



Riding the Bench—A Look at Sports Metaphors in Judicial Opinions

Megan E. Boyd*

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INTRODUCTION

Sports is human life in microcosm.

— Howard Cosell

“Sports play a major, if sometimes unappreciated, role in the lives of Americans.”1 The vast majority of Americans play sports, watch sports, or read articles about sports — a whopping 96.3 percent.2 It is unsurprising, then, that sports metaphors abound in judicial opinions. After all, the adversarial nature of the court system in this country mirrors the very nature of

* Megan E. Boyd worked as a litigator at several Atlanta, Georgia law firms before becoming a law clerk and part-time legal writing instructor. She has written numerous articles on legal writing and maintains a legal writing blog at http://ladylegalwriter.blogspot.com/, named to the ABA’s 2013 Blawg 100 list. Megan can be reached at boyd_megan@yahoo.com.

1 ROBERT L. SIMON, FAIR PLAY: SPORTS, VALUES, AND SOCIETY 2 (1991).

2 Id.

competitive sports.³ Sports analogies are everywhere in the law, and because Americans love and understand sports, sports metaphors in judicial opinions just make sense.

In fact, some of the most common legal terms and phrases are sports analogies. Courts use a sports metaphor to explain one of our bedrock Constitutional principles of personal jurisdiction: A court may not exercise personal jurisdiction over a person or entity unless doing so comports with traditional notions of “fair play and substantial justice.”⁴ Often, a decision about whether to present certain evidence or call a certain witness to testify is a “game-time” decision. Lawyers and dissenting judges express frustration when a court “punts” on an issue. One party may seek to “level the playing field” in a discovery dispute, while another litigant might complain that the other party’s changing position forces the litigant to “shoot at a moving target.” Metaphors provide easy-to-understand, vibrant depictions of often confusing fact scenarios and legal arguments.⁵

This Article is not intended as a serious analysis of metaphor and the law — there are other, far more qualified writers who have undertaken that challenging task.⁶ Rather, this Article is a lighthearted look at the often humorous ways courts have utilized sports metaphors in their written opinions. I have endeavored to do more than simply list the metaphors — I have also provided the context in which they were used in order to show the reader why the metaphors are particularly apt.

I. BOXING

The best sports metaphor, of course, is one that is apropos to the case. I once represented a defendant in a case involving a famous boxer. I filed a motion to dismiss, and could not help asking the court to “knock out” the boxer’s claims, which the court kindly did. Other courts like boxing analo-

³ See *State v. Myers*, 536 P.2d 280, 290 (N.M. Ct. App. 1975); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women’s Lawyering Process*, 1 BERKELEY WOMEN’S L.J. 39, 51 (1985).

⁴ *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

⁵ See Michael J. Yelnosky, *If You Write It, (S)he Will Come: Judicial Opinions, Metaphors, Baseball, and “The Sex Stuff”*, 28 CONN L. REV. 813, 818 (1996).

⁶ See, e.g., Linda L. Berger, *What is the Sound of a Corporation Speaking? How the Cognitive Theory of Metaphor Can Help Lawyers Shape the Law*, 2 J. ASS’N LEGAL WRITING DIRECTORS 169 (2004); Bernard J. Hibbits, *Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse*, 16 CARDOZO L. REV. 229 (1994); James E. Murray, *Understanding Law as Metaphor*, 34 J. LEGAL EDUC. 714 (1984); Elizabeth G. Thornburg, *Metaphors Matter: How Images of Battle, Sports, and Sex Shape the Adversary System*, 10 WIS. WOMEN’S L.J. 225 (1995).

gies, too. The Third Circuit Court of Appeals has described a boxing promoter's appeal as an attempt to "recover from the District Court's knockout punch" on the enforceability of an agreement between the promoter and a professional boxer.⁷

As one court has observed, "[l]itigation and boxing are not so different. Some fights are won after a long, drawn-out battle that leaves both parties bruised and battered," and others "are won after one knockout punch that ends the match just as it begins."⁸ Many courts have compared lengthy, highly litigious cases to boxing matches. One court described a party's efforts to get approval to build its church as a "fruitless three-year-long shadowboxing match" in which the city's "combination of uppercuts, hooks, crosses, and jabs coupled with [its] bobbing and weaving . . . ensured that [the church] was always facing a moving target."⁹ In determining the propriety of a defendant's motion for summary judgment, another court recognized that the motion "land[ed] decisive blows" to some, but not all, of the plaintiff's claims, thereby enabling the plaintiff to "fight another round."¹⁰ And a party that secured a reversal of a trial court's "knockdown" was deemed to have been "saved by the [appellate] bell."¹¹

Courts often recommend that litigants in civil cases "throw in the towel" by terminating litigation. Despite one court's imposition of sanctions to compel the plaintiffs to "throw in the towel," the plaintiffs instead "reenter[ed] the ring in [a] tax dispute," attempting to make the case a "fifteen round bout."¹² The court again imposed sanctions and delivered what it deemed a "knockout punch" to the plaintiffs' case.¹³ The Seventh Circuit Court of Appeals described how litigation costs may force a small defendant to "throw in the towel, agreeing to a settlement favorable to the [plaintiffs] even if the defendant has an excellent defense."¹⁴

In addition to civil cases, "towel" analogies appear frequently in criminal opinions. One court upheld a jury's verdict where the trial judge had

⁷ *Echols v. Pelullo*, 377 F.3d 272, 273 (3d Cir. 2004).

⁸ *Burgett v. Troy-bilt LLC*, No. 1225ART, 2012 WL 5384702, at *1 (E.D. Ky. Nov. 1, 2012).

⁹ *Reaching Hearts Int'l, Inc. v. Prince George's Cnty*, 584 F. Supp. 2d 766, 784 (D. Md. 2008).

¹⁰ *Burgett*, 2012 WL 5384702, at *1.

¹¹ *Nat'l Indus., Inc. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1270 (9th Cir. 1982).

¹² *Stelly v. Comm'r of Internal Revenue*, 804 F.2d 868, 868 (5th Cir. 1986) (internal quotation marks omitted).

