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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 re-
alignment of the teams in the National League. The law has not always

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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 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 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

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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 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.