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CONTEMPORARY ARGUMENTATION AND DEBATE
19 (1998): 1-17.

LIABILITY IMPLICATIONS OF FORENSIC PROGRAM ADMINISTRATION

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College debate coaches, judges and program administrators often are confronted with potential legal liability as a result of the performing their official duties. Because intercollegiate forensics requires extensive travel and contact with students outside of the classroom environment, the potential liability exposure for individuals involved in forensics vastly exceeds the litigation risks associated with ordinary teaching duties. While no plan of action can completely alleviate these risks, a better understanding of the areas where potential legal problems may arise should enable educators to rationally and thoughtfully evaluate their exposure prior to the point when they are faced with litigation.

With that goal in mind, this essay outlines a variety of legal issues that may spring from forensics program administration, coaching or judging. It begins by providing an overview of a variety of specific factual situations that may give rise to liability claims. These "worst-case" scenarios are presented as a means of stimulating dialog on the legal implications of forensics participation and are not intended to function as specific guidelines for programs to follow as a means of avoiding potential lawsuits.

The second section of the essay discusses a variety of proactive strategies that coaches and program directors may wish to study, including acquisition of insurance coverage. This section poses a series of specific questions that may assist educators in understanding the legal implications of their official duties more precisely. Again, the issues addressed in this section are not intended to establish a specific framework by which litigation risks can be reduced. Educational institutions vary widely in size, structure and the degree to which policies are formalized, and insurance coverage is policy-specific. As is the case with all of the issues that will be discussed, legal rules and procedures vary widely by jurisdiction and readers are strongly advised to consult with the general counsel or other relevant

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administrators at their colleges or universities before making any policy decisions on the basis of the issues raised in this essay.

Forensics Educators at Risk

General Travel-Related Issues. One of the most risky areas of forensics program administration is travel. Debate coaches, program directors and administrators, and in some cases even hired judges, may owe students a duty of "ordinary care." According to Attorney Lawrence Savell, "this means that the school and its staff must act in the way that a careful, prudent person would considering all of the circumstances" (B5). Included in this standard of ordinary care is the assumption that personnel in charge of supervising students during competition would "anticipate any dangers or risks that would be considered foreseeable by a reasonable person" (Savell B5).

There are many ways that the duty of "ordinary care" might be violated, triggering subsequent liability exposure. One item to consider is the degree to which the conduct in question was specifically prohibited by a rule or law about which supervising educator knew, or ought to have known. In a general sense, liability exposure is increased by a party's failure to act in accordance with college or university rules and procedures, federal, state or local laws or regulations, or non-codified mandates that have been adopted by particular programs. According to this line of thought, a reasonable person would conclude that activities which are specifically proscribed are risky and thus would avoid such activities. Some institutions, for example, have rules regarding the distance which drivers may travel in a given time period, or prohibitions on travel during certain weather conditions such as blizzards or rain storms. Forensics personnel who disregard these policies may be deemed negligent if their actions subsequently cause or contribute to death, injury, or property damage. "Negligence means you have failed to use the required level of care under the circumstances," and mindful of the vast contextual and jurisdictional differences that may effect the adjudication of the case, "it can generally be said that if you are negligent, you run the risk of being held responsible" (Savell B5).

Recklessness steps beyond mere negligence. It occurs when an individual egregiously ignores the impact of his or her actions on the safety or well-being of others, particularly individuals to whom the agent owes some duty of care. Leaving minor children alone and unsupervised, for example, amounts to "reckless endangerment" because the risks of such an action are apparent to a reasonable person. At first glance, it seems unlikely that debate

coaches, judges, or program administrators could face charges of recklessness. Most people in the activity take their responsibilities very seriously, and go to great pains to ensure that their duties are discharged faithfully. When unanticipated events arise, however, coaches, judges, or program administrators may succumb to the temptation to act quickly in an effort to respond to changing circumstances, and these "emergency actions" may subsequently be deemed reckless.

