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NOTE

ON-CAMPUS SUICIDE SITES AND MEANS-RESTRICTIVE SUICIDE BARRIERS: PROTECTING STUDENTS AND THEIR UNIVERSITIES

*Rachel S. Sparks Bradley**

The tragedy of college-student suicides has grabbed numerous headlines in recent years. In the wake of these horrific events, many universities have strengthened their mental-health programs and found new ways to aid students in distress. Some universities have also opted to employ "means restriction" methods of suicide prevention—specifically, physical barriers—at "known" locations for suicide-by-jumping on their campuses. In the last decade or so, a handful of suits brought against universities based on students' on-campus suicides have resulted in inconsistent liability determinations—particularly because while suicide is generally a superseding act that cuts off the liability of any other actor, the possibility of a "special relationship" between a university and a particular distressed student adds a new layer to considerations of duty and foreseeability in the student-suicide setting.

This Note considers university liability for on-campus student suicides-by-jumping from known suicide sites in the previously unexplored context of "means restriction" methods of suicide prevention. Specifically, it asks whether a university (1) faces any liability for failing to install means-restrictive suicide barriers, (2) exposes itself to liability by installing such barriers, or (3) assumes a duty by installing such barriers. This Note concludes that a university may actually face liability on all three counts under the current trend of American law through a sort of hybrid of premises-liability and the student–university "special relationship"—at least when the university had reason to know that a particular student was suicidal or intended to utilize a known on-campus

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suicide-by-jumping site. This Note argues, however, that even the possibility of such liability is inappropriate and dangerous and instead proposes that state legislatures clearly delimit the contours of university liability in this context so that universities may be free to make the best choices for their students under their particular circumstances without fear of civil repercussion—and hopefully save students' lives in the process.

INTRODUCTION

Suicide is the third leading cause of death among college-age individuals.[1] Among college students themselves, however, suicide is the second leading cause of death, resulting in an estimated 1,350 suicides each year.[2] Unfortunately, some of this behavior is dramatic and headline-grabbing. Recent tragedies include Tyler Clementi's leap from the George Washington Bridge,[3] Elizabeth Shin's self-immolation in her dorm room,[4] and a handful of young souls' jumps from the upper balconies at New York University's Bobst Library[5] and from the bridges over the fabled gorges at Cornell University.[6] In the wake of these horrific events, universities have rushed to strengthen their mental health programs.[7] Some universities have also installed physical barriers at known suicide sites—such as transparent Lexan plastic barriers at NYU's Bobst Library and metal chain-link fences along the railings of Cornell's gorge

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[1] *See* LLOYD POTTER ET AL., SUICIDE PREVENTION RESOURCE CENT., PROMOTING MENTAL HEALTH AND PREVENTING SUICIDE IN COLLEGE AND UNIVERSITY SETTINGS 4 (2004), *available at* http://www.sprc.org/library/college_sp_whitepaper.pdf.

[2] *See* Morton M. Silverman, Presentation at Columbia Univ. Law Sch. Conference, Turning Violence Inward: Understanding and Preventing Campus Suicide (Apr. 4, 2008), http://www2.law.columbia.edu/jfagan/conference/docs/Silverman_CLS_Presentation.ppt. The number was lower just a decade ago and significantly lower several decades ago. *See* NAT'L MENTAL HEALTH ASSOC. & THE JED FOUNDATION, SAFEGUARDING YOUR STUDENTS AGAINST SUICIDE: EXPANDING THE SAFETY NET: PROCEEDINGS FROM AN EXPERT PANEL ON VULNERABILITY, DEPRESSIVE SYMPTOMS, AND SUICIDAL BEHAVIOR ON COLLEGE CAMPUSES 2–3 (2002), *available at* http://www.acha.org/Topics/docs/Safeguarding_Against_Suicide_FULLreport.pdf (reporting that as of 2001, the number of yearly college-student suicides was 1,088 and that the suicide rate for all adolescents ages fifteen to twenty-four tripled in the sixty years prior to that).

[3] Kelly Heyboer, *Tyler Clementi, Rutgers Freshman, Commits Suicide After Secret Broadcast of Sexual Encounter*, NJ.COM (Sept. 29, 2010), http://www.nj.com/news/index.ssf/2010/09/rutgers_student_commits_suicid.html.

[4] *See* Rochelle Sharp, *Suicide at MIT Raises Parents' Ire*, USA TODAY (Jan. 24, 2002), http://www.usatoday.com/news/nation/2002/01/25/usat-mit.htm; *see also* Shin v. Mass. Inst. of Tech., No. 020403, 2005 WL 1869101, at *9–14 (Mass. Super. Ct. June 27, 2005).

[5] Arielle Milkman, *Student Death Moves University to Reassess Bobst Safety*, WASH. SQ. NEWS (Nov. 4, 2009), http://nyunews.com/news/2009/11/04/death/ (discussing history of student suicides at NYU).

[6] Jennifer Epstein, *Does 6 Deaths in 6 Months Make Cornell 'Suicide School'?*, USA TODAY, Mar. 16, 2010, http://www.usatoday.com/news/education/2010-03-16-IHE-cornell-suicides-16_ST_N.htm.

[7] For broad discussions of these various mental-health strategies to suicide prevention, see Juhi Kaveeshvar, Comment, *Kicking the Rock and the Hard Place to the Curb: An Alternative and Integrated Approach to Suicidal Students in Higher Education*, 57 EMORY L. J. 651, 659–74 (2008), and Karin McAnaney, Note, *Finding the Proper Balance: Protecting Suicidal Students Without Harming Universities*, 94 VA. L. REV. 197, 201–17 (2008).

bridges[8]—following significant research suggesting that "means-restriction" prevents suicides.[9]

Standing alone, these developments are not overtly remarkable, particularly given the concern most universities demonstrate for the health and well-being of their students. What is remarkable, however, is the decision two of these means-restricting universities made to make their temporary suicide barriers permanent. In April 2010, NYU announced that its barriers, installed in 2003, will remain indefinitely,[10] and in September 2010, Cornell University announced that permanent barriers would replace the temporary barriers it installed only months earlier.[11] Since the recent rashes of suicides-by-jumping are not the first at either university,[12] the big question is "why now?"

One possible reason, in addition to strong social science research indicating that such barriers really do prevent impulsive suicide jumps,[13]

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8 Lisa W. Foderaro, *Cornell Adds Fences to Bridges to Deter Suicides by Students*, N.Y. TIMES, Mar. 24, 2010, http://www.nytimes.com/2010/03/25/nyregion/25fences.html; Nils I. Palsson, *Bobst Barriers Installed*, WASH. SQ. NEWS (Nov. 24, 2003), http://nyunews.com/2003/11/24/15/.

9 *See* ANNETTE BEAUTRAIS ET AL., PREVENTING SUICIDE BY JUMPING FROM BRIDGES OWNED BY THE CITY OF ITHACA AND BY CORNELL UNIVERSITY: EXTENDED REPORT 14–25, 28 (2010), *available at* http://caringcommunity.cornell.edu/docs/062010-cu-consultation-report-extended.pdf (discussing a number of social and empirical studies related to suicide barriers and other forms of means-restriction and ultimately recommending that Cornell University make its temporary suicide barriers permanent); *see also* PETER AITKEN ET AL., NAT'L INST. FOR MENTAL HEALTH IN ENG., GUIDANCE ON ACTION TO BE TAKEN AT SUICIDE HOTSPOTS 4, 8 (2006), *available at* http://www.nmhdu.org.uk/silo/files/guidance-on-action-to-be-taken-at-suicide-hotspots.pdf ("The most effective form of [suicide] prevention at jumping sites is a physical barrier, which literally restricts access to the drop. Safety nets serve a similar purpose but rescue from a net may be difficult should a jump occur."); TIMOTHY C. MARCHELL, MEANS RESTRICTION ON ITHACA'S BRIDGES: A KEY ELEMENT OF A COMPREHENSIVE APPROACH TO PREVENTING SUICIDE 5 (2011), *available at* http://www.gannett.cornell.edu/cms/pdf/upload/MeansRestriction_QandA.pdf ("Several studies have demonstrated that means restriction on bridges significantly reduces or eliminates jumping suicides from those locations. This finding is quite consistent and not controversial.").

10 Prerana Swami, *Bobst Barriers, Although Meant To Be Temporary, Will Remain*, WASH. SQ. NEWS (Apr. 12, 2010), http://nyunews.com/news/2010/04/11/12glass/.

11 Originally, the plan called for permanent metal fencing. *See* Michael Linhorst, *Cornell Selects Architect for Permanent Bridge Barriers*, CORNELL DAILY SUN (Sept. 2, 2010), http://cornellsun.com/section/news/content/2010/09/02/cornell-selects-architect-permanent-bridge-barriers. The final decision, however, was for permanent metal mesh nets underneath the bridges to replace some of the temporary fencing as early as the spring of 2012. *See* Jeff Stein, *Common Council Approves Nets Under City Bridges*, CORNELL DAILY SUN (Dec. 8, 2011), http://cornellsun.com/node/49229; Joseph Niczky, *Revised Bridge Net Plan Avoids Obstructing Views*, CORNELL DAILY SUN (Oct. 7, 2011), http://cornellsun.com/node/48227.

12 Milkman, *supra* note 5; Michael Stratford, *After 30 Years, Cornell Continues Debate Over Suicide Barriers*, CORNELL DAILY SUN (May 7, 2010), http://cornellsun.com/section/news/content/2010/05/07/after-30-years-cornell-continues-debate-over-suicide-barriers.

13 *See* sources cited *supra* note 9.

is a fear of liability.[14] Unfortunately, this fear is likely not as far-fetched as it once might have been, particularly in the wake of several suits brought against universities and university personnel for on-campus student suicides.[15] Generally, American courts are reluctant to impose liability on any person, institution, or landowner for the suicide of another; courts typically consider suicide a superseding act that breaks nearly any causal chain.[16] In some of these student-suicide suits, however, courts have shown a remarkable willingness (or at least not an unwillingness) to find an affirmative duty to prevent suicide stemming from the "special relationship" a university may have with each of its students—particularly where the relationship is one of dependence, the university had notice of the student's suicidality, or the particular student's suicide was otherwise foreseeable.[17] Universities such as NYU and Cornell, then,

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[14] "Liability" here refers to a determination or question of legal duty such as that sufficient for a plaintiff to survive a motion to dismiss or a later motion for summary judgment, not to ultimate negligence. This Note does not mean to suggest, however, that these universities made their choices solely, or even primarily, out of this fear of liability, rather than out of concern for their students' health and safety. Both, in fact, expressed genuine concern for their students following the most recent student suicides-by-jumping. *See* Trip Gabriel, *After 3 Suspected Suicides, Cornell Reaches Out*, N.Y. TIMES, Mar. 16, 2010, http://www.nytimes.com/2010/03/17/education/17cornell.html (quoting Cornell President David J. Skorton's full-page ad in the campus paper as saying, "If you learn anything at Cornell, please learn to ask for help."); *University Releases Statement on Death in Bobst*, WASH. SQ. NEWS (Nov. 3, 2009), http://www.nyunews.com/news/2009/11/03/comment/ (reprinting the text of a university-wide email). Nevertheless, litigation against colleges and universities appears to be increasing; some scholars have noted that students and parents, on the whole, are becoming more and more willing to bring claims against their universities for a host of tort claims both real and seemingly imagined. *See* AMY GAJDA, THE TRIALS OF ACADEME: THE NEW ERA OF CAMPUS LITIGATION 183–204 (2009).

[15] *See, e.g.*, Schieszler v. Ferrum Coll., 236 F. Supp. 2d 602, 608–10 (W.D. Va. 2002); Jain v. State, 617 N.W.2d 293, 300 (Iowa 2000); Shin v. Mass. Inst. of Tech., No. 020403, 2005 WL 1869101, at *9–14 (Mass. Super. Ct. June 27, 2005); Mahoney v. Allegheny College, No. AD 892-2003 (Pa. Ct. Com. Pl. Dec. 22, 2005), *available at* http://www.theasca.org/attachments/articles/35/Allegheney%20college%20SJ%20decision.pdf. Most recently, in November 2011, the father of a Cornell student who committed suicide by jumping into a gorge on Cornell's campus in February 2010 sued the university, among others, for $180 million. *See* Complaint at 25–26, Ginsburg v. City of Ithaca, No. 5:11-cv-01374 (N.D.N.Y. Nov. 21, 2011). This lawsuit is still pending at the time of this writing. Several decades ago, lawsuits against Cornell following the jumping suicides of two students were unsuccessful. *See* Eric Randall, *Parents of '77 Suicide Victim Lose Suit Against C.U., City*, CORNELL DAILY SUN, Apr. 20, 1981, at 1; John Schroeder, *Barriers to Rise on C-Town Bridge*, CORNELL DAILY SUN, May 2, 1979, at 1.

