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## Legal Liability for Sports Referees in Today's Litigious World - If You Can't Kill the Ump then Sue Him

**Legal Liability for Sports Referees  
in Today's Litigious World - If You Can't Kill The Ump Then Sue Him**

**Marc T. Wolin & Robert D. Lang\***

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**Introduction:**

In today's environment, people continuously look to blame others for misfortune regardless of the cause. We read about legal cases every day where we question why people are suing, and the inherent equity of what is being alleged. This is no different in the field of officiating sports contests.

The sports official plays an unusual role. There are thousands of officials in the United States, ranging from pickup leagues to professional sports. The vast majority of officials receive nominal pay, and do this predominantly as an avocation. They are motivated by their love of the sport, the physical activity and thrill of athletic competition, community service, a motivation toward perfection, and so forth. When the contestants take the field, they might not like the officials, but all respect the necessity of their presence to fairly control the contest, and rule on the play. Leagues can easily supply players or coaches not participating in the contest to officiate, but instead rely on the necessary evil of an impartial third party official.

Thus, it can be argued that an official is in effect a quasi-governmental official. In essence they are a Judge, or a Traffic Policeman, or an administrative hearing officer, etc. Government officials under the law are given superior protection or immunities since it is recognized that they need to do their jobs without undue exposure or recrimination. In the current legal environment under the vast majority of cases, officials are given the benefit of the doubt when misfortune occurs.

What is the role of the official? Is it to create a "safety bubble" over the participants so nothing bad happens even in numerous sports with hazardous activity? Is the role of the official to maintain some sort of Orwellian control of the game so people's innate aggressive behavior is minimized so there are no "cheap shots" or dangerous behavior on behalf of the participants?

Are the officials (in conjunction with the league and school authorities) simply liable when bad things happen, notwithstanding the assumption of risk of the participants and the behavior of the participants?

What the vast preponderance of case law details is that the world has not gone mad. While people always can and will sue for anything, the official has not assumed the responsibility of making sure bad things do not happen, nor is the official responsible for the irresponsible conduct of participants under a broad theory that had they controlled the game better they would have prevented a participant from using a danger and illegal conduct. The official under controlling law is held to a standard of gross negligence. While not of the immunity caliber of governmental officials, it is of course a preferable standard to negligence.

As noted, in today's world people are increasingly looking to shift self-responsibility on others. An underlying hypocrisy is that players and coaches do not hold up themselves to a standard of perfection, but do hold up the official to a standard of perfection. A coach can call a bad play, a player can drop the ball or take a third strike not swinging, but if there is a close call that went against a team then sometimes it seems that the onset of WWII is at hand. Superior coaches and players know that it is hard work, preparation and honing of skills that decide the contest, and the various calls of the official have little bearing on their ability to compete.

Fortunately, self-responsibility and common sense is the current state in today's world. Hopefully, this is not a slippery slope of expanding liability of those individuals who provide a selfless service predominantly out of the love of the particular sport.

**Case Law:**

To be sure, no one goes to a sporting event for the purpose of watching the referees. Except in rare circumstances, for example, when the National Football League (NFL) replaced the replacement referees,<sup>1</sup> or when referees make a favorable, although perhaps dubious, call in their team's favor,<sup>2</sup> fans tend not to cheer for referees.<sup>3</sup>

Yet, referees in sports have perhaps a unique role — they are usually the only persons participating in the event, not invested in which team prevails, acting simultaneously as both participant and spectator, “active when they run up and down the field alongside players, yet detached when they make swift, impartial decisions in the midst of intense competition.”<sup>4</sup>

Referees in sport are often placed in difficult situations, needing to react immediately without time to contemplate their action. Although taking one's time is usually considered a virtue in certain circumstances, in the context of sports, hesitancy by referee in making a decision can be construed as an indication of uncertainty, resulting in increased questioning of on-field decisions.<sup>5</sup>

Few people will volunteer to referee sporting events if, in addition to accepting the risk of being criticized by opposing players, coaches and their fans, they also risk potential legal liability actions not of their own making. In this regard, efforts to protect athletes from concussions can

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<sup>1</sup> Joseph White, *‘That Kind of Chokes You Up’: Referees Cheered at First NFL Game Following End of Lockout*, MINN. STAR TRIBUNE, Sept. 28, 2012, <http://www.startribune.com/sports/vikings/171517041.html>.

<sup>2</sup> Consider the reaction by the Kansas City Royals fans when Umpire Don Denkinger called Jorge Orta safe at first base in the 8<sup>th</sup> inning of Game 6 of the 1985 World Series, even though television replays and photographs clearly showed that Orta was out by half a step. Kansas City went on to win the World Series and Denkinger was blamed for their victory. Ron Fimrite, *In the Eye of the Storm: Vilified for a World Series Call, Ump Don Denkinger has Remained Calm*, SPORTS ILLUSTRATED, Jan. 6, 1986, available at <http://si.com/vault/article/magazine/MAG1064414/index.htm>.

<sup>3</sup> Notably, after Umpire Jim Joyce publicly admitted making an incorrect call, costing Detroit pitcher Armando Galarraga a perfect game, Detroit Tiger fans cheered Joyce the following day when he returned to umpire another game. “‘When I walked down that tunnel and I got the reception I did from the Tiger fans---I had to wipe the eyes,’ Joyce said.” *Umpire Back in the Game after Bad Call*, CBNNEWS.COM (June 3, 2010), <http://www.cbn.com/cbnnews/us/2010/June/Umpires-Bad-Call-Upsets-Baseball-History/>.

<sup>4</sup> Erin E. McMurray, *‘I Expected Common Sense to Prevail’: Vowles v. Evans, Amateur Rugby, and Referee Negligence in the U.K.*, 29 BROOK. J. INT’L L. 1307, 1342 (2004).

<sup>5</sup> Shlomi Feiner, *The Personal Liability of Sports Officials: Don’t Take the Game Into Your Own Hands, Take Them to Court!*, 4 SPORTS LAW. J. 213, 220 (1997).

potentially place officials at risk for legal liability when a player, who suffers a concussion, files a claim, not only against a coach and team physician, but also the referee of the sporting event on the theory that the referee knew, or should have known, that the player was dazed and confused and should have not been allowed to re-enter the athletic contest. Legislation that is designed to protect players from concussions can have the effect of drawing referees directly into the line of fire.

