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Little League Fun, Big League Liability

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LITTLE LEAGUE FUN, BIG LEAGUE LIABILITY

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It is a Saturday morning in late May, and the Yankees of the Wyckoff, New Jersey Recreation Little League have taken the field ready to do battle against the Royals. The Yankees, as well as their opponent, are composed of 7th and 8th graders. This age level is the players' last opportunity to participate in the Wyckoff Recreation Little League. The coach and his two assistants are recent college graduates and are only twenty-three years of age.

The morning provided the two teams with a picture perfect blue sky. Although it was humid, typical of New Jersey, it was a beautiful day to play baseball. The Yankees had Brian, their star pitcher, on the mound: a lefty 8th grader who was the first pick overall in the 7th and 8th grade league draft. Everything, from the perspective of the Yankees's coaching staff, was perfect.

The fourth inning rolled around with the Yankees ahead of the Royals by a score of three to one. Brian was pitching magnificently up to that point, but then he walked the first two Royals's batters leading off their half of the inning. The next batter, a lefty, stepped up to the plate and Brian, knowing he had to bear down, threw him an inside pitch. . . . . *CRACK!!!* No, it was not the sound of bat on ball, but the sound of a bone breaking! Brian's fastball had struck the batter in the face, resulting in obvious concern and a broken jaw.

It was unlike Brian to throw inside. However, this was a lefty batter and 98% of the batters Brian had pitched to in his short career had been righties.

The Yankees went on to win the game. But, that afternoon, the Yankees's coaching staff was not celebrating because that afternoon brought a phone call. The Yankees's coaches were informed that they were to be named as parties in a civil lawsuit to be filed that coming

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Monday by the parents of the child who suffered the broken jaw. The parents claimed that the Yankees's coaches were tortious,[1] specifically citing negligence,[2] thereby proclaiming that they were legally responsible for the injury sustained by their child.

Fortunately for the Yankees's coaches, *this account* was fictitious. However, reality has proven otherwise.[3] One needs to recognize, before

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1. The term "tort" is generally used to convey a breach of a duty (other than a contractual duty and it is not labeled a crime) by an individual. The tort, also regarded as a civil wrong, can be remedied in a court of law in an action for damages. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 1 at 1,2 (5th ed. 1984) [hereinafter "PROSSER AND KEETON"].

> Wrongful; of the nature of a tort. [U]sed throughout the Restatement, Second, Torts, to denote the fact that conduct whether of act or omission is of such a character as to subject the actor to liability, under the principles of the law of torts. (§ 6). To establish "tortious act" plaintiff must prove not only existence of actionable wrong, but also that damages resulted therefrom.

Id. See also BLACK'S LAW DICTIONARY 1489 (6th ed. 1990) [hereinafter "BLACK'S"].

2. As a starting point, the term "negligence" is defined as: "Failure to exercise the care that a prudent person usually exercises." WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY 566 (7th ed. 1965). In a legal context, "negligence" can be defined as:

> The omission to do something which a reasonable [person], guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent [person] would not do. Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances[.]

BLACK'S, *supra* note 1, at 1032 (6th ed. 1990); *see also* RESTATEMENT (SECOND) OF TORTS § 282 (1977) ("[N]egligence is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm.")

3. *See* Creighton Hale, *Litigation League*, WALL ST. J., Feb. 13, 1995, at A14. Hale writes of little leaguers who, upon injury, turn to their coaches as viable parties to be held legally accountable by claiming that they acted negligently:

> The batter hits a pop fly to center, but your centerfielder is playing the position for the first time.... The pop fly hits him in the eye.... In a real-life case similar to the one described here, the centerfielder's parents filed suit against the coach who stationed their child under the malevolent pop fly. They sought compensation for pain and suffering, as well as punitive damages.... In recent years, litigation has been the end result of two boys colliding in the outfield (the two picked themselves up and sued the coach). Another player sued when a stray dog intruded on the field of play and bit him. In still another case, a man and a woman won a cash settlement when the woman was hit by a ball a player failed to catch. The player was her daughter.

Id.; *see also Little League Bill Is Irresistible But Shortsighted*, NEWSDAY (NEW YORK), May 6, 1989, at 18 (Viewpoints) ("Little League volunteers were once sued after a player was struck by lightning while standing at third base.")

However, the case that has commanded the most attention, and may have served as a catalyst for the enacting of legislation, involved a 10-year-old little leaguer in Runnemede, New Jersey in 1985. *See* Dan Holly, *Sports leagues reeling from liability 'hardball'*, STAR-LEDGER (NEWARK), Mar. 2, 1986, at 1, col. 2 ("In Camden County, . . . a mother filed a $750,000 damage suit against the Runnemede Youth Athletic Association and several coaches after her 10-year-old son was hit in the face when he misjudged a fly ball while warming up for

volunteering one's time, that one could potentially be named in a negligence lawsuit by the very children one coaches; or by the other children in one's league. The prospect of being held legally accountable for an injury that would be thought and categorized as a "part of the game,"[4] is something people may be unaware of prior to signing up to serve as a volunteer. After all, individuals sign up to volunteer as coaches for the prospects of having fun and being able to contribute to their town leagues, which they may have participated in when they were children.[5] Clearly it is not for the prospect of being sued by an injured child or that

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a baseball game."); *Little League Suit*, N.Y. TIMES, May 9, 1985, at B18 (Sports People) (reporting that a Little League outfielder filed suit against four of his coaches after sustaining an eye injury caused by his misjudging a fly ball during the team warm-up); *Committee Hearing on Health Reform Issues: Antitrust, Medical Malpractice, Volunteer Protection*, 1996 WL 81,963 (F.D.C.H.) (testimony of the Honorable John Edward Porter before the House Judiciary Committee) ("One of the most widely reported horror stories involved Little League coaches in Runnemede, New Jersey, who were sued when a fly ball injured a young player in the outfield.... This case was settled for $125,000."); 137 CONG. REC. S8,310-01, S8,344 (daily ed. June 20, 1991) (statement of Sen. Deconcini) ("The parents argued that their child was a natural shortstop, and sued the coach for negligently playing the child in an unfamiliar position [centerfield]. The case was settled out of court for $25,000 [sic]."); 136 CONG. REC. H7,521-02, H7,533 (daily ed. Sep. 13, 1990) (statement of Rep. Tauke) ("The allegation: the child was an infielder, not an outfielder and the coaches knew this."); 136 CONG. REC. S1,782-02, S1,786 (daily ed. Feb. 28, 1990) (statement of Sen. McConnell) ("His parents sued the coach for failing to recognize that the 10-year-old was a born infielder. The National Little League was overwhelmed with calls by coaches from across the country who were worried they would be sued if they moved a player from one position to another.")

4. *See generally* Mel Narol, *Sports Participation With Limited Liability: The Emerging Reckless Disregard Standard*, 1 SETON HALL J. SPORT L. 29 (1991) (discussing the proper duty to be imposed in vigorous athletic competition; recognizing that athletes do not have an expectation of being injured, but they do aspire to engage in "vigorous competition"). It is here that one can begin to think about one's duty to another while engaged in athletic competition. It is also here that one can begin to think about what duty of care a volunteer coach owes to those athletic participants. *See also* RESTATEMENT (SECOND) OF TORTS §, 4 cmt. a (1977).

> [A] duty that the actor shall conduct himself or not conduct himself in a particular manner. It therefore imposes no obligation which is not within the actor's ability to perform, since it relates only to the actor's conduct over which as such he has control.... [W]hether or not he is liable depends upon whether his breach of duty results in an injury to someone to whom the duty is owing in such a manner as to make the breach of the duty a legal cause of the injury, and this depends upon the course of events subsequent to the actor's breach of his duty, a matter over which the actor has no effective control . . .

Id.

5. The positive feelings experienced by volunteers are captured in several periodicals. *See* Gene Pomerance, *The Care and Feeling of Volunteers*, PARKS & RECREATION, Nov. 1994, at 54 (identifying and describing the various reasons why people volunteer); Stephen King & Harry Connolly, *Diamonds Are Forever*, LIFE, May 1, 1994, at 26 (words and photographs capturing the pureness of little league baseball).

child's parents, who often believe that someone is to be held accountable; someone other than themselves.[6]

Let us assume that this article's fictitious account was true: where would that leave the Yankees's coaches? Luckily for these coaches, they lived in New Jersey; a state which *specifically* provides statutory protection for volunteer "coaches."[7] In fact, many states do provide statutory protection for volunteer coaches, but there is a larger number of states that do not.[8] And, herein lies one part of the problem for volunteer coaches: the applicability of negligence or the degree of culpable con-

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6. *See* William J. Cople III, *Unfair Lawsuits Threaten Volunteers*, WASHINGTON LEGAL FOUND. (Dec. 16, 1994), *reprinted in* 141 CONG. REC. S17,776-02, S17,779 (daily ed. Nov. 29, 1995). William J. Cople III stated that:

> Volunteer service is under assault from an unlikely quarter — the civil justice system. . . .[C]ivil justice should not be used recklessly to inhibit beneficial conduct that may involve some amount of risk. . . . In the past, the courts seem to have understood that some circumstances, even ones of tragic proportion, are simply caused by accident or misfortune, and not necessarily by culpable conduct on the part of any other person. Yet, this now has become an unacceptable conclusion. Every conceivable circumstance in which we deal and interact with each other seems to create a victim. This has spawned the civil litigation clogging the courts, *as every victim of circumstances seeks compensation by shifting the blame for those circumstances to someone else.*

Id. (emphasis added); *see also* 142 CONG. REC. E1,445-02 (daily ed. Aug. 1, 1996) (statement of the Honorable Michael N. Castle) (acknowledging the work of Christina Cabrera of Seaford, DE who stated that "[t]he most important part of answering America's call is to cease playing the blame game. By making oneself a victim and shifting the blame on everyone else, one only adds to the problems plaguing our country."); 141 CONG. REC. H15,548-01 (daily ed. Dec. 21, 1995) (statement of Rep. Foley) ("It is also important at this time that we all accept responsibility for our actions. It is about time that we stop trying to place the blame on other people. . . . Far too often people are looking to blame others in society."); 1996 WL 90811 (F.D.C.H.) (Feb. 28, 1996) (statement of Sen. McConnell before the House of Representatives Judiciary) ("Let me turn to another aspect of the legal crisis — those who are victimized by lawsuits: the selfless volunteers who help worthy organizations and institutions. When the legal system ensnares these individuals, the result is too many people pointing fingers and too few offering a helping hand."); Hale, *supra* note 3 ("As a society, we need to remember that because it's not your fault doesn't mean it must be someone else's. As every centerfielder knows, sometimes the sun just gets in your eyes.").

7. N.J. STAT. ANN. § 2A:62A-6 (West 1986). The use of the term "coach" will hereinafter include the terms/titles of manager and athletic instructor as well. The terms/titles of umpire, referee, and official are not included within the scope of "coach" because there are certain states that only provide statutory protection for those kinds of volunteers, while at the same time do not recognize the need to protect volunteer coaches. *See infra* notes 128-132 and accompanying text.

8. A list of those states that have no statutory law *specifically* protecting volunteer coaches as of the time that this article was written: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware (bill proposed), Hawaii (bill proposed), Idaho, Kansas, Kentucky, Maine, Michigan, Mississippi, Montana, Nebraska, Nevada, New York (bill proposed), North Carolina, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin, Wyoming, and Vermont. *See also infra* Part IV (for a more in-depth look).

duct in recreational sports used in determining whether a volunteer coach's conduct is negligent.[9] If one has the answer to that question, one is then ready to address the second part of the volunteer coach's problem: the interpretation of that defined culpable conduct and understanding when a volunteer coach's conduct amounts to negligence. This inevitably leads to an inquiry as to who is to be directed with making that culpability determination when a volunteer coach's conduct is directly in question — a judge, a jury, or a state's legislature?[10]

Why is there no uniformity (in terms of applicability and interpretation) in this area of the law? If there are states with statutes enacted for the sole purpose of protecting volunteer coaches, then why do not *all* states simply provide statutes specifically aimed at protecting volunteer coaches? This is especially pertinent when one takes into consideration that all states typically offer sports like baseball, football, soccer, and basketball, through the creation of recreational programs, organized and sponsored by Little League, Inc., Pop Warner Football, or through a municipal or town recreation department.

Simply put, the discrepancy in state liability rules for recreational athletics — especially when evaluating whether a volunteer coaches' conduct is compulsory — produces a confusion in understanding, resulting in legal questions as to what is not acceptable conduct. This will then lead to apprehension and reluctance on the part of the prospective volunteer coach to even get involved. It should truly make one think that volunteer coaches should get a salary for just figuring out what the appli-

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9. For example, depending upon the state, one's conduct in a particular activity may subject that person to liability if a jury could find negligence based upon an "ordinary negligence" standard; while a neighboring state may not draw the same conclusion because the jury was required to weigh the conduct against a "gross negligence" standard. Although not sports related cases, *see Traphagan v. Mid-America Traffic Marking*, 555 N.W. 2d 778, 785 (Neb. 1996) ("Ordinary negligence is defined as doing something that a reasonably careful person would not do under similar circumstances, or failing to do something that a reasonably careful person would do under similar circumstances.") *compare with Mobil Oil Corp. v. Ellender*, 934 S.W. 2d 439, 447 (Tex. Ct. App. 1996) ("'Gross negligence' means more than momentary thoughtlessness, inadvertence or error of judgment so as to constitute an entire want of care as to establish that the acts or omissions . . . were the result of actual conscious indifference to the rights, safety or welfare of the persons effected."); *State v. Clark*, 556 N.W. 2d 820, 822 (Mich. 1996) ("Gross negligence means more than carelessness. It means willfully disregarding the results to others that might follow from an act or failure to act.")

10. In one form or another, every state provides some form of protection for volunteers; however, the tricky part is deciphering exactly who and what classes of people are protected. *See generally* Charles Tremper, *Volunteers Vulnerable: Protective Laws are a Shield Full of Holes*, 4 BUS. L. TODAY 22 (Nov/Dec 1994) ("One result of all the legislation is a false sense of security among some volunteers, combined with uncertainty among volunteers and lawyers about the scope and effectiveness of the new laws.")

cable standard of care is and how their conduct is going to be measured against that standard.[11]

Accordingly, this article advances the position that there is no acceptable reason for any state[12] to avoid providing *specific statutory protection for volunteer coaches*,[13] who go uncompensated (but not unappreciated), while participating in a municipal or town recreational sports program or non-profit organization sponsored sports athletic league. Part I explores the notion of "negligence" and how our lawsuit happy society has come to view a child's misjudging a fly ball as a cause of action against an individual who may, incidentally, have the most economic wealth. Part II explores volunteerism, its impact in this country and its need to be preserved as a social institution. Part III addresses the role of legislation and how a prospective volunteer coach's apprehensiveness, due to the susceptibility of being sued, can be subdued through the enactment of protective legislation (but is this a matter for the states or for the Federal Government to address?). Part IV looks to the states and their respective legislators for providing volunteer coaches with statutory protection. This section focuses on the language used in New Jersey's statute, which sets out an appropriate standard for volunteer coaches and officials to be measured against.[14]

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11. For a related view, *see* Jamie Brown, Comment, *Legislators Strike Out: Volunteer Little League Coaches Should not be Immune from Tort Liability*, 23 (1997) (manuscript to be published in SETON HALL J. SPORT L.), where Brown points out that depending upon the State that one lives in, a volunteer coach's standard of care will vary, inevitably leading to inconsistency. And although Brown advocates economic recovery for the injured participant, potentially at the expense of the volunteer coach, one could conclude that even Brown himself concedes that there is a need for nationwide uniformity in this area of tort law.

