Violence in Professional Sports: Is it Time for Criminal Penalties?

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By Richard B. Perelman*

I. INTRODUCTION

The problem is well-known among sports fans. Violence in professional sporting events has reached almost epidemic proportions. Almost all daily newspapers report about hundreds of penalty minutes for brawls in National Hockey League (NHL) games, fistfights in National Basketball Association (NBA) contests and about injuries suffered in National Football League (NFL) battles.1 Recent commentary has examined new case law in the area2 and the possibility of civil suit to redress damage.3 The criminal law confronted the problem in the form of a bill introduced in 1980 in the House of Representatives by Rep. Ronald M. Mottl.4 The bill would have penalized convicted offenders

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Mottl, an Ohio Democrat, was not re-elected in 1982. NEWSPAPER ENTERPRISES ASSOCIATION, INC., THE WORLD ALMANAC & BOOK OF FACTS 1983 47 (1982). Nevertheless, bills concerning the topic discussed here will likely be introduced in the future; the problem has not withered.
with fines up to $5,000 and/or up to one year in jail.\textsuperscript{5}

This note will analyze the nature of the problem dealt with by the bill in the context of three major professional sports: football, basketball and hockey. It will examine the current remedies provided by the sports leagues themselves and the civil process, their inadequacy to stem the excessively violent tide and the probable effectiveness of criminal sanctions against knowing infliction of excessive physical force, as outlined by the Mottl bill.

II. THE PROBLEM

A. The Role of Sport in the Society

Some values of sport are obvious to those who have played and are at least appreciated by those who have not. For many who participate, sports are fun. It’s a way to keep your weight down, by burning calories through physical exertion. In general, sport improves one's physical condition. For those who do not participate, but watch others who do, it provides entertainment, sometimes as intense an experience as that of those who participate.\textsuperscript{6,7}

The overriding quality of sport, at least in prior times, seems to have been the purity and goodness that was believed to be endemic to sport itself. A "sportsman" has been defined as "a person who is fair and generous and a good loser and a graceful winner."\textsuperscript{8} No definition mentions brutality, viciousness or any of the other violent actions that were the target of the Mottl bill.

B. Sport Today Is Marked by Frequent and Brutal Violence

There is little doubt that professional sport today is marked by an overabundance of violence.\textsuperscript{9} It has crippled some,\textsuperscript{10} and made “he-
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roes” of others.11

Worst of all, the games themselves seem to be open invitations to commit assault, battery, even mayhem. Jean Fugett, a professional football player, has stated: “The game is legalized violence. . . . I can go into a game and just literally try to break somebody’s neck . . . . It happens all the time.”12 Jack Tatum’s book title, “They Call Me Assassin” indicates his reputation as a player. Tatum makes no secret of his motivations during a game: “I never make a tackle just to bring someone down. I want to punish the man I’m going after and I want him to know that it’s going to hurt every time he comes my way.”13

The situation is the same in other sports, especially hockey. Don Cherry, former coach of the Boston Bruins, once stated: “I wish I had one man I could send after Mikita, to send him back to Czechoslovakia in a coffin.”14 The attitude of Philadelphia Flyers’ coach Fred Shero is typical: “Players die like flies in football, why is everyone up in arms over violence in hockey?”15

While this inflammatory verbiage might be passed off as pure braggadocio, the brutal reality of this attitude has seen light in too many sporting events in the past few seasons.

In the 1980-81 season, for example, NHL crowds witnessed fights, brawls and slugfests too numerous to list. Some particularly unfortunate incidents stick out. On February 26, 1981, a game between the Minnesota North Stars and the Boston Bruins was merely a sidelight to the record-setting fight(s) on the ice.16 With seven separate brawls in the first period alone, penalty minutes handed out totalled a record 406. Twelve players were ejected. The first fight began seven seconds into the game.

In April, 1981, the Los Angeles Kings and New York Rangers engaged in an important playoff game. Gordon Edes’ lead in the Los Angeles Times read:

TV’s version of “Masada” ended Wednesday night.

11. Tatum has achieved wide notoriety as a “vicious” hitter. He expounds on this at length in his book, Id.
12. Hechter, supra note 1, at 437 n.63.
The Kings and Rangers put on their own version Thursday night at the Forum, staging a fight to the (almost) finish.

The slings and arrows of the Romans and Jews were replaced by high sticks, low blows and all-out brawling between the Kings and Rangers. The debacle reached its nadir in a bench-clearing fight at the end of the first period that nearly spilled into the crowd.

"A total disgrace," said Kings' assistant coach Ralph Backstrom.\(^{17}\)

The game set a record for playoff penalties.\(^{18}\) Yet the only penalty against the participants to cover more than the time of the game itself was a suspension of one player for one additional game.

An often-quoted portion of the Tatum book describes his hit on Denver Broncos player Riley Odoms:

\[\text{[I]t was the best hit of my career. I heard Riley scream on impact and felt his body go limp. He landed flat on his back, . . . but Riley's eyes rolled back into his head and he wasn't breathing. I had another knockout, and maybe this time, I had even killed a man.}^{19}\]

Basketball examples are more rare, but Los Angeles sports fans remember well two incidents involving the Lakers. The best-known "fight" was the one-punch mutilation of Rudy Tomjanovich's face by Laker Kermit Washington. The jury awarded Tomjanovich $3.25 million dollars, but the case was later settled.\(^{20}\) In the same year, Laker center Kareem Abdul-Jabbar and Milwaukee Bucks center Kent Benson exchanged blows that kept both out of subsequent games.\(^{21}\)

Remarkably, with public indignation over violent crime so high that many feel it more important to fight violent crime than to re-tool


\(^{18}\) Id. Records set included most penalty minutes assessed in a playoff game, 267 and most penalties assessed, 43.

\(^{19}\) Tatum, supra note 10, at 18. This 1971 game was played at Denver. The Oakland Raiders emerged the winner, 27-16.

\(^{20}\) The jury awarded $1.75 million incompensatory damages and $1.50 million in punitive damages. Torts in Sports, supra note 1, at 765 n.9. The case was later settled for an undisclosed amount. Los Angeles Times, Apr. 21, 1981, sec. 3, at 4. The settlement preceded oral argument on appeal by the defendant California Sports, Inc. (parent company of the Lakers) by only seven days.

our national defense, there has been little done to stem the tide of violence in professional sports. Mottl acknowledged that his bill was apparently the first legislative effort on a national level.

III. The Currently Available Remedies

A. Penalties Assessed During the Games Themselves

In each case of professional football, basketball and hockey, game officials are able to penalize and/or eject individual players from that particular game. In general, restrictions on player participation in that particular game are all that game officials can impose. In special circumstances, penalties can be assessed that will suspend a player for one additional game. These penalties, however, are severely restricted and rarely invoked. The resulting deterrent effect of the playing rules is almost non-existent. In fact, many teams flagrantly disregard such rules by using "enforcers," players whose primary job is to provoke physical conflict and intimidate the opposition. It is activities of these players especially, that the Mottl bill would have affected.

1. Professional Football

Even the most casual fan is well aware of penalties that are handed out during the course of play. In addition to technical violations of the rules, there are additional penalties for unnecessary roughness, late hits, and the like. These usually consist of penalty yardage.

24. *Horrow, supra* note 2, at 20-24. Horrow notes that the sole purpose of some players is to pay "policeman." Incredibly, player interviews seemed to indicate that such conduct by these players is not perceived as being wrong in any way, despite the preference of these players for violence over lawful team play. *Id.*

A graphic example of this mentality was provided in Rep. Mottl's remarks before the House on July 31, 1980, when he read into the record a newspaper article that contained the following passage:

"It makes no difference in hockey. Former Bruins coach Don Cherry loves a good fight, and once gave "enforcer" John Wensink a back-handed compliment for scoring a few out-of-character goals. "I just hope he doesn't forget what got him there," said Cherry. "I mean the goals are nice. I was happy that he got the hat trick the other night, but not so happy as I've been when he's won some big fights for us. I know I shouldn't say that, but that's the honest truth."


To the same effect is the comment by hockey player Dave Schultz: "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." *Horrow, supra* note 2, at 23.

The officials can also eject a player for various reasons. This is rarely done, but a graphic example of the power of game officials occurred in a game between the Atlanta Falcons and the Chicago Bears during the 1980-81 season. With Chicago leading Atlanta late in the third quarter, a questionable call near the goal line induced Bear running-back Walter Payton to challenge the call. In the course of pleading his case, he unintentionally touched an official. He did no harm; the touch was the most innocuous possible. Yet, touching an official is grounds for ejection, and the official exercised this discretion and ejected Payton immediately. It was the first time he had ever been ejected from a game. The loss of Payton slowed the Bears’ momentum and Atlanta, perhaps because Payton could not play after that, won the game.26

2. Professional Basketball

Simply expressed, a personal foul is a foul which involves contact with an opponent.27 Any player assessed with six such fouls during the course of a single game is disqualified from further participation in that game.28 Additionally, technical fouls may be assessed for non-contact violations of the rules.29 Each technical foul is accompanied by a fine: $100 for the first and $150 for the second.30 Ejection is a matter for discretion of the game officials, by assessment of technical fouls. A player may be ejected after one technical foul, or may be immediately ejected after a fighting foul has been called.31 As in football, contact with an official is grounds for ejection. Intentional contact with an official requires automatic ejection and suspension and loss of pay for the next game.32

26. With Chicago leading Atlanta 17-14 late in the third quarter, the Bears mounted a drive to the Atlanta five-yard line. Payton scrambled for a four-yard gain to the one, but was charged with a fumble that films showed later to have been an erroneous call. Atlanta recovered the fumble with 3:51 to go in the quarter and went on to win, 28-17. The game was played in Atlanta on November 23, 1980. It was the opinion of the television broadcasters at the time that the Bears would have won the game should the call have been made correctly and the Bears followed up with the score.


