

# Better Talk to

## 9 Answers to Your Important Legal Questions



Lowell Gratigny

**A player gets hurt, a fight breaks out, someone wants to do a background check on you and all sorts of other situations arise in which you need advice from a lawyer. NASO provides its members with free access to attorneys through its Legal Information and Consultation Program (LICP), and even conducted a face-to-face legal question-and-answer session at last summer's Leadership Officiating Summit in Salt Lake City. Alan Goldberger, the nation's leading expert on legal issues in officiating, and Lowell Gratigny, senior vice president in charge of legal services for American Specialty, NASO's insurance provider, were on hand to answer attendees' legal questions.**



Alan Goldberger

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### Question:

Can I sue a school that constantly fails to provide me a locker room, some sort of security, and even a game manager to work with me when I get to the game?

**Goldberger:** Most of us, me included, have really wanted to sue a school for failure to provide all those things that you mention. Unfortunately, or fortunately as the case may be, the legal system doesn't provide a remedy for every injustice. Obviously, failing to have proper facilities at a school is something that is a chronic complaint of all of us. I would say the best way to address that particular situation is through your local association. Have your group petition the schools and conferences to remedy the situation.

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### Question:

We just had legislation passed by the state of Florida that all officials submit to a background check and be fingerprinted. If the official refuses to pay the money for a background check and the school board refuses them work, can the official sue them?

**Goldberger:** The practical problem is if it's a state statute, which is the case in Florida, there aren't going to be a whole lot of ways to get around that. So if the law says if you want a license as an official, if you have to pay X amount

of dollars and undergo the test, whether it's fingerprinting or appearing at the police station, then you pretty much have to do it or you're not going to referee. The only way that would change is if a legislature repealed it or if somebody were to bring a lawsuit and say that's unconstitutional, that's unlawful for whatever reason they can conjure up and if they can convince a judge to overturn the statute.

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### Question:

Even if state law or the state association doesn't require a background check on officials, could our local association conduct background checks on our members anyway?

**Goldberger:** Every referee association in the country wants to do the right thing, right? Every association in the country feels that background checks are something that's coming because of all the problems we keep hearing about on the news and some of the high profile incidents that have come about as a result of those who were supervising youth sports and interscholastic sports. The problem is that for your officials association, you cannot run off doing background checks unless and until, one, you know what you're looking for; number two, you have a legally sound method of performing the check; and number three, you have a good idea of what you're going to do with the information when you

# a Lawyer



This article was compiled by Donald C. Collins, executive director of the California Interscholastic Federation-San Francisco Section. He is also a lawyer and basketball official.

get it. The best advice we can give to officials associations at this point in time with regard to background checks is this: Look around to the schools and the leagues you are servicing. Look around to the programs that you're involved with. If somebody else is doing background checks, let them. If you insist on doing background checks, you had better get some legal advice before you get started, and you'd better be careful what you ask for because you may just get it. Do your bylaws provide what the requirements are? Suppose somebody doesn't consent to a background check. Do they have to? Is it legal in your state to even do it and under what circumstances? And then what are the kinds of things for which officials can be disqualified from working? Is it drunk driving? Is it child abuse? Is it armed robbery? Is it passing a bad check? The point is you have to know exactly what you're doing before you get started, or don't get started.

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## Question:

If we have an unsafe condition in a basketball gym or arena and management says they cannot make it safe, do we have the right to refuse to work that game? Suppose there are 1,500-2,000 fans in the stands and the school has collected a lot from the gate, can a school or a district come after us for that if we don't work?

**Goldberger:** I don't care how many tickets have been sold. I don't care if there's a sword swallower lined up at halftime. If it's unsafe and it can't be corrected and it presents an unreasonable risk to the student-athlete, there is no game. You're the referee. I guarantee if you play the game under those circumstances and a student-athlete or anybody else is injured, everybody in the western hemisphere will testify that we played this game because the referee said it was OK. So you can either tell it to the jury or you can consider the safety of the players.

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## Question:

In a particular rec ballgame, the referee threw a parent out. The parent threatened to sue on his First Amendment rights being violated. Did he have a leg to stand on?

**Goldberger:** Let's first of all just back up two steps before we get to your specific question, and let's get one thing perfectly clear. It's almost never appropriate for a referee to address a spectator directly. If you don't train that, you have more trouble than you need to have. Because once we start talking to spectators we have brought the spectator right up to the level of being the head coach or player on the floor or an athletic administrator. Now, to answer your question, it is very doubtful that the spectator's free speech rights would form the basis of a successful lawsuit.

**Gratigny:** There's no constitutional right to attend a game.

**When a fight breaks out during your game, should you attempt to stop it? What are your legal responsibilities and the legal responsibilities of game management and game security?**

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**Question:**

When it comes to fights during games, I've heard the philosophy that you don't ever touch players and I've heard that you've got to get between players. What guidelines can you offer and how does it impact my liability insurance coverage?

