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EXCESSIVE HECKLING AND VIOLENT BEHAVIOR AT SPORTING EVENTS: A LEGAL SOLUTION?

LINDSAY M. KOREY LEFTEROFF*

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I. INTRODUCTION

In a civilized society, it is surprising that we often tolerate the uncivilized behavior that is consistently exhibited at sporting events. Excessive alcohol consumption, offensive language, and fighting are commonplace at sporting events, and those who engage in such behaviors expect to escape punishment and oftentimes do.¹ Despite exhibiting behaviors that violate criminal statutes (i.e. battery, disorderly conduct, etc.), the obstreperous fans are

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¹ Phoebe Weaver Williams, *Performing in a Racially Hostile Environment*, 6 MARQ. SPORTS L.J. 287, 294-95 (1996) (citing Tim Layden, *The 'Vulgar Minority': Fueled by Alcohol, As Well As Anger and Aggression, a Few Fans Make It Uncomfortable for Many*, NEWSDAY, Feb. 12, 1989, at Sports 9).

rarely arrested. In the unlikely event that police officers do arrest fans, prosecution is not likely to follow.² Although it may be stadium policy to warn or eject a spectator who "continuously taunts a player or exhibits obnoxious behavior," it often seems that stadium security is delinquent in fulfilling this responsibility.³ Because there is little deterrence against this kind of behavior, spectators continue to believe that heckling players is their right as paying customers. If verbal assaults and threats from fans are not monitored by stadium security, then some athletes and commentators feel that self-help becomes the only viable option for player protest and protection.⁴ Athletes often retaliate after being verbally, and in some cases, physically assaulted. When athletes retaliate, they are almost always punished by their teams or by their leagues, through fines, suspensions, or both.⁵ Some players find this double standard frustrating,⁶ while others believe that because fans have paid an admission fee, they are entitled to heckle the players.⁷ The challenge becomes finding a solution to negative player and fan interaction that allows the fan the freedom to voice reasonable support or dissatisfaction, but does not unreasonably intrude upon a player's limited right to be free from certain types of comment or attack.

Modern sport has changed quite a bit from its early days, and not all the change has been for the better. We are far from the days when a Base Ball player was expected to abstain "from *profanity* and its twin and vile brother *obscenity*, leaving these vices to be alone cultivated by graduates of our penitentiaries."⁸ Rather than being surprised to hear profanity or obscenity

² Kevin A. Fritz, *Going to the Bullpen: Using Uncle Sam to Strike out Professional Sports Violence*, 20 CARDOZO ARTS & ENT. L.J. 189, 207 (2002) (stating that the failure to prosecute is based on the already crowded nature of criminal dockets). See also Gordon W. Russell, *Sports riots: A social-psychological review*, Department of Psychology and Neuroscience, University of Lethbridge, Lethbridge, Alberta, Canada, Section 1.4 (2003).

³ Ben Bolch, *Chair Toss Raises Issues of Security; Rangers' Francisco Is Arrested in Fan Incident*, L.A. TIMES, Sept. 15, 2004, at D5. See also Williams, *supra* note 1, at 295.

⁴ Williams, *supra* note 1, at 309-10. See also John Romano, *Make Next Target Boors in the Seats*, ST. PETERSBURG TIMES, Nov. 23, 2004, at 1C.

⁵ See Bolch, *supra* note 3, at D5. See also Michael D. Mirne, *The Brawl at Wrigley: An Analysis of Tort Liability*, 9 SPORTS L. J. 95, 95-96, 108 (Spring 2002); Williams, *supra* note 1, at 296-97, 310-11; Steven Brandon, *Fan Punched by Maxwell Sues for \$4.5 Million*, PORTLAND OREGONIAN, Mar. 29, 1995, at E6; Chris Sheridan, *Never Again NBA Boss's Vow as Brawlers Are Given \$17 Million in Fines, 140 Matches in Bans*, THE ADVERTISER, Nov. 23, 2004, at 80.

⁶ Doug Padilla, *Everett Hasn't Forgotten His Own Brush with Fans in Oakland*, CHI. SUN-TIMES, Sept. 15, 2004, at 152.

⁷ Mike DiGiovanna, *Angel Report; Erstad: Fans Not to Blame for Incident*, L.A. TIMES, Sept. 15, 2004, at D5.

⁸ *The Greenfield Village Official Guide to 1860s Base Ball* (Henry Ford Museum and Greenfield Village, Special Programs, Marcia Mason, 1996) (citing Henry Chadwick, THE BASE BALL PLAYERS

at today's sporting events, spectators are more astonished if such language is not present. More and more, fans are becoming verbally and sometimes physically abusive towards other spectators and the athletes that they have paid to watch. In return, athletes are becoming more aggressive in their responses to spectator heckling. This article examines whether a legal framework could be effective in curbing the escalating problem and suggests several alternatives to alleviate the problem. Part II of the article will discuss the problem in baseball, football, basketball, and hockey, as well as the emerging problem in golf and tennis. Part III of the article will evaluate domestic and international attempts to curtail or control abusive spectator behavior at sporting events. This article concludes by suggesting several proposals to help alleviate the problem, including both legal and non-legal solutions.

II. DEFINING THE SCOPE OF THE PROBLEM

Heckling by fans takes many forms: spectators insult a player's physical ability, throw objects onto the playing field, or use visual aids to taunt a player.⁹ According to Stephen Sugarman, a University of California-Berkeley law professor who teaches in the area of sports and the law, as long as the heckling remains reasonable and avoids personal insults, it is both permissible and appropriate.¹⁰ Permissible heckling and fan behavior generally includes refraining from entering the field of play, refraining from throwing objects onto the field of play, refraining from physical contact with another fan, and avoiding racial slurs.¹¹ Racial slurs constitute "fighting words" and as such, are not protected by the First Amendment's guarantee of free speech.¹² The use of racial slurs is especially inappropriate at a sporting event; they not only affect the athletes at whom they are directed, but can also create tension among spectators seated close enough to hear the offensive comments.¹³ When fans are permitted to use racial slurs to provoke and taunt athletes, they are subjecting their fellow spectators to a

BOOK OF REFERENCE (Haney & Company Publishers, 1867)).

⁹ Williams, *supra* note 1, at 297; *L.A. Loses Bradley for Regular Season*, BOSTON GLOBE, Sept. 30, 2004, at E2; *Poor Conduct No Stranger in Sports Circles*, CONTRA COSTA TIMES (Walnut Creek, CA), Sept. 15, 2004, at A01.

¹⁰ *Poor Conduct*, *supra* note 9, at A01.

¹¹ Mel Antonen, *MLB Investigating Player Fan Clash*, USA TODAY, Sept. 15, 2004, at 1C.

¹² *Resident Advisory Board v. Rizzo*, 503 F.Supp. 383 (D.C. Pa. 1980); See also Charles R. Lawrence, III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, in *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* (Robert W. Gordon & Margaret Jane Radin, eds., 1993).

¹³ Williams, *supra* note 1, at 298.

racially abusive environment; this is especially unfortunate, as the fans subjected to this negative environment have paid to attend the game.¹⁴ For many years, professional sports leagues turned a deaf ear to the racial slurs being bandied about in the seating area; black athletes were expected to control their emotions and reactions and behave as model citizens.¹⁵ Presumably, black spectators were expected to do the same. In response to a lawsuit initiated by a black athlete, the National Football League ("NFL") changed its policy to require that member clubs take additional measures to minimize the risk of threats, harassment, and confrontation between fans and athletes.¹⁶

One of the dangers of tension amongst spectators is the starting of a riot or fight in the seating areas. Environmental factors that increase the likelihood of aggression amongst spectators include "noise, heat, darkness, crowding, foul odors, and second-hand smoke."¹⁷ A field study of fan behavior at baseball games indicates a correlation between violent outbursts in the seating areas and warmer weather.¹⁸ Darkness is another factor that increases the likelihood of violence in the seating areas because it provides a measure of anonymity for those engaged in such behavior.¹⁹

Increased violence at nighttime sporting events can be partly attributed to elevated consumption of alcohol, which has been shown to influence aggression.²⁰ Fans attending evening games have the opportunity to consume alcohol both prior to and during the game, which typically results in higher levels of inebriation and increased aggression.²¹ Because few fans consume excessive amounts of alcohol prior to a game that begins early in the day, fans are less likely to consume large quantities of alcohol prior to daytime games, as compared to nighttime games.