28. Id. at 35.
29. Id. at 16.
30. Id. at 33.
31. Id. at 33-34, 37.
32. Id. at 41.
3. Professional Hockey

Game officials have more power in hockey than in the other two sports discussed above. They can choose from a variety of penalties, in varying degrees of severity. The most common penalty is a "minor," imposed for numerous infractions of the rules. This penalty requires the offending player to serve two minutes in the "Penalty Box," while his team is not permitted to substitute for him, leaving it "short-handed." The player returns to the ice after the penalty is over, bringing his team up to full strength.33

A "major" penalty requires the player to sit out for five minutes, leaving his team short-handed for that period. A fine of $50 is automatically imposed for major penalties involving injury of one player's head/face by another's use of the stick.34 Upon the third misconduct penalty in the same game, the player is ejected for the duration of that game and is fined $100.35

"Misconduct" penalties remove the player from action for ten minutes, but the team is allowed to substitute for him. An automatic fine of $50 is imposed.36

"Game Misconduct" or "Gross Misconduct" penalties suspend the player of other official from participation in the remainder of the game and fine the offender $100.37 A sufficient number of misconduct penalties in successive games will automatically suspend the player for a following game.38 It is only at this penalty level that the League President is notified for possible further action.39

"Match" penalties are the most severe. They suspend the player from the game immediately, carry with them a $200 fine and a report to the League President.40 Under the rules, the President MUST investigate the circumstances surrounding these penalties, in order to determine whether additional sanctions are required.41

The NHL recently added strength to its rules on enforcement of player safety in Rule 49, which automatically suspends any player who deliberately tries to injure an opponent, until the League President

34. Id. at 31.
35. Id.
36. Id. at 32.
37. Id. at 32-33.
38. Id.
39. Id.
40. Id. at 33-34.
41. Id. at 34.
rules on the matter.  

B. League-Imposed Penalties

It is at this level that the real fireworks should begin. The potential for discipline at this level, however, has remained more potential than reality. Nevertheless, these procedures have been described as a "system of private criminal law, practically without procedural safeguard at the fiat of the owners."  

1. Professional Football

The player consents to League discipline by signing his contract. Section 15 of the NFL Player's Contract states in part:

Player . . . acknowledges his awareness that if he . . . is guilty of any other form of conduct reasonably judged by the League Commissioner to be detrimental to the League or professional football, the Commissioner will have the right, but only after giving Player the opportunity for a hearing at which he may be represented by counsel of his choice, to fine Player in a reasonable amount; to suspend Player for a period certain or indefinitely; and/or to terminate his contract.  

Thus, the player can be penalized, at the Commissioner's discretion, for something "detrimental" to the game, though what is detrimental is left undefined. Tatum, fined for violent actions in a game against the Pittsburgh Steelers in 1976, complains: "At the hearing Rozelle said that the charges were 'unnecessary roughness,' and then he said that I had acted 'unprofessionally.' Pete Rozelle and his lawyers were vague about everything." Later, Tatum wrote:

I wasn't guilty of unnecessary roughness or unsportsmanlike conduct. I was a victim of the system and resented it. I resented even more the fact that Rozelle wasn't interested in my side of the story. The verdict was in and I was guilty regardless of favorable evidence or the NFL's lack of proof that a crime has been committed.  

43. Horrow, supra note 2, at 65.  
45. Id.  
46. Tatum, supra note 10, at 40.  
47. Id. at 41.
Even casting vagueness and proof problems aside, the question arises as to the stiffness of the penalties and whether they really deter individual players from repeating the same violent conduct. Considering the high salaries paid to players today, a relatively small fine will have little effect, especially if these fines are paid for by the teams. One article concluded that "the token fine or penalty has been ineffectual in eliminating violence in sports." A typical illustration was provided in the case of one NFL player who was suspended for one game and fined $2,000 in 1977. His response: "It don't faze me at all."

The Commissioner, as noted above, has the power to suspend or terminate the player as well. This is certainly a more drastic measure and is rarely used. Nevertheless, there is sentiment that this type of penalty would be the most effective in stopping "criminal activity" on the field. Consider that suspending a player requires the team to fill in with other players, probably of inferior skill to the one suspended; it hurts the player suspended in that his skills, both technical and competitive, are dulled by the suspension period and disturbs the play of the team as a whole, both on and off the field: on the field, as a part in a complex larger machine must be replaced, and off, as other players realize that similar conduct could also rob them of portions of their careers. Additionally, suspensions without pay would hurt the pocketbook of the individual player, perhaps seriously. This effect is far greater than simply imposing stiff fines and at least one player feels that these measures are necessary companions to a system of fines alone. But the possibilities are a matter for academic discussion only until and unless the Commissioner exercises this power in the future.

48. Id. at 184; Horrow, supra note 2, at 75. The average salary for NFL players during the 1980-81 season was listed at a $78,600. Los Angeles Times, Mar. 17, 1981, sec. 3, at 1 (bar graph) (hereinafter cited as Salary Survey).

49. Horrow, supra note 2, at 75.

50. Flakne, supra note 15, at 33. See also Tatum, supra note 10, at 184; Horrow, supra note 2, 109.


52. Horrow, supra note 2, at 78 n. 336, stating that no player has ever been suspended for life by the NFL, nor have suspensions ever been appealed in court.

53. Id. at 109; Tatum, supra note 10, at 184.


55. Even if the Commissioner should exercise his power, there are player grievance procedures, installed as a result of pressure from the NFL Player Association. See Horrow, supra note 2, at 78-109.
2. Professional Basketball

The NBA Standard Player Contracts state that the Player agrees "not to do anything which is detrimental to the best interests of the Club or of the Association." This is another example of the vagueness which pervaded the NFL Player Contract clauses above. Portions of the NBA Constitution reprinted to accompany the Contract are equally vague. Subsections of section 35 allow the Commissioner to impose fines of up to $1,000 for conduct "prejudicial or detrimental to the Association." These fines may also be accompanied or replaced by suspensions. Decisions of the Commissioner made under these sections may be appealed to the NBA Board of Governors, who will determine the merit of the appeal "in accordance with such rules and regulations as may be adopted by the Board in its absolute and sole discretion."

It is worthwhile to again examine the merit of fines as tool for player discipline, in light of their primary mention in the preceding disciplinary sections. The largest fine that the Commissioner can impose under these provisions is $1,000. Yet, the average salary in the NBA during the 1980-81 season was $185,000! Is it any wonder that professional basketball players probably pay as little attention to league fines imposed under this section as the football players mentioned above?

There are stiffer penalties for more specific conduct contained in the playing rules. Importantly, fighting carries with it the possibility of a fine of up to $10,000 for each player involved, imposed by the Commissioner "at his sole discretion." A suspension may be added to or imposed in place of the fine, also at the sole discretion of the Commissioner.

The "heavy" fine was invoked in recent years to counteract a flagrant incident in a season-opening game between Los Angeles and Milwaukee. After a particularly hard elbow to his midsection from Milwaukee center Kent Benson, Laker center Kareem Abdul-Jabbar

57. Id. at 30.
59. Id. at 37-38.
60. Salary Survey, supra note 47.
61. NBA Rules, supra note 27, at 37.
retaliated with a punch to Benson's face that broke Abdul-Jabbar's right hand. Subsequently, both players missed numerous games, and Abdul-Jabbar was fined $5,000. Later in the same season, Laker forward Kermit Washington restructured Rudy Tomjanovich's face in a one-punch incident that eventually led to a court battle and later, an out-of-court settlement. In addition to being traded from the Lakers to Boston and facing court battles for the next several years, Washington was suspended by the League for 60 days and fined the maximum $10,000. Based on these and other examples, it can be said that the NBA, through Commissioner Lawrence O'Brien, is at least making an effort to respond to on-court violence with available penalties. Considering the above-mentioned average salary, however, query whether these penalties are stiff enough to stem on-court violence in the NBA? Though time will provide the ultimate answer, it seems obvious that many NBA players cannot afford to suffer repeated $10,000 penalties, along with suspensions from pay and salary, during a season. NBA basketball is the least violent of the three sports here considered; part of that is no doubt due to the nature of the game itself. It may also be due to an aggressive stance against violence in the rules and an equally tenacious application of those rules by the League executives.

