

Texas Court's Ruling in Bonfire Case Opens New Liability Worries for Campuses

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Austin, Tex.

A Texas court's ruling last week that allowed a negligence lawsuit to proceed against 12 former Texas A&M University administrators has some higher-education legal experts concerned about campus officials' liability in a host of situations, from fraternity initiations to housing accidents to student suicides.

The ruling was in favor of the parents of students who were killed or injured in 1999, when a 59-foot-high stack of logs, under construction for use in a bonfire on the College Station campus, collapsed. Twelve students were killed, and 27 others were injured.

State and federal courts have ruled that Texas A&M itself cannot be sued because of the doctrine of sovereign immunity, which holds that governments and their agencies, including public colleges, are immune from civil lawsuits and criminal prosecution ([The Chronicle](#), October 9, 2007). (The sovereign immunity of state governments and their agencies is guaranteed under the 11th Amendment to the U.S. Constitution.)

Many people had assumed that the same protection carried over to the administrators who were in charge at the time of the incident.

Not so, according to the new ruling, by the state's 10th Court of Appeals, in Waco.

By a 2-to-1 vote, the court upheld a lower-court decision giving the plaintiffs a green light to sue the administrators as individuals in state courts, even though the accident occurred during the course of their work for the university ([The Chronicle](#), May 29).

'No One Else to Go After'

Higher-education law experts had mixed views of the ruling.

Michael A. Olivas, a professor of law at the University of Houston who directs its Institute for Higher Education Law and Governance, called the decision "a very bad policy and not at all a slam dunk for the plaintiff parents."

"It will likely chill the ability of institutions to recruit good people who have any involvement in student affairs," he said.

Texas's "tort reform" legislation, approved in 2003 and intended to curb frivolous lawsuits, had made it harder for people to sue Texas institutions and more likely that they would sue individuals instead, he said.

"The state has ratcheted up its sovereign-immunity protection and limited the number of cases that can be brought against institutions," Mr. Olivas said. "This forces plaintiffs like these aggrieved parents to go after these individuals because there's no one else to go after."

The Texas court's ruling also raises the question of whether lawsuits against higher-education employees will become more commonplace, and more successful, when their institutions can't be sued.

Last summer, for instance, two officials of Rider University, in New Jersey, including the dean of students and director of Greek life, were indicted on charges of aggravated hazing following the drinking death of a freshman at a fraternity initiation, even though the officials were not present at the time ([The Chronicle](#), August 6, 2007). The indictments were later dismissed ([The Chronicle](#), August 28, 2007).

Barbara A. Lee, a professor of human-resource management at Rutgers University's School of Management and Labor Relations, helped run a Web conference on the topic last fall with the National Association of College and University Attorneys. During that conference, student-affairs administrators discussed what some believe is an increase in the number of lawsuits against administrators, particularly at public universities. Several of those cases involved student suicides.

"The suicide cases are interestingly and sort of chillingly similar to the Texas A&M case because they involved a loss of life or very serious injury," Ms. Lee said in an interview on Sunday. "It raises the question we all struggle with: To what degree is the institution responsible for monitoring the behavior of people who are legally adults? Does the administrator have a responsibility to protect students from their own risky behaviors?"

In most cases, she said, the courts have concluded that they do not, but the fact that they can be sued still has many administrators who work with students on edge.

Ms. Lee said she was interested in the dissenting opinion in the Texas A&M case. The author of the dissent, Justice Bill Vance, warned that the ruling would make administrators at public universities more vulnerable to lawsuits than their counterparts at private institutions.

The majority opinion, he wrote, deprives "these defendants of the protection of sovereign immunity when all of their acts were on behalf of the university, subjects them to potential liability when their employer—the university—is immune from both suit and liability, and exposes them to more liability than persons similarly situated in the private sector."

Personal and Professional Negligence

Darrell Keith, a Fort Worth lawyer who represents some of the plaintiffs in the Texas A&M case, said the administrators were acting in their personal capacities when they loosely oversaw the bonfire construction.

Unlike in earlier years, he said, the administrators did not adequately enlist the support of faculty members with expertise in engineering and architecture to help the students with their design.

"They allowed professional engineering and architectural oversight of the student bonfire leaders to lapse," Mr. Keith said. "That led to the construction and design of a structurally dangerous bonfire that ultimately collapsed."

Asked how a university administrator could be deemed personally liable for an incident that happened on the job, he likened the situation to a police officer who is driving negligently while chasing a suspect. The officer could be held personally liable if his erratic driving injured or killed someone.

'Quasi-Official Immunity'

Texas A&M officials declined to comment on the case because litigation is pending. A spokesman for the Texas attorney general's office, which is representing the university, said it was too early to say whether A&M would appeal the case.

Barry D. Burgdorf, vice chancellor and general counsel of the University of Texas system, predicted that the A&M administrators would eventually be granted "quasi-official immunity" by successfully arguing that they were performing university work, not personal duties.

"I think, in the end, the defendants will not owe any money," he said.

The case is the latest chapter in a drawn-out legal battle. In 2004, 35 students who oversaw construction of the bonfire agreed to pay \$6-million in a settlement with the parents who sued. Lawsuits were filed in federal court as well, but those ended last year when the U.S. Supreme Court declined to take up the cases.