

1-1-1991

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Recommended Citation

Melnik, Karen (1991) "Giving Violence a Sporting Chance: A Review of Measures Used to Curb Excessive Violence in Professional Sports; Note," *Journal of Legislation*: Vol. 17: Iss. 1, Article 7.

Available at: <http://scholarship.law.nd.edu/jleg/vol17/iss1/7>

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GIVING VIOLENCE A SPORTING CHANCE: A REVIEW OF MEASURES USED TO CURB EXCESSIVE VIOLENCE IN PROFESSIONAL SPORTS

I. INTRODUCTION

Violence in professional sports has reached a point where participating athletes have come to expect that their career will be short-lived because injuries, caused by player violence, are so commonplace. All too often the media brings news of an athlete who has been permanently injured because another player was excessively violent. Broadcasts of professional sporting events, such as football or hockey, show players who intentionally throw other players to the ground even after a play has been completed or spear other players with their hockey sticks. These violent acts, although not necessary to the objective of winning in the sport, are allowed to continue despite the injuries that they cause.

The fact is, sports violence has never been viewed as "real" violence. The courts, except for isolated flurries of activity, have traditionally been reluctant to touch even the most outrageous incidents of sports-related bloodletting; legal experts still flounder in their attempts to determine what constitutes violence in sport. The great majority of violence-doers and their victims, the players, even though rule-violating assaults often bring their careers to a premature close, have always accepted much of what could be called violence as "part of the game." Large segments of the public, despite the recent emergence of sports violence as a full-blown "social problem," continue to give standing ovations to performers for acts that in other contexts would be instantly condemned as criminal.¹

Although more and more people express concern about the violence that occurs on the playing field,² no successful solution to the problem has been found. The federal legislature is aware of the problem, however, they have been unable to agree on a means to prevent or reduce sports violence.³ Alternatives which could be used to reverse the current trend in society of accepting the violent conduct by athletes on the playing field include, *inter alia*, self-regulation

1. Smith, *What is Sports Violence?: A Sociological Perspective*, in *SPORTS VIOLENCE* 33-4 (Goldstein ed. 1983).

2. Studies indicate that 60% of Americans believe that violence is a serious sport problem. 54% of the coaches, 74% of the sports journalists and 77% of the sports physicians surveyed also saw violence as a serious problem. W.M. LEONARD II, *A SOCIOLOGICAL PERSPECTIVE OF SPORT* 169, 176 (3d ed. 1988).

3. On two occasions, bills were introduced by the House of Representatives that would require professional sports leagues to establish an arbitration panel that would have the power to force clubs and players to pay the costs of their excessively violent conduct. Those costs would include such things as the medical expenses and lost wages of the injured player. H.R. 4495, 98th Cong., 1st Sess. (1983) and H.R. 2151, 99th Cong., 1st Sess. (1985). For a more detailed discussion of this proposed legislation, see *infra* footnotes 51-62 and accompanying text. Attempts were also made to enact legislation which would criminalize excessively violent sports conduct. H.R. 7903, 96th Cong., 2d Sess. (1980) and H.R. 2263, 97th Cong., 1st Sess. (1981). For a more detailed discussion of this proposed legislation, see *infra* footnotes 42-50 and accompanying text.

by professional athletic leagues, civil suits brought by the injured player, criminal sanctions, or arbitration by a separate sports panel that specializes in player violence. This note discusses these various measures and their likelihood of success.

II. SELF-REGULATION

Responsibility for controlling player violence falls most frequently on the league in which the athlete plays. Most professional sports leagues provide specific procedures and sanctions to be used when violence occurs on the field.⁴ The league defines what conduct should not be permitted, when a player has violated league standards, and what sanctions should be imposed. Essentially, the league acts as accuser, judge, and jury in its own private system of criminal law.⁵

Theoretically, several advantages could be realized by allowing a league to regulate the conduct of its players. Judgment by a league administration can be swift, certain, and severe. League officials are extremely familiar with the sport and its customs. Therefore, they will be in the best position to determine if a player's actions on the field exceed those generally accepted in the sport. Their knowledge of the sport will allow the league officials to impose uniform and predictable sanctions for violent acts. Thus, players will know what conduct is frowned upon by the league and what form of punishment will ensue if they do not follow league rules.⁶ Since leagues have the power to suspend athletes from play, the athletes may be less violent in order to prevent a loss of their livelihood. Additionally, the length of time between the date that the violent conduct occurred and the date that sanctions are imposed will be shorter than if the case were heard by a federal or state court. Moreover, the courts' calendars will not be clogged by large numbers of sports violence cases. Thus, internal regulation by leagues would appear to offer many advantages in controlling violence.

