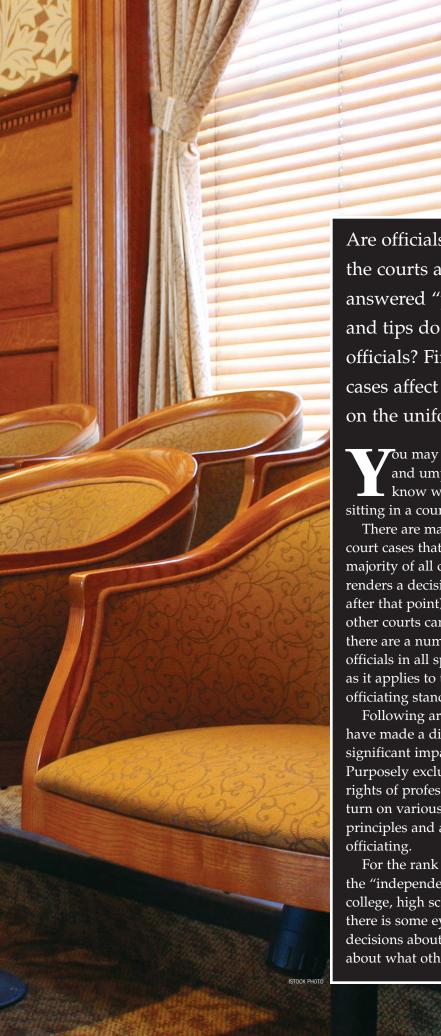
# COUNTY PRESENCE

11 Cases That Made a Difference

By Alam Goldberger 26 REFEREE April 2008 www.referee.com



Are officials really the final authority on the courts and fields? A court of law has answered "yes." What other guidance and tips do officiating cases offer officials? Find out how some important cases affect the job you do when you put on the uniform.

You may not think cases involving other referees and umpires really affect you, but you never know when you could be the next official sitting in a courtroom as a plaintiff or defendant.

There are many tips to be learned from officiating court cases that have been litigated. Since the vast majority of all cases are settled before a judge or jury renders a decision (and many more are settled even after that point), outcomes that serve as a precedent for other courts can be relatively difficult to come by. Still there are a number of court decisions from which officials in all sports can learn something about the law as it applies to them. Those cases "cut to the chase" of officiating standards — and the legal rights of officials.

Following are the legal highlights of 11 cases that have made a difference. The cases have had a significant impact on the officiating industry. Purposely excluded are cases involving employment rights of professional sports officials. Those court cases turn on various employment and civil rights law principles and are only tangentially related to

For the rank and file of the officiating industry – the "independent contractor" troopers who labor in the college, high school and recreation gyms and fields there is some eye-opening guidance from court decisions about what officials can and can't do, and about what others can and can't do to officials.

### PART 1: DEFENSE

OFFICIALS AND/OR OFFICIALS' ORGANIZATIONS ARE SUED



### **Keep Your Eye on the Ball**

### Carabba v. Anacortes School District No. 103

Almost all discussions of court decisions involving an official's liability for negligence begin with a lawsuit against a school board and not a referee. In 1963, high school wrestler Stephen Carabba became paralyzed by an illegal hold that was applied while referee Robert Erhart was trying to realign two sections of a wrestling mat. Carabba and his parents sued the school district, claiming that Erhart was the school district's legal agent and that the referee was negligent.

Carabba's opponent was attempting a pin. Alternating "halfnelsons" were applied. As a result of that action, the wrestlers ended up in a corner of the main mat near the mats intersecting with some smaller side mats. The referee noticed that one of the side mats had become separated from the main mat, exposing the hardwood floor. The referee attempted to correct that situation by replacing the side mat. At that time, the plaintiff's opponent allegedly applied a "full-nelson" hold, immobilizing Carabba. Carabba was rendered quadriplegic due to a severance of a major portion of his spinal cord.

