

FRANKLIN v. Ackley

**KANE COUNTY BAR FOUNDATION**

**2019 BOY SCOUT MERIT BADGE DAY**

**MOCK TRIAL PROGRAM MATERIALS**

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Franklin v. Ackley, a mock civil trial - Summary

Janice Franklin, a cheerleader for North High School, has filed a civil lawsuit against Robert Ackley, a basketball player for South High School, as the result of personal injuries she sustained after she and Ackley collided while he went for a ball which had rolled out-of-play during a North-South basketball game in the evening of February 9, 2008. This personal injury lawsuit is based upon the intentional tort of battery. Franklin has filed a complaint in the Circuit Court seeking "not less than \$75,000" in damages, based on medical expenses, pain and suffering, and punitive damages. Both liability and damages are contested, although the parties are willing to agree as to the nature of the physical injuries suffered by Franklin.

Witnesses:

For the plaintiff:

Janice Franklin: The plaintiff, a 16-year-old high school sophomore at the time of the incident in question, was a cheerleader for the North High School varsity basketball team. On the date in question, North and South High Schools were playing a very important basketball game, at North's gymnasium. Franklin and her five fellow cheerleaders were standing in the area behind the east basket during most of the game. With about five minutes remaining in the second half, with South leading by 20 points and the action on the court concentrated at the west basket, a whistle was blown by one of the officials and the ball came bouncing toward the direction of the North cheerleaders. According to Franklin, she remained out of bounds, waiting to retrieve the ball, when the defendant, Robert Ackley, a South High basketball player, who had been "coming on" to her before the game, charged after the ball and "leveled" her. As the result of this collision, Franklin sustained a fractured femur

(thighbone) and clavicle (collarbone). She remained in the hospital for two weeks, underwent surgery to repair the bones and wore a half-body cast for three months. Her medical and related expenses totaled \$53,185.

Randy Black: A former teammate of Ackley. Black was sitting on the South team bench when the collision occurred. According to Black, Ackley was running very quickly after the loose ball and did not slow down in order to avoid making contact with Franklin, whom Black saw bend over near the end line to get the ball. Black also overheard Ackley joking with his teammates about the North cheerleaders and Franklin in particular, going so far as to say that before the night was through, he would "get her attention."

Lawrence Ashcroft: The referee working the North-South basketball game. Ashcroft had whistled a foul on another South player while North had the ball, on offense, at the west basket. He recalled that as he went to the scorer's table to report the foul, he saw the ball rolling to the east basket. He thought he saw a South player, Ackley, run after the ball and collide with Franklin. Ashcroft recalls whistling Ackley for two or three fouls in the second half of the game, the last one just minutes before the collision. He recalled that Ackley was playing very aggressively, but had no reason to run after the loose ball since the whistle had signaled the ball "dead" and play stopped, with only minutes left in the game and South ahead by around 20 points. He also recalled having to warn both sets of cheerleaders repeatedly during the game about standing too close to the boundary lines.

For the defendant:

Robert Ackley: The defendant, an 18-year-old senior at South High at the time, is presently a sophomore at State University, where he was selected as an All-American linebacker this past fall, and is rumored to be leaving college early in order to enter the NFL draft. He admits "checking out" the North cheerleaders before the game, but did not recall trying to "hit on" Franklin. He recalls that the North cheerleaders were abusive towards him and his teammates throughout the game. He said he was coached to play aggressively, and he did his best in every game. He recalled he ran after the ball, but did not think he hit Franklin "that hard" and said she ran out at least 10-15 feet onto the floor to get the ball. He said he tried, at the last moment, to avoid hitting Franklin. He does not remember hearing the referee's whistle before he went after the ball.

Jack Marshall: Varsity Coach, South High School. Marshall coached the team to give "110% every second of the game," and recalled that while Ackley was not a gifted basketball player, he was one of the hardest-working, most aggressive players on the team. Marshall believes that Ackley was "simply hustling ... nothing unusual" when the collision occurred. He did not see the collision, but when he heard the crowd react, he saw Franklin sprawled over the end line.