12. This is also meant to include the District of Columbia.

13. For the purposes of this article "specific statutory protection for volunteer coaches" indicates the enacting of a standard where a volunteer recreational coach will be provided with statutory immunity for conduct that does not amount to "willful and wanton negligence" or "willful and wanton misconduct."

Under such a standard, a volunteer recreational coach's conduct will constitute "willful and wanton negligence" when there is: "[a f]ailure to exercise ordinary care to prevent injury to a person who is actually known to be, or reasonably is expected to be, within range of a known danger." BLACK's, *supra* note 1, at 1600. Therefore, conduct that amounts to "willful and wanton negligence" can also be characterized as "willful and wanton misconduct." Where "willful and wanton misconduct" is defined as the "[f]ailure to exercise ordinary care to prevent injury to a person who is actually known to be or reasonably expected to be within the range of a dangerous act being done." *Id.* (*citing* Georgia Press Co. v. Deese, 51 S.E.2d 724, 728 (Ga. Ct. App. 1949)).

For a statutory example, establishing "willful and wanton negligence" as the applicable standard by which a volunteer coach should be judged, one should refer to the legislation enacted by New Jersey. *See* N.J. STAT. ANN. § 2A:62A-6(c)(1) (1995).

14. That applicable standard is set out in § 2A:62A-6(c)(1).

In short, New Jersey's legislated standard should be viewed as creating a foundation upon which nationwide uniformity can be achieved in this area of the law.

I. WHAT ARE VOLUNTEER COACHES DOING, OR FOR THAT MATTER NOT DOING, THAT ENABLES LAWSUITS TO BE BROUGHT AGAINST THEM CLAIMING NEGLIGENCE?

Problems in the applicability and interpretation of negligence law are resolved when nationwide uniformity is achieved. If the goal of tort law is to assign responsibility to someone for causing another's injury — resulting in that someone being obligated to compensate that injured person[15] — then that goal can only be achieved when its standards are practiced throughout society. Uniformity can be understood to mean that when an individual engages in a particular activity, he or she will understand the probable ramifications of his or her conduct and the economic responsibilities that may follow.

What constitutes actionable negligence must be determined objectively. Even the judicial system recognizes that subjectivity influences its determinations of assigning responsibility and awarding compensation; as the judge and jury are all active participants in the subjective society. Consequentially, an objective force is introduced and utilized in the judicial system. A force none other than "our fictitious friend," the reasonable (and prudent) man.[16] The reasonable man is society's reaction to

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Nothing in this section shall be deemed to grant immunity to any person causing damage by his *willful, wanton, or grossly negligent act of commission or omission*, nor to any coach, manager, or official who has not participated in a safety orientation and training skills program which program shall include but not be limited to injury prevention and first aid procedures and general coaching concepts.

Id. (emphasis added).

15. "[Tort law] affords a measure of protection against harmful activities; in addition it gives compensation to the injured person." WARREN SEAVEY, COGITATIONS ON TORTS 3 (1956).

16. RESTATEMENT (SECOND) OF TORTS § 283 (1977).

The words 'reasonable man' denote a person exercising those qualities of attention, knowledge, intelligence, and judgment which society requires of its members for the protection of their own interests and the interests of others. It enables those who are to determine whether the actor's conduct is such as to subject him to liability for harm caused thereby, to express their judgment in terms of the conduct of a human being. The fact that this judgment is personified in a 'man' calls attention to the necessity of taking into account the fallibility of human beings.

Id. at cmt. b; *see also* PROSSER AND KEETON, *supra* note 1, § 32, at 173 (history and characterization of the "reasonable person"); OLIVER WENDALL HOLMES, JR., THE COMMON LAW 137

subjective decision making,[17] whereby the reasonable man becomes our measuring stick for judging whether the actor's acts or omissions were so unreasonable that he be found guilty of negligence.[18] For the reasonable person standard to be determined objectively, the community must not assume or create unfounded expectations about a particular actor's conduct. The volunteer coach participating in a community's recreational athletic league is a reasonable man; whose conduct must be evaluated objectively.

The volunteer coach is not the equal of a professional or even semi-professional coach.[19] Rather, volunteer coaches are active community participants extending their time and energies for the benefit of the community's children.[20] The success of a recreational league will depend

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(Little, Brown and Company 1923) (1881) ("the average prudent member of the community" is founded on moral ground).

17. "The reasonable man is a fictitious person, who is never negligent, and whose conduct is always up to standard. . . . It is therefore error to instruct the jury that the conduct of a reasonable man is to be determined by what they would themselves have done." RESTATEMENT (SECOND) OF TORTS § 283 cmt. c (1977).

18. "[C]onduct cannot be either right or wrong without other conduct with which to compare it, or without reference to consequences. There must be reference to some pre-conceived standard of comparison, as to which the conduct described falls above or below." Warren A. Seavey, *Negligence — Subjective or Objective?*, 41 HARV. L. REV. 1, 3 (1927). "The question for judges and juries is not what a man was thinking or not thinking about, expecting or not expecting, but whether his behaviour [sic] was or was not such as we demand of a prudent man under the given circumstances." POLLOCK, TORTS, 12 ed., 443, *quoted in* Henry W. Edgerton, *Negligence, Inadvertence, and Indifference; The Relation of Mental States To Negligence*, 39 HARV. L. REV. 849, 863 (1926) (footnote omitted). "It has often been laid down that negligence is doing what a reasonable and prudent man would not have done or not doing what such a man would have done." Henry Terry, *Negligence*, 29 HARV. L. REV. 40, 41 (1915).

19. For a related view, *see* Ian M. Burnstein, Note, *Liability for Injuries Suffered in the Course of Recreational Sports: Application of the Negligence Standard*, 71 U. DET. MERCY L. REV. 993, 1016 (1994). Although the discussion focuses on the proper standard of care between co-participants, Burnstein strongly suggests that the particpants' status in recreational sports needs to be distinguished from the status for participants in professional sports. The courts need to recognize that the two types of athletic participant status cannot be assessed using the same criteria.

20. Consider the message behind the closing argument made by counsel for the City of Manchester. He was trying to convince the jury that the City's supervision for the Southside Junior High School cheerleading team was not negligent:

> This case is about who loses if you return a verdict in favor of [plaintiff] and you send a message to the community that what [the teacher] did in this case was wrong and if you volunteer and if a kid gets injured you could be spending the next couple of days just where he has been spending it [in a court of law]. The only ones who lose in that situation are the kids because, as [the teacher] said, he wouldn't do this again and you are not going to have all those programs that are provided only because people volunteer. *The kids who are taking advantage of those programs are taking advantage of them because of volunteers.*

upon community support. To this extent, the community has consented to the volunteer coach's ability and inability to teach, instruct, and encourage its children on how to participate and compete in recreational athletic sports.

It would be blatantly unrealistic to expect a volunteer coach to possess the equivalent skill, knowledge, and foresight of a high school, college, or professional coach. However, that is not to suggest that the volunteer coach should not be expected to exercise due care. Exercising due care should mean that the volunteer coach, while acting in a capacity reasonably expected by someone in his or her position, does not exhibit conduct that amounts to willful and wanton negligence.[21]

"Negligence is a departure from a standard of conduct demanded by the community for the protection of others against unreasonable risk."[22] Accordingly, negligence could be the result of "a lack of common knowledge, memory, observation, imagination, foresight, intelligence, judgment, quickness of reaction, deliberation, coolness, self-control, determination, courage, or altruism."[23] Therefore, in establishing a liability rule, the reasonable person in the volunteer coach context must be determined independently from the reasonable person standard used in the more structured and advanced coaching or instructing contexts.[24] In

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Walton v. City of Manchester, 666 A.2d 978-980 (N.H. 1995) (emphasis added) (the case was reversed and remanded due to the trial court erring in granting a new trial to plaintiff).

21. Although it would appear intended for high school and collegiate coaches, consider that the

> [p]revalent case law and legal commentary establish the following specific duties upon coaches: (1) supervision; (2) training and instruction; (3) ensuring the proper use of safe equipment; (4) providing competent and responsible personnel; (5) warning of latent dangers; (6) providing prompt and proper medical care; (7) preventing injured athletes from competing; and (8) matching athletes of similar competitive levels.

See Anthony S. McCaskey & Kenneth W. Biedzynski, *A Guide To The Legal Liability Of Coaches For A Sports Participant's Injuries*, 6 SETON HALL J. SPORT L. 7, 15-16 (1996) (footnote omitted).

22. RESTATEMENT (SECOND) OF TORTS § 283 cmt. c (1977).

23. Edgerton, *supra* note 18, at 856.

24. Recreational volunteer coaches and the young players they coach, do not possess the same levels of athletic experience and ability to understand the risks (whether they are foreseeable or unforeseeable) involved with participating in an athletic activity as compared to those participants who engage in athletic activities for various rewards (i.e., monetary gain and scholastic achievement). *See, e.g., Rutter v. Northeastern Beaver County Sch. Dist.*, 437 A.2d 1198 (Pa. 1981) (high school football player injured while trying to impress the high school football coaches); *Fortier v. Los Rios Community College Dist.*, 52 Cal. Rptr. 2d 812 (Cal. Ct. App. 3d 1996) (college offered an "advanced football" class whose instructors were also the college's football coaches); *Harvey v. Ouachita Parish Sch. Bd.*, 674 So.2d 372 (La. Ct. App. 1996) (high school football player, regarded as a "star" player, sustained an injury preventing him from pursuing football on an athletic scholarship level); *Zalkin v. American Learning Sys.*,

keeping with the same rationale, a liability rule calling for a finding of ordinary negligence or invoking either the confusing and misleading assumption of risk[25] and unavoidable accident[26] doctrines are extreme and

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639 So.2d 1020 (Fla. Dist. Ct. App. 1994) (high school football player, starting for his team as a defensive tackle, sued the high school's coach for "failure to supervise the sport properly"); *Wattenbarger v. Cincinnati Reds*, 33 Cal. Rptr. 2d 732 (Cal. Ct. App. 3d 1994) (professional baseball team held tryouts for invited participants aged 16 to 21, where upon a high school baseball player tried out and sustained an injury in the process); *Tan v. Goddard*, 17 Cal. Rptr. 2d 89 (Cal. Ct. App. 4d 1993) (plaintiff wanted to become a jockey, and relied upon the knowledge and experience of the riding school's instructors); *Galardi v. Seahorse Riding Club*, 20 Cal. Rptr. 2d 270 (Cal. Ct. App. 2d 1993) (plaintiff was an accomplished equestrian who sued her instructor at the riding club for injuries resulting from a horse jumping mishap).

Thus, professional, collegiate, and high school athletics create a more mature brand of competition where there is a better understanding for the notion of competition and a better appreciation for the particular sport's parameters. Whereas, little league recreational leagues exist to promote teamwork, develop skills, and an interest in the particular sport, as opposed to those who look at the more competitive levels of athletic competition believing that they promote "the infliction of pain" and possess a knowledge of inherent danger. *See* Burnstein, *supra* note 19, at 1013; *Fortier*, 52 Cal. Rptr. 2d 812 (aggressiveness essential element in the game of football); *Yancey v. Super. Ct. of Stanislaus County*, 33 Cal. Rptr. 2d 777, 780 (Cal. Ct. App. 5th 1994) (vigorous participation breeds careless behavior).

25. Assumption of risk is defined as: "[A] plaintiff may not recover for an injury to which he assents, *i.e.*, that a person may not recover for an injury received when he voluntarily exposes himself to a known and appreciated danger." BLACK's, *supra* note 1, at 123; *see also* RESTATEMENT (SECOND) OF TORTS § 496 A (1977) ("A plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm.").

The doctrine's scope, however, is limited: its application is only appropriate as a defense against claims for ordinary or mere negligence. *See, e.g., Knight v. Jewett*, 834 P.2d 696, 712 (Cal. 1992); *Fortier*, 52 Cal. Rptr. 812; *Tan*, 17 Cal. Rptr. at 91; *Galardi*, 20 Cal. Rptr. at 272; *Rich v. West Shore Little League Baseball, Inc.*, 209 A.D.2d 396 (N.Y. App. Div. 1994); *Strauss v. Town of Oyster Bay*, 201 A.D.2d 553, 554 (N.Y. App. Div. 1994).

This article acknowledges that mishaps and accidents, resulting in injury, will occur within the context of participating in recreational sports. Thus, this article also advances the position that in order to sustain a cause of action, in a court of law, against a volunteer coach, more than ordinary negligence must be maintained. *Cf. Zalkin*, 639 So.2d 1020 (Fla. Dist. Ct. App. 1994) ("express assumption of risk is not a bar to an action for negligent supervision of a minor engaged in a contact sport.") Moreover, the assumption of risk doctrine has no place in a liability scheme that establishes as its level of culpability "willful and wanton negligence."

Beyond the discussion of what liability scheme will encompass the doctrine's applicability, assumption of risk has been regarded as complex. When seen as a jury instruction, it is often cited as a source for confusion. *See, e.g., Knight*, 834 P.2d at 699 ("As every leading tort treatise has explained, the assumption of risk doctrine long has caused confusion both in definition and application. . ."); *Rutter*, 437 A.2d at 1208. In fact, a number of jurisdictions, recognizing the inadequacies with the doctrine's application, have abolished the assumption of risk defense. *See, e.g., Crawn v. Campo*, 630 A.2d 368, 372 (N.J. 1993) ("'Assumption of risk' is not a sound basis for incorporating a sports-injury immunity in New Jersey law. The concept of assumption of risk was essentially written out of our jurisprudence by *Meistrich v. Casino Arena Attractions, Inc.*, 155 A.2d 90 (N.J. 1959). . . . [and] emphatically reaffirmed in *McGrath v. American Cyanamid Co.*, 196 A.2d 238 (N.J. 1963). . ."); *Rutter*, 437 A.2d at 1210 n.5 ("We

note that nineteen other jurisdictions have either seriously modified or abolished the assumption of risk doctrine.")

On the other hand, California recognizes the assumption of risk defense, creating two distinct categories for interpreting cases: 1) primary assumption of risk: "by virtue of the nature of the activity and the parties' relationship to the activity, the defendant owes no legal duty to protect the plaintiff from the particular risk of harm that caused the injury[;]" and 2) secondary assumption of risk: "occurs when the defendant owes a duty of care to the plaintiff but the plaintiff knowingly encounters the risk of injury caused by defendant's breach of that duty. [It] is merged into the comparative fault scheme[.]" *See Yancey*, 33 Cal. Rptr. at 779 (adopting the standard set out by the California Supreme Court in *Knight v. Jewett*); *but see Knight*, 834 P.2d at 712 (Mosk, J., dissenting) ("I believe the time has come to eliminate implied assumption of risk entirely.")

In sum, although the assumption of risk doctrine can be invoked where blame for sports related mishaps are in question, the defense will only be considered where the duty of care owed is that of ordinary negligence. But, as this article professes, the assumption of risk doctrine's rationale does not belong in the recreational sports context; because the players are younger, more limited in their ability and understanding of the sports, and the coaches are volunteers with limitations as to their ability to teach and prevent young children's mishaps. *See Dillard v. Little League Baseball Inc.*, 55 A.D.2d 477, 481 (N.Y. App. Div. 1977).

> It cannot be said that it would be a total surprise for a nine year old to throw a pitch after the umpire had called time out and before the umpire had called a resumption of play. This kind of mistake, error, inadvertence or lack of attention is fully to be expected during the heat of a game from so young a player.

Id.

