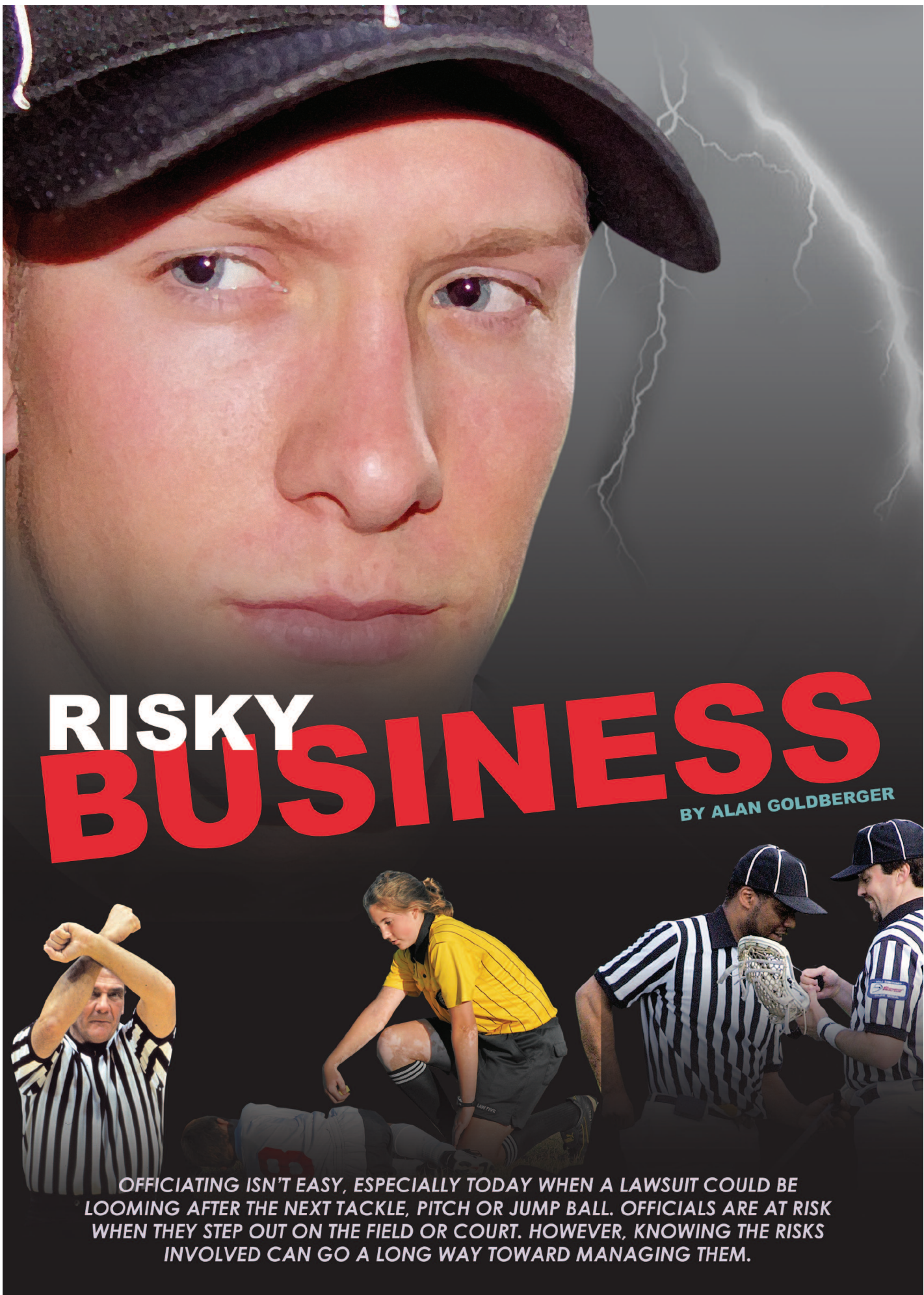




RISKY BUSINESS

BY ALAN GOLDBERGER

OFFICIATING ISN'T EASY, ESPECIALLY TODAY WHEN A LAWSUIT COULD BE LOOMING AFTER THE NEXT TACKLE, PITCH OR JUMP BALL. OFFICIALS ARE AT RISK WHEN THEY STEP OUT ON THE FIELD OR COURT. HOWEVER, KNOWING THE RISKS INVOLVED CAN GO A LONG WAY TOWARD MANAGING THEM.

