THE EMERGING CRISIS OF COLLEGE STUDENT SUICIDE: LAW AND POLICY RESPONSES TO SERIOUS FORMS OF SELF-INFLICTED INJURY

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I. INTRODUCTION

The number-one student risk factor in the minds of most college administrators now is alcohol use, and to a certain extent, the use of other drugs. Alcohol has been a risk factor in a number of prominent student deaths, including the untimely death of Scott Krueger at Massachusetts Institute of Technology (MIT).[1] Alcohol is heavily associated with secondary risks, such as sexual assault and student riots over changes in alcohol policies.[2] High-risk alcohol use is also a major factor in self-inflicted injury. The Authors anticipate that in the near term, however, attention paid to suicide and other serious forms of self-inflicted injury will continue to increase and that these concerns may begin to gain prominence.[3]

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1. Leo Reisberg, *MIT Pays $6 Million to Settle Lawsuit over a Student's Death*, 47 Chron. Higher Educ. A49 (Sept. 29, 2000) (describing how Scott Krueger died of alcohol poisoning after a night of forced drinking while pledging an MIT fraternity); *see NBC Nightly News*, "Universities Trying to Combat Student Binge Drinking" (NBC Sept. 13, 1999) (tv broadcast, transcript available in LEXIS, News Group File) (discussing similar incidents at Louisiana State University and elsewhere).

2. *See* Leo Reisberg, *Some Experts Say Colleges Share the Responsibility for the Recent Riots*, 44 Chron. Higher Educ. A48 (May 15, 1998) (discussing recent campus riots over beer and also the string of deaths at prestigious colleges).

3. In an extremely unfortunate incident at MIT, student Elizabeth Shin set fire to herself in her dorm room; she died four days later from self-inflicted burns over sixty percent of her body. Leading up to this incident, Ms. Shin had repeatedly stated that she would commit suicide and cut herself with a knife. Her parents are suing MIT for failure to notify them of their daughter's problems. Rochelle Sharp, *Parents' Fury at MIT: A Study of Mental Illness on Campus; Couple Plan to Sue University in Daughter's Suicide*, USA

Suicide and self-inflicted violence are already enormous social problems in traditional college-aged populations. According to the National Institute of Mental Health (NIMH), suicide was the eighth-leading cause of death in the general population in 1997.[4] More disturbingly, in that same year suicide was the third leading cause of death in individuals fifteen to twenty-four years old.[5] The rates of suicide among young people have been increasing dramatically.[6] The research indicates that the number of students coming to campus with mental-health issues will continue to increase.[7] Disturbingly, many students have been medicated throughout their K–12 education and may require similar treatment in college to remain emotionally and physically stable.[8]

The American legal system has been reluctant to hold institutions liable for suicide or self-inflicted injury. Traditionally, an individual who committed suicide was thought to be the sole "proximate cause" of injury; therefore, other entities were not responsible for the suicide.[9] These traditional legal rules translated into substantial protection for colleges and institutions of higher education with respect to suicide and self-inflicted injury. Such legal protection has created the reality that many institutions have not placed high priority on these issues. The Authors describe various factors that could begin to erode legal protections of colleges regarding student suicide.[10] Many of these factors are already evident in the case law and in noncollege cases.

The Authors offer a law-and-policy vision of appropriate college responses to student suicide and self-inflicted injury based in large measure on the "facilitator" model first put forth by Profes-

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Today A01 (Jan. 25, 2002) (available in 2002 WL 471775).

4. Donnah L. Hoyert, Kenneth D. Kochanek & Sherry L. Murphy, *Deaths: Final Data for 1997*, *National Vital Statistics Report, U.S. Dept. Health & Human Servs.* (June 30, 1999) (available at <http://www.cdc.gov/nchs/data/nvsr/nvsr47/nvs47_19.pdf>); Natl. Inst. Mental Health, *In Harm's Way: Suicide in America* <http://www.nimh.nih.gov/publicat/harmaway.cfm> (last updated Jan. 1, 2001).

5. Hoyert et al., *supra* n. 4, at 8.

6. Natl. Inst. Mental Health, *supra* n. 4.

7. Gail Russell Chaddock, *Mental Health Woes on Rise: Many Campuses Unprepared to Help Troubled Students*, Chi. Sun-Times 14 (Mar. 5, 2002).

8. JoAnn E. Kirchner et al., *Development of an Educational Program to Increase School Personnel's Awareness about Child and Adolescent Depression*, 121 Educ. 235 (Winter 2000).

9. *See infra* pt. III (discussing the issue of duty in a suicide context).

10. *See infra* pt. IV (discussing the university's potential duty to disclose information regarding at-risk students).

sors Bickel and Lake in their book, *The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life?*[11] The Authors recognize that universities are not in a position to place the general student population (or even large numbers of specific individuals) in custodial control sufficient to prevent suicide. A need to do so would undermine the very nature of the academy. Colleges cannot be bystanders, however, to this major social issue, which promises to become a major form of risk to manage in college communities. The college of the future will strive to create a reasonably safe learning environment supportive of individuals with mental-health issues and will be prepared to take reasonable steps to protect the physical safety of those and other individuals.

II. DISTURBING FACTS AND UNNERVING TRENDS FOR THE FUTURE

The fact that suicide is the third-leading cause of death among college-aged students (eighteen to twenty-four year olds) is a disturbing statistic in itself,[12] but other trends regarding suicide in the college population are also of concern. One study published in the *Journal of American College Health* demonstrates that suicidal ideation is a continuum and can be linked to unintentional injury and homicide, the first- and second-leading causes of death among the college-age group.[13] The study points out that

> suicide has been described as the end point of a continuum that begins with suicide ideation (consideration of suicide), followed by planning and preparation for suicide and finally by threatening, attempting, and completing suicide.[14]

The study suggests that suicidal ideation correlates with

> physically reckless behaviors such as playing with fire crackers, pointing a gun at someone, and engaging in criminal behavior that would provoke law enforcement officers to dis-

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11. Robert D. Bickel & Peter F. Lake, *The Rights and Responsibilities of the Modern University: Who Assumes the Risk of College Life?* 193–213 (Carolina Academic Press 1999).

12. *Supra* n. 4 and accompanying text.

13. Lisa C. Barrios et al., *Suicide Ideation among U.S. College Students: Associations with Other Injury Risk Behaviors*, 48 J. Am. College Health 229 (2000).

14. *Id.*

> charge weapons. Suicide correlates with the use of tobacco, alcohol and drugs, risky sexual behavior, failure to use seat belts, drinking and driving, weapons possession, and altercations.[15]

In other words, research suggests that suicide is a cluster risk and tends to correlate with other high-risk behavior, including leading causes of death of college students. In the fight to manage risky behavior among students, suicide must be attended to, because it is so closely correlated to other risk factors. The intuitive sense that suicide is different from other high-risk behaviors is clearly contradicted in the scientific literature, which demonstrates strong correlations among these behaviors.[16]

Not only is suicide clustered with other risks on campus, but it is also apparent that issues of suicide and depression have been increasing in the last few years and will continue to do so in the near term. NIMH reports that "over the last decades, the suicide rate of young people has increased dramatically."[17] For example, suicide was also the third-leading cause of death for individuals who were ten to fourteen years old in 1997 (i.e., for individuals who are currently of college or near-college age).[18] The group that has just passed through college (i.e., those aged fifteen through nineteen in 1997) also had a disturbingly high rate of suicide.[19] Indeed, it may be that college itself is a risk factor in the students ideating suicide and actually completing it, in that the college environment may exacerbate the problem.[20]

More men succeed in committing suicide than women, but women make more suicide attempts.[21] Various risk factors can be

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15. *Id*.

16. Barrios et al., *supra* n. 13, at 231 (finding little evidence to connect guns and suicide in the college population although, such a connection is found in the greater population).

17. Natl. Inst. Mental Health, *supra* n. 4.

18. *Id*.

19. *Id*.

