This case provides an excellent illustration of the importance for forensic psychiatrists to think beyond the strict medical model of disability. Although a medical model of disability primarily focuses on an individual's restrictions and limitations, the social or civil rights model of disability "emphasizes eliminating barriers in the society that keep persons with disabilities from being fully integrated" (Weber MC. AAPL guideline for forensic evaluation of psychiatric disabilities: A disability law perspective. J Am Acad Psychiatry Law. 2008; 36(4):558–62). In this case, we observe potentially disparate treatment via the barriers placed on disabled persons with addictions compared with other groups. These barriers could significantly affect the recovery process, as they may have affected treatment methods and community integration. It is essential to safeguard the rights and privileges of group homes from any discriminatory policies or regulations that may limit the advantages of community living to ensure that disabled groups can benefit from this living arrangement.

University's Duty to Protect Students

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University's Duty to Use Reasonable Care to Protect Its Students Exists When Student Is On Campus or Engaged in University-Sponsored Activities

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In *Barlow v. State*, 540 P.3d 783 (Wash. 2024), the Washington Supreme Court ruled that a special relationship exists between a university and its students for campus activities, which gives rise to a duty to use reasonable care to protect students from the foreseeable harms from other students. The scope of the duty is predicated on the student's participation in on-campus or university-controlled activities.

Facts of the Case

In August 2017, Madeleine Barlow started undergraduate studies as a freshman at Washington State University's (WSU's) main campus in Pullman, Washington. On August 20, 2017, Thomas Culhane, a fellow WSU student, raped Ms. Barlow at a party at his off-campus apartment. This situation resulted in Mr. Culhane being expelled from WSU and later convicted of second-degree rape.

Prior to the sexual assault on Ms. Barlow, Mr. Culhane was a student at WSU's Vancouver campus until Spring 2017, where he had been the recipient of two sexual misconduct complaints. One student filed a complaint that Mr. Culhane had sent her sexual comments via electronic communication. Another student complained that, during a school trip, Mr. Culhane sat next to her on a university bus and put his hands on and between her legs and continued even after she requested him to stop. The Office of Student Conduct found Mr. Culhane responsible for violating student conduct. During the investigation, Mr. Culhane requested and was granted transfer to the WSU Pullman campus. Because of the hearing, WSU suspended Mr. Culhane for nine days on August 1, 2017 and assigned him to write a paper on his understanding of consent as part of his sanctions for his sexual misconduct. But Mr. Culhane demonstrated that he did not understand the concept of consent, and the university instructed him to rewrite the paper. He did not complete all of the terms of his sanctions. Two weeks after the sanctions were imposed, he sexually assaulted Ms. Barlow at the Pullman campus at WSU.

On January 28, 2020, Ms. Barlow filed a civil suit against WSU in the superior court for Thurston County for negligence. WSU removed the case to federal court. Ms. Barlow's negligence claim relied on WSU having a special relationship with its students, alleging a duty to control and protect the students, with the knowledge of Mr. Culhane's past sexual misconduct making the offense foreseeable.

WSU moved for summary judgment, arguing that Ms. Barlow's claims failed as a matter of law because the assault occurred off campus. The district court granted WSU's motion for summary judgment. Ms. Barlow then appealed to the Ninth Circuit Court of Appeals, and that court certified two questions to the Washington Supreme Court: whether, first,

Washington law recognizes a special relationship between a university and its students such that the university owes a duty of reasonable care to protect students from foreseeable injury from other students and, second, if the answer is yes, what is the appropriate scope of the university's duty?

Rulings and Reasoning

Before the Washington Supreme Court, Ms. Barlow argued that a special relationship exists between a university and its students and that the common law duty of K–12 schools should be expanded to universities. Relying on the Restatement (Second) of Torts (1977), she identified exceptions to the general premise that there is no duty to protect others from third-party conduct. She cited exceptions based on the concept of a special relationship. She argued that WSU had a duty to control Mr. Culhane and protect her based on what WSU knew about Mr. Culhane's behavior. She asserted that WSU was negligent given the foreseeability that Mr. Culhane would cause harm again.

The court recognized that, under § 344 of the restatement, which addresses the duties of a property holder, the university has a type of special relationship, but the duty is limited only to university property and university-controlled activities. Ms. Barlow proposed to extend the duty recognized for K–12 students to university students with reference to § 320 of the restatement. But the court stated that K–12 schools, unlike universities, have almost complete control over the students and their activities. K–12 schools are acting as parents to students during the school day, and this control gives rise to the duty that the K–12 schools owe children. Universities, in contrast, do not have similar protective custody over adult students.

