

From Personal Foul to Personal Attack: How Sports
Officials Are the Target of Physical Abuse From
Players, Coaches and Fans Alike

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I. INTRODUCTION

“Get a rope, get a tree. . .
Hang the f#@!&%g referee!!”

— Often Heard College Hockey Chant

Harmless chants to taunt sports officials, or goad them into favoring the home team, have become increasingly less harmless over the years. Despite the lack of official statistics for these transgressions, assaults¹ on the sports official have become more prevalent in the last decade.² In fact, several states nationwide have made efforts to address this problem including California, Oklahoma, Pennsylvania, West Virginia, North Carolina, Minnesota, Montana and New Jersey.³ Legislation

1. Assault is defined as any “willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm. . .” BLACK’S LAW DICTIONARY 114 (6th ed. 1990). Furthermore, the assault “may be committed without actually touching, or striking, or doing bodily harm, to the person of another.” *Id.*

2. See Jon Bigness, *These Days Hitting A Ref Can Mean Courting Arrest*, WALL STREET J., Jan. 17, 1997, at B9. *Referee Magazine* reported “more than 30 incidents of assault in 1996 from pros through amateur levels.” *Id.* (quoting Bob Still, spokesman for the National Association of Sports Officials.)

3. See, e.g., N.J. STAT. ANN. §2C:44-1(a)(West 1997), which provides in pertinent part:

introduced by these states offers stiffer penalties against those who physically attack a sports official, thereby acting as a deterrent supplemental to any civil suit the assaulted sports official may or may not choose to commence independently. Without criminal laws of this nature, today's sports official can no longer "make a call" without fear of physical repercussions. That fear translates into apprehensive decision-making on the part of the officials, thereby diminishing the purity of the game.⁴

This Comment focuses on violence by players, coaches and fans toward sports officials on every level of competition.⁵ Section II addresses the largest form of sports theatre, the professional leagues. "The Big Show"⁶ boasts an extensive fan base,

In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court shall consider the following aggravating circumstances:

. . . (8) The defendant committed offense against a police or other law enforcement officer, correctional employee or fireman, acting in the performance of his duties while in uniform or exhibiting evidence of his authority;. . . the defendant committed the offense *against a sports official*, athletic coach or manager, acting in or immediately following the performance of his duties or because of the person's status as a sports official, coach or manager.

Id. (emphasis added).

4. See, e.g., Michael Grunwald, *For Many, Soccer is a Life-or-Death Matter; Escobar Killing Reflects Harsh History*, BOSTON GLOBE, July 4, 1994, at 1. Violence has long been part of the hooliganism in soccer overseas. See *id.* Violence against a referee in this arena was most recently felt in 1989, when Colombian linesman Alvaro Ortega was murdered after a game in which he made two controversial calls. See *id.* The murder was later linked to gamblers who had large sums of money on that game. See *id.*

5. See, e.g., Jason Young, *Are They Safe? Cases of Assault on Referees Growing Concern Across U.S.*, BIRMINGHAM POST-HERALD, July 21, 1997, at C6. One of the most thorough definitions of "referee assault" and "referee abuse" is articulated by the United States Soccer Federation, which declares:

Referee assault is an intentional act of physical violence at or upon a referee. . . Assault includes, but is not limited to, the following acts committed upon a referee: hitting, kicking, punching, choking, spitting at, or on, grabbing or bodily running into; the act of kicking or throwing any object at a referee that could inflict injury; damaging the referee's uniform or personal property, i.e., car, equipment, etc. . .

Referee abuse is a verbal statement or physical act which implies or threatens physical harm to a referee or a referee's property or equipment. Abuse includes, but is not limited to, the following acts committed on a referee: using foul or abusive language toward a referee; spewing any beverage on a referee's personal property; or verbally threatening a referee. . .

Id. (Emphasis added).

6. See, e.g., BULL DURHAM (Orion 1988). Crash Davis, the veteran minor league catcher (portrayed by Kevin Costner) offers 'Nuke' LaLoosh, the upstart pitcher (played

a national TV audience and far-reaching media coverage. Thus, whether they like it or not, the professionals are role models for athletes of lesser status.

Section III looks at "The Trickle-Down Effect,"⁷ better known as the effect that actions by professionals have on amateurs, youngsters, and recreational athletes. With stakes much less substantial at the local level, the rate of violent incidents involving sports officials should be proportionately lower. The rate of these incidents, however, is alarmingly high.⁸ The combination of both mimicking the unruly behavior of some professional athletes, and society's ongoing failure to recognize a serious problem, creates a hazardous work environment for sports officials.

Section IV analyzes the role of the judiciary regarding the assault on a sports official through analysis of *Toone v. Adams*,⁹ a notable North Carolina case. That case reflects on an incident spurred by a coach's discontent with an umpire's calls during the course of a game.¹⁰ The end result includes an incited crowd of fans and an injury to a beleaguered umpire.¹¹ Perhaps foreshadowing future legislation, the North Carolina Supreme Court agrees, in dicta, that no sports official should be the victim of physical abuse.¹²

Overall legislative response to the problems faced by sports officials is analyzed in Section V. Part A points to those states who have adopted legislation to handle the problem and discusses some results therefrom. Part B addresses a weakness in the enacted legislation: the scenario where the sports official

by Tim Robbins) plenty of advice for his inevitable 'arrival' into the major leagues. *See id.* 'The Show', a baseball euphemism for the major leagues, (and more importantly, making it 'big') would bring the rookie pitcher not only fame and fortune, but also an introduction to a different set of attitudes, expectations, and deference. *See id.* Crash would remind Nuke, however, that while toiling away in the minor leagues, perception is reality:

Your shower shoes have fungus on 'em! You'll never make it to the bigs with fungus on your shower shoes. Think classy, you'll be classy. If you win 20 in the show you can let the fungus grow back on your shower shoes and the press will think you're colorful. Until you win 20 in the show, however, you're a SLOB!

Id.

7. *See infra* note 113 and accompanying text.

8. *See* Bigness, *supra* note 2.

9. 137 S.E.2d 132 (N.C. 1964).

10. *See id.*

11. *See Toone*, 137 S.E.2d at 134.

12. *See infra* note 107 and accompanying text.

acts, to borrow the term, "ultra vires",¹³ or outside of his scope as sports referee. When the official behaves in a manner inconsistent with that of the objective intermediary, protection from these statutes should not be invoked.

This Comment concludes by offering a two-pronged assessment of why legislation to protect the sports official should be adopted by all fifty states. In hopes that the prefacing commentary illuminates the plight of the sports official, the final section serves to wrap up an objective, yet informed, point of view.

II. THE BIG SHOW—HIGH STAKES, LOW RESTRAINT

"Things are slowly but surely getting out of control. We're in trouble. If we are the policemen of sports, then the judges are not doing their job."

— Major League Baseball umpire Jim McKean¹⁴

The last half-century has seen the advent of technology capable of broadcasting sporting events to the farthest reaches of the globe. Professional athletics is now performed on a stage large enough to be seen by the entire world.¹⁵ The professional athlete is no longer glorified through the one-time combination of folklore and print media; now, his fame is enhanced through the active and far-reaching visual images of television.¹⁶ In fact, the power of the airwaves is so strong that broadcasters, influenced by eager advertisers, pay handsomely for the right to air sporting events.¹⁷ As a result, heroes of the gridiron, hardwood, diamond and ice are born on a global scale.

13. Adopted from the law of corporations, the Latin term "Ultra Vires" is defined as "[a]n act performed without any authority to act on the subject." BLACK'S LAW DICTIONARY 1522 (6th ed. 1990).

14. Robert Lipsyte, *Harassed Officials Fear 'Kill the Ump' Is No Longer a Joke*, N.Y. TIMES, Jan. 19, 1997, at 20. McKean was the crew chief assigned to work the September 1996 Baltimore Orioles/Toronto Blue Jays game in which Oriole second baseman, Roberto Alomar, spit in the face of fellow umpire John Hirschbeck. *See id.*

15. *See, e.g., Super Bowl XXXI: By the Numbers*, FLORIDA TIMES-UNION, Jan. 26, 1997, at C14. In 1996, Super Bowl XXX between the Dallas Cowboys and the Pittsburgh Steelers was watched by an estimated 138.5 million people in 187 countries. *See id.*

16. *See id.* and accompanying text.

