THE LAW OFF-CAMPUS

William P. Hoye
Associate Vice President and Deputy General Counsel
Concurrent Associate Professor of Law
University of Notre Dame

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In this session, we will explore the potential legal liability and obligations of modern colleges and universities arising out of their many and sundry off-campus activities, such as internships and academic programs, alumni tours and events, fraternities and sororities, field trips, off-site employees, joint projects, student field trips and international study abroad programs. Although a great deal has been written about the legal liability of higher education institutions for activities, conduct and behavior occurring on-campus, colleges and universities are planning, sponsoring and conducting more and more programs and activities off-campus. Despite this increase, and the augmented risks associated with many of these programs and activities, little has been written about them.

Off-campus programs and activities tend to be very diverse. They run the gamut from a group of students volunteering at a local homeless shelter and required academic internships at local off-site locations to University-sponsored travel to exotic international sites over break, urban plunge experiences and student and alumni volunteer activities in third world countries. Often, these types of programs are short-term. They generally involve small group of students, and perhaps a single faculty or staff member. They are often undertaken on an ad hoc basis. As a result, the level of University “sponsorship” of these activities may be less than clear-cut. In some cases, the institution’s administration may not even be aware of the program or activity. Rarely does the institution have full-time employees on-site who are primarily charged with managing an individual off-campus activity. Nor does there tend to be the infrastructure colleges and universities tend to require with respect to on-campus programs and activities. The level of due diligence invested by the institution’s employees into pre-planning, orientation, security, and health and safety issues can be as varied as the programs and activities themselves. Reporting
lines may be less than clear, and compliance with university polices and procedures tends to be varied and dependent upon the individual faculty or staff members involved. Finally, the principle of “out of sight, out of mind” is often a genuine concern with respect to an institution’s off-campus programs and activities.

To further complicate matters, off-campus programs and activities often carry added risk. For example, the individual faculty or staff member who is on-site with a group of students or alumni may or may not be conversant with institutional policies and procedures (e.g., what to do in the event of an emergency or to whom a complaint of sexual harassment or student misconduct must be promptly reported on the home campus). He or she also may be unfamiliar enough with local customs, rules or laws, such as what types of conduct to avoid at the site and what areas of a neighborhood, city or country should be avoided. As a result, the institution’s sole representative on-site may not have sufficiently oriented or warned program participants of the risks and dangers posed at a particular off-campus site. Even in those instances when an individual faculty or staff member is familiar with these issues and has effectively oriented his or her students, the risk to students is often increased due to a lack of familiarity and first-hand experience in their new environment.

When this increased risk is coupled with the ad hoc and short-term nature of most off-campus activities, as well as the likelihood of a limited infrastructure on-site, inconsistency in levels of pre-program planning, orientation and rules compliance, the potential for increased institutional legal liability seems clear.

Our focus in this session will be on recent court decisions and pro-active steps institutions can take to help identify, analyze and mitigate some of the inherent risks attendant to off-campus programs and activities, in order to help reasonably protect students, faculty and staff from foreseeable harm while at the same time reducing potential institutional legal liability.

In recent years there has been a marked increase in the number of reported trial and appellate court cases involving diverse new negligence issues such as the supervision and instruction of students, the duty of the university to control others, and the duty to warn students and others of foreseeable harm. Consequently, the amount of time and money spent in defense of
claims by higher education institutions, administrators, in-house counsel and institutional insurers has skyrocketed.

To confront this harsh reality, college and university attorneys, risk managers, faculty, staff and others must not only acknowledge and accept the trend but also begin to pro-actively examine, identify and assess areas of risk off-campus with these cases in mind. They must then make wise responsive decisions to implement reasonable, measured and appropriate steps to help protect their constituencies from foreseeable harm and injury. Such pro-active steps represent wise and important investments in an institution’s future. Their dividends are real. They include fewer accidents and injuries to students, faculty, staff and guests, both on and off campus, as well as reduced legal liability, and protection of the institution’s reputation and assets.

