



## Beanballs and Baseball: Private Remedies vs. Criminal Sanctions for Violence in Baseball

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### I. INTRODUCTION

On August 10, 2009, the tension between the Boston Red Sox and the Detroit Tigers began to escalate when a pitch hit Detroit Tigers' first baseman Miguel Cabrera while he was at bat in the top of the fourth inning.<sup>1</sup> The beanballs<sup>2</sup> continued later in the game when Boston's third baseman Kevin Youkilis was hit by a pitch in the bottom of the fourth inning and Detroit's Brandon Inge was hit in the top of the eighth inning.<sup>3</sup>

When the two teams met the next night, the discord boiled over.<sup>4</sup> A pitch once again hit Cabrera, this time in the top of the first inning.<sup>5</sup> In the bottom of the first inning, Tigers' pitcher Rick Porcello threw an inside pitch to the Red Sox' first baseman Victor Martinez.<sup>6</sup> After nearly being hit by the pitch, Martinez "took a few menacing steps toward the

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1. Associated Press, *Tigers-Red Sox Brawl Nets Ejections*, ESPN.COM NEWS SERVS., Aug. 11, 2009, available at <http://sports.espn.go.com/mlb/news/story?id=4392728> [hereinafter *Tigers-Red Sox Brawl*].

2. A beanball is a term used in baseball to describe a pitch that targets the body of a batter, specifically a batter's head (or "bean"). See WEBSTER'S NEW WORLD DICTIONARY 120 (3d coll. ed. 1988).

3. *Tigers-Red Sox Brawl*, *supra* note 1.

4. *See id.*

5. *Id.*

6. *Id.*

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mound before returning to the batter's box," allowing the already tense situation to further intensify.<sup>7</sup>

The friction between the two teams reached its breaking point when Boston's Youkilis stepped into the batter's box to lead off the bottom of the second inning.<sup>8</sup> Youkilis was hit in the back with the very first pitch thrown by Porcello.<sup>9</sup> Youkilis immediately dropped his bat and threw his helmet at Porcello as he charged the mound.<sup>10</sup> The two became entangled, eventually falling to the ground.<sup>11</sup> Simultaneously, both benches cleared.<sup>12</sup> At the end of the brawl, Youkilis returned to Boston's bench and subsequently was ejected from the game.<sup>13</sup> Following a discussion of the events that transpired, the umpires decided to also eject Porcello for his role in the fight.<sup>14</sup> After reviewing the facts, Major League Baseball (MLB) suspended both Youkilis and Porcello for five games and fined both players.<sup>15</sup>

This Comment will focus on beanballs and fights that occur as a result of beanballs in professional baseball. It will examine the punishment of major league and minor league baseball players—at the hands of both the Commissioner of MLB and the criminal justice system. The Background will introduce two players whose lives changed forever because of beanballs. Part A explains the origin of the power to punish players and the duties of the Commissioner of Baseball. Part B concentrates on the leniency of punishment—particularly analyzing the need for position-specific suspensions—and look at inconsistencies in punishment between major league and minor league players as well as between players and fans. Part C contemplates the criminal side of players' actions, discussing the intent necessary for criminal liability, a player's assumption of risk, and the salaries of players relative to their risk assumption. Finally, Part D considers private remedies to which players have turned, including civil lawsuits and retaliatory fights on the field.

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7. *Id.*

8. *See id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *See id.*

13. *Id.*

14. *Id.*

15. Associated Press, *Bosox's Youkilis, Tigers' Porcello Suspended 5 Games Each*, USATODAY.COM, Aug. 13, 2009, available at [http://www.usatoday.com/sports/baseball/2009-08-12-youk-porcello-suspended\\_N.htm](http://www.usatoday.com/sports/baseball/2009-08-12-youk-porcello-suspended_N.htm) [hereinafter *Bosox's Youkilis*].

## II. BACKGROUND

### A. *Tony Conigliaro*

Tony Conigliaro burst onto the baseball scene when he hit a homerun in his first major league game in 1964.<sup>16</sup> In his second season with the Boston Red Sox, Conigliaro hit 32 homeruns, becoming the youngest American League homerun champion at the age of 20.<sup>17</sup> He later became the youngest player to hit 100 career homeruns.<sup>18</sup>

However, Conigliaro's career would take a turn for the worse on a summer night in Boston on August 18, 1967.<sup>19</sup> After a base hit in the second inning, Conigliaro stepped up to the plate in the fourth inning, just a few pitches after a fan had distracted the players by throwing a smoke bomb onto the field.<sup>20</sup> California Angels' Jack Hamilton slammed his next pitch into the left side of Conigliaro's face, resulting in a broken cheekbone and temporary loss of vision in Conigliaro's left eye.<sup>21</sup> The injury caused Conigliaro to miss the entire 1968 season.<sup>22</sup> He returned the following season and won the Comeback Player of the Year Award after hitting 20 homeruns, but ongoing vision problems caused him to cease playing during the 1971 season.<sup>23</sup> After a failed comeback attempt as a designated hitter in 1975, Conigliaro was forced to retire and prematurely end what likely would have been a Hall of Fame career.<sup>24</sup>

### B. *Ray Chapman*

As devastating as the loss of vision and the loss of a promising career can be, nothing compares to the ultimate loss suffered by Ray Chapman. Twenty-nine-year-old Ray Chapman was an excellent hitter and an accomplished shortstop, but his career, and life, would end

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16. Maureen Mullen, *A Hometown Hero's Fall Still Echoes After 40 Years*, BOSTON GLOBE, Aug. 16, 2007, at 1, available at 2007 WLNR 16001797.

17. Tony Conigliaro, *Batting Statistics*, <http://sports.espn.go.com/mlb/players/stats?playerId=20350> (last visited Jan. 1, 2010).

18. *Id.*

19. See Steve Buckley, *Hamilton, Fateful Pitch Will Be Forever Linked to Tony C.*, BOSTON HERALD, Aug. 17, 2007, at 86, available at 2007 WLNR 16024028.

20. *Id.*

21. *Baseball: Conig's Comeback*, TIME, Apr. 11, 1969, available at <http://www.time.com/time/magazine/article/0,9171,900769,00.html>.