Kim Kendall: Now Sports Information Director at State U., formerly Sportswriter, City News. Kendall will recall the long and bitter rivalry between North and South High. This game was for the league championship, and South was outplaying and out hustling North all night. He had nicknamed Ackley "Ack-Ack" because of the latter's explosive, if scattershot, style of play. Sitting a row behind the scorekeeper, Kendall

saw the collision. He thought Franklin ran "a good couple of feet" onto the court and into Ackley. He did not think Ackley caused the collision.

Stipulations

Both sides must stipulate that:

The plaintiff, Janice Franklin, sustained fractures to her right femur and right clavicle as a result of the collision. She underwent routine surgery and remained hospitalized for six weeks. She wore a "hip-spica" (half-body) cast for two months thereafter. Her medical and related expenses totaled \$53,185.

Attached hereto:

Abstracts of witness depositions [taken at the offices of the parties' attorneys on the dates indicated], diagram of basketball court, and instructions

Janice Franklin (October 20, 2009)

I am presently a 18-year-old senior at North High School.

On the evening of February 9, 2008, I was a sophomore and a cheerleader for my school's varsity basketball team. We were playing South High at our school's gym. Each team's cheerleaders were assigned an area behind each basket. We had the area behind the east baskets. Late in the second half, the ref blew a whistle for a foul on a South player for pushing one of our guys over by the basket on the other side of the court. The South players were playing pretty rough all game long. They were very cocky. After the whistle blew, I saw the ball come rolling over to my end of the court, heading right to me. The last thing I remember is bending down to get the ball and then getting "leveled" by this South guy. I don't think I stepped onto the court while I waited for the ball.

That same South guy that hit me had been "coming on" to me all game long. He was trying to impress me before the game with his wisecracks. At one point, he put his hand on my shoulder and asked me out for a date. I pushed his hand away and told him to drop dead, and I think his teammates really got on him for that. The last thing he said before the game started was "I'll get you, remember that."

I don't remember too much after the collision. I know I was hurting real, real bad, both by my right collarbone and my right thigh. I remember waking up the next day in the hospital, with both of my legs in traction. I had intense muscle spasms in my right leg for a day and a half. I was in traction for two weeks, and then was put in this cast that went from above my navel to my toes on my right foot and above my knee on my left. I was in the cast for three months. I also had my right arm in a sling for three weeks. I had a small area cut out of the cast to go to the bathroom and had

to use a wheelchair to get anywhere. It was pretty awful. I felt real embarrassed to go anywhere. My grades at school all fell by about a grade in each class. Even after the cast came off, it took a month and half of physical therapy before I could walk without a cane. I walked with a limp for another two months.

Before the accident, I was involved in a lot of extra-curricular activities. Since then, I get real nervous going to any sporting events and have to sit far away to be safe. I don't belong to any extra-curricular groups anymore.

**Randy Black** (October 6, 2009)

I am a senior at South High. I'm 18-years-old. I was a member of the South High basketball team and was at the basketball game with North High, in February, 2008, when that cheerleader got hurt. I was sitting on the South bench during the whole game, since I was at that time the last substitute and usually only got to play in the last minute of most games if we were either ahead or behind by a lot. We were playing pretty good ball all game long, pretty much manhandling the North players. By the end of the first half had a pretty big lead. From that point, we kind of started getting pretty cocky sitting on the bench. I remember that before the game, Robert Ackley, who was next to me while we were doing our lay-up drills, was looking over and pointing at the North cheerleaders. He made some wisecracks about a couple of them. He pointed to the one who later got hurt and said: "That one, I want that one. She's mine." I told him she didn't even know he existed, and Ackley said: "Oh, I'll get her attention tonight, you just wait."

At some point near the end of the game I think the referee blew his whistle for something and the ball kind of squirted out of one guy's hands and headed for the opposite side of the court. Ackley, who had gotten into the game a few minutes earlier, started running after the ball like it was real important or something. By the time the ball got to the other end, the cheerleader, standing just out of bounds, bent over to scoop it up. Ackley just plowed into her. He didn't try to avoid hitting her or even go after the ball. She was just flattened after he hit her. I think she was knocked out or something for a while. At first we thought it was kind of funny, but when they had to take her out of the gym in a stretcher I know I felt pretty stupid.