¹³ *Id.*

¹⁴ *Hughes v. Kore of Indiana Enterprise, Inc.*, 731 F.3d 672, 678 (7th Cir. 2013).

refused to “give up and throw in the towel” unless the jury members were certain they could not reach a verdict.¹⁵ With respect to whether a guilty plea was involuntary, the First Circuit Court of Appeals noted: “Even if a defendant’s misapprehension of the strength of the government’s case induces him to throw in the towel, that misapprehension . . . cannot form the basis for a finding of involuntariness” with respect to his guilty plea.¹⁶ In discussing federal sentencing guidelines, the Seventh Circuit Court of Appeals has noted: “The fact that a defendant having done everything he could to obstruct justice runs out of tricks, throws in the towel, and pleads guilty does not make him a prime candidate for rehabilitation.”¹⁷

Courts dislike litigants who attempt to “hit below the belt,” and the Virginia Supreme Court of Appeals has explained its role as follows: “Law is your umpire; it must not go into the ring until one or the other opponent hits below the belt.”¹⁸ In dismissing a defendant’s contentions that the plaintiff’s lawyer’s opening and closing statements were inappropriate, the First Circuit Court of Appeals noted that “[t]here is a critical difference between a lawyer who hits hard and a lawyer who hits below the belt.”¹⁹ Another court admonished a party for filing post-verdict motions that were an “attempt to hit below the belt.”²⁰

II. BASEBALL

Baseball is known as America’s pastime and has existed in its current form — more or less — since at least the mid-19th century.²¹ Baseball analogies are probably the most popular sports analogies in judicial opinions.

The Chief Justice of the Supreme Court, John Roberts, utilized a baseball analogy during his opening statement before the Senate Judiciary Committee in 2005 when he stated: “Judges are like umpires. Umpires don’t make the rules; they apply them . . . I will remember that it’s my job to call balls and strikes and not to pitch or bat.”²² Justice Roberts was not the first

¹⁵ *State v. Griffith*, 312 S.W.3d 413, 420 (Mo. Ct. App. 2010).

¹⁶ *Ferrara v. United States*, 456 F.3d 278, 291 (1st Cir. 2006).

¹⁷ *United States v. Buckley*, 192 F.3d 708, 711 (7th Cir. 1999).

¹⁸ *Reaves Warehouse Corp. v. Commonwealth*, 126 S.E. 87, 91 (Va. 1925).

¹⁹ *Muniz v. Rovira*, 373 F.3d 1, 6 (1st Cir. 2004).

²⁰ *United States v. Balistrieri*, 577 F. Supp. 1532, 1547 (E.D. Wis. 1984).

²¹ *February 2, 1876: National League of Baseball is Founded*, HISTORY, <http://www.history.com/this-day-in-history/national-league-of-baseball-is-founded> (last visited Apr. 22, 2014), archived at <http://perma.cc/RQA8-CM8>.

²² Associated Press, *Text of John Roberts’ Opening Statement*, USA TODAY (Sept. 12, 2005, 4:31 PM), <http://usatoday30.usatoday.com/news/washington/2005-09-12->

to use this umpire analogy — it appeared in opinions at least as early as 1906: “[W]here there is a difference of opinion between counsel[,] the presiding judge is the proper umpire.”²³

As every baseball fan knows, “[i]n baseball, after three strikes the batter is out.”²⁴ Unsurprisingly, “three strikes” analogies are popular when a party has been given at least three chances to do something or where the party is asking for a third opportunity. In allowing a pro se plaintiff another chance to amend the complaint to allege a claim, one court noted “there is much wisdom in [the] traditional [three strikes] American limit, and . . . after three strikes there is a greater burden of persuasion to convince us that the same batter deserves more pitches.”²⁵ A dissenting judge in another case analyzed the “three strikes” analogy in a different way. In discussing whether a veterinary examinee should be entitled to take the licensure exam more than three times, the dissenting judge noted, “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. Thus a batter may swing at several pitches before getting a hit, and it is no less a hit than if it had occurred on the first or second swing.”²⁶

Grand slam analogies are prevalent as well. One court described a party’s suspect arguments as a “wild swing for a grand-slam home run.”²⁷ Another declined to follow dicta in prior precedent when the dicta seemed to be “inserted to complete a grand-slam where the game was already over.”²⁸ In a case where attorneys sought fees constituting nearly ninety percent of the total amount recovered on behalf of the client, a bankruptcy court denied the full fee request, describing it as a “grand slam for counsel while the [client] is left with a pop-up bunt.”²⁹ And the Fourth Circuit Court of Appeals, in analyzing whether the admission of a “grand slam” confession was harmless error, concluded that there was no error because

roberts-fulltext_x.htm (last visited Apr. 22, 2014), *archived at* <http://perma.cc/N574-NX8C>.

²³ *State v. Rodriguez*, 40 So. 438, 443 (La. 1906) (Land, J., concurring).

²⁴ *Wilbert v. City of Chicago*, 768 F. Supp. 253, 254 (N.D. Ill. 1991).

²⁵ *Sarpolis v. Bd. of Trs. of Univ. of Ill.*, No. 97-CC-3911, 2000 WL 33593158, at *3 (Ill. Ct. Cl. Feb. 29, 2000); *see also Wilbert v. City of Chicago*, 768 F. Supp. 253, 254 (N.D. Ill. 1991) (utilizing a “three strikes” analogy in analyzing whether plaintiff should be permitted to file third amended complaint).

²⁶ *Linton v. Mo. Veterinary Med. Bd.*, 988 S.W.2d 513, 520 (Mo. 1999) (Wolff, J. dissenting).

²⁷ *In re Jordan*, 91 B.R. 673, 681 (Bankr. E.D. Pa. 1988).

²⁸ *Barrett v. Catacombs Press*, 64 F. Supp. 2d 440, 447 (E.D. Pa. 1999).

²⁹ *In re Smith*, No. 05-55819, 2007 WL 1406913, at *4 (Bankr. E.D. Ky. May 9, 2007).

even if the confession had not been admitted, “the remaining 10-0 score would still have left the jury’s verdict the same.”³⁰

Home run analogies are also popular. In analyzing whether it could exercise personal jurisdiction over a defendant pursuant to diversity of citizenship, one federal district court considered the possibility that the plaintiff would “hit a home run on damages.”³¹ Another court described contingency fee contracts in baseball terms: “Accepting employment on a contingency fee basis may result in situations where counsel sometimes hits a home run and at other times just dribbles the ball down the first base line.”³² In a criminal case, an appellate court explained that relevant testimony need not be self-sufficient and may be considered in conjunction with all other evidence: “[E]very witness does not have to hit a home run.”³³ The Louisiana Court of Appeals used a funny metaphor in analyzing a doctor’s testimony about whether a plaintiff’s injury was caused by an accident. The court described the doctor’s testimony as “like the late major league baseball announcer, Harry Carey’s signature comment, that ‘it could be, it might be,’ but the [d]octor can’t say, ‘it is a home run.’”³⁴ And a bankruptcy court described compliance with a lien perfection statute as similar to hitting a home run: “It assures a score, but there are other ways to be safe at home.”³⁵

Courts have even employed home run metaphors in jury instructions. The United States District Court for the Southern District of New York found no error in a trial court’s sports-themed instruction on circumstantial evidence, which charged the jury that “a spectator at a baseball game who does not see a batter swing the bat but sees the batter ‘slowly rounding all the bases’ could properly infer that the batter hit a home run.”³⁶

Analogies involving strikeouts, bunts, and pop-ups are less common, but still exist. In describing the distinction between the weight and admissibility of evidence in a criminal case, a court noted that a defendant may argue to the jury that a witness “‘struck out’ or ‘popped up’ but [the defendant] [cannot] keep [the witness] from having her time at bat.”³⁷ Another court likened a police officer who testified that conduct he observed was

³⁰ *Cooper v. Taylor*, 103 F.3d 366, 370 (4th Cir. 1996).