> 26. The unavoidable accident doctrine has been defined consistently by courts as, an occurrence which is not contributed to by the negligent act or omission of either party or which is not proximately caused by the negligence of any person. It is such an occurrence as, under all the circumstances, could not have been foreseen or avoided in the exercise of ordinary care.

Schaub v. Linehan, 442 P.2d 742, 744 (Idaho 1968); *see also Harrah v. Washington*, 477 S.E.2d 281, 286 (Va. 1996); *Burdette v. Madison*, 719 S.W.2d 418, 419 (Ark. 1986); *Meyers v. Smith*, 482 So.2d 60, 64 (La. Ct. App. 1986). Initially, the doctrine was utilized "when damages for injuries to person or property directly caused by a voluntary act of the defendant could be recovered in an action of trespass and when strict liability would be imposed unless the defendant proved that the injury was caused through 'inevitable accident.'" *Butigan v. Yellow Cab Co.*, 320 P.2d 500, 504 (Cal. 1958). However, courts have continually regarded the doctrine as being "obsolete" and "inapplicable," as well as criticized the doctrine's instruction and application as "misleading" and "confusing." *See Butigan*, 320 P.2d at 504-05, *cited with approval in Schaub*, 442 P.2d 742; *Dinda v. Sirois*, 347 A.2d 75 (Conn. 1974); *Burdette*, 719 S.W.2d 418; *Hunter v. Johnson*, 359 S.E.2d 611 (W. Va. 1987). Nevertheless, the doctrine has not been completely abandoned. There are those rare instances where a court has found that, under the circumstances of a particular case, the doctrine's application has been ruled appropriate. *See Dorsey v. Williams*, 525 So.2d 542 (La. Ct. App. 1988) (accident involving a driver of an automobile and a child running suddenly into the street); *see also Brown v. United States Fire Insurance*, 671 So.2d 1195 (La. Ct. App. 1996) (a child became a paraplegic after darting out into the street and being struck by a school bus).

An authority, destined to be in the minority, may successfully render an opinion that reads: Where the sudden acts of a child manifests an inevitable emergency situation, no liability for the resulting injuries will be placed upon the volunteer coach so long as the volunteer coach has employed all reasonable precautions. The incident would be dismissed as an unavoidable accident. Nonetheless, this line of reasoning will not be explored or advocated in this article.

insufficient responses in determining the duty of care owed by a volunteer recreational coach.

Recreational athletics — due to the age, limited ability, and overall competence of the participants — accommodate unpredictability and the

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It follows that if the unavoidable accident doctrine is to be thought of as an inappropriate and unacceptable defense to a claim of negligence in the recreational sports context, so must the "act of God" defense, a sub-set of the unavoidable accident doctrine, be viewed in the same light.

> The act of God defense generally entails the following requirements: the unforeseeability by reasonable human intelligence, and the absence of a human agency causing the alleged damage. . . . The test is not whether the eventuality is likely or probable, but whether it is foreseeable. Consequently, the defense is generally limited to truly unforeseeable events, rather than situations involving unusual, but not unprecedented, impacts.

See Denis Binder, *Act of God? or Act of Man?: A Reappraisal Of The Act Of God Defense In Tort Law*, 15 REV. LITIG.1, 13 (1995-96); *see also Bradford v. Stanley*, 355 So.2d 328, 330 (Ala. 1978) ("In its legal sense an 'act of God' applies only to events in nature so extraordinary that the history of climatic variations and other conditions in the particular locality affords no reasonable warning of them."); *Curtis v. Dewey*, 475 P.2d 808, 810 (Idaho 1970) ("Negligence cannot be predicated upon a failure to anticipate that which was so extraordinary and utterly unprecedented as to have eluded the foresight of a reasonable man.")

Thus, the "act of God" doctrine could theoretically be viewed as a way to refute an action for negligence; to the reasonable person an incident or risk of an incident, involving a child participating in recreational athletics, could be seen as unforeseeable. Consider these two incidents: 1) a little leaguer misjudges a fly ball and is consequently struck in the face by the ball. The little leaguer claims that he was blinded by the bright sun and that his coaches acted negligently in failing to teach him how to shade his eyes from the sun; and 2) the little league centerfielder is again struck in the face, but this time he is struck by a bolt of lightning. The game had started with the possibility for showers, but it was not until the game progressed did the sky become increasingly overcast. Could not both incidents be categorized as "act[s] of God?" Or, could one conclude that the centerfielder's being struck by lightning, like being struck by a misjudged fly ball, is actionable by holding the coach responsible for placing the child in that position? The answer to these questions, nevertheless, depends upon whether an incident was foreseeable. *See* NEIL J. DOUGHERTY, ET AL., SPORT, PHYSICAL ACTIVITY, AND THE LAW 241 (1994) (the "act of God" doctrine is properly invoked where an accident is deemed beyond reasonable control); *see also* Binder, at 37 ("It seems clear that the act of God defense rests on the twin pillars of lack of predictability and lack of control. If either pillar is missing, the defense fails.") (footnote omitted); *but see Little League Suit*, N.Y. TIMES, May 9, 1985, at B18 (Sports People) (when asked to sum up an incident involving a little leaguer, who was hit in the eye by a pop fly while playing centerfield, Bill McGrath, a vice president of the Runnemede [New Jersey] Little League, concluded that it was "an act of God," as opposed to negligent coaching).

Like the unavoidable accident doctrine, the problem of jury confusion enters into the act of God defense's application. *See* Binder, at 77. "In conclusion, the act of God defense is a theory which no longer makes legal or factual sense. It is time to recognize that when looked at in the context of the specifics, the act of God defense is simply an application of normal negligence principles." *Id.* at 79. And in the context of recreational athletics, the application of ordinary negligence principles are not appropriate for determining whether a volunteer recreational coach should be held liable for injuries sustained by a player who misjudges a fly ball or is struck by a bolt of lightning.

inability of a volunteer coach to foresee every possible situation and its consequences. If tort law's goal of assigning responsibility for injured persons is to be achieved in the recreational sports arena, then it must be recognized that a volunteer coach's conduct must be measured against a *willful and wanton negligence* (or willful and wanton misconduct) standard of culpability.

Returning to this article's opening story concerning Brian's errant pitch, one might begin to question how and why society would tolerate a civil action being brought against the Yankees's coaches. The recent college graduates were volunteer recreational coaches, who never aspired to become professional coaches and possessed no agenda other than to contribute to the overall social welfare of their community.

In the meantime, consider how society should define the reasonable person's attributes in the volunteer recreational athletic coach context. Then, in applying this article's fictitious account, ask yourself; how could the reasonable person allow such an unconscionable conclusion to be drawn against such a community person?

A. A Strict Application Of Negligence's Elements, Under Either A Traditional Framework Or Economic Model, Cannot Take Into Full Account The Volunteer Coach's Social Utility And Worth.

In civil actions, where a volunteer coach's conduct is at issue, a willful and wanton negligence standard should be applied.[27] However, before the issue can be settled, consideration must be extended to negligence's elements at common law. Asking for an ordinary negligence determination to be made will produce both inequitable results and resentment in every community benefited by youth activities. This position is also based upon the tenet that "[n]egligence is conduct, and not a state of mind. . . . [T]he actor does not advert properly to the consequences that may follow his conduct, and therefore fails to realize that his conduct is unreasonably dangerous."[28] To hold the volunteer recreational coach re-

27. Three of the major areas where lawsuits allege that a coach breached his/her duty of care are: 1) the responsibility to provide effective supervision; 2) the responsibility to provide appropriate and well-conducted activities; and 3) the responsibility to provide safe and appropriate environmental conditions. *See* NEIL J. DOUGHERTY, ET AL., *supra* note 26, at 250-51 & Table 13.1; *see also* ROBERT W. KOEHLER, LAW SPORT ACTIVITY AND MANAGEMENT, Chapter III ('Negligence') (1991).

28. Terry, *supra* note 18, at 40; *but see* Edgerton, *supra* note 18, at 859 ("When there is negligent conduct, there has been a shortcoming in some mental respect; and when a shortcoming in any mental respect leads to dangerous conduct, it leads to negligent conduct.").

sponsible for the injuries incurred by a child participant, there must be more present than a lack of knowledge or an error in judgment. For example, the question to be asked, should be whether the coach's conduct involved risk, "which he understands to be unreasonably great."[29]

The traditional formula used in determining whether an individual has acted negligently focuses on four elements:

> a. A duty, or obligation, recognized by the law, requiring the person to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
> b. A failure on the person's part to conform to the standard required: a breach of the duty.
> c. A reasonably close causal connection between the conduct and the resulting injury. This is what is commonly known as 'legal cause,' or 'proximate cause[.]'
> d. Actual loss or damage resulting to the interests of another . . . [P]roof of damage [is] an essential part of the plaintiff's case.[30]

However, because we are focusing on a volunteer coach's acts of omission or commission an additional element needs to be addressed:

> e. Foreseeability . . . . there must be proof that the defendant [in this case the volunteer coach] should have been able to predict the possibility of an injury under the circumstances in question. It is not necessary to show that the specific injury suffered by the plaintiff was predictable under the circumstances; simply that a reasonable person should have realized that *someone* might suffer *some type of injury*.[31]

With the traditional formula for determining negligence in place, one can begin to see how one errant and unintentionally thrown pitch can result in a parent scrambling to call a lawyer, seeking to sue anyone and everyone with a "close causal connection" to the child's injury.[32] But,

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29. Terry, *supra* note 18, at 41. Therefore, a determination needs to be made in understanding the conduct of the volunteer recreational coach; did the volunteer coach recognize that there was a "risk" because of the nature of the activity he was coaching (an inherent risk that an injury will be endured), or did the volunteer coach have knowledge of a specific risk, but was not compelled to take the proper precautions to prevent injury?

30. PROSSER AND KEETON, *supra* note 1, § 30, at 164-65; *see also* RESTATEMENT (SECOND) OF TORTS § 281 & cmt. a. (1977) ("Clauses (a) and (b) state the conditions necessary to make the actor's conduct negligent. Clauses (c) and (d) state the conditions which are necessary to make negligent conduct actionable."); RESTATEMENT (SECOND) OF TORTS § 289 & cmt. b. (1977) (the reasonable man recognizes that his conduct involves risk of harm, and a potential holding that his conduct amounted to negligence).

31. NEIL J. DOUGHERTY, ET AL., *supra* note 26, at 237; *see also* RESTATEMENT (SECOND) OF TORTS § 284 (1977).

32. "With thousands of nine-year-old rifle arms throwing thousands of baseballs as thousands of Little League parents look on, the likelihood of an errant throw is obvious. It's

not every mishap should result in a phone call to a lawyer, especially when the determination of liability lies within the context of children participating in recreational sports. For in the recreational sports arena, every occurrence (the obvious and non-obvious) can be characterized as "foreseeable."[33] The volunteer coach is arguably always in "reasonably close causal connection between the conduct and the resulting injury." Thus, under the traditional negligence framework, there is always the possibility that an affirmative answer can be given to the question: "Was the [volunteer coach] under a duty to protect the [player(s)] against *the event* which did in fact occur?"[34]

In the recreational sports context, a legislated willful and wanton standard is best suited for addressing the concerns of individuals who are willing to volunteer in their communities' recreational leagues. This conclusion is fostered through the use of two rationales. Initially, legislation laying out a willful and wanton standard will address the fears of volunteers who are unwilling to face the uncertainties presented by the legal system. There is uncertainty because there is no set formula in place that will enable the correct and just outcome to prevail. A party to such an action solely relies upon a group of individuals, serving in a jury capacity, to competently make an understanding of the facts and the law of negligence. But, in addition, one must recognize that when in the hands of a creative legal mind, (who will later be speaking before a jury) nothing is unforeseeable.

Secondly, the need for such legislation arises out of the desire to protect the community recreational programs that rely upon individual par-

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sad, but emblematic of our times, that such an incident results in litigation." *The Windup, the Pitch, the Suit*, SPORTS ILLUSTRATED, Jan. 15, 1996, at 31 (Scorecard).

33. *See, e.g., supra* note 3; *see also Castro v. Chicago Park District*, 533 N.E.2d 504 (Ill. App. 1988) (little leaguer brought negligence action against park district for injuries sustained when hit by a foul ball, during a baseball game, while sitting on dugout bench; the team's baseball coach was named in a third-party complaint for contributory negligence); *Preston, Pro Ami v. Little League Baseball Inc. & Pasadena Pan American Little League*, 1994 WL 127847 (LRP Jury) ("[Little leaguer] suffered a fractured jaw and lacerations . . . [running] into a barbed fence at the defendant's baseball field while chasing a ball which had been hit by his coach."); *Roe, Pro Ami v. Little League Baseball Inc. and Warwick Little League*, 1995 WL 838253 (LRP Jury) (An 11-year-old ballplayer who was hit in the eye by a baseball while playing (resulting in surgery and a change in vision), contended that the defendant was negligent in failing to attach face shields to the helmets used during ball games); *Baker v. Groetz*, 1992 WL 330269 (Ohio Ct. App. Nov. 9, 1992) (parents brought negligence action on behalf of their son for a team miniature golf outing incident involving a teammate's errant golf swing; the team's baseball coach was also named as a negligent party in the suit).

34. PROSSER AND KEETON, *supra* note 1, § 42, at 274 (emphasis added); *Id.* at 356 (for volunteer coaches, that duty can be seen as an obligation to conform to a "legal standard of reasonable conduct in the light of the apparent risk").

ticipation on a voluntary basis. In fact, if these recreational programs sought to hire only highly skilled and trained coaches there would be no reason to write this article.

This article has no concern for any of the legal dilemmas that may develop in the area of compensated sports coaches and instructors.[35] There is a fundamental difference between the compensated coach and the volunteer coach: absolutely everyone is capable of becoming a volunteer coach, while only a small minority of individuals will ever be provided with the chance of becoming a compensated coach. Universality is what makes community recreational sports so precious and worthy of specific legal attention. Recreational athletics can accommodate anyone who wishes to get involved.

Consider two cases, both on point with the aforementioned observations. Both cases present the issue of when does a particular coach's conduct amount to negligence. In considering the cases, keep in mind two variations: first, both cases should be treated as if the volunteer coaches coached players between the ages of ten and eleven;[36] and second, how would these cases be determined under a willful and wanton negligence standard?

In *Rutter v. Northeastern Beaver County School District*,[37] a high school football coach was accused of exhibiting negligent conduct, resulting in one of his players sustaining injury.[38] The injured football player, sixteen years old, incurred permanent eye damage when struck by a fellow teammate's outstretched hand during a practice.[39] The practice, which did not include the use of protective equipment, took the form of a game entitled "jungle football."[40] "Jungle football" was defined in the lawsuit, in part, as a fast-paced game where "[p]lay was stopped when

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35. Here, the author is directly referring to high school and college level coaches, as well as to instructors involved in various athletic activities (i.e., the martial arts, skiing, horseback riding). For a broad exploration of coaches and the legal liability they face, at all levels of competition, *see generally* McCaskey and Biedzynski, *supra* note 21, at 10 n.4.

> The legal liability issue invariably pertains more to coaches on the amateur level for obvious reasons. First, those coaches are not dealing with professional players who tend to be older, more skilled, and more experienced than their amateur counterparts. Second, professionals are paid athletes and are usually insured for resulting injuries pertaining to the sport by their respective franchises.

Id.

36. Actually, the first case questioned the conduct of a high school football coach, while the second case considered the actions of a volunteer little league baseball coach.

37. 437 A.2d 1198 (Pa. 1981).

38. *Id.* at 1200.

