THE INCIDENT BEHIND
THE CASE
Chapter 1: The Incident Behind the Case

Greene admits hitting worker after game

By Lee Shappell
The Arizona Republic

Cardinals defensive line coach Joe Greene acknowledged Monday that he hit a worker who had driven over his foot with a flatbed golf cart on the Sun Devil Stadium field after a 27-3 loss to New England on Sunday.

Greene apologized to the Cardinals and to Coach Vince Tobin for any embarrassment the incident caused them.

"Normally after a ballgame I’m pretty quick off the field," Greene said.

"On this particular occasion, I just sat on the bench. Like most of the people in the organization, I was depressed."

Greene said he spotted a coaching acquaintance from the Patriots leaving the field and got up to try to catch up to him.

"I lost him in the crowd, I was looking over the top, and I walked right next to the buggy or whatever this thing was," said Greene, who earned induction into the Pro Football Hall of Fame after his playing days with the Pittsburgh Steelers. "I stopped. I said, ‘What are you going to do, run over me?’"

"He looked at me and proceeded to run over my foot and I slapped him. End of story."

The driver of the cart, Mark Cockriel, 45, said Greene’s blow knocked his glasses off his face. Cockriel was working in the crew setting up a portable stage for a post-game concert by swing band Big Bad Voodoo Daddy.

Cardinals Coach Vince Tobin said he planned no disciplinary action against Greene.

"I would have to think that something would have to be proven one way or the other," Tobin said. "I don't know who was at fault or who was not at fault. I don't think I can be judge and jury of something I didn't see. I wasn't there. I talked to Joe about it. I believe what Joe told me."

Greene said he wouldn't know Cockriel again if he saw him.

"If the exchange would have been, ‘Sorry, I didn’t see you,’ and ‘Sorry, I didn’t see you, either,’ then it would have been over," said Greene, who appeared to be walking normally. "It happened just that quickly. I used profanity when I said, ‘Are you going to run over me?’ He just looked at me and he started up again.

"In terms of my reactions I stand up to those, good or bad."

Cockriel had a welt above his left cheek. He was treated by Cardinals medical personnel.

The news story above presents a first view of the facts of the case explored in this book. Of course, the newspaper's version of the facts is likely to differ greatly from one or several of the parties' versions of the facts. Mark Cockriel, the sound engineer who was struck by Joe Greene, might describe the incident as follows:

I work as a sound engineer, and part of my job is to set up sound equipment for concerts. On October 31, 1999, I was at the Sun Devil Stadium after a Cardinals

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1 This is not a narrative ever voiced by Mark Cockriel; rather, the authors created the description from the pleadings filed in the subsequent lawsuit.
football game to set up for a concert. I was driving a cart pulling some sound equipment on to the field. There were lots of people around. There were quite a few fans and other people still there from the football game at that time, including some members of the media. I had to keep stopping when pedestrians would get in the way of the cart. One of the band’s roadies was in the trailer I was pulling behind the cart to make sure the equipment traveled safely.

As I was driving the cart on the field, “Mean” Joe Greene, who is one of the assistant coaches for the Cardinals football team, was also crossing the field. Our paths crossed, and I stopped the cart to avoid running into him. He glared at me and then, among other things, yelled, “What the fuck were you going to do, run over me?!” He basically dared me to move the cart, so I did drive forward a little bit. The wheels of the cart might have touched his foot or something, but I’m not sure. Then he hit me really hard on the side of the head. He hit me so hard that my glasses flew into the air a long way. (My glasses were later found in the end zone, and this happened at about the 10 yard line.) After he hit me, Joe just walked off the field.

Right after he hit me, it hurt really badly and I had some swelling on my head, the side of my face, and my neck, and my ears were ringing. I was treated on the scene by a Cardinals medic but all he gave me was some Advil. I did continue to work that concert and didn’t miss any concerts after that. But the ringing in my ears didn’t go away (in fact, I had ringing in my ears for several months). As a sound engineer, it is really important that I have good hearing, and it doesn’t make life very easy to have ringing in my ears all the time. I went to a doctor, which cost $285. It turns out I had a punctured ear drum and some hearing loss, although the ringing has stopped and I can hear fine now.

I want to sue Mean Joe Greene for what he did to me.

Joe Greene was interviewed by his defense attorneys as they prepared to negotiate, and potentially litigate, on his behalf. The following memorandum summarizes Joe’s description of the facts as he remembered them on the day of the interview.
JONES, SKELTON & HOCHULI, P.L.C.