17. *See, e.g., Phil Plentz, Series Propels Yanks' Record Financial Year: Revenues Top \$100 Million Mark, TV Deal Limit Future Gains*, CRAIN'S NEW YORK BUSINESS, Oct. 21, 1996, at 1. The New York Yankees, one of the most popular sports franchises in history, are involved in a 12-year, \$486 million cable contract with the Madison Square Garden Network. *See id.*

With this extensive exposure, the professional athlete's demeanor and disposition affects his audience. Some players scoff at the overused title of "role model" as nonsensical,¹⁸ and cast responsibility for the actions of others—especially youngsters—on parental presence, or lack thereof.¹⁹ Foolishly, however, professional athletes fail to realize the significance of their actions transmitted worldwide, whether graceful and inspirational or detrimental and disturbing.²⁰ While some aspiring athletes look at professionals and look to perform with similar proficiency some day, others only view and absorb the negativity professionals display through lack of deference or respect shown by these professionals towards officials. Thereafter, any imitation of this second-rate behavior by the non-professional serves as justification for the non-professional's own poor sportsmanship at the local level.

Problems start with a simple disagreement.²¹ The sports official, designated as the objective interpreter of rules and

18. See, e.g., Jim Pedley, *Athletes Are Role Models, Like It or Not*, THE FORT WORTH STAR-TELEGRAM, Aug. 31, 1997, at 16. Charles Barkley, all-star forward for the Houston Rockets, insists that parents should be the only role models for children. See *id.* See also Lenn Roberts, *Hall of Shame: They're Very Good at Behaving Badly*, THE RECORD (NORTHERN NEW JERSEY), Aug. 21, 1997, at S1. Barkley sheds the title of role model and asserts: "Just because I dunk a basketball doesn't mean I should raise your kids." *Id.*

19. See, e.g., Jim Nesbitt, *Refs Try to Blow the Whistle on Rising Tide of Anger*, NEWARK STAR-LEDGER, Jan. 6, 1997, at 1. NBA spokesman Chris Brienza sees the problem on more of a "two-way street," noting that the athletes "have played at least 12 years before they get to [the professional level]." *Id.* Brienza feels that once the athlete develops a certain mentality, "it's hard to re-educate them, totally change behavior that was not learned in our league." *Id.*

20. See, Nesbitt, *supra* note 19 and accompanying text. NBA senior vice-president of operations Rod Thorn agrees that whether they like it or not, "professionals are role models and should set a standard for comportment." *Id.* (*Emphasis added*).

See also Bowie Kuhn, *It's Open Season on Game Officials; Umpires Deserve Our Respect*, NY TIMES, May 15, 1988, §8 at 10. Kuhn, who as a boy worked the scoreboard at Griffith Stadium, was commissioner of baseball from 1969 to 1984. See *id.* He felt that no one should "ignore the powerful role models sports provide to the public in activities outside the ball park." *Id.* Kuhn was sure that "drug abuse by athletes inspires imitation by young fans." *Id.* Contemporaneously, "disrespect for the sanctity of officials can readily translate into attacks upon public officials. . . ." *Id.*

21. Sometimes not as simple as it seems. See, e.g., Mike Brehm, *Penalty Calls Up; Scoring Unaffected*, USA TODAY, Oct. 7, 1997, at 11C. Professional referees are subject to learn and interpret new and existing rules yearly, enforcing them pursuant to current league policy. See *id.* For instance, NHL Commissioner Gary Bettman has instructed referees to be better aware of, and thus whistle, more obstruction fouls and "in-thecrease" violations during the 1997-98 NHL season. See *id.*

play, makes a call as he or she sees it.²² As fallible as the athlete who has botched a grounder, missed a lay-up, dropped a pass, or fanned on a one-timer, the sports official practices his craft to officiate with as little error as possible.²³ Much to the delight of the public, however, the hint of an error by the official sends athletes, coaches and fans into a verbal eruption.²⁴ Video clips of these outbursts often make the sports highlight reel of the nightly news for their "entertainment" value.²⁵

Indifference to the official has degenerated from spirited tete-a-tete to disrespect, incivility and poor sportsmanship. Leniency shown to those who argue with the official has fostered a situation where a participant in a sporting event is permitted to allow his vehemence to dictate his actions.²⁶ Failure to reprimand the enraged athlete invites others to behave in the same manner.²⁷ As a result, no "line in the sand" is ever drawn. Words no longer suffice—instead, conduct in the form of gestures and intimidation has become more prevalent.²⁸

22. See also *infra* note 107 and accompanying text, for an anecdotal view of the official's calls as discussed by the North Carolina court.

23. See, e.g., Kuhn, *supra* note 20 and accompanying text. Kuhn often observed the fallibility of the official, and would say "[o]f course, mistakes are made—there is an unevenness to any endeavor administered to a human being." *Id.* Kuhn would finish by noting that "by and large, the outcome of the game is not determined by the mistakes of the official but by the play of the competitors." *Id.*

See also Peter Alfano, *Sports Officials Want to Throw the Abuse Outta Herel*, NEW YORK TIMES, May 29, 1988, §8 at 1. Therein Alfano finds that: "[t]he standard of excellence for officials is higher than that for athletes, but that doesn't generate much sympathy." *Id.*

24. See, e.g., Eleena De Lisser, *Abusive Fans Lead Amateur Umpires to Ask Courts, Legislators for Protection*, WALL STREET J., Aug. 1, 1994, at B1. Merle Butler, then National Director of Umpires for the American Softball Association, warns that "[s]wearing is just the beginning. . . [o]ne thing leads to another." *Id.*

25. See, e.g., Greg Boeck, *Umpires Not So Safe: Violence vs. Officials 'A Scary Thing'*, USA TODAY, Aug. 2, 1991, at 1A. Ron Jeffers, a 31-year sports official from Cincinnati notes that "society not only accepts and tolerates bad behavior. It enjoys it. It's a show. People enjoyed watching Billy Martin go crazy." *Id.*

26. See Kuhn, *supra* note 20 and accompanying text. Kuhn felt strongly about the physical abuse aimed at the umpire inciting the crowd when he commented:

Fights among players, an issue for another day, are bad enough, but placing the official in the middle, between manager or coach and fan, runs a real risk of inciting dangerous behavior in the stands. There is a fine line between intense fan support and an uncontrolled crowd. Fans should be excited at games but should not be pushed to the boiling point by attacks on officials.

Id.

27. See *id.* and accompanying text.

28. See, e.g., Rick Reilly, *Losing His Head; Bears Linebacker Bryan Cox is a Swell Fellow—Until the Game Starts and He Goes Stark Raving Mad*, SPORTS ILLUSTRATED,

The most publicized example of such an outburst involves the Baltimore Oriole's second baseman Roberto Alomar.²⁹ Alomar had the reputation as a gifted infielder, with a nifty glove and consistent bat to earn him the accolades every professional baseball player seeks.³⁰ A crowd favorite in Baltimore, Alomar dazzled his fans with incredible skill and a quick smile. That is, until the game in Toronto at the end of the 1996 regular season that would hang like an albatross around Alomar's neck.³¹

In dispute of a called third strike, Alomar began a heated argument with umpire John Hirshbeck.³² The quarrel escalated to a point where Oriole players and coaches needed to separate the combatants.³³ Enraged beyond the point of self-control, Alomar let his anger and aggression take over.³⁴ He then did the once unthinkable: Alomar spit in Hirshbeck's face.³⁵

Sept. 15, 1997, at 48. One costly gesture included the \$87,500 "finger" that then-Chicago Bears linebacker Bryan Cox gave field judge Billy Smith during an October, 1995 National Football League game. *See id.* Cliff Brady, Cox's agent, would later justify his client's actions by asking: "But have you ever seen him use drugs? Hit his wife? Snort cocaine? Drive drunk? Smoke pot? Get in bar fights? Carry a gun through an airport? No." *Id.*

Another rather costly incident for use of gestures surrounded Chicago Bull forward Dennis Rodman in the National Basketball Association. *NBA Refs Accosted in Separate Incidents*, REFEREE, June 1996, at 15. Rodman, always extravagant and outspoken, protested a technical foul whistled against him when he argued a call. *See id.* Rodman then put his hands in his shorts, and was ejected from the game by referee Ted Bernhardt. *See id.* Rodman proceeded to head-butt Bernhardt, and was suspended for 6 games and fined \$30,000 by NBA Commissioner David Stern—costing Rodman close to \$228,000. *See id.*

29. *See generally* Barry M. Bloom, *Roberto Alomar Interview*, SPORT MAGAZINE, Jan. 1, 1997, at 12.

