

Healthcare/Intellectual Property

Enduring the Aftermath of a School Shooting: When Survivors Take Their Own Lives

Schools must create and enforce policies and procedures to identify at-risk individuals early and intervene before an incident of gun violence occurs.¹ Preventative measures and mental health interventions can not only protect a school and its administration from liability but can also save a life. Now more than ever, in the wake of three recent suicides related to school shootings, we must also address the mental health needs of the survivors. The grief, guilt, stress or a combination of several mental health conditions may haunt survivors for the rest of their lives. Schools must identify and offer treatment options for these mental health issues affecting the survivors of a school shooting and must be ready to defend legal claims of liability in the event of a suicide in the aftermath.

In March 2019 three people committed suicide that were directly affected by school shootings.² Two of these individuals were students who survived the 2018 shooting at Marjory Stoneman Douglas High School in Parkland, Florida.³ It was reported that one of these students, Sydney Aiello, experienced survivor's guilt after her friend died in the shooting. Then Jeremy Richman, a father of one of the 20 children killed in the 2012 shooting at Sandy Hook Elementary School in Newton, Connecticut, died of an apparent suicide

later that month.⁴ Unfortunately, these outcomes related to mass school shootings, are common in our national history. For example, six months after the 1999 shooting at Columbine High School in Colorado, the mother of an injured student committed suicide.⁵ Around the time of the first anniversary of Columbine, a student whose best friend died in the shooting committed suicide.⁶ A student at Virginia Tech took his own life eight months after the 2007 shooting on campus.⁷ Sadly, this list continues.

Research shows that survivors of mass shootings are at a higher risk for several types of mental health disorders. The negative impact of surviving a school shooting can be lifelong. Survivors may experience Post Traumatic Stress Disorder, anxiety, and/or depression, along with a variety of other issues such as turning to alcohol or illegal substances to self-medicate.⁸ Individuals may feel "survivor's guilt" and/or an inability to handle their grief.



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Additionally, suicide is the second leading cause of death for people 10 to 34 years of age.⁹

We repeatedly see an outpouring of emotional support after a shooting incident, an increase in activism in the community, and a deepened connection among community members as they mourn their loved

ones. This type of social support is one of the best predictors of resiliency after experiencing a traumatic event. However, these survivors may also need professional mental health services in addition to the support of their family and community.

Unfortunately, not all survivors are able to access necessary mental health services after a tragedy. For those who can find and afford appropriate mental health treatment, there is no quick fix. The support of counselors, friends, and family can fade in the months and years after a tragedy, but the need for continuous mental health treatment remains. We often see that counseling ser-

vices and mental health treatment offerings are temporary after a tragedy occurs. Many schools offer counseling on school premises for several months and then the administration returns to business as usual. Grief and other mental health issues, however, can be long lasting and may be triggered every year around the anniversary of the event.

There has been a recent increase in lawsuits seeking to hold schools responsible for student suicide. Secondary schools and institutions of higher education must evaluate their exposure to liability as it specifically relates to school shootings and student suicide. While there is legal precedent of secondary schools being held liable when a child commits suicide if the school was negligent and that negligence led to the suicide, parents have rarely succeeded in establishing such liability. Many of these cases across the country involve bullying where a school knew of the bullying incidents and allegedly failed to notify a child's parents and/or take any steps to intervene and stop the mistreatment before it was too late.¹⁰ Courts generally look to whether a "special relationship" between the school and the student imposed an affirmative "duty to warn".¹¹ The foresee-

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Appellate Counsel



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NCBA Committee Meeting Calendar • June 10 - June 25, 2019

Questions? Contact Stephanie Pagano at (516)747-4070 or spangano@nassaubar.org.

Please Note: Committee meetings are for NCBA Members. Dates and times are subject to change.

Check www.nassaubar.org for updated information.