[16] *See, e.g.*, Salsedo v. Palmer, 278 F. 92, 96 (2d Cir. 1921) (finding that suicide is a deliberate and intervening act that cuts off third-party liability); *Jain*, 617 N.W.2d at 300 (finding that because no special relationship existed between the student and university under the circumstances, there could be no exception to the intervening-superseding suicide cause doctrine); s*ee also* Victor E. Schwartz, *Civil Liability for Causing Suicide: A Synthesis of Law and Psychiatry*, 24 VAND. L. REV. 217, 217 (1971) (noting that many courts "shy away from imposing civil liability for causing suicide").

[17] *See Schieszler*, 236 F. Supp. 2d at 608–10 (finding a special relationship between university officials and student where suicide was foreseeable); *Shin*, 2005 WL 1869101, at

may have reason to fear liability for on-campus student suicides-by-jumping imposed through a sort of hybrid of premises-liability and the student–university "special relationship."

Much has been said about university liability for student suicides generally.[18] Little has been said about the landowner aspect of that liability, however, and nothing has been said about university liability for employing, or rejecting, means-restriction methods such as suicide barriers. Thus, the broad, basic question of this Note is whether, in the face of suicides-by-jumping from the same or similar on-campus sites, a university actually (1) faces any liability for failing to install suicide barriers, (2) exposes itself to liability by installing such barriers, or (3) assumes a duty by installing such barriers that prevents their removal. This Note argues that, at least as to particular students, universities may actually face liability on all three counts under the current trend of American law, but that they absolutely should not.[19] Among other reasons,

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*11–13 (permitting suit against university officials, though not the university itself, to proceed on reasoning similar to, and specifically citing, *Schieszler*); *see also* Irwin v. Ware, 467 N.E.2d 1292, 1300 (Mass. 1984) (defining a "special relationship" in part by "whether a defendant could reasonably foresee that he would be expected to take affirmative action to protect the plaintiff and could anticipate harm to plaintiff from the failure to do so"). Note that issues of sovereign immunity where the university at issue is a public institution find little play in these cases. For an overview of sovereign immunity in the public university context, see Brett A Sokolow et al., *College and University Liability for Violent Campus Attacks*, 34 J.C. & U.L. 319, 336–40 (2008).

[18] *See, e.g.*, Valerie Kravets Cohen, Note, *Keeping Students Alive: Mandating On-Campus Counseling Saves Suicidal College Students' Lives and Limits Liability*, 75 FORDHAM L. REV. 3081, 3088–3101(2007); Kelley Kalchthaler, *Wake-Up Call: Striking a Balance Between Privacy Rights and Institutional Liability in the Student Suicide Crisis*, 29 REV. LITIG. 895, 920–24 (2010); Aaron Konopasky, Note, *Eliminating Harmful Suicide Policies in Higher Education*, 19 STAN. L. & POL'Y REV. 328, 336–42 (2008); Heather E. Moore, Note, *University Liability When Students Commit Suicide: Expanding the Scope of the Special Relationship*, 40 IND. L. REV. 423, 428–37 (2007); Elizabeth Wolnick, Note, *Depression Discrimination: Are Suicidal College Students Protected by the Americans with Disabilities Act?*, 49 ARIZ. L. REV. 989, 1005–15 (2007).

[19] Throughout this Note, "university" is used collectively to refer to both the institution and its personnel. Additionally, for the purposes of this Note, I have generally set aside claims based on intentional acts or gross negligence. *Cf. infra* Part V.B (bringing intentional acts and gross negligence back into the equation as means to rebut a presumption of good faith by the university).

Of course, I am not the first to suggest that universities should not face liability for these actions or that it is a significant problem not to specifically define a university's duties. *See, e.g.*, Peter F. Lake, *Still Waiting: The Slow Evolution of the Law in Light of the Ongoing Student Suicide Crisis*, 34 J.C. & U.L. 253, 254 (2008) ("Legal inactivism in the context of college and university student suicide is dangerous . . . . There is a cost when neither courts nor legislatures articulate the ways in which general legal principles apply in the college and university context and fail to consider the impact upon administrators of partial, incomplete, or inconsistent legal commands. At this time, the law is failing colleges and universities with respect to the mental health crisis.").

imposing liability creates unnecessary uncertainty in an arena in which lives are clearly at stake.[20]

Part I of this Note briefly describes the evolution of liability based on the university–student relationship. Part II explores the nature of a university's liability as a landowner and the special problems that may develop with a known suicide site, and Part III examines suicide both as a superseding cause and as a contagion on university campuses. Part IV argues that remarkably, a university might face liability in the wake of a student's suicide-by-jumping from a known suicide site, not only when a university has not installed suicide barriers, but also when it has installed and later removed those barriers. Finally, Part V argues that not only would this liability be excessive for universities, but that even the possibility of it is also unnecessarily dangerous for students, and that it is legislatures, rather than courts, which much find the solution to this unnecessary and dangerous liability and ground it on proper incentives.

I. THE "SPECIAL RELATIONSHIP" AND THE EVOLUTION OF UNIVERSITY LIABILITY

The university–student relationship is not merely contractual, not merely landlord–tenant, and not merely that of strangers; rather, universities have a special relationship with their students.[21] Because of the unique, near-paternalism of this relationship, many courts have been willing to find a tort-defined legally significant "special relationship" in various contexts.[22] Among other things, these contexts include student

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20 Fear of liability might, for example, stop a university from invoking essential suicide-prevention strategies, or might encourage a university to install all manner of means-restrictive barriers even if such barriers have little value, thus expending valuable resources and perhaps unnecessarily advertising an appealingly effective suicide location.

21 Such a special relationship is not necessarily a legally significant "special relationship" under all circumstances. *See* ROBERT D. BICKEL & PETER F. LAKE, THE RIGHTS AND RESPONSIBILITIES OF THE MODERN UNIVERSITY: WHO ASSUMES THE RISKS OF COLLEGE LIFE? 179–87 (1999); Jane A. Dall, *Determining Duty in Collegiate Tort Litigation: Shifting Paradigms of the College-Student Relationship*, 29 J.C. & U.L. 485, 486–87 (2003) (arguing that as of 2003, existing liability rules had not sufficiently addressed the relationship and that the special relationship should be given broad recognition).

22 American law generally imposes no affirmative duty to rescue in the absence of a "special relationship." *See, e.g.*, Fred v. Archer, 775 A.2d 430, 438–40 (Md. Ct. Spec. App. 2001); RESTATEMENT (THIRD) OF TORTS § 40(a) ("An actor in a special relationship with another owes the other a duty of reasonable care with regard to risks that arise within the scope of the relationship."); *id.* § 40(b) & cmt. *l* (including a "school with its students," even institutions of higher education "at least with regard to risks from conditions on the college's property or risks created by the acts of others on the confines of college property"); *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, 535 (2001) ("Thus, with no hint of irony, courts continue to hold that adult college students are not in a special relationship with an [institution of higher education (IHE)], except when they are. The courts appear to be saying there is no *general* special relationship, but students do have spe-

intoxication, drug use, or other voluntary student activities.[23] Additionally, many state legislatures require that public and private universities and colleges impose special rules on their students related to safety and orderliness.[24] As a result, a university is at risk of being held to a higher duty—and thus facing a lower threshold for liability—than an average landowner when one of its students is injured or killed on its premises.[25] Universities may be particularly susceptible to liability based on assumed duties, even if a duty would not otherwise exist.[26]

A. *A University May Have Duties Stemming from Its Special Relationship with Its Students*

No court has suggested that the university–student relationship is per se "special" in a legal sense.[27] Nevertheless, it is important to recognize that any imposition of liability, or even a discussion of liability, is a remarkable shift from the paradigm that until recent decades governed university–student relationships.[28] The doctrine of *in loco parentis* granted universities nearly boundless discretion over their decision making—"so long as," as the Florida Supreme Court put it, "such regulations d[id] not violate divine or human law."[29] In this era, it was the rare court

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cific duty-creating relationships with IHE's, some of which are legally 'special.' Thus, IHE's do not have 'custody' over their adult students, but do have other legal relationships, some of which are technically and legally 'special,' giving rise to a duty of reasonable care." (footnotes omitted)).

23 *But see* Bash v. Clark Univ., No. 06745A, 2006 WL 4114297, at * 3–5 (Mass. Super. Ct. Nov. 20, 2006) (finding that a student overdose was not so plainly foreseeable that it would be reasonable to impose a special relationship between the university and the student); Christopher T. Pierson & Lelia B. Helms, Commentary, *Liquor and Lawsuits: Forty Years of Litigation over Alcohol on Campus*, 142 EDUC. L. REP. 609, 617–20 (2000) (compiling data from litigated cases 1960 to 2000 related to on-campus student alcohol use).

24 Nearly every state imposes such rules. For one representative example, see N.Y. EDUC. L. §§ 6430–6437 (MCKINNEY 2010) (dealing with the regulation by colleges of conduct on campuses and other college property used for educational purposes).

25 *See* sources cited *supra* note 17.

26 *See, e.g.*, Coghlan v. Beta Theta Pi Fraternity, 987 P.2d 300, 312 (Idaho 1999) (finding that the university did not owe student a duty of care to protect her against her own intoxication, but it had assumed the duty through its voluntary supervision of activities); Featherston v. Allstate Ins. Co., 875 P.2d 937, 940 (Idaho 1994) (discussing assumption of duty principles generally).

27 *See, e.g.*, *Coghlan*, 987 P.2d 300 (determining that "whether a special relationship exist[s] . . . sufficient to impose a duty" requires evaluating a wide variety of policy factors).

28 *See* BICKEL & LAKE, *supra* note 21, at 17–33; Nathan Roberts et al., *Tort Liability*, *in* CONTEMPORARY ISSUES IN HIGHER EDUCATION LAW 183, 188–89 (Joseph Beckham & David Dagley eds., 2005).

29 John B. Stetson Univ. v. Hunt, 102 So. 637, 640 (Fla. 1924); BICKEL & LAKE, *supra* note 21, at 17–33. Thus, for example, universities were found to have no liability for student injuries in on-campus classroom laboratories, even when supervised by instructors, and regardless of any lack of due care by either the university or the instructor. *See* Parks v. Northwestern Univ., 74 N.E. 991, 993 (Ill. 1905); Hamburger v. Cornell Univ., 148 N.E. 539, 541–43 (N.Y. 1925).

that found any university liable;[30] thus, *in loco parentis* operated as a shield for universities, not as a sword for students injured on campus or during school-related activities.[31]

By the 1960s, however, courts began to view the university–student relationship in a different light and started refusing to grant universities immunity as governmental or charitable entities.[32] Nevertheless, through the 1970s and 1980s (the "bystander era"), courts mostly declined to impose liability on universities, reasoning that adult students were uncontrollable.[33]

The trend of modern case law, however, has been toward a significantly greater imposition of legal responsibility as universities act more like businesses that rent, maintain, and insure their facilities, particularly due to the media and public attention resulting from student deaths on college campuses throughout the 1980s, 1990s and the early 2000s.[34]

This trend is particularly startling in the context of student suicide. During the last ten years, suits stemming from on-campus student suicides have begun to flesh out the existence and scope of a legally significant special relationship between a university and its students.[35] Perhaps ironically, in *Jain v. Iowa* in 2000, the highest court ruling on a suit stemming from an on-campus student suicide, the Iowa Supreme Court declined to find a special relationship between the University of Iowa

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30 *See* BICKEL & LAKE, *supra* note 21, at 27–28 (discussing Brigham Young Univ. v. Lillywite, 118 F.2d 836 (10th Cir. 1941), where the Tenth Circuit found the private university liable for a student laboratory injury).

31 *See* Lake, *supra* note 22, at 532.

32 *See* BICKEL & LAKE, *supra* note 21, at 35–48; Dixon v. Ala. State Bd. of Educ., 294 F.2d 150, 157–59 (5th Cir. 1961) (declining, in a landmark decision, to grant *in loco parentis* deference to an administrative decision to expel six students for participating in a civil rights demonstration), *cert. denied*, 368 U.S. 930 (1961).

33 As Bickel and Lake note, these decades coincided with greater numbers of students and greater "taste for drugs and alcohol" among university students. BICKEL & LAKE, *supra* note 21, at 49. They cite *Bradshaw v. Rawlings*, 612 F. 2d 135 (3d Cir. 1979), *Baldwin v. Zoradi*, 176 Cal. Reptr. 809 (Cal. Ct. App. 1981), *Beach v. Univ. of Utah*, 726 P.2d 413 (Utah 1986), and *Rabel v. Illinois Wesleyan Univ.*, 514 N.E.2d 552 (Ill. App. Ct. 1987) as "four 'famous' cases . . . which are emblematic of the no-duty, bystander period." BICKEL & LAKE, *supra* note 21, at 50–66.

34 *Id.* at 150–57; Lake, *supra* note 22, at 534; Peter F. Lake, *Private Law Continues to Come to Campus: Rights and Responsibilities Revisited*, 31 J.C. & U.L. 621 (2005). While liability findings have been inconsistent, the overarching trend has been toward greater university liability, which is often a matter of apportionment between the university and the student, each for their own fault. *See, e.g.*, Furek v. Univ. of Del., 594 A.2d 506, 516–23 (Del. 1991).

