

# “PROGRESSION” SINCE CHARLES WHITMAN: STUDENT MENTAL HEALTH POLICIES IN THE 21ST CENTURY

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## I. STUDENT MENTAL HEALTH: THE PENDULUM EFFECT

In 1941, a man by the name of Charles Whitman was born in the small town of Lake Worth, Florida.<sup>1</sup> From a young age, it was apparent that Whitman was a well-rounded and talented individual, excelling in both academic and physical pursuits.<sup>2</sup> In addition, Whitman’s family was fairly well off and respected; however, Whitman’s home-life was not as pleasant as this façade would indicate.<sup>3</sup> His father, C.A. Whitman, belittled and abused Charles from a young age, along with his mother and two brothers.<sup>4</sup> In an act of rebellion, Whitman joined the Marines against his father’s will shortly before turning eighteen, where he became very proficient with a rifle.<sup>5</sup>

In September 1961, Whitman enrolled in the University of Texas at Austin. Through a prestigious Marine Corps scholarship, he pursued an engineering degree tuition-free.<sup>6</sup> Unfortunately, Whitman did not react well to the transition from the dictatorial atmosphere created by his father to the absolute freedom of university life.<sup>7</sup> His grades were lackluster, and he participated in a prank where he was

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1. Marlee MacLeod, *Charles Whitman: The Texas Tower Sniper*, CRIME LIBRARY, [http://www.crimelibrary.com/notorious\\_murders/mass/whitman/index\\_1.html](http://www.crimelibrary.com/notorious_murders/mass/whitman/index_1.html) (last visited Apr. 14, 2008).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* Whitman received a Sharpshooter’s Badge, along with Good Conduct and Marine Corps Expeditionary medals. His proficiency is further illustrated by the fact that he scored 215 out of a possible 250 points on shooting tests. He also excelled at rapid fire from a long distance and was most accurate when shooting at moving targets. *Id.*

6. *Id.* Whitman received the scholarship through the Naval Enlisted Science Education Program, which paid for his tuition and books, and provided a stipend of \$250 per month. *Id.*

7. *Id.*

arrested for poaching a deer.<sup>8</sup> These problems led to the discontinuation of his scholarship, forcing him to return to active duty.<sup>9</sup> During this period, Whitman married his girlfriend Kathy Leissner, a woman who he would later murder.<sup>10</sup>

After an honorable discharge from the Marines in 1964, Whitman returned to the University of Texas.<sup>11</sup> Although he was finally free of the military life, he was not able to escape his family troubles; Whitman's mother filed for divorce in 1966 and moved to Austin, Texas.<sup>12</sup> Shortly thereafter, Whitman began to suffer from overwhelming depression—a fact he admitted to a doctor.<sup>13</sup> Whitman was subsequently advised to seek help from university psychiatrist Dr. Maurice Heatly.<sup>14</sup> During their meeting, Whitman said that he was extremely frustrated with his life and that he sometimes had thoughts of “going up on the Tower with a deer rifle and shooting people.”<sup>15</sup> Whitman never attended another counseling session with Dr. Heatly.<sup>16</sup>

Four months later on July 31, 1966, Whitman purchased a Bowie knife and binoculars and began writing an explanatory letter where he claimed that he did not “consider this world worth living in.”<sup>17</sup> In the early hours of the following morning, Whitman killed his mother and wife and proceeded to the top of the University of Texas clock-tower.<sup>18</sup> It was from this vantage that he killed fourteen people before he was finally shot and killed by two police officers.<sup>19</sup>

This tragedy brought to the forefront many issues regarding student mental health. When should a college or university be held liable for the extreme actions of its students? How should a college or university respond to threats of violence by a student? Should the response to a threat be different if the threat is suicidal rather than homicidal in nature? The Whitman case also represents a time when the mindset was at one extreme, with colleges and universities providing students access to mental health facilities, but with their proactive duties going no further than to prescribe medication. Today, modern realities dictate that colleges and universities can no longer rely on laissez-faire policies with regard to student mental health. Unfortunately, judicial responses to cases involving student mental

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8. *Id.*

9. *Id.* Whitman tried to have his scholarship renewed, but his request was denied. He also discovered that the year and a half he spent in Austin did not count toward his active duty requirements. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* In his note, Whitman stated:

It was after much thought that I decided to kill my wife, Kathy. . . . The prominent reason in my mind is that I truly do not consider this world worth living in, and am prepared to die, and I do not want to leave her to suffer alone in it.

*Id.*

18. *Id.*

19. Jim Yardley, *Off Limits Since '74, Deck Reopens*, N.Y. TIMES, Sept. 16, 1999, at A18.

health issues have begun to develop a standard that may discourage colleges and universities from being proactive in providing assistance for student mental health-related situations.

In order to develop an understanding of the current need for student mental health awareness at the college and university level, the next section of this note outlines the current state of mental health among college and university students from a statistical standpoint. Thereafter, the note analyzes a developing “immediate probability” standard with regard to student mental health issues and this standard’s possible effect on college and university responses to student mental health problems. Finally, this note analyzes college and university liability as a general matter both from a historical and modern standpoint in order to identify possible judicial standards that would provide colleges and universities with greater flexibility to address student mental health issues while still allowing liability when necessary.

## II. THE CURRENT STATE OF MENTAL HEALTH AMONG STUDENTS

### A. General Statistics

According to the National Institute of Mental Health, over one-fourth of Americans over the age of eighteen, almost 58 million people, suffer from some form of mental disorder.<sup>20</sup> That number includes almost 15 million people suffering from major depressive disorder, 6 million from panic disorder, 2.2 million from obsessive compulsive disorder, 2.4 million from schizophrenia, and 15 million from social phobia.<sup>21</sup> Almost 21 million Americans suffer from some sort of mood disorder, including “major depressive disorder, dysthymic disorder, and bipolar disorder” and approximately 40 million suffer from anxiety disorders.<sup>22</sup> All of these conditions are relevant to students, especially within the context of their transition into college or university life; however, statistics alone do not even scratch the surface of student mental health as a whole.

The 2006 National College Health Assessment—the largest known comprehensive data set on the health of college and university students—reported that at least once within a span of twelve months approximately 65% of college and university females and 50% of college and university males reported feeling

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20. Nat’l Inst. of Mental Health, *The Numbers Count: Mental Disorders in America*, <http://www.nimh.nih.gov/publicat/numbers.cfm> (last visited Mar. 14, 2008).

Mental disorders are common in the United States and internationally. An estimated 26.2 percent of Americans ages 18 and older—about one in four adults—suffer from a diagnosable mental disorder in a given year. When applied to the 2004 U.S. Census residential population estimate for ages 18 and older, this figure translates to 57.7 million people.

*Id.* (internal citations omitted).

