

## THE JURISPRUDENCE OF BASEBALL: RULES VERSUS STANDARDS

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### Abstract

*Baseball is a legal system with a set of laws governing play and an adjudicative process for resolving issues that arise during the game. As in other legal systems, some of these laws are rules and others are standards. An extensive legal literature exists discussing the relative advantages and disadvantages of rules and standards in ordinary legal systems. This Article applies the insights from that literature to the laws of baseball and recommends changes to some baseball laws. In particular, this Article recommends using precise rules to regulate plays that occur frequently, that require players to decide how to act before the umpire declares how the law applies, or that involve situations in which consistency in how the law is interpreted or applied is particularly important. In contrast, standards are more appropriate when it is difficult to formulate a precise definition of the situation or conduct that the law seeks to regulate in advance of its occurrence. In addition, this Article discusses how administrative issues—such as the inability of umpires and players to accurately measure most distances on a baseball field—impact the optimal design of many rules.*

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## INTRODUCTION

In his opening statement at his confirmation hearing, Chief Justice John Roberts famously stated, “Judges are like umpires. Umpires don’t make the rules, they apply them.”<sup>1</sup> He also promised to “remember that it’s my job to call balls and strikes, and not pitch or bat.”<sup>2</sup> Chief Justice Roberts’s usage of the balls and strikes<sup>3</sup> analogy is noteworthy. The laws of baseball precisely define the strike zone, so that calling balls and strikes requires almost no interpretation by the umpire.<sup>4</sup> Thus, by his reference to the umpire’s role, Chief Justice Roberts was invoking the “very deepseated idea of the judicial function . . . that judges apply rules.”<sup>5</sup> In doing so, he was, of course, downplaying the great amount of discretion that judges exercise in making many decisions.<sup>6</sup> However, Chief Justice Roberts also was failing to acknowledge that umpires must sometimes apply vague standards that require a great deal of interpretation and discretion.<sup>7</sup>

This Article takes up the umpire side of the analogy. It examines the use of rules and standards in the laws governing baseball play by applying the insights of legal theorists regarding the relative advantages and disadvantages of rules and standards in ordinary legal systems. Like any sport, baseball is a legal system that has laws governing play “that must be understood, interpreted, and applied by those playing and supervising the game, within an adjudicative process

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1. *Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 55 (2005) (statement of John G. Roberts, Jr., Nominee to be Chief Justice of the United States).

2. *Id.* at 56.

3. *See Strike Zone*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/glossary/rules/strike-zone> (last visited Nov. 8, 2023) (“Strikes and balls are called by the home-plate umpire after every pitch has passed the batter, unless the batter makes contact with the baseball (in which case the pitch is automatically a strike).”).

4. *See* MAJOR LEAGUE BASEBALL, OFFICIAL BASEBALL RULES Definition of Terms: *Strike Zone* (2023) [hereinafter OFFICIAL BASEBALL RULES]. The Official Baseball Rules can be accessed at: <https://img.mlbstatic.com/mlb-images/image/upload/mlb/wqn5ah4c3qtivwx3jatm.pdf>.

5. Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1708 (1976).

6. *See* RICHARD A. POSNER, HOW JUDGES THINK 78 (2008) (“Neither [Roberts] nor any other knowledgeable person actually believed or believes that the rules that judges in our system apply, particularly appellate judges and most particularly the Justices of the U.S. Supreme Court, are given to them the way the rules of baseball are given to umpires.”); Kennedy, *supra* note 5, at 1708 (explaining how putting law in rule form “shores up the legitimacy of judicial action” by disguising the exercise of judicial discretion).

7. *See* HOWARD M. WASSERMAN, INFIELD FLY RULE IS IN EFFECT: THE HISTORY AND STRATEGY OF BASEBALL’S MOST (IN)FAMOUS RULE 4 (2019) (“Roberts was criticized for an overly simplistic vision of both judging and umpiring.”).

allowing the games to proceed.”<sup>8</sup> Thus, ordinary legal systems and sports have much to learn from the academic study of one another, and many legal scholars have called for increased attention to the jurisprudence of sports.<sup>9</sup> Indeed, law schools including those at the University of Michigan, the University of Pennsylvania, and the University of Virginia have begun to offer courses in the jurisprudence of sports.<sup>10</sup>

Baseball is a particularly fertile area for study. Unlike other sports, “[e]very pitch and every play requires a ruling” by an adjudicator, the umpire.<sup>11</sup> Overall, “baseball is a highly legalistic game with a far more elaborate set of rules than any other sport.”<sup>12</sup> In addition, baseball’s culture—including the tendency to argue about the adjudicator’s decisions—parallels the litigious nature of the

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8. *Id.* at 3; see also MITCHELL N. BERMAN & RICHARD D. FRIEDMAN, *THE JURISPRUDENCE OF SPORT: SPORTS AND GAMES AS LEGAL SYSTEMS* 2 (2021) (“[S]ports and games are, in a clear and recognizable sense, legal systems. . . . [T]he law-ness of sports systems is not merely superficial or semantic. ‘Every organized sport begins the same way, with the creation of rules.’” (citation omitted)).

9. See Mitchell N. Berman, *Replay*, 99 CALIF. L. REV. 1683, 1686 (2011) [hereinafter Berman, *Replay*] (“[O]rganized sports systems have much more in common with ordinary legal systems than is generally appreciated and, therefore, . . . legal theorists might find much both to learn and to teach by paying closer attention to the world of sports.”); Jeffrey Standen, *Foot Faults in Crunch Time: Temporal Variance in Sports Law and Antitrust Regulation*, 41 PEPP. L. REV. 349, 349 (2014) (“The study of sports law is interesting because sports contests provide a microcosm for the observation of rules in action and a laboratory for experiments in legality.”); J.S. Russell, *Remarks on the Progress of a Jurisprudence of Sport*, 63 N.Y. L. SCH. L. REV. 175, 176 (2018) (explaining that it is “obvious” that there should be scholarly attention to a jurisprudence of sport because “sport embodies the main elements of a legal system” but also has distinctive characteristics); Mitchell N. Berman, “Let ‘Em Play” *A Study in the Jurisprudence of Sport*, 99 GEO. L.J. 1325, 1331 (2011) [hereinafter Berman, *Let ‘Em Play*] (“In short, sporting systems. . . comprise a worthy object of legal-theoretical study.”).

10. See, e.g., *Rules of Play: Sports and Games as Legal Systems*, UNIV. MICH. LAW SCH., <https://michigan.law.umich.edu/courses/rules-play-sports-and-games-legal-systems> (last visited Nov. 18, 2023); *Sports as Legal Systems* (Berman), UNIV. PA. CAREY LAW SCH., <https://goat.law.upenn.edu/cf/coursefinder/course-details/?course=sports-as-legal-system&sec=LAW%20715401&term=2022C&page=1> (last visited Nov. 18, 2023); *Sports and Games*, UNIV. VA. CAREY SCH. OF LAW, <https://www.law.virginia.edu/courses/sports-and-games-124218667> (last visited Nov. 18, 2023).

11. Spencer Weber Waller, Neil B. Cohen & Paul Finkelman, *Introduction*, in *BASEBALL AND THE AMERICAN LEGAL MIND* ix (Spencer Weber Waller, Neil B. Cohen & Paul Finkelman, eds. 1995); see also WASSERMAN, *supra* note 7, at 4 (“We could imagine a long stretch in a basketball game in which teams exchange baskets, missed shots, and rebounds on both ends of the floor, with the clock moving, players running from one end to the other, and officials making no calls or signals. Such a stretch with no formal pronouncements from a game official, even if only to establish the obvious (the pitch is a strike, the batter is out on a caught fly ball), is impossible and unimaginable in baseball.”).

12. Waller et al., *supra* note 11, at ix.

American legal system's culture.<sup>13</sup> There has resultantly been "considerable use of legal insights to inform the world of baseball and baseball insights to inform the world of law."<sup>14</sup>

This Article applies legal theory to the study of the laws governing play in Major League Baseball (MLB), the highest professional baseball league in the United States.<sup>15</sup> The main source of law is the *Official Baseball Rules*, which also governs lower leagues of professional baseball that are MLB-operated as well as some amateur and non-professional leagues.<sup>16</sup> Despite its name, the *Official Baseball Rules* includes some standards rather than rules. In contrast, some sports refer to the instructions governing gameplay as *laws*. For example, the set of laws governing soccer overseen by the Fédération Internationale de Football Association (FIFA) and the set of laws governing rugby overseen by World Rugby are both named the "Laws of the Game."<sup>17</sup>

There are additional sources of professional baseball laws. For example, each MLB stadium has ground rules that govern particular situations that can occur at that stadium, covering issues such as whether a batted ball that hits a concrete portion of the top of an outfield wall in flight and "bounces back onto the field" is a home run or in play.<sup>18</sup> In addition, the *Umpire Manual* published

13. *Id.*

14. *Id.* at x.

15. *See About MLB*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/official-information/about-mlb> (last visited Nov. 16, 2023). The MLB is made up of thirty member clubs: twenty-nine in the United States and one in Canada. *Id.* This Article occasionally uses male-gendered pronouns or terminology in its discussion of the *Official Baseball Rules* and MLB play. While a woman has not yet played in the MLB, this Article's discussion and argument is not intended in any way to disregard that as a future possibility. *See Emily Lovelass, Can She Play? The Journey of a Female Athlete in the Industry of Baseball*, MISS. SPORTS L. REV. 54, 55 (2020).

16. OFFICIAL BASEBALL RULES, *supra* note 4, at Foreword. An eleven-person Competition Committee can amend these rules. The Competition Committee is composed of six representatives from MLB clubs; four players, and one umpire. *See Competition Committee & On-Field Changes*, Major League Baseball Players, <https://www.mlbplayers.com/player-competition-committee> (last updated Sept. 9, 2022).

17. *See Laws of the Game*, FIFA, <https://www.fifa.com/about-fifa/organisation/contact-fifa/laws-of-the-game> (last visited Nov. 16, 2023); *Laws of the Game*, WORLD RUGBY, <https://www.world.rugby/the-game/laws/home> (last visited Nov. 16, 2023); *see also* Berman, *Let 'Em Play*, *supra* note 9, at 1329 (noting that "[w]hile the American sports scene is dominated by three home-grown team sports—baseball, football, and basketball—all of which are governed by official 'rule books,' the most popular global team sports like soccer, cricket, and rugby (both league and union) are all formally governed by 'laws,' not 'rules'").

18. *See e.g.*, MAJOR LEAGUE BASEBALL, BUSCH STADIUM: 2023 GROUND RULES 6 (2023), <https://img.mlbstatic.com/mlb-images/image/upload/mlb/dhhysvysajsdrrbsn5wfd.pdf> (providing Busch Stadium Ground Rule that states a "[b]atted ball in flight striking the

by the MLB Commissioner's Office contains official interpretations of some of the *Official Baseball Rules*.<sup>19</sup>

Part I of this Article discusses the types of laws and the forms they can take. Part II then discusses the relative advantages and disadvantages of rules and standards identified by legal scholars that are relevant to the laws of baseball. It also discusses the implications of these characteristics, specifically for lawmakers choosing whether to promulgate a law as a rule or a standard. Part II also highlights certain differences between baseball and ordinary legal systems that can be relevant to the choice between rules and standards. Part III then examines several of the laws of baseball by analyzing whether their forms as rules and standards are consistent with legal theory. Based on these analyses, Part III also recommends changes to some of these laws.<sup>20</sup> In particular, it argues for using precise rules to regulate plays that occur frequently, that require players to decide how to act before the umpire declares how the law applies, or that involve situations in which consistency in how the law is interpreted or applied is particularly important. In contrast, this Article recommends using standards when it is difficult to precisely define the situations or conduct the law seeks to regulate in advance of such situations or conduct occurring. In addition, it discusses how administrative issues, such as the inability of umpires and players to accurately measure most distances on a baseball field, should impact the design of certain rules.

#### I. TYPES AND FORMS OF LAWS

Laws can have different purposes. Some laws are designed to deter undesirable conduct,<sup>21</sup> such as criminal laws.<sup>22</sup> Other laws, known as "formalities," are instead merely "supposed to help parties in communicating clearly to the judge which of various alternatives they want him to follow in

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concrete portion of the [top of an outfield] wall or beyond regardless of whether or not it bounces back onto the field" is a home run).

19. See OFF. OF THE COMM'R OF BASEBALL, MAJOR LEAGUE BASEBALL UMPIRE MANUAL pt. II (2019 ed.).

20. See Berman, *Replay*, *supra* note 9, at 1687 ("Like ordinary lawmakers, gamewrights confront virtually the entire panoply of problems that traditionally engage legal theorists: [including] . . . how best to navigate tradeoffs between rules and standards. . .").

21. See Pierre J. Schlag, *Rules and Standards*, 33 UCLA L. REV. 379, 384 (1985) ("Many fields of law including tort, criminal, and regulatory law, are ostensibly designed to deter selected activities or conduct.").

22. See Kennedy, *supra* note 5, at 1691.

dealing with disputes that may arise later in their relationship[s].”<sup>23</sup> The requirements for executing a will are examples of formalities.<sup>24</sup> Determining whether a particular law is a formality or is intended to deter certain behavior can be difficult.<sup>25</sup> In addition, some laws exist in an intermediate category, possessing characteristics both of formalities and deterrent laws. An example is the law of damages that applies when someone injures another person despite not engaging in “intrinsically immoral or antisocial behavior.”<sup>26</sup> Similarly, some laws regarding form, such as the statute of frauds and parole evidence rule in contract law, are frequently drafted to prevent fraud.<sup>27</sup>

Some of the laws of baseball fall into this intermediate category. For example, the law defining the strike zone prescribes whether a pitch that the batter does not swing at is a ball or a strike; a pitch that crosses any part of the strike zone is a strike, and otherwise it is a ball.<sup>28</sup> The strike zone is partly a formality because some definition of balls and strikes is necessary for the game to be played. Pitchers need to know where they can throw pitches to be deemed strikes, sans umpire error. Batters also need to know the pitch locations that are generally not viewed as strikes to determine which pitches they can choose not to swing at without strikes being called.<sup>29</sup>

However, the strike zone also partly serves a deterrent function: it deters pitchers from throwing pitches that batters would be unable to reach easily and deters batters from not swinging at pitches that they can easily reach.<sup>30</sup> If the

23. *Id.*; see also Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L. J. 557, 618 (1992) (stating that formalities often “are designed to facilitate rather than regulate behavior”). Of course, laws can have many other purposes that are not relevant to this article, such as to punish, compensate, or express community values.

24. Kaplow, *supra* note 23, at 568.

25. See Kennedy, *supra* note 5, at 1692 (“While the two poles are quite clear in theory, it is often extremely difficult to decide how the concepts involved apply in practice. One reason for this is that, whatever its purpose, the requirement of a formality imposes some cost on those who must use it, and it is often unclear whether the lawmaker intended this cost to have a deterrent effect along with its cautionary and evidentiary functions.”).

26. *Id.* at 1692–94.

27. See e.g., Note, *Statute of Frauds—The Doctrine of Equitable Estoppel and the Statute of Frauds*, 66 MICH. L. REV. 170, 171 n.6 (1967) (quoting Lord Redesdale as stating that the statute of frauds “was made for the purpose of preventing perjuries and frauds”).

28. See OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Strike, Ball*.

29. See *Baseball Strike Zone*, ROOKIE ROAD, <https://www.rookieroad.com/baseball/101/strikezone/#:~:text=The%20strike%20zone%20is%20primarily,counted%20as%20strikes%20or%20balls> (last visited Nov. 16, 2023) (“The strike zone is primarily used to determine whether pitches should be counted as strikes or balls.”).

30. See Mark Bailey, *Understanding the Strike Zone in Baseball*, BASEBALLBIBLE, <https://www.baseballbible.net/strike-zone/> (last updated May 24, 2023) (“The point of the

batter does not swing at a pitch thrown outside of the strike zone, the pitcher is penalized with a “ball.” If four balls are thrown, the batter is awarded first base.<sup>31</sup> Similarly, if a batter fails to swing at a pitch thrown inside the strike zone, the batter is penalized with a “strike” and the batter is out if he receives three strikes.<sup>32</sup> Games would be very boring if pitchers continually threw pitches that batters could not reach, or if batters continually did not swing at pitches that they easily could reach.

Regardless of a law’s purpose, the law can be phrased as a rule or as a standard.<sup>33</sup> In the legal academic literature, agreed-upon definitions of rules and standards do not exist.<sup>34</sup> In fact, the words *rules* and *standards* are often used interchangeably.<sup>35</sup> Nevertheless, “a general consensus has emerged regarding how the key attributes of rules and standards differ.”<sup>36</sup> In particular, a rule more precisely defines what conduct will trigger certain legal consequences, and a standard defines the conduct (and sometimes the consequences) in more general terms.<sup>37</sup> As a result, in applying a precise rule, the adjudicator need only determine whether the actor engaged in the exact conduct that is specified by the rule’s text. In applying a standard, the factfinder must determine both (1) the conduct that occurred and (2) whether that conduct violated the standard.<sup>38</sup> Thus,

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strike zone is twofold. It forces your pitcher to throw good pitches and forces batters to swing at good pitches. . . . A strike zone forces both the batter and the pitcher to be aggressive.”).

31. OFFICIAL BASEBALL RULES, at Definition of Terms: *Base on Balls*.

32. *Id.* at R. 9.15.

33. See Kennedy, *supra* note 5, at 1694–95 (“The categorization of rules as formalities or as designed to deter wrongdoing is logically independent of the issues of formal realizability and generality.”).

34. See Russell D. Covey, *Rules, Standards, Sentencing, and the Nature of Law*, 104 CALIF. L. REV. 447, 456 (2016) (“The terms ‘rules’ and ‘standards’ do not have precise or fixed meanings in the legal literature.”).

35. Kaplow, *supra* note 23, at 560 n.2 (“Outside the debate over formulation of the law, the terms [rules and standards] are often used interchangeably.”).

36. Covey, *supra* note 34, at 456.

37. See Kathleen M. Sullivan, *The Justices of Rules and Standards*, 106 HARV. L. REV. 22, 58 (1992) (“A legal directive is ‘rule’-like when it binds a decisionmaker to respond in a determinate way to the presence of delimited triggering facts.”); Michael Coenen, *Rules Against Rulification*, 89 YALE L. J. 644, 652 (2014) (“The distinction [between rules and standards] depends in large part on specificity. The paradigmatic ‘rule’ falls toward the high end of the specificity spectrum; it ascribes definitive consequences to the satisfaction of precise and determinate criteria. . . . The paradigmatic ‘standard,’ by contrast, leaves many application-related details unresolved.”); Schlag, *supra* note 21, at 382–83 (“The paradigm example of a rule has a hard empirical trigger and a hard determinate response. . . . A standard, by contrast, has a soft evaluative trigger and a soft modulated response.”).

