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## ANOTHER SIDE TO THE INFIELD FLY RULE

Andrew J. Guilford\*

I<sup>1</sup> begin<sup>2</sup> by paraphrasing a show tune. In olden days a glimpse of stocking was looked on as something shocking, but today, anything goes.<sup>3</sup> Likewise, baseball has moved from an ancient gentility to the exciting, aggressive, audacious competition of today. The (in)famous Infield Fly Rule grew from that time of gentility when folks thought it ungentlemanly to purposely drop an infield fly to get a double play. For this and other reasons, Joel Mallord and I wrote an article calling for an end to the misguided, outdated Rule.<sup>4</sup>

Much has happened since that 2015 article (and much more since Broadway declared that anything goes). The most significant event concerning the Infield Fly Rule is Professor Howard Wasserman's book.<sup>5</sup> This entertaining book provides 202 pages arguing for the Infield Fly Rule ("IFR"). (A full response requires more than the 1,000 words allotted to this article.)

Professor Wasserman admits that the goals of the Rule are outdated.<sup>6</sup> But he seeks to prop up the ancient Rule mainly by identifying four criteria present in an IFR situation, and calling the IFR a proper "limiting rule."<sup>7</sup> The four criteria are (1) intentional failure to perform expected athletic skills in the expected manner; (2) one-sided inequitable cost-benefit disparity; (3) one-side disparity in control or influence on the play; and (4) perverse incentives.<sup>8</sup>

These criteria are somewhat like the Rule itself: they are so because someone said they are so. But the criteria do provide a helpful tool in analyzing other limiting rules of baseball and other sports in the book, and

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<sup>1</sup> Me, a name I call myself. *See* RICHARD RODGERS, *SOUND OF MUSIC*, act I, sc. 5.

<sup>2</sup> A very good place to start. *See id.*

<sup>3</sup> Cole Porter, *Anything Goes*, in *THE COMPLETE LYRICS OF COLE PORTER* 171 (Robert Kimball ed., 1983).

<sup>4</sup> *See* Andrew J. Guilford & Joel Mallord, *A Step Aside: Time to Drop the Infield Fly Rule and End a Common Law Anomaly*, 164 U. PA. L. REV 281 (2015).

<sup>5</sup> HOWARD M. WASSERMAN, *THE INFIELD FLY RULE IS IN EFFECT: THE HISTORY AND STRATEGY OF BASEBALL'S MOST (IN)FAMOUS RULE* (2018).

<sup>6</sup> *Id.* at 48, 185.

<sup>7</sup> *Id.* at 12.

<sup>8</sup> *Id.* at 57–64.

perhaps obtain legitimacy from the fact that when all four criteria exist, limiting rules like the IFR exist.

Still, it's debatable whether all four criteria exist in an IFR situation. For example, the runners influence the play by jukes and feints and various strategies.<sup>9</sup> And the hitter can influence the play by not hitting a pop-up!<sup>10</sup>

But beyond distinguishing ipse dixit criteria, players of this game can join the fun and create new criteria to justify dropping the Rule. Here are three: (5) lack of an exciting situation involving the wit and skill of the players on the field; (6) lack of ability to reward a player at least as well as the reward for a player producing a lesser result; and (7) requiring the stoppage of the athletes' live play simply with a boring raising of the umpire's hand.

IFR situations have none of these three criteria, as discussed throughout our 2015 article.<sup>11</sup> Our article yearns for the excitement of fielders and runners interacting while an infield fly hovers above. It argues that a skillful pitcher who throws a pitiful pop-up should be rewarded no less than a pitcher who throws a less pitiful hard ground ball. And thus, the skillful pitcher should be rewarded with at least the double play usually coming from a hard ground ball. Our article bewails the absurd, unexpected stoppage of play by an umpire just as athletes are about to strut and fret upon the diamond's stage.<sup>12</sup> And all the IFR nonsense is to protect baserunners, by ancient fiat, not wit and skill, from the consequences of their teammate hitting a pitiful pop-up.

Professor Wasserman's book should get any seamhead's fancy lightly turning to thoughts of baseball. His analysis shows why great legal minds are so attracted to baseball, with its rules, traditions, and backward-looking resistance to change, like a lawyer's commitment to precedents and originalism.<sup>13</sup> This is all good. But better is the simple joy of watching the boys and men of baseball play the game, unrestricted by a complex, cumbersome limiting rule. And thus we have another reason to abolish the Rule: it's too cumbersome.

Professor Wasserman acknowledges the cumbersome nature of the IFR,<sup>14</sup> and dutifully describes some recent rhubarbs.<sup>15</sup> Other than simply letting the ball fall (or not fall) as it may, the cursed Rule leaves players left in confusion as umpires make subjective decisions. The Rule raises many

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<sup>9</sup> *Id.* 78–79 (quoting Guilford & Mallord, *supra* note 4, at 284–85).

<sup>10</sup> *See* Guilford & Mallord, *supra* note 4, at 287–88.

<sup>11</sup> *Id.* at *passim*.

<sup>12</sup> *Id.* at 289–90.

<sup>13</sup> *See id.* at 289.

<sup>14</sup> *See, e.g.*, WASSERMAN, *supra* note 5, at 30, 83.

<sup>15</sup> *Id.* at 31–38.

issues,<sup>16</sup> and many of them are far more subjective than the objectivity of calling balls and strikes alluded to by Chief Justice John Roberts at his confirmation hearing.<sup>17</sup> Does the ball have a sufficient parabolic arc to be a fly rather than a line drive? Is the ball playable with ordinary effort by an infielder? Does the batter sufficiently show he was not bunting? This may be fun stuff for a lawyer or a judge whose job is to make similar calls. But it's no fun for a player on the field or a fan in the stands to watch the umpire stop play while he errs in making these arbitrary decisions.

So added to the reasons described in our 2015 article for abolishing the Rule is its complexity. This complexity has become a bigger problem since 2015 with the increase in player shifts: a second baseman now sometimes plays basically in right field.<sup>18</sup> And some might argue that the 2018 All Star Game—with a boring 25 strikeouts, 9 walks, 10 dingers, and very little activity on the bases—would have been enlivened by an IFR situation with the Rule abolished!

Finally, our 2015 article purposely and presciently started with an odd hypothetical for 2015 that had the Cubs in a World Series.<sup>19</sup> Perhaps it was our 2015 article that finally broke the Curse of the Goat,<sup>20</sup> allowing the Cubs to win the 2016 World Series. And perhaps my article you are now reading will finally destroy the cursed Infield Fly Rule. Hope springs eternal for seamheads in Spring!

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<sup>16</sup> *Id.* at 68–77.

<sup>17</sup> *See* Guilford & Mallord, *supra* note 4, at 284 n.16.

<sup>18</sup> WASSERMAN, *supra* note 5, at 25–27.

<sup>19</sup> *See* Guilford & Mallord, *supra* note 4, at 281 n.5.

<sup>20</sup> *See id.* at 284 n.17.