21. *See id.* Major Depressive Disorder is considered the “leading cause of disability” in the United States for ages 15–44. *Id.* (internal citation omitted).

22. *Id.* “Anxiety disorders include panic disorder, obsessive-compulsive disorder, post-traumatic stress disorder, generalized anxiety disorder, and phobias (social phobia, agoraphobia, and specific phobia).” *Id.*

“things were hopeless,” over 80% of females and almost 70% of males reported feeling “very sad,” and 45% of females and 35% of males reported feeling “so depressed it was difficult to function.”<sup>23</sup> Even more alarming is the fact that approximately 10% of females and 9% of males “seriously consider[ed] attempting suicide” at least once within the same twelve-month span.<sup>24</sup>

### B. Suicides

Suicide is a continuous and major concern among college and university officials and healthcare providers. Approximately 30,000 people commit suicide each year, making suicide the eleventh leading cause of death in the United States.<sup>25</sup> Even more staggering is the number of attempts. Each day, 1500 people attempt suicide,<sup>26</sup> which means there are almost 550,000 suicide attempts each year. About 90% of suicide victims suffered from at least one psychiatric disorder,<sup>27</sup> with 60% estimated to suffer from major depression,<sup>28</sup> also relevant due to the prominence of depression and other mental conditions among college and university students. Up to 50% of people who commit suicide had attempted suicide in the past.<sup>29</sup>

Regarding college and university students specifically, suicide is the second leading cause of death.<sup>30</sup> Young males are much more prone to commit suicide than young females, with 16.5 young males per 100,000 committing suicide in 2001 in relation to only 2.9 young females per 100,000 committing suicide in the same year.<sup>31</sup>

### C. Modern Trends

These numbers are exacerbated by the fact that an increasing number of students are being diagnosed with mental disorders. The percentage of students who sought help for depression and suicidal tendencies doubled between 1989 and 2001 according to a Kansas State University study.<sup>32</sup> The same study found that, even though the number of students seen by Kansas State University’s counseling

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23. AM. COLL. HEALTH ASS’N, NATIONAL COLLEGE HEALTH ASSESSMENT 13 (2006), [http://www.acha-ncha.org/docs/ACHA-NCHA\\_Reference\\_Group\\_ExecutiveSummary\\_Fall2006.pdf](http://www.acha-ncha.org/docs/ACHA-NCHA_Reference_Group_ExecutiveSummary_Fall2006.pdf).

24. *Id.*

25. *See* AM. FOUND. FOR SUICIDE PREVENTION, FACTS ABOUT SUICIDE (2006), [http://www.afsp.org/files/College\\_Film/factsheets.pdf](http://www.afsp.org/files/College_Film/factsheets.pdf).

26. *Id.*

27. *Id.* “Certain personality disorders, such as borderline and antisocial personality disorders, appear to carry high risk for suicide. Impulsivity also appears to be a risk factor for suicide.” *Id.*

28. *Id.* at 3.

29. *Id.* at 1.

30. *Id.* at 2. Among individuals ages 15 to 24 in the United States, only accidents and homicides cause more deaths than suicides. *Id.*

31. *Id.*

32. *See* Erica Goode, *More in College Seek Help for Psychological Problems*, N.Y. TIMES, Feb. 3, 2003, at A11.

center remained stable, the percentage of students taking some kind of psychiatric medication doubled between 1989 and 2001.<sup>33</sup> “In a 2002 national survey, more than 80 percent of 274 directors of counseling centers said they thought the number of students with severe psychological disorders had increased over the previous five years.”<sup>34</sup> This belief seems to conflict, however, with the fact that there was no significant increase in students with eating disorders, chronic mental disorders, or drug and alcohol abuse issues between 1989 and 2001.<sup>35</sup> In addition, “[i]n a 2005 national survey of the directors of college counseling centers, 95 percent of counseling directors reported an increase in students who were already on psychiatric medications when they came in for help.”<sup>36</sup>

While it is uncertain whether this increase is due to an enlargement of the overall number of students with psychiatric disorders or if physicians today are simply more inclined to prescribe psychiatric medication, student mental health is certainly a major issue facing colleges and universities.

### III. MODERN RESPONSES TO MENTAL HEALTH THREATS

While the liability of colleges and universities regarding students’ mental health-related injuries is still unclear, some courts have adopted a narrow foreseeability standard that focuses on whether a college or university knew of an “imminent probability” of injury. In *Schieszler v. Ferrum College*,<sup>37</sup> a student at Ferrum College in southwest Virginia, Michael Frentzel, got into an argument with his girlfriend, Crystal.<sup>38</sup> Campus police responded to the disturbance and discovered that Frentzel had several self-inflicted bruises and was exhibiting suicidal behavior.<sup>39</sup> Officials from the college arrived on the scene and had Frentzel sign a letter promising not to hurt himself.<sup>40</sup> The officials then left Frentzel in a room alone, even after Crystal warned them that he had tried to commit suicide before and that she received an email implying that he was going to try again.<sup>41</sup> By the time officials returned to Frentzel’s room, he had already hung himself with a belt.<sup>42</sup> LaVerne Schieszler, Frentzel’s aunt and the personal

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33. *Id.*

34. *See id.*

35. *Id.*

36. Lynette Clemetson, *Off to College on Their Own, Shadowed by Mental Illness*, N.Y. TIMES, Dec. 8, 2006, at A1.

37. 236 F. Supp. 2d 602 (W.D. Va. 2002).

38. *Id.* at 605. The defendants moved for dismissal based on lack of subject-matter jurisdiction and failure to state a claim. *Id.* The representative for Michael Frentzel later moved to add three defendants and assert a claim for punitive damages. 233 F. Supp. 2d 796, 797 (W.D. Va. 2002).

39. *See Schieszler*, 233 F. Supp. 2d at 798. “The campus police . . . went to Frentzel’s room and found the door locked. Frentzel eventually let them in but stated that he wanted to be left alone because he had something to do. Frentzel indicated that bruises on his head and neck were self-inflicted.” *Id.*

40. *See id.*

41. *See id.* at 799. “Frentzel sent an email to an unnamed person stating that he was ‘sorry’ and that the recipient should ‘tell Crystal that he loved her.’” *Id.*

42. *Id.*

representative of his estate, brought a wrongful death action against Ferrum College and its representatives.<sup>43</sup>

In ruling on a motion to amend the complaint, the court made two important conclusions: (1) a special relationship existed between Frentzel and Ferrum College and (2) a trier of fact could find that there was an “imminent probability” that Frentzel would try to hurt himself.<sup>44</sup> Factors that supported this “imminent probability” included college officials finding Frentzel alone in his room with self-inflicted bruises, their knowledge of a suicidal email sent from Frentzel to Crystal, and a statement signed by Frentzel promising that he would not harm himself.<sup>45</sup> The last factor, Frentzel’s signed statement, indicated that the college believed Frentzel wanted to kill himself.<sup>46</sup> This ruling marked one of the rare occasions where a court used a foreseeability standard when determining college or university liability for student behavior. In addition, “imminent probability” was the standard adopted by the court when determining foreseeability in this negligence case.<sup>47</sup>

