

## Chapter IV

# MENTAL HEALTH HISTORY OF SEUNG HUI CHO

This chapter is divided into two parts: Part A, the mental health history of Cho, and Part B, a discussion of Virginia’s mental health laws.

### Part A – Mental Health History of Seung Hui Cho

One of the major charges Governor Kaine gave to the panel was to develop a profile of Cho and his mental health history. In this chapter, developmental periods of Cho’s life are discussed, followed by an assessment and recommendations to address policy gaps or system flaws. The chapter details his involuntary commitment for mental health treatment while at Virginia Tech. It also examines the particular warning signs during Cho’s junior year at Virginia Tech and the university’s ability to identify and respond appropriately to students who may present a danger to themselves and others.

Information was gleaned from many sources. One of the most significant was a 3-hour interview with Cho’s parents and sister. The family stated that they were willing to help in any way with the panel’s work, and felt incapable of redressing the loss for other families. They expressed heartfelt remorse, and they apologized to the families whose spouse, son, or daughter was murdered or injured. The Chos have said that they will mourn, until the day they die, the deaths and injuries of those who suffered at the hands of their son.

Cho’s sister, Sun, interpreted the answers to every question posed to Mr. and Mrs. Cho. At the end of the interview, they had portrayed the person they knew as a son and brother, someone who was startlingly different from the one who carried out premeditated murder.

Other sources of information included:

- Hundreds of pages of transcripts and records from Westfield High School,

Virginia Tech, and various medical offices and mental health treatment centers.

- Interviews with high school staff and administrators where Cho attended school, faculty and staff at Virginia Tech, and several of Cho’s suitemates, roommates, and resident advisors in the dormitories.
- Interviews with staff at the Center for Multi-cultural Human Services, the Cook Counseling Center, the Carilion Health System, special justices, and Virginia Tech police.
- The tape and written records of Cho’s hearing before special justice Barnett.
- The report of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services, *Investigation of April 16, 2007 Critical Incident at Virginia Tech*.

### EARLY YEARS

Cho was born in Korea on January 18, 1984, the second child of Sung-Tae Cho and Hyang Im Cho. Both parents were raised in two-parent families that included the paternal grandmother; there was extended family support. The families did not encounter the level of deprivation that many did in post-war Korea. The Chos recall that a paternal uncle in Korea committed suicide. Their first child, daughter Sun Kyung, was born 3 years before Seung Hui.

When he was 9 months old, Cho developed whooping cough, then pneumonia, and was hospitalized. Doctors told the Chos that their son had a hole in his heart (some records say “heart murmur”). Two years later, doctors conducted cardiac tests to better examine the inside of his heart that included a procedure (probably an

echocardiograph or a cardiac catheterization). This caused the 3-year-old emotional trauma. From that point on, Cho did not like to be touched. He generally was perceived as medically frail. According to his mother, he cried a lot and was constantly sick.

In Korea, Cho had a few friends that he would play with and who would come over to the house. He was extremely quiet but had a sweet nature. In Korea, quietness and calmness are desired attributes—characteristics equated with scholarliness; even so, his introverted personality was so extreme that his family was very concerned.

In 1992, the family moved to the United States to pursue educational opportunities for their children. They were encouraged by Mr. Cho's sister who had immigrated before them. Mrs. Cho began working outside the home for the first time in order to make ends meet. The transition was difficult: none of the family spoke English. Both children felt isolated. The parents began a long period of hard labor and extended work hours at dry cleaning businesses. English was not required to do their work, so both there and at home they spoke Korean.

Sun stated that her brother seemed more withdrawn and isolated in the United States than he had been in Korea. She recalled that at times they were "made fun of," but she took it in stride because she thought "this was just a given." In about 2 years, the children began to understand, read, and write English at school. Korean was spoken at home, but Cho did not write or read Korean.

For the first 6 months in the United States, the Chos lived with family members in Maryland. They moved to a townhouse for 1 year, after which they relocated to Virginia, living in an apartment for 3 years. The move to Virginia occurred in the middle of third grade for Cho. He was 9 years old. Cho's only known friendship was with a boy next door with whom he went swimming.

Sun and her parents recall that Cho seemed to be doing better. He was enrolled in a Tae Kwon Do program for awhile, watched TV, and played video games like Sonic the Hedgehog. None of the video games were war games or had violent themes. He liked basketball and had a collection of figurines and remote controlled cars. Years later when he was in high school, Cho was asked to write about his hobbies and interests. He wrote:

I like to listen to talk shows and alternative stations, and I like action movies...My favorite movie is X-Men, favorite actor is Nicolas Cage, favorite book is *Night Over Water*, favorite band is U2, favorite sport is basketball, favorite team is Portland Trailblazers, favorite food is pizza, and favorite color is green.

Transportation to and from extracurricular activities was a problem because both parents worked long hours trying to save money to buy a townhouse, which they accomplished a few years later. The parents recalled that Cho had to wait for transport back and forth all the time.

The parents reported no disciplinary problems with their son. He was quiet and gentle and did not exhibit tantrums or angry outbursts. The family never owned weapons or had any in the house. At one point after Cho was in college, his mother found a pocket knife in one of his drawers, and she expressed her disapproval. He had few duties or responsibilities at home, except to clean his room. He never had a job during summers or over school breaks, either in high school or in college.

The biggest issue between Cho and his family was his poor communication, which was frustrating and worrisome to them. Over the years, Cho spoke very little to his parents and avoided eye contact. According to one record the panel reviewed, Mrs. Cho would get so frustrated she would shake him sometimes. He would talk to his sister a little, but avoided discussing his feelings and reactions to things or sharing everyday thoughts on life, school, and events. If called upon to speak when a visitor came to the home, he would develop sweaty palms, become pale, freeze, and sometimes cry. Frequently, he would only nod yes or no.

Mrs. Cho made a big effort to help Cho become better adjusted, and she would talk to him, urging him to open up, to “have more courage.” The parents urged him to get involved in activities and sports. They worried that he was isolating himself and was lonely. Other family members asked why he would not talk. He reportedly resented this pressure. Mr. Cho, having a quiet nature himself, was slightly more accepting of his son’s introspective and withdrawn personality, but he was stern on matters of respect. Cho and his father would argue about this. According to one of the records reviewed, Cho’s father would not praise his son. Where Cho’s later writings included a father-son relationship, the character of the father was always negative. Cho never talked about school and never shared much. His mother and sister would ask how he was doing in school, trying to explore the possibility of “bullying.” His sister knew that when he walked down school hallways a few students sometimes would yell taunts at him. He did not talk about feelings or school at all. He would respond “okay” to all questions about his well being.

Cho, as a special needs child, generated a high level of stress within the family. Adaptation to cope with this stress can produce both positive and negative results. The family dynamic which evolved in the Chos’ to cope with this stress was that of “rescue” behavior and more coddling of Cho who seemed unreachable emotionally. There was some friction between Cho and his sister, however, nothing that appeared as other than normal sibling rivalry. In fact, Sun was the one to whom Cho spoke the most.

### ***Key Findings of Early Years***

- Cho’s early development was characterized by physical illness and inordinate shyness.
- Even as a young boy, Cho preferred not to speak, a situation that worried and frustrated his parents.
- He was ostracized by some peers, though he did not discuss this with his family.

- His parents worked very long hours and had financial difficulties. They worried about the effect of this on their children because they had less than optimum time to devote to parenting.
- Medical records did not indicate a diagnosis of mental illness prior to coming to the United States.

### **ELEMENTARY SCHOOL IN VIRGINIA**

Cho was enrolled in the English as a Second Language (ESL) program in Virginia as soon as he arrived in the middle of third grade. The family at this time was living in a small apartment. School teachers indicated that Cho would not “interact socially, communicate verbally, or participate in group activities.” One teacher reported that he did play with one student during recess.

Cho was referred to the school’s educational screening committee because teachers believed his communication problems stemmed more from emotional issues than from language barriers. When Cho was in sixth grade, his parents bought a townhouse next to the school so he could easily commute to his classes. The school requested a parent–teacher conference because Cho was not answering any questions in class. Mrs. Cho took an interpreter with her to the parent-teacher conference. She resolved to “find” friends for him and encouraged both their children to go to the church she attended. Because the congregation was small, however, there were few children, so both Cho and his sister lost interest and stopped going to church.

One of Mrs. Cho’s friends urged her to look into another church that reportedly had a minister who “could help people with problems like Cho’s.” She occasionally attended that church over a 6-month period, but decided against reaching out to that pastor to work with her son. Several newspaper articles that appeared after the shooting reported that the pastor from that church had worked directly with Cho. According to Mrs. Cho, those reports are untrue. Mrs. Cho did register her son for a 1-week summer basketball camp

sponsored by that church, but she never sought its help on personal matters.

Mrs. Cho tried to be extra nurturing to Cho. He did not reject her attempts at socialization *per se*, but he disliked talking. Finally, Cho's parents decided to "let him be the way he is" and not force him to interact and talk with others. He never spoke of imaginary friends. He did not seem to be involved in a fantasy world or to be preoccupied by themes in his play or work that caused concern. He never talked of a "twin brother." The parents' characterization of him was a "very gentle, very tender," and "good person."

## MIDDLE SCHOOL YEARS

The summer before Cho started seventh grade, his parents followed up on a recommendation from the elementary school that they seek therapy for Cho. In July 1997, the Cho's took their son to the Center for Multicultural Human Services (CMHS), a mental health services facility that offers mental health treatment and psychological evaluations and testing to low-income, English-limited immigrant and refugee individuals. They told the specialists of their concern about Cho's social isolation and unwillingness to discuss his thoughts or feelings.

Mr. and Mrs. Cho overcame several obstacles to get their son the help he needed. In order for Cho to make his weekly appointments at the center, they had to take turns leaving work early to drive him there. There were cultural barriers as well. In the family's native country, mental or emotional problems were signs of shame and guilt. The stigmatization of mental health problems remains a serious roadblock in seeking treatment in the United States too, but in Korea the issue is even more relevant. Getting help for such concerns is only reluctantly acknowledged as necessary.

After starting with a Korean counselor with whom there was a poor fit, Cho began working with another specialist who had special training in art therapy as a way of diagnosing and

addressing the emotional pain and psychological problems of clients. Typically, this form of therapy is used with younger children who do not have sufficient language or cognitive skills to utilize traditional "talk" therapy. Because Cho would not converse and uttered only a couple words in response to questions, art therapy was one way to reach him. The specialist offered clay modeling, painting, drawing, and a sand table at each session. Cho would choose one of the options. As he worked, the therapist could ascertain how he was feeling and what his creations might represent about his inner world. Then she talked to him about what his work indicated and hoped to help him progress in being more socially functional. He modeled houses out of clay, houses that had no windows or doors.

Cho's therapist noted that while explaining the meaning of Cho's artwork to him, his eyes sometimes filled with tears. She never saw anything that he wrote. Eventually, Cho began to make eye contact. She saw this as a start toward becoming healthier.

Cho also had a psychiatrist who participated in the first meeting with Cho and his family and periodically over the next few years. He was diagnosed as having [severe] "social anxiety disorder." "It was painful to see," recalled one of the psychiatrists involved with Cho's case. The parents were told that many of Cho's problems were rooted in acculturation challenges—not fitting in and difficulty with friends. Personnel at the center also noted in his chart that he had experienced medical problems and that medical tests as an infant and as a preschooler had caused emotional trauma. Records sent to Cho's school at the time (following a release signed by his parents) and the tests administered by mental health professionals evaluated Cho to be a much younger person than his actual age, which indicated social immaturity, lack of verbal skills, but not retardation. His tested IQ was above average.

