Gross v. Family Services Agency, Inc.: The Internship as a Special Relationship in Creating Negligence Liability

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I. INTRODUCTION

Many academic programs encourage experiential learning in the form of internships, practica, or apprenticeships, as part of a student's overall career and professional preparation. Indeed, the value of experiential learning has been well documented in business and academic journals (Briggs, 2000; Cates-McIver, L, 1998; Crumbley D.L., & Sumners, G.E. 1998; Haghighi, 1998; Singer, 2000). In addition to encouraging experiential learning, many academic programs include internships or practica as required elements of medical, business, communication, teacher education (Bowman & Lipp, 2000), and sport management degree programs. These opportunities enable students to earn academic credit while also gaining professional experience. The Sport Management Program Review Council (SMPRC) Standards for national program approval of sport management programs requires some form of field experience at the undergraduate, master's, and doctoral levels (SMPRC, 2000). In a recent study of United States sport management programs, 76% of respondents *required* an internship experience (Williams, 2001). With more than 40 sport management programs nationally approved by the SMPRC at the undergraduate or graduate levels (NASSM, 2001) and over 200 existing sport management programs, the administration of internship programs and supervision of interns is becoming increasingly challenging.

Two handbooks have been published to guide the internship component of a sport management program (Ashley, & Dollar, 2000; Cuneen, & Sidwell, 1994). While not many academicians would dispute the necessity of such experiences, a required field experience can bring about certain legal relationships between the student and the post-secondary institution, hereinafter referred to as university, which may expose the

university to liability for injuries sustained by a student during the course of an internship or practica. Some sport management programs may have more than 50 students working in field experiences in any given academic semester. These interns may be located at diverse and possibly even remote internship sites. A single faculty coordinator may supervise these internships. This can not only create administrative challenges for the faculty coordinator and the university, but the legal implications of supervising sport management interns are unclear and possibly expanding as demonstrated in a recent court decision. In *Nova Southeastern University v. Gross* (2000), the Florida Supreme Court held that a university could be liable for injuries sustained by a student intern as a result of a sexual assault by a third party. Even though the precedent established in *Gross* is limited to the State of Florida, the decision serves as an example of a potentially changing view of the legal relationship between universities and student interns.

Situations creating the potential for injury occur with greater frequency as university activities extend beyond the campus in such forms as international student exchange programs, field trips, sports team travel, and particularly, the internship or practicum. The purpose of this article is to examine the potential for expanded university liability for injuries to interns caused by third persons during an internship. Section II of this article will examine the history and evolution of the legal relationship between the university and student. Section III will examine negligence theory as it generally applies today in defining the legal relationships between the university and student and, specifically, the legal relationship between the university and the student intern as discussed by the Florida Supreme Court in *Gross*. Section IV will describe typical internship situations and criteria, and discuss the potential impact of the *Gross* decision in re-defining the legal relationships between the university and student intern. The article will conclude by introducing policy recommendations for universities, professors, and their internship programs.

II. HISTORY AND EVOLUTION OF LEGAL RELATIONSHIPS BETWEEN UNIVERSITIES AND STUDENTS

While college and university law is today a well-recognized and complex legal specialty, prior to 1960 only a handful of attorneys routinely represented universities and no formal body of college and university law existed (Bickel & Lake, 1999, citing Thomas, p. 159). Since that time, legal issues involving post-secondary education have evolved from this informal interest to a large body of higher education law.

Bickel and Lake (1999) identify four discernable periods during the 20th Century contributing to the evolution of higher education law. They are the legal insularity era, the civil rights era, the bystander era, and the duty era.

The first period, the "Legal Insularity Era" is the time period prior to the 1960s. While there was scant case law during this era relating to school and university liability, courts generally protected both public and private post-secondary institutions through a variety of immunities protecting governmental and charitable institutions and through the doctrine of *in loco parentis*. The tort immunity of *in loco parentis* existed based upon a "legislative determination that educators stand in the place of a parent or guardian in matters relating to school discipline, the conduct of schools, and schoolchildren" (57 AM. JUR. 2D *Municipal, County, School, & State Tort Liability* § 50). As such, universities had the power to control student conduct and a duty to protect students from harm, but the university would only be liable for willful or wanton failure to protect.

