CASE AND STATUTORY LAW REGARDING THE LIABILITY OF YOUTH SPORT ORGANIZATIONS FOR THE PEDOPHILIC ACTIONS OF YOUTH SPORT COACHES AND OFFICIALS BASED ON THE THEORIES OF RESPONDEAT SUPERIOR, NEGLIGENT HIRING, AND NEGLIGENT RETENTION

By

THOMAS A. BAKER III

A DISSERTATION PRESENTED TO THE GRADUATE SCHOOL
OF THE UNIVERSITY OF FLORIDA IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY
UNIVERSITY OF FLORIDA

2007

To my parents, Tom and Catherine Baker.

ACKNOWLEDGMENTS

I would first like to thank my parents and my sister for their love and support. I would also like to thank the members of my committee for their guidance, time, and patience. In particular, I would like to thank Dr. Dan Connaughton, my advisor. His mentorship has been critical in my success here at the University of Florida.

TABLE OF CONTENTS

page

LIST OF TABLES

Abstract of Dissertation Presented to the Graduate School
of the University of Florida in Partial Fulfillment of the
Requirements for the Degree of Doctor of Philosophy

CASE AND STATUTORY LAW REGARDING THE LIABILITY OF YOUTH SPORT ORGANIZATIONS FOR THE PEDOPHILIC ACTIONS OF YOUTH SPORT COACHES AND OFFICIALS BASED ON THE THEORIES OF RESPONDEAT SUPERIOR, NEGLIGENT HIRING, AND NEGLIGENT RETENTION

By

Thomas A. Baker III

May 2007

Chair: Daniel Connaughton
Major: Health and Human Performance

More than 10 million children below the age of 16 play organized sports (Peterson, 2004). The majority of these children are coached by volunteer, unscreened adult males (Peterson, 2004). The lack of screening on the part of youth sport organizations coupled with the access that they provide to large numbers of children create a ready-made resource pool for pedophiles (Nack & Yaeger, 1999). By coaching youth sports, pedophiles are given an opportunity to win over parents and gain the trust of children. Parents and athletes alike put faith in their coaches and this faith can easily be exploited by coaches who are sexual abusers (Deak, 1999).

In my study, case law for all 50 United States and the District of Columbia was analyzed with the purpose of determining the applicability of the tort theories of respondeat superior, negligent hiring, and negligent retention in terms of holding youth sport organizations liable for the pedophilic actions of their coaches and officials. My study also analyzed voluntary immunity statutes for all 50 United States to determine whether said statutes provide defenses to the aforementioned tort theories for youth sport organizations. By analyzing the law for all 50 states and the District of Columbia, I was able to determine comparisons and differences that can be drawn between the states in how they apply the law for these tort theories and voluntary

immunity statutes. Finally, my study analyzed the corresponding standard of care that is imposed on youth sport organizations for all 50 states and the District of Columbia so that youth sport organizations will know what is needed of them to avoid liability and guard against abuse.

CHAPTER 1
INTRODUCTION

Background

It is a worst case scenario, a nightmare even. How could someone be such a monster? How could others let this happen? Unfortunately, monsters do exist and they count on the negligence of others when targeting their victims. While these monsters prey on children, they are not the type that exist under beds or hide in closets. Instead, they can be found in dugouts or on the sidelines at youth sport events.

Take Norman Watson for example. Watson was a leading coach and umpire for the East Base Line Little League (Nack & Yaeger, 1999). Watson was more than just a baseball coach and official, he was "a part of the East Base Line family." Watson went on vacations with families of players and was invited to their homes for the holidays. Perhaps that familiarity was one of the reasons the community was so devastated when Watson pleaded guilty to 39 counts of lewd acts with children, all of which involved his players and occurred during his six-year tenure as coach and official for the East Base Line Little League.

A simple background check on the part of the League would have revealed that Watson had undergone more than five years of treatment in two state mental hospitals for child molesting (Nack & Yaeger, 1999). Further, well before charges were filed, the League was put on notice of Watson's past by two of its board members. Instead of removing Watson from his positions as coach and official, the League ousted the two board members and asked Watson if he needed a lawyer.

Horror stories like this demonstrate the need for youth sport organizations to conduct proper background checks before granting individuals access to children. Further, youth sport

organizations need to terminate coaches and officials when it is revealed that they pose a threat to the children in their leagues. Failure on the part of youth sport organizations to take the aforementioned measures could result in legal liability based on the torts of respondeat superior, negligent hiring, and negligent retention. In today's litigious society, it is imperative that youth sport organizations understand how they can be held liable for the pedophilic actions of coaches and officials in order to avoid legal liability. Knowledge and understanding of the law can assist youth sport organizations the development of policies and procedures necessary to avoid legal liability. Further, youth sport organizations that adopt policies and procedures aimed at limiting legal liability will also reduce the risk that pedophiles will use their organizations to victimize children.

Statement of the Problem

More than 10 million children below the age of 16 play organized sports (Peterson, 2004). The majority of these children are coached by volunteer, unscreened adult males (Peterson, 2004). The lack of screening on the part of youth sport organizations coupled with the access that they provide to large numbers of children create a ready-made resource pool for pedophiles (Nack & Yaeger, 1999). By coaching youth sports, pedophiles are given an opportunity to win over parents and gain the trust of children. Parents and athletes alike put faith in their coaches and this faith can easily be exploited by coaches who are sexual abusers (Deak, 1999).

Youth sports are the perfect hunting ground for a type of pedophile termed the *seductor* (Peterson, 2004). The term seductor is given to a type of molester who seduces children the same way men and women seduce each other (Nack & Yaeger, 1999). Flirtation, affection, attention, and gifts comprise the tools of the seductor, although alcohol and drug abuse may also be used. The seductor first wins the hearts of both the families and the athletes they abuse. Then the

seductor scopes out the perfect victim, the child who is vulnerable and whose needs are not being met elsewhere.

Watson fits the seductor description. One of Watson's victims stated that Watson first started talking to his parents before he even really talked to him (Nack & Yaeger, 1999). Watson would come over to the child's house and play games and lavish the child with presents. In fact, this victim still refers to Watson as his best coach and one of his best friends. However, Watson's charm was nothing more than a means to an end, and that end was sex with the child.

The youth sport molestation case that garnered the most media attention is the one involving Sheldon Kennedy, a former professional hockey player in the National Hockey League (NHL). Before reaching the NHL, Kennedy was a child playing in the Canadian Hockey League (CHL) where, at the age of 14, he was first molested by his coach, Graham James (Deak, 1999). Looking back, Kennedy described himself as a lonely child who was unable to get along with his strict parents. Conversely, James had previously been named Calgary Man of the Year in 1989 by Inside Hockey for his coaching ability and his stance against violence in the sport. Thus, Kennedy, the troubled youth, was the perfect victim for James, the accomplished coach.

Much to the dismay of the CHL, James' strong ethical stance against violence on the ice did not deter him from sexually abusing his athletes off the ice. In fact, the first time James molested Kennedy he used a gun to threaten Kennedy into sex. In 1997, James plead guilty to two counts of sexual assault against Kennedy and another unnamed player (Deak, 1999).

Predators like Graham James and Norman Watson are not anomalies and their victims are not alone. It is estimated that one in three girls and one in seven boys in the United States are sexually molested before the age of 18 (Earl-Hubbard, 1996). Unfortunately, these overwhelming numbers do not even represent the true extent of sexual abuse because it is

estimated that only 10 to 35 percent of incidents involving sexual exploitation are ever reported (Peterson, 2004). Some pedophiles have admitted to molesting 500-600 children before getting caught. Although no one has ever studied the number of young athletes who have been molested by their coaches, experts including the Executive Director of the National Institute for Child Centered Coaching, Stephen Bavolek, believe that sexual abuse in sports is prevalent (Deak, 1999).

Children in a coach-player relationship tend to be more susceptible to sexual assault (Peterson, 2004). Coaches often take on a role similar to that of a parent and children typically consent to activities they would never undertake under the guidance of a parental figure (Appenzeller, 2000). Children also look to coaches as role models, heroes, or, in the case of Watson and his victims, best friends (Peterson, 2004). Further, children are often told from the outset of their athletic involvement to obey the coach and never argue with the coach.

To deal with the problem, many youth sport organizations have implemented screening programs for their volunteer coaches and officials. For example, all Little League managers, coaches, and volunteers are now checked against state lists of convicted sex offenders (Little League, n.d.). Little League had been advising local leagues to perform background checks since 1996, when USA Baseball, the national governing body for amateur baseball, recommended the background checks for youth baseball organizations. However, Little League decided to make the checks mandatory partly as a response to the sex abuse scandal in the Roman Catholic Church.

The CHL has gone even further than Little League. In response to Kennedy's abuse and in dedication to his courage, the CHL enacted a Players First report of recommendations created to lay a foundation for a safe environment for youth hockey (Kirk, 1997). The report states that

creating a safe environment for the athletes is the CHL's paramount concern. The recommendations include:

- A mandatory screening procedure by which coaches and volunteers must allow the member club to check for police records and child abuse registries, locally and across Canada and the United States.
- Each applicant must have three letters of reference that speak to the applicant's integrity and strength of character.
- On-going employee evaluations where players and parents have the opportunity to evaluate coaches at midseason and again at the end of the season.
- Education programs for children directed at addressing sexual harassment and the internalization of guilt, and making it clear to child victims that the harassment is not their fault. Through education the CHL believes that it may be possible to improve the likelihood of early disclosure and remove the victim from harm.
- The appointments of community advisors who are appointed by the CHL, remain apart from the team, but oversee the preventative measures.
- The creation of a formalized policy and complaint process that includes the creation of a Complaint Investigator, independent of the CHL, to investigate the complaint.
- All complaints will be deemed confidential unless disclosure is required by controlling law.
- Counseling and support for victims of harassment, including a toll-free number for players to call if they are not ready discuss their harassment face-to-face (Kirk, 1997).

Based on the aforementioned recommendations, it can be argued that the CHL has aggressively attacked the proliferation of sexual abuse within its ranks. The measures that the CHL have taken go beyond what any other organization has done to prevent pedophile coaches or officials from using their organization to solicit victims.

Not every youth sport organization has been so aggressive. In fact, many have not even gone as far as to adopt a volunteer screening requirement. Even though the cost of background checks has been reduced to about forty dollars per search, some youth sport organizations

believe that the benefits do not justify the expense (Peterson, 2004). Opponents of background checks for coaches argue that the searches are an invasion of privacy, will deter volunteers who have been convicted of non-sexual offenses, and can in many cases be ineffective in terms of screening pedophiles. For example, the checks do not screen for first-time offenders, or offenders who have never been caught. Even the CHL in its Players First report recognized that screening is not foolproof and is not likely to catch many predators (Kirk, 1997). However, the report also states that screening may act as a deterrent to those with reason to fear a background inquiry and may even detect predators who have engaged in sexually abuse conduct before and are looking to do so again.

So the question becomes, what must youth sport organizations do to protect their child athletes from pedophiles? After all, experts like Stephen Bavolek believe that the pedophilia problem is increasing in youth sports. The CHL has gone as far as to label the protection of its athletes from pedophilia “a paramount concern” (Kirk, 1997).

In addition to the moral and ethical justification for protective measures, there is a legal duty on the part of youth sport organizations to protect their athletes from foreseeable risks (van der Smissen, 1990). It is possible that a youth sport organization could be found liable if the appropriate protective measures are not in place to prevent, or at least limit, the possibility of sexual harassment or abuse. It is imperative that these organizations understand how liability could be imposed on them for the actions of pedophiles who infiltrate their ranks and abuse their athletes.

My review of the literature has revealed a substantial void in the research on this issue. While there are articles and research on what individual states have done in terms of imposing liability on youth sport organizations for the pedophilic actions of their coaches and officials, no

single study has ever attempted to provide a comprehensive review for all 50 United States and the District of Columbia.

Purpose of My Study

This study analyzed case law for all 50 United States and the District of Columbia with the purpose of determining the applicability of the tort theories of respondeat superior, negligent hiring, and negligent retention in terms of holding youth sport organizations liable for the pedophilic actions of their coaches and officials. The study also analyzed voluntary immunity statutes for all 50 United States and the District of Columbia to determine whether said statutes provide defenses to the aforementioned tort theories for youth sport organizations. By analyzing the law of all 50 states and the District of Columbia, my study made comparisons that can be drawn between the states in how they apply the law for these tort theories and voluntary immunity statutes. Finally, my study analyzed the corresponding standard of care that is imposed on youth sport organizations for all 50 states and the District of Columbia so that youth sport organizations will know what is needed of them to avoid liability and guard against abuse.

The scope of my study included a complete examination of existing case law for all 50 United States and the District of Columbia. It is necessary to have an expansive study that includes all 50 states and Washington D.C. because negligence is a creation of state law and the application of negligence theories vary among the several states. However, national youth sport organizations like Little League and Pop Warner provide services in most states and need to understand the variances that may exist between the legal jurisdictions. Youth sport organizations need to understand how different jurisdictions apply these theories so that they know what is required of the organization to protect against the pedophilic actions of coaches and officials within their ranks.

Significance of the Study

Youth sport organizations are much more likely today than ever to be involved in negligence litigation. In considering cases, courts throughout the country issue decisions that define legal liability and create new potential avenues for legal liability. When a child is sexually victimized by a coach or athletic official, it is probable that the child's parents will seek compensation for the victimization through legal action. As the CHL recognized, it is impossible to expect youth sport organizations to completely prevent pedophiles from having access to their athletes (Kirk, 1997). Yet, it is possible for a pedophile to slip through even the most stringent of screening processes. It is also possible to minimize that risk, and in today's litigious society is has become imperative for youth sport organizations to do so.

The first step youth sport organizations can take toward minimizing the potential for liability is to understand how liability can be imposed against them. While the law is always subject to change, the doctrine of *stare decisis* provides that courts will tend to stand by their past decisions (Garner, 2004). Accordingly, the law, while malleable, does provide some degree of predictability (20 American Jurisprudence 2nd Nature and scope of doctrine, generally § 129, 2005).

Administrators for youth sport organizations can look to existing case law to determine how courts in their jurisdiction have resolved certain types of problems. Cases can be used to help youth sport organizations understand the standard of care for the sport industry in their jurisdiction. The results of my research project provide youth sport organizations with information they need to make policy decisions for all 50 United States and the District of Columbia on how to limit liability and guard against sexual abuse within their organizations.

CHAPTER 2
LITERATURE REVIEW

Chapter Introduction

This study concerns the potential civil liability of youth sport organizations for the pedophilic actions of coaches and officials who sexually abuse athletes. Civil liability can be established through tort law or through contract. A tort is a civil wrong for which the law provides a remedy (Keeton, 1984). A tort can derive from either an intentional or unintentional act or omission. A youth sport coach or official who sexually abuses an athlete is subject to civil liability for an intentional tort because the perpetrator of the tort acted with intent, meaning that he or she intended to do the tortious act (Restatement (Second) of Torts § 8A, 1965).

However, the aim of my study targets the potential liability of the youth sport organization rather than its coach or official. Since the youth sport organization is not the pedophilic actor, any civil liability on its part will likely be established through use of one or more unintentional tort theories.

Unintentional Torts: Negligence

The term negligence is given to those unintentional torts that injure others in person, property or reputation (van der Smissen, 2003a). The difference between intentional torts and negligence turns on the probability, under the circumstances known to the actor and based on common experience that a certain consequence will follow from a certain act (65 Corpus Juris Secundum § 14, 2005). If the consequence is desired by the actor, or the actor knows to a substantial certainty that the consequence will follow, the action is legally intentional. Conversely, in negligence, intent is irrelevant (57A American Jurisprudence (2d) § 30, 2005). Thus, the negligent actor does not desire to bring about the consequences, nor does the actor

know that the consequences are substantially certain to follow. Instead, there is merely an unreasonably great risk of such consequences (Keeton, 1984).

Negligence can be defined as conduct involving an unreasonably great risk of causing harm or damage; conduct that falls below the standard established by law for the protection of others against unreasonable risk of harm (Restatement (Second) of Torts § 282, 1965). In most cases, negligence is caused by "heedlessness or inadvertence" (Keeton, 1984 p. 169). In fact, the term negligence denotes culpable carelessness (Garner, 2004).

Negligence may result from a personal or professional decision rendered after careful consideration and based on an individual's best judgment (Keeton, 1984). Negligence does not always involve the absence of solicitude for those who may be harmed by a person's actions or inactions. In these instances, liability will be determined on whether the actor's conduct adheres to the standard of care or poses an unreasonable risk to others.

The standard of care imposed by law is external or objective in that it is based on what society demands of its members rather than the actor's personal morality or individual beliefs. Failure to conform to the standard of care, even if it is the result of "clumsiness, stupidity, forgetfulness, an excitable temperament, or even ignorance," results in potential liability for negligence (Keeton, 1984, p. 169).

While negligence presupposes a uniform standard of behavior, there are an infinite variety of situations that may arise to which the standard must be applied (Keeton, 1984). It is impossible to fix definite rules in advance for all conceivable human conduct and the law does not attempt to do so. Through the common law, formulas have been developed to determine whether an actor has breached the standard of care. Before those formulas are discussed, it is important to first analyze the elements of negligent.

There are five primary elements to negligence (Restatement (Third) of Torts § 6, 2005). Each element must be found to exist before a plaintiff may recover in negligence. The elements to negligence are duty of care, breach of duty, causation in fact, proximate cause, and damages. First, the defendant must have owed a duty of care to the plaintiff to conform to the standard of care necessary to prevent the unreasonable risk of harm (Epstein, 1990). Second, the plaintiff must establish that the defendant breached the appropriate standard of care. Third, it must be shown that the defendant's breach was the factual cause of the plaintiff's harm. Fourth, the breach must be the proximate cause of the plaintiff's harm. Fifth, the plaintiff must establish proof of some form of property damage or personal injury. Since the negligence theories of negligent hiring and negligent retention both require a showing of each of the five elements exist, a discussion of each follows.

The First Element: Duty of Care

The existence of a legal duty is what dictates whether an individual or entity must conform to the standard of care (Clement, 2004). Therefore, the first question that must be addressed in assessing liability is whether youth sport organizations owe their athletes a duty of care to protect them from coaches who are pedophiles. It is important to note that the existence of a duty of care is a question of law because it results in the conclusion that it is appropriate to impose liability for the injuries suffered (*Tarasoff v. Regents of University of California*, 1976). Thus, judges bear the responsibility of determining whether a duty of care exists because questions of law are decided by judges not juries (*Phelps v. Firebird Raceway, Inc.*, 2005).

Generally, a person does not owe a duty to protect others from third parties absent a special relationship (Restatement (Second) of Torts § 315, 1965). There are three primary ways in which a special relationship may be established: (a) from a relationship inherent, (b) from a

voluntary assumption of the duty, and (c) from a duty mandated by statute (van der Smissen, 2003a).

It is typically not difficult to locate the existence of a relationship inherent because the duty is open and obvious based on its nature (van der Smissen, 2003a). After all, there are those types of relationships that automatically give rise to a duty to protect another from an unreasonable risk of harm. For example, there is little debate as to whether a mother owes a duty to her child or a lawyer owes a duty to his or her client.

When a service is provided, typically there is also a concomitant obligation not to expose the participant using the service to an unreasonable risk of harm (van der Smissen, 2003a). Youth sport organizations provide services to the children who play in their leagues and for their teams. Accordingly, there is a duty on the part of youth sport organizations to protect their athletes from unreasonable risks.

In the absence of a relationship inherent, a special relationship may still be established by voluntary assumption (van der Smissen, 2003a). For example, even though there is no duty to come to someone's aid, once purported tortfeasors voluntarily begin to render assistance, they must proceed with reasonable care (Restatement (Second) of Torts § 324, 1965). Thus, they have assumed a duty that normally they would not normally posses because there is no relationship inherent. A person may also voluntarily assume a special relationship by volunteering to assist a youth sport organization as a coach or league official (van der Smissen, 2003a).

The final way in which a special relationship may be found is if it is set forth by statute (van der Smissen, 2003a). For example, there is a statutory prohibition against driving while intoxicated in every jurisdiction in the United States. If a driver negligently operates a motor vehicle and is caught driving over the legal limit then the driver has breached a duty owed to

other drivers and pedestrians. If the intoxicated driver injures someone as a result of the breach, then the driver may be deemed negligent *per se*.

If a defendant violates a statutory duty and is deemed negligent *per se*, then the defendant is negligent as a matter of law (Restatement (Third) of Torts Restatement § 324, 2005). In such a case, the plaintiff need only prove the elements of causation and actual harm to prevail in court. Thus, the statute sets up both the legal duty and the standard of care for the plaintiff.

The Second Element: Breach of Duty

The second element of negligence requires the plaintiff to prove that the defendant breached the duty of care. Specifically, the plaintiff must establish that the defendant failed to conform to the duty of care owed to the plaintiff (Restatement (Second) of Torts § 282, 1965). To show that the duty of care was breached, the plaintiff must prove that the defendant's conduct, viewed as of the time it occurred, imposed an unreasonable risk of harm (Keeton, 1984).

By establishing the existence of an unreasonable risk of harm, the plaintiff is in effect showing that the defendant breached the standard of care that was owed under the circumstances. As previously mentioned, it is impossible to define the standard of care for every possible event and thereby expose every possible unreasonable risk. Thus, the courts have developed a formula for determining whether each set of facts give rise to an unreasonable risk of harm (Keeton, 1984). This formula consists of the creation of a fictitious person who is often described as the reasonably prudent person and was first created in *Vaughan v. Menlove* (1837).

The fictitious reasonably prudent person is a model individual with human qualities, but only those shortcomings that the community will tolerate (Keeton, 1984). The courts have gone to unusual lengths to emphasis that the reasonably prudent person is an abstraction and is not to be identified with any ordinary person. The conduct of the reasonably prudent person will vary

depending on the circumstances. Thus, the jury must take the circumstances into account when deciding what a person of reasonable prudence would do (Keeton, 1984).

The courts have expanded the definition of the word “circumstances” to include any physical attribute that the defendant may posses (Keeton, 1984). For example, if the defendant has a specific physical disability, like blindness, then so does the reasonably prudent person (Restatement (Second) of Torts § 283C, 1965). However, courts have not extended the term “circumstances” to include the specific mental characteristics of the defendant (Keeton, 1984). Thus, the intelligence of the defendant is not considered when deciding what a reasonably prudent person would do.

Most jurisdictions have carved an exception to this general rule for individuals who have a mental state that is so low that they are unable to comprehend a risk or avoid an accident (57B American Jurisprudence (2d) § 1022, 2005). Conversely, the Restatement (Second) of Torts does not adopt the majority rule that mental deficiency may relieve a person of negligence (§ 283B, 1965). Although, the Restatement does allow for a child’s mental deficiency to be taken into account (Restatement (Second) of Torts § 283A, 1965).

Courts have also created another exception for those individuals who posses superior knowledge, skill or intelligence (Keeton, 1984). Thus, a defendant’s professional and educational experience may be considered under the circumstances. Professional persons in general, and those who undertake any task that requires special skill, are required to posses a standard minimum of special knowledge and ability that would be commonly held by members of the profession in good standing (Restatement (Second) of Torts § 299, 1965). Accordingly, for situations involving the need for professional expertise, the fictitious reasonably prudent person is transformed into the reasonably prudent professional.

In some situations it may be too difficult to ascertain what a reasonably prudent person would do under the circumstances. For example, it may be too amorphous and inexact to always apply the standard to the actions of a business organization. To deal with situations where the reasonably prudent person standard may be too difficult to apply, the courts have developed a balancing test to determine if the defendant's conduct posed an unreasonable risk of harm to the plaintiff.

The balancing test was crafted by Judge Learned Hand in *U.S. v. Carroll Towing Co.* (1947). The *Carroll Towing Co.* case involved a barge, owned by the plaintiff in the case, which broke away from its moorings due to the negligent manner in which the defendant shifted the lines that moored the barge. The defendant argued that the plaintiff was also negligent because the plaintiff should have placed someone on the barge to make sure that it was secure.

In addressing this fact pattern, Judge Hand did not use the reasonably prudent person to determine whether the plaintiff's failure to place an employee on the barge amounted to contributory negligence (*U.S. v. Carroll Towing*, 1947). Instead, Judge Hand applied a formula that balanced the burden of preventing the harm (B) against the gravity of the harm (L) multiplied by the probability of the harm (P). If $B < L \times P$, then there is an unreasonable risk of harm.

Applying this formula, Judge Hand found that the substantial burden of having an employee on board at all times was outweighed by the seriousness of the harm and the probability that the harm would occur (*U.S. v. Carroll Towing*, 1947). Specifically, the facts took place during wartime and ships were constantly coming in and out of the harbor. Thus, the risk that the mooring lines would come undone and the danger that the barge posed to other ships sufficiently outweighed the burden of placing a man on the barge.

