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JUST SAY NO TO THE CHEAP DOUBLE PLAY

Richard D. Friedman*

The Infield Fly Rule has drawn a considerable amount of attention from legal scholars for nearly half a century. Much of the writing, in keeping with the tone of the keynote work discussing the rule, the famous *Aside* by William Stevens published in the University of Pennsylvania Law Review in 1975,¹ has been whimsical and ironical. But the *Aside* was also a genuine piece of legal scholarship. And now, Howard Wasserman has written a book—an entire book!—on the rule, and done so without whimsy or irony.

That, in my view, is much to his credit. True, the rule is one governing games—baseball and (though Wasserman does not discuss it) softball—not, say, sales or insurance, or judicial procedure. But so what? Sports are, after all, significant human activities. Every year, millions of people play them and millions watch them being played, and both players and fans pour great energy and passion into them. A rule governing any such activity is worth considering on its own terms, without being sheepish about the effort.

I was glad to see this book for another reason. As Wasserman notes, Mitchell Berman and I have been drafting a book to develop a law school course studying sports as legal systems. Rules define a sport, and from a purely pedagogical standpoint, the rules of sports offer fertile ground to explore legal concepts, and to do so in a way that for many students and teachers is particularly engaging and enjoyable. So any serious attempt to grapple with a sports rule is excellent grist for our mill.

And there is no doubt that Wasserman has treated the matter seriously. He has spent enormous effort on the project. He has for example, studied every infield fly situation in the major leagues over a period of eight years, and he has compiled very interesting data on the rule and on its cousin, the rule preventing a batter who strikes out from attempting to reach first base when the base is occupied and there are fewer than two outs. He has, furthermore, developed a sustained and coherent theory supporting the rule. That does not necessarily mean his theory is persuasive, and I am not completely convinced.

The Infield Fly Rule addresses the situation in which two or three runners are both forced and frozen: They are forced because there is no empty base before them (so they have to run on a ground ball), and they are frozen

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¹ William J. Stevens, *Aside: The Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975).

because the batter has hit a catchable fly ball with fewer than two outs (so they can't stray far from the base). Absent the rule, an infielder could let the ball drop and get at least two relatively easy force outs. To prevent such a cheap-seeming double—or triple—play, invocation of the rule avoids the runners' dilemma by declaring the batter out, thus allowing each runner to stay safely on or near his base.

Wasserman puts great weight on the fact that the crucial act that the rule is meant to prevent—letting the ball drop—is contrary to the ordinary expectations of the game. But again I wonder, so what? In a complex game what is optimal in one situation may not be in another. Wasserman recognizes this, but he believes this particular tactic should not be countenanced because allowing multiple outs on the play would produce an inequitable result, totally within the control of the defense, and the defense would have a “perverse incentive” to let the ball drop every time the situation arose.

But where's the inequity here? If the rules allowed the infield to initiate a double or triple play by letting a pop fly drop, a feature of the game would be that in the prescribed situation the worst thing a batter could do, even worse than rapping a ground ball right at an infielder, would be to pop up—and the best thing the pitcher and catcher could do, in selection and execution of pitches, would be to induce that pop-up. Wasserman recognizes this argument, but he dismisses it rather briefly. He contends that control and influence over a play must be measured “once the play has begun, and not before”—and that in this situation “the play” includes “what each side can do once the pitch is hit.”² That strikes me as too narrow. If one team has put itself in position that it need only take an easy action to achieve a significant result, more power to it—no matter how far back one need look (including training) to find the reasons why it has been able to do so.

Having said that, I am inclined to agree with Wasserman that the game is better with the Infield Fly Rule than without. In part this is because the double plays that would result without the rule would on the whole be rather boring. And in part my response is purely path dependent. For well more than a century, the rule has precluded this particular kind of double play. That consideration is not altogether preclusive, but I believe it puts the burden on those who would allow the defense to act this way, given that it would be a rather substantial change to the way the game is played.

But even assuming that the defense should not be allowed to achieve a cheap double play on an infield fly, the rule is still perplexing and even perverse: It prevents the undesired pro-defense result by giving the defense a windfall, recording an out even if (as in the 2012 National League wildcard

² HOWARD M. WASSERMAN, *INFIELD FLY RULE IS IN EFFECT: THE HISTORY AND STRATEGY OF BASEBALL'S MOST (IN)FAMOUS RULE 63* (2018).

game, which Wasserman quite properly highlights) no one catches the ball. Shouldn't the rule instead require the defense to earn its outs in the usual manner and simply prevent it from getting two or three of those outs by forcing runners when an infield fly drops uncaught? There are various possibilities to achieve this result. I hope to explore them in a fuller piece inspired by this engaging book.