citing medical literature of midazolam's ineffectiveness (at clinical doses). In a 5-4 decision, the Court affirmed the denial of preliminary injunctions, holding that the petitioners had not met their burden to "show Oklahoma's use of a massive dose of midazolam" entailed a "substantial risk of severe pain" (*Glossip*, p 2731) or that the "risk of harm was substantial when compared with a known and available" alternative (*Glossip*, p 2727). The Court remarked, "The fact that a low dose of midazolam is not the best drug for maintaining unconsciousness during surgery says little about whether a 500-milligram dose of midazolam is constitutionally adequate for purposes of conducting an execution" (*Glossip*, p 2742).

In summary, the Sixth Circuit's ruling in *In re Ohio Execution Protocol Litigation (Campbell v. Kasich*) emphasized that the seriousness of pain involved in execution protocols using a paralytic drug and potassium chloride was already sufficiently established, so that the only remaining issue is the actual likelihood that the protocol as a whole will cause such serious pain. While psychological pain was considered immaterial in the present case, the door was left open for future claims of psychological suffering if that "sure or very likely" level of certainty (of serious pain and needless suffering) could be proved. Forensic psychiatrists may be asked to assist in the determination of the severity of psychological pain and the risk an inmate would experience it due to a particular execution method.

Duty to Protect Students from Foreseeable Violence During Curricular Activities

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The California Supreme Court Holds That Colleges Have a Special Relationship with Their Students and a Resultant Duty to Protect Students, During Curricular Activities, from Foreseeable Violence

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In *Regents of the University of California v. Superior Court of Los Angeles County (Rosen)*, S230568, 2018 WL 1415703, (Cal. March 22, 2018), the California Supreme Court considered whether universities have a duty of care to protect their students from foreseeable violence.

Facts of the Case

On October 8, 2009, Damon Thompson stabbed classmate Karen Rosen during chemistry lab at University of California Los Angeles (UCLA). Karen Rosen was severely injured.

Shortly after transferring to UCLA in the fall of 2008, Damon Thompson started having problems in class and the dormitory. He thought other students were harassing him, talking about him behind his back, calling him names, and listening in on his phone calls. He complained to his professors and the Dean of Students. He said that if the school didn't handle the situation, he would act "in a manner that [would] incur undesirable consequences" (*Rosen*, p 3). The school moved Mr. Thompson to a different dormitory.

Mr. Thompson continued to believe that other students were harassing him. In January 2009, he complained to several professors and a teaching assistant. The teaching assistant told her supervising professor that she had not seen anyone harassing Mr. Thompson, but had noticed him acting oddly and thought he was showing signs of schizophrenia. The teaching assistant, supervising professor, and then the Assistant Dean of Students, met separately with Mr. Thompson. They referred him to UCLA's Counseling and Psychological Services (CAPS). The Assistant Dean contacted the school's "Response Team."

In February 2009, Mr. Thompson told his dormitory director that he was hearing "'voices coming through the walls calling him an idiot' . . . a clicking noise . . . that sounded like a gun, and he believed the other residents were planning to shoot him" (*Rosen*, p 3). He said he had "telephoned his father and was advised to 'hurt the other residents'" (*Rosen*, p 3). The campus police were called. They searched Mr. Thompson's dormitory but did not find a weapon.

The police escorted Mr. Thompson to the emergency room for a psychiatric evaluation.

During his evaluation, Mr. Thompson reported depression, auditory hallucinations, and paranoia. He denied "suicidal and homicidal thinking" (*Rosen*, p 4). He was diagnosed with possible schizophrenia and major depressive disorder. He agreed to take an antipsychotic medication and attend outpatient psychiatric treatment. The Assistant Dean of Students and the Response Team were notified.

In March, Mr. Thompson began outpatient treatment with a CAPS psychologist. He was still having auditory hallucinations, had thrown out his medications, and continued to have problems at the dormitory (even though the school had moved him to a single room).

Later in March, Mr. Thompson saw a CAPS psychiatrist and said he wanted to hurt the people who were harassing him. Mr. Thompson did not have a specific target or plan. The CAPS team did not believe Mr. Thompson met criteria for involuntary hospitalization. Mr. Thompson refused voluntary hospitalization.

In late April, Mr. Thompson stopped going to CAPS sessions. In June, Mr. Thompson pushed a dormitory resident he accused of making too much noise. Mr. Thompson was barred from university housing. He was instructed to re-start treatment with CAPS in the fall.

In the fall, Mr. Thompson continued to believe that other students in his chemistry lab were harassing him. He e-mailed his chemistry professor, Professor Bacher, about this. He was again attending CAPS sessions. He told his psychologist that other students were making "critical and racist comments" (*Rosen*, p 5). The psychologist concluded that Mr. Thompson was delusional. He was seen by the CAPS psychiatrist and referred to UCLA's behavioral health clinic.

On October 6 and October 7, 2009, Professor Bacher received concerning reports about Mr. Thompson. There had been two incidents in the chemistry lab in which Mr. Thompson accused specific students of harassing him. The Assistant Dean of Student Services, the Response Team, and CAPS were all notified.

