

**REPORT TO THE BOARD OF GOVERNORS OF  
THE NATIONAL BASKETBALL ASSOCIATION**

**Lawrence B. Pedowitz  
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**October 1, 2008**

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**Executive Summary**

The referees of the National Basketball Association are entrusted with ensuring that games are determined solely by NBA rules and the skill and effort of the teams. To uphold that trust, referees are required to adhere to certain rules, policies and procedures. During the summer of 2007, the League and the public learned that Tim Donaghy, an NBA referee, had breached the duties he owed to the League and violated federal law: he had used confidential NBA information to bet on NBA games and provided confidential NBA information to bookies and gamblers in violation of NBA rules, policies and procedures. As a result of Donaghy's conduct, Commissioner David Stern and the Audit Committee of the NBA's Board of Governors engaged me and my colleagues at Wachtell, Lipton, Rosen & Katz to conduct a review of the League's officiating program and to report our findings to the League and the public. The following is an Executive Summary of our report.

**A. Scope of Review**

Our review of the League's officiating program focused on three areas:

1. We sought to determine if there was any information suggesting that any referees other than Donaghy had bet on or misused confidential information concerning NBA games. We also sought to determine the extent to which any referee had violated NBA rules prohibiting other types of gambling, such as betting on other sports or casino betting.
2. We conducted a general review of the League's officiating program, including an examination of whether there was information suggesting the existence of potential

referee bias and game manipulation. In this regard, we reviewed the allegations contained in Donaghy's June 10, 2008 court filing outlining information about purported game manipulation by referees and improper relationships among referees and other team and League employees.

3. We conducted a forward-looking risk review of issues related to the integrity of the game. Here, our principal objective was to recommend changes to NBA rules, policies and procedures, monitoring and detection systems, and training to reduce the risk of future gambling incidents and disclosures of confidential information. We further sought to identify ways that the League could enhance a culture of compliance and underscore the importance of protecting the game's integrity and the League's reputation.

During the course of our review, we conducted approximately 200 interviews, covering members or representatives of the following NBA constituencies: referees, teams (owners, presidents, general managers and coaches), players, coaches, trainers and NBA management. We reviewed thousands of pages of documents that the League supplied at our request, including personnel files, statistical information, internal NBA documents and studies, and video of games. We also spoke to various experts in the areas of gambling, training and education, and employee background checks, among others.

## **B. Factual Findings**

Our principal factual findings can be summarized as follows:

### 1. Gambling or Misuse of Confidential Information by Other Referees

We have discovered no information suggesting that any NBA referee other than Tim Donaghy has bet on NBA games or leaked confidential NBA information to gamblers. In this connection, we reviewed a suggestion that referee Scott Foster was somehow involved in

Donaghy's conspiracy (a suggestion raised in a press report about Donaghy's phone records) and found it to be meritless.

Although we found nothing to suggest that other referees bet on NBA games or disclosed confidential League or team information, we did find that many referees engaged in other forms of gambling in violation of the NBA's rules. The anti-gambling rules had been too broadly drafted, and the League's failure to enforce the rules had contributed to a permissive atmosphere. At our suggestion, the League has narrowed and clarified the rules to enumerate specifically the types of gambling activities that are prohibited, and intends to strictly enforce the new rules going forward.

## 2. Review of Donaghy Games

Under our supervision, NBA Basketball Operations personnel reviewed a group of seventeen games that we believe include the sixteen games on which Donaghy provided picks during the 2006-2007 season. Donaghy has denied intentionally making calls designed to manipulate games, and the government has said that it found "no evidence that Donaghy ever intentionally made a particular ruling during a game in order to increase the likelihood that his gambling pick would be correct." Based on our review, and with the information we have available, we are unable to contradict the government's conclusion.

## 3. Integrity of the League's Officiating Program

NBA management sends a clear and consistent message to referees that they are to make accurate and consistent calls and favor no team or player. We have found no evidence that the League has ever deviated from this message. The League has implemented a robust officiating program designed (i) to send a consistent message that the referees should strive for

accuracy, uniformity and fairness; (ii) to measure and evaluate referees according to these standards; and (iii) to provide referees the tools they need to develop and improve.

While the referees to whom we spoke said that their primary aim was to make accurate and consistent calls, some team representatives believe that some referees on occasion make calls based on personal bias. Steps taken since 2002 to improve the monitoring of referees have helped to reduce perceptions of favoritism. But because the potential for referee bias remains a threat to the integrity of the game, the League can do more, and we have made certain recommendations to that end.

We reviewed the allegations set forth in Donaghy's June 10, 2008 court filing. Four of Donaghy's allegations contain enough detail to enable us to relate them to a specific game or playoff series: (i) the 2005 playoff series between the Houston Rockets and the Dallas Mavericks (where Donaghy alleged that referees, at the League's direction, "targeted" Houston star player Yao Ming to favor Dallas); (ii) Game 6 of the 2002 playoff series between the Los Angeles Lakers and the Sacramento Kings (where Donaghy alleged that two referees intentionally favored Los Angeles to extend the series to seven games); (iii) a 2000 regular season game between the Seattle SuperSonics and the New York Knicks (where Donaghy alleged that a referee was disciplined by the League for ejecting a "star" player); and (iv) a 2004 regular season game between the Toronto Raptors and the Golden State Warriors (where Donaghy alleged that a referee favored Golden State based on his relationship with a member of team management). We have found no evidence of any inappropriate conduct in any of these series or games. And more generally, we have discovered no evidence that the League has asked referees to call games to favor particular teams or players.

### **C. Recommendations**

As a result of our factual findings, we have made a number of recommendations, including the following:

#### **1. Rule Changes**

Based on our recommendation, the League has implemented a number of rule changes designed to bolster its anti-gambling efforts. Among those changes are the following:

The League has adopted new rules designed to minimize the risk of disclosure of confidential League information to gamblers, including rules making referee assignments public on the morning of the game and prohibiting referees from discussing with trainers or other team employees the condition of any player.

The League's Board of Governors adopted amendments to the NBA Constitution on April 18, 2008, and the League has made other changes to its rules. These changes strengthen and clarify the ban on gambling on NBA games and the prohibition on sharing confidential League information with individuals outside the NBA — two rules that Donaghy violated. We have also proposed that these changes be made applicable to players.

#### **2. Improvement of Compliance Function**

The League, at our suggestion, is taking a number of steps to improve the extent to which it consistently enforces its own rules, including the following:

The League is in the process of hiring a full-time Compliance Officer who will be responsible for assuring enforcement by appropriate personnel of the League's compliance policies and procedures and overseeing the League's anti-gambling efforts. We have suggested that the Compliance Officer report to the President of League and Basketball Operations, and by dotted line to the Audit Committee of the Board of Governors.

Starting this season, a “hotline” will be available for League and team employees (including referees, coaches, trainers, players and other NBA employees) to anonymously raise questions and report problems concerning gambling and game integrity issues.

The management of the referee program has been reorganized, including by hiring Army Major General (Ret.) Ronald L. Johnson. General Johnson, who has successfully managed individuals in high-stress positions, will oversee the program and, among other tasks, will ensure that there is proper focus on referee integrity issues and rules enforcement.

Ongoing gambling education efforts will continue to be enhanced, as such education programs are an important part of any effective compliance effort. In that regard, we have also proposed mandatory gambling education for players.

3. Increased Monitoring of Games for Suspicious Activity

Drawing on both outside and internal resources, the League has implemented a number of programs to monitor games for suspicious activity. The monitoring program includes the following:

The League has arranged to obtain information on a regular basis from individuals and entities involved in the gambling business about unusual movements in the betting lines and rumors concerning confidential NBA information, such as player injuries and referee assignments. Flagging games for the League to investigate may help the League detect gambling or misuse of confidential information.

Since the 2003-2004 season, the League has been collecting data on calls and non-calls for each of its referees. Although this system was developed for training and developmental purposes, we have worked with the League and its statistical consultant to

develop a prototype, proprietary system for screening games in an effort to detect data patterns that warrant further investigation.

Prior to the Donaghy revelations, the NBA regularly conducted background checks on the referees. At our suggestion, the background check process has been enhanced. The League will also more strictly enforce its rules regarding outside employment by referees.

4. Increased Efforts to Eliminate the Perception of Bias and Favoritism

Because the perception of bias or favoritism continues to exist, we have made a number of recommendations to address this issue:

Going forward, the League will establish a direct line of communication for bias-related complaints from the teams to General Johnson. We suggest that team complaints about bias be as specific as possible and accompanied by whatever supporting evidence the teams can gather. We also recommend that General Johnson and the President of League and Basketball Operations report periodically to the Audit Committee regarding these complaints.

In addition, we have recommended that, starting with the 2008-2009 playoffs, all team complaints about referee calls during a playoff series, along with the League's response to the complaining team, be posted and made available to both teams. This procedure should help alleviate any concern that a complaint will lead to special focus on a player or team in a series.

To better understand and monitor any concern about improper fraternization between referees and team personnel, we have suggested that referees identify all off-court contacts with team personnel.

To ensure that the public is better educated about the scope and import of the referee program and the extent to which referees are monitored to ensure that games are called fairly, we have suggested that the NBA continue to make presentations to media about the key

aspects of the referee program, including standards of performance, management, evaluations, training programs and its data collection system. We have also suggested that a publicly accessible website be created, which would include, for example, basic information (including video) about referees, the referee program, playing rules and how they are interpreted. We have also recommended that the NBA make a cross-section of referees available to the public and the media to discuss how they approach their job on a day-to-day basis.

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**I. Introduction**

The referees of the National Basketball Association are entrusted with ensuring that games are determined solely by NBA rules and the skill and effort of the teams. To uphold that trust, referees are required to adhere to certain rules, policies and procedures. During the summer of 2007, the League and the public learned that Tim Donaghy, an NBA referee, had breached the duties he owed to the League and violated federal law: he had used confidential NBA information to bet on NBA games and provided confidential NBA information to bookies and gamblers in violation of NBA rules, policies and procedures. As a result of Donaghy's conduct, Commissioner David Stern and the Audit Committee of the NBA's Board of Governors engaged me and my colleagues at Wachtell, Lipton, Rosen & Katz to conduct a review of the League's officiating program and to report our findings to the League and the public. This report is a product of the review that I conducted with a number of my partners and associates.<sup>1</sup>

\* \* \* \* \*

The League first learned that an NBA referee was connected with illegal gambling from the Federal Bureau of Investigation and the United States Attorney's Office for the Eastern District of New York. On June 20, 2007, an FBI agent contacted Bernie Tolbert, the NBA's Senior Vice President of Security (and a former FBI agent himself), to alert the League

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<sup>1</sup> My partners David B. Anders and Jonathan M. Moses and our associates Joshua A. Naftalis and Won S. Shin worked on this review and report. Biographical information concerning each of us is attached to this report.

that the FBI had interviewed a current NBA referee in connection with a federal investigation of illegal gambling. The FBI told Tolbert that it did not believe any other referees were involved in criminal conduct; however, the government had information suggesting that other referees may have violated certain League rules, policies and procedures. Tolbert reported this information to League executives.

The next day, June 21, 2007, Commissioner Stern and other senior members of NBA management met with the FBI and were briefed about what the FBI had uncovered. The FBI explained that NBA referee Tim Donaghy — who had been with the League for thirteen seasons — had placed bets on NBA games, including games he had officiated. The FBI also informed the League that Donaghy had disclosed confidential NBA information — including player injuries and the names of the referees assigned to specific games — to individuals for use in betting on NBA games. The FBI provided no information suggesting that Donaghy had made calls to influence improperly games he had officiated.

The League immediately began cooperating with the government's investigation by, for example, making various League employees available for interviews, providing documents and game video, and reviewing at the government's request video of certain games that Donaghy had officiated.

On August 15, 2007, Donaghy pleaded guilty before Judge Carol Bagley Amon in the United States District Court for the Eastern District of New York to two felonies: (i) conspiracy to commit wire fraud by denying his employer the intangible right to his honest services and (ii) conspiracy to transmit wagering information.

On August 21, 2007, Commissioner Stern publicly announced that I and my law firm would lead a comprehensive review of the League's officiating program. We have reported

during the course of our work both to the Commissioner and to the Audit Committee of the NBA's Board of Governors.

## **II. Scope and Process of the Review**

### **A. Scope of the Review**

Our review of the League's officiating program focused on three areas. First, we sought to determine if there was information suggesting that any other referees had bet on or misused confidential information concerning NBA games. We also sought to determine the extent to which referees had violated NBA rules prohibiting other types of gambling, such as betting on other sports or casino betting.

Second, we conducted a review of the League's officiating program, including in particular an examination of whether there was any information suggesting the existence of potential referee bias or game manipulation. In that regard, we have reviewed the allegations contained in a June 10, 2008 letter that Donaghy's attorney submitted to the Court outlining information that he claimed Donaghy had supplied to the government during debriefing sessions. The letter purported to summarize claims Donaghy made about "game manipulation" by referees and improper relationships among referees and other team and League employees.

Third, we conducted a forward-looking risk review of issues related to the integrity of the game. Here, our principal objective was to recommend changes to NBA rules, policies and procedures, monitoring and detection systems, and training to reduce the risk of future gambling incidents and disclosures of confidential information. We further sought to identify ways that the League could enhance a culture of compliance and underscore the importance of protecting the game's integrity and the League's reputation.

We have considered our review first and foremost as a forward-looking compliance review — an effort to identify on behalf of the League ways in which it can improve

its systems and processes going forward to prevent another Donaghy scandal. In our experience, it is a best practice for business entities following a significant ethical or legal breach, such as the one committed by Donaghy, to conduct such a review to help ensure that the business has taken appropriate steps so that future breaches do not occur. Compliance reviews are an area in which we have a great deal of experience in our representation of major corporations.

The League clearly stated this primary goal in announcing our review. We were to “conduct a broad examination of the NBA’s league-wide anti-gambling efforts, including its rules, its policies regarding disclosure of confidential information, its methods of monitoring and enforcement, and its efforts to educate NBA personnel.” Our work was to be done “with the aim of improving the overall effectiveness of NBA officiating and of bolstering the league’s efforts to detect and deter betting on its games.”

As discussed in this report, most of our work has focused on developing recommendations to achieve this objective. We have been in active consultation with the League throughout the past fourteen months on ways it can bolster its compliance efforts and expect to continue to assist the League in implementing the steps identified in this report.

The Commissioner made clear to us that our mandate was a broad one and that we were to conduct a searching review of matters that could affect the integrity of the game. No limits were placed on how we pursued our review. If matters came to our attention that suggested any other wrongdoing, we were instructed to pursue them as we believed appropriate. We were given unfettered access to League personnel and League documents. The referees were instructed to cooperate with us and did so with the understanding that any misstatement to us would result in termination.

As a result of our work, we reached certain conclusions about the nature of the referee program, the ethos of the League and its referees, and the circumstances of particular games that have received scrutiny as examples of potential referee misconduct. Our conclusions are set forth in this report.

## **B. Review Process**

Our review relied principally on three types of information: interviews, documents and advice from experts.

Over the last year, we conducted approximately 200 interviews, covering the following NBA constituencies:

- With the cooperation of the National Basketball Referees Association (“NBRA”), we spoke to the fifty-seven referees who were employed by the League during the 2006-2007 season and who would be returning for the 2007-2008 season. These interviews were our first priority and were conducted in early September 2007 before the 2007-2008 pre-season began. As detailed below, one of our objectives was to determine whether there was any information suggesting that any other referees had gambled on NBA games or misused confidential NBA information. We wanted to complete our fact-finding before the start of the 2007-2008 season to help ensure that no referees who had engaged in misconduct similar to Donaghy’s would officiate NBA games in the upcoming season. In June 2008, after Donaghy made allegations of game manipulation and referee misconduct, we again interviewed all of the active NBA referees, as well as certain retired NBA referees and executives.

- Because our review of the officiating program was wide-ranging, we asked each of the thirty NBA teams whether they wanted to speak with us about the officiating program and risks to the integrity of the game. We spoke to representatives from fourteen teams (owners, presidents, general managers and coaches).
- We also received input from the Executive Director and the General Counsel of the National Basketball Players Association, the President of the NBA Coaches Association and the General Counsel of the National Basketball Trainers Association.
- In addition, we spoke to more than thirty members of NBA management. We interviewed several senior NBA executives, including Commissioner Stern, and the vast majority of the Basketball Operations department, as well as members of various other League departments. We re-interviewed many of these individuals in connection with the claims of game manipulation and referee misconduct raised by Donaghy in June 2008.<sup>2</sup>

In addition to conducting interviews, we reviewed thousands of pages of documents that the League supplied at our request, including personnel files, statistical information, internal NBA documents and studies, and game video. We also oversaw a process by which games were reviewed for this report by personnel from the League's Basketball

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<sup>2</sup> We received a great deal of cooperation from the referees throughout this process. To insure maximum candor, we assured the referees that we would preserve their anonymity regarding any views they expressed on the operation of the referee program and the conduct and effectiveness of League management. We made similar representations to team representatives. The result was that a number of referees and team representatives were quite frank with us about what they saw as shortcomings in the operation of the referee program.

Operations department who regularly review referee play calling over the course of the season. The games that were reviewed are identified within this report.

Finally, we spoke to various experts. For example, we consulted with gambling experts and representatives of Las Vegas sportsbooks; the Director of the National Collegiate Athletic Association's Agent, Gambling and Amateurism Activities; and a firm specializing in employee background checks. We also consulted and worked with the Sibson consulting firm (a division of Segal Company, a leading human capital, actuarial and employee benefits consulting firm) that helped design the NBA's referee performance and development program.

### **III. Background**

Because the impetus for our review was Tim Donaghy's misconduct, we begin with a summary of what we know about Donaghy's crimes, the gambling rules in place that Donaghy violated and what the League knew about Donaghy's character and conduct prior to learning from the government that he had gambled on NBA games and disclosed non-public information.

#### **A. Donaghy's Misconduct**

Despite our repeated requests, Donaghy has declined to speak with us. The government also has declined to share any non-public information from its investigation with us. In connection with the sentencing of Donaghy and his co-conspirators, however, there have been a number of government submissions providing details of Donaghy's crimes. Our understanding of Donaghy's misconduct is based on these and other court filings.

On August 15, 2007, in the U.S. District Court for the Eastern District of New York, Donaghy was charged with and pleaded guilty to two felonies: conspiracy to commit wire fraud by denying the NBA the intangible right to its employee's honest services and conspiracy to transmit wagering information. The criminal information, 07 Cr. 587 (CBA) (the

“Information”), alleged that Donaghy placed bets or provided picks on NBA games for four years: “Approximately four years ago, Donaghy began placing bets on NBA games, including games he officiated. Beginning in approximately December 2006, Donaghy began to receive cash payments in exchange for providing betting recommendations or ‘picks’ on NBA games, including games he officiated, to individuals involved in the business of sports betting.”<sup>3</sup>

According to the Information, during the post-December 2006 period when Donaghy was engaged in his conspiracy, Donaghy “received payment from his coconspirators for each correct pick” but “was not paid for an incorrect pick.”<sup>4</sup> The Information further alleged that, “in determining his picks for certain NBA games, Donaghy would rely on, among other things, nonpublic and other information to which he had unique access by virtue of his position as an NBA referee. This information included his knowledge of (a) the officiating crews for upcoming NBA games, (b) the interactions between certain referees and certain players and team personnel, and (c) the physical condition of certain players.”<sup>5</sup> Finally, the Information alleged that Donaghy “concealed this scheme from the NBA and other referees in order to prevent its detection.”<sup>6</sup> In a subsequent filing with the Court, the government identified some ways in which Donaghy concealed his scheme:

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<sup>3</sup> Information ¶ 7, *United States v. Donaghy*, No. 07 Cr. 587 (CBA) (E.D.N.Y. Aug. 15, 2007).

<sup>4</sup> Information ¶ 11, *United States v. Donaghy*, No. 07 Cr. 587 (CBA) (E.D.N.Y. Aug. 15, 2007).

<sup>5</sup> Information ¶ 13, *United States v. Donaghy*, No. 07 Cr. 587 (CBA) (E.D.N.Y. Aug. 15, 2007).

<sup>6</sup> Information ¶ 13, *United States v. Donaghy*, No. 07 Cr. 587 (CBA) (E.D.N.Y. Aug. 15, 2007).

Donaghy developed with his co-conspirators a coded language to communicate betting information. In addition, Donaghy would occasionally utilize hotel room telephones so that his calls would not necessarily be traceable to him. To further conceal the illegal activity, Donaghy provided betting information regarding games that he did not referee so that others would not notice the substantial bets placed primarily on games he did referee.<sup>7</sup>

The Information did not identify any games on which Donaghy bet or provided picks.

During his guilty plea, Donaghy admitted to the following conduct:

In December, 2006, I was employed as a referee with the National Basketball Association. As an employee, I was subject to rules of conduct established by the NBA, including a prohibition on betting on professional sporting events. In addition, as a referee, I was given access to master referee schedules that included the identities of officiating crews for particular games. This information was confidential and not available to the general public. I also was aware of the manner in which officials interacted with players and called games as well as the condition of players prior to a game. By having this non-public information, I was in a unique position to predict the outcome of NBA games.

Beginning in December, 2006 until about April, 2007, I agreed with other individuals to use this non-public information in order to pick NBA teams that I predicted would win particular games and also cover the point spreads set by professional bookmakers. As part of our agreement, others would in turn use my picks in order to place bets with bookmakers on the teams I had selected. I received cash payments for successful picks but would not lose any money if a pick did not win and cover the point spread. Some of my picks included games I had been assigned to referee. I would use a telephone or cell phone to make calls around the country to one of the individuals in order to communicate the picks so that the bets could be placed with professional bookmakers. In many of these calls, we used a coded language and I concealed this conduct from my employer.<sup>8</sup>

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<sup>7</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 15 (June 27, 2008).

<sup>8</sup> Transcript of Guilty Plea 21:1-22:3, *United States v. Donaghy*, No. 07 Cr. 587 (CBA) (E.D.N.Y. Aug. 15, 2007).

On February 8, 2008, Donaghy's co-conspirators, James Battista and Thomas Martino, were indicted in the U.S. District Court for the Eastern District of New York. Like Donaghy, Battista and Martino were charged with conspiracy to commit wire fraud by denying the NBA the intangible right to its employee's honest services and conspiracy to transmit wagering information.<sup>9</sup> The Indictment's allegations concerning these two charges were substantially the same as the allegations against Donaghy. Martino was also charged with two counts of perjury for lying to a grand jury regarding his involvement in the conspiracies.<sup>10</sup> On April 16, 2008, Martino pleaded guilty to conspiracy to commit wire fraud, and, on April 24, 2008, Battista pleaded guilty to conspiracy to transmit wagering information.<sup>11</sup> During his guilty plea, Martino admitted to the following conduct:

Between mid-December 2006 and early April 2007, I agreed with James Battista and Tim Donaghy to pay Tim Donaghy, an NBA referee, for non-public information to which he had unique access by virtue of his position as an NBA referee about NBA games that he was scheduled to referee.

Mr. Donaghy would provide me with the name of the team he believed was a good pick for gambling purposes. I knew that Mr. Donaghy was violating the rules that governed his NBA employment by providing this information.

That information was relied on by Mr. Battista to place gambling wagers on NBA teams. If Donaghy's pick won he was paid for his information. He was not paid if his pick lost. On most occasions I

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<sup>9</sup> Indictment ¶¶ 7-15, *United States v. Battista & Martino*, No. 08 Cr. 86 (CBA) (E.D.N.Y. Feb. 8, 2008).