The manner in which leagues are actually internally regulated, however, differs substantially from the practices set forth previously.⁷ Violent conduct is often tolerated by the league as part of the game.⁸ As a result, league commissioners tend to punish excessive violence of athletes inconsistently and minimally.⁹

4. For a general discussion of league regulatory procedures, see R. HORROW, *SPORTS VIOLENCE: THE INTERACTION BETWEEN PRIVATE LAWMAKING AND THE CRIMINAL LAW* 64-73 (1980).

5. Extreme deference is given by federal and state courts to professional sports leagues' internal fines and suspensions. Courts rarely intervene in a league's self-governance. *Id.* at 64.

6. Eitzen, *Violence in Professional Sports and Public Policy*, in *GOVERNMENT AND SPORT: PUBLIC POLICY ISSUES* 102 (1985).

7. See *supra* footnote 6 and accompanying text.

8. "League officials and players accept the fact that some less talented players use violence to compensate for inferior ability." Horrow, *Violence in Professional Sports: Is It Part of the Game?*, 9 J. LEGIS. 1 (1982).

9. Three examples from professional football illustrate this point:

(1) When George Atkinson leveled Lynn Swann with a vicious forearm, causing Swann to suffer a serious concussion and miss part of the 1976 season, Commissioner Pete Rozelle imposed a fine of \$1,500 on Atkinson.

(2) When Darryl Stingley was paralyzed by Jack Tatum's vicious hit, which Tatum admitted was overly aggressive in order to intimidate his opponent, not even his team was penalized in yardage, since the blow was within the rules.

(3) When linebacker Stan Blinka was suspended for one game in 1982 by Rozelle for a "cheap shot" against receiver John Jefferson, it marked only the second time in the 63-year history of the league (the first was in 1977) that a player had been suspended by the league for an unnecessarily violent act.

Eitzen, *supra* note 6, at 103.

In addition, a strong disincentive exists for league officials to punish violent conduct. The media coverage of sporting events often focuses on violence that is occurring on the field and rewards the players for engaging in that conduct.¹⁰ Media portrayal of violence as acceptable or even necessary to sporting contests instills in league managers the idea that without violence their sport will not be as popular with the public. In order to keep fans happy, and so that ticket sales and media coverage will continue, management feels it must encourage violence.¹¹ Thus, violence has a significant commercial value to sports leagues.

If leagues continue to believe violence is necessary in order to maintain or increase revenues, they will not sanction excessive violence, but rather encourage it. Sports violence will never diminish if the body responsible for regulating misconduct believes that their profitability is dependent upon allowing violent acts. The league officials' discretion in imposing sanctions will lean toward permitting, rather than prohibiting, player violence. As a consequence, sports leagues should not be permitted to regulate themselves since they perceive violence as necessary to the sport and their continued success.

III. CIVIL LIABILITY

Although the primary means of regulating violent conduct on the sporting field lies with the professional sports leagues, injured players have sought redress through federal and state courts.¹² Courts have been called upon to determine liability not only on the professional sports level,¹³ but also on amateur,¹⁴ collegiate,¹⁵ and recreational¹⁶ levels.

The trend in the courts, defining when a player will be held responsible for the injuries he has caused, appears to be that a player must act with "reckless

10. "Media portrayal of violence in an attractive manner reinforces the assumption that violence in sports is not criminal. The sports establishment and the media seem to believe that violence enhances the marketability of professional sports." Horrow, *supra* note 8, at 3. For example, former professional football player-coach John Madden now provides commentary for television coverage of professional football, and annually he selects his "All-Madden" team which honors the season's outstanding players and those who like to "get down and dirty" on the playing field.

