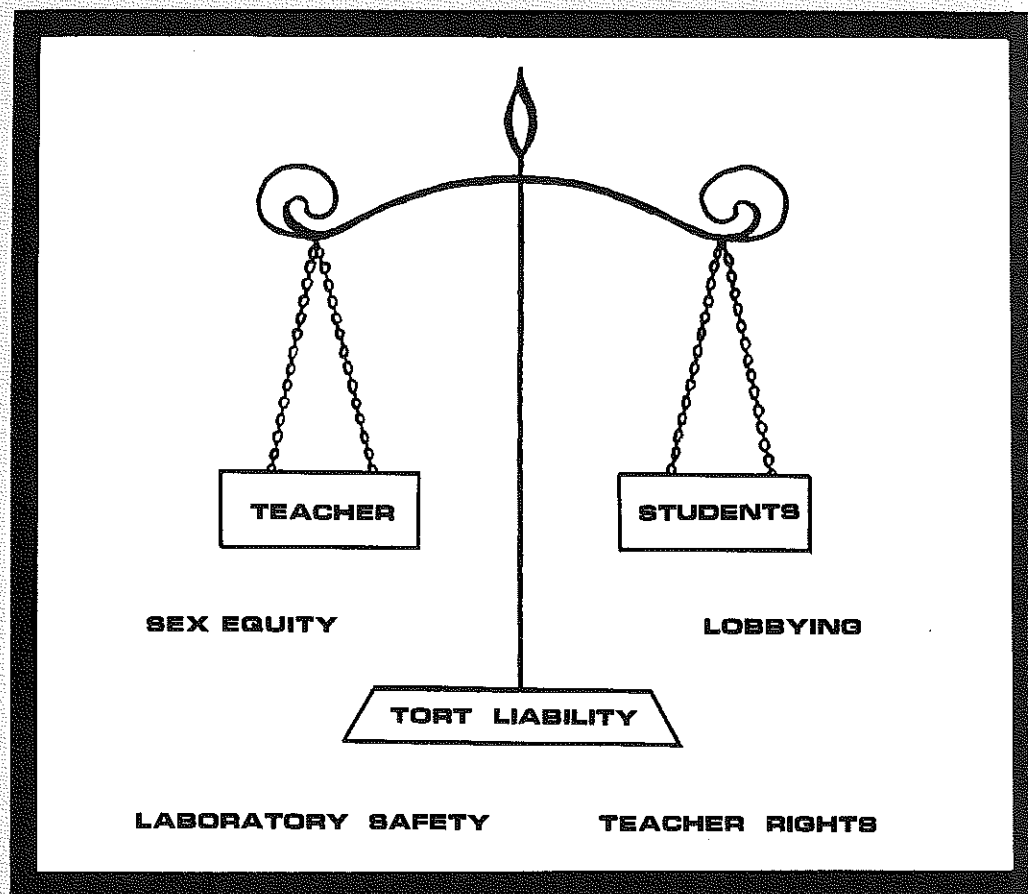


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**THEME: Legal Issues and
Agricultural Educators**

THE AGRICULTURAL EDUCATION MAGAZINE



August, 1988

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Number 2

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ARTICLE SUBMISSION

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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Ignorance of the Law is Not Acceptable

Personal injury litigation usually surfaces when educators begin discussing legal issues that impact America's teachers. This is especially true for individuals who teach agricultural education on the secondary level. Laboratory teaching and an extensive visitation program usually mean that secondary teachers are presented with an extensive list of accidents waiting to happen. College faculty, meanwhile, face different but equally potent legal issues. Even though issues facing secondary teachers and college faculty may be different, potential damage to one's professional career should not be minimized or underestimated.

Jurists often remind clients that ignorance is no excuse for violating a law. Further, most courts probably will not be too impressed if an educator uses ignorance as a defense. Thus, educators, including those in agriculture, have little choice but to become more informed about today's legal environment and its impact on America's system of public education.

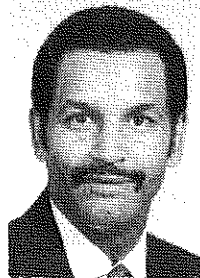
Professionals in other disciplines say that the best legal defense is an aggressive offense. "Stay on top of key legal concerns" was the sound advice I received via three undergraduate journalism classes. That advice, reading Tom Flygaré's legal opinion articles in the *Phi Delta Kappan* professional education journal, and related strategies have thus far kept me out of major legal entanglements.

A Major Legal Issue - Copyright Infringement

Agricultural educators are a bit remiss if they devote excess energy staying abreast of personal injury litigation. Other legal matters deserve similar attention. Such a list must include items related to the handicapped, sex, race, educational malpractice, financial planning and taxes, copyright, et al. Of the items on this list, copyright law has more than its share of uncertainties.

Teaching courses about instructional technology, computer applications, and communications means that I frequently encounter a host of legal issues regarding **Copyright Infringement**. This topic affects all educators, especially those who are serious about exposing students to the newest instructional materials and technologies. Are there copyright laws and rules educators can follow? A vague answer is most appropriate: Yes, but it depends!

Becker (1986) offered guidelines about videotaping and copying computer software. The quiz listed in Figure 1 was prepared to illustrate the vagueness of the copyright environment (Becker, 1986, p. 17, 62). Please answer true or false to each item shown in Figure 1.



BY BLANNIE E. BOWEN, EDITOR

(Dr. Bowen is an Associate Professor in the Department of Agricultural Education at The Ohio State University.)

Videotaping Off-the-Air

1. Nonprofit educational institutions can videotape programs off-the-air as long as the programs are for instructional use.
2. Programs shown on pay channels such as HBO, Cinemax, WGN, and WTBS can be videotaped for educational purposes.
3. A videotape of a program can be kept for 45 days before it must be erased.
4. Sections of a program can be videotaped if a teacher does not need the entire program.
5. A teacher can use a videotaped program once and repeat it once with each class if this is done during the first 10 consecutive school days included in above 45-day period.
6. A teacher can routinely videotape a local agribusiness T.V. program if the tapes are for instructional purposes.

Computer Software

1. The purchaser of a software package can make one copy if the copy is for file or archival purposes.
2. If you acquire a site license for a piece of software, you can make a backup or file copy.
3. When multiple copies of a software package are needed, negotiate this need at the time of the purchase.
4. The Fair Use Doctrine implies that a software package used in a computer networking situation is not a copyright infringement.

Figure 1: Videotaping and Computer Software Copyright Quiz.

How do you score? Based on Becker's (1986) guidelines, the odd numbered items are true; the even false. To debate your answers, review Gary Becker's article ("Retracing Copyright Guidelines") in *Media & Methods*, November/December, 1986.

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Ignorance of the Law Is Not Acceptable

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About This Issue

This issue examines topics relative to the legal dimensions of being an agricultural educator. Jerry Peters, this month's theme editor, solicited a variety of individuals to address

topics ranging from tort liability to lobbying. This issue is not designed to scare colleagues into purchasing a professional liability policy or into adding to an existing one. Having colleagues assume a more guarded professional posture is also not a reason. This issue was prepared to generate one action from the profession: To have readers think in a critical manner about legal forces and factors that impact the profession.

THEME

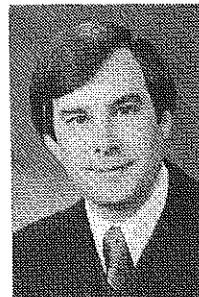
Protecting Yourself Against Litigation

It might be terrifying to think that you could go to court to determine who was legally responsible for an accident that occurred in your classroom or shop. What kind of administration and/or faculty support would you receive if someone brought charges against you for sexual harassment? If for no apparent reason you are asked to resign, what course of action would you have to take? Just knowing that legal action could at sometime be taken against you is reason enough to pay close attention to the legal issues discussed in articles included in this issue.

Accidents can occur in classrooms, in classroom laboratories and shops, during, before and after school activities, and on field trips and home visits. It usually is at the most unexpected time that something will happen. With an increase in litigation, it is imperative that teachers familiarize themselves with statutes and fundamental rules of tort liability.

How much personal liability insurance coverage should a teacher have? Most teachers consider the amount of liability coverage provided by the school to be enough. If you carry personal liability insurance, what does it cover? A thorough review of the policy may find it is lacking. Does your professional organization carry liability insurance for its membership? Many teachers consider this to be a major benefit of belonging to a professional organization.

Teachers should be knowledgeable about their rights in relation to contract termination. Should a teacher resign or seek legal assistance to try and retain her or his position? What is the school's policy concerning dismissal? An analysis of litigation in education, particularly those involving teacher dismissals, suggests that many problems originate from inconsistent implementation of policies and procedures.



BY JERRY L. PETERS, THEME EDITOR

(Dr. Peters is an Associate Professor of Agricultural Education in the Vocational Education Section at Purdue University, West Lafayette, Indiana 47907.)

Some of the ideas set forward in this issue are being followed by teachers across the country. Helpful guidelines are provided which can be useful in helping teachers minimize the possibility of litigation. The involvement of parents, students, and teachers in the establishment of an aggressive accident prevention program is a good place to begin to establish guidelines for student safety.

The articles in this issue cannot begin to resolve all of a teacher's potential legal difficulties. However, they may stimulate further investigation or inquiry into your legal responsibilities and liabilities as a teacher.

About the Cover

All vocational agriculture teachers should be aware of legal issues and the litigations that can arise in the course of their teaching career. (Artwork courtesy of Jerry L. Peters).

Expectations of Parents, Teachers, and Supreme Court Judges — Can They Be Reconciled In the Laboratory?

Can parents, teachers, and the courts satisfy their mutual expectations in today's vocational agriculture laboratory? High expectations lead to high achievements, yet expectations beyond the sphere of control leads to stress, frustration, and even litigation!

Parents have three broad expectations of the program and teachers. First parents expect a safe school environment. Second, parents expect teachers to help children learn, to identify and solve problems, and eventually to learn to teach themselves. Third, parents expect teachers to provide supervision and a reasonable example of behavior. Can these expectations be satisfied in today's schools?

Teachers have three broad expectations of the program and the student. First, students should demonstrate appropriate behavior. Second, students should act as if they want to learn. Third, students should follow directions and use reasonable judgement in a least-restrictive environment. However, teachers recognize they are ultimately responsible for the care of the student. Are these expectations reasonable in today's society?

A review of recent court decisions indicates three broad expectations of the teachers and the school. First, judges expect the student to receive proper instruction. Second, teachers have an obligation to provide adequate supervision. Third, teachers and the school have the responsibility to maintain safe equipment and facilities. Can you, as a vocational agriculture teacher, satisfy these expectations in today's school laboratories?

Provide a Safe Environment

Learning is an active process due to experience on the part of the learner and results in a permanent change in behavior. A safe classroom and laboratory are essential to a positive learning environment. Mish (1987) defines the laboratory as "A place providing (individual students) opportunity for experimentation, observation, or practice in a field of study." Legal experts have described the laboratory as a place where teachers "... are more frequently subjected to lawsuits and are more likely to be held liable for pupil injury than the average classroom teacher" (Connors, 1981:88).