<sup>10</sup> Indictment ¶¶ 16-21, *United States v. Battista & Martino*, No. 08 Cr. 86 (CBA) (E.D.N.Y. Feb. 8, 2008).

<sup>11</sup> Transcript of Guilty Plea 23:17-24:14, *United States v. Martino*, No. 08 Cr. 86 (CBA) (E.D.N.Y. April 16, 2008). During his guilty plea, Battista made a similar statement. Transcript of Guilty Plea 18:20-19:6, *United States v. Battista*, No. 08 Cr. 86 (CBA) (E.D.N.Y. April 24, 2008).

would receive that information from Mr. Donaghy by telephone and then relay that information to Mr. Battista by telephone.

On December 13, 2006, I spoke with Mr. Donaghy by telephone regarding his pick for an NBA game. On December 14th, Mr. Donaghy and I met in Pennsylvania where I gave him a cash payment for his information.

On December 26, I spoke with Mr. Donaghy by telephone and again received his pick on an NBA game. On March 11, 2007, I met with Mr. Donaghy in Toronto, Canada and gave him a cash payment.<sup>12</sup>

On May 8, 2008, in connection with Donaghy's sentencing, the government submitted a letter to the Court concerning Donaghy's cooperation with the government. In addition to repeating some information contained in the charging document, the letter provided additional details of Donaghy's misconduct, including some additional details regarding Donaghy's early betting before he began his conspiracy with Battista and Martino:

Beginning in or about 2003, and continuing into 2007, Donaghy provided betting recommendations or "picks" on NBA games — including games he officiated — to Jack Concannon, who was one of Donaghy's friends. Donaghy and Concannon bet on approximately 40 games per season, and shared evenly in any gambling winnings. Donaghy earned \$10,000 to \$30,000 per year from gambling on these NBA games. (These winnings were offset by losses incurred gambling on other sports, such as football.) Donaghy temporarily stopped betting with Concannon in December 2006, when . . . Donaghy began dealing with James Battista and Thomas Martino, both of whom Donaghy knew from high school. He resumed dealing with Concannon, however, in approximately February 2007.<sup>13</sup>

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<sup>12</sup> Transcript of Guilty Plea 23:17-24:14, *United States v. Martino*, No. 08 Cr. 86 (CBA) (E.D.N.Y. April 16, 2008).

<sup>13</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 2 (May 8, 2008) ("5K1 Letter"). The letter was written pursuant to § 5K1.1 of the U.S. Sentencing Guidelines, which provides that, "[u]pon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines."

According to the government, Donaghy and Concannon bet on approximately five more games when they resumed betting in February 2007.<sup>14</sup>

The government's letter also set out additional details regarding Donaghy's betting with Battista and Martino, including a description of the agreement among the three co-conspirators:

In mid-December 2006, Donaghy was in Philadelphia to referee a game between the Philadelphia 76ers and the Boston Celtics. Prior to arriving in Philadelphia, Martino had called Donaghy and told him that Battista wanted to meet with Donaghy when he arrived in Philadelphia. Donaghy indicated that although he would meet with Martino, Donaghy did not want to meet with Battista because Donaghy knew that Battista was a professional gambler and Donaghy assumed that Battista wanted Donaghy's opinion as to who would win the 76ers-Celtics game (or perhaps other games).

Martino eventually drove to Donaghy's hotel to pick him up. When Martino arrived, Donaghy noticed that Battista was also in Martino's car. Donaghy joined them, and they drove to a local store. While in the car, Battista and Martino confronted Donaghy with the fact that Donaghy had been providing picks to Concannon. Battista then told Donaghy that he should provide his picks to Battista and Martino, and not to Concannon. Battista also told Donaghy that Battista "didn't want the NBA to find out" about what Donaghy was doing. Donaghy interpreted this comment to mean that if Donaghy did not agree to deal with Battista and Martino, Battista would inform the NBA about Donaghy's prior dealings with Concannon.

At a later meeting back at Donaghy's hotel, Battista also threatened harm to Donaghy's family. Battista told Donaghy that "you don't want anyone from New York visiting your wife and kids." Over the preceding years, Donaghy had come to believe that Battista had organized crime connections, and so he interpreted "New York" to be the Mafia. Before the meeting concluded, Donaghy agreed to provide picks to Battista and Martino.

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<sup>14</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 3 (June 27, 2008).

During the meeting at the hotel, Battista agreed to pay Donaghy \$2,000 for each correct NBA pick. It was further agreed that Donaghy would provide the picks to Martino, who would relay the information to Battista.

The very next day, Donaghy, Battista, and Martino met at Martino's home. During that meeting, Donaghy told Battista and Martino that he believed the Boston Celtics would defeat the Philadelphia 76ers. Donaghy refereed the game later that night, and the Celtics won[, by a score of 101-81].

The following day, Donaghy, Battista, and Martino again met at Martino's home. Battista gave Donaghy \$2,000 in cash. Donaghy then provided Battista and Martino with picks for games that were to be played later that night. During the meeting, Donaghy and Martino established the following code for communicating picks over the telephone: Martino has two brothers. If Donaghy mentioned Martino's brother Chuck (who lived in the Philadelphia area), the pick would be the home team. If, on the other hand, Donaghy mentioned Martino's brother Johnny (who did not live in the Philadelphia area), the pick would be the visiting team.<sup>15</sup>

In addition to the Boston-Philadelphia game described above, the government's letter identified another game on which Donaghy provided a betting pick to Battista and Martino:

[O]n December 26, 2006, Donaghy refereed a game in which the Washington Wizards hosted the Memphis Grizzlies. Donaghy originally informed Martino that he thought the Grizzlies would win. Just before the start of the game, however, an official NBA scorer entered the referees' locker room and said that the Grizzlies were "all banged up." Armed with this inside information concerning the physical condition of the Grizzlies, Donaghy called Martino and changed his pick to the Wizards. According to NBA records, the Wizards won, 116-101.<sup>16</sup>

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<sup>15</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 2-4 (May 8, 2008). The letter goes on to note that "[a]lthough Donaghy was concerned by Battista's comment regarding Donaghy's wife and children, he has never taken the position that he was anything other than a willing participant in the scheme with Battista and Martino, and, before them, with Jack Concannon." *Id.* at 3 n.1.

<sup>16</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 4 (May 8, 2008). The letter noted that "[d]uring the course of the conspiracy, Martino met with Donaghy in Phoenix, Toronto, Washington, D.C., and New Jersey for the

On May 16, 2008, again in connection with Donaghy's sentencing, the government filed a letter with the Court concerning the amount of loss resulting from Donaghy's crimes. This letter provided some additional details regarding the number of games on which Donaghy bet or provided betting picks:

Beginning in or about March 2003, and continuing into 2007, Donaghy violated . . . NBA rules by provid[ing] betting recommendations or "picks" on NBA games — including games he officiated — to other individuals. In the Spring of 2003, Donaghy provided picks for games he refereed on only 2-3 occasions. Over the next three full seasons (2003-2004, 2004-2005, and 2005-2006), however, Donaghy bet on numerous games that he worked. The government's investigation revealed that Donaghy provided picks for anywhere from 30 to 40 such games for each of those three seasons. During the 2006-2007 season (the time period charged in the information), Donaghy bet on approximately 30 games, including about 14 games that he refereed.<sup>17</sup>

The government has since stated that Donaghy provided picks on sixteen games that he officiated during the 2006-2007 season.<sup>18</sup>

On June 27, 2008, the government filed another letter with the Court in connection with Donaghy's sentencing. Among other things, the letter emphasized that Donaghy was, unlike Battista and Martino, "the central figure in the scheme":

It was only Donaghy, by virtue of his position as an NBA referee, who had access to the nonpublic and other inside information on which he based his gambling picks, and it was only Donaghy who had a duty to provide honest services to his employer, the NBA. Without Donaghy, the scheme simply could not have been carried

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primary purpose of paying Donaghy for his correct picks. On each occasion, Martino gave Donaghy cash." *Id.*

<sup>17</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 2 (May 16, 2008).

<sup>18</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 2 n.1 (June 27, 2008).

out. Indeed, it was only Donaghy who had the ability to terminate the entire conspiracy at any time, simply by deciding to stop making betting recommendations.<sup>19</sup>

On July 24, 2008, Battista was sentenced to a prison term of fifteen months, and Martino was sentenced to a prison term of twelve months and one day. On July 29, 2008, Donaghy was sentenced to a prison term of fifteen months. The defendants were also ordered to serve supervised release terms of three years each after their imprisonment and to pay \$217,266.94 in restitution to the NBA as the victim of their crimes.<sup>20</sup>

### **B. Donaghy's Betting on Games that He Officiated**

According to court filings, Donaghy made picks on sixteen NBA games that he officiated during the 2006-2007 season and bet on thirty to forty games that he officiated in each of the prior three seasons.<sup>21</sup> Donaghy has acknowledged that he “compromised his objectivity as a referee because of his personal financial interest in the outcome of NBA games, and that this personal interest might have subconsciously affected his on-court performance.”<sup>22</sup> But he has denied intentionally making calls designed to manipulate games. In its 5K1 letter to the Court describing Donaghy's cooperation, the government stated that “[t]here is no evidence that

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<sup>19</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 18 (June 27, 2008).

<sup>20</sup> See *United States v. Donaghy*, -- F. Supp. 2d --, Nos. 07-CR-587 (CBA), 08-CR-86 (CBA), 2008 WL 2884748 (E.D.N.Y. July 23, 2008).

<sup>21</sup> During these four seasons, Donaghy officiated 296 games:

- in 2003-2004, he officiated 76 games (6 pre-season; 66 regular season; 4 playoff);
- in 2004-2005, he officiated 69 games (4 pre-season; 63 regular season; 2 playoff);
- in 2005-2006, he officiated 72 games (6 pre-season; 63 regular season; 3 playoff);
- in 2006-2007, he officiated 79 games (6 pre-season; 68 regular season; 5 playoff).

<sup>22</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 5 (May 8, 2008); see also Information ¶ 13, *United States v. Donaghy*, No. 07 Cr. 587 (CBA) (E.D.N.Y. Aug. 15, 2007) (Donaghy “compromised his objectivity as a referee because of his personal financial interest in the outcome of NBA games”).

Donaghy ever intentionally made a particular ruling during a game in order to increase the likelihood that his gambling pick would be correct.”<sup>23</sup>

We have no reason to doubt the thoroughness of the government’s investigation on which it based its conclusion. We believe that the government would have been naturally skeptical of Donaghy’s assertion that he did not go beyond exploiting “inside” information and did not intentionally make calls to influence the outcome of games. Before concluding that there was no evidence that Donaghy intentionally made incorrect calls, the government investigators doubtless questioned Donaghy carefully about the specific non-public information on which he based his picks, and his conduct while officiating those sixteen games. Because the NBA provided video of games that Donaghy officiated, the government also would have had the opportunity to review these games and to cross-examine Donaghy — and assess the logic of his explanations and his demeanor. While we do not know what Donaghy told the government, he clearly convinced them that he had not manipulated these games.

During our review, we explored whether we had any information that provided a basis for questioning the reasonableness of the government’s conclusion. When we interviewed the referees, we asked specifically whether any of them had seen or heard anything prior to Donaghy’s arrest that in retrospect and in light of his admitted betting led them to believe that Donaghy had intentionally manipulated games or calls. None of the referees, including those who had refereed games with him, believed they had.<sup>24</sup>

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<sup>23</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 5 (May 8, 2008).

<sup>24</sup> We have spoken to gambling experts in Las Vegas who run major sportsbooks and have contacts with bookies throughout the country. While, in their experience, rumors about manipulation of sporting events move quickly through the gambling community, they told us that

We also asked NBA Basketball Operations personnel, under our supervision, to review certain games on which we believe Donaghy had made betting picks to see if any game-related conduct suggested manipulation. While neither the government, Donaghy nor any of his co-conspirators has identified for us the specific games or teams on which Donaghy bet, we believe that there is a reasonable basis for identifying a group of seventeen games that include the sixteen games on which Donaghy assisted his co-conspirators Battista and Martino to bet in the 2006-2007 season.

In its 5K1 letter to the Court setting out Donaghy's cooperation, the government publicly identified two games on which Donaghy provided picks to his co-conspirators during the 2006-2007 season: Boston at Philadelphia on December 13, 2006 and Memphis at Washington on December 26, 2006.<sup>25</sup> In July 2007, the FBI asked the NBA for video of fourteen of Donaghy's games from the 2006-2007 season, which included the two games noted above. In August 2007, the U.S. Attorney's Office asked Ronnie Nunn, then the NBA's Director of Officials, to review eight of Donaghy's games from the 2006-2007 season.

Seventeen games fall into one or more of these categories. We believe that the sixteen games on which Donaghy bet during the 2006-2007 season likely fall into this group of seventeen games, which are set out in the following table:

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they never received information supporting the conclusion that Donaghy was manipulating games.

<sup>25</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 2-4 & n.2 (May 8, 2008).

	<b>Games Mentioned in 5K1 Letter</b>	<b>FBI Request for 14 Games</b>	<b>Nunn Review of 8 Games</b>
1) 12/11/06: Phoenix at Orlando		X	X
2) 12/13/06: Boston at Philadelphia	X	X	X
3) 12/16/06: Detroit at New Jersey		X	
4) 12/18/06: Washington at Denver		X	
5) 12/22/06: Indiana at Atlanta		X	
6) 12/26/06: Memphis at Washington	X	X	X
7) 12/29/06: Milwaukee at Cleveland		X	
8) 01/01/07: Minnesota at Charlotte		X	
9) 01/05/07: Miami at Phoenix		X	X
10) 01/06/07: Utah at Denver		X	
11) 01/17/07: Phoenix at Houston		X	
12) 01/19/07: New Orleans at San Antonio			X
13) 01/30/07: Seattle at Dallas			X
14) 02/12/07: Atlanta at Utah		X	
15) 02/26/07: Miami at New York		X	X
16) 03/08/07: San Antonio at Sacramento		X	
17) 03/18/07: Orlando at Miami			X

NBA Basketball Operations personnel reviewed video of each of these seventeen games. They examined every play and determined whether, in their view, Donaghy's calls (or absence of calls) were correct. We met and discussed with them the results of their examination of these games, including whether Donaghy appeared to favor the team that covered the point spread. We also reviewed some of the game video during our discussions.

The NBA experts and we found nothing revealing about the way Donaghy conducted or carried himself on the floor. In some of these games, Donaghy appeared to do a good job and made virtually no errors. In others, he made a substantial number of errors, but the errors did not seem to favor one team over another. In still other games, there were no errors at the critical points of the game, or there was an error that might in isolation raise some suspicion but that seemed to be offset by another error that favored the other team. One game — Detroit at New Jersey — raised concerns that Donaghy's calls and substantial errors might have been aimed at favoring Detroit (which covered the point spread). But after our analysis, the NBA experts and we ultimately felt that there was insufficient evidence to disagree with the government's conclusion that Donaghy had not manipulated this or any games.

Without the opportunity to speak to Donaghy and to assess his credibility, the League's experts and we simply do not have enough information to assess whether any specific unusual call or pattern of calls were the result of chance, mistake or manipulation. If we were able to speak to Donaghy, we could ask him to identify precisely the games on which he provided picks, the team that he selected and the reason why he picked that team. This information might support or contradict the notion that the attributes found in our review of games might be relevant. We also could ask Donaghy about some specific erroneous calls or non-calls or patterns of calls or non-calls and could assess his truthfulness as he answered our questions.

It seems plausible to us that Donaghy may not have manipulated games. He likely had concerns about being detected. Because there were two other referees on the floor, it was inherently risky for him to make an intentionally incorrect call or non-call without being questioned or overruled by his crewmates. Referee calls are also subject to regular scrutiny:

observers are present in the arenas; multiple levels of NBA management can and do review video of referee calls for accuracy; teams closely review referee calls and routinely submit requests to the NBA to review plays that they believe were called incorrectly; and games are closely scrutinized by the media and fans. As such, it seems likely that Donaghy might have recognized a substantial downside to making intentionally incorrect calls: the risk that he might come under suspicion and one day be caught.

Aside from concerns about detection, Donaghy's job performance was in large measure dependent on the accuracy of his play calling. His mid- and year-end performance reviews from the NBA, and his annual ratings by the League and the teams, focused on call accuracy (among other factors). His advancement within the ranks of the officiating staff, in turn, depended on his performance reviews and ratings. Referees with better performance reviews and ratings are more likely to become "crew chiefs" and be selected to officiate NBA playoff games. The financial and psychological rewards of this latter achievement are significant. For example, in the 2006-2007 season, selection to officiate the first round of the playoffs would result in \$11,207 of additional compensation; \$13,307 for the second round; \$16,343 for the third round; and \$22,701 for the Finals. Poor play calling — especially calls that could affect the outcome of games — could hurt Donaghy's chances of being viewed as an accurate and consistent caller and could make it less likely that he would be selected to work in the playoffs. During our interviews, we also learned that Donaghy was highly motivated to advance in the playoffs and garner greater recognition for his officiating.

It also bears noting that Donaghy's arrangement with Battista and Martino did not involve Donaghy placing bets on games; rather, he supplied information to others who placed bets. Donaghy was paid a flat fee when the bet succeeded — \$2,000 a game — but did not

suffer a financial penalty if the bet failed. As Donaghy weighed the financial benefits and risks associated with making intentionally wrong calls, he may have concluded that he was better off simply making betting picks (which would presumably be right more often than they were wrong, because they were based on confidential information), without making any intentional efforts to affect game outcomes.

Given the information currently in our possession, we and the League's experts are unable to contradict the government's conclusion that "[t]here is no evidence that Donaghy ever intentionally made a particular ruling during a game in order to increase the likelihood that his gambling pick would be correct."<sup>26</sup>

### **C. NBA Gambling Rules that Donaghy Violated**

This section sets forth the NBA rules that Donaghy violated. For many years, the NBA Constitution has prohibited team owners and employees (including players and coaches) and League employees (including referees) from betting, directly or indirectly, on NBA games:

Any person who, directly or indirectly, wagers money or anything of value on the outcome of any game played by a Team in the league operated by the Association shall, on being charged with such wagering, be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding, conclusive, and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion

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<sup>26</sup> The government has also stated in court filings that Donaghy bet on thirty to forty games that he officiated in each of the three seasons prior to the 2006-2007 season and resumed betting with Concannon after he stopped conspiring with Battista and Martino. As to these games, the government has not provided — publicly or privately — any information as to the games on which Donaghy wagered. And, as discussed above, Donaghy has declined to meet with us and supply information. Donaghy officiated close to 300 games in this period. Without knowing on which games or teams he wagered and without access to Donaghy's explanation for his calls, we believe that it would be impossible to find that the government's conclusion that he did not manipulate games is erroneous.

and/or perpetual disqualification from further association with the Association or any of its Members.<sup>27</sup>

The NBA also prohibits the intentional disclosure of confidential League or team information. For example, the League's Legal Compliance Policy and Code of Conduct, which applies to League employees (including referees), provides, among other things:

Non-public information concerning the NBA's business (or those of its business partners) that any employee becomes aware of should not be discussed with anyone outside of the NBA, including members of an employee's immediate family. ("Non-public information" is generally information concerning the NBA (or its business partners) that has not been the subject of any press release or otherwise disseminated to the public at large.) . . . It is the policy of the NBA that no employee may use for personal gain, or the gain of others, confidential or non-public information obtained from any source connected in any way with the NBA. Such information could concern, for example, . . . the health of a player, or the identity of the referees at a particular game. Confidential NBA information may be used only for the benefit of the NBA. When in doubt, employees should assume that the information is confidential.<sup>28</sup>

In addition to the restrictions set out in the NBA Constitution, NBA referees also are subject to the collective bargaining agreement between the League and the NBRA. Under

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<sup>27</sup> NBA Const. Art. 35A(g). Article 35(f), which covers players, provides:

Any Player who, directly or indirectly, wagers money or anything of value on the outcome of any game played by a Team in the league operated by the Association shall, on being charged with such wagering, be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding and conclusive and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion and/or perpetual disqualification from further association with the Association or any of its Members.

<sup>28</sup> NBA Legal Compliance Policy and Code of Conduct § II.C.

this agreement, referees — until recently — were prohibited from gambling, by the following language:

No Referee shall participate in any gambling or place bets of any kind; nor shall any Referee visit or attend any race track, off track betting establishment, casino, or gambling establishment of any kind; provided, however, that a Referee may, during any Off-Season (i) visit and place bets at race tracks; and (ii) attend a show at a hotel/casino, provided that the Referee may, at no time, be present in the “gaming” area of such hotel/casino.<sup>29</sup>

The referees were also subject to work rules promulgated by the League. These work rules, which are deemed part of the NBA-NBRA collective bargaining agreement “as fully as if herein written and shall be binding upon each Referee,”<sup>30</sup> made clear that referees were charged with upholding the integrity of the game and were prohibited from gambling or disclosing confidential NBA information. Referees also were prohibited from visiting any gambling establishment, except for race tracks and the non-gaming areas of casinos during the off-season. The work rules also reinforced the rules regarding confidential information, as referees were prohibited from disclosing their game assignments to anyone other than members of their immediate families:

Because it is impossible to cover with a specific rule or regulation every situation that may arise, you are reminded that you are expected always to conduct yourself on and off the court according to the highest standards of honesty, integrity, and professionalism; to conform your personal conduct to the highest moral standards; and to refrain from any conduct that might impair the faithful and thorough discharge of your duties or be detrimental or prejudicial to the best interests of the NBA.<sup>31</sup>

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<sup>29</sup> NBA-NBRA Collective Bargaining Agreement Art. XI, § 2.

<sup>30</sup> NBA-NBRA Collective Bargaining Agreement Art. XI, § 4.

<sup>31</sup> 2006-2007 Work Rules for NBA Officials preamble.

You must . . . [n]ot disclose any official's Game assignment (including your own) to anyone (including, without limitation, your friends and acquaintances, and except your immediate family members), as only the Commissioner, Ops, and other NBA officials are permitted to know where you and your colleagues are scheduled to work.<sup>32</sup>

. . .

As an NBA official, your conduct (both on and off the court) is critical to your job. You are a reflection of the NBA to the public and, as a consequence, must be a model of integrity.

Accordingly, you must not:

- A. Breach any provision of Section 35A of the NBA Constitution. . . .
- E. Disclose confidential information concerning the NBA, its teams, or any of their current or former owners, officers, employees (including players), or operations. . . .
- G. Interfere with, or encourage or engage others to interfere with, the presentation of an NBA game or event. . . .
- O. Gamble or place bets of any kind.
- P. Visit or attend race tracks, off-track betting establishments, casino gaming areas, casinos generally (except only to attend shows during the Off-Season), or other gambling establishments or Internet sites. . . .
- S. Engage in unlawful or improper conduct during non-working hours which affects your relationship to your job, co-workers, or supervisors, or the NBA or its reputation or good will.<sup>33</sup>

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<sup>32</sup> 2006-2007 Work Rules for NBA Officials § II.B.

<sup>33</sup> 2006-2007 Work Rules for NBA Officials § IX.

