Violence in Professional Sports: A Proposal for Self-Regulation

Don Eugene-Nolan Gibson
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By Don Eugene-Nolan Gibson*

Introduction

The trial of professional hockey player Dave Forbes on aggravated assault charges focused public and legal attention on the issue of violence in professional sports. Much of the current concern about the level of violence in professional sports exists because: (1) professional athletes often serve as role models for children; (2) violence in sports may have adverse effects on other parts of society; and (3) there has been an alarming increase in the number of injuries suffered by professional athletes.

* Member, Second Year Class, U.C.L.A. School of Law.


Forbes, [playing for the Bruins], apparently checked Boucha against the boards, with his elbows up, and Boucha retaliated by punching Forbes who fell to the ice. Both players were sent off the ice [with] penalties. . . . When they returned to the ice, Boucha was skating ahead of Forbes who allegedly . . . took a swing at Boucha. Although missing with his gloved hand, Forbes did strike Boucha with the butt end of his stick, and after Boucha fell to the ice covering his seriously injured face, Forbes jumped on Boucha punching him until the two were separated by a third player. Approximately 25 stitches were used to close the stick-inflicted cut next to Boucha's right eye. Double vision prompted x-rays and the need for surgery to repair a small fracture in the floor of the right eye socket.


2. See notes 22-24 & accompanying text infra.


4. Many commentators feel that if violence in sports is condoned, violence will increase in other parts of society. See, e.g., R. Horrow, supra note 1, at 116-17; Note, Sports Violence: A Matter of Societal Concern, 55 Notre Dame Law. 796 (1980).

5. See generally Sprotzer supra note 3, at 3; Note, Liability in Professional Sports: An Alternative to Violence! 22 Ariz. L. Rev. 919 (1980) [hereinafter cited as Note, Liability in Professional Sports]. For example, during "the 1974-75 hockey season, there were over 44,000 treatments for hockey injuries in U.S. hospital emergency rooms." R. Horrow, supra
Violence in professional sports is a most controversial issue. One commentator asserts that if these acts "were committed off the athletic field the perpetrator of the violent act in question would most probably be prosecuted by local authorities and the result would be a jail sentence." Similarly, some commentators feel that "[t]he . . . act of putting on a uniform and entering the sports arena should not serve as a license to engage in behavior which would constitute a crime if committed elsewhere." They view the imposition of criminal and civil sanctions as the most effective means of deterrence and control.

Criminal law enforcement authorities have had limited involvement with the professional sports violence issue and, until recently, very few professional athletes sought judicial remedies for injuries they received during the course of play. The area of the law involving violence in organized sports is new and controversial.

This Note discusses violence in professional sports that are subject to private regulation. The Note argues that the applica-
tion of criminal and civil sanctions is not the most feasible means of deterring and controlling violence in professional sports.\textsuperscript{17} Part I discusses the scope of the sports violence problem;\textsuperscript{18} Part II discusses and analyzes the various methods of deterrence and control that have been attempted and recommended.\textsuperscript{19} Finally, after demonstrating that these methods are inherently flawed and limited, this Note proposes self-regulation as the best method of deterring and controlling professional sports violence.\textsuperscript{20} Nevertheless, reform of the present system of league discipline is necessary for self-regulation to be effective.\textsuperscript{21}

I. The Scope of the Sports Violence Problem

Before one begins analyzing professional sports violence, one must define violence in the professional sports context. Because violence has many definitions,\textsuperscript{22} determining its scope in professional athletic competition is difficult.\textsuperscript{23} Violence, when referred to in this Note, will involve those acts that are excessively rough and unnecessary; essentially beyond that amount of roughness which is commensurate with the physical nature of a particular sport.\textsuperscript{24}

Violence in sports is not a new phenomenon; "[e]arlier in this century, sports were characterized by violence, extreme injury, public indignation and official reform action."\textsuperscript{25} American society has expressed, and still expresses, much concern about the level of

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\textsuperscript{17} N. Y. UNCONSOL. LAWS §§ 8901-8933 (McKinney 1974).
\textsuperscript{18} See notes 123-45, 177-83 & accompanying text infra.
\textsuperscript{19} See notes 22-62 & accompanying text infra.
\textsuperscript{20} See notes 184-92 & accompanying text infra.
\textsuperscript{21} See notes 194-208 & accompanying text infra.
\textsuperscript{22} Webster's New Collegiate Dictionary lists eleven different definitions.
\textsuperscript{23} For example, John A. Ziegler, Jr., President of the National Hockey League stated that "there is violence in the NHL when violence is defined as 'intense turbulent furious action,' or 'furious,' or a 'clashing or jarring quality,' but discounted the existence of violence in the league 'when violence is defined as 'exertion of physical force so as to injure or abuse.'\textsuperscript{\textsuperscript{24}} hearings on H.R. 7903, supra note 5, at 5 (statement of John A. Ziegler, Jr., President, National Hockey League.)."
\textsuperscript{24} See SELECT COMM. ON PROFESSIONAL SPORTS, INQUIRY INTO PROFESSIONAL SPORTS, H.R. REP. No. 1786, 94TH CONG., 2d Sess. 121 (1977) [hereinafter cited as 1977 HOUSE REPORT].
\textsuperscript{25} Hallowell & Meshbesher, supra note 1, at 27; In 1905, President Teddy Roosevelt threatened to abolish football by executive order unless the game was made less violent. R. Horrow, supra note 1, at 7. In 1920 Cleveland Indian Ray Chapman was killed when he was hit by a fastball thrown by Yankee pitcher Carl Mays. See Doing Violence to Sport, \textit{Time}, May 31, 1976, at 64.
violence in sports.\textsuperscript{26}

Although most sports experience some amount of excessively rough or violent acts,\textsuperscript{27} the contact sports are most often cited as the real problem areas.\textsuperscript{28} Because the contact sports are inherently rough, the occurrence of excessively rough and violent acts “make them appear almost war-like or brutal.”\textsuperscript{29} This type of behavior has become an acceptable element of conduct during play and also gains approval from coaches, respect from fellow players, and endorsement from spectators.\textsuperscript{30}

A. Hockey

Hockey has received much notoriety because of the amount of player violence\textsuperscript{31} witnessed at almost every game, and because of some highly publicized criminal proceedings. Several players have been arrested, arraigned,\textsuperscript{32} and indicted\textsuperscript{33} for acts committed while

\textsuperscript{26}See notes 2-5 & accompanying text supra.

\textsuperscript{27}“[I]... appear[s] that a majority of American society has chosen to accept a certain amount of violence as part of professional sports.” Sprotzer, supra note 3, at 4.

\textsuperscript{28}The contact sports are usually considered hockey and football. Although basketball and baseball are essentially non-contact sports, they, nevertheless, have the potential for extreme violence. They are therefore included in this Note’s discussion of professional sports violence.

\textsuperscript{29}1977 HOUSE REPORT, supra note 24, at 121.


\textsuperscript{31}Although this Note addresses the problem of player violence, fan violence is also of great public concern. See 1977 HOUSE REPORT, supra note 25, at 126-30. Several members of the Boston Bruins were fined and suspended because of a post-game brawl with fans at New York’s Madison Square Garden in 1980. See N.Y. Times, Jan. 31, 1980, § A, at 19, col. 1. Because of this incident, several fans filed a $7 million personal injury and civil rights suit against the players involved, both teams, the NHL, Madison Square Garden, and the City of New York. The suit was dismissed on Jan. 19, 1981 for jurisdictional reasons. See 3 SPORTS L. REP. 2 (Jan. 1981). Recently, Cesar Cedeno of the Houston Astros was fined $5,000.00 for going into the stands after a fan who taunted him and his wife. See L. A. Times, Sept. 12, 1981, pt. III, at 4, col. 1. After studying this problem, a Congressional Committee concluded that fan violence could be reduced, if not eliminated, by controlling the level of player violence. 1977 HOUSE REPORT, supra note 24, at 128.

