



**Bruce W. Neckers**

# Cheating

Last summer I read with great interest the story of the Little League team from the Bronx, which, by the combination of their skill and lack of facilities and equipment, had captured the attention of those of us who are baseball fans. One day I watched as their pitcher, Danny Almonte, struck out nearly everyone he faced. They were a rags-to-riches team, and it was fun to cheer for them. Several days later we learned that Danny was 14 years old, two years older than Little League rules allow. In other words, he and the adults who supported him were guilty of cheating.

Recently, a former major league baseball most valuable player claimed that 50 percent of all players enhance their performances with steroids or other substances banned in other sports. Barry Bonds and Mark McGwire admit to taking performance enhancing substances, but fellow players, their union leaders, billionaire owners, and fans have been content to see home run records obliterated by persons commanding obscenely large salaries for superhuman performances. Cheating? Why do we condemn a 14-year-old for gaining an age-induced advantage, yet cheer for those who gain a proportionately greater advantage by taking substances banned in other sports? What example is set for the 14-year-old Little League player and others trying to make it to the big leagues?

---

The views expressed in the President's Page, as well as other expressions of opinions published in the *Journal* from time to time, do not necessarily state or reflect the official position of the State Bar of Michigan, nor does their publication constitute an endorsement of the views expressed. They are the opinions of the authors and are intended not to end discussion, but to stimulate thought about significant issues affecting the legal profession, the making of laws, and the adjudication of disputes.

---

As I write, it is again being claimed that figure skating at the Winter Olympics was dominated by more than just superior athletic performance. In addition to problems with the use of banned performance enhancing drugs, there have always been concerns about the objectivity of judges, particularly in the skating arena. During the Salt Lake Olympics it was suspected that a French judge had agreed to vote for skaters in advance of their performance. Now we now learn that our government believes that some of the contestants, in cooperation with a Russian crime syndicate, were responsible for the decision of the French judge and perhaps others. In other words, there was cheating at the Olympics.

Each day seems to bring new confessions and revelations from accounting firms and major corporations about "cooking the books" and shading or hiding the truth to enhance personal income, improve corporate earnings, or otherwise increase share value. Their greed has caused many common folks to delay retirement or tighten their belts after saving and investing for a lifetime. In other words, those accountants and corporate executives cheated.

In almost all of the things I have just mentioned, the establishment has seemed to support the cheaters. Didier Gailhaguet, one of those suspended for his role in the Salt Lake Olympics, was just re-elected head of the French skating federation. I watched the home run contest before the now-controversial All Star game and could not believe the size of the arms on the hitters. It was fairly obvious that the players' bodies and strength are unnaturally greater than they should be. And it should not have taken Enron, WorldCom, or Arthur Anderson to prove to corporate America that auditors with a strong financial interest in retaining consulting work for others in the firm were going to cause trouble down the road. Only Danny Almonte and his immigrant father were not protected by

peers once their infraction was known. Ever wonder why?

But what about the legal profession? Our oath of office—the one each of us recited on admission to the bar—proclaims:

*I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land.*

*I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.*

Our critics in the business world have persistently attacked us for frivolous lawsuits. Our defense is that we have rules for the dismissal of *truly* frivolous lawsuits and sanctions for those who bring them. But I wonder if the answer is a little disingenuous. How would the landscape change if we were to more scrupulously honor the letter and spirit of our oath to bring no suit or proceedings which appear to be unjust, no defense except that which is honestly debatable under the law? What changes would be made to complaints, answers to complaints, or answers to interrogatories? Would we be so quick to deny allegations, or neither admit nor deny them because we do not know the answer, if we seriously followed our oaths? What changes could we expect in affirmative defenses, motions, or defenses to motions for summary disposition? What would our bills look like?

What difference would it make in corporate boardrooms if their lawyers insisted upon total honesty? Often we blame actions taken on clients. We ignore the fact that on both sides of almost every major case or business transaction is a lawyer who advises the client and who has the responsibility to guide the client along a legal and ethical path. For those attorneys who represent public corporations, regulatory agencies are going to pay



special attention to their behavior. At the recent ABA meeting in Washington, Harvey Pitt, chair of the SEC, said that lawyers need to play an active roll in preventing fraud or risk—"the fate visited upon the accounting industry." He said, "Lawyers for public companies represent the company as a whole and its shareholder-owners, not the managers who hire and fire them." Since Mr. Pitt's comments comply totally with MRPC 1.13 there can be no question that lawyers represent the organization and not the officers and that they have a duty to report violations of the law.