Tournament travel is the most likely situation where the need to act quickly might lead to actions which, in retrospect, demonstrate a failure to exercise appropriate care. There are a number of potential problem areas, but the most striking litigation risks center around the issue of transportation. There are dozens of accidents each year involving travel to or from officially sponsored athletic or academic competitions. Sadly, some of these accidents cause significant injury or loss of life. Among the situations which should concern directors and coaches are occasions where an agent risks an accident by driving in bad weather, breaks the speed limit or drives recklessly to arrive at a competition on time or return from a tournament quickly, delegates driving responsibilities to unqualified individuals, or drives for an excessive period of time, even when such practices are not specifically proscribed. Each situation involves a degree of foreseeability that could haunt the responsible party if an accident ensued. Particularly for directors or program administrators who are charged with the responsibility for planning and arranging the squad's travel activities, questions could arise concerning the reasonability of the decisions and the appropriateness of the decision rules used to evaluate competing choices. In the latter case, budgetary concerns are often the guiding principle that dictates the range of possible alternatives, and this fact may prove legally problematic.

Although not in the context of intercollegiate forensics, a recent case at Stanford University illustrates the problems that may arise in this area. The head coach of the Stanford water polo team arrived at the airport to find that the team's van was unavailable to transport them back to campus. The team's budget was small and the coach felt that alternative forms of transportation (such as taxi-cabs or limousines) were prohibitively expensive. The team's travel coordinator had arranged for a U-Haul cargo van to meet them at the airport, and without an inexpensive alternative, the coach ordered the athletes into the cargo hold. "Several of the players expressed concern about the dangers of riding in the back of the truck," noted columnist Michael Martinez (D1). The vehicle lacked seat belts, lighting and emergency exits, and "locked automatically from the outside, leaving the

players with no escape in case of an accident" (Martinez D1). In this instance, the coach's decision was both unsafe and illegal. According to California Highway Patrol spokesperson Roxanne Anderson, the driver "could have been cited for violations including failure to provide emergency exits, improper seating and lack of emergency equipment. All are misdemeanors that carry fines" (Martinez D1). The ensuing trip was uneventful and none of the Stanford players were injured, but the coach exhibited an error in judgment that could have resulted in legal exposure if an accident had occurred.

In addition to legal responsibility for accidents arising in conjunction with tournament-related travel, coaches (or other authorized drivers) may also be responsible for incidents that occur in a variety of other contexts. For example, many tournaments provide transportation to and from airports for teams who do not have their own vehicles. To avoid potential legal problems, those who provide such services should make sure that the authorized driver scrupulously obeys all driving laws and, ideally, has previous experience driving the same type of vehicle that will be used to transport guests. Coaches or authorized drivers should pay particular attention to which people are covered by the college or university's insurance policy. When a coach agrees to transport a student from another institution to a tournament, for example, or offers to take a student from another institution along with the squad during a tournament lunch break, he or she may be personally liable for any accident that results (Wynn).

Drug and Alcohol Use. The illegal use of drugs or alcohol at college-sponsored activities is another potential area of litigation. Three general areas of concern arise: (1) The use of drugs or alcohol in faculty-student interactions (such as underage drinking explicitly sanctioned or sponsored by coaching staff, hired judges or program directors); (2) diminished capacity as a result of drug or alcohol use (such as drinking or drug use by coaching or supervisory staff while they are driving or otherwise responsible for student safety); and, (3) explicitly or implicitly sanctioned illegal drug or alcohol use in violation of the Drug Free Schools Act.

The use of alcohol or drugs in conjunction with officially sanctioned or sponsored events or in faculty-student interactions obviously is problematic. Directors should pay particular attention to the rules of their institutions. Approximately twenty-five percent of American colleges and universities prohibit alcohol consumption on campus or in conjunction with school-sponsored events (Anderson & Gadaletto). In addition, schools are required under the Drug Free Schools and Communities Act Amendment of 1989 to

implement a program to prevent the "unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on institutional property or at any (institutional) activities" (Section 22). The last portion of that mandate, "at any institutional activities," is particularly troubling for coaches and program directors. If student parties are hosted in conjunction with forensics tournaments, or if student travel is improperly supervised, coaches should be concerned about potential legal action under the Drug Free Schools Act.