3. Professional Hockey

It is here that the ratio of violence to league action seems to be out of alignment. The NHL President, like the other League executives noted above, has power to: "[A]ssess additional fines and/or suspensions for any offense committed during the course of a game or any aftermath thereof by a player, trainer, manager, Coach or Club Executive whether or not such offense has been penalized by the Referee." The rules relating to attempts to injure, kick a player or deliberately

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62. See 12 GA. L. REV. 380, 390 n.55 (1978). The game in which Abdul-Jabbar slugged Benson took place on October 18, 1977 and was won by Milwaukee, 117-112. After assessing the fine, Commissioner Lawrence O'Brien stated, "Every player in the NBA is on notice that I oppose fighting during games, no matter what the provocation. I will use all the powers of my office to prevent violence within the NBA." Id.
64. Id.
65. Id.; see also note 61, supra. The NBA was paid a compliment in this regard by another professional athlete: NFL quarterback Lynn Dickey of the Green Bay Packers. Dickey, complaining about the violence in his sport, said: "There used to be a problem with fighting in the NBA. They wanted it stopped, so when Rudy Tomjanovich was hurt, the penalty that was handed down was very severe, and there has not been much of a problem with fighting in the NBA since." Los Angeles Times, Oct. 28, 1981, sec. 3, at 4.
66. NHL RULES, supra note 33, rule 34A.
67. Id., rule 44.
injure opponents allow for Match penalties to be imposed, which triggers a mandatory investigation by the League President. Although these tools provide a vehicle through which to provide severe discipline, the discipline meted out has had absolutely no deterrent effect, judging by the increasingly violent behavior exhibited in the NHL in the past season.

After the ignominious game between the Boston and Minnesota teams noted above, that produced a record total of 406 penalty minutes, the League office got busy with determining what possible disciplinary action should be handed out. Three weeks later, the league announced the suspension of two players for two games each, plus some additional fines levied on the teams, and a $1,000 fine on Minnesota coach Glen Sonmor of his conduct FOLLOWING THE GAME! These penalties, of course, were in addition to those imposed at the time of the incident, but as noted above, any penalties imposed by game officials can only run a maximum of $200 per infraction. Thus, the maximum dollar penalty that any player probably suffered from the biggest brawl in NHL history was necessarily limited thoroughly $1,000. The entire dollar penalty imposed on all parties, including the teams themselves, did not total much over $10,000.

Yet, in response to an attack by NHL players on paying fans in the seats, the League fined 19 players and suspended three players for 20 games each. The implication is obvious that the League is willing to tolerate violence on the ice, but draws the line when the players start attacking the paying customers. This mentality is reflected in a March, 1981 article in the Los Angeles Times that quoted statements by League President John Ziegler:

How do fans feel about violence? Well, one barometer may be the attendance of the pugnacious Philadelphia Flyers,
who sell out every game at home and are the league’s biggest attraction on the road.

Ziegler certainly has taken note of this fact. “If the other 20 teams were as successful, I’d be pleased, regardless of how they achieved such success.”

With the NHL’s highest official voicing such a pro-violence attitude, it is little wonder that many NHL games are more and more violent. Ziegler defended fighting in hockey games before the House Committee on the Judiciary’s Subcommittee on Crime, making him the only top executive in the three sports examined here to endorse the explosion of violence in his sport. Other hockey executives do not share Ziegler’s high enthusiasm for riots on the ice. One, Minnesota General Manager Lou Nanne, a former NHL player, has called for an end to NHL fighting and has given some thought on how to accomplish this goal. Specifically, Nanne would immediately make sure that players pay their own fines, and are not reimbursed by their clubs. “When it comes out of the player’s pocket, see how long the fighting lasts.”

This is an interesting comment in light of section 18 of the NHL Standard Player’s Contract, which requires that “all fines imposed upon the Player under the Playing Rules . . . shall be deducted from the salary of the Player.”

C. The Civil Suit

Given the inadequacies of the anti-violence procedures of the sports bodies outlined above, the injured player has few choices: He can forget about his injuries and “play with pain,” writing off injuries


76. For the NBA reaction, see note 61, supra. The NFL also states that it is against unnecessary on-field violence, but cf. 126 Cong. Rec. E3712 (daily ed. July 31, 1980); Hechter, supra note 1, at 437 n.60 (“Brutality is profitable; the NFL’s mystique of raw, explosive fury has filled stadiums and swelled T.V. audiences to 100 million a week.”); Hackbart v. Cincinnati Bengals, Inc., 435 F. Supp. 352, 354-55 (D. Colo. 1977), rev’d and remanded, 601 F.2d 516 (10th Cir. 1979), cert. denied, 444 U.S. 931 (1979).

77. See note 74, supra.

as just another occupational hazard, or he can take his case to the newspapers in hopes of gaining sympathy. But to get monetary re-
dress outside of whatever Worker's Compensation or insurance benefits might be available, the player must go to court and file suit in tort.

1. The Pressure Not to File

There is undeniable pressure on the player not to file suit. Dwight White, a down linemen for the Pittsburgh Steelers of the NFL, ex-
pressed the prevailing attitude among his peers when he told one com-
mentator that he is vehemently opposed to intervention by the legal system into his profession. The biggest fear seems to be that "the minute the courts have the power to litigate the game, a Pandora's Box will be opened."82

There is also a more personal fear among players that they'll be tagged with a "clubhouse lawyer" label, a reputation so repulsive to players that they will shun litigation to avoid it. If the player does go ahead and press on with his suit, he can expect little or no help from his Player's Association, leaving him to his own designs.84


If a player should overcome the attitudes, fears and obstacles that block his path to litigation, he will find that the civil court provides obstacles to recovery as well.

The leading American case on the subject is Hackbart v. Cincinnati Bengals, Inc. Briefly, the facts were that during a game between the Denver Broncos and the Cincinnati Bengals, a pass was intercepted by a Denver player near the Denver goal line. Hackbart, a free safety with the Broncos, was blocked by Charles "Booby" Clark, and then

80. See Tatum, supra note 10, at 34-39.
81. See Hechter, supra note 1, at 438.
82. See Horrow, supra note 2, at 45, quoting Washington Capitals (NHL) Public Relations Director Pierce Gardner. See generally, Horrow at 43-63.
83. Id. at 50-51.
84. Id. at 59-61.
85. 435 F. Supp. 352 (D. Colo. 1977), rev'd and remanded, 601 F.2d 516 (10th Cir. 1979), cert. denied, 444 U.S. 931 (1979). This is the leading case dealing with professional athletes. There are others dealing with the amateur. See the cases exhaustively collected in Law of Sports, supra note 1, at 184-90, 933-51.
86. Billy Thompson, the Denver free safety, made the interception. 601 F.2d at 519. The game was played in Denver, Colorado, on September 16, 1973 and was won by the Broncos, 28-10.
struck by Clark, using his right forearm, across the back of Hackbart’s head. Both players fell to the ground as a result of the blow and the momentum required to deliver it. No penalty was called, and both players returned to their team areas. Hackbart complained of some soreness, but was able to play on succeeding Sundays without incident.\textsuperscript{87}

Later in the season, Hackbart was released by Denver and was not claimed by any other team. Upon a medical examination after his release, he discovered his neck injury and was paid his full season’s salary by Denver under an injury clause in his contract.\textsuperscript{88}

It was at this time, after he had finished his playing career,\textsuperscript{89} that Hackbart filed suit, asking for damages under a tort theory of liability. The trial court\textsuperscript{90} found that:

\begin{quote}
(I)n the context of common community standards there can be no question but that Mr. Clark’s blow here would generate civil liability. It would involve criminal liability if the requisite intent were present. The difference here is that this blow was delivered on the field of play during the course of action during a regularly scheduled professional football game. . . .
\end{quote}

\begin{quote}
My conclusion (is) that the civil courts cannot be expected to control the violence in professional football. . . .\textsuperscript{91}
\end{quote}

The case was appealed to the Tenth Circuit, and reversed. The Court held specifically that the Federal courts cannot duck this type of case simply because it springs from activity on the professional football field. Reviewing the authorities,\textsuperscript{92} the Court noted prior Supreme Court decisions\textsuperscript{93} declaring that where a federal court has jurisdiction, it must take it. In determining whether there was jurisdiction in the diversity case before it, the Tenth Circuit explained that Colorado law

\textsuperscript{87} These were strong men. Plaintiff Hackbart was a 13-year professional player, stood 6-3 and weighed 210 pounds. Defendant Clark was in his rookie season as a professional, stood 6-1 ¾ and weighed 240. Hackbart was 35 years old and Clark was 23. 435 F. Supp. at 353.

\textsuperscript{88} 601 F.2d at 519. \textit{Cf.} NFL CONTRACT, \textit{supra} note 43, cl. 9.

\textsuperscript{89} Note that Hackbart had finished his playing career before he filed suit. Because of this, he eluded much of the "in-house" pressure not to file discussed above. \textit{See generally} Horrow, \textit{supra} note 2, at 43-63.

\textsuperscript{90} The District Court opinion was reported at 435 F. Supp. 352.

\textsuperscript{91} 435 F. Supp. at 358.

