

CHAPTER 2

Sportsmanship, Gamesmanship, and Cheating

► How People Win

Everyone likes to win! Adults and children alike enjoy the exuberance of winning, but it is also clear that some people like to win more than others. The subject of this chapter is *how* people win. Should we concern ourselves with how people get into the winner's circle, or by what means they use to prevail? After all, no one remembers who finished second in the Super Bowl.

Cheating, rule breaking coupled with the intent to avoid detection, violates the normative principle of honesty. Why do people cheat in general and what nonmoral values drive people to cheat? Cheating occurs outside of the sports world, such as by students in colleges and universities—they may see others doing it and want to “level the playing field”—while others do it out of ignorance or simply the desire to avoid doing work. One example that is not always well understood by college students is plagiarism. Students have also found creative ways to cheat in the technological

age by using text messaging to get answers or “Googling” during exams.

Cheating in one's private life ultimately leads to negative outcomes for the cheater while affecting other people and business interests. Cheating in one's personal life can translate to lost income—this can certainly occur if you are a world-class athlete. Professional Golf Association (PGA) golfer Tiger Woods' marital infidelities were splashed across world headlines when his conduct was exposed. Since he is one of the most famous people in the world, this was considered newsworthy, and it cost him dearly. His celebrity endorsements decreased by an estimated \$22 million in 2010. Most celebrity and athlete endorsement contracts contain moral clauses; after the Woods scandal, insurers were inundated with inquiries from corporations anxious to protect their name and brands. Dan Trueman, head of the enterprise risk department at R.J. Kiln and Company, the managing agent for Lloyd of London Insurance Company, said, “Tiger Woods has made people think about their

reputations. These days, people don't worry about the office burning down, but instead 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 in the months after he announced he was taking a break from golf.¹ There is no doubt that, in some cases, personal unethical behavior affects others and also has a direct effect on business.

Why do people cheat in sports and 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 teamwork at 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.

Most everyone in sports would consider cheating to be ethically or morally wrong. Gamesmanship, however, occupies a gray area between good sportsmanship and outright cheating. Gamesmanship utilizes legal tactics that are morally dubious and are designed to unsettle opponents—these tactics usually are not technically against the rules. With millions of dollars at stake at the professional and collegiate levels, gamesmanship can sometimes take precedence over sportsmanship.

Former National Football League (NFL) player Bob Whitfield said, "Everybody cheats. After that initial handshake, anything goes. The code of honor and respect probably ends when they toss the coin."² After all, sports are

about competition, with athletes competing on the field, court, or ice to determine a winner. Winning is the most important goal of an athlete at all levels of competition, especially as a professional. What club owner is going to tolerate a player who does not do everything within his or her power to win? Certainly, sports can be played on a non-competitive basis just for fun; however, even a pickup basketball game among friends can be fiercely competitive.

Competition in most sports is a zero-sum game—there has to be a winner and a loser. Furthermore, competitive sports have a set of rules players must abide by during the game. If a player violates the rules to win, many will say that the player did not "legally win" because he or she failed to play by the rules. Most fans do not like cheaters, but what about those players who straddle the line between fair play and cheating? One example of gamesmanship is trash talking. Perhaps the most infamous trash talking statement was made by boxer Mike Tyson: "When I'm ready I'm going to rip out his heart and feed it to him. . . . My style is impetuous, my defense is impregnable and I'm just ferocious. I want your heart. I want to eat your children. Praise be to Allah." The overwhelming majority of high schools, along with the National Collegiate Athletic Association (NCAA), prohibit trash talking and "excessive celebration." Nevertheless, athletes continue to berate, trash talk, showboat, and needle their opponents, hoping to gain an edge—but the remarks are sometimes inciting, profane, offensive, or demeaning.

Other examples of gamesmanship include taking an inordinate amount of time between points in a tennis match and calling an unnecessary time-out to "freeze" an opponent before a crucial foul shot in basketball or a field goal in football. The strategic foul is also a form of gamesmanship which may be committed to prevent an opponent from scoring an easy layup. Unlike outright cheating, these types of fouls are *openly* committed in the expectation that a penalty will be imposed. What about a manager who intentionally gets himself ejected from a game to

motivate his team?³ Gamesmanship tactics are, at a minimum, a violation of the spirit of the game, but when does it cross over the line from strategy to cheating? Are there certain times in sports when it is acceptable to intentionally break the rules to try to win? Should players try to gain an advantage any way they can, even if it means bending the rules just a little? Gamesmanship is not cheating per se since it typically lacks the element of secrecy or cover-up, but it definitely falls short of sportsmanship. A fine distinction can be made between sportsmanship and some forms of gamesmanship. Stephen Potter, in his seminal work on golf gamesmanship, states that gamesmanship had its origin in the sport of tennis.⁴ There is no doubt that gamesmanship is an art and comes in all forms⁵—gamesmanship occurs in a variety of other industries as well, including the legal profession.⁶

There have been many definitions of sportsmanship, but scholar James Keating has set forth one of the more notable definitions:

Sportsmanship is not merely an aggregate of moral qualities comprising a code of specialized behavior; it is also an attitude, a posture, a manner of interpreting what would otherwise be only a legal code. Yet the moral qualities believed to comprise the code have almost monopolized consideration and have proliferated to the point of depriving sportsmanship of any distinctiveness. Truthfulness, courage, Spartan endurance, self-control, self-respect, scorn of luxury, consideration for another's opinions and rights, courtesy, fairness, magnanimity, a high sense of honor, cooperation, generosity. The list seems interminable. Whereas the conduct and attitude which are properly designated as sportsmanlike may reflect many of the above-mentioned qualities, they are not all equally basic or fundamental. A man may be law-abiding, a team player, well-conditioned, courageous, humane, and the possessor of sangfroid without qualifying as a sportsman. On the other hand, he may certainly be categorized as a sportsman without possessing Spartan endurance or a scorn of luxury. Our concern is not with those virtues that might be found in the sportsman. Nor is

it with those virtues that often accompany the sportsman. Our concern is rather with those moral habits or qualities which are essential, which characterize the participant as a sportsman. Examination reveals that there are some that are pivotal and absolutely essential; others peripheral.⁷

Which “moral habits [and] qualities” is Keating referring to that characterize someone as a true sportsman? Does this definition fit the current sports industry in the United States?

Alternatively, gamesmanship has been defined as follows:

The winning-at-all costs mentality; it is the way that sports may be, not how it should be. It includes: looking for exceptions to the rules; fake fouls; illegal head starts; taunting to gain an advantage; intentionally injuring another player; intimidation; and espionage.⁸

There is often a fine line between gamesmanship and sportsmanship, but gamesmanship is clearly present in sports, and always has been.

Most would agree that cheating involves breaking the actual rules of the game, with the hope of not getting caught; whereas gamesmanship focuses on the idea of winning at all costs. It embodies the concept that “it is only cheating if you get caught.” It has been argued by one noted sports writer that American sports are consumed with gamesmanship and that players rarely value sportsmanship.⁹ The attitude is “show me a good loser and I’ll show you a loser.” Everyone is looking for an edge up in competition, and athletes sometimes do not care how they get it. Many support the concept of gamesmanship and believe it to be a legitimate way to compete in sports.

Conceptually, we can think about sportsmanship, gamesmanship, and cheating on a sliding scale with sportsmanship and cheating on the opposite ends. Gamesmanship sits somewhere in the middle and tips the scale towards one side or the other depending upon the nature of the conduct. See **FIGURE 2-1**.



