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THEME: Teacher/Professional Liability

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Articles and photographs should be submitted to the Editor, Regional Editors, or Special Editors. Items to be considered for publication should be submitted at least 90 days prior to the date of issue intended for the article or photograph. All submissions will be acknowledged by the Editor. No items are returned unless accompanied by a written request. Articles should be typed, double-spaced, and include information about the author(s). Two copies of articles should be submitted. A recent photograph should accompany an article unless one is on file with the Editor.

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Answering Two Big Questions About Vo-Ag

Vocational agriculture educators are continually assessing their programs and their relationships to other agencies and professional organizations. Two of the big impact questions now being discussed are "What is the AVA doing for vo-ag?" and "What is the Department of Education doing for vo-ag?" The profession must be rational in finding answers. Both sides of each question must be carefully studied and the decision reached that will maximize the forward movement of vocational agriculture.

What Is the AVA Doing for Vo-Ag?

What a question this is! It probes deeply into the existence of vocational agriculture as one of the areas of vocational education, or, if you wish, as one of the members of the vocational education family. Regardless, it is a question that has been frequently heard at meetings of vo-ag educators in recent years.

Perhaps the question is due to a lack of understanding by vo-ag educators of the other members of the vocational education family. Do vo-ag educators really know much about, for example, distributive education or health occupations education? Or is the question due to a shift in the backgrounds of the individuals who are moving into leadership positions which impact the direction of the AVA? Since the late 1960's, vocational education has been inundated with individuals who had no background in it. A number of universities have allowed individuals of varying backgrounds — often not in vocational education — to pursue advanced graduate degrees in general vocational education. These individuals often had very shallow knowledge of vocational agriculture, but they were trained to be "leaders" of vocational education and they are now out and trying to be "leaders".

The American Vocational Association has released a publication entitled "A National Agenda For Vocational Education". Many individuals had a role in shaping its contents. According to the preface, this publication represents a national agenda ". . . in preparation for making recommendations for the 1982 reauthorization of the Vocational Education Act." The report purports to highlight the ". . . potential contribution of vocational education to selected national goals and concerns."

In the 76 pages of this document, there is little reference to agricultural industry and vocational agriculture. The first reference to any agricultural subject is "farm workers," on page 15. This is a negative reference which ilistrates a narrow, out-of-date notion that agricultural industry is "farm workers," showing a 15.9 percent decline by 1990. The next reference to agriculture (also negative) is on page 42 to illustrate that 17.3% of the enrollment in vocational agriculture is female. There is no reference to



JASPER S. LEE, EDITOR

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the important role of vocational agriculture in ensuring our food supply! (None of the other areas of vocational education are specifically mentioned. However, there appears to be more visibility of them by the kind of information included and the way the data are presented.)

What can we make of this? Does the AVA not recognize the existence of vo-ag? Have social issues overcome quality vocational education? The stress is on addressing national concerns through vocational education. The previously mentioned publication addresses needs in rural areas, youth, sex equity, and others. Certainly, vocational agriculture addresses national concerns! Vo-ag educators need to realize that the program can contribute to the achievement of national goals.

The question many people raise is, "why is there no specific mention of vocational agriculture and accurate reference to agricultural industry in many AVA materials?" Some individuals in vocational education apparently feel that vo-ag will fair better in funding it if it is not mentioned. Further, it is difficult to obtain accurate information on the nature and scope of agricultural industry. Vo-ag educators should accept these explanations or either do something about them.

Regardless of what we do, rational thinking must prevail. The "clout" of all vocational educators joining together has long been promoted as a reason for AVA membership. And this is still a valid reason to join! However, people find it difficult to continue to pay the dues when it unfortunately appears that they are ignored. As I hear it, if the AVA wants vocational agriculture educators to join, it should respond with programs, materials, and friendliness that recognize vo-ag.

Vo-ag educators should continue membership in the AVA, at least in the immediate future. The AVA represents all of vocational education. To not affiliate by membership would mean that the AVA would no longer represent vo-ag. The AVA can only represent those who hold membership in it! At the present time, vo-ag probably would experience considerable difficulty without the

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Answering Two Big Questions About Vo-Ag

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leadership of the AVA. Some resolution of the problem is needed. Maybe there is no problem. If this is so, substantive reinforcement to prove that this is the case is needed — and needed now!

What Is The Department of Education Doing For Vo-Ag?

Vocational agriculture education is administered through education agencies at the federal, state, and local levels. The Office of Education and now the Department of Education have provided program support and leadership for vo-ag since its founding. Recent discussions among groups of vo-ag teachers have increasingly focused on the best location of vo-ag at the federal level. Much of the talk is about how vo-ag would fail if administered in the U.S. Department of Agriculture. Would a change be in best interest of vo-ag?

Secretary of Education T. H. Bell spoke to the State FFA Presidents Conference in Washington in late July. He praised the FFA and how it had helped youth develop. He praised the role of Extension and research in farming. He further commented that the level of achievement in education has been declining in the United States and said that education needs what the FFA does for young people. (It is suspected that the decline in achievement is due to emphasis by government agencies on social issues and not on specific areas of learning.) Dr. Bell praised the Secretary of Agriculture, John Block, and noted that he was an FFA officer when in high school.

Secretary Bell's comments could be interpreted as a lack of support among the top leaders in the Department of Education for vo-ag and an insinuation that the USDA had good leadership that better understood vo-ag and agricultural industry. His comments about farming clearly in-

dicated a lack of understanding of today's agricultural industry. Further, the current federal administration has promised to do away with the Department of Education. Several possibilities on the future of it are now being considered.

In recent years the USDA has apparently been very supportive of efforts in vocational agriculture. Funds have been provided by various agencies of USDA to support some vo-ag activities. The common interest of vo-ag and USDA in agricultural industry appear congruent. Why not go ahead, move to the USDA, and get it over with? After all, the top leaders in the U.S. Department of Education apparently profess little interest in agricultural industry. (It should be noted that there are several individuals in the Department of Education who are very strong for vo-ag. These include Byron Rawls and Coleman Harris, and they are to be commended on their leadership for it.)

Vo-ag is concerned with formal education in the public schools. The USDA does not have a public school education mission, while the Department of Education does. Current procedures for administration of the FFA are rooted in the Department of Education. These would be endangered by a Department switch, but could probably be re-established.

Before any change is made, sound judgement must be applied to the problem. The decision must involve input from the leaders of vocational agriculture education. Supervisors, teachers, and teacher educators must synthesize the advantages and disadvantages. They must emerge with a strong, united commitment to vo-ag. The most important item is the quality of the education students receive in vocational agriculture. Any decision on the administrative location of vo-ag must recognize the need for quality education.

The Answers

Individuals who would like to express opinions about these two questions should send letters to the Editor. Selected letters will be published without editing or comment. Your letter will be welcomed!

"Letters to the Editor" is a feature to encourage dialogue among readers of the MAGAZINE. Selected letters will be printed without comment or editing. Your letter will be welcomed! (Send letters to: Editor, The Agricultural Education Magazine, P.O. Drawer AV, Mississippi State, MS 39762.)

Editor:

Some of the reactions to vocational education budget cuts in Washington are apparently based more on emotion than on logic. Some people believe that regular and continued increases in federal dollars always result in improved instruction and quality programs. While federal aid and the mandates that go with it have been a major factor in the development of strong vocational agriculture programs during the early part of this century, they have also resulted in some very unfavorable actions in recent years which have hurt programs immensely. Those who believe that all of our problems will be solved through increased

federal funds are reminded that federal legislation in 1968 and subsequent actions which grew out of that legislation almost eliminated vocational agriculture in some states. We need also to remind ourselves that inflation has been a major contributor to the financial squeeze in vocational education. Efforts to reduce inflation are not necessarily anti-education even when education is one of the programs to be cut.

We need more dialogue on this subject to show that those who advocate more federal aid and more federal control are not always the champions of vocational agriculture and neither are those who are proposing new ways of financing programs necessarily our enemies.

> Sincerely, Paul E. Hemp Division of Agricultural Education University of Illinois Champaign, IL 61820

DEINVID

Conducting Quality Programs with Minimum Liability

Leaving students unattended in the classroom to answer the telephone. Having students operate power equipment in the land laboratory. Using a personal car to take students home after school to supervise occupational experience programs. Taking overnight trips to state FFA activities. Working with the judging team at a local farm after school hours. Letting students work on individual projects in the shop unsupervised. Placing a student at a local agricultural firm for occupational experience. Waiting until next week to replace that worn out grindstone. Having an excessive number of students in the laboratory classes.

These and many similar activities are normal for many teachers of vocational agriculture. Dedicated teachers want to be involved and active in "doing" activities. They want to provide the maximum learning experiences for their students. Maximizing student involvement and ensuring student welfare are their chief concerns. Never confined to textbook and classroom teaching, vocational agriculture teachers are planning, managing and supervising a humber of projects and activities at all times.

Involvement in each of these activities, however, entails some risk. With the mood of the public to file suit more readily, teachers of vocational agriculture are well advised to inventory their activities, reassess their vulnerability to lawsuits, and check the status of their liability.

Most teachers of vocational agriculture recognize the potential hazards of getting students involved in learning activities. Whether teaching and supervising students in the classroom, the agricultural mechanics shop, the greenhouse, the school farm, the land laboratory, or placing students on farms or in agricultural firms for occupational experience, the teacher is vulnerable. The teacher is also vulnerable when conducting field trips, selecting students, transporting students to leadership activities, supervising occupational experience programs, and conducting many other routine activities.

Yet, almost all teachers of vocational agriculture would agree that involvement of students in these learning experiences and leadership activities is the heart of the vocational agriculture program. Take away student involvement in many of these excellent learning activities and the program will soon vanish.