The second era, the "Civil Rights Era" began in the mid-1960s and was fueled by many of the social initiatives of the decade. College students as adult citizens began to recognize and demand basic rights including the right to free speech, freedom from unreasonable searches and seizures, and due process. The courts declared that public universities needed to provide some basic constitutional rights and the focus was on constitutional and economic rights, not safety rights.

Following the civil rights era, the numbers and types of students were rising across American campuses creating a potentially "dangerous and divisive place" according to Bickel & Lake (1999, p. 49). Students, as adults, were no longer under parental control. Having abandoned the legal model arising from *in loco parentis*, courts began to analyze higher education cases using a "duty" and "no duty" model. As a result, the university relationship with the adult student became that of a bystander. This new era, the "Bystander Era," established that the college and university's role was that of an educator, not a parent, protector, insurer, or babysitter. Having no legal duty to students, the university, bore no responsibility for harm. The Bystander Era lasted from the mid-1970s to the mid-1980s.

Beginning in the mid-1980s, the Bystander Era began to give way to a new era which Bickel and Lake call the "Duty Era." At this time students successfully litigated for physical safety on campus. The Duty Era also acknowledged the growing perception of universities as businesses. Bickel and Lake summarize this era as follows:

> There are strong indications that the image emerging from the process is one in which a university owes duties to students and students owe duties to protect themselves. The rules that will be applied will recognize that the university is a unique, if sometimes business-like, environment where special applications of more general negligence and duty rules are needed. The new image is one of shared responsibility and a balancing of university authority and student freedom. Duty is the vehicle which courts use to make this happen (p. 105).

Using duty theory to resolve cases involving student injuries presents several difficulties in the university/student relationship. Courts have attempted to rely on cases involving business, professional sport, amateur sport, and municipal liability; however, the university is neither a typical business, nor a typical governmental unit. Thus, courts attempting to apply general negligence and duty rules in the university context encounter a difficult and cumbersome task. In order to fully appreciate this difficulty, one must examine basic negligence law and the role of duty in negligence theory.

III. NEGLIGENCE THEORY

A. Negligence Theory Applied to Student Relations

While universities are finding that their student relationships may create certain duties, the relationship between a university and a student has typically been a relationship favoring the university. Since universities serve an important societal interest, courts have accorded them a great deal of deference when examining their relationships with students (Beh, 2000). Contract claims are reluctantly permitted against universities and educational malpractice claims are uniformly rejected (*Donohue v. Copiague Union School District*, 1977; *Jackson v. Drake University*, 1991; *Ross v. Creighton University*, 1990). In the case of an injured student, the student must look to the law of torts for a potential remedy if injured by some university misconduct or omission. Typically negligence thoery is the primary means by which students pursue universities for physical injuries. Representative claims of negligence can include: negligent supervision of a field trip, negligently maintaining a facility or premises, negligent security, negligent failure to warn, or negligent failure to control dangerous persons.

General negligence principles require proof of four basic elements: duty, breach, causation, and actual damages. The first element, duty, is a question of law for a judge to decide. If a judge finds no duty exists, the case fails. Most negligence cases brought against universities, which

arise in the context of the university/student relationship, are duty cases. This simply means that the primary dispute between the parties relates to the duty element of the negligence action. Thus, modern college and university law is primarily focused on identifying and defining the scope of the duty, if any, existing between the university and student. The *Restatement Second of Torts* defines "duty" as follows:

> The word "duty" is used throughout the Restatement of this Subject to denote the fact that the actor is required to conduct himself in a particular manner at the risk that if he does not do so he becomes subject to liability to another to whom the duty is owed for any injury sustained by such other, of which that actor's conduct is a legal cause (§ 4).

This duty relates only to the actor's conduct over which he or she has control, and imposes no obligation beyond the actor's ability to perform.

Generally, today, universities have a duty to maintain safe premises, supervise the conduct of their employees, and in some instances supervise the conduct of third parties. Many students have successfully recovered for injuries sustained due to unsafe premises or negligent conduct of university employees (Fowler, 1984). However, recovery for injuries sustained due to the negligent or criminal conduct of third parties has generally been limited to situations where the injuries were sustained on campus. Liability for injuries occurring on campus is based upon a landowner/invitee theory. Landowners have a duty to protect their invitees based upon a special relationship existing between them. (ALI § 343 defining the liability of landowners for harm caused to invitees). However, in order for a university to be liable for injuries occurring off campus, some other theory imposing a duty on the university must exist. This article focuses on the potential liability of universities for injuries occurring off-campus, and explores the possible theories available to extend liability to a university for off-campus injuries including injuries caused by the negligent or criminal acts of third parties.