20. Jameson K. Hirsch & Jon B. Ellis, *Differences in Life Stress and Reasons for Living among College Suicide Ideators and Non-Ideators*, 30 College Student J. 377 (1996); Morton M. Silverman et al., *The Big Ten Student Suicide Study: A 10-Year Study of Suicides on Midwestern University Campuses*, 27 Suicide & Life-Threatening Behavior 285 (1997).

21. Natl. Inst. Mental Health, *supra* n. 4. Firearms are the weapons of choice in most suicides. NIMH reports "risk factors in attempted suicide in adults include depression, alcohol abuse, cocaine use, and separation or divorce. Risk factors for attempting suicide in youth include depression, or other drug use disorder, physical or sexual abuse, and aggressive or disruptive behaviors." *Id*.

especially lethal in combination.[22] The vast majority of people who commit suicide are clinically depressed, suffer from other mental disorders, or have a history of substance abuse.[23] Generally, an individual attempts suicide multiple times before the fatal episode (approximately an eight-to-one ratio).[24] Also, it is noteworthy that suicide attempts and completions may involve serious violence against others, thus creating a significant potential risk to the community and other students.[25]

While treatment of suicidal ideation is complex, the scientific and treatment communities have identified some good practices. First, NIMH believes that the effectiveness of suicide-prevention programs should be scientifically evaluated.[26] "Information only" programs do not appear to be sufficient and may, if not used in combination with other programs, even be detrimental.[27] Importantly, suicidal individuals must not be left unattended, and in some cases it may be appropriate to get emergency help, including calling 911.[28] NIMH also believes that, in addition to not leaving people alone, it is critical to limit access to dangerous and lethal means of committing suicide, such as guns, alcohol, drugs or other medications, and other hazards.[29] Suicidal ideation is not just "a harmless bid for attention."[30] The vast majority of suicide attempts represent manifestations of extreme mental stress.[31]

III. DUTY TO PREVENT SUICIDE?

For many years the American legal system categorically refused to find civil liability arising out of a failure to prevent suicide.[32] Suicide was considered an illegal, deliberate, and inten-

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22. *Id*.
23. *Id*.
24. *Id*.
25. *See Nasser v. Parker*, 455 S.E.2d 502, 502–503 (Va. 1995) (documenting a series of events in which a suicidal man threatened his ex-girlfriend at gunpoint and, several weeks later, murdered her and killed himself).
26. Natl. Inst. Mental Health, *supra* n. 4.
27. *Id*.
28. *Id*.
29. *Id*.
30. *Id*.
31. *Id*.
32. Margot O. Knuth, Student Author, *Civil Liability for Causing or Failing to Prevent Suicide*, 12 Loy. L. Rev. 967, 967–968 (1979); Victor E. Schwartz, *Civil Liability for Causing Suicide: The Syntheses of Law and Psychiatry*, 24 Vand. L. Rev. 217, 217–218 (1971).

tional act, that was an intervening proximate cause that precluded liability.[33] As the Supreme Court of New Hampshire correctly has observed

> [I]n recent years, however, tort actions seeking damages for the suicide of another have been recognized under two exceptions to the general rule, namely, where the defendant is found to have actually *caused* the suicide, or where the defendant is found to have had a *duty to prevent* the suicide from occurring.[34]

An individual or entity may fall within the first exception — that of causing the suicide — in a number of limited circumstances. For example, when an individual causes severe physical injury to another, leading that individual to a state of mental incapacity that results in suicide, the individual causing the physical injury may be held responsible for the resulting suicide.[35] Additionally, if a defendant causes severe mental injury through serious physical abuse, torture, abuse of process, or improper confinement, and that mental injury leads to suicide, that defendant may be held responsible for causing an uncontrollable impulse to commit suicide that prevented the individual from realizing the wrongful and serious nature of the suicidal act.[36] As the *McLaughlin* court correctly observed, an exception based on causing the suicide

> involves cases where a tortious act is found to have caused a mental condition in the decedent that proximately resulted in an uncontrollable impulse to commit suicide, or prevented the decedent from realizing the nature of his act. . . . Such cases typically involve the infliction of severe physical injury, or, in rare cases, the intentional infliction of severe mental or emotional injury through wrongful accusation, false arrest or torture.[37]

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33. *McLaughlin v. Sullivan*, 461 A.2d 123, 123 (N.H. 1983).

34. *Id.* at 124 (emphasis in original).

35. *Orcutt v. Spokane County*, 364 P.2d 1102, 1105–1107 (Wash. 1961); *see generally* Schwartz, *supra* n. 32, at 222–226.

36. *Cauverien v. DeMetz*, 188 N.Y.S.2d 627, 631 (N.Y. App. Div. 1959); James A. Howell, Student Author, *Civil Liability for Suicide: An Analysis of the Causation Issue*, 1978 Ariz. St. L.J. 573, 576–577; Schwartz, *supra* n. 32, at 219–236.

37. 461 A.2d at 124 (citations omitted).

Indeed, it is common for courts to regard this exception in a "very narrow" way.[38]

Courts also have considered that an individual who or entity that provides illegal substances or liquor in an illegal or improper way also can be liable for resulting suicide.[39] This type of liability can be statutory in nature and encompasses "a duty to refrain from knowingly making available the means of an individual's self destruction."[40] A recent decision from the Arkansas Supreme Court illustrates this principle.

In *Wallace v. Broyles*,[41] a varsity football player at the University of Arkansas died from a self-inflicted gunshot wound.[42] The family filed an action against several defendants, alleging that they had caused the varsity football player's death.[43] The allegations included that one of the defendants stored controlled substances and dispensed them from an athletic complex without proper registration.[44] The complaint also alleged improper storage of the controlled substances.[45]

During a game, the varsity football player sustained a severe shoulder injury that required extensive physical therapy and heavy dosages of Darvocet.[46] Defendants allegedly supplied the Darvocet without any proper warnings of the side effects or dangerous interactions that Darvocet could have with other drugs.[47] Evidence was presented suggesting that the varsity football player may have committed suicide by consuming extremely large quantities of alcohol.[48] This evidence raised the issue of whether the suicide was caused by improper use of Darvocet.[49] The court took notice that Darvocet was a strong pain killer that had mind-altering properties and came with warnings of drug-related deaths, addictive and depressive effects, as well as emotional disturbances and suicidal ideation or attempts connected with the

38. *Id*. at 125.
39. *Wallace v. Broyles*, 961 S.W.2d 712 (Ark. 1998).
40. *McLaughlin*, 461 A.2d at 124.
41. 961 S.W.2d 712.
42. *Id*. at 713.
43. *Id*.
44. *Id*.
45. *Id*.
46. *Id*.
47. *Id*.
48. *Id.* at 714.
49. *Id*.

use of the drug.[50] In short, the drug had a history of potential risk to certain individuals.[51]

For purposes of ruling on summary judgment, the court believed that sufficient evidence existed to permit the action by the parents of the varsity football player to proceed.[52] The essence of the *Wallace* decision is that an individual can be liable for the suicidal ideation and death of another individual when prescribing or dispensing drugs in an unlawful or illegal manner.[53] As a case that arose in the context of higher education, *Wallace* demonstrates the importance that universities and colleges must place on careful control and supply of drugs that could exacerbate or cause depression or suicide ideation.

A second well-recognized exception to the no-duty-to-prevent-suicide rule arises when the defendant has a legally recognized special relationship with a suicidal individual sufficient to create a duty to prevent suicide.[54] Generally, American tort law does not hold individuals responsible for preventing harm by others merely from the knowledge of danger.[55] The duty to prevent suicide (when it is not an issue of whether the defendant caused the suicide) is a creature of the law of affirmative duty.