Similarly, a most popular and commercially attractive videotape marketed by the official National Football League film archives, annually compiles the season's top rated "hits," and also compares them to an all time list of the most aggressive and visually dramatic tackles. The viewing public is often invited to vote on the relative ranking of such lists. It must be stressed, however, that all the tackles appearing on the videotapes are technically within the rules of football.

11. "If they cut down on violence too much, people won't come out to watch. It's a reflection of our society. People want to see violence and promoters appear to be all too willing to provide fans with what they want. Violence sells!" W.M. LEONARD II, *supra* note 2, at 177 (quoting former National Hockey League player Bobby Clarke).

12. Trial and appellate judges around the country are being called upon more frequently to determine sports law issues. The key issue, with which the courts have struggled for two decades, is the role of the legal system in the sports arena. Nowhere is this issue of judicial intervention more keenly focused than when a player, injured during the course of an athletic contest by an opposing player, seeks recovery in a tort action.

See *Narol, Courts Define Standard of Care In Player vs. Player Litigation*, NAT'L L.J., Nov. 20, 1989, at 23.

13. Perhaps the most widely known professional case is *Hackbart v. Cincinnati Bengals, Inc.*, 435 F. Supp. 352 (D. Colo. 1977), *rev'd*, 601 F.2d 516 (10th Cir. 1979), *cert. denied*, 444 U.S. 931 (1979). See *infra* notes 19-23 and accompanying text.

14. See *Nabozny v. Barnhill*, 31 Ill. App. 3d 212, 334 N.E.2d 258 (1975).

15. See *Gavin v. Clark*, 537 N.E.2d 94 (Mass. 1989).

16. See *Bourque v. Duplechin*, 331 So. 2d 40 (La. Ct. App. 1976), *cert. denied*, 334 So. 2d 210 (La. 1976).

disregard."¹⁷ Reckless disregard is found when a player knows an act is harmful and intends to commit the act, but does not intend by the act to harm an opponent; further, it involves a player's knowledge of the danger and risk, which knowledge is substantially greater than in the case of negligence.¹⁸

The reckless disregard or reckless misconduct standard, as termed by the courts, was applied to professional sports in *Hackbart v. Cincinnati Bengals, Inc.*¹⁹ In *Hackbart*, Dale Hackbart of the Denver Broncos was injured by Charles Clark, a fullback for the Cincinnati Bengals. After a Broncos' interception, Hackbart was kneeling in the Bengals' end zone watching the play upfield. Clark, acting out of anger and frustration, but without a specific intent to injure, hit Hackbart in the back of the neck with his forearm. The force from the blow was strong enough to knock both players to the ground. Hackbart suffered injuries from the blow which prevented him from playing effectively and eventually caused him to be relieved of his position as a professional football player.²⁰

The district court found that no duty existed between two professional football players to refrain from reckless conduct during a game.²¹ On appeal, the Tenth Circuit defined reckless conduct²² and then held that a professional athlete does owe a duty to refrain from conduct which is reckless.²³

Since the courts will recognize that duties exist between professional athletes to refrain from recklessly injuring one another, the remaining question is whether civil liability is a likely method for deterring athletes from violent conduct. Several reasons exist which would appear to make civil suits against athletes an appealing deterrent.

First, by imposing civil liability upon a player, a court is actually going to affect the financial resources of the player. Unlike fines imposed by the professional leagues, which are often paid by the player's team or of only minimal dollar value,²⁴ a player may find damages imposed by the court to be substantially

17. Reckless disregard falls somewhere between an intentional act and a negligent act. RESTATEMENT (SECOND) OF TORTS § 500 and comments (1961 & Supp. 1976-1986).

18. *Id.*

19. 435 F. Supp. 352 (D. Colo. 1977), *rev'd*, 601 F.2d 516 (10th Cir. 1979), *cert. denied*, 444 U.S. 931 (1979).

20. 435 F. Supp. at 353-4.

21. *Id.* at 358.