35 One commentator notes that these cases are "departure[s] from precedent." Kaveeshvar, *supra* note 7, at 654; *see, e.g.*, Jain v. Iowa, 617 N.W.2d 293, 300 (Iowa 2000) (university not liable because it did not have a "special relationship" with student who committed suicide); Schieszler v. Ferrum College, 236 F. Supp. 2d 602, 606–12 (W.D. Va. 2002) (finding that a university dean and resident advisor had a duty to take reasonable care to prevent student suicides); Shin v. Mass. Inst. of Tech., No. 020403, 2005 WL 1869101, at *12–13 (Mass. Super. Ct. June 27, 2005) (finding a "special relationship" between suicide victim and university administrators).

and a student who died of carbon monoxide poisoning in his dorm room after he intentionally left his moped running.[36] The court found that the university had no affirmative duty to prevent that student's suicide even if it had prior notice of an earlier attempt, because the student had not relied on the university to prevent his suicide and no university personnel had done anything to increase his risk.[37]

Jain is not the end of the story, however. Two more recent student suicide cases, *Schieszler v. Ferrum College*[38] and *Shin v. Massachusetts Institute of Technology*,[39] were both settled at the trial court level in ways inconsistent with *Jain*.[40] Despite the lack of explicit judicial resolution, both *Schieszler* and *Shin* are worrisome cases for universities concerned about liability for student suicide because both judges rejected the respective universities' no-duty claims. In *Schieszler* in 2002, the Western District of Virginia found that the foreseeability of the student's suicide (due to previous attempts and information gathered from friends) established a special relationship between Ferrum College's administrators and other authorities and the student so as to impose a duty to prevent that student's suicide.[41] In 2005, the Massachusetts *Shin* court explicitly relied on *Schieszler* in its ruling.[42] There, the court permitted the suit to proceed based on a "special relationship" arising from notice of the student's past suicidal behavior to proceed against two administrators and four medical personnel even though it dismissed direct damage claims against MIT itself, because of the reasonable foreseeability of the student's suicide by self-immolation in her dorm room.[43]

The most recent decision to come down in a student suicide case, *Mahoney v. Allegheny College* in 2005, discussed *Jain*, *Shin*, and *Schieszler* to note that "rather than relying on the rules of proximate causation to resolve cases involving students' suicides, courts are increasingly looking at duty within the ambit of the existence of a 'special relation-

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36 *See Jain*, 617 N.W.2d at 296, 300.

37 *See id.* at 299–300; *see also* Mahoney v. Allegheny College, No. AD 892-2003 (Pa. Ct. Com. Pl. Crawford Cnty. Dec. 22, 2005), *available at* http://www.theasca.org/attachments/articles/35/Allegheney%20college%20SJ%20decision.pdf (applying the *Jain* court's reasoning to decline to find a special relationship between administrators at Allegheny College and a student who committed suicide where the suicide was not reasonably foreseeable).

38 236 F. Supp. 2d 602.

39 2005 WL 1869101.

40 *See* Richard Fossey & Heather E. Moore, *University Tort Liability for Student Suicide: The Sky is Not Falling*, 39 J. L. & EDUC. 225, 227 (2010); Lake, *supra* note 33, at 653.

41 *See Schieszler*, 236 F. Supp. 2d at 609.

42 *See Shin*, 2005 WL 1869101, at *13.

43 *See id.* at *12–14; Eric Hoover, *Judge Rules Suicide Suit Against MIT Can Proceed*, 51 CHRON. OF HIGHER EDUC. 49, Aug. 12, 2005, at A1.

ship' and whether an event is 'reasonably foreseeable.' "[44] There, while claims against the university itself went to trial, a Pennsylvania Court of Common Pleas dismissed claims against two university deans after finding that these deans had no "special relationship" with Mahoney such as to give rise to a duty to prevent his suicide where, unlike the students in *Shin* and *Schieszler*, he had never attempted suicide before and his suicide was not otherwise foreseeable to these administrators.[45]

B. A University May Assume Duties Based on Its Special Relationship with Its Students

Even when the university–student special relationship does not impose an affirmative duty in and of itself, the uniqueness of the relationship may make it easier for a university to *assume* a duty to its students, even unintentionally.[46] To quote then-Judge Benjamin Cardozo: "It is ancient learning that a person [or entity] that assumes to act, even though gratuitously, is subject to the duty of acting carefully" and may not necessarily stop acting with impunity.[47]

Accordingly, courts have been particularly willing to permit suits against universities to proceed in the context of assumed duties as it relates to third-party acts, such as hazing or criminal behavior. Illustrative in this context is *Mullins v. Pine Manor College*.[48] *Mullins* resulted in institutional liability where the Supreme Judicial Court of Massachusetts found that Pine Manor College did have a duty to protect its students from third-party criminal acts. Pine Manor had established procedures for registering and admitting outside guests to campus, but because an intruder evaded the procedures and abducted and raped a female student

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[44] Mahoney v. Allegheny College, No. AD 892-2003, at 20 (Pa. Ct. Com. Pl. Crawford Cnty. Dec. 22, 2005), *available at* http://www.theasca.org/attachments/articles/35/Allegheney%20college%20SJ%20decision.pdf.

[45] *Id.* at 22–23, 25. In a later "very tough decision," a jury found that neither Allegheny College itself nor the college's mental-health counselor was negligent in Mahoney's suicide. *See* Jane Smith & Mary Spicer, *Suicide Trial Jury: Allegheny Not at Fault*, MEADVILLE TRIBUNE, Sept. 1, 2006, http://meadvilletribune.com/local/x681006500/Suicide-trial-jury-Allegheny-not-at-fault/.

[46] Kalchthaler, *supra* note 18, at 901–11 (discussing "special relationships" as a "new era of liability").

[47] Glanzer v. Shepard, 135 N.E. 275, 275–76 (N.Y. 1922); *accord* RESTATEMENT (SECOND) TORTS § 323 cmt. *c* (1965) (stating that an assumed duty attaches where "the actual danger of harm to the other has been increased by the partial performance, or . . . the other, in reliance upon the undertaking, has been induced to forego other opportunities of obtaining assistance"); *see also* Kaplan v. Dart Towing, Inc., 552 N.Y.S.2d 665 (App. Div. 1990) (citing Nallan v. Helmsley-Spear, 407 N.E.2d 451, 459–60 (N.Y. 1980)). In oft-cited *Moch v. Rensselaer Water Co.*, Judge Cardozo summarized assumption of duty: "If conduct has gone forward to such a stage that inaction would commonly result, not negatively merely in withholding a benefit, but positively or actively in working an injury, there exists a relation out of which arises a duty to go forward." 159 N.E. 896, 898 (N.Y. 1928).

[48] 449 N.E.2d 331 (Mass. 1983).

in a campus building, the college was liable for negligently performing a duty it had voluntarily assumed.[49]

Even where the student behavior is voluntary, such as where it is drug or alcohol-related, some courts have still been willing to find an assumed duty.[50] In *Coghlan v. Beta Theta Pi Fraternity*,[51] for example, the Idaho Supreme Court found that while an underage student injured at a fraternity house party could not recover against the fraternity that supplied the alcohol, the University of Idaho was not entitled to summary judgment where it knew or should have known that the student was intoxicated, despite having no general duty to protect students against their voluntary intoxication.[52] The court found that the university's knowledge was sufficient to infer an assumed duty to protect its student against the criminal act of a third party, in this case, supplying a minor with alcohol.[53]

II. ON-CAMPUS INJURIES OR DEATHS AND UNIVERSITY PREMISES LIABILITY

A. *Universities as Landowners*

Since the end of the *in loco parentis* era, it has been well established that a university has, at minimum, the same responsibilities to users of its land as does any landowner—the contours of which are well established in American law.[54] In those states which have expressly abandoned the common-law distinctions among users of land (that is, licensee, invitee, trespasser), a university will owe the same duty to all users of land.[55] This means that a university must maintain its premises in a "reasonably" safe condition for all users, considering the likelihood of injury to possible users, the seriousness of the potential injury, and the burden of avoiding the risk.[56] In those states which have not abandoned the common-

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49 *Id.* at 333, 336–37.

50 *See* BICKEL & LAKE, *supra* note 21, at 152–57 (university duties related to student alcohol use).

51 987 P. 2d 300 (Idaho 1999).

52 *Id.* at 312.

53 *Id.*

54 *See* BICKEL & LAKE, *supra* note 21, at 109–24.

55 Approximately ten jurisdictions have abandoned this distinction including, most famously, California in *Rowland v. Christian*, 443 P.2d 561, 568–69 (Cal. 1968). *See generally* Vitauts M. Gulbis, Annotation, *Modern Status of Rules Conditioning Landowner's Liability Upon Status of Injured Party as Invitee, Licensee, or Trespasser*, 22 A.L.R. 4th 294 (1983) (collecting and updating cases through 2012).

56 *See, e.g.*, Basso v. Miller, 352 N.E.2d 868, 871–72 (N.Y. 1976) (abolishing distinctions among users of land in New York); Maheshwari v. City of New York, 810 N.E.2d 894, 897 (N.Y. 2004) (discussing the balance of various factors). Where the burden of avoiding the risk is not too great when compared to the seriousness of injury likely to possible users, a court is more likely to increase the work done by "reasonably." *See Maheshwari*, 810 N.E.2d at 897; *see also* United States v. Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947) (establishing

law distinctions among users of land, however, a university's duties will differ according to user status.[57] Whatever status other users of university land may have, most courts have found that students on university-owned property are invitees, and thus owed the highest level of care.[58]

Assuming a duty to the user then, university landowners may additionally be liable for personal injuries sustained on their land due to a non-obvious "dangerous condition."[59] No matter how dangerous the condition, however, a landowner will not be liable for injuries on his property unless that landowner had either actual or constructive notice of the condition.[60] Moreover, a landowner has no duty to warn against a danger that is "open and obvious," whether natural or man-made.[61] The

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the B < PL formula for determining negligence, in which if the burden of taking the precaution is less than the probability of the injury occurring multiplied by the gravity of the injury, the defendant is negligent for not taking the precaution).

57 These states are the clear majority. Some retain the distinction for trespassers, but hold landowners to the same duty of care for both licensees and invitees, while other states retain the common-law distinctions among all three categories. *See* Gulbis, *supra* note 55 (collecting cases).

58 *See* Furek v. Univ. of Del., 594 A.2d 506, 521 (Del. 1991) (noting that characterizing "students as invitees is not a novel proposition" (quoting Peterson v. S.F. Comm. Coll. Dist., 685 P.2d 1193, 1198 n.6 (Cal. 1984) (collecting cases))); Banks v. Trs. of the Univ. of Pa., 666 A.2d 329, 331 (Pa. Super. Ct. 1995); Ogueri v. Tx. S. Univ., No. 01-10-0028-CV, 2011 WL 1233568, at *4 (Tex. App. Mar. 31, 2011).

59 *See* Piacquadio v. Recine Realty Corp., 646 N.E.2d 795, 796 (N.Y. 1994). Where such a dangerous condition exists, however, a landowner need only make the property "reasonably" safe for foreseeable uses, not absolutely safe for all uses. *See, e.g.*, *Maheshwari*, 810 N.E.2d at 897–98 (finding that where it was not foreseeable that a camper would climb a 30-foot water tower, the camp was under no duty to enclose it with a fence or other barrier); Leyva v. Riverbay Corp., 620 N.Y.S.2d 333, 336–37 (App. Div. 1994); *see also* Gustin v. Ass'n of Camps Farthest Out, 700 N.Y.S.2d 327, 330 (App. Div. 1999); Babcock v. City of Oswego, 644 N.Y.S.2d 958, 961–62 (N.Y. Sup. Ct. 1996) (finding that county had no duty to fence off a 100-plus-foot radio tower because it was not foreseeable that an individual would climb it and jump off), *aff'd*, 668 N.Y.S.2d 140 (App. Div. 1998). Accordingly, landowners have no duty to protect their land's users against that user's own folly. *See* Smith v. Curtis Lumber Co., 583 N.Y.S.2d 642, 643 (App. Div. 1992) (finding that a claimant injured when he stood on a pile of loose wood may not recover because he was "fully aware" of the danger of standing on loose wood).

60 *See, e.g.*, Litwack v. Plaza Realty Invs., Inc., 898 N.E.2d 571, 572 (N.Y. 2008) (affirming dismissal of a complaint for injuries due to toxic mold where there was no proof that the landowner had any notice of persistent water leaks). A "general awareness" is usually not sufficient to establish liability. *See, e.g.*, *Piacquadio*, 646 N.E.2d at 796 ("[A] 'general awareness' that a dangerous condition may be present is legally insufficient to constitute notice. . . ."). Rather, the landowner must have notice of the *specific* condition. *See* Solazzo v. New York City Transit Auth., 843 N.E.2d 748, 749 (N.Y. 2005) (finding that the New York Transit Authority could be liable for plaintiff's fall on icy stairs only if it had had notice of the icy stairs and then failed to correct the "dangerous condition" in a reasonable time); *see also* Chiara v. Fry's Food Stores of Az., Inc., 733 P.2d 283, 285 (Az. 1987) ("The notice requirement, actual or constructive, is only satisfied if the proprietor has notice of the specific dangerous conditions itself and not merely if the proprietor has general notice of conditions producing the dangerous condition.").

