

An Analysis of Courts Cases Since 1995 Wherein College and High School Coaches in the United States Were Sued for Negligence as a Result of a Player's Injury

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One of the areas of concern in athletics is the possibility of injuries. Although some injuries are going to occur no matter the precaution, it seems incumbent upon the coach to do all he or she can to avoid putting athletes in harm's way unnecessarily. In some cases coaches must weigh the risk in implementing and managing situations in conditioning, practice and games. For example, practicing football in full pads will lead to more contact and more contact will lead to more injuries. Not practicing in full pads could also lead to more injuries because the players may be unprepared for the contact that occurs in game situations. In basketball, loose ball drills often result in minor injuries because of the contact inherent in creating a game-like situation. Knowing this, coaches insist on such training because they understand the importance of gaining control of a loose ball and the fact that it could be the difference between winning and losing. Coaches are constantly making such decisions. How can they know for sure which decisions they make may lead to charges of negligence against them? By completing a search of appealed litigation in the last 17 years (my previous research included all cases up to 1995, [Pate, 1995]) wherein athletes sued their coach charging negligence it may be possible to find commonalities in those cases that could lead to useful suggestions to avoid such charges and subsequently reduce the number of injuries. The LexisNexis database allows one to conduct a comprehensive search of those cases that made it to state or national courts. I have conducted a thorough search and found twelve such cases. I have analyzed each to note actions by players and coaches that might have contributed to injuries (including acts of omission or commission). Some situations involving one or more aspects of coaching seem to be more problematic and I have noted those here.

A case from 1996, *Searles v. Trustees of St. Joseph College*, involved a basketball player who claimed he was forced to play by his coach "despite warnings from the athletic trainer" (*Searles v. Trustees of St. Joseph College*). As a result, the player claimed this resulted in permanent knee injuries. This type of case represents a common area of contention in athletics. In fact, some athletes hide injuries to avoid being told they cannot play. A key piece of this case involves the relationship between the coach and the athletic trainer. Although it is not discussed in the court records, the institutional policy regarding such decisions should have precluded such a situation from occurring. It is not uncommon for coaches to be operating without the assistance of an athletic trainer and it has been noted, "in general, coaches tended to return players to the game" (Almquist, J., McCleod, T. C. V., Cavanna, A., Jenkinson, D., Lincoln, A. E., Loud, K., . . . Woods, T. S., 2004, p. 38). "However, state laws often prohibit coaches from making return-to-play decisions" (Almquist, J., McCleod, T. C. V., Cavanna, A., Jenkinson, D., Lincoln, A. E., Loud, K., . . . Woods, T. S., 2004, p. 38). This inconsistency can result in undesirable outcomes. The problem is not just a lack of training of the coaches although proper training can ameliorate these situations. The coaches can make decisions based on factors other than the athletes' best interest. That fact is the basis of the state laws on the books that forbid coaches from such decision-making. This case also speaks to player-coach relationships. Most players operate on the desire to please the coach and may place blind faith in him or her. This can preclude players resisting their coach's attempts to convince them to return to action even if they are, indeed, injured.

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In this case there was an athletic trainer involved in the evaluation of the athlete. This brings up a confounding factor: the relationship between the coach and the athletic trainer. In some instances athletic trainers can be affected by the type of association they have with the coach. If they are friendly with the coach or intimidated by the coach, these factors can cloud their objectivity about an injury.

Another case from 1996 involved alleged verbal abuse by a football coach toward a player. In *Newman v. Oberstellar*, the player alleged that the coach looked him directly in the eyes and said, “Ya’ll f**king suck, all we’ve got on this team is a bunch of a**holes . . . and if any of ya’ll want to run home and tell your parent’s [sic] I’ll stand on top of the Empire State Building and say, you’re God damn right that’s what I said” (*Newman v. Oberstellar*, 1996). The player claimed the words of his coach caused him “severe emotional distress” (*Newman v. Oberstellar*, 1996). The coach claimed that in the “aggressive and competitive” (*Newman v. Oberstellar*, 1996) world of high school football, it is necessary to use strong language to properly motivate students. Coach Newman asked for dismissal on the basis of immunity promised by the Texas Education Code.