We cannot lament dishonesty in Little League baseball and other sports, and condemn corporate executives and accountants for their second-rate ethics and the loss of their moral compass without taking a careful look at our own profession. Endemic cheating starts when one person after another chooses the cheap advantage, the easy way, often with seemingly reasonable justifications. As more and more people cut ethical corners, the norms of behavior erode exponentially.

Each of us is responsible for the state of honesty in our profession because the norms of ethical attorney behavior consist of our collective and individual ethical choices. We are in a competitive profession, but the behavior of each of us can affect us all.

We stand at the door between greed and responsibility for many clients. We have the

## *As I leave this president's page to others, I can only be humbled and grateful for the opportunity to participate with so many good people...*

opportunity to hold up for them the mirror that reflects clouded or dishonest reasoning. How willing are we to draw the boundary between right and wrong—to refuse personal gain in the name of truth and honor? Lofty? Sure. Pollyanna? I don't think so—particularly when we consider the potential ripple effect for those impacted by our advice and counsel and our clients' actions.

This is my last article. Writing has been a lot of work. What starts as a blank page ends as a part of a magazine with circulation of more than 35,000 individuals and organizations with a broad range of opinions. Writing a column in the midst of a bar president's never-ending responsibilities (which, while a great privilege, consume a significant number of hours) would not be possible without the assistance of others. I have been sincerely blessed with some wonderful editors. Nancy Brown, Naseem Stecker, and Valerie Robinson from the *Bar Journal* staff have kept me on task, on deadline, and in compliance with *Bar Journal* rules. Bruce Courtade has read much of my material and provided useful criticism; but I could not have done this por-

tion of my job without the assistance of former Grand Rapids Bar Association Executive Director, Deirdre Toeller-Novak, and the Bar's general counsel, Janet Welch. Deirdre has read and edited every article. She has been willing to push me to think more clearly and write more directly. Janet has always been available to counsel me about a paragraph or a sentence that was troubling me. In the end, the responsibility for the articles was always mine, but my friends, Deirdre and Janet, have made this job immeasurably easier and I thank them for it.

I also want to thank the readers who have written and sent e-mail following every column. No writer could ask for a more passionate and critical readership than that of the *Michigan Bar Journal*, and that is the best reward for all the work. I was particularly gratified by the support I received in response to the article on the Michigan Chamber's characterization of trial lawyers as "sharks" and the one in which I asked whether the high cost of a legal education was still worth the cost because I knew those were sensitive subjects. I was most appreciative of the many lawyers who wrote in response to the columns entitled "Do Well but Do Good" and "The Art of the Apology" because they are issues about which I have much passion.

As I leave this president's page to others, I can only be humbled and grateful for the opportunity to participate with so many good people who are attempting with all of their might to enhance the quality of practicing law in Michigan and to serve the public with integrity and skill. I am speaking of those who serve as officers, members of the board, employees, members of committees and sections, and other lawyers who participate at all levels—especially the members of my firm, Rhoades, McKee. I will miss my contact with many of them and with so many of you and enjoy the increased time with my law firm, my clients, and my family. Thanks for the opportunity. ◆

### Annual Meeting Program Update

**The following were inadvertently omitted from the 2002 list of 50-Year Honorees:**

Harry J. Knudsen, Muskegon  
Donald J. Veldman, Muskegon

**The following meeting times have changed:**

*Thursday, September 26*

Open Justice "Profiles in Courage" will be held from 2:00–5:00 p.m. in the Atrium Room, Atrium Level.

International Law Section Business Meeting and Election will be held at 2:00 p.m. and the program will follow at 2:30 p.m.

**The following meeting location has changed:**

*Thursday, September 26*

University of Michigan Law School Alumni Reception will be held at the Pinnacle Room (29th Floor) of the Amway Grand Plaza Hotel.

**Correction:** The section chairperson of the Antitrust, Franchising & Trade Regulation Section is Daniel R. Gravelyn.