A recent ruling involving the Massachusetts Institute of Technology (“MIT”) incorporated *Schieszler’s* ruling. In *Shin v. Massachusetts Institute of Technology*,<sup>48</sup> a student, Elizabeth Shin, began to suffer from psychiatric problems in February 1999.<sup>49</sup> She subsequently overdosed on Tylenol with codeine and was admitted to a hospital for a one-week psychiatric observation, during which doctors discovered that she suffered from mental health problems and had previously engaged in self-injurious behaviors.<sup>50</sup> Shin was later diagnosed with “adjustment disorder” and suffered from “situational issues” due to a recent break-up with a boyfriend combined with mediocre grades.<sup>51</sup>

In October 1999, Shin was sent to MIT Mental Health after admitting that she had suicidal thoughts.<sup>52</sup> Shin continued to cut herself and told a teaching assistant that she intended to take a bottle of sleeping pills.<sup>53</sup> She continued treatment until April 10, 2000, when MIT Mental Health received notification that Shin had discussed plans to kill herself.<sup>54</sup> MIT Mental Health decided not to respond to this notification because Shin had recently informed a psychiatrist that she was fine and because there had been overreactions to a suicide threat that she made just two

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43. *Id.* at 797–98.

44. *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 602, 608–09 (W.D. Va. 2002).

45. *Id.* at 609.

46. *Id.*

47. *See id.* at 608–09.

48. No. 020403, 2005 WL 186910 (Mass. Super. Ct. June 27, 2005).

49. *Id.* at \*1.

50. *Id.* (noting that Shin engaged in cutting behaviors in high school).

51. *Id.* at \*2. Shin had made a suicidal comment to her boyfriend with whom she had broken up. The doctors suggested she read “Feeling Good” by David Burns. She was also instructed to continue her therapy sessions after returning from her parents’ house in New Jersey, where she stayed during her freshman summer break. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at \*5.

days earlier.<sup>55</sup> Later that night, Shin set fire to her clothes and burned to death.<sup>56</sup>

Shin's parents subsequently filed suit against MIT and various MIT employees.<sup>57</sup> While the trial court dismissed all claims against MIT, it rejected dismissal on specific claims aimed at institution administrators.<sup>58</sup> The court then cited *Schieszler's* "imminent probability" standard and used a very similar analysis, but focused on the history between Shin and the institution. As stated by the *Shin* court, institution administrators "were well aware of Elizabeth's mental problems at MIT from at least February 1999. . . . Accordingly, there was a 'special relationship' . . . imposing a duty . . . to exercise reasonable care to protect Elizabeth from harm."<sup>59</sup>

Both *Schieszler* and *Shin* settled. While these cases merely provide persuasive authority for future rulings, they may illustrate a trend toward the use of an "imminent probability" standard with regard to college or university liability for student mental health. However, solely relying on such a standard may discourage colleges and universities from providing adequate mental healthcare for their students. Under such a standard, a college or university has little incentive to go out of its way to promote health center services to the student body at large and such a standard may force colleges and universities to overreact toward any possibility that a student may harm him or herself.

There are also examples of colleges and universities taking reactive rather than proactive stances toward student mental health issues. In 2004, a student at Hunter College of the City University of New York attempted suicide by swallowing an overdose of Tylenol.<sup>60</sup> While paramedics were able to save her, she returned to school to discover that her dorm room door locks had been changed and that she was expelled from the dorm.<sup>61</sup> In 2004–05, the Hunter College housing contract stated:

A student who attempts suicide or in any way attempts to harm him or

55. *See id.* at \*4–5.

56. *Id.* at \*5–6.

That night, shortly before 9:00 p.m., students in [Shin's residence hall] heard the smoke alarm sounding in Elizabeth's room. The MIT Campus Police were called and . . . responded within minutes. The Campus Police broke open Elizabeth's door and found her with her clothing engulfed in flames. . . . As a result of the fire, Elizabeth suffered third-degree burns over 65% of her body [and] . . . suffered irreversible neurological brain damage. . . . At 1:50 a.m. on April 14, 2000, Elizabeth Shin was pronounced dead as a result of injuries suffered in the fire.

*Id.*

57. *See id.* at \*1. The plaintiffs filed suit "against the Defendants Massachusetts Institute of Technology, MIT Medical Professionals, MIT Administrators, and MIT Campus Police Officers." *Id.*

58. *Id.*

59. *See id.* at \*13. Institute officials consisted of Dean Arnold Henderson and Nina Davis-Mills. Arnold Henderson was a Counseling and Support Services Dean who met with Shin on several occasions and originally received the email from Shin's professor regarding the sleeping pills. Nina Davis-Mills was Shin's housemaster at her college dorm. *Id.* at \*1–4.

60. *See Some Colleges Evicting Suicidal Students*, MSNBC, Sept. 1, 2006, <http://www.msnbc.msn.com/id/14626533>.

61. *Id.*

herself will be asked to take a leave of absence for at least one semester from the residence hall and will be evaluated by the school psychologist or his/her designated counselor prior to returning to the residence hall.<sup>62</sup>

Under this policy, attempting suicide was a violation of the student housing contract.<sup>63</sup> The student sued, claiming that her expulsion from the dorms was in violation of federal disability discrimination law.<sup>64</sup> Hunter College agreed to pay the student \$65,000 and has since reevaluated its suicide policy.<sup>65</sup>

An egregious example of the possible effects related to an “imminent probability” standard involves George Washington University and a student named Jordan Nott. In the fall semester of 2004, Nott began to develop psychological problems as a result of being unable to stop one of his college friends from committing suicide.<sup>66</sup> Eventually, Nott asked his roommate to take him to George Washington Hospital for psychiatric evaluation.<sup>67</sup> Soon thereafter, Nott received a disciplinary letter, informing him that he could either withdraw from the university or face suspension, expulsion, or, potentially, criminal charges.<sup>68</sup> Nott was evicted from his dorm, barred from attending any classes, and was warned that he would be treated as a trespasser if he came on campus for any reason.<sup>69</sup> Nott sued George Washington University and various affiliated individuals under the Americans with Disabilities Act, the Rehabilitation Act, and the Fair Housing Act, among others.<sup>70</sup>

The case settled in October 2006.<sup>71</sup> In a press release, Nott said, “I certainly hope that other universities will not discipline their students for seeking mental

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62. See Eve Bender, *Lawsuit Prompts College to End Policy on Suicide Attempts*, PSYCHIATRIC NEWS, Oct. 6, 2006, at 27.