\textsuperscript{92} 601 F.2d at 521-22.

requires its courts to protect a right under the law if one exists, and that
the jurisdiction of the state district court to protect such rights is unlim-
ited.94 The Court noted that the Colorado Constitution provides for a
remedy for every injury to person, property or character.95 Accordingly,
the case is within the jurisdiction of the Colorado state courts.
Of course, "[I]n a diversity case the federal court inherits the jurisdic-
tional scope that is enjoyed by the state court within the district,"96 and
"sits as a state trial court and applies the law of the forum state."97
Applying Justice Peckham's majority view in Willcox v. Consolidated
Gas Co.98 that the "right of a party plaintiff to choose a Federal court
where there is a choice cannot be properly denied,"99 the Court of Ap-
peals held that the District Court was required to take jurisdiction over
the case and try the cause on its merits.100

In setting the standard for liability, the Tenth Circuit held that
recovery in tort was proper under the Colorado101 tort standard of
reckless misconduct.102 The Circuit Court's characterization of the re-
covery standard: "recklessness exists where a person knows that the act
is harmful but fails to realize that it will produce the extreme harm
which it did produce."103

The Circuit Court dispensed with the notion of an absolute as-
sumption of the risk by the plaintiff, a theory supported by the trial
court.104 Assumption of the Risk is based on consent. The leading
California case on the subject, Vierra v. Fifth Avenue Rental Service,105

94. 601 F.2d at 524.
95. 601 F.2d at 523.
96. Id.
97. 601 F.2d at 522. See generally, C. Wright, Handbook of the Law of Federal
99. Id. at 40, quoted at 601 F.2d at 521-22.
100. 601 F.2d at 522.
101. Remembering that this was a diversity suit, filed in the United States District Court
for the District of Colorado (the game took place in Denver).
355.
103. 601 F.2d at 524.
104. 435 F. Supp. at 356. Query whether the court actually meant to apply Assumption
of the Risk. This doctrine is used as a defense against negligence, rather than against inten-
tional interference with another, such as Clark's act against Hackbart. See W. Prosser,
any case, an analysis of Assumption of the Risk discusses the consent problem, as the doc-
trine is based on consent. Id. at 440. Thus, though the court might have more properly
discussed the defense of Consent, the ground was covered in the analysis of Assumption of
the Risk.
states that, "Before the doctrine is applicable, the victim must have not only general knowledge of a danger, but must have knowledge of the particular danger, that is, knowledge of the magnitude of the risk involved." The Tenth Circuit in Hackbart exploded any contention that professional football players know of or have any expectation of facing the risks Hackbart did:

The general customs of football do not approve the intentional punching or striking of others. That this is prohibited was supported by the testimony of all the witnesses. They testified the intentional striking of a player in the face or from the rear is prohibited by the playing rules as well as the general customs of the game. Punching or hitting with the arms is prohibited. Undoubtedly these restraints are intended to establish reasonable boundaries so that one football player cannot intentionally inflict serious injury on another. Therefore, the notion is not correct that all reason has been abandoned, whereby the only possible remedy for the person who has been the victim of an unlawful blow is retaliation.

Thus, the Hackbart case has paved the way for future cases to be heard on the subject of tort liability for violence in professional sports. The standard for recovery in Colorado, based on the Restatement (Second) of Torts, section 500, is representative of much of the law throughout the nation. Equally important, the Tenth Circuit gutted the defense of assumption of the risk, which, if treated with as much deference as the District Court in Hackbart gave it, would have prevented recovery in every such suit.

3. The Meaning of Hackbart for the Potential Litigant

Although the nation's potential sporting plaintiffs won a collective victory under the Hackbart holding, the road is still bumpy. The normal pitfalls of any civil suit still lie ahead.

Hackbart's injury occurred in 1973, yet the opinion in the trial court was not filed until August of 1977. The Tenth Circuit did not file its opinion, granting a remand, until June 11, 1979. Even more time was involved in an unsuccessful attempt at gaining certiorari in the United States Supreme Court. Thus, the ever-present problem of

106. 60 Cal. 2d at 271, 383 P.2d at 780, 32 Cal. Rptr. at 196.
107. 601 F.2d at 521.
109. PROSSER, supra note 103, at 184-86.
waiting years to get a judgment at the trial court level is a powerful factor to deter sports violence victims from becoming plaintiffs.\textsuperscript{111}

Against this demand for patience, there are many possible advantages for the potential litigant:

(1) The evidentiary standard is preponderance of the evidence, rather than the stiff “beyond a reasonable doubt” standard of the criminal courts.\textsuperscript{112}

(2) He can go after the “deep pocket,” the football club; a victory would almost always insure payment as few clubs are completely judgment-proof.\textsuperscript{113}

(3) By joining the individual who caused his injury, the plaintiff can deter that defendant from further like conduct on the field. Naturally, a judgment against club and player defendants in a state with joint and several liability would bring the message home to the defendants in a financial way on both the individual and corporate levels.

(4) The threat of large judgments against the corporate entity would necessitate instruction by club management to the coaching staff to keep players from engaging in the sort of violent contact that might result in potential liability. No such training was evident at the time of the \textit{Hackbart} trial as was emphasized by the coaches of the Denver and

\begin{itemize}
\item \textsuperscript{111} See \textit{Time}, Apr. 20, 1981, at 51. The article stated that in California, “it takes more than four years for the average civil jury suit to reach trial.”
\item \textsuperscript{112} See generally, C. McCormick, \textit{Handbook of the Law of Evidence} sec. 339 (2d ed. 1971); as to the criminal standard specifically, see \textit{In re Winship}, 397 U.S. 358, 364 (1970).
\item \textsuperscript{113} Of course, if the team pays, the resulting deterrent effect on the player may be lessened greatly, unless the team decides that it can less afford to allow the player to continue his present style of play than to pay large sums in damages as a result of it. In that instance, management will be sure that the player either conforms his conduct to that which does not result in a large judgment against the team, or will drop him from the team. In the \textit{Hackbart} case, the District Court opinion reported that witnesses Paul Brown and John Ralston, both coaches of professional football teams, “emphasized that the coaching of professional football players did not include any training with respect to a responsibility or even any regard for the safety of opposing players.” 435 F. Supp. at 355-56. Thus, it is not yet prudent for professional teams to “pull back the reins” on their players. But at least one commentator suggests, “[t]he best means of deterring violence in professional sports is to make it unprofitable.” \textit{Torts in Sports, supra} note 1, at 791-92.
\end{itemize}

A probable barometer of the effectiveness of large civil judgments against a professional player and his sports club will be the final judgment in the suit by former Detroit hockey player Dennis Polonich against Wilf Paiement and his then-team, the Colorado Rockies. In an October 25, 1978 game at Detroit, Paiement struck Polonich with his stick, causing a broken nose, concussion and multiple cuts. The blows caused Polonich's face to be permanently disfigured, and have caused breathing problems. Paiement was suspended for 15 games, the longest penalty for on-ice violence ever imposed by the NHL. Four years later, a U.S. District Court jury awarded Polonich (now a minor league player) $500,000 in actual damages and $350,000 in exemplary damages. An appeal will undoubtedly follow. \textit{See} \textit{Los Angeles Times}, Aug. 18, 1982, sec 3, at 4.
Cincinnati teams in sworn testimony.114

This very beneficial social side-effect of successful civil litigation could be cut short, however, by the availability of liability insurance for the teams.

However, there are other possible problems for the potential civil litigant: The player currently engaged in the middle of his career might find himself “blacklisted” because of filing suit and unable to find employment.115 Many players apparently feel that retribution against “troublemakers” will be swift and real.116 If this happens, the plaintiff may have won the “battle,” but lost the “war,” by having his career cut short.

Additionally, the civil litigant must be careful to examine the law of the jurisdiction in which he files suit. Without a national rule, the law in each state could conceivably be different enough to prevent recovery in one state, while allowing it in another. The unfortunate result of this is forum-shopping. A by-product is a series of uneven and possibly inconsistent holdings, which would restrain the deterrent effect.117

The conclusion of a thoughtful recent commentary about civil litigation and tortious conduct by professional athletes on the field of play reaches the same unfortunate conclusion that the District Judge did in the Hackbart case: “The civil forum alone cannot rid professional sports of unnecessary violence.”118 Yet the commentator expresses hope that the civil forum can assist strengthened intra-league disciplinary measures to reduce the amount of violence now so prevalent in professional sports today.119 For some, however, the civil forum is not strong enough to provide the needed impetus for reform.

IV. THE HISTORY OF CRIMINAL PENALTIES IN THE SPORTS VIOLENCE CONTEST AND THE NEED FOR A NATIONAL CRIMINAL RULE IN THE AREA

With the growing awareness of the problem of violence in professional sports,120 and the candid admission of the Colorado District

115. See Torts in Sports, supra note 1, at 791; Horrow, supra note 2, at 43-63.
116. See Horrow, supra note 2, at 52-63.
117. This has already been recognized. See Torts in Sports, supra note 1, at 791.
118. Torts in Sports, supra note 1, at 792.
119. Id. at 792-93.
120. See the massive bibliography in Horrow, supra note 2, at 251-58, 259-63, and additional sources cited in Torts in Sports, supra note 1.
Court in *Hackbart* that the defendant Charles Clark’s conduct would have been criminal if the required intent were present 121 (an issue not before the court and therefore not decided), 122 the cry has gone up to stop the slugfest. The prosecutor in *State v. Forbes*, 123 the best-known American criminal case ever prosecuted against a professional athlete for malicious violence on the playing field, wrote:

The mere 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. . . . It is ludicrous to think that anything short of criminal sanctions will deter conduct that is criminal in its character. 124

To better understand the need for, and the background of, criminal prosecution of professional sports figures for on-field violence, brief studies must be made of the Canadian and American experiences in this field in the past. Following that, an examination of the Mottl bill will reveal its potential for lessening this growing national problem.