In this session, we will identify some of the significant trends, developments and notable recent cases involving tort claims against colleges and universities arising in connection with their off-campus programs and activities. Using recent cases as a springboard for discussion, we will recommend various ways in which higher education administrators and their counsel can take steps, pro-actively, to help reduce the likelihood and severity of accidents and injuries in the first instance by identifying, assessing and eliminating unnecessary and foreseeable risks of harm to our most precious resources: our students, faculty, staff and alumni.

**Recent Decisional Law.**

Several recent court decisions from various jurisdictions serve as excellent examples to highlight the growing trend toward holding colleges and universities legally responsible for their off-campus programs and activities. Some of these cases involved criminal or reckless conduct by a third party who was not an employee or agent of the defendant university, but who caused injury to a University student, faculty members, staff member or alumnus in connection with a university sponsored off-campus program.

Generally, in order to recover on a theory of negligence a plaintiff must establish the following elements: (1) a duty arising on the part of the defendant to confirm its conduct to a standard of care arising from its relationship with the plaintiff; (2) a failure of the defendant to conform its conduct to the requisite standard of care required by the relationship; and (3) an injury
to the plaintiff proximately caused by the breach. The existence of a legal duty is a question of law for the court to determine.

Traditionally, in the college and university context courts have been reluctant to impose a duty to anticipate and protect against criminal acts by third parties unless the facts of a particular case make it reasonably foreseeable that a criminal act is likely to occur. In recent years, however, some legal scholars and commentators have hinted that this so-called “no-duty rule” may be gradually eroding with respect to higher education institutions, suggesting that they should be treated like business and other institutional defendants. Nevertheless, college and university administrators and their counsel have been slow to accept this shift in the law, continuing to embrace the ‘no-duty’ defense to the exclusion of other possible defenses, particularly in those cases involving criminal or reckless conduct by third parties.

The most recent cases asserting a duty by universities to control others tend to involve third parties who commit criminal or tortious acts against faculty, staff, students or guests in connection with university sponsored off-campus programs. Even though the “bad actors” in these cases are not employees or agents of the institution, the plaintiffs allege a negligent failure by the university to provide them with adequate security, protection, or warning of the potential danger. The defendants in these cases typically assert either that they are entitled to some sort of immunity (if they are state institutions), or that they did not owe the plaintiff a legal duty of protection or a warning because the criminal actions in question were not reasonably foreseeable and were committed by a third party who was not an employee or agent of the institution.

**Case 1: Bird v. Lewis & Clark College, 303 F.3d 1015 (9th Cir. 2002).**

**Facts:** In this case, a student who is a wheelchair bound paraplegic brought an action alleging that Lewis & Clark College violated the Title III of the Americans with Disabilities Act (“ADA”), the Rehab Act and various fiduciary and other duties by failing to reasonably accommodate her disabilities during an overseas program in Australia. In the fall of 1994, the plaintiff was accepted into the College’s Spring 1996 overseas program, which was largely field based and involved a lot of travel throughout the term. The College approached the Australian company making arrangements for the program and inquired about the possibility of including a student in a wheelchair. The company, Global Education Designs, indicated that the program could be revised
to accommodate her. In advance of the trip, the on-site faculty host and the director of overseas programs at the College met with Bird to discuss her needs for special living accommodations and her need for various medications. Bird was informed then that she would not be able to participate in several activities on the program, but that adequate facilities would be available on most of the outdoor trips, alternative activities would be arranged, and her disability would be accommodated.

As it turned out, on the trip, Bird did not have full wheel-chair access at some 22 locations. For example, she needed assistance to enter or leave her lodgings in Sydney, because of a steep curb to the sidewalk and a steep ramp. She could not use the shower or the toilet without assistance in several locations. At one, she had to be carried up the stairs to reach a cafeteria and at another she could not get to her bedroom due to a stairway. In terms of outdoor activities, she could not join a tour exploring the tide pools at one site. One tour required multiple stream crossings, too, so Bird was not allowed to participate. At Rubyvale, Bird could not go mining because the mine shaft involved a vertical drop. Finally, she had to be carried onto certain ground transportation during the trip.