30. *See ESPN SPORTSZONE* (visited Oct. 16, 1997) <<http://espnet.sportszone.com/mlb/profiles/notes/4189.html>>. Alomar is a lifetime .304 hitter, played in seven all-star games and earned 4 gold gloves in his nine-year career. *See id.*

31. *See* Bloom, *supra* note 29. At the time of the spitting incident, the Orioles were looking to clinch a playoff spot in the first-round of the playoffs against the New York Yankees. *See id.*

32. *See id.*

33. *See id.*

34. *See id.*

35. *See, e.g.,* Rick Reilly, *Baseball's Spitting Image: The National Pastime was All Wet Long Before Roberto Alomar Let Fly*, SPORTS ILLUSTRATED, Oct. 14, 1996, at 88. Former Major League Umpire Dave Pallone would be quoted as saying, ". . . [i]t is one thing to cuss a man. . . [b]ut spitting is as vile a thing as you can do to a man on the field." *Id.* Yet umpires will subject themselves to a manager's saliva onslaught with a level of pride which prevents him from looking away. *See id.* In fact, the older, more cagey managers will purposely structure their verbal tirade to include the "ump's worst nightmare—hard

This defining moment in sports history was severely mishandled. The opportunity presented itself for a professional sports entity, Major League Baseball, to address the question of exactly where that "line in the sand" must be drawn.³⁶ With the first-round of the playoffs imminent, a suspension of Alomar would have banned him from critical post-season games.³⁷ Such an action would have sent a message to players at every level: control of one's temper when dealing with officials is not only necessary, but required.

Most of Alomar's suspension, however, was postponed to the beginning of the 1997 season.³⁸ The most prominent reason behind the carry-over included the fear that immediate action would be detrimental to the Baltimore Orioles and their fans.³⁹ But the damage had been done, as Alomar was permitted to play in the playoffs.⁴⁰

Another disturbing example of physical aggression directed at sports officials on the professional level involved Nick Van Exel, a guard for the NBA's Los Angeles Lakers.⁴¹ Van Exel was a stand-out college player for University of Cincinnati,

consonants: 'P-iss p-oor!' they will yell, spewing out the staccato ammo four inches from the ump's nose. 'That was p-retty p-iss p-oor, p-all! P-erhaps I oughta p-unch a f-at, f-reakin' hole in that f-reakin' mask, p-ork p-ie!' *Id.*

36. See Tom Nawrocki, *Scorecard*, SPORTS ILLUSTRATED, Oct. 14, 1996, at 14. Gene Budig, American League President, was jeered for his failure to take appropriate disciplinary steps against Alomar. See *id.* Nothing in the Collective Bargaining Agreement between the players and the league would have precluded an immediate suspension. See *id.* Acting commissioner Bud Selig could have also stepped in and took more immediate action "in the best interests of baseball" but refrained as well. *Id.*

37. See Nawrocki, *supra* note 36 and accompanying text. Other leagues, namely the National Basketball Association and the National Hockey League, commence suspensions with the next game—playoffs or not. See *id.* See also, Amy Rosewater, *Christian Will Miss 20 Games*, PLAIN DEALER REPORTER (Cleveland, OH), May 30, 1997, at 5D. The International Hockey League suspended player Jeff Christian for 20 games after he intentionally fired a puck which hit a referee. See *id.* Christian's suspension commenced during the playoffs, carried over into the following season, and was applicable to the NHL and the American Hockey League if Christian played alternatively for either. See *id.*

38. 37 See Bigness, *supra* note 2 and accompanying text. There is a fear that the mixed messages student athletes get stem from the light punishment of professional athletes when they misbehave. See *id.*

39. See Nawrocki, *supra* note 36 and accompanying text.

40. See Bloom, *supra* note 29. The spitting incident would weigh on Alomar throughout the playoffs, most notably when a ground ball hit by Bernie Williams (of the eventual 1996 World Champion New York Yankees) "uncharacteristically shot through Alomar's legs to set up five crucial unearned runs in a 6-4 loss that ended the series." *Id.*

41. See ESPN SPORTSZONE (visited Oct. 16, 1997) <<http://espn.sportszone.com/premium/nba/profiles/stats/career/1308.html>>. Before the start of the 1997-98 season,

and drafted by the Lakers for his speed and shooting skills.⁴² Known as a hot-head, but without any incidents on his professional record to compare with his contemporary Dennis Rodman,⁴³ Van Exel displayed a rather unprofessional level of rage on April 9, 1996.

While officiating a game between the Lakers and the Denver Nuggets, referee Ron Garretson had occasion to whistle Van Exel for a technical foul.⁴⁴ Soon after, while Van Exel headed toward the bench during a time-out, words were exchanged between the two and Van Exel was whistled for a second technical.⁴⁵ Completely enraged, Van Exel charged Garretson and shoved him off of his feet onto the scorer's table.⁴⁶ The situation did not diffuse itself until Van Exel's teammates restrained him.⁴⁷

What leads otherwise well-adjusted professionals to behave in such a manner? The answer is usually "pressure" or something of the like. As a professional, and under the scrutiny of both media and fans, seemingly nondescript circumstances are intensified. In the world of the free-agent, and the "just win, baby" attitude,⁴⁸ the stakes are incredibly high. Big exposure, big money and big egos drive the world of professional sports, where one wrong call could spell disaster for a player or man-

Van Exel has 6,006 total points, 868 rebounds, 2307 assists, 34 blocks, and 327 steals in his four-year pro career with the Los Angeles Lakers. *See id.*

42. *See id.* and accompanying text.

43. Compare, e.g., *NBA Refs Accosted in Separate Incidents*, *supra* note 28 and accompanying text on Dennis Rodman.

44. *See NBA Refs Accosted in Separate Incidents*, *supra* note 28.

45. *See id.*

46. *See id.* Instead of apologizing for his actions, Van Exel denied hitting Garretson very hard and chalked up the ref's reaction to the shove to be "a good Hollywood job" by the nine-year veteran official. *Id.*

47. *See* Jackie MacMullan, *First Rodman, Then Van Exel, Now Magic: Why All the Official Bashing?* *SPORTS ILLUSTRATED*, Apr. 22, 1996, at 69. NBA Commissioner Stern hit Van Exel with a seven-game suspension and \$25,000 fine—totaling near \$188,000. *See id.* However, an unnamed NBA referee spoke for his contemporaries when he queried: "What are they waiting for? For one of those guys to haul off and belt me in the face? What good is some bogus fine going to do if I walk off the court with a broken nose." *Id.*

Compare *NBA Refs Accosted in Separate Incidents*, *supra* note 28. Van Exel's response to the situation should have mirrored that of his then Laker teammate Magic Johnson. *Id.* Five days after the Van Exel incident, Johnson bumped ref Scott Foster while arguing a call. Once fined and suspended by Stern, Johnson recognized his mistake and apologized. *See id.*

48. *See* Nesbitt, *supra* note 19. This famous quote by Oakland Raider's owner Al Davis promotes the attitude towards victory which measures results in the form of wins, not sportsmanship. *See id.*

ager. Observers would be hard-pressed to find the same pressure at the amateur and recreational levels of play, yet uncontrolled intensity exists there tenfold.

III. THE "TRICKLE DOWN" EFFECT— LOW STAKES, EVEN LESS RESTRAINT

"Nobody saw him coming because they were all attending to me. I could hear what was going on around me but I couldn't open my eyes."

— Basketball referee Charles Murray after an assistant coach had punched him in the mouth, and a twelve-year-old player had shattered his ankle with a metal folding chair.⁴⁹

Lack of deference to the sports official starts at the professional level, is adopted by those who watch the pros, and condoned by the public at large.⁵⁰ This creates countless situations where referees at amateur and local levels are not afforded the same extent of protection as professional league officials.⁵¹ At these lower level athletic events the sports official may operate alone, or with one or two other officials. Usually a part-time job, the local sports official does not give his time as an umpire or referee for money—only for the interest in local competitors and in the game itself.⁵²

Yet without the glare of the media, the stare of tens of

49. See Bill Topp, *Ordeal*, REFEREE, Aug. 1994, at 70. Murray was the referee in a church basketball league game and with three minutes remaining in the contest, he whistled a coach for a technical. See *id.* The assistant coach proceeded to knock out three of Murray's front teeth. See *id.* "While [Murray] lay on the floor, with blood and broken teeth clogging his throat, [the] 12-year-old player ran up and smashed a folding chair across his legs, breaking his left ankle." De Lisser, *supra* note 24.