\textsuperscript{32}In 1976, Canadian authorities in Toronto arraigned Don Saleski, Mel Bridgman, and Joe Watson of the NHL’s Philadelphia Flyers on charges of assault and carrying offensive weapons. The charges stemmed from several fights that occurred during a playoff game. See Hechter, The Criminal Law and Violence in Sports, 19 CAML. L.Q. 425, 426 n.3 (1976-77). The charges against Saleski and Bridgman were dropped, and Watson pleaded guilty to one count of simple assault and was fined $1,000.00. See Note, Torts in Sports-Deterring Violence in Professional Athletics, 48 FORDHAM L. REV. 764, 771 n.55 (1980) [hereinafter cited as Note, Torts in Sports].

\textsuperscript{33}See note 1 supra. Wayne Maki and Ted Green were both tried for assaulting each
playing; fighting between players, both on and off the ice, is prevalent in the National Hockey League (NHL). Commentators contend that rather than taking steps to eliminate fights between players, NHL officials condone and promote fighting. They view fighting as a necessary outlet and “a far more acceptable alternative to the harmful use of sticks as a means to vent frustrations.” Management deems violence to be acceptable when “two players . . . fight as a spontaneous reaction to pressure which builds up when bodies are hurtling into each other at thirty miles per hour . . .” An alternative reason for the NHL’s approval of fighting is the fact that the spectacle created on ice, in most cases, increases a team’s ability to bring fans into the arena.

In addition, internal pressures faced by athletes promote and other. The incident occurred during an exhibition game between the Boston Bruins and the St. Louis Blues. Green, playing for the Bruins, got into a skirmish with Maki behind the goal where Green either struck, or pushed Maki in the face with his glove. They then came off the boards with their sticks raised high. Maki allegedly struck Green in the head and causing injuries. Maki was charged with assault causing bodily harm; Regina v. Maki, 14 D.L.R.3d 164 (Ont. Prov. Ct. 1970). Green was charged with common assault; Regina v. Green, 16 D.L.R.3d 137 (Ont. Prov. Ct. 1970). One year after the Forbes trial, Dan Maloney of the Detroit Red Wings severely beat Brian Glennie of the Toronto Maple Leafs during a hockey game. He was then tried on a charge of assault causing bodily harm, but was acquitted. Regina v. Maloney, 28 C.C.C.2d 323 (Ont. Co. Ct. 1976).

34. Seven seconds into a game between the Boston Bruins and the Minnesota North Stars, a brawl broke out and was followed by a dozen other fights. One of these spilled onto the runway leading to the Minnesota locker room. These incidents produced an NHL record of 406 penalty minutes and caused the ejection of 12 players. See Kirshenbaum, It’s Time for the NHL to Stop the Hooliganism, SPORTS ILLUSTRATED, March 9, 1981, at 9.

35. The only major action taken by the NHL’s Board of Governors recently was the institution of Rule 54(e) which is aimed at preventing secondary fights. It provides penalties for players, other than the original combatants, who drop sticks, gloves, etc. in preparing to fight. See Hearings on H.R. 7903, supra note 5, at 8 (statement of John A. Ziegler, Jr.).

36. See e.g., Kirshenbaum, note 34 supra; note 96 infra. “The premium the NHL puts on fighting was reestablished every time I talked to a team on behalf of a draft choice. Invariably, the interview would get around to how well my client could fight. . . . To my endless amazement, the clubs,—if they got the impression the boy wasn’t tough enough—frequently offered to enroll him in boxing classes.” Sprotzer, supra note 3, at 6 (quoting sports agent Bob Woolf).

37. Hearings on H.R. 7903, supra note 5, at 7 (statement of John A. Ziegler, Jr.).

38. Id. at 8.

39. The Philadelphia Flyers have been the NHL’s most belligerent team. They have led the league in penalty minutes for nine straight years, and have been called the league’s “best draw” by League President John Ziegler, Jr. Ziegler added that “[i]f the other 20 teams were as successful, [he would] be pleased, regardless of how they achieved such success.” Kirshenbaum, note 34, supra.

40. These are pressures placed on the player by his peers, coaches, management, and the rule structure itself, to conform to accepted behavior. For a full treatment of these concepts
encourage fighting among them.41 Less talented players must often use excessive force and be overly aggressive to compensate for their inferior athletic ability.42 Also, players feel compelled either to fight when challenged or risk being branded as cowards by their peers and the spectators.43 Further compounding the problem is the notion that in hockey certain player types are needed because the role they play is an integral part of the game strategy.44 Among these player types are “enforcers” whose primary purpose is intimidating opposing players and/or instigating fights.45 In essence, then, hockey players fight because “it has become a condition or part of the job.”46

B. Football

Football, like hockey, draws attention because of its violent nature. In professional football, the main attribute that coaches look for in a prospective player is aggressiveness.47 Because violent physical contact is an integral part of the game, a player’s ability to absorb punishment is as important as his ability to mete it out.48 Further, professional football players are conditioned to play with pain because they are expected to perform while hurt.49 Consequently, the professional football player has an average career length of only 4.6 years50 and a life expectancy that is “significantly shorter than that of most males.”51

see R. Horrow, supra note 1, at 30-38. Also, players are constantly reminded that there are thousands of players in the minor leagues and colleges available to replace a player who is “not tough enough.” 1977 House Report, supra note 24, at 123 (citing P. Hoch, Rip Off THE BIG GAME: THE EXPLOITATION OF SPORTS BY THE POWER ELITE).

41. R. Horrow, supra note 1, at 20.
42. Id. at 20-24.
43. Id. at 30. Former NHL President Clarence Campbell admitted that there is duress and pressure placed on players to stand their ground and fight. See Hechter, supra note 32, at 438 n.13.
44. “I'm more valuable in the penalty box than I am sitting on the bench . . . I'm not gonna stop fighting even if I could. It's one of my assets and if it helps win games I'm going to keep fighting.” R. Horrow, supra note 1, at 23 (quoting Dave Schultz, formerly of the Philadelphia Flyers) (emphasis added). See also 1977 House Report, supra note 24, at 122.
45. R. Horrow, supra note 1, at 21.
46. B. Woolf, BEHIND CLOSED DOORS 144 (1976).
47. Id. at 16 (citing 12 Ga. L. Rev. 380, 388 (1978)).
51. Id. citing J. Capetta, The "Booby" Trap: Does the Violent Nature of Professional
Football, like hockey, receives severe criticism from both players and observers because of the prevalence of acts that serve to make the game's already violent nature even more violent.\textsuperscript{52} Physical intimidation of opposing players is now essential to the game strategy.\textsuperscript{53} As a result, one player has been crippled,\textsuperscript{54} and many others seriously, though not permanently, injured.\textsuperscript{55} Not surprisingly, many of the game's participants have openly voiced their concern about the direction in which the game is evolving.\textsuperscript{56} One player, in fact, filed suit against the opposing team for injuries caused by one of its players during a game.\textsuperscript{57}

C. Basketball

Basketball is essentially a "noncontact" sport and excessive violence is not as widespread as it is in football and hockey. The most notable incident was the fight between Rudy Tomjanovich and Kermit Washington which occurred in 1977.\textsuperscript{58} Tomjanovich, the in-
jured player, sued Washington's employer, the Los Angeles Lakers.  

D. Baseball

Baseball may have the least capacity for extreme violence of these four sports. It does, however, have "the most dangerous weapon in sports," the beanball. Because of this pitch, players feel that their life is on the line when they step into the batter's box. Player violence in baseball usually consists of bench-clearing brawls between opposing teams, as well as fights between individual players.  