Cho continued to isolate himself in middle school. He had no reported behavioral problems and did not get into any fights. Then, in March 1999, when Cho was in the spring semester of eighth

grade, his art therapist observed a change in his behavior. He began depicting tunnels and caves in his art. In and of themselves, those symbols were not cause for alarm, but Cho also suddenly became more withdrawn and showed symptoms of depression. In that context, the therapist felt that the tunnels and caves were red flags. She was concerned and asked him whether he had any suicidal or homicidal thoughts. He denied having them, but she drew up a contract with him anyway, spelling out that he would do no harm to himself or to others, and she told him to communicate with his parents or someone at school if he did experience any ideas about violence. That is just what he did, in the form of a paper he wrote in class.

The following month, April 1999, the murders at Columbine High School occurred. Shortly thereafter, Cho wrote a disturbing paper in English class that drew quick reaction from his teacher. Cho's written words expressed generalized thoughts of suicide and homicide, indicating that "he wanted to repeat Columbine," according to someone familiar with the situation. No one in particular was named or targeted in the words he wrote. The school contacted Cho's sister since she spoke English and explained what had happened. The family was urged to have Cho evaluated by a psychiatrist. The sister relayed this information to her parents who asked her to accompany Cho to his next therapy appointment and report the incident, which she did. The therapist then contacted the psychiatrist for an evaluation.

Cho was evaluated in June 1999 by a psychiatrist at the Center for Multicultural Human Services. There, psychiatric interns from The George Washington University Hospital provide treatment one day a week supervised by other doctors at GWU. Cho was fortunate because the intern who was his psychiatrist was actually an experienced child psychiatrist and family counselor who had practiced in South America prior to coming to the United States. He had to recertify in this country and

was in the process of doing that at GWU Hospital when he first met Cho.

Mr. and Mrs. Cho explained to the psychiatrist that they were facing a family crisis since their daughter would be leaving home in the fall to attend college and she was the family member with whom Cho communicated, as limited as that communication was. They feared that once their daughter was no longer home, he would not communicate at all. The psychiatrist also was informed of the disturbing paper Cho had written.

The doctor diagnosed Cho with "selective mutism" and "major depression: single episode." He prescribed the antidepressant Paroxetine 20 mg, which Cho took from June 1999 to July 2000. Cho did quite well on this regimen; he seemed to be in a good mood, looked brighter, and smiled more. The doctor stopped the medication because Cho improved and no longer needed the antidepressant.

Selective mutism is a type of an anxiety disorder that is characterized by a consistent failure to speak in specific social situations where there is an expectation of speaking. The unwillingness to speak is not secondary to speech/communication problems, but, rather, is based on painful shyness. Children with selective mutism are usually inhibited, withdrawn, and anxious with an obsessive fear of hearing their own voice. Sometimes they show passive-aggressive, stubborn and controlling traits. The association between this disorder and autism is unclear.

Major depression refers to a predominant mood of sadness or irritability that lasts for a significant period of time accompanied by sleep and appetite disturbances, concentration problems, suicidal ideations and pervasive lack of pleasure and energy. Major depression typically interferes with social, occupational and educational functioning. Effective treatments for depression and selective mutism include psychotherapy and anti depressants/anti-anxiety agents such as Selective Serotonin Reuptake Inhibitors (SSRI's).

It should be noted that when the subject of Cho's eighth grade paper and subsequent evaluation was discussed with Mr. and Mrs. Cho and Cho's

sister during the interview, they appeared shocked to learn that he had written about violence toward others. They said they knew he had hinted at ideas about suicide, but not about homicide.

School records indicate that an interpreter was provided (sometimes this was Cho's sister) during meetings that involved the parents, as is the policy and required by law.

## HIGH SCHOOL YEARS

In fall of 1999, Cho began high school at Centreville High School. The following year a new school, Westfield High School, opened to accommodate the population growth in that part of Fairfax County. Cho was assigned there for his remaining 3 years. About 1 month after classes began at Westfield, one of Cho's teachers reported to the guidance office that Cho's speech was barely audible and he did not respond in complete sentences. The teacher wrote that he was not verbally interactive at all and was shy and shut down. There was practically no communication with teachers or peers. Those failings aside, teachers also praised Cho for his qualities as a student. He achieved high grades, was always on time for class, and was diligent in submitting well-done homework assignments. Other than failing to speak, he did not exhibit any other unusual behaviors and did not cause problems. When the teacher asked Cho if he would like help with communicating, he nodded yes.

The guidance counselors asked Cho whether he had ever received mental health or special education assistance in middle school or in his freshman year (at the previous high school), and he reportedly indicated (untruthfully) that he had not.

Cho's situation was brought before Westfield's Screening Committee on October 25, 2000, for evaluation to determine if he required special education accommodations. Federal law requires that schools receiving federal funding enable children with disabilities to learn in the least restrictive environment and to be

mainstreamed in classrooms. Provisions are made for special services or accommodations after a core evaluation involving a battery of tests is given to diagnose the problems and to guide the school in preparing an Individualized Education Plan (IEP). The high school conducted a special assessment to rule out autism as an underlying factor. Cho also was evaluated in the following domains:

- Psychological
- Sociocultural
- Educational
- Speech/Language
- Hearing Screening
- Medical
- Vision

As part of the assessment process, school personnel met with Cho's parents to find out more about his history and to explain the assessment process. Mrs. Cho expressed concern about how her son would fare later in college given the transition required and his poor social skills. She noted that her son was receiving counseling and gave permission for the school to contact her son's therapist. The therapist, in turn, was encouraged by the fact that the school would be tracking Cho's progress. The committee determined that Cho was eligible for the Special Education Program for Emotional Disabilities and Speech and Language. Mr. and Mrs. Cho were receptive to receiving help for him and so was his older sister who was in college and with whom he had a good relationship. The parents and sister continued to be in contact with the school; Sun usually served as interpreter.

Special accommodations were made to help Cho succeed in class without frustration or intimidation. The school developed an IEP, as required by law, that was effective in January 2001. The IEP listed two curriculum and classroom accommodations and modifications: modification for oral presentations, as needed, and modified grading scale for oral or group participation. In-school language therapy was recommended as well, but Cho only received that service once a month for 50 minutes. His art therapist, who reached out to a few teachers and others at the school with



questions or concerns, said she asked why the language therapy was so limited. The school responded that it was reluctant to pull him out of class for this special service because this would interrupt his academic work or negatively impact his grades. Besides, the primary diagnosis was selective mutism, not problems with the mechanics of speaking or an inability to function in English.

Cho was encouraged to join a club and to stay after school for help from teachers. He was permitted to eat lunch alone and to provide verbal responses in private sessions with teachers rather than in front of the whole class where his manner of speaking and accent sometimes drew derision from peers.

With this arrangement, Cho's grades were excellent. He had advanced placement and honors classes. However, his voice was literally inaudible in class, and he would only whisper if pushed (an observation consistent with his behavior later in college). In written responses, at times, his thinking appeared confused and his sentence structure was not fluent. Indeed, his guidance counselor raised the question to the panel: "Why did he change his major to English at Tech?" Why did this student, whose forte appeared to be science and math, switch to humanities?

After the Virginia Tech murders, some newspapers reported that Cho was the subject of bullying. The panel could not confirm whether or not he was bullied or threatened. His family said that he never mentioned being the target of threats or intimidating messages, but then neither did he routinely discuss any details about school or the events of his day. His guidance counselor had no records of bullying or harassment complaints.

Nearly all students experience some level of bullying in schools today. Much of this behavior occurs behind the scenes or off school grounds—and often electronically, through instant messaging, communications on MySpace and, to a lesser extent, on Facebook, a website used by older teenagers. Cho's high

school counselor could not say whether bullying might have occurred before or after school, as suggested by other unconfirmed sources.

It would be reasonable, however, to assume that Cho was a victim of some bullying, though to what extent and how much above the norm is not known. His sister said that both of them were subjected to a certain level of harassment when they first came to the United States and throughout their school years, but she indicated that it was neither particularly threatening nor ongoing.

In the eleventh grade, Cho's weekly sessions at the mental health center came to an end because there was a gradual, if slight, improvement over the years and he resisted continuing, according to his parents and therapist "There is nothing wrong with me. Why do I have to go?" he complained to his parents. Mr. and Mrs. Cho were not happy that their son chose to discontinue treatment, but he was turning 18 the following month and legally he could make that decision.

Cho took upper level science and math courses and spent 3 to 4 hours a day on homework. He earned high marks and finished high school with a grade point average of 3.52 in an honors program. That GPA, along with his SAT scores (540 for verbal and 620 for math registered in the 2002 testing year) were the basis for his acceptance at Virginia Tech. What the admission's staff at Virginia Tech did not see were the special accommodations that propped up Cho and his grades. Those scores reflected Cho's knowledge and intelligence, but they did not reflect another component of grades: class participation. Since that aspect of grading was substantially modified for Cho due to the legally mandated accommodations for his emotional disability, his grades appeared higher than they otherwise would have been.

When his guidance counselor talked to Cho and his family about college, she strongly recommended they send him to a small school close to home where he could more easily make the transition to college life. She cautioned that Virginia Tech was too large. However, Cho appeared very self-directed and independent in his decision. He

chose Virginia Tech, which had been his goal for some time. He applied and was accepted.

Virginia Tech does not require an essay or letters of recommendation in the freshman application package and does not conduct personal interviews. Acceptance decisions at Virginia Tech are based primarily on grades and SAT scores, though demographics, interests, and some intangibles are also considered. An essay about oneself is optional. Cho included a short writing about rock climbing in his application, which was written in the first person and spoke about human potential that often cannot be achieved because of self-doubt.

Before Cho left high school, the guidance counselor made sure that Cho had the name and contact information of a school district resource who Cho could call if he encountered problems at college. As is now known, Cho never sought that help while at Virginia Tech.

As Cho looked to the fall of 2003, he was preparing to leave home for the first time and enter an environment where he knew no one. He was not on any medication for anxiety or depression, had stopped counseling, and no longer had special accommodations for his selective mutism. Neither Cho nor his high school revealed that he had been receiving special education services as an emotionally disabled student, so no one at the university ever became aware of these pre-existing conditions.

There is a standard cover page that accompanied Cho's transcripts to Virginia Tech called "Pupil Permanent Record, Category 1". The page lists all the types of student records, whether they include information from elementary, middle, or high school, and how long they are to be retained. The lower right corner of the page has a section marked "The Student Scholastic Record" under which are boxes to be checked as they apply. The first six boxes are Clinic, Cumulative, Discipline, Due Process, Law Enforcement, and Legal. Only the first two were checked, indicating Cho had no records pertaining to discipline or legal prob-

lems. Then, there is a subheading labeled "Special Services Files" where six additional boxes are presented: Contract Services, ESL, 504 Plan, Gifted and Talented, Homebound, and Special Education. Only the ESL box is checked, even though Cho had special education services. The special education services box was not checked.

As the panel reviewed Cho's mental health records and conducted interviews with persons who had provided psychiatric and counseling services to Cho throughout his public school career, it became evident that critical records from one public institution are not necessarily transferred to the next as a person matures and enters into new stages of development. What are the rules regarding the release of special education records between, for example, high schools and colleges?

It is common practice to require students entering a new school, college, or university to present records of immunization. Why not records of serious emotional or mental problem too? For that matter, why not records of all communicable diseases?

The answer is obvious: personal privacy. And while the panel respects this answer, it is important to examine the extent to which such information is altogether banned or could be released at the institution's discretion. No one wants to stigmatize a person or deny her or him opportunities because of mental or physical disability. Still, there are issues of public safety. That is why immunization records must be submitted to each new institution. But there are other significant threats facing students beyond measles, mumps, or polio.