For example, last year in Ohio, a bill intended to protect athletes from concussions required coaches or officials to remove a player from a game or practice if the athlete showed signs of a concussion or suspected of suffering from a concussion. Although the proposed legislation contains some immunity for coaches, Association of Coaches objected to the legislation, concerned that the net effect of the bill would be to increase legal liability for volunteers in youth sport organizations.<sup>6</sup> A number of states have already passed legislation that limits the liability of referees and/or defines assaults on sports officials as crimes.<sup>7</sup>

Although it has been argued that there should be a way to sue sports officials for “referee malpractice,”<sup>8</sup> courts are generally loathe to substitute their judgment for that of sports officials, and, in practice, exercise judicial intervention only when a referee’s conduct constitutes gross negligence, substantially departing from the necessary standard of officiating.

The requirement of gross negligence by a sports official, rather than mere negligence, makes all the more sense when considering that few individuals would be willing to officiate if their mere negligence would result in personal liability for injuries sustained by players.<sup>9</sup> There is no disputing that the acts of sports officials can cause serious injuries, especially to players. In

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<sup>6</sup> *YMCA Expresses Concern with Ohio Concussion Bill*, YMCA OF CENTRAL OHIO (April 21, 2012), [http://www.ymacolumbus.org/news-media/news/ymca\\_fights\\_concussion\\_bill\\_governing\\_coaches\\_refs](http://www.ymacolumbus.org/news-media/news/ymca_fights_concussion_bill_governing_coaches_refs).

<sup>7</sup> See, e.g. Cal. Penal. Code § 243.8; Miss. Code Ann. § 95-9; Okla. Stat. Ann. tit. 21, § 650.1; W. Va. § 61-2-15a.

<sup>8</sup> Jason Loomis, *The Emerging Law of Referee Malpractice*, 11 SETON HALL J. SPORT L. 73, 88 (2001).

<sup>9</sup> Kenneth W. Biedzynski, *Sports Officials Should Only Be Liable for Acts of Gross Negligence: Is That the Right Call?*, 11 U. MIAMI ENT. & SPORTS. L. REV. 375, 408 (1994).

a well-publicized incident from the NFL in 1972, All-Pro linebacker Charles “Bubba” Smith<sup>10</sup> was playing for the Baltimore Colts against the Pittsburgh Steelers in a pre-season game. While running towards the sidelines after an interception, seeking to block, Bubba Smith leaped over fallen players and struck the aluminum sideline marker, which was still stuck in the ground rather than having been allowed to fall. Bubba Smith sued the NFL and the game official.<sup>11</sup> After a mistrial, a second jury found for the defendant. However, the case is significant as it was the first time that a sports official could possibly have been found liable for negligence during an athletic event as the case was not dismissed against the game officials and the case was allowed to go to the jury.

The court found that any standard that would allow referees and umpires to be liable on a mere negligence approach would undoubtedly discourage those who volunteer or participate as referees, as they would be putting themselves at a greater legal and financial risk without receiving substantial, if any, monetary benefit.<sup>12</sup>

Thirty-six years later, in an analogous situation, University of Houston wide receiver Patrick Edwards broke his leg during a 2008 football game against Marshall University when he ran into a metal cart used by the Marshall University band, just after half time. The cart was a few feet behind the south end zone and Edwards ran into the cart while trying to catch a long pass.<sup>13</sup> In addition to the pain and suffering and \$30,000 in medical bills, Edwards faced the possibility that the compound fracture, which included having a rod inserted into his lower right leg, jeopardized his potential NFL career.

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<sup>10</sup> When he playing at Michigan State University, students sometimes chanted “Kill, Bubba, Kill” in an effort to encourage Bubba to sack the quarterback, something for which Bubba needed little encouragement. Matt Sheehan, *‘Kill, Bubba, Kill’: Remembering a Michigan State Legend*, BleacherReport.com (Aug. 4, 2011), <http://bleacherreport.com/articles/791521-kill-bubba-kill-remembering-a-michigan-state-legend>.

<sup>11</sup> Smith v. National Football League, No. 74-418 Civ. T-K (US D. Fla.).

<sup>12</sup> Michael Mayer, *Stepping In To Step Out of Liability: The Proper Standard of Liability for Referees in Foreseeable Judgment-Call Situations*, 3 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 54, 83 (2005).

<sup>13</sup> *Houston Wide Receiver Breaks Leg*, YOUTUBE (Oct. 29, 2008), <http://www.youtube.com/watch?v=wMB0oNzWSwM>.



Edwards sued Marshall University, Conference USA and the game referee, citing the NCAA football rules requiring that "all markers and obstructions within the playing enclosure shall be placed or constructed in such a manner as to avoid any possible hazard to players." The case settled for \$250,300.<sup>14</sup>

The requirement that officials see to it that the playing field is in safe condition is long standing. For example, in *Forkash v. The City of New York*,<sup>15</sup> plaintiff was injured during the semi-final game of a softball tournament for the championship of the Bronx, sponsored by the City Department of Parks and a newspaper, the New York Daily Mirror.

All players testified that the outfield contained shards of glass from numerous broken bottles and that, prior to the game, they had told a uniformed New York City Parks Department supervisor, who was also acting as umpire, that the field was not in suitable playing condition. The supervisor thereafter had the infield, not the outfield, cleared with a large broom. At the end of the first inning, players again complained to the supervisor/umpire that the outfield was not in playing condition but were told that the brooms had already been put away and that it was getting dark and that they should "just get out there and play."<sup>16</sup> The two outfielders (both 18 years old) did what they were told and continued to play.

In the fifth inning, when it had already grown quite dark, a ball was lined to the outfield. Plaintiff, running towards the ball, trying to make a play, tripped on a piece of glass in the field and collided with a second outfielder, who was also trying to catch the ball.

In the litigation that ensued, defendant The City of New York successfully moved to dismiss the complaint, stating there were no questions of fact for the jury. On appeal, a

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<sup>14</sup> *Former Houston Receiver Patrick Edwards Settles Lawsuit Against Marshall, C-USA*, SPORTINGNEWS.COM, (March 20, 2012), <http://www.sportingnews.com/ncaa-football/story/2012-03-20/former-houston-receiver-patrick-edwards-settles-lawsuit-against-marshall-c-usa>; *MU's Tab \$250,300 in Houston WR Suit*, THE CHARLESTON GAZETTE, April 27, 2012, <http://www.wvgazette.com/Sports/201204270163>.

<sup>15</sup> *Forkash v. City of New York*, 277 N.Y.S. 2d 827 (N.Y. App. Div. 1967).

<sup>16</sup> *Id.*

unanimous First Department reversed, stating that the jury should decide the questions. The court noted that the plaintiffs were of “impressionable years” and that their obedience to the umpire, which the court noted was “in baseball proverbially a dominating and inflexible figure,”<sup>17</sup> created an issue of fact for the jury to decide finding that the players may not have had pre-choice “when they knew that this obedience might disturb a sporting event sponsored and planned by the City and already in progress, might perhaps prejudice their team, perhaps harm their own reputations.”<sup>18</sup>

For an example of the courts applying a reasonableness standard when reviewing the decisions of a referee consider *Santopietro v. City of New Haven*,<sup>19</sup> where a softball game in an organized league in New Haven, Connecticut, went out of control. Players started cursing, taunting members of the other team, kicked a garbage can, threw bats on the ground, threw their gloves on the pitcher’s mound and engaged in other ungentlemanly behavior. Two defendants served as umpires for the game.