President Abraham Lincoln was once asked to describe what it was like to be President of the United States during the Civil War. Lincoln's answer cited the story of a man who was tarred and feathered, then ridden out of town on a rail. When asked how he liked the experience, the man replied, "If it weren't for the honor of the thing, I'd rather have walked."

Sometimes it seems that making calls with the goal of giving both teams an equal chance to win, is the "honor of the thing" for all officials. To be sure, the specter of accountability that looms over every call or no-call that we make as officials goes with the territory.

Referees have been sued for many things: For calling fouls and for not calling fouls. For ejecting a fighting player from a game and for not ejecting a fighting player from a game. For starting a game in inclement weather and for not starting a game. For providing first aid and for not providing first aid. The list goes on and on. In short, officials have been sued for about anything they do or don't do in the course of a single game or match.

Officials, in the eyes of players, coaches and team followers, sometimes make decisions that affect the outcome of games or matches. As you know, officials often make a decision on the field or floor even when they make no call. Referees and umpires are, to be sure, decision-makers. Decision-makers are sometimes held accountable for their decisions when those decisions are perceived to be in error. That accountability sometimes takes the form of a lawsuit.

What Makes an Official Liable?

When an official takes the field or court, the law generally holds the referee or umpire to a standard: He or she must work the game as would a "reasonably prudent referee or umpire." In some states, legislatures have lowered the official's standard of care by making officials liable only for so-called "gross negligence," or "reckless disregard" of safety principles. Generally, though, to avoid legal liability an official's actions should reflect reasonable efforts to safeguard players and others from injury. That means officials need to be ready, willing and able to manage risk by enforcing the rules.

Successful officials avoid "liability hotspots" by demonstrating the following attributes:

1) Rules knowledge. A thorough understanding of the rules is required if players, coaches and onlookers are to be protected from bodily injury.

2) Mechanics. Competent officials manage risk by being in the right place and using approved techniques to enforce all rules dealing with safety-related issues.

3) Courage. Prudent officials do not permit anyone to prevent them from tending to the tasks at hand.

4) The appearance of impartiality. We all know officials are impartial. Officials don't care who wins the game or match. But do you exhibit the appearance of being impartial? Successful officials know the difference between perception and reality and act accordingly.

What are the areas of officiating that tend to put referees and umpires to the test? Experience tells us that certain aspects of officiating present legal liability landmines that need to be addressed. Consider the following seven hotspots of officials' liability. The areas were selected because they generally apply to all officials, and to some degree at all levels of play. They are listed not by "weight" but in the chronological order encountered by officials in the course of an assignment.

1. FACILITIES

"We've been playing here for six years and you're the first official who said anything. Give the kids a break."

"The county just spent \$2 million redoing this field. The team from West Nile just traveled 75 miles. And you won't let us play. Who are you kidding?"

"Those pylons have been used all season. No referee has ever said anything. You guys need to get together!"

"I've got 800 people in the stands. The cops are on overtime. We're gonna play this game. I'll take responsibility."

Who among us has not heard remarks such as those when trying to have a dangerous facilities condition corrected?

Officials are required by most rules codes to inspect the field, pitch or court. Unsafe conditions are found in some very unlikely places. From the architects to superintendents to business administrators to building principals to athletic directors to site managers, unsafe and nonconforming facilities continue to be hatched.

Whatever the reason, someone decided not to look at the applicable safety rules regarding materials, clearances, buffer zones and hazardous design defects. When the great equalizer referee arrives at the court or field, his or her blessing is all that is needed to start the action! Should a participant or onlooker be injured due to an unsafe facility, the chorus will sing out: "The referees thought it was OK or they wouldn't have started the game."

