THE DUTY TO LEGAL EXTERNS

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Abstract: The increased popularity of externships stems in part from external pressures. Law students have demanded practical legal experience, making externship programs a good marketing tool. While who would charge for the safety of externs? The author find that the law school had a duty to exercise care in the placement decision and a duty to warn students of known dangers in the placement, but not a duty to provide on-going supervision and investigation of the student's safety at the externship site. The externship agreement should state that the student has chosen the site, that she understands that the law school has not evaluated its safety, and that she assumes the risk of dangers in the site.

Introduction

When law schools send students off-campus for practical training, the students are vulnerable to dangers from the neighborhoods they work in, their field supervisors, their clients, opposing parties, and people against the legal system. Are law schools, then, responsible for the safety of these students whom they have placed in externships? The fact that legal externs are adult graduate students in workplaces and neighborhoods beyond the physical control of their law schools would seem to weigh against such an obligation. The filed supervisors are more aware than the law schools of the potential dangers to externs and are better situated than the schools to guard against them. But they think the externs are different from the working attorneys .Thus they won't take the responsibility for the students. The externs themselves, in terms of their ability to care for themselves, have such significant personal responsibility for their own safety. Who would be finally responsible for the externs?

The Field Placement: Benefits and Risks

The Growing Role of Field Placements in Legal Education. Most law schools now offer some kind of field placement program that allows students to earn academic credit by working in law firms, government agencies, courts, legal aid offices, and other real-world settings. Student externs work for free and pay their law schools for the experience. The increased popularity of externships stems in part from external pressures. Law students have demanded practical legal experience, making externship programs a good marketing tool. In a real-life context, externs both observe the skills in action and practice those skills themselves. For example, externships can provide intensive research, writing, and analytic problem-solving in a whole-case context. The field placement also helps students to develop personal standards of professional conduct as they observe and reflect upon the

professional conduct of the attorneys at the externship site. Properly guided, the externship teaches students to reflect upon their skills, choices, and values and helps them to become reflective lawyers responsible for their professional growth. The externship further enhances professional development by allowing students to experience career possibilities and develop professional contacts while still in law school. Indeed, the career-shopping aspect of the externship may benefit the community as a whole, as students who might not otherwise have chosen a public-service or government career follow those paths as a result of their externship experiences.

Another educational advantage is that the externship can supplement the law school curriculum, not only by exposing students to legal subjects not found in the course catalogue, but also by improving their understanding and retention of subjects they have studied in law school and deepening students' expertise in these areas. Allowing students to gain substantive knowledge through externships is an advantage to the law schools as well because providing enough faculties to address the wide range of subjects .And it can interest students entering an ever more specialized legal profession.

Potential Dangers in Legal Externships. Working for lawyers and judges to earn course credit exposes law students to the dangers that lawyers and judges face. Most attacks against attorneys occur in the courtroom during trials and in legal offices, but violence against lawyers also occurs outside the workplace, in parking lots, and at home. After all, an attorney's work place is not just the office. Lawyers travel to investigate facts, meet with clients, and take depositions. They can be victims of violence at any place and any time. Externs could become targets of violent anger because of their own involvement in cases or be harmed because they are with attorneys or judges who are attacked. The dangerous client could be more dangerous to a law student not experienced in client management than to an experienced lawyer. The younger, traditional law student, who are fresh from undergraduate school, may be a chronological adult but lack the experience to recognize and read risky situations. The student extern is likely to be more vulnerable to sexual harassment than a female attorney. Studies show that from thirty percent to seventy percent of women in higher education are victims of sexual harassment, and the particularly vulnerable groups include graduate students and female students in male-dominated fields.

The Duty of Colleges and Universities

In planning and structuring the externship, the law school can address the issue of reasonable background safety. A significant part of background safety is site selection. Sometimes the law school is solely responsible for choosing the site, as when it creates an externship program that is connected to a limited list of sites. In that situation, it has a responsibility to determine that the site has no unreasonable dangers, particularly the kinds of dangers that good orientation advice cannot significantly reduce. This responsibility must fall upon the law school because it is not a responsibility that can be shared with the student; the law school is making the choice, not the student. On the other hand, when the student chooses the site, and the law school's approval is limited to the educational value of the placement, the far greater share of the responsibility for a safe choice should lie with the student who is making the choice. The law school should advise students to consider safety in making the choice and make clear that the school has no opinion regarding the safety of the site. The externship agreement should state that the student has chosen the site, that she understands that the law school has not evaluated its safety, and that she assumes the risk of dangers in the site. Sometimes, though, when students choose their own sites, other students will have

worked at the sites before them. Law schools should keep track of safety concerns raised by students and faculty mentors regarding individual sites. If concerns are raised about a site's safety, some responsibility should lie with the law school before sending another student there because the school now has reason to be concerned about safety and does have the ability to do something about it. It can withdraw the option of this particular site, if the prior student's accounts suggest it is unreasonably dangerous. When externs go to sites where previous externs have worked, they may be less vigilant for their own safety, assuming that the site has not presented problems, or they would not have been sent there. If the school does not regard the dangers as so high as to be outweighed by the value of the experience the site affords, the school must at least give students the information necessary for them to decide whether they want to accept the site and to keep the appropriate vigilance if they do go there.

