

Violence in the Workplace: Avoiding Liability

By Bradley H. Hall
General Counsel and Risk Manager, Idaho State University

Introduction

Legal actions involving violence in the workplace can vary from tort claims asserting the employer was negligent in hiring the perpetrator of the violent act by failing to conduct an adequate reference and/or criminal background check; or [that federal constitutional rights of a victim were violated]. Probably more common are claims arising under tort theories, such as the negligent hiring theory. [Administrators, risk managers, and] educators should consult their own state laws in evaluating whether claims of this nature are recognized by the courts of the particular jurisdiction.¹

This institution became acutely aware of violence in the workplace when, several years ago, Lloyd Cobb walked into the President's offices, and shot and killed his estranged wife, an assistant to the President. While no litigation resulted, other than the criminal murder charges against Cobb himself, civil litigation often does occur as a result of violent acts committed on campus.

It seems one may not pick up a newspaper or turn on the evening news without learning of another incident of workplace or school violence. Given media publicity and scrutiny of these events and, of course, their obviously traumatic nature, the quest to find blameworthy parties often begins almost immediately in the aftermath of these events. Interviews with witnesses and the ever-present "experts" often cast the employer or school as an evil-doer that knew or should have known of the violent propensities of the guilty employee or student and that steps to prevent the bad event should have been taken. In reality, the law is generally not as harsh as the public media might have us believe in terms of imposing liability, although there are circumstances where an employer or educational institution will be found to have a legal duty which may be breached by failing to prevent a violent act. A brief review of the significant theories of liability and some suggestions for liability avoidance will be presented here.

Negligence in General

To establish a claim of negligence, a plaintiff must allege and prove the following elements: (1) a duty of care owed by defendant to the plaintiff; (2) a breach of that duty by the defendant; (3) and damage to the plaintiff which is proximately caused by the defendant's breach of duty.² Closely intertwined with the duty and breach of duty elements is the concept of *foreseeability*. The general test for whether a defendant's conduct has breached the applicable standard of care is whether a foreseeable risk of injury resulted from the defendant's conduct. A "reasonably foreseeable" event is one that might reasonably be expected to occur now and then,

and would be recognized as not highly unlikely.³ An analysis of the foreseeability component of duty involves two considerations: whether the injured person was a foreseeable victim and whether the type of harm actually occurring was reasonably foreseeable.⁴ The law generally does not require precision in foreseeing the exact hazard or consequence of a particular act for a duty to be recognized; it is sufficient if what occurs is one of the kinds of consequences which might reasonably be foreseen.⁵ However, foreseeability is to be determined “in the context of the circumstances as they were at the time [of the incident] rather than with the benefit of hindsight.”⁶ Other courts explain foreseeability in terms of “notice” or “knowledge” of a dangerous condition or employee.⁷

A fairly recent K-12 school violence case serves to illustrate some of these basic principles. On December 1, 1997, Michael Carneal, fourteen years of age at the time, entered Heath High School in McCracken County, Kentucky, removed a .22 caliber pistol from his backpack and opened fire into a prayer group, killing three students and wounding five more. The parents of the deceased students sued some fifty-three defendants in state court. The case on appeal is entitled *James v. Wilson*.⁸ In addition, in a separate action filed in federal court, the same plaintiffs sued various video game producers, movie production firms, and Internet content providers.⁹ Among the defendants in the state court action were Carneal himself, his parents, the owner of a stolen gun used in the shootings, various classmates of Carneal, and various teachers, administrators, and board members. Of all the defendants named in both lawsuits, only one, Carneal himself, was found liable. The jury awarded \$42 million in damages against him. It was the trial court’s decision to award summary judgment or dismissal to all the defendants except Carneal that was the subject of the state court appeal.