#### **D. NBA's 2005 Investigation of Donaghy**

In 2005, the NBA learned from a press report that Donaghy had been involved in a public dispute with his neighbors. In January 2005, the neighbors, Peter and Lisa Mansueto, filed a civil lawsuit against Donaghy for harassment and invasion of privacy. According to the complaint, in the summer of 2003, Donaghy began “a pattern of public harassment and stalking” against the Mansuetos. Among other misconduct, Donaghy allegedly followed Mrs. Mansueto around the country club to which both Donaghy and the Mansuetos belonged while staring at and mimicking her; repeatedly yelled obscenities at them at both the country club and their residence; set fire to a tractor owned by the Mansuetos; and took a golf cart owned by the Mansuetos and drove it into a ravine.<sup>34</sup> The complaint also alleged that the Mansuetos filed a complaint with the country club against Donaghy based on the conduct above, and that Donaghy responded by making “repeated and unending false reports” to the local police.

During its review of Donaghy's conduct, the NBA also heard a generalized allegation that Donaghy had gambled at casino gaming tables in violation of the referee work rules. Donaghy was then directly questioned by the League's General Counsel and head of Security. The League asked not only whether Donaghy had gambled in casinos but also whether he had wagered on NBA games. Donaghy answered no, and, in so doing, we now know he lied.

Notwithstanding Donaghy's denials, the League retained a private investigative firm to conduct a detailed background investigation of Donaghy, including whether the gambling allegation was true. The investigative firm reported that, according to its sources in the gaming industry, Donaghy had not received lines of credit or “comps” at any of over sixty casinos in

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<sup>34</sup> Complaint, *Mansueto v. Donaghy*, No. 05-00411 (Chester County, Pa. Court of Common Pleas Jan. 11, 2005).

New Jersey and Nevada. The NBA subsequently learned of additional allegations that Donaghy gambled at casinos, including a specific allegation that Donaghy gambled at the Borgata Hotel in Atlantic City in December 2004. In an interview with the League's head of Security, Donaghy also denied these allegations. The investigative firm attempted to verify these additional allegations but found no evidence supporting them.

At no point during this investigation did the NBA receive any indication that Donaghy had in fact bet on NBA games or disclosed confidential League or team information in connection with betting on NBA games. As a result, the League closed its investigation, but penalized Donaghy for the bad judgment he had exercised in the dispute with his neighbors by not permitting him to officiate in as many playoff rounds as he had the prior year.

#### **IV. Findings Regarding NBA Referees' Gambling and Disclosure of Confidential NBA Information**

As noted, the impetus for our review was the government's revelation that Donaghy had gambled on NBA games himself and with others, and had been paid secretly to provide confidential NBA information. A focus of the first part of our review was to learn if there was any information suggesting that *other* referees had engaged in similar misconduct.<sup>35</sup> We therefore set out to determine, among other things, whether other NBA referees had (i) bet on NBA games, (ii) violated NBA rules prohibiting other types of wagering or (iii) leaked confidential NBA information.

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<sup>35</sup> NBA referees have violated the law previously. In the late 1990s, seventeen referees were convicted of tax evasion after an Internal Revenue Service probe revealed a practice of exchanging first-class airline tickets for cheaper ones and failing to report the difference in income to the IRS.

**A. Betting on NBA Games**

**1. Referees Other than Donaghy**

We have discovered no information suggesting that any NBA referee other than Tim Donaghy has bet on NBA games or leaked confidential NBA information to gamblers. The conclusion that no other referee has done so is supported by the following:

First, the government has made clear that it has no evidence indicating that any other NBA referees engaged in such misconduct. At the earliest meetings between the FBI and senior NBA management in June 2007, the FBI told the NBA that it had no information about other referees engaging in criminal misconduct (though it did have information about other referees violating League rules). The FBI has informally reiterated since then that it has no other information suggesting that other NBA referees have bet on NBA games. Consistent with this information from the FBI, the U.S. Attorney's Office stated in a June 27, 2008 letter to the Court that the information it received from Donaghy "did not lead to evidence of prosecutable federal offenses."<sup>36</sup> Similarly, Donaghy's June 10, 2008 letter to the Court, although containing a variety of allegations of game manipulation by other referees (which will be addressed below), did not suggest that any other referee had placed bets on NBA games or provided confidential information to gamblers.

Second, the NBA's Security Department — which has numerous contacts in law enforcement through Bernie Tolbert, the head of Security and a former FBI agent — has never received any information suggesting that other referees have gambled on NBA games or provided confidential information to gamblers.

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<sup>36</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 3 (June 27, 2008).

Third, we personally interviewed all the active and certain retired referees and their supervisors and asked specific questions about whether they had any information suggesting that their colleagues or they personally had been involved in betting on NBA games or leaking confidential NBA information. All denied having any information suggesting that their fellow referees had bet on NBA games. They also denied personally betting on NBA games or providing or leaking confidential information to others.

While it is, of course, possible that one or more referees was not completely truthful with us, the referees appeared sincere in their denials and, as noted, nothing has come to our or the League's attention suggesting otherwise. Moreover, the referees were told that if any were found to have lied to us, they would be terminated by the NBA for the lie alone.

Fourth, a private investigative firm engaged by the NBA to conduct background checks of the referees has found no evidence of other referees having gambled on NBA games.

Fifth, we spoke to gambling consultants in Las Vegas who run major sportsbooks and have regular contacts with bookies in major cities throughout the United States. They have told us they uncovered no information suggesting that any other referees have bet on NBA games or have provided confidential information to individuals betting on NBA games.

Finally, no information about other referees gambling on NBA games or leaking confidential information has been brought to our attention since Donaghy's misconduct came to light last June.

## **2. Scott Foster**

On July 14, 2008, a press report stated that Tim Donaghy's phone records showed that during the period when Donaghy was engaged in his criminal conspiracy with James Battista and Thomas Martino, Donaghy made frequent phone calls to fellow referee and friend Scott

Foster. While the article contained no information about what was actually said during these calls, it highlighted certain facts that were deemed suspicious:

- Donaghy placed 134 calls to Foster between October 2006 and April 2007;
- Many of these calls lasted no longer than two minutes;
- Many of these calls were placed in the hours before or after games; and
- On a few days, Donaghy's calls to Foster were close in time to calls Donaghy made to Martino.

Several factors lead us to conclude that Foster was not involved in Donaghy's misconduct and that there are innocent explanations for the calls reflected in the phone records.

First, no information suggests that the government has ever believed that Foster engaged in any improper conduct with Donaghy. The government at no time has indicated through questions to the NBA or requests for documents that Foster has been under any suspicion whatsoever. The government contacted Foster only once during its investigation — when the FBI interviewed him in August 2007. During this interview, which the FBI conducted by phone rather than in person, the FBI asked Foster about his relationship with Donaghy. Foster explained his long-term friendship with Donaghy and told the FBI that they spoke almost every day during the season. It appears that the purpose of this interview was simply to confirm that Donaghy had accurately described his relationship with his friend Foster.

Second, although Donaghy's attorney submitted letters to the Court in June 2008 alleging misconduct by referees, those submissions contained no suggestion that Foster was involved in any improper conduct or that any referee other than Donaghy was involved in betting

on NBA games.<sup>37</sup> This point is worth emphasizing. Had Donaghy in fact consulted with Foster in connection with his criminal conduct, but failed to disclose this information to the government, Donaghy would have subjected himself to additional criminal penalties for making false statements to the government *plus* he would have forfeited his right to a 5K1 letter advising the Court of his cooperation, thereby subjecting himself to a risk of significant additional prison time.

Third, after the article was published, Martino's attorney expressly and publicly stated that Foster was not a member of the conspiracy.

Fourth, there is a reasonable explanation for the frequency of calls between Donaghy and Foster: a close friendship of over fifteen years. Foster and Donaghy first met in 1991 after the NBA had invited both of them to officiate games in its summer league. After working together and becoming friends that summer, Foster returned to finish his degree at the University of Maryland while Donaghy became a referee in the Continental Basketball Association ("CBA"). The next summer, both participated again in the NBA's summer league. Foster then joined Donaghy as a CBA referee. The NBA hired Foster and Donaghy, as well as Tony Brothers, to be NBA referees for the 1994-1995 season. While Foster and Donaghy did not officiate games together because they both were rookies, they stayed in close touch and spoke on the phone frequently. Their friendship revolved around a deep interest in basketball, other sports, including golf, and their shared profession. They occasionally played golf together but rarely met socially. Foster also asked Donaghy to be the godfather of his son.

Fifth, there is also an explanation for the fact that many of Donaghy's calls to Foster were recorded as having lasted only one or two minutes. Calls between referees often go

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<sup>37</sup> See Letter from John F. Lauro, Esq., to Hon. Carol Bagley Amon, U.S. District Judge (May 19, 2008); Letter from John F. Lauro, Esq., to Hon. Carol Bagley Amon, U.S. District Judge (June 10, 2008).

unanswered because the League mandates that referees silence or turn off their cell phones during referee meetings and in the referee locker room. Foster told us that he frequently calls other referees and either hangs up when the call goes to voicemail or leaves a short voicemail message, and that other referees do the same when calling Foster. Foster's cell phone service agreement, which appears to be typical for cell phone carriers, provides that a call begins as soon as the phone being called rings, and a call as short as one second is recorded as a one-minute call. If the phone rings five or six times and the caller then leaves a message, it is likely that the call will last over one minute and will be recorded as a two-minute call. Therefore, it seems likely that many of Donaghy's short calls to Foster were in fact instances in which Donaghy and Foster did not speak to each other.

Sixth, Foster also explained why he called Donaghy (and other referees) so often in the hours before or after games by recounting his typical daily experiences on the road:

- When Foster arrives in a city to officiate a game, he waits at the airport for the shuttle van to the hotel. While he is waiting, he will typically call fellow referees to relieve his boredom. Because his fellow referees are also traveling, Foster often will not get an answer, so he will call another referee, and so on. When he does get an answer, the call may be very short: when the shuttle van arrives, he will hang up and call back after getting into the van. More generally, much of a referee's life involves travel, and travel involves a great deal of waiting time, so Foster often makes calls to "kill time."
- Foster is a creature of habit and a basketball and sports junkie. When he is on the road, he works out every morning at 10:00 a.m. He is also an early

riser, which means that he has several hours to kill every morning. His typical morning involves leaving the television tuned to ESPN's SportsCenter while he is on his laptop computer watching video clips of plays posted on the NBA's intranet site for referees. He has frequent, short calls with fellow referees during this morning ritual to discuss plays that he sees on SportsCenter or on the website.

- At 11:00 a.m., Foster conducts a meeting with his two crewmates to prepare for that night's game. His phone is silenced or turned off during the meeting but messages can be left. After the meeting, the crew usually has lunch together. During the meeting and lunch, the referees typically discuss notable plays they have recently seen, as well as referee gossip. Referees have more time on their hands in the afternoon before a night game. Foster described this time as often boring and lonely, because referees rarely spend it together. Therefore, Foster usually returns to his hotel room after lunch and makes more calls to fellow referees, with the morning meeting and lunch conversations serving as fodder for these calls.
- The excitement of officiating an NBA game in the evening typically leaves him "wired" and unable to sleep right away when he gets back to his hotel room after the game, often after midnight. Because it is often too late at night to call his family, Foster calls his fellow referees to discuss the games they have just officiated.

Seventh, we find nothing suspicious about Donaghy's phone records showing that, on a few days, Donaghy made calls to Foster and Martino that were close in time. Donaghy

appears to have been cycling through his phone's contact list, unsuccessfully looking for someone to talk to as nobody was answering his calls.

Finally, although the government and the reporter have declined to supply us copies of Donaghy's phone records, Foster provided us with his own phone records for December 2006 through June 2008, and they appear to us to confirm fully that there was nothing out of the ordinary about the Foster-Donaghy calls:

- *Frequency.* During the period of Donaghy's conspiracy with Battista and Martino (December 2006 to April 2007), Foster spoke frequently to Donaghy (170 calls). Foster had a similar number of calls with referee Matt Boland (153 calls), and spoke frequently to referee Mark Wunderlich (75 calls) and Danny Crawford (32 calls). During the same period the following year (December 2007 to April 2008), after he had stopped speaking to Donaghy, Foster continued to speak just as frequently with referees Boland (156 calls), Danny Crawford (55 calls) and Wunderlich (23 calls). Foster explained that he is a friend of Wunderlich; a friend and mentor of Boland; and a protégé of Crawford, a veteran referee. Foster confirmed that the phone records accurately reflect his practice of speaking frequently on the phone with these referees and other referees whom he considers to be friends. (Boland, Wunderlich and Crawford confirmed this.)
- *Duration.* While from December 2006 to April 2007, the majority of Foster's calls with Donaghy were recorded as having lasted two minutes or less (93 of 170 calls), this was also true of Foster's calls with Boland

(78 of 153 calls) and with Wunderlich (40 of 75 calls). In fact, the majority of *all* calls between Foster and NBA-related phone numbers during this period were recorded as having lasted two minutes or less (400 of 680 calls).

- *Timing.* From December 2006 to April 2007, Foster spoke regularly in the hours before or after games not only with Donaghy, but also with Boland and Wunderlich. During the 2007-2008 season, after he had stopped speaking to Donaghy, Foster continued to speak frequently with Boland and Wunderlich in the hours before or after games.

It is also noteworthy that many of the referees to whom we spoke indicated that they thought that their calling patterns with fellow referees were similar to Foster's and that their phone records would also show hundreds of short calls to fellow referees both before and after games. The referees explained that they often talk about basketball, sports and personal matters, so their cell phone talks resemble office water cooler conversations. A number of referees also said that their closest friends on the referee staff tend to be those with whom they entered the League — with some analogizing that group to their “pledge class.” At our request, Matt Boland and Mark Wunderlich, the referees to whom Scott Foster spoke most frequently, provided us with their phone records for the 2007-2008 season. An analysis of their records reveals that their calling patterns were similar to Foster's:

- *Matt Boland.* From December 2007 to April 2008, Boland spoke frequently to Zach Zarba (191 times), Scott Foster (156 times) as noted, and Jess Kersey (24 times). Boland's calls were frequently before and

after games. And almost half of his calls made to referees during this time period were only one- or two-minutes long.

- *Mark Wunderlich.* From December 2007 to April 2008, Wunderlich spoke frequently to Joey Crawford (191 times), Bob Delaney (123 times), Bennett Salvatore (86 times) and Scott Foster (23 times) as noted. Wunderlich's calls were frequently before and after games. And approximately two-thirds of all his calls made to referees during this time period were only one- or two-minutes long.

The report on Donaghy's phone records — when assessed in light of Foster's phone records, Foster's friendship with Donaghy and the frequency with which Foster spoke to other referees — do not in our view raise concerns about his integrity. Numerous referees and NBA management personnel have also spoken to us about their positive opinion of Foster's character.

Foster requested that we ask the NBA if he could be allowed to meet with the media to explain that he has done nothing wrong. He also offered to have a reporter follow him for a week during the next season so that the reporter could understand the life he leads as an NBA referee and why and when he is on the phone with fellow NBA referees. We have asked the Commissioner to allow Foster to respond to future media inquiries.

## **B. Violations of NBA Gambling Rules**

Although we found nothing to suggest that other referees bet on NBA games or disclosed confidential League or team information for betting on NBA games, we did find that many referees engaged in other forms of gambling. As noted above, under the NBA's referee work rules, the referees were prohibited from "gambling," with the exception of betting at a race track during the off-season. This broadly worded language could be read to prohibit not only

gambling at places like casinos, but also casual gambling, such as on a recreational golf game or even purchasing a lottery ticket.

Of the fifty-seven referees we interviewed, fifty-two acknowledged that they had engaged in some form of betting while employed by the NBA. Below is a summary:

- Thirty-three referees acknowledged gambling at a casino at least once.
  - Twenty-one referees acknowledged gambling at a casino two or more times.
  - Thirteen referees acknowledged gambling at a casino during the off-season but while on NBA business.
  - Four referees acknowledged gambling at a casino during the NBA season.
  - One referee acknowledged maintaining a credit line at a casino.
- Three referees acknowledged betting at a race track during the NBA season.
- Sixteen referees acknowledged participating in betting pools on sporting events (such as Super Bowl pools) or making other low-stakes, friendly bets on non-NBA sporting events. All referees denied using bookmakers to bet on sports.
- Seventeen referees acknowledged wagering on card games (including two who also played poker online).
- Thirty-five referees acknowledged wagering while playing golf or pool.
- Thirty-seven referees acknowledged purchasing lottery tickets.
- Five referees said they had not engaged in any form of gambling.

Some of the referees claimed they did not have a full appreciation of the scope or meaning of the gambling rules then in effect. For example, some referees claimed that they thought off-season betting in casinos was permissible, as it was at race tracks. Many said they did not realize the League's rules might be read to prohibit betting on one's own round of golf. Others said they knew they were violating the rules but thought that the League's rules were honored in the breach, especially if the gambling occurred on a vacation.

We provided the Commissioner with our specific findings about referee gambling and briefed the NBA's Board of Governors on our findings in October 2007. We advised that the referees' conduct in no way resembled Donaghy's criminal violations or suggested to us that the referees lacked fundamental integrity. That said, we informed them that we believed that the referees should receive some visible (though moderate) form of discipline for their rules violations so that they would be reminded that NBA rules needed to be followed, not ignored. After considering the details of the violations and our recommendation, the Commissioner decided not to discipline any of the referees. Because the anti-gambling rules had been too broadly drafted and because the League had failed to enforce its rules — thus creating a permissive atmosphere — the Commissioner believed it would be fundamentally unfair to punish the officiating staff for these violations.

As set forth below, the League accepted our recommendation that it amend its gambling rules to make them clearer and more workable. While the rules had always prohibited doing anything that causes or could cause any NBA game to be decided other than on its merits and betting directly or indirectly on any NBA game, we made suggestions to clarify them and also suggested other changes. Among other changes, the rules now also prohibit:

- Encouraging or causing any other person to bet on any NBA game;
- Betting directly or indirectly on any professional or collegiate sport, other than small bets with friends or family members;
- Betting directly or indirectly via an internet gambling site;
- Betting directly or indirectly at a casino, race track or off-track betting establishment during the NBA season;<sup>38</sup> and
- Betting in violation of federal, state or local law.

### **C. Disclosure of Confidential NBA Information**

Donaghy claims to have used three types of non-public League information to make his betting picks: player injury information, referee game assignments and referees' perceived tendencies or biases regarding certain players and teams.<sup>39</sup> According to experts in the gaming industry, information about whether, how much or how effectively a player will play in a game — such as whether a player is injured, suspended or benched — can move the betting line of a game. Such information is particularly important in basketball because of how few players are on the court at one time. Therefore, knowing in advance of public disclosure whether a player, particularly a key player, is injured can be prized information to gamblers.

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<sup>38</sup> Although League rules now permit betting at a casino, race track or off-track betting establishment during the off-season, a referee must notify the League's Security Department within twenty-four hours of placing such a bet.

<sup>39</sup> Numerous websites catering to gamblers provide information on referees, which suggests that gamblers may perceive the information to be valuable. However, gaming industry experts to whom we spoke dismissed the identity of the referees as significant information. For example, Ken White, the Chief Operating Officer of Las Vegas Sports Consultants, the licensed entity that helps set the opening lines for most Las Vegas casinos, told us that he does not consider the identity of the referees in setting the line. The gambling experts with whom we spoke told us that the release of referee assignments has not moved Las Vegas betting lines on NBA games, which suggests that those betting in Las Vegas do not value this information.

Given Donaghy's admitted abuse of confidential League information in connection with his illegal betting activities, another aspect of our review was to determine whether *other* referees disclosed and abused confidential League information. During our interviews of the referees, we asked specific questions about whether they had any information suggesting that they or their colleagues had improperly disclosed non-public League information. All denied personally sharing confidential information about NBA games — such as information about player injuries or referee scheduling — with anyone for gambling or other improper purposes. All denied having any information suggesting that any of their fellow referees had intentionally leaked confidential information to gamblers. Nevertheless, during the course of our review we learned of significant risks that non-public player injury information or referee scheduling information could be disclosed.

The interaction of team personnel with referees presents a risk of disclosure of information about player injuries. An example of this risk involves athletic trainers, who are team employees with firsthand knowledge about player injuries. Traditionally, home teams have made their athletic trainers available to the referees because the League does not employ or supply separate trainers to the referees. Although the referees are most often given treatment in the referee locker room, there is a risk that referees could, through casual conversation, learn about player injuries from trainers. In addition to trainers, other team personnel, such as doctors, coaches, equipment managers, ball boys and the like, have direct access to information about the condition of players and teams, and other non-basketball team personnel can easily gain access to such information. Donaghy's own case illustrates the breadth of the risk. According to a court filing, one of Donaghy's betting picks was based on an official scorer's comment that a

team was “all banged up.”<sup>40</sup> Of course, official scorers are not involved in players’ medical treatment, but, as team employees, they have access to non-public areas of the arena and therefore potentially have access to player injury information.

Similarly, we learned that players’ family members, friends, acquaintances, agents and other individuals are regularly given access to non-public areas of arenas, such as “family rooms” and hallways leading to and from the player locker rooms, and sometimes even the player locker rooms. Players, coaches and other team personnel frequent these areas, which means that confidential team information may become available. For example, coaches might discuss player line-ups or substitution patterns, or one might see that a player is not suited up for a practice. Given the sheer number of non-team individuals with access to these areas, there is a significant risk to the League that confidential information will be disclosed — whether intentionally or inadvertently — to individuals not authorized to possess it.

We likewise learned of risks of disclosure of referee scheduling information. As discussed below, the League has nullified any possible utility of this information to gamblers by accepting our recommendation to release the names of the referees assigned to a game on the morning of the game. Even with this change, however, referee assignments might be perceived to be valuable to gamblers if they could be obtained before their release on the morning of a game. We learned that the “master schedule” — a listing of all of the referee assignments for a particular month’s games — presents just such a risk. NBRA executives and board members (who are active NBA referees) were provided with the “master schedule” as a courtesy so that they could locate their fellow referees who were traveling. It was also provided to group

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<sup>40</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 4 (May 8, 2008).

supervisors (employees of the League who supervise the referees' training and development) so that they could schedule meetings with referees on the road. While there are rules prohibiting distribution of the master schedule beyond these limited recipients, we learned that referees often obtained the master schedule by requesting it from NBRA board members. Most referees told us that they only asked for the master schedule on a few occasions and did so simply to see where their fellow referees would be working, but it was readily available. We believe that Donaghy obtained the master schedule in this way and then shared information it contained with his co-conspirators.

As discussed in the Recommendations section below, we have made a number of recommendations, including amendments to the League's Constitution and referee work rules, to try to minimize the risk of the misuse of confidential information by referees, trainers, other team personnel and other individuals.

#### **V. NBA Officiating Program**

In addition to examining the potential for gambling-related corruption among referees and others, we also were asked to conduct a broader review of the officiating program. Understanding the way that the referees are trained, evaluated and supervised informs an understanding of the job of an NBA referee and of the real and perceived strengths and weaknesses of how they perform. In particular, we believe it is helpful to understand how the officiating program functions today and how the philosophy of officiating NBA games has evolved in recent years.

The League has implemented a robust officiating program designed (i) to send a consistent message that the referees should strive for accuracy, uniformity and fairness, (ii) to measure and evaluate referees according to these standards and (iii) to provide referees the tools

they need to develop and improve. We discuss below the many aspects of the officiating program that the League has put in place in an effort to improve referee performance.

Given the nature of the game, however, and the role that the referees play, it should come as no surprise that the referees and the teams have different perspectives on just how successful the referees are at getting the calls right. We discuss both the referees' and the teams' perspectives on the officiating program.

