

ETHICAL CONCEPTS IN SPORTS



SPORTS IN SOCIETY

America is a sports crazed culture, but Americans are not alone in their love of sports. The world is connected in a sports culture with millions of individuals in Spain, India, Australia, New Zealand, Canada, Colombia, China and many other countries watching and participating in sports each year. Participating in sports can bring new challenges to an individual and teach valuable life lessons along the way. Americans participate in a variety of sports including golf, basketball, cycling, tennis, baseball, soccer, and ice hockey. Parents are enrolling their children in youth sports at an ever-increasing rate so they might learn time honored concepts such as hard work, dedication, team building, competition, and sportsmanship and subsequently transfer those skills to their personal life. All are good societal values and build character in youth.

Youth sports have never been more popular. In the United States millions of kids participate in a variety of sports beginning at the toddler stage. Before they can even bounce a ball, swing a club, or run in a straight line, overzealous parents have their children in the sports arena learning how to kick a ball, take a charge or throw a spiral. Kids participate in sports for a variety of reasons, some healthy and some not so healthy. Many participate because their friends are playing, others because their parents insist, and some even participate just for fun! When sports stop being fun, kids tend to drop out. The benefits of youth sports include increased confidence, increased fitness (less time for videogames), increased social awareness, moral development, and improved problem-solving skills. Choosing sides, nominating a team captain, and shaking hands with an opponent after a match are all good character traits for a young athlete to develop, although organized sports have taken some of these basic tasks away from the youth participant. Many youth sports programs involve “select teams” or All-Star teams, in which certain players are picked to play additional games.

Sports at the high school level are increasing in popularity, and watching colleague sports is extremely popular in the United States. With universities offering scholarships in a variety of sports including basketball, bowling, lacrosse, football, rodeo, riflery, ice hockey and swimming, parents are hoping that their child will be a superstar.

Spectators flock to stadiums around the world to watch sports. American fans love to watch football, both amateur and professional; collegiate and professional basketball, ice hockey, and, of course, America's national pastime, baseball. Athletes in professional sports can earn millions of dollars playing their favorite sport. Sports franchises are valued at more than \$1 billion, and collegiate football games can draw more than 110,000 fans. The New York Yankees are valued at \$1.2 billion, and some football coaches at major universities can earn more than the university president.¹

Some fans seem to take sports a little too seriously, and this can include many youth sports parents. Ardent fans spend hours each day ruminating over statistics for their individual fantasy leagues while others paint their bodies and "tailgate" for up to 6 hours before the NFL game of their favorite team. The contemporary sports world is fraught with "over the top parents" and fans alike.²

Christopher Noteboom, for example, fits well into the dedicated category. He was an enthusiastic Philadelphia Eagles football fan, some may believe just a little too enthusiastic. In November 2008 he was arrested for running onto the field during a Philadelphia Eagles football game. Before judging him too harshly, consider his calling that day. Noteboom ran onto the field with a plastic bag under his right arm that contained the ashes of his recently deceased mother who herself was a long time Eagles fan. When Christopher reached the 30-yard line, he dropped to his knees, made the sign of the cross, and lay on his stomach. Now that's a fan and a good son!³

Before you cast dispersions on Mr. Noteboom, consider the following comments that appeared in the *New York Times* in 1895 concerning Americans' infatuation with sports:

Is there not a certain defect of gayety in contemporary sport? We Americans seem nowadays to take ours excessively hard. We take some of our soberer matters very easily. We giggle over heresy trials, and have endless patience for the shortcomings of politicians, but we hold our breath over the reports of football games and yacht races, and lose our sleep over intricacies in the management of those events. We worried nearly as much last September over the international yacht races as our fathers did a generation ago over Mason and Slidell and the affair of the Trent.⁴

Many issues are present in sports as ethical, business, and legal issues abound in both professional and amateur sports. Race and ethnicity are at the forefront of social issues in sports. Whether it is the NFL's Rooney Rule or the use of Native American mascots by universities, race and ethnicity are significant topics in any discussion of the sports ethics. Other issues such as drug testing, athletic eligibility, gender equity, intellectual property rights, and violence in sports all present serious issues for an intellectual debate on sports ethics. U.S. Collegiate sports are fraught with ethical issues ranging from the illegal payment of student-athletes to agent regulation, low student-athlete graduation rates, and violence.⁵

¹ *Forbes.com*; "Analyzing Salaries for Football Bowl Subdivision Coaches," *USA Today*, November 10, 2009.

² Matthew Futterman, "Under Pressure," *The Wall Street Journal*, October 4, 2008.

³ "Bad Sports: A Study Conducted by the University of Missouri-St. Louis," *Pittsburgh Post-Gazette*, November 29, 2005.

⁴ "We Take Our Sports Too Seriously: While Soberer Matters Are Treated with Unbecoming Levity," *New York Times*, November 5, 1895.

⁵ Rick Telander, *The Hundred Yard Lie: The Corruption of College Football and What We Can Do to Stop It* (Chicago: University of Illinois Press, 1989); Murray Sperber, *Beer and Circus: How Big-Time College Sports Is Crippling Undergraduate Education* (New York: Holt Paperbacks, 2001); Hela Sheth and Kathy M. Babiak, "Beyond the Game: Perceptions and Practices of Corporate Social Responsibility in the Professional Sport Industry," *Journal of Business Ethics*, 91, no. 3 (2010), 433–450.

Why Study Sports Ethics?

Some may ask, “Why study sports ethics?” Is there a specific discipline of sports ethics as there is for business, legal, or medical ethics? Many think so. A good deal of scholarship has been produced on sports ethics.⁶ Several noted scholars have been appointed sports ethics fellows, and universities have created centers for studying sports ethics.⁷ Is there a practical reason for studying sports ethics? Some think not and argue that sports ethicists should stick to what they know best—sports. “If we have to have ethics at all in sports, let’s make sure those moral philosophers explore the right issues. Should Pete Rose wear his Phillies or Reds cap to the Hall of Fame? Was O. J. Simpson the greatest running back in history?”⁸

For the sports management professional, (SMP) there is a clear advantage to the study of sports ethics coupled with a study of management and law. Sports executives need to have a solid grasp of the ethical decision-making process to perform their duties honestly, professionally and ethically. Whether that individual is an athletic director, coach, general manager, business owner, or sports executive, all must deal with significant ethical and legal concepts prevalent in sports.

Sports morality and ethics were much debated topics, even in the early years of the 20th century.⁹ All-pro defensive end Bill Glass wrote a book in the late 1960s titled *Don’t Blame the Game*, with chapter titles including “Win at Any Cost,” “Booze Makes It Better,” “Trainers Are Junkies,” and “Racism Is Everywhere.” An excerpt from the book stated: “You know the type, ‘Broadway’ Joe, Dave Meggyesy, Bernie Parrish, Jim Bouton—a handful of professional athletes whose escapades on and off the field have cast a shadow across the entire sport world.” Yet Bill Glass says the “swingers” are really not representative of the majority of professional sport personalities.¹⁰ It does not sound like Glass did himself any favors by naming specific players. One wonders what Glass would think of today’s sports world.

This book contains numerous cases and case studies in which ethics and morality come into play in sports. For a quick overview of some of the issues involved, consider the following scenarios and the types of ethical and moral decision making that may be required of the sports professional.

1. NBA player Gilbert Arenas said he faked an injury in a preseason game to allow a teammate to get more playing time.¹¹
2. NFL Houston Texans team owner Bob McNair ordered his team’s staff to search the players’ locker room to make sure they were not using any banned substances.¹²

⁶ See Robert L. Simon, *Fair Play: The Ethics of Sport* (Boulder, CO: Westview Press, 2003); Claudio Tamburrini, *Values in Sport: Elitism, Nationalism, Gender Equality and the Scientific Manufacturing of Winners (Ethics and Sport)* (New York: Taylor & Francis, 2000); William J. Morgan, *Ethics in Sport* (Champaign, IL: Human Kinetics, 2007); Tommy Boone, *Basic Issues in Sports Ethics: The Many Ways of Cheating* (Lewiston, NY: Edwin Mellen Press, 2009).

⁷ “Institute for International Sport and Positive Coaching Alliance Announce 2010 Sports Ethics Fellows,” March 31, 2010; Centers include the *Center for Sports and Citizenship*, The Ohio State University; *Institute for Diversity and Ethics in Sport*, University of Central Florida, Director Richard Lapchick; Also, *Center for Sports, Ethics, and Culture*, Ball State University.

⁸ Robert Lipsyte, “The Sports Ethicists Come Out in Force: Let’s Ignore Them, O.K.?” *New York Times*, March 19, 2000, SP13.

⁹ Sol Metzger, “Sport Ethics Grow Cleaner at 4 Colleges,” *Chicago Daily Tribune*, January 2, 1916, B4; Bernie Lincicome, “From Nero Down, Sports Cheaters Are Rife,” *Denver Rocky Mountain News*, September 19, 2007.

¹⁰ “Bill Glass Answers the Sport World Swingers in *Don’t Blame the Game*,” *Chicago Tribune*, January 21, 1973, F6.

¹¹ “Gilbert Arenas Says He Faked Injury,” *ESPN.com*, October 12, 2010.

¹² Associated Press, “Texans Searched Locker Room,” *ESPN.com*, October 29, 2010.

3. The University of Mississippi's new mascot, the "Rebel Black Bear," replaced its former mascot, "Colonel Reb."¹³
4. In 2010 the Bahrain national soccer team beat Togo's national team 3–0, or at least they said they were the Togo team. However, Togo fans should not worry because the team that was shut out was a fake team organized by someone to "pocket" money from the event.¹⁴
5. In November 2008, Grapevine Faith, a small Christian school in Dallas, played a football game against Gatesville, a state school at a maximum-security correctional facility for male teenage felons. The Gatesville players were required to travel in handcuffs. Grapevine's coach, Kris Hogan, split his school's fans and cheerleaders into two groups with one group cheering for Gatesville. One Gatesville player said, "Lord, I don't know how this happened, so I don't know how to say thank you, but I never would've known there was so many people in the world that cared about us."¹⁵
6. A drunk adult Cleveland Browns fan tackled an 8-year-old New York Jets fan after a game between the two teams.¹⁶
7. After dropping a sure touchdown pass in an NFL game, wide receiver Steve Johnson posted on his Twitter account a message wondering how God could allow him to drop the pass:¹⁷
"I PRAISE YOU 24/7!!!!!! AND THIS HOW YOU DO ME!!!!!! YOU EXPECT ME TO LEARN FROM THIS??? HOW???!!! ILL NEVER FORGET THIS!! EVER!!! THX THO"
8. In 2010 the PGA voted to amend its constitution to allow transgendered players to participate.¹⁸
9. In 2009 Sheffield United and West Ham settled a lawsuit for \$30 million. West Ham had used ineligible players, thereby cheating during the 2007 season, and Sheffield United claimed they were the victims. West Ham player Carlos Teves scored a goal in the final match of the year against Manchester United, causing Sheffield to drop from England's top division, the Premier League.¹⁹
10. New York Yankees shortstop Derek Jeter faked that he was hit with a ball to get on base.²⁰
11. New York Governor David Patterson was called before an administrative law judge to determine whether he violated ethics laws when he was able to secure tickets to the first game of the 2009 World Series at Yankee Stadium.²¹
12. NBA Player Ron Artest announced he will donate "either all or some" of his entire 2011–2012 salary to charity.²²

¹³ Sandra Knispel, "University of Mississippi Introduces New Mascot," www.npr.org, October 15, 2010.

¹⁴ David Gauthier-Villars, "When Togo Played Bahrain, the Whole Match Was a Fake: Taking the Field as African Nation's Team, Impostors Lose Game but Net Fees," *Wall Street Journal*, October 4, 2010.

¹⁵ Joe Lemire, "The Decade in Sportsmanship," *Sports Illustrated*, December 22, 2009.

¹⁶ Rich Cimini, "Report: Young Jets Fan Roughed Up," *ESPN.com*, November 17, 2010.

¹⁷ Associated Press, "Bills Stand Behind WR Stevie Johnson," *Espn.com*, November 29, 2010.

¹⁸ Ryan Ballengee, "LPGA Votes to Amend Constitution to Allow Transgender Players," *NBC Sports*, November 20, 2010.

¹⁹ "Can Rule-Abiding Players Sue Alleged Cheaters? English Soccer Squabble May Hold the Answers," *csportslaw.com*, March 18, 2009.

²⁰ "The Jeter School of Acting," *Sports Illustrated*, September 16, 2009.

²¹ "Patterson Won't Attend Ethics Hearing on Yankees Tickets," *Wall Street Journal*, August 16, 2010. The governor was fined \$62,125. David M. Halbfinger, "Patterson Fine \$62,125 over World Series Tickets," *New York Times*, December 20, 2010.

²² Dave McMenamin, "Ron Artest to Donate 2011–12 Salary," *ESPN.com*, December 8, 2010.

13. The MCC World Cricket committee contemplates using lie-detector tests to fight corruption.²³
14. NBA star Kobe Bryant's endorsement deal with Turkish Airlines caused an uproar with the Los Angeles Armenian community.²⁴
15. The NFL banned the "Captain Morgan" (producer of rum) end zone celebration after Eagles tight end Brent Celek performed it on a Sunday night telecast after catching a touchdown pass. The Captain Morgan Rum Company had intended to offer charity contributions each time a player was caught on camera striking the "Captain Morgan pose."²⁵
16. A high school wrestler was charged with sexual assault after performing a novel move called the "butt drag" on a teammate during a practice.²⁶
17. In 1982 with the game between the NFL Patriots and Dolphins tied at 0–0, the Patriots coach ordered snowplow operator Mark Henderson to clear a spot for the New England kicker. The 33-yard field goal was good and the Patriots won 3–0. Dolphins coach Don Shula called the NFL commissioner and said "it was the most unfair act that had ever happened in a football game."²⁷ Henderson, a convicted felon, was on a work release program at the time of the game. He received a game ball from the Patriots.
18. In 2010, five student-athletes at Ohio State University violated NCAA rules by selling championship rings, game gear, and personal awards for cash. They were not suspended by the NCAA for the upcoming Sugar Bowl but instead will be suspended for the first five games of the 2011 season.²⁸
19. After a game between the Dallas Cowboys and the Philadelphia Eagles, Cowboys running back Tashard Choice asked Eagles quarterback Michael Vick to sign a glove for a family member who was a big fan of Vick's. Choice said, "I don't want anybody to think I was disrespectful. . . . My teammates, coaches, and Jerry [Jones] know where my heart is. I care about football. I meant no disrespect."²⁹
20. Six-year-old Kennedy Tesch was tossed off the flag football cheerleading squad when her parents objected to the cheer "Our backs ache, our skirts are too tight, we shake our booties from left to right." Her parents thought the cheer was inappropriate for 6-year-old girls. After a team meeting, other parents voted to kick Kennedy off the squad because of her parents objections.³⁰

Ethical Reasoning and Ethical Models

Any individual faced with an ethical or moral decision must make that decision based on certain guiding principles.³¹ How are ethical decisions to be made? Which guiding principles should be

²³ "Cricket Chiefs Consider Lie-Detectors to Fight Corruption," *CNN.com*, December 15, 2010.