Regarding the owner of the stolen gun used in the murders, the court first noted that the gun was kept unloaded and in a storage case in a cabinet and that the ammunition was kept in a separate outbuilding. Carneal surreptitiously broke into the outbuilding and stole the ammunition, and “[i]t was only after Carneal had loaded the stolen ammunition into the stolen pistol that it became a dangerous weapon.”¹⁰ Citing the general rule that “the law does not view as foreseeable the intentional criminal acts of a third party when considering the position of the gun owner from whom the weapon is stolen,” the court held that the gun owner in this case “was under no duty to anticipate that Michael would ransack his shed, steal his gun and ammunition, and use them in the intentional shootings of other students.”¹¹

The court dismissed the claims against Carneal’s parents, distinguishing prior cases in which liability was imposed when there was evidence that the child had done similar misdeeds in the past and the parents were on *notice* that they would need to control the conduct of their child and the child was within the *immediate control area* of the parents at the time of the incident.

Carneal’s classmates were alleged to have known or should have known of Carneal’s plans and failed to warn others or take action to prevent his criminal acts. The court first cited the general common law rule that, “there is no duty to report the commission of a crime by another, let alone the possibility of a crime being committed by another.”¹² While there are recognized exceptions to the general rule, such as the duty common carriers have toward their passengers, innkeepers and their guests, landowners and their invitees, those who have voluntary custody of others, and where a *special relationship* exists between the party accused of

negligence and a third party, no such special relationship existed here. Further, in any event, even if a special relationship between the classmates and the victims were found, Carneal's own acts became the *superseding and intervening cause* of the injuries, (*i.e.*, the classmates' actions or inactions could no longer be considered the proximate cause of the harm).¹³ The court did acknowledge that in appropriate circumstances, a business owner would have a duty to business invitees,¹⁴ and that a special relationship creating a duty to a third person might arise out of the psychiatrist or therapist and patient relationship.¹⁵ These two exceptions certainly suggest a duty to third parties for colleges and universities engaged in proprietary functions, such as operating residential housing,¹⁶ and those who operate health or counseling clinics.¹⁷

The teachers, administrators and board member defendants were all found to be immune from suit under Kentucky law. Because all the alleged negligent acts of these individuals, such as failing to implement safety measures to protect the student body, failing to notify Carneal's parents or school officials of violent references in Carneal's papers, etc., were deemed to involve *discretionary functions*, under the applicable Kentucky statutes, those officials enjoyed sovereign and/or official immunity. Of course, the statutes and case law of a given state must be consulted to determine the applicability of such immunity provisions. Generally, immunity will only apply to *public officials* or institutions, not private.

The various media defendants in the separate action were found not to be liable because Carneal's actions were not a reasonably foreseeable result of his involvement with the defendants' products. "We find that it is simply too far a leap from shooting characters on a video screen (an activity undertaken by millions) to shooting people in a classroom (an activity undertaken by a handful, at most) for Carneal's actions to have been reasonably foreseeable to the manufacturers of the media that Carneal played and viewed."¹⁸

As a general rule, then, absent a special relationship or a business invitee relationship, a college or university employer won't have a duty to anticipate and prevent the criminal acts of persons against third parties. However, relatively new theories of liability have emerged that may have a significant impact on colleges and universities when the perpetrator of violent acts are also *employees* of such colleges and universities.

Negligent Hiring, Supervision and Retention Claims

Claims involving allegations that employers were negligent when they hired or retained employees who later committed violent acts against co-workers, students, or even third parties are on the rise.¹⁹ The courts have been somewhat receptive to such claims, particularly when the facts reveal inadequate background or reference checks, or even worse, notice or knowledge of prior violent acts of an applicant or employee who is nonetheless hired, or if discovered after hiring, is retained and/or not adequately supervised. It is obviously much easier to avoid liability in this arena if bad characters are never hired in the first place.

The elements of a negligent hiring case are: (1) the employer knew, or in the exercise of ordinary care should have known, of the unfitness of its employee at the time of hiring; (2)

through the negligent hiring of the employee, the employee's unfitness or dangerous characteristics proximately caused the resulting injuries; and (3) there is some employment or agency relationship between the violent employee and the defendant employer.²⁰ Typically, negligent hiring claims present allegations that the employer failed to conduct an adequate criminal background check, failed to adequately check performance issues from prior employers or to delve into significant gaps in employment history, failed to check references or follow up on questionable areas, or that the interview process was too perfunctory.