The U. S. Department of Education has accepted a broad definition of "campus environment" that includes "all of the conditions and influences -- such as physical, chemical, biological, social and cultural stimuli -- that effect the growth and development of students" (Western Interstate Commission for Higher Education 2). Given this broad definition, coaches may be held responsible for granting permission, subsidizing, or even having prior knowledge of illegal activities involving drugs or alcohol. Failure to act to prevent driving under the influence, or the illegal consumption of drugs or alcohol could give rise to charges of negligence or recklessness in addition to sanctions under the Drug Free School Act.

Sexual Harassment. Awareness of sexual harassment and gender-based discriminatory practices has increased substantially during the past decade. Most faculty members are aware of the consequences of their behavior in situations that represent sexual harassment (Connoly & Marshall). The potential liability exposure of a coach does not end, however with careful attention to his or her own actions. Program directors, or the colleges and universities that they represent, may be held responsible for their failure to prevent "student-to-student" harassment, or harassment stemming from the improper behavior of judges, subordinates, assistant coaches and so forth. Consequently, forensics personnel should view sexual harassment and gender-based discrimination in a broader context than ordinary faculty members, who have minimal direct responsibility for the behavior of others (Stanfield).

There is no uniform definition of sexual harassment, but it frequently has been construed to include "unwanted sexual attention from peers, subordinates, supervisors or customers, clients, or anyone the victim may interact with to fulfill school or job duties where the victim's responses are restrained by fear of reprisals" (Massachusetts Board of Education 9). Although most educational institutions have established policies to prevent or punish faculty-to-student sexual harassment, few have specifically examined the issues of

peer harassment or harassment committed by indirect agents acting on behalf of the college or university.

Peer harassment is pernicious and much more common than faculty-to-student harassment. Several studies conducted in high schools found that "young women are much more likely to be the victims of peer sexual harassment than young men," and that peer harassment on the basis of sexual orientation is widespread (Sherer 2128). Consistent results have been obtained in surveys of higher education students. In one study, 12.7% of 246 women surveyed reported that they had experienced sexual harassment, and 2.6% reported that they had dropped a course as a result (Schneider 525). Studies at Cornell, MIT and the University of Rhode Island each reported significant levels of peer sexual harassment, and experts believe that the problem is emerging and national in scope ("Schools are Newest Arenas" B8).

Peer sexual harassment raises troubling questions for program directors because it potentially extends their responsibility to prevent unwelcome behavior or comments to situations where they may not be immediate parties. For example, several recent court cases have applied workplace theories of sexual harassment as a remedy for student-to-student misconduct (Franklin v. Gwinnett County Public Schools; Doe v. Petaluma City School District; Elliot v. Miami Board of Education). As a result of these rulings, coaches, teachers and school administrators, like employers, can sometimes be held responsible for the behavior of subordinates that they "knew or should have known would be injurious to the victim" (Ellison v. Brady; Walsh).

Although case law in this area primarily focuses on public elementary and secondary schools, forensics educators would be ill-advised to ignore the possibility that claims may arise in a higher education context, and they should familiarize themselves with behaviors that may telegraph a propensity to engage in unwelcome conduct. Student complaints about the undesirable behavior of other students or judges should be taken seriously and investigated. In addition, because students work and travel in close proximity to one another, difficult situations which may constitute harassment can arise. Policies should be developed that prohibit relationships between assistant coaches or judges and students. When injury results, courts and juries increasingly examine the issue of foreseeability in an attempt to assign liability for the event. "In instances involving the victimization of students as well as other personal injuries on campus," writes Annette Gibbs, "the element of foreseeability has become a critical criterion in many states" (3). The extent to which a

student reported unwelcome contact, or the degree to which supervisory personnel "knew or should have known that a student was exposed, or could be exposed to a risk or injury has become a major factor" in establishing an institutional duty of care (Gibbs 3).