63. *Id.*

64. *Id.*

65. *Id.*

66. Complaint at 4, *Nott v. George Washington Univ.*, No. 05-8503 (D.C. Super. Ct. 2006), available at <http://www.bazelon.org/issues/education/incourt/nott/nottcomplaint.pdf>. Nott’s friend committed suicide by jumping out of his dorm’s window. *Id.* Nott and a peer knew about the suicide but were unable to stop it because they were unable to open a locked door. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 6. The letter read:

You are barred according to DC Code section 22-3302—unlawful entry on property, which is defined as: any person who, without lawful authority, shall enter, or attempt to enter, any public or private dwelling, building or other property, or part of such dwelling, building or other property, against the will of the lawful occupant or the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding \$100 or imprisonment or jail for more than six months, or both, in the discretion of the court. Should you be found in or on GW property in the future, you will be arrested for unlawful entry. You are not permitted on The George Washington University property, either as a guest, or to utilize University facilities, without written authority from the Chief Police at The George Washington University.

*Id.* at 17–18.

70. See *id.* at 4–5.

71. See *Student Settles Suit with University*, PSYCHIATRIC NEWS, Dec. 1, 2006, at 18.



health treatment.”<sup>72</sup> Dr. John Williams, Provost and Vice President for Health Affairs, said, “While we recognize that some steps in the process may not have been perfect, we stand by the result. We appreciate Mr. Nott’s support in resolving this matter, and we wish him continued success.”<sup>73</sup>

Dr. Williams is correct; the process was far from perfect. Unlike the *Schieszler* and *Shin* cases, Nott did not try to commit suicide and he did not even state that he was thinking about committing suicide. Nott simply felt guilt over the loss of a friend—a perfectly normal response—and sought help in the best manner he could. The decision to seek help is the kind of behavior colleges and universities should encourage, not punish. While George Washington University has said its intention was to “protect a life,” it has provided no explanation as to how expelling a depressed student would constitute a step to protect him.<sup>74</sup>

Not all agree that withdrawal should be a taboo area with regard to depressed students. In 2003, Paul Joffe analyzed the formal suicide prevention program of the University of Illinois at Urbana-Champaign.<sup>75</sup> This program requires that any student who threatens or attempts to commit suicide attend four sessions of psychiatric assessment.<sup>76</sup> Failure to comply with this program may result in mandatory withdrawal from the university.<sup>77</sup> Joffe’s major defense of the program’s strict, mandatory nature is founded on the notion of “control.”<sup>78</sup> According to Joffe, if the university simply referred the student to psychiatric services rather than requiring such services, there is a significant chance that the suicidal student will not accept the referral, and even if he or she does, that student will be hesitant to discuss his or her suicidal tendencies.<sup>79</sup>

Joffe thinks that this reaction stems from the student’s notion that he or she has a right to commit suicide, thus creating a control or power struggle with the university that is attempting to help the student.<sup>80</sup> The mandatory nature of the program, however, allows the university to shift the focus from the asserted right to end one’s life to the privilege of attendance and how, if the student wishes to continue enrollment, he or she must conform to certain standards of conduct.<sup>81</sup> Joffe concludes that the student is often so invested in his or her enrollment in the university that he or she will “forgo his perceived privilege to engage in life-ending strategies” and submit to the mandatory assessment process.<sup>82</sup>

While the possibility of an institution compulsorily withdrawing a suicidal

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72. *Id.*

73. *Id.*

74. *See Some Colleges Evicting Suicidal Students, supra* note 60.

75. Paul Joffe, An Empirically Supported Program to Prevent Suicide Among a College Population 1 (Feb. 16, 2003) (unpublished manuscript), *available at* [www.jedfoundation.org/articles/joffeuniversityofillinoisprogram.pdf](http://www.jedfoundation.org/articles/joffeuniversityofillinoisprogram.pdf).

76. *Id.* at 9.

77. *Id.* at 10.

78. *Id.* at 6.

79. *Id.*

80. *Id.* at 12.

81. *Id.*

82. *Id.*

student may seem disconcerting at first, a line needs to be drawn between the University of Illinois program, which uses withdrawal as a means of incentivizing a suicidal student's participation in psychiatric evaluation, and the Nott situation, in which George Washington University punished a depressed student for seeking help. In the first situation, while the University of Illinois may be taking a hard-line approach toward the suicidal student, the university is motivated by the desire to help the student deal with his or her mental instability. On the other hand, even if George Washington University was attempting to adopt a hard-line approach similar to that of the University of Illinois, its failure to incentivize treatment and its harsh action toward a student who did not threaten suicide were misguided.

The University of Illinois is not the only college or university with complex procedural guidelines for treating students with mental health problems. The University of San Diego, for example, provides four instances when the university may withdraw a student for mental health-related issues.<sup>83</sup> Before making such a determination, the vice president or dean must meet with the student, relevant university officials, and the student's parents, if appropriate.<sup>84</sup> Similar to the University of Illinois, Harvard University's Divinity School also allows for the withdrawal of a threatening student who refuses to cooperate with university psychiatric evaluations.<sup>85</sup> The dean responsible for withdrawing the student must meet with appropriate university officials before making the decision and the student may apply for readmission.<sup>86</sup>

On the other hand, several colleges and universities have policies that are less procedurally robust. For example, the University of Notre Dame's Office of Student Affairs may withdraw a student upon the advisement of the University Counseling Center or University Health Services that the student is "incapable of properly functioning in this community or is in such a condition that he or she could cause harm to himself or herself or to others."<sup>87</sup> This policy is vague,

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83. Univ. of San Diego, Student Discipline: University Policies, *available at* <http://www.sandiego.edu/discipline/policies.php> (last visited Mar. 14, 2008). The policy provides:

The term "disruptive or dangerous behavior" includes but is not limited to . . . :

- (1) Behavior that poses a threat to self, including but not limited to a suicidal attempt, gesture, or statement of suicidal attempt;
- (2) Behavior that demonstrates an imminent, foreseeable or existing threat to the safety or well-being of a student, other member of the University community, or clients of University-related programs on or off campus;
- (3) Behavior that disrupts or interferes with the ability of other students, faculty or staff to participate in the educational programs, living environment, or employment opportunities offered by the University;
- (4) Behavior that indicates that a student is unable to control his/her behavior or to perform the essential functions of a student.

*Id.*

84. *See id.*

85. HARV. DIVINITY SCH., HANDBOOK FOR STUDENTS 19 (2007), *available at* <http://www.hds.harvard.edu/registrar/handbook/handbook.pdf>.

