

## HABEAS CORPUS AND BASEBALL

Published in slightly abridged form in *Res Ipsa*, p. 1 (Spring Finals Edition 2006). For additional information on the history of criminalizing Sunday baseball playing, see 73 Am. Jur.2d Sundays and Holidays § 29 (2005); 7 C.J. Baseball (1916); 9 C.J.S. Baseball (1938); 83 C.J.S. Sunday § 39 (2005); Annot., 4 A.L.R. 382 (1919).

Author: Donald E. Wilkes, Jr., Professor of Law, University of Georgia School of Law.

In the late 19th and early 20th centuries playing baseball on Sundays was a criminal offense in many states, where police often aggressively intervened to prevent or stop baseball games from being played on the Sabbath. In 1894, “the police of the city of Brooklyn took it upon themselves to chase, club and lock up all boys and men found playing ball on Sunday,” *People ex rel. Poole v. Hesterberg*, 43 Misc. 510, 89 N.Y.S. 498, 499 (N.Y. Sup. Ct. Kings County 1904); on two consecutive Sundays in July 1910, two professional baseball teams attempting to play in Chemung County, New York were “prevented from doing so by [sheriff’s] deputies,” *Southern Tier Baseball Ass’n of Elmira v. Day*, 69 Misc. 53, 125 N.Y.S. 733, 733 (N.Y. County Ct. Chemung County 1910); and on Sunday, May 17, 1925, two professional baseball teams endeavored to play a game before 5,000 fans in Norfolk County, Virginia, whereupon “[a]t the end of the first inning the [police] officers stopped the game and arrested the players and the umpires, who were tried and convicted and sentenced,” *Crooks v. Commonwealth*, 147 Va. 593, 136 S.E. 565, 566 (1927).

Some states specifically prohibited Sunday baseball; thus, an Indiana statute, Act of Mar. 10, 1905, ch. 169, § 468, 1905 Ind. Laws 693, made it a misdemeanor to play Sunday baseball “where any [admission] fee is charged;” see *Carr v. State*, 175 Ind. 241, 93 N.E. 1071 (1911). Sometimes persons playing Sunday baseball were charged with breach of the peace or other crime even though they might be boys or young men simply playing a friendly game; see, e.g., *State v. Prather*, 79 Kan. 513, 100 P. 57 (1909); *Commonwealth v. Meyers*, 1890 WL 2866 (Pa. Common Pleas Northampton County 1890). But most of the criminal prosecutions for playing baseball on Sunday involved professional baseball players performing to paying spectators, and were founded on then-widespread Sunday Observance Laws, which criminalized operating certain businesses or engaging in certain occupations or various leisure activities on the Sabbath but did not specifically mention baseball; see, e.g., *Crooks v. Commonwealth*, *supra*; *Hiller v. State*, 124 Md. 385, 92 A. 842 (1914); *Territory v. Davenport*, 17 N.M. 214, 124 P. 795 (1912); *Territory v. Hart*, 17 N.M. 206, 124 P. 798 (1912); *Cheeves v. State*, 5 Okla. Crim. 361, 114 P. 1125 (1911); *People ex rel. Hart v. Demerest*, 56 Misc. 287, 107 N.Y.S. 549 (N.Y. Sup. Ct. N.Y. County 1905); *State v. O’Rourke*, 35 Neb. 614, 53 N.W. 591 (1892); *State v. Williams*, 35 Mo. App. 541 (1889).

Amazingly, there are seven reported cases where persons jailed for being involved in playing baseball on Sunday sought relief by filing a petition for a writ of habeas corpus. This famous writ, the Great Writ of Liberty, is the most celebrated of all writs because it provides a procedure by which the judiciary may inquire into whether an imprisoned person’s custody is lawful and, if it is not, to release that person. In two of these seven cases, preconviction habeas corpus relief was denied and the petitioner remanded to custody. *Seay v. Shrader*, 69 Neb. 245, 95 N.W. 690 (1903); *Ex parte Carroll*, 1884 WL 4674 (Ohio Common Pleas Franklin County 1884). In the other five cases, the imprisoned person was discharged from custody by the court, either prior to

trial or after conviction. *Ex parte Roquemore*, 60 Tex. Crim. 282, 131 S.W. 1101 (1910) (postconviction); *People ex rel. Poole v. Hesterberg*, supra (preconviction); *People ex rel. Bedell v. De Mott*, 38 Misc. 171, 77 N.Y.S. 249 (N.Y. Sup. Ct. Kings County 1902) (preconviction); *Ex parte Neet*, 157 Mo. 527, 57 S.W. 1025 (1900) (postconviction); *Commonwealth v. Meyers*, supra (preconviction). In each of these five cases, the habeas corpus relief was granted on the ground that the conduct charged—playing baseball on Sunday—was not a criminal offense under the laws of the state. These cases where habeas relief was granted are significant because they substantially advanced the cause of decriminalizing Sunday baseball. They demonstrate how the Great Writ contributed to completely legalizing America's greatest sport.

These five cases are important for additional reasons. They show how recurring the problem of lawlessness in law enforcement is. Just as police of today routinely violate individual rights to enforce drug laws and other vice crimes, so a century ago police commonly trampled on people's rights while endeavoring to suppress the victimless crime of Sunday baseball. In *People ex rel. Poole v. Hesterberg*, supra, for example, the court, referring to a Brooklyn police captain responsible for numerous illegal arrests of Sunday baseballers, wrote: "[The captain's] action seems to be in defiance of the decisions of our courts. He sets himself above the law; a thing grown very common with the police of this city in late years .... It cannot be said too often to those who rule the police that our government, like all free governments, is a government of laws and not of men. Those who turn it into one of men and not of laws are more dangerous to society than any other class of law breakers. They would destroy our system of government, and substitute one of arbitrary power and unlawful force."

Furthermore, these cases remind us that baseball has been a beloved American institution for a very long time. Thus, in *People ex rel. Poole v. Hesterberg*, supra, the court observed "that it is practically the unanimous sentiment of the religious and God-fearing people of the community that it is far better for our grown boys and young men who have to work indoors all the week for a living, to go into the fields on Sunday afternoon after attending church, and participate in or witness good, elevating, healthy physical exercise [playing baseball] than to be driven instead to dance gardens, drinking places, pool rooms, and worse places;" and in *Ex parte Roquemore*, supra, the Texas court announced: "It is known, of course, that baseball is the most generally practiced, patronized, and approved of all the games of exercise, and that it is the cleanest and fairest of all manly sports, and that every village and hamlet has its favorite nine, and that in every village and hamlet many ambitious youth dream of the day when they shall equal if not excel Mathewson, Speaker, Cobb, Napoleon La Joie, and Honus Wagner."

However, we also learn from these cases that in some circles playing baseball on Sunday was once regarded as atrocious misconduct. Thus, in *Commonwealth v. Meyers*, supra, the court, while granting habeas relief to someone who had played baseball on the Sabbath, nonetheless said this: "I yield to no man in readiness to condemn the conduct of this defendant and his associates in their desecration of the Sabbath. That they did that which was morally wrong there can be no doubt, and ... [was] ... an outrage upon the moral sentiment of our religious community.... I have no sympathy with these people who are desecrating the Sabbath in this way .... [What the defendant has done in playing baseball on Sunday] shocks the moral sentiment of all the good people of our city ... and ... is contrary to the wishes of and the moral sense of the entire community ...."

