

A SURVEY OF DOMESTIC AND INTERNATIONAL SANCTIONS AGAINST SPECTATOR VIOLENCE AT SPORTING EVENTS

I. INTRODUCTION

Senseless killing of man by man is the bane of this and every era.

Occurring in connection with sports and athletic events, violence has been traditionally more characteristic of Latin America than the United States of America. While soccer stadium riots and attacks on rival team players are well known below the Rio Grande, football in this country is marked by better sportsmanship on the part of the losing team and its fans. This case chronicles one of the unfortunate exceptions. Yet in the larger context, of course, the sports event both here and there serves merely as an excuse for the depraved individual to commit his acts of violence. An unthinking rage, a whirl of momentary madness¹

Sporting events are violent, both on the field² and in the stands.³ Spectator or fan violence is not a new phenomenon.⁴ Major incidents have occurred in sports such as baseball,⁵ basketball,⁶ hockey,⁷ football,⁸

1. *Allen v. State*, 290 Ala. 339, 341, 276 So. 2d 583, 584-85 (1973) (conviction of a fan who shot into a crowd and killed a rival fan after a high school football game was affirmed).

2. Bredemeier & Shields, *Values and Violence in Sports Today*, PSYCHOLOGY TODAY, Oct. 1985, at 23.

3. Horn, *Fan Violence: Fighting the Injustice of It All*, PSYCHOLOGY TODAY, Oct. 1985, at 30 [hereinafter Horn].

4. In 532 B.C., 30,000 Romans died in riots at chariot races. *Id.* at 30.

5. When the New York Mets won the National League Eastern Division Championship in 1986, an estimated 6,000 fans stormed the playing field tearing pieces of sod. Vecsey, *The Mark of the Fans*, N.Y. Times, Sept. 19, 1986, at D17, col. 1.

6. After a high school basketball game in Westchester County, New York, a 19-year-old man was shot in the head in a fight in the arena parking lot. Kolbert, *For Heated Rivalry, Cheering Fades*, N.Y. Times, Feb. 11, 1986, at B2, col. 1 [hereinafter Kolbert].

7. After the Montreal Canadians won the National Hockey League's Stanley Cup in 1985, riotous fans looted downtown Montreal stores and overturned cars. *Postgame Looting*, N.Y. Times, May 26, 1986, at A40, col. 6.

8. After the Buffalo Bills clinched a playoff berth, thousands of fans stormed the field resulting in \$7,000.00 in property damage and leaving three spectators with broken legs. *Wilson, Fans Savor Rise from Bottom to Top of Heap*, Hous. Chron., Nov. 21, 1988, at 10C, col. 1. After the University of Florida beat Florida State University in a football game in 1982, a brawl broke out when both teams' fans stormed the field. Neff, *Can It Happen in the U.S.?*, SPORTS ILLUSTRATED, June 10, 1985, at 27 [hereinafter Neff].

and most frequently, soccer.⁹ The problem is not limited to one country; outbursts have occurred in England,¹⁰ Germany,¹¹ France,¹² Russia,¹³ China,¹⁴ Mexico,¹⁵ Argentina,¹⁶ and many other countries.¹⁷ This comment will explore the attempts to control spectator violence in the United States and at the international level. Close attention shall be paid to judicial, legislative, and private attempts to curb the violence. In conclusion, recommendations shall be made to explore and emphasize certain areas which have proven successful.

II. DOMESTIC SOLUTIONS IN THE UNITED STATES

Arguably, American fans are not as "fanatical" as European, Asian, and South American fans, but our sports history is not free from incident.¹⁸ In 1907, on baseball's Opening Day, 17,000 fans stormed the baseball diamond at a New York Yankees game to protest an umpire's call.¹⁹ In 1934, Detroit Tiger fans pelted St. Louis Cardinal outfielder Joe (Ducky) Medwick with fruit and bottles during the seventh game of the world series.²⁰ In 1962, a riot broke out at a Washington, D.C. high

9. Spectator riots and outbursts have become synonymous with international soccer. See, e.g., Toye, *Why Soccer Serves as a Vehicle For Fan Violence*, N.Y. Times, June 2, 1985, at E2, col. 1 [hereinafter Toye]. The most notorious incident was the riot between English and Italian soccer fans prior to the European Cup finals, the top prize for European soccer clubs, at Heysel Stadium in Brussels, Belgium on May 29, 1985. Thirty-nine people were killed and over 250 were injured when British fans stormed into a section reserved for Italian spectators. See *Riots in Brussels at Soccer Game Leaves 41 Dead*, N.Y. Times, May 30, 1985, at A1, col. 1 [hereinafter *Riots in Brussels*] (original estimates counted 41 dead, but the number was later reduced to 39). Between 1984 and 1985, there were eight major incidents where people were killed or seriously injured, or property was damaged by riotous fans. *Id.* at A10, col. 4.

10. *Riots in Brussels*, *supra* note 9 at A10, col. 4.

11. Fans rioted throughout West Germany during the 1988 European Cup games. *Traveling Hooligans*, NEWSWEEK, June 17, 1988, at 37.

12. *Riots in Brussels*, *supra* note 9 at A10, col. 4.

13. Soccer fans in Kiev attacked a train carrying Moscow soccer players after Kiev lost. *Soccer Team Bus Attacked By Fans*, N.Y. Times, Sept. 22, 1988, at A33, col. 6.

14. On May 19, 1985, thousands of Chinese soccer fans rioted outside a Peking stadium after a 2-1 loss to Hong Kong. *Chinese Riot After Soccer Defeat*, N.Y. Times, May 20, 1985, at A3, col. 2.

15. Ten people were trampled to death as fans tried to force their way into a Mexican soccer stadium. *10 Die in Crush at Mexican Game*, N.Y. Times, May 27, 1985, at A3, col. 3.

16. Fifty people were injured and one killed when a fight broke out between soccer fans in Avellaneda, Argentina. *Fan, 14, Is killed in Soccer Brawl*, N.Y. Times, Apr. 8, 1985, at C8, col. 1.

17. The violent outbursts have no select boundaries, "the roots of violence . . . are deep and cut across economic, social and national boundaries from Europe to the United States." Carlsen, *Dark Signs Exist in the U.S. Too*, N.Y. Times, June 2, 1985, at E2, col. 1 [hereinafter Carlsen].

18. See Neff, *supra* note 8.

19. Wolff, *Unruliness an Ugly Pastime for Some Baseball Fans*, N.Y. Times, June 16, 1985, at E1, col. 1 [hereinafter Wolff].

20. *Id.*

school football championship where 340 people were injured.²¹ In December 1981, one hockey fan knifed another at a National Hockey League game in Chicago.²² More recently, on April 3, 1989, University of Michigan fans rioted in Ann Arbor, Michigan, smashing store windows and turning over cars following the NCAA basketball championship.²³ Incidents like these have caused great concern. Attempts to curtail these spectator outbursts have come from three areas: state and federal legislatures, the courts, and local organizations. To some extent these moves have been successful, but spectator violence remains as much a part of American sports as the band at half-time.²⁴

A. *State and Federal Legislative Attempts to Control Spectator Violence*

Few states have any laws specifically prohibiting spectator violence.²⁵ Such acts are generally prohibited by individual state criminal statutes.²⁶ No federal law specifically prohibits such violence, but Congress has made attempts to outlaw player violence which many psychologists believe is the catalyst for outbursts in the stands.²⁷

1. *The Carrol Case*

In *Carrol v. State*,²⁸ the Court of Criminal Appeals of Oklahoma affirmed the conviction of an assistant coach who assaulted a high school umpire.²⁹ The court found an Oklahoma law that specifically outlawed assaults on game officials, coaches, and participants "not unconstitutionally vague and indefinite nor void for uncertainty."³⁰ The pertinent part of this statute specifies:

Every person who, without justifiable or excusable cause and

21. See Neff, *supra* note 8.

22. Appleson, *Spectator Violence: What They See is What They Do?*, 68 A.B.A. J. 404 (1982) [hereinafter Appleson].

23. *Michigan Celebration Gets Out of Hand*, Hous. Post, Apr. 5, 1989, at C6, col. 3 (One year prior, on May 1, 1988, Cincinnati Reds baseball fans hurled garbage and debris at umpire Dave Pallone after he ejected Cincinnati Manager Pete Rose). *Reds Fans' Assault Leaves Bad Taste*, N.Y. Times, May 2, 1988, at D27, col. 5.

24. See Neff, *supra* note 8.

25. See Engler, *Kill 'Em! Sports Violence and the Law!*, UPDATE ON LAW-RELATED ED., Spring 1983, at 3 [hereinafter Engler]; see also *Carrol v. State*, 620 P.2d 416 (Okla. Crim. App. 1980) (coach was found guilty of assaulting a high school umpire in violation of state statute).