86. *Id.*

87. UNIV. OF NOTRE DAME, DU LAC: A GUIDE TO STUDENT LIFE 189 (2007), *available at* <http://orlh.nd.edu/dulac/duLac%202007.pdf>.

especially with regard to the “improperly functioning” language, and does not specifically provide that the Office of Student Affairs must meet with the student or outline a readmission policy. In addition, Arizona State University and the University of Michigan have emergency withdrawal procedures allowing the dean of students or the vice president to unilaterally and immediately withdraw a student from those universities.<sup>88</sup> While these policies do not provide the same procedural safeguards found in the policies of the University of Illinois and the University of San Diego, this lack of strict formality may provide those institutions with the increased flexibility needed to handle situations on a case-by-case basis. On the other hand, the lack of procedural mechanisms may create ambiguity and inconsistency in enforcement of mental health policies and could possibly discourage students from seeking help.

#### IV. THE EVOLUTION OF COLLEGE AND UNIVERSITY LIABILITY

##### A. Potential Impact of “Imminent Probability”

With an increasing number of students seeking help from colleges and universities for mental health-related issues, institutions should facilitate this need with adequate facilities, competent personnel, and policies that encourage students to utilize such assistance. If, however, more courts adopt an “imminent probability” standard, colleges and universities may face liability for actively promoting and thoroughly providing these services.

A good illustration of this point would be a comparison of the Jordan Nott incident and the Elizabeth Shin case. For hypothetical purposes, it will be assumed that, in response to his expulsion, Nott committed suicide. In the Shin case, MIT actively encouraged Shin to attend counseling and provided psychiatric service for over a year.<sup>89</sup> Although, the officials misinterpreted direct warning signs of Shin’s suicidal intentions, there was at least an effort to help her. In the Nott hypothetical, there was no interpretation of the signs or intervention to help, only punishment.

While George Washington University’s actions in this hypothetical may have contributed to the suicide of Nott, there also would be no basis to argue that the university had any direct knowledge of the “imminent probability” that Nott would kill himself. Nott did not try to commit suicide or say he was going to attempt suicide; he simply checked in for depression.<sup>90</sup> Thus, there would have been no basis for the university to conclude that he had suicidal tendencies; on the other hand, he was in a fragile mental state and needed help, not chastisement. Unfortunately, this fact would probably play no part in the determination of the

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88. See Ariz. St. Univ., Involuntary Withdrawal, <http://www.asu.edu/aad/manuals/usi/usi104-05.html> (last visited Mar. 14, 2008); Univ. of Mich., Withdrawal and Readmission, <http://www.studentpolicies.dsa.umich.edu/mentalhealth.htm> (last visited Mar. 14, 2008).

89. See *Shin v. Mass. Inst. of Tech.*, No. 020403, 2005 WL 1869101, at \*1 (Mass. Super. Ct. June 27, 2005). Shin received treatment starting in February 1999 and continuing until her suicide in April 2000. *Id.* at \*6.

90. See Complaint at 5, *Nott v. George Washington Univ.*, No. 05-8503 (D.C. Super. Ct. 2006), available at <http://www.bazelon.org/issues/education/incourt/nott/nottcomplaint.pdf>.

university's liability for Nott's suicide under an "imminent probability" standard.

"Imminent probability" is arguably a valid factor when determining whether a college or university should be liable for injuries related to student mental health problems because it ties into the concept of foreseeability. "Imminent probability" creates an incentive for colleges and universities to act in emergency situations or be subject to liability, as illustrated in *Schieszler*.<sup>91</sup> However, if "imminent probability" ever became the sole factor for determining liability of institutions for student suicide, it could create a disincentive for a college or university to be proactive because such action may increase the chance it will be in an "imminent probability" situation. The analysis in *Shin* exacerbates this risk by using MIT's history of assisting a student with mental health issues against it; as stated by the court, institution officials were "well aware of Elizabeth's mental problems."<sup>92</sup> While this certainly was the case, such a conclusion in this context raises the question of whether this history of caring for the student should also be viewed as a positive that may mitigate damages, similar to how a court may analyze the extent of moral blame attached to a college or university in assumption of duty cases.<sup>93</sup>

In order to reach a conclusion as to the appropriate standard for college and university liability in student mental health cases, it is important to understand the history related to college and university liability for student action. For that reason, the following is a general outline of the how college and university liability developed. In addition, this section provides examples of non-mental health-related college and university liability cases using an analysis that may strike the proper balance between the narrow "imminent probability" standard and the broader in loco parentis concept adopted during the initial founding of American colleges and universities.

#### B. History of In Loco Parentis

When American colleges and universities were first established, they were modeled after their European counterparts and thus adopted many of the European ideals and philosophies.<sup>94</sup> One ideal adopted was the concept of in loco parentis; in essence, the college or university would stand in the place of the parent.<sup>95</sup> This was the predominant philosophy in the early stages of American educational institution development and allowed colleges and universities to exercise some of the authority and control usually reserved for the parents of a student.<sup>96</sup>

The law has designated special relationships that give rise to a duty of care and, in turn, to liability for violations of this duty of care.<sup>97</sup> In loco parentis creates a

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91. See *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 602 (W.D. Va. 2002).

92. *Shin*, 2005 WL 1869101, at \*13.

93. See *infra* notes 136–142 and accompanying text.

94. See Nick Sweeton & Jeremy Davis, *The Evolution of In Loco Parentis*, 13 COLO. ST. J. STUDENT AFF. 1 (2004).

95. *Id.*

96. *Id.*

97. See RESTATEMENT (SECOND) OF TORTS § 314A (1965).

special relationship between the college or university and the student—a relationship that can be used when defining the breadth of the institution’s liability to an injured student, as well as the enforcement power of a college or university.

*Gott v. Berea College*<sup>98</sup> is an example of how in loco parentis was initially applied. In that case, J.S. Gott was the owner of a restaurant near Berea College in central Kentucky. He challenged a college rule forbidding students from entering any “eating houses” or “places of amusement” in the town under the premise that such a rule unlawfully and maliciously injured his business.<sup>99</sup> In upholding the rule, the court stated:

College authorities stand in loco parentis concerning the physical and moral welfare and mental training of the pupils, and we are unable to see why, to that end, they may not make any rule or regulation for the government or betterment of their pupils that a parent could for the same purpose. Whether the rules or regulations are wise or their aims worthy is a matter left solely to the discretion of the authorities or parents.<sup>100</sup>

Initially, in loco parentis was attractive to colleges and universities. Due to the low average age of students at the time, it assured parents that the college or university would care for and protect their son or daughter. As educational institutions in America evolved, however, the influence of in loco parentis was diminished.