Harrington v. Louisiana State Board of Elementary and Secondary Education,²¹ illustrates some of the issues involved in a negligent hiring case. Harrington, a student of Delgado Community College's culinary apprenticeship program was raped by the program director. He was charged and convicted, and testified in the civil claim against the college's governing board that when he was hired, neither the board of trustees nor college officials inquired about his past. In fact, he had prior convictions for possession of marijuana with intent to deliver, theft or grand larceny, and interstate transportation of forged securities, he had served 20 months in federal prison, and that there was an outstanding warrant against him in Illinois. The trial court entered judgment against the former program director individually, and ruled that the board was not vicariously liable for his actions and that the college was not negligent in its hiring of him. However, regarding the negligent hiring claim, the appellate court held:

Delgado had a duty to use reasonable care when hiring a person placed in a position of authority as a professor. Delgado breached its duty by hiring Veller, a convicted felon who had served time in prison. The fact that Veller was an instructor at Delgado and Director of CAPL [Culinary Apprenticeship Programs of Louisiana] put him in a position to harm Harrington; Delgado's conduct was substandard for failing to screen a prospective professor and that was a cause-in-fact of the injury. A professor is in a position where character, moral turpitude, and a clean record should be essential. The risk of being raped or harmed by a professor in a position of authority can be associated with the duty to use reasonable care when hiring.²²

Negligent retention and supervision cases apply the same general principles, with the focus being on the idea that the employer who becomes aware of the dangerous proclivities of an employee who then commits a violent act upon a co-worker, student, or third party, and that the employer, prior to the violent act, should have taken greater supervisory measures or should have terminated the violent employee. One court stated that, "[a]n employer whose employees are brought into contact with the public has a duty to exercise care in the selection and retention of employees or the employer may be liable to an injured third party under a theory of negligent hiring or negligent retention."²³

As noted previously, immunity can be an issue in these cases, particularly when a public entity is involved. In *Wood v. North Carolina State University*,²⁴ for example, the court held that neither the purchase of employee liability insurance by the university nor the adoption of a sexual harassment policy served to waive the university's sovereign immunity in a negligent retention and supervision claim. On the other hand, in *Sabb v. South Carolina State University*,²⁵ the court rejected an immunity defense based on the exercise of discretion

exemption. The court stated that, “[m]ere room for discretion on the part of the entity is not sufficient to invoke the discretionary immunity provision.²⁶ Discretionary immunity is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.”²⁷ In *Hubbard v. Canton City School Board of Education*,²⁸ the court held that the portion of the immunity statute in question did not provide the board with immunity in a negligent supervision and retention claim arising out of the sexual assault of a student by a teacher on school grounds. Again, it is important to examine the statutes and case law of a given jurisdiction in to determine the applicability of immunity provisions.

Negligent Referral

Negligent referral cases may arise when the victim of violence perpetrated by an employee believes that a prior employer in some manner failed to disclose violent behavior or tendencies in referring the employee for employment to a subsequent employer. The leading case in this area was decided by the California Supreme Court, *Randi W. v. Muroc Joint Unified School District*.²⁹ A student who was sexually molested sued, among others, the former school district employer of the molester, who gave an unreserved positive recommendation to the placement service which helped place the employee with a second school district. The court held that: (1) a person writing a letter of reference does owe a duty to the prospective employer *and* to third persons not to misrepresent the facts in describing the qualifications and character of a former employee, if making such misrepresentations would present a substantial, foreseeable risk of physical harm to the prospective employer or third party (the injured student); (2) the letters from the first employer did contain affirmative misrepresentations by positively evaluating the employee’s character and rapport with students without disclosing that disciplinary actions had been taken against the employee for sexual misconduct; and (3) the injured student need not show *reliance* on the misrepresentation—only that the injury resulted from the misrepresentations.