39. *Id.*

40. *Id.* at 1201.

the ball carrier was tagged with two hands, or tackled, or when a pass fell incomplete."[41] The lower court ruled that the minor, Howard Rutter, had assumed the risk of sustaining such an injury and that a claim for negligence was inappropriate against the coach.[42]

The Pennsylvania Supreme Court reversed and remanded back to the Beaver County Court announcing that: 1) Pennsylvania's courts would no longer recognize the assumption of risk doctrine; and, 2) the facts of the case should have been evaluated under a negligence rationale.[43]

However, based upon the Pennsylvania Supreme Court's characterization of the coach's conduct, a willful and wanton negligence[44] standard would have been the appropriate liability rationale:

> [A] 'touch' football game in which tackling and body blocking occurs, which is *initiated and supervised by the football coaches*, in which *no equipment is used*, and which is played by team members *attempting to impress coaches who are themselves engaged in the game*, may be said at least to present a jury question as to the *dangerousness of the game* and the negligence of the coaches.[45]

If a volunteer coach and his players were the participants in *Rutter*, would the nature of the activity and the conduct of the coach justify the application of a willful and wanton negligence standard? And would the application of this standard prove to be the most appropriate? It appears that this is so, especially when one considers that the coach, regardless of his experience, must have been aware of the unreasonable risks imposed by such an activity.

Would the reasonable person conduct an activity where no protective equipment is issued, knowing that the game provided its participants with the opportunity to impress their coach? Collectively, the facts would suggest that the participants' level of competitiveness would have been intensified. A volunteer coach's duty of care should not be founded upon the foreseeability of an errant outstretched hand causing permanent eye damage. Instead, one should be examining the coach's

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41. *Id.*

42. *Rutter*, 437 A.2d at 1201.

43. *Id.* at 1209.

44. "[A f]ailure to exercise ordinary care to prevent injury to a person who is actually known to be, or reasonably is expected to be, within range of a known danger." BLACK'S, *supra* note 1, at 1600.

45. *Rutter*, 437 A.2d at 1202 (emphasis added).

level of willfulness or disregard to the known risks involved with conducting the particular activity.[46]

The second case to be considered is *Lasseigne v. American Legion, Nicholson Post #38*: a case decided in 1990 by the Court of Appeals in Louisiana.[47] Jason Lasseigne, a minor, participated in the American Legion little league baseball program, where his baseball coaches were volunteer parents. On June 3, 1986, Jason, and his teammates, participated in a practice session, after their regularly scheduled game had been postponed.[48] The field they practiced on was wet and Jason, while taking infield practice, was struck on the head by an errantly thrown baseball by teammate Todd Landry.[49] The wet ball field was responsible for producing poor footing and a soggy baseball, resulting in Landry slipping on the wet ground while making the throw.[50] The volunteer coach immediately examined Jason and saw no apparent signs of injury. Nonetheless, the volunteer coach instructed Jason to sit on the side for awhile to rest. After a short period of time, Jason stated that he was ready to resume practicing (at no time were there any signs of physical complications).[51] Upon taking Jason home, his baseball coach told Jason to inform his parents of what had happened during the practice. Approximately twenty-four hours later, Jason underwent head surgery.[52]

The Lasseignes, on behalf of Jason, filed a suit for damages suffered. An exhaustive list of responsible parties was compiled – a list that in-

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46. Can a claim alleging negligence on behalf of the volunteer coach, for the permanent eye damage sustained by a young little leaguer struck by a routine fly ball, be distinguished from the facts asserted in *Rutter v. Northeastern Beaver County Sch. Dis.*? Would the reasonable person conclude that both incidents involved foreseeable risks that could have been prevented by the coach's instruction or taking a different course of action? The two incidents cannot be considered in the same light. Regardless of the level of coaching experience, the parameters of the particular activity must be reasonably assessed prior to encouraging youngsters to compete. However, one cannot create the expectation that every mishap incurred by a youngster could have been avoided by some course of action taken by the coach. If that were the case, every occurrence (even if it had only a one in one billion chance of occurring) could be deemed as foreseeable, and reduced to a lawsuit alleging ordinary or mere negligence.

If being struck in the eye by a routine fly ball is a foreseeable occurrence, created by a volunteer coach's ordinary negligence, why are there not any aspiring lawyers trying to bar or discontinue the activity?

47. Lasseigne v. American Legion, Nicholson Post #38, 558 So.2d 614 (La. Ct. App. 1990).

48. *Id.* at 615.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Lasseigne*, 558 So.2d at 615.

cluded Jason's baseball coaches.[53] The conduct of Jason's coaches, Claude Cassels and Billy Johnson, was specifically in question on appeal. It was claimed that the coaches failed to adequately supervise the practice session and that they increased the severity of Jason's injury by not directly informing his parents of the incident.[54]

The focus of the case was whether the coaches breached their duty of care: due to the conditions of the baseball field and allowing Jason to resume practicing. But, could not the suit's focus just as easily have been placed upon the parents? In an attempt to stay clear of any placed blame, the parents claimed that "no one from Post 38 or the *coaching staff* ever informed [them] that there was any undue risk involved in allowing Jason to participate in the program."[55] But, like any sports activity, there is always going to be the risk of injury (and is not that the message behind the introduction of a willful and wanton negligence standard).

In affirming the trial court's granting of summary judgment on behalf of the defendants, the Louisiana Court of Appeals stated: "The reasonableness of their conduct is especially clear in light of the *social utility* of said conduct — namely, the value of the services of volunteers in a youth sports program to the community in which they participate."[56]

Was the volunteer coach in *Lasseigne* negligent? The answer to that question can arguably be answered in the affirmative, as it is reasonably foreseeable that playing baseball on a wet grass field could result in a player getting hurt. However, is this to mean that we should ignore the role of the child's parents in this incident? The "team's regularly scheduled game was rained out,"[57] yet the child's parents did not object to their son's participation in the inclement weather. Could it be inferred that the *reasonable parent* would not have allowed his/her child to participate in such inclement conditions? It is possible to infer this (especially when taking into account the parents' knowledge of the activity's

53. *Id.* (parties also named in the suit included: American Legion, Nicholson Post #38; the East Baton Rouge Parish School Board (controller of Central Middle School practice grounds); State Farm Fire and Casualty Co. (insurer of Cassels and Johnson under two separate policies); Mr. and Mrs. Jerry Landry (parents of Todd Landry); and Gulf Insurance Company (insurer of Mr. and Mrs. Landry)).

54. *Id.* at 616.

55. *Id.* (emphasis added).

56. *Id.* at 617 (emphasis added); *see also* Lasseigne v. American Legion, Nicholson Post #38, 543 So.2d 1111 (La. Ct. App. 1st Cir. 1989) (affirming the granting of American Legion's motion for summary judgment).

57. *Lasseigne*, 558 So.2d at 615.

risks and that their son's coach was potentially no more experienced in precautionary measures associated with the activity than they were).

The facts presented in *Lasseigne*, unlike the facts in *Rutter*, do not support a conclusion that the volunteer coach acted with willfulness or conscious indifference. It must be acknowledged that an injury resulted to one of the players. However, contrary to the conduct taken by the coaches in *Rutter*, the coach's conduct exhibited in *Lasseigne* was clearly within the scope of care associated with the reasonable "parent little league baseball" person.

I believe that the context in which "social utility" was used, by the judge, in *Lasseigne*, strongly supports the rationale behind legislating a willful and wanton negligence standard. And, with that belief, *Lasseigne* uncovers an additional element to be considered within the traditional framework: How much is the *social utility* of a volunteer coach worth to a society's community athletic programs?[58]

Judge Learned Hand, in a 1947 opinion, set out a mathematical equation for determining when an injury is the result of negligent conduct. The equation relies upon the product of the equation's elements and provides as follows:

> [T]he owner's duty, as in other similar situations, to provide against resulting injuries is a function of three variables: (1) The probability that she will break away; (2) the gravity of the resulting injury, if she does; (3) the burden of adequate precautions.... in algebraic terms: if the probability be called P; the injury, L; and the burden, B; liability depends upon whether B is less than L multiplied by P: i.e., whether B less than PL.[59]

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58. Depending upon how much one thinks the social utility is worth, one will either: a) support a sanction that holds the volunteer coach's conduct to a higher degree of culpability; b) recognize that the coach's conduct is to be weighed against the traditional framework for negligence; or c) recognize that the monetary cost for uncompensated volunteer coaches is economically inefficient, signifying the end of their utility. A conclusion that volunteer coaching is economically inefficient is the result of recognizing that an ordinary negligence standard is responsible for producing both preventative and legal costs that exceed the benefits of running a recreational athletic program.

59. United States v. Carroll Towing Co., 159 F.2d 169, 173 (2nd Cir. 1947). However, *Carroll Towing* was not the first time Judge Learned Hand announced his test for determining the unreasonableness of an act using the formula. *See Conway v. O'Brien*, 111 F.2d 611, 612 (2nd Cir. 1940) ("the likelihood that his conduct will injure others, taken with the seriousness of the injury if it happens, and balanced against the interest which he must sacrifice to avoid the risk.").

The longevity of the Hand formula can be seen with its application in more recent cases, thereby demonstrating the test's utility. *See, e.g., Schneider Nat'l, Inc. v. Holland Hitch, Co.*, 843 P.2d 561 (Wyo. 1992); *Levi v. Southwest Louisiana Electric Membership Cooperative (SLEMCO)*, 542 So.2d 1081 (La. 1989).

Now a distinguished opinion for approaching the calculation of negligence within an economic framework, Judge Hand's intention was not to be original. Judge Hand was acknowledging "the social function of liability for negligent acts."[60] As a result, the economic impact, associated with providing for community recreational programs, will influence the decision as to what degree of culpability the volunteer coach's conduct should be measured against. And, although legal scholars have provided a wealth of economic analysis,[61] this article's economic focus is whether it is economically efficient to maintain recreational leagues if its volunteers are going to be held to an ordinary negligence standard.

Economic efficiency is achieved when the optimal level of precaution is determined, which is the result of balancing the amount of money spent in precaution against the probability, or risk, that harm will occur.[62] Thus, if the costs of providing for safety equipment, coaching instruction, and first aid training exceed the benefits associated with accident avoidance gained, society's communities would be better off, economically speaking, to simply eliminate such recreational leagues.[63]

However, the economic efficiency of community recreational leagues does not provide a conclusive assessment of whether such leagues should exist. Any assessment of community recreational leagues must also acknowledge the value of these leagues' social utility. When the social utility of these leagues is accurately depicted, it becomes clear that a liability scheme other than ordinary negligence must be established.

The costs of providing precaution will decrease with the legislating of a willful and wanton negligence scheme. Whereupon, the injuries sustained by child participants will have to be viewed as either the result of participating in an activity that generates a risk of harm, or the result of

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60. Richard Posner, *A Theory of Negligence*, 1 J. LEGAL STUD. 29, 32 (1972). "The cost of prevention is what Hand meant by the burden of taking precautions against the accident. It may be the cost of installing safety equipment or otherwise making the activity safer, or the benefit forgone by curtailing. . .the activity." *Id., quoted in Levi*, 542 So.2d at 1087.

61. *See, e.g.*, Posner, *supra* note 60; Brown, *Toward an Economic Theory of Liability*, 2 J. LEGAL STUD. 323 (1973); Steven Shavell, *An Analysis of Causation and the Scope of Liability in the Law of Torts*, 9 J. LEGAL STUD. 463 (1980); Landes & Posner, *The Positive Economic Theory of Tort Law*, 15 GA. L. REV. 851 (1981) (including a historical discussion of the law and economics movement); Mark F. Grady, *A New Positive Economic Theory of Negligence*, 92 YALE L. J. 799 (1983); Note, *The Inefficient Common Law*, 92 YALE L. J. 862 (1983); Schwartz, *Objective and Subjective Standards of Negligence: Defining the Reasonable Person to Induce Optimal Care and Optimal Populations of Injurers and Victims*, 78 GEO L. J. 241 (1989); *see also* GUIDO CALABRESI, THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS (1970) (the normative theory to the economic approach).

62. Grady, *supra* note 61, at 801-03.

63. Posner, *supra* note 60, at 32-33.

parents not taking the proper steps to ensure their own child's safety. Adopting a willful and wanton negligence standard, at the expense of an ordinary negligence standard, represents a willingness to accept the premise that the level for risk of harm tolerated in a particular athletic activity may increase. But, that potential increase in accident occurrence is economically outweighed by the higher social values recognized when providing children with the opportunity to participate in recreational athletic leagues. Lastly, this rationale should not be viewed as any less acceptable than the majority of jurisdictions that have announced a reckless disregard standard for co-participants who participate in the same athletic activities.

B. Sports Co-Participants: A Unique Area Of The Law That Is Relevant In Establishing and Supporting The Appropriate Standard For Volunteer Coaches Involved With Recreational Athletics

While most discussions of negligence (and the application of its elements) are directed toward events and circumstances most commonly associated with everyday living, society's legal system has demonstrated, over time, an unwillingness to be static in its ability to reconcile the unconventional event. The unwillingness to stagnate is especially apparent where a traditional negligence analysis may fall short of providing an aggrieved party with the most equitable result. This scenario is seen no clearer than in the recreational sports arena: where the acts and emotions of competitive athletic participants can sometimes generate unusual events and circumstances giving rise to injury and misfortune.[64]

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64. Richard Laliberte, *Baseball Dangers: What Every Parent Needs To Know*, PARENTS MAGAZINE, Apr. 1, 1995, at 32,

> With approximately 4.8 million kids between the ages of 5 and 14 stepping up to home plate every year, it's no surprise that baseball and softball are two of the country's most popular youth sports. . . . And each year, 107,000 injuries requiring visits to hospitals' emergency rooms affect youngsters in youth baseball and softball leagues.

In addition, consider the following language from the 1939 case *Englehardt v. Philipps*, involving an eleven year old boy who experienced a swimming mishap:

> Generally speaking, it may be assumed that a person of whatever age is able to appreciate the obvious risks incident to any sport or activity in which he may be able to engage with intelligence and proficiency and must act accordingly. If a child is able to play baseball capably, he must know that there is a danger of being hit with a ball or bat; if he is able to engage proficiently in the game of football, he must know that in playing the game there will occur violent physical contacts which may result in injury to him; if he is a proficient swimmer or diver, he must know of the danger of drowning and the danger of harm incidental to the use of diving apparatus.

In fact, the majority of jurisdictions, after wrestling with the issue, have either legislated or judicially established a "reckless disregard of safety"[65] standard as the appropriate standard of care to be applied in cases involving sports co-participants.[66] The primary rationale, that lies behind this majority standard, is the jurisdictions' desire to balance the need to support and advance sports participants' nature to compete at an

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Englehardt v. Philipps, 23 N.E.2d 829, 833 (Ohio St. 1939); *but see* Cople III, *supra* note 6, at S17,779. William J. Cople III states:

> The courts have regrettably found rights, and corresponding remedies, to exist in cases involving grievances that are trivial or mundane and in cases where acts or omissions were not previously understood to be a legal wrong. In other cases, judges and juries have found serious injuries and other matters of grave concern to deserve recompense, even though the legal duty was uncertain or the causal connection to the harm was attenuated.

Id.

65. RESTATEMENT (SECOND) OF TORTS § 500 (1977) (defining "reckless disregard of safety"); *see also Dotzler*, 449 N.W.2d at 782 ("[R]ecklessness exists where a person knows that the act is harmful but fails to realize that it will produce the extreme harm which it did produce."). A determination that an action should claim "reckless disregard" over a claim of ordinary negligence rests in the ability to recognize that unrelated activity produces specific conduct with a concurring level of risk. *See* PROSSER AND KEETON, *supra* note 1, at 213. Yet, "[r]ecklessness differs from intentional wrongdoing [(i.e., willful and wanton negligence)] in that while the act must be intended by the actor in order to be considered reckless, the actor does not intend to cause the harm which results from the act." *Dotzler*, 449 N.W.2d at 782; *see also* PROSSER AND KEETON, *supra* note 1, at 211-15.

