2988 - Football Coach Negligence - A high school football player alleged his strength coach required him to overexert himself by performing 150 repetitions of a 700 pound leg press -- in the process of trying to keep up, plaintiff purportedly sustained a disc injury

Taylor v. Trinity High School, 02-8689
Plaintiff: Paul V. Hibberd, *Pregliasco Straw Boone*, Louisville
Defense: John G. Crutchfield and William S. Bowman, *MacKenzie & Peden*, Louisville
Verdict: Defense verdict on liability
Circuit: **Jefferson**, J. Abramson,
5-19-05

In the spring of 2002, Jonathan Taylor, then age 16, was eager to play football for a perennial power, Trinity High School. On 5-22-00, he participated in a voluntary weight-lifting program. The prior fall, Taylor had played on the junior varsity team -- he longed to wear the green varsity uniform.

To do that, he hoped to impress Robert Maddox, the team's strength and conditioning coach. Taylor remembered the coach told him that if wanted to play in the fall, he needed to do 150 repetitions on the leg press at 700 pounds. Taylor gave it his best shot and attempted the task.

However during the process, he suffered a low-back injury. He subsequently followed with his family doctor, ultimately treating with Dr. Steven Glassman, Orthopedics, Louisville. Glassman identified an L4-5 disc injury and linked it to overexertion during the leg press. Plaintiff's medicals were $3,900 and he sought $250,000 for suffering. [Taylor did not play football again after this incident and is now a student at UK.]

Taylor sued the school in this lawsuit and alleged negligence by Maddox in supervising his weightlifting. The liability theory alleged the coach forced him to lift too much weight, thereby violating the football coach standard of care.

Trinity first made a procedural argument in defending the case. It argued that as Taylor was now 16 years of age, school attendance was not compulsory -- the theory went on that because his attendance wasn't compulsory, the school didn't owe him a duty. The argument was rejected.

Defending on the merits, Coach Maddox denied fault and in fact, didn't even remember the incident -- conversely, while not remembering anything, Maddox went on to explain that each athlete had a personalized program that was safe and effective for strength training. Trinity also pointed to proof from Matt Howard, Taylor's training partner on the day in question. Howard also had no memory of the day or an injury-causing event. From this proof, there was a suggestion by Trinity that Taylor was never injured in the first place.

In this unusual case, the court's instruction defined Maddox's duty as that of the reasonably prudent teacher supervising weightlifting. The jury rejected the claim by a 10-2 count and thus didn't reach plaintiff's duties, apportionment or damages. No judgment was entered a week following the trial.

3299 - Breach of Football Contract - A high school football player alleged he was induced to attend U of L by Coach Petrino's promise he would receive a scholarship after playing as a walk-on for a year – Petrino flatly denied the promise

Holifield v. Petrino, 04-0487
Plaintiff: Scott White, *Morgan & Pottinger*, Louisville
Defense: Craig C. Dilger and Thomas M. Williams, *Stoll Keenon Ogden*, Louisville
Verdict: Defense verdict on liability
Circuit: **Jefferson**, J. Montano,
3-30-06

As 2002 began, Ryan Holifield of Jackson, TN, was hoping to play college football – a lineman, he stood a solid 6-foot-5. He had enrolled at Fork Union Military Academy in Virginia to hone his skills. Holifield's dream of bigtime college football appeared to be coming true – beyond the dream, it was at his dream school, U of L, where his father had attended. [Father Mark is a dentist.]

On 1-26-03, Holifield attended a recruiting event in Louisville. He was lodged at the Seelbach, football staff wining and dining the prospect. Holifield also remembered meeting the feminine face of Louisville football, the Louisville Ladies, a group of co-eds who welcome recruits to the college experience.

Coach Bobby Petrino told Holifield he would welcome him at U of L as a walk-on. Holifield resisted – he wanted a scholarship. Returning back home, Petrino called and told Holifield he could attend as a preferred walk-on. If Holifield enrolled, he was promised a scholarship after the first semester and certainly by the end of the year.