FIGURE 2-1

🔍 CASE STUDY 2-1 Enforcing the Letter of the Law

As South Pasadena High School's best pole vaulter, Robin Laird stood at the top of the runway preparing for her first vault of the day, a 7 feet 6 inch attempt. Robin was probably not thinking about the friendship bracelet on her left wrist, but someone else was—the coach of the opposing team. She completed her vault, giving her team a 66–61 victory and an apparent league title; however, opposing coach Mike Knowles began pointing at his wrist and gesturing toward Laird. A section of the National Federation of State High School Association (NFHS) rules states: “Jewelry shall not be worn by contestants,” and further adds that competitors, if wearing jewelry, would be disqualified from competition. When Laird found out what happened, she burst into tears, blaming herself for her team's loss at the event and the league championship. Coach Knowles responded, “It's unfortunate for the young lady. But you've got to teach the kids rules are rules.” Some questioned the coach's motives for such a strict enforcement of the rules.¹⁰

1. Does the adage “It is not whether you win or lose but how you play the game” still hold true?
2. Does sportsmanship still exist at all levels of sport, or has it become a winning at all costs attitude?
3. What is the purpose of the “no jewelry” rule? Is the penalty for violating the rule unjust?
4. Was the coach's strict enforcement of the rules a violation of the spirit of competition?

🔍 CASE STUDY 2-2 Ultimate Act of Sportsmanship

Western Oregon's Sara Tucholsky hit a three-run home run in the second inning of a game against Central Washington. As she rounded first base in her home run trot, she collapsed in the base path when her right knee gave way. Her coach was told by the umpire that a pinch runner could take her place but she would only be credited with a single and two RBIs; the home run would be erased. It was against the rules to allow her teammates to help her around the bases. It was Sara's only home run in four years. Central Washington's first baseman, Mallory Holtman, her conference's all-time home run leader, had a solution. There existed no rule prohibiting her teammates from carrying Sara around the bases and that is what they did—Western Oregon won the game 4–2.¹¹

1. Were the actions of Holtman and her teammates sportsmanlike?
2. Should a participant ever assist an opponent to win in a competitive sport?
3. Did the actions of Holtman and her teammates destroy the integrity of the sport?

No one may have been better at gamesmanship than National Basketball Association (NBA) champion Bill Laimbeer of the Detroit Pistons. He was once referred to as the

NBA's “consummate actor and psychiatrist.” For whatever reason, Laimbeer just had a way of “getting under people's skin.” Brad Daugherty of the Cleveland Cavaliers said of Laimbeer,

“If he is trying to get on people’s nerves, he is doing a good job.”¹² Laimbeer elbowed, fought, pleaded, annoyed, and cajoled his way to two NBA championships while he had others thinking about how “annoying” he was. One *Sports Illustrated* writer put it succinctly: “As the baddest of the Detroit Pistons’ Bad Boys in the late 80s, Laimbeer was as famous for being a crybaby jerk as he was for his contributions to the Pistons’ back-to-back championships.”¹³ He played the “villain” well and no one was a better actor than Laimbeer, who could “flop” with the best in the league. At 6 feet 11 inches and 260 pounds, Laimbeer provoked a long list of NBA Hall of Fame players. Laimbeer’s wife once said, “People are always coming up to me and saying how nice I am and how could I be married to such a jackass. . . . You just have to get to know him. Don’t take any of his bull-____, you just can’t let him bug you.” But many people did, and Laimbeer got two NBA rings while opponents were consumed with Laimbeer’s annoying behavior.

When the St. Louis Blues were ready to take on the Detroit Red Wings in the 1996 Stanley Cup playoffs, they had a surprise waiting for them at Detroit’s Joe Louis Arena. The Red Wings had been thoughtful hosts and had just painted the Blues’ locker room. Just painted meaning one hour before the Blues arrived! How thoughtful, you might say; however, one player remarked: “While the nice, white appearance would have gotten Martha Stewart’s seal of approval, the fumes from the paint could have choked a cow.” The next year the Red Wings did the same thing again. Blues defenseman Marc Bergevin told reporters, “It looks nice, though.”¹⁴

Tennis player Andy Murray was accused of using gamesmanship tactics to “rattle” his opponent when his opponent claimed Murray had faked an injury. Murray responded:

That’s very disappointing to hear. I never once used any of the rules that certain players have used to try to gain an upper hand in a match or to slow my opponent down. Definitely,

when I played him at Queen’s, this was not the case. I didn’t know there was a problem but I couldn’t grip the racket the following day. There are so many things in matches where guys take toilet breaks, injury time-outs, delay you sometimes when you are trying to serve, and take a little bit longer between the points than they are allowed. It happens all the time. It’s just part of the sport.¹⁵

Murray said he never had to resort to gamesmanship saying, “It’s a form of cheating. It’s bending the rules to gain advantage. It’s a bit like diving in football. It does go on and certain players do it and certain players don’t. I’m one of the guys who doesn’t do it.”¹⁶

Minnesota Twins first baseman Kent Hrbek was a big man, physically. In a controversial play in the 1991 World Series, Hrbek pulled Atlanta Braves player Ron Gant (172 lbs) off first base and Hrbek (253 lbs) tagged him out. The Braves called it cheating. Hrbek said, smiling, “I didn’t get away with anything. . . . I just kept my glove on his leg, and his leg came off the base.”¹⁷

Gamesmanship exists even in the gentlemanly game of golf. In the 1947 United States Open, PGA players Sam Snead and Lew Worsham were battling for the title. Just as Snead was about to putt on the 18th green, Worsham stopped him and called for a measurement. The officials brought out a tape measure and it was discovered that Snead was, in fact, farther from the hole (30.5 in. to 29.5 in. for Worsham) so Snead had the honor of putting first. After a delay of five minutes, Snead missed his putt and Worsham subsequently made his putt and won the tournament. Worsham broke no rules in asking for the measurement. Was Worsham a poor sport under the circumstances?¹⁸ In another gamesmanship moment from golf, in the 1971 U.S. Open, on the first tee, PGA golfer Lee Trevino pulled a three foot rubber snake from his golf bag, held it up, wiggled it for the amazed gallery, and then tossed it at Jack Nicklaus’s feet. Trevino won the playoff hole and the U.S. Open.

CASE STUDY 2-3 *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.”¹⁹

1. Did Gaylord Perry’s conduct constitute cheating?
2. If it is cheating, why is cheating tolerated in baseball in certain contexts?
3. If Perry did cheat (as he admitted), should he be treated any differently than a player who took performance-enhancing drugs?²⁰
4. When a cardboard fingernail file came flying out of Minnesota Twins pitcher Joe Niekro’s back pocket during a 1987 game, many accused him of cheating. Niekro said he needed the emery board to file his fingernails. He was suspended by Major League Baseball (MLB) for ten games. Should filing the laces on the baseball be viewed any differently than applying a foreign substance?

CASE STUDY 2-4 *“Creative Cheating”*

Mark Schlereth was an offensive lineman for the National Football League (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 “slimy,” 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.”²¹

1. Where should the line be drawn between strategy and blatant cheating?
2. Does the answer to this question depend on whether there is a violation of a written rule? Does the NFL need a rule that states, “No player shall apply any artificial substance to game apparel”?