²⁴ "Report: Kobe Endorsement Causes Flap," *FoxSports.com*, December 15, 2010.

²⁵ Charles Robinson, "NFL Shipwrecks Captain Morgan Campaign," *Yahoo! Sports*, November 12, 2009.

²⁶ Jesse McKinley, "Wrestler Sees Legal Move; Prosecutor Sees Assault," *New York Times*, December 18, 2010.

²⁷ Mike Reiss, "'Snowplow Game' Still Stings Shula," *ESPN.com*, January 28, 2010.

²⁸ "Bowl CEO Wanted Buckeyes Eligible," *FoxSports.com*, December 29, 2010; Pat Forde, "NCAA Ruling Defies Common Sense," *ESPN.com*, December 23, 2010.

²⁹ Tim MacMahon, "Michael Vick Signs Cowboys RB's Glove," *ESPN.com*, December 12, 2010.

³⁰ Joshua Rhett Miller, "Girl, 6, Removed from Cheerleading Team After Parents Object to 'Booty' Cheer," *Fox News*, September 15, 2010.

³¹ Ronald C. Arnett and Clifford Christians, *Dialogic Confession: Bonheoffer's Rhetoric of Responsibility* (Carbondale, IL: Southern Illinois University Press, 2005); Dietrich Bonheoffer, *Letters & Papers from Prison* (New York: Touchstone, 1997).

employed? Should individuals merely do what they believe is right? Should individuals employ the “Golden Rule”—“Do unto others as you would have them do unto you.”—in all decisions and in their conduct when dealing with others? Are there any guiding religious principles that should affect the choices made by the decision maker? Should an ethical decision maker be concerned solely with what is legal and discard all other relevant principles, or should other factors come into play? Can an action be considered legal but be immoral? These are all tough questions that must be addressed.

In this chapter we discuss how ethical standards serve as the basis for sports ethics. This topic is a fundamental introduction for encouraging an environment that highlights the essence of sports: fair play, character development, and excellence. Sports, just as any other endeavor, places much emphasis on rules and regulations.

Ethics is considered to be a branch of philosophy because it is concerned with what is morally right and wrong. The challenge lies in finding the standard by which we determine what is right and wrong. The philosophy of ethics is intimately connected with metaphysics, specifically with ontology, or the study of being. Where do we come from? Why are we here? What is our purpose? How do we determine a standard of right and wrong? What universal ideas do we embrace that help us make sense out of particular situations that we face in life? The following diagram illustrates this idea:

$$\frac{U}{P} = \frac{\text{Universal (or Upper Story)}}{\text{Particular (or Lower Story)}}$$

As we make choices in the day-to-day situations that we face (or particulars), why do we make these choices and not others?³²

Ethical theories are divided into three general subject areas: metaethics, normative ethics, and applied ethics.³³ Metaethics examines the origins of theoretical concepts and notions and what they mean. Are ethics merely a social invention? Are they more than expressions of our individual emotions? The answers to these types of questions focus on issues of universal truth, God’s will, the role reason plays in ethical decision making, and in defining ethical terms themselves.

Normative ethics takes on a more practical task. In normative ethics the inquiry is to determine what moral standards regulate right and wrong conduct and behavior.³⁴ This search for the ideal litmus test for proper conduct focuses on the duties and rules individuals should follow or the consequences that behavior or conduct has on other individuals. An example of normative ethics is the Golden Rule. What systems or ideas are put forth to guide an individual’s conduct and assist him or her in determining right from wrong? Subfields include deontological theories, (duty) consequential theories, evolutionary ethics, and virtue theories.³⁵

Applied ethics examines specific, unresolved, controversial issues such as environmental concerns, social inequality, capital punishment, abortion, and racial discrimination.

³² “Five Steps of Principled Reasoning,” *An Ethical Decision-Making Model* (Los Angeles, CA: Josephson Institute, 1999).

³³ Steven M. Cahn and Peter Markie, *Ethics: History, Theory, and Contemporary Issues*, 4th ed. (New York: Oxford University Press, 2008).

³⁴ Tara Smith, *Ayn Rand’s Normative Ethics: The Virtuous Egoist* (New York: Cambridge University Press, 2006).

³⁵ Michael Ruse, “Evolutionary Theory and Christian Ethics: Are They in Harmony?” *Journal of Religion & Science* 29, no. 1 (1994): 5–24.

Distinguishing between metaethics, normative ethics, and applied ethics can be a difficult task. In metaethics it is argued that God or a form of supreme being provides the foundation of all ethical decision making. In normative ethics it is argued that the foundation for ethical thought and decision making originates from agreements between individuals, from duty or virtue, or from consideration of the consequences of various actions on individuals or groups. In applied ethics controversial issues such as capital punishment, stem cell research, gun ownership, and personal control over end-of-life are addressed.

Normative principles that can be applied uniformly, that are not too narrowly focused, and that take into account varying points of view include the following:

- *Benevolence*: assisting those in need.
- *Honesty*: not deceiving or lying to others.
- *Autonomy*: individual bodily freedom.
- *Justice*: an individual's right to due process and to live in a fair and just society.
- *Paternalism*: assisting others to achieve what is in their best interests when they are unable to do so.
- *Harm*: do no harm to others.
- *Social benefit*: acknowledging that certain actions are beneficial to society as a whole.
- *Rights*: individual autonomy, privacy, free expression, and personal safety.
- *Lawfulness*: the rule of law benefits individuals and society as a whole.

These traditional normative principles are derived from several ethical approaches and can be applied to almost every ethical dilemma.

Sports ethics is concerned with what is the right thing to do in sports.³⁶ One aspect of sports ethics addresses how individuals and teams conduct themselves when competing or preparing to compete in sporting events.³⁷ In this case, the major concern is competing hard, yet doing so in the right way. In youth sports, the goal is character development, and ethical concerns center on working hard, honor, team work, diligence, courage, and self-discipline. In competitive sports, including professional sports, the goal is to win through effort and excellence rather than by cheating. This is more a personal ethical matter, but there can be strong influences from others including coaches, teammates, friends, family, and fans.

The business aspect of sports applies to youth league organizations as well as to professional sports. How do organizations manage their sports programs and sporting events? Is the sports organization as a whole following ethical guidelines and making ethical decisions? This is where sports ethics intersects with business ethics. Corporations face increasing competition in a rapidly changing global economy, and with change comes more pressure to develop unethical ways to compete. Many times this pressure leads to the notion that "business is business" and an "anything goes" attitude.³⁸ This same mind-set can be found in sports. Individuals and teams often face increased change and competition. And, like businesses, the challenges and pressures can come from several entities including government, sports governing organizations, agents, fans, parents (in the case of youth sports), coaches, other athletes, and other clubs.

³⁶ Mike McNamee, "Sports, Ethics and Philosophy; Context, History, Prospects," *Sports, Ethics and Philosophy* 1, no. 1 (2007).

³⁷ J. Brent Crouch, "Gender, Sports, and the Ethics of Teammates: Toward an Outline of a Philosophy of Sport in the American Grain," *Journal of Speculative Philosophy, New Series* 23, no. 2 (2009): 118–127.

³⁸ See, generally, Laura Hartman, *Perspectives in Business Ethics*, 3d ed. (New York: McGraw-Hill, 2004).

To change this mind-set, organizations must understand the long-term benefits of ethics to individual, team, and organizational success. It is easy to believe that it is necessary to cut corners ethically to succeed in sports. Everyone connected with sports must realize that this reflects a short-term view of success that often ignores the potential for long-term consequences. Unethical viewpoints and conduct must be replaced by the realization that sound ethical principles are good for sports and for the individuals participating in sports.

The key to sports is competitive cohesion, but the nexus between athletes and fans should be collaborative as opposed to adversarial. There are many examples of both the collaborative model and the adversarial model. In the collaborative model, athletes play with sportsmanship and enthusiasm while at the same time showing respect for fans, management, opposing players, and referees. For example, an outfielder practicing before the game will throw the last ball to a young fan. In the collaborative model, professional athletes visit hospitals and chat with sick children at every opportunity. In the collaborative model, fans respect the athlete's privacy and do not use profane, rude, or disrespectful language. The ethical fan appreciates the time and energy the athlete spends in pursuing goodwill. Conversely, the adversarial model is typified by the spoiled athlete and the obnoxious fan. The athlete will not readily sign autographs—he or she will seek the adversarial motif. The obnoxious fan will taunt the athlete, drink to excess, and “pester” the athlete, not respecting his or her privacy.

The standard between athletes and fans should be one of collaborative ethics. Sports are so important that the different parties should collaborate to maintain the integrity of the sport and the greater glory, pride, and self-esteem of the team, city, or country. The inherent value of a sports contest is its capacity to produce in the participants and the fans a quality of experience that is evaluated as good in itself.

CHEATING

Defining Cheating

Cheating would seem to be a rather simple concept to define but that is not always the case. Before a determination can be made whether an individual is a cheater or acting unethically, a definition of cheating must be established. The *American Heritage Dictionary* defines cheating as follows:

to cheat is to deprive of something valuable by the use of deceit or fraud; to influence or lead by deceit, trick, or artifice; to elude or thwart by or as if by outwitting; to practice fraud or trickery; to violate rules dishonestly; to be sexually unfaithful; or to position oneself defensively near a particular area in anticipation of a play in that area.³⁹

Some propositions are universal. For instance, all would agree that stealing is morally wrong, correct? However, what if an individual is stealing food to feed his or her family? Would their actions then be considered unethical or “wrong” even though it is against the law or violating another person's rights? Sometimes it is not easy to define a wrong that has been done or to claim that someone has cheated. Is killing a person always against the law or immoral? What about an individual's right to self-defense or a state that enforces the death penalty? Would everyone agree that cheating

³⁹ *American Heritage Dictionary, New College Edition* (Boston, MA: Houghton Mifflin, 1976).

on one's spouse is always immoral? Is telling a lie always wrong? Is just a little cheating allowable as long as it does not hurt anyone? Can fairness or cheating be objectively defined, or is it left to the subjective perception of each individual?

Some have argued for a universal concept of fairness that all individuals should recognize and employ. Noted Scholar C. S. Lewis described it as follows:

[Men appeal] to some kind of standard of behavior which he expects [other men] to know about and [other men] very seldom [reply]: 'To hell with your standard.' It looks, in fact, very much as if [all men have] in mind some kind of Law or Rule of fair play or decent behavior or morality or whatever you like to call it, about which they really agreed. And they have. If they had not, they might, of course, fight like animals, but they could not quarrel in the human sense of the word. Quarreling means trying to show that the other man is in the wrong. And there would be no sense in trying to do that unless you and he had some sort of agreement as to what Right and Wrong are; just as there would be no sense in saying that a footballer had committed a foul unless there was some agreement about the rules of football.⁴⁰

A Cheating Culture

It seems the headlines and the Internet are packed with “serial cheaters” and unethical people engaging in a myriad of acts in a variety of industries; business, education, religion, and, yes, even sports. This is not to say that there are not honest people, for there are many. For example, Jerry Mika returned a check in the amount of \$2,245,342 that was sent to him in error by the state of Utah.⁴¹ Notwithstanding Mika's ethical actions, in the last 10 years the United States has been fraught with financial scandals of gigantic proportions. Bernard Madoff defrauded numerous investors for hundreds of millions of dollars through fraudulent investment schemes. His investors included actor Kevin Bacon and Hall of Famer baseball player Sandy Koufax. Enron was the largest corporate scandal in U.S. history, causing thousands of people to lose their jobs and many their entire retirement income. Kenneth L. Lay was the CEO of Enron and went to prison. Prior to his prison career, he donated \$1.2 million to the University of Missouri to endow the Kenneth L. Lay Chair in International Economics. Tyco CEO Dennis Kozlowski was sentenced to 30 years in prison for his part in the Tyco financial scandal. John Bogle, founder and former chief executive of the Vanguard Group of Mutual Funds, has argued that to combat unethical behavior a “fiduciary society” must be established that places the interests of clients above your own interests.⁴²

Cheating in college and universities is on the rise as well.⁴³ Many students cheat because they see others doing it and want to “level the playing field.” Others do it out of ignorance or just because they are lazy. Plagiarism, for instance, is not always well understood by college students. Students have found creative ways to cheat in the technological age, with text messaging answers and “googling” during exams becoming increasingly common.⁴⁴ Some of the nation's top business schools now

⁴⁰ C. S. Lewis, *Mere Christianity* (New York: HarperCollins, 1952), 3–4.

⁴¹ Tonya Papanikolas, “Man Mistakenly Given More than \$2 Million,” *KSL.com*, November 21, 2007.

⁴² Laura Sullivan, “Madoff Likely Won't Be Serving Time in ‘Club Fed,’” *www.npr.org*, July 2, 2009; “The Kenneth L. Lay Chair in Business Ethics?” *Wall Street Journal*, May 31, 2006; “Ex-Tyco Officers Sentenced,” *The Washington Post*, September 20, 2005; Vanessa O'Connell, “Test for Dwindling Retail Jobs Spawns a Culture of Cheating,” *Wall Street Journal*, January 7, 2009.

⁴³ “Cheating in College in Widespread—But Why?” *www.npr.org*, July 19, 2010.