**Lawrence Ashcroft** (September 1, 2009)

I am employed as land surveyor. For the past 13 years, I have also been a basketball referee on the high school level. Since 2002, I have been considered a "recognized" referee with the Illinois High School Association, meaning that I have been promoted to the second of three levels of officiating. I've been working boys' varsity games between North and South High for the past five years or so, and was working as the referee at the game at North High on February 9, 2008. My partner was Ron Burger. We had worked a few games together before, but we didn't work together all the time. I was familiar with the North-South rivalry. I'd read the account of the last game between the two, in January, when North won with a last second shot in double overtime. Both teams were playing for first place on the 11th. The gym was packed and the noise level was extremely high. I'd worked a couple of South games earlier in the year. The South team is very aggressive and they like to physically intimidate the other team, while North is more of a finesse-type team.

The game on the 11th was different than I expected. South got out to a quick 10 point lead that was stretched to 25 by halftime. The second half was a little more even, but North never got within 20, although I don't usually pay close attention to the score. South still played very aggressively, even with its large lead. The Ackley kid was extremely aggressive, diving for loose balls and shouting at his teammates. I whistled him for a couple of pushing fouls before the collision with the cheerleader, which came with about five minutes to go in the game.

The ball was at the North basket and I whistled a South player for improper use of hands underneath the basket. As I went over to the scorer to report the foul, I observed the ball bouncing to the other end of the court. I saw Ackley run after the

ball very quickly, as if the ball was still alive, which it was not, since I had blown my whistle for the foul moments before. In fact, he was running so hard I blew my whistle again, just to kind of remind him. There was no reason for him to run so hard after the dead ball. He still ran hard, and collided with this poor North cheerleader who had bent over to get the ball. He just "crunched" her. I ran over and saw she was stunned. I did not touch her. I called over to the benches for the trainers.

I do recall having warned both sets of cheerleaders, at several times earlier in the game, to move back from the end lines during play.

**Robert Ackley** (September 24, 2009)

I am 20-years-old and a sophomore at State University. On February 9, 2007, I was an 18-year-old senior at South High. I was a forward on the varsity basketball team. I started some games that year, but did not start that particular game against North, who beat us with a lucky shot in double overtime a month earlier. Both of our teams were pretty good, and we were tied for first place in our league. Coach Marshall told us to be aggressive at all times. Coach would have us run extra laps, sometimes even after games, if we didn't hustle. The guys that hustled extra hard during games and in practice would get little iron-on basketballs for our warm-up jackets. I had the most of anyone on the team.

We were mad about the way North beat us in the last game and Coach told us to play every minute like it was the last. It was a fun game. The place was packed and the fans were screaming at everything. Their cheerleaders were especially nasty. One, that Franklin girl, kept calling me names before the game. We exchanged a few words before the game, and at halftime, too. She was kind of cute and I'd check her out from time to time, but I don't remember asking her out or anything. I had a girlfriend already.

Our team got out to a nice early lead, and just held on. I didn't start, but I played a lot. I picked up one foul in the first half, and then in the second half, I got two quick whistles on some pushes while going for rebounds.

What I remember about the collision is that while we were on defense, our guard knocked the ball away from their guard at the top of the point. I was on the wing, since we were playing a 1-3-1 zone. I saw the ball rolling down court toward our basket, and just took off after it. I don't think I remember hearing any whistle.

Out of nowhere, this cheerleader comes onto the court, to about the free throw line. I tried to miss her, but I was going too fast, I guess. I don't think I hit her that hard. I didn't mean to hurt her, and I think I twisted my ankle some.

At State University, I no longer play basketball, but I was a second-team All-America linebacker last fall on our football team. I'd like to play NFL ball one day and have been told I have a good chance at getting drafted in the first two rounds of the draft. I could go hardship and be drafted this year, but I think my value could be better after another year of college ball.

**Jack Marshall** (September 28, 2009)

I'm an algebra teacher at South High School, where I've taught for 10 years. I'm also currently the head varsity boys' basketball coach. The 2007-2008 season was my first. We'd had talented teams in the past, but they tended to be lazy. I worked my players hard and tried to impress upon them to give 110% effort every second of every game. Bob Ackley was not particularly talented as a basketball player, but he was one of the hardest working, most aggressive boys I've ever coached. He hustled on every play. He was a real good, tough kid.

I was watching some action on the other side of the court when the collision occurred. When I heard the crowd react and heard someone say, "uh-oh," I looked over and saw Ackley and a North cheerleader both on the floor. The girl was sprawled over the end line, and wasn't moving.

