

THE 2019 CLAY AWARDS The 23rd Annual California Lawyer Attorneys of the Year

PERSONAL INJURY

RESOLVING THE STANDARD OF CARE A SCHOOL OWES ITS STUDENTS



ALAN CHARLES DELL'ARIO Law Office of Alan Charles Dell'Ario

Regents of the University of California v. Superior Court (Rosen) (2018)

Chang said the key to the successful appellate proceedings was the numerous depositions they took when the case launched.

"Weeks and weeks of depositions of school administrators," she said. "We learned that right after Virginia Tech the University of California system set up a task force and threat assessment committees, said they would raise tuition to pay for safer campuses and assured students and parents that Cal had the safest campuses in the country.

"But they were shell committees that weren't actually doing anything. There were red flags all over the place from the student who stabbed our client. He even sent threatening letters. We had evidence from our depositions that Cal's procedures were negligently implemented."

Though they lost 2-1 at the court of appeal on their first trip there on the duty to warn issue, a dissent by Justice Dennis M. Perluss foreshadowed how the high court would rule. "Justice Perluss was all over our negligence argument," Panish said. "The Supreme Court essentially adopted his analysis."

Dell'Ario said he advanced several theories before the high court regarding why schools have a duty to their students. "The special relationship argument was the boldest because there was no precedent for it," he said. "But we pushed forward with that idea."

Still, he added, "Oral argument is no time to try to win your case. You'd better have done that before you get there. But I didn't know how they would rule. It can be dangerous to fall in love with your own blarney. I once called a different case 5-2 and it went 5-2 the other way. I was not there for a big sweeping ruling, only to win for my client."

Said Chang: "So far we have won on duty and the reasonable man standard. This is why we all became lawyers."

— John Roemer

In the 2007 Virginia Tech massacre, a student killed 32 and wounded 17 on campus before taking his own life. The horrific event galvanized college and university authorities across the country to reconsider their school safety planning. Even so, in 2009, Katherine Rosen, a pre-med student in her junior year at UCLA, suffered life-threatening injuries when a classmate stabbed her in her neck and chest.

Rosen's resulting negligence lawsuit spanned the decade that followed and led to a 2018 state Supreme Court ruling for the first time that public colleges have a duty to protect students from foreseeable violence in classrooms and elsewhere.

For veteran appellate specialist Alan Charles Dell'Ario, a sole practitioner who twice argued the issue before a state appellate panel and at the state's high court, it was the case with the most far-reaching impact of any in his 44-year career.

"No one had ever before extended the special relationship doctrine to colleges and universities," he said.

The Supreme Court's unanimous ruling left unresolved the standard of care schools owe students—the metric that should apply when Rosen finally gets to fully air her negligence claims. On the case's second trip to the 2nd District Court of Appeal, the panel in December concluded the standard that ordinarily applies in negligence cases, that of a reasonably prudent person under the circumstances, would apply to Rosen.

That was the outcome Dell'Ario wished for, so that his colleagues Brian J. Panish and Deborah Chang of Panish Shea & Boyle LLP could conclude the case they originally filed 10 years ago. UCLA sought another state Supreme Court review on the standard of care question. In March, the high court denied review on standard of care and immunity.

"This is a big deal that will help a lot of people beyond our client," Panish said of the outcome so far.

Chang added, "It's like we've been in a time machine, and now we're on the verge of finally getting our day in court."