

# 2023 BRANDT REPORT

## Unsportsmanlike Conduct

VOLUME IV



THE JEFFREY S. MOORAD

CENTER FOR THE STUDY OF SPORTS LAW

VILLANOVA UNIVERSITY SCHOOL OF LAW

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## A MESSAGE FROM ANDREW BRANDT

Welcome to the fourth annual Brandt Report, an annual publication addressing an important topic in Sports Law and Business, brought to you by the efforts of my industrious students at the Jeffrey S. Moorad Center for the Study of Sports Law at Villanova University Charles Widger School of Law. I am proud that the Brandt Report (Report) has become an annual white paper presentation to inform and educate a growing audience about these topics. The report is prepared to be a deep dive into an annual topic for a wide variety of readers and users: students, media, sports industry professionals at all levels and anyone interested in an expansive look into a sports law/business/policy topic that has experienced disruption in the prior year.

Previous Reports have focused on sports betting (2020), the covid effect on sports (2021) and the advent of Name/Image/Likeness in College Sports (2022). This year's Report, "Unsportsmanlike Conduct," focuses on the topic of disciplinary action in professional sports. With stories in the news weekly, if not daily, about improper behavior from players, teams, owners, etc., we feel it is important to highlight some of the most well-known cases and outcomes in this publication. This report can serve as a resource for what levels of discipline were meted out to those violating league rules for personal and professional conduct.

The Report is prepared and constructed under my leadership, but the research and analysis has been done by our students from the Moorad Center. I joined the Moorad Center in 2013 to create what I hope we have become: the standard for unique and differentiated education in sports law and business and to be thought leaders in sports law, business, media, policy and thought.

We hope you enjoy the fourth edition of the Brandt Report.

**Andrew Brandt**

*Executive Director*

*Jeffrey S. Moorad Center for the Study of Sports Law*

## OVERVIEW AND INTRODUCTION

The 2023 Brandt Report examines subjects and cases in a multitude of professional sports, with the throughline being that there was misbehavior (unsportsmanlike conduct) in some way. The Report sets up the issue, explains the case in question, and details the level of discipline meted out.

Although there are volumes of disciplinary topics that can be discussed, the Report focuses on three main ones: doping, violations of the integrity of the game, and sexual misconduct.

In each category, the issues, investigations, and punishments are explained. Our analysis centers on the range of disciplinary procedures, often dependent on the type of sport and the subject's specific role within the team or organization.

Ultimately, the Report shows there is no bright-line standard from which a league, team or other sports entity must adhere to when handing out discipline. Having said that, however, the comparative analysis that this Report offers gives readers an important look into strengths and weaknesses in the disciplinary processes, as well as areas for improvement. This is a topic that will continue to demand the attention of not only fans and media, but all stakeholders in sports.

## PART 1



## DOPING IN SPORTS

# PART 1 DOPING IN SPORTS

## Introduction

Throughout the 20th and 21st centuries, doping scandals plagued professional sports leagues and organizations around the world, casting doubt upon Olympic medals, home run records and record-breaking championships.

Around the turn of the century, two important regulatory bodies emerged to combat doping in sports: WADA and USADA.



**WADA:** The World Anti-Doping Agency was established in 1999 as an independent agency to lead a collaborative world-

wide movement for doping-free sport. It was created by the International Olympic Committee (IOC), the global organization that coordinates and operates the Olympics. According to its website, WADA's primary role is to develop, harmonize and coordinate anti-doping rules and policies across all sports and countries. This objective is largely accomplished through WADA's creation and regulation of the **World Anti-Doping Code**, the core document that provides the framework for all anti-doping rules and policies within sports organizations and among public authorities.




**USADA:** Launched in 2000, the United States Anti-Doping Agency is the national anti-doping organization for all United States Olympic, Paralympic, Pan American and Parapan athletes. Although independent of WADA, USADA is a signatory to WADA's World Anti-Doping Code (as are numerous anti-doping agencies worldwide) mandating these organizations to abide by the rules and policies set out in the Code. In effect, USADA is the mechanism through which WADA implements and enforces the Code.

In addition to WADA and USADA, the MLB, NFL, NBA, and NHL all have their own collectively-bargained drug policies that athletes must comply with in order to remain eligible to participate. Many of the league policies rely heavily on the standards and prohibited substance lists provided by WADA and USADA; these policies are jointly negotiated between the league and the respective league players' association.

## Players

### LANCE ARMSTRONG

#### Background

- Allegations of doping in the Tour de France (the Tour) have been made since the Tour's inception in 1903.
-  Union Cycliste Internationale (UCI) is the world governing body for cycling that operates the Tour each year. Before the creation of WADA in 1999 (followed by USADA in 2000), the UCI worked alongside government bodies to test for doping in its events.
- American cyclist Lance Armstrong competed in his first Tour in 1993.
- After winning the Tour in 1999, Armstrong tested positive for an illegal substance called corticosteroid triamcinolone. This classification of drugs stimulates the body's own production of cortisone.
- UCI did not discipline Armstrong because he was able to produce a doctor's note explaining that the substance was in a skin cream that he had used.
- Armstrong went on to win six more (seven total) Tour titles between 1999 and 2005.



Patrick Kovarik via Getty Images

#### Subject

- In 2012, several witnesses disclosed to USADA that they had personal experience with and knowledge of Armstrong's doping activities.
  - Witnesses allege to have observed Armstrong doping and/or heard admissions from Armstrong, himself, that he used EPO, blood transfusions, testosterone, and cortisone from 1998 through 2005. They have also disclosed that Armstrong admitted to using EPO, testosterone, and hGH until 1996.
  - Armstrong also encouraged others to participate in similar doping activities.
  - USADA produced scientific data that showed Armstrong's use of blood manipulation during his performance in the 2009 Tour.
- In June 2012, USADA notified Armstrong that they had sufficient and overwhelming evidence of anti-doping violations and USADA planned to charge him with such violations.
- USADA sanctioned Armstrong for the following anti-doping rule violations which are found within the World Anti-Doping Code, specifically the WADA Prohibited List:
  - (1) Use and/or attempted use of prohibited substances and/or methods including EPO (method of increasing the amount red blood cells,

and consequently an athlete's aerobic capacity), blood transfusions, testosterone, corticosteroids and masking agents.

- (2) Possession of prohibited substances and/or methods including EPO, blood transfusions and related equipment (such as needles, blood bags, storage containers and other transfusion equipment and blood parameters measuring devices), testosterone, corticosteroids and masking agents.
- (3) Trafficking of EPO, testosterone, and corticosteroids.
- (4) Administration and/or attempted administration to others of EPO, testosterone, and cortisone.
- (5) Assisting, encouraging, aiding, abetting, covering up and other complicity involving one or more anti-doping rule violations and/or attempted anti-doping rule violations.

- **Armstrong received a lifetime eligibility ban for his numerous violations and administration of doping substances to teammates. He was further disqualified from all competitive results earned at any time after August 1, 1998.**

- Per the Code, a lifetime of ineligibility prevents an athlete from participating in any activity or competition organized by any signatory to the Code.
- Additionally, per the Code, a disqualification of results includes the forfeiture of medals, titles, finishes, winnings, points and prizes.
- Armstrong chose to not contest USADA's disciplinary ruling for his doping violations. If Armstrong had chosen to contest the ruling, all the evidence would be presented in an open legal proceeding held in federal court in Austin, Texas.

When an athlete is sanctioned because they do not contest USADA's charges in arbitration, such sanctions cannot be reopened or subject to appeal.

- The only exception to this rule is when the athlete can show that they never received actual or constructive notice of the opportunity to contest the sanction, which is not what happened in Armstrong's case.

- Instead, Armstrong voluntarily decided to not have his case heard before neutral arbitrators, so his disciplinary order was final.



## FERNANDO TATIS JR.

### Background

- On December 13, 2007, results from an 18-month investigation into the allegations of steroid use in Major League Baseball (MLB) were released in the “Mitchell Report.”
  - The report specifically named 89 MLB players who have used steroids or performance-enhancing drugs (PEDs).
- In 2013, the Biogenesis scandal broke, implicating several MLB players who were accused of obtaining PEDs, specifically human growth hormone, from the now-defunct rejuvenation clinic Biogenesis of America in Miami, Florida.
  - MLB sued six people connected to Biogenesis, accusing them of damaging the sport by providing banned substances to its players.
  - 13 players received lengthy suspensions of 50+ games.
- On March 28, 2014, amid an increase in MLB doping, players and owners announce penalties for a failed drug test will increase to:
  - 80 games unpaid for a first-time violation (increased from 50 games),



Robert Byron via Dreamstime

- 162 games (season-long) unpaid for a second-time violation (increased from 100), and
- a third-time violation would result in a permanent suspension from baseball.

### Subject

On August 12, 2022, the MLB announced the suspension of San Diego Padres shortstop Fernando Tatis Jr. for 80 games after he tested positive for Clostebol.

Categorized as a “synthetic androgenic steroid with anabolic effects that is frequently used in sports to increase physical performance,” this substance is on both MLB and WADA’s prohibited substance list.

