

Winning At All Costs

IS CHEATING IN SPORTS A REFLECTION OF SOCIETY?

by David Lefkowitz

Sports play a large role in our society. Billions of dollars are spent attending sporting events, advertising during broadcasts and paying the athletes. A successful team can bring a city together in celebration. We want our teams to win, and we want our favorite athletes to excel. Of course, athletes also want to win; sometimes they want it too badly. Sports can be a microcosm of society, and when it comes to the win-at-all-costs mentality, sports can mimic society.

There are some who think that using steroids is a form of cheating, yet is “part of the game” and should not be condemned. Personally, I think it would be entertaining if athletes were allowed to use every single performance-enhancer available. Let football players be gladiators; let their strength and speed be superhuman. If they want to take steroids, at the risk of their health, let them go for it. That’s fine by me, as long as everyone is allowed to do it, and we have a fair competition. But, as long as there are rules of competition and laws in society, then the rules should be followed. Most of all, as fans, we want the games to be fair, the outcome not to be predetermined and the competition to be vigorous. If one team or one player (or one referee) is cheating, then we aren’t watching sports; we’re watching a hoax.

Cheating in sports is nothing new; it’s human nature to seek an easier way to win. In today’s world, with

wealth, fame and so much more to gain by winning, why would anyone be surprised that people are creating fraudulent birth certificates, poking themselves with needles and bending seemingly any rule they can get away with in order to win? And, it’s not just humans being poked. In 2007, a horse trainer named Patrick Biancone was suspended after cobra venom, which is (illegally) used to block pain in horse’s joints, was found in his barn at Keeneland Race Track.

Assuming we want to get rid of cheating to enjoy an honest competition, how do we accomplish that goal? How do you tell a teenager, raised in poverty, not to inject himself with something that could lead to a scholarship, a large contract and a better life for his family? How do you tell him to be honorable when his mother is working three jobs to put food on the table? I don’t know the answers (I get to ask rhetorical questions in this column). I do know that if cheating in sports and in society is ignored (or noticed and then accepted), then it’s not going to stop. Athletes, investors, politicians and others are tempted to cheat when they believe the risks of getting caught are low, the rewards from cheating are high and the penalty, if caught, is modest. If any of those criteria were adjusted, the incidence of cheating might decline.

In my law practice, which deals primarily with lawyer misconduct, it is often dishonesty (cheating the client of the truth) that causes the problem.

A lawyer may make a mistake which causes his client some harm. Instead of admitting it however, some lawyers try to deny the mistake occurred or fabricate an elaborate lie to cover it up. A few years ago, a very nice 40-year old man named Tom was referred to me. He had suffered a disabling stroke after leaving an emergency room in Atlanta. While at the emergency room, he had complained of typical neurological symptoms (headache, slurred speech and numbness on one side of his body), but he had been discharged with the diagnosis of a headache. Sure enough, he had a major stroke within hours. Tom’s wife quit her job to take care of him, and his life was never the same.

Tom hired a lawyer from Alabama to represent him and, armed with the affidavit testimony of an expert neurologist, a lawsuit was filed against the emergency room doctor who negligently allowed Tom to leave the hospital. The case was a strong one, and the Alabama lawyer was the first to tell you so. However, the Alabama lawyer committed some significant procedural errors in filing the case, and eventually the judge dismissed the lawsuit. In so doing, the judge issued an order documenting the various errors, and towards the end, the judge wrote that the Alabama lawyer should have associated a local lawyer to guide him through Georgia’s procedural rules.

Once the case was dismissed, the lawyer wrote a letter to Tom. Prior to

receiving the letter, Tom and his wife had no idea that their lawsuit was in jeopardy. In the letter, the Alabama lawyer wrote that he would file an appeal, because the judge had made a mistake in dismissing the case. The lawyer concluded his letter by saying that even if the appeal were successful, he did not think the malpractice case had any merit because the expert witness (the neurologist) had changed his mind and decided that there was no malpractice after all.

Sure enough, the appeal was denied (because the judge had ruled correctly). Once the client was referred to me, I began reviewing documents. It seemed very fishy to me that an expert witness would change his mind about a case, so I gave the neurologist a call. He was very nice. He told me that he remembered Tom's situation very well and that he felt bad for him. I asked the neurologist if he had changed his opinion that Tom would not have suffered the stroke had he been properly treated at the emergency room. He said, "Of course not. This never should have happened to Tom."

When I contacted the Alabama lawyer, he claimed that he had not made any mistakes, and asserted that even if he had, Tom had not been damaged because the case was unwinnable. I asked the lawyer if his assertion was based upon the expert changing his mind, as he had claimed in the letter, and he said, "Yes." When I informed him that I had spoken to the expert, the lawyer immediately hung up.

The lawyer told Tom that the expert neurologist had changed his mind for one reason: to convince Tom and his wife that their case was weak

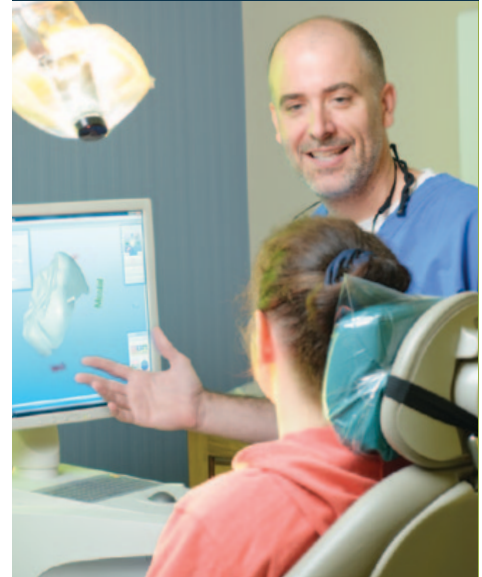
and that they had not been damaged by his legal errors. When I asserted the legal malpractice claim, one of the strongest aspects of the claim was the fact that the lawyer had lied. If he had been honest with Tom and explained that he made an unfortunate mistake, he may have been forgiven. *Even if* Tom had decided to pursue a claim against the lawyer, it would have been a smaller claim. Once the dishonesty came into play, and it became clear that the lawyer wanted to win at any cost, he had no legitimate defense.

I wonder if the lawyer cheats when he plays golf.



David Lefkowitz is the founder of The Lefkowitz Firm, LLC, which has offices in Atlanta and Athens. The Lefkowitz Firm, LLC, represents individuals and corporations in their claims for legal malpractice (legal negligence) and similar claims such as breach of fiduciary duty, trustee misconduct and executor misconduct. The firm also represents attorneys with regard to law firm management issues, including conflicts and bar discipline matters. Mr. Lefkowitz frequently is an invited speaker at continuing legal education seminars on the topics of legal malpractice, ethics and professionalism. For more information, visit the firm's website at: LefkowitzFirm.com.

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