

2018 Recent Legal Developments

**Universities Have Duty of Care
Regarding Mentally Ill Students**

Richard Fossey

Picard Center for Child Development & Lifelong Learning



Commonwealth of Virginia v. Peterson (Va. 2013)

- ▶ State of Virginia (Virginia Tech) sued for negligence in aftermath of 2007 massacre.
- ▶ Day of mass shooting, police first believed they were dealing with a domestic shooting.
- ▶ Later that morning, Seung-Hui Cho went to Norris Hall and shot 49 people on campus with two semi-automatic pistols, killing 32 and wounding 17. Several other victims were injured jumping from windows to escape Cho. As police stormed Norris Hall to find and arrest Cho, he shot himself in the head with a pistol, and died instantly.

Commonwealth of Virginia v. Peterson (Va. 2013)

- ▶ “In this case, the Commonwealth knew that there had been a **shooting** in a dormitory in which one student was critically wounded and one was murdered. The Commonwealth also knew that the shooter had not been apprehended. At that time, the Commonwealth did not *know* who the shooter was, as law enforcement was in the early stages of its investigation of the crime. However, based on representations from three different police departments, Virginia Tech officials believed that the shooting was a domestic incident and that the shooter may have been the boyfriend of one of the victims. Most importantly, based on the information available at that time, the defendants believed that the shooter had fled the area and posed no danger to others.”

Commonwealth of Virginia v. Peterson (Va. 2013)

- ▶ Based on the limited information available to the Commonwealth prior to the **shootings** in Norris Hall, it cannot be said that it was known or reasonably foreseeable that students in Norris Hall would fall victim to criminal harm. Thus, as a matter of law, the Commonwealth did not have a duty to protect students against third party criminal acts.
- ▶
- ▶ Assuming without deciding that a **special relationship** existed between the Commonwealth and Virginia Tech students, based on the specific facts of this case, as a matter of law, no duty to warn students of harm by a third party criminal arose.

Thomas v. Bd. of Trustees of Nebraska State Colleges (Neb. 2017)

- ▶ Tyler Thomas (age 19) resided in dorm room next to dorm room of Joshua Keadle (age 29). Thomas disappeared. Keadle admitted to being with her on night of murder. Then he took the Fifth.
- ▶ Keadle had had 2 sexual harassment claims filed against him at the college.
- ▶ Housing director received email warning that Keadle had been charged with “forcible fondling” of female.
- ▶ After Thomas’ disappearance, Keadle convicted of raping a 15-year-old.

Thomas case (continued)

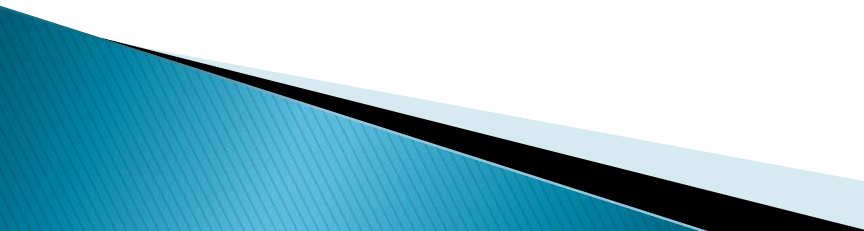
- ▶ The facts indicate that Keadle's behavior was seriously problematic for PSC and other students, but not reasonably indicative that he posed a risk of a violent assault on the person of another student. And although the Board might have anticipated continued problems with Keadle, no reasonable fact finder could find that the harm that occurred was a reasonably foreseeable risk based upon the circumstances present in this case. That is, nothing in the record indicates there was a risk that Keadle's conduct would result in the abduction, rape, and murder of another student.
- ▶ College owed duty of care to Thomas, but Thomas's abduction not foreseeable. College not liable.

Nguyen v. Mass. Institute of Technology

- ▶ On June 2, 2009, Nguyen, 25-year-old doctoral student in M.I.T. marketing program, commits suicide by jumping off roof of campus building.
- ▶ Family sues, alleging negligence by M.I.T.



