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Marshall H. Tanick

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Baseball umpires spur litigation in Minnesota

"Being an umpire has become an increasingly stressful job."

Devin Gordon, "Out of Their League" New York Times Magazine (April 2, 2023)

By Marshall H. Tanick
Special to Minnesota Lawyer

The highly acclaimed new rules for Major League Baseball governing the Minnesota Twins and all other big league teams have focused renewed attention on the role of umpires as adjudicators of the national pastime.

The upgraded protocols include special clocks timing pitchers delivering the ball and batters stepping up to the plate, elimination of infield shifts to thwart ground ball hits, and other changes. They augment other recent role modifications all aimed at speeding up the game and increasing the number of runs scored in order to attract and maintain younger fans

But there are a few flaws here. For one thing, increasing the number of runs tends to prolong games, not shorten them. Further, it is presumed that older folks like long, desultory games, and youths do not. But some youthful fans enjoy the slower pace, too.

Nonetheless, these changes have been well-accepted so far and are likely to trickle down to lower levels of the game, as some have already been pre-tested there.

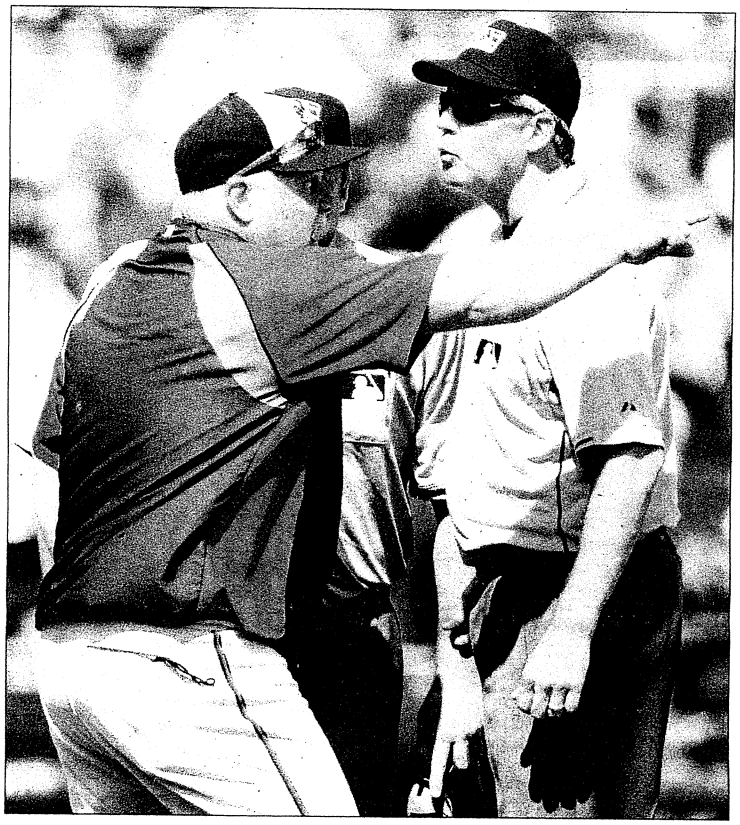
Of all the major team sports in this country, baseball is the most relaxing. Its leisurely pace, minimum physical contact, no fixed time period, and other features contribute to that characteristic.

But the new rule changes this season, especially the speed clocks for pitchers and batters, and other recent ones have made the game less relaxed.

One group of participants expressing concern is umpires, who seem beleaguered in the eyes of some observers, although their average annual salary of $235,000 at the MLB level helps alleviate much of their angst, which the New York Times referenced when the current season began as eliciting "pity for the poor umpire."

As arbiters, they play a key role in the national past time, evoking the famous remark of John Roberts at his confirmation hearing in 2006 for chief justice of the United States, comparing judges to umpires impartially in "calling balls and strikes."

That is a dubious analogy, given the major role that personal ideology plays in the way justices call the



AP FILE PHOTO

On May 30, 2011, Ron Gardenhire, then manager of the Minnesota Twins, had a few words with third-base umpire Gary Darling after a disputed play in Detroit that would hand the Tigers a one-run victory.

pitches and plays.

But this centrality to the game is unmistakable, and their impact has been felt in the law, too. With the Twins batting for the lead in the Central Division of the American League and both leagues pausing for the 90th anniversary of the annual midseason All-Star game in Seattle next Tuesday this is an opportune occasion to review some of the umpire-inspired litigation lore in Minnesota.

Hazardous harm

Umpires generally do not sustain physical harm while carrying out their duties. But injuries are, to some extent, an occupational hazard for them.

In *Rostad v. On-Deck Inc.*, 372 N.W.2d 717 (Minn. 1985), a softball umpire was struck in the head by a donut-shaped metal device used as a bat weight that flew off the end of a bat as a player was swinging it while warming up on deck. The ump's suit against the New Jersey manufacturer of the device was dismissed by the Hennepin County District Court on grounds of lack of personal jurisdiction. The Court of Appeals reversed holding that personal jurisdiction existed, and the Supreme Court affirmed.

