

The Calm Before the (Court) Storm: Potential Fan Liability and the NCAA's Necessary Response

Joshua D. Winneker

Sam C. Ehrlich

Follow this and additional works at: <http://scholarship.law.marquette.edu/sportslaw>



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Repository Citation

Joshua D. Winneker and Sam C. Ehrlich, *The Calm Before the (Court) Storm: Potential Fan Liability and the NCAA's Necessary Response*, 27 Marq. Sports L. Rev. 425 (2017)

Available at: <http://scholarship.law.marquette.edu/sportslaw/vol27/iss2/8>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

THE CALM BEFORE THE (COURT) STORM: POTENTIAL FAN LIABILITY AND THE NCAA'S NECESSARY RESPONSE

JOSHUA D. WINNEKER & SAM C. EHRLICH*

Injuries at contact sporting events are an extremely common occurrence. As a player, you are aware of the possibility of being injured during a game at any time, but would you also expect to be injured after the game and during a celebration? Many college basketball players continue to face this post-game injury threat every time fans “storm the court” (run onto the basketball court) following a major win or upset.¹

The risk of injury from this practice is real, extremely serious, and not just limited to players; indeed, coaches, staff, and patrons are also within the zone of court storm danger.² Even with these safety concerns, court storming remains a popular form of celebration,³ and currently, there is no official NCAA rule against it.⁴ Despite not having a formal rule, the NCAA only disallows

* Joshua D. Winneker, J.D., Assistant Professor, Misericordia University and Sam C. Ehrlich, J.D., Doctoral Student, Sport Management, Florida State University. The authors would like to thank Nick Kenna, MBA, Sports Management; and Nick Sulpizio, J.D. Candidate, Marquette University Law School, for their research assistance.

1. See Tony Gervino, *When College Basketball Fans Storm Court, Ritual Trumps Peril*, N.Y. TIMES (Mar. 1, 2013), <http://www.nytimes.com/2013/03/02/sports/ncaabasketball/when-college-basketball-fans-storm-court-ritual-trumps-peril.html>. Another dangerous tradition in college sports is when fans rush a football field after a big win, which is called “field storming.” See David LaVetter & Yun Seok Choi, *Implications of Toppling Goal Posts in College Football: Managing Institutional Risk*, 2 J. SPORT ADMIN. & SUPERVISION 52 (2010); Marcus Misinec, *When the Game Ends, the Pandemonium Begins: University Liability for Field-Rushing Injuries*, 12 SPORTS LAW. J. 181 (2005). Field storming and the risk of harm from toppled goal posts, however, is beyond the scope of this paper. This paper is limited to Division I men’s basketball court storming.

2. See *infra* Section I.

3. Mike Rutherford, *Storming the Court Is Fun, Which Is Why Every Program Has Done It*, SB NATION (Oct. 23, 2014), <http://www.sbnation.com/college-basketball/2014/10/23/7040671/college-basketball-court-storing-2014-2015>. Court storming has been described as a “sacred ritual;” in fact, in 2013, *USA Today* published an article ranking the “10 best court-rushing games” of the season. Scott Gleeson, *Ranking the 10 Best Court-Rushing Games This College Basketball Season*, USA TODAY (Mar. 2, 2013), <http://www.usatoday.com/story/gameon/2013/02/06/ranking-the-five-best-court-rushes-this-college-basketball-season/1894435/>.

4. See Eben Novy-Williams, *Storming Court Creates ‘Devastating’ Liability for NCAA Schools*, BLOOMBERG (Feb. 24, 2015), <http://www.bloomberg.com/news/articles/2015-02-24/storming-court-creates-devastating-liability-for-ncaa-schools>. See *infra* Section II(A).

court storming during its Championships.⁵

The conferences then are left to their own devices in determining how to deal with this hazardous custom prior to the NCAA Men's Basketball Championships (NCAA Championships or Championships). Various conferences have taken half-hearted measures to combat the practice, but few of these policies have enough teeth to actually prevent court storming.⁶ Thus, it is seemingly only a matter of time before the next major court storming injury occurs and when this does happen, the storming fan will likely face substantial civil liability. In order to avoid devastating injuries and subsequent litigation, it is incumbent on the NCAA to do more.

Part I of this paper will provide an overview of major court storming incidents in college basketball resulting in physical altercations or injuries. Part II will detail what actions have been taken against court storming by the NCAA and its conferences. Part III will discuss what the legal standard would be if a fan were to injure someone while rushing the court. Finally, Part IV will

conclude by arguing that the only effective way to combat court storming, and any subsequent litigation against the fans, is for the NCAA to formalize into a rule its ban on court storming during its Championships and then extend the rule to all regular season and conference tournament games.

I. COURT STORMING INCIDENTS RESULTING IN INJURIES AND FIGHTS

A common argument against banning court storming is that it is mostly harmless and does not lead to injury.⁷ According to this argument, the custom is “an intoxicating display of team unity,” where it is rare that the pandemonium itself becomes the story.⁸ But at what point does the benefit outweigh the risk? Each time the fans storm the court, it places everyone in the stadium in harm's way and it has, on a number of occasions, caused serious injuries and fights.

5. Marc Tracy, *Storming the Court, a Cherished Rite, Can Be a Danger*, N.Y. TIMES (Mar. 4, 2016), http://www.nytimes.com/2016/03/05/sports/ncaabasketball/storming-the-court-a-cherished-rite-can-be-a-danger.html?_r=0 (the NCAA commented: “We don't allow court-storming at N.C.A.A. championships[.]”). The NCAA has effectively eliminated court storming during the NCAA Championships as there has been only one court storm in the last thirty-three years. *See infra* note 148 and accompanying text.

6. *See infra* Section II.

7. Braden Gall, *The 6 Commandments to Storming a College Basketball Court*, ATHLON SPORTS (Feb. 25, 2015), <http://athlonsports.com/college-basketball/court-storming-issue-resolved-college-basketball-rules-follow>.

8. Gervino, *supra* note 1.

*A. College Basketball**i. Kentucky at Indiana (2011)*

After a December 2011 game where Indiana upset top-ranked Kentucky in Bloomington on a last second three-point shot, Indiana fans stormed the court to celebrate the big win.⁹ Caught in the wake of the fans rushing the court was Megan Dills, a Playboy model, who was at the game rooting for Kentucky, her alma mater.¹⁰ According to Dills, she was knocked down “five or six steps” by fans rushing the court before being picked up by one of the court stormers.¹¹

After the game, Dills was diagnosed with torn tendons and a sprained ankle.¹² As a result, Dills was unable to walk and was subsequently forced to cancel a magazine shoot.¹³

ii. Duke at North Carolina State (2013)

Another particularly dangerous court storm occurred on January 12, 2013, when fans stormed the court after North Carolina State (N.C. State) upset No. 1 Duke in Raleigh.¹⁴ Among those storming the court was Will Privette, a N.C. State student who had been confined to a wheelchair since birth.¹⁵ In the chaos, Privette was knocked from his wheelchair to the floor near center court.¹⁶

Luckily, Privette was quickly noticed by N.C. State player C.J. Leslie, who pushed people away from the scene and carried Privette and his wheelchair to safety.¹⁷ After the game, Privette stuck around to thank Leslie for “saving

9. Jeff Eisenberg, *Court-storming Indiana Fans Nearly Trampled a Playboy Model*, YAHOO! SPORTS (Dec. 15, 2011), http://sports.yahoo.com/ncaa/basketball/blog/the_dagger/post/court-storming-indiana-fans-nearly-trampled-a-playboy-model?urn=ncaab,wp6982.

10. *Id.*

11. *Id.*

12. *Id.*

13. Tom Weir, *Playboy Model Was Injured when Hoosier Fans Stormed Court*, USA TODAY (Dec. 14, 2011), <http://content.usatoday.com/communities/gameon/post/2011/12/playboy-model-was-injured-when-hoosier-fans-stormed-court/1>.