E. Justification?

Despite these incidents, the sports establishment contends that there is no uncontrolled excessive violence in any sport. Rather, they assert, the competitive nature of sports requires that a certain amount of roughness be allowed. They also attribute hostile acts to a normal release of emotions which result from the intensity of

and hit him with a punch which resulted in fractures of the face and skull, a broken nose, a separated upper jaw, a cerebral concussion and severe lacerations around the mouth." Note, Sports Violence: A Matter of Societal Concern, supra note 4, at 796. Washington was fined $10,000.00 and suspended for 60 days by NBA Commissioner Larry O'Brien. See Sprotzer, supra note 3, at 3.

59. Tomjanovich v. California Sports, Inc., No. H-78-243 (S.D Tex. Aug. 17, 1979). The jury awarded Tomjanovich $1.8 million in actual damages and $1.5 million in punitive damages. See Woolf, Courts Coming Down Hard on Excessively Violent Players, Nat'l L.J., Jan. 7, 1980, at 20, col. 4. The initial jury award was reduced $125,000.00 by the trial court. The case was appealed and before it was argued an out-of-court settlement was reached. See 4 Sports L. Rep. 6 (June, 1981).

60. For a thorough discussion of the beanball and the fear it engenders, see Kram, Their Lives Are On The Line, Sports Illustrated, Aug. 18, 1975, at 32.

61. Id. See also R. Horrow, supra note 1, at 10.

62. These incidents usually develop when a batter attempts to retaliate against a pitcher after being hit by a pitch or being narrowly missed by one. See, e.g., L. A. Times, Aug. 24, 1981, pt. III, at 1, col. 2. The most notable incident involving two players occurred in 1965 between John Roseboro and Juan Marichal. The Los Angeles Dodgers and San Francisco Giants were playing a weekend series and harsh words were exchanged between Roseboro, the Dodger catcher, and members of the Giants. During the Sunday game Roseboro threw the ball back to the pitcher and in so doing nicked Marichal's ear while he stood in the batter's box. Marichal then struck Roseboro over the head with his bat, causing considerable injury. Marichal was fined $1,750 by the league and suspended for eight games. Roseboro filed a suit against Marichal and the Giants which was then settled out of court for $7,500.00. R. Horrow, supra note 1, at 210 n.821.

63. See 1977 House Report, supra note 24, at 118.

64. Id.
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Finally, the sports industry contends that the use of modern media technology has called "special attention" to the flagrant acts that have occurred. The latter argument has some merit, but fighting as an outlet for frustration should not be considered an acceptable and necessary ingredient of sports.

II. Attempts at Deterrence and Control

The disciplining of athletes who commit acts that are considered "detrimental" to a particular sport is a function of that league's officials. This long-standing policy of self-regulation, though, is under scrutiny. Critics view this system as incapable of properly handling the problem of excessive violence and ineffective as a credible deterrent. The judicial system is being touted as a more feasible and capable alternative.

A. Internal Discipline

The league’s power to discipline is not inherent in its structure.
but is derived from, and has its legal basis in, the consent of the player. Management secures the player's consent through the use of a standard player contract and provisions set forth in the league's by-laws. The sanctions the league may impose on players who violate the game's safety rules form two categories: (1) those that may be imposed while the game is in progress; and (2) those that may be imposed after the game as either remedial or punitive measures. During the game, the responsibility of meting out the appropriate sanctions rests upon league selected, on-the-field officials. After the game, the league's commissioner considers egregious infractions of the safety rules. Each league usually vests copies of their agreement to the public.


76. For example, Paragraph 11 of the NFL Standard Player Contract provides that the “[p]layer acknowledges the right and power of the Commissioner to fine and suspend . . . any player . . . who is guilty of any conduct detrimental to the welfare of the league or of professional football.” Reprinted in L. SOBEL, supra note 75, at 421.

77. “Whenever the Commissioner, after notice and hearing, decides that . . . any player . . . has either violated the Constitution or By-Laws of the league, or has been or is guilty of conduct detrimental to the welfare of the league or professional football, then the Commissioner shall have complete authority to:
(1) suspend and/or fine such person in an amount not in excess of five thousand dollars ($5,000) and/or
(2) Cancel any contract or agreement of such person with the league or with any member thereof.”


78. For a listing of the sanctions at each league's disposal, see R. Horrow, supra note 1, at 69-73.

79. Safety rules serve the sole purpose of promoting player safety. Since 1962, the NFL has implemented 33 rules that have the primary purpose of increasing player safety. See NFL Rule Changes That Benefit Player Safety, (Final Update, June 23, 1981). In 1980, for example, the league “[m]ade it illegal for a player to strike, swing, or club an opponent in the head, neck, or face by a raking or continuous action even if the initial contact is below the neck.” Id. at 3.

80. They usually consist of penalties to the violator's team and/or expulsion of the violator from the game. See Comment, Civil Liability Between Professional Football Players, supra note 13, at 746-47.

81. Usually monetary fines and/or player suspension, although contract termination is also available. Id.

82. Id. These officials are commonly referred to as referees or umpires.

83. Commissioner Pete Rozelle of the NFL has stated that unnecessary violence outside the rules of the game will be cause for league discipline whether or not it is detected by game officials. See Statement of the NFL commissioner (Sept. 14, 1977). After the commissioner determines that the conduct warrants punishment, he has to notify the player of the action taken. Should the player decide to appeal, the commissioner will designate a time and place for a hearing. After the hearing, he makes the final and binding decision. See NFL Agreement, supra note 74, art. VIII, § 1. It should be noted that the chief official for the NHL is the President; although he carries a different title his function is the same as a
an enormous amount of disciplinary power in the hands of its commissioner who possesses the power to render a full, final, and binding decision in any matter "concerning the preservation of the integrity of, or the maintenance of public confidence" in the sport he oversees. Although the leagues have made significant attempts to curb the level of violence in the respective sports by promulgating rules designed to promote player safety, the sanctions league officials currently impose are ineffective in preventing and discouraging infractions of the safety rules by players.

For the most part, the fines and suspensions assessed serve no deterrent value. The fines are relatively nominal when one considers the exceedingly large salaries of professional athletes, and the suspensions are usually too lenient given the nature of the offense. In those cases where the penalties assessed were severe, some players have claimed that the team paid the fine. Such conduct on the part of management serves to effectively negate the deterrence value of a severe penalty. Also, penalties become less effective when management encourages those acts the penalties

84. In baseball, the respective league presidents are also vested with significant disciplinary powers. See Baseball Agreement, supra note 74, art. IX(A).
85. Id. art. X(A)(1)(G). See NFL Agreement supra note 74, art. VIII, § 1; NBA Agreement, supra note 74, art. XXI, § 1(f). The league Commissioner is usually selected by the club owners. See Weistart, supra note 75, at 715 n.46.
86. See note 79, supra. Major League Baseball officials have taken steps to eliminate beanball wars as a common occurrence in the sport. See R. Horrow, supra note 1, at 73.
87. See note 78, supra.
88. See Comment, Civil Liability Between Professional Football Players, supra note 13, at 748.
89. For example, Marvin Webster of the New York Knicks was fined $2,000.00 for his involvement in a fight with another player during a basketball game last season. At that time Webster earned a salary in excess of $500,000.00 per year. See Sprotzer, supra note 3, at 6. In the NHL last season, Bobby Schmautz of the Vancouver Canucks and Pat Hughes of the Pittsburgh Penguins were both fined $200.00 for a stick-swinging incident between them. See Edes, More Fines for 2 Stick Swingers!, L. A. Times, Oct. 29, 1981, pt. III, at 16, col. 2. In 1980 the average salary of a professional hockey player was in excess of $100,000.00 per year. See Comment, Sport in Court: The Legality of Professional Football's System of Reserve and Compensation, 28 U.C.L.A. L. Rev. 252, 253 n.13 (1980).
90. "[NHL officials] feel that the use of a stick against an opponent is the most serious foul . . . [in hockey] because of the potential dangers involved." Edes, supra, at 2, col. 3 (quoting Brian O'Neill, Executive Vice-President of the NHL). Yet, last season Behn Wilson of the Philadelphia Flyers and Danny Gare of the Buffalo Sabres were involved in a stick-swinging incident and both were suspended for only three games. The same three-game suspension was levied against Bobby Schmautz and Pat Hughes for their stick-swinging incident last year. Id. at 16, col. 2.
91. See R. Horrow, supra note 1, at 75.
92. See 1977 House Report, supra note 24, at 123.
were designed to prevent.93