Most typically, courts look for a special relationship between the parties to impose an affirmative duty on an individual for the benefit of another party.[56] In discussing the duty to prevent suicide, courts typically speak of special relationships in the context of custodial care.[57] Some courts appear to impose a custodial requirement that goes even beyond mere custody and control to the level of the responsibility of a suicide watch — a highly controlled custodial care environment.[58] Courts have been most likely to impose duties arising from such a special relationship on a jail, hos-

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50. *Id*. at 717.
51. *Id*.
52. *Id*. at 718–719.
53. *Id*.
54. *McLaughlin*, 461 A.2d at 125; Donnie Braunstein, *Custodial Suicide Cases: An Analytical Approach to Determine Liability for Wrongful Death*, 62 B.U. L. Rev. 177 (1982).
55. *Restatement (Second) of Torts* § 314 (1965).
56. *Id*. at §§ 314, 315; John M. Adler, *Relying on the Reasonableness of Strangers: Some Observations about the Current State of Common Law Affirmative Duties to Aid or Protect Others*, 1991 Wis. L. Rev. 867, 886–898; Peter F. Lake, *Recognizing the Importance of Remoteness to Rescue*, 46 DePaul L. Rev. 315, 331 (1997).
57. Schwartz, *supra* n. 32, at 245–246.
58. *Id*. at 248.

pital, or reform school, and on others having actual physical custody and control over individuals.[59] Mental hospitals, psychiatrists, and other trained professionals in the mental-health field are also often deemed to have the type of training and experience to permit them to be aware of behavior patterns that may increase the potential for suicide.[60] It appears that courts sometimes equate special knowledge and experience in this field with a type of control sufficient to impose a duty to prevent suicide.[61]

As the New Hampshire Supreme Court stated in *McLaughlin*:

> [W]e find fundamentally characteristic of these two types of defendants a pre-existing duty of care and protection which is imposed either because an institution has actual physical custody of, and substantial or total control over, an individual . . . or because the institution is a hospital or the individual is a specially trained medical or mental health professional, who has the precise duty and the control necessary to care for the physical and/or mental well-being of a patient. . . .[62]

Even in the case of an individual psychiatrist, "commentators have suggested that imposing liability . . . is only appropriate if his patient is hospitalized at the time of the suicide, because a psychiatrist does not have *sufficient control* over the non-hospitalized patient to prevent his suicide."[63]

In each of the two exceptional scenarios in which a defendant may be liable for a suicide (the case in which the defendant's acts are deemed to have caused the person to commit suicide or the case in which the defendant has a special relationship that creates a duty to protect), the traditional, no-proximate-causation rule is no longer accepted.[64] Instead, with respect to these two exceptions, courts typically say that a suicide is foreseeable. Suicide is no longer an intervening act that cuts off the chain of liability. Therefore, a defendant who falls within either of these two exceptions may be subject to liability for the resulting suicide. Histori-

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59. *McLaughlin*, 461 A.2d at 125; Schwartz, *supra* n. 32, at 245.
60. Schwartz, *supra* n. 32, at 247–248.
61. *McLaughlin*, 461 A.2d at 125.
62. *Id*. at 126.
63. *Id*. (emphasis in original).
64. *Id*. at 124; *Brigance v. Velvet Dove Restaurant, Inc.*, 725 P.2d 300, 302–303 (Okla. 1986).

cally suicide rules focused very heavily upon the idea of proximate causation, as opposed to duty. Yet, strict rules of proximate causation have waned in modern times.[65]

Courts increasingly look to manage difficult issues of liability through the vehicle of duty.[66] For example, in a key decision, *Nally v. Grace Church*,[67] the California Supreme Court concluded that a clergy member owed no duty to prevent a suicide.[68] The *Nally* court engaged in a complicated balancing of policy factors relating to the issue of duty, rather than an analysis of proximate cause.[69] Thus, in an earlier period, litigators could argue hard-and-fast rules of proximate causation to settle cases involving student suicide. It is increasingly apparent that courts will begin to analyze these issues more in terms of the complex issues that relate to duty. Universities now must be aware that courts will analyze suicide cases in light of a multiplicity of public policy factors. This may mean it will be more difficult to predict results in individual cases.

Currently, colleges and universities may be liable for student suicide if either of the two above-mentioned exceptions apply. For example, in the *Wallace* case,[70] the court was concerned with university behavior that gave student athletes access to controlled substances that could lead to self-inflicted harm.[71] Colleges and universities also must contend with potential liability for suicide if the university wrongly and maliciously accuses a student under an honor or disciplinary code, if the student is subjected to severe physical hazing that may lead to suicide, or if the student is subjected to some sort of severe mental or physical torture as in a hazing situation.

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65. The strict rule of causation associated with the law of alcohol responsibility, ergo the rule that the drinker was the sole proximate cause of harm, has fallen into disfavor throughout the country. *E.g. Brigance*, 725 P.2d at 302–304 (abolishing the strict rule of proximate causation that the drinker is the sole proximate cause of harm in a negligent-service of alcohol matter).

66. *See Nally v. Grace Church*, 763 P.2d 948 (Cal. 1988) (finding no duty owed by clergy to prevent suicide).

67. 763 P.2d 948.

68. *Id*. at 970.

69. *Id*. at 955–958.

70. *Wallace*, 961 S.W.2d 712, is discussed at *supra* notes 39–53 and accompanying text.

71. 961 S.W.2d at 713.

In addition, institutions of higher education must be cognizant of situations that may create a special or custodial relationship. Universities must be especially careful if a student who may be in a suicidal state is placed in the custody of campus police, is admitted into a university hospital or care facility, is taken under the custodial care of trained mental-health professionals, or is otherwise placed in a position in which trained professionals have physical control over that student's well being. The case law suggests, however, that lawyers themselves have no responsibility to prevent suicide even if they are aware of suicidal ideation of clients.[72]

The limited exceptions to the no-duty-to-prevent-suicide rule have protected universities from liability for a student suicide in a broad range of cases.[73] Thus, for example, the mere fact that a student is depressed, isolated or lonely, receives bad grades, is socially ostracized, or engages in high-risk alcohol use does not itself impose a responsibility upon the university to intervene to prevent suicide. Students are expected to shoulder the stresses and burdens of the transition into the college environment, even if those burdens are very high.

It is worth noting that these exceptions may be eroding. In a recent case involving Ferrum College,[74] the court upheld a claim involving an alleged duty to prevent suicide. Michael Frentzel was a freshman at the time of his self-inflicted death.[75] He experienced some "disciplinary issues" during his first semester, and the College required that he fulfill certain conditions such as anger-management counseling prior to the start of the second semester.[76] Early in that semester, Frentzel had an argument with his girlfriend.[77] Campus police and the resident assistant at Frentzel's dormitory responded to the incident and were aware that Frentzel sent a note to his girlfriend stating that he would hang himself with this belt.[78] During the next few days, Frentzel wrote several other notes of a suicidal nature and was found in

72. *Id*.

73. Sonja Larsen, *Liability of School or School Personnel in Connection with Suicide of Student*, 17 A.L.R.5th 179 (1994); *infra* n. 124 and accompanying text.

74. *Schieszler v. Ferrum College*, No. 7:02CV00131 (W.D. Va. July 15, 2002).

75. *Id*., slip op. at 1.

76. *Id*.

77. *Id*.

78. *Id*.

his dormitory room with self-inflicted bruises to his head.[79] The College responded by requiring Frentzel to sign a statement promising not to harm himself and by refusing to allow his girlfriend to return to his dormitory room.[80] Frentzel hanged himself by his belt in his dormitory room three days after the argument with his girlfriend.[81]

Representatives of his estate sued the College, alleging that it owed a duty to Frentzel to prevent his suicide.[82] The College moved to dismiss the complaint, arguing that no such duty was owed.[83] However, the court refused to dismiss the action, holding that Frentzel's suicide was arguably foreseeable because there was an "imminent probability" of harm and the college had "notice of this specific harm."[84] The court noted that there is usually no affirmative duty to aid others "absent unusual circumstances."[85] One such circumstance is the existence of a special relationship sufficient to impose a duty to aid.[86] The court acknowledged that the relationship between college and student is not necessarily special; however, a special relationship can "exist between particular plaintiffs and defendants . . . because of the particular factual circumstances in a given case."[87] Therefore, the special relationship at issue arose from the College's knowledge of the imminent danger to Frentzel.[88] The court did not suggest that the holding relied on the "assumed duty" theory because the duty owed by the College did not arise from its voluntary attempt to work with Frentzel after his first semester difficulties. The existence of the special relationship also did not stem from custodial control as the court acknowledged that, unlike a high school student, no *in loco parentis* relationship existed.[89] Instead, the College's duty arose from a special relationship based upon the particular facts of the case. This case will be closely watched and could, if it stands, rewrite college-suicide law.