As the formula implies, the more serious the gravity of the injury, the less probable that the injury need be before the defendant should guard against it to avoid legal liability in negligence (*U.S. v. Carroll Towing*, 1947). Further, the burden in the equation is not only a cost to the individual party, but also a broader social utility of the conduct that should be borne. Thus, the question becomes one of whether society would be better off if all like parties were permitted to act as the alleged tortfeasor has acted.

The Restatement (Second) of Torts has attempted to combine the balancing test with the reasonably prudent person standard. The Restatement (Second) of Torts § 291 states:

"[w]here an act is one which a reasonable person would recognize as involving a risk of harm to another, the risk is unreasonable and the act is negligent if the risk is of such magnitude as to outweigh what the law regards as the utility of the act or of the particular manner in which it is done" (Restatement (Second) of Torts § 291, 1965).

The determination of which test, between the reasonably prudent person standard and the balancing test, to use depends on the jurisdiction and the circumstances. Again, tort law varies somewhat from state to state. However, both formulas are long-standing in the common law, thus both have long histories of case law supporting their use and explaining their application.

No matter the formula used, particular attention will be paid by the court to ordinances, regulations, policies, standards, or even guidelines that attempt to establish the appropriate standard of care (van der Smissen, 2003a). Generally accepted practices or custom of the profession may instead be accepted as proof of the standard of care in the absence of published standards. Often, this information will be introduced into evidence through expert testimony.

Thus, a plaintiff will need to establish that the youth sport organization did not act reasonably and therefore breached a duty of care owed to the plaintiff. In doing so, the

jurisdiction may use the reasonably prudent person formula or the balancing test. Either way, the issue will turn on whether the defendant's actions posed an unreasonable risk of harm to the plaintiff. In other words, the question can be posed as whether the defendant breached the standard of care owed to the plaintiff. In establishing the standard of care, evidence in the form of standards, guidelines, regulations, policies, or even custom that concerns the administration of youth sport may be considered.

The Third Element: Cause In Fact

Even if there is a breach of the duty of care owed to another, their recovery against the defendant is not possible unless the defendant's breach was the factual cause of the plaintiff's harm (Clement, 2004). In other words, there must be some reasonable, direct connection between the plaintiff's cause of action for negligence and the defendant's action or omission (Keeton, 1984). An act or omission is not a cause of an event if the event would have occurred without it. This maxim has been used by courts to establish a "but for" or "sin qua non" rule. Simply put, causation in fact requires a finding that "but for" the defendant's conduct, the plaintiff would not have been hurt.

A defendant may negate causation in fact if it can be shown that another intervening cause actually caused the plaintiff's harm (Keeton, 1984). However, the law recognizes that there can be more than one cause for a plaintiff's harm. Accordingly, if a plaintiff can prove that any of two or more causes would have brought about the harm, then the plaintiff may recover against any or all of the actors. In this case, the defendants would be deemed joint tortfeasors.

The substantial factor test is used to determine whether multiple causes each resulted in the plaintiff's harm (Keeton, 1984). If the defendant's conduct played a substantial factor in causing the plaintiff's harm, then the defendant's conduct factually caused the plaintiff's harm. Thus, if the actions or omissions of multiple defendants each played a substantial factor in bringing about

the plaintiff's harm, then those defendants would be deemed joint tortfeasors and the plaintiff may recover against any single torfeasor, or all of the tortfeasors, for compensation (Restatement (Second) of Torts § 432, 1965).

Accordingly, plaintiffs seeking redress against a youth sport organization will have to establish that the organization factually caused their injuries. While the pedophile coach or administrator actually performed the harassment or molestation, it must be shown that the youth sport organization played a substantial factor in the bringing about of this specific harm. Otherwise, the plaintiff will not be able to establish "but for" causation.

The Fourth Element: Proximate Causation

The cause in fact requirement is not the only causation requirement. Once direct causation is established, the plaintiff must also establish that the defendant's negligence was the proximate cause of the injuries (Wong, 2002). The concept of proximate cause stems from policy considerations that serve to place manageable limits on liability caused by negligent conduct (57A American Jurisprudence 2nd § 427, 2003). The proximate cause requirement arises out of the judicial sense that negligent actors should not be liable for all the consequences of their actions, especially those that are far-reaching. There are two conflicting applications of the policy. The first is termed the "direct causation" view. It holds that defendants are liable for all consequences of their negligent act absent superseding intervening causes. The second, most popular and widely used, application is termed the *foreseeability* or *scope of risk* view (Keeton, 1984).

Jurisdictions that incorporate foreseeability into their proximate cause determination require plaintiffs to prove that the injury was foreseen by the defendant, or reasonably should have been foreseen, as the natural and probable result of the negligence (57A American Jurisprudence 2nd § 429, 2005). Accordingly, the foreseeability component of proximate cause

is satisfied if a person of ordinary caution and prudence could have foreseen the likelihood of injury (*Regions Bank & Trust v. Stone County Skilled Nursing Facility, Inc*., 2001).

Palsgraf v. Long Island Railroad Company (1928) is the seminal case on the subject of the applicability of foreseeability in a proximate cause determination (Gash, 2003). In *Palsgraf*, a man carrying a package wrapped in newspaper under his arm, attempted to catch the defendant's train by jumping onto a train car. During the jump, the man appeared unsteady, so one of the train guards reached to help him. At the same time, another guard attempted to assist the man by pushing him from behind. The man's package fell onto the tracks revealing its contents, fireworks. The fireworks exploded on the tracks and the impact of the shock caused scales on the railway passenger platform to fall onto the plaintiff, Mrs. Palsgraf. A jury ruled in Mrs. Palsgraf's favor by finding the defendant train company liable for her injuries. The court of appeals reversed the trial court's decision and handed down then-Judge Cardozo's now landmark opinion (*Palsgraf v. Long Island Railroad Company*, 1928).

Judge Cardozo did not use proximate cause as a basis for his determination. Instead, he found that the defendant did not owe a duty of care to the plaintiff (*Palsgraf v. Long Island Railroad Company*, 1928). However, the case is used as a basis for understanding the role of foreseeability in a proximate cause inquiry (*Devellis v. Lucci*, 1999; *Freddo v. Access Agency, Inc*., 2001; *Hicks v. Nunnery*, 2002; *Isaacs v. Larkin Electric Company*, 1998; *Moore v. PaineWebber, Inc.*, 1999; *Williamson v. Liptzen*, 2000). Judge Cardozo determined that the plaintiff's injuries were not the foreseeable result from the defendant's actions. In doing so, he constructed an *orbit of danger*, something akin to a legal snapshot, that freezes the defendant's actions to ascertain what risks were reasonably foreseeable based on the defendant's actions.

Consequently, only those risks included in the orbit of danger were reasonably foreseeable (*Palsgraf v. Long Island Railroad Company*, 1928).

Looking at the facts in *Palsgraf*, the majority held that the risks created by helping a man holding an unidentified package onto a train did not include the risk of a scale falling on a person standing on the other end of the platform. Therefore, the plaintiff's injuries were not the reasonably foreseeable consequence of the train employees' actions (*Palsgraf v. Long Island Railroad Company*, 1928).

Judge Andrews wrote a strong dissent to the majority's decision. Judge Andrews did not agree with the limitations posed by the orbit of danger. Instead, he argued that proximate causation should extend to all consequences of negligent action, not only those that are reasonably foreseeable. Thus, he urged for the adoption of the direct causation view (*Palsgraf v. Long Island Railroad Company*, 1928).

Arguably, a strict application of the approach to foreseeability taken by the majority in *Paslgraf* could pose problems for plaintiffs seeking to hold youth sport organizations liable for the actions of pedophile coaches or officials. However, proximate cause is based on policy considerations (57A American Jurisprudence 2nd Negligence § 427, 2003). In fact, *Palsgraf* has been interpreted as standing for the proposition that "a foreseeability finding turns on fairness, policy, and as before, 'a rough sense of justice'" (*AUSA Life Insurance Co. v. Ernst & Young*, 2000, p.218). Proximate cause is also a common law concept, and as such, it must evolve to reflect "economic, social, and political developments" (*AUSA Life Insurance Co. v. Ernst and Young*, 2000; *Cullen v. BMW of North America, Inc*., 1982, p. 1102).

With athletes like Sheldon Kennedy coming forward in the media to describe how they have been victimized and the horrific stories provided by Norman Watson, the public is

becoming more and more aware of the pedophilic problem in youth sports. Therefore, public policy may very well dictate that the concepts of foreseeability and proximate cause should evolve to reflect said developments. After all, the fear of pedophile coaches and administrators accessing youth sports did not exist in 1928 when Judge Cardozo wrote the *Palsgraf* decision.

The Fifth Element: Actual Harm

For any cause of action based on negligence, some actual harm or injury must exist as a requirement and nominal damages are not available (Restatement (Second) of Torts § 907, Comment a, 1965; Wong, 2002). Proof of damage is an essential part of the plaintiff's case in negligence because negligent conduct in and of itself does not rise to the type of interference with the interests of society as a whole to warrant a complaint (Keeton, 1984). Thus, for a plaintiff to recover, he must establish the existence of some bodily injury or emotional harm (van der Smissen, 2003a).

In cases dealing with allegations of pedophilia, it is typically not difficult for a plaintiff to establish actual harm. In fact, even if the plaintiff does not incur any permanent physical loss, the plaintiff may recover for pain and suffering (*McDougald v. Garber*, 1989). Specifically, mental pain and suffering experienced through sexual abuse or harassment often serves as a basis for an award in tort law (*Wilson v. Safeway Stores Inc.*, 1997).

Once actual harm or injury is established, there is a plethora of possible types of damages that may be recovered to compensate the victim. The types of damages available depend on the circumstances but may include compensation for physical pain and suffering, mental distress, direct economic loss, loss of consortium, and wrongful death (van der Smissen, 2003a).

In some jurisdictions, there is the possibility that a plaintiff may recover punitive damages against the defendant. Punitive damages are different than compensatory damages because punitive damages are awarded to punish the defendant rather than compensate the victim

(Keeton, 1984). However, punitive damages are only awarded to punish outrageous, reckless, willful, or wanton conduct (Wong, 2002). Accordingly, punitive damages are typically not available for ordinary damages (van der Smissen, 2003a).

Gross Negligence

Thus far, this review has focused on what is required for ordinary negligence. However, the common law recognizes that tortuous conduct may be so great that it amounts to more than just negligence, even though it falls short of being intentional (Keeton, 1984). For these situations courts have distinguished between ordinary negligence and situations where the defendant' acts with a heightened degree of careless, or gross negligence (*Fidelity Leasing Corp. v. Dun & Bradstreet, Inc.*, 1980; *Leite v. City of Providence*, 1978; *Pilot Industries v. Southern Bell Tel. & Tel. Co.*, 1979). In gross negligence, the defendant's culpability is magnified so that it is at a higher degree then that which is found in ordinary negligence (57A American Jurisprudence § 227, 2005). Some courts have stated that gross negligence amounts to a failure to exercise care even that care which a careless person would use (*Crowley v. Barto*, 1952; *Louisville & Nashville Railroad Co. v. McCoy*, 1883; *Whitley v. Com*., 2000).

However, other courts have interpreted gross negligence to require a showing of willful, wanton, or reckless misconduct (Keeton, 1984; *De Wald v. Quarnstrom*, 1952; *In re Wright's Estate*, 1951; *Redeout v. Winnebago Traction Co*., 1904; *Rokusek v. Bertsch*, 1951; *Thompson v. Bohlken*, 1981). The majority of jurisdictions distinguish between those acts that are willful, wanton, or reckless and those that involve gross negligence (Keeton, 1984). Specifically, these courts hold that gross negligence is more than just ordinary inadvertence, but less than conscious indifference (Keeton, 1984; *Crowley v. Barto*, 1952; *Fidelity Leasing Corp. v. Dun & Bradstreet, Inc.*, 1980; *Hodge v. Borden*, 1966; *Wyseski v. Collette*, 1965).

Willful, Wanton, and Reckless Conduct

As previously stated, some jurisdictions distinguish between gross negligence and willful, wanton, and reckless conduct. These jurisdictions recognize situations where a defendant may act with intentional indifference to the point that her actions exceed the culpability required for gross negligence (Keeton, 1984). Even though a defendant acts with intentional indifference, the defendant's actions remain negligent rather than intentional because the defendant never intended to bring about the harm. In these situations, the risk of harm is so great that the defendant probably knows that the harm will follow (Restatement (Second) of Torts § 500, 1965). This probability falls short of the substantial certainty required for an intentional tort.

Some courts have tried to distinguish between willful, wanton, and reckless conduct (*Kelly v. Mallott*, 1905; *Neary v. Northern Pacific Railway*, 1910). For most jurisdictions, however, these terms can be used collectively or interchangeably (*Mania v. Kaminski*, 1980). A defendant who is found liable for willful, wanton, and reckless conduct may incur civil sanction through punitive damages (*Hackbart, v. Cincinnati Bengals, Inc*., 1979).

Negligence Theories and Doctrines

Within the concept of legal negligence, there are various types of theories on which a plaintiff may rely depending on the specific circumstances at issue. What theories may be available to the plaintiff hinge on how the defendant was negligent, or the defendant's relationship to the party who actually committed the negligent act. This section of the review of literature will focus on the negligence theories most applicable to a cause of action against a youth sport organization for the pedophilic actions of their coaches and officials. In doing so, this section will review the literature concerning the negligence theories of respondeat superior, negligent hiring, negligent supervision, and negligent retention.

It is important to note that these individual theories of negligence each require a showing that the defendant(s) acted negligently. Thus, the elements of ordinary negligence must still be established for a plaintiff to prevail in negligence through use of one of these theories. Further, if the defendant's conduct through one of these theories is extreme, then the defendant may be found liable for gross negligence or willful, wanton, and reckless conduct.

The Doctrine of Respondeat Superior

The doctrine of respondeat superior is often referred to as vicarious liability because it serves as a method of holding one person vicariously liable for the wrongs committed by another (Keeton, 1984). The phrase respondeat superior is Latin meaning "let the master answer" (Garner, 2004). Under this doctrine, liability can attach to a master if the servant, while acting on the master's behalf, harms someone to whom the master owes a duty of care (Mayer, 2005). Accordingly, if an employee (servant) acts negligently during the course of employment, then the employer (master) may be held liable for the employee's negligence. Simply put, the negligence of the employee is imputed to the employer.

To be successful in a respondeat superior claim, the plaintiff must establish that the tortfeasor is liable in tort, the tortfeasor is employed by the defendant, and the employee was acting within the scope of employment when the tortuous act was committed (27 American Jurisprudence 2nd § 459, 2005). Perhaps the most critical element of respondeat superior is the requirement that the employee was acting within the scope of his employment (Keeton, 1984). Acts committed by the employee that exceed the scope of employment are considered ultra vires. Employers, are generally not vicariously liable for the ultra vires actions committed by their employees (Cotten, 2003). However, the definition of scope of employment has extended to include all acts committed in furtherance of the employer's business (Keeton, 1984).

Early decisions did not hold employers liable for the intentional torts committed by their employees on the assumption that employers would not authorize such conduct (*Maille v. Lord, 1868; McManus v. Crickett, 1800; Poulton v. London & S.W.R. Co., 1867; Wright v. Wilcox, 1838*). Modern application of the doctrine of respondeat superior has been extended to include intentional torts that occur during the scope of the employee's employment (Keeton, 1984). Thus, intentional torts are no longer per se ultra vires acts.

Criminal acts, including sexual assault, have generally been considered to be outside the scope of employment (Gibbons & Campbell, 2003). The basis for this exception is that such acts are not done in furtherance of the employer's enterprise. In certain circumstances, courts have held than an employee's sexual assault falls within the scope of employment even though it was not motivated by a purpose to serve the employer (DeMitchell, 2002; Lear, 1997). Most of the cases that have extended the scope of authority to include sexual abuse cases have done so where the sexual aggressor stood in an authority position over the victim. Youth sport coaches, administrators, and officials are invariably placed in authoritative positions of trust (Gibbons & Campbell, 2003). Jurisdictions that use a broader definition of scope of employment provide a greater opportunity for plaintiffs to recover against the youth sport organization based on respondeat superior (Weeber, 1992).

The policy behind the doctrine of respondeat superior focuses on risk allocation. The losses caused by the torts of employees, which are sure to occur, are placed upon the enterprise itself as a cost of doing business (Keeton, 1984). After all, between the employer and the victim, the employer stands in a better position to prevent the harm because the employer has control over their employees.

It is central to the doctrine of respondeat superior that the employer posses some degree of control over actions of the employee (Keeton, 1984). For this reason, courts have not extended the doctrine to make employers liable for the actions of independent contractors. After all, independent contractors are not, by their nature, employees. Instead, they are independent parties contracted to perform a task.

Independent contractors typically retain almost complete control over the means for accomplishing the task. Since the employer has no power of control over the manner in which the work is to be done by the contractor, the task should be regarded as the contractor's own enterprise, and the contractor, rather than the employer, should hold the responsibility of preventing the risk, and bearing and distributing it (Restatement (Second) of Torts § 409, Comment b, 1965). There is an exception to this general rule for non-delegable acts that involve ultra-hazardous activities (24 Corpus Juris Secundum § 432, 2005).

Unique societal hurdles exist for plaintiffs who seek to use the doctrine of respondeat superior against volunteer organizations, especially those that are non-profit (Lear, 1997). Imposing vicarious liability on these organizations may drive them out of business even though the societal utility of the activity exceeds the harm. One of the often used justifications for the doctrine of respondeat superior is that employers typically have more resources than their employees (Keeton, 1984). Thus, a plaintiff has a greater chance at full recovery against the master than the servant. However, volunteer organizations do not always amass vast reserves of wealth, earmarked for the enriched owners or investors (Lear, 1997). Tapping the resources of volunteer organizations to compensate victims in tort may force the organizations out of business.

To protect youth sport organizations, and in particular, the services they provide the public, jurisdictions may refuse to apply the broad definition of "scope of employment." Instead, they may rely on the narrow definition that limits vicarious liability to only those actions performed in furtherance of the employer's enterprise (Deak, 1999).

Negligent Hiring

The tort of negligent hiring may provide hope for plaintiffs in jurisdictions that do not extend the doctrine of respondeat superior to include criminal conduct. In fact, courts appear to be more willing to accept negligent hiring as a means for holding an employer liable for sexual assaults committed employees (Gibbons & Campbell, 2003). Perhaps the basis for accommodation lies in the fact that, unlike the doctrine of respondeat superior, the tort of negligent hiring does not strictly impute the negligence of the employee onto the employer simply because the employer stands in the role as master of the employee (Scales, 2002). Instead, a negligent hiring action alleges culpability on the part of the employer. Particularly, the tort requires the establishment of a causal link between the employer's negligence in hiring an individual with known harmful propensities and the employee's subsequent violent action (Sullivan, 1998).

The tort of negligent hiring stems from the fellow servant rule (Scales, 2002), a common law defense that protected an employer against the claims of injured employee based on the theory that the injury resulted from a negligent act or omission of a fellow employee (Lin, 2005). The tort of negligent hiring evolved out of the modern version of the fellow servant rule, which emphasizes an employer's duty to hire and retain competent employees (Lienhard, 1996; Scales, 2002). The first negligent hiring cases required that the crimes committed by employees fall within the scope of employment. However, subsequent case law expanded employer liability to include ultra vires acts (North, 1976).

To prevail on a cause of action for negligent hiring, a plaintiff must first establish that the employer owed them a duty of care (Gibbons & Campbell, 2003). As a general rule, there is no duty on the part of organizations to protect victims against the violent propensities of employees. However, if the plaintiff falls within a member of a class of foreseeable victims, then courts are willing to find the existence of a duty of care on the part of employers.

In a youth sport setting, courts recognize that a greater degree of care is owed to children based on their lack of capacity to appreciate risks and avoid danger (Gibbons & Campbell, 2003). Thus, courts have found a special relationship between children and the organizations that place adult caregivers in authority positions over children. Accordingly, youth sport participants that play in leagues established by youth organizations fall within a foreseeable class of victims that could be harmed by pedophilic coaches and officials. Therefore, a special relationship exists between youth sport organizations and the children who use their services and this relationship creates a duty of care on the part of the organizations to hire competent coaches and officials (Gibbons & Campbell, 2003).

A plaintiff asserting a negligent hiring cause of action must also show (a) that the employer knew or in the exercise of ordinary care should have known of its employee's unfitness at the time of hiring; (b) that through the negligent hiring of the employee, the employee's incompetence, unfitness, or dangerous characteristics proximately caused the resulting injuries; and (c) that there is some employment or agency relationship between the tortfeasor and the defendant employer (27 American Jurisprudence 2nd § 392, 2005).

Perhaps the most critical inquiry made in negligent hiring cases concerns the first element of the tort, the requirement that the employer knew or should have known of the employee’s unfitness at the time of hiring (27 American Jurisprudence 2nd § 392, 2005). Critical to this

inquiry is the degree of knowledge of the fitness of the employee. Specifically, how much knowledge is required of an employee's unfitness before the employer's actions in hiring the employee amount to negligence?

In answering this question, negligent hiring cases may be divided into three categories (Sullivan, 1998). The first type of cases involves situations where the employers were unaware of the employee's unfitness. Employers are often relieved of liability in situations where they had no knowledge of the employee's predisposition toward harmful conduct.

The second type of cases involving the knowledge requirement for negligent hiring actions include those cases where the employer possesses actual knowledge of the employee's predisposition towards harmful behavior (Sullivan, 1998). It is in this line of cases that the employer is particularly vulnerable to civil liability. However, the mere existence of a criminal record does not in and of itself mean that the employer was negligent in hiring the employee. A reasonable investigation of the employee's past may reveal that the employee was involved in an isolated incident and does not have a propensity towards dangerous conduct.

The third type of cases concern situations where the employer should have known of the employee's violent behavior (Sullivan, 1998). The literature and case law is clear that an employer may be held liable for negligently hiring an employee if they knew or should have known of an employee's propensity toward violence. Thus, lack of knowledge does not relieve the employer of his duty to perform an adequate background check (van der Smissen, 2003b).

This means that the employer must conduct a reasonable investigation into the employee's work experience, background, character, and qualifications (27 American Jurisprudence 2nd § 393, 2005). The scope of an adequate background check depends largely on the nature of the job in terms of the anticipated degree of contact that the employee will have with other persons in

performing job functions (27 American Jurisprudence 2nd § 394, 2005). If the employee's job duties will frequently bring him into contact with the public or involve close contact with particular persons resulting from a special relationship between such persons and the employer, the employer's duty expands, requiring it to go beyond the job application form and personal interview.

Generally though, a reasonable routine background check includes an application, an interview, and reference checks (Lear, 1997). However, if the application, interview or reference checks reveal a problem with the employee, a more thorough independent inquiry may be required (27 American Jurisprudence 2nd § 394, 2005). Even if an independent inquiry is required, such investigation typically does not normally extend to criminal record checks (Sullivan, 1998).

The modern negligent hiring doctrine looks at the circumstances surrounding the employment relationship that may call for a heightened duty (Lear, 1997). It is possible that the circumstances involving the employee's background may give rise to a heightened duty that would warrant organizations to go much further than what is minimally required (Gibbons & Campbell, 2003). This may be particularly true in situations where the employee would have access to vulnerable persons, like children (Lear, 1997).

However, the general rule remains that employers do not have to conduct criminal record checks (Sullivan, 1998). Furthermore, employers may be relieved of liability for not conducting reasonable background checks if the employer establishes that a reasonable inquiry would not have revealed the employee's unfitness (27 American Jurisprudence 2nd § 394, 2005).

Negligent Retention

Not only should employers use reasonable care in hiring employees, but they should also use reasonable care in deciding whether to retain employees who demonstrate a propensity

toward dangerous conduct. Failure to exercise such care and terminate unfit employees could result in liability for the tort of negligent retention. An employer who knew or should have known of problems with an employee that indicated unfitness and who failed to take further action such as investigation, discharge, or reassignment could be found liable for torts committed by that employee against a third person (27 American Jurisprudence 2nd § 396, 2005). Conversely, employers cannot be held liable if they did not have notice of an employee's propensity to commit criminal acts during the course of employment. This is especially true where the employer has made it clear to the employee that he or she should not participate in criminal acts while on the job.

Like the tort of negligent hiring, negligent retention also originates from the fellow servant rule (Lienhard, 1996). Also like negligent hiring, early negligent retention cases only imposed liability on the employer for those acts that the employee committed during the scope of employment. However, later cases have expanded the tort to cover ultra vires actions, including criminal offenses.