Suit was brought against the two competing school districts, but not the referee. Instead, the plaintiff Carabba was content to let his fortunes in the lawsuit rest upon the success of his claim against the school district who hired the referee.

Although the referee was not sued, court documents indicate that an injured student-athlete and his parents sought \$500,000 against the two competing school districts because they said the schools were negligent because the referee was negligent. The Carabbas claimed the referee was the person in charge on behalf of the school board and that he failed to protect the wrestlers by reason of his inattentiveness while he was dealing with sections of the mat that had become separated. While the referee was dealing with the mat, the Carabbas said an illegal and dangerous hold was applied and maintained without the referee intervening. The lawsuit claimed the referee's failure to defuse the illegal hold violated the rules, thereby causing the paralyzing injuries.

The trial took 20 days. Thirty-eight witnesses testified. The statement of facts alone in the case consisted of more than 2,300 pages. Although the jury found for the defendant, the Carabbas' appeal was granted and a new trial was ordered. The case was settled, but the theory of legal liability of officials remains viable for those injured in sports. Were a similar incident to occur today, the referee would be sued, without a doubt. Officials need to enforce rules and use proper mechanics to prevent injuries to athletes. Officials need to remember that they often must choose between competing risk management concerns during competition. Then they must make the best choice under all the circumstances.

### **Don't Lose Control** of the Game

### Hinton v. Pateros School District

Two Washington basketball officials found themselves defendants in a 1976 lawsuit brought by Keith Hinton, a player who suffered a catastrophic injury in the waning moments of a high school game. A foul occurred with 1:06 remaining in the game. The young man who was fouled apparently was catapulted over his opponent's shoulder and landed on his head in such a way that the cervical vertebrae were fractured and he was rendered a quadriplegic. A lawsuit was brought against both school boards, both coaches and their wives, the Washington Interscholastic Athletic Association and both officials, their wives and their officials association.

Among other things, the officials were charged in the lawsuit with negligence for failing to call fouls during rough play or terminate the game, thus causing the injury. Game films depicted Hinton jumping into the air and landing on the man with the ball, indicating that plaintiff had, to a great extent, brought his injury on himself.

Neither official had sports officials' insurance coverage (it was the 1970s). Fortunately, one official's homeowner's insurance policy covered his defense. The officials association did not maintain insurance at that time either.

All the defendants moved the court for summary judgment to dismiss the suit. Their motions were granted and the lawsuit was over. However, Hinton appealed and, while the appeal was pending, the case was settled by the boards of education. The officials association paid only a small portion of the settlement.

Though the officials won the lawsuit, the happenstance of a catastrophic injury will often trigger litigation against officials and others involved with game sponsorship and administration. All others involved can be expected to ask the judge or the jury to place the blame on the officials — even when, as in the Hinton case, the officials did nothing wrong.



### **Teach Your Chain** Crew Well

### Smith v. NFL

During an NFL preseason game in 1972, allpro defensive end Charles "Bubba" Smith was at his post when a teammate intercepted a pass. At the end of the play, Smith found himself on the ground out of bounds, suffering from a serious

knee injury. A lawsuit was brought against several parties, including NFL head linesman Ed Marion and the individual who was holding the down marker, which Smith collided with upon going out of bounds.

The first trial of the case resulted in a mistrial due to the fact that the jurors could not agree on a unanimous verdict. The second trial resulted in a ruling in favor of the defendants. Of course, the NFL official was able to testify that he had instructed the chain crew in the proper methods of holding the stakes — or the

outcome may have been different. Since the Smith case, the physical requirements of the down marker and line-to-gain stakes have been changed for safety reasons, as has the placement of the chain crew during the down. The case of Bubba Smith teaches that pregame responsibilities and sideline management are two of the cornerstones of risk management for officials — in any sport.