26. See *Allen v. State*, 290 Ala. 339, 276 So. 2d 583 (1973).

27. See Sports Violence Act of 1980, H.R. 7903, 96th Cong., 2d Sess., 126 Cong. Rec. 20,890 (1980); Appleson, *supra* note 22. See generally Sanders, *Violence in the Stands: When Fans and Players Meet*, 53 INS. COUNS. J. 264 (1986) [hereinafter Sanders].

28. *Carrol v. State*, 620 P.2d 416 (Okla. Crim. App. 1980).

29. *Id.* at 417.

30. *Id.* at 418.

with intent to do bodily harm, commits any assault, battery, assault and battery upon the person of a referee, umpire, time-keeper, coach, player, participant, official, sports reporter or any person having authority in connection with any amateur or professional athletic contest is punishable by imprisonment in the county jail not exceeding six (6) months or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.³¹

This statute has been cited as an example of state law that "adequately hand[le]s problems of excessive sports violence when outside intervention is needed."³² Oklahoma's sports violence statute addresses the problem when an individual attacks a participant in a particular sport, but it fails to specifically deter the brawls between rival fans that occur at these events. Secondly, the deterrent effect is minimized when one considers that many fans are drunk or caught up in the "adversary situation on the field."³³ Few states have followed the Oklahoma statute. Many depend on their own existing criminal statutes to punish and convict riotous fans.³⁴

2. The Sports Violence Act of 1980,³⁵ the Sports Violence Labor Arbitration Act of 1981,³⁶ and the Sports Violence Arbitration Act of 1985³⁷

Many psychologists and social scientists consider spectator violence a direct result of the violence on the field.³⁸ Therefore, reducing violent

31. OKLA. STAT. ANN. tit. 21, § 650.1 (West 1979). Subsequent to the case, the fine was increased to \$1,000.00, and jail time was increased to one year. OKLA. STAT. ANN. tit. 21, § 650.1 (West Supp. 1988).

32. Comment, *Torts in Sports—"I'll See You in Courtl."* 16 AKRON L. REV. 537, 552 (1983) (authored by John F. Carroll) [hereinafter Carroll].

33. Appleson, *supra* note 22, at 404.

34. See *Allen v. State*, 290 Ala. 339, 276 So. 2d 583 (1973); see also *Commonwealth v. Belgrave*, 445 Pa. 311, 285 A.2d 448 (1971) (conviction of sixteen spectators who incited a riot at a high school football game was reversed and new trials were given because the trial court failed to sever the individual defendants).

35. H.R. 7903, 96th Cong., 2d Sess., 126 Cong. Rec. 20,890 (1980).

36. H.R. 5079, 97th Cong., 2d Sess., 127 Cong. Rec. 28,630 (1981).

37. H.R. 2151, 99th Cong., 1st Sess., 131 Cong. Rec. H2302 (1985).

38. Coleman, *Brutal Sports and Brutal Fans*, N.Y. Times, Aug. 3, 1985, at C1, col. 1. Psychologists and social scientists share the view that "the particularly brutal and angry aggression that is a virtually integral part of some forms of competitive athletics increases the likelihood of imitative violence among crowds dominated by young males." *Id.* This "copy-cat" syndrome is supported throughout the scientific community as one of the reasons for violence in the stands. Horn, *supra* note 3, at 30. Psychologist John Cheffers of Boston University has concluded that violence on the field "almost always" provokes violence among the spectators. Mishara, *Sporting Violence*, OMNI, Dec. 1981, at 44. "[T]he more violent the game becomes—whether because of adherence to the rules and the use of aggressive tactics or outbreaks of fights among players—the more violent the spectators will be." Sanders, *supra* note 27, at 267.

outbursts between the players should have an equal result in the stands.³⁹ Legislation such as the Sports Violence Act of 1980, the Sports Violence Labor Arbitration Act of 1981, and the Sports Violence Arbitration Act of 1985 was proposed to reduce violence on the field and, as a by-product, to reduce it in the stands.⁴⁰

The Sports Violence Act of 1980 provided that a player who "knowingly uses excessive physical force and thereby causes a risk of significant bodily injury to another person involved in that event shall be fined not more than \$5,000, or imprisoned not more than one year, or both."⁴¹ The Act defines "excessive physical force" as "unreasonably violent" action that has "no reasonable relationship to the competitive goals of the sport" and could not be foreseen as a normal hazard of a person's involvement in a sports event.⁴²

Supporters of the Act argued that existing efforts to curb violence were ineffective.⁴³ The bill was designed to eliminate the problem of excessive violence that the leagues refused to solve and local prosecutors either avoided or botched.⁴⁴ The bill would have made a participant liable if:

- (1) he showed a "definite resolve to harm another, or negligent, reckless, deliberate or willful disregard for the safety of another";
- (2) he violated a safety rule;
- (3) the act occurred while play was over or "occurs without any reasonable relationship to the competitive goals of the sport";
- (4) the act was beyond the reasonable and necessary aggressiveness of the sport;
- (5) the act could not have been foreseen by the victim; and
- (6) the only result would have been serious injury.⁴⁵

Several opponents complained that the Act was too vague, frivolous in light of other pressing legislation, and an unnecessary expansion into an area better suited for state law.⁴⁶ NFL Commissioner Pete Rozell,

39. Athletes, as role models, can deter violence in the stands by "eliminating fights, tantrums and prolonged, arm-waving arguments over decisions." Horn, *supra* note 3, at 31.

40. See generally 126 CONG. REC. 20,898 (daily ed. July 24, 1980). Rep. Mottl introduces H.R. 7903, the Sports Violence Act of 1980, which would make it a "Federal crime for professional athletes to engage in excessive violence in the course of a sports event." *Id.* at 20,898.

41. H.R. 7903, 96th Cong., 2d Sess., § 115(a) (1980).

42. *Id.* § 115(b)(1).

43. Sprotzer, *Violence in Professional Sports: A Need For Federal Regulation*, CASE & COMMENT, May-June 1981, at 3 [hereinafter Sprotzer]. The then existing efforts were league sanctions and state and local criminal and civil penalties. *Id.* at 5.

44. Carroll, *supra* note 32, at 552.

45. Engler, *supra* note 25, at 63.

46. See Carroll, *supra* note 32, at 552; Sprotzer, *supra* note 43, at 8; Note, *Violence in*

NHL President John Ziegler, NBA Deputy Commissioner Simon Gourdine, Baltimore Orioles General Manager Hank Peters representing Baseball Commissioner Bowie Kuhn, and North American Soccer League Commissioner Philip Woosnam spoke in opposition to the bill.⁴⁷ The bill never left the House Judiciary Committee's subcommittee on crime.⁴⁸

The Sports Violence Labor Arbitration Act was later proposed by Representative Robert M. Mottl in 1981.⁴⁹ This legislation, however, was just a repeat of the 1980 Act and no action was taken.⁵⁰

In 1985, Representative Thomas A. Daschle introduced the Sports Violence Arbitration Act.⁵¹ Unlike its predecessors, this Act did not make excessively violent conduct a criminal act. Rather, it required all major professional sports to create arbitration panels that would force teams and players to pay the costs of their conduct.⁵² The bill was a significant change from previous legislation, but no action was ever taken in committee⁵³ or on the House floor.

Although these Acts specifically related to player violence, they did not directly address the problem of spectator violence. Arguably, if the proposed legislation were put into effect, violent incidents would decrease on the field, but this would not guarantee that such violence would not overflow into the stands. Proponents of this legislation fail to see that there are other factors that contribute to fan violence. Psychologists have determined that bad calls by officials, certain rules perceived as unfair, the atmosphere of a crowded stadium with an abundance of alcohol, and the feeling of anonymity and unrestraint of being part of a crowd, are all contributing factors.⁵⁴ The Acts proposed by Congress would not have dealt with these latter components of spectator violence; that task was given to the courts and to private, local, and municipal entities to handle.⁵⁵

Professional Sports: A Proposal For Self-Regulation, 3 COMM. & ENT. L.J. 425, 441 (1981); see also *supra* note 25-26 and accompanying text.

47. Engler, *supra* note 25, at 63.

48. *Id.*

49. Appleson, *supra* note 22, at 404.

50. Carroll, *supra* note 32, at 553.

51. H.R. 2151, 99th Cong., 1st Sess., 131 CONG. REC. H2302 (1985).

52. See 131 CONG. REC. E5285 (daily ed. Nov. 20, 1985)(statement of Rep. Daschle). Compare Note, *The Sports Court: A Private System to Deter Violence in Professional Sports*, 55 S. CAL. L. REV. 399 (1982) (H.R. 2151 was based on the concepts discussed in this note).

