“I’M HURT, I’LL SUE”
THE AFFECTS OF RECENT RECREATION AND PARK LAWSUITS
ON YOUR PROFESSIONAL LIFE

Professor Bruce Hronek used many of his experiences in recreation law to impart his knowledge to the audience in this session. This session provided an overview of lawsuits that affected the Parks and Recreation field. The knowledge gain from lawsuits can help the professional to prevent suing in their company or program by learning about polices that influence each one. This knowledge can be leaning from past and current lawsuits. Past lawsuits that were discussed ranged from facility, staff, and management issues. Encouragement was given to people to fix issues that they know about because if they are left alone and later become an issue it can escalate the problem, especially if people found out that it was a known issue. Reviewing past court cases are a great way to learn about things to avoid.

Recently settled lawsuits or those still under debate were also mentioned. Items that are unacceptable or taboo within different companies received criticism at the session as they will be the thing that provokes the next lawsuit. Polices that come from lawsuits needed to be review regularly by leaders so that the company or program can prevent lawsuits from occurring.

Lawsuits will continue to happen and can destroy or devastate a company or program. Keeping up on what is happening and reviewing what has happened will help to protect against potential problems. Knowledge is important but must be followed by action.
I’m Hurt, I’ll Sue
The Affect of Recreation and Park Lawsuits on Your Professional Life

Understanding the effect of precedent setting cases.

Bruce Hronek
Professor
Indiana University
My First Opportunity for a Damsel Rescue
I Loaded all known rescue equipment equipment into the pickup
Vintage 1936 Restroom Facility
A weighty problem
What most of us believe -

- When you take the risk out of life, you take the life out of life.
- You will continue to provide activities that are challenging and risky.
Civil Legal Liability in Recreation and Parks

- Criminal Liability
  - Contract
- Civil Liability
- Constitutional Torts
  - Tort (Tort Claims Act)
  - Other Categories
    - Strict Liability
    - Intentional Torts
    - Nuisance
    - Negligence
- Intellectual Law
Criminal Liability

Legal Liability

Crimes Against Persons
- Assault
- Battery
- Others: Drugs, Murder, Rape, Etc.

Crimes Against Property
- Trespass to Land
- Trespass to Property
- Robbery, Burglary, Fraud, Etc.
Constitutional Torts and Protection of Individual Rights

Due Process
- Liberty
- Property
- Hearing

Bill of Rights
- Privacy
- Search
- Right to Counsel
- Self-Incrimination

Human Rights
- Religion
- Speech
- Race
- Gender, Age
- Disability

Constitutional Torts
Negligence Categories

Negligence

Premises
- Design
- Construction
- Maintenance

Supervision
- Facilities
- Programs
- Employees
- Training
Degrees of Negligence

- **Ordinary Negligence** - the failure to exercise such care as would be expected by the majority of people under like circumstances.

- **Gross Negligence** - The disregard of life and property of others. It consists of conscious acts of negligence.

- **Willful and Wanton Negligence** - The conduct so gross as to have something of a criminal character, evil intent, wantonness or recklessness, indicative of malice.
Nuisance

- Noise
- Light
- Health
- Use of Property
- Odor
- Unsightly
- Obstruction
- Inconvenience
- Community Standards
Intentional Torts

- Property
  - Trespass to Property
  - Trespass to Chattel
  - Conversion

- Persons
  - Assault
  - Battery
  - False Arrest
  - Defamation
  - Intentional Infliction of Emotional Distress
Cases that Count

- Some of the precedent setting cases that have effected your professional life
Questionable Decisions

Soto v. United States (C.D. Cal 1990)
McMichael v. U.S.
Rimkus v. Taos Ski Valley
Ewell for Ewell v. U.S.
George v. U.S.
Montgomery, Alabama – A man whose arm was bitten off by an alligator in the national forest has been awarded $772,870 in damages in his lawsuit against the federal government.

U.S. District Judge Robert Varner of Montgomery ordered the Forest Service to pay the money to Kermit H. George Jr. of Florala.

George’s arm was bitten off by a 500 pound, 12 foot alligator on July 26, 1986, while he was swimming in the Conecuh National Forest not far from his home near the Florida-Alabama line.

In a ruling released Thursday, the judge awarded $655,200 for George’s pain and suffering. He was awarded $117,690 for medical needs and other damages.

The decision followed an April 30 ruling in which Varner found that the Forest Service had failed to place signs warning of danger despite having received complaints about alligators in the national forest.
Harmon v. U.S.
Davis v. U.S.
Timeliness: 
*Rost v. U.S.*
New Cases – New Problems

- Have you tested for lead paint on playground equipment?
- Plaintiff must prove a preponderance of evidence
- When are defibrillators necessary?
- Most victims assume risk of activity
  - Rotolo v. San Jose Sport and entertainment, LLC Cal 2007
New Cases – New Problems cont.

- Do you give disabled participants “extra team points” because they are in a wheelchair?
- Neutral rule applied equally does not violate ADA
  - McFadden v. Grasmich, Maryland, 2007
- Parent’s of six year-old signed up for “My First Gym” Child was injured. Parents signed waiver.
- Waiver was not an excuse for negligent supervision
  - El-Haless v. Chauser, Cal. 2006
New Cases – New Problems cont.

- Are managers responsible for a sexual molestation in a facility?
- If molester was a patron, incident was unforeseeable
  - Rice v. Six Flags over Georgia, Georgia 2005
- After having a fatality in a pool are you required to disclose dangers to groups using your facilities?
- Operators of pools have a duty to warn
  - Lewis v. Eisen, Missouri 2002
New Cases – New Problems cont.

- Increased reports involving pool drain entrapment?
- New laws and standards being implemented
- Reckless rec sports participant sued for sliding into baseman.
- Does injured player assume risk of reckless actions by other players?
  - Kiley v. Patterson, Rhode Island 2002

No
Who is legally liable?

- Employees
- Contractors
- Volunteers
- Sponsors
- Supervisors
- Manufacturers
- Administrators
- All of the above
By taking risk management actions under the following circumstances successful suits can be reduced by 80%:

1. Take preventive actions where accidents have previously occurred
2. Conduct a risk management survey in areas of high public use
3. Warn public about situations that pose extraordinary danger
Rule of Seven

- **Age of Child**
  - 0-7
  - 8-14
  - 14-18 (21)
  - Adult

- **Responsibility of Child**
  - Not responsible for their actions
  - Partly responsible for their actions
  - Mostly responsible for their actions
  - Responsible for their actions
Agency Responsibility (as determined by the courts)

- To use ordinary and reasonable care to keep the premises reasonably safe for the visitor and to warn the visitor of any known danger.
Negligent Supervision  An administrator can be held liable for poor hiring practices
Waivers and Releases  Apply only to those who are old enough to contract (18).
Volunteers  An administrator can be held liable for the actions of a recognized volunteer.
Relax and Provide Safe Public Services