The College countered with evidence of having accommodated Bird’s disability. It paid for her use of taxis in Sydney and for her to fly from Canberra to Brisbane while other class members used buses and trains. It arranged for a wheelchair accessible van to transport her around Stradbroke Island. It paid two students on the program to be her helpers. It purchased a sleeping cot manufactured to Bird’s specifications, and a special shower head for her use. It also provided a smaller, narrower wheelchair so she could move indoors when door openings were too narrow for a normal wheelchair. When she complained about a home stay, she was offered but declined a different, more fully accessible house. She was offered a choice of rooms at multiple locations on trips and rooms on the ground floor at 2 sites. Finally, a number of alternative outdoor activities were designed for and offered to Bird. For example, she joined one study group in the outdoors by working close to a path and used a raft provided by Global so she could float in the water and observe coral reefs. In addition, a rainforest study was moved to a more accessible location. She was able to go on boat tours with the group, too, and to visit an archeological site. She also went on various excursions and traveled to an aboriginal community.
**Procedural history:** Bird sued the College alleging violations of Title III of the ADA, the Rehab Act, breach of contract, breach of fiduciary duty, defamation, negligence, fraud, negligent misrepresentation and intentional infliction of emotional distress. The crux of her claims was that the College discriminated against her on the basis of her disability while she was on the Australia program. Both parties moved for summary judgment. The district court granted judgment against Bird on her defamation and intentional infliction of emotional distress claims. Two claims for equitable relief, under the Rehab Act and Title III, were tried to the court. The remaining claims were tried to a jury. The jury found against Bird on all but the breach of fiduciary duty claim, awarding her $5,000.00 in damages. Her claims under the Rehab Act and the ADA were denied by the court. Both parties then appealed to the U.S. Court of Appeals for the Ninth Circuit.

**Appellate Court Holding and Rationale:** On appeal, the Ninth Circuit held that Bird, because she had graduated from Lewis & Clark by the time the case was decided, lacked standing to obtain a declaration that the College discriminated against her on the basis of her disability or an order requiring the College to change its overseas programs to prevent future discrimination against disabled persons. The court held that Bird did have standing on her request for an order enjoining the College from releasing her grades for the semester she participated in the Australia program. On the merits, the court rejected Bird’s Rehab Act claim, concluding that the College had provided her with “meaningful access to its programs.” While reasonable modification of policies, practices, programs and procedures can be required under both the Rehab Act and the ADA, the court recognized that fundamental or substantial modification cannot. On the facts of the case, the court found the College’s steps “reasonable.” Importantly, the court noted that it is not the number of locations and occasions on which wheelchair access was denied to Bird, but rather whether the program, viewed in its entirety, was readily accessible to and usable by individuals with disabilities. According to the court, the College offered ample evidence of having accommodated Bird’s disability. It hired two helpers, paid her to fly while others took trains and buses, and paid for a cot, a second wheelchair and even a unique showerhead built to her expectations. She received alternative wheelchair accessible lodgings at almost every location where the class stayed. The Court held that the College did not necessarily fail to make reasonable modifications simply because some aspects of the program did not conform to Bird’s expectations.
She enjoyed many of the benefits offered by the program, including outdoor activities and classes, and she received full credit for her term abroad. The court did not reach the question of whether or not the ADA and the Rehab Act apply extraterritorially to overseas programs.

Notably, the court did find that a ‘special relationship’ existed between Bird and the College; and therefore, that the finding of a breach of fiduciary duty by the jury was not erroneous. Critical to the court’s finding of a special relationship were the College’s assurances to Bird that the overseas program would accommodate her disability, that Global and the on-site director of the program routinely handle people both in the field and in home stays with disabilities more physically challenging than Bird’s, and that adequate facilities would be available at most outdoor trips.

**Examples of Pro-Active Steps Universities Might Take in Response to this Case**

* Work cooperatively with disabled students to reasonably accommodate their disabilities.