The imposition of severe penalties for violation of the safety rules can be an effective deterrent to excessive violence in professional sports.94 Because management95 possesses sole disciplinary powers, however, it has been able to maintain violence as an integral part of sports. This situation will remain so long as management views violence as marketable and profitable.96

B. The Intrusion of Criminal Law Into the Sports Arena

The rationale for the intrusion of criminal law into the realm of professional sports is that self-regulation has been ineffective as a means of controlling excessive violence and protecting the athletes.97 One commentator argues that to preclude the intervention of criminal law would be tantamount to allowing a segment of society to commit crime with impunity;98 thus, if the athlete were immune from criminal sanctions merely because of his participation in a sporting event, the commission of acts of violence would “become the order of the day.”99

1. The Application of Criminal Sanctions to Professional Athletes

There have been few criminal prosecutions of professional athletes,100 and those that have occurred have involved hockey play-

93. Id. “[Management] expects you to do what you get fined for.” R. Horrow, supra note 1, at 75 (quoting an unidentified player).
94. See Comment, Torts in Sports, supra note 32, at 766; R. Horrow, supra note 1, at 76-78; THE SPORTING NEWS, note 52 supra. Penalties as severe as those levied against Kermit Washington ($10,000 fine and a 60-day suspension) cost a player a substantial amount of money, cost the team the loss of the player’s services, and, as such, are more likely to deter acts of violence.
95. Management includes the team owners, league presidents, and commissioners.
96. “Many in sports management feel that violence is necessary to the game. They not only condone it, but encourage it. They feel it sells tickets and creates fan interest.” Woolf, supra note 39, at 20. See also note 39 & accompanying text supra.
98. See Flakne & Caplan, supra note 8, at 33. “[T]he enforcement of criminal laws should not stop at the admitting gates of sporting events.” Id. at 34.
99. Id. at 35.
100. There has been one successful criminal prosecution of an amateur athlete. People v. Freer, 86 Misc. 2d 280 (1976). John Freer was found guilty of third degree criminal assault for punching another player in the eye while participating in a football game. During the course of a tackle the complainant punched the defendant in the throat. As both players fell to the ground there was a pileup. After all the players got off the defendant he punched the
ers. The first of these prosecutions occurred in Canada in 1970 where Wayne Maki and Ted Green were both tried on criminal assault charges.\textsuperscript{101} The only American prosecution of a professional athlete occurred in 1975 when Dave Forbes was tried on criminal assault charges.\textsuperscript{102}

In most jurisdictions where assault is alleged, the prosecution must show that the defendant intended to cause the injury.\textsuperscript{103} Intent, though an essential element of the crime, is most difficult to prove in the sports setting because of the environment in which the athlete operates.\textsuperscript{104}

(a) The Consent Defense

The defense of consent\textsuperscript{105} of the victim, recognized at common law,\textsuperscript{106} stands as the primary legal barrier to the successful prosecution of athletes on criminal assault charges.\textsuperscript{107} Hockey, football, basketball, and baseball all call for physical contact and intimidation that would normally be considered assaults.\textsuperscript{108} By voluntarily participating in these sports, the player impliedly gives his consent to such contact.\textsuperscript{109}
The major difficulty the consent defense presents, however, is determining the scope of player consent. The court in Regina v. Green acknowledged this problem and concluded that it would be very difficult for a player, embroiled in the intensity of an athletic contest, to stop and determine whether an act he is about to commit constitutes an assault. The Maki court, however, was able to conclude that "no athlete should be presumed to accept malicious, unprovoked or overly violent attack." Unprovoked savage acts resulting in serious injury are the only acts of violence that should subject a player to criminal prosecution. Although a case may fit the standard delineated in Maki, there are additional defenses to a charge of assault the defendant may successfully raise.

(b) Involuntary Reflex

The defense of involuntary reflex action is predicated on the theory that the violent act committed by the player was instinctive rather than premeditated. His action results from attitudes in-
stilled in him at an early age,\textsuperscript{118} combined with the high level of pressure and emotion associated with sports.\textsuperscript{116} The latter point was asserted by the court in the \textit{Green} case and was the basis of Green's acquittal.\textsuperscript{117} This defense was also successfully raised in the \textit{Forbes} case.\textsuperscript{118}

(c) \textit{Self-Defense}

A defendant in a sports violence action may assert that he acted in self defense. Whether he will be successful, however, depends upon attendant circumstances. The force the defendant used must not only have been reasonable,\textsuperscript{119} but the defendant must also have reasonably believed that it was necessary to use such force\textsuperscript{120} and that the threatened harm was imminent.\textsuperscript{121} When a defendant asserts such a defense, the trier of fact must analyze the circumstances surrounding the act as well as the state of mind of the accused at the time in question.\textsuperscript{122}

(d) \textit{Criminal Law Limitations}

In addition to the problems\textsuperscript{123} criminal prosecutors in sports violence cases face, there are inherent limitations in the criminal law that make it an unfeasible means of control. For criminal law to be effectively applied to any group or organization, the group must perceive the law as being both appropriate and credible as a social control mechanism.\textsuperscript{124} Criminal penalties serve minimal deterrent

\textsuperscript{115} Id. at 202.
\textsuperscript{116} Id.
\textsuperscript{117} “We must remember that we are dealing with a hockey game. . . . We are not now dealing with the ordinary facts of life, the ordinary going and coming. We must remember that when we discuss the action of these men we are examining it within that forum and we are discussing it within the context in which the game is played, at high speed and \textit{obviously with people keenly on edge}. In these circumstances I find as a fact that Mr. Green’s action . . . was instinctive.” Regina v. Green, 16 D.L.R.3d at 142 (emphasis added).
\textsuperscript{118} See R. HoRrow, \textit{supra} note 1, at 201.
\textsuperscript{119} See W. LaFAVE \& A. SCOTT, \textit{supra} note 105, § 53, at 392.
\textsuperscript{120} Id. at 393.
\textsuperscript{121} Id. at 394.
\textsuperscript{122} See, e.g., Regina v. Maki, 14 D.L.R.3d at 166.
\textsuperscript{124} The professional sports establishment does not view the conduct of its members on the playing field as warranting criminal prosecution. This ‘‘mentality’’ . . . mitigates against the effectiveness of the traditional criminal law as a mechanism to control exceptionally severe acts of sports violence.” R. HoRrow, \textit{supra} note 1, at 12.
purposes because the acts that would subject players to liability are not perceived by them as criminal but rather as part of the game. Criminal prosecution, then, may well be ineffective in controlling sports violence.