Noise is an additional contributing factor to aggression among spectators.²² Noise is more influential on aggressive behavior when it "occurs at irregular intervals and with those fans who are already angered, perhaps

¹⁴ *Id.*

¹⁵ *Id.* at 304.

¹⁶ *Id.* at 311.

¹⁷ Russell, *supra* note 2, Section 3.2, (citing R.A. BARON & D.R. RICHARDSON, HUMAN AGGRESSION, (2nd ed.), (Plenum 1994) and E.C. O'Neal & P.J. McDonald, *The Environmental Psychology of Aggression*, in PERSPECTIVES ON AGGRESSION 169-92 (R.G. Geen & E.C. O'Neal, eds., 1976)).

¹⁸ *Id.* at Section 3.2.1 (citing C.K. Dewar, *Spectator Fights at Professional Baseball Games*, REVIEW OF SPORT & LEISURE 4, at 12-25).

¹⁹ *Id.* at Section 3.2.2.

²⁰ *Id.* at Section 6.1.3.

²¹ Scott Merkin, *Dodgers: Enough Already; Ex-Cub Adams Blames Night Ball, Alcohol for Brawl*, CHI. TRIB., at N4.

²² Russell, *supra* note 2, Section 3.2.3.

having witnessed an altercation or a controversial decision by an official.”²³ The influential noise can originate from a variety of sources, including sound systems and the crowd itself.²⁴ As disruptive as violence in the stands is, it bears mentioning that riots occasionally erupt far from the site of the sporting event,²⁵ often when the home team wins an important game.²⁶ At the close of the 2003–2004 Major League Baseball (“MLB”) season, a college student in Boston was killed when police attempted to control a rowdy crowd after the Boston Red Sox defeated the rival New York Yankees in the American League Championship Series.²⁷

A. Player and Fan Violence: Violence and America’s Most Popular Sports Baseball

In the last few decades, violent interactions pitting athletes against fans and fans against fans have increased.²⁸ Due to their popularity and allegiance of their fans, violence has been particularly remarkable in America’s four major sports: football, baseball, basketball, and, to a lesser extent, hockey. Franchises in some cities have even developed a reputation for the violent and offensive behavior of their fans.²⁹ Baseball in particular has been plagued by negative interactions between fans and players due to stadium configuration, which allows fans easy access to players.³⁰ Although baseball officials advise players to avoid interaction with abusive fans, players often say that they are unaware of any formal procedures to guide their behavior if they are being verbally or physically abused by fans.³¹

The pitchers’ bullpen in baseball is an area that is especially vulnerable to violent incidents because it is often located directly adjacent to the stands.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at Section 1.1.

²⁶ Edmund Tijerina, *Partying Spurs Eat Italian, Drink French*, SAN ANTONIO EXPRESS-NEWS, June 17, 2003, at B 3. See also, Kevin Baxter, *Tough Tickets, Right Security in Boston*, MIAMI HERALD, Oct. 24, 2004, at K1991; Marcella Bombardieri, *Postgame Riots Grow on Campus*, BOSTON GLOBE, Oct. 11, 2003, at B1.

²⁷ John Saraceno, *Real Sports Fans Don’t Celebrate Wins With Drunken Hooliganism*, USA TODAY, Oct. 25, 2004, at C6.

²⁸ Guy Curtright, *Reliever Is Arrested After a Wild Pitch; Rangers Rookie Threw Chair into Crowd*, ATLANTA JOURNAL-CONST., Sept. 15, 2004, at 1D. See also, Russell, *supra* note 2, Section 1.5–1.6.

²⁹ DiGiovanna, *Angel Report: Erstad*, *supra* note 7, at D5; See also, Padilla, *supra* note 6, at 152; Dennis R. Toney, Jr., *Sporting Events, Fan Violence, and the Courts of the Future: Make Way for a New Player*, “The Legal Eagle,” 6 SPORTS LAW J. 147, 150 (1999).

³⁰ Bob Sherwin, *Melvin: “Tough crowd” in Oakland*, THE SEATTLE TIMES, Sept. 15, 2004 at D10. See also Bolch, *supra* note 3, at D5.

³¹ Bolch, *supra* note 3, at D5.

On September 13, 2004, police arrested Frank Francisco, a reliever with the Texas Rangers, and filed felony aggravated battery charges against him after he threw a chair in the direction of fans who had been heckling him throughout a game against the home-town Oakland Athletics.³² A woman in the crowd, Jennifer Bueno, was injured in the incident, suffering a broken nose and cuts on her face.³³ Bueno filed a civil suit against Francisco, two other pitchers, the Texas Rangers, and a security company, seeking monetary damages for assault, battery, negligence, negligent training, and negligent security.³⁴ During the incident, an additional reliever, Doug Brocail, had to be restrained by teammates as he screamed at a man in the stands.³⁵ The Athletics' Vice President of Stadium Operations blamed player aggression for the incident, stating, "The fans didn't go on the field. They didn't throw anything. They didn't hit anybody. To my knowledge, there was no profanity or racial slurs."³⁶ Despite this assessment, it is clear that something must have occurred to provoke the athletes.³⁷ Craig Bueno, Mrs. Bueno's husband, admits he was heckling Brocail, as he often does to opposing relief pitchers from his seat near the bullpen.³⁸ Additionally, Francisco's attorney contends that someone "grabbed [Francisco's] arm and jostled him just before the incident."³⁹ If this contention is true, it is likely that Francisco felt that he had the right to defend himself, similar to the notion expressed by Los Angeles Dodgers' catcher Todd Hundley, who says that "[w]hen it gets physical, we are allowed to get physical and do whatever we want to do."⁴⁰ Judging by the reactions of law enforcement officers and MLB, it is clear that officials do not agree with this assessment.⁴¹

Legal scholars would most likely disagree with Hundley's reasoning. Self-defense is defined as "the use of force to protect oneself . . . from a real or threatened attack."⁴² In general, the use of reasonable force as self-defense is justified if the actor reasonably believes that such force is necessary to

³² Curtright, *supra* note 28, at 1D.

³³ *Id.*

³⁴ Ivan Delventhal, *Chair-Tossing Pitcher Enters No Contest Plea*, CONTRACOSTATIMES (Walnut Creek, Ca.), July 1, 2005, at F4.

³⁵ *Id.*

³⁶ Antonen, *supra* note 11, at 1C.

³⁷ Jenni Carlson, *The View from Afar: Fans Need to Rein in Their Taunts*, PITTSBURGH POST-GAZETTE, Sept. 20, 2004, at C2.

³⁸ Jim Herron Zamora, *Texas Pitcher Pleads Not Guilty; Rangers' Francisco Wants Case Finished Before Season Starts*, S.F. CHRON., Oct. 30, 2004, at B5.

³⁹ *Id.*

⁴⁰ Mirne, *supra* note 5, at 108.

⁴¹ Zamora, *supra* note 38, at B5; see also J.A. Adande, *Dodgers and Angels Knew of the Risks*, L.A. TIMES, Sept. 30, 2004, at D6.

⁴² BLACK'S LAW DICTIONARY 1364 (7th ed. 1999).

avoid the imminent danger of great bodily harm.⁴³ In criminal law, self-defense is a justification for behavior that would otherwise be deemed criminal; it is a defense to a criminal charge.⁴⁴ Given the surrounding circumstances, behavior that might otherwise be morally condemned is deemed lawful. There is a large difference, however, between justified self-defense and retaliation, which is defined as taking revenge.⁴⁵ With retaliation, the actor is reacting to a threat that has already passed and there is no legal justification for such behavior. In this regard, heckling without physical contact is not sufficient to justify a lawful physical response. Francisco's reaction in throwing a chair would therefore be classified as retaliation. Even if physical contact had taken place, it is probable that the imminent threat of great bodily harm had passed, and that Francisco was not acting in self-defense. Because his actions should be classified as retaliation and not self-defense, Francisco was originally arrested on suspicion of a felony and charged with misdemeanor aggravated assault.⁴⁶

A major fracas between fans and bullpen occupants in which physical contact was involved occurred on May 16, 2000, when the Los Angeles Dodgers were playing the Chicago Cubs at Chicago's Wrigley Field.⁴⁷ Dodgers' catcher Chad Kreuter was in the visitor's bullpen when a fan reached over the barrier and allegedly punched him in the back of the head before swiping the hat off his head.⁴⁸ Kreuter, along with several teammates, entered the stands to regain possession of his cap and a brawl broke out between the fans and players.⁴⁹ Dodgers players and coaches were fined and suspended as a result of the incident. Moreover, an injured spectator originally arrested on suspicion of disorderly conduct was awarded civil penalties against the Cubs and Dodgers in the amount of \$775,000.⁵⁰ Again, the behavior of the Dodgers' players would likely be classified as retaliation - the danger from the fan had passed by the time the players entered the seating area in search of Kreuter's cap - however, in this situation the police did not file any criminal charges.⁵¹

⁴³ *Id.*

⁴⁴ BLACK'S LAW DICTIONARY 870-71 (7th ed. 1999).