By Holifield's reckoning, that represented either a 3 ½ or 3 year full scholarship. He signed the dotted line and enrolled in the fall of 2002. That December as the football Cardinals lined up to play in the GMAC Bowl in Mobile, Petrino dropped a bomb on Holifield – he was told there was no scholarship for him.

Holifield left school and transferred to Middle Tennessee State University (MTSU). While at first hoping to play football at MTSU, injuries ended his career. Holifield finished at MTSU as a regular student.

From this set of facts, Holifield sued Petrino and alleged a promissory estoppel theory. That is, Holifield was lured to U of L by the promise of a scholarship after a year – proof of the promise came from both Holifield's father and his Fork Union football

coach. [The promise was not made directly to the player.] In valuing damages, Holifield sought $121,676, his measure of a 3 ½ year full scholarship to Louisville.

Petrino and the U of L Athletic Association defended on several counts. The first was to deny there was ever any promise. In support of the notion there wasn't a promise, Petrino explained that in the football cartel that is the NCAA, scholarships are only promised for one year – their renewal is at the discretion and grace of the coach. Thus, Petrino explained, it would have been impossible for him to promise a three-year deal when no such thing exists.

Damages were also diminished, Petrino noting that in relying on the promise, Holifield gave up nothing. While sending out football tapes to 300-plus schools, he didn't receive a single scholarship offer. U of L thought Holifield was at best, a walk-on candidate and nothing more. His dream of playing D-1 football was described not as a reality, but rather a fantasy harbored by his father.

Holifield countered that he was highly recruited, other schools discontinuing their interest when Holifield committed to U of L, the commitment being based on Petrino's promise. That Holifield was a good prospect, he also cited letters sent to him by U of L that indicated he was a "top prospect."

The verdict on the promissory estoppel claim was for the coach, Holifield taking nothing. A defense judgment followed.

Ed. Note - According to media reports, the always ebullient Petrino remarked that he was pleased with the result and indicated, "I'd prefer never to have to talk about it again."

580 - Slip and Fall - Football fan in town from Florida State for a Notre Dame game, slipped and fell at a hotel bar

Harris v. Quality Hotel,
20D02-9510-CT-0669
Plaintiff: William J. Cohen and Thomas S. Wilson, Jr., *Cohen & Wilson*, Elkhart
Defense: Todd M. Conover and Thomas E. Rosta, *Kopka Landau & Pinkus*, Crown Point
Verdict: Defense verdict on liability
County: **Elkhart**, Superior
Court: J. Platt, 4-28-01

South Bend and the surrounding area was a mecca for college football on the weekend 11-12-93. Scheduled to play that Saturday were Florida State and Notre Dame. Both teams were undefeated, ranked first and second in the polls. The interest level was intense and several fans from Florida made the trip. One was Judith Harris, age 55, a media specialist in a school system in Panama City.

Arriving a day early with her boyfriend, they toured the Notre Dame campus, returning to their hotel in Elkhart. It was the late great Quality Hotel, since demolished. The mood was festive the night before the big game and the party moved to the hotel bar, Aldi's.

Harris recalled that the beer was flowing and all had a good time. Later that night, she was ready to go to bed, her companion promising to catch up after a game of pool. She began to exit the lounge, which was elevated by several steps above the base floor of the hotel.

Harris never saw the steps in the darkened lounge and simply stepped over the edge, the floor seeming to fall out from under her. Hitting the ground hard, Harris dislocated her elbow, undergoing an emergency surgery that night at an Elkhart Hospital. Her trip was ruined and she watched parts of the game the next day . . . on television from her hospital room. Incidentally, Irish fans will remember the home team prevailed 31-24.

Back in Florida, Harris continued to treat, undergoing surgery to repair a fractured shoulder. As time passed, pain and radiating numbness symptoms have continued and fibromylagia was identified. Appropriate proof of her injuries was developed from her treating doctors in Florida. Plaintiff's medicals totaled $61,000 and she has claimed vocational impairment.