14. Nicole Auerbach, *How C.J. Leslie Saved Wheelchair Court Stormer Will Privette*, USA TODAY (Jan. 12, 2013), <http://www.usatoday.com/story/sports/ncaab/2013/01/12/qa-with-north-carolina-state-wheelchair-fan-will-privette/1829185/>.

15. *Id.*

16. *C.J. Leslie Saves Court-storming Wheelchair Fan Will Privette*, SPORTING NEWS (Jan. 12, 2013), <http://www.sportingnews.com/ncaa-basketball-news/4463408-cj-leslie-saves-wheelchair-fan-nc-state-courtstorming-duke-upset-video>.

17. *Id.*

[his] life.”¹⁸

Privette, a longtime N.C. State fan, had previously rushed the court after N.C. State beat Duke in 2010, but unlike in the instant incident, he had waited until after the first wave of fans so he “wouldn’t get crushed.”¹⁹ Famously, Privette would storm the court a third time two years later after N.C. State once again upset Duke in January 2015.²⁰ This time, Privette waited for the second wave to rush the court.²¹

iii. New Mexico State at Utah Valley (2014)

One issue with court storming is placing rowdy, hyped-up fans in close proximity to frustrated visiting team players and staff members, which could lead to violence. This is exactly what occurred on February 27, 2014, when New Mexico State junior guard K.C. Ross-Miller, after an overtime loss at Utah Valley, angrily threw the ball and hit a Utah Valley player as time expired.²²

Understandably, Ross-Miller’s actions started a confrontation between Utah Valley and New Mexico State players.²³ Unfortunately, the incident quickly got worse when the Utah Valley fans who were already storming the court to celebrate the close victory joined in on the brawl.²⁴ During the melee, New Mexico State forward Renaldo Dixon punched a fan who had allegedly attacked one of his teammates.²⁵ Ross-Miller and Dixon were both suspended by the Western Athletic Conference for their actions.²⁶

iv. Kansas at Kansas State (2015)

In another court storming situation, Kansas head coach Bill Self and play-

18. *Id.*

19. Auerbach, *supra* note 14.

20. Jeff Eisenberg, *NC State’s Wheelchair Court Stormer Rushes the Floor Again*, YAHOO! SPORTS (Jan. 11, 2015), <http://sports.yahoo.com/blogs/ncaab-the-dagger/nc-state-s-wheelchair-court-stormer-rushes-the-floor-again-001240167.html>.

21. *Id.*

22. Michael Middlehurst-Schwartz, *Fans Rush Court During Fight at Utah Valley-New Mexico State Game*, USA TODAY (Feb. 28, 2014), <http://ftw.usatoday.com/2014/02/scuffle-new-mexico-state-utah-valley>.

23. *Id.*

24. *Id.*

25. Chris McKee, *Aggies Punished for Brawl with Fans*, KRQE NEWS 13 (Feb. 28, 2014), <http://krqe.com/2014/02/28/aggies-face-punishment-for-basketball-brawl-with-fans/>.

26. Nicole Auerbach, *Two New Mexico State Players Suspended After Brawl*, USA TODAY (Feb. 28, 2014), <http://www.usatoday.com/story/sports/ncaab/wac/2014/02/28/new-mexico-state-suspends-ke-ross-miller-brawl-utah-valley/5898937/>.

er Jamari Traylor barely avoided injury after Kansas State fans stormed the court following the Wildcats' home upset over eighth-ranked Kansas on February 24, 2015.²⁷ Coach Self was pinned against the scorer's table by storming fans and had to be rescued by Kansas assistant coach Kurtis Townsend and Kansas State coach Bruce Weber.²⁸ In order to keep Self safe, Weber had to start pushing fans out of the way and Townsend ended up having to put an overly aggressive fan in a headlock.²⁹ At the same time, Kansas player Jamari Traylor was rushed and body-checked by Kansas State student Nathan Power.³⁰ Power was ultimately cited for disorderly conduct and later wrote a letter to the editor of Kansas State University's school newspaper apologizing for making the Kansas basketball team "feel disrespected."³¹

In its statement after the game, the Big 12 Conference said that Kansas State's written events-management policy "was unsuccessful in ensuring the safety and security of both game participants and spectators," calling for the school to revise its policies and procedures in light of the incident.³² At the

27. Rob Dauster, *Bill Self Crushed, Jamari Traylor Targeted During Kansas State Court Storm*, NBCSPORTS (Feb. 24, 2015), <http://collegebasketball.nbcports.com/2015/02/24/bill-self-crushed-jamari-traylor-targeted-during-kansas-state-court-storm-video/>.

28. Rustin Dodd & Kellis Robinett, *Kansas State Says It 'Fell Short' with Security as Court Storming Issue Takes Center Stage*, KAN. CITY STAR (Feb. 24, 2015), <http://www.kansascity.com/sports/college/big-12/kansas-state/article11066765.html>; Chris Graham, *Storming the Court: ESPN Is Going to Get Somebody Killed*, AUGUSTA FREE PRESS (Feb. 24, 2015), <http://augustafreepress.com/storming-the-court-espn-is-going-to-get-somebody-killed/>.

29. *Id.*

30. Dauster, *supra* note 27.

31. *Big 12 Reprimands Kansas State Wildcats for Court Storming vs. Kansas Jayhawks*, ESPN (Feb. 26, 2015), http://espn.go.com/mens-college-basketball/story/_/id/12383655/big-12-reprimands-kansas-state-wildcats-court-storming-vs-kansas-jayhawks [hereinafter *Big 12 Reprimands Kansas State*]; *Kansas State Wildcats Fan Nathan Power Contrite, 'Can't Change' Incident*, ESPN (Feb. 25, 2015), http://espn.go.com/mens-college-basketball/story/_/id/12378058/kansas-state-wildcats-fan-nathan-power-contrite-change-incident.

32. *Big 12 Reprimands Kansas State*, *supra* note 31. Several coaches have expressed displeasure and concerns over the dangers their players face from thousands of students rushing the court. During the 2013 college basketball season, the Duke Blue Devils suffered four road losses to Virginia, North Carolina State, Miami, and Maryland. Cindy Boren, *Mike Krzyzewski Warns About Storming the Court After Duke Loss*, WASH. POST (Mar. 1, 2013), <https://www.washingtonpost.com/news/early-lead/wp/2013/03/01/mike-krzyzewski-warns-of-danger-of-fans-rushing-the-court-after-duke-loss/>. Following all of these contests, fans stormed the court and Hall of Fame head coach Mike Krzyzewski was very upset after the Virginia loss, noting,

I'm not saying any fan did this, but the potential is there all the time for a fan to just go up to you and say, "Coach you're a [expletive]," or push you or hit you. And what do you do? What if you did something? That would be the story. We deserve that type of protection.

Id. Even more astounding is that the University of Virginia has a protocol for court storming, and

time, the Big 12 had no policy barring spectators from entering playing areas.³³ In response, former Kansas State athletic director John Currie said that the school “fell short” of their security responsibilities, “was unable to get in the proper position quickly enough . . . and was overwhelmed by fans rushing the floor.”³⁴ Currie then stated that he is “100 percent against court storming.”³⁵

After this incident, ESPN’s *Outside the Lines* devoted an entire broadcast to the game, discussing whether this particular court storm would be a “tipping point for change.”³⁶ Chris Graham of the *Augusta Free Press* put the onus on ESPN and other television broadcasters to make changes, stating that “[i]f ESPN (and other TV broadcasters) cut away from court storms on live TV, and don’t show the highlights afterward, it won’t be long before the sexiness of storming the court goes away.”³⁷

Despite the backlash and criticism following this incident, Kansas State players have continued to encourage fans to storm the court after big wins.³⁸ Fortunately, another storm has not occurred . . . yet.

v. Iowa at Iowa State (2015)

On December 10, 2015, *Des Moines Register* columnist Randy Peterson got caught up when Iowa State fans rushed to the court after a come-from-behind win over archrival Iowa.³⁹ While trying to get away to the interview room, Peterson had his leg locked with another person’s leg, and had to be taken off the court on a stretcher with his leg in an air cast.⁴⁰ Peterson ended up fracturing his tibia and fibula, which required major surgery.⁴¹

even let Duke know of it during the shoot-around before the game. *Id.* Essentially the University creates a “safe zone” with security to allow the opposing team to safely exit the playing surface. *Id.* Clearly, this “half measure” was not enough for Krzyzewski.