An affirmative duty to protect another from harm is not generally imposed by the law. Thus, a person owes no duty to another to protect him/her from third party harm. This general rule is uniformly applied when the alleged injury resulted from the criminal or negligent actions of a third party. "The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action" (ALI § 314). In other words, a person may see that another person is about to be harmed by a third person. The first person has no affirmative duty to protect the other person from the third person. The actions of the third person are

beyond the control of the first person and his or her failure to control the third person or warn the other person will not subject him or her to liability for negligence.

The duty to take *affirmative* action to protect another is an entirely separate duty from the duty to take no action that may cause harm to another. While a few exceptions to the general rule do exist, a duty to take affirmative action may only arise where a "special relationship" exists between the student and the university that would impose a duty to aid or protect (*DeShaney v Winnegago County Department of Social Services*, 1989). Absent a special relationship between the plaintiff and the university, or the university and the third party, no duty exists between the plaintiff/student and the university. Moving beyond the traditional theories of legal relationships, there is much in the literature impling new relationships between the university and students (Bowman & Lipps, 2000; Hoye, 2000, Lake, 2000). While new relationships are emerging, whether these relationships amount to a "special relationship" for purposes of imposing an affirmative duty to protect is not clear.

According to § 314A of the *Restatement (Second) of Torts*, special relations may give rise to a duty to aid or protect. The duties stated in this Section "arise out of special relations between the parties, which create a special responsibility, and take the case out of the general rule" of tort liability. Part Four of §314 discusses that one has a duty if he or she is required by law or take voluntary custody of another under circumstances such as to deprive the other of his or her normal opportunities for protection. Traditionally, special relationships have been found to exist between common carrier/passengers; proprietor/patron; landlord/tenant; landowner/invitee (ALI § 314A); psychiatrist/patient (*Tarasoff v Regents of University of California*, 1976); and secondary education institutions/minor students students (Recent Developments in the Law, 2001). Special relationships have also recently been alleged to exist between movie producer/viewers and talk show hosts/guests (Fornos, 2000). However, these latter relationships have not yet been held to create a "special relationship" imposing an affirmative duty to protect from third parties for purposes of negligence liability (*Bill v Superior Court*, 1982; Fornos, 2000). In addition, courts are divided on whether the relationship between a university and student athlete is a special relationship. (*Kennedy v Syracuse University*, 1995; *Kleinknecht v Gettysburg College*, 1993; *Knapp v Northwestern University*, 1996; & *Orr v BYU*, 1997).

Factors to consider in determining whether a special relationship exists are:

1. Societal interests to be served;
2. Severity of the risk;
3. Burden on the defendant to provide protection;
4. Likelihood of occurrence of harm;
5. Relationship between the parties;
6. Foreseeability of the criminal or dangerous activity;
7. Victims/plaintiff's inability to protect himself or herself;
8. Cost of providing protection; and
9. Whether the plaintiff bestowed an economic benefit on the defendant.

(*See also*, Emerick, 1997; McGirt, 1999).

Restatement (Second) of Torts § 314 discusses the duty to act for protection of others where an individual may undertake a duty through contract and may "assume reasonable care for the protection of another, or even of a third person. . ." This section therefore may include "one whose conduct consists of failure to act. . ." In a teacher-student or university-student relationship, there may be some situations in which special relations are created such as field experience placements. One reported court decision has held that the student intern/university relationship is a "special relationship" such that liability could be imposed for injuries caused to a student intern by a third party (*Gross v. Family Services Agency, Inc.*, 1998, *aff'd, Nova Southeastern v. Gross*, 2000). This case is an interesting development in the evolution of negligence theory as applied to the student intern/university relationship.

B. *Gross v. Family Services Agency and Nova Southeastern University*

In *Gross v. Family Services Agency, Inc.* (1998), Bethany Gross was a twenty-three year old psychology doctoral student attending Nova Southeastern University in south Florida. The students in this program were required to complete an eleven-month practicum. The university provided the student with a listing of approved sites and each student then selected six sites from the approved list. The university then placed the student at a site of their choosing from the six provided.