The in loco parentis doctrine remained a viable principle until the 1960s and 1970s, when a series of decisions substantially affected the doctrine.<sup>101</sup> During this period, the civil rights movement catalyzed student demand for more

Special Relations Giving Rise to Duty to Aid or Protect

- (1) A common carrier is under a duty to its passengers to take reasonable action (a) to protect them against unreasonable risk of physical harm, and (b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.
- (2) An innkeeper is under a similar duty to his guests.
- (3) A possessor of land who holds it open to the public is under a similar duty to members of the public who enter in response to his invitation.
- (4) One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other.

*Id.*

98. 161 S.W. 204 (Ky. Ct. App. 1913).

99. *See id.* at 205. The policy stated:

Eating houses and places of amusement in Berea, not controlled by the college, must not be entered by students on pain of immediate dismissal. The institution provides for the recreation of its students, and ample accommodation for meals and refreshment, and cannot permit outside parties to solicit student patronage for gain.

*Id.*

100. *Id.* at 206.

101. *See, e.g.,* Moore v. Student Aff. Comm. of Troy St. Univ., 284 F. Supp. 725 (M.D. Ala. 1968); Soglin v. Kauffman, 295 F. Supp. 978 (W.D. Wis. 1968); Goldberg v. Regents of Univ. of Cal., 57 Cal. Rptr. 463 (Cal. Ct. App. 1967); *see also* Kerry Robert Brittain, Comment, *Colleges and Universities: The Demise of In Loco Parentis*, 6 LAND & WATER L. REV. 715 (1971).

autonomy.<sup>102</sup> The relationship between the institution and student changed, with the focus switching away from institutional officials dictating policy to the student and toward recognition of student desire to have a say in the functioning of the institution. The phenomenon of student government was born and student affairs officials began to concentrate more on coordination and less on discipline.<sup>103</sup>

One of the first cases that illustrates this change in the role of colleges and universities is *Goldberg v. Regents of the University of California*.<sup>104</sup> The plaintiffs in the case were four students at the University of California at Berkeley who had organized rallies in response to a non-student's arrest for displaying an obscene sign on campus.<sup>105</sup> As a result of the rallies, one student was expelled and three were suspended.<sup>106</sup> The students sued, claiming their punishments were unconstitutional limitations on their First Amendment rights, were administered pursuant to constitutionally vague regulations, deprived the students of their due process rights, and were an invasion into an area exclusively controlled by state law.<sup>107</sup>

While the court upheld these punishments, it also downplayed the concept of in loco parentis in the decision:

For constitutional purposes, the better approach . . . recognizes that state universities should no longer stand in loco parentis in relation to their students. Rather, attendance at publicly financed institutions of higher education should be regarded a benefit somewhat analogous to that of public employment. . . . The test is whether conditions annexed to the benefit reasonably tend to further the purposes sought by conferment of that benefit and whether the utility of imposing the conditions manifestly outweighs any resulting impairment of constitutional rights.<sup>108</sup>

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102. See Sweeton & Davis, *supra* note 94, at 1.

103. See *id.* ("The role of student affairs professionals, once consisting of discipline and authority, now focused on education and coordination of campus life." (internal citations omitted)).

104. 57 Cal. Rptr. 463 (Cal. Ct. App. 1967); see also Brittain, *supra* note 101, at 728.

105. See *Goldberg*, 57 Cal. Rptr. at 466.

106. See *id.* at 470-71.

107. *Id.* at 466.

108. *Id.* at 470-71 (internal citations omitted). The court cited a previous court's decision regarding in loco parentis in support of its dicta, referencing the general trend of older students attending colleges and universities as evidence to why the in loco parentis doctrine no longer applied. *Id.*

In earlier decades in loco parentis had some superficial appeal because the vast majority of college students were below 18. Today, in contrast, there are more students between the ages of 30 and 35 in universities than there are those under 18, and the latter group account for only seven per cent of the total college enrollment. . . . Apart from the values of a university education to the individual and to society, its significance in this state is reflected in the spectacular increase in enrollment in our public universities in the last decade and the commensurate rise of state and federal support.

*Id.* at 470 n.11.

While this decision was limited in scope to public universities,<sup>109</sup> it indicated a general change in the courts' mentality regarding the in loco parentis doctrine and the role of colleges and universities with regard to student conduct issues.

Shortly thereafter, the court in *Moore v. Student Affairs Committee of Troy State University*<sup>110</sup> reached a similar conclusion to the one reached in *Goldberg*. The plaintiff in the case, Gregory Moore, lived in a dorm at Troy State University ("TSU") in southeastern Alabama.<sup>111</sup> He was in good standing until TSU and Alabama Health Department officials searched his room, under his supervision, and found marijuana. Moore was subsequently expelled.<sup>112</sup> Moore sued TSU, claiming the search violated his Fourth Amendment right to be free from illegal searches and that the procedures related to his dismissal taken by TSU violated his procedural due process rights.<sup>113</sup> The court dismissed all of Moore's claims.<sup>114</sup>

In dicta, the court stated that TSU could not justify the search purely on in loco parentis grounds. It said, "The college does not stand, strictly speaking, in loco parentis to its students, nor is their relationship purely contractual in the traditional sense. The relationship grows out of the peculiar and sometimes the seemingly competing interests of college and student."<sup>115</sup> The last sentence of this quotation embodies the conflict faced by the court, the college or university, and the student when attempting to define the relationship between the latter two parties. The confines of this relationship are often blurry and in flux as societal, institutional, and political values change.

Within the tort context, courts in the 1970s and early 1980s began to treat colleges and universities as bystanders to student behavior and as entities that owed no duty to the adult students.<sup>116</sup> The key case illustrating this point is *Bradshaw v. Rawlings*.<sup>117</sup> The plaintiff in *Bradshaw*, a sophomore at Delaware Valley College in eastern Pennsylvania, was severely injured in a car accident after attending a class "picnic" during which large amounts of alcohol were

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109. *See id.* at 471.

110. 284 F. Supp. 725 (M.D. Ala. 1968); *see also* Brittain, *supra* note 101, at 729.

111. *See Moore*, 284 F. Supp. at 727.

112. *Id.*

113. *Id.* The court described the confines of search and seizure with respect to student dormitories:

The college, on the other hand, has an "affirmative obligation" to promulgate and to enforce reasonable regulations designed to protect campus order and discipline and to promote an environment consistent with the educational process. The validity of the regulation authorizing search of dormitories thus does not depend on whether a student "waives" his right to Fourth Amendment protection or on whether he has "contracted" it away; rather, its validity is determined by whether the regulation is a reasonable exercise of the college's supervisory duty.

*Id.* at 729.

114. *Id.* at 731.

115. *Id.* at 729.

116. *See, e.g., Bradshaw v. Rawlings*, 612 F.2d 135 (3d Cir. 1979); *Baldwin v. Zoradi*, 176 Cal. Rptr. 809 (Cal. Ct. App. 1981); *see also* ROBERT D. BICKEL & PETER F. LAKE, *THE RIGHTS AND RESPONSIBILITIES OF THE MODERN UNIVERSITY* 56-57 (1999).