This modern view of negligent retention emphasizes an ongoing duty on the part of an employer to retain only competent employees (27 American Jurisprudence 2nd § 396, 2005). Through this modern view, there are several issues that courts must consider including: (a) the level of care the employer must exercise in making personnel decisions; (b) the foreseeable victims to whom the duty is owed; (c) the employee’s characteristic that results in incompetence or unfitness, and the type of proof that evidences this trait; (d) the connection between the employee's unfitness and the plaintiff's injury; and (e) the connection between the employer and the plaintiff (Lienhard, 1996).

Thus, the issues inherent in negligent retention cases are almost identical to the requirements for negligent hiring cases. Accordingly, the standard care in a negligent retention case is very similar to that for negligent hiring cases (Beck, 2006). However, there is one critical difference in that in a negligent retention case, the employee would be subject to firsthand observation by the employer. Therefore, courts may be willing to grant more latitude for plaintiffs in a negligent retention case based on the employer's knowledge (Beck, 2006).

The employer's knowledge of the employee's incompetence or unfitness is critical in a negligent retention case. In fact, the success of a negligent retention claim will turn on whether the employer knew or should have known in the exercise of ordinary care that their employee was unfit (27 American Jurisprudence 2nd § 396, 2005). Thus, employers should perform employee appraisals on a regular and systematic schedule (Lienhard, 1996). The existence of any incidents should be noted by a supervisor immediately. Employers should pay close attention to personality traits that may emerge involving violent episodes or frustrations. If a pattern or trend starts to develop, then the employer should take immediate action to remove, transfer or suspend the employee (Lienhard, 1996).

Third parties may also establish liability against employers under negligent retention where the actions taken by the employer are not properly administered (27 American Jurisprudence 2nd § 396, 2005). Further, employers could be found liable for negligent retention where the employer reasonably should have foreseen that its actions were inadequate to protect third persons from harm resulting from a recurrence of the employee behavior of which the employer had prior notice (27 American Jurisprudence 2nd § 396, 2005; *Favorito v. Pannell*, 1994).

Defenses

There are several defenses that defendants can use to defeat causes of actions based in negligence. The availability of the defense depends on the facts of the case. It is also important to

note that if the facts preclude the use of a defense theory, the defendant may still prevail if the plaintiff cannot meet the burden of establishing each of the elements required for the specific tort. However, most defense theories to negligence claims focus on the plaintiff's conduct at the time the tort occurred. The most common defenses to respondeat superior, negligent hiring, and negligent retention cases are assumption of risk and comparative fault/contributory negligence (Lienhard, 1996). Thus, the review of literature will include a brief discussion of these defenses.

Finally, this study specifically deals with youth sport organizations which are often composed of volunteers. Many jurisdictions have enacted volunteer immunity statutes that protect volunteers from liability incurred in the activities for which they have volunteered. This section will also include a brief discussion of volunteer immunity.

Assumption of Risk

Assumption of risk is a defense that is available when a plaintiff has voluntarily exposed himself to a known and appreciated danger (Cotten, 2003). Assumption of risk is an absolute defense meaning that its existence precludes the plaintiff from recovering for the injuries (Keeton, 1984). Assumption of risk involves the assumption of well-known risks that are inherent to the activity. Put simply, when one knows the inherent dangers involved and voluntarily participates, one assumes those risks inherent in the activity and the service provider is not liable for resulting injuries (Cotten, 2003).

Three elements must exist for a valid assumption of risk defense. These include: (a) the risk must be inherent to the activity, (b) the participant must voluntarily consent to be exposed to the risk, and (c) the participant must know, understand, and appreciate the risks inherent in the activity (*Leakas v. Columbia Country Club,* 1993). It is unlikely that youth sport organizations will be able to satisfy the elements of assumption of risk when defending against claims based on the pedophilic actions of their coaches and officials. First and foremost, pedophilia is not an

inherent risk in any youth sport (*Rutter v. Northeastern Beaver County School District*, 1981). Second, children, as minors, cannot legally consent to risk exposure and any consent by a parent or guardian to pedophilia would most certainly be negated in court because such consent would violate the law in every jurisdiction. Thus, assumption of risk is not a valid defense for youth sport organizations against claims brought by their athletes alleging pedophilia.

Contributory Negligence and Comparative Fault

Contributory negligence is a defense to negligence that focuses on the conduct of the plaintiff. Contributory negligence is also an absolute defense in that it too precludes recovery for the plaintiff if established. The theory provides that plaintiffs may not recover if they are negligent and their negligence contributes proximately to their injuries. Thus, the defense is a complete one. It shifts the loss totally from the defendant to the plaintiff, even if the plaintiff's failure to exercise reasonable care is much less marked than that of the defendant. However, contributory negligence has been either overruled or repealed by statute in most jurisdictions (Cotten, 2003).

In fact, most jurisdictions have replaced contributory negligence with comparative negligence. These jurisdictions have done so because they are of the opinion that contributory negligence leads to unfair and perhaps even harsh results (Cotten, 2003). Instead, these jurisdictions have fashioned systems that attempt to apportion damages between the plaintiff and the defendant according to their relative degree of fault (Clement, 2004). This is the basis for comparative negligence.

It is not likely that a youth sport organization will be able to assert a defense based on either contributory negligence or comparative fault in a case brought on behalf of a child who has been sexually abused by a coach or official. After all, both types of jurisdiction require the defendant to prove that the plaintiff was negligent. Further, these defenses do not apply to

intentional torts. If a child is victimized by a coach then it is not probable that the league that employed the coach will succeed on a claim that the child negligently contributed to his or her victimization. Additionally, while the league may be found negligent for either, or both, hiring and retaining the coach, the actual act that led to the claim involved an intentional tort committed by the coach.

Volunteer Immunity

Commentators have called volunteers the third sector of the American economy, the other two being government and business (Smith, 1999). Various service providing organizations, including youth sport organizations, would not be able to function without volunteers. Thus, when insurance companies began raising premiums in response to a rash of lawsuits in the 1980s, states across the country started passing volunteer immunity statutes. These statutes grew out of a fear that people would stop volunteering and the services provided by these volunteer-dependant agencies would stop (Smith, 1999).

State volunteer immunity statutes are uniform in that they all seek to protect certain persons, such as Little League and youth soccer coaches, from liability for injuries resulting from ordinary negligence in connection to their coaching activities (Hurst & Knight, 2003). Some states have gone further with their coverage and have expanded the statutes to cover gross negligence and even willful, wanton, and reckless conduct (Smith, 1999).

To add some clarity to the law, Congress enacted its own volunteer protection statute in 1997 when it passed the Federal Volunteer Protection Act (FVPA; Biedzynski, 1999). The stated purpose of the Act is to "promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions ...."(42 U.S.C.A. § 14501(b), 2005). Even with these statutes, however, youth sport organizations may still be vulnerable to litigation.

Most volunteer statutes, including the FVPA, apply only to coaches or officials who serve as volunteers without compensation in activities that benefit young people (Hurst & Knight, 2003). Thus, the organizations are not immune to liability for their own negligent actions. Further, the organizations may also be held vicariously liable for the actions of their volunteers, who independently may enjoy protection under the statutes (Smith, 1999). Finally, statutes typically have some qualifiers that limit their application to certain specific acts. For example, the FVPA has qualified its coverage so that it does not include crimes of violence, hate crimes, sexual offenses under controlling state law, and civil rights violations under either a federal or state law, or actions of the volunteer while under the influence of alcohol or drugs at the time of the incident (Biedzynski, 1999).

Thus, volunteer immunity statutes may or may not protect a youth sport organization against a claim that is brought on behalf of a child who was sexually victimized by his or her coach. The FVPA probably would not provide protection for the organization because the claim would involve a sexual offense under state law (Biedzynski, 1999). Further, the organization itself may still be liable under the Act despite the fact that its volunteers may enjoy coverage.

Therefore, the question remains open as to whether state immunity statutes would provide protection for youth sport organizations for the pedophilic actions of their coaches and officials in claims brought against the organization under the tort theories of respondeat superior, negligent hiring, and negligent retention. My research project will attempt to answer that question for all 50 states and the District of Columbia.

Sexual Abuse of Children

There are two primary types of people who sexually abuse children. The first type is the situational offender (Edwards, 1997). A situational offender is not typically sexually attracted to children. The second type of offender is the pedophile. According to Dr. Fred Berlin, a Johns

Hopkins professor who founded the National Institute for the Study, Prevention and Treatment of Sexual Trauma, a pedophile is someone with a distinct sexual orientation marked by persistent, and sometimes exclusive, attraction to prepubescent children (Cloud, 2002). Outside of the medical community, however, the term pedophile is frequently extended to include people who are attracted to adolescent children as well as prepubescent children, and people who engage in sexual activity with a child (The Columbia Electronic Encyclopedia, 2003).

Youth Sport Organizations

More than 10 million children below the age of 16 play some form of organized sport (Peterson, 2004). Organized youth sports can range in activity and the organizations that provide these activities are equally as diverse. Some are national organizations like Little League (baseball), Pop Warner (football), and USA Soccer. Others, however, are regional and are operated by states, counties, municipalities, churches or park and recreation departments in the local communities for which they service.

Despite the diverse nature of youth sports, there are unifying umbrella organizations that seek to advance and enhance youth sports. Organizations like the National Council of Youth Sports (NCYS), which has 170 members nationwide and operates under the mission of representing these members through advancing the values of participating in youth sport (www.ncys.org, n.d.). A large number of the NCYS member organizations are national organizations. One of the primary services provided by the NCYS is the development and sharing of information that promotes healthy participation of youth sports. For example, the NCYS educates coaches and officials on leadership development. Further, the NCYS has developed recommended guidelines for background screening of all volunteers who work with NCYS member organizations. NCYS member organizations each receive one hardbound copy of

the NCYS background check recommendations and can purchase additional copies for $12.00 (www.ncys.org/background_screening, n.d.).

The National Alliance for Youth Sports (NAYS) is another national organization that seeks to make the sports experience healthy for all children (www.nays.org/about, n.d.). The NAYS, however, works on the local level through its partnerships with more than 3,000 community organizations, which include park and recreation departments, Boys and Girls Clubs, Catholic Youth Organizations, and Jewish Community Centers. Primarily, the NAYS provides children with positive instruction and works toward building basic motor skills. The NAYS seeks to ensure that administrators (both professional and volunteer), volunteer coaches and officials are well trained in their roles and responsibilities. One way in which the NAYS assists local community organizations is by providing them with volunteer screening resources which include background check guidelines developed by the NAYS (www.nays.org/IntMain, n.d.)

CHAPTER 3
MATERIALS AND METHODS

Chapter Summary

This chapter identifies the methods that were utilized to study whether youth sport organizations can be held liable for the pedophilic actions of their coaches through the tort theories of respondeat superior, negligent hiring, and negligent retention. The scope of this study included a complete examination of existing case law for all 50 United States. The results of my study provide youth sport organizations with information they need to make policy decisions on how to limit liability and in turn guard against sexual abuse within their organizations.

Research Design

My study employed a descriptive methodology in performing a legal analysis on existing case law to determine whether youth sport organizations can be held liable for the pedophilic actions of their coaches through the tort theories of respondeat superior, negligent hiring, and negligent retention. Volunteer immunity statutes were also studied as they might provide defenses for youth sport organizations against claims asserting the aforementioned theories. As this project involved a descriptive study of an existing problem, it is in effect a documentary study incorporating case and statutory law analysis.

Data Collection

The data in this study consisted of case and statutory law for all 50 United States and the District of Columbia. Specifically, the criteria for case selection extended to include all federal and state cases that applied the tort theories of respondeat superior, negligent hiring, and/or negligent retention to claims brought on behalf of children and their parents and against youth sport organizations alleging sexual abuse by their youth sport coaches and officials. Additionally, volunteer immunity statutes for these jurisdictions were analyzed to determine if they provide a

valid defense against the aforementioned tort claims. Relevant cases were located and accessed through descriptive word searches on Westlaw's electronic database. Descriptive searches included the terms "sexual abuse," "molestation," "coach," "athlete," "youth," "respondeat superior," "negligent hiring," and "negligent supervision." Westlaw is an online legal research service providing electronic access to West's vast collection of statutes, case law materials, public records and other legal resources, as well as current news articles and business information.

It was anticipated that not every jurisdiction has reported case precedent involving a lawsuit brought against a youth sport organization on behalf of a youth sport participant, alleging pedophilia by a coach or official, and based on one of these three tort theories. Analogous cases were used for these jurisdictions. Analogous cases are those that involve similar but not identical problems. An example of an analogous case may involve an athlete who alleges sexual misconduct on the part of a high school or college coach. Another example may include an allegation of sexual abuse brought by a youth against a Boy or Girl Scout troop leader. Because our legal system is based on precedent, cases can be used as authority for a rule, or as an example of how that rule has been applied in similar cases (Oates, Enquist, & Kunsh, 1998). Legal interpretation can be made by studying analogous case law that utilizes the theories of respondeat superior, negligent hiring, and negligent retention to similar cases, but not identical cases. Therefore, the law for a specific jurisdiction can be gleaned from analysis of analogous case law.

There was no time frame in terms of how recent the cases or statutes must have been. However, my study focused exclusively on controlling case and statutory law. In other words, my study only analyzed primary authority, meaning cases that are binding on courts within the

jurisdiction. Accordingly, this study was a comprehensive overview of the law as it applied to the problem.

Data Analysis

Cases and statutes were analyzed to determine the applicable law for all 50 United States. Relevant cases were briefed according to a standard comprehensive format (Ray & Ramsfield, 1993). This method for interpreting and synopsizing a court decision includes: (a) issue presented in the case, (b) the rules used by the court in resolving the issue, (c) the court's analysis, and (d) the court's conclusion. Statutes were interpreted and analyzed based on a method utilized by Shapo, Walter and Fahans (1989). This method required: (a) careful reading of the text of the statute, (b) identification of statutory issues, and (d) analysis of legislative intent that is explained by comments to annotated statutes. The cases and statutes were then analyzed to determine how each state will likely rule on a case brought against a youth sport organization for the pedophilic actions of its coaches and officials.

The first criterion for analyzing the case law for these jurisdictions was whether there are cases directly on point. Specifically, the first goal was to determine whether each jurisdiction had directly answered the research questions. If the jurisdiction had not directly answered all of the research questions, then analogous cases were utilized. The review of literature revealed several key questions that were used to determine whether a jurisdiction that lacks controlling case law would be more willing to impose liability on a youth sport organization for the pedophilic actions of its coaches and officials.

The questions revealed through the review of literature framed the criterion used for analyzing analogous cases. These questions were: (a) whether the doctrine of respondeat superior extends employer liability to criminal actions like molestation and harassment; (b) whether the doctrine of negligent hiring and negligent retention required a heightened duty in cases where the

employee has access to children and/or the public; and (c) if a heightened duty existed, did that duty extend to include criminal background checks in cases where the employee has access to children or the public?

Volunteer immunity statutes were analyzed to determine whether they extend to cover youth sport organizations in addition to the individual volunteers. Analogous case law was not needed to determine the application of these statutes.

Ultimately, as the law for each jurisdiction was determined, patterns appeared in how states applied the tort theories and/or voluntary immunity defense. Mine is an exploratory study, thus, there was no way of predicting patterns at the initial stage of the study. However, the results of my study revealed that certain jurisdictions applied the law in ways that separate them from other jurisdictions and these states were grouped together and identified based on their commonality.

Delimitations

My study was limited to volunteer youth sport organizations and did not include interscholastic or intercollegiate youth sport organizations. The theories of liability used to pursue claims against volunteer youth sport organizations are not necessarily the same as those that would be used in an interscholastic setting. For example, the doctrine of respondeat superior does not apply to state employers in the vast majority of jurisdictions.

It is also important to note that this study did not investigate organizational requirements that may be imposed. Organizations may place requirements on themselves that exceed what the law requires. For example, a youth sport organization may require criminal background checks for all new hires, however; the legal jurisdiction may not legally require the organization to conduct such searches.

Finally, most lawsuits are settled out of court and most trial or district court decisions are not reported. Therefore, it was possible that my search would not detect some legal cases brought against youth sport organizations because the cases either settled out of court, or never reached the appellate stage.

Research Questions

The purpose of this study was to answer the following research questions:

- Can youth sport organizations in the United States be held liable for the pedophilic actions of their coaches and officials based on the tort theories of respondeat superior, negligent hiring, and negligent retention?
    - Are there reported cases for each jurisdiction involving civil liability against youth sport organizations for the pedophilic actions of their coaches and officials?
    - Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse?
    - Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public?
    - Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public?
- Do volunteer immunity statutes provide youth sport organizations in the United States with a defense against lawsuits based on the pedophilic actions of their coaches and officials based on tort theory of negligent hiring?
- What comparisons can be drawn between states in the way they apply the tort theories of respondeat superior, negligent hiring, and negligent retention?
- What is the standard of care in the United States for youth sport organizations in terms of preventing or limiting their liability for the pedophilic actions of their coaches and officials?

CHAPTER 4
RESULTS

The results section is divided into subsections with each subsection representing the research questions used to form the case law search criterion. The results for each research question are listed in their corresponding sections. Detailed analysis of each jurisdiction are found in Appendix A.

Cases against Youth Sport Organizations

Only California and Indiana had reported cases where plaintiffs brought civil actions against youth sport organizations for the pedophilic actions of their coaches and officials. These two states had conflicting results. In California, there were actually two cases with both cases resulting in verdicts favoring the defendant youth sport organizations. One case was brought against a gymnastic association and coach and was upheld because there was no basis to overturn the jury's verdict that there was not enough proof to find the association and coach liable (Dawn D. et al., v. The Regents Of The University Of California, 2003).

The second case was brought by the victims of Norman Watson. In that case a California appellate court ruled that Little League Baseball, Inc. was a franchisor and that East Baseline Little League was a franchisee and that franchisors do not have control over the employees of franchisees. Based on this ruling, the plaintiffs' negligent supervision, negligent hiring, and respondeat superior claims against Little League Baseball, Inc. failed. The plaintiffs were allowed to pursue actions against East Baseline Little League, the local Little League Baseball affiliate (Hickman v. Little League Baseball, Inc., 2006).

The Indiana case involved a claim against Southport Little League for the pedophilic actions of an equipment manager. Unlike the California case, the plaintiffs in the Indiana case

only pursued the local Little League affiliate and the league was found liable under the doctrine of respondeat superior (Southport Little League v. Vaughan, 2000).

Application of the Doctrine of Respondeat Superior

The doctrine of respondeat superior can apply to sexual molestation and abuse cases in: Indiana; Louisiana, if the servant's tortious conduct is closely connected in time, place, and causation to his duties to the master; Minnesota, as long as the source of the attack is related to the duties of the employee, and the assault occurs within work-related limits of time and place; Mississippi; North Dakota; Oregon, if the tortious act occurred substantially within the time and space limits authorized by the employment, the employee was motivated, at least partially, by a purpose to serve the employer, and the employee's act was of a kind which the employee was hired to perform. For an overview on which states apply the doctrine of respondeat superior, see table 1.

The doctrine of respondeat superior does not apply to sexual molestation or abuse claims in: Alabama, unless later ratified by employer; Arkansas; Arizona; California; Colorado; Connecticut; District of Columbia, unless the employee actuated, at least in part, by a desire to serve the master; Florida, unless the employee was assisted in accomplishing the tort by virtue of the employer/employee relationship; Georgia, unless later ratified by employer; Illinois; Iowa; Kentucky; Maine, unless the employee actuated, at least in part, by a desire to serve the master; Michigan; Montana; Nevada; New York; North Carolina; Ohio; Oklahoma; Pennsylvania; Rhode Island; Tennessee; Texas, unless an assault is so connected with and immediately arising out of authorized employment tasks as to merge the task and the assaultive conduct into one indivisible tort; Utah; Washington; and Wisconsin.

States that have not resolved the question of whether the doctrine of respondeat superior applies to sexual molestation and abuse include: Alaska, Delaware, Hawaii, Idaho, Kansas,

Maryland, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, South Carolina, South Dakota, Vermont, Virginia, West Virginia, and Wyoming.

Requiring a Heightened Duty of Care

States that have a heightened duty of care in negligent hiring and negligent retention cases involving situations where the employee has access to children or the public include: Colorado, the duty of care varies based on degree of contact with other persons; Florida, degree of contact varies based on degree of contact with other persons; Georgia; Louisiana, when an employee is to be placed in a position of supervisory and/or disciplinary authority over children, the employer has a duty to properly screen the applicant (and continue to provide screening) to determine if the applicant has been convicted of a crime (or crimes) involving moral turpitude; Massachusetts, the scope of investigation is directly related to the severity of risk third parties are subjected to by an incompetent employee; New Jersey, heightened duty for hirings related to the instruction of children; Tennessee, increased duty whenever employees have access to living quarters; and Texas, organizations whose primary function is the care and education of children owe a higher duty to their patrons to exercise care in the selection of their employees than would other employers. For an overview of which states have a heightened duty of care, see table 1.

Requiring Criminal Background Checks

Only Rhode Island and Pennsylvania have cases requiring criminal background checks as part of a reasonable background check. Several states have suggested that a criminal background check may be required based on the facts of the case. These states include: Colorado, but only if there are circumstances giving the employer reason to believe that a job applicant, by reason of some attribute of character or prior conduct, would constitute an undue risk of harm to members of the public and the applicant will be in frequent contact with particular persons who stand in a special relationship to the employer and with whom the applicant will be in close contact;

Georgia, suggested if the circumstances require it, Iowa, the issue is a material question left to jury; Kentucky, no general requirement to perform a criminal record check, but at least one decision suggested that a check may be required when the defendant had previously agreed via contract or through some sort of policy to conduct criminal records checks; Louisiana, could be part of reasonable search, depends on situation and whether person will supervise children; Maine, only if the employer contractually agreed to do such searches; Maryland, issue left to jury to consider the relative ease with which a criminal record search could have been conducted, and the information that would have been obtained had the inquiry been made; Massachusetts, facts could warrant such a search and such a search may be contractually required if employer agreed to perform it; Missouri, there is no general duty, but the facts could necessitate a further inquiry based on knowledge of a potential employee's criminal past; North Dakota, depends on situations, i.e. situations where knowledge of criminal behavior exists or where the person has access to homes; Ohio, for situations where person has access to homes; Texas, there is no general requirement, but when children are involved a check may be necessary; and Virginia, question left open because fact pattern may arise requiring a check.

Conversely, Minnesota, New York, North Carolina, Florida, and Michigan have decisions stating that criminal background checks are never required as a part of a reasonable background search in negligent hiring cases. The remaining states, including the District of Columbia, lack reported decisions on the issue of whether criminal background checks are required when a potential employee has access to children or the public.

Application of Volunteer Immunity Statutes

States that have volunteer immunity statutes that cover the organizations as well as the volunteers include: Minnesota, although it limits application to situations where the individual acts in a willful and wanton or reckless manner in providing the services or if the individual acts

in violation of federal, local or state law; Mississippi, but it only protects the volunteer/organization against claims based in negligence; New Jersey, but the act expressly excludes protection of volunteers or agents for sexual misconduct; and Pennsylvania.

States where volunteer immunity statutes do not provide protection for the youth sport organizations include: Alabama, Arkansas, Arizona, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Missouri, Montana, North Carolina, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin.

The following states do not have volunteer immunity statutes: Alaska, California [does have a statute that exempts directors of nonprofit organizations], Connecticut, Iowa, Kentucky, Maine, Michigan, Nebraska, Nevada, New Hampshire, New York, New Mexico, Ohio, Oregon, Tennessee, Vermont, Virginia, Washington, and Wyoming.

Table 1. Research Question Results*

Research Questions	Yes	No, with Exceptions	Undecided
Does Respondeat Superior Apply to Sexual Molestation or Abuse?	LA, MN, MS, ND, OR	AL, DC, FL, GA, MN, TX	AK, DE, HI, ID, KS, MD, MA, MO, NE, NH, NJ, NM, SC, SD, VT, VA, WV, WY
Is There a Heightened Duty of Care Based on Access to Children or the Public?	CO, FL, GA, LA, MA, NJ, TN, TX		
Are Criminal Background Searches Required?	RI, PA	CO, GA, IA, KY, LA, ME, MD, MA, MO, ND, OH, TX, VA	AL, AK, AZ, AR, CA, CT, DE, DC, HI, ID, IL, IN, KS, MS, MT, NE, NH, NJ, NM, OK, OR, SC, SD, TN, UT, VT, VA, WA, WV, WI, WY

* States not listed on table answered no to the research questions without exceptions.

CHAPTER 5
DISCUSSION

Discussion is presented in subsections with each subsection representing a research question. One of the research questions concerns comparisons that can be drawn between states in the way they apply the tort theories of respondeat superior, negligent hiring, and negligent retention. There will be no specific subsection for this question as this research question will be answered within each subsection.