Gross was assigned to Family Services Agency (FSA) located about fifteen minutes from the university. While leaving the off-campus internship site, Gross was abducted from the parking lot, robbed and sexually assaulted. Prior to the attack, the university had been made aware of criminal incidents at or near the lot. Gross decided to sue both FSA and Nova. Gross settled out of court with FSA for $900,000.00. Initially, the University was granted summary judgment in the trial court because the student was attacked on property not owned, controlled, or operated by the institution (*Gross v. Family Services Agency, Inc.*). The decision

was based solely on the legal issue of duty and premise liability. Gross appealed.

The Florida Fourth District Court of Appeals reviewed the main issue of whether the university had a duty to warn that the internship site presented an unreasonable risk of harm. In reversing the trial court, the appellate court held that Gross had stated a claim against Nova. Whether a duty arises in a particular contest is a question of law determined by weighing the policy considerations that led the court to conclude that a person in entitled to protection. Generally, a person has no duty to protect another person from criminal acts of third parties, however, several "special relationship" exceptions to this duty exist. For example, the relationships of employee-employer, landlord-tenant, landowner-invitee, and school-minor student have all been held to create special relationships which require one party to protect another party from foreseeable risks posed by the criminal acts of another (*Gross v Family Services, Inc.*, 1998, p. 389, citing, *Lillie v. Thompson*, 1947; *Hill v. City of North Miami Beach,* 1993; *Peterson v San Francisco Community College District,* 1984; *Rupp v. Bryant*, 1982; *Schmidt v. Towers Constr. Co. of Panama City*, 1991).

Gross was not an employee, tenant, invitee, or minor student. Rather, she was an adult student injured during an off-campus, but school related activity. While none of the traditional exceptions to liability were present in *Gross*, the court of appeals determined that the relationship between Gross and Nova qualified as a special relationship imposing a duty upon Nova to protect Gross from foreseeable risks. The relationship was characterized as a "relationship between an adult who pays a fee for services, the student, and the provider of those services, a private university. The service rendered is the provision of an educational experience designed to lead to a college degree." (*Gross v. Family Services Agency, Inc.*, 1998, p. 339). The court reasoned that a student is certainly within the foreseeable zone of known risks created by the university when assigning a student to a mandatory and approved internship program. Moreover, the university's duty does not arise from a general duty of supervision, but rather from the "special relationship" existing between the university and the student based upon the university's superior knowledge of allegedly foreseeable acts of third parties. The court imposed a duty on Nova to use ordinary care in providing educational services and programs to one of its adult students. The court of appeals also certified the following question to the Florida Supreme Court: "[w]hether a university may be found liable in tort where it assigns a student to an internship site which it knows to be unreasonably danger-

ous but gives no warning or inadequate warning, to the student, and the student is subsequently injured while participating in the internship?" (p. 340).

The Florida Supreme Court addressed the certified question in *Nova Southeastern v Gross* (2000) and affirmed the court of appeals decision. The Florida Supreme Court acknowledged that generally the relationship between a university and adult student, where attendance is not mandatory and the university is not in *loco parentis* to the student, does not create a special relationship that creates a duty between the parties. However, the Florida court opined that different relationships may exist between a university and adult student which would not necessarily preclude the university from owing a duty to students. Such a relationship may exist where students are assigned to *mandatory and approved* internship programs (p. 89). The Nova practicums were a mandatory part of the curriculum students were required to complete in order to graduate and Nova had the final say in assigning students to the internship locations. While the duty owed to the student by the university is limited by the amount of control the school has over the student's conduct (*Rupp v. Bryant*, 1982), Nova had such control over the student's conduct by requiring them to do the practicum and by assigning them to a specific location. This duty requires the university to act reasonably in making those assignments. They did, indeed, facilitate the placement of the intern.

According to the Florida Supreme Court, a university's duty is also not limited only to a duty to warn. The Florida Supreme Court stated that the duty to use ordinary care in providing educational services and programs to an adult student could include but is not necessarily limited to warning of the known dangers at a particular internship site (*Nova Southeastern University v Gross*, 2000, p. 90). "Students. . .could reasonably expect that the school's placement office would make some effort to avoid placing [students] with an employer likely to harm them." (*Nova Southeastern University v Gross*, 2000, p. 90, citing, *Silvers v. Associated Technical Institute, Inc.*, 1994).