117. 612 F.2d 135 (3d Cir. 1979).

consumed.<sup>118</sup> A faculty member sponsored the event but did not attend.<sup>119</sup> Bradshaw, in turn, sued the college, among other parties, for negligence. In an oft quoted passage, the court began with “a recognition that the modern American college is not an insurer of the safety of its students. Whatever may have been its responsibility in an earlier era, the authoritarian role of today’s college administrations has been notably diluted in recent decades.”<sup>120</sup> The court supported its finding:

Regulation by the college of student life on and off campus has become limited. Adult students now demand and receive expanded rights of privacy in their college life including, for example, liberal, if not unlimited, partial visiting hours. College administrators no longer control the broad arena of general morals. At one time, exercising their rights and duties in loco parentis, colleges were able to impose strict regulations. But today students vigorously claim the right to define and regulate their own lives.<sup>121</sup>

With these words, “*Bradshaw* became the judicially self-serving declaration of student independence and the announcement of the birth of a new ‘adult’ student body.”<sup>122</sup>

The last major event signaling the period’s progressive downplay of the in loco parentis doctrine occurred in 1972 with the ratification of the Twenty-Sixth Amendment and the reduction of the voting age to eighteen.<sup>123</sup>

The nascent empowerment of students resulted in even more autonomy and, consequently, altered the college landscape. Vibrant student activism reached new levels during this period, epitomized by involvement in anti-war movements and the struggle for civil rights for minorities and women. Numerous clubs and campus organizations sprouted during this time that reflected desire for independence in personal and public matters.<sup>124</sup>

This “nascent empowerment” paved the way for the flurry of student involvement in college and university politics and the subsequent diminution of disciplinary control over students.

Experts disagree, however, as to the remaining amount of influence the in loco parentis doctrine possesses.<sup>125</sup> Some experts believe that the in loco parentis doctrine suffered a complete demise after 1970.<sup>126</sup> Others believe that the doctrine

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118. *See id.* at 137.

119. *Id.*

120. *Id.* at 138.

121. *Id.* at 139–40.

122. *See* BICKEL & LAKE, *supra* note 116, at 59.

123. *See* Sweeton & Davis, *supra* note 94, at 1.

124. *Id.*

125. *Id.*; *see also* Peter F. Lake, *The Special Relationship(s) Between a College and a Student: Law and Policy Ramifications for the Post In Loco Parentis College*, 37 IDAHO L. REV. 531 (2001).

126. *See* Lake, *supra* note 125, at 532.



was not completely removed from the legal realm, but has simply changed, retaining much of its former vigor.<sup>127</sup>

### C. The Current State of College and University Liability

Recent case law indicates that the type of liability imposed on a college or university today is dependent on the type of activity at issue. For example, with regard to cases involving alcohol, courts utilize a more fact-intensive test than they do with regard to cases associated with mental disorders.

A line of cases supporting this conclusion began with an incident that occurred during “Rush Week” at the University of Idaho.<sup>128</sup> Rejena Coghlan, a sophomore at the university, attended several parties associated with the end of Rush Week, including a “Jack Daniels’ Birthday” party and a “Fifty Ways to Lose Your Liver” party.<sup>129</sup> Two employees of the university were present at the latter party.<sup>130</sup> After attending the parties and being helped to bed by a sorority sister, Coghlan fell three stories from a fire escape and sustained permanent injuries.<sup>131</sup> As a result of this incident, Coghlan filed a complaint against the university and various fraternities and sororities.<sup>132</sup> The lower court dismissed her claims against the university, holding that the school owed no duty of care to Coghlan.<sup>133</sup> On appeal, the Supreme Court of Idaho reversed.<sup>134</sup>

The court stated that while the institution-student relationship is not listed in the Restatement of Torts<sup>135</sup> as giving rise to a duty of care, a college or university can voluntarily assume a duty of care.<sup>136</sup> Indications of a voluntary assumption included the fact that two university employees were present at the “Fifty Ways” party, that the employees knew or should have known that alcohol was being served at the parties, and that the employees knew or should have known that Coghlan was intoxicated and that she needed assistance in the hours preceding her accident.<sup>137</sup>

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127. See Sweeton & Davis, *supra* note 94, at 1. Sweeton and Davis note:

While the concept dramatically changed, this perception of demise is untrue. Today’s college students and their parents have explicit expectations of what role the university should play, which illustrates the fluid nature of *in loco parentis*. *In loco parentis* is not the trademark of a defunct era; it is an evolving notion. For many generations of college students, this notion has, in one degree or another, been a factor of their college experience.

*Id.*

128. See *Coghlan v. Beta Theta Pi Fraternity*, 987 P.2d 300, 305 (Idaho 1999) (defining “Rush Week” as “an event sponsored and sanctioned by the University in conjunction with campus fraternities and sororities.”).

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* at 314.

135. RESTATEMENT (SECOND) OF TORTS § 314A (1965).

136. See *Coghlan*, 987 P.2d at 312.

137. *Id.*

The court identified several factors to consider when determining if a duty of care exists for a college or university. These factors include the foreseeability of harm to the student, the degree of certainty related to the foreseeable harm, the “closeness of the connection” between the institution’s conduct and the injury, and the extent of moral blame attached to the university’s conduct.<sup>138</sup> Courts should also, according to the Idaho Supreme Court, look at relevant policies that may prevent future harm, the burden placed on the college or university in preventing the harm versus the consequences to the community at large in imposing a duty of care with resulting liability for any breach, and factors related to the availability of insurance for the risk in question.<sup>139</sup>

The court emphasized that it had not ruled that a special relationship existed between the university and the student, but rather that the university had assumed responsibility through its actions.<sup>140</sup> Given, however, the court’s emphasis that the employees “should have known” there was underage drinking taking place, and considering the very public nature of fraternity and sorority parties, the court may have effectively created a “special relationship” even though it claimed not to have done so.<sup>141</sup> Conversely, the court may have simply been sending a message that, while colleges and universities are not required to patrol all elements of student alcohol use, they are required to take reasonable steps to protect their students from high-risk alcohol-related activities.<sup>142</sup> Within the context of mental health, adopting an assumption-of-the-risk analysis may deter colleges and universities from providing adequate mental healthcare in order to avoid creating a duty of care. If, alternatively, there is a special relationship between the institution and its students, the college or university may have a greater duty to take reasonable steps to ensure the mental wellbeing of its students.