⁴⁴ Ellen Gamerman, “Legalized ‘Cheating,’” *Wall Street Journal*, January 21, 2006.

require a high-tech identity scan for standardized admissions tests to prevent cheating.⁴⁵ In 2007 Duke business students faced discipline charges in the largest undergraduate cheating scandal in the school's history.⁴⁶ The list of ethical and criminal violations of politicians is long as well, but a few are worth mentioning: President Richard M. Nixon (R) ("high crimes and misdemeanors"), President William J. Clinton (D) (lying under oath) and Charlie Rangel (D) (centured by U.S. House of Representatives for failure to pay taxes).⁴⁷

Exaggerating one's accomplishments on a résumé may be commonplace, but some individuals have been caught in a "bold-face" lie. The president of the United States Olympic Committee (USOC) was forced to resign in 2002 after it was discovered that she lied about her academic credentials.⁴⁸ George O'Leary had waited a lifetime to coach the "Fighting Irish" of Notre Dame but was forced to resign 5 days after he was hired when it was discovered that he had lied on his résumé. O'Leary claimed to have a master's degree in education and to have played 3 years of college football, both of which were false. O'Leary later explained, "Many years ago, as a young married father, I sought to pursue my dream as a football coach. . . . In seeking employment I prepared a resume that contained inaccuracies regarding my completion of course work for a master's degree and also my level of participation in football at my alma mater. These misstatements were never stricken from my resume or biographical sketch in later years."⁴⁹ When looking for a job, experts still think "honesty is the best policy."⁵⁰ Why do people lie in such a bold fashion? Each seems to have specific reasons. People even have lied about the most honorable things possible. Actor Brian Dennehy had claimed for years that he had served a 5-year tour in Vietnam. In reality the closest he ever came to Vietnam was playing football in Okinawa in 1962.⁵¹ Ironically, Dennehy starred in *Rambo*, with actor Sylvester Stallone.

Cheating in one's private life can affect other people and business interests as well. Some people have trouble telling the difference between reality and real life and need a "reality check." Such is the case with Ric Hoogstraat, who had an online relationship in a virtual world with a woman of his own choosing, who was, of course, not real. Some people may not consider it technically cheating, but his wife certainly did: "It's really devastating . . . you try to talk to someone or bring them a drink, and they'll be having sex with a cartoon."⁵²

Cheating in one's personal life can translate to lost income, and that can certainly occur if you are a world-class athlete. No "cheater" has gotten more play in the headlines in the last few years than

⁴⁵ John Hechinger, "Business Schools Try Palm Scans to Finger Cheats," *Wall Street Journal*, July 22, 2008.

⁴⁶ Alan Finder, "34 Duke Business Students Face Discipline for Cheating," *New York Times*, May 1, 2007; Len Boselovic, "Study Suggests Cheating 101 More Prevalent at Business Schools," *Pittsburgh Post-Gazette*, October 1, 2006. For a list of college cheating scandals, see Ethan Trex, "Seven College Cheating Scandals," *Wall Street Journal*, May 15, 2009.

⁴⁷ Also see Brad Parks, "Poison Ivy in the Garden State," *Wall Street Journal*, July 25, 2009.

⁴⁸ "U.S. Olympic Chief Resigns in Resume Scandal," *CNN*, May 24, 2002.

⁴⁹ "Short Tenure: O'Leary Out at Notre Dame After One Week," *SI.com*, December 14, 2001.

⁵⁰ "In Job Hunting, Honesty Is Still the Best Policy," *Wall Street Journal*, April 25, 2010; Associated Press, "Lying on Resume Simply Isn't Worth the Risk: Common Falsehoods Are Overstating Education, Previous Responsibilities," *MSNBC.com*, June 7, 2006.

⁵¹ Nicholas Ehrenberg, "Fake War Stories Exposed: Phony Soldiers Bring Shame to Military Forces," *CBSNews.com*, November 13, 2005.

⁵² Alexandra Alter, "Is This Man Cheating on His Wife?" *Wall Street Journal*, August 10, 2007; Naomi Schaefer Riley, "The Young and the Restless: Why Infidelity Is Rising Among 20-Somethings," *Wall Street Journal*, November 28, 2008.

PGA golfer Tiger Woods. Woods's infidelities were splashed across world headlines when his conduct was exposed. It should be noted out that Woods is not alone in his cheating confessions, but because he is one of the most famous people in the world it was considered newsworthy. Woods's personal conduct issues cost him severely. His celebrity endorsements decreased an estimated \$22 million in 2010. Most celebrity and athlete endorsement contracts contain morals clauses. After the Woods scandal, insurers were inundated with inquiries from corporations anxious to protect their corporate name and brands. Dan Truemann, head of the enterprise risk department at R. J. Klin and Company, the managing agent for Lloyds, said, "Tiger Woods has made people think about their reputations. These days, people don't worry about the office burning down, but about their intellectual property being damaged." The stock price of seven publicly held companies that had dealt with Woods lost approximately \$12 billion in market value the months after Woods announced he was taking a break from golf.⁵³ In 2000, actor Michael Douglas reportedly signed a prenuptial agreement that included a \$5 million "straying fee" should he have sexual relations with someone other than his wife, Catherine Zeta Jones.⁵⁴ There is no doubt that in some cases personal unethical behavior affects others and also has a direct effect on business.

Consider the following scenarios. Should these people be deemed cheaters, or unethical?

CASE STUDY 1-1 *Hand of God*

Footballer Diego Maradona now admits he struck the ball with his hand when scoring the most controversial goal in the history of soccer in the 1986 World Cup quarterfinals. Football rules prohibit such a move. It appeared that Maradona actually punched the ball into the net. His opponents protested but to no avail. Maradona thought the goal most likely would be waived off but it was not.

1. Should his admission that he failed to play by the rules produce a forfeit?⁵⁵

CASE STUDY 1-2 *The Spitter and Me*

Gaylord Perry was a good baseball pitcher. He was an expert at "doctoring" a baseball, or was he? Did he just make batters think he was throwing a "spitball"? Over his career Perry was noted for applying a variety of foreign substances to the ball, including Vaseline, baby oil, hair tonic, spit, and a few other substances that were unknown even to Perry. Perry is in the baseball Hall of Fame and has been called baseball's most notorious cheater. He won two Cy Young awards and went to five All-Star games. Perry once stated, "When my wife was having babies the doctor would send over all kinds of stuff and I'd try that too. Once I even used fishing line oil." The title of his biography is *Me and the Spitter*.⁵⁶

⁵³ Reed Albergotti, "How Tiger's Top Man Is Managing the Crisis," *Wall Street Journal*, December 7, 2009; "Tiger's Endorsements Down Estimated \$22 Million," *Washington Street Journal*, July 21, 2010; "Sports Players Facing Moral Clauses in Contracts," *Lawyers Weekly*, May 28, 2009; Ken Belson and Richard Sandomir, "Insuring Endorsements Against Athlete's Scandals," *New York Times*, February 1, 2010.

⁵⁴ Elise Nersesian, "Sex Addiction Real—Or Excuse for Cheating?" *MSNBC.com*, February 19, 2010.

⁵⁵ Associated Press, "Maradona Call Famous Goal 'Bit of Mischief'," *ESPNsoccernet.com*, August 23, 2005.

⁵⁶ Derek Zumstag, "Perry Greased Batters with His Stuff," *ESPN.com*, May 16, 2002; Jack Curry, "In Perry's Book, a Brown Smudge Is Not a Black Mark," *New York Times*, October 24, 2006.

Cheating in sports is generally considered unethical; however, in baseball circles it is tolerated. Why is cheating in baseball accepted to a certain extent whereas other sports draw a very rigid line on cheating? If Perry did cheat (as he admitted), should he to be treated any differently than a player who took performance-enhancing drugs?⁵⁷

CASE STUDY 1-3 “Creative Cheating”

Mark Schlereth was an offensive lineman for the NFL Denver Broncos. To gain an advantage in a playoff game, he and his fellow linemen coated their arms and the backs of their jerseys with Vaseline. All the linemen were “slimey,” and no one could grab onto them. The Broncos won the game 14–12. Schlereth stated, “Did I grease up my jersey, and use sticky substances on my gloves? You’re damn right. . . . What you call cheating is a fine line. It’s an interesting line. What we did, in the locker room, is called being creative. Certain cheating is snickered at, or applauded.”⁵⁸

1. Where should the line be drawn between strategy and blatant cheating? 2. Does this rise to the level of unsportsmanlike conduct?

CASE STUDY 1-4 Lottery Systems and Playing to Lose

The National Football League Arizona Cardinals have had a horrible season. The Cardinals are 2–13 (post Kurt Warner era) going into the final game with Seattle, who are 9–6 and looking for a wild card spot. The Houston Texans are also 2–13 and are playing the 13–2 Bears, who need to win their final game to gain home field advantage in the playoffs. The Cardinals hold the tiebreaker with the Houston Texans, so if they both lose, the Cardinals will get the first draft pick. The number one draft pick is certainly going to be Joe Savage, a “can’t miss” NFL quarterback who by all accounts will be a sure Hall of Famer. Early in the fourth quarter the Cardinals are beating the Seahawks 20–7 when the coach, at the request of the owner, inserts a rookie quarterback into the game who had never played in the NFL. The Cardinals lose 28–20 and get the first draft pick.

1. Should a team ever try to lose a game on purpose?
2. Does it tarnish the integrity of the game if they attempt to do so?
3. How do you view the actions of the Cardinals coaching staff or the owner?
4. Should all leagues adopt such a lottery draft system to prevent any season ending shenanigans?⁵⁹

Cheating in Sports

Cheating in sports is not a new phenomenon. All sports have a long and dubious history of cheaters. The first cheater in organized sports may have been Eupolus of Thessaly, a boxer in the

⁵⁷ Derek Zumsteg, *The Cheater’s Guide to Baseball* (Boston, MA: Houghton Mifflin, April 2007); Dave Krieger, “Integrity? In Baseball, It No Longer Exists,” *Denver Rocky Mountain News*, February 17, 2007.

⁵⁸ Lance Pugmire, “Cheating in Sports: The Fine Art of Getting Away with It,” *Los Angeles Times*, August 20, 2006.

⁵⁹ Associated Press, “Davis Denies Cavs Trying to Lose,” *USA Today*, March 3, 2003; Tim Sullivan, “Don’t Even Hint at Losing on Purpose,” *San Diego Union-Tribune*, December 28, 2003.

Olympics of 388 BC, who allegedly bribed three of his opponents to “take dives.”⁶⁰ National Public Radio put together a list of the most notorious cheaters in sports history:

- Chicago White Sox (gambling, 1919 World Series)
- City College of New York (point-shaving scandal)
- Paul Hornung and Alex Karras (alleged gambling, in the NFL)
- Dancer’s Image (drug scandal robbed *Dancer’s Image* of 1968 *Kentucky Derby* Title)
- East German Athletes (steroids scandal)
- Pete Rose (gambling in baseball)
- Ben Johnson (steroid use in track and field)
- Danny Almonte (15-year-old playing Little League baseball)
- Floyd Landis (cycling doping scandal)
- Rick Tocchet (NHL gambling scandal)
- Tim Donaghy (NBA referee gambling)
- Bill Belichick (spying and espionage in the NFL)
- Marion Jones (track and field, performance-enhancing drugs)
- Barry Bonds (MLB, alleged usage of performance-enhancing drugs)⁶¹

Can sports withstand the onslaught of cheating that seems to have taken over in the last few years?

Some cheating is quite obvious. For example, former Mexican presidential candidate Roberto Madrazo was declared the winner of a German marathon until it was determined that he took a shortcut.⁶² Rosie Ruiz, used some form of motorized vehicle in the Boston marathon and won by cheating; however, her title was later taken away.⁶³ Why do people cheat in sports? What is their motivation? Some of the reasons for the unethical behavior of athletes, owners, and coaches are:

- An overemphasis on winning, which fosters a “winning at all costs” attitude.
- Participants in the sports industry seek prestige or financial wealth.
- Athletes are pressured to perform at a higher level by coaches, universities, parents, and alumni.
- A lack of emphasis on sportsmanship and team work at the amateur levels.
- The lack of role models in sports, although many believe athletes should not serve as role models.
- The “commercialization” of sports participants at the collegiate level.
- A “misplaced” emphasis on the significance of sports in society in general.

Is too much emphasis placed on winning in sports? The answer to that question would have to be “yes” if you were Mathew Kowald. Kowald was cited for criminal disorderly conduct after his

⁶⁰ Lance Pugmire, “The Fine Art of Getting Away With It,” *Los Angeles Times*, August 20, 2006.

⁶¹ Jeffrey Katz, “The Wide World of Sports Cheating,” *www.npr.org*, January 15, 2008; Fran Zimniuch, *Crooked: A History of Cheating in Sports* (New York: Taylor Trade Publishing, 2009); Wayne Drehs, “Are Sports Heading Toward ‘Major Crash’ Because of Cheating?” *ESPN.com*, August 9, 2007.

⁶² Associated Press, Madrazo DQ’s from Berlin Marathon for Taking Shortcut, *ESPN.com*, October 9, 2007.

⁶³ Sam Enriquez, “Marathoner Disqualified for Apparent Shortcut,” *Los Angeles Times*, October 10, 2007; Amdur, Neal, “Who Is Rosie Ruiz?” *New York Times*, April 2, 1980.

wife informed the police that Kowald had restrained his 7-year-old son for more than an hour during a Green Bay Packers playoff victory in 2008 because his son refused to wear a Packers jersey.⁶⁴

With so much money at stake and big contracts available in professional sports, players have more of a “win at all costs attitude” and most owners want nothing different. However, should the same attitude prevail in a 5-year-old’s t-ball league? Unfortunately sometimes it does. Is there too much emphasis placed on the significance of sports in society in general? Does this have an effect on the way amateur athletics are conducted? Consider the following scenario dealing with the number of games played in Little League baseball.

CASE STUDY 1-5 *Little League or Big League?*

A 12-year-old little leaguer may play as many as 40 baseball games in a season. How many games should a little league team play? Should 12-year-olds attempt to play as many games as possible to improve their skill for the “next level”? Many leagues regulate how many “touches” a kid has in a week.⁶⁵ What is the rationale for limiting the number of games a little leaguer can play? What restrictions should be placed on little league participants with regard to participation?

Many parents are beginning to realize that their child may be spending too much time participating in sports. As reported in the *Wall Street Journal*: “[The] escalating time, travel and financial demands of many competitive youth teams are pushing some parents over the edge. Many are pushing back, dropping teams mid-season, barring year-round competition for their children or refusing to make their kids available for holiday or vacation-time play.”⁶⁶ Do you think youth sports in general place enough emphasis on sportsmanship instead of just focusing on winning?