The law school cannot provide physical protection to students at their externship sites but it can provide at an externship orientation the information that will help students make good choices about their own safety. The only duty assumed by providing safety information is to give that information with reasonable care. Students might be cynical, as they are law students, that safety talk is just an attempt to place legal liability on the student. This advice might be more convincing if it comes from someone outside the school. Also, should concerns have arisen about any particular sites, but not to the level that withdrawal of the site would be appropriate, students should be alerted to known dangers at particular locations. This provides them the information they will need to keep themselves safe.

Law schools have limited control over the safety of students in externships. Their greatest point of control is in site selection, in making sure that students are not sent to unreasonably dangerous sites. Beyond that, all that they really can do is guide and advise the student about how best to keep safe in general and with regard to any known dangers at the site. They can, through the journals, keep an eye out for safety concerns, and when those arise assess the student's ability to deal with those dangers and speak to the field supervisor if necessary. The only other control that the school has is to remove the student from the site if dangers seem unreasonable.

As the cases increases in the university, courts more and more frequently found that the university did owe the student a duty of care. Although courts still required the student to prove a special relationship and still continued to reject the relationship between a university and a student as special person, courts began to recognize that the school often stood in relationships to its students other than the educational one and that these relationships were special. When the university ran a dormitory, it was a landlord, and the students were its tenants, who were owed a duty of care in the area of residential/dormitory safety. When the university took fees from students, it was a business, and the students were its customers, who were owed reasonable care in those services. Duties were found for premises maintenance. The colleges and universities as businesses had to provide their customers, the students, "safe walkways, proper lighting, and other aspects of reasonably safe premises." When students worked on campus, the school was an employer. A duty of care was even found off-campus, when a student was injured on a school-related canoe trip. Moreover, when schools acted to protect students and created reliance, they had a duty to exercise reasonable care in the endeavor that they started. Within the educational relationship, duties were found with regard to curricular and curricular safety, in the conduct of classes and labs. The obligation to provide curricular safety is not tied to exceptions to no affirmative duty rules and does not require a special relationship because it is based on the duty to use reasonable care in actions and activities. In a

"radical shift" from the insular university, courts found duties in the full range of extra-curricular activities in which universities exercised more supervision, direction, structure, and control. This did not mean that schools would be liable, but it did mean that courts would at least consider that they were subject to liability where previously they would not have been. The willingness of courts to use a business analogy to find that the post-secondary institution owed a duty and to find that a duty was voluntarily assumed is the attitude change most important to the question of whether law schools owe externs a duty of care.

The Duty of the Filed Supervisor

Student safety can also be addressed in the externship agreement. As an agreement among three parties, the law school, the law student, and the field supervisor, the agreement can place certain obligations with the supervising attorney to ensure that the student receives proper information about any safety issues particular to the site or work assignments that she will receive. The filed supervisor is responsible for the externs' safety, including: the training conditions, facilities and the insecurity caused by their failed management, and other personal injury caused by accidents. if the filed supervisor does not abdicate its authority or proper duties to the student, it would take the main responsibility.

The Duty of the Legal Externs

If a law school has undertaken a safety service by its site approval process, a student attacked in the parking lot of one of the sites will still have to demonstrate that she was injured because the site assignment increased the risk of that injury to her or because she relied on the law school's care in making assignment. In this circumstance, the law school also has to undertake the responsibility. It means that the law school does not assume a duty regarding site inspection or supervision but assumes only a duty to exercise care in giving the warnings. If the advice is not received, the student would undertake the responsibility by themselves.

Conclusion

The law regarding the duties that colleges and universities owe their students continues to evolve. That influence is ever-decreasing as courts become more and more open to imposing obligations of care upon institutions of higher learning. What this means for law schools is that courts may compare the externship program to a business relationship that imposes a duty of care upon the law school, as it would upon any business rendering services, to exercise care in that relationship. Courts may be inclined to limit the duty to care in site selection and warning of known dangers at the externship site and certainly would not impose it for unforeseeable dangers or those outside the law school's control. The fact that the externship is not served on the law school campus will not, however, place the student's safety outside the law school's control. Also, courts may be more willing to find that by certain acts within the externship the law school has assumed a duty of care in those acts. Finally, courts may move towards a facilitator model that regards the nature of the relationship as one in which the school's primary role in student safety is to plan, guide, instruct, train, and consult, and where significant responsibility is placed upon the student herself for her own safety. The critical point is that courts are likely to impose some legal responsibility upon law schools for extern safety,

and therefore, law schools seeking to avoid liability should not depend upon no-duty arguments to shield them but should instead conduct themselves so that no-breach arguments will.

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