The manufacturer was subject to suit in Minnesota under the state long-arm statute, Minn. Stat. § 543.19, subd. 1(d), which extends state jurisdiction over a party that commits "any act outside Minnesota causing injury or property damage" in this state. The nationwide distribution contracts and marketing efforts by the manufacturer of the device met the five-pronged standard for assertion of personal jurisdiction in Minnesota, consisting of the quantity of its contacts with the state, the quality of those contacts, the source of those contacts, the state's interest in the case, and the convenience of the parties.

Because the manufacturer's "purposeful availment ... of the benefits and corresponding responsibilities of doing business in Minnesota," it should be required to "defend this lawsuit in Minnesota." This is preferable to requiring the injured umpire to be "limited to suit" in New Jersey.

A softball umpire who twice claimed knee injuries was denied payment of carrier in *Kolosky v. Nationwide Life Insurance Co.*, 2010 WL 1412214 (D. Minn. 2010). The case started in Dakota County Conciliation Court and wound its way through the Dakota County District Court system, with a jury trial resulting in a directed verdict in favor of the insurer on grounds that the claim was not filed within a 90-day period under the policy.

The umpire then took the case to the U.S. District Court, where he also struck out. Magistrate Judge Arthur Boylan recommended to Judge Patrick Schiltz that the claim be dismissed on grounds of res judicata because the earlier claim involved the same set of factual circumstances, the same parties, resulted in the final judgment of the merits, and the umpire had a "full and fair opportunity to litigate the matter" in state court. The prior case, therefore, was "a bar to the present federal litigation." Judge Schiltz adopted the recommendation on grounds that the erstwhile umpire "cannot litigate his claim a second time," and the dismissal summarily was affirmed as "proper" six months later by the 8th U.S. Circuit Circuit per curiam, throwing the umpire out of court just as that year's baseball season was drawing to a close.

Inflicting injuries

Umpires and other sports officials also find themselves in court because of injuries they inflict upon others.

A challenge by an inmate at a federal prison that he was improperly disciplined for engaging in a fight with another prisoner while the claimant was serving as a referee at a prison softball game was rejected in *Sweesy v. Federal Bureau of Prisons*, 2009 WL 1244047 (D. Minn. 2009). The prisoner claimed that his due process rights were violated by the disallowance of 27 days of good conduct time and imposition of three days of prison segregation after he struck another inmate when a dispute arose about a call the claimant made while umpiring a game. Magistrate Judge Jeffrey Keys recommended that the prisoner's claim be denied, and U.S. District Court Judge Paul Magnuson agreed.

The five elements of due process for a prisoner's claims, as set forth by the U.S. Supreme Court in *Wolff v. McDonnell*, 418 U.S. 539 (1974) were satisfied. The prisoner received written notice of the charge of misconduct at least 24 hours before a hearing, an impartial hearing was held, the prisoner had an opportunity to present witnesses and to document evidence,

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assistance was available to him if legal assistance was necessary for him, and written statements or evidence relief upon and reasons for sanctions were issued.

There also was "sufficient evidence" to sustain the disciplinary action against the inmate umpire. Therefore, his challenge to the disciplinary action was properly rejected.

In *Ulrich v. Minneapolis Boxing and Wrestling Club, Inc.*, 268 Minn. 328, 129 N.W.2d 288 (Minn. 1964), a 77-year-old spectator at a professional wrestling match sued the promoter and a referee after the referee accidentally struck him while on the way to the dressing room after a match. A Freeborn County District Court jury awarded the fan $25,000 for a broken leg he suffered, but the Supreme Court reversed.

The claim was not actionable against the promoter because it did not fail to provide adequate crowd supervision. The claimed lapse in crowd supervision was not a proximate cause of the injury. Because the referee twisting around after the spectator touched his arm was not reasonably foreseeable, the promoter was not liable as a matter of law.

Nor was the promoter reckless in employment of the referee. There was no evidence indicating that the promoter knew, or should have known, that the referee's response to being jostled by the spectator would be as abrupt and unusual as it was. Nor was there any evidence that the referee was acting within the course of his employment after the match had ended.

Because there was no finding whether there was an employer-employee relationship, the verdict could not be sustained on the ground either. Therefore, the case was remanded to determine the issue of vicarious liability of the promoter. The issue of damages had to be relitigated, as well, to determine the amount of pain and suffering that could be properly awarded to the elderly claimant.

Criminal case

Disputes involving sports officials occasionally lead to criminal cases. In *State v. McCarthy*, 659 N.W.2d 808 (Minn. App. 2003), the father of a football player was convicted in Ramsey County District Court for disorderly conduct after a disturbance at a football game following a dispute with the referee.

The appellate court affirmed the conviction, holding that the conduct "arose alarm, anger, or resentment" in others present at the game.

By placing his hands on the referee, refusing to leave when asked and causing disruption of the game, the father's conduct was sufficient to support a conviction of disorderly conduct.