Hayley Milbourn was a true sportsman in every sense of the word. Hayley was a senior at Poland Park (MD) County High School and was competing in the Maryland Golf Championship. She was a two-time champion of the event. When she completed the tournament, she discovered she had completed the round with someone else’s golf ball by accident. No one knew except Hayley. She could have easily claimed another championship, but instead she turned herself in and was disqualified. Hayley said, “I just couldn’t accept a trophy for something I didn’t deserve.”⁶⁷ That’s true sportsmanship!

CASE STUDY 1-6 *Reggie Bush returns Heisman Trophy*

Reggie Bush was an outstanding football player at the University of Southern California. In September 2010 Bush voluntarily relinquished his 2005 Heisman Trophy, most likely giving the award back before the award was taken from him. The NCAA ruled Bush ineligible for the 2005 season after determining both he and his family had accepted money and gifts from sports agents while Bush was at USC. In the history of the Heisman no winner’s trophy has ever being revoked or returned. Bush stated: “The persistent media speculation regarding allegations dating back to my years at USC has been both painful and distracting. In no way should

⁶⁴ “Father Jailed for Taping Jersey on Son: Boy, 7, Refused to Wear Packers Clothing Before Game,” *SI.com*, January 17, 2008.

⁶⁵ Jennifer Alsever, “A New Competitive Sport: Grooming the Child Athlete,” *New York Times*, June 25, 2006.

⁶⁶ Sue Shellenbarger, “Kids Quit the Team for More Family Time,” *Wall Street Journal*, July 21, 2010.

⁶⁷ Drehs, “Are Sports Heading Toward ‘Major Crash’ Because of Cheating?”

the storm around these allegations reflect in any way on the dignity of this award, nor on any other institutions or individuals.”⁶⁸

1. Do you consider Bush’s actions honorable?
2. Under what circumstances should an athlete be required to forfeit the Heisman trophy or any other award?

Should athletes be viewed as societal role models? Consider the following scenario.

CASE STUDY 1-7 *The Cinderella Man: A Real Role Model in Sports*

It is the enduring question: Are athletes role models? Sports has had its share of good and bad characters. Some modern players have exemplified good character, and some have not. The same can be said for past ball players. James J. Braddock, The Cinderella Man, was made famous when he was portrayed on Hollywood’s big screen by actor Russell Crowe. Braddock led his family through tough times during the Great Depression and was forced to accept government welfare to survive. However, once he was back on his feet, he paid the government back the money he had received as Braddock had promise. Braddock was given a chance, and he capitalized on that chance, eventually beating Max Baer for the world heavyweight championship in 1935. Braddock worked as a longshoreman later in life and joined the Army during WWII. In 1954 he was presented with an award for his longtime service to boxing. It was said of the former champion in the *New York Times*:

The former heavyweight champion is boxing’s most illustrious advertisement, a vivid example of the wonderful things that the sport can do for one of its own. There’s nothing new about his story, of course. It’s indeed a surprise that Hollywood didn’t reach for it long ago. But it would have to be presented in documentary style. As a fiction piece it just wouldn’t click. It would be unbelievable.

Braddock was back in that same ring but this time he was meeting Baer for the world heavyweight championship. The Big Bad Baer was younger, bigger and more talented. He was favored at 10 to 1 over the dogged, indomitable Braddock. But Jim kept plugging away, left-hooking him to death, and all of a sudden he was the champion. Except for his force of character, Braddock was not a great champion. Judged on his character alone, however, he might have been the greatest. Scrupulously he paid back each debt, including every penny he’d received on relief. He wore his mantle with a natural dignity and his inner nobility glowed through.⁶⁹

Braddock was clearly a role model as an athlete. He was hard working, honest, and fought his way to the top with determination and great skill. What should society expect of its athletes? Should they be role models for the younger generation? There are still role models in sports today. In 2009 former NFL quarterback Kurt Warner was named the NFL’s best role model by his fellow players.⁷⁰

Every team likes to have enthusiastic fans and they want these fans to be loud. Consider the effects of crowd noise on player performance in the following scenario.

CASE STUDY 1-8 *Crowd Noise*

The Indianapolis Colts and the New England Patriots are NFL rivals. During a November 2007 game between the two, there was a “conspicuous audio glitch, a repeating crowd-noise crescendo” that occurred on

⁶⁸ Bill Pennington, Reggie Bush, Ineligible for ‘05, Returns Heisman, *The New York Times*, September 14, 2010.

⁶⁹ Arthur Daley, “The Cinderella Man,” *New York Times, Sports of the Times*, January 14, 1954.

⁷⁰ “Which Active Player Is the Best Role Model on and off the Field?” *Sports Illustrated*, December 7, 2009; cf. Tom Weir, “Fans Still Love Their Sports, but Think Twice About Hero Worship,” *USA Today*, February 26, 2010.

the first play of the fourth quarter on a 14-yard pass from Tom Brady to Randy Moss. Patriots president Jonathan Kraft asked the NFL Vice President of Security to determine whether the Colts were “piping artificial crowd noise into the dome.” Those actions would be illegal under NFL rules. The league investigated the alleged infraction but ultimately attributed the noise to a CBS production problem.⁷¹

1. What is the purpose of the rule?
2. What should be done if a team is found to be in violation of such a rule?

Injuries are a part of every sport. A player must be in peak physical condition to perform at his or her best. Many players will play notwithstanding injuries. Consider the following case study dealing with NFL injury problems:

CASE STUDY 1-9 Injury Lists

NFL teams are required to submit to the league office a list of injured players for the next week’s game. Under NFL rules, a player is listed as “probable” if he has a better than 50% chance of playing in the next week’s game. Players who are listed as “questionable” by the club are 50–50, and “doubtful” means the player has a 75% chance or greater of not playing in the next game. “Out” means exactly that: the player will not play. The NFL has the authority to fine a team who fails to follow the NFL guidelines in reporting injuries. Since 1997 approximately 13 teams have been fined. Former Dallas Cowboys coach Jimmy Johnson stated, “If you want to be real technical about it you could list the majority of your team because in a sport as violent as pro football, nearly all players have something that’s not 100%.” Former Pittsburgh Steelers coach Bill Cowher stated, “Sometimes when a guy had an ankle (injury), I might list it as a knee, just because I didn’t want people knowing where to take shots at my players.” Jimmy Johnson further stated, “Scanning injury reports rarely had an effect on our preparation, unless it’s a key player like a quarterback, and even then, it’s iffy.” In September 2009 the NFL fined the New York Jets and former coach Eric Mangini \$125,000 for violating league rules on reporting injuries for quarterback Brett Favre.⁷²

1. What is the purpose of the NFL’s injury reporting rules?
2. Are coach Cowher’s actions really protecting his players, or do you consider them a form of cheating?

ETHICAL DECISION MAKING AND THE SPORTS MANAGEMENT PROFESSIONAL

Introduction

A sports management professional faces many difficult situations in the workplace, especially in the employment context. He or she is required to deal with the human resources department to resolve difficult personnel issues. Disputes will arise in the workplace; that is a given. A part of the

⁷¹ Associated Press, “NFL Blames CBS, not Colts, in Noise Dispute,” *NBCSports.com*, November 5, 2007.

⁷² Associated Press, “Tannenbaum Also Fined \$25,000,” *ESPN.com*, September 16, 2009.

job for any sports SMP is to resolve disputes that may occur in the workplace. No company wants to end up in a lawsuit or in a dispute with an employee. An SMP must be able to bring to the workplace a multitude of skills in dealing with employees. One of the skills most needed is that of dispute resolution or conflict management. A skilled professional must be able to resolve disputes fairly, quickly (if possible), and ethically.⁷³ The old adage “you can’t please everyone” may be true, but a good-faith effort must be put forth to satisfy all the parties involved in any dispute. An SMP must be able to understand differing points of view and different cultures in an attempt to resolve any workplace disputes that may arise. Efforts to see another person’s viewpoint and not favor one person over another is essential to the fair resolution of any employment dispute. Understanding another person’s point of view, even though it may be different from your own, is an important skill the SMP must develop and implement to reflect an ethical decision making process.

One of the most important responsibilities of an SMO is to make the company successful. The SMP must be able to build morale, loyalty and enthusiasm among employees. “Team loyalty” can be a valuable asset to a company. Making employees feel as though the company is on their side and that it understands their viewpoint is essential to employee morale. Granting every employee’s wish is not realistic, and keeping the employee “happy” cannot always be achieved. However, individuals who enjoy their work will certainly be more productive. Everyone has experienced treatment that they think is unfair. Being treated unfairly in the employment context can lead to low employee morale, poor production on the job, “back-biting” between employees, and even lawsuits. Every SMP knows a lawsuit against the company is not a positive step, although some lawsuits cannot be avoided. SMPs must be able to interact with a diverse population of individuals in the workplace and make ethical decisions in the context of that diverse culture.

The sports business has become an extremely lucrative business. It is now clear, more than ever, that sports is a growing business. Baseball’s revenues in 2009 were approximately \$6.6 billion. Mack Brown, the head football coach at the University of Texas, makes more than the president of the university and, for that matter, the president of the United States. All of those involved in sports—sports professionals, managers, executives, players, fans, and owners—face tough ethical decisions.

The discipline of business ethics applies to sports just as it applies to corporate America. The president of an NFL club, the general manager of a baseball team and club personnel are all faced with many ethical decisions in business on a daily basis. Corporate decision makers, including those in the sports industries, are faced with ethical issues relating to employees, fans, clients, customers, and the general public. Most SMPs think of themselves as ethical people, and it has been argued that being ethical in business is no different from being ethical in one’s private life. Treating people with respect and dignity, being concerned for the welfare of others, and treating people like you want to be treated are all simple propositions that can and have been translated into the corporate culture by many successful companies. On a broader scale, high-level managers have responsibility for the creation and maintenance of an ethical corporate culture that protects against unethical and illegal conduct by employees and customers as well. Each person in a corporation occupies a specific role and has his or her own responsibilities. Whether it is the president of the club or the salesperson at the entrance to the ballpark, each is charged with a specific duty and must discharge that duty in a fair, reasonable, and ethical manner. Some positions may encounter more difficult problems, but ethical decisions must be made just the same, regardless of an individual’s status, wage, or position within a company. Everyone at a company must be an ethical example to others.

⁷³ Lawrence Van Gelder, “On the Job: Conflict Resolution Made Simple,” *New York Times*, March 25, 2001.

Business activity takes place within an extensive framework of laws, and some hold the viewpoint that law is the set of rules that should apply in determining whether an activity or conduct is ethical. If it is legal, then it is by definition ethical. However, obtaining approval from a company's legal department does not always translate to the solution of a business problem in an ethical and fair manner. In a more practical sense, SMPs need to consider both the ethical and the legal aspects of a situation when making a decision. Not every immoral act may be considered illegal. For instance, taking credit for someone else's work (unless it constitutes plagiarism) is not necessarily illegal, but most people would agree that it is unethical.

Tough Calls for the Sports Management Professional

Race and Discrimination in the Workplace Every corporate manager must make difficult decisions, and the same is true for the SMP. Consider the following case in which an employee was extremely offended, and rightly so, by some material distributed by his employer.



CASE 1-1 *Brooks v. CBS Radio, Inc.*

342 Fed.Appx. 771; C.A.3 (Pa. 2009).

In September 2000, Shawn Brooks began working as an account executive for Infinity Broadcasting Corporation ("Infinity"), a corporation which is now named CBS Radio, Inc. ("CBS Radio"). In that position, Brooks sold advertising on radio station WYSP in connection with its broadcast of Philadelphia Eagles football games. Among the approximately twenty-five account executives at WYSP, Brooks was the only African American. Brooks's immediate supervisor was Joseph Zurzolo, the Eagles Radio Network's Sales Manager. Zurzolo was supervised by Peter Kleiner, WYSP's General Sales Manager, who was in turn supervised by Ken Stevens, WYSP's General Manager.

On May 9, 2001, Zurzolo held a sales meeting with the account executives for the Eagles Radio Network. During the meeting, Zurzolo distributed a book entitled *New Dress for Success* and stated, "Per human resources, use it." Zurzolo distributed the book, which was recommended to him by Jeffrey Snodgrass, WYSP's Sports Sales Manager, because he felt one of the account executives, a white female, was dressing too casually at work. Zurzolo did not read the book before distributing it.

After reading *New Dress for Success*, Brooks was offended by a number of the book's passages. On May 10, 2001, Brooks called Sandy Shields, WYSP's Business Manager and Human Resources Director, to complain about the book. Shields told Brooks that he had a right to be upset and that she would look into the matter. Shields contacted Stevens, who instructed her to collect all copies of the book that had been distributed to the station's employees. Shields then contacted Kleiner, and together they collected all copies of the book, except for Brooks's copy. Kleiner also verbally reprimanded Zurzolo for distributing *New Dress for Success* without reading it first. One week after the

book's distribution, Kleiner attended an Eagles Radio Network sales meeting and told the staff that the book did not represent the views of Infinity, himself, or Zurzolo, who had not read the book prior to its distribution. Brooks, who after the book's distribution returned to the office only once, on May 28, 2001, to submit a resignation letter and collect his personal items, was not present and did not know that Kleiner had addressed the staff regarding the book's distribution.

Specifically, Brooks was offended by . . . the following passages:

- (i) "If you are black selling to white Middle America, dress like a white. . . . This clothing conveys that you are a member of the establishment and that you are pushing no radical or other feared ideas."
- (ii) "Blacks selling to whites should not wear Afro hairstyles or any clothing that is African in association. If you are selling to corporate America, it's very important that you dress, not as well as the white salesman, but better than them. You have to wear suits, shirts and ties that are expensive and more conservative than your white co-workers."
- (iii) "If you are white selling to blacks, you will fare much better if you dress in non-establishment patterns. Black America is essentially divided into two camps, establishment and anti-establishment, and the divisions are not dictated by income alone. . . . Almost all members of Northern ghettos who are in the lower socioeconomic groups are understandably antiestablishment. . . . The black establishment includes all blacks who have made it along with almost all Southern, rural blacks, no matter what their position. Southern blacks do not consider themselves disenfranchised. . . ."
- (iv) "When selling to middle class blacks, you cannot dress like a ghetto black. . . ."
- (v) "It is an undeniable fact that the typical upper-middle-class American looks white, Anglo-Saxon and Protestant. He is of medium build, fair complexion with almost no pronounced physical characteristics. He is the model of success; that is, if you run a test, most people of all socioeconomic, racial and ethnic backgrounds will identify with him as such."
- (vi) "The two groups who have the most problems with their appearances are black men and Hispanic men. It is unfortunate but true that our society has conditioned us to look upon members of both groups as belonging to the lower classes, and no matter how high a minority individual rises in status or achievement, he is going to have some difficulty being identified by his success rather than his background. But clothing can help."