Whatever the reason for the existence of an unsafe facility, an official cannot always avoid that liability concern.

**Unsafe conditions
are found in some very
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REFEREE

Clearly, some facilities are unsafe by design and cannot be corrected in the few minutes before the game. Those conditions should be reported, in writing, to your commissioner or association. However, many other physical hazards can be neutralized by padding, buffering or simply removing or relocating the hazard. If the condition can be remedied before the game by physically removing the unsafe item from the playing surface, padding or buffering, you need to direct that the corrective action be taken before the game starts. If management refuses to make the adjustment, do not play the game. Simply stated, if protecting an area, such as a vault pit or drain plate, will make the area reasonably safe, it is no excuse that game management does not have any padding on site. If their response is to say they don't have any padding or can't find it and an injury occurs, they will blame you for starting the game in unsafe conditions. Do not fall into that trap.

2. EQUIPMENT

Like facilities, equipment issues require the official to have a detailed knowledge of the rulebook and a good sense of what equipment will unreasonably increase the risk of injury.

Although rules codes at different levels contain different restrictions as to what type of equipment, clothing and ornaments are "legal," meeting rulebook requirements for *legality* is not quite the same as *legal* in the sense that you will not lose a lawsuit.

Rulebook requirements for legal equipment are the best and only starting point for determining what type of equipment and accessories to allow participants to use. But for prudent officials, more is required. Questions need to flash up when there is any doubt as to player equipment, clothing or accouterments: Is the item, technically legal by rule, worn or affixed in such a way that it presents a danger to the wearer or another person? Is the item properly fitted? Is the item worn or affixed in the manner intended by the manufacturer? Does the item bear the certifying stamp (NOCSAE or other) required?

Administrators, coaches and supervisors are required to have appropriate equipment and uniforms on hand. If they do not, it is not your fault. Indeed, some rules codes, including NFHS rules, require the head coach to verify to the referee that his or her team will wear and use legal equipment during the game. If equipment and/or uniforms are illegal by rule, in disrepair or ill fitting, safety may be compromised. Officials are the last line of defense in those

situations. It is indefensible for an official to permit any athlete — on any level — to participate with unsafe equipment or accessories. Officials who disregard player safety in that respect will find that seriously injured players or spectators will be quick to point the finger of blame in the form of a lawsuit.

3. GAME CONTROL

As officials, when do we "let them play" and when do we take the game away from the players? The answer to that question eludes many referees and umpires, but it's at the heart of managing risk. Most times when a fight or serious injury occurs, some keen-witted observer is heard to say, "The officials let the game get out of control." That statement is, of course, usually preceded by a game in which the players decided they did not want to play but rather to commit unintelligent fouls, taunt opponents and look for alibis.

Under those circumstances, competent officiating always will take the game away from the players, as they say. The alternative, in terms of legal liability, is unacceptable. Indeed, some rules codes, including all NFHS rules, require the head coach to verify to the referee that his or her team will exhibit good sportsmanship throughout the game.

Liability can sometimes be measured by three simple equations: Bad officiating encourages anti-social behavior. Anti-social behavior equals injuries. Injuries equal lawsuits.

There are tools available to deter the type of behavior that can spell legal liability. The negative consequences that flow from a rule violation are a major deterrent to conduct, which leads to injuries. Officials must make every effort to prevent injuries — both intentional or otherwise — by penalizing uncivilized conduct and illegal contact infractions.

Officials must penalize immediately the cheap shot, the taunting and baiting, the finger in the face, the attempts to humiliate an opponent or the trash talk. The plain facts are that all of the above activities can lead to violence. Violence leads to injuries. Injuries lead to lawsuits.

We have all heard officials warn players: "The next time you do that it's a foul." Unfortunately, the next time may be the cause of an injury that spells liability, especially since you have already told the people involved that you saw it happen the first time or second, third or fourth and you didn't do anything about it.