50. 49 See Nesbitt, *supra* note 19. Nesbitt chronicles the thoughts of Mau Cason, a 20-plus year veteran referee of the Chicago Public High School Basketball League. See *id.* Cason's concerns include the "growing sense that such vitriol [in the form of fan jeering] has become unshackled and now knows no boundaries. . . ." *Id.* Cason further notes that "the hurled insult can now be followed by the chest bump, the head-butt, spittle-in-the-face or the full-blown punchout with little fear of crushing penalty or societal outrage." *Id.* The longtime ref agrees that "[a]nytime the supervisors don't address verbal and physical assaults on officials at the pro level, it trickles down." *Id.*

51. See, e.g., Alfano, *supra* note 23 and accompanying text. For this reason Jim Tunney, a 28-year referee in the National Football League, confesses in his book entitled *Impartial Judgment*: "I'd rather work a game between the Giants and the Redskins than a Little League game." *Id.*

52. See, e.g., Joel Stashenko, *Criminalizing Abusive Actions Toward Officials*, THE PORTLAND OREGONIAN, July 6, 1997, at B1. A Little League umpire may make between \$7-\$10 per game, whereas a high school game could fetch an umpire somewhere around \$30. See *id.*

thousands of fans, and the hard-driving pressure to "just win" hanging over a player's head, the violent flare-ups aimed at officials are alarmingly higher.⁵³ Take some of the following examples as a small cross-section:

- June, 1991: A 31-year-old assistant coach for an East St. Louis youth baseball team is ejected for verbally abusing a 16-year-old umpire and returns to the field with a .38 caliber revolver.⁵⁴ The coach squeezes off a few rounds but misses both umpire and fans.⁵⁵
- Summer, 1992: A player at an American Legion baseball game hits an umpire in the chest with a bat after the umpire mistakenly called him out on the second strike.⁵⁶
- May, 1994: A 17-year-old umpire in Connecticut is hit in the face with an aluminum bat by an angry Little League coach.⁵⁷
- July, 1994: A referee in the Oakland Neighborhood Basketball League calls a foul on a player and is attacked by fans.⁵⁸ The referee was left "semiconscious on the floor, blood pouring from his wounds" as the attack ensued.⁵⁹
- August, 1994: A referee of 18 to 24-year-old basketball players was "punched, kicked and beaten over the head with a chair" by spectators angry about a call.⁶⁰
- September, 1995: The father of a high-school volleyball player in California head-butted the referee after his daughter's team had been eliminated from a semi-final match.⁶¹
- January, 1996: A wrestling official in Spokane, Washington is head-butted by the losing participant and knocked unconscious for more than 20 seconds.⁶²

53. See, e.g., Margo Athans, *Attacks Have School Referees Crying Foul*, FT. LAUTERDALE SUN-SENTINEL, Oct. 17, 1994, at 1A. Low pay and high levels of verbal abuse have always been part of the job. See *id.* "You give up dinner with your wife for a \$45 paycheck, and then you get to hear what a stupid, lousy SOB you are." *Id.*

54. See Greg Boeck, *Umpires Not So Safe: Violence vs. Officials 'A Scary Thing'*, USA TODAY, Aug. 2, 1991, at 1A.

55. See *id.*

56. See *Hit the Umpire; Go to Jail*, GREENSBORO NEWS & RECORD, July 11, 1993, at B4.

57. See De Lisser, *supra* note 24 and accompanying text.

58. See Reynolds Holding, *Violence in Amateur Sports: Beaten Officials Going to Court to Even the Score*, THE SAN FRANCISCO CHRONICLE, Aug. 5, 1994, at A1. It should also be noted that the referee, Richard Hill, was working the game for free. See *id.*

59. *Id.*

60. Athans, *supra* note 53. This referee, too, was a volunteer. See *id.*

61. See Bryan Rodgers, *Man Arrested for Assault on Referee*, LOS ANGELES TIMES, Oct. 18, 1995, at C1. The referee, Jerry Burns, was in his 18th season as a high school sports official and suffered a facial gash and nose injury as a result of the attack. See *id.*

62. See *Prep Wrestler Gets 30-Day Jail Term for Head-Butting*, REFEREE, Aug. 1996.

- February, 1996: Two referees were attacked during a Kentucky Boys and Girls Club basketball game, after the coach had been hit with a technical foul.⁶³ The coach's reaction prompted the referees to cancel the game, and led to a skirmish with the coach and players.⁶⁴ The referees were "kicked, punched and hit with chairs," and sustained injuries necessitating hospital care.⁶⁵
- July, 1996: As the bench of the Mid-Continental Football League's Toledo Thunder chanted, "HIT THE REF!" a Toledo linebacker "lowered his helmet and charged into [the referee] at full speed."⁶⁶
- November, 1996: New Mexico football referee Allan Bainter was blindsided by a player in full sprint after the player's ejection from a high school game.⁶⁷ Bainter would be hospitalized for two days thereafter.⁶⁸
- January, 1997: A Philadelphia high school basketball player disagreed with a technical foul called against him and punched the referee in the eye.⁶⁹
- September, 1997: Just after a North Carolina high school volleyball game, a fan upset with the officiating punched the referee in the neck from behind, and knocked him off his feet.⁷⁰

These few cases illustrate that the failure to control anger is not particular to any isolated class of player, coach or fan.⁷¹

See also, Chris Mullick, *Bill For Referees Dies After Delay of Game Filibusters Leave No Time to Stiffen Penalties for Assaults*, THE SPOKESMAN REVIEW (Spokane, Washington), Mar. 21, 1997, at B6. Bob West, the referee injured in the incident, campaigned for the model legislation to be passed into Washington law. See *id.* West watched the bill die as the vote deadline passed, and he later admitted he "had no idea there were all these hoops you have to jump through [to pass a law]." *Id.*

63. See Cindy Schroeder, *Youth Hoops Coach Pleads Not Guilty: Attack on Referees "Nobody's Fault"*, THE CINCINNATI ENQUIRER, Feb. 24, 1996, at B1.

64. See *id.*

65. *Id.* The coach would later comment that the whole incident "was nobody's fault. . . [i]t just happened." *Id.*

66. *Football Official Rammed by Player*, REFEREE, Nov. 1996. Referee Eric Erickson was taken to a local hospital and treated for "severe contusions, pulled neck muscles and numbness in his arms and shoulders." *Id.*

67. *High School Football Ref Knocked Out*, REFEREE, Feb. 1997, at 14. Back Judge Robert David would say after the incident that the player "must have run 35 yards at [Bainter] at full speed." *Id.* David added that the hit from behind sent Bainter into the air, "and he flipped over and landed on his head." *Id.*

68. See *id.*

69. See Bill Littlefield, *When "Kill the Umpire" is More Than a Taunt*, USA WEEK-END, Sept. 14, 1997, at 14. The laceration inflicted from the punch required six stitches to close. See *id.*

70. See Todd Nelson, *Man Charged in Attack on Volleyball Referee*, THE NEWS & OBSERVER (Raleigh, NC), Sept. 18, 1997, at B1.

71. See, e.g., Nesbitt, *supra* note 19. A Wisconsin District Attorney was removed

Nor are sex lines an issue, as both men *and* women have been documented as sports official abusers.⁷² In fact, some cases involve people who have served as officials themselves and, as spectators, lost control on then working officials.⁷³ There simply is no guessing as to where the attacks will come from next.

With media and public pressure at recreational or amateur sporting events far less than that found at the professional level, why the dramatic rise in violence? The "trickle-down" effect provides much impetus for this behavior,⁷⁴ with parents pressing their children to play like big league competitors.⁷⁵ These parents will often try to develop young athletes, at any cost, into future million-dollar superstars.⁷⁶ Compound this premature development attempt with the parent's own athletic failures, and the sports official becomes the "brunt of the parent's frustration and fury."⁷⁷ These attacks on the official not

from his office resulting from a February 1997 attack by the DA on a referee during his son's junior varsity basketball game. *See id.*

72. *See, e.g.,* Young, *supra* note 5. Take Kathleen Barajas and Julia Farrell, two Omaha, Nebraska mothers who shoved and verbally abused a 13-year-old referee during a 6 and 7-year-old youth soccer match. *See id.*

See also Assault Filed Against Woman Coach, TULSA TRIBUNE & WORLD, Mar. 8, 1997, at B2. More recently, a female women's basketball coach for Wallace-Rose Hill High School in North Carolina was charged with assault on a referee in a state playoff game. *See id.* The coach expressed no outward anger towards the officials during the game, but afterwards stormed the office which served as the official's dressing room. *See id.* She grabbed, and as a result scratched, the referee while her players attempted to restrain her. *See id.*

73. *See* Boeck, *supra* note 54. Therein, a Vermont first-base coach for an American Legion team grabbed and knocked down the umpire. *See id.* "The irony: [The coach] was a member of the Vermont umpiring association." *Id.*

74. *See, e.g.,* Lipsyte, *supra* note 14. "Parent[s] and coaches put pressure on youngsters to win, and by their own abusive behavior give young players tacit permission to act out." *Id.* The Southern California Tennis Association junior program director, Jim Hillman, feels that the big money available in the big leagues gives parents "an inflated view their child can become a professional. . . [t]here is pressure on the kid being groomed without the right knowledge." *Id.*