In the sixth inning, after hitting a fly ball to the outfield, one of the players intentionally flung his bat towards the backstop. The bat passed through the backstop and struck plaintiff, a spectator, in the head, fracturing his skull and causing other serious injuries. Plaintiff was not on the field of play and was seeing his son play another game being played on an adjacent field.

The two umpire defendants moved for a directed verdict in their favor, which was granted. On appeal, the dismissals were sustained. In affirming the dismissal, the appellate court noted that umpires have considerable discretion in how to deal with unruly behavior by players:

Shepard testified that, as an umpire, he had the duty to maintain control of the game to prevent harm to spectators, and that

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Santopietro v. City of New Haven*, 682 A.3d 106, 113-14 (Conn. 1996).

warnings constitute the primary means by which to maintain that control. Moreover, Brennan testified that umpires have the authority to suspend the game if necessary to keep order or to prevent harm to spectators.

Brennan and Shepard also testified that the decision of whether to impose discipline in any given instances of unruly behavior is a discretionary matter for the umpire. Brennan testified that the rule against unsportsmanlike conduct gives the umpire authority 'at his discretion, to disqualify any player who exhibits unsportsmanlike conduct in the judgment of the umpire.' He further testified that decision whether to take disciplinary action in response to loud swearing, throwing a glove or kicking dirt 'are umpire judgment or umpire discretion calls.' Shepard testified that the question of whether unruly behavior, such as using loud and abusive language, throwing a glove or kicking a garbage can, constitutes unsportsmanlike conduct will depend on the particular situation. Shepard further testified that the determination of whether unsportsmanlike conduct has occurred sometimes depends upon 'the whole tenor of what is going on, the language, plus the gloves, plus whether it's considered taunting or not.' Similarly, Brennan testified that 'there are a lot of variables that go into' determining whether unsportsmanlike conduct has occurred. Brennan further testified concerning the subjective nature of the decision whether to discipline a player for unsportsmanlike conduct. Specifically, he stated that 'the majority of the time you'll find that umpires are former players, and umpires will use the term unsportsmanlike conducts as some type of action which, had I been a player, I wouldn't like done to me, I wouldn't let another group do it to another player.'

We note that this testimony confirms what is the common understanding of the umpire's task. In the absence of exceptional circumstances, a softball umpire, when confronted with unruly behavior by a player that arguably constitutes unsportsmanlike conduct, faces a spectrum of discretionary options. At one end of the spectrum is taking no action; at the other end is ejection of the player or suspension of the game. In between are warnings and other appropriate disciplinary action. The umpire has discretion, within the spectrum, to respond to the offensive behavior in the manner that the umpire finds to be most appropriate in the given circumstances.

The trial court directed a verdict in favor of Brennan and Shepard reasoning, in part, that if a duty exists, expert testimony was required to establish a breach of that duty and that such a breach caused the harm to the plaintiffs. The trial court concluded further that the standard of care applicable to an umpire, whether that standard was breached, and whether that breach caused the

plaintiffs' injuries are not matters of common knowledge. We conclude that the plaintiffs were required to establish by expert testimony that the failure of Brennan and Shepard to act in the present case constituted a breach of duty, and that the plaintiffs' evidence did not satisfy that burden.<sup>20</sup>

The court noted that plaintiff had failed to produce expert testimony to establish that the applicable standard of care was breached by either or both of the two umpires. The court further found that the fact that the two umpires had improperly failed to act in response to two earlier incidents in the game (tossing a bat towards other bats and taunting) was insufficient to allow a jury to decide whether the umpires breached a duty to plaintiff.<sup>21</sup>

Similarly, in *Zajackowski v. Connecticut State Soccer Association, Inc.*,<sup>22</sup> plaintiff was playing in an adult soccer game in Stamford, Connecticut, as a member of the Polonia Stamford Soccer Team. While scoring a goal, plaintiff collided with the goalkeeper from the opposing team and sustained personal injuries. Plaintiff sued the Connecticut State Soccer Association, Inc. and the Amateur Soccer League of Connecticut but failed to sue the referee who supervised play. Nor did plaintiff sue the City of Stamford, which owned the playing field, or the goalkeeper who injured plaintiff.

Among the claims made by plaintiff was that defendants failed to properly supervise the officials provided to referee the game, failed to train the officials and permitted the game to continue while knowing it was not being properly officiated to prevent violent behavior and to prevent violation of the rules. In granting defendant's motion for summary judgment, the court noted that neither plaintiff, nor his manager, nor members of his team, complained to the referee regarding the condition of the playing field or any violent level of play. Nor did any player or

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<sup>20</sup> *Id.* at 114-15.

<sup>21</sup> *Id.* at 117-18.

<sup>22</sup> *Zajackowski v. Conn. Soccer Ass'n, Inc.*, 2010 WL 1052937.

coach request a referee stop the game. Accordingly, the court found that there was insufficient evidence of negligence regarding the acts taken, or not taken, by the referee during the game.

Where a referee acts reasonably, liability will not be imposed when a player suffers a personal injury in the course of an officiated contest. In *Pape v. State*,<sup>23</sup> claimant sustained personal injuries playing an intramural floor hockey game played in the gym of the State University of New York at Albany. After stealing the puck from an opposing player, a second player from the opposing team knocked the puck away from claimant. Thereafter, claimant grabbed the second player by the legs, just above the knees, and attempted to tackle him. In so doing, the second player lifted and fell on claimant's neck, fracturing claimant's cervical spine. At trial, the court found that the incident occurred when claimant attacked the second player and was not attributable to a lack of supervision and training by the referees. On appeal, a unanimous Third Department sustained the verdict below, finding that there was no basis to disturb the finding that the referees had committed a lapse of duty "and, in any event, concluded that the referee's officiating was not a proximate cause of the injury."<sup>24</sup>

When umpires seek to reduce the risk to participants, they often place themselves at risk to a lawsuit. One such example occurred in May 1995 during a Little League game in Colorado. A player was running from third to home. The umpire picked up a bat, which was lying in the path and tossed it away, striking 10 year-old Austin Wright, who was standing in the on-deck circle, waiting his turn to bat. The bat struck the boy in the face, shattering five of his permanent teeth and cutting his upper lip.