³¹ *Wheeler v. Farmers Ins. Exchange*, No. 13-CV-0951, 2013 WL 4432097, at *4 (W.D. La. Aug. 16, 2013).

³² *In re Smith*, 2007 WL 1406913, at *4.

³³ *State v. Hampton*, 855 P.2d 621, 623 n.8 (Or. 1993) (citations omitted).

³⁴ *Williams v. State Farm Mut. Auto. Ins. Co.*, 830 So.2d 379, 383 (La. Ct. App. 2002).

³⁵ *In re Brosnahan*, 312 B.R. 220, 224 (Bankr. W.D.N.Y. 2004).

³⁶ *Trinidad v. Senkowski*, WL 60418, at *4 (S.D.N.Y. Apr. 11, 1991).

³⁷ *State v. Lerch*, 677 P.2d 678, 687 n.16 (Or. 1984).

consistent with drug trafficking to a “trained observer on the baseball diamond . . . point[ing] out the bunt sign among an array of otherwise meaningless scratches and touches by the third base coach.”³⁸

Finally, some California courts deem settlements to have been made in good faith if they are in the “ballpark” of what might be awarded if the case were to be tried.³⁹

III. FOOTBALL

Metaphors from another one of America’s favorite sports, football, also appear frequently in judicial opinions. The Supreme Court has even gotten in on the popular “punt” metaphor — in *Morse v. Frederick*, commonly known as the “Bong Hits 4 Jesus” case, Justice Stevens expressed frustration that the majority “punt[ed]” on an issue of importance and decided the case on completely different grounds.⁴⁰

Courts presiding over cases involving the National Football League (“NFL”), the National Football League Players’ Association (“NFLPA”), and professional teams seem to especially love to throw football analogies into their written opinions. Following an arbitration between the NFLPA and the Washington Redskins, the team sought to “make an end run around the arbitrator’s decision” by filing a lawsuit.⁴¹ The court described the team as “behind on the scoreboard and buried in its own territory with less than a minute to play,” and compared the arbitrator’s finding to a “referee’s pass interference call,” where “the key is not necessarily the correctness of the decision, but its finality.” According to the court, “[w]ithout a final resolution of the matter, play cannot proceed.”⁴²

In another NFL case, Cincinnati Bengals season ticket holders sued over private seat licenses at the Bengals’ Paul Brown Stadium. In its opinion, the Ohio Court of Appeals had great fun with football references. The court described how the trial court “punted the case to binding arbitration,” thereby forcing the appellate court to “reverse the call made on the field.”⁴³ The plaintiffs claimed the Bengals committed an “illegal pass” by changing

³⁸ *United States v. Johnson*, 488 F.3d 690, 698 (6th Cir. 2007).

³⁹ *N. Cnty. Contractors Ass’n v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1091 (Cal. Ct. App. 1994).

⁴⁰ 551 U.S. 393, 441 (2007) (Stevens, J., dissenting).

⁴¹ *Nat’l Football League Players Ass’n v. Pro-Football, Inc.*, 857 F. Supp. 71, 74–75 (D.D.C. 1994), *vacated*, 56 F.3d 1525 (D.C. Cir. 1995)).

⁴² *Id.*

⁴³ *Dunkelman v. Cincinnati Bengals, Inc.*, 821 N.E.2d 198, 199 (Ohio Ct. App. 2004).

the rules “midgame.”⁴⁴ Conversely, the Bengals argued that the plaintiffs had agreed to the seat license “gameplan.”⁴⁵ The court ultimately determined that the plaintiffs were not required to arbitrate their claims and “return[ed] the trial court’s punt.”⁴⁶

After the Los Angeles Rams moved to St. Louis in 1995, season ticket holders brought suit, alleging breach of contract and fraud. The California Court of Appeals described the plaintiffs’ oral motion to recuse one of the appellate judges as an “ironic audible,” but declined to send the judge “from the bench to the showers,” suggesting instead that counsel should “huddle with more experienced teammates before attempting such a ‘Hail Mary’ in the future,” or, at the very least, consult the California Supreme Court’s “playbook.”⁴⁷

Touchdown analogies appear to be the most popular football-themed analogies in judicial opinions. One court explained the burden of proof in a criminal matter in touchdown terms: “[T]he State’s evidence must be persuasive enough to almost make a touchdown; reaching the midfield is never enough to meet the ‘beyond a reasonable doubt’ standard.”⁴⁸ In describing how a court determines whether hearsay evidence will be admitted, another held: “On the legal grid that is hearsay in criminal law, the right of confrontation is the goal line which must be crossed to score the touchdown of admissibility.”⁴⁹

In a case about whether Wisconsin’s school financing system creates equal educational opportunities for all children, the dissenting justice noted that while many children are “handed the ‘educational’ ball on the twenty yard line, a significant number are handed this ball on the one yard line with a three-hundred pound lineman on their back.”⁵⁰ The Wisconsin constitution, according to the justice, requires that “everyone on the playing field have an equal opportunity” to score that educational touchdown.⁵¹

The First Circuit Court of Appeals ruminated on the importance of legal research in touchdown terms. It passed on a party’s “attempt to score

⁴⁴ See *id.* at 200–01.

⁴⁵ *Id.*

⁴⁶ *Id.* at 204.

⁴⁷ *Charpentier v. Los Angeles Rams Football Co., Inc.*, 75 Cal. App. 4th 301, 304 n.1 (Cal. Ct. App. 1999).

⁴⁸ *Brooks v. State*, 323 S.W.3d 893, 923 (Tex. Crim. App. 2010).

⁴⁹ *United States v. Hughes*, 48 M.J. 700, 725 (1998).

⁵⁰ *Kukor v. Grover*, 436 N.W.2d 568, 588 (Wis. 1989).