The primary question for vocational agriculture teachers to answer then is, "How can I conduct a program of maximum quality for my students, yet minimize my potential 'jability?"

The authors in this issue are not advocating that you as a teacher curtail the relevant, beneficial learning and supervisory activities which have made the program of vocational agriculture so successful over the years. Rather, they



By Alfred J. Mannebach, Theme Editor

Editor's Note: Dr. Mannebach is Professor of Agricultural Education in the School of Education at the University of Connecticut, Storrs, Connecticut 06268.

do offer suggestions regarding how you can incorporate valid precautions into your daily and yearly repertoire of activities to maximize quality involvement for students and remain on safe ground regarding liability issues.

After reading this issue, each person should have (1) a better idea of the areas in which he or she is particularly liable, (2) familiarity with basic guidelines to follow to limit professional liability, and (3) a knowledge of some of the basic legal terminology and its meaning. The intent is not to provide legal advice, but to increase teacher awareness of ways to ensure student welfare and to minimize risk. Qualified legal staff should be consulted for advice on specific cases.

Every teacher of vocational agriculture is urged to read this issue and keep it for further reference. In my role as theme editor for the issue, I have found the articles to be informative and professionally relevant and beneficial. I trust that you will, too.

The Cover

As an educational program which makes considerable use of first hand experiences, vocational agriculture teachers may be in positions of increased liability. This photograph shows students and their teacher out of the classroom for hands-on learning. (Photograph courtesy of the National FFA Center).

SEMINAR PROCEEDINGS AVAILABLE

The Proceedings of the National Agricultural Education Seminar held in July, 1980, have been distributed. One copy was mailed to each participant, head state supervisor of vocational agriculture, and head teacher educator for vocational agriculture.

A few copies of the Proceedings are still available. If you would like a copy, please request it from the Editor of The Agricultural Education Magazine.

THEME

How Quality Vo-Ag Programs Impact Liability

Vocational agriculture teachers who develop and carry on innovative curriculums that give students opportunities to participate with "hands-on" learning experiences are sometimes those individuals who suffer the greatest risk of becoming involved in a legal suit due to student injury resulting from the learning experiences.

Many vocational agriculture instructors "play it safe" by limiting student learning experiences to those which involve demonstrations by the teacher, viewing of films, and field trips to observe others performing tasks. This may be better than sitting in the classroom reading booklets or other materials.

This "play it safe" attitude on the part of the teacher, local school administration, and Boards of Education may be the major reasons why young people today could be accused of being the greatest group of "watchers of work" in history. No person can really learn about a job and the skills and competencies necessary to become successful in it without actually getting "hands-on" experiences.

Most vocational agriculture educators believe that supervised occupational experience is the best means of delivering "hands-on" experiences for students. It must be remembered, however, that in our early years these types of experiences were taught at the school and practiced at home under parent supervision with assistance from the vocational agriculture teacher.

Over the years, the vo-ag curriculum has changed so that it now involves greater varieties of students from more diverse family backgrounds. The school is expected to offer more of the skills and competencies for students which in turn places greater legal burdens on the vocational agriculture instructor.



Hands-on experiences are necessary in vo-ag even though teacher legal liabilities may be increased. This photograph shows the Sycamore FFA Chapter President operating the FFA-owned combine.

By Jim Guilinger

Editor's Note: Mr. Guilinger is Vocational Agriculture Instructor at Sycamore High School, Sycamore, Illinois 60178. He is also serving as Secretary of the Agriculture Education Division of the American Vocational Association.



The philosophy of American society has also changed. Teachers at one time expected and received a high degree of community respect as professional persons. This has changed. Vocational agriculture teachers must make their own personal decision as to the limits they will accept involving the risk of being held liable for possible injuries or other activities conducted in or near the school under their direction.

At Sycamore High School, the vo-ag department operates extensive livestock, farming, horticultural, mechanical, and travel activities which involve the entire enrollment of vocational agriculture students. We are concerned about liability activities for which the faculty, administration, and Board of Education could be held responsible. The number of areas are so vast that a person might have difficulty listing all the possibilities. After identifying them, one might choose to not even offer a curriculum in vocational agriculture due to the possible risks.

Dwelling on the negative or possibility of liability will surely bring about a law suit. In my early years, I worked under a local superintendent who constantly worried about our student involvement in farming a small FFA plot and the possibility of being sued if a student was injured. We never had any liability suits. If you worry and talk about your liabilities long enough, someone in your community will oblige you with a legal problem.

How can we develop strong programs which involve students and provide training in real working situations? Sound program planning procedures should be followed. Teachers of vocational agriculture must:

- 1. Study the community and its leadership to determine the social and community attitude toward the vocational agriculture program.
- 2. Learn how the administration and local Board of Education feel about the vocational agriculture program.
- Use an advisory council to get community feelings and, in turn, support his/her personal views about a quality vocational agriculture program.

- 4. Develop SOE programs for every vocational agriculture student.
- 5. Require every student to be a member of the FFA in order to learn leadership skills for use in later life.
- 6. Visit all students at their homes and observe their SOE programs.
- 7. Know the parents of every vocational agriculture student. When parents know the instructor on a personal basis and they learn that you, as a local teacher, care about their children and their achievements, only the most severe causes will likely bring about legal action.

8. Understand that people expect you to conduct yourself as a professional at all times. You are an image for youth to follow. You chose this profession and, rightly or wrongly, you are copied by your students in almost every endeavor you perform.

None of those eight points are new. I learned them at the University of Illinois under Dr. H. M. Hamlin and his staff many years ago. Their soundness has stood the test of 30 years of teaching. They will do the same for any other intelligent vocational agriculture teacher.

An Overview of Teacher/Professional Liability

Under certain conditions teachers can be held liable for their actions in a court of law. Such lawsuits have been relatively rare in the past and many educators have viewed such liability as "something that happens to someone else."

However, conditions are changing and legal action against teachers and other professionals in general is increasing. There is greater emphasis on the rights of the individual, including youth, in society at large. Further, many students currently in school are products of the permissive child rearing philosophy of the 1960's and consequently are less accepting toward school authority. The increase in violent acts committed in schools¹ is a symptom of that attitude. In short, professional liability is currently a reality in our profession.

To deal with this reality, teachers need to be aware of both their rights and responsibilities. The question of liability involves federal and state education laws, local board of education policy, and the rights of students, parents, and teachers.

Federal and State Education Laws

Education in the United States is essentially a function of the states. That is, the states have legal responsibility and retain all rights not specifically delegated under law to the federal level. Also, state legislatures have delegated authority for certain elementary and secondary school decisions to local boards of education. It is important to remember that state law varies considerably from state to state, as do local board of education policies within the same state.

Teacher Rights

Teacher rights include academic freedom, freedom of outside utterance and association, and employment issues. While all three areas have implications for professional liability, employment issues have the greatest potential for litigation.²



By Arthur L. Berkey

Editor's Note: Dr. Berkey is Professor of Agricultural and Occupational Education, College of Agriculture and Life Sciences, Cornell University, Ithaca, New York 14853.

Students Rights

Student's rights have been clarified and defined by courts over the past decade. The areas of student rights are discrimination, records, searches, religion, freedom of speech and assembly, publication, distribution and possession of literature, suspensions, expulsions and involuntary classifications, and miscellaneous issues which include grooming and dress codes, education for excluded students, and corporal punishment.³

Parent Rights

Seven important, legally-established, parent rights have been listed. Two of the seven have implications for individual teachers; the first is the right to equal educational opportunities for both boys and girls, and the second is the right to receive compensatory services for handicapped children. The other five parents rights involve decisions by school administrators, boards of education and state legislators, rather than individual teachers.

Potential Areas of Liability

The challenge to teachers is to be knowledgeable about and avoid situations where professional liability can be incurred. Neither good intentions nor ignorance of the law are sufficient defense against legal action for liability. Ad-

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An Overview of Teacher/Professional Liability

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ditionally, vocational teachers have more potential for liability due to their involvement in many activities with students in laboratories and outside the school. A discussion of potential areas of liability for teachers follows.

Transportation. The transporting of students is closely regulated to protect the health and safety of students in most states. The U.S. Department of Transportation has regulations and guidelines which are often further supplemented by state regulations and guidelines. In addition to the regular operator's license, specific instruction in transportation and vehicle inspection are among the requirements to transport students in New York State.

Additionally, school policy may limit or forbid driving of private vehicles by teachers and/or students to "away from school" activities. Teachers should avoid liability by being knowledgeable about and following local board of education policy and state law on transporting of students.

Student Discipline. The major areas of student discipline relating to liability for teachers are corporal punishment, searches and seizures, grades and records, and dress and hair styles.⁵

Although corporal punishment has been upheld as constitutional by the U.S. Supreme Court, such punishment may be banned by states and local boards of education. Further, minimal due process requirements for application of corporal punishment must be followed. These include informing the student beforehand except in the instances of extreme disruptive/antisocial behavior, presence of a second school official, and written notification to parents on request.

States may ban corporal punishment by statute or policy. The use of corporal punishment in states where it is banned is illegal.

Local boards of education can pass policy on corporal punishment within state policy and statutes. Such local policy may ban, restrict, or allow use of corporal punishment. Where passed, local policy has the force of law.

Even where permitted, corporal punishment may not be "excessive," "unreasonable," or with "malice." Further, other statutes on child abuse, and assault and battery may be cause for civil action.

Some general standards for excessive or unreasonable corporal punishment include giving more than three licks with a paddle or leaving bruises or marks, striking other than on the buttocks, and causing any temporary or permanent injury.

