

# THE DARK SIDE OF SPORTS

## Taking Spotting Seriously

A look at a growing safety problem in high school sports

BY DR. MARC RABINOFF

Can you give me a spot?" is a common question heard in any gym. And although the person you ask may be willing to help out and may have good intentions, it's simply unacceptable for someone to spot if they do not have the skills or physical capability to do so properly.

Think about it. What is the purpose of a spotter in weight training? There is basically only one: to get the weight off the person lifting should that individual fail to complete the lift. Rarely do we use spotters in weight training for the purpose of working on technique, because one nice thing about this activity is

that you can safely work on technique with very light weights. As the weight increases, the spotter must be *ready, able* and *willing* to hold the weight should the lifter fatigue or miss the lift or make an error.

The spotter's role is different in gymnastics and in cheerleading (the latter, unfortunately, is responsible for the highest number of catastrophic injuries in the United States for women). In both cheerleading and gymnastics, a spotter has two major purposes. The first is to help the athlete master their

technique. For example, if a gymnast is performing a rotation off a high bar, the athlete can't stop the rotation in the middle of the movement – he or she has to try to perform the complete movement. A spotter, by pushing a certain



Use of a power rack and proper spotting technique, as shown here by athletes at Berrien High School, will help prevent accidents and injury in the weightroom.

part of the athlete's body or by helping to hold up the athlete, can help them complete the movement. The second major purpose is to keep the athlete's head or neck from hitting anything.

I am currently working on a case in which a Level 10 male gymnast was performing a horizontal bar routine in a meet. During the dismount the athlete made a serious error, and the spotter, instead of trying to help prevent the athlete from seriously injuring himself, moved out of the way! The result was that the athlete missed the mat, hit his

head, and is now brain damaged for life. I saw a video of the accident, and it's obvious that the person spotting didn't know what the hell he was doing.

This brings me to my last major point, which I will make by using an analogy of an airline pilot. These days the planes practically fly themselves, but if something goes wrong with the plane, the pilot must take over and that pilot had better know what he or she is doing. Likewise, anyone can spot a skill done well. It's when the skill fails that the spotter must be on their toes and their training comes in.

Offering moral support when a person is lifting is fine, but if someone is not trained how to spot properly, then they absolutely should not be doing it. There's never a good reason to settle for anyone other than a trained spotter. It's your life we're talking about. **BRF**

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# THE DARK SIDE OF SPORTS

## Taking it to the Courts

Insight into the forensic expert's report

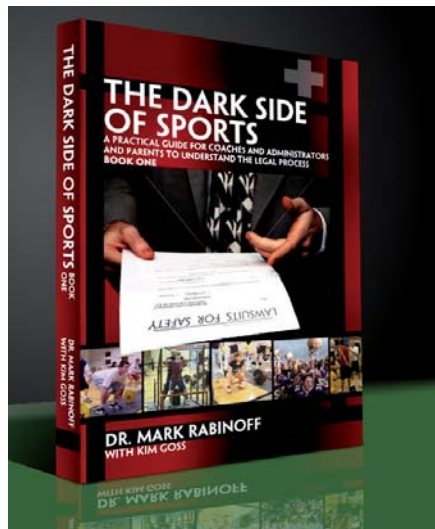
BY DR. MARC RABINOFF

A formal report is required in federal court unless the court has opted out of such a requirement, and many state courts have adopted federal rules. Further, in most states there are specific deadlines by which an attorney must disclose or provide to the court and opposing counsel the forensic expert's report. In lawsuits involving weightrooms, you should expect to deal with formal reports from forensic experts.

Although the attorney is responsible for requesting a formal written report, the forensic expert should ask beforehand whether a written report will be required and when it is due. A good forensic expert will use an organized note-taking system during the investigation of the evidence that can go a long way in helping to prepare a report.

Before writing the report, the forensic expert will compile all the data gathered during discovery and review them to determine how the report should be organized. The forensic expert should clearly state his or her opinions regarding information uncovered during discovery.

Consequently, the attorney should inform the expert of the facts required to develop the burden of proof. It is



This chapter is an excerpt from Dr. Marc Rabinoff's book, *The Dark Side of Sports: a Personal Journey Through a Sports Liability Lawsuit*.

critical that the attorney know and understand what the expert witness will say during the trial. The forensic expert's report should be concise and based on testimony and research from the industry or specific discipline. Throughout the writing process the forensic expert should anticipate rebuttals by forensic experts representing opposing counsel. Here are a few other qualities of the good report. It should...