No professional employee of any school district within the state shall be personally liable for any act incident to or within the scope of the duties of his position of employment, and which act involves the exercise of judgment or discretion on the part of the employees, except in circumstances where professional employees use excessive force in the discipline of students or negligence resulting in bodily injury to students. (*Newman v. Oberstellar*, 1996)

The Texas Court of Appeals decided the question of “whether Coach Newman acted within the scope of his employment” (*Newman v. Oberstellar*, 1996) was not clear cut. In other words, while immunity exists, it does not extend to certain acts which can conceivably be so egregious to be considered outside the normal execution of the duties of an employee. The summary judgment sought by the appellant was denied. A coach can and will be held liable for his or her actions if the jury agrees that such actions rise to a level that exceed normal behavior.

In a case from 1997, *Orr v. Brigham Young University*, a football player alleged the “coaches and trainers failed to provide adequate medical care” (*Orr v. Brigham Young University*, 1997). He also claimed the coaches put “enormous pressure on him to continue playing while he was hurt” (*Orr v. Brigham Young University*, 1997). This case speaks again to the tension that exists to continue participation while injured. This is part of the culture of athletics and emphasizes the need for objective evaluation of injuries. In this case, the athlete acquiesced to the coaches’ entreaties but ultimately decided his injuries were exacerbated by this decision. The decision to return to competition ranks as one of the most important that has to be made and it should not be influenced either by the coach’s attitude or by the player’s desire to participate. To ensure the sanctity of this decision, it should be made by a medical doctor. Even some doctors are not immune to the authority of some coaches, but, in most instances, an objective opinion will be rendered.

The Return-To-Play process should be under the direction of the team physician whenever possible. While it is desirable that the team physician coordinate evaluating, treating and rehabilitating the injured or ill athlete, it is essential that the team physician ultimately be responsible for the Return-To-Play decision. (*Medicine & Science in Sports and Exercise*) Communication between all parties is important but the final authority should be the team physician. If the team physician is not present, the athletic trainer should always err on the side of the safety of the athlete.

A case from 2001 spoke to the oft-used sovereign immunity defense. In the case *Yanero v. Davis* the Kentucky Supreme court found the Kentucky Court of Appeals had erred in granting sovereign immunity to all parties sued by a young baseball player who was injured during practice.

The player had been batting in the batting cage when he was hit in the head by a pitch. He was not wearing a helmet even though rules in place at the time required such headgear.

He sued the Board of Education, the athletic director, The Kentucky High School Athletic Association and two of his coaches. In a decision that should be a warning to coaches everywhere, the Kentucky Supreme Court found that all the parties to the lawsuit were immune from liability because of sovereign immunity except the coaches and stated that the negligent supervision charges against them must be decided by a jury. In other words, the coaches did not automatically have immunity, especially if it could be proven that they had acted in a wanton manner concerning their supervisory roles.

Sovereign immunity is a concept that arose from the common law of England and was embraced by courts at an early stage in the nation's history. It is an inherent attribute of a sovereign state that precludes the maintaining of any suit against the state unless the state has given its consent or otherwise waived its immunity. This principle has been recognized by Kentucky as early as 1828. The absolute immunity from suit afforded to the state also extends to public officials sued in their official capacities, when the state is the real party against which relief in such cases is sought (*Yanero v. Davis*, 2001).

Even though the coaches were acting in their official capacities, they can be held liable if their actions rise to a level of neglect. Culpability of that action can be decided in court especially if the performance of a duty, either by commission or omission, can be proximately linked to the injury in question. In this case the charge of negligence against the coaches for allowing the minor to bat without a helmet must be decided by a jury. So the coach is not automatically protected, even though his employer and supervisor are. That fact alone is one that should make any coach consider obtaining professional liability insurance because in the event that an injury occurs, a coach cannot count on an effort by the school district to fight the suit because the district can claim immunity. That leaves the coach to fend for himself or herself.