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79. *Id*. at 2.
80. *Id*.
81. *Id*.
82. *Id*.
83. *Id*.
84. *Id*. at 9.
85. *Id*. at 4.
86. *Id*.
87. *Id*. at 5.
88. *Id*. at 10.
89. *Id*. at 11–12.

Traditional tort rules regarding the duty to prevent suicide focused upon the actual physical responsibility to prevent the act. In other words, a defendant could be liable for a suicide if it either provided the actual means of destruction or, in the case of custodial care, failed to use reasonable care to monitor individuals under its care. In recent times, however, litigants have raised a new set of issues relating to the duty to prevent suicide — particularly the responsibility to notify parents and to share information.

IV. SUICIDE PREVENTION: DUTIES TO NOTIFY AND SHARE INFORMATION

One way to prevent suicide is to actually eliminate the physical means of destruction or to physically control an individual so that he or she is unable to commit suicide. Another, less demanding way to prevent suicide is to provide information to other individuals who might be in a position to act on that information for the benefit of the suicidal individual. Those other individuals might include parents, family members, or law-enforcement officials.

When confronted with a decision to disclose information about a student who may be at risk for suicide or other serious self-inflicted harm, colleges and universities must balance the desire to contact a parent or an entity outside the institution with the student's privacy interests. The student's interests are protected generally by federal and state laws that protect the privacy of student records, and by legal and ethical obligations of confidentiality that arise in the context of professional relationships, such as with a counselor, psychologist, psychiatrist, or physician. Although extremely important, these laws and ethical obligations do not prevent a college or university from disclosing information that suggests the student may be suicidal, if the disclosure is reasonably directed toward avoiding harm to the student or to others.

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student educational records, which include most university records maintained about enrolled students.[90] Under FERPA, these records should not be released to anyone,

90. 20 U.S.C. § 1232g (2000) (the term "university records" broadly pertains to records maintained by an educational institution regarding a student).

including a student's parent or guardian, unless the student consents or unless the disclosure falls within a recognized FERPA exception.[91] FERPA restricts the disclosure of academic and conduct records.[92] It also restricts the disclosure of records of informal counseling or educational sessions between the student and campus officials, such as student housing staff, student judicial affairs, and academic advisors.[93]

FERPA provides an express exception, however, for disclosures made in a health or safety emergency.[94] FERPA permits, but does not require, institutions to disclose information "in connection with an emergency, [to] appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons."[95]

Moreover, even in circumstances that do not fall within an express exception to FERPA, institutions can counsel students on the value of an appropriate prospective disclosure. The goal may be to elicit the student's consent or to clarify the student's reasons for withholding consent and to facilitate an appropriate alternative response. The student may not wish information to be disclosed to a parent, for example, but may consent to voluntary evaluation at a local clinic. Finally, it may be appropriate in certain limited circumstances to risk the allegation of a FERPA violation in a good-faith attempt to save the life of a student.[96]

Recent litigation has tested the responsibility of a university or college to share information in a potential suicide situation. The leading case at this time is *Jain v. Iowa*.[97] Sanjay Jain, a freshman at the University of Iowa, killed himself in his dormitory room.[98] His father sued the University for wrongful death.[99]

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91. *Id*.

92. *Id*.

93. Formal medical and mental-health-treatment records for students over the age of eighteen, that are maintained by campus health providers, psychologists, or counselors are not FERPA educational records, but are protected by state medical records laws. *Id*. § 1232g(a)(4)(B)(iv).

94. *Id*. § 1232g(b)(1)(I).

95. *Id*.

96. A student will not have a private right of action under FERPA, *Gonzaga U. v. Doe*, 122 S. Ct. 2268 (2002), but may file a complaint with the U.S. Department of Education, Family Policy Compliance Office. U.S. Dept. Educ., Family Policy Compliance Off., *About Us* <http://www.ed.gov/offices/OM/fpco/> (last updated October 23, 2002).

97. 617 N.W.2d 293 (Iowa 2000).

98. *Id.* at 294.

99. *Id*.

He argued that the University failed to exercise reasonable care for his son's safety, particularly in failing to notify his parents of serious indications of their son's self-destructive behavior.[100] The Iowa Supreme Court affirmed a lower-court ruling dismissing the case for lack of legal duty.[101]

Sanjay Jain came from a close-knit family and had been successful in high school, planning to major in biomedical engineering.[102] His first semester proved difficult as his academic performance diminished, he was moody, and he missed classes.[103] He began experimenting with drugs and alcohol and was disciplined for smoking marijuana.[104] Under its policy protecting the privacy of student records, the University did not inform his parents about these problems.[105] In addition, the evidence suggested that Jain's communications with his parents painted a very different and more promising portrait of his university experience.[106]

Late in the fall term, resident assistants in his dormitory were called to resolve a dispute between Jain and his girlfriend over the keys to his moped.[107] Jain's girlfriend reported that he was attempting to commit suicide by inhaling exhaust fumes from the moped.[108] When interviewed independently, Jain corroborated that he was indeed trying to commit suicide.[109] After discussing this incident with the resident assistants, Jain offered assurances that he would seek counseling.[110] After several discussions with Jain, the resident assistant reported the problems to the assistant director for resident life.[111] The assistant director took no action to contact Jain's parents, but instead agreed with the resident assistant's decision to continue encouraging Jain to seek counseling.[112] Jain also commented to his roommate that he would kill himself

100. *Id*.
101. *Id.* at 300.
102. *Id*.
103. *Id*.
104. *Id*.
105. *Id*.
106. *Id*.
107. *Id.*
108. *Id*.
109. *Id.*
110. *Id*.
111. *Id*.
112. *Id.* at 296.

with his moped.[113] Later, Jain turned on the moped and asphyxiated himself through carbon-monoxide poisoning.[114]

The University apparently had an unwritten policy that permitted the dean of students to notify parents in case of a suicide attempt.[115] However, no relevant information about Jain was shared with the dean until after the student's death.[116]

The Iowa Supreme Court refused to find a special relationship between Jain and the University sufficient to raise a duty to notify Jain's parents of impending danger.[117] The court engaged in a lengthy analysis of affirmative duty:

> No affirmative action by the defendant's employees, however, increased that risk of self-harm. To the contrary, it is undisputed that the [resident assistants] appropriately intervened in an emotionally charged situation, offered Sanjay support and encouragement, and referred him to counseling. [A school counselor] likewise counseled Sanjay to talk things over with his parents, seek professional help, and call her at any time, even when she was not at work. She sought Sanjay's permission to contact his parents but he refused. In short, no action by university personnel prevented Sanjay from taking advantage of the help and encouragement being offered, nor did they do anything to prevent him from seeking help on his own accord.[118]

The record is similarly devoid of any proof that Sanjay relied, to his detriment, on the services gratuitously offered by these same personnel. To the contrary, it appears by all accounts that he failed to follow up on recommended counseling or seek the guidance of his parents, as he assured the staff he would do.[119]

While the court found that the University did not owe a duty as a matter of law, the court relied on the evidence showing that residents and staff apparently performed with reasonable care in attempting to manage the situation.[120] The case could easily be

113. *Id*.
114. *Id.*
115. *Id*.
116. *Id*.
117. *Id.* at 299.
118. *Id*.
119. *Id.* at 299–300.
120. *Id*. at 300.

squared with a ruling that a duty existed but, as a matter of law, was not breached.