The panel asked its legal counsel to review the laws pertaining to special education records and the release of that information, specifically as addressed in FERPA and the Americans with Disabilities Act (ADA). Although FERPA generally allows secondary schools to disclose educational records (including special education records) to a university, federal disability law prohibits universities from making what is known as a 'preadmission inquiry' about an applicant's disability status. After admission, however, universities



may make inquiries on a confidential basis as to disabilities that may require accommodation.

It should be noted that the Department of Education's March 2007 "Transition of Students with Disabilities to Post Secondary Education: A Guide for High School Educators" clarifies that a high school student has no obligation to inform an institution of post secondary education that he or she has a disability; however, if the student wants an academic adjustment, the student must identify himself or herself as having a disability. Cho did not seek any accommodations from Virginia Tech. The disclosure of a disability is always voluntary.

It is a more subtle question whether Fairfax County Public Schools would have had to remove any indication of special education status or accommodation from Cho's transcript or grade reports as part of his college application.

Because this issue is of such great importance and because much more study is needed, the panel does not make a recommendation here. But the panel hopes that this issue begins to be debated fully in the public realm. Perhaps students should be required to submit records of emotional or mental disturbance and any communicable diseases *after they have been admitted but before they enroll at a college or university*, with assurance that the records will not be accessed unless the institution's threat assessment team (by whatever name it is known) judges a student to pose a potential threat to self or others.

Or perhaps an institution whose threat assessment team determines that a student is a danger to self or others should promptly contact the student's family or high school, inform them of the assessment, and inquire as to a previous history of emotional or mental disturbance.

This much is clear: information critical to public safety should not stay behind as a person moves from school to school. Students may start fresh in college, but their history may

well remain relevant. Maybe there really should be some form of "permanent record."

### ***Key Findings of Cho's School Years***

- Both the family and the schools recognized that Cho's problem was not merely introversion and that Cho needed therapy to help with extreme social anxiety, as well as acculturation and communication.
- A depressive phase in the second half of eighth grade led to full blown depression and thoughts of suicide and homicide precipitated by the Columbine shooting. Cho received timely psychiatric assessment and intervention (prescription of Paroxetine and continued therapy). This episode abated within a year, and medications were discontinued.
- Transportation problems interfered with Cho's involvement with sports and extracurricular activities, which may have increased his isolation.
- Intervention for a child suffering from mental illness reduces the burden of illness as well as the risk for severe outcomes such as violence and suicide, as it did for Cho during his pre-college years.
- During his high school years, Cho was identified as having special educational needs. His identification as a special education student within the first 9 weeks of enrollment in a new high school and the accommodations accorded him as part of his Individualized Educational Plan led to a high degree of academic success. Indeed, his high school guidance counselor felt that his high school career was a success. With regard to his social skills, however, his progress was minimal at best.
- Clearly, Cho appeared to be at high risk, as withdrawn and inhibited behavior confers risk. This risk seemed mitigated by the interventions and accommodations put in place by the school. This risk also was reduced by involved and concerned parents who were particular in following through with weekly therapy. This risk was further mitigated by effective therapy that allowed expression (through

art therapy) of underlying feelings of inadequacy. These factors as well as an above-average performance in school (but-tressed by accommodations) lessened his frustration and anger.

- The school that Cho attended played an important part in reducing the possibility of severe regression in his functioning. The school worked closely with Cho's parents and sister. There was coordination between the school and the therapist and the psychiatrist who were treating Cho. These positive influences ended when Cho graduated from high school. His multi-faceted support system then disappeared leaving a huge void.

## COLLEGE YEARS

In August of 2003, Cho began classes at Virginia Tech as a Business Information Technology major. Mr. and Mrs. Cho were concerned about his move away from home and the stress of the new environment, especially when they learned he was unhappy with his roommate. His parents visited him every weekend on Sundays during that first semester, which was a major time commitment since they both worked the other 6 days of the week. They noted that the dorm room trash can was full of beer cans (allegedly, from the interview with Cho's parents, the roommate was drinking) and the room was quite dirty. Cho, in contrast, had kept his room neat at home and had good hygiene. He requested a room change—a move that his parents and sister saw as a positive sign that he was being proactive and taking care of his own affairs. It seemed as though college was working out for him because he seemed excited about it.

Cho settled in, got his room changed by the beginning of the second semester, and seemed to be adjusting. Parental visits became less frequent. According to a routine they established, every Sunday night he spoke with his parents by telephone who always asked how he was doing and whether he needed any-

thing, including money. Mr. and Mrs. Cho said that he never asked for extra money and would not accept any. He was very mindful of the family's financial situation and lived frugally. He would not buy things even though his parents encouraged him occasionally to purchase new clothes or other items. They reported that he did not appear envious or angry about anything.

During his freshman year, Cho took courses in biology, math, communications, political science, business information systems, and introduction to poetry. His grades overall were good, and he ended the year with a GPA of 3.00.

Cho's sophomore year (2004–2005) brought some changes. Cho made arrangements to share the rent on a condominium with a senior at Virginia Tech who worked long hours and was rarely home. His courses that fall leaned more heavily toward science and math. His grades slipped that term. At the same time, he became enthusiastic about writing and decided he would switch his major to English beginning the fall semester of 2005. It is unclear why he made this choice as he disliked using words in school or at home. Moreover, English had not been one of his strongest subjects in high school.

The answer may be found in an exchange of e-mails that Cho had with then-Chair of the English Department, Dr. Lucinda Roy. Cho had taken one of her poetry classes, a large group, entry-level course the previous semester. On Saturday, November 6, 2004, he wrote "I was in your poetry class last semester, and I remember you talking about the books you published. I'm looking for a publisher to submit my novel...I was just wondering if you know of a lot of publishers or agents or if you have a good connection with them." He went on, "My novel is relative[ly] short...sort of like Tom Sawyer except that it's really silly and pathetic depending on how you look at it..." Dr. Roy's first e-mail back said: "Could you send me your name? You forgot to sign your note." "Seung Cho," he wrote. Dr. Roy then recommended two resource books and gave him tips on finding literary agents. She also advised, "If you haven't yet

taken a creative writing (fiction) course...you should consider doing so.”

University personnel explained to the panel that Virginia Tech's process for changing majors relies on “advisors” who serve to help ensure that students are taking the right number of credits and courses to meet the requirements of their major and to graduate. They do not generally offer counsel on whether a student is making a wise move or examine the reasons behind their class choices. In any given year at Virginia Tech, many students change majors. Over 40 percent of the student body changes their major after the first year or two. Thus this change is not abnormal and not a red flag.

Cho seemed to enjoy the idea of writing, especially poetry. His sister noticed that he would bring home stacks of books on literature and poetry and books on how to become a writer. Writing seemed to have become a passion, and his family was thrilled that he found something he could be truly excited about. He would spend hours at his computer writing, but when his sister asked to see his work, he would refuse. On one rare occasion, she did get to read a story he wrote about a boy and his imaginary friend, which she thought was somewhat strange, but nothing too odd.

Cho's parents never read his compositions, both because he did not offer to show them and because they did not read English, at least not well.

Cho took three English courses in the spring of 2005, plus an economics course, and an introductory psychology course. He did not do particularly well, especially in the literature courses. One of his English professors gave him a D-, another, a C+. He earned a B+ in Introduction to Critical Reading, but also withdrew from the economics class, thus earning only 12 credits and registering a 2.32 for the semester.

Late that sophomore year, in his presence, Cho's sister chanced upon a rejection letter

from a New York publishing house on Cho's desk at home. He had submitted a topic for a book describing the book's outline. She encouraged him to continue to write and learn saying that all writers have to work at their craft for a long time before they are published and that he was just at the beginning and not to lose heart.

While living in the off-campus condominium, Cho became convinced that he had mite bites (based on searches he did on the Internet). He went to a local doctor who diagnosed it as severe acne and put him on medication. Other than followup appointments for his acne at home and at the Shiffert Medical Center at Virginia Tech (he continued to believe mites were the problem), he did not have regular appointments with general practitioners, specialists, psychiatrists, or counselors in his hometown during his entire college tenure. His family reported that he came home for all his breaks and would spend the time writing, reading, playing basketball, and riding his bike—alone.

***Storm Clouds Gathering, Fall 2005*** – The fall semester of Cho's junior year (2005) was a pivotal time. From that point forward, Cho would become known to a growing number of students and faculty not only for his extremely withdrawn personality and complete lack of interest in responding to others in and out of the classroom, but for hostile, even violent writings along with threatening behavior.

He registered for French and four English courses, one of which was Creative Writing: Poetry, taught by Nikki Giovanni. It would seem he selected this course on the basis of Dr. Roy's advice to him the previous fall. His sister began noticing some subtle changes: he was not writing as much in his junior year and he seemed more withdrawn. The family wondered whether he was getting anxious about the future and what he would do after graduation. His father wanted him to go to graduate school, but Cho indicated he did not want to continue with academics after he graduated. His parents then offered to help him find a job after graduation, but he refused.

Cho had moved back to the dormitories that semester. He had a roommate and two suitemates

who lived in another room connected by a bathroom—a typical layout in the residence halls. The panel interviewed his roommate and one suitemate who related some events from that year. They described Cho in the same way as he is described throughout this report: very quiet, short responses to questions, and rarely initiating any communication. At the beginning of the school year, the roommate and the other suitemates took Cho to several parties. He would always end up sitting in the corner by himself. One time they all went back to a female student's room. Cho took out a knife ("lock blade, not real large") and started stabbing the carpet. They stopped taking him out with them after that incident.

The three suitemates would invite Cho to eat with them at the beginning of the year, but he would never talk so they stopped asking. They observed him eating alone in the dining hall or lounge. The roommate asked Cho who he hung out with and Cho said "nobody." He would see him sometimes at the gym playing basketball by himself or working out.

Cho's roommate never saw him play video games. He would get movies from the library and watch them on his laptop. The roommate never saw what they were, but they always seemed dark. Cho would listen to and download heavy metal music. Someone wrote heavy metal lyrics on the walls of their suite in the fall, and then in the halls in the spring. Several of the students believed Cho was responsible because the words were similar to the lyrics Cho posted on Facebook.

Several times when the suitemates came in the room, it smelled as though Cho had been burning something. One time they found burnt pages under a sofa cushion. Cho would go to different lounges and call one of the suitemates on the phone. He would identify himself as "question mark"—Cho's twin brother—and ask to speak with Seung. He also posted messages to his roommate's Facebook page, identifying himself as Cho's twin. The roommate saw a prescription drug

bottle on his desk. He and the others in the suite looked it up online and found that it was a medication for "skin fungus."

Cho's actions in the poetry class taught by Nikki Giovanni that semester are widely known and documented. For the first 6 weeks of class, the professor put up with Cho's lack of cooperation and disruptive behavior. He wore reflector glasses and a hat pulled down to obscure his face. Dr. Giovanni reported to the panel that she would have to take time away from teaching at the beginning of each class to ask him to please take off his hat and please take off his glasses. She would have to stand beside his desk until he complied. Then he started wearing a scarf wrapped around his head, "Bedouin-style" according to Professor Giovanni. She felt that he was trying to bully her.

Cho also was uncooperative in presenting and changing the pieces that he wrote. He would read from his desk in a voice that could not be heard. When Dr. Giovanni would ask him to make changes, he would present the same thing the following week. One of the papers he read aloud was very dark, with violent emotions. The paper was titled "So-Called Advanced Creative Writing – Poetry." He was angry because the class had spent time talking about eating animals instead of about poetry, so his composition, which he would later characterize as a satire, spoke of an "animal massacre butcher shop."