Cases Against Youth Sport Organizations

California and Indiana were the only states with reported legal decisions of cases brought against youth sport organizations for the pedophilic actions of coaches and officials. California had two legal decisions with both cases resulting in verdicts favoring the defendant youth sport organizations. The first decision was a claim brought by gymnasts against a gymnastic association and coach claiming sexual misconduct on the part of the coach. A jury heard the case and resolved the matter in favor of the defendant coach and association on the basis that there was not enough evidence to find that either the coach or the association was liable for any misconduct. On appeal, the California 2nd District Court of Appeals ruled that there was no legal basis to overturn the trial court's decision (Dawn D. et al. v. The Regents Of The University Of California, 2003).

The second California decision involved claims brought by the victims of Norman Watson against Watson, East Base Line Little League, and Little League Baseball, Inc. In that decision the California 4th District Court of Appeals ruled that Little League Baseball, Inc. was a franchisor and that East Base Line Little League was a franchisee. The court ruled that as a franchisor, Little League Baseball, Inc. lacked control over its franchisee's employees. Based on this lack of control, Little League Baseball, Inc. could not be held liable under the doctrines of

respondeat superior or negligent hiring/retention. Specifically, the court found that Little League Baseball, Inc. did not have control over East Base Line's hiring of Watson, or his continued employment after allegations of misconduct surfaced. The court did permit the plaintiffs to pursue actions against East Base Line Little League, the local Little League Baseball affiliate.

The Indiana decision involved a claim against Southport Little League for the pedophilic actions of an equipment manager (Southport Little League v. Vaughan, 2000). Unlike the California Little League case, the plaintiffs in the Indiana case only pursued the local Little League affiliate and the league was found liable under the doctrine of respondeat superior.

In Southport Little League v. Vaughan, an equipment manager for the league wrongfully viewed child genatalia and molested child athletes. The court held that the league could be liable through the doctrine of respondeat superior if the league authorized any of the offendor employee's actions. On review, the appellate court found that the plaintiff's designated materials raised the inference that some of the offender's acts were authorized (such as fitting the youths' uniforms) when he viewed the athlete's genitalia for his sexual gratification and when he sexually molested the youths. Thus, the appellate court held that the trial court properly denied the Little League's motion for summary judgment.

Further, the court found that the youths who participated in Little League baseball were taught to respect adult authority, and it was clear to participating youths that the offender held a position of authority with Southport Little League (Southport Little League v. Vaughan, 2000). The court held that when an individual is cloaked with authority by an organization in which youths are participating, such as Little League Baseball, youths will typically comply with requests or commands of the adult individual in authority. Therefore, Southport Little League, by appointing the offender as an official, essentially authorized the offender to exert his authority

over youths who participated in Little League Baseball. Because some of the offender's acts were authorized, the court believed that the determination of whether Southport Little League was liable under the doctrine of respondeat superior for the sexual molestations was a question of fact for the jury (Southport Little League v. Vaughan, 2000).

The Indiana court did address the issue of whether a claim against Little League Baseball, Inc. for the pedophilic actions of its coaches and officials would survive. Accordingly, it is unclear whether the franchisor/franchisee control roadblock exists in Indiana for cases where plaintiffs pursue national youth sport organizations. However, Illinois, Texas and Virginia all have decisions where national youth organizations were relieved of liability on the franchisor/franchisee basis (Doe v. Big Brothers Big Sisters of America, 2005; Doe v. Boys Clubs of Greater Dallas, Inc., 1994; Golden Spread Council, Inc. No. 562 of Boy Scouts of America v. Akins, 1996; Infant C. v. Boy Scouts of America, Inc., 1990).

The Texas and Virginia decisions involved Boy Scouts of America, and Illinois and Texas have decisions involving Big Brothers, Big Sisters of America. The rationale used in all of these cases to relieve the national organizations of liability is identical to that used by the California 4th District Court of Appeals in its decision relieving Little League Baseball, Inc. of liability for the pedophilic actions of Norman Watson. Accordingly, Illinois, Texas and Virginia all have decisions that would probably provide protection for national youth sport organizations against sexual abuse/molestation claims brought within Illinois, Texas and Virginia.

The fact that only two states had decisions directly on point is significant. The review of literature revealed that experts believe sexual abuse in youth sports is prevalent (Deak, 1999). However, there is a dearth of reported cases of sexual abuse involving youth sport organizations. Accordingly, the results do not seem to support the review of literature finding that sexual abuse

and molestation are prevalent in youth sports. The search did reveal a number of cases of sexual abuse and molestation claims brought against coaches who work in a school setting, although those cases fell outside the scope of this study.

There may be a legal reason for the low number of reported sexual abuse and molestation cases brought against youth sport organizations. It is possible that a number of cases against youth sport organizations have never reached the trial stage of litigation, much less the appellate stage. If a case has been settled out of court before it is resolved by a court of law then it would not be reported and would not appear on Westlaw's legal database. Further, the vast majority of reported decisions are appellate cases. The basis for this is that there is little reason to publish most trial court or district court decisions because trial court and district court decisions typically do not have binding authority on future litigants. Thus, there may be legal cases brought against youth sport organizations that provided decisions that were either settled out of court, or resolved by a trial or district court without appeal. The true scope of the prevalence of sexual abuse in youth sports is unknown because no studies have been conducted on the population (Zaichkowsky, 2000).

Application of the Doctrine of Respondeat Superior

The review of literature revealed that the most critical element of respondeat superior is the requirement that the employee was acting within the scope of employment (Keeton, 1984). Acts committed by the employee that exceed the scope of employment are considered ultra vires and employers are generally not vicariously liable for the ultra vires actions committed by their employees (Cotten, 2007). The case law research showed that states have varying definitions of the phrase "scope of employment." Some states interpret the phrase broadly to include criminal actions of sexual molestation or abuse. Conversely, the majority of states have interpretations

that are narrow in application and consider all actions of sexual abuse and molestation to be ultra vires as a matter of law.

States Where the Doctrine of Respondeat Superior Applies

The states that allow the doctrine of respondeat superior to apply to sexual molestation or abuse all have one thing in common; at one time they did not permit the doctrine's application to intentional sexual misconduct. These states represent a growing trend of legal precedent adopting a broader definition of "scope of authority," and a more liberal application of the doctrine of respondeat superior.

As previously stated, in Indiana an appellate court held that a local Little League Baseball, Inc. affiliate could be held liable through the doctrine of respondeat superior. In doing so, the court found that there were questions of fact that need to be resolved by the jury. The court in Southport Little League v. Vaughan found that the league could have authorized certain acts (such as fitting the youths' uniforms) that took place when the offending employee viewed the athlete's genitalia for his own sexual gratification and when he sexually molested the youths. Further, the court found that the League had cloaked the employee with authority and the youths who participated in Little League Baseball were taught to respect that adult authority. Based on these facts, the court concluded that a reasonable jury could find in favor of the plaintiffs as there were issues of material fact (Southport Little League v. Vaughan, 2000).

Accordingly, in Indiana it is possible to use the doctrine of respondeat superior to impose liability on a youth sport organization. For a league to be liable, it must have authorized at least some of the actions that led to the sexual abuse or molestation (Southport Little League v. Vaughan, 2000). However, the requisite authority needed to result in liability in Indiana is minimal because the state uses a broad definition of "scope of authority." Specifically, the court in Southport Little League found authority in the fitting of uniforms on the part of the league's

employee. Coaches and officials for youth sport organizations regularly have contact with children that might lead to similar results in future cases. For example, coaches and officials might have to assist child athletes with injuries or have physical contact with child athletes through close instruction that could provide the coach or an official with the opportunity to sexually molest or abuse an athlete.

Louisiana also permits the doctrine of respondeat superior to apply to cases of sexual abuse or molestation. In Louisiana, the course and scope of a servant's duties to his master is dependent on whether the servant's tortious conduct was closely connected in time, place, and causation to his duties to the master as to be regarded as a risk of harm which can be fairly attributed to the master's business (Landreneau v. Fruge, 1996).

Minnesota's definition of "scope of authority" is similar to Louisiana, but goes even further in expanding the applicability of the doctrine of respondeat superior. Like Louisiana, in Minnesota sexual abuse or molestation can fall within the scope of authority as long as: (1) the source of the attack is related to the duties of the employee, and (2) the assault occurs within work-related limits of time and place (L.M. ex rel. S.M. v. Karlson, 2002). However, Minnesota courts go a step further because they have held that an employee's act need not be committed in furtherance of his employer's business to fall within the scope of employment (Fahrendorff ex rel. Fahrendorff v. North Homes, Inc., 1999). Instead, the master is liable for any such act of the servant which, if isolated, would not be imputable to the master, but which is so connected with and immediately grows out of another act of the servant imputable to the master, that both acts are treated as one indivisible tort (Fahrendorff ex rel. Fahrendorff v. North Homes, Inc., 1999; Lange v. National Biscuit Co., 1973; L.M. ex rel. S.M. v. Karlson, 2002).

Mississippi's definition of "scope of authority" is very similar to the more traditional definition used by the majority of states. However, there is one Mississippi Supreme Court decision that allowed a case of sexual abuse and molestation against a church to proceed past summary judgment. Thus, Mississippi's highest court may have implicitly rather than expressly expanded the state's definition of "scope of authority" by allowing the respondeat superior claim to continue rather than dismissing it as a matter of law.

In North Dakota, the courts define "scope of employment" as an act that takes place within the period of the employment, at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto, or as sometimes stated, where he is engaged in the furtherance of the employer's business (D.E.M. v. Allickson, 1996; Nelson v. Gillette, 1997). Similarly, Oregon courts define scope of employment to include sexual abuse or molestation if: (1) the tortious act occurred substantially within the time and space limits authorized by the employment; (2) the employee was motivated, at least partially, by a purpose to serve the employer; and (3) the employee's act was of a kind which the employee was hired to perform (Chesterman v. Barmon, 1988). To satisfy the second requirement, the focus of the inquiry is not necessarily whether an employee's tortious conduct itself was intended to serve the employer but, rather, whether the employee engaged in conduct that was intended to serve the employer and that conduct resulted in the acts that injured the plaintiff (Vinsonhaler v. Quantum Residential Corp., 2003). There are two cases, one involving a scout leader and the other involving a priest where the Oregon Supreme Court found that the employee used the position of employment to cultivate abusive relationships, thus triggering the doctrine of respondeat superior (Fearing v. Bucher, 1999; Lourim v. Swensen, 1999).

States Where the Doctrine of Respondeat Superior Does Not Apply

The majority of states do not allow parties to use the doctrine of respondeat superior in claims alleging sexual abuse or molestation. These states are uniform in their rationale for not allowing the use of respondeat superior for these types of cases. The basis for disallowing respondeat superior for sexual abuse or molestation cases is that such behavior falls outside the scope of authority. The review of literature revealed that the traditional interpretation of scope of authority excludes actions that employees commit that were not motivated by a purpose to serve the employer (DeMitchell, 2002; Lear, 1997). Therefore, because acts of sexual abuse and molestation are typically performed for purely selfish purposes by employees, those acts are traditionally held to be ultra vires and an employer cannot be held accountable for ultra vires acts through the doctrine of respondeat superior as a matter of law. Accordingly, plaintiffs who attempt use the doctrine of respondeat superior against a youth sport organization for the pedophilic actions of coaches and officials in states that utilize the traditional definition of scope of authority will probably have their cases dismissed as a matter of law.

There are other states that adopt the traditional definition of "scope of authority," but have exceptions that will extend the doctrine of respondeat superior to include sexual abuse or molestation. Alabama and Georgia have exceptions for situations where the actions were later ratified by the employer. The District of Columbia has an exception that extends the doctrine where the employee actuated, at least in part, by a desire to serve the master. Florida and Maine make exceptions in situations where the employee was assisted in accomplishing the tort by virtue of the employer/employee relationship. Texas has an exception to the rule for situations where an assault is so connected with and immediately arising out of authorized employment tasks as to merge the task and the assaultive conduct into one indivisible tort, thus allowing the tort to be imputed to the employer.

Utah is a bit of an anomaly in terms of how the state applies its definition of “scope of authority.” Utah has a definition very similar to that used by Minnesota, North Dakota, and Oregon. In Utah, there are three basic elements for determining whether an employee is acting within the scope of his or her employment for purposes of respondeat superior liability. First, the employee's conduct must be of a general kind and nature that the employee is hired to perform (Birkner v. Salt Lake County, 1989; Jackson v. Righter, 1995; Phillips v. JCM Dev. Corp., 1983). The employee's acts must be generally directed toward the accomplishment of the employee's duty and authority. Second, the conduct must occur within the hours of the employee's work and the ordinary spatial boundaries of the employment. Third, the employee's conduct must be motivated, at least in part, by the purpose of serving the employer's interest. Thus, Utah’s requirements are very similar to those used by courts in Minnesota, North Dakota, and Oregon,

However, the Utah Supreme Court applied the required elements to relieve an employer of liability for acts of sexual abuse committed by an employee. The case involved a situation where a patrolman molested members of an explorers club (J.H. by D.H. v. West Valley City, 1992). The court found that the first two elements were satisfied, but ruled that the third element was not satisfied because the offending employee was obviously not hired to perform acts of a sexual nature on the explorers under his supervision. The plaintiffs argued that the employee was employed to instruct and direct them in areas involving police work and that his actions in molesting the explorers were carried out pursuant to this type of instruction and supervision. The court held that the argument fails, however, because it is not the instruction and supervision of the employer of which the plaintiff complained. The employee was not hired or authorized to instruct the explorers in sexual matters, nor was he authorized to touch the explorers in any

manner. His acts of molestation were not in any way part of the instruction and supervision of the explorers but were in fact a complete abandonment of that instruction and of his employment (J.H. by D.H. v. West Valley City, 1992).

States that Remain Undecided

The research revealed that there is a group of states that either have never addressed the issue of whether the doctrine of respondeat superior applies to cases of sexual molestation or abuse, or have left the issue open for further review. New Jersey does not have a case that directly permits the application of the doctrine of resondeat superior to apply to sexual abuse or molestation. However, the state's interpretation of "scope of employment" is similar to the broad interpretations used by courts in Minnesota, North Dakota, and Oregon. Specifically, New Jersey's interpretation of "scope of employment" is broad enough to cover sexual molestation, harassment or abuse because it includes all conduct that the servant is employed to perform; conduct which occurs substantially within the authorized time and space limits; and is actuated, at least in part, by a purpose to serve the master.

Requiring a Heightened Duty of Care in Negligent Hiring And Negligent Retention Cases Where the Employee has Access to Children or the Public

Only eight states require a heightened duty of care in negligent hiring and negligent retention cases where potential or current employees have access to children or the public. For these states, the standard of care becomes more strenuous in that the employer must exercise increased care in the hiring or retaining of employees. The research showed that the states that do impose a heightened duty of care in certain situations are not uniform in how they increase or heighten the duty of care.

In Colorado, the scope of duty depends on the employee's anticipated degree of contact with other persons in carrying out the duties of employment. The requisite degree of care

increases, and may require expanded inquiry into the employee's background when the employer expects the employee to have frequent contact with the public, or when the employment fosters close contact and a special relationship between particular persons and the employee (Connes v. Molalla Transport System, Inc., 1992). Like Colorado, the states of Florida, Georgia and Massachusetts also vary the degree of care based on the extent to which employee's duties will require contact with others (Garcia v. Duffy, 1986; Munroe v. Universal Health Services, Inc., 2004). In these four states employers must determine how much contact potential employees have with the public and adjust the degree of scrutiny given to applications of potential employees accordingly.

In Louisiana, a heightened duty of care exists when an employee is to be placed in a position of supervisory and/or disciplinary authority over children. In such cases, the employer has a duty to properly screen the applicant, and continue to provide screening, to determine if the applicant has been convicted of a crime(s) involving moral turpitude (Williams v. Butler, 1991). Similarly, New Jersey and Texas also place a heightened or increased duty on employers for hirings related to the care or instruction of children (Doe v. Boys Clubs of Greater Dallas, Inc.,1994; Frugis v. Bracigliano, 2003; Hardwicke v. American Boychoir School, 2006). Accordingly, employers in these three states must be cautious when hiring or retaining employees that will have supervisory or instructional responsibility over children. Louisiana goes a step further in its requirement that employers look to the potential employee’s fitness in terms of moral turpitude.

Tennessee recognizes an increased or heightened duty of care, but only for situations where employees have access to living quarters (Doe v. Linder Const. Co., 1992). It remains unclear whether Tennessee is willing to expand the heightened duty of care to other fact patterns.

Requiring Criminal Background Checks

Only Pennsylvania and Rhode Island have cases requiring criminal background checks as a part of a reasonable search for all positions, not just those where the employee has access to children or the public. Accordingly, youth sport organizations in these two jurisdictions should conduct criminal background searches or risk exposure to liability if the employees are unfit for employment and their unfitness could have been detected through a criminal record check.

Conversely, Florida, Michigan, Minnesota, New York and North Carolina have decisions holding that a criminal record check is never required as part of a reasonable background search. Courts in these states base their decisions on the expense and degree of effort needed to conduct criminal records checks. However, the cost for criminal records checks continues to decrease and the advent of the Internet has made criminal records checks more convenient. In fact, the primary authority on this issue from New York was decided in 1968. Thus, a court in New York may reach a different conclusion if presented with this issue in the future.

There are 13 states that have decisions that either expressly leave the question open for later resolution, or suggest that criminal records checks may be required under certain circumstances. One Virginia decision expressly left the question open based on the court's recognition that it could be presented with a factual situation that may require a criminal record search (Southeast Apartments Management, Inc. v. Jackman, 1999). Thus, it is unclear how these states would resolve a negligent hiring case where the plaintiff argues that a criminal record check should have been performed.

Colorado requires a search only if there are circumstances giving the employer reason to believe that a job applicant, by reason of some attribute of character or prior conduct, would constitute an undue risk of harm to members of the public (Connes v. Molalla Transport System, Inc., 1992). Further, the job has to be one where the applicant will be in frequent contact with

particular persons who stand in a special relationship to the employer. A youth sport organization would probably fit the second requirement in that the vulnerability of children typically places them in a special relationship with supervising or instructing organizations (Lear, 1997). Although, the establishment of a special relationship is just one of two hurdles that a plaintiff must overcome in Colorado because plaintiffs still must overcome the more difficult hurdle of demonstrating that the employer was on notice that the employee posed a threat.

Like Colorado, Missouri and North Dakota also have decisions suggesting that a criminal records check may be required if the employer had knowledge of the employee's criminal past. North Dakota, however, also requires the fact pattern to involve the hiring of employees who will have access to homes. Ohio mandates that criminal records checks be performed when the employee has access to homes.

In Iowa and Maryland the issue of whether a criminal records check is necessary is a material question that is left to the jury to decide. Maryland, however, goes further by listing factors that the jury must consider in making its decision as to whether a criminal records check should have been performed by the employer. Specifically, in Maryland, the jury must first consider the relative ease with which a criminal records check could have been conducted, and the information that would have been obtained had the inquiry been made (Cramer v. Housing Opportunities Com'n of Montgomery County, 1985). Other factors must also be considered, including: (a) the availability of such information; (b) the cost and inconvenience; (c) delay in obtaining it; (d) whether other sources, including a previous employment record in the same field, are sufficient to justify a finding of fitness; and (e) whether unanswered questions, negative indicators, or other 'red flags' have surfaced during routine investigation. No single factor is dispositive.

Kentucky, Maine, and Massachusetts, all fail to recognize a general requirement for employers to perform criminal record checks, but all three states have cases suggesting that a check may be required when the defendant had previously agreed via contract or through some sort of policy to conduct criminal records checks. Many youth sport organizations, like Little League Baseball, Inc., now require their affiliates to conduct criminal records checks. These policies could be used in court to place a requirement to conduct a criminal records check where no such check would ordinarily be required. Finally, Louisiana and Texas both have decisions stating that a criminal records check could be part of reasonable search when the potential employee will have supervisory control over children. The remaining states do not have reported decisions addressing this issue.

Application of Volunteer Immunity Statutes Apply to Volunteer Organizations

Depending on the jurisdiction, a youth sport organization may seek the protection of a volunteer immunity statute to guard against a lawsuit alleging sexual molestation or abuse on the part of coaches or officials. The research revealed, however, that the volunteer immunity statutes for most states do not afford protection to youth sport organizations, but instead limit their protection to volunteers. In fact, only Minnesota, Mississippi, New Jersey, and Pennsylvania have volunteer immunity statutes that extend protection from volunteers to the organization. Further, three out of the four states that do provide protection do so with either limitations or qualifications.

For example, in Minnesota, volunteers are not protected from acts committed in a willful and wanton or reckless manner (M.S.A. § 604A.11). Additionally, volunteers are not protected if they act in violation of federal, local, or state law. These limitations may also extend to the organization seeking shelter under the statute and if that is the case, then youth sport organizations would not be protected against cases alleging sexual molestation or abuse because

those actions extend beyond willful, wanton or reckless behavior in that they are intentional. Further, sexual molestation and abuse violate Minnesota's criminal code. Minnesota is a state that allows plaintiffs to use the doctrine of respondeat superior against employers for cases alleging sexual molestation or abuse on the part of employees.

If respondeat superior is the basis for a plaintiff's claim against a youth sport organization then the volunteer immunity statute will probably not afford protection to the organization because the organization would stand in the shoes of the employee in that they are vicariously liable for the employee's actions. Thus, because the volunteer employee would not be able to use the volunteer immunity statute for protection, it is unlikely that the organization would be able to seek protection under the statute. However, the statute may provide protection for the organization if the plaintiff sues under a negligent hiring/retention theory. The statute does provide protection for ordinary negligence; therefore the case will turn on whether the organization was willful, wanton or reckless in its selection and/or retention of the pedophilic employee.

Similarly, New Jersey has a statute that covers the organization from its own negligence (N.J.S.A. 2A:53A-7). Though, the act also expressly excludes protection of volunteers or agents who commit acts of sexual misconduct. Therefore, the statute leaves open the question as to whether the organization would remain protected under the act for negligently hiring the employee who committed the sexual misconduct. Mississippi has a volunteer immunity statute that affords protection to youth sport organizations, but only protects organizations against claims based in negligence (Miss. Code Ann. § 95-9-1). Pennsylvania has a statute that expressly provides protection for youth sport organizations (42 Pa.C.S.A. § 8332.1). There is a dearth of

case law interpreting Pennsylvania's statute so the extent of coverage provided under the statute is unclear.

As previously stated, the vast majority of states have volunteer immunity statutes that expressly provide no protection for youth sport organizations. However, the research revealed that a large number of states do not even have volunteer immunity statutes. These states include: Alaska, California, Connecticut, Iowa, Kentucky, Maine, Michigan, Nebraska, Nevada, New Hampshire, New York, New Mexico, Ohio, Oregon, Tennessee, Vermont, Virginia, Washington, and Wyoming. Volunteers in these states can still seek protection under the Federal Volunteer Protection Act, but that act does not provide protection for youth sport organizations.

The Standard of Care

The standard of care is not something that can be set on a national level. Jurisdictions will vary in how they interpret the law and what requirements they place on youth sport organizations. In this study, two research questions directly inquired into the standard of care imposed on youth sport organizations for the pedophilic actions of coaches and officials. These two questions concerned the existence of a heightened duty of care for situations where employees have access to children or the public and whether states require criminal background checks.

As previously stated, there are eight states that impose a higher duty of care on employers in the selection of employees who will have access to children or the public. In these eight states youth sport organizations must be cognizant that they should exercise care exceeding what is normally required in the selection of employees. For these jurisdictions employers must be thorough in their selection process and make sure to conduct interviews and check all references. However, conducting these types of background checks is often difficult for youth sport organizations who rely on volunteers. When hiring for paid positions, it is feasible to conduct

rigorous background checks, but such checks are not as feasible in situations where organizations are dependant on volunteers. Yet in eight states youth sport organizations must still exercise increased care in selecting volunteer employees. And two of these eight states, Louisiana and Texas, expressly impose a higher duty when the potential employee will instruct or supervise children.

The use of criminal records checks could help youth sport organizations in these eight jurisdictions, especially considering that none of the eight jurisdictions have decisions requiring criminal records checks. In fact, in one of the states, Florida, criminal records checks are never required as a matter of law. Louisiana and Texas both suggest that criminal records checks may be required in situations where children are involved, but even these states have yet to require such searches. Conversely, two states, Pennsylvania and Rhode Island, require criminal records checks even though these states do not impose a heightened duty of care on employers in situations where employees will have access to the public or children. For these states, youth sport organizations must conduct criminal records checks or risk legal exposure if they hire an unfit employee, like a pedophile, who harms one of their child participants and the employee's unfitness could have been detected by a criminal records check.