The court placed little emphasis on the University's failure to follow its unwritten policy. Instead, it chose to cast Jain as a bystander to the University, one to whom no duty was owed because the University had neither assumed a duty to protect him nor increased his risk of injury. To a certain extent, the rationale of the court is disturbing because some individuals who are serious about suicide may refuse to seek help. Persons most at risk, for example, those refusing to seek help, experiencing denial, or isolating themselves, will be owed the least amount of care in Iowa.

The court did not analyze — perhaps because no litigant raised the issue — responsibilities that may arise by virtue of a special relationship between Jain and the university because of a landlord-tenant or similar relationship.[121] Moreover, the court did not consider, possibly again because it was not raised, whether Jain was owed responsibility by virtue of contractual relationships with the University based on campus documents or policies. The case is not remarkable, however, as it fits within the usual rule that nontherapist counselors are not required to provide suicide prevention unless they cause the risk of suicide.[122]

The case has enormous policy implications because many parents would be surprised to learn that the schools their children attend can withhold, with legal impunity, information regarding the safety or behavior of their sons and daughters. As courts begin to reassess the relationship between the acquisition of information and the potential to prevent danger, they may view these cases very differently, particularly for students of traditional college age in residential environments. The Iowa Supreme Court has also shown tendencies to be protective of national fraternities, local fraternities, and universities facing legal claims,[123]

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121. Traditional duties to prevent suicide arise in custodial special relationships, not from all special relationships imposing affirmative duty. In suicide law, not all special relationships, like a landlord–tenant relationship, are special for purposes of suicide prevention. Iowa has a specific exemption for campus housing in its landlord–tenant act. Iowa Code § 562A.5 (1992). The Iowa courts have not indicated that this act precludes liability for negligence arising from a special relationship of landlord and tenant in a campus residential housing situation.

122. *Nally*, 763 P.2d at 956–961; *Adams v. City of Fremont*, 80 Cal. Rptr. 2d 196, 217–218 (App. 1st Dist. 1998).

123. *Garofalo v. Lambda Chi Alpha Fraternity*, 616 N.W.2d 647 (Iowa 2000) (holding that a fraternity owed no duty to a student who died from alcohol intoxication after a fra-

leading one to believe that it may be in agreement with a line of cases falling into disfavor.[124] Even if it had found that the University had a duty to Jain, the Iowa court also could have concluded that University officials used reasonable care to prevent Jain's suicide.

Courts following *Jain* may begin to realize that the traditional rules regarding suicide prevention do not distinguish clearly between the duty to prevent suicide and the duty to notify family members of potential danger. The duty to notify parents or others is far less difficult to discharge than a comprehensive duty to prevent suicide. The two responsibilities are not analogous, as the amount of care that would be required to provide notification would be far less in almost every situation than that necessary to actually prevent a suicide from occurring. The traditional common-law rules that supported liability for suicide based on causation of harm and custodial relationship were built principally upon the notion that the responsibility was to actually prevent the suicide, not the lesser, perhaps included, responsibility to notify those who may be able to provide care.[125] Modern prevention theory clearly demonstrates that involvement of parents and notification of loved ones may be a key factor in preventing or lowering risk of harm, particularly for students of traditional college age.[126] One can speculate that the *Jain* rule will come under attack as the number of suicides and suicide attempts increase on campus.

A glimmer of this analysis was evident in the seminal case of *Eisel v. Board of Education of Montgomery County*.[127] In that case, a middle-school counselor was held responsible for failing to no-

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ternity function).

124. *Bradshaw v. Rawlings*, 612 F.2d 135 (3d Cir. 1979) (holding a college owed no duty of custodial care to a student injured in an automobile accident after a college-sponsored activity); *Rabel v. Ill. Wesleyan U.*, 514 N.E.2d 552 (Ill. App. 4th Dist. 1987) (holding that the University owed no duty to protect a student injured during a fraternity party); *Beach v. U. of Utah*, 726 P.2d 413 (Utah 1986) (finding no special relationship between the University and a student injured on a school-sponsored field trip); *see generally* Peter F. Lake, *The Rise of Duty and the Fall of* In Loco Parentis *and Other Protective Tort Doctrines in Higher Education Law*, 64 Mo. L. Rev. 1 (1999) (discussing recent trend in courts to offer less protection to universities in cases involving student injuries).

125. *Wallace*, 961 S.W.2d at 715–716; *McLaughlin*, 461 A.2d at 124–126; *Bogust v. Iverson*, 102 N.W.2d 228, 229–232 (Wis. 1960).

126. For a discussion of prevention theory and duty-to-notify cases and policy, consult *infra* pages 145–147.

127. 597 A.2d 447 (Md. 1991).

tify parents of a thirteen-year-old student's suicide threats.[128] On its face, the case is readily distinguishable because it involved a student in a K–12 situation in which *in loco parentis* custodial care applies.[129] The Maryland court, however, did not see the issue as one principally of custodial relation but as a matter of duty generally. Indeed, in analyzing the matter, *Eisel* turned attention to the *Bogust* case,[130] which refused to impose a duty for a student's suicide on a college professor-counselor when the suicide occurred approximately six weeks after termination of counseling sessions with the student.[131] There the court held that the counselor did not have a duty to warn the parents of the student's emotional state.[132] *Bogust* pointed out that no facts had been alleged that showed that the counselor was on notice of suicidal tendencies.[133] *Bogust* left open the opportunity, as *Eisel* noted, that on the pleading of the appropriate facts, an appropriate duty might be applied.[134] As the Maryland court pointed out in *Eisel*,

> A number of factors distinguish the instant matter from those cases finding an absence of any duty, reviewed above, in which the custodial relationship between the suicide victim and the defendant was other than that of hospital and patient or jailer and prisoner. Eisel's claim involves suicide by an adolescent. The negligence relied on is a failure to communicate to the parent the information allegedly possessed by the defendants concerning the child's contemplated suicide, not a failure by the school authorities physically to prevent the suicide by exercising custody and control over Nicole.[135]

The *Eisel* court made precisely the kind of distinction that may well begin to emerge in higher-education litigation regarding student suicide.[136]

In cases involving actions against public institutions regarding suicide, governmental immunity doctrines may bar recovery

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128. *Id*. at 456.
129. *Id*. at 448.
130. 102 N.W.2d 228.
131. *Eisel*, 597 A.2d at 451.
132. *Id*.
133. *Id*.
134. *Id*.
135. *Id*.
136. *See e.g. Stanton v. U. of Me. Sys.*, 773 A.2d 1045 (Me. 2001) (finding a duty owed to a student in a sexual assault).

independent of an assessment for the reasonableness of the defendant's behavior. For example, in *Porter v. Maunnamgi*,[137] the court dismissed the claim against a state psychiatrist arising out of the suicide of a patient who was discharged from a state hospital because state statutory immunity law immunized psychiatrists when acting within the scope of authority and while engaging in discretionary acts.[138] The *Porter* court determined that a psychiatrist's decision to release an individual from a state institution is a discretionary act within the meaning of the state statute.[139]

In a recent case involving a college student at the University of Wyoming, the University and its employees were shielded from responsibility for the student's suicide.[140] In *White v. University of Wyoming,*[141] the Wyoming Supreme Court determined that two employees of the University were statutorily shielded from responsibility because they were not health-care providers and so were within the protection afforded by the state immunity statute.[142]

Chauncey White was an eighteen-year-old freshman living in a dormitory on campus.[143] White was found intoxicated in his residence hall; his speech was observed to be slurred and he was vomiting.[144] The hall director called university police out of concern for White's safety and also because White was an underaged drinker.[145] White was taken by the police to the hospital and later discharged.[146] In the early morning hours after his discharge, White cut himself on his wrists with either a pocket knife or razor blade, inflicting nonserious wounds.[147] The hall director assessed White for his risk of suicide and talked with him about the incident, determining that he was not suicidal.[148] The hall director also contacted university police and requested that they contact

137. 764 S.W.2d 699 (Mo. App. 1988).
138. *Id*. at 700.
139. *Id.*
140. *White v. U. of Wyo.*, 954 P.2d 983 (Wyo. 1998).
141. 954 P.2d 983.
142. *Id*. at 987.
143. *Id*. at 985.
144. *Id*.
145. *Id*.
146. *Id*.
147. *Id.*
148. *Id*.