The court also noted that while the chain of causation was “somewhat attenuated,” the assault was *reasonably foreseeable*, and that there were alternatives available to the prior employer short of misrepresenting the facts, any one of which would have allowed it to escape liability. The employer could have: (1) written a “full disclosure” letter, revealing all relevant facts; (2) written a “no comment” letter omitting any affirmative statements; or (3) merely verified basic employment dates and position, etc.

The Louisiana courts have also recognized a cause of action for negligent referral. In *Louviere v. Louviere*,³⁰ a police officer went on a crime spree, killing one and injuring several other people. The victims sued the policeman, police chief and the former employer, another police department. The most current employer attempted to shift blame to the former employer, contending that if certain things had been disclosed, it would not have hired the officer in the first place. The non-disclosed items included a psychological report, and a personal history prepared by the officer which revealed he had been sexually abused as a child and that he had been involved in an assault against a girlfriend. The letter from the former employer in which the police chief indicated the officer had received “satisfactory performance evaluations” was also attacked. The court, however, rejected the claim, since a more recent psychological evaluation

conducted prior to his employment with the second department stated the officer was “psychologically fit for the police department,” and it was the second police department that responded to the assault incident, and therefore, that employer had actual knowledge of the situation and chose to hire the officer anyway. Additionally, the officer had in fact received satisfactory evaluations with the first department, so the police chief’s letter was not misleading.

A prior Louisiana case made it clear that if the subsequent employer is negligent in conducting its own hiring process, it may not necessarily look to a prior employer for blame. In *K.S. v. Summers*,³¹ an action against a former state employer after an employee assaulted the plaintiffs’ son at a juvenile detention facility, the court held that the state’s failure to disclose the former employee’s felony drug conviction was not the *legal cause* of the assault. The court noted that, “[d]uring his preemployment interview, Summers [the assailant] was never asked by [the second employer] about his criminal background. No person during the application and interview process asked a more searching question inquiring into any incidents in his background that would reflect adversely upon the District if he were hired or would reflect adversely upon his fitness for the position.”

It is likely that more negligent referral cases will be seen in the future.

Negligent Placement

One area of concern for institutions that place students in off-campus programs has been whether they have a duty to ensure that externships, internships, or clinical sites are safe. Traditionally, courts have found no “special relationship” between colleges and their students creating a duty to inspect such sites.³² However, the Florida Supreme Court recently approached a case involving the injury of a student at an off-campus internship site in a manner that may be a cause for concern for institutions engaged in these programs.

The case involved a 23-year old graduate student’s claim against a private university for injuries sustained when she was criminally assaulted upon leaving the off-campus internship building. In responding to the university’s argument that since college attendance is not mandatory, no special relationship existed which created a duty, the court responded”

Although Nova is correct that the school-minor student special relationship evolved from the *in loco parentis* doctrine, the district court recognized that any duty owed by Nova to Gross was not the same duty a school owed a minor student. The district court further recognized a different relationship existed between the university and its adult students, a relationship which does not necessarily preclude the university from owing a duty to students assigned to mandatory and approved internship programs. In *Rupp*, we said the extent of the duty a school owes to its students should be limited by the amount of control the school has over the student’s conduct. Here, the practicums were a mandatory part of the curriculum that the students were required to complete in order to graduate. Nova also had the final say in assigning students to the locations where they were to do their practicums.

As Nova has control over the students' conduct by requiring them to do the practicum and by assigning them to a specific location, it also assumed the Hohfeldian correlative duty of acting reasonably in making those assignments. In a case such as this one, where the university had knowledge that the internship location was unreasonably dangerous, it should be up to the jury to determine whether the university acted reasonably in assigning students to do internships at that location.³³

It remains to be seen, of course, whether the courts of other jurisdictions will adopt the rationale of the case. If they do, it will require institutions, especially when off-campus internships are *mandatory*, to take a more careful look at the safety of these off-campus sites.

