

# SPORTS & LAW: A GAME OF RULES - IMPLICATIONS FOR LEGAL ETHICS

I had the great pleasure of “batting leadoff” with Judge Duane Benton and Erv Switzer at the Bench and Bar Conference. We took this unique opportunity to explore some of the similarities and differences between baseball and the practice of law, in the context of legal ethics.

## *Civility*

On one hand, the Rules of Professional Conduct are intended to prevent cheating and advance the following objectives in the legal profession: (1) fair competition; (2) transparency and (3) elimination of surprise. Model Rule 3.4 [cmt. 2] explains:

Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

On the other hand, Thomas Boswell, a long time sports columnist for the Washington Post once said “[c]heating is baseball’s oldest tradition. No other game is so rich in skullduggery, so suited to it or so proud of it.” Without getting into the accuracy of Boswell’s statement, it is important for lawyers to remember the words of Chief Justice Roberts: “[w]ithout the rule of law . . . rights are meaningless.” Unlike baseball players and managers, lawyers and judges must always respect the rule of law and those charged with enforcing it. Otherwise, our rights and justice system would cease to exist.

## *The Judge’s Role*

Judges and umpires serve similar functions. According to Chief Justice Roberts, “[j]udges are like umpires . . . They don’t make the rules. They apply them.” Although judges are tasked with applying the rule of law, Justice Kagan explained that judges “are not the most important people in our democratic system of government . . .”

During our presentation, we reminded the attendees that judges, like umpires, are human and sometimes make the wrong call. More importantly, we reminded everyone of Model Rule 8.2(a) regarding Judicial and Legal Officials, which states:

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to the falsity concerning the qualifications or integrity of a judge. . . .

To illustrate this principle, we showed a video clip of a former minor league manager’s epic meltdown following an umpire’s questionable call. While entertaining, this clip served as a prime example of what lawyers should not do in a courtroom. We emphasized the importance of lawyers staying in control of their emotions and respecting the judge’s role in our justice system. Unfortunately, lawyers do not enjoy the same freedom to express

their feelings that baseball managers do.

We closed the presentation with a video clip of James Earl Jones’ character, Terrance Mann, from the classic baseball movie *Field of Dreams*. In the clip, Jones eloquently describes the game of baseball, saying “this game is a part of our past. It reminds us of all that was good and could be good again.” Jones’ words apply with equal force to the legal profession and the practice of law. As lawyers, we should remember that we have the honor and privilege of shaping history and ensuring that our democratic system of government continues to function.



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*Ronnie L. White II presenting on stage with Hon. Duane Benton and Erv Switzer during Bench & Bar 2017*