Tatis claimed he inadvertently took the steroid, in the form of a skin medication, to treat ringworm but declined the option to appeal his positive test.

In addition to the League’s Collective Bargaining Agreement, the MLB and MLB Players Association also agree to a Joint Drug Agreement. This Agreement governs all things related to drug testing, prohibited substances, the disciplinary process, and more.



Getty Images

Per the Joint Drug Agreement:

### E. Positive Test Results

**Any test conducted under the Program will be considered “positive” under the following circumstances:**

- Except as set forth in Section 3.G, 3.H or 8.B below, if any Prohibited Substance identified in the test results meets the levels set forth in the Collection Procedures and Testing Protocols of the Program. Notwithstanding the foregoing, the determination of whether a test is “positive” for a Drug of Abuse shall be made by the Treatment Board. The presence of a Drug of Abuse in the Player’s urine specimen shall be treated as a positive test result unless the Treatment Board determines that the Player was authorized to administer the Drug of Abuse through a valid, medically appropriate prescription provided by a duly licensed physician, as described in Section 3.H. 1 below.
- A Player refuses or, without good cause, fails to take a test pursuant to Section 3.A, 3.B, or 3.C, or otherwise engages in activity that prevents the collection of a specimen for testing as contemplated by the Program.
- A Player attempts to substitute, dilute, mask or adulterate a specimen or in any other manner alter a test.

- Testing positive falls under the umbrella of “strict liability.” It doesn’t matter how or why a player tests positive. All that matters is that the test came back as “positive”.

- Tatis will be eligible to return from his suspension on April 20, 2023.



Harry How via Getty Images

## DEANDRE HOPKINS

### Background

- Since October 2020, 31 players have been suspended after violating the league’s policy for performance enhancing drugs (PEDs).
- Of those 31, 20 players were issued 6-game suspensions, as a result of testing positive for anabolic agents, the most serious kind of drugs banned under the policy.
- In total, there have been 261 suspensions under the NFL PED Policy since 2001.
- NFL drug policy:
  - First failed test for stimulants or diuretics: 2-game suspension
  - First failed test for anabolic steroids: 6-game suspension
  - Second violation for stimulants or diuretics results: 5-game suspension
  - Second violation for anabolic steroids: 17-game suspension
  - Manipulation and/or substitution and use of a prohibited substance: 8-game suspension

**Subject**

- In May 2022, Arizona Cardinals wide receiver, DeAndre Hopkins, was suspended for 6 games without pay, in the 2022 NFL season, for violating the league’s PED Policy after testing positive for the banned substance Ostarine.
- Ostarine is listed on USADA’s website as a Selective Androgen Receptor Modulator (SARM) that is not approved for human use or consumption in the U.S. or any other country.
- Typically, SARMS are used to create anabolic activity, enhancing muscle growth.
- Although not a synonymous list, Ostarine is listed on the NFL’s Banned Substance List as an Anabolic Agent.

- Speaking publicly for the first time since his suspension, in June 2022, Hopkins stated that his test found 0.1% of Ostarine in his system. He suggested that his team was considering an appeal. No appeal was filed.
- In July 2022, Hopkins criticized the “black and white” nature of the NFL’s PED Policy.
- Like the MLB’s Joint Drug Agreement, the NFL’s PED Policy sets forth a standard of strict liability. The circumstances surrounding a positive test are irrelevant. In the eyes of the NFL, all that matters is that the test came back positive.
- Following his suspension, Hopkins returned to play in October 2022 for Week 7. He finished the season with the Cardinals with 717 passing yards and 3 touchdowns.



Paul Sakuma via Associated Press

**Programs**

**BALCO**

**Background**

- The Bay Area Laboratory Co-Operative (BALCO) provided steroids to professional athletes in Major League Baseball, the National Football League, Boxing and Track and Field.
- The founder of BALCO, Victor Conte, worked closely to develop relationships with coaches throughout the 1980s and 1990s. These relationships allowed him to customize and distribute his drugs to individual athletes, meeting their specific doping and training purposes.
- BALCO’s “designer steroids” were manufactured and produced by Conte in ways to specifically prevent them from appearing in positive tests administered by a drug agency like USADA or in a professional league’s drug testing program.
- One of the most successful coaches that Conte worked with was Trevor Graham, a former track and field Olympian himself, who trained a dozen American track stars.
  - His most prominent athletes were two-time Olympic gold medalist Maurice Greene and three-time Olympic gold medalist Marion Jones.
- There were two groups investigating BALCO before they consolidated their efforts in October 2003:
  1. 2002 — Federal agents in California were investigating BALCO, and
  2. 2003 —The US Anti-Doping Agency (USADA) was working on an anonymous tip about BALCO’s founder Victor Conte allegedly distributing “designer steroids”

**Subject**

- In October 2003, a grand jury investigation into BALCO and its coaches and athletes began. High profile athletes were subpoenaed to testify during this investigation.
- Victor Conte and another BALCO executive were subsequently indicted on charges of money laundering, fraud and possession with intent to distribute steroids.
- By 2005, Victor Conte pled guilty to steroid distribution and money laundering, sentenced to four months in prison and four months of house arrest.
- In 2007, Marion Jones pled guilty to lying to federal agents in 2003 about her steroid use prior to the 2000 Summer Olympics. She was sentenced to six months in prison and two years of probation. The IOC also stripped her of her three gold medals and two bronze medals.



Paul Sakuma via Associated Press

- In 2008, coach Trevor Graham was found guilty on one count of lying to federal investigators. He was sentenced to one year of house arrest.
- Other notable professional athletes that were caught in the BALCO scandal included: Jason Giambi (MLB), Barry Bonds (MLB), and Bill Romanowski (NFL). However, none of these athletes faced punishment from their respective leagues nor were found guilty of any crime.

In my 10-year NFL career, I have never tested positive for using performance enhancing drugs.

To learn that my November test came back with trace elements of a banned substance, I was confused and shocked.

I am very mindful of what I put in my body and have always taken a holistic approach, so I am working with my team to investigate how this could’ve happened. But even as careful as I have been, clearly I wasn’t careful enough.

For that, I apologize to Cardinals fans, my teammates, and the entire Cardinals organization. I never want to let my team down.

I fully intend to get to the bottom of this.

As soon as I have more information I will share it.

—DeAndre Hopkins



Cindy Ord via Getty Images



## SYSTEMIC DOPING IN RUSSIA

### Background

• There is a long history of systematic doping involving athletes from Russia. This is a result of the Soviet Union's system of state-sponsored PED usage and training programs.



• In February 2014, Russia hosted the Winter Olympics in Sochi. This marked the first Olympics hosted by Russia since the fall of the Soviet Union.

- Russia finished with the most medals overall (33), and the most gold medals (13).

• In December 2014, an investigative report from Germany claimed that “up to 99 percent” of Russian Olympic athletes were doping and that positive tests were being covered up.

### Subject

• In response to the report, WADA investigated and released a 323-page report in November 2015 that confirmed widespread use of PEDs and blood doping by Russian track and field athletes, which had been both encouraged and covered-up by coaches, doctors, and state officials.

- The report implicated:

- The Russian Ministry of Sport
- All-Russian Athletics Federation (ARAF)
- Russian Anti-Doping Agency (RUSADA)

Additionally, the report found that over 1,400 lab samples were intentionally destroyed by officials in a Moscow laboratory after WADA asked for their preservation.

• Following the report's release, WADA declared the Russian Anti-Doping Agency (RUSADA) to be **non-compliant** and shut down the national drug-testing laboratory. WADA also suspended Russia's track and field program from international competition, a ban which **remains in place today**.

• WADA's 2015 report and subsequent investigations exposed the procedures Russian officials used to cover-up positive tests and swap urine samples and implicated more than 1,000 Russian competitors across a variety of sports.

• As a result, the IOC banned Russia from competing in the 2018 Winter Olympics in Pyeongchang, disqualified 43 Russian athletes, and stripped 13 medals from Russia that were won in the 2014 Winter Olympics in Sochi, Russia.

- There have been various appeals in the Court of Arbitration of Sport since, with some medals being reinstated based on insufficient evidence.

• In February 2018, 168 Russian athletes were permitted to compete in Pyeongchang as “Olympic Athletes from Russia,” but not allowed to represent the Russian flag during the games.

- Two Russian athletes failed doping tests during the games.

• In September 2018, WADA controversially voted to reinstate RUSADA. In the announcement, WADA President stated:

- “The pressure on WADA to ensure that Russian sport is genuinely clean now and in the future is one that we feel very keenly and we will maintain the highest levels of scrutiny on RUSADA's operations and independence.”

• However, only a few months later in January 2019, WADA finds evidence of doping from a RUSADA lab in Moscow.

• In December 2019, WADA once again bans Russia for four years, including the 2020 Summer Olympics, 2022 Winter Olympics and 2022 FIFA World Cup for tampering with doping tests.

- The Court of Arbitration for Sport (CAS) reduced the four-year ban to two:

**It was unclear why the three-judge panel reduced Russia's punishment even as it largely agreed with WADA's arguments. The arbitrators stressed in their ruling that Russia should not claim the decision as a kind of vindication.**

• The reduced ban ended on December 16, 2022.