⁴⁵ THE AMERICAN HERITAGE DICTIONARY 588 (New Laurel Edition, 1989).

⁴⁶ Zamora, *supra* note 38, at B5; *see also*, Delventhal, *supra* note 34, at F4. Francisco pled no contest to the charge and was sentenced to three years' court probation, thirty days in jail (which can be satisfied through participation in a sheriff's work program), six months of weekly anger management classes, and five hundred hours of community service.

⁴⁷ Mirne, *supra* note 5, at 95.

⁴⁸ *Id.* at 106.

⁴⁹ *Id.* at 95.

⁵⁰ Bolch, *supra* note 3, at D5.

⁵¹ MacDaniel & Douglass Belkin, *In Case Against Yankees, A Game of Hardball*, THE BOSTON

HOCKEY

Fighting between fans and athletes is certainly not limited to baseball. Incidents between athletes and fans, while less frequent, remain present in football, basketball, and hockey. In hockey, one particularly ugly incident occurred in December 1979 during a game between the Boston Bruins and the hometown New York Rangers.⁵² After the final buzzer, players began fighting with each other on the ice.⁵³ A spectator grabbed the stick of a Bruins player sitting on the bench and cut him.⁵⁴ In response, Terry O'Reilly, a player for the Bruins, entered the stands and began fighting with spectators.⁵⁵ At one point, Mike Milbury, also of the Bruins, entered the stands, took a spectator's shoe, and used it to beat the fan.⁵⁶ The league suspended both O'Reilly and Milbury, and the police arrested several fans for disorderly conduct.⁵⁷ No assault charges were filed as a result of the fight, which lasted ten minutes.⁵⁸

FOOTBALL

In football, as in baseball, certain cities are notorious for especially troublesome football fans, notably Philadelphia and Oakland.⁵⁹ Inappropriate fan behavior in the Philadelphia Eagles' former stadium has been well documented. It ranges from throwing snowballs at the Dallas Cowboys' coach in 1989 to the firing of a flare gun across the field in 1997.⁶⁰ In a particularly appalling incident, fans cheered excessively while an opposing player, Michael Irvin, lay motionless on the field after suffering what turned out to be a career-ending injury.⁶¹ Throwing snowballs at opposing teams seems to be popular in other northern cities. In New York, more than 170 fans were ejected from Giants Stadium in 1995 for snowball related

GLOBE, Oct. 22, 2003, at B1.

⁵² *NHL Delays Investigation of Garden Melee*, WASH. POST, Dec. 25, 1979, at E2.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Joe Murphy, *The Night the Bruins Beat Up Rangers Fans*, EAGLE TRIB., Dec. 15, 2000, available at http://www.eagletribune.com/news/stories/20001215/SP_002.htm (last visited Aug. 22, 2005).

⁵⁷ *Id.*

⁵⁸ *NHL Delays Investigation*, *supra* note 52, at E2.

⁵⁹ Ron Rapoport, *Eagles, Raiders Fans Far From Gracious Hosts*, CHI. SUN-TIMES, Jan. 14, 2003, at 101; see also, Toney, *supra* note 29, at 150.

⁶⁰ *Through the Years*, N.Y. DAILY NEWS, Jan. 19, 2003, at 48.

⁶¹ *Id.*

incidents, including one in which a San Diego Chargers trainer was knocked unconscious after being hit with a ball of ice thrown by fans.⁶²

Although there was no physical violence involved, one of the more serious incidents involving fans heckling football players occurred in September 1993 when Bryan Cox of the Miami Dolphins was the subject of substantial verbal abuse, including racial slurs, from Buffalo Bills fans both before and during a game.⁶³ In response to the abuse, Cox directed "obscene gestures" towards the fans and was fined \$10,000 by the league.⁶⁴ Cox responded by filing a complaint with the Equal Employment Opportunity Commission ("EEOC") alleging that he was subjected to a racially hostile work environment by the NFL. After investigating the complaint, the EEOC issued a right to sue letter.⁶⁵ Cox then filed suit against the NFL in federal court, and the league ultimately reduced the fine assessed against him and officially changed its guidelines to require that teams remove fans who use racial taunts in their heckling of players.⁶⁶

BASKETBALL

Basketball arenas are similar to baseball stadiums in that the fans sit in close proximity to the players; spectators sit courtside, with no barrier between fans and players.⁶⁷ Without physical barriers, it is impossible to see where the invisible line separating the playing area from the spectators' area begins and ends. One well-publicized incident in basketball took place in February 1995 when Vernon Maxwell of the Houston Rockets entered the stands during a game against the Portland Trailblazers and punched a spectator for allegedly "yelling racial slurs and making comments about Maxwell's stillborn daughter," as well as making "obscene comments about the female members of Maxwell's family."⁶⁸ The abusive spectator, Steve George, filed a civil suit seeking \$4.5 million from both Maxwell and the Rockets and the league fined and suspended Maxwell.⁶⁹

More recently, on November 19, 2004, a major altercation between fans and players took place in Detroit. With less than one minute remaining in

⁶² Dan Barreiro, *New Yorkers Just Like Us: City's Residents Show Softer Side in Aftermath of Attacks*, STAR-TRIB. NEWSPAPER OF THE TWIN CITIES, Sept. 17, 2001, at 2C.

⁶³ Williams, *supra* note 1, at 296-97.

⁶⁴ *Id.* at 296.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Rochelle Riley, *3 Sides to the Melee; Good, Bad, Unfair*, DETROIT FREE PRESS, Nov. 23, 2004, at 1A.

⁶⁸ Brandon, *supra* note 5, at E6.

⁶⁹ *Id.*

the game, Ron Artest of the Indiana Pacers, in response to being pushed by Ben Wallace of the Detroit Pistons, lay down on the scorers' table while other players continued to push and shove each other on the court.⁷⁰ While lying on the table, Artest was hit with a cup thrown from the stands. In response, he charged into the seating area, where he exchanged punches with fans.⁷¹ Several players followed Artest into the stands, some fighting with fans,⁷² and others acting as peacemakers.⁷³ Several additional players remained on the court and fought with fans who entered the playing area.⁷⁴ After several minutes of fighting, the Detroit fans bombarded the Pacers with beer, ice, and popcorn as they exited the court to return to their locker room.⁷⁵

The National Basketball Association ("NBA") Commissioner, David Stern, suspended the athletes who played the largest role in the altercation. Pacer Ron Artest received a suspension for the remainder of the season (72 games),⁷⁶ and teammates Stephen Jackson, Jermaine O'Neal, Anthony Johnson and Reggie Miller were suspended for 30, 25, 5, and 1 game(s) respectively.⁷⁷ Pistons player Ben Wallace was suspended for six games and teammates Chauncey Billups, Elden Campbell and Derrick Coleman each received one game suspensions.⁷⁸ Additionally, O'Neal faced two counts of misdemeanor criminal assault, and Artest, Johnson, Jackson and fellow teammate David Harrison were each charged with one count of misdemeanor criminal assault.⁷⁹

What makes this incident stand out from the others is that not only did the league punish the athletes, but both the players and spectators involved in the fight were criminally charged. The most serious charges, one count of felony assault and one count of misdemeanor assault and battery, were

⁷⁰ Associated Press, *NBA Game Turns into Basket-Brawl; Pacers Charge into the Stands, Punch Pistons Fans; Game Ends Early*, CHARLOTTE OBSERVER, Nov. 20, 2004, at 1A.