In general, potential liability from use of corporal punishment is considerable and it is prudent to avoid use of this means of discipline.

Searches and Seizures can cause legal problems. Searches means looking for items not permitted in schools such as drugs and weapons. Seizure is the taking of such banned items.

The principle of the school serving "in the place of

parents" to supervise students applies to this area. In general, the searching of students' lockers, desks, etc., is permitted. Also, student's person and possessions may be searched on reasonable suspicion. However, searches should be done by school administrators, not by individual teachers.

Grades and records are two areas with liability implications for teachers. In general, grades are supposed to denote student achievement in the subject. The use of other criteria such as student attitude and attendance needs to be justified in terms of the course objectives. In vocational subjects, there is a case for development of positive job attitudes as one primary course objective. Confidentiality rules for records should be followed.

Under certain conditions schools may regulate student dress and hair styles. The condtions are health, safety, and to avoid educational disruption. Written notification about problems to students must provide reasons. Be sure to follow school policy in this area.

Discrimination is illegal. Equal educational opportunity must be provided for both boys and girls. Therefore, student selection or differential treatment based on sex is illegal. Discrimination by race or religion is also illegal. Boys and girls must be accorded equal treatment.

Education for Handicapped Students. The Education of all the Handicapped Children Act of 1975 (PL 94-142) has had considerable impact on agricultural education. Mainstreaming and the use of agricultural subjects such as horticulture as a focus for handicapped classes continues to increase. Failure to provide appropriate vocational instruction in agriculture, such as not teaching an appropriately placed student, is subject to litigation by parents in civil court.

Safety. Teacher responsibility for providing safe conditions for students during instruction activities is the most challenging area of liability. Such liability occurs both by actions taken and not taken. The key issue determining teacher liability is negligence. Was safety instruction provided to students? Was the machine safe to operate? Was adequate supervision provided? Did the teacher act judiciously to prevent student injury in a crisis situation? Were the required safety devices worn by students or in place on the machine? Was emergency safety equipment (such as fire extinguishers and eye washer) on hand and operable to prevent or minimize student injury? Was the student physically and mentally competent to operate the machine? These are questions that must be answered in the affirmative to avoid liability.

Safety considerations for mainstreamed students is an emerging factor as special education students are placed in vocational classes. Actions by volunteers and aides under teacher supervision may also involve teacher liability.

Limitations of This Article

Information in this article has been mainly synthesized from Phi Delta Kappa Foundation Fastback Series publications. A simplified and preliminary introduction to a complex legal area has been presented. The intent is not to provide legal advice, but rather to orient readers to major areas where liability tends to occur. Qualified legal staff should be consulted for opinions on specific cases.

Liability Protection

Teachers may be covered by school insurance for instruction-related activities. Additionally, state level organizations of the National Education Association (NEA) and the American Federation of Teachers (AFT) provide legal services as part of services to members. However, the teacher may still be held personally responsible for negligence under some circumstances.

Professional liability insurance is available as part of homeowner policies and through professional organizations such as the American Vocational Association (AVA). The cost is approximately \$10 per \$100,000 coverage. Such coverage is carried by many educators and should be seriously considered.

A Fact of Life

Professional liability is now a fact of life in the education profession. Teachers can reduce the chances of incur-

ring liability by being knowledgeable about, and following federal and state law, and local board of education policy. The areas where liability are most apt to occur are transportation of students, student discipline, discrimination, and safety. Professional liability insurance is available to teachers and should be considered.

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THEME

Tort Liability and the Vo-Ag Teacher

For many years past, tort liability claims in education were almost non-existent. Historically, there have been many misfortunate accidents, both minor and tragic, which have occured during public school connected functions or activities in almost every community in the nation. However, until recent years, these accidents were generally viewed as unfortunate incidents and, in most cases, civil law suits claiming professional liability on the part of school officials did not arise as a result. In recent years, however, a sharp contrast in public attitude has developed concerning professional liability in education. Tort liability has become a "household" term among educators and the threat of court action claiming professional liability has dramatically increased. Today, one of the most vulnerable areas in which teachers may find themselves in court is in the area of negligence in a charge of tort liability.

Definition of Tort

Tort liability has been defined as the responsibility for any civil wrong independent of contract. Generally, there are two recognized types of tort liability; intentional and unintentional. Unintentional, of course, most directly involves the vocational agriculture teacher. In the case of unintentional tort liability, the prevailing opinion on the part of the plaintiff is that the teacher has failed to maintain an acceptable standard of conduct by being negligent or careless and through this has injured another person. To prove this type of claim or charge, the plaintiff must show that the defendant owed him a duty, the duty was breached, and an injury was sustained as a result.

Basic Duties

The courts have generally held that a teacher owes three basic duties to his/her students. These duties include ade-



By Thomas A. Quarles

Editor's Note: Dr. Quarles is Head Teacher Educator at Stephen F. Austin State University, Nacagdoches, Texas 75962.

quate supervision, proper instruction, and maintenance of all equipment for which the teacher is responsible. Proper performance of these duties is extremely critical in vocational agriculture because of the nature of the program. In other words, the threat of tort liability may not be quite as great to the English or history teacher as the vocational agriculture teacher because instruction is not directly related to proper performance of dangerous skills, there are fewer field trips and youth leadership organization activities, and there is no equipment to maintain. In short, the number of vulnerable areas is much greater in vocational agriculture than most other general education programs. Other programs in the public schools which could be grouped with vocational agriculture as vulnerable programs are selected vocational industrial education programs, some industrial arts programs, drivers education, athletics, and possibly chemistry.

In an effort to provide maximum safety for all students under the teacher's supervision and to protect the teacher from possible civil law suits, it is of utmost importance to adequately supervise students at all times. This is especially true during the designated times that the teacher is

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Tort Liability and the Vo-Ag Teacher

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responsible for the students. This includes adequte supervision during the regularly scheduled in-school classroom/laboratory periods, field trips, and overnight as well as one-day trips to FFA livestock shows, conventions, leadership contests, judging contests, and other school-related activities. In the case of regularly scheduled classroom/laboratory periods in which teachers have the responsibility for a group of students, students should never be left unattended. During this time, the teacher becomes vulnerable to a charge of negligence for even making or answering a telephone call in the case of an accident.

Proper instruction is particularly important in the vocational agriculture program. Students must be taught how to properly use hand tools, power tools, and other shop-related equipment in order to minimize personal injury. Students should always be taught shop safety and general theory in the classroom before being allowed to get handson experience in the laboratory. After being taught shop safety in the classroom, students should be required to successfully pass a comprehensive safety exam. In an effort to make parents aware that shop safety has been taught, it is generally a good practice to have each student take the safety exam home, for signing by parents. After the exam has been signed, it should be returned to the vocational agriculture teacher who should permanently keep it on file.

Another important practice before allowing any student to use the equipment in the laboratory is for the teacher to demonstrate how to properly use the equipment. After the teacher has demonstrated the proper use of equipment, each student should be required to demonstrate how to properly use the equipment (at least the most dangerous equipment) while under the supervision of the vocational agriculture teacher. Some educators have labeled this practice as time consuming and even impractical; however, if the teacher intends to maximize safety instruction and more thoroughly protect herself or himself, it should be made a common practice. Psychomotor tests such as these, coupled with the cognitive test described previously, decrease the possibility of injury to students and increase the documentation of proper instruction which is needed to protect the teacher from a charge of negligence in case of an injury to a student.

The third basic duty which the courts have held teachers responsible for is the maintenance of all equipment assigned to the teacher for his/her program. Teachers should have a set system throughout the year in which equipment should be checked periodically to see if it is safe and in good working order. Results of the equipment checks should be documented and kept on file. Any equipment that is not working properly or found to be unsafe should be restricted from use until it can be properly repaired.

In reference to tort liability in general, most jurisdictions do not deviate from the rule that governmental entities operating public schools are immune from tort liability for personal injuries or death occuring in connection with such operation, unless the entity has assumed liability by constitutional, legislative, or insurance-coverage provisions.

A Case

A recent case emphasizes the tort liability trend as to school districts today:

A student sued a high school teacher and school board for injuries resulting from the defendant's alleged negligence in instructing in the use, and in the maintenance of a power saw that the student was using in the course of instruction. The Court dismissed the suit, based upon governmental immunity.

On appeal, the Court of Appeals affirmed as to the board, and reversed and remanded as to the teacher. It was held (1) that in the absence of a statute waiving its governmental immunity, the board enjoyed the sovereign immunity of the state, (2) that such immunity was unaffected by statutes waiving immunity with respect to school vehicles only, (3) that such immunity could not be extended to the teacher for his own alleged negligence, even though, while in the course of his instructional duties, he was performing a governmental function for the board, and (4) that the student had stated a good cause of action against the teacher.

Immunity

The general rule is that a school district or school board is not subject to liability for injuries suffered by pupils of public schools in connection with their attendance, because the district or board, in maintaining schools, acts as an agent of the state and performs a purely public or governmental function or duty, imposed upon it by law for the benefit of the public, and for which it receives no profit or advantage. The important point in dealing with this "immunity" is to avoid being taken out of the "immunity umbrella of protection." Vocational agriculture is a governmental function of the school district, and as such, the administration is protected; but such does not so protect the vocational agriculture teacher, who does not properly administer his or her program according to the policies of the school district.

The school administration or school board can only be held liable in very limited circumstances. One example is where the board is proven negligent in its hiring practices whereby a teacher is hired who has a prior record of inability to deal with pupils. Other areas which, if proven, exist as exceptions to the "immunity rule" are:

- (1) the function in question is proprietary in nature rather than governmental;
- (2) where the function in question is ministerial, rather than discretionary or judicial governmental;
- (3) where the function is optional or permissible rather than mandatory;
- (4) where an attractive nuisance has been maintained which results in personal injury or death; or
- (5) where willful and malicious negligence exists.

