

MARQUETTE LAWYER

FALL 2021

THE SPORTS LAW ISSUE

The Winning Career Record
of Marquette Sports Law Alums

Ray Cannon, L'1913, Sports Law Pioneer

Assessing the Off-the-Field
Tumult in College Sports

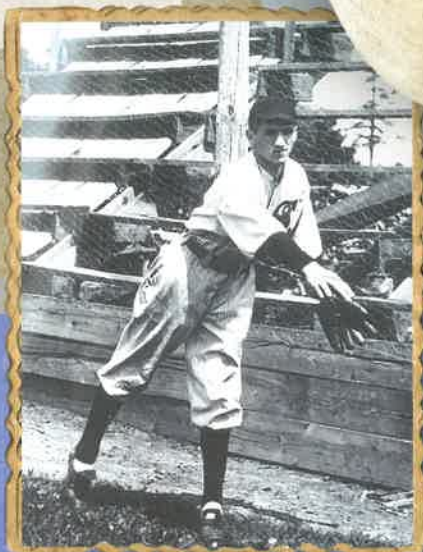
ALSO INSIDE

Chicago's *Lakefront*—The Story of the
Public Trust Doctrine

A Faculty Conversation on the Criminal
Justice System

The Law School in the World War II Era

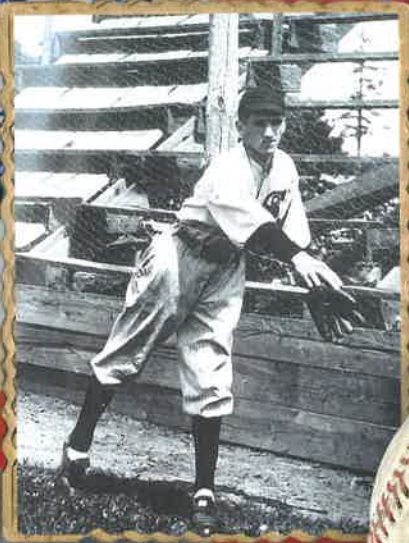
Honoring Professors Edwards and Williams



JOE JACSO



PHOTO: MARQUETTE



JOE JACSONO



RAY CANNON,

Sports Law Pioneer

Knowing some of their circumstances from personal experience, a Marquette lawyer of more than a century ago blazed a trail in providing legal help to professional athletes.

By Thomas G. Cannon

Today, it is commonplace for top athletes to rely on a phalanx of lawyers, agents, accountants, investment advisors, and public relations consultants to help manage their careers. A century ago, such professional resources were unheard of for poorly paid athletes—unless one retained Milwaukee lawyer Ray Cannon, a Marquette University law alumnus (class of 1913) and pioneering figure in sports law.

The spark behind his role lay in Cannon's considerable ability as a baseball player. He began making a name for himself "up North"—in Minocqua, Wisconsin—as a gifted right-handed pitcher for his city team. In 1910, Cannon moved to Milwaukee to begin the three-year law program at Marquette University. By then, he had perfected his curveball and changeup to earn \$50 a game pitching for semiprofessional teams in the Wisconsin-Illinois League. Income from those weekend gigs subsidized his legal education.

Cannon soon faced a pivotal career choice: baseball or law? He turned down contract offers from two teams in the American Association: the St. Paul Saints and the Toledo Mud Hens. Milwaukee attorney Henry Killilea, a family friend and father figure to the orphaned Cannon, offered a clerkship in his law firm. That step proved providential, as Killilea also owned the Milwaukee Brewers baseball team. In fact, in 1899, at the old Republican House Hotel in downtown Milwaukee, Killilea convened a meeting of Connie Mack, Charles Comiskey, and Ban Johnson to found the American League.

Cannon's stint in the Killilea firm taught him that sports and law could make a successful match. But where Killilea represented ownership interests, Cannon's natural sympathies as a player led him to side with the stars who actually drew the crowds that generated franchise income. Part of his legal career would come to focus on representing athletes' interests.