22. Mullen, *supra* note 16.

23. See *id.*

24. See *id.*

abruptly in August of 1920 when he became the only player<sup>25</sup> ever to die as the result of being hit by a pitch.<sup>26</sup>

Long before batters had access to batting helmets,<sup>27</sup> Cleveland Indians' shortstop Ray Chapman was struck in the head while at bat by a ball thrown by the Yankees' pitcher Carl Mays.<sup>28</sup> Chapman fell to the ground as blood gushed from his ear.<sup>29</sup>

Chapman suffered a fractured skull and was admitted to the hospital.<sup>30</sup> The surgeon operated on Chapman for 84 minutes, during which he "removed a piece of skull about an inch and a half square and found the brain had been so severely jarred that blood clots had formed."<sup>31</sup> The impact of the ball striking Chapman's head forced his brain to collide against the inside of his skull with such a significant amount of force that it caused lacerations on both sides of his brain.<sup>32</sup> For a short time following the surgery, Chapman showed improvement in both his breathing and pulse.<sup>33</sup> However, that hope was fleeting.<sup>34</sup> At 4:40 a.m. the next day, Chapman was pronounced dead.<sup>35</sup>

Mays was "cleared of any malicious intent."<sup>36</sup> In his defense, Mays "insisted that a rough spot on the fatal ball caused it to sail and said the umpires should have thrown it out."<sup>37</sup> Because of Chapman's death,

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25. However, on July 22, 2007, a minor league first-base coach, Mike Coolbaugh, was hit by a line drive. Kevin Maloney, *Legion Follows MLB's Change*, TRENTON, N.J. TIMES, July 13, 2008, at C01, available at 2008 WLNR 13127654. Coolbaugh coached an affiliate of the Colorado Rockies known as the Tulsa Drillers. *Id.* He was killed almost instantly. *Id.* Because of this unfortunate incident, as of 2008, MLB requires all first base and third base coaches to wear helmets while on the field. *Id.*

26. See Dick Heller, *Deadliest Pitch Still a Stunner*, WASH. TIMES, Aug. 16, 2009, at C03, available at 2009 WLNR 15960326.

27. The use of batting helmets was not legislated until 1971, 51 years after Chapman was killed. See Tom Singer, *Base Coaches Weigh In On Helmet Rule*, MLB.COM, Mar. 2, 2008, [http://mlb.mlb.com/news/article.jsp?ymd=20080302&content\\_id=2400383&vkey=spt2008news&fext=.jsp&c\\_id=mlb](http://mlb.mlb.com/news/article.jsp?ymd=20080302&content_id=2400383&vkey=spt2008news&fext=.jsp&c_id=mlb) (last visited Jan. 7, 2010). Beginning in 1984, and effective for every game thereafter, all players (except those who objected on record in 1982) were required to wear batting helmets with an ear-flap. See Official Baseball Rules, Rule 1.16, available at [http://mlb.mlb.com/mlb/downloads/y2008/official\\_rules/01\\_objectives\\_of\\_the\\_game.pdf](http://mlb.mlb.com/mlb/downloads/y2008/official_rules/01_objectives_of_the_game.pdf).

28. Heller, *supra* note 26.

29. *Id.*

30. *Id.*

31. *Beaned by a Pitch, Ray Champan Dies*, NYTIMES.COM, Aug. 17, 1920, available at [http://www.nytimes.com/packages/packages/html/sports/year\\_in\\_sports/08.17.html](http://www.nytimes.com/packages/packages/html/sports/year_in_sports/08.17.html).

32. See *id.*

33. *Id.*

34. See *id.*

35. *Id.*

36. Heller, *supra* note 26.

37. *Id.*

baseball required that “clean”<sup>38</sup> balls be supplied throughout the game.<sup>39</sup> However, despite this and other rule changes in the 1920 season,<sup>40</sup> 90 years later, beanballs—and violence—are still a part of baseball.

### III. ANALYSIS

#### A. *The Power to Punish: The Commissioner of Major League Baseball*

Major League Baseball speaks through its Commissioner.<sup>41</sup> In the early years of baseball, an Association of Players acted as the Commissioner.<sup>42</sup> However, this proved highly ineffective as bribery and gambling became common in the game.<sup>43</sup> Eventually, a league replaced the Association of Players and appointed a five-person board of directors, headed by a president.<sup>44</sup> The board’s second president, William Hulbert, had a significant impact on the current discipline of professional baseball.<sup>45</sup> Hulbert was a tough disciplinarian.<sup>46</sup> He did not

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38. A clean ball is one free of spit, scratches, discoloration, and other abnormalities; clean balls sail further into the air to produce more homeruns. See DAVID NEMEC, STUART SHEA, PAUL ADOMITES, STEPHEN HANKS, DICK JOHNSON, DAVID RASKIN, THOMAS W. GILBERT, ANDY COHEN, JOE GLICKMAN & DANNY GREEN, *THE BASEBALL CHRONICLE* 88 (2008). Many suggest Chapman could have avoided Mays’s pitch had the ball not been so worn and discolored. See *id.*

39. See *id.*

40. Also in 1920, “trick pitches” were banned from baseball. *Id.* Common trick pitches at the time included spitballs (putting saliva or a similar substance on the ball) and emery balls (filing a portion of the outer leather of the ball to cause a change in the rotation of the pitch). *Id.* However, professional baseball permitted 17 major league pitchers to continue the use of spitballs through a grandfather clause. *Id.* Because of the ban, the Estimated Run Averages in baseball increased significantly. *Id.* However, the 17 major league players who legally were allowed to continue pitching spitballs did not see any significant changes in their Estimated Run Averages. *Id.*

41. Currently, the Commissioner of MLB is Allen H. (Bud) Selig. See MLB.com, About MLB, [http://www.mlb.mlb.com/mlb/official\\_info/about\\_mlb/index.jsp](http://www.mlb.mlb.com/mlb/official_info/about_mlb/index.jsp) (last visited Jan. 3, 2010). He is the ninth Commissioner and was elected on July 9, 1998. See MLB.com, The Commissionership: A Historical Perspective, [http://mlb.mlb.com/mlb/history/mlb\\_history\\_people.jsp?story=com](http://mlb.mlb.com/mlb/history/mlb_history_people.jsp?story=com) (last visited Jan. 3, 2010) [hereinafter Commissionership].

42. Commissionership, *supra* note 41.

43. See *id.*

44. *Id.*

45. See *id.*

46. See *id.*

hesitate to eject an entire team<sup>47</sup> for “ungentlemanly” conduct, and he did not allow for any appeals.<sup>48</sup>

By 1900, the large number of leagues, 14 in all, required a common agreement.<sup>49</sup> This led to the establishment of a three-man commission with the power to suspend and fine players.<sup>50</sup> However, after the 1919 World Series,<sup>51</sup> it was determined that authority needed to be vested in a single person.<sup>52</sup> Perhaps appropriately, baseball’s first Commissioner was Kenesaw Mountain Landis, a United States District Court Judge.<sup>53</sup>

Among other duties, the Commissioner is responsible for “mak[ing] decisions . . . regarding on-field discipline”<sup>54</sup> and holds the office for a minimum of three years.<sup>55</sup> The Commissioner also has the ability to judge “conduct by Major League Clubs, owners, officers, employees or players . . . [as not] in the best interests of Baseball.”<sup>56</sup> If such a determination is made, the Commissioner may take punitive action for each separate offense by using one or more of the following:

- (a) a reprimand; (b) deprivation of a Major League Club of representation in Major League Meetings; (c) suspension or removal of any owner, officer or employee of a Major League Club;
- (d) temporary or permanent ineligibility of a player; (e) a fine, not to

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47. The entire Cincinnati Reds Team (the first professional baseball team, originally known as the Cincinnati Red Stockings) was expelled for selling alcohol at its stadium. *See id.*