#### **A. “Old” vs. “New” Refereeing Philosophies**

In an effort to improve both actual and perceived referee performance, the NBA, during the past six years, has tried to move toward a clearly articulated refereeing philosophy that adheres strictly to a literal and consistent interpretation of the rules. Previously, referees were inclined to employ an approach that allowed for more discretion. That approach — which was also aimed at getting calls right — varied somewhat with the circumstances of the game. The approach has been described to us as the “art of refereeing” or “game management,” and has aspects of common sense, a desire not to interrupt the flow of the game (thereby showcasing the talent of the players), and rough justice.

Through our interviews, we have learned a number of ways that this approach would at times manifest itself in a game, both affecting the tone of the game and individual calls. For example, if referees expected a heated match-up of players and/or teams, they might “set the tone” by whistling close calls early in the game to establish control or to discourage rough play. On the other hand, referees might avoid calling a foul on a play with significant contact at the end of a close game, consistent with the view that players rather than referees should determine a game's outcome. Similarly, to minimize tensions, referees were reluctant to call close or “ticky-tack” fouls against a team that was substantially behind in a game to avoid rubbing salt in the wound.

Referees were also conscious of game circumstances and considered them when making judgments about calls. For instance, we have been told that some referees maintained an awareness of substantial imbalances in foul calls against teams. Also, if a referee recognized that he or his crew had made an incorrect call, a referee might whistle a “make-up” call soon thereafter. Finally, some told us about giving consideration to the number of fouls called on “players of consequence.” Before making a call that would put such a player in foul trouble, some referees would make sure the foul was a “good one.”

With respect to individual calls, referees employed a philosophy of “advantage/disadvantage.” Referees focused on whether a player was actually disadvantaged by contact — whether the game was really affected — even if there was technically enough contact to constitute a foul.<sup>41</sup> The same concept is echoed in something known as the “Tower Philosophy,” named after Oswald Tower, a fifty-year member of the National Basketball rules committee, who was enshrined in the Basketball Hall of Fame as a contributor in 1959. The “Tower Philosophy” provides as follows:

It is the purpose of the rules to penalize a player who by reason of an illegal act has placed his/her opponent [at] a disadvantage. It is not the intent that the rules shall be interpreted literally, rather they should be applied in relation to the effect which the action of the players has upon their opponents. If they are unfairly affected as a result of a violation of the rules then the transgressor shall be penalized. If there has been no appreciable effect on the progress of the game, then the game shall not be interrupted. The act should be ignored, as it is incidental and not vital. Realistically and practically, no violation has occurred.

The goal of this philosophy was to avoid interrupting the flow of the game. One example we heard of this philosophy was a situation where a player committed a traveling

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<sup>41</sup> See, e.g., Earl Strom, *CALLING THE SHOTS* 26-34 (1990).

violation but did not get by his defender and therefore did not gain an advantage from the violation. Under the advantage/disadvantage concept, the referee would not call the violation.

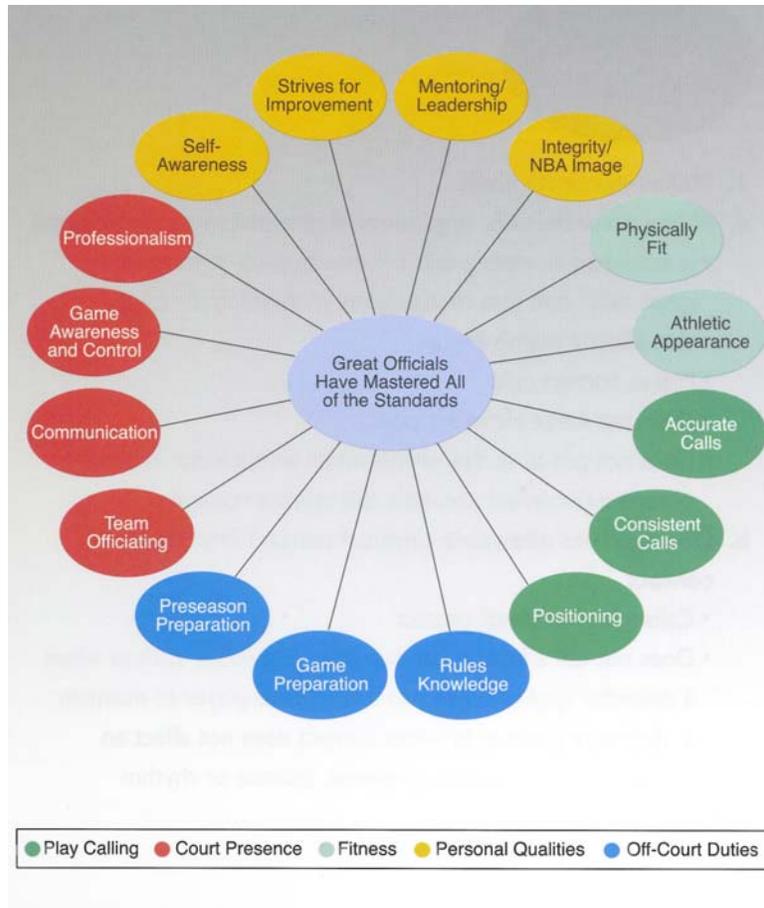
With universal access to digital review of games and multiple angles of instant replay, this old approach to refereeing gave rise to criticism. A number of team personnel criticized referees operating under this approach for being inconsistent in their play-calling and not following the League's written rules of play. A growing sentiment arose among NBA management and the teams that officiating should be more of a science rather than an art — that the League's referees should be a consistent group of play-callers striving to make the same calls regardless of circumstance.

Based in part on consideration of these criticisms, the League has worked to change its officiating philosophy. The League determined that the goal of the officiating program should be absolute call accuracy and consistency throughout the game.

To implement this system, which is described below, the League enhanced its training and supervision, and began to use statistics to monitor performance. The League has now developed a comprehensive — though little publicized — system of recruiting, training, monitoring, managing and developing its sixty referees who officiate each of the League's games.

## **B. Performance Standards**

In 2003, the NBA established sixteen “performance standards” for its referees. The document setting forth these standards — NBA Officiating Performance Standards — is provided to all referees. It explains that these standards seek “to capture what it takes to be a successful NBA Official”: referees are to “strive for the unattainable goal of perfection, assuring that we fully develop our potential. We view an ongoing process of performance monitoring, feedback and development as an essential part of that effort.” The sixteen standards, each of which contain detailed application comments, are as follows:



Implementing these standards has furthered the League’s goal of creating consistency throughout the referee program. Teams, managers and observers all rate the referees using the same definitions for performance. Once the standards were developed, they were used as the foundation for all referees’ performance reviews, including recruiting assessments, pre-season development plans, mid-season reports, observer reviews, end-of-season assessments and the composite ratings, which include input from teams. Supervisors and referees were instructed to try to use language in the standards as much as possible to help foster consistency.

Throughout our interviews with the referees and NBA management, we heard that the League communicates a consistent message: “get the calls right.” It is no surprise, therefore, that the first group of standards fall into the “play calling” category, including an expectation that referees strive to make “accurate calls, regardless of circumstances of the game” and to

“distinguish[] allowable physical contact from illegal physical contact.” The goal is to “make correct calls” and “not make incorrect calls.” The second standard requires that referees make “consistent calls.” As such, referees are to make “consistent calls from player to player”; make “consistent calls throughout each game”; and not be “affected by home team atmosphere or prior games.” The third standard in the play calling category emphasizes “positioning” to ensure that referees make accurate and correct calls. The other thirteen standards are similarly aimed at striving for accuracy and consistency: maintaining a high level of professionalism, integrity, self-improvement, preparation, leadership and fitness, among others.

In addition to the NBA Officiating Performance Standards, the referees’ duties, and related policies and procedures, are defined in a number of other documents. First, there are the Official Rules that the referees enforce. Second, League management has developed a Case Book that provides commentary on and explanation of the application of particular rules to particular situations. Third, the referees are provided with the Official’s Manual, which provides an overview of play calling expectations, mechanics and game management skills. In addition, it sets forth the League’s “expectations for off court protocol,” and builds on the referees work rules. The Manual stresses that “Uniformity, Consistency, and Team Officiating are the goal for each three-person crew.”

### **C. Supervisory and Monitoring System**

The referees are primarily supervised by certain members of League management and three group supervisors, each of whom is responsible for the training and development of about one-third of the referee staff. The Senior Vice President for Referee Operations, currently Army Major General (Ret.) Ronald L. Johnson, is responsible for all aspects of the NBA’s officiating program, including recruiting, training and development, scheduling, data management and analysis, and work rules enforcement. The Vice President and Director of

Officials, currently Bernie Fryer, oversees the daily management and on-court performance of referees. The newly-created position of Vice President for Referee Operations, currently Joe Borgia, is responsible for ensuring work-rule monitoring, overseeing the recruitment and training programs for officials, and overseeing the NBA's D-League and WNBA officiating programs. The Director of Development, currently Ronnie Nunn (who was previously the Director of Officials), is responsible for the training and development of less experienced referees. Don Vaden, the Special Assistant to the Director of Officials, is responsible for focusing on the crew chiefs, the most senior officials. The group supervisors, as discussed in more detail below, are charged with continually monitoring, diagnosing and helping the referees improve their officiating. In addition, the crew chiefs, who are the veteran referees on the staff, work with and mentor less-seasoned referees.

#### **D. Training and Development**

League management is engaged in an ongoing effort to monitor referee performance, individually and collectively, identify areas that need improvement and provide the necessary guidance to achieve ongoing development. All referees — rookies and veterans — receive such training.

In September each year, the referees meet for five days at their pre-season camp. Rookie referees complete a self-assessment of their strengths and weaknesses and areas for improvement; returning referees are also encouraged to complete these self-assessments. During the camp, each referee meets with his/her group supervisor to establish a development plan for the upcoming season, drawing on, among other things, evaluations from the prior season, the referee's self-assessment and observations of performance by League management. The referees receive extensive instruction in new rules, interpretations and procedures, and drill on existing knowledge and skills.

During the season on at least a twice-monthly basis, group supervisors meet with or speak by phone to all junior referees and referees with specific development needs. More senior referees and those that perform to high standards tend to communicate with management through email. During the season, the League also sends DVDs of plays to the referees for review, and group supervisors send emails commenting on and linking to videos of certain plays. League managers monitor referees' performance by attending games and/or watching the games on video.

Also throughout the season, League management — typically the Director of Officials or the referee group supervisors — highlights particular types of fouls or plays, referee mechanics and general pointers. Management also uses this highlighted information to check its own observations of staff-wide and individual performance, and to help develop points of emphasis (“POEs”) for the staff and individual curricula for the referees. POEs are a common and important learning tool for referees. They are generally communicated by email, are posted on the referee's website (either as written text or video clips) or are discussed in person. POEs generally emphasize certain types of calls (*e.g.*, travels, block/charge or defensive three-seconds) or mechanics (*e.g.*, referee movement on the floor) that management wants to underscore.

Around the time of the All-Star Game, each referee receives a mid-season review from a senior manager. At the end of the season, each referee receives a year-end review where the referee's performance is compared against the performance standards. The League compiles its composite ratings and rankings for all referees, which are based in part on feedback from the teams and coaches.

The group supervisors, as well as other members of League management, use a computerized Officiating Review System (“ORS”) to identify areas of improvement for

individual referees and for the staff overall. Since the 2003-2004 season, and with the help of Sibson Consulting, data on calls and non-calls have been entered into the ORS computer database. To populate the database, the League has deployed an extensive observer program. The League trains and employs thirty observers who attend each of the home games played by his assigned team. During the game, the observer watches for close calls, obvious or potential errors and calls of consequence to help aid in his subsequent video review. The observer also watches for behavior consistent with the court presence and fitness standards (*e.g.*, professionalism, game awareness and communication). After each game, the observer reviews the game on video, rates every call, enters correct and incorrect non-calls, and includes some qualitative assessments of performance. These observer reports are submitted to the League electronically.

During the game, courtside statisticians (employed by teams) record calls reported by referees to the scorer's table and enter them into a courtside system. This system, in turn, is uploaded into the ORS. The ORS links the courtside data to the League's extensive digital database of games, enabling each call logged to have a corresponding video clip linked to it. When the observers file their observer reports, they use a form populated by the courtside system of call data and rate each referee call as correct or incorrect. They also enter correct and incorrect non-calls which are plays where no whistle was blown. Over the course of a given season, between 65,000 and 70,000 officiating events are entered into this proprietary statistical system.

Given the importance of this data, the NBA continually works to improve the quality of the observers' performance. Prior to the season, observers receive training on the rules of play, floor mechanics, observation techniques and the technology needed to do their jobs. The League also provides the observers with training during the season via website and DVDs.

Notably, the observers receive the same points of emphasis that the referees receive and take the same tests on the rules of play that the referees take.

The NBA employs an additional level of reviewers (including former League general managers and coaches) who audit, review and critique the observers' reports; approximately 150 games per season are subject to this additional review. The League has replaced about two to three observers per year; approximately fifty percent of these replacements are aimed at improving observer performance.

The primary purpose of the ORS, and the reason for its implementation, is referee training and development — to make the program better by monitoring call accuracy and consistency and identifying potential areas of improvement, individually and collectively.

The ORS data and observer reports are used in a variety of ways. Group supervisors use these observer reports to review the performance of referees in individual games. While, as a practical matter, group supervisors cannot review every call of every game (each group supervisor is responsible for twenty referees, and each referee officiates approximately sixty to sixty-five regular season games per season), they use observer reports, referees' game reports (discussed below) and the ORS summary reports of calling patterns. Group supervisors also perform “deep dives” of certain games, in which each play in a particular games is reviewed. When a group supervisor finds a call (as entered by the observer) with which he disagrees, the group supervisor overrides it in the ORS system. To help maintain the integrity of the ORS data, a clear audit trail is maintained of the overriding of observer assessments to ensure that changes can be reviewed if any issues arise.

Group supervisors and NBA management also use the ORS to determine directionally how the referee staff and individual referees are performing. The data can be

analyzed in various ways to find areas for improvement. For example, data queries can show what types of calls are being missed, when, by whom, from what position and the like. If a certain referee seems to be missing a particular call, managers can quickly run a query for examples — both correct and incorrect — of that call for that referee and create a DVD for the referee and his/her supervisors to review together. The goal is to find areas for staff-wide and individual improvement, not to rank the referees.

The League recognizes certain limitations to the data, including the fact that individual observer performance varies and that video is sometimes inconclusive. In this regard, the League has made a conscious decision to use the data as just one piece of information used to help inform decision making.

Although this database was not developed to detect referee gambling or misconduct, as will be discussed below, the NBA is exploring ways to combine information in the ORS with information about betting line movement.

#### **E. Referee Self-Assessment Responsibilities**

The referees' commitment to their duties extends beyond the games themselves. Prior to a game, the referee crew has its morning meeting during which it prepares for that day's game. Among other things, the crew reviews other referees' game summaries for the teams, possible player match-ups and dynamics, player tendencies, mechanics and other issues. After the game, the crew is required to submit a game report that details all critical, pertinent and notable calls, both correct and incorrect. Typical game reports include ten to twenty calls. The referees also review and break down the video of the game and engage in a self-assessment and critique of their performance either that night or the following day.

This game report is entered into another computer system called the Officials Interactive Website ("OIW"). If any atypical plays occurred, such as technical fouls, flagrant

fouls or ejections, the referees must also note these in an atypical report. Upon request from management, the crew chief is also required to submit a game summary report via the OIW.

In addition to submitting the above reports immediately after a game, each referee must conduct a number of “deep dives” of their games, usually about eight per month during the season. During these reviews, referees are required to watch and rate every one of their own calls and to identify incorrect calls and non-calls. The principal goal is self-analysis and learning from both correct and incorrect calls. These reports are then reviewed by the group supervisors and League management to identify areas for training and development.

Referees are also asked to complete additional web-based work that tests their knowledge on a weekly basis. Management posts weekly web tests on the OIW, which are five-question tests on specific rules. Web plays are also posted on the OIW for review; these videos highlight referee mechanics or request input in a “you make the call” type question. As noted, referees also receive numerous emails from their group supervisors and management stressing points of emphasis and individual points of focus. DVDs with POEs are sent to the referees (and teams) every few months, and these POEs are reinforced by the group supervisors during their meetings and communications with referees.

#### **F. Recent Program Improvements**

The League is continuously engaged in efforts to identify areas for improvement and enhancement to its referee training program. For example, after we interviewed the referees the first time in the summer of 2007, we shared views (both ours and those we heard) about the program, and improvements were made as a result. In part as a result of our comments about ways to improve the officiating system, last September, the League hired Bernie Fryer as Assistant Director of Officials and Crew Chief Coordinator, a newly created position whose primary responsibility is monitoring and coaching the sixteen crew chiefs.

The League also recently separated the Basketball Operations department — which had included all aspects of on-court operations, including officiating — into two departments: Basketball Operations and Referee Operations. This separation was necessary because both the officiating and non-officiating functions of the Basketball Operations department had expanded dramatically in scope and complexity, particularly as a result of the globalization of the NBA’s business. As a result, the referees are now managed, trained and supervised by a separate Referee Operations department. In splitting Basketball Operations, the League has also divided the position formerly known as Executive Vice President for Basketball Operations into two positions: Executive Vice President for Basketball Operations and a new position called Senior Vice President for Referee Operations.

When we interviewed a number of owners and other team representatives, it was suggested that it would be extremely useful to hire a highly successful, professional manager to run referee operations. We agreed with the suggestion of bringing in a person who had managed a group of individuals who were in high stress positions. We were pleased to see that the Commissioner has recently hired Army Major General (Ret.) Ronald L. Johnson, who spent thirty-two years in the U.S. Army, as Senior Vice President for Referee Operations. We have had an opportunity to meet with General Johnson and found him to be most impressive. We expect that his appointment will introduce management skills and discipline that will improve substantially the operation of the referee program.

In addition, we have learned that a video rule book is being developed for the benefit of teams and referees that will feature video clips of plays to help explicate rule interpretations for various fouls and violations. We have suggested that this video rule book eventually be made available to the public as well. At our suggestion, the League is also

developing a standardized website for teams to submit calls for the League to review, which should further help them understand how well the referees are performing.

## **G. Perspectives on the Officiating Program**

### **1. Referees' Perspectives**

During the course of our review, we interviewed each current referee at least twice and spoke to certain former referees. As a result, we heard the referees' individual views of the officiating program — both positive and critical.

The referees told us that their first priority is to make accurate and consistent calls. But referees recognize that they inevitably make mistakes. They told us that the speed of the game, the size of the players and the level of play make calling a perfect game an unattainable goal.

While the referees as a whole appear to derive considerable satisfaction from their jobs, some indicated that their morale needed improvement. They described a few root causes. Some referees explained that their job is difficult and stressful because of the level of scrutiny and criticism to which they are subjected. Although the staff gets the vast majority of its calls correct, referees are frequently critiqued by teams who lodge complaints with the League and are criticized by the media for missed calls. Some referees also said that they rarely received positive feedback from the League. Much of the feedback is critical, and their training and development often focuses on missed plays and areas of performance that need to be strengthened.

Of course, in substantial part, the referees' concerns are an inevitable result of the profession they have chosen. Given the nature of competition in the NBA, players, coaches and owners, together with fans, are going to complain when they are not happy about a referee's call. There is nothing the League could ever do to stop these complaints, and it is clearly helpful to allow teams to "blow off steam" by criticizing calls. The complaints also serve an important

function: teams are often able to identify missed calls that lead to additional training. Team complaints about missed calls should not in fact affect referee morale because referees are not supposed to know when teams lodge such complaints.<sup>42</sup>

Some referees expressed concern about the League's observer and statistics program. While some referees acknowledged that statistics are a valuable part of the League's training and development program, others questioned whether the statistics are sufficiently reliable. Some questioned the accuracy of the call and non-call data that the observers enter into the ORS because the observers, they say, are generally not former NBA referees and therefore may lack the experience to assess the accuracy of the referees' calls. Some referees say their lack of confidence in the observers' assessments is exacerbated by the fact that the referees are not shown the observer reports. Furthermore, some referees believe that certain calls or non-calls fall into a grey, subjective area that even the most experienced referees might debate. Finally, some referees complained when we first interviewed them in 2007 that in highlighting areas for improvement by using statistics, the League may be implicitly communicating that they should make more or less of a certain type of call. For example, when a referee is told that he or she is making fewer calls of a particular type (*e.g.*, travels) than the staff on average, he or she might interpret this as a directive to make more of those type of calls.

As noted above, the League has worked to improve the observer program by upgrading the quality of the observers and conducting annual training. And the League has explained that it does not use any of the statistics in a vacuum to rate referees. Instead, the statistics are used to identify patterns, which, when combined with video review, can help

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<sup>42</sup> When teams complain about referee rudeness or misapplication of the rules, referees are generally told about the complaint and asked to explain themselves.

referees and their supervisors identify areas of weakness. Finally, the referees' complaint regarding how supervisors use the statistics when communicating with the referees has been addressed on a number of occasions, including during the 2007-2008 season. The League never intended for supervisors to discuss call volume with referees.

While many of the referees appreciate the training they receive from group supervisors, some feel that the system needs to be improved and augmented. In the past, a large part of a young referee's training came from mentoring by the veteran referees and crew chiefs who taught the "craft" of how to be an official. Some referees feel that the League's focus on developing consistent refereeing and statistics has reduced this experiential mentoring. Some referees feel that they could learn a great deal from current referee mentors, and the fact that some group supervisors were not veteran referees makes them less effective teachers. After we reported these comments to League management prior to the 2007-2008 season, Bernie Fryer, in his new role in League management, focused on improving communication between management and referees — in an effort to improve the morale of the staff — and encouraging the crew chiefs to mentor and teach the younger referees.

Notwithstanding expressions of concern about morale from some referees, the referees still described their commitment to self-improvement. They spend hours together and alone breaking down video, discussing plays, mechanics and rules, watching web plays and taking online tests as part of their self-development. Less-seasoned referees and veterans constantly review plays, looking to learn from their mistakes. Many spend their free time watching NBA games on television critiquing the calls of their fellow referees.

As discussed below, a substantial number of team representatives believes that referees make calls, on occasion, based on personal bias. The concern that referees are biased or

call games unfairly for or against a particular team or player is not new. For years, coaches, players, sportswriters and fans have periodically complained about how referees have called games. Because the potential for referee bias is a threat to the integrity of the game, we have explored the extent to which this form of abuse exists in the League.

When we interviewed the referees, we asked specific and pointed questions about bias and prejudice. The referees acknowledged that there is a perception among some teams and fans that referees favor certain teams or superstars or call “make up” fouls, but they all said that this was not the case today. All denied making calls other than on the merits.

We found our interview of Bernie Fryer to be revealing, as his experiences in the League have spanned that of player, referee for twenty-eight seasons and now member of League management. Fryer told us that when he was a player, he and other players periodically discussed their view that referees were biased in favor of or against certain players or teams. But when he became a referee, he said he soon realized that there was not an actual basis for this belief. He discovered that referees have a great deal of professional pride and are focused on getting their calls right. And now as a member of NBA management in charge of the referee program, he said he is anxious to help reduce the perception of bias by ensuring that the referees are consistently given the message that their sole job is to call games correctly, uniformly and fairly.

## **2. Teams’ Perspectives**

The owners, general managers and coaches of teams with whom we spoke also gave us their views of the officiating program. Many believe that referees generally perform well. They recognize that referees have a very difficult job, with many believing that NBA basketball is the hardest sport to officiate. Team representatives also recognized that, under the League’s current officiating program, referees today have more responsibilities, receive more

training and are subject to more scrutiny than ever before. Yet team representatives articulated a number of criticisms and believe that the program needs to be improved.