* Consider not asking program applicants whether they are disabled or require accommodations. Wait until after students are admitted to your overseas programs to ask whether or not they have any special needs. Have your institution’s counsel review any forms or other materials addressing these issues.

* Once a disabled student has been admitted to an overseas program, use the time before they go abroad to utilize your on-campus resources (e.g., Office for Students With Disabilities) and be in touch with on-site program staff in the country to which they will be traveling. Involve the student in these discussions and inquire about each student’s specific needs, capabilities and desires.

* Be prepared to reasonably accommodate disabled students who want to participate in your overseas programs. While you need not fundamentally alter your programs, you can make reasonable modifications. These may include steps such as finding accessible housing, moving some class meeting locations, securing alternative transportation or lodgings while traveling with the group, providing some alternative activities, etc.

* Do not steer students away from international programs because they are disabled or might require accommodations.
*Do be candid with students about the realities of accessibility issues in the country to which they will be traveling, including roads, sidewalks, curb cuts, ramps, lodgings, class rooms, historic buildings, field trips, trains, buses and other transportation issues, as well as other aspects of the program.

*Do the detail work in advance by asking detailed questions, in advance, about program locations, accessibility issues, available resources, etc. Good communication and reasonableness are the keys to success.

*Do not overpromise or commit to things you cannot deliver abroad (note the special relationship found by the court to exist in the Bird case).

**Case No. 2: Fay v. Thiel College**, 2001 WL 1910037 (Pa.Com.Pl. 2001), Amy Fay, a student participant in a 3-week international study abroad program in Peru that was sponsored by Defendant Thiel College fell ill during the trip. She was taken to a medical clinic in Cuzco, but then left in the care of a Lutheran missionary not affiliated with the college. The trip was supervised by 3 faculty members. They and the rest of the group continued on their journey as scheduled. At the Cuzco Clinic, the plaintiff underwent an unnecessary appendectomy, even though she had asked beforehand whether the surgery was absolutely necessary, whether she could be transferred to a hospital in Lima and whether she could call her parents. All of these requests were denied. The surgeon and the anesthesiologist who treated the plaintiff sexually assaulted her after the surgery, while she was conscious but under a local anesthetic. The Plaintiff sued the College on the basis of the faculty supervisors’ alleged negligence, alleging that if she had not been left alone in Cuzco, she would not have suffered her injuries. The defendants moved for summary judgment in the case, relying upon the liability waiver the student signed before the trip and asserting that they owed no legal duty to the plaintiff. The Court denied the defendants’ motion, concluding that the exculpatory clause was invalid and unenforceable because the waiver of liability form constituted a contract of adhesion under Pennsylvania law, and that the form did not spell out by express stipulation and with the requisite particularity an intention to release the college from liability stemming from medical decisions made by one or more of the faculty supervisors. Both parties agreed the form was presented on a ‘take it or leave it’ basis. The Court also found that the consent form the student signed, which allowed the College to authorize
medical treatment of the plaintiff in an emergency created a ‘special relationship’ between the College and the Plaintiff and that this special relationship created a duty. In an emergency, the faculty supervisors had a duty to ‘secure whatever treatment is deemed necessary, including the administration of anesthetic and surgery.’ The court also rejected as questions of material fact the defendants’ arguments that even if they had stayed in Cuzco they would have been unable to prevent the plaintiff’s injuries and that the Peruvian surgeon’s actions were a superceding cause. Significant to the court’s ruling was its conclusion that the defendant’s were trying to exculpate themselves from their own negligent acts. The case was referred for a jury trial on the question of whether or not the College breached the duty of care it owed to the student on the basis of the ‘special relationship’ between the parties arising out of the medical consent form the student signed. The court clearly stated that the separate medical consent form the student signed was not the same as a liability waiver form, and that it failed to state that the plaintiff waived any claims based upon the negligent failure to secure or oversee emergency medical treatment.

**Examples of Pro-Active Steps Universities Might Take in Response to this Case**

* Orient faculty and staff taking students abroad not to leave behind, unsupervised, an ill or injured student while continuing on with the trip itinerary. Have an emergency action plan or policy in place that speaks to how such situations will be handled. Build some redundancy into the plan.

