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Is Football Violence a Crime?

NFL assaults have led to lawsuits before. But a prosecutor would have difficulty proving a charge in court.

By Randy Maniloff

Nov. 18, 2019 7:04 pm ET

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Cleveland Browns defensive end Myles Garrett swings at Pittsburgh Steelers quarterback Mason Rudolph in Cleveland, Nov. 14. PHOTO: KEN BLAZE/REUTERS

It was the shot to the head heard 'round the world. In the closing seconds of last week's Browns-Steelers game in Cleveland, Browns defensive end Myles Garrett pulled off Steelers quarterback Mason Rudolph's helmet. Mr. Garrett then swung it at Mr. Rudolph, hitting him in the head.

The Pittsburgh quarterback didn't suffer a concussion. Still, Mr. Garrett, who was the first pick of the 2017 National Football League draft, has been suspended without pay by the league for the rest of the season and may receive further discipline. The egregious nature of Mr. Garrett's act has also led to calls that he face criminal charges. In an unscientific poll on [Cleveland.com](#), 67% of respondents favored charging him with assault, although many no doubt were Browns fans.

Such questions have arisen before, and the results suggest it would be difficult for prosecutors to make criminal charges stick—though Mr. Rudolph might have a shot with a civil lawsuit.

In 1973 the Denver Broncos' Dale Hackbart suffered a career-ending neck fracture when Charles "Boobie" Clark of the Cincinnati Bengals struck him in the back of the head and neck with his forearm. The incident took place away from the ball, while Mr. Hackbart was watching the play following an interception.

Mr. Hackbart sued Clark for his injuries. The trial court held that for reasons of social policy, based on the inherently violent nature of the game, the suit was out of bounds. But in 1979 in *Hackbart v. Cincinnati Bengals* the 10th U.S. Circuit Court of Appeals disagreed with the trial court, instead concluding that "there are no principles of law which allow a court to rule out certain tortious conduct by reason of general roughness of the game or difficulty of administering it." The case was ultimately settled for an undisclosed sum.

In *Green v. Pro Football Inc.* (2014), a U.S. district judge in Maryland found guidance from *Hackbart* in allowing Barrett Green, a former New York Giants player, to sue Robert Royal of the Washington Redskins after Mr. Royal effectively ended Mr. Green's career by lowering his own helmet and driving full speed into Mr. Green's knees in a December 2004 game at the Redskins' stadium in Landover, Md.

Although these courts have declined to block injured players from pursuing monetary damages, the stakes are much higher when someone's liberty is on the line. Courts will take seriously a defendant's claim that by agreeing to play, the injured party implicitly consented to the risk.

In *State v. Guidugli* (2004), an Ohio appeals court—whose decisions would carry the force of precedent in any state criminal case against Mr. Garrett—concluded that a participant in an athletic contest consents to an injury that is "foreseeable" as part of the game. That didn't help a college student convicted of misdemeanor assault for striking an opposing player after a hard foul in an intramural basketball game. A retaliatory punch during a pause in play, the court concluded, was not foreseeable.

But amateur basketball is a far cry from professional football, for whose players the workplace is a modern-day Roman Colosseum. Given the frequency of hits—during, after and away from plays—wide latitude must be given.

That's not to condone Mr. Garrett's conduct. He might well have crossed the line and committed an unforeseeable injury. But the violent nature of the sport would make it harder for prosecutors to prove that beyond a reasonable doubt.

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