MEMORANDUM

TO:    File
FROM:  RRB
DATE:  July 14, 2000
SUBJECT: Cockriel v. Joe Greenee

I spoke today to our client, Joe Greene, regarding the events in question. Mr. Greene stated that the incident occurred after the Arizona Cardinals v. New England Patriots game on October 31, 1999. He stated that his usual practice at the end of games is to immediately run down the sidelines and into the tunnel. At the end of the Patriots game, however, he sat on the team bench for between two and five minutes. He explained that it was a long, grueling game, that his hip and back hurt and that he needed to rest for a few minutes. He also suggested that he was very upset by the loss.

After resting for a few minutes, Mr. Greene ran diagonally across the field toward the goal post. He explained that the reason he ran onto the field instead of down the sidelines was because he wanted to catch up with, and congratulate, the defensive line coach for the New England Patriots.

As Mr. Greene was partially across the field, looking for the opposing defensive line coach among the many people on the field, he was almost run over by a small vehicle/cart. He stated that had he not stopped abruptly, the cart would have hit him. According to Mr. Greene, he looked at the driver and said: "What the fuck are you going to do, run over me?" He stated that the driver looked at him for a few seconds, and then proceeded forward, running over Mr. Greene’s foot. Mr. Greene stated there was no question in his mind but that the driver either intentionally ran over his foot or consciously disregarded the likelihood that he would run over Mr. Greene’s foot.
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File
RRB
July 14, 2000
Cockriel v. Joe Green

According to Mr. Greene, either while the vehicle was still on his foot or immediately it drove over his foot, he reached across and slapped the driver in the face. His best guess is that he hit the driver, Mr. Cockriel, on the cheek, and he recalls that one of his fingers hit Mr. Cockriel’s glasses and knocked them off. Mr. Greene stated that after he struck Mr. Cockriel, Mr. Cockriel asked, “Why did you do that?” and Mr. Greene’s response was: “You ran over my foot.”

Mr. Greene stated that he struck Mr. Cockriel with an open hand, and that although he knocked Mr. Cockriel’s glasses off, Mr. Cockriel remained in the cart. After the slap, Mr. Cockriel drove away, and Mr. Greene does not know if he left the field or if he proceeded to do whatever he was on the field to do (presumably to set up a post-game concert).

Mr. Greene does not have any personal knowledge of what Mr. Cockriel did after the incident, and he never saw or spoke to Mr. Cockriel again. He was later told by the Cardinals’ team doctor, however, that the doctor examined Mr. Cockriel after the incident and found no injuries other than a welt on Mr. Cockriel’s face. Mr. Greene stated that he did not know how he might have damaged Mr. Cockriel’s eardrum when he never struck Mr. Cockriel’s ear.

A few other points. First, Mr. Greene stated that when he first confronted the vehicle driven by Mr. Cockriel, it was something of a stand-off. He explained that unless either he moved or Mr. Cockriel steered away, there was going to be a collision. Second, Mr. Greene stated that Mr. Cockriel never gave him an opportunity to move out of the way, and that immediately after Mr. Greene said: “What the fuck are you going to do, run over me?” Mr. Cockriel ran over him. Third, Mr. Greene recalls smelling beer at the time of the incident. He is not sure whether the smell was coming from Mr. Cockriel, or whether it was from other people on the field or in the stands.

Legal action often does not begin with the filing of a lawsuit. Instead, an aggrieved party’s lawyer may send a written notice demanding some action by the would-be defendant. Depending on the nature of a potential plaintiff’s claim, a demand letter could ask the would-be defendant for any combination of paying money to the claimant, ceasing an objectionable activity, or performing a previously promised task. Most demand letters contain the following elements: a description of the plaintiff and the harm suffered by him or her at the hands of the defendant, an offer to settle for a specified amount, and a deadline for acceptance of the settlement offer. The following demand letter, sent by Mark’s attorney to the Cardinals’ (Joe’s employer’s) counsel, was the first volley in a suit by Mark against Joe.
April 14, 2000

Michael K. Kennedy, Esq.
Gallagher & Kennedy
2600 North Central Avenue
Phoenix, Arizona 85004-3050

Re: Mark Cockriel adv. Arizona Cardinals/"Mean Joe" Greene

Dear Mr. Kennedy:

This letter is intended to fall within the scope of Rule 408, Arizona Rules of Evidence, in that it proposes a compromise or settlement of certain claims relating to the actions and negligence of the Arizona Cardinals and Charles Edward Greene. We address this letter to you because it is our understanding that you will represent one or more of the adverse parties, if this matter proceeds to litigation.