75. *See, e.g.,* Josh Getlin and Sarah Smith, *Obsessed Parents; Killing the Ump: It Isn't Child's Play*, LOS ANGELES TIMES, Jan. 27, 1987, §1 at 1. Harry Edwards, professor of sociology at the University of California, Berkeley, comments that the pressure some parents place on their children, and ultimately may take out on the sports official, is "influenced by hours of television sports and an obsession with winning. . . ." *Id.*

76. *See id.* and accompanying text. Professor Edwards notes that this parent mentality starts "when the father walks into the maternity ward carrying a blanket with little football insignias, baseball bats or hockey pucks on it." *Id.* Despite the odds against the child athlete developing into a player of professional caliber, parents are usually not deterred in bringing a "Super Bowl-like intensity to contests between athletes less than a decade out of diapers." *Id.*

77. Getlin, *supra* note 75 and accompanying text. Psychology professor Thomas

only put others at risk, but also spoil the "lessons young players should be learning through sports."⁷⁸

These children, unduly pressured to perform, grow into the next generation of both athletically-inadequate parents and "weekend warriors" still trying to capture a dream long past. With this skewed view of the sports official not a human, but as the "intermediary charged with orderly play within a sporting event," a de-humanization occurs. Verbal abuse and physical confrontation is no longer seen to affect a person, but rather, an entity. Decorum is cast aside and impulse reigns.⁷⁹

IV. SOME HISTORICAL PERSPECTIVE THROUGH THE JUDICIARY—*TOONE V. ADAMS* ANALYZED

"Half the people are going to agree with your calls. The other half ain't."

— Old saying among sports officials

Attacks on sports officials are nothing new. Referees have been under siege for generations.⁸⁰ The 1964 case of *Toone v.*

Tutko of San Jose State University notes that "infantile" behavior is exhibited by parents at their child's sporting event. *See id.* "They're [the parents] attacking the outside world—in this case an umpire—because of their own sense of inadequacy." *Id.*

78. Getlin, *supra* note 75 and accompanying text. Raucous behavior by the parent "shows children that—despite all those lectures about sportsmanship—their parents have not mastered the art of cooperation and the civilized resolution of conflicts." *Id.* Professor Tutko aptly notes that "[t]he obsession with winning has nothing to do with the kids' needs, which are not to win but to grow, develop, learn, be with their friends and have fun." *Id.*

79. *See, e.g., Editorial Snowball Fans*, LOS ANGELES DAILY NEWS, Jan. 2, 1996, at N10. When impulse overrides rational thought, especially at a large sporting event, disaster looms. *See id.* Take, for example, the New York Giants/San Diego Chargers football game in December of 1995. *See id.* At the game, fans began pelting the field with snowballs in a "shameful example of unsportsmanlike behavior" and knocked Charger's equipment manager, Sid Brooks, unconscious with one of the projectiles. *Id.* The Giants, in an effort to 'send a message' revoked 75 season tickets from unruly fans, and took out a full page ad in the San Diego Union-Tribune apologizing for the actions of their fans. *See id.*

80. *See, e.g., Allen J. Abel, Going Down Swinging; Fan Frankie Germano Delivered Swift Justice When an Ump's Call Cost The Bums a Win*, SPORTS ILLUSTRATED, Aug. 19, 1996, at 51. This story traces the September, 1940, exploits of Brooklyn Dodger's fan Frankie Germano and his assault of umpire George Magerkurth. *See id.* Germano, a young, lean "scrapper" physically "confronted, berated, knocked down, straddled and repeatedly pounded a 230-pound National League umpire" after a game at Ebbots Field. *Id.* The newspapers would thereafter herald Germano as a hero for pummeling the umpire who had "blown the call." *Id.* Germano would later admit that he idolized Leo Derocher, one-time Dodger's coach and "a dapper dictator of incendiary temperament." *Id.* "When he got mad," Germano would beam proudly, "I got mad." Abel, *supra*.

*Adams*⁸¹ serves as a perfect starting point for a historical perspective.⁸² *Toone* is also illustrative of the hostility often faced by umpires and the duty, or lack thereof, that coaches, teams and leagues have to protect the official.

In *Toone*, a baseball umpire filed an action in the Superior Court, Wake County of North Carolina against the Raleigh Caps baseball team, manager and a fan for injuries sustained when the umpire was assaulted while leaving the field after a game.⁸³

It was June 15, 1960 and the plaintiff was a field umpire at a game between the Raleigh Caps and the Greensboro Yankees.⁸⁴ The plaintiff would make three calls that night which were instrumental in the attack at hand.⁸⁵ First, in the second inning, the plaintiff ruled that a Raleigh outfielder had failed to catch a ball cleanly, 'trapping' the ball with his glove instead.⁸⁶ The Raleigh manager, co-defendant Kenneth Deal, vehemently protested the call.⁸⁷ Next, the plaintiff called a Raleigh player out on a close play at first base in the third inning.⁸⁸ This time, Coach Deal warned the plaintiff that if another call was made that he (Deal) did not agree with, "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 towards the plaintiff by the partisan fans."⁸⁹ This prophecy came true in the ninth inning when all hell broke loose.

With the Yankees at the plate, the plaintiff called a batter safe at first base on an infield hit.⁹⁰ Incensed by the call, Deal stormed the field with his Raleigh players and proceeded to push and shove the plaintiff.⁹¹ Deal was asked by the plaintiff to control his team, and when this request was deliberately disregarded, "plaintiff promptly informed Deal that he was re-

81. 137 S.E.2d 132 (N.C. 1964).

82. *See id.*

83. *See id.* at 134.

84. *See id.*

85. *See Toone*, 137 S.E.2d at 132-35.

86. *Toone*, 137 S.E.2d at 134.

87. *See id.*

88. *See id.*

89. *Id.*

90. *See Toone*, 137 S.E.2d at 134.

91. *See id.*

moved from the game."⁹²

Pandemonium ensued thereafter.⁹³ The fans,⁹⁴ charged by the actions of the Raleigh team and its coach, poured over the right field fence.⁹⁵ They cursed at and challenged the plaintiff to a fight.⁹⁶ In hopes that he could get off the field as soon as possible, plaintiff gathered with another umpire and two policemen to seek shelter.⁹⁷ "On the way, co-defendant Baxter Adams, without any cause or provocation, and without warning, struck plaintiff a blow on his head" which resulted in injury.⁹⁸ Subsequently, plaintiff filed this action.⁹⁹

Plaintiff alleged that the proximate cause of his injury was direct result of a breach of the duty the team owed to him as the umpire.¹⁰⁰ The umpire alleged defendants Deal and Raleigh Baseball, Inc. "owed him the duty to conduct themselves so as not to incite the fans against him and also to provide him with safe passage from the playing field 'either by police or by other agents of the corporation' immediately after the game."¹⁰¹ Furthermore, plaintiff alleged that the attack by the fans was a foreseeable consequence of defendant Deal's actions.¹⁰² All tolled, plaintiff sought compensatory and punitive

92. *Id.*

93. See Boeck, *supra* note 54 and accompanying text. The umpire's inability to penalize a coach or player without ejecting them from the game completely has been addressed. See *id.* Therein, Merle Butler, mentioned *supra* note 24, complains: "Basketball has the technical foul and football the penalty, but umpires have nothing to combat the abuse." *Id.*

94. A short form of the word *fanatic*, a "fan" is defined as "a person enthusiastic about a specified sport, pastime, or performer. . . ." WEBSTER'S NEW WORLD DICTIONARY 490 (3rd ed. 1994).

95. See Toone, 137 S.E.2d at 134.

96. See *id.* at 134.

97. See *id.*

98. *Id.*

99. See Toone, 137 S.E.2d at 134.

100. See *id.*

101. *Id.* Plaintiff also set out in his complaint rules and regulations of the National Association of Professional Baseball Leagues, the same league with which the Caps were associated. See *id.* Therein, the rules provide:

. . . that the home team shall furnish police protection sufficient to preserve order at a game; they authorize the umpire to remove managers, players, spectators or employees from a game or field for a violation of the rules or unsportsmanlike conduct; and they declare that 'his [the umpire's] decisions which involve judgment' shall be final and that players and managers shall not object thereto.

Id. Unfortunately for the plaintiff, these portions of the complaint were stricken as evidentiary. See *id.*

102. See Toone, 137 S.E.2d at 134.

damages.¹⁰³

At the trial level, the court dismissed the complaint for failure to state a cause of action.¹⁰⁴ The court held that there was no legal duty for defendant Deal to breach, the facts alleged did not provide a causal relation between the conduct of Deal and the assault by Adams, and the assault by the spectator was not reasonably foreseeable.¹⁰⁵ These and other issues were brought before the North Carolina Supreme Court for review.

