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Baseball and the Legal Profession

Howard W. Brill

The practice of law, of which you have dreamed, for which you have prepared, and into which you are about to enter, can best be compared to a baseball game. Let me briefly suggest nine similarities, nine comparisons, between the great American pastime and the legal profession.

(1) When the game starts, only 25 players are there. Many players in T-ball and Little League and Babe Ruth dreamed of making the big leagues, but they never made it. Likewise, when you were in the fifth grade in Texarkana or Hot Springs, and all the fifth graders went down to the courthouse on Law Day, many of your classmates said, "I'd like to be a lawyer," but they're not here today. Similarly, many students sat in dorm rooms or fraternity houses and watched "Perry Mason" or "L.A. Law" and said, "It sure would be exciting to be a lawyer," but they're not here today. Even three years ago 150 of you started, but not all have survived; those of you here today have made the big leagues.

(2) A baseball game starts with everyone in attendance standing. The traditional words of the national anthem are heard and the umpire, dressed

in black, cries out, "Play ball." Court commences in the same fashion. The bailiff announces the arrival of the judge, everyone stands, traditional words are recited, and the judge, dressed in black, cries out, "This Court is now in session." Another traditional start to another traditional activity.

(3) The players are dressed in traditional, outmoded, non-functional uniforms—useless stirrups, knickers, cold weather clothes in the heat of the summer. In the legal profession, we may no longer dress in robes, we may no longer wear the wigs of colonial days, but we have a traditional uniform of dark blue and gray in somber attire. For some of you, that will mean a major change in the way you have dressed in the past three years. For example, for those of you who came to Remedies and sat in the front row and took off your shoes and socks to relax, I have sad news: you can't take off your shoes and socks in the courtroom.

(4) Baseball has a unique vocabulary. We speak of Texas leaguers and southpaws. The legal profession has its own vocabulary. We read of rules against perpetuities, holders in due course, and even mysterious Latin phrases such as *res judicata*.

Baseball has its rules that are vague and open-ended and leave justice to the eye of the umpire, such as the balk. The legal profession has its rules that are vague and open-ended and leave justice to the eye of the judge, such as contempt.¹ Baseball has its rules that many of us view as foolish, such as the designated hitter.² The legal profession has rules that you probably view as foolish, such as bar exams.³

(5) A visitor to Cooperstown, who walks through the gallery where the plaques of the greatest baseball players hang, soon realizes that one vital piece of information is missing from each plaque. The plaque that honors a pitcher for the St. Louis Cardinals who won thirty games in the 1930s doesn't say that Dizzy Dean started in Lucas, Arkansas; and the plaque that memorializes an All Star third baseman for the Detroit Tigers in the 40s and 50s doesn't tell us that George Kell began in Swifton, Arkansas. Their plaques hang in the Hall of Fame because of what they accomplished, not where they started.

From this day forward in the legal profession, you're starting with a clean slate. Your career will depend upon what you accomplish from this day forward. When clients come into your office next year to decide whether to retain you or not, they will ask you many questions. But they are not likely to ask, in deciding whether to hire you, what your GPA was. When you present an argument in court and the judge is trying to decide whether to rule for you or against you, that judge is not likely to ask, "Counselor, I need to know—were you on the Law Review?" You're starting over on equal ground and whether you make the lawyer's Hall of Fame depends upon what you accomplish from this day forward.

(6) A baseball player suddenly wins 20 games, bats .300, hits 40 home runs and he's an expert: an expert on religion, on politics, on credit cards, on fast-food restaurants, and deodorants. When you hang out the shingle, when you join the civic club, when you go to the PTA at the school where your son is enrolled, and someone points you out and says, "She's the new lawyer in town"; you're the expert. You're supposed to know, certainly about religion and politics, perhaps even about credit cards and deodorants. The public will turn to you, and you're in the limelight. Like the proverbial

city on a hill,⁴ your influence will reach farther because you're an attorney. But the down side is if your influence or your light grows dim or even becomes dark, those all around will see it.

(7) Baseball occasionally has players of unparalleled ability, an enthusiasm for the game and a sense of tradition, but who can't live by the rules. In baseball they go by names like Pete Rose.⁵ Likewise, in the legal profession, occasionally there are those who can't or won't live by the rules. They practice in large cities and small towns; they've graduated from every law school in the nation; they are in private practice and corporate practice and even in government service. Just as the Pete Roses are removed from baseball, those lawyers need to be removed from the legal profession.