Several practices enhance student safety, and at the same time, reduce the teacher's liability while teaching in the laboratory. August is an excellent time for each teacher to



BY GLEN C. SHINN

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use a safety inspection check list to identify existing hazards (Bear and Hoerner, 1986:172). Each hazard should be corrected and so noted on the check list. If it is impossible to correct the hazard, clearly mark it **OUT OF ORDER** and notify school officials in writing. Students should be warned of any potential hazard. Course objectives and teaching plans should be reviewed to remove activities which require the use of unsafe equipment.

Provide Proper Instruction

A primary purpose of the school is to help students learn to solve problems in a complex and changing world. Today, more than ever before, students must learn to teach themselves. Students must learn to collect and apply information, analyze the results, and make logical evaluations. The development of safe attitudes is a prerequisite to safe behavior and is an expectation by employers.

Many vocational agriculture students can be described as "active, practical learners" (Sproles, Cox, and Sproles, 1987). Students with this learning preference use experiences to make learning meaningful for them. As teachers, we should use systematic planning which includes questioning and discussion teaching techniques. Laboratory instruction can provide experiences which go beyond recall and develop application, analysis, and evaluation skills used in agricultural industry. Application methods using individual projects, simulation, or case studies should be used in the laboratory to actively involve each student.

Provide A Reasonable Example of Behavior

Students learn more by sight than sound. The de facto premise determining negligence and tort liability rests on the concept of "in loco parentis." Kigin (1983) concluded that the courts expect teachers to act as a reasonable and prudent parent. A decision of negligence is based on the fault

(Continued on page 6)

Expectations of Parents, Teachers, and Supreme Court Judges — Can They Be Reconciled in the Laboratory?

(Continued from page 5)

or blame of the defendant. Negligence consists of the creation of an **unreasonable** risk or harm to others within the zone of foreseeable danger. Tort liability occurs only when some significant degree of fault characterizes the defendant's behavior.

Teachers must demonstrate correct procedures. These demonstrations provide the mental imagery and imitation for guided performance and modeling. As the students practice the new behavior, teachers should provide supervision and corrected feedback as close to the performance as possible. Where appropriate, personal protection devices should be worn by the teacher as well as the student.

Provide Adequate Supervision

Although there are examples of both favorable and unfavorable rulings for the teacher regarding direct supervision, it seems safe to assume that students should be supervised in laboratories. Connors (1981) reported the decision of *South Ripley Community School Corporation v. Peters* (396 N.E. 2d 144, 1979). While cutting wood on a 10 inch circular saw with a defective blade guard, a 14-year-old student cut off four fingers. At the time of the accident, the teacher was in an adjacent room with another class. The higher courts upheld the damage award of \$100,000 to the student. Connors summarized the decision; ". . . it is not unreasonable to require that, in the school setting, the dangers be minimized by means of guarded machinery and personal supervision. . . . It is not a harsh burden to require school authorities in some instances to anticipate and guard against conduct of children by which they may harm themselves or others" (p. 83).

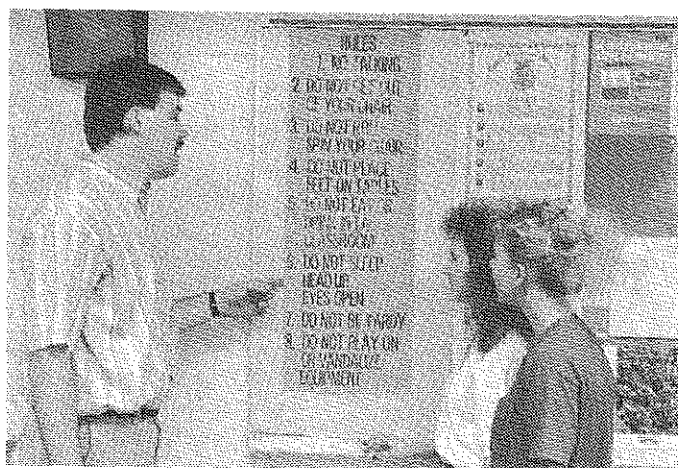
Maintain Safe Equipment and Facilities

Maintaining the laboratory is a constant job. A time period should be allotted during each class for routine housekeeping and safety inspections. Students can be authorized to conduct a weekly inspection and report hazards. Good housekeeping provides a positive attitude about safety. At the end of the course, students should be instructed on proper cleaning and storing of equipment. This is a beneficial skill for the students and provides more teacher time for supervision of experience programs.

Physical considerations in the laboratory should include space, noise, illumination, color, and temperature. The laboratory should provide a safe work area for each student. Depending on the nature of the activity, this space may range from 25 to 250 square feet per student. Each area should be zoned for each activity or machine. Miller (1987) concluded that students benefit from hearing protection devices when exposed to noise intensities greater than 100 db(A). A minimum of 80 foot-candles (fc) of light should be provided at the work station. This level should be increased to 150 fc when there is detail. The American Society of Agricultural Engineers approved a system which color codes particular hazards or features in the laboratory and it is available from AAVIM. The environmental control



Safe laboratories provide students with an opportunity to experiment, observe, and practice new skills.



Student discipline is an integral part of supervision. The identification of appropriate behavior and enforcing the rules is a prerequisite to a safe, least-restrictive learning environment. (Photos courtesy of the author).

system should maintain a comfortable temperature for the laboratory activity.

Tools and equipment should be selected and sized for the physical strength and judgement of the student. Connors (1981:73) concluded because vocational agriculture classes ". . . deal with so many machines and tools that can cause injury, courts want to be certain that such equipment is always properly maintained. Allowing students to use a machine that is not in perfect operating order may constitute an unreasonable risk. Equipment not in perfect operating order or lacking safety features (e.g., blade guards), should not be used by students."

Conclusion

The expectations of parents, teachers, and Supreme Court judges can be reconciled in the laboratory through a well planned safety program. This should begin with a pre-enrollment discussion involving the student, parents, and teacher about expectations of the program. Charles (1985:186) found parents "expect teachers to make a strong effort in teaching, to be serious and dedicated, (and) to do the best they can." Epley and Flowers (1984:149) concluded, "While the courts do, and should punish teachers who

act unprofessionally, their rulings have consistently protected from liability those teachers who performed their duties reasonably. Educators who translate their concern and professional ability into well-planned activities have little to fear from negligence judgments." A safe, least-restrictive laboratory environment is no accident.

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THEME

Professional Malpractice in Vocational Agriculture — A Far Fetched Idea?

This article is going to break type from most other articles you may have read in this publication. Generally, articles which appear are practical, down-to-earth, nuts-and-bolts type of reading designed to help the local teacher of vocational agriculture do a better job of preparing students for employment in agricultural occupations. This one, however, is anything but practical — it is entirely theoretical — and let's hope it stays that way! The intent of the next few paragraphs is to stimulate thinking and perhaps discussions regarding the theory of malpractice and its application, if any, to education.

This article was not written by a lawyer. It is based almost entirely on theoretical application of professional malpractice law since very little case law exists which deals with "educational malpractice."

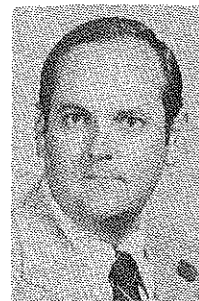
Teachers and Tort Liability

Teachers of vocational agriculture, by the very nature of the profession, may face threats of court action at any time. Such threats may stem from accidents resulting in injury to students which may occur in the agricultural mechanics laboratory, in transporting students, handling livestock, etc. Other articles in this issue address those topics. A broader, and perhaps more encompassing legal aspect, deals with the concept of "educational malpractice."

By applying Tort and Contract Law Theory to education, the possibility exists for action to be brought by a plaintiff against a teacher and school district. In any action, the plaintiff must prove the teacher and/or the school "failed to educate" the pupil (plaintiff). In such action, the plaintiff must show a cause-effect relationship for the alleged "failure to educate" and also must show cause to collect damages.

Two key terms relate to the topic at hand and must be defined here. The first is tort. A tort is:

"A wrong; a private or civil wrong or injury independent of contract, resulting from a breach of a



BY DAVID E. COX

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legal duty. The essential elements of a tort are the existence of a legal duty owed by defendant to plaintiff, breach of that duty, and a causal relation between defendant's conduct and the resulting damages to plaintiff" (Gifis, p. 210).

The second key term is negligence:

"Failure to exercise that degree of care which a person of ordinary prudence (a reasonable man) would exercise under the same circumstances. The term refers to conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm" (Gifis, p. 136).

Does Educational Malpractice Exist?

Undoubtedly, many of us have read or heard stories of huge financial settlements resulting from negligence or malpractice lawsuits won against physicians, hospitals, businesses, corporations, and governmental entities. Could such a case be won against a teacher and school district in which "failure to educate" could be shown? Is it too far fetched to conceive that a completer of a vocational agriculture program could bring suit against the teacher and school if he/she was unable to obtain employment? Is there any type of implied warranty in vocational education?

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Professional Malpractice in Vocational Agriculture — A Far Fetched Idea?

(Continued from page 7)

One writer in the field of malpractice law states, "Malpractice is just another term for negligence and can refer to any improper practice in any field of endeavor" (Rosenblatt, 1977, p. 10). If Rosenblatt is correct, then malpractice in education and vocational education theoretically can be shown. As teachers of vocational agriculture, it is not time to panic and "hide in the classroom." Keep on, because the courts have historically ruled overwhelmingly on your side.

It is one thing for a plaintiff to bring a lawsuit against a defendant — it is an entirely different matter for the plaintiff to win the lawsuit. The legal profession typically uses, as a test for negligence, the concept of the "reasonable and prudent person" theory. A teacher may not avoid liability if he/she failed to act as a reasonable and prudent person would in a similar situation. The courts have tended to uphold this test and only hold teachers to this level of "ordinary negligence." Selected other professionals, such as physicians and attorneys, are held to a higher standard of practice and, hence, to a higher test for negligence.

Could A Case Be Made?

A somewhat new and fairly unusual application of liability of a school district and perhaps a teacher for lack of pupil achievement is now coming to the courts. Cases of this nature are not a separate area of law, but rather represent an expansion of the traditional tort law concept. Educational malpractice, then, is an attempt to apply tort law to educational outcomes to redress a student for deficiencies allegedly caused by sub-standard educational practice. However, many precedents have been set which deny damages to students.

A somewhat famous case was Peter W. vs. San Francisco Unified School District, (131) Cal. Rptr. 854, Cal. App. (1976). In this case, Peter W. was allegedly graduated as an "average student from the 12th grade." However, Peter read only at the fifth grade level. The student sued, claiming the schools "failed to educate" him, and further claimed the school misrepresented to his mother that he performed "near grade level." The court ruled for the school.

Could similar cases be "dreamed up" and filed against teachers and schools with vocational education programs or vocational agriculture programs in particular? Is it feasible that a graduate of a vocational agriculture program, who cannot find or maintain employment due to lack of technical competence, could build a case to sue the teacher and the school? Remember, it is one thing to file a lawsuit and quite another to win a lawsuit.

