



MARK T. WOLIN is President and Chief Executive Officer of Seneca Insurance Company. He is also a football referee for semi-pro and high school football for over 30 years. **ROBERT D. LANG** is a member of the firm of D'Amato & Lynch, LLP in New York City, where he is head of the Casualty Defense Department (RDLang@damato-lynch.com). The authors have previously written on lawsuits against sports officials. Wolin & Lang, *Legal Liability for Sports Referees in Today's Litigious World*; 15 U. Den. Sports & Ent. L.J. 83 (2013); Wolin & Lang, *If You Can't Kill The Ump, Should You Sue?* 86 N.Y.S. Bar J. 28 (June 2014). Now, they even the playing field by analyzing lawsuits by, rather than against, sports officials.

The Umpires Strike Back

By Mark T. Wolin and Robert D. Lang

Although not found in the Constitution, it is horn-book law that every fan has the right, frequently used, to boo umpires. Not even textualists, like Justices Scalia and Thomas, would likely disagree. Booing sports referees is considered to be part of the game, handed down from parent to child, generation after generation.¹ Of course, no one cheers the umpire – unless the umpire happens to make a questionable call in favor of their team.

In the United States, baseball in particular provides great opportunities for theater in challenging umpires' decisions, since, of all the major sports, baseball managers retain their traditional right to argue calls, other than balls and strikes, by coming onto the field and "conversing" with umpires at close range.² But there is a major difference between coaches kicking dirt on umpires, like Billy Martin, or ridiculing officials and linesmen, like John McEnroe, and physically assaulting referees. That line is increasingly being crossed. Although it has long been said that you have to have very thick skin or be hard of hearing in order to be a referee, neither of those "attributes" will help a referee if physically assaulted.

It's a Dangerous Call

As we discussed in our June 2014 article in this *Journal*, rage against referees is rising. Both the number and the brutality of the attacks on sports referees are increasing. Barry Mano, the president of the National Association of Sports Officials (NASO), reported that each week the NASO receives reports of sports officials being physically abused – and those calls come only from the NASO's 20,000 members. Many other incidents go unreported.³

One reason for the increase in physical violence against referees by parents is that, for some, becoming more involved in the athletic pursuits of their children translates into being more involved in the potential of sports scholarships for college and the possibility of a pro contract in the future. Parents are less likely to accept with quiet dignity a bad call by a referee when it affects the events of a family member envisioned to be a future Djokovic or LeBron. Sporting events for these parents are no longer just games; they are now "financial opportunities."⁴

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Criminal Cases

In December 2010, Florida High School basketball official Jim Hamm called a technical foul on DeSoto High School player Mason Holland. The 6' 5" player attacked the 51-year-old referee, picking him up and body slamming him onto the court.⁵ After watching the video of his assault, Holland was shocked to see himself act that way, stating, "I got to see the video of it and I was like, that's not me."⁶ In addition to violating the law, Holland broke an unwritten rule that, while players can sometimes take on another player, they can never, ever, go after a coach or official.⁷ Holland was sentenced, under the written law, to 37 months in prison for battery.⁸

In October 2010, a semi-pro football player attacked a referee after the game, beating him with his helmet, leaving the referee with a broken face and several skull fractures. The player pleaded guilty to assault and was sentenced to 10 years in prison.⁹

In September 2011, in Sarasota, Florida, during the first quarter of a youth football game, coaches of one of the teams disagreed with the referee's call and came onto the field. Following the lead of their so-called mentors, the team joined the argument, and one of the players tackled the referee.¹⁰ The incident was captured on video, showing not only the tackle but other players and unidentified persons joining in.¹¹

Civil Suits

In a high school football game in Oklahoma, the referee was punched by a fan as he attempted to break up a fight between the teams in the last 20 seconds of the game. The referee filed suit against the high school, arguing that the school had tried "to excite and arouse the crowd to a fighting frenzy," resulting in the referee being spun around and punched while he attempted to break up the fight.¹²