Even after becoming a practicing lawyer, though, Cannon arranged his busy trial schedule so that he could pitch spring training games for major league teams. He parlayed friendships with managers Kid Gleason, Art Fletcher, and Joe McCarthy to pitch for the Chicago White Sox, Philadelphia Phillies, and Chicago Cubs. In spring of 1918, for example, he threw a three-hitter for the Phillies against the Boston Braves. His last such game came in 1924, when he pitched the Phillies to a 6-2 victory over the Braves in Miami. Lou Chapman, longtime *Milwaukee Sentinel* sports editor, would later write, "Ray Cannon . . . was as skillful in the pitcher's box as he was before a jury and could have made a profession of baseball had he wished."



Attorney Ray Cannon (left) sits next to his client, Jack Dempsey, in 1921, at Dempsey's training camp in Atlantic City, N.J., where the world heavyweight champion was preparing for his successful title bout with Georges Carpentier; standing is trainer Teddy Hayes.

Jack Dempsey

In February 1918, a promising young boxer named Jack Dempsey arrived in Milwaukee to fight the heavily favored Bill Brennan at the Milwaukee Auditorium. Before the match, however, Dempsey's unscrupulous ex-manager, John "the Barber" Reisler, slapped a restraining order on Dempsey, escrowing a one-third share of his purse. The pugilist needed legal counsel fast. Local boxers at the old Elite Rink on National Avenue (where Dempsey was training) urged him to hire a courtroom fighter named Ray Cannon.

Reisler's Milwaukee suit was one of many he filed in courthouses around the country, thus placing Dempsey's future under a legal cloud. The

most damaging consequence of his managerial uncertainty was that it blocked Dempsey from scheduling the quality opponents necessary to contend for the championship. Cannon got Reisler's restraining order lifted and soon won dismissal of the underlying suit. His pivotal representation cleared Dempsey's path to a coveted title bout. Recognizing the significance of that case, the Milwaukee County Historical Society mounted a major exhibit on the litigation in 1997.

Before a crowd of 70,000 fans in Toledo in 1919, Dempsey won the heavyweight crown, knocking out reigning champ Jess Willard in three rounds. Dempsey quickly became, in the words of biographer Paul Gallico, "the greatest and most beloved sports hero the country had ever known." In the 1920s, Dempsey eclipsed Babe Ruth in national and international acclaim.

Cannon continued representing the champ over the next eight years. In 1921, he negotiated the contract for the Dempsey-Carpentier fight before 91,000 fans at Boyle's Thirty Acres in New Jersey. The bout marked a milestone in sports history by producing the first million-dollar gate. For that single match alone, Dempsey's take was more than \$300,000, far eclipsing Ruth's 154-game salary of \$70,000.

Cannon recognized that Dempsey might realize additional income by syndicating film rights to his bouts, but a federal law banned interstate shipment of fight films. In 1921, the Milwaukee lawyer sought a test case to challenge the statute, publicly announcing that he would deposit a film of the second Dempsey-Brennan match in a mailbox outside the federal courthouse in Chicago. The U.S. Attorney's office, not wanting to indict the world's most popular athlete, declined the bait.

The champ's contract with Cannon described him as Dempsey's "legal and business advisor." A contemporaneous newspaper described his role: "The Milwaukee attorney is on the ground for all of Dempsey's big battles and takes care of the legal end of the bout, and for any other difficulties that may arise." The Milwaukee lawyer also worked out with the champ during training camps.

Dempsey proved to be an entrée for Cannon to acquire such boxing clients as Freddie Welsh, world lightweight champion; Ad Wolgast, former world lightweight champion; and Jimmy Wilde, world flyweight champion. Yet none of them approached Dempsey's fame or occasioned as much attention for Cannon from newspapers around the country.

The champ and his attorney remained close friends. On one Milwaukee visit, Dempsey even babysat the three Cannon children. Of his lawyer, Dempsey said, "Ray's been my friend for years. He's squared me in a lot of legal jams, has exceptional ability, and is honest to a fault. Also, I have found his advice has always been sound. I wish I had always followed it."

National Baseball Players Association

Ray Cannon saw professional sports through the lens of his baseball-playing experience. His *bête noir* was the infamous 10-day reserve clause that owners required in all major league contracts. On that, Cannon argued: "A ballplayer may sign a five-year contract, say, at \$4,000 a year. He may develop into a sensation and be a tremendous box-office draw. But his salary is set. He takes it all for five years, or he's through. On the other hand, he may break a leg sliding into a base—but the club is not bound in any way. Ten days later, he can be released without further pay!"