⁵¹ *Id.*

a touchdown by selective perusal of legislative history,” and concluded the attempt “put[] no points on the board.”⁵²

One court even analogized a criminal defendant’s conduct to a touchdown celebration. The court described a defendant in a drug-smuggling operation as being involved in a “game” with federal authorities in which the defendant taunted authorities like “[t]he football player who, after scoring a touchdown, holds the ball in the air to taut [sic] his opponent.”⁵³

Hail Mary analogies are popular in cases where parties have — often unwisely — made tenuous arguments in attempting to salvage their cases. One court characterized a party’s suspect argument as a “[H]ail-Mary” pass that fell “short of the endzone.”⁵⁴ And another court likened a party’s motion for reconsideration filed nine months after the bench trial of the case to an “attempt to score on a Hail Mary pass after the game has ended.”⁵⁵

Hail Mary analogies seem particularly prevalent in criminal cases. One appellate court classified a defendant’s claim that the trial court interfered with his ability to present a complete defense as a “Hail Mary pass” that the court would “not catch.”⁵⁶ In discussing the reasons a motion for a new trial would have been fruitless, another court held that the motion would have been the equivalent of a “‘Hail Mary pass’ in the last second of the fourth quarter with the losing team on its own five-yard line.”⁵⁷

⁵² *Stowell v. Sec. of Health and Human Servs.*, 3 F.3d 539, 542 (1st Cir. 1993).

⁵³ *United States v. Archbold-Newball*, 554 F.2d 665, 674 n.13 (5th Cir. 1977).

⁵⁴ *Tenor Opportunity Master Fund, Ltd. v. Oxygen Biotherapeutics, Inc.*, No. 11 Civ. 06067, 2012 WL 2849384, at *8 (S.D.N.Y. July 11, 2012); *see also* *Nyunt v. Chairman, Broadcasting Bd. of Governors*, 589 F.3d 445, 449 (D.C. Cir. 2009) (characterizing party’s claim that a court can review agency action for statutory violations where statute precludes review as a “Hail Mary pass,” an attempt that in court, as in football, “rarely succeeds”); *In re Dunn*, 399 B.R. 909, 910 (Bankr. W.D. Wash. 2009) (finding debtors’ request to sell their property immediately, rather than maintain the property and continue to make mortgage payments, as “a Hail Mary . . . thrown in hopes of salvaging something out of a grim . . . real estate market and a stringent economy”); *Newdow v. Rio Linda Union School Dist.*, 597 F.3d 1007, 1070 (9th Cir. 2010) (Reinhardt, J., dissenting) (expressing frustration that majority’s opinion was based on a ground that no party mentioned, briefed, or argued, calling it a “Hail Mary argument”).

⁵⁵ *Wallace v. NCL (Bahamas) Ltd.*, 891 F. Supp. 2d 1334, 1336 (S.D. Fla. 2012).

⁵⁶ *In re Lucas C.*, No. G040926, 2010 WL 1534217, at *4 (Cal. Ct. App. Apr. 19, 2010); *see also* *Reis v. Hazelet Strip-Casting Corp.*, 28 A.3d 442, 478 (Del. Ch. 2011).

⁵⁷ *Ken v. State*, 267 P.3d 567, 577 (Wyo. 2011) (Golden, J., concurring in part and dissenting in part).

Appellate courts love to remind litigants that the courts generally cannot engage in Monday morning quarterbacking. In outlining a habeas corpus petitioner's burden to demonstrate ineffective assistance of counsel, one court explained that it could not act as a "Monday morning quarterback" in reviewing [trial counsel's] tactical decisions."⁵⁸ Similarly, in determining whether a police officer's conduct complied with the requirements of the Fourth Amendment, another court refused to act as a "Monday morning quarterback," holding that the officer's conduct need only fall within a range of objective reasonableness.⁵⁹

One court used the Monday morning quarterback analogy in a civil case to explain that a factfinder must determine whether information provided by an applicant for insurance is material, such that an insurer would be able to void the policy for material misrepresentation. According to the court, any other finding "would give the insurers power to play 'Monday morning quarterback,' potentially voiding all policies that prove to have been bad gambles for them."⁶⁰

Other football analogies have also found their way into judicial opinions. In explaining why a police officer's Fourth Amendment blunder was unintentional and not fatal to the government's case, a court noted that if the officer were playing in the Super Bowl, he "would have been penalized five yards for being offside, not forty yards for pass interference."⁶¹ In a 1949 opinion, the Georgia Court of Appeals described the state's efforts as finding "a hole in the line through which [the State] could carry the ball for a touchdown of conviction of the defendant," but ultimately held that the State had "fumbled."⁶²

In comparing a defendant's intent to force a mistrial with a defensive football player's intentional foul for pass interference, another court stated: "The defense knows that by performing the illegal act that constitutes the foul, he will probably be caught and his team penalized. Nevertheless, the

⁵⁸ *Davis v. McEwen*, No. 2:09-cv-03510, 2012 WL 4510940, at *10 (E.D. Cal. Sept. 28, 2012).

⁵⁹ *Powell v. Johnson*, 855 F. Supp. 2d 871, 876 (D. Minn. 2012); *see also* *Shultz v. Long*, 44 F.3d 643, 649 (8th Cir. 1995) (discussing the reasonableness of a police officer's conduct in shooting the plaintiff, and indicating that while the officer could have acted differently, "the Fourth Amendment does not allow this type of 'Monday morning quarterback' approach" to judging the officer's conduct).

⁶⁰ *Fernandez v. Bankers Nat'l Life Ins. Co.*, 906 F.2d 559, 567 (11th Cir. 1990) (quoting *Indep. Petrochemical Corp. v. Aetna Cas. & Sur. Co.*, 674 F. Supp. 354, 359 (D.D.C. 1987)).

⁶¹ *United States v. Hoffman*, 677 F. Supp. 589, 599 (E.D. Wis. 1988).

⁶² *Steed v. State*, 80 Ga. App. 360, 366, 56 S.E.2d 171, 176 (Ga. App. 1949).

offender prefers to take the penalty rather than give up the touchdown that most likely would occur were the foul not committed.”⁶³

The Eleventh Circuit Court of Appeals even got in on the football fun when it reviewed a trial court’s finding that a beer maker had infringed on the University of Georgia’s service mark by selling its product in a red and black can featuring a beer-swigging bulldog. The Eleventh Circuit described the beer maker’s hope that his Battlin’ Bulldog beer would “pile up yardage and score big points” in the beer market,⁶⁴ “kick[ed] off” its discussion by noting it would only be deciding whether the district court properly applied the Lanham Act,⁶⁵ and concluded that while the beer maker had a clever “entrepreneurial game plan,” the University of Georgia was able to hold it to “little or no gain.”⁶⁶

The sometimes-controversial booth review has even made its way into judicial opinions. One dissenting judge compared the majority’s review of potential juror misconduct to “a booth review of instant replay” and recommended that the court make the parties “[r]eplay fourth down.”⁶⁷

Some metaphors more ambiguously draw on not only American football, but possibly other sports like soccer, rugby, or lacrosse. For example, in reviewing the fair use factors for defending against a copyright infringement claim, the Second Circuit Court of Appeals noted that, where a defendant “shut[s] out” the plaintiff on the four fair use factors, “victory on the fair use playing field is assured.”⁶⁸ Additionally, in explaining the reasons a party is not permitted to re-litigate a lost motion on different grounds, the United States District Court for the Northern District of New York explained that allowing that type of re-litigation would be equivalent to “mov[ing] the goalposts” on the party that prevailed.⁶⁹

⁶³ Lee v. State, 423 A.2d 267, 370 (Md. Ct. Spec. App. 1980).