Additionally, the states of Kentucky, Maine, and Massachusetts may require criminal records checks where the employer has policies or procedures requiring a criminal records check, or contractually agreed to conduct a search. Little League Baseball, Inc. has a policy requiring all managers, coaches, and volunteers within its organization to be checked against state lists of convicted sex offenders (Little League, n.d.). Little League Baseball, Inc.'s policy requiring a criminal records check could be used against it or its affiliates in courts in Kentucky, Maine, and Massachusetts if a criminal records check is not conducted. Accordingly, in at least these three

states, other youth sport organizations should look to their own rules and policies to determine whether they are required by their own policies or contracts to conduct criminal records checks.

Practical Implications

The first step youth sport organizations can take toward minimizing the potential for liability is to understand how liability can be imposed against them. My study analyzed case law for all 50 United States and the District of Columbia with the purpose of determining the applicability of the tort theories of respondeat superior, negligent hiring, and negligent retention in terms of holding youth sport organizations liable for the pedophilic actions of their coaches and officials. Through my study, voluntary immunity statutes for all 50 United States and the District of Columbia were also analyzed to determine whether said statutes provide defenses to the aforementioned tort theories for youth sport organizations. By analyzing the law for all 50 states and the District of Columbia, comparisons were drawn between the states in how they apply the law for these tort theories and voluntary immunity statutes.

Accordingly, the results from my study can be used by both local and national youth sport organizations. Local or regional youth sport organizations can look to the results to understand how their specific jurisdiction would apply the tort theories that plaintiffs would use to establish liability against youth sport organizations for the pedophilic actions of coaches and officials. National youth sport organizations like Little League Baseball and Pop Warner Football provide youth sport leagues in most states and need to understand the variances that exist between the legal jurisdictions. Specifically, national youth sport organizations need to understand how different jurisdictions apply these theories so that they know what is required to legally protect themselves against the pedophilic actions of coaches and officials within their ranks. It would be advisable for national youth sport organizations to look to states that provide the greatest exposure in terms of potential legal liability and adopt measures that will provide the

organization with the greatest legal protection. Thus, the results of this research project can provide youth sport organizations with the information they need to make policy decisions for all 50 United States and the District of Columbia on how to limit liability and guard against sexual abuse within their organizations.

For example, youth sport organizations in states that allow the doctrine of respondeat superior to be used in cases alleging sexual molestation or abuse should understand that they have a greater likelihood of being held liable for the pedophilic actions of their employees. The basis for this increased liability is found in the fact that they could be held liable for the actions of their employees even though they did not act negligently in either the hiring or supervision of said employees.

The results did reveal that courts in states allowing the use of the doctrine of respondeat superior in sexual abuse or molestation cases place emphasis on whether the sexual assault occurred within work-related limits of time and place. Accordingly, youth sport organizations can target times and locations for random supervisory inspections. While the youth sport organizations cannot completely safeguard themselves from exposing their athletes to pedophiles, they can regularly inspect locations at times when the employee is acting within the scope of employment. Taking such measures could help prevent unfit employees from assaulting athletes at locations and times that expose the employer to liability.

Further, youth sport participants will be afforded more protection if a pedophilic coach or official is forced to attempt sexual assaults outside of work times and locations. After all, such measures shift the potential for sexual misconduct outside the access that coaches and officials should have with athletes. Thus, any additional contact that a coach or official may have with an athlete may raise a red flag with a parent or guardian.

However, youth sport organizations are not off the proverbial hook just because they are located in states that do not allow plaintiffs to use the doctrine of respondeat superior in cases alleging sexual molestation or abuse. After all, the results revealed that every jurisdiction allows plaintiffs to pursue actions against organizations under the doctrines of negligent hiring and retention. The doctrines of negligent hiring and retention require employers to exercise reasonable care in the hiring and retention of employees. Further, the results revealed that eight states place an increased or heightened duty on employers to hire fit employees if the employees have access to children or the public. In these states employers must exercise more caution than what is required from employers in performing reasonable searches. This increased caution should come in the form of attention to background checks. Youth sport organizations must perform reasonable background checks in even the most relaxed of jurisdictions. The reasonableness of a background search varies with each jurisdiction. Most jurisdictions only require an interview process followed by a reference check. Currently, only two jurisdictions require employers to perform criminal records checks. However, 14 other jurisdictions may require criminal records checks if the circumstances suggest that one is necessary.

Youth sport organizations in these 15 jurisdictions should conduct criminal records checks. While only two require such checks as a matter of law, the other 13 have considered such searches as necessary in certain situations. Thus, courts in these jurisdictions have allowed cases concerning the reasonableness of a criminal records check to reach the jury stage for determination. It is possible that a jury could find that youth sport organizations should conduct criminal records checks before hiring coaches or officials. After all, national youth sport leagues like Little League Baseball and Pop Warner Football mandate background checks for all their affiliates and youth sport organizations like the National Council for Youth Sports and the

National Alliance of Youth Sports actually provide the means for other youth sport organizations to conduct criminal background checks. Thus, a jury may find that the actions of these sport organizations in conducting criminal record checks establishes a standard of care that should be followed by other youth sport organizations. Therefore, it is possible for a reasonable jury in these jurisdictions to find that the circumstances surrounding the hiring of a coach or official that has access to children dictates a criminal records check.

Youth sport organizations often rely on volunteers for coaches and officials. Most jurisdictions, as well as the federal government, provide statutory immunity for volunteers. However, the research revealed that the vast majority of volunteer immunity statutes, including the federal statute, provide no coverage for youth sport organizations. In fact, only Minnesota, Mississippi, New Jersey, and Pennsylvania have volunteer immunity statutes that extend protection from volunteers to the organization. However, three out of those four states have qualifications or limitations that prevent or limit the statutory protection afforded to youth sport organizations. Further, the qualifications and limitations for each these three statutes render their application useless in cases where a youth sport organization needs seeks statutory protection against claims of sexual abuse or molestation by one of the organizations volunteers. Only Pennsylvania has a statute that is apparently broad enough to provide protection for youth sport organizations. Although, organizations in Pennsylvania should be cautious in relying on the statutes protection because there is a dearth of case law explaining how courts will interpret the statute in sexual abuse or molestation cases.

CHAPTER 6
FUTURE WORK

By analyzing case law for all 50 United States and the District of Columbia, information was gathered that can be used to help youth sport organizations understand the standard of care for their industry in their jurisdiction. The results of this research project provide youth sport organizations with information they need to make policy decisions for all 50 United States and the District of Columbia on how to limit liability and guard against sexual abuse within their organizations.

However, this research project was just one step. In fact, the information gathered from my expansive case law study can be used for future research projects on this topic. Specifically, the information on the legal standards derived from this research project can be used to develop survey instruments that can be administered to youth sport organizations in an attempt to determine if said organizations are risking legal exposure through their actions or inactions in preventing or guarding against sexual molestation or abuse on the part of their coaches and officials. Further, because this study was expansive in that it included all 50 United States and the District of Columbia, the information obtained during the case law study can be used to analyze the results gathered from a survey design study and specific, rather than generalized, conclusions can be drawn concerning the potential for liability in each of the 51 jurisdictions.

This study only concerned youth sport organizations and excluded case law on sexual molestation or abuse occurring in interscholastic settings. However, this study could be replicated to study the potential liability for interscholastic and intercollegiate sport programs for the pedophilic actions of coaches and administrators.

Additionally, this project will lead to future studies that can be used to establish a standard of care for youth sport organizations for all 50 states and the District of Columbia. A survey

design study using the information gathered from this study could be used to determine what measures are being taken industry-wide for specific youth sport organizations. The information obtained through this study can be used to develop survey questions designed to illicit information from youth sport organizations to determine if they are taking appropriate steps necessary to avoid legal liability and prevent pedophiles from infiltrating their ranks. Accordingly, the results from additional studies utilizing survey research along with the information gathered from this study could be used by organizations in their evaluation as to whether they are risking potential legal exposure through their measures in comparison to what other organizations are doing and taking into consideration the current legal standards for their specific jurisdiction.

APPENDIX
STATE AND CASE LAW ANALYSIS

Alabama

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The doctrine does not apply to sexual harassment or sexual molestation cases unless the actions were later ratified by the employer.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported Alabama cases require criminal background checks.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No, it does not.

Supporting Cases and Statute

- **Question 1**: No supporting cases.

- **Question 2**: Meyer v. Wal-Mart Stores, Inc., 813 So.2d 832 (Ala. 2001) (criminal acts like assault and battery could fall within the ambits of respondeat superior as long as the acts did not derive from purely personal reasons); USA Petroleum Corp. v. Hines, 770 So.2d 589 (Ala. 2000) (respondeat superior does not extend to include sexual harassment or other malicious acts unless the master later ratified or authorized said acts); citing, Mardis v. Robbins Tire & Rubber Co. 669 So.2d 885 (Ala. 1995); Norman v. Southern Guar. Ins. Co., 191 F.Supp.2d 1321 (M.D. Ala. 1991); Naber McCrory & Sumwalt Construction Company, 393 So.2d. 973 (Ala. 1981); United States Steel Company v. Butler, 260 Ala. 190, 69 So.2d 685 (1953); Anderson v. Tadlock, 27 Ala. App. 513, 175 So. 312 (1937); Seaboard Air Line Railway Company v. Glenn, 213 Ala. 284 (1925).

- **Question 3**: No supporting cases.

- **Question 4**: No supporting cases.

- **Question 5**: Ala.Code 1975 § 6-5-336.

Alaska

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The Supreme Court of Alaska left this question open, but suggested that the theory does extend to include child sexual molestation.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported Alaskan cases require criminal background checks.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? Alaska does not have a volunteer immunity statute that covers youth sport volunteers or youth sport organizations.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Broderick v. King's Way Assembly of God Church**,** 808 P.2d 1211 (Alaska, 2001); citing, Doe v. Samaritan Counseling Center, 791 P.2d 344, (Alaska 1990). (clinic could be held liable in respondeat superior for therapist's negligent mishandling of transference phenomenon, which resulted in unethical sexual relations between therapist and plaintiff-patient).

- **Question 3**: No supporting cases.

- Question 4: No supporting cases.

- **Question 5**: No volunteer immunity statute covering youth sport organizations.

Arkansas

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Probably not. I will apply if the employee is acting in furtherance of the employer's enterprise. However, the Supreme

Court of Arkansas decided in one case that an employer was acting purely for his own interests when he sexually molested a third party.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? The question is left open by the Arkansas Supreme Court. However, the Court did reference the possibility that the existence of a criminal record could be used to support a claim for negligent hiring/retention.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No they do not.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Porter v. Harshfield, 948 S.W.2d 83 (Ark. 1997) (Scope of employment does not extend to actions that do not benefit the employer); Gordon v. Planters & Merchants Bancshares, 935 S.W.2d 544 (Ark. 1996); J.B. Hunt Transp., Inc. v. Doss, 899 S.W.2d (Ark. 1995).

- **Question 3**: No supporting cases.

- **Question 4**: Saine v. Comcast Cable Vision of Arkansas, Inc., 126 S.W.3d 339 (Ark. 2003) (Court looked at lack of criminal record as basis for concluding that no direct proof linked hiring of employee to tortuous action); citing, Porter v. Harshfield, 948 S.W.2d 83 (Ark. 1997); St. Paul Fire & Marine Ins. Co. v. Knight, 764 S.W.2d 601 (Ark. 1989).

- **Question 5**: A.C.A. § 16-6-102; A.C.A. § 16-6-103; A.C.A. § 16-6-104.

Arizona

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? No it does not because sexual molestation, harassment, or abuse falls outside the scope of authority.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported case supports such a requirement.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Smith v. American Exp. Travel Related Services Co., Inc.**,** 876 P.2d 1166 (Ariz. App.1 1994) (Employee bringing claim against employer. This decision relied on opinions from other jurisdictions as it was a matter of first impression in Arizona).

- **Question 3**: No supporting cases.

- **Question 4**: No supporting cases.

- **Question 5**: A. R. S. § 12-982.

California

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? Yes, there are reported cases that were resolved in favor of the organizations. One case involved Little League Baseball and was brought by the victims of Norman Watson. In that case a California appellate court ruled that Little League Baseball, Inc. was a franchisor and that East Baseline Little League was a franchisee and that franchisors do not have control over the employees of franchisees. Based on this ruling, a negligent supervision/hiring/respondeat superior action against Little League Baseball, Inc. failed. In another case, a gymnastic coach and association prevailed on a claim brought by two gymnasts that they were molested. The court found no basis to support their claim.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The doctrine both applies and does not apply based on the offender. Specifically, the doctrine does not apply to sexual assault cases unless the cases involve police officers using their power while they are on duty. Additionally, California has expanded the doctrine of respondeat superior in limited situations involving priests for matters where the abuse was foreseeable. This expansion has not been applied to any other fact patterns.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported cases support such a requirement. However, California does have a penal statute allowing youth organizations to check the criminal records for those whom they employ.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? California does not have a volunteer immunity statute that covers youth sport volunteers or youth sport organizations. However, California does have a statute that exempts volunteer directors of nonprofit organizations from liability.

Supporting Cases and Statute

- **Question 1**: Hickman v. Little League Baseball, Inc., 2006 WL 3456486 (Cal.App. 4 Dist. Nov 30, 2006) (this decision is not reported and therefore California law prevents it from being cited or relied upon); Dawn D. et al., v. The Regents Of The University Of California, 2003 WL 21404925 (Cal.App. 2 Dist. 2003) (a gymnastics coach prevailed against allegations of sexual misconduct brought by two youth gymnasts).

- **Question 2**: Jeffrey E. v. Central Baptist Church,197 Cal.App.3d 718 (Cal. 1988), (church not liable for sexual abuse of minor by Sunday school teacher); Rita M. v. Roman Catholic Archbishop, 232 Cal.Rptr. 685 (Cal. App. 3d. 1986,) (archbishop not liable for sexual relations between seven priests and minor parishioner); Milla v. Roman Catholic Archbiosis of Los Angeles, 187 Cal. Appl.3d (1986) (expanding the doctrine of respondeat superior in situations where sexual abuse was foreseeable).

- **Question 3**: No supporting cases.

- **Question 4**: West's Ann.Cal.Penal Code § 11105.2.

- **Question 5**: Ann.Cal.Corp.Code § 5239 (concerning immunity for directors of nonprofit organizations).

Colorado

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? No it does not because sexual molestation, harassment, and abuse fall outside the scope of authority.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? Yes. The scope of duty depends on the employee's anticipated degree of contact with other persons in carrying out the duties of employment. The requisite degree of care increases, and may require expanded inquiry into the employee's background when the employer expects the employee to have frequent contact with the public, or when the employment

fosters close contact and a special relationship between particular persons and the employee.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? Only if there are circumstances giving the employer reason to believe that a job applicant, by reason of some attribute of character or prior conduct, would constitute an undue risk of harm to members of the public and the applicant will be in frequent contact or to particular persons who stand in a special relationship to the employer and with whom the applicant will be in close contact.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not. It applies only to the volunteers or the board of directors of said organizations.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Moses v. Diocese of Colorado**,** 863 P.2d 310 (Colo. 1993)(priest accused of abusing parishioner).

- **Question 3**: Moses**,** 863 P.2d 310; Connes v. Molalla Transport System, Inc., 831 P.2d 1316 (Colo.1992) (hiring of dangerous drivers).

- **Question 4**: Connes v. Molalla Transport System, Inc., 831 P.2d 1316 (Colo. 1992).

- **Question 5**: C.R.S.A. § 13-21-116; Cooper v. Aspen Skiing Co., 48 P.3d 1129 (Colo. 2002).

Connecticut

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? There are three sexual abuse cases dealing with coaches employed by school systems, but no reported cases dealing with youth sport organizations.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? No. Connecticut courts have held as a matter of law that when the tortfeasor-employee's activity with the alleged victim became sexual, the employee abandoned and ceased to further the employer's business.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? The only precedent on point is a trial court decision finding liability on the part of an agency that did not perform a check.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statutory protection exists.

Supporting Cases and Statute

- **Question 1**: No relevant supporting cases.

- **Question 2**: Doe v. Burns, WL 2210320 (Conn.Super.2005) (junior high coach abused athlete); Gutierrez v. Thorne, 537 A.2d 527 (Conn. 1988)(employee of facility for mentally challenged persons assaulted patient); Nutt v. Norwich Roman Catholic Diocese, 921 F.Sup. 66 (D.Conn.1995) (priest abused alter boys).

- **Question 3**: No supporting cases.

- **Question 4**: Pattavina v. Mills, WL 1626960 (Conn.Super. 2000) (health care provider found liable at trial court level for failing to perform a proper background search which the court felt included a criminal records check).

- **Question 5**: No statute.

Delaware

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? This question was intentionally left unanswered by Delaware court decision that concerned the doctrine's application to Title VII claim of sexual harassment.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

Supporting Cases and Statute

- **Question 1**: No relevant supporting cases.

- **Question 2**: Konstantopoulos v. Westvaco Corp., 690 A.2d 936 (Del.Supr. Oct 02, 1996) (Title VII workplace harassment case).

- **Question 3**: No supporting cases.

- **Question 4**: No supporting cases.

- **Question 5**: 10 Del.C. § 8133.

District of Columbia

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Generally no. Sexual assaults typically fall outside the scope of employment because they are typically done solely for the employee's benefit. However, while it may be probable that the vast majority of sexual assaults arise from purely personal motives, it is nevertheless possible that an employee's conduct may amount to a sexual assault and still be "actuated, at least in part, by a desire to serve [the employer's] interest.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported cases require criminal background checks. Just reasonable investigation into the employee's past employment history.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? The statute does not exempt the corporation from liability for the conduct of the volunteer, but the corporation shall be liable only to the extent of the applicable limit of insurance coverage it maintains.

Supporting Cases and Statute

- **Question 1**: No relevant supporting cases.

- **Question 2**: Brown v. Argenbright Sec., Inc., 782 A.2d 752 (D.C. 2001)(action brought against company by person who was allegedly sexually assaulted by employee of company while being detained by security guard); Weinberg v. Johnson, 518 A.2d 985 (D.C. 1986)(customer brought action against laundramat for violent actions of employee);Boykin

v. District of Columbia, 484 A.2d 560 (D.C. 1984)(minor sued store owner for sexual assault allegedly committed by security guard); Jordan v. Medley, 711 F.2d 211 (D.C.Cir. 1983)(tenant brought action against landlord for violent behavior).

- **Question 3**: No supporting cases.

- **Question 4**: Brown v. Argenbright Sec., Inc., 782 A.2d 752 (D.C. 2001).

- **Question 5**: DC ST § 29-301.113.

Florida

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- Question 2: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Generally, sexual assaults and batteries by employees are held to be outside the scope of an employee's employment, and therefore, insufficient to impose vicarious liability on the employer. An exception may exist where the tortfeasor was assisted in accomplishing the tort by virtue of the employer/employee relationship.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? Yes. Extent to which employer must inquire as to employee's background, in order to be relieved of liability for negligent hiring, varies depending upon extent to which employee's duties will require contact with others.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? Even where the circumstances dictate the need for some independent inquiry, however, there is no requirement, as a matter of law, that the employer make an inquiry with law enforcement agencies about an employee's possible criminal record, even where the employee is to regularly deal with members of the public.

- **Question 5**: Does the state’s volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

Supporting Cases and Statute

- Question 1: No relevant supporting cases.

- **Question 2**: Iglesia Cristiana La Casa Del Senor, Inc. v. L.M., 783 So.2d 353 (Fla.App. Dist. 2001)(parishioner brought action against church for sexual assault by priest); Nazareth v. Herndon Ambulance Service, Inc., 467 So.2d 1076 (Fla.App. 5 Dist. 1985). Exception- Agriturf Mgmt., Inc. v. Roe, 656 So.2d 954 (Fla. 2d. DCA 1995); Hennagan

v. Department of Highway Safety and Motor Vehicles, 467 So.2d 748 (Fla.App. 1 Dist. 1985)(minor assaulted by highway patrolman).

- Question 3: Garcia v. Duffy, 492 So.2d 435 (Fla.App. 2d. 1986).

- **Question 4**: Evans v. Morsell, 284 Md. 160, 395 A.2d 480 (1978).

- **Question 5**: F.S.A. § 768.1355.

Georgia

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? No it does not. It is well settled in Georgia law that employers are not liable for the sexual misconduct of their employees as such conduct falls outside the scope of authority. An exception exists if the employer later ratifies the conduct.

- Question 3: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? Yes there is a heightened duty.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? Criminal background checks of employees are statutorily-mandated in certain industries. See, e.g., OCGA § 49-5-60 et seq. (requiring employee records checks for day-care centers and other child-caring institutions). However, while there may be no statutory requirement that employers in other businesses conduct background or criminal checks on potential employees, the Georgia Supreme Court rejects the position that employers who fail to conduct such searches can never be found liable for negligent hiring because of this failure. Whether or not an employer's investigative efforts were sufficient to fulfill its duty of ordinary care is dependent upon the unique facts of each case.

- **Question 5**: Does the state’s volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? The statute is silent on the issue.

Supporting Cases and Statute

- **Question 1**: No relevant supporting cases.

- **Question 2**: Big Brother/Big Sister of Metro Atlanta, Inc. v. Terrell, 359 S.E.2d 241 (Ga.App.1987)(parent and child lost on action against youth volunteer service organization for the sexual misconduct of volunteer employee); see also, Travis Pruitt & Associates, P.C. v. Hooper, 625 S.E.2d 445 (Ga.App.1. 2005); Mears v. Gulfstream Aerospace Corp.,

484 S.E.2d 659 (Ga.App.1. 1997); Trimble v. Circuit City Stores, Inc., 469 S.E.2d 776 Ga.App.1. 1996); Newsome v. Cooper-Wiss, Inc., 347 S.E.2d 619 (Ga.App.1. 1986).

- **Question 3**: See supporting Georgia Supreme Court case listed below for Question 4.

- **Question 4**: Munroe v. Universal Health Services, Inc., 596 S.E.2d 604 (Ga. 2004)(mental health patient sued health care provider because employee of company medicated and raped her).

- **Question 5**: Ga. Code Ann., § 51-1-20.1.

Hawaii

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The Hawaii courts have not directly answered this question. However, the Hawaii Supreme Court has held on two occasions that the doctrine was not applicable to two different cases involving allegations of sexual molestation and harassment on the basis that the conduct was outside the scope of employment. Accordingly, the answer appears to be no.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported cases require criminal background checks.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

Supporting Cases and Statute

- **Question 1**: No relevant supporting cases.

- **Question 2**: Doe Parents No. 1 v. State, Dept. of Educ., 58 P.3d 545 (Hawai'i 2002)(action brought by parents of middle school children who were molested by teacher); Sharples v. State**,** 793 P.2d 175 (Hawai'i 1990)(harassment action brought by seduced patient against seducer psychiatrist).

- **Question 3**: No supporting cases.

- **Question 4**: Brown v. Argenbright Sec., Inc., 782 A.2d 752 (D.C. 2001) (Hawaii courts recognized this D.C. decision).

- **Question 5**: HRS § 662D et. seq.

Idaho

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**- Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? No reported cases answer the question.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported cases require criminal background checks.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? The statute does not extend protection to the organizations, but is silent as to their exposure to liability.

Supporting Cases and Statute

- **Question 1**: No relevant supporting cases.

- **Question 2**: No relevant supporting cases.

- **Question 3**: No supporting cases.

- **Question 4**: No supporting cases.

- **Question 5**: I.C. § 6-1605.

Illinois

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases against volunteer youth sport organizations. However, there is a case where a coach sexually abused a manager on a high school wrestling team. There were pleading deficiencies in the case and the case was dismissed, but without prejudice meaning that the plaintiffs were allowed to resubmit their complaints for all but one claim.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? There is a very analogous case involving Big Brothers, Big Sisters of America in which an action was brought against the

national organization for abuse committed against a child in Illinois. An Illinois appellate court sustained a summary judgment motion against the plaintiffs on the basis that the organization did not owe a duty to the child to protect him against offenses committed by a volunteer at a local office. The basis for this decision was that the national organization had no control over the actions of the volunteer who committed the offense. Further, the court refused to extend liability through voluntary undertaking because Illinois requires malfeasance rather than nonfeasance for the tort. Also, Illinois has a general rule providing that employers do not have a duty to protect third parties from harm committed by their employees unless the victim was a: (a). customer of a common carrier, (b). business invitee, (c) guest of an innkeeper, (d) protectee of a voluntary custodian. Finally, even if one of these relationships exist, sexual assaults have been held to fall outside the scope of authority in Illinois because they do not further the employer's business interests.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? An Illinois appellate court refused to expand what is required under the restatement for a general background check for a situation where an employee would have home entry access. No other court decisions discuss the existence for a heightened duty.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No it does not.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No, it expressly excludes the organizations.

Supporting Cases and Statute

- **Question 1**: Mueller by Math v. Community Consol. School Dist. 54, 678 N.E.2d 660 (Ill.App. 1 1997).

