Regulating Coaches and Athletes' Behavior On the Field

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2007 SPRING SYMPOSIUM
April 13, 2007

“Regulation of Coaches’ and Athletes’ Behavior and Related Contemporary Considerations”

Topic I

“Regulating Coaches’ and Athletes’ Behavior On the Field”

Moderator:
Kathryn Statz

Panelists:
Dennis Cordell
Eldon Ham
Rick Karcher
John Shukie
MS. MARTIN: Good morning, everyone. My name is Elizabeth Martin. I am the symposium editor for the DePaul Journal of Sports Law.

We’d like to thank everybody for coming this morning. We have a great panel this morning. They will all introduce themselves and kind of give you a little bit of their background. If you have any questions after they’re done talking, please feel free to ask.

MS. STATZ: Can everyone hear me okay, guys in the back? Okay. I think I’m going to leave the microphone for those who have more pithy comments than I have.

I’m Kathryn Statz. I’m Associate Athletic Director at DePaul, and I’m very pleased to be here. I appreciate being invited and all the hard work that Liz and her staff have done to bring this panel here.

I got my law degree from Marquette — please don’t boo — and I do compliance responsibilities and other contract review, and I supervise eight of our sports at DePaul. So that’s probably the last you’ll hear about me because I’m just here to try to get these guys going and engage in a dialogue that I hope you’ll participate in when we get to the end.

My thought was to tell you a little bit about them, let them talk a little bit and pose a few questions to get us started. They have no idea what I’m going to be asking them. We haven’t even met before.

MR. SHUKIE: I’m trying to get her to give us some questions, and she’s —

MS. STATZ: Yeah, nothing. Nothing. And so I hope that it can be kind of an engaging 90 minutes and that maybe you have some things that you’re planning on asking as well because I think we have a good topic today, coaches’ and athletes’ behavior specifically to on the field, on the court, and all the rest.

So if that sounds like a good format, it’s a democracy but I get the last vote. So let me just briefly introduce, and I won’t read you what you already have in your packet, but this is quite a panel, and I’d just like to tell you a little bit about them.

On my immediate left, on your right, is John Shukie who was a football student athlete in undergrad. He has also earned his master’s in sports admin from the University of Massachusetts, which is a very well-known sports management master’s program, and earned his J.D. from University of Chicago.

He’s a member of the National Office Staff at the NCAA. He’s been there for about a year and a half, and he specifically works on
issues with agents, gambling, and amateurism. So welcome, John Shukie.

(Applause.)

**MS. STATZ:** On his left is Eldon Ham, who many of you may know. He’s a very well-known sports attorney. He’s an adjunct professor at Kent College of Law here in Chicago. He’s also worked with Zucker Sports Management Group, which is a very well-known representation firm for athletes. And he’s authored an article that I’d like to talk a little bit about today called, “Sports Violence: A Crime That Pays?” So please welcome Mr. Ham.

(Applause.)

**MS. STATZ:** On his left is Dennis Cordell. He’s founder of Coaches, Inc. It works to assist NFL coaches, share salary information, does negotiations and contract assistance. He’s also worked for the NFL Coaches Association for seven years. And Dennis joins us today having started his company in January of 2006. Welcome.

(Applause.)

**MS. STATZ:** And last but not least is Rick Karcher. Rick graduated from the Michigan State College of Law, and he is a professor currently at Florida Coastal Law School. Rick prior to that was counsel at a firm in Detroit, and prior to that, he played first base for the Atlanta Braves organization. So, Rick, we’re pleased to have you today as well.

(Applause.)

**MS. STATZ:** I thought maybe to get started, we’re talking about behavior in athletics, and one of the things I was thinking about last night was, is bad behavior more prevalent today or are we just susceptible to an unprecedented ability to see violence or see bad behavior than we have been in the past? Are we looking at a changing atmosphere of incivility or do we just have greater exposure? Who would like to tackle that philosophical question?

**MR. HAM:** Well, I could tackle it in a way maybe you won’t like. I could say that in my view it’s clearly both, but I know that’s not necessarily what you were driving at because I do think there is increased incivility.

**MS. STATZ:** Do you want to grab the mic?

**MR. HAM:** I think there is increased incivility, but you do have to also examine at what level because it’s different at each level. You can have—if we’re talking about pro sports, which we might be, the
NCAA, high school, even pre-high school, pre-high school is an issue now. And I guarantee you that 30 years ago it wasn’t as big of an issue as it is now.

And one of the things that exacerbates all of that is maybe two words, videotape. It used to be that no one would attempt to sort out a mess that stirred up on the field, and in fact, the courts even take largely that position, Illinois and elsewhere. They won’t interfere. If you have a contact sport, a willing participant in a contact sport and there is some injury that develops during the course of play, even if it’s a fringe kind of conduct that created the injury, the courts don’t try to sort it out. There’s a willful and wanton rule.

But now you have this thing called videotape, and the videotape I think will work the way technology and law often interact. I think that the technology will drive it, and you’ll start to see courts rethink how they approach those on-field transgressions because it used to be you couldn’t sort it out. Now you can sort it out.

And almost everything is videotaped these days. Clearly every breath taken in an NFL game is taped from 12 different angles. But I’ve got news for you, the same is true for practically every Little League baseball game, just 20 parents in the stands all with video-cameras. So technology will drive some of that.

And, yes, that helps answer the other part of the question. It is more visible, so there’s probably more of it at many levels, and it is clearly more visible so you get a bigger reaction. So maybe that’s the long answer to what should have been a short answer, but that’s how I see it.

**MS. STATZ:** Okay.

**MR. CORDELL:** I tend to believe that it’s definitely more driven by the media and media interests. For example, we see the Imus comment, the guy that’s been constantly on the news for the last three or four days, however long that’s been. I think because people are interested in that with the 24-hour media we have now, I think that’s important.

I think a good example of the interests in the media that drives this, why we are much more aware of it comes from two incidents that happened in Arizona in the Phoenix area. I think it was two years ago there was an Arena League coach, and this is kind of how I see it probably back in the day with the NFL when sports weren’t quite as prevalent in our society. There was an Arena League coach who was on cocaine, naked in a tree outside of a 7-Eleven or a convenient store who got arrested.
Well, I heard about that through the Coaches Association, and it showed up in a couple of papers in the Phoenix area, but it definitely wasn't national news simply because the Arena League is not that important in the grand scheme of things and what people are interested in. However, this year one of the Cardinals' coaches was caught soliciting a prostitute. That was on ESPN running on the ticker for about three days, got fired. There's probably a good chance this guy is never going to be able to get a coaching job again.

So in my opinion, probably being naked on cocaine is probably a little bit worse than soliciting a prostitute, but the guy who was naked on cocaine, because he was in Arena League, will probably have a better chance at continuing his coaching career than the guy on the Cardinals.

MS. STATZ: Rick, do you want to comment as to whether or not you think awareness of being taped and in the media might change behavior?

MR. KARCHER: Yeah. I mean, I was just going to add to what Dennis said. I think that's exactly right. I think that it's different from the standpoint of 24 hours a day now. ESPN News is going to keep showing over and over again when somebody for the Texas Rangers shoves a cameraman in the face or a chair goes flying in the stands or a batter charges the pitcher's mound. You're going to see it 50 times that day and so are your kids. And when they see that, obviously the psychological impact is that this is acceptable, and it didn't used to be that way.

But combined with that, I do think that players are less tolerant of actions on the field against them. It used to be that pitchers, even when they're throwing—you know, Bob Gibson notorious for throwing at people all the time, and batters seemed to be more accepting of that.

Now, for whatever reason, I don't know why, over time it's evolved this way. now you have the batter with the elbow shield and everything going up there, and, "If you throw in on me, I'm coming at you," and they're less accepting of that. And so you're going to have more combat on the field. I don't know the answer of why that is.

And I think a third component is the response, then, to the on-field misconduct that takes place. I mean, we see it all the time where the team wants to defend their player all the time.