48. *See id.*

49. *See id.*

50. *Id.*

51. In 1919, eight members of the Chicago White Sox intentionally threw the World Series against the Cincinnati Reds. NEMEC ET AL., *supra* note 38, at 84. This famous scandal has been termed the “Black Sox Scandal.” *Id.* Well-known player “Shoeless” Joe Jackson maintained his innocence from the scandal—citing his six series Runs Batted In (RBI), 12 series hits, and .375 series batting average—but was unable to explain why he received money from the conspirators and he was subsequently banned from professional baseball. *Id.* at 84, 87. As a result, he was ineligible to be elected to the Baseball Hall of Fame. *Id.* Entertainment has capitalized on the scandal as well. The movie *Eight Men Out* was based on the Black Sox Scandal, while *Field of Dreams* was based on the redemption of “Shoeless” Joe. *See generally* Daniel J. Voelker & Paul A. Duffy, *Black Sox: ‘It Ain’t So, Kid, it Just Ain’t So,’* CHICAGO LAWYER, Sept. 1, 2009, available at <http://www.chicagolawyer magazine.com/Archives/2009/09/01/092009sox.aspx>.

52. *See* Commissionership, *supra* note 41.

53. *See id.*

54. MAJOR LEAGUE BASEBALL CONST. art. II, § 2(f), *reprinted in* PAUL C. WEILER & GARY R. ROBERTS, STATUTORY AND DOCUMENTARY SUPPLEMENT TO SPORTS AND THE LAW TEXT, CASES, PROBLEMS 57 (West 2004).

55. MAJOR LEAGUE BASEBALL CONST. art. II, § 8, *reprinted in* WEILER, *supra* note 54, at 58.

56. MAJOR LEAGUE BASEBALL CONST. art. II, § 3, *reprinted in* WEILER, *supra* note 54.

exceed \$2,000,000 in the case of a Major League Club, not to exceed \$500,000 in the case of an owner, officer or employee, and not to exceed \$5,000 in the case of a player; (f) loss of the benefit of any or all of the Major League Rules, including but not limited to the denial or transfer of player selection rights provided by Major League Rules 4<sup>57</sup> and 5;<sup>58</sup> and (g) such other actions as the Commission may deem appropriate.<sup>59</sup>

Through these constitutional provisions, the Commissioner derives his power to suspend and fine MLB players. In most circumstances, however, punishment ends with the Commissioner and seldom results in any criminal prosecution.

*B. The Leniency of "Punishment"*

Is private retaliation a harsher punishment than actual suspension? It might be an overstatement to assert that player punishments are too lenient. Should a bench clearing brawl, possibly instigating injury to many players, result in a suspension of only five games? For a major league player, a solid punch in the throwing arm could be a harsher punishment, and could lead to more missed playing time, than a five-game suspension. The suspension may remove the player for five games, but an arm injury could remove the player from the starting lineup, resulting in a season of minor league play during rehabilitation or possibly even ending a player's professional career.

1. Should the Punishment Be Position-Specific?

The frequency of a player's playing time has a significant impact on suspensions. A suspension of five games is counter-productive for a starting pitcher. Typically, such a suspension results in the player missing, at most, one game due to the rotation of starting pitchers used

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57. See Official Baseball Rules, Rule 4, available at [http://mlb.mlb.com/mlb/downloads/y2008/official\\_rules/04\\_starting\\_ending\\_game.pdf](http://mlb.mlb.com/mlb/downloads/y2008/official_rules/04_starting_ending_game.pdf) (placing rules on starting and ending the game as well as regulating batting order, balking, availability of base coaches, ejection from a game, scoring runs, length of games, doubleheaders, forfeits, protests, and suspended games (including rules regarding halting a game due to weather, as made infamous by Game Five of the 2008 World Series between the Philadelphia Phillies and the Tampa Bay Rays)).

58. See Official Baseball Rules, Rule 5, available at [http://mlb.mlb.com/mlb/downloads/y2008/official\\_rules/05\\_putting\\_ball\\_in\\_play.pdf](http://mlb.mlb.com/mlb/downloads/y2008/official_rules/05_putting_ball_in_play.pdf) (placing rules on putting the ball in play such as offensive team objectives, defensive team objectives, dead balls, and ending an inning).

59. MAJOR LEAGUE BASEBALL CONST. art. II, § 3, reprinted in WEILER, *supra* note 54, at 57-58.

by most teams.<sup>60</sup> A suspension can also turn into relief for an overworked pitcher needing an extra day off for rest and relaxation. As a result, position-specific suspensions in baseball are long overdue.

The suspensions that resulted from the beanball incident between the Tigers and Red Sox had significantly different impacts on the Red Sox and the Tigers. The Tigers' starting pitcher, Rick Porcello, was suspended for five games—the same penalty Red Sox's first baseman Kevin Youkilis received.<sup>61</sup> However, due to Porcello's position as a starting pitcher, he missed only one scheduled game, whereas Youkilis missed all five of Boston's games during the suspension period.<sup>62</sup>

The Red Sox saw a significant impact from Youkilis's suspension. The effect of the suspension on the Red Sox is noticeable statistically in the drop-off in offensive production the team experienced.<sup>63</sup> Not only can this be seen with the games Youkilis missed during his suspension, but also throughout the 26 games Youkilis missed in the 2009 Red Sox season.<sup>64</sup> During Youkilis's five-game suspension for his fight with Porcello, the Red Sox won two of their five games and scored an average of 4.2 runs per game.<sup>65</sup> When compared to the Red Sox season average of 5.38 runs per game, the team scored one less run per game in Youkilis's absence.<sup>66</sup> In the 26 total games that Youkilis missed during the 2009 season, the Red Sox won 14 games and lost 12 games—a .538 winning percentage—and averaged 4.88 runs per game—a half run below their season average.<sup>67</sup>

Other aspects of the game are affected when an all-star player, such as Youkilis, misses a significant amount of playing time due to a suspension or an injury. A secondary player who does not see as much playing time outside of practice will be asked to step in and try to fill the void in the starting line-up. During Youkilis's absence in the 2009

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60. Most teams have a five-pitcher rotation during the regular season; hence, most starting pitchers only pitch once every five games. Teams typically employ either a three or a four-man rotation during the post-season. See, e.g. Tom Saladino, *2 Left Out in Braves' Rotation*, PITTSBURGH POST-GAZETTE, Sept. 27, 1995, at C5, available at 1995 WLNR 2410647.

61. *Bosox's Youkilis*, *supra* note 15.