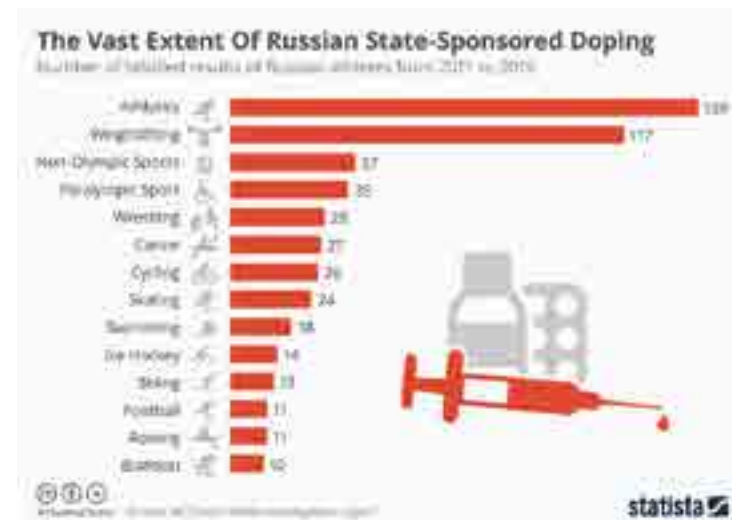
### Summary Analysis

Well-established leagues in the United States (MLB, NFL, NBA, NHL, etc.) all have collective bargaining agreements (CBA) which provide policies regarding doping and performance enhancing drugs (PEDs). The CBAs are jointly negotiated by the league and the respective league's players association. A players association gives players a collective voice, as representatives of the players association negotiate on behalf of all players within the league. DeAndre Hopkins (NFL) and Fernando Tatis Jr. (MLB) may not agree with their suspensions but as they are part of the union, they have agreed to the policies and procedures surrounding doping/PEDs as per the CBA.

CBAs contain specific language from the WADA Code, including a list of prohibited substances. However, in sports without CBAs, WADA and USADA provide most of the doping policies and procedures. In these instances, the Code provides a framework for the necessary disciplinary procedures and various dispute resolution processes.

Regardless of the mechanism for doping enforcement, sports commissioners and executives worldwide have made it clear that doping is expressly prohibited and if caught, severe punishments must be served. Whether it be through policies and procedures outlined in a CBA (much of which has language from WADA and USADA), or from standards outlined in the WADA Code itself, doping comes at a cost and a potential positive drug test risks not only a suspension, but a tarnished reputation, significant financial harm, and lifetime of criticism surrounding a dream-turned-reality that an athlete has worked and trained for their entire life.

Competitive balance and integrity are cherished mantras of every sports league and organization. Doping strikes at the heart of both. The above illustrates how sports administrators have prioritized eliminating the competitive advantage that doping provides.



# PART 2

# VIOLATING THE INTEGRITY OF THE GAME



## PART 2 VIOLATING THE INTEGRITY OF THE GAME

### Introduction

After the United States Supreme Court overturned the Professional and Amateur Sports Protection Act (PASPA) in *Murphy v. NCAA* in 2018, states were given the authority to implement sports betting legislation. Although not legal in all 50 states, sports betting and the revenue associated with it has been a subject of discussion in recent years. Numerous professional sports leagues and teams have partnered with sports betting companies such as Draft Kings and FanDuel. Nevertheless, athletes in all sports are prohibited from betting for the common reason that it “violates the integrity of the game.”



Additionally, tampering with outcomes of games has also been proven to violate the integrity of the game. Whether it be for purposes of receiving cash, gaining higher draft picks or winning a championship, there have been numerous instances of both players and organizations attempting to gain an unfair advantage. Unlike sports betting, tampering has always been frowned upon and the following cases are clear examples that this type of behavior will never be tolerated.

### Gambling

#### CALVIN RIDLEY

### Background

- Since 1963, the National Football League (NFL) has handed out only a few suspensions to players who have violated its gambling policy:
  - 1963—Alex Karras admitted to placing “at least a half-dozen \$50-\$100 bets” on NFL games. He was suspended for the entire 1963 season but returned in 1964. Karras was elected to the Pro Football Hall of Fame in 2020.
  - 1963—Paul Hornung, MVP of the 1961 season, was also suspended for the entire 1963 season after it was revealed he had bet “up to \$500” on NFL games. Like Karras, he was fully reinstated after his one-year suspension.



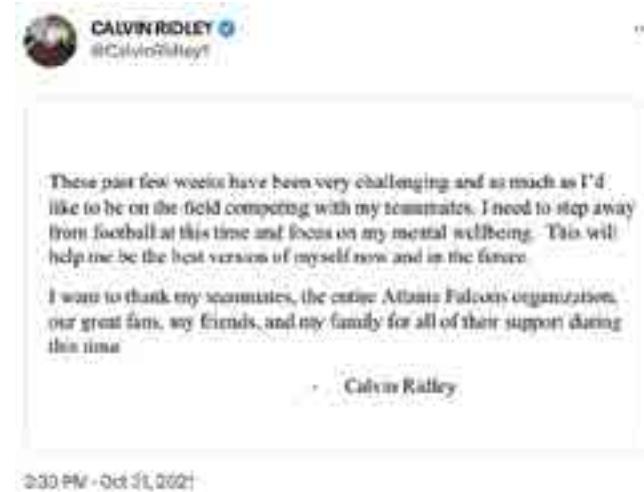


- 1983—Art Schlichter, the fourth overall pick in the 1982 NFL Draft, struggled with a gambling addiction. Between late 1982 and early 1983, he reportedly lost almost \$500,000 betting on basketball games and his bookies threatened to expose him to the NFL if he did not pay them. Schlichter instead went to the NFL directly, and he was suspended indefinitely. However, after seeking treatment, Schlichter’s suspension was reduced to 13 months. He was reinstated for the 1984 season.
- 2019—Josh Shaw was on the Arizona Cardinal’s injured reserve list when he went to Las Vegas to place an undisclosed amount on numerous sporting events, including bets on his current team. He revealed to the media that he misinterpreted the 2018 Supreme Court ruling which had removed the federal ban against sports betting. Commissioner Goodell suspended Shaw indefinitely through the end of the 2020 season. Shaw’s suspension was lifted on March 20, 2021, lasting a total of 21 games. However, he has not played in the NFL since.
- Wide receiver Calvin Ridley entered his fourth season in the NFL in 2021, following a breakout season in 2020 with the Atlanta Falcons.
- Ridley played in five of the first six games during the 2021 season before being announced as inactive before the team’s Week 8 matchup.



Gary A. Vasquez via USA Today Sports

- Ridley tweeted on October 31, 2021 that he is “stepping away from football and the Falcons to focus on his mental wellbeing”



**Subject**

- Reports surfaced that during his five-day break in November 2021, Ridley placed a bet on the Falcons, his own team, and had used his personal phone to wager on parlays.
- On March 7, 2022, the NFL announced Ridley was suspended **indefinitely** through at least the conclusion of the 2022 season for betting on NFL games during the 2021 season.
- Although sports betting is now legal in most states, the NFL still prohibits its athletes from betting on any professional, collegiate, international or Olympic sport.

**Restrictions on Legal Gambling**

NFL Personnel are restricted or prohibited from engaging in the following gambling-related activities, regardless of whether such activities are legal:

1. Betting on Football: All NFL Personnel are prohibited from placing, soliciting, or facilitating any bet, whether directly or indirectly through a third-party, on any NFL game, practice or other event. This includes betting on game outcome, statistics, score, performance of any individual participant, or any other kind of “proposition bet” on which wagering is offered.
2. Betting on Other Sports: All NFL Personnel other than Players are further prohibited from placing, soliciting, or facilitating bets on any other professional (e.g., NBA, MLB, NHL, PGA, USTA, MLS), college (e.g., NCAA basketball), international (e.g., World Baseball Classic, World Cup), or Olympic sports competition, tournament or event.

- In a letter to Ridley, NFL Commissioner Roger Goodell stated, “There is nothing more fundamental to the NFL’s success—and to the reputation of everyone associated with our league—than upholding the integrity of the game.”
- The NFL’s investigation found no evidence that coaches, staff, teammates, or other players had awareness or knowledge of Ridley’s gambling. The investigation further concluded that no game was compromised and there was no use of inside information.
- Following Ridley’s suspension, NFL players and the media reacted to the **one year to indefinite suspension**.



- February 15, 2023 was the first day that Ridley could file for his reinstatement to the NFL, and he did so immediately.
- On March 6, 2023, the NFL fully reinstated Ridley, one day before the anniversary of his initial suspension.



Michael Reaves via Getty Images



John Swart via Associated Press

**PETE ROSE**

**Background**

- Pete Rose had a 24-year (1963-1986) career in Major League Baseball (MLB) as a player, primarily for the Cincinnati Reds and Philadelphia Phillies.
- Rose was an all-time great hitter, and still holds the MLB records for career hits (4,256), at-bats (14,053), plate appearances (15,890) and games played (3,562).
- Rose was a 17 time All-Star, won three World Series, three batting titles, one MVP Award, two Gold Gloves, and the Rookie of the Year Award in 1963.
- In 1984, Rose began to serve as the Reds’ manager, while also being listed on the team’s roster. He remained the team’s manager after his official retirement in 1986 until the 1989 season.