- **Question 2**: Doe v. Big Brothers Big Sisters of America, 359 Ill.App.3d 684, 296 Ill. App.1 2005). For general rule see, Strickland v. Communications and Cable of Chicago, Inc., 710 N.E.2d 55 (Ill.App. 1 1999). For sexual assault rule see, Stern v. Ritz Carlton Chicago, 702 N.E.2d 194 (Ill.App. 1 1998).

- **Question 3**: Strickland v. Communications and Cable of Chicago, Inc., 710 N.E.2d 55 (Ill.App. 1 1999).

- **Question 4**: See the case listed for Question 3.

- **Question 5**: IL ST CH 70 P 700, et. seq.

Indiana

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? Yes. The case was against Southport Little League and involved a situation where an equipment manager for the league

wrongfully viewed child genatalia and molested child athletes. The court held that the league could be liable through the doctrine of respondeat superior if the league authorized any of the offendor employee's actions. On review, the appellate court held that because the plaintiff's designated materials raise the inference that some of the offender's acts were authorized (such as fitting the youths' uniforms) when he viewed the athlete's genitalia for his sexual gratification and when he sexually molested the youths, they held that the trial court properly denied the Little League's motion for summary judgment. Further, the court found that the youths who participated in Little League baseball were taught to respect adult authority, and it was clear to participating youths that the offender held a position of authority with the Little League. The court held that when an individual is clothed with authority by an organization in which youths are participating, such as Little League baseball, youths will typically comply with requests or commands of the adult individual in authority. Thus, the Little League, by appointing the offender as an official, essentially authorized the offender to exert his authority over youths who participated in Little League baseball. Because some of the offender's acts were authorized, the court believed that the determination of whether the Little League was liable under the doctrine of respondeat superior for the sexual molestations was a question of fact for the jury.

- Question 2: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? See above. Indiana focuses on authorization. Indiana courts have established that an employer can even be vicariously liable for the criminal acts of an employee, such as the sexual acts committed by Cole in the present case, the determination depends upon whether the employee's actions were at least for a time authorized by the employer. If it is determined that none of the employee's acts were authorized, there is no respondeat superior liability. If some of the employee's actions were authorized, the question of whether the unauthorized acts were within the scope of employment is one for the jury. Authorization is required even where the employee makes use of the employer's facilities during the molestation, harassment, or abuse.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported case supports such a requirement.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? The statute does not extend protection to the organizations, but is silent as to their exposure to liability.

Supporting Cases and Statute

- **Question 1**: Southport Little League v. Vaughan, 734 N.E.2d 261 (Ind.App. 2000).

- **Question 2**: See also, Doe v. Lafayette School Corp., 846 N.E.2d 691(Ind.App. 2006) (school district found not liable for teacher even though school facilities were used during abuse because acts were not authorized by the district; Stropes by Taylor v. Heritage House Childrens Center of Shelbyville, Inc., 547 N.E.2d 244 (Ind. 1989) (nurse abused mentally disabled children at center for mentally disabled children).

- **Question 3**: No supporting cases.

- **Question 4**: No supporting cases.

- **Question 5**: IC 34-30-19-3.

Iowa

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? No. Iowa appellate courts have held that sexual harassment or abuse acts were a substantial deviation from job duties in two different cases and were not "necessary to accomplish the purpose of employment." While the offenders did become acquainted with the victims by virtue of their position at the employer's place of business., the courts could not conclude that their actions were committed in furtherance of their duties or the objectives of the corporations. The fact some of the alleged conduct occurred on employers' property does not make it automatically liable for offenders' actions.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? At least one case has held that the question of whether a criminal record check is required is a material question that should be left to the jury. So criminal record checks may be required in some instances if a jury feels that it is necessary.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? Iowa does not appear to have a volunteer immunity statute that covers youth sport volunteers or organizations.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Riniker v. Wilson, 623 N.W.2d 220 (Iowa App. 2000); Godar v. Edwards, 588 N.W.2d 701(Iowa 1999).

- **Question 3**: No supporting cases.

- **Question 4**: D.R.R. v. English Enterprises, CATV, Div. of Gator Transp., Inc., 356 N.W.2d 580 (Iowa App. 1984).

- **Question 5**: No statute.

Kansas

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? There is no controlling authority that directly answers this question. However, a Kansas Supreme Court decision and a Kansas appellate court decision both upheld trial court decisions that dismissed claims because sexual harassment, molestation fell outside the scope of authority.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- Question 4: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No Kansas cases directly answer the question.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

-

Supporting Cases and Statute

- Question 1: No cases.

- **Question 2**: Kansas State Bank & Trust Co. v. Specialized Transp. Services, Inc., 819 P.2d 587 (Kan. Oct 25, 1991); Hollinger v. Stormont Hosp. & Training School for Nurses, 578 P.2d 1121 (Kan.App.2d 1978).

- **Question 3**: No supporting cases.

- **Question 4**: D.R.R. v. English Enterprises, CATV, Div. of Gator Transp., Inc., 356 N.W.2d 580 (Iowa App. 1984).

- **Question 5**: K.S.A. § 60-3601.

Kentucky

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? For it to be within the scope of its employment, the conduct must be of the same general nature as that authorized or incidental to the conduct authorized. A principal is not liable under the doctrine of respondeat superior unless the intentional wrongs of the agent were calculated to advance the cause of the principal or were appropriate to the normal scope of the operator's employment. Ordinarily, an employer is not vicariously liable for an intentional tort of an employee not actuated by a purpose to serve the employer but motivated, as here, solely by a desire to satisfy the employee's own sexual proclivities.

- Question 3: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No general requirement to perform a criminal record check, but at least one decision suggested that a check may be required when the defendant had previously agreed via contract or through some sort of policy to conduct criminal records checks.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- Question 2: Patterson v. Blair, 172 S.W.3d 361 (Ky. 2005)(driver blew out tires on truck); American General Life & Acc. Ins. Co. v. Hall**,** 74 S.W.3d 688 (Ky. 2002)(sexual harassment claim brought by employee).

- **Question 3**: No supporting cases.

- **Question 4**: Oakley v. Flor-Shin, Inc., 964 S.W.2d 438 (Ky.App. 1998).

- **Question 5**: No statute.

Louisiana

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The courts have suggested that the doctrine may apply if a jury can determine if the conduct falls within the course and scope of employment. The determination of whether an activity is within the course and scope of a servant's duties to his master is dependent on whether the servant's tortious conduct was closely connected in time, place, and causation to his duties to the master as to be regarded as a risk of harm which can be fairly attributed to the master's business.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? Yes. In Louisiana it has been held that when an employee is to be placed in a position of supervisory and/or disciplinary authority over children, the employer has a duty to properly screen the applicant (and continue to provide screening) to determine if the applicant has been convicted of a crime (or crimes) involving moral turpitude.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? Because a higher duty is owed in searching the background of those who supervise children, the degree of reasonableness in terms of searching a background of a potential employee is increased significantly. This search may require checking with local authorities to determine if an employee has a criminal record. Further, at least one decision suggested that in certain situations reasonable care in hiring may require some type of screening program necessary for the purpose of determining whether an employee such has a criminal record. A polygraph examination might even be appropriate, the employer might engage in a routine check of police records, or some other reasonable screening method might be employed.

- **Question 5**: Does the state’s volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? The statute is silent on the issue but does not expressly extend coverage to the organizations.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Landreneau v. Fruge**,** 676 So.2d 701 (La.App. 3 Cir. 6/12/96) (minor female athlete was sexually abused by coach); Doe v. Roman Catholic Church for Archdiocese of New Orleans, 615 So.2d 410, 81 Ed. Law Rep. 1183 (La.App. 4 Cir. Feb 26, 1993)(minor molested by youth organization volunteer).

- **Question 3**: Williams v. Butler, 577 So.2d 1113 (La.App. 1 Cir. 1991).

- **Question 4**: See the case listed for Question 3. Also see; Jackson v. Ferrand, 658 So.2d 691, 94-1254 (La.App. 4 Cir. 12/28/94); Smith v. Orkin Exterminating Co., Inc., 540 So.2d 363, 13 A.L.R.5th 962 (La.App. 1 Cir. Feb 28, 1989) (customer assaulted by pest control specialist).

- **Question 5**: LSA-R.S. 9:2798

Maine

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? For it to be within the scope of its employment, the conduct must be of the same general nature as that authorized or incidental to the conduct authorized. A principal is not liable under the doctrine of respondeat superior unless the intentional wrongs of the agent were calculated to advance the cause of the principal or were appropriate to the normal scope of the operator's employment. Ordinarily, an employer is not vicariously liable for an intentional tort of an employee not actuated by a purpose to serve the employer but motivated, as here, solely by a desire to satisfy the employee's own sexual proclivities.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No general requirement to perform a criminal record check, but at least one decision suggested that a check may be required when the defendant had previously agreed via contract or through some sort of policy to conduct criminal records checks.

- Question 5: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Fortin v. The Roman Catholic Bishop of Portland**,** 871 A.2d 1208 (Me. 2005) (Catholic priest accused of molesting child parishioner).

- **Question 3**: No supporting cases.

- **Question 4**: No supporting cases.

- **Question 5**: No statute.

Maryland

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The Maryland courts have not directly answered this question with respect to molestation or abuse. A Maryland federal district court recognized this fact in a case brought before it. This court looked to other jurisdictions and found that it believed Maryland courts would hold that an employer cannot be held vicariously liable for sexual assaults committed by its employees or one it may have given apparent authority.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? The Maryland Supreme Court held that a plaintiff in a case involving a rape by an employee of her landlord was "entitled to place before the jury evidence of an additional area of investigation open to the HOC [defendant], the relative ease with which it could have been conducted, and the information that would have been obtained had the inquiry been made. In Maryland, an employer can normally assume that another who offers to perform simple work, not involving danger to others, is competent. On the other hand, where the work involves a serious risk of harm if the employee is unfit, as in the hiring of a police officer, there is no presumption of competence and there may well exist a duty to conduct a criminal record investigation. Other factors must be considered, including the availability of such information; the cost, inconvenience, and delay in obtaining it; whether other sources, including a previous employment record in the same field, are sufficient to justify a finding of fitness; and whether unanswered questions, negative indicators, or other 'red flags' have surfaced during routine investigation. No single factor is dispositive, and the trier of fact must consider all of the circumstances to determine whether the failure to obtain a criminal history record constitutes a breach of duty in a given case."

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? The statute does not expressly cover said organizations.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Thomas v. Bet Sound-Stage Restaurant/BrettCo, Inc., 61 F.Supp.2d 448 (D.Md. 1999)(sexual harassment case involving employees of a restaurant).

- **Question 3**: No supporting cases.

- **Question 4**: Cramer v. Housing Opportunities Com'n of Montgomery County**,** 501 A.2d 35 (Md. Dec 12, 1985).

- **Question 5**: MD Code, Courts and Judicial Proceedings, § 5-406.

Massachusetts

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Question remains open.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? While no court has used direct language expressing a "heightened duty", courts have held that, "[t]he scope of the [prudent] investigation is directly related to the severity of risk third parties are subjected to by an incompetent employee."

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? Courts have not directly answered the question, but have suggested that a criminal record check may be necessary. In one trial court case the court stated, "the City did not complete reasonable due diligence before hiring an employee. In that case, a check would have revealed that the employee had recently served time in prison for rape. However, even without a criminal background check, the employee's resume itself reflected a long, unexplained gap in his employment history representing the time he served in prison, which should have put the City on notice to make reasonable inquiry. Another trial court case held that a criminal record check could be contractually required if it is a part of a bargain for exchange.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? It provides no express protection to the organization.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: The question remains open in Massachusetts.

- **Question 3**: Or v. Edwards, 818 N.E.2d 163 (Mass.App.Ct. 2004)(citing a Minnesota decision and dealing with a case of a landlord who entrusted a pass key to a "shady" individual).

- **Question 4**: Brimage v. City of Boston, 13 Mass.L.Rptr. 4 (Mass.Super.,2001); Reguera v. Leduc, 20 Mass.L.Rptr. 4 (Mass.Super.,2005).

- **Question 5**: M.G.L.A. 231 § 85V.

Michigan

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Michigan appellate court held that it does not believe that any factual development can arise which could justify the finder of fact in concluding that the racial and sexual slurs are within the apparent scope of a teacher/coach's employment. Further, Michigan does not recognize exception to respondeat superior nonliability rule, which would create employer liability for the intentional torts of an employee acting outside the scope of his employment when the employee was aided in accomplishing the tort by the existence of the agency relationship between the employee and the employer.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? Michigan courts have held that an employer is not obliged to "conduct an in-depth background investigation of his employee" to discover whether there is a history of violent propensities. Rather, "[t]he duty is to use reasonable care to assure that the employee *known to have violent propensities* is not unreasonably exposed to the public."

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Gaston v. Becker, 314 N.W.2d 728 (Mich.App. 1981) (teacher allegedly verbally abused a student and this abuse involved some sexual harassment/abuse); Zsigo v. Hurley Medical Center**,** 716 N.W.2d 220 (Mich. 2006)(hospital employee sexually abused patient); Salinas v. Genesys Health System, 688 N.W.2d 112 (Mich.App. 2004)(Nurse sexually abused a patient).

- **Question 3**: No cases.

- Question 4: *Kendrick v. Ritz-Carlton Hotel Co., L.L.C.*, WL 2084919 (Mich.App.,2006).

- **Question 5**: No statute.

Minnesota

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The Minnesota Supreme Court has interpreted the respondeat-superior doctrine to hold an employer liable for even the intentional misconduct of its employees when (1) the source of the attack is related to the duties of the employee, and (2) the assault occurs within work-related limits of time and place. Further, Minnisota courts have held that an employee's act need not be committed in furtherance of his employer's business to fall within the scope of his employment. Instead, the master is liable for any such act of the servant which, if isolated, would not be imputable to the master, but which is so connected with and immediately grows out of another act of the servant imputable to the master, that both acts are treated as one indivisible tort.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? Minnesota has "reject[ed] the contention that, as a matter of law, there exists a duty upon an employer to make an inquiry as to a prospective employee's criminal record even where it is known that the employee is to regularly deal with members of the public." An employer need not check an applicant's criminal history if the employer has made adequate inquiry or otherwise has a reasonably sufficient basis to conclude the employee is reliable and fit for the job.

- **Question 5**: Does the state’s volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? Yes it does, but limits application to situations where the individual acts in a willful and wanton or reckless manner in providing the services or if the individual acts in violation of federal, local or state law.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: L.M. ex rel. S.M. v. Karlson, 646 N.W.2d 537 (Minn.App. 2002)(parents of children brought action against daycare where allegedly the children were sexually abused); Fahrendorff ex rel. Fahrendorff v. North Homes, Inc., 597 N.W.2d 905 (Minn. 1999) (minor resident of group home sued operator of group home alleging sexual abuse); Lange v. National Biscuit Co., 211 N.W.2d 783 (Minn. 1973)(assault by a store’s employee on the owner of another store).

- **Question 3**: No cases.

- **Question 4**: Ponticas v. K.M.S. Investments, 331 N.W.2d 907 (Minn. 1983)(apartment tenant sued landlord for giving passkey to alleged rapist employee).

- **Question 5**: M.S.A. § 604A.11.

Mississippi

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The Mississippi Supreme Court allowed a case brought on behalf of a minor against a Catholic Diocese to survive summary judgment. So, it appears that as a matter of law, respondeat superior can be used to impose liability for sexual molestation, abuse, or harassment. However, liability in such cases will turn on the facts and whether the abuse fell within the scope of employment. Accordingly, the question remains somewhat open.

- **Question 3**- Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement.

- Question 5: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? It does cover youth sport organizations, however, it only protects the volunteer/organization against claims based in negligence.

Supporting Cases and Statute

- **Question 1**: No cases.

- Question 2: Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213 (Miss. 2005)(action brought against Catholic Diocese for sexual abuse of minor parishioners)

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: Miss. Code Ann. § 95-9-1.

Missouri

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**- Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Missouri courts have not directly answered the question, but have applied the doctrine very strictly. For example, they have held that intentional sexual molestation does not fall within the scope of authority of priests and is in fact prohibited by the church. This strict interpretation of "scope of authority" is the reason a lawsuit on behalf of minor against Boy Scouts for pedophilic actions of scout leader was based in failure to warn, a products liability theory, rather than respondeat superior.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? Yes and no. No reported cases require a heightened or increased duty of care. In fact, one case recognized that even though a cashier had regular access to the public, this access did not increase the duty owed in terms of conducting a reasonable background check. However, that same decision also stated that certain circumstances may require a more intensive background check, one that may even necessitate a criminal record check. Accordingly, Missouri case law is inconsistent on this issue.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No general duty, but one Missouri court has recognized that there are some situations which would require certain employers to investigate an applicant's past to determine if the applicant has a criminal record and if such record would necessitate a rejection of the applicant.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? It does not expressly cover or apply to volunteer organizations.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Hobbs v. Boy Scouts of America, Inc., 152 S.W.3d 367 (Mo.App. W.D. 2004) (case brought against Boyscouts of America, Inc. for child sexual abuse); Gibson v. Brewer, 952 S.W.2d 239 (Mo. 1997)(lawsuit brought against Catholic Diocese alleging sexual child molestation).

- **Question 3**: Butler v. Hurlbut, 826 S.W.2d 90 (Mo.App. E.D. 1992).

- **Question 4**: See above. See also, Reed v. Hercules Construction Co., 693 S.W.2d. 280 (Mo.App. 1985).

- **Question 5**: V.A.M.S. 537.118.
  Montana

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Montana courts have held that rape falls outside scope of employment. Scope of employment in Montana is strictly defined as acting in the "course of employment," in "furtherance of an employer's interest," or "for the benefit of a master;" "in the scope of his employment," etc. But a servant who acts entirely for his own benefit is generally held to be outside the scope of his employment and the master is relieved of liability. Further, the nondelegable duty doctrine is accepted in Montana, but only applies to inherently dangerous activities.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Maguire v. State, 835 P.2d 755 (Mont. 1992)(mentally handicapped patient was allegedly raped by employee at hospital); Stepanek v. Kober Const., 625 P.2d 51 (Mont. 1981) (construction case dealing with nondelegable duty doctrine).

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: MCA 27-1-732.

Nebraska

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Nebraska has no reported

cases that directly answer this question. There is one case against a Catholic Archdiocese for the sexual misconduct of a priest. However, the court could not use the doctrine of respondeat superior because the sexual contact between the priest and the adult parishioner was consensual. The court in that case did infer that the doctrine would apply to sexual behavior as long as the conduct fell within the scope of the employees authority. Unfortunately, Nebraska state courts have not defined scope of authority in terms of sexual misconduct/abuse.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Schieffer v. Catholic Archdiocese of Omaha, 508 N.W.2d 907 (Neb. 1993).

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: No statute.

Nevada

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- Question 2: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Nevada has a statute that addresses specific circumstances in which an employer is not liable for harm or injury caused by an employee's intentional conduct:
  An employer is not liable for harm or injury caused by the intentional conduct of an employee if the conduct of the employee:
  (a) Was a truly independent venture of the employee;
  (b) Was not committed in the course of the very task assigned to the employee; and
  (c) Was not reasonably foreseeable under the facts and circumstances of the case

considering the nature and scope of his employment.
For the purposes of this subsection, conduct of an employee is reasonably foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported decisions have answered this question. However, the existence of background checks was considered under Nevada's vicarious liability statute.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: NRS 41.745 (Nevada statute controlling vicarious liability for employee's intentional acts); Wood vs. Safeway, Inc., 121 P.3d 1026 (Nev. 2005) (Guardian ad litem of mentally handicapped store employee brought action against store and company that provided janitorial services to store, seeking to recover for sexual assault committed on store employee by janitorial company's employee).

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: No statute.

New Hampshire

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- Question 2: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? New Hampshire courts have not answered this issue. The law in this area is undeveloped.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement..

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: No cases.

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: No statute.

New Jersey

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No cases that are directly on point. There is a case involving a claim that a volunteer swim coach molested a child swimmer, but the swim program was organized by a school board instead of a volunteer sport organization.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Perhaps. The New Jersey Supreme Court suggested that respondeat superior was an applicable theory that should be explored on remand by the court in a case involving claims of sexual abuse brought by a student at a non-profit school. Further, New Jersey's definition of "scope of employment" is broad enough to cover sexual molestation, harassment or abuse because it includes all conduct that the servant is employed to perform; conduct which occurs substantially within the authorized time and space limits; [and] is actuated, at least in part, by a purpose to serve the master. There is a possible hurdle for plaintiffs in New Jersey because the state has a statute that protects charitable organizations from liability. However, this statute does expressly exclude protection of the volunteer for sexual misconduct. Further, this statute was not extended to include all non-profit organizations.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? Yes. A "heightened duty" has been recognized by the courts for schools to protect children through reasonable hiring practices.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? It does cover the organization from its own negligence. However, the act also expressly excludes protection of volunteers or agents for sexual misconduct. It leaves open the question as to whether the organization would remain protected under the act for negligently hiring the employee who committed the sexual misconduct.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Hardwicke v. American Boychoir School, 902 A.2d 900 (N.J. 2006); Singer v. Beach Trading Co., Inc., 876 A.2d 885 (N.J.Super.A.D.,2005); Di Cosala v. Kay, 450 A.2d 508 (N.J. 1982); N.J.S.A. 2A:53A-7.

- **Question 3**: Hardwicke v. American Boychoir School, 902 A.2d 900 (N.J. 2006); Frugis v. Bracigliano, 827 A.2d 1040 (N.J. Jul 28, 2003).

- **Question 4**: No cases.

- **Question 5**: N.J.S.A. 2A:53A-7.

New Mexico

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? There is a sexual molestation case where the New Mexico Supreme Court considered the applicability of the doctrine of respondeat superior. Although, the "employer" in this case was an out-of-state archdiocese of the Catholic Church. The court held that the doctrine could not be used as a basis for long-arm jurisdiction. This case suggests that the doctrine could apply to a sexual molestation/abuse case. However, a much older opinion by an appellate court upholding a lower court's opinion that sexual molestation by a hotel employee against a child patron fell outside the scope of authority, thus negating the doctrine's applicability. Accordingly, while the New Mexico Supreme Court has suggested that the doctrine may be applicable to molestation cases, there is case precedent that could adversely affect such a claim. Therefore, the question remains undecided in New Mexico.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- Question 2: Tercero v. Roman Catholic Diocese of Norwich, Connecticut, 48 P.3d 50 (N.M. 2002) (molestation case brought against out-of-state arch diocese); Pittard v. Four Seasons Motor Inn, Inc., 688 P.2d 333 (N.M.App. 1984) (molestation case brought against motel for actions of employee).

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: No statute.

New York

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? No New York case has imposed vicarious liability on an employer for intentional sexual misconduct by an employee. One case involving a sexual molestation claim against a priest attempted to expand the doctrine, but was unsuccessful. In fact, the court expressly declined to follow California precedent that allowed victim of police sexual misconduct to use the doctrine. Further, a New York appellate court also overruled a trial court for failing to dismiss a sexual abuse claim brought against a daycare facility. The court agreed with the plaintiff that sexual abuse falls outside the scope of authority.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? There is a case

from 1968 that states that employers need only perform reasonable searches into the employee's background and these searches do not include criminal record checks. The court held that to require more exhaustive investigation would place an undue burden on the employer. This issue has not been addressed by a court since.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Jones by Jones v. Trane, 591 N.Y.S.2d 927 (N.Y.Sup. 1992)(sexual molestation claim against church for actions of priest); Noto v. St. Vincent's Hosp. and Medical Center of New York, 559 N.Y.S.2d 510 (N.Y.A.D. 1 1990)(appellate court refused to extend respondeat superior to impose liability against hospital for sexual misconduct of employee); see also, Peter T. v. Children's Village, Inc., 30 A.D.3d 582 (N.Y.A.D. 2 Dept.,2006).

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: No statute.

North Carolina

- Question 1: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? There is one state appellate court case involving a sexual harassment claim brought by a plaintiff against an employer for the actions of an employee. The appellate court found that the employee was acting outside the scope of his authority because his actions were not performed in furtherance of his employment. While the parties were at the employer's place of business and the employee was working at the time of the malfeasance, the court found that the employee was in pursuit of his own corrupt or lascivious purpose.

- **Question 3**- Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? In North Carolina, employers generally have no duty to perform criminal record checks and a presumption exists that an employer uses due care in hiring its employees.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? There is protection from liability for members of non-profit associations. However, this statute does not protect the associations. Accordingly, if the volunteer is working with a non-profit sport organization, then the volunteer, and not the association, is protected under the statute.

