The Bases are Loaded and its Time to Get a Restraining Order: The Confounding Conflation of America’s Two National Pastimes

Paul A. LeBel*
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Abstract

Time might begin on opening day and life might imitate the world series, according to one of our finest contemporary sports writers, but it is arguable that too little attention has been paid to the relationship between America’s leading pastimes, litigation and baseball.

KEYWORDS: restraining order, imitate, sports
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Time might begin on opening day and life might imitate the world series, according to one of our finest contemporary sports writers, but it is arguable that too little attention has been paid to the relationship between America’s leading pastimes, litigation and baseball.

Some points of comparison are apparent. The top performers in each receive compensation that seems to meny to be grossly disproportionate to their value to society at large, and many of the participants in both enterprises wear pin stripes while they are working.

Still, there are significant differences. Baseball players get to spit and scratch in public a lot more than lawyers, and their pin stripes are bottomed off with spikes instead of wingtips or tuxedo lapels. And when it comes down to it, baseball knows how to handle an appeal a lot more efficiently than the legal system. When was the last time you heard of a successful protest of an umpire’s decision in the major leagues? As far as I can tell, the official league response to a protesting manager has been, “Shut up.” (Although, come to think of it, that sounds awfully lot like the current Supreme Court’s standard response to petitions for certiorari.)

Baseball and litigation have been linked in such matters as challenges to the exemption that baseball enjoys from the antitrust laws, particularly in connection with attacks on the reserve clause, a libel action by an umpire and the umpires’ association against a manager who accused the umpire of bias against his team, and most recently, the challenge to the realignment of the teams in the National League. The law has not always

1. James Gould, Cloth Professor of Law, College of William and Mary.
2. THOMAS GORMAN, WHY TIME BEGINNS ON OPENING DAY (1845).
come off as a particularly impressive performer in these encounters. That
last lawsuit, for example, set up the potential for a definitive judicial
statement that Chicago is east of Atlanta.

Still, things could be worse. Garrison Keillor once said that folks in
Lake Wobegon were waiting to celebrate the Minnesota Twins (well-
deserved, I might note) victory in the 1987 World Series until they were
sure that there would not be a lawsuit.

Imagine if you will a state of affairs such that the most perceptive of
baseball fans turn each week not to The Sporting News or USA Today
Baseball Weekly but rather to the sports pages of The Legal Times. A
typical news report from the era when litigiousness runs amok in baseball
might look like this:

Washington, September 17, 1997—A surprisingly large num-
ber of games were played through to completion yesterday in the
major leagues. The Florida Mar-
lins, temporarily playing in the
Northwestern Division of the
National League in order to ac-
commodate the move of the Tampa
Bay Giant-Mariners into the
Southeastern Division, were able to
wrap up a lawsuit-shortened game that was begun on April
25th. In that contest, New York Mets manager Gary Carter se-
cured a restraining order in the
eighth inning after Marlin pitcher
Bob Milacki threw a pitch behind the head of Mets pinch hitter
Eddie Murray. The Marlins front office was able to get an emer-
gency stay of further play from
Mario Cuomo, the Supreme Court
Associate Justice with jurisdiction
over the National League, pend-
ing consideration of the matter by
the full court. (Murray's own
civil suit against Milacki for
assault was dismissed in May on
a motion for summary judgment.
The trial judge ruled that no
reasonable juror could conclude
that Milacki's fast ball was cap-
able of causing an imminent apprehen-
sion of a harmful contact. No
appeal is expected from that rul-
ing.) Yesterday's action on the
field saw the Marlins complete
the sweep of the Mets, winning 2-
1 and thereby improving the
team's record for the year to 11
and 5. Marlins reliever, Jeff
Reardon, has tentatively been
credited with the save, but the
team's newly-acquired set-up
pitcher has filed an action in the
Dade County Circuit Court alleg-
ing that his retiring of two batters

after coming into the game when the
bases were loaded and no one
was out was demonstrably more
significant than Reardon's getting
the final out when the only batter
he faced hit a weak pop-up to short.
The class action, filed on
behalf of "non-winning pitchers
who do not finish games that
their teams win," is calling on the
state court to exercise its equita-
ble power to correct the injustice
of the save rule and "to award to
the plaintiff class adequate credit
and such other compensation as
the court might deem proper for
the substantial contribution that
they make to the victory."

In other action around the
majors, the Atlanta Braves defeated
the Colorado Rockies 12-0, in a
three-inning game that was
shortened by the Rockies' invoca-
tion of the Eighth Amendment
prohibition against cruel and
unusual punishment. This is the
first time that the rule was suc-
cessfully invoked since the con-
stitutional provision was incorpo-
rated into the official rules of major
league baseball by a United States
Supreme Court ruling last term.
Early this season, a claim that an
opposing team's use of a suicide
squeezing pitch was unusually press-
fing for the catcher was dismissed
with prejudice by the court in which
it had been filed.

In the only complete game in
the American League yesterday,
the Cleveland Indians continued
t heir division-leading season with
a 9-0 defeat of the Oakland Ath-
letics. The Indians' victory came
as a result of an Oakland forfeit
under the new "excessively wea-
rining travel" clause of the players
agreement. The Athletics were
unable to field a team due to the
failure of the club to arrive in
Cleveland with sufficient time for
the players to rest, catch up on
their shopping, and have a chance
to have their laundry done after
having traveled across one time-
zone boundary following the
completion in late August of its
last series in Chicago. The club
traveling secretary declined to
comment on the matter, saying
that a majority of his attorneys
had advised him to make no
statement until the completion of
arbitration on the question of
whether the appropriate starting
time for the running of what has
come to be known as "the statute
of leisure" was the beginning of
the ending of an extra-inning
game.

