

## The Law Review article Judge Evans never wrote

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It is a little-known fact that Judge Evans was envious of some of his Seventh Circuit colleagues because of their numerous law review articles.<sup>2</sup> In fact, there are only two law review articles attributed to Terence Evans.<sup>3</sup> Shortly before his death, we started working on a law review article that “coulda had class”.<sup>4</sup> In his honor, I feel it is appropriate to write the law review article Judge Evans was contemplating.<sup>5</sup>

### Going Where All Men Have Gone Before<sup>6</sup>

The Hon. Terence T. Evans<sup>7</sup>

Toilet Paper. This law review article is about toilet paper.<sup>8</sup> More specifically, I would like to convince academia that there is a need for a course in Sports Entrepreneurial Law and Toilet Paper.<sup>9</sup>

Sports and toilet paper go back a long time. There is evidence that the Romans allowed the Christians to toss toilet paper as a distraction to the lions in the arena<sup>10</sup> Archeological evidence shows that the Mesoamerican ballgame evolved to using toilet paper instead of solid rubber balls after too many players had their hips broken and thus had to be sacrificed.<sup>11</sup> However, there is speculation among archeologists that the change to toilet paper displeased the gods and led to a severe drought that led to the destruction of the Mayan civilization and later, the world in 2012.<sup>12 13</sup> There are several hundred other historical examples.<sup>14</sup>

Not to be outdone by the past, there are many modern references to sports and toilet paper. What is not apparent is good lawyering in this field. If there can be seminars on being a sports agent, then I think we can develop the new field for Sports Entrepreneur. I’m not talking about selling the semi-

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<sup>1</sup> Librarian, U.S. Courts Library, Milwaukee, WI. UW 1980.

<sup>2</sup> So little well known, Judge Evans didn’t even know it.

<sup>3</sup> Terence T. Evans, *Memorial to Keenan Peck*, 1990 Wis. L. REV. 287 (1990), and Adrian P. Schoone and Terence T. Evans, *Medical Evidence*, 50 MARQ. L. REV. 516 (1966-67), although one could argue because this was written when the judge was a student, it shouldn’t count, especially since he didn’t get top billing.

<sup>4</sup> Terry, *On the Waterfront*. If you believe that statement you don’t understand this contest.

<sup>5</sup> Honor, your honor, you get it, right?

<sup>6</sup> I don’t think another Seventh Circuit judge’s law review title has a footnote, so I would like this to be a distinguishing feature for my law review articles.

<sup>7</sup> Circuit Judge for the Seventh Circuit Court of Appeals and the circuit expert on toilet paper. I hate to mention it but there are judges, who shall remain nameless, currently on the court who have never mentioned toilet paper in a precedential opinion.

<sup>8</sup> *Georgia-Pacific Consumer Products LP v. Kimberly-Clark*, 647 F.3d 723 (7th Cir. 2011).

<sup>9</sup> Hint hint, Marquette. After all, you have the Sports Law Institute.

<sup>10</sup> Lions 14, Christians nothing.

<sup>11</sup> See *infra* notes 544-601 and accompanying text.

<sup>12</sup> See *Indiana Jones and some future movie*.

<sup>13</sup> Oops. The first sentence of this paragraph doesn’t have a footnote. Let’s not point that out to the law review editors.

<sup>14</sup> See *infra* notes 544-601 and accompanying text.

ubiquitous toilet paper with the logos of your favorite teams.<sup>15</sup> No, this is a serious field of legal study.<sup>16</sup> I propose the following topics for such a needed class.<sup>17</sup>