Supporting Cases and Statute

- **Question 1**: No cases.
- **Question 2**- Hogan v. Forsyth Country Club Co., 340 S.E.2d 116 (N.C.App. 1986).
- **Question 3**: No cases.
- **Question 4**: Caple v. Bullard Restaurants, Inc, 567 S.E.2d 828 (N.C.App.,2002); Stanley v. Brooks, 436 S.E.2d 272 (N.C.App. Nov 16, 1993).
- **Question 5**: N.C.G.S.A. § 59B-7.

North Dakota

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.
- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The North Dakota Supreme Court has adopted the modern version of vicarious liability that allows claims for intentional torts. Further, the court has recognized that "scope of employment" can extend to cover claims involving sexual misconduct. Specifically, the court defined "scope of employment" as an act that takes place within the period of the employment, at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto, or as sometimes stated, where he is engaged in the furtherance of the employer's business. Further, a North Dakota Supreme Court stated that there were grounds for reversing a lower court's dismissal of a respondeat superior claim based on sexual misconduct.
- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.
- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? In some situations it may. There is one case involving a claim against a vacuum company whose salesperson sexually assaulted a would-be customer. The court found that criminal conduct of this nature was foreseeable by the company due to prior incidents and that coupled with the fact that employees would be entering customers' homes presented a potential need for a criminal background check. Further, the company's own manuals suggested performing

criminal background checks. For these reasons, the court sent the case back to the trial level for resolution of the issue as to whether a criminal background check was needed.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Nelson v. Gillette, 571 N.W.2d 332 (N.D. 1997), rehearing denied (Dec 1997) (applying vicarious liability to sexual misconduct case); D.E.M. v. Allickson, 555 N.W.2d 596 (N.D. 1996) (suggesting that lower court erred by dismissing respondeat superior claim for sexual misconduct.

- **Question 3**: No cases.

- **Question 4**: McLean v. Kirby Co., a Div. of Scott Fetzer Co., 490 N.W.2d 229 (N.D. 1992).

- **Question 5**: NDCC, 32-03-46.

Ohio

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? It does not appear so. Scope of employment in Ohio is narrowly defined to include behavior that is "calculated to facilitate or promote the business for which the servant was employed." For example, an employer might be liable for an intentional tort if an employee injures a patron when removing her from the employer's business premises or blocking her entry. However, the employer would not be liable if an employee physically assaulted a patron without provocation.

- **Question** :- Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? In some situations it may. There is one case involving a claim against a vacuum company whose salesperson sexually assaulted a would-be customer. The court found that criminal conduct of this nature was foreseeable by the company due to prior incidents and that coupled with the fact that employees would be entering customers' homes presented a potential need for a criminal background check. Further, the company's own manuals suggested performing

criminal background checks. For these reasons, the court sent the case back to the trial level for resolution of the issue as to whether a criminal background check was needed.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? A statute was repealed that allowed youth sport programs to enter into exculpatory agreements with parents of children that bound the children.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Mills v. Deehr, 2004 WL 1047720 (Ohio App. 8 Dist. 2004), as amended nunc pro tunc (May 11, 2004) (case against archdiocese for sexual misconduct of priest); Byrd v. Faber**,** 565 N.E.2d 584 (Ohio 1991) (parishioner's suit based against church for church employee's sexual misconduct with parishioner's wife); Vrabel v. Acri, 103 N.E.2d 564, (Ohio 1952) (employee's physical assault on third party fell outside authority because motives were personal rather than job-related).

- **Question 3**: No cases.

- **Question 4**: No supporting cases.

- **Question 5**: R.C. § 2305.382 (repealed).

Oklahoma

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Oklahoma Supreme Court addressed a case where a minister molested 12 children during his tenure. The court held that the molester/employee acted for his own personal gratification rather than for any religious purpose. He abused his position and exploited his special relationship with the children and that it is inconceivable that his acts were of the nature of those which he was hired to perform. Accordingly, the Oklahoma Supreme Court held that the molester's actions were outside the scope of authority and the doctrine of respondeat superior was not applicable. Further the court found that its decision was in line with the majority of jurisdictions.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported cases support such a requirement.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

Supporting Cases and Statute

- **Question 1**: No cases.
- **Question 2**: N.H. v. Presbyterian Church (U.S.A.), 998 P.2d 592 (Okla. 1999) (minister molested 12 children).
- **Question 3**: No cases.
- **Question 4**: No cases.
- **Question 5**: 76 Okl.St.Ann. § 31.

Oregon

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.
- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? In Oregon, to establish that the employee acted "within the course and scope" of employment, thus invoking the doctrine of respondeat superior, requires proof of three things: (1) the tortious act must have "occurred substantially within the time and space limits authorized by the employment"; (2) the employee must have been "motivated, at least partially, by a purpose to serve the employer"; and (3) the employee's act "is of a kind which the employee was hired to perform. To satisfy the second requirement, the focus of the inquiry is not necessarily whether an employee's tortious conduct itself was intended to serve the employer but, rather, whether the employee engaged in conduct that was intended to serve the employer and that conduct resulted in the acts that injured the plaintiff. There are two cases, one involving a scout leader and the other involving a priest, where the Oregon Supreme Court found that the employee used the position of employment to cultivate abusive relationships, thus triggering the doctrine of respondeat superior.
- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.
- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement.
- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Chesterman v. Barmon, 753 P.2d 404 (Or. 1988)(woman brought claim based on sexual abuse of employee of company who was also abusing drugs at the time of abuse); Vinsonhaler v. Quantum Residential Corp., 73 P.3d 930 (Or.App. 2003) (woman sued company for sexual harassment committed by employee of company); Fearing v. Bucher, 977 P.2d 1163 (Or. 1999) (pries abused child parishioner and parents sued church); Lourim v. Swensen, 977 P.2d 1157 (Or. 1999) (action brought against Boy Scouts of America for sexual abuse committed by scout leader).

- **Question 3**: No cases.

- Question 4: No cases.

- **Question 5**: No statute.

Pennsylvania

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The Pennsylvania Superior Court held that a church is not vicariously liable for the conduct of its minister where the minister sexually abused a minor living in his neighborhood. The court reasoned that where an employee acts in an outrageous manner, which is unrelated to the performance of his job, the actions are outside the scope of employment and the employer is not vicariously responsible. Further, there is a Pennsylvania decision releasing the Boy Scouts of America of any liability for the sexually abusive actions of a scout leader because sexual abuse fell well outside of the leader's authorized actions.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? One case does suggest that a criminal background check is a part of a reasonable background check.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? Yes it does.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: R.A. ex rel. N.A. v. First Church of Christ, 748 A.2d 692 (Pa.Super. 2000) (minister sexually abused children and parents sued church); A.L.M. v. Diocese of Allentown, 2004 WL 3104798 (Pa.Com.Pl. 2004) (priest sexually abused child parishioners); A.T.S. v. Boy Scouts of America, 1992 WL 464252 (Pa.Com.Pl. 1992) (sexual abuse committed by scout leader).

- **Question 3**: No cases.

- **Question 4**: Keibler v. Cramer, 1998 WL 917129 (Pa.Com.Pl. 1998).

- **Question 5**: 42 Pa.C.S.A. § 8332.1.

Rhode Island

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? A case from 1988 suggests that the doctrine is not applicable. The case involved a priest's sexual misconduct with a parishioner. In the case the court found the priest's conduct was not within the nature of his employment. The court found that the priest had no authority to do such acts; deviating totally from his sacred vows and the spiritual fabric of his faith. Although it was alleged that the Bishop d had actual or constructive knowledge of the priest's practices of making homosexual advances on and engaging in homosexual acts, the court found that the amended complaint did not state or imply that the misconduct of defendant priest was a "foreseeable event" which was "characteristic of the enterprise" for which a priest is engaged. It is unclear as to whether the foreseability aspect of this case would change based on the number of allegations brought against priests since 1988.

- **Question 3-** Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? One case does suggest that a criminal background check is a part of a reasonable background check.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No, it does not expressly cover the organization.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Doe v. O'Connell, Gelineau, Angell, 1988 WL 1016799 (R.I.Super. Jan 28, 1988).

- **Question 3**: No cases.

- **Question 4**: Welsh Mfg., Div. of Textron, Inc. v. Pinkerton's, Inc., 474 A.2d 436 (R.I. 1984).

- **Question 5**: Gen.Laws 1956, § 9-1-48.

South Carolina

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? South Carolina courts have not directly answered this question.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? The only statute close is one concerning charitable organizations. It is unclear that the statute is applicable to a volunteer sport organization. If so, then the organization is not covered.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: No cases.

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: Code 1976 § 33-56-180.

South Dakota

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**- Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? South Dakota has not answered this question directly. The only case remotely on point was dismissed because respondeat superior cannot be used as a basis for liability under § 1983.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? One case does suggest that a criminal background check is a part of a reasonable background check.

- Question 5: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? Statute providing protection for nonprofit organizations does not protect the organization.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: No cases.

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: SDCL § 47-23-29.

Tennessee

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? The Tennessee Supreme Court han't directly resolved the issue, but has affirmed cases that dismissed sexual abuse claims where respondeat superior is the theory used for recovery. Once such case was against a childcare service where plaintiffs tried to use federal statute to impose vicarious liability on service where child was molested because district courts dismissed respondeat superior claim because sexual abuse fell outside scope of authority.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? Tennessee courts have recognized a higher duty in situations where employees have access to living quarters.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No reported cases require such a search. Even in cases where there is a heightened duty the background check must only be reasonable. No reported Tennessee cases have yet to require a criminal record check.

- **Question 5**- Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- Question 1: No cases.

- **Question 2**: Houghton v. Aramark Educational Resources, Inc**.,** 90 S.W.3d 676 (Tenn. 2002).

- **Question 3**: Doe v. Linder Const. Co., Inc., 845 S.W.2d 173 (Tenn. 1992) (dissent).

- **Question 4**: See case listed for Question 3.

- **Question 5**: No statute.

Texas

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? There is one case that is close to on point. It involves a sexual abuse claim against Boys and Girls Club of Greater Dallas. The case was brought by parents of children abused by volunteer of organization. The plaintiffs used negligent hiring as a basis for the action and the court agreed that this was the proper theory to use because the volunteer's actions fell outside the scope of employment. However, the children were not members of the club and thus a duty was not owed. Further, the abuser's criminal history involved only a driving while intoxicated conviction and this was not enough to put the defendants on notice in terms of his potential for sexual molestation. However, there is a case involving a Boy Scouts of America and a Texas Boy Scout council affiliate that could pose a problem to potential youth sport litigants. This is because the Texas Supreme Court held that the neither the national agency or the local affiliate had a duty to investigate a boy scout master because they were not his employers and as such had no ability to control scout master's activities. Accordingly, respondeat superior was not an applicable theory. The only duty imposed on the local boy scout council involved a duty not to recommend the scout master's appointment to the local troup if the council new that the scout master had a proclivity for sexually abusing children. However, the council was under no duty to search into the master's background.

This decision could affect a case brought against a national or regional youth sport organization if that claim is brought in Texas.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? It is ordinarily not within the scope of a servant's authority to commit an assault on a third person. But if an assault is so connected with and immediately arising out of authorized employment tasks as to merge the task and the assaultive conduct into one indivisible tort, it may be imputed to the employer. This case seems to extend scope of employment to perhaps cover sexual assault/battery. However, the Boys and Girls Club case is still good law and could prevent the doctrine's application to a youth sport setting (these are conflicting appellate circuits in Texas).

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? Yes, organizations whose primary function is the care and education of children owe a higher duty to their patrons to exercise care in the selection of their employees than would other employers.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? The Texas courts haven't explicitly stated that a criminal record check is in order, but the aforementioned decisions saying that a heightened duty exists when children are involved may require such a search. Further, in both the Boys Clubs and Boy Scouts of America cases the courts analyzed whether the criminal records of the employees involved would have put either organization on notice of the potential for sexual abuse. These cases suggest that a criminal records check may be in order if a duty of care is in fact owed.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? Only the volunteer is immune and only if the volunteer is acting within the scope of employment.

Supporting Cases and Statute

- **Question 1**: Doe v. Boys Clubs of Greater Dallas, Inc., 868 S.W.2d 942 (Tex.App.-Amarillo 1994); Golden Spread Council, Inc. No. 562 of Boy Scouts of America v. Akins, 926 S.W.2d 287 (Tex. 1996).

- **Question 2**: NCED Mental Health, Inc. v. Kidd, 2006 WL 2080674 (Tex.App.-El Paso,2000) (hospital patient sexually abused by hospital employee).

- **Question 3**: Doe v. Boys Clubs of Greater Dallas, Inc., 868 S.W.2d 942 (Tex.App.-Amarillo 1994); Doe v. Taylor Independent School Dist., 975 F.2d 137 (5th Cir. 1992) (overruled but not on issue pertaining to research question).

- **Question 4**: See case listed for Question 3.

- **Question 5**: § 84.004. Volunteer Liability.

Utah

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? In Utah, there are three basic elements for determining whether an employee is acting within the scope of his or her employment for purposes of respondeat superior liability. First, the employee's conduct must be of a general kind and nature that the employee is hired to perform. The employee's acts must be generally directed toward the accomplishment of the employee's duty and authority. Second, the conduct must occur within the hours of the employee's work and the ordinary spatial boundaries of the employment. Third, the employee's conduct must be motivated, at least in part, by the purpose of serving the employer's interest. The employee's intent, however misguided in its means, must be to further the employer's business interests. "If the employee acts 'from purely personal motives ... in no way connected with the employer's interests' or if the conduct is 'unprovoked, highly unusual, and quite outrageous,' then the master is not liable." The Utah Supreme Court applied these elements to a situation where a patrolman molested members of an explorers club. The court found that the first two elements were satisfied, but ruled that the third element was not satisfied because the offending employee was obviously not hired to perform sexual nature on the explorers under his supervision. Plaintiffs argued that the employee was employed to instruct and direct them in areas involving police work and that his actions in molesting the explorers were carried out pursuant to this type of instruction and supervision. The court held that the argument fails, however, because it is not the instruction and supervision of the employer of which the plaintiff complained. The employee was not hired or authorized to instruct the explorers in sexual matters, nor was he authorized to touch the explorers in any manner. His acts of molestation were not in any way part of the instruction and supervision of the explorers but were in fact a complete abandonment of that instruction and of his employment.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 5**: Does the state’s volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: Jackson v. Righter, 891 P.2d 1387 (Utah 1995) (considering scope of employment to determine if employer was liable for employee's alienation of affections); J.H. by D.H. v. West Valley City, 840 P.2d 115 (Utah 1992); Phillips v. JCM Dev. Corp. 666 P.2d 876 (Utah 1983)(finding employer liable for employee's act of fraud committed within scope of employment); Birkner v. Salt lake County, 771 P.2d 1053 (Utah 1989) (analyzing scope of employment to determine if employer was liable for sexual battery committed by employee).

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: U.C.A. 1953 § 78-19-2 (immunity for volunteers of nonprofit organizations).

Vermont

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Vermont has not answered this question.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 5**: Does the state’s volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: No cases.

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: No statute.

Virginia

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases that are directly on point. However, Virginia is like Texas in that it has an opinion relieving Boy Scouts of America, the national organization, of liability for the negligent hire of a scoutmaster. The court held that because the national organization did not select or retain group leader accused of sexual assaults against young boys where national organization did not take part in leader's selection, even though leader had been accused of similar crimes while he was leader for another branch of the same national organization. This opinion could provide protection for a national youth sport organization in the state of Virginia. Although, the local branch could still be liable.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? In Virginia, an act is within the scope of the employment, thus triggering the doctrine of respondeat superior, if (1) it was expressly or impliedly directed by the employer, or is naturally incident to the business, and (2) it was performed, although mistakenly or ill-advisedly, with the intent to further the employer's business, or from some impulse or emotion that was the natural consequence of an attempt to do the employer's business. An act that arose wholly from some external, independent, and personal motive on the part of the [employee] to do the act upon his own account is not within the scope of his employment. The majority of Virginia opinions do not extend scope of employment to include sexual misconduct. However, there is one decision by the Virginia Supreme Court that extended the doctrine to include sexual misconduct by a psychiatrist who used his special position over a vulnerable patient for sexual misconduct. So the question remains open in a youth sport setting whether a reviewing court would follow the majority of opinions or follow the state supreme court’s opinion in extending the doctrine.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? Virginia has not directly required a criminal background check and even stated in one case that the facts did not warrant the inclusion of a criminal search as part of a reasonable background search. However, the case left open the possibility that such a search may be necessary under different facts.

- **Question 5**: Does the state’s volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- **Question 1**: Infant C. v. Boy Scouts of America, Inc., 391 S.E.2d 322 (Va. 1990).

- **Question 2**: Doe v. Bruton Parish Church, 1997 WL 33575565 (Va.Cir.Ct.,1997) (sexual abuse by minister fell outside scope of authority); Plummer v. Center Psychiatrists, Ltd., 476 S.E.2d 172 (1996) (Virginia Supreme Court extended doctrine to include sexual abuse by psychiatrist); Kensington Associates v. West, 362 S.E.2d 900 (Va. 1987) (respondeat superior generally); Broaddus v. Standard Drug Co., 179 S.E.2d 497 (Va. 1971) (respondeat superior generally).

- **Question 3**: No cases.

- **Question 4**: Southeast Apartments Management, Inc. v. Jackman, 513 S.E.2d 395 (Va. 1999).

- **Question 5**: No statute.

Washington

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases are directly on point.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Washington case law does not favor the imposition of respondeat superior or strict liability for an employee's intentional sexual misconduct.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases require a criminal record check. One case does require a reasonable investigation of an employee's work history including phone calls to former employees to determine if an employee has a criminal record.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No statute.

Supporting Cases and Statute

- Question 1: No cases.

- Question 2: S.H.C. v. Lu, 54 P.3d 174 (Wash.App. Div. 1 2002); C.J.C. v. Corporation of Catholic Bishop of Yakima, 985 P.2d 262 (Wash. 1999) (both cases dealt with sexual abuse committed by religious leaders towards their church members).

- Question 3: No cases.

Question 4: Carlsen v. Wackenhut Corp., 868 P.2d 882 (Wash.App. 1994).

- Question 5: RCWA 4.24.670.

West Virginia

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No reported cases are directly on point.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? West Virginia courts have not answered this question yet.

- **Question 3**:Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases require a criminal record check.

- Question 5: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not. The statute only covers directors or board members of nonprofit organizations.

Supporting Cases and Statute

- **Question 1**: No cases.

- **Question 2**: No cases.

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: W. Va. Code, § 55-7C-1 (for directors of nonprofit organizations).

Wisconsin

- **Question 1**: Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? There is no case directly on point, but there is one case involving Soccer, USA. In that case an employee planted a video camera in the women's locker room. The victim, however, was not a minor. The court granted summary judgment in favor of the defendants because the actions were not foreseeable.

- **Question 2**: Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? For the purpose of resondeat superior, an employee's action is not within the scope of employment if it is either different in kind from that authorized by the master, or if it is too little actuated by a purpose to serve the employer or if it is motivated entirely by the employee's own purposes. Thus, if the employee steps aside from the prosecution of the employer's business to accomplish an independent purpose of his or her own, the employee is acting outside the scope of his or her employment. Further, the employee's intent must be considered when determining whether his or her conduct was within the scope of employment. Normally, the scope-of-employment issue is presented to the jury because it entails factual questions regarding an employee's intent and purpose. However, Wisconsin courts have held that when there is no evidence that an employee's sexual, social or business relationship was motivated by a desire to serve the employer then it is outside the scope of employment. Moreover, Wisconsin courts are reluctant to find sexual relationships to fall within the scope of employment when such relationships are forbidden and where civil or criminal laws prohibit the behavior.

- **Question 3**: Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- **Question 4**: Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases require a criminal record check.

- **Question 5**: Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No it does not.

Supporting Cases and Statute

- **Question 1**: Gallun v. Soccer U.S.A., Inc., 516 N.W.2d 789 (Wis.App.1994).

- **Question 2**: S.J.A.J. v. First Things First, Ltd., 239 Wis.2d 233, 619 N.W.2d 307 (Wis.App. 2000) (sexual misconduct by a counselor); L.L.N. v. Clauder, 563 N.W.2d 434, 65 USLW 2774 (Wis. 1997) (priest/counselor used position to enter into sexual relationship with parishioner); Block v. Gomez, 549 N.W.2d 783 (Ct.App. 1996).

- **Question 3**: No cases.

- **Question 4**: No cases.

- **Question 5**: W.S.A. 181.0670 (protection for liability for all volunteers for corporations).

Wyoming

- Question 1- Is there any cases involving civil liability against youth sport organizations for the pedophilic actions of their coaches or officials? No cases.

- Question 2- Does the doctrine of respondeat superior extend employer liability to criminal actions involving sexual molestation, harassment, or abuse? Wyoming courts have not directly answered this question yet.
- Question 3- Do the doctrines of negligent hiring and negligent retention require a heightened duty in cases where the employee has access to children or the public? No cases support such a requirement.

- Question 4- Does the doctrine of negligent hiring extend to require criminal background checks in cases where the employee has access to children or the public? No cases require a criminal record check.

- Question 5- Does the state's volunteer immunity statute apply to volunteer organizations as well as the actual volunteers? No existing statute.

Supporting Cases and Statute

- Question 1- No cases.

- Question 2- No cases.

- Question 3- No cases.

- Question 4- No cases.

LIST OF REFERENCES

20 Am. Jur. 2nd Nature and scope of doctrine § 129 (2005).

27 Am. Jur. 2nd Negligent hiring § 393 (2005).

27 Am. Jur. 2nd Negligent hiring § 394 (2005).

27 Am. Jur. 2nd Negligent retention.§ 396 (2005).

27 Am. Jur.2nd Negligent hiring. § 459 (2005).

27 Am. Jur.2nd Employment Relationship § 459 (2005).

57 A Am. Jur. 2nd Negligence. 57 A § 30 (2005).

57 A Am. Jur. 2nd Negligence. § 227(2005)

57 A Am. Jur. 2nd Negligence. § 427 (2005).

57 A Am. Jur. 2nd Negligence § 429 (2003).

57 B Am. Jur. 2nd Negligence. § 1022 (2005).

2A C.J.S. § 432 (2005).

65 C.J.S. § 14 (2005).

10 Del.C. § 8133.

76 Okl.St.Ann. § 31.

42 Pa.C.S.A. § 8332.1.

§ 84.004. Volunteer Liability.

A.C.A. § 16-6-102.

A.C.A. § 16-6-103.

A.C.A. § 16-6-104.

Agriturf Mgmt., Inc. v. Roe, 656 So.2d 954 (Fla. 2d. DCA 1995).

Ala.Code 1975 § 6-5-336.

A.L.M. v. Diocese of Allentown, 2004 WL 3104798 (Pa.Com.Pl. 2004).

American General Life & Acc. Ins. Co. v. Hall, 74 S.W.3d 688 (Ky. 2002).

Anderson v. Tadlock, 27 Ala. App. 513, 175 So. 312 (1937).

Ann.Cal.Corp.Code § 5239.

Appenzeller, T. (2000). *Youth sport and the law*. Durham, NC: Carolina Academic Press.

A. R. S. § 12-982.

A.T.S. v. Boy Scouts of America, 1992 WL 464252 (Pa.Com.Pl. 1992).

AUSA Life Insurance Co. v. Ernst &Young, 206 F.3d 202 (2nd Cir. 2000).

Beck, J. (2006). Entity liability for teacher-on-student sexual harassment: Could state law offer greater protection than federal statutes? *Journal of Law and Education, 35,* 141-150.

Biedzynski, K.W. (1999). The federal volunteer protection act: Does congress want to play ball? *Seton Hall Legislative Journal, 23*(2), 319-358.

Big Brother/Big Sister of Metro Atlanta, Inc. v. Terrell, 359 S.E.2d 241 (Ga.App. 1987).

Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989).

Block v. Gomez, 549 N.W.2d 783 (Ct.App. 1996).

Brimage v. City of Boston, 13 Mass.L.Rptr. 4 (Mass.Super. 2001).

Broderick v. King's Way Assembly of God Church, 808 P.2d 1211 (Alaska, 2001).

Brown v. Argenbright Sec., Inc., 782 A.2d 752 (D.C. 2001).

Broaddus v. Standard Drug Co., 179 S.E.2d 497 (Va. 1971).

Butler v. Hurlbut, 826 S.W.2d 90 (Mo.App. E.D. 1992).

Caple v. Bullard Restaurants, Inc, 567 S.E.2d 828 (N.C.App. 2002).

Carlsen v. Wackenhut Corp., 868 P.2d 882 (Wash.App. 1994).

Chesterman v. Barmon, 753 P.2d 404 (Or. 1988).

C.J.C. v. Corporation of Catholic Bishop of Yakima, 985 P.2d 262 (Wash. 1999).

Clement, A. (2004). *Law in sport and physical activity*. Dania, FL: Sport and Law Press.