62. *See id.*

63. See Kevin Youkilis, Game Log, <http://espn.go.com/mlb/players/gamelog?playerId=5375> (last visited Jan. 3, 2010).

64. *See id.*

65. *See id.*

66. *See id.*

67. See Red Sox, Box Score, <http://sports.espn.go.com/mlb/teams/schedule?team=bos&season=2009&seasonType=1> (follow "result" hyperlink for game of interest; then select "box score" hyperlink) (last visited Jan. 26, 2010) (calculated consulting statistics from games on Apr. 24, 2009, May 5-19, 2009, July 25, 2009, Aug. 12-16, 2009, Sept. 13-17, 24, and 30, 2009) [hereinafter Red Sox].

season, his replacements performed well below Youkilis's all-star standards.<sup>68</sup> In the 26 games he missed in 2009, Youkilis's replacements had only 21 hits in 91 at bats, a batting average of .230, compared to Youkilis's average of .305—a 75-point difference.<sup>69</sup> The replacements compiled an on-base percentage<sup>70</sup> of .313, 100 points lower than Youkilis's .413 on-base percentage.<sup>71</sup> Even to someone who is not a baseball fan, such statistics highlight the significant differences between a reliable starter and the uncertainty of inconsistent replacements.

## 2. Major League vs. Minor League

Although not a common event, players do occasionally receive punishments outside the realm of MLB and the Commissioner. During a brawl that occurred in July 2009, minor league Peoria Chiefs' pitcher Julio Castillo picked up a baseball and threw it toward the dugout of the Dayton Dragons.<sup>72</sup> His throw sailed over the dugout and struck 45-year-old Chris McCarthy in the head.<sup>73</sup> McCarthy was "hit . . . so hard that the seams [of the ball] left a mark on his scalp."<sup>74</sup> Additionally, McCarthy "had a throbbing headache for days and couldn't wear a hard hat for his job because of swelling."<sup>75</sup> Castillo claimed that when the brawl ensued, he felt "frightened" and threw the ball at the dugout to prevent the Dragons' players from coming out onto the field.<sup>76</sup> Castillo was charged with felonious assault.<sup>77</sup> Although Castillo could have received a sentence of up to eight years in jail, the judge believed that Castillo was "remorseful" for his actions and ultimately sentenced him to 30 days in jail and three years of probation.<sup>78</sup> Additionally, the court required Castillo to write an apology to McCarthy, take anger

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68. *See id.*

69. *See id.* Batting averages are out of 1.000 and are determined by dividing the number of hits by the number of times the player batted. MLB Statistics Glossary, June 1, 2007, <http://sports.espn.go.com/mlb/news/story?page=stats/glossary> (last visited Jan. 2, 2011).

70. On-base percentage = (hits + walks + hit by pitch) ÷ (at bats + walks + hit by pitch + sacrifice flies). *Id.*

71. *See Red Sox, supra* note 67.

72. Associated Press, *Felony Charge for Minor League Player After Fan Is Hit By a Ball*, N.Y. TIMES, July 26, 2008, at D3, available at 2008 WLNR 13941185.

73. Associated Press, *Castillo Gets Jail, Probation*, ESPN.COM NEWS SERVS., Aug. 6, 2009, available at <http://sports.espn.go.com/minorlbb/news/story?id=4381593>.

74. *Id.*

75. *Id.*

76. *See id.*

77. *Id.*

78. *Id.*

management therapy, maintain gainful employment, and pursue his graduate equivalency degree.<sup>79</sup>

Castillo is just one of several Minor League Baseball players held criminally accountable. On August 14, 2007, Jose Offerman, a former major leaguer turned minor leaguer, was playing for the Long Island Ducks while taking his turn at bat.<sup>80</sup> The opposing Bridgeport Bluefish pitcher, Matt Beech, struck Offerman in the leg with a pitch.<sup>81</sup> Offerman charged the mound, swinging his bat in retaliation, and hitting Beech and the Bluefish's catcher, John Nathans, instead of the ball.<sup>82</sup> Beech suffered a broken finger on his non-pitching hand, a minor grievance compared to his league suspension and fine.<sup>83</sup> Struck on the head, Nathans received a career-ending concussion resulting in vertigo, inner ear damage, headaches, vomiting, and other concussion symptoms.<sup>84</sup> Offerman was charged with two counts of felony assault, a charge that typically carries a potential maximum sentence of ten years imprisonment.<sup>85</sup> However, Offerman's actual sentence consisted of two years probation, anger management treatment, and reimbursing Beech and Nathans for their medical bills.<sup>86</sup> He was also permanently suspended from baseball in the United States.<sup>87</sup> Until recently,<sup>88</sup> Offerman continued his baseball career by managing the Licey Tigers in the Dominican Republic.<sup>89</sup>

Offerman and Castillo may have been criminally prosecuted, but such was not the case for major league pitcher Juan Marichal, despite the similarities to Offerman's attack. During a heated pennant race late in the 1965 season, the Los Angeles Dodgers and the San Francisco Giants

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79. *Id.*

80. Associated Press, *Former Big Leaguer Offerman Arrested for Melee*, ESPN.COM NEWS SERVS., Aug. 15, 2007, available at <http://sports.espn.go.com/mlb/news/story?id=2975386>.

81. *Id.*

82. *See id.*

83. *See* Associated Press, *Catcher Says Attack Ended His Career*, ESPN.COM NEWS SERVS., Feb. 12, 2009, available at <http://sports.espn.go.com/mlb/news/story?id=3902057>.

84. *See id.*

85. Associated Press, *Offerman Gets Two Years of Probation for Minor League Bat Attack*, ESPN.COM NEWS SERVS., Oct. 30, 2007, available at <http://sports.espn.go.com/mlb/news/story?id=3087226> [hereinafter *Offerman Gets Two Years*].

86. *Id.*

87. *Id.*

88. On January 16, 2009, Offerman, while acting as manager of the Licey Tigers, punched Umpire Daniel Reyburn. Associated Press, *Offerman Barred by League*, N.Y. TIMES, Jan. 19, 2010, at B12, available at 2010 WLNR 1120200. The Dominican Winter League banned Offerman for life. *Id.*

89. *Id.*

took part in one of the most violent brawls in MLB history.<sup>90</sup> The tension between the teams manifested itself on August 20, 1965, when a clash nearly ensued over a couple of catcher's interference<sup>91</sup> calls.<sup>92</sup> Los Angeles Dodger Maury Wills was accused of intentionally tipping the glove of the Giants' catcher.<sup>93</sup> Later, Giants' outfielder Matty Alou countered by grazing the facemask of Dodgers' catcher John Roseboro while swinging his bat.<sup>94</sup> This provoked Roseboro, who retaliated by nearly hitting Alou with his return throw to the mound.<sup>95</sup>

A few days later, on August 24, 1964, Giants' pitcher Marichal attempted to even the score by throwing balls at two Dodger batters.<sup>96</sup> The already enraged Roseboro instructed Dodger Hall Of Fame pitcher Sandy Koufax to hit Marichal with a pitch the next time he came to the plate.<sup>97</sup> Koufax refused to do so.<sup>98</sup> Taking matters into his own hands, Roseboro returned the baseball to Koufax by throwing it right past the head of Marichal.<sup>99</sup> The players exchanged harsh words until Roseboro removed his facemask and stood up.<sup>100</sup> Marichal then proceeded to hit the unmasked Roseboro over the head with his bat, leading to a long and violent brawl.<sup>101</sup> Roseboro suffered a concussion from the blow to his head.<sup>102</sup> Marichal's punishment was a \$1750 fine and a weeklong suspension.<sup>103</sup> As a pitcher, he missed his next two scheduled starts.<sup>104</sup> Many felt the penalty was not severe enough in light of his actions.<sup>105</sup>

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90. See Juan Marichal: Biography, [http://www.baseballlibrary.com/ballplayers/player.php?name=Juan\\_Marichal\\_1937](http://www.baseballlibrary.com/ballplayers/player.php?name=Juan_Marichal_1937) (last visited Nov. 20, 2009) [hereinafter Marichal].