Copyright Infringement and Fair Use. Several highly-publicized recent cases have highlighted the need for an awareness of copyright issues and for coaches to employ proactive strategies to prevent copyright infringement or the theft of intellectual property (see, for example, Basic Books v. Kinko's Graphic Corp.). Because speech and debate teams rely heavily on photocopied documents to prepare for competition, some educators have expressed concern that they may be in violation of intellectual property laws. Before discussing the legal risks incurred by the blatant theft of intellectual property, it would be useful to consider the parameters of fair use and the conditions within which the utilization of copyrighted material is legally permissible.

The so-called "fair-use" doctrine recognizes the utility of photocopying copyrighted material when conducting academic research, and the doctrine does not universally require prior permission from the copyright holder. Codified in 1978, the fair use doctrine permits the limited reproduction of copyrighted work providing that the following conditions have been satisfied: (1) The copyrighted material in question is clearly marked as copyrighted; (2) the reproduced passages are brief, when considered within the context of the work as a whole (a generally accepted rule of thumb is ten-percent of the total work, or 1,000 words, whichever is less); (3) the reproduced passages are spontaneous (in other words, the decision to reproduce them is made by an individual teacher or researcher, and is not a response to a request made by a supervisor); and finally, (4) the act of reproducing the material does not have the cumulative effect of diminishing the market for the copyrighted work (Murray 551). One additional, extremely important caveat is that the material may not be sold or marketed. If the intellectual property in question is to be offered for sale, it would be advisable to seek prior permission from the copyright holder in advance.

The fair use doctrine also distinguishes between materials that are reproduced by professors for the purpose of classroom preparation and those that are directly distributed to students. Out of print materials are more easily reproduced and many governmental or non-profit organizations, such as CSPAN, include blanket copyright waivers for the use of their materials for either instructional or research purposes. In most instances, the use of copyrighted material during speech and debate competition will not violate the conditions of the fair use doctrine. Although few debate teams mark their evidence as "copyrighted

material," complete citations are ordinarily available upon request. It is extremely unlikely that copyright holders would object to the use of direct quotations from their works during a debate or speech competition. Quoting brief passages of material during a speech, preparing briefs for a debate round, or conducting research are presumptively permissible activities under the fair use doctrine because they meet the tests of brevity and spontaneity, and because they do not have the cumulative effect of diminishing the marketability of the copyrighted work. In addition, the right to photocopy materials in a library is specifically protected in the copyright act and students need not fear litigation as the result of conducting research (Kasunic).

Assuming that they abide by the conditions specified in the four-part test outlined above, professors are also insulated against copyright infringement claims arising out of professional or course-preparation activities. There are, however, several specific actions that bear mention. When a teacher attempts to avoid copyright restrictions by placing protected materials on reserve in a library and subsequently requires students to photocopy the material in violation of the copyright act, the teacher may be held responsible for the violation. In other words, the possibility of legal action, albeit remote, is theoretically not reduced when a professor shifts the burden of violating the act to students. Because it may undermine the marketability of protected products or services, the teacher's actions violate the spontaneity test set forth in the copyright act and may constitute the unauthorized use of intellectual property. Direct reproduction of classroom materials is equally problematic. "By reproducing handouts for students rather than buying the books, periodicals or other needed materials," writes Kenneth Murray, "educators may run afoul of the law" (552). To avoid these problems, coaches should consult with their campus bookstores or reproduction centers for assistance in obtaining copyright permission or adhering to the fair use doctrine.