That provision reflected the players' lack of economic leverage vis-à-vis club owners, as well as their weak legal position resulting from a recently decided U.S. Supreme Court case, *Federal Baseball Club v. National League* (1922), which excluded baseball from the application of the Sherman Antitrust Act of 1890.

To address the imbalance, in August 1922, Cannon formed a labor union, the National Baseball Players Association. As he told the *Boston Globe* at the time: "The players at present are little better than slaves of the owners, subject to arbitrary direction and dismissal. The only possible way in which a just, honest, and fair contract can be secured from the owners is for players to organize as a unit."

Within months, 132 players in the National League and 93 in the American League signed membership pledges. Samuel Gompers, president of the American Federation of Labor, endorsed the union. However, nationally syndicated columnist Westbrook Pegler called Cannon a "labor agitator" and described him as "the Leon Trotsky of the sporting business." A *New York Times* editorial, dripping with sarcasm, declared: "It is probable that the liberal weeklies and other champions of the downtrodden will hail with joy this banding together of the oppressed slaves of capital," but the *Times* had no sympathy.

In that early-1920s era, before passage of the National Labor Relations Act more than a decade

later, the owners quickly crushed the nascent union by threatening to blacklist any player who joined. Before its disbanding the following year, though, Cannon was able to extract one long-lasting concession: creation of a relief fund for needy former players, which still exists today. He later explained: "We were successful enough to make the magnates come down off their high horses and meet some player demands, but their quick rush to an agreement broke up our union. They came to terms on the condition players quit the union."

Cannon's stature among ballplayers soared because they appreciated his going to bat for them. When he brought his nine-year-old son to the 1926 World Series, the Cannons visited both team dugouts during batting practice. Grover Cleveland Alexander introduced the boy to the St. Louis Cardinals and gave the youngster a diamond pin worth \$300. Babe Ruth introduced the boy to Lou Gehrig and other stars of the New York Yankees.

Cannon continued representing individual ballplayers with grievances. In 1924, for example, he advised Washington Senators outfielder Wid Matthews on contract issues. Matthews had an unremarkable playing career but later achieved renown as a footnote to a more famous story. Working as a scout for the Brooklyn Dodgers in 1946, Matthews wrote a glowing assessment of a recently discharged World War II army veteran who hoped to break into the major leagues. That report influenced Branch Rickey to interview, and then sign, an unheralded infielder named Jackie Robinson, thereby ending Major League Baseball's ban, in effect since 1888, on African American players.

Black Sox Trial

The greatest scandal in American sports history occurred in 1919 when eight Chicago White Sox players were accused of accepting money from gamblers to throw the World Series. The episode occasioned two legal cases.

In the first proceeding, players were hauled before a Cook County grand jury and encouraged to admit to crimes by team counsel Alfred Austrian. Relying on that conflicted advice, the players testified and were quickly indicted. Before trial, however, the "confessions" were stolen from the evidence room in the prosecutor's office. The players, thereafter represented by independent lawyers, declined to testify at trial. (Ray Cannon made a cameo appearance at the trial, successfully

Cannon's stature among ballplayers soared because they appreciated his going to bat for them. When he brought his nine-year-old son to the 1926 World Series . . . , Babe Ruth introduced the boy to Lou Gehrig and other stars



Charles "Swede" Risberg (left) and Oscar "Hap" Felsch (right), members of the 1919 Chicago White Sox, confer with attorney Ray Cannon in July 1921 during their trial in the old Cook County Criminal Court Building, at 54 W. Hubbard Street in Chicago.

obtaining permission to allow Oscar "Happy" Felsch to return briefly to Milwaukee for his father's funeral.) The jury acquitted all defendants.

Nonetheless, White Sox owner Charles Comiskey fired the players, and Commissioner Kenesaw Mountain Landis (a onetime lecturer at Marquette University's law school during his earlier tenure as a federal judge) banned them from baseball for life. Newspapers dubbed them the "Black Sox."