Monday, June 10
LABOR & EMPLOYMENT LAW
12:30 p.m.
Paul F. Millus

Wednesday, June 12
MATRIMONIAL LAW
5:30 p.m.
Jennifer Rosenkrantz

Tuesday, June 18
ETHICS
5:30 p.m.
Matthew K. Flanagan

Thursday, June 20
DIVERSITY & INCLUSION
6:00 p.m.
Linda K. Mejias

Wednesday, June 12
ASSOCIATION MEMBERSHIP
12:45 p.m.
Adam D'Antonio

Tuesday, June 18
VETERAN'S & MILITARY LAW
12:30 p.m.
Gary Port

Wednesday, June 19
COMMERCIAL LITIGATION
12:30 p.m.
Matthew F. Didora

Tuesday, June 25
ANIMAL LAW
6:00 p.m.
Matthew A. Miller/Kristi L. DiPaolo

Wednesday, June 12
REAL PROPERTY LAW
5:30 p.m.
*Mark S. Borten/Anthony W. Russo/
Bonnie Link*

Tuesday, June 18
**GENERAL, SOLO AND SMALL LAW
PRACTICE MANAGEMENT**
12:30 p.m.
Deborah E. Kaminetzky

Wednesday, June 19
IN-HOUSE COUNSEL
6:00 p.m.
Tagiana Souza-Tortorella



Michael J. Langer

COMMITTEE REPORTS

Elder Law, Social Services & Health Advocacy

Meeting Date: 5/22/19

Co-Chairs: Kathleen Wright, Danielle Visvader

Presenters Beth Polner Abrahams and John Newman gave a lecture on the issue of transfers of guardianship proceedings to other states, including the relatively new statutory scheme found in Article 83 of the Mental Hygiene Law. The next meeting is scheduled for June 12, 2019.

Medical Legal Committee

Meeting Date: 5/15/19

Co-Chairs: Mary Anne Wallington, Susan Darlington

At the meeting, guest speaker Michael Salisbury, General Counsel for Verisma, delivered a presentation on the issue of obtaining medical records from medical record retrieval companies. The next topic to be presented will be on the issue of discovery of metadata and the case of *Vargas v. Lee*, recent-

ly decided in the Appellate Division, Second Department, in March, 2019. The next meeting will be in September, 2019, the date to be determined.

The Committee Reports column is compiled by Michael J. Langer, a partner in the Law Offices of Michael J. Langer, P.C. Mr. Langer is a former law clerk in the United States Court of Appeals for the Second Circuit, and a former Deputy County Attorney in the Office of the Nassau County Attorney. Mr. Langer's practice focuses on matrimonial and family law, estate and commercial litigation, and criminal defense.

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ability of the harm is often cited as a leading factor in determining whether such a duty exists.¹² For secondary schools, litigants have argued that the school and its counselors act *in loco parentis*, with an obligation to protect the students' safety and exercise reasonable care. It is crucial that schools examine their exposure to such lawsuits as it relates to school shootings and student suicide. If a school knew about a student's despair in the wake of a school shooting, ignored warning signs of the student's suicidal thoughts, and failed to intervene, can the school be held liable?

Courts have not established a clear rule on the duty of an institution of higher education to prevent student suicide. Our legal system has traditionally protected institutions of higher education from liability for student suicides.¹³ Courts have shifted away from the concept of *in loco parentis*, finding that colleges do not act in place of parents, but rather that students are legal adults and are responsible for their own lives.¹⁴ In the modern legal era, however, courts have, in some circumstances, found that suicide may be the result of a civil wrong or tort action.¹⁵ In the recent case of *Nguyen v. MIT*, Nguyen's parents initiated a lawsuit against MIT after he jumped to his death from a campus building.¹⁶ His parents argued that a "special relationship" existed between the university and its students such that non-clinician employees owe a duty to secure students against self-inflicted harm. They argued that two professors and a

dean were bound to care for Mr. Nguyen given they knew of his long history of mental illness and previous suicide attempts.¹⁷ In May 2018 Massachusetts's highest court ruled that MIT could not be held responsible, stating that "there is no duty to prevent another from committing suicide" and that the college was "not responsible for monitoring and controlling all aspects of their students' lives."¹⁸ The Court did, however, hold that a university may be liable under limited circumstances, such as when a student expressly tells of plans to commit suicide.¹⁹ This leaves the door open for future litigation as it relates to student suicide.