22. Reckless misconduct differs from negligence . . . in that negligence consists of mere inadvertence, lack of skillfulness or failure to take precautions; reckless misconduct, on the other hand, involves a choice or adoption of a course of action either with knowledge of the danger or with knowledge of acts which would disclose this danger to a reasonable man. Recklessness also differs in that it consists of intentionally doing an act with knowledge not only that it contains a risk of harm to others as does negligence, but that it actually involves a risk substantially greater in magnitude than is necessary in the case of negligence. . . . [T]he difference, therefore, in the degree of risk . . . is that the difference is so significant as to amount to a difference in kind.

Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516, 524 (10th Cir. 1979).

23. *Id.* See cases cited *supra* notes 14-16 for application of the "reckless disregard" standard to players in non-professional sporting contests.

For a discussion of the affirmative defenses which a player who is being sued may invoke, see Comment, *It's Not How You Play the Game, It's Whether You Win or Lose: The Need For Criminal Sanctions To Curb Violence In Professional Sports*, 12 *HAMLINE L. REV.* 71, 77-9 (Winter 1988).

24. See R. HORROW, *supra* note 4, at 75-6.

higher.²⁵ Players may think twice about committing such egregious acts when the financial burden for doing so can be so high.

Second, a team may also be brought into the civil suit under the doctrine of respondeat superior.²⁶ If a team fears that a jury may impose a substantial damages verdict upon the team for the acts of its players, the team management may exercise more careful control over its players in order to limit its liabilities. When there are financial disincentives to a team and its players for allowing or committing violent acts on the field, they may work to curb such socially undesirable activities.²⁷

Although the civil suit appears to offer several advantages over league regulation, it does have several problems. First, the injured player is required to bring the suit, and an injured player is often reluctant to bring a suit against another player. The player fears that he will be labelled as a troublemaker for taking his claim outside of the league, or that his actions may result in an informal "blacklisting" around the league.²⁸

Coinciding with the player's fear that he will be blacklisted for filing a claim against another player, there is also a fear that court involvement will decrease his chances of getting ahead in the sport.²⁹ Management can refuse to renew the player's contract and other teams may be unwilling to sign a player who is considered a troublemaker.

Other players can also play a role in preventing the injured player from filing a lawsuit against another player. According to an unwritten macho code which the players follow, courts are not the appropriate forum for resolving player conflicts.³⁰ A player who decides to go outside the league's own policing mechanisms will soon find that he is considered an outcast by both league management and players.

Second, the individual called upon to decide the case may not be familiar with the nature of the sport. Unlike the case of internal regulation by the leagues, a civil case will require that either a judge or jury decide the case. Decisions may vary according to the composition of the jury and judicial discretion. Problems develop as to what is and what is not considered acceptable violence. Without a clear understanding of what violent conduct might occur during contact sports,

25. A player may be held liable for punitive damages, as well as compensatory damages. In *Tomjanovich v. California Sports, Inc.*, No. H-78-243 (S.D. Tex., 1979), the jury returned a verdict of \$1.8 million in actual damages and \$1.5 million in punitive damages. The verdict was \$600,000 more than the plaintiff requested.

26. The Circuit Court in *Hackbart* noted that not only can the player be sued, but also the team for which he is playing. 601 F.2d at 524.

27. Eitzen, *supra* note 6, at 107.

28. Many owners adamantly deny that such a blacklist exists. There is evidence, however, to the contrary. Bernie Parrish, a former defensive star with the Cleveland Browns of the National Football League, suggests that he was blacklisted because of his activities in the National Football League Player Association. Another former football player stated that blacklisting is used against a player who "... refuses to accept rigid authority" or who has "... different values either morally or otherwise than a coach." In short, the blacklist can be used against any player who the team management (including the coach) feels is a "troublemaker" or whom the club feels is becoming too political or a "clubhouse lawyer."

R. HORROW, *supra* note 4, at 54-55 (citing B. PARRISH, *THEY CALL IT A GAME*, 172 (1974)).

29. R. HORROW, *supra* note 4, at 50-51.

30. Horrow, *supra* note 8, at 5.

a jury member will be unable to adequately assess whether that violent conduct is excessive for the sport in question.

Third, the nature of professional sports requires that an athlete compete in several different states. This creates a jurisdictional problem. States vary in their laws.³¹ A possibility exists that a different result may occur in each state, despite the fact that the actual violent act, which is in question, is the same. If more than one forum exists in which the court has jurisdiction over the case, an injured player may forum shop for the court which is most likely to provide a favorable outcome. This option does not exist for an aggrieved player who is required to settle his dispute through internal league mechanisms.