### **Safety Related Rules** Are Not Made to Be Broken

**Ed Marion** 

### Smolden v. Whitworth and Nolan

The genesis of referee liability in the United Kingdom, which applies to all, is thought by many to be embodied in the 1996 case of Smolden v. Wentworth and Nolan. Benjamin Smolden, a 17-year-old rugby player, suffered a paralyzing injury when his scrum collapsed during a match. The rugby match was played under rules modified for younger athletes. The match was an under-19 Colts match. The court found that the referee allowed illegal scrums on more than 20 occasions in the match, despite being reminded of the rule by his assistant. The injured player was awarded more than \$3.7 million on the basis of the referee's actions.

In rejecting the referee's legal argument that the athlete had assumed the risk of injury while playing rugby, the court stated that the official cannot escape his legal duty to enforce the rules, which were framed for the players' safety. All officials take note: You can't rely on old bromides that any athlete "assumed the risk" of participating, especially if the athlete says you failed to apply a

safety-related rule. Such officiating lapses can be errors of omission — or errors of commission. Where player safety is implicated, err on the side of caution.

Do not tolerate illegal contact or unnecessary roughness in which the risk of injury is present; violation of noncontact sportsmanship rules (i.e. taunting/baiting); illegal or dangerous equipment; or non-conforming field or court clearances or obstructions that present a safety hazard.



### Refereeing the Players' **Experience**

### Vowles v. Evans

In the wake of the Smolden case, a 1998 rugby match on a muddy English field was the scene of another

catastrophic injury. This time it involved an adult player. Welsh Rugby Union referee David Evans was working a match between the Llanharan and Tondu Rugby Football Clubs. The rules of rugby in effect had specific direction for substitutions in the event of injury. Those rules entailed the obligation of the referee to get information about the suitability of team members to function at certain positions. An alternate procedure in the rules was to allow "uncontested" scrums in the absence of enough players of suitable experience. The charge was that Evans violated the rules by allowing an inexperienced substitute to replace a prop forward. Richard Vowles, a 24-year-old experienced player, suffered a catastrophic injury when the "scrum" failed to engage.

Confined to a wheelchair, Vowles sued Evans, the Welsh Rugby Union and officers of the Llanharan Rugby Club. The judge found that the inexperienced substitute's technique caused the mishap resulting in Vowles' injury. Evans had a duty to exercise care for the players' safety by enforcing the rules to prevent injuries.

In court, the referee argued that the rule allowed the referee to permit an inexperienced substitute on a "trial basis." Even so, the referee should have kept a closer eye on the substitute to avoid the danger to Vowles. Had the referee noticed that the scrums were not working out, he should have "converted" them to the noncontested variety to minimize the possibility of injury. The court found Evans and the Welsh Rugby Union liable for the injuries.

The appeals court agreed that because Evans allowed the inexperienced player to "give it a go" as the front row forward without asking him or others whether he was experienced, Evans violated a rule and that was the cause of Vowles' injury.

In delivering his decision, the judge remarked that the referee's decision to allow the game to continue as a contested match was during a timeout and not "in the heat of the moment during fast moving play," so there was little excuse for disregarding any aspect of the rule. The judge also noted that he viewed the referee's notes and game report as compelling evidence that the referee did not properly enforce a playing rule involving player safety. In addition, the judge referenced a newspaper article in which Evans explained that he had stopped a different game for safety reasons.

Evans was liable for his negligence. The English court decision provides food for thought: officials are bound to recognize that

their primary responsibility is the players' safety; they should suspend or modify an activity anytime an unreasonable risk to player safety is created; officials should continually monitor play to guard against any rules violation or condition that could prevent an injury; they must take into account the abilities, experience level and predilections of players where required by rules and obtain answers when required by the playing rules; written notes, game cards and postgame reports must be carefully prepared to document all safety-related rules were enforced; and comments to the media about a game assignment seldom serve any purpose except to increase the liability exposure of the official.