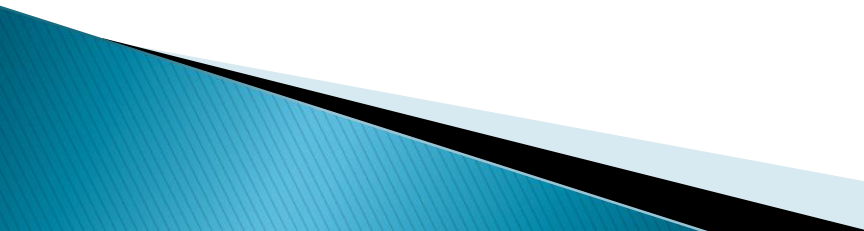
M.I.T. resources & off-campus resources

- ▶ 2 Marketing professors (Prelec and Wernerfelt)
 - ▶ Assistant Dean for Student Support Services (Randall)
 - ▶ MIT Ph.D. program coordinator (Cayley)
 - ▶ MIT Office of Student Disability Services
 - ▶ MIT Psychologist
 - ▶ 9 private mental-health professionals
 - ▶ 91 in-person visits 2006–2009
- 

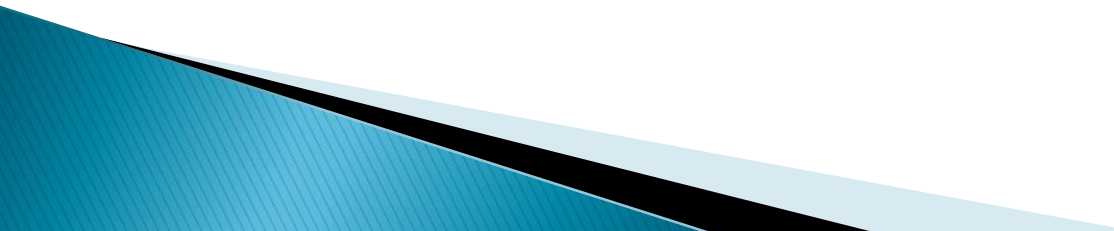
Mass. Supreme Court ruling:

- ▶ “[A] university has special relationship with a student and a corresponding duty to take reasonable measures to prevent his or her suicide in the following circumstances: Where a university has actual knowledge of a student’s suicide attempt that occurred while enrolled at the university or recently before matriculation, or of a student’s stated plans or intentions.”

Reasonable measures:

- ▶ Initiating suicide–prevention protocol
 - ▶ “contact the appropriate officials at the university empowered to assist the student on obtaining clinical care from medical officials”
 - ▶ If student refuses assistance, contact student’s emergency contact
 - ▶ In emergency situations, contact police, fire, or emergency medical personnel.
- 

Other Jurisdictions:

- ▶ No third-party due for another' suicide. See *Jahn v. State of Iowa* (2000).
 - ▶ Governmental or charitable immunity in many states.
 - ▶ *Nguyen* decision runs counter to law in other jurisdictions and seems to be a swing back toward in loco parentis.
- 

Regents of Univ. of Calif. v. Superior Court (Cal. 2018)

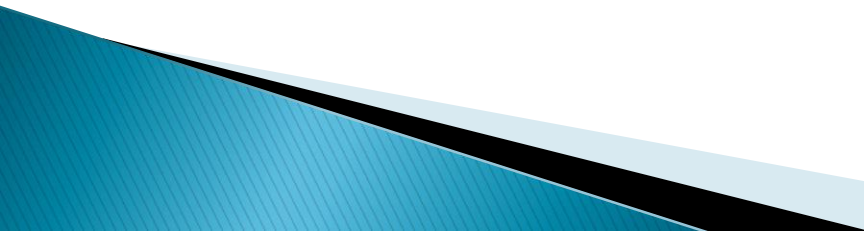
- ▶ Damon Thompson, UCLA student, stabs Katherine Rosen. Charged with attempted murder. Diagnosed as schizophrenic and found not guilty by reason of insanity.



Regents of Univ. of Calif.

- ▶ Claimed people were talking about him
- ▶ UCLA moved him to new dorm and referred concerns to response team
- ▶ More disruptive behavior in 2d dorm. Campus police escorted him to emergency room.
- ▶ March 2009: Was prescribed medications and saw UC psychologist and psychiatrist.
- ▶ Moved to single room in his second dorm.
- ▶ Admitted thinking about harming others.
- ▶ UC psychiatrist recommended *involuntary commitment* if thoughts of harming others worsened.
- ▶ Thompson Attacked Rosen on October 8, 2009

Regents v. Univ. of Calif.

- ▶ University in “special relationship” with students who are vulnerable and depend on university to protect them.
 - ▶ “[A]s a consequence of the special relationship recognized here, colleges generally owe a duty to use reasonable care to protect their students from foreseeable acts of violence in the classroom or during curricular activities.”
- 

Implications

- ▶ Pressure on Response Teams to Identify mentally ill students and refer them to medical professionals
 - ▶ Duty to contact students' emergency contacts
 - ▶ More resources will be dedicated to mental health issues—strain on small colleges
 - ▶ Adequate mental health resources will not insulate colleges from lawsuits
 - ▶ More pressure to pursue involuntary commitment of students known to be dangerous.
 - ▶ More pressure to suspend students with serious mental health problems.
- 