Programs that produce, distribute, or sell copyrighted materials in the form of handbooks, guidebooks, or prepared briefs may well be in violation of the fair use doctrine and could face the possibility of legal action. Personal liability exposure in this regard may be heightened if the handbook revenue is collected by the individual coach, rather than the college or university. Moreover, the use of electronic databases in preparing handbooks is often expressly forbidden in the database subscriber agreement and electronic publishers have warned that they will zealously protect their intellectual property against infringement. For example, Dialog Information Services, a subsidiary of Knight-Ridder Information Incorporated, expressly forbids the re-sale of any information obtained from its database

and further warns subscribers that "Information from these databases is delivered to users as intellectual property, copyrighted by the Information Providers and subject to the provisions of international copyright conventions and other intellectual property laws" (1). Because handbook sales generate revenue, it is unlikely that they meet the tests established in the Copyright Act. Furthermore, copyright holders (particularly in fee-for-service electronic database providers) may reasonably argue that the sale of protected materials in the form of a handbook diminishes the marketability of their proprietary services. The same argument holds true for handbooks which are given away or included in the price of a high school workshop registration fee. Although the producer of the handbook does not collect direct revenue for the project, the process of mass distribution might have the effect of diminishing the marketability of protected material.

Obviously, the direct theft of propriety products is illegal and carries with it the possibility of legal action. Although the precise extent of data theft within the forensics community remains unclear, several authors in a recent *Southern Journal of Forensics* forum have suggested that the problem may be widespread (see, for example, Elliot 188). If so, it poses serious legal implications for the coach, the program and the institution. Pat Gehrke summarized the risks succinctly:

If Professor Elliot is correct that stealing passwords is a rampant practice, then a number of forensics administrators are making very unwise decisions. It seems highly unlikely that even a remotely involved coach would remain unaware of such a practice by his/her students. Knowledge of such activities, without immediate action to correct the crime, would likely open the coach and his/her university to both criminal and civil action (219-220).

The direct theft of proprietary information is the most likely means by which a coach or squad will bring the unauthorized use of copyright protected material to the attention of copyright holders. Since the violation would be blatant and, presumably, the database provider has a legal department charged with preventing crimes of this nature, the risk seems extraordinary. Coaches and program administrators would be prudent to caution their students not to illegally access fee-for-service information systems and to warn them that violations might trigger serious legal consequences.

Institutionally-Sponsored High School Workshops. College students are generally considered adults and educational institutions are not typically responsible for supervising their actions (Miyamoto). However, programs that host high school debate workshops

should consider the heightened duty of care imposed on those who supervise minors. The doctrine of *in loco parentis* places teachers (or college or university personnel) in the position of guardians of a minor student's physical and moral well-being (Davis). This doctrine is particularly appropriate in the context of high school debate workshops. Use of *in loco parentis* declined somewhat throughout the 1960s, as students began demanding greater independence from regulation and control (Evans; University of Denver v. Whitlock). Despite the evolution of the doctrine, however, teachers continue to have a special relationship with minor students, particularly in residential settings.

Parents that send their children to debate workshops assume, and in many cases, have been explicitly promised, that adequate supervision will be provided and that students will not be exposed to dangerous situations, encouraged to conduct illegal activities, or placed in the care of negligent individuals. Because the workshops involve residential as well as classroom supervision, program directors need to pay particular attention to the individuals whom they hire to conduct the workshop. Too often, workshop staffs are hired solely on the basis of their debate credentials, without consideration of their level of maturity or moral character. The following are just a few of the items that could give rise to claims under the doctrine of *in loco parentis*: charges that workshop personnel provided students with alcohol or other illegal substances; engaged in sexual relations with minor students in their care; or failed to supervise the residential environment, contributing to the death or injury of a student. Those who direct workshops should also ascertain their legal relationship with the host institution. Of particular concern is the extent to which the workshop staff is indemnified by the institution's "Directors and Operators" liability insurance in the performance of workshop-related duties.

Risk Management

Having considered a variety of situations which may give rise to liability claims, it is now possible to turn attention to proactive strategies designed to prevent litigation. A central tenet that runs through the research on liability prevention is that program directors, administrators, coaches and judges should be proactive in reducing their exposure to liability claims, and should know and understand the policies and regulations in effect at their home institutions. Whenever possible, formalized regulations should be made clear to students and they should be provided with copies of pertinent policies at the beginning of each season. Directors should speak with college or university officials who oversee

insurance coverage and obtain copies of the institution's liability policies. It is vitally important that coaches enforce any policy that has been officially established, whether it be institutionally-adopted or particular to the forensics program.