On appeal, the findings of the lower court were upheld.¹⁰⁶ Although the appellate court agreed that a sports official should never be subject to physical abuse, they conceded that verbal abuse is "a goodly part of the sport."¹⁰⁷ As such, there can be no correlation between the abuse absorbed by plaintiff from Deal, and the assault on the plaintiff by Adams.¹⁰⁸ In their final synopsis, the court found that neither they, "nor a jury, could say that the conduct of Adams was 'the fruit of the seeds of disorder' sown by Deal."¹⁰⁹ The mere fact that both Adams and Deal became "simultaneously enraged with the plaintiff for the same cause" did not suffice.¹¹⁰ Thus, the un-

103. *See id.*

104. *See id.*

105. *See id.*

106. *See Toone*, 137 S.E.2d at 139.

107. *See id.* at 136. In a spirited but misguided passage, the court commented in dicta that "goading and denouncing the umpire when [the fans] do not concur in his decisions" is commonplace. *Id.* Additionally, the court noted:

most feel that, without one or more rhubarbs, they [the fans] 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. Illustrative of this faculty is the storied conversation of three umpires who were discussing matters of mutual interest:

'Balls and strikes,' said one, 'I call them as I see them.'

'Balls and strikes,' said the second, 'I call them as they are.'

'They are not balls and strikes until I call them,' decreed the third.

Id.

108. *See id.* at 136-37. The court held that "[o]ne is not responsible for a beating inflicted by another, however wrongful it may be, simply because he thinks the punishment deserved, or is pleased at it, or thinks well of it. He must do something more." *Id.* (Citations omitted).

109. *Toone*, 137 S.E.2d at 138. The court found that only speculation could attach the fan's actions to the coach's behavior. *See id.* Nonchalantly, the court found that Adams' assault could have been the result of "his own reaction to the umpire's ruling, to the 'rhubarb' created by Deal, to both, or whether he [Adams] 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." *Id.*

110. *Id.* at 138-39. The court said that it would be "an intolerable burden upon man-

sportsmanlike conduct of the manager was not seen to incite the crowd to violence.¹¹¹

And so, despite a fan's frustrations, a coach's misbehavior, and the players' discontent, the umpire is afforded no protection beyond that of any other individual. His precarious position as referee is compromised by his ability to make the calls 'as he sees them.' If the calls are not made in conformity with how others see them, the official is singled-out as a culprit of sorts, and subject to uncalled-for abuse by everyone participating in the sporting event. The official wears a target, and hangs himself out to the whimsical aggression of those around him.¹¹²

V. FIGHTING BACK— REFEREES INCITE LEGISLATION

"Referees are the judges and police, if you will, of our sporting endeavors. Without judges and police, there is no law and order. Without referees, there are no games. Sports participants and spectators need to receive the clear message that we, as a society, will not tolerate the mugging of an official— whether the call was 'right' or 'wrong'."

—Barry Mano, President of the National Association of Sports Officials (NASO)¹¹³

agers of baseball teams to saddle them with responsibility for the actions of every emotionally unstable person" who is angered by the call of the sports official. *Id.* at 139.

111. See *id.* and accompanying text.

112. Umpire Toone would find it bittersweet that North Carolina was among the first states to adopt legislation addressing the plight of the sports official. See N.C. GEN. ST. §21-33. The North Carolina statute provides in pertinent part:

(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor, in the course of the assault, assault and battery, or affray he: . . . (9) Commits an assault and battery against a sports official when the sports official is discharging or attempting to discharge official duties at a sports event, or immediately after the sports event at which the sports official discharged official duties. A "sports official" is a person at a sports event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach. A "sports event" includes any interscholastic or intramural athletic activity in a primary, middle, junior high, or high school, college, or university, any organized athletic activity sponsored by a community, business, or non-profit organization, any athletic activity that is a professional or semiprofessional event, and any other organized athletic activity in the State.

N.C. GEN. STAT. 14-33(9)(a) (1997).

113. Barry Mano, *Referees Need Special Protection*, THE RECORD (Northern New Jersey), Oct. 14, 1992, at B6.

Worthy of much more than a mere footnote, Mr. Mano champions the cause for

It would not be long until the collective voice of the sports official would be heard. The need for enhanced protection of referees became evident to many state legislators through the accounts "highlighted" in Section III. Proactively, the National Association of Sports Officials "drafted model legislation"¹¹⁴ in 1987 making attacks on officials a criminal offense."¹¹⁵ This

sports officials everywhere. *See generally* Kathleen Waterbury, *Good Call: Mano Scores with Referee Enterprises*, THE MILWAUKEE SENTINEL, Nov. 17, 1997, at 1D. Most articles and writings that deal with violence against sports officials bear Mr. Mano's insightful thoughts and opinions. *See id.* A former official for 23 years, Mr. Mano developed the NASO to address the very problems cited herein. *See id.* His main platform remains to be *Referee* magazine, a monthly periodical dedicated to the sports official. *See id.* Within *Referee*, readers find various articles drawn from local accounts and newspapers that document attacks on officials. *See* Waterbury, *supra*.

Mano is also very outspoken on the "Trickle-Down Effect" highlighted *supra*, Section III. He took note that the Roberto Alomar incident served as a springboard to similar events at the high school level. *See*, Bob Knudson, *More Attacks On Officials Alarm Leader Magazine, Group Aid Referees*, OMAHA WORLD-HERALD, Mar. 18, 1997, at 19SF.

114. The model legislation provides:

Section 1: Any person who physically assaults any sports official at any level of competition, within the confines or immediate vicinity of the athletic facility at which the athletic contest in which the sports official was an active participant shall be guilty of a crime (misdemeanor, felony, etc.) which shall be punishable by a fine of \$10,000 and/or imprisonment to a maximum of three (3) years.

Section 2: Sports officials are defined as those individuals who serve as referees, umpires, linesman (sic), and those who serve in similar capacities but may be known by other titles and are duly registered or members of a local, state, regional or national organization which is engaged in part in providing education and training to sports officials.

Section 3: The law shall take effect immediately.

PROPOSED MODEL LEGISLATION: CRIMINAL OFFENSE TO PHYSICALLY ASSAULT SPORTS OFFICIALS, drafted by Melvin Narol, Special Advisor to the *National Association of Sports Officials*.

115. Boeck, *supra* note 54. The drafter of the model legislation, New Jersey attorney Melvin Narol, notes that more and more courts are ruling in favor of the sports official because, in his words, "[There is] an analogy that officials are like judges. . . ." *Id.* As such, Narol feels that judges relate to the official, seeing them as "brethren, judges on the field." *Id.*

See also ALAN S. GOLBERGER, *SPORTS OFFICIATING: A LEGAL GUIDE* 114 (Leisure Press 1984). Comparison of the sports official to other authority figures can additionally offer a fitting analogy of how referees should be protected. *See id.* Goldberger cites the turn of events when a police officer is assaulted:

There are so many charges lodged that the legal system gets several bites of the apple in an attempt to bag the offender. There is good reason for this. Police officers, highly visible to the public and at once the keepers of the peace and scapegoats of society are, like officials, subject to affronts on their safety and dignity, ranging from verbal insults to brutal and deadly violence. Were they not to protect their own brethren by doing all in their power to discourage and deter attacks on themselves, they would be unable to do an effective job of protecting the rest of us.

Id.

model legislation serves as the catalyst behind criminal statutes now in effect throughout twelve states.

A. *States with Laws to Protect Officials*

As of July 1, 1997, there were twelve states that provide protection in their state statutes for sports officials.¹¹⁶ Most are variations of, but none are quite as severe as, the proposed model legislation. Each state which has sought to provide some modicum of protection for the sports official, however, follows the same formula when addressing all elements of the crime. On the whole, the enacted statutes apply to and intend to punish any person guilty of such offense. Thus, the crowd of fans at any given event, all players both on and off the court, field or ice, and any other person represented at an athletic event must refrain from committing assault or battery on the sports official.

Initially, the definition of the term "sports official" provides the scope of those covered under the statute. Some states extend coverage of the statute to not only umpires, referees, and officials in general, but also to coaches and other supervisory personnel.¹¹⁷ In fact, Pennsylvania provides the most comprehensive definition of those covered by also listing "trainer, team attendant, game manager, athletic director, assistant athletic director, president, dean, headmaster, principal and assistant principal of a school, college, or university."¹¹⁸

Next, the "sports event" itself is identified. An important distinction is made between athletic events at an interscholastic or intramural level, as opposed to a more publicly organized event.¹¹⁹ Yet statutes have been drafted to extensively cover each and every sporting event, at all levels, within the state.¹²⁰

116. See *supra* note 3, New Jersey; *supra* note 112, North Carolina; *infra* note 124, Arkansas; *infra* note 123, California; *infra* note 128, Delaware; *infra* note 127, Louisiana; *infra* note 125, Minnesota; *infra* note 127, Montana; *infra* note 117, Oklahoma; *infra* note 118, Pennsylvania and all accompanying text.