91. MLB Rule 6.08(c) provides that "[t]he batter becomes a runner and is entitled to first base without liability to be put out (provided he advances to and touches first base) when . . . [t]he catcher or any fielder interferes with him." Official Baseball Rules, Rule 6.08(c), available at [http://mlb.mlb.com/downloads/y2008/official\\_rules/06\\_the\\_batter.pdf](http://mlb.mlb.com/downloads/y2008/official_rules/06_the_batter.pdf).

92. See Marichal, *supra* note 90.

93. See *id.*

94. See *id.*

95. See *id.*

96. See *id.*

97. See *id.*

98. *Id.*

99. See *id.*

100. See *id.*

101. See *id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. "Declared Lou Johnson: 'He should have been suspended for at least the rest of the season.' Ron Fairly quipped that the penalty 'should have been 1,750 days and \$8.'" Larry Gerlach, *Crime and Punishment: The Marichal-Roseboro Incident*, UNIV. OF NEB. PRESS, Mar. 22, 2004, at 1, available at 2004 WLNR 21998537 (quoting Jimmy Cannon, N.Y. JOURNAL-AMERICAN, Aug. 24, 1965 (on file with The Dolph Briscoe Center for

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Despite the incident, in 1983, Marichal was inducted into the MLB Hall of Fame.<sup>106</sup>

Why is it that Castillo and Offerman were prosecuted in the legal system and Marichal was left to be dealt with by the Commissioner? The acts of Offerman and Marichal were highly similar when viewing the action, but not when examining the result: both attacked an opponent with a bat and both caused serious injury, yet, one is revered, and the other is despised. How can two similar events yield such opposite results?

One possible theory of the differing sentences between Castillo and Offerman versus Marichal could be the result of Marichal being in the major leagues while Offerman and Castillo were in the minor leagues. Offerman was at one time a major league player; however, at the time of the incident, he was playing in the minors. If he were still in the majors, would his attack have been “part of the game” and overlooked? In the alternative, if Marichal had been in the minor league, would he have received a harsher sentence? Are minor league players more “dispensable” than major league players?

Furthermore, it is possible that the inconsistencies between the major and minor leagues is a façade for player popularity. A major league player has a rite of passage and as a result becomes popular with fans. Fans are often the main source of revenue and revenue is often dependent on success.<sup>107</sup> When a hometown favorite [who could still be receiving his seven-figure salary] is injured, suspended, or otherwise out of the line-up, this affects the fans and could lead to a decline in attendance, resulting in decreased revenue. In comparison, minor league players generally do not have a significant individualized fan base, and therefore, as individual players, create less of a draw for attendance. When a minor league player is injured, suspended, or otherwise taken out of the line-up, minor league fans—who usually support a team rather

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American History, University of Texas at Austin)). Even Roseboro felt the penalty was unjust, saying an appropriate penalty would be to “[j]ust put him and me in a locked room together for ten minutes.” *Id.* (quoting Jack Mann, *The Battle of San Francisco*, *SPORTS ILLUSTRATED*, Aug. 30, 1965, at 12).

106. Marichal, *supra* note 90.

107. Teams are not required to disclose their financial situations. However, a Cleveland Indians disclosure from 1997 shows that ticket sales reaped \$49 million, local radio and television garnered \$17 million, merchandise sales racked up \$17 million, the Major League Baseball Central Fund brought in \$16 million, concessions and catering were responsible for \$14 million, postseason revenue accounted for \$13 million, rental of private suites and club-seats collected \$9 million, and revenue sharing provided a \$7 million loss provision. See JONAH KERI & BASEBALL PROSPECTUS, *BASEBALL BETWEEN THE NUMBERS: WHY EVERYTHING YOU KNOW ABOUT THE GAME IS WRONG* 175 (2006). Most of these categories are dependent upon fans.

than a player—still attend the games. This generates revenue through ticket sales, parking, and concessions; thus, the player's absence affects the franchise in a less dramatic way. Therefore, there is a greater disincentive to punish a major league player due to the decrease in revenue, while there is less of a deterrent to punishing a minor league player. The reality remains that professional baseball is a business.

### 3. Players vs. Fans

The inconsistencies do not stop there; discrepancies also exist between the criminal sanctions imposed upon players and fans for fights. On May 16, 2000, the Los Angeles Dodgers played the Chicago Cubs at Wrigley Field.<sup>108</sup> During the game, Chad Kreuter, a member of the Dodgers, was sitting in the bullpen.<sup>109</sup> The Cubs bullpen is located in foul territory along both the first and third baselines, rather than behind the outfield fence as in most MLB stadiums.<sup>110</sup> At some point during the game, a Cubs fan reached into the bullpen, hit Kreuter in the back of the head, and stole his baseball hat.<sup>111</sup> Kreuter immediately went into the stands after the fan, and his Dodger teammates followed.<sup>112</sup> The result was “a half-dozen or so Dodgers in the stands, trading punches with fans.”<sup>113</sup> After nine minutes and multiple attempts to restore order, the brawl stopped.<sup>114</sup> Three of the Cubs fans involved in the brawl were arrested and charged with disorderly conduct for their actions.<sup>115</sup> However, the Dodgers involved did not face any similar criminal charges.<sup>116</sup> Even Sandy Alderson, a Vice President in the Commissioner's office, noted the discrepancy, stating: “Some sort of punishment is in order for the Dodgers involved.”<sup>117</sup>

While it may be opined that this discrepancy in the intensity of punishment is due to the fans being punished through the legal system and the players being punished by the Commissioner, this begs the question of why the players were not also punished by the legal system.

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108. Associated Press, *National League: Roundup; After Brawl, Cubs Raise Security*, N.Y. TIMES, May 18, 2000, at D6, available at 2000 WLNR 3289738 [hereinafter *Cubs Raise Security*].

109. *Id.* A bullpen is the area near the field where the relief pitchers can practice and warm-up. See WEBSTER'S NEW WORLD DICTIONARY 184 (3d coll. ed. 1988).

110. See *Cubs Raise Security*, *supra* note 108.

111. See *id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. See *id.*

117. *Id.*

Why should a player be shielded from legal consequences just because he is a professional athlete? From another perspective, a Kmart employee who punches a customer does not escape criminal liability simply because he or she could receive punishment from the retail establishment. However, in many circumstances, this same logic protects professional baseball players.