Theories of Action

If the example cited above developed, what type of recovery might a plaintiff seek? The plaintiff could seek:

1. Removal of the teacher.
2. Recovery of the costs necessary for remedial education or retraining.
3. Recovery of costs for diminished future income.
4. Any combination of the above.

The plaintiff can only recover damages if the court rules in his/her favor.

It appears from a non-lawyer's perspective that at least two theories which may support a course of action are theoretically open to a plaintiff. The first is *Tort Theory*. If professional malpractice laws are applied to education, the "reasonable and prudent person" test for negligence probably would not hold. If the courts ever perceive educators as professionals (in the same regard as the courts perceive lawyers, physicians, etc.), then educators will be held to a higher standard of practice. At that point, educators (teachers and schools) must then provide the equivalent minimum educational services available in similar communities. Those minimum educational standards of practice must be identified, maintained, and provided. Certain states may have statutes affecting governmental immunity which could impact a plaintiff taking this approach. As educational practitioners, we must be aware of this very specific potential application of tort theory.

A second avenue for action may also be open to the plaintiff, and governmental immunity may not hold in this application of *Contract Law Theory*. This theory probably impacts proprietary and private trade and technical schools more than public institutions, at least to now. The student who enrolls in a private or proprietary school typically meets the legal test of "entering the market, agreeing upon costs, and 'contracting' with the school."

Similar conditions could well apply to a public institution. For example, when a student enters a vocational agriculture program in a school, an implied contract may exist for "non-negligent" instruction. The school then has a de facto agreement to provide non-negligent instruction while the student agrees to attend and "work" for his/her education. The definition of non-negligent instruction and the degree to which a student was prepared for employment could be the pivotal point in this hypothetical case.

Summary

The implication for quality instruction on the part of the teacher and school is evident in this scenario. If such cases are ever brought to court, the plaintiff must prove "failure to educate" or professional negligence on the part of the school and the teacher.

The burden of proof with the two theories discussed above and the application of professional malpractice laws rests with the plaintiff. The plaintiff must show the test for negligence was not met by the teacher and school. Substandard practice, negligence, intentional tort, or contract violation must be proven by the plaintiff. So far, the courts have been consistent in applying the "reasonable and prudent person" theory as the legal test in cases involving schools. Let's hope this continues.

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Teaching Agricultural Mechanics: Implications for Teacher Liability

One of the universal concerns expressed by teachers of agricultural mechanics is how to avoid being sued from shop related accidents. In most states, principals, superintendents, and school boards are granted protection from suit under sovereign immunity laws. However, the laws reason that someone must be responsible and the person directly in charge of the activity should bear such responsibility. In our case, this is the teacher!

Given the above facts, the most practical and probably the best defense we can generate against potential suits is to initiate and carry out an aggressive accident prevention program. This article is dedicated to helping teachers plan such a program for the health and welfare of their students and themselves and for defense in case of an accident and subsequent lawsuit.

Where Accidents Occur

In the secondary setting there are six areas where most school accidents occur which develop into liability lawsuits. These areas are athletic events, physical education activities, shops and laboratories, field trips, student errands, and school grounds. As an agricultural mechanics teacher you are most likely aware of the hazards your laboratory may hold for students. The safety prevention strategy should include standards for use of the tools and equipment in the mechanics laboratory as well as safety to be observed on field trips.

A procedure used by some teachers is to establish a departmental safety policy and have it approved by the principal, superintendent, and/or school board. Such policy then becomes school policy and there is more administrative support for administering school policy than for administering individual teacher rules and regulations. This procedure has the advantage of being communicated to administrators and having their approval before it is implemented. If such procedure is implemented the instructor should make certain that the safety policy is covered with every student and communicated to parents. Some instructors have their safety policies included in the school student handbook which parents sign indicating they have read and are aware of the contents.

The courts have held that using students to perform errands for the teacher is not an appropriate educational activity. Regardless of the convenience or educational value that student errands may be, students should not be used for such activities. Student errands usually cannot be supervised by the instructor and courts have sustained that when activities are unsupervised, the person in charge of the activity is responsible.



BY STANLEY R. BURKE

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Implications for Liability Suits

Eye Protection

In virtually every state, there are state laws or statutes which mandate the use of safety glasses in school laboratories. These laws or statutes are quite specific in communicating that eye safety equipment must be worn in laboratories where physical activity is going on and that such eye protection must be of industrial quality.

If a suit should be brought against a teacher the court will try to ascertain the degree to which eye safety was practiced in the defendant's classes. In this case, a strong previous record of students being required to use eye protection while working in the mechanics laboratory is a good defense for the instructor. The court may seek to determine the degree to which the teacher followed the policy set for students. Therefore, a good history of the teacher wearing safety glasses when teaching or working in the mechanics laboratory will be a plus for liability defense.

Most state laws or statutes specify that student eye protection devices be of industrial quality. Such specification requires that the eye protection devices in school mechanics laboratories meet or exceed the Z87.1, 1979 standard as established by the American National Standards Institute (ANSI). Safety glasses which are industrial quality can be identified by the Z87.1 logo and a manufacturer's emblem on the glasses and frames. Teachers should make sure that students wear only industrial quality safety glasses when working in the mechanics laboratory.

Because many different kinds of activities occur simultaneously in agricultural mechanics laboratories, it is important that students wear eye protection devices which provide both frontal and side protection. Industrial quality glasses can be secured which provide only frontal protection. Glasses of this type would not be appropriate for use in most agricultural mechanics programs. Caution should be observed in allowing students to work only with street

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Teaching Agricultural Mechanics: Implications for Teacher Liability

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glasses which they may call "safety glasses." Typically the lens in street glasses will be shatterproof; however, the lens thickness and frames do not qualify as industrial quality. If such glasses are industrial quality they will have the Z87.1 logo.

Hearing Protection Safety Equipment

In a recent study, Virginia teachers of agriculture indicated that they seldom used hearing protection devices while working in the mechanics laboratory. In the same study, 26.4% of the teachers tested were found to have hearing losses greater than other people their own age. Although we cannot assume that the hearing loss in this study was caused by noise generated from loud shop equipment, we do know that much of the equipment found in vocational agriculture laboratories produces noise of sufficient intensity to cause hearing loss. With such knowledge teachers must take precautions to protect the hearing of their students and themselves. Most states do not have laws or statutes which require the use of hearing protection devices as they do safety glasses; however, Occupational Safety and Health Administration (OSHA) standards call for the use of hearing protectors when working in a loud environment. Such standards could be the basis for legal action against teachers if hearing protectors are not provided and used when operating loud shop equipment.

Machine Guarding

Allowing students to use equipment without proper safety guards and shields is an activity directly under the control of the teacher. The courts have held without question that failure of teachers to require students to use the safety guards when operating equipment constitutes negligence. Students injured by such conditions are entitled to remedy under tort law.

Much research and development have gone into developing shields and guards for both power and portable power equipment found in agricultural mechanics laboratories. The use of shields and guards on equipment is accepted practice in industry as well as the educational setting. It is the responsibility of the school system to provide the safety shields and guards for laboratory equipment; however, it is the responsibility of the instructors to teach and enforce their use on equipment.

Supervision

The courts have held that vocational teachers are expected to recognize potentially hazardous situations for students and provide the instruction, safety, and supervision necessary to keep students from being injured. Not to provide such care for students clearly creates conditions for court action against the instructor. Leaving a class unsupervised in the agricultural mechanics laboratory to answer or make a telephone call would be considered a negligent act if an accident occurred and legal action resulted. The primary responsibility of the teacher is to the students. This responsibility to the student is not met by merely posting a set of safety rules in the laboratory. Careful and continuous supervision must be exercised to assure the development of safe work habits, a good safety attitude, and to prevent accidents. We, as teachers, should know that students will take safety short-cuts, become careless and overconfident in their ability, and take unnecessary risks when working in mechanics laboratories. Teachers have a legal responsibility to prevent and correct this type of conduct among students.

Keypoints

1. Most state laws hold the teacher directly in charge of an educational activity responsible if an accident occurs and a liability suit results.
2. The best defense against a negligence lawsuit is an aggressive safety program.
3. Accidents in vocational agriculture programs frequently occur in the mechanics laboratory, on field trips, and while students are sent on errands for the teacher.
4. Use of eye safety equipment is required by state laws or statutes. Eye safety equipment used in the mechanics laboratory should be industrial quality.
5. Hearing protection devices are not usually required by law; however, OSHA standards specify their use in loud work environments.
6. Allowing students to operate equipment without proper guards or shields clearly establishes a liability for the teacher if an accident occurs and a lawsuit results.
7. Teachers are expected to recognize and protect students from hazardous situations, thus, constant class supervision is essential.

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Reliability of Liability in Vocational Agriculture

The old adage that a vocational agriculture instructor must be a "jack of all trades" is true. The variety of problems, issues, and concerns that face teachers and their programs is often thought to be overwhelming. One of the most important areas in which vocational agriculture teachers and their administrators should be concerned is the development and implementation of safety/liability control programs. To accomplish this task, vocational agriculture instructors must become familiar with liability and safety management principles utilized by safety professionals and apply them to meet their needs. The issue of safety and liability, as it relates to vocational agriculture, must become a primary goal for the profession.

Liability and safety management are two different issues. But they are related and must be considered to accomplish this goal. Safety management is "responsibility" which must be carried out by both the instructor and his/her administration. Liability is a legal or financial matter. An instructor or the school can be held legally liable for the acts for all the students under their supervision. When an educator completely understands the issue and concerns of liability, he or she will most definitely consider the responsibilities of good safety management (Hannaford, et al., 1982).

Safety professionals and vocational instructors often work in similar types of environments and situations. The principles and practices of safety professionals can be adapted to meet the needs of the vocational agriculture teacher. Teachers must think and act like qualified safety professionals to reduce injuries within their programs and eliminate the chance of both legal and criminal liability.

Many teachers think they are immune from accidents and liability. According to Firenze and Walters (1981), approximately 38,000 accidents occur in industrial/vocational education laboratories during one year. It should be noted that this figure only includes accidents which were reported and which caused property damage or loss of a half a day of school. Firenze and Walters also suggest that this accident figure is actually higher because many accidents are not reported and many accidents do not cause property damage or result in the loss of at least a half a day of school.

Because of the number of real and potential accidents, liability is an important issue that must be considered by vocational agriculture instructors and their school systems. It is the responsibility of every instructor to possess and encourage the proper safety attitude and environment to prevent accidents and accident litigation. In recent years, court cases have brought forth a variety of developments, legislation, and court decisions that may make teachers more vulnerable to litigation from students and their parents. Two court cases recorded by Kigin (1987) suggest that liability is the responsibility of the instructor:



BY STACY A. GARTIN AND WAYNE M. MAINES

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A Vermont Supreme Court said it well when it stated: "The teacher owes his students a duty of supervision and if there is a failure to exercise reasonable care in carrying out this duty, either in the commission or omission of an act which results in injury, the teacher is liable to the student."