* When students are injured or hospitalized, make sure faculty or staff on-site appropriately and adequately supervise the student’s medical care. Many travel insurance plans now include global medical assistance with 24-hour hotlines. These are an excellent resource in seeking, obtaining and overseeing emergency medical care. Often, medical professionals who speak the local language are available via phone to speak with the local doctors and ask the right questions.

* Communicate immediately and regularly with the home campus and the student’s family through on-site faculty or staff (or through on-campus employees) when a student is ill or injured.

* Consider augmenting emergency medical consent forms and liability waiver forms to include exculpatory waiver language for the institution’s (or on site faculty or staff) failure to secure, obtain or supervise adequate medical care for ill or injured students.
*Augment emergency medical consent forms to clearly indicate that they do not create a ‘special relationship’ between the institution and the student, and that the student releases the institution and its employees and agents from all liability for any injury or damage the student sustains as a result of any medical care they receive in the host country, including but not limited to medical malpractice or treatment that is not in accordance with U.S. standards, as well as for any medical treatment decision or recommendation made by an employee or agent of the institution.

*Even if it means changing plans for the entire group or added cost and inconvenience, avoid leaving an ill or injured student behind or in the care of a non-institutional employee.

*Inform program participants in writing and in advance of the trip if the medical care where a group will be traveling is not up to U.S. standards, is difficult to reach or is far away.

**Case 3: King, et. al. v. Eastern Michigan University.**

**Facts:** In this case, six female students from Eastern Michigan University (“EMU”) brought a Title IX claim alleging gender discrimination and sexual harassment against Eastern Michigan University. The Plaintiffs alleged that they were forced to leave a 5-week summer study abroad program sponsored by EMU in South Africa early because of the actions of three male EMU students – two of whom were participating in the program and another student who was the assistant to Dr. Okafor, the on-site faculty advisor. After repeated incidents of harassment by the three male students, which culminated in a violent altercation; and, after repeated attempts to involve Dr. Okafor in the resolution of the problem, the plaintiffs left the program early. They subsequently filed suit.

The case turned on whether Title IX has extraterritorial application outside the United States, and whether the court had subject matter jurisdiction over the plaintiffs’ claims? Although the court answered this question in the positive, resolving the substance of the case, the underlying facts and circumstances of the case provide excellent guidance concerning pro-active preventative steps institutions can and should take to avoid liability in this context.

Substantively, the court found the broad language of Title IX itself, the legislative history
and the implementing regulations all “provide affirmative evidence that Congress intended for Title IX to apply to every single program of a university or college, including study abroad programs.” Defendants’ motion to dismiss Plaintiffs’ Title IX claim of sex discrimination was denied.

The main battle appears over the language of 20 U.S.C. §1681 which states “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance . . .” EMU focused on the language “no person in the United States” whereas the plaintiffs relied on “under any educational program” to make their argument. The court quoted Gesber v. Largo Vista Independent School District to define Title IX as remedial legislation with two primary objectives, “to avoid the use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those practices.” 524 U.S. 274, 286-290 (1998). Since “remedial statutes are to be read broadly so as to effectuate their purposes” the court looked to the legislative history and implementing regulations for direction. Tcherepin v. Knight, 389 U.S. 332, 336 (1967). The legislative history provided little discussion of “no person in the United States” limiting the phrase to the language of Title VI of the Civil Rights Act. However, more detailed discussion of the meaning of “education program or activity” was provided. There was “sufficient affirmative evidence that Congress intended extraterritorial application of Title IX where so required, i.e. where the educational program or activity makes it necessary for a student to leave the territorial limits of the United States in order to avail him or herself of the educational opportunities offered.” p.4

The court held that to limit Title IX jurisdiction over the international study abroad placement would in effect be limiting a woman’s opportunity to participate in these programs and would essentially allow for situations that would be illegal if they occurred in the United States. The court also found that plaintiffs were “persons of the United States” for purposes of Title IX. If plaintiffs proved such harassment occurred then as continuing EMU students they were denied equal access to resources when EMU failed to stop the harassment of its male students. The court stated, “Study abroad programs are an integral part of college education today. A denial of equal
opportunity in those programs has ramifications on students’ education as a whole and detracts from their overall education.”