38. See Kaplow, *supra* note 23, at 559–60 (“[A] rule may entail an advance determination of what conduct is permissible, leaving only factual issues for the

the primary difference between rules and standards is the extent to which content is given to the laws before or after the relevant conduct occurs.<sup>39</sup>

For example, imagine someone charged with speeding. If the relevant speeding law is a rule, such as a forty-five-miles-per-hour speed limit, the judge need only decide whether the driver drove faster than forty-five miles per hour. In contrast, if the law is a standard, such as one that prohibits “driving at an unsafe speed,” the judge must decide both the speed that was driven and whether that speed was unsafe under the circumstances.<sup>40</sup>

Despite these distinctions, no clear line exists dividing rules from standards; instead, they span a continuum. In other words, laws can be more or less rule-like or standard-like.<sup>41</sup> For example, a law setting a forty-five-miles-per-hour speed limit on a road during “normal conditions” is more rule-like than a law prohibiting driving at an unsafe speed or speed that is not “reasonable,” but is less rule-like than a law that also defines “normal conditions” and specifies lower speed limits in other conditions.<sup>42</sup> Also, standards that employ rebuttable or

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adjudicator. . . . A standard may entail leaving both specification of what conduct is permissible and factual issues for the adjudicator.”); Kennedy, *supra* note 5, at 1688 (“The application of a standard requires the judge both to discover the facts of a particular situation and to assess them in terms of the purposes or social values embodied in the standard.”).

39. See Kaplow, *supra* note 23, at 559 (“Arguments about and definitions of rules and standards commonly emphasize the distinction between whether the law is given content *ex ante* or *ex post*.”).

40. Robert E. King & Cass R. Sunstein, *Doing Without Speed Limits*, 79 B.U. L. REV. 155, 158-62 (1999). Following the repeal of the federal speed limit in 1995, drivers’ speeds on public highways in Montana were governed by a standard. Specifically, the relevant statute required people to drive “at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to the view ahead.” *Id.*; MONT. CODE ANN. § 61-8-303 (1999) (amended 2003). In December 1998, the Montana Supreme Court invalidated this standard as being unconstitutionally vague, concluding that “the average motorist in Montana would have no idea of the speed at which he or she could operate his or her motor vehicle on this State’s highways.” *State v. Stanko*, 974 P.2d 1132, 1136-37 (1998). Montana reimposed numerical speed limits in June 1999. See Grantlee W. Hohlbein, *Life in the (Really) Fast Lane: Why Rural States Should Implement a High-Speed Minimum Speed Limit on Additional Freeway Lanes*, 48 TRANSP. L. J. 71, 76 (2022).

41. See Coenen, *supra* note 37, at 653 (“The two categories [rules and standards] simply facilitate discussion of something that is very much a matter of degree.”); Kaplow, *supra* note 23, at 561 (explaining there is “the common practice of referring to rules and standards as if one were comparing pure types, even though legal commands mix the two in varying degrees”).

42. Kaplow, *supra* note 23, at 562.

irrebuttable presumptions that certain behavior will be permitted or forbidden can be more rule-like than other standards.<sup>43</sup>

In addition, over time, standards can become more rule-like. As judges apply a standard to factual situations, they can create precedents and rules of thumb.<sup>44</sup> This can result in a “rulification” of the standard.<sup>45</sup> Also, as judges gain experience in applying a standard, they may acquire the knowledge sufficient to create and use a more specific rule instead of the standard.<sup>46</sup> In contrast, over time, a rule can become more standard-like. For example, judges who, for equitable reasons, create a counter-rule or exceptions to a rule can convert the rule into a “covert standard.”<sup>47</sup>

Both rules and standards can vary in degrees of complexity. For example, a simple rule might set a forty-five-miles-per-hour speed limit for a particular road at all times, while a more complex rule might set a forty-five-miles-per-hour speed limit during the daytime, a forty-miles-per-hour speed limit during the nighttime, and a thirty-five-miles-per-hour speed limit when the road is wet.<sup>48</sup> Standards can also differ in complexity based on the number of factors that are required to be considered in applying the standards. For example, a simple standard might prohibit driving at an *unsafe speed* as determined by visibility at the time, while a more complex standard might base the determination of an unsafe speed on multiple factors, including visibility, the amount of traffic, and the presence of rain or snow on the road. In practice, however, an adjudicator (such as a jury) might simplify a complex standard by applying only those “factors that are most salient and easiest to comprehend.”<sup>49</sup>

In summary, there are many types of rules and standards with much gray area between them. Nevertheless, “[t]here seems no basis for disputing that the notions of rule and standard, and the idea that the choice between them will have wide-ranging practical consequences, are useful in understanding and designing

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43. See *id.* at 600.

44. See Aziz Z. Huq & John D. Michaels, *The Cycles of Separation-of-Powers Jurisprudence*, 126 YALE L. J. 346, 421–22 (2016).

45. See Kaplow, *supra* note 23, at 577 (stating that an “enforcement authority’s first adjudication [can] constitute[] a precedent for future enforcement proceedings... essentially transform[ing] the standard into a rule”); Coenen, *supra* note 37, at 653, 655 (stating the “rulification” of a standard “is a natural and recurring consequence of issuing opinions with precedential effect”).

46. See Kennedy, *supra* note 5, at 1705–06.

47. *Id.* at 1700–01.

48. The Internal Revenue Code, many of the accompanying tax regulations, and many of the regulations promulgated by the Occupational Safety and Health Administration are examples of very complex rules. See Kaplow, *supra* note 23, at 565–66, 594.

49. *Id.* at 594.

legal institutions.”<sup>50</sup> Thus, legal scholars have long discussed when laws should be promulgated as rules or standards.<sup>51</sup>

## II. WHEN TO USE RULES AND STANDARDS

As discussed above, a key difference between rules and standards is when content is provided to the law, i.e., when it is determined what specific conduct is permissible.<sup>52</sup> For rules, the content is provided when the rule is promulgated and for standards, the content is provided when the standard is enforced.<sup>53</sup> This difference causes rules and standards to have relative advantages and disadvantages. Indeed, the arguments that the legal community “make for or against rules or standards tend to be pretty much the same regardless of the specific issue involved.”<sup>54</sup> This Section focuses on the relative advantages of rules and standards relevant to baseball.<sup>55</sup>

These advantages and disadvantages suggest several factors that should be considered in deciding whether a particular law should be formulated as a rule or a standard. These factors include the frequency with which the law will govern conduct, the difficulty of precisely defining the regulated conduct, and the importance of consistency in the enforcement of the law.

### *A. Rules are Preferable When the Law Will Govern Conduct More Frequently*

A primary advantage of standards is that they are easier to create than rules. Lawmakers drafting a standard need not provide much content for the law and instead can leave an adjudicator to determine the content later.<sup>56</sup> Thus, the

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50. Kennedy, *supra* note 5, at 1701.

51. See Schlag, *supra* note 21, at 380 (“[D]isputes that pit a rule against a standard are extremely common in legal discourse. Indeed, the battles of legal adversaries (whether they be judges, lawyers, or legal academics) are often joined so that one side is arguing for a rule while the other is promoting a standard. And this is true regardless of whether the disputes are petty squabbles heard in traffic court or cutting edge controversies that grace the pages of elite law reviews. As members of the legal community, we are forever involved in making arguments for or against rules or standards.”).

52. See *supra* note 39 and accompanying text.

53. See Kaplow, *supra* note 23, at 559–60.

54. Schlag, *supra* note 21, at 380.

55. The academic literature discussing the characteristics of rules and standards is vast. Thus, the citations provided in this Article are merely representative of the key themes in this literature.

56. See BERMAN & FRIEDMAN, *supra* note 8, at 95.

promulgation costs of standards are generally lower than those of rules.<sup>57</sup> For example, promulgating a state law that prohibits driving at an unsafe speed does not require lawmakers to determine what constitutes unsafe speeds on particular roads throughout the state. In contrast, setting appropriate speed limits requires factual investigations to determine the maximum safe driving speed for each road.

However, rules generally are easier than standards for an adjudicator to apply in enforcing the laws.<sup>58</sup> For example, assessing whether a rule—a forty-five-miles-per-hour speed limit—was violated requires the judge to decide only whether the driver drove faster than forty-five miles per hour. Assessing whether an unsafe speed standard was violated requires the judge to decide what speed was unsafe and whether the driver exceeded that speed. Determining an unsafe speed requires consideration of many factors, such as the weather and visibility at the time, the dimensions and condition of the road, and the presence of other cars and pedestrians.

In summary, the promulgation costs of rules are higher than those of standards, but the enforcement costs of rules are lower. Therefore, a primary factor in determining whether a rule or standard should be used is the frequency with which the law will govern conduct. All else being equal, the more frequently the law will govern conduct, the more likely the law should be a rule. Although the cost of promulgating a rule is higher, the cost only has to be incurred once, while the higher enforcement costs of a standard will have to be incurred frequently.<sup>59</sup> In contrast, if the law will govern the conduct infrequently, a rule's lower enforcement cost is less likely to justify its higher promulgation costs.<sup>60</sup> Thus, for example, at least on a well-traveled road, the combined promulgation and enforcement costs are very likely lower for a speed limit rule than for an unsafe speed standard.<sup>61</sup>

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57. See Kaplow, *supra* note 23, at 562 (stating that “[r]ules are more costly to promulgate than standards because rules involve advance determinations of the law’s content”).

58. See *id.* at 562–63 (stating that having standards increases costs for “enforcement authorities to apply because they require later determinations of the law’s content”); BERMAN & FRIEDMAN, *supra* note 8, at 95 (stating that the notion “that rules are cheaper and easier to apply (because the rule-applier need not make complex or uncertain evaluative judgments)” is a “central insight” of “[t]he legal theoretical literature on the tradeoffs between rules and standards”).

59. See Kaplow, *supra* note 23, at 562–63.

60. *Id.*

61. Similarly, lawmakers promulgating a rule might be able to choose how much effort to put into determining the proper content of the rule. All else equal, the more often a rule will govern people’s conduct, the more costs should be expended in determining the proper content of the rule. *Id.* at 579–80.

*B. Standards are Preferable When Precisely Defining the Regulated Conduct is Difficult*

Because rules more specifically define the conduct regulated by the law, designing an appropriate rule is challenging if the conduct the law seeks to regulate is difficult to define precisely. For example, consider a law defining liability for car accidents. A standard might be that drivers are liable if they are negligent. In contrast, a rule might specify exactly what conduct constitutes negligence. However, a wide variety of conduct can be negligent.<sup>62</sup> In addition, what constitutes negligent conduct varies based upon the details of the setting of the accident, such as visibility, weather conditions, and dimensions of the road.<sup>63</sup> Thus, a rule detailing precisely which conduct under which specific conditions constitutes negligence would arguably be virtually impossible to promulgate.

Even if it were possible to create such a rule, much of the effort would be wasted because most of the exact accidents listed in the rule would never occur. Although negligence is very common, any particular scenario that constitutes negligence occurs very infrequently (i.e., each car accident is at least slightly unique).<sup>64</sup> Thus, promulgating a negligence standard is better than promulgating a rule that attempts to define all possible conduct that would make drivers liable. Additionally, having adjudicators determine after accidents occur whether the drivers were negligent is less costly than having lawmakers attempt to draft a law that seeks to precisely define every scenario in which drivers would be liable.<sup>65</sup>

*C. Rules are Preferable When Consistency in Enforcement is Very Important*

A standard requires adjudicators both to interpret the standard and to apply it to the facts of particular cases. The act of interpreting the standard generally

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62. See, e.g., *Proving Negligence*, JAVAHERI & YAHODAI, <https://jnylaw.com/practice-areas/car-accident/los-angeles-car-accident-investigations/proving-negligence/> (last visited Nov. 15, 2023) (listing, as examples, eleven types of conduct that constitute driver negligence).

63. See, e.g., *Covey v. Simonton*, 481 F. Supp. 2d 224, 232 (2007) (holding that to avoid being negligent “drivers are expected to take into account weather and road conditions and drive at a safe speed to avoid collisions”).

64. See Kaplow, *supra* note 23, at 564 (“[T]he law of negligence applies to a wide array of complex accident scenarios, many of which are materially different from each other and, when considered in isolation, are unlikely to occur.”).

65. See *id.* at 573 (“A law . . . may have a small likelihood of applying to any activity; consider the example of myriad unique accident scenarios. Then, standards tend to be preferable. Even if they are extremely costly to apply, the significant likelihood that the particular application will never arise may make standards much cheaper.”).

gives adjudicators more discretion in the enforcement of the standard than a rule.<sup>66</sup> This discretion can be used to help fulfill the law's purposes because adjudicators may (or must) consider laws' purposes in deciding how to interpret standards.<sup>67</sup> In contrast, precise rules do not require interpretation and thus do not provide this flexibility. Therefore, rules tend to be both overinclusive and underinclusive relative to the purposes of laws.<sup>68</sup>

For example, the primary purpose of a speed limit is to deter driving at unsafe speeds. However, as discussed above, what constitutes an unsafe speed for a particular road can vary based on the weather, time of day, and other factors.<sup>69</sup> A constant speed limit does not account for these differences and instead always forbids driving over a specified speed even if, at a particular time, a higher speed would still be safe—or even if a lower speed would be unsafe. In contrast, a law prohibiting driving at an unsafe speed requires the law's enforcers to take the purpose of the law into account in deciding how to apply the law. If someone is driving at a safe speed at that particular time, then the purpose of the law—deterring unsafe driving—is not implicated and the driver will not be charged with violating the law.<sup>70</sup>

A standard gives the adjudicator discretion to enforce the law in a way that is more tailored to achieving the law's purposes.<sup>71</sup> However, this discretion might be exercised in other ways as well, including inconsistently with the law's

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66. See Sullivan, *supra* note 37, at 57 (“Rules, once formulated, afford decisionmakers less discretion than do standards.”).

67. See *id.* at 58 (“A legal directive is ‘standard’-like when it collapses decisionmaking back into the direct application of the background principle or policy to a fact situation.”). Kennedy, *supra* note 5, at 1688 (“A standard refers directly to one of the substantive objectives of the legal order.”).

68. See Kennedy, *supra* note 5, at 1689 (stating that rules are both overinclusive and underinclusive relative to the purposes of the law); see also Sullivan, *supra* note 37, at 58 (“[T]he rule’s force as a rule is that decisionmakers follow it, even when direct application of the background principle or policy to the facts would produce a different result.”). But see Kaplow, *supra* note 23, at 565 (arguing that the “familiar suggestion that rules tend to be over- and underinclusive relative to standards . . . is misleading because typically it implicitly compares a complex standard and a relatively simple rule, whereas both rules and standards can in fact be quite simple or highly detailed in their operation”).

69. See *supra* Section II.B.

70. For a rule, the law’s purpose can be taken into account by the adjudicator choosing not to enforce the rule when the purpose is not implicated. Doing so, however, requires the adjudicator to sometimes ignore the explicit text of the rule, potentially undermining consistent enforcement of the law.

71. See *supra* note 68 and accompanying text.

purposes. Such discretion can even be used to consciously or unconsciously carry out unlawful discrimination.<sup>72</sup>

Even if the discretion is not exercised in objectionable ways, it is still likely to result in greater inconsistency in terms of how the law is enforced. Because adjudicators must interpret a standard and interpretations can differ, standards are likely to be enforced less consistently than rules. For example, because reasonable police officers and judges can differ regarding what is an unsafe speed in a particular case, such a standard likely will be enforced less consistently than a fixed speed limit. Even a particular adjudicator might differ in how they interpret a standard over time. There is thus a greater potential of arbitrariness, or at least the perception of arbitrariness, in how the standard is applied.<sup>73</sup>

Therefore, all else being equal, the more important consistent enforcement of the law is, the more likely a rule is preferable to a standard. Consistency is important “to the fundamental values of equality, fairness, impartiality and evenhandedness in law enforcement; and to the integrity of legal systems under the idea of the rule of law.”<sup>74</sup> Consistency is even more important for people who rely upon the law to choose how to behave. For example, drivers who wish to avoid a speeding ticket on a road with a speed limit can do so by not driving faster than the limit.<sup>75</sup> However, they will be uncertain regarding how fast they can drive under an *unsafe speed* standard. Thus, the more often people rely upon consistency in the enforcement of the law—and the higher the stakes of such reliance—the more important consistency becomes.

### III. HOW BASEBALL DIFFERS FROM ORDINARY LEGAL SYSTEMS

In every legal system, the choice exists of whether to promulgate particular laws as rules or standards. However, baseball has many characteristics that differ from those of ordinary legal systems. Some of these characteristics are relevant to whether certain baseball laws should be rules or standards.

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72. See Kennedy, *supra* note 5, at 1688 (stating it has been long accepted that one of the “great social virtues” of rules is “the restraint of official arbitrariness” which “means the sub rosa use of criteria of decision that are inappropriate in view of the underlying purposes of the rule,” which “range from corruption to political bias”).

73. See *id.* at 1695 (noting the “potential arbitrariness and uncertainty of a standard”).

74. Yoav Dotan, *Making Consistency Consistent*, 57 ADMIN. L. REV. 995, 996 (2005).

75. This assumes, of course, that a police officer will not issue a speeding ticket unless the driver exceeds the speed limit.

A. *Adjudicators Make Decisions Almost Instantaneously*

In ordinary legal systems, the adjudicator usually has at least some time to make a decision. For example, in a car accident case, a judge or jury can carefully consider the facts of the case before deciding if a driver was negligent.<sup>76</sup> Such luxury of time does not exist in baseball umpiring. In baseball, the umpires are the primary adjudicators of conduct on the field. Umpires generally must judge the players' conduct instantaneously at the time it occurs:

Even the most casual baseball fan is aware of an umpire's responsibility to understand and immediately apply the *Official Baseball Rules* to the games they work. . . .

. . . Every application of those rules must be accurately and confidently recalled within a second or two in the heat of the action under the watchful eyes of the 50 or so uniformed combatants, the press and broadcast personnel, 30,000+ fans in the stands, the MLB umpire evaluation staff, thousands watching live on TV or the web, and thousands more who will acquire an account of the game via newspaper, newscast, MLB.com, or various other means available to the millions of baseball fans throughout the United States and abroad.<sup>77</sup>

An implication of this is that the possible extra enforcement costs of applying a standard rather than a rule is not that it takes extra time for umpires to apply a standard. Regardless of whether umpires must apply a precise rule or a vague standard, they must apply it almost instantaneously.<sup>78</sup> Instead, the cost is the extra difficulty in deciding whether a standard is satisfied rather than a precise rule. An umpire applying a standard must both instantaneously give content to the standard and apply the player's or players' actions to that content.<sup>79</sup> An umpire applying a rule need only perform the latter task. The umpire's need to recall and apply the relevant law instantaneously and before a large audience

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76. See, e.g., *A Guide to Jury Deliberations*, JUD. COUNS. OF CAL., [https://www.courts.ca.gov/documents/Jury\\_Deliberations\\_Guide.pdf](https://www.courts.ca.gov/documents/Jury_Deliberations_Guide.pdf) (last visited Nov. 18, 2023) [hereinafter, *Jury Deliberations*] (instructing California jurors to "not rush into a verdict to save time" because "[t]he people in this case deserve your complete attention and thoughtful consideration").

77. Bob Hicks, *Notes on Official Baseball Rules in Observations of Umpires at Work*, BASEBALL RES. J. (Spring 2011), available at <https://sabr.org/journal/article/observations-of-umpires-at-work/>.

78. *Id.* Perhaps the closest parallels to this in ordinary legal systems are police officers when forced to make immediate enforcement decisions and trial judges when ruling on evidentiary objections in real time during trials.

79. See *infra* Section IV.B. (discussing the infield fly rule).

is stressful.<sup>80</sup> If a standard makes this application more complex, it increases the application's difficulty and possibly also the umpire's stress.<sup>81</sup>

*B. Some Player Conduct Occurs Unconsciously or Without Full Awareness*

As discussed above, a rule that precisely defines impermissible conduct facilitates people's compliance with the law.<sup>82</sup> However, some conduct governed by the laws of baseball occurs unconsciously, or at least without the full awareness of the players committing the conduct. In such circumstances, players cannot tailor their conduct to the law. In other words, in deciding how to behave, the player is not relying upon how the law is defined.