The school board can best protect itself and retain its immunity by the careful review and following of the state

statutes, the declaration of a carefully drawn set of rules and regulations, and the instituting of a program of update and review. These practices along with effective counseling and communication on the part of school administrators should provide maximum protection from claims of liability.

Be Conscious of Liability

In summary, tort liability in public school education is a topic that all teachers, school administrators, and school boards should be conscious of. There are several areas which possibly could make the teacher vulnerable to claims of professional liability. This article only attempted to identify and discuss a few areas of vulnerability. Other areas such as improper administration of discipline, lack of academic competence on the part of a student who has suc-

cessfully completed a program, and other moral and ethical issues have also become common claims of professional liability in education. All pre-service teacher education programs in agriculture should provide adequate instruction to prospective teachers on all aspects of professional liability and the consequences associated with it. School administrators should also provide intensive inservice training on the topic of professional liability to insure that all teachers are aware of and understand its implications. Also all teachers should take advantage of professional liability insurance policies which are offered through various professional teacher organizations. These policies are usually reasonable in cost and offer good coverage.

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A Disease Called Litigation

Lawsuits against school personnel and school districts have been increasing at an exponential rate in recent years. In fact they are so prevalent and have spread so fast throughout nearly every facet of our schools that one might say litigation has reached epidemic proportions.

No area of the school is immune, but some are more susceptible than others. Vocational agriculture has become one of the prime targets for liability suits. When an injury occurs (or it is alleged that one has occurred) the usual charge is that a tort or civil wrong has been committed.

Injuries can and do occur on field trips, at judging contests, in the shop, and even in the classroom. The individual who has the dubious distinction of being listed first on the suit is usually the class instructor, followed in close order by the principal, the superintendent, and the school board. Today, suits of 100 to 200 thousand dollars are common, and million dollar suits are not uncommon! Your Master Charge and Visa credit cards will not go far toward paying off on such judgements!

Will Insurance Help?

No thinking person would drive his/her car anywhere unless covered by liability insurance. The same is true of a teacher today — you must have insurance coverage to protect from suits due to possible negligence or lack of proper or adequate supervision. Many school districts carry insurance policies which will cover all their teachers. Check it out! If you're not covered and you are a teacher in a state where you do not have immunity from suit for torts, see your insurance agent or join a professional organization which offers a group liability policy. Even though you win the suit brought against you, attorney fees alone can mount up to several thousand dollars.

Will Written Policies and Procedures Help?

Fortunately, courts do not ask you to guarantee the safety of your students; but they certainly do hold you to the By Maurice Wear and Jim Durkee

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standard of liability for foreseeable risks — those whose consequences a person of "ordinary prudence" would reasonably expect might occur. (By the way, the judge or the jury, as the case may be, decides what a "person of ordinary prudence" is.) However, the courts do expect you to have written rules and procedures to help insure the safety of our students. In addition, you should inform them orally of all those rules and regulations. You just can't overdo it. Oh, one other thing — you must enforce those rules and regulations — posting them and discussing them are just not enough. In other words, you must provide adequate supervision.

What Is Adequate Supervision?

The answer to this question depends upon several factors, such as the age of the students and the nature of the activities in which students are engaged. In a tort case, in addition to the "reasonable prudent person" standard, three questions are asked. If the answer by the judge or jury is "yes" to all three, you have a problem, because you have been found to have committed a tort. In other words, three strikes and you are out. The questions or the essential elements of a tort are:

- (1) Was there a duty of care owed? Teachers are responsible for the safety and well-being of the students in their classes or under their supervision, so the answer here is nearly always "yes" when the injury occurs in the shop, in the classroom, on field trips, or at judging contests.
- (2) Was there a breach of that duty? If you leave (Continued on page 12)

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A Disease Called Litigation

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students alone, unsupervised, even for a few minutes, this may be looked upon as a "breach of duty." If you fail to enforce safety regulations, or permit unsafe conditions to exist in the shop, this may be enough evidence to warrant a

(3) Was the breach of duty the proximate cause of the injury? In other words, if the instructor had not breached his or her duty, would the injury still have occurred. If the "cause-effect" relationship can be established to the satisfaction of the judge and/or jury, then a "yes" will be forthcoming on this third question.

This final "yes" makes you a loser, and you or your insurance company are going to pay. The only remaining question is "how much?"

How About Unsafe Conditions?

You, of course, are the on-site administrator and the one who is directly responsible for the equipment, the condition of that equipment, and the overall safety of the area. Your immediate supervisor should be notified of conditions that are hazardous to students so that they can be remedied. It may be desirable in some cases to formalize the request and put it in writing so there will be a record. In the meantime, you still have the responsibility of protecting students from injury. In case of litigation, you will be able to show that you attempted to get the unsafe conditions corrected.

Yes, there is a "disease called litigation" that has spread across the public school sector. There are not quick cures. but there are some "non-prescription medicines" that will help protect you from contacting the disease or, if you get it, will at least minimize its effects. These, of course are (1) adequate insurance coverage, (2) written policies and procedures, and (3) adequate supervision. But, if all else fails, try "good old common sense" — it can do wonders.

THEME

It's Your Fault!

When accidents occur, the immediate question is asked, "Who was at fault?" There is another basic question as to whether it was an accident or the event was caused by a controllable series of events. The investigations and hearings to follow will eventually determine who was negligent. The Law of Negligence is a branch of common law and consists of a set of rules for determining the legal liability of one person for injuries unintentionally caused to another through neglect of responsibility. Negligence consists of (a) a legal duty to use care, (b) failure to employ care, (c) failure to protect others from unnecessary risks. (d) failure to act as a reasonable and prudent person under the circumstances involved, and (e) to permit a third person to engage in an activity or to use an object which might cause injury to another person. A civil jury usually determines who will be officially designated as negligent. Thus, there is not a single set of rules to follow to determine if a person is negligent. Each situation is different and must be evaluated to determine the designation of negligence.

A sound basic rule to follow is that each person is responsible for his/her own negligence. If determined negligent you will be legally responsible. There may be assistance from your employer, insurance policies, and other legal systems but let's disregard them for the purpose of this article.

What Can I Do?

As a vocational agriculture instructor, you should be concerned about your daily activities which would provide the proof that you are a prudent person and that you should not be classified as negligent if an accident occurs.

Always Be In The Instructional Area Being in the instruction area at all times may not prevent By W. Forrest Bear

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an accident, but it would be more difficult to prove that your absence is an advantage for accident prevention. Sometimes you will have to leave the instructional area and when this happens a qualified person should be given supervision responsibility. Now the question arises as to whether a student, substitute teacher, or another faculty member is qualified to handle the supervision of your students. The length of departure time is critical. Will you be gone five minutes to the restroom or two days on a field trip? Obviously, the school does not hire a substitute teacher for a trip to the restroom, therefore, assign the responsibility to the student with the most maturity and one who commands the respect from his/her peers. Remember, if an accident does occur in your absence, you selected the person left in charge and you will still be held responsible.

Permit Only Qualified Students to Use the Facilities

The definition of "qualified" is questioned when an accident has occurred, but there are steps you can follow in the instructional program. Study each power tool and/or piece of laboratory equipment. With most tools, you're concerned about the safety of the student but with others,

the desire is to extend the useful life of the tool. Have proof of a reading assignment in a manual, a written assignment. teacher demonstrations, student completion of a required activity, and the successful completion of a safety examination. Have an organized system for recording the completion of the safety instructional program. Only students completing the training are to be permitted to use the tools. Each student should receive a Tool Use Proficiency Card. This card may be honored in other laboratory classes in the school system.

	Drill Press Table Saw	
Radial Arm Saw	Name	Hack Saw
Band Saw	School	Metal Lathe
	Date	
Impact Tool	Arc Welder	Oxy-Act Outfit

Tool Use Proficiency Card.

This rule may not appear fair to the school's play director, student council advisor, a coach, and others, but remember — you will initially be held responsible for any accidents.

Restrict students with mental and physical incapacity or abnormality from using power tools and equipment unless the machine has been adapted to compensate for their problems or extra instructional staff is provided. You may not be popular with the parents, guardians, or administrators but remember — you will be held responsible.

Purchase and Use Only Quality Tools and Equipment

When purchasing tools and equipment, buy quality merchandise which will do the intended task and have the necessary safety features. Always keep the tools in adjustment and properly serviced. Do not bring the equipment from an outside source for students to use without prior approval from the board of education. The tool may be adequate and safe, but if an accident occurs the school administrators could say the tool was unsafe regardless of its physical condition. Had the administration wanted you to have this tool, they would have purchased it, but since it's unsafe, that accounts for its absence on the inventory list. If the school provides tools and the safety guards are broken or other factors make the tool unsafe, do not let students use them. Request and/or demand repair of all unsafe tools and, if not repaired, restrict student use. In some schools, your responsibility will include maintenance of all tools and equipment plus the instructional program on tool use. Remember, if tools are being used and an accident occurs — you will be held responsible.

Know How to Use the Tool

Be prepared to demonstrate the safe use of all tools and equipment. A task may be performed that creates unreasonable risk to the student or sets in motion a reaction which is also dangerous. There's no doubt about your responsibility in this situation.

Provide Supervision

Regardless of the age and maturity of the student, if you are the instructor you are in charge. You must anticipate problems, actions, reactions, and give adequate warning. This is called supervision. You may have to repeat the message twice or many times. You may be unpopular when safety practices are enforced. You have been employed to perform this task and if not done, you may be popular by some, but you will be held responsible by all.