**Subject**

- It was known in baseball circles that Rose had a gambling problem, but the belief was that he only gambled on football and horse racing.
- Allegations surfaced in 1989 that not only was Rose betting on baseball, but he was betting on his own team’s games.



- MLB Commissioner Bart Giamatti launched an inquiry and hired lawyer John Dowd to head the investigation. Dowd collected hours of testimony from numerous sources who confirmed that Rose had, indeed, bet on the Reds while acting as manager.
- Rose denied the accusations and refused to meet with Commissioner Giamatti. Instead, Rose filed a lawsuit in the local Ohio state trial court, alleging that Giamatti had prejudged his case and therefore could not provide him with a fair hearing.
- The case was removed to the Southern District of Ohio, which ruled in favor of the Commissioner. The court held that MLB's Major League Agreement determined that parties agree to submit themselves to the Commissioner's discipline powers.
- In August 1989, Rose voluntarily accepted a lifetime ban from baseball. MLB's punishment cited Rule 21 Misconduct, (d) Betting on Ball Games.

**2. Any player, umpire, or club or league official or employee, who shall bet any sum whatsoever upon any baseball game in connection with which the bettor has a duty to perform shall be declared permanently ineligible.**

- Since accepting the punishment, Rose has applied for reinstatement **five times**, but has been repeatedly denied by three different MLB Commissioners.
- Despite holding multiple records, Rose's ban prevents him from being inducted to the Baseball Hall of Fame.

## Tampering

### BLACK SOX SCANDAL

#### Background

- The 1919 World Series between the Chicago White Sox and the Cincinnati Reds is one of the most famous game-fixing and tampering scandals in sports history.
- Gamblers had long been greasing the palms of some of the underpaid players in Major League Baseball, exchanging money for insider tips.



Underwood & Underwood via Wikimedia Commons

- However, the proposition of rigging the World Series was likely an unprecedented decision.
- The White Sox were the heavy favorites leading up to the Series, but odds shifted as those with knowledge of the purported rigging of the games started betting heavily on the Reds.
- **Subject**
- Before the Series began, eight White Sox players agreed to throw the World Series in exchange for about \$100,000 payouts each, with the money coming in \$20,000 installments after each of the games they planned to throw.
- In Game 1, White Sox pitcher Eddie Cicotte hit a batter with one of his first pitches, supposedly signaling that the fix was on. He would make a series of uncharacteristic blunders from the mound and Chicago lost 9-1.
- In Game 2, another White Sox pitcher, Lefty Williams, gifted the Reds a 4-2 win after walking three batters in a row.



The San Diego Union-Tribune

- Players grew uneasy when the \$20,000 payments never arrived after the games. They attempted to call off the fix of the best-of-nine Series by winning Games 6 and 7 but were threatened by the gamblers. Chicago lost the Series in Game 8.
- In October 1920, the eight players, dubbed the "Black Sox," were each indicted on conspiracy charges.
  - All paper records relating to the players' grand jury confessions **vanished** under mysterious circumstances, now believed by some to have been stolen as part of a cover-up.
  - All eight Black Sox players were found not guilty.
- In response to the scandal and to remedy its image and trust with fans, Major League Baseball's owners created the first-ever Commissioner position, hiring United States federal judge Kenesaw Mountain Landis in 1920.
  - MLB owners gave Landis the power and freedom to do what was necessary to restore the "integrity of the game."
- The creation of the Commissioner position altered the future of American sports forever. Following in the MLB's footsteps, each professional sports league went on to create its own Commissioner position:
  - NFL—1942
  - NBA—1967
  - NHL—1993

### HOUSTON ASTROS SIGN STEALING

#### Background

- Beginning in the 2017 season, the Houston Astros set up a camera in center field that had a view of home plate and the opposing team's catcher.
- The live video, captured by this camera, was visible from a TV monitor near the Astros dugout. Astros players and staff would determine which pitch the opposing team's catcher was signaling, and relay that information to the hitter by banging a trash can (certain beats signaled certain pitches), giving the Astros a competitive advantage.
- The Astros used this method to steal signs and therefore affect the outcome of games throughout the 2017 regular season and playoffs. They went on to beat the Los Angeles Dodgers in the World Series.

In November 2019, The Athletic released a story disclosing how the Astros stole signs in 2017. Former Houston pitcher Mike Fiers, with the club from 2015-2017, was the source for the story.



Brett Croomer, Houston Chronicle





Michael Reaves via Getty Images

**Subject**

- In January 2020, Major League Baseball released the results of its investigation, confirming *The Athletic's* story.
  - MLB's Department of Investigations interviewed 68 people, including 23 Astros players, and collected more than 76,000 emails during the investigation.
  - The MLB's Constitution grants the Commissioner the power to investigate and subsequently issue punishments.
- (b) To investigate, either upon complaint or upon the Commissioner's own initiative, any act, transaction or practice charged, alleged or suspected to be not in the best interests of the national game of Baseball, with authority to summon persons and to order the production of documents, and, in case of refusal to appear or produce, to impose such penalties as are hereinafter provided.**
- (c) To determine, after investigation, what preventive, remedial or punitive action is appropriate in the premises, and to take such action either against Major League Clubs or individuals, as the case may be.**
- MLB imposed the following punishments against the team and its personnel:
  - The Astros were fined \$5 million.
  - The Astros forfeited their first and second-round picks in both the 2020 and 2021 MLB Drafts.

- Astros manager, A.J. Hinch, was suspended for one year. The Astros fired Hinch upon his suspension, but he was hired by the Detroit Tigers in 2020, despite not being eligible to coach until the 2021 season.
- Astros general manager Jeff Lunhow was suspended for one year. He was fired upon his suspension.
- Astros bench coach, Alex Cora, was suspended for one year. When the punishment was released, Cora was the manager of the Boston Red Sox. Boston fired him after the suspension was announced, although he was rehired by the club as manager for the 2021 season.
- **No players were suspended for their roles in the scandal. Usually, under the MLB CBA, players would be suspended. However, in this case suspensions were foregone** because MLB Commissioner Rob Manfred **gave players immunity from discipline in exchange for their cooperation during the investigation.**

**MIAMI DOLPHINS TANKING + TAMPERING**

**Background**

- In January 2022, after spending three years with the organization (2019-2021), the Miami Dolphins fired head coach Brian Flores.
- Dolphins' owner Stephen Ross stated that Flores was fired because the Dolphins organization lacked consistency, collaboration and general functionality during his tenure.
- In February 2022, Flores filed a lawsuit against the NFL, the Dolphins, Denver Broncos, and New York Giants alleging discrimination regarding his interview process with Denver and New York, and his firing from Miami.



Mark Brown via Getty Images



Mark Brown via Getty Images

- In addition to discriminatory interviewing tactics, Flores alleged that Ross and the Dolphins engaged in prohibited **tanking** and **tampering** practices during his tenure as head coach with the team.
  - **Tanking:** When a team or player intentionally loses game(s) to earn the benefits provided to the worst teams in the league at the end of the season. In the NFL, the worst team is awarded the first pick in next year's Draft.
    - Flores claimed Ross attempted to incentivize Flores with payments of \$100,000 per loss during the 2019 season.
  - **Tampering:** The NFL's Anti-Tampering Rule "refers to any interference by a member club with the employer-employee relationship of another club or any attempt by a club to impermissibly induce a person to seek employment with that club or with the NFL."
    - Flores claimed Ross pressured Flores into recruiting a "prominent quarterback" (presumed to be Tom Brady) at the end of the 2019 season prior to the expiration of that quarterback's contract with another team.

**Subject**

- After seeing the lawsuit and its claims, the NFL contracted an external investigation team to analyze Flores' allegations and the Dolphins organization.
- The investigation team was charged to resolve two issues:
  - "(1) whether the Dolphins violated League rules prohibiting tampering with a player and a coach under contract to other clubs; [and]
  - (2) whether, during the 2019 season, the Dolphins intentionally lost games to improve the club's draft position in the 2020 draft, and whether Dolphin's Chairman and Managing General Partner Mr. Stephen Ross offered Head Coach Brian Flores financial incentives or otherwise encourage him to lose games."
- In August 2022 after a six-month investigation, the NFL released a statement with its findings:
  - **Tanking:** The investigation determined the Dolphins had **not tanked**, but rather **competed to win every game**, including at the end of the season when winning two late games would have worsened the team's position in the 2020 Draft.
  - **Tampering:** The investigation found the Dolphins **violated** the NFL's Anti-Tampering Policy in three instances:
    1. The Dolphins had "impermissible communications" with Tom Brady in 2019-20 while he was still under contract with the New England Patriots. The conversations with Brady were conducted by Bruce Beal, a limited partner of the Dolphins. Beal kept Ross informed of his discussions with Brady.
    2. The Dolphins had "impermissible communications" with both Brady and his agent, Donald Yee, during and after the 2021 season when Brady was under contract with Tampa Bay. These conversations started in December 2021 and involved Brady becoming a limited partner in the Dolphins and serving as a football executive, as well as Brady playing for the Dolphins. Ross and Beal were "active participants in these discussions."



