

Any Limit to Free Speech?



By Donald C. Collins

Q I believe that fans have the right to free speech when it comes to what they say at

ballgames. I generally tune them out during rants anyway. However, sometimes the volume and message seem to go too far. How do I determine it is time to get the game authority involved? Could I be sued if I pull the trigger on a fan too quickly?

A In a formal setting, officials are governed by sports rulebooks. An official has to know whether his or her sports rulebook gives the authority to eject a spectator. Many rulebooks don't give officials that authority. However, constraints on an official's ability to eject a spectator are procedural constraints as opposed to practical ones.

Most rulebooks set forth a procedure under which an official has the authority to approach game management and have game management address spectator misconduct in a manner that satisfies the official. In essence, the official would work in conjunction with game management to remove a spectator

who engages in misconduct.

In theory, game management could decline to work with the official. But, there's no practical reason for game management not to work with officials to resolve spectator misconduct. After all, officials do have authority to suspend games, assess penalties and take other actions when spectator misconduct reaches a point where the officials must take sterner steps than merely asking a spectator to leave.

Clearly, officials who directly eject a spectator without the authority to do so could be sued. However, a spectator ejected by an official who didn't follow proper procedures is not likely to win a lawsuit. Courts don't tend to second guess officials for their rules applications or misapplications. If courts acted as officials' review boards, we'd probably have a lot of games that would never end as call after call would be marched before a judge.

If a spectator did win a lawsuit, he or she would probably only recover the cost of the ticket. After all, the spectator would have engaged in comportment that warrants the removal from a contest, and would simply be claiming that the official made a procedural error in directly ejecting him or her. The spectator would have received the same result if the proper procedure was followed. There's simply no harm — merely a procedural error.

Of course, the ejected spectator could try to bring claims based on damages to reputation, and other sorts of status-based harms. They could bring claims based on discrimination, and they could make an official spend a significant amount of time defending a lawsuit if they pushed matters. A determined spectator could make an official's life miserable, but the spectator still is not likely to win the lawsuit.

Most ejected spectators aren't going to want to sue. After all, most — if not all — ejected spectators have engaged in misconduct that they probably don't wish to have exposed in court. That misconduct combined with the judiciary's general reluctance

to substitute its judgment for the judgment of game officials (except in injury cases) would make it hard for an ejected spectator to win substantial damages. Officials are relatively safe. But, relatively safe is not always safe enough. The threat of litigation still exists.

Some entities have addressed the threat of litigation by writing rules that let officials directly eject spectators. At least one state has direct ejection legislation. The direct ejection laws empower officials to directly eject spectators without having to work with game management.

It's no longer enough to just read your rulebook. The wise official should know whether his or her state has laws, regulations or athletic bylaws that allow a direct ejection. Wise officials should also know the regulations in their own sport on how to address unsportsmanlike spectators. They should also know a host of other rules pertaining to spectators such as the proper location for coaches and cheerleaders, and the measurements for safety sectors in sports that have defined safety sectors.

Ultimately, officials must manage spectators. They must also manage bands, cheerleaders, school administrators who stray into sideline areas, and officiating support staff such as football chain crews, students who keep score, and parents working as timers on pool decks. Officials must communicate with game administration and event sponsors, and officials must know what powers they have and don't have. An official may be able to elude substantial legal liability for using the wrong procedure to eject an unruly spectator, but officials who apply wrong procedures too often will create problems that can't be resolved in other areas of their work with the many groups of non-participants that they must manage. *Donald C. Collins is the executive director of the San Francisco Section of the California Interscholastic Federation. He is a longtime basketball official and lawyer. This article is for informational purposes and is not legal advice.* □

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