Constitutional Theories of Liability

Probably as a result of sovereign or official immunity provisions, noted previously, which limit liability of many public entities, creative plaintiffs' attorneys have on occasion sought to convince courts that violent acts against their clients may also violate the federal constitution. In *Dacosta v. Nwachukwa*,³⁴ for example, a student who was intentionally battered in class by an instructor at the Georgia Military College, claimed, among other things, that the battery violated her constitutional substantive due process rights. In rejecting the plaintiff's claim, the court stated that:

In the instant case, Dacosta has alleged intentional battery—a tort under Georgia law. Her right to be free from such a battery is conferred by Georgia law and protected by the Georgia courts. Dacosta cannot point us to any authority suggesting that such conduct, malicious as it may have been, amounted to a deprivation of her rights under the U.S. Constitution, as opposed to a deprivation of her rights under Georgia law. The cases she cites as authority for her substantive due process claim involve excessive force used by law enforcement officers, and are not applicable to the instant case. . . .

In the instant case, Dacosta likewise cannot point to any authority holding that a battery perpetrated by a college teacher upon an adult student rose to the level of a substantive due process violation. In light of the Supreme Court's finding in *Collins*³⁵ that this area of the law should be developed cautiously, we feel that judicial restraint demands that we find no such violation on these facts. Remedies for battery of this sort should be pursued in accordance with state law.³⁶

Another appellate court also recently rejected a substantive due process claim in a case where a resident-advisor was brutally murdered by a freshman student after the resident-advisor had reported the student's drug use to the police. In *Severson v. Board of Trustees*,³⁷ numerous claims, including negligence and state and federal constitutional violations, were alleged against Purdue University by the student's parents. The court discussed this issue in some detail and concluded that:

In general, a private citizen does not have a constitutional right to be protected from violence committed by another citizen. The exceptions to this general rule—the “state-created danger” and “special relationship” exceptions are not applicable in the instant case. The defendants did not compel Eskew to murder Jay. Nor was there any evidence that the defendants took affirmative steps to place Jay within Eskew’s murderous path and then remove any means by which Jay might have protected himself. For these reasons, the [parents] have failed to designate any evidence showing that the defendants deprived Jay or them of their rights to substantive due process.³⁸

It should also be noted that the court rejected the plaintiffs’ negligence claims in that it was not reasonably foreseeable that the murder would occur, and thus, the university did not have a legal duty to protect the murdered resident-advisor from the student’s criminal acts; and there was no evidence that there had been prior violent acts committed by student-residents against their advisors.³⁹

Warning Signs of Violent Behavior⁴⁰

The best way to avoid liability for workplace violence is to prevent it. Among the tools to prevent violence is the recognition that certain characteristics may be predictors of future violence. Among the recognized characteristics are:

- A history of violence
- Stalking-like activity
- Anger or hostility beyond the ordinary—“in your face” behavior
- A preoccupation with weapons, violence, police, military, or “survivalism”
- Aggressive sexual behavior
- Strong sexist or racial attitudes
- Active psychotic signs
- Homicidal or suicidal thoughts (frequently expressed just prior to an incident)
- Substance abuse
- Belligerence and insubordination
- Holding grudges
- Inappropriate use of e-mail or internet to express hostile views
- Repeated use of grievance processes for minor issues

Tips for Avoiding Institutional Liability

Keeping in mind that not all *litigation* can or will be avoided, some common suggestions for avoiding institutional *liability* are:

- Have and *follow* a workplace violence policy
- Include within the policy, a violence response team that can act quickly
- Treat threats of violence seriously—don’t ignore them
- Conduct adequate background checks⁴¹

- Ask probing questions in the interview process
- Refer to public sex offenders registries
- Conduct thorough reference checks—ask or inform applicants that you may go outside references provided
- Where appropriate, obtain releases from applicants and obtain copy of personnel file
- Train supervisors in violence warning signs recognition
- Know your employees and students
- Consider a “secure room” for conducting student and employee grievance hearings, etc.
- Remember that the Americans with Disabilities Act (ADA) does not require you to ignore employee or student misconduct—focus on the behavior and apply same standards to all
- Keep good records
- Analyze each case upon its own facts and circumstances

Conclusion

While we all hope violent acts never occur in our institutions, odds are that at one time or another, we will all deal with individuals with violent propensities or with the aftermath of violent events. It is hoped that an understanding of the legal theories involved and the suggestions provided will assist in sorting out and even preventing some of these occurrences.