#### 4. Baseball Meets the World of Sports

Baseball is not the only sport with “on the field” fights. On February 21, 2000, the Boston Bruins’ Marty McSorley, a 17-year veteran of the National Hockey League (NHL), hacked Donald Brashear of the Vancouver Canucks in the head with his hockey stick during the last three seconds of the game.<sup>118</sup> The hit caused Brashear to fall, hitting the back of his head on the ice.<sup>119</sup> Unconscious and enduring a seizure, Brashear suffered a Grade III<sup>120</sup> concussion.<sup>121</sup>

The NHL suspended McSorley indefinitely immediately following the incident.<sup>122</sup> In addition, the Canadian<sup>123</sup> criminal justice system prosecuted McSorley for his act.<sup>124</sup> McSorley was charged and found guilty of assault with a weapon.<sup>125</sup> However, the sentence was not as harsh as many expected it to be. McSorley received 18 months of probation, which was to be expunged from his record upon successful

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118. See Associated Press, *Brashear Testifies*, SPORTSILLUSTRATED.COM, Sept. 27, 2000, available at [http://sportsillustrated.cnn.com/hockey/nhl/news/2000/09/26/brashear\\_testifies\\_ap/](http://sportsillustrated.cnn.com/hockey/nhl/news/2000/09/26/brashear_testifies_ap/) [hereinafter *Brashear*].

119. *Id.*

120. The American College of Sports Medicine uses a system of three grades for concussions. Dan J. Tennenhouse, *Types of Brain Injury Caused by Head Trauma*, 2 ATTORNEYS MEDICAL DESKBOOK § 25:32 (4<sup>th</sup> ed. 2008). A Grade I concussion is a mild concussion and has no loss of consciousness and symptoms are resolved within 30 minutes. *Id.* A Grade II concussion is moderate and includes a loss of consciousness for under five minutes and symptoms that take 30 minutes to 24 hours to settle. *Id.* A Grade III concussion is considered the most severe and occurs when there is a loss of consciousness for a period greater than five minutes and symptoms for longer than 24 hours. *Id.*

121. *Brashear*, *supra* note 118.

122. Associated Press, *Very Major Penalty*, SPORTSILLUSTRATED.COM, Oct. 7, 2000, available at [http://sportsillustrated.cnn.com/hockey/nhl/news/2000/10/06/mcsorley\\_assault\\_ap/](http://sportsillustrated.cnn.com/hockey/nhl/news/2000/10/06/mcsorley_assault_ap/).

123. The game between the Bruins and the Canucks, in which the assault occurred, was played in Vancouver and under the jurisdiction of British Columbia, Canada. See *id.*

124. See *id.*

125. *Id.*

completion.<sup>126</sup> The only special circumstance was that McSorley was not allowed to play hockey with Brashear during that time.<sup>127</sup>

Even a light sentence such as McSorley's is more than many NHL players receive. For example, Scott Hartnell, a forward for the Philadelphia Flyers, was involved in a scuff with Kris Letang, a Pittsburgh Penguins defenseman, during a hockey game on October 8, 2009.<sup>128</sup> Letang emerged from the scuffle with a bloody hand, allegedly the result of Hartnell biting his finger.<sup>129</sup> When questioned, Hartnell only stated, "A lot of stuff happens on the bottom of the pile. . . . He had his hands in my face, doing the face wash, and we were rolling around. I can't say what happened."<sup>130</sup> Cameras were unable to provide any evidence of the bite because the players' bodies blocked any view.<sup>131</sup> Hartnell received a two-minute penalty in the penalty box during the game.<sup>132</sup> Despite the circumstantial evidence, it was decided that "there was insufficient evidence to punish Hartnell."<sup>133</sup>

### C. *Criminal Act or Part of the Game*

Beanballs are usually pitched intentionally, and players known for their beanballs are commonly referred to as "headhunters."<sup>134</sup> "Being *intentionally* hit is . . . an inherent risk of the sport, so accepted by custom that a pitch intentionally thrown at a batter has its own terminology: 'brushback,' 'beanball,' 'chin music.'"<sup>135</sup> Beanballs are considered payback, a type of eye-for-an-eye, retributive justice; they are used "to disrupt a batter's timing or back him away from home plate, to retaliate after a teammate has been hit, or to punish a batter for having hit a home run."<sup>136</sup> They often are ordered by a team's manager and are a compulsory requirement for a pitcher who wants to be a "team player."<sup>137</sup>

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126. *See id.*

127. *See id.*

128. *See* Associated Press, *Source: Lack of Proof Clears Hartnell*, ESPN.COM NEWS SERVS., Oct. 9, 2009, available at <http://sports.espn.go.com/nhl/news/story?id=4546976&campaign=rss&source=NHLHeadlines>.

129. *Id.*

130. *Id.*

131. *See id.*

132. Sporting News Staff, *Flyers' Hartnell Avoids Punishment in Letang Bite Allegation*, SPORTINGNEWS.COM, Oct. 9, 2009, <http://aol.sportingnews.com/nhl/story/2009-10-09/flyers-hartnell-avoids-punishment-letang-bite-allegation> (last visited Aug. 1, 2011).

133. *Id.*

134. *See* Avila v. Citrus Cmty. Coll. Dist., 131 P.3d 383, 393 (Cal. 2006).

135. *Id.*

136. *Id.*

137. *See id.*

With each retaliation, there is typically another more harmful retaliation from the other team.<sup>138</sup> This results in a greater chance of injuries to multiple players.

MLB prohibits pitchers from throwing beanballs.<sup>139</sup> According to the Official Baseball Rules, if an umpire believes that a pitcher has intentionally thrown the ball at a batter, the umpire has the option of either giving a warning or ejecting the pitcher and/or the manager from the game.<sup>140</sup> In addition, league presidents have the authority to take supplementary action.<sup>141</sup> Furthermore, the comments of the Official Baseball Rules state: “[t]o pitch at a batter’s head is unsportsmanlike and highly dangerous. It should be—and is—condemned by everybody. Umpires should act without hesitation in enforcement of this rule.”<sup>142</sup>

However, as artfully stated by Johan Santana, the two-time Cy Young<sup>143</sup> Award-winning starting pitcher for the New York Mets, “I feel like I have to protect my teammates. If you have been around the game long enough and know how it is, then I don’t have to explain. All I do is protect my teammates the right way. That’s it.”<sup>144</sup> Santana’s statement begs the question: why are these intentional acts not punished outside of the realm of baseball?

#### 1. Intentional Tort: Battery

Black’s Law Dictionary defines battery as “[t]he use of force against another, resulting in harmful or offensive contact.”<sup>145</sup> However, when a ball is already sailing toward a batter at 100 miles per hour, how can it be proven that the pitcher intended to strike the batter with the pitch? A beanball is not typically the first pitch of a game; rather, it

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138. *See id.*

139. *See* Official Baseball Rules, Rule 8.02(d), available at [http://mlb.mlb.com/mlb/downloads/y2008/official\\_rules/08\\_the\\_pitcher.pdf](http://mlb.mlb.com/mlb/downloads/y2008/official_rules/08_the_pitcher.pdf).

