzoDeisinger_CampusThreatAssessmentTeams_FINAL_20110802.pdf
- J. Reid Meloy and Jens Hoffman (Editors), International Handbook of Threat Assessment, 2d. Edition, Oxford University Press (April 23, 2021). https://www.amazon.com/International-Handbook-Threat-Assessment-Meloy/dp/0190940166/ref=asc_df_0190940166/?tag=hyprod-20&linkCode=df0&hvadid=564641475597&hvpos=&hvnetw=g&hvrand=16618016854751726407&hvpone=&hvptwo=&hvqmt=&hvdev=c&hvdvcmdl=&hvlocint=&hvlocphy=9003008&hvtargid=pla-1121345926467&psc=1
  Note, there is a charge for this publication.
- Gene Deisinger, Marisa Randazzo, Daniel O'Neill, and Jenna Savage, The Handbook for Campus Threat Assessment and Management Teams, Applied Risk Management, LLC (January 2008). https://www.amazon.com/Handbook-Campus-Threat-Assessment-Management/dp/0615234933
  Note, there is a charge for this publication.
- Jeffrey J. Nolan, Marisa R. Randazzo, Gene Deisinger, Campus Threat Assessment and Management Teams in 2012: Current Standards of Care And an Outline of Best and Promising Practices (NACUA 2012 Annual Conference). https://www.nacua.org/docs/default-source/legacy-doc/conference/june2012/08f_v-12-06-17.pdf?sfvrsn=cd7a89bf_12

Title IX Issues
- Jeffrey J. Nolan, Addressing Intimate Partner Violence and Stalking on Campus: Going Beyond Legal Compliance to Enhance Public Safety (Holland & Knight reprint). https://www.hklaw.com/en/insights/publications/2015/08/addressing-intimate-partner-violence-and-stalking-on-campus

Targeted Attacks
- United States Department of Justice, Making Prevention a Reality: Identifying, Assessing and Managing Targeted Attacks (2017). https://www.fbi.gov/file-repository/making-prevention-a-reality.pdf/view

Workplace Violence
- United States Department of Justice and Federal Bureau of Investigation, "Workplace Violence: Issues in Response" https://www.fbi.gov/file-repository/stats-services-publications-workplace-violence-workplace-violence/view

- Occupational Safety and Health Administrations, "Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers." https://www.osha.gov/sites/default/files/publications/osha3148.pdf