3. In January 2022, the Dolphins had “impermissible communications” with Donald Yee, in his capacity as agent for then-New Orleans Saints head coach Sean Payton. These conversations were about contracting Payton to serve as the Dolphins head coach. Payton was not yet a free agent and Miami did not seek permission from the Saints to have these preliminary talks.

- The NFL imposed the following punishments:
  - The NFL revoked the Dolphins’ first-round pick in the 2023 Draft and third-round pick in the 2024 Draft.
  - Owner Stephen Ross was suspended from August 2022 through October 17, 2022. During his suspension, he was barred from entering the Dolphins’ facilities and could not represent the team at any team or league event. He was also prohibited from attending any league meetings until the Annual Meeting in 2023. He was also fined \$1.5 million.

### Summary Analysis

Regardless of the form in which it appears, violating the integrity of the game has proven to be something that sports leagues penalize. And rightfully so. NFL Commissioner Roger Goodell said it best: “The integrity of the game is the most important thing. [It] is something we will always protect. The rules apply to everybody.”

As with any rule, leagues must be strict when it comes to enforcement. However, with the integrity of the game, it is particularly imperative that leagues keep a strict oversight. Given the popularity of sports, players (and organizations) are often seen as role models for fans. Failing to uphold the integrity of the game not only risks the reputation of an athlete or organization but could also have a devastating impact on the sport in general. Sponsors, media and fans are not going to invest their time and money on a product they cannot trust. Without an emphasis on fairness and honesty, the future of a sport’s integrity is at risk.



Allen Eyestone via USA Today Network

## PART 3



## SEXUAL MISCONDUCT, HARASSMENT AND ASSAULT

## PART 3 SEXUAL MISCONDUCT, HARASSMENT AND ASSAULT

### Introduction

**Trigger Warning:** *This next portion of the Report discusses sexual assault and abuse allegations that some may find disturbing. If you or someone you know has been a victim of sexual assault, call RAINN, the National Sexual Assault Hotline, at 800-656-HOPE (4673), available 24 hours a day, 7 days a week. You can also visit their website for more information at [www.rainn.org/resources](http://www.rainn.org/resources). The hotline provides confidential support to anyone who has experienced sexual abuse or domestic violence. Support is also available via live chat.*

Even though sexual misconduct or assault involves serious allegations by nature, there is no standard form in which sports leagues and/or teams operate to discipline players, coaches, or owners. In the NFL, NBA, MLB and NHL, discipline policies are negotiated into the league's current Collective Bargaining Agreement (CBA). Further, Commissioners are granted the power to investigate and discipline coaches and owners in the league's Constitution and Bylaws.

Since 2021, each of the Big Four leagues (NFL, NBA, MLB, NHL) investigated at least one allegation of sexual misconduct resulting from a player, coach, or owner's actions. Some of these investigations overlapped with ongoing criminal or civil proceedings. One investigation was brought before Congress, with the House Oversight Committee making a ruling on the matter. With allegations and investigations about sexual misconduct dominating headlines, leagues and commissioners are under scrutiny, requiring an examination of the policies and procedures currently in place.



Rob Tringali via Getty Images

### Players

#### TREVOR BAUER

##### Background

- Major League Baseball (MLB) and the Major League Baseball Players Association (MLBPA) created the league's domestic violence policy (the Policy) in 2015. Since then, 15 MLB players have been disciplined for violating the Policy.
  - The Policy permits the Commissioner to place any player suspected of domestic violence, sexual assault, or child abuse on administrative leave for up to **seven days** while conducting an investigation.
  - Following the investigation, the Commissioner can choose to suspend or reinstate the player or can defer judgment if criminal proceedings need to conclude.
  - The Policy has no minimum or maximum punishments.
    - MLB handed down its longest punishment in March 2021, suspending pitcher Sam Dyson for 162 games (an entire season).
  - None of the players previously disciplined under the Policy ever challenged the penalty before an arbitrator.

- MLB pitcher Trevor Bauer signed a three-year, \$102 million contract with the Los Angeles Dodgers in February 2021.
  - Concerns arose about Bauer's social media use after two women accused him of harassing them online. The Dodgers were aware of the issues but choose to overlook because of his pitching talent.

##### Subject

- On June 30, 2021, the Pasadena Police Department told news outlets that the pitcher was under investigation for allegedly assaulting a woman in San Diego that May.
  - The woman was granted a temporary domestic violence restraining order on June 28, 2021.
- On July 2, 2021, MLB imposed Bauer to take an administrative leave as they investigated the sexual assault allegations.
- On September 10, 2021, MLB and the MLBPA extended Bauer's leave through the remainder of the 2021 season.
- Due to the MLB lockout, the League's investigation into Bauer was paused, and he began the 2022 season on continued administrative leave.
- On April 29, 2022, Commissioner Rob Manfred gave Bauer an unprecedented two-season (324 games) suspension without pay for violating the MLB's Joint Domestic Violence, Sexual Assault and Child Abuse Policy.
  - This is the longest non-lifetime suspension of any MLB player.



Charles Rex Arbogast via AP Photo



Meg Oliphant via Getty Images

- Bauer appealed MLB's suspension.
  - A three-person panel started hearing the case on May 23, 2022. Deputy Commissioner Dan Halem and Union Assistant General Counsel Bob Lenaghan sat on the panel.
- Independent arbitrator Martin Scheinman upheld a 194-game suspension over Manfred's intended 324-game suspension and reinstated Bauer immediately by assigning 50 games to cover the time while Bauer was placed on administrative leave and while the MLB investigated the claims during the 2021 season.
  - Scheinman ultimately affirmed that Bauer violated the Policy.
- On January 23, 2023, instead of restoring him to the active roster, the Dodgers released Bauer.
- Due to the allegations, Bauer will lose over \$34 million in salary for the 144 games of the 2022 season and for the first 50 games the 2023 season.





Ron Schwane via AP Photo

## DESHAUN WATSON

### Background

- The National Football League (NFL)'s Personal Conduct Policy (the Policy) was introduced in April 2007, shortly after Roger Goodell took over as NFL Commissioner.
  - "Engaging in violent and/or criminal activity is unacceptable and constitutes **conduct detrimental** to the integrity of and public confidence in the National Football League."
- This Policy is designed to "help control on and off-field behavior by its players and preserve the league's public image." It also outlines investigative processes and discipline standards.
  - The Policy was heavily criticized in 2014 following the Ray Rice punishment. Rice, a running back for the Baltimore Ravens, received just a two-game suspension following his arrest for domestic violence. Rice was caught on camera in an Atlantic City hotel elevator and lobby punching and dragging his then-fiancée.
  - NFL Commissioner, Roger Goodell, admitted to owners in August 2014 that he "didn't get it right" regarding Rice's suspension, which led to the creation of the NFL's Domestic Violence Policy, which includes the following penalties:
    - First offense: Six-game suspension
    - Second offense: Banishment from the NFL
- The NFL continues to update the Policy, most

recently incorporating a Disciplinary Officer position in its 2020 Collective Bargaining Agreement (CBA):

- The 2020 CBA introduced a Disciplinary Officer for investigations, who makes the initial threshold decision for player discipline. The Disciplinary Officer is mutually agreed upon between the NFL and the NFL Players Association (NFLPA).

**(v) The Disciplinary Officer's disciplinary determination will be final and binding subject only to the right of either party to appeal to the Commissioner. The appeal shall be in writing within three business days of the Disciplinary Officer's decision, and any response to the appeal shall be filed in writing within two business days thereafter. The appeal shall be limited to arguments why, based on the evidentiary record below, the amount of discipline, if any, should be modified. The Commissioner or his designee will issue a written decision that will constitute full, final and complete disposition of the dispute and will be binding upon the players, Club (s) and the parties to this Agreement.**

- Either party can appeal the decision of the Disciplinary Officer, leaving the Commissioner with the broad power to review, revise, or reverse the Officer's decision.
  - However, the Commissioner **cannot** alter the decision if the Disciplinary Officer decides that there should not be **any discipline**.

### Subject

- In January 2021, reports emerged that Houston Texans quarterback, Deshaun Watson, was asking for a trade. Watson had spent four seasons with the team after being drafted with the 12th overall pick in 2017.
- In March 2021, the first civil suit was filed against Watson alleging misconduct against women. By the end of the month, 20 additional civil suits had been filed against Watson.
- The NFL opened its investigation against Watson on March 16, 2021, stating that "the matter is under review of [the League's] personal conduct policy."
- Even with the investigation ongoing, Watson reported

to Texans training camp in July 2021.