In this action, Harris alleged the hotel lounge was negligently designed, criticizing the drop-off design. An architect expert, South Bend, Donald Sporleder, criticized the inadequate lighting and the failure to have a handrail, also noting code violations.

The Quality Hotel defended on liability and damages. An IME from Miami, Gaelano Scuderi, Orthopedics, N. Miami Beach, FL, noted the injuries, but recognized no impairment from her teaching career. Richard Hicks, Engineer, Indianapolis, indicated the steps were properly delineated and fully visible, contesting the notion the lighting was inadequate. As plaintiff was drinking, comparative fault issues were raised.

A jury retired to deliberate the case after five in the evening. It had one question while deliberating, asking the court for a copy of Sporleder's report. For seven hours and until after midnight, the panel would deliberate the case. During that time, it is learned the parties negotiated settlement, plaintiff seeking $200,000 and Quality Hotel remaining firm at its pretrial offer of $100,000. Back with a verdict, it was for the defendant on liability, awarding Harris nothing. A defense judgment has been entered.

1943 - Football Coach Negligence - A 17 year-old high school football player died of heat stroke during a summer practice session; the boy's parents blamed his death on the school's failure to follow IHSAA rules limiting the length of practice sessions

Stowers v. Clinton Central School Corporation, 49D05-0207-CT-1273
Plaintiff: D. Bruce Kehoe, *Wilson Kehoe & Winingham*, Indianapolis
Defense: William H. Kelley, *Kelley Belcher & Brown*, Bloomington
Verdict: Defense verdict on liability
County: **Marion**, Superior
Court: J. Miller, 2-11-05

In the summer of 2001, Travis Stowers, age 17 and a student at Clinton Central High School, was excited about the start of the high school football season. Travis played football for his school under the auspices of the Indiana High School Athletic Association (IHSAA).

The football season began that year on 7-30-01. On 7-31-01, the second day of practice, the temperature reached over 91 degrees and the relative humidity approached 60%. That combination made for a heat index of over 105 degrees.

Despite those conditions, the school's coaches and athletic director put the team members through a total of nearly four and a half hours of strenuous practice. The effect of the heat was compounded by the requirement imposed by the head coach, George Gilbert, that the boys wear their full uniforms, including helmets, throughout the practice period regardless of the heat.

The combination of the heat, the humidity, the strenuous practice, and the suffocating uniforms soon took a toll on the players. During the morning practice session, one of the boys complained to the coaches about feeling ill, and Travis himself vomited. Still, practice continued. During the afternoon session, seven other boys became ill. Yet, again, practice continued.

At approximately 1:45 p.m., Travis became dehydrated and overheated. When he told the coaches he felt ill, they told him to walk to the water area and drink some water. Travis obeyed and began walking. Before he reached his destination, however, he became disoriented and collapsed.

The athletic director swung into action and applied ice packs to Travis's body. When that didn't seem to help, an ambulance was called at approximately 2:00 p.m. Travis was taken to St. Vincent's Hospital of Franklin and treated for heat stroke.

Travis's rectal temperature was measured at St. Vincent's at 108 degrees. As a result of this extreme body temperature, Travis's vital organs simply shut down, and he showed no further neurological function. He was transported by helicopter to Methodist Hospital in Indianapolis where he was pronounced dead the next day.

Travis's parents, Alan and Sherry Stowers, filed suit against the IHSAA and the Clinton Central School Corporation. The IHSAA was later dismissed on summary judgment, and the case proceeded solely against the school corporation. The Stowerses blamed the corporation for violating the IHSAA's rules regarding the conduct of practice sessions.

According to the Stowerses, IHSAA Rule 54-4 provides in relevant part that "The first two days shall be non-contact practices limited to two 90 minute sessions per day or less with a two-hour break between sessions." Contrary to this rule, the coaches had actually conducted some 260 minutes of practice.