CASE STUDY 2-5 *When is Enough, Enough?*

Beginning in September 2006, Connecticut high school football teams were subject to a “50 Point Rule.” Football coaches who were found to be running up the score when their team was ahead by 50 points or more were subject to sanctions. The first week of the season, Bridge Central beat Bassick 56–0. At halftime the score was 49–0. The third touchdown was scored by a third string player. The loss was Bassick’s fourth in a row. The Bassick coach noted that Dave Cadelina, coach of the Bridgeport team,

had acted in a sportsmanlike manner while coaching the game. A three-member panel examined the actions of the coach and exonerated him, finding he did not engage in any unsportsmanlike acts.²²

1. Do you favor a rule similar to the 50 Point Rule? What is the purpose of the rule?
2. Would you distinguish between professional and amateur sports?
3. Should different rules apply to different sports such as soccer, baseball, football, and hockey?
4. As a coach, should you ever instruct a player not to score or play to the fullest extent of their ability?

CASE STUDY 2-6 *Poor Taste or Academic Brilliance?*

The Rice University Marching Owl Band (the MOB) has always been a little esoteric, even for the elite. Their “act” is usually received well, even though only a selected few may truly understand their intended purpose. Todd Graham was the head football coach for the second smallest school in Division I-A football, the Rice Owls. He left that job after one year to go to the NCAA’s smallest Division I-A football program, Tulsa. The following year, Tulsa defeated Rice in the last game of the season at Rice Stadium in Houston. During the halftime show, the MOB’s performance became the subject of an investigation by Conference USA. The overriding theme of the performance was a search by the MOB through the nine circles of hell based on Dante’s *Divine Comedy*. The band suggested that “Graham’s shredded contract was found in the fourth circle of hell with the greedy and the avaricious—also claiming that former Texas A&M coach Dennis Franchione was in that circle.” They also claimed “the coach could be found beyond hell’s greatest depths behind a door marked ‘Welcome to Tulsa.’”²³ The skit ended with the public address announcer calling Graham a “douchebag.” The MOB later apologized, saying the skit was meant to be funny.²⁴

1. Should the university or the band be sanctioned for their behavior, or, should their behavior be viewed as an artistic expression in the form of parody?
2. How many spectators do you think understood what the performance was actually about anyway?

CASE STUDY 2-7 *“Icing” the Kicker*

“Icing” the kicker has become a term of art in American football. Coaches attempt to call a time-out seconds before a kicker lines up to kick an important field goal. If a high school placekicker lines up to kick the winning field goal and, just as he begins his kick, the opposing coach calls a time-out, is that considered a strategic move or poor sportsmanship? Should time-outs be used in such a fashion? If time-outs are at the discretion of the coach, does that, by definition, make it ethical? Does it matter if this occurs in a professional or amateur game?²⁵ One study shows that placekickers in the NFL made 77.3% of field goals kicked in the final two minutes or in overtime when no time-out was called and made 79.7% when a time-out was called by the opposing coach, notwithstanding the distance of the kick.²⁶

► Rules and Regulations

The main principle of sportsmanship is to conduct yourself in such a manner as to increase rather than decrease the pleasures

found in a sporting activity—both for yourself and your opponent. Sportsmanship involves the value of fair play, which implies adherence to the letter and spirit of equality as indicated in the rules, regulations,

and customs that control play of the sport in question. Many rules and customs regulate sportsmanship; for example, the NCAA attempts to foster sportsmanship in intercollegiate sports. The association has a myriad of rules dealing with eligibility and personal conduct policies for fans, parents, coaches, and participants. In addition, every sport has customs which are usually not written rules. For example, although not officially in the rulebook, a baseball player who hits a home

run should run at a fairly quick pace around the bases and not at a slow trot. A player who takes his time may be seen as “showing up” the pitcher and could be subject to retaliation by the opposing club.

Rules and regulations are promulgated by state athletic associations, professional and amateur sports leagues and associations, and under state laws. Consider the ethical dilemmas presented for all participants and the sports officials in the following cases.

CASE STUDY 2-8 *Trippin’ Coach*

There is no doubt that New York Jets strength coach, Sal Alosi, is a competitor both on and off the field. Alosi showed his own strength in a game on Monday Night Football when he tripped Miami Dolphins player Nolan Carroll as Carroll ran by the Jets bench during the game. He was suspended for the remainder of the season and fined \$25,000 by the NFL. Alosi said “I accept responsibility for my actions and respect the team’s decision . . . You are asking me to give you a logical explanation for an illogical act.”²⁷

1. Did the league take enough disciplinary action against the coach for his unethical conduct?
2. Was the fine too little, considering the coach could have severely injured the Dolphin player?
3. Does your assessment of the disciplinary action in this case depend upon whether there is a league rule that prohibits sideline tripping?

Consider Case 2-1, in which a boxer allegedly used a foreign substance in his

hand-wraps in violation of professional boxing rules.

CASE 2-1 *Margarito v. State Athletic Commission*

2010 WL 4010605

1. The Parties

Margarito is a professional boxer who has fought more than 30 times across the United States, including more than half a dozen championship fights. Margarito was licensed by the Commission as a professional boxer in California from the mid-1990’s until 2009 when his license was revoked.

The Commission is the agency with sole jurisdiction over professional boxing in California and is responsible for adopting and enforcing the professional boxing rules in this state. The Commission has the authority to issue, suspend, and revoke boxing licenses . . .

2. The Illegal Hand Wraps

Margarito was scheduled to fight Shane Mosley (Mosley) in a welterweight championship boxing contest in Los Angeles on January 24, 2009. Margarito’s trainer, Javier Capetillo (Capetillo), was responsible for

preparing the hand wraps, bandages, and tape used to protect Margarito's hands during the contest. Capetillo was a professional trainer who had worked with many professional boxers during his 38-year career as a trainer. During his 11 years as Margarito's trainer, Capetillo was the only person who wrapped Margarito's hands before a boxing contest.

Before the contest with Mosley, Capetillo was wrapping Margarito's hands while four Commission inspectors and Mosley's trainer observed the process. After Capetillo finished wrapping Margarito's right hand, Mosley's trainer asked the inspectors to physically inspect a pre-made gauze "knuckle pad" insert that Capetillo was about to wrap over Margarito's left hand. The inspectors found that the inner layers of the pad were discolored and that the pad felt harder than it should have. In a report prepared after the inspection, Commission Inspector Che Guevara (Guevara) described the gauze pad removed from Margarito's left hand as "dirty-looking" and smeared with a white substance that looked like plaster and was hard to the touch. Concluding that the pad violated the rules, the inspectors confiscated the pad and instructed Capetillo to prepare a new one.

Mosley's trainer then asked the inspectors to examine the gauze insert in Margarito's already wrapped right hand. Margarito insisted there was nothing in the right hand wrapping, and held his hand out saying, "Touch it. Feel it. Go ahead. There is nothing in it." The inspectors ordered the wrapping removed and found a similar improperly hardened pad, which they confiscated. After Capetillo prepared two new knuckle pads, the inspectors approved Margarito's hand wraps and allowed Margarito to proceed with the boxing match.

In a letter dated January 27, 2009, the Commission notified Margarito that his boxing license was temporarily suspended pending a final determination of the case. The Commission explained the reason for the suspension as follows:

This action is taken because of your recent participation in what appears to be a violation of rule 323. Rule 323 limits the use of gauze and tape on an athlete's hands and requires that both contestants be represented while the gauze and tape are applied. The rule also prescribes the manner in which the gauze and tape is applied to an athlete's hands. Here, it appears that a foreign substance was used in the hand-wraps in violation of Rule 323. Additionally, Commission rule 390 allows the commission to revoke, fine, suspend or otherwise discipline any licensee who 'conducts himself or herself at any time or place in a manner which is determined by the Commission to reflect discredit to boxing.'