For example, consider the check swing: a batter begins to swing at a pitch but then stops. As discussed below, the *Official Baseball Rules* does not define at what point a check swing becomes a swing, and thus a strike even if the pitch is out of the strike zone. It is instead left to the umpires' judgment.<sup>83</sup> At least in part due to this ambiguity, check swing calls are often controversial.<sup>84</sup> However, when deciding whether to check their swings, batters are not relying upon umpires' interpretations of the law governing check swings. Batters who commit check swings initially start to swing but then change their minds in a fraction of a second.<sup>85</sup> They are thus not aware of how much they have already swung when they choose to stop.

A situation in which players sometimes appear to act unconsciously occurs when a groundball is hit to an infielder and the infielder's throw then goes past the first baseman. In that situation, the batter, who is likely at a full sprint, legally

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80. See Li-An Leonard & Andy Strasber, *Umpire Observations at Second Base in Observations of Umpires at Work*, in *Observations of Umpires at Work*, BASEBALL RES. J. (Spring 2011), <https://sabr.org/journal/article/observations-of-umpires-at-work/> (listing "[s]tressful conditions" as one of the challenges of being an MLB umpire; "[i]nstant recall of applicable knowledge of the rules in front of thousands or millions of people must occur within seconds of a play"); see also WASSERMAN, *supra* note 7, at 83 ("The Infield Fly Rule's costs include the difficulty for umpires in identifying plays warranting invocation, given the subjectivity of the necessary judgments.").

81. See BERMAN & FRIEDMAN, *supra* note 8, at 93 ("It is highly desirable that . . . those who enforce the rule can apply it quickly and accurately. This is true in the legal world, but might be even more important in sports, where speed of decision is crucial.").

82. See *supra* Section II.C.

83. See *infra* Section IV.C (providing a discussion on check swings).

84. See David Waldstein, *Baseball Has a Rorschach Test: The Checked Swing*, N.Y. TIMES (Oct. 26, 2019), <https://www.nytimes.com/2018/10/26/sports/baseball/baseball-world-series-checked-swings.html> (quoting former MLB player, coach, and manager Bobby Valentine as calling the check swing "the most argued call in baseball").

85. See *id.* ("Umpires are making judgments based on swings that occur in a relative blink of an eye.").

overruns first base, and then sometimes makes a small movement toward second base—instinctively and unconsciously—before going back to first base upon realizing that they will not be able to make it to second base before the ball is in the control of the right fielder or catcher who is running to back up the first baseman in anticipation of such errors.<sup>86</sup> The issue can then become whether the batter’s movement constitutes an “attempt” to advance toward second base, and thus whether the batter can be tagged out before he returns to first base.<sup>87</sup>

Abandonment and desertion are other situations which typically involve conduct without full awareness. Abandonment occurs when a runner who has already reached a base abandons the base without making an effort to advance to the next base.<sup>88</sup> Desertion occurs when a batter who is allowed to advance toward first base does not do so.<sup>89</sup> Abandonment and desertion typically occur because runners erroneously believe they are already out and thus make no effort to run the bases.<sup>90</sup>

As will be discussed below, the *Official Baseball Rules* more precisely defines desertion than abandonment.<sup>91</sup> However, because the batters or runners erroneously believe they are already out, they do not realize they are committing desertion or abandonment. Thus, their behavior is unlikely to be affected by how these terms are defined.

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86. When the batter’s time at bat ends, such as when he hits the ball into fair territory, the *Official Baseball Rules* refers to him as the “batter-runner” until “he is put out or until the play on which he became a runner ends.” See OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Batter-Runner*. For simplicity, however, this Article will refer to a player in such a situation as the batter.

87. See *infra* Section IV.F. (providing further discussion on this issue). A “tag” occurs when a fielder touches the runner with the ball or with the fielder’s glove that is holding the ball. OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Tag*.

88. See OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(2).

89. See *Rules of the Week: Batter Abandonment – When a Batter is Called Out for Desertion*, BASEBALL R. ACAD., <https://baseballrulesacademy.com/rule-week-batter-abandonment/#:~:text=He%20dropped%20the%20ball!%E2%80%9D%20The,to%20this%20circumstance%20as%20desertion> (last visited Nov. 16, 2023) [hereinafter *Batter Abandonment*].

90. See, e.g., Alex Butler, *Watch: Mariners’ Dylan Moore Called Out for Abandonment in Base-Running Blunder*, YAHOO SPORTS (Aug. 18, 2023), <https://sports.yahoo.com/watch-mariners-dylan-moore-called-132524344.html?src=rss> (showing a batter abandoning first base because he erroneously believed the outfielder caught the ball that he hit).

91. See *infra* Section IV.E. (discussing abandonment and desertion).

*C. Many Player Decisions Must Be Made Almost Instantaneously*

Baseball players sometimes have at least a little time to make decisions. For example, a pitcher has at least fifteen seconds to begin their delivery,<sup>92</sup> so their team (the defense) has at least several seconds to decide where to try to throw a pitch to the opposing batter. However, much of baseball players' other conduct requires almost instantaneous decisions. For example, a batter has only a fraction of a second to decide whether to swing at a pitch after the pitcher releases it<sup>93</sup> and when a fielder attempts to tag a runner, the runner must immediately decide how to try to avoid the tag.

As discussed above, an umpire's need to make almost instantaneous decisions throughout the course of a baseball game might cause umpires to prefer a rule over a standard because the standard requires more interpretation.<sup>94</sup> Similarly, players needing to make instantaneous decisions should prefer a precise rule because they do not have the time to think about how an umpire will interpret a standard.<sup>95</sup>

In contrast, actors in ordinary legal systems often have much more time to make decisions. For example, a manufacturer can engage in extensive study before deciding how to dispose of a byproduct of a manufacturing process to comply with a law that regulates the disposal of hazardous substances.<sup>96</sup> This study has costs, such as the time required for self-study or the expense of paying lawyers for advice.<sup>97</sup> But these costs can decrease the uncertainty as to how a standard will be interpreted by enforcement authorities.<sup>98</sup> Of course, some decisions that are governed by ordinary legal systems must also be made

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92. When no runners are on base, pitchers must begin their delivery within fifteen seconds of when they receive the ball from the catcher. If runners are on base, pitchers have eighteen seconds to begin their delivery. They have thirty seconds to begin if it is a new batter. See Dan Gartland, *MLB 2023: New Pitch Clock Explained*, SPORTS ILLUSTRATED (Feb. 24, 2023), <https://www.si.com/mlb/2023/02/24/mlb-new-rules-2023-pitch-clock>; Matt Snyder, *MLB Rule Changes: Pitch Clock Tweak, Widened Runner's Lane, More Coming in 2024 Despite MLBPA Objection*, CBS SPORTS (Dec. 21, 2023), <https://www.cbssports.com/mlb/news/mlb-rule-changes-pitch-clock-tweak-widened-runners-lane-more-coming-in-2024despite-mlbpa-objection/> (explaining that, in 2024, pitchers will have only 18 seconds between pitches, as opposed to the 20 seconds they had in the 2023 season).

93. See Sean Quinton, *Don't Blink: The Science of a 100mph Fastball*, SEATTLE TIMES (Mar. 31, 2017), <https://projects.seattletimes.com/2017/mariners-preview/science/> (showing batters have approximately 150 milliseconds to decide whether to swing at a 100 mile-per-hour pitch).

94. See *supra* Section III.A.

95. See BERMAN & FRIEDMAN, *supra* note 8, at 93.

96. See Kaplow, *supra* note 23, at 569.

97. *Id.*

98. *Id.*

essentially instantaneously. For example, drivers often must instantaneously decide whether to slow down or accelerate as they approach yellow traffic lights. Nevertheless, overall, people have much more time to determine how to comply with the law off the baseball field than on it.

#### IV. BASEBALL'S USE OF RULES AND STANDARDS

Most of the laws governing baseball are rules rather than standards, or at least more like rules than standards. Indeed, the main source of MLB laws is named the *Official Baseball Rules*.<sup>99</sup> Although, as discussed below, some of the so-called rules are actually standards.<sup>100</sup>

This Section examines several important and/or interesting laws of baseball and analyzes whether their forms as rules or standards are consistent with the legal theory discussed above. Based on these analyses, this Section also suggests changes to some of these laws.

##### A. The Strike Zone

Perhaps the most frequently applied law in baseball is the law defining the strike zone, which determines whether pitches the batter does not swing at are balls or strikes. Pitches that pass through any part of the strike zone are strikes; pitches that fail to do so are balls.<sup>101</sup> In the 2022 MLB regular season, over 2,430 games, there were 708,539 pitches.<sup>102</sup> Batters did not swing at approximately 368,000, or approximately 52%, of them.<sup>103</sup> Thus, on average, home plate umpires were required to decide more than 150 times per game whether a pitch passed through the strike zone.<sup>104</sup> However, the strike zone impacts even pitches at which batters swing. The team playing defense in a particular half-inning chooses where to try to pitch largely based on the location of the strike zone, and

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99. OFFICIAL BASEBALL RULES, *supra* note 4.

100. See *infra* Section IV.B. (providing an example of this through a discussion of the infield fly rule).

101. OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Strike, Ball*.

102. See 2022 Major League Baseball: *Pitching Pitches*, BASEBALL REFERENCE, <https://www.baseball-reference.com/leagues/majors/2022-pitches-pitching.shtml> (last visited Nov. 15, 2023).

103. 35.8% of pitches were called balls and approximately 16.2% were called strikes even though the batter did not swing at the pitch. See *id.*

104. There were 2,430 regular season games in 2022. Thus, 368,000 pitches at which batters did not swing divided by 2,430 games equals approximately 151 pitches per game that home plate umpires had to judge to be balls or strikes. See *Standings*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/standings/2022> (last visited Nov. 16, 2023).

batters choose whether to swing largely based upon whether they think the pitches are in the strike zone.<sup>105</sup>

The strike zone's purpose is to generate the desired amount of offense and desired pace of game.<sup>106</sup> It does this through the incentives it creates for players. Batters are incentivized to swing at pitches in the strike zone, because failing to do so will result in strikes. Pitchers are incentivized to throw pitches that are at least close to the strike zone, because balls are called if batters do not swing at pitches outside of the strike zone.<sup>107</sup> A larger strike zone forces batters to swing at pitches in a larger area, even if they are harder to hit well. Also, because of this, pitchers will throw more of these difficult-to-hit pitches.<sup>108</sup> All else being equal, these behaviors result in less offense; e.g., hits, walks, and runs. Indeed, after the 1968 season during which pitching became too dominant, MLB reduced the size of the strike zone to increase the amount of offense.<sup>109</sup>

A larger strike zone might quicken the pace of games by inducing batters to swing more often because pitches in a larger area will be called strikes. In fact, in 1996, MLB adopted a larger strike zone at least partly to reduce the length of games by encouraging more swings and quicker outs.<sup>110</sup>

That current strike zone is strictly defined in the *Official Baseball Rules*:

105. See Bailey, *supra* note 30.

106. See Tom Verducci, *Dead Ball Era: Raising the Strike Zone Not the Solution Baseball Needs to Pressing Problem*, SPORTS ILLUSTRATED (Feb. 13, 2017), <https://www.si.com/mlb/2017/02/13/raising-strike-zone-pace-action> (discussing the role of the strike zone in the game's "pace of action"); Mark Williams, *MLB Umpires Missed 34,294 Ball-Strike Calls in 2018. Bring on Robo-umps?*, BU TODAY (Apr. 8, 2019), <https://www.bu.edu/articles/2019/mlb-umpires-strike-zone-accuracy/> ("Blown [strike] calls only undermine the integrity of the game, slow down pace, hurt averages, and prevent the athletes from being able to maximize their potential performance.").

107. Pitchers might entice batters to swing at pitches close to but outside of the strike zone. However, batters are much less likely to swing at pitches that are far outside the strike zone's boundaries. See Bailey, *supra* note 30.

108. See Jared Diamond, *Why Major League Pitchers are Avoiding the Strike Zone*, WALL ST. J. (July 30, 2018), (noting that pitchers try to throw pitches close to the strike zone "that look like strikes until the last possible moment" before "dart[ing] out of the strike zone").

109. See 1968: *Year of the Pitcher*, THIS GREAT GAME, <https://web.archive.org/web/20111224181907/http://www.thisgreatgame.com/1968.html> (last visited Nov. 16, 2023).

110. See *The Strike Zone: A History of Official Strike Zone Rules*, BASEBALL ALMANAC, [https://www.baseball-almanac.com/articles/strike\\_zone\\_rules\\_history.shtml](https://www.baseball-almanac.com/articles/strike_zone_rules_history.shtml) (last visited Jan. 4, 2024). The length of games, however, did not decrease following this change in the strike zone. *Major League Miscellaneous Year-by-Year Averages and Totals*, BASEBALL REFERENCE, <https://www.baseball-reference.com/leagues/majors/misc.shtml> (last visited Nov. 16, 2023) (showing the average time of nine-inning games for each year from 1901–2023).

The STRIKE ZONE is that area over home plate the upper limit of which is a horizontal line at the midpoint between the top of the shoulders and the top of the uniform pants, and the lower level is a line at the hollow beneath the kneecap. The Strike Zone shall be determined from the batter's stance as the batter is prepared to swing at a pitched ball.<sup>111</sup>

Thus, the strike zone is defined by a precise rule rather than a standard, such as *the area that a batter can easily reach with an ordinary swing*. However, the rule results in both the exact location and dimensions of the strike zone depending on the particular situation to which it is applied. In particular, the vertical location and size of the strike zone differs based on the physical dimensions of the batter; the zone extends from the midpoint between the top of the batter's shoulders and pants to the hollow beneath the batter's kneecaps.<sup>112</sup> Having the strike zone vary with the size of the batter helps the strike zone achieve its purpose of generating the desired amount of offense in the game.<sup>113</sup> Overall, the location of pitches that are relatively easier or harder to hit well will vary by the size of the batter. For example, taller batters can generally hit higher pitches better than can shorter batters.<sup>114</sup> To incentivize batters to swing at pitches up to a particular difficulty level—and to incentivize pitchers to throw these pitches—the dimensions and location of the strike zone should therefore vary by batter size.<sup>115</sup>

The strike zone, however, is not completely tailored to the individual batter. Unlike its vertical dimensions, the strike zone's horizontal dimensions are fixed. Specifically, the horizontal zone is the seventeen-inch area over home plate, regardless of the length of the batter's arms, the length of the bat the batter chooses to use, and how close the batter stands to the plate.<sup>116</sup> However, administrative issues in enforcing the strike zone might justify this fixed width. For example, umpires would find it difficult to determine how far horizontally a

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111. OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Strike Zone*.

112. *Id.*

113. See also Barry Svrluga, *Improving Ball-Strike Calls is a Challenge MLB Needs to Take On*, WASH. POST (June 28, 2023), <https://www.washingtonpost.com/sports/2023/06/28/robot-umps-mlb-strike-zone/> (“For 150 years of professional baseball, the strike zone has never been called consistently — be it because of era, umpire or situation. The zone needs to be able to expand when rain is on the way or in the late innings of a blowout, just for players, fans and umps to keep their sanity.”).

114. See MLB NETWORK, *How to Hit the High Pitch*, <https://www.youtube.com/watch?v=ZvMYDMI8IPk> (last visited Dec. 20, 2023) (showing difficulty for batters of hitting pitches high in their strike zone).

115. See *supra* note 108 and accompanying text.

116. See OFFICIAL BASEBALL RULES, *supra* note 4, at app. 2. The depth of the strike zone is also fixed at seventeen inches, the length of home plate. *Id.*

certain player could reach with an *ordinary* swing. In contrast, the edges of home plate are clear markers that the umpire can use to determine if a pitch is within the horizontal dimensions of the strike zone.<sup>117</sup> Similarly, the markers of the vertical dimensions of the strike zone—the batter’s knees, shoulders, and top of uniform pants—are arguably obvious to the umpire.

Defining the strike zone by a rule rather than a standard is wise for several of the reasons discussed earlier. First, rules are more likely to be applied consistently than are standards.<sup>118</sup> Having a consistent strike zone throughout a baseball game is very important. Players must know the location of the strike zone because they rely repeatedly upon this knowledge as they choose how to act throughout the game. Defenses’ decisions of where to attempt to throw pitches and batters’ decisions of whether to swing at pitches are both based largely on the strike zone’s location.<sup>119</sup> Because players must tailor their conduct to the definition of the strike zone, defining the strike zone with a precise rule rather than a standard is important.

In fact, in enforcing the strike zone, consistency is probably even more important than accuracy. Indeed, commentators often note that players do not mind greatly if the home plate umpire is calling the strike zone somewhat inaccurately—i.e., not exactly as it is defined in the *Official Baseball Rules*—so long as the umpire is calling it consistently.<sup>120</sup> For example, an umpire might be inaccurately calling strikes on pitches that nearly miss the outside part the strike zone or might inaccurately call balls on pitches that cross the very top of the strike zone. However, if the umpire does this consistently then players can adjust their behavior to these errors.<sup>121</sup>

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117. *Id.* (providing dimensions of home plate).

118. *See supra* Section II.

119. *See* Bailey, *supra* note 30 (“The point of the strike zone is twofold. It forces your pitcher to throw good pitches and forces batters to swing at good pitches. . . . A strike zone forces both the batter and the pitcher to be aggressive.”).

120. *See, e.g.,* BRUCE WEBER, AS THEY SEE ‘EM: A FAN’S TRAVELS IN THE LAND OF UMPIRES 33 (2009) (“Ask major leaguers what they look for in an umpire – I must have asked a few dozen, past and present – and no one ever mentions accuracy. The two words you hear most describe unquantifiable qualities: ‘consistency’ and ‘control.’ That is they want an umpire’s boundaries to be clear. What will he tolerate in terms of pugnacious behavior and what won’t he? They want the strike zone to be established early and remain unchanged for the duration of the game.”); *see also* David Hunter, *A Metric for Home-Plate Umpire Consistency*, FANGRAPHS: CMTY. RSCH. (Sept 13, 2017), <https://community.fangraphs.com/a-metric-for-home-plate-umpire-consistency/> (“When calling balls and strikes, consistency matters. As long as an umpire always calls borderline pitches the same way within a game, players seem to accept variations from the rule book strike zone.”).

121. Former MLB player and manager Davey Johnson stated, “It’s always been the job of the hitter and pitcher to recognize the strike zone for that particular night, whether it is high

As noted above, the following of precedent in how a standard is interpreted can effectively transform the standard into a rule.<sup>122</sup> Similarly, the inaccurate but consistent umpire transforms one rule (the de jure strike zone specified in the *Official Baseball Rules*) into another rule (the de facto strike zone that is applied by the umpire that day). Because the strike zone is enforced so often during a game,<sup>123</sup> players can learn that day's de facto strike zone from the home plate umpire's ball and strike calls early in the game and adapt to that zone.

Players' ability to learn and adapt suggests that the strike zone could be defined by a standard rather than a rule. For example, imagine that the strike zone were defined as *the area that the batter could easily reach with an ordinary swing*. Based on the umpire's ball-strike calls early in the game, players could determine how an umpire is interpreting the standard and adjust their behavior to this interpretation. For two reasons, however, a rule is still preferable.