In the paper, Cho accused the other students in the class of eating animals, "I don't know which uncouth, low-life planet you come from but you disgust me. In fact, you all disgust me." He made up gruesome quotes from the classmates, then wrote, "You low-life barbarians make me sick to the stomach that I wanna barf over my new shoes. If you despicable human beings who are all disgraces to [the] human race keep this up, before you know it you will turn into cannibals—eating little babies, your friends,. I hope y'all burn in hell for mass murdering and eating all those little animals."

Dr. Giovanni began noticing that fewer students were attending class, which had never been a

problem for her before. She asked a student what was going on and he said, "It's the boy...everyone's afraid of him." That was when she learned that Cho also had been using his cell phone to take pictures of students without permission.

Dr. Giovanni talked to Cho, telling him, "I don't think I'm the teacher for you," and offered to get him into another class. He said that he did not want to transfer, which surprised her. She contacted the head of the English Department, Dr. Roy, about Cho and warned that if he were not removed from her class, she would resign. He was not just a difficult student, she related, he was not working at all. Dr. Giovanni was offered security, but declined saying she did not want him back in class, period. She saw him once on campus after that and he just stared at the ground.

Dr. Roy explained to the panel what her actions were once Dr. Giovanni made her aware of Cho's upsetting behavior. She remembered Cho from the previous semester when he took that poetry class she taught (she had given him a B- in the course). Dr. Roy contacted the Dean of Student Affairs, Tom Brown, the Cook Counseling Center, and the College of Liberal Arts with regard to the objectionable writing that Dr. Giovanni showed Dr. Roy. She asked to have it evaluated from a psychological point of view and inquired about whether the picture-taking might have been against the code of student conduct.

Dean Brown sent an e-mail message to Dr. Roy and advised "there is no specific policy related to cell phones in class. But, in Section 2 of the *University Policy for Student Life*, item #6 speaks to disruption. This is the 'disorderly conduct' section which reads: 'Behavior that disrupts or interferes with the orderly function of the university, disturbs the peace, or interferes with the performance of the duties of university personnel.' Clearly, the disruption he caused falls under this policy if adjudicated."

Dean Brown also said, "I talked with a counselor...and shared the content of the 'poem'... and she did not pick up on a specific threat. She suggested a referral to Cook during your meeting. I also spoke with Frances Keene, Judicial Affairs director and she agrees with your plan." He continued, "I would make it clear to him that any similar behavior in the future will be referred."

Frances Keene noted in her response to Dean Brown and Dr. Roy that she was available if Cho had any further questions about how using his cell phone in class to take photographs could constitute disorderly conduct. She also wrote, "I agree that the content is inappropriate and alarming but doesn't contain a threat to anyone's immediate safety (thus, not actionable under the abusive conduct – threats section of the UPSL)."

During an interview with the panel, Ms. Keene related that she would have needed something in writing to initiate an investigation into the disorderly conduct violation, and reported that she never received anything. The formal request would have come from the English Department.

Ms. Keene recalled that the concern about Cho was brought before the university's "Care Team," of which she is a member, at their regular meeting. The Care Team is comprised of the dean of Student Affairs, the director of Residence Life, the head of Judicial Affairs, Student Health, and legal counsel. Other agencies from the university are occasionally asked to participate; including the Women's Center, fraternities and sororities, the Disability Center, and campus police, though these agencies are not standing members of the Team.

At the Care Team meeting, members were advised of the situation with Cho and that Dr. Roy and Dr. Giovanni wanted to proceed with a class change to address the matter. The perception was that the situation was taken care of and Cho was not discussed again by the Care Team. The team made no referrals of Cho to the Cook Counseling Center. The Care Team did nothing. There were no referrals to the Care Team later that fall semester when Resident Life, and later, VTPD became

aware of Cho's unwanted communications to female students and threatening behavior.

Frances Keene said that she received no communications from the female students who had registered complaints about Cho and that she learned of those incidents only through campus police incident reports. However, the assistant director of Judicial Affairs, Rohsaan Settle, received an e-mail communication on December 6 advising her of Cho's "odd behavior" and "stalking." Ms. Keene indicated that it is her office's policy to contact students who have been threatened and advise them of their rights, but one of the students stated that she was never contacted by Judicial Affairs, and there is no documentation that the others were contacted. Ms. Keene indicated that she would have discussed these incidents with the Care Team at the time the incidents occurred had she known about them.

Dr. Roy e-mailed Cho and asked him to contact her for a meeting. He responded with an angry, two-page letter in which he harshly criticized Dr. Giovanni and her teaching, saying she would cancel class and would not really instruct, but just have students read what they wrote and discuss the writings. He agreed to meet with Dr. Roy and said "I know it's all my fault because of my personality...Being quiet, one would think, would repel attention but I seem to get more attention than I want (I can just tell by the way people stare at me)." He said he imagined she was going to "yell at me."

Dr. Roy asked a colleague, Cheryl Ruggiero, to be present for the meeting with Cho. Ms. Ruggiero took notes, the transcription of which provided an exceptionally detailed account of that session with Cho as did e-mails from Dr. Roy to appropriate administration officials after the meeting.

Cho arrived wearing dark sunglasses. He seemed depressed, lonely, and very troubled. Dr. Roy assured him she was not going to yell at him, but discussed the seriousness of what he wrote and his other actions. He replied that

he was "just joking" about the writing in Giovanni's class, but agreed that it might have been perceived differently. Dr. Roy asked him if he was offended by the class discussion on eating animals and he said, "I wasn't offended. I was just making fun of it...thought it was funny, thought I'd make fun of it." He was asked if he was a vegetarian or had religious beliefs about eating meat or animals; he answered no to both questions.

Ms. Ruggiero's transcript mentions that Dr. Roy "proposes alternative of working independently with herself and Fred D'Aguiar." The transcript also notes that Cho "doesn't want to lose credits...if not 'kicked out' will stay" [*I (Ruggiero) noted some emotion on the words 'kicked out,' a small spark of anger or resentment*]. The transcript goes on to document that "Lucinda asked if he would remove his sunglasses." Cho takes a long time to respond, but he does remove them. "It is a very distressing sight, since his face seems very naked and blank without them. It's a great relief to be able to read his face, though there isn't much there." Dr. Roy asks if taking off the sunglasses has been terrible for him...and says "he doesn't seem like himself, like the student she knew in the Intro to Poetry class, and she asks if anything terrible or bad has happened to him." Eventually Cho answers "No."

Twice during the meeting with Cho, Dr. Roy asked him if he would talk to a counselor. She told him she had the name of someone, and asked again if he would consider going. He did not answer for a while, and then said vaguely, "sure."

In her interview with the panel, Dr. Roy stated that the university's policy made the situation difficult. She was obligated to offer Cho an alternative that was equivalent to the instruction he would receive in Giovanni's class. Thus, she offered to tutor him privately. He later agreed. She told Cho that he would have to meet four more times and do some writing. As he left the meeting, Dr. Roy gave him a copy of her book. He took it and "appeared to be crying," she related.

Throughout the deliberations about Cho's writing and behavior and the available options, Dr. Roy communicated widely with all relevant university

officers and provided updates on meetings and decisions. On October 19, 2005, Dr. Roy e-mailed Zenobia Hikes, Tom Brown, George Jackson, and Robert Miller with a report on her meeting with Cho.

Cheryl and I met with the student we spoke about today. We spoke about 30 minutes. He was very quiet and it took him long time to respond to question; but I think he may be willing to work with me and with Professor Fred D'Aguiar rather than continuing in Nikki's course...he didn't seem to think that his poem should have alarmed anyone... [But] he also said he understood *why* people assumed from the piece that he was angry with them. I strongly recommended that he see a counselor, and he didn't commit to that one way or the other. ...Both Cheryl and I are genuinely concerned about him because he *appeared* to be very depressed—though of course only a professional could verify that.

One month later, Dr. Roy wrote to Associate Dean Mary Ann Lewis, Liberal Arts & Human Sciences, who in turn shared it with the dean of Student Affairs and Ellen Plummer, Assistant Provost and Director of the Women's Center. She wrote

He is now meeting regularly with me and with Fred D'Aguiar rather than with Nikki. This has gone reasonably well, though all of his submissions so far have been about shooting or harming people because he's angered by their authority or by their behavior. We're hoping he'll be able to write inside a different kind of narrative in the future, and we're encouraging him to do so...I have to admit that I'm still very worried about this student. He still insists on wearing highly reflective sunglasses and some responses take several minutes to elicit. (I'm learning patience!) But I am also impressed by his writing skills, and by what he knows about poetry when he opens up a little. I know he is very angry, however, and I am encouraging him to see a counselor—something he's resisted so far. Please let me and Fred know if you see a problem with this approach.

For the remainder of the semester, Dr. Roy focused on William Butler Yeats and Emily Dickinson to help him develop empathy toward others and redirect his writing away from violent themes. They worked on a poem together where she went over technical skills. She saw no overt threats in the writings he did for her. He was stiff, sad, and seemed deliberately inarticulate, but gradually he opened up and wrote well. She repeatedly offered to take him to counseling. She eventually gave him an "A" for a grade.

Cho did not go home for Thanksgiving, according to his roommate and resident advisor, though he thought that Cho may have gone home for a few days at Christmas. When Cho's parents were asked about this they indicated that he came home at every break, but that sometimes he would have to wait a day or so until their day off work so they could come pick him up at school.

According a VTPD incident report, on Sunday, November 27, the police, following a complaint from a female student who lived on the fourth floor of West Ambler Johnston, came to Cho's room to talk to him. The roommate went to the lounge and then returned after the police left. Cho said "want to know why the police were here?" He then related that "he had been text messaging a female student and thought it was a game". He went to her room wearing sunglasses and a hat pulled down and said "I'm question mark." He said that "the student freaked out," and the resident advisor came out and called the police. According to the police record, the officer warned Cho not to bother the female student anymore, and told him they would refer the case to Judicial Affairs.

The resident advisor told the panel about Cho, "He was strange and got stranger." She said that Cho's roommate and one of the other suitemates found a very large knife in Cho's desk and discarded it.

On Wednesday, November 30, at 9:45 am, Cho called Cook Counseling Center and spoke with Maisha Smith, a licensed professional counselor. This is the first record of Cho's acting upon professors' advice to seek counseling, and it followed



the interaction he had had with campus police three days before. She conducted a telephone triage to collect the necessary data to evaluate the level of intervention required. Ms. Smith has no independent recollection of Cho and her notes from the triage are missing from Cho's file. A note attached to the electronic appointment indicates that Cho specifically requested an appointment with Cathye Betzel, a licensed clinical psychologist, and indicated that his professor had spoken with Dr. Betzel. The appointment was scheduled for December 12 at 2:00 pm, but Cho failed to keep the appointment. However, he did call Cook Counseling after 4:00 pm that same afternoon and was again scheduled for telephone triage.

According to the Cook scheduling program documents, Cho was again triaged by telephone at 4:45 on December 12. This triage was conducted by Dr. Betzel who has no recollection of the specific content of the "brief triage appointment." Written documentation that would have typically been completed at that time is missing. The "ticket" completed to indicate the type of contact indicates that the telephone appointment was kept, that no diagnosis was made (consistent with Cook's procedure to not make a diagnosis until a clinical intake interview is completed) and that no referral was made for follow-up services either at Cook or elsewhere. Dr. Betzel did recall at the time of her interview with the panel that she had a conversation with Dr. Roy concerning a student whose name she did not recall, however the details were so similar that she believes it was Cho. She recalls that Dr. Roy was concerned about disturbing writings submitted by Cho in class, and that Dr. Roy detailed her plans to meet with the student individually. The date of Dr. Betzel's consultation with Dr. Roy is unknown and any written documentation that would typically have been associated with the consultation is missing from Cho's file.