⁷¹ *Id.*

⁷² Greg Sandoval, *Artest Asks the Public to 'Move On'; But Tape Implicates Fifth Pacer*, WASH. POST, Nov. 24, 2004, at D01.

⁷³ See Sheridan, *supra* note 5, at 80.

⁷⁴ See Sandoval, *supra* note 72, at D01.

⁷⁵ Associated Press, *Basket-Brawl*, *supra* note 70, at 1A.

⁷⁶ Helene St. James, *Pacer Knocked Out After \$16m Brawl*, DAILY TELEGRAPH (SYDNEY), Nov. 23, 2004, at 70.

⁷⁷ Marsha Low and Frank Witsil, *The Aftermath*, DETROIT FREE PRESS, Dec. 8, 2004, at 1A; see also *NBA Notes: Judge OKs Arbitrator's Ruling in O'Neal Case*, THE ADVOCATE (BATON ROUGE, LA), Dec. 31, 2004, at 7D, (upholding arbitrator's decision to reduce O'Neal's suspension. The arbitrator upheld suspensions for Artest, Jackson, and Johnson. Other players did not appeal their suspensions.).

⁷⁸ Low and Witsil, *supra* note 77, at 1A.

⁷⁹ Frank Witsil, *Suspect's Lawyer Could Testify in Chair-Toss Case*, DETROIT FREE PRESS, Dec. 23, 2004, at 4B.

filed against Pistons fan Bryant Johnson who allegedly threw a chair into the already-fighting crowd.⁸⁰ Three other Pistons fans were also charged with one count of misdemeanor assault and battery. One fan, John Green, who allegedly threw the cup at Artest, was charged with two counts of assault and battery.⁸¹ Two additional Pistons fans were charged with violating a city ordinance that prohibits fans from entering the court.⁸²

B. Player and Fan Violence: The Rise of Violence and Heckling in the "Kinder, Gentler" Sports

TENNIS

In contrast to the more popular American sports, heckling and violence have been the exception rather than the rule in the more "gentlemanly" sports of golf and tennis, but that tradition is changing.⁸³ During a tennis game, the crowd is encouraged to show enthusiasm and support their favorite players, but not while a player is serving or during the point.⁸⁴ In recent years, however, tennis players have been booed by fans; previously booing was taboo behavior.⁸⁵ Even worse, in 2001, the father of Venus and Serena Williams reported being subjected to racial harassment by spectators as he and Venus were walking to their seats to watch Serena, who drew jeers during the play of match and was applauded for her errors.⁸⁶ The Williams family had been criticized following Venus' sudden withdrawal from the tournament, which fans interpreted as an attempt to avoid having the sisters play against each other.⁸⁷

Perhaps the most egregious incident of fan-athlete interaction in tennis occurred in early 1993 when a fan of German player Steffi Graf stabbed Monica Seles, who at the time was the number one ranked player in the world, so that Graf would again become number one.⁸⁸ Following the attack, Graf was harassed by an obsessed fan at both the French Open and

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Bud Montet, *Hecklers Have Always Found Their Place in Sports*, BATON ROUGE SUNDAY ADVOC., July 25, 1993, at 13C. See also Lorne Rubenstein, *Heckling Is Nothing to Scream About*, GLOBE AND MAIL, March 6, 2004, at S7.

⁸⁴ A.J. Carr, *Fans Don't Make a Racket at this Event*, NEWS & OBSERVER, May 7, 2004, at C1.

⁸⁵ *Id.*

⁸⁶ *Williams Sisters' Father Says He Suffered Racist Abuse*, AGENCE FRANCE-PRESSE, March 27, 2001, available at 2001 WL 2371192.

⁸⁷ *Id.*

⁸⁸ Heather Smith, *Angry Fan Sparks New Safety Fears*, THE AGE, June 24, 1993, at 26.

Wimbledon, despite additional precautionary measures that had been taken to ensure the safety of players.⁸⁶ Graf recognized the man and reported him to the chair umpire, and the man was eventually removed from the court.⁸⁷

GOLF

Golfers have not been subjected to the physical abuse that other athletes have suffered, but heckling has become an increasing problem in recent years. Golf is played in a very public forum,⁸⁸ and increased diversity among the players and the corresponding rise in popularity of the sport have resulted in newer fans who are less familiar with the traditions and customs of the game.⁸⁹ As a result, etiquette in the galleries is changing.⁹⁰ As with other sporting events, every ticket purchased contains a warning that spectators who behave inappropriately can be ejected.⁹¹ Part of the emerging problem is that not all spectators who attend a golf tournament are there to watch the tournament; for some, golf tournaments have become a new place to socialize and drink alcohol with their friends.⁹² The FBR Open in Scottsdale, Arizona, in particular, has become home to large crowds that prefer to socialize rather than watch the tournament, and because the fans are less interested in the game, they pay less attention to its rules and traditions.⁹³

Heckling has recently caused problems for some golfers. Some players are able to ignore the comments made by fans or even turn them into advantages, but others have "rabbit ears" and become angry with spectators for violating the rules.⁹⁴ Scottish golfer Colin Montgomerie is one player, who despite heckling that was so severe it caused his father to leave the course during the 1999 Ryder Cup, is able to channel his anger at the crowd into better play.⁹⁵ The heckling was so bad during that tournament that Montgomerie's American opponent conceded the final hole as a gesture of apology for the way fans had treated Montgomerie throughout the

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Rubenstein, *Heckling*, *supra* note 83, at S7.

⁸⁹ Gary D'Amato, *Crass Course: Hecklers Becoming Part of Pro Golf*, THE MILWAUKEE JOURNAL-SENTINEL, Aug. 9, 2004, at 7D.

⁹⁰ *Id.*

⁹¹ Rubenstein, *Heckling*, *supra* note 83, at S7.

⁹² Lorne Rubenstein, *Rowdy Ryder Cup: U.S. Team Deserves a Gimme on the 17th Hole*, GLOBE AND MAIL, Sept. 29, 1999, at S5.

⁹³ D'Amato, *supra* note 92, at 7D.

⁹⁴ *Id.* See also Rubenstein, *Heckling*, *supra* note 83, at S7.

⁹⁵ Peter Laine, *Rile Up Monty and He'll Stuff Us*, DAILY STAR, Sept. 16, 2004, at 56.

tournament.⁹⁶ As a result of the heckling, Montgomerie considered no longer playing in the United States.⁹⁷ After deciding that he would continue to play in the United States, other golfers as well as magazine campaigns have encouraged fans not to bait Montgomerie.⁹⁸

Unlike Montgomerie, some golfers have let their tempers get the best of them at the expense of fans who heckle them or otherwise violate the rules. In addition to problems with hecklers, Tiger Woods has often had a problem with spectators bringing cameras onto the course, which is prohibited during tournament play.⁹⁹ Woods' caddie Steve Williams has confiscated a camera from a fan, kicked the camera of a credentialed photographer, and grabbed a spectator's camera, which he then threw into a lake.¹⁰⁰ Because it is common practice for silence to reign while a golfer is taking a shot, even the click of a camera is disturbing to players.¹⁰¹

Sudden noises, whether the click of a camera or the shout of a spectator, can ruin the concentration of golfers and disturb play. After being subjected to repeated shouts of "No Love" as he prepared to hit a shot, Davis Love III requested that the heckling fan be removed from the gallery.¹⁰² Long-time fans of golf viewed the incident as Love defending the traditions of the game, but fans new to the sport derided Love for his reaction and nominated him for ESPN's "Just Shut Up" Award.¹⁰³ Love says that those who do not agree with his decision to enforce the traditional rules of silence do not understand the game.¹⁰⁴ In response to the incident, Love said, "People just assume that we're out here screwing around. It's hard work, and I don't come into your office and screw you up. Don't come into my office and screw me up."¹⁰⁵ Love contends that the declining etiquette among golf spectators is reflective of a decline in social etiquette as a whole.¹⁰⁶ He says,

⁹⁶ Michael Grange, *Rivalry Replaces Friendly Matches*, GLOBE AND MAIL, Sept. 26, 2002, at S1.

⁹⁷ Staff, *The Last Word*, HOUSTON CHRON., Feb. 23, 2002, at 11.