Moreover, in sports violence cases, one might argue that the sport, rather than the individual, is on trial. The individual may then be viewed as the "scapegoat" who is unjustly prosecuted for the level of violence in the particular sport.\textsuperscript{126}

Consistency is another problem with sports violence prosecutions. Since the decision to prosecute is discretionary,\textsuperscript{127} sports violence cases may be vigorously prosecuted in some jurisdictions and completely ignored in others.\textsuperscript{128} Such haphazard enforcement would eradicate any effectiveness the criminal law may have as a deterrent to sports violence.\textsuperscript{129} Also, courts could set variant standards for determining the criminality of an act, thus causing chaos because of the lack of uniformity.\textsuperscript{130}

2. The Sports Violence Act of 1980

Congressman Ronald Mottl (D-Ohio) has proposed the Sports Violence Act of 1980\textsuperscript{131} which would make it a federal crime for professional athletes to use excessive physical force against another player during the course of a sports event.\textsuperscript{132} However, the intervention of federal criminal law enforcement authorities into the sports violence issue is considered unwarranted and unnecessary.\textsuperscript{133}

\begin{footnotes}
\item[125] Id. at 119. "[Players] . . . argue that intimidation, retaliation, and violently aggressive tactics have always been an accepted part of the game, so they fail to see why they should be punished for playing within these unwritten rules." 1977 House Report, supra note 24, at 123-24. See also note 93, supra.
\item[126] See Hallowell & Meshbesher, supra note 1, at 28. Cf. R. Horrow, supra note 1, at 125 (athletes form a subgroup and because each member acts the same way, it is unfair to punish only one individual).
\item[127] For a full discussion of the factors that influence whether a prosecutor decides to prosecute a sports violence case, see R. Horrow, supra note 1, at 110-60.
\item[128] Id. at 113.
\item[129] See Hallowell & Meshbesher, supra note 1, at 28.
\item[130] See R. Horrow, supra note 1, at 146.
\item[131] H.R. 7903 was introduced on July 31, 1980 and referred to the Committee on the Judiciary. Hearings were held, but no action was taken. The bill was reintroduced on March 3, 1981 (H.R. 2263) and its status remains the same. Near the publication deadline for this Note, Congressman Ronald M. Mottl reintroduced the Sports Violence Act under a new name. It is now the Sports Violence Arbitration Act of 1981 (H.R. 5079). A copy of the bill was unavailable for review as of the publication deadline.
\item[132] The bill provides for a $5000 fine or one year imprisonment or both.
\item[133] See Hearings on H.R. 7903, supra note 5, at 5 (statement of Edward Garvey); notes
\end{footnotes}
Further, the bill is replete with problems that will make enforcement extremely difficult. \(^{134}\)

In situations involving personal violence, protection of the public safety is normally a function of state law enforcement authorities. \(^{135}\) Federal action is usually limited to those situations which involve “officers or employees of the United States, foreign officials, official guests, and internationally protected persons . . . .” \(^{136}\) Proponents of the bill argue that the failure of past attempts \(^{137}\) to curb violence in professional sports necessitates the intervention of federal criminal law enforcement authorities. \(^{138}\) They also contend that the act will provide for uniform administration of the law, thereby resolving the problem of inconsistent criminal prosecutions by state authorities which result from varying assault and battery statutes. \(^{139}\)

Successful criminal prosecutions will not be more easily achieved at the federal level than at the state level. The federal courts will also face the problem of drawing that fine line separating violent conduct which is considered a part of the game from that which is excessive and unnecessary. \(^{140}\) This problem prevented successful criminal prosecutions at the state level \(^{141}\) and is exacerbated by the bill’s ambiguous language. \(^{142}\) Those issues which could not be judi-

134. See note 142 & accompanying text, infra.
135. See Hearings on H.R. 7903, supra note 5, at 1 (statement of James S. Reynolds, Deputy Chief, General Litigation and Legal Advice Section, Criminal Division, U.S. Dep’t of Justice).
136. Id.
137. Past attempts include internal regulation, and local law enforcement. See Sprotzer, supra note 3, at 4.
138. “[P]ast attempts to curb violence in professional sports have been lacking in their vigor and the time has come for a new approach.” Id.
139. Id. at 6.
140. Mottl concedes this point. See 126 Cong. Rec., supra note 56, at E3,711.
141. See Hallowell and Meshbesher, supra note 1, at 29; note 111, supra.
142. For example, the bill defines excessive physical force as that amount of force which “has no reasonable relationship to the competitive goals of the sport; is unreasonably violent; and . . . [is not] a normal hazard . . . [of the] sport.” H.R. 2263, supra note 131, at 2. Most observers would agree that the “competitive goal” of sport is to win, and “[i]f you’re going to win, you’re going to be so keyed up that maybe once in a while you’ll over-play a guy. You might give him an extra shot . . . .” 1977 House Report, supra note 24, at 122 (quoting former Washington Redskin quarterback, Billy Kilmer). This has been an accepted part of professional football for a long time. Id. Further, the use of such terms as “unreasonably violent” and “normal hazard” do not lessen the line-drawing problems the trier of fact will face. See Hearings on H.R. 7903, supra note 5, at 5-6 (Statement of Edward Garvey). Also, “[t]he Government would have to prove as elements of the offense that a defendant knowingly used ‘excessive physical force,’ and thereby caused ‘a risk of significant bodily
cially resolved at the state level will also not be capable of resolution at the federal level.

A fundamental question is whether the resolution of the sports violence problem should be a priority of the federal government. Since local police organizations usually provide security at professional sports events, they are better able to respond to eruptions of exceptional violence among the game's participants. Consequently, the initial response to, and investigation of, cases involving sports violence would continue to be accomplished by local authorities. This indicates that the handling of these matters should remain a function of state law enforcement authorities.

C. Civil Liability

The criminal law process is not designed to provide compensation for injuries an athlete wrongfully suffers during the course of play. Compensation for the wrongfully injured person, however, is the primary purpose of tort law. Until recently, few professional athletes sought civil judicial remedies for injuries caused by another while playing. Most of these actions followed the case of Hackbart v. Cincinnati Bengals, Inc. where the court held that tort principles were applicable to cases involving injuries suffered

injury'. . . [T]his language would be challenged as being unconstitutionally vague." Hearings on H.R. 7903, supra note 5, at 2 (statement of James S. Reynolds) (emphasis added).

143. "The prevailing attitude against passage of the bill is that government should concern itself with pressing national problems and leave the regulation of sports to the respective leagues." Sprotzer, supra note 3, at 8.

144. See Hearings on H.R. 7903, supra note 5, at 1 (statement of James S. Reynolds).
145. Id.
146. See Note, Liability in Professional Sports, supra note 5, at 927.
148. In addition to the Hackbart and Tomjanovich cases, see notes 57-59 & accompanying text, supra, Richard Rhodes, a rookie guard trying to win a spot on the Chicago Bulls basketball roster, won a total of $125,000 in damages from the Kansas City Kings and guard Lucius Allen after Allen broke Rhodes' jaw in an exhibition game. See Ranii, supra note 5, at 1. Henry Boucha filed a civil action against Dave Forbes, the Boston Bruins, and the NHL, but dropped his action when an out-of-court settlement was reached. He reportedly collected between $1 million and $2 million. Id. at 30. Earlier this year, Mike Robitaille, a former hockey player, was awarded $435,000 in damages because his former club, the Vancouver Canucks, breached their duty of care to him. Robitaille was forced to play hockey while injured and team doctors failed to examine him properly when he complained of the injury. He is now permanently disabled. See 4 Sports L. Rep. 2 (June, 1981).
during a professional sports event. The success of a professional athlete's civil suit depends on the theory of liability he adopts, as most tort theories have limited applicability in the sports context.

1. Assault & Battery

Should the injured athlete seek liability based on a theory of assault and battery, he would have to prove that the defendant intended to both commit the act, and cause the harm. And, as discussed above, he would have to contend with the defense of consent and any other defenses the defendant feels are applicable.

