Assessing Threats of Self-Directed Violence and Duties of Care within Higher Education Institutions: 

*Nguyen v. Massachusetts Institute of Technology (2018)*

Whereas threat assessment professionals in the United States and Canada may well be aware of case law, other legal standards, and their professional responsibilities regarding assessing and managing risk of violence toward others, fewer may be as familiar with sources of authority regarding self-directed violence threat assessment. It may be reassuring to know that our professional responsibilities related to assessing and managing other- and self-directed violence are somewhat analogous, and the courts have historically, as well as more recently, underscored this view.

**Early Cases**

In the United States, the California Supreme Court influentially ruled in two cases (*Tarasoff v. Regents of the Univ. of Cal.*, 1974, 1976) that client confidentiality had limits and that mental health professionals have a “duty to warn” and a “duty to protect” when their clients pose a foreseeable risk of harm to identifiable third parties. In Canada, the Supreme Court heavily relied upon the landmark *Tarasoff* cases in *Smith v. Jones* (1999) and noted that even solicitor (attorney)-client privilege was limited when there was a risk of harm to the public. The Court continued on to hold that mental health professionals were bound by a duty to warn and protect, and therefore must disclose to authorities a risk of harm to third parties as an exception to the general duty of confidentiality owed to clients.

In addition to the duty to warn and protect members of the public (related to other-directed violence threat assessment), courts have also long-recognized a duty of care that is owed by mental health professionals to their clients regarding self-directed violence threat assessment. In both Canada (e.g., *Haines v. Bellissimo*, 1977) and the United States (e.g., *Bellah v. Greenson*, 1978), courts have held that the existence of a “special relationship” between mental health professionals and clients triggers a duty of care. In each of these early cases, a family member attempted to sue a mental health professional for negligence after a client engaged in lethal self-directed violence. Similar to their responsibility to take reasonable steps to protect third parties from foreseeable harm, the courts affirmed that professionals must also take reasonable care to prevent the death of clients by foreseeable self-directed violence.
Recent Cases Involving Higher Education Institutions

Of particular relevance to threat assessment teams working within higher education settings, several courts in the United States have recently held that a similar special relationship exists between institutions and their students. In light of this relationship, colleges and universities owe similar, albeit circumscribed, duties to their student body with respect to appraising and managing risk of other-directed and self-directed violence. As King and Del Pozzo discussed in their Legal Update issue in the October 2018 edition of the AP-LS E-Newsletter, the Supreme Court of California held that higher education institutions had a duty to warn and protect students of foreseeable risk of other-directed violence (Regents of the Univ. of Cal. v. Superior Court, 2018).

Contemporaneously, the Massachusetts Supreme Judicial Court (SJC) paralleled this ruling in a case involving self-directed violence, holding that the duties owed by higher education institutions to their students include prevention of self-directed violence (Nguyen v. Mass. Inst. of Tech., 2018).


Han Duy Nguyen was 25 years old at the time of his death and was a graduate student in the Sloan School of Management at the Massachusetts Institute of Technology (MIT). In 2007, approximately two years prior to his death, he was referred to disability services on campus after informing his program coordinator that he was struggling with taking tests. Mr. Nguyen originally declined disability services, stating that he did not have a disability, and was subsequently referred to MIT’s mental health and counselling services. During the intake process, he disclosed a long history of depression and two suicide attempts that occurred prior to his enrollment at MIT, but he did not endorse current suicidal ideation. Mr. Nguyen declined further services and stated that he was seeing a psychiatrist off campus. In a subsequent appointment with an assistant dean in the student support office, Mr. Nguyen again disclosed his history of depression and self-directed violence. The assistant dean referred Mr. Nguyen to MIT mental health and counselling services and Mr. Nguyen again declined, informing the assistant dean that he was receiving treatment in the community. Of note, Mr. Nguyen saw several mental health professionals in the community throughout his tenure at MIT, none of whom deemed him to be at imminent risk of suicide.