1.B. Hall & R. Marsh, *Legal Issues in Career and Technical Education*, p.340 (American Technical Publishers, 2003).

2.*See, e.g., Patel v. Howard University*, 896 F.Supp. 199 (D.D.C. 1995); *Wright v. Ohio State University*, 750 N.E.2d 659 (Ohio Ct.Cl. 2001); *Mason v. State ex rel. Board of Regents of University of Oklahoma*, 23 P.3d 964 (Okla.Civ.App. 2000).

3.*Hill v. Safford Unified School District*, 952 P.2d 754 (Ariz.App.Div.2 1997).

4.*King v. Northeast Sec., Inc.*, 732 N.E.2d 824 (Ind.App. 2000).

5.*Sharkey v. Board of Regents of University of Nebraska*, 615 N.W.2d (Neb. 2000).

6.*James v. Wilson*, 2002 WL 598330 (Ky.App. 2002).

7. *See, e.g., Collins, Jr. v. Studer*, 2002 WL 31513619 (N.Y.A.D. 2 Dept 2002) (“To find that a school breached its duty to provide adequate supervision in the context of injuries caused by the acts of fellow students, the plaintiff must show that the school ‘had sufficiently specific knowledge or notice of the dangerous conduct which caused injury, that is, that the third-party acts could reasonably have been anticipated.’”); *Sanzo v. Solvay Union Free School District*, 2002 WL 31529060 (N.Y.A.D. 4 Dept 2002).

8. *Supra* note 6.

9. *James v. Meow Media, Inc.*, 300 F.3d 683 (6th Cir. 2002).

10. *Supra* note 6 at *3.

11. *Id.* at *4.

12. *Id.* at *7.

13. *Id.* at 11.

14. *Citing, Grayson Fraternal Order of Eagles v. Claywell*, 736 S.W.2d 328 (Ky. 1987).

15. *Evans v. Morehead Clinic*, 749 S.W.2d 696 (Ky.App. 1988). *See, also, Nero v. Kansas State University*, 861 P.2d 768 (Kan. 1993); *Peterson v. San Francisco Community College District*, 658 P.2d 1193 (Cal. 1984); *Steiger v. Huntsville City Board of Education*, 653 So.2d 975 (Ala. 1995); *Boyd v. Texas Christian University, Inc.*, 8 S.W.3d 758 (Tex.App. 1999); *Platson v. NSM, America, Inc.*, 748 N.E.2d 1278 (Ill.App. 2 Dist. 2001).

16. *See, e.g., Mullins v. Pine Manor College*, 449 N.E.2d 331 (Mass. 1983) (college owed duty to resident of housing to protect her against the criminal acts of third persons); *Vangeli v. Schneider*, 598 N.Y.S.2d 837 (A.D.3 Dept. 1993) (Cornell University owed a duty to exercise reasonable care to maintain property in a safe condition and to protect residents from the reasonably foreseeable criminal acts of third persons, but discharged its duty in this case by the various security measures it had in place); *Savannah College of Art and Design, Inc. v. Roe*, 409 S.E.2d 848 (Ga. 1991); *Stanton v. University of Maine System*, 733 A.2d 1045 (Me. 2001) (university owed a duty to a high school student attending a preseason soccer camp who was raped in her dormitory room, and the duty included a duty to reasonably warn and advise students of the steps that should be taken to improve their personal safety).

17. *Tarasoff v. Regents of the University of California*, 551 P.2d 334 (Cal. 1976) (duty of a psychiatrist to warn potential victim of criminal threats expressed by patient to psychiatrist).

18. *James v. Meow Media, Inc.*, *supra*, note 9, at 693.