2. Negligence

In an action founded on negligence, the plaintiff must prove that the defendant was under a duty to him to conform to a certain standard of conduct. A defendant who subjects the plaintiff to an unreasonable risk of harm and thus causes an injury breaches this duty. The defenses of assumption of risk and contributory

150. 601 F.2d at 524.
151. See notes 152-76 and accompanying text, infra. Also, the theory of liability the player adopts may very well be determined by the nature of the sport he plays. See note 159 and accompanying text, infra.
152. Assault and battery do not have to exist together; the difference between them is that battery requires physical contact, whereas assault requires only the apprehension of physical contact. W. PROSSER, supra note 147, § 10, at 41.
153. Hackbart, 601 F.2d at 525.
154. See notes 105-22 and accompanying text, supra.
155. See W. PROSSER, supra note 147, § 30, at 143. The trial court in Hackbart stated that the issue of duty of care raises the question of reasonableness. In this case the question would be what a reasonably prudent professional football player can be expected to do under the circumstances that confronted Clark when the incident occurred. 435 F. Supp. at 355. The court concluded that "[i]t is wholly incongruous to talk about a professional football player's duty of care for the safety of opposing players when he has been trained and motivated to be heedless of injury to himself." Id. at 356. Further, "[t]he character of NFL competition negates any notion that the playing conduct can be circumscribed by any standard of reasonableness." Id. The appellate court, however, found that the general customs and rules of football do not include the intentional striking or punching of others. These restraints, the court stated, do establish boundaries wherein a player's conduct must conform to some standard of reasonableness. 601 F.2d at 521. Despite the finding of a duty to refrain from conduct like Clark's, a negligence action could not be maintained. See note 159 and accompanying text, infra.
156. See W. PROSSER, supra note 147, § 30, at 143.
157. "Generally, a participant assumes all the ordinary and inherent risks attendant to a sport. An assumed risk precludes the existence of a duty and thereby relieves the defendant of any legal wrong for his conduct." 19 Duq. L. Rev. 191 at 195 (1980) (footnotes omitted). For a full discussion of the assumption of risk defense in professional sports, see Comment,
or comparative negligence\textsuperscript{158} may be asserted in this situation. A negligence cause of action, though, has limited applicability in the sports context. For example, the court in \textit{Hackbart} held that negligence is inapplicable when the injury is sustained during a football game, because "subjecting another to [an] unreasonable risk of harm, the essence of negligence, is inherent in the game of football, for admittedly it is violent."\textsuperscript{159}

3. Reckless Misconduct

Reckless misconduct was found applicable to the facts in the \textit{Hackbart} case.\textsuperscript{160} Liability on this theory requires a finding that the defendant intentionally committed an act knowing he would be subjecting the plaintiff to a substantial risk of harm.\textsuperscript{161} The defendant, however, is not required to have intended to cause the harm which results.\textsuperscript{162} The appropriate defenses to such a charge are assumption of risk\textsuperscript{163} and conduct on the part of the plaintiff in reckless disregard of his own safety.\textsuperscript{164}

4. Employer Liability

The injured player may also seek to establish liability in his assailant's employer by invoking the theories of respondeat superior and negligent supervision.\textsuperscript{165}

\textit{Assumption of Risk and Vicarious Liability in Personal Injury Actions Brought by Professional Athletes}, 1980 \textit{Duke L.J.} 742 [hereinafter cited as Comment, \textit{Assumption of Risk}].

158. "Contributory negligence is conduct on the part of the plaintiff, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection." W. \textit{Prosser}, \textit{supra} note 147, § 65, at 416-17 (footnotes omitted).

159. 601 F.2d at 520. The court's language seems to imply that a negligence cause of action may be brought in cases where the injury was sustained while playing a sport not as inherently violent as football or hockey. \textit{See}, \textit{e.g.}, Bourque v. Duplechin, 331 So. 2d 40 (La. App. 3d Cir. 1976) (plaintiff only assumes the risk of injury resulting from incidents common to the sport). Also, a negligence cause of action could not be maintained in \textit{Hackbart} because Clark's act was intentional. The court found that negligence consists of "mere inadvertence, lack of skillfulness or failure to take precautions." 601 F.2d at 524.

160. 601 F.2d at 525. \textit{See} note 57, \textit{supra} for the facts of this case.

161. 601 F.2d at 524 (citing \textit{Restatement (Second) of Torts} § 500 (1965)).

162. \textit{Id}.


164. \textit{See} \textit{Restatement (Second) of Torts} § 503 (1965). This defense is most applicable in the sports context because players often dive for loose balls, make diving catches, etc., and, as a result, subject themselves to greater chances of injury.

165. \textit{For} a full discussion of these concepts, \textit{see} Note, \textit{Torts in Sports}, note 32, \textit{supra}. These theories were the basis of the claim in the \textit{Tomjanovich} case. \textit{See} notes 58 and 59, \textit{supra} for the facts of this case.
(a) Respondeat Superior

Generally, an employer is held vicariously liable for the acts of his employees when a master-servant relationship exists between them. Such a relationship exists when the employer has control over, or the right to control, the performance of the employee’s duties. The plaintiff must also prove that the tortious act which caused his injury was committed within the scope of the defendant’s duties as an employee. To be within the scope of employment, the conduct must be of the same nature as authorized conduct, or incidental to authorized conduct. In addition, if the act was intentional, it must have been committed to further the employer’s business. The success of a suit based on respondeat superior, however, depends on the facts of the case as well as the jurisdiction in which the action is brought.

(b) Negligent Supervision

The second basis upon which an employer’s liability may be established is negligent supervision. This theory is predicated on

166. See Note, Torts in Sports, supra note 32, at 778. The rationale for passing liability for an employee’s torts to the employer is that the losses caused by such conduct should be considered a cost of doing business. Further, such liability will provide incentive for the employer to be more careful in selecting, instructing and supervising his employees. W. Prosser, supra note 147, § 69, at 459.

167. See Note, Torts in Sports, supra note 32, at 779; The author argues that a master-servant relationship exists in professional sports because management has the power to enforce dress codes and curfews, terminate contracts, and discipline players. Id. at 779-81.

168. Id. at 781. See also W. Prosser, supra note 147, § 70, at 460-61.

169. See Note, Torts in Sports, supra note 32, at 781.

170. Id. at 782. See W. Prosser, supra note 147, § 70, at 464.


172. Id. at 782-83. "In jurisdictions that apply the [vicarious] liability doctrine narrowly, vicarious liability for unauthorized intentional torts attaches only if the employee was acting in furtherance of his employer's interest." Id. at 782 (footnotes omitted). In these jurisdictions (e.g. Iowa and Kansas) the employee's act must have been in response to conduct on the part of the plaintiff which interfered with the employee's ability to perform his duties successfully for the employer to be held liable. Under this standard, absent a finding that the act was either expressly or impliedly authorized, it is unlikely that a team will be held liable for a player's conduct. Id. at 782-83. In jurisdictions that apply the doctrine more liberally (e.g. California) the employer may be liable for the employee's conduct if the act is incidental to the performance of the employee's duties. "Under this standard if a player strikes an opponent out of anger and frustration developed over the course of [a] game, the team may be subject to liability." Id. California Law was followed in the Tomjanovich case. Id. at 784.

173. For an analysis of the differences between negligent supervision and respondeat superior see Note, Tort Liability in Professional Sports, 44 ALB. L. REV. 696 (1980).
the idea that the employer is expected to use reasonable care in selecting and retaining employees who, because of the nature of their activities, will come into contact with third persons. The employer, then, has a duty to investigate the prospective employee's background before hiring him. Once the individual is hired, the employer must exercise reasonable care in supervising the employee's activities. For liability to be passed on to the employer, however, it must be shown that there was either actual or presumptive notice to the employer as to the employee's tendency to commit tortious acts.