⁶⁴ Univ. of Georgia Athletic Ass’n v. Laite, 756 F.2d 1535, 1537, 1539 1547 (11th Cir. 1985).

⁶⁵ Id. at 1539.

⁶⁶ Id. at 1547.

⁶⁷ People v. Crosby, No. F056070, 2010 WL 1532686, at *10 (Cal. Ct. App. Apr. 19, 2010) (Gomes, J., dissenting). Judge Gomes’s point is that booth review is not a de novo review—it’s actually more akin to review for abuse of discretion. In the National Football League for example, booth reviewers must uphold the call made on the field unless they find there is “indisputable visual evidence” that the call on the field was incorrect. See Chad M. Oldfather and Matthew M. Fernholz, Comparative Procedure on a Sunday Afternoon: Instant Replay in the NFL as a Process of Appellate Review, 43 IND. L. REV. 45, 49–52 (2009).

⁶⁸ Arica Inst., Inc. v. Palmer, 970 F.2d 1067, 1079 (2d Cir. 1992).

⁶⁹ Trudeau v. Bockstein, No. 05-cv-1019, 2008 WL 541158, at *2 (N.D.N.Y. Feb. 25, 2008) (citations omitted).

IV. BASKETBALL

“Slam dunk” analogies are probably the most popular of the basketball analogies. A strong case is frequently described as a “slam dunk.” For example, the Fourth District Court of Appeals of California noted that a defendant would have a “slam-dunk claim of ineffective assistance of counsel” if counsel had failed to object to a sentence that potentially violated double jeopardy.⁷⁰ A weaker case, however, was described by the Fifth District of Illinois as far from a “slam-dunk.”⁷¹ And, oddly, another court used the slam dunk analogy in the opposite way, holding that the defendant’s argument was a “slam dunk loser.”⁷²

A North Carolina appellate court reviewing a defendant’s murder conviction acknowledged that the state’s case was not a “slam dunk” but was, at the least, an “uncontested lay-up.”⁷³ In a trademark action between Converse and Reebok, the court characterized Converse’s decision not to comply with the local rules as a “technical foul,” and said compliance was necessary because the filings were “not the result of a last minute fast break to the courthouse” (i.e., they were not an emergency that would have excused non-compliance).⁷⁴

The “full court press” basketball analogy is also common. A party that filed numerous motions and other documents was described as engaging in a “full court press.”⁷⁵ The Eighth Circuit Court of Appeals explained the prosecution’s evidentiary burden at a pre-trial hearing in those same terms, holding that the prosecution is “not required to put on a full court press on the evidence at a pretrial motion hearing.”⁷⁶ Another court analogized the discovery process to a basketball game: “Whether the game is played at a slow pace or a full court press . . . is not going to affect the [c]ourt’s decisions, the ultimate goals of which are to avoid overtime.”⁷⁷

⁷⁰ *People v. Castillo*, No. E056490, 2013 WL 4774542, at *1 (Cal. Ct. App. Sept. 6, 2013).

⁷¹ *People v. Morris*, No. 5-10-0015, 2012 WL 7059867, at *6 (Ill. App. Ct. July 25, 2012).

⁷² *Smith v. United States*, No. 2:06-CR-01206, 2013 WL 3422031, at *4 (D.S.C. July 8, 2013).

⁷³ *State v. Stevenson*, 710 S.E.2d 304, 307 (N.C. Ct. App. 2011).

⁷⁴ *Converse, Inc. v. Reebok Int’l Ltd.*, 328 F. Supp. 2d 166, 174 (D. Mass. 2004) (internal quotation marks omitted).

⁷⁵ See *Mitchell v. Brennan*, No. G042296, 2011 WL 810747, at *5 n.4 (Cal. Ct. App. Mar. 9, 2011).

⁷⁶ *United States v. McCarther*, 596 F.3d 438, 442 (8th Cir. 2010).

⁷⁷ *PIC Group, Inc. v. Landcoast Insulation, Inc.*, No. 1:09CV662-KS-MTP, 2010 WL 4791710, at *14 n.6 (S.D. Miss. Nov. 18, 2010).

Opinions contain a number of other basketball analogies that are varied and not easily characterized. An “air ball” is a shot so errant it fails to even hit the rim. A court considering a defamation claim filed by a woman who allegedly had an affair with Michael Jordan described her claim as an “air ball.”⁷⁸ In addressing the reasons a retired professional basketball player’s claim that he timely appealed a tax assessment failed, the Court of Appeals of Michigan noted: “While the Petitioner may have graced the basketball court with many game-saving jump shots, in the tax court his attempt came after the final buzzer.”⁷⁹

Judge Kozinski of the Ninth Circuit Court of Appeals has noted that “there are no free-throws in criminal trials”; that is, if the defense offered testimony that the defendant was peaceable, the prosecutors would get to question that witness about the defendant’s prior misdeeds.⁸⁰ And, in a hilarious but accurate criticism, one court found that a party’s argument was “as errant as a typical Shaquille O’Neal free throw.”⁸¹

Every now and again, a mixed sports metaphor will slip into a judicial opinion. One trial court noted that its finding of admissibility was a “slam dunk” while the defendant’s argument to the contrary was “not even in the ballpark.”⁸²

V. GOLF

In golf, shooting “below par” is a good thing because the golfer’s objective is to shoot the round in the smallest number of strokes.⁸³ If something is “par for the course,” however, it is usual or expected, like the number of strokes golfers should require to complete a hole. The Supreme Court used this analogy to describe the “subjective and individualized” nature of employment decisions, where “treating seemingly similarly situated

⁷⁸ *Knafel v. Chicago Sun-Times, Inc.*, 413 F.3d 637, 640 (7th Cir. 2005).

⁷⁹ *Kelser v. Dep’t of Treasury*, 421 N.W.2d 558, 560 (Mich. Ct. App. 1988).