As you know, an employee of the Arizona Cardinals, Charles Edwards Greene (a/k/a "Mean Joe Greene") assaulted Mark Cockriel on October 31, 1999. An assault, for purposes of establishing criminal liability in Arizona is defined as:

1. Intentionally, knowingly or recklessly causing any physical injury to another person; or

2. Intentionally placing another person in reasonable apprehension of imminent physical injury; or

3. Knowingly touching another person with the intent to injure, insult or provoke such person.

A.R.S. § 13-1203. In addition, where an assault causes serious physical injury, the law deems it an "aggravated" assault. See A.R.S. § 13-1204(A).
Michael K. Kennedy, Esquire  
April 14, 2000  
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For purposes of establishing a civil cause of action, a plaintiff typically would show:

An actor is subject to liability to another for battery if

(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and

(b) a harmful contact with the person of the other directly or indirectly results.

Restatement (Second) of Torts, § 13 (as to a "battery"). Alternatively,

An actor is subject to liability to another for assault if

(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and

(b) the other is thereby put in such imminent apprehension.

Restatement (Second) of Torts, § 21 (as to an "assault").

On November 12, 1999, at your request, we furnished to you a video tape of this incident. The tape is provocative and clear with respect to the events. Any suggestion that Mr. Greene’s assault was a reaction to his foot being run over by a cart, as he may have suggested to the media, is clearly belied by the tape. In addition, several members of the press were standing nearby when the attack took place and will refute such a scenario. Legally, however, even if his toe had been touched by a tire, that fact would not constitute a defense to a cause of action.
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I am preparing a draft complaint and notice of deposition for Mr. Greene. In short order, if a civil action were filed, we would notice or move the court for leave to notice other representatives of ownership and management who would be expected to have relevant information. We also will be requesting extensive background materials on Mr. Greene and thoroughly review the circumstances under which he was hired, management’s knowledge of his character and history, his reputation in the profession, as well as the precise style and scope of the Cardinal’s supervision of Mr. Greene.

As you may know, Mr. Cockriel is an educated and highly qualified sound engineer. As one might then expect, his most precious sense is his hearing. Following this incident, Cardinal physician, Dr. Wayne Kuhl, treated Mr. Cockriel with Advil. In reality, Mr. Cockriel’s eardrum was ruptured, resulting in significant pain, loss of hearing, and considerable apprehension over the prospect of losing not only his hearing, but also his career and the business he built in the industry. We have enclosed medical records reflecting his post-incident treatment, assessment, and, fortunately, his recovery. While he is thankful to have made an apparent full recovery, the anxiety during the four months before it could be determined that his prognosis was positive, was grueling. Unfortunately, the embarrassment and humiliation of being assaulted by a celebrity in front of literally thousands of people continues.

The Restatement of Torts recognizes that conduct which is extreme and outrageous may cause severe emotional distress for which one may be subject to liability. Restatement (Second) of Torts § 46(1) (1965). The Restatement also states that the tort of emotional distress inflicted intentionally or recklessly is recognized as a separate and distinct basis of tort liability. There is no need to show elements of other torts such as assault and battery. Restatement (Second) of Torts § 46 comment b (1965). A comment to § 46 states that there is liability: where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community... in which... an average member of the community would... exclaim,
Not all demand letters are as lengthy and intricate as the one sent to the Cardinals’ counsel by Mark’s attorney. Some, seeking simply to draw the would-be defendant into negotiations, may not even specify a sum.

**QUESTIONS**

1. Why did Doug Erickson send a demand letter to the Cardinals discussing assault, battery, and emotional distress when it was Joe’s actions that caused the alleged assault, battery, and emotional distress? Why might the Cardinals be liable for the individual actions of one of its employees?

2. How directly are the facts as related by the newspaper story, Joe, and Mark in direct conflict?

3. How might one calculate damages in this kind of case? What percentage of Mark’s damages likely reflects the hard costs of medical treatment and recovery...
and what percentage reflects recoverable intangibles such as humiliation and pain and suffering?

The newspaper account, Joe’s lawyer’s write-up of his own view of the story, and Mark’s demand letter provide a flavor of the incident giving rise to a claim for damages — and a foundation for examining how an incident such as this one can be portrayed as intentional wrongdoing, negligence, or a wholly innocent, if unfortunate, encounter. The rest of this book examines how the case progressed, with emphasis on the strategic decisions that faced lawyers on what would quickly turn out to be more than two sides.