33. *Big 12 Reprimands Kansas State*, *supra* note 31. See *infra* Section II(C).

34. Dodd & Robinett, *supra* note 28.

35. *Id.*

36. Dodd & Robinett, *supra* note 28.

37. Graham, *supra* note 28.

38. Kellis Robinett, *K-State Basketball Players Encourage Another Court Storming if They Beat KU*, KAN. CITY STAR (Feb. 19, 2016), <http://www.kansascity.com/sports/college/big-12/kansas-state/article61322647.html>.

39. *Iowa State Basketball: Journalist Leg Broken as Fans Storm Court*, SPORTS ILLUSTRATED (Dec. 11, 2015), <http://www.si.com/college-basketball/2015/12/11/iowa-state-journalist-breaks-leg-fans-storm-court> [hereinafter *Iowa State Basketball*].

40. Andrew Holleran, *A Reporter Likely Broke His Leg During Iowa State’s Court Storming After Iowa Win*, SPUN (Dec. 11, 2015), <http://thespun.com/big-ten/iowa/a-reporter-likely-broke-his-leg-during-iowa-states-court-storming-after-iowa-win>.

41. *Iowa State Basketball*, *supra* note 39.

This occasion was especially notable because it was the first documented court storming injury in the Big 12 Conference after the conference had created penalties for schools whose fans rush onto the court.⁴² But, the Big 12 chose not to take any action against Iowa State, stating that the way the school handled the postgame celebration was “consistent with Big 12 guidelines for sportsmanship and ethical conduct.”⁴³ At the same time, however, video from the incident shows that fans started rushing the court nearly immediately after the game ended, and security was not in a position to protect those on the court from injury.⁴⁴

Based on these incidents, and the reactions from those involved, it is clear that a change of culture is necessary in men’s Division I college basketball in order to prevent court storming injuries and potential litigation.

B. High School Basketball

i. Salpointe Catholic High School at Tucson High School

Although this article addresses men’s Division I college basketball court storming, this high school basketball court storm is decidedly noteworthy due to the severity of the injuries and how it could just as easily occur at a college game.

One of the most well-known and tragic court storming incidents took place on February 6, 2004, at a game between Tucson (AZ) High School and rival Salpointe Catholic.⁴⁵ After his last-second breakaway dunk secured the win for Tucson High, Joe Kay was thrown to the floor by fans rushing the court.⁴⁶ Kay suffered a stroke and a torn carotid artery, leaving him fully paralyzed on his right side.⁴⁷

After a year of intensive physical therapy, Kay regained his ability to read, write, count, walk, and talk but was unable to regain use of his right hand.⁴⁸

42. *Big 12 Won’t Punish Iowa State Cyclones for Students Rushing Court*, ESPN (Dec. 12, 2015), http://espn.go.com/mens-college-basketball/story/_/id/14345432/big-12-punish-iowa-state-cyclones-students-rushing-court [hereinafter *Big 12 Won’t Punish Iowa State*]. See *infra* Section II(C).

43. *Big 12 Won’t Punish Iowa State*, *supra* note 42.

44. Holleran, *supra* note 40.

45. Mary Bustamante, *TUSD to Pay \$2.9M to Ex-student Hurt in Pileup After Game*, TUCSON CITIZEN (Apr. 14, 2006), <http://tucsoncitizen.com/morgue/2006/04/14/9334-tusd-to-pay-2-9m-to-ex-student-hurt-in-pileup-after-game>.

46. *Id.*

47. *Id.*

48. Sam Whiting, *Stanford Recruit Gets Settlement / \$3.5 Million for Getting Trampled*, S.F. CHRON. (Apr. 14, 2006), <http://www.sfgate.com/sports/article/Stanford-recruit-gets-settlement-3-5-million-2520001.php>.

Kay, who along with his athletic prowess was a jazz musician and the school valedictorian, had been offered a scholarship to Stanford for volleyball.⁴⁹ But because of his new disability, he had to switch his scholarship to a medical scholarship and was unable to play competitive sports.⁵⁰ As of 2013, Kay had recovered some use of his right hand and arm and was no longer cognitively impaired, but his entire right side was still “slow,” and his recovery will likely be a lifelong process.⁵¹

After suing the Tucson Unified School District for negligence in providing adequate security for the game, the case settled before any court decisions with Kay receiving a \$2.9 million settlement from the district, plus an additional \$500,000 and \$100,000, respectively, from the two students that hit him.⁵²

The district had claimed that it did not do anything wrong in supervising the event, stating that they had “at least six” staff members working the game, and that court storming generally does not happen at Tucson High School games.⁵³ However, in the lawsuit, the Kay family alleged that court storming had

previously occurred at a Tucson/Salpointe game played at Salpointe Catholic; thus, district officials should have known another incident was likely.⁵⁴

After his injuries, Kay’s only contact with basketball was as a member of Stanford’s basketball rooting section, “the sixth man.”⁵⁵ Coincidentally, Kay was in attendance when fans stormed the court after the Cardinal’s overtime win over Washington in January 2006.⁵⁶ Needless to say, he did not join them.⁵⁷

49. *Id.*

50. *Id.*

51. Zachary Ziegler, *Catching up with Joe Kay*, ARIZ. PUB. MEDIA (May 11, 2013), <https://radio.azpm.org/p/azspot/2013/5/10/24262-catching-up-with-joe-kay/>.

52. Whiting, *supra* note 48.

53. Mary Bustamante, *TUSD to Pay \$2.9M to Ex-student Hurt in Pileup After Game*, TUCSON CITIZEN (Apr. 14, 2006), <http://tucsoncitizen.com/morgue/2006/04/14/9334-tusd-to-pay-2-9m-to-ex-student-hurt-in-pileup-after-game>.

54. *Id.* Other states have seen the dangers of court storming and have instituted policies to discourage it from happening at high school games. The state of Iowa, with the assistance of the Iowa High School Athletic Association, has a policy in place with forbids it during post-season play. Jason Eslinger, *A Note from the Executive Director: Storming the Court: Don't Do It!*, IOWA GIRLS HIGH SCH. ATHLETIC UNION (Dec. 18, 2015), <http://ighsau.org/2015/12/18/a-note-from-the-executive-director-storming-the-court-dont-do-it/>. This policy leaves it up to the school to provide adequate security and ensure that fans and students are taught how to conduct themselves following a win. *Id.* The Executive Director of the Iowa Girls High School Athletic Union, Mike Dick, reinforced this policy in December of 2015, citing the safety of fans and players as the main concern. *Id.*

55. Whiting, *supra* note 48.

56. *Id.*

57. *Id.*

II. NCAA AND CONFERENCE POLICIES ON COURT STORMING

A. NCAA Action

As mentioned above, the NCAA does not have any official rule on court storming. The NCAA has, however, held two summits to address the rise of unsafe fan celebrations and recommend action by its member institutions. First, on February 20, 2003, the NCAA conducted a Sportsmanship and Fan Behavior Summit to discuss “inappropriate fan behavior” including court storming.⁵⁸ The summit, which brought together nearly 150 conference commissioners, athletic directors, and other athletics administrators,⁵⁹ acknowledged that “incidences of spectator aggression in intercollegiate athletics, particularly in . . . men’s and women’s basketball, appear to be on the rise” and that these “hostile traditions” are “inconsistent with the values of sport.”⁶⁰

Notably, this first summit’s report acknowledged that “[n]ational policies can help ensure that institutions are operating under at least a minimal level of safety and can provide support to athletics departments attempting to institute policies that are not well received by fans and alumni.”⁶¹ Despite this finding, the summit participants did not act to create a national rule, and instead passed the buck to individual institutions.⁶² The NCAA only pledged that its national office “will attempt to assist institutions and conferences in making those decisions by acting as a type of clearinghouse of information on sportsmanship and fan behavior.”⁶³

Three years later, the NCAA and representatives from all three NCAA divisions met again as part of a Postgame Crowd Control Summit to address safety issues surrounding fan celebrations.⁶⁴ But once again, instead of creating a full association-wide rule prohibiting court storming, the twelve-member panel merely made “suggestions” through a “Crowd Control Global Check

58. *Report on the Sportsmanship and Fan Behavior Summit*, NCAA 2 (Feb. 20, 2003), http://www.soe.vt.edu/highered/files/Perspectives_PolicyNews/09-03/sportsmanship.pdf.