⁸⁰ *Pinholster v. Ayers*, 590 F.3d 651, 707 (9th Cir. 2009) (Kozinski, J., dissenting), *rev’d*, 131 S.Ct. 1388 (2011).

⁸¹ *City of Seattle v. Professional Basketball Club, LLC*, No. C07-1620RSM, 2007 WL 3217556, at *4 (W.D. Wash. Oct. 2, 2007). In his professional career, O’Neal made only 52.7 percent of his free throw shots. *Shaquille O’Neal Stats*, ESPN, http://espn.go.com/nba/player/stats/_id/614/shaquille-oneal (last visited Apr. 22, 2014), *archived at* <http://perma.cc/LZ5Y-VXB6>.

⁸² *People v. Hamilton*, Nos. C068430 and C069220, 2013 WL 3961167, at *4 (Cal. Ct. App. July 31, 2013).

⁸³ *See generally* UNITED STATES GOLF ASS’N, RULES OF GOLF R. 2-1 (Jan. 1, 2012), *archived at* <http://perma.cc/45UL-FFMK>.

individuals differently . . . is par for the course.”⁸⁴ Another court described “[d]etailed, time consuming, contentious discovery issues” as “par for the course in many civil actions.”⁸⁵ And one judge expressed frustration with a party’s numerous filings, which protracted the litigation, by describing the party’s futile motion for reconsideration as “[p]ar for the course.”⁸⁶

Judicial opinions offer other interesting golf analogies. In a bankruptcy action to set aside an allegedly fraudulent transfer of a golf course, the judge indicated he would “tee it up, take a swing and see where the issues now before [him] land.”⁸⁷ Similarly, another court discussed the methods available to a party to “tee up” an agency’s decision for judicial review.⁸⁸

Where a party’s new counsel attempted to undo mistakes of prior counsel, one court held that “[e]ven though a newly assigned counsel may not have personally dropped the proverbial ball, the arrival of replacement counsel cannot afford a party a ‘Mulligan.’”⁸⁹

In determining the propriety of police conduct in entering a defendant’s apartment without a warrant, the Western District of Wisconsin found that exigent circumstances permitted the entry, and the police were “not required to acquiesce to the equivalent of an assessed penalty stroke by [waiting for a warrant and] allowing [the defendant] an opportunity to deep-six” evidence.⁹⁰

Another court analogized the requirements of the Magnuson-Moss Warranty Act with a golf course sand trap or water hazard. According to that court, the warranty required by the Act “is simply a feature that the player must accept in playing the game.”⁹¹

⁸⁴ Engquist v. Or. Dep’t of Agric., 553 U.S. 591, 604 (2008).

⁸⁵ McNeil v. Hayes, No. 1:10-CV-01746-AWI-SKO PC, 2013 WL 2434702, at *1 (E.D. Cal. June 4, 2013).

⁸⁶ Madura v. BAC Home Loans Servicing L.P., No. 8:11-CV-2511-T-33TBM, 2012 WL 3656449, at *2 (M.D. Fla. Aug. 23, 2012); *see also* Nufrio v. Quintavella, No. 11-CV-3232, 2012 WL 458437, at *4 (D.N.J. Feb. 10, 2012) (imposing sanctions for plaintiff’s filing of a document “without regard to the objective reasonableness or truth of his utterances” when such filings were “par for the course”).

⁸⁷ *In re Grandote Country Club Co.*, 208 B.R. 218, 220 (Bankr. D. Colo. 1997).

⁸⁸ Medical Waste Inst. & Energy Recovery Council v. EPA, 645 F.3d 420, 428 (D.C. Cir. 2011).

⁸⁹ Carlson v. Carmichael, No. 10-3579, 2013 WL 3778356, at *3 (E.D. Pa. July 19, 2013) (footnote omitted).

⁹⁰ United States v. High, No. 07-CR-091-C, 2007 WL 5555947, at *7 (W.D. Wis. Nov. 5, 2007).

⁹¹ Ann Sacks Tile & Stone, Inc. v. Dep’t of Revenue, No. TC 4879, 2011 WL 5967187, at *5 (Or. Tax. Reg. Div. Nov. 29, 2011).

VI. POKER⁹²

Poker metaphors are surprisingly popular in judicial opinions. Kenny Rogers' famous song, *The Gambler*,⁹³ has been quoted by a number of courts for the proposition that litigants must learn when to "hold 'em" by moving forward with a suit and when to "fold 'em" by taking a settlement.⁹⁴

The elusive royal flush⁹⁵ is less elusive in judicial opinions. In describing a defendant who reached a plea agreement and then appealed the sentence imposed, the Ninth Circuit Court of Appeals noted that the defendant may "bet on the possibility of winning the appeal and then winning an acquittal, just as a poker player has the right to hold the ten and queen of hearts, discard three aces, and pray that when he draws three cards, he gets a royal flush."⁹⁶ Another court used poker terms to explain why a defendant who waited until after he obtained discovery to seek to enforce an arbitration clause was not entitled to arbitration — according to the court, the defendant's discovery "forced the plaintiffs to reveal their hand," and whether the plaintiff's discovery disclosures "consisted of a royal flush . . . or a pair of twos," the prejudice lay in the disclosure itself, not the specific content.⁹⁷

⁹² ESPN considers card playing to be a sport, and because of the interesting poker-influenced metaphors found in judicial opinions, I have included it here.

⁹³ *The Gambler* is itself meant to be a metaphor for life:

You've got to know when to hold 'em
 Know when to fold 'em
 Know when to walk away and
 Know when to run
 You never count your money
 When you're sittin' at the table
 There'll be time enough for countin'
 When the dealin's done

KENNY ROGERS, *THE GAMBLER* (United Artists 1978).

⁹⁴ *In re Lehman Bros. Sec. & Erisa Litig.*, No. 09 MD 2017(LAK), 2012 WL 1563879, at *1 (S.D.N.Y. May 3, 2012); *Grine v. Colburn's Air Conditioning & Refrigeration*, No. 09-11, 2009 WL 2634179, at *15 (W.D. Pa. Aug. 25, 2009).

⁹⁵ A royal flush occurs when a player obtains the ace, king, queen, jack, and ten in a single suit. See *Royal Flush*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/royal%20flush> (last visited Apr. 22, 2014), archived at <http://perma.cc/8WPX-RM2M>. The probability of being dealt a royal flush in any suit in a five-card hand is 1 in 649,740 or .00015 percent. See Natasha Glydon, *Gambling and the Odds*, MATH CENTRAL, <http://mathcentral.uregina.ca/beyond/articles/Gambling/Odds> (last visited Apr. 22, 2014), archived at <http://perma.cc/WXZ7-EFAU>.