Personal Protective Equipment

Industrial quality eyewear, respirators, leather gloves, aprons, shop coats, coveralls, hard hats, and steel-toed shoes are examples of personal protective equipment required in classes. These are required for the safety of the student and are approved safety items used by workers in the industry. Their use has not been intended to harass the students. In 1967, the State of Minnesota passed an Eve Safety Law requiring industrial quality eyewear to be worn upon entering a shop or laboratory. Most states have similar industrial laws which are also enforced in the school system. An instructor who does not enforce safety rules causes unnecessary strain on other faculty members. Some instructors will ignore these laws and their enforcement in hopes of buying favors, friendship and good conduct from certain students. The odds are against the instructor's success ratio on this gamble. Those students who will take advantage of a teacher under these conditions probably have parents who will sue with the least excuse and the greatest intensity. Too frequently the thought, "accidents happen to someone else," causes nonenforcement of rules and regulations.

Regardless of the laboratory instructor's philosophy and desire for a safety program, if he or she has a school administration that doesn't want safety, doesn't talk safety, and doesn't provide support for the staff, there will not be an effective safety program. Whether you do or do not have administrative support for a safety program remember you will be the first one held responsible.

Lip Service Safety Programs

Lip-service safety programs operated by some school administrators can best be explained by a review for the eye wear safety programs. Flexible goggles cost \$2 to \$3, and visitor glasses which are plastic and nonadjustable are somewhat higher in price. The industrial quality eye wear cost is in the \$5 and \$6 range. Frequently, the purchase decision is based on price rather than the eye wear effectiveness, student acceptance, or the instructor's ease for enforcement of the regulation. The attitude of some administrators has been, "I purchased them, they meet the standards, and you enforce their use because it's your problem now." Providing enough eye wear for the largest class and sharing with students in other classes is another way to squeeze the budget. This also causes problems because it's always the other students or class who have broken or misplaced the eye wear. There's nothing like a good lawsuit to help eliminate lip-service safety programs.

Administrator's Responsibility

For years, school administrators and boards of educa-

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tion have been somewhat sheltered and immune from lawsuits. In recent years, this has changed and there have been lawsuits directed at both the instructor and his or her administrative supervisor. The administrator has also been ruled as negligent and responsible. Now, there is more response from some administrators to help in promoting safety. It's too bad accidents that caused injuries and suffering had to occur before they could see the need for supporting safety in the school system.

What's Right, Not Who's Right

Better safety programs should be developed and pro-

moted because we don't want undue injury to people. There is much less physical pain and mental anguish if the accident never happens. The expense and effort of ACCIDENT PREVENTION are minimal compared to having to decide who's right.

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THEME

Teachers Can Protect Themselves Against Tort and Liability

Many teachers have heard the word tort and tort liability, and they express the notion simply as "liability." Yet teachers often do not know what tort really involves and harbor a fear of massive law suits over which the teacher has little control, nor resources, for prevention. These notions are not well founded. The teacher does, in fact, have a great deal of control over the threat of liability suits and has good resources for preventing them.

Tort as defined in the book Law of Torts by William L. Prosser, is "a civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages." This says nothing more than a tort is one kind of legal wrong, for which the law will give a particular remedy. There are remedies other than action for damages which we will not mention since they are less likely to fit our situations in vocational agriculture programs. The basis for legal precedence in torts has been established by social norms as to what is unacceptable or unreasonable conduct. The common thread woven into all torts is the idea of unreasonable interference with the interest of others. This can occur through the act of omission as well as commission.

We happen to be in one of the subject areas where the opportunity for potential liabilities is high. We share this distinction with other shop instructors, as well as laboratory science and physical education instructors. Teacher versus pupil, pupil versus teacher, teacher versus teacher, pupil versus pupil, and other combinations surface as court actions growing out of school settings. Specifically the grounds for action in tort include: 1) intentional interference, 2) strict liability, 3) negligence and 4) defamation.

Intentional Interference

Intentional interference and negligence are those grounds for legal action which surface most frequently in

Mary Co.



By Elmer L. Cooper and Steen G. Westerberg

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educational settings. Intentional interference with an individual may be grounds for an action tort. This involves the intention of an individual to interfere with or invade the rights of another. Areas of intentional interference include:

- a) assault an act or attempt, meaningly planned or not, to do some physical injury, but does not require physical contact,
- b) battery physical contact with the intent to do harm, and
- c) interference with peace of mind that is to inflict mental and personal anguish.

The elements of both assault and battery should be understood as they apply to intentional interference.

Battery is simply defined as physical contact with the intention to do harm. A person is protected from intentional and unpermitted contacts. This protection extends to any

part of the body or to anything which is attached to it and practically identified with it. Thus contact with a person's clothing, an object held in his/her hand, the chair in which one sits, or the horse on which he/she rides may be battery. It is not important that contact be brought about with a direct application of force, such as a blow, but it is enough that the defendant sets a force in motion which ultimately produces the result. In order to be liable for battery, it must be shown that the defendant had done some positive or affirmative act. The action for battery is not the hostile intent of the defendant, but rather the absence of consent to the contact on the part of the plaintiff (the person bringing suit).

Assault, on the other hand, can be differentiated from battery by the fact that actual contact is not necessary, just the apprehension of a harmful or offensive contact with the person. Many times assault and battery are used together. In many states you may touch when there is a required duty. For example, the duty to stop fights (with reasonable force) or guide a disruptive student to the office (being careful not to use excessive force) may make touching an act permitted under the law. This fact, however, would not necessarily shield a teacher from the possibility of being charged with assault and/or battery. Many states have had a rapid rise in assault charges in recent years. Recent Supreme Court findings and consumer advocates have opened legal paths to remove the shield of professional protection which governments and their representatives once enjoyed. The teacher now becomes more visible and a more personal target for any dissatisfied parent or student.

Strict Liability

Strict liability is a concept devised by the courts to place liability for an injury on the person best able to bear the burden. It is generally used only if fault for an injury cannot be traced to a specific individual. While fault is not a prerequisite to a liability in these cases, the courts have generally required that the defendant has caused some unusual hazard to exist.

Negligence

Negligence is the third ground for action in tort. It is defined as conduct falling below an established standard which results in injury to another person. Four elements establish the conditions for negligence.

Duty. The teacher who does not protect his or her students from unreasonable risks may be negligent. For example, if a student's sweater gets caught in a lathe, negligence may be found because there was a failure to provide aprons.

Failure. The teacher who does not exercise an appropriate standard of care may be negligent. For example, an appropriate standard of care would be for the teacher to provide proper and correct instruction. However, written instruction is not enough. There must be instruction by word and action. Some cases to illustrate are are follows:

New York Case: A gym teacher was held liable in a soccer mishap. The court cited two factors: (1) reasonable care in demonstrating includes an explanation of safety precautions, and (2) teacher admission that he had not instructed the students about what to do when two players

meet the ball at the same time. One must not only instruct in how to use, but also explain hazards and how to avoid them.

Maryland Case: A student who was injured on a trampoline didn't follow instructions. The Court ruled that charges were "second guesses" about instructional techniques. The cause was the failure of the student to follow instructions. No liability was found.

Foreseeability is an important concept. One is expected to have the neccessary expertise to foresee possible harm. No liability exists if proven it was an accident. Webster defines an accident as, "an event occuring by chance or arising from unknown causes."

California Case: Students were outside for a safety lecture. A student was playing with a knife. The knife struck a drawing board, deflected, and put out another student's eye. The Court indicated that there was sufficient evidence found from which a jury might infer that the teacher knew or should have known that the knife throwing was going on and that he was inattentive and careless in failing to observe and stop it before the injury occurred.

The teacher's conduct must be the proximate or legal cause. For example, a teacher is expected to provide proper personal attention and supervision. If the teacher leaves the room, the mere absence is not a basis for liability.

Maryland Case: The teacher left the room and a student was injured during that period of time. Initially the teacher lost the case, but on appeal, the court held that the teacher's absence was not the cause of the injury.

The test is whether the presence of the teacher in the room would have been likely to prevent the injury. The more dangerous the situation, the more careful the supervision must be. Consider the dangers caused by long hair. In Minnesota in 1969, the courts said the teacher could require hair nets or hair tied back if activity the student was engaged in was hazardous to the long-haired student.

The common test for negligence appears to be, "Did the teacher act in a more careless manner than a reasonable and prudent person would under the same circumstances?"

Defamation

Defamation is the scandalous communication to others which diminishes the good name or reputation of a person. Defamation may occur by libel, which is defamation by written communication, or by slander, which is defamation by word of mouth.

In considering the legal aspects of the job, vocational agriculture teachers should become familiar with the implications concerning all teaching responsibilities, whether in the shop, greenhouse, or classroom, or on the school farm, student's farms, or field trips. Each situation should be studied and determinations should be made, first how to avoid legal action, and second, what protection and assistance are available if you are summoned or sued.

Protecting Yourself

Much can be done to protect yourself, fellow professionals, and students from legal actions growing out of your job as a teacher of vocational agriculture. The following are suggested for your consideration:

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Teachers Can Protect Themselves Against Tort and Liability

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- 1. Keep a record of when rules and regulations were announced or distributed.
- 2. Record all equipment and machine maintenance that has been performed.
- 3. Keep all equipment and machines in a safe, operable condition.
- 4. Require safety tests on all machines by each student.
- 5. Allow no machines to be operated without authority.
- 6. Properly instruct students in all safety procedures.
- 7. Always demonstrate correct methods and procedures before allowing students to utilize facilities.
- 8. Practice safe procedures at all times and insist that all others in the room do the same.
- 9. Never leave students alone in the room with operable equipment.