59. *Id.* at 13–15.

60. *Id.* at 2.

61. *Id.* at 12.

62. *Id.*

63. *Id.*

64. Nat’l Collegiate Athletic Ass’n, *Safety of Student-Athletes, Officials, Fans Focus of NCAA Group Studying Postgame Crowd Control Issues*, NCAA.ORG (Apr. 14, 2006), <http://fs.ncaa.org/Docs/PressArchive/2006/Miscellaneous/Safety%2Bof%2BStudent-Athletes%2BOfficials%2BFans%2BFocus%2Bof%2BNCAA%2BGroup%2BStudying%2BPostgame%2BCrowd%2BControl%2BIssues.html>.

List/Tool Kit” that institutions can adopt as they please.⁶⁵ These “suggestions” were given to the NCAA Division I Board of Directors, who stated that the provided toolkit would be “helpful for institutions in preventing negative postgame celebrations.”⁶⁶

The only action that the NCAA itself has taken is to disallow court storming during its Championships.⁶⁷ At those games, the NCAA takes preventative measures with the host schools and venues to ensure that fans will not storm the court.⁶⁸ According to an NCAA spokesman, the association works with each venue hosting games to create a security plan, and has “confidence in the personnel at each site to execute that plan.”⁶⁹ In conjunction with this security plan, announcements are also made to the fans prior to the games explaining that court storming is banned.⁷⁰ Lastly, for the Final Four games, the NCAA requires extra security to be present to prevent mass-storming because these games attract more students than the others.⁷¹

The NCAA has acknowledged the serious safety concerns of court storming by conducting two summits and then selectively choosing to ban court storming at its Championship games. Through these actions, the NCAA is prioritizing its multi-billion dollar Championships.⁷² The NCAA, however, needs to be equally diligent in preventing court storming injuries in all games prior to its Championships. The NCAA’s inaction during those games has left the conferences with no guidance and uneven responses.

65. *Collegiate Sports: Board Eliminates Traditional Division I Subdivision Labels (8/06)*, BOND, SCHOENECK & KING (Aug. 17, 2006), <http://www.bsk.com/media-center/1345-collegiate-sports-board-eliminates-traditional-division-i-subdivision-labels->.

66. *Id.*

67. Tracy, *supra* note 5. There has only been one court storm following an NCAA Championship game: the 1983 championship game between North Carolina State and the University of Houston. *Id.*; NCAA On Demand, *March Madness Buzzer Beater - 1983 NC State vs Houston*, YOUTUBE (Jan. 29, 2013), <https://www.youtube.com/watch?v=ICZ8HO8c9bw>.

68. Tracy, *supra* note 5.

69. *Id.*

70. This information was provided by L.J. Wright, Director of Men's Basketball Championships for the NCAA. Telephone Interview by Nick Kenna with L.J. Wright, Director of Men's Basketball Championships, NCAA (June 24, 2016) [hereinafter Telephone Interview]. To his knowledge, no fans have ever stormed the court during an NCAA Championship game, aside from the incident in 1983. *Id.*; *see infra* note 148.

71. Telephone Interview, *supra* note 70.

72. *See* Darren Heitner, *The March Madness Advertising Business Is Booming*, FORBES (Mar. 17, 2015), <http://www.forbes.com/sites/darrenheitner/2015/03/17/the-march-madness-advertising-business-is-booming/#66eb585019c5>.

B. Southeastern Conference

The Southeastern Conference (SEC) was one of the first major conferences to create a policy dealing with court storming. Put in place in 2004, the conference's initial policy came with a \$5,000 fine for a first offense and then up to \$25,000 and \$50,000 for any additional violations of the policy.⁷³ The policy read: "For the safety of participants and spectators alike, at no time before, during or after a contest shall spectators be permitted to enter the competition area."⁷⁴

Following the 2014–2015 college basketball season, the SEC realized their current fines for court storming were not enough of a deterrent for schools, resulting in the conference revamping the policy with stricter fines.⁷⁵ This new policy increased the fines to \$50,000 for a first offense; \$100,000 for a second offense; and \$250,000 for each additional offense.⁷⁶ In addition, the conference also eliminated the three-year statute of limitations, which had forgiven previous violations that occurred more than three years prior to the new incident.⁷⁷ The conference hoped that these steeper fines would lead to less people court storming, culminating in a safer environment for players, coaches, and spectators.⁷⁸

An impetus for raising these fines was the fact that SEC schools, flush with money from the largest media deal in college sports,⁷⁹ have not exactly seen fines from their conference as a reason to stop court storming. For example, when South Carolina fans rushed the court following an upset win at home over Kentucky in March 2014, even South Carolina President Harris Pastides took part in the court storming, saying after the game, "Once I real-

73. Matt Norlander, *SEC Fines South Carolina 25K for Court Storm After Kentucky Game*, CBS SPORTS (Mar. 3, 2014), <http://www.cbssports.com/collegebasketball/eye-on-college-basketball/24465983/sec-fines-south-carolina-25k-for-court-storm-against-after-kentucky-game>.

74. Blair Kerkhoff, *SEC Has Rule Against Court-Storming, but Big 12 Does Not*, KAN. CITY STAR (Feb. 24, 2015), <http://www.kansascity.com/sports/spt-columns-blogs/campus-corner/article11054027.html>.

75. David Ching, *SEC Passes Tougher Fines for Court Storming*, ESPN (May 29, 2015), http://espn.go.com/college-football/story/_/id/12977211/sec-passes-tougher-fines-court-storming.

76. *Id.*

77. *Id.*

78. *Id.*

79. See Chris Smith, *The SEC Is Finally the Most Valuable Conference in College Sports*, FORBES (July 20, 2015), <http://www.forbes.com/sites/chris-smith/2015/07/20/the-sec-is-finally-the-most-valuable-conference-in-college-sports/#7a718339349e>.

ized I was paying [the fine] anyway, I ran down . . . I enjoyed every dollar.”⁸⁰ Similarly, in 2010, when South Carolina also upset Kentucky, the top-ranked team in the nation at the time, students gave athletic director Eric Hyman \$1 bills to help offset the fine.⁸¹

Despite the increased penalties, however, SEC schools have continued to see these fines as merely a cost of doing business. During the 2015–2016 college basketball season, Vanderbilt fans stormed the court after upsetting Kentucky.⁸² Because it was the school's second violation of the SEC policy (the first occurring in 2007 after upsetting top-ranked Florida), Vanderbilt was fined \$100,000.⁸³ In a written statement announcing the fine, SEC Commissioner Greg Sankey said that while he understands the enthusiasm after a big win, “fans need to remain in the stands and avoid the safety concerns associated with rushing on to the playing floor.”⁸⁴ In response, Vanderbilt athletics director David Williams said that the school “will pay this fine and try to talk to our students and fans about having some alternative way of celebrating besides putting us in that situation.”⁸⁵ However, Williams said that he does not want the school to create a “police state” and that “[Vanderbilt] students are good people, and they will work with us (to try prevent court-storming).”⁸⁶

On January 16, 2016, Auburn fans stormed the court after their team upset fourteenth-ranked perennial powerhouse Kentucky.⁸⁷ Instead of using the incident to revisit their court storming policies, Auburn athletic director told *AL.com* that he would “happily” pay the fine, stating that the fine would not “take anything away” from the big win.⁸⁸ In this case, even the SEC seemed

80. Norlander, *supra* note 73.

81. Nicole Auerbach, *The Forecast for College Basketball: Storming the Court*, USA TODAY (Feb. 7, 2013), <http://www.usatoday.com/story/sports/ncaab/2013/02/05/storming-rushing-the-court-college-basketball/1890851/>.