53. The bill was sent to the House Committee on Education and Labor.

54. See Horn, *supra* note 3.

55. See Engler, *supra* note 25, at 5 (state criminal laws generally prohibit spectator violence); see generally Annotation, *Liability of Owner or Operator of Theatre or Other Amusement to Patron Assaulted by Another Patron*, 75 A.L.R.3d 441 (1987) [hereinafter Annotation].

B. *The Judicial Role in the Area of Spectator Violence*

If the acting participants are singled out, the criminal courts can be effective in resolving the problem.⁵⁶ However, many times the violent fans who injure others are never found and the victims must find recourse against the only available party, the stadium or team owner. The vehicle often used by the spectator-turned-plaintiff has been the civil judicial system.⁵⁷ The plaintiff has not been wholly successful against the stadium owner or team.⁵⁸ The stadium has either been immune from suit,⁵⁹ or the spectator has not proven a negligence cause of action.⁶⁰

1. Decisions in Favor of the Defendant-Stadium or Team Owner

a. *The Rodriguez,⁶¹ Vanchieri,⁶² and DeSantis⁶³ Opinions*

In *Rodriguez v. New Jersey Sports and Exposition Authority*, the plaintiff, after winning \$4,000.00 at the Meadowlands Race Track, was assaulted by three men in the track's parking lot. His jaw was fractured and all of his money was stolen.⁶⁴ Rodriguez sued the New Jersey Sports and Exposition Authority (Authority), owner and operator of the race track, and Pinkerton's, Inc. (Pinkerton's), the company that provided contract security to the Meadowlands Complex. Rodriguez maintained that the Authority and Pinkerton's failed to provide adequate security and lighting, failed to warn of known dangers, and failed to protect patrons lawfully on the premises. The trial court, granting defendants' motion for summary judgment, held that the New Jersey Tort Claims Act gave immunity to both the Authority and Pinkerton's.⁶⁵

The Superior Court of New Jersey affirmed this decision: "Tort claims against public entities, such as the Sports Authority, are governed

56. See *supra* notes 26-34 and accompanying text.

57. See generally Gregory & Goldsmith, *The Sports Spectator as Plaintiff*, TRIAL, Mar. 1980, at 27 [hereinafter Gregory & Goldsmith].

58. See generally Annotation, *supra* note 55.

59. See generally *Rodriguez v. New Jersey Sports & Expo. Auth.*, 193 N.J. 39, 472 A.2d 146 (App. Div. 1983), *cert. denied*, 96 N.J. 291, 475 A.2d 586 (1984) (public operator of sports complex cannot be sued for the injuries caused by third persons because of sovereign immunity).

60. See *Townsley v. Cincinnati Gardens, Inc.*, 39 Ohio App. 2d 5, 314 N.E.2d 409 (1974) (stadium owner not liable to patron in absence of showing that it knew or reasonably could have anticipated the attack which caused the patron's injuries).

61. *Rodriguez v. New Jersey Sports & Expo. Auth.*, 193 N.J. 39, 472 A.2d 146 (App. Div. 1983), *cert. denied*, 96 N.J. 291, 475 A.2d 586 (1984).

62. *Vanchieri v. New Jersey Sports & Expo. Auth.*, 104 N.J. 80, 514 A.2d 1323 (1986).

63. *DeSantis v. Ricci*, 614 F. Supp. 415 (D.C.N.J. 1985).

64. *Rodriguez*, 193 N.J. at —, 472 A.2d at 147.

65. *Id.*; see also N.J. STAT. ANN. § 59 (West 1982).

by the provisions of the Tort Claims Act. The Tort Claims Act re-establishes an all-inclusive immunity from tort liability for public entities absent specific provisions therein imposing liability upon them."⁶⁶ Under the Tort Claims Act, a public entity is only liable for failure to protect against a dangerous condition.⁶⁷ The *Rodriguez* court "assumed" that the Authority was a "public entity" for the purposes of the Tort Claims Act and found that Rodriguez's assault was not the result of a "dangerous condition."⁶⁸ The court went on to find that Pinkerton's shared the Authority's immunity,⁶⁹ and that even if the Authority were not immune, no causal connection existed between the "roving guards on traffic duty" and the assault on Rodriguez.⁷⁰ The importance of this case is that county and municipally owned stadiums can be immune from similar suits. Unless the litigated event results from a "dangerous condition," similar immunity statutes will protect most stadiums.⁷¹

In *Vanchieri v. New Jersey Sports and Exposition Authority*,⁷² the Supreme Court of New Jersey reversed the lower court's summary judgment in favor of defendant Wackenhut Company, the security agency hired by the Authority. Vanchieri was knocked down by "young rowdies" while leaving Giants Stadium after a preseason football game between the New York Jets and Denver Broncos. The youths were never found and Vanchieri broke her left femur and eventually had to have surgery.⁷³ Vanchieri sued the Authority, Wackenhut Company, and various fictional defendants.⁷⁴ The supreme court followed *Rodriguez* and granted immunity to the Authority under the Tort Claims Act.⁷⁵ The

66. *Rodriguez*, 193 N.J. at —, 472 A.2d at 147. The Authority was created by the New Jersey Sports and Exposition Authority Law in 1971. N.J. STAT. ANN. § 5:10-1 (West 1971). In 1972, the Supreme Court of New Jersey upheld the constitutionality of this law. *New Jersey Sports & Expo. Auth. v. McCrane*, 61 N.J. 1, 292 A.2d 545 (1972), *appeal dismissed*, 414 U.S. 991 (1973).

67. See N.J. STAT. ANN. § 54:4-7 (West 1982).

68. *Rodriguez*, 193 N.J. at —, 472 A.2d at 148. See N.J. STAT. ANN. § 59:4-1(a) (West 1982) ("dangerous condition" means a condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which it may be reasonably foreseeable that it will be used). See also *DeSantis v. Ricci*, 614 F. Supp. 415 (D.C. N.J. 1985). "[The *Rodriguez*] court assumed the Authority to be a 'public entity' and held it to be immune." *Id.* at 419.

69. *Rodriguez*, 193 N.J. at —, 472 A.2d at 149.

70. "This was simply a criminal act by third parties which could not have been prevented but for the most fortuitous presence of a security guard roving the massive complex at the precise moment of the crime." *Id.* at —, 472 A.2d at 150.

71. *Id.* at —, 472 A.2d at 148.

72. *Vanchieri*, 104 N.J. 80, 514 A.2d 1323 (1986).

73. See *Vanchieri v. New Jersey Sports & Expo. Auth.*, 201 N.J. Super. 34, —, 492 A.2d 686, 688 (N.J. Super. Ct. App. Div. 1985) (*Vanchieri* originally brought suit against the Authority and Wackenhut Company, the security agency hired by the Authority to patrol the stadium during the game.).

74. *Id.*

75. *Vanchieri*, 104 N.J. at 80, —, 514 A.2d at 1324 (1986).

state supreme court refused to extend the New Jersey Tort Claims Act⁷⁶ to Wackenhut, holding that it was not an employee, but an independent contractor. Independent contractors fall under the immunity of the Tort Claims Act "[w]hen a public entity provides plans and specifications to [it]."⁷⁷ The court found that Wackenhut did not show that the Authority specified how security functions were to be performed. In the absence of such evidence, a summary judgment could not be granted to Wackenhut.⁷⁸ The *Vanchieri* decision is similar to *Rodriguez* in that the stadium owner can still claim immunity under a sovereign immunity statute. In *Vanchieri*, however, this immunity does not extend to independent contractors hired by the stadium who are given no specifications on how to secure the facilities.⁷⁹

In *DeSantis v. Ricci*,⁸⁰ the District Court of New Jersey held that the plaintiff's suit against the Authority was not barred by the eleventh amendment.⁸¹ The plaintiff, who had gone to the Byrne Meadowlands Arena, claimed that he was beaten by security guards hired by the Authority.⁸² The district court applied the *Blake v. Kline*⁸³ test and found that the Authority was not an arm of the state for purposes of the eleventh amendment.⁸⁴ This decision casts serious doubt on the *Rodriguez*

76. In *Vanchieri's* complaint, she alleged that:

- (1) both the Authority and Wackenhut were responsible for security and negligently failed in their duty;
- (2) the Authority negligently failed to hire adequate security guards;
- (3) the Authority negligently failed to provide emergency care to her;
- (4) Wackenhut negligently failed to provide security and supervision; and
- (5) John and Jane Doe and the Authority negligently caused her injuries.