## The Rules of the Game and Toilet Paper

Several modern sports have written toilet paper out of their rules. This is attributed to Kenesaw Mountain Landis, a judge for the Northern District of Illinois from 1905 to 1922, who became the first commissioner of “organized” baseball in 1921.<sup>18</sup> Judge Landis was brought into baseball to clean up after the “Black Sox” scandal where members of the South Side team of Chicago were convicted of fixing the World Series.<sup>19</sup> In the course of the investigation, Judge Landis discovered the bribes were written on toilet paper hidden in the players’ shoes.<sup>20</sup> Joseph Jefferson Jackson, outfielder, refused the bribes and so played without shoes, thus earning him the name of “Shoeless Joe Jackson”.<sup>21</sup> The continued prohibition against toilet paper on the field is well documented.<sup>22</sup>

Vestiges of the anti-toilet paper rule survive in college basketball to this day. John Brown University plays a toilet-paper game every year to protest this rule.<sup>23</sup> At the home opener, fans celebrate the first at-home score by throwing toilet paper onto the court. In one year, over 2,000 rolls of toilet paper were tossed. This celebration results in a technical foul because of the anti-toilet paper rules. Why should they get a technical foul for something that was once legal?<sup>24</sup> Anyway, there could be a seminar class regarding whether toilet paper should be brought back into the rules of the game for various sports.<sup>25</sup> Just think of the potential of being a toilet-paper lobbyist to one of the major sports organizations.<sup>26</sup>

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<sup>15</sup> Crash Davis, “We’re dealing with a lot of shit.” *Bull Durham*. Have you noticed that you don’t find these team logo rolls of toilet paper at the actual stadiums where the teams play?

<sup>16</sup> Just saw an ad for NFL logo paper towels. Maybe change the name to sports law and paper products?

<sup>17</sup> Wow, only two footnotes in the entire paragraph! (Not counting this one)

<sup>18</sup> Judge Landis was named for a pivotal battlefield in the Civil War campaign for Atlanta, although Kenesaw Mountain is really spelled Kennesaw Mountain. David Quentin Voigt, *Landis, Kenesaw Mountain* in *ENCYCLOPEDIA OF AMERICAN BIOGRAPHY*, 660-661, (John A. Garraty and Jerone L. Sternstein, eds., 1998). Abner Doubleday, a prominent Civil War general who may or may not have invented baseball, did not participate in the campaign for Atlanta. *Abner Doubleday*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Abner\\_Doubleday](http://en.wikipedia.org/wiki/Abner_Doubleday). (Last visited yesterday. All internet sites were last visited yesterday, so I’m not going to include that any more).

<sup>19</sup> *Black Sox Scandal*, BASEBALL-REFERENCE.COM, [http://www.baseball-reference.com/bullpen/Black\\_Sox\\_scandal](http://www.baseball-reference.com/bullpen/Black_Sox_scandal) The north side team of Chicago, having so few appearances in the World Series, have lacked the opportunity to sell out to rich gamblers. Plus, common sense leads any sports fan to know that the gamblers wouldn’t have to waste their money bribing this team as they could lose the Series all by themselves.

<sup>20</sup> Surprisingly, the *History of Toilet Paper*, VIRTUAL TOILET PAPER MUSEUM, <http://nobodys-perfect.com/vtpm/ExhibitHall/Informational/tphistory.html>, does not mention this, so *see infra* notes 544-601 and accompanying text.

<sup>21</sup> *Shoeless Joe Jackson*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Shoeless\\_Joe\\_Jackson](http://en.wikipedia.org/wiki/Shoeless_Joe_Jackson). Note to law review—if it isn’t there now, it will be by the time I finish editing Wikipedia.

<sup>22</sup> Jimmy Dugan, “Toilet paper! There’s no toilet paper in baseball.” *A League of Their Own*. (Columbia 1992).

<sup>23</sup> Having a lot of ids is rather egotistical, so all of the information in this paragraph is from the following article unless otherwise noted: Jeff Eisenberg, *Toilet Paper Game Remains One of College Basketball’s Most Fun Traditions*, THE DAGGER, (NOV. 3, 2013, 11:44 AM), <http://sports.yahoo.com/blogs/ncaab-the-dagger/toilet-paper-game-remains-one-college-basketball-most-164421463--ncaab.html>.

<sup>24</sup> *See supra* note 14.