Civil suits appear to offer a greater incentive to players and teams to reduce violence on the field than does internal league regulation. By offering the possibility that large damage verdicts may be awarded, a civil suit may put players and management on their guard. In reality, however, the players rarely go to court to recover for their injuries. Too many disincentives exist, such as blacklisting, which prevent a player from seriously considering any alternative mechanism for dispute resolution than those provided within the league. As a means of deterring sports violence, therefore, civil suits do not appear to be a mechanism which will work successfully until players rid themselves of the fear that management or other players will seek revenge.

IV. CRIMINAL SANCTIONS

A third method of deterring violent activities by professional athletes would be to impose criminal liability. Criminal prosecution of sports violence is a means which is rarely used and which is often difficult to apply successfully.³² In the last ten years, the federal legislature has attempted to enact measures which would impose criminal liability on athletes who use excessive violence on the field.³³ As yet, however, proponents of this legislation have been unable to rally enough support in Congress to get the proposed bills passed.

A. Attempts at Imposing Criminal Sanctions

On several occasions prosecutors have attempted to bring athletes up on criminal assault charges.³⁴ Although the courts have heard these cases, successful prosecution rarely occurs.

Perhaps the most famous case in the United States is *State v. Forbes*.³⁵ On January 4, 1975, the defendant, Forbes, was playing in a hockey game between the Boston Bruins and the Minnesota North Stars. He was involved in an altercation with an opposing player for which each player received time in the penalty box. Upon returning to the ice, Forbes allegedly made a remark to the opposing player and took a swing at him. Forbes missed hitting him with his

31. By allowing each state to apply its own rules, a different ruling may result. For example, some jurisdictions apply the doctrine of *respondeat superior* narrowly, while others have a liberal interpretation. Eitzen, *supra* note 6, at 108.

32. See *supra* notes 34-37 and accompanying text.

33. See *supra* note 3.

34. See, e.g., *Regina v. Green*, 16 D.L.R.3d 137 (1970); *Regina v. Maki*, 14 D.L.R.3d 164 (1970).

35. No. 63280, (Dist. Ct. Minn. *dismissed* Aug. 12, 1975).

arm but did hit him with the end of his hockey stick. The player fell to the ice, seriously injured, and Forbes jumped on him and punched him until the two were separated.

Forbes was then prosecuted under the Minnesota criminal assault statute. The question of Forbes's culpability was never resolved because the jury was unable to reach a verdict.³⁶ The prosecutor in the case decided not to retry the case because he felt that, by taking the case to trial initially, he put the sports world on notice that acts involving intent to cause serious bodily injury to another would not be tolerated.³⁷

Although the *Forbes* case is the most well-known attempt in the United States to apply criminal sanctions to a professional athlete, one case has been decided in Canada that did result in a conviction of an American hockey player.³⁸ This case was the first successful criminal prosecution for violence in professional sports.³⁹

As is evidenced by the fact that the first imposition of criminal sanctions did not occur until August 1988, successful use of the criminal courts to deter violence on the sports field is highly unlikely. Although criminal sanctions have the potential for diminishing excessive violence on the athletic field, in reality they have not been a useful method of deterrence.

Two explanations can be given for the lack of successful prosecutions. First, "intent," which is often a necessary element to proving criminal assault cases, is extremely difficult to prove in sports violence cases.⁴⁰ Guilty verdicts will only be awarded in extremely violent incidents and in jurisdictions where intent must specifically be alleged. In those jurisdictions, successful prosecution of sports violence cases will be the exception, not the rule.

Second, prosecutors are often unaware of or indifferent to sports violence incidents.⁴¹ Unless cases come to the attention of the prosecutor, he will be unable to prosecute the assaulting player. Additionally, prosecutors are often

36. R. HORROW, *supra* note 4, at 163.

37. *Id.* (citing Flackne and Caplan, *Sports Violence and the Prosecution*, 12 TRIAL 33 (1977)). Criminal prosecution for sports violence is not only difficult in the United States, but also in Canada. See *Regina v. Green*, 16 D.L.R.3d 137 (1970) (player reacting instinctively by hitting another player over the head after he has been speared and who does so in protection of his own safety should not be found guilty of common assault); *Regina v. Maki*, 14 D.L.R.3d 164 (1970) (resulting in an acquittal).