One may argue that an internship creates a unique if not a "special" relationship between a student and a university. *Black's Law Dictionary* (1999) defines a special relationship as a "non-fiduciary relationship having an element of trust arising especially when one person trusts another to exercise a reasonable degree of care and the other knows or ought to know about the reliance." *Gross* appears to have greatly expanded the scope of the university's liability beyond traditional and modern negligence theory, and raises many interesting questions for sport manage-

ment programs and faculty, but, do faculty serving as intern supervisors create a special relationship between the university and the student imposing an affirmative duty on the university to protect the student against injuries caused by third parties? Absent knowledge of an unreasonable risk, *Gross* teaches that the faculty member may not be required to take precautions against a sudden, unforeseeable attack by a third person, but, does the faculty member have a duty to investigate potential internship sites and make independent safety determinations? In order to understand the legal implications of a "special relationship" and acts of third parties, an examination of the parameters of an internship program is both necessary and beneficial.

IV. SPORT MANAGEMENT INTERNSHIPS AND THE IMPACT OF *GROSS*

A. The Role of the Internship in Academic Programs

Internships, also known as field experiences, service learning, practica, externships, and apprenticeships, give students opportunities to network, gain real world experience or technical skills, and explore potential job placements or career options. Indeed, internships play an important role in undergraduate and graduate education. Internships serve an important purpose – they enable a student to gain practical learning experiences not available in the classroom. Administration of the internship by the academic program and university varies greatly from one university and even one academic program to another. For example, some internships are optional and involve no supervision by the university other than helping the student locate and identify potential internship sites. Other internships may be a required component of the academic program, but it is the responsibility of the student to identify, locate, and secure an internship. Still other internships may make up a required academic component and the university assigns the student intern to a specific site. To complicate this seemingly complex relationship further, interns may be located on-campus, around town, or hundreds or even thousands of miles away from the university.

B. Five Stages of Internships

The sport management internship process can be broken down into five stages or components that should prove useful for examining the legal relationship created by an internship. During each of these stages, the legal relationship between the university and the student intern takes

on new characteristics possibly affecting the responsibilities of the university, student intern, and internship site.

Stage One: Academic Component Stage

In this stage, internships can either be (a) required, (b) permitted, or (c) student controlled. The required internship is usually mandated by the degree requirements for any student pursing a sport management degree.

A permitted internship is highly encouraged by the university and the sport management program. In this situation, sport management faculty provide some types of administrative support for the student intern and academic credit may be available for those students choosing to complete internships, but students are not required to complete an internship in order to complete their sport management degree requirements.

In the student controlled internship, students are neither encouraged nor discouraged from seeking experiential learning opportunities, and the university has no involvement in the administration of the internship and would not be present in any of the latter stages. These internships would typically result when a student recognizes the benefits associated with an internship and undertakes to secure internship experience on his or her own accord but receives no academic credit. It is often the hiring organization that refers to the position as an "internship" simply for their organizational needs, but there is no academic tie.

Stage Two: Site Identification and Confirmation Stage

In this stage, the internship agreement is reached. It may be either verbal or written. In the required internship, the university will likely be a party to the agreement, and the student intern may or may not actually execute an agreement. The agreement may not be formalized, but only documented through the exchange of syllabi, intern handbooks, or other correspondence between the university, student intern, and site supervisor. If a formal agreement is used, it may incorporate certain university policies requiring non-discriminatory practices. In the permitted internship, little interaction will occur between the sport management faculty and the student intern other than informal meetings or chance encounters unless the student seeks academic credit for the internship. If the student seeks academic credit, similar agreements and administrative procedures as those used in the required internship may exist. If the student does not seek academic credit, it is unlikely that a written agreement will be entered into, and the agreement between the student intern

and the internship site is often so vague that the existence of a verbal agreement would be difficult to prove.

Stage Three: Location Stage

Internships can be located on or near campus, around town, or at remote sites. A remote internship is one where the intern is not within a reasonable travel distance from the university such that if problems were to occur it would be difficult for the intern to reach out to the university for assistance especially through face-to-face contact with a university internship coordinator. The distinction between the required and permitted internship is not particularly significant with regard to location except that a remote location for a required internship may present unique problems for the university to maintain consistent levels of instruction and supervision.