**A. The Canadian Experience**

The leading cases in this area are two that arose from the same incident. 125 In a 1969 exhibition game between the Boston Bruins and the St. Louis Blues, the Bruins’ Edward “Ted” Green and Blues player Wayne “Chico” Maki became involved in a shoving match behind the Boston goal. 126 Soon after, Maki apparently speared Green by poking his stick into Green’s lower abdomen, but this is a matter of some doubt. 127 Conflict between the players continued, ending when Maki raised his stick high, then smashed Green’s head with it.128 Green, of

121. 435 F. Supp. at 358.
122. Clark admitted at trial that the blow itself was intentional, although he had no specific intent to injure. He stated that his anger and frustration were brought about by the fact that his team was losing the game, 21-3, at the time the blow was struck. 601 F.2d at 519. Compare this admitted intent of Clark with the intent standard required for prosecution under the Mottl bill discussed infra.
123. State v. Forbes, No. 63280 (Minn. Dist. Ct., dismissed Aug. 12, 1975.)
125. Regina v. Maki, 14 D.L.R.3d 164 (Ont. Provincial Ct. 1970) and Regina v. Green, 16 D.L.R.3d 137 (Ont. Provincial Ct. 1970). Other cases have been far less consequential. They are collected in *Torts in Sports*, *supra* note 1, at 771 & n.55. See also Hechter, *supra* note 1, at 425-26 & nn. 2-5.
126. 14 D.L.R.3d at 164-65; 16 D.L.R.3d at 138.
128. 14 D.L.R.3d at 165; 16 D.L.R.3d at 138. It cannot be emphasized how truly vicious this blow was. According to sources gathered by Rick Horrow,

Green, then a Boston Bruin, “came off the boards and cuffed (Maki) with the back
course, received a serious injury.\textsuperscript{129}

The first case, \textit{Regina v. Maki},\textsuperscript{130} dismissed the charges against Maki on the grounds of self-defense. The Judge could not there find, beyond a reasonable doubt, that Maki intended to injure Green.\textsuperscript{131} The companion case, \textit{Regina v. Green},\textsuperscript{132} found Green innocent on a self-defense theory.\textsuperscript{133}

Although the holdings in both cases acquitted the defendants, dicta in each expressly approved the possibility of criminal convictions in future cases. In \textit{Maki}, the opinion noted that, "[n]o sports league, no matter how well organized or self-policed it may be, should thereby render players in that league immune from criminal prosecution."\textsuperscript{134} Limitations on the consent defense were also expressly recognized, in that, "no athlete should be presumed to accept malicious, unprovoked or overly violent attack."\textsuperscript{135}

The opinion in \textit{Green}, issued six months later, echoed the same refrain. While the judge there thought it unlikely that convictions could be based on the type of 'technical assaults' so common in professional hockey, he distinguished "unprovoked savage attacks in which serious injury results."\textsuperscript{136} Clearly, the common thread between the two opinions lies in the belief that professional athletes could be criminally liable for the type of conduct labelled above as "malicious, unprovoked or overly violent."\textsuperscript{137}

This was confirmed in 1982. Winnipeg Jets player Jimmy Mann earned a ten-game suspension for breaking the jaw of Pittsburgh Penguin player Paul Gardener during the course of an on-ice fight.\textsuperscript{138} Four months later, Mann pled guilty to a charge of "assault causing of his glove." Maki retaliated with his stick, "coming straight overhead like a logger splitting a stump." Milt Schmidt, the Bruin coach at the time, said it "was the worst thing he ever saw in a hockey game. He fell like a cut log." Green sustained a serious concussion and massive hemorrhaging. After two brain operations, he regained only partial sensation and "has never recovered 100 percent."


\textsuperscript{129} See note 127 \textit{supra}.  
\textsuperscript{130} 14 D.L.R.3d 164 (Ont. Provincial Ct. 1970).  
\textsuperscript{131} 14 D.L.R.3d at 166.  
\textsuperscript{132} 16 D.L.R.2d 137 (Ont. Provincial Ct. 1970).  
\textsuperscript{133} 16 D.L.R.3d at 142-43.  
\textsuperscript{134} 14 D.L.R.3d at 167.  
\textsuperscript{135} \textit{Id.}  
\textsuperscript{136} 16 D.L.R.3d at 143. The Maki case was decided on March 4, 1970. The Green case followed on September 3, 1970.  
\textsuperscript{137} 14 D.L.R.3d at 167.  
\textsuperscript{138} \textit{Sports Illustrated}, Feb. 8, 1982, at 111.
bodily harm" and was fined $500 by a Manitoba provincial judge.\(^{139}\) The Canadian criminal law thus appears to have drawn that fine line between violent actions indigenous to professional hockey and conduct outside the bounds of both the laws of the game, and of the society it is played in.

**B. State v. Forbes: The American Foray**

The leading American criminal case on this topic never got past a hung jury.\(^{140}\) The defendant, NHL hockey player Dave Forbes, was accused of "Aggravated Assault by Use of Dangerous Weapon" in beating rival player Henry Boucha.\(^{141}\) According to an article co-authored by the prosecutor in the Forbes case,\(^{142}\) both Forbes and Boucha were returning to their team areas from the penalty box when Forbes approached Boucha from the right rear and, with hockey stick in hand, punched Boucha's head. The stick struck Boucha just above the right eye, stunning him and dropping him to the ice, bleeding. Forbes then continued punching Boucha and slamming his head into the ice, until finally restrained by another player.\(^{143}\)

The case went to trial later the same year. The defense was denied instructions relating to assumption of the risk on the basis that that defense was applicable solely to civil cases.\(^{144}\) The defense was granted an instruction that one cannot consent, either expressly or by implication, to be the victim of a crime.\(^{145}\) The jury deliberated for 18 hours, but could not reach the required unanimous verdict. It was subsequently determined that the jurors had split 9-3 in favor of conviction.

The prosecution decided not to re-prosecute for two reasons: first, the initial trial had served notice to the sports world that conduct like Forbes' would not be tolerated, at least in that jurisdiction;\(^{146}\) and sec-

\(^{139}\) Sports Illustrated, May 31, 1982, at 85.
\(^{140}\) State v. Forbes, No. 63280 (Minn Dist. Ct., dismissed Aug. 12, 1975). See Flakne, supra note 15, at 34. The jury deliberated for 18 hours before conceding. Id.
\(^{141}\) Forbes played for the Boston Bruins, and Boucha for the Minnesota North Stars. The game took place on January 4, 1975, in Bloomington, Minnesota.
\(^{142}\) Flakne & Caplan, Sports Violence and the Prosecution, Trial January, 1977, at 33. At the time this article was published, Gary Flakne was the County Attorney for Hennepin County, Mn. He prosecuted Dave Forbes.
\(^{143}\) See Flakne, supra note 15, at 34.
\(^{144}\) Id.
\(^{145}\) Id. This was the court's view of the law in Minnesota.
\(^{146}\) Id. Flakne wrote, "we had put the sports world on notice that acts involving intention to cause serious bodily injury to another will not be tolerated in our jurisdiction." Id. Compare that with a quote from Forbes that appeared in the Philadelphia Inquirer: "I just don't see, no matter how wrong the act is, how anything that happens in an athletic contest can be criminal." Id.
ond, there was a likelihood of ending with another hung jury.\textsuperscript{147}

In his subsequent article, the Forbes prosecutor, Gary Flakne, discussed the problems of the consent defense and prosecutorial discretion, often cited as stumbling blocks in the path of effective criminal prosecution of professional sports-related violence.\textsuperscript{148} While the fear of many that criminal intervention into professional sport will bring a deluge of trivial suits,\textsuperscript{149} suits that will downgrade the level of play,\textsuperscript{150} Flakne explains that the bringing of such suits is a waste that will not be tolerated by prosecutors, either:

\begin{quote}
[T]he likelihood of prosecutions for technical violations of the law on the part of a sports participant is virtually non-existent. In the first place, it is unlikely that any jury would be willing to convict under those circumstances and, secondly, the prosecutor would not derive any support from the law.\textsuperscript{151}
\end{quote}

Likewise, he asserts that the consent defense is not a barrier to successful criminal prosecution in a proper case. Flakne states that the consent defense has never been asserted successfully where the assault has resulted in death,\textsuperscript{152} and that the same failure would occur in situations such as that of Forbes: serious injury caused by assaultive behavior outside the rules of play.\textsuperscript{153} Recognizing that broken bones and other serious injuries are sometimes part of sports, even when played within the rules, Flakne suggests that these instances of "legal assaults" are eliminated by the necessity of criminal intent for conviction. Accordingly,

\begin{quote}
[w]hether the defense of consent then may be raised successfully should be dependent on whether the injuries were occasioned through an accident while the actor was in compliance with the rules of the game or whether the injuries were inflicted under such circumstances that they tend to show a definite resolve on the part of the actor to cause a serious injury to another. If the attendant circumstances tend to show that the
\end{quote}

\textsuperscript{147} Id.
\textsuperscript{149} Id. at 29.
\textsuperscript{150} Flakne, \textit{supra} note 15, at 35; \textit{see} Regina v. Green, 16 D.L.R.3d 137, 141 (Ont. Provincial Ct. 1970).
\textsuperscript{151} Flakne, \textit{supra} note 15, at 35.
\textsuperscript{152} Flakne, \textit{supra} note 15, at 35. At least one commentator has also recognized the same safeguards that Flakne has. \textit{Torts in Sports}, \textit{supra} note 1, at 775-76. No prosecutor is interested in bringing an action that has no chance of success. The immense criminal caseload confronting many prosecutors assures this.
actor went beyond the scope of the rules of the game and purposefully injured or attempted to injure his opponent, the defense of consent should be unavailable.\textsuperscript{154}

\section*{C. The Motl Bill}

Into this fray stepped Representative Ronald M. Mottl.\textsuperscript{155} In 1980, he introduced H.R. 7903, the Sports Violence Act of 1980.\textsuperscript{156} It was his response to the growing sports violence problem, and would have dealt with it by adding a new section to Title 18 of the United States Code:

Sec. 115 Excessive violence during professional sports events

(a) Whoever, as a player in a professional sports event, 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.