61 *See, e.g.*, Tagle v. Jakob, 763 N.E.2d 107, 108–10 (N.Y. 2001). For example, a landowner does not have a duty to warn visitors that a metal tent pole may be struck by lightning,

"open and obvious" rule applies even to dangerous conditions that allow for fatal or paralyzing falls. Owners of gorges, for example, are not required to warn, fence off, or otherwise prevent access to a gorge because the dangers of falling into a gorge are open and obvious.[62] Similarly, owners of bridges are not generally under a duty to install barriers to prevent users from diving from the bridge into a creek below—again, because the danger is open and obvious.[63] In the university context, moreover, it remains true that "[a] wall is a wall after all," even if that wall is on university property and even if a student was seriously injured after climbing it to circumvent an on-campus event.[64]

Notwithstanding the longstanding precedent of these general principals, however, courts have frequently held universities to higher standards of landowner responsibility because of the uniqueness of their relationship with their students—particularly when the injury is foreseeable. In *Lloyd v. Alpha Phi Alpha Fraternity*, for example, the Northern District of New York found that if a university has actual or constructive notice of dangerous activities (here, fraternity hazing activities) then it must act with all reasonable care to prevent injuries caused by those dangerous activities even if it did not encourage or promote them.[65] Similarly, in *Banks v. Trustees of University of Pennsylvania*, the Superior Court of Pennsylvania noted the duty of a university to protect its students even against open and obvious dangers where the students "will fail to protect themselves against it," even though it declined to find any liability against the university where a student had unnecessarily climbed on—and jumped from—a four-foot stone wall.[66]

B. Universities as Landowners of Known Suicide Sites

Undoubtedly, even assuming a duty, simply owning the land or building on or from which a person commits suicide does not create liability for a landowner. Perhaps as a result, no American statute or case directly addresses the issue of premises liability surrounding *known* sui-

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see Kelly v. Academy Broadway Corp., 625 N.Y.S.2d 123 (App. Div. 1994), or that a train may strike a car stopped on the tracks, *see* Clementoni v. Consol. Rail Corp., 868 N.E.3d 963, 964–65 (N.Y. 2007). For a discussion of the "open and obvious" rule in the university context, see BICKEL & LAKE, *supra* note 21, at 116–17.

62 *See* Coote v. Niagara Mohawk Power Co., 651 N.Y.S.2d 799, 800 (App. Div. 1996).

63 *See* Zmieske v. State, 579 N.Y.S.2d 482, 483 (App. Div. 1992).

64 BICKEL & LAKE, *supra* note 21, at 116–17; Banks v. Trs. of the Univ. of Pa., 666 A.2d 329, 330–33 (Pa. Super. Ct. 1995).

65 No. 96-CV-438, 1999 WL 47153, at *4–5 (N.D.N.Y. Jan 26, 1999). *But see* A.W. v. Lancaster Cnty. Sch. Dist., 784 N.W.2d 907, 915–20 (Neb. 2010) (abrogating Knoll v. Bd. of Regents, 601 N.W.2d 757 (Neb. 1999), which had previously been a seminal case in university tort liability, by finding that "foreseeable risk is an element in the determination of negligence, not legal duty").

66 666 A.2d 329, 331 (Pa. Super. Ct. 1995).

cide sites.[67] Crucially, however, such a site is likely to present an open and obvious danger—hence its use as a suicide site—particularly where the danger is due to the height of the natural or human-made object, or what lies beneath it.[68] Where a landowner has sufficient notice, particularly because of a pattern of similar occurrences, even an open and obvious danger could be considered a "dangerous condition" sufficient to impose liability if the university does not act to prevent access or otherwise engage in "mean-restricting" action.

Crucially, to be liable for personal injuries due to a "dangerous condition," a landowner must have had either actual or constructive notice of the condition.[69] Such notice must be of a specific condition rather than a "general awareness" that a dangerous condition "may" be present.[70] Accordingly, a known suicide site may impose only a general awareness on a landowner—that is, the knowledge that an individual *may* use that particular location to commit suicide.[71]

The likelihood that awareness of a suicide site on one's property creates only general awareness insufficient to impose liability is reinforced if the suicides themselves lack a pattern.[72] A pattern of similar occurrences, however, is one way to establish constructive notice.[73] An illustrative example is *Maheshwari v. City of New York*, where the New York Court of Appeals found that assaults in a landowner's parking lot were too random to rise to the level of a pattern, and that moreover, none of the assaults was necessarily the result of a large concert gathering sponsored by the landowner.[74] While *Maheshwari* involved third-party criminal acts rather than self-induced suicidal acts, the "pattern" princi-

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67 That is, the same or similar suicide location from which a number of suicides have occurred. Note that it is certainly clear that such sites exist, however. *See, e.g.*, Phil Zabriskie, *The Mysteries of the Suicide Tourist: Why the same things that attract millions of happy visitors to New York—the glamour, the skyline, the anonymity—also draw people from around the world to kill themselves here*, NEW YORK MAGAZINE, May 11, 2008, *available at* http://nymag.com/news/features/46811/.

68 For a discussion of the Golden Gate Bridge and other significant landmarks (such as the Empire State Building, the Sydney Harbor Bridge, the Duomo, and the Eiffel Tower) as "known" or "iconic" suicide spots, see Tad Friend, *Jumpers: The Fatal Grandeur of the Golden Gate Bridge*, THE NEW YORKER, October 13, 2003, *available at* http://www.newyorker.com/archive/2003/10/13/031013fa_fact.

69 *See, e.g.*, Litwack v. Plaza Realty Invs., Inc., 898 N.E.2d 571, 572 (N.Y. 2008).

70 *See* Piacquadio v. Recine Realty Corp., 646 N.E.2d 795, 796 (N.Y. 1994).

71 *See* Dominy v. Golub Corp., 730 N.Y.S.2d 362, 363–64 (App. Div. 2001) (noting that the landowner was accordingly under no particular duty to correct the dangerous condition beyond exercising reasonable care in the property's maintenance).

72 *See, e.g.*, Maheshwari v. City of New York, 810 N.E.2d 894, 897 (N.Y. 2004) (discussing how a pattern of past events could establish notice).

73 *Id.*

74 *See id.*; *see also* Nallan v. Helmsley-Spear, 407 N.E.2d 451, 459–60 (N.Y. 1980).

ple seems to hold true across the board.[75] Thus, where suicides from a known suicide site are sufficiently random, they may not suggest a pattern sufficient to establish that the university had constructive notice of a dangerous condition.

Alternatively, however, that a known suicide site is just that—a site—could be sufficient to render a landowner's awareness of the condition specific rather than general. Where a particular location is repeatedly used as a suicide setting, even if unpredictably used, such use may be sufficient to establish specific, actual notice that generates liability for the suicides. As the "pattern" principle remains untested in American courts, what number of suicides in a given period at a given location is sufficient to render the occurrences a pattern and establish notice—if at all—is unknown.

Whether a known suicide site is a "dangerous condition" or not, however, a landowner may still be responsible for suicides from that site, if such suicides are reasonably foreseeable. Where an injury is the foreseeable result of a condition on a landowner's property, that landowner has a duty to take reasonable steps to prevent the injury.[76] Suicide from a known suicide site is likely foreseeable, even if unlikely given the number of people who may use the location for other purposes, or unpredictably random. Moreover, when a particular location is iconic, it is even more likely that individuals will use it for suicide purposes in the future.[77] Accordingly, multiple suicides from such a suicide site are likely foreseeable. The question remains, however, whether this foreseeability is legally sufficient to give rise to a university–student special relationship and a corresponding affirmative duty to prevent student suicides.

III. SUICIDE AS CONTAGION AND BARRIERS AS PREVENTION OR CAUSATION

At common law, suicide has long been considered a superseding act that cuts off the liability of any other actor.[78] That is, because suicide is

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[75] *See, e.g.*, Allstadt v. Long Island Home, Ltd., 620 N.Y.S.2d 425, 426 (App. Div. 1994) (finding that evidence of previous and similar falls due to a defective railing were admissible to establish a dangerous condition and landowner's notice of that dangerous condition).

[76] *See* Palsgraf v. Long Island R.R., 162 N.E.2d 99, 100 (N.Y. 1928) (noting famously that "the risk reasonably to be perceived defines the duty to be obeyed"); Tarricone v. State, 571 N.Y.S.2d 845, 846–47 (App. Div. 1991).

[77] Much research has been done on suicide from known or iconic locations. *See generally* BEAUTRAIS ET AL., *supra* note 9, at 8–10 (summarizing studies).

[78] *See, e.g.*, Salsedo v. Palmer, 278 F. 92, 93–94 (2d Cir. 1921) (applying New York law); Jain v. State, 617 N.W.2d 293, 300 (Iowa 2000) (finding that because no special relationship existed between the student and university, there could be no exception to the intervening-superseding suicide cause doctrine); Peter Lake & Nancy Tribbensee, *The Emerging Crisis of College Student Suicide: Law and Policy Responses to Serious Forms of Self-Inflicted Injury*,

a self-induced act, only the suicide victim is accountable for his or her actions. Under this rule, then, a suicidal student would be solely responsible for his or her own actions, even if that student jumped from a university-owned bridge or balcony.[79] Despite this general rule, however, suicide is not a superseding act that cuts off liability as a matter of law in most states; thus, if a suicide victim is either insane or mentally deranged because of a wrongful, intentional act committed by another individual, then that other individual may be liable for wrongful death.[80] By the same token, a negligent tortfeasor whose actions lead to suicide—or under particular circumstances, fail to prevent the suicide—may be liable for the suicide victim's death.[81] This is particularly true when the particular individual's suicide was foreseeable and, in the university–student context, when the university had a legally significant special relationship with the suicidal student.[82]

A. *Suicide May Be a Contagion Among Impulsive Adolescents and Young Adults*

One aspect of this foreseeability may be the "contagious" effect of suicide. That is, however voluntary or self-inflicted, many scholars consider suicide to be a contagion that can result in suicide "clusters," particularly for individuals college-age and younger, who may be particularly prone to impulsive suicide.[83] With certain limitations, of course, landowners generally (particularly common carriers or owners of confined spaces that are used by others) have a certain duty to protect users of their property from contagious diseases of which they are aware.[84] Research indicates that drawing attention to a known suicide site—even just by reporting that the suicide occurred—can feed the contagious effect of

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32 STETSON L. REV. 125, 129–30 & n.32 (2002) (noting that at common law, "[s]uicide was considered an illegal, deliberate, and intentional act").

79 This rule was, in fact, crucial to the *Jain* court's decision: "[S]uicide is . . . a deliberate, intentional, and intervening act that precludes another's responsibility for the harm." 617 N.W.2d at 300. Moreover, it is likely not unreasonable for a university to assume that its students are adults or semi-adults in this respect. *See* Dall, *supra* note 21, at 294–97.

80 *See* Fuller v. Preis, 322 N.E.2d 263, 265 (N.Y. 1974) ("Precedent of long standing establishes that public policy permits negligent tort-feasors to be held liable for the suicide of persons who, as the result of their negligence, suffer mental disturbance destroying the will to survive."); Cauverien v. De Metz, 188 N.Y.S.2d 627, 632 (N.Y. Sup. Ct. 1959).

81 *See, e.g.*, *Cauverien*, 188 N.Y.S.2d at 631.

82 *See supra* note 17 and accompanying text.

83 *See* POTTER ET AL., *supra* note 1, at 15–16; BEAUTRAIS ET AL., *supra* note 9, at 4–7 (citing numerous studies); M.S. Gould et al., *Suicide Clusters: An Examination of Age-specific Effects*, AM. J. PUB. HEALTH 80(2):211–212 (1990).

84 *See, e.g.*, Bogard's Adm'r v. Ill. Cent. R. Co., 139 S.W. 855, 857–58 (Ky. 1911) (holding that a common carrier was bound to exercise ordinary care to protect passenger from measles contagion once the affliction of another passenger had been discovered).

suicide.[85] The greater the media coverage, in fact, the greater the likelihood of similar suicides, particularly when the method of suicide is dramatic, such as a leap from a high balcony or into a gorge.[86] In contrast, a number of studies indicate that "[c]autious, muted reporting has been shown effective in *reducing* suicides" at a given location, partly because refusing to discuss the tragic events decreases the contagion effect.[87]

Universities, which encourage community and participate in vast information dissemination strategies, may unwittingly facilitate the contagion effect by promoting awareness of suicide prevention strategies (such as access to mental health services) or by implementing suicide prevention strategies (such as obvious physical barriers) themselves.[88] Thus, if suicide does act as a contagion, specific facts related to the spread of that contagion *under those particular circumstances*—including media coverage, promotion of mental health services, and obvious physical barriers—may impact a court's analysis of a student's suicide as a superseding cause that cuts off the liability of a university. Ironically, by deliberately engaging in visible activities to prevent student suicides, then, a university may actually feed the contagion and increase the foreseeability, even if not the likelihood, of future student suicides.