The teacher's poor example was a contributing factor in the court's decision in favor of the plaintiff in Ridge vs. Boulder Creek. The plaintiff injured a finger on his right hand while operating a power saw without a guard or fence in position. The district was held liable under California statute (p. 25).

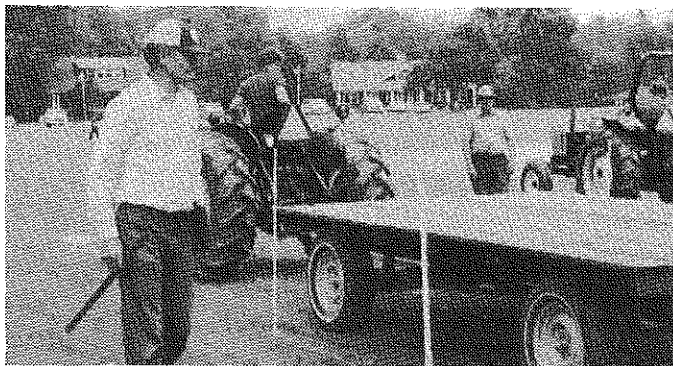
The primary purpose of safety education is to develop attitudes and skills in students which will enable them to work and live safely in today's world. Instructors must be aware of the possibility of accident liability and use that awareness to help develop positive safety attitudes in their students and their administrators.

It is often thought that injuries in vocational programs are not severe and pose no threat to a liability litigation. However, a study conducted by Maines (1988) identifies the types of serious accidents that have occurred in vocational agriculture programs in West Virginia. The data in Table 1 indicates that there were many different types of serious accidents which could have been potential liability situations. It is a very sad and traumatic experience to have a student seriously injured. A serious accident may never happen in your program but you must remember this terrible situation could strike at any time. To prevent accident situations, teachers must develop and implement an active accident prevention program. However, serious injury in shop

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Reliability of Liability in Vocational Agriculture

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Vocational agriculture instructors must evaluate student performance of safety knowledge and skills with agricultural machinery. (Photo courtesy of Stacy A. Gartin, West Virginia University.)



Proper use of personal protective equipment is a mandatory component of any safety program. (Photo courtesy of Stacy A. Gartin, West Virginia University.)

and supervision safety are not the only areas in which litigation may be taken against teachers of vocational agriculture. Teachers must become more familiar with tort liability.

Tort Liability

Tort liability is defined as a group of civil wrongs, other than breach of contract, for which the court will award a remedy in the form of damages.

When teachers are looking for the kinds of things they should defend themselves against, types of tort come to mind. The first type of tort to be addressed is **intentional interference**, such as assault, battery, interference with peace of mind, and false imprisonment. Assault is any psychological scaring of an individual; battery is the actual touching; interference with peace of mind is to inflict mental or personal anguish and false imprisonment is where you have someone arrested.

Negligence is a second ground for litigation in tort. It is defined as a conduct falling below an established standard

which results in injury or damage to another person. Teachers of vocational agriculture have a duty and obligation to protect their students. Teachers must provide proper and correct instruction. Written and verbal instruction is not enough. Instruction must be taken to the **doing stage**. Student application and evaluation of what has been taught is essential in protecting the teacher against negligence.

Table 1
Serious Accidents in Vocational Agriculture Programs

Types of Serious Accidents	Number of Reported Incidents
Band saw cuts	6
Cut finger on power equipment	6
Student cut on leg with chainsaw	3
Loss of fingers on jointer	3
Careless use of grinder - cut finger	2
Kickback on table saw	1
Hand caught on pulley of metal lathe (five stitches)	1
Loss of fingernails (mashed fingers)	1
Lost part of finger on table saw	1
Cut finger on pipe	1
Teacher cut finger "BAD"	1
Cut forearm with wood chisel (13 stitches)	1
Chest burned from clothing fire	1
Student cut off finger and thumb on the table saw	1
Teacher partially cut off thumb helping a student hook up a mowing machine	1
Students got sick from welding galvanized metal	1
Vo-ag teacher stabbed himself with a screwdriver	1

Defamation of character is defined as providing statements to a third party which have a tendency to reduce esteem, confidence, respect, and goodwill through verbal or written communications. Normally, teachers are protected under what is called 'qualified' because they have a legitimate comment, made with no malice.

Throughout the years, much civil rights litigation has existed in education. Examples include the deprivation of any rights, privileges, or immunities secured by the constitution or law. If there is any time when teachers deprive someone on the basis of age, race, sex, color, creed, national origin, religion, and possibly sexual preference, they are clearly liable. The most recent scene for litigation is in the area of educational malpractice. So far, no one has won a malpractice case.

Protecting Yourself

Vocational agriculture teachers must educate themselves about the law. In becoming more familiar and educated about teachers and the law, vocational agriculture teachers should have at their access, in their school system, a copy of the state code, the state board of education policy, the county policy manual, the student handbook, faculty handbook, and school policy manual. Finally, teachers should establish departmental policies.

Teachers should be informed as to what kind of personal liability insurance they have. They should check their state laws to see how they may be covered. Under a public

employees policy, for example, a teacher may be covered up to a million dollars per occurrence. Teachers should also check the local or their professional association's liability. It is suggested that normally one half million dollars personal liability should be adequate coverage. However, many professional liability policies will not cover you for racial, sexual discrimination, or sexual harassment because these are excluded from most policies.

Limitations of the Article

Information in this article only attempts to provide a basis for continued study on the part of teachers of vocational agriculture. The intent is not to provide legal advice, but to inform readers of major areas where liability occurs. Qualified legal staff should be consulted for opinions on specific cases.

Reality

Teachers of vocational agriculture must realize that litigation cannot be prevented, however, losing a case can. Teachers must, indeed, be a "jack of all trades," especially in the area of liability. It is important for teachers to be informed and educated about the law. However, teachers should not let the fear or paranoia of liability influence their

ability to provide students with high quality instruction, supervision, and educational experiences.

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THEME

Teacher Rights and Responsibilities in Legal Issues

As the students leave his last class, a vocational agriculture teacher makes a mental note of the date, April 15. He thinks, "I must go to the post office and mail my taxes before my SOE visit." Just then, the principal comes in and says, "At the board meeting last night, it was decided to let you go; you won't be with us next year."

A vocational agriculture teacher receives a call at home one evening. What she hears is, "My daughter was hurt in your class yesterday and I am suing you for \$300,000."

As Karl Malden would say in his American Express commercial: "What do you do, what do you do?"

The immediate answer is say nothing and contact a lawyer, according to David Bongiolatti (personal communication, February 3, 1988), Executive Director of the Mississippi Association of Educators (MAE), the National Education Association affiliate. Bongiolatti suggests the teacher should be a listener not a talker; do not admit or deny anything without the presence of legal representation.

Termination or Non-renewal

In the case of the teacher being terminated, the first ques-



By JACQUELYN DEEDS

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tion involved is what are the teacher's procedural rights? The teacher and his/her legal counsel should first check the teacher's contract. Some contracts specify detailed procedures for termination or non-renewal. In many states, state law specifies a date by which notice of non-renewal or termination must be provided to the teacher (in most states it is prior to April 1; Flygare, 1976).

The teacher's contract most probably provides for written notification of termination and discusses procedures for a

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Teacher Rights and Responsibilities In Legal Issues

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hearing before the school board or some other specified committee. If the local teaching contract does not contain these provisions, the teacher may again have to look to state law. In some states, provisions are made not only for dates of renewal, but also for hearing procedures.

If the termination situation had been described differently with the principal indicating immediate dismissal, the legal situation would be slightly different. Because of a signed contract, a teacher cannot be dismissed mid-year, unless the teacher does something that is considered in breach of contract. Flygare (1976) indicated that in the case of immediate dismissal the teacher is entitled to a hearing regardless of whether or not he/she is tenured based upon the Supreme Court "Roth" decision of 1972. The only exception would be if the teacher's alleged behavior is considered a danger to others or disruptive to the educational process.

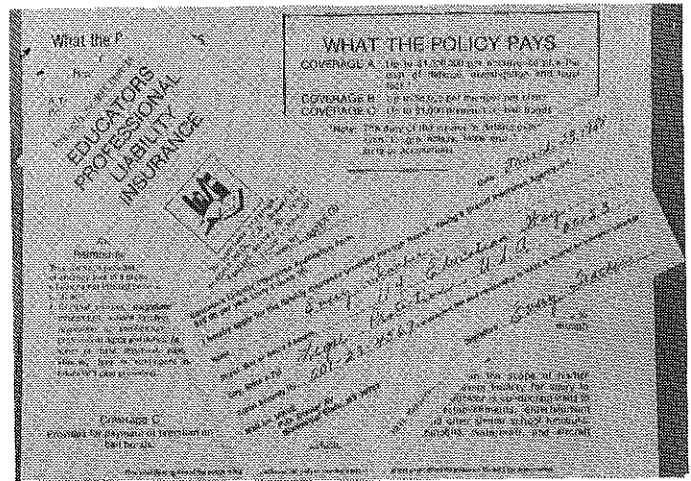
Bongiolatti cited cases where teachers were told if they did not resign immediately, they would be terminated. His response was never resign. If you do, you often have no recourse. Even if the teacher has been wrongly accused, by resigning he can lose many of the rights that protect him. By resigning, the teacher's salary is also lost. If the school district terminates a teacher without proof of breach of contract, the district is required to pay the teacher the contracted salary. In many cases, the school district will continue to pay the teacher's salary from time of suspension until a hearing can be held and a final decision made.

Lawsuits

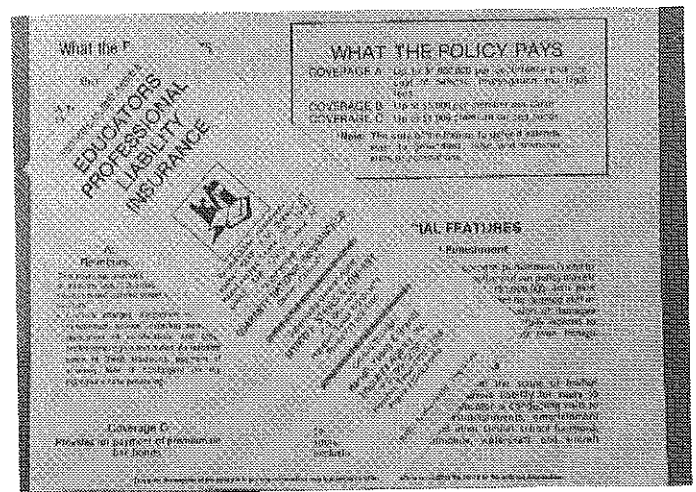
In the case of damage suits, the procedures are less clear. However, the same basic principles apply: listen, don't talk, and seek legal advice. The teacher should notify the school system of the threat of litigation. In some cases, schools have sovereign immunity and cannot be sued. If the teacher is being sued for something that allegedly happened at school, the school district's legal counsel should be involved. The teacher should seek legal representation at the first indication of a lawsuit, and not wait until papers are filed. Papers may never be filed after a threat, but it is better to be safe than sorry.

