

The Cubs, The Cubs, How About Them Cubs ! Robert J. Matlock

It's October - it's World Series time! This is the season when a baseball fan slips into the team jersey, pulls on the team logo cap and announces that any family member who dares touch the TV remote during a game will be immediately Tazered.

But the 2016 World Series is much, much more. For the first time in 71 years, the Chicago Cubs are playing in the October classic. Their last appearance was in 1945 – that was the year my dad was anticipating his discharge from the Navy as World War II was coming to a close. In 2016, the underdogs who have broken the hearts and dashed the hopes of countless Cubs fans for decades have pulled off a miracle and overcome the Billy Goat Curse. See *Wikipedia for info about the curse*.

The language of baseball has remained alive even while the Cubs suffered through their incredible drought. Thanks to an article in the *Journal of the Missouri Bar* authored by Douglas E. Abrams, a law professor at the University of Missouri, examples of judicial homage to baseball terminology has existed for many years.

Spring training

Housing Works, Inc. v. Turner, 362 F. Supp.2d 434, 438 (S.D.N.Y. 2005) “Litigants cannot be permitted to use litigation before a magistrate judge as something akin to a spring training exhibition game, holding back evidence for use once the regular season begins before the district judge”.

Touching all the bases

R.W. Int'l Corp. v. Welch Foods, Inc., 937 F.2d 11, 15 (1st Cir. 1991) (seeking dismissal for discovery abuse without a prior court order) “tantamount to a ball player sprinting from second base to home plate, without bothering to round, let alone touch, third base”,

State v. Eason, 629 N.W.2d 625, 661 (Wis. 2001) (Prosser, J., dissenting) “player who fails to touch all the bases is not permitted to score. In fact, the player is out. There is no good faith exception for failing to touch third base”.

Trone v. Delaware Alcoholic Beverage Control Comm'n, No. 99A-11-007, 2000 WL 33113799 (Del. Super. Ct. Dec. 28, 2000) “Appellants struck out, but due to the umpire’s error, they have been able to get to third base. This Court can find no basis in equity, good conscience or fair play to let them now score the winning run”.

Called out on strikes

Linton v. Missouri Veterinary Med. Bd., 988 S.W.2d 513, 520 (Mo. 1999) (Wolff, J., dissenting) (arguing that board’s denial of license to applicant after four attempts to pass licensing examination violated equal protection) “even in baseball, a batter is allowed more than three swings because a foul ball, which normally counts as a strike, does not count when it occurs on the third strike”.

Bunt vs swinging for the fences

United States v. Merritt, 114 F.3d 1178, No. 95-5866, 1997 WL 297490 (4th Cir. June 4, 1997) (unpublished opinion) (when courts impose a criminal sentence) “cheats and swindlers who go down swinging for the bleachers ought to be punished more severely than those who bunt foul on the third strike”.

Pitcher vs batter

Hoskins v. Wainwright, 485 F.2d 1186 (5th Cir. 1973) (prisoner’s habeas corpus petition granted after two prior hearings) “We step back into the batter’s box, having allowed one to go by us and tipping another, in hopes that on our third and final swing we can avoid a judicial strike-out”.

Base hit vs home run

R.C. Dick Geothermal Corp. v. Thermogenics, Inc., 890 F.2d 139, 145 (9th Cir. 1989) (a party entitled to a temporary injunction) “need not establish that he can hit a home run, only that he can get on base, with a possibility of scoring later”.

The umpire

Haluck v. Ricoh Electronics, Inc., 60 Cal. Rptr.3d 542, 549 (Ct. App. 2007) (appellant claimed the judge’s unorthodox behavior was prejudicial, appellee claimed there was no error because the bizarre actions were aimed at both parties) “It is like saying that a baseball team could not complain if the umpire decided to call balls and strikes with his eyes closed, as long as he kept them closed for both teams.”

The rules

Chapman v. United States, 553 F.2d 886, 892 (5th Cir. 1977) (reversing order that denied criminal defendant’s motion to proceed pro se as untimely) “request was not a ninth inning ploy. The umpire had dusted off the plate, the lineup cards had been delivered, but Chapman demanded to defend pro se before the first pitch was thrown. Accordingly, we send appellant’s motion to vacate sentence into extra innings”.

The baseball terms utilized by our brothers and sisters who don the judicial robes add a bit of color to their opinions but they lack the humble realism of the truisms uttered by those who are intimately familiar with the game.

When Casey Stengel was asked to explain the secret to managing a team he responded: “To keep the ones who hate you away from the ones who are undecided”.

Of course, Yogi Berra will always be remembered for his observation; “It ain’t over til it’s over”.

For 2016, **IT AIN’T OVER – GO CUBS!!**

Important note:

The content of this article was brazenly stolen from a scholarly work authored by Professor Douglas E. Abrams. He alone deserves credit for the exhaustive legal research concerning judicial usage of sports terms. Robert J. Matlock is responsible for and deserves the blame for all the other stuff.