117. See, e.g., OKLA. STAT. ANN. tit. 21 § 650.1 (West 1997), which goes as far as to include the timekeeper in its purview.

118. 18 PA. CONS. STAT. ANN. §2712(c)(1997).

119. Compare LA. REV. STAT. ANN. §14-34-4(A)(2) (West 1997)(providing coverage over public or private secondary school officials only) with CAL. PENAL CODE §243.8 (West 1997) (providing an increased scope of event coverage to include attacks on officials in "interscholastic, intercollegiate, and any other organized amateur or professional athletic contest[s].").

120. See, e.g., *supra* note 112, for North Carolina's explicitness in this area.

These more encompassing definitions grant greater uniformity in the protection and punishment for abuse of the official.¹²¹

The time of an assault also proves to be an important component in the composition of the statute. The model legislation fails to address the proximity in time between an assault on an official and the actual athletic event.¹²² However, some states have specifically addressed, by statute, the official's right to protection during and immediately following a game.¹²³ Arkansas and California have gone one step further to include attacks before the games as well.¹²⁴ Situations that are not in immediate proximity of the event, yet "in connection with" the event, are also specifically addressed by certain statutes.¹²⁵

Penalties for these violations vary considerably from state to state. Minnesota, for example, has fairly lenient punishment when compared to most other jurisdictions.¹²⁶ Where Minnesota only chooses to exclude an assailant from attending future activities, most states hand down fines and/or short prison sentences.¹²⁷ Other states impose punishment by ap-

121. See, e.g., *supra* note 119 and accompanying text. Uniformity is more readily found in the more expansive definitions when for example, the sports official can be assaulted without additional penalty at a semi-pro baseball game as opposed to a high-school soccer match. See *id.*

122. See *supra* note 112 and accompanying text.

123. See, e.g., CAL. PENAL CODE §243.8 which expressly provides coverage within the scope of the statute "[w]hen a battery is committed against a sports official *immediately prior to*, during, or immediately following" the athletic event. CAL. PENAL CODE §243.8 (West 1997)(emphasis added).

124. See, e.g., ARK. CODE ANN. § 5-13-209 which provides:

Any person, with the purpose of causing physical injury to another person, who shall strike or otherwise physically abuse an athletic contest official *immediately prior to*, during, or immediately following an interscholastic, intercollegiate, or any other organized amateur or professional athletic contest in which the athletic contest official is participating shall be guilty of a Class A misdemeanor.

ARK. CODE ANN. § 5-13-209 (Michie 1987)(emphasis added).

125. See, e.g., MINN. STAT. ANN. §128C.08(2) which attaches to "[a]ny person who assaults a sports official *in connection with* an interscholastic athletic activity may be excluded from attending an activity for up to 12 months." MINN. STAT. ANN. §128C.08(2)(West 1997)(emphasis added).

126. See *id.* and accompanying text.

127. See CAL. PENAL CODE §243.8 whereby the offense is "punishable by a fine not exceeding Two Thousand Dollars (\$2,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment." CAL. PENAL CODE §243.8 (West 1997).

See also LA. REV. STAT. ANN. §14-34-4(A)(2) whereby "whoever commits the crime of battery of a school athletic contest official shall be fined not more than Five Hundred Dollars (\$500) and imprisoned not less than 15 days nor more than six months without benefit of suspension of sentence." LA. REV. STAT. ANN. §14-34-4(A)(2)(West 1997).

plying aggravating circumstances to the assault, thereby increasing the severity of the penalty.¹²⁸ Delaware's statute is an ideal model for other jurisdictions in that penalties stiffen more when an offender commits subsequent offenses.¹²⁹

As of July 1, 1997, five states were, or had been, in active consideration of adopting legislation regarding assaults on a sports official.¹³⁰ These proposed statutes all follow the Proposed Model Legislation in touching on each of the aforementioned elements. One piece of proposed legislation, South Carolina's, ambitiously mirrors the model legislation in form and severity of punishment.¹³¹ None of the statutes, however, discuss what should happen when the official is in the wrong. . . .

B. *"Ultra Vires" & Provocation Cases Not Applicable*

At times, the sports official oversteps his bounds. Like any position of power, even in a recreational context, the referee may adopt the posture of one who is infallible.¹³² Naturally, ego and personal ideology are a major factor in the actions of both player and official. Yet the official, with the duty to serve as objective interpreter of both the rules and the play before him, could dictate the outcome of any sporting event on whim. Instances of provocation and "ultra vires" conduct¹³³ by a referee are not unheard of, and should not invoke protection of a statute designed to cover assault on a sports official.

Take for example the case of Ken Smotrys. Smotrys, a high school referee in California, was an official in a football game

See also MONT. CODE ANN. §45-5-211(2) whereby "a person convicted of assault upon a sports official shall be fined an amount not to exceed one thousand dollars (\$1000) or be imprisoned in the county jail for any term not to exceed six months, or both." MONT. CODE ANN. §45-5-211(1996).

128. *See, e.g.*, DEL. CODE ANN. tit.11 §614(a) which states that "any person who intentionally causes physical injury to a sports official who is acting in the lawful performance of his duty shall be guilty of a Class A misdemeanor." DEL. CODE ANN. tit.11 §614 (1996). Delaware continues by increasing the severity of misdemeanor "[u]pon conviction for a second or subsequent offense under this section. . .[to a] Class G felony." *Id.*

See also supra note 3 and accompanying text.

129. *See*, DEL. CODE ANN., *supra* note 126 and accompanying text.

130. *See, e.g.*, Hawaii Senate Bill No. 1009; Hawaii House Bill No. 306; Missouri Chap. 574, RSMO, Sec. 574.095; New York Senate Bill No. 5082; So. Carolina Sec. 52-7-710 (proposed); and Washington RCW 9:94A.390.

131. *See* So. Carolina Sec. 52-7-710 (proposed).

132. *See supra* note 107 and accompanying text.

133. *See supra* note 13 and accompanying text.

between Compton Centennial High and Beverly Hills High which he will never forget.¹³⁴ The events which transpired during that October of 1995 would lead to a swirling controversy, two arrests, and much litigation.¹³⁵ All this after Smotrys was punched out.¹³⁶

The game began uneventful enough. The first half passed without incident, with an average amount of penalty calls.¹³⁷ During the half-time break, the twelve-year veteran official told fellow referees that he was concerned with the demeanor of two Centennial players.¹³⁸ One of these players, Kumasi Simmons, would soon become prominent in Smotrys' life.¹³⁹

According to Smotrys, on the kickoff for the second half, Simmons tackled the Beverly Hills player who received the ball and pushed his helmet into the turf after the whistle.¹⁴⁰ As Smotrys ran to where the tackle occurred, he ran into another Centennial player, Vincent Brooks.¹⁴¹ When Smotrys got near Simmons, the referee "was being very loud with him" in order to convey to Simmons' that his actions were not sportsmanlike.¹⁴² With that, the teams went back to their huddles to commence the next series of plays.¹⁴³ As the teams broke from their huddles, Simmons broke for Smotrys.¹⁴⁴

134. See, e.g., Deborah Hastings, *Racism in L.A. County Reaches Even Prep Level: Everyone Knows Player Punched Referee, But Who Knows the True Story?*, SAN FRANCISCO EXAMINER, Nov. 26, 1995, at D5. Smotrys was only a part-time referee, and never had a complaint lodged against him during his 12-year tenure as an official. See *id.*

135. See, e.g., Eric Shepard, *Centennial Player Disciplined; Prep Football: Kumasi Simmons Suspended from School, Removed from Team for Punching Official*, LOS ANGELES TIMES, Oct. 24, 1995, at C7 (hereinafter Shepard, *Centennial Player Disciplined*).

136. See *id.*

137. See Eric Shepard, *It Was One Punch With Many Repercussions; Prep Football: Charges of Racism have been Raised—and Vigorously Denied—Since a Black Player Struck a White Referee*, LOS ANGELES TIMES, Oct. 28, 1995, at C1 (hereinafter Shepard, *It Was One Punch*).