If a suit is threatened, the teacher should also notify his/her professional organization. As a liability insurance carrier, the organization will more than likely have insurance forms to fill out and place on file. The teacher should record everything that can be remembered about the incident: times, dates, people and situations. These facts might help later in the teacher's defense.

The immediate recollections of the teacher are important because cases of this type may take years before coming to trial. Memory may not provide accurate recall of the facts several years later. The teacher's notes should only be shared with the lawyer and others he/she determines to be appropriate. Bongiolatti pointed out that once a student is 18, he or she can initiate a lawsuit on his or her behalf, regarding some incident that happened several years earlier. Teachers should report all incidents that might cause legal problems at a later time.



Agricultural education professionals should be a member of their vocational organization and take advantage of the professional liability insurance available through the organization.



Keep a copy of the liability insurance, know what your policy covers, and what it will pay. (Photos courtesy of Tommy Bonner, graduate student, Mississippi State University.)

When sued, many people think they can handle legal matters themselves. After all, it's their life; why depend on someone else? Bongiolatti indicated the main reason that an individual should allow a legal representative to handle everything is because lawyers are less emotional. Legal representation will be more objective.

Teacher's Responsibilities

After asking, "What are the teacher's rights?" we should ask, "What are the teacher's responsibilities?"

The first responsibility of the teacher is to know his/her rights. Teachers should be familiar with the teaching contract in their school and the laws of their state concerning contract renewal dates and due process in the event of termination. Teachers should also be aware of any sovereign immunity or other liability laws that might affect them in the course of their work.

The second responsibility is to belong to the teacher's professional organization and to know what legal services are available as a member of that organization. Would you know the person to contact if you were faced with any of the scenarios previously described? Do you know the individual in your school building who could supply the name

of the professional organization's legal counsel? Do you have the telephone number of the state professional organization's office and the name of the person to whom questions should be directed?

MAE Executive Director Bongiolatti believes that professional dues are the best investment a teacher can make where legal issues are concerned. Intense legal battles concerning teachers can go on for years. A recent case lasted more than five years and cost in excess of \$10,000 in legal fees. That is far more time and money than most educational professionals can afford.

The third responsibility of the teacher is to maintain liability insurance and to know what the insurance covers. Most school districts carry liability insurance for faculty members. Often teachers will obtain a separate policy through their professional organization (the NEA Educators Liability policy is for \$1,000,000). Do you know what your liability policy covers? Some liability policies cover physical

injury but not emotional trauma. Do not assume your particular policy covers everything. If you don't know what is covered by your policy and can't determine coverage by reading the policy, find someone who can.

Take the Offensive

Athletic coaches will tell you the best defense is a good offense. The same is true regarding legal issues for teachers. First, know your rights. Second, be a member of your professional organizations; learn what they can do for you, and know the individuals to contact when necessary. Finally, have liability insurance and know exactly what it covers. To paraphrase Karl Malden, your legal knowledge and your professional organization . . . don't go to work without them.

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ARTICLE

Point of Law

What school officials are immune from tort liability?

The concept of sovereign immunity has been discussed many times by the Supreme Court in Virginia. The age old doctrine is still enforced in Virginia. The Supreme Court and the General Assembly do not want the doctrine destroyed. (*Messina v. Burden*, 228 Va 301, 321 S.E. 2d 657 (1984).¹

The principle of sovereign immunity has no legislative foundation to lend protection for school officials. One can see through reviewing the Virginia Tort Claim Acts that this act does not apply to school boards and employees. Virginia Code Section 8.01-195.3(6) states that "school boards are not state agencies nor are employees of school boards state employees." Further the Virginia Tort Claims Act is "not applicable to any county, city, or town in the Commonwealth."²

In the absence of law, tort immunity has its basis upon Supreme Court decisions. School boards in the Commonwealth seem to be totally immune in negligence law suits.

Sample Cases

In *Crabbe v. School Board and Albrite*, 209 Va 356 164 S.E. 2d 639 (1968), Crabbe, a student at Northumberland High School sued his teacher and the school board after he injured his hand in a vocational shop. The trial court allowed both defendants governmental immunity, but the Supreme Court affirmed the decision for the school board but reversed the decision concerning the teacher. The court contended "in the absence of statute waiving its governmental immunity, the defendant (School Board) is immune from liability of the injuries sustained by the plaintiff by reason of its alleged negligence."³

BY MARK LAYNE

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In another case, *Kellam v. School Board*, 202 Va 252, 117 S.E. 2d 96 (1960), a plaintiff sustained injuries at a concert which the school board leased to a private operator. The plaintiff charged the school board with negligence in failing to maintain common passageways. The court held that the board was immune "since it was a governmental agency or the arm of the state."⁴

In *Banks v. Sellers*, 224 Va 168, 294 S.E. 2d 862 (1982), a public high school student, Lynnette Banks, was stabbed and cut by Novita L. Goode on school premises during school hours. The plaintiff brought action against the high school principal and division superintendent of Henrico County Public Schools for negligence in providing her a safe environment. Justice Thompson found that a superintendent is a "supervisory official who exercises powers involving a considerable degree of judgement and discretion."⁵ The court added that a principal is "essentially a counterpart of the superintendent."⁶ In the Virginia Constitution, Article VIII, the Supreme Court indicated that a plea for sovereign immunity was available for both defendants.⁷

On the other hand, teachers are not protected in the same manner as school boards, superintendents, and principals. *Short v. Griffiths*, 220 Va 53, 255 S.E. 2d 479 (1979), the Supreme Court held that sovereign immunity did not apply to an athletic director, baseball coach, and building and ground supervisor of Herndon High School.⁸ The plaintiff

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Point of Law

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fell on a broken glass while running laps around the school outdoor track. The student alleged that the defendants failed to maintain the property and the administration should have used more discretion in supervising the custodial staff. If the custodian had been responsible, the track would have been inspected and students warned of dangerous conditions.

In *Crabb v. School Board and Albrite*, the Supreme Court reversed the lower courts decision on allowing a vocational teacher, Bobby Albrite, the ability to maintain sovereign immunity.⁹ The plaintiff, the court held, had a valid action against the teacher because he allowed the student to use a saw which the teacher knew was defective and for not instructing the student in proper safety instruction. "Employees of such a local governmental agency . . . do not enjoy governmental immunity and . . . are answerable for their own acts of simple negligence."¹⁰

In *James v. Jane*, 221 Va 43, 267 S.E. 2d 108 (1980) the court was faced with the question of whether a physician, employed by the state and practicing in a hospital, was immune from an act of negligence from the doctor's own failure to exercise reasonable care.¹¹ The court, in listening to the testimony, listed three factors used in determining if an employee could obtain protection under the sovereign immunity doctrine. They include (1) the duty of the office, (2) the use of judgement, and (3) the amount of control and direction exercised by the Commonwealth. The court explained that, "No single all inclusive rule can be enunciated or applied in determining entitlement to sovereign immunity."¹²

In the case at hand, *James v. Jane*, the physician departed from the condition of his employment and did not use reasonable care. The doctor, because of his negligence, was not entitled to the doctrine of sovereign immunity.¹³

Conclusion

Currently, there is no legislative act to protect school officials from tort liability. Virginia Case Law indicates that school boards, superintendents, and principals are protected from tort action. (*Crabbe v. School Board and Albrite*, 209 Va. 356, 164 S.E. 2d 639 (1968); *Kellam v. School Board*, 202 Va 252, 117 S.E. 2d 96 (1960); and *Banks v. Sellers*, 294 S.E. 2d 862). Teachers, coaches, and other lower level employees do not enjoy sovereign immunity (*Short v. Griffiths*, 255 S.E. 2d 479; *Crabbe v. School Board and Albrite*, 209 Va 356, 164 S.E. 2d 639 (1968). There are three factors used to determine employees liability (*James v. Jane*, 221, Va 43, 267 S.E. 2d (1980). The factor indicated earlier will determine the immunity of individuals falling between the two levels of school officials.

ENDNOTES

- 1 Messina v. Burden, 228 Va 301, 321 S.E. 2d 657 (1984).
- 2 Virginia Tort Claims Act 8.01-195.3 (6).
- 3 *Crabbe v. School Board and Albrite*, 209 Va 356, 164 S.E. 2d 639 (1968).
- 4 *Kellam v. School Board*, 202 Va 252, 117 S.E. 2d 96 (1960).
- 5 *Banks v. Sellers*, 224 Va 168, 294 S.E. 2d 862 (1982).
- 6 *Ibid*.
- 7 *Ibid*.
- 8 *Short v. Griffiths*, 220 Va 53, 255 S.E. 2d 479 (1979).
- 9 *Crabbe*, 164 S.E. 2d at 639.
- 10 *Ibid*.
- 11 *James v. Jane*, 221 Va 43, 267 S.E. 2d 108 (1980).
- 12 *Ibid*.
- 13 *Ibid*.

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Virginia Tort Claims Act 1986 Amendment.

NEW PRODUCTS

Lacking interpersonal, academic, and specific vocational skills, special needs youth are not being adequately prepared for work. In *TRANSITION, SPECIAL NEEDS, AND VOCATIONAL EDUCATION*, Patricia Sitlington examines the major components of the school-to-work transition process — vocational rehabilitation, Job Training Partnership Act agencies, and developmental disabilities agencies — and suggests roles for vocational education that enhance the service available to these youth and promote a comprehensive approach to addressing each skill area.

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The mission of vocational education — providing a skilled work force for society — is being influenced by demographic, social, economic, technological, and political changes, *PERSPECTIVES ON THE EDUCATION AND TRAINING SYSTEM OF THE FUTURE* by Warren H. Goff proposes a method of devising scenarios for creating preferred alternative futures for the emerging technical society.

Alternatives involving increased or diminished emphasis on vocational education are suggested from futuristic, holistic, and outcomes perspectives. Recommendations also are made for the redesign and staffing of the education and training system of the future.

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Toward Sex Equity: America's Equal Employment Opportunity Laws

The American culture has been evolving since this country was established. However, in terms of civil rights, changes and developments have been a relatively recent phenomenon. During the 1950s, the judicial branch of government engaged in action regarding civil rights, which led to action by the legislative branch in the 1960s. During this period, women's issues emerged which carried legislative action into the 1970s, action which is affecting both branches of the government in the 1980s. These much-needed judicial and legislative intervention, which are affecting us today, were stirred in 1954.

Civil Rights

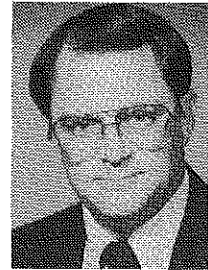
Prior to 1954 courts ruled in favor of the "Separate But Equal" doctrine which had been in existence since 1896. "Separate But Equal" became the rule following an act of the general assembly in the State of Louisiana in 1890. The act provided for separate railway carriages for the white and black races stating, "No person or persons, shall be admitted to occupy seats in coaches, other than the ones assigned to them on account of the race they belong to." It was not until *Brown vs. Board of Education* in 1954 that the long-held doctrine of "Separate But Equal" was challenged.