Some team representatives believe there are referees who fail to communicate appropriately with players and coaches and appear standoffish and arrogant. Behavior of this sort, they feel, exacerbates tensions on the court. Some team representatives commented that under the “old” system of refereeing, the referees generally showed more of their personalities and interacted better with teams and fans. Many teams said that encouraging referees to talk more to teams and players (*e.g.*, to discuss calls or acknowledge mistakes) would help defuse tensions. A number of them expressed the desire for more off-court interactions among referees, players and coaches, which they believe would help alleviate the occasional confrontation.

A number of team representatives also told us that they felt that some referees exhibit personal biases in favor of or against certain players or teams. Some added that they were concerned that referees are not held sufficiently accountable for their actions and errors and wanted more transparency regarding how the League reacts to their complaints about specific calls or referees.

Certain of the team representatives expressed the view that biased calls were a product of a lack of discipline and leadership. They told us that they believed this problem could be addressed by hiring a professional manager for the referees, perhaps from a military or law enforcement background.

With respect to complaints about referees’ on-court demeanor, we believe the appropriate standard for referees is already set forth in the League’s various rules and policies. The Official’s Manual provides, for example: “Communication [with players and coaches] is most effective when conducted professionally in a business-like fashion. Listening skills are the

foundation of good communication”; “Continue to be interactive and diplomatic with coaches. Questions are to be addressed diplomatically and effectively.”<sup>43</sup> The League’s Officiating Performance Standards similarly provide that a good referee “displays respect for players, coaches, media, broadcast personnel, in-arena support staff and fans” and “appropriately responds to questions and comments from team coaches and players . . . without sarcasm, personal comments, profanity and/or historical reference.”<sup>44</sup> The League should continue to conduct periodic training to insure that referees comply with these standards.

We believe that the teams’ suggestion for more off-court events with the referees is a laudable goal, but it should be achieved through formal events rather than informal, unregulated interactions that can lead to suspicions of favoritism. The League currently arranges a number of formal opportunities for referees to interact with team personnel. For example, many referees are invited to an annual coaches meeting to foster understanding between the two groups, and referees visit with teams in the pre-season to explain rules changes and the upcoming season’s points of emphasis. We have recommended that the League look for additional opportunities to increase the number of official interactions, such as by sending more referees to the annual coaches meeting and by sending referees for discussions with the teams during the season in addition to the pre-season.

As to concerns about referee bias, the League recognizes that the perception that bias exists undermines confidence in the integrity of the game. The League’s modifications to the officiating program in the past six years and the use of statistics to monitor and train referees were aimed in substantial part at removing this perception. By insisting on uniformity and

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<sup>43</sup> NBA Officials’ Manual 94, 98.

<sup>44</sup> NBA Officiating Performance Standards 7, 11.

consistency of calls among all referees and by creating an observer system, together with group supervisors, the new system seeks to encourage accurate and consistent calls.

Notwithstanding the League's efforts to change the officiating program, perceptions of bias linger. It is extremely difficult to assess the extent to which bias has existed in the past and the extent to which the current referee program has reduced it. We believe the issue requires constant focus from League management and the referees.

The Commissioner's recent hiring of General Johnson reflects an understanding of the teams' concerns, a commitment to instill greater discipline among the referees, and an opportunity to address the issue of bias directly. He has precisely the sort of background that team representatives thought was appropriate to provide enhanced leadership for the referees. A former deputy commanding general of the U.S. Army Corps of Engineers, General Johnson has made clear to the referees that he will enforce rules, recently telling them: "I've been in the Army 32 years, I don't tolerate noncompliance. . . . [W]e've got rules, we'll follow them."<sup>45</sup>

We have recommended that General Johnson focus on the issue of bias, as the Commissioner clearly intended when he hired him. We believe the League should establish a direct line of communication, outside the normal complaint system for erroneous calls, from the teams to General Johnson to report claimed instances of bias. We suggest that team complaints about bias be as specific as possible and accompanied by whatever supporting evidence a team can gather. This specificity is important, as the teams' complaints we heard were, in large part, quite general and lacking the detail necessary to investigate any particular claim. Similarly, to allow anonymous complaints, the League will accept complaints about bias on its newly created

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<sup>45</sup> Brian Mahoney, *Former Army General Takes Charge At NBA Refs Camp*, ASSOC. PRESS, Sept. 24, 2008.

hotline, which is discussed below. We also recommend that General Johnson and the President of League and Basketball Operations report periodically to the Audit Committee of the Board of Governors regarding these complaints.

Finally, the League has taken steps to gather statistics that may reveal the existence of personal biases, such as calculating regularly each teams' won-loss record with each referee. The League intends to consider additional ways to use its statistical database to reveal the existence of bias among referees.

#### **H. Dick Bavetta**

The government interviewed a number of current and former NBA referees in connection with the Donaghy investigation, and some of the government's questions concerned referee Dick Bavetta. The government also interviewed Bavetta himself. It appears that Donaghy prompted the government's questions about Bavetta. As discussed in the next section of our report, several of the allegations of game manipulation contained in Donaghy's June 2008 letter appear to refer to Bavetta. Given Bavetta's prominence among referees, we viewed it as important to understand the nature of the government's review and to assess whether it raised issues about Bavetta or referees generally.

Dick Bavetta recently completed his thirty-third season as an NBA referee. He has never missed an officiating assignment during his NBA career, which has spanned more than 2,200 games. These numbers demonstrate dedication and an undisputed work ethic. But we learned during our review that Bavetta is a somewhat controversial figure.

Bavetta's annual reviews by teams reflect that he is highly rated by coaches and general managers in the areas of professionalism, game awareness and control, communication and play calling accuracy and consistency. The team representatives to whom we spoke were generally positive about Bavetta, especially with respect to his on-court demeanor. A number

held Bavetta out as an especially good communicator, noting their particular appreciation of his willingness to admit his erroneous calls to players and coaches. Others praised Bavetta for having fun on the court, talking to fans and otherwise showing that he enjoys his job.

When we spoke to the referees, we received a variety of comments. As to his play calling, the overwhelming majority of current referees told us that they had no reason to believe that Bavetta (or any other referee) made calls for any reason other than on the merits. But a number of referees told us that they believe Bavetta is highly conscious of how he is viewed and wants to be liked by everyone, including team personnel. Some referees are clearly put off by what they describe as antics and his hugging and kissing of team personnel. Almost all who commented on this desire to be liked said they did not believe it affected his play calling. A few told us that they believed that Bavetta may make a technically correct close call that might otherwise not be made to “calm the waters,” but not with an intent to favor a particular team. A few ex-referees, including those who have held or hold supervisory positions with the NBA, used harsher words to describe Bavetta’s style, suggesting that his play calling at times reflects an effort to keep games close or to ingratiate himself with a team. Other current and ex-supervisory personnel think very highly of Bavetta.

One referee — who has refereed many games with Bavetta and is clearly fond of him — made it clear that Bavetta is unlike any other referee in the NBA. His personality has endeared him to many but also engendered negative feelings among some of his colleagues. This referee told us that in his view Bavetta’s success as a playoff referee has created some professional jealousy. We also learned that there are political factions among the referees and that there is a group that dislikes Bavetta. We were struck when one ex-referee who expressed

strong negative views about Bavetta's refereeing told us that his views were based solely on negative comments he had heard from others.

We interviewed Bavetta on a number of occasions and found him to be personable and highly intelligent. He is aware that his on-court demeanor and rapport with team personnel have not always been well received by his fellow referees or supervisors, but he feels that his style is part of his ebullient personality and has often helped lessen tensions on the court. He told us that he takes great pride in his work and that he would never do anything to jeopardize the integrity of the game. When we discussed his conduct in a number of specific games, Bavetta emphatically denied that he ever made calls to manipulate a game, and we found him credible.

There is clearly a diversity of views among the referees about Bavetta. As noted above, the government has concluded that there is no evidence that any referee other than Donaghy committed any federal crimes and that many of Donaghy's allegations have not been substantiated. Having examined several specific games and allegations connected to them, we are not persuaded that Bavetta has engaged in wrongful or manipulative conduct.

## **VI. Donaghy's Allegations**

On June 10, 2008, Tim Donaghy's lawyer sent a letter to Judge Amon outlining information that he stated Donaghy had supplied to government prosecutors and agents during the course of debriefing sessions by the FBI and prosecutors.<sup>46</sup> The letter purports to summarize claims Donaghy made about game manipulation by referees, improper relationships between referees and other league employees, such as players, coaches, team managers and observers, and how League officials allegedly sought to influence the way games were called. We believe

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<sup>46</sup> Letter from John F. Lauro, Esq., to Hon. Carol Bagley Amon, U.S. District Judge (June 10, 2008).

that the games and playoff series referenced in the letter are described with enough detail to make them identifiable.

In examining Donaghy's allegations, we re-interviewed the current referee staff and certain past and present members of NBA management. We also had video of relevant games reviewed by NBA experts, and we have reviewed portions of the videos ourselves and examined League records and media reports related to the incidents discussed.

We first address four sets of allegations made in the letter that we are able to relate to a specific game or playoff series: (i) the 2005 playoff series between the Houston Rockets and the Dallas Mavericks; (ii) Game 6 of the 2002 playoff series between the Los Angeles Lakers and the Sacramento Kings; (iii) a 2000 regular season game between the Seattle SuperSonics and the New York Knicks; and (iv) a 2004 regular season game between the Toronto Raptors and the Golden State Warriors. We also address allegations regarding fraternization between referees, players and observers, and claims of nepotism.

**A. Houston Rockets vs. Dallas Mavericks 2005 Playoff Series**

Donaghy's attorney claims that "manipulative events" occurred in a 2005 playoff series between "Team 3" and "Team 4." According to the June 10, 2008 letter:

Team 3's Owner alleged that referees were letting a Team 4 player get away with illegal screens. NBA Executive Y told Referee Supervisor Z that the referees for that game were to enforce the screening rules strictly against that Team 4 player. Referee Supervisor Z informed the referees about his instructions. As an alternate referee for that game, Tim also received these instructions. The referees followed the league's instructions and Team 3 came back from behind to win the series. The NBA benefited from this because it prolonged the series, resulting in more tickets sold and more televised games.

Referee Supervisor Z told Tim that he had contacted the Team 4 coach about the NBA's instructions. The NBA launched a secret investigation, except that the investigation did not relate to the team that received preferential treatment. Rather, the NBA fined

the Team 4 coach \$100,000 for not disclosing the name of the official who had informed him of the behind-the-scenes instructions. The NBA was concerned only with keeping secret the leaks of behind-the-scenes instructions.

These allegations clearly refer to the Round 1 Western Conference playoff series between the Dallas Mavericks (“Team 3”) and the Houston Rockets (“Team 4”) and the well-known controversy over whether referees were told to “target” Yao Ming of Houston (“Team 4 player”).

The thrust of Donaghy’s allegations seems to be that the NBA sought to extend the playoff series by instructing referees to call more fouls on one of Houston’s star players. As we explain below, we have found no evidence that anyone in NBA management or any referees who officiated the series sought to do anything other than get the calls in this series right. Nor have we discovered any evidence that the NBA instructed referees to call illegal screens more “strictly,” or differently, on Yao Ming than on other players, or to make erroneous calls. On the other hand, our inspection of this incident reveals that focus should be given to two areas that arise frequently, particularly during playoff series: (i) how the League handles team complaints about referees’ calls, and (ii) how supervisors and referees review erroneous calls made in earlier games when preparing for upcoming games.

We have been able to determine the following based on interviews, a review of the League’s investigative files from the time and a review of press and other public materials:

The Dallas Mavericks lost the first two games of its 2005 playoff series with the Houston Rockets. Both games were played in Dallas. Following each game, Dallas owner Mark Cuban (“Team 3’s Owner”) contacted the League and flagged a substantial number of calls that he believed were incorrect. In particular, following Game 2, Cuban sent two emails to the League complaining about twenty-nine alleged “moving screens” he claimed had been set by Houston’s Yao Ming during the first two games. This type of complaint was not unusual, but for the large

number of plays that were questioned. Coaches, general managers and owners will often contact the League to complain about particular calls or plays — even when their team has won the game, although not as frequently as when they lose. For many years, the League has believed it appropriate to take such complaints from teams and to respond. To the extent that errors are identified during this process, the information is then communicated back to the complaining team, and often also back to the referees to prevent them from making similar errors in the future, without advising the referees that a team made a complaint. During this time period, Stu Jackson, Executive Vice President for Basketball Operations, Ronnie Nunn, Director of Officials, or someone else from Basketball Operations would review complained-of plays; Jackson or Nunn would then respond by either email or phone to the coach, general manager or owner.

Nunn reviewed the plays that Mark Cuban forwarded to the League and determined that nine of the twenty-nine challenged screens were in fact illegal. In response, Nunn sent an email to the Dallas Mavericks with the League's response, explaining which calls were correctly called and which ones were incorrectly called.

The general issue raised by Cuban's complaint — moving screens — was included in an April 29, 2005 email that Nunn sent to all playoff referees. Nunn's email did not mention Yao Ming, the Houston Rockets or any other player or team. Indeed, the email noted several points of emphasis. (As noted above, POEs are learning tools sent to the referees. They are not player- or team-specific; rather they are call- or movement-specific.) Among a number of other POEs discussed in Nunn's email were illegal screens — the issue that Cuban had flagged. Of note, Nunn sent a similar email on April 25, 2005 — *before* Game 2 — to all playoff referees in which he also emphasized a number of POEs, including illegal picks. That email also did not mention any team or player. Nunn also spoke with Donnie Vaden, the series

supervisor (“Referee Supervisor Z”), about various issues that arose during the first two games. They discussed, among other things, the missed calls against Yao and the need to avoid similar mistakes in the upcoming games.

Before each game of the series, Vaden, as series supervisor, met with the referee crew. We spoke with Vaden and each of the referees for the remaining games of the series. While none recalled any specific discussion or review of clips of Yao Ming, they said they almost certainly discussed Yao and other players and reviewed video clips that involved him as well as other players. Moreover, given Nunn’s conversation with Vaden, it is likely that Vaden mentioned the errors in the prior games regarding Yao’s screens because one of Vaden’s goals was to prevent similar errors from occurring in the upcoming games. In addition, referees normally discuss the tendencies of key players when preparing for a game — and it was well known among referees at the time that Yao had a tendency to set illegal screens.

While it is thus clear to us that Yao’s tendency to set illegal screens and the missed calls in prior games were discussed, none of the referees recalled receiving any special direction from Vaden or anyone else to enforce the screen rules in some special or “strict” or “preferential” way against Yao. The referees explained that had such a specific direction about Yao been given, it would have been unlike any instruction they could ever recall receiving or hearing from any supervisor or member of NBA management. None of them believed he was being asked to “target” Yao. And more fundamentally, none of the referees believed that the League issued any instruction to favor Dallas or otherwise make calls that would help extend the playoff series. As the referees described to us, they believed that the League and Vaden were simply trying to improve the quality of the refereeing in the upcoming games. They did not see

it as an effort to skew calls or “target” Yao and had no intent to give “preferential treatment” to any team or player.<sup>47</sup>

Two important issues are raised by this sequence of events: how the League handles team complaints and how the League informs the referees about past errors and instructs the referees to correct them. Houston’s coach, Jeff Van Gundy, disagreed at the time — and continues to disagree — with how he believes the League handled both of these issues. His public airing of his views is the likely source for the second part of Donaghy’s allegations regarding this playoff series. Specifically, Donaghy’s letter alleges that “Referee Supervisor Z” (Vaden) contacted “Team 4 coach” (Van Gundy) about the NBA’s purported instructions to call more illegal screens on Yao and that a “secret investigation” followed that resulted in Van Gundy’s being fined \$100,000.

According to Stu Jackson — who was interviewed both by us and by the League’s General Counsel in May 2005 — sometime after Game 2 of the series (on either April 26 or April 27), Jackson called Van Gundy. At the time, the two were friends and neighbors, and spoke from time to time. After discussing a variety of matters about their respective families, Jackson mentioned that he had reviewed video of Yao’s screens and that Yao’s foot often moved on screens, particularly during high pick and rolls. Jackson told Van Gundy that Van Gundy

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<sup>47</sup> Donaghy alleges that, after Games 1 and 2, “[t]he referees followed the league’s instructions” and Dallas received “preferential treatment.” However, the facts indicate otherwise: In the first two games (before Cuban’s complaint was reviewed), Yao Ming was called for a total of one illegal screen. In Game 3, no illegal screens were called on Yao; in Game 4, one illegal screen was called on Yao. In Game 5, he was called for one. In Game 6, he was called for none. And in Game 7, he was called for one. All of these illegal screen calls have been reviewed by the NBA and have been found to be correct.

Interestingly, although Dallas won four of the five games after Game 2, it was whistled for more fouls than Houston in three of those games. More fouls had been called against Houston than Dallas in Games 1 and 2, which Houston won.

needed to get Yao into a legal position. Jackson does not now and did not in May 2005 recall mentioning Cuban's name during this conversation, but Van Gundy might well have inferred that Jackson was reviewing video of Yao because of a complaint from the Mavericks. Jackson recalled clearly that he did not say or imply that the referees were directed to "target" Yao.<sup>48</sup>

According to Vaden, and confirmed by his contemporaneous notes, two days after Game 3, Van Gundy called Vaden. Van Gundy indicated that he had received information from someone at the League that the League was "targeting" Yao. Van Gundy did not mention moving screens or Cuban's complaints during this call. Vaden recalls responding simply that the referees were not targeting Yao and were not biased against Yao, but were simply doing their best to get the calls right.

Van Gundy's recollection of these two conversations is slightly different. Of most significance, he recalls that Jackson, and later Vaden, left him with the impression that, as a result of Cuban's complaints, the referees were being focused on Yao Ming's illegal screens, rather than being focused on illegal screens in general. While Van Gundy finds no fault at all with the League's or the referees' intentions to improve calls, his concern is and was that a referee, after being focused on erroneous calls involving a particular player, would be more likely, subconsciously, to call fouls on that player. To support the position that referees might be

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<sup>48</sup> Jackson told us that it was fairly commonplace for him to call a general manager or coach regarding particular players' tendencies and officiating issues. For example, if a player were prone to flagrant fouls, Jackson might have called the coach and told him that the player needed to be kept in control; other examples of instances in which Jackson called a team were if a player was stepping over the free throw line during free throws or if a team was playing too physically.

subconsciously focused on Yao, Van Gundy recalls a foul call against Yao in the fourth quarter of Game 4 — a call that Van Gundy believes hurt his team’s chances for victory in that game.<sup>49</sup>

What is not in dispute is that Van Gundy was upset at the turn of events. The day after his call with Vaden, Van Gundy gave a media interview in which he alleged (i) that the NBA was biased against and had “targeted” Yao; (ii) that Dallas Mavericks owner Mark Cuban had been calling the NBA about Yao; and (iii) that Van Gundy had received a call before Game 3 from a non-playoff “official” “that I’ve known forever” who said that the NBA was looking harder at Yao because of Cuban’s complaints.<sup>50</sup>

Van Gundy told us that his use of the word “targeted” was regrettable. He never meant to be understood as in any way impugning the integrity of the referees and told us that Donaghy’s suggestion that the referees intentionally made incorrect calls was “laughable.” His real concern at the time, which he stands by today, is that he did not know about Cuban’s complaints until moments before Game 4, and thus did not have a chance to respond by, for instance, pointing out Dallas players who were likewise setting illegal screens. He therefore believes that the referees were focused on Yao’s screens rather than illegal screens in general.

Many commentators jumped to the conclusion that the “official” Van Gundy mentioned in this interview was a referee (when he was in fact referring to Stu Jackson). Others incorrectly believed that Van Gundy was referring to Vaden. (Vaden was so troubled by Van Gundy’s comments and the perception that Van Gundy was referring to Vaden that Vaden called

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<sup>49</sup> Van Gundy recalled the call occurring in Game 3, but the referee he identified as making the call refereed Game 4, and, in fact, Yao was called for an illegal screen, his fifth foul, in the fourth quarter of Game 4. The League has told us that this illegal screen call was correct.

<sup>50</sup> Jonathan Feigen, *Yao ‘targeted,’ alleges Van Gundy; Cuban’s complaints to NBA elicit different treatment by refs, coach says*, HOUS. CHRON., May 2, 2005, at 1.

Van Gundy to discuss this issue. Van Gundy confirmed in that call that he was not referring to Vaden when he referenced an “official.”)

Immediately after learning of Van Gundy’s public comments suggesting that the League was “targeting” Yao, the League’s General Counsel and Security Department began an investigation into Van Gundy’s allegations. During the investigation, the head of Security interviewed Van Gundy, but Van Gundy refused to disclose the identity of the NBA “official” (later learned to be Stu Jackson) to whom he had spoken prior to Game 3. Because of Van Gundy’s comments about NBA officiating and his failure to cooperate with the League investigation, the League fined him \$100,000. The Commissioner explained publicly that Van Gundy had been assessed the fine because his allegations “go to the integrity of the game” and because Van Gundy refused to cooperate with the League in its investigation in violation of the NBA Constitution.

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We have found no evidence of any inappropriate conduct in this playoff series. There is no evidence that anyone in the League office or any of the referees were intending to favor one team over another. Based at least in part on the Mavericks’ complaints, the League identified a type of erroneous non-call that referees had made in prior games and sought to correct it for future games. While Van Gundy continues to take issue with how he believes the message to correct the erroneous non-calls was delivered to the referees, he does not believe the referees or anyone else intentionally sought to manipulate a game or injure his team.

This incident has caused us to focus on the process by which team complaints about officiating are received and resolved. As we discuss in our Recommendations, we believe

that all team complaints about officiating during the playoffs and the League's response to those complaints should be posted for both teams to see.

**B. Los Angeles Lakers vs. Sacramento Kings (Game 6 — May 31, 2002)**

Donaghy also claims to have provided the government with “information relating to manipulation occurring in 2002.” According to Donaghy:

Referees A, F, and G were officiating a playoff series between Team 5 and Team 6 in May of 2002. It was the sixth game of a seven-game series, and a Team 5 victory that night would have ended the series. However, Tim learned from Referee A that Referees A and F wanted to extend the series to seven games. Tim knew Referees A and F to be “company men,” always acting in the interest of the NBA, and that night, it was in the NBA's interest to add another game to the series.

Referees A and F heavily favored Team 6. Personal fouls (resulting in obviously injured players) were ignored even when they occurred in full view of the referees. Conversely, the referees called made-up fouls on Team 5 in order to give additional free throw opportunities for Team 6. Their foul-calling also led to the ejection of two Team 5 players. The referees' favoring of Team 6 led to that team's victory that night and Team 6 came back from behind to win the series.

Donaghy's description of the game clearly refers to Game 6 of the 2002 Western Conference Finals between the Sacramento Kings (“Team 5”) and the Los Angeles Lakers (“Team 6”), which was played in Los Angeles on May 31, 2002. The Lakers won Game 6 by a score of 106-102 to tie the series at three games apiece. (On June 2, 2002, the Lakers won Game 7 by a score of 112-106 to win the series four games to three.)

The referees officiating Game 6 were Dick Bavetta, Ted Bernhardt and Bob Delaney (“Referees A, F and G,” although it is not clear which letter Donaghy assigned to each referee). A number of referees who knew Donaghy well when he was officiating with the NBA have told us that they believe Donaghy's reference to two referees as “company men” is to Bavetta and Delaney, who were veteran referees who had been selected by NBA management as

playoff referees for a number of years and who had cordial relationships with certain members of referee management. A phone call that Donaghy made this summer to Ted Bernhardt — which we discuss further herein — confirmed for us that Donaghy’s accusation is focused on Bavetta and Delaney. The two Sacramento Kings players who were disqualified for accruing six fouls each — they were not “eject[ed]” — were Vlade Divac and Scott Pollard.

