

VOLUME 14
(Beginning August 1973
thru
December 1973)

REMARKS BY:

ROBERT MORGAN
ATTORNEY GENERAL

25TH ANNUAL N.C. COACHES CLINIC
GREENSBORO, N.C.
AUGUST 2, 1973

LIABILITY CONCERNING COACHES AND TRAINERS

IT IS INDEED A PLEASURE FOR ME TO BE WITH YOU THIS MORNING. I UNDERSTAND FROM MR. JAMIESON, WHO INVITED ME TO THIS CLINIC, THAT I AM SUPPOSED TO GIVE YOU SOME ADVICE CONCERNING GENERAL LIABILITY OF COACHES AND TRAINERS FOR SCHOOL ACCIDENTS. I REALIZE THAT GIVING ADVICE IS USUALLY A THANKLESS BUSINESS AND I ASSURE YOU THAT I SHALL NOT VENTURE TOO FAR IN THAT DIRECTION. I HAVE ALWAYS KEPT IN MIND THE UNCONSCIOUSLY PROFOUND SUMMATION WRITTEN BY A SMALL SCHOOL GIRL: "SOCRATES," SHE WROTE, "WAS A GREEK PHILOSOPHER WHO WENT ABOUT GIVING PEOPLE GOOD ADVICE. THEY POISONED HIM."

THIS MORNING I SHALL ADDRESS MYSELF TO THREE INTERRELATED SUBJECTS: GENERAL CONCEPTS OF NEGLIGENCE, LIABILITY OF TEACHERS AND SCHOOL BOARDS FOR NEGLIGENCE, AND A FEW THOUGHTS ON THE SPORTS MEDICINE PROGRAM.

IN OUR SYSTEM OF JURISPRUDENCE, WHICH APPLIES EQUALLY TO TEACHERS AND OTHER SCHOOL PERSONNEL, A PERSON IS HELD LIABLE FOR HIS OWN NEGLIGENCE. WHEN HIS NEGLIGENCE DIRECTLY CAUSES INJURY TO ANOTHER, HE IS LIABLE TO THE INJURED PERSON FOR

WHATEVER DAMAGES ARE CAUSED. THIS, OF COURSE, DOES NOT MEAN THAT BECAUSE AN ACCIDENT IN FACT OCCURS THAT THE TEACHER IS LIABLE FOR THE INJURY. WITHOUT NEGLIGENCE, REGARDLESS OF HOW SERIOUS THE INJURY, THERE IS NO LIABILITY.

THE TERM "NEGLIGENCE" IS, THEREFORE, THE KEY TO A TEACHER'S LIABILITY. THE TEACHER, SINCE HE HAS THE PRIMARY RESPONSIBILITY FOR THE WELFARE OF THE PUPILS UNDER HIS SUPERVISION, OWES HIS PUPILS THE LEGAL DUTY OF EXERCISING REASONABLE CARE TO PREVENT INJURIES TO THEM. NEGLIGENCE RESULTS FROM THE BREACH OF THIS DUTY.

NEGLIGENCE GENERALLY DEFINED, IS THE FAILURE TO EXERCISE THAT DEGREE OF CARE FOR OTHERS' SAFETY WHICH A REASONABLE, PRUDENT MAN, UNDER LIKE CIRCUMSTANCES, WOULD EXERCISE, AND MAY CONSIST OF EITHER ACTS OF COMMISSION OR OMISSION. IN OTHER WORDS, NEGLIGENCE CAN CONSIST OF INACTION AS WELL AS ACTION. IF THE INDIVIDUAL DOES SOMETHING CONTRARY TO WHAT THE LAW EXPECTS, HE CAN BE NEGLIGENT; LIKewise, IF THE INDIVIDUAL FAILS TO DO SOMETHING EXPECTED OF HIM BY THE LAW, HE MAY BE NEGLIGENT.

I THINK IT ALSO IMPORTANT TO DEFINE WHAT IS "A REASONABLE PRUDENT MAN OR PERSON," EVEN THOUGH OUR COURTS OFTEN HAVE DIFFICULTY WITH IT. THIS IS A MYTHICAL PERSON ESTABLISHED BY LAW: "FORESIGHT IS HIS MAJOR CHARACTERISTIC."