I mean, the Kenny Rogers incident when he shoved the cameraman in the face, Bud Selig suspended him for 20 games or something. It went to an arbitrator, and it got reduced to 13 right then and there for time served. And he comes back, and the coach — the Texas Rangers
manager and the players are all saying, yeah, good to have you back. That was too—20 games is outrageous when some cameraman irks you, and he isn’t hurt in the process either, and why should you be suspended for 20 games? And then you read these quotes in the paper where it ends up being just basically acceptable behavior.

I think the natural response for everybody, the public and the kids that are playing sports are just going to take that to be that maybe it is more acceptable in sports. And then hopefully you can draw the line between maybe it’s acceptable, if it is, that is, on the field, but it’s not in everyday life and society. And I think that that’s where it does tend to become a concern. And so then if there is that connection to this is how we act in society as well, then the question becomes how should we deal with it? Should it be dealt with by the leagues themselves internally by way of the Commissioner and leave it alone, or should it be something that is a public concern and ends up being an issue in the courts? Because that’s always been a struggle that courts have dealt with over the years, whether it’s from a civil lawsuit standpoint, you know, tort liability for battery on the field or whatever and also from a criminal standpoint.

There are cases in hockey, for example, where the State has prosecuted hockey players. And courts struggle with just the first question, is this something that we should be dealing with, this court, or is this something that is a League internal matter that doesn’t have any public concern whatsoever? They know their business. They know what is reckless, what crosses the line and what doesn’t. And that’s not our job to do, and I can see that point.

I mean, because if you get into what does in fact constitute acceptable behavior, some would say that there is a certain level of violence that’s going to take place. That’s part of the game. I mean, there’s that standard in tort liability. And it’s basically the same standard from a criminal responsibility standpoint as well; that if it’s part of the game, then you assume the risk that that’s going to happen. There’s going to be some level of fighting. And when does it cross the line and when doesn’t it is a difficult question, and I don’t know who the best party is to answer it, whether it’s the courts or the leagues.

**MS. STATZ:** John, do you want to talk about maybe—and please respond to whatever you’d like—but also I think when I was thinking about this topic today, we can talk about violent behavior and bad behavior, but we can also talk about harassing behavior and grandstanding. And that’s sometimes when I think of the NCAA process, the NCAA is run—sports committees run NCAA championships, and the enforcement staff doesn’t become involved in managing behavior.
It's the sports committees who do. So I don't know if that was the direction you were going to go.

**MR. SHUKIE:** I thought—that does help because I was going to give some background. I think the NCAA is probably one of the most misunderstood organizations out there as far as how it actually works. We generally at the national office, the enforcement staff doesn't regulate on-field behavior outside of the playing rules committee so things along those lines.

Two things before I kind of get to that that occurred to me when I was listening to the other speakers comment. I think one thing that we as a society generally do is glorify the past when we think back. I think especially in baseball, it's something we look back and we think well everything was happy-go-lucky back in the day, and we didn't have these civility problems.

And I think if you're an historian, like I aspire to be, and you look back and you read about things that were going on in, say, the '20s and '30s, things that people that, say, like Ty Cobb did when he was playing baseball, he would be suspended for years on end for doing that in present day Major League baseball, going into the stands, things like that.

We also lose sight of the fact that there was such—you can't even use the words race relations. There was no opportunities for African-Americans to play baseball, things like that. Now, we can't even imagine that being the case, but there was that. It was a different kind of lack of civility, more of a—it was really part of the social fabric. So I think it's shifted. Now it's more personal interaction rather than a social construct.

And the second thing, I think an interesting way to look at the 24-hour news network, sports news, ESPN News, is not actually as, wow, they're going to show everything that happened? I see that sometimes as a cause of what happens.

You go and I go and I speak to a lot of college student athletes, and one of the things that they want is to be on Sports Center. They may not even shoot for Sports Center. They want to be on ESPN News or whatever it is, and they want to see their jersey on the Sunday after a Saturday football game doing something on the field. And a lot of them in their calculus of what is good or bad, they'd rather get the 15-yard penalty and have a 15-second spot on ESPN News than—you know, and they'll deal with the coach's rath.

Especially if you've got a 42-nothing blowout or whatever it is, their cost-benefit analysis, if you will, is, well, I want to be on ESPN News. And everyone back in my hometown is going to see me on there, and
they’ll know I’m doing okay or they’ll know I’m still the same person I was when I left high school. And it’s really—I see TV and the media sometimes acting as an outlet for that.

One thing to get back to what the NCAA does and what we don’t do I guess is a better way, we do get accused of kind of overregulating things to begin with in some arenas. And basically the way the NCAA works is from a national office perspective, and that’s what I do, is we’re basically charged to do certain things. The people who charge us with that are the presidents of the universities and the athletic directors to kind of simplify it or get it down to its basics. And the presidents and the athletic directors have said over the years that they don’t want us to have the power to come in and regulate this behavior.

So, for example, you see the Miami University-Florida International football fight on the field. We have what’s called the Sportsmanship and Ethical Conduct Committee, which basically works with the conferences and the institutions to say, okay, what would be the most equitable and most rational thing to do in this situation. But the penalties—the schools decided they don’t want the penalties coming from Indianapolis.

And I think I can see where people are coming from because you’re so—us and Indianapolis are very disconnected from what these student athletes and what these coaches are like on a personal level. So I think for us to kind of fly in to Miami from Indianapolis and say we have this videotape, and we think you did this and you did that, it would ruffle a lot of feathers. And like I said, we already get accused of overregulating too much anyway. We’d probably have to hire a whole new department just to monitor that kind of on-the-field behavior.

So the power lies within the conference and it lies within the institutions as far as what they want to do if something like that happens on the field. And we do, I think, from the media catch some flack for not having the same kind of structure in place that, say, the NFL has where you can take someone—this is off-the-field behavior—but someone like a Pacman Jones, and the NFL was who suspended him for a year. We’ve kind of left that power at the local level.

I think it’s easier when you’re dealing with 30 or 32 NFL teams rather than I think we’re over 1,100 NCAA institutions to try and mirror that same framework.

**MR. HAM:** I’d like to expand on something, too, just to take that to the next level, then. If the NCAA isn’t regulating it, who is? And if it’s local, what is it? Can it be a court?
Rick raised a good point. If I can paraphrase it, how do you balance the assumption of risk issue against not giving a license to maim just because it happens on the field of play, and that’s a difficult question. As Rick suggested, it’s a hard one to answer.

I don’t know if this is the answer either, but I have published a couple of articles suggesting that there’s a way that the courts can deal with some of the behavior on a criminal basis because it gets a little murky. You raised the issue of the fight, the famous fight that occurred and everybody saw it on video. When it reaches punches thrown, and it stops being a game and it becomes a brawl, that’s a little easier to define because now maybe you do have a battery situation where if somebody wanted to file a complaint, you could follow up with it.

But what happens when it’s not so clear-cut, yet somebody does intentionally injure another player on the field? Aside from proof problems, which you might get over that hurdle with the videotape thing to expand on what I’ve said before, but I’ve suggested that courts can now deal with something I call—I give it a title. I call it flagrant sports battery. It’s something that goes above and beyond.

Well, that’s a little vague, so indulge me for a second. I promise it’s only four lines. But I suggested something like this that we could have to enforce criminality of some of that conduct. Flagrant sports battery, to give it a definition like maybe this: “An act of excessive battery, force, or other violence of a magnitude that is unnecessary or otherwise contrary to the object of the game as stated in the express or commonly implied rules, whether invoked intentionally or recklessly, and causing substantial injury.”

We had an interesting case in Illinois. It didn’t reach the appellate level, but the high school hockey player in New Trier, Neal Goss, who was paralyzed due to a very violent checking from behind just as the game ended. As it happens, that’s one of the few successful criminal prosecutions for an act that occurred sort of within the context of the play. And the only reason it probably survived all the motions to dismiss is that by the time the transgressor hit the victim, the buzzer had sounded, like within seconds.

**MR. KARCHER:** That’s not Bertuzzi, is it?

**MR. HAM:** No. It’s Neal Goss is the name of the victim. It was a high school case, New Trier High School. And they successfully prosecuted it, and the kid who did it got probation and so on. It was a particularly violent act and left the victim paralyzed.