Following two additional telephone conversations with Shields on May 10 and May 11, 2001, Brooks felt Shields was not going to resolve the

matter adequately. Although Zurzolo and Kleiner left several phone messages for Brooks asking him to call them, Brooks never communicated with any of his supervisors about the book's distribution because he did not trust them. Zurzolo had offended Brooks on a number of occasions prior to the book's distribution. Specifically, Brooks makes the following additional allegations, which CBS Radio does not dispute . . . :

- (i) On one occasion, Zurzolo made a comment to Brooks about "having to go with [Brooks's] fiancée," a statement perceived by Brooks to mean that Zurzolo wanted to have sex with his fiancée.
- (ii) On several occasions, Zurzolo "palmed," or put his hand on, the head of an African-American receptionist, a gesture Brooks viewed as racially offensive.
- (iii) On several occasions, Zurzolo used ethnic slurs, including "dago," in reference to himself.
- (iv) On one occasion, Zurzolo inappropriately touched an African-American receptionist while on a sales call.
- (v) On one occasion, someone stole a promotional banner relating to Brooks's ING Direct account, an act Brooks perceived as racially motivated.

Although Infinity had adopted a non-discrimination and anti-harassment policy that encouraged employees to report offensive conduct, Brooks did not tell anyone in the office about these incidents because he felt such conduct was tolerated and accepted.

Infinity's policy stated that the corporation "will not tolerate any form of harassment on account of race" and that "[h]arassing conduct includes, but is not limited to[,] epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and display or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group (including through e-mail)." The policy further instructed employees to "report their complaints to their immediate supervisor, their Department Head, their Station Manager, their Station's designated Ombudsperson, or the Human Resources Department *before* the conduct becomes severe or pervasive" and advised that "[i]ndividuals should not feel obligated to file their complaints with their immediate supervisor first before bringing the matter to the attention of one of the other Infinity designated representatives identified above."

On May 16, 2001, Brooks filed a complaint with the Pennsylvania Human Relations Commission ("PHRC") . . . alleging that Infinity had discriminated against him based on his race in violation of the Pennsylvania

Human Relations Act by (i) subjecting him to a hostile work environment and (ii) causing his constructive discharge.” Brooks’s administrative complaint did not identify any allegation of harassment other than the book’s distribution.

Source: Reprinted from Westlaw with permission of Thompson Reuters.

The *Brooks* case started out with a rather innocent proposition. A WYSP sports sales manager thought a caucasian female account executive was dressing too casually for work, therefore “per human resources” he distributed a book to all account executives for the Eagles Radio Network without first reading the book. Of course, companies are certainly within their right to require their employees to dress appropriately.

In light of the facts of the *Brooks* case, how should the following questions be answered?

1. How could have the human resources department assisted in resolving this problem?
2. What could have been done to prevent this dispute from getting “out of hand”?
3. Did the employer take the appropriate steps after discovering what happened? What else could have they have done?
4. Should Zurzolo have been fired for his actions? Should Jeffrey Snodgrass have been fired?
5. If a company wants their employees to improve the way they dress, what is the appropriate and ethical action to take?
6. Should a company wide memorandum have been issued apologizing for their actions? Is a corporate apology effective?
7. Do you consider the passage from the book “racist” or offensive? What about the portrayal of white America?
8. Do you find Mr. Brooks at fault for failing to report the alleged previous incidents of discrimination and harassment?
9. Should the actions of the company be viewed differently because they are a “sports related” company?

Sometimes even a simple “mistake” or stray remark, in this case distributing a book to employees without knowing its contents, can be costly to a company. Part of a manager’s job is to avoid placing the company at legal risk. An SMP must act ethically toward all its employees and treat each employee with respect and dignity, and that was not done in this situation. Mr. Brooks was the only African American among the 25 account executives, but shouldn’t the other caucasian employees have been offended as well by the contents of the book? One of the reasons Brooks said he never communicated with any of his supervisors about the distribution of the book was because he did not trust them. Building employee trust is essential to employee morale and can curtail potential employee problems. An SMP must be able to build trust with his or her employees in order to establish an open line of communication to solve problems fairly, ethically, and quickly.

The Pennsylvania Human Relations Commission (PHRC) found that Brooks had been forced to quit his job, constructive discharge under the law, and that his workplace constituted a “hostile work environment.” The commission awarded him \$614,262 in economic damages. On appeal, the ruling was reversed in favor of the employer. Infinity eventually prevailed and a court found they did nothing wrong, but the company was forced to fight through an administrative process and two courts to prove their point. The legal fees to defend the case were astronomical. How could a lawsuit have been

prevented in this situation? Do you agree that because Infinity did nothing wrong legally that they acted ethically under the circumstances? Do you chalk this situation up to an innocent mistake, negligence or unethical actions on behalf of the company and its employees? However it is viewed, it is certainly a regrettable situation and could easily have been avoided by someone at the company reading or previewing the book before distribution to its sales force.

Sports Participation and Eligibility No decision in sports is bigger than one of eligibility. Deciding whether an athlete can participate is a tough decision to make. It can be a devastating blow to a student-athlete if they are ruled ineligible. In interscholastic sports (high school or youth sports), resolving a dispute with a sports participant often involves the parents of the participant and many times a lawyer. Consider the following case in which a 13-year-old girl's participation in sports was at issue. The *Baker* case presents some unique issues for the SMP. In this case, the school district was faced with the decision of having to potentially deny a visually impaired 13-year-old student-athlete the right to participate in sports, something she really enjoyed. In fact, when she was denied the opportunity to swim, her grades suffered. Her academic progress was clearly tied to her participation in sports. Needless to say, the decision to allow her to participate was an important one for her and her father.



CASE 1-2 *Baker v. Farmingdale Union Free School District*

887 N.Y.S. 2d 776 (2009)

Joseph M. Baker, father . . . of Amanda Baker, applied to permit his thirteen year old daughter Amanda Baker to participate in swim team and track and field athletic activities conducted by the school district. This matter was sent down to determine whether it is in the best interest of Amanda Baker to participate in the respective athletic teams and that it is safe for her to do so.

Amanda Baker is 13 years old and is classified as visually impaired due to blindness caused by neurofibromatosis.

Despite her physical challenges, Amanda retains some degree of visual acuity. She has participated in swimming activities most of her life, including her successful involvement in the swimming activities offered during her seventh grade year. According to Mr. Baker, this is achieved, in part, because Amanda can distinguish color contrasts, such as those present at the bottom of a swimming pool, and can perceive and successfully employ the use of a kickboard positioned at the end of her swimming lane, allowing her to avoid collision with the swimming pool wall and to reverse direction in order to continue swimming. When swimming activities are conducted off school grounds, another individual accompanies her to help her avoid hazards.

Mr. Baker indicated that Amanda thoroughly values her participation in school swimming activities. When she was denied the opportunity to continue swimming, she suffered a strong emotional reaction which, according to Mr. Baker, precipitated a significant drop in her school grades.

Mr. Baker also stated that Amanda would like to participate in track and field programs offered by the school district. However, when questioned about how Amanda would be able to run or jump without hazarding herself or others given the limitations of her sight, Mr. Baker responded that a companion or guide would run with her during training and participation in the specific events. Beyond the presence of this companion or guide, no specific outline or plan was offered to insure Amanda's safety.

Given her nearly life-long experience with swimming and her successful participation in swimming events during her seventh grade academic year, Amanda has demonstrated that she has overcome whatever limitations her blindness may have imposed upon her, in regards to the sport of swimming. Her record of performance coupled with her keen desire to participate in the school district swimming events and the safeguards put in place by the presence of a companion or guide give reasonable assurance that it is in her best interest to participate in such swimming activities and that it is safe for her to do so.

Source: Reprinted from *Westlaw* with permission of *Thompson Reuters*.

How would you answer the following questions in light of the *Baker* case?

1. If you determine Amanda is not allowed to participate in sports, on what basis would you make that decision?
2. Would you exclude Amanda from both swimming and track and field? If so, on what basis?
3. Would you need an expert medical opinion to assist you in making the decision?
4. At what point would it be necessary to consult the school district lawyer?
5. Do you agree with the suggestion of Mr. Baker that a companion or guide could run with Amanda? What safety issues would that present?
6. How would you handle complaints from parents of other participants? You know they are coming!
7. What if Mr. Baker wanted to have his lawyer present at all meetings? Would you allow that? What if he wanted to tape record all the meetings?
8. Are the legal and ethical issues similar in the *Baker* case?
9. Would you require a medical examination of Amanda Baker before you make a decision regarding her participation? Some parents may find a medical examination intrusive or even abusive and may think their son or daughter is being "single-out".
10. If you are going to deny Amanda's application to participate, how would you inform her of the school's decision? Would you direct the correspondence to her father instead of Amanda?
11. How could you ensure fair and ethical treatment in whatever decision you make?
12. How would your personal beliefs affect your decision? What if you personally believed Amanda should be able to participate, but your boss told you "find a way to keep her out of sports, we can't take the risk"?
13. What legal liability issues does this case present for the school district? For Amanda?

14. If you did choose to allow Amanda to participate, would it be necessary to contact the liability insurer of the school district and inform them of Amanda's participation?
15. Would you make her or her father sign a release in case she was injured or others were injured as a result of her participation?
16. Would it be important to determine if Amanda was disabled as that is defined under disability law?

Telling someone they cannot participate or be part of a team is never an easy decision, especially if it is a 13-year-old visually-impaired girl who is being "singled out" because of her medical condition. The court decided to allow Amanda to participate in swimming but not in track and field because of safety issues. Was their decision fair to Amanda? What other school sports do you believe she could safely participate in?

Disability in Sports The employment process can be difficult. Hiring managers and executives are faced with tough choices in the interviewing and hiring process. Making the proper ethical decision can ensure that the right employee is hired for the job and will stay and contribute to the company's success. Evaluating potential candidates can be a difficult task. Reviewing résumés, performing background checks, interviewing potential candidates, and chairing a search committee are highly important parts of a SMP's job. There is immense pressure on the SMP to ensure they hire the right person for the job. At the same time, the interviewing and hiring process must be both ethical and legal. Consider the following case scenario dealing with hiring a volleyball coach.



CASE 1-3 *Rickert v. Midland Lutheran College*

2009 WL 2840528 (D. Neb.)

Joan Rickert's employment for Midland began when she was hired as a part-time assistant volleyball coach in August of 1997. She was hired as the part-time head volleyball coach for Midland in 1999.

Steve Schneider ("Schneider") was the Athletic Director and head football coach for Midland when [Rickert] was initially hired, and he was [Rickert's] immediate supervisor throughout her employment as a volleyball coach for Midland. At the time Rickert was first hired, Schneider stated he intended to someday make the head volleyball coach position full-time, and if that happened, the position would be open to all potential applicants and [Rickert] could apply. Rickert knew some of the full-time coaches at Midland not only coached, but taught classes, and she therefore believed any full-time volleyball coaching position would include teaching duties. However, some of Midland's full-time coaches did not have teaching responsibilities.

In 2000, Rickert was hired as Midland's part-time Student Activities Director, which, in combination with her part-time head volleyball coaching position, afforded her full-time employment for Midland.

Rickert was diagnosed with breast cancer in June of 2003 and had a partial mastectomy on July 2, 2003. Although she was hospitalized for

three days due to her surgery, she did not miss any work because the surgery occurred in the summer and she was employed by Midland on a ten-month contract. [She] attended a symposium for Midland within fifteen days following her surgery, and by late July, was back on the volleyball court.

Rickert began chemotherapy treatments on August 1, 2003. Four two-hour treatments were administered every third Monday morning, the last one occurring on September 29, 2003. These chemotherapy treatments went "very well," causing only minor nausea, and no emesis or mucositis. Rickert was encouraged to maintain her normal activity throughout her chemotherapy regimen. Rickert's cancer treatment did cause fatigue. She was unable to stand or walk for any length of time, and needed to sit during practices and while at work. It was difficult for her to carry out daily functions, and she was exhausted by night time. She lost her hair, her food occasionally tasted like metal, and she experienced other minor side effects.

Rickert did not, however, miss any work as either the part-time head volleyball coach or the part-time Student Activities Director due to her cancer treatment, in part because her volleyball team changed the practice schedule to accommodate Rickert's medical appointments. From the onset of Rickert's breast cancer and throughout her treatment, Rickert could fully perform her job, and although co-employees asked Rickert if she wanted to go home and rest out of concern for her well-being, no one at Midland criticized her or stated she was unable to perform her job due to her cancer or the treatment side-effects.

Rickert had breast reconstruction surgery on January 4, 2004. Since the surgery was performed during interterm, she missed no work as a Student Activities Director because there were no ongoing activities, and she missed no work as a volleyball coach because it was off-season. By March 2, 2004, Rickert was reportedly "doing well," with no symptoms, her only complaint being the resumption of menses. She was prescribed additional medications to suppress her ovaries and advised to follow up every three months.

On March 23, 2004, Tara Knudson-Carl ("Knudson-Carl") was hired as Vice-President of Student Development at Midland and became Rickert's supervisor in her capacity as part-time Student Activities Director. When Knudson-Carl began the position, she stated that if the budget allowed, she intended to make the Student Activities Director position full-time. However, Knudson-Carl advised Rickert that she would wait a year to see if Rickert could handle both the part-time volleyball head coaching duties and the part-time Student Activities Director duties. Knudson-Carl knew she had breast cancer and was undergoing breast cancer treatment.

Rickert was seen by her doctor for follow up in May and August 2004. Other than "tolerable" hot flashes, likely caused by medications used to induce menopause, Rickert was "doing well."

Rickert spoke with Schneider in August 2004 and told him she was being treated for her cancer, and would continue receiving injections and medications for the following five years. The expression on Schneider's face indicated he was not happy to hear this news.