In Pennsylvania, a referee at a college football game filed suit against a player from Cheyney University, alleging that the player took off his helmet and struck the head linesman in the head. The incident arose after the linesman called a penalty against the player for illegal use of the hands. The player then argued with another referee, using profanity, which resulted in a second penalty, this time for unsportsmanlike conduct. The player then removed his helmet, causing the referee to call a third penalty. After that, the player struck the referee in the head, using his helmet as a weapon. Three days after the incident, the university expelled the player. The referee had to undergo three operations for the injuries suffered.¹³

In 2006, following a two-point overtime loss in a conference game, an assistant basketball coach for West Virginia Wesleyan College verbally, and then physically, assaulted the referee. West Virginia Wesleyan College suspended the assistant coach for the remainder of the

basketball season. The referee filed suit against the college and the assistant coach.¹⁴

In Elgin, Illinois, approximately 35 miles from Chicago, a soccer referee warned a player about tripping. The player responded first by verbally abusing and then physically attacking the referee. The referee sued the player for personal injuries sustained.¹⁵

Bill Boyd, a Texas referee, taught a course titled "The Fears in Officiating."

In 2013, a number of legal issues arose at a high school football game in Louisiana. During the third quarter of the game between Manderville and St. Paul's, a linesman repeatedly attempted to move fans away from the field's sideline, because they were interfering with the chain crew. The police officer on the sideline instead told the linesman to pay attention to the game. The referee complained that the fans had not been moved back enough. The police officer responded that the referee should handle the game, while the police officers handled the crowd. Then the referee, in essence, tried to eject the police officer stating, "you're out of the game . . . get outta here."

The police officer responded by arresting the head referee and the linesman on the charge of "public intimidation." The two referees involved were considered "very well respected" by the head of the Louisiana High School Officials Association. The police officer who arrested the two football referees was thereafter suspended and demoted.¹⁶

While the courts have largely protected referees, there are some outliers. For example, in *Toone v. Adams*,¹⁷ a disgruntled fan of the Raleigh Caps (yes, that is the name of the team), a team in the Carolina League, assaulted the umpire as he was leaving the playing field after the end of the game. Fans were pouring over the right field fence, "cursing and challenging" the umpire to fight. During the game, the manager of the Raleigh Caps had threatened the umpire, saying that if the umpire made yet another decision with which he disagreed, "he would behave in such a manner that plaintiff would be forced to eject him from the game and his ejection would result in extreme hostility toward plaintiff on the part of the partisan fans."¹⁸

The lower court ruled that the manager of the Raleigh Caps did not owe a legal duty to the umpire in that there were no facts showing a causal relationship between the conduct of the umpire and the assault by the angry fan. On appeal, the decision was affirmed. In its decision, the court portrayed umpires as accepted targets of ridicule

and described them as people who should accept their lowly role in life:

For the present day fans, a goodly part of the sport in a baseball game is goading and denouncing the umpire when they do not concur in his decisions, and most feel that, without one or more rhubarbs, they have not received their money's worth. Ordinarily, however, an umpire garners only vituperation — not fisticuffs. Fortified by the knowledge of his infallibility in all judgment decisions, he is able to shed billingsgate like water on the proverbial duck's back.¹⁹

The court found that the unsportsmanlike conduct of the umpire in allegedly inciting fans to violence was not contemporaneous with the assault and, therefore, there was no liability to the umpire:

No one can say whether Adams' assault on plaintiff was his only action to the umpire's ruling, to the "rhubarb" created by Deal, to both, or whether he was merely venting pent-up emotions and propensities which had been triggered by the epithets, dares, or challenges of one or more of the 3,451 other fans attending the game.²⁰

The court concluded, "It would be an intolerable burden upon managers of baseball teams to saddle them with responsibility for the actions of every emotionally unstable person who might arrive at the game spoiling for a fight and become enraged over an umpire's call which the manager had protested."²¹