## CHO'S HOSPITALIZATION AND COMMITMENT PROCEEDINGS

*(The law pertaining to these proceedings is discussed in Part B of this chapter.)*

On December 12, 2005, the Virginia Tech Police Department (VTPD) received a complaint from a female sophomore residing in the East Campbell residence hall regarding Cho. She knew Cho through his roommate and suitemate. The students had attended parties together at the beginning of the semester and it was at this young woman's room that Cho had produced a knife and stabbed the carpet. While the student no longer saw Cho socially, she had received instant messages and postings to her Facebook page throughout the semester that she believed were from him. The messages were not threatening, but, rather, self-deprecating. She would write back in a positive tone and inquire if she were responding to Cho. The reply would be "I do not know who I am." In early December, she found a quote from *Romeo and Juliet* written on the white erase board outside her dorm room. It read:

*By a name  
I know not how to tell thee who I am  
My name, dear saint is hateful to myself  
Because it is an enemy to thee  
Had I it written, I would tear the word*

The young woman shared with her father her concerns about the communications that she believed were from Cho. The father spoke with his friend, the chief of police for Christiansburg, who advised that the campus police should be informed.

The following day, December 13, a campus police officer met with Cho and instructed him to have no further contact with the young woman. She did not file criminal charges. No one spoke with her regarding her right to file a complaint with Judicial Affairs. Records document that there were multiple e-mail communications regarding the incident among Virginia Tech residential staff, the residence life administrator on call, and the president's & upper quad area coordinator, the director of Residence Life, and the assistant director of Judicial Affairs. The matter was not, however,

brought before the Virginia Tech multi-disciplinary Care Team.

Following the visit from the police, Cho sent an instant message to one of his suitemates stating "I might as well kill myself." The suitemate reported the communication to the VTPD.

Police officers returned around 7:00 p.m. that same day to interview Cho again in his dorm room. The suitemate was not present, but they spoke to Cho's roommate out of his presence. The officers took Cho to VTPD for assessment, and a pre-screen evaluation was conducted there at 8:15 p.m. by a licensed clinical social worker for New River Valley Community Services Board (CSB). The pre-screener interviewed Cho and the police officer, and then spoke with both Cho's roommate and a suitemate by phone. She recorded her findings on a five-page Uniform Pre-Admission Screening Form, checking the findings boxes indicating that Cho was mentally ill, was an imminent danger to self or others, and was not willing to be treated voluntarily. She recommended involuntary hospitalization and indicated that the CSB could assist with treatment and discharge planning. She located a psychiatric bed, as required by state law at St. Albans Behavioral Health Center of the Carilion New River Valley Medical Center (St. Albans) and contacted the magistrate by phone to request that a temporary detention order (TDO) be issued.

The magistrate considered the pre-screen findings and issued a TDO at 10:12 p.m. Police officers transported Cho to St. Albans where he was admitted at 11:00 p.m. Cho did not speak at all with the officer during the trip to the hospital. He was noted to be cooperative with the admitting process. The diagnosis on the admission orders was "Mood Disorder, NOS" [non specific]. On the Carilion Health Services screening form for the potential for violence, it was marked that Cho denied any prior history of violent behavior, but that he did have access to a firearm. (The panel

inquired about this, and checking the box for fire-arm access may have been an error.) He was on no medication at the time of admission, but Ativan was prescribed for anxiety, as needed. One milligram of Ativan was administered at 11:40 p.m. (The records do not show that he ever received another dose.) Cho passed an uneventful night according to the nursing notes.

On the morning of December 14, at approximately 6:30 a.m., the Clinical Support Representative for St. Albans met with Cho to give him information about the mental health hearing. Around 7:00 a.m., the representative escorted Cho to meet with a licensed clinical psychologist, who conducted an independent evaluation of Cho pursuant to Virginia law.

The independent evaluator reported to the panel that he reviewed the prescreening report, but that due to the early hour, there were no hospital records available for his review. He did not speak with the designated attending psychiatrist who had not yet seen Cho. The evaluator has no specific recollection, but believes that the independent evaluation took approximately 15 minutes.

The evaluator completed the evaluation form certifying his findings that Cho "is mentally ill; that he does not present an imminent danger to (himself/others), or is not substantially unable to care for himself, as a result of mental illness; and that he does not require involuntary hospitalization." The independent evaluator did not attend the commitment hearing; however, both counsel for Cho and the special justice signed off on the form certifying his findings.

Shortly before the commitment hearing, the attending psychiatrist at St. Albans evaluated Cho. When he was interviewed by the panel, the psychiatrist did not recall anything remarkable about Cho, other than that he was extremely quiet. The psychiatrist did not discern dangerousness in Cho, and, as noted, his assessment did not differ from that of the independent evaluator—that Cho was not a danger to himself or others. He suggested that Cho be treated on an outpatient basis with counseling. No medications were prescribed, and no primary diagnosis was made.

The psychiatrist's conclusion was based in part on Cho's denying any drug or alcohol problems or any previous mental health treatment. The psychiatrist acknowledged that he did not gather any collateral information or information to refute the data obtained by the pre-screener on the basis of which the commitment was obtained. He indicated that this is standard practice and that privacy laws impede the gathering of collateral information. (Chapter V discusses these information privacy laws in detail.) The psychiatrist also said that the time it takes to gather collateral information is prohibitive in terms of existing resources.

Freer access to clinical information among agencies is imperative so that a rational plan for treatment can be developed. As for the relationship between the independent evaluator and the staff psychiatrist, they rarely see each other and they function independently. The role of the independent evaluator is to provide information to the court and the job of the attending psychiatrist is to provide clinical care for the patient.

As for counseling services at Virginia Tech and the other area universities from which St. Albans Hospital receives patients, according to the psychiatrist they are all stretched for mental health resources. The lack of outpatient providers who can develop a post-discharge treatment plan of substance is a major flaw in the current system. The lack of services is common in both the public and the private outpatient sectors.

The psychiatrist noted his recommendation for outpatient counseling on the Initial Consent Form for TDO Admissions. The clinical support representative then escorted Cho and other TDO patients to meet with their attorney prior to their hearings. There were four hearings that morning, and the attorney has no specific recollection of Cho.

A special justice designated by the Circuit Court of Montgomery County presided over the commitment hearing for Cho held shortly

after 11:00 a.m. on December 14. Neither Cho's suitemate nor his roommate nor the detaining police officer nor the pre-screener nor the independent evaluator nor the attending psychiatrist attended the hearing. The prescreening report was read into the record by Cho's attorney. The special justice reviewed the independent evaluation form completed by the independent evaluator and the treating psychiatrist's recommendation. He heard evidence from Cho. The special justice ruled that Cho "presents an imminent danger to himself as a result of mental illness" and ordered "O-P" (outpatient treatment) "—to follow all recommended treatments."

The clinical support representative (CSR) contacted Cook Counseling Center at Virginia Tech to make an appointment for Cho. The Cook Counseling Center required that Cho be put on the phone (a practice begun shortly before this hearing according to the CSR) to make the appointment, which he did. The appointment was scheduled for 3:00 p.m. that afternoon, December 14. The CSR does not recall whether this phone call was made prior to or following the hearing.

The clinical support representative recalls making his customary phone call to New River Valley CSB to advise them of the outcome of the morning's hearings. It was not the hospital's practice at that time to send copies of the orders from the commitment hearings.

Due to the rapidly approaching outpatient appointment for Cho, the CSR urged the treating psychiatrist to expedite the dictation and transcription of his discharge summary. It was transcribed shortly before noon and the physical evaluation findings and recommendation about an hour later. The clinical support representative recalls faxing the records to Cook Counseling Center, but he did not place a copy of the transmittal confirmation in the hospital records. Cook Counseling Center, however, has no record of having received any hospital records until January 2006. The physical evaluation report indicated that Cho was to be treated by the psychiatrist at St. Albans "and hopefully have some intervention in therapy for treatment of his mood disorder." The discharge

summary, which was not part of the records received by the panel from Cook Counseling Center, indicated “followup and aftercare to be arranged with counseling center at Virginia Tech. Medications none.”

Cho was discharged from St. Albans at 2:00 p.m. on December 14. No one the panel interviewed could say how Cho got back to campus. However, the electronic scheduling program at the Cook Counseling Center indicates that Cho kept his appointment that day at 3:00 p.m. He was triaged again, this time face-to-face, but no diagnosis was given. The triage report is missing (as well as those from his two prior phone triages), and the counselor who performed the triage has no independent recollection of Cho. It is her standard practice to complete appropriate forms and write a note to document critical information, recommendations, and plans for followup.

It is unclear why Cho would have been triaged for a third time rather than receiving a treatment session at his afternoon appointment following release from St. Albans. The *Collegiate Times* had run an article at the beginning of the fall semester expressing “concern about the diminished services provided by the counseling center” and the temporary loss of its only psychiatrist.

It was the policy of the Cook Counseling Center to allow patients to decide whether to make a followup appointment. According to the existing Cook Counseling Center records, none was ever scheduled by Cho. Because Cook Counseling Center had accepted Cho as a voluntary patient, no notice was given to the CSB, the court, St. Albans, or Virginia Tech officials that Cho never returned to Cook Counseling Center.

## AFTER HOSPITALIZATION

Cho’s family did not realize what was happening with him at Blacksburg that fall 2005 semester: his dark writings, stalking, and other odd and unsettling behavior that worried roommates, resident advisors, teach-

ers and eventually, campus police. They were unaware that their son had been committed for a time to St. Albans Hospital or that he had appeared in court before a special justice. This is corroborated by documents and interviews relating that Cho refused to notify his parents when campus police responded to his threat of suicide. The university did not inform the parents either.

According to Virginia Tech records, there was a “home town” doctor or counselor who Cho could see when he was home. The panel did not discover what led to this assumption. However, it is known that the university did not contact the family to ascertain the veracity of home town followup for counseling and medication management.

When Cho’s parents were asked what they would have done if they had heard from the college about the professors’, roommates, and female students’ complaints, their response was, “We would have taken him home and made him miss a semester to get this looked at ...but we just did not know... about anything being wrong.” From their history during the high school years, we do know that they were dedicated to getting him to therapy consistently and also consented to psychopharmacology when the need arose.

***More Problems, Spring 2006*** – The trend of disturbing themes continued to be apparent in many of Cho’s writings, along with his selective mutism.

Robert Hicok had Cho in his Fiction Workshop class that semester. Hicok described his class as a mid-level fiction course with about 20 students. He told the panel that there was no participation from Cho and that Cho’s stories and work were violent. He said Cho was a very cogent writer, but his creativity was not that good. Cho was open to suggestions and he made some edits, but he was “not very unique” in his writing. The combination of the content of Cho’s stories and his not talking raised red flags for Hicok. He consulted with Dr. Roy, but then decided to keep Cho in the class and just deal with him. Hicok scheduled two meetings with Cho, but he did not show up, and Hicok never saw Cho again after the semester ended. Cho received a D+ in this class.

Professor Hicok shared none of Cho's writings with the panel. However, based on a question to a panel member by a reporter, further inquiry was made as this report was about to go to press. Several writings by Cho in Hicok's class were produced, one of which is of particular significance. It tells the story of a morning in the life of Bud "who gets out of bed unusually early...puts on his black jeans, a strappy black vest with many pockets, a black hat, a large dark sunglasses [sic] and a flimsy jacket...." At school he observes "students strut inside smiling, laughing, embracing each other....A few eyes glance at Bud but without the glint of recognition. I hate this! I hate all these frauds! I hate my life....This is it....This is when you damn people die with me...." He enters the nearly empty halls "and goes to an arbitrary classroom...." Inside "(e)veryone is smiling and laughing as if they're in heaven-on-earth, something magical and enchanting about all the people's intrinsic nature that Bud will never experience." He breaks away and runs to the bathroom "I can't do this....I have no moral right...." The story continues by relating that he is approached by a "gothic girl." He tells her "I'm nothing. I'm a loser. I can't do anything. I was going to kill every god damn person in this damn school, swear to god I was, but I...couldn't. I just couldn't. Damn it I hate myself!" He and the "gothic girl" drive to her home in a stolen car. "If I get stopped by a cop my life will be forever over. A stolen car, two hand guns, and a sawed off shotgun." At her house, she retrieves "a .8 caliber automatic rifle and a M16 machine gun." The story concludes with the line "You and me. We can fight to claim our deserving throne."