What should one do when an injury occurs? From a personal liability standpoint, the bare minimum requires that a person should:

- 1. Immediately report any pupil injury to the proper administrative channels.
- 2. Never volunteer to pay medical or property damage

3. Never relate the incident to any person representing the student or the student's parents without first seeking the advice of counsel.

Summary: Be Reasonable and Prudent

If a teacher acts in a reasonable and prudent manner. there is a good chance of not being found guilty or liable should tort action arise. Teachers should be familiar with the tort liability laws in the state where they teach. Further, teachers should have liability insurance coverage in case it may be needed. By safeguarding the welfare of their students, teachers are safeguarding their personal lives against the ravages of tort liability.

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In 1979, the author mailed 53 letters to selected state departments of education and teacher institutions with agricultural education. Of the 27 replies, 20 indicated that

they had no information or research available to their teachers on tort liability. A whopping 74 percent of the respondents that had no information available!

Are you concerned about your legal responsibilities in

the event of an injury-causing accident that could occur in

a laboratory? All teachers are concerned about injury to

students and their liability for such injury.

Tort liability is a problem that concerns all teachers. Tort action is the effort by the plaintiff (student and/or his or her parents) to recover damages for injury that allegedly occurred as the result of some action of the defendant. The plaintiff usually attempts to prove that the defendant had a duty and responsibility to protect him or her from injury. Then the plaintiff attempts to prove negligence in the carrying out of this duty. As a defense, the defendant usually attempts to show that the plaintiff had, in fact, assumed the risk of the activity or was contributorily negligent. Either case may absolve the defendant of liability.

This is over simplification of a very complex problem that faces each of us daily. However, it gives a basis from which to make some suggestions about how to protect our students and ourselves, as follows:

- 1. Teach Safety. This should be done not only as a unit once or twice a year, but daily. Use the best teaching available. Be sure also to set an example of safety.
- 2. Give a safety test over each area covered. Follow-up by giving students correct answers and have them copy them onto their test and then keep these as proof that the student was taught about safety.
- 3. Maintain your laboratory and equipment. Be sure that the laboratory is a safe place to work. Dangerous areas should be so designated, all guards and protective equipment should be in place and used. All equipment should be approved and in good operating condition.
- 4. Practice good housekeeping. Keep the laboratory
- 5. Practice good organization. Good organization and management in the laboratory can help you avoid many
- 6. Allow no horseplay. Many accidents occur directly or indirectly due to the lack of discipline.
- 7. Make sure the laboratory is properly equipped. It should include the correct safety equipment such as fire extinguishers, first-aid kits, and emergency shut-off switches.
- 8. Maintain membership in your professional organizations. You won't stand alone.

By Rodney W. Tulloch

Could You Be Found Guilty?

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- 9. Carry liability insurance. The protection and peace of mind is worth the cost of the premium.
- 10. During your professional improvement take a course in school law. This will help you become more familiar with the problem and the workings of the legal
- 11. Study the problem of liability. There are several good books and articles worthy of reading which will serve to enlighten you upon your position.
- 12. If it should happen to you, don't panic. Secure good legal assistance. And if you have done your job as a competent, well trained teacher, you will have nothing to fear. The courts will be just.



Don't let this happen to you!

BOOK REVIEW

When You Preside, 5th edition, by various leader responsibilities. A good how to invite and introduce speakers; John D. Lawson, Danville, Illinois: The Interstate, 1980, 182 pp., \$8.95.

The book is divided into three major parts. Part one deals with the general topic entitled "The People." Included in this section are discussions about people in groups, various and respective leadership styles that operate within a group, and concepts which begin to build a case for understanding one another. This section sets the stage for the roles that people play. Considerable detailed information on dynamics of group action was gleaned from the book entitled "Dynamics of Group Actions" written by Dr. D.M. Hall. This helps the reader begin to understand the various roles that people play as they work within a group. The section on leadership styles is short but does a good job of outlining the various types of leadership roles including the dictatorship, the benevolent leader, the unpredictable leader, the responsible, orderly leader and the democratic leader.

Part two of the book is entitled "The

people in getting acquainted with each other and learning to work together. This section also addresses the awareness, anticipation and emotional factors influencing group motivation. Details in encouraging people and maintaining their interest are clearly illustrated.

Included in the Techniques section are outlines of how to utilize the problem solving method. Mentioned are identifying the various ways to identify a problem, who might bring that problem forward, and how the leader might assist a group through the thinking process of problem solving. Additional activities and methods discussed include: the buzz group, brainstorming sessions, role playing and "special things" kinds of activities.

The third section entitled "Formalities" presents the key activities needed to make a meeting operate. Several methods of presenting information to a group — panel discussions, symposiums, and forums — are discussed. Technique." This section deals with the Other areas examined in the book are:

leader develops agendas and assists role and functions of committees within the organization; and the practical application of how to activate within a group through nominations. elections, and team building. It also has a brief section on parliamentary procedure and developing formal leadership responsibilities.

The author has had a rich and varied background and experience which makes him uniquely qualified to develop this kind of book. The book, by its own preface, is designed for people who are thrust into the leadership role. The preface of the book states, "This book is written for my neighbor across the street and for all those thousands of people like her in this country of ours: the men and women who are willing to step forward and take the lead in community, civic and business affairs." That particular lead sentence in the preface does an excellent job of identifying the audience for which this text book is directed.

Thomas R. Stitt and Mike Murray Southern Illinois University/ Carbondale, Illinois 62901

Field Trip Liability

A well planned field trip is an excellent technique for adding reality to vocational agriculture instruction. When used to reinforce good teaching, the field trip provides first hand observation while developing positive student attitudes. Hundreds of times each year students board busses, or all too often pickups, for a trip to the local agribusiness or farming operation. Should the unforeseen happen and an accident occur in which a student is injured, who is responsible? What liability risks do teachers encounter while involved in a field trip?

The Responsibility

In recent years our litigious society has placed the responsibility for the student primarily on the teacher. In most cases the teacher stands in *loco parentis* in regard to his or her students, that is, being in place of the parents. This term involves more than just educating the student. The safety, morals, and health of each student is also a part of the teacher's responsibility. A teacher who does not provide reasonable care and supervision during a field trip may be held liable should the student sustain an injury.

Since the field trip is within the scope of the teacher's job, the governing body or school may share the responsibility for the student. This shared responsibility will be true unless barred by the doctrine of sovereign immunity. This doctrine prohibits claims against the state of which the school district is a part. If the doctrine of sovereign immunity is not waived, the teacher may in turn stand alone as the sole defendant.

The Risks

Constant supervision of students while on a field trip is imperative. The law says that the degree and care to be exercised by a teacher in supervising students is that degree of care which a person of ordinary prudence, charged with comparable duties, would excercise under the same circumstances.

An example of student supervision or nonsupervision may be related to a field trip to a local tractor and implement dealer. While the class is touring the dealership, three of the somewhat curious students venture into the shop area. The teacher is absorbed in a discussion with the dealer and does not miss them until a crash is heard in the shop. It seems that one student had attempted to start a combine and injured the other students in the process.

If such an incident occurred, the teacher could be liable for injuries to the students and possibly for damages to the dealer's property. Whether or not the teacher will be held liable for injuries sustained by his or her students will depend upon the "duty of care" that was owed the students. The issue of the existence of "duty owed" is normally one of law for the courts rather than a jury to decide. It is generally agreed that if the event that caused the injury was not foreseeable, then no liability risk exists. Even if the teacher is found liable for the combine accident, damages





By R. Dale Perritt and Charles T. Yoste

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awarded may be reduced or eliminated based on contributory negligence on the part of the student. A teacher will not be held liable in most jurisdictions where even the highest degree of supervision would not have prevented the injury.

The Prevention

The old adage "an ounce of prevention is worth a pound of cure" certainly applies in the area of teacher liability. Preventing situations which promote accidents may be best accomplished through the use of common sense. Allowing students while on a field trip to do things which are inherently and foreseeably dangerous is just looking for trouble. Supervision is the key.

Standard student release forms have long been used to serve as a buffer against litigation. These forms generally state that the student will not seek recourse should an accident occur while on a school sponsored trip. Do not think that these forms will relieve you as a teacher from liability. Some court jurisdictions would not recognize these documents as being valid since a minor cannot waive his or her rights without court approval.

To be safe, make sure you are knowledgeable of your school's policy concerning field trips. Find out whether or not they will stand behind you in the event a lawsuit does occur. If in doubt, ask the school's attorney for guidance.

For an extra measure of protection, invest a few dollars each year in liability insurance. Many professional organizations have this service available through membership. A minimum of \$300,000 is ordinarily considered acceptable.

In Conclusion

Field trips are a definite asset in vocational agriculture instruction. Continue to use them effectively even though the red tape of getting a bus and scheduling classes is somewhat annoying. Liability is a fact of life and may be to our advantage if we use it to provide better supervision and instruction for our students. Find out what the rules, regulations, and laws are and document the fact that you are following them. Educate your students to think safety through your example of prudent supervision.

School Laboratory Liability

Is a teacher liable for accidents occurring to students under his/her supervision? The usual answer to this question is "yes," especially if the teacher was negligent. Proving this negligence is not left to the students, the parents or the principal, but to the processes of a court of law. Since no one wants to be involved in a lawsuit, the first responsibility of a teacher is to do all that is possible to prevent accidents. If an accident does happen, be sure that teacher negligence is not ruled as the proximate cause of the accident. Even though proof of negligence is necessary before a teacher can be held liable for an accident, it is not a prerequisite before a suit can be filed in court. Since lawsuits involve time, emotional strain, and attorney fees, even if negligence is not proven, it behooves a teacher to do all within reason to prevent being sued. This may mean that the teacher uses effective procedures in teaching and practicing safety and in creating and maintaining a safe environment in and around school laboratories.