First, players probably can adapt quicker to how an umpire is enforcing a rule than a standard. Players know the precise dimensions of the strike zone as defined by the rule. They need only to figure out what—hopefully small—deviations the umpire is making from that zone. It is probably easier for players to determine those deviations than to determine how an umpire is interpreting a vague standard such as *a pitch that can be easily reached by an ordinary swing* because the standard lacks the same clear starting point (i.e., the rule-defined strike zone) for making the determination. This is particularly true if the umpire interprets the standard as requiring the strike zone's horizontal size and/or location to also vary by batter.<sup>124</sup>

Second, a precisely defined rule is more likely to result in the purpose of the strike zone being fulfilled: obtaining the desired amount of offense and pace of game. Baseball's lawmakers chose the dimensions of the strike zone for those purposes.<sup>125</sup> To the extent that they were correct in their assessment, the strike zone should be enforced as accurately as possible; umpires should not substitute their own judgments regarding the appropriate strike zone. As discussed above,

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or wide, and adjust accordingly. It's been like that for like two-hundred years.” *The Strike Zone*, *supra* note 110. (last visited Nov. 18, 2023). Similarly, Ted Williams, one of the greatest hitters in baseball history, remarked, “The umpire’s zone is defined by the rule book, but it’s also more importantly defined by the way the umpire works. A good umpire is consistent so you can learn his strike zone.” *Id.*

122. See *supra* note 45 and accompanying text.

123. Recall that throughout the course of a single game, baseball umpires must decide whether approximately 150 pitches cross through the strike zone. See *supra* note 104 and accompanying text.

124. See *Strike Zone*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/official-information/umpires/strike-zone> (last visited Nov. 16, 2023) (providing history of changes in the strike zone).

125. See *supra* notes 110–11 and accompanying text.

rules generally are better than standards in limiting such law enforcers' discretion.<sup>126</sup>

Indeed, umpires are very likely calling strike zones closer to the exact dimensions defined in the *Official Baseball Rules* than they would if they were asked instead to enforce a vaguer standard. In 2009, MLB began grading its umpires based on how closely their ball-strike calls aligned with the strike zone defined in the rulebook, as determined by a camera-based system.<sup>127</sup> By at least 2017, umpires were calling a strike zone much closer to that defined in the rulebook than they were when the grading system was first adopted.<sup>128</sup> Thus, umpires enforced the strike zone more accurately when their compliance with it was more carefully evaluated. Evaluating how well umpires comply with a vaguely defined strike zone would be much more difficult.

The greater consistency of a rule-based strike zone might also provide another advantage: preventing undesirable discrimination. Because rules constrain the enforcer's discretion more than standards,<sup>129</sup> rules can reduce discrimination in the enforcement of the law. Studies have found mixed evidence regarding whether major league umpires racially discriminate in their ball-strike calls by favoring pitchers and batters who share the umpire's race.<sup>130</sup> Racial discrimination in the strike zone's enforcement would be another reason for defining the strike zone by a rule. Of course, even a precisely defined strike zone that leaves no room for umpire interpretation might not prevent discrimination

126. See *supra* Section II.C.

127. This system is called PITCHf/x. See David Waldron, *Baseball's Changing Strike Zone*, DAVID WALDRON (Oct. 17, 2017), [https://www.waldrn.com/baseballs-changing-strike-zone/#:~:text=But%20in%201996%2C%20citing%20concerns,more%20swings%20and%20quicker%20outs](https://www.waldrn.com/baseballs-changing-strike-zone/#:~:text=But%20in%201996%2C%20citing%20concerns,more%20swings%20and%20quicker%20outs.). Television broadcasts of games also use PITCHf/x to show fans whether a pitch was within the rule-defined strike zone. *Id.* Starting in 2001, MLB was using another system, QuesTec, but it was available in only about one-third of stadiums. This "rais[ed] the suspicion among players and fans that umpires called games differently depending on whether QuesTec was watching. Umpires also questioned if the [QuesTec] system was sufficiently accurate to gauge their performance." Alan Schwarz, *Ball-Strike Monitor May Reopen Wounds*, N.Y. TIMES (Mar. 31, 2009), <https://www.nytimes.com/2009/04/01/sports/baseball/01umpires.html>.

128. See Waldron, *supra* note 127 (comparing umpires' behavior in 2009 and 2017; not examining other years).

129. See *supra* Section II.C.

130. For a discussion of several of these studies, see Michael Wenz, *Caught Looking: Two New Looks at Umpires and Racial Bias*, BASEBALL PROSPECTUS (Feb. 5, 2016), <https://www.baseballprospectus.com/news/article/28378/caught-looking-two-new-looks-at-umpires-and-racial-bias/>; Robert Arthur, *A New Study Shows Umpire Discrimination Against Non-White Players*, BASEBALL PROSPECTUS (Aug. 13, 2021), <https://www.baseballprospectus.com/news/article/68963/moonshot-a-new-study-shows-umpire-discrimination-against-non-white-players/>.

in how the rule is enforced. However, if the strike zone were instead defined by a standard, umpires could discriminate both in how they interpret the standard and in how they enforce it.

Another reason for defining the strike zone by a rule instead of a standard is that the strike zone must be enforced very frequently. In the 2022 regular season, batters did not swing at approximately 368,000 pitches, each requiring an umpire to decide if it passed through the strike zone.<sup>131</sup> As discussed above, rules can be preferable to standards when the regulated behavior occurs frequently, because the higher, one-time promulgation costs to create the rule are likely offset by the repeated savings in enforcement costs.<sup>132</sup> Indeed, the one-time promulgation costs for baseball's lawmakers who must determine the exact dimensions of the strike zone is almost certainly outweighed by the reduced enforcement costs from sparing umpires from having to determine how to interpret a strike zone defined by a standard, such as *the area that the batter can easily reach with an ordinary swing*. Such a standard would require each umpire to determine both what *easily reach* and *ordinary swing* mean.

However, the saved enforcement costs should not be overestimated. If the strike zone were defined by a standard, umpires would likely develop rules of thumb to simplify their enforcement decisions. This might be especially true because a ball-strike call must be made immediately after the pitch,<sup>133</sup> so umpires have very little time to think about how to apply the definition of the strike zone after the pitch.

It would be unsurprising if these rules of thumb resulted in de facto strike zones fairly similar to the current rule-based strike zone. A rule of thumb would be easier to apply if it were based on markers that umpires could easily see. Thus, many umpires might use the batter's kneecaps as the bottom of the strike zone, a little above the top of the batter's uniform pants as the top of the strike zone, and home plate as the width of the strike zone.

However, even if each umpire were to effectively convert a strike zone standard into a rule in this way, having baseball's lawmakers define the strike zone by a rule would still be preferable. A rule will likely lead to more consistency across umpires.<sup>134</sup> If left on their own to interpret a standard, some umpires might differ in the rules of thumb they develop. For example, some might use the middle of the batter's kneecaps rather than the hollow beneath the

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131. See *supra* note 103 and accompanying text.

132. See *supra* Section II.A.

133. See Peter Osborne, *Working the Plate, Part 1: The Basics* 1, 7, UMPIREBIBLE, <https://www.umpirebible.com/files/Osborne01.pdf> (last visited Nov. 18, 2023) ("Good umpires wait .75 to 1.15 seconds after the ball hits the catcher's glove until they call the pitch").

134. See *supra* Section II.C.

kneecaps as the bottom of the strike zone. Umpires are likely to use more similar strike zones if they are all applying the same precise rule instead.

As discussed above, players rely upon consistency in the strike zone in deciding where to pitch and whether to swing.<sup>135</sup> If an umpire is consistent, players can learn during the game what strike zone an umpire is using. However, if all umpires are basing their strike zones on the same precise rule, umpires' de facto strike zones are likely to be more similar, allowing players to figure out that day's de facto zone quicker and adjust their behavior accordingly.

The importance of consistent and accurate enforcement of the strike zone is further reflected in MLB's current consideration of adopting an electronic strike zone, i.e., using technology to determine if a pitch was in the strike zone. In particular, MLB is considering using an automated balls and strikes system, which can notify the home plate umpire whether pitches crossed the strike zone.<sup>136</sup>

However, some people have criticized electronic strike zones as removing part of the human element from the game.<sup>137</sup> An electronic system rather than a human being would determine whether pitches were balls or strikes.<sup>138</sup> Also, electronic strike zones would eliminate the relevance of the catcher's ability to frame pitches (i.e., the ability to catch pitches that are close to the strike zone in a way that is more likely to make the pitches appear to home plate umpires as if the pitches passed through the strike zone).<sup>139</sup> Similarly, umpires may call pitches

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135. See *supra* note 119 and accompanying text.

136. This system was experimented with in certain minor leagues during the 2023 season. See Anthony Castrovince, *Pitch Timer, Shift Restrictions Among Announced Rule Changes for '23*, MAJOR LEAGUE BASEBALL (Feb. 1, 2023), <https://www.mlb.com/news/mlb-2023-rule-changes-pitch-timer-larger-bases-shifts>. An alternative also being studied would have the home plate umpire still judge whether a pitch was a ball or strike, but each team would be allowed to challenge a certain number of such calls per game. When a call is challenged, the electronic system would then be used to determine if the umpire was correct. See *id.*

137. See Katherine Acquavella, *Robot Umpires: How It Works and Its Effect on Players and Managers in the Atlantic League, Plus What's to Come*, CBS SPORTS (Aug. 27, 2019), <https://www.cbssports.com/mlb/news/john-fisher-is-redefining-sports-owner-malpractice-as-he-spitefully-tries-to-move-his-oakland-as-to-las-vegas/> ("Those who are anti-electronic strike zone argue that, by using a machine, it's removing a human element from the game."); see also Russell, *supra* note 9, at 191 ("I find the human element as well as the element of luck introduced by fallible human umpires to be a part of sport that is worth cherishing.").

138. Such systems have recently been used in certain minor leagues. See Castrovince, *supra* note 136.

139. See Emma Baccellieri, *Beware Catchers: The Robots are Coming*, SPORTS ILLUSTRATED (Mar. 28, 2023), <https://www.si.com/mlb/2023/03/28/pitch-framing-robo-umps-daily-cover>.

in the strike zone balls if the catcher moved in an unusual way to catch them.<sup>140</sup> In addition, umpires are more likely to call strikes on pitches just outside the strike zone if a pitcher has been accurately throwing strikes on the corner of the strike zone during the game. Players and managers expect umpires to do this, but an electronic strike zone would eliminate these human nuances and practices of the game.<sup>141</sup>

Arguably, however, the desirable human element in baseball is provided by the conduct and decisions of the players and managers, not of the umpires. While fans clearly often become frustrated and angry about umpires' ball-strike calls, it is unclear whether fans enjoy watching umpires trying to make correct calls and catchers attempting to deceive umpires by framing pitches. Indeed, a recent poll found that most MLB fans would favor an automated ball and strike system that calls every pitch or a replay review system of balls and strikes in which each team could challenge several ball-strike calls each game.<sup>142</sup>

Another possible disadvantage of an electronic strike zone is that it would prevent umpires from expanding the strike zone when it is at least arguably desirable for them to do so. For example, currently an umpire can expand the strike zone to have the game finish faster in a boring blowout or if bad weather is threatening to cause a rain delay near the end of the game.<sup>143</sup> There is evidence that players and managers want umpires to do this.<sup>144</sup> An electronic strike zone would eliminate this discretion.

However, the benefit of the electronic strike zone is greater consistency and accuracy in the strike zone's enforcement. Even though players can adjust to a consistent strike zone during the game, doing so involves trial and error. For example, players do not know whether a slightly outside pitch will be called a strike that day until a batter does not swing at such a pitch and the umpire calls

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140. See Dave Weaver, *Don't Ever Teach Your Catchers to Frame a Pitch*, HITTING WORLD (2005), <https://www.hittingworld.com/Don-t-Ever-Teach-Your-Catchers-to-Frame-a-Pitch-p/art17.htm>.

141. See Jayson Stark, *Are Robot Umpires Ready for Their MLB Debut? Not So Fast.*, THE ATHLETIC (Aug. 25, 2023), <https://theathletic.com/4791440/2023/08/25/mlb-robot-umpires-future/>.

142. See Mark J. Burns, *Baseball Fans Are Open to the Idea of Robot Umpires*, MORNING CONSULT (July 11, 2022, 5:00 AM), <https://pro.morningconsult.com/instant-intel/baseball-mlb-fans-open-to-robot-umpires> (showing that 50% of fans supported and 35% opposed an "automated ball and strike system that calls every pitch and relays the balls and strikes to a human home plate umpire through an earpiece" while 55% supported and 33% opposed a "replay review system of balls and strikes with each team manager getting several challenges a game"); see also WEBER, *supra* note 120, at 25 ("It is often said that the best umpire is one you never notice.")

143. See Stark, *supra* note 141.

144. See *id.*

it a ball or strike. With an electronic strike zone, the de jure and de facto strike zones will always be the same. From the beginning of the game, players will know which pitches will be called balls and strikes, and they can behave accordingly. Of course, players are human and thus sometimes incorrectly perceive the location of pitches. However, those errors will not be compounded by uncertainty over how the umpire is defining the strike zone that day.

Also, to the extent that the strike zone defined in the *Official Baseball Rules* reflects the desired amount of offense and desired pace of game, an electronic strike zone calibrated to that rule would be better than even a perfectly consistent umpire whose strike zone deviated from the rule. In addition, like players, umpires are human, and thus no umpire is perfectly consistent anyway.<sup>145</sup>

In conclusion, the great importance of consistency and other considerations strongly suggest that the strike zone should be defined by a precise rule rather than by a standard. Indeed, the *Official Baseball Rules* takes that approach. Also, an electronic strike zone would very likely improve the consistency and accuracy of ball and strike calls, but at the cost of losing some of the human element in the game and of losing the opportunity to have a larger strike zone in certain situations. However, this tradeoff is likely justified, especially by the great importance of having a consistent strike zone.

#### B. The Infield Fly Rule

The strike zone is perhaps the most frequently enforced law of baseball. However, the infield fly rule is probably the baseball law most frequently discussed in legal academic writing, despite it being infrequently invoked during games.<sup>146</sup> The infield fly rule provides that, in a half-inning where there are less than two outs and the offense has runners on first and second base or has the bases loaded, and the batter hits a fair fly ball<sup>147</sup> (not including a line drive or

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145. @UmpScorecards, is an online platform that is not affiliated with the MLB but publishes measures of the consistency and accuracy of umpires' calling of balls and strikes. *See About Us*, @UMPScorecards, <https://umpscorecards.com/about/> (last visited Nov. 16, 2023).

146. *See* WASSERMAN, *supra* note 7, at 4 ("Within this baseball-centric world of law and legal academia, the Infield Fly Rule occupies its own pedestal."). Wasserman found that the infield fly rule was unquestionably invoked only an average of 239 times per year in MLB from 2010–2017, i.e., less than once per ten games. Although limitations of Wasserman's data sources might have caused him to be unable to detect some other invocations of the rule, the actual number is unlikely to be much higher. *See id.* at 152–54.

147. *See* OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Fly Ball*.

attempted bunt) that can be caught by an infielder with “ordinary effort,”<sup>148</sup> the batter is automatically out and the runners may try to advance at their own risk.<sup>149</sup>

The infield fly rule’s purpose is to prevent fielders from intentionally allowing a pop-up to drop to ground to get a “cheap” or “unfair” double play (or possibly even a triple play).<sup>150</sup> To understand how the infield fly rule attempts to achieve this purpose, imagine that the infield fly rule did not exist. If runners were on first and second base with one out, for example, and a batter popped up the ball to the shortstop<sup>151</sup> in the infield, the runners would likely stay close to their bases because, if the shortstop catches the ball, they would also be out if the shortstop threw the ball to their bases before they returned to them. Knowing that the runners have remained close to their bases, however, an alert shortstop would let the batted ball drop to the ground at his feet.<sup>152</sup> Because the ball is not caught, the runners on first and second base would then be forced to run to second base and third base, respectively. Because bases are ninety feet apart, before the runners could reach their next bases, the shortstop would likely be able to pick up the ball and throw it to third base for a force out, and the third baseman would then throw it to second base for another force out.<sup>153</sup>

The infield fly rule prevents this scenario. When the ball is popped up to the shortstop, the umpire(s) would invoke the infield fly rule and declare the batter out. Thus, even if the shortstop allows the ball to drop to the ground, the runners

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148. *Id.* at Definition of Terms: *Ordinary Effort*.

149. *See id.* at Definition of Terms: *Infield Fly*.

150. *See* Neil B. Cohen & Spencer Webber Waller, *Taking Pop-Ups Seriously: The Jurisprudence of the Infield Fly Rule*, 82 WASH. U. L. Q. 453, 458 (2004).

151. A shortstop is an infield player usually positioned between the third baseman and second base, and is often a key player in double plays, which is where two offensive players are called out within the same play. *Glossary*, MLB, <https://www.mlb.com/glossary> (last visited Dec. 27, 2023).

152. The shortstop would have to let the ball drop to the ground before touching it. If, for example, the shortstop instead intentionally let the ball fall from his glove, by rule, the umpire(s) would declare the play dead and the batter would be out, but all runners would remain safely at their bases. *See* OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(a)(12). That rule mandates that if an infielder intentionally drops any fair fly ball or line drive when there are less than two outs and a runner on first base (or first base and any other base or bases) then the batter is out but all runners return to their bases. The rule does not apply, however, if the infielder lets the ball drop to ground before touching it. *See id.*

153. Intentionally allowing the ball to drop could even lead to a triple play if, for example, there were no outs and bases were loaded and the ball is popped up right in front of home plate. In the absence of an infield fly rule, the runners would likely stay close to their bases when the ball is popped up. Thus, the catcher could potentially pick up the ball, step on home plate for a force out for the first out, throw to third base for a second force out, and then the third baseman could throw to second base for a third force out, especially if the runner on first base were slow.

would not be forced to try to advance to their next bases. They could instead safely stay at first and second base, avoiding a possible double play. Also, as a result, the shortstop lacks an incentive to let the ball drop to the ground.<sup>154</sup>

The infield fly rule applies only if the batter hits an “infield fly.” The *Official Baseball Rules* defines an infield fly as “a fair fly ball (not including a line drive nor an attempted bunt) which can be caught by an infielder with *ordinary effort*, when first and second, or first, second and third bases are occupied, before two [players] are out.”<sup>155</sup> “Ordinary effort” is defined as “the effort that a fielder of average skill at a position in that league or classification of leagues should exhibit on a play, with due consideration given to the condition of the field and weather conditions.”<sup>156</sup>

Thus, despite its name, the infield fly rule is more like a standard. Whether a batted ball is an infield fly turns in large part on whether an infielder could catch the ball with ordinary effort.<sup>157</sup> The *Official Baseball Rules* lists some of the factors that should be considered in determining if the standard is satisfied as including field conditions and weather conditions.<sup>158</sup> For example, on a very windy day, an infielder might need extraordinary effort to catch a pop-up that could be caught with ordinary effort on a calm day.

Interestingly, the *Official Baseball Rules* explicitly rejects bright-line rules for determining whether a ball is an infield fly. The official comment to the definition of an infield fly states that “[o]n the infield fly rule the umpire is to rule whether the ball could ordinarily have been handled by an infielder – *not by some arbitrary limitation such as the grass, or the base lines.*”<sup>159</sup> In fact, umpires must declare an infield fly even if the ball was “handled by an outfielder, if, in

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154. Some people argue that the infield fly rule should be repealed because it unfairly reduces the penalty for a batter who pops up to an infielder and unfairly reduces the reward for the pitcher who induces the pop-up. 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, 287–88 (2015). Some also contend that the repeal of the infield fly rule would lead to more entertaining play as runners would have to decide how far to stray off their bases in the event of an infield pop-up and the defense would have to decide whether to catch the pop-up in light of the runners’ decisions. See *id.* at 284.

155. OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Infield Fly* (emphasis added).

156. *Id.* at Definition of Terms: *Ordinary Effort*.

157. The infield fly rule is also standard-like because only a fair “fly ball (not including a line drive nor an attempted bunt)” can be an infield fly. *Id.* at Definition of Terms: *Infield Fly*. A fly ball is defined as a “batted ball that goes high in the air in flight,” leaving umpires to decide what “high” means. *Id.* at Definition of Terms: *Fly Ball*.

158. See *id.* at Definition of Terms: *Ordinary Effort*.

159. *Id.* at Definition of Terms: *Infield Fly Comment* (emphasis added).

the umpire's judgment, the ball could have been as easily handled by an infielder."<sup>160</sup>

Using a standard rather than a rule to determine ordinary effort makes sense. How easily a particular pop-up can be caught by an infielder depends on many factors,<sup>161</sup> such as where the ball will land, where the infielders are positioned, how high the ball is hit (an infielder has more time to reach a higher ball), and wind conditions.<sup>162</sup> Creating a rule that explicitly accounts for all possible combinations of these factors would be very difficult, if not impossible. This is analogous to laws governing liability for car accidents. There are countless possible accident scenarios, so developing a rule detailing every scenario that could cause a driver to be liable for an accident is virtually impossible. Using a standard, such as negligence, is necessary instead.<sup>163</sup>

As discussed above, a disadvantage of standards is that, because more uncertainty exists regarding how they will be applied, people are less confident about how to tailor their conduct to standards.<sup>164</sup> For example, runners need to know whether a particular fly ball is an infield fly, because they need to know whether they must run to their next bases if the ball falls to the ground. However, the uncertainty of whether an umpire will declare an infield fly is not a great problem because of the timing of when the umpire's declaration is made. In particular, the *Official Baseball Rules* states that "[w]hen it seems apparent that a batted ball will be an Infield Fly, the umpire shall immediately declare 'Infield Fly' for the benefit of the runners."<sup>165</sup> Thus, umpires are supposed to declare the infield fly rule in effect in time for runners (and fielders) to decide how to react. If the umpires do not declare an infield fly, players know to proceed as if it is not

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160. *Id.*

161. See generally Michael K. McBeath, Alan M. Nathan, A. Terry Bahill & David G. Baldwin, *Paradoxical Pop-ups: Why Are They Difficult to Catch?*, 76 AM. J. PHYSICS 723 (2008) (discussing how, in addition to a variety of environmental factors, the trajectories of pop-ups can make catching them difficult).

162. In contrast, in applying the ordinary effort standard umpires do not consider whether the angle of the sun makes it difficult for the fielder to see the ball. See CHRIS JAKSA & RICK RODER, *RULES OF PROFESSIONAL BASEBALL: A COMPREHENSIVE REORGANIZATION AND INTERPRETATION* 53 (15th ed. 2019). The reason for considering wind conditions but not the sun is unclear. Just as umpires can be aware that a particular day is windy and thus high pop-ups might be more difficult than usual to catch, umpires can arguably be aware that the angle and brightness of the sun at a particular time can make pop-ups in certain areas of the field more difficult than usual to catch. Similarly, although it is difficult for the umpire to predict whether the sun will suddenly get in the fielder's eyes on a particular pop-up, it is difficult to also predict whether a sudden wind gust will occur as the fielder is trying to catch a particular pop-up.

163. See *supra* Section II.B.

164. See *supra* Section II.C.

165. OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Infield Fly*.

in effect. In other words, the ambiguity of a standard for an infield fly should not matter to players because the umpires will have disclosed how they have applied the standard (i.e., their decision of whether it is an infield fly) before the players need to react to that decision. In practice, umpires differ regarding how soon to declare an infield fly: when the ball is at its apex or after it begins descending.<sup>166</sup> Regardless of the umpires' exact timing, however, players will have sufficient time to decide how to react.

Although having the infield fly rule be a standard is necessary, the *ordinary effort* standard is not the best one. As discussed above, a major advantage of standards is that they can be better tailored to the purpose of laws than can rules.<sup>167</sup> The purpose of the infield fly rule is to prevent fielders from intentionally letting fly balls drop to the ground to get (at least) double plays.<sup>168</sup> Unfortunately, the *ordinary effort* standard is not well tailored to that purpose. The primary way in which it fails is that the double play it seeks to prevent is often almost impossible anyway on many fly balls that an infielder could catch with ordinary effort. For example, a fly ball hit significantly beyond the infield—especially one hit on the far right side of the field—is very unlikely to be turned into double play if allowed to drop, because a long throw to third base or home is necessary to get the first out, making it very likely that the other runners would reach their next bases safely.

The most famous example of this problem occurred in a playoff game between the St. Louis Cardinals and Atlanta Braves on October 5, 2012.<sup>169</sup> The Braves had runners on first and second base with one out when the batter hit a high pop-up.<sup>170</sup> The Cardinals shortstop drifted well into left field but appeared to be under the ball.<sup>171</sup> However, likely because of a miscommunication between him and the left fielder, the shortstop moved away at the last moment and the ball fell to the ground untouched.<sup>172</sup> However, because an umpire had already declared an infield fly, the batter was out anyway.<sup>173</sup>

The umpire's declaration of an infield fly provoked outrage from the Braves and their fans, caused a rare formal protest of a game by the Braves' manager,

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166. See WASSERMAN, *supra* note 7, at 38.

167. See *supra* notes 71–72 and accompanying text.

168. See Cohen & Waller, *supra* note 150, at 458.

169. See BERMAN & FRIEDMAN, *supra* note 8, at 99 (describing the Cardinals-Braves game on October 5, 2012, as having “the most notorious call of the infield fly rule in recent decades”).

170. See MAJOR LEAGUE BASEBALL, *NL WC: Umps Call Infield Fly Rule on Simmons' Popup*, YOUTUBE (Dec. 19, 2013), <https://www.youtube.com/watch?v=X-6ujbLknUc>.

171. *Id.*

172. *Id.*

173. *Id.*

and resulted in a nineteen-minute delay in the game to remove the debris that Braves fans threw onto the field in (informal) protest.<sup>174</sup> The anger and initial criticism from many people largely stemmed from a misunderstanding of the requirements of the infield fly rule. In particular, such critics complained that it should not have been an infield fly because the ball landed far beyond the infield.<sup>175</sup>

However, the infield fly rule does not require that the ball be in the infield.<sup>176</sup> It requires merely that the ball could be caught by an infielder with *ordinary effort*.<sup>177</sup> In this case, because the ball was hit very high, the shortstop was still able to get under the ball even though it was well into the outfield.<sup>178</sup> Indeed, after the game, MLB Executive Vice President of Baseball Operations Joe Torre (who rejected the Braves' formal protest) stated that he, the umpire supervisor, and all six of the game's umpires agreed that the infield fly rule was applied correctly on the play.<sup>179</sup>

A better reason for Braves fans to have been upset, however, is that the infield fly rule is not well-tailored to the rule's purpose. The fly ball that occurred in the game was far enough in the outfield that even if the Cardinals' shortstop had intentionally let the ball drop at his feet, turning a double play would have been almost impossible because the necessary, initial throw to third base would have been too far. Thus, the play is an example of how the infield fly rule is overinclusive, i.e., the requirements for invoking the infield fly rule were satisfied even though declaring an infield fly did not further the rule's purpose in that case.

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174. See Alan Blinder & David Waldstein, *The Braves, the Cardinals and an Infamous Infield Fly: An Oral History*, N.Y. TIMES (Oct. 3, 2019), <https://www.nytimes.com/2019/10/03/sports/braves-cardinals-baseball-playoff.html>.

175. See, e.g., John Buhler, *Atlanta Braves: Remembering the Infield Fly Rule Game*, FANSIDED (Oct. 6, 2015), <https://atlallday.com/2015/10/06/atlanta-braves-remembering-the-infield-fly-rule-game/> (“[T]his was the worst call I’ve seen in a Major League Baseball game. The ball landed dozens of feet in the outfield!”).

176. See OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Infield Fly Comment*.

177. *Id.* at Definition of Terms: *Infield Fly*.

178. See WASSERMAN, *supra* note 7, at 31 (“While media commentary [of the umpire’s call] also was initially critical, consensus developed that the call was correct, or at least not unreasonable.”). But see BERMAN & FRIEDMAN, *supra* note 8, at 100 (noting that “[not only] some of the Braves – but also some neutral observers – denied that [the Cardinals shortstop] had been ‘camped’ under the ball”).

179. See Gil Imber, *St. Louis Cardinals vs. Atlanta Braves: Umpires Get Infield Fly Rule Call Right*, BLEACHER REP. (Oct. 5, 2012), <https://bleacherreport.com/articles/1360712-cardinals-vs-braves-infield-fly-rule-protest-denied-as-umpires-get-call-right>.

Interestingly, at least some umpire trainers believe that umpires do somewhat consider the infield fly rule's purpose when applying the rule. For example, these trainers believe that umpires are more likely to invoke the rule on the left side of the field than on the right side because turning a double play on a ball allowed to drop is easier on the left side of the field because the initial throw is shorter.<sup>180</sup> They also assert that umpires would never invoke the infield fly rule in the hypothetical extreme case of a ball hit to the outfield wall even if the ball was high enough that an infielder would be able to catch the ball with ordinary effort.<sup>181</sup>

Another reason that the infield fly rule is not well-tailored to its purpose is that the rule defines the *ordinary effort* standard by whether an *average* infielder could catch the ball.<sup>182</sup> However, the actual likelihood that a particular fly ball could be turned into a double play if allowed to drop depends not upon whether an average infielder could do so, but rather on whether the particular infielder to whom the ball is hit could do so. The double play that the rule is intended to prevent can only occur if the fielder picks up the ball very soon after letting it drop to the ground.<sup>183</sup> A quick infielder who gets a good "jump" on fly balls will be able to reach areas of the field that a slower fielder could not reach in time. Thus, a quicker fielder would be able to create double plays on some fly balls that a slower fielder could not. Similarly, infielders with stronger arms would be able to create double plays on certain fly balls—those that are relatively far from the base to which the ball must first be thrown—that weaker-armed infielders would be unable to.

Importantly, however, the heuristic that umpires actually use to decide whether a fly ball can be caught with ordinary effort takes into account the quickness of the particular fielder rather than that of an average fielder. Specifically, in practice, for a ball to be judged catchable with ordinary effort, umpires require that the fielder is "comfortably underneath" the ball, even though no such requirement exists in the text of the infield fly rule.<sup>184</sup> Whether this *comfortably underneath* standard is satisfied obviously depends on where the

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180. See WASSERMAN, *supra* note 7, at 26.

181. *Id.* at 25.

182. Recall that the *Official Baseball Rules* defines "ordinary effort" as "the effort that a fielder of average skill at a position in that league or classification of leagues should exhibit on a play, with due consideration given to the condition of the field and weather conditions." OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Ordinary Effort*.

183. See Cohen & Waller, *supra* note 150, at 458 (stating that the intent of the infield fly rule is to prevent the fielder getting a double play or triple play by allowing the ball to drop).

184. WASSERMAN, *supra* note 7, at 24. They also require that the ball's flight have sufficient arc to be considered a "fly ball" rather than a line drive, although no guidance is provided in the rulebook regarding what arc is sufficient. See *id.* at 24.

particular fielder actually is—not where an average fielder would be—relative to the ball. Quicker fielders are able to get comfortably underneath more fly balls than are slower fielders.

Taking account of the skill of the particular infielder better tailors the *ordinary effort* standard to the infield fly rule's purpose of preventing fielders from intentionally allowing fly balls to drop to get double plays. However, it also reduces the advantage of being a quicker fielder. There are certain fly balls that a quick infielder—but not an average infielder—will be able to get comfortably underneath. If the infield fly rule were invoked based on what an average fielder can do, such fly balls would not be declared infield flies. Quick infielders could then choose to allow such balls to drop in front of them, potentially creating double plays for their teams. Average infielders, who would not be comfortably underneath such balls, would find it much harder to do so. However, using the comfortably underneath heuristic, umpires will declare infield flies on such fly balls for quick infielders. Although the batters will be declared out, these superior infielders will be deprived of opportunities for double plays. Thus, the *comfortably underneath* heuristic reduces the advantage from having superior athletic ability. Arguably, the laws of sports should be enforced in such ways as to reward—rather than partially neutralize—superior athletic ability.

However, umpires' use of the *comfortably underneath* heuristic is understandable. Without such a heuristic, umpires would be forced to track and forecast the flight of the fly ball to try to predict whether it will be catchable by an infielder with ordinary effort. Also, as discussed earlier, umpires must declare an infield fly sufficiently before the ball lands so that players have time to react to the implications of the declaration.<sup>185</sup> Therefore, umpires need to be able to decide quickly whether to declare an infield fly. The *comfortably underneath* heuristic allows umpires to do so. In addition, as discussed above, this heuristic helps tailor the infield fly rule to its purpose of preventing fielders from intentionally allowing fly balls to drop for double plays. Whether the fielder is comfortably underneath a fly ball is a better measure of whether such a double play is possible than is whether an average fielder could catch the ball with ordinary effort.<sup>186</sup>

In summary, the use of this heuristic is an example of a law's enforcers transforming a standard (ordinary effort) into an easier-to-apply standard (comfortably underneath). Although reasonable umpires can still differ regarding whether a fielder is comfortably underneath a ball, the heuristic reduces the

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185. See *supra* note 165 and accompanying text.

186. See WASSERMAN, *supra* note 7, at 25 (“[A]n infielder not settled comfortably underneath a ball – if he was still running or his body was not positioned properly when the ball landed on the ground – would have a more difficult time controlling an uncaught ball off the ground or making the necessary throw to begin the double play.”).

administrative costs of the law by reducing the difficulty of enforcing the law. In addition, the heuristic focuses umpires on the ability of the specific infielder—rather than an average infielder—to catch the ball, which is a better measure of the likelihood of a double play if the ball drops. Thus, by disregarding the letter of the infield fly rule, umpires are better fulfilling its purpose.

The *comfortably underneath* heuristic, however, does not reduce the main problem discussed earlier: the infield fly rule is overinclusive because it applies to balls that an infielder can catch with ordinary effort, even if turning a double play if the ball drops would be almost impossible because of the location of the ball. In particular, balls that are well past the infield, particularly on the far right side of the field, are unlikely to result in double plays.<sup>187</sup>

As noted above, at least some umpire trainers claim that umpires are less likely to call such balls infield flies for that reason.<sup>188</sup> Despite this, however, umpires often invoke the infield fly rule in situations inconsistent with its purpose. Jim Evans, former MLB umpire and umpire trainer, “guesstimates” that fielders would not turn a double play on approximately 25% of balls on which the infield fly rule is invoked if there were no infield fly rule and the fielder intentionally did not catch the ball.<sup>189</sup> Similarly, Professor Howard Wasserman reviewed every infield fly called from 2010–2017 and concluded that approximately 10% of them “were hit to areas of the field (deep or behind first base) on which the double play appears impossible.”<sup>190</sup> Evans’s guesstimate and Wasserman’s analysis are not necessarily inconsistent; many infield flies for which a double play would not have been impossible would not have been successfully turned into a double play if allowed to drop. Even a small misplay (such as a hesitation or an off-line throw) by a fielder could prevent a double play in many cases.

A better standard for invoking the infield fly rule would be explicitly related to its purpose. For example, Wasserman notes that the infield fly rule could be changed from requiring the fly ball to be catchable by an infielder’s “ordinary effort” to requiring an “umpire to find a reasonable possibility (or likelihood or probability or reasonable probability or some other standard) of a double play should the infielder intentionally not catch the fly ball.”<sup>191</sup>

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187. For the double play to occur that the infield fly rule is intended to prevent, the first throw must be made to third base or home. The farther the ball is hit beyond the infield, the longer is that throw. In addition, the farther to the right that the ball is hit, the longer is the throw to third base. *See id.* at 160.

188. *See supra* note 180 and accompanying text.

189. *See* WASSERMAN, *supra* note 7, at 171.

190. *Id.* at 170.

191. *Id.* at 83.

Wasserman ultimately rejects such an approach because it would require umpires to speculate what would happen if a fly ball were to drop to the ground.<sup>192</sup> But the need to consider a counterfactual situation should not prevent the adoption of a better standard. The *Official Baseball Rules* already requires umpires to consider counterfactual scenarios in other situations. For example, if a fielder obstructs a runner while a play is being made on the runner, the umpire must put all runners on “the bases they would have reached, in the umpire’s judgment, if there had been no obstruction.”<sup>193</sup> Also, when a spectator interferes with a batted or thrown ball, the umpire must “impose such penalties as in his opinion will nullify the act of interference.”<sup>194</sup> The official comment to that rule explains that this means that the “[b]atter and runners shall be placed where in the umpire’s judgment they would have been had the [spectator] interference not occurred.”<sup>195</sup>

However, switching to a standard that requires the umpire to judge the likelihood of a double play might increase the difficulty of deciding whether to declare an infield fly. The likelihood of a double play is affected not only by the likelihood that the fielder would be able to catch the ball easily and the location of where the ball would land. Other relevant factors include the speed of the runners and the arm strength of the fielders who would be involved in the double play attempt.<sup>196</sup> Umpires might find it difficult to consider all these factors in the (at most) several seconds they have to decide whether to declare an infield fly.

Umpires might respond to this difficulty by focusing on just a couple of factors, such as whether the fielder is comfortably underneath the ball and how far the fielder is from the base to which he will have to throw to start the double play. Indeed, even in ordinary legal systems, adjudicators facing much less time constraints might simplify standards by focusing on a small subset of the factors that could be considered.<sup>197</sup>

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192. *Id.* at 84.

193. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 6.01(h)(1). In applying this rule, however, the umpire must award the obstructed runner “at least one base beyond the base the runner had last legally touched before the obstruction,” even if the umpire doesn’t believe the obstructed runner would have attained that extra base absent the obstruction. *Id.*

194. *Id.* at R. 6.01(e).

195. *Id.* at R. 6.01(e) cmt. The *Official Baseball Rules* requires umpires to consider counterfactuals in other situations as well. *Id.* at R. 6.01(h)(2) (regarding the obstruction of a runner when no play is being made on the runner); *Id.* at R. 6.01(d) (regarding the unintentional interference by a person—other than an umpire or member of a team—who is authorized to be on the field).

196. For the double play to occur, the fielders’ throws must reach the relevant bases before the runners reach them. Obviously, this is more likely to occur, all else being equal, if the fielders have strong arms and the runners are slow.

197. See Kaplow, *supra* note 23, at 594.

Thus, one might contend that a change in standard might not change how the infield fly rule is enforced in practice. As discussed above, some umpire trainers state that umpires already take into account the likelihood of a double play when deciding whether to invoke the rule. However, a change in the formal standard likely would still have some effect. For example, consider again the most (in)famous invocation of the infield fly rule during the 2012 Cardinals-Braves playoff game.<sup>198</sup> Recall that all six umpires, the umpire supervisor, and the MLB Executive Vice President of Baseball Operations unanimously believed that the call was correct because it satisfied the *ordinary effort* standard.<sup>199</sup> However, it is very unlikely that any of them would have believed that the fly ball would have also satisfied a *reasonable possibility of a double play* standard.