(b) As used in this section, the term—

(1) ‘excessive physical force’ means physical force that—

(A) has no reasonable relationship to the competitive goals of the sport;
(B) is unreasonably violent;
(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; and

(2) ‘professional sports event’ means a paid-admis-

\begin{footnotes}

\footnote{The \textit{MODEL PENAL CODE}, section 2.11(2), states,}

\footnote{(2) Consent to Bodily Harm. When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:}

\footnote{(a) the bodily harm consented to or threatened by the conduct consented to is not serious; or}

\footnote{(b) the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport.}

\footnote{\textit{MODEL PENAL CODE} sec. 2.11(2) (Proposed Official Draft 1962). The formulation of the consent test in sec. 2.11(2)(b) is almost identical to the test for “excessive physical force” in the Mottl bill. \textit{See} the textual discussion of the Mottl bill. See the textual discussion of the Mottl bill infra.}

\footnote{155. Mottl is a Democrat from Parma, Ohio. \textit{See} note 4, \textit{supra}.}

\footnote{156. The bill died in committee, but was re-introduced in the following session as H.R. 2263, 97th Cong., 1st Sess. (1981). It was assigned to the House Committee on the Judiciary. 127 Cong. Rec. H760 (daily ed. Mar. 3, 1981).}
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sion contest, in or affecting interstate or foreign commerce, of players paid for their participation.\textsuperscript{157}

The bill never got out of committee. Mottl re-introduced it in the following session of Congress, and it was again stalled in the House Committee on the Judiciary, and the Judiciary Committee’s Subcommittee on Crime.\textsuperscript{158}

1. The Bill’s Design

Mottl, in his statement to the Subcommittee on Crime, was very specific as to the kinds of actions he intended to penalize through the bill:

- It is directed to the player who smashes a hockey stick over the head of an opponent. This is not sport.
- It is directed to the baseball player who drops his bat or glove and raises his fists. This is not sport.
- It is directed to the basketball player who crushes the face of another with his fist. This is not sport.
- It is directed to the lineman who deliberately slams into and injures an opposing quarterback long after the play is dead. This is not sport.

When we are looking at these extreme kinds of actions, I have no doubt whatsoever that a carefully drawn federal statute can preserve the health and vitality of professional sports, while serving notice on pro athletes that they have no license to commit televised assault and battery.\textsuperscript{159}

The question is whether Mottl’s bill was indeed that carefully drawn statute.

2. The Bill’s Probable Effectiveness

The merits of the bill must be judged in several categories to determine its probably overall impact, if enacted: ability to successfully prosecute under the statute, the actual deterrent effect of the statute and the impact on legitimate play in professional sports.

a. Possibility of Successful Prosecution

Basically, the bill sought to penalize physical force used in a professional sports event that is so violent that it falls outside the rules or

\textsuperscript{157} H.R. 2263, 97th Cong., 1st Sess. sec. 2 (1981).
\textsuperscript{158} See note 153 supra.
\textsuperscript{159} See note 23 supra.
normal customs of the game involved. This physical force must be applied "knowingly." Interestingly, there is nowhere a requirement of injury itself. This is an important omission.

But not requiring serious injury, the pitfalls noted by Flakne\textsuperscript{160} are avoided in that much serious injury occurs from conduct well within the rules and customs of many professional athletic contests in the United States. Moreover, by requiring conduct that causes only a risk of significant bodily injury, a risk that is practically insured by the use of violent action outside the rules or customs of the sport, the bill seeks to specifically deter not the rash of injuries that follow unnecessarily violent conduct, but the unnecessary conduct itself. The bill properly addresses itself to the root of the problem, not the fruit of its vine.

To prove such conduct, evidence presented at trial would have to show the three statutory elements of "excessive physical force": physical force that has no reasonable relationship to the competitive goals of the sport, is unreasonably violent and could not be reasonably foreseen, or was not consented to, by the injured\textsuperscript{161} person, as a normal hazard of such person's involvement in the sporting event.

For the instances of conduct Mottl cited above in his Statement to the Subcommittee, there is no question but that such conduct: hockey sticks smashed over the heads of opposing players, fistfights in baseball or basketball and the like, have no relationship, reasonable or otherwise, to the sports in which they occur. This is patently obvious from the very nature of each sport. It is this very conduct, not the hard body check in hockey or the hard shoulder tackle in football that is the whole of the problem and the only conduct to which the bill's criminal sanctions are directed. The first test should cause little trouble.\textsuperscript{162}

Likewise, the stick vs. head, fist vs. face, and helmet vs. knee match-ups are so beyond the basic playing customs of each sport to which they occur in, and are so vicious in every instance, that they can easily be counted as unreasonably violent. While some may comment that much violence will still remain as the word "unreasonably" is continually colored, it must be remembered that some sports, such as football, are quite violent by nature.\textsuperscript{163} It is not this violence that has become a wide-spread problem. The problem comes in violence that is outside the scope of the game as properly played. It is that violence

\textsuperscript{160} Flakne, supra note 15, at 35.
\textsuperscript{161} In this context, "injured" means one who was assaulted, whether or not battered, or injured as a medical matter. See Black's Law Dictionary 706 (5th ed. 1979).
\textsuperscript{162} Cf. the Model Penal Code section quoted at note 151 supra.
\textsuperscript{163} See Hackbart v. Cincinnati Bengals, Inc., 601 F.2d at 520.
which is unreasonable.\textsuperscript{164}

The final item provides a possibly more difficult standard. The actions must be unforeseeable or not consented to by the person injured,\textsuperscript{165} as a normal hazard of the sport participated in. There could be a potentially difficult question for the trier of fact, determining what the foreseeable hazards of a particular sport are, or determining exactly what physical contact is and is not consented to. This question may be especially perplexing in rough sports such as football and hockey. But the question is not without answer.

The first part—the foreseeability test—is much the same as the “reasonable relationship” test. Both are grounded in the rules and customs of the game. Again, the brutal violence that Motl stated the bill zeroes in on is clearly not foreseeable as a NORMAL hazard of a person’s involvement in a sports event. This is the case in professional football as illustrated by the \textit{Hackbart} decision in which the Tenth Circuit noted that all the evidence condemned defendant Clark’s action as well beyond proper conduct of a participant in a professional football game.\textsuperscript{166} Even if some violent conduct falls on the borderline, the intent question should resolve the problem. While a participant might reasonably foresee particular conduct in a game, he certainly could not foresee, as a normal hazard of playing such game, the conduct being knowingly inflicted.

Of course, it is possible to place a gloss on the meaning of “normal hazards,” distorting it to represent those exceedingly violent acts which are commonplace in sport today. For a court to do this would simply disregard the bill’s clear intent and rob the legislature of its constitutional place as the lawmaking branch.\textsuperscript{167} If the Congressional purpose is clear, as here, the Court is without authority to give a statute another meaning by interpretation.\textsuperscript{168}

The second clause of the subsection focuses on consent: whether or not the injured participant consented to the violence against him as a normal hazard of willingly participating in the game itself.

In considering the consent defense, one must remember that this would be a criminal statute. In criminal cases, the general rule is that

\begin{itemize}
  \item \textsuperscript{164} \textit{Id.}
  \item \textsuperscript{165} \textit{See note 158 supra.}
  \item \textsuperscript{166} \textit{Hackbart} v. Cincinnati Bengals, Inc., 601 F.2d at 520-21.
  \item \textsuperscript{167} U.S. Const. art. I, sec. 1.
  \item \textsuperscript{168} Southern S.S. Co. v. NLRB, 316 U.S. 31, 44 (1942); U.S. v. Durkee Famous Foods, Inc., 306 U.S. 68, 71 (1939).
\end{itemize}
consent is not a defense. However, in crimes where lack of consent is defined as part of the crime, as here, its existence can be a bar to conviction. Since professional athletes make no explicit agreement with other players as to what conduct is and is not consented to, whatever consent there is must be implicit. Logically, since the player's only contract is with the Club and League to participate for payment in athletic contests sponsored by the League, any implicit agreement from the contract can cover only such conduct as is within the scope of the game itself. Such scope is governed by the game's rules as adopted by the League. Thus, the player's implicit consent is extended to all foreseeable conduct engaged in under the rules of the game he plays. Under this concept of consent, the test becomes "foreseeability," a test already imposed in the prior clause of the subsection and discussed above and shown to be ineffectual as a defense against extreme violence such as playing rail-splitter with a hockey stick on another's head. Prosecution of athletes for the actions which Mottl sought to curtail would thus not be derailed by a consent defense. Two leading commentaries have agreed.

The bill requires that such violence be "knowingly" inflicted. This term generally means that the actor intentionally did an act which the law forbids. Applying that definition to a typical sports violence case, the question for proof at trial would be whether the player, aware of his conduct, delivered a blow which he knew to be "excessive physi-

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170. Id.
171. Interestingly, unless the player receives special consent from his League, he typically cannot play any other sport professionally or engage in other sports that have a known risk of injury as a normal hazard of that sport. See NFL Contract, supra note 43, sec. 3; NBA Contract, supra note 55, sec. 17; NHL Contract, supra note 77, sec. 7.
172. See note 159 supra.
174. Record Revolution No. 6 v. City of Parma, 492 F. Supp. 1157, 1175 & n. 10 (N.D. Ohio 1980); United States v. Sirhan, 504 F.2d 818, 819-20 & n. 3 (9th Cir. 1974).