But because it happened two seconds after the buzzer, it created the ability to argue that it didn’t happen during the game, during the con-
test. And if it had happened three seconds sooner, there may have been a problem having any kind of criminal responsibility because the Illinois courts are loathe to get into that sort of thing.

So there are different ways you can approach it. You can regulate it at the NCAA level. You can let the NFL deal with it. You can criminalize pieces of it, and I think 20 years ago before the prevalence of videotape and videocameras, maybe that wasn’t practical. I think it might be practical now.

**MS. STATZ:** Let me ask because I think that’s a helpful definition for a framework for us to talk about a little bit.

Dennis, how would that impact your interests, which is the coaches, how would that suck in coaches for their level of blame when an act is flagrant? And the reason I’m asking that is in the Goss case that Mr. Ham references, there was an allegation that the coach directed that behavior and had it out for this young guy. Does that unnecessarily suck coaches in?

**MR. CORDELL:** Well, I believe we saw that with, who was it, Chaney at Temple sending a guy out—a person out to potentially injure another player on the other team. And obviously that in my opinion—now, what I try to do to protect my coaches, every coaching contract has a morals clause that will say you’ve got to act in—you can’t do anything basically that would be conduct detrimental to the team, the school, or whatever. What I always try to do is bring that into community standards. So if we’re in a big city, we’re going to go by the standards of Chicago not Champaign, Illinois, for example. But when coaches are intentionally pulling out players, I don’t think there’s any excuse for that. You know, it’s interesting we’re talking about the Florida International game in Miami. The coaches kind of knew this was going to happen. One of my clients was actually the offensive coordinator down at FIU, and these guys when the—both teams were high school rivals. A lot of them played against each other in high school. They’re from the same areas. They would go to parties together, and there’s was a lot of trash-talking before the game from guys on both teams.

So the coaches on both staffs sort of knew that it was going to be a very contentious battle, and honestly, they weren’t surprised when this happened on the field, which is something that I don’t think they could have stopped. But they definitely were aware of a bad situation that could happen before it actually did.

**MS. STATZ:** Did they have a duty, though, to try to be proactive and say we’re not going to stand for any kind of—of what happened?

**MR. CORDELL:** No.
MS. STATZ: No duty?
MR. CORDELL: No, they didn't. And my guy was with Florida International who was definitely the underdog, had the players who weren't quite as good as the guys on Miami. So these guys were really, really frustrated, and they're trying to get these guys as fired up as possible to go out, and it probably fed into it a little bit, to be honest with you.

One thing that's a little bit off of that, something that's interesting, you know, talking about what the media wants. We talked about ESPN, guys wanting to be on ESPN maybe doing something that would get them more media attention. There's something interesting that happened this year. One of my guys is actually on a—he's a high school coach but actually has a television show on MTV, and it's a reality based show that has him on the field and has game footage, etcetera.

Well, it was filmed during last season, but it started airing right after the Super Bowl. And one of the issues we had with MTV—the ratings weren't as good in the first few episodes this year as they were last year, and one of the things that they had sort of edited out and we had asked them to edit out was his cursing. Coaches curse very badly, and especially during the games. So the ratings were down. They wanted to run—obviously they're not playing the full version on MTV, but they're bleeping it out. There was one game where this running back scored three or four touchdowns against them, and there was one or two sentences with about seven or eight M-F bombs said by my coach, and MTV wanted to run that as the promo for the upcoming episode. And when they started actually—they didn't do that, but they started using more of his language in the promos, and the ratings actually went up.

So I don't know what that says about the media, but they definitely, it works better for the media I guess when things are a little more controversial.

MR. KARCHER: I think it also says something about what the fans want, too. I mean, if you're talking about hockey fights, you can go to a hockey game, and if there's not a fight after the second period, people are starting to complain when is there going to be a fight in this game.

But getting to the standard that we're trying to apply here and listening to the standard that you proposed, I don't remember it word for word there, but my reaction to it was that it's sort of similar to, in a nutshell, what is part of the game. And some of this stuff, your intentional torts happen all the time. That's sports. Every play has an in-
tentional tort. Every play has literally by definition a battery: An intentional infliction of a harmful or offensive bodily contact. Every player is trying to hit somebody. And so is it part of the game?

**MR. HAM:** Because there's license to do it.

**MR. KARCHER:** Right. But then you go into is it beyond what's acceptable or not.

**MR. HAM:** Right, a fact question.

**MR. KARCHER:** Then your gut says, like the Hackbart case, well, if it's down at the other end of the field and the guy is on his knees and his back is—you know, he's way down at the other end of the field, his back is to this player, and some player comes flying up and nails him in the back of the head with a clip basically when he's on his knees, that's not part of the game. We all know it. We don't even have to debate it.

Bertuzzi when he was criminally charged, he punched this player—it wasn't that long ago, March of 2004—in the side of the head and then pile-driven his face into the ice when he wasn't looking or whatever. He was criminally charged, and he ended up accepting a plea for assault, and he was sentenced to a year, a year's probation or whatever.

The last thing I want to add is that from a practical standpoint, there has been efforts to try to federally legislate this area. A couple of bills have been proposed. One was in 1980 and another was in 1983, the Sports Violence Arbitration Act. And in all these circumstances, it's a matter of trying to define what the standard is, and then in the end they die. The bills die because nobody wants it. The leagues are not supporting it. They want to keep it to themselves. This is their issue. And I think from a practical standpoint, what happens in these situations is the players themselves don't want to have a charge filed against the players that they play with. Even though they're on opposite teams, they literally are in a friendship relationship. This isn't something that's going on out in the street and they don't know each other. They're probably out having a drink two months after the fight or whatever, and that's just the reality of it. And they don't want to pursue a lawsuit against them, and it would make them look bad in front of the League that they pursued some lawsuit. I mean, he'd be an outcast.

And you read these cases, these criminal cases, the one who got his butt kicked won't testify against the guy. So from a practical standpoint, how do you do it? And that's sort of the problem, is it an internal matter that they just want to keep to themselves?
MR. CORDELL: I think you made a good point in what do the fans want. I think that drives a lot of this. I spent a brief time with the NFL Players Association and worked on the Terrell Owens case against the Eagles, and if you guys remember that, he was suspended for four games which was the maximum penalty without pay and then was not allowed to come back to the Eagles. And he did this — basically it all stemmed from him wanting more money. And then he wouldn’t show up to practice or do things like that, would park in coaches’ parking spots, that sort of thing, definitely bad behavior, talked bad about his quarterback, et cetera, nothing physical. And fans really don’t like that. Fans have a real problem with NFL athletes or athletes in general making a lot of money, and fans hated that.

Well, in doing research on that case, in my opinion, he obviously did some things wrong, but compared to other problems and other issues in the NFL, and the one that stood out to me which was egregious was Bill Romanowski. He punched one of his teammates, broke his eye socket, caused brain damage and ended this guy’s career. He got a two-game suspension for that action. In my opinion, that was a much worse thing, however, than what T.O. did. But the fans don’t really care about this sort of — he was kind of a journeyman — I believe a journeyman tight end whose career got ended by Bill Romanowski. That wasn’t something that the fans really cared about.

But when they see a guy who they feel is a prima donna who wants more money, that’s something that the fans really don’t like to see, and I think that’s one of the reasons that T.O. got such a harsh punishment and Romanowski didn’t.

MS. STATZ: So is that an example, the eye socket puncher, of where your, perhaps, criminal definition could really fix what you guys all have outlined where there’s pressure not to file a civil suit, and then we could have a standard by which a prosecutor could then step in so the League is off the hook and the right thing perhaps is done?

MR. HAM: Yeah. It does take a lot of the right people off the hook, but you do raise a number of practical considerations which are valid. It also does one other thing. Let’s be practical here, many judges in many forums prefer to skirt issues if they can. We all know. Judges if they can bail out on a motion and say get rid of it, they get rid of it.

A law like that would take away the bail-out ability of a judge who says, oh, that just happened on the field of play, bail it out, get rid of it. If you have a law that says you can’t do this stuff and it becomes a fact question, then they can’t just get rid of it and shove it out the door.
I’ve got two examples of cases where — there are millions of them, of course, but two where coach liability does come into play. I think someone raised that issue. One of which actually supports some of the things that Rick was getting at about the athletes not wanting to pursue some of these things.