Finally, recall that earlier this Article argued for the adoption of an electronic strike zone based on the importance of consistency for ball and strike calls.<sup>200</sup> Such adoption is feasible only because the strike zone is defined by a precise rule; the exact dimensions of the strike zone can be programmed into the technology. In contrast, an electronically enforced infield fly rule is probably not feasible at this time. A major impediment likely is that the infield fly rule is a standard that requires the consideration of numerous factors. Whether a fly ball can be caught with ordinary effort by an infielder depends on factors such as the height of the ball, the positioning of the infielders, and wind conditions. As discussed above, detailing all combinations of the potential factors that would satisfy this standard is likely impossible.

However, with the advent of Artificial Intelligence (AI), this might change in the future. For example, an AI system could potentially analyze all pop-ups that have occurred over a relevant historical period to determine what combination of characteristics resulted in a 95% percent or higher likelihood of being caught by an infielder. Based on this information, the system could immediately signal to umpires in a game when a pop-up satisfies these criteria.

An AI system might also be able to apply other possible standards such as a *reasonable possibility of a double play should the infielder intentionally not catch the fly ball* standard, which might require taking into account additional factors such as the fielders' speed and arm strength and the speed of the runners to determine whether there was at least a 25% probability (for example) of a double play if the ball were allowed to drop. Acquiring sufficient data for the AI system to analyze for such a standard, however, might be problematic. Because the vast majority of potential infield flies have been caught—and/or the umpires declared an infield fly on the play—there might be insufficient examples of

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198. See *supra* note 169 and accompanying text.

199. Imber, *supra* note 179.

200. See *supra* Section V.A.

uncaught balls that have been turned into the double plays that the infield fly rule is intended to prevent.<sup>201</sup>

### C. Check Swings

The check swing is another example of a standard. A check swing occurs when the batter starts to swing at the pitch but then stops before completing the swing.<sup>202</sup> If the bat does not hit the ball and the pitch was outside of the strike zone, the umpires must decide whether the check swing was sufficient to constitute a swing.<sup>203</sup> If it was a swing then a strike is called; if it was not a swing then a ball is called.<sup>204</sup>

Determining whether a check swing was a swing is often difficult for umpires for two reasons. First, the home plate umpire does not have a good view of how far the batter swung on a check swing. Because of this, if the home plate umpire calls a ball and the catcher or defensive team's manager appeals that the batter swung, the home plate umpire is required to ask the base umpire who has a much better viewing angle of the check swing, but who also is much farther away.<sup>205</sup> The second difficulty is that the *Official Baseball Rules* does not clearly define when a check swing becomes a swing, and thus a strike.

One of the relevant parts of the *Official Baseball Rules* provides one definition of a strike as a pitch that is "struck at by the batter and is missed."<sup>206</sup> The other relevant part states that a batter "may elect to strike the ball, or . . . may not offer at it, as he chooses."<sup>207</sup> Thus, a check swing is a strike if the batter "struck at" or "offer[ed] at" the pitch. Unfortunately, these definitions are not helpful because they do not indicate what determines whether a check swing

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201. For example, there appears to have been only a total of thirty cases of potential infield flies being uncaught by a fielder—let alone being turned into double plays—during the 2010–2017 MLB seasons. See WASSERMAN, *supra* note 7, at 169.

202. Although baseball commentators generally use the term "check swing," the *Official Baseball Rules* uses the terms "check swing" and "half swing" interchangeably. Compare OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.04(b)(4)(A)(ii) (using the term "check swing"), with *id.* at R. 8.02(c) (using the term "half swing").

203. See Waldstein, *supra* note 84.

204. See OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Strike, Ball*.

205. *Id.* at R. 8.02(c) cmt. For a right-handed batter, the first base umpire has the best angle; for a left-handed batter, the third base umpire has the best angle. See also EXPLAINER: *What Exactly is a Check-Swing*, USA TODAY (Oct. 15, 2021, 4:41 AM), <https://www.usatoday.com/story/sports/mlb/2021/10/15/explainer-what-exactly-is-a-check-swing/49273655/> (stating "umps at first and third often have a better vantage point on check-swings, and plate umpires routinely ask for their help on such calls").

206. OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Strike*.

207. *Id.* at R. 501(c).

constitutes striking at or offering at a pitch. As a result, “the [check] swing issue is just about as gray as you can find in the baseball rulebook.”<sup>208</sup>

In contrast, the laws of some other baseball leagues specifically define when a check swing is a swing. For example, for college baseball, the National Collegiate Athletic Association (NCAA) rulebook states that a check swing “shall be called a strike if the barrel head of the bat passes the batter’s front hip.”<sup>209</sup> In addition, in 2019, the Atlantic League (a lower professional baseball league) adopted a rule that, for a check swing, “the base umpire should determine whether the batter’s wrists ‘rolled over’ during an attempt to strike at the ball and, if not, call the pitch a ball.”<sup>210</sup> Either the first base umpire or third base umpire still has a better viewing angle than the plate umpire to make these determinations.

Multiple reasons exist for having a precise rule define when a check swing becomes a swing. First, check swings occur frequently: several times throughout the course of a game, on average.<sup>211</sup> Thus, to the extent that having a precise rule reduces enforcement costs by simplifying umpires’ check swing decisions, this reduction is likely to outweigh the rule’s one-time promulgation costs.

Also, the lack of a clear definition of a swing creates at least the perception of inconsistency in how check swings are called by umpires. Different umpires appear to make the decision differently, including by considering how far the bat barrel reached and whether the batter “broke his wrist” on the swing.<sup>212</sup> The

208. CloseCallSports, *Baseball’s Parallax Effect – Check Swing Angles Prove Deceptive*, YOUTUBE (June 6, 2018), <https://www.youtube.com/watch?v=z0KTnfQM2C0>.

209. NAT’L COLLEGIATE ATHLETIC ASS’N, 2023 AND 2024 BASEBALL RULES BOOK R. 2-39 (2022), <http://www.ncaapublications.com/productdownloads/BA24.pdf> [hereinafter NCAA Rules Book]. Like the MLB’s *Official Baseball Rules* sometimes does, the NCAA rules refer to check swings as “half swings.” See, e.g., *id.* at 28.

210. Lindsay (@LindsayImber), *Atlantic League Debuts New Rules, E-Zone*, CLOSE CALL SPORTS: CLOSE CALL SPORTS (July 10, 2019), <https://www.closecallsports.com/search?q=Atlantic+League+Debuts+New+Rules%2C+E-Zone> [hereinafter CLOSE CALL SPORTS, *Atlantic League*].

211. Jeff Mount, *MLB Rules: Checked Swings Should Not be Judgment Calls*, FANSIDED (Dec. 9, 2021), <https://calltothepen.com/2021/12/09/mlb-checked-swings-not-judgment-calls/>.

212. See *How to Call a Checked Swing*, BASEBALL R. ACAD., <https://baseballrulesacademy.com/how-to-call-a-checked-swing/> (last visited Nov. 16, 2023) (“One of the things [umpires] look for is the head of the bat. . . . If the head of the bat comes through, comes past his body, comes over the plate, that’s going to be a swing even though [the batter] might try to pull [the head of the bat] back. . . . [If] the head of his bat has not crossed his body yet that’s going to be no swing.”); see also *What is a Swing?*, BASEBALL R. ACAD., <https://baseballrulesacademy.com/lesson/what-is-a-swing-5/#:~:text=A%2>

result is that check swings are perceived as being “called with a randomness that indicates a lack of consensus among umpires as to what the rule actually is.”<sup>213</sup> Indeed, even MLB’s official website refers to “Major League Baseball’s arbitrary check-swing rule.”<sup>214</sup>

As discussed above, consistency in the enforcement of the laws of baseball is important partly because players decide how to act based upon how they believe the laws are applied.<sup>215</sup> However, this consideration does not apply to check swings. Check swings occur when batters start to swing at a pitch but then quickly change their minds; these decisions to stop swinging are made in a fraction of a second.<sup>216</sup> Batters are thus very unlikely to be able to change their behavior based on how a check swing is defined. Batters who have started swinging would have no time to think—much less be able to see—that, for example, the barrels of their bats have not reached their front hips and thus they can stop their swings.<sup>217</sup> In other words, knowing how umpires define check swings is very unlikely to affect batters’ behavior.

Nevertheless, having umpires declare very quickly whether check swings are swings still can be important to players. For example, imagine that there is a three-balls one-strike count on the batter and a runner on first base begins running toward second base as the pitcher throws the pitch. If the pitch is outside of the strike zone but the batter check swings, then the catcher will benefit from knowing immediately whether the check swing is a swing. If it is a swing, then the catcher will likely want to throw the ball to second base to try to throw out the base runner. If it is not a swing, then the catcher will not want to throw the ball because the runner will be entitled to second base because it is the fourth ball called. Throwing to second base in that case has no upside and, if the throw is too inaccurate, could allow the runner to advance to third base because of the errant throw.

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Oswing%20is%20an%20attempt,attempted%20at%20a%20pitched%20ball (last visited July 24, 2023) (“Contrary to popular belief, a batter does not have to ‘break his wrist’ in order to attempt at a pitch. While noting whether the swing carried the barrel of the bat past the body can aid an umpire on this call, the final decision is based on whether the batter actually attempted at the pitch.”).

213. Mount, *supra* note 211.

214. *Defining a Check-Swing*, MAJOR LEAGUE BASEBALL: FILMROOM (July 19, 2021), <https://www.mlb.com/video/defining-a-check-swing>.

215. See *supra* note 120 and accompanying text.

216. Even a full swing occurs in 100-150 milliseconds (i.e. less than one-sixth of a second). See Quinton, *supra* note 93.

217. As part of the research for this Article, the author spoke with college baseball players and several confirmed that their decisions to check swings are made very quickly, without an awareness of how far they have swung already.

Similarly, imagine that there is a runner on second base and a two-balls two-strike count on the batter. If the batter check swings on the next pitch and that pitch is outside of the strike zone and is not caught by the catcher, then the batter can try to advance to first base if and only if the check swing is deemed a swing.<sup>218</sup> The batter thus needs to know the umpire's call to know whether he needs to run to first base. Also, if the batter does run, the catcher needs to know the call to determine if he should throw the ball to first base; an unnecessary throw is risky because there is a runner on another base. Because of the importance to the players of knowing quickly whether the check swing is a swing, home plate umpires are required in this potential uncaught third-strike situation to immediately ask the base umpire who has the best view of the check swing, even before the defensive team appeals.<sup>219</sup> In addition, if the check swing is a swing, that base umpire is required to indicate so even before being asked by the home plate umpire.<sup>220</sup>

Thus, players often need to know as soon as possible whether a check swing is a swing. However, the adoption of a rule precisely defining a swing is unlikely to help players' decision-making processes. Like home plate umpires, catchers and batters are not in good positions to see exactly how far batters swung. Regardless of how a swing is defined, they often will have to rely upon base umpires to determine whether that definition is satisfied.

However, consistency in calling check swings still is important. Players, managers, fans, and the media become frustrated when check swings—or any other type of play—appear to be called inconsistently.<sup>221</sup> Umpires are aware of this desire for consistency and try to provide it. As former MLB Umpire Crew Chief Ted Barrett stated, “We [umpires] talk about [check swings] a lot at our meetings because it is one of our most difficult calls, and we try to get all on the same page as a staff [so] that we’re all trying to call the same thing. . . . So there’s some ambiguity there, but we do our best to try to be consistent, so players know what’s a swing and what’s not.”<sup>222</sup> Despite this, the game’s participants and observers believe that umpires are inconsistent regarding check swings.<sup>223</sup>

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218. If the third strike is not caught by the catcher with two outs and/or no runner on first base, the batter must be tagged or thrown out before he reaches first base.

219. See MLB UMPIRE MANUAL, *supra* note 19, at R. Interpretation 77.

220. *Id.*

221. See WASSERMAN, *supra* note 7, at 83 (2019) (stating that “[c]osts [of the infield fly rule] also include player, manager, media, and fan confusion, controversy, and anger from an erroneous or disputed call”).

222. Chris Chavez, *Umpire Addresses Controversial Giants-Dodgers Final Strike Call: ‘I Thought He Went’*, SPORTS ILLUSTRATED (Oct. 15, 2021), <https://www.si.com/mlb/2021/10/15/umpire-explains-controversial-strike-call-wilmer-flores-dodgers-giants-playoffs>.

223. See *supra* notes 212–14 and accompanying text.

Adopting a rule precisely defining a swing likely would increase at least the perceived consistency of the calls. Everyone would know that all umpires were using the same test for a swing. In practice, there would still very likely be significant inconsistency in the calls because, even with a precise rule, the check swing would remain one of the most difficult calls for umpires to make. The base umpire who has the best view of the check swing is more than ninety feet away,<sup>224</sup> and the play occurs in a fraction of a second as the batter generally pulls back the barrel of the bat after checking the swing, requiring the umpire to judge how far the barrel had travelled before being pulled back. In October 2021, after a very close playoff series between the Los Angeles Dodgers and San Francisco Giants ended on a controversial check swing call, the base umpire who made the call apologetically explained to the press, “Check-swings are one of the hardest calls we have. I don’t have the benefit of multiple camera angles when I’m watching it live. When it happened live I thought he went, so that’s why I called it a swing.”<sup>225</sup> As correctly suggested by that explanation, in addition to being a difficult call, the camera angle can greatly affect one’s perception of how far the barrel of the bat reached.<sup>226</sup> Thus, the variety of camera angles used on television will also continue to fuel controversy over whether umpires correctly applied even a precise definition of a swing.

A possible objection to using a precise rule to define a swing is that a rule would be overinclusive and thus inequitable. For example, consider the NCAA rule that a swing occurs “if the barrel head of the bat passes the batter’s front hip.”<sup>227</sup> Sometimes a batter turns away from an inside pitch to avoid getting hit by the ball and, in doing so, brings the barrel head of the bat past his front hip. Calling a swing in such a situation is inequitable because the batter was acting out of self-preservation rather than trying to hit the ball. The current vague test of whether the batter “struck at” the pitch allows the umpire to rule that there was no swing because the batter was merely trying to get out of way of the errant pitch rather than trying to hit it.<sup>228</sup> However, this situation also could be dealt with by adding a clause to the rule to create an exception. For example, the rule could be that a check swing is a swing if the barrel head of the bat passes the

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224. See OFFICIAL BASEBALL RULES, *supra* note 40, at R. 2.01, app. 1 (showing that first and third bases are ninety feet from home plate); MLB UMPIRE MANUAL, *supra* note 19, at § 1.1 (showing that first and third base umpires should always be positioned behind the bases).

225. USA TODAY, *supra* note 205; see also *id.* (quoting veteran MLB Umpire Crew Chief Ted Barrett as saying that check swings are “one of our most difficult calls”).

226. See CLOSE CALL SPORTS, *Atlantic League*, *supra* note 210.

227. NCAA BASEBALL, 2023 AND 2024 BASEBALL RULES BOOK R. 2–39 (2022), <http://www.ncaapublications.com/productdownloads/BA24.pdf>.

228. See OFFICIAL BASEBALL RULES, *supra* note 4, at Definition of Terms: *Strike*.

batter's front hip, *unless the batter did not intend to strike at the ball*. Indeed, even in ordinary legal systems, rules sometime contain exceptions to prevent the laws from being overinclusive.<sup>229</sup> For example, a rule mandating “no vehicles in the park,” might include an exception for “emergency vehicles” to prevent it from being overinclusive for excluding ambulances.<sup>230</sup>

In conclusion, the desirability of more consistency in the calling of check swings justifies the adoption of a precise rule that defines when a check swing is a swing. Although the difficulty of the call would prevent complete consistency in practice, a rule would likely increase at least the perception of consistency. With the current, vague definition of a swing, umpires can differ in their judgments of both how to determine whether a check swing is a swing and whether a particular check swing satisfies those criteria. Under a precise rule, the only differences across umpires would be in their judgments of whether the criteria were satisfied.

#### D. *Running Out of the Base Path*

On a baseball field, there is a marked running lane parallel to the foul line for the last half of the distance between home plate and first base. This running lane is three-feet wide and in foul territory. Prior to the 2024 season, it defined the area wherein a batter running to first base could avoid being called out for interfering with a fielder at first base who was trying to catch a throw from another fielder.<sup>231</sup>

However, another *unmarked* three-foot limit exists for runners anywhere on the field. The *Official Baseball Rules* states that a runner who “runs more than three feet away from his base path to avoid being tagged” is out “unless his action is to avoid interference with a fielder fielding a batted ball.”<sup>232</sup>

This limitation relieves fielders from possibly having to chase runners all over the field to tag them out. This is especially important if other runners are also on base. Without such a law, a runner trying to avoid a tag might run well into the outfield, for example, forcing the fielder to choose between pursuing him or staying in the infield to prevent other runners from advancing. Such behavior

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229. Judy M. Cornett, *The Rulification of General Personal Jurisdiction and the Search for the Exceptional Case*, 89 TENN. L. REV. 571, 574 (2022).

230. *Id.*

231. Snyder, *supra* note 92. One of the plays in which this interference was most likely to occur was a when the catcher fielded a ball hit right in front of home plate. If the batter ran in fair territory to first base, the batter could easily get in the way of an accurate throw from the catcher to the first baseman. Requiring the batter to run in a running lane located in foul territory reduced this problem.

232. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(1).

might be viewed as distorting the desired competitive balance between offenses and defenses. The law limiting running out of the base path might also serve an aesthetic purpose: if fielders were forced to chase runners around the entire field, baseball could often resemble a children's game of tag. This could make the game less enjoyable for many fans.<sup>233</sup> Also, the defense might spend a long time trying to tag a very nimble runner, which could slow the pace of the game.

The three-foot limit on running out of the base path is a precise rule. Players' reliance on the limit justifies using a rule rather than a standard, such as that runners cannot deviate an *unreasonable distance* from the base path to avoid a tag. A runner who is trying to avoid a tag needs to know how far he may move away from the attempted tag before being called out. Similarly, a fielder needs to know how far he might need to pursue a runner who is attempting to avoid a tag. Often a fielder will tag out a runner and then must quickly throw the ball to attempt to put out another runner. A fielder who is unsure how far the first runner can stray from the base path can waste valuable time by attempting to tag out that first runner even though he is about to be called out anyway for running out of the base path. Umpires can reduce this problem by calling runners out for moving too far from the base path as soon as the infractions occur, but even a very small time savings can be important if a play on another runner is also possible.

This three-foot rule also might be easier for umpires to administer than a standard because they need only decide whether a runner deviated more than three feet from the base path to avoid a tag, rather than having to determine both what would constitute an unreasonable distance, for example, and whether the runner exceeded this limit.

Unfortunately, the three-foot rule has a significant problem. It is hard to administer because baseball fields have no markings to indicate the borders of that three-foot limit. This forces players and umpires to estimate the distance in real time while tag attempts are occurring.<sup>234</sup> Making helpful markings would be very difficult anyway, because there are an almost limitless number of potential base paths. Contrary to the belief of many fans, the base path is not a straight line

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233. See WASSERMAN, *supra* note 7, at 58 ("The rules should create a game that is not only competitively and equitably balanced, but aesthetically pleasing to play and watch."). See also *id.* at 147 ("[A]esthetics plays an important, although distinct, role in creating and modifying the rules of any sport.").