IF A REASONABLE MAN OF ORDINARY PRUDENCE COULD HAVE, OR

ATHLETE. UPON APPEAL OF THE CASE BY THE SCHOOL DISTRICT ON THE GROUNDS THAT THE AWARD FOR DAMAGES WAS EXCESSIVE, THE HIGHER COURT REDUCED THE DAMAGES TO \$206,804.

THE APPALLING CONSEQUENCES OF THIS PLAYER'S INJURY AND THE LARGE SUMS OF MONEY EMPHASIZE THE SCHOOL'S RESPONSIBILITY, LEGAL AND ETHICAL, WHICH MUST BE ASSUMED BY THOSE RESPONSIBLE FOR THE SUPERVISION AND COACHING OF INTERSCHOLASTIC SPORTS. IT EMPHASIZES FURTHER THE NEED FOR ADMINISTRATORS AND COACHES TO KNOW HOW TO AVOID DAMAGE SUITS WHILE MEETING THEIR RESPONSIBILITY FOR THE WELFARE OF STUDENTS.

IN A CASE ARISING OUT OF OREGON, A 140-POUND FIFTEEN-YEAR OLD, INEXPERIENCED HIGH SCHOOL FRESHMAN WAS SENT IN TO PLAY IN AN INTER-SCHOOL FOOTBALL GAME AGAINST A SUPERIOR TEAM COMPOSED OF LARGE, RATHER ROUGH INDIVIDUALS OF MUCH MORE EXPERIENCE. THE BOY HAD NOT BEEN GIVEN ANY INSTRUCTION PRIOR TO BEING SENT INTO THE GAME BY THE COACH, AND DURING THE GAME HE BROKE HIS NECK. ACTION WAS BROUGHT AGAINST THE SCHOOL BOARD, THE SUPERINTENDENT, AND THE PRINCIPAL OF THE PARTICULAR SCHOOL. IN THIS ACTION THE COACH WAS NOT NAMED SPECIFICALLY AS A PARTY DEFENDANT. THE COURT INFERRED THAT IF ANYONE WAS LIABLE FOR THE INJURY SUSTAINED BY THE LAD, IT WAS THE COACH. THE COURT STRONGLY IMPLIED THAT A COACH FAILS TO TAKE REASONABLE CARE OF HIS PLAYERS AND IS THEREFORE NEGLIGENT WHEN HE PERMITS SUCH STUDENTS TO PLAY WITHOUT PROPER OR SUFFICIENT INSTRUCTIONS.

THIS CASE REPRESENTS SEVERAL POINTS OF INTEREST, PARTICULARLY TO YOU AS PRACTICING COACHES. THE PROBLEM OF MISMATCHING CONTESTANTS IS A THORNY ONE.

IN NEW YORK THE COURTS FOUND NEGLIGENCE BECAUSE OF MISMATCHING OF HEIGHTS AND WEIGHTS IN AN OTHERWISE PROPERLY SUPERVISED SOCCER GAME. ONE STUDENT WAS KICKED IN THE HEAD BY ANOTHER AND SUFFERED SERIOUS INJURY.

ON THE OTHER HAND, IN ANOTHER NEW YORK CASE THE COURT FOUND NO NEGLIGENCE WHERE A STUDENT WAS INJURED IN A WRESTLING MATCH WHICH WAS A PART OF THE PHYSICAL EDUCATION PROGRAM. IT SEEMS THAT HERE THE ACTIVITY WAS UNDER THE IMMEDIATE SUPERVISION OF A COMPETENT PERSON WHO HAD APPROVED THE MISMATCHING OF TWO BOYS AFTER CAREFUL COMPARISON OF WEIGHTS AND AFTER WATCHING THE TWO BOYS WRESTLE.

A CALIFORNIA COURT SAW NO NEGLIGENCE WHERE EIGHTH GRADERS PLAYED TOUCH FOOTBALL AND WHERE THE PARTICIPANTS HAD BEEN SELECTED ACCORDING TO INDIVIDUAL SKILL AND HAD BEEN PROPERLY INSTRUCTED ABOUT THE GAME.