Examples of Pro-Active Steps Universities Might Take in Response to this Case

- Orient faculty and staff taking students abroad to the institution’s sexual harassment policy. Make sure they know to whom complaints should be reported under your policy and that they must be reported immediately. Have a plan for dialogue with those on-site and the home campus when a crisis arises and know who will be included in the discussion.
- Review institutional sexual harassment policies to make sure they can reasonably be applied overseas. For example, does the policy specify who will investigate complaints of sexual harassment at off-campus locations? Does the policy provide for what happens if the alleged harasser is the only university employee on the trip?
- Consider making investigatory powers delegable under the policy (e.g., by the Provost with respect to complaints against academics, by the Vice President for Human Resources with respect to complaints against institutional staff, by the Vice President for Student Affairs with respect to complaints against other students).
- Orient students concerning the institution’s policies in advance and inform them to whom complaints should be reported, both on-site and on the home campus.
- Consider developing a policy and program for those leaving study abroad programs early, which addresses refunds.
- Augment liability waiver forms for international trips to allow students to be sent home at the discretion of institutional representatives, without a refund, if they violate institutional rules, become a danger to themselves or others, or behave in a manner that disrupts the academic program.
- When complaints of sexual harassment are reported, investigate them promptly and take swift appropriate action to protect the rights of those involved.

Note: In *Turner v. Kent State University*, 2003 Ohio 6567 (Ohio Ct.Cl. 2003), a student participating in a required, month-long summer Geology Field Camp for Geology majors in the Black Hills of South Dakota was approached by her female instructor in a hallway and asked to
assist her in the professor’s dormitory room. The professor told the student that she had a tick on
her upper thigh, several inches below her underwear, and asked for the student’s help in removing
it. The student agreed, they closed the door of the dorm room and the professor lowered her jeans
so that the tick was exposed. The Plaintiff successfully removed the tick using matches and
tweezers. The professor asked her if she had removed the entire tick and the student said she had.
The professor asked her to check again, which the student did, confirming that she had removed
the entire tick. The professor thanked the student, and the student then left the professor’s dorm
room. That seemed to be the end of it, until the student filed a lawsuit against the University and
the professor. The plaintiff claimed that she had been embarrassed and humiliated by the
situation, and that the professor had told other students about it, which led to inappropriate
comments and questions from other students on the trip. After the incident, the plaintiff alleged
that during the remainder of the trip the professor criticized her inappropriately and refused to
personally help her when the student became stuck in a cave entrance. The student alleged that the
field trip to the cave was unreasonably dangerous. The University alleged as a defense that the
Professor was immune from liability as a state employee under Ohio law, which turned on the
question of whether the professor exceeded her authority and acted beyond the scope of
employment. The court determined that the professor acted reasonably and within the scope of her
employment in approaching another woman, albeit a student, for assistance in removing the tick,
especially in light of the professor’s prior illness from a tick bite and her fear of contracting Lyme
Disease or Rocky Mountain Spotted Fever from the tick. The professor’s assistant on the trip
was a male, and the court did think it would have been reasonable to require the professor to go to
the hospital to have a tick removed. Also significant was the fact that the student agreed to assist
the professor after she knew of the problem. Finding that the professor did not act with malicious
purpose, in bad faith or in a wanton or reckless manner toward the plaintiff, the professor’s civil
immunity was upheld. Questions for further thought and discussion: (1) what should the professor
have done differently in order to help reduce the likelihood that the student would feel compelled
to file suit?; (2) Might the outcome have been if this case involved a private university and
statutory immunity was not therefore available; what would the result have been in such
circumstances?; and (3) what pro-active steps might the University take to help avoid a similar case or claim in the future?