140. *Id.*

141. *Id.*

142. *Id. cmt.8.02(d).*

143. The Cy Young Award is an honor given each year to the two best pitchers: one in the American League and the other in the National League. *See* Cy Young: Biography, [http://biographybase.com/biography/Young\\_Cy.html](http://biographybase.com/biography/Young_Cy.html) (last visited Nov. 18, 2009). The Baseball Writers Association of America decides the winning pitchers through a vote. *See* About BBWAA, <http://bbwaa.com/about/> (last visited Nov. 18, 2009). The award is presented in memory of pitcher Denton True “Cy” Young (1867-1955), who retired with a record-setting 511 career wins. *See* Cy Young: Biography, *supra*.

144. Ted Keith, *It’s Dangerous Business, But Sadly Beanballs Are Probably Here To Stay*, SPORTSILLUSTRATED.COM, Aug. 18, 2009, [http://sportsillustrated.cnn.com/writers/writers/ted\\_keith/08/18/beanballs.ingrained/index.html](http://sportsillustrated.cnn.com/writers/writers/ted_keith/08/18/beanballs.ingrained/index.html) (last visited Aug. 1, 2011).

145. BLACK’S LAW DICTIONARY 162 (8th ed. 2004).

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often occurs after a near beanball to a player of the fielding team or after fights or near fights.<sup>146</sup>

Therefore, how does an umpire know for sure that the pitch was released from the pitcher's hand with the intent of hitting the batter? Hamilton, the pitcher who ended Conigliaro's baseball career, had control issues, but only hit 13 batters during his eight years pitching in the major leagues.<sup>147</sup> Additionally, five of those 13 hits occurred during his rookie year, leaving only eight batters hit in seven years—an excellent record for any pitcher.<sup>148</sup> Hamilton admitted to having thrown the occasional trick pitch, but denied having used a spitball<sup>149</sup> or intentionally having thrown the ball at Conigliaro.<sup>150</sup> While it would have a significant impact on baseball to have the ability to criminally punish pitchers such as Hamilton who cause severe injury to their peers, finding the evidence for a conviction would prove problematic. Considering Hamilton's record, does Conigliaro's hit appear to have been a fluke, or does it appear to have been intentional? Does a low hit-by-pitch ratio<sup>151</sup> incriminate a pitcher when he hits a batter, or does it act as a defense? In the alternative, does a high hit-by-pitch ratio<sup>152</sup> act as a defense when a pitcher hits a batter? These questions must be answered before intent to throw a beanball can be monitored.

Furthermore, beanballs must be differentiated from fights, in which intent can be monitored. Acts such as those committed by Offerman and Marichal, striking another player with a bat, are clearly intentional. Although a beanball could be brushed off as a "wild pitch," it would be difficult for either player to claim that he had a "wild swing." Therefore, the intent of players as to fights should not be confused with the questions surrounding beanballs.

## 2. Assumption of Risk

Do players consent to assault and battery as part of the game? It could be said that players assume the risk when they step onto the field. "Athletes implicitly agree to the possibility of being touched, hit and even mauled, so long as the contact is within the rules of the sport. . . .

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146. See generally *Avila v. Citrus Cmty. Coll. Dist.*, 131 P.3d 383 (Cal. 2006).

147. See Buckley, *supra* note 19.

148. See *id.*

149. See discussion *supra* note 38.

150. See Buckley, *supra* note 19.

151. An example is a talented pitcher with excellent control and an ability to throw strikes who hits fewer batters than the average pitcher.

152. An example is a wild pitcher with poor control who hits more batters per pitch than the average pitcher.

No baseball player can sue if he's bowled over in a collision at the plate."<sup>153</sup> Does a player's assumption of risk prohibit further legal action? Should it?

What about players who deliberately stand close to home plate—should they assume a greater risk because they knowingly stand within the strike zone? Conigliaro was known for crowding the plate and has been reported as “leaning . . . over the plate” during the pitch which hit him.<sup>154</sup> In the case of Chapman, the ball that ended his life would have been a strike had Chapman gotten out of the path of the ball.<sup>155</sup> Players who “hug” the plate stand so close to home plate that their head is often in the strike zone. For example, Chase Utley of the Philadelphia Phillies is a well-known plate hugger who is often hit by pitches.<sup>156</sup> In 2007, Utley led the league with 25 hits by pitches.<sup>157</sup> Utley continued to lead the league in both 2008 with 27 hits<sup>158</sup> and in 2009 with 24 hits.<sup>159</sup>

### 3. The Price of Money

One may suggest that the salary of a major league player more than makes up for any possibility of physical harm. The Yankees' 2010 salary roster of 23 players contained ten athletes making over ten million dollars for the season.<sup>160</sup> As the team known for having the highest payroll in MLB, the highest paid Yankee, Alex Rodriguez, earned 33 million dollars for the 2010 season.<sup>161</sup> Does Rodriguez, earning almost

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153. Alan Dershowitz, *But Is it a Crime*, SPORTSILLUSTRATED.COM VAULT, Mar. 13, 2000, available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1018508/index.htm>.

154. Buckley, *supra* note 19.

155. NEMEC ET AL., *supra* note 38.

156. See Chase Utley, Batting Statistics, <http://espn.go.com/mlb/players/stats?playerId=5383> (last visited Jan. 1, 2010).

157. MLB Baseball Batting Statistics and Lead Leaders 2007, [http://espn.go.com/mlb/stats/batting/\\_/year/2007/sort/hitByPitch/type/expanded](http://espn.go.com/mlb/stats/batting/_/year/2007/sort/hitByPitch/type/expanded) (last visited Jan. 2, 2010).

158. MLB Baseball Batting Statistics and Lead Leaders 2008, [http://espn.go.com/mlb/stats/batting/\\_/year/2008/sort/hitByPitch/type/expanded](http://espn.go.com/mlb/stats/batting/_/year/2008/sort/hitByPitch/type/expanded) (last visited Jan. 2, 2010).

159. MLB Baseball Batting Statistics and Lead Leaders, [http://espn.go.com/mlb/stats/batting/\\_/year/2009/sort/hitByPitch/type/expanded/order/true](http://espn.go.com/mlb/stats/batting/_/year/2009/sort/hitByPitch/type/expanded/order/true) (last visited Jan. 2, 2011).

160. See New York Yankees Player Salaries, <http://sports.espn.go.com/mlb/teams/salaries?team=nyy> (last visited Jan. 2, 2011).

161. See *id.*

as much in 2010 as the entire payroll of the Pittsburgh Pirates,<sup>162</sup> assume more risk than a rookie player making the league minimum?<sup>163</sup>

Conversely, should all MLB players assume the same risk simply by agreeing to be part of the game? It would be difficult to suggest that even the lowest paid player assumes no risk. The average American would be overjoyed to make \$400,000 a year and would likely assume a small amount of risk of being hit to obtain such a large sum, especially when considering that only one MLB player has died from being hit by a pitch. However, if we begin to use salary as an evaluation for assumption of risk, is it also necessary to factor in a player's time in the major leagues or their general experience level in baseball as well?

