

Liability and Service Learning:

Gross v. Family Services Agency and Nova Southeastern University, Inc.

Jaclyn Rivard

Western Michigan University

As one embarks upon a career path, it is important to understand all aspects of the field, especially one's specific area of interest. Higher education, like many other careers, has a broad spectrum of important elements to understand. Among these is the history and application of legal precedent. As I begin a career focused on civic engagement and policy in higher education, there are many areas of the law that I must examine and understand. One segment of civic engagement that is particularly laden in potential legal issues is service learning; a case with broad implications for this area is *Gross v. Family Services Agency and Nova Southeastern University, Inc.* This case involved a practicum experience for an academic program, but has legal applications to service learning programs and professionals.

### **The Case**

Court transcripts from the 1998 appeal provide in-depth background on this case. Bethany Gross was a graduate student in the psychology department at Nova Southeastern University. As part of the regular curriculum in her department, Gross was required to complete a practicum. The university provided a list of approved sites that included descriptions of the experience offered; students submitted their preferences, but were ultimately placed by the university at a site. Gross was placed with Family Services Agency (FSA) for her internship. Following work one evening Gross was abducted at gunpoint from the FSA parking lot, and then subsequently robbed and sexually assaulted. The evidence presented in court showed that Nova had knowledge of a number of other criminal incidents that had occurred at this same location prior to the attack on Gross.

The main issue in this case is the question of duty of care. Neither Nova nor FSA informed Gross about the previous criminal incidents that had occurred in the parking lot, nor had they warned her of potential danger. Gross alleges that in assigning her without this

warning, the university breached its duty to exercise reasonable care. The initial lawsuit found in favor of Nova and FCS, but Gross appealed. FCS eventually settled out of court.

The court identified two obstacles to the appeal. First, that the premises on which the attack occurred was neither owned nor controlled by Nova. Second, the injury was inflicted by the criminal acts of a third party. Gross argued that the first obstacle was non-applicable because the lawsuit was not one of premises liability, and that the second was rendered irrelevant because the relationship between student and institution places a duty to exercise reasonable care on the institution.

The appellate court agreed with Gross, reversing the lower court's ruling and remanding it for further proceedings. In its ruling the court acknowledged the special relationship alleged by Gross, and affirmed that Nova had indeed been negligent. The ruling elaborated on negligence, "An act or omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal" (Gross v. Family Services Agency and Nova Southeastern University, Inc., 1998). In other words, Nova should have realized that not giving Gross the information about previous attacks, they had placed her in danger. After being reversed and remanded, the lower court ruled in favor of Gross. Nova appealed to the Florida Supreme Court, which affirmed the lower court's ruling that Nova had been negligent in its established duty of care.

### **Application to Policy**

The *Gross* decision has many implications for policy in higher education. With specific regard to service learning, the case affects planning and implementation of any off-campus experience. Each institution is responsible for maintaining policies to limit liability and support

its programs. In the case of service learning, an institution ought to have policies regarding monitoring off-campus learning sites, preparing and informing students, and monitoring student experiences.

Monitoring off-campus learning sites should not be limited to occasional internet searches, or sporadic visits, and institutions should not leave it up to the site administrators to inform them of any risks. Instead, the institution should complete regular, intentional assessment of risk at regularly used service learning sites. Records should be maintained of all concerns and possible risks, including accessibility of the site by those with mobility issues.

As *Gross* demonstrates, possessing information about possible risks itself poses a liability when it is not shared with students. Therefore, institutions must put in place policies and procedures for the dissemination of this information to involved students prior to the start of any service learning experience. It would be ideal to incorporate reading of this information and confirming receipt by signature into pre-site orientation so that students can contextualize the information, and the institution has a record of the exchange. In case one these risks materializes, students also need also to be informed about insurance policies of both the institution and the service learning site, and whether they apply during the student's experience.

An institution wishing to remain beyond reproach on issues of liability related to placing students at external sites will also develop ways to prepare those students for known and potential risks. The California State University system, Boise State University, Iowa State University, and many others provide online risk management guidebooks for faculty and staff offering service learning opportunities for students (ETR Associates, 2012). These include guidance on student orientation, as well as detailed policies for transportation, site selection, emergency procedures, and other risk management issues. The National Service-Learning

Clearinghouse also provides resources for forming risk management plans that can be accessed online at [www.servicelearning.org](http://www.servicelearning.org). In cases such as *Gross*, institutions' decisions are often compared to standard practice in the field. By examining other institutions' resources and plans, one can ensure that the policy being formed meets those standards.