In recent years the question of concussions has come to the forefront in discussions about athletic injuries. More and more evidence exists to link head injuries to other conditions that can occur at some point after the initial injury. "Doctors believe that even several mild concussions that happen within a short time of one another can cause long-term disabilities." (What's the link, n.d., p. 1). The 2001 case of *Cerny v. Cedar Bluffs* involved just such a scenario. A football player injured during a game on Friday night reported to his two coaches that he felt dizzy and disoriented. There was some disagreement at trial as to what symptoms were communicated to the coaches. Later in the game the player asked to re-enter the game and was allowed to do so. He participated in the game in the third quarter without incident and then was allowed to practice on the following Tuesday. During the Tuesday practice, he suffered a second head injury which caused a traumatic brain injury. This type of injury is known as second impact syndrome and is a result of suffering a second concussion before the symptoms of the first one have resolved. Other conditions that might be related to multiple concussions include dementia, Parkinson's syndrome and/or disease and amyotrophic lateral sclerosis (Multiple Concussions). Although the player complained of symptoms known to be consistent with concussion, no medical personnel examined him before he was allowed to reenter the game on Friday night. Experts agree that a player having only one symptom of concussion should not be allowed to re-enter competition. "Both the coach and the assistant coach held Nebraska teacher certificates with coaching endorsements" (*Cerny v. Cedar Bluffs*, 2001). The Nebraska coaching endorsement indicates that a person with such an endorsement has completed a class called "Prevention and Care of Athletic Injuries". The coaches testified that they did not believe the player had symptoms consistent with a concussion.

There is some dispute as to what symptoms were reported to the coaches. The fact that both coaches had such an endorsement actually raised the standard for the level of care they would be expected to provide.

“The standard of care is modified in circumstances in which the alleged tort-feasor possesses special knowledge, skill, training, or experience pertaining to the conduct in question that is superior to the standard of a reasonably prudent person.” (Cerny v. Cedar Bluffs, 2001).

Although the district court found the coaches not negligent and dismissed the action, this finding was reversed by the Nebraska Supreme Court and a new trial was ordered.

In *Kavanagh v. Trustees of Boston University*, a basketball player who was punched during a basketball game by a member of the opposing team sued the coach and the school of the opposing team. “He alleged negligent and intentional infliction of emotional distress.” (*Kavanagh v. Trustees of Boston University*, 2003). The defendants were awarded summary judgment by the Superior Court and this verdict was affirmed by the Supreme Judicial Court of Massachusetts. The plaintiff in this case suggested that the opposing coach’s aggressive behavior contributed to a culture that pushed the offending player to over-react. Courts generally have held that aggressive behavior is a core part of sport and that it is necessary to avoid rulings that might chill the rigor of athletic competition. “Indeed a coach’s ability to inspire players to compete aggressively is one of a coach’s important attributes” (*Kavanagh v. Trustees of Boston University*, 2003). Only in instances where a player had previously been guilty of such behavior and it was known that the athlete might react in an inappropriate manner might a charge of negligence be supported by the element of foreseeability of harm. It is not unknown in the annals of basketball for coaches purposely to send into the game a “hatchet-man” to do harm to a star player on the other team. In fact, one famous coach admitted to resorting to that tactic in recent years. In a well-publicized game in 2005, Coach John Chaney of Temple University admitted to sending in a “goon” to commit hard fouls (Coach apologizes, 2005, p. 1). “Temple coach John Chaney . . . apologized for putting a player in against St. Joseph’s . . . for the sole purpose of rough play” (Coach apologizes, 2005, p. 1). Obviously, such an admission could prove a mitigating element had a lawsuit emanated from that particular incident.

Another point that arises from this case stems from the claim made by Kavanagh that the game was “the most physical he ever played” (*Kavanagh v. Trustees of Boston University*, 2003) and that as such, it could have been expected that such an incident would occur. In fact, until the offending punch, no technical fouls had been called and when it did occur, the puncher was immediately ejected and assessed a technical foul. However, a game that has grown heated certainly can arouse unusual emotions and it could be argued that it is the responsibility of the coaches to try and ameliorate the possibility for contact outside the normal amount allowed. Of course, this type of claim is difficult to prove in an objective manner, but coaches and referees should use their experience and expertise to anticipate and defuse such situations. As far as injuries are concerned, it should be the goal of all involved to eliminate all those that are avertable.

In *Kahn v. East Side Union High School*, a fourteen year old swimmer was paralyzed when she dove into a pool to start a race. She alleges that her coach had not properly instructed her in the technique of diving from a starting block into a three and one-half foot deep pool. Furthermore, the coach knew she had a fear of such an injury and had previously allowed her to begin competition in the water. Although differences of opinion exist as to these facts, the Superior Court of Santa Clara granted summary judgment for the defendants and the Court of Appeals, Sixth District, affirmed. The Supreme Court of California reversed the decision and remanded the case. At issue here was whether the coach acted recklessly.

No coach can remove all risk from athletic competition but the standard that must be applied would assume that the coach would certainly not increase the risk. "To impose a duty to mitigate the inherent risks of learning a sport by challenging a student . . . could have a chilling effect on the enterprise of teaching or learning skills that are necessary to the sport" (Kahn v. East Side Union High School, 2003).