In September 2004, less than six months after Knudson-Carl was hired, Knudson-Carl advised Rickert that since there was no Dean of Students at the time, there was money in the budget to make the Student Activities Director a full-time position. Knudson-Carl told Rickert the part-time Student Activities Director position was being terminated and, as such, Rickert's employment in that position was terminated effective September 8, 2004. Rickert's passion and vocation was for volleyball. Knudson-Carl stated Rickert could apply to be the full-time Student Activities Director, but probably would not want to because if hired Rickert could not coach volleyball, and Rickert would probably get a full-time head volleyball coaching position at Midland when that job was created. Rickert did not apply for the full-time position as Student Activities Director because, had she been hired, she would have been required to quit coaching, which would have left her volleyball players without a head coach midway through their season.

Midland hired Tara Mieras ("Mieras"), a woman under the age of thirty, as the full-time Student Activities Director. Rickert agrees Mieras appeared, on paper, to be qualified for the position.

The Midland volleyball season was over in the beginning of November 2004. By the end of 2004, Rickert no longer had an office in Student Development since she was no longer employed as a part-time Student Activities Director. The athletic facilities were under construction, and office space in the athletic department was so scarce that the offices of two assistant football coaches and the golf coach were located in converted closets or storage areas. Schneider could not immediately locate any available office space for [Rickert], so he asked her to work from home by computer while he continued to look. Schneider tried to locate space on campus, but the only option available was in a house three blocks from the field house but close to the residential halls, a location allowing [Rickert] to have access to students. [Rickert] was provided an office in the house. The office was equipped with a single bulb hanging from the ceiling, a desk, two folding chairs, a computer, a file cabinet, a telephone, and a chair. This less than "ideal set-up" made it difficult for [Rickert] to communicate with her athletes and keep connected with the Midland coaching community, but it was the best solution Schneider could find at the time.

Rickert was concerned about losing her full-time benefits, including health care benefits, with the loss of her full-time employment. Schneider and Crume worked with the Human Resources Department and made [Rickert's] part-time head volleyball coaching position a two-thirds time position so she could earn more money and retain her benefits. Schneider and Crume told [Rickert] that if she held some camps and club volleyball tournaments to raise money, then her salary could remain the same and she could retain her benefits.

During the 2003-2004 time frame, the focus of the Midland athletic department began changing. In 2003, Steve Titus became the president of Midland. Before Titus was president, the academic dean was in charge of athletics, but under Titus, Gene Crume became an executive vice president responsible for several departments, including the athletic department. Schneider, the Athletic Director, reported to Crume.

At the outset of the Titus/Crume administration, approximately 35% of Midland's students were involved in athletics. Titus and Crume therefore developed a strategic plan to strengthen the Midland athletic program as a means for recruiting athletically and academically better students. Significant facility upgrades were implemented, and the athletic program was changed from an NAIA coaching model, where coaches both taught and coached, to an NCAA model, where coaches had limited or no teaching responsibilities, and coached and recruited on a full-time basis. As part of the Titus/Crume strategic plan, the head volleyball coaching position was changed from part-time to full-time and a full-time track coach was hired.

Crume's two preferred options for hiring a coach were to either use a search committee or hire an identified candidate with a known record of success. The majority of head coach hires made by Schneider were done through the committee process, including when Jeff Field was hired as the head baseball coach and when Dan Sullivan, who was a part-time soccer coach, was hired as a full-time soccer coach. Schneider also formed a committee to hire an assistant head football coach in preparation for Schneider's possible departure as head football coach to become the full-time Student Activities Director, and the anticipated need to transition the assistant head football coach to head football coach when that occurred. The search committee process was not used when Justin Horner was hired as the head track and field coach, either because the retiring coach had worked with and recommended Horner as his replacement and therefore no search committee was formed, or because the committee was formed but no other qualified applicants applied.

In December 2004, Schneider advised Rickert that the head volleyball coaching position would be made full-time, a five-person search

committee would interview the applicants, and Rickert could apply for the position. When [Rickert] asked why the position was being opened for applications, and why she needed to apply if she was already doing the job, Crume stated Midland "wanted to just see if there was something better out there," and Schneider stated "they wanted to move in a different direction."

Volleyball was a revenue-producing sport for Midland, and Crume had concluded [Rickert] was an average coach who had become the part-time head volleyball coach primarily by happenstance. He did not believe [Rickert]'s coaching style was well-organized or focused, and he wanted better results in the area of recruiting and inspiring students to remain engaged in the program. During prior evaluations, [Rickert] was told she was underperforming in the area of recruiting. Midland was investing significant resources in the volleyball program. The arena facilities were being upgraded, and with the change from a part-time to full-time volleyball coach, Crume expected a substantially different commitment and sense of dedication to the program. Crume wanted to select a better than average head volleyball coach from a robust pool of potential applicants.

The application process began. The position was advertised and was different than other coaching positions on the campus in that it consisted of 90 to 95% coaching and recruiting responsibilities with very minimal teaching. A master's degree was preferred, but only a bachelor's degree was required.

The search committee members were Midland coaches, including Keith Kramme, head softball coach and assistant athletic director; Joanne Bracker, head women's basketball coach; Jeff Field, baseball coach; Casey Thiele, football coach; and Becky Wuebben, athletic trainer. Kramme served as the committee chairperson, and the other committee members forwarded their comments to him. From the applications received, the search committee identified five candidates for interviews: Kerry Beidleman, Kristen Lebeda, Mike Meyer, Pam Wendel, and [Rickert]. The committee interviewed the five candidates and reviewed each candidate's résumé, references, and letter of application. The candidates also met with the volleyball players, who were afforded the opportunity to identify the pros and cons for each applicant. Background checks were performed.

Biedlemann was 26 years old. Field identified Biedlemann's positive traits to include her "youth," experience in the sport, and the fact that she was new to the college and conference. Her youth was considered a positive because "she was vibrant," and likely a "go-getter." However, Field questioned whether Biedlemann would connect to and understand the students, and as negative factors, noted she was

engaged to a coach (and therefore would be more likely to move), and did not interview well. Bracker believed Biedlemann's portfolio was extremely impressive, and she was highly articulate and very responsive to questions. Kramme considered Biedlemann a "very strong candidate top to bottom," with a tremendous portfolio and a background of successes with the program at the University of Nebraska at Kearney. Thiele believed Biedlemann's positive traits included being organized, having experience in a successful college volleyball program, and her likely ability to recruit. Thiele further noted, however, that Biedlemann had no contacts with the Fremont, Nebraska, community, lacked familiarity with the Midland program or the NAIA model, and appeared to be looking for more money than Midland could offer.

As to Lebeda, who was 25 years old, Thiele noted as beneficial her experience as a player and her Omaha club connections, both considered helpful for recruiting, but felt she was inexperienced, unfamiliar with running a Junior Varsity program, and did not adequately research Midland before her interview. Field did not believe Lebeda interviewed well, and based on the interview, did not believe she could handle coaching a small college program.

Thiele believed Wendel was a strong candidate, in the top third, whose drawback was a lack of coaching experience at the collegiate level. Bracker, who had previously worked with Wendel, considered Wendel an outstanding candidate, who had experienced success at the high school level, and was intelligent, articulate, and organized.

Meyer, who was in his mid-40s or 50s, was considered a "very strong candidate," who "would be hard to beat."

As to [Rickert], Bracker, who was 60 and a good friend of Rickert at the time of the interviews, was extremely impressed with Rickert's commitment to Midland during her health issues and considered this a positive character trait. Kramme believed Rickert was a successful coach but was concerned she lacked control over her team. Thiele considered, as a positive, that Rickert had gone through a very tough time with her illness and remained very loyal to the school. However, he noted her résumé and cover letter had typographical errors, she acknowledged having conflicts within her team every year, and her first recruiting class was her best, leading him to question whether she would allow recruiting to slip even further in the future. He also believed her practices were disorganized. Like Thiele, Field considered Rickert's positive traits to include her loyalty to Midland, and the fact she knew the current players, and is a good person. However, Field believed Rickert was unorganized and not concerned enough with winning, and while she corrected some problems in the program, she had failed to move the program forward. Wuebben reiterated the positive

traits identified by Thiele and Field, further adding the players liked her, Rickert believed academics were important, her retention was good, and she gave a lot to the school during her illness. Wuebben believed, however, that [Rickert] lacked team control and had two sets of rules depending on whether the player was on scholarship. Wuebben noted the search committee process was hard for her, and she was "just sick about this." Weubben believed Rickert should have been appointed to the full-time position rather than having to compete.

Rickert's declaration contains not only her personal knowledge, but also her interpretation of the deposition testimony of other witnesses. Some of that deposition testimony was offered as evidence; some was not. Rickert's declaration states Wuebben testified she ranked Rickert as her first choice for the full-time head volleyball coach position. The Wuebben testimony of record does not support this statement. Wuebben's email to Kramme, which is part of the record, stated Wuebben was "just sick about" having to make a decision, and was "still thinking on this."

The players identified Rickert's strengths to include a familiar coaching style and her willingness to educate herself. Their identified concerns included favoritism, inconsistency, recruiting issues, and knowledge. Similar issues were identified in a parent letter sent to Titus on May 15, 2003, but the letter was never discussed with [Rickert].

Rickert had a "gut feeling" that the selection committee members considered her age as a factor in the hiring process. However, the only reference to age was Field's positive comment on Beidlemann's "youth." Field also stated Lebeda may be too young and immature for the job. Rickert's age was never discussed by the committee. There is no evidence Rickert's breast cancer was identified as an impediment or discussed as limiting Rickert's ability to be the full-time head volleyball coach.

The interviews were conducted during February of 2005. In the end, Beidlemann was the committee's first choice, followed by Meyers and Lebeda. Rickert was the committee's fourth choice. These choices were forwarded to Schneider. The final decision was left to Crume, who relied heavily on Schneider's opinion.

Beidlemann withdrew from consideration because she accepted a job offer from Drake University. Meyer was withdrawn from consideration following a reference check. Lebeda was offered the position and accepted it, the job to commence on June 1, 2005. Rickert admits that on paper, Lebeda appeared to be very qualified for the job. Rickert

was told in March 2005 that her contract for the head volleyball coaching position would not be renewed.

By the time the application process began for the full-time head volleyball coaching position, [Rickert] had no recurrence of breast cancer, and although she remained on medication, she was having no symptoms associated with the disease or its treatment. During the application process, Rickert's stamina was reportedly "excellent" and she was "feeling fine." Rickert continued to be "active with good performance status" when her Midland employment ended on May 31, 2005.

The evidence reveals the search committee considered both objective and subjective factors and traits in comparing the candidates and recommending its choices. Among the traits considered were organizational skills; stability and contacts with the community; loyalty to and knowledge concerning the Midland program and its players; prior experience as a player and coach; community and school contacts, particularly as they related to access to recruiting venues and experience with quality teams; team control; and the ability to interact with the players. Midland offered evidence that on balance and in comparison to Biedlemann, Lebeda, and Meyer, Midland concluded Rickert was not the strongest candidate. No one on the search committee questioned Rickert's loyalty to the school or her knowledge of the program or its players, and they admired her resilience and commitment in continuing to coach throughout her cancer diagnosis and treatment, but they also noted she was unorganized, lacked team control, and was perceived to show favoritism.

Perhaps most important, Midland was changing its program, including upgrading facilities and hiring a full-time head volleyball coach, primarily to recruit better students, yet Rickert had been counseled to improve her recruiting and acknowledged her best recruiting year was her first year as a coach, leading at least one committee member to question whether she was able and willing to improve. The full-time position consisted of 90 to 95% coaching and recruiting, but Rickert was viewed by Crume as only an average coach and Rickert's recruiting skills were in question. Crume wanted more than an average coach, particularly since Midland was investing so much in the program. In contrast to Rickert, the committee, Schneider, and Crume concluded Biedlemann and Lebeda were both able to coach with skills and experience gained from noted and touted outside volleyball programs, and both had connections to volleyball clubs and programs perceived as potentially valuable for future recruiting. Rickert admitted that, on paper, Lebeda appeared very qualified for the position. Although Rickert argues neither Biedlemann nor Lebeda were qualified for the full-time head volleyball coaching position because they lacked a master's degree and could not teach at Midland, both had a bachelor's degree,

which was all that was required for the position because teaching was not a significant part of the job.

A search committee composed of Rickert's coworkers, most of whom considered her a friend, interviewed five applicants, compared their qualifications, and decided three of the applicants were better choices for the position than Rickert, two of whom were substantially younger than her, and one who was approximately her age. Rickert may disagree with Midland's decision, but the courts do not "sit as super-personnel departments reviewing wisdom or fairness of employer's judgments unless they were intentionally discriminatory."

[Rickert] has offered win-loss and retention records to show Lebeda did not perform as well as Rickert had in the volleyball coaching position, in part to show Rickert was more qualified than Lebeda. This challenge to Midland's hiring decision, made with the benefit of hindsight, is irrelevant. The question is whether Midland considered disability or age when it was deciding not to hire Rickert. [Rickert] has presented no evidence that based on the information known by Midland at the time of hiring, [Rickert]'s age or alleged disability were considered, or that Rickert was more qualified than Lebeda to be the full-time head volleyball coach.

The Midland Lutheran College has offered evidence explaining legitimate, nondiscriminatory reasons for hiring Lebeda instead of [Rickert] as the full-time head volleyball coach. [Rickert] has offered no evidence that these reasons are a mere pretext for underlying discriminatory animus.

Source: Reprinted from Westlaw with permission of Thompson Reuters.

Coach Rickert sued the university but lost in federal court. Under federal law an individual must be at least 40-years old to state a valid claim for age discrimination. This court's opinion does not list her age but stated that she met the criteria.

Evidently, the fourth best candidate was Rickert. Lebeda was younger than coach Rickert but did not interview well, was unfamiliar with running a junior varsity program, was decidedly "inexperienced," and the committee did not think "she could handle" coaching a small college program. How did this make her a better candidate than coach Rickert? It was not that coach Rickert's commitment to the university was viewed as a "positive character trait" but that she "was not concerned enough with the university."

It would be naïve to say universities always value character development of students over winning, but if character is what they are trying to develop in the student-athlete, how much more character can you show than coach Rickert's battle with cancer? Although there was no evidence that her breast cancer played a role in the committee's decision, do you believe it may have been an "unstated" factor in their decision not to hire her?