Kansas was the setting for *Brown vs. Board of Education*. The plaintiffs were black children who sought admission to public schools on a nonsegregated basis. A three-judge federal district court denied relief to the plaintiffs on the so-called "Separate But Equal" doctrine, since under that doctrine "equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities are separate."

The plaintiffs contended that "segregated public schools are not 'equal', and hence they are deprived of the equal protections of the laws." Due to the obvious importance of the question presented, the case was taken to the Supreme Court. It was argued that "to separate students from those of similar age, and qualifications solely because of their race generates a feeling of inferiority . . . that may affect their hearts and minds in a way unlikely to ever be undone." Although well-stated, the court ruled against the plaintiffs; however, the court concluded that in the field of public education the doctrine of "Separate But Equal" has no place. *Brown vs. Board of Education* had fueled an awakening of the civil rights movement. As the civil rights of minorities gathered headlines and legislation, it soon became apparent that equity issues of women held a place in the movement.

Sex Equity

Women were being found in greater and greater numbers in the work force but tended to be employed in traditionally low status and low-paying jobs. As financial demands



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grew for families and as more families were being headed by single parents, most often women, the need for women to be able to pursue and obtain employment in occupations that have traditionally been held by males became important from both an economic and social point of view.

Thus, 10 years after *Brown vs. Board of Education*, Title VII of the 1964 Civil Rights Act was enacted. Title VII stated that it is unlawful for an employer to engage in discriminatory practices against an employee on the basis of sex and that those offended could sue for damages. Pregnancy issues and sexual harassment cases, especially in educational settings, revealed a gap in Title VII. This gap led to the enactment of Title IX.

Title IX of the Educational Amendments of 1972 was designed to guard women educators and students against sex discrimination. The greatest "majority-minority" in the country — women (51% of America's population is women), were finally gaining attention. Title IX protected women by stating that no one, on the basis of sex, should be excluded from participation in any educational program receiving federal funds. It also intervened with penalties for discriminatory actions. For example, federal funds could be withheld from agencies found to be discriminating against women. Clearly, discrimination was now considered illegal.

A problem emerged with the more subtle types of discrimination such as stereotyping and sex bias. This issue was becoming a major impediment to the equal rights of women. Because this issue was surfacing rapidly in the work place, and because vocational education prepares students for the world of work, it seemed logical that vocational education was a vehicle whereby something could be done to promote change.

Title II was designed with vocational education in mind. It moved beyond nondiscrimination to overcome the effects

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Toward Sex Equity: America's Equal Employment Opportunity Laws

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of past sex discrimination and stereotyping. It established block grants, provided funds for sex equity coordinators in each state department of education, and set aside federal money for educational programs and services.

The Carl Perkins Act of 1984 carried the main theme of Title II even further. States were appropriated basic grants to be used solely for sex equity. For Ohio that meant \$1.1 million was set aside for equity. That was a powerful message from the legislature that vocational education could and would take a stand on this issue.

Coincidentally, at the time that the Carl Perkins Act was granting set aside money for sex equity, a major flaw was discovered in Title IX. *Grove City College vs. Bell* (1984), which dealt with discrimination, resulted in the ruling that, "If federal funding is allotted to specific programs, other programs which remain untouched by federal funds may be exempt from Title IX." This tended to disarm and diffuse the power of Title IX in protecting women educators and students from sexual discrimination and harassment.

The issue of sex discrimination is often compounded by the issue of harassment. Immediate attention needs to be given to educating people about what constitutes harassment. The Equal Employment Opportunity Commission (EEOC) defines harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature, either explicit or implicit, which is used as the basis for employment decisions or which interferes with or creates an intimidating, hostile, or offen-

sive work environment." On November 10, 1980, the EEOC issued final interpretive guidelines on sexual harassment under Title VII:

- Title VII prohibits sexual harassment of employees;
- Employers are responsible for the actions of their agents and supervisors; and
- Employers are responsible for the actions of all other employees if the employer knew or should have known about the sexual harassment.

Sexual harassment is illegal, and cannot be justified in any way. Offenders can be found liable under Title VII and IX and can be subject to disciplinary proceedings.

Conclusion

Title II, VII, and IX were legislative outgrowths of the judicial ruling in 1954 that "separate was not equal." Beginning in 1964 with Title VII, moving to 1972 with Title IX, and then to 1976 with Title II, federal legislation has attempted to protect the right of every individual to be treated equally regardless of sex, race, or handicap. It is the legal and moral obligation of every person in industry and education to end all activity in the workplace which infringes upon these individual rights.

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BOOK REVIEW

INTRODUCTION TO WILDLAND FIRE: FIRE MANAGEMENT IN THE UNITED STATES, by Stephen J. Pyne, New York, NY: Wiley, 1984, 455 pp., Price \$39.95.

Pyne is also the author of *FIRE IN AMERICA: A CULTURAL HISTORY OF WILDLAND AND RURAL FIRE* (1982). He has worked as a Fire Management Specialist in the national park setting. The book has an easy to read style presenting the information adaptable for both college student instruction and literature for professional foresters and fire managers. Included is an index and a listing of abbreviations used in the work. At the end of each chapter is a mini-bibliographic essay listing significant works followed by a listing of all references cited. The addition of other references in the index might have helped to make this work more valuable, however, its purpose was to set forth the concepts of fire research

and management that have prompted certain institutional policies. It has succeeded in this purpose. Accompanying illustrations add significantly to the reader's comprehension.

Three basic sections are Fire Environment, Fire Regime, and Fire Management. The physical and chemical aspects of wildland fire, chemical and physical fire retardants, fire growth and behavior, and the types of atmospheric conditions that affect fire are part of Fire Environment. In the second section, Fire Regime, Pyne shows that combustion in any form can produce some profound effects upon any given ecosystem, whose components are water, air, land, fauna, and flora. Although lightning is a possible cause for this combustion, mankind remains the greatest source of ignition. The reasons for such ignition can vary from prescribed or controlled burn to out-right arson for no apparent reasons. It is in this rather complex situation that

fire management objectives must be prepared. Such objectives might vary greatly between the various agencies because of conflicting missions.

The last section, Fire Management, shows that there are usually common goals to prevent ignition, change the environment in which a fire burns, and to stop small fires from becoming big ones. Actual fire management programs vary. Pyne skillfully shows the possible considerations why these different objectives might take place. Although someone might disagree with a particular objective, it is important we understand why the objective was made. Pyne has succeeded in presenting the theories of fire research and management in order to explain certain resultant fire management objectives.

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Minimizing Tort Liability Negligence Claims

The newspaper headlines read, "VO AG TEACHER SUED FOR \$125,000." The facts that accompanied the news article were that a vocational agriculture co-op student caught his foot in a grain auger while working at the local feed mill. The student's foot was badly mangled. In the lawsuit, it was claimed that the vocational agriculture teacher and the school were negligent. This incident happened in Indiana but could easily have occurred in nearly any state.

Litigation involving vocational agriculture teachers such as this appears to be occurring more frequently. Due to the nature of their programs, vocational agriculture teachers are exposed to the possibility of various legal actions surrounding their work with students.

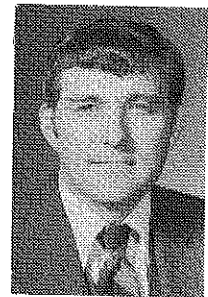
In this article, the authors examine the most common form of litigation faced by vocational agriculture teachers, that being held liable for student injuries. The four central issues that courts look at in those types of lawsuits and suggestions for minimizing the potential of litigation are examined.

Tort Liability

There are many different types of liability. In this article, only tort liability is examined. A tort is a private or civil wrong independent of a contract.

A vocational agriculture teacher, by virtue of his or her position, demonstrates to society and to students a course of action that is expected both legally and socially within our society. A person does not cause harm to other people, intentionally or unintentionally. If something harmful happens to a student under the jurisdiction of a teacher, the teacher might be held responsible. Tort liability may be any civil wrong, either intentional or unintentional. An example of an unintentional tort claim might be that the vocational agriculture teacher was not exercising good care and supervision over a group of students engaged in the use of a table saw. In this example, if a board were to kick back and injure students, the teacher may be subject to a tort claim. An example of an intentional tort liability would be where a student claimed that the teacher engaged in assault and battery against him or her.

It is important that all classroom teachers recognize that one may be held liable for his or her conduct based on his or her actions or inactions. A potential libelous situation under the concept of tort liability may be either engaging in an activity which directly results in a pupil injury or by failure to do something that directly results in a pupil injury. It is necessary that the classroom teacher exercise an acceptable standard of conduct in supervising students. Classroom teachers must exercise care by demonstrating adequate supervision, proper instruction to students, and maintaining all equipment in reasonable repair.



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The most common form of tort liability is in the area of negligence. In general, to show negligence, most state courts examine four central issues: (1) *Due Care* — the classroom teacher has a duty to protect the health and welfare of the students assigned to his or her class. It should be clearly realized that with the potential of greater injury in the agricultural shop area, the standard of care increases. For example, the student in a high school social studies class is normally not exposed to high risk relative to the high school agriculture student. Therefore, the agriculture teacher must exercise greater care and caution with regard to the safety of the students. For example, all shields and guards should be properly adjusted and in place on equipment. (2) *Breach of Duty* — by the actions or inactions, the teacher is shown to have breached a duty of proper standard. For example, this might occur if the agriculture teacher allowed students to operate tractors without first ascertaining whether the students were familiar with the controls. (3) *Proximate Cause* — if the actions or inactions have a reasonably causal effect in the injury to the pupil. For example, if the teacher had properly instructed the students in the safe usage of the drill press, would the injury have occurred? (4) *Actual Damages* — most state courts, generally speaking, look for real damage; that is, was the student physically harmed and, if so, to what extent?

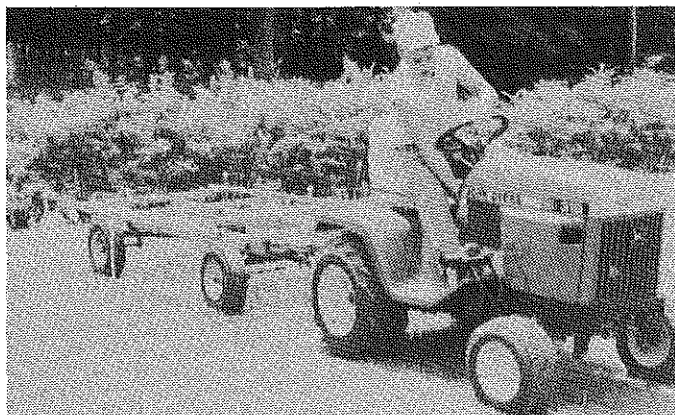
Within these four elements as outlined, the courts are heavily persuaded by the "reasonable man" theory. That is, what would a reasonable person have done in like or similar circumstances? Could the injury have been foreseen by the reasonable person and thus prevented?

The classroom teacher must realize that he or she is responsible for a reasonable standard of care for the safety

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Minimizing Tort Liability Negligence Claims

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Vocational agriculture program policies should document who may operate power machinery and equipment. (Photograph courtesy of Stacy A. Gartin, West Virginia University.)

and welfare of the students. The classroom teacher, however, is not responsible nor can he or she be held responsible for unavoidable accidents which occur. However, one may reasonably suggest that it is the duty of the classroom teacher to minimize the potential accidents.