With the recent increase of legal cases and claims involving school shootings, suicide and other related mental health issues, it is more important than ever for schools to create and implement risk management protocols. It is essential that these mental health conditions, including, but not limited to depression, anxiety, grief and suicidal thoughts are addressed. Suicide prevention programs can help identify and treat individuals in need of assistance in the aftermath of a traumatic event. Such programs include screening to identify the at-risk individuals and implementing year-round mental health services in school or on campus. Warning signs that a student may be having suicidal thoughts include talking about or threatening suicide, alcohol or substance abuse, feeling hopeless, withdrawing from friends and activities, reckless behavior, and/or mood changes.²⁰ Suicide prevention programs should also include training for faculty and students, teaching them how to recognize and manage these warning signs, as

well as how to recognize triggers or stressors related to the traumatic event and intervene before it's too late. Schools must act to reduce isolation and promote feelings of belonging, reducing the stigma associated with mental illness and encouraging help-seeking. The survivors of a school shooting can experience long-lasting mental health effects of this trauma that must be addressed. We cannot wait for those who are hurting to ask for help. Not only can these reasonable measures help avoid liability, they could save a life.

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1. Carolyn Reinach Wolf and Jamie A. Rosen, *Gun Control is Not Enough: Early Identification and Intervention for Those At Risk Means Safety and Security Before It's Too Late*, Nassau Lawyer, (June 2018).
2. Ashley Fetters, *Lasting Grief After a Mass Shooting*, The Atlantic, (Mar. 28, 2019), <https://www.theatlantic.com/education/archive/2019/03/grief-school-shootings-suicide/585865/>.
3. *Id.*
4. Holly Yan, *The father of a Sandy Hook victim dies from an apparent suicide*, CNN, (March 25, 2019), <https://www.cnn.com/2019/03/25/us/sandy-hook-victim-father-jeremy-richman-suicide/index.html>.
5. Ashley Fetters, *Lasting Grief After a Mass Shooting*, The Atlantic, (Mar. 28, 2019), <https://www.theatlantic.com/education/archive/2019/03/grief-school-shootings-suicide/585865/>.

6. *Id.*
7. *Id.*
8. Carolyn Wolf, *Not All Survivors of School Shootings Survive*, Psychology Today, (Apr. 1, 2019), <https://www.psychologytoday.com/us/blog/the-desk-the-mental-health-lawyer/201904/not-all-survivors-school-shootings-survive>.
9. Centers for Disease Control and Prevention, (2007), Preventing Suicide, <https://www.cdc.gov/violenceprevention/pdf/suicide-factsheet.pdf>.
10. See, Mihir Zaveri, *Sixth Grader's Parents Say School Didn't Do Enough to Stop Her Suicide*, NY Times, (June 21, 2018), <https://www.nytimes.com/2018/06/21/nyregion/student-suicide-new-jersey.html>.
11. Restatement (Second) of Torts §314 A (1965).
12. See generally *Tarasoff v. Regents of Univ. of Cal.*, 551 P.2d 334, 342 (Cal. 1976). This opinion cites foreseeability as the most important factor to consider when determining affirmative duty.
13. See, e.g., *Jain v. State*, 617 N.W.2d 293 (Iowa 2000) (holding that no special relationship existed between Snjay Jain, a freshman at the University of Iowa, who committed suicide in his dorm room, and the University, such that the University owed no duty to inform Sanjay's parents of his previous suicide attempt).
14. See, e.g., *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 602, 608 (W.D. Va. 2002) (holding that the doctrine of *in loco parentis* does not apply where a student is not a minor); *Nguyen v. Mass. Inst. Tech.*, 479 Mass. 436 (2018).
15. See, *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 609 (W.D. Va. 2002) and *Shin v. MIT*, No. 020403, 2005 WL 1869101 (Mass. Super. June 27, 2005). These two court decisions stated that university officials had a special relationship with a student and that the self-harm was foreseeable, thereby creating a duty to act or intervene. However, these two decisions were narrowly limited to their facts and were not reviewed on appeal. Both cases settled before trial.
16. Katharine Q. Seelye, *M.I.T. is Not Responsible for Student's Suicide*, Court Rules, NY Times, (May 7, 2018), <https://www.nytimes.com/2018/05/07/us/mit-student-suicide-lawsuit.html>.
17. *Id.*
18. *Nguyen v. Mass. Inst. Tech.*, 479 Mass. 436 (2018).
19. *Id.*
20. Suicide Among Youth, <https://www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/SuicideYouth.html>.