If the assertion by the plaintiff that she was not taught the proper technique because of her fear of diving, the coach's actions could be construed to have reduced the motivation of the swimmer to learn the skill. In this instance, the plaintiff was not receptive to learning the skill, and at issue is whether that reluctance caused the coach to avoid having her confront her fear.

Society expects . . . more from instructors and coaches than merely that they will refrain from harming a student intentionally or with wanton disregard for safety. An instructor's gross or extreme lack of care for student safety is not an inherent risk of school athletics programs. (Kahn v. East Side Union High School, 2003)

This admonishment from the court reveals how much more is expected of coaches in terms of their special relationship to the athletes whereby they are often expected to motivate the athlete to perform at higher levels than the athlete, without such inspiration, normally could. In other words, coaches are given more leeway to arouse higher levels of effort, but with that special dispensation comes a greater responsibility.

In a case from Mississippi, an African American high school football player was injured by his white teammate during practice (Priester v. Lowdnes County School District, 2004). The plaintiff claimed that the attack was racially motivated and that a culture of racial injustice and bullying was promulgated by the football coaches. During practice, after a drill, the white player gouged the eye of the African American player "and resulted in permanent damage including a torn right lower eyelid, a laceration to his lower punctum and canaliculus (tear duct), chronic tearing, and blurry vision" (Priester v. Lowdnes County School District, 2003). The injured player alleged that leading up to the incident, there had been several actions by the defendant that should have alerted the coaches to the fact that such behavior might be foreseeable. A subsequent report by the principal did not find anyone who had seen the alleged assault. The United States District Court for the Northern District of Mississippi granted a summary judgment for the defendants and this was upheld by the United States Court of Appeals for the Fifth Circuit. The plaintiff was not able to show that there was a conspiracy to injure the player.

The concern here speaks to the culture established by the football coaches and whether or not that culture contributed to the injury that was sustained by the defendant. This would be necessary to establish a charge of negligence against the coaches: otherwise, the injury could be considered an assault by a teammate acting in a tortious manner. In this case, the duty of the coaches to prevent harm to the defendant did not rise to the level of a special relationship because the "court has held that no special relationship exists between a school district and its students during a school sponsored activity held outside the time during which students are required to attend school for non-voluntary activities" (Priester v. Lowdnes County School District, 2004). It seems, once again, that placing that burden of protection on the coaches might mean eliminating full-contact drills in which injuries are more likely to occur. Such proscriptions might again chill the rigor of athletic competition. If the plaintiff's contention that the injuries sustained are the result of gross negligence occasioned by a lack of supervision during football practice, the court's imprimatur of that allegation could substantially alter the manner in which football is practiced and played. Nonetheless, it cannot be overemphasized that coaches need excellent leadership and stewardship skills to develop a competitive culture without promoting wanton aggression.

The act of intentionally throwing at a batter as a means of retaliation for prior events that occurred during that game or any earlier contest has been a part of baseball for many years. Even in the major leagues, it is problematic for an umpire to make such a determination because intent is difficult to divine as occasionally pitches simply get away from the pitcher. In *Avila v. Citrus Community College*, a batter was hit in the head by a pitched ball and sued, claiming failure of the opposing school “to supervise and control its team’s pitcher” (*Avila v. Citrus Community College*, 2006).

Such a charge was found to be without basis since the “doctrine of primary assumption of the risk barred any claim” (*Avila v. Citrus Community College*, 2006). A ruling by the court that the school was liable would have set a precedent that might have impacted the further participation in baseball competition. The court does seem to understand that risk is and must be a part of sport and without the willingness of players to accept such risk and the court’s willingness to recognize assumption of risk, many sports would cease to exist as we know them. Attempts to eliminate the bean ball must continue as coaches, umpires and administrators do what they can to prevent use of such tactics, but not at the expense of negatively impacting competition.

As mentioned earlier, the court can find summary judgment for a school but that will not necessarily extend to the coach. In *Patrick v. Great Valley School District*, an injured wrestler had been instructed to wrestle a much heavier teammate in practice. This decision by the coach went against established wrestling protocol that generally prohibits such activity. The United States Court of Appeals for the Third Circuit ruled the coach should have recognized the danger of such tactics and that the injury was foreseeable. This type of “shocks the conscience” (*Patrick v. Great Valley School District*, 2008) act can be compared to the willful and wanton standard referred to earlier in reference to cases wherein coaches were not protected by governmental immunity while the state or school was protected.