One of the best cases I saw was about 1988, give or take, Jim McMahon, the Chicago Bears quarterback, in a game against the Green Bay Packers. The Green Bay Packers—well, McMahon was already injured. He had a bad shoulder, but he was playing in the game anyhow. The Green Bay Packers come out, and they all have hit list numbers on the towels that they wear in their pants or on their belts for people that they want to attack and get out of the game. So they had this plan as to what they wanted to do.

And then as they implemented it, and this is how it looked to me. You might recall seeing this if any of you are old enough or maybe you’ve seen video replays of it. McMahon throws a pass.

The play is still happening, but it’s nowhere in the area of Jim McMahon. It is down the field someplace. He’s just kind of standing there watching what happens to the pass. A defensive lineman for the Packers comes up behind Jim, picks him up, turns him upside down, drives his bad shoulder into the ground. It looked awfully intentional to me. Was it part of the game, not part of the game?

It would have been a good test for the kind of law I propose, but what it did do was corroborate something that Rick said. Jim didn’t want to pursue it. I thought it was one of the best cases in those days, 20 years ago, that I had seen. It was on videotape. The Packers are wearing hit lists. It was predetermined that they were going to—and Jim was on the list. So it had all the great elements for not only drama but a terrific court case. Jim didn’t want to do it. Even though he got hurt, even though it probably shortened his career, all of the things that happened, he said, no, I’m not going to pursue it. And maybe that was for the best because a couple of years later he got released from the Bears, and he ended up playing for the Packers. So maybe Jim really and truly did know what he was doing with that.

The other is, on the other end of the spectrum, you may have seen this in the news, a Little League coach who has his team in the playoffs, and they’re about to go into the playoffs.

And he had to get around a rule where you have to play all the kids because some of them aren’t too good. You know, the traditional put your bad kid in right field kind of stuff. One of the kids—these kids are nine years old. One of them was mentally disabled in some fashion. He had one—I think he offered 25 bucks to one of his players in
warmups to drill a fastball in this kid’s face and injure him and get him out of the game so he didn’t have to play the disabled kid. If that’s not coach liability, I’ve never seen it, so anyway.

MR. SHUKIE: Wow, that’s just horrible.

I think the definition that you put out, Mr. Ham, I think to me it makes me really nervous. Because I think—and I’m going to throw out something hypothetical here. I think if—let’s say in a world where we have that rule, I think less people will actually watch sports because I think people like seeing—I think we’re talking about—we’ve been focusing more on football and hockey because I think that’s where you see the most contact within the structure of the game.

MR. HAM: Maybe basketball.

MR. SHUKIE: Maybe. And you see even like the Washington thing happened after the whistle.

I think the best football and the best hockey is played on the borderline of rage and aggressiveness. And I think you see a person like a Ray Lewis, people come out to watch Ray Lewis play, and I’m not saying this is a good thing or a bad thing. I think it probably is a bad thing. People want to see someone like that play because they play full of rage, and there’s always—something really bad might happen, and people want—you know, there’s kind of the—blood lust is a strong word, but I think people in the stands, you know, they cheer. They cheer for those sort of things. And would that have a chilling effect if they have to kind of step back from that borderline between rage and aggressiveness and not play with that same intensity? I don’t know if I’m giving the athletes so much credit that they would actually be cognizant of the flagrant foul battery, but I just wonder whether or not people wouldn’t turn out in such numbers if they thought that that kind of intensity was toned down.

MR. HAM: Well, just to keep the conversation going, they do have means of dealing with those things. On the fly, for example, in the NBA you have flagrant fouls and intentional fouls and different levels, so it’s possible to apply a standard even if it seems vague because it’s one of those things sort of like the Supreme Court pornography standard. Often you know it when you see it.

So it’s possible, and I’m not sure we should shy away from it just because it might take away some of the entertainment value, but I do appreciate, and I knew I would catch a little flack, because the four lines that I read you do contain a lot of vague definitions, okay.

But the reason I had the gist of it being outside the actual rules of the game and also the implied expectations as to how that game is played, I wanted to take into consideration the fact that there are hard
fouls, there are brush-back pitches, there are even intentional fouls, and there are hard hits in football. And some of them are a little questionable, and some even generate a penalty flag, but that doesn’t mean they go over the edge where they are some kind of flagrant sports battery.

An easy example was the football case where the—I forgot the names now of the players, but where the one player who had the other player on the ground, and he scrapes his cleats over his face and caused him an extra 25 or so stitches for his trouble. That might be a battery even without my law. But as you get closer to that and further away from just this hard-knock frenzy that is necessary in the game of football, maybe we need to deal with it. I don’t know.

MS. STATZ: What happens under your rubric when it doesn’t cause substantial injury, but it’s by the luck of the draw that it doesn’t? If it’s a really heinous foul, and the guy just happens to fall right and he doesn’t sustain an injury, but yet the behavior was flagrant and egregious?

MR. HAM: Logically it would make sense to include that behavior, because as we know in the criminal law, we do penalize behavior even if you got lucky, and there happened to not be an injury, or you got lucky and the victim didn’t die, so to speak. I took it out only because I wanted to on purpose reduce the number of instances where you’re arguing about things where in that case there was no harm, and maybe not to kind of take the analogy too far but the no harm/no foul angle, just to keep hypothetical arguments out of the courts as much as I could because I knew it would create more burden on the courts. No sense taking it beyond.

Although, I would be open to a suggestion of a way to handle it because if someone does throw the punch and miss, or they throw the punch and instead of knocking the guy cold, they only just take him out of the game for a few minutes, is it something that shouldn’t happen? Yeah. Should we prosecute each time it does? Probably not because there would be perhaps a lot of prosecutions.

MS. STATZ: Rick, let me ask you, did you bring up the John Chaney situation or was it Dennis?

MR. CORDELL: I did.

MS. STATZ: Do you guys remember the case two years ago where John Chaney admitted that he directed one of his players to go out and commit hard fouls, as he called it, because he was mad that their opponent was—he thought that they were setting hard screens, and they were being dirty. So he directed the player to go out and hard foul I don’t think it was anyone specific but just get back. you know,
level the playing field. And the guy ended up fouling his opponent such that he broke his arm. And it was a different case a little bit because Chaney admitted that he did direct that.

So what can we do in a case like that where a student athlete has very little bargaining power to say, “You’re on crack, Coach, I’m not going to do that”?

MR. KARCHER: Just like we’re trying to define what’s acceptable behavior with the player on the field, I think it’s the same issue with what is acceptable for a coach to do and what not to do. His example of the Little League coach, clearly not acceptable. Throwing at the guy at that age, clearly not acceptable. What this basketball coach did, I don’t know, I’m struggling with it. That might be acceptable because I’m involved in coaching myself. I coach my nine-year-old kid, and I’ve coached him in Pop Warner football. I’ve coached him in baseball. Obviously we’re trying to teach our kids how to play aggressive football. You can’t just lay down. You’ve got to show that if somebody gets in your face, get back in his face. So where is that line drawn?

And I had this situation myself. I’m on the sidelines. My son is one of these kids, you know, he’s big, and when he gets mad, look out, but a lot of times he’s not mad. So if he’s not mad, he’s not helping us much out on the field. But when he’s mad, he’s brutal out there.

But here’s the issue. So we’re going through half the game where he’s just not into the game. He’s playing football out there, and some of my assistant coaches, they’re trying to get him fired up and get mad and all this stuff, and they did. They got him fired up, and he ended up—some kid hit him, and he was at the other end of the field, and he ended up smacking the kid in the helmet, and the kid went down, a penalty was thrown. And you know what, all of us coaches were kind of like, “That’s okay, Ricky. That’s okay. Penalties happen sometimes.”

Now, was our role supposed to be—now, is that egregious such that it rises to the level of a terrible thing that he did, or is that just a penalty that sometimes happens as part of the game because he was retaliating against what the kid had done to him that the ref didn’t see?

So I mean, where do you—I don’t know. I didn’t direct him, “Ricky, smack him in the head and make him pay.” I didn’t do that, but he did it on his own as a reaction to us trying to fire him up and get mad.