**Case 4:** *Nova Southeastern Univ., Inc. v. Gross*, 758 So.2d 86 (Fla. 2000).

**Facts:** Bethany Jill Gross, a twenty-three year old graduate student in psychology at Nova Southeastern University, was abducted at gunpoint while leaving the parking lot of Family Services Agency (“FSA”), an off-campus internship site. She was then taken to a second location by the gunman where he sexually assaulted and robbed her. The 11-month internship or “practicum” was required by the University as part of Gross’ academic program. The internship site had been approved by the University and was on a list of possible sites from which each student was allowed to select 6 preferred locations. The FSA was on Gross’ list of preferred locations, and she was assigned to it by Nova. There was record evidence that Nova had been made aware of a number of other criminal incidents which had occurred at or near the FSA parking lot prior to Gross’s attack.

**Procedural history:** The trial court entered summary judgment in favor of Defendant Nova. An intermediate appellate court reversed. The Supreme Court of Florida accepted the case on a certified question from the lower court regarding whether the university owed a duty of care to Gross. *See id.* at 87.

**Holding/Reasoning:** The court held that the University did owe Gross a duty of care while she was participating in an off-campus school activity. *See id.* The court based its holding on a principle from its prior decision in *Rupp:* “the extent of the duty a school owes to its students should be limited by the amount of control the school has over the student’s conduct.” *Id.* at 89. The University had mandated the internship as a graduation requirement and Gross did not have the final say in the location of where she would perform her internship. *See id.* Therefore, the court found that the university had sufficient control to owe a legal duty of care to Gross. *See id.* The plaintiff alleged the university was negligent in assigning her to perform an internship at a facility which Nova knew was unreasonably dangerous, and in failing to warn plaintiff of the danger. Critical to the court’s decision was the fact that Nova had been made aware of a number of other criminal incidents which had occurred at or near the FSA parking lot. The court
recognized that while generally a person has no duty to take precautions to protect another against the criminal acts of third parties, exceptions to this rule have emerged where a ‘special relationship’ exists between the parties. Although the Court of Appeals’ decision was vague concerning the existence of a special relationship between the plaintiff and Nova, it ruled the criminal attack against the plaintiff was foreseeable, writing:

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\ldots \text{appellant has stated a cause of action in negligence against Nova based on her allegations that the university assigned her, without adequate warning, to an internship site which it knew was unreasonably dangerous and presented an unreasonable risk of harm. The court refrained from making any specific findings as to the scope of the duty Nova owed Gross or whether the University acted reasonably in assigning Gross to a location that it knew was “unreasonably dangerous.”} \]

\textit{Id.} The court stated that such determinations should be left to the jury.

One of the reasons that this case has been received with shock and surprise in the higher education legal community is that, unlike primary and secondary schools, in the eyes of the law higher education institutions generally do not stand in the shoes of parents vis-a-vis their students. The seminal case in this area was \textit{Bradshaw v. Rawlings},\textsuperscript{2} where the Third Circuit Court of Appeals discussed at length the trend in the law away from the doctrine of \textit{in loco parentis}, commenting as follows concerning the relationship between modern universities and their students:

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\text{Our beginning point of recognition is that the modern American college is not an insurer of the safety of its students. Whatever may have been its responsibility in an earlier era, the authoritarian role of today’s college administration has been notably diluted in recent decades . . . . College students today are no longer minors; they are now regarded as adults in almost every phase of community life . . . . There was a time when college administrators assumed a role in loco parentis . . . . A special relationship was created between college and student that imposed a duty on the college to exercise control over student conduct and , reciprocally, gave the students certain rights of protection by the college. The campus revolutions of the}
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late sixties and early seventies were a direct attack by the students on rigid controls by the colleges and were an all pervasive affirmative demand for more student rights. In general, the students succeeded, peaceably and otherwise, in acquiring a new status at colleges throughout the country. . . . Regulation by the college of student life on and off campus has become limited.  