82. David Collier, *SEC Fines Vanderbilt for Court-storming Following Win over Kentucky*, SEC COUNTRY, <https://www.seccountry.com/vanderbilt/sec-fines-vanderbilt-for-court-storming-following-win-over-kentucky> (last visited May 15, 2017).

83. *Id.*

84. *Id.*

85. Adam Sparks, *Vanderbilt Fined \$100K by SEC for Fans Storming Court*, TENNESSEAN (Feb. 29, 2016), <http://www.tennessean.com/story/sports/college/vanderbilt/2016/02/29/vanderbilt-fined-100k-basketball-fans-storming-court-kentucky/81123718/>.

86. *Id.*

87. Chip Patterson, *Court Storm After Kentucky Win, Kick Six Net Auburn \$100K Fine from SEC*, CBSSPORTS (Jan. 18, 2016), <http://www.cbssports.com/collegebasketball/eye-on-college-basketball/25453866/court-storm-after-kentucky-win-kick-six-net-auburn-100k-fine-from-sec>.

88. Brandon Marcello, *Auburn Happy to Pay Fine for Storming Court After Win Against Kentucky*, AL.COM (Jan. 16, 2016), http://www.al.com/auburnbasketball/index.ssf/2016/01/auburn_happy_to_pay_fine_for_s.html.

willing to ignore the purpose of the fine. Following the game, the SEC Network's official Twitter account tweeted exuberantly about the court storming as it was happening: "The upset is complete and Auburn STORMS THE COURT!"⁸⁹ The tweet was accompanied by a screen capture of the fans crowded at center court as shown on the ESPN broadcast.⁹⁰

C. Big 12

Unlike the SEC, the Big 12 Conference does not have a specific policy in place to discourage schools from storming the court.⁹¹ Instead, in the wake of Kansas coach Bill Self's comments after the court storming incident at Kansas State in 2015,⁹² the Big 12 Conference simply gave conference commissioner Bob Bowlsby broad authority to punish schools for court storming incidents.⁹³ Commissioner Bowlsby has the authority to issue a variety of different punishments based on each incident including a fine or even the loss of a home game.⁹⁴ The Big 12 policy mandates that the home team is responsible for providing the correct security to protect players from injury.⁹⁵

As noted previously, in the first test of this new policy after the Iowa-Iowa State game that injured *Des Moines Register* reporter Randy Peterson,⁹⁶ the Big 12 did not levy any punishment against Iowa State.⁹⁷

D. Pac-12

Following the example of the SEC, the Pac-12 Conference adopted a new court storming policy in May 2016 that implemented a tiered fine system for

89. SECNetwork (@SECNetwork), TWITTER (Jan. 16, 2016, 6:18 PM), <https://twitter.com/SECNetwork/status/688500633083756544>.

90. *Id.*

91. Kerkhoff, *supra* note 74.

92. *See supra* Section I(A)(4). Kansas head coach Bill Self took a similar stance to that of Krzyzewski following his team being upset by Kansas State in the spring of 2015. Following the game, Self noted that "[t]here were several students that hit our players . . . I'm not saying like with a fist, but when you storm the court you run into and bump everybody. Stuff like that. This has got to stop." Kerkhoff, *supra* note 74.

93. *Big 12 Schools Could Face Big Penalties for Court Storming*, ESPN (May 27, 2015), http://espn.go.com/espn/story/_/id/12965175/big-12-schools-face-big-penalties-court-storming.

94. *Id.*

95. Kami Mattioli, *Big 12 Comes down Hard in New Court Storm Penalties*, SPORTING NEWS (May 28, 2015), <http://www.sportingnews.com/ncaa-basketball/news/big-12-court-storm-policy-change-bob-bowlsby-fine/7bpo9td7kd7s1mrtkhuvdzxyx>.

96. *See supra* Section I(A)(5).

97. *Big 12 Won't Punish Iowa State*, *supra* note 42. *See supra* note 49 and accompanying text.

court storming offenses.⁹⁸ Starting in the 2016–2017 academic year, Pac-12 institutions were fined \$25,000 for a first offense; \$50,000 for a second offense; and \$100,000 for a third offense.⁹⁹

The timing of this new policy was not surprising given the harsh criticism by University of Arizona’s coach Sean Miller, who said on February 24, 2016, after opposing fans had stormed the court on his team at least ten different times:

Eventually what’s going to happen in the Pac-12 is this . . . An Arizona player is going to punch a fan, and they are going to punch the fan out of self-defense. And when it happens—and only when it happens—will everybody . . . say, “We have to do something to protect both teams so that when the game ends we have a deep breath to be able to leave the court.”¹⁰⁰

In a statement announcing the policy, the Pac-12 Counsel indicated that it balanced “the safety and welfare of our student-athletes, officials and fans” with the “impact on . . . fans who loyally support [Pac-12] teams” and that the policy “[allows the conference] to educate staffs and fans on procedures going forward.”¹⁰¹

E. *Big Ten*

Shortly after the NCAA’s Sportsmanship and Fan Behavior Summit in February 2003, the Big Ten Conference enacted “a set of initiatives to address fan behavior and improve security for visiting teams and game officials.”¹⁰²

98. *Pac-12 Announces Series of Decisions out of End of Year Board Meetings*, PAC-12 CONF. (May 24, 2016), <http://pac-12.com/article/2016/05/24/pac-12-announces-series-decisions-out-end-year-board-meetings>.

99. *Id.*

100. Sam Vecenie, *Arizona Coach Sean Miller Criticizes Pac-12 over Court Storming*, CBS SPORTS (Feb. 25, 2016), <http://www.cbssports.com/collegebasketball/eye-on-college-basketball/25494731/arizona-coach-sean-miller-criticizes-pac-12-over-court-storming>. Fearing vigilante justice is yet another reason court storming needs to be banned at all times. See Joshua Winneker, *Coach’s Court-storming Comment Stirs Legal Debate*, TIMES-TRIB. (Mar. 20, 2016), <http://m.thetimes-tribune.com/opinion/coach-s-court-storming-comment-stirs-legal-debate-1.2020768>. Yet another reason to ban court storming in all games is the potential liability of not only a player who hits a storming fan but of the coach who potentially authorized or encouraged the players’ behavior. See *id.*

101. *Pac-12 Announces Series of Decisions out of End of Year Board Meetings*, *supra* note 98.

102. *Big Ten Releases Crowd Control Measures*, BIG TEN COMM. (Aug. 13, 2003), <http://www.scout.com/college/wisconsin/story/168397-big-ten-releases-crowd-control-measures>.

These initiatives included instructions that schools hosting games must provide adequate security and protection for the visiting team and game officials both before they arrive and through their departure from campus and/or the competition venue.¹⁰³

Beyond those directives, the Big Ten does not have a published policy prohibiting court storming, nor do they have a set of penalties for member schools that allow court storming to occur. While the Big Ten's approach on court storming is unclear, what is clear is that the conference does permit it to happen. For example, in February 2016, Penn State University fans stormed the court after defeating No. 4 Iowa without any known repercussions.¹⁰⁴ In January 2014, Indiana fans stormed the court after defeating No. 3 Wisconsin and the Big Ten's official network responded by writing an article about the court storm on their website and posting a video of the court storm on their official Twitter account.¹⁰⁵ Also, as detailed above, in 2011, Indiana fans stormed the court in Bloomington after a last-second win over top-ranked Kentucky and no penalties were ever assessed against Indiana.¹⁰⁶ Finally, in January 2010, according to one commentator, security at a Big Ten Conference tournament allowed fans to storm the court three times in one weekend.¹⁰⁷

F. Conference USA

Conference USA follows a tiered fine system.¹⁰⁸ Their punishment scheme is less financially severe than the other conferences with similar penalty schemes, fining schools from \$10,000 for the first offense up to \$30,000 for the third offense.¹⁰⁹ The policy includes a five-year grace period for the schools, meaning that a second or third violation must occur within five years

103. *Id.*

104. Mark Puleo, *Penn State Men's Basketball on the Map After Upsetting No. 4 Iowa*, DAILY COLLEGIAN (Feb. 18, 2016), http://www.collegian.psu.edu/sports/men_basketball/article_a933651c-d620-11e5-9bf8-330d07b114dc.html.