### PART 2: OFFENSE

WHEN AN OFFICIAL'S RIGHTS ARE ON THE LINE



### A Good Lawyer Can Make a **Big Difference**

### Locke v. Ozark City Board of Education

Alabama baseball umpire Wesley Locke and his partner were leaving the field after a high school game on March 30, 1999, when Locke was attacked by a player's parent. The attacker punched the umpire multiple times, causing facial and neck injuries, scarring and blurred vision. Locke sued the home team's board of education. The Ozark City Board of Education maintained that it did not owe a duty to protect umpires from criminal acts of third parties. While the judge agreed, the Supreme Court of Alabama did not.

Locke was assigned by the Southeast Alabama Umpires Association. The group provided umpires only to Alabama High School Athletic Association (AHSAA) sponsored events. The AHSAA handbook stated that principals were required to ensure good game administration and supervision by providing adequate police protection at games. No officers were present at the game in question. That, claimed Locke, was a violation of AHSAA rules.

Locke maintained that the handbook provision was written for the safety of the umpires as much as anyone, since the umpires are involved in game administration and supervision. A legal theory of "third party beneficiary to a contract" comes into play. The AHSAA handbook stated the terms and regulations under which high school sports were governed in the state. Since the regulation in question was intended to benefit officials, an official who was injured as a result of a violation of those regulations had a valid claim in court against the school. The Supreme Court noted that the AHSAA assessed a \$1,000 fine and a one-year probation against the home school — Carroll High School — for not having police protection. To add to the argument, the person who attacked Locke testified that had there been a uniformed police officer at the game, he probably would not have attacked the umpire.

# **Dealing With** Miscreants in Uniform

### Guffey v. Wyatt

On Feb. 4, 1992, Stanley Guffey was officiating the Oklahoma City basketball championship game between Douglass High School and Star Spencer High School when a police officer named Eldridge Wyatt entered the court to berate Guffey. Using an expletive, the officer ordered the referee to start calling more fouls. Guffey said to Wyatt, "I don't know who you are, but you don't have any business out here on the floor." Guffey was then placed under arrest by Wyatt and removed from the court. A short time later, in a private arena office, Wyatt's superiors persuaded him to "unarrest" Guffey. Guffey resumed his duties and the game ended without further incident.

Guffey sued Wyatt for violation of his civil rights under federal law in the U.S. District Court for the Western District of Oklahoma. At trial, Wyatt claimed he had probable cause to arrest the referee for not obeying a "lawful request for assistance." Guffey won his case against Wyatt. He was awarded a verdict of \$5,000 in damages and approximately \$80,000 in attorneys' fees against the police officer.

As a result of the referee asserting his rights, at least one police department revised policies to discourage such irresponsible actions on the part of officers. Unfortunately, on more than one occasion, a referee has had to deal with a game site worker who interferes with the game instead of doing his or her job. If faced with that, know that you are still in control of the playing surface. Commission your partner(s) as a witness and do exactly what Guffey did: Tell the individual to butt out. After the game or match, report the incident to your association, supervisor or assigner.



## **Equal Assignment** Rights for All

### Kemether v. PIAA

Noreen Kemether was a registered Pennsylvania Interscholastic Athletic Association (PIAA) basketball official. In her lawsuit against the PIAA and others, Kemether claimed her assigner's policy of sending only male officials to work boys' games above the ninth-grade level violated her civil rights. Kemether successfully claimed that the officials association was an agent of the PIAA, as the PIAA had the right to

exercise control over the association. Thus the PIAA bore some blame for the association assigner's actions.

Kemether maintained in court that she asked the assigner for boys' basketball games, including varsity games, as she had only been assigned girls' junior varsity games during her first three seasons with her officials association. The assigner was reported to have responded to Kemether's request by reminding the official that "girls don't do boys' games." Kemether's claim was originally made to the U.S. Equal Employment Opportunities Commission, alleging that she was being discriminated against on the basis of gender. On Dec. 18, 1998, a federal court jury returned a verdict against the PIAA for \$314,000. Of more lasting impact than the judgment for money damages was the judge's directive to the associations involved to eliminate the practices that illegally discriminated against women officials.