234. See *Base Path & Running Lane*, UMPIREBIBLE, <https://www.umpirebible.com/-index.php/rules-base-running/basepath-running-lane> (last updated Mar. 7, 2020) ("[Y]ou'll never see an umpire with a tape measure, so eyeballing that three-foot allowance takes experience and judgment.").

between two bases.<sup>235</sup> Instead, “a runner’s base path is established when the tag attempt occurs and is a straight line from the runner to the base he is attempting to reach safely.”<sup>236</sup> Thus, the location of the three-foot limit depends on the runner’s exact location at the time the fielder begins to attempt to tag the runner. Runners usually do not run in a perfectly straight line from one base to another. Thus, putting markings on the field that account for everywhere a runner might be when a tag attempt begins would be impossible.

In contrast, clearly marking the three-foot running lane to first base is feasible because—at least when a play at first base is possible—the batter will run in essentially a straight line from home plate to first base.<sup>237</sup> Having this clearly marked running lane helps players and umpires. Batters running to first base know exactly the area that they need to stay within. Also, fielders near home plate who see runners outside of the designated running lane can still throw the ball to first base without worrying about hitting the runners with the ball; such runners will be out for interference if the ball hits them.<sup>238</sup> In addition, the marking of the running lane facilitates umpires judging if runners are outside the permissible path to first base. In summary, the marking of the running lane relieves players and umpires from having to estimate three feet.

In contrast, determining if a runner is more than three feet from the base path requires estimation. Compounding the difficulty of this estimation is that it must occur while the runner is attempting to avoid a tag. Thus, the umpire must simultaneously watch whether a tag is made and judge whether the runner is deviating more than three feet from the base path. Additionally, even the base path itself must be estimated; it is a straight line from where the runner was when the umpire determined that the tag attempt began to the base that the runner was attempting to reach. Similarly, the fielder is trying to tag the runner, and the runner is trying to avoid the tag, while needing to be aware of the three-foot rule. In summary, the conditions are far from ideal for the umpire and players to apply the rule accurately.

In addition, in principle, it is strange to have a rule set a precise distance for an infraction when umpires and players can only estimate that distance. As

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235. See Sam Miller, ‘Skunk in the Outfield’: How the Most Epic Trick Play in History Broke Baseball, ESPN (June 17, 2020), [https://www.espn.com/mlb/story/\\_/id/20294816-skunk-outfield-how-most-epic-trick-play-history-broke-baseball](https://www.espn.com/mlb/story/_/id/20294816-skunk-outfield-how-most-epic-trick-play-history-broke-baseball).

236. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(1).

237. On a ball hit to the outfield, the batter normally rounds first base, rather than runs in a straight line to and through the base, because it is a faster route to take to (potentially) advance to second base. However, balls hit to the outfield do not implicate the purpose of the running lane because no throw is being made to first base that starts from a point close to home plate, and thus the throw does not pose the risk of a ball hitting the batter who is running from home plate to first base.

238. See OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(a)(11).

discussed above, a primary advantage of a precise rule is that people can more easily tailor their conduct to the law.<sup>239</sup> If there is a forty-five-miles-per-hour speed limit, drivers can choose to drive forty-five-miles-per-hour without fear of a speeding ticket. In addition, enforcement is easier for police and judges who need to only decide if the person was driving faster than forty-five miles per hour instead of also having to decide how to interpret a standard such as an *unsafe speed*.

However, if the adjudicators and people governed by the rule can only estimate if the rule is being complied with, some of these advantages of promulgating the law as a rule are lost. People will be unable to carefully tailor their behavior to the rule and, at least in close situations, adjudicators will be unable to determine whether the rule was violated. Indeed, adopting a forty-five-miles-per-hour speed limit would be strange if cars lacked speedometers and police lacked radar and other ways of measuring drivers' speeds. Yet the *Official Baseball Rules* takes this approach regarding running out of the base path. Runners are required to remain within three feet of the base path despite the runners, fielders, and umpires being unable to measure whether this limit is exceeded.

However, the three-foot rule probably still is better than a standard, such as prohibiting runners from deviating an unreasonable distance from the base path to avoid a tag. Such a standard would create even more uncertainty for players and require umpires both to determine what is an *unreasonable* distance and estimate whether runners exceeded that limit.

Nevertheless, a more administrable rule is preferable. For example, the rule could be changed to declaring a runner out who runs more than one step from his base path to avoid being tagged, unless this action is to avoid interference with a fielder fielding a batted ball. Runners should have more awareness of whether they have taken a step away from a fielder rather than whether they have moved more than three feet. Also, because of the absence of distance markings on the field, umpires and fielders could more easily judge whether runners took more than a step away from the base path rather than estimate whether runners moved more than three feet away.

In addition, the concept of determining whether a player took a step would not be a new concept for umpires to apply. Umpires already use the "step-and-reach" rule in enforcing runner interference. In particular, if a fielder misplays or deflects a batted ball, there is a "generally accepted notion" that umpires will call a runner out for interference if the runner hinders the fielder's attempt to retrieve

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239. See *supra* Section II.B.

the ball if the ball remains within a “step-and-reach” of the fielder.<sup>240</sup> The feasibility of using a step as the test for running out of the base path is also supported by the fact that the self-proclaimed “premier website for developing umpires of amateur baseball”<sup>241</sup> already tells umpires that “noticing whether the fielder attempting to tag the runner, upon making a step and a reach, was able to tag the runner who is trying to pass him” is a helpful guideline for estimating whether the runner was more than three feet from the base path.<sup>242</sup> In other words, the website already encourages umpires to use a step and a reach as a proxy for three feet.

A possible fairness objection exists to a *one step* rule: a player with longer legs could have a longer step and thus would be allowed to deviate from the base path more than would a shorter-legged player. This inequity, however, is at least arguably outweighed by the advantages a *one step* rule would have in guiding players’ behavior and umpires’ judgment. Also, this advantaging of longer-legged players would partially offset the arguable inequity of the larger strike zone faced by taller batters.

#### E. Abandonment and Desertion

Occasionally a runner erroneously believes he is out and thus stops trying to advance on the bases for too long. If this occurs after the runner has reached first base or beyond, it is an “abandonment.”<sup>243</sup> If it occurs before the runner reaches first base, it is a “desertion.”<sup>244</sup> However, the penalty is the same for both: the runner is out.<sup>245</sup> The purpose of these laws is likely, at least in part, to maintain the pace of the game; a runner who erroneously stops trying to advance delays the game. However, these laws also relieve a fielder from having to follow and

240. See *Runner Touched by Live Ball*, UMPIREBIBLE, <https://www.umpirebible.com/-index.php/rules-base-running/runner-touched-by-live-ball> (last updated Mar. 7, 2020).

241. *Welcome to the UmpireBible*, UMPIREBIBLE, <https://www.umpirebible.com/#:~:text=The%20UmpireBible%20is%20the,of%20the%20rules%20of%20baseball> (last updated Feb. 19, 2022).

242. UMPIREBIBLE, *Base Path*, *supra* note 234.

243. The *Official Baseball Rules* uses the terminology that the runner is “abandoning his effort to touch the next base” when this infraction is committed by a runner who has at least reached first base. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(2).

244. No term is provided in the *Official Baseball Rules* for when the runner has not yet reached first base, but the term desertion is commonly used to refer to this situation. See *Batter Abandonment*, *supra* note 89 (stating there is no official term for this situation, but desertion is commonly used).

245. See OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(2), 5.05(a)(2) cmt.

tag a runner who is leaving the playing field.<sup>246</sup> This can save the fielder valuable time if a play is possible on another runner.

Desertion most commonly occurs when the batter does not realize there has been an uncaught third strike.<sup>247</sup> When there are two outs and/or no runner on first base, if the catcher fails to catch a third strike, the catcher usually must tag or throw out the batter at first base.<sup>248</sup> However, the catcher need not do this if the batter does not quickly attempt to go to first base; instead the batter is automatically out.

The *Official Baseball Rules* gives some guidance regarding how soon the batter must try to advance to first base. In particular, the comment to the uncaught-third-strike rule states, “A batter who does not realize his situation on a third strike not caught, and who is not in the process of running to first base, shall be declared out once he leaves the dirt circle surrounding home plate.”<sup>249</sup>

However, a batter can also be declared out for desertion before he leaves the dirt circle. Specifically, Major League Baseball’s *Umpire Manual* instructs umpires also to declare out a batter who, after an uncaught third strike, “makes no effort to advance to first base within, in the umpire’s judgment, a reasonable amount of time. For example, a batter who ‘lingers’ at home plate, removing a shin guard, and then takes off for first base shall also be declared out.”<sup>250</sup>

Although less common, a runner can be called out for abandonment if he has already reached first base but then abandons any attempt to run the bases. In particular, the *Official Baseball Rules* states that a runner is out if “after touching first base, he leaves the base path, obviously abandoning his effort to touch the next base.”<sup>251</sup> The comment to that rule adds more detail, stating that “[a]ny runner after reaching first base who leaves the base path heading for his dugout or his position believing that there is no further play, may be declared out if the umpire judges the act of the runner to be considered abandoning his efforts to

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246. The rule against running more than three feet outside of the base path does not apply in these cases because the runner is not trying to avoid a tag. *See id.* at R. 5.09(b)(1).

247. *See JAKSA & Roder, supra* note 162, at 50 (“Desertion typically occurs when a third strike is not caught and the defense neglects tagging the batter-runner or first base.”).

248. *See OFFICIAL BASEBALL RULES, supra* note 4, at R. 5.05(a)(2). This is commonly called a “dropped third strike,” but often it occurs on a pitch thrown in the dirt rather than a pitch that is dropped by the catcher. *See id.* Thus, “uncaught third strike” is more accurate terminology. Also, if there are two outs, then the defense can choose to make a force out at any base where there is a force play instead of tagging or throwing out the batter.

249. *Id.* at 5.05(a)(2) cmt. A diagram in the *Official Baseball Rules* shows this dirt circle having a diameter of twenty-six feet. *Id.* at app. 1. However, the size and shape of the “circle” is not the same in every MLB ballpark. MLB UMPIRE MANUAL, *supra* note 19, at R. Interpretation 10.

250. MLB UMPIRE MANUAL, *supra* note 19, at R. Interpretation 10.

251. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(2).

run the bases.”<sup>252</sup> The comment also gives an example of such abandonment: a “[r]unner believing he is called out on a tag at first or third base starts for the dugout and progresses a *reasonable distance* still indicating by his actions that he is out shall be declared out for abandoning the bases.”<sup>253</sup>

Thus, it appears that a standard governs abandonment. That is, whether the runner progressed a *reasonable distance* toward his dugout or his fielding position. However, no guidance is provided to define or determine a reasonable distance, and research for this Article found no evidence regarding how umpires determine this distance.<sup>254</sup>

A separate provision of the *Official Baseball Rules* discusses abandonment that occurs immediately after a runner has (legally) run or slid past first base. In particular, “[i]f after overrunning or oversliding first base he starts toward the dugout, or toward his position, and fails to return to first base at once, he is out, on appeal, when he or the base is tagged. . . .”<sup>255</sup> Thus, a runner who abandons his effort to run the bases after overrunning or oversliding first base is out only if the defensive team appeals the play before the runner returns to first base. Also, the standard for abandonment after overrunning or oversliding first base appears to be whether the runner *starts toward* rather than progresses a *reasonable distance* toward the dugout or his fielding position. However, no guidance is provided regarding how to apply this *starts toward* standard either.

In summary, both desertion and abandonment are defined by a runner failing to attempt to run the bases. However, at least some rule-like guidance is provided for determining if desertion occurred. For example, leaving the circle surrounding home plate without trying to advance to first base is sufficient for desertion, but not necessary.<sup>256</sup> In contrast, no rule-like guidance is provided for determining if abandonment occurred. Instead, umpires must apply vague standards such as whether the runner starts toward or progresses a reasonable distance toward his dugout or fielding position.<sup>257</sup>

The argument for precise rules defining desertion and abandonment is weaker than for some of the other baseball laws discussed earlier in this paper.

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252. *Id.* at R. 5.09(b)(1) and (2) cmt.

253. *Id.* (emphasis added).

254. See *What is Runner Abandonment*, BASEBALL R. ACAD., <https://baseballrulesacademy.com/what-is-runner-abandonment/> (last visited Nov. 13, 2023) (“[Question:] Is there a certain number of feet a runner must run to be considering abandoning his efforts to run the bases? [Answer:] No. This is an arbitrary judgment by the umpire.”).

255. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(11).

256. See *id.* at 5.05(a)(2) Comment; MLB UMPIRE MANUAL, *supra* note 19, at R. Interpretation 10.

257. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(1), (2) cmt.

Abandonment rarely occurs.<sup>258</sup> When it does, it often is during an unusual, confusing play, which explains why the runner erroneously believes he is out. For example, in a game in March 2021, a lead runner passed a trailing runner during a rundown. Although the trailing runner is out in this situation, the lead runner mistakenly believed that he was out instead, and so he jogged back toward his dugout.<sup>259</sup> Similarly, in a college game in April 2022, a player hit a home run but he (and the broadcasters) erroneously believed the outfielder had caught the ball, so the player stopped running the bases between first and second base and started jogging back to his dugout instead.<sup>260</sup> The rarity of abandonment means any enforcement cost savings from having a precise rule defining abandonment are likely to be low. Although a precise definition of abandonment would spare umpires from having to interpret a vague standard, this savings would rarely occur.

Desertion is much more common, especially after an uncaught third strike.<sup>261</sup> However, even when the batter does not realize the third strike was not caught, desertion is often moot because the catcher will generally tag out the batter if the ball is still nearby. Because the batter believes he is already out, this tag is normally not difficult. Notably, even when desertion is called, it likely is not noticed by the game's viewers because it generally is not mentioned by MLB television broadcasters. This might be because desertion occurs immediately after a third strike, so the batter is acting as if he were already out, and because the batter does not object to the desertion call because the batter thought he was already out. Thus, broadcasters might not notice the desertion or at least not consider it worthy of commentary.

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258. See Frankie Taddeo, *Mariners Player Called Out on Rare 'Abandonment' Rule in Bizarre Scene vs. Royals*, SPORTS ILLUSTRATED (Aug. 17, 2023), <https://www.si.com/extra-mustard/2023/08/18/mariners-player-dylan-moore-called-out-abandonment>.

259. See CloseCallSports, *Lukes-Brujan Runners Passing Nearly Turns Into Abandonment Double Play During BOS-TB Spring Game*, YOUTUBE (Mar. 9, 2021), <https://www.youtube.com/watch?v=R1M1fjgcqZE>. Although the lead runner should have been called out for abandonment on the play, the umpires did not do so, likely because one umpire erroneously called time after the lead runner passed the trailing runner, thus stopping play. *Id.*

260. See CloseCallSports, *Baseball Abandonment Issues During a Home Run – Reviewing the Auto-Out Rule with an NCAA Example*, YOUTUBE (Apr. 15, 2022), <https://www.youtube.com/watch?v=P1ScR7hoVLE>. The NCAA baseball rule governing abandonment is similar to the MLB rule. See NCAA Rules Book, *supra* note 209, at R. 8-5-c (“Any runner after reaching a base safely who leaves the base path heading for his dugout or his defensive position, believing that there is no further play, [is out] if the umpire judges the act of the runner to be considered abandoning his efforts to run the bases.”).

261. See *Rule of the Week: Batter Abandonment – When a Batter is Called Out for Desertion*, BASEBALL R. ACAD., <https://baseballrulesacademy.com/rule-week-batter-abandonment/> (last visited Nov. 16, 2023) (explaining and providing an example of desertion).

Another reason why precise definitions of desertion and abandonment are not very important is that the need for consistency in how umpires enforce these laws is relatively low. This is primarily because precisely defined rules would not be helpful to runners. Desertion or abandonment generally occurs because the runners erroneously believe that they are out. Thus, the runners' behavior will be unaffected by knowing how far they can go toward their dugout or fielding position before being declared out; the rule would be irrelevant in the runners' minds. Having a precise rule is very likely also irrelevant even when abandonment or desertion is intentional.<sup>262</sup> The runners have given up already and are unlikely to change their minds.

However, precise definitions of desertion and abandonment sometimes could be helpful to fielders. Knowing how far runners can move toward their dugouts before being called out for desertion or abandonment might prevent fielders from having to spend time pursuing and tagging (or throwing to a base) to retire a runner who is about to be called out for desertion or abandonment anyway. Umpires can reduce this problem by calling desertion and abandonment as soon as they occur, but even a very small time savings can be important if a play on another runner is possible.

Administratively, defining desertion by a precise rule is easier than defining abandonment by one. A large dirt circle surrounds home plate. This can potentially allow umpires and players to have a clear method of detecting desertion on uncaught third strikes because desertion is partly defined by whether the batter leaves the home plate circle before attempting to go to first base.<sup>263</sup> Although a batter attempting to go to first base will also leave the circle on the way to first base, distinguishing such an attempt from desertion is easy because a batter attempting to reach first base on an uncaught third strike will be running directly toward first base, while a batter who erroneously believes that he is out will instead be walking toward his dugout or fielding position.<sup>264</sup>

Sometimes when batters do not realize there is an uncaught third strike, the batters linger in the circle instead of leaving it. This likely most frequently occurs when there are already two outs and thus the batters think that they have struck out for the final out of the inning. They thus feel no need to leave the circle

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262. Intentional desertion or abandonment can occur, for example, if a runner gives up because he knows that he is about to be put out by a fielder. See, e.g., Baseball R. Acad., *Marwin Gonzalez Abandons Basepath*, YOUTUBE (July 6, 2021), <https://www.youtube.com/watch?v=ozuID7xUXDk> (providing an example of intentional abandonment).

263. See OFFICIAL BASEBALL RULES, *supra* note 4, at 5.05(a)(2) cmt.

264. See Baseball Dad, *Complete Guide to Baseball Field Layout*, 99BASEBALLS, <https://99baseballs.com/baseball-field/complete-guide-to-baseball-field-layout/#2-baseball-field-layout> (last visited Nov. 16, 2023) (showing a diagram of layouts of typical baseball fields).

quickly, because they think that the half-inning is over and so no new batter is about to come to the plate. Instead, while remaining in the circle, the batters will remove their batting equipment (such as their batting helmets or elbow guards) to prepare to take their defensive positions on the field.<sup>265</sup> In such situations, if the catcher does not tag out the batter, defining desertion merely by leaving the dirt circle before attempting to go to first base would not be sufficient. The play would be ongoing until the batter finished removing the equipment and wandered out of the circle, which could take a little time. This would undermine a likely primary purpose of prohibiting desertion: preventing unnecessary delay.

Because of this, as noted above, umpires are directed to also call a batter out for desertion if the batter fails to attempt to advance to first base within a “reasonable amount of time” after an uncaught third strike.<sup>266</sup> Whether this standard is satisfied is explicitly left to “the umpire’s judgment.”<sup>267</sup> Some guidance is given, however, regarding how to exercise that judgment: a batter who removes equipment before attempting to advance violates that standard, for example.<sup>268</sup>

Instead of a *reasonable amount of time* standard, a precise rule could govern this situation instead. For example, a batter is out if he fails to attempt to advance to first base within five seconds of being entitled to do so, unless he is attempting to avoid a tag.<sup>269</sup> However, a significant administrative problem would exist with

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265. See MLB UMPIRE MANUAL, *supra* note 19, at R. Interpretation 10.