- With no decision from the NFL, Watson remained on the Texans' 53-man roster for the 2021 season. However, Watson was ruled out for every game of the season for "non-injury reasons/personal matter."
- Still with no determined discipline from the NFL, Watson waived his no-trade clause with Texans, in the spring of 2022, and was traded to the Cleveland Browns, where he signed a 5-year, \$230 million fully guaranteed contract, the most guaranteed money contract in NFL history.
  - The contract was structured so that Watson's salary was \$1 million for the 2022 season. Therefore, pending the results of the NFL's investigation, if Watson were suspended, he would only lose about \$55,000 per game.
- On June 21, 2022, Watson settled 20 of the 24 lawsuits against him.
- One week later, on June 28, 2022, the three-day disciplinary hearing began in front of U.S. District Court Judge Sue L. Robinson, the Disciplinary Officer appointed by the NFL and NFLPA.
- On August 1, 2022, Judge Robinson ruled that Watson should be suspended for **six games** in the 2022 season. The ruling also included mandates regarding Watson's behavior and that he may only receive massage therapy from the Browns' team therapists.
- Two days later, the NFL appealed her decision, seeking a longer suspension and a monetary fine.
  - Commissioner Goodell appointed former New Jersey Attorney General Peter C. Harvey as the hearing officer. Harvey had previously consulted with the NFL regarding the discipline of Dallas running back Ezekiel Elliot in 2017.
- On August 12, 2022, Watson dressed for Cleveland in



Nick Cammett via Getty Images

a preseason game. This marked the first time he had played in the NFL since the 2020 season.

- On August 18, 2022, the NFL and NFLPA finalized a settlement agreement with Watson: **an 11-game suspension and \$5 million fine**. Watson was also mandated to "undergo a professional evaluation by behavioral experts and will follow their treatment program."
- Watson served his 11-game suspension and played his first regular season game as a Brown on December 4, 2022.
  - Ironically, his first game back was **in Houston against the Texans**. The Browns defeated the Texans 27-14. Watson threw for 131 yards, had one interception, and no touchdowns.



Teams

NATIONAL WOMEN'S SOCCER LEAGUE

Background

- The National Women's Soccer League (NWSL) is the highest level of professional women's soccer and one of the most popular women's soccer leagues in the world.
  - 12-team league started in 2012
  - NWSL Players Association didn't start until 2017
- In October of 2021, two investigations were launched amid a report put out by *The Athletic* about misconduct by NWSL coaches and general managers.
  - The report detailed allegations from 2015 about sexual misconduct and coercion made against three former coaches;
    - Paul Riley—Former Portland Thorns Head Coach
    - Rory Dames—Former Chicago Red Stars Head Coach
    - Christy Holly—Former Racing Louisville Head Coach

Until January 31, 2022, there were **no policies or procedures protecting the players**. On January 31, the NWSL and NWSL Players Association ratified the first ever Collective Bargaining Agreement in the history of women's soccer.

Subject

- The United States Soccer Federation released findings from an independent investigation in the "Yates Report" on October 3, 2022.
  - The Federation hired US Deputy Attorney Sally Yates and her law firm King & Spalding to conduct the investigation.
  - Major findings included;
    - "Our investigation has revealed a league in which abuse and misconduct—verbal and emotional abuse and sexual misconduct—had become systemic, spanning multiple teams, coaches, and victims."



- "Teams, the League, and the Federation not only repeatedly failed to respond appropriately when confronted with player reports and evidence of abuse, they also failed to institute basic measures to prevent and address it, even as some leaders privately acknowledged the need for workplace protections."
- Paul Riley—Interviews confirmed that Riley verbally abused and disparaged numerous players, sent inappropriate photos to players, provided alcohol to players, and sexually harassed players.
- Rory Dames—The Chicago Red Stars failed to background check and did not undertake any due diligence prior to his hire, relying instead on the reputation of his youth club, the Eclipse Select Soccer Club.
  - > At Eclipse, he "spoke to players about foreplay, oral sex, and their sex lives."
  - > While at the Red Stars, player surveys from numerous years described Dames as "abusive" and "unprofessional."
- Christy Holly
  - > Holly was "paranoid, ultra-aggressive, short-tempered, nasty, mean, patronizing, humiliating" while at Sky Blue FC.
  - > While at Racing Louisville, Holly sent inappropriate photos to a player, showed her pornography, and masturbated in front of her. Additionally, while watching game film with a player, Holly pushed his hands down the player's pants and up her shirt.
- The NWSL and NWSLPA released findings of a separate investigation on December 13, 2022.
  - Jointly hired Covington & Burling (representing the League's interests) and Weil, Gotshal & Mages (representing the Players Association's interests).



Nick Potts via AP Photo

- NWSL Commissioner Jessica Berman outlined the approach to the investigation during the 2022 NWSL Championship: "First, seeking the truth. Second, corrective action, and third, systemic reform."
- Major findings mirrored that of the Yates Report released by the US Soccer Federation.
  - "There is substantial work to be done. To that point, during this investigation, the Joint Investigative Team received reports of ongoing misconduct at more than half the League's clubs."
- Provided six recommendations:
  - Strengthening anti-harassment policies.
  - Developing and enforcing guidelines that address appropriate interactions between club staff and players.
  - Developing and implementing training that reflects and addresses player and staff experiences.
  - Coordinating with clubs and U.S. Soccer to improve and centralize hiring practices.
  - Enhanced reporting and investigation procedures.
  - Prioritizing DEI initiatives to create a more inclusive environment for all players and staff.
- "This report clearly reflects how our league systemically failed to protect our players"—NWSL Commissioner Jessica Berman.

CHICAGO BLACKHAWKS/ KYLE BEACH

Background

- While the National Hockey League (NHL)'s Collective Bargaining Agreement (CBA) provides the guidelines for how Commissioner Gary Bettman can **discipline** players for on and off ice conduct, the NHL Constitution outlines the ways in which Bettman can use his powers to discipline **owners** and **teams** for such misconduct.
  - However, the NHL is secretive about its Constitution, keeping it hidden from the public. The most recent excerpts became available in 2009 when the then-Phoenix Coyotes provided the Constitution as an Exhibit in bankruptcy court when the franchise filed for Chapter 11 bankruptcy.

Though it is reasonable to assume that the Constitution has changed somewhat since 2009, the Commissioner's power under Article VI likely remains relatively unchanged:

The Commissioner is granted "full and exclusive jurisdiction and authority to arbitrate and resolve:

**(5) any dispute involving a Member Club or Clubs, or any players or employees of the League or any Member Club or Clubs, or any combination thereof, that in the opinion of the Commissioner is detrimental to the best interests of the League or professional hockey or involves or affects League policy.**



- Once the Commissioner determines that any person connected with the League or a Member Club “has either violated the Constitution, the By-Laws, or any other governing rule or regulation of the League, or has been guilty of conduct (whether during or outside the playing season) detrimental to the League or the game of hockey, he should have full and complete authority to discipline such person in any or all of the following respects:”

**(a) by expelling or suspending the person for a definite or indefinite period;**

**(b) by cancelling any contract or agreement that the person has with the League or with any Member Club;**

**(c) by imposing a fine on the person not exceeding One Million dollars (\$1,000,000) or such greater amount as may be prescribed by any League rule or By Law; or**

**(d) if the conduct in question affects the competitive aspects of the game, by awarding or transferring players and/or draft choices and/or depriving the offending Member Club of draft choices.**

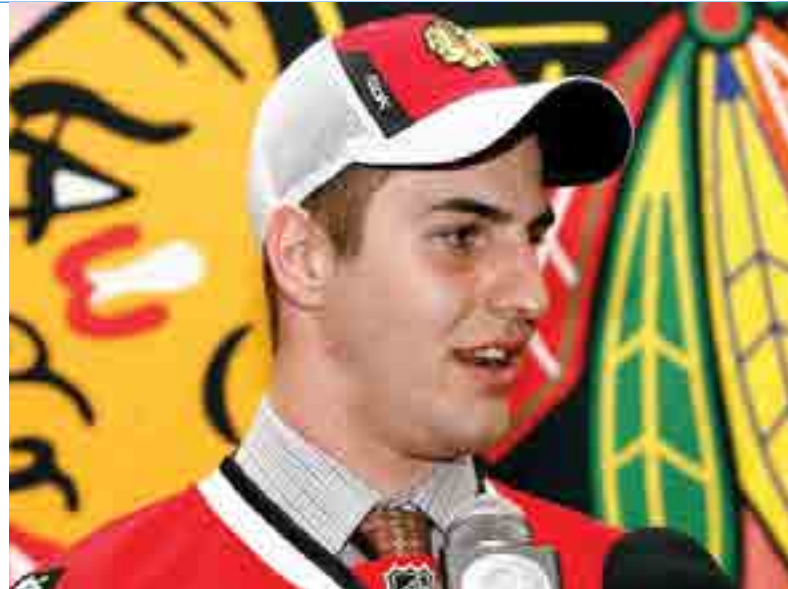
- Prior to 2021, the NHL and Commissioner Gary Bettman had never used their powers granted to them under the Constitution to investigate a Member Club for a matter relating to covering up a sexual assault allegation.

#### **Subject Assault**

In 2008, the Chicago Blackhawks drafted winger Kyle Beach as the team’s #11 overall pick. In the team’s 2010 playoff run, Beach was called up from the minors to the Blackhawks roster to serve as an extra player if necessary.