B. Suicide Barriers May Prevent Suicides from the Barred Site but May Shift Suicides to Another Site

One of the most visible activities to prevent student suicides-by-jumping are physical suicide barriers, and installing such barriers is arguably an acknowledgement that future suicides are foreseeable and perhaps, even likely. Suicide barriers on bridges and other elevated places are a method of "means restriction," which some studies indicate are effective in reducing the number of suicides from a location with such a barrier.[89] These studies are not conclusive, however, and both nationwide and worldwide, the battle over suicide barriers on bridges and other similar high structures rages as to both efficacy and aesthetics. Not only is the well-known debate over barriers on the Golden Gate Bridge, the

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[85] *See* BEAUTRAIS ET AL., *supra* note 9, at 6–8.

[86] *See id.*; CENTERS FOR DISEASE CONTROL ET AL., REPORTING ON SUICIDE: RECOMMENDATIONS FOR THE MEDIA 2 (2001), *available at* http://www.sprc.org/library/sreporting.pdf; *see also* WORLD HEALTH ORGANIZATION, PREVENTING SUICIDE: A RESOURCE FOR MEDIA PROFESSIONALS (2000), *available at* http://www.who.int/mental_health/media/en/426.pdf.

[87] BEAUTRAIS ET AL., *supra* note 9, at 17 (emphasis added).

[88] *Id.* at 8 ("It appears that cluster suicides may be more impulsive than other suicides, at least at their onset, and the factors that may precipitate a suicide cluster include a public location of the death followed by a large amount of publicity.").

[89] *See* BEAUTRAIS ET AL., *supra* note 9, at 5 ("Restricting access to means and sites of suicide is an effective, but often under-valued, approach to suicide prevention."), 15–16 ("barriers" subheading).

most deadly bridge in the world in terms of suicides, in high gear,[90] but the debate rages even in small towns like Ithaca, New York.[91] The worldwide and nationwide trends, however, seem to be toward the installation of suicide barriers at known or iconic suicide-by-jumping sites. For example, construction on barriers on the Cold Spring Canyon Bridge in Santa Barbara, California, after a lengthy environmental and aesthetic impact study, began in June 2010 over much protest.[92] In Toronto, the "Luminous Veil" was constructed in 2003 to prevent suicides from the Prince Edward Viaduct.[93] Other known suicide sites which now have suicide barriers include the Jacque Cartier Bridge in Montreal (barriers built in 2004), the Duke Ellington Bridge in Washington, D.C. (barriers built in 1986), the Vincent Thomas Bridge in San Pedro (barriers built in 1998), the Colorado Street Bridge in Pasadena (barriers built in1992), and the Grafton Bridge in Auckland, New Zealand (barriers removed in 1996 and reinstalled in 2003).[94] One "natural" study of the Grafton Bridge empirically demonstrated that removing a suicide barrier increased the number of suicides at that particular location, but that replacing that barrier resulted in a complete reduction in suicides.[95] Consequently, the consensus among the scholarly community that studies such things seems to be that suicide barriers are a means of reducing suicides at any particular location.[96]

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90 Proponents and opponents are numerous. For a discussion of possible legal liability (in the context of a municipality) for suicide barriers, see Mary B. Reiten & David J. Jung, *Report: Civil Liability for Suicide Barriers*, PUBLIC LAW RESEARCH INST. (May 22, 1998), http://w3.uchastings.edu/plri/spring98/civil.html (focusing exclusively on California law).

91 *See* Stratford, *supra* note 12.

92 The environmental and aesthetic impact study, published in June 2009, may be found at http://www.dot.ca.gov/dist05/projects/sb_cold_springs/eir09june.pdf. For information about the beginning of construction of the suicide barriers, see *Work on Cold Spring Canyon Bridge to Begin Monday*, SANTA MARIA TIMES (June 22, 2010), http://www.santamariatimes.com/news/local/article_325ac1ae-7dc2-11df-8792-001cc4c002e0.html.

93 *See Where Spirits Live*, NOW MAGAZINE 22:36 (MAY 8–15, 2003), http://www.nowtoronto.com/news/story.cfm?content=136534&archive=22,36,2003.

94 *See* Laura Cooper, *Landmark Bridges Around the World Employ Suicide Barriers*, NOOZHAWK (May 4, 2010), http://www.noozhawk.com/bridge/article/0504010_landmark_bridges.

95 *See* Annette Beautrais et al., *Removing Bridge Barriers Stimulates Suicides: An Unfortunate Natural Experiment*, AUST. N.Z. J. PSYCHIATRY, June 2009; 43(6): 495–97. This study explores the impact of removing suicide barriers from the Grafton Bridge in Auckland, New Zealand in 1993 after they had been in place for sixty years. The authors conclude that removing the barriers increased the number of suicides dramatically. When barriers were reinstalled in 2003, the suicide rate from that bridge dropped to zero. *See also* Elana Premack Sandler, *If You Build it, Will They Stop Coming?*, PSYCH. TODAY PROMOTING HOPE, PREVENTING SUICIDE BLOG (June 17, 2009), http://www.psychologytoday.com/blog/promoting-hope-preventing-suicide/200906/if-you-build-it-will-they-stop-coming (discussing the Grafton Bridge study).

96 *See* BEAUTRAIS ET AL., *supra* note 9, at 5, and accompanying citations.

Even so, no study of suicide barriers has ever shown a "statistically significant drop in *overall rates* of suicide in the vicinity" of the suicide barrier.[97] That is, while studies repeatedly show that barriers decrease or eliminate suicides at bridges commonly used for suicide-by-jumping, none prove that such barriers actually stop suicides altogether. A 2010 study of the suicide barrier installed in 2003 at the Bloor Street Viaduct bridge in Toronto—the bridge with the world's second-highest annual rate of suicide-by-jumping—concluded that "yearly rates of suicide-by-jumping from other bridges and buildings were higher in the period after the barrier although only significant for other bridges."[98] Though the study's authors posited no conclusion as to the cause of their findings, they wrote that their results suggested that "barriers on bridges may not alter absolute rates of suicide-by-jumping when comparable bridges are nearby."[99]

Other studies, however, suggest that suicidal individuals who are thwarted at one location will not likely go elsewhere. For example, Richard Seiden's famous "Where Are They Now?" study published in 1978 concluded that the hypothesis that thwarted Golden Gate Bridge suicide attempters would just "go someplace else" was unsupported by the data.[100] Ultimately, whether suicide attempters thwarted from jumping at one site will move to another may partially depend on the iconic or known status of other suicide sites.[101] That is, if an unbarred site has a greater iconic pull than another site, barring the less-iconic site may have only a marginal impact on suicides in the vicinity—and vice versa.[102] To avoid foreseeably spurring suicide from other locations, then, a university that installs a barrier over one bridge or atop one balcony may be compelled to install barriers at every bridge or atop every balcony.

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97 *See* Mark Sinyor & Anthony J. Levitt, *Effect of a Barrier at Bloor Street Viaduct on Suicide Rates in Toronto: Natural Experiment*, BRIT. MED. J., BMJ 2010; 341: c2884, *available at* http://www.bmj.com/cgi/reprint/341/jul06_1/c2884 (emphasis added).

98 *See id.*

99 *See id.*

100 *See* Richard H. Seiden, *Where are They Now?: A Follow-Up for Suicide Attempters from the Golden Gate Bridge*, 8 SUICIDE & LIFE THREATENING BEHAV. 203(1978), *available at* http://www.seattlefriends.org/ files/seiden_study.pdf; *see also* BEAUTRAIS ET AL., *supra* note 9, at 23 ("[T]he clear majority of those who are restrained from jumping do not go on to make further attempts using other methods or sites."); MARCHELL, *supra* note 9, at 7 ("By separating in time and space the intent to die and the access to highly lethal methods, means restriction can buy time for suicidal desires to pass and thus reduce the risk of death.").

101 As a matter of common sense, of course, whether an individual goes on to try again also involves a host of other factors, including the impulsiveness of the first attempt, the severity of any mental health issues the individual has, and the availability of other suicide-prevention means, such as counseling.

102 *See* BEAUTRAIS ET AL., *supra* note 9, at 8–10 ("[T]he symbolism and romanticism associated with an iconic or symbolic suicide site appear to play a decisive . . . role for those who choose to jump from such sites.").

IV. UNIVERSITY LIABILITY FOR STUDENT SUICIDES AT ON-CAMPUS SUICIDE SITES: A POSSIBLE ARGUMENT

Under the law as it currently stands, a university may face liability for student suicides where it has (1) failed to install suicide barriers, (2) installed such barriers, or (3) installed and then later removed such barriers, particularly in the face of multiple suicides from the same—or similar—on-campus sites. To explore this possible liability, this Part explores a possible plaintiff's argument, presumably made by the next-of-kin of a university student who successfully committed suicide-by-jumping from a known on-campus suicide site. A university's primary defenses to this plaintiff's argument would, of course, be traditional tort principles related to contributory negligence, assumption of risk, lack of notice, student–university relations, and premises liability.[103] These defenses are not addressed specifically here; it is important to note, however, that were a university to be found liable under a student–university special relationship and premises liability hybrid theory, it would be a remarkable deviation from traditional tort principles. Nevertheless, under these circumstances, such a deviation is not impossible.

A. *University Liability for Failing to Install Suicide Barriers at a Known On-Campus Suicide Site*

One avenue for university liability in the face of on-campus suicides-by-jumping could occur when the university has not installed any form of suicide barrier—making the suicide site, whether it be a multi-story library or a bridge high above a deep gorge—as accessible to a second suicidal student as it was to a previously successful suicidal student. Questions of university liability in this context hinge on duty, specifically, the duties arising from the "special relationship" a university may have with its students. As no affirmative duty to prevent any student's suicide exists without such a duty, however, a plaintiff's claim would likely hinge on this finding.

As discussed above, the university–student relationship is not inherently legally "special"; that is, it is not per se sufficient to impose an affirmative duty to rescue.[104] In the on-campus student suicide context, the key to judicial findings of a "special relationship" sufficient to impose such a duty has been the foreseeability of the particular student's suicide—that is, not just that some students may be suicidal, but that *this* student was suicidal and the university knew or had reason to know of

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[103] *See* Jain v. Iowa, 617 N.W.2d 293, 299–300 (Iowa 2000) (approving the successful, though decade old, no-duty argument made by the University of Iowa in the context of on-campus student suicide); Kaveeshvar, *supra* note 7, at 654, 655–59; Cohen, *supra* note 18, at 3089–95.

[104] *See supra* Part I.A.

that suicidality.[105] The precise contours of that foreseeability analysis remain muddied, however, possibly increasing the plaintiff's odds of surviving a motion to dismiss or summary judgment. In *Mahoney*, for example, the Pennsylvania court refused to find that the college's deans had a special relationship with the student where they had no notice of the student's suicidality, while in *Jain*, the Iowa court refused to find that a student's suicide was foreseeable even when that student had made previous attempts to end his life.[106] In *Schieszler* and *Shin*, however, the Western District of Virginia and the Massachusetts court permitted suits against the universities and their personnel to proceed where they knew of previous attempts or other suicidal behavior.[107]

When one adds in the idea of a known suicide *site*, however, the issue of foreseeability takes on a different pall, and the key becomes whether the foreseeability analysis pertains only to the particular student who committed suicide-by-jumping, or to any student who commits suicide from that location. In other words, the question becomes whether previous successful suicides from a particular location function to make the suicide of another student from that same—or similar—location foreseeable, even in the absence of any information about that second student's suicidality. Fairness and common sense would seem to dictate that a university could not be responsible for a student's suicide in the absence of any information of that student's suicidality—nevertheless, the existing student-suicide case law does not preclude the alternate possibility. In cases like *Jain*, *Shin*, and *Schieszler*, that is, the suicide methods the students employed were tools like a moped, matches, and a belt, none of which comport with the means-restriction possibilities that accompany high places to which students have access.[108] Moreover, sui-

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105 *See Jain*, 617 N.W.2d at 300; Schieszler v. Ferrum College, 236 F. Supp. 2d 602, 609–12 (W.D. Va. 2002); Mahoney v. Allegheny College, No. AD 892-2003, at 20 (Pa. Ct. Com. Pl. Crawford Cnty. Dec. 22, 2005), *available at* http://www.theasca.org/attachments/articles/35/Allegheney%20college%20SJ%20decision.pdf; Shin v. Mass. Inst. of Tech., No. 020403, 2005 WL 1869101, at *11–14 (Mass. Super. Ct. June 27, 2005); *see also* McAnaney, *supra* note 7, at 208–17. That is, it is likely not sufficient that just *any* student might employ a particular means of suicide, but that it was foreseeable that *this* student would employ *that* means of suicide.