Cho encountered problems in another English class that semester, Technical Writing, taught by Carl Bean. The professor told the panel that Cho was always very quiet, always wore his cap pulled down, and spoke extremely softly. Bean opined that "this was his power." By speaking so softly, he manipulated people into feeling sorry for him and his fellow stu-

dents would allow him to get credit for group projects without having worked on them. Bean noted that Cho derived satisfaction from learning "how to play the game—do as little as he needed to do to get by." This profile of Cho stands in contrast to the profile of a pitiable, emotionally disabled young man, but it may in fact represent a true picture of the other side of Cho—the one that murdered 32 people.

Bean allowed that Cho was very intelligent. He could write with technical proficiency and could read well. However, his creative writing skills were limited and his command of the English language was "very impoverished." He had trouble with verb tenses and use of articles. On two or three occasions early in the semester, Bean had spoken to Cho after class regarding the fact that he was not participating orally nor working collaboratively on group assignments. By late March or early April, the class was given a writing assignment to do a technical essay about a subject within their major. Cho suggested George Washington and the American Revolution, but Bean advised him that this was not within his major. Cho next suggested the April 1960 revolution in Korea—again rejected because the topic was not in his major. Cho then decided to write "an objective real-time" experience based on *Macbeth* and corresponding to serial killings.

On April 17, 2006, one school year prior to the shooting to the day (because it was also a Monday), Bean asked Cho to stay after class again. The professor explained to Cho that his work was not satisfactory and that his topic was not acceptable. He recommended that Cho drop the class and that he would recommend that a late drop be permitted. Cho never said a word, just stared at him. Then, without invitation, Cho followed Bean to his office. The professor offered for him to sit down, but Cho refused and proceeded to argue loudly that he did not want to drop the class. Bean was surprised because he had never heard Cho speak like that before nor engage in that type of conduct. He asked Cho to leave his office and return when he had better control of himself. Cho left and subsequently sent an e-mail advising that he had dropped the course.

Bean did not discuss the matter with Dr. Roy and he was not aware that Nikki Giovanni had encountered problems with Cho the prior semester. After the massacre of April 16, it was discovered that Cho had mailed a letter to the English Department on that same day. Bean stated he knew Cho was antisocial, manipulative, and intelligent. Cho, he said, had obviously “researched” Bean after dropping Bean’s course, because in the April 16 letter Cho wrote numerous times that Bean “went holocaust on me.” Bean has a great interest in the Holocaust.

**Fall 2006** – Cho enrolled in Professor Ed Falco’s playwriting workshop in the fall semester. During the first class when each student was asked to introduce him/herself to the class, Cho got up and left before his turn. When he returned for the second class, Professor Falco informed him that he would have to participate; Cho did not respond. In his interview with the panel, Professor Falco described Cho’s writing as juvenile with some pieces venting anger.

Post April 16, 2007 students from this class were quoted in the campus newspaper as saying that some classmates had joked that they were waiting for Cho to do something. One student reportedly had told a friend that Cho “was the kind of guy who might go on a rampage killing”.

According to an article in the August 10, 2007 edition of *The Roanoke Times*, Professor Falco, director of Virginia Tech’s creative writing program, recently proposed and participated in the drafting of written guidelines for dealing with students who submit disturbing and violent work. The guidelines suggest that faculty concerned about a student’s writing pursue a series of actions including speaking to the student, encouraging the student to seek counseling, and involving university administrators.

Cho also took a class called “Contemporary Horror” in the fall of 2006. His final exam paper which appears to analyze a horror film

is reasonable and cogent. The professor awarded Cho a B for the course.

Cho’s senior year roommate explained to the panel that he tried speaking to Cho at the beginning of the semester, but Cho barely responded. “I hardly knew the guy; we just slept in the same room.” Cho went to bed early and got up early, so his roommate just left him alone and gave him his space. The only activities Cho engaged in were studying, sleeping, and downloading music. He never saw him play a video game, which he thought strange since he and most other students play them. One of the suitemates mentioned that he saw Cho working out at McCommis Hall and saw him return to the room from time to time in workout attire. Cho kept his side of the room very neat. Nothing appeared to be abnormal—no knives, guns, chains, etc. The only reading material the roommate saw on Cho’s side was a paperback copy of the New Testament, which he thought may have been for a class. (Cho took a course in the spring 2007 semester: *The Bible as Literature*.)

The resident advisor for the section of Harper Hall where Cho resided had been forewarned by the previous year’s RA that “there were issues” with Cho. She knew about his unwanted advances toward female students and that he was suspected of writing violent song lyrics on the dorm walls that also were posted on his web site. However, she did not encounter a single problem with him.

That fall semester, Cho enrolled in Professor Norris’ Advanced Fiction Workshop—a small class of only about 10 students. Cho had taken one of her classes the previous spring, on contemporary fiction, so she knew how little he participated in class. Norris realized that the workshop class would be a problem for Cho because there would be discussions and readings. Cho appeared in class with a ball cap pulled low and making no eye contact. Norris checked with the dean’s office to see if it was safe—if Cho was okay—and she asked to have someone intervene on his behalf.

The English Department did not know about Cho’s dealings with campus police and the

communications generated from Residence Life about his stalking behavior.

Norris told Cho that he had to come see her if he was going to be able to make it through this particular class. She ascertained that Cho had trouble speaking in both English and Korean, and she offered to connect him with the Disability Services Office.

After meeting with Cho, she e-mailed him to reiterate her offers to go with him for counseling or for other services. He did not pursue those offers. His written work was on time and he was on time for class, but he missed the last 2 weeks of class. Cho earned a B+ in Norris's class that semester.

The following semester, spring 2007, Cho began to buy guns and ammunition. His class attendance began to fall off shortly before the assaults. There were no outward signs of his deteriorating mental state. In their last phone call with him the night of April 15, 2007, Mr. Cho and Mrs. Cho had no inkling that anything was the matter. Cho had called per their usual Sunday night arrangement. He appeared his "regular" self. He asked how his parents were, and other standard responses: "No I do not need any money." His parents said, "I love you."

## MISSING THE RED FLAGS

The Care Team at Virginia Tech was established as a means of identifying and working with students who have problems. That resource, however, was ineffective in connecting the dots or heeding the red flags that were so apparent with Cho. They failed for various reasons, both as a team and in some cases in the individual offices that make up the core of the team.

Key agencies that should be regular members of such a team are instead second tier, non-permanent members. One of these, the VTPD, knew that Cho had been cautioned against stalking—twice, that he had threatened suicide, that a magistrate had issued a temporary detention order, and that Cho had spent

a night at St. Albans as a result of such detention order. The Care Team did not know the details of all these occurrences.

Residence Life knew through their staff (two resident advisors and their supervisor) that there were multiple reports and concerns expressed over Cho's behavior in the dorm, but this was not brought before the Care Team. The academic component of the university spoke up loudly about a sullen, foreboding male student who refused to talk, frightened classmate and faculty with macabre writings, and refused faculty exhortations to get counseling. However, after Judicial Affairs and the Cook Counseling Center opined that Cho's writings were not actionable threats, the Care Team's one review of Cho resulted in their being satisfied that private tutoring would resolve the problem. No one sought to revisit Cho's progress the following semester or inquire into whether he had come to the attention of other stakeholders on campus.

The Care Team was hampered by overly strict interpretations of federal and state privacy laws (acknowledged as being overly complex), a decentralized corporate university structure, and the absence of someone on the team who was experienced in threat assessment and knew to investigate the situation more broadly, checking for collateral information that would help determine if this individual truly posed a risk or not. (The interpretation of FERPA and HIPAA rules is discussed in a later chapter.)

There are particular behaviors and indicators of dangerous mental instability that threat assessment professionals have documented among murderers. A list of red flags, warning signs and indicators has been compiled by a member of the panel and is included as Appendix M.

## KEY FINDINGS – CHO'S COLLEGE YEARS TO APRIL 15, 2007

The lack of information sharing among academic, administrative, and public safety entities at Virginia Tech and the students who had raised concerns about Cho contributed to the failure to see the big picture. In the English Depart-



ment alone, many professors encountered similar difficulties with Cho—non-participation in class, limited responses to efforts to personally interact, dark writings, reflector glasses, hat pulled low over face. Although to any one professor these signs might not necessarily raise red flags, the totality of the reports would have and should have raised alarms.

Cho's aberrant behavior of pathological shyness and isolation continued to manifest throughout his college years. He shared very little of his college life with his family, had no friends, and engaged in no activities outside of the home during breaks and summer vacations. While he was an adult, he was a member of the household and receiving parental support, but he did not hold a job to help earn money for college. Unusual by U.S. standards, a high, sometimes exclusive focus on academics is common among parents from eastern cultures.

Cho's roommates and suitemates noted frequent signs of aberrant behavior. Three female residents reported problems with unwanted attention from Cho (instant messages, text messages, Facebook postings, and erase board messages). One of Cho's suitemates combined many of these instances of concern into a report shared with the residence staff. The residence advisors reported these matters to the hall director and the residence life administrator on call. These individuals in turn, communicated by e-mail with the assistant director of Judicial Affairs.

Notwithstanding the system failures and errors in judgment that contributed to Cho's worsening depression, Cho himself was the biggest impediment to stabilizing his mental health. He denied having previously received mental health services when he was evaluated in the fall of 2005, so medical personnel believed that their interaction with him on that occasion was the first time he had showed signs of mental illness. While Cho's emotional and psychological disabilities

undoubtedly clouded his ability to evaluate his own situation, he, ultimately, is the primary person responsible for April 16, 2007; to imply otherwise would be wrong.

## RECOMMENDATIONS

***IV-1 Universities should recognize their responsibility to a young, vulnerable population and promote the sharing of information internally, and with parents, when significant circumstances pertaining to health and safety arise.***

***IV-2 Institutions of higher learning should review and revise their current policies related to—***

***a) recognizing and assisting students in distress***

***b) the student code of conduct, including enforcement***

***c) judiciary proceedings for students, including enforcement***

***d) university authority to appropriately intervene when it is believed a distressed student poses a danger to himself or others***

***IV-3 Universities must have a system that links troubled students to appropriate medical and counseling services either on or off campus, and to balance the individual's rights with the rights of all others for safety.***

***IV-4 Incidents of aberrant, dangerous, or threatening behavior must be documented and reported immediately to a college's threat assessment group, and must be acted upon in a prompt and effective manner to protect the safety of the campus community.***

***IV-5 Culturally competent mental health services were provided to Cho at his school and in his community. Adequate resources must be allocated for systems of care in schools and communities that provide culturally competent services for children and adolescents to reduce mental-illness-related risk as occurred within this community.***

***IV-6 Policies and procedures should be implemented to require professors***

**encountering aberrant, dangerous, or threatening behavior from a student to report them to the dean.** Guidelines should be established to address when such reports should be communicated by the dean to a threat assessment group, and to the school's counseling center.