By the time Travis became ill, the maximum allowable practice time had already passed. Had the coaches followed the IHSAA rules and limited the length of the practice session, Travis would not have succumbed to the heat and died. The Stowerses identified experts included Dr. George Nichols, Forensic Pathology, Louisville, Kentucky; and Lawrence Armstrong, Human Performance, Coventry, Connecticut.

Nichols and Armstrong agreed that Travis died as a result of heat exhaustion during football practice. Armstrong added that among the contributing factors were the fact that Travis's football helmet trapped heat near his head, the environment was hot and humid, and the length of the practice session was excessive.

The school corporation defended the case and blamed the tragedy on Travis for continuing to practice despite feeling ill. The corporation also pointed out that both Travis and his mother signed release forms as a condition of Travis being allowed to play at all. In doing so, they assumed the risk of possible injury. As for the excessive length of the practice session, that was simply an honest mistake attributable to Gilbert's misinterpretation of the rule.

The case was tried for four days in Indianapolis. The jury deliberated for slightly over five hours before returning a defense verdict for the school corporation. The court entered a consistent judgment.

Post-trial, the Stowerses filed a motion to correct errors based on the following grounds: (1) the Stowerses presented uncontradicted evidence of negligence, (2) the school corporation presented no evidence of contributory negligence or incurred risk, and (3) the court erred in admitting the release forms into evidence without giving the jury a final instruction on the law governing release forms. The court denied the motion, and the Stowerses have filed a notice of appeal.

1226 - Assault - A woman was attacked, beaten, kidnaped, and threatened with death by an enraged 300-pound professional football player; the jury valued the woman's damages at $2,000

Locke v. Carson, 03-3416
Plaintiff: Dan McCleave and Scott E. Denson, *McCleave & Denson*, Mobile
Defense: John C. Brutkiewicz, *Brutkiewicz Attorneys*, Mobile
Verdict: $2,000 for plaintiff
Circuit: **Mobile**, 3-1-05
Judge: Herman Y. Thomas

In 2003, Leonardo Carson, age 26 and a defensive tackle for the San Diego Chargers, was having domestic problems. Carson had an eight-year-old daughter with LaShaye Locke, and he had provided a home for them both in Mobile. However, in April of 2003, LaShaye took the child and fled for reasons unknown.

For some months after LaShaye's departure, Carson repeatedly attempted to persuade her to return. From LaShaye's point of view, Carson's aggressive overtures amounted to harassment, which prompted her to take the child and go into hiding. Carson, however, was not one to take no for an answer. If he could not locate LaShaye directly, perhaps he could get at her through her family.

On 8-21-03, Carson was on leave from the Chargers to attend his grandmother's funeral in Mobile. While he was in town, he decided to make a call on LaShaye's sister, Tasha Locke, age 22. Around mid-morning, Carson phoned Tasha and demanded to know the whereabouts of LaShaye and his daughter. During the conversation, Carson threatened Tasha. She responded by hanging up. For several hours thereafter, Carson repeatedly tried to phone Tasha, but she would not answer.

Carson became enraged at Tasha's stonewalling. In the early afternoon he presented himself at Tasha's home in the Woodland Square Apartment complex, apartment 109, located at 250 South Sage Avenue in Mobile. Carson demanded Tasha let him in, but she refused. Instead, she called the police, her brother, and some other relatives.

Nevertheless, Carson was not to be denied. He broke a window and climbed into the apartment where he grabbed Tasha, threw her against a wall, and again demanded she reveal the whereabouts of LaShaye and his daughter. Tasha managed to break free and run to the bedroom. Carson quickly caught her again and threw her to the floor.

During the ordeal, Tasha was crying and screaming. In an effort to quiet her down, Carson covered her face with a blanket. When that didn't work, he switched to a pillow. Once Tasha finally settled down, Carson ordered her to get dressed and take him to his daughter's school. For good measure, Carson said he would kill Tasha if she tried to flee.

Despite Carson's warnings, and in fear for her life, Tasha twice attempted to flee while walking through the parking lot. Carson caught her both times and then choked her and shoved her to the pavement face first. He then slung Tasha over his shoulder and carried her to his car where he locked her in to prevent any further escape attempts.