In *Latham v. Sims*,²² an umpire at a softball game held during a company picnic called a ball hit down the foul line as foul. A member of the team protested the call by grabbing the plaintiff umpire by the shirt collar and throwing him to the ground. When the umpire got up, the employee grabbed the umpire by the throat with one hand and threw him to the ground again. The umpire sued both the player who assaulted him and the company for personal injuries he sustained. The company that sponsored the picnic filed a motion dismissing the complaint, arguing that the company was not liable for the negligent act of its employee, which occurred outside the scope of employment. The court denied the motion for summary judgment, stating that it was "a close call" whether the company picnic, or at least the batted-ball incident, occurred within the scope of the employment and therefore denied the motion to dismiss.

In *Baugh v. Redmond*,²³ the Louisiana Court of Appeals considered an assault on an umpire in an adult softball game. After the umpire called out a player for leaving a base early on a fly ball, the defendant, a sponsor of a team, verbally harassed the umpire for the remainder of the game. At the end of the contest, as the umpire was leaving, the defendant struck the umpire in the face, knocking his eyeglasses off. The defendant then stepped on the eyeglasses. The blow caused extensive damage to the umpire's teeth. The court found that the plaintiff had not pushed or made any threatening moves toward the

defendant, that the assault took place while the plaintiff was walking through the dugout, heading toward the concession stand. As such, the court found that the plaintiff-umpire was not guilty of any comparative fault so as to reduce his recovery for the injuries he sustained.

Self-Help

Self-help by referees is useful, if not necessary, to avoid physical assaults. Bill Boyd, a Texas referee, taught a course titled "The Fears in Officiating," where he recommended that referees introduce themselves to the police or security guards prior to the game and advise them from which section of the court or field they will be leaving. After the game, he recommends that referees remove their whistles from around their necks to reduce the chance that someone will grab it and try to choke them.²⁴

Legislation

Legislation protecting officials is essential. In Florida, parents, coaches and fans who threaten or assault referees during games are subject to criminal charges, fines of up to \$10,000, and three years in jail for assault, aggravated assault or aggravated battery.²⁵ Just having statutes that protect sports officials is insufficient; the laws must be effectively enforced. Pennsylvania, in the early 1990s, was one of the first states to enact laws aimed at protecting sports officials, making it a crime to assault a sports official at a sporting event, including interscholastic contests and other organized athletic events. Since 2002, 37 people in Pennsylvania have been charged with assaulting sports officials. However, prosecutors have secured convictions in fewer than 25% of those cases.²⁶

Conclusion

There was a time when sports umpires, in essence, wore signs that said "kick me." Despite remaining problems, now, if a sports referee is assaulted, count on the managers or players being suspended and fined and, if an assault was committed by a fan, civil and criminal lawsuits await the individual who puts the "fanatic" back in the "fan." Here's a recent example of how times have changed: An AP sportswriter tweeted that an NBA referee had allegedly said that he would give a "makeup" call to even things out, following a supposed bad call. The referee sued the reporter, alleging defamation of his professional standing.²⁷

Umpires are not awarded lucrative Nike contracts and sports energy drink endorsements, nor are long-term, no-cut contracts given to referees. The talking heads and color commentators on *Sports Center* are not referees. Umpires do not appear regularly on *Sports Nation*, *Pardon the Interruption*, *Around the Horn*, and other sports programs. Yet, try holding major competitive sports contests (except perhaps court tennis) without referees. Imagine NFL games where the offensive lineman had to call holding penalties on themselves, NBA games where defensive

players had to call fouls on themselves or Major League Baseball games where each side had to call balls and strikes for themselves.

Although underappreciated and underpaid, without referees and umpires, major competitive sports would descend into anarchy. Even if large salaries and bonuses are not destined to be part of their world, they deserve, at a minimum, to be spared physical abuse, even if choruses of boos from thousands of fans is their lot should they make an unfavorable call against the home team. There will only be more lawsuits and more legislation protecting sports referees if this important message is ignored.