**Gratigny:** I see fights erupting between players and parents and officials more now than I have even two, three or four years ago. It seems like they're breaking out at a younger age group. You can't buy insurance for intentional acts. Our NASO policy expands that a little bit. We provide coverage to an official who is trying to protect persons or property. So if a father comes up and threatens to hit you over the head with a baseball bat and you protect yourself, you would have full coverage under the policy to do that. I'll let Alan address whether it's best to touch players or not.

**Goldberger:** "Never touch a player." Almost everybody has heard that. We can't put our hands on a player because we'll get sued. In my view there is little that is further from the truth or from good officiating mechanics than the advice to never touch a player. If you let players fight because you're standing around and taking numbers, your game is down the toilet. If you let them see your stripes and let them see that you're there and between them, if you save the fight, you save your ballgame, and you may save yourself a

**Keep a paper trail any time a player is injured during one of your games. If that player had a doctor's note indicating he or she could play despite a pre-existing injury, you'd better have a copy of that note and plan to hold onto it for years.**

lawsuit. Go over it in your pregame. One thing is for sure: You move quickly, you get in between the opponents and you don't let the fight happen. And if it does happen, you do whatever you can to stop it as quickly as you can. Does that mean you have to put your hands on somebody? I think it does. It's the only answer, folks.

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**Question:**

I'm looking for some direction when it comes to doctors' notes indicating that a player can play. We have privacy issues in our state dealing with keeping the note. Could you give a legal interpretation whether the official should keep the note or whether just seeing the note is good enough?

**Goldberger:** There was case like that just a few seasons ago in which a high school football referee was presented with a note from the team physician indicating that a particular student could play with the apparatus or the cast or the bandage or whatever it was in accordance with the NFHS rulebook. That was good and fine, so the note was displayed to the referee, and the referee says, "Fine, thank you," and he reaches for it. But the nurse says, "No, you can't have it." The referee says, "Why not?" And the nurse says it's because of medical privacy laws. Well, the referee correctly concluded that if it was OK for him to see it, it was OK for him — and in fact necessary for him — to take a copy of it. I think that's where the answer is. If there is a situation in which the student-athlete needs a note from a physician or anybody else to play, or there's some writing that has to be produced, most legal authorities would say you'd better hold onto it.

**Gratigny:** And the reason for keeping the note is because a minor can bring suit once they reach the age of majority plus whatever that statute of limitations is. So officials can get nailed with lawsuits six, seven, eight years down the road. We don't get many of them, because generally the suits that last that long are bad injury suits, and we're generally aware of the kids that get injured pretty seriously. But a lawsuit is a lawsuit, so those records have to be maintained for a long period of time.

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**Question:**

Are there any litigation cases against states or local associations for their assigning practices?

**Gratigny:** I've handled probably six or seven. Generally we find that cooler heads can prevail if you sit down and talk to the person bringing suit.

**Goldberger:** Most of the suits that I'm familiar with involving assigning practices do not go very far. Judges usually do not want to be bothered with something that they consider trivial unless somebody can show that there is some pattern of unlawful activity such as discrimination on the basis of one of the criteria that is prohibited in the United States — race, gender, religion, etc. Other than that, unless there's a breach of contract situation in which you have assignments that are supposed to be made according to definite criteria, it's a very difficult road to travel for the person going after the assigner.

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**Question:**

Alan, you talked about what officials should do if it appears a fight is going to break out during the game. What about a postgame situation, in which the officials have not left the confines of the playing area? Should we handle a fight differently in a postgame situation?

**Goldberger:** The first thing we have to look at is the official's jurisdiction. We are on duty until we no longer have jurisdiction for the game. There's a timeline there that we have to deal with. You want to do what's reasonable under the circumstances. Get the final score straight and then get out fast. If a fight breaks out before then, you still have jurisdiction and have to deal with it. The best advice is to get out as soon as you are legally entitled to get out, when your jurisdiction is over. If it isn't, keep looking because you're still the referee.

**Gratigny:** I'll add an example. One of the worst fights I've heard of happened down in Florida. It happened during the good sportsmanship handshake after a football game. Someone brought suit against the officials and we ended up convincing the court that once a game was over the officials didn't have any right or duty to control the teams that ended up pummeling each other. So from a legal standpoint, the officials were not liable.

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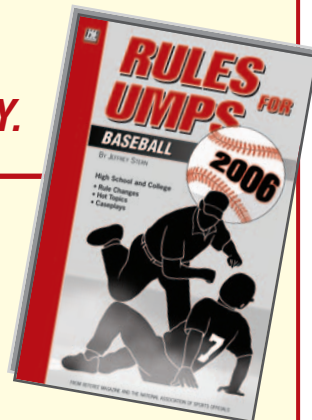
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