66. *See generally* Mel Narol, *Sports Participation With Limited Litigation: The Emerging Reckless Disregard Standard*, 1 SETON HALL J. SPORT L. 29 (1991) ("Courts and legislatures have espoused the view that torts which might be actionable in other areas if negligence is shown, should only be actionable in the sports arena if the aggrieved person demonstrates gross negligence or reckless disregard by the defendant."); *see also Knight*, 834 P.2d at 710-11 (improper for participants to be held against an ordinary careless conduct standard, as co-participants only assume the risk of ordinary negligence; reckless or wanton infliction of injury is actionable); *Ginsberg v. Hontas*, 545 So.2d 1154 (La. Ct. App. 1989) (duty to refrain from reckless conduct); *Gauvin v. Clark*, 537 N.E.2d 94, 95 (Mass. 1989) ("We hold that participants in an athletic event owe a duty to other participants to refrain from reckless misconduct"); *Ross v. Clouser*, 637 S.W.2d 11 (Mo. 1982) (liability for an injury incurred during slow pitch softball game must be predicated on reckless disregard of safety principles rather than a mere negligence standard); *Dotzler*, 449 N.W.2d at 774 (participants will not be held liable for ordinary negligence but will be held liable for conduct that is reckless); *Marchetti v. Kalish*, 559 N.E.2d 699 (Ohio 1990) (the proper standard for adult and child participants involved in recreational sports activities is that of recklessness); *Kabella v. Bouschelle*, 672 P.2d 290 (N.M. 1983) (for a player to recover damages for an injury sustained at the hands of an opponent, it must be shown that the opponent acted with a reckless disregard for the rules); *Connell v. Payne*, 814 S.W.2d 486 (Tex. Ct. App. 1991) (in competitive contact sports for a plaintiff to prevail he/she must be able to demonstrate that the defendant had acted "recklessly"); *Lestina v. West Bend Mut. Ins. Co.*, 501 N.W.2d 28, 33 (Wis. 1993) (Wilcox, J., dissenting) (asserting that a recklessness standard is more appropriate than an ordinary negligence standard, as the latter standard would discourage vigorous participation).

aggressive level with the co-participant's right of redress for injuries incurred.[67]

Acknowledging that an ordinary or mere negligence standard is inadequate in an area of society that promotes vigorous athletic competition, an examination of the first jurisdiction to adopt the reckless disregard standard is in order. In 1975, the Illinois Appellate Court held that a participant is legally liable for conduct that is either deliberate, willful, or with reckless disregard for the safety of the other participating players.[68] In *Nabozny*, both the plaintiff, playing the position of goalkeeper, and the defendant, playing forward on the opposing team, participated in a high school soccer game.[69] The plaintiff, while down on one knee to field the ball in the "penalty area," was kicked in the side of the head by the defendant.[70] Witnesses stated that the contact could have been avoided and that the soccer rules explicitly prohibited any player from making contact with the goalkeeper when in possession of the ball in the "penalty area."[71] The court emphasized that for conduct to be regarded as reckless, facts such as the training and coaching of the teams, the established rules of the sport, the defendant's actions in relation to the safety rules, and the level of competition (i.e., did the incident occur during "heated play") all had to be considered.[72]

Although the *Nabozny* opinion has been pointed to as a starting point in establishing the reckless disregard standard, there has been an apparent struggle with formulating a consistent interpretation and application of the standard by jurisdictions' courts and legislatures.[73] This inability to cite a fixed reckless disregard standard may explain why there are still states and commentators who believe that the standard is inap-

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67. This all originates out of the failure by someone to keep his or her conduct within the scope of the particular athletic contest. *See* Narol, *supra* note 66.

68. Nabozny v. Barnhill, 334 N.E.2d 258, 261 (Ill. App. Ct. 1975).

69. *Id.* at 259.

70. *Id.*

71. *Id.* at 260.

72. *Id.* (the jury had to decide whether Barnhill's conduct was a "part of the game").

73. Burnstein, *supra* note 19, at 1014 (illustrating inconsistencies by contrasting the definitions of "reckless disregard," *announced in Bourque v. Duplechin*, *Nabozny v. Barnhill*, and *Kabella v. Bouschelle*); *see also Gauvin*, 537 N.E.2d at 95 (once establishing that reckless disregard for the safety of others was the proper standard, the next issue the court needed to resolve was what type of conduct actually constituted recklessness); Lynn A. Goldstein, Note, *Participant's Liability for Injury to a Fellow Participant in an Organized Athletic Event*, 53 CHI.-KENT L. REV. 97, 98 (1976) (contending that the *Nabozny v. Barnhill* holding is vague, resulting in misplaced determinations of when a player's conduct constitutes a reckless disregard).

propriate. Instead, they opt for the adoption of an ordinary negligence standard.[74]

These problems, associated with interpreting and applying the "reckless disregard of safety" standard, are possible reasons why volunteer coaches have been targeted as potentially liable parties. Whether it be a result of the law's evolution or society's persistence in trying to place accountability on every mishap, volunteer coaches being held accountable for injuries sustained by players is just a result of finding someone else to blame.[75]

C. The Willful And Wanton Negligence Standard Can Curb The Trend Of Shifting The Blame To The Volunteer Recreational Coach For The Injuries Incurred By Children Participating In Recreational Athletic Activities

One should never advocate the position that volunteer coaches, in the recreational sports arena, are not to be held to some level of care. At the same time, one should not maintain the position that would hold volunteer coaches accountable for every incident that could fit within the black letter definition of ordinary negligence.[76] As William J. Cople III has stated in his article entitled *Unfair Lawsuits Threaten Volunteers*:

> Any parent entrusting their children to the care and supervision of another should expect and demand that all reasonable and prudent care be taken in discharging that responsibility. However, this does not mean that only constant supervision of the youth in their care, regardless of the age and other factors, will suffice for volunteers to satisfy their legal responsibility. Certainly, the circumstances surrounding tragic incidents should be carefully examined. . . . But circumstances will nonetheless occur where senseless tragedies happen without anyone being legally to blame. . . . Organizations serving the youth in our community . . .

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74. *See, e.g.*, Niemczyk v. Burleson, 538 S.W.2d 737, 741 (Mo. Ct. App. 1976) (participants assume the risks of injury in athletic events, but that does not mean that actionable negligence cannot occur on the playing field); *Lestina*, 501 N.W.2d at 29 (the rules of ordinary negligence govern liability for injuries sustained during recreational contact sports); *Crawn v. Campo*, 630 A.2d 368, 375-76 (N.J. Super. Ct. App. Div. 1993) (simple negligence, not reckless disregard, is the standard owed by individuals participating in sports activities); Daniel E. Lazaroff, *Torts & Sports: Participant Liability to Co-participants for Injuries Sustained During Competition*, 7 U. MIAMI ENT. & SPORTS L. REV. 191, 213-14 (1990) (the reckless disregard standard is inappropriate within the context of contact sports where intent to harm is inherent).

75. *See, e.g., supra* note 6.

76. *Levi*, 542 So.2d at 1086, ("the ordinary reasonable person . . . is required to realize that there will be a certain amount of negligence in the world").

> should not be forced into the role of guaranteeing a safe harbor free of all risk. [N]either should volunteers be held to a standard that may be infeasible, or even unattainable.[77]

Clearly, in the context of this area, establishing a mere negligence standard is too low a burden of proof.[78] The thought that both the judiciary and legislature would expose community volunteers to potentially endless claims of liability does not make sense, especially when faced with the broader realization that those young sports participants need athletic facilitators.[79] The imposition of a willful and wanton negligence standard will immunize those individuals, who in certain situations, would potentially be found to have acted negligently. But, at the same time, reducing the scope of liability will advance the social function of ensuring that there is not a shortage of athletic facilitators (i.e., community volunteers willing to coach recreational sports). Thus, in advancing a willful and wanton negligence standard, as the appropriate standard for measuring a recreational volunteer coach's conduct, two principles must

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77. Cople III, *supra* note 6, at S17,780.

78. If Good Samaritan laws — generally declaring volunteer rescuers negligent when their actions have increased the severity of a person's injury — hold the volunteer rescuer to a potentially stringent standard, then it is inappropriate to conclude that the volunteer coach should be held to a less stringent standard. *See* Brown, *supra* note 11, at 38.

This argument can be reconciled by recognizing that legislators ultimately face the task of balancing social policy. The conclusion that volunteer recreational league coaches should be evaluated under the same liability scheme as Good Samaritans assumes that public opinion voices the same concerns for each type of volunteer. This would seem unfounded, especially when one considers that a balancing of public policy produces different levels of care for volunteers who possess different levels of medical or rescue related skill and training. *See, e.g.*, ARK. CODE ANN. § 17-95-108 (Michie 1995) (retired physicians providing volunteer medical assistance will be held liable for acts amounting to willful misconduct); CAL. EDUC. CODE § 49409 (West 1994) (physicians rendering, in good faith, voluntary medical assistance at elementary or secondary school athletic events will only be held liable for grossly negligent acts or omissions); FLA. STAT. ANN. § 768.135 (West 1995) (volunteer elementary and secondary school team physicians must render emergency care as would be performed by the reasonably prudent person with similar skills and training); MISS. CODE ANN. § 73-25-38 (1995) (in a charitable capacity, physicians providng medical or health services must not act willfully or grossly negligent); OHIO REV. CODE ANN. § 2305.231 (Banks-Baldwin 1994) (athletic team physicians, who volunteer their services, will be held liable for acts constituting willful and wanton misconduct); TENN. CODE ANN. § 68-140-509 (1995) (physician "on the scene" shall be held to that level of care expected from the reasonable physician exercising such skill and ability).

79. Cople III, *supra* note 6, at S17,780.

> The civil justice system should not recognize a legal right for every victim of circumstances. The rule of law should be used to define our standards of conduct and promote consistency and reasonable expectations in their application. . . . Despite the best of intentions, when misused or used in unpredictable ways, the civil justice system ends up serving no one, least of all those who volunteer.

Id.

be asserted: 1) in the modern era, the legal system's use (or threatened use) is directly opposed to any theory calling for economic efficiency; and, 2) participation is usually the result of creating incentives and if a liability rule cannot foster an economic incentive it must then offer a social incentive.

The willful and wanton negligence standard should be statutorily legislated and judicially applied. Codifying this standard into state statutes appears to be the best way to formulate its interpretation and application.[80] Legislators, responsible for drafting statutory language, directly in touch with modern society, possess the ability to foresee changes in public opinion and recognize the complexity of societal needs. In short, legislators are the best suited for setting out a plan for legal order in the recreational leagues.[81] However, this does not overlook the critical role that the judiciary has to play in determining whether the volunteer coach is to be held liable in a particular situation. Even with the most soundly drafted statutes at their disposal, people still rely on the judge's ability to provide legal insight and justice.[82]

There is support for a common law determination to be made in cases involving the mishaps of children participating in recreational sports. But, the actual development of such community recreational leagues is the product of collective determinations. Therefore, it would seem appropriate that those who participated in those leagues' development should also have an influence over the way they are to be governed. Part IV of this article illustrates that there are several states that have gone forward with this approach even though a great number of states do not.

But, first the individual that this tort law controversy is focused around must be examined - the community volunteer.

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80. *See* JAMES WILLARD HURST, DEALING WITH STATUTES 4 (1982) ("In the country's experience statute law has had special importance in giving content to public policy and adapting the legal social order to changing currents of interest and circumstances."); *but see* GUIDO CALABRESI, A COMMON LAW FOR THE AGE OF STATUTES 1 (1982) (who argues against the utility of statutes, as courts are faced with the problem of having to interpret and apply statutes that are obsolete or that take no note of time).

81. *See* Note, *The Inefficient Common Law*, 92 YALE L. J. 862, 885 (1983) (statutory law has been responsible for replacing "reckless common law;" it would appear that legislators have surpassed judges in creating laws for almost every area in modern society); *see also* Dr. Oskar Bulow, *Statutory Law and the Judicial Function*, 34 AM. J. LEGAL HIS. 71, 74-5 (1995) (translation by James E. Herget and Ingrid Wade); *but see* RICHARD POSNER, ECONOMIC ANALYSIS OF LAW 404 (2d ed. 1977) ("judge made rules tend to be efficiency promoting"); F. HAYEK, LEGISLATION AND LIBERTY 94-144 (1973) (an argument based on non-economic grounds, producing criticism that legislation is inferior to the common law).

82. Bulow, *supra* note 81, at 94.

II. VOLUNTEERISM: AN INSTITUTION APPRECIATED BY SOCIETY'S COMMUNITIES, BUT ARE ITS INDIVIDUALS APPRECIATED ENOUGH TO BE PROTECTED FROM THE INEQUITIES OF OUR LEGAL SYSTEM?

Several individuals in the political arena have stated that: *Volunteers are the backbone of American society.*[83] However, before weighing that statement's validity, consider the statistical data compiled by Independent Sector from a series of biennial surveys originating in 1988:[84]

	Unit	1993	1991	1989
Volunteers, including informal volunteering	mil.	89.2	94.2	98.4
Average weekly hours per volunteers	hours	4.2	4.2	4.0
Estimated total of hours in both formal informal volunteering	bil.	19.5	20.5	NA
The estimated value of volunteer time	bil.	$182	$176	($150)[85]
Above average volunteering groups				
35-44 years of age	pct.	54.5	60.8	64.2
45-54 years of age	pct.	53.8	55.9	56.4
Areas in which population volunteered (Volunteers as a pct. of population)	pct.	(47.7)	(51.1)	(54.4)
Recreation (adults)	pct.	5.4	6.7	8.5
Youth Development	pct.	11.7	14.7	15.8

Realizing that volunteering has declined six percentage points since 1990,[86] one would have to question the merit of this section's opening

83. 135 CONG. REC. E1,049-02 (daily ed. April 4, 1989) (statement of the Honorable John P. Murtha) ("The efforts of volunteers are really the backbone of our country."); *see also* 139 CONG. REC. H7,468-04, H7,487 (daily ed. October 6, 1993) (statement of Rep. Fields) ("Volunteers have been the backbone of this country."); U.S. Rep. John Porter, *End the Liability of Volunteering*, CHIC. TRIB., Aug. 24, 1986 (Perspective) ("Volunteers are the backbone of social progress and community life in America and run many of our local governments from townships to libraries to volunteer fire departments."); 142 CONG. REC. S2,081-01, S2,090 (daily ed. Mar. 14, 1996) (statement of Sen. Grassley) ("[W]e should not forget the 3.9 million young people who do volunteer work in their community without compensation. These volunteers help form the backbone of community service in America."); 139 CONG. REC. H4,531-01, H4532 (daily ed. July 13, 1993) (statement of Rep. Michel) ("Only when millions of individual volunteers in tens of thousands of America's communities tell Washington through their actions what community service is can we truly reflect the strength of this Nation . . ."); 135 CONG. REC. S2,257-03, S2,258 (daily ed. Mar. 7, 1989) (statement of Sen. Deconcini) ("From town councils and charitable organizations to little league baseball teams and scout troops, America depends on volunteers."); 134 CONG. REC. S301-02 (daily ed. Jan. 28, 1988) (statement of Sen. Melcher) ("This country was built by volunteers, and it's volunteers who make it work today."); 133 CONG. REC. S4,719-02 (daily ed. Apr. 7, 1987) (statement of Sen. Melcher) ("Our country depends on volunteers to make things work: Town councils, libraries, school boards, fire departments, hospital boards, Scout troops and little league teams.")