In *Knoll v. Board of Regents of University of Nebraska*,<sup>143</sup> Jeffrey Knoll was allegedly abducted from the basement of his on-campus dorm by a fraternity and taken to an off-campus fraternity house.<sup>144</sup> In this house, Knoll was handcuffed to various objects and was forced to drink alcohol.<sup>145</sup> It was later determined that Knoll had a blood alcohol content of .209.<sup>146</sup> He eventually managed to escape through a window, only to fall and suffer severe and permanent injuries.<sup>147</sup> The university regulated the house in which these events occurred but did not own it.<sup>148</sup> Knoll sued the university, alleging that the university “had acted negligently in

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138. *Id.* at 311 (internal citation omitted).

139. *Id.*

140. *Id.* at 312.

141. *See Lake, supra* note 125, at 535.

142. *See id.*

143. 601 N.W.2d 757, 760 (Neb. 1999).

144. *Id.* at 760.

145. *Id.*

146. *Id.* All states have adopted a legal blood alcohol content of .08. Ctrs. for Disease Control and Prevention, Frequently Asked Questions, <http://www.cdc.gov/alcohol/faqs.htm#8> (last visited Mar. 14, 2008).

147. *Knoll*, 601 N.W.2d at 760.

148. *Id.* at 764.

failing to enforce prohibitions against acts of hazing, the consumption of alcohol, and physically abusive behavior when the University knew or should have known that the [fraternity] house was in violation of the rules prohibiting such activities.”<sup>149</sup>

The university argued that it had no duty to the student, and that it had no way of knowing what was transpiring.<sup>150</sup> The court found, however, that a duty to the student existed.<sup>151</sup> The landowner/invitee relationship is one of the special relationships under Section 314A of the Restatement (Second) of Torts,<sup>152</sup> and while the major events occurred off-campus, the initial abduction happened on university property; thus, the university had a duty to protect the student from reasonably foreseeable harm.<sup>153</sup>

The court made two relevant conclusions. First, while the relationship between the institution and the student does not in and of itself create a special duty of care, that duty can be inferred through other relationships that exist.<sup>154</sup> Considering the various ways in which students’ lives are intertwined with their colleges or universities, this standard could be stretched to fit many different situations. Second, while the event happened off-campus, the court held that there was enough of a link between the university and the off-campus establishment for a duty of care to arise.<sup>155</sup> In reaching this conclusion, the court used a “totality of the circumstances” test, which requires a landowner not only to consider the risk inherent in its land, but also the risks inherent in nearby property.<sup>156</sup>

In determining the duty of the university to its students, the court used a “risk-utility” test, considering “(1) the magnitude of the risk, (2) the relationship of the parties, (3) the nature of the attendant risk, (4) the opportunity and ability to exercise care, (5) the foreseeability of the harm, and (6) the policy interest in the proposed solution.”<sup>157</sup> The court also made sure to note that foreseeability alone was “not dispositive.”<sup>158</sup>

In both *Knoll* and *Coghlan*, the courts carved out a niche within the concept of duty and utilized tangential elements of the general rule in order to fit the facts of each case without affirmatively creating a duty between institutions and their students. In *Knoll*, the court stated that the university assumed the risk and thus created the relationship, and in *Coghlan*, the court focused on how there was a close link between the university and the injury that created a duty. These two cases also demonstrate how courts will look at the entirety of the facts when deciding if a duty did arise. In *Coghlan*, the court focused on the fact that there

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149. *Id.* at 761.

150. *Id.*

151. *Id.* at 765.

152. *See supra* note 97 and accompanying text.

153. *Knoll*, 601 N.W.2d at 762.

154. *Id.* at 764–65.

155. *Id.*

156. *Id.* at 764.

157. *Id.* at 761.

158. *Id.*

were university employees present;<sup>159</sup> in *Knoll*, the court focused on the fact that the initial event that triggered the injury occurred on university property.<sup>160</sup> While the element of “foreseeability” is considered, the courts also considered the proactive steps taken by each institution in preventing the injuries, or rather, the lack of steps taken.

#### D. New College and University Liability Principles as Applied to Actions Involving Mental Health

*Coghlan* and *Knoll* exemplify a type of analysis that should be utilized in cases involving mental health issues. For example, we can examine the facts of *Shin* focusing on the factors laid out in *Coghlan*.<sup>161</sup> While it was arguably foreseeable that Shin would attempt to commit suicide, there was not a great degree of certainty that she would. The connection between the institution’s conduct and the suicide was fairly tangential considering they had scheduled a psychiatric appointment for the next day. There is also little moral blame attached to the institution considering how much care it provided Shin over the course of a year. Since the policies of the institution were fairly thorough, imposing liability on the institution in light of its efforts would result in a great burden that would hinder its efforts to provide such care in the future.

Returning to the hypothetical involving Jordan Nott’s suicide, the opposite is true. While there was less foreseeability of harm when compared to *Shin*, there would also be a much closer connection between George Washington University’s actions and the injury with much higher moral blame attached to the university. The burden placed on the university would be simply to avoid punishing students for seeking out help for mental conditions. This comparison illustrates the need for courts to limit the reliance on absolute standards like “imminent probability” and instead emphasize standards that take a broad range of factors into account.

#### CONCLUSION

The pendulum is certainly beginning to swing; while colleges and universities were previously extremely lax in their responses to student mental health in general, they now understand the importance of adequate student mental healthcare. In addition, the number of students taking medication for psychiatric disorders is increasing. Whether this increase is due to an actual climb in the number of student mental health disorders, a broader acceptance of mental health

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159. See *Coghlan v. Beta Theta Pi Fraternity*, 987 P.2d 300, 312 (Idaho 1999).

160. See *Knoll*, 601 N.W.2d at 764–65.

161. See *Coghlan*, 987 P.2d at 311. *Coghlan*’s factors were:

[T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant’s conduct and the injury suffered, the moral blame attached to the defendant’s conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

*Id.* (internal citation omitted).

treatments, or is simply indicative of physicians' inclination toward prescribing such medication, colleges and universities should be working in a proactive manner to encourage mental health awareness.

The courts' trend toward heightened college and university liability<sup>162</sup> and the adoption of an "imminent probability" standard by two courts<sup>163</sup> have put colleges and universities in a precarious position: the college or university should be doing as much as possible to aid students with mental health issues, but such aid may increase the institution's potential liability.<sup>164</sup> If courts do not implement a fact-intensive test that encourages colleges and universities to provide high quality and readily available mental healthcare, then colleges and universities may choose to resort to playing safe. Flexible standards that do not rely solely on "imminent probability" may help make situations like Jordan Nott's the exception rather than the rule.

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162. See, e.g., *Knoll*, 601 N.W.2d 757; *Coghlan*, 987 P.2d 300.

163. See *Schieszler v. Ferrum Coll.*, 233 F.Supp.2d 796 (W.D. Va. 2002); *Shin v. Mass. Inst. of Tech.*, No. 020403, 2005 WL 1869101, at \*13 (Mass. Super. Ct. June 27, 2005).

164. See *supra* Part IV.A.