Game 6 featured a significant disparity in fouls called in the fourth quarter: the Sacramento Kings were called for sixteen fouls, while the Lakers were called for eight fouls. Three foul calls against Sacramento, however, were the result of intentional “take” fouls committed by Sacramento to stop the clock and regain possession of the ball. Removing these fouls from the tally yields a foul differential of thirteen to eight.

Two plays in the fourth quarter, both of which favored the Lakers, were particularly controversial. First, with two minutes and fifty-six seconds left in the game and the Kings leading 92-90, Vlade Divac of the Kings was erroneously called for a loose-ball foul, for which two free throws were awarded to the Lakers’ Robert Horry. The foul was Divac’s sixth of the game, resulting in his disqualification. Second, with 12.6 seconds left in the game and the Lakers leading 103-102, the Lakers’ Kobe Bryant struck the Kings’ Michael Bibby in the face with his forearm but was not called for a foul.

The officiating in Game 6 generated a substantial amount of critical commentary in the media and elsewhere,<sup>51</sup> and Ralph Nader wrote a letter to Commissioner Stern calling for a review of the game and changes to the League’s policies concerning criticism of officiating.<sup>52</sup>

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<sup>51</sup> See, e.g., Jay Mariotti, *In Theory, Lakers a Shoo-In*, CHICAGO SUN-TIMES, June 2, 2002, at 114 (free throw disparity “push[ed] the Lakers to a frenetic Game 6 victory, preserving a delicious slice of prime-time programming” for Game 7); Michael Wilbon, *Talk About Foul! Game 6 Was a Real Stinker*, WASH. POST, June 2, 2002, at D1 (noting that although he had

We examined Donaghy's allegations about Game 6 by interviewing the game's referees and other League employees. We also asked the NBA to have the video of Game 6 reviewed by its officiating experts to determine whether the referees made correct or incorrect calls or non-calls on each play in light of specific allegations that two of the referees may have manipulated the game outcome and to see if they saw any conduct suggesting manipulation. This review of how the referees performed seems to us to present a more meaningful measure of the referees' conduct than simple disparities in fouls called, which may simply reflect different playing styles between the teams or game situations.

The game was, in the opinion of the reviewers, poorly officiated. There were a total of fifteen incorrect calls or non-calls. Of these fifteen errors, eight favored the Lakers, while seven favored the Kings. The bulk of the game's incorrect calls and non-calls occurred during the first three quarters. In the critical fourth quarter, there were only three incorrect calls or non-calls: two favored the Lakers and one favored the Kings. The officiating errors were found to be distributed among the three referees as follows:

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“never seen officiating in a game of consequence as bad as that in Game 6,” he had “zero tolerance for ‘conspiracy’ stories, that the NBA and NBC conspire to influence if not straight-up arrange the outcome”; attributing the controversial calls and free throw disparity to “the same thing that affects players, like nervousness, or being intimidated by the crowd (or mouthy participants), or anticipating contact instead of waiting for them to occur.”); Sam Smith, *Star system runs afoul of fairness; O’Neal, Bryant benefit from officials’ calls*, CHICAGO TRIBUNE, June 2, 2002, at C6 (while critical of the performance of the referees, described the “[c]onspiracy theories” to the effect that “TV wants big markets to win” and that “the league wants its stars in the big series” as “nonsense.”).

<sup>52</sup> Letter from Ralph Nader & League of Fans to Commissioner David J. Stern (June 4, 2002), available at <http://www.leagueoffans.org/sternletter.html>.

- Bavetta made nine errors in the game, five of which favored the Lakers and four of which favored the Kings. None of these errors occurred in the fourth quarter.
- Bernhardt made six errors, four of which favored the Lakers and two of which favored the Kings. In the fourth quarter, Bernhardt made one error favoring the Lakers.
- Delaney made four errors in the game, two of which favored the Lakers and two of which favored the Kings. In the fourth quarter, Delaney made three of his errors: two favoring the Lakers and one favoring the Kings. The two errors favoring the Lakers involved the controversial plays discussed above in which Divac was incorrectly called for a sixth foul and Bryant was incorrectly not called for the forearm to Bibby's face.<sup>53</sup>

We discussed Donaghy's allegations with the three referees. Ted Bernhardt, who is no longer employed by the League, was quoted in the *New York Times* after Donaghy's allegations this summer, saying that while he "wasn't happy about" the way the game was called, "I stand by my calls in that game. . . . I was right on. I believe in Dick Bavetta, and I believe in

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<sup>53</sup> The individual referees' errors for the game sum to nineteen errors, which is four more than the figure of fifteen errors mentioned above. This is because on each of four erroneous plays, an error was attributed to two referees simultaneously. Likewise, the individual referees' errors for the fourth quarter sum to four errors, which is one more than the figure of three errors set out in the preceding paragraph. This is because on one erroneous play in the fourth quarter, an error was attributed to two referees simultaneously. The reviewers believe that both Delaney (in the lead position) and Bernhardt (in the slot position) should have called Bryant for an elbow to the face of Bibby.

Bob Delaney, and I believe in the NBA, for that matter.”<sup>54</sup> Bernhardt was also quoted in the *Sacramento Bee*:

After the game, I wasn’t happy, not with a particular call, but it just wasn’t a good game for us. . . . I know this is a horrible thing. But we tried hard to get the calls right. I don’t understand. . . . I don’t know what’s behind (the Tim Donaghy) situation, but I have never been around a referee I thought cheated or was influenced in a game. . . . I never imagined we’d be talking about this six years later.<sup>55</sup>

Bernhardt told us that after these press reports appeared, Donaghy called him and said he was disturbed by Bernhardt’s press comments. Bernhardt said that Donaghy then proceeded to try to lead him and put words in his mouth. He said that Donaghy was incredibly persistent and sounded like a conspiracy theorist. Bernhardt told us that Donaghy was pushing him to agree that Dick Bavetta had said Bavetta was happy to have the series go to a seventh game. Bernhardt said he told Donaghy, “I’d like to help you if I could, but that’s not the way it happened.”

Bernhardt also told us that Bavetta and Delaney made mistakes, and they as a crew had a bad night, but they all had done their best. Bernhardt told us that he thought highly of the integrity of both Bavetta and Delaney. He left the phone call with Donaghy believing that Donaghy was trying hard to make up a story to get a lesser sentence — something Bernhardt says he told his girlfriend right after the call. Bernhardt also said that NBA management never at any time suggested to him or other referees that they hoped a series would be extended.

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<sup>54</sup> Howard Beck, *Stern Unconcerned About F.B.I. Inquiries of Bavetta*, N.Y. TIMES, June 13, 2008, at D3.

<sup>55</sup> Ailene Voisin, *Ex-ref: Off-night for crew Ted Bernhardt denies there was a conspiracy in 2002*, SACRAMENTO BEE, June 15, 2008, at C1.

When we spoke to Bavetta and Delaney, both acknowledged making errors in the game but emphatically denied making calls to favor the Lakers or to extend the series or discussing such favoritism with Donaghy. Bavetta noted that while he had made errors early in the game, they had been against both teams. He also pointed out that he had made no errors during the critical fourth period of the game. He added that he was confident that any errors by Delaney or Bernhardt were made in complete good faith.

When we spoke to Delaney, he told us that in every game he strives to be as accurate a caller as possible, and his professional pride makes it difficult to live with the inevitable unintentional mistakes he makes. The idea that he would set out intentionally to make erroneous calls in front of a national audience — subjecting himself to public criticism — is, he said, “simply absurd.” We found both men to be credible.

We also discussed Donaghy’s allegations with Ed T. Rush, who was Director of Officials at the time. Rush was present in the arena and supervised the referees during the game. He told us that he was well aware during the game that the referees were having a bad game and making errors. Rush told us that he has reviewed the video of this game on a number of occasions, and the pattern of calls, in his opinion, do not reflect favoritism. He added that it was also inconceivable to him that any of the referees would set out intentionally to extend a series. He pointed out that all of the referees are in competition each year to officiate playoff games and said it was impossible for him to believe any referee would deliberately make erroneous calls and subject himself or herself to having their calls repeatedly reviewed and criticized by the media.

Rush told us he thought that Bernhardt’s performance that night had been satisfactory, and nothing about his performance suggested that he was trying to favor either team. As to Bavetta, while he made a substantial number of errors, Rush felt there was nothing about

his call patterns that suggested he was deliberately trying to favor the Lakers. Rush also noted that Bavetta had performed well in the fourth quarter, making no errors.

As to Delaney, Rush was aware that he was involved in the two most controversial calls in the fourth quarter — plays that Donaghy appears to single out as suggesting manipulation. Rush told us that he has known Delaney for many years and believes Delaney is a highly honorable person. He noted that Delaney had been a highly decorated law enforcement officer before he joined the NBA. (Delaney served with the New Jersey State Police for fourteen years before becoming an NBA referee. Delaney’s career included a three-year undercover assignment in connection with a major organized crime investigation. In 1981, Delaney testified as a law enforcement expert before a Senate subcommittee during hearings on waterfront corruption. Senators Warren Rudman and Sam Nunn praised him for his effectiveness and bravery. To this day, Delaney regularly gives speeches at federal law enforcement training sessions and to undercover operatives in the United States and Canada.)<sup>56</sup>

Rush also recalled that Delaney made only a few errors but was nonetheless quite upset with the errors he had made in the fourth quarter. Having known and observed Delaney on and off the floor, and knowing how hard he tried to avoid mistakes, Rush said that he could not imagine Delaney ever deliberately manipulating a game. Rush told us that he had been in touch with Delaney and his wife after the game and learned that Delaney was so upset about his performance in that game that he had suffered sleepless nights.

Rush also told us that he thought that it had been a mistake (for which he took some responsibility) to have teamed Delaney with Bavetta in this game. While Delaney and

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<sup>56</sup> *Waterfront Corruption: Hearing Before the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, 97th Cong. 349-83 (1981) (testimony of Trooper Robert Delaney, Detective, New Jersey State Police).*

Bavetta once had a close friendship, they had a falling out in connection with a personal matter some years before this game, and Rush felt that the poor chemistry between the two referees contributed to the crew's poor performance in this game.

We reviewed the video of this game and discussed with NBA Basketball Operations personnel the erroneous call against Divac and the non-call against Bryant. They explained to us how Delaney and Bernhardt (on the second call) could have missed these calls. The first play, which resulted in Divac receiving his sixth foul, came while Divac was on the floor battling for the ball. Delaney saw numerous players in the scramble and blew his whistle as Bryant was moving in front of him, obstructing his view of the play. The instinct to make a call was understandable; Delaney just made the wrong one.

The second play occurred with twelve seconds left in the game, when Kobe Bryant, trying to free himself on an inbounds play, elbowed Mike Bibby in the face. While Bryant's elbow, though seemingly inadvertent, was a foul, it occurred only after Bibby grabbed Bryant's arms in what appears to be an effort to prevent him from freeing himself to receive the inbounds pass. Delaney was positioned on the baseline at an angle that prevented him from getting a good look at the play. Bibby had his back to Delaney, and contact of the nature of the elbow to Bibby's nose is often incidental. The blood from Bibby's nose was not seen until later. Bernhardt was the slot official at the time. Bryant moved away from Bernhardt's position, so Bernhardt also did not have a good angle to see Bryant's elbow to Bibby. Indeed, the Basketball Operations personnel told us that the television camera had by far the best view of this play.

As noted above, we also re-interviewed all of the current referees after Donaghy's allegations surfaced in June 2008. There was not a single referee among the dozens we interviewed who supported Donaghy's claims about this game. The referees told us that the

consistent message from the League is to make accurate calls. It has never been suggested to them that they should favor a team or try to extend a series.

Some referees also told us that no rational referee would deliberately make incorrect calls in a game (let alone a playoff game) and subject him or herself to the embarrassment of having calls replayed over and over on ESPN. Some told us that not only was the allegation illogical for that reason, but there also is no economic incentive for referees to try to extend a series. While a referee receives additional compensation for each round of the playoffs he or she officiates, this compensation is the same for a given round whether a referee officiates one or two games in that playoff round.

A number of referees also noted that, because of the strained personal relationship between Delaney and Bavetta, the two men were unlikely to engage in any cooperative venture, let alone one that involved clearly improper conduct. A number of referees also offered the following observation: Game 6 was a controversial game with which almost every veteran referee is familiar. Because it is well known that the referees made numerous errors in the game, it was easy for Donaghy — trying to avoid a jail sentence by providing information about other referees — to suggest that he had a conversation with one of the referees to the effect that two of them hoped to extend the series.

One of the referees told us that he had discussed this game with Donaghy years earlier. While Donaghy had noted the many errors by the referees, he never suggested that he had heard that referees in this game made bad calls to extend the series. We also found it noteworthy that, while referee basketball gossip travels quickly throughout the referee ranks, the referees had not heard any suggestion that Bavetta and Delaney had tried to extend the series.

We have not seen or heard evidentiary or logical support for Donaghy's allegations about this game.

**C. Seattle SuperSonics vs. New York Knicks (January 24, 2000)**

The June letter from Donaghy's attorney further alleges that "league officials would tell referees that they should withhold calling technical fouls on certain star players because doing so hurt ticket sales and television ratings":

As an example, Tim explained how there were times when a referee supervisor would tell referees that NBA Executive X did not want them to call technical fouls on star players or remove them from the game. In January 2000, Referee D went against these instructions and ejected a star player in the first quarter of the game. Referee D later was reprimanded privately by the league for that ejection.

We discussed with the current referee staff and certain current and former members of League management Donaghy's allegation that the League directs referees to treat star players more leniently than other players. Every referee to whom we spoke told us that NBA management has never suggested that they refrain from calling technical fouls on star players or from removing them from games. The referees also told us that referee supervisors routinely dispense advice on how referees can diffuse conflicts with players and coaches without resorting to technical fouls and ejections, and when those procedures are not followed, referees are occasionally spoken to and sometimes disciplined. But the referees uniformly reported that the League's response to their calls are based on the merits of the technical foul or ejection, not the identity or status of the player.

As to the specific allegation concerning a January 2000 game, we believe that this allegation refers to a January 24, 2000 game between the Seattle SuperSonics and the New York Knicks, since that was the only game in January 2000 where a player was ejected in the first quarter of the game. The game was officiated by Ted Bernhardt, Sean Corbin and Michael

Smith. In the first quarter of the game, Bernhardt assessed two technical fouls against Gary Payton of the SuperSonics, resulting in his ejection.

We spoke to Bernhardt about this incident. He told us that it was nonsense to suggest that the League has sent the message to the referees that they should avoid calling technicals on stars. As to this 2000 incident, he told us that the League did not reprimand him; it simply offered advice about how he could have moved away more quickly from Payton and could have avoided the need for the second technical. Bernhardt told us that he agreed with the League that he could have walked away from Payton sooner. He told us that advice he received had nothing to do with Payton's being a star. At the League's suggestion, Bernhardt met prior to a subsequent game with Payton and had a face-to-face discussion to clear the air. (The League will sometimes arrange for these face-to-face meetings between a referee and player so that any residual feelings about a play or game can be put behind them.) Bernhardt told us he and Payton never again had a problem with each other. Bernhardt told us that he had shared this information with Donaghy when the two of them spoke by phone this summer.

Former Director of Officials Ed T. Rush told us that when referees appeared to have inappropriately called technical fouls or ejected players, League management would speak to them. This is still the case. Rush recalled that Bernhardt was sometimes "quick," early in his career, to overreact and call a second technical foul on players. Rush said that Bernhardt's temperament had been a development point for Bernhardt and the League's focus on the issue had nothing to do with the status of Payton as a star.

We also asked NBA personnel to review the video of this January 24, 2000 game. They advised us that the ejection was probably unwarranted, as Bernhardt called the technical foul against Payton a considerable time after Payton appears to have stopped talking.

We have found no evidence supporting Donaghy's charge that NBA referees are asked not to call technical fouls on or eject stars, or that the League's focus on Bernhardt's ejection of Payton was as a result of Payton's status as a star.

**D. Toronto Raptors vs. Golden State Warriors (February 8, 2004)**

The June 10, 2008 letter from Donaghy's attorney also contains an allegation about a purported relationship between a referee and team's general manager that resulted in the referee favoring the general manager's team in a specific game:

Tim also described one instance where a referee's relationship with a team's general manager led to an attempt by that referee to influence a game's outcome. In 2004, Team 1 was playing a game against Team 2, which was officiated by Referees A, B, and C. Tim did not officiate that game, but spoke to Referee B by telephone, who confirmed that Referee A had spoken with Team 1's general manager that day. Referee B told Tim that Referee A planned to favor Team 1 at that night's game. Indeed, the referees called 25 personal fouls on Team 2, and far fewer on Team 1.

During our recent interviews with the referee staff, some referees indicated that they thought that Dick Bavetta and Garry St. Jean, who used to be the general manager of the Golden State Warriors, may have been friends, with a few recalling instances where St. Jean came to the referee locker room to say hello to the referees and speak to Bavetta before a game. We believe that Donaghy is likely referring to a February 8, 2004 game between the Golden State Warriors ("Team 1") and the Toronto Raptors ("Team 2"), and the perceived friendship between Bavetta ("Referee A") and St. Jean. The game, which was officiated by Bavetta, Mark Wunderlich and Phil Robinson, ended in Toronto beating Golden State 84–81. Toronto was called for a total of twenty-five fouls, with Bavetta calling thirteen fouls on Toronto and three fouls on Golden State; Golden State was called for seventeen fouls.

We interviewed Bavetta, Wunderlich, Robinson and St. Jean. Bavetta and St. Jean confirmed that they have a friendly, professional relationship but told us that they have

never socialized together, that is they have never visited each other's homes or had a drink or meal together. Bavetta and St. Jean also confirmed that St. Jean stopped by the referee locker room from time to time to greet the referees and speak to Bavetta. Bavetta also recalled one occasion when he and two other referees dropped by the Golden State practice facility, which was on the roof of the Marriott hotel at which they were staying, to say hello to St. Jean. St. Jean also recalled this visit. Bavetta also told us that when St. Jean's son and daughter were "ball boys" for Golden State, he was friendly to both of them. St. Jean told us that he believes that Bavetta is one of the "class acts" of the NBA, a view he has shared with the media over the years.<sup>57</sup> Bavetta also told us that he has never made calls or non-calls to favor Golden State.

Neither Wunderlich nor Robinson recalled anything out of the ordinary about the game or anything about Bavetta's calls that indicated he was trying to favor Golden State. Neither recalled having any conversation with Donaghy about the game, and both said that they are confident that they never told Donaghy that Bavetta intended to favor Golden State.

Robinson said that he recalled the game because it was played around the time that Bavetta was about to officiate his 2000th game, and a lot of reporters and others were congratulating Bavetta on this accomplishment — which he reached on February 20, 2004.<sup>58</sup> Robinson also recalled having his picture taken with Bavetta and Wunderlich by a *USA Today* reporter. Bavetta also remembered that a reporter and photographer were following him around before and after the game.

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<sup>57</sup> See, e.g., David Firestone, *Public Lives; Jovial Referee Is Eager for Call to Play Ball*, N.Y. TIMES, Dec. 4, 1998, at B2; David DuPree, *Bavetta proves he's officially capable*, USA TODAY, Feb. 20, 2004, at C1; Christopher Cullen, *Dick Bavetta, NBA referee*, CURRENT BIOGRAPHY, March 2008, at 3, 7.

<sup>58</sup> David DuPree, *Bavetta proves he's officially capable*, USA TODAY, Feb. 20, 2004, at C1.

We found it noteworthy that no referee had ever heard prior to Donaghy's letter that Bavetta had ever favored Golden State in a game. Donaghy, we were told, liked to share gossip about referees with his friends. Yet, this story appears to have surfaced only after Donaghy started sharing information with the government to reduce his sentence.

We asked the League's experts to analyze each of the game's calls. While Bavetta called thirteen fouls on Toronto and only three on Golden State, what we find telling — and inconsistent with Donaghy's allegation — is that Bavetta had seven incorrect calls, six of which favored Toronto. Thus, while Bavetta may have called more fouls in favor of Golden State, those calls were correct and what errors Bavetta made heavily favored Toronto. This behavior does not seem consistent with a referee's trying to favor Golden State.

#### **E. Other Allegations**

The June 10, 2008 letter from Donaghy's attorney also contains allegations about fraternization and socializing between referees and team personnel, and between referees and the in-arena observers, and about the role that nepotism has played in certain referee hirings.

##### **1. Fraternization**

As to improper fraternization between referees and team personnel, the letter states:

[Donaghy] described various examples of improper interactions and relationships between referees and other league employees, such as players, coaches, or management. Some referees socialized frequently with coaches and players. Others would request autographs from players, or they would receive gratuities, such as merchandise or free meals, from team coaches and managers. [Donaghy] described one referee's use of a team's practice facility to exercise and another's frequent tennis matches with a team coach. These activities were against NBA rules; indeed, such inappropriate relationships could influence the outcome of games.

Before addressing these allegations, it is important to understand the NBA rules that governed the interaction between referees and team personnel. The rules specifically

prohibit many of the activities described in Donaghy's letter. For example, since 1995, the League has had a written rule prohibiting fraternization between referees and team personnel. Rod Thorn, the Executive Vice President of Basketball Operations at the time, wrote to NBA Officials in December 1995: "There must be absolutely NO fraternization between officials and players, coaches or other club personnel AT ANY TIME. . . . There shall be no fraternization with Observer/Scouts. This means no riding to or from games with them, no eating or drinking with them and no entertaining them in the dressing room."<sup>59</sup> The League's referee work rules now expressly prohibit fraternization between referees and team personnel: "You must not . . . [f]raternize with any NBA players or team personnel (including, without limitation, team owners), or with any game observers, on or off the court at any time, except in the course of charitable or other similar activities approved by Ops."<sup>60</sup> Similarly, the NBA's Official's Manual directs officials: "DO NOT fraternize with team personnel, on or off the court."<sup>61</sup> In addition, the League has set forth in writing how it wants the referees to behave on court. The Official's Manual provides, for example: "Excessive conversation with players, coaches, trainers, media, spectators or scorer's table personnel is prohibited. Everyone who is not involved becomes suspicious."<sup>62</sup>

The League has also prohibited officials from requesting autographs and other memorabilia from teams since approximately 2002. At that time, Stu Jackson specifically instructed the entire officiating staff during their pre-season camp that all such requests, whether

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<sup>59</sup> Memorandum from Rod Thorn to NBA Officials re: Rules for the 1995-96 Season 4 (Dec. 7, 1995).

<sup>60</sup> 2007-2008 Work Rules for NBA Officials XIV.D.

<sup>61</sup> NBA Officials' Manual 116.