Is that what the basketball coach was doing here? Hey, these guys are walking all over you. Don’t take it anymore. You’re going to
have to—or else if you don’t fight back, it’s going to keep happening to you. And sometimes you’re going to get called penalties, but you know what, that might be better for us to get a penalty thrown at us once in a while in this situation.

**MR. CORDELL:** Yeah. One thing that—or a couple of things that have happened in football is actually we talked about a hit list earlier. There have been coaches known to put bounties out in football. Glanville and Buddy Ryan back in the day were known to say, hey, here’s a thousand bucks for whoever can take out the kicker, that sort of thing. So obviously in my opinion, and hopefully everybody else’s, that’s probably not acceptable behavior.

**MR. KARCHER:** Well, Tony LaRussa is notorious for telling his pitchers to throw at batters all the time. If his hitters are getting beaned once or twice, that’s enough for him. He tells the pitcher, “Next one at his head,” or at his—and if the pitcher doesn’t do it, that pitcher is out. I mean, I’ve talked to players in that situation.

**MR. HAM:** That happened to the White Sox last year. Ozzie Guillen almost had a heart attack. He ordered the pitcher to throw at the batter, and the pitcher didn’t do it, and he yanked him out of there as fast as you could get that pitcher off that mound.

**MR. KARCHER:** But is that part of the game?

**MR. HAM:** Yeah.

**MR. KARCHER:** Yeah, because you have to protect your hitters. Unless you want them to keep getting hit, you’ve got to show them that this is unacceptable for you to do this to our batters.

I mean, this just gets into that line drawing of what is acceptable and what isn’t. And I’ve got—I mean, there’s all kinds of stories that you can say it’s in your gut that this is okay and this one isn’t. If you walk off a home run and you’re up by 18 runs in the 9th inning, and you walk off a home run that you just hit off the second baseman because the other team ran out of pitchers or they don’t want to use their pitchers—I was in that situation; one of my teammates did that—we all knew he was going to get drilled the next time we played at their park. We just were waiting for it to happen, and that’s part of the game. And he knew it, too.

But what was interesting was the pitcher threw at his head, and that bothered us. You know, it literally (indicating) right above his head. We knew he was headhunting and literally throwing at his head. That drew the line for us. I mean, that was over the line. I mean, we would have been okay if he would have been hit in the back or the leg or whatever. Don’t go headhunting. And then he did it a second time
and major brawl because, I mean, that crossed the line. That is not part of the game, throwing at your head.

**MR. HAM:** Right, because you had that expectation. You knew he was going to get drilled.

**MR. KARCHER:** That’s right, and he knew it.

**MR. HAM:** Which is within this vague definition of the game.

**MR. KARCHER:** And he was okay with it.

**MR. HAM:** Yeah, and I’m okay with it, too.

**MR. KARCHER:** That’s life. But not at his head because that is life threatening and career ending possibly and on and on.

**MR. HAM:** Yeah.

**MS. STATZ:** So do we agree as a group of 40 people here that something that happens when the clock is expired is off limits, is inappropriate, is worthy of some sort of legal action? Can we agree on that as a starting point?

**MR. HAM:** After the buzzer goes off?

**MS. STATZ:** Yes, or before it clicks on.

**MR. HAM:** I suppose.

**MR. CORDELL:** I don’t think so. There was a case that I worked on for the Players Association that involved a pregame fight. It was a Monday night game, and Monday night there’s a lot more pregame stuff going on in the NFL. And the guys got trash talking before the game, and I don’t think you can say that that’s not part of the game. They’re out there on the field warming up. If they get into a fight, to me they’re just getting fired up. And that adrenaline, I think that gives you sort of the license to do your actions on the field during the game. That situation was already created, and I don’t think you can say it necessarily happens an hour and a half prior to the game or 20 minutes after the final buzzer. I don’t think you can say that.

**MR. KARCHER:** But if you’re talking about a fight, then there really is no liability because both people are consenting really to do the fight. I think the issue arises in these situations where it’s a cheap shot or it’s totally unexpected. It comes out of nowhere, a ball throw thrown at the head, whatever it is, where it’s not a mutual thing. To me a brawl, whether it happens during the game or after the buzzer or before the game is probably not going to be actionable, but that’s just my initial thought.

**MS. STATZ:** So can we get some feedback from you-all? Is the better standard that it’s something that’s unprovoked or unplanned, is an individual’s action that’s outside the expectations of behavior in the game?
DOUG BAKKER: You brought up, Rick, the career ending thing. So is it more, like, we should make the law more that has a career ending thing? So it's getting hit in the head, it's—you know what I mean, should that be added to the law? That's something that—you know, there's cheap shots, and then there's cheap shots made to injure somebody, and do we draw the line there? Is that a good place?

MR. HAM: Yeah. That's why I added the substantial injury. To take your example, if the ball had hit your teammate in the face, you say, all right, let's open it up to potential prosecution. It's a fact question now as to what's going on, but it may qualify. Even intentionally throwing at the head is an assault technically if you think about it under law.

MR. KARCHER: Sure. Right.

MR. HAM: But we don't need to go to court every time a ball sails over a guy's head.

MR. KARCHER: Right. That's a great point because the California case last year, the California Supreme Court there was a civil liability case. It wasn't a criminal, but it's still the same standard essentially, this "part of the game" standard.

And the court literally said we're not going there with balls thrown at batters. This has been going on since baseball started and brought up all these different scenarios, even like LaRussa ordering people to throw at the head, the brush-back pitch is part of the game. They even call it headhunting, so obviously they know it happens.

MR. HAM: Right, right.

MR. KARCHER: The judge had no sympathy for this case and just dismissed it. And this was a case where it was a junior college pitcher had thrown intentionally at the batter and had ended up hitting him in the head and seriously injured the batter in the head, so a serious head injury. And it ended up just to what we're saying. The court is sort of like I don't want to go there. This is not my area.

I think that's the first—we need agreement on should it be limited to the sport and an internal issue or is this something that is a public concern? Because it's analogous to performance-enhancing drugs in that we are concerned that the impact it can have on society if it's acceptable and people are going to do it, because that's the rationale for getting involved on the performance-enhancing drugs. Is it the same analogy? I'm not convinced that it is.

MR. HAM: That judge was afraid of it because how do you prove it? Even though all you guys on the team knew that pitcher was prob-
ably throwing at your guy, how do you really prove it? How do you really prove intent and all of that?

MR. KARCHER: That’s a good point.

MR. HAM: One way to do it is if your batter was standing in the on-deck circle at the time instead of—which happens.

MR. KARCHER: Yeah.

MR. HAM: That’s a little more—it’s easier to show intent. You know, if you drill a guy in the on-deck circle, you’re okay. I think that works.

MR. KARCHER: We could go on and on. There are situations—if the on-deck batter is too close to home plate when the pitcher is warming up, that’s part of the game to throw at that guy, you’re too close. It sends a message: Don’t get too close to me when I’m warming up because you’re timing my pitches. It gives you an advantage. You should be further away.

MR. HAM: Well, that’s what happened in a Cubs case, a Minor League case.

MR. KARCHER: Yeah. And there was a pitcher I recall that—the same case, same situation. And again, you’re into this when is it too close that—when are you too close to home plate when you’re on deck such that you deserve to have a ball thrown at you, and when are you too far away? The court has no idea, and the court shouldn’t be deciding that issue. It should really be, I think, internally because they understand it.

I think the most important thing is that the right party internally is deciding the matter. I mean, so if we decide that internally it’s best, what is the best party? Is it the Commissioner? Is it each team to be responsible for their own player, disciplining their own player when something happens? And we talked about the NCAA thing, I mean, that’s a great point. There are so many schools, and how do you govern that, and they want to do it themselves. But the plus to having the NCAA doing something like that is that they would be in the role of the Commissioner from the standpoint of not affiliated with any one school, so to speak, right, and would be more of an objective party to look at this thing. And then they’d be able to go based upon precedent and prior situations, what makes the most sense here from an objective standpoint. It’s all on tape. It’s not—which we’re going to get to in the next panel when it’s off field. Clearly factual issues involved as to what happened, if it happened. On field we see it, we know it, and may be something to think about.
MR. HAM: Well, the League, I agree, can probably decide it better. They understand the sport better. They understand the nuances.