At one time, schools and teachers enjoyed immunity against lawsuits. In former years, teachers did not receive enough money to pay damages and, consequently, were not named as defendants in many lawsuits. Teachers were often looked upon as in *loco parentis* (in place of parents) which gave them some immunity against lawsuits. Schools and school boards were considered an entity of the people and could not be sued because a person in reality cannot sue himself or herself.

Many of these attitudes and opinions have been reversed in the courts. In 1959, the Illinois Supreme Court overthrew the immunity doctrine of schools in a lawsuit in which a child was hurt on a school bus. The lower courts ruled in favor of the defendants, but the decision was reversed in the higher court in favor of the plaintiff, the child. It was emphasized in the case that the traditional concept of governmental immunity could not be justified on the basis that "a king can do no wrong." The defense contended that governmental immunity was necessary to protect public funds and public property, but the court contended that education constitutes one of the biggest businesses in the country, and that individuals should not be required to suffer to protect a large business. It was also reasoned that the abolition of immunity would tend to decrease accidents in that schools and boards of education would be more safety conscious.

Other states have followed Illinois in this decision, but there are a few states where the immunity doctrine is supported. In some states the doctrine has been modified, often setting the limit of liability to the amount of stipulated insurance coverage.

There have been gradual changes in attitudes and opinions that have tended to reverse the immunity doctrine theory. Teachers are now paid better. They are no longer revered as being in *loco parentis*, and are expected to be more careful than parents because of their training in student supervision and control. Students under 18 years of



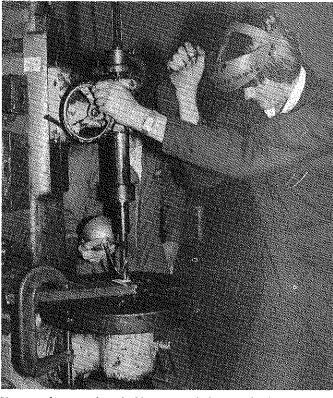
By John D. Todd

Editor's Note: Dr. Todd is Associate Professor and Chairman, Agricultural Education, The University of Tennessee, Knoxville, Tennessee 37916.

age are minors and cannot have their rights removed by adults, but at the same time they are given more individual right as persons.

It is a universal fact that teachers are liable for accidents in school laboratories if their negligence can be proven when an accident occurs. School boards and administrators would share some of the responsibilities since they authorize the purchasing of equipment, including safety devices, provide facilities, elect and place teaching personnel; and assign students to classes. Much of the responsibility would rest on the teacher who is the person solely

(Continued on page 20)



Vo-ag students use face shields, proper clothing, and a large clamp to hold material in place as they drill a hole in a flat steel bar at Horace Maynard High School, Maynardville, Tennessee. Note how the bar is positioned on the press so that if it breaks loose it will strike the column instead of flying around and striking the operator or assistant.

School Laboratory Liability

(Continued from Page 19)

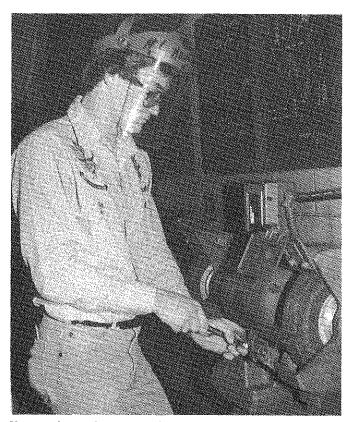
responsible for teaching, maintaining, and operating the equipment, and controlling and supervising students.

Teachers will not always be found negligent if an accident occurs. Numerous cases are on record where teachers, school boards, and administrators have been sued for damages resulting from an accident. In some of these cases teachers have been found negligent; in others, negligence was not proven. The key is whether or not negligence can be proven.

The following cases are examples of suits which have been filed involving accidents in a school laboratory.

Case One: Power Saw

A student using a power saw to cut a piece of scrap lumber without the use of a "cudgel" suffered the loss of



Vo-ag student Rodney Norris adjusts the tool rest and spark breaker on the grinder at Horace Maynard High School, Maynardville, Tennessee.

two fingers on his right hand. The school authorities testified that the plaintiff and all members of the class had been thoroughly instructed regarding the use of the saw and had been told to use a "cudgel" to push small pieces of lumber across the saw. The plaintiff denied that he had been told to use a "cudgel", and his testimony was supported by other members of the class. The jury awarded a verdict against the teacher.

Case Two: Iointer

A student using a jointer, which was guarded, attempted to joint a round piece of wood five inches in diameter and three inches long. The material slipped and the student lost two fingers. Several members of the class had been warned not to joint short pieces of wood without using a "cudgel" or a shoe to hold the pieces against the blade. Also a warning sign was posted on the wall dealing with using the jointer. The jury returned a verdict in favor of the defendant, the teacher.

Case Three: Disconnected Machine

Three boys were cleaning a machine that had been disconnected from an electrical circuit. They were removing rust and dirt from a set of gears. One of the boys manually turned the machine and caused one finger to be cut off the hand of another boy. The teacher was sued, but the verdict was returned in his favor. The court ruled that an intervening agent, namely the second boy, was the proximate cause of the accident. It was found that the teacher had given full instructions for cleaning the machine, including safety, and had disconnected the electrical service to the machine before assigning students to clean it.

Know Liability

Teachers can be held liable for accidents that occur to students under their supervision. This is a matter of judgement and is dependent upon the degree of proven negligence that must be determined in a court of law. Teachers who know their responsibilities for safeguarding their students from accidents and prudently follow the expected tasks of teaching and supervising their students probably never will be found negligent if an accident were

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BOOK REVIEW

CAREERS IN CONSERVATION, by Ada and book and readers hoping to give the Frank Graham, New York: Charles reader a better insight into some con-Scribner and Sons, 1980, 166 pages, servation career fields and what is \$9.95.

The context of this book deals with a careers. personal approach to careers in conser-

necessary to enter into conservation

The book definitely reflects the opinvation. The authors have attempted to ions of the authors. This distorts somedevelop an association between what the actual thrust of the book various characters portrayed in the which was to explore various conser-

vation careers.

I feel the book should not be used as a reference or as a text, but should be recommended for casual reading by high school students who are interested in careers in conservation.

Robert Daniels West Muskingum High School Zanesville, Ohio

ARTICIE

Implications for Vo-Ag?

Soil Testing is Increasing

High interest rates and increased fertilizer costs are causing North American farmers to turn to soil testing more than ever as a way to combat inflated production expenses by forcing them to look harder at long-range fertilizer needs.

USDA agronomist, Harold Owens, takes an annual census of soil testing and plant analysis by both institutional and commercial labs. He found in 1979, that farmers, fertilizer dealers and others had invested in 3,034,000 soil tests — an increase of almost ten percent over 1978.

Current figures are not yet available, but the word from several states and Canada indicate North American farmers are using soil tests as a possible way out of the cost-price squeeze.

"High prices of fertilizer are causing farmers to hone their fertility programs," says Jack Baird, Extension soil specialist at North Carolina State University. "Many farmers are even looking over their old soil test results in order to better determine their future fertility needs.'

North Carolina's Department of Agriculture tests soil samples free for farmers and non-farmers. Baird explains. Last year, he adds, a "whopping" 167,000 tests were completed by the department.

Free soil testing is also being greeted with enthusiasm in other areas of North America. Tom Bates, director of the Ontario soil testing laboratory at Guelph, Canada, savs farmers who took advantage of free service and sent in a record 8,000 samples during January alone.

Alan Bandel, University of Maryland soilsman, says they have been inundated with soil tests in Maryland as farmers try to cut costs. There's much more commercial lab work being done now in the state, and fertilizer dealers are tending to use both commercial labs and university services to get the most accurate results.

By Paul Castner

Editor's Note: Mr. Castner is with Sperry-New Holland, New Holland, Pennsylvania 17557.

"We're suggesting both top layer and plow layer samples for no-till fields," Bandel says. "No-till nitrogen in the top layer can knock surface pH and some of the herbicides we use."

Ohio State University soil scientist. E.O. McClean, calls the soil test program used by universities a fertilizer "sufficiency" program. This, he explains, is aimed at getting a crop yield and a crop dollar that will more than pay for the last half-ton of fertilizer applied to the soil.

This concept seems to work best on soils of generally high, well-balanced fertility, but deficient in one element such as P,K, or magnesium. However, it does not apply to all soil conditions, McLean adds.

Most commercial soil testing labs use what is known as the BCSR (basic cation saturation ratio) concept. This is an "idealized relationship" of the soil's nutrient cations (positive ions). An ion, McLean points out, is an electrically charged atom or group of

A combination of the BCSR commercial lab concept and the University's "sufficiency" programs seem to work best as a basis for soil test interpretations in most conditions. He notes that grower use of commercial lab soil testing came along fast in the 1960's when fertilizer was relatively inexpen-

Illinois farmers do more soil testing than farmers in any other state, reports Ted Peck, Illinois Extension agronomist. Most of these tests are performed by commercial labs.

One reason, he says, is the commercial labs are doing a better job than before and are working closer with university scientists these days.

Peck feels commercial labs will play a larger role in soil testing as a service to farmers, and at least two states, Nebraska and Minnesota, have legislation licensing and monitoring, to some extent, state soil-test lab operations. Laboratory soil testing has not always been met with widespread acceptance. In the past, lime and fertilizer recommendations for high yield goals under similar soil and farm situations have sometimes varied as much as \$30 an acre or more between one lab and another, according to the Sperry New Holland report.