The court ordered the PIAA to adopt policies regarding the evaluation and assignment of officials to regular season and postseason games, using gender-neutral criteria and to include women evaluators. In addition, the PIAA was ordered to recommend that member schools insert into officials' contracts and assigners' contracts the requirement not to discriminate on the basis of gender. The PIAA was also ordered to designate a person to receive reports of violations of the court's order; and not to retaliate against any official who claimed a violation. The association was ordered to amend its bylaws, rules and regulations and athletic officials' manual to comply with the court order and to take other steps to implement the order. And the jury's award more than doubled when attorneys' fees, available under federal law, were awarded to Kemether.

### PART 3: NONSENSE

LEGISLATING SPORTSMANSHIP, THE CRIMINAL JUSTICE SYSTEM, OTHER LEGAL CHALLENGES



### **Association Sanctions** for Spectator Attacks

### Watkins v. Louisiana High School Athletic Association (LHSAA)

A 1974 high school basketball game in the state of Louisiana was the backdrop for a litigated case that demonstrated that a state association can successfully defend in court actions taken to protect game officials. The case, brought by a spectator at the game against the Louisiana High School Athletic Association (LHSAA) and its commissioner, the late Frank Spruiell, sought \$90,000 in damages as a result of the association imposing sanctions against a school.

### DOES IT "SUIT" YOU?

If there is a serious injury in a game you are working, or if it becomes necessary to give a player, coach or other participant his or her walking papers for the evening, you need to take special precautions. A lawsuit may be coming to a neighborhood near you! Very near you. For that reason, officials need to take a few simple precautions. All nine steps listed are nothing more than enhanced postgame mechanics, designed to protect you and your association from legal liability.

Follow proper end-of-game mechanics to the letter. Stay on the field or court as long as you have to, by rule and league or association regulation. Leave as soon as your work on the field or court is completed. And don't leave any of your partners behind.

On the way out, and for the rest of the time, speak about the game or the incident only to those to whom you are required to speak. That list, depending on the game, the organizations involved and the circumstances may be short or long. Generally speaking, appropriate people to receive your comments or statements include your assigner or commissioner, association secretary,

police officers and your attorney. Choose your words carefully.

If your association does not screen game reports, or if a serious injury is involved, consult an attorney before releasing any statements — written or oral.

Do not under any circumstances discuss any aspect of your work in a particular game, or the play of a team or an athlete, with anyone, other than as above. Media statements and interviews are fertile ground to help an injured athlete prove a case against you in court.

As soon as possible after the game, write down everything you remember about the game, the incident, and anything that was said, to you or to others, about what happened. Keep your notes in your permanent officiating file and show them only to your attorney unless he or she instructs you otherwise.

Do not sign any documents or attend any meetings, hearings or gatherings for the purpose of discussing the incident, unless authorized by your attorney.

If you are injured, seek medical treatment immediately.

Report the fact of any serious injury to all insurance carriers who may afford coverage.

Gather all documents, news accounts, reports and any other written or recorded data available to you and keep it in your permanent officiating file. Show that file only to your attorney unless he or she instructs you otherwise.

The officials reported that right after the game the mother of a player — Mrs. Edmond C. Watkins — descended from the bleachers onto the court and proceeded to chastise one of the officials, in the process grabbing his arm and physically detaining him on the floor as an angry crowd milled about. After the state association's sportsmanship committee hearings, the school involved was placed on probation for one year. A fine was also assessed. The school was forbidden to participate in any athletic contests for one year with Watkins in attendance.