Many American higher educational institutions have formal substance abuse policies, anti-discrimination or harassment regulations, and student or faculty codes of conduct. These policies may impose heightened obligations on coaches or program directors to prevent or curtail undesirable practices or activities. For example, Gustavus Adolphus College has enacted a variety of regulations that govern the behavior of students and faculty members while they participate in college-sponsored events. Pursuant to the Drug Free Schools Act, the college enacted a standard of conduct that "prohibits the unlawful possession, use or distribution of drugs or alcohol by students and employees on its property or as a part of any of its officially-sponsored activities" (*Drug Free 1*).

Gustavus has also codified regulations pertaining to services for students with disabilities (*Services for Students*), prohibiting sexual, racial, religious or sexual-orientation based harassment or discrimination (*Non-Discrimination Policy*), and outlining general codes of conduct for students (*Handbook of Conduct for Students*) and faculty members (*Handbook of Conduct for Staff*). In each of these areas, the college offers training to faculty and staff who wish to address specific issues that may arise as a result of the performance of their duties. Many of the policy statements also describe the process for handling grievances and additional off-campus resources that may be available to students, faculty or staff.

Another proactive strategy is the development of a program mission statement that articulates the goals of the forensics program and outlines any conditions that may be attached to participation in speech and debate. Some of the issues that a program mission statement and accompanying documents might address include: the minimum grade point average and course credit-load required for participation in forensics, a syllabus that outlines the procedures for completing assignments and for evaluating student work if forensics participation is offered for college credit, a release form that signifies a desire on the part of students to participate in forensics activities and certifies their understanding of applicable policies and procedures, an outline of expectations for appropriate student behavior while on forensics trips, and, in some instances, specific goal-oriented agreements between the Director and individual students that identify particular areas of concern. The authors cannot emphasize enough the importance of enforcing policies evenly and

consistently. If a policy is developed, but violations are permitted, ignored or condoned, potential legal consequences may be more serious than if no policy existed.

In terms of travel, there are a number of risk-aversion practices that can be undertaken. The best advice is for supervisors to exercise prudent caution. "This may sound obvious," notes Savell, "but the bottom line is that your vigilance and close supervision may be the best defense to a claim that you were negligent or reckless" (B5). In addition to exercising prudent judgment and avoiding behavior that is risky, illegal, or prohibited by institutional policies, coaches or program directors should fully investigate student complaints. In the event of a serious accident, a complete and immediate investigation should be undertaken by the coach and other appropriate institutional personnel. "If it turns out that the tragedy was caused by a sudden, impulsive, or instantaneous act by one of the students, which your intervention could not possibly have prevented, you might be absolved from liability" (Savell B5).

Forensics educators should devote considerable attention to the liability coverage carried by their institutions. Coaches should discuss insurance matters with relevant administrators and should have a clear understanding of exactly which individuals are indemnified. There are five main types of liability insurance available to colleges and universities: primary insurance, self-insurance, excess insurance, and Directors and Officers (D&O) insurance. Institutions may purchase any combination of these five types of policies. Coverage may vary not only by the type of policy, but also based on the amount of coverage purchased by the institution, and readers are again reminded to scrutinize the details of the insurance policies carried by their host institutions.

Primary insurance provides threshold coverage and normally includes a defense obligation "that does not exhaust the basic policy limit" (Higgins & Zulkey 126). In other words, the coverage requires that the insurance provider pay for the costs of defending against claims and, furthermore, adds the costs of legal bills to the face-value of the policy. Consequently, a \$500,000 judgment in conjunction with legal bills in excess of \$100,000 would not exceed the limits of a \$500,000 policy because defense-costs would be "added-on" to the total. Many policies include small deductibles, but the presence of a deductible often does not relieve the insurance company of responsibility for defending against claims on the policy, even in situations where the amount of damages sought by plaintiffs is relatively small.