Another point which teachers must accept is that ours is a litigationist society often based on adversarial relationships. Lawsuits may and will occur for a variety of reasons. Through careful planning and knowledge of potential liability, the risks may be minimized.

Minimizing Lawsuits

The vocational agriculture teacher can take several actions which will help minimize the possibility of becoming involved in a lawsuit.

1. **Have written lesson plans which include safety instruction.** The importance of lesson planning has long been emphasized by teacher educators primarily for the purpose of improving instruction. If the lesson plans were actually used, they might indicate that safety instruction had been taught.

2. **Sound instruction.** It is the teacher's obligation to properly instruct students on how to operate the equipment. Never assume students already know how to use the equipment. The students should receive formal classroom instruction on the equipment, be shown how to operate the equipment, and then demonstrate how to operate the equipment under the teacher's supervision. The use of equipment should be reviewed each year. Nothing can take the place of sound safety instruction.

3. **Safety tests.** After students are instructed in the operation of equipment, they should be given a written safety test. Students should be required to retake the safety test if they do not score a high level (e.g. 90%). The wrong answers should be corrected by the student. Although liability cannot be absolved, the teacher may want to consider having the students sign a statement at the bottom of the test which indicates that they received safety instruction and know how

to use the equipment. These tests should be kept on file. Students should not be allowed to use a piece of equipment until they have passed the safety test.

4. **Training plans.** Students enrolled in co-op programs should have a training plan. On the training plan, provisions for providing safety instruction, both at school and on the job, should be listed. Care should be taken to provide the safety instruction early in the co-op experience.

5. **Safety inspector.** Most vocational agriculture teachers have some type of organized clean-up procedures for the end of the class period. Often a job wheel is used listing such clean-up duties as sweeper, duster, shovel person, and so on. Students are assigned new clean-up duties on a daily or weekly basis. Consideration should be given to adding a new duty — safety inspector. This student would check safety guards, cords on electrical equipment, distance between the tool rest and grinding wheels, and so on.

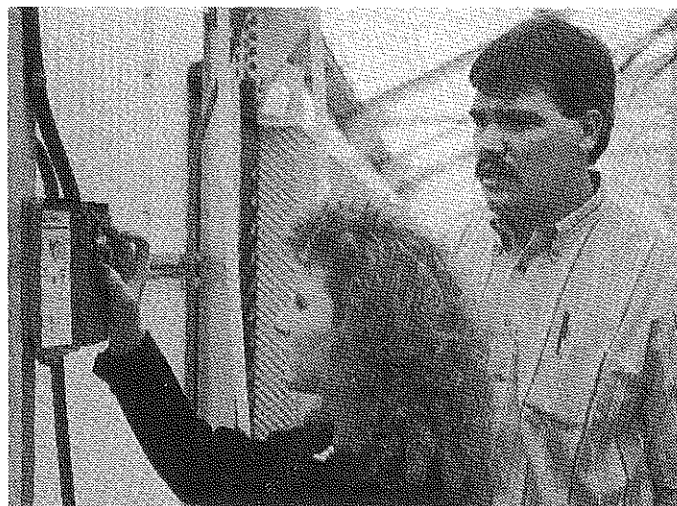
6. **Safety committee.** A teacher may want to consider having a safety committee in the FFA program of activities. The safety committee will assist the teacher in identifying and eliminating potential safety hazards.

7. **Wear safety glasses.** There is no defensible excuse for a vocational agriculture teacher to allow students to be in the shop or laboratory without wearing safety glasses.

Conclusion

It is important to realize that teachers may be held liable for their conduct. By using common sense and following the guidelines listed in this article, tort liability claims can be minimized. A teacher should also consider purchasing professional liability insurance. This insurance is generally available from professional organizations such as the American Vocational Association for a relatively small price.

In case you are wondering what happened to the lawsuit mentioned in the first paragraph of this article — the lawsuit was dismissed. The teacher had attended to some of the points made in this article. Shouldn't you?



Tort liability decisions are based, in part, on adequate supervision. Teachers should anticipate hazards and provide supervision in situations where students may harm themselves or others. (Photo courtesy of Glen C. Shinn, Mississippi State University.)

Lobbying in Louisiana

In Louisiana, vocational agriculture teachers have been politically active since the program of vocational education in agriculture came into existence in the public schools. The biggest issue has usually been extended employment. Other items of concern have been travel expenses and funding for supplies and/or equipment and operation of food preservation programs. When times were good financially, there was really no problem securing the support of legislators. However, when oil revenues (the major source of state income) declined drastically, support for funding the agriculture programs also became scarce. Moral support was there, but it became more and more difficult to find votes for bills which funded programs.

Lobbying efforts became more intense from other groups competing for the same shrinking state revenues. Vocational agriculture teachers found it increasingly difficult to carry on legislative activities while also maintaining quality vocational agriculture programs. In 1986, funding for two weeks of pay was eliminated from the extended employment of vocational agriculture teachers in the state budget. Money for travel was also eliminated in the budget of the state department of education. For most teachers in the state, this amounted to a loss in income of over \$2,000.

It became apparent that even with a close eye on things in the legislature, agriculture teachers were not able to do all that was needed to keep up with and influence the legislative process. The decision was made to poll the membership on the idea of hiring a professional lobbyist. This was something new to Louisiana and there were many questions to be answered. Two critical issues were identified. A decision had to be made on a method to pay a lobbyist. There was also the problem of finding one with whom to work.

The Hiring Process

Once the membership decided to go forth with the effort, a committee was selected representing all areas of the state. It was decided to ask each teacher to pay \$100 into a fund that would be used to cover the expenses of the lobbyist. Why \$100? This figure was used in preliminary discussions with lobbyists of other groups. This figure would also bring about \$20,000 into the fund. It was felt that this would get the services of a professional lobbyist for at least the first legislative session. It should be noted that the agriculture teachers had never before experienced cuts to the 12 month program. Not all teachers decided to participate. There were some who were very skeptical of the effort. There are some who still feel that way. Approximately 170 of 260 teachers in the state decided to donate their share of the lobby fund. With the funding level established, a search was begun to find a person with whom to work. Recommendations from legislators, members of the state FFA foundation, farm organizations, and other friends of the FFA and vocational

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agriculture provided a list of contacts. The list proved to be quite diverse. Many of the suggested lobbyists were out of the organization's reach financially. After a lot of telephone contact, six prospective lobbyists agreed to meet with the committee to discuss the issues. This was done in one day in a series of one hour interviews and one of those interviewed was hired to be the lobbyist for the Louisiana Vocational Agriculture Teachers Association (LVATA). The woman selected for the position had a farm background and had done volunteer work for a state representative who was a former vocational agriculture teacher. It was agreed that she could work for other clients as well because there was not enough funding to pay for her services on a full-time basis. There were no conflicting obligations on her part, so she was free to pursue other interests as well as those of the agriculture teachers.

Duties of the Lobbyist

Although the generally expected duties were discussed in the interviews, specifics were one of the first things to be decided. The selection committee perceived that a lobbyist for the LVATA would:

1. promote legislation and provide information about that legislation (why it is important, who it is affecting, etc.) that would insure the continuation of the vocational agriculture programs in the high schools of Louisiana on a year round basis;
2. provide information about the vocational agriculture program and the FFA to legislators who were not aware of the program or the extent that the program operated in their respective legislative districts; and
3. be on the lookout for efforts by legislators or other groups who would be attempting to reduce the funding of the program.

It was decided that the lobbyist was to be a legislative watchdog. On a limited budget, funds were not available for entertaining as is done by many groups. The lobbyist was to work with two or three close contacts who in turn would contact the rest of the membership via a telephone network. It was decided that the agriculture section chief in the state department of education and the chairman of the legislative committee would be the primary contacts for the lobbyist. It was recognized that contact with too many of the members would be both a waste of valuable time and a practice that could lead to confusion. Keeping up with committee meetings, changes in bills, etc., is a monumental task. The lobbyist was to do this work and let the associa-

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Lobbying in Louisiana

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tion know when the telephone network was to be put into effect to give instructions to the teachers. This information would include the bill number, the association's position, and why it was important for the legislator to vote a certain way on the issue. All teachers would have this information within 24 hours and could contact their legislators. The lobbyist would also work on the lawmakers while at work in the state capitol.

Our Network in Action

The contract with the newly hired lobbyist went into effect October 1, 1986. A special legislative session had been called for December to deal with state finances. This would be the first test of the wisdom of the vocational agriculture teachers and their decision to hire a professional lobbyist to represent them.

The lobbying effort worked to the extent that the cut in funding two weeks pay was restored by the legislature only to be vetoed by the governor. This was later stated to have been a "mistake" by the governor caused by miscommunication and that it would be taken care of in the regular session. Again, the following spring in its regular session, the legislature restored the funding cuts and the governor promised that nothing would happen this time to interfere with the restoration. But as things can happen, the governor made some "mistake" and allowed them to go unfunded. This was a real blow to the expectations of the agriculture teachers. Some were disgusted and others reminded other teachers of their skepticism. Many were frustrated, but all were extremely disappointed. This was, however, an election year and the vocational agriculture teachers went to work and helped

elect a new governor. The new governor understands the needs of the agriculture program, so there should be a better probability of restoring the salary cuts and funds for travel expenses. Some would say that the efforts were in vain because the cuts were not restored. The probability was that if the issue had not been fought, more cuts to the extended program would have been made.

Final Thoughts

The effect of hiring a lobbyist to represent the LVATA in the Louisiana legislature has been positive. Most legislators know her and that she represents the LVATA. Many legislators are now fully aware of vocational agriculture and FFA programs and the impact these programs have in their districts. Legislation records and reports show how each legislator votes on issues critical to vocational agriculture. Being present in the legislature and contact with other lobbyists ensures that we can be more fully informed of current issues and where we need to place our emphasis and who we are competing with for support and our share of the tax dollar.

The legislative lobbying effort by the teachers has been a necessity. Leaving the lobbying effort solely to the teachers causes some to miss critical school time and causes financial hardship on some more than others. By assessing the membership for the cost of the lobbying effort, each teacher has an equal chance to participate in sharing the cost and can actually be more effective by having a voice present at all legislative committee meetings as well as the sessions. Louisiana vocational agriculture teachers have improved their leadership role in vocational education in the state by being the first to hire professional representation for their lobbying efforts.

ARTICLE

Legal Issues: Supervised Occupational Experience Programs

Paula is a sophomore who has been very active in the vocational agriculture program through the first year and a half of her high school career. She feels that she wants to work in the parts department and office of the local machinery dealership. You arrange an interview for Paula and she is hired. A senior student, Bob, works on a supervised occupational experience program (SOEP) agreement as a mechanic in the same implement dealership. Because Paula doesn't drive, you ask Bob if he would give her a ride to work each day.