But there is another danger and a greater warning to us. Seventy years ago, baseball expelled a player, not because he threw a game and perhaps not even because he took a bribe, but Shoeless Joe Jackson was expelled from baseball because he knew his teammates did and he kept quiet.⁶ In the legal profession, we take that principle, we codify it, we make it a rule, we even give a number (8.3), and through it we say to the public that we will police ourselves.⁷ The rule that says that we will act against members of the profession who fall beneath the minimum standards is not an easy rule to follow. No attorney in this room will tell you that it is pleasant, but the rule is essential. The public demands it, the profession demands it, your inner sense of honesty should demand it.

(8) The game nears the end. Some fans cheer; some fans boo. Bill Russell, not the Dodger short-stop but the Celtic center, was once asked how he felt when he heard the boos. Bill Russell responded by saying he never heard the boos, and he never heard the cheers.⁸ In the practice of law, you will hear boos and cheers. You can deal with the boos—the boos that come from defending an unpopular client, from telling a client that an action he desires is not permitted. You can respond to those because you have survived the first semester of law school.

But the greater danger, it seems to me, is with the cheers. The cheers will come from winning big cases, from blazing new law, from being recognized as a leader in the profession or in the com-

munity. The danger is that those cheers, though rightfully deserved, may lead to pride or to greed, or in some other way start you on the road to tragedy. Don't forget where you started three years ago. Don't forget those in this room who have supported you and who have sacrificed for you. Don't forget those in society who may not be hearing the cheers.

Bill Russell played ball according to his own standard of excellence, regardless of the crowds. You have to practice law according to your own standards of excellence, regardless of those around you.

(9) It's the ninth inning, the fans leave, the infield is covered with a tarp, the lights are turned off, the players go home. It is the end of the game, perhaps the end of a season, perhaps the end of a career, but the players must learn that life goes on. When you leave the office, when you leave the courtroom or the library, you must learn that life goes on. In the practice of law, there are too many temptations to lose sight of life—of children, of family, of the needs of others, of your own beliefs and values and standards. In the rush to succeed and to excel, don't lose sight of life or where you started.

As we walk through the fields of life, we all dream dreams, we all see visions,⁹ we all hear voices.¹⁰ Some of us, some of you, may have dreamed of playing major league baseball, and that dream probably will not be achieved. But all of you graduates have dreamed of being attorneys and that dream is coming true. Congratulations!

NOTES

This commentary is based on a commencement speech at the School of Law, University of Arkansas, May 12, 1990.

1. *E.g.*, Clark v. State, 291 Ark. 405, 725 S.W. 550 (1987) (court divided, 4-3, on whether in-court statements of a litigant constituted criminal contempt); Morrow v. Roberts, 250 Ark. 822, 467 S.W.2d 393 (1971) (contempt finding against witness for refusing to have his hair cut, reversed). *See also* Arkansas Gazette, April 13, 1990 (municipal judge held woman in contempt for not wearing proper undergarments).

2. Compare Laurence, *On Eurocentric Myopia, The Designated Hitter Rule and "The Actual State of Things,"* 30 ARIZ. L. REV. 459 (1988); Laurence, *A Short Essay in Praise of Non-Traditionalism in the Structure and Performance of Baseball,* 7 MPLS. REV. OF BASEBALL 29 (No. 3, 1988).

3. *E.g.*, Taylor v. Safly, 276 Ark. 541, 637 S.W.2d 578 (1982) (challenge to procedural fairness of bar examination process).

4. Matthew 5:14.

5. Rose v. Giamatti, 721 F. Supp. 906 (S.D. Ohio 1989).

6. Kirby, *The Year They Fixed the World Series,* 74 A.B.A. 64 (February 1988).

7. *See* Preamble, ARKANSAS RULES OF PROFESSIONAL CONDUCT. "The legal profession is largely self-governing." *See also* Ark. Const., amend. 28: "The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law."

8. Rosenblatt, Essay, TIME (June 29, 1987).

9. Joel 2:38.

10. In W. P. Kinsella's novel SHOELESS JOE (1982) and the subsequent movie *Field of Dreams*, an Iowa farmer hears a voice which says to him, "If you build it, he will come."