<sup>25</sup> Hint to editors. This is an opinion so I shouldn’t need to footnote it.

<sup>26</sup> The American Forest and Paper Assn. represents the paper companies but so far has shown no interest in approaching sports teams, so someone could really wipe the rest from the field if they get in early.

Would George Brett have committed the pine tar incident if he could have swaddled his bat in toilet paper?<sup>27</sup>

## Sports Financing and Toilet Paper

Toilet paper has a proud history of financing sports teams, even though currently there are no stadiums with toilet-paper naming rights.<sup>28</sup> The Green Bay Packers, one of two professional football teams located in the Seventh Circuit,<sup>29</sup> owes its existence to toilet paper.<sup>30</sup> In the 1930s, Green Bay became known as the toilet paper capital of the world.<sup>31</sup> Selling shares to the public, written on toilet paper, the team raised enough money to avoid bankruptcy and was kept in Green Bay.<sup>32</sup> Think of the potential opportunities for arena naming rights that a young sports law entrepreneur could transact.<sup>33</sup> The Milwaukee Bucks are looking for financing.<sup>34</sup> Other teams will also look for financing as sports venues age.<sup>35</sup> Transactions attorneys earn good money making these kind of deals, so let us teach law students how to do them.<sup>36</sup>

NASCAR demonstrates the myriad opportunities for sponsorships. Charmin sponsors a promotion at the Charlotte Motor Speedway called “Stop Skid Marks”.<sup>37</sup> Kyle Larson is sponsored by Cottonelle and stars in a commercial that provides way too much information.<sup>38</sup> Even test drivers attest to the need

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<sup>27</sup> For my opinion on this see *Central Mfg. v. Brett*, 492 F.3d 876 (7th Cir. 2007).

<sup>28</sup> See Barbara L. Fritschel, *Index to Special Court Sessions in West’s Federal Reporters*, 93 LAW LIBR. J.109 (2001). Actually this article has nothing to do with the topic but is a shameless plug for the wonderful, superlative, best federal court librarian in Milwaukee.

<sup>29</sup> The Indianapolis Colts is the second team. We are talking about **professional** football teams, Judge Callahan. For those of you who don’t know, Judge Callahan is a long suffering fan of that almost semi-pro team, Da Bears.

<sup>30</sup> See *supra* note 11.

<sup>31</sup> Brian Tuohy, *Debt, Toilet Paper and Scandals: How the Green Bay Packers Became a Non-Profit*, VICE SPORTS, <https://sports.vice.com/article/debt-toilet-paper-and-scandals-how-the-green-bay-packers-became-a-non-profit>.

Don’t tell the Commissioner, but apparently the ownership pattern of the Packers is illegal.

<sup>32</sup> *Id.* Maybe the article doesn’t mention that the shares were written on toilet paper, but what else they have been written on?

<sup>33</sup> *Supra* note 25.

<sup>34</sup> Dan Shafer, *Bucks for Bucks: Talks on Arena Financing Reach State Level*, MILWAUKEEMAG.COM, <http://www.milwaukeeemag.com/article/11142014-BucksforBucksTalksonarenafinancingreachesstatelevel>. Angel Soft Stadium surely sounds as intimidating as the team slogan “Fear the Deer”.

<sup>35</sup> Asher Chancey, *The 30 Worst Stadiums and Arenas in American Sports*, BLEACHERREPORT.COM, <http://bleacherreport.com/articles/779467-the-30-worst-stadiums-and-arenas-in-american-sports>. While this report includes a few college venues, just think of the potential for high school, little league, and Pop Warner venues.

<sup>36</sup> I don’t have specific figures but they certainly make more money than my salary of \$184,500 per year. *Judicial Compensation*, [www.uscourts.gov](http://www.uscourts.gov). (Figure is accurate for when Judge Evans was on the bench.) Third-year associates make more money. *Sortable Employer Comparisons*, FINDLAW.COM, <http://infirmation.com/shared/search/payscale-compare.tcl?city=New+York>. And this would be a practical skill for law students.

