



ON THE CASE JULY 28, 2020 / 7:00 PM / UPDATED 14 HOURS AGO

Colleges have a duty to protect drunk students from imminent danger, says Mass. high court

Alison Frankel

7 MIN READ



(Reuters) - A young woman named Morgan Helfman lost her case this week at the Massachusetts Supreme Judicial Court. Helfman wanted to hold her school, Northeastern University, responsible for what she alleges was a sexual assault that occurred in 2013, when she was a freshman and drank too much at a dorm-room Halloween party. The Massachusetts high court [ruled Monday](#) that Northeastern was not liable for Helfman's alleged rape, affirming Suffolk County Superior Judge Robert Gordon's grant of summary judgment to the university.

But Helfman's lawyers, **Mark Itzkowitz** and **Kenneth Kolpan**, told me Tuesday that in a broader sense, Helfman won.

The court did restrict liability to what it called a “narrow” circumstance, in which the school has “actual knowledge of conditions that would lead a reasonable person to conclude that a student on campus is in imminent danger of serious physical harm.” Itzkowitz and Kolpan said, though, that the ruling will enable future plaintiffs to survive universities’ motions for summary judgment and get their cases before juries.

In Helfman’s case, the state justices evaluated the facts rather than remanding the matter to the trial court. Both sides agreed that Helfman drank too much at her own dorm and at a subsequent party in a resident advisor’s room in another dorm. After she vomited several times in the RA’s room, Helfman’s friends urged her to go back to her own dorm. Another freshman, a man who also lived her dorm, volunteered to take her home. The two were checked in by a proctor at their dorm’s entrance, where Helfman leaned on the counter and appeared unsteady on her feet. She and the man went to his room. They had sex.

The next morning, when Helfman told her roommate about the previous night, she said she would have stopped the encounter if she had been sober. The two women reported the incident to their dorm’s residential advisor. Helfman also told her mother what had happened. She and her mother went to the Northeastern police, who investigated the case. The man was not charged with assault. A Northeastern disciplinary body also determined that he did not commit sexual assault.

The Massachusetts high court said that the university could not have foreseen that Helfman could be assaulted. Nothing in the record, the court said, indicated that anyone at the Halloween party acted inappropriately, including the man who allegedly assaulted Helfman. She left willingly with him and was

able to talk and text with friends at the party and when she was in the man's dorm room. She was unsteady on her feet when she and the man checked in with the proctor at their dorm, but the Massachusetts justices said that she did not appear to be "dangerously intoxicated" at that moment.

"The mere presence of an intoxicated young woman in the company of an intoxicated young man as they returned to their shared residence hall does not, without more, suggest that a crime or physical harm is imminent," the court said.

Nevertheless, Itzkowitz and Kolpan said the court's ruling puts Massachusetts colleges and universities on notice that they may be responsible for what happens to students who have had too much to drink, much as the same court's 2018 ruling in [Nguyen v. MIT](#) alerted schools of their duty to take reasonable measures, in certain circumstances, to prevent at-risk students from committing suicide. The Helfman case, in other words, marks the second time in two years that the Massachusetts Supreme Judicial Court has walked back from what it has called the "bystander" view of the relationship between universities and their students.

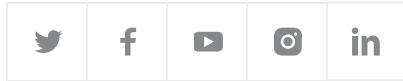
"It's a warning to colleges: You may not be able to get away with this again," said Itzkowitz.

Northeastern counsel Daryl Lapp of Locke Lord did not respond to an email request for comment.

The views expressed in this article are not those of Reuters News.

Our Standards: [The Thomson Reuters Trust Principles.](#)

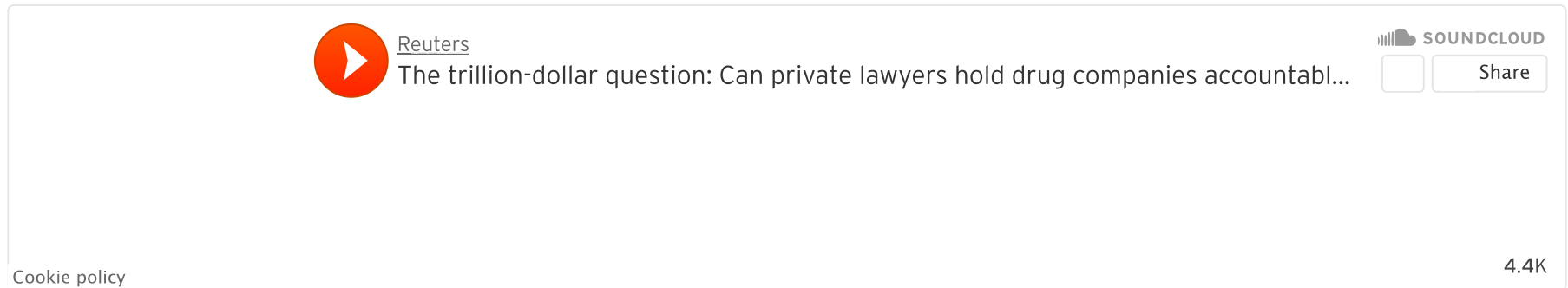
[Apps](#) [Newsletters](#) [Advertise with Us](#) [Advertising Guidelines](#) [Cookies](#) [Terms of Use](#) [Privacy](#) [Do Not Sell My Personal Information](#)



All quotes delayed a minimum of 15 minutes. See [here](#) for a complete list of exchanges and delays.

© 2020 Reuters. All Rights Reserved.

Want more [On the Case](#)? Listen to the [On the Case](#) podcast.



The image shows a SoundCloud player interface. On the left, there is a red play button icon. To its right, the text "Reuters" is displayed above the title "The trillion-dollar question: Can private lawyers hold drug companies accountabl...". In the top right corner, the SoundCloud logo and a "Share" button are visible. At the bottom left, there is a "Cookie policy" link, and at the bottom right, the number "4.4K" is shown.

Northeastern, represented by Locke Lord, had argued that universities “have no duty to protect their students from the consequences of their own drinking.” The Massachusetts high court rejected the principle that schools are not responsible for what happens to intoxicated students. Schools have a duty, the Supreme Judicial Court held in an opinion by Justice **Barbara Lenk**, “to take reasonable measures to protect (students) from harm” when they are aware that the drunk student is in imminent danger and is incapable of seeking help.

“In terms of principles, Morgan accomplished tremendous things,” said Itzkowitz, who said his client graduated from Northeastern, went on to law school and is currently interning at the Southern Poverty Law Center. Added Kolpan: “The university came in saying it has no duty, it’s immune from suits from drunk kids. Now colleges are required to recognize their responsibility if students are dangerously intoxicated.”