A third area of service learning that ought to be managed through policy is the monitoring of student experiences. While informing students of possible risks, and preparing them for the experience at hand are important steps, the special relationship recognized by the court in *Gross* requires that the institution maintain communication with placed students. Standards ought to be created and written regarding the frequency, depth, and type of monitoring that is to occur, and a logging system should be used to keep written record of this. In an ideal situation, a log would exist for each individual student and be signed by both the student and supervisor each time they communicate. However, due to the size, scope, and duration of some programs, this is not logistically feasible. In these cases an institution ought to work with faculty and staff to identify simpler tracking methods.

### **Application to Career and Professional Life**

While the institution certainly has a responsibility to create overarching policies that manage risk and monitor student experiences, faculty and staff members creating and providing these experiences are also responsible for the safety and success of students. As I reflect on *Gross*, there are a few key areas on which I know I must be prepared to focus. These include examining institutional policies, thoroughly inspecting potential sites, investing time and research into student orientation, and maintaining conversance with current events.

Knowing the policies of the institution for which one works is important, but perhaps even more important is the act of examining the policies that directly affect your work. This

examination should include comparison to the practices of established programs at peer institutions, and reflection on relevant court cases. For instance, if Nova Southeastern University had examined the policies of its peer institutions, perhaps it would have been inspired to manage risk through policy, and Bethany Gross would have been informed about the previous attacks at FCS. While this may or may not have spared her from the attack she endured, it would almost certainly have lessened Nova's liability.

Thorough inspection of potential sites is also important when working with service learning programs. Professionals should look for potential hazards on site and nearby. Considering *Gross*, it is important to examine parking lots. Are they well lit and in view of the street or other people? Are they open, without hiding places? Is there a clear path between the site and the parking lot, and is parking a safe distance from the door? This is especially important when there are known instances of previous attacks.

As we learned from *Gross*, it is crucial that students have the information they need to manage risk at off-campus learning sites. To ensure that students are adequately prepared, I will invest time and research into the orientation they receive before beginning a service learning experience. *Gross* inspires the inclusion of site knowledge, local crime statistics, and safe parking or transportation practices. Other risk-limiting subject matter includes confidentiality practices, appropriate dress and equipment use, weather assessment, and communication plans to ensure that students' whereabouts and activities are known and logged.

Finally, I will maintain conversance with current events, including pending legal actions related to this field. *Gross* unveiled issues of liability arising from a special relationship between institutions and students that places responsibility on the institution to provide students with the information needed to manage risk effectively at off-campus sites. While this case has set

current precedent for these situations, the legal landscape in higher education is constantly changing through emerging case law and scholarship. Engaging with publications, and at professional conferences in the field does not guarantee, but certainly improves the likelihood of maintaining a position at the forefront of the field.

### **Conclusion**

Service learning is an important teaching and learning method that can be extremely beneficial in building civic engagement. Knowing and addressing the risks in advance can reduce the liability placed on an institution for any unfortunate situations that arise. *Gross v. Family Services Agency and Nova Southeastern University, Inc.* provides an excellent example of the importance of risk management at off-campus learning sites in higher education. The broad implications of this case reach from law to policy, and professional practice in the field. As I pursue a career in this area, I will keep this case, and others like it in mind to ensure that the programs and policies I am involved in creating will provide protection for both students and the institution.

### References

ETR Associates (2012) "Risk Management in Higher Education Service-Learning" National

Service-Learning Clearinghouse. Retrieved from: [http://www.servicelearning.org/  
instant\\_info/fact\\_sheets/he\\_facts/risk\\_mgmt](http://www.servicelearning.org/instant_info/fact_sheets/he_facts/risk_mgmt)

Gross v. Family Services Agency and Nova Southeastern University, Inc., 716 So. 2d 337 (Fla. App. 1998)

Kaplin, W.W. and Lee, B.A. (2007). *The Law of Higher Education (4th Edition)*. San Francisco, Jossey-Bass.

Nova Southeastern University v. Gross, 758 So. 2d 86; 2000 Fla. LEXIS 656; 25 Fla. L. Weekly S 243

Service Learning (2012) Website of Illinois University-Purdue University Indianapolis.

Retrieved from: <http://gateway.uc.iupui.edu/Resources/ServiceLearning.aspx>