Vanchieri, 201 N.J. Super. at —, 492 A.2d at 688.

77. *Vanchieri*, 104 N.J. at —, 514 A.2d at 1326; see also *Spectators Sue for Injuries*, TRIAL, Feb. 1987, at 84.

78. *Vanchieri*, 104 N.J. at —, 514 A.2d at 1327.

79. *Id.* at —, 514 A.2d at 1326.

80. *DeSantis*, 614 F. Supp. 415 (D.C. N.J. 1985).

81. *Id.* at 422-23.

82. *Id.* at 416.

83. *Blake v. Kline*, 612 F. 2d 718 (3d Cir. 1979), *cert. denied*, 447 U.S. 921 (1980). In order to fall within the protection of the eleventh amendment a state agency must show:

- (1) that the payments of the agency will have to be made out of the state treasury;
- (2) whether the agency is governmental or proprietary;
- (3) whether the agency has been separately incorporated;
- (4) the degree of autonomy of the agency;
- (5) whether the agency has the power to sue, be sued, or enter contracts;
- (6) whether the agency's property is immune from state taxation and whether the sovereign has immunized itself from responsibility for the agency's actions.

Id. at 722.

84. The eleventh amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI. Simply put, the federal court cannot entertain a suit against a state by citizens of another state, or foreign countries, and by citizens of that state. *Hans v. Louisiana*, 134 U.S. 1 (1890).

and *Vanchieri* opinions. The court recognized the findings in *Rodriguez*, but did not give it authority.⁸⁵ The *DeSantis* court went on to limit the *Rodriguez* decision by not allowing the Tort Claims Act to hold the Authority immune in federal court.⁸⁶ Despite immunity at the state level based on *Rodriguez* and *Vanchieri*, the Authority is open to suit in federal court by its own citizenry. Hence, state owned and operated stadiums do not enjoy the "home field" advantage in federal court.

b. The Stadium Owner's Victory Under Common Law Negligence

The patron-plaintiff has not fared well against the nonimmune stadium owner. In *Townsley v. Cincinnati Gardens, Inc.*,⁸⁷ a boy was assaulted in the restroom during a Harlem Globetrotter's performance. The boy's father brought suit for his minor son and the Ohio Court of Common Pleas ruled for the plaintiffs and awarded them \$2,477.00.⁸⁸ The Ohio Court of Appeals reversed the lower court holding that there was no evidence that would have alerted a reasonable mind of the danger or circumstances that led to the plaintiff's injuries.⁸⁹

In *Corbitt v. Ringley-Crockett, Inc.*,⁹⁰ the plaintiff was beaten and robbed in a men's restroom during a James Brown performance. The court set out the standard for determining when a stadium owner is liable to a spectator for assaults or criminal acts of third persons.⁹¹ "[I]f the owner is to be held liable for the sudden criminal acts of third persons there must be a showing that the owner was on notice in some manner of the imminent probability of the act."⁹² Hence, with respect to assaults, the stadium owner has a duty to protect against harms which he has knowledge of or should have discovered through reasonable diligence.⁹³

The *Townsley* and *Corbitt* standards apply to criminal assaults against patrons by third persons,⁹⁴ but *Shtekla v. Topping*⁹⁵ involved a

85. Although the Authority cited the Tort Claims Act, the district court would not incorporate it into its opinion, but it would allow reconsideration if the Authority would provide similar authority. *DeSantis*, 614 F. Supp. at 419 n.3.

86. *Id.* at 421.

87. *Townsley v. Cincinnati Gardens, Inc.*, 39 Ohio App. 2d 5, 314 N.E.2d 409 (1974).

88. *Townsley v. Cincinnati Gardens, Inc.*, 39 Ohio Misc. 1, 314 N.E.2d 406 (Ct. Comm. Pleas 1973).

89. *Townsley*, 39 Ohio App. 2d at —, 314 N.E.2d at 411-12.

90. *Corbitt v. Ringley-Crockett, Inc.*, 496 S.W.2d 914, 75 A.L.R.3d 432 (Tenn. Ct. App. 1973).

91. *Id.* at 917-19, 75 A.L.R.3d at 436-39.

92. *Id.* at 919, 75 A.L.R.3d at 439.

93. See Gregory & Goldsmith, *supra* note 57, at 28.

94. See, e.g., *Leslie v. Delaware Racing Ass'n*, 275 F.Supp. 354 (D. Del. 1967) (plaintiff failed to prove prima facie case against defendant); *Noble v. Los Angeles Dodgers, Inc.*, 168 Cal. App. 3d 912, 214 Cal. Rptr. 395 (Cal. Ct. App. 1985) (defendant could not have foreseen assault on patron; there was adequate police force and defendant owed no duty); *Gonzales v. City of San Diego*, 156 Cal. App. 3d 256, 202 Cal. Rptr. 634 (Cal. Ct. App. 1984) (city allowing tailgate parties did not create a dangerous condition); *Warner v. Florida Jai Alai, Inc.*,

more common form of spectator violence—the crowd brawl. In *Shtekla*, the plaintiff was injured when a fight broke out at a baseball game at Yankee Stadium.⁹⁶ The court held: “[T]he defendant [stadium owner] would not be liable for the ordinary rudeness and jostling that is characteristic of crowds at sporting events . . . and it is only when something more than that can be expected that reasonable care requires intervention.”⁹⁷ Generally, a stadium owner will not be liable for the reckless conduct of spectators which is not directed at any one person, but does result in injury to certain patrons.⁹⁸

2. Decision for the Plaintiff-Patron-Spectator

There have been instances, although quite rare, where the patron has prevailed against the stadium owner for the acts of other patrons.⁹⁹ Most of these cases result from reckless conduct of spectators which were considered “foreseeable risks.”¹⁰⁰ However, a stadium owner will not be held liable for the criminal assaults by third persons where such assaults are not known or discoverable through reasonable diligence.¹⁰¹

In *Lee v. National League Baseball Club of Milwaukee, Inc.*,¹⁰² a sixty-nine-year-old spectator was trampled by other patrons scrambling for a foul ball. The usher in charge of the section where the woman was injured had been moved from his customary position and was not in a position to protect the patron.¹⁰³ The defendant was on notice that spectators scramble after foul balls hit into the stands. The usher was moved for reasons other than protecting patrons or maintaining order and such

221 So. 2d 777 (Fla. Dist. Ct. App. 1969) (no breach of duty on part of Jai Alai promoter when patron was knocked down by drunk); *Gill v. Chicago Park Dist.*, 85 Ill. App. 3d 903, 407 N.E.2d 671 (1980) (plaintiff failed to show that defendant owed legal duty to protect patron against third-party assaults); *McDonald v. Chicago Stadium Corp.*, 336 Ill. App. 353, 83 N.E.2d 616 (1949) (plaintiff did not show that overcrowding was in violation of statute or that usher's inattentiveness was a proximate cause of plaintiff's injuries).

95. *Shetkla v. Topping*, 23 A.D.2d 750, 258 N.Y.S.2d 982 (1965).

96. *Id.* at —, 258 N.Y.S.2d at 983.

97. *Id.* at —, 258 N.Y.S.2d at 984 (citation omitted).

98. *See, e.g., Reynolds v. Deep South Sports, Inc.*, 211 So.2d 37 (Fla. Dist. Ct. App. 1968) (complaint against promoters of wrestling match where patron was struck in face by whiskey bottle did not state cause of action); *Whitfield v. Cox*, 189 Va. 219, 52 S.E.2d 72 (1949) (promoter of wrestling match not liable for injuries sustained by patron when she was struck by a bottle thrown by an unidentified person). *Contra Lee v. National League Baseball Club of Milwaukee*, 4 Wis. 2d 168, 89 N.W.2d 811 (1958) (baseball club held liable for injury sustained when 69-year-old patron was trampled by spectators scrambling after foul ball).

99. *See generally* Gregory & Goldsmith, *supra* note 57, at 28-29.

100. *Id.* at 28.

101. *Id.*

102. *Lee v. National League Baseball Club of Milwaukee, Inc.*, 4 Wis. 2d 168, 89 N.W.2d 811 (1958).