the counseling center's crisis-intervention team.[149] After being contacted by the police, the crisis-intervention team responded and talked with White for over an hour regarding his suicide attempt in an effort to determine the level of risk.[150] In the conversation, "White denied that he had attempted to commit suicide."[151] The crisis-intervention-team representative "determined that White did not have a plan, or access to a means, to commit suicide and that he had a good support system of friends."[152] White appeared to be open to the idea of counseling and, because of this, the crisis-intervention-team representative determined that White was "low risk" and ended the crisis-intervention-team involvement.[153] At no time did the University inform White's parents of this incident or the issues relating to their son.[154]

Over two years later, White committed suicide.[155] His parents sued the University of Wyoming and the employees for negligence and breach of fiduciary duties "by failing to adequately monitor, treat, counsel, or give notice to the Whites in response to their son's December 1990 suicide attempt."[156]

The issue before the *White* court was not whether reasonable care was used, but whether the employees of the University fell within the protections of the governmental immunity statute in Wyoming, the *Wyoming Governmental Claims Act*.[157] After analyzing this issue, the court concluded that the employees were not health-care providers in the sense that the Wyoming Governmental Claims Act contemplated, and therefore, they were immune from liability in this matter.[158]

Individuals or institutions charged with negligent failure to notify may avoid addressing the negligence question if they qualify for immunity conferred under state tort-law-immunity rules. To the extent that defendants are not immune, as in the *Jain* case,[159] courts may have to grapple with a difficult issue. The ra-

149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.*
155. *Id.*
156. *Id.*
157. Wyo. Stat. Ann. § 1-39-104 (1997); *White*, 954 P.2d at 984.
158. *White*, 954 P.2d at 987.
159. 617 N.W.2d 293.

tionales underlying the common-law limitation of the responsibility for suicide have been the following: (1) the suicide victim was a wrongdoer entitled to no relief in the court system for himself or on behalf of his relatives, (2) suicide is extremely difficult to prevent and therefore liability should be limited, (3) responsibility to prevent suicide entails an affirmative duty, for which the common law traditionally provides significant limitations, and (4) the issue of foreseeability is prominent in suicide cases and only individuals with training and special knowledge are in a position to foresee and address suicide risk.

These underlying policy rationales, however, are weakest in duty-to-notify cases. First, the law has clearly moved away from a moralistic attitude regarding suicide. Suicidal individuals are now regarded as victims, not wrongdoers, reflecting a dramatic shift in the law and mental-health paradigms. This attitudinal shift alone most likely accounts for the movement in the law as exemplified in *Eisel*. Second, when a defendant is asked to prevent suicide from happening, the resulting burden is extreme. Only those who have full custodial control or who have engaged in wrongful acts that precipitate suicide can be asked to account for suicide as a result of their actions or inactions. Even in that context, foreseeability of danger is an essential element; defendants must either have knowledge of suicidal tendencies or the suicide must be reasonably proximate in time and space to the wrongful act that precipitated it. However, when the allegation is one of notification, not prevention of suicide, the burden on a defendant shifts from preventing a suicidal intent to simply providing information to parties who may or may not have a chance to intervene effectively with the suicidal individual.

A duty to notify, incidentally, is more readily inferred from the college-student relationship. For example, a variety of campus documents and policies reflect the college's goals for promoting student development and the well-being of the student. Although this territory is not well explored in higher-education law, there may even be a fiduciary duty between a student and the college or even between the parent and the college sufficient to provide information for the best interest of the student.[160] While a student is not *in loco parentis* in a higher-education environment, nonethe-

160. *See* Bickel & Lake, *supra* n. 11, at 185–187.

less, students, particularly in their transitional days, have a unique relationship with their university such that the university must provide guidance through difficult times.[161] A duty to notify is a much lower cost alternative than a duty to actually prevent the suicide from happening.

One major obstacle to holding institutions of higher education legally responsible for a student's suicide is the traditional common-law rule that no affirmative duty exists absent a special relationship or special circumstances. In many cases, no one alleges that an educational institution caused suicidal ideation; the allegation is simply that the institution was aware of the ideation and the associated risks. The traditional common-law rule of no affirmative duty absent a special relationship[162] continues to come under attack in American jurisdictions.[163] Courts in more recent decades have been more willing to impose a responsibility to share information in an affirmative-duty context. For example, in the landmark decision of *Tarasoff v. University of California*,[164] the California Supreme Court determined that a psychotherapist owed a duty to warn a foreseeable and identifiable victim and to protect parties from the dangerous tendencies of a patient.[165] In one form or another, this rule has become prominent throughout the United States in the psychotherapeutic context.[166]

Courts have been willing to abrogate the no-affirmative-duty-to-protect-third-parties rule particularly in circumstances in which information can be shared by a professional, especially a mental-health professional, for the safety of third parties.[167] This

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161. *See Stanton*, 773 A.2d at 1045 (finding a young woman entering a college environment is entitled to protection in the transitional phase).

162. *See* Adler, *supra* n. 56, at 886–898 (discussing the typical relationship required by courts to impose an affirmative duty); Lake, *supra* n. 56, at 331.

163. *See Schuster v. Altenberg*, 424 N.W.2d 159 (Wis. 1988) (indicating that a psychotherapist may have an affirmative duty to warn a third person or institute a commitment proceeding when a patient's condition has dangerous implications).

164. 551 P.2d 334 (Cal. 1976).

165. *Id*. at 340.

166. *See e.g. Emerich v. Phila. Ctr. for Human Dev., Inc.*, 720 A.2d 1032, 1036–1037 (Pa. 1998) (noting that the rule from *Tarasoff* has been widely accepted, in some form, among those courts that have dealt with the issue); *but see Nally*, 763 P.2d at 957–958 (refusing to extend an affirmative duty to prevent suicide to clergy members); *Bellah v. Greenson*, 146 Cal. Rptr. 535, 538–539 (App. 1st Dist. 1978) (finding that a therapist is not required to prevent a suicidal patient from committing suicide).

167. Peter F. Lake, *Virginia Is Not Safe for "Lovers": The Virginia Supreme Court Rejects* Tarasoff *in* Nasser v. Parker, 61 Brook L. Rev. 1285, 1285 n. 3 (1995); Peter F. Lake,

extension of responsibility has analogies in the suicide situation. *Tarasoff* and its progeny create a duty to warn either the identifiable victim or someone in a position to protect the identifiable victim (e.g., law enforcement) of the individual's dangerous tendencies; the extension to the suicide context would contemplate a duty to warn someone in a position to protect the potentially suicidal individual. The California Supreme Court itself has refused to extend *Tarasoff* in this way. In *Nally*,[168] the court distinguished danger to others from danger to self and stated concerns for the confidential relationship between a patient and therapist in refusing to impose a duty on a clergy member to warn of a suicide or refer a suicidal individual for treatment in breach of patient confidentiality.[169] However, the college–student relationship is often different from a *Nally* fact pattern. As in *Jain*,[170] a student may display suicidal ideation and intent to individuals in a nonconfidential relationship, thus creating no threat to effective and confidential therapeutic or religious relationships. Indeed, a university may receive information in such a manner that a parent or family may be in the best position to intervene. In some cases, notification will be more effective if made to law enforcement or a facility for involuntary commitment. The question relates to the level of risk or perception of risk that will generate the duty.

Courts frequently devote much analysis to foreseeability when assessing responsibility for suicide.[171] Thus, it is typical that for suicide responsibility to attach, a defendant must have sufficient information to enable that defendant to determine that suicide is foreseeable and likely.[172] Modern mental-health research has improved dramatically in identifying factors that should give rise to concern for suicide.[173] In many cases, these factors can be discerned by nonphysician health-care providers and others who

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Revisiting Tarasoff, 58 Alb. L. Rev. 97, 98–101 (1994); *but see Thapar v. Zezulka*, 994 S.W.2d 635, 638 (Tex. 1999) (refusing to recognize a "mental health professional's duty to warn third parties of a patient's threats").