<sup>62</sup> NBA Officials' Manual 116.

for charity events or personal use, must stop; all requests for autographs, shoes and the like for charity events were to be handled through the League office. Since 2004, the work rules have prohibited referees from accepting “free or discounted merchandise, goods, memorabilia or other goods or services” from players or team representatives. Earlier this year, a written prohibition against obtaining autographs was added to the referees’ work rules: the rules now explicitly state that referees may not accept “free or discounted merchandise, goods, memorabilia, autographs, or other goods and services . . . from players or any other team personnel, or request (directly or indirectly) from players or other team personnel,” except for game tickets distributed in accordance with a League-mandated procedure.<sup>63</sup>

With respect to Donaghy’s general allegation of frequent socializing between referees and coaches and players, we asked referees and members of League management whether they had ever heard of conduct like that described in the letter or other violations of the League’s anti-fraternization rules. Our interviews suggest that Donaghy’s allegations vastly overstate the issue — such socializing appears to be the rare exception, not the rule. Virtually every referee denied having meals or drinks or otherwise socializing or interacting with team personnel. All referees denied that their interactions with teams in any way affected their objectivity when officiating. A small number of referees said that they were friendly and interacted socially with players and other team personnel with whom they grew up or with whom they went to school before becoming referees. By way of example, one referee told us that a few years ago he played golf with a player with whom he had grown up. He went on to tell us that he then ejected that player from a game the next night. Other referees explained that they interact with players, coaches and owners only at charity functions, League-sponsored approved events,

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<sup>63</sup> 2007-2008 Work Rules for NBA Officials XIV.A.2.

such as the All-Star Game, and referee camps and summer leagues. Almost all the referees explained that they get to know team personnel on a professional level over the years, but that their interactions are limited to small talk.

Years ago, socializing between referees and team personnel was apparently more common.<sup>64</sup> But we found no information suggesting that such “chumminess” is common or viewed as acceptable anymore. Referees do not stay at the same hotels as teams. And when on a rare occasion team personnel check into the same hotel as a referee crew, the crew tries to switch hotels. It is clear that the League prohibits and discourages such fraternization.

With respect to Donaghy’s allegation that a referee used a team’s practice facility to exercise, we learned of only one instance where this happened. Two years ago, referee Joey Crawford was rehabilitating a knee injury during the off-season. The office of Crawford’s doctor, who is also the Philadelphia 76ers’ orthopedist and to whom the League had referred him, is located across the street from the 76ers’ practice facility. On one occasion, as part of therapy, the therapist brought Crawford across the street to the 76ers’ facility to run sprints. According to Crawford, no team members were using the practice facility at the time.

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<sup>64</sup> In his autobiography, Earl Strom, who officiated in the League for thirty-three years and retired in 1990, described some of his relationships with players “early in [his] career.” He recalled that he and Mendy Rudolph, another Hall of Fame official, while staying at the same hotel as the Boston Celtics, drank and sang Christmas carols with Bob Cousy, Frank Ramsey, Jim Loscutoff and Tom Heinsohn. Strom explained, “[t]hat sort of thing happened often.” He also indicated that referees would “run into the players who were traveling and end up having a couple of pops with them in the hotel bar or sitting with them at the airport or on flights when we happened to fly with teams. We’d sit around the hotel lobby laughing and telling stories . . . . That’s just the way it worked in those days.” Strom, *CALLING THE SHOTS* 39-40.

We are also aware that in 1989, a referee called Michael Jordan in his hotel room to introduce him to a woman. This interaction, which was reported in the press in 2003, violated League rules and was inappropriate.

As to the allegation that a referee played tennis with a coach, referee Ron Olesiak recalls playing tennis once with a coach, John Lucas, over five years ago. Lucas recalls that he was in Sacramento for a game and Olesiak had a layover. Lucas recalled that they played while he was coaching Cleveland (which was around 2001-2003).

We doubt that occasional interactions of this sort pose a serious risk of affecting the way games are refereed. However, we also believe that it is important for the League to remind the referees regularly about the need to avoid social interactions that can create even an appearance of impropriety or favoritism. We believe that referees should be reminded each season about the fraternization and free merchandise and autograph rules. We also recommend that the League require the referees annually to disclose their off-court contacts with all players, coaches, general managers, owners and other team personnel. This information will permit the League to better monitor fraternization, subject certain relationships or contacts to greater scrutiny if necessary, and take any appropriate actions regarding discipline or changes to referee assignments.

Donaghy's allegations about referees asking players for autographs and other memorabilia appear to be rooted in activities that took place over five years ago,<sup>65</sup> but which the League has sought to curtail. As noted, in around 2001 or 2002, the League instituted a policy prohibiting referees from asking team personnel for autographs or other memorabilia; all requests for merchandise to use for charitable purposes are to be relayed through the League. The referees indicated to us that, with a few exceptions, they were not aware of other referees violating this prohibition. We also heard from some referees that while they knew they were not permitted to request autographs from players, they believed this rule did not apply during the

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<sup>65</sup> See, e.g., Strom, *CALLING THE SHOTS* 67-68.

All-Star game — which the League has advised is not the case and therefore should be clarified with the referees.

The League's autograph rules are clear. The issue, to the extent one exists, appears to be that while the League has written rules prohibiting referees from requesting autographs and memorabilia from team personnel, it has not made clear in writing how referees should request autographs and memorabilia to donate to charities. We have recommended that the League establish a written policy that makes clear the procedure for requesting such merchandise for charitable purposes.

Overall, the League has taken substantial steps to prohibit fraternization. That said, in addition to the recommendations discussed above, we have suggested that the League provide referees with annual training on these rules and make enforcement of these rules a priority.

## **2. Observers**

The June 10, 2008 letter from Donaghy's attorney further alleges that "the observer rating system was frequently manipulated":

Although the observers were supposed to remain anonymous, all the referees knew who they were. Referees friendly with NBA observers monitoring their game would likely receive a good report. Tim told the government of an instance where an NBA observer entered the referees' locker room before a game and asked the referees to buy a book he had written. The referees felt obligated to buy it because they felt that they would otherwise receive a bad report from the observer.

A number of referees and members of League management with whom we spoke confirmed that the observer for Atlanta's home games entered the referee locker room around the 2005-2006 season to promote a book he had written, the proceeds of which he told some referees would go to the United Negro College Fund. Some referees reported purchasing the book out of politeness or because they wanted to avoid offending the author. Some reported purchasing the

book to support the United Negro College Fund. Some declined to purchase the book. Still others reported believing that they were being given a free copy and, upon discovering the misunderstanding, simply paid to avoid the awkwardness of returning the book. A few referees said that they bought the book because they did not want to risk the observer's giving them poor marks on his report to the League.

A number of the referees were unhappy about the request to purchase the book, and NBA management was made aware of the observer's solicitation, which was a violation of League rules. Observers receive training annually directing them not to have contact with referees prior to, during or after games and to keep all interactions professional. Moreover, observers are not among the League employees permitted to enter referee locker rooms. Paul Brazeau, who is in charge of the observer program, spoke to the observer and directed him to stop selling his book.

With respect to Donaghy's allegation that an observer would submit a positive or negative report for a referee depending on their relationship, nobody with whom we spoke could recall hearing of an instance when this occurred. Indeed, referees are not provided with copies of or access to observer reports. In any event, a consistent attempt to skew observer reports in this manner would likely be futile, because observer reports are reviewed by group supervisors, League executives and independent reviewers — all of whom have the authority to overrule an observer's incorrect review of a referee's calls. Furthermore, an observer who engaged in the practice of favoring referees with whom he is friendly (or punishing referees whom he does not like) would likely be detected as error-prone and run the risk of being terminated.<sup>66</sup>

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<sup>66</sup> It is also worth noting that a referee works in a particular team's arena — and therefore is observed by an individual observer — on average only two times per season. Even if an

We believe Donaghy's suggestion that "the observers were supposed to remain anonymous" as regards referees is incorrect. The League directs observers not to call attention to themselves while in the arenas and to keep their work confidential. The League's training materials for observers also state: "Your interaction with game officials needs to be professional. While it is understood that many of you have personal relationships with some of our staff members, we trust that the nature of your work will not be discussed during your personal moments."<sup>67</sup> But the League does not seek to keep observers' identities hidden from referees. Such a goal would, in any event, be unrealistic. Many referees reported knowing the identities of observers because they have met in other basketball-related contexts or because some observers have previously been employed by the League or teams in other capacities. Referees also told us that they can easily identify observers based on the fact that they sit in the same seats for each game and studiously take notes of the game.

We see no reason to believe that the observer system requires anonymity in order to be effective. In almost all employment contexts, an employee knows the identity of his or her evaluators. And it is often the case that an employee has a friendly or cordial relationship with his or her evaluators. This is especially so given that, as noted above, observers are themselves routinely reviewed by others, which makes it difficult for observers to play favorites based on their relationships with referees. Nevertheless, we believe that the NBA should minimize the risk of such bias, whether real or perceived. Accordingly, we have recommended that the

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observer did favor a particular referee and was not detected, the impact of his evaluations on that referee's overall call accuracy would be de minimis.

<sup>67</sup> We note that this rule appears on its face to be inconsistent with the referee work rule that prohibits fraternization between referees and observers. We believe the League should resolve this seeming inconsistency.

League require referees annually to disclose personal relationships with observers and observers annually to disclose personal relationships with referees. This information will permit the League to watch out for any possible favoritism in the observer reports.

### **3. Nepotism**

The June 10, 2008 letter from Donaghy's attorney alleges that "nepotism played a far greater role than qualifications in a number of referee hirings." Four current NBA referees have fathers who are or were NBA referees:

- Ron Garretson has been an NBA referee since the 1987-1988 season. His father, Darell Garretson, was an NBA referee from 1967 to 1994 and was the League's Director of Officials from 1981 to 1998.
- James Capers, Jr. has been an NBA referee since the 1995-1996 season. His father, James Capers, Sr., was an NBA referee from 1972 to 1993 and is currently a group supervisor.
- Tommy Nunez, Jr. has been an NBA referee since the 2004-2005 season. His father, Tommy Nunez, Sr., was an NBA referee from 1972 to 2003 and is currently a group supervisor.<sup>68</sup>
- Brian Forte has been an NBA referee since the 2007-2008 season. His father, Joseph Forte, has been an NBA referee since the 1988-1989 season.

Garretson and Capers were hired by Rod Thorn, the Executive Vice President of Basketball Operations from 1986 to 2000. Nunez and Forte were hired by Stu Jackson, the current Executive Vice President of Basketball Operations. We spoke with Thorn and Jackson

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<sup>68</sup> The NBA has made its group supervisor assignments to ensure that neither Capers, Jr. nor Nunez, Jr. is ever a member of the group supervised by his father.

about their hiring of Garretson, Capers, Nunez and Forte. We also spoke with other members of NBA management, such as Ed Rush, Ronnie Nunn and Joe Borgia, who helped evaluate these referees prior to their hiring and who played some role in the decision to hire them.

We were told that James Capers, Sr., Tommy Nunez, Sr. and Joseph Forte played no role whatsoever in the hiring of their sons. We understand that Thorn was primarily responsible for the hiring of Ron Garretson but that Darell Garretson had some input in Ron's hiring because, as Director of Officials, Darell had input in the hiring of all referees. In all four instances, we have been told that their sons received no special consideration in the hiring process because of their fathers. Each was hired because he was perceived as meeting the qualifications to be a referee and after the League determined that they were among the best available candidates for open positions. Of note, Capers spent six years in the CBA before being hired into the NBA; Nunez, Jr. was dropped from the League's development program but became an excellent college referee before being hired when a number of spots opened up in the NBA.

A substantial number of professional referees develop an interest in officiating as a result of watching a parent or relative officiate a sport. We have learned, for example, that Donaghy is the son of a highly regarded former college referee and the nephew of a former NBA referee, Billy Oakes. Obviously, the NBA has no desire to discourage relatives of NBA referees from applying to be NBA referees. It should be enough that their relatives do not influence the hiring decisions, and, in the case of Ron Garretson, we have been told that his father's input was not a deciding factor — his talent was.

Donaghy's allegation of nepotism is a bit ironic given that his uncle, Billy Oakes, was an NBA referee at the time that Donaghy was hired. While we have received no information suggesting that Donaghy received favorable treatment when he was hired (he was viewed to be

quite talented), his family ties would create a similar perception of possible nepotism to the one he invites with his allegations about Capers, Nunez, Forte and Garretson.

#### **F. Observations Concerning Donaghy's Allegations**

We had hoped to interview Donaghy. We first spoke to Donaghy's lawyer in the summer of 2007 about meeting with us, believing that if Donaghy told us how he had committed his offenses — especially how he had gone about obtaining and using confidential information — we could make better-informed recommendations to the NBA about how it might improve its policies and procedures. Donaghy declined, explaining that he was cooperating with the government's investigation and therefore could not speak with us until the government gave him permission.

On April 28, 2008, the government granted Donaghy that permission, advising us that they had informed Donaghy that he was free to speak with us. We contacted Donaghy's lawyer and again encouraged him to make his client available to us. Donaghy's lawyer again declined our invitation, suggesting that his client might be cooperating with another prosecutor's office. We repeated our request for an interview in June and July after Donaghy's lawyer had filed his letter containing Donaghy's allegations. He again declined.

We have tried to approach Donaghy's allegations with an open mind, but Donaghy's unwillingness to meet with us and permit us to ask questions has made us skeptical of his allegations. Other factors have contributed to that skepticism:

Donaghy's criminal conduct over many years while working as a referee demonstrated that he is quite capable of prolonged and self-serving deceit. There are also the self-serving lies that he told the NBA when questioned about his gambling in 2005. We believe that some of the allegations he has made to the government in this case reflect at a minimum an inclination to make relatively minor conduct sound quite serious.

Also, the U.S. Attorney's Office advised Judge Amon that, while Donaghy's cooperation as to his co-defendants Martino and Battista was deserving of credit, his cooperation as to NBA personnel did not lead "to evidence of prosecutable federal offenses." With respect to Donaghy's allegations of bias and manipulation, the government advised the Court on July 9, 2008 that "a lot of it was unsubstantiated and that's important. . . . [T]here's a difference between telling the truth and believing you're telling the truth and finding out later that a number of the allegations don't hold water."<sup>69</sup> The Court itself agreed that Donaghy's attorney did not "have any basis" for his assertion that Donaghy's allegations of bias and manipulation had been substantiated.<sup>70</sup>

Further contributing to our skepticism are the communications that Donaghy has recently had with other referees in an apparent attempt to get them to stop speaking about him to the media. We learned from the referees union that Donaghy called its offices on two occasions and made comments that were perceived as threatening. We were told that Donaghy complained during these calls about a comment that Lamell McMorris, the spokesperson and lead negotiator for the referees union, made about Donaghy in the press. We also learned from various sources that Donaghy sent emails to former colleagues, threatening to embarrass them by disclosing information about their personal lives.

In an editorial in *USA Today* in August 2008, McMorris discussed Donaghy's history of erratic behavior that raises questions about his personality and character:

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<sup>69</sup> Transcript of Hearing 21:19-25, *United States v. Donaghy*, No. 07 Cr. 587 (CBA) (E.D.N.Y. July 9, 2008).

<sup>70</sup> Transcript of Hearing 23:19, *United States v. Donaghy*, No. 07 Cr. 587 (CBA) (E.D.N.Y. July 9, 2008).

These actions [the threats against other referees] did not surprise us. Published news stories over the years have documented Donaghy's aggressive and menacing behavior.

For example, *The Philadelphia Inquirer* and other local newspapers reported that Donaghy's next-door neighbors sued him for setting fire to their tractor, crashing their golf cart into a ravine, stalking and threatening the family. Their lawsuit also alleged that Donaghy filed numerous police reports against them after their young son threw stones over Donaghy's fence, the family puppy ran onto Donaghy's lawn and a cable TV technician crossed Donaghy's lawn to get to the neighbor's house. The neighbors told us that Donaghy's original dispute with them was over unswept lawn clippings.

Six years ago, *Sports Illustrated* and other news sources reported, Donaghy was charged with disorderly conduct for allegedly attempting to run a U.S. postal carrier off the road after the letter carrier either accidentally knocked over a recycling bin in front of Donaghy's home, or scraped his delivery vehicle against it.

Other similar incidents, all frightening and sad, have been reported over the years by those who have crossed paths with Donaghy.

This is the guy that we know too well. Donaghy is angry and lashes out at everyone he feels has hurt or abandoned him. He is seeking to taint us so that he doesn't look as bad in comparison. And he will, if not now then eventually, disclose every scandalous, petty and horrible thing that he knows or thinks he knows about the NBA and its officiating staff. He will always seek to cast a shadow on all that we hope to accomplish, including our mission to reassure the public about the integrity of the game.<sup>71</sup>

Our skepticism about Donaghy's allegations has been heightened still further by the well-publicized nature of the games that give rise to his primary claims of manipulation. The 2005 Dallas-Houston series and Game 6 of the 2002 Lakers-Sacramento series both generated significant controversy and media attention at the time. It therefore would not be difficult, as a

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<sup>71</sup> Lamell McMorris, *The Tim Donaghy we know*, *USA Today*, Aug. 7, 2008, at 12A. Donaghy has denied making the threatening calls identified in McMorris' editorial. See Andrew Alberg, *Ex-ref denies making threats*, *USA TODAY*, Aug. 7, 2008, at 2C.

number of referees have noted, for Donaghy to take the facts in the public record, give them his own twist and claim that he had produced evidence of wrongdoing at the NBA.

With regard to the 2002 series, Donaghy has known for years that Game 6 was a poorly-called game. If he is making up a story — as we now believe he is — it is the perfect game for which to add a claim that one of the referees told him that he and one of the other referees deliberately set out to favor the Lakers. As to the 2005 Dallas-Houston series, there is likewise a substantial public record, along with Jeff Van Gundy's public statement that he had been told that the referees were "targeting" Yao. Again, it takes only a small twist by Donaghy to suggest that the referees for Games 3 and 4 were told by their supervisor to focus improperly on Yao in an effort to aid Dallas.

Having spoken at length to the leadership and professional staff of the NBA, we believe the culture of the NBA is entirely inconsistent with a core thesis of Donaghy's allegations — that the NBA puts a thumb on the scales of certain games or series. To a man and woman, referees tell us that the unequivocal message from the top of the NBA right through the supervisory ranks is to be accurate and consistent and to favor no team or player. And we find these statements credible.

Further supporting our conclusion that there is no merit to Donaghy's allegations of game manipulation is the general theme we heard from the staff and others in the League management: the referees are in regular contact with one another and share information. Rod Thorn, the current President and General Manager of the New Jersey Nets and Vice President of Basketball Operations from 1986 to 2000, told us that Donaghy's allegations were nonsensical, adding that if he, as a former member of League management, ever told a referee to favor one team over another, "it would be in the national press in thirty minutes."

Our skepticism has been further fueled by a claim Donaghy made to the Court that is simply false. In a May 19, 2008 letter submitted to the Court concerning Donaghy's sentencing, Donaghy's attorney contended that the NBA "pressured" the U.S. Attorney's Office into "shutting down" its prosecution of Donaghy's co-conspirators Battista and Martino.<sup>72</sup> The letter goes on to allege: "We do know that the [U.S. Attorney's Office] had unassailable cases against Martino and Battista. However, on the eve of trial — which would have resulted in the disclosure of details concerning NBA practices unrelated to [the defendant] — the [U.S. Attorney's Office] desperately sought 'sweet-heart' deals with Martino and Battista that were contrary to DOJ practices."<sup>73</sup> These allegations are baseless. As the NBA told the Court: "The NBA did not 'pressure' or otherwise attempt to influence the government's investigation or prosecution of Messrs. Battista and Martino, or any other individual involved in the defendant's crimes. Indeed, other than in connection with cooperating with the government's efforts to prepare for trial (including by making NBA personnel available to testify at trial and by providing documents pursuant to subpoena), the NBA had no substantive communication whatsoever with the U.S. Attorney's Office about these cases."<sup>74</sup> In connection with Donaghy's sentencing, the government likewise disputed Donaghy's claim that the government "failed to prosecute [Battista and Martino] to the full extent of the law."<sup>75</sup> At Donaghy's sentencing, the Court stated that it found "no bad faith on the part of the government in concluding that the

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<sup>72</sup> Letter from John F. Lauro, Esq., to Hon. Carol Bagley Amon, U.S. District Judge, at 2 n.3 (May 19, 2008).

<sup>73</sup> Letter from John F. Lauro, Esq., to Hon. Carol Bagley Amon, U.S. District Judge, at 23 (May 19, 2008).

<sup>74</sup> Letter from Richard W. Buchanan, Exec. V.P. & General Counsel, NBA, to Hon. Carol Bagley Amon, U.S. District Judge, at 1-2 (June 5, 2008).

<sup>75</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 22 & n.14 (June 27, 2008).

information provided by Mr. Donaghy was not sufficient to develop further prosecution. The speculation of defendant's counsel in letters to this Court that the information was not pursued because of the NBA's influence on the government is just that, completely unfounded speculation."<sup>76</sup> In our view, the manner in which Donaghy made this allegation without factual support casts doubt on his credibility generally.

Recognizing that we have not heard all the details of Donaghy's story, we have found his allegations to be unpersuasive.

## **VII. Recommendations**

We have been asked to make risk assessments and recommendations that fall into two general categories. First, we have made recommendations aimed at preventing NBA personnel from gambling and/or misusing confidential League or team information. Second, we have made recommendations designed to improve the integrity and transparency of the officiating program.

### **A. Gambling and Confidential Information Recommendations**

Sports gambling is big business. In 2006, the Nevada State Gambling Control Board reported \$2.4 billion in legal sports wagering; \$635.4 million of that total was bet on basketball (college and NBA combined). According to one expert in the gaming industry to whom we spoke, approximately 45% of all sports bets in Nevada are placed on football (approximately 20% college and 25% National Football League); basketball is the second most popular sport on which to bet, attracting approximately 25% of wagers (approximately 15%

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<sup>76</sup> Transcript of Sentencing 27:5-11, *United States v. Donaghy*, No. 07 Cr. 587 (CBA) (E.D.N.Y. July 29, 2008).

college and 10% NBA). By some estimates, total volume of sports betting in the United States is \$325 to \$400 billion, with less than 1% of this betting taking place legally in Nevada.

## **1. Gambling Rules**

### **a) NBA Constitution**

We recommended several changes to the NBA Constitution, which the League's Board of Governors adopted on April 18, 2008.<sup>77</sup> As discussed above, the Constitution already prohibited directly or indirectly betting on NBA games. The newly-adopted amendment now prohibits the encouraging, or the attempt to encourage, any other individual or entity to bet on NBA games. This makes clear that even if a League employee does not have a financial stake in a bet, the employee is prohibited from encouraging it.

As discussed above, the League for many years has interpreted the NBA Constitution to prohibit intentionally "tipping," or disclosing confidential League or team information in connection with betting on NBA games. The newly-adopted amendment now makes this prohibition on tipping explicit in the Constitution. The amendment also extended the rule beyond intentional tipping to cover tipping where the disclosing person *should have known* that the tippee intended to use such information in connection with betting on NBA games. We suggested this extension because recklessly tipping confidential League or team information to gamblers can be just as harmful to the League as intentional tipping. Thus, persons entrusted with confidential League or team information will be expected to exercise care in their handling of such information.

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<sup>77</sup> The amendments discussed herein pertain to all persons associated with the NBA other than players. Constitutional provisions pertaining to players are discussed in Section VII.A.2 below.

The NBA Constitution already authorized the Commissioner to punish conduct that, in his opinion, was prejudicial or detrimental to the League. A new amendment now explicitly authorizes the Commissioner to punish any other conduct related to betting on NBA games that he deems prejudicial or detrimental to the League. Although the former provision did not authorize the Commissioner to terminate or expel from the NBA a person engaged in conduct generally prejudicial or detrimental to the League, the new provision gives the Commissioner authority to impose this punishment on a person engaged in *gambling-related* conduct prejudicial or detrimental to the League — a difference reflecting the special seriousness of this misconduct.

