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ATTORNEYS AT LAW

Foul Balls & Finders Keepers

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I love baseball. And despite having attended countless professional baseball games, I've never caught a foul ball. But did you know that there was a time when fans had to return a foul baseball?

As early as 1899, the Washington Senators hired a group of boys to retrieve baseballs hit into the stands. In 1901, owners discussed a new rule to penalize batters who fouled off pitchers. Fortunately, it was never passed. Around 1904, Major League Baseball formalized a rule that allowed teams the right to go into the stands to retrieve baseballs. This new rule only angered fans, who made it clear that "finders keepers" was going to be the rule of law.

Notwithstanding fans' determined efforts, in 1905, a Cubs fan was arrested after catching a foul ball and refusing to hand it over to an usher. Then Cubs' President personally confronted him and signed a larceny complaint. The criminal charges were dropped the next day when the fan, a member of the Chicago Board of Trade, threatened to sue. Believe it or not, things grew worse for the fans. In 1915, *Sporting Life* reported that "the practice of concealing balls fouled into the grandstand or bleachers has reached disgusting proportions in New York." That same year, a Yankee fan named Guy Clarke was arrested for refusing to return a baseball hit into the bleachers, and had to pay a \$3 fine. The next day, the *New York Times* ran an article titled "Ball Grabbers, Read This." It was a warning to fans – if you keep a baseball hit into the stands, you will be arrested.

One owner saw an opportunity. In 1916, Cubs owner Charles Weeghman began letting fans keep the baseballs they caught. Most owners didn't see the wisdom of allowing fans the opportunity to keep a baseball hit into the stands. For example, shortly thereafter, the Phillies billed the Cubs when 8 Phillies' baseballs were hit into the stands during batting practice.

But common sense prevailed after May 16, 1921. That day, Reuben Berman, a 31-year-old stockbroker, caught a foul ball during a Reds-Giants game at the Polo Grounds. When an usher demanded that he return the baseball, Berman's answer was to toss the baseball further into the crowd - much to the delight of the fans it can be presumed. Berman was ejected from the Polo Grounds and threatened with arrest. Berman subsequently filed a lawsuit against the team claiming that he had been unlawfully detained and had suffered mental anguish and a loss of reputation. The case was tried in New York's Supreme Court, and Berman was awarded \$100.

Berman's case had a lasting impact. What cemented the result were two other incidents that occurred about seven years apart. In 1923, in Philadelphia, an 11-year-old boy was arrested for keeping a ball hit into the stands. The Judge released him the next day, stating "[Keeping the baseball] is a thing I would do myself." Around 1930, a 17-year-old young fan caught a foul ball off the bat of Hall of Famer Hack Wilson, and began fighting with security when they tried to take it away from him. The young man and his two friends were arrested for disorderly conduct, but the charges were dismissed the next day when the Judge ruled that a baseball hit into the stands belongs "to the boy who grabs it." So the next time you go to the ballpark, be thankful that you don't have to: (1) hide a baseball you caught; (2) throw it to other fans; (3) risk arrest; or (4) brawl with security. And remember Reuben Berman for the everlasting gift he has given to baseball fans everywhere - yet a gift that has eluded me for 40 years!