As to fighting, an ounce of prevention is worth 100 pounds of cure. How do officials prevent the fight? The answer is simple: Prevent the fight with good mechanics. By the negative reinforcement of penalizing uncivilized actions,

officials prevent it by making sure that all players must be under observation by somebody at all times and reacting swiftly and firmly to unduly aggressive behavior exhibited by players.

Officials who are alert to sense ill-will brewing and let the opponents see that striped shirt in between them when something starts to happen. That includes, of course, not having everybody's back turned on the players ever — no matter what else is going on in the game or at the table or elsewhere.

4. INJURY MECHANICS

Without a doubt, the other side of game control is what to do in the event that you can't prevent an injury. In the event that a participant is injured, managing risk includes utilizing proper injury mechanics. The following steps must be taken:

- Determine if the player really is in need of assistance. If so, stop play and beckon the coach.
- Don't attempt to treat the player yourself.
- Don't discuss the cause of the injury with anyone.
- Do not request anyone to move the injured player so that you can get the game started again. It does not matter if the delay is one minute or four hours. Only the medical personnel, once you've called out the coach, can and should determine if the player can be moved and when.
- Keep opposing players on the field or court separated.
- Continue to supervise both teams, including bench areas.
- Remember that, in high school play, an unconscious or apparently unconscious player cannot return to play that day without written authorization from a physician.
- A player who is bleeding must be treated before resuming participation.

Don't attempt to treat the player yourself.



JIM WHITE

LESSONS FROM A LIGHTNING LAWSUIT

Bill Goss, who served as an SEC football official for 23 years, knows first-hand the risks of liability that can be involved in officiating. Although the incident he was involved in occurred more than 10 years ago, Goss hasn't forgotten how a lawsuit can happen when you don't expect it. Goss, who retired from officiating five years ago, was sued in a lightning case that made headlines in this magazine.

Goss was the referee for an October 1994 Mississippi-Alabama game played in Tuscaloosa, Ala. After suspending the game for a period of time due to threatening weather, Goss resumed the contest and Alabama went on to win, 37-0.

It wasn't until the next day when he read the newspaper that he learned camera crane operator William Browning had been hurt by a lightning strike, which allegedly happened after the resumption of the game. It reportedly sent a high-voltage charge through the equipment and into Browning's body, scorching him through his headphones.

"That surprised me," said Goss. "And then I just kind of forgot about the incident for the next two years."

In October 1996, Browning filed a lawsuit contending that Goss was negligent in failing to stop the game amid the inclement weather. The case against Goss went forward and his insurance company eventually settled out of court in February 1998 for \$26,000.

Goss learned several lessons from the lightning liability lawsuit he was involved in that all officials should know.

• **It Can Happen to You** — Goss said he used to be one of those officials who thought a lawsuit could never happen to him, but that changed abruptly. "It's a litigious society, and that's not going away anytime soon," said Goss. "It was an act of God in my case — lightning. But I was still sued and I had to defend myself. Anybody can sue anybody for anything."

• **You're on Your Own** — Don't count on the host school or conference to come to your rescue if a lawsuit arises, advised Goss. "Because referees are independent contractors the conference took care of itself and left me on my own to take care of myself," said Goss. "That really drives home the idea that officials have to take care of themselves and we're not going to get help from our employers."

• **Get Protection** — "The number one thing I would tell people is to buy insurance," said Goss. "Either be independently wealthy or have insurance." Goss had NASO liability insurance at the time of his incident, which he said was critical. "I wasn't in NASO for the insurance, but I was lucky I had it. It was excellent," he said.

• **You're Better Safe Than Sorry** — Goss stressed that officials should get the information they need and suspend a game if necessary. "Things have improved since I was officiating back then," said Goss. "You couldn't see the storm coming from where we were down on the field. Communication is better now. Make sure you communicate with game management, and don't be bashful about suspending the game."