103. *Id.* at 170, 89 N.W.2d at 812.

action on the part of the defendant was negligence which was the proximate cause of the plaintiff's injuries.¹⁰⁴ The *Lee* court dismissed the defendant's claim that the plaintiff assumed the risk, holding that it was a fact issue better left to the jury.¹⁰⁵ Thus, a stadium owner is liable for the injuries sustained by a patron resulting from the acts of third persons when the owner is aware of or should be aware of the conduct of third persons and it has not taken reasonable and appropriate measures to restrict that conduct.¹⁰⁶

In *Sample v. Eaton*,¹⁰⁷ a spectator was hit in the jaw by a Coca-Cola bottle thrown by another patron at a wrestling match. The plaintiff filed suit against the proprietor of the wrestling club and the operators of the refreshment concession who sold Coca-Cola.¹⁰⁸ During the match several of the spectators were throwing items into the ring. A witness testified that a man sitting next to her grabbed a Coca-Cola bottle from a vendor employed by the concession operators and hurled it at the ring. The bottle flew over the ring and struck the plaintiff in the mouth.¹⁰⁹ The concession owner had instructed all of its vendors not to sell or give bottles to customers, but to pour the contents into paper cups. The California District Court of Appeals reversed the judgment against the concession owner, holding that it owed no duty to spectators to protect them from injury resulting from the "wrongful acts of other spectators."¹¹⁰ However, the Court of Appeals reversed the nonsuit in favor of the proprietor. The facts raised an issue as to whether the proprietor knew that the spectators were throwing articles and did not try to control them. Also, the evidence showed that the proprietor knew the vendors with Coca-Cola bottles were in the vicinity of the disruptive crowd.¹¹¹

In *Bearman v. University of Notre Dame*,¹¹² the plaintiff was knocked down by a drunk as she was returning to her car after a Notre

104. *Id.* at 173-74, 89 N.W.2d at 814-15.

105. In *Lee*, the court stated:

As we view the issue of assumption of risk in this case, it boils down to the question of whether it is a matter of common knowledge that spectators at baseball games, who scramble for balls batted into the stands, are likely to forcibly knock other patrons out of their seats with such force as to injure them. This could not have been a matter of common knowledge on the part of patrons . . . in attendance at National League games up to the time of plaintiff's injury. This is because of the testimony that no one had been so injured there prior to such time.

Id. at 177, 89 N.W.2d at 816.

106. *Id.* at 172-73, 89 N.W.2d at 813-14.

107. *Sample v. Eaton*, 145 Cal. App. 2d 312, 302 P.2d 431 (Cal. Dist. Ct. App. 1956).

108. *Id.* at 313, 302 P.2d at 432.

109. *Id.* at 315, 302 P.2d at 433.

110. *Id.* at 316-17, 302 P.2d at 434 (citing *Philpot v. Brooklyn Baseball Club*, 303 N.Y. 116, 100 N.E.2d 164 (1951)) (concessionaire did not owe duty to protect spectators).

111. *Id.* at 434.

112. *Bearman v. University of Notre Dame*, 453 N.E.2d 1196 (Ind. Ct. App. 1983).

Dame football game. There were no ushers or guards in the area. The Indiana Court of Appeals, applying a similar standard to that in *Lee*,¹¹³ reversed and remanded the lower court's grant of a motion for judgment on the evidence in favor of the defendant.¹¹⁴ The court stated that the University was aware of alcohol being consumed on the stadium premises; that "tailgate" parties were held in the stadium parking lot; and that, although it had no knowledge of the particular dangers posed by the drunk who injured the plaintiff, it did have knowledge that intoxicated persons on their premises could pose a threat to other patrons.¹¹⁵ The case was then remanded for the jury to decide if the University employed adequate protective measures.

The *Lee*, *Sample*, and *Bearman* decisions set up the standard for liability of stadium owners or proprietors for the conduct of other patrons. The owners are liable if: (1) they know or have reason to know of conduct of patrons which could pose a threat to the safety of other patrons; and (2) they fail to take adequate measures in protecting innocent patrons from that conduct or try to alleviate that conduct.¹¹⁶ The biggest hurdle under this standard is the knowledge criterion especially in cases involving assaults by patrons.¹¹⁷ This criterion is often difficult to assess when assaults are limited in number and occur so quickly that the proprietor cannot be adequately alerted.¹¹⁸

C. *Private Attempts to Curtail Incidents of Spectator Violence*

Legislative policies and judicial rulings outlined above have impact after the effects of fan violence have been felt. Many commentators believe that a better policy is to combat the problems of spectator violence at its source—the stands.¹¹⁹

The major contributor to spectator violence is alcohol.¹²⁰ Drinking is associated with a weakening of normal restraints, allowing passion to

113. See *supra* notes 102-106 and accompanying text.

114. *Bearman*, 453 N.E.2d at 1198.

115. *Id.*

116. See generally Annotation, *Liability of Proprietor For Injury to Customer or Patron Caused by Pushing, Crowding etc. of Other Patrons*, 20 A.L.R.2d 8 (1987); Annotation, *supra* note 55.

117. See *supra* notes 102-115 and accompanying text.

118. See Gregory & Goldsmith, *supra* note 57, at 28-29.

119. See generally Barron, *At Old Ball Game, New Brew is No Hit*, N.Y. Times, April 4, 1985, at A12, col. 4 [hereinafter Barron].

120. Neff, *supra* note 8. At Nickel Beer Night in Cleveland in 1974, several fights broke out among the fans and hundreds charged the field and attacked Texas Ranger rightfielder, Jeff Burroughs. *Id.* Lieut. Robert Becker, who directs the New York City police at Shea Stadium reports that 90% of their problems are alcohol-related. Wolf, *supra* note 19, at E10, col. 2.

overtake common sense.¹²¹ Many stadium officials feel that fan drunkenness and violence is on the rise.¹²² To address this problem, many stadiums have limited or banned alcohol in their parks.¹²³ Detroit Tiger Stadium was one of the first organizations to limit beer consumption on its premises to control fan incidents.¹²⁴ At the opening of baseball season in 1985, many stadiums started to sell low alcohol beer, designated "no drinking" zones, and closed concessions before the end of the game.¹²⁵ In 1987, the San Francisco Giants banned beer sales in the stands.¹²⁶ The New York legislature has recently passed a bill that will force all major professional sports arenas and stadiums in the State to set aside six percent alcohol-free seats and another fifteen percent vendor-free seats.¹²⁷ The results have been promising. Pat Gallagher, vice president for the San Francisco Giants has reported that alcohol-related security problems have gone down.¹²⁸

The solution to the problem of spectator violence is not limited solely to limiting the consumption of beer.¹²⁹ Increasing security¹³⁰ and other measures¹³¹ have also been proposed. Some events have excluded spectators altogether.¹³² However, most experts agree that despite the highly published occurrences, spectator violence is not a major problem as compared to other countries.¹³³ Foreign spectator violence is considered by most authorities to be a plague which is very difficult to cure.¹³⁴

121. Horn, *supra* note 3, at 30.

122. Wolff, *supra* note 19.

123. See generally Wolff, *supra* note 19.

124. Barron, *supra* note 119.

125. *Id.*

126. Johnson, *Sports and Suds*, SPORTS ILLUSTRATED, Aug. 8, 1988, at 68, 82 [hereinafter Johnson].

127. N.Y. LAB. LAW § 288 (McKinney 1988). The bill met little opposition from the major arenas in the state, but it was opposed by Baseball Commissioner Peter Ueberroth. Johnson, *supra* note 126, at 82.

128. Johnson, *supra* note 127, at 82.

129. See Horn, *supra* note 3.

130. During the National League Playoffs, the New York Mets proposed to double the security guards to 400 in the event that the final game was to be played in New York. *Security to be Bolstered if Mets Win Today*, N.Y. Times, Oct. 12, 1986, at A46, col. 1.

131. Anaheim Stadium officials have ushers fill out computer cards after each game describing incidents of spectator violence that evening. The stadium officials use this information to predict where problem spots exist and thus anticipate the problem. *Angels Discover Antipunch Card*, N.Y. Times, July 3, 1986, at A29, col. 1.

132. See Kolbert, *supra* note 6 (high school fans banned after incident at a prior basketball game between the two participating schools).

133. See Carlsen, *supra* note 17, at col. 1; see also Neff, *supra* note 8. *Contra Vecsey, Baseball's Time Bomb*, N.Y. Times, July 15, 1985, at C3, col. 2.

134. See generally Toye, *supra* note 9; see also Collie, *The Centennial of a Troubled Game*, MACLEANS, Aug. 17, 1987, at 36, col. 1 [hereinafter Collie].