Best known in the group was "Shoeless Joe" Jackson. The star leftfielder had a .356 lifetime batting average, ranking him third all-time behind Ty Cobb and Rogers Hornsby. Babe Ruth called Jackson "the greatest natural hitter I ever saw," and paid him the ultimate compliment by copying Jackson's swing. At the urging of teammate (and Milwaukee native) "Hap" Felsch, Jackson sought Ray Cannon's help in recovering two years of back salary and his share of the 1919 World Series bonus.

Cannon filed suit in Milwaukee County because Comiskey had incorporated his club in Wisconsin when he helped charter the American League. In a pretrial letter, Cannon told Jackson, "I want to trim Comiskey if it is the last thing I do." Cannon's cross-examination of the White Sox owner, in early 1924, proved to be the trial's dramatic highlight. As set out in Eliot Asinof's book, *Eight Men Out*, Comiskey admitted that baseball's reserve clause was unfair to players, but he claimed that Jackson broke his contract by selling out to gamblers.

Cannon sharply reminded Comiskey that the law had tried and acquitted Jackson. Suddenly, Comiskey's lawyer pulled from his briefcase the stolen grand jury transcript of Jackson's "confession"—missing since 1920. Cannon immediately demanded to know how Comiskey came into possession of confidential grand jury materials. Neither the witness nor his lawyer could

answer the question without self-incrimination since both state and federal law made receipt of stolen property a felony.

A reporter for the *Milwaukee Sentinel* described Cannon's final argument as "powerful," adding: "Cannon wept in closing his pleading for Jackson, whom he described as one of fifteen children, obliged at 12 years of age to enter the unhealthy cotton mills of South Carolina to help feed his brothers and sisters, and begged the jury to restore him to his honor, even if they didn't give him any money, so that he can go back home and again look his neighbors in the eye and tell the world that he had been falsely accused."

Jurors returned a verdict awarding Jackson his full back pay and World Series share. Judge John Gregory then surprised observers by setting aside the verdict, ruling that Jackson's trial testimony conflicted with his grand jury testimony. Inexplicably, the jurist overlooked Comiskey's chicanery in using stolen documents.

In 1988, the Chicago Historical Society acquired Jackson's grand jury transcript from Comiskey's old law firm. The purloined document revealed that Jackson had denied throwing the World Series and gave testimony that was equivocal, if not exculpatory, on several key points.

Asinof and other baseball historians eventually ferreted out the truth behind Cannon's trial question to Comiskey and his lawyer: the White Sox owner had paid a rumored \$10,000 to gambler Arnold Rothstein to steal the grand jury documents. Thus they were available to Comiskey for use in the Milwaukee trial, several years later, in 1924.

Afterward, Cannon rendered his own private verdict on the Black Sox, telling his son: "If any of the players was innocent, it was Jackson." That conclusion was borne out by Shoeless Joe's on-field performance. Jackson set a World Series record by batting .375 (12 hits, including a home run, three doubles, and six RBIs). In eight games, Shoeless Joe played 72 flawless innings devoid of a single fielding or throwing error.

Trial testimony established that Jackson did not conspire with teammates to throw the Series and that he made a good-faith effort to report what he'd heard to Comiskey (who refused to see him). The 1,700-page trial transcript remains the only complete firsthand account of the Black Sox scandal—told in the words of its principals, under oath, and subject to cross-examination. More than a dozen books and two movies have kept the Black Sox in the limelight

as partisans of one side or another continue to debate the scandal, but the jury's verdict stands as the only call of a truly objective umpire.

Cannon later settled Jackson's case, along with those of "Hap" Felsch and Charles "Swede" Risberg, during appeal. In 1927, the Milwaukee lawyer represented Risberg in an unsuccessful reinstatement hearing before Commissioner Landis. In 1951, shortly before both men's deaths, Cannon sent Shoeless Joe a note of encouragement after the South Carolina Legislature adopted a futile resolution urging Jackson's reinstatement in baseball.

Red Grange

Harold "Red" Grange, often regarded as the top college football player of all time, became the first superstar in the newly formed National Football League. Turning professional after the 1925 collegiate season, Grange traveled to Wisconsin to consult Ray Cannon about his managerial situation. In a reprise of the Dempsey case, the "Galloping Ghost" found himself pursued by a high-flying manager, C.C. ("Cash and Carry") Pyle. Grange ignored Cannon's advice to avoid hiring Pyle and signed with the smooth talker.