(b) knowingly.

A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

Model Penal Code sec. 2.02(b) (Proposed Official Draft 1962).

The Mottl bill focused on "knowingly" as defined in (i) above, since the proposed statute dealt with the physical force applied by the athlete, rather than the result of the application of such force.
cal force," as defined above, i.e., outside the rules and customs of the game he was playing. Such a question would be for the trier of fact, and could be inferred from a number of sources: testimony, videotape or films, photographs and the like.

It must be reiterated that while there is potential for some close cases on the intent question, there is little doubt about the actions that Mottl cited as examples of the acts that he wishes to stop via enactment of his bill. Hockey sticks smashed over heads of players, fistfights in basketball and baseball and spearing with the helmet in football have all been outlawed for so long and are so well known to be beyond the bounds of play that there can be no doubt as to whether a player thought they were within the rules or customs of the game.

Concern has been voiced over the difficult question of whether a jury would be able to decide if a particular player actually intended to injure another with his blow(s). That question, however, is not germane to the jury's inquiry under the Mottl bill. The only question is whether the player intended to deliver the blow itself, knowing that it was outside the rules and customs of the game. This is the essential difference between penalizing conduct, as the Mottl bill did, and penalizing the results of that conduct.

Evidence to prove such conduct at trial could be massive. If any group could be said to hold their events in the proverbial "fishbowl," professional sports would be the one. Each contest attracts thousands of spectators, and most events are shown on television, either on networks or via cable systems. Additionally, media coverage usually includes numerous others who write for newspapers, broadcast on radio and shoot films of the event. Most leagues and teams have film camermen on hand to photograph events for posterity, either for a "game library," scouting purposes or for highlight films and other promotional activities. This mass of photographic material would be available for court viewing if desired, and, of course, would probably be admissi-

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175. Torts in Sports, supra note 1, at 772.
176. See the analysis of Model Penal Code sec. 2.02(b) in note 171 supra.
177. One commentator has expressed doubts about this. See Torts in Sports, supra note 1, at 772 n. 60. Although that comment was published in 1980, the incredible, continuing expansion of cable coverage of professional sporting events virtually assures that any particular game would be filed or taped. Although there remains the possibility that the availability of only a single camera angle could distort the evidentiary value of the film or tape, the sharp prosecutor would be aware that many games were shot with more than one camera, and that the entire output of a camera which was never used to show an "on air" picture is often saved on tape by the production company, until the game is over, as a matter of routine. These tapes are usually recorded over soon afterward, but would be available if the prosecutor moved with vigor to obtain them.
Although much can be said about possible distortion by use of photographic evidence, the overwhelming mass of photographic evidence probably available at any particular trial would eliminate most of the problems of poor angle, blocked view and the like.

In sum, the bill's potential for successful use at trial appears good. The quantum of proof required makes convictions for the serious acts of violence noted above, allowing acquittals for acts engaged in that are within the normal bounds of competitive play.

b. Deterrent Effect

The hope was, of course, that if the bill had been adopted as law, it would rarely have to be used. Mottl's intent was to enlarge penalties for on-field violence so that the violence will be eliminated. His bill might have been the right tool to do this.179 Had it passed, there would have been little doubt that players would have had to restrain their tempers and end premeditated assaults on chosen "targets."180 Further, individual players, knowing that they themselves would be subject to criminal prosecution and the possible infamy of conviction, would have had to pay closer attention to playing techniques and strategies that emphasize skill and finesse, rather then
naked brutality, for effectiveness. In large measure, this self-restraint would effect much of the clean-up of violence in professional sports now campaigned for.

Additionally, if the desire to settle such matters "within the family" is as strong as indicated, then the individual leagues could be expected to stiffen their own procedures in order to keep cases out of the criminal courts. This would also further the goal without the necessity of having to press a single charge. Simply by having such a law on the books, leagues would have to respond by "cleaning house" or face the prospect of having their contract players marched into court to answer to a higher authority.

This is not to say, however, that cases should not be prosecuted if the proper opportunity presents itself. Increased regulation of athletic conduct on the league level will leave little work for the prosecutor waiting to try a criminal sports violence case. Enactment of a Mottl-type bill followed by the increased league regulation outlined will provide the significant deterrence required to stem the current violent tide. Otherwise, prosecutors will get their chance to remove offenders from

181. From the recent literature, it appears clear that eliminating violence from sports today will reduce the popularity of some sports, notably hockey. See Torts in Sports, supra note 1, at 769 n.34, where Dr. Walter Menninger, formerly a member of President Lyndon Johnson's National Commission on the Causes and Prevention of Violence, noted that many individuals "experience a vicarious satisfaction from the open aggression and mayhem on the ice."

In his House statement introducing H.R. 7903 on July 31, 1980, Rep. Mottl read into the Congressional Record an article by John Meyer from the Fort Lauderdale News and Sun-Sentinel of July 20, 1980. The following language was included:

For everything, there is a purpose, including violent behavior in sport. It has certainly helped to sell football—the NFL denies it, but don't believe it—and in hockey, there are those who say it helps sell the game to American fans who don't understand it.

"The large numbers of people who are being exposed to the game now are often not aware of the skills and finesse that give the game its real appeal." Retired hockey star Brian Conacher wrote in "Hockey in Canada the Way It Is!, "But brawling is something they do understand . . . . If there is a little blood, so much the better for the people with color sets."

126 Cong. Rec. E3712 (daily ed. July 31, 1980). It is this kind of attitude that has invaded the sports executive's mentality and restricted the effectiveness of intra-league discipline, as noted earlier.

Those who put any real stock in the inability of American fans to appreciate hockey in its pure form must have been shocked by the national reaction to the U.S. hockey team that won the gold medal at the 1980 Winter Olympic Games. Whether American fans understood what they were seeing or not, they certainly appreciated it and tuned in in record numbers to see more. See Sports Illustrated, Mar. 3, 1980, at 16-20; Sports Illustrated, Dec. 22-29, 1980, at 30-46.

182. Horrow, supra note 2, at 43-63.

183. See Flakne, supra note 15, at 32.
the field of play.184

c. Effect on Level of Play

Many sports professionals have expressed concern that should a bill such as Mottl's be enacted, the quality of play will be severely affected and would, in fact, decline.185 The Ontario Provincial Court judge in Regina v. Green noted that it is almost impossible for the hockey player involved in a rough fray for the puck in a corner of the rink to suddenly stop his conduct, in fear of prosecution under a law such as the Mottl bill.186

If the judge in Green meant that the player would have to consider stopping legitimate attempts to assist his team's efforts to defend their goal or help score a point or goal, within the rules and customs of the game, he can rest easy. The Mottl bill represented no such threat to professional sports.187 If the words can be read to imply that where rough play invites escalation to conduct well outside the rules, where the intent of the conduct is not to assist the team but to injure the oppo-

184. It is this possibility that will move the leagues toward further regulation and stiff enforcement of those regulations. The failure of professional sports leagues to restrain violence is the entire impetus behind the Mottl bill to bring "outsiders" (i.e., the U.S. Attorney) into the fray. Such "outsiders" are exactly what it appears to take to force the so-far loose hand of the leagues toward eliminating excessive violence on their fields, courts and rinks. It seems clear that the athletes themselves do not want any lawyers involved. See Horrow, supra note 2, at 43-63 and Hechter, supra note 1, at 438.

Yet Mottl himself introduced a bill that would supposedly reduce sports violence through arbitration boards established by the professional sports leagues. H.R. 5079, 97th Congress, 1st Session (1981). The bill sought to add six sections to Title 28 of the United States Code "to establish an arbitration system for the settlement of grievances resulting from the use of excessive force during professional sports events, in order to reduce the number and costs of injuries associated with such events." Id. sec. 2.

The bill would have required that each league set up an arbitration system for sports violence cases, to be included in the player's collective bargaining agreement. The boards would be composed of three persons, none of whom are employees of any government. But the crucial points of how the board members are selected, what disciplinary actions and compensatory awards are available and what the procedures for filing are, are all left to the professional sports leagues and their players. Id. sec. 3. Considering the extreme ineffectiveness with which the leagues and their players have policed themselves so far, could this statutory forum for current league/player policy have been expected to change the level of sports violence in any significant way? Clearly not: Few will file, those who do will get little help, and the only satisfactory forum will remain the civil courts, where "outsiders" take a different view of sports violence than those currently involved. See nn. 24, 80-83 & 114-15 supra and accompanying text.

185. The worry is that there would be a rash of trivial suits, marching players in and out of court as marionettes on the fingers of evil prosecutors. It has been demonstrated that such fears are utterly unfounded. See notes 146-48 supra and accompanying text.


nent, and that conduct should be allowed because of the difficulty in stopping oneself under the circumstances, then there is something wrong.

Sports is not a protected forum for violence that outside an arena would clearly be subject to civil or criminal penalties. Whether officials in various sports leagues or organizations like it or not, this is the law. It is time for those in sports to recognize this. Those who do not, such as Forbes, the defendant in the leading American criminal sports violence case, will be forced to realize that should a Mottl-type bill become law, the Congress will have stated a public policy that excessive violence in professional sporting events is not to be tolerated. If the level of play should recede as a result, then so be it. Imagine what hockey would be like if one could concentrate on team passing, good stickwork and the elusive ability of outstanding offensive players to create scoring opportunities?