I was paying attention to the play on the court during the game. I really didn't notice the fans too much.

**Kim Kendall** (September 10, 2009)

I'm currently employed as the Sports Information Director at State University. Up until last August I'd been a sportswriter for the City News Daily paper for eight years.

North and South High are your traditional cross-town rivals. Very simply, the schools just hate each other. They compete - pretty equally - at everything, be it sports, academics, tax dollars, you name it. This rivalry is naturally very hot during the basketball season. North won the league championship in 2006-2007, and South was in next to last place. South went and hired a new coach, Marshall, who turned the team around. They were a real bunch of hustlers and a pretty physical team, and Robbie Ackley was kind of the heart and soul of the team. I called him "Ack-Ack" because his style of play was kind of scattershot, yet explosive. He was a real "take no prisoners" kind of player. Like they say, as a basketball player, he was a real good football player.

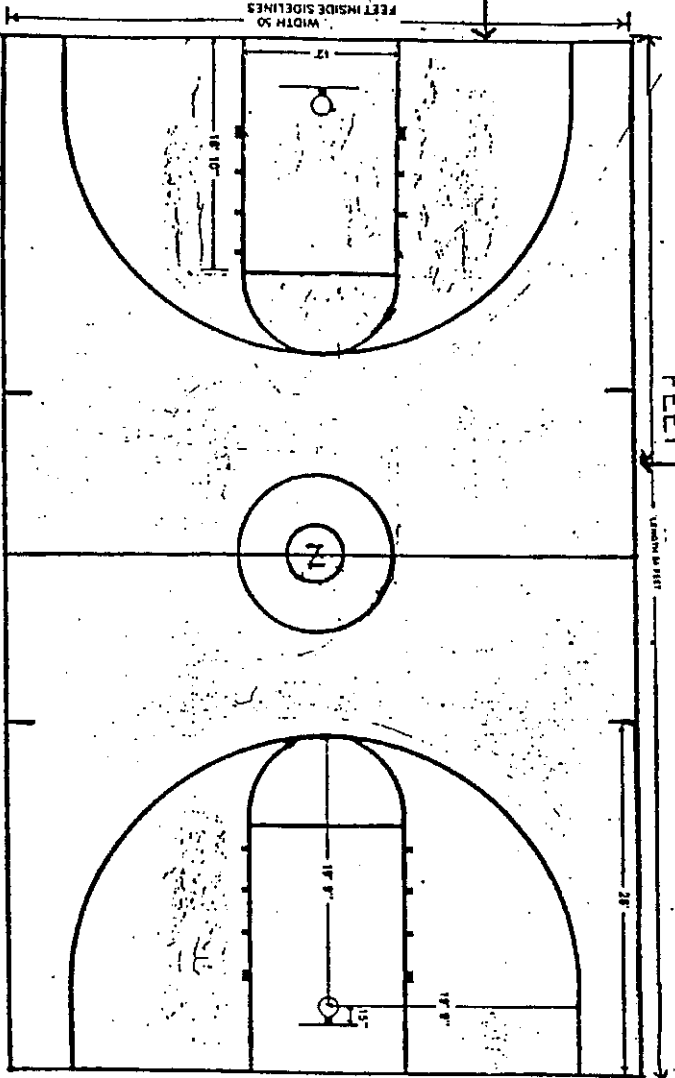
North had won the first game between the two a month earlier, by a point, on a last-chance shot in double overtime. On the 9th, South came out with its guns blazing, and clobbered North with a 30-4 run which gave it a 20 point lead through most of the first half, and a similar lead with about five minutes to play in the last quarter.

I was sitting behind the scorekeeper and could tell North, and its home fans, were totally demoralized by South's play. I saw the collision between Ack-Ack and the cheerleader. I think the girl ran a good couple feet onto the court to get a loose ball and ran into Ackley. I don't think he tried to hit her. She really had no business being that far onto the court while the game was being played.

# DIAGRAM OF NORTH HIGH SCHOOL GYMNASIUM

SPECTATOR SEATS

NORTH  
 WEST → EAST  
 SOUTH



SPECTATOR SEATS

SPECTATOR SEATS

VISITORS' BENCH SCORER'S TABLE HOME BENCH

SPECTATOR SEATS