**b) Referee Work Rules**

As noted above, the referees are subject to work rules clearly stating that referees are charged with upholding the integrity of the game. In December 2007, we recommended a number of changes to these work rules to clarify and emphasize the rules relating to the integrity of the game. The NBA has already implemented those changes, issuing a revised set of work rules in February 2008.

The most important changes relate to gambling by referees. As discussed above, the work rules had been written to prohibit the referees from gambling of any kind, with the sole exception of betting at race tracks during the off-season, and from visiting any gambling establishment, except for race tracks and the non-gaming areas of casinos during the off-season. Because we believed it unnecessary and unrealistic in this day and age to prohibit a referee from all forms of wagering or going to a casino, we recommended narrowing and clarifying the rules to enumerate specifically the types of gambling activities that are prohibited.

The revised rules further clarify and underscore the existing rules that prohibit a referee from doing anything that causes or could cause any NBA game to be decided other than

on its merits, and betting directly or indirectly on any NBA game. The rules now also list the following new specific prohibitions:

- Encouraging or causing any other person to bet on any NBA game;
- Betting directly or indirectly on any professional or collegiate sport, other than small bets with friends or family members;
- Betting directly or indirectly via an internet gambling site;
- Betting directly or indirectly at a casino, race track or off-track betting establishment during the NBA season;<sup>78</sup> and
- Betting in violation of federal, state or local law.

The League has also adopted recommendations concerning referees and the disclosure of confidential information. Donaghy admitted to, among other things, a vivid example of obtaining and disclosing confidential player injury information:

[O]n December 26, 2006, Donaghy refereed a game in which the Washington Wizards hosted the Memphis Grizzlies. Donaghy originally informed Martino that he thought the Grizzlies would win. Just before the start of the game, however, an official NBA scorer entered the referees' locker room and said that the Grizzlies were "all banged up." Armed with this inside information concerning the physical condition of the Grizzlies, Donaghy called Martino and changed his pick to the Wizards. According to NBA records, the Wizards won, 116-101.<sup>79</sup>

To address this risk, the League clarified and underscored the rule prohibiting referees from disclosing non-public NBA or team information to those not entitled to receive it. The League

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<sup>78</sup> Although the referee work rules now permit betting at a casino, race track or off-track betting establishment during the off-season, a referee must notify the League's Security Department within twenty-four hours of placing such a bet.

<sup>79</sup> Letter from Benton J. Campbell, U.S. Attorney, to Hon. Carol Bagley Amon, U.S. District Judge, at 4 (May 8, 2008).

also strengthened its existing rule regarding communications by referees, so that referees are prohibited from using cell phones or other electronic communication devices in the arena from an hour before the start of the game until the conclusion of the game.

We also recommended — and the NBA has implemented — other rule changes protecting the integrity of the game. The new work rules explicitly prohibit knowingly associating with individuals engaged in illegal gambling, professional gamblers or anyone else determined by NBA Security to be involved in gambling activities (other than as an employee in the legal gambling industry or one who occasionally bets legally in a social setting), and requiring a referee to report to NBA Security any information concerning a violation of these integrity-related rules, as well as any instance in which a person seeks to have any referee violate an integrity-related rule.

In addition to suggesting changes to the referee work rules, we also suggested that the NBA more rigorously enforce the rules. As a consequence, the League has created a detailed enforcement mechanism. For each referee work rule, the League has designated those responsible for monitoring the conduct governed by the rule, specified the information to be reported in the event of a breach and identified the members of management to be notified of such breach.

### **c) Public Release of Referee Assignments**

The League has accepted two recommendations related to referee assignments. First, as discussed above, Donaghy admitted to disclosing referee assignments to those with whom he conspired to bet on NBA games. We thought it made sense that the NBA publicly disclose each morning the referee assignments for that night's games, and the League now releases this information by 9:00 a.m. eastern time each day on the NBA's website:

<http://www.nba.com/news/referee.html>. By making this information public, it will no longer be valuable to those who use it to bet on NBA games.

Second, as discussed above, the League used to distribute the master referee schedule fairly widely, and referees admitted to sharing the master schedule with each other. The NBA now limits the distribution of the master referee schedule and intends to enforce the rule that prohibits sharing the master schedule with those not authorized to receive it.<sup>80</sup>

**d) Disclosure of Confidential NBA Information by Team Personnel and Other Individuals**

As noted above, we learned during our review that when a referee requires pre-game medical attention, the League's current practice is to send the home team's athletic trainer to the referee locker room to provide treatment there. (On rare occasions, such as when the home team's trainer is too busy, a referee may be treated by the visiting team's trainer.) This practice created a risk that confidential information regarding player injuries might be disclosed by trainers to referees.<sup>81</sup> In the ordinary performance of their team duties, trainers necessarily learn, for example, which players are injured and not on the active list, and which players are recovering from injuries but are playing nonetheless. A trainer might inadvertently reveal such confidential information regarding a player's condition to a referee through casual conversation. (We emphasize, however, that we received no information during our review of any specific trainer disclosing confidential information to a referee in this manner.)

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<sup>80</sup> As noted above, however, Las Vegas experts to whom we have spoken do not believe this information is valuable to gamblers.

<sup>81</sup> We also learned that there have been occasions when referees received treatment in the home team's player locker room. This scenario creates an even greater risk of disclosure of confidential information: even if the trainer does not disclose any information, the referee may simply witness a player's condition. The League now prohibits referees from receiving treatment in the team locker rooms.

To minimize this potential risk, we proposed — and the League has implemented — a referee work rule governing communications between referees and trainers. The work rules now provide that a referee “must not discuss with the trainer any non-public information about the team, including the physical condition of any player.” As with other work rules violations, a violation of this rule subjects a referee to punishment by the League, including fine, suspension and/or termination.

We also learned that some teams employ trainers from outside, third-party vendors to supplement their in-house trainers. These “contract” or “per diem” trainers are not team employees, but they are used to treat players and the referees. The use of such outside trainers creates a risk that a non-team-affiliated individual may have access to player injury information. The League is currently considering our suggestion that the League prohibit teams from using these third-party trainers.

Of course, trainers are not the only point of potential risk for disclosure of player injury information and other confidential League and team information. The roster of team employees who are directly involved in maintaining players’ health, or who have access to injury information simply by being in or around the locker room, includes physicians, strength coaches, equipment managers, ball boys and so on. And in at least one case, Donaghy claims to have learned player injury information from a team’s official scorer. We note that the anti-tipping (*i.e.*, anti-disclosure of confidential information) constitutional amendment described above in the context of referees applies to all League and team employees (other than players) and therefore should partially address the risk associated with so many team employees having access to confidential information.

Finally, as noted above, many individuals who are not affiliated with the League or the teams — such as players’ friends and families — are given access to non-public areas of arenas, thereby providing them potential access to confidential information like player injuries. The NBA currently regulates access to non-public areas of arenas during the playoffs. During the pre-season and the regular season, however, the NBA merely encourages teams to follow certain policies, leaving the final decisions to the teams themselves. We heard from the teams that, although they enforce the arena-access rules mandated by the NBA during the playoffs, they are reluctant to announce or enforce restrictive *team* policies during other parts of the season, because to do so requires saying “no” to their players. The net result is that meaningful arena-access rules simply are not imposed by the teams. Therefore, to eliminate teams’ apparent incentives to relax the rules, we believe that the NBA should set and enforce uniform, League-wide regulations regarding access to non-public areas of arenas.

## **2. Gambling and Disclosure of Confidential NBA Information by Players**

As noted above, NBA players are prohibited from betting on NBA games — but the Constitution does *not* prohibit players from gambling at casinos or wagering with friends. Thus, for example, it is not uncommon for players to wager large sums at casino gaming tables or while playing cards with teammates. Indeed, some have commented that there is a culture of gambling among the players. We have recommended that the NBA consider new rules governing gambling by players. We believe that gambling can expose the players and the League to significant risks and therefore it is important that players be educated regarding these risks.

## **3. Gambling Education**

Enhanced gambling education is also an important step in addressing risks related to gambling. Prior to the revelation of Donaghy’s misconduct, the NBA had already made

significant efforts to educate its referees about gambling. For example, at the referees' annual pre-season training camp, the League's head of Security has given a presentation on the NBA's gambling rules for many years. Since 2003, referees have received annually the League's Legal Compliance Policy and Code of Conduct, which addresses the prohibition on betting on NBA games. In 2006, all League employees, including referees, completed an online training course on the Legal Compliance Policy and Code of Conduct, including the gambling rules. Since the 2004-2005 season, referees have received copies of the referee work rules, which include the broader prohibition on gambling described above. Since the 2006-2007 season, referees have also received a brochure discussing the gambling rules and how they can obtain help for a gambling problem.

The NBA's education efforts have extended beyond the referees to team and other League personnel. For example, the head of Security gives a presentation on the NBA's gambling rules at the annual pre-draft camp for NBA draft prospects and at the annual rookie transition program, which is mandatory for every NBA rookie player. The session at the rookie transition program includes a presentation by a former professional gambler who addresses the dangers of gambling. For many years, members of the Security Department visited every NBA team to conduct a workshop on gambling; the session included a brochure, a video titled "Gambling with Your Life" and guest speakers from local law enforcement. Every NBA player contract includes as an exhibit a copy of the League's constitutional provision that bans betting on NBA games. Starting with the 2006-2007 season, teams have been required to display in the players' locker rooms a poster listing the League's gambling rules. Moreover, all players, coaches and trainers have received a brochure discussing the gambling rules and how they could obtain help for a gambling problem.

Notwithstanding this commitment to gambling education, we have proposed that the League continue to enhance its gambling education efforts in several ways. First, because gambling education underscores the risks that gambling poses to individuals and to the integrity of the game, the League is now beginning to coordinate gambling education for all team and League personnel, including referees, players, coaches and trainers. The League is also providing gambling education to team and League employees who are not a direct part of the game, such as finance and marketing personnel. Such education can and should be delivered in a variety of contexts and formats, including live presentations, video and/or internet programs and meetings with FBI agents and other law enforcement personnel, among others. Second, we have proposed that a newly hired League Compliance Officer (discussed below) be responsible for all aspects of gambling education. Third, we have proposed that gambling education for players be mandatory. Presently, the NBA-National Basketball Players Association collective bargaining agreement requires that players attend education on performance-enhancing and illegal drug education, and players are subject to substantial fines for failing to attend these sessions. We see no reason why gambling education should be treated differently.

#### **4. Gambling Enforcement, Detection and Deterrence**

In addition to revising its gambling rules and educating League and team personnel about gambling, we have recommended that the League place greater emphasis on enforcing these rules and detecting and deterring violations.

##### **a) Background Investigations and Reviews**

###### **(i) Referee Background Checks**

Prior to the Donaghy revelations, the NBA regularly conducted background checks on the referees through an outside firm, unlike all other League employees who were checked by in-house security personnel. To be hired, every referee had to pass a background

check. In addition, beginning with the 2005-2006 season, the League required all referees on staff to undergo background checks on an annual basis. Prior to the 2005-2006 season, background checks were performed on all referees on staff every other year.

We have recommended that the NBA enhance its referee background check procedures in several ways, all of which have been implemented. First, the League is now strengthening the annual background checks. In the past, these background checks consisted primarily of searching electronic databases of credit reports, criminal records, civil litigation, bankruptcies, liens, motor vehicle records, corporate affiliations and professional licenses. In the future, additional electronic databases will be searched. In addition, because such electronic databases are sometimes incomplete, the firm hired to perform the background check will obtain relevant hardcopy records from courts and government agencies.

Second, the annual background check will be made more effective by collecting more detailed information from the referees. In the past, the referees completed a questionnaire that asked for basic information concerning a referee's employment history, criminal record, civil litigation, debt collection, business ownership or operation and engagement in illegal gambling or drug use. We have worked with the League and the firm conducting background checks to create a new questionnaire that asks for more detailed information on these topics.

Third, a more formalized response process will be followed when the annual background check reveals certain warning signs. Referees with warning signs — such as excessive debt levels or a history of credit delinquencies — will receive greater scrutiny of their credit reports and will be asked to provide additional financial information. They will also be required to discuss their financial issues with the League and will be referred to financial counselors as appropriate. Referees with more serious flags — such as arrests or severe financial

and credit problems, or a failure to address adequately issues previously flagged — will likewise be required to discuss their issues with the League. They will also be subject to further background checks. This “deep dive” background check will also continue to be conducted before any new referee is hired by the NBA.

**(ii) Referee Outside Employment and Businesses**

We learned during our review that a number of referees are employed by, or provide services to, entities other than the NBA. For example, a number of referees serve as instructors at academies for aspiring basketball officials. Others serve as supervisors of officials for college conferences. A number of referees also own and operate businesses, most frequently in real estate investment. These activities can present several potential risks to the integrity of the game and the League. For example, outside employment or businesses may be so time-consuming as to interfere with referees’ ability to perform their officiating duties to the level required by the NBA; outside employment or business relationships may create real or perceived conflicts of interest; outside employers or business partners may be involved in gambling or other activities with which the League prohibits association; and business ventures may expose referees to large losses and thereby make them vulnerable to pressure from outside influences.

The collective bargaining agreement between the NBA and the NBRA provides that a referee may not maintain outside employment or own or operate a business without first providing written disclosure to the NBA and receiving the League’s express written consent. Although this rule contemplates disclosure and approval as a precondition to involvement in outside employment or businesses, the NBA historically has not required it. Instead, the League has required referees to disclose their outside employment or businesses *ex post* on an annual basis.

We have recommended — and the League has agreed — that it enforce the existing rule as written, requiring referees to formally apply to the League for approval of any

prospective outside employment or business *before* engaging in such activities. To that end, we have worked with the League and an investigative firm to create a questionnaire that a referee must complete and submit for the NBA's review and approval before the referee undertakes outside employment or business. This questionnaire requires disclosure of detailed information concerning the prospective employer or business and will be used by the League to conduct an investigation into the proposed employment or business. The League will then use the results of such investigation to determine whether to grant approval to the referee's application.

**b) Compliance Officer**

As a result of our recommendation, the League is in the process of hiring a full-time Compliance Officer who will have the following responsibilities: assessing and mitigating reputational and legal risks; establishing and assuring enforcement by appropriate personnel of the League's compliance policies and procedures; ensuring that appropriate training and education regarding compliance is provided to all League personnel, including referees, teams and players; overseeing the League's anti-gambling efforts; establishing and overseeing the operation of the League's "hotline," discussed below; reviewing selected incidents to ensure that designated supervisors follow up properly by investigating them thoroughly and implementing safeguards against their recurrence; helping ensure that an appropriate "tone at the top" concerning compliance issues is periodically communicated to League personnel; and leading the Compliance Department and overseeing its day-to-day administration.

We have suggested that the Compliance Officer report to the President of League and Basketball Operations, and by dotted line to the Audit Committee of the Board of Governors. Among the members of the Compliance Officer's staff will be an individual(s) responsible for gambling education and enforcement.

**c) Gambling Monitors**

The League has now arranged to obtain information on a regular basis from individuals and entities involved in the gambling business who can provide the League with information about unusual movements in the betting lines, rumors about things such as injury reports or referee schedules or where the “smart money” is being wagered. By flagging games or individuals for the League to investigate, these monitors may help the League detect gambling or misuse of confidential information. (We note that this system has been working properly, as certain games were brought to the League’s attention during the 2007-2008 season. After further review, the League determined that nothing improper had occurred.)

**d) Statistical Screening for Gambling and Bias**

Since the 2003-2004 season, the League has been collecting data on calls and non-calls for each referee. The collection system was designed by Sibson as part of the overall effort to redesign the officiating performance program. The system itself was built by the League. Although this system was developed for training and instructional purposes, we have worked with the League and Sibson to develop a prototype, proprietary system for screening games in an effort to help detect data patterns that may suggest misconduct by referees and others. Data — including this foul call information and the movements of betting lines — can be analyzed using various algorithms to flag patterns consistent with questionable behavior. While this system is in development, the League has already started to actively monitor several high-level data-points (such as line movements) for every game for signs of potential misconduct, and certain game and betting information is distributed to League management on a daily basis. For those games that are flagged, the League has undertaken further review. In addition, the League hired Steven Angel, a former consultant with Sibson, as Senior Vice President for League Operations and Officiating to, among other things, help coordinate wagering intelligence and

game screening. Analyses are also being conducted to help identify patterns consistent with referee bias for/against certain players or teams.

We have also explored with the League and Sibson including in the prototype a system that can screen for possible player or coach misconduct.

**e) Hotline**

We also proposed that the League create a hotline for League and team employees (including referees, coaches, trainers, players and other NBA employees) to anonymously raise questions and report problems concerning gambling and game integrity issues. Such confidential employee reporting systems are now common in public corporations and, in our experience, contribute to a general culture of compliance in traditional businesses. The goal of such a hotline is to identify problems that might otherwise go undetected and to address potentially serious issues at an early stage while they are relatively minor and easy to resolve. The League has chosen an established vendor of hotline services and expects the hotline to be operational during the 2008-2009 season.

**B. Additional Officiating Program Recommendations**

We believe it is incumbent on the NBA to continue its efforts to improve the systems and procedures it has in place to help insure that the referee program is as effective and fair as it can be. This includes a clear and precise message and tone from the top and the best possible training, management, supervision and assessment of performance. We have offered the following specific recommendations, which the League has accepted:

1. Going forward, the League should establish a direct line of communication for bias-related complaints from the teams to General Johnson. We suggest that team complaints about bias be as specific as possible and accompanied by whatever supporting evidence the teams can gather. General Johnson and the President of League and Basketball

Operations should report periodically to the Audit Committee of the Board of Governors regarding bias-related complaints.

2. As discussed above, owners, general managers and coaches regularly send complaints to the NBA about officiating. During a playoff series all team complaints and the League's responses to them should be posted and made available to both teams. This should help alleviate any concern that a complaint will lead to special focus on a player or team in a series. It will also permit teams whose players are violating the rules to self-correct.

3. The League should require the referees annually to disclose to the League their off-court contacts with all players, coaches, general managers, owners and other team personnel, as well as observers, unless those contacts were authorized by the NBA. This disclosure will enable the League to better monitor fraternization, subject certain relationships or contacts to greater scrutiny if necessary, and take any appropriate actions regarding discipline or changes to referee assignments.

4. While it is our belief that the NBA's standards for referees are clear, League management should periodically address the referee staff and remind them of the terms and purpose of the non-fraternization and autograph and free merchandise rules.

5. We believe it would be helpful for the media and the public to be better educated about the scope and import of the referee program. The NBA should continue to make presentations to the media about the key aspects of the referee program. We also suggest that a publicly accessible website be created, which includes basic information about referees, such as an explanation of the rules accompanied by explanatory video and performance standards.

6. We have found the referees, as a group, to be dedicated to their craft and working hard to try to get calls right and improve. We have recommended that the NBA make a

cross-section of referees available to the public and media to discuss how they approach their job on a day-to-day basis.

## **BIOGRAPHICAL INFORMATION**

### **Lawrence B. Pedowitz**

Lawrence B. Pedowitz is a 1972 graduate of New York University Law School. After graduation, he served as a law clerk to Henry J. Friendly, Chief Judge of the United States Court of Appeals for the Second Circuit, and then to William J. Brennan, Jr., a Justice of the United States Supreme Court. He then joined the United States Attorney's Office for the Southern District of New York where he was a member of the Criminal Division from 1974 through 1978. During that period, he served as a member of the Securities Fraud and Narcotics Units and became Chief Appellate Attorney. He then joined Wachtell, Lipton, Rosen & Katz and became a partner in 1980. In 1982, U.S. Attorney John Martin asked Mr. Pedowitz to return to the U.S. Attorney's Office to serve as Chief of the Criminal Division. He served in that position under U.S. Attorneys Martin and Giuliani. He returned to Wachtell, Lipton in 1984. Since returning to the firm, Mr. Pedowitz has specialized in handling regulatory and white collar investigations for major corporation, including investment banks, securities firms, defense contractors and pharmaceuticals clients. In that capacity, he has conducted numerous internal investigations and compliance system reviews.

David B. Anders

David B. Anders joined Wachtell, Lipton, Rosen & Katz in 2006, after serving as an Assistant United States Attorney for the Southern District of New York from September 1998 through December 2005, and became a partner on January 1, 2008. His practice principally involves the representation of Fortune 500 and other companies in connection with the defense of regulatory, white-collar criminal, and complex civil litigation matters. He also advises clients on the design of compliance policies and has conducted numerous internal investigations. Mr. Anders is a 1991 graduate of Dartmouth College with an AB in Government and graduated from Fordham University School of Law in 1994. He served as law clerk to the Honorable Denny Chin, United States District Judge, Southern District of New York, and was an Associate Adjunct Professor at Fordham University School of Law from 1997 through 2006. During his time at the U.S. Attorney's Office, he investigated and prosecuted a wide variety of securities, commodities, and other investment fraud schemes, money laundering, immigration, racketeering, and associated violent crime. He tried 13 felony cases to verdict, and briefed and argued numerous appeals before the United States Court of Appeals for the Second Circuit. While at the U.S. Attorney's Office, Mr. Anders was involved in several high-profile cases, including the investigation and prosecution stemming from the fraud at WorldCom.

Jonathan M. Moses

Jonathan M. Moses is a member of the Firm's Litigation Department which he joined in 1998. He has represented clients in diverse industries, including banks and financial institutions, media companies, and industrial firms. His practice includes government investigative proceedings and complex commercial, insurance and securities litigation. Prior to joining the firm, Mr. Moses served as an attorney for the *New York Daily News*, where he worked on First Amendment issues among other matters, and a law clerk to the Hon. Stephen F. Williams of the United States Court of Appeals for the District of Columbia Circuit. Mr. Moses is also a former journalist having served, among other positions, as a staff reporter for *The Wall Street Journal*. From 1990 to 1991, Mr. Moses served as a speechwriter to Gov. Jim Florio of New Jersey. Mr. Moses received an A.B. from Harvard University in 1988 and a J.D. from Columbia Law School in 1996, where he was an editor of the Law Review and a James Kent Scholar. Following graduation from Harvard, Mr. Moses was the recipient of a Fulbright Fellowship in Hong Kong.

Joshua A. Naftalis

Joshua A. Naftalis is an associate at Wachtell, Lipton, Rosen & Katz. His practice has included regulatory and white-collar criminal matters, securities and complex civil litigation, and litigation related to mergers and acquisitions. Prior to joining Wachtell, Lipton in 2005, Mr. Naftalis served as a law clerk to The Honorable John M. Walker, Jr., Chief Judge, United States Court of Appeals for the Second Circuit, and The Honorable Carol Bagley Amon, United States District Court for the Eastern District of New York. Mr. Naftalis received his J.D. from Columbia Law School in 2003, where he was a James Kent Scholar and Managing Editor of the *Columbia Law Review*, and his B.A., *magna cum laude* and with distinction, from Yale University in 1999.

Won S. Shin

Won S. Shin earned his A.B., *magna cum laude*, from Harvard College in 2000 and his J.D., *magna cum laude*, from Harvard Law School in 2005. After law school, he served as a law clerk to the Honorable Karen Nelson Moore of the United States Court of Appeals for the Sixth Circuit. In 2006, Mr. Shin joined Wachtell, Lipton, Rosen & Katz, where he was, until recently, a litigation associate whose practice included regulatory and white-collar criminal matters, litigation related to mergers and acquisitions, and other civil litigation. Mr. Shin is now a litigation associate focusing on appellate and Supreme Court matters at Akin Gump Strauss Hauer & Feld in Washington, D.C.