168. 763 P.2d at 948.

169. *Id*. at 958–959.

170. 617 N.W.2d 293.

171. *See* C.T. Drechsler, *Civil Liability for Death by Suicide*, 11 A.L.R.2d 751, 782–786 (1958) (discussing foreseeability in terms of anticipation).

172. *Id*.

173. Monica H. Swahn & Lloyd B. Potter, *Factors Associated with the Medical Severity of Suicide Attempts in Youths and Young Adults*, 32 Suicide & Life-Threatening Behavior 21 (2001).

provide campus services associated with the health and wellness of students.[174]

Moreover, where the issue is one of notifying parents or others of the danger a student may present to him or herself, the demands of foreseeability should not be as strict. For example, if the issue is whether one should be committed or otherwise placed in custodial or supervisory care as a result of suicidal activities, the threshold should be quite high for that type of strong intervention. In areas in which professional staff may doubt whether a person needs hospitalization or custodial care, there may be sufficient information to give rise to a concern that a reasonable defendant would share the information with parents or other related third parties. Indeed, the foreseeability issue may be even less critical than in a situation in which third parties are endangered. In many cases, the information can be shared among individuals already possessing some knowledge or indication of the dangers presented to the student. In short, foreseeability often is not as critical a concern and should not require as high a threshold as it would in a situation in which the remedy involved is placing an individual in strict custodial care.

Overall, the policy reasons underlying limited responsibility regarding student suicide seem to wane significantly in the face of a lesser-included responsibility of notification. The issue of notification is easier when a confidential relationship is not at risk. Understandably, the courts will want to protect colleges from extensive liability regarding student suicide. If this social problem begins to increase in colleges, courts may have to rethink positions such as those articulated in *Jain*.[175]

One obstacle in imposing liability for failing to warn or advise parents or third parties of a dangerous student involves the requirement of breach. For liability to attach, the institution must not only have the duty, it must be in breach of the duty. The facts in the *White*[176] and *Jain*[177] cases strongly suggest the university in each situation used reasonable care in light of its knowledge and the circumstances at the time. Even if a duty to prevent suicide through warning is acknowledged generally by courts, it appears

174. *Id.*
175. 617 N.W.2d 293.
176. 954 P.2d 983.
177. 617 N.W.2d 293.

that in many situations, universities will discharge that duty with reasonable care. Indeed, one concern that will have to be addressed is the very real possibility that, in an individual case, notification may worsen the problem rather than make it better. In some cases, the parent or other third party who would be notified may be a major factor in the student's depression or suicidal ideation, and notifying and including that person will only increase the pressure the student feels to complete the act or may otherwise exacerbate the patient's or the student's condition. Reasonable administrators in a university setting must consult with appropriate professional staff to assess whether notification is in the best interest of the student and whether such notification is expected to protect the student from suicide or suicidal ideation.

Another obstacle to imposing liability in a suicide situation for failure to notify is causation. To recover, an aggrieved parent or a third party should be required to demonstrate that notification would have had a substantial and material impact on the well being of the student. In other words, to be liable, the university must be shown as some form of a traditional "substantial factor."[178] It may be that many courts are reluctant to impose a duty to notify on unspoken causation grounds. In many cases, it will be apparent that notifying the parents or third parties would have no appreciable benefit to the student. For example, the institution should not be liable for failing to notify parents who are already aware of their child's circumstances.

Courts may, over time, begin to reexamine the duty requirement in suicide situations. Rather than base its decision on a finding of "no duty," a court may instead find that the college or university had a duty but is not liable either because it did not breach that duty or because the plaintiff has failed to establish causation. Universities and colleges are likely to continue to win suicide cases, albeit on other grounds. This may well be the trend in future cases as courts begin to recognize that modern suicide-prevention efforts strongly favor inclusion of family members,

178. *Saelzler v. Advanced Group 400*, 23 P.3d 1143, 1145 (Cal. 2001) (lacking evidence to establish that the defendant's breach of duty contributed to the plaintiff's injury); *Landers v. E. Tex. Oil Co.*, 248 S.W.2d 731, 732–733 (Tex. 1952) (introducing the concept that when more than one wrongdoer exists, the wrongdoers will be "held jointly and severally liable").

friends, and others when it is clinically determined that such involvement would have a positive impact on the suicide victim.

In addition to legal concerns, campus medical and mental health personnel also are influenced by interests and obligations that arise from their clinical relationships with students. When confronted with a student who appears to be at risk for suicide or harm to self, professional staff, including counselors, psychologists, and physicians, may be very reluctant to violate the student's expectation of confidentiality. Professional rules of ethics place extreme importance on the confidentiality between the therapist or physician and the individual client or patient.[179] This forms the basis for the trust that is necessary to a successful therapeutic or clinical relationship. Professional ethics codes and the law permit disclosure, however, when necessary to avoid serious harm to self or others.[180]

Although concerns may be articulated in terms of breach of an ethical or legal obligation, both the law and professional ethical codes provide exceptions for disclosures made in these exceptional circumstances. What remains, however, is the therapist's or physician's concern for the potential damage that disclosure may do to the therapeutic or clinical relationship and the belief that maintaining the trust relationship and protecting the integrity of the treatment relationship is essential to the client's well-being. This concern may influence professional staff to fail to notify or to delay notification to parents, family, or legal authorities, even in cases in which the law and ethical codes would permit this disclosure.

Professional staff and the attorneys who advise them are encouraged to discuss these issues directly and to evaluate the risks for the student. Among the more difficult cases in this regard will be students with serious eating disorders. These students may not make an overt threat of suicide but often deny the life-threatening consequences of their behavior. Professional staff

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179. ACA Code of Ethics & Stands. of Prac. (Am. Counseling Assn.) (available at <http://www.counseling.org/resources/ethics.htm#ce>); Code Med. Ethics 5.05 (Am. Med. Assn. 2000); NASW Code Ethics (Natl. Assn. Soc. Workers 1997) (available at <http://www.ssc.msu.edu/~sw/ethics/nasweth.html>); *Ethical Principles of Psychologists and Code of Conduct*, 47 Am. Psychol. 1597 (Am. Psychol. Assn. 1992).

180. ACA Code of Ethics & Stands. of Prac., *supra* n. 179; Code Med. Ethics, *supra* n. 179.

may, in some cases, come to believe that notification of the family will not be in the student's immediate best interest. A common fear is that if the student's therapist notifies the family the student will feel betrayed and abandon the treatment relationship, thus placing the student at greater risk. In these cases, professional staff, including, as appropriate, a representative from student health services, campus counseling services, and campus legal counsel should develop a decision model for the manner in which parents or others will be notified. This discussion should include issues such as when notification is appropriate, when alternatives (e.g., hospitalization) may be preferable, and the extent to which the student will be a part of the notification process.

A facilitator university does not view the student's wellness as a student-health-services issue only. Our experience teaches us that when the legal issues devolve into questions of the extent of the need to breach confidential therapeutic relationships, a college is not facilitating a safe overall environment because issues of suicide are issues for the entire college community to address. A facilitator college recognizes that transitional students (such as Jain) are at especially high risk because the students are in a stage of development past childhood, but short of full adult responsibilities. These students need structure and an environment in which they can make reasonable, safe choices. This means that a residential four-year college will provide access to adequate health care and spiritual programs, but also will foster an environment in which a student at risk of suicide will be protected by the entire community, including fellow students. One way to foster this environment is to involve family and friends when an individual is in crisis. Also, despite the recognized need for retention, some students' mental health issues do not suit them for college life at this stage in their development. For example, would Jain still be alive if he had been sent home at the first sign of trouble? Traditionally, a negligent-retention claim is a variation of the disfavored educational-malpractice cause of action, but a failure to remove a student for his or her own safety raises different issues.[181] The facilitator college then considers a variety of op-

181. *See Miller v. Loyola U. of New Orleans*, 2002 WL 31256424 (La. App. 4th Sept. 30, 2002) (dismissing the claim of a law student alleging educational-malpractice and noting a "great weight of authority" against such claims for alleged poor instruction and other forms of supposed educational-malpractice).

tions in dealing with suicide — many set out below — and recognizes that it can preserve certain confidential relationships while still involving family members and others for the benefit of student safety.