5. Tort Law Limitations

Civil sanctions, like criminal sanctions, have limited applicability in sports violence cases. As previously discussed, there are a limited number of theories upon which an injured player may successfully establish liability in another for his injury. In a civil action the trier of fact will also face the problem of drawing the line that separates actionable conduct from acceptable conduct during play. Thus, only players who are injured by acts of violence committed out of the play have a good chance of recovering damages from another athlete and/or his team.

Because tort law differs from one jurisdiction to another, the results of civil actions will be unpredictable and inconsistent; an injured player may recover damages in one jurisdiction, while another player, injured under similar circumstances, is denied damages in another jurisdiction.

Civil actions cannot be an effective deterrent to sports violence unless damages are assessed against the defendant. Their effectiveness as a deterrent, however, depends upon the injured player's

175. Id. at 788.
176. See Note, Tort Liability in Professional Sports, supra note 173, at 709. "According to papers filed by Tomjanovich, Washington had been involved in seven separate incidents in which he used or attempted to use his fists in only three years as a Laker, all prior to the incident involving Tomjanovich." 4 SPORTS L. REP. 6 (June, 1981).
177. See Part II (B), supra.
178. See Part II (C), supra.
179. "[If] [t]he blow [had arisen] out of the normal pushing and shoving inherent in the game . . . the case would have been more difficult." Comment, Assumption of Risk, supra note 157, at 755 (re: Rudy Tomjanovich).
180. See, e.g., Note, Torts in Sports, supra note 32, at 791.
181. Id.
182. See generally Note, Torts in Sports, supra note 32, at 790-93.
interest in instituting an action against another player and/or his team. Because of internal pressures, a player's incentive to file a suit may be lessened. An alternative to the civil suit is needed.

III. Self-Regulation: The Need for Internal Structural Reform

Criminal law enforcement authorities have been unable to punish athletes for acts committed during a game. In addition, criminal sanctions cannot control player conduct during a game because of inherent limitations in the criminal law when used in the professional sports setting. Therefore, the responsibility of policing sports activity should remain a function of the leagues. The leagues are in a better position than the courts to define and enforce specific rules of conduct. They do not have to wait until cases come before them to establish standards for player conduct during the game. Also, because of the close contact league management and players have with the game, they are better able to determine what constitutes reasonable conduct under game conditions. A system of league control may also be more flexible than one involving public control because the leagues can exercise control over a wider range of conduct. For example, league enforcement could conceivably extend to conduct a prosecutor would not consider prosecuting. In addition, because league control is centrally administered, playing standards would be consistent and uniformly enforced. The variance in enforcement practices that characterizes public law enforcement would thus be avoided. In short, the leagues can much more efficiently and effectively control and deter sports violence.

Effective self-regulation requires vigorous enforcement of rules

183. "Fear that they might be blacklisted throughout the league as [troublemakers] may discourage players from initiating lawsuits." Id. at 791.
184. See note 33 and accompanying text supra.
185. See notes 123-30 and accompanying text supra.
186. See Weistart, supra note 75, at 729 n.91.
187. Id.
188. See Comment, Violence in Professional Sports, 1975 Wis. L. Rev. 771, 784.
189. See Weistart, supra note 75, at 729 n.91.
190. Id. For example, a prosecutor would probably not prosecute a player for going into the stands after a heckler. League officials, however, have fined players for doing just that. See, e.g., note 31 supra.
191. Id.
192. Id.
promulgated to control player conduct and promote player safety. Such enforcement will not preclude the state or local authorities from instituting criminal actions, but may serve to reduce the need for them to do so.193

At present, the power to discipline players rests solely in the hands of management.194 The commissioner, management’s chief representative, possesses the power to render final and binding decisions in cases that affect the public image of the sport.195 As a result, cases involving on-the-field violence are heard and decided by him alone.196 Because the commissioner is usually selected by the team owners,197 he is viewed as being dependent on them.198 The owners determine and pay his salary,199 have the authority to modify his powers,200 and retain the right to fire him.201 Under these circumstances, one cannot expect the commissioner to render decisions contrary to the owners’ basic interests.202 As discussed above,203 management will condone and promote violence so long as it is profitable. Therefore, the likelihood that the commissioner will impose severe sanctions on an athlete for egregious infractions of the rules is limited.

The present internal disciplinary system also suffers from a lack of fairness because fines are assessed against players without the benefit of a hearing.204 The present system is also inconsistent205 and does not provide for appeals to an objective third party.206

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194. See notes 74-85 and accompanying text, supra.
195. See note 85 and accompanying text supra.
196. See, e.g., note 83, supra. In the National Hockey League, however, these cases are heard by Executive Vice-President Brian O’Neill. See generally Edes, note 89 supra.
197. See note 85, supra.
198. See R. Horrow, supra note 1, at 85.
199. Id.
200. Id.
201. Id.
202. Id.
203. See notes 39, 96 and accompanying text, supra.
204. Only through an appeal is the player able to contest the penalty assessed against him. See, e.g., note 83, supra.
205. Players who have a reputation for very aggressive play are often disciplined for acts that do not warrant such action. On the other hand, acts by other players against them that do warrant some form of disciplinary action often go unnoticed by league officials. See e.g., J. Tatun, note 53 supra, at 44-45; Zimmerman, The Raiders Regain a Lost Art, Sports Illustrated, Oct. 26, 1981, 70, 73.
206. See, e.g., note 83, supra. "The most distressing thing is that we were forced to appeal to (Commissioner Pete) Rozelle, who made the fine in the first place." Balzer, note 52, supra (quoting Herb Rudoy, agent for Chicago Bears player Mike Hartenstein).
For these reasons, the present internal disciplinary system of the major sports leagues should be dismantled and replaced by one that can more effectively handle the sports violence problem.

A. Joint Committee on Player Discipline

For self-regulation to be effective, player participation in the process of promulgating and enforcing rules of conduct is essential.\textsuperscript{207} The players must have a role in establishing and enforcing the rules of conduct during a game because it is their physical wellbeing which is at stake.\textsuperscript{208} They, therefore, have the greatest interest in eliminating excessive violence. \textit{Further, no one will be more stringent with players who violate the rules than their peers.}\textsuperscript{209} The players are also in an ideal position to monitor conduct during a game because they are the participants, as well as the perpetrators of the acts in question. As part of their collective bargaining agreement the league management and the players' association should form a Joint Committee on Player Discipline. This committee, comprised of both labor and management representatives,\textsuperscript{210} should be solely responsible for disciplining players for conduct during a game. As a result, the commissioner would no longer perform this disciplinary function by himself. Management may, however, select him as one of its representatives on the committee. The committee should be responsible for drafting rules of player conduct during the game,\textsuperscript{211} and determining the appropriate sanc-

\begin{footnotesize}
\begin{enumerate}
\item[207.] "Under NLRB interpretation of the collective bargaining obligation, the players' associations must participate in the development of, or at least agree to, rules changes such as would be required in this case." 1977 \textit{HOUSE REPORT}, supra note 24, at 126.
\item[208.] Because acts of violence contribute to player injuries and injuries threaten a player's career and his source of income, the sports violence issue should be viewed as a matter which relates to the terms and conditions of employment. The players associations would then be able to make their participation in the handling of the sports violence problem a mandatory subject of collective bargaining. "[T]he subject matter of collective bargaining in professional sports . . . include all matters that relate to the terms and conditions of the employment of athletes." J. \textsc{Weis}tart \& C. \textsc{Lowe}ll, supra note 193, at 813.
\item[210.] The committee should be composed of either 5 or 7 individuals. The odd member should be a neutral party; the supervisor of umpires or referees could fill this position.
\item[211.] The goal of the committee in drafting these rules is to ensure player safety. Player safety, however, will be ensured only if the rules are clear as to what acts are proscribed. Consistent enforcement of these rules by the referees on the field is also essential to the success of this program. Players with a reputation for aggressive play can no longer be singled out for disciplinary action. All violators of the rules must be dealt with appropriately.
\end{enumerate}
\end{footnotesize}
tions for the violation of these rules. The penalties for a player's violating the rules of conduct during a game must parallel the magnitude of the violation. Therefore, expulsion of a player from the sport must not be ruled out as a possible sanction. Penalties against coaches and management must also be assessed in those cases where it is found that these parties authorized the player's conduct.