The Court in *Beach v. University of Utah* echoed this sentiment, writing:

> Colleges and universities are educational institutions, not custodial . . . . It would be unrealistic to impose upon an institution of higher education the additional role of custodian over its adult students. . . . Fulfilling this charge would require the institution to babysit each student, a task beyond the resources of any school. But more importantly, such measures would be inconsistent with the nature of the relationship between the student and the institution, for it would produce a repressive and inhospitable environment, largely inconsistent with the objectives of a modern college education.

In the past, as a general rule colleges and universities have not had a recognized legal duty to supervise their students or to protect individuals from unforeseeable harm caused by their students.  

However, the *Gross* case and other similar recent court decisions appear to be eroding the general rule and recognizing a higher duty owed by colleges and universities to their students and others. As noted above, although many in higher education have attempted to deny this sea change in the law of higher education, recent decisional law has made it increasingly difficult to do so.

**Examples of Pro-Active Steps Universities Might Take in Response to this Case.**

What steps, if any, can higher education institutions consider taking to help protect students participating in university mandated internships off campus, while at the same time reducing the risk of institutional liability?

*If lists of internships are provided to students by the University or a department, include a disclaimer on them stating that the University is not recommending any of the sites on the list, that the University is not knowledgeable of or warranting the level of security or safety
at any of the internship sites on the list, and that the internship and any travel to or from the site are solely the responsibility of the student.

*For required internships, consider having students identify and propose intern sites to their academic department for approval, rather than providing students with a list of possible internship sites compiled by the University. If students do select from a University generated list, have them select the specific site they want themselves, rather than having the University “assign” the site from a list of student preferences.

*Have each internship participant sign a liability waiver form in favor of the University before participating in the internship.

*Avoid assigning students to required internships in known high crime areas or areas known to be unreasonably dangerous.

*Warn students in writing of any known dangers at the internship site or in the neighborhood where it will be undertaken.

*Consider having interns work in teams and report to and from the internship site in teams or as a group. Also, utilize the internship site’s existing security precautions for the benefit of your students, both in terms of informing students and helping them stay safe (e.g., if the staff has security personnel walk them to their cars, then insist that you students receive the same treatment as a condition of the internship agreement).

*Provide an on-site orientation for interns which addresses issues of personal safety and security at the internship site.
Enter an agreement with the internship provider which includes indemnification for the University supported by adequate insurance and which spells out responsibilities for security and safety.

Conclusion

As this brief examination of the legal liability of colleges and universities for their off-campus programs and activities illustrates, the volume, breadth and diversity of claims seems to be on the rise, which is commensurate with the increase in the number and type of off-campus endeavors. Thus, higher education institutions face spending increasingly large portions of their limited budgets on legal fees, court costs, insurance premiums and related expenses. This diverts vital financial resources away from the educational mission of the university. In the final analysis, the best institutional hedge against increased on campus or off-campus litigation and liability is improved risk identification, assessment and management with respect to activities and programs. In this context, the best defense to the proliferation of tort claims would seem to be a good offense in the form of reducing the risk of injury and harm to students, faculty, staff and guests in the first instance. College and university administrators and their counsel should consider investing greater resources in preventative law, pro-active risk assessment, training, education and orientation for students, faculty and staff. These steps may seem time consuming and expensive at first glance, but they are in fact minimal when compared with the time and expense of protracted litigation. If colleges and universities wish to continue to increase the number and type of their off-campus programs and activities, then they also should be willing to make a small investment in helping to make those programs and activities safer for their most precious resources: students, faculty, staff and alumni.
ENDNOTES


2. 612 F.2d 135, cert denied, 446 U.S. 909, 100 S.Ct. 1836, 64 L.Ed.2d 261 (1980).

3. 612 F.2d at 139.

4. Id.

5. See, e.g., McNeil v. Wagner College, 667 N.Y.S.2d 397, 123 Ed.Law.Rep. 854, 1998 N.Y.Slip.Op. 00129 (App.Div. 1998), where the court held that a college had no duty to supervise a student’s medical care following a slip and fall personal injury accident in Austria, which occurred while the student was participating in the defendant’s international study abroad
program. The court noted that New York has rejected the doctrine of in loco parentis at the college level.