105. Brent Yarina, *Do We? Don't We? OK, Let's Do It! Indiana Fans Storm Court*, BIG TEN NETWORK (Jan. 14, 2014), <http://btn.com/2014/01/14/do-we-dont-we-ok-lets-do-it-indiana-fans-storm-court/>.

106. *See supra* Section I(A)(1).

107. Jonathan Lintner, *Weekend Rewind: Big Ten's Court Storming Belittles Tradition-Rich Programs*, BLEACHER REPORT (Jan. 17, 2010), <http://bleacherreport.com/articles/328071-weekend-rewind-big-10-court-storming-belittles-tradition-rich-programs>.

108. Ryan Lynch, *Storm Chasers: Conference USA Rules Discourage Fan Invasion*, U. PRESS (Apr. 16, 2015), <http://www.upressonline.com/2015/04/storm-chasers-conference-usa-rules-discourage-fan-invasion/>.

109. *Id.*

otherwise it will be deemed a first offense.¹¹⁰ Conference USA's policy also allows the conference to force a home team to forfeit a game as a penalty.¹¹¹

G. Big East

Like the Big 12, the Big East takes more of a loose approach to court storming by leaving it to the discretion of the conference as to whether or not a team gets fined.¹¹² Their policy places the responsibility on the school to prevent fans from storming the playing surface; failure to do so the first time could result in a \$5,000 fine.¹¹³ Any subsequent violations could be up to \$25,000.¹¹⁴

H. Other Conference Policies

Other conferences, including the Horizon Conference; Mid-American Conference; Mid-Eastern Athletic Conference; Missouri Valley Conference; Northeast Conference; Southern Conference; Southland Conference; Sun Belt Conference; Summit Conference; West Coast Conference; and Western Athletic Conference, have yet to publicly outline a specific policy on court storming.¹¹⁵ Some conferences, including the America East Conference; Atlantic Coast Conference; and Metro Atlantic Athletic Conference, have explicitly stated that they do not have any specific policy to discourage court storming.¹¹⁶ The Metro Atlantic Athletic Conference "defers to existing arena policies."¹¹⁷

Other schools individually have attempted to curb court storming by setting up plastic barricades, and not surprisingly, have had limited success. National Public Radio's Mike Pesca attended a non-conference game between Monmouth University and Fairleigh Dickinson (FDU) as research for a story

110. *Id.*

111. *Id.*

112. Tracy, *supra* note 5. The specific tenets of this policy are unpublished and unclear. It is notable that there is no evidence of any fine or punishment resulting from when Georgetown students stormed the court against Big East rival Villanova in January 2015. Scott Allen, *Georgetown Students Rush the Court After Win over Villanova and JTHH Is Not Amused*, WASH. POST (Jan. 20, 2015), <https://www.washingtonpost.com/news/dc-sports-bog/wp/2015/01/20/georgetown-students-rush-the-court-after-win-over-villanova-and-jthh-is-not-amused/>. If Georgetown was fined or otherwise punished for the incident, this punishment was not publicized.

113. *Id.*

114. *Id.*

115. Lynch, *supra* note 108.

116. Tracy, *supra* note 5.

117. *Id.*

on court storming.¹¹⁸ While there, he interviewed a female fan who was able to lift the placed plastic barricade with one finger.¹¹⁹ After Monmouth then beat the home team FDU in a close game, it nearly ended in a fight when the visiting Monmouth fans stormed the court and the home fans took exception.¹²⁰ The day was only saved when “The Knight,” FDU’s plastic horse-headed mascot, stepped in between the two groups and diffused the tension.¹²¹

The above demonstrates that more needs to be done by the NCAA to prevent court storming during the regular season and conference championships. Too often, the various fines and other measures by the conferences and schools alone are simply ignored in favor of the unsafe court storming.

III. LEGAL STANDARD FOR COURT STORMING

Given the current lack of any true preventative measures during the regular season and conference tournaments to keep fans from storming the court, the possibilities of injuries and subsequent lawsuits remain highly likely. When fans leave the stadium seating and rush the court to celebrate their team’s victory, they likely are not thinking of the legal consequences of their actions. Instead, they are just caught up in the moment. Unfortunately, if the fan injures a player, coach, or spectator, significant civil liability could arise. As detailed previously, these incidents are not uncommon. The resulting injuries would be considered a tort and the injured party would likely have a viable civil cause of action against the storming fan.¹²²

A. General Participant Liability

While there have been injuries during court storming incidents in the past, those injuries resulted in either a settlement without a court determination or no lawsuit was ever filed.¹²³ Thus, without any precedent to point to, lawsuits against storming fans would be considered a novel legal theory.

With that said, there is already an established body of law for injuries to

118. Mike Pesca, *Schools Ban Court-storming During March Madness*, NAT’L PUB. RADIO (Mar. 10, 2006), <http://www.npr.org/templates/story/story.php?storyId=5256394>.

119. *Id.*

120. *Id.*

121. *Id.*

122. Torts are civil wrongs committed against someone and include negligence, recklessness and intentional actions. *See generally* RESTATEMENT (THIRD) OF TORTS (2000).

123. *See supra* Section I.

participants caused by other participants in contact sports like basketball.¹²⁴ When a participant is injured playing a contact sport such as basketball, that player cannot maintain a lawsuit based on negligence.¹²⁵ Negligence is unintentional conduct that causes injury to another.¹²⁶ Negligence, as a cause of action, however, does not suffice in contact sports because accidental contact is a part of the sport itself.¹²⁷ Every player who plays a contact sport assumes the risk of a certain level of contact that is inherent to the game.¹²⁸ If players were allowed to sue for accidental contact during a contact sporting event, then the sport itself would cease to exist because the players would be afraid to have any contact with another player.¹²⁹ Additionally, the court sys-

124. See *Pfister v. Shusta*, 657 N.E.2d 1013 (Ill. 1995) (applying the contact sports exception as broadly as to prevent one student from suing another for injuries suffered in an impromptu game of kicking a soda can in the lobby of a college dormitory); *Oswald v. Township High Sch. Dist. No. 214*, 406 N.E.2d 157 (Ill. App. Ct. 1980) (creating a “contact sports exception,” where players in a contact sport are not liable for injuries suffered by negligent conduct by other players, while still potentially remaining liable for any reckless or intentional conduct); *Kavanagh v. Trs. of Bos. Univ.*, 795 N.E.2d 1170 (Mass. 2003) (holding a university and its basketball coach not liable for injuries suffered after one of their players punched the plaintiff in the nose).

125. See *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516, 520 (10th Cir. 1979) (“subjecting another to unreasonable risk of harm, the essence of negligence, is inherent in the game of football, for admittedly it is violent”); *Nabozny v. Barnhill*, 334 N.E.2d 258, 260 (Ill. App. Ct. 1975) (“This court believes that the law should not place unreasonable burdens on the free and vigorous participation in sports by our youth.”).

126. To maintain a lawsuit based on negligence, the plaintiff must show that the defendant owed a duty to the plaintiff; that the defendant breached that duty; and that the breach actually and proximately caused the plaintiff’s damages. See *Hayden v. Univ. of Notre Dame*, 716 N.E.2d 603, 605 (Ind. Ct. App. 1999) (citing *Wickey v. Sparks*, 642 N.E.2d 262, 265 (Ind. Ct. App. 1994)).

127. *Hayden*, 716 N.E.2d at 605.