266. *Id.*

267. *Id.*

268. *Id.*

269. Occasionally, a batter will stop trying to advance to first base to avoid facilitating the defense tagging him out quickly and resultantly allowing the defensive player to have time to throw another runner out for a double play. See, e.g., jps901c, *Batter Runner Retreats Toward Home Plate*, YOUTUBE (Apr. 1, 2018), <https://www.youtube.com/watch?v=SjZdYRRSHeA> (providing an example of such a tactic). Generally, the batter in such situations will have started to attempt to advance to first base but will stop or even, as illustrated, retreat toward home plate to avoid being tagged. However, to handle the unusual case in which, to avoid being tagged, a runner does not even initially attempt to advance to first base, an exception that allows the runner to attempt to avoid a tag could potentially be integrated into the rule that sets a time limit for the runner to attempt to advance to first base. Importantly, if the batter begins to advance to first base but then retreats to avoid a tag, the batter is out if he reaches home plate. See MLB UMPIRE MANUAL, *supra* note 19, at R. Interpretation 58(1). As one analysis explains, “This is actually an interpretation of the obstruction rule which states that obstruction may not be called on a fielder who impedes the batter-runner as the BR [batter-runner] retreats toward home, but obstruction still does apply to a batter-runner advancing or running toward first base.” Lindsay (@Lindsaylmb), *Running a Batter Back to Home Plate – Automatic Out Rule*, CLOSE CALL SPORTS (May 27, 2021), <https://www.closecallsports.com/2021/05/running-batter-back-to-homeplate.html#:~:text=The%20MLB%20Umpire%20Manual%20states,that%20obstruction%20may%20not%20be>.

such a rule: umpires would be unable to measure five seconds accurately in such situations.<sup>270</sup> Thus, like the three-foot test for running out of a base path, such a rule would require umpires to estimate whether the rule was violated.

However, like the current *reasonable amount of time* standard, a rule specifying a precise amount of time would be unlikely to cause much controversy in practice. The batters already believe that they are out (or are giving up voluntarily), so they are unlikely to object to the umpire calling them out for desertion regardless of how it is defined by a rule or standard.

In contrast to desertion, abandonment occurs after the runner has already reached at least first base. Clear markings, such as the dirt circle around home plate, are absent from most of the rest of the field. Thus, defining abandonment by observable markings is impracticable. However, other formulations of a precise rule defining abandonment are possible. For example, a runner could be deemed to abandon running the bases “if he takes more than one [or two] step[s] toward the dugout or his fielding position.”<sup>271</sup> As discussed above, such step-based rules do not require markings on the field to judge accurately.<sup>272</sup> Similarly, such a rule could be used for the rare desertion that begins only after the batter has already left the circle surrounding home plate, and thus where the usual tests of the batter leaving the circle while not running to first base or of making no effort to advance in a “reasonable amount of time” do not apply.<sup>273</sup>

In summary, the case for a precise rule defining abandonment is not very strong. Because abandonment rarely occurs, any enforcement costs savings for umpires are minimal. Also, the absence of relevant markings on the field limits the types of rules that are administratively feasible. In addition, because runners who abandon bases generally erroneously believe they are out, their behavior would be unlikely to be affected by such a rule. However, it is possible that some fielders’ decision-making might benefit from the greater clarity provided by a rule defining abandonment as, for example, runners taking at least two steps

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270. Since the beginning of the 2023 season, there has been a pitch clock enforcing time limits for how quickly a pitcher must begin to pitch and for when batters must be ready to hit. Although extenuating circumstances permit the umpire to direct the clock to be paused, reset, and restarted, the clock is otherwise controlled by a field timing coordinator (FTC). Hannah Keyser, *Everything You Didn’t Know You Need to Know About MLB’s New Rules*, YAHOO!SPORTS (Feb. 15, 2023), <https://sports.yahoo.com/everything-you-didnt-know-you-need-to-know-about-mlbs-new-rules-015747273.html>. Requiring the FTC to also keep track of how long batters take to initiate their advance to first base after an uncaught third strike would add an administrative burden that is arguably not worth the trouble.

271. A fielder might go directly to his fielding position rather than back to his dugout if he erroneously believes there are three outs.

272. See *supra* Section IV.D.

273. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.05(a)(2) cmt.; MLB UMPIRE MANUAL, *supra* note 19, at R. Interpretation 10.

toward their dugouts or fielding positions. The case for defining desertion precisely is stronger. Desertion occurs much more frequently, so umpires and fielders will benefit more from the consistency provided by a rule. In addition, relatively easy-to-enforce measures of taking too long to attempt to advance to first base exist, such as whether the batter left the dirt circle or began removing batting equipment. Indeed, this is largely the current approach taken by the laws of baseball.<sup>274</sup>

*F. Batter's Attempt to Advance to Second Base*

Sometimes a batter hits a ground ball to an infielder who then inaccurately throws the ball past the first baseman.<sup>275</sup> Often in such a situation the batter who legally overran first base will then realize that the throw has passed the first baseman and will start to move toward second base. However, the batter then almost immediately sees that another fielder is close to retrieving the ball—and thus will likely throw him out if he runs to second base—so the batter returns to first base.

The *Official Baseball Rules* states that a runner is out if he “fails to return at once to first base after overrunning or oversliding that base. If he attempts to run to second [base] he is out when tagged [before returning to first base].”<sup>276</sup> Thus, if a fielder sees that the batter who overran first base also attempted to go to second base, the fielder will try to tag the batter (or tell whichever teammate has the ball to do so) before the batter can return to first base.

A law governing this situation is necessary. On a ground ball hit to an infielder, the batter will generally run as quickly as possible to first base to beat the infielder's throw to the base.<sup>277</sup> If batters could be tagged out for merely overrunning first base, batters would be forced to slow down by sliding or running slower as they approached first base to avoid overrunning it. This would reduce the chance that batters would reach first base in time. Thus, batters are

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274. Recall that the *MLB Umpire Manual* provides the case of a batter who lingers in the circle, removing equipment, merely as an example of desertion. The determination of whether a batter did not attempt to advance to first base within a “reasonable amount of time” is explicitly left to the umpire's judgment. See *MLB UMPIRE MANUAL*, *supra* note 19, at R. Interpretation 10.

275. See, e.g., Basketball US, *MLB Error Throwing to Bases*, YOUTUBE (Nov. 12, 2016), <https://www.youtube.com/watch?v=nGhNNi8wbHc&t=196s> (2017) (showing examples of infielders throwing balls past first basemen).

276. *OFFICIAL BASEBALL RULES*, *supra* note 4, at R. 5.09(b)(11).

277. Recall that there are some rare situations when a batter might not wish to advance toward first base to avoid being tagged quickly and allowing the defense to potentially get a double play. See *supra* note 269 and accompanying text.

allowed to overrun first base.<sup>278</sup> Of course, if the infielder's throw goes past the first baseman, the batter may wish to advance to second base. But like any runners who choose to advance, batters who try to advance are at risk of being tagged out before they get to that base or retreat successfully back to the previous base.

However, the law is often difficult to apply because whether the batter attempted to advance to second base is unclear. The difficulty exists because the batter legally overran first base and thus was not touching a base when the alleged attempt to advance to second base occurred. If the batter were standing on first base when the infielder's throw went past the first baseman, determining whether the batter attempted to go to second base would be unnecessary. The batter would be out if they moved off first base for any reason and was tagged before returning.

However, when the batter has legally overrun first base, they are no longer on the base and thus the umpire has to judge whether the batter attempted to advance to second base. The mere fact that they are tagged while not touching first base is no longer sufficient. In other words, the umpire must decide if the batter only overran first base or also attempted to advance to second base before changing his mind and deciding not to advance. Determining whether the batter "attempted" to advance can be difficult when the batter makes a relatively minor movement toward second base in reaction to the throw getting past the first baseman.

Unfortunately, the *Official Baseball Rules* provides no help in making this judgment; it merely states that the runner can be tagged out if he "attempts" to advance to second base.<sup>279</sup> However, no guidance is provided for determining what constitutes an attempt, and thus umpires merely use their judgment in deciding whether an attempt occurred.<sup>280</sup> At least partly because of this ambiguity, controversy sometimes results when a fielder tags a batter who has overrun first base in these situations. If the umpire calls the batter safe, the defense will protest that the batter attempted to go to second base. If the umpire calls the batter out, the offense will claim that the batter did not attempt to do so.

Constructing a precise rule defining an attempt is feasible. The only comprehensive baseball rules textbook<sup>281</sup> advises umpires:

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278. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(11).

279. *Id.*

280. This Article's author spoke with several former major league umpires and current minor league umpires, all of whom confirmed that there is no test or common heuristic they apply in making this judgment.

281. Rick Roder, *How to Use This Book*, R. OF BASEBALL.COM, <https://rulesofbaseball.com/ebooks/how.html> (last visited Nov. 16, 2023) (noting that the "Jaksa/Roder manual is the only comprehensive baseball rules textbook in existence today").

A batter-runner overrunning first base who subsequently takes a single step (or steps) toward second base with intent to advance is no longer overrunning and can be tagged out while off base . . . . Simply turning toward second base after overrunning first does not necessarily show an attempt to advance.<sup>282</sup>

Something like this advice could be formulated into a rule. For example, an *attempt* to advance to second base could be defined as a step or two steps toward second base that occur after the runner turns toward that base.

Multiple reasons exist for defining an attempt with a precise rule. First, it is not uncommon for a throw from an infielder to get past the first baseman, potentially creating a question of whether the batter attempted to advance to second base.<sup>283</sup> Thus, the promulgation costs of a rule are likely to be offset by the reduced enforcement costs from making the decision easier and less controversial for umpires. For example, a rule defining an attempt as a step a toward second base after the batter turned his body toward the base, would eliminate the need for the umpire to infer the batter's intent from lesser movements toward second base.

Second, players would benefit from being able to rely upon a definition of an attempt. Currently, when fielders believe that a batter might have attempted to advance to second base, they must tag the batter before he returns to first base.<sup>284</sup> Because the batter has overrun first base on these plays, the batter can be far beyond first base, forcing fielders to pursue the batter for a tag. This can potentially affect fielders' ability to make plays on runners at other bases. A precise rule that provides fielders more confidence regarding whether the batter has attempted to advance to second base would help them better decide whether the batter is worth pursuing.

Batters, however, might benefit less than fielders would from a precise rule. Batters often appear to not realize that they moved toward second base on these plays. Indeed, they are often making no effort to get back to first base quickly when tagged by fielders who claim the batters attempted to advance to second base.<sup>285</sup> Perhaps this is because batters' initial reaction to an overthrown ball is

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282. JAKSA & RODER, *supra* note 162, at 46–47.

283. See generally Mitchel Lichtman, *First Baseman "Scoops"—The Value of Handling Errant Throws at First Base*, FANGRAPHS (Feb. 9, 2009), <https://blogs.fangraphs.com/first-basemen-scoops/> (conducting empirical analysis regarding first basemen's abilities to catch infielders' errant throws).

284. OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(11).

285. See, e.g., CloseCallSports, *Did Billy McKinney Intend to Advance? When a Batter-Runner Loses Overrun Protection at First Base*, YOUTUBE (June 20, 2021), <https://www.you>

instinctive rather than voluntary. When a batter hits a ground ball to an infielder, the batter is focused on running to first base as quickly as possible. Then, suddenly and unexpectedly, the infielder's throw goes past the first baseman. If the batter sees this, they might instinctively (and unconsciously) react by moving toward second base. However, almost immediately after, the batter sees that another fielder is close to the ball and thus the runner decides not to try to advance. Because of the speed and unanticipated nature of these events, batters might be unaware of whether, and how much, they moved toward second base. Did they step toward second base or merely turn or flinch in that direction? Even batters who consciously decided to try to advance to second base might not be aware of exactly what actions they took. This might explain why batters often do not run back to first base in these situations; they do not realize that they might have made an *attempt* to advance and thus are in jeopardy of being tagged out.<sup>286</sup>

Batters' lack of awareness of their movement would limit the effect of a rule precisely defining an attempt. People unaware of their own behavior cannot tailor that behavior to a rule. However, at least somewhat reducing this problem is that an alert first base coach who sees the batter's actions can tell the batter to hurry back to first base if the actions might be construed as an attempt to advance.

Also, as discussed above, consistency is an important value even if players are not relying upon this consistency.<sup>287</sup> If *attempt* were defined precisely, umpires likely would judge more consistently whether a batter attempted to advance. Umpires would all be looking only for whether the batter took a step after turning toward second base, for example. Players and coaches would also know that umpires were applying the same test, likely increasing at least the perception of umpires' consistency.

In addition, the timing of the umpire's call in these situations provides another reason for clearly defining an attempt. As discussed earlier, an umpire is supposed to make calls regarding many types of plays as soon as they occur.<sup>288</sup> For example, an umpire should declare an infield fly as soon as the standard for

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tube.com/watch?v=DvN0G1MYWuo (showing an example of a batter who overran first base not attempting to return quickly to the base despite being tagged by fielder who claimed the batter attempted to advance to second base); CloseCallSports, *Quickie – 1B Umpire Quinn Wolcott Calls Alek Thomas Out Past First Base*, YOUTUBE (July 13, 2022), <https://www.youtube.com/watch?v=-cuJqIt20A> (same); Major League Baseball, *COL@MIA: Ozuna Gets Tagged Out After a Turn at First*, YouTube (Aug. 12, 2017), <https://www.youtube.com/watch?v=cRzRV33NOFY> (same).

286. It arguably might be a good strategy for a batter who suspects that he might have made an attempt to advance to second base to nonchalantly walk back to first base so as to not alert the fielders to this. However, the author of this Article is not aware of any evidence that batters intentionally do this as part of an understood and utilized strategy.

287. See *supra* Section IV.C.

288. See *supra* notes 165 and 232 and accompanying text.

it is satisfied. Similarly, an umpire should call a runner out for running out of the base path to avoid a tag, or for abandonment or desertion as soon as the violation occurs. As a result, even if umpires inconsistently apply vague standards in these situations, players very quickly know that the umpires believed the standards were satisfied. This reduces the problem of players needing to accurately predict on their own whether a standard was satisfied. For example, a fielder can stop pursuing a runner as soon as the umpire declares the runner out of the base path, even if the fielder does not understand the test the umpire is applying.

In contrast, umpires do not signal immediately when a batter attempts to advance to second base. Only when a fielder tags the batter does the umpire either call the runner out (which indicates that there was an attempt to advance) or safe (which indicates that there was not an attempt).<sup>289</sup> Thus, a fielder must tag the batter before the umpire announces whether an attempt was made. As noted above, even spending a short time pursuing and tagging the batter can be costly to the defensive team if there are potential plays on runners on other bases. This time is wasted if the umpire decides that no attempt occurred. A precise rule defining an attempt would allow alert fielders to better predict whether the umpire will judge that the batter attempted to advance to second base and thus whether pursuing and tagging the batter is worthwhile.

Umpires also do not signal when other important events occur. For example, umpires do not provide any signal when a runner passes a base without touching it or when a runner tags up early (i.e., before a fielder touches a fly ball). Instead, umpires only signal if the defense appeals these plays, declaring at that time whether the runner is safe or out.<sup>290</sup> Thus, these plays depend upon the defense detecting the runner's violation. Similarly, the runner often can correct the violation before the appeal by going back to touch the base that was missed or left early.<sup>291</sup> A clear rule defining these violations makes it easier for players to know if a violation occurred and thus whether an appeal should be made and whether the runner should try to return to the base. Indeed, that is the approach taken by the *Official Baseball Rules*. For example, runners must actually "touch"

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289. See OFFICIAL BASEBALL RULES, *supra* note 4, at R. 5.09(b)(11) (stating that runners who attempt to advance to second base are out only when tagged by a fielder).

290. See *id.* at R. 5.09(c)(1)–(2) ("Any runner shall be called out, on appeal when: (1) After a fly ball is caught, he fails to retouch his original base before he or his original base is tagged; . . . (2) With the ball in play, while advancing or returning to a base, he fails to touch each base in order before he, or a missed base is tagged. . . ."). The defense appeals by tagging the runner or the relevant base while indicating to the umpire that the defense is appealing that the runner missed the base or tagged up early.

291. See *id.* at R. 5.09(c)(2) *Approved Ruling* ("(A) No runner may return to touch a missed base after a following runner has scored. (B) When the ball is dead, no runner may return to touch a missed base or one he has left after he has advanced to and touched a base beyond the missed base.").

(or “retouch”) the bases rather than just get within a reasonable distance of them,<sup>292</sup> and runners cannot tag up until a fielder actually “touches” a fly ball rather than just being reasonably close to the ball.<sup>293</sup> Unfortunately, however, no such precise rule defines when a batter attempts to advance to second base.

In summary, adopting a rule defining when a batter *attempts* to advance to second base is wise. One possible definition is a step (or two steps) toward second base occurring after the runner has turned toward that base. An advantage of that definition is that a batter who takes a step (and certainly two steps) after turning toward second is unlikely to be acting unconsciously. As discussed above, a batter’s initial movements toward second base might be instinctive. By requiring more than just initial movements, batters are more likely to realize when they have attempted to advance to second base. This should lead to fewer cases of batters being tagged out while nonchalantly walking back to first base. It would also help batters better tailor their behavior to the law by requiring them to consciously choose whether to advance toward second base.

#### CONCLUSION

Baseball is a legal system with a set of laws governing the play of the game. As in other legal systems, some of these laws are rules and others are standards. An extensive academic literature exists discussing when, in general, it is preferable to promulgate laws as rules or standards. This Article has applied the lessons from that literature to the laws of baseball.

For multiple reasons, precise rules usually are preferable in baseball. First, it is a very repetitive sport. The MLB regular season has 2,430 scheduled regular season games, almost all of which are at least eight-and-a-half innings long and have at least three batters during each half-inning. Thus, even plays that are unusual can occur frequently in absolute terms. As a result, the one-time promulgation costs of a rule are very likely to be outweighed by any reduced enforcement costs from having that rule.

Reducing enforcement costs can be especially important because umpires must typically make and declare their judgments almost instantaneously. Eliminating the need to interpret a standard facilitates these judgments by allowing umpires to focus on merely applying a precise rule to the play at hand rather than also having to interpret a standard.

Precise rules also generally benefit players, who often need to make very quick decisions tailored to the laws of the game. Such rules encourage consistency in umpires’ enforcement of the laws, helping players make better

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292. *See id.* at R. 5.09(c)(1)–(2).

293. *Id.* at R. 5.09(a)(1) Catch cmt.

decisions. In addition, consistency in enforcement is an important principle in and of itself. When the laws are not enforced consistently, the perceived fairness and integrity of the game is undermined. In addition, inconsistency causes confusion and anger among players, managers, fans, and the media.

As a result of these considerations, precise rules should, and do, govern the definition of the strike zone, running out of the base path and, to some extent, desertion. However, these considerations also suggest that other laws should be changed to precise rules as well. These include those laws defining whether check swings are *swings*, whether a batter *attempted* to advance to second base, as well as abandonment. However, administrative issues must be considered in designing such rules. For example, umpires and players lack the ability to precisely measure distances on most areas of the field. As a result, it is wise to avoid rules based on exact distances, such as a rule prohibiting runners from deviating more than three feet from their base paths to avoid tags. Instead, such rules should be based on easier-to-administer metrics, such as whether a runner took more than one step away from the base path.

Still, some of the laws of baseball should remain standards rather than rules. For example, the difficulty of precisely delineating in advance which fly balls under which weather conditions can be caught with *ordinary effort* precludes a precise definition of an infield fly. However, the standard used should be changed to explicitly incorporate the purpose of that law—to prevent an infielder from intentionally allowing a fly ball to drop to the ground to obtain a double play.

In summary, legal scholars have long looked to baseball for insights relevant to improving the American legal system. However, this can be a symbiotic relationship. Insights from scholars regarding our U.S. legal system—including those related to the wisdom of using rules and standards—can improve baseball.