⁹⁶ *United States v. Sandoval-Lopez*, 409 F.3d 1193, 1199 (9th Cir. 2005).

⁹⁷ *Martin v. Rundquist*, No. H028060, 2005 WL 1668863, at *6 (Cal. Ct. App. July 15, 2005) (alterations omitted) (citation omitted).

Courts have also used poker terms to explain the need for litigants to disclose their cases during the litigation process. For example, one court explained what plaintiffs must do to survive a motion to dismiss. “Just as you cannot win a game of poker by telling your opponents that somewhere within the fifty-two cards lurks a winning Royal Flush, [plaintiffs] must do more than append raw data and say, find it, it’s in there somewhere; some selection and arrangement is necessary.”⁹⁸ Similarly, in determining that a party was required to turn over discovery, another court noted that, in discovery, each party may be ordered to “lay his cards down,” and while a party “may have the winning hand, . . . he may not take the pot by simply reassuring the Court that he has an ace in the hole.”⁹⁹

Appellate courts have also used poker terms like “royal flush” and “ace in the hole” to explain their ability to rule on issues not properly raised in earlier proceedings. The Supreme Court of Utah has considered whether a litigant’s failure to raise an error below absolutely prohibits the appellate court from reversing that decision when the appellate court “holds in its hand an argument that is tantamount to the legal royal flush.”¹⁰⁰ Another court explained the necessity of the claim preclusion doctrine to prevent a party from “reserv[ing] and preserv[ing] . . . [an] unrepresented fact or theory as an ‘ace in the hole’ to be used as a ground for a second lawsuit based on such ground.”¹⁰¹ In general, counsel must object to comments by a trial judge that he believes are inappropriate when those comments are made, and cannot “wait until after the conclusion of the matter to silently preserve the event as an ace in the hole to be used in the event of an adverse decision.”¹⁰² And appellate courts generally refuse to consider arguments not made below, because to do so would “encourage a party to sandbag at the district court level, only then to play his ace in the hole before the appellate court.”¹⁰³

⁹⁸ *Bowers v. Crystal Valley, R.V.*, No. 95 C 7527, 1996 WL 169415, at *1 (N.D. Ill. Apr. 9, 1996).

⁹⁹ *Perry v. Hunt*, No. 9:10-CV-1033 (LEK/TWD), 2012 WL 4106459, at *3 (N.D.N.Y. Sept. 18, 2012).

¹⁰⁰ *State v. Robison*, 147 P.3d 448, 452 (Utah 2006).

¹⁰¹ *Regions Fin. Corp. v. Marsh USA, Inc.*, 310 S.W.3d 382, 396 (Tenn. Ct. App. 2009) (quoting *McKinney v. Widner*, 746 S.W.2d 699, 706 (Tenn. Ct. App. 1987)).

¹⁰² *James v. James*, 344 S.W.3d 915, 918 (Tenn. Ct. App. 2010) (citations omitted) (internal quotation marks omitted).

¹⁰³ *Campbell v. Davol, Inc.*, 620 F.3d 887, 892 (8th Cir. 2010) (quoting *Pub. Water Supply Dist. No. 3 of Laclede Cnty, Mo. v. City of Lebanon*, 605 F.3d 511, 524 (8th Cir. 2010)) (internal quotation marks omitted).

In poker, a sandbagger is someone who has a strong hand but bets conservatively to lull other players into staying in the game, thereby raising the pot the sandbagger will win.¹⁰⁴ Many courts have used the term “sandbagging” to refer to the late disclosure of evidence or arguments in an attempt to surprise the opposing party. For example, courts have noted that Rule 37 of the Federal Rules of Civil Procedure, which allows a trial court to exclude evidence that was not timely disclosed to the opposing party, is designed to “prevent the practice of sandbagging an adversary with new evidence.”¹⁰⁵ And some appellate courts, including the Court of Appeals for the D.C. Circuit, require appellants to “raise all arguments in the opening brief to prevent ‘sandbagging’ of appellees . . . and to provide opposing counsel the chance to respond.”¹⁰⁶

VII. OTHER SPORTS

Noteworthy analogies from other sports appear in judicial opinions as well. The “hat trick”¹⁰⁷ analogy has made its way into several opinions. One appellate court described a case that implicated doctrines of standing, mootness, and ripeness as a “rare justiciability hat trick.”¹⁰⁸ Another dismissed a criminal defendant’s claim that the prosecution “effected a hat trick of violations” by suppressing material evidence.¹⁰⁹

In a billiards analogy, the Seventh Circuit Court of Appeals explained that a lawyer’s failure to follow the local rules put his client “behind the eight ball” when a judge disregarded her factual assertions.¹¹⁰ Another

¹⁰⁴ See *Sandbagging in Poker*, <http://www.fairpoker.info/Sandbagging-in-Poker.html> (last visited Apr. 22, 2014), *archived at* <http://perma.cc/HXY6-U67A>. Golfers also use the term “sandbagger” to refer to a player who intentionally plays below his skill level to obtain a higher handicap and give himself a better chance to win a future tournament. *The History of Sandbaggers*, <http://www.golftripper.com/the-history-of-sandbaggers/> (last visited Apr. 22, 2014), *archived at* <http://perma.cc/BBA9-E6YB>.

¹⁰⁵ *Ventra v. United States*, 121 F. Supp. 2d 326, 332 (S.D.N.Y. 2000) (citations omitted).

¹⁰⁶ *Corson and Gruman Co. v. NLRB*, 899 F.2d 47, 50 n.4 (D.C. Cir. 1990); *see also Cleary v. Boeing Co. Emp. Health and Welfare Benefit Plan (Plan 503)*, No. 11-CV-00403, 2013 WL 3943633, at *12 n.8 (D. Colo. July 31, 2013) (“The Court will not consider arguments raised for the first time in a reply brief; such tactics sandbag the opposing party and prevent the argument from being fully briefed.”).

¹⁰⁷ Hat tricks occur in several sports, including hockey and soccer.

¹⁰⁸ *Worth v. Jackson*, 451 F.3d 854, 855 (D.C. Cir. 2006).

¹⁰⁹ *United States v. Faulkenberry*, 614 F.3d 573, 589 (6th Cir. 2010).