On October 8, 2009, during a chemistry lab, Mr. Thompson stabbed Ms. Rosen in the neck and chest with a kitchen knife. Damon Thompson was charged with attempted murder and found not guilty by reason of insanity.

Ms. Rosen sued the Regents of the University of California (and others) for negligence. Ms. Rosen claimed that UCLA had a duty to take reasonable measures to warn her of, and protect her from, "foreseeable criminal conduct on its campus" (*Rosen*, p 7). UCLA filed for summary judgment alleging (among other things) that a college does not have a duty to protect its students from criminal acts. The trial court denied UCLA's motion for summary judgment. The Court of Appeal reversed this, ordering the trial court to enter summary judgment on UCLA's behalf, holding "that UCLA owed no duty to protect Rosen based on her status as a student" (*Rosen*, p 8). Ms. Rosen petitioned the Supreme Court of California for review.

Ruling and Reasoning

The California Supreme Court reversed the Court of Appeal's decision. The court noted that a defendant's motion for summary judgment is only to be granted when, as a matter of law, there is no cause of action. In Rosen's case, the suit was for negligence. To have a cause of action, Rosen had to establish a duty, breach of duty, causation, and damages. The Court of Appeal's ruling was based on its interpretation that, as a matter of law, UCLA did not have a duty to protect its students from criminal acts. The California Supreme Court disagreed, holding that "universities have . . . a duty to protect [students] from foreseeable violence during curricular activities" (*Rosen*, p 2).

The California Supreme Court explained that, in general, an individual does not have a duty to "'control the conduct of another, nor to warn those endangered by such conduct'" (*Rosen*, p 10). However, there are exceptions: a duty to protect can exist when the defendant has a special relationship with the "'person whose conduct needs to be controlled or [with] . . . the foreseeable victim of that conduct'" (*Rosen*, p 10).

The court gave examples of recognized special relationships: parent and child, innkeepers and guests, common carriers and their passengers; describing situations involving dependency and a superior ability to protect the dependent party. The court found a special relationship between universities and their students "while they are engaged in activities that are part of the school's curriculum or closely related to its delivery of educational services" (*Rosen*, p 17).

The court distinguished previous California cases that declined to acknowledge this special relation-

ship, referencing the courts' reluctance in those cases to impose a duty to prevent crimes related to alcohol use. They also cited a 2006 California Supreme Court case, *Avila v. Citrus Community College Dist.*, 38 Cal.4th 148 (2006), where the court found a university had "a duty to students in school-sponsored athletic events . . . 'warranted by the[ir] relationship'" (*Rosen*, p 16).

Having found a legally special relationship between universities and their students, the court considered policy considerations that support or weigh against the establishment of a limited duty to protect. The court evaluated a variety of policy considerations, including the California Constitution's extension of a right to public safety to postsecondary campuses, and the burden this duty would impose on universities.

The court, mentioning the social context of recent mass shootings such as Virginia Tech, stated that policy considerations support the establishment of the above duty: "violence against students in the classroom or during curricular activities, while rare, is a foreseeable occurrence . . ." (*Rosen*, p 23). Furthermore, universities are already aware of the need to identify and defuse "potential threats to student safety"; UCLA "expressly marketed itself . . . as 'one of the safest campuses in the country'" (*Rosen*, p 28).

Discussion

In general, a defendant does not have a duty to protect a plaintiff from a third party's violent behavior. There is an exception to this rule when a defendant and the plaintiff have a (legally defined) special relationship. The California Supreme Court found such a relationship between a university and its students. The resultant duty is limited to "enrolled students . . . participating in curricular activities at the school" (*Rosen*, p 29).

The court did not describe the standard of care, but noted that universities are not expected to prevent all violence on their grounds as this would be an impossible task. A university must exercise "reasonable care when aware of a foreseeable threat of violence in a curricular setting" (*Rosen*, p 29). Although not specifically stated in the opinion, it is likely that the increasing use of "threat assessment protocols and multidisciplinary teams to identify and prevent campus violence" (*Rosen*, p 24) will shape the standard of care, and perhaps judicial interpretation thereof.

In discussing foreseeability, the court mentioned the importance of notice: whether a university was aware that a student was "at risk to commit violence against other students" (*Rosen*, p 25). The court's holding, relying on foreseeability and reasonableness, will likely be challenging for lower courts. The California Supreme Court cautioned lower courts against hindsight bias. Each case must be decided based on the specific facts, including consideration of whether the perpetrator had made prior threats and whether there was an identifiable victim.

The American Psychiatric Association had filed an amicus brief in support of the defendants. Their brief voiced concern about a possible expansion of the duty of psychotherapists to protect third parties from harm. The Supreme Court of California declined to review this issue because Rosen's "petition for review was limited to the issue of duty" (*Rosen*, p 31).

ERRATUM

In a Legal Digest article reviewing *Mena v. Idaho State Board of Medicine* (J Am Acad Psychiatry Law 44:499–501, 2016), the authors described the imposition of sanctions on a physician by the Idaho Board of Medicine. The subtitle used the word "suspension" instead of "sanctions." The subtitle should have read: "Physician's License Sanctions Reversed Absent Finding of Impairment in Accordance with the Disabled-Physician Act." We apologize for any confusion created in the originally published subtitle.

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