Some in professional hockey would answer, "boring." If true, this boredom would undoubtedly reduce the number of paying customers, people who are believed to enjoy hockey not for the level of skill required, but for the violence that usually accompanies even the best-played games. From the above, it could be implied that in the United States, hockey is an unattractive product, requiring on-field violence to boost its appeal. Perhaps so. But does that justify such conduct? Passage of a Mottl-type bill would make the answer a concrete "no." The National Football League, sensing a lack of excitement in its games from a dearth of offense, changed the rules to assist offensive teams. Other sports would do well to follow the same example.


189. See Forbes' comment at note 143 supra. HORROW cites a comment he received in a detailed survey of professional athletes: "There is no such thing as a lawsuit; discipline is handled by league officials, and that's that!" HORROW, supra note 2, at 44. Another survey response, this time from Log Angeles Kings General Manager George Maguire, stated: "I am not of the opinion that criminal violence exists in professional sports, and I feel that too many people try to make a mountain out of a mole hill when they have a tough time even finding the mole." Id. at 35.

190. Id. at 40-42.


Passage of a Mottl-type bill will undoubtedly change professional sports as they are now played. Whether those changes add or detract to the level of play may depend on one's perspective. Those who stand to gain from revenues believed to be boosted by the presence of the excessively violent conduct that now pervades some sports may well state that the level of "play" has declined. Others, concerned with the propriety of sport itself and what it stands for in society, and especially as it reflects on emulative behavior by society's youngsters, will posit that any device to eliminate the needless violence in sports today can only be a welcome addition, bound to upgrade any game's standards.

V. Conclusion

The problem is excessive violence in professional sporting events today. Penalties imposed by the rules of each game have been insufficient to deter violent conduct by players and league disciplinary procedures have been equally ineffective, as players treat such penalties, usually quite mild, as merely an extension of the playing rules, with an equally non-deterrent effect. Civil tort cases have made some inroads in the field, but owing to their long lead time in coming to trial, cannot be charged with responsibility for providing immediate deterrence to players. Prior attempts at criminal prosecution in the United States have failed under current standards relating to assault.

Congress, through enactment of a Mottl-type bill, can grasp a unique and timely opportunity to equip prosecutors with the tool to ferret out and discipline excessively violent players through the federal

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maintains that the most effective restraint of all might be to impose rule changes that affect the competitiveness of the team. *Id.* at 792.

A newspaper article illustrated the effectiveness of such sanctions. The article, discussing international-class water polo, traditionally a "dirty" sport, noted that recent rule changes that significantly reduced a team's effectiveness via stiff penalties for prohibited conduct, have cleaned up the game tremendously:

[American coach Monte] Nitzkowski says the implementation of the foul rule has eliminated much of the unnecessary roughness of the game. A flagrant foul may mean a 45-second ejection from the game. A brutality foul will result in a one- or two-game suspension. Nitzkowski says losing a player for two games of a tournament such as the FINA Cup can ruin a team's chances.

"Guys on the international level have too much to lose so play has really cleaned up," Nitzkowski said.


193. See HORROW, *supra* note 2, at 41, quoting NHL President Clarence Campbell; Hechter, *supra* note 1, at 432.

criminal system. The probable reaction of the sports leagues, to tighten internal disciplinary procedures and avoid the embarrassment of losing their contract players to the penitentiary, will reduce the need for intervention by prosecutors and keep player discipline essentially "within the family."

The time has come for a reduction in violence in sports. Those already in sports have failed. However distasteful it may be to those individuals, it is now time for outsiders to step in and do the job the sports professionals have abdicated.
Mr. Chairman, thank you for calling this hearing today and for permitting me to appear before the Subcommittee. I am confident that under your able leadership, the Subcommittee will examine fairly and fully the serious problem of excessive sports violence.

On July 31, 1980, I introduced in Congress H.R. 7903, the Sports Violence Act of 1980. To my knowledge, this bill is the first serious attempt in Congress to curb the episodes of excessive violence that increasingly characterize professional sports.

My bill would make it a federal crime for professional players to use excessive during-the-game force that creates a significant risk of injury, when that force has no reasonable relationship to the competitive goals of the sport, is unreasonably violent, and could not be reasonably foreseen or consented to by the intended victim.

It is difficult at times to draw a clear line between contact that we all agree is part of any rugged, physical game, and needlessly violent, vicious and dangerous contact that has no place on or off the field.

But for the good of sports, players and fans, it is time we blew the whistle on conduct that would be prosecuted if it happened on the street but which has too often been overlooked in the arena.

Let me be specific about the kinds of conduct my bill is intended to penalize.

This is not sport.

It is directed to the player who smashes a hockey stick over the head of an opponent. This is not sport.

It is directed to the baseball player who drops his bat or glove and raises his fists. This is not sport.

It is directed to the basketball player who crushes the face of another with his fist. This is not sport.

It is directed to the lineman who deliberately slams into and injures the opposing quarterback long after the play is dead. This is not sport.

When we are looking at these extreme kinds of actions, I have no doubt whatsoever that a carefully drawn federal statute can preserve the health and vitality of professional sports, while serving notice on pro athletes that they have no license to commit televised assault and battery.

A statute marking out the line between normal and accepted aggressive behavior in sports, and excessively violent and repugnant conduct, would yield a number of important benefits.

First, the threat of criminal prosecution would deter the 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.

Finally, and in my book most importantly, I believe that 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.

Recently in my own city of Cleveland, a pro basketball player in a local summer league became angered and reportedly struck a young referee in the face. The injury later required an eye operation, but that wasn’t the major concern of this young referee who himself was a college athlete.
The referee later said, "What hurts me the most is that the young kids in the stands will think, 'Hey, he did it. I can do it too'."

Yes, I've received my share of mail calling sports violence a phony issue, describing my bill as the latest example of needless Big Government meddling, and asking why I haven't single-handedly solved inflation if I have so much time on my hands.

I send my correspondents some comments on this issue from figures who have attained more prominence in the sports world than I achieved as a Notre Dame pitcher and one-season minor leaguer.

Joseph Robbie, an owner of the Miami Dolphins, has stated: "I perceive that one of the greatest threats to the future of professional sports of every kind, here and abroad, is may-hem on the field and crowd violence. We need to take stern and strict measures for adequate control in each instance. Football and hockey are games of controlled violence, and any deliberate act which would constitute criminal assault should be handled in the same manner as any similar act off the field."

Veteran sports commentator and analyst Howard Cosell has commented: "In my opinion, excessive violence in professional sports is a serious problem that hasn't gotten enough attention from those in a position to do something about it. The operation of law should not stop at the ticket gate of any sporting event. If league officials and local prosecutors won't act to clean up professional sports, they may be leaving Congress no choice but to fill the void."

In drafting this bill, I have had the invaluable assistance of Richard B. Horrow, a legal expert and author on sports violence. The Sporting News editorialized recently that the product of our work "is not a random swing at violence, but a thoroughly analyzed and researched proposal."

The attorney for Darryl Stingley, a former New England Patriot football player who is paralyzed from a playing field collision, is O. Jackson Sands of Boston. Sands has stated: "It appears that the United States Congress is the only forum available to those of us who are gravely concerned about the increased violence in professional sports. It is apparent that the leagues themselves are unwilling to take the necessary corrective measures. Furthermore, it seems unmanageable for the various state courts to intervene as we could have fifty different rules of conduct in professional sports."

Mr. Chairman, I believe that pro organizations have not dealt swiftly and effectively with excessive violence in their sports, even though they prefer to keep this matter within the family. Yet the performance of our fine Olympic hockey team against the Soviets this year gave lie to the notion that you can't play good, tough, crowd-pleasing hockey without fistfights every five minutes. What do we see in nearly every National Hockey League game? A barroom brawl on skates.

Local prosecution for assault and battery, while attempted increasingly by concerned local officials, has been inconsistent and ineffective.

Congress, therefore, may indeed be the only forum available for the protection of the public interest as a whole.

This is not a new issue for Congressional interest. I was a member of the Select Committee on Sports in the 94th Congress. The more we looked into professional sports violence, the more concerned we became. We concluded in our final report that "escalating sports violence will force local prosecutors to seek criminal sanctions to contain the level of violence in the public interest." And we found that "the professional sports industry as a whole could reduce or eliminate violence in a very short time by making it perfectly clear that such acts will not be tolerated."

If we had seen appreciable improvement since this 1977 report, I would not be sitting here today. But I have become convinced that to curb this problem while preserving the sports themselves, a national standard for unacceptable during-the-game conduct is necessary.

A week ago Sunday, Washington quarterback Joe Theismann went through a bruising game against Oakland. He came out complaining of late hits and cheap shots, including one
episode in which he was literally picked up and slammed down on his shoulder by a lineman who drew an unnecessary roughness penalty.

Theismann's comments to the Washington Post say it all:

"This has no place in the game of football, and it should be dealt with accordingly. It still goes on and you don't see any real major punishments, or fines, or suspensions. What are they waiting for? Somebody to get killed, and then they're going to do something? There's got to be a deterrent in some way, shape or form. And until they put a heavy enough deterrent on it, it's going to happen."

Yet, what is the NFL now fining players for? Baggy socks! Even more ironic, the rationale for socking it to several Cincinnati Bengals is that such sloppiness harms pro football's public image, and that young people emulate what they see on television!

So, Mr. Chairman, for the league officials, who chose not to be here, I'll repeat Joe Theismann's question: What are you waiting for?

Thank you.