After reading the facts of this case, how would you answer the following questions?

1. Was coach Rickert treated fairly during the application process?
2. What part should her loyalty to the university have played in their hiring decision?
3. Was the entire hiring process fair? If not, what should have been done differently?
4. Do you believe her medical condition played any part in Midland's choice to not hire her?
5. Do you believe her age was a factor in Midland not hiring her?
6. Did the university use the correct criteria in evaluating candidates?
7. Does the fact that Schneider was "unhappy" about the news that coach Rickert would have to continue medication for 5 years shows he was biased against her during the hiring process?
8. Does any of the written communication of the search committee indicate coach Rickert was treated unfairly or unethically?
9. What part if any, did the "upgrade" of the athletic program play in their decision not to hire coach Rickert?

Student-Athlete Issues and Team "Chemistry" Team unity and sportsmanship are vital to any team's success at all levels of sports. If a team works together, they are more likely to be successful on the field of play. A team must have the right "chemistry" between the players to win. With that in mind, when is a player, and in case 1-4, a high school player, allowed to voice his or her opposition to the way a team is being run? This case involves the expulsion of several high school student-athletes from the team after they started a petition attempting to get the coach fired.



CASE 1-4 *Lowery v. Euverard*

497 F.3d 584 (6th Cir. 2007)

Derrick Lowery, Jacob Giles, Joseph Dooley, and Dillan Spurlock were students at Jefferson County High School in Tennessee during the 2005 to 2006 school year. All four were members of the Jefferson County varsity football team. Euverard became the head varsity football coach at Jefferson County in 2004. During the 2005 season, many of the Jefferson County football players . . . became dissatisfied with Euverard's coaching methods. They allege that Euverard struck a player in the helmet, threw away college recruiting letters to disfavored players, humiliated and degraded players, used inappropriate language, and required a year-round conditioning program in violation of high school rules.

In early October of 2005, after discussions with Dooley and Lowery, Giles typed the following statement: "I hate Coach Euvad [sic] and I don't want to play for him." Giles and Dooley asked other players to sign the petition, which would be held until after the football season. Giles and Dooley intended to then give the petition to Schneitman, the principal of Jefferson County, in order to have Euverard replaced as head coach. Eighteen players eventually signed the petition, including Spurlock.

Euverard learned of the petition on October 7, 2005. Darren Whitehead, another player on the team, told Assistant Coach Ricky Upton about the petition, who then told Euverard. Euverard called an all-coaches meeting on October 9. Schneitman was also present at the meeting. At the

meeting, the coaches discussed how to deal with the petition. The coaches decided to question the players individually to learn more about the petition.

When the players arrived for practice on October 10 they were told to sit in front of their lockers and remain quiet. Players were then taken one by one into an office in the weight room where they were interviewed by Euverard. Assistant Coach Brimer was also present in the office, taking notes. All the players were asked the same questions: (1) Have you heard about the petition? (2) Did you sign it? (3) Who asked you to sign it? and (4) Do you want to play football with Coach Euverard as coach?

When Wesley Lee, a player who had signed the petition, was called for his interview, Lowery called out, "Are you alright?" Assistant Coach Pippenger then asked Lowery to come over. At first Lowery refused, and then walked over to Pippenger. Lowery told Pippenger "don't put your hands on me," or words to that effect, and refused to go outside with Pippenger. Giles and Dooley then got up and stood by Lowery. Pippenger took the three of them into the weight room, and told Euverard about the situation. Euverard attempted to interview the three boys individually, but they said they would only meet with Euverard as a group. Euverard told them that if they were going to be that way, they could pick up their things and leave. Giles, Dooley, and Lowery gathered their belongings and left. As they were leaving, Dooley said to the other players, "I know how much you hate him, and you guys need to leave with us right now."

Spurlock was not at school on October 10. Euverard interviewed Spurlock on October 11, and Spurlock told Euverard that he signed the petition. Euverard asked Spurlock if he still felt that way, and Spurlock answered that he loved football. Euverard then asked Spurlock if he wanted to play football with Euverard as head coach. Spurlock said no, but that he wanted to play for Jefferson County. Euverard told Spurlock to get his stuff, and that he was no longer on the team. Players who signed the petition but apologized to Euverard and told him they wanted to play for him were allowed to remain on the team.

In the 1986 movie *Hoosiers*, Gene Hackman plays Norman Dale, the new basketball coach at a small Indiana high school. On the first day of practice Dale makes an introductory speech to the players. All of the players attentively listen to Dale except two, who are talking to each other. Dale notices the two players talking, and the following dialogue ensues:

Dale: Basketball is a voluntary activity. It's not a requirement. If any of you feel you don't want to be on the team, feel free to leave right now. Did you hear what I just said?

Player: Me?

Dale: Yes, you.

Player: Sure, I'm just kinda curious to know when we start.

Dale: We start when I say so.

Player: OK, would you kinda let me know, 'cause I'm kinda getting tired of standing.

Dale: Alright. Out. Out of here. Right now.

One of the purposes of education is to train students to fulfill their role in a free society. Thus it is appropriate for students to learn to express and evaluate competing viewpoints. The goal of an athletic team is much narrower. Of course, students may participate in extracurricular sports for any number of reasons: to develop discipline, to experience camaraderie and bonding with other students, for the sheer "love of the game," etc. Athletic programs may also produce long-term benefits by distilling positive character traits in the players. However, the immediate goal of an athletic team is to win the game, and the coach determines how best to obtain that goal. As this Court has recognized:

Unlike the classroom teacher whose primary role is to guide students through the discussion and debate of various viewpoints in a particular discipline, [the role of a coach] is to train his student athletes how to win on the court. The plays and strategies are seldom up for debate. Execution of the coach's will is paramount.

The success of an athletic team in large part depends on its coach. The coach determines the strategies and plays, and "sets the tone" for the team. The coach, particularly at the high school level, is also responsible for providing "an educational environment conducive to learning team unity and sportsmanship and free from disruptions and distractions that could hurt or stray the cohesiveness of the team." The ability of the coach to lead is inextricably linked to his ability to maintain order and discipline. Thus attacking the authority of the coach necessarily undermines his ability to lead the team. In this case, Spurlock admitted that signing the petition was equivalent to saying he had no respect for Euverard. . . . coaches are entitled to respect from their players. The circulation of a petition stating "I hate Coach Euvad [sic] and I don't want to play for him" was a direct challenge to Euverard's authority, and undermined his ability to lead the team. It could have no other effect.

In addition to challenging Euverard's authority, the petition threatened team unity. In most instances, school officials would be more

likely to fire a coach who had a horrible season than one who had a successful season. Thus players advocating the removal of a coach would have a powerful incentive to give less than one hundred percent. The Court is not accusing the [players] of this behavior; they all claim to have played their hardest despite their feelings for Euerard. However, after every missed block, dropped pass, or blown tackle, it would only be natural for other players, knowing the situation, to question the [players] motivation. This would inevitably increase the tension on the team.

The circulation of the petition necessarily divided players into two camps, those who supported Euerard and those who didn't. Although team chemistry is impossible to quantitatively measure, it is instrumental in determining a team's success. Joakim Noah, a player on the University of Florida basketball team that won consecutive NCAA championships in 2006 and 2007, stated that "the difference between winning and losing is so, so small. . . . It's teams that really play together that win. Team chemistry is such a sensitive thing, but we really, really have it." See Paola Boivin, "Gators Bare Their Championship Teeth," *Arizona Republic*, Mar. 19, 2007, 11.

Mutual respect for the coach is an important ingredient of team chemistry. The Detroit Tigers were the talk of the baseball world during the 2006 season, due to their remarkable turnaround and run to the World Series. An opposing player attributed the Tigers' success to "a manager they all trust and respect and that they are behind, and a team chemistry that seems pretty unified." See John Lowe, "Add in Some Hot Bats, and the Tigers Have Found Their Swagger," *Detroit Free Press*, Oct. 16, 2006, 5. See also Mark Gaughan, "Expectations Low in an Uncertain Era," *Buffalo News*, Sep. 7, 2006, C11 ("I truly believe there is team chemistry. I believe the players truly believe and respect Coach Jauron."); David Boyce, "Central Missouri State Working for Series Title," *Kansas City Star*, May 10, 2002, D8 ("We have a deep respect for our coaches. . . . We know they know what they are doing. We have a good team chemistry.").

Conversely, conflict between a player and the coach can shake "the very foundation of team chemistry." See Greg Boeck, "Revolution on Court: Players' Defiance Upsets NBA Leadership Picture," *USA Today*, Dec. 21, 2000, C1. One sportswriter has noted that:

The feud between [the player and coach] ultimately tore at the fabric of team chemistry and may have contributed to [the team's] postseason failure. At best, the constant discord created an uncomfortable atmosphere on the team. At worst, it forced players to choose between a coach and a teammate, creating a fissure of distrust and disunity.

See Glenn Nelson, "Ready to Blow? Enigmatic George Karl Can't Understand Why He's Misunderstood," *Seattle Times*, Nov. 1, 1995, H3.

Conflict between a player and coach has also been described as a "cancer." See Selena Roberts, "From Sleepless to Selfless," *The New York Times*, Dec. 10, 1996, B13.

The Court does not have an idealized, pristine view of athletic teams. Athletic teams are a family of sorts, and, like any family, it is inevitable that there will be some squabbles. Games are emotional affairs, and players and coaches may exchange angry words in the heat of the moment. From time to time, players may also vent their frustrations over play calls, lack of playing time, etc. The petition in this case, however, cannot be characterized as an isolated expression of dissatisfaction. The petition, stating "I hate Coach Euvard [sic] and I don't want to play for him," was part of a concerted effort to have Euverard fired. Such a petition would necessarily force players to choose between Euverard and the players that opposed him.

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Of course, student-athletes do not completely waive their First Amendment rights when they join a team. A coach could not dismiss a player simply because the player had religious or political views that were unpopular with his teammates.

After reviewing the facts of case 1-4, how would you answer the following questions?

1. Do student-athletes have a right to say whatever they want to a coach?
2. Should student-athletes be dismissed from the team for writing and signing the petition?
3. To what extent can student-athletes at the high school level determine who their coach is going to be?
4. How would you handle the allegations against the coach?
5. How would you determine whether the allegations are true?
6. Would you initiate an investigation and if so how would it be conducted?
7. How much leeway should a coach be given to discipline players?
8. Did the student-athletes act in an unsportsmanlike manner?
9. Do the student-athletes have any free speech rights to be considered?
10. Do you agree with the statement, "Execution of the coach's will is paramount"?
11. Should the coach be disciplined or fired if any of the allegations are proved to be true?

The matter eventually ended up in litigation with a federal court deciding the players had the right to challenge the coach under these circumstances. Was this the correct decision? How could this incident have avoided?

An SMP is required to hear all sides of an issue and make a decision that is fair to all parties involved. Resolving disputes in any industry is a difficult task. Therefore, every SMP must have the requisite skills to solve problems and must be able to resolve them within the bounds of ethical behavior and achieving fairness to all involved. Consider the following case. How is it different from the *Euverard case*?

**CASE 1-5 Wildman v. Marshalltown School District**

249 F.3d 768 (8th Cir. 2001)

In January 1998, Rebecca Wildman was a sophomore student at Marshalltown High School in Marshalltown, Iowa, and a member of the school's basketball team.

Wildman hoped to play on the varsity team and she testified that Coach Rowles, the high school girls' varsity basketball coach, promised in conversations with her before the season that he would promote her to the varsity team. When the promotion never materialized, Wildman testified that she "became frustrated and decided to write a letter to [her] teammates" and that her "purpose was to find out what they thought of the situation and Coach Rowles." She composed a letter on her home computer and distributed it to her teammates in the school's locker room on Saturday, January 24, 1998. The letter stated:

To all of my teammates:

Everyone has done a great job this year and now is the time that we need to make ourselves stronger and pull together. It was a tough loss last night but we will get it back. We have had some bumps in the road to success but every team does and the time is here for us to smoothen it out. Everyone on this team is important whether they think so or not. After watching last nights [sic] Varsity game and seeing their sophomores play up I think and I think [sic] that some of you are think [sic] the same thing. I think that we have to fight for our position. Am I the only one who thinks that some of us should be playing Varsity or even JV? We as a team have to do something about this. I want to say something to Coach Rowles. I will not say anything to him without the whole teams [sic] support. He needs us next year and the year after and what if we aren't there for him? It is time to give him back some of the bullshit that he has given us. We are a really great team and by the time we are seniors and we ALL have worked hard we are going to have an AWESOME season. We deserve better then [sic] what we have gotten. We now need to stand up for what we believe in!

She included below her statement a poem about geese in flight titled "We Makes Me Stronger."

Source: *Reprinted from Westlaw with permission of Thompson Reuters.*

After reviewing case 1-5, how would you answer the following questions?

1. How would you handle the situation in which a student is disrespectful to a coach on his or her Facebook page? Is that poor sportsmanship or proper conduct that merits discipline?⁷⁴

⁷⁴ Andrew Greiner, Student Suspended for Facebook Teacher Slam, *NVC Chicago*, February 22, 2010.

What about a coach who slams players and parents? Royal Oak Michigan varsity soccer coach, Jason Windsor resigned after he used his Facebook page to threat players and disparage players' parents. Some of his comments included: "3 words my varsity soccer parents will get used to this week. BENCH, JV, CUT. You will all be taught a lesson you sh—stirring pri—!!!!!!!" and "(certain) Parents are the worst part of kid's sports" and finally "great set of results on the field today! shame certain soccer moms make soccer so negative."⁷⁵

2. Should every school have a code of conduct which states student-athletes must respect and abide of all reasonable decisions of the coach?
3. How much credibility do you give to the student-athlete, and her cause, (Case 1-5) considering the numerous typographical and grammatical errors in her letter?
4. Would there be a difference if Rebecca Wildman (Case 1-5) had e-mailed her letter to her teammates instead of distributing the letter to her teammates on school property?
5. Should the use of the word "bullshit" in her letter automatically disqualify her from the team?

College Student-Athletes An SMP in a collegiate setting is faced with numerous ethical issues on a wide array of topics. One prevalent issue is the student-athlete graduation rate. Shouldn't the graduation rate of student-athletes be a primary concern of the university? After all, it is an educational institution!