138. See *id.* Smotrys told the other officials that the two players, Kumasi Simmons and Avante Rose, were "extremely vocal" and "appeared to be upset" during the first half. *Id.*

139. See, e.g., Eric Shepard, *Unfinished Business: A Year After a Referee was Punched During Game Between Compton Centennial and Beverly High, Issues Remain Unsolved*, LOS ANGELES TIMES, Oct. 24, 1996, at C7 (hereinafter Shepard, *Unfinished Business*). "This thing is never far from the front of my mind," Smotrys admits. *Id.*

140. See *id.*

141. See *id.*

142. See *id.*

143. See Shepard, *It Was One Punch*, *supra* note 137.

144. See *id.*

Videotape¹⁴⁵ captured Simmons charging Smotrys and punching him so hard that the referee's feet left the ground.¹⁴⁶ Both parties were arrested and Simmons was charged with assault on a sports official.¹⁴⁷ But the story was far from over.

Simmons, an African-American, was an honor student and Captain of his team.¹⁴⁸ With no prior history of violent behavior, all personal accounts of Simmons point to his exemplary behavior on and off the field.¹⁴⁹ Questions remained as to how this otherwise model student could be brought to fisticuffs.¹⁵⁰

Simmons said Smotrys called him a racial slur.¹⁵¹

Smotrys, who is white, denied it.¹⁵²

And so ensued allegations of racism and civil rights violations.¹⁵³ Members of Compton Centennial confirmed Simmons' story.¹⁵⁴ In fact, the head coach for Centennial claimed that this was not the first meeting between the two teams where that epithet had been heard on the field.¹⁵⁵ Yet Smoltrys produced evidence and witnesses to corroborate his version of the story.¹⁵⁶ Most significantly, Smoltrys points to Simmons' po-

145. See Hastings, *supra* note 134 and accompanying text. Two video tapes documented the attack—one from a student and one from the local cable station. See *id.*

146. See, e.g., Niki Kapsambelis, *Race, Videotape Again at Play in a City Divided*, THE ORANGE COUNTY REGISTER, Nov. 5, 1995, at A36. Smotrys would later be administered 6 stitches to close the cut above his eye. See *id.*

147. See *id.* Simmons was also suspended, then expelled when school administration determined he was not a resident of Compton. See *id.*

See also *Charges Fly After Game*, CHICAGO SUN-TIMES, Nov. 1, 1995, at 38.

148. See Shepard, *Centennial Player Disciplined*, *supra* note 135. The Centennial coach, also the mayor of Compton, said Simmons "is the leader of this team and someone I have never had a problem with before." *Id.*

149. See *id.*

150. See *id.* Not uncharacteristic of Simmons' demeanor, he was both apologetic and remorseful after the incident. See *id.*

151. See Hastings, *supra* note 134 and accompanying text. See also *Claim of Racial Slur Doubted; CIF, Beverly Hills Police Conduct Investigation*, SAN DIEGO UNION-TRIBUNE, Nov. 8, 1995, at D8.

152. See *id.*

153. See Shepard, *It Was One Punch*, *supra* note 137. Simmons would further claim that the police officers who arrested him violated his civil rights. See *id.*

154. See, e.g., *Eight Heard Referee's Slur, Lawyer*, CHARLESTON DAILY MAIL, Nov. 1, 1995, at 3B. Teammate Vincent Brooks, the player Smoltrys collided with before any confrontation with Simmons, said he heard the epithet. See *id.*

155. See, e.g., Shepard, *It Was One Punch*, *supra* note 137. The Centennial coach, Omar Bradley, was reported by Beverly Hills athletic director to have told his players to "remember last year's game, remember them [Beverly Hills players] calling us niggers" before the game in which Simmons and Smoltrys would meet. *Id.*

156. See *id.* Andre Farkas was the Beverly Hills player who received the ball to start

lice report which included no mention of the racial epithet.¹⁵⁷

It would take two years to finally resolve the situation.¹⁵⁸ Simmons moved on to college and Smoltrys continued to referee, but not for any Centennial or Beverly Hills games.¹⁵⁹ However, an important situation had developed for legislators seeking to protect the sports official: what should be done when the player is provoked? For Smoltrys and Simmons, regardless of which side is at fault, the attack was not seemingly due to the call of the official, but rather due to extraneous circumstances.¹⁶⁰

Neither the model legislation nor present statutes on point incorporate any justification against "ultra vires" acts by the official, such as provocation. When referees are afforded *too* much leeway, they are given *carte blanche* to say and do as they please. Thus, it is imperative that the phrase "acting within the scope of his/her duties as sports official" be instituted into *all* protective legislation. This will achieve and maintain the impartiality necessary for the sports official to provide fair competition on any level. After all, to concede that the sports official is fallible, and then insulate them for the very behavior legislation seeks to protect them from, is hypocritical.¹⁶¹

VI. CONCLUSORY OPINION

"Victory is when you walk off the floor and you know you did a good job. But there is no question that you have to be a master of your emotions or this job can be a cancer."

—Jim Bain, basketball referee¹⁶²

Laws are already in place to punish those for crimes against the person. Civil and criminal litigation has addressed

the second half and was tackled by Simmons. *See id.* "Farkas, who was standing between the referee and Simmons, told investigators he heard no epithets." *Id.*

157. *See id.*

158. *See* Sports Desk, *Staff and Wire Reports*, LOS ANGELES TIMES, Apr. 2, 1997, at C3. Reported here, attorneys representing both parties "mutually agreed that the allegation was the result of a mistake or misunderstanding and that Smoltrys didn't use a racial epithet." *Id.*

159. *See* Shepard, *Unfinished Business*, *supra* note 139 and accompanying text.

160. *See, e.g.,* Shepard, *It Was One Punch*, *supra* note 137. Smotrys admits he did not call an unsportsmanlike conduct penalty, instead couching his reprimand of Simmons to be "a warning." *Id.*

161. *See id.* and accompanying text.

162. *See* Alfano, *supra* note 23 and accompanying text.

gratuitous attacks on others ad infinitum. Depending on the circumstances, these wrong-doers have been punished monetarily and/or penally for their deeds. Legislation to discourage physical aggression towards sports officials, however, does much more. It not only protects the sanctity of the game, but also serves as a deterrent and instills a mindset for future generations.

Barring immediate action, the purity of professional sports will deteriorate in the next three to four generations. Forget steroid abuse, forget sky-rocketing salaries, forget collective bargaining issues—without individuals to serve as the intermediaries of the game, there will be no sports. The “Trickle-Down Effect” will reverse itself and “Trickle-Up” to where sports officials refuse to work anywhere but the professional leagues. There they are compensated well and protected by both their union and league administrators. A “Catch-22” situation then develops where the professional leagues do not field competitors at the top of their respective games because there are no lower ranks for athletes to so develop.

The actual game itself is one of the last arenas unaffected by politics. Although the leagues and their operation are guided by the political prowess of their principals, the players in the professional leagues should only politically negotiate *outside* factors, like salaries. Happenings particular to the game itself, such as a grounder to third, an intercepted pass, or a pad save, should only be negotiated with the *skill* of the athlete. When the official can no longer make the calls to the best of his or her abilities, due to *outside* factors like fear or anxiety, “politics” has seeped into the game and athletic talent becomes secondary. The most deserving, better skilled team does not achieve the victory they may have earned. Professional sports then becomes shaped not by the ability of the participants, but instead by external influences. As a result, skill levels diminish and the spirit of the game is tainted. Team owners will suffer: after all, who will pay to watch athletes amounting to nothing more than over-paid amateurs?

In order to maintain the highest caliber of competition, the most entertaining exhibitions of ability, and the most enjoyable public presentation of athletic effort and strategy, the official must be shielded from *outside* influence. This influence pollutes the true talent capabilities of the athlete. Purity in

every aspect of the game will be lost if those in charge of rule interpretation are dissuaded from making the proper calls. Moreover, these interpreters will further be dissuaded from any participation, aside from that of a spectator, if coming to work means fearing for one's safety. Would lawyers come to court if they felt that a wrong decision would result in a beating by their client?

Lastly, no clinical reference or legal treatise is necessary to observe that the young athlete is easily influenced by adult figures. Youth sports coincides with the stage in a child's development where proper values are integrated. As a result of the extensive exposure young athletes have to youth sports officials, this official presence represents a primary contact for children to a figure of authority, outside of their parents. If respect for authority figures is not learned during these impressionable years, what happens when the young athlete grows into an adult?

For years, the official has been a punching bag for the loser— whether player, coach or fan. Even when an official's actions exceed the scope of his role as athletic arbiter, he should never be physically penalized. It should never even come to mind as a possibility. Frightening away the only element of order in the world of sports will ultimately cause its demise. Simultaneously, the deterioration of respect towards sports officials as authority figures starts early. As generations pass, this mentality will fester and run amuck. The model legislation is, for the most part, exactly what is needed to maintain order. The law can 'even the score' to protect the sports official. It may ultimately protect the future of young athletes as individuals. It will definitely protect sports itself.

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