• **Be Prepared to Defend Your Actions** — "I didn't take the lawsuit seriously at first," said Goss. "I thought it was a joke, but a lawyer soon told me that I had to defend myself." Goss said that no matter what type of lawsuit arises, it is important to know what your duties are by rule and be able to defend them. He had to defend his actions to a lawyer, the insurance company lawyers and during two depositions.



TED RICHARDSON/MCT

Prevent the fight with good mechanics.

AN OFFICIAL'S LIABILITY CHECKLIST

You can't prepare for everything, but the following list can help you avoid liability concerns.

Before the Game

- ✓ Perform all pregame responsibilities.
- ✓ Identify site manager or person in charge of venue.
- ✓ Avoid careless discussion of teams or personalities.
- ✓ Review weather and field conditions with partners.
- ✓ Be on the field or court when your jurisdiction begins.
- ✓ Maintain the appearance of impartiality.

Facilities

- ✓ Inspect the field/court and surroundings for hazards.
- ✓ Check padding and clearances.
- ✓ Instruct assistant officials.

Equipment

- ✓ Is the equipment illegal by rule, or just plain unsafe?
- ✓ Look for projecting hard substance.
- ✓ Don't allow jewelry if rules prohibit it.
- ✓ Check the fit and appropriateness of uniforms.
- ✓ Keep doctor's permission slips in your permanent file.

Game Control

- ✓ Always keep a set of eyes on athletes and benches.
- ✓ When an infraction occurs, penalize; don't "warn."
- ✓ Penalize taunting and baiting without hesitation.
- ✓ Penalize unsporting and other illegal contact by rule.
- ✓ Don't permit players to fight.
- ✓ Remain aware of trouble spots (pile-ups, sidelines, etc.).
- ✓ Don't threaten participants with impending suspension.
- ✓ Don't engage in discussion concerning prior actions of a player or coach involved in an ejection.
- ✓ Don't discuss the consequences of a disqualification.
- ✓ Don't render interpretations of a suspension/DQ rule.
- ✓ Don't police suspensions in subsequent games.
- ✓ Deal with disruptive spectators by deploying site manager/security. Don't address spectators directly.

Injury Mechanics

- ✓ Determine if player needs help.
- ✓ Don't render first aid or move a player. Let medical/team personnel attend to the player.
- ✓ Don't talk about the cause.
- ✓ Separate the teams, but maintain sight lines.
- ✓ Communicate with partner as to "unconscious" player (NFHS rules only).
- ✓ Follow blood/communicable disease indicator rules.

Postgame Mechanics

- ✓ Follow specific end-of-game procedures.
- ✓ Locate partners and leave together.
- ✓ Don't seek out coaches or engage in conversations.
- ✓ Don't stay on the court to make scorebook notations.
- ✓ Lock dressing room door.
- ✓ Don't give media interviews. Discuss the game only with assigner, association member or commissioner.
- ✓ Prepare game reports stating only facts.

General

- ✓ Consider the welfare of players your first responsibility.
- ✓ Enforce all safety rules, regardless of the level.
- ✓ Don't discuss skills or abilities of athletes and coaches.
- ✓ Have a plan for emergency situations.
- ✓ Understand game control: "Don't turn your back."

5. WEATHER OR NOT?

If your mother ever told you to come in out of the rain, she may not have been wrong. From an official's standpoint, once a game or match begins, the dangers created by inclement weather are almost totally under the officials' control. Why? Simply because most rulebooks leave any decision to suspend play due to weather or environmental conditions up to the officials — and no one else.

For that reason, officials may bear the primary legal responsibility for injuries to participants that are caused by weather conditions. Not only the obvious meteorological phenomena such as lightning, but the effect of torrential rain and the like on the condition of the field or equipment has been cited in lawsuits brought against officials.

If there is any doubt that weather will create an unreasonable risk of injury, err on the side of caution and suspend play. Don't wait to "get another half-inning in." Do it immediately. Be aware that severe weather events are for you as the official to recognize and deal with. Coaches and administrators will inevitably attempt to distance themselves from any responsibility for weather-related injuries in a lawsuit by claiming that the officials were in charge and they (the coaches/administrators) had no say in calling the game off. Therefore, any weather event that is more severe than the typical spring rain during softball and baseball seasons should alert you to the possibility that the athletes' safety may be jeopardized if you continue.