Nine years later, now an adult, Wright filed a lawsuit against the umpire who tossed the bat. The junior baseball league and the umpire argued that there was no liability because Wright's father had signed a waiver releasing the league from any claims of negligence or injury

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<sup>23</sup> 456 N.Y.S. 2d 863, 864 (3d Dep't 1982).

<sup>24</sup> *Id.*

to his son. Jefferson County District Judge Margie Enquist agreed, and dismissed the lawsuit prior to trial. In 2006, the Colorado Court of Appeals reversed the dismissal and stated that the case should proceed to trial since the waiver did not exempt those who acted grossly negligent, willfully or wantonly. Appellate Judge Daniel Taubman ruled that “[i]f a base runner had been approaching home plate, Doe’s conduct may have been negligent because he might have simply thrown the bat in a manner that a reasonably careful person under the same pressure to prevent an injury would not have done”<sup>25</sup>. The appellate court also noted that the conduct of an umpire may rise to legal liability if the umpire grabbed the bat and consciously decided to throw the bat into the on-deck circle.<sup>26</sup>

A noteworthy case involving a direct injury to a player caused by a referee occurred in 1999, during an NFL game between the Cleveland Browns and the Jacksonville Jaguars. Orlando “Zeus” Brown, a 6’7”, 350-pound offensive tackle for the Browns, suffered a significant, career-ending eye injury after being hit by the tossing of a referee’s weighted penalty flag. Although the NFL allegedly instructed its referees to weight penalty flags with popcorn kernels, the official in question instead weighted his with BBs.<sup>27</sup> In 2001, Brown sued the NFL for his personal injuries, seeking \$200 million and stating that the flag incident prematurely ended his career, but did not sue the referee who threw the flag. A claim could certainly be fashioned against the referee; instead, Brown sued the NFL for alleged negligently training of its

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<sup>25</sup> Howard Pankratz, *Lawsuit Against Umpire Back in Play*, THE DENVER POST, April 21, 2006, [http://www.denverpost.com/ci\\_3733210?source=rss](http://www.denverpost.com/ci_3733210?source=rss).

<sup>26</sup> *Id.*

<sup>27</sup> Adam Rubin, *Ref Blamed for Eye Injury*, N.Y. DAILY NEWS, March 30, 2001, <http://www.nydailynews.com/archives/sports/ref-blamed-eye-injury-article-1.915989..>

officials".<sup>28</sup> According to reports, Brown settled in 2002 for between \$15 million and \$25 million.<sup>29</sup>

Nor are situations where referees will be held accountable for personal injuries sustained in games they officiate limited to adult sports. As the New York Times reported last year in a front-page article, a Pop Warner pee wee game in Massachusetts between two teams, with players as young as 10 years old and none weighing more than 120 pounds resulted in so many injuries that one team no longer had the required number of players to participate, with 5 pre-adolescent boys sustaining head injuries.<sup>30</sup> The officials did not intervene. Some parents accused the other team's players of deliberately trying to hurt their sons and one coach accused the other coach of not properly training his team and jeopardizing them by not forfeiting. The league officials suspended both coaches for the rest of the season and the referees who oversaw the game were barred from officiating any more contests in the league.

An October 2009 high school soccer match in Michigan resulted in a 14-year-old player nearly losing his leg as a result of injuries sustained from being kicked by an opposing player. Suit was filed against the two referees on the theory that they had failed to control overly aggressive play. Close to forty depositions were taken, including testimony from teammates and spectators. The referees contended that they did not see the player (who was also a defendant) who kicked plaintiff engage in aggressive behavior and that with only two referees, they could not cover the entire the field. Ultimately, the case settled, on confidential terms, for \$300,000.<sup>31</sup>

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<sup>28</sup> Darryll M. Halcomb Lewis, *An Analysis of Brown v. National Football League*, 9 VILL. SPORTS & ENT. L.J. 263, 264-65 (2002).

<sup>29</sup> Daniel E. Slotnik, *Orlando Brown, Who Sued N.F.J. Over Errant Flag, Dies at 40*, N.Y. TIMES, Sept. 23, 2011, [http://www.nytimes.com/2011/09/24/sports/football/orlando-brown-who-sued-nfl-over-errant-flag-dies-at-40.html?\\_r=0](http://www.nytimes.com/2011/09/24/sports/football/orlando-brown-who-sued-nfl-over-errant-flag-dies-at-40.html?_r=0).

<sup>30</sup> Ken Belson, *A 5-Concussion Pee Wee Game Leads to Penalties for the Adults*, N.Y. TIMES, Oct. 23, 2012, <http://www.nytimes.com/2012/10/23/sports/football/pee-wee-football-game-with-concussions-brings-penalties-for-adults.html>.

<sup>31</sup> Douglas Levy, *Suit Over Soccer Injuries Settled for \$300K, Saginaw Attorney Uses Referee Rules for Argument*, MICH. LAW. WEEKLY, May 2013.

In *Aboubakr v. Metropolitan Park District*,<sup>32</sup> a baseball game between two teams of eighteen-year olds, while highly competitive, also included taunts and cursing. At one point, the home plate umpire warned the teams to calm down and to stop cursing or he would end the game. Nevertheless, the verbal exchanges continued. An assistant coach for one team allegedly enticed his players to engage in taunting; one player was ejected directly after a comment to the other team's bench; and another player (a pitcher) who argued against balls and strikes was also ejected.

The game ended, the teams engaged in the traditional handshake, which, while well intended, turned out to be a bad idea since, during the handshake, a fight broke out between two opposing players. After the fight was quickly broken up, one manager took his team off to left field (literally) for a customary after-game talk.

At the end of that meeting, the opposing teams started fighting and one player picked up a baseball bat and threw it towards the opposing team, striking plaintiff in the eye, causing serious injuries. By that time, the game had concluded and the field had been cleared for approximately 15 minutes before the incident occurred. The two umpires assigned to the game had already collected the bases and were standing safely across the street, out of harm's way.

The injured player filed a lawsuit against the park district, the umpires, coaches and the player who threw the bat. The defendants, other than the player responsible for the accident, moved for summary judgment, and the trial court dismissed the claim. On appeal, the court affirmed.

With respect to the umpires, plaintiff argued that they had breached their duty to adequately control the game, specifically the verbal taunting between the teams, thereby allowing the situation to escalate into physical violence. Plaintiff contended that the umpires

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<sup>32</sup> *Aboubakr v. Metro. Park Dist. of Tacoma*, 94 Wn. App. 1044 (1999).



should have taken greater steps to control the situation, including stopping the game, in order to have prevented the incident from taking place.