CASE 1-6 *Kevin Ross v. Creighton University*

957 F. 2d 410 (7th Cir. 1992)

Kevin Ross filed suit against Creighton University (Creighton) for negligence and breach of contract arising from Creighton's alleged failure to educate him.

In the spring of 1978, Ross was a promising senior basketball player at Wyandotte High School in Kansas City, Kansas. Sometime during his senior year in high school, he accepted an athletic scholarship to attend Creighton and to play on its varsity basketball team.

Creighton is an academically superior university. Ross comes from an academically disadvantaged background. At the time of his enrollment at Creighton, Ross was at an academic level far below that of the average Creighton student. For example, he scored in the bottom fifth percentile of college-bound seniors taking the American College Test, while the average freshman admitted to Creighton with him scored in the upper twenty-seven percent. According to the complaint, Creighton realized Ross's academic limitations when it admitted him, and, to induce him to attend and play basketball, Creighton assured Ross that he would receive sufficient tutoring so that he "would receive a meaningful education while at Creighton."

⁷⁵ Marilisa Kinney Sachteleben, Royal Oak High School Soccer Coach Resigns After Facebook Confrontations, *Associated Content from Yahoo*, October 15, 2010.

Ross attended Creighton from 1978 until 1982. During that time he maintained a D average and acquired 96 of the 128 credits needed to graduate. However, many of these credits were in courses such as Marksmanship and Theory of Basketball and did not count towards a university degree. Ross alleges that he took these courses on the advice of Creighton's Athletic Department, and that the department also employed a secretary to read his assignments and prepare and type his papers. Ross also asserts that Creighton failed to provide him with sufficient and competent tutoring that it had promised.

When he left Creighton, Ross had the overall language skills of a fourth grader and the reading skills of a seventh grader. Consequently, Ross enrolled, at Creighton's expense, for a year of remedial education at the Westside Preparatory School in Chicago. At Westside, Ross attended classes with grade school children. He later entered Roosevelt University in Chicago but was forced to withdraw because of a lack of funds. In July 1987, Ross suffered what he terms a "major depressive episode," during which he barricaded himself in a Chicago motel room and threw furniture out the window. To Ross, this furniture "symbolized" Creighton employees who had wronged him. Id.

Ross's complaint advances three separate theories of how Creighton was negligent towards him. First, he contends that Creighton committed "educational malpractice" by not providing him with a meaningful education and preparing him for employment after college. Second, Ross claims that Creighton negligently inflicted emotional distress upon him by enrolling him in a stressful university environment for which he was not prepared, and then by failing to provide remedial programs that would have helped him survive there. Third, Ross urges the court to adopt a new cause of action for the tort of "negligent admission," which would allow recovery when an institution admits, and then does not adequately assist, a woefully unprepared student. The complaint also sets forth a contract claim, alleging that Creighton contracted to provide Ross "an opportunity . . . to obtain a meaningful college education and degree, and to do what was reasonably necessary . . . to enable [Ross] to obtain a meaningful college education and degree." It goes on to assert that Creighton breached this contract by failing to provide Mr. Ross adequate tutoring; by not requiring Ross to attend tutoring sessions; by not allowing him to "red-shirt," that is, to forgo a year of basketball, in order to work on academics; and by failing to afford Mr. Ross a reasonable opportunity to take advantage of tutoring services. Ross also alleges that Creighton breached a promise it had made to him to pay for a college education.

Source: *Reprinted from Westlaw with permission of Thompson Reuters.*

After reviewing the facts of Case 1-6, how would you answer the following questions?

1. What ethical duty does a university have to recruit student-athletes they know will be academically successful at the university?
2. How did the university fail in its ethical duties to Ross?
3. Is Kevin Ross in any way responsible for his situation?
4. What ethical actions can be taken to prevent this in the future?
5. Should universities ever admit student-athletes who fail to meet the minimum entrance requirements for general students of the university?⁷⁶

NOTES AND DISCUSSION QUESTIONS

Sports in Society

1. How are business ethics and sports ethics interrelated? Are there overlapping principles applicable to both?
2. What are some examples of ethical decisions individuals have to make in the sports industry?⁷⁷
3. What are some examples of ethical decisions corporations are required to make in the sports industry?⁷⁸
4. What ethical choices do professional and amateur athletes have to make?
5. Which principles from business ethics could sports ethics adopt?⁷⁹
6. What is the best way to enforce the idea of sportsmanship in youth sports?
7. In what ways can sports build character?⁸⁰
8. What can be done to further promote the concept of sports ethics?⁸¹
9. How are sports ethics principles applied differently to sports managers, coaches, and participants?
10. Are there any sports ethics principles that can be considered “universal”?

⁷⁶ Alison Go, “Athletes Show Huge Gaps in SAT Scores,” *U.S. News & World Report*, December 30, 2008. “Football players average 220 points lower on the SAT than their classmates. Men’s basketball was 227 points lower. University of Florida won the prize for biggest gap between football players and the student body, with players scoring 346 points lower than their peers. Georgia Tech had the nation’s best average SAT score for football players, 1028 of a possible 1600, and best average high school GPA, 3.39 of a possible 4.0. but because its student body is apparently very smart, Tech’s football players still scored 315 SAT points lower than their classmates. UCLA, which has won more NCAA championships in all sports than any other school, had the biggest gap between the average SAT scores of athletes in all sports and its overall student body, at 247 points.” The schools with the top SAT scores were Georgia Tech, 1028; Oregon State, 997; Michigan, 997; Virginia, 993; and Purdue, 974. The bottom five schools were Oklahoma State, 878; Louisville, 878; Memphis, 890; Florida, 890; and Texas Tech, 901.

⁷⁷ See generally, Joy Theresa DeSensi and Danny Rosenberg, *Ethics and Morality in Sport Management* (Morgantown, WV: Fitness Information Technology, 2003).

⁷⁸ See D. Stanley Eitzen, “Ethical Problems in American Sport,” *Journal of Sport and Social Issues* 12, no. 1 (1988): 17–20.

⁷⁹ See Mary A. Hums, Carol A. Barr, and Laurie Gullion, “The Ethical Issues Confronting Managers in the Sports Industry,” *Journal of Business Ethics* 20, no. 1 (1999): 51–66.

⁸⁰ See Gordon Marino, “Do College Sports Really Strengthen Character?” *Wall Street Journal*, August 31, 2006.

⁸¹ See generally, Robert Simon, *Fair Play: The Ethics of Sport* (Boulder, CO: Westview Press, 2003).

11. How should sports ethics be addressed at the international level. Does sports ethics differ in every culture?⁸²
12. What human rights issues are present in sports and sports ethics?⁸³

Cheating

13. Do certain sports tolerate cheating, taking the attitude that cheating is tolerated if the player can get away with it?⁸⁴
14. Do you believe there is a universal concept of “fairness” that can be applied to sports?
15. Consider Case Study 1-4, “Lottery Systems and Playing to Lose.” Should the league commissioner be allowed to fine a team that loses purposefully? How could you actually prove it? Does it hurt the integrity of the sport if a team or player fails to play at its best?
16. Do you believe there is a cheating epidemic in sports? If so, what created the epidemic? Do you believe cheating in sports is just a reflection of cheating in other aspects of society (business, legal, medical, education)?⁸⁵
17. Do large salaries for players at the professional level create an incentive for players to cheat?⁸⁶
18. Do you believe people who are unethical or dishonest in their private life will also engage in unethical in their professional careers? Is there a connection between an individual’s personal beliefs and how those beliefs are applied into the corporate culture?
19. How would you prove a violation of the morals clause in the prenuptial agreement for actor Michael Douglas that included a \$5 million “straying fee” should he have sexual relations with someone other than his wife, Catherine Zeta Jones?⁸⁷
20. How should cheaters in sports be disciplined? Should they be fined, suspended or in the worst case scenario have their contract terminated?⁸⁸
21. How would you define a good role model in sports? What role does the sports media play in determining the “villains” of sports?⁸⁹
22. How has the increase of sports agents in sports created ethical problems?⁹⁰

⁸² See Cui Jiang, “China’s Traditional Sports Ethics Thought and the Value of Rebuilding Morals of Modern Sports,” *CNKI.com.cn*, February 29, 2006; Francois-Xavier Mbopi-Keou, *Health and Sports in Africa: A Challenge for Development* (Esher, Surrey, UK: John Libbey Eurotext, 2008).

⁸³ See Bruce Kidd and Peter Donnelly, “Human Rights in Sports,” *International Review for the Sociology of Sport*, 35, no. 2 (2000): 131–148.

⁸⁴ See Fran Zimniuch, *Crooked: A History of Cheating in Sports* (New York: Taylor Trade Publishing, 2009).

⁸⁵ See Lance Pugmire, “Cheating in Sports: A Master of Style, and Substance,” *Los Angeles Times*, August 20, 2006; Selena Roberts, “The Road to Success Is Paved by Cheating,” *New York Times*, April 8, 2007.

⁸⁶ See Joshua H. Whitman, “Winning at All Costs: Using Law and Economics to Determine the Proper Role of Government in Regulating the Use of Performance-Enhancing Drugs in Professional Sports,” *University of Illinois Law Review* 459 (2008).

⁸⁷ See Jonah Goldberg, “Just Like Ozzie and Harriet: When Hollywood Liberals ‘Settle Down,’” *National Review*, December 18, 2000.

⁸⁸ See “Hitting Sports Cheats in Their Wallets,” *New York Times*, August 26, 2009.

⁸⁹ See Gill Lines, “Villains, Fools or Heroes? Sports Stars as Role Models for Young People,” *Leisure Studies* 20, no. 4 (October 2001): 285–303.

⁹⁰ See Mike Celizic, “Are ‘Pimp’ Agents Any Worse Than Coaches?” *NBCSports.com*, July 22, 2010.

23. Do you agree with the following proposition?

We cannot lament dishonesty in Little League baseball and other sports, and condemn corporate executives and accountants for their second-rate ethics and the loss of their moral compass without taking a careful look at our own profession. Endemic cheating starts when one person after another chooses the cheap advantage, the easy way, often with seemingly reasonable justifications. As more and more people cut ethical corners, the norms of behavior erode exponentially.⁹¹

Ethical Decision Making and the Sports Management Professional

24. What are the major ethical dilemmas facing the SMP today?⁹²
25. What is the best training and education for an SMP to be able to deal with the important issues they will face in the workplace? MBA? Law school? Sports management degree? Military experience? Liberal studies degree? Work experience? A combination of several of the above?
26. What are the essential elements of a corporate ethics program?⁹³ How would a corporate ethics program in the sports industry differ from a ethics program in another industry such as financial, manufacturing, sales or service?
27. Should every corporation establish an ethics hotline? Would an ethics hotline be a good idea for a professional sports franchise?⁹⁴
28. Because of the many different races involved in the sports world, what type of diversity training should a SMP receive?⁹⁵
29. What are the essential skills an SMP needs to develop an ethical decision-making model?
30. International sports no longer means only the Olympics. The NFL, MLB, NHL, and NBA are all attempting to increase their international influence. What additional training would an SMP need to be successful in the international arena?⁹⁶ What additional ethical issues are present on the international stage in sports?⁹⁷
31. A college coach recruits a high school player he is “pretty sure” will not be academically successful at the university. What ethical dilemma does this scenario pose?⁹⁸
32. Rebecca Wildman lost her case in federal district court. She appealed her case to the federal court of appeals, which once again ruled against her in favor of the school. The court stated in part: “Marshalltown had in place a handbook for student conduct in 1997–1998,

⁹¹ Bruce Neckers, “Cheating,” *Michigan Bar Journal* (September 2002).

⁹² See Hums, Barr, and Gullion, “The Ethical Issues Confronting Managers in the Sports Industry.”

⁹³ See Jeanne M. Logsdon and Donna J. Wood, “Global Business Citizenship and Voluntary Codes of Ethical Conduct,” *Journal of Business Ethics* 59, nos. 1-2 (2005): 55–67.

⁹⁴ www.cces.ca.

⁹⁵ See Dana Brooks and Ronald Althouse, *Diversity and Social Justice in College Sports: Sport Management and the Student-Athlete* (Morgantown, WV: Fitness Information Technology, 2007).

⁹⁶ See www.ie.edu (Master in Sports Management, an excellent program that focuses on the global aspects of sports management. Director of Program Antonio Martin).

⁹⁷ www.internationalsport.com

⁹⁸ See generally Peter A. French, *Ethics and College Sports: Ethics, Sports, and the University (Issues in Academic Ethics)* (Lanham, MD: Rowman & Littlefield, 2004).

as well as a Marshalltown Bobcat Basketball Handbook, drafted by Coach Rowles and distributed to Wildman and her teammates at the start of the season. Both handbooks indicated that disrespect and insubordination will result in disciplinary action at the coach's discretion." It also stated, "Wildman's letter, containing the word 'bullshit' in relation to other language in it and motivated by her disappointment at not playing on the varsity team, constitutes insubordinate speech toward her coaches."⁹⁹

33. Woody Hayes, head football coach of The Ohio State University (OSU) from 1951 to 1978, provides another example. He was seen by some as a tough but fair coach who showed compassion by visiting hospitals and taking a personal interest in his students. Yet he exhibited a hot temper that boiled and burst forth at a moment's notice. This caused him to lash out at players, other coaches, bowl game officials, and bus drivers; in addition he destroyed inanimate objects such as telephones, film projectors, water bottles, and tackling dummies. Finally, his temper led to his demise as a coach in the 1978 Gator Bowl. OSU trailed Clemson 17–15 late in the game but was driving for what looked to be a game-winning field goal attempt. But with less than 2 minutes left, Clemson's Charlie Bauman intercepted an Art Schlichter pass and was tackled out of bounds right in front of the OSU bench. Woody Hayes, in front of all the fans in the stadium and a national television audience, proceeded to rush over and punch Bauman in the face. When OSU players tried to restrain him, he punched at them. Hayes, though well loved, was fired the next day and never coached again. We might excuse his behavior by saying he was a product of his time, seeing combat in World War II in the Pacific while serving as a Naval Officer. However, a combat mentality does not always apply in an intercollegiate academic and competitive situation. Hayes took a positive quality of excellence and desire to compete hard and twisted it into one that allowed for blowups at any time for any reason.

⁹⁹ *Wildman v. Marshalltown School Dist.*, 249 F. 3d. 768 (2001).