84. INDEPENDENT SECTOR, AMERICA'S INDEPENDENT SECTOR IN BRIEF (Winter 1996).

85. Eric Pfanner, *Grassley to Sponsor Bill to Insure Some Volunteers*, OMAHA WORLD-HERALD, June 1, 1990, at 17 (relying on 1988 figures, Senator Grassley stated that the value of volunteers' time was estimated at $150 billion).

86. POINTS OF LIGHT FOUNDATION, A MEASURE OF COMMITMENT (Fall 1994).

statement. In fact, beginning in the later half of the 1980s, the backbone of America has plunged into a downward spiral. Volunteering has apparently lost nearly ten million people from its order.

The statistical data casts doubt on the premise that volunteers are the backbone of America, but the statistical data is not irrefutable. First, consider the statements made on the Congressional floor proclaiming: "[V]olunteer service has become a high-risk venture. Our 'sue happy' legal culture has ensnared those selfless individuals who help worthy organizations and institutions through volunteer service. And, these lawsuits are proof that no good deed goes unpunished."[87] The statements originating from non-profit organizations echo the same realization, that individuals are forgoing the opportunity to volunteer due to the prospect of facing potential litigation:

> It's [(the litigation explosion)] a problem common to all nonprofit organizations and the volunteers they depend on. Little League Baseball has seen its liability insurance skyrocket 1,000% - from $75 per league annually to $795 — in a recent five year period. Good Samaritans are caught in a suicide squeeze. . . . [T]here is growing evidence of a 'chilling effect' at work, as volunteers from sports teams to fire and rescue units to candy stripers at the local hospital learn that their altruism won't save them from a subpoena.[88]

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87. 141 CONG. REC. at S17,777 (statement of Sen. McConnell). Mr. McConnel's opening statement was made in support of the Volunteer Protection Act: a bill that would create immunity from lawsuits for responsible and duly certified volunteers. *Id.* (the Volunteer Protection Act is discussed further, *infra* text accompanying notes 92-95). *See also* 141 CONG. REC. at S17,779 (William J. Copple III stated: "It is fair to say. . .that volunteers themselves have become victims of the civil justice system. The increasing propensity to enlarge the universe of rights and award compensation, often in stunning amounts, may be to the detriment of volunteer service."); 136 CONG. REC. S1,782-02, S1,784 (daily ed. Feb. 28, 1990) (statement of Sen. McConnell) ("'sue-for-a-million' mentality that has gripped our civil justice system"); *Little League Bill Is Irresistible But Shortsighted*, *supra* note 3, at 18 ("In our increasingly litigious society, not even kids' baseball is immune from liability claims in court: A Central Islip mother sued after she was creamed by a ball thrown past her daughter who was allegedly covering first base. . ."); Pfanner, *supra* note 85, at 17 ("Referring to 'sue-happy' elements of American society, [Sen.] Grassley said his bill would protect the 'venerable tradition of volunteerism.'"); *Volunteering Firefighters Are Scarcer*, OMAHA WORLD-HERALD, Oct. 19, 1994 (News) (J.D. Reeder, president of the Nebraska Volunteer Firefighters Association stated: "Everybody is so sue-happy anymore, that (volunteers) are afraid that if they do something wrong, they're going to lose everything they have.")

88. HALE, *supra* note 3. *See also* Robert Hanley, *Insurance Costs Imperil Recreation Industry*, N.Y. TIMES, May 12, 1986, at A1 ("In Queens, the Ozone Park Little League has been barred from the field it leases from the New York Racing Association until it comes up with $25 million in liability coverage[, an increase in coverage in the amount of $24 million].")

Clearly, the statistics establish a trend that may lead one to conclude that either: 1) as a social institution, volunteering is not as important as it once was; or 2) individuals simply do not have the resources — namely time without economic reward — that they once had available to them. But, a belief in either conclusion will only lead one down the narrow road of maintaining the status quo. The real cause for the statistical decline in volunteerism can be attributed to the perception that we live in a society whose legal system has become as uncontrollable as a tornado in the Midwest. Individuals are afraid to volunteer because they are afraid of being sued. If one thinks the fear is unwarranted, one need look no further than what is being said in Congress,[89] or to what is happening to the size of jury awards.[90]

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89. 135 CONG. REC. S2,257-03, S2,258 (daily ed. Mar. 7, 1989) (statement of Sen. Deconcini) ("What is the cause of the decline in volunteers? One factor is a perception among volunteers that they can be sued and potentially lose their homes, farms, and personal assets."); 133 CONG. REC. S4,719-02 (daily ed. Apr. 7, 1987) (statement of Sen. Melcher) ("[V]olunteers are getting harder to find. Why? Because volunteers are increasingly wary of being exposed to lawsuits that is, being sued by someone who is injured. . ."); 136 CONG. REC. S1,782-02, S1,785 (daily ed. Feb. 28, 1990) (statement of Sen. McConnell) ("[P]eople in America are not coming forward to offer their services because of the fear of being sued. Yet, no other country on Earth depends more on volunteer efforts of so many throughout their society."); 136 CONG. REC. H7,521-02, H7,533 (daily ed. Sept. 13, 1990) (statement of Rep. Tauke) ("We are seeing greater and greater incidences of potential volunteers unwilling to give their time in service for fear of being sued."); 137 CONG. REC. S8310-01, S8344 (daily ed. June 20, 1991) (statement of Sen. Deconcini) ("Many volunteers believe they may be the subject of a lawsuit as a result of their volunteer activities. . . . Potential volunteers are not getting involved, and nonprofit organizations are dropping valuable programs because of their concern about litigation."); 139 CONG. REC. S9,938-01, S9,946 (daily ed. July 30, 1993) (statement of Sen. McConnell) ("The message that millions of would-be volunteers are getting from our legal system is this: Serve and be sued."); 1996 WL 81963 (F.D.C.H.) (Feb. 27, 1996) (testimony of the Rep. John Edward Porter before the House Judiciary Committee).

> [T]he public perception of volunteering [is] a risky undertaking. Even though volunteers have not been sued successfully in large numbers, volunteers have been named in many lawsuits and the costs of legal defense can be staggering. This fear of lawsuits has affected volunteer programs nationwide by discouraging individuals from coming forward to pledge their time for good causes.

Id.; *see also* 1996 WL 85879 (F.D.C.H.) (testimony of Sister Christine Bowman before the House Judiciary Committee) (Feb. 28, 1996) ("[T]he perception of liability is a strong disincentive for many prospective volunteers."); *but see* 136 CONG. REC. S1,782-02, S1,793 (daily ed. Feb. 28, 1990) (statement of Sen. Bumpers) ("It [the premise that volunteer protection legislation is needed] is based on what I believe is an absolute false premise; that is many people are not volunteering because they are afraid of being sued.")

90. *See* Edward Felsenthal, *Increase in Size of Jury Awards May Spur Efforts to Alter System*, WALL ST. J., Jan. 5, 1996, at PG (Law),

> The size of jury awards grew for the second year in a row, according to a new study . . . The study by Jury Verdict Research, a Horsham, Pa. firm that tracks trials, found that in 1995 the median amount awarded to compensate plaintiffs for injuries was . . . up 17% from. . .1994 . . . The median awards. . .don't include punitive damages. . .;

As a final thought, while testifying before the House Judiciary Committee, United States Representative John Edward Porter concluded that today's volunteers are forced to "weigh liability risks against their desire to serve."[91] But, this fear of liability (and potentially having to face litigation) on the part of the volunteer coach could be reduced. The introduction and subsequent enacting of statutory law in every state, establishing a willful and wanton negligence standard, would effectively combat the volunteer coach's fear. This goal of nationwide uniformity is supported by the belief that community athletic programs can only survive through the enactment of laws that value social utility as much as they value the promotion of economic efficiency.

III. ADDRESSING THE PERCEPTION OF FEAR THROUGH THE ENACTMENT OF LEGISLATION: THE STATES, NOT THE FEDERAL GOVERNMENT, SHOULD BE PROTECTING THE VOLUNTEER COACH.

The enactment of legislation is capable of placating the fears of potential volunteers. However, this solution cannot be addressed before resolving the initial matter of who should be responsible for enacting the legislation; the individual states or the federal government through the law-making abilities of Congress?

First, consider what has been proposed at the federal level. Beginning in the late 1980s, Congress stepped forward in an attempt to rem-

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see also 141 CONG. REC. H1,961-01, H1,966 (daily ed. Feb. 21, 1995) (statement of Rep. Heineman):

> The greater majority of States have no standards or guidelines that juries or the courts can use to determine the maximum possible award in a case. As a result, the frequency, and more importantly, the size of punitive damage awards have increased markedly in the past years. A Rand Corp. study found that in Cook County, IL, there was a 2000 percent increase in punitive damage awards over a 20-year period. Perhaps even more startling was the size of the awards. Over that same period, the average punitive damage award increased from $7,000 to $729,000.

Id.; *see also* CHARLOTTE A. CARTER-YAMAUCHI, VOLUNTEERISM — A RISKY BUSINESS? 1 (1996) ("[T]he litigation explosion and excessive jury awards in damage cases have led to concern about volunteer liability that persists even today."); David O. Weber, *A Thousand Points of Fright?*, INSURANCE REVIEW, Feb. 1, 1991, at 40 (describing an incident involving an individual seriously injured, falling 90 feet, while climbing Box Springs Mountain. He then sued his rescuers for "reckless and negligent" rescue techniques; in a lawsuit that was eventually dropped 2 years later, the injured climber sought $12 million in damages).

91. 1996 WL 81963 (F.D.C.H.); *see also* 142 CONG. REC. S2,553-04, S2,589 (daily ed. Mar. 21, 1996) (statement of Sen. Ashcroft) ("[A]s long as our litigation system forces a would-be volunteer to consider whether the risks of being sued outweigh the benefits of contributing one's time and talent to charitable organizations efforts to solve society's problems will continue to be unnecessarily stymied.")

edy the problem of volunteers being susceptible to lawsuits alleging negligence. Originating as far back as 1986, United States Representative John Edward Porter has continuously introduced House Bill 911 (entitled the Volunteer Protection Act). Although House Bill 911 has reportedly received an ample amount of support,[92] the bill has not advanced beyond the consideration of the House Judiciary Committee.[93] In declaring that the prospect of being sued has deterred individuals from volunteering,[94] the bill's purpose is to prevent volunteers from "being forced to defend him or herself for liability action related to their unpaid service to any not-for-profit organization."[95] Using House Bill 911 as a model, Congressman Porter's aim is to encourage each state to enact legislation that would provide individual volunteers with immunity

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92. 1996 WL 81963 (F.D.C.H.) (Representative Porter testifying that "the last four Congresses [the bill] has enjoyed the bipartisan support of over 200 Members of Congress"); 1996 WL 107211 (F.D.C.H.) (John H. Graham, IV testifying on behalf of the A.S.A.E. that "more than 150 Members have cosponsored the bill"); 1996 WL 90810 (F.D.C.H.) (Christine G. Franklin testifying on behalf of the American Red Cross supporting H.R. 911's immunization of individuals who volunteer).

93. According to Julie Debolt, a staff member for Congressman Porter, the bill's status as of September 18, 1996. *See, infra* note 97.

Additionally, Congressman Porter, in 1993, attempted to address volunteer liability exposure by introducing an amendment to the National and Community Service Trust Act of 1993, but the House Judicial Committee elected to omit the provision from the final bill. *See* 139 CONG. REC. H6,318-02 (daily ed. Aug. 6, 1993) (statement of Rep. Porter):

> The Judiciary Committee has, as I have stated on the floor previously, not held a hearing on my legislation — H.R. 911, the Volunteer Protection Act — for 8 years despite its hundreds of cosponsors and widespread support. Not surprisingly, they removed this provision from the final legislation, a provision which would have strengthened, not weakened this bill [(the National and Community Service Trust Act of 1993)].

Id.; see also 139 CONG. REC. S9,938-01, S9,948 (daily ed. July 30, 1993) (statement of Sen. DeConcini) (supporting an amendment, similar to the Volunteer Protection Act of 1993, to the National Service Act that would provide volunteers protection from tort litigation).

President Clinton signed the National and Community Service Trust Act of 1993 on September 21, 1993. *See* Remarks on Signing the National and Community Service Trust of 1993, 29 WEEKLY COMP. PRES. DOC. 1822 (Sept. 27, 1993).

94. *See generally* H.R. 911, 104th Cong., 1st Sess.§2(A) (1995), "Findings. The Congress finds and declares that . . .").

95. 1996 WL 81963 (F.D.C.H.) (testimony of the Honorable John Edward Porter before the House Judiciary Committee on February 27, 1996). Section 2(B) of House Bill 911 states:

> (B) Purpose - It is the purpose of this Act to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs and nonprofit organizations and governmental entities which depend on volunteer contributions by encouraging reasonable reform of state laws to provide protection from personal financial liability to volunteers serving with non-profit organizations and governmental entities for actions undertaken in good faith on behalf of such organizations.

from civil liability claims of ordinary or "simple negligence."[96] House Bill 911 establishes an economic incentive in the form of a one percent increase in Social Service Block Grants.[97]

Meanwhile, over this same time period, United States Senator Mitch McConnell has introduced similar legislation with Senate Bill 1435, the Volunteer Protection Act of 1995.[98] Fundamentally, the bill's declaration and findings are identical.[99] However, the two bills reflect the Congressmen's different mindsets as to how to resolve the problem.[100] The Senate's legislation, affording protection to volunteers, takes the position that it is a matter of concern to be governed by the Federal Government. Thus, Senate Bill 1435 is not an attempt to encourage states to adopt model legislation, but rather an attempt to preempt the states' abilities to experiment and legislate for themselves.[101]

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96. *Id.* However, volunteers who act grossly negligent or behave in a willful or wanton manner are not protected. In addition, volunteer protection is not extended to volunteers when they are operating any motor vehicle. *See* H.R. 911 (Section 4(A)-(D), "Limitation on Liability for Volunteers").

97. Telephone Interview with Julie DeBolt, legislative aid for Rep. Porter (Sept. 18, 1996).

98. S. 1435, 104th Cong., 1st Sess. (1995). Senator McConnell has been a long-time supporter of legislation affording volunteer protection, as he has offered similar legislation in 1989 and 1993. *See* Government Press Releases, *McConnell Introduces Volunteer Protection Act* (Nov. 29, 1995); *see also* 136 CONG. REC. S1,782-02, S1,784 (daily ed. Feb. 28, 1990) (statement of Sen. McConnell) (introducing amendment 1269 to section 501(c) of the Internal Revenue Code of 1986 affording protection from civil liability to volunteers, as well as discussing the Lawsuit Reform Act); *but see* 133 CONG. REC. S4,719-02 (daily ed. Apr. 7, 1987) (statement of Sen. Melcher) (introducing S. 929, "Voluntary Protection Act of 1987," to the committee on the Judiciary that would "encourage States to grant volunteers of tax-exempt organizations immunity from personal civil authority for actions which they take in good faith and which are within the scope of their official functions"); 135 CONG. REC. S2,257-03, S2,258 (daily ed. Mar. 7, 1989) (statement of Sen. DeConcini) (introducing S. 520, a bill identical to H.R. 911, on Feb. 7, 1989).

99. S. 1435, *reprinted in* 141 CONG. REC. at S17,778 (statement of Sen. McConnell) ("Section 2. Findings and Purpose"), *compare with* H.R. 911 ("Section 2. Findings and Purpose").