The appellate court noted that umpires in athletic events can only be held liable if the player who committed the act had a “known propensity towards violence or there was a total absence of supervision”.<sup>33</sup> The court found no evidence was presented to support plaintiff’s claim that the player in question had a known propensity for violence but that the umpires were aware that he posed any physical harm. Nor was there any evidence to establish that the player had fought with other boys in the past who had a reputation for violence. Although, prior to the bat-throwing incident, the player in question had wrestled with one of the opposing players, the court found that “the evidence reveals nothing about Streets’ behavior to suggest he would throw a baseball bat at someone with malicious intent. Moreover, Aboubakr admitted that he did not anticipate anything more happening once Emerson walked Streets across the field. Thus, Aboubakr failed to show that the umpires or Emerson had any knowledge of any propensity for violence by Streets that should have prompted them to take more stringent precautions.”<sup>34</sup>

Although plaintiff argued that the umpire should have stopped the game in order to prevent any possible physical fight, the court found that stopping the game during play could have perhaps fanned the flames could have increased the danger of physical harm. The court concluded, “there is simply no way of knowing whether the umpires could have done anything to prevent the bad feelings between Streets and Carter from boiling over. Aboubakr also suggests that the umpires could have stopped the game during play, but such an act may well have increased the tensions rather than diffuse them.”<sup>35</sup>

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<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

Regrettably, *Aboubaker* is not the only instance where the post-game handshake resulted in violence, rather than sportsmanship. In *Talasazan v. Northridge Arena Soccer League, Inc.*,<sup>36</sup> plaintiff had finished playing a soccer match when he went to shake the hands of his opponent, his opponent punched him and a full-scale brawl broke out where plaintiff was struck in the eye and lost consciousness.

In the lawsuit that was later brought against the soccer league, plaintiff established that security guards were present during most of the games he previously played at the league's arena. On at least three occasions, he saw the security guards intervene when players fought or argued, successfully preventing those situations from escalating. However, on the night in question, plaintiff saw no security guards and records obtained from the soccer club showed that security guards were not paid for the date in question.

In denying the motion for summary judgment, the court pointed out that presence of the security guards often were provided and "that their presence was adequate to stop fights before they got out of hand".<sup>37</sup> The court concluded that the absence of security guards on the date in question was a material issue of fact as to whether adequate safeguards were taken which would have prevented the assault from taking place:

The question posed by *Talasazan* is why the guards were not present the night he was injured. Respondents have never addressed that question and we are left to speculate why guards were present some nights and not others. Given the statistical frequency of fights and the absence of any such explanation by the respondents, we believe it was highly foreseeable that fights could occur at any game, making the need for guards at every game just as foreseeable.<sup>38</sup>

Despite the fact there would appear to be a good idea for referees to be present during the traditional post-game handshake between players, the Massachusetts State Basketball Officials

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<sup>36</sup> *Talasazan v. Northridge Arena Soccer League, Inc.*, No. B153563, 2002 W.L. 3170287, at 1-2 (Cal. Ct. App. Dec. 4, 2002).

<sup>37</sup> *Id.* at 3.

<sup>38</sup> *Id.*

Associations filed a lawsuit in 2008 seeking a temporary injunction challenging the ruling by the Massachusetts Interscholastic Council that referees in all team sports remain at the competition site until after the handshake ceremony has concluded.

At a hearing in Worcester Massachusetts, Superior Judge Christen M. Roach rejected the claim by the referees, as being present during the traditional handshake; the referees may be subject to physical harm. At the hearing arguments in a courtroom filled with referees, high school administrators and officials, the court ruled that the referee organization had “not met their burden to demonstrate the required level of imminent, non-speculative, substantial, and irreparable harm to their physical, reputation, or financial interest.”<sup>39</sup> The referee organization argued that the rule would put its members in danger of fans and coaches who could be upset at calls during the game. However, the presence of the officials during the handshake might prevent instances such as those in *Aboubaker* and *Talasazan*, discussed above.

The role of a referee in enforcing the rules, especially those related to safety, In *Karas v. Strevell*,<sup>40</sup> during an ice hockey game, plaintiff was checked from behind by two opposing players and struck his head against the boards, resulting in serious head and neck injuries. Checking from behind was in violation of the Amateur Hockey Association Illinois Inc., of which both teams were members. The hockey association required each player to have the word “STOP” sewn on the back of his jersey in order to enforce the rule against body-checking from behind.

Plaintiff filed a lawsuit against the two opposing players, their team, the hockey association and the officials who refereed the game. With respect to the claim against the referees, the Illinois High Court noted that rules violations are an inherent, anticipated and

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<sup>39</sup> Dave Nordman, *Referees Lose on Handshake Rule in Court*, BOS. GLOBE (Dec. 12, 2008), [http://www.boston.com/sports/schools/football/articles/2008/12/12/referees\\_lose\\_on\\_handshake\\_rule\\_in\\_court/](http://www.boston.com/sports/schools/football/articles/2008/12/12/referees_lose_on_handshake_rule_in_court/).

<sup>40</sup> *Karas v. Strevell*, 884 N.E.2d 122, 125 (Ill. 2008).

unavoidable risk in participating in the sport. The court pointed out that plaintiff did not allege that the referees completely failed to enforce the rules against body checking from behind and noted that the requirement that players wear the “STOP” warning showed an enforcement of the rule. Especially since refereeing involves “subjective decision-making that often occurs in the middle of a fast-moving game,” applying a negligence standard to those decisions “would open the door to a surfeit of litigation that would impose an unfair burden on organizational defendants.”<sup>41</sup> The court stated, “It is difficult to observe all the contact that takes place during an ice hockey game, and it is difficult to imagine activities more prone to second-guessing than coaching and officiating.”<sup>42</sup>

In *Carabba v. Anacortes School District No. 103*,<sup>43</sup> plaintiff, a high school student, sued for serious injuries sustained while participating in a high school wrestling match. Specifically, plaintiff alleged that the referee failed to adequately supervise the contestants by permitting his attention to be diverted from the actions of the match, thereby allowing an illegal and dangerous hold to be applied, and failing to cause that hold to be broken, resulting in personal injuries. Specifically, near the end of the third round of the match between two boys wrestling in the 145-pound-weight division, one boy was applying a Half-Nelson, trying to roll plaintiff into a pin position. The referee, noticing a separation between the two mats, moved to close the gap between the mats to protect the contestants so they would not roll off the main mat and onto the bare floor. In so doing, his attention was diverted from the boys when one of the contestants applied what many of the eyewitnesses saw as a Full Nelson. As the round ended, plaintiff was unable to move, as a major portion of his spinal cord had been severed, resulting in permanent paralysis of all voluntary functions below the level of his neck.

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<sup>41</sup> *Id.* at 137-38.

<sup>42</sup> *Id.* at 137.