38. On August 24, 1988, Dino Ciccarelli, of the Minnesota North Stars hockey team, was convicted of assaulting an opposing player and was sentenced to a day in jail and a fine of \$1,000. The incident occurred during a hockey game between the North Stars and the Toronto Maple Leafs. Ciccarelli attacked a player on the opposing team by hitting him over the head twice with his hockey stick and then punching him in the face. Comment, *supra* note 23, at 80.

39. *Id.*

40. Three explanations have been given as to why intent is so difficult to prove:

- (1) objective indications used to evaluate the mental state of the participant are often limited;
- (2) the court may embrace the view that an athlete participates in competition out of love for the game, not out of a malicious desire to harm the opponent; therefore, the requisite *mens rea* does not exist; and
- (3) physical intimidation is often seen as "just part of the football or hockey game;" therefore, prosecutors would have difficulty proving that an athlete specifically intended to harm an opponent.

R. HORROW, *supra* note 4, at 130-135.

41. See generally R. HORROW, *supra* note 4, at 130-135.

unwilling to add sports violence cases to their already crowded schedules, except in instances where the assault was extremely severe.⁴² An athlete will not be deterred from violent conduct by the threat of criminal sanctions if he believes that only in rare and extreme instances will a prosecutor actually bring a case to court.

In summary, if prosecutors rarely bring sports violence cases to court and in those cases intent is difficult to prove, the likelihood of successful criminal prosecution is minimal. A player who believes that imposition of criminal sanctions will rarely occur will not be deterred from violent conduct by the minimal threat that this result may be obtained.

B. Sports Violence Act⁴³ - A Legislative Proposal to Criminalize Excessive Sports Violence

In 1981, the House of Representatives reintroduced a bill from the previous Congress which would make excessive sports violence in professional sports a federal crime.⁴⁴ The bill was intended to draw a line between acceptable, although aggressive, behavior and excessively violent conduct and to criminalize behavior which crosses that line.⁴⁵ Additionally, the bill's sponsors hoped that several benefits could be achieved from the enactment of a law which imposes criminal sanctions for sports violence, namely:

First, the threat of criminal prosecution would deter most extreme acts and make each game safer for all participants.

Second, a player who stays on the safe side of the line need never worry about prosecution.

Third, legislation will symbolically confirm that fundamental law and order do not stop at the ticket gate.

42. In Richard B. Horrow's extensive study of sports violence, he surveyed prosecutors across the country to elicit information on how the prosecutors decide to prosecute a case. Some of the responses to these surveys included the following answers:

(i) "Prosecution must only be warranted in those cases of sports violence where assault is so intentioned, so gross, and so disregarding of human welfare as to shock the conscience of society." Maricopa County (Phoenix) Attorney Charles F. Hyder.

(ii) "Only the excessively bad case . . . and/or cases that arise as a result of sports, but off the field" would be prosecuted. Allegheny County (Pittsburgh) District Attorney Robert E. Colville.

Id. at 131-32.

43. H.R. 7903, 96th Cong., 2d Sess. (1980) (reintroduced as H.R. 2263, 97th Cong., 1st Sess. (1981)).

44. The bill provided in relevant part that:

"[a] player in a professional sports event who knowingly uses excessive physical force and thereby causes a risk of significant bodily injury to another person involved in that event shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

H.R. 2263 § 115(a), 97th Cong., 1st Sess. (1981).

The bill defined "excessive physical force" as force that:

"(A) has no reasonable relationship to the competitive goals of the sport;

(B) is unreasonably violent; and

(C) could not be reasonably foreseen, or was not consented to, by the injured person, as a normal hazard of such person's involvement in such sports event."

Id.

45. *Excessive Violence in Professional Sports: Hearings on H.R. 7903 Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 96th Cong., 2d Sess. 5 (1980) (statement of Rep. Ronald M. Mottl).