According to the Louisiana Court of Appeals, Watkins claimed that she had been humiliated by the principals of schools searching the crowd for her before allowing Fenton (the high school where the incident occurred) to begin play. She alleged that at the Top-20 Basketball Tournament in March 1974 Spruiell informed the Fenton principal that should Watkins come into the coliseum "the game would be stopped and Fenton would be allowed two minutes to get the fan out of the coliseum or the game would be forfeited." She asserted abridgement of her rights of free speech and assembly, invasion of privacy and damage to her reputation. She alleged that she had been humiliated in the eyes of neighbors and children by the ruling, which branded her unsporting.

In dismissing the lawsuit, the court agreed that the exercise of regulations to protect officials was valid and upheld the association's decision. The case remains the gold standard for a state association acting to preserve a safe environment.



### It's the Judge, Stupid!

### Commonwealth v. Dukovich

At a high school basketball game in Pennsylvania, a spectator came on to the court to confront referee Ron Bell. The spectator's husband joined in by picking up the referee and forcefully depositing him on the floor — in full view of the principal and superintendent. Both spectators were arrested. The husband was charged with "assault on a sports official," under a 2006 statute.

Though it sounds exactly like "assault on a sports official," it didn't to Judge Zottola of the Pennsylvania Common Pleas Court, who ruled that the man who slammed the referee to the floor was guilty only of a lesser "simple assault." The Pittsburgh Post-Gazette reported that the assailant testified that he didn't realize that the man in the striped shirt who he approached on the basketball court was a referee. So, for body slamming a referee to the hardwood, the punishment was \$1,000 fine, an order to perform community service, to reimburse the referee's medical bills of \$1,578 and to refrain from attending sporting events for one year.

If you are perplexed by the ruling, you are not alone. But there are lessons to be learned:

1. Legislatures can pass law after law designed to protect officials from assaults, but inadequate reaction by those who carry out the law can negate any positive effect. Officials can't depend on the system to vindicate all their rights in a court. Expectations that prosecutors or judges will always be sensitive to the dangers officials face and deal appropriately with criminals who assault referees are unrealistic.

2. While few would admit it, there is an unwritten assumption held by many that assaults on officials are a part of the game, should a person feel justifiably outraged by a call. Police officers and judges don't always treat



Ron Bell

those who assault referees the same as those who assault victims on the street or in their homes. Athletes, parents, fans and coaches are emotionally involved in sport. That emotion is often cited as justification for violence against officials.

3. Officials who are inadequately defended in administrative and legal proceedings while their attackers appear to emerge unscathed sometimes have themselves and their

associations to blame. The court's ruling shows the importance of officials getting legal counsel immediately upon being assaulted to prevent such attacks from being viewed as "bar-room brawls."

Although state laws on assaulting sports officials are clear, should a judge decline to apply the law, the result reinforces perceptions that assaulting an official can be justified. As in the Pennsylvania case, there will be miscarriages of justice in which the law is misinterpreted and a violent criminal is "slapped on the wrist." At the same time, there is little excuse for officials to be unprepared to assert their legal rights.



# Will the Courts

### Brown v. OSHAA

On Nov. 19, 2005, Oklahoma high school quarterback Tucker Brown took a knee near the end of a late season game. After an opponent tried to jar the football loose from Brown, the quarterback kicked at his tackler and was ejected by officials for fighting. Under Oklahoma Secondary School Activities Association (OSSAA) rules, Brown's ejection meant a two-game suspension. The next game was a postseason tournament round. The quarterback's mother (and wife of the coach) responded by filing a lawsuit against the OSSAA to ask the court to let her son play.

Judges in the U.S. have a broad range of "equitable powers." Trial level judges who are assigned to decide lawsuits to overturn an official's decision are told that if the court does not act, a student-athlete and his school will

suffer "irreparable harm." That means that whatever harm would ensue from a 17-year-old child having to sit out the next game can be prevented only by the court intervening. In those cases, the young model citizen who was ejected often attributes the event to the referee's mistake or bias — or to an uncharacteristic departure from his usual sporting persona.