128. See *Hackbart*, 601 F.2d at 520; *Niemczyk v. Burleson*, 538 S.W.2d 737, 740 (Mo. Ct. App. 1976) (“[A] voluntary participant in a baseball or softball game assumes the risks ordinarily incident thereto and only in exceptional circumstances may he recover from a coparticipant for injuries unintentionally caused by the latter.”); *Kabella v. Bouschelle*, 1983-NMCA-125, ¶ 11, 100 N.M. 461, 672 P.2d 290 (“Voluntary participation in a football game constitutes an implied consent to normal risks attendant to bodily contact permitted by the rules of the sport. Such risks are foreseeable or inherent to the playing of the sport.”).

129. See *Ross v. Clouser*, 637 S.W.2d 11, 14 (Mo. 1982) (“Fear of civil liability stemming from negligent acts occurring in an athletic event could curtail the proper fervor with which the game should be played and discourage individual participation, yet it must be recognized that reasonable controls should exist to protect the players and the game.”); see also *Karas v. Strevell*, 884 N.E.2d 122, 130 (Ill. 2008).

[I]f a negligence standard were imposed on participants, contact sports would be fundamentally altered or, perhaps, eliminated altogether. Numerous other courts have voiced the same concern and have stated that a primary justification for limiting liability in the sports context is to avoid fundamentally altering, or discouraging participation in, the sport at issue.

Id. (citations omitted).

tem would be flooded with lawsuits, and participation in sports would decrease dramatically.¹³⁰

Aware of this potential problem, the courts have struck a balance and have created a “contact sports exception,” ruling that a participant injured in a contact sport can only sue for injuries sustained based on intentional or reckless conduct.¹³¹ Unlike negligence, the courts have ruled that players in a contact sport do not assume the risk of being harmed by intentional or reckless conduct.¹³² An intentional tort requires that the offending party both intend the action and intend the subsequent harm.¹³³ Recklessness falls somewhere between negligence and intentional action.¹³⁴ It is often referred to as “gross

130. See *Kavanagh v. Trs. of Bos. Univ.*, 795 N.E.2d 1170, 1179 (Mass. 2003) (“Just as players are entitled to play aggressively without fear of liability, a coach properly may encourage players to play aggressively. Indeed, a coach’s ability to inspire players to compete aggressively is one of a coach’s important attributes.”); *Gauvin v. Clark*, 537 N.E.2d 94, 97 (Mass. 1989) (“Precluding the imposition of liability in cases of negligence without reckless misconduct furthers the policy that ‘[v]igorous and active participation in sporting events should not be chilled by the threat of litigation.’” (quoting *Kabella*, 1983-NMCA-125, ¶ 16)); *Kabella*, 1983-NMCA-125, ¶ 16 (“Vigorous and active participation in sporting events should not be chilled by the threat of litigation.”).

131. *Hackbart*, 601 F.2d at 521 (“The general customs of football do not approve the intentional punching or striking of others. . . . Undoubtedly these restraints are intended to establish reasonable boundaries so that one football player cannot intentionally inflict a serious injury on another.”);

A reckless disregard for the safety of other players cannot be excused. To engage in such conduct is to create an intolerable and unreasonable risk of serious injury to other participants. . . . It is our opinion that a player is liable for injury in a tort action if his conduct is such that it is either deliberate, wilful [sic] or with a reckless disregard for the safety of the other player so as to cause injury to that player.

Nabozny v. Barnhill, 334 N.E.2d 258, 215 (Ill. App. Ct. 1975); *Ross*, 637 S.W.2d at 14 (“[I]t must be recognized that reasonable controls should exist to protect the players and the game. Balancing these seemingly opposite interests, we conclude that a player’s reckless disregard for the safety of his fellow participants cannot be tolerated.”); *Hanson v. Kynast*, 526 N.E.2d 327, 330–31 (Ohio Ct. App. 1987) (Milligan, J., concurring) (“Courts have avoided adopting a negligence standard in such cases because the standard would simply place unreasonable burdens on the ‘free and vigorous participation in sports.’ . . . Paradoxically, courts have found a duty based on an intentional or recklessness standard.” (citations omitted)).

132. *Hackbart*, 601 F.2d at 520; *Nabozny*, 334 N.E.2d at 215; *Hanson*, 526 N.E.2d at 330–31 (Milligan, J., concurring).

133. *Garratt v. Dailey*, 279 P.2d 1091, 1093 (Wash. 1955).

134. *Donnelly v. S. Pac. Co.*, 118 P.2d 465, 469 (Cal. 1941) (“Wanton and reckless misconduct is more closely akin to willful misconduct than to negligence, and it has most of the legal consequences of willful misconduct.”).

negligence.”¹³⁵ In recklessness situations, the offending party typically did not intend the injury but could foresee the possibility of the injury and takes the risk anyway.¹³⁶

B. Fan Liability – Negligence or Recklessness?

The instant situation presents a different scenario. Here, a fan, and not another player, would be causing an injury, and the injury would be caused after the game itself was played. Based on the above, the likely causes of action that the injured party could bring would be for either negligence or reckless conduct.

At first glance, negligence would appear to be a viable cause of action because a fan storming the court could accidentally bump into someone and cause harm. However, a response from the defendant-fan could be that the injured party assumes the risk of getting bumped into when fans storm the court after a victory. In order for the assumption of the risk defense to apply, however, the risk has to be something that is inherent to the sport.¹³⁷

As such, in any suit the court would have to answer the following question: is court storming inherent to the game of basketball? While court storming is very common, is it so common that it is inherent to the game itself? This would be a determination left to the court, but it is likely that a court would find that court storming is not inherent to basketball. It is a celebration that does occur, but it is not part of the sport itself. Other sports have been faced with a similar question about mascot-related injuries, and the courts have found that mascots and their activities are not inherent to the game of

135. *Id.*

136.

Wanton conduct may suggest arrogance, insolence, or heartlessness that reckless conduct lacks, but the difference is likely not to be significant in most cases. Our recent practice has been simply to refer to reckless conduct as constituting the conduct that produces liability for what the court has traditionally called wilful [sic], wanton, or reckless conduct.

Sandler v. Commonwealth, 644 N.E.2d 641, 643 (Mass. 1995) (citations omitted); *Andover Newton Theological Sch., Inc. v. Cont'l Casualty Co.*, 566 N.E.2d 1117, 1118–19 (Mass. 1991) (“Indifferent or reckless wrongdoing is not deliberate or intentional wrongdoing.”).

137.

[A]n individual who voluntarily engages in a potentially dangerous activity or sport “consents to” or “agrees to assume” the risks inherent in the activity or sport itself, such as the risks posed to a snow skier by moguls on a ski slope or the risks posed to a water skier by wind-whipped waves on a lake.

Knight v. Jewett, 834 P.2d 696, 705 (Cal. 1992).

baseball, thereby allowing the injured parties' claims to proceed.¹³⁸ Therefore, it is possible that negligence could be a viable cause of action, but ultimately it would be up to a court to decide.

The more likely and viable cause of action against the fan, though, would be for recklessness or gross negligence. It is abundantly clear that a fan running onto the court after a game is intending his actions and can foresee the risk of injury, but does it anyway. If that same fan then injures someone, that harm is likely not intended.¹³⁹ Given that, the fan's conduct certainly would be reckless and the party should have a valid cause of action against the fan.¹⁴⁰

Courts have often made recklessness a "threshold standard for imposing liability in contexts where 'assumption of risk' and other affirmative defenses would otherwise bar a plaintiff from recovering."¹⁴¹ Recklessness can also

138. *Lowe v. Cal. League of Prof'l. Baseball*, 65 Cal. Rptr. 2d 105, 111 (Cal. Ct. App. 1997) ("If . . . foul balls were to be eliminated, it would be impossible to play the game. Thus, foul balls represent an inherent risk to spectators attending baseball games. . . . Can the same thing be said about the antics of the mascot? We think not.");

In the past, this Court has held that spectators cannot sue a baseball team for injuries caused when a ball or bat enters the stands. Such risks are an unavoidable—even desirable—part of the joy that comes with being close enough to the Great American Pastime The risk of being injured by Slugger's hotdog toss, on the other hand, is not an unavoidable part of watching the Royals play baseball. That risk is no more inherent in watching a game of baseball than it is inherent in watching a rock concert, a monster truck rally, or any other assemblage where free food or T-shirts are tossed into the crowd to increase excitement and boost attendance.