100. 1996 WL 90811 (F.D.C.H.) (testimony of U.S. Senator Mitch McConnell before the House Judiciary Committee) (Feb. 28, 1996) (". . . while our proposals take different approaches, our goal is the same: to eliminate the lawsuit burden from the caring citizens who give their time and service to their communities").

101. Compare S. 1435 and H.R. 911.

Section 3. Preemption.

"This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional incentives or protections to volunteers, or category of volunteers."

S. 1435 (emphasis added), *reprinted in* 141 CONG. REC. at S17,778 (statement of Sen. McConnell) (while introducing the bill Sen. McConnell stated that the Act would create a "Federal standard for volunteer protection"); *but see* 135 CONG. REC. at S2,259 (statement of Sen. DeConcini) (S. 520: "Section 3. No Preemption of State Tort Law").

Section 3. No Preemption of State Tort Law.

In addition to the legislation introduced by Congress, the Bush Administration developed the Model State Volunteer Service Protection Act in 1990.[102] Much like House Bill 911, the Model State Act was an attempt at encouraging the states to enact comprehensive volunteer protection for those individuals donating their time with nonprofit organizations and governmental entities.[103] Accordingly, the Model State Act's protection extends to those volunteers who have acted in good faith (i.e., within the scope of their official duties) and where any injury which is not the result of a willful or wanton disregard on the part of the volunteer.[104]

Through 1996, Congress's Volunteer Protection Act has never moved beyond the House Judiciary Committee, and no state has adopted the Model State Act in its entirety.[105] One of the reasons for this inaction could be attributed to the fact that by the time of the Model State Act's inception, "each state legislature had already addressed the matter at least once, and few were eager to tackle it again."[106]

Obviously, broad volunteer protection laws that encompass the many types of volunteers and the different classes of organizations they are

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"Nothing in this Act shall be construed to preempt the laws of any State governing tort liability actions." H.R. 911.

However, it is interesting to point out that in 1993, while supporting an amendment (that would provide immunity to volunteers of nonprofit organizations or governmental entities) to the National and Community Service Trust Act, Senator McConnell stated: "[T]his amendment is quite different from the approach I personally have taken in the past to the liability issue. It does not preempt State tort law, as my proposals have in the past." 139 CONG. REC. S9,938-01, S9,946 (daily ed. July 30, 1996) (statement of Sen. McConnell).

102. DEPT. OF JUSTICE, MODEL STATE VOLUNTEER PROTECTION ACT AND COMMENTARY (Dec. 1990), *reprinted in* CARTER-YAMAUCHI, *supra* note 90.

103. MODEL STATE VOLUNTEER PROTECTION ACT AND COMMENTARY, *supra* note 102, at § 4 (The Preamble of the Act establishes the same findings and declarations as H.R. 911 and S. 1435); *see also* 26 WEEKLY COMP. PRES. DOC. 2031 (Dec. 12, 1990),

> [N]o obstacle is more chilling than the fear of personal liability and the high cost of insurance to protect against liability. Often programs are curtailed or those contemplated are not undertaken because of the fear of personal liability — outrageous claims often about personal liability. . . . [The Model State Volunteer Service Protection Act] encourages volunteers to contribute their services for the good of their communities."

104. MODEL STATE VOLUNTEER PROTECTION ACT AND COMMENTARY, *supra* note 102, at § 5.

105. CARTER-YAMAUCHI, *supra* note 90, at ch. 6 and ch. 3 (chapter 3 discusses the many state volunteer protection laws adopted, whose "actual scope of coverage" varies tremendously from state to state); *but see* ALA. CODE § 6-5-336 (1991) (the Volunteer Service Act follows — by incorporating identical language — the Model State Act save one major difference: The act actually affords more protection to volunteers by omitting the Model State Act's exception of immunity for those volunteers who operate a motor vehicle).

106. Tremper, *supra* note 10, at 23.

affiliated with, would resolve the problems faced by volunteer athletic coaches. There are a few states that have enacted laws affording protection to a broad range of volunteers, but those laws attempt to be broadly construed because they "usually focus on volunteers of nonprofit entities."[107] Volunteer coaches associated with Little League Baseball, Inc. or Pop Warner Football would be afforded protection, but volunteer coaches who affiliate with a municipality or town recreation department would not. Herein lies the problem, or shortcoming, with not having specific statutory protection for all volunteer coaches.

It is the legislators of the individual states who have to recognize the need to protect volunteer athletic coaches, but they also must be committed to taking the appropriate legislative measures. Undeniably, the legislation endorsed at the federal level has identified the problem and would provide a benefit to society by: 1) solidifying the importance and value of volunteers in our society; and 2) addressing society's animosity toward the legal system's tolerance for frivolous lawsuits. Nonetheless, enacting such legislation should still be left for the states to address.

The states have traditionally been left on their own to enact and regulate laws that would be in the best interests of their respective citizens.[108] In addressing the preemptive effects of federal reform, and the issue of whether the states or federal government should be reforming the tort system, Thomas A. Eaton and Susette M. Talarico commented:

> One consequence of state control of tort law has been variation and experimentation. Each state has been free to decide for itself what mix of doctrine best balances the competing interests of plaintiffs and defendants. Allowing states to serve as laboratories of experimentation has been viewed generally as a positive aspect

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107. CARTER-YAMAUCHI, *supra* note 90, at ch. 6; *see also* Tremper, *supra* note 10, at 23 ("[all] the legislation [has created] a false sense of security among some volunteers, combined with uncertainty among volunteers and lawyers about the scope and effectiveness of the new laws").

108. Thomas A. Eaton & Susette M. Talarico, *A Profile of Tort Litigation in Georgia and Reflections on Tort Reform*, 30 GA. L. REV. 627, 686 (spring 1996) ("[S]tate courts and legislatures can strike a reasonable balance between the competing interests of its citizens who create risk of physical injury and those who are injured."); *cf.* Robert F. Copple, *Cable Television and the Allocation of Regulatory Power: A Study of Government Demarcation and Roles*, 44 FED. COMM. L. J., 4 (Dec. 1991) (the cable industry serves as an example of how Congress leaves a "substantial remainder of cable regulatory authority" in the hands of state and local governing boards, as they are in a better position to address the needs of local communities); Martin H. Redish & Shane V. Nugent, *The Dormant Commerce Clause and the Constitutional Balance of Federalism*, 1987 DUKE L. J. 569, 570 (1987) (recognizing that Congress leaves "numerous areas free" of regulation, thereby allowing the states to establish their own regulations).

> of federalism. Nowhere has there been more state experimentation than in tort reform.[109]

In their conclusion, Eaton and Talarico state, "[i]n light of the paucity of reliable data regarding the operation and impact of the tort system, we question the practical wisdom of imposing a single set of rules on all states."[110] It is because of this last statement's message that we may best understand the rationale behind Congressman Porter's proposed bill; a bill that focuses on encouraging, as opposed to preempting, the states' authority to enact law.

Moreover, there is a constitutional issue present when resolving which rulemaking authority is best suited for enacting legislation that would provide immunity from civil liability for volunteer coaches participating in recreational athletic leagues. To this extent, Article I, Section 8, clause 3 of the United States Constitution states that Congress has the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]"[111] This language establishes that Congress will be prohibited from enacting legislation that "neither regulates a commercial activity nor contains a requirement that the [activity] be connected in any way to interstate commerce."[112] Accordingly, the individual who volunteers his/her services in a community recreational coaching capacity is outside the scope and reach of the Commerce Clause. The enactment of the Model State Volunteer Service Act would support this last postulate.

Beginning with the landmark case *Gibbons v. Ogden*,[113] Chief Justice Marshall first outlined Congress's commerce power: "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."[114] A century later, the Supreme Court, in *Wickard v. Filburn*,[115] reaffirmed Chief Justice Marshall's interpretation of Congress's commerce power by concluding that an activity, albeit local and not regarded as commerce, "may still, whatever its nature, be reached by Congress if it exerts a *substantial economic effect* on inter-

109. Eaton & Talarico, *supra* note 108, at 687.
110. *Id.* at 690.
111. U.S. CONST. art. I, § 8, cl. 3.
112. United States v. Lopez, 514 U.S. 549 (1995).
113. 22 U.S. (9 Wheat.) 1 (1824).
114. *Gibbons*, 22 U.S. (9 Wheat.) at 189-90.
115. 317 U.S. 111 (1942).

state commerce."[116] More recently, in *United States v. Lopez*,[117] the Supreme Court once again affirmed these earlier designations by holding that unless any real limits are drawn, "any activity can be looked upon as commercial" and therefore, within Congress's authority under the Commerce Clause.[118]

Protecting individuals that want to serve as volunteer coaches could hardly be considered an activity commercial in nature, or one that would have a "substantial economic effect on interstate commerce." Regardless, one should first contemplate the respective findings of both House Bill 911 and Senate Bill 1435, which incidentally use the identical language:

Section 2. Findings and Purpose.

a) Findings - The Congress finds and declares that-

1) The willingness of volunteers to offer their services is deterred by potential personal liability for simple mistakes made in the course of volunteer service;

2) As a result, many nonprofit public and private organizations and governmental entities . . . have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities;

3) The contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating; and

4) Because *federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation*, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for federal encouragement of state reform.[119]

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116. *Wickard*, 317 U.S. at 125; *but see Lopez*, 514 U.S. at 587 (1995) (Thomas, J., concurring). Justice Thomas had a problem with the use of "substantial effect" as a justification for extending Congress' law-making authority: "The Constitution not only uses the word 'commerce' in a narrower sense than our case law might suggest, it also does not support the proposition that Congress has authority over all activities that 'substantially affect' interstate commerce."

Id. at 587.

"Even though the boundary between commerce and other matters may ignore 'economic reality' and thus seem arbitrary or artificial to some, we must nevertheless respect a constitutional line that does not grant Congress power over all that substantially affects interstate commerce."

Id. at 593.

117. 514 U.S. 549 (1995).

118. *Id.* at 565.

119. H.R. 911, *supra* note 94 (emphasis added); S. 1435, *supra* note 99 (emphasis added).

Indeed there are federal funds expended on many of society's social service programs, but most of America's town recreation departments operate baseball, soccer, football, and basketball programs without the benefit of receiving any of those so-called "federal funds."

Returning to the Supreme Court's most recent Commerce Clause decision, *United States v. Lopez* illustrates the federal legislature's attempt to "convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States."[120] *Lopez* involved a youth, while in attendance at a Texas public school, who was arrested for possession of a firearm.[121] But, instead of being charged under Texas law, the youth was charged under federal law §922, the Gun-Free School Zones Act of 1990.[122] In defending Congress's power to enact §922, the Government advanced a two prong argument: 1) violent crimes are costly, and with insurance, these costs extend throughout the society; and 2) as result of violent crimes, individuals perceive parts of the country as unsafe and thereby are less willing to travel.[123] The Supreme Court addressed the Government's position by holding that the requisite nexus was not satisfied. The possession of the firearm by a student at a local school did not have "any concrete tie to interstate commerce."[124]

Keeping with the Supreme Court's rationale, individuals who volunteer as coaches in recreational leagues are providing an invaluable service to their communities. Any belief that their services have interstate commerce implications because of the equipment used, the uniforms worn, or the fields used is misguided. As Justice Kennedy concluded in his concurring opinion in *Lopez*: "[W]ere the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the

120. *Lopez*, 514 U.S. at 567.

121. *Id.* at 551.

122. *Id.* The Gun-Free School Zones Act of 1990 made it a federal offense "for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone." 18 U.S.C. § 922(q)(1)(A) (1988) (repealed 1995), *reprinted in Lopez*, 514 U.S. at 551.

123. *Lopez*, 514 U.S. at 564. The dissent, specifically Justice Breyer, reasoned: "1) gun-related violence is a serious problem; 2) that problem, in turn, has an adverse effect on classroom learning; and 3) that adverse effect on classroom learning, in turn, represents a substantial threat to trade and commerce." *Id.* at 565. The Court, in addressing the rationale of the dissent, stated: "Under the dissent's rationale, Congress could just as easily look at child rearing as 'fall[ing] on the commercial side of the line' because it provides a 'valuable service — namely, to equip [children] with the skills they need to survive in life and, more specifically, in the workplace.'" *Id.*

124. *Id.* at 567.

boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory."[125]

After all, can we really expect the federal legislature's macro environment — a forum filled with competing interests and battles over pleasing constituents — to properly address and assure the stability of "an atmosphere dominated by freckle-faced 8-year-olds[?]"[126]

IV. States Providing Specific Statutory Protection: It Is Now 1996, There Is No Acceptable Reason As To Why Volunteer Coaches Should Be Denied Immunity From Lawsuits Citing Ordinary Negligence.

Over nineteen million children, between the ages of five and fourteen, participate in their communities' recreational baseball, softball, and tee-ball leagues.[127] However, that statistic does not account for the additional millions of children who participate in the other athletic activities offered in their communities' recreational leagues. Our towns and communities need people to volunteer their time for recreational sports activities, not because there is an economic interest involved, but because we want to provide our Nation's youth with a positive community upbringing. Regardless of whether it goes unrecognized, participation in community sponsored sports programs is just as vital to children's social development as is their attending school, church or synagogue, Boy Scouts, or other community youth groups.

Yet, it is justifiably difficult to expect parents to get involved in this community upbringing if they have to walk on egg shells while giving batting practice or running lay-up drills. Every state has the ability, through its law-making authority, to rectify this problem and reassure individuals of all ages that recreational sports leagues will be alive and well in the 21st century.

However, not every state can be held to blame for failing to provide volunteer coaches with statutory immunity from liability. In fact, several states have enacted legislation protecting volunteer coaches from law-

125. *Id.* at 577 (citation omitted).

126. *Little League Bill Is Irresistible But Shortsighted, supra* note 3, at 18.

127. Erich Williams, *Little League Safety Issue Not A Hit With Some National Group's Recommendations Called Overkill*, The Arizona Republic, June 29, 1996, at C6; *but see* Dougherty, et al., *supra* note 26, at 169 *citing* L.M. Micheli, *Children and Sports*, Newsweek, Oct. 29, 1990, at 12 (according to data compiled in the late 1980's, the number of youngsters participating in recreational and competitive athletics, nonschool related, in this country, was 20 million).

suits involving incidents categorized as a volunteer coach's negligence.[128] These states have taken the necessary steps in preventing the further abuse of the legal system. In the context of competitive athletics, these states have acknowledged that competitive participation cannot prevent harm or injury from occurring.[129] However, statutory law can guide the public's perception as to what conduct, on behalf of the volunteer recreational coaches, will be deemed appropriate and to what extent will their actions be tolerated.

New Jersey is one of the states to pass legislation specifically in favor of volunteer coaches. In fact, New Jersey's legislation was the first enacted law of its kind. Moreover, New Jersey's law is the most comprehensive and should therefore be looked upon as the model for all states to follow. This is not to say that the remaining states with existing statutory law, protecting volunteer coaches from civil liability, are inadequate. Rather, it is the purpose of this article's section to illustrate two principles: first, that the existing recreational volunteer's law effectively manages the operation of community recreational athletics; and second, that New Jersey's law is best suited to serve as the model act for promoting nationwide uniformity in this area of the law.

