1993

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

Paul A. LeBel

Repository Citation
LeBel, Paul A., "The Bases are Loaded and It's Time to Get a Restraining Order: The Confounding Conflation of America's Two National Pastimes" (1993). Faculty Publications. 938.
https://scholarship.law.wm.edu/facpubs/938

Copyright c 1993 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/facpubs
The Bases are Loaded and it's Time to Get a Restraining Order: The Confounding Conflation of America's Two National Pastimes

Paul A. LeBel

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 many 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. Ball 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 tassel loafers. 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 an awful 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

* James Goold Cutler Professor of Law, College of William and Mary.
1. THOMAS BOSWELL, WHY TIME BEGINS ON OPENING DAY (1984); THOMAS BOSWELL, HOW LIFE IMITATES THE WORLD SERIES (1982).
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 note6) 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, 199?-A surprisingly large number of games were played through to completion yesterday in the major leagues. The Florida Marlins, temporarily playing in the Northwestern Division of the National League in order to accommodate 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 secured a restraining order in the eighth inning after Marlins pitcher Bob Milacki threw a pitch behind the head of Mets pinch hitter Eddie Murray. The Marlins front office was able to get an emergency stay of further play from Mario Cuomo, the Supreme Court Associate Justice with jurisdiction over the National League, pending 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 capable of causing an imminent apprehension of a harmful contact. No appeal is expected from that ruling.) 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 alleging 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 equitable 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' 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 wearying 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 mani-
festations of severe emotional dis-
tress." 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 Cham-
pionships obtained by the Plain-
tiffs in 1987 and 1991 were less
legitimate than similar World
Championships obtained by di-
verse other ball clubs in years
other than the aforesaid." Last
night's CNN Sports & Courts
Center broadcast reported that
famed media lawyer Floyd Ab-
rams 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 Min-
nesota chapter of the Audubon
Club continued to picket the
WGN broadcast truck, alleging
that Harrelson was giving unfa-
vorable publicity to the epony-
rous creature he had adopted for
his nickname. In explaining why