

When it Comes to Ethics and Civility, Don't Use Your Head

by Keith A. Call

Recently, over 2,600 former players have filed nearly 100 separate lawsuits against the NFL for concussion-related injuries. The players allege the NFL concealed the long-term impacts of concussion injuries. See Nathan Fenno, *Former Redskins RB Stephen Davis Sues NFL Over Concussions*, WASH. TIMES, July 5, 2012, available at http://www.washingtontimes.com/blog/screen-play/2012/jul/5/former-redskins-rb-stephen-davis-sues-nfl-over-con/?tw_p=tw. These modern-day lawsuits are particularly interesting in light of modern day equipment – hard-shell helmets and other “protective” equipment used by football players.

Many pundits are suggesting that today's helmets are actually part of the *cause* of many of today's serious football injuries. That is because the hard-shell helmet, along with other football padding, can give a player a sense of invincibility that encourages harder, more damaging hits.

I learned this first-hand in high school. Our football team was known as a relentless, hard-hitting, and well-conditioned team. A year after I graduated I met a guy who played running back for an opposing team. Although my team lost the game, my former foe commented on how badly he was personally rocked when he played us. He was a victim of what we were taught: put your facemask in the opposing player's numbers and hold nothing back.

This phenomenon has brought several commentators to not-so-facetiously call for a ban of the football helmet. See, e.g., Reed Albergotti & Shirley S. Wang, *Is It Time to Retire the Football Helmet?*, WALL ST. J., NOV. 11, 2009, <http://online.wsj.com/article/SB10001424052748704402404574527881984299454.html>. The argument is that if football helmets were removed, players would behave better. More specifically, they would stop using their heads as weapons. There may even be empirical evidence to support this argument. Research suggests that helmeted NFL players are 25% more likely to sustain a head injury than their counterparts in the professional Australian rugby league, a comparable full-contact sport in which no helmets and no

significant padding are worn. See *id.*

What does this have to do with ethics and civility? The point I want to make is that just because you can do something under applicable rules does not mean you *should*. Good ethics and civility require more than written rules and standards. They require a good conscience and good character, traits that are developed over a lifetime of practice. And sometimes the best lessons are the ones we learn from our own mistakes.

Now, I'm not calling for a repeal of written rules and standards governing ethics or civility. They certainly have their place. Taken to its extreme, the no-helmet theory would also suggest that we replace automobile airbags with spears that would impale drivers in an accident. See John Tamny, *Memo to the NFL: To Reduce Concussions, Ban Football Helmets*, FORBES, May 27, 2012, available at <http://www.forbes.com/sites/johntamny/2012/05/27/memo-to-the-nfl-to-reduce-concussions-ban-football-helmets/>. While I'm certain such measures would drastically reduce aggressive and unsafe driving practices, I vote we stick with seatbelts and airbags.

So let's not abandon written rules of ethics and civility. But this little discourse is a public reminder to myself, and perhaps others, that using your helmeted head as a weapon is not always the best idea. Instead of always pushing the envelope on what the written rules and standards allow, perhaps we would all be better off paying a little more attention to what the little man or woman on our shoulder is trying to whisper in our ears.

KEITH A. CALL played for the 9-2 Wasatch Wasps in 1982. He is now a shareholder at Snow, Christensen & Martineau, where his practice includes professional liability defense, IP and technology litigation, and general commercial litigation.