<sup>43</sup> *Carabba v. Anacortes Sch. Dist. No. 103*, 435 P.2d 936, 941-58 (Wash. 1967) (en banc).

The case proceeded to trial and 38 witnesses testified during the 20 days of trial. The case was submitted to the jury solely on the issue of the referee's negligence. The trial court ruled that the referee was acting as the agent of the school districts when he refereed during the match. The jury returned a verdict for defendants and the plaintiff appealed. On appeal, the appellate court reversed the judgment in favor of the school district and remanded the matter for a new trial, finding that the school district, through the actions/inactions of the referee owed a duty to the student participants. Accordingly, any negligence to the referee was imputed to the defendant school district.

Although the allegations against the referee may sound appealing when reading a complaint drafted with passion, they have to be supported by the facts, which may not always be the case. In *Sullivan v. Quiceno*,<sup>44</sup> plaintiff was severely injured during a youth soccer match when a fight broke out between the teams and one player suddenly, without warning, assaulted plaintiff. In addition to suing the assaulting player, plaintiff also sued the Connecticut Junior Soccer Association, Inc., alleging that plaintiff had, prior to the assault, expressed his concerns to the referee that the player in question was violent and likely to harm plaintiff and that the referee had failed to respond adequately.

In granting the motion to dismiss that complaint, the court specifically found that plaintiff conceded at his deposition that he never told the referee that the player had allegedly assaulted him and did not tell the referee to take steps to control the game. Since the court found that plaintiff's "testimony [was], therefore, inconsistent with his allegations that he 'verbally expressed concern to the referee that [the defendant] is violent and likely to cause harm to the plaintiff or another party.'"<sup>45</sup>

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<sup>44</sup> *Sullivan v. Quiceno*, 44 Conn. L. Rptr. 338 (Conn. Super. Ct. 2007).

<sup>45</sup> *Id.*

Lawsuits against referees are not restricted to the United States. Earlier this year, a physiotherapist who went onto the field during a rugby match in Australia to tend to an injured player, was struck by other players as play continued while she was still on the pitch. Plaintiff suffered serious injuries, including a crushed vertebra, a \$30,000 medical bill for spine surgery, claimed an 80% loss of her income.<sup>46</sup> The suit included as a defendant the referee, for allowing play to continue while an “obviously injured” player was lying on the ground nearby. The referee denied that he was under an obligation to stop play by blowing his whistle and stated that he did not regard the condition of the injured player to be serious.<sup>47</sup> That suit is presently pending.

Rugby is, indeed, a contact sport. In April of this year, a study in South Africa noted the rise of personal injury claims among youth rugby players in that country. The study questioned whether, if a 13-year old plays in a rugby game intended for those under the age of 11 and the older player injures a younger player from the opposing team, the referee could be held liable for allowing the 13-year old to play.<sup>48</sup>

In May of this year, a discussion in Australia concerned the potential liability of a referee for not sending a player off the field in a rugby match after repeated incidents of serious foul play, should that player remain on the field and injure another player. In response to this situation, the director of referees of the National Rugby League (“NRL”) “brushed off questions over on-field official’s liability in cases of serious injuries, “stating “[t]he NRL’s got insurance... the refs are covered.”<sup>49</sup>

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<sup>46</sup> Stephanie Gardiner, *Physio Sues After Collision With Players*, SYDNEY MORNING HERALD (May 30, 2013), <http://www.smh.com.au/nsw/physio-sues-after-collision-with-players-20130530-2ndih.html>.

<sup>47</sup> *Id.*

<sup>48</sup> *Personal Liability Claims During Rugby Season*, BIZCOMMUNITY.COM (Apr. 23, 2013), <http://www.bizcommunity.com/Article/196/385/92423.html>.

<sup>49</sup> Mike Colman, *Allowing a Dangerous Player to Stay on the Field Raises Questions Over Duty of Care Issues for Referees*, DAILY TELEGRAPH.COM.AU (May 3, 2013), <http://www.dailytelegraph.com.au/sport/nrl/allowing-a->

It is hardly the case that referee liability arises only in contact sports. This July, the front page of The New York Times reported that as many as 60 judges in the tasteful sport of rhythmic gymnastics were guilty of cheating when grading contestants in world class competition.<sup>50</sup> While some may question whether rhythmic gymnastics is truly a sport,<sup>51</sup> the International Gymnastics Federation (“F.I.G.”) and its participants take their “sport” seriously. The alleged evidence of cheating was more typical of a high school examination, with notes written on the palms of the hands, answers on the same test paper written in at least two different handwriting styles, blatant copying, and identical scores which the F.I.G. found to be “not possible.” In Romania, test takers copied answers from one another’s papers, including mistakes; in Moscow, 114 answers were changed on dozens of tests; and in Spain, 257 answers were changed.<sup>52</sup> Nonetheless, the F.I.G., in August, one month later, cleared dozens of judges’ accused of cheating because there was “no direct evidence of cheating,”<sup>53</sup> although the investigation also concluded that some of the scores “would only have occurred by cheating.”<sup>54</sup> Plainly, problems with referees not following the rules can take place in any sport, ranging from those involving full contact to those where contestants perform with the soundtrack of classical music playing, using hoops, holding balls, sporting ribbons and wearing sequined outfits. In a sport where the

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dangerous-player-to-stay-on-the-field-raises-questions-over-duty-of-care-issues-for-referees/story-e6f9x9-1226634274564?from=public\_rss.

<sup>50</sup> Mary Pilon, *Judges of a Elegant Sport, Caught in a Clumsy Cheating Scandal*, N.Y. TIMES, July 17, 2013, at A1, available at [http://www.nytimes.com/2013/07/17/sports/olympics/judges-of-a-graceful-sport-caught-in-a-clumsy-cheating-scandal.html?\\_r=0](http://www.nytimes.com/2013/07/17/sports/olympics/judges-of-a-graceful-sport-caught-in-a-clumsy-cheating-scandal.html?_r=0).

<sup>51</sup> “Rhythmic gymnastics is a much-maligned competition that every four years tends to elicit the same reaction from American viewers — That’s a sport? — as they watch pint-size women swirl acrobatically with hoops and ribbons. With its sparkles and hair scrunchies, rhythmic, as it is called by its followers, can look more like modern dance-meets-small-town circus than a traditional Olympic competition.” *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Mary Pilon, *Rhythmic Gymnastics Judges Cleared*, N.Y. TIMES, Aug. 27, 2013, at B14, available at <http://www.nytimes.com/2013/08/27/sports/panel-clears-rhythmic-gymnastics-judges-suspected-of-cheating.html>.