Self-insurance policies range from having no insurance at all to having an excess policy to protect against large losses while relying upon general funds to cover small judgments. "In almost all cases," note Higgins and Zulkey, "self-insurance means that the insured takes responsibility for its initial defense obligation, including the choice of counsel" (125). Many large universities and public higher-educational institutions are self-insured. Self-insurance may require additional scrutiny by program directors insofar as the "front-end" costs of defending against actions may fall upon the institution itself, or the individual defendants that are named in the suit. Even in this situation, however, an excess liability attachment to a personal homeowner's policy, or an umbrella liability policy might insure the cost of defending against claims and provide relief from potentially expensive legal bills.

Excess insurance is simply a catch-all phrase for a policy written to take effect only after the insured party has been held liable for the payment of a pre-determined sum (Higgins & Zulkey). In general, excess policies contain large "deductibles" that prevent the policy from taking effect until, for example, a million-dollar judgment has been declared. The amount of any judgment below the effective policy minimum is the responsibility of the insured party, as are any expenses incurred in defending against the claim. Consequently, if the policy has a one-million dollar effective deductible, and a judgment against a plaintiff is reached in the amount of two-million dollars, with legal fees of two-hundred thousand dollars, the insurance company would only be responsible for a payment of one-million dollars total. Excess insurance policies can also be written to include a defense obligation, or to "drop-down" in certain unusual circumstances when the underlying insurance does not apply or has been exhausted. Policies of this nature are normally triggered only in large-sum liability actions, and are viewed by institutions as a means of supplementing their existing liability coverage.

D&O policies are designed to insulate administrators from liability that is consequent to their discharge of their official duties as representatives of the college or university. Program directors and coaches, particularly those who do not serve on regularized full-time faculty appointments, should confirm that they are, in fact, considered "Directors and Operators," when discharging their official responsibilities in speech and debate. Some D&O policies may require indemnified individuals to pay the up-front costs of defense and be reimbursed by the underwriter at a later date, while others may exclude a duty to defend altogether. In the latter event, coaches may wish to purchase additional insurance that

bridges this gap and pays any costs associated with defending against claims, including the cost of preparing exhibits and acquiring expert witnesses.

In addition to determining what type and amount of liability coverage is provided by the college or university, forensics educators should closely review the policies to determine whether there are any coverage exclusions or limitations. For example, in many states with no-fault automobile insurance laws, the primary insurer is automatically the company that provides coverage to the owner of the vehicle. If a personal vehicle were involved in an accident in a no-fault state, therefore, the burden of coverage would automatically fall on the owner's carrier even if full indemnity for tournament travel was available through the institution's coverage. If the college or university is self-insured, does the policy require the coach to exhaust his or her personal liability insurance as a condition of threshold coverage? If the institution is state-run, are there conditions under which graduate students, teaching assistants or hired judges may be excluded from liability coverage? Likewise, are there statutes of limitations or sovereign immunity exceptions that might encourage injured parties to seek personal judgments against coaches or administrators rather than the college or university?

Conclusion

For individuals faced with liability, litigation is an unpleasant, time-consuming and emotionally disruptive event. Unfortunately, college and university professors no longer can assume that they are immune to the risks of being sued. Nationwide, the number of personal injury and negligence suits filed against educational institutions and their agents continues to increase (Savell B5). Lawyers at several colleges and universities report that they are also experiencing an increase in nuisance suits filed by students or their representatives who view large institutions as easy targets (Gose). There is little reason to believe that these problems will be abated in the years to come.

Every institution is unique and the most important source of information that coaches can gather is from their own institution. The authors hope that the issues raised in this essay will encourage members of the debate community to re-evaluate their practices and to conduct a serious review of all matters pertaining to liability exposure and insurance coverage. Because administrative and insurance policies may change without prior notice, those who have been involved in the activity for a number of years may wish to conduct periodic reviews with their departments, lawyers and financial administrators to make sure

that their understanding of the issue of liability exposure is timely. Forensics participation and coaching are valuable and rewarding enterprises. Hopefully, this article will call attention to some of the unforeseen risks and potential drawbacks of coaching and program administration, and create an environment in which those issues can be thoughtfully considered.

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