The Commission set a formal hearing on the matter for February 10, 2009.

3. Administrative Hearing

At the February 10, 2009 hearing, Commission Inspectors Guevara, Dean Lohuis (Lohuis), and Mike Bray (Bray) all testified that they felt the knuckle pads Capetillo initially placed in Margarito's hand wraps before the Mosley fight and that the pads felt harder than allowed by the applicable rules and were confiscated. After feeling one of the confiscated pads at the hearing, Margarito admitted that he felt something hard. Capetillo admitted that the confiscated pads violated the applicable rules, and acknowledged that had they been used, they could have seriously injured Margarito's opponent.

The commissioners at the hearing inspected one of the pads that had been confiscated from Margarito's hand wraps and compared it to the soft gauze that is used to wrap a boxer's hand before a contest. The other confiscated pad was sent to the Department of Justice's forensic laboratory for evaluation, where it was photographed under a microscope at six times magnification. The photographs were presented as evidence at the hearing.

At the conclusion of the hearing, all seven commissioners voted unanimously to revoke Margarito's license.

4. The Commission's Decision

In a written decision issued on March 31, 2009, the Commission found that the knuckle pads removed from Margarito's hand wraps before the Mosley fight on January 24, 2009, had been adulterated with a

white plaster-like substance. The Commission concluded that the use of adulterated knuckle pads by a boxer seriously endangers the boxer's opponent and gives the boxer an unfair advantage that causes discredit to boxing. The Commission further concluded that "[b]ecause [Margarito] violated Commission Rule 323, there is sufficient cause for revocation of [Margarito's] boxing license . . .

The Commission rejected Margarito's argument that he could not be held responsible for violating rule 323 because he did not know that Capetillo had inserted the illegal pads into his hand wraps and noted that "[t]he Commission's laws and rules, enacted to protect public health and safety, do not require either knowledge or intent for a violation to occur." The Commission stated: "Because of the serious physical consequences which could have resulted to the other boxer from the use of boxing gloves loaded with illegal knuckle pads, the appropriate penalty is revocation."

. . . the Commission has adopted professional boxing rules. (Cal.Code Regs., tit. 4, § 201.) Rule 323 specifies the materials that may be used to wrap a boxer's hands during a contest and prescribes the manner in which those materials may be applied. It states:

"Bandages shall not exceed the following restrictions: One winding of surgeon's adhesive tape, not over one and one-half inches wide, placed directly on the hand to protect that part of the hand near the wrist. Said tape may cross the back of the hand twice but shall not extend within one inch of the knuckles when hand is clenched to make a fist. Contestants shall use soft surgical bandage not over two inches wide, held in place by not more than ten yards of surgeon's adhesive tape for each hand. Not more than twenty yards of bandage may be used to complete the wrappings for each hand. Bandages shall be applied in the dressing room in the presence of a commission representative and both contestants. Either contestant may waive his privilege of witnessing the bandaging of his opponent's hands."

1. Were the actions of the State Athletic Commission appropriate? Was revocation of Margarito's boxing license an appropriate penalty in this case?
2. Do you think there was an actual violation of the rules by the *boxer* under these circumstances?

Margarito v. State Athletic Commission, U.S. Supreme Court.

CASE STUDY 2-9 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% or greater chance of not playing in the next game. "Out" means exactly that: the player will not play. Teams and coaches have been fined for failing to follow the NFL guidelines in reporting injuries. 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 Cower 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."

1. What is the purpose of the NFL's injury reporting rules?
2. Did coach Cower's actions really protect his players, or do you consider them a form of cheating?

CASE STUDY 2-10 Draft Lottery Systems and Playing to Lose

The NFL Arizona Cardinals have had a horrible season. The Cardinals are 2–13 (post Kurt Warner era) going into the final game against the Seattle Seahawks, 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, which need to win their final game to gain home field advantage in the playoffs. The Cardinals hold the tie breaker 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 purposefully? Does it tarnish the integrity of the game if they attempt to do so?
2. How do you view the actions of the Cardinals coaching staff or the owner?
3. Should all leagues adopt a lottery draft system to discourage teams from “tanking”? In a lottery draft system, the top picks are decided by a lottery and are chosen from the teams that do not make the playoffs.

The NFL experienced a legal quagmire involving the Patriots’ deflating footballs during the 2015 playoffs, which became widely known as “Deflategate.” The controversy resulted in Patriots quarterback Tom Brady being suspended for four games the following season and the team being fined \$1 million and losing two draft picks. The matter ultimately ended up in federal court, where Judge Richard M. Berman

vacated Brady’s suspension, which allowed him to play the entire 2015 season; however, following the conclusion of the season, the Second Circuit Court of Appeals reversed the lower court and reinstated Brady’s four-game suspension, which became effective for the 2016 regular season. The 2016 season concluded with the Patriots winning the Super Bowl and Tom Brady being named MVP of the game.

CASE 2-2 NFL v. NFLPA and Tom Brady

820 F.3d 527 (2nd Cir. 2016)

On January 18, 2015, the New England Patriots and the Indianapolis Colts played in the American Football Conference Championship Game at the Patriots’ home stadium in Foxborough, Massachusetts to determine which team would advance to Super Bowl XLIX. During the second quarter, Colts linebacker D’Qwell Jackson intercepted a pass thrown by Brady and took the ball to the sideline, suspecting it might be inflated below the allowed minimum pressure of 12.5 pounds per square inch. After confirming that the ball was underinflated, Colts personnel informed League officials, who decided to test all of the game balls at halftime. Eleven other Patriots balls and four Colts balls were tested using two air gauges, one of which had been used before the game to ensure that the balls

were inflated within the permissible range of 12.5 to 13.5 psi. While each of the four Colts balls tested within the permissible range on at least one of the gauges, all eleven of the Patriots balls measured below 12.5 psi on both.

On January 23, the National Football League announced that it had retained Theodore V. Wells, Jr., Esq., and the law firm of Paul, Weiss, Rifkind, Wharton & Garrison to conduct an independent investigation into whether there had been improper ball tampering before or during the game. That investigation culminated in a 139–page report released on May 6, which concluded that it was “more probable than not” that two Patriots equipment officials—Jim McNally and John Jastremski—had “participated in a deliberate effort to release air from Patriots game balls after the balls were examined by the referee.” Specifically, the Report found that McNally had removed the game balls from the Officials’ Locker Room shortly before the game, in violation of standard protocol, and taken them to a single-toilet bathroom, where he locked the door and used a needle to deflate the Patriots footballs before bringing them to the playing field.

In addition to videotape evidence and witness interviews, the investigation team examined text messages exchanged between McNally and Jastremski in the months leading up to the AFC Championship Game. In the messages, the two discussed Brady’s stated preference for less-inflated footballs. McNally also referred to himself as “the deflator” and quipped that he was “not going to ESPN . . . yet,” and Jastremski agreed to provide McNally with a “needle” in exchange for “cash,” “newkicks,” and memorabilia autographed by Brady. The Report also relied on a scientific study conducted by Exponent, an engineering and scientific consulting firm, which found that the underinflation could not “be explained completely by basic scientific principles, such as the Ideal Gas Law,” particularly since the average pressure of the Patriots balls was significantly lower than that of the Colts balls. Exponent further concluded that a reasonably experienced individual could deflate thirteen footballs using a needle in well under the amount of time that McNally was in the bathroom.

