

## *The Hit Heard Round the State*      *Averill v. Luttrell*

### CASE DESCRIPTION

A panel of Court of Appeals judges for the Eastern Division of Tennessee was called upon to consider an unusual but still frequently cited case involving two minor league baseball teams, the Nashville Vols and the Chattanooga Lookouts, and events that occurred on the evening of August 20, 1955, when the Vols played the Lookouts in Chattanooga's Engel Stadium.

The Lookouts were in the hunt for the Southern Association championship, while Nashville was back in the middle of the standings. Pitching for Nashville was Gerry [Jerry] Lane, a resident of Chattanooga and a former Lookout. In the sixth inning, the hot-hitting Lyle Luttrell came to bat for the Lookouts. He had seen Lane throw curves and sliders over the outside of the plate. Luttrell resolved to step forward in the batter's box so that he could reach the outside pitches.

Luttrell stepped forward on the first pitch and then had to dodge it. Upon receiving the ball back from catcher Earl Averill, Lane said "Nobody does that to me. If you do it again I'll stick it in your ear." Luttrell stepped forward on the next pitch and again had to dodge it. The same thing happened on the third pitch. The fourth pitch brushed Luttrell on the back of his thigh.

Earlier in the season, Luttrell had been hit in the jaw by a pitch and had suffered a broken jaw that sidelined him for some time. He took being thrown at seriously. He tossed his bat in the general direction of the pitcher. [Testimony at the trial indicated that the bat did not come close to Lane.] Catcher Earl Averill jumped up and almost instantly struck Luttrell behind his right ear with his fist. Luttrell fell forward unconscious and his face hit the ground, fracturing his jaw again. A ruckus resulted with players on both teams rushing the field and fighting. The police came onto the field to restore order even though umpire Vic Delmore told them to get off the field.

Luttrell was transported to the hospital, Nashville Manager Joe Schultz removed Lane from the game, and Averill was ejected. That same evening, Chattanooga attorney Ray Brock, whose services were secured by Chattanooga Lookouts owner Joe Engel, filed suit for Luttrell.



## *The Hit Heard Round the State Averill v. Luttrell*

**GRADES:** 9-12

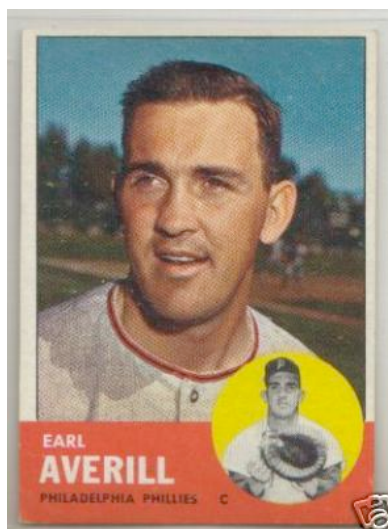
**LESSON DURATION:** 1 SESSION

**LESSON INTRODUCTION:**

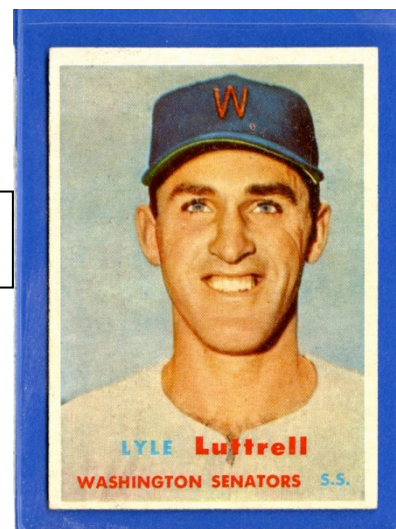
In this lesson students will consider who should be considered liable for Luttrell's injuries.

**GOALS:**

- To build core skills of reading, critical thinking, primary source analysis, speaking
- To understand how the judicial system resolves disputes of liability
- To understand the process of appeals in the Tennessee court system



v.



**OBJECTIVES:**

The students will (TSW) identify key participants (i.e. plaintiff, defendant, judge, attorneys arguments).

TSW analyze different perspective and evaluate which arguments present the best case.

TSW synthesize different arguments and draw their own conclusion based on the evidence presented.

TSW will write an opinion based on the actual case judgment.

**CURRICULUM STANDARDS:**

**Common Core:**

[CCSS.ELA-Literacy.RH.9-10.1](#) Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.

[CCSS.ELA-Literacy.RH.9-10.2](#) Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.

[CCSS.ELA-Literacy.RH.9-10.8](#) Assess the extent to which the reasoning and evidence in a text support the author's claims.