106 *Jain*, 617 N.W.3d at 300; *Mahoney*, No. AD 892-2003, at 20–23.

107 *Schieszler*, 233 F. Supp. 2d at 607 (citing Commercial Dists. v. Blankenship, 397 S.E.2d 840, 846 (Va. 1990), in which the Virginia Supreme Court found that had a facility resident been on the premises at the time of his death, and had his suicide been foreseeable, the facility would have had a duty to assist him, though it stopped short of declaring this a "special relationship"); *Shin*, 2005 WL 1869101, at *11–14. Issues of foreseeability could prove central to the ongoing lawsuit against Cornell, *see supra* note 15, since the university claims that no one, not even the student's peers or family, had even an inkling about the student's suicidality, *see* Answer at 5–8, Ginsburg v. City of Ithaca, No. 5:11-cv-01374 (N.D.N.Y. Nov. 21, 2011).

108 *See Jain*, 617 N.W.2d at 296, 300; *Shin*, 2005 WL 1869101, at *5–6; *Schieszler*, 233 F. Supp. 2d at 605.

cide by, for example, moped-generated carbon monoxide in one's dorm room is not likely to be a repeated source of suicide. In contrast, a leap from an iconic bridge or balcony is likely—that is, foreseeably—to be a repeated method of suicide and, additionally, is susceptible to means-restrictive methods at a site that later individuals may also use.

Foreseeability, of course, directly relates to notice, and a plaintiff would likely argue that notice gives rise to a university's special relationship duty to protect its students from suicide. Key to this plaintiff's argument in this student–university context is the *known* or *iconic* nature of the suicide site. In fact, it is likely the lynch-pin to university liability for on-campus student suicide-by-jumping because the nature of the suicide site is a direct link between foreseeability or notice and a special-relationship affirmative duty. Put differently, the better known the suicide site, the stronger the argument that the university landowner was sufficiently aware of it to place the university on notice that a particular suicidal student would use that site—more likely than another site—to end his or her life.[109] One significant question, of course, is whether a single suicide is sufficient to establish that a suicide site is "known" to a university so as to establish notice, or whether the notice exists on a continuum—that is, at some point the site becomes *iconic* whereas at all points before it was not—in response to the particular circumstances. If on a continuum, at what suicide number does a particular site become iconic? Six souls leaped into Cornell's gorges during the 2009–10 school year (the last within two days of each other),[110] and two from NYU's Bobst Library during 2003–04, and another during the 2009–10 school year.[111] Other decidedly iconic sites have seen many more suicides than that. For example, well over one thousand people have leaped to their deaths from the span of the Golden Gate Bridge since it opened in 1937; thirty-one in 2009 alone.[112] The Golden Gate Bridge is undeniably an iconic suicide site—people travel from far and wide to jump from it—and particular locations at Cornell and NYU could meet this definition as well. A plaintiff in the student-suicide context would, of course, argue that the site from which the student jumped is iconic and that the university had adequate notice of the danger the site posed to that suicidal student.

A plaintiff could bolster this claim by examining the mythos of a particular place, particularly as it relates to media attention.[113] Certainly,

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109 *See supra* Part II.A. This would be, of course, a very fact-specific inquiry.

110 *See* BEAUTRAIS ET AL., *supra* note 9, at 2.

111 Milkman, *supra* note 5.

112 *See* Friend, *supra* note 68; *31 suicides from Golden Gate Bridge last year*, ABC7 NEWS (Jan. 21, 2010), http://abclocal.go.com/kgo/story?section=news/local/north_bay&id=7232028.

113 After the cluster of suicides at Cornell in early 2010, for example, Dr. Harold Koplewicz published "Has Your Child Just Been Accepted to Suicide University?" and fo-

judicial analysis of such coverage or mythos will be fact-specific; however, factors such as the intensity and duration of coverage, as well as even the geographic spread of the coverage, may come into play. At universities like Cornell and NYU, the *known* or *iconic* status of on-campus suicide sites for jumping would be an easy argument for a plaintiff to make—both the tragic numbers and significant media attention make this clear. During early 2010, for example, when Cornell faced the numerous student suicide tragedies in its gorges, news sources like the *New York Times*, CNN, the BBC, and the NBC Today show all covered the incidents;[114] even popular websites like the *Huffington Post* joined in the discussion.[115] Furthermore, representing the shaken campus community, the *Cornell Daily Sun* ran numerous articles and op-ed pieces.[116] As a result, a plaintiff would likely have little trouble arguing that students, prospective students, and indeed, the whole nation, have every reason to be aware of the school's reputation: the "glut" of media attention, one student noted, is "just feeding into this idea of Cornell as a suicide school."[117] The university itself is also clearly aware: it hired a team of consultants to analyze the university's short- and long-term "response to the recent deaths of students who jumped from bridges."[118] These same notice factors proved true, though on a reduced scale, following the tragedies at NYU in 2003–04 and 2009.[119] Thus, if this plaintiff is in a situation similar to that of Cornell or NYU, it could likely demonstrate

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cused his attention specifically on Cornell. While his ultimate conclusion was that no university is a "suicide university," his article is evidence of the widespread mythos surrounding Cornell's bridges. *See* Harold Koplewicz, *Has Your Child Just Been Accepted to Suicide University?* HUFFINGTON POST (Mar. 30, 2010), http://www.huffingtonpost.com/dr-harold-koplewicz/suicide-college-has-your_b_511583.html.

114 *See, e.g.*, *As Campus Mourns Deaths, Media Descend Upon Ithaca*, CORNELL DAILY SUN (Mar. 17, 2010), http://cornellsun.com/node/41643 (including the NBC Today Show's segment on the rash of suicides); Trip Gabriel, *After 3 Suspected Suicides, Cornell Reaches Out*, N.Y. TIMES, Mar. 16, 2010, http://www.nytimes.com/2010/03/17/education/17cornell.html?_r=1; Cassie Spodak, *College on edge after recent wave of student suicides*, CNN (Mar. 18, 2010), http://www.cnn.com/2010/US/03/18/cornell.suicides/index.html; *Cornell University on alert after suspected suicides*, BBC (Mar. 17, 2010), http://news.bbc.co.uk/2/hi/americas/8573343.stm.

115 Rob Fishman, *Cornell Suicides: Do Ithaca's Gorges Invite jumpers?* HUFFINGTON POST (Mar. 14, 2010), http://www.huffingtonpost.com/rob-fishman/the-gorges-of-cornell-uni_b_498656.html.

116 *See, e.g.*, Munier Salem & Andrew Daines, *Double Take: Ithaca in Mourning*, CORNELL DAILY SUN, (Mar. 17, 2010), http://cornellsun.com/section/opinion/content/2010/03/17/double-take-ithaca-mourning; sources cited *supra* notes 11, 12.

117 Peter Finocchiaro, *After Suicides, Some Students Worry about the Appropriate Response*, HUFFINGTON POST (Mar. 19, 2010), http://www.huffingtonpost.com/2010/03/19/cornell-suicides-on-a-som_n_506023.html.

118 BEAUTRAIS ET AL., *supra* note 9, at 2.

119 *See, e.g.*, Joanna Gonzalez, *NYU Suicide Mystery Continues from Within*, PACE PRESS (Nov. 18, 2009), http://www.pacepress.org/features/nyu-suicide-mystery-continues-from-within-1.1490565 (noting NYU's "notorious reputation" stemming from numerous students' dramatic on-campus suicides).

the *known* and *iconic* nature of the suicide site at issue, sufficient to provide a university with notice of a dangerous condition on its property.

Because having notice of a dangerous condition does not, however, inherently require affirmative action—such as installing suicide barriers—to remedy that dangerous condition, particularly where the danger is open and obvious,[120] a plaintiff would have to argue that because of a special relationship between the university and the particular student, foreseeability trumps any no-duty claim. That is, where suicide-by-jumping is a foreseeable use of a particular location, based on past use or the *iconic* nature of the site, then the special relationship "imposes on the [university] the duty to prevent foreseeable harm to the [suicidal student]."[121] This duty, a plaintiff would likely argue, trumps even the intervening—and at common law, superseding—event of suicide, because the suicide is the "very risk the special duty is meant to prevent."[122] Put differently, in the student suicide context, the special relationship may change everything, and a plaintiff would argue that not even a student's own voluntary action of jumping into an open and obvious danger may be enough to shield a university from liability for failing to install suicide barriers.[123]

One additional factor that may impact this analysis is whether the suicide is impulsive or deliberately planned. Research strongly suggests that means-restriction methods, like suicide barriers, have little value in preventing a planned suicide because, as the oft-repeated maxim states (however distasteful in this context), "where there's a will, there's a way."[124] Suicide barriers are much more likely to stop an impulsive suicide. Specifically, access to "lethal means of suicide" actually increases the risk of death by an impulsive act.[125] Arguing that the student's death was impulsive would likely further solidify a plaintiff's argument that the university should have installed suicide barriers at the suicide site.

Moreover, where a university has not installed suicide barriers at known suicide sites, a plaintiff could perhaps further bolster its claim by charging the university with encouraging or failing to halt the "cluster" or contagious effects of suicide.[126] Such a claim would be more power-

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120 Little could be more obvious than the dangers of leaping from bridges into gorges or from a balcony ten stories high. In that vein, no landowner—university or otherwise—is required to keep its property in absolutely safe condition, but just reasonably safe for foreseeable uses. *See* Palsgraf v. Long Island R.R., 162 N.E.2d 99, 100 (N.Y. 1928); *supra* note 59 and accompanying text.

121 *Jain*, 617 N.W.2d 293, 300 (Iowa 2000).

122 *Id.*

123 *See, e.g.*, Moore, *supra* note 18, at 428–30.

124 *See* BEAUTRAIS ET AL., *supra* note 9, at 5, 23 & nn.36–37. The existence of a suicide note, for example, could be strong evidence of a plan.

125 *See id.*

126 *See* BEAUTRAIS ET AL., *supra* note 9, at 6–8; *supra* Part III.A and sources cited.

ful in the university–student context than in other contexts because adolescents and young adults (under age twenty-four) are much more likely to be affected by cluster issues; specifically, such individuals are at two to four times higher risk of risk of suicide following any exposure to another suicide.[127] Even for a university to disseminate information about campus-wide suicide support networks or mental health facilities could be a form of advertising the suicides—or perhaps even attractively glorifying the suicide victim. Consequently, a plaintiff could argue that by permitting any significant media attention at all, or by creating its own sort of attention through campus-wide emails or other means, the university intentionally drew attention to an attractive suicide location, admitted the foreseeability of future suicides with that attention, but failed to actually restrict the suicide means by installing barriers.[128]

B. University Liability for Student Suicides that Occur After It Installs Barriers at a Known On-Campus Suicide Site

All of the above considerations related to the absence of suicide barriers at a known on-campus suicide site—foreseeability, notice, university–student special relationship—additionally apply in the context of a student's suicide-by-jumping from a known suicide site at which a university has installed means-restrictive suicide barriers. Clearly, a university's choice to install a suicide barrier communicates its notice that the site at issue is iconic, or at least, known, as a potential suicide location.[129] The argument from a plaintiff's perspective would thus likely be that this short-circuits the need to establish an affirmative duty running from the university to its students because installing the barrier creates, absent any other factors, a special relationship. Such a special relationship is solidified under a foreseeability analysis: by installing the barriers, the university assumes that suicide at that site is foreseeable. In other words, suicide is the harm within the risk that the university attempts to prevent by installing the barriers.[130]

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127 *See, e.g.*, Gould et al., *supra* note 83.

128 Though beyond the scope of this Note, the ramifications of social science research—specifically about issues such as "means-restriction"—on judicial determinations of landowner liability are important here. What is clear, however, is that such research does matter and, for good or for ill, American courts pay attention to it. *See, e.g.*, William E. Doyle, *Can Social Science Data Be Used in Judicial Decisionmaking?*, 6 J.L. & EDUC. 13, 18 (1977); Sanjay Mody, Note, Brown *Footnote Eleven in Historical Context: Social Science and the Supreme Court's Quest for Legitimacy*, 54 STAN. L. REV. 793, 825–28 (2002).

129 *See* Jessica Mintz, *Safety Barriers Installed in N.Y.U. Library Atrium*, VILLAGER 73:92 (Dec. 10–16, 2003), http://www.thevillager.com/vil_32/safetybarriers.html.

130 *See Jain*, 617 N.W.2d 293, 300 (Iowa 2000) (discussing, though not in so many words, the harm-within-the-risk argument for university liability). Again, of course, whether this foreseeability is legally significant will turn on whether it applies to *any* student suicide at the barred location or only to those of students that the university knew or had reason to know were suicidal. *See supra* notes 104–108 and accompanying text.