MR. KARCHER: That’s another level, the League level maybe would be better.

MR. HAM: The League or some local approach, which I agree with. The only problem with it is if it was aberrant conduct on the field, and it did result in a serious injury, just because the League issues some kind of suspension to the other team doesn’t exactly give any kind of redress or penalty, any real penalty.

They can decide it better. The irony is they can handle it. They just can’t do much about it. So that’s the dilemma.

MR. KARCHER: And I wonder if, like, the conference level in college would be a way to handle this because it does get a little more local, but it also brings an objective component to it as opposed to the NCAA doing it. Is that something —

MR. SHUKIE: That’s what they’ve tried to do. They try to give the Conference that power because it’s the middle ground between us and Indianapolis. And then the school obviously, as much as they try to separate themselves, are going to have some sort of inherent bias where they know these student athletes or these coaches on a personal level.

I think, also, one thing that’s kind of always in the background with big-time college programs, the head basketball coach usually makes five to ten times more than the AD and the president do, so it’s to punish that person. And they’re also much more popular in the news, so it puts the athletic directors sometimes in a difficult position to then come down with a hammer on someone. You see it in, for example, the now president of the NCAA is still Myles Brand after he put the no tolerance policy and let Bobby Knight go.

I mean, people—I’ll be out at the supermarket and people will ask, “Where do you work?” I tell them the NCAA, and they’ll start yelling. They just can’t stand—I had my cable put in, and the guy was asking, we were talking, “Where do you work?”

“Well, I just moved here. I work for the NCAA.”

“I transferred from Indiana University when they fired Bobby Knight.”

I mean, that’s how ingrained sometimes college sports is into the fabric of the state or the community.

So if you leave it at the Conference, it kind of gives the local athletic directors or the president some sort of way to get out of being the bad guy.
MR. KARCHER: I agree. I think that’s a great way to do it.

MS. STATZ: Well, let me ask you guys this, the point that you raise. Are we to the point that it does impact society? Has the behavior that’s become so publicized to the point that you don’t even see as many good plays anymore, you see more bad behavior, has it impacted society to the point that something does need to happen? Are little kids changing their behavior because they see things as being status quo that they would have never seen before? Are we there?

MR. KARCHER: My own experience says we’re not there.

MS. STATZ: No?

MR. KARCHER: That’s just my own personal experience. I think we need some facts. I think we need data to compare it. I don’t think we—the concern that I have is that we are maybe being convinced that this is the case because we keep hearing about it over and over and over again. Even when something happens at a Little League level, you read about it in 50 different papers and 15 different news channels and it’s constantly running, and you keep thinking, wow, this is going on all the time. I’m not convinced that it is. I don’t know whether it is. Personally I haven’t seen it in my experiences with the young kids.

MR. HAM: You know the girls powder puff football hazing episode, that’s exactly what you’re getting at. That was not a great moment in high school sports for Illinois, but it really wasn’t a sanctioned sport. But regardless of what it was, it was played every 20 minutes across the globe nonstop for two straight weeks. So you do get the impression that it’s happening a lot more than it really is.

MR. KARCHER: But I will say that I think the parents need to start thinking about how they act from what I’ve seen personally in Little League. I don’t see a problem with the kids on the field and their behavior. I’m seeing it more—I’d like to take some parents and just ring them by the neck sometimes. Because there are some times—and I don’t know why that is. Just getting out of hand at games, getting emotional and yelling like this is the—like your kid is—you know, you’re going to retire on your kid or something. He’s going to be the next professional star. I mean, it’s just too bad.

MS. STATZ: Dennis, how do you manage coaches at the NFL level, the point they are being paid a pittance compared to these players? How do you advise them on what they should do when they—you know, they’re only on TV when they screw up?

MR. CORDELL: Yeah, it’s interesting. I worked on the T.O. case, and one of my—his wide receiver’s coach at the Eagles actually would
say I would have him back in a minute. His coach, his position coach actually was the only person on the staff that he would talk to.

And with dealing with him, it is tough, and it’s really harder for the younger guys. And the trend over the last couple of years in the NFL is to higher younger guys with less experience. And in my opinion, the reason behind that, and I think ADs are doing this in college as well, is they don’t necessarily want a coach. We talked about the coaches are going to get paid more than the ADs. They might be a little bit more prevalent than maybe the general manager or someone at the team level.

They want guys that they can control and somebody that they’re going to—you know, they know who’s the boss, and the boss is going to be the AD or the general manager.

In the NFL when you’re dealing with a player like T.O. as a position coach, basically he acted as the only representative of the Eagles with T.O. And what they try to go in and do is make sure that this is football, and they try to take the business part out of it. And for the most part, players are good. That’s why I said he would say that to this day he would have T.O. back. Because on the field at practice when T.O. was in a good mood, he was a great player and great teammate. It was when the cameras got on him in the locker room or outside of his house when he was doing situps, that sort of thing, that’s when this other personality came out. But on the field, he was great.

And actually, one of my clients interviewed for the Cowboys’ wide receiver job this year and didn’t get it. So what I try to do is have him call—I had him call about three or four different guys who had coached him before and say — because I knew that was a question that was going to come up. How do you expect to deal with him, and my coach was a young coach coming out of college. So try to get some experience from the guys who have done it in the past.

One other thing I wanted to point out, too, we were talking about who makes the decision. And a Commissioner of a League or a conference, it is still a little naive to think that the Commissioner of whatever it is is unbiased, and I’ll give you a great example.

One of the things that we’ve always fought for with the coaches in the NFL was to try to get a neutral arbitrator to hear our cases. We can’t get it. The last time the officials in the NFL went on strike or almost went on strike was when September 11th happened. That was one of their issues, trying to get a neutral arbitrator. They didn’t get it.
The players have it. So what the players do, the Players Association and the NFL agree on a certain number of arbitrators each year as to who is going to hear their cases in between, you know, the disputes.

When the T.O. case decision—when that decision came out, the Players Association, we fired that arbitrator.

**MS. STATZ:** Right.

**MR. CORDELL:** So that guy who gave us the decision we didn’t like, he was gone. So obviously you’ve got to think that there’s some bias there because if we don’t like the decision, we’re going to get rid of you.

There was a case a couple years back in the NFL where a coach went to take a head job in college and his team wouldn’t allow—it was with the Raiders who has sued the League many, many times. The Raiders wouldn’t allow one of the assistant coaches to follow this guy to Nebraska is where he ended up going. And there were two coaches who they wouldn’t let go.

The guy who basically works for the NFL who kind of schedules all the arbitrations actually acted as counsel for one of those coaches because—it was the most biased case I’ve ever heard of, but in this case it was biased towards the coach because the League hates the Raiders. But basically they told him when to file, what to do, was his legal counsel in a dispute which this guy’s boss was going to be deciding.

So it’s definitely—they might know the game better, but it’s definitely naive to think that there’s no bias among Commissioners.

**MS. STATZ:** I agree. Having argued a case before a Commissioner in the past, I definitely agree.

Are we to a point that there’s a chilling effect on game officials who are kind of put in the position that they’re the on-field arbiters? I’ve driven officials to the airport many times who have said, “That was a great game. It was a clean game.” And if it wasn’t, they’ll tell me that, too. “Boy, I’m sick of that grandstanding. I’m sick of all the crap I have to put up with.” Could that be relevant? Because I’ll tell you what, we’ve got some old guys officiating, and we don’t have a lot of new guys officiating. And it sure seems to me like there’s no incentive to be an official at any level anymore.

**MR. KARCHER:** I don’t feel that knowledgeable about it, but I do think that my gut tells me that it’s probably tougher to be an official these days than—and I know John’s shaking his head going, oh, there’s that comment about the way it used to be or whatever. But I think that—
MR. SHUKIE: Especially in baseball. They have the computers now.