It would not be feasible for the committee to monitor each game as it is being played. Therefore, the committee should consider determining whether an act warrants disciplinary action by reviewing game films and referee reports. An action may also be instituted if another player, or team, files a grievance with the committee and requests disciplinary action.

The committee must also draft rules of procedure to ensure fundamental fairness and procedural due process. Therefore, guidelines regarding notice and how the hearing is to be conducted must be established.

In addition, the committee must incorporate an appeals process into the system to mitigate the effects of arbitrariness by the committee itself. A viable means to accomplish this goal is through the use of independent arbitrators who will hear a grievance on appeal and render a final and binding decision. The selection of the arbitrator, or arbitrators, does not have to be a function of the committee. Instead, that responsibility could be delegated to other labor and management representatives.

The proposed disciplinary system is much fairer than the current one. The players' involvement in the process will result in greater efficiency and more effective control and deterrence of excessive violence in professional sports. Consequently, there will be fewer threats of intrusion by the criminal justice system, the sport's public image will be enhanced, and labor and management

212. These sanctions should be a combination of fines and suspensions without pay. I recommend that the committee determine fines based on a percentage of the player's salary. As a result, higher-paid players will not have an advantage over lesser-paid players.

213. In other words, the more flagrant the infraction, the more severe the fine and suspension must be.

214. Such action may be necessary in a situation where the act was intentional and resulted in serious injury to another player. Also, players who constantly violate the rules may be subject to expulsion.

215. In this situation a severe fine is probably the most feasible means to discipline management. Fines in this instance should be based on a percentage of the club's revenues. Coaches, however, should be subject to both fines and suspensions.
should be more unified.

B. Compensation for the Injured Player

The major sports leagues do not provide an internal procedure by which a player injured by an act of violence can seek damages. In addition, the injured player may be precluded from seeking damages from his assailant.216 The injured player, however, may be eligible for certain league-provided disability benefits217 and, depending upon the gravity of his injury, may be eligible for additional insurance and pension benefits.218 The player may also seek compensation under Worker’s Compensation statutes.219

These programs do not adequately indemnify players injured by an act of violence. The player receives the same amount of compensation he would have received if he had sustained the injury under normal game conditions. The filing of a civil suit against another player, his team, or both, becomes the only means by which the injured player can be duly compensated. The judicial route, however, does not guarantee recovery of damages because most tort theories have limited applicability in sports violence cases.220 Consequently, the player is limited to a few theories on which he can maintain a cause of action.221 In addition, the courts will face the problem of distinguishing actionable conduct from acceptable conduct during the course of a game. As a result, the only athletes

216. For example, by express agreement, a professional basketball player waives all his claims against another player for injuries he may receive from the other player’s violent conduct. See NBA Agreement, supra note 74, art. XIX, § 5.

217. For example, the National Football League (NFL) provides that if the injured player was placed on the injured reserve list because he was physically unable to perform, he will still be paid his full contract salary. See NFL Agreement, supra note 74, art. XVIII, § 2. Also, if the player’s contract was terminated the season following the one in which an injury prevented him from playing in all, or part, of the team’s last game, the player is eligible to receive 50 percent of his contract salary, but no more than $37,500.00. He may receive the payments subject to the following conditions: (1) that he was under rehabilitation treatment during the offseason following the season of injury; and (2) that he failed the physical examination the club gives at the start of training camp. Id. art. X, §§ 1 & 2. It should be noted that this benefit is given only once during a player’s career and payments cease if he signs a contract with a new team that year. A similar provision exists in the Baseball Agreement at art. VIII (D) except that the player is paid his full salary, less any workmen’s compensation payments.

218. In the NBA for example, to qualify for the insurance benefits the player must be permanently and totally disabled. See NBA Agreement, supra note 74, Exhibit B-1, Part 1.

219. For a full discussion of Worker’s Compensation and its application to professional athletes, see J. Weisbart & C. Lowell, supra note 193, at 1004-12.

220. See notes 152-76 and accompanying text, supra.

221. See Part II (C), supra.
who have a good chance of recovering damages are those who are injured by violent acts that occur out of the play.\textsuperscript{222} In this situation, the courts are not faced with the severe line-drawing problems presented when the player is injured during play. The majority of players, however, are injured during the course of play.\textsuperscript{223} Therefore, those who may feel that they were injured by an unnecessary act of violence have no practical means of judicial recourse.

League management and the players association should adopt new provisions in their collective bargaining agreement to provide greater monetary and health benefits for players injured by acts of violence. Management should increase the present disability benefits for these players and create a special fund for additional compensation. The amount of compensation the injured player receives through this fund should be determined by the extent of his injury. Therefore, a player permanently disabled will be more highly compensated than one who is not permanently injured. A committee comprised of labor and management representatives should be established to manage the program. The committee will hear grievance claims and determine whether the circumstances surrounding the player's injury make him eligible for additional compensation under this plan.\textsuperscript{224} The committee must also draft rules of procedure similar to those of the Joint Committee on Player Discipline, and incorporate an appeals process into this program. Should a player be dissatisfied with the ruling of the committee he should have the opportunity to appeal to an objective third party. In those situations where an appeal is to be made, the use of arbitration is recommended.

Should the leagues include this plan as part of their collective bargaining agreement, the players must expressly waive any claims they may have against another player and/or his team for injuries arising out of the other player's conduct. The waiver is necessary to avoid negating the purpose of the plan, which is to preclude the use of the courts as a means of getting compensation for one's injuries. The players will benefit from this plan because they will avoid the uncertainty and expense of a civil suit. Management will benefit because it will not be presented with the threat of a civil suit,

\textsuperscript{222} See note 179, \textit{supra}.

\textsuperscript{223} See note 5 and accompanying text, \textit{supra}.

\textsuperscript{224} This will not be a difficult task as the committee will merely have to defer to the findings of the Joint Committee on Discipline.
and will avoid the expense of defending the suit should one be filed. Also, the sport’s public image will no longer be adversely affected by the publicity associated with court actions. Finally, the judicial system will benefit because it will no longer have to resolve the problems of sports violence civil suits.

Conclusion

American society is concerned about the presence of violence in professional sports. Critics have argued that self-regulation is not a feasible means of control and that public law enforcement is necessary to eliminate violence in professional sports.

Public law enforcement cannot effectively deter violence in professional sports because violent conduct is, unfortunately, an accepted part of most sports. Criminal sanctions, therefore, cannot effectively control such conduct because it is not perceived as criminal by the players and management. Civil sanctions serve little deterrent purposes, and only players injured by violent acts out of the play have a good chance to recover damages for their injury.

Self-regulation by the leagues is the most feasible means of controlling sports violence. The present internal disciplinary system, however, must be abolished. The players must get involved in the process of making rules and establishing proper player conduct during the game for self-regulation to be effective in eliminating professional sports violence. In addition, a sincere attempt must be made by management to create a program of adequate compensation for players injured by acts of excessive violence.