III. THE INTERNATIONAL PROBLEM OF SPECTATOR VIOLENCE

Spectator violence is a serious problem in the international sports arena, especially at soccer matches. From 1984 to 1985, there were at least eight major incidents of spectator violence.¹³⁵ More recently, during the European Cup Championships, English, German, and Irish fans rioted throughout Stuttgart, West Germany.¹³⁶ Spectators in Russia, China, Mexico, and other countries have had similar outbursts.¹³⁷ What separates these incidents from those in the United States is that a majority of them involve international fans and, of course, international legal consequences.¹³⁸ Due to the severity of the problem, sanctions against spectator violence are much more stringent, and in some situations, joint ventures by many countries.¹³⁹ The most interesting attempts to control spectator violence include recent decisions of English courts, a European convention on controlling spectator violence, and various local and private sanctions in certain countries. Despite these attempts, soccer violence is still a significant problem which has roots in many areas of society.¹⁴⁰

A. *The English War Against the Hooligan*¹⁴¹

The English have had a recurrent problem with spectator violence.¹⁴² However, the courts have taken a very hard-lined attitude

135. See *Riots in Brussels*, *supra* note 9.

136. *England Loses, Fans Riot*, N.Y. Times, June 13, 1988, at C9, col. 5.

137. See *supra* notes 10-16.

138. See generally Comment, *The War on Soccer Hooliganism: The European Convention on Spectator Violence and "Misbehavior" At Sports Events*, 27 VA. J. INT'L L. 603 (1987) (authored by Jefferson C. Taylor) [hereinafter Taylor].

139. E.g., *European Convention on Spectator Violence and Misbehavior at Sports Events and In Particular at Football Matches* (Aug. 19, 1985), reprinted in 24 INT'L L. MAT. 1566-72 (1985) [hereinafter Convention]; see also Taylor, *supra* note 138.

140. See *Why Are Soccer Fans So Violent?*, DISCOVER, Aug. 1985, at 8-9 [hereinafter *Soccer Fans*].

141. The term "hooligan" is an English term that describes the typical violent fan:

The following actions have been judged to constitute "football hooliganism" in the reported cases: looking aggressive, jeering, shouting, jumping up and down, waving fists in the air, running in groups issuing blood curdling and obscene threats involving baseball bats; invading the pitch; wrecking motorway service stations; taking a crutch away from its unfortunate owner and using it as a club; fighting with fists; kicking rival fans who are on the ground; smashing faces with hammers; robbing rival fans of their valuables and clothes; ripping up terracing; "stampeding" around railway stations so as to scatter the public; denting car bonnets and roofs and obstructing the road; vandalizing and overturning local peoples' cars after a match; assaulting local residents with iron bars and wooden clubs; "shouting National Front and racial abuse;" radically inspired and disabling attacks involving bottles and fists on British Rail employees, taxi drivers and shopkeepers; and lastly, throwing missiles at each other, local people, oncoming cars and the police.

Salter, *The Judges v. The Football Fan: A Sporting Contest?*, 36 N. IR. LEGAL Q. 351, 352 (1985) [hereinafter Salter I].

142. See Collie, *supra* note 134. See generally E. Dunning, P. Murphy & J. Williams, THE

toward the soccer hooligan.¹⁴³ The courts have recently been given new sentencing power with the enactment of the Sporting Events (Control of Alcohol Etc.) Act of 1985¹⁴⁴ and the Public Order Act of 1986.¹⁴⁵

1. Judicial Responses to Soccer Violence

The English courts have equated hooliganism to a crime in itself.¹⁴⁶ The cases have generally been tried under three concepts—assault, affray,¹⁴⁷ and breaches of the peace under section 5 of the Public Order Act of 1936.¹⁴⁸ Whatever standard is applied, the hooligan faces a vengeful court that reflects the disgust that the whole of English society has for such conduct.¹⁴⁹

a. Assault

The English courts have a problem similar to the American courts when it comes to prosecuting hooligans in that the perpetrator is difficult to find.¹⁵⁰ Also, even if the suspect is found, the victim may be difficult to locate.¹⁵¹ The reason is that many of these victims have been involved in fighting or dislike getting involved with the police.¹⁵² This phenomenon stems from the nature of the football hooligan. The typical hooligan is male, between the ages of 17 and 25, and comes from lower working class background.¹⁵³ He tends to have a "look after oneself" attitude,

RIOTS OF FOOTBALL HOOLIGANISM (1988) [hereinafter Riots]. The problem has entered the courtroom. Many jurors have been fearful of passing verdicts against hooligans out of fear of retaliation by the other hooligan gang members or by the defendants when they get out of jail. McFarlane, *The Hooligan Trials: Problems for the System*, 132 SOLIC. J. 1138-39 (1988).

143. See generally Salter, *Judicial Responses to Football Hooliganism*, 37 N. IR. LEGAL Q. 281 (1986) [hereinafter Salter II].

144. Reprinted in 12(s) HALSBURY'S STAT. at 63 (1986).

145. Reprinted in 12(s) HALSBURY'S STAT. at 159 (1986).

146. Salter I, *supra* note 141, at 351.

147. Affray is an "unlawful physical assault involving such a degree of violence that persons of reasonably firm character are likely to be terrified." Williams, *Football Hooliganism: Offences, Arrests and Violence—A Critical Note*, 7 BRIT. J. L. & SOC'Y 104, 108 (1980) [hereinafter Williams].

148. Reprinted in 12 HALSBURY'S STAT. at 235 (1985). Section 5 states in part:

Section 5 Prohibition of Offensive Conduct Conducive to Breaches of the Peace.

Any person who in any public place or at any public meeting-

(a) uses threatening, abusive or insulting words or behavior, or

(b) distributes or displays any writing, sign or visible representation which is threatening, abusive or insulting, with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence

Id.

149. "The public is sick and tired of people like you, the public is sick and tired of having its entertainment broken up by hooligans, and absolutely appalled at the mentality which produces the bottle and the boot." R. v. Baker and Hawkins, 51 Crim. App. 74, 76 (Eng. 1966).

150. Williams, *supra* note 147, at 107.

151. *Id.*

152. *Id.*

153. See Trivizas, *Offences and Offenders in Football Crowd Disorders*, 20 BRIT. J. CRIMINOLOGY 276, 280 (1980).

hostility toward outside authority, especially the police, and tends to resort to physical violence as a means of expressing himself.¹⁵⁴ As a result, police intervention in hooligan assaults is often not welcome.¹⁵⁵

b. Affray

Affray, aggravated physical assault, is usually committed by soccer hooligans; and the common jail sentence is three years.¹⁵⁶ The reasons for charging affray do not rest on whether physical violence has occurred, but on the severity of the incidents.¹⁵⁷ For the most part, it is only used in incidents "short of riot,"¹⁵⁸ and in cases of "severe public disorder."¹⁵⁹

*c. Section 5, Public Disorder Act of 1936*¹⁶⁰

Section 5 of the Public Disorder Act of 1936 has been widely used to combat soccer violence. Section 5 has been called "one of the most useful and flexible offenses available to the police in the prosecution of those responsible for disturbing the peace."¹⁶¹ Section 5 was important because it created a uniform system for dealing with abusive, offensive or threatening conduct, it widened the scope of already existing laws, and it created stricter penalties than those already in existence.¹⁶²

Under Section 5, the mere presence of a football hooligan may constitute an offense.¹⁶³ Although the wording of the statute seems to indicate that "threatening," "abusive," or "insulting" words would themselves create an offense, authorities indicate that some "recourse to assault" is needed.¹⁶⁴ The case law has made fighting a violation of Section 5.¹⁶⁵ But, in *Mail v. McDowell*,¹⁶⁶ the High Court found that a man in the company of other spectators violated Section 5 when he was yelling obscenities and threatening others. The use of Section 5 has been

154. Williams, *supra* note 147, at 108.

155. *Id.*

156. G. WILLIAMS, TEXTBOOK OF CRIMINAL LAW 205-07 (2d ed. 1983) [hereinafter G. WILLIAMS].

157. Williams, *supra* note 147, at 109.

158. G. WILLIAMS, *supra* note 156, at 207.

159. Williams, *supra* note 147, at 109; *see also* Munday v. Metropolitan Police Dist. Receiver, 1949 All E.R. 237 (K.B.).

160. Reprinted in 12 HALSBURY'S STAT. at 235 (1985); *see also supra* note 148.

161. D.G.T. Williams, *Threats, Abuse, Insults*, [1967] CRIM. L. R. 385, 387.

162. *Id.* at 387-88.

163. Salter II, *supra* note 143, at 283.

164. Williams, *supra* note 147, at 107 (quoting Bentil, *Acts of Shouting and Swearing as Threatening or Abusive Behavior*, 142 JUST. PEACE 514-17, at 514 (1978)).