MR. KARCHER: That’s true, and the players are still arguing with the umpires. I mean, I think it’s probably tougher today just with what they have to deal with, with all of the grandstanding you said, which obviously we can all acknowledge that that takes place a lot more than it ever did. And that’s a penalty, and they have to decide when does that cross the line into excessive celebration and when doesn’t it. So that’s another tough decision they have to make.

And regardless of which decision they make on that totally subjective question, somebody is going to hate them for it whether it’s the other team or the player or whatever. It’s got to be tough.

MS. STATZ: Believe me, I’m not saying pity them because they get paid a ridiculous amount of money for what they do. But I do see very few college kids who want to officiate soccer or any sport. They just absolutely see it as the worst punishment and nightmare.

MR. KARCHER: I can see why.

MS. STATZ: Okay. We’ve talked quite a bit. We’re ready for your questions or your comments. A lot of issues have been raised here. Does anyone want to start off?

Yes, Doug, can you give her the microphone?

SHELLYE TAYLOR: I just had a general question about you-all discussing that it’s part of the—the egregious behavior is part of the game and that it shouldn’t really be in the court’s hands to decide whether or not they should be punished by law. But don’t you feel that or aren’t you worried that such acceptance of the behavior leads to a higher occurrence of that behavior occurring outside the field? I mean, to them it’s not punishable. I mean, hey, I’ll get—a couple million or sit out a game or two. So then that gives that idea that it’s okay, and then we go out in the real world and it’s okay.

MR. KARCHER: You mean the player is actually then doing it outside?

SHELLYE TAYLOR: Right.

MR. KARCHER: I thought you meant the impact on society in general.

SHELLYE TAYLOR: No, no, no, the actual player.

MR. KARCHER: Okay. Yeah, that’s a —

MR. HAM: Yeah, it’s a good question. If it’s an acceptable free-for-all on the field, some players get the impression that, gee, that’s how life is. You get to do what you want, and there is no penalty. So, yeah, maybe. There could be a correlation I suppose.
MR. KARCHER: I guess the question is why should we treat sports different than other aspects? I mean, it's their business. It's their product. It's their, you know—it's not—everything that they do on the field does not affect directly anybody unless somebody throws a chair in the stands, and that's a problem, and we'll deal with that, right, because then it affects a fan.

But to the extent it's just something that affects another player or something, then I guess there's an argument why should we be so concerned. But when they do it out in society, then we are going to do something about it. And it's their responsibility to be able to turn it off, turn it on and off. And if they can't, then we'll step in.

MS. STATZ: Well, in what other industry would your employer appear with you and back you up when you screw up? At some point I think that the League isn't going to appear with someone who cold-cocks someone from behind, and they can't.

MR. KARCHER: Well, the big difference there is sports is so different from any other industry from the standpoint of having very highly talented, unique individuals that can play a sport that obviously helps them profit. You don't have that in other industries.

I mean, if somebody on the assembly line or whatever goes and hits somebody, well, we'll get somebody else to do that work. I mean, you'll be gone and it won't impact our business as much if you're gone. Obviously if Kenny Rogers isn't going to start for five games, that's a very detrimental impact to the team when he doesn't pitch versus what goes on in other industries.

DOUG BAKKER: We've talked all about the legal angle, but what about the role model angle of professional athletes, is that part of the regulation? Should that be—you know—little kids are seeing this. We've kind of danced around that. I think you guys kind of danced around that, but we haven't really addressed that issue. Are professional athletes role models in regulating their conduct? Is that a part of that?

MR. CORDELL: I think the leagues would like them to be simply because it would help sell their product better, but let's be realistic. Just because you're good at what you do doesn't mean that everybody has to emulate you. And I think it's a joke that people do think that they're role models just because they can play sports well.

MR. KARCHER: I struggle with his question because I personally believe that they shouldn't be. I think there are other people that should be role models in society, okay, I mean, teachers, whatever, police officers, whatever. But it doesn't matter what I think. The reality is that they are, so I struggle with that. The reality is that they
are. They shouldn’t be. So what is the right answer in that circumstance?

MR. HAM: Yeah. That’s where the role model and the image question merge. The NFL probably likes the fact that these guys are role models because it’s good for business. On the other hand, they can’t really regulate them as role models, but they can regulate image. And just now you’re starting to see more of that where they really take this image idea to heart because it’s starting to crumble the fabric of the NFL goodwill that is built.

You know, the NBA did that, too, years ago in the 1970s. The NBA was a joke. The fans thought of it just as a thuggery kind of a League where half the players were on drugs, if not more than half, and it took a number of years to clean that up plus getting lucky and signing in one draft class Michael Jordan and a number of other players which helped. So the NFL has spent a lot of money and put a lot of time into this image thing. So to the extent that the image part helps the role model part there, you’re going to get it.

MR. KARCHER: And you’ve seen that with David Stern with the NBA and the policies that he’s implemented. But what she said earlier was putting the legality aside, the problem is you really—in sports you can’t put the legality aside because there are labor unions and they are certified unions. And anything that the League decides to do from a disciplinary standpoint from telling them— affecting their wages or working terms and conditions under the law, then they have to negotiate that stuff with the union. And so unlike most industry, which is non-unionized, you don’t have these problems and issues. They just decide what they want to do.

MR. SHUKIE: I think you see leagues—I think you alluded to that leagues kind of take the offensive, a marketing offensive, and I think you see it with the NCAA as well because we’re a unique body that most people—our high-profile athletes won’t even be there four years, you’re talking one year, two years. So they try to get people to see the university or the athletic program as the role model and something to aspire to be. And I think the best department we have in the NCAA is now the new branding initiatives with the 360,000 student athletes, and most of them aren’t going pro. So they try not to take the individual student athlete like a Greg Oden or a Kevin Durant and say that’s who you want to look up to. But it’s the swimmer who’s a biochemistry major, that’s who you want to emulate.

And I think leagues after something that happened with, say, Kobe Bryant are more wary of putting people up on the pedestal, because before that really happened, although there’s rumors that he didn’t
get along well with Shaq or whatever, but throwing all your eggs in one basket from a marketing perspective saying this is—hey, little kids, this is the guy you want to look up to, and then all the sudden he’s caught in a hotel room in Colorado, you really run the risk.

So with the NFL, they talk about their United Way program. Sure, they use—they’ll have one football player out there, but it’s not always the biggest star. So they’re trying to—they want you to look up to the League as a standard rather than just to an individual player.

**MR. KARCHER:** But the flip side of that is that the individual player’s jersey is selling a lot and making a lot of money.

**MR. SHUKIE:** No one wants to buy the Colts jersey without anything on the back.

**MR. KARCHER:** Exactly.

**MR. SHUKIE:** When I was growing up, that meant you couldn’t afford the one that had the number on the back. That was basically it.

**MR. KARCHER:** I may buy Reggie Bush’s jersey, too, even though it doesn’t have Bush on the name of the jersey, right? We all know it’s Reggie’s.

**MR. SHUKIE:** It’s a number. It’s a random number.

**MR. KARCHER:** Yeah. That’s a different discussion. I’d love to have that panel, by the way.

**MS. STATZ:** Question in the back?

**BRION DOHERTY:** I came in a little bit late. I don’t know if you touched on this at all, but what about—do you have any opinions about on-the-court, on-the-field penalties that could help prevent this? I mean, for example, if football is, I don’t know, a 15-yard penalty is the most you’re going to get or you’re going to get thrown out of the game. I don’t know. Have they ever experimented with larger penalties?

Because, I don’t know, I guess my thought might be that if this stuff is happening on the field, and it’s about winning the game or getting your kid excited to win the game, if getting over that boiling point is going to hurt your team and your teammates are going to be against it, I mean — I don’t know if they’ve ever done anything like that.

**MR. HAM:** Actually, that’s really a compelling question. A paradigm shift is really kind of where it leads. I like the idea because it has bothered me for years, and I never thought of the answer—or at least an answer until just now. The 15-yard penalty doesn’t seem like it’s adequate sometimes, yet you throw the guy out of the game, it’s one or the other. So maybe you could have a rule that said—and make it team wide. So let’s say you have your—just to give this as a thought—
the third 15-yard unnecessary roughness, or whatever type penalty it is, infraction. The third time that happens, then something bigger happens. I don’t know what the bigger thing is. So maybe it’s 30 yards or maybe it’s something else, but something to keep the team from having this attitude.