I THINK IT IS IMPORTANT TO REMEMBER THAT THE REQUIREMENT OF ADEQUATE INSTRUCTION SEEMS TO HAVE BEEN THE DECISIVE FACTOR IN THE OREGON CASE. A NEW YORK CASE ALSO HELD THAT LACK OF INSTRUCTION BEFORE REQUIRING A PUPIL TO DO A SOMERSAULT COULD CONSTITUTE NEGLIGENCE AND IT WAS A QUESTION FOR THE JURY TO DECIDE. IN ANOTHER CASE A COACH SAT IN THE BLEACHERS AND WATCHED WHILE TWO INEXPERIENCED PUPILS BOXED IN A THREE ROUND SLUGGING MATCH WITHOUT PRIOR INSTRUCTION IN THE ART OF BOXING

AND THE PRINCIPLES OF DEFENSE. THE COACH WAS HELD NEGLIGENT FOR ALLOWING SUCH A DANGEROUS EXERCISE WITHOUT ADEQUATE INSTRUCTION.

in another case

BUT, WHERE PREVIOUS INSTRUCTION HAD BEEN PROVIDED, AND THE COACH DEMONSTRATED THE LEAPFROG JUMP OVER A GYMHORSE, AND HAD WARNED THE PUPIL OF THE DANGER AND TOLD HIM NOT TO ATTEMPT IT IF HE FELT UNABLE TO DO IT, THE COACH WAS HELD NOT NEGLIGENT WHEN A FOURTEEN-YEAR-OLD STUDENT BROKE HIS ARM IN THE ATTEMPT. THE POINT TO REMEMBER: MAKE SURE YOUR STUDENTS RECEIVE SOME PRIOR INSTRUCTION FROM YOU CONCERNING THE SPORT IN WHICH THEY ARE ABOUT TO PARTICIPATE.

ANOTHER QUESTION OF CONCERN IS THE KIND OF SCHOOL FACILITIES THAT MUST BE PROVIDED AND THEIR APPROPRIATE USE. AS IN THE CASE OF GIVING INSTRUCTIONS, ONE SHOULD BE GUIDED BY COMMON SENSE.

IN A 1955 NEW YORK CASE, THE DIRECTOR OF ATHLETICS SCHEDULED EIGHT (8) BASKETBALL GAMES AT THE SAME TIME IN EIGHT (8) ~~CONTIGUOUS~~ ^{adjacent} BASKETBALL COURTS CROWDED INTO A GYMNASIUM EIGHTY FEET BY FORTY-THREE FEET. A STUDENT WAS SERIOUSLY HURT AND THE COURT HELD THAT THE ATHLETIC DIRECTOR WAS NEGLIGENT BECAUSE HE SHOULD HAVE ANTICIPATED THAT SOMEONE MIGHT BE INJURED IN A GYM THAT WAS SO OVERCROWDED AND BEING USED FOR A STRENUOUS GAME WHICH REQUIRED SUCH MOVEMENT.

ON THE OTHER HAND, WHERE SEVERAL HANDBALL GAMES WERE PLAYED ON A GYM FLOOR SIMULTANEOUSLY AND THE STUDENT WAS HIT IN THE EYE BY A BALL, NO NEGLIGENCE WAS FOUND ON THE PART OF THE

COACH BECAUSE, AS THE COURT PUT IT, HANDBALL WAS NOT "AN INHERENTLY DANGEROUS GAME."

IN ANOTHER NEW YORK CASE, AN APPLICANT FOR A TEACHING JOB WAS REQUIRED TO TAKE A PHYSICAL EXAM DURING WHICH SHE WAS DIRECTED TO BAT A SOFTBALL AND RUN TO FIRST BASE. THE FIRST BASE SACK WAS NOT ANCHORED PROPERLY AND IT SLIPPED OUT FROM UNDER HER WHEN SHE SLID INTO THE BASE. THE COURT HELD THAT THE SUPERVISOR WAS NEGLIGENT IN NOT PROPERLY CHECKING TO INSURE THAT THE BASE WAS SECURELY FASTENED.

WHAT KIND OF SUPERVISION IS NECESSARY? IN A RECENT CALIFORNIA DECISION, SOME FOURTH GRADE CHILDREN WERE PLAYING THE GAME OF "BLACK-OUT," WHICH INVOLVED ONE CHILD HOLDING HIS BREATH WHILE ANOTHER SQUEEZED HIM TIGHTLY ~~THE~~ ^{until} UNCONSCIOUS ~~HE~~. A TEN-YEAR-OLD PARTICIPANT DIED AS A RESULT. THE EVIDENCE TENDED TO SHOW THAT SOME OF THE TEACHERS KNEW OR SHOULD HAVE KNOWN THAT THE CHILDREN WERE PLAYING THIS DANGEROUS GAME. THE COURT SAID THAT IT WAS FOR THE JURY TO DECIDE WHETHER THE LACK OF SUPERVISION OR IMPROPER SUPERVISION OF PUPILS WAS NEGLIGENCE.