V. POLICY AND PREVENTION PROGRAMS

In the face of increasing need for student services regarding self-inflicted injury in light of trends in legal decisions regarding liability for student suicide, institutions should make efforts to adopt prevention programs and protocols regarding student self-inflicted injury and suicide. The adoption of such programs is made more difficult by the fact that, at this point in time, there is not a model such as the environmental-management model for alcohol and other drug use[182] that can be used for the management of student self-inflicted injury and suicide. Institutions do not currently have a single national governmental source for guidance on programming and protocols to adopt and therefore should review policies and procedures used by other institutions.

While courts generally have not found higher education institutions liable for the mere failure to provide prevention programming, it is important to ensure that the institution follows whatever prevention programs or protocols it chooses to adopt. Following proper protocols can be especially challenging as key personnel change over time and as budget cuts threaten program resources. Also, colleges should evaluate a variety of strategies for addressing student safety. Arizona State University (ASU), for example, has adopted a risk-management strategy that is adaptable to multiple issues not limited to suicide.[183] The Vice President for Student Affairs at ASU has appointed a Student Assistance Coordinating Committee that meets monthly to monitor high-risk student concerns.[184] The committee includes representatives from the Dean of Students' office, the campus counseling center, the

182. Educ. Dev. Ctr., Inc., *Higher Education Center for Alcohol and Other Drug Prevention*. <http://www.edc.org/hec/> (last updated June 14, 2002).

183. Dr. Leon Shell, Associate Vice President of Student Affairs, established ASU's current strategy in 1993. The program's mission is to "coordinate the delivery of appropriate agency resources to students with behavioral and/or mental health problems and to reduce the occurrence and severity of acute psychological problems." Memo. from Dr. Leon Shell, Assoc. Vice Pres. of Student Affairs (May 18, 1993) (copy on file with *Stetson Law Review*).

184. *Id*.

student health center, the disability resource office, campus police, campus housing, and the university legal office.[185] This committee serves a case-management role for administrators working with students who may be raising concerns in multiple offices across campus.[186] It also provides for the sharing of nonprivileged information among offices in a position to provide services or appropriate referrals.[187] If no one has an individual case to present at a meeting, the committee uses the scheduled meeting time to discuss general issues perceived as increasing risk on campus, such as the presence of minors on campus, management of students with eating disorders, or any other perceived patterns of apparent high risk.[188]

Another important strategy for managing risk is the periodic review of the physical campus environment for features such as tall buildings, bridges, gorges, sites of previous attempts, and other physical dangers. Effective suicide- and self-inflicted-injury prevention programs may include outside contractors, emergency hot lines, and information about community resources. Managing high-risk behavior is not isolated to campuses alone. Community resources, to the extent they are available, can be very helpful.

While in college, students may face a variety of pressures that increase the risk of self-destructive behavior. Students frequently engage in major life transitions, for example loss of family members or breaking up with high school girlfriends and boyfriends, living in new places, failing exams, picking the wrong major, and transitioning to a lifestyle with more responsibility and less structure. College students also may experience feelings of helplessness, hopelessness, and negative feelings about themselves that may contribute to suicidal ideation. Certainly, alcohol and substance abuse can exacerbate depressive periods as well. High-risk alcohol and substance use, therefore, are major risk factors for suicide.

Effective suicide prevention requires focused training for all professional staff, including physicians, nurses, psychologists, therapists, social workers, counselors, and individuals who provide resources for disabled students, as well as campus police,

185. *Id.*
186. *Id.*
187. *Id.*
188. *Id.*

residence-hall staff, student-conduct officers, and campus attorneys.

The academic staff also needs to become more attuned to the realities of suicidal ideation. Certain academic programs, such as freshman composition courses or psychology courses, may inadvertently create an opportunity for students to disclose suicidal thoughts. Professors in these programs should know about available campus resources and be encouraged to consult immediately with professional staff when they receive any troubling disclosure from a student.

Finally, programming also is important for the students themselves. Students should be informed about resources available to help them manage the increasing stresses of campus life.

Educational and informational materials and training should cover, at a level appropriate to the audience, recognition of potential warning signs and identification of available campus and community resources. Individuals should understand the importance of consulting with professional staff and the dangers of ignoring risk factors or trying to manage a situation without the benefit of professional advice.

Classic signs of suicide risk include verbal or written expression of feelings that family members, students, teachers, or lovers do not care or that life is not worth living.[189] Statements to the effect that the world would be better if the individual were dead or gone may also be verbal warning signs.[190] Nonverbal warning signs include suddenly giving away personal belongings and other possessions, heavy drug and alcohol use, loss of attention to personal appearance and friends and social activities, and poor performance in school.[191] Many of these signs can be observed by various campus personnel, including the academic staff. When these signs occur in combination, the student may be at especially high risk, and all reasonable efforts should be made to inform the student of options for assistance.

The vast majority of people who attempt suicide have shown some discernable warning signs. For all but professional staff, the goal is the identification and reporting of behavior that may sug-

189. Natl. Inst. Mental Health, *supra* n. 4.
190. *Id*.
191. *Id*.

gest an increased risk of suicide and not diagnosis of mental illness. First, not all individuals who attempt or commit suicide have a mental disorder, and the existence of a disorder does not, in itself, determine risk. Second, only professional staff acting in their professional capacity should attempt to diagnose any student. Finally, no action should be taken on the basis of a student's perceived or actual disability; institutional decisions should be based solely on the student's behavior and an assessment of the potential risk to the student and others.

Many suicides can be prevented by an effective, appropriate, and timely intervention. Once a student has indicated suicidal ideation or has demonstrated sufficient risk factors to raise concern, effective intervention may begin with an appropriate referral protocol. College personnel, from resident assistants to tenured faculty, should be able to identify, consult with, and refer to a campus or community resource when confronted with a potentially suicidal person.

While creating a campus referral-and-treatment protocol is important, it is equally essential to actually follow the protocol in individual cases. As is apparent from the *Jain* case,[192] litigation will raise the failure to comply with one's own protocol and treatment strategies for intervention. Even in cases in which the failure to comply with a protocol does not ultimately lead to liability, the consequences of the failure may create additional issues at trial. Referral-and-treatment plans should be sensitive to scientifically recognized risk factors identified through appropriate professionals.

When working with a potentially suicidal student, involving the family may be important. One can expect, however, that some families will deny the problem and, in other cases, may actually make the problem worse. When students leave campus for break, additional risk factors may be present, such as increased parental pressure or access to guns, drugs, or dangerous substances. Students who remain on campus during breaks, when fewer students and staff are present and when regular routines are interrupted, may go unnoticed or may not have access to regular sources of support or professional services. If a student requires hospitalization, a university should establish a protocol for notification of the

192. 617 N.W.2d 293.

family and for the appropriate timing and circumstances for the return to campus activities. If minors are involved, the university must determine the extent to which consent to treatment is required. Additionally, university health-services and counseling centers need to establish an effective referral protocol to community resources for high-risk former students or nonstudents who are not otherwise eligible for campus services.

VI. CONCLUSION

The law has remained relatively protective of institutions of higher education in cases of student suicide. Current legal trends strongly suggest that those protections will begin to erode in the next decade or so. A student suicide represents a tragic loss that affects many individuals, from the student and the student's family, to witnesses and friends, to campus personnel and professional staff. Suicide is a major health risk for our students and is closely connected with high-risk alcohol and substance use. Colleges and universities should strive to coordinate resources to educate the campus and to implement effective referral and treatment protocols whenever a potential for suicide is suspected. The university should facilitate programs and decisions that promote student safety, understand and engage potential risks, and use campus and community resources to manage them.