**Content Standards:**

GC.56 Explain the hierarchy and functions of the Tennessee court system, including the distinction between Chancery and circuit courts and identify the current chief justice of the state supreme court. (P, TN)

**HOOK/SET:**

Pose a scenario: A dog owner's dog escapes from its fence and bites a neighborhood child. Is the dog owner responsible for the hospital bills and damages incurred by his dog? Why or why not?

What about a parent? Are they responsible for a minor child's criminal activities? [see: Tennessee Code Annotated 37-10-101-103 regarding malicious or willful personal injury or property damage by a minor]

Today we are going to discuss a similar circumstance and in the process understand how the Tennessee appeals process is carried out.

**PROCEDURES:**

Display printouts of team photos and men's baseball cards at the front of the room.

- 1.) Have students read the Case Description. (Set-up does not include aspects of the trial.)
- 2.) Hold a preliminary class discussion on the Case Description. Have students identify main characters in the drama.

As they identify the main characters, ask for students to assume the identities of each character. (For fun, give each character props.) Pitcher gets a cap and baseball. Catcher gets a catcher's mitt and mask. Batter gets a handkerchief tied around his chin to the top of his head (as if his jaw is broken).

Discuss the story as a class. What happened?

Define the dispute.

Identify the plaintiff

Identify the defendant(s)

3.) Assign students to play the roles of the main characters.

Catcher- Earl Averill

Batter-Lyle Luttrell

Pitcher-Gerry Lane

Nashville Vols Manager Joe Shultz

Chattanooga Lookouts Manager Cal Ermer

4.) Hold a class discussion on the dispute and write the key points of the dispute on the board.

5.) Have students predict the outcome of this dispute between the parties involved. Why did they make the predictions they made? Have students support their predictions with evidence from the case.

6.) Pay close attention to who students list as the defendant. Did they include the Nashville Baseball Club? Why or why not? Have students defend their answers using supporting evidence.

7.) Writing Exercise:

Should the Nashville Baseball Club be held responsible for the actions of their player? Quietly, without discussion, have students determine their own conclusion and write it down in a one or two paragraph response.

Student Speaking & Presentation Period

8.) Have students present their opinions to the class providing their own supporting evidence. Have students respond to other students' use of evidence. Do they agree or disagree?

9.) Take a class vote on whether Averill should have to pay money to Luttrell for his injuries, and a vote on whether the Nashville Vols should have paid Luttrell instead. Record the vote.

The Appeal:

Read the ruling of the first trial. Discuss what options the Nashville Vols had. Did they have to accept that ruling? [No, they could appeal.]

10.) Read the case outcome. Hold a class wrap-up. Did this change the students' opinion? Why or why not?

**SUGGESTED ASSESSMENT:**

11. Write a letter to Judge Peabody Howard explaining why you believe he was right or wrong in overturning the first ruling. Use supporting evidence.

**Guided Thinking and Writing Prompts**

Making predictions:

How do you think this lawsuit will play out? Will the plaintiff receive money for the damages he incurred? Who do you believe is at fault? Support your claims with evidence from the case.

Critical Thinking:

Should the Nashville Baseball Club be held responsible for the actions of their player? Give your opinion in a one or two paragraph response.

Read and Respond:

Response to Judge Peabody Howard's Decision: Now that you have heard the court's ruling, do you feel Judge Howard was right in overturning the lower court's decision to convict the Nashville Baseball Club? Why or why not? Respond to Judge Howard.

## THE CASE OUTCOME

The suit went to trial in November 1956. Vols catcher Earl Averill, who had been arrested on the night of the incident and subsequently suspended and fined by Southern Association President Charlie Hurth, admitted hitting Lookouts batter Lyle Luttrell and having “regretted it ever since.” The Nashville Baseball Club (represented by the highly respected Nashville attorney Jack Norman) defended by arguing that (1) such events are just part of competitive athletics and (2) Averill had stepped aside from his employment and was acting on his own. The jury awarded Luttrell a judgment of \$5,000 against the defendants.



Judge Peabody Howard

The Nashville Baseball Club appealed. In an opinion issued on July 9, 1957, Court of Appeals Judge Peabody Howard wrote: “The assault was neither incident to nor in the furtherance of his employer’s business, and under the circumstances we think that the Nashville Baseball Club would not be liable under the doctrine of *respondeat superior*, and that the learned trial judge should have sustained the defendant’s motion for a directed verdict made at the conclusion of the plaintiff’s proof.”

Consequently, the judgment against the Nashville Baseball Club was reversed. The significance of this case is twofold. It is commonly considered the first case in which one professional athlete sued another for an incident occurring during a game. It is also important because it is an example of a professional team denying responsibility for the on-field actions of one of its players. This is an interesting case for lawyers as well as baseball fans.