The investigation also examined Brady’s potential role in the deflation scheme. Although the evidence of his involvement was “less direct” than that of McNally’s or Jastremski’s, the Wells Report concluded that it was “more probable than not” that Brady had been “at least generally aware” of McNally and Jastremski’s actions, and that it was “unlikely that an equipment assistant and a locker room attendant would deflate game balls without Brady’s “knowledge,” “approval,” “awareness,” and “consent.” Among other things, the Report cited a text message exchange between McNally and Jastremski in which McNally complained about Brady and threatened to overinflate the game balls, and Jastremski replied that he had “[t]alked to [Tom] last night” and “[Tom] actually brought you up and said you must have a lot of stress trying to get them done.” The investigators also observed that Brady was a “constant reference point” in McNally and Jastremski’s discussions about the scheme, had publicly stated his preference for less-inflated footballs in the past, and had been “personally involved in [a] 2006 rule change that allowed visiting teams to prepare game balls in accordance with the preferences of their quarterbacks.”

Significantly, the Report also found that, after more than six months of not communicating by phone or message, Brady and Jastremski spoke on the phone for approximately 25 minutes on January 19, the day the investigation was announced. This unusual pattern of communication continued over the next two days. Brady had also taken the “unprecedented step” on January 19 of inviting Jastremski to the quarterback room, and had sent Jastremski several text messages that day that were apparently designed to calm him. The Report added that the investigation had been impaired by Brady’s refusal “to make available any documents or electronic information (including text messages and emails);” notwithstanding an offer by the investigators to allow Brady’s counsel to screen the production.

National Football League, Defendant–Appellant, v. Tom Brady, Counter–Claimant–Appellee, U.S. Supreme Court.

In its ruling upholding Brady's four-game suspension, the Court of Appeals stressed that the collective bargaining agreement failed to contractually stipulate the procedural safeguards that Brady and the NFL Players Association believed ought to exist.

► Ethical Choices in America's National Pastime

It is probable that no other sport blurs the thin line between gamesmanship and sportsmanship more than baseball.²⁸ Stealing signs, pitchers scuffing balls, batters corking bats, phantom tags, ejected managers disguising themselves in the dugout to go undetected by umpires, brushback pitches, and head games have always been part of the national pastime. Whether before, during, or after the game, baseball has seen its share of gamesmanship and blatant cheating.²⁹

Baseball is a game of rules—in some regards they are very strict. It is played on a diamond between two distinct white lines and is dominated by statistics and numbers. Notwithstanding this structure, baseball also has its share of *unwritten* rules that players are encouraged to follow. Baseball's list of unwritten rules has included the following:³⁰

1. Don't swing at the first pitch after back-to-back home runs.
2. Don't "work the count" when your team is winning or losing by a wide margin.
3. When a batter is hit by a pitch, the batter should never rub the mark that is made by the baseball.
4. A batter should never stand on the dirt cutout at home plate while a pitcher is warming up.

5. A player should never walk in front of a catcher or umpire when getting into the batter's box.
6. A player should never help the opposition make a play.
7. A relief pitcher should "take it easy" when pitching to another relief pitcher.
8. A player should follow the umpire's Code when addressing an umpire on the field.
9. Pitchers should always stay in the dugout until the end of the inning in which they get "pulled."
10. Pitchers should never show up their fielders.

An ESPN poll of baseball's unwritten rules asked readers the following questions: In your opinion are these tactics a violation of baseball's unwritten rules? Do they constitute unsportsmanlike conduct?

1. A batter calls time-out when the pitcher is in the middle of his wind-up.
2. A batter stands at home plate and admires a home run.
3. A batter flips the bat or takes an excruciatingly slow home run trot.
4. A batter runs across the mound while the pitcher is standing on it.
5. A batter bunts to break up a no-hitter.
6. A batter peeks back at a catcher's setup or gets signs relayed to him from a teammate on second base.
7. A batter intentionally leans over the plate to be hit by a pitch.
8. A batter takes a big cut at a 3-0 pitch when his team is way ahead.³¹

Are players required to abide by these unwritten codes? Does the amount of money professional athletes earn entice them to break the unwritten codes of a sport? Do you consider breaking an unwritten code unsportsmanlike? (After all, it is unwritten!) Is it cheating or just gamesmanship to do so? Should a player announce to other players that he will

no longer be abiding by the sport's unwritten code? Should amateur players (including youth sports participants) have an unwritten code of rules as well?

CASE STUDY 2-11 Alex Rodriguez "Ha!"

In a game between the Yankees and the Blue Jays in May 2007, Alex Rodriguez, as a base runner for the Yankees yelled "ha!" in an effort to distract Toronto third baseman Howie Clark from catching a fly ball. It worked, and the ball dropped in for a run-scoring single. Baseball has no rules against what Rodriguez did. The Toronto manager commented, "I haven't been in the game that long. Maybe I'm naïve. But, to me, it's bush league. One thing, to everybody in this business, you always look at the Yankees and they do things right. They play hard, class operation, that's what the Yanks are known for. That's not Yankee baseball." Rodriguez's actions were viewed by many in baseball as a "bush league" tactic. Rodriguez responded, "We're desperate. We haven't won a game in a little bit now. We won the game."³²

1. Are Rodriguez's actions considered to be more unsportsmanlike since he was baseball's highest paid player at the time?³³
2. Are Rodriguez's actions merely gamesmanship or can you make the argument that it was cheating? Why not just blame Howie Clark for missing an easy fly ball?
3. As the most visible and highest paid player on arguably the world's most famous sports club, doesn't he have to give his club every chance to win? Yankees management did not criticize the actions of Rodriguez.

The list of gamesmanship episodes in baseball is long, but a few examples worth noting are presented in the following case studies.

CASE STUDY 2-12 The "Phantom Tag"

A "phantom tag" has been defined by *The Dickson Baseball Dictionary* as "a missed tag or a tag from a glove without the ball in it, either one of which is mistakenly credited as a legal tag." Dustin Pedroia is an All-Star second baseman for the Boston Red Sox. Certainly, he knows he needs to tag a base runner with the baseball for that runner to be called out by the umpire. Pedroia supposedly tagged Orioles centerfielder Felix Pie as Pie slid into second base. The only problem was, the baseball was in Pedroia's left hand and he only tagged Pie with his empty glove. With a quick sleight of hand, Pedroia placed the ball in his glove and showed it to the umpire, who immediately declared Pie out. Did Pedroia cheat? He obviously knew what he was doing and even made an attempt to cover up his illegal actions. Could his actions be viewed as a veteran ballplayer doing whatever he needed to do to help his team win a game in a heated pennant race? Pedroia was not being paid to be a "good sport" by his club but was being paid to win. Should Pedroia have come clean, admitted his trick to the umpire, and allowed the umpire to correct his mistake? If Pedroia admitted his intentional breaking of the rules to the umpire, what would Red Sox management have said to Pedroia? Possibly, "Excellent job, Dustin, you have kept the integrity of the national pastime intact"? Most likely not. On the contrary, Pedroia was probably congratulated by his teammates in the clubhouse for his deceptive actions on the diamond.³⁴

The Major League Baseball Uniform Player's Contract mentions fair play, sportsmanship, and good citizenship:

In consideration of the facts above recited and of the promises of each to the other, the parties agree as follows:

Loyalty

3.(a) The Player agrees to perform his services hereunder diligently and faithfully, to keep himself in first-class physical condition and to obey the Club's training rules, and pledges himself to the American public and to the Club to conform to high standards of personal conduct, *fair play* and good *sportsmanship*. (emphasis added)

TERMINATION ...