⁹⁸ Jay Gearan, *Game Has No Place for Golf Loudmouths*, MONTACHUSETT TELEGRAM & GAZETTE, June 12, 2002, at 9; see also Laine, *supra* note 97, at 56.

⁹⁹ D'Amato, *supra* note 92, at 7D.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* See also Steve Campbell, *Rowdy Fans Give Golfers Reason for Pause*, THE MILWAUKEE JOURNAL SENTINEL, April 25, 2004, at 1C.

¹⁰² D'Amato, *supra* note 92, at 7D.

¹⁰³ Randall Mell, *Love Finds Fan Support: Fallout Has Been Minor Since Incident at Match Play Event*, SOUTH FLA. SUN-SENTINEL, March 11, 2004, at 1C.

¹⁰⁴ Rubenstein, *Heckling*, *supra* note 83, at S7.

¹⁰⁵ D'Amato, *supra* note 92, at 7D.

¹⁰⁶ *Id.*

I don't think it's just golf. I think it's our whole society. People don't respect what other people do, they don't respect their elders, they don't respect other people's space, they don't respect traditions or etiquette or customs. You see it in every sport. You see it walking down the street.¹⁰⁷

At least one sports sociologist agrees with Love's assessment of the downturn of behavior in society. Stan Eitzen, a retired Colorado State University professor, links the violent outbursts at sporting events to a disconnected society "where families infrequently gather for dinner, neighborhoods gate themselves off from communities and neighbors remain strangers."¹⁰⁸ Professor Steve Sugarman dismisses the idea that present failures in society lead to increased violence and instead opines that "[t]his is a long-standing familiar problem that men, when pressed, sometimes fight."¹⁰⁹

III. EXISTING ATTEMPTS TO REGULATE FAN BEHAVIOR

A. Domestic Policies

Regardless of the cause of escalating violence and abusive language in sports, some venues are making efforts to curtail the worst of the inappropriate behaviors. The Professional Golfers' Association ("PGA Tour") already prohibits cellular phones and cameras during play, and is considering enlarging the distance between the gallery and the golfers.¹¹⁰ Additionally, the PGA Tour is emphasizing the role of marshals, who already have the authority to remove offending fans in order to keep spectators quiet during play.¹¹¹ Christian End, who studies fan behavior, suggests that the PGA Tour is on the right track by educating newcomers to the sport about proper gallery etiquette and enforcing the rules and traditions of the game.¹¹²

To attempt to correct the problems facing baseball players, many teams have been increasing both the number and visibility of security officials on hand during games. For instance, after the chair-throwing incident in

¹⁰⁷ *Id.*

¹⁰⁸ *Poor Conduct*, *supra* note 9, at A01.

¹⁰⁹ *Id.*

¹¹⁰ Campbell, *supra* note 103, at 1C.

¹¹¹ Gary Mihoces, *Masters: Model of Decorum; Rowdy Fans Not Tolerated at Augusta's Temple of Golf*, USA TODAY, Apr. 8, 2004, at C1.

¹¹² *Id.*

Oakland, the Texas Rangers added four security officers to their bullpen and one to their dugout.¹¹³ At Dodger Stadium, a security officer is stationed in the visiting team's bullpen during the game, with additional officers nearby.¹¹⁴ Immediately following the Chad Kreuter incident, the Cubs boosted the security presence in the area by placing three security officials in the bullpen and off-duty police officers in the seating area surrounding the bullpen.¹¹⁵

As a result of the violence seen at Philadelphia Eagles football games, the team established Eagles Court in the basement of Veterans Stadium to swiftly deal with offenders.¹¹⁶ Eagles Court was not the first instance of a franchise or sporting venue venturing into stadium-based justice; the New Jersey Sports and Exposition Authority played host to "a judge and some lawyers at the stadium" during a playoff game in 1995 following a game in which 170 people were arrested for throwing snowballs.¹¹⁷ Eagles Court, however, was a more permanent fixture at Veterans Stadium and was in session during the football seasons from 1997 until 2003. During its existence, it was very effective in curtailing unruly fan behavior.¹¹⁸

Before Eagles Court's first session, Judge Seamus McCaffery promised that unruly fans would be arrested, brought directly before the judge, and penalized if found guilty.¹¹⁹ During the first session of Eagles Court, twenty cases were tried.¹²⁰ The court proved to be effective, as the following week, only five fans were arrested, and in the third and final session of the season, security brought only two fans before the court.¹²¹ After two seasons of working directly out of Veterans Stadium, Eagles Court relocated to a police station close to the venue, where it remained even after the Eagles moved into their new stadium.¹²² Despite the efforts of Judge McCaffery and the Eagles administration, the court has not always been as effective as it could be, due to police failure to arrest rowdy fans, especially in the closing minutes of games.¹²³ Even so, the court has been highly effective in

¹¹³ Antonen, *supra* note 11, at 1C.

¹¹⁴ Bolch, *supra* note 3, at D5.

¹¹⁵ Mirne, *supra* note 5 at 101.

¹¹⁶ Toney, *supra* note 29 at 151.

¹¹⁷ Barreiro, *supra* note 62, at 2C.

¹¹⁸ Associated Press, *Court Is No Longer in Session*, THE FORT-WORTH STAR-TELEGRAM, Dec. 7, 2003, at 16.

¹¹⁹ Toney, *supra* note 29, at 153.

¹²⁰ *Id.* at 151.

¹²¹ *Id.* at 151-52.

¹²² Jim Nolan, *Again Starting for Birds – Judge McCaffery; He's Running Eagles Court for 7th Year*, PHILA. DAILY NEWS, Aug. 15, 2003, at 08.

¹²³ Jim Nolan, *Few Arrests in the 700 Level: Romp Keeps Fans Peaceful*, PHILA. DAILY NEWS, Sept.

"cracking down on the rowdy and lewd behavior" that had characterized the Philadelphia fans for the past decades.¹²⁴ The combination of seven years of Eagles Court plus increased security features at the Eagles' new stadium has decreased incidents of fan conflicts so much so that the Eagles administration closed down Eagles Court, deeming it unnecessary.¹²⁵ Team spokesman Ron Howard indicated that Eagles Court could return if there is a need, and added that the new stadium was built with jail cells in the event a need for them arises.¹²⁶

Some states have tried to prevent or limit violent behavior at sporting events by enacting laws to "encourage responsibility on the part of sellers of alcoholic beverages"¹²⁷ and attempting to pass legislation that would criminalize excessive violence between players.¹²⁸ Additionally, some municipalities that contain sports stadiums and arenas have enacted city ordinances prohibiting fans from entering the playing area.¹²⁹

B. *International Response*

The United States is not the only country to face the problem of violence at sporting events. Many European countries have long been plagued with violence related to soccer matches.¹³⁰ Special police units exist in Europe to monitor and assess the risk of violence during upcoming matches. In England, officials estimate the cost of policing matches for a single season at more than five million dollars.¹³¹ Increased security is not the only method that other nations have used to address the problem of violence at sporting events. Great Britain has raised admission prices to keep undesirable fans away and has denied entry to spectators known to cause trouble.¹³² Some venues have even installed moats around the soccer pitch to distance unruly fans from game officials and players, who are often the primary targets of the fans' fury.¹³³ It has become common practice to create separate seating areas for fans of rival teams, and some matches between

23, 2002, at 03.

¹²⁴ *Id.*

¹²⁵ Associated Press, *Court at Philadelphia Eagles' Games Is Out of Session Sunday*, CAN. PRESS, Dec. 6, 2003.

¹²⁶ *Id.*

¹²⁷ Mirne, *supra* note 5, at 103.

¹²⁸ Fritz, *supra* note 2, at 212.

¹²⁹ See Witsil, *supra* note 79, at 4B.

¹³⁰ Russell, *supra* note 2, Section 1.1.

¹³¹ *Id.*

¹³² *Id.* at Section 6.1.1.