The results were disastrous. After back-to-back college and pro seasons, Grange also barnstormed an additional nine games in 40 grueling days. As his injuries mounted, his performance plummeted, and for the first time in his life crowds booed the star. When financial results fell far short of the million dollars dangled by Pyle, Grange refused renewal of his manager's contract. The episode, though, highlighted the risky mix of unsophisticated athletes and unscrupulous managers vying for the increasingly large sums pouring into professional sports.

Baseball and Congress

In 1933, one last pitching assignment beckoned Ray Cannon, then a freshman member of Congress representing a Milwaukee district. He took the mound at the home of the Washington Senators—Griffith Stadium, known as a pitcher's park—to hurl for the Democrats in the annual congressional baseball game against Republicans. Celebrity umpires for the contest, which raised money for charity, were General John J. Pershing, former heavyweight champion Gene Tunney (in a bit of irony, perhaps, given his famous rivalry with Jack Dempsey, Cannon's former client), and singer and comedian Al Jolson. Cannon was now age 42, and the final score, 18–16 in favor of the GOP, showed that his arm was finished.

In 1937, as chairman of the House Committee on Revision of the Laws, Congressman Cannon wrote Attorney General Homer Cummings, demanding the Justice Department investigate and prosecute major league owners for antitrust violations arising from their continuing use of the reserve clause.

Cummings ultimately declined, saying that he was blocked by the Supreme Court's *Federal Baseball* decision. That opinion, written by Justice Oliver Wendell Holmes, Jr., would become one of the Court's most widely panned. The Court ruled that Major League Baseball was not engaged in interstate commerce and therefore lay beyond the reach of federal antitrust law.

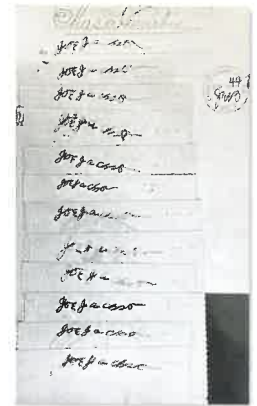
Cannon pressed two points: (i) *Federal Baseball* was a narrow, intercorporate ruling that failed to consider, much less adjudicate, owners' unlawful collusion against players; and (ii) the Supreme Court's recent decision (*NLRB v. Jones & Laughlin Steel Corp.*), upholding the National Labor Relations Act in 1937, implicitly overruled *Federal Baseball*.

Within days of the attorney general's declination, Cannon introduced a bill to strip baseball of its antitrust exclusion. The measure failed, but Cannon's legislative remedy anticipated a future Supreme Court opinion, *Flood v. Kuhn* (1972), declaring that only Congress could revoke baseball's unique legal status with respect to the antitrust laws. After a century, *Federal Baseball* remains the law of the land. Meanwhile, the National Football League, National Basketball Association, and National Hockey League are subject to federal antitrust law precisely because they operate in interstate commerce.

Conclusion

Ray Cannon emerged as a national figure on the cusp of the 1920s, America's first golden age of sports. His advocacy addressed the corrupting influence of commercialization, the economic injustice of refusing to share equitably the industry's largesse with its workers, and the perils of mass celebrity. By advancing legal remedies he first studied at Marquette University Law School, Cannon cemented his pioneering position in the niche known today as sports law. ■

Thomas G. Cannon is a former professor at Marquette University Law School. Ray Cannon was his grandfather.



This is an image of defendant's exhibit no. 44 in "Shoeless Joe" Jackson's 1922 Milwaukee County Circuit Court trial against Charles A. Comiskey, owner of the Chicago White Sox. The multiple signatures by Jackson are handwriting exemplars—likely, variously either culled from documents that he signed or provided to handwriting examiners such as John F. Tyrrell, who prepared this exhibit. (Comiskey's name at the top is not his signature but simply means that the exhibit was proffered by him as defendant.) An autographed photograph of Jackson sold this fall for \$1.47 million.

Ray Cannon, newly elected member of Congress, in 1933.