Stage Four: Personal Contact Stage

This stage examines the frequency and quality of contact between the university and student intern, university and site supervisor, and the site supervisor and the student intern. It is unlikely that a permitted internship that did not involve academic credit would involve any personal contact during the internship other than chance encounters. For required internships, contact can come in the form of preparatory seminars or orientation, periodic meetings throughout the academic term, site visits conducted by the university faculty representative at the internship site, and final meetings or presentations once the internship has ended. Electronic or telephone communication can also be used exclusively in this stage for remote sites or to enhance communication between actual face-to-face encounters.

Stage Five: Evaluation Stage

This stage will only apply to the required internship and the permitted internship if the student intern is earning academic credit. Evaluation criteria often will include resume writing, mid-term and final evaluations by the site supervisor, student evaluations of the site and site supervisor, career interviews of management personnel, periodic logbooks or journals, papers, research projects or organizational projects which benefit the site, and presentations. The internship may be graded pass/fail or letter graded, and the number of credit hours may range from one to twelve. This final stage often becomes the most important stage for the university and the faculty supervisor. Besides the evaluations of the student, future relationships with the site will be evaluated

based on the supervision and experience they gave the intern. The quality of the experience may help the faculty member make future recommendations for placement of interns. For example, by using a student's daily logs or evaluations of the site/supervisor, the university internship coordinator may be able to discern problems the student may not want to discuss openly (e.g., students being sent to unsafe areas for sales/marketing purposes; sexual harassment). If the faculty member is made aware of these potentially dangerous situations, he or she can then prevent future students from interning at that site, or at the very least, warn the student of any potential dangers/problems. Thus, written information/evaluations provided by the student to the university/internship coordinator regarding the site and site supervisor rise to an importance of protecting future interns.

C. The Internship Relationship

It becomes fairly clear that the required internship may create a relationship with significant interaction, involvement, and control by the university with both the internship site and the student intern. However, the amount of interaction, involvement, and control, may vary tremendously from one university to another, but does the internship create a relationship that presents many of the factors of a "special" relationship?

While a typical faculty internship coordinator may be relied upon to advise and counsel students on site selection and career choices, rarely would that relationship meet the traditional criteria required for the creation of a special relationship. The student intern has not lost the ability to protect himself or herself. Nor is the faculty supervisor in control of the conditions or circumstances from which the risks arise. The Florida Supreme Court in *Gross* relied heavily on the "control" exercised by Nova over not only the site selection, but placement opportunities of the student interns. Absent such control, a special relationship is unlikely.

Cases where the university/student athlete relationship was held to be a special relationship are also instructive (*Kennedy v Syracuse University*, 1995; *Kleinknecht v Gettysburg College*, 1993; and *Knapp v Northwestern University*, 1996). In those cases finding such a special relationship, the courts relied heavily on three important factors: (1) the degree of active recruiting used to encourage the student athlete to attend the university and participate in athletics; (2) whether the student-athlete was acting within his or her capacity as an athlete rather than private student when injured; and (3) the foreseeability of the risk of harm. In a typical sport management internship scenario, *Gross* implies that the third factor may be sufficient to create a special relationship.

But where there is no absolute control of site selection by the internship supervisor or instructor, a special relationship would not exist.

However, some scholars have gone as far as discussing the relationship between a college and a student as a fiduciary relationship (Fowler, 1984) that implies even a higher standard of care. A fiduciary relationship is one "in which one person is under a duty to act for the benefit of the other on matters within the scope of their relationship (Garner, 1999). According to this definition, fiduciary relationships occur in several instances, one of which is "when one person has a duty to act or give advice to another in matters falling within the scope of the relationship" (Garner). Goldman (citing Stamatakos, 1990, p. 478) states

> all elements of a fiduciary relation are present in the student-university relationship. It is. . .no small display of confidence to place oneself under the educational mentorship of a particular university. The value of an educational experience is directly affected by the school's conscientious, faithful performance of its duties. . .

Goldman goes further to state that since the student must provide confidential information to individuals appointed by the university, a "stringent" legal standard of conduct is owed. According to Scallen (1993, p. 906), "law imposes fiduciary obligations, but doesn't do so without acceptance of a role." Based on these writings, there is evidence that when a professor accepts the role of internship supervisor, there is implication of a higher standard of care whether it be in the form of a special or a fiduciary relationship. But Stamatakos (1990) disputes the fiduciary relationship as applicable to the post-secondary institution because the responsibilities placed on a college student to take care of themselves would be significantly reduced and, more importantly, because the courts have been reluctant to accept this judicial model.