Mr. Nguyen continued to have academic problems during his first two years at MIT and received below-average grades in some of his courses. As his academic functioning worsened, the faculty working with Mr. Nguyen believed that he was suffering from mental health problems and made several academic accommodations in an attempt to reduce the stress on him. The supervising faculty in Mr. Nguyen’s department were under the impression that his primary problems were related to insomnia and that he had been hospitalized in the past due to severe sleep deprivation. He did not disclose his history of depression and self-directed violence to the supervising faculty in his department.
In 2009, Mr. Nguyen’s mental health appeared to be improving and he took on several teaching and research assistant positions. Prior to the start of his research assistantship, Mr. Nguyen’s supervising faculty raised concerns with one another following several emails that Mr. Nguyen had sent to a project investigator that were perceived as inappropriate in nature. After presenting to the research laboratory in June 2009, Mr. Nguyen left the lab around 11:00am to speak with his supervising faculty on the phone regarding his inappropriate email communications, wherein his supervisor “read [Mr. Nguyen] the riot act.” The telephone call ended a few minutes after it began, and Mr. Nguyen then walked to the roof of the building and jumped to his death.

Mr. Nguyen’s parents subsequently initiated a wrongful death suit against MIT. They alleged that MIT owed Mr. Nguyen a duty of reasonable care and had breached this duty, thereby causing conscious pain and suffering that proximally lead to Mr. Nguyen’s death. The SJC noted that there is no general duty to prevent someone from committing suicide; however, in the context of a special relationship, there may be an affirmative duty to take reasonable steps toward preventing suicide. The SJC acknowledged that, although these duties often arise within correctional facilities or hospitals, students are “adults but often young and vulnerable; their right to privacy and their desire for independence may conflict with their immaturity and need for protection” (Nguyen, 2018, p. 452). Further, the SJC found that universities “have a wide-ranging involvement in the lives of their students” (Nguyen, 2018, p. 452) despite no longer being considered in loco parentis, or substitutes for the parents of their student body. Thus, the SJC affirmed the presence of a special relationship between higher education institutions and students. Nevertheless, the SJC did not find that MIT had breached its duty of care in this case given that Mr. Nguyen’s suicide was not reasonably foreseeable at the time of his death—Mr. Nguyen never expressed clear intent or plan to commit suicide to staff or faculty at MIT and his prior suicide attempts occurred before he had enrolled at MIT.

More generally, the SJC ruled that higher education institutions incur a duty of care when the institution is (1) aware of a student’s suicide attempt while enrolled, or recently before enrolling, at that university, or (2) aware of a student’s intent or plan to commit suicide. This duty of care rests on the notion of foreseeability and likelihood in that it does not extend to circumstances in which a student has expressed suicidal ideation without intent or planning. To satisfy this duty when the aforementioned circumstances are present, higher education institutions must either (1) initiate suicide prevention protocols, (2) contact persons within the institution responsible for initiating clinical or medical care, or in the case of an emergency, (3) contact 911 and emergency services.

Opportunity for Scholarship

Both this issue and the aforementioned issue by King and Del Pozzo (2018) in the AP-LS E-Newsletter Legal Update column have highlighted recent developments in the law relevant to threat assessment and institutions of higher education. Other recent Legal Update issues in the AP-LS E-Newsletter discussed resources for legal research generally
(King & Zelle, 2017), and an example application of a systematic legal research methodology (Zottoli & Edkins, 2018; see also Zottoli et al., 2019). As the field of threat assessment for both other- and self-directed violence grows, the time appears ripe for systematic legal reviews (cf. Obegi, 2017) to inform threat assessment professionals and the organizations with which they consult about the current legal landscape with respect to duties of care of organizations to monitor, intervene, and hopefully prevent such violent outcomes among their constituents. Systematically collected legal data can also contribute—alongside other sources of authority—to informing expert testimony about related standards of care and, hopefully, the development of best-practice standards for threat assessment (Heilbrun, Grisso, & Goldstein, 2008).

References


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Tarasoff v. Regents of the Univ. of Cal., 551 P.2d 334 (Cal. 1976).
  Ignorance of the law can no longer be a defense for researchers.
  