<sup>54</sup> *Id.*

result is dependent on judging, any controversy connected to the legitimacy of the scoring only brings about more questions, and more potential litigation.<sup>55</sup>

Although there is no reported decision yet holding a sports official liable for economic losses resulting from an incorrect application of in-game rules, with the increased use of instant replay technology, the foundation may be laid to allow a court to find that a referee's decision was "grossly negligent."<sup>56</sup>

Non-participants interest in sporting events is high. Consider college basketball. Few sporting events in the United States create as much passion as college basketball. In 1982, during the final seconds of a Big Ten basketball game between the University of Iowa and Purdue, veteran referee Jim Bain called a foul on an Iowa player, awarding two free-throws to Purdue, resulting in a Purdue victory. The loss eliminated Iowa from the Big Ten championship.

A few days after the game, John and Karen Gillespie, who operated "Hawkeye John's Trading Post," a store in Iowa city specializing in University of Iowa sports memorabilia, began marketing T-shirts showing a man with a rope around his neck captioned, "Jim Bain Fan Club." Bain then sued the Gillespies for injunctive relief and damages. Perhaps thinking the best defense is a good offense, or perhaps hoping for a sympathetic view from the "home" Iowa courts, the Gillespies counterclaimed, allegedly that his conduct in officiating the game was below the standard of confidence required of a referee. For money damages, the Gillespies claimed that the misconduct by Bain caused Iowa to lose and, because Iowa was eliminated from the Big Ten championship, the Gillespies lost a potential marketing opportunity for memorabilia, recognizing Iowa as the Big Ten champion.

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<sup>55</sup> Sam Gardner, *Rhythmic Gymnastics Hit with Scandal*, MSN.FOXSPORTS.COM, (July 18, 2013), <http://msn.foxsports.com/olympics/story/rhythmic-gymnastics-officials-cheating-scandal-071813>.

<sup>56</sup> S. Christopher Szczerwan, *Tackling Instant Replay: A Proposal To Protect The Competitor Judgment Of Sports Officials*, 6 VA. SPORTS & ENT. L.J. 277, 281 (2007).



The trial court granted summary judgment dismissing the counterclaim. On appeal, the dismissal was affirmed by the Iowa appellate court in *Bain v. Gillespie*.<sup>57</sup> The court held that the referee owed no duty to the Gillespies' business interest:

Referees are in the business of applying rules for the carrying out of athletic contests, not in the work of a marketplace for others. In this instance, the trial court properly ruled that Bain owed no duty. Gillespies has cited no authority, nor have we found any, which recognizes an independent court for 'referee malpractice'. Absence corruption or bad faith, which is not alleged, we held no such tort exists.<sup>58</sup>

If anything, fans have even a greater interest in their teams than those that market their merchandise. After the New England Patriots and coach Bill Belichick were caught in the 2007 "Spygate" scandal, a New York Jets season ticket holder filed a federal lawsuit, *Mayer v. Belichick, et. al.*, against the Patriots, Belichick and the NFL, taking the case all the way to the U.S. Supreme Court. The plaintiff (who was also a lawyer) argued that a class action suit should be allowed on the basis that large sums of money were spent by fans to watch professional football games that were essentially rigged. The suit was dismissed by the United States District Court of New Jersey (Judge Brown), affirmed by the Third Circuit Court of Appeals<sup>59</sup> and the Supreme Court declined to hear the appeal.<sup>60</sup> In affirming the dismissal, the third circuit specifically noted:

At the very least, a ruling in favor of Mayer could lead to other disappointed fans filing lawsuits because of 'a blown call' that apparently caused their team to lose or any number of allegedly improper acts committed by teams, coaches, players, referees and *umpires*, and others. This Court refuses to countenance a course of action that would only further burden already limited judicial resources and force professional sports organizations and related individuals to expend money, time, and resources to defend against such litigation *See, e.g., Bickett*, 472 N.Y.S. 2d at 883 ('Buffalo News Sports Editor, Larry Felser, in his column of May 30, 1983

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<sup>57</sup> *Bain v. Gillespie*, 357 N.W.2d 47, 48-50 (Iowa Ct. App. 1984).

<sup>58</sup> *Id.* at 49.

<sup>59</sup> *Mayer v. Belichick*, 605 F.3d 223, 225 (3d Cir. 2010).

<sup>60</sup> *Supreme Court Won't Hear 'Spygate'*, ESPN.COM, Mar. 7, 2011, <http://sports.espn.go.com/nfl/news/story?id=6189497&src=mobile>.

warned of the dire consequences of permitting such a theory of recovery to exist, 'If the fan (plaintiff) wins against the Bills, every lawyer in Western New York could use the Precedent to finance a vacation to the Riviera'). Under the circumstances, public policy considerations evidently weigh against Mayer and his various claims. *See, Garifine*, 461 A.2d at 1137-38 (Emphasis added).<sup>61</sup>

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<sup>61</sup> *Mayer v. Belichick*, 605 F.3d 223 (3d Cir. 2010).

**Conclusion:**

Let's take a historical perspective: In 1940, during a football game between Cornell, entering the game with an 18 game unbeaten streak, Dartmouth, the home-team underdog, led 3-0 and field conditions made it difficult for either team to move the ball.<sup>62</sup> Late in the fourth quarter, Cornell had a first down at the Dartmouth six-yard line. Cornell failed to score on four downs. Nevertheless, the linesmen signaled Cornell still had possession, and the referee agreed. On the next play, with nine seconds on the clock, Cornell scored on a touchdown pass and won the game 7-3 with the benefit of a "fifth down." The loss cost Cornell a possible national title.

After the game was over, officials discovered their error after reviewing the game film.<sup>63</sup> The following day, the Cornell players, football coach acting athletic director and president agreed that Cornell should send a telegram to Dartmouth offering to forfeit the game. Dartmouth accepted the forfeit.<sup>64</sup>

In 1990, fifty years later, during a football game between Colorado University and Missouri University, underdog Missouri led 31-27 late in the fourth quarter. As Colorado drove near the Missouri goal line, the officiating crew failed to flip the down marker following second down. Colorado was again stopped short of the end zone on third down. On the following play (it was actually fourth down but it was marked by the officials as third down), Colorado was again stopped short of the goal line. The quarterback spiked the ball, stopping the clock with

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<sup>62</sup> 1940 Dartmouth v. Cornell—The Five Down Game, COLLECTIBLEIVY.WORDPRESS.COM (Jan. 4, 2009, 1:26 AM), <http://collectableivy.wordpress.com/2009/01/04/1940-dartmouth-v-cornell-the-five-down-game/>.

<sup>63</sup> To view footage of the "fifth down", see: CBS, *The Infamous 5<sup>th</sup> Down: Cornell v. Dartmouth*, YOUTUBE (Oct. 25, 2006) (video originally from CBS).