To see how inconsistently these standards are applied, in *Davis v. Carter*, three coaches “are entitled to qualified immunity” (*Davis v. Carter*, 2009) on appeal to the United States Court of Appeals for the Eleventh Circuit. In this case, the death of a football player came as the result of heat illness brought on by poor hydration and the subsequent lack of proper care for obvious symptoms. This inaction by the coaches was deemed “an under-reaction or misjudgment rather than conscience shocking behavior” (*Davis v. Carter*, 2009, p. 20).

The most recent case included here is *Brokaw v. Winfield-Mt. Union Community School District and Andrew McSorley*. The case involved a high school basketball player injured during a varsity game with another school. The player from the opposing team (McSorley) intentionally threw an elbow which struck the plaintiff in the head and allegedly caused post-concussion syndrome. The defendant was immediately assessed a technical foul and kicked out of the game. “Plaintiffs had set forth the action by alleging assault and battery against the opposing player and negligent supervision of an athlete against the school district” (*Brokaw v. Winfield-Mt. Union Community School District*, 2010). Although the judgment against the offending player was upheld, so was the decision that the school district “did not know” (*Brokaw v. Winfield-Mt. Union Community School District*, 2010) that the offending player would intentionally throw an elbow. Previously the Massachusetts Supreme Court said,

In a general sense, one can always foresee that, in the thrill of competition and the heat of battle inherent in a contact sport, any player might someday lose his or her temper and strike an opposing player. If that possibility alone sufficed to make an assault on the field of play reasonably ‘foreseeable,’ schools and coaches would face liability every time they allowed enthusiastic players to take the field against an opposing team.

For these purposes, foreseeability must mean something more than awareness of the ever present possibility that an athlete may become overly excited and engage in physical contact beyond the precise boundaries of acceptably aggressive play. (Brokaw v. Winfield-Mt. Union Community School District, 2010)

This ruling supports the notion that only if striking evidence exists that a player might commit such an act can foreseeability be proven. Such evidence would probably include other such attacks by the player. In this case no such history could be shown.

One of the more pertinent points in this case and others is the long-term effect of concussions on the health of the injured parties. In many instances, it seems likely that a pattern of repeat concussions can lead to long-term problems. New evidence suggests that it is difficult to know which event can signal long-term problems. "Repeated concussions raise the risk of developing permanent neurological problems later in life, a concern highlighted when some retired football players sued the National Football League" (Neergaard, 2012, p. 1). Even more troubling, it seems teenagers are "more vulnerable to long-term effects of head injury" (Harmon, 2012, p. 1).

Since lawsuits alleging improper care, treatment and prevention of head injury are becoming more common as more research supports a link between concussions and long term problems, it is incumbent on coaches and trainers to treat those kinds of injuries with great care and consideration. The issue surrounding head trauma and long term cognitive problems is one that threatens the very essence of sports in America. We can expect increased litigation as a result of new research that is emerging from the medical community. Some very famous sports figures are afflicted and their stories are bringing media focus to the dangers that exist in sports where concussion is a somewhat common occurrence. Even soccer where heading has been linked to brain injury is not immune to the possible charges of unacceptable dangers. "Frequent 'heading' of soccer balls by avid amateur players may cause brain damage leading to subtle but serious declines in thinking and coordination skills, a new study suggests" (Leighty, 2011, p. 1). At the very least, the future could hold the possibilities for radical changes in the way some sports are played and coached.

In conclusion, it is obvious that athletes are going to continue to sue their coaches as they become injured. A coach can use the information gathered here to help avoid repeating mistakes that have been made. Even in cases where the coach was found innocent of charges of negligence, the actions chronicled here, while not rising to a level of negligence in every case, could help a coach avoid even the charge of culpability by avoiding those questionable actions that can lead to a lawsuit. Common sense can go only so far and an understanding of what has happened in the courts is useful for helping all coaches at least be aware of the importance of considering the ramifications of all actions. Furthermore, staying current on the latest research in care, prevention and treatment of athletic injuries can also provide some protection. Generally, the facts that are found here suggest the preponderance of cases involve supervisory decisions by the coach. This indicates that planning athletic programs with care and ensuring that policies are prescribed and followed can go a long way in avoiding problems.

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