¹³³ *Id.* at Section 6.1.2.

teams with strong rivalries are moved to neutral sites.¹³⁴ European police have also updated their crowd control tactics to include “surveillance cameras, flying squads, the use of horses and attack dogs, and more recently, malodorants (stink bombs).”¹³⁵ As an additional measure, some venues plant peaceful models, security officials who look like fans, within the crowds as an example of the proper way to behave.¹³⁶ Other countries and government entities dealing with player security institute different procedures. In Japanese baseball stadiums, for example, a net surrounds the field and separates the fans from the players.¹³⁷

IV. SOLVING THE SPORTS VIOLENCE DILEMMA

The major question facing sports officials is whether something can be done in this country that will be effective in preventing violence between athletes and spectators and among spectators at sporting events, and the seemingly obvious answer is that it depends on the sport and on the configuration of the playing area. Sports officials must find ways of preventing violence and excessive heckling that are specifically tailored to their sport and venue. Because the individual venue locations have different configurations, a “one size fits all” approach is just not feasible, even in stadiums that host multiple sports.

A. Regulation Through “More of the Same”: Why Some Sports Can Meet Their Needs Through Small Changes

Heckling and violence is a bigger issue in some sports than it is in others. In golf, for example, while heckling has emerged as a problem, violence has so far been absent. The hecklers will continue to attend tournaments; their attendance comes part and parcel with the attraction of non-traditional fans who also frequent baseball, basketball, and football stadiums and comport themselves according to the norms of attending games of those sports.¹³⁸ Tournament officials cannot prevent the hecklers from attending, but they can institute procedures to reduce the effects of the changing gallery etiquette. The precautions against heckling already undertaken by PGA

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at Section 6.1.5.

¹³⁷ Lisa Olson, *Thanks to a Chicago Dope, Rules Have Changed*, N.Y. DAILY NEWS, April 17, 2003, at 74.

¹³⁸ Associated Press, *Whoop! There He Is!*, CHI. TRIB., March 4, 2004, at 18.

Tour officials, such as increased education of new fans and more visible enforcement of the existing rules, will most likely help to alleviate the problem over time; as more and more non-traditional fans of golf become familiar with the customs of the game they will likely learn to appreciate the rules and adjust their behavior accordingly.¹³⁹ However, if increased education and enforcement is not sufficient to quell the problem, tournament hosts should increase the distance between the gallery and the players to reduce the effects of the heckling and other disturbing sounds. Hosts can also provide additional security by increasing the number of marshals, as well as by increasing their authority.

In tennis, violence is more of a problem than it is in golf, and again, tennis officials have already taken steps that should help alleviate the problem. Following the attack on Monica Seles, tournament officials increased the number of available security officials and moved players' on-court seating so that the players' backs no longer faced the crowd.¹⁴⁰ To combat heckling during play, tennis officials should follow in the footsteps of that other gentlemanly sport, golf, and employ marshals to roam the seating area and remind fans that their silence during play is necessary and appreciated.¹⁴¹ As long as fans can express their opinions using non-profane language, they will likely be content to watch quietly while play is in progress, and boo or cheer during the breaks.

For athletes in both golf and tennis, it may become necessary to change expectations about fan behavior if education proves insufficient in reducing inappropriate behavior. With the increased non-traditional fan base attracted by more popular and dynamic players,¹⁴² it may not be realistic to expect all new fans to behave according to traditional etiquette norms. Fans should learn the rules of behavior and should be encouraged to follow them, but the players may also have to learn to play with a few more distractions in order for their sports to continue to thrive.

B. *Regulating the "Big Four": A Broader Application of an Existing Legal Solution*

The problem of excessive fan heckling is more complicated in the four major sports of baseball, football, basketball, and hockey. Even in sports

¹³⁹ Mihoces, *supra* note 114, at C1.

¹⁴⁰ Smith, *supra* note 88, at 26.

¹⁴¹ Mihoces, *supra* note 114, at C1.

¹⁴² D'Amato, *supra* note 92, at 7D; see also Mihoces, *supra* note 114, at C1 (citing an ESPN Sports poll measuring the growth in fan interest that indicates that the PGA Tour is attracting new fans from such demographics as females, African-Americans, Hispanics, and youth.).

arenas and stadiums where the fans are far enough away that violent interactions between spectators and fans are unlikely, excessive heckling remains a problem. The prevalence of racial slurs and personal attacks is especially worrisome. Official policies of ejection for fans engaging in such behavior can only be of limited effectiveness, especially if officials enforce those policies sporadically.

Rather than enforce a policy of ejection against spectators who use such abusive language, stadium officials could better prevent such behavior if a stronger deterrent than ejection was in place. We know from the example of Eagles Court that the threat of arrest and immediate punishment works as a deterrent to inappropriate behavior; the significant drop in disorderly conduct and lewd behavior is evidence of the strong deterrent effect of an immediate hearing and punishment following arrest, especially if the police continue to regularly arrest offenders.¹⁴³ Therefore, to control the inappropriate behavior of fans, including violence and excessive heckling, rather than installing a courtroom in every sports facility, those municipalities in which the venues are situated should be encouraged to establish and maintain a courtroom facility, a Court for Sport if you will, staffed with a judge or magistrate, a court reporter and deputy, and a public defender that must be available immediately prior to, during, and after games to deal with patrons who abuse the privileges of attending a sporting event. At its discretion, the municipality should also have the option of providing a prosecutor.

A specialty court for sports related matters, such as those established for domestic violence,¹⁴⁴ family matters,¹⁴⁵ drug offenses,¹⁴⁶ or workers compensation issues,¹⁴⁷ would allow the municipalities to better handle the rising number of arrests due to increased enforcement of laws and other policies discouraging inappropriate behavior. It would be more effective for municipalities to direct most sporting-event related criminal cases to a court specially designed to handle such matters. Since the court would be located within close proximity to the stadiums and because the judicial personnel involved would gain experience handling issues related to sporting event attendance, the proceedings involved would be expedited and more

¹⁴³ Nolan, *Few Arrests*, *supra* note 123, at 03.

¹⁴⁴ See, e.g., <http://www.courts.state.ri.us/family/domesticviolence.htm> (last visited July 16, 2005); <http://www.courts.state.ny.us/courts/10jd/suffolk/domesticviolence.shtml> (last visited July 16, 2005).

¹⁴⁵ See e.g., <http://www.state.wv.us/wvsca/familyct/index3.htm> (last visited July 16, 2005); <http://www.nycourts.gov/courts/nyc/family/index.shtml> (last visited July 16, 2005).

¹⁴⁶ See e.g., <http://www.nccourts.org/Citizens/CPrograms/DTC/Default.asp> (last visited July 16, 2005), http://www.sbcourts.org/special_programs/satc.htm (last visited July 16, 2005).

¹⁴⁷ See e.g., <http://www.owcc.state.ok.us/> (last visited July 16, 2005), <http://wcc.dli.mt.gov/> (last visited July 16, 2005).

efficient.¹⁴⁸ By relocating cases involving low-grade violence and other misdemeanors that occur at sporting events to the Court for Sport, the municipalities would obtain the additional benefit of alleviating some of the burden on their already crowded criminal courts.¹⁴⁹

One challenge to such a court would likely be the additional costs it would create for the municipality. The cost of the Court for Sport, however, is not prohibitive; it would employ existing facilities and personnel and require only additional use of those resources. To further reduce the costs of the court, the municipalities alone would not bear the cost of the Court for Sport, rather each municipality would determine the number of magistrates, public defenders, court reporters, and deputies it would require and propose a reasonable budget to its local teams. Individual venues that do not currently employ off-duty police officers as security officials should be required to do so. The teams would divide the cost of the court and additional security personnel among themselves based on the number of home games played each season. Teams could pay for these additional expenses in a number of ways, including increasing ticket prices or the purchase price of alcohol. Because the fans are the reason such a Court for Sport is necessary, it is equitable that they bear at least some of its cost.

While municipalities may be initially opposed to installing a Court for Sport within their respective jurisdictions, a court specifically dedicated to handling matters relating to sporting events will serve multiple purposes and provide benefits to the participating municipalities. Primarily, such a court will act as a deterrent both to the punished individuals and to the public; even the publicity surrounding the Court for Sport may act as a deterrent to inappropriate behavior.¹⁵⁰ Prior to the implementation of the Eagles Court, the police arrested an average of sixty fans per home game, but after the publicity surrounding the installation of the stadium court, fans immediately

¹⁴⁸ See Wendy N. Davis, *Special Problems for Specialty Courts: Clients Get Needed Treatment Rather than Jail Time, But Prosecutors and Defense Lawyers Alike Worry About Compromising Their Roles as Advocates*, 89 A.B.A.J. 32, 34 (Feb. 2003) (discussing how a judge who repeatedly presides over the same kind of case develops expertise, which leads to increased efficiencies). See also, Ellen Byers, *Mentally Ill Criminal Offenders and the Strict Liability Effect: Is There Hope for a Just Jurisprudence in an Era of Responsibility/Consequences Talk?*, 57 ARK. L. REV. 447, 529 (2004).