Just as Carson was driving away, Tasha saw some of her relatives approaching. She waved at them to get their attention. Carson reacted by speeding away. Tasha's relatives followed in hot pursuit, and this led to a high-speed car chase along Sage Avenue.

After traveling only a short distance, Carson drove over a curb at a shopping center located at the corner of Sage Avenue and Dauphin Street. The jolt damaged his car and caused it to lose power. At that point Tasha somehow managed to escape from the car and attract the attention of a police patrol car. Carson took off running with the officers in pursuit. They soon caught him near Radney's Funeral Home at 3155 Dauphin Street and placed him under arrest.

Carson was charged with one count of first-degree burglary (a class-A felony) and one count of second-degree kidnaping (a class-B felony). He later was released on a bond of $57,500. The Chargers did their own investigation and suspended Carson for one game. The team later dropped him from the roster altogether, allegedly for performance issues. However, Carson later joined the Dallas Cowboys under a contract reportedly worth $600,000 per year.

After some negotiations, the prosecutor reduced the felony charges against Carson to one count each of trespassing and unlawful imprisonment, both misdemeanors. Carson pleaded guilty and was sentenced to one year on each charge, with the sentences to run consecutively. However, the court suspended all but thirty days. Carson served all of eight days before the court granted him early release so he could attend off-season workouts at the Dallas Cowboys training camp.

In the meantime, Tasha filed suit against Carson for assaulting and kidnapping her. She claimed the ordeal caused her to suffer various injuries to her neck, side, hip, leg, and ankle. She further claimed that even after his arrest,

Carson continued to threaten her and her family.

Carson, who has a lengthy prior criminal history, defended the case and explained his altercation with Tasha was motivated by a wholesome concern for his daughter's safety. It seemed Tasha had once pleaded guilty to child abuse, and this caused Carson grave concern when he found himself unable to locate his daughter.

The case was tried in Mobile. The jury returned a verdict in which Tasha was awarded a whopping $500 in compensatory damages and another $1,500 in punitive damages. If the court entered a judgment, it was not in the record at the time the AJVR reviewed it.

1311 - Defamation - A former assistant coach and recruiting coordinator for the University of Alabama's football program claimed his reputation was tarnished and his employment prospects damaged by statements made about him by a football recruiting analyst

Cottrell v. Culpepper, 03-810
Plaintiff: Thomas T. Gallion, III, *Haskell Slaughter Young & Gallion*, Montgomery; C. Delaine Mountain, *Mountain & Baird*, Tuscaloosa; H. Lewis Gillis and Tyrone C. Means, *Gillis & Seay*, Montgomery
Defense: Robert H. Rutherford, John C. Morrow, and J. Frederic Ingram, *Burr & Forman*, Birmingham; James J. Jenkins and A. Courtney Crowder, *Phelps Jenkins Gibson & Fowler*, Tuscaloosa, for NCAA; John P. Scott, Jr., W. Michael Atchison, and Joshua H. Threadcraft, *Starnes & Atchison*, Birmingham, for Culpepper
Verdict: $30,000,000 for plaintiff against Culpepper only; other claims dismissed by the court
Circuit: **Tuscaloosa**, 7-22-05
Judge: Thomas S. Wilson

Ivy Williams was hired in 1994 to serve as the running back coach for the University of Alabama football team. A few years later, in 1997, Ronald Cottrell was brought on-board the same team as both a tight-end coach and as the recruiting coordinator for the football program.

In his capacity as the recruiting coordinator, Cottrell had occasion to strike up a friendship with wealthy UA booster, Logan Young. At one point, Young even extended to Cottrell a mortgage loan of $55,000. This cozy relationship soon caught the notice of rival University of Tennessee head football coach, Phillip Fulmer.

Beginning in 1998, Fulmer began making accusations to Southeastern Conference Commissioner Roy Kramer about Young's involvement in UA recruiting. In short, Fulmer believed Young had committed violations of NCAA rules in order to lure prospective recruits to Alabama and away from Tennessee. Despite Fulmer's accusations, the NCAA did nothing to stop the alleged recruiting abuses at UA.