By Club

7.(b) The Club may terminate this contract upon written notice to the Player (but only after requesting and obtaining waivers of this contract from all other Major League Clubs) if the Player shall at any time: (1) fail, refuse, or neglect to conform his personal conduct to the standards of *good citizenship* and good sportsmanship . . . (emphasis added)

A Major League Baseball player is contractually obligated to engage in fair play and sportsmanship and be a good citizen. How does that affect your viewpoint of gamesmanship and sportsmanship if the player is contractually bound to perform such duties?

CASE STUDY 2-13 Baseball's Showman

There is no doubt Bill Veeck was the showman of baseball and proved it over many years in the game with his creative ideas. He used gimmicks and many other strategies to get fans to the ballpark. He also wanted to win.³⁵ On August 19, 1951, Veeck's last place St. Louis Browns were playing the Detroit Tigers in the second game of a double header in St. Louis. Veeck was looking for something to spice up his club's last place position. He found it in Eddie Gaedel. Unbeknownst to others, Veeck had signed Gaedel to a major league contract. Veeck instructed Browns' manager, Zack Taylor, to send Gaedel to the plate in the first inning as a pinch hitter. Using a pinch hitter in the first inning may seem odd in baseball circles; however, what was so unique about Gaedel was that he was only 3 feet 7 inches tall. Prior to his baseball career, Gaedel had been working in "show business."³⁶ Tigers pitcher Bob Cain threw four straight balls to Gaedel, who set his bat down and dutifully walked to first base.³⁷

There are no height or weight requirements for players in baseball. With that in mind, consider the following:

1. Do you consider Veeck's actions demeaning to Gaedel or to the integrity of the game of baseball, or both?
2. If Gaedel had a good chance of getting on base when he batted, would it be acceptable for a club to use him in strategic situations during the game?
3. Should Veeck's actions be considered gamesmanship or cheating or simply boorish, discriminatory, demeaning, strategic, poor sportsmanship, or unprofessional? Perhaps this was merely a

marketing ploy by a desperate owner to attract fans to a last place club.

When Veeck owned the Cleveland Indians in the 1940s, he had a movable fence installed in the outfield that could be shifted as much as 15 feet. How much Veeck moved it depended on how the Indians matched up against an opponent. Veeck could find no rule against it, although the American League eventually adopted one in 1947 in response to Veeck's actions, decreeing that outfield fences be kept in a "fixed" position during the season. Is this cheating? Must there be a violation of an express rule in order to constitute cheating?

CASE STUDY 2-14 Actor – Derek Jeter

MLB official rules allow a batter to take first base if he is struck by a pitched ball. It would seem to be simple to determine if a player has been hit by a ball thrown by the pitcher, but that has not always been the case. New York Yankees shortstop Derek Jeter was undoubtedly *not* hit by a pitched ball, but pretended as if he were. He was so convincing, the umpire awarded him first base.³⁸ Former major league catcher Tim McCarver said, “What upset some people, perhaps, is that he was so demonstrative when it hit the bat, but to think that quickly is remarkable . . . You can’t say, ‘No, the ball didn’t hit me.’ You’re trying to get on base; you’re trying to win the game.” “It’s gamesmanship,” said Bob Costas, another veteran baseball commentator, approvingly of Jeter’s actions. “This is completely different from steroids or stealing signs with a pair of binoculars.”³⁹ Is Costas right? Why is it completely different from stealing signs with binoculars?

► The Ethics of Spying and Espionage in Sports

Spying and gaining access to an opponent’s strategies is a long-standing issue in sports. The question is, when does it go too far? Should one team try to spy on another team’s practice to gain valuable information for the next game? It seems to be acceptable in baseball to steal signs legally, which, of course, is an oxymoron; however, even in baseball, there is a line that can be crossed. MLB player Miguel Tejada was accused of “tipping” pitches to friends on opposing teams and also allowing balls his friends hit to get past him at shortstop during games with lopsided scores. No hard evidence was ever produced and Tejada vehemently denied the charges. Some Oakland Athletics (A’s) players had major concerns and called a team meeting over the issue. Pitcher Liván Hernández said, “If I knew someone

was doing that, I would fight them there, right on the field.”

Significant in the eyes of some of the players was an incident in the second game of a series against Toronto. Tejada did not get to an easy ground ball hit by Tony Batista (a friend of Tejada’s from the Dominican Republic), off reliever Mark Guthrie with the A’s leading 8–2. When the inning was over, A’s players fumed on the bench. If the charges were proven, what should happen to Tejada? If the score was not close, is it still an issue? Could Tejada’s actions have been deemed unethical or cheating? Like other major league players, Tejada has a loyalty clause in his contract. Could the A’s terminate Tejada’s contract for his disloyalty based on his actions if it was proven that he was assisting opposing players?⁴⁰

The scenario presented in Case Study 2-13 deals with the NFL’s loyalty clause, which states in part: “Club employs player as a skilled football player. Player accepts such employment. He agrees to give his best efforts and loyalty to the club . . .” (NFL Player Contract, paragraph 2.)

CASE STUDY 2-15 Traitor or Loyal Teammate?

The Jacksonville Jaguars (Jags) had an upcoming game against the Pittsburgh Steelers, their division rival. In anticipation of the game, the Jags signed linebacker Marquis Cooper from the Steelers practice squad, which they are allowed to do under league rules. They signed him on November 27 and released him

December 6, after the game. During the brief time he was on the Jags, Cooper said Jacksonville coaches “asked him many questions about the Steelers, with particular interest in some of their players.” Everything Jacksonville did was according to NFL rules. Did they do anything that could be deemed unethical? If a team follows the rules, does that mean they were acting ethically?⁴¹ The player has no more legal obligations to his former club—he is now playing under a contract that requires him to give his best effort and loyalty to the new club. If he has information that can help his new club, should he be willing to share that information? For example, the Redskins signed quarterback Andre Woodson away from the New York Giants. Woodson said, “Right now, anything to help the Redskins out, I’m willing to do.”⁴² Would a quarterback be familiar with all the plays run by the offense, including audibles? Do you place this in the “legalized spying” category? How would you view this situation if Woodson had only stayed on the Redskins roster for the game against the Giants and then had his playing contract terminated?

Businesses develop trade secrets and make every effort to protect those secrets from their competitors. Trade secrets are non-public information, a valuable piece of intellectual property to any business. If a competitor attempts to misappropriate a trade secret, they can be sued. A trade secret is defined by the Uniform Trade Secrets Act (UTSA) as follows:

Information, including a formula, pattern, compilation, program device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. U.T.S.A. §1(4).

Is sports competition the same as business competition? Is there any information in sports that can be protected under the trade secret law? What about a team’s play signs or signals being relayed during a game? Hall of Famer Christy Mathewson wrote in 1912, “All is fair in love, war, and baseball except stealing signals dishonestly.”⁴³ Former major league pitcher Bert Blyleven could be classified as an artist. He commented on sign stealing, “Stealing signs or noticing when a pitcher is unintentionally tipping his pitches is not cheating, that’s just baseball. You try to get an advantage over your opponent any way you can.”⁴⁴

There is nothing in baseball’s rulebook about sign stealing, but stealing signs with the use of technological equipment is a no-no. In 2001, MLB Vice President Sandy Alderson issued the following memo:

No club shall use electronic equipment, including walkie-talkies and cellular telephones, to communicate to, or with, any on-field personnel, including those in the dugout, bullpen, field and—during the game—the clubhouse. Such equipment may not be used for the purpose of stealing signs or conveying information designed to give a club an advantage.