A plaintiff's assertion that a university is still liable for a student's suicide where that student circumvents the barriers the university installed[131] includes additional considerations. Specifically, where a university installs suicide barriers at known suicide sites, university liability for a later, successful student suicide likely turns on whether installing such barriers was a reasonable response to the foreseeable use of the site for suicide. Setting aside issues of negligent construction or other dangers, a plaintiff could argue in the negative for a number of reasons: suicide barriers may increase the attractiveness of a suicide location, inadvertently spur a contagion effect by increasing awareness of similar suicides, and could significantly add to a borderline-student's depression.[132]

While one powerful defense in this context is that barriers are likely to stop the impulsive suicides of the vulnerable adolescent population,[133] a plaintiff would likely argue, however, that the barriers actually increased the contagion risk—making the "germ" of suicide that much more potent because of the constant reminder of suicide produced by the physical, visible barrier. A plaintiff's argument could be even stronger in this regard if installing the barriers resulted in significant media attention.[134] Even if not, however, the pervasiveness of the barriers could impact the contagion analysis. At Cornell, for example, the university installed metal suicide barrier fences on each of the seven bridges running to and from the campus, making it impossible for students to avoid seeing them and prompting a series of reactions related to the depressing, prison-like nature of the barriers.[135] Similarly, at NYU, the Bobst Library's transparent plastic suicide barriers "ruin[ed]" the library for some

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131 This is precisely NYU's situation after the 2009 suicide, since its barriers went up in 2003. *See* Editorial, *Permanent Barriers in Bobst are Needed*, WASH. SQ. NEWS (April 12, 2010), http://admin.nyunews.com/opinion/2010/04/11/12house/ ("[I]t's clear from last year's suicide that the Lexan guards are not very effective at preventing students from jumping."); Michael S. Schmidt, *Student, 20, Jumps to His Death at N.Y.U.*, N.Y. TIMES, Nov. 3, 2009, http://www.nytimes.com/2009/11/04/nyregion/04nyu.html.

132 Even reporting on the installation of a suicide barrier can advertise both the availability of suicide and the iconic nature of the site. *See* BEAUTRAIS ET AL., *supra* note 9, at 16–17 (citing E. King E & N. Frost, *The New Forest Suicide Prevention Initiative (NFSPI)*, CRISIS 26(1):25–33 (2005)).

133 *See, e.g.*, MARCHELL, *supra* note 9.

134 Clearly, this was the case at both Cornell and NYU. *See supra* notes 115–117 and accompanying text.

135 *See, e.g.*, Anonymous85, Comment to Michael Linhorst, *University Installs Fences on Campus Bridges*, CORNELL DAILY SUN (Mar. 24, 2010, 8:53AM), http://cornellsun.com/section/news/content/2010/03/29/university-installs-fences-campus-bridges ("The fences are so depressing themselves! The Collegetown bridge looks like the outside of a prison now."). Replacing some of the barriers with metal nets under the bridges would alleviate the visibility problem, *see* Niczky, *supra* note 11; Stein, *supra* note 11, but could possibly open the door to barrier-removal liability discussed below, *supra* Part IV.C.

students.[136] Moreover, following widespread recommendations for effective suicide barriers could easily increase the likelihood of such feelings. For example, research tells us that suicide barriers must be of sufficient height to be effective (minimum 250 centimeters), built so that they do not have footholds or handholds for any jumpers, and "provide the impression of a daunting physical deterrent."[137] In this context, daunting may equal depressing. Determining the reasonability of installing such barriers hinges on these factors. Again, where standards are muddy, a plaintiff stands a better chance of surviving a university's motion to dismiss or for summary judgment.

Even if, however, a plaintiff fails to demonstrate that the university–student special relationship or the foreseeability of student suicides gives rise to a duty to protect its students from the risk of suicide at on-campus known suicide sites, the plaintiff could still argue that the university assumed a duty to its students—particularly its at-risk students—by installing the barriers. As in *Mullins v. Pine Manor College*, having chosen to take on a gratuitous duty, the university likely cannot later assert that it had no duty to prevent a student's suicide when the very harm its student suffered was within the risk that the gratuitous duty aimed to prevent.[138] Under the analysis of cases like *Coghlan v. Beta Theta Pi Fraternity*, this gratuitous duty assumption analysis applies even in the context of voluntary activities, like intoxication or suicide.[139]

If a plaintiff's decedent had been enrolled at NYU, for example, this argument would come into full play. Specifically, though NYU installed the Lexan plastic barriers in Bobst Library in 2003, one suicide-by-jumping occurred there again in 2009. That means that the student who jumped from the tenth floor balcony had to circumvent the eight-foot barriers.[140] Moreover, the upper floors were sealed off, so the student also had to obtain access to the high floor. Clearly this is a tragic instance of "where there's a will, there's a way" and thus more likely a non-impulsive suicide that no barrier would have stopped. Nevertheless, by installing the barriers at all, NYU likely took on a whole new level of duty to prevent suicides going well beyond means-restriction.[141] Had the

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136 *See* Jessica Mintz, *Safety Barriers Installed in N.Y.U. Library Atrium*, VILLAGER 73:92 (Dec. 10–16, 2003), http://www.thevillager.com/vil_32/safetybarriers.html (quoting one student as asserting that "it's sad they had to ruin the entire library" with the barriers).

137 *See* BEAUTRAIS ET AL., *supra* note 9, at 15 & nn.128–29, and at 21.

138 *See* 449 N.E.2d 331, 333, 336–37 (Mass. 1983).

139 987 P.2d 300, 312 (Idaho 1999); *see also* Konopasky, *supra* note 18, at 330–31.

140 *See* Larry Celona et al., *NYU Student Commits Suicide at School Library*, N.Y. POST (Nov. 3, 2009), http://www.nypost.com/p/news/local/manhattan/item_C16olIgqnR0ZLRil1PT0UO; *see also supra* note 131.

141 See sources cited *supra* note 18 for a group of various articles addressing other levels of duty in the context of on-campus student suicides, including various suicide-prevention strategies such as mental health or counseling services.

university not installed the barriers, a plaintiff would be left with only the university–student special relationship argument, and the university would have a more powerful no-duty-because-not-foreseeable argument.

C. *University Liability for Student Suicides that Occur After It Removes Barriers from a Known On-Campus Suicide Site*

Briefly, the assumption-of-duty argument takes on further implications in another context: removal of means-restriction suicide barriers. Were a student then to commit suicide at the known suicide site from which the university had removed the barriers, a plaintiff would have a significant foreseeability-based "harm-within-the-risk" argument that removing the barriers led directly to the suicide, particularly if the suicide was impulsive. At least one study empirically demonstrated that removing a suicide barrier increased the number of suicides at that particular location and that replacing that barrier resulted in a complete reduction in suicides.[142] The Extended Report to Cornell following suicides in spring 2010 states that "it is our opinion that removing [the barriers] will, in effect, invite further suicides."[143] As in the other potential liability contexts—liability for failing to install barriers or for actually installing them—there is just no way to remove the barriers without significant media attention. Under the contagion theory of young adult suicide, such attention could increase the risk of additional suicides again through rehashing the previous tragedies that led to the installation of the barriers in the first place.[144]

Because suicide may be contagious, and because building suicide barriers may or may not prevent suicides, a landowner of a suicide site may assume a duty to prevent suicides from that location by building a suicide barrier there. If the owner of a tall building, bridge, gorge, or any known suicide site voluntarily installs barriers in order to prevent suicides—likely in response to what they understand to be a dangerous condition on their land, whether they had a duty to guard against it or not—then removing those barriers may recreate a dangerous condition for which they may incur liability should a suicide subsequently occur. Landowners are liable for the dangerous conditions they create, even if they lack notice that the condition is dangerous.[145] Since an individual who chooses to act gratuitously must act carefully—and may not always

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142 *See* Beautrais et al., *supra* note 95.

143 BEAUTRAIS ET AL., *supra* note 9, at 26, 27 (noting also that as to other means-restrictive solutions, "[c]hoosing barriers lower than a recommended height in order to preserve the view at the expense of a student life would be difficult to defend").

144 As illustration, note that every article discussing the suicide barrier bridge fences at Cornell mentions the number of tragic suicides. *See, e.g.*, Linhorst, *supra* note 11. Of course, any discussion on the issue necessarily includes discussion of background facts.

145 *See, e.g.*, Merlo v. Zimmer, 647 N.Y.S.2d 641, 642 (App. Div. 1996).

stop acting with impunity—then liability may attach to the landowner that installs suicide barriers and later wishes to remove them.[146]

As a rule, landowners who fail to install fences, guardrails, or other barriers on their property to guard users against natural geological phenomena, including waterways, are not chargeable with creating a dangerous condition.[147] Nevertheless, American law does not specifically address whether such landowners are liable for injuries that may occur should they *remove* any such voluntarily-installed barrier. As discussed earlier, however, sociological research suggests that removing a barrier may actually increase the risk of suicide at that particular point.[148] When suicide is viewed not from a "site" point of view but from a "vicinity" point of view (that is, suicides from neighboring buildings, bridges, balconies and so forth), it becomes clear that no study of suicide barriers has ever shown a "statistically significant drop in overall rates of suicide in the vicinity" of the suicide barrier.[149] Accordingly, though removing barriers may increase suicide rates at a particular site, it may have no ramification on suicides in the vicinity.[150] For a university struggling to decide whether or not to install suicide barriers at a particular site, however, such a point is particularly relevant if there are other such known suicide sites under university control nearby (for example, another bridge or another balcony).

Thus, if a plaintiff could demonstrate that removing means-restrictive suicide barriers actually did increase a particular student's risk—perhaps because the student expressed interest in that site or impulsively jumped from it—then the reasoning that relieved the university of liability in *Jain*, that is, that university personnel had not increased the student's risk of death or assumed a duty to prevent his suicide, may fall short.[151]

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146 *See* H.R. Moch v. Rensselaer Water Co., 159 N.E. 896, 898 (N.Y. 1928); *see also* Varga v. Parker, 524 N.Y.S.2d 905, 905 (App. Div. 1988) ("A party who engages in affirmative acts which create a danger owes a duty to exercise reasonable care in protecting those exposed to the danger.").

147 *See, e.g.*, Lipscomb v. City of Ithaca, 495 N.Y.S.2d 779, 779 (App. Div. 1985) (finding that the city was not under a duty to install a fence at edge of parking lot leading down to a creek because car sliding down into the creek was outside the realm of reasonable foreseeability and accordingly, city had in no way created the condition).

148 *See* BEAUTRAIS ET AL., *supra* note 9, at 26; Beautrais et al., *supra* note 95.

149 *See* Sinyor, *supra* note 97; *supra* notes 97–99 and accompanying text.

150 One significant question that follows, of course, is whether a university that installs means-restrictive suicide barriers could be liable for the suicides of thwarted students who instead go to another landowner's property to end their lives.

151 *See* Jain v. Iowa, 617 N.W.2d 293, 297–300 (Iowa 2000). Much would depend, of course, on the court's response to the research about installation, effectiveness, and removal of suicide barriers. *See* Beautrais et al., *supra* note 95 and sources cited therein.

V. UNIVERSITY LIABILITY IN THIS CONTEXT IS INAPPROPRIATE FOR UNIVERSITIES AND FOR THE SAFETY OF STUDENTS THEMSELVES

A. *The Problem*

More important than the issue of university liability is the issue of student safety. In the context of student suicide, however, the two issues are remarkably interdependent, not least because the dramatic increase in the number of student deaths during the last several decades is mind-boggling, but also because the dramatic nature of suicides-by-jumping—such as those at Cornell and NYU—is equally torturous for the universities and their students. Ultimately, the critical reality is that universities must act in the best interest of all their students—those it may know are suicidal and all those who are not—not out of a fear of liability.[152] Not only is the expense of installing suicide barriers potentially extreme[153] but also potentially unnecessary if the barriers would not be effective. To install them only to circumvent liability would also be unwise because, as discussed above, installing the barriers—or installing and later removing them—could actually increase the potential for liability. Specifically, since suicides-by-jumping are particularly dramatic and apt to give rise to "cluster" behavior, a university must take extra care in choosing to act or not to act with the installation of suicide barriers.[154] That is, a university that acts primarily out of fear of liability may actually facilitate the very thing it strives to prevent: additional student suicides-by-jumping from the known suicide sites on their campuses.

Universities, however, clearly take these issues very seriously. This is evidenced by, among other things, the expansion of mental health programs and broadening of on-campus suicide-prevention programs in the last several years at universities like the University of Illinois, George Washington University, and a host of others, including Cornell and

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152 *See* BEAUTRAIS ET AL., *supra* note 9, at 3 (noting that immediately installing suicide barriers was an "essential demonstration of [Cornell] University's commitment to safety above all else").

153 As of November 2010, for example, Cornell had spent $350,000 on the temporary suicide barrier fences on the university's and the City of Ithaca's bridges. *See* Jeff Stein, *Cornell Spends $575,000 on Suicide Response So Far*, CORNELL DAILY SUN (Nov. 22, 2010), http://cornellsun.com/section/news/content/2010/11/22/cornell-spends-575000-suicide-response-so-far. Moreover, the debate about funding for installation, maintenance, and insurance has been a serious source of contention between the university and the City of Ithaca, particularly as to any barriers (either fences or the more recently proposed nets) on city-owned bridges. *See* Liz Camuti, *University Agrees to Pay for Upkeep of Bridge Nets*, CORNELL DAILY SUN (Sept. 14, 2011), http://cornellsun.com/node/47746. By one estimate, the means-restriction initiatives at Cornell will cost between six and eight million dollars. *See* MARCHELL, *supra* note 9, at 9.