MR. KARCHER: Then it would carry over into the next game—into more games possibly.

MR. HAM: Oh, you mean like the Rasheed Wallace complaining rule? Maybe, yeah. No really, yeah.

MR. KARCHER: If you want to really make it terrible, it could be on a season basis if you’ve got a team or a group of players that have committed so many of these penalties.

MS. STATZ: Right. You have that in soccer. I don’t know if it’s in pro soccer, but in collegiate soccer you get how many yellows and you have to sit a game. You get, like, nine yellow cards cumulatively over the season, and then you sit.

But I like the idea as well, not that it’s about you sitting, but there’s a team consequence.

MR. KARCHER: Yeah. I mean, if you really want to prevent people from getting injured in hockey, the guys that sits in the penalty box for a minute and a half or whatever it is, two minutes, is that going to do it? So he sits in there for two minutes and comes back out and drills another guy. I mean, obviously he wasn’t thinking about what he did while he was in that penalty box.

MR. HAM: He was getting a good rest.

MR. KARCHER: He was resting up for being able to pop the next guy.

MR. CORDELL: I think one of the practical problems with doing that, at least in the NFL, the way the rules are done in the NFL is the Competition Committee with three NFL head coaches on it. NFL coaches know they can’t control their players at all times, and I think they would probably be reluctant to implement a team-wide penalty over what some of their players can and cannot do in the heat of battle, what they can’t control.

MR. HAM: But if you have it team wide like that, what happens is by default some of the other players can help control. Because now if you’re going to be a screw-up, it’s not just the coach that’s mad at you, they’re all going to get mad at you. Because if there’s a 30-yard penalty or something, whatever the heck the elevated penalty is, now there’s peer pressure. Don’t screw us all up.
MR. KARCHER: Yeah. At some point it’s got to become a deterrent. I mean, really what he’s saying is, is it just not good enough? Maybe we need more deterrents with respect to penalties on the field for it to stick. That’s a pretty good question, way to handle it.

But just because the coaches don’t want to do it, I mean, this is something that the Commissioner obviously could have some involvement on to make happen in the best interests of the game and all. So we could get over the fact that the coaches don’t like that. I mean, that’s—right? I know you don’t want to hear that.

MR. CORDELL: That’s a possibility, yeah.

MR. KARCHER: That’s a possibility. We could do it.

MR. HAM: Yeah, we could do anything.

MS. STATZ: I think we have time for maybe one last question or comment. Okay, Karen.

KAREN FALDUTO: I was just thinking about other behaviors besides violence necessarily that are on the field or court, and maybe how do we deal with that, in courts or just within the leagues? Like, for instance, Ben Wallace not being able to wear the headband; that he was told by his coaches or whatever that that’s not how it’s going to be on the Bulls.

And what about, like, smack-talking and cursing and things like that? I know those are things that pretty much are just accepted. But, also, what can they wear to practice, what can they wear on their way to the games, not showing up to practice, showing up late, just other behaviors like that. Can we regulate those and kind of just make it a more uniform, more like, okay, this is what you do, this is how you behave yourself, or is that kind of too much?

Are they allowed to do kind of whatever they want as long as they’re not hitting people to the point where they have a concussion, or should there be some control over the fact that you call someone this name or that name?

And, like, you were saying before that there’s not really that many other people to fill the position, so how much can you really, like, suspend that person or punish them because how many other running backs do we have that are that good? Do we really even want to suspend them that long? Like with T.O., how many times did he misbehave and not really much was done?

MR. CORDELL: That actually was one of the—one of our arguments in that case was, you know, you talk about team rules. Well, that’s also negotiated with the unions as well. And there are procedures set up, so when a player does violate team rules such as showing
up late to a team meeting or not adhering to the dress code, which T.O. never did, there are procedures. And the procedure is you file a grievance with the union, and then the union then decides to represent that player. And it’s an escalating fine system. So for the first infraction it’s—oh, I can’t remember. I think it’s a 1,000-dollar fine for each penalty that’s worked out with the union, and that just escalates.

But there are procedures put in place that the Eagles did not follow simply because they sort of didn’t want it to become a big deal with T.O. And our argument was that because they didn’t follow these procedures of sending us a letter and actually giving him the $500 fine, the $2,500 fine and the $5,000 fine for each time he did it, that they violated basically what we had negotiated in the CBA.

What the arbitrator said to that was that those rules and those penalties and procedures are put in place to put the player on notice that he’s screwing up. And the arbitrator said that because every time T.O. screwed up there was a report on ESPN or in the newspapers, that everybody in the world knew that he was screwing up. So, therefore, the real purpose of those rules, which was to put the player on notice, that the notice was actually given constructively through all the media hype.

So there are rules in place, and in the professional level, those are doled and negotiated with the unions. I’m not sure about baseball what you guys had.

MR. KARCHER: What I was going to say was just to make sure that there’s a distinction, though, with the T.O. case because it was the team that was disciplining him, and that’s why he had the right to go to an arbitrator. If it was the League doing it, the Commissioner doing it like you have, while it’s off-field misconduct, it doesn’t matter with Pacman, he doesn’t have the right in football to go to a neutral arbitrator. His appeal right is to go back to the Commissioner. So when the team does it —

MR. CORDELL: Well, the union can go to a neutral arbitrator for him.

MR. KARCHER: For who, Pacman?

MR. CORDELL: Yes.

MR. KARCHER: A neutral one?

MR. CORDELL: Yes.

MR. KARCHER: Is that newly negotiated in their agreement because it wasn’t the case. It didn’t used to be the case.
Tagliabue, for example, the League could only—or the players could only appeal to him when he was Commissioner. And unless they changed something in the collective bargaining agreement, that’s my understanding of how it worked, but we’ll find out. That’s interesting.

**MR. SHUKIE:** One thing that’s really—I think you can draw a pretty strong line between college and professional sports is that in professional sports, you’re pretty much getting drafted by whatever team—you’re going to end up with whatever team drafts you. At some point when you’re a free agent, you have some level of choice, whereas in college, you have more of a knowledge of what kind of situation you’re getting yourself into. You know there’s a difference between going to play for Bobby Knight who is going to have certain policies on his team. It’s his way or the highway rather than, say, some other coach who has more lax policies about dress code and that sort of thing. So you kind of have a general idea of what you’re getting yourself into.

And then even when you get there, the coach I think on the college level can hold more power over the college student athlete because they’re on a year-by-year scholarship. There’s not as much, if any, kind of grievance procedure. If it’s something like he’s breaking team rules and you sit him, that’s it, kind of end of story.

So while you have more knowledge of what you’re getting yourself into in college, the coach I think and the team or the athletic department has a little bit more power over the student rather than a professional athlete.

**MS. STATZ:** To Karen’s point about other bad behavior, are there things as specific as addressing a professional flipping off the crowd or taunting the crowd in some of the things that have prescribed penalties?

**MR. HAM:** Yeah, they’ve been fined. There was a Bears linebacker, the name escapes me, that flipped off the crowd, and he got fined for it. So that happens.

**MS. STATZ:** Right.

**MR. HAM:** And there are a lot of rules. I mean, the NFL used to fine and still would fine you if you didn’t wear your socks the right way. And there was an incident I think early this season where the Bulls players were wearing their shorts too low, and I don’t know if that meant the waist was too low or the part by the knee was too low, but it was too low.

So, yeah, the rules are there, but how in the heck do you really—you’ve got to have a strong coach who commands some of the respect
of the players because it’s really hard to regulate all those nitpicky things. That’s why it’s amazing to me that the headband rule that the Bulls have didn’t blow up in somebody’s face. Somebody must have enough respect going up the chain where they elected not to make an issue of it. Because it is kind of silly to watch them play other teams, and half the players on the team have headbands, and they can’t wear them. It’s kind of a little juvenile, but they seem to buy into it, so it’s okay I guess.

**MS. STATZ:** Does anyone have anything else they wanted to add?

Okay. Well, I’d really like to thank our four panelists for their comments and their preparation, and I hope this was helpful to you guys.

(Applause.)