Despite certain characteristics of trust, advice, and role acceptance, special relationships are not the same as fiduciary relationships. The distinction between fiduciary relationships and special relationships is important because the finding of a special relationship is for the purpose of imposing a duty of ordinary care in negligence cases where otherwise no such duty would exist. A fiduciary relationship may impose a higher standard of care, but it becomes apparent that a fiduciary relationship would only exist if an intern completely entrusted himself or herself to the control and protection of the university (Garner, 1999). It is rare when the sport management intern is placed in this scenario.

Some commentators incorrectly refer to a "heightened" duty of care where a special relationship is found to exist; however, this reference to

a "heightened" duty of care is somewhat confusing and incorrectly characterizes the duty element in a negligence action (McGirt, 1999; Rhim, 1996; and Whang, 1995). If a special relationship is found to exist, the duty imposed is that only of reasonable care (ALI § 314A, comment (e)). Whether the duty to provide reasonable care is breached and what care would be reasonable is then defined by the circumstances of the individual case and may even vary from case to case but it is incorrect to suggest that a finding of a special relationship implies a duty of care other than or more stringent than that of reasonable and ordinary care. It is possible that these commentators referred to a heightened *duty* of care when in fact the *standard* of care as it relates to whether a breach has occurred was the intended reference. For example, McGirt (1999) discusses several cases involving student-athletes where the courts were asked to examine the relationship between student-athletes and universities for purposes of imposing a duty of care on a university for injuries sustained by student-athletes. McGirt correctly presented the courts' decision; however, she then concluded "courts have increasingly recognized a special duty of care owed to student-athletes" (McGirt). This conclusion mistakenly suggests that the duty owed in the student-athlete/university relationship is something other than reasonable and ordinary care, a new and heightened duty of some kind. This distinction is not just a semantic one, but rather it is critical to the application of basic negligence principles. The duty element of a negligence action is a question of law. If a court determines that a duty exists as a matter of law, it then becomes a question of fact whether a defendant acted reasonably in fulfillment of such duty and what risks were reasonably foreseeable. Fulfillment of the duty and foreseeability relate to the second element of a negligence action, Breach, not the first element of Duty. The court of appeals in *Kleinknecht v. Gettysburg College* (1993), explains the dichotomy between the courts finding of a duty as a matter of law and the proof that such duty was breached as a question of fact.

> We predict that the Supreme Court of Pennsylvania would hold that the College owed Drew a duty of care in his capacity as an intercollegiate athlete engaged in school-sponsored intercollegiate athletic activity for which he had been recruited. This does not end our inquiry, however, The determination that the College owes a duty of care to its intercollegiate athletes could merely define the class of persons to whom the duty extends, without determining the nature of the duty . . . (p. 1369).

D. The University as a Facilitator

Bickel and Lake (1997) believe the courts are ready for "a balanced way to comprehend whether and to what extent a student-university relationship is 'special.' " (p.784). While they discuss that in their third era the University's role was somewhat as a bystander, today's university cannot claim that role. They point out that the university involves itself and encourages student life programs. At the same time, they are not insurers of student safety. If this were to be the case, every student activity that imposes some risk might be eliminated. Since the college years are a time for students to grow and learn about themselves, protecting them from any and all injuries would necessarily curtail many traditional college activities including athletics, intramural sports, field trips, and some fraternal events.

What Bickel and Lake do promote is the role of facilitator or what they are calling the Facilitator University (Bickel & Lake, 1999). The university does facilitate learning, development of programs, off-campus events, housing arrangements, and more. They call this new model or era facilitator because a "facilitator exercises subtle forms of authority and control" (p. 795). Traditional university roles such as professor, housing director, fraternity sponsor, etc., display some forms of authority and control. The university also facilitates "transition from home and parental discipline" as well as the societal perception of adolescence to adulthood (*Id.*). Thus, the role of facilitator seems to be a logical one. However, how does the university "facilitate" an internship and also minimize its liability for potential injuries to student interns? The following section provides several policy recommendations for sport management faculty and sport organizations.

V. POLICY RECOMMENDATIONS

While the *Gross* decision sets precedent only for the State of Florida, its implications for policy setting in sport management intern programs must not be ignored. Thus, the faculty coordinator for internships should examine the various stages of the internship to determine where safeguards can be added and protections implemented. First and foremost, during the Site Identification and Confirmation Stage, the university can take the role of recommending sites and facilitating site placement without mandating a specific internship site.