On supervisory visits, you find everything going well with Mike (the manager), Bob, and Paula — until you drive past the shop late one evening and see Paula and Mike still working (tax time of year). Feeling concerned, you decide to talk about it with Mike. The next day on your visit to the implement dealership, you learn that Paula and Bob are in the

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hospital because of an accident in Bob's car on the way to work. Later you learn that Bob had been drinking just before the accident.

In addition to showing a classic example of "whatever can go wrong will go wrong," the incidents described above force us to examine our legal responsibilities as instructors in a supervised occupational experience program.

Child Labor Relations

A working knowledge of federal and state labor laws

governing the employment of minors is important to vocational agriculture teachers placing students in SOEP placement programs. A United States Department of Labor publication, *Child Labor Requirements in Non-Agricultural (off-farm) Occupations*" (Child Labor Bulletin No. 101, 1978) provides a good overview of federal guidelines in the Fair Labor Standards Act. It identifies occupational fields and specific jobs that minors may or may not be employed in, with exceptions for student learners in approved school-supervised and school-administered work experience programs.

The Child Labor Act sets the following hour and time standards under which 14 and 15-year-old minors may not be employed:

- during school hours, except as provided for in work experience programs;
- before 7 a.m. or after 7 p.m., except from June 1 through Labor Day when they may work until 9 p.m.;
- more than 3 hours per day on school days;
- more than 18 hours during school weeks
- more than 8 hours per day on non-school days; and
- more than 40 hours per week in non-school weeks.

State laws will differ slightly depending on the occupations peculiar to a given state. Remember that you must comply with both federal and state laws. If there is a conflict between them, federal law usually supersedes state law. In some places, however, state law may be more limiting than the federal law, in which case the state law takes precedence. Where these matters are unclear, consult your state and federal child labor office or your school attorney.

Insurance and Taxes

Responsibility for providing worker's compensation insurance to cover an on-the-job accident belongs to the legal employer of the student worker. Legal employment is determined by whether the student receives pay for work performed at the training station. Paid work experience requires the employer to provide insurance coverage. The school holds responsibility for insurance in non-paid employment.

Employers usually insure paid work experience students in the same manner as regular employees. The same coverage applies to employment during and after school hours.

State laws usually make special provisions giving schools the opportunity to provide non-paid students with insurance protection while on the job. Students must be enrolled in an approved work experience program to be covered under these provisions.

Students are considered legal employees of the local school district while on non-paid work experience assignments. The school district must apply for coverage with its state accident insurance fund or a designated private carrier. Schools must submit to the insurance carrier, for approval, a list of non-paid student workers with their places of work and job assignments. Upon the insurance carrier's approval, the school pays premiums and insurance coverage takes effect. Premiums are computed on an assumed wage basis.

Your school's insurance carrier can provide a complete explanation of the procedures and conditions for insuring work experience students. The carrier will gladly have a representative meet with you to review your insurance coverage.

The Federal Unemployment Tax Act of 1971 (FUTA) specifically excluded cooperative work experience students from receiving unemployment benefits, thereby relieving employers from paying unemployment taxes on their wages.

On the other hand, all paid work experience students must have social security taxes withheld from their paychecks by their employer. If a student cannot use federal form W-4E, the employer must withhold both state and federal income taxes from the paycheck as well.

Tort Liability

Students using their own cars to transport others to work outside of school are always a concern to teachers. If an accident occurs, the question of negligence regarding the person who arranged the transportation invariably arises. The court tests this question by asking what a reasonably prudent professional would have foreseen under the same or similar circumstances and if the person involved met the standard or care expected commensurate with the risks involved. In other words, what should the reasonably prudent SOEP coordinator have done before the accident to prevent it from happening or, if it does happen, to relieve the school of liability for negligence?

Many schools have a policy for students driving their own cars for school-sponsored activities or events that could be adapted for use in SOEP activities. The policy might include:

- proof that the student driving has a valid driver's license;
- proof of adequate insurance on the car used;
- a signed statement from a parent or guardian giving the student permission to drive other students;
- a statement signed by a parent or guardian permitting his or her child or ward to ride with another student; and
- a record of every driving students' accidents and moving violations. (Check with local law enforcement agencies for this information, which is public record — no invasion of privacy is involved.)

In addition, you must keep accurate records and follow carefully the plan you adopt. If an accident occurs, write down everything you can remember about the events leading to and following it. Careful attention to a plan that includes these precautions will normally result in your school not being the proximate cause of an accident involving a student-driven vehicle.

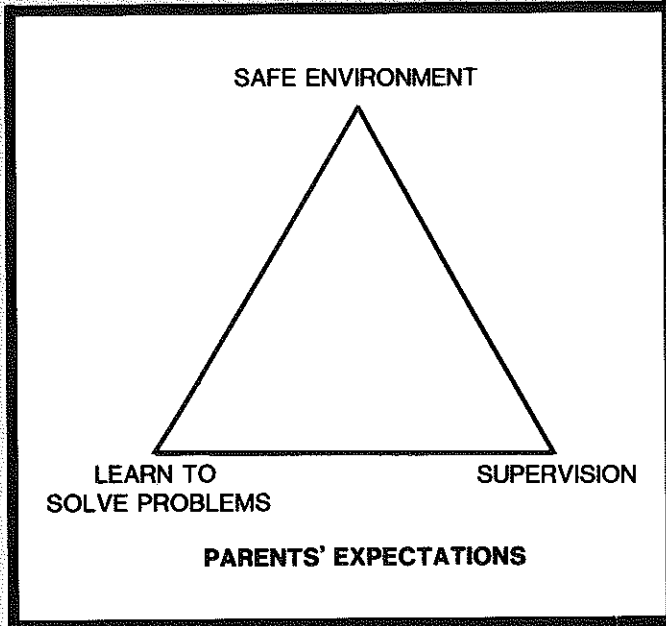
Summary

Ideally, each student's placement should result from his or her career interests and objectives. Within the limitations of available training sites and each student's interests and abilities, the coordinator or teacher has the difficult task of matching students with training sites. The coordinator or teacher also has a legal and ethical responsibility to ensure that the training site is a safe working environment and that the student's abilities show likelihood of successful on-the-job performance.

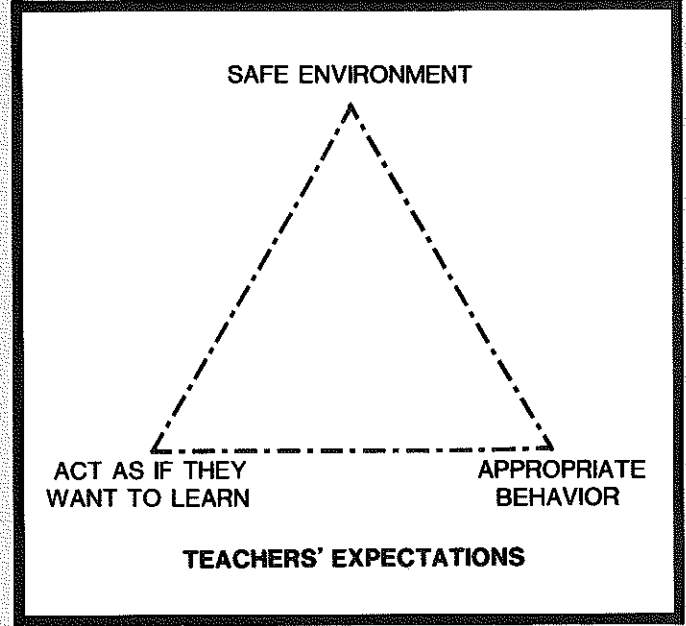
A student's work experience can be a valuable and richly rewarding experience. This is especially true for vocational agriculture students who work with changing technology, equipment, processes, and marketing. We hope the legal issues addressed in this article help you develop and implement both educationally and legally sound supervised occupational experience programs in the agricultural placement area.

Stories In Pictures

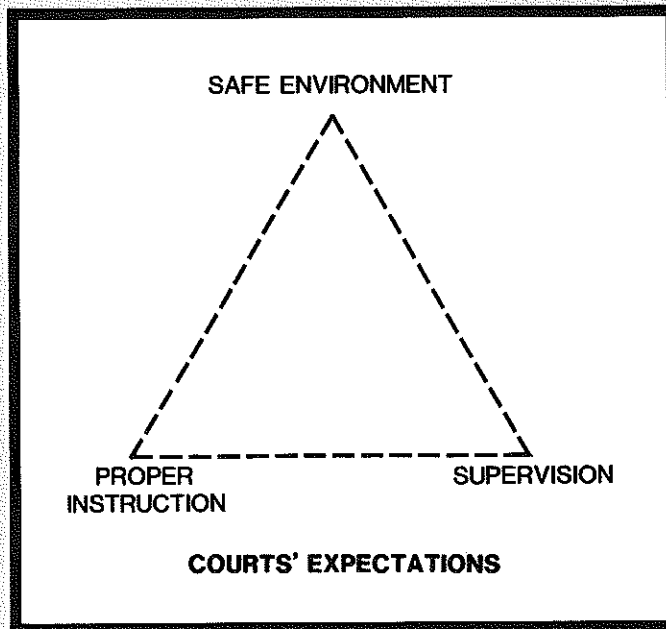
Legal Issues and Agricultural Educators



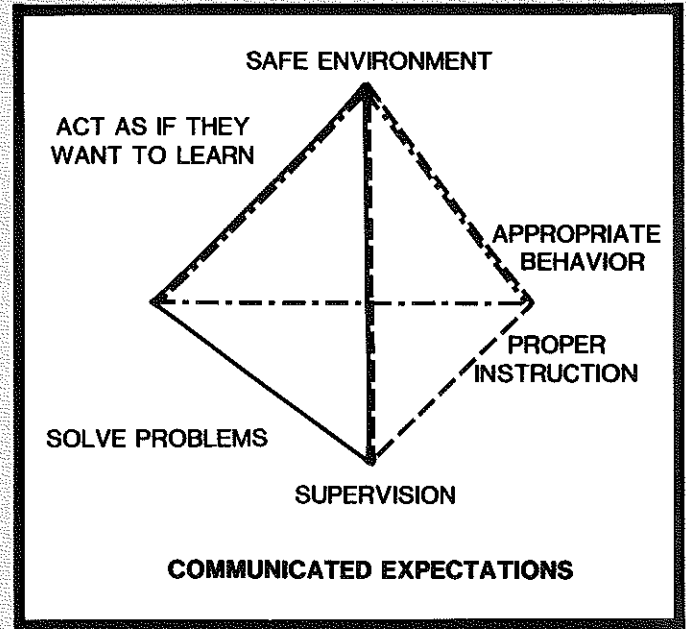
Parents expect the school to provide a safe environment, supervision, and believe their child should learn to solve problems which occur in daily life.



Teachers expect students to demonstrate appropriate behavior, act as if they want to learn, and maintain a safe, least-restrictive environment.



The courts expect the teacher to provide proper instruction, supervision, and the maintenance of a safe environment.



Identified and communicated expectations for a safe laboratory in which students can experiment, observe, and practice agricultural competencies.

(All Figures Courtesy of Glen C. Shinn, Professor, Mississippi State University.)