¹⁴⁹ See Mirne, *supra* note 5, at 207. See also Tim Stanley, *Busy BA City Court to Expand Sessions*, THE TULSA WORLD, Broken Arrow Edition, Aug. 3, 2005, at ZB3 (finding that municipal criminal court dockets are so full that a permanent extra session is being added to the schedule); Virginia Bridges, *New System Targets Easing Truancy Woes; Students' Parents Will Soon Face Family Court Judge*, THE HERALD-SUN, Oct. 28, 2004, at B1. (discussing how parents charged with allowing truancy will appear in Family Court, instead of criminal courts, where cases are often delayed and do not receive proper attention because of crowded dockets).

¹⁵⁰ See Toney, *supra* note 29, at 152.

adjusted their behavior.¹⁵¹ Publicity alone, however, is not a sufficient long-term deterrent. The Court for Sport must be implemented and shown to be effective in order to permanently change the future behavior of fans. With the institution of the Court for Sport, individuals will be immediately held accountable for their actions and will more readily equate the punishment with the crime, which will deter future similar behavior. Additionally, because the judicial process will be expedited, the impression of the crime and its related punishment will be reinforced in the collective mind of the general public, and again act as a deterrent to similar future behavior.

A mixture of professional security guards and off-duty police officers staff sports stadiums.¹⁵² Professional security officials already have the power to remove offending fans, and off-duty police officers have the power to arrest belligerent fans who break the law; rather than simply evicting these fans from the stadium, it should be league policy that if their offense is serious enough, they should be arrested and taken before the Court for Sport and given an immediate hearing. Police officers should be given some discretion in determining what offenses constitute a serious offense worthy of arrest, however, these officers should be encouraged to arrest those fans whose behavior warrants arrest, even if the offense occurs late in the game. One of the problems faced by Eagles Court was that officers failed to arrest offenders in the closing minutes of a game.¹⁵³ The actuality of an arrest is a necessary deterrent to behavior; if a fan's actions warrant arrest, it should be league policy to arrest the fan.

Fans should also have the power to report fellow spectators who act inappropriately or illegally to security officials. If the arrest of a misbehaving fan occurs, the reporting fans should act as witnesses during the initial hearing and provide a statement to be used at future proceedings. By allowing fans to report each other, game attendance will be more pleasant for those fans who comport themselves appropriately. With the safer and more respectful environment the Court for Sport will create, fans with children will be more likely to make attendance at a sporting event a family outing.

The criminal jurisdiction of the Court for Sport should extend only to the highest level of misdemeanor in the jurisdiction where the court is situated, and the Court for Sport should only be authorized to assign punishments up to the level of the jurisdictional maximum for the highest level of misdemeanor. Because of due process concerns, the Court for Sport should not supplant the criminal courts already in place by adjudicating

¹⁵¹ *Id.*

¹⁵² Mirne, *supra* note 5, at 101.

¹⁵³ Nolan, *Few Arrests*, *supra* note 123, at 03.

felonies. There could also be a mechanism in place allowing arrestees to opt out of the specialty court and into the standard criminal court. For instance, during arraignment at the court, the fan could plead innocent, guilty, or no contest at the proceeding or elect to have his matter referred to a state criminal court. Another alternative would make the Court for Sport mandatory, and would give notice to fans that game attendance subjected them to the jurisdiction of that court. To allow for consistency across municipalities, venues could amend the license agreement printed on game tickets to include a provision indicating that attendance at the sporting event is an agreement to be subjected to the rules and decisions of the Court for Sport. Appellate review of Court for Sport decisions should be directed to the criminal district courts, and fans who object to the procedures of the Court for Sport should also have some recourse through the criminal courts.

In addition to the punishments commonly meted out by courts, such as fines and jail time, non-traditional penalties could also act as an effective deterrent. Consequences such as loss of season tickets, one of the penalties imposed by Eagles Court,¹⁵⁴ or restricting the fan from attending a game in any sport for a particular length of time, would supply an additional deterrent to those fans who regularly attend games and abuse players and their fellow spectators.¹⁵⁵ Because a magistrate cannot make private property decisions for the leagues, punishments involving non-criminal sanctions should be meted out by a league, team, or stadium representative and could be given in addition to the criminal punishment assigned by the magistrate. Following the hearing before the magistrate, the court reporter should provide a transcript of the hearing to the league, team, or stadium representative who may then assign additional, non-traditional punishments. Alternatively, the magistrate could offer defendants the option of a more traditional penalty, such as jail time, or the forfeiture of season tickets.¹⁵⁶

For more serious violence, especially between players and fans, such as the type that occurred between Indiana Pacers players and the Detroit Pistons fans, immediate prosecution and sentencing is insufficient to fully understand the events that occurred and to determine which individuals committed which crimes. Although the current criminal courts could deal with matters such as these, it is more efficient and logical for a specialty court such as the Court for Sport to hear these infractions, provided the charges fall within the court's jurisdiction. The judicial officials assigned to

¹⁵⁴ Associated Press, *Court at Philadelphia*, *supra* note 125.

¹⁵⁵ *Id.*

¹⁵⁶ See Jim Collar, *Make-A-Wish Thankful for Tickets, Organization Surprised by the Judge's Decision*, OSHGOSH NORTHWESTERN, April 29, 2005, available at 2005 WLNR 675604 (giving a woman the choice between ninety days in jail or forfeiting her season tickets after being convicted of theft).

the Court for Sport will have a deeper understanding of the relevant issues and will be better able to keep the cases moving expeditiously and efficiently.¹⁵⁷

The individual league commissioners are already empowered to punish players who misbehave on the field, court, or ice, and they must continue to do so aggressively in order to impress upon their players the standards of appropriate conduct. Some suggest that players who engage in misconduct, especially violence, against spectators should be penalized more severely than those who engage in misconduct against fellow players.¹⁵⁸ This rule is practical in situations in which the athlete is the instigator of violence, however, it is an unwise rule when a spectator attacks an athlete with little or no warning. By playing the game, athletes "assume certain risks and hazards of the sport . . . [however] no athlete should be presumed to accept malicious, unprovoked or overly violent attack."¹⁵⁹ Players must continue to be accountable to both their teams and their leagues, but must also be held accountable to society through the Court for Sport if they commit criminal acts during a game.

Each league should enact policy changes making it mandatory for security officials to remove and, if warranted, ask police to arrest offending fans and bring them before the Court for Sport. Because the Court for Sport is a specialty court, any increase in the number of arrests due to increased enforcement of the existing laws will not crowd district court criminal dockets and the cases will be resolved expeditiously. Additionally, once fans become familiar with the policies of the Court for Sport, it is probable that the number of offenders will significantly decrease, allowing the necessary judicial officials to remain "on call" rather than physically present at the courthouse during games.¹⁶⁰

Additionally, the jurisdiction of the Court for Sport could be extended to civil matters; for example, ownership determination of items entering the spectator areas, such as home run balls or jerseys thrown by players, and cases involving accidental violence, such as instances where a fan is injured in a crowd. By transferring all sporting event related cases to the Court for Sport, traditional courts would have more time to focus on matters

¹⁵⁷ Davis, *supra* note 148, at 34.

¹⁵⁸ Elsa Kircher Cole, *Book Survey: Applying a Legal Matrix to the World of Sports*, MICH. L. REV. (2001) (reviewing Paul C. Weiler, *LEVELING THE PLAYING FIELD: HOW THE LAW CAN MAKE SPORTS BETTER FOR FANS* (2000)).

¹⁵⁹ *Regina v. Maki*, 14 D.L.R. 3d 164 (Ont. 1970). See also, Paul C. Weiler & Gary R. Roberts, *SPORTS AND THE LAW: TEXT, CASES, PROBLEMS* 1083-1106 (3d ed. 2004).