- Also in 2008, video coach Bradley Aldrich was hired by the Blackhawks. He was 25 years old. He had worked previously in video positions in the NHL and the NCAA.

- On May 9 or 10, 2010, Beach was sexually assaulted by Aldrich at Beach’s apartment. Aldrich allegedly threatened Beach’s professional hockey career if he didn’t comply with his requests or if he told anyone about what happened.



Richard Wilowicz via Getty Images

- On May 23, 2010, Beach **reported the assault** to the Blackhawks’ coaching staff and team officials in an upper-management meeting.
  - The meeting was on the same day that Chicago advanced to the Stanley Cup Finals. No action was taken by the coaching staff or management, seeking to “**avoid bad publicity**” during the playoffs.
- Sometime in late May/early June, Beach reported the assault to the NHL Players Association. No action was taken by the NHLPA at that time either.
- On June 9, 2010, Chicago defeated the Philadelphia Flyers to win the Stanley Cup. Aldrich remained an active member of the coaching staff and was allowed to participate in the championship parade and celebration.
- On June 10, the first full day back in the office after the team won the Stanley Cup, Aldrich met with HR and was told he can either take a leave of absence while the team investigates, or that he could sign a separation agreement and leave the organization. Aldrich opted to sign the agreement and leave the organization.
  - With the Blackhawks providing no recommendations for future hiring, Aldrich went on to work as Director of Hockey Operations at Miami University (Ohio) but resigned after two sexual assault allegations were made in November 2012.

- He returned to his hometown in Michigan and volunteered for his former high school hockey team. He was arrested months after his return and pleaded guilty to fourth-degree criminal sexual assault.

- In 2014, he was sentenced to nine months in jail and five years of probation.

#### **Lawsuit**

- 11 years later, on May 7, 2021, Beach, under a John Doe alias, filed a lawsuit against the Chicago Blackhawks alleging that the organization deliberately hid claims of sexual assault. Beach sought \$150,000 in damages.
- The Blackhawks hire Jenner & Block, LLP in June 2021 to conduct an independent investigation.

On October 26, 2021, the Jenner & Block report is released, exposing the details of the John Doe’s sexual assault and his subsequent report to management that was handled improperly. On that day:

- Blackhawks General Manager Stan Bowman resigned. Bowman had been general manager since 2009. He also stepped down as General Manager for Team USA’s 2022 Olympic men’s ice hockey team.
- Exercising his commissioner powers, Gary Bettman and the NHL fined the Blackhawks **\$2 million** for “inadequate internal procedures and untimely response in the handling of matters relating to former video coach Brad Aldrich.”
- On October 27, Kyle Beach revealed that he was John Doe.

- In November 2021, the NHLPA retained law firm Cozen O’Connor to investigate its response to Beach’s report of sexual abuse. The report is released in April 2022

The Cozen report determined that, “In sum, after a thorough examination of the contemporaneous record, the policies and practices in place at the union at the time, and the recollections of each of the parties to the contacts with the NHLPA or the SABH program, we cannot identify any individual wrongdoing or institutional failures of policy or procedure by either Fehr, NHLPA personnel, or the SABH program concerning the handling of Beach’s reports. Beach’s warnings about Aldrich were not addressed on account of miscommunication and misunderstanding, rather than any individual or systemic failure.”

In accordance with the decision of the Executive Board, the NHLPA has made the report available to the public. In addition to the report, Cozen provided the Board with several recommendations outlining new processes and resources the NHLPA should consider implementing,

The Executive Board voted to keep these recommendations confidential for now because they require further development by staff and evaluation by the Board.

- On December 15, 2021, the Blackhawks settled the lawsuit with Beach for an undisclosed amount



Owners

ROBERT SARVER

Background

- The National Basketball Association’s (NBA) Constitution and By-Laws, most recently released in 2012, grant the Board of Governors and the Commissioner certain powers.

- Article 35A outlines Misconduct of Persons Other Than Players, and describes the Commissioner power to dismiss, disqualify, suspend, or fine Owners, Officers, Managers, Coaches or other employees who are bound by the Constitution for any “effect[s] prejudicial or detrimental to the best interests of basketball or of the Association or of a Member or its Team.”



SI.com

- Exercising this right in 2014, Commissioner Adam Silver banned Los Angeles Clippers longtime owner Donald Sterling **for life** and fined him \$2.5 million after an investigation into alleged racist comments.
- In April 2014, TMZ released a recording of a man, believed to be Sterling, making a series of offensive and racist comments towards his then-girlfriend V. Stiviano.
- The NBA media and players responded with outrage about the recording. Commissioner Silver emphasized that while he finds the recording “truly offensive and disturbing,” Sterling would be afforded due process during an investigation.
- Four days after the recording’s release, Silver banned Sterling indefinitely from the NBA and mandated a \$2.5 million fine, the maximum amount allowed.

- Silver also announced that the NBA’s other owners would move ahead with the process to remove Sterling from ownership of the Clippers.

- The Constitution provides that an owner may be removed by a vote of 75% of the other owners:

ARTICLE 13

TERMINATION OF OWNERSHIP OR MEMBERSHIP

**The Membership of a Member or the interest of any Owner may be terminated by a vote of three fourths (3/4) of the Board of Governors if the Member or Owner shall do or suffer any of the following:**

Just a few days before the owners’ vote, former Microsoft CEO Steve Ballmer is reported to be purchasing the Clippers from Sterling for \$2 billion.

Subject

- In November 2021, ESPN released a story detailing workplace culture allegations against Robert Sarver, 30% majority owner of the Phoenix Suns since 2004.

- The allegations included repeatedly using the N-word in staff meetings, referring to staffers and players as “inventory,” multiple “instances of inequitable conduct toward female employees,” and inappropriate comments on employees’ appearances.

- Shortly after the story was released, the NBA hired law firm Watchell, Lipton, Rosen & Katz and launched its own investigation into Sarver and the workplace environment at the Suns.

- Watchell, Lipton, Rosen & Katz had previously investigated Donald Sterling in 2014.



Mark J. Rebilas via USA Today Sports

- On September 13, 2022, the NBA’s investigation concluded after examining more than 80,000 documents, emails, text messages and videos. More than 320 current and former Suns’ employees were also interviewed during the investigation.

- Following the release of the report, Silver announced that Sarver “clearly violated common workplace standards” and issued a **one-year suspension** and **\$10 million fine**.

- In the press conference following the release, Silver stated:

“I don’t have the right to take away his team. I don’t want to rest on that legal point because of course there could be a process to take away someone’s team in this league. It’s very involved, and I ultimately made the decision that it didn’t rise to that level.”

- NBA players and media were outraged with the NBA’s report and punishment:



- On September 16, 2022, PayPal, the jersey patch sponsor of the Suns, released a statement that it would not renew its sponsorship with the team if Sarver was allowed to continue in his role as majority owner following his one-year suspension.

- Golden State Warriors’ superstar Draymond Green called for NBA owners to vote for Sarver’s removal on September 20.

- On September 21, 2022, Sarver announced he would begin the selling process.



NBA.com

- On December 20, 2022, Mat Ishbia agreed to purchase the Suns and Mercury for \$4 billion.

- The sale was officially approved by the NBA Board of Governors on February 6, 2023.

DAN SNYDER

Background

- The National Football League’s (NFL) Constitution and Bylaws outlines the NFL Commissioner’s powers in Article VIII. The most recent version of the NFL Constitution available was updated in 2016;

Detrimental Conduct

**8.6 The Commissioner is authorized, at the expense of the League, to hire legal counsel and take or adopt appropriate legal action or such other steps or procedures as he deems necessary and proper in the best interests of either the League or professional football, whenever any party or organization not a member of, employed by, or connected with the League or any member thereof is guilty of any conduct detrimental either to the League, its member clubs or employees, or to professional football.**

- Further, Section 8.13 discusses the **Disciplinary Powers of Commissioner:**

- Here, the Constitution allows for the Commissioner to decide, after notice and hearing, whether an owner, shareholder, partner or holder of an interest in a member club has violated the Constitution or is guilty of conduct detrimental to the welfare of the League or professional football.