So it was in Oklahoma. Pottawatomie County Judge Paul Vassar heard testimony from Tucker's father and coach Billy Brown, as well as a former commissioner of the Oklahoma Intercollegiate Conference, who said he spent 35 years as an official and later as a supervisor. He was a native of Shawnee ("lived there all my life") who happened to be in the stands to take in the Shawnee-Tulsa Washington game.

Brown's attorney argued that the officials did not penalize a Tulsa player who took a swipe at a Shawnee player earlier in the game. Nor did the officials, according to the player's father, understand that Tucker instinctively reacted to being grabbed by the charging linebacker. Brown's attorney and the ex-commissioner pointed to film of the incident and the aftermath showing an infusion of Tulsa Washington coaches on the field, engaging in conversations with officials. That was in contrast to the fact that Shawnee coaches had retreated back to the sideline sooner. Billy Brown

the sideline. At the end of the trial, Judge Vasser noted the "impropriety" of Coach Brown being sent to his bench and the other coaches being allowed to engage the linesman in conversation. That was a mistake, said the court. For that mistake, Tucker's mother "won" her lawsuit as the judge ordered the OSSAA to permit the boy to play.

says he was made to go back to

As the OSSAA's attorney prepared an appeal, the state office postponed the semis and the finals pending new

proceedings. The games postponed, the stage was set for a higher court to decide the matter. Two weeks later, the Supreme Court of Oklahoma reversed Vassar's ruling, approving the OSSAA's suspension of Tucker Brown. The court decided that interfering with the ejection and suspension was an improper and unlawful interference in the internal affairs of the OSSAA, a private, voluntary association.

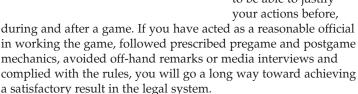
The Supreme Court recognized that Brown's act was properly penalized as a fight under the rules by a referee who made his call "in good faith," and "... positioned to see the play and who reacted immediately to the player's action." Relegated to a footnote in the Supreme Court's opinion was the observation that officials' decisions are final under OSSAA regulations. The Court stated that courts are not ... to act as "super referees" to overturn the referee's decision. Neither may the court — because a referee does not make a call — do so for the official. The court may not "call the game" or construe the official's failure to see every infraction as arbitrary.

While the Oklahoma Supreme Court made its decision without reference to decisions on similar cases in other states, the result was identical to that in other states. While exceptions exist, state high school associations' disqualification rules, and for that matter, all officials' judgment calls, are not susceptible to replay in court with judges becoming "super referee" to overturn an official's call based on a proceeding. The lessons to be culled from the Supreme Court's involvement in the game are vital: Avoid any situation in which there is a hint of the appearance of impropriety. It may not take much for a local judge anxious to be a "good guy" to save the day for a team by letting a disqualified player play in a "big game." At the end of the day, there were no improprieties, unfairness or instances of official misconduct in the game. But that may be beside the point. A word to the wise: When perception differs from reality, the result can be an unjust court decision.

The cases covered are not the last word on the liability of referees or umpires, nor do they represent the upper limits of officials asserting their legal rights in a court of law. The cases are a sampling of the considerations that judges use when confronted

with legal issues involving officials. When officials need to go on the offensive by asserting their legal rights, they should have competent counsel to help them evaluate the alternatives and choose a course of action.

Regardless of whether you are defending or prosecuting a legal proceeding as an official, you will want to be able to justify



Officials are the gatekeepers of safe and fair competition. Officials who are not up to date on their legal responsibilities and rights are at a disadvantage every time they officiate. The stakes are high. Don't pretend the legal system, the courts and the legislature don't affect your work as an official. It is a reality of officiating in the 21st century. May the courts be with you! Alan Goldberger is an attorney and official from Clifton, N.J., who wrote the book Sports Officiating: A Legal Guide. This is intended for informational purposes and is not legal advice.  $\square$ 



**Tucker Brown**