IN A WASHINGTON STATE CASE, AN ELEVEN-YEAR-OLD BOY DURING AN UNSUPERVISED RECESS PLAYED "KEEP AWAY" WITH A FOOTBALL WITH A NUMBER OF OTHER CHILDREN. EVIDENCE PRODUCED DURING THE TRIAL AGAINST THE BOARD OF EDUCATION WAS THAT ALTHOUGH THE GAME OF FOOTBALL ITSELF WAS PROHIBITED ON THE SCHOOL GROUNDS, THE EMPLOYEES OF THE BOARD ALLOWED THE GAME OF "KEEP AWAY" TO BE PLAYED DESPITE THE FACT THAT THEY KNEW OR SHOULD HAVE KNOWN

THAT CHILDREN DURING THE RECESS PERIOD WERE PARTICIPATING IN THE SPORT. THE COURT SAID THAT THERE WERE SUFFICIENT ALLEGATIONS TO ALLOW THE CASE TO GO TO THE JURY TO DECIDE THE ISSUE OF WHETHER THE SCHOOL BOARD WAS NEGLIGENT IN FAILING TO PROVIDE ADEQUATE SUPERVISION DURING THE RECESS PERIOD.

ONE OTHER THING I WOULD LIKE TO POINT OUT RELATIVE TO THE TOPIC OF SUPERVISION IS THAT THE QUALITY OF THE SUPERVISION MUST MEET, AS WE WERE DISCUSSING BEFORE, THE "REASONABLE MAN" TEST. FOR EXAMPLE, IN A CASE WHICH AROSE OUT OF THE STATE OF WASHINGTON, A HIGH SCHOOL STUDENT SUFFERED FATAL INJURIES DURING AN INITIATION CEREMONY OF THE HIGH SCHOOL'S LETTERMAN SOCIETY, WHICH WAS HELD ON A SCHOOL DAY UNDER THE AUSPICES OF SCHOOL AUTHORITIES. THE FACT THAT THE SCHOOL AGENT WAS THERE AND IN CHARGE OF THE MEETING DID NOT, BY ITSELF, PREVENT A HOLDING THAT A CAUSE OF ACTION EXISTED FOR NEGLIGENCE.

IN NORTH CAROLINA, A BOARD OF EDUCATION, UNLESS IT HAS WAIVED IMMUNITY FROM TORT LIABILITY AS SPECIFICALLY AUTHORIZED BY STATUTE, IS NOT LIABLE IN A TORT ACTION OR PROCEEDING. THE BASIS UPON WHICH A BOARD OF EDUCATION MAY NOT BE HELD LIABLE AT COMMON LAW FOR NEGLIGENCE IS THE THEORY OF SOVEREIGN IMMUNITY WHICH REASONS THAT NEITHER THE STATE, NOR ANY OF ITS SUBDIVISIONS, CAN DO WRONG AND THEREFORE CAN NOT BE SUED UNLESS PERMISSION IS GIVEN. THE SCHOOL BOARD IS A SUBDIVISION OF THE STATE.

IF A BOARD OF EDUCATION HAS PURCHASED LIABILITY INSURANCE, AND I UNDERSTAND THAT THE VAST MAJORITY OF THE BOARDS HAVE IN FACT PURCHASED SUCH INSURANCE, LIABILITY IS WAIVED UP TO THE AMOUNT OF THE INSURANCE. HOWEVER YOU MUST REMEMBER THAT A SCHOOL EMPLOYEE MAY BE SUED IN HIS INDIVIDUAL CAPACITY FOR DAMAGES HIS NEGLIGENT ACTS OCCASION.