Unusually high winds blow things around. Torrential

Be aware that severe weather events are for you as the official to recognize and deal with.



rain can impact a playing surface beyond what athletes can or should be reasonably expected to endure. Lightning can strike too fast to avoid it any time its presence is detected by sight or sound. Any environmental condition that creates enhanced risk needs to be evaluated by officials before the injury occurs — not after.

6. SPECTATOR INTERACTION

Officiating manuals uniformly caution officials against talking to or reacting to the comments of spectators. That is good advice to avoid that liability concern. When an official engages in dialogue or debate with a spectator, the conversation can place the official at legal risk — as well as at risk for injury. What's more, to elevate a spectator to the status of your inquisitor is indefensible, legally speaking. Remember: There are no qualifications to attend a sporting event. Spectators who taunt officials are rewarded when the official makes them "important" by talking back. Good officials do not elevate the status of spectators.

If a spectator is disrupting your game, the correct and risk-wise mechanic is to direct the site manager (or head coach if there is no site manager or security personnel) to remove the spectator. No part of that mechanic involves the official addressing the spectator directly.

Some years ago, a high school basketball referee requested the removal of the father of one of the players. As luck would have it, the spectator-father happened to be a school board member and the referee happened to talk to the press after the game.

The referee was reported to have told a newspaper reporter that the parent of the player got his attention by exhibiting "lewd and aggressive" behavior "when his behavior crossed over the guidelines of sportsmanship."

When the father/spectator/school board member threatened to sue the referee, the official wrote a letter apologizing.

The state high school athletic association said that it didn't believe that the school board member's comments were lewd. Then it said that it thinks it's important that people understand that officials are not perfect and referees make mistakes, but it sincerely believed they were doing the best job they could on that specific evening. That's right, nary a word spoken by the state association about what the school board member/parent did, inciting a crowd with unsporting



behavior at his son's game. Instead of taking the school board member/parent to task for creating a dangerous situation by his remarks, the state association is apologizing for the official.

Similarly, offhand remarks or discussions about game officials' work when somebody gets hurt — or about game officials' work when a team member got hurt — can lead to legal consequences.

7. DISQUALIFICATION CHALLENGES

With the advent of the summary suspension rules in both high school and college rules and regulations, referees face legal challenges of a different sort. In those cases, physical injuries are not the focus of taking an official to task in court. Rather, the object of the plaintiff is to have a judge engage in "further review" for the purpose of reversing the official's call assessing a flagrant or disqualifying foul or infraction.

Since most DQ rules and regulations do not provide for any appeal of an official's decision to show the door to a violating player or coach; and since that decision involves in many cases an automatic suspension for the next game or two, legal complications sometimes develop after ejections.

The significance of such disqualifications increases when penalties are immediate (i.e. suspension for the next game or two, etc.). Cumulative disqualifications (i.e. successive or repeat violations during the same season) may increase the length of the suspension.

As penalties increase, so does the likelihood of litigation. Officials need to be extra vigilant to follow approved mechanics in DQ situations. Offhand remarks concerning the details of a suspension, threatening players or coaches with suspension and failing to utilize approved mechanics can make defending a disqualifying foul difficult.

Officials are paid for their judgment. They are bound to conduct the game as the rulemakers intend it to be played: fair play in a safe environment for those participating. The starting point in practical terms can be seen by reviewing the areas where officials have definite responsibilities, spelled out in black and white. Those areas represent the bare minimum in terms of an official's duty. At the end of the day, rules knowledge, mechanics and courage will go a long way toward avoiding liability — and make you a better official. *Alan Goldberger is an attorney and official from Clifton, N.J., who wrote the book Sports Officiating: A Legal Guide. This column is intended for informational purposes and is not legal advice.* □

Good officials do not elevate the status of spectators.