<sup>37</sup> *Charmin Toilet Tissue Says Skid Marks are Only Good for Racetracks*, AUTOWEEK, <http://autoweek.com/article/nascar-sprint-cup/charmin-toilet-tissue-says-skid-marks-are-only-good-racetracks>

<sup>38</sup> *Chip Ganassi Drivers Larson, Dixon, Kanaan Star In Cottonelle Toilet Paper Spots*, SPORTSBUSINESSDAILY.COM, <http://www.sportsbusinessdaily.com/Daily/Issues/2014/07/23/Marketing-and-Sponsorship/Larson.aspx>. (Maybe there is a possible seminar on sports hemorrhoids?)

for toilet paper.<sup>39</sup> There is just a diarrhea of possibilities for other sports to get sponsorships.

### Sports Figures Defaming Toilet Paper

One could specialize in suing sports figures or fans who defame or infringe on toilet paper's trademarks. For example, Dallas Mavericks guard Jason Terry called Matt Barnes the "Charminator"<sup>40</sup> Blackhawk fans celebrated winning the Stanley Cup by throwing toilet paper around the trees and bushes of Coach Quenneville's house.<sup>41</sup> And then there is the celebrated case of the man who robbed a sports bar wearing a toilet paper mask.<sup>42</sup>

### Conclusion

There are other sports I haven't covered, because I've reached my word limit – for example, cricket and toilet paper recalls about 766,000 results,<sup>43</sup> poker and toilet paper recalls a mere 534,000 results.<sup>44</sup> With all of the Law and xxx courses in today's curriculum, surely there is a dire need for Sports Entrepreneurial Law and Toilet Paper.<sup>45</sup> Don't disappoint me, Marquette.

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<sup>39</sup> Mark Patterson, *Nico Rosberg 'Needs Toilet Paper' After 320 km/h Tyre Blowout*, BLEACHERREPORT.COM <http://bleacherreport.com/articles/1894829-nico-rosberg-needs-toilet-paper-after-320kmh-tyre-blowout>. Note: This is a British source so don't tell me that spell check tells you Tyre is misspelled.

<sup>40</sup> Brad Cohen, *Jason Terry Slams Matt Barnes: He's Soft as Toilet Paper*, SPORTSGRID.COM, <http://www.sportsgrid.com/nba/jason-terry-slams-matt-barnes-hes-soft-as-toilet-paper/>. Considering how many toilet papers describes themselves as "strong", maybe this should be taken as a compliment.

<sup>41</sup> David Wharton, *Chicago Blackhawks Fans Celebrate Stanley Cup with Toilet Paper*, LA TIMES.COM, <http://articles.latimes.com/2013/jun/25/sports/la-sp-sn-chicago-blackhawks-fans-toilet-paper-20130625>. Hey, it beats someone shooting Dan Devine's dog when he was having a dog of a season as the Green Bay Packers head coach. See Cliff Christi, *Who Shot Dan Devine's Dog?* PACKERS.COM, <http://www.packers.com/news-and-events/article-cliffs-notes/article-1/Who-shot-Dan-Devines-dog/d0538c15-d0d0-4378-8e2f-e132208264d8>

<sup>42</sup> Steve Vanbergen, *Suspect With Toilet Paper Mask Robs Sports Bar*, FOX17ONLINE.COM, <http://fox17online.com/2014/09/08/suspect-with-toilet-paper-mask-robs-sports-bar/>. Sounds like another stupid criminal story to me. Have I told you about the stupid criminal who came before me as a district judge and.....

<sup>43</sup> I'm getting tired of these Bluebook citations. If I Googled it, you can too.

<sup>44</sup> Ditto. (or should that be *ditto*)?

<sup>45</sup> See Law and Movies, Law and Pets, Law and Underwater Basket Weaving. Note to law review editors: I'm a federal judge. If you want to clerk for me, you find the annoying citations.