19. *See, e.g., Peck v. Siau*, 827 P.2d 1108 (Wash.Ct.App. 1992); *Doe v. Durtschi*, 716 P.2d 1238 (Idaho 1986); *Doe v. Town of Blanford*, 525 N.E.2d 403 (Mass. 1988); *Doe v. Cedar Rapids Community School District*, 652 N.W.2d 439 (Iowa 2002).

20. *Godar v. Edwards*, 588 N.W.2d 701 (Iowa 1999).

21. 714 So.2d 845 (La.App. 4 Cir. 1998).

22. *Id.* at 851.

23. *Blavackas v. Worcester State College*, 1996 WL 1348995 (Mass.Super. 1996). *See, Graves v. Iowa Lakes Community College*, 639 N.W.2d 22 (Iowa 2001) (claim for negligent supervision and retention generally recognized, but not applied in this case where no physical injuries were involved).

24. 556 S.E.2d 38 (N.C.App. 2001).

25. 567 S.E.2d 231 (S.C. 2002).

26. *Id.* at 237, *citing, Summer v. Carpenter*, 492 S.E.2d 55 (S.C. 1997).

27. *Id.*, *citing, Wooten ex rel. Wooten v. South Carolina Dep't of Transp.*, 511 S.E.2d 355 (S.C. 1999).

28. 2002 WL 31814520 (Ohio 2002).

29. 929 P.2d 582 (Cal. 1997).

30. 2002 WL 12901930 (La.App.1 Cir. 2002).

31. 799 So.2d 510 (La.App.1 Cir. 2001).

32. *See, e.g., Judson v. Essex Agricultural and Technical Institute*, 635 N.E.2d 1172, 1174-1175 (Mass. 1994) (“We discern no existing social values or customs demonstrating that career and technical schools, such as EATI, have recognized an obligation to protect students during their employment with third persons creating an expectation in students and their parents that EATI would exercise reasonable care to inspect the plaintiff’s place of employment or to ensure that the plaintiff’s employer provided workers’ compensation insurance.”). *But, see, Delbridge v. Maricopa Community College*, 893 P.2d 55 (Ct.App.Div. 1 Ariz. 1994) (duty existed where community college leased off-campus site to conduct pre-apprenticeship lineworker course and student was required to free climb a large-diameter utility pole to a height of 30 feet, where the student lost his grip and fell, rendering him paraplegic; the court held that the college assumed the primary control over the classroom, and that such control included “the duty not to subject students, through acts, omissions, or school policy, to a foreseeable risk of harm.”).

33. *Id.* at 89.

34. 304 F.3d 1045 (11th Cir. 2002).

35. *Collins v. City of Harker Heights*, 503 U.S. 115, 112 S.Ct. 1061 (1992).

36.*Supra*, note 34 at 1048-1049; *see, also, Nix v. Franklin County School District*, 2002 WL 31546110 (11th Cir. 2002) (high school student killed by electrical shock in an electromechanical class did not have his substantive due process rights violated even though the instructor's conduct could be described as involving "deliberate indifference.")

37.777 N.E.2d 1181 (Ind.App. 2002).

38.*Id.* at 1199.

39.*Id.* at 1200.

40.Adapted from *Legal Issues in Career and Technical Education*, *supra*, note 1, pp. 355-356, and *Violence in the Workplace: Avoiding Institutional Liability*, workshop presented by Ranaye Marsh & Bradley Hall, Association for Career and Technical Educators annual conference, Las Vegas, NV, Dec. 13, 2002.

41.Of course, each institution must decide for itself which employees or categories of employees should have a criminal background check conducted. *See, e.g.*, "U. of Texas Adopts Narrower Policy on Background Checks for Job Applicants," *Chronicle of Higher Education*, (Dec. 2, 2002) (reporting that the university revised its policy to no longer require criminal background checks of all employees to instead require such checks for senior-level administrative jobs, positions involving child care or treatment of patients, jobs with access to pharmaceuticals and controlled substances, and other "security sensitive" positions.