THERE IS AN IMPORTANT NEED FOR ADMINISTRATORS, COACHES AND TRAINERS TO KNOW HOW TO AVOID DAMAGE SUITS WHILE MEETING THEIR RESPONSIBILITY FOR THE WELFARE OF STUDENTS. FOR EXAMPLE, IN NORTH CAROLINA APPROXIMATELY 54 PERCENT OF THOSE STUDENTS PARTICIPATING IN INTERSCHOLASTIC FOOTBALL ARE INJURED AT SOME TIME DURING THE SEASON, AND 71 PERCENT OF THOSE INJURED ARE REINJURED DURING THE SEASON. THIS WOULD SEEM TO INDICATE THAT THE STUDENT IS RETURNING TO PRACTICE TOO SOON OR THAT HE IS NOT RECEIVING PROPER MEDICAL CARE.

WHAT IS NEEDED IS A PROGRAM TO INSURE OPTIMAL PROTECTION AGAINST INJURY THROUGH GOOD TECHNICAL INSTRUCTION, PROPER REGULATION AND CONDITIONS OF PLAY, AND ADEQUATE HEALTH SUPERVISION. TO IMPLEMENT THESE GOALS THE SPORTS MEDICINE PROGRAM FOR THE PUBLIC SCHOOLS OF NORTH CAROLINA WAS CREATED. THIS PROGRAM HAS BEEN SANCTIONED BY THE MEDICAL SOCIETY OF NORTH CAROLINA, WHICH THROUGH ITS COMMITTEE ON MEDICAL ASPECTS OF SPORTS INTENDS TO WORK WITH THE SPORTS MEDICINE PROGRAM AND LOCAL GROUPS.

PERSONNEL IS NOT GENERALLY AVAILABLE IN THE SCHOOL SYSTEM WITH THE TRAINING AND QUALIFICATIONS NECESSARY TO CARE FOR SPORTS-RELATED INJURIES NOT REQUIRING THE ATTENTION OF A PHYSICIAN,

OR TO PROVIDE EMERGENCY TREATMENT AND FIRST AID FOR MORE SERIOUS INJURIES THAT DO REQUIRE THE ATTENTION OF A PHYSICIAN. AT THE PRESENT IN NORTH CAROLINA, THIS RESPONSIBILITY IS USUALLY ASSIGNED TO SOMEONE WORKING WITH THE COACHING STAFF. FACULTY MEMBERS TRAINED IN THE PREVENTION AND CARE OF MEDICAL INJURIES ARE DESPERATELY NEEDED.

UNDER THE SPORTS MEDICINE PROGRAM, THIS TRAINING WILL BE PROVIDED UNDER NATIONAL STANDARDS WITH NATIONAL CERTIFICATION, IN ACCORDANCE WITH THE REGULATIONS OF THE NATIONAL ASSOCIATION OF ATHLETIC TRAINERS. ALSO, COLLEGE PROGRAMS HAVE BEEN INSTITUTED AT APPALACHIAN STATE UNIVERSITY AND AT EAST CAROLINA UNIVERSITY BEGINNING THIS FALL. THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL IS PLANNING SUCH A PROGRAM IN THE NEAR FUTURE AND IN ADDITION WILL OFFER A MAJOR IN ATHLETIC TRAINING.

THE OBJECTIVES OF THE SPORTS MEDICINE PROGRAM ARE TO DEVELOP A SYSTEM OF QUALIFIED TEACHER-ATHLETIC TRAINERS, TO INVOLVE A GREATER NUMBER OF PHYSICIANS AND ALLIED HEALTH PROFESSIONALS AND VOLUNTEERS IN LOCAL SPORTS MEDICINE PROGRAMS, AND TO DISSEMINATE INFORMATION REGARDING MODERN TECHNIQUES OF SPORTS MEDICINE. ^{These} ^{Objectives and} ARE INDEED WORTHY. I AM SURE THIS PROGRAM CAN BE SUCCESSFUL WITH YOUR INTEREST AND PARTICIPATION.

THANK YOU SO VERY MUCH FOR ALLOWING ME TO BE WITH YOU TODAY. I AM A FATHER AND I HAVE CHILDREN IN OUR PUBLIC SCHOOLS. I PERSONALLY APPRECIATE YOUR ENTHUSIASM FOR YOUR JOBS AND THE GOOD WORK YOU ARE DOING.

WE IN THE ATTORNEY GENERAL'S OFFICE ENJOY THE GOOD
RELATIONSHIP WE SHARE WITH EDUCATORS IN OUR STATE AND APPRECIATE
YOUR WILLINGNESS TO CALL UPON US FOR ADVICE AND ASSISTANCE.
PLEASE FEEL FREE TO CONTINUE TO DO SO IN THE FUTURE.