154 *See supra* Part III.A–B and sources cited.

NYU.[155] This seriousness is even evidenced by the near-immediate reactions of NYU in 2003 to its rash of suicides at the Bobst Library, and at Cornell in 2010 after its gorge suicides, to install suicide barriers to protect students, likely without any significant liability analysis. As a result, the possibility of university liability serves no incentivizing purpose and could actually disincentivize a university from implementing certain effective suicide-prevention methods.[156] Axiomatically, students have a strong interest in their university taking the most effective measures to prevent student suicides. Naturally, the methods that work most effectively will vary somewhat according to context. If, for example, suicide barriers actually do decrease the frequency of suicides-by-jumping at universities like NYU and Cornell, and it is not unreasonable to install them given other considerations about contagion, then it is in the students' best interest for their universities to be free to install—and perhaps even later remove or modify—such barriers.

An additional consideration here is what cases like *Shin* and *Schieszler* demonstrate when compared with cases like *Jain*: under widely accepted, longstanding premises-liability and university–student law, a university is not responsible for the on-campus suicide of its students absent some intentional act—that is, without some significant causal connection to the suicidality of a particular student. The dangers of departing from precedent without considered thought regarding the ramifications—particularly for student safety—of more easily imposing university liability where it has not previously been imposed are potentially extreme and wide-ranging.[157]

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155 *See, e.g.*, Kaveeshvar, supra note 7, at 688–93 (discussing the University of Illinois's comprehensive suicide-prevention plan). Like many other universities, Cornell and NYU have both instituted suicide-prevention plans, NYU through its "Wellness Exchange" and Cornell through its "Caring Community." *See NYU: Wellness Exchange*, NYU.EDU, http://www.nyu.edu/999/index.html (last visited Feb. 27, 2012); *Cornell University: Caring Community*, CORNELL.EDU, http://caringcommunity.cornell.edu/ (last visited Feb. 27, 2012). Some of these plans have been heavily criticized, particularly when a university, fearing liability, takes steps to remove the suicidal student from campus altogether. *See* Konopasky, *supra* note 18, at 328–29. Calling one suicidal student's expulsion from school "morally reprehensible," Konopasky argues that such expulsion is actually "encouraged by the current legal landscape" because "colleges and universities risk incurring liability for a student's death if a close relationship exists between the student and the college or university. To guard against a court finding such a close relationship with the student, colleges and universities attempt to cut off contact altogether." *Id.*

156 *See supra* notes 7, 18 and sources cited; *see also* United States v. Carroll Towing Co., 159 F.2d 169, 173 (2d Cir. 1947). As a matter of common sense, $B < PL$ is irrelevant where an entity will make a decision for students' best interests regardless of the burden or likelihood of loss.

157 *See* Dall, *supra* note 21, at 506–09 ("[I]ncreased college liability affects educational resources, the curricular and co-curricular opportunities colleges choose to provide, student rights, and future litigation postures.").

In this tumultuous area of law, where precedent is in danger of violation, universities are in danger of being subject to unnecessary liability, and students are in danger of not getting the protective services they need, it makes best sense to formally establish the boundaries of university liability for on-campus student suicides-by-jumping from known or iconic suicide sites. One possible solution is to return to *in loco parentis*—a move that no one, least of all university-law commentators, agree is wise, particularly given the expectations of today's students, their parents, and university administrators that students should bear some responsibility for their own safety.[158] Another is to simply hope that cases like *Shin* and *Schieszler* were mere "blips on a continuum" rather than the harbingers of an entirely new era in university tort law.[159] Realistically, however, current law (such as it is) regarding university–student relationships in the context of student suicides, particularly the unaddressed area of student suicides-by-jumping from known suicide sites on-campus, is too uncertain to allow either universities or their students to rest easy or make decisions confidently, even in this arena already fraught with emotional tension and life-and-death consequences.[160] As it stands, a university faced with the difficult decision of responding to multiple student suicides from a particular on-campus location may be "damned if it does, damned if it doesn't"—a reality that is ultimately at odds with a university's mission to protect and nurture its students according to the unique circumstances of its locale and community.

To define these boundaries judicially through common-law evolution would require more suits against universities by the distraught next-of-kin of a student who ended her own life, and consequently, would also require the time, drama, heartache, and expense for both parent–plaintiffs and universities that accompanies such suits, as all parties in the *Jain*, *Shin*, and *Schieszler*, and *Mahoney* cases no doubt experienced. Additionally, *not* defining these boundaries of liability should not be an option, first because the increase in student suicide during the last years[161] will undoubtedly lead to more decision making regarding preventative measures at the university administrative level, and second because of the general uptick in litigation in the "university law" arena.[162]

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158 *See* BICKEL & LAKE, supra note 21, at 123.

159 Kaveeshvar, *supra* note 7, at 657.

160 *See* BICKEL & LAKE, supra note 21, at 123 ("The outcomes . . . are not always easy to predict because courts must weigh various policies in each fact specific context to find an appropriate result.").

161 Scholars in this area are not in perfect consensus, but are clear that, at the very least, incidences of student suicide have not decreased. *See, e.g.*, Ann MacLean Massie, *Suicide on Campus: The Appropriate Legal Responsibility of College Personnel*, 91 MARQ. L. REV. 625, 632–36 (2008).

162 *See* Barbara A. Lee, *Fifty Years of Higher Education Law: Turning the Kaleidoscope*, 36 J.C. & U.L. 649, 652 (2010) ("The overall increase in litigation in the United States is

B. A Legislative Solution

Taking all of this into account, it becomes clear that a legislative solution is best. That is, state legislatures must define the boundaries of university liability for student suicide, delimiting it for much the same reasons that landowner liability for public recreational use is statutorily limited:[163] such liability incentivizes the behaviors that we value in a way that imposing liability does not.[164]

In the context of student suicides, however, even suicides-by-jumping from known on-campus suicide sites, universities are not merely landowners, and students are not merely recreational users. Regardless of whether the university–student relationship is a "special relationship" for negligence duty purposes, few would deny that the relationship is somehow special. Universities care for their students in a way that other landowners—landlords, businesses and so forth—do not, and conversely, students expect care from their universities in a way they simply do not, and cannot, from other landowners. Accordingly, offering blanket immunity to universities or a straight-shot to liability to suicide victims' families would fail to reflect the special nature of the relationship that universities and students have with each other.

Thus, the legislative solution in this context is to establish a rebuttable presumption that precludes university liability for installing, failing to install, or installing and then later removing means-restrictive suicide barriers at a known suicide site when (1) the university demonstrates that its decision was made in good faith[165] as to the reasonableness of installing, not installing, or removing the barriers, and (2) the university has in place a comprehensive suicide-prevention program, including at minimum, access to free short- and long-term counseling and emergency services for all students.[166] Failing to establish either prong would leave the

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mirrored in higher education, as individuals who disagree with a decision—whether it be admissions, employment, or student discipline—challenge the decision in court under an expanding array of legal theories."); *see also* GAJDA, supra note 14, at 183 (noting the "barrage of recent tort suits involving colleges and universities").

163 Recreational-use statutes protecting landowners exist almost uniformly across the nation. *See, e.g.*, N.Y. GEN. OBLIG. LAW § 9-103 (2010); TEX. CODE ANN. § 75.001–04 (2010); WASH. REV. CODE § 4.24.200–10 (2010).

164 In the student-suicide context, these behaviors include making choices that are best for students regardless of other consequences—civil, monetary, or otherwise. Defining the broad contours of these choices will require inquiry into the wide variety of other state and federal statutes that prescribe and proscribe university action toward or in relation to its students in other contexts, including, at a federal level, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (2006), the Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213 (2006), and even the Constitution, *see* Lee, *supra* note 162, at 649–50. Some of this work has already been done. *See* sources cited *supra* notes 7, 18.

165 This is an admittedly low burden; it could be based, for example, on expert opinion. *See, e.g.*, BEAUTRAIS ET AL., *supra* note 9.

166 *See supra* note 155 and accompanying text.

university in the muddy realm of current university–landowner negligence law.[167] Once the university demonstrates good faith and the existence of a comprehensive suicide program, the plaintiff could rebut the presumption only by proving gross negligence, willful act, or deliberate indifference as to the particular student who committed suicide-by-jumping from the known on-campus suicide site.

Using a rebuttable presumption in this manner has at least two significant benefits: First, it incentivizes universities to create comprehensive suicide prevention programs. These programs, depending on the particular circumstances, may or may not include means-restrictive suicide barriers, but would certainly focus on preventing suicide rather than on avoiding liability.[168] Second, the rebuttable presumption emphasizes a university's responsibility to each individual student rather than only to the student body as a whole. This protects students by further incentivizing universities to implement comprehensive suicide prevention strategies (including providing a well-trained staff)[169] that can protect suicidal students whose struggle might otherwise go unnoticed. It also protects universities from unnecessary liability as to a particular student suicide victim of whose suicidality it had no notice or for whom it did not show, for example, deliberate indifference even if it did have notice of that particular student's suicidality.[170] University liability will be difficult for a plaintiff to establish under this scheme—and rightly so—but not impossible where a university has truly failed a particular student. Crucially, that possibility will incentivize university behavior that will not only protect universities from unnecessary liability, but will also protect vulnerable students from harm.

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167 *See supra* Parts I & II.

168 This inventive also comports with the admonition offered to Allegheny College by the *Mahoney* court: "[F]ailure to create a duty [based on a special relationship] is not an invitation to avoid action. We believe the University has a responsibility to adopt prevention programs and protocols regarding students['] self-inflicted injury and suicide that address risk management from a humanistic and therapeutic as compared to a just liability or risk avoiding perspective." Mahoney v. Allegheny College, No. AD 892-2003, at 25 (Pa. Ct. Com. Pl. Crawford Cnty. Dec. 22, 2005), *available at* http://www.theasca.org/attachments/articles/35/Allegheney%20college%20SJ%20decision.pdf (internal quotation marks omitted).

169 Cornell, for example, even trains its custodial staff to look for signs of suicidal intentions. *See* Elizabeth Bernstein, *Bucking Privacy Concerns, Cornell Acts as Watchdog*, WALL ST. J. ONLINE (Dec. 28, 2007), http://online.wsj.com/article/SB119881134406054777.html.

170 Critically, while an enactment like this would free universities to act as they and their advisors suggest as to means restriction, it would not impact possible university liability for other types of negligence as it may relate to fraternity hazing, alcohol or drug-related injuries, third-party criminal acts, or other similar incidents. *See generally* BICKEL & LAKE, *supra* note 21.

CONCLUSION

More than one thousand college students die each year by suicide, and at some universities the rash of student suicides clustered together has been extreme. To respond to this crisis, some universities have installed physical barriers at known suicide sites—such as the transparent Lexan plastic barriers at NYU's Bobst Library balconies and the metal fences along the railings of Cornell's gorge bridges—following research suggesting that "means-restriction" prevents suicides. Both universities decided to make these barriers permanent—likely for a host of reasons, but almost certainly including a fear of liability. Unfortunately, this fear is likely not as far-fetched as it once might have been, particularly in the wake of several suits brought against universities for on-campus student suicides, including *Jain*, *Shin*, *Schieszler*, and *Mahoney* which together create an uncertain picture about the foreseeability of student suicide and the implications of university–student "special relationships."

Coupling this uncertainty with the further uncertainty of university responsibilities to its students in the landowner context, particularly as it relates to a known or iconic on-campus suicide location, creates a muddled mess and leaves universities uncertain how to proceed. This Note has demonstrated a possible plaintiff's argument for university liability when (1) a university failed to install suicide barriers, (2) installed such barriers, or (3) installed and then later removed such barriers—each grounded in concepts of foreseeability and contagion. Nevertheless, this Note has argued that, for a variety of precedent and policy reasons, such liability is both unnecessary and inappropriate. Among other reasons, imposing liability creates unnecessary uncertainty in an arena in which lives are clearly at stake. Fear of liability might, for example, stop a university from invoking essential suicide-prevention strategies, or might encourage a university to install ineffective (even if liability-limiting) strategies instead.

This Note has concluded that, instead of relying on the common-law process in this highly emotional context fraught with life and death implications, state legislatures should clearly delimit the contours of university liability in the student-suicide context as it relates to suicides-by-jumping from on-campus suicide sites by creating a rebuttable presumption in favor of universities who demonstrate good faith and establish comprehensive suicide prevention programs. This would free universities to make the best choices for their students under their particular circumstances without fear of civil repercussion. Only then is it more likely that the headlines that grab our attention will not be to announce another student's tragic suicide leap, but instead to trumpet university students' health and well-being.