Elsewhere yesterday, the
Minnesota Twins stopped play in
the second inning and marched in
protest to the federal courthouse
in Minneapolis when White Sox
television announcer Ken "Hawk"
Harrelson again criticized the
playing conditions in the Hubert
H. Humphrey Metrodome. The
complaint, filed late yesterday
afternoon, states that Harrelson
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6. See PAUL A. LEBEL, JOHN BARLEYCORN MUST PAY: COMPENSATING THE VICTIMS
come off as a particularly impressive performer in these encounters. The last lawsuit, for example, set up the potential for a definitive judicial statement that Chicago is east of Atlanta.

Still, things could be worse. Garrison Keillor once said that folks in Lake Wobegon were waiting to celebrate the Minnesota Twins’ (well-deserved, I might note) victory in the 1987 World Series until they were sure that there would not be a lawsuit.

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In other action around the majors, the Atlanta Braves defeated the Colorado Rockies 12-0, in a three-inning game that was shortened by the Rockies’ invocation of the Eighth Amendment prohibition against cruel and unusual punishment. This is the first time that the rule was successfully invoked since the constitutional provision was incorporated into the official rules of major league baseball by a United States Supreme Court ruling last term. Early this season, a claim that an opposing team’s use of a suicide squeeze play was unusually stressful for the catcher was dismissed with prejudice by the court in which it had been filed.

In the only complete game in the American League yesterday, the Cleveland Indians continued their division-leading season with a 9-0 defeat of the Oakland Athletics. The Indians’ victory came as a result of an Oakland forfeit under the new “excessively wearing travel” clause of the players agreement. The Athletics were unable to field a team due to the failure of the club to arrive in Cleveland with sufficient time for the players to rest, catch up on their shopping, and have a chance to have their laundry done after having traveled across one time-zone boundary following the completion in late August of its last series in Chicago. The club traveling secretary declined to comment on the matter, saying that a majority of his attorneys had advised him to make no statement until the completion of arbitration on the question of whether the appropriate starting time for the running of what has come to be known as “the statute of leisure” was the beginning or the ending of an extra-inning game.

Elsewhere yesterday, the Minnesota Twins stopped play in the second inning and marched in protest to the federal courthouse in Minneapolis when White Sox television announcer Ken ‘Hawk’ Harrelson again criticized the playing conditions in the Hubert H. Humphrey Metrodome. The complaint, filed late yesterday afternoon, states that Harrelson has repeatedly made reference to
the fact that the team had never won a World Series game on the road, and alleges that his taunting has caused the players and their families to suffer "physical manifestations of severe emotional distress." The complaint further alleges that "Harrelson's statement is false and defamatory, as the clear implication of the words employed by Defendant suggested that Plaintiffs were unable to win a World Series game without the home field advantage and that as a result thereof the World Championships obtained by the Plaintiffs in 1987 and 1991 were less legitimate than similar World Championships obtained by diverse other ball clubs in years other than the aforesaid." Last night's CNN Sports & Courts Center broadcast reported that famed media lawyer Floyd Abrams is flying to Minneapolis to defend Harrelson. When reached for comment, Abrams expressed outrage at this latest attack on the free speech principles that made this country what it is today, and vowed to resist these lawsuits that threaten the very integrity of the social fabric.

In a related action, the Minnesota chapter of the Audubon Club continued to picket the WGN broadcast truck, alleging that Harrelson was giving unfavorable publicity to the eponymous creature he had adopted for his nickname. In explaining why they were picketing, the chapter president pointed to the legislation introduced earlier in this term of Congress to remove the hawk from the endangered species list. That legislation has (not coincidentally) been co-sponsored by members of Congress from every district in which the White Sox play road games.

When the sign painter put "BEATRICE CRAMSHER, HEAD FACULTY SECRETARY" on her office door, she told him to add "MISS" before her name. When he painted "MS." before her name, she told him to "change it at once." The sign painter complained to the Dean that she was "a crotchety ol' pisshit." The Dean was sympathetic but asked him to "please do whatever she says."

She had not always been Miss. For three years in the early 1940s, she was Mrs. Cramshaw. But when she was widowed by the war, she wanted it to be known that she was "available" even though she kept her dead soldier's last name out of respect. At 64 years of age, that was no longer her reason for being Miss; she was no longer "available." But she had always been known as Miss Cramshaw and "that was that." Besides, she found no liking for the "modern Ms. nonsense."

As Head Faculty Secretary, Miss Cramshaw always rendered extremely detailed minutes of monthly faculty meetings. Each dean had always told her that she need not be so elaborate, that all she needed to record were the votes and the actions taken and very brief recitals of announcements; discussion comments and her personal observations were [sic] unnecessary.

But Miss Cramshaw was not to be denied her way of reporting minutes. She had always faithfully recorded as much of the happenings as her aging hands would allow. Faculty meetings were, after all, her once a month opportunity to share and hobnob at the top. Those meetings were not open to anyone; only those who served could be there; it was an honor to be included. Her detailed recordings were a way of demonstrating her indispensable service to those meetings.

She held no use for modern word processing machines, calling them "lazy, televised nonsense." She succumbed to photocopying only when the increasing size of the faculty taxed the platen in her Smith-Corona to the point that it could no longer squeeze more carbons and onion skins.

In a day of dwindling workload, she took even more tender care with the preservation of detailed faculty minutes. Recording the words that were said was more accurate for her than summarizing meanings; meanings, after all, have to be understood; words do not.