



George Sisler, first baseman for the St. Louis Browns of the American League, circa 1915. One of his baseball bats, auctioned in 2016, was the subject of a legal dispute. (Photo by European/FPG/Archive, Getty Images)

## As fans look ahead to new baseball season, judges look back at game's history

When it comes to our national pastime, judges have a lot to say

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"It's my job to call balls and strikes," John Roberts told the Senate Judiciary Committee in 2005 when being considered for Chief Justice of the United States. For some judges, it turns out when the case before them actually involves baseball, they can't just be the umpire.

When confronting a dispute with a connection to baseball, some judges have turned nostalgic, poeticizing about the game's history, players and traditions before taking a swing at the issues.

In 1966, the Supreme Court of Pennsylvania ruled in *Conrad v. Pittsburgh* that the city's plan for financing a new ballpark for the Pirates did not violate a provision of the state's constitution requiring voter approval to incur debt.

While Justice Michael Musmanno agreed, he wrote separately to challenge a citizen group that had balked—calling the stadium a "luxury" and not an "essential service."

"It would be a sad day indeed if the Pirates should leave Pittsburgh and not return," Musmanno lamented, thinking of the loss of the "gladsome and thrilling opening day of the baseball season each spring."

The civic group would drop its opposition, the jurist was sure, after it experiences "the spine-tingling strains of the 'Star Spangled Banner,'" hears "the dramatic crack of the bat as the ball goes soaring out into space" and watches "the dust of the diamond exploding into clouds as the runner with the winning run comes furiously sliding into the home plate."

The joys of opening day (this year's opener is March 25) is just one of the ways judges have romanticized the national pastime.

In *Flood v. Kuhn* (1972), the U.S. Supreme Court upheld baseball's denial of a player's right to free agency. Before turning to the law of antitrust, Justice Harry Blackmun's majority opinion laid out several milestones in the game's history, including the formation of the National League in 1876, the first World Series in 1903 and the birth of the Major League Baseball Players Association in 1966.

Blackmun spoke of the "happenings, habits, and superstitions about and around baseball that made it the 'national pastime' or, depending upon the point of view, 'the great American tragedy.'"

He went on to name 88 of the game's greats who "have sparked the diamond and its environs and that have provided tinder for recaptured thrills" and "reminiscence and comparisons." Blackmun would later express regret for his oversight in leaving Mel Ott off the list.

At the 1981 winter meetings of the American Association of Professional Baseball Clubs, one team's president and general manager hurled vicious slurs at another team's executive when the two couldn't agree on issues.

The ensuing defamation suit, in *King v. Burris* (1984), landed in the courtroom of Colorado federal judge John Kane. He admitted at the top of the first that he was not capable of "judicial restraint" because "this case is about baseball!" If Justice Blackmun couldn't do it, Kane noted, it was "too much to expect a mere tyro on the district bench to cleave to the issues."

Kane went on to recall Babe Ruth's "called shot," Carlton Fisk's 12th inning home run to win Game 6 of the 1975 World Series and controversies over the designated hitter and artificial turf.

"Baseball mirrors our foibles and fallibilities," Kane observed. "The game has survived the Black Sox scandal of 1919, striking umpires, striking players, drug and alcohol problems, and even perhaps George Steinbrenner."

In 2016, Christie's auctioned the bat that George Sisler used to hit his record-breaking 257<sup>th</sup> hit in the 1920 season. The historic lumber went for \$137,500. Hillerich & Bradsby, the manufacturer of Sisler's Louisville Slugger, sued, saying that the bat—given to it by Sisler—had been stolen from its warehouse years earlier.

The bat had been part of an "Old Timers Bat Display." In 1967, H&B loaned the display in connection with the World Series. It was returned. But then it was never seen again by H&B until Christie's listed it for auction.

The case was about jurisdiction. But the Kentucky federal court's opinion, in *Hillerich & Bradsby Co. v. Christie's* (2017), first reads like a book report of facts and figures on the St. Louis Browns slugger. Sisler, readers learn, was nicknamed "Gorgeous George" and called by Ty Cobb "the nearest thing to a perfect ballplayer" he had ever seen. The court also gave Sisler a nod for being included on Blackmun's list in *Flood v. Kuhn* of the game's elite.

Another case arose from a dispute between the Cincinnati Reds and Ohio's tax commissioner over the ball club's handling of certain taxes related to promotional items—bobbleheads, caps, shirts and the like—bought to be distributed to fans on giveaway games.

*Cincinnati Reds v. Testa* (2019) reached the Supreme Court of Ohio, which immediately discussed the history of the game, including the first radio broadcast of a contest in 1921, the first televised World Series in 1947 and the breaking of the color barrier in both the American and National Leagues.

Then Ohio's top court turned inward, laying out a highlights reel of Ohioans' contributions to the game. The court's tributes included Judge Kenesaw Mountain Landis, the sport's first commissioner and a native of Millville; the Big Red Machine era of the 1970s; and Philadelphia Phillies slugger Mike Schmidt, a native of Dayton and an Ohio University alumnus.

The lack of restraint even extended to the decision, which the court provided by borrowing the familiar words of longtime Reds radio announcer and recipient of the National Baseball Hall of Fame's Ford C. Frick Award, Marty Brennaman: "This one belongs to the Reds."

When baseball lands in court, some judges go just a bit outside.



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