Cloud, J. (2002, April 29). Pedophilia. *Time Magazine*. *159*(17), 42-46.

Code 1976 § 33-56-180.

Connes v. Molalla Transport System, Inc., 831 P.2d 1316 (Colo. 1992).

Cooper v. Aspen Skiing Co., 48 P.3d 1129 (Colo. 2002).

Cotten, D.J. (2007). Defenses against liability. In Cotten, D.J., & Wolohan, J.T. (Eds.), Law for recreation and sport managers. (4th ed) (pp. 66-77). Dubuque, IA: Kendall/Hunt.

Cotten, D.J. (2007). Which parties are liable? In Cotten, D.J., & Wolohan, J.T. (Eds.), Law for recreation and sport managers. (4th ed) (pp. 66-77). Dubuque, IA: Kendall/Hunt.

Cramer v. Housing Opportunities Com'n of Montgomery County, 501 A.2d 35 (Md. Dec 12, 1985).

Crowley v. Barto, 367 P.2d 828 (Wash. 1952).

C.R.S.A. § 13-21-116.

Cullen v. BMW of North America, Inc., 691 F.2d 1097 (2d. Cir. 1982).

Dawn D. et al., v. the Regents of the University of California, 2003 WL 21404925 (Cal.App. 2 Dist.).

DC ST § 29-301.113.

D.E.M. v. Allickson, 555 N.W.2d 596 (N.D. 1996).

DeMitchell, T. (2002). The duty to protect: Blackstone's doctrine of in loco parentis: A lens for viewing the sexual abuse of students. *Brigham Young Education & Law Journal*, *17*(1), 28-52.

De Wald v. Quarnstrom, 60 So.2d 919 (Fla. 1952).

Deak, D. (1999). Out of bounds: How sexual abuse of athletes at the hands of their coaches is costing the world of sports millions. *Seton Hall Journal of Sport Law*, *9*(1), 171-195.

Devellis v. Lucci, 697 N.Y.S.2d 337 (N.Y. 1999).

Di Cosala v. Kay, 450 A.2d 508 (N.J. 1982).

Doe Parents No. 1 v. State, Dept. of Educ., 58 P.3d 545 (Hawaii 2002).

Doe v. Big Brothers Big Sisters of America, 359 Ill.App.3d 684, 296 (IllApp.1 2005).

Doe v. Boys Clubs of Greater Dallas, Inc., 868 S.W.2d 942 (Tex.App.-Amarillo 1994).

Doe v. Bruton Parish Church, 1997 WL 33575565 (Va.Cir.Ct. 1997).

Doe v. Burns, WL 2210320 (Conn.Super. 2005).

Doe v. Lafayette School Corp., 846 N.E.2d 691(Ind.App. 2006).

Doe v. Linder Const. Co., Inc., 845 S.W.2d 173 (Tenn. 1992) (dissent).

Doe v. O'Connell, Gelineau, Angell, 1988 WL 1016799 (R.I.Super. 1988).

Doe v. Roman Catholic Church for Archdiocese of New Orleans, 615 So.2d 410, 81 Ed. Law Rep. 1183 (La.App.4 Cir. 1993).

Doe v. Samaritan Counseling Center, 791 P.2d 344, (Alaska 1990).

Doe v. Taylor Independent School Dist., 975 F.2d 137 (5th Cir. 1992).

D.R.R. v. English Enterprises, CATV, Div. of Gator Transp., Inc., 356 N.W.2d 580 (Iowa App. 1984).

Earl-Hubbard, M.L. (1996). The child sex offender registration laws: The punishment, liberty deprivation, and unintended results associated with the scarlet letter laws of the 1990s. *Northwestern University Law Review*, *90*(2), 788-802.

Edwards, M. (1997). Treatment for pedophiles; treatment for sex offenders, Pedophile Policy and Prevention, *Australian Institute of Criminology Research and Public Policy Series*, *12*(1) 74-75.

Epstein, R.A. (1990). *Cases and materials on torts*. London: Little, Brown and Company.

Evans v. Morsell, 284 Md. 160, 395 A.2d 480 (1978).

Fahrendorff ex rel. Fahrendorff v. North Homes, Inc., 597 N.W.2d 905 (Minn. 1999).

Favorito v. Pannell, 27 F.3d 716 (1st Cir. 1994).

Fearing v. Bucher, 977 P.2d 1163 (Or. 1999).

Fidelity Leasing Corp. v. Dun & Bradstreet, Inc., 494 F.Supp. 786 (E.D.Pa. 1980).

Fortin v. The Roman Catholic Bishop of Portland, 871 A.2d 1208 (Me. 2005).

Freddo v. Access Agency, Inc., 29 Conn. L.Reptr. 275 (Conn. 2001).

Frugis v. Bracigliano, 827 A.2d 1040 (N.J. 2003).

F.S.A. § 768.1355.

Ga. Code Ann., § 51-1-20.1.

Gallun v. Soccer U.S.A., Inc., 516 N.W.2d 789 (Wis.App. 1994).

Garcia v. Duffy, 492 So.2d 435 (Fla.App.2d. 1986).

Garner, B.A. (Ed.). (2004). *Black's law dictionary* (8th ed.). St. Paul: Thompson West.

Gash, J. (2003). At the intersection of proximate cause and terrorism: a contextual analysis of the (proposed) Restatement Third of Torts' approach to intervening and superseding causes. *Kentucky Law Journal*, *91*(3), 523-612.

Gaston v. Becker, 314 N.W.2d 728 (Mich.App. 1981).

Gen.Laws 1956, § 9-1-48.

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

Golden Spread Council, Inc. No. 562 of Boy Scouts of America v. Akins, 926 S.W.2d 287 (Tex. 1996).

Gordon v. Planters & Merchants Bancshares, 935 S.W.2d 544 (Ark. 1996).

Gibbons, M. & Campbell, D. (2003). Liability of recreation and competitive sport organizations for sexual assaults on children by administrators, coaches and volunteers. *Journal of Legal Aspects of Sport*, *13*(3), 185-229.

Gibson v. Brewer, 952 S.W.2d 239 (Mo. 1997).

Guba, E.G., & Lincoln, Y.S. (1981). *Effective evaluation.* San Francisco: Jossey-Bass.

Gutierrez v. Thorne, 537 A.2d 527 (Conn. 1988).

Hackbart, v. Cincinnati Bengals, Inc., 601 F.2d 516 (10th Cir. 1979).

Hardwicke v. American Boychoir School, 902 A.2d 900 (N.J. 2006).

Hennagan v. Department of Highway Safety and Motor Vehicles, 467 So.2d 748 (Fla.App. 1 Dist. 1985).

Hickman v. Little League Baseball, Inc., 2006 WL 3456486 (Cal.App. 4 Dist. 2006).

Hicks v. Nunnery, 643 N.W.2d 809 (Wis.App. 2002).

Hobbs v. Boy Scouts of America, Inc., 152 S.W.3d 367 (Mo.App.W.D. 2004).

Hodge v. Borden, 417 P.2d 75 (Idaho 1966).

Hogan v. Forsyth Country Club Co., 340 S.E.2d 116 (N.C.App. 1986).

Hollinger v. Stormont Hosp. & Training School for Nurses, 578 P.2d 1121 (Kan.App.2d 1978).

Houghton v. Aramark Educational Resources, Inc.90 S.W.3d 676 (Tenn. 2002).

HRS § 662D et. seq.

Hurst, T.R. & Knight, J.N. (2003). Coaches' liability for athletes' injuries and deaths. *Seton Hall Journal of Sport Law, 13*(1), 27-51.

I.C. § 6-1605.

IC 34-30-19-3.

IL ST CH 70 P 700, et. seq.

Iglesia Cristiana La Casa Del Senor, Inc. v. L.M., 783 So.2d 353 (Fla.App.Dist. 2001).

Infant C. v. Boy Scouts of America, Inc., 391 S.E.2d 322 (Va. 1990).

In re Wright's Estate, 228 P.2d 911 (Kan. 1951).

Isaacs v. Larkin Electric Company, 1998 WL 906394 (OhioApp.2d 1998).

Jackson v. Ferrand, 658 So.2d 691, 94-1254 (La.App.4 Cir. 1994).

Jackson v. Righter, 891 P.2d 1387 (Utah 1995).

J.B. Hunt Transp., Inc. v. Doss, 899 S.W.2d (Ark. 1995).

Jeffrey E. v. Central Baptist Church,197 Cal.App.3d 718 (Cal. 1988).

J.H. by D.H. v. West Valley City, 840 P.2d 115 (Utah 1992).

Jones by Jones v. Trane, 591 N.Y.S.2d 927 (N.Y.Sup. 1992).

Jordan v. Medley, 711 F.2d 211 (D.C.Cir. 1983).

Kansas State Bank & Trust Co. v. Specialized Transp. Services, Inc., 819 P.2d 587 (Kan. 1991).

Keeton, W. P. (1984). *Prosser and Keeton on the law of torts*. St. Paul: West Publishing.

Keibler v. Cramer, 1998 WL 917129 (Pa.Com.Pl. 1998).

Kelly v. Mallott, 135 F. 74 (7th Cir. 1905).

Kendrick v. Ritz-Carlton Hotel Co., L.L.C., WL 2084919 (Mich.App., 2006).

Kensington Associates v. West, 362 S.E.2d 900 (Va. 1987).

Kirk, G.I. (1997). *Canadian Hockey League, players first*. Available from http://www.canoe.ca/PlayersFirst/home.html

Konstantopoulos v. Westvaco Corp., 690 A.2d 936 (Del.Supr. 1996).

K.S.A. § 60-3601.

Lagasse, P. (2003) Pedophilia. In *The Columbia Encyclopedia* (Vol. 26, p. 2171). New York: Columbia University Press.

Landreneau v. Fruge, 676 So.2d 701, 111 Ed. Law Rep. 582, 94-553 (La.App. 3 Cir. 1996).

Lange v. National Biscuit Co., 211 N.W.2d 783 (Minn. 1973).

Leakas v. Columbia Country Club, 831 F.Supp. 1231 (Md. 1993).

Lear, M.C. (1997). Just perfect for pedophiles? Charitable organizations that work with children and their duty to screen volunteers. *Texas Law Review*, *76*(1), 143-182.

Leite v. City of Providence, 463 F.Supp. 585 (D.R.I. 1978).

Lienhard, R. (1996). Negligent retention of employees: An expanding doctrine defense counsel journal employers must use care in hiring and retaining employees or they face liability for a variety of unfortunate acts and events. *Defense Counsel Journal*, *63*, 389-395.

Lin, A.C. (2005). Beyond tort: Compensating victims of environmental toxic injury. *Southern California Law Review, 78*(6), 1439-1528.

Little League Baseball, Inc. (no date). *Little League child protection program.* Available from http://www.littleleague.org/common/childprotect/index.asp

Louisville & Nashville Railroad Co. v. McCoy, 81 Ky. 403 (Ky.App. 1883).

Lourim v. Swensen, 977 P.2d 1157 (Or. 1999).

L.L.N. v. Clauder, 563 N.W.2d 434, 65 USLW 2774 (Wis. 1997).

L.M. ex rel. S.M. v. Karlson, 646 N.W.2d 537 (Minn.App. 2002).

LSA-R.S. 9:2798.

Maille v. Lord, 39 N.Y. 381 (N.Y. 1868).

Maguire v. State, 835 P.2d 755 (Mont. 1992).

Mania v. Kaminski, 412 N.E.2d 651 (Ill.App.1 1980).

Mardis v. Robbins Tire & Rubber Co. 669 So.2d 885 (Ala. 1995).

Mayer, M. (2005). Stepping in to step out of liability: the proper standard of liability for referees in foreseeable judgment-call situations. *DePaul Journal of Sport Law and Contemporary Problems*, *3*, 54-101.

McLean v. Kirby Co., a Div. of Scott Fetzer Co., 490 N.W.2d 229 (N.D. 1992).

Mears v. Gulfstream Aerospace Corp., 484 S.E.2d 659 (Ga.App.1.1997).

Merriam, S.B. (1988). *Case study research in education*. San Francisco: Jossey-Bass.

Meyer v. Wal-Mart Stores, Inc., 813 So.2d 832 (Ala. 2001).MCA 27-1-732.

McDougald v. Garber, 536 N.E. 2d. (1989).

McManus v. Crickett, 102 Eng. Rep. 43 (1800).

MD Code, Courts and Judicial Proceedings, § 5-406.

M.G.L.A. 231 § 85V.

Milla v. Roman Catholic Archdiosis of Los Angeles, 187 Cal. Appl.3d (1986).

Mills v. Deehr, 2004 WL 1047720 (OhioApp.8 Dist. 2004).

Miss. Code Ann. § 95-9-1.

Munroe v. Universal Health Services, Inc., 596 S.E.2d 604 (Ga. 2004).

Moore v. PaineWebber, Inc., 189 F.3d 165 (2nd.Cir. 1999).

Moses v. Diocese of Colorado, 863 P.2d 310 (Colo. 1993).

M.S.A. § 604A.11.

Mueller by Math v. Community Consol. School Dist. 54, 678 N.E.2d 660 (Ill.App. 1 1997).

Naber McCrory & Sumwalt Construction Company, 393 So.2d. 973 (Ala. 1981).

Nack, W. & Yaeger, D. (1999, September 13). Every parent's nightmare: The child molester has found a home in the world of youth sports, where as a coach he can gain the trust and loyalty of our kids-and then prey on them. *Sports Illustrated* , *91*(10), 40-53.

National Alliance for Youth Sports (no date). *Who we are.* Available from http://www.nays.org/index.cfm

National Alliance for Youth Sports (no date). *Volunteer screening.* Available from http://www.nays.org/index.cfm

Nazareth v. Herndon Ambulance Service, Inc., 467 So.2d 1076 (Fla.App. 5 Dist. 1985).

NCED Mental Health, Inc. v. Kidd, 2006 WL 2080674 (Tex.App-El Paso 2000).

National Council of Youth Sports (no date). *About NCYS.* Available from http://www.ncys.org/about.html

National Council of Youth Sports (no date). *Background screening*. Available from http://www.ncys.org/about.html

Neary v. Northern Pacific Railway, 110 P. 226 (Mont.1910).

Nelson v. Gillette, 571 N.W.2d 332 (N.D. 1997), rehearing denied (N.D. 1997).

Newsome v. Cooper-Wiss, Inc., 347 S.E.2d 619 (Ga.App.1. 1986).

N.C.G.S.A. § 59B-7.

NDCC, 32-03-46.

N.H. v. Presbyterian Church (U.S.A.), 998 P.2d 592 (Okla. 1999).

N.J.S.A. 2A:53A-7.

North, J.C. (1976). The responsibility of employers for the actions of their employees: The negligent hiring theory of liability. *Chicago-Kent Law Review*, *53*(3), 717-31.

Noto v. St. Vincent's Hosp. and Medical Center of New York, 559 N.Y.S.2d 510 (N.Y.A.D. 1 1990).

NRS 41.745.

Nutt v. Norwich Roman Catholic Diocese, 921 F.Sup. 66 (D.Conn.1995).

Oakley v. Flor-Shin, Inc., 964 S.W.2d 438 (Ky.App. 1998).

Oats, L.C., Enquist, A., Kunsh, K. (1998). *The legal writing handbook: Analysis, research, and writing* (2nd ed.). New York: Aspen Law & Business.

Or v. Edwards, 818 N.E.2d 163 (Mass.App.Ct. 2004).

Palsgraf v. Long Island Railroad Co., 163 N.E. 99 (N.Y. App. 1928).

Pattavina v. Mills, WL 1626960 (Conn.Super. 2000).

Patterson v. Blair, 172 S.W.3d 361 (Ky. 2005).

Peterson, J. (2004). Don't trust me with your child: Non-legal precautions when the law cannot prevent sexual exploitation in youth sports. *Texas Review of Entertainment & Youth Sports Law, 5*, 297-323.

Peter T. v. Children's Village, Inc., 30 A.D.3d 582 (N.Y.A.D. 2 Dept.,2006).

Phelps v. Firebird Raceway, Inc., 111 P.3d 1003 (Ariz. 2005).

Phillips v. JCM Dev. Corp. 666 P.2d 876 (Utah 1983).

Pittard v. Four Seasons Motor Inn, Inc., 688 P.2d 333 (N.M.App. 1984).

Porter v. Harshfield, 948 S.W.2d 83 (Ark. 1997).

Pilot Industries v. Southern Bell Tel. & Tel. Co., 495 F.Supp. 356 (D.S.C. 1979).

Ponticas v. K.M.S. Investments, 331 N.W.2d 907 (Minn. 1983).

Poulton v. London & S.W.R. Co., 2 Q.B. 534 (1867).

Redeout v. Winnebago Traction Co., 101 N.W. 672 (Wis. 1904).

Reed v. Hercules Construction Co., 693 S.W.2d. 280 (Mo.App. 1985).

Regions Bank & Trust v. Stone County Skilled Nursing Facility, Inc., 49 S.W.3d 107 (Ark. 2001).

R.A. ex rel. N.A. v. First Church of Christ, 748 A.2d 692 (Pa.Super. 2000).

Ray, M.B., & Ramsfield, J.J. (1993). *Legal writing: Getting it right and getting it written* (2nd ed.) St. Paul: West Publishing.

R.C. § 2305.382.

RCWA 4.24.670.

Reguera v. Leduc, 20 Mass.L.Rptr. 4 (Mass.Super.,2005).

Restatement (Second) of Torts § 8A. (1965).

Restatement (Second) of Torts § 282 (1965).

Restatement (Second) of Torts § 283A (1965).

Restatement (Second) of Torts § 283B (1965).

Restatement (Second) of Torts § 283C (1965).

Restatement (Second) of Torts § 299 (1965).

Restatement (Second) of Torts § 315 (1965).

Restatement (Second) of Torts § 324 (1965).

Restatement (Second) of Torts § 409. cmt. b (1965).

Restatement (Second) of Torts. § 432 (1965).

Restatement (Second) of Torts § 500, cmt. a (1965).

Restatement (Second) of Torts § 907 cmt. a (1965).

Restatement (Third) of Torts § 6 (2005).

Restatement (Third) of Torts § 14 (2005).

Riniker v. Wilson, 623 N.W.2d 220 (Iowa App. 2000).

Rita M. v. Roman Catholic Archbishop, 232 Cal.Rptr. 685 (Cal. App. 3d. 1986).

Rokusek v. Bertsch, 50 N.W.2d 657 (N.D. 1951).

Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213 (Miss. 2005).

Rutter v. Northeastern Beaver County School District, 437 A.2d. 1198 (Pa. 1981).

Salinas v. Genesys Health System, 688 N.W.2d 112 (Mich.App. 2004).

Saine v. Comcast Cable Vision of Arkansas, Inc., 126 S.W.3d 339 (Ark. 2003).

Scales, M. (2002). Employer cach-22: The paradox between employer liability for employee criminal acts and the prohibition against ex-convict discrimination. *George Mason Law Review*, *11*(2), 419-440.

Schieffer v. Catholic Archdiocese of Omaha, 508 N.W.2d 907 (Neb. 1993).

SDCL § 47-23-29.

Seaboard Air Line Railway Company v. Glenn, 213 Ala. 284 (1925).

Shapo, H.S., Walter, M.R., & Fajans, E. (1989). *Writing and analysis in the law*. New York: Westbury.

Sharples v. State, 793 P.2d 175 (Hawaii 1990).

S.H.C. v. Lu, 54 P.3d 174 (Wash.App.Div. 1 2002).

S.J.A.J. v. First Things First, Ltd., 239 Wis.2d 233, 619 N.W.2d 307 (Wis.App. 2000).

Singer v. Beach Trading Co., Inc., 876 A.2d 885 (N.J.Super.A.D. 2005).

Smith, M. (1999). Tort immunity for volunteers in Ohio: Zivich v. Mentor Soccer Club, Inc., *Akron Law Review*, *32*(4), 699-722.

Smith v. American Exp. Travel Related Services Co., Inc., 876 P.2d 1166 (Ariz.App.1 1994).

Smith v. Orkin Exterminating Co., Inc., 540 So.2d 363, 13 A.L.R.5th 962 (La.App.1 Cir. 1989).

Southeast Apartments Management, Inc. v. Jackman, 513 S.E.2d 395 (Va. 1999).

Southport Little League v. Vaughan, 734 N.E.2d 261 (Ind.App. 2000).

Stanley v. Brooks, 436 S.E.2d 272 (N.C.App. Nov 16, 1993).

St. Paul Fire & Marine Ins. Co. v. Knight, 764 S.W.2d 601 (Ark. 1989).

Stepanek v. Kober Const., 625 P.2d 51 (Mont. 1981).

Stern v. Ritz Carlton Chicago, 702 N.E.2d 194 (Ill.App.1 1998).

Strickland v. Communications and Cable of Chicago, Inc., 710 N.E.2d 55 (Ill.App.1 1999).

Stropes by Taylor v. Heritage House Childrens Center of Shelbyville, Inc., 547 N.E.2d 244 (Ind. 1989).

Sullivan, D. (1998). Employee violence, negligent hiring, and criminal records checks: New York's need to reevaluate its priorities to promote public safety. *St. John's Law Review, 72*(2), 581-605.

Tarasoff v. Regents of University of California, 17 Cal. 3rd 425 (Cal. 1976).

Tercero v. Roman Catholic Diocese of Norwich, Connecticut, 48 P.3d 50 (N.M. 2002).

Thomas v. Bet Sound-Stage Restaurant/BrettCo, Inc., 61 F.Supp.2d 448 (D.Md. 1999).

Thomas, J.R., Nelson, J.K., & Silverman, S.J. (2005). *Research methods in physical activity* (5th ed.). Champaign, IL: Human Kinetics.

Thompson v. Bohlken, 312 N.W.2d 501 (Iowa 1981).

Travis Pruitt & Associates, P.C. v. Hooper, 625 S.E.2d 445 (Ga.App.1. 2005).

Trimble v. Circuit City Stores, Inc., 469 S.E.2d 776 (Ga.App.1.1996).

U.C.A. 1953 § 78-19-2.

U.S.C.A. 42 § 14501(b) (West 2005).

U.S. v. Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947).

USA Petroleum Corp. v. Hines, 770 So.2d 589 (Ala. 2000).

United States Steel Company v. Butler, 260 Ala. 190, 69 So.2d 685 (1953).

van der Smissen, B. (1990). Legal liability and risk management for public and private entities. Cincinnati: Anderson.

van der Smissen, B. (2003 a). Elements of negligence. In Cotten, D.J., & Wolohan, J.T. (Eds.), *Law for recreation and sport managers* (3rd ed.) (pp. 56-65). Dubuque, IA: Kendall/Hunt.

van der Smissen, B. (2003 b). Human resources law. In Cotten, D.J., & Wolohan, J.T. (Eds.), *Law for recreation and sport managers* (3rd ed.) (pp. 180-191). Dubuque, IA: Kendall/Hunt.

Vaughan v. Menlove, 132 Eng. Rep. 490 (1837).

V.A.M.S. 537.118.

Vinsonhaler v. Quantum Residential Corp., 73 P.3d 930 (Or.App. 2003).

Vrabel v. Acri, 103 N.E.2d 564, (Ohio 1952).

Weeber, R.R. (1992). Scope of employment redefined: Holding employers vicariously liable for sexual assaults committed by their employees. Minnesota Law Review, 76(6), 1513-1541.

Weinberg v. Johnson, 518 A.2d 985 (D.C. 1986).

Welsh Mfg., Div. of Textron, Inc. v. Pinkerton's, Inc., 474 A.2d 436 (R.I. 1984).

West's Ann.Cal.Penal Code § 11105.2.

Whitley v. Com., 538 S.E.2d 296 (Va. 2000).

Williams v. Butler, 577 So.2d 1113 (La.App.1 Cir. 1991).

Williamson v. Liptzen, 539 S.E.2d 313 (N.C. App. 2000).

Wilson v. Safeway Stores, Inc., 60 Cal.Rptr.2d 532 (Cal. App. 1, 1997).

Wong, G.M. (2002). Essentials of sports law (3rd ed.). London: Praeger.

Wood vs. Safeway, Inc., 121 P.3d 1026 (Nev. 2005).

Wright v. Wilcox, 19 Wend. 343 (N.Y. 1838).

W.S.A. 181.0670.

W. Va. Code, § 55-7C-1.

Wyseski v. Collette, 126 N.W.2d 896 (N.D. 1965).

Zsigo v. Hurley Medical Center, 716 N.W.2d 220 (Mich. 2006).

BIOGRAPHICAL SKETCH

Thomas A. Baker III received a B.A. in journalism from the University of Southern Mississippi and a J.D. from Loyola University New Orleans School of Law. He is a member of the Louisiana Bar Association and has practiced law in Louisiana. His area of practice was general and commercial litigation.