1. Conlan & Creamer, *Nobody Loves an Umpire*, Sports Illustrated (June 26, 1967).
2. Former Baltimore Orioles Manager Earl Weaver took the "art" of arguing to an advanced level by turning the bill of his cap backwards so he could bring his face even closer to an umpire when arguing calls on the field.
3. Shira Springer, *Out of Bounds: Violence Against Referees and Umpires Has Reached a Fever Pitch, But There Are Solutions*, Boston Globe (Aug. 25, 2013).
4. Garry Boulard, *Cense-Fire on the Umpire!* (State Legislatures) (June 2008) (quoting Illinois State Senator Edward Maloney).
5. The video of the assault can be seen online at nesn.com/2010/12/high-school-basketball-player-attacks-referee-faces-felony-video. Bettie, *High School Basketball Player Attacks Referee, Faces Felony*, NESN (Dec. 15, 2010).
6. Sandra Weathers, *High School Basketball Player Apologizes for Attacking Ref*, www.abc-7.com/Global/story.asp?S=13679685&clienttype=mobile (Dec. 15, 2010).
7. Anthony Cormier, *DeSoto Athlete's Brief Lapse Has Long-Reaching Consequences*, Sarasota Herald-Tribune (Dec. 18, 2010).

8. Tom Hanson, *Raging at Referees: Deadly Attack of Soccer Referee Strikes Home for Local Basketball Official*, Naples Daily News (May 12, 2013).
9. *Id.*
10. ABC Action News, *Ref in Football Brawl: Emotions Got Out of Control* (Sept. 2, 2011).
11. *Sarasota Gators Youth Football Coaches, Player Attack Referee*, http://www.huffingtonpost.com/2011/09/01/sarasota-youth-football-coach-player-attack-referee_n_94489.html (Sept. 1, 2011).
12. Kevin Donovan, *Injured Football Referee Sues High School Over Attack by Fan*, newsok.com (June 24, 1983).
13. Elliot Grossman, *Football Referee Sues Player, Claiming Assault During Game*, The Morning Call (Lehigh Valley) (June 26, 1997).
14. Chris Dickerson, *Referee Sues W. Va. Wesleyan, Former Coach For Attack at the Game*, W. Va. Record (Jan. 26, 2006).
15. *Soccer Player Sued by Injured Referee*, Chicago Tribune (July 10, 2007).
16. Tim Polzer, *High School Football Referees Arrested During Game*, Sports Illustrated (Oct. 14, 2013).
17. 262 N.C. 403, 137 S.E.2d 132 (1964).
18. *Id.* at 403.
19. *Id.* at 415-16.
20. *Id.* at 421.
21. *Id.* at 432.
22. 1994 Conn. Super. LEXIS 420 (Super. Ct. Conn. 1994).
23. 565 So.2d 935, 1990 La. App. LEXIS 1604 (1990).
24. Eleena De Lisser, *Abusive Fans Lead Amateur Umpires to Ask Courts, Legislatures for Protection*, Wall St. J. (Aug. 1, 1994).
25. *Threats, Assaults on Referees a Crime*, Miami Herald (Nov. 20, 2005).
26. Rich Cholodofsky, *PA Law Protecting Sports Officials Rarely Used*, Pittsburgh Tribune Review (Apr. 16, 2007).
27. McShane, *NBA Ref Bill Spooner Sues AP Sportswriter Jon Krawczynski for "Defamation" Over Twitter Remark*, NY Daily News (Mar. 15, 2011).

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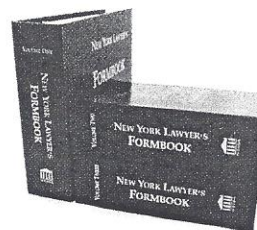
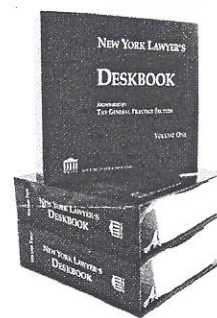
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