Coomer v. Kan. City Royals Baseball Corp., 437 S.W.3d 184, 188 (Mo. 2014). See generally Joshua D. Winneker, David Gargone & Sam C. Ehrlich, *Who Let the Dogs out: Should a Stadium Owner Be Held Liable for Injuries Sustained from a Mascot's Errant Hot Dog Toss?*, 21 JEFFREY S. MOORAD SPORTS L.J. 369 (2014).

139. If the injured party could prove that the fan intended to hurt him, then the intentional cause of action could be a valid claim as well. See, e.g., Meghan Price, *Dodgers' Security Fails, Liability Ensues*, JEFFREY S. MOORAD CTR. FOR STUDY SPORTS L. (July 27, 2014), <http://lawweb2009.law.villanova.edu/sportslaw/?p=2628> (two fans were forced to pay damages to a fan they attacked in the Dodger Stadium parking lot).

140. Similarly, a "Gatorade Bath" would fall under this same legal theory. See Joshua D. Winneker, *Potential Liability of "Gatorade Baths,"* 3 ARIZ. ST. SPORTS & ENT. L.J. 154 (2013).

141. Geoffrey Christopher Rapp, *The Wreckage of Recklessness*, 86 WASH. U. L. REV. 111, 115 (2008). See *Knight*, 834 P.2d at 716 ("[L]iability properly may be imposed on a participant only when he or she intentionally injures another player or engages in reckless conduct that is totally outside the range of the ordinary activity involved in the sport.");

The majority of jurisdictions . . . have concluded that personal injury cases arising out of an athletic event must be predicated on reckless disregard of safety. . . . Precluding the imposition of liability in cases of negligence without reck-

trigger punitive damages,¹⁴² and it trumps a plaintiff's possible contributory negligence.¹⁴³ Therefore, an injured party at the hands (or feet) of a "reckless" court storming fan could receive a potentially large civil judgment.

Whether the proper claim against a court storming fan is for negligence or recklessness, it is clear that a viable cause of action could exist. This potential liability looms over every game as court storming is gaining steam and not slowing down any time soon.

IV. CONCLUSION

Court storming is an obvious problem in Division I men's college basketball during the regular season and conference tournaments. The NCAA has left it up to the conferences to regulate court storming during this time and the fans simply have disregarded the conferences' authority as well as their pun-

less misconduct furthers the policy that '[v]igorous and active participation in sporting events should not be chilled by the threat of litigation.'

Gauvin v. Clark, 537 N.E.2d 94, 97 (Mass. 1989); Morgan v. State, 685 N.E.2d 202, 208 (N.Y. 1997) ("Another important counterweight to an undue interposition of the assumption of risk doctrine is that participants will not be deemed to have assumed the risks of reckless or intentional conduct."). This would include a court storming plaintiff who participates in the court storming but is still hurt in the melee. See *supra* Section I(A)(2).

142.

Most cases under state common law, although varying in their precise terminology, have adopted more or less the same rule, recognizing that punitive damages in tort cases may be awarded not only for actual intent to injure or evil motive, but also for recklessness, serious indifference to or disregard for the rights of others, or even gross negligence.

Smith v. Wade, 461 U.S. 30, 47-48 (1983); Donnelly v. S. Pac. Co., 118 P.2d 465, 469 (Cal. 1941) ("Wanton and reckless misconduct is more closely akin to willful misconduct than to negligence, and it has most of the legal consequences of willful misconduct. Thus, it justifies an award of punitive damages, and contributory negligence by the plaintiff is not a defense."); see Jason S. Johnston, *Punitive Liability: A New Paradigm of Efficiency in Tort Law*, 87 COLUM. L. REV. 1385, 1402 (1987); Rapp, *supra* note 141, at 116.

143. *Donnelly*, 118 P.2d at 469 ("Wanton and reckless misconduct is more closely akin to willful misconduct than to negligence, and it has most of the legal consequences of willful misconduct. Thus, it justifies an award of punitive damages, and contributory negligence by the plaintiff is not a defense."). But see *Sorensen v. Allred*, 169 Cal. Rptr. 441, 444 (Cal. Ct. App. 1980).

[C]ontributory negligence should be no defense at all because willful and wanton conduct is different in kind rather than in degree from ordinary negligence. On the other hand, the Court also observed that 'a comprehensive system of comparative negligence should allow for the apportionment of damages in all cases involving misconduct which falls short of being intentional.

Id. (citing *Li v. Yellow Cab Co.*, 13 Cal. 3d 804, 825-26 (Cal. 1975)); see Rapp, *supra* note 141, at 116.

ishments. It is clear that the conference-born-solution of levying fines has done nothing to prevent court storming, especially when schools do not mind (and sometimes enjoy) paying the fines for their fans' actions.¹⁴⁴ Moreover, these fines only address the problem post-storm and after any injuries would have occurred. Additionally, trying to allow court storming in a "safe" manner has also proven to be ineffective.¹⁴⁵

The fans will simply not stop court storming as long as they feel they can get away with it when the conferences are the final arbiters. What needs to be done is that the NCAA must step in and formalize its ban on court storming during its Championships into an NCAA rule and then extend that rule to the regular season and conference tournaments. This extended rule would provide a global solution to the problem and take the regulatory power away from the conferences. Instead, all of the conferences would simply have to follow the NCAA's rule.¹⁴⁶ It would then prevent potential serious injuries and subsequent lawsuits as well as stop any possible retribution by the players from ever occurring.¹⁴⁷

The NCAA's proactive approach for the Championship games is extremely effective, as there has not been a court storm at a Division I Men's NCAA Championship Game since 1983.¹⁴⁸ By enforcing this rule during the regular season and conference championships as well, the NCAA can ensure that the same prevention can continue. The NCAA, and its billions of dollars, can eas-

144. *See supra* Section II(B).

145. *See Boren, supra* note 32. The University of Virginia has a protocol, and even let Duke know of it during the shoot-around before the game, where the University creates a "safe zone" with security to allow the opposing team to safely exit the playing surface—something that Duke's Krzyzewski believed was not enough.

146. The NCAA Constitution requires as part of its fundamental policy that member institutions, including colleges, universities, athletics conferences, and associations, apply and enforce the NCAA constitution and bylaws. 2013–14 NCAA DIVISION I MANUAL art. 1.3.2. (Aug. 2013). Under NCAA Bylaw 3.1.1, NCAA membership is available only to institutions who "accept and observe the principles set forth in the constitution and bylaws of the [NCAA]." *Id.* art. 3.1.1. Additionally, conferences are required to "facilitate the institutional performance program of the [NCAA] in accordance with the [NCAA's] constitution and bylaws." *Id.* art. 3.3.4.2.

147. *See supra* Section I.

148. Tracy, *supra* note 5; NCAA On Demand, *supra* note 67. While it is true that the lack of court storming at NCAA Championship games is partially a result of the fact that these games are at neutral sites with fewer students and local fans, the presence of these students and local fans who would rush the courts is certainly not absent. For the 2012 Final Four, 710 students were allowed to purchase \$25 tickets for each of their school's Final Four games, and 355 of these students were given floor level tickets. Zak Keefer, *Lucky Students Witness Final Four*, NCAA.COM (Apr. 1, 2012), <http://www.ncaa.com/news/basketball-men/article/2012-04-01/lucky-students-witness-final-four>. Three hundred fifty-five students rushing the court at once would absolutely create a significant risk of harm to anyone in their path.

ily work with the conferences and member schools on banning court storming just as it does with the venues during the NCAA Championships.

Therefore, in order to allow fans to continue to attend the games,¹⁴⁹ and at the same time eliminate potential injuries and lawsuits, the NCAA needs to ban court storming altogether.

149. John Infante, *Why and How the NCAA Should Ban Court Storming*, ATHNET (Feb. 28, 2014), <http://www.athleticscholarships.net/2014/02/28/why-and-how-the-ncaa-should-ban-court-storming.htm> (noting that “closed door games” without fans like European soccer is one potential penalty for court storming).