Second, during the Site Identification and Confirmation Stage the various written agreements reflecting the internship arrangements will be created and executed. These written agreements should include an Ac-

knowledgement by the intern that he or she identified and secured his or her own internship and exercised the final decision in site selection. The Acknowledgement could further recognize that the faculty coordinator did not mandate or require the intern to accept the specific internship in question. Cooperation from the internship site should also be sought at this Stage in the form of indemnity agreements and agreements to abide by university policies pertaining to non-discriminatory practices and sexual harassment.

During the Location Stage, an evaluation of the distance, proximity, and accessibility of an internship site could be evaluated. If a site location is known to be dangerous, the university has some crucial decisions to make. Either the placement should not be permitted or the student wishing to be placed in a specific organization should be warned of the possible risks, educated in ways to control or minimize those risks, and probably be asked to sign an assumption of risk form stating he or she is aware of the risks involved.

While many sport management professors who have supervised internships may never have had an intern injured during an internship, reality purports that it could happen. Many sport facilities and organizations are located in areas that may not be the safest location. Additionally, many interns may be required to work during late evening hours and at locations within the sport facility that are not well monitored or maintained. Adequate steps to protect an intern from potential injury should be taken. Many of these steps may be initiated during the Personal Contact and Evaluation stages of the internship. For example, preparatory seminars and orientations should include instruction on recognizing and avoiding dangerous situations. Women should be particularly mindful of walking unaccompanied through unattended or unmonitored areas. During site visits, the faculty coordinator may ask the student intern about his or her perceptions of their personal safety and also confirm with the site supervisor that university policies regarding non-discriminatory practices and sexual harassment are being followed.

Evaluation forms used by the sport management program may be modified to request information from interns regarding their perceptions of their personal safety, unsafe or dangerous conditions either at or near the internship site, and specific instances of danger, whether actual or threatened. In addition, in the event that an intern does report a dangerous situation, the internship program needs to provide a process where the internship may be prematurely terminated without penalty or additional safeguards implemented.

On a broader scale, the entire post-secondary institution and not just the affected program should consider rewriting policies regarding safety of sites for all of their internship programs. The university must communicate those policies in an effective and efficient way to all that supervise student interns. Any such policy may also need to be expanded to field experience abroad (Bickel, 1997).

VI. CONCLUSION

With the proliferation of sport organizations, sporting events, and sport facilities, placements of interns in unsafe locations are a distinct possibility. With the discussions in the literature regarding special relationships created by today's university environment and the result of the *Gross* case, it is paramount that universities and professors supervising these interns/field experience placements protect the student and themselves. The most logical course of action would be to prohibit students from working with any organization in an area that may be deemed unsafe. However, since many prominent sport organizations are located in unsafe areas, this logical course of action may not be the best in terms of career opportunities for the student.

Therefore, the university and professor must be prudent in first protecting the student by warning them of the possibility of an unsafe area. Showing the student local newspaper articles about incidences that have occurred is one way to warn, but not all students perform internships that are local. Informing them of safe practices to protect themselves and/or asking university security to explain protection tactics are prudent courses of action that can be utilized anywhere.

Using a waiver or assumption of risk form may help protect the university and its faculty as they perform the role of facilitator. Via *Gross*, at least one state, Florida, has held that a special relationship does exist even if actions of third parties cannot be controlled.

Bickel and Lake's facilitator model of the university/student relationship is a model balancing the rights of the student and their desire to mature into adulthood with the duty of the university to facilitate that maturation. This facilitation does not ensure student safety, but does allow students the freedoms they desire to grow, act, and make mistakes while learning from those mistakes in an environment that reasonably protects them in foreseeable situations. The internship is such an environment. The special relationship potentially created by the field experience environment may impose a duty upon the university to, at the very minimum, warn students of known or foreseeable problems for which they have some prior knowledge. The university/faculty member cannot

possibly be aware of all potentially dangerous situations, but *Gross* suggests that there is a duty in this special relationship to facilitate a safe environment when dangers are known.

Internships give students an opportunity to network, gain real world experience or technical skills, and explore potential job placements or career options. Indeed, internships play an important role in undergraduate as well as graduate education. It is up to the post-secondary institution/internship coordinator to balance the important and educational role the internship plays with the need to minimize or avoid liability on the part of the university.

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