**IV-7 Reporting requirements for aberrant, dangerous, or threatening behavior and incidents for resident hall staff must be clearly established and reviewed during annual training.**

**IV-8 Repeated incidents of aberrant, dangerous, or threatening behavior must be reported by Judicial Affairs to the threat assessment group.** The group must formulate a plan to address the behavior that will both protect other students and provide the needed support for the troubled student.

**IV-9 Repeated incidents of aberrant, dangerous, or threatening behavior should be reported to the counseling center and reported to parents.** The troubled student should be required to participate in counseling as a condition of continued residence in campus housing and enrollment in classes.

**IV-10 The law enforcement agency at colleges should report all incidents of an issuance of temporary detention orders for students (and staff) to Judicial Affairs, the threat assessment team, the counsel-**

**ing center, and parents.** All parties should be educated about the public safety exceptions to the privacy laws which permit such reporting.

**IV-11 The college counseling center should report all students who are in treatment pursuant to a court order to the threat assessment team.** A policy should be implemented to address what information can be shared with family and roommates pursuant to the public safety exceptions to the privacy laws.

**IV-12 The state should study what level of community outpatient service capacity will be required to meet the needs of the commonwealth and the related costs in order to adequately and appropriately respond to both involuntary court-ordered and voluntary referrals for those services. Once this information is available it is recommended that outpatient treatments services be expanded statewide.**

The panel's report deals with facts. Sometimes, however, police investigation requires educated guesses and speculation—such as in instances where a “profile” of an unknown killer is generated by FBI profilers, who are specially trained in this area. Set forth in Appendix N is such a work, written by panel member Dr. Roger Depue, who is, among many other qualifications, a former FBI profiler. While no member of the panel can definitively ascertain what was in Cho's mind, this profile offers one theory.

## Part B – Virginia Mental Health Law Issues

The Commonwealth of Virginia Commission on Mental Health Law Reform was appointed in October 2006, by Virginia Chief Justice Leroy R. Hassell, Sr. The 26-member commission, chaired by Professor Richard J. Bonnie, Director of the Institute of Law, Psychiatry and Public Policy at the University of Virginia, is charged to “conduct a comprehensive examination of Virginia's mental health laws and services” and to “study ways to use the law more effectively to

serve the needs of people with mental illness, while respecting the interests of their families and communities.”

The commission has held four meetings with another scheduled for November 2007 and is working through five task forces with more than 200 participants. The Task Force on Civil Commitment is addressing criteria for inpatient and outpatient commitment, transportation, and the emergency evaluation process, procedures for

hearings, training, and compensation for participants in the process, and oversight.

The Task Force on Civil Commitment will submit its final report to the commission in November 2007. The commission intends to prepare a preliminary report during the winter and to submit a final report by the fall of 2008 for consideration by the 2009 General Assembly.

The discussion that follows constitutes an abridged effort, due to constraints of time and manpower, to address some of the issues that will be dealt with by the commission in a far more comprehensive manner. Many of the panel's recommendations are framed in general terms with the expectation that the commission will formulate specific proposals.

Throughout the panel's work, there was close collaboration with Professor Bonnie and James Stewart, the Inspector General for the Department of Mental Health and Mental Retardation and Substance Abuse Services. The inspector general released a report in June 2007 detailing his findings concerning Cho's interaction with mental health services in Virginia.

### **TIME CONSTRAINTS FOR EVALUATION AND HEARING**

Va. Code 37.2-808 establishes the procedures for involuntary temporary detention of persons who are mentally ill, present an imminent danger to self or others, and are in need of hospitalization but unwilling or unable to volunteer for treatment. Subsection H provides that no person shall remain in custody for longer than 4 hours without a temporary detention order issued by a magistrate. In Cho's case, the New River Valley CSB was able to provide a pre-screener in a timely manner, and she was able to conduct the screening and locate an available bed in order to present the matter to the magistrate within the required 4-hour period.

However, mental health service providers and special justices interviewed for this report set forth numerous arguments as to why this period should be lengthened to either 6 hours or to permit one renewal of the 4-hour period for good

cause. The concerns raised included that it is often difficult to promptly secure qualified personnel to perform the prescreening evaluation given staff resources and required travel time, particularly in rural jurisdictions. It is often even more difficult to locate the available bed required for a temporary detention order (TDO) to issue. Four hours do not allow sufficient time to gather meaningful collateral information from family, friends, or other health care providers nor to secure proper evaluations for medical clearance. Some noted, however, that an extension of the 4-hour period may require police departments to spend more time with a person in emergency custody in those locales where hospital security are unable to assume responsibility.

The American College of Emergency Physicians (ACEP) has recommended that emergency physicians trained in psychiatric evaluation be given more authority in the involuntary hold process. Since emergency departments are 24-hour facilities, resources are already in place. Because the CSB serves an independent "gatekeeper" role under the Virginia TDO process, emergency physicians and CSB staff are generally expected to work collaboratively in determining whether a TDO is needed for those patients screened in emergency departments. However, where CSB pre-screener are not immediately available, properly trained emergency physicians can effectively screen patients under an emergency custody order and communicate with the magistrate to obtain the TDO when needed. If such a gate keeping responsibility were to be conferred on emergency physicians, further questions would have to be addressed regarding the respective roles of the emergency physicians and the CSB staff in exploring alternatives to hospitalization and in participating in the commitment hearing.

Under current Virginia law, the duration of temporary detention may not exceed 48 hours prior to a hearing (or the next day that is not a Saturday, Sunday, or legal holiday). The mental health service providers in Cho's case were able to comply with the 48-hour requirement; however, the information available to the

special justice was extremely limited. There was no history regarding prior treatment; there were no lab or toxicology reports, nor the report regarding access to a firearm. At the hearing, there were no witnesses present such as family, roommate/suitemates, the CSB pre-screener, the independent evaluator, or the treating psychiatrist.

Mental health professionals interviewed reported that 48 hours is one of the shortest detention periods in the nation and recommended that it be lengthened. Reasons cited for expanding this period included the need to contact family or friends and to explore the person's prior history. Also cited was the need for a more comprehensive independent evaluation and the difficulty in securing a complete report of the treating psychiatrist in time for the hearing. It was suggested that a psychiatric "workup" as well as a toxicology screen be available to the independent examiner. A further concern was that often psychiatric inpatient bed space is not available within the 48 hours. As a financial consideration, it was argued that a longer period would allow patients an opportunity to stabilize or recognize the need for voluntary treatment, thereby reducing the number of commitment hearings and the costs associated with special justices and appointed counsel.

## STANDARD FOR INVOLUNTARY COMMITMENT

The judge or special justice ordering commitment must find by clear and convincing evidence that the person presents (1) an imminent danger to himself or others or is substantially unable to care for himself, and (2) less restrictive alternatives to involuntary inpatient treatment have been investigated and are deemed unsuitable. Cho was found to be an imminent danger to himself by the pre-screener who also found that he was "unable to come up with a safety plan to adequately ensure safety." He was unwilling to contact his parents to pick him up. However, Cho was found *not* to be an imminent danger to self or others by both the independent examiner and the treating psychiatrist at St. Albans, and accordingly neither recommended

involuntary admission. At the commitment hearing, the special justice did find Cho to be an imminent danger to himself; however, he agreed with the independent examiner and treating psychiatrist that a less restrictive alternative to involuntary admission, outpatient treatment, was suitable. Perhaps Cho presented himself differently at various stages of the commitment process or perhaps the professionals had differing evaluations of someone who did not speak much or perhaps they had differing interpretations of the standard set forth in the Virginia Code.

Mental health professionals advised the panel that the standard "imminent danger to self or others" is not clearly understood and is subject to differing interpretations. They recommend that the criteria for commitment be revised to achieve a more consistent application. Service providers and special justices suggest that the "imminent danger" criterion should be replaced by language requiring "a substantial likelihood" or "significant risk" that the person will cause serious injury to himself or others "in the near future." A few disagreed on the basis that personal rights of liberty should be paramount, and that changing the standard would lower the threshold for admission. Proponents for modifying the criteria respond that Virginia's commitment standard is one of the most restrictive of all the states. They contend that the threshold finding prevents intervention in cases of severe illness accompanied by substantial impairment of cognition, emotional stability, or self-control.

## PSYCHIATRIC INFORMATION

Many of those interviewed expressed serious concerns regarding the paucity of psychiatric information available to the independent evaluator and judge/special justice. As noted above, the independent evaluator for Cho had only the report from the CSB pre-screener and no collateral information or medical records. The independent evaluator plays a key role in the commitment process in many jurisdictions. In Cho's case, notwithstanding the finding from the independent evaluator that Cho did not pose an imminent threat, the special justice,



nevertheless convened the hearing and actually made a finding that differed from that of the independent evaluator. He did, however, agree with the independent evaluator that inpatient treatment was not required. The panel was advised that in many jurisdictions, absent a finding by the independent evaluator that an individual poses an imminent danger or is substantially unable to care for himself, many special justices will decline to hold a hearing.

It is unclear under existing law whether the independent evaluator is intended to serve as a gate keeper. If the opinion of the independent evaluator is to be given great weight, then it is critical that sufficient psychiatric information be available upon which an informed judgment may be made. Background information including records from the current hospitalization must be assembled for review. The Cho case calls attention to the need to assure that the independent evaluator has both sufficient time and information to conduct an adequate evaluation.

At Cho's hearing, the only documents available to the special justice were the Uniform Pre-Admission Screening Form, a partially completed Proceedings for Certification form recording the findings of the independent evaluator and a physician's examination form containing the findings of the treating psychiatrist. No prior patient history was presented; no toxicology, lab results, or physical evaluation from the treating psychiatrist were available. The admitting form indicating that Cho had access to a firearm was not presented.

Panel members have been advised by mental health providers and special justices from other locales in Virginia that it is not unusual for the evidence presented at commitment hearings to be minimal. Due to the time constraints and limitations of resource personnel, the information available to the judge/special justice is often very limited. Witnesses cannot be located quickly and hospital records have often not been transcribed. Additionally, conflicting interpretations of the constraints of the Health Insurance Portability and Accountability Act (HIPAA) and Virginia Code 32.1-127.1:03 Health Records Pri-

vacy (VaHRP) often make it difficult to acquire background medical/psychiatric information on a patient previously treated elsewhere. Legal experts from a research advisory group for the Commission on Mental Health Law Reform participated in the development of a questionnaire for judges and special justices to complete following civil commitment hearings in the month of May 2007. More than 1400 questionnaires were returned. They reflected that approximately 60 percent of the May hearings lasted no more than 15 minutes and only 4 percent required more than 30 minutes.

Cho was the only person to testify at his commitment hearing, and he was not very communicative. The pre-screener was not present nor was any representative from the CSB. The independent evaluator was not present. The officer who detained Cho was not present. Cho's roommate, suitemates, and Cho's family were all absent. This apparently is not an unusual scenario for commitment hearings in Virginia. Often the pre-screener is off duty by the time of the hearing. CSBs with limited staff frequently do not send a substitute. (The commission's survey reflected that the CSB representatives attended only half of the hearings held in May, 2007). Independent evaluators, paid \$75 per commitment evaluation, often feel compelled to return to their private practice rather than waiting for hearings that may be held hours after the evaluation is complete. (The responses to the questionnaires indicated that the independent evaluators were present at approximately two-thirds of Mays hearings.) Due to time constraints and concerns regarding HIPAA and VaHRP restrictions, friends and family are often not notified.

HIPAA and VaHRP generally require that no health care entity disclose an individual's health records or information. However, permitted exceptions are information necessary for the care of a patient and information concerning a patient who may present a serious threat to public health or safety. Therefore, a treating physician at the facility where a patient is detained should be granted access to all prior psychiatric history. These exceptions, however

do not clearly permit these records be shared with the judge or special justice at the commitment hearing. Although a person may consent to the release of information to any person or entity, detained individuals are often unable or disinclined to do so.