Next, the court reviewed Ms. Barlow's proposal to consider § 315(b) of the restatement, which had previously been applied to individuals at risk of being harmed. The court looked to *Niece v. Elmview Group Home*, 929 P.2d 420 (Wash. 1997), in which a group home was fully responsible for the care of a vulnerable adult and therefore had a duty to protect the adult resident from harm. The court distinguished Ms. Barlow's case from *Niece*. Unlike Ms. Niece, who had a developmental disability, Ms. Barlow was not a vulnerable adult who could not care for herself, and thus, the university had no power to control her actions off campus. The court also considered *Turner v. Dep't of Social & Health Services*, 493 P.3d 117 (Wash. 2021), which found a duty based on the dependency of the victim, and said that no similar duty exists between a university and its students.

Further, the court considered Ms. Barlow's argument based on § 315(a) and 319 of the restatement that WSU had a duty based on the school's being entrusted to care for its students when it knew about Mr. Culhane's risk of violence. In stating that the duty does not apply, the court turned to *Volk v. DeMeerleer*, 386 P.3d 254 (Wash. 2016), which addressed mental health clinicians' duty to protect third parties from foreseeable violence of their patients. "We acknowledged [in Volk] that the nature of the doctor-patient relationship gave the doctor insight into the dangerousness of the patient and provided the doctor with the identity of possible victims, but also gave the doctor sufficient control of the third party to manifest the duty" (*Barlow*, p 788). The court said that this type or relationship does not exist between a university and its students, as the interactions are less intimate and consistent.

Finally, the court distinguished cases in which a parole or probation officer was found to have a duty to the perpetrators' foreseeable victims. The court stated, in cases where officers were found to have a duty, the officers had significant control over the offenders and statutory authority to supervise them. A university does not have the type of authority that officers have to dictate to the students who are off campus. Essentially, the court reiterated that foreseeability does not establish a duty. Although sexual assaults are horrific, the university has no power to control a student's movements off campus. The university's duty is limited to on campus and school-related purposes only.

Dissent

The dissenting justices said that a university's duty to protect its students should not be bound by the geographical boundaries of the college campus. The dissent indicated that WSU had duties from its relationship with Mr. Culhane and also its relationship with Ms. Barlow. Judge Montoya-Lewis specifically addressed the risk of sexual violence among college students, stating that, with increasing societal awareness of the prevalence of sexual assault and alcohol and substance use in universities, students are now required to attend trainings on these risks and universities provide relevant counseling and support;

accordingly, there should be an appropriate middle ground between universities acting as parental figures and mere bystanders toward their students.

Discussion

This *Barlow* Court reviewed the scope of a "special relationship" and the duty to protect as applied to a university and its students. Although a special relationship exists between a university and its students when they are on campus, the scope of the duty is based on the student's participation in university-controlled activities.

Forensic psychiatrists are familiar with principles of the special relationship and the duty to protect from cases involving harm from patients. In the landmark case of *Tarasoff v. Regents of Univ. of California*, 551 P.2d 334 (Cal. 1976), the Supreme Court of California held that, when a therapist determines that a patient presents a serious risk of danger to another person, the therapist has a duty to use reasonable care to protect the intended victim from danger. These duty-to-protect cases have been extended to jurisdictions across the country, some with further expansion of the duty owed by the clinician. For example, in *Volk*, which was cited in *Barlow*, the Supreme Court of Washington ruled that, once a special relationship exists between a mental health professional and patient, mental health professionals have a duty to protect foreseeable victims from the dangerous propensities of their patients. This ruling has been interpreted as a broad application of the duty to protect and an outlier across states (Piel JL, Opara R. Does Volk v. DeMeerleer conflict with the AMA Code of Medical Ethics on breaching patient confidentiality to protect third parties? AMA J. Ethics. 2020; 20(1):10–18).

Although both *Barlow* and *Volk* were decided by the Washington Supreme Court, there are striking differences in how the court views the special relationship and duty between a mental health provider and patient versus university and student. The *Barlow* court emphasized the intimate nature of the relationship between a mental health provider and patient. The majority in *Barlow* discounted the fact that the university similarly gained intimate knowledge of Mr. Culhane's past history of violence such that it was overseeing his discipline. Time will tell whether mental health clinicians continue to be held to a different standard in Washington.