Last, incidents of excessive during-the-game violence must be punished when countless young people look to professional sports figures as role models for their own behavior on and off the field.⁴⁶

The proposed legislation met with extreme opposition by professional sports league representatives,⁴⁷ however, and never made it out of the House of Representatives.

Although the intent of the proposed Sports Violence Act⁴⁸—to more clearly define what was considered to be excessive violence in sports and to attempt to deter that conduct—was commendable, the actual drafting of the Act was troublesome. The language of the bill was so ambiguous and general that applying the bill to actual violent conduct would result in uncertain and arbitrary results.⁴⁹ Excessive physical force, as defined by the bill, required that the violent conduct bear “no reasonable relationship to the competitive goals of the sport.”⁵⁰ No guidance was provided, however, as to what would be considered a “reasonable relationship” or “competitive goals.” Thus, the courts would have had to decide when these conditions were met, despite being unfamiliar with the nature of the sport. Courts, without intending to do so, would therefore provide arbitrary meanings to these terms and create conditions for uncertain outcomes in criminal violence cases.

There was another problem, unrelated to the drafting of the bill, which would have limited the feasibility of the proposed legislation. Prosecutors are often unaware of or inattentive to incidents of sports violence.⁵¹ If a prosecutor is unwilling to bring an athlete up on criminal charges, the actual language of the criminal statute which would be applied is irrelevant since it will never be put to use.

V. SPORTS VIOLENCE ARBITRATION ACT: AN ARBITRATION PANEL TO DETER VIOLENCE IN PROFESSIONAL SPORTS

Perhaps the most intriguing method offered to curb violence in professional sports was the Sports Violence Arbitration Act.⁵² Members of the House of Representatives, on three separate occasions, attempted to pass legislation which would require professional sports leagues to establish an arbitration panel that would create financial incentives for clubs and players to refrain from encouraging or engaging in unnecessarily violent conduct.⁵³ Unfortunately, the bill's sponsors

46. *Id.*

47. League representatives indicated that they felt their internal league mechanisms to prevent violence were sufficient and that the bill, as drafted, provided insufficient guidance as to when “excessive force” exists. *See, e.g.*, statement by John A. Ziegler, Jr., President of the National Hockey League, *id.* at 138-40; statement by Pete Rozelle, Commissioner, National Football League, *id.* at 173-75; and statement by Philip A. Woosnam, Commissioner, North American Soccer League, *id.* at 212-13.

48. *See supra* notes 43-46 and accompanying text.

49. “In application to particular episodes, the bill’s language would create as many uncertainties as may currently exist under state law.” *Supra* note 45 (statement by Pete Rozelle, Commissioner, National Football League), at 174.

50. *See supra* note 41.

51. *See supra* notes 41-42 and accompanying text.

52. H.R. 5079, 97th Cong., 2d Sess. (1981) (reintroduced as H.R. 4495, 98th Cong., 1st Sess. (1983), and H.R. 2151, 99th Cong., 1st Sess. (1985)).

53. R. HORROW, *supra* note 4, at 14.

were unable to gain enough support in Congress to enact any of the bills into law.

The arbitration panel, as originally proposed,⁵⁴ was composed of a neutral panel of sports experts whose function was to resolve injury-grievance disputes evolving from violent conduct.⁵⁵ The arbitration panel would determine on a case-by-case basis whether the incident constituted conduct that was punishable and, if so, impose sanctions that would hold both the assaulting player and his club financially responsible for excessively violent conduct.⁵⁶ The decision of the arbitration panel would be binding upon the parties and not subject to appeal.⁵⁷

The arbitration panel, as proposed in the Act, included several of the most successful attributes of other measures for deterring violence which have been discussed in this note. The arbitration panel was to be neutral,⁵⁸ a quality found in federal and state courts which hear sports grievances. The members of the panel were to be experts in the sport for which they would decide cases,⁵⁹ similar to those individuals charged with imposing sanctions when a sports league is self-regulated. The sanctions imposed could be as severe and substantial as jury determinations in civil cases. The club, as well as the player, could be penalized for the player's violent conduct,⁶⁰ similar to a civil court's application of the doctrine of respondeat superior. Case loads would not be overwhelming for the panel, a quality found when a professional league regulates itself. Each of these attributes would contribute to a system of deterrence that is swift, certain, and severe.