<sup>64</sup> Interestingly, the Cornell president, Edmund Ezra Day, was a Dartmouth alumnus. He confidently told the Cornell team, "Fellas, I'm a Dartmouth graduate. I know Dartmouth and it won't be long before we get a return telegram saying 'no Cornell, you won it on the field, and that's the way it should be.'" Dartmouth never sent that telegram, choosing instead to accept the forfeit. ROBERT J. SCOTT & MYLES A. POCTA, HONOR ON THE LINE: THE FIFTH DOWN AND THE SPECTACULAR 1940 COLLEGE FOOTBALL SEASON (2010).

two seconds remaining. The referees failed to award the ball to Missouri and, on the final play of the game, Missouri scored, “winning” the game.<sup>65</sup>

For twenty minutes thereafter, the Big Eight officiating crew conferred as to whether the score counted. During that delay, radio and television announcers noted that Colorado had scored with the help of the additional play and the referee was so advised. Nevertheless, the referee ruled that the touchdown would stand.

In contrast with the reaction at Cornell following the Cornell-Dartmouth game of 1940, Colorado football coach Bill McCartney<sup>66</sup> stated that he had considered forfeiting the game but decided against it because “the field was lousy,” thereby blaming the home team Missouri for the condition of the field, linking those conditions to accepting the fifth down.<sup>67</sup>

Colorado went on to claim the 1990 National Championship. The seven-man Big Eight Conference officiating team was suspended indefinitely. The reaction in Missouri was predictable.<sup>68</sup> It was not until 1998, eight years after the game and four years after McCartney retired as Colorado head football coach, that he admitted making mistakes and being “saddened” by the fifth down fiasco.<sup>69</sup>

We may not have to wait another 50 years for another “fifth down” situation. Should it occur, it remains to be seen whether the reaction of the participants will be closer to those of a

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<sup>65</sup> To view the final series of plays between Colorado and Missouri, including this “fifth down”, see: [Title of video as it appears on Youtube], YOUTUBE [(DATE POSTED TO YOUTUBE)]

<sup>66</sup> In an interesting parallel to Cornell’s Edmund Day, a graduate of Dartmouth, Colorado’s coach Bill McCartney was a graduate of Missouri. David Plati, *Bill McCartney to Enter College Football Hall of Fame* (May 7, 2013), CU BUFFS, <http://www.cubuffs.com/ViewArticle.dbml?ATCLID=207574760>

<sup>67</sup> Stewart Whitehair, *Colorado Football: CU vs. Missouri 1990 (The Fifth Down Game)* BLEACHER REPORT (June 23, 2008), <http://bleacherreport.com/articles/31980-colorado-football-cu-vs-missouri-1990-the-fifth-down-game>. This is another parallel to the 1940 Cornell-Dartmouth game since, in both instances, the field conditions of the home team affected the outcome.

<sup>68</sup> Dave Matter, *Fifth Down is a Play That Will Live In Infamy*, COLUM. DAILY TRIB., Oct. 6, 2010, available at [http://www.columbiatribune.com/sports/mu\\_football/fifth-down-is-a-play-that-will-live-in-infamy/article\\_1e26bb97-96a9-5be8-b658-e51dedd73f89.html](http://www.columbiatribune.com/sports/mu_football/fifth-down-is-a-play-that-will-live-in-infamy/article_1e26bb97-96a9-5be8-b658-e51dedd73f89.html).

<sup>69</sup> : “‘The single biggest problem was me’, McCartney said in a recent interview. ‘There’s an old rule of thumb whenever you’re competing. When you win, be humble. In all candor, I wasn’t humble in victory . . . I stood on the sidelines during the game and said to myself-not to anyone else-if we win this game, I’m going to talk about the field, but if we lose, I’m not going to say anything.’” John Henderson, *No Downplaying CU’s Fifth Down at Missouri*, DENVER POST, Oct. 6, 2010, available at [http://www.denverpost.com/ci\\_16263692](http://www.denverpost.com/ci_16263692).

1940 Cornell-Dartmouth game or the 1990 Colorado-Missouri game. It would hardly be surprising if lawsuits are filed by the universities (think of the lost revenue from bowl games which the school lost with a lower BCS standing), players (who, not playing in that bowl game, will miss out on the opportunity to showcase their talent for the NFL), fans (who need little reason to sue other than the belief that their school has been wronged) and possibly even mascots and cheerleaders who again will miss out on television exposure because their team is either not “bowling” or is going to a less prominent bowl. Indeed, matters might not even proceed to that point since fans, athletes watching the game on TV or checking their Smartphones in the stadium, would immediately text, email and call in efforts to notify the officials and their team of the mistake, much like viewers at home sought to contact tour officials to complain that Tiger Woods had taken an illegal drop in a golf tournament.<sup>70</sup>

The fifth down example is illustrative of the change in the interpretation of equity, fairness and self-responsibility over the many of the past decades. The standard of gross negligence is consistent with the concept that the sports official has an elevated status of an impartial arbiter to be insulated from liability. Additionally, current case law has not put an obligation upon the sports official of being a “safety bubble.” Lastly, the sports official is not being held liable for the control of the game whereby plaintiffs will fashion their case after the fact with self serving and manipulated facts that minimize the poor behavior of participants who in fact are the ones who have performed the tortious behavior that run afoul of proper behavior in the first instance, and the rules of the game in the second instance.

It is in everyone’s interest that referees and umpires may fully focus on the actions on the field, without having their attention and concentration diverted by concerns over future lawsuits. For the most part, service as a referee is more a labor of love than a full time profession. As has

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<sup>70</sup> Tony Manfred, *Tiger Woods is in Another Illegal Drop Controversy After Winning the Players Championship*, BUSINESS INSIDER, May 13, 2013.

been observed, these are men and women who love their sport and usually once were athletes themselves and want to stay connected and active in sports. They may be without the ball, but they are still running up and down the court, and are both integral and necessary to the game and to the fabric of sport.<sup>71</sup>

It is therefore important that the law continue to allow referees to do their job, with the players performing, the fans rooting, and the referees officiating without the unsettling prospect of potential litigation changing the basic fabric of sporting events. This can best be done by protecting referees by permitting liability only for intentional or gross wanton actions; negligence in refereeing a sporting event should not be allowed to give rise to legal liability. As the old saying goes, "Let's just play ball."

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<sup>71</sup> Earl Gustkey, *Taking Aim At The Stripes: Referees Lately Are Becoming The Target Of Many More Suits*, L.A. TIMES, Mar. 4, 1986, available at [http://articles.latimes.com/1986-03-04/sports/sp-15133\\_1\\_sports-officials](http://articles.latimes.com/1986-03-04/sports/sp-15133_1_sports-officials).