165. R. v. Oakwell, — K.B. —, 1978 All E.R. 1223.

166. Salter II, *supra* note 143 (discussing *Mail v. McDowell*, [1980] Q.B. 35).

quite popular among English courts.¹⁶⁷ The punishment is assessed at six months in jail, a fine up to £2,000, or both.¹⁶⁸

2. The Sporting Events (Control of Alcohol Etc.) Act of 1985¹⁶⁹ and the Public Order Act of 1986¹⁷⁰

The Sporting Events (Control of Alcohol Etc.) Act of 1985 ("Sporting Events Act") was enacted after growing concern surrounding the tragedy at Heysel Stadium in Brussels, Belgium in 1985.¹⁷¹ The Act created new offenses in connection with alcohol consumption, or possession on buses, trains, and at sporting events.¹⁷² Sections 30-37 of the Public Order Act of 1986 create exclusionary orders to ban convicted hooligans from attending sporting events.¹⁷³ These two pieces of legislation add to the "range of measures available to the courts to deal with [soccer hooligans]."¹⁷⁴

The Sporting Events Act created many new offenses in connection with attending or traveling to sporting events with or under the influence of alcohol. Section 1 makes it an offense for either the operator or owner of a vehicle, taking passengers to or from a sporting event, to knowingly cause or allow alcohol to be carried onto that vehicle.¹⁷⁵ It is also an offense under this section to carry alcohol or to be intoxicated in a vehicle traveling to or from a sporting event.¹⁷⁶ Section 2 of the Act makes it an offense to carry alcohol or to an article "capable of causing injury to a person struck by it" at a designated sporting event.¹⁷⁷ It is also an offense to be drunk at any time during the sporting event.¹⁷⁸ The Act also gives the police authority to close bars in the area of the sporting event if their opening "is detrimental to the orderly conduct or safety of spectators at that event."¹⁷⁹ The Act also gives the police wide authority to enter the

167. From 78 convictions arising out of incidents during Oxford United's 1974 season, 55 were Section 5 violations. Williams, *supra* note 147, at 106.

168. *See supra* note 148.

169. *See supra* note 144.

170. *See supra* note 145.

171. Puttick, *Sporting Event (Control of Alcohol Etc.) Act*, NEW L.J., Sept. 27, 1985, at 960-61 [hereinafter Puttick]; *see also supra* note 9.

172. Puttick, *supra* note 171, at 960.

173. Broadbent, *Football Violence: The Court's New Red Card*, 131 SOLIC. J. 1136-38 (1987) [hereinafter Broadbent].

174. *Id.* at 1136.

175. Sporting Events (Control of Alcohol Etc.) Act of 1985, § 1(2).

176. *Id.* §§ 1(3) & (4).

177. *Id.* § 2. A person is considered "at the event" if he can directly view it, or if he is exiting or entering the event. *Id.* § 2(1)(a) & (b). A "designated sports event" is one designated by the Secretary of State or within the meaning of Part V of the Criminal Justice (Scotland) Act of 1980. *Id.*

178. *Id.* § 2(2).

179. *Id.* § 6(1).

event, search a person, or stop any vehicle.¹⁸⁰ The Act extends only to England and Wales.¹⁸¹

Sections 30-37 of the Public Order Act of 1986 exclude or ban a convicted "hooligan" if three conditions are met.¹⁸² First, the offense occurred while the accused was at a soccer match, and involved threats or acts of violence against persons or property at that match or in traveling to or from it, or was a violation of the Sporting Events Act.¹⁸³ Second, the court must be satisfied that the exclusion order shall help to prevent soccer fan violence.¹⁸⁴ Third, the exclusion order is in addition to whatever punishment is imposed on the accused for the original crime.¹⁸⁵

An important feature of this Act is that it covers both domestic and international soccer matches.¹⁸⁶ The exclusionary order lasts for at least three months, and it is a further violation if the exclusionary order is broken.¹⁸⁷ The Secretary of State may order that this Act be extended to other sports besides soccer.¹⁸⁸ A major limitation of this law is enforcement, but the police may photograph the "hooligan" for use in identifying him if he attempts to enter a soccer match in violation of the exclusionary order.¹⁸⁹

The overall impact of these two laws has not yet been documented. Many soccer clubs complain that the Sporting Events Act is unfairly applied,¹⁹⁰ and the Acts are only preventative measures having no real effect on incidences of spectator violence that occur outside the arena.¹⁹¹ These laws and the English courts' attitude toward spectator violence indicate that there is a real problem, and that direct and effective answers are needed. This attitude is shared by the international community.

B. *The Heysel Disaster and the International Response*

On May 29, 1985 thirty-eight people were killed in a soccer riot at

180. *Id.* § 7.

181. *Id.* § 11(c). Existing provisions of the Criminal Justice (Scotland) Act of 1980 were amended to extend this Act to sporting events where spectators would be travelling to and in Scotland. Puttick, *supra* note 171, at 961.

182. *See* Broadbent, *supra* note 173, at 1136; Public Order Act of 1986, § 30.

183. Public Order Act of 1986, § 31. The Public Order Act also amended the Sporting Events Act to allow limited sale of alcohol in certain parts of the stadium. *Id.* § 5, sched. I. The Act also extended the ban of alcohol in vehicles that carried more than eight passengers. *Id.* § 2, sched. I.

184. *Id.* § 30(2).

185. *Id.* § 30(3).

186. *See* Broadbent, *supra* note 173, at 1138.

187. Public Order Act of 1986, § 32.

188. *Id.* § 37.

189. *Id.* § 35; *see also* Broadbent, *supra* note 173, at 1138.

190. Puttick, *supra* note 171, at 961.

191. Broadbent, *supra* note 173, at 1138.

Heysel Stadium in Brussels, Belgium.¹⁹² English soccer fans from Liverpool crashed a restraining fence separating them from Italian fans from Juventus. The Italians then retreated toward a wall at the opposite side of their seating section. The wall collapsed because of the weight and force of the crowd. Once the wall collapsed, hundreds of fans trampled out of the section. Thirty-one Italians, four Belgians, two Frenchman and one Briton died; 437 people were injured.¹⁹³

The immediate blame was directed at the Belgian police who failed to segregate the two sets of fans.¹⁹⁴ The Union of European Football Association (UEFA) concluded that the police did not have an adequate force until seven minutes had elapsed, which was too late.¹⁹⁵ The UEFA also banned indefinitely all English soccer clubs from European Competition.¹⁹⁶ English soccer officials went along with the ban, and British Prime Minister Margaret Thatcher personally apologized to Italian Prime Minister Bettino Cruxi.¹⁹⁷ The British eventually extradited twenty-six people in connection with the riot to Belgium to face charges of manslaughter.¹⁹⁸

The disaster had great legal consequences. The tragedy showed how inadequate planning and lax police presence created a stage for such violence.¹⁹⁹ More significantly, it focused European attention on the problem of spectator violence.²⁰⁰ On August 19, 1985, the Council of Europe addressed this issue.²⁰¹ The European Convention on Spectator Violence and Misbehavior at Sports Events and in Particular at Football Matches²⁰² was proposed "with a view to preventing and controlling violence and misbehavior by spectators."²⁰³ The Convention was ratified by Austria, Belgium, Denmark, Greece, the Netherlands, Portugal, Sweden, and the United Kingdom.²⁰⁴

The Convention addressed five significant problems learned from the Heysel disaster: (1) the lack of segregation of team fans; (2) the absence of control over ticket sales to effect segregation; (3) the inadequate

192. See *Riots in Brussels*, *supra* note 9.

193. Gammon, *A Day of Horror and Shame*, SPORTS ILLUSTRATED, June 10, 1985, at 20-35.

194. *Id.* at 29.

195. *Id.* at 30.

196. *English Soccer Clubs are Banned from European Play Indefinitely*, N.Y. Times, June 3, 1985, at A6, col. 3.

197. *Apology Extended*, N.Y. Times, June 29, 1985, at A50, col. 2 (Britain gave \$325,000 to families of the dead Italians who were killed in Heysel).

198. *Extradition: A Victory for Pragmatism*, NEW L.J., July 17, 1987, at 651.

199. Taylor, *supra* note 139, at 607.

200. *Id.* at 608. Riots, *supra* note 142, at 247.

201. For details on the Council of Europe, see Taylor, *supra* note 138, at 604 n.6.

202. Convention, *supra* note 138.

203. *Id.* at art. 1, ¶ 1. For a detailed analysis of this convention, see Taylor, *supra* note 138.