In 2017, the Yankees filed a complaint with the MLB commissioner’s office that included a video they took of the Red Sox dugout during a three-game series in Boston showing a member of the Red Sox training staff looking at his Apple Watch in the dugout. As it turned out, the Red Sox were stealing hand signals from the Yankees’ catcher, and the Yankees were not the only victims of this illicit scheme. The Red Sox admitted to the commissioner that their trainers were receiving signals from video replay personnel and then relaying messages to players in the dugout, who, in turn, would signal teammates on the field about the type of pitch that was about to be thrown.⁴⁵ The Red Sox were fined an undisclosed amount that would be given to hurricane relief efforts in Florida. If sign stealing has always been a part of the game and considered merely gamesmanship, why does the use of

technological equipment to steal signs constitute cheating?

Should a team's playbook be considered a trade secret?⁴⁶ In November 2010, a Connecticut high school football coach was suspended for using an opposing quarterback's missing arm-band to assist his defense. The opposing player had misplaced the armband during the first half of the game. The principal of the high school suspended the coach after the coach admitted using the list of coded plays.⁴⁷

Although certain actions may be unethical and even acknowledged as unethical by the parties involved, that does not necessarily mean the law provides a remedy for that behavior. Consider the now infamous NFL

"spygate" episode involving the New England Patriots and coach Bill Belichick. Carl Mayer, a New York Jets season ticket holder, argued that the ticket he purchased stated that any game would "be played in accordance with NFL rules and regulations" and furthermore that as a ticket holder he "fully anticipated and contracted for a ticket to observe an honest match that would be played accordingly to NFL rules." He asked the court to award him (and other Jets fans who were in the same situation) \$61,600,000, which was the amount paid by New York Jets ticket holders to watch eight "fraudulent games between the New England Patriots and the New York Jets" between 2000 and 2007. In a word, the court said "no" to Mr. Mayer and other Jets fans.

CASE 2-3 *Mayer v. Belichick*

605 F.3d 223 (3rd Cir. 2010)

This highly unusual case was filed by a disappointed football fan and season ticket-holder in response to the so-called "Spygate" scandal. This scandal arose when it was discovered that the Patriots were surreptitiously videotaping the signals of their opponents.

[Carl Mayer alleges that] Bill Belichick, during a game with the New York Jets on September 9, 2007, instructed an agent of the New England Patriots to surreptitiously videotape the New York Jets coaches and players on the field with the purpose of illegally recording, capturing and stealing the New York Jets signals and visual coaching instructions. The Patriots were in fact subsequently found by the National Football League (NFL) to have improperly engaged in such conduct. This violated the contractual expectations and rights of New York Jets ticket-holders who fully anticipated and contracted for a ticket to observe an honest match played in compliance with all laws, regulations and NFL rules.

Mayer, a New York Jets season ticket holder, contends that in purchasing tickets to watch the New York Jets that, as a matter of contract, the tickets imply that each game will be played in accordance with NFL rules and regulations as well as all applicable federal and state laws. Mayer [and others] contend that the Patriots tortuously [sic] interfered with their contractual relations with the New York Jets in purchasing the tickets. They further claim that the Patriots violated the New Jersey Consumer Fraud Act and the New Jersey Deceptive Business Practices Act. They also claim that the Patriots violated federal and state racketeering laws by using the NFL as an enterprise to carry out their illegal scheme. Because the Patriots have been found in other games to have illegally used video equipment, Mayer sought damages for New York Jets ticket-holders for all games played in Giants stadium between the New York Jets and the New England Patriots since Bill Belichick became head coach in 2000.

[Court's Decision]

At their most fundamental level, the various claims alleged here arose out of the repeated and surreptitious violations of a specific NFL rule. This rule provides that "no video recording devices of any kind are permitted to be in use in the coaches' booth, on the field, or in the locker room during

the game” and that “all video for coaching purposes must be shot from locations ‘enclosed on all sides with a roof overhead.’” In a September 6, 2007, memorandum, Ray Anderson, the NFL’s executive vice president of football operations, stated that “[v]ideotaping of any type, including but not limited to taping of an opponent’s offensive or defensive signals, is prohibited on the sidelines, in the coaches’ booth, in the locker room, or at any other locations accessible to club staff members during the game.”

On September 9, 2007, the Jets and the Patriots played the season opener in Giants Stadium, East Rutherford, New Jersey. Mayer possessed tickets and parking passes to this game, and the Patriots ultimately won, 38–14. ESPN.com then reported that the NFL was investigating accusations that an employee of the Patriots was actually videotaping the signals given by Jets coaches at this game. Specifically, NFL security reportedly confiscated a video camera and videotape from an employee during the course of the game, and this employee was accused of aiming his camera at the Jets’ defensive coaches while they were sending signals out to the team’s players on the field.

This was not the first time a public accusation of cheating or dishonesty had been made against the Patriots. A man wearing a Patriots credential was found carrying a video camera on the sidelines at the home field of the Green Bay Packers in November 2006. Admittedly, “[t]eams are allowed to have a limited number of their own videographers on the sideline during the game, but they must have a credential that authorizes them to shoot video, and wear a yellow vest.” However, this particular individual evidently lacked the proper credential and attire and was accordingly escorted out of the stadium by Packers security.

With respect to the 2007 incident, the Patriots denied that there was any violation of the NFL’s rules. A Patriots cornerback named Ellis Hobbs told the press that he was unwilling to believe that his team had cheated and that he was standing by the team and its coaches. However, he also admitted that, “[i]f it’s true, obviously, we’re in the wrong.” Belichick apologized to everyone affected following the confiscation of the videotape. But, at a weekly press conference on September 12, 2007, he refused to take questions from reporters about the NFL investigation and stormed out of the room.

On September 13, 2007, “the NFL found the [Patriots] guilty of violating all applicable NFL rules by engaging in a surreptitious videotaping program.” It imposed the following sanctions: (1) the Patriots were fined \$250,000.00; (2) Belichick was personally fined \$500,000.00; and (3) the Patriots would be stripped of any first-round draft pick for the next year if the team reached the playoffs in the 2007–2008 season and, if not so successful, the team would otherwise lose its second- and third-round picks. Roger Goodell, the commissioner of the NFL, characterized the whole episode as “a calculated and deliberate attempt to avoid longstanding rules designed to encourage fair play and promote honest competition on the playing field.”

He further justified the penalties imposed on the team on the grounds that “Coach Belichick not only serves as the head coach but also has substantial control over all aspects of New England’s football operations” and therefore “his actions and decisions are properly attributed to the club.”

The owner of the Patriots, Robert Kraft, refused to comment on the NFL’s sanctions, and the New York Jets issued a statement supporting the commissioner and his findings. On September 13, 2007, Belichick stated the following: “Once again, I apologize to the Kraft family and every person directly or indirectly associated with the New England Patriots for the embarrassment, distraction and penalty my mistake caused. I also apologize to Patriots fans and would like to thank them for their support during the past few days and throughout my career.” However, he then “bizarrely... attempted to deny responsibility, stating: ‘We have never used sideline video to obtain a competitive advantage while the game was in progress... [.] With tonight’s resolution, I will not be offering any further comments on this matter. We are moving on with our preparations for Sunday’s game.’” But, at least according to Mayer, Jets ticket-holders have refused to “move on.”