Because interpretation of HIPAA and FERPA were key in stopping adequate exchange of information concerning Cho, the panel requested that its legal council research the interpretation and exceptions under these laws, which is presented in the next chapter.

## INVOLUNTARY OUTPATIENT ORDERS

In conducting the investigation, the panel encountered many questions concerning involuntary outpatient orders. What specificity should be required of outpatient orders? To whom should notice of outpatient orders be given? How should compliance with outpatient orders be monitored? What procedures should be available to address noncompliance and what resources are needed?

The special justice ordered that Cho receive outpatient treatment; however, the order provided no information regarding the nature of the treatment other than to state “to follow all recommended treatments.” The order did not specify who was to provide the outpatient treatment or who was to monitor the treatment.

There was considerable support among those interviewed by panel members for greater guidance in the Virginia Code regarding outpatient treatment orders. Some felt that the order should track recommendations from the treating physician as to the frequency and duration of treatment and whether medication was required. Others observed that often physician’s evaluations and orders were not available and the special justice/substitute judge did not have the expertise to order specific treatment. However, all agreed that more specificity in outpatient treatment orders is essential.

New River Valley CSB did not have a representative at Cho’s hearing due to financial constraints. Va. Code 37.2-817(C) currently requires the CSB to recommend a specific course

for involuntary outpatient treatment and to monitor compliance. However, the Code does not specify how or by whom the CSB will be notified that outpatient treatment has been ordered if a representative is not present at the hearing. There exists a disagreement as to whether the CSB was advised of the entry of the outpatient order in Cho’s case. The clinical support representative for St. Albans advised that he always calls the CSB following commitment hearings to report the results. The CSB reports that they have no record of having been notified. If the CSB is represented at the hearing, there can be no reason for confusion. However, if Virginia Code is not amended to require the presence in person or telephonically, it must be amended to designate who has responsibility for certifying a copy of the outpatient order to the CSB. There should also be clear guidance provided in the Virginia Code as to who has responsibility for notification if a private mental health practitioner is to provide the mandated outpatient treatment.

No notice of the hearing or the order issued by the special justice was given to Cho’s family, his roommate/suitemates, the VTPD, or the Virginia Tech administration. The Code of Virginia authorizes no such notice. The recordings of the hearing must be kept confidential pursuant to Va. Code 37.2-818(A). The records, reports and court documents pertaining to the hearing are kept confidential if so requested by the subject of the hearing under 37.2-818(B) and are not subject to the Virginia Freedom of Information Act. HIPAA and VaHRP restrictions may further limit dissemination of certain information as no person to whom health records are disclosed may redisclose beyond the purpose for which disclosure was made. Concerns were raised by many interviewees and speakers at panel hearings that family members, those residing with the subject of a commitment hearing, the police department and school officials should all be notified of the hearing and its outcome in the interest of public safety.

In Cho’s case, there are conflicting reports regarding the issue of notice to the treatment provider, Cook Counseling Center. An appointment

had been scheduled by Cho with the assistance of the clinical support representative for St. Albans. The representative reports that he faxed a copy of the discharge summary to Cook. Cook, however, contends that they did not receive any written documentation until January, and even then it was the physical examination which indicated that Cho would be treated by the St. Alban's psychiatrist. Following Cho's in-person triage appointment on December 14, the Cook Counseling Center left it to Cho's discretion whether to return for follow up treatment. When he did not, it was not reported to the special justice, St. Alban's, or the CSB. The Virginia Code imposes no legal obligation for Cook Counseling Center to do so, and Cook counselors question whether they have the right to do so given the restrictions of HIPAA and VaHRP.

Furthermore, there exists the question of whether Cho was noncompliant given the general language of the involuntary treatment order; and if Cho were considered noncompliant, how was that to be addressed. There is no contempt provision in the Virginia Code for those noncompliant with involuntary outpatient orders. There is no guidance as to the nature of the hearing to be held for noncompliance; nor is there a basis for compensating the special justice/substitute judge or attorney for followup proceedings. Many questions are raised. If a form is created to report noncompliance, can a treatment provider file the report without violating HIPAA and VaHRP? If the noncompliance report is filed, how does the special justice secure the presence of the individual for a followup hearing? If the noncompliant individual does not pose an imminent danger to himself or others at the time of the followup hearing, an emergency custody order cannot be issued; nor can the special justice order involuntary inpatient treatment. Should there be a Code provision allowing for a short period of inpatient treatment for those not compliant with the outpatient order yet not an "imminent danger" at the time returned for noncompliance? Will commitment for noncompliance pose yet another burden on the already overcrowded inpatient facilities?

On June 22, 2007, the Commission on Mental Health Law Reform released the final report of its study of the current commitment process. This study, undertaken for the commission by Dr. Elizabeth McGarvey of the University of Virginia School of Medicine, involved intensive interviews with 64 professional participants in the process, 60 family members of persons with serious mental illness, and 86 people who have had the experience of being committed. According to Dr. McGarvey's report, professional participants and family stakeholders are uniformly frustrated by almost every aspect of the civil commitment process in Virginia. Among the most common complaints were a shortage of beds in willing detention facilities, insufficient time for adequate evaluation, the high cost and inefficiency of transporting people for evaluation, inadequate compensation for professional participants in the process, inadequate reimbursement for hospitals, inconsistent interpretation of the statute by different judges, and lack of central direction and oversight.

### **CERTIFICATION OF ORDERS TO THE CENTRAL CRIMINAL RECORDS EXCHANGE**

Va. Code 37.2-819 requires the clerk to certify, on a form provided, any order for involuntary admission to the Central Criminal Records Exchange. The section does not specify who bears responsibility for completion of the form. The failure of Va. Code 37.2-819 to specify responsibility for preparation of the order furnished by the Central Criminal Records Exchange was noted to be a problem. It is reported that in some jurisdictions, if the clerk is not furnished the completed form, no form is forwarded to the exchange. There is lack of consistency throughout the Commonwealth regarding who prepares the forms. In some jurisdictions, the forms are completed by the special justice/substitute judge, in others by the clerk of court, and reportedly in others, the forms are often not completed at all.

Of further concern was the issue of under what circumstances the forms are to be completed. Mental health and legal professionals



interviewed by panel members felt that there was no reasonable distinction to be drawn between persons ordered for involuntary inpatient treatment and those ordered for involuntary out-patient treatment when a finding has been made that the individual poses an imminent danger to self or others. If firearms restrictions apply, they should be based upon the fact that an individual poses a danger, not on the basis of the type of treatment ordered; therefore, both involuntary inpatient and involuntary out-patient treatment orders should be certified. While the governor has addressed this matter by executive order, it was felt that legislation should be enacted embodying the certification requirement. Mental health and legal experts also raised the question of whether persons electing voluntary admission upon being advised of their right to do so during the commitment hearing should also be reported. (The commission's survey indicated that 30 percent of the commitment hearings in May resulted in voluntary admission.)

It was also noted with concern by the mental health and legal experts interviewed that the reporting requirement does not apply to orders for juveniles found to pose an imminent danger, regardless of whether inpatient or outpatient treatment was ordered. They further expressed concern regarding the absence of any provision in the Virginia Code requiring the clerk to certify orders pertaining to persons found not guilty by reason of insanity.

## KEY FINDINGS

Statutory time constraints for temporary detention and involuntary commitment hearings significantly impede the collection of vital psychiatric information required for risk assessment.

The Virginia standard for involuntary commitment is one of the most restrictive in the nation and is not uniformly applied.

The fact that a CSB representative did not attend the commitment hearing and the failure to certify a copy of the outpatient commitment

order to the CSB resulted in an absence of oversight for Cho's outpatient treatment.

The lack of a requirement in the Virginia Code to certify outpatient commitment orders to the CCRE resulted in Cho's name not being entered in the database, which could have prevented his purchase of firearms.

There was a lack of doctor-to-clinician contact between St. Albans Hospital and the Cook Counseling Center.

In the wake of the Virginia Tech tragedy, much of the discussion regarding mental health services has focused on the commitment process. However, the mental health system has major gaps in its entirety starting from the lack of short-term crisis stabilization units to the outpatient services and the highly important case management function, which strings together the entire care for an individual to ensure success. These gaps prevent individuals from getting the psychiatric help when they are getting ill, during the need for acute stabilization, and when they need therapy and medication management during recovery.

## RECOMMENDATIONS

***IV-13 Va. Code 37.2-808 (H) and (I) and 37.2-814 (A) should be amended to extend the time periods for temporary detention to permit more thorough mental health evaluations.***

***IV-14 Va. Code 37.2-809 should be amended to authorize magistrates to issue temporary detention orders based upon evaluations conducted by emergency physicians trained to perform emergency psychiatric evaluations.***

***IV-15 The criteria for involuntary commitment in Va. Code 37.2-817(B) should be modified in order to promote more consistent application of the standard and to allow involuntary treatment in a broader range of cases involving severe mental illness.***

***IV-16 The number and capacity of secure crisis stabilization units should be expanded where needed in Virginia to ensure that individuals who are subject to a temporary detention order do not need to wait for an available bed.*** An increase in capacity also will address the use of inpatient beds for moderately to severely ill patients that need longer periods of stabilization.

***IV-17 The role and responsibilities of the independent evaluator in the commitment process should be clarified and steps taken to assure that the necessary reports and collateral information are assembled before the independent evaluator conducts the evaluation.***

***IV-18 The following documents should be presented at the commitment hearing:***

- *The complete evaluation of the treating physician, including collateral information.*
- *Reports of any lab and toxicology tests conducted.*
- *Reports of prior psychiatric history.*
- *All admission forms and nurse's notes.*

***IV-19 The Virginia Code should be amended to require the presence of the prescriber or other CSB representative at all commitment hearings and to provide adequate resources to facilitate CSB compliance.***

***IV-20 The independent evaluator, if not present in person, and treating physician should be available where possible if needed for questioning during the hearing.***

***IV-21 The Virginia Health Records Privacy statute should be amended to provide a safe harbor provision which would protect health entities and providers from liability or loss of funding when they disclose information in connection with evaluations and commitment hearings conducted under Virginia Code 37.2-814 et seq.***

***IV-22 Virginia Health Records Privacy and Va. Code 37.2-814 et seq. should be amended to ensure that all entities involved with treatment have full authority to share records with each other and all persons involved in the involuntary commitment process while providing the legal safeguards needed to prevent unwarranted breaches of confidentiality.***

***IV-23 Virginia Code 37.2-817(C) should be amended to clarify—***

- *the need for specificity in involuntary outpatient orders.*
- *the appropriate recipients of certified copies of orders.*
- *the party responsible for certifying copies of orders.*
- *the party responsible for reporting non-compliance with outpatient orders and to whom noncompliance is reported.*
- *the mechanism for returning the non-compliant person to court.*
- *the sanction(s) to be imposed on the non-compliant person who does not pose an imminent danger to himself or others.*
- *the respective responsibilities of the detaining facility, the CSB, and the outpatient treatment provider in assuring effective implementation of involuntary outpatient treatment orders.*

***IV-24 The Virginia Health Records Privacy statute should be clarified to expressly authorize treatment providers to report noncompliance with involuntary outpatient orders.***

*IV-25 Virginia Code 37.2-819 should be amended to clarify that the clerk shall immediately upon completion of a commitment hearing complete and certify to the Central Criminal Records Exchange, a copy of any order for involuntary admission or involuntary outpatient treatment.*

*IV-26 A comprehensive review of the Virginia Code should be undertaken to determine whether there exist additional situations where court orders containing mental health findings should be certified to the Central Criminal Records Exchange.*