#### 4. From a Part of the Game to Criminal

At what point do a player's actions go from part of the game to becoming illegal? Does the fact that the act was *on* the field rather than *off* the field create a type of immunity? If Marichal hit Roseboro in the head while standing in the stadium parking lot, would his actions have been punishable with jail time? Marichal's punishment of a \$1750 fine and a week of suspension likely would not have been sufficient if the act had been committed off the baseball diamond.<sup>164</sup> According to fellow pitcher Bob Miller, "If you did the same thing on a street, you would get 20 years in prison."<sup>165</sup>

However, the California Supreme Court, in 2006, decided that beanballs are an inherent risk of college baseball.<sup>166</sup> Additionally, they rebuked the use of tort law to prosecute beanballs:

It is one thing for an umpire to punish a pitcher who hits a batter by ejecting him from the game, or for a league to suspend the pitcher; it is quite another for tort law to chill any pitcher from throwing inside, i.e., close to the batter's body—a permissible and essential part of the sport—for fear of a suit over an errant pitch. For better or worse, being intentionally thrown at is a fundamental part and inherent risk

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162. See Pittsburgh Pirates Player Salaries, [http://espn.go.com/mlb/team/salaries/\\_/name/pit/pittsburgh-pirates](http://espn.go.com/mlb/team/salaries/_/name/pit/pittsburgh-pirates) (last visited Jan. 2, 2011). The Pirate's 2010 payroll was \$34,933,000. *Id.*

163. In 2009, the league minimum of an MLB player was set at \$400,000. Major League Baseball Players Association: Frequently Asked Questions, <http://mlbplayers.mlb.com/pa/info/faq.jsp#minimum> (last visited Jan. 2, 2011).

164. See Marichal, *supra* note 90.

165. Gerlach, *supra* note 105 (quoting Jimmy Cannon, N.Y. JOURNAL-AMERICAN, Aug. 24, 1965 (on file with The Dolph Briscoe Center for American History, University of Texas at Austin)).

166. See *Avila v. Citrus Cmty. Coll. Dist.*, 131 P.3d 383, 400 (Cal. 2006).

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of the sport of baseball. It is not the function of tort law to police such conduct.<sup>167</sup>

*D. Preferring Private Remedies*

1. Commissioner's Sanctions

Repeatedly, the most common private remedies seem to be fines, suspensions, and bans that the MLB Commissioner deems appropriate. However, what the Commissioner finds appropriate is not always deemed sufficient by the outside world, including fans and other players.<sup>168</sup> Should acts such as Marichal's bat beating be punished only through the Commissioner?

2. Civil Penalties

a. John Nathans v. Jose Offerman

Jose Offerman's costly attack on John Nathans may cost him more than the probation, treatment, and medical expenses the court sentenced him to pay.<sup>169</sup> In February 2009, Nathans filed a lawsuit against Offerman and Offerman's former team, the Long Island Ducks.<sup>170</sup> Nathans is seeking \$4.8 million for the permanent injuries he sustained as a result of Offerman's striking his head with a bat.<sup>171</sup> To date, there is no word on a settlement or trial resulting from the lawsuit.

b. John Roseboro v. Juan Marichal

On September 1, 1964, John Roseboro filed suit against Juan Marichal for assault and battery.<sup>172</sup> He asked for punitive and exemplary damages of \$100,000 as well as general damages of \$10,000.<sup>173</sup> Roseboro also named the San Francisco Giants franchise as co-defendants for endorsing Marichal's actions because they "knew or should have known of the 'brutal, savage, [and] malicious nature of . . .

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167. *Id.* at 394.

168. *See* Gerlach, *supra* note 105.

169. *See Offerman Gets Two Years*, *supra* note 85.

170. Stan Grossfeld, *A Dizzying Turn: Life Has Changed Drastically for the Catcher Offerman Hit With His Bat*, *BOSTON GLOBE*, May 12, 2009, at 1, available at 2009 WLNR 8998027.

171. *See id.*

172. *See* Gerlach, *supra* note 105.

173. *Id.*

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Marichal.”<sup>174</sup> In February of 1970, more than five years after the suit was filed, Roseboro and Marichal settled for a reported \$7500.<sup>175</sup>

### 3. Brawls Between The Lines

Fights on the field are not a new occurrence, nor an uncommon one. From kicking a catcher in the face to throwing a bat, on-field fights may begin for a variety of reasons but often end with the same result—someone gets hurt. Often, players use on-field fights as their remedy for sports violence and avoid the legal system altogether. However, this often takes an easily preventable situation and magnifies it.

In many of the events above, the initial act was not the one most appalling; rather, the act most appalling was the retaliatory act and the fight that ensued. While Conigliaro and Chapman’s injuries were the direct result of an initial act—a beanball—such is not the case in most circumstances. The crime that Castillo received 30 days in prison for was done out of anger and was retaliatory in nature. Similarly, Offerman and Marichal’s bat attacks were done in retaliation. Typically, it is the retaliatory act, not the initial act that receives the harshest punishment. Still, retaliatory acts are the private remedies preferred by most players.

## IV. CONCLUSION

Overall, there are great acts of leniency and major inconsistencies in punishing professional baseball players. A great degree of discrepancy can be seen between punishment of major and minor league players, between pitchers and position players, and between players and fans. Whether civil or criminal, the punishment of players needs to be more severe—regardless of league level, regardless of position, and regardless of professional imperviousness. While it may not always seem practical, equitable remedies are necessary to ensure uniformity and fairness in the game of baseball.

The Commissioner has the power to punish players and should do so, taking into account both the player’s position and the offense he has committed to help ensure a fair and equitable punishment for all players involved. However, punishment cannot end with the MLB Commissioner. The legal system should not turn a blind eye to the acts of professional athletes, no matter the sport and no matter the level.

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174. *Id.*

175. *See id.* (citing Richard Goldstein, *John Roseboro, a Dodgers Star, Dies at 69*, N.Y. TIMES, Aug. 20, 2002, at C16).

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A player's intent should be determined on a case-by-case basis when deciding whether to go beyond the power of the Commissioner and the remedies of baseball—including fines, suspensions, and expulsion—and instead turn to the legal system for more just ramifications. Undoubtedly, Marichal and Offerman's bat attacks were intentional acts. Both attacks involved the swinging of a bat in a manner that cannot be deemed accidental and *both* should have been punished criminally.

However, in the cases of beanballs and headhunters, it is not so easy to decipher between those acts that are intentional and those that are accidental. A starting point would be to look at prior records of beanball related incidents and scrutinize both the players involved and the teams involved. This would allow for the evaluation of prior beanball incidents between the teams and players to determine if the possibly criminal act is a pattern of activity or if it is an isolated event. Unfortunately, this circumstantial evidence may never be enough to satisfy the laws of criminal sanctions. While private remedies are inefficient, ineffective, and inconsistent, they are currently the most valuable resolution for beanballs in baseball.