Notwithstanding the fact that the sports arbitration panel alternative does appear to combine the most successful attributes of the various methods for deterring sports violence, it has one major flaw. Grievances are brought before the panel by an injured player and his club.⁶¹ As discussed earlier, leagues prefer to be self-regulated and will ostracize players who attempt to resolve grievances outside of the league's internal system.⁶² Although the arbitration panel is established by the professional league, it would act independently of the league.⁶³ Club management, which is concerned that eliminating violence will reduce their

54. The original idea for the arbitration panel was developed in a law review note by two students from the University of Southern California. The note was published by Chris J. Carlsen and Matthew Shane Walker as *The Sports Court: A Private System to Deter Violence in Professional Sports*, 55 S. CAL. L. REV. 399 (1982).

55. *Id.* at 414-15.

56. 131 CONG. REC. E5285-01 (daily ed. November 20, 1985) (statement of Rep. Daschle). The player could be subject to substantial fines and suffer suspension without pay. Moreover, the club could be required to pay the salary and medical expenses of the injured player as well as compensatory damages if the player could not perform in the future. The club could also be required to relinquish a draft choice or pay damages to compensate the injured player's club for the loss of the player's services. Additionally, fines might be imposed on the club for failing to supervise its players properly.

Id.

57. See Note, *supra* note 54, at 431-32.

58. See generally Note, *supra* note 54, at 427-28.

59. *Id.*

60. *Id.* at 415.

61. *Id.*

62. See *supra* notes 28-29 and accompanying text.

63. See Note, *supra* note 54, at 427.

profitability,⁶⁴ may avoid bringing cases before a neutral panel which does not have similar concerns. They may also exert pressure on players to prevent them from filing claims with the panel. Therefore, the arbitration panel will not aid in deterring violence in professional sports if injured players and management do not bring their complaints before it.

Although the arbitration panel proposed in the Sports Violence Act has many attributes which could have a positive impact on reducing sports violence, it is not the perfect solution. First, Congress must enact the proposed legislation, which requires a significant amount of support from individuals who believe sports are too violent. Second, until professional athletes and management accept the arbitration panel as a meaningful method of resolving injury disputes, the panel will sit idle, and violence on the field will continue.

VI. CONCLUSION

Society has come to realize that, although certain levels of violence are to be expected in professional sports, something must be done which will curb an athlete's urge to engage in excessive violence. Several methods of deterring violence have been explored in this note, but none of them provide a perfect solution.

The arbitration panel, which has been proposed by the House of Representatives, provides the most likely means for successfully curbing excessive violence. The panel responsible for determining what conduct is beyond the scope of accepted violence will be familiar with the customs and rules of the sport. The panel will not be overloaded with cases, a problem which does exist in federal and state courts. The panel, which is free of management influence, will not be concerned about the possibility of decreasing revenues by decreasing violence.

Despite the fact that many of the problems inherent in other forms of regulating sports violence are eliminated by the arbitration panel, it possesses one major drawback. Players, teams or sports officials are required to bring their grievances before the panel. A fear of league reprisal, such as that which occurs when a player brings a civil suit against another player or team, may thus hinder the success of the arbitration panel.

One means of overcoming this problem would be to appoint an individual(s), who is knowledgeable about the sport in question and is also free of both management and player influence, to act in a capacity similar to a criminal prosecutor. This person—a sports ombudsman—would bring cases of player misconduct before the arbitration panel for resolution.

Although many sports fans, teams and players do not consider player violence to be a serious problem, a large number of career or life-ending injuries caused by sports violence exist. The leagues are unwilling to risk revenue dollars by policing violence. The injured players, who fear league reprisal, will not take their claims to court. The federal and state courts cannot guarantee uniform guidelines for defining what is excessive violence. Therefore, the federal and state legislatures are the bodies who are most capable of implementing a system, such as the modified arbitration panel discussed above, which will successfully deter

64. See *supra* notes 10-11 and accompanying text.

athletes from engaging in excessive violence on the playing field. Those bodies should recognize the need for regulation of the sporting industry and adopt measures which will penalize players and teams who engage in excessively violent conduct.

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