In January of 2000, UA played in the Orange Bowl in Miami. After the game, Young had occasion to drive back to Alabama in the company of Tom Culpepper, a freelance recruiting analyst and football media expert. Culpepper would later claim that during the drive, Young told him about a plan to pay money to recruit for UA a promising athlete named Albert Means. Of course, paying money to lure a recruit would be a violation of NCAA rules.

Culpepper later told several other people about what he allegedly heard from Young. According to Culpepper, Young somehow found out about Culpepper's loose lips and, in a rage, threatened to kill him. In fear for his life, Culpepper first turned for help to Young's friend, Coach Cottrell.

When Cottrell proved unwilling to intervene, Culpepper turned to UT coach Fulmer. Fulmer, in turn, told the story to NCAA investigator Richard Johanningmeier. From that point onward, Culpepper became a "confidential informant" in the NCAA's investigation of UA recruiting practices.

In November of 2000, the entire UA football staff, including Cottrell and Williams, were fired after failing to win more than three games during the season. In the meantime, the investigation of alleged recruiting violations continued and eventually resulted in UA being placed on probation in 2001. Cottrell has since moved to Ozark and become the head coach at Carroll High School. Williams has become an assistant coach at Savannah State.

Cottrell and Williams would later claim that during the investigation, both Culpepper and Johanningmeier leaked derogatory information to the media and made defamatory statements about them. On one occasion in particular, Culpepper and a friend of his named Mike Wood engaged in a lengthy telephone conversation with Birmingham radio talk show host Paul Finebaum.

During the conversation with Finebaum, Culpepper stated that Cottrell was a cheat and was responsible for destroying the UA football program. Several other recruiting analysts would also later acknowledge they had heard Culpepper make similar statements about Cottrell. On another occasion, Culpepper stated that Cottrell had stolen money from a charitable foundation run by Shaun Alexander (a former UA football star), that Cottrell had stolen certain video tapes following his dismissal from UA, and that Cottrell had abandoned his children and his first wife in Florida to take the job at UA.

Cottrell and Williams filed suit against the NCAA, Culpepper, Johanningmeier, and NCAA Infractions Committee Chairman Thomas Yeager. Plaintiffs claimed their reputations and employment opportunities had been damaged by defendants' actions in leaking information to the media and making defamatory statements about them.

Plaintiffs also accused Culpepper in particular of pursuing a personal vendetta against them. Specifically, plaintiffs claimed Culpepper hated them because he blamed Cottrell for causing Culpepper to lose his insider access to UA's football program.

As the trial date drew near, the court dismissed the claims against Johanningmeier and Yeager on summary judgment. The case then proceeded against the NCAA on claims of defamation and invasion of privacy, and against Culpepper on claims of libel and slander. They defended and denied wrongdoing.

The case was tried for nine days in Tuscaloosa. After the close of plaintiffs' evidence, the court granted defendants' motion for a judgment on the evidence on all of Williams's claims against both defendants and on all but one of Cottrell's claims. The sole remaining issues for the jury were Cottrell's claim against Culpepper for the remarks about having stolen money from Shaun Alexander's charity organization, having stolen videotapes, and having abandoned his wife and children. [The court determined that Cottrell was a private figure and that standard applied in the instructions.]

On those issues, the jury deliberated a mere sixty-three minutes before returning a verdict for Cottrell in the amount of thirty million dollars. Of that amount, $6,000,000 was for compensatory damages, and the remaining $24,000,000 representing punitive damages. According to one published account, this represents the largest single verdict in the history of Tuscaloosa County. If the court entered a judgment, it was not in the record at the time the AJVR reviewed it. Reportedly, Culpepper plans to file an appeal.

In post-trial motions, Culpepper has pled poverty -- however that poverty did not prevent him from having a defense at trial. It was widely rumored that the NCAA paid for his legal defense.