In March 1986, New Jersey became the first state to enact a statute providing volunteer athletic coaches and officials civil immunity from liability. The Act, codified at N.J. Stat. Ann. section 2A:62A-6, was later amended in 1988.[130] It is now 1997, more than ten years have passed,

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128. COLO. REV. STAT. ANN. § 13-21-116 (1994); DEL. CODE ANN. tit. 16, § 6836 (1996); GA. CODE ANN. § 51-1-20.1 (1995); ILL. ANN. STAT. ch. 745, para. 80/1 (1993); IND. CODE ANN. § 34-4-11.8-6 (1993); LA. REV. STAT. ANN. § 2798 (1995); M.D. CODE ANN., CTS. & JUD. PROC. § 5-313 (1994); MASS. GEN. LAWS ANN. ch. 231, § 85V (1993); MINN. STAT. ANN. § 604A.11 (1994); N.H. REV. STAT. ANN. § 508:17 (1994); N.J. STAT. ANN. § 2A:62A-6 (1994); N.M. STAT. ANN. § 41-12-1 (1995); N.D. CENT. CODE § 32-03-46 (1993); PA. CONS. STAT. ANN. § 8332.1 (1995); R.I. GEN. LAWS § 9-1-48 (1994); *see also* 18th State Legis., 1995 H.I. S.B. 1170 (referred to Senate committee); 219th Gen. Assembly, 2d Reg. Sess., 1996 N.Y. A.B. 8656 (referred to the Committee on Judiciary).

129. Consider the words of T.J. Teebles, age 12: "I play to get hurt anyway, . . . If you're so worried about getting hurt [while playing baseball], why don't we just wear a full football uniform?" Williams, *supra* note 127, at C6. In addition, the concern that lawsuits will suppress the competitive nature of sports is shared by legal commentators:

> Unfortunately, each injury must be recognized as a potential lawsuit. We've seen that it is impossible to remove all risks from physical activities; for many participants, the very element of controlled risk (or the perception of risk) is part of the enjoyment of the sporting experience. It probably would be unwise to entirely eliminate every element of danger even if it were possible to do so. The remaining activities would be so sterile and unchallenging that no one would bother with them.

DOUGHERTY, ET AL., *supra* note 26, at 235-36.

130. N.J. § 2A:62A-6 as amended in 1988 states:

and still the majority of states have chosen to ignore New Jersey's wisdom in preserving community recreational programs in society.

What initially makes New Jersey's act so appealing is its clarity in stating exactly whom it protects. An individual who wants to coach a little league baseball team should be able to research and understand for him/her self whether his/her particular state affords him/her protection from civil liability, as compared to the process of having to first hire an attorney to interpret the laws for him/her. Where many state statutes are ambiguous as to the extent of what organizations are protected, New Jersey's act clearly states that all volunteer coaches, regardless if the team they are coaching is affiliated with a non-profit sports league or

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a. Notwithstanding any provisions of law to the contrary, no person who provides services or assistance free of charge, except for reimbursement of expenses, as an athletic coach, manager, or official, other than a sports official accredited by a voluntary association . . . and exempted from liability . . . for a sports team which is organized or performing pursuant to a nonprofit or similar charter or which is a member team in a league organized by or affiliated with a county or municipal recreation department, shall be liable in any civil action for damages to a player, participant or spectator as a result of his acts of commission or omission arising out of and in the course of his rendering that service or assistance.

b. The provisions of subsection a. of this section shall apply not only to organized sports competitions, but shall also apply to practice and instruction in that sport.

c. (1) Nothing in this section shall be deemed to grant immunity to any person causing damage by his willful, wanton, or grossly negligent act of commission or omission, nor to any coach, manager, or official who has not participated in a safety orientation and training skills program which program shall include but not be limited to injury prevention and first aid procedures and general coaching concepts. (2) A coach, manager, or official shall be deemed to have satisfied the requirement of this subsection if the safety orientation and skills training program attended by the person has met the minimum standards established by the Governor's Council on Physical Fitness and Sports in consultation with the Bureau of Recreation within the Department of Community Affairs, in accordance with rules and regulations adopted pursuant to the "Administrative Procedure Act,". . .

d. Nothing in this section shall be deemed to grant immunity to any person causing damage as the result of his negligent operation of a motor vehicle.

e. Nothing in this section shall be deemed to grant immunity to any person for any damage caused by that person permitting a sports competition or practice to be conducted without supervision.

f. Nothing in this act shall apply to an athletic coach, manager, or official who provides services or assistance as part of a public or private educational institution's athletic program.

In addition to New Jersey's legislation, Pennsylvania, also in 1986, passed legislation making it the second state to offer volunteer coaches protection from civil liability. *See* PA. CONS. STAT. ANN. § 8332.1; *see also* Christopher A. Terzian, Legislative Summaries: Sports Law, *Tort Liability—Athletic Coaches and Officials—Volunteers—Civil Immunity From Liability—To Be Codified At N.J. Stat. Ann. §2A:62A-6*, 10 SETON HALL LEGIS. J. 332 (1987) (for a discussion of New Jersey and Pennsylvania's volunteer coach civil immunity from liability legislation).

affiliated with a municipal recreation department, are afforded protection.[131]

Further, New Jersey's act limits its civil immunity to volunteer coaches who have either caused damage or have had an injury result from their "act of omission or commission" that would be categorized as willful or wanton negligence.[132] In addition, the afforded protection of the act does not extend to the volunteer coach while in operation of any kind of motor vehicle,[133] who knowingly allows "sports competition or practice to be conducted without supervision,"[134] or who is involved with

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131. N.J. § 2A:62A-6 (its caption reads: "Volunteer athletic coaches, managers, or officials for non-profit sports teams or teams in league affiliated with county or municipal recreation department"); *compare with* COLO. § 13-21-116 ("coach . . . for any program, organization, association, service group, educational, social or recreational group, or nonprofit corporation serving young persons . . ."); MASS. § 85V ("an entity which is organized as a nonprofit corporation or nonprofit unincorporated association"); MD. § 5-313 ("'Community recreation program' means an athletic, fitness, or recreation activity:"); N.H. § 508:17 ("Any volunteer of a nonprofit organization or government entity . . ."); *but see* ILL. ch. 745, para. 80/1 ("sports program of a nonprofit association"); LA. § 2798 (does not specify beyond "a sporting activity" related to a "recognized league or association"); MINN. § 604A.11 ("a sports team that is organized or performing under a nonprofit charter"); N.M. § 41-12-1 ("in a formally organized nonprofit sports association"); N.D. § 32-03-46 ("nonprofit or similar charter"); PA. CONS. STAT. ANN § 8332.1 ("sports program of a nonprofit association, and no nonprofit association"); R.I. § 9-1-48 (youth sports programs "organized and conducted by or under the auspices of a non-profit corporation" or established through interscholastic or intramural leagues).

132. N.J. § 2A:62A-6. Every state which protects volunteer coaches does so to the extent that the individual is not willful, wanton, or grossly negligent. *See* CARTER-YAMAUCHI, *supra* note 90, at ch. 3; *see also* Comments, 48 LA. L. REV. 1383 (1988) ("[r]eflections on willful, wanton, reckless, and gross negligence[:]. . . a 'twighlight zone which exists somewhere between ordinary negligence and intentional injury'"). However, there are three states that elect to afford volunteer coach protection as long as that individual's conduct does not fall "below ordinary standards of care." *See* ILL. ch. 745, para. 80/1; N.M. § 41-12-1; PA. CONS. STAT. ANN § 8332.1.

133. N.J. § 2A:62A-6(d); *see also* ILL. ch. 745, para. 80/1(1)(i) (identical language as used by Pennsylvania statute); MD. § 5-313 (volunteer personally liable for "negligent operation of a motor vehicle"); MASS. § 85V (no exception for "acts or failures" related to the transportation of participants); MINN. § 604A.11(protection does not apply "if the acts or omissions arise out of the operation, maintenance, or use of a motor vehicle"); N.H. § 508:17 ("Volunteer activity related to transportation or to care of the organization's premises shall be excepted from the provisions of paragraph I, of this section."); N.D. § 32-03-46 (no immunity granted to "person causing damage as the result of the negligent operation of a motor vehicle"); PA. CONS. STAT. ANN § 8332.1 (1)(b)(i) (protection not extended to individuals whose "[a]cts or omissions" are related to the "transportation of participants in a sports program or others to or from a game, event, or practice); R.I. § 9-1-48 (no immunity granted for the negligent operation of a motor vehicle).

There are, however, a number of states which do not mention any limitations to immunity for the negligent operation of a motor vehicle. *See* COLO. § 13-21-116; GA. § 51-1-20.1; IND. § 34-4-11.8-6; LA. § 9:2798; N.M. § 41-12-1.

134. N.J. § 2A:62A-6(e); *see also* MD. § 5-313; N.D. § 32-03-46.

a "public or private educational institution's athletic program."[135] Although other states' statutes may incorporate additional limitations and exceptions in the granting of civil immunity,[136] New Jersey's act properly addresses those situations rationally expected to be confronted by the volunteer coach in a way that allows the act's construction to avoid overly broad or narrowly drawn interpretations.

Most importantly, the New Jersey act incorporates a provision that actually serves as a precursor to the granting of civil immunity. This provision is that the volunteer coach must participate in and complete a safety orientation and training skills program before he or she is covered by the law.[137] The provision was added as an amendment in 1988, but it should be viewed as the essential element for demonstrating a commit-

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135. N.J. § 2A:62A-6(f); *see also* MINN. § 604A.11 (limitation to granting of immunity for athletic coaches providing "services or assistance as part of a public or private educational institution's athletic program"); N.D. § 32-03-46 (no granting of immunity to any athletic coach "providing service as a part of a public or private educational institution's athletic program").

136. COLO. § 13-21-116 ("except that such immunity from liability shall not extend to protect such person from liability for acts or omissions which harm third persons"); DEL. tit. 16, § 6836 (cap on damages, as related to the amount of insurance coverage); ILL. ch. 745, para. 80/1 (exception as to the "care and maintenance of real estate unrelated to the practice or playing areas which such persons or nonprofit associations own, possess or control"); LA. § 9:2798 ("The receipt of a small stipend or incidental compensation for volunteer services shall not exclude any person, who is otherwise covered, from the limitation of liability provided . . ."); MD. § 5-313 ("This section does not create, and may not be construed as creating, a new cause of action or substantive legal right against an athletic official or volunteer."); MASS. § 85V (immunity limited to leagues "for participants who are eighteen years of age or younger"); MINN. § 604A.11 (grant of immunity does not extend to the volunteer coach's acts or omissions to the extent that they are "covered under an insurance policy issued to the entity for who the coach . . . serves"); N.H. § 508:17 ("[t]he volunteer had prior written approval from the organization to act on behalf of the organization"); N.M. § 41-12-1 (volunteer coach must be participating in a league for persons under eighteen years of age); PA. CONS. STAT. ANN § 8332.1 (exception as to the "care and maintenance of real estate unrelated to the practice or playing areas which such persons or nonprofit associations own, possess or control"); R.I. § 9-1-48 ("'youth sports programs' . . . whose participants are nineteen (19) years of age or younger or physically or mentally handicapped regardless of age").

137. N.J. § 2A:62A-6(c)(2). Unfortunately, only two other states, providing volunteer coaches with statutory immunity from civil liability, require that their volunteers participate in a safety program. *See* LA. § 2798 (protection is applicable upon participation "in a safety orientation and training program" or it may be waived "upon submission of appropriate documented evidence as to that individual's proficiency in first aid and safety"); N.D. § 32-03-46 (coach's - "participat[ion] in a safety orientation and training program established by the league or team with which the person is affiliated" must first be met); *but see* N.H. § 508:17 ("In the case of volunteer athletic coaches or sports officials, such volunteers shall possess proper certification or validation of competence in the rules, procedures, practices, and programs of the athletic activity.")

ment toward taking the necessary steps in protecting everyone participating in recreational athletic leagues.[138]

Currently only a small number of states have enacted volunteer protection laws specifically focused around the services rendered by the volunteer recreational athletic coach. But, if there is an established rationale behind this specific statutory construction, why is there no significant push toward nationwide statutory protection in this area of the law? Do the other states conclude that this statutory framework is too unreasonable or simply unnecessary?

Clearly there is room for such statutory designations to be made in this area of an individual state's laws. This is especially true when recognizing that some states specifically grant immunity to volunteer recreational athletic officials[139] and rodeo participants[140] for acts constituting ordinary negligence. At the same time, the states find volunteer recreational coaches undeserving of the same statutory protection. Further, there is the nationwide existence and acceptance of laws which are enacted for the specific purpose of safeguarding the interests of individuals who volunteer to serve as directors and officers for nonprofit corporations,[141] or who render assistance as a Good Samaritan.[142]

"With thousands of nine-year-old rifle arms throwing thousands of baseballs as thousands of [l]ittle [l]eague parents look on, the likelihood of an errant throw is obvious. It's sad, but emblematic of our times, that such an incident results in litigation."[143]

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138. For an example of how the act's provision is complied with *see* YOUTH SPORTS RESEARCH COUNCIL, COACHES REFERENCE MANUAL, 2ND ED., THE RUTGERS S.A.F.E.T.Y. CLINIC (1994); *see also* Byrne v. Fords-Clara Barton Boys Baseball League, 564 A.2d 1222 (N.J. Super. Ct. 1989) (upholding the requirement that a volunteer coach must first participate in a safety orientation program before qualifying for New Jersey's statutory immunity); DOUGHERTY, ET AL., *supra* note 26, at 169 (advocating the position that volunteer coaches should be provided with adequate training).

139. ARK. CODE ANN. § 16-120-102(b) (Michie 1994); KAN. STAT. ANN. § 60-3601 (1993); MISS. CODE ANN. § 95-9-3 (1993); NEV. REV. STAT. § 41.630 (1993); TENN. CODE ANN. §§ 62-50-201-203 (1994).

140. ALA. CODE § 6-5-337 (1994); MONT. CODE ANN. § 27-1-733 (1994); WYO. STAT. ANN. § 1-1-18 (1995).

141. *See generally* CARTER-YAMAUCHI, *supra* note 90 (for a state-by-state examination of enacted laws that afford civil immunity to directors and officers of nonprofit corporations).

142. Robert A. Mason, *Good Samaritan Laws — Legal disarray: An Update*, 38 MERCER L. REV. 1440 (1987) ("The disparity between moral obligation and legal duty is somewhat exacerbated because one who decides to rescue must undertake to do so nonnegligently to avoid civil liability to the victim."). Currently, every state has adopted some form of Good Samaritan laws, there are 117 in all. *Id.* at Table I.

143. *The Windup, the Pitch, the Suit, supra* note 32, at 31.

V. CONCLUSION

This article's intention was to develop a framework, enabling the reader to recognize that a segment of the American fabric is in jeopardy, the willingness of individuals to serve as volunteer coaches in their community recreational sports leagues.

In January of 1993, President Bush, while at a Points of Light celebration, declared: *"I believe that it's time we ought to care for each other more and sue each other less."*[144] But, what does this suggest when it is spoken by the leader of the entire nation? That we possess and support a legal system that manipulates the direction of our everyday living.

It is ironic when one realizes that the people bringing the lawsuits against these volunteer sports coaches were probably once themselves participants in similar recreational sports leagues. The proper declaration is that society's individuals need to become more involved, more responsible, and more accountable for the doings and lack of doings, of themselves and their children. It is not a proclamation that recreational sports leagues will prevent society's youth from going astray, but in this technology driven age do we want our children's aspirations to be the achieving of the title "Sega-Genesis Neighborhood Champion?"

Society must accept the reality that participation in athletic activities involves risks; more than those faced while sitting four feet away from the television screen on a warm, beautiful spring day.

144. Remarks at a Celebration of the Points of Light, 29 WEEKLY COMP. PRES. DOC. 42 (Jan. 14, 1993) (emphasis added).