- Section 8.13(A) grants the Commissioner the power to impose a fine of no more than \$500,000 or cancel any contract of agreement of such person with the League.
- If the punishment under 8.13(A) is insufficient, the Commissioner “may refer the matter to the Executive Committee, with a recommendation” for additional or increased punishments or discipline, including:
  - Cancellation or forfeiture of the **franchise**. If this occurs, the affected franchise shall be sold.
  - Cancellation or forfeiture of the **interest** in a member club owned by a person involved. If this occurs, the interest held by the person shall be sold.
- > Importantly, discipline under this Section must be approved by “no less than three-fourths or 20, whichever is greater, of the members of the League”:

**Any such ruling or decision by the Commissioner under the circumstances referred to in this Section 8.13(B), after approval or ratification by the affirmative vote of no less than three-fourths or 20, whichever is greater, of the members of the League, as aforesaid, shall be final, conclusive, and unappealable. Any party involved in or affected by any such decision agrees to release and waive any and all claims that such party may now or hereafter have or possess arising out of or connected with such decision against the Commissioner, individually and in his official capacity, as well as against the League and any officer or employee thereof and every member club therein and against any director, officer, shareholder, or partner thereof or the holder of any interest therein, whether for damages or for any other remedy or relief.**

- In December 2017, Sports Illustrated reported that at least four former Panthers employees received “significant” monetary settlements due to inappropriate workplace comments and conduct by Jerry Richardson, then owner of the Carolina Panthers.
- In response, the NFL and Commissioner Roger Goodell launched an investigation headed by former U.S. Attorney and SEC Chairman Mary Jo White.
  - White also advised the NFL regarding the 2012 New Orleans Saints bounty investigation, and again in 2017 regarding Cowboys’ player Ezekiel Elliot’s suspension.
- Shortly after, Richardson announced he would sell the team after the completion of the 2017 season.
- In May 2018, the NFL approved the sale of the Panthers to hedge fund billionaire, David Tepper, for \$2.275 billion.
- In June 2018, results from the investigation are published and confirm “improper conduct” from Richardson. The NFL fined Richardson \$2.75 million.



Kevin C. Cox via Getty Images

**Subject**

- In May 1999, Daniel Snyder purchased the Washington Redskins for \$800 million. At that time, the sale was the most expensive transaction in sporting history and made Snyder the youngest owner in NFL.
- On July 15, 2020, 15 female employees announced they were sexually harassed during their employment with the team.
  - In response, the team hired attorney Beth Wilkinson to conduct an investigation into the organization’s workplace. In August, NFL took over control of the investigation.
- On July 1, 2021, the NFL fined Washington \$10 million based on the results of the Wilkinson Report. The report and its findings were not released to the public.
- In October 2021, Congress launched a probe into the NFL’s investigation after Goodell continued to refuse to release Wilkinson’s findings.
- In December 2021, reports revealed that Snyder hired lawyers and private investigators to tail witnesses involved in the case.
- On February 2, 2022, the team unveiled its new nickname, the Washington Commanders, after an 18-month rebranding process.
  - The next day, former Washington cheerleader Tiffani Johnston, stated in a House Oversight Committee roundtable that she was sexually harassed by Snyder.
- On February 18, 2022, the NFL announced that Mary Jo White will head the investigation surrounding this latest sexual harassment claim against Snyder.
  - This investigation remains active as of February 2023.
- In July 2022, Snyder appeared (virtually) before the House Oversight Committee and testified for more than 10 hours.
- In October 2022, Indianapolis Colts owner Jim Irsay told reporters at an NFL owners meeting that he believes there is “merit” to remove Snyder as owner.
- In November 2022, the Commanders announced Snyder hired Bank of America Securities to consider possible options for the sale of the team.
- The House Oversight Committee released its findings on December 8, 2022. The report found that Snyder



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- permitted and participated in conduct that created a toxic workplace culture.
- As of February 2023, Snyder remains Washington’s owner. Forbes lists the Commanders as the sixth most valuable franchise, estimated to be worth \$5.6 billion.
  - *Front Office Sports* reported in February 2023 that Snyder is seeking a sale price of \$7 billion.

**Summary Analysis**

The Big Four American professional sports leagues (NFL, NBA, MLB, NHL) operate under both Collective Bargaining Agreements – jointly negotiated with the Players’ Associations – as well as Constitutions and Bylaws. These legal documents provide disciplinary systems in which players, coaches and owners can be punished for misconduct, including sexual misconduct. These punishments are often independent of or in addition to civil or criminal legal proceedings, depending on the circumstances.

Cases of sexual misconduct often require a brave survivor to step forward and speak out about their abuse by making a report, filing a lawsuit, or pressing charges. Therefore, to adequately and appropriately handle reports related to sexual misconduct, it is critical that leagues maintain functional and operational reporting and investigative procedures.

Importantly, we want to stress this Report’s discussion is only a small sample size of examples and examines issues that were reported and in the spotlight in recent years. Unfortunately, the issue of sexual misconduct has been prevalent for many years and affects all levels of sport, ranging from professional to collegiate to youth sports.

Given the platform of professional sports, the leagues should lead by example and promote safe workplaces with functional reporting and investigative systems in place to keep their players, coaches, staff and employees as safe as possible.

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## ACKNOWLEDGMENTS

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## ABOUT US

The Jeffrey S. Moorad Center for the Study of Sports Law advances a new era of education for sports industry professionals as one of only a handful of institutes in the United States dedicated to the study of sports law. The Moorad Center students examine issues in sports law and business through rigorous academic study, innovative programs, internship and externship opportunities, scholarship, and research. Under the leadership of respected and accomplished industry professionals, the Center strives to produce innovative and visionary leaders in sports law and beyond. The Center aims to be the best sports education program in the world by developing thought leaders in not only sports law but also in topical issues and the changing dynamics in sports news and media, sports business, sports policy and more.

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## LEADERSHIP

### ANDREW BRANDT, Executive Director



Andrew Brandt is a nationally recognized accomplished sports executive and is Professor of Practice and Executive Director of the Jeffrey S. Moorad Center for the Study of Sports Law at Villanova University Charles Widger School of Law. Brandt is guiding the Moorad Center to be a destination for young lawyers interested in a career in sports through curricula including sports law courses and nationally recognized events and lectures. Brandt has been involved with sports at a variety of levels, as an agent, as Vice President of the Green Bay Packers from 1999-2008, and as a consultant for the Philadelphia Eagles. He has become a trusted advisor and asset to the Villanova Athletics Department and writes weekly columns on legal and business issues in sports for The Athletic and Sports Illustrated. Brandt served as the Legal and Business Analyst for ESPN from 2011-2017, analyzing business, legal and policy sports issues on programs such as Outside the Lines and SportsCenter, as well as multiple appearances on ESPN radio programs every week.

### JEFFREY S. MOORAD, Founder and Chairman



Jeffrey S. Moorad '81 committed \$5 million for the creation of the Jeffrey S. Moorad Center for the Study of Sports Law. Moorad is one of the most recognizable names in professional sport and has been a leader in the sports industry for more than 25 years. The founder of Moorad Sports Management, he began specializing in athlete representation in 1983, focusing mainly on Major League Baseball. Two years later, Moorad joined forces with Leigh Steinberg to form one of the most dynamic partnerships in the history of sports representation, covering both Major League Baseball and the National Football League. In 2004, Moorad was named a member of the executive team of the Arizona Diamondbacks. Moorad has also served as Vice Chairman and Chief Executive Officer of the San Diego Padres.



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## INVOLVEMENT

### THE JEFFREY S. MOORAD CENTER FOR THE STUDY OF SPORTS LAW

**SPORTS LAW CONCENTRATION** provides selected students with unique value-add towards careers in amateur and professional sports. It complements existing programs through the Moorad Center, including rigorous academic study, a tailored curriculum, the highest level of speakers and symposia, innovative fellowship and internship opportunities, mentorship and research.

**ANNUAL SYMPOSIUM** addresses current issues in the world of sports law each year. In conjunction with the Jeffrey S. Moorad Sports Law Journal, the Sports Law Concentration students and faculty work to develop a respected group of panelists to provide insight into hot topics in sports. Past symposia have discussed issues related to sports betting, COVID-19's effect on sports, and name, image, and likeness in college athletics.

**SPORTS LAW SOCIETY** provides all Villanova Law students the opportunity to engage with sports law on a foundational level. The Society frequently hosts events surrounding topics in sports law while also providing networking opportunities, career resources, and a space for students to share their love for sports.

**NOVASPORTSLAW BLOG** is a student-run blog that publishes student articles about current topics in sports law and business. The blog currently features the work of 12 staff writers and seven contributing editors.

**SPEAKER SERIES** provides interactive, behind-the-scenes looks at the sports industry as various speakers from a variety of positions in sports share insightful knowledge, professional experiences, and career advice.

**NEGOTIATION TEAMS** provide students with real-world simulations of contract negotiation whether it be for a player contract, endorsement agreement, or sponsorship deal. Each year, after extensive research and preparation, negotiation teams participate in various competitions throughout North America for baseball, football, basketball, soccer, and hockey. Beginning in Fall 2022, negotiation team members now earn academic credit for their participation.

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## COMPETITIONS

The Jeffrey S. Moorad Center for the Study of Sports Law allows students to attend a variety of sports-related competitions around the country. Our teams have had great success at these competitions.

### Gameday Sports Competition

Annual competition hosted by Villanova Law and UCLA Anderson School of Management.

### Tulane Professional Football Negotiation Competition

1st place: 2022, 2020, 2019, 2017  
Finalist: 2023, 2018  
Semifinalists: 2021

### Tulane International Fútbol Negotiation Competition

1st place: 2022

### Tulane Professional Basketball Negotiation Competition

1st place: 2021  
Finalist: 2020  
Quarterfinalists: 2022

### Tulane International Baseball Arbitration Competition

Semifinalists: 2023, 2021  
Quarterfinalists: 2022, 2020  
Best Written Brief: 2023



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