¹¹⁰ *Day v. N. Ind. Pub. Serv. Corp.*, 164 F.3d 382, 383 (7th Cir. 1999).

court used the same eight ball analogy in a case in which a screwdriver malfunctioned while the plaintiff was attempting to assemble a pool table. That court's subheadings reflect its holding that the plaintiff was "[b]ehind the [e]ight [b]all" in notifying the manufacturer of the plaintiff's breach of warranty claim and that both parties' appeals were without merit and, therefore, "[s]nookered."¹¹¹

In a dissenting opinion, one judge used a tennis analogy to describe the "bouncing burden of proof" in an admiralty action over damage to goods transported by a sea vessel.¹¹² According to the dissenting judge, the plaintiff "served the ball in bounds" by proving the goods were uncontaminated when loaded, the defendant hit a "return shot" by proving the contamination was caused by an incident over which the defendant had no control, but the plaintiff "drove the ball into the net" when it failed to produce evidence the defendant was negligent.¹¹³

Quiet title actions often involve many parties with divergent interests, and one court characterized a contentious quiet title action as a rugby "scrum."¹¹⁴ Another noted the difficulties faced by the board of directors of a closely held company who "struggle[d] to act in [the company's] best interest in the midst of a familial rugby scrum that greatly impede[d] their efforts."¹¹⁵

The "home stretch" analogy from track and field is also popular. One court declined to allow a defendant to implead another party because the case was in the "home stretch" when the defendant filed its motion.¹¹⁶ Meanwhile, a bankruptcy court permitted a Chapter 11 debtor to enter into a loan agreement because disallowing the loan would have counterproductively "cut off the debtor's ability to function when [they were] just reaching the home stretch of [the] reorganization."¹¹⁷

¹¹¹ *Castro v. Stanley Works*, 864 F.2d 961, 962–63 (1st Cir. 1989).

¹¹² *PPG Indus., Inc. v. Ashland Oil Co.*, 592 F.2d 138, 153 (3d Cir. 1978) (Rosenn, J., dissenting).

¹¹³ *Id.*

¹¹⁴ *Deane v. United States*, 329 F. App'x. 809, 816 (10th Cir. 2009). A scrum occurs when players from both teams come together in a close formation and attempt to gain possession of the ball. *See Scrum*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/scrum> (last visited Apr. 22, 2014), archived at <http://perma.cc/4D8W-F5NK>.

¹¹⁵ *Demoulas v. Demoulas Super Mkts., Inc.*, No. 033741BLS, 2004 WL 1895052, at *18 (Mass. Super. Ct. Aug. 2, 2004).

¹¹⁶ *Botkin v. Tokio Marine & Nichido Fire Ins. Co., Ltd.*, 956 F. Supp. 2d 795, 808 (E.D. Ky. 2013).

¹¹⁷ *In re Catholic Bishop of N. Alaska*, No. F08-00110-DMD, 2008 WL 8652366, at *1 (Bankr. D. Alaska Nov. 26, 2008).

Analogies from wrestling, which might be the world's oldest sport, have also made their way into judicial opinions. In analogizing a doctor's refusal to testify as to the definitive cause of the plaintiff's injuries, an appellate court compared the attorneys' efforts to those of an "Olympic wrestler attempting a takedown of his opponent and failing to succeed."¹¹⁸

Surprisingly, even cricket analogies have made their way into American judicial opinions. A "sticky wicket" occurs when the playing surface of a cricket field becomes wet or otherwise uneven, and the term commonly refers to a difficult situation.¹¹⁹ The First Circuit Court of Appeals has described the statutory framework of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") as creating a "sticky wicket" for parties that choose not to settle early in the litigation.¹²⁰

In motor car racing, the pole position is the first or most advantageous position. In a case involving a violent offender, the trial court's consideration of protecting the public in determining the offender's sentence took "pole position."¹²¹ The "pit stop" is another common racing analogy used in judicial opinions. In explaining that a Chapter 11 reorganization can take an extended time where a company has "latent problems lurking under its hood," the Fifth Circuit Court of Appeals noted that those latent problems can turn "what was expected to be a pit-stop into a lengthy reorganization process."¹²² And many courts have noted that in certain types of lawsuits, such as patent actions, parties frequently race to the courthouse to be the first to file. For example, one court determined that to exercise jurisdiction over the plaintiff's declaratory judgment action while the defendant was prosecuting a separate patent infringement action against the plaintiff would be to "discourage attempts at settlement and wave the checkered flag in front of races to the courthouse."¹²³

¹¹⁸ *Williams v. State Farm Mut. Auto Ins. Co.*, 830 So.2d 379, 383 (La. Ct. App. 2002).

¹¹⁹ See *Wicket*, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/us/definition/american_english/wicket (last visited Apr. 22, 2014), archived at <http://perma.cc/L39T-U653>.

¹²⁰ *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 92 (1st Cir. 1990).

¹²¹ *State v. Mayek*, 776 N.W.2d 101, at *1 (Wis. Ct. App. 2009) (unpublished table decision).

¹²² *In re ASARCO, LLC*, 702 F.3d 250, 264 (5th Cir. 2012).

¹²³ *Aeroflex USA, Inc. v. Armacell Enter. GmbH*, No. 3:13-CV-485-TAV-CCS, 2014 WL 652912, at *5 (E.D. Tenn. Feb. 20, 2014); see generally *Cellectis S.A. v. Precision Biosciences, Inc.*, 881 F. Supp. 2d 609, 611 (D. Del. 2012) (summarizing the parties' litigation history as "a series of races to the courthouse on nearly a dozen patents").

One of the best uses of apropos sports metaphors comes from a dissenting opinion in a contract case involving a raceway. The dissenting opinion is replete with race-themed idioms and analogies. The dissenting judge admonished the majority for attempting to dispose of the case “by a quick drop of the checkered flag called summary judgment.”¹²⁴ He explained that he disagreed with the majority’s “swerves, twists and turns” that failed to acknowledge settled jurisprudence and follow the “rules of the road.”¹²⁵ The opinion contains other clever uses of race-related words and themes, including “frame,” “body,” “fuel,” “fender rubbing,” “bumping and hitting,” “pits,” “final turn,” “mileage,” “caution flag,” and “bumper to bumper,” among many others.

VIII. CONCLUSION

Whether they are returning a lower court’s punt or knocking out a party’s claims, courts use sports metaphors in a variety of contexts to explain a myriad of legal principles and factual scenarios. These metaphors have been employed at all judicial levels from state trial court judges to the Supreme Court justices. There is no sign courts intend to rein in their use of sports metaphors either. And why should they? As long as Americans continue to love sports, courts will continue to use these metaphors to illuminate our understanding of legal concepts. So, whether you are a football fanatic or a golfing guru, there is something for every sports fan in these judicial opinions.

¹²⁴ *Fry Racing Enters., Inc. v. Chapman*, 497 S.E.2d 541, 547 (W. Va. 1997) (Starcher, J., dissenting).

¹²⁵ *Id.* at 545.