

BETTER TALK TO A LAWYER

Edited by Donald C. Collins

Officials and association leaders face a constantly changing array of legal and administrative challenges. At the 2005 NASO Summit in Salt Lake City, NASO gave officials and association leaders direct access to Alan Goldberger and Lowell Gratigny. Alan may well be the nation's leading expert on legal issues in officiating, and Lowell is the Senior VP for American Specialty Insurance Services, NASO's insurance provider. Alan and Lowell's Q & A session touches upon background checks, medical privacy, association discipline, the legal ramification of fights, and other legal and insurance matters.

Bob Macena - Valencia, California: 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?

Alan Goldberger: The legal system doesn't provide a remedy for every injustice... I would say the best way to address that particular situation is through your local association.

Dave Robbins - Portland, Oregon: I'm just trying to get some direction here regarding the question of the note that a trainer has to waive a player's ability to play by a doctor... Could you give a legal interpretation whether the note should be kept by the official or whether just seeing the note is good enough?

Alan Goldberger: There is quite a concern as to what's medical privacy and what isn't... If there is a situation where the student athlete needs a note from a physician or anybody else to play, I think most legal authorities would say that if it's okay for you to see it then you'd better hold onto it ... for about seven years.

Lowell Gratigny: A minor can bring suit once they reach the age of majority plus whatever that statute of limitations is. So you folks as officials can get nailed with lawsuits six, seven, eight years down the road.

Question: If there aren't background checks made on officials, but some officials have legal problems to the point that they need to either serve time or whatever, if an association decides not to use the official's services, could the association be held liable? And second of all, when can or should they be brought back in?

Alan Goldberger: You cannot run off doing background checks unless and until: number 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 what you're going to do with the information when you 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 that 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 kind of things for which officials can be disqualified from being referees? 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.

Question: In a particular rec ball game, 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?

Alan 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 we don't train this, we have more trouble than we 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, with the first question that was asked, it is doubtful that this spectator's free speech rights would form the basis of a successful lawsuit.

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

Tim Brooks - Tampa, Florida: We just had legislation passed by the State of Florida that all officials would have a background check and fingerprints. And I would like to find out if the official refuses to pay the money for a background check and they refuse them the work, can they sue the school board or the state?

Alan Goldberger: The practical problem is if it's a state statute then 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 dollars

and undergo this test, whether it's fingerprinting or whatever it is or background checks or registration fees 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.

Scott Maxfield – Salt Lake City, Utah: I've got a question whether you could offer some guidelines with regard to fights during a game.

Lowell Gratigny: I see fights erupting between players and parents and officials more now than I have even two or three or four or five years ago. It seems like they're breaking out at a younger age group. You can't buy insurance for intentional acts. So if I happen to kick Alan over here because he's a plaintiff's attorney that's purposeful and I can't buy insurance to do that. Our 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, not to touch, when to do it and when you

Alan Goldberger: Never touch a player. How many people have heard that? 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 good officiating mechanics than 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 ball game, and you may save yourself a lawsuit. Go over it in your pre-game. 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.

Jim Jorgenson – Sacramento, California Are there any litigation cases against states or local associations for their assigning practices?

Lowell Gratigny: I've handled probably six or seven. Generally in that type of thing cooler heads can prevail if you sit down and talk to the person.

Alan 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, etc. Other than that, unless there's a breach of contract situation where you have assignments that are supposed to be made according to definite criteria it's a very difficult road to travel.

Alan Zarrow - Brooklyn, New York: I was just wondering if there are any guidelines for in-house policing of officials, particularly either a penalty or a fine?

Alan Goldberger: Here's the situation with that, Alan. Most of those matters, if not all of those matters, are concerns for your bylaws or your written rules and regulations. In most places in the United States, in most associations I think it's fair to state you are entitled to a hearing before those things happen. If you are an association officer, we recommend in our office that you don't do any major sanctions against anybody without having a hearing first.

Kelly Callahan - Wilmington, Delaware: If you have someone in your association that appears in the local paper for being convicted do you have a legal recourse or even a requirement to suspend or expel that person if nothing is clearly defined in your bylaws?

Lowell Gratigny: It would be more difficult. You can't suspend something for doing something wrong when they don't know what the wrong is.

Alan Goldberger: Right, and I agree with what Lowell said. The other thing to bear in mind is that you need to take what you read in the paper with a slight grain of salt. But assuming, to get to the core of your question, that you have an individual in your association who is convicted or accused of armed robbery, an offense involving moral turpitude with a youth and so forth, obviously this is serious business. If there's an accusation that results in a criminal charge or, worse yet, if there's a conviction this is something that has to be dealt with. How do you deal with it? You're talking about a high school association, right? Well, we do a charge against the member for violating the bylaws and we do a hearing. Guess what, that's what we do with somebody who is accused of armed robbery or accused of child molestation. We have charges. There's going to be something in your constitution which you can

read that will tell you that somebody who has committed an armed robbery or who has committed an offense of a sexual nature against an underage person is not qualified for membership in your association. The next thing to do is to invoke the procedure to deal with this person because the official who is charged with armed robbery in the *Boston Globe* may be innocent. If you're an NBA official, an NFL official, if you work for the Eastern League, if you're a member of the Southwest Conference staff, that's different. They have different documents. But you always need to follow your procedures, and don't believe what you read in the newspapers.

Hank: This is for Lowell. Lowell, could you help us understand how maybe a record check of a guy's driving record, for example, in the Dolan vs. OHSAA case? .

Lowell Gratigny: This is a referee out of Ohio that had been picked up on a DWI, and he had an assignment to a junior varsity game. He drove to the game, had an intersection accident with a kid that happened to be going to the game, just coincidentally, and the kid was killed. The kid's mother brought suit against the Ohio association, claiming they should have checked the official's license. The other hooker in this case is that in the accident itself the kid that was killed is the one that blew the stop sign. I don't see any duty from any organization to be obligated to check driver's licenses just because someone may have to drive a car to a game

Hank: She just dropped the case, the mother.

Lowell Gratigny: I rest my case.

Jack Clingon - Los Alamedos, California: If we have an unsafe condition in a basketball gym or arena, and we have gotten with game management and they cannot make the game safe, let's say we have 1,500 to 2,500 people in the stands that they have charged admission for, and game management says you need to do the game. As an official do we have the right to refuse an unsafe condition game, and can a school or a district come after us for that?

Alan 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 of the student athlete, it's a game. You're the referee. I guarantee you 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 Scott the referee said it was okay. So you can either tell it to the jury or you can consider the safety of the players.

Moderator: We are about out of time. I'd like to thank everyone for their excellent questions.