204. Convention, *supra* note 139.

police force at matches; (4) the rarity of physical searches of incoming spectators; and (5) the readily available supply of alcohol.²⁰⁵ The Convention proposed a number of measures to address these problems.²⁰⁶ Of consequence are traveling guidelines,²⁰⁷ stadium recommendations,²⁰⁸ alcohol restrictions,²⁰⁹ judicial cooperation,²¹⁰ and the creation of a Standing Committee to oversee these policy implementations.²¹¹

The Convention was an important step in controlling spectator violence at the international level, but it only applies to international competitions. Domestic matches are not under the examination of the Standing Committee, and it is generally up to the home country to deal with these problems. Also, despite what some authorities would believe, the Convention has not ended the problem.²¹² During the European Games in 1988, English fans following the English National team rioted throughout West Germany.²¹³ Furthermore, spectator violence is not solely a European problem. Major incidents have occurred in South America,²¹⁴ Asia,²¹⁵ and the South Pacific.²¹⁶ The Convention does not reach these troubled spots. Therefore, despite the progress made by the Convention, it has not been as successful as some might think.²¹⁷

C. Various Countries' Attempts to Control Spectator Violence

Spectator violence is considered a serious problem in other countries besides England and the United States. The problem stems from cultural, economic, and even religious clashes.²¹⁸ Officials in China, Russia, Greece, Spain, Belgium, and other countries have installed new tactics to combat their own country's problem with spectator violence.

In the summer of 1985, Chinese soccer fans went on a rampage in

205. Taylor, *supra* note 138, at 609.

206. Convention, *supra* note 139, arts. 3(1)-(5); 5(1)-(2); 6(1)-(3); *see also* Taylor, *supra* note 138, at 610-41.

207. Convention, *supra* note 139, art. 3(1)-(3).

208. *Id.* art. 3(4)(a)-(c).

209. *Id.* art. 3(4)(f).

210. *Id.* art. 5(1)-(2).

211. *Id.* arts. 8-10.

212. Taylor, *supra* note 138, at 648-50; The Convention has been criticized as lacking significant long term initiatives. *Riots*, *supra* note 142, at 249.

213. *Traveling Hooligans*, NEWSWEEK, June 27, 1988, at 37.

214. *See supra* note 16.

215. *See supra* note 14.

216. New Zealand police officials faced serious problems from the Australian National Rugby Football Union Springbok supporters during a tour in 1981. *The Police and the Tour*, NEW ZEALAND L.J., May 21, 1981, at 191.

217. *Riots*, *supra* note 142, at 249.

218. The South Americans have built moats around their fields. Toye, *supra* note 9. Half of Liverpool's largest soccer fan club are unemployed. *Soccer Fans*, *supra* note 140. Twice a year the Glasgow Rangers, with a predominantly Protestant following, plays the Catholic-backed Glasgow Celtics. Toye, *supra* note 9.

Peking after the Chinese National Soccer team lost to Hong Kong.²¹⁹ The fans overturned taxis and assaulted many Western visitors.²²⁰ Peking's municipal Communist party committee commented that the riot "smeared the image of Peking as well as our country."²²¹ The Chinese officials came down very hard on the hooligans. One of the offenders was sentenced to two and a half years in prison, another to two years, two others were sentenced to four months, and 120 were kept in jail for up to three weeks and publicly labeled as "black sheep."²²²

Other countries have stepped up the attack against fan violence. Greece has adopted a similar approach to Great Britain.²²³ Spectators can be jailed or fined for cursing in the stands, fighting, carrying dangerous objects or fire works, or disrupting play.²²⁴ Convicted fans are automatically banned from stadiums for up to two years.²²⁵ Greece has also approved legislation that would suspend or fine players, coaches, or officials who publicly make inflammatory statements.²²⁶ The Soviet Union has used army troops, built partitions to prohibit movement between sections, and banned alcohol from its stadiums.²²⁷ But even militarization has failed to prohibit outbursts outside the stadium complex.²²⁸

Spanish soccer referees have taken a hard line against spectator outbursts. At a soccer match in Pamplona, Spain the referee stopped a game with only one minute remaining when spectators were throwing garbage, bottles, and fireworks at the opposing team.²²⁹

The Belgian government instigated major reform after the Heysel disaster.²³⁰ Immediately after the disaster, the Belgian Parliament proposed that open stadia come under Règlementation Générale pour la Protection du Travail which permitted regular and detailed inspections of sports auditoriums.²³¹ The Government also proposed a *Loi Anti-Casseurs* (Anti-Hooligan Law). This law made it a criminal offense to be at any demonstration or meeting while carrying a weapon or shielding or hiding one's face to avoid identification.²³²

219. See *supra* note 14; *China: Violent Sore Losers*, NEWSWEEK, June 3, 1985, at 47 [hereinafter *Sore Losers*].

220. *Sore Losers*, *supra* note 219.

221. *Id.*

222. *Scorecard: Chinese Fireworks*, SPORTS ILLUSTRATED, July 8, 1985, at 11.

223. See *supra* notes 142-191 and accompanying text.

224. *Jail for Soccer Rowdies*, N.Y. Times, Aug. 21, 1986, at B13, col. 5.

225. *Id.*

226. *Id.*

227. Carlsen, *supra* note 17.

228. *Supra* note 13.

229. *Soccer Game Suspended*, Hous. Chron., Jan. 29, 1989 at 11B, col. 6.

230. Redmond-Cooper, *Legal Aftermath of the Heysel Disaster*, NEW L.J., Sept. 27, 1985, at 957.

231. *Id.* at 957.

232. *Id.* at 958.

The methods outlined above are just a few of the many attempts to control spectator violence. The problem is far from being solved, but laws such as the *Loi Anti-Casseurs* and other penal laws are a step in the right direction. Countries such as China, Greece, Russia and Belgium, as well as the United States and Great Britain, have taken a hard line against spectator violence. Such reaction indicates that many governments consider spectator violence to be a matter that needs serious attention.

IV. CONCLUSION

Spectator violence is a worldwide problem. There have been deaths, injuries, and property damage in every country that holds sporting events. Problems occur when masses of people, who are often young, intoxicated and violent, crowded into stadiums with inadequate police protection. Because of events on the fields, violence erupts. The most serious incidents have occurred in foreign countries, but with the arrival of the World Cup in 1994, "hooliganism" could invade American shores.²³³ There are three potential ways to prevent these outbursts: alcohol control, physical stadium planning, and police presence.

A. Limits or Bans on Alcohol

All authorities agree that the major contributor to spectator violence is alcohol. Officials have avoided this issue, having been motivated by the profits that come with the sale of alcohol at these events. The facts are clear. Beer throwing, drunks fighting, obnoxious fans yelling profanities in the middle of family sections, and other similar actions are a common occurrence at every sports event.

Limits or bans on alcohol sales at sporting complexes will curtail fan outbursts. This has been done on a limited scope, but often the bans will end at the ballpark gates. Drinking should be stopped in the parking lots and streets surrounding the stadiums. These outlying areas are where most of the damage can occur. Limiting alcohol consumption in the stadium is only a beginning because many drunk fans will slip through the cracks, and alcohol itself is not the sole contributor to spectator violence.

B. Stadium Planning

The major disasters in the realm of spectator violence can often be

233. *U.S. Awarded '94 World Cup Tourney in Soccer*, N.Y. Times, July 5, 1988, at A1, col. 4.

attributed in part to the physical setup of the stadium. The Heysel disaster and similar riots occurred in "standing room only" sections of the stadium. These overcrowded sections are brewing grounds for violence. While these sections do provide more economical seating for the less affluent fan, they become crowded areas that are susceptible to a domino-effect of fighting; they may collapse from the sheer weight of the fans.

A similar problem in stadium planning is that often the fans are not properly sectioned off. Placing large groups of rival fans in close proximity greatly increases the likelihood of violent behavior. Erecting small barricades is an unsatisfactory solution: when violence erupts, these restraining devices become weapons in the hands of angry hooligans.

Standing room only sections must be eliminated. The economic savings to certain fans is not worth the propensity for bodily harm. Also, rival fans should either be banned from the stadium, or segregated in such a way so that there can be no interchange between the two groups.

C. Police.

The best combatant against spectator violence is the police official. Armed guards stationed at various trouble spots throughout the stadium and bordering the outlying areas are the best means to control outbursts. The police should also be given unlimited discretion to remove hooligans from the stadium complex. The number of police officials should also be increased for events that could possibly lead to riots.

Whatever measures are taken, fan violence will most likely be with us forever. Sports is an escape for all societies, but at the same time it is a vehicle for us to let out our aggressions. Even if alcohol is banned, stadiums are segregated, or police are in every other seat, a bad call or an upsetting loss could turn even the most sedate crowd into a riotous mob. The only thing to do with spectator violence in these situations is control it and keep it from becoming a disaster.

International sports competitions are becoming very frequent. Teams from various nations often travel both as a means of cultural exchange and to increase the particular sport's exposure. Unfortunately, with this exchange comes violence resulting from overzealous pride in one's national image. Unless major steps are taken to prevent such incidents, the sports that we, as a society, love will be irreparably marred by the warlike nature of these outbursts.

Christopher D. Bertini