Convictions on two counts of attempted second-degree murder and felonious assault, stemming from a shooting following a disagreement over a referee's call in a basketball game at a St. Paul recreational facility, were affirmed in *State v. Lindsay*, 1991 WL 102960 (Minn. App. 1991). The Ramsey County District Court imposed the shooter's conviction for the incident, and the appellate court affirmed. Hearsay testimony was allowable because it "corroborated" testimony of the victim, which constituted "sufficient guarantees of trustworthiness."

Regardless of its merits, the umpire analogy is not novel. Supreme Court Justice Lewis Powell, who served from 1971 to 1987, once used it during a luncheon with Larry Brown, a star player for the Washington Redskins football team. When asked how he liked being on the high court, Powell, a prominent lawyer and former president of the American Bar Association before becoming a jurist, responded wistfully by asking the ball carrier: "Would you rather be a player or a referee?"

The role of umpires and referees may not be equivalent to that of a judge. But, as these cases reflect, the jurists and sports officials share a common feature: they spend a lot of time in court.

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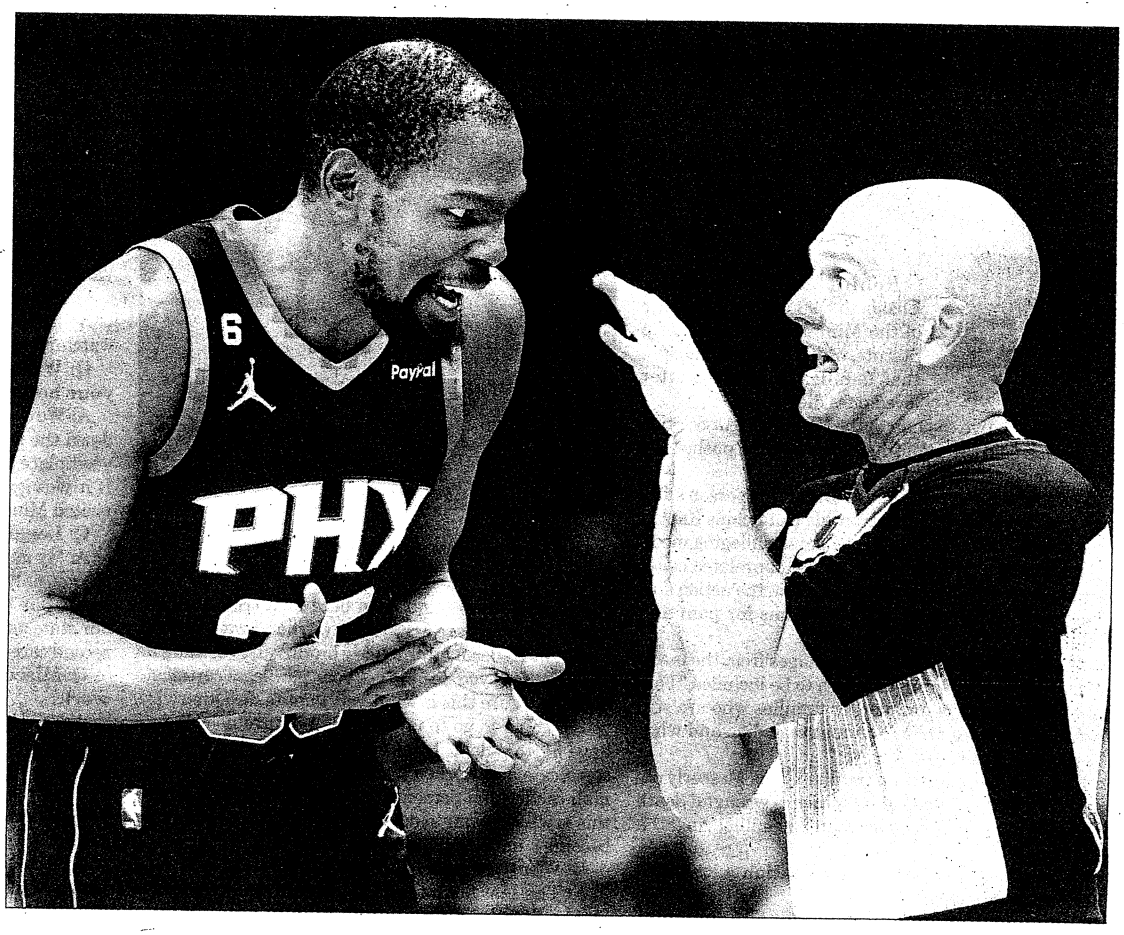

AP PHOTO

Phoenix Suns forward Kevin Durant argues a call with the referee during the Game 4 of an NBA basketball Western Conference semifinal game against the Denver Nuggets on May 7 in Phoenix.

PERSPECTIVES POINTERS

Some Umpiring Milestones

- Most games: Joe West, 5,460
- Oldest ever: Hank O'Day (68)
- Youngest ever: William Evans (22)
- First Black: Emmett Ashford (1966)
- First woman: Bernice Gerga (1972) (one game)
- First gay: Dale Scott (2014)