This variance in fertilizer recommendations caused a credibility gap among farmers and others about soil testing, many soil scientists concede. University of Nebraska agronomist Delno Knudsen spoke at a Missouri meeting of plant and soil scientists and put the credibility gap into sharp focus.

"Although many farmers, fertilizer dealers and others recognize the value (and limitations) of soil testing as the most practical means of providing base for an efficient and economical fertilizer program, others have written it off as a gimmick, hoax or an inept program," Knudsen claimed. He said the degree of acceptance of soil tests varies from locale to locale and the credibility gap between soil testers and farmers must be a matter of continued and common concern to the soil testing and plant analysis industry.

Since Knudsen presented his case, considerable progress has been made in closing the gap. However, comparisons indicate that some commercial labs still tend to recommend higher cost fertilizer programs than the universities to achieve the same goals.

The general consensus among soil scientists is that more good educational programs aimed at farmers, vocational agriculture teachers, county agents, and fertilizer dealers are needed to better acquaint them with the two different major testing programs.

Agriculture Mechanics Instruction Develops Important Skills

The learning of agriculture mechanics skills is more critical now than it has been in the past. Further, these skills will continue to increase in importance. This is true because of several reasons.

To enter a job will require more skills in agricultural mechanics. Many of the students at Valley Mills High School enter the job market directly out of high school, while others who have become interested in various phases of mechanics continue training in agricultural mechanics.

The students have different needs. We have moved from a rural oriented student to an urban oriented student. Many of the skills that were once taught on the farm must now be taught in the vo-ag program.

Instruction in agricultural mechanics helps students develop self confidence. As students move from skill to skill, they build confidence in their own ability.

Background

Valley Mills, with a population of 1,000, is located in Central Texas, 25 miles northwest of Waco. The enrollment in Vocational Agriculture is about 60 students. The two-teacher department provides instruction in Production Agriculture I, II, and III and Pre-Lab General Agricultural Mechanics.

What Skills Are Taught?

In Vo-Ag I, the students are taught many of the skills involved in farm construction. The most basic skill is the identification of hand tools. Along with this, the students are taught the proper use of each tool and the importance of proper conditioning. Other basic skills include hardware identification, measuring and marking, board feet calculations, selecting and applyBy Les Farmer

Editor's Note: Mr. Farmer is Vocational Agriculture Teacher at Valley Mills, Texas

ing paints, and tapping and threading.

The skills taught in Vo-Ag II include arc welding, oxyacetylene cutting and welding, the use of power tools, and concrete work. A lot of time is spent in welding because of the many opportunities in our surrounding area for welders. More of our students enter welding occupations than any other

During Vo-Ag III, electricity, small engines, tractor maintenance, farm plumbing, and the use of the farm level are taught. Each of these areas has many skills involved.

Since agricultural mechanics is only one area in the curriculum, students usually do not have time to enhance their skills by doing a lot of practical work. This is why the Pre-Lab General Agricultural Mechanics program is of such great benefit to the student. In our local situation, this course is available to senior students only. Although not mandatory, we have found that the student who is able to complete Vo-Ag I, II, and III before coming into Pre-Lab benefits the most.

In Pre-Lab, the students spend two consecutive hours each day applying skills already learned and developing new ones. This is accomplished through shop project work. Building trailers, livestock and farm equipment. as well as projects for the home are included. These involve the use of both wood and metal. The two-hour class also provides the opportunity to do community service projects with problems and solutions to be worked out. In the past these jobs have included concrete work, farm structure, welding, small engine repair, and farm elec-

Student Motivation

As any teacher will testify, motivation is a continuing process. One of the ways we motivate students is through job responsibility and keeping the whole class involved. It takes a lot of preparation and planning, but I see that each student has a job to do each day. Students lose enthusiasm quickly when nothing is expected of them.

Another motivation factor is recognition. Our chapter participates each year in the FFA skill contests. We involve all the members of a class and no one is left out. The team that goes to the district contest is selected a week before. When students become proficient in a skill, their confidence is built up and they want to become more efficient at other skills.

The FFA Farm Project Show at the Heart of Texas Fair gives students an opportunity to be recognized for their workmanship and ability to construct practical shop projects.

The Agricultural Mechanics Contest is a valuable motivational activity for Pre-Lab students. It is one of the most challenging of contests, not only to the student but also to the teacher.

We are fortunate to have a local newspaper editor who recognizes our students for their accomplishments with pictures and stories. This in itself is enough to motivate most youngsters.

The development of basic mechanical skills cannot be over emphasized, because on a major project, such as the overhaul of a small engine or the building of a livestock trailer, many skills are involved in accomplishing the end result. Students will find it easier to enter the work world at a higher salary if we take the time to train them. As teachers, this is our challenge.

Are you having trouble with FFA fund-raising activities? This is a universal problem. Almost every vo-ag instructor has it. I am no different. My

ideas are not original, necessarily, but

they work.

Whether you sell fruit, candy bars, Christmas wreaths, or Christmas cards, it makes no difference. You have to motivate the students to get them out for these fund-raising activities. The day of "selling for the organization" is over because students are exposed to money-making activities all over the school. Money-making activities (selling for a club) is not fun! Therefore, the vo-ag instructor must make it enjoyable for the student.

The following three things have worked for me:

1. First of all, I provide an incentive.

By Jim Mostad

Editor's Note: Mr. Mostad is Vocational Agriculture Instructor at Minot High School Central Campus, Minot, North Dakota 58706.

By an incentive I mean the student will also make some money by selling this particular product. In the Minot FFA Chapter, each student receives an incentive of 50c a case for each one sold, but they must sell 15 cases to receive any of this incentive.

- 2. A bonus is given to students after a certain number of items are sold. In the case of fruit, after 100 cases are sold, a \$15 bonus is awarded to the student. This is an addition to the incentive mentioned in 1, above.
- 3. To get the students excited and to make them know that you care about this activity, let them know you are

trying to sell this product, too. For instance, challenge them that you can sell X number in a certain amount of time, but be sure you can do it. This lets the students know you are interested, and it is fun because they are competing with you. As an example: I challenge each student by giving them a dollar if I don't sell 15 cases of fruit in one week. If I couldn't sell those 15 cases, I pay each FFA member a dollar. On the other hand, if a student does not sell 15 cases, he owes a dollar to the FFA Chapter.

These three ideas can be used in money-making activities to support your FFA Chapter. There are many others and many that you will have to think up to suit your own situations if you are going to have to be original and make selling activities fun and suc-

BOOK REVIEW

Greenhouse Management For Flower AND PLANT PRODUCTION, by Kennard S. Nelson, Danville, Illinois: The Interstate Publishers and Printers, Inc., 1980, 2nd edition, 250 pp., \$10.95.

All aspects of greenhouse management are included in this text. However, some topics are only briefly mentioned in a few short paragraphs. In those cases the author does in many cases recommend other sources for more indepth study. The chapters pertaining to the greenhouse manager, management of business procedures, management of the physical facilities, and management of marketing are concise, focusing only on the basic concepts with very little expansion of those concepts. The remaining three chapters, crop rotations and scheduling, management of the greenhouse soil environment, and management of the greenhouse air environment, contain somewhat more detail,

Many examples of forms and charts are given for use by the manager in scheduling crops. With the exception of these examples, the book contains very few charts and illustrations. There are no pictures of greenhouses or crops being grown.

Agriculture education has succeeded in reducing sex stereotyping in horticulture classes. However, this text is written with the sexist terms of "he" or "him" used exclusive when referring to the manager of a greenhouse.

The reading level appears to be too difficult for most high school students; therefore this text would be best used as supplementary reading at the postsecondary level.

> Donald E. Elson Virginia Polytechnic Institute and State University Blacksburg, Virginia

HANDBOOK OF LIVESTOCK EQUIPMENT, by Elwood M. Jurgensen. Danville, Illinois: The Interstate, 1979, Second Edition, 371 pp., \$10.50.

This handbook is a collection of plans for livestock equipment and facilities. The first chapter includes some general theory on buildings and facilities. Succeeding chapters include very little theory with general comments provided below or on the op-

posite page from the drawing. This arrangement of the plans leaves a lot of blank space within the book. No bills of material are provided and no addresses are included to allow quick ordering of complete plans from the original designer.

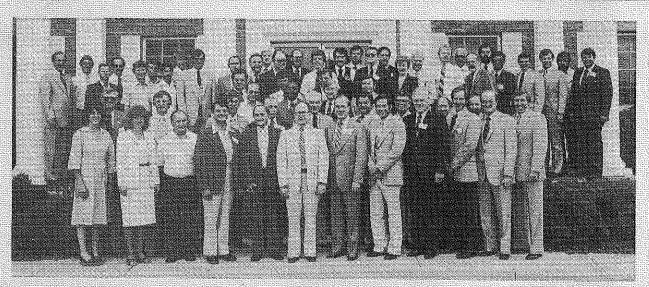
Many drawings are provided for the following: buildings and shelters; equipment for feeding, watering, loading and transporting livestock;

show and exhibition equipment; hand tools; equipment for horses, cattle, sheep and swine; fences; gates; chutes; and corrals.

The handbook would be a good general reference for teachers of high school students and livestock farmers.

> Jordan Hudson Virginia State University Petersburg, Virginia

Stories in Pictures



The 1981 Update Meeting was held at the National FFA Center in July. The above photograph shows participants as they assembled at the National FFA Center. (Photograph from Coleman Harris, National FFA Center).



Horticulture students at Hawkeye Institute of Technology in Waterloo, Iowa, are shown learning to install an irrigation system in the school's nursery laboratory. (Photograph from Virgil Christensen, Hawkeye Institute of Technology.)