The Patriots and Belichick deployed their surreptitious videotaping program during all eight games played against the Jets in Giants Stadium from 2000 through 2007. Beginning in 2000 when Belichick became head coach, they commenced an ongoing scheme to acquire the signals of their adversaries and then match such signals to the plays on the field, in alleged violation of the “NFL rules that are part

of the ticketholders' contractual and/or quasi contractual rights." On the other hand, Jets fans collectively spent more than \$61 million on tickets to watch these purportedly honest and competitive games between the two teams.

In 2000, Matt Walsh, an employee in the team's videography department, was hired by the team to videotape the signals of opponents. Relying specifically on statements made by Walsh to the New York Times and United States Senator Arlen Specter, Mayer made a series of allegations with respect to this Patriots employee. Walsh claimed that he received his videotaping instructions directly from Ernie Adams, Belichick's own special assistant. The purpose of the videotaping program was to capture signals for use in games against the same opponent later in the season, and the program was later expanded to include teams that the Patriots could encounter in the playoffs. The first instance of taping occurred in a 2000 preseason game against the Tampa Bay Buccaneers. When the two teams played again in the regular season opener, the Patriots appeared to use the acquired signals. Walsh specifically asserted "that this was the first time he had seen quarterback Drew Bledsoe operate a 'no huddle' [offense] 'when not in a two-minute or hurry situation'" and that, when he asked an unnamed quarterback if the taped signals were helpful, the player replied that, "probably 75 percent of the time, Tampa Bay ran the defense we thought they were going to run." Although Walsh left the videotaping program after the 2002 Super Bowl, "he [as a Patriots season ticketholder] witnessed Patriots employee Steve Scarnecchia continue the same taping practices in multiple games in the 2003, 2004, and 2005 seasons." Walsh was further instructed by the Patriots organization to conceal his actions and misrepresent his activities if challenged on the field by: (1) intentionally breaking the red operating light on the video camera, (2) telling any person questioning "the use of a third video camera on the field" that he was filming tight shots or highlights, and (3) "if asked why he was not filming action on the field, he was to say he was filming the down marker." Finally, at the 2002 American Football Conference championship game against the Pittsburgh Steelers, Walsh was instructed not to wear a team logo while filming.

Walsh's attorney, Michael Levy, likewise released a statement describing the team's method "of securing and tying coaching signals to plays." As reported in the New York Post, the lawyer provided the following description of a videotape made during an October 7, 2001, game against the Miami Dolphins:

[It] contains shots of Miami's offensive coaches signaling Miami's offensive players, followed by a shot from the end-zone camera of Miami's offensive play, followed by a shot of Miami's offensive coaches signaling Miami's offensive players for the next play, then edited to be followed by a shot of the subsequent Miami offensive play," Levy told ESPN.com. "And that pattern repeats throughout the entire tape, with occasional cuts to the scoreboard.

Citing again to the New York Post, Mayer further alleged that the NFL wrongfully destroyed the illicit videotapes themselves:

Other tapes produced to the NFL (and later destroyed by order of Commissioner Roger Goodell) include defensive signals from Miami coaches in a game on Sept. 24, 2000, signals from Bills coaches from a Nov. 11, 2001, game, signals from Browns coaches from a game on Dec. 9, 2001, two tapes of signals from Steelers coaches from the 2001 AFC Championship game on Jan. 27, 2002, and signals from Chargers coaches from a game Sept. 29, 2002.

Walsh provided at least eight videotapes to the NFL, while the Patriots likewise furnished at least six tapes to the league. The commissioner claimed that he ordered the destruction of the videotapes to prevent their use by the Patriots, even though the NFL allegedly had a legal duty to preserve these items pursuant, *inter alia*, to the Sarbanes-Oxley Act and the NFL's own antitrust exemption.

Here, Mayer undeniably saw football games played by two NFL teams. This therefore is not a case where, for example, the game or games were cancelled, strike replacement players were used, or the professional football teams themselves did something nonsensical or absurd, such as deciding to play basketball.

Nevertheless, there are any number of often complicated rules and standards applicable to a variety of sports, including professional football. It appears uncontested that players often commit intentional rule infractions in order to obtain an advantage over the course of the game. For instance, a football player may purposefully commit pass interference or a “delay of game.” Such infractions, if not called by the referees, may even change the outcome of the game itself. There are also rules governing the off-field conduct of the football team, such as salary “caps” and the prohibition against “tampering” with the employer-employee relationships between another team and its players and coaches. A team is apparently free to take advantage of the knowledge that a newly hired player or coach takes with him after leaving his former team, and it may even have personnel on the sidelines who try to pick up the opposing team’s signals with the assistance of lip-reading, binoculars, note-taking, and other devices. In addition, even Mayer acknowledge[s] that “[t]eams are allowed to have a limited number of their own videographers on the sideline during the game.”

In fact, the NFL’s own commissioner did ultimately take action here. He found that the Patriots and Belichick were guilty of violating the applicable NFL rules, imposed sanctions in the form of fines and the loss of draft picks, and rather harshly characterized the whole episode as a calculated attempt to avoid well-established rules designed to encourage fair play and honest competition. At the very least, a ruling in favor of Mayer could lead to other disappointed fans filing lawsuits because of “a blown call” that apparently caused their team to lose or any number of allegedly improper acts committed by teams, coaches, players, referees and umpires, and others.

Professional football, like other professional sports, is a multi-billion dollar business. In turn, ticket-holders and other fans may have legitimate issues with the manner in which they are treated. (“It is common knowledge that professional sports franchisees have a sordid history of arrogant disdain for the consumers of the product:”) Fans could speak out against the Patriots, their coach, and the NFL itself. In fact, they could even go so far as to refuse to purchase tickets or NFL-related merchandise. However, the one thing they cannot do is bring a legal action in a court of law.

In light of the *Mayer v. Belichick* case, consider the following questions:

1. Do you think the fans who attended the Jets–Patriots games from 2000 through 2007 were defrauded as a result of the unethical and illegal actions of the Patriots team and administration?
2. Do you think the commissioner of the NFL did enough to penalize New England and Coach Belichick for their improper actions?
3. Do you consider the actions of the Patriots team and their coaching staff unethical or was it merely gamesmanship at its highest level? Do you think their actions could constitute criminal conduct?⁴⁸
4. The Patriots did break league rules by spying, but is that always translated to be an unethical act?
5. Can Jets’ fans still claim that they saw a dishonest match if the Jets won the game?
6. Do you consider Mayer and other Jets’ fans ‘victims’ as they argued to the court?
7. Do you believe the alternative remedies suggested by the court, such as never going to another NFL game, are realistic?

Mayer v. Belichick, U.S. Supreme Court.

Is spying on another club always wrong? In November 2010, the Denver Broncos and their former coach, Josh McDaniels, were both fined \$50,000 in what many deemed “spygate 2”. McDaniels was an assistant coach for the Patriots when the first spygate incident occurred in 2007. The Broncos team video

operations director had filmed a San Francisco’s 49ers practice one month before, in violation of league rules. After being presented with the film, McDaniels refused to view it, but the league still fined him for failing to properly report it. McDaniels was fired by the Broncos within a month after the incident.⁴⁹

► Summary

Is too much emphasis placed on winning in sports? 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 less. Unfortunately, this same mentality has filtered down into college, high school, and youth sports. As this

chapter illustrates, sportsmanship, gamesmanship, and cheating issues arise in many aspects of sport management, from coaching to developing rules and policies, to imposing appropriate discipline and sanctions. Sportsmanship, gamesmanship, and cheating issues arise at all levels of sport and it is important for the sport management professional (SMP) working at any level to have a firm grasp of these concepts.

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