¹⁶⁰ Associated Press, *Court at Philadelphia*, *supra* note 125. (Eagles Court closed because its effectiveness combined with new security features decreased incidents to the point where a full time court was no longer needed; the possibility of resurrection exists if it becomes necessary.).

unrelated to sports. In municipalities that own their stadiums, officials could extend the jurisdiction of the Court for Sport to other uses of those stadiums, such as concerts and other non-sporting events.

C. Other (Non-Legal) Suggestions for Decreasing Violence

If used in conjunction with the Court for Sport, non-legal remedies could also help mitigate the circumstances that lead to violent behavior. Stadium officials would do well to consider restricting the sale of alcohol even more than they already do.¹⁶¹ Policies of restricting sales after a certain point in the game are already in place at most stadiums, however, additional measures, such as removing beer vendors from seating areas, may serve to reduce overall consumption and lessen the severity of heckling, which in turn would most likely reduce the severity of violence between players and fans and among fans. A policy of removing beer vendors only from seating areas that become troublesome during a game acts as a deterrent because "if your enjoyment of a beer is threatened because of the drunk in the next row, you might be more inclined to report the offender to security" before matters escalate to the point where the vender is removed from your seating area.¹⁶² Fans often enter the stadium or arena having already consumed significant amounts of alcohol during tailgating parties.¹⁶³ Stadium security should administer breathalyzers to fans who appear to be excessively inebriated before the game and remove them from the stadium before they have the chance to enter.¹⁶⁴

Baseball stadiums where the location of the bullpen provides fans with easy access to players pose additional problems that will not easily be solved merely by threats of arrest and reduced alcohol sales. It is highly unlikely that the Japanese solution of using nets to separate the fans from players would be an effective solution at American ballparks; because such nets prevent fans from catching balls that come their way and may decrease visibility, attendance may decline and team owners would not find this a palatable solution. In those stadiums with bullpens located in the foul territory of the playing field, a combination of an increased and visible security presence, a policy of arrest rather than ejection, and reduced sales of alcohol may be sufficient to help subdue overly abusive hecklers. Recent

¹⁶¹ Tom Reed, *Athletes, Fans Glare Across Gap; Animosity in Pro Sports Rises, Fed by Culture, Money, Race*, AKRON BEACON J., Nov. 24, 2004, at 1.

¹⁶² Romano, *supra* note 4, at 1C.

¹⁶³ *Id.*

¹⁶⁴ Such measures would obviously be required to conform with the 4th Amendment to the United States Constitution.

incidents of negative player-fan interaction have led baseball officials to institute a policy of providing a field supervisor in every stadium for all games during the season.¹⁶⁵

Basketball arenas pose an additional logistical problem because there is no physical barrier between the players and the fans; basketball fans are physically closer to the players than in any other sport.¹⁶⁶ A controversial solution would be to separate the fans from the players with glass partitions such as those used in hockey.¹⁶⁷ NBA Commissioner David Stern is adamant that there is already an intangible boundary in place that separates fans and players, and players must not cross that boundary to enter the stands.¹⁶⁸

Following the Pistons-Pacers incident, Commissioner Stern promised a broad review of security procedures as well as other factors contributing to violence, such as alcohol sales, in order to regain "the covenant between players and fans, and between fans and fans, and make sure we can play our games in very welcoming and peaceful settings."¹⁶⁹ The promised review led to a new NBA policy, mandatory for all teams, prohibiting the sale of alcohol during the fourth quarter and placing a limit on the size of alcoholic beverages and the number sold to each customer.¹⁷⁰ Additionally, the NBA now requires that arenas institute designated driver programs.¹⁷¹ While the NBA is clearly making an effort to alleviate the problem of dangerous fan behavior, such measures are insufficient to eliminate the problem; at the time of the brawl, the Detroit Pistons were already following these procedures.¹⁷² Increased security and reduced alcohol sales are an obvious starting point for improvement, but creating a physical barrier between fans and players by installing glass partitions or removing courtside seats may provide the better long-term solution, though perhaps at a significant cost. Fans pay premium prices for courtside seating, and teams will undoubtedly lose money and fan support if no comparable alternative to courtside seating is found.

Additionally, educating athletes in all sports as to formal complaint procedures and proving to players that such procedures remove the troublesome fan would alleviate the perceived need for violent retaliation by

¹⁶⁵ Mike DiGiovanna, *Angel Report; Visa Issues Still Delay Morales*, L.A. TIMES, Feb. 28, 2005, at D10.

¹⁶⁶ See Riley, *supra* note 67, at 1A.

¹⁶⁷ *Id.*

¹⁶⁸ See Sheridan, *supra* note 5, at 80.

¹⁶⁹ *Id.* at 78.

¹⁷⁰ *NBA Beefs up Security*, CAPITAL TIMES, Feb. 18, 2005, at 2D.

¹⁷¹ *Id.*

¹⁷² *Timberwolves*, MIAMI HERALD, Feb. 27, 2005, at C12.

players. The leagues and owners should educate players as to how to deal psychologically with hostile environments such as those encountered during games, especially games in which they constitute the visiting team.¹⁷³ Some baseball teams provide such education; the Los Angeles Angels of Anaheim viewed a tape of the Pacers-Pistons brawl at a meeting with the MLB security chief and according to first baseman Darin Erstad, the MLB officials gave the players "steps on how to handle certain situations."¹⁷⁴ The NFL already provides a Player Development Program that assists players with financial education and career counseling; it would be relatively simple to introduce seminars on appropriate reactions to rowdy fans.¹⁷⁵ The NBA provides a similar program for its rookie athletes.¹⁷⁶ Again, a seminar dealing with appropriate reactions to spectator provocation would be relatively easy to add to the agenda. Athletes as well as fans need to remember that sports are entertainment and that each contest is only a game.¹⁷⁷ A simple reminder of this, such as a handshake between players of opposing teams could go a long way towards returning sportsmanship to the game and alleviating the competitive drive of fans who view the opposing team as the enemy.¹⁷⁸

V. CONCLUSION

It is clear from examining the individual sports that no umbrella solution would suffice to curtail inappropriate fan behavior for all sports, but there is certainly a legal framework that could be effective in curtailing the abuse of players by fans and the abuse of fans by other fans. This could be achieved through increased enforcement of existing laws and policies designed to prevent violent and criminal behavior during sporting events, coupled with the implementation of a Court for Sport to hear the cases arising from increased enforcement. Even with the implementation of these measures, impermissible heckling will not disappear overnight. Over time, however, perhaps a reduction in overly offensive heckling, such as the use of racial slurs and personal attacks, will contribute to a reduction in the "need" for retaliation by players and a reduction in violence between players and fans. Additionally, if the use of offensive language in the spectator areas

¹⁷³ See Reed, *supra* note 161, at 1.

¹⁷⁴ See DiGiovanna, *Angel Report: Visa*, *supra* note 165, at D10.

¹⁷⁵ NFL Player Development, available at <http://www.nfl.com/player-development/story/6190917> (last visited August 9, 2005).

¹⁷⁶ Chris Broussard, *Pro Basketball; N.B.A. Rookies Get Lessons in Life Skills*, N.Y. TIMES, Sept. 26, 2003, at D7.

¹⁷⁷ See Reed, *supra* note 161, at 1.

¹⁷⁸ *A Handshake Disagreement*, CHI. TRIB., Oct. 30, 2004, at C30.

can be reduced, it is likely that fights among spectators will decrease as well. A legal framework, such as the Court for Sport, would act as a deterrent against those behaviors that are most problematic in the seating areas of sporting events and would provide benefits to the municipalities implementing such a specialty court.

Though it will be a challenge for the various municipalities to implement this solution, it will produce a worthwhile result, as the Court for Sport will provide efficient and immediate resolution of sports-related criminal actions, as well as an alternative means of handling civil disputes between fans arising from attendance at sports games. It will also allow municipalities to remove these matters from their current court dockets, alleviating some of the over-crowding currently plaguing courts.¹⁷⁹ In addition to the deterrent effects of the Court for Sport, by creating an environment where criminal acts are significantly diminished, the court will also create a more pleasant environment for the average sports fan.

¹⁷⁹See Stanley, *supra* note 149. See also Bridges, *supra* note 149.