- State upfront whether the report is preliminary or final
- Identify the educational and

practical experiences of the forensic expert, as well as the information discovered in data collection, that helped form the basis for the opinion

- Refer to specific testimony, documents and objects as reviewed to provide concrete evidence for the opinions and conclusions expressed in the report

- Reach a conclusion

- State that the forensic expert is willing to review future issues and that these would be included in any additional reports requested

- Include the forensic expert's signature and appropriate title. Titles can include earned degrees, professional rank, certifications or business job titles

An attorney will often suggest alternative ways for the expert to express a conclusion or opinion, but such suggestions should be limited to elements of style and should not affect the content of the opinion. The forensic process is a team effort. **EF**

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# THE DARK SIDE OF SPORTS

## Justice Prevails (Part 1)

A look at a lawsuit that took 19 years to settle

BY DR. MARC RABINOFF

What is particularly aggravating about law shows on television is they are seldom realistic about the time it takes to litigate cases. They give the impression that after an accident occurs, a lawsuit can be quickly filed and the case can be settled within a few weeks. The truth is lawsuits can take months, even years to settle. And it may be hard to believe, but I just got the news that one injury case I was involved in as a forensic expert was finally settled *19 years after the accident occurred!*

I was retained on this case as a forensic expert in 1994, although the injury that resulted in the lawsuit occurred in 1991. It happened at a Chicago school in a gymnastics/tumbling/mini-trampoline program to keep intercity kids away from drugs. It was run jointly by the Chicago school system and a Chicago youth center. They hired a man who said he was a physical education teacher, but there was nothing in his résumé indicating he was qualified to teach such a program.

In 1991 the Chicago school decided to purchase two mini-tramps for this program. There were about 15 kids in the class, ages 13 to 15. On one occasion, the teacher in question had them jumping off a mini-tramp onto a 1 and




Photo: Timeless Images Photography

Having appropriate landing mats is essential in any activity in which gymnastic activities are performed.

1/4-inch horsehair mat. One youth either underrotated while attempting a double front slip or overrotated during a single flip. In any case the coach was not spotting him, and the result was the young man landed on his head, broke his neck and became a quadriplegic.

In 1992 a law firm was retained, and in 1994 I was retained to review

the case. In 1997 I wrote an affidavit for the court that stated the actions of the defendant fell below the standards of care that were established by the United States Gymnastics Federation. The teacher testified that he didn't know these standards in the profession and that he had no gymnastics background other than a course he'd taken in college. In my opinion, if this coach had followed the standards for this type of equipment, standards that are clearly laid out in the safety manuals published by the Gymnastics Federation, the young man would not have broken his neck.

Let's recap: Here's a case about an accident that happened in a situation where there was inadequate equipment, poor instruction, failure to warn, failure to supervise – and so on. You would think that with such overwhelming evidence this case would have been quickly and easily resolved. But it wasn't, and in Part 2 of this article I'll explain why. 

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# THE DARK SIDE OF SPORTS

## Justice Prevails (Part 2)

More insight into a lawsuit that took 19 years to settle

BY DR. MARC RABINOFF

In the previous issue I talked about a lawsuit I worked on in Chicago that resulted from a catastrophic injury to a young man, Ryan Murray, and took 19 years to settle. I need to tell you more about this case.

In February of this year I got a call from the Murray family's representative, who told me they did not have to go to trial because the defendant had finally settled the case for \$14,675,000. Even though Ryan has been a quad since 1991, in the end there was no guilt or innocence established – it was just a settlement. Everybody goes home and Ryan moves on.

One thing this case illustrates in a dramatic fashion is that lawsuits can be very, very expensive. I don't know how much the law firm that worked for Ryan Murray spent, but I would venture to guess that it's deep into the six figures, maybe even a million dollars over the past 19 years.

The case not only cost a tremendous amount of money, a settlement that may result in bankrupting a public school district, but the fact is Ryan



At the 2010 BFS National Certification, BFS clinicians such as Doug Kaufusi ensured that the coaches who attended understood proper spotting technique along with proper lifting technique.

Murray became a quad in 1991 and is still a quad in 2010. Now he can live a decent life and get all the best medical care he deserves for the rest of his life. But if you'd ask him if he would rather have \$14 million or be able to walk again, the choice would be obvious.

When I first read about the case in 1994, I believed, based upon the evidence presented, that this was a grievous violation of standards of care. I believed that in 1994, and I believed it in 2001 when the Illinois State Supreme Court agreed with me and used my work as part of their decision. And I

believe this settlement will affect, at least in the state of Illinois, how the legal system looks at sport-related injuries. It's also a wakeup call for teachers to get them to understand, very clearly, that they have to be vigilant when they coach or teach. And if they don't know how to teach a specific skill, then they must study it before they put any kid in harm's way.

You can't get lackadaisical in a PE class. If you've been teaching for 20 years, and you get lazy and neglect to take precautions you would have earlier in your career, a kid could get hurt. How would you live with yourself? And in any trial that ensues, the jury will be asking did you in fact at the time of the injury fall below the standard of care in your profession. That's the lesson to be learned from Ryan Murray's tragic accident. **BFS**

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Glenn A. Morris, an adjunct professor of strength at Metropolitan State College of Denver, teaching a young woman the finer points of a power clean. Metro State has an outstanding sports liability program run by Dr. Rabinoff that discusses issues such as screening individuals for coaching positions.

## THE DARK SIDE OF SPORTS

# The Truth about *Background Checks*

What coaches, parents and administrators need to know about this screening method

BY DR. MARC RABINOFF

**M**any national sports governing bodies are performing background checks on their members – and not just on coaches but also on judges and even volunteers. Doing background checks may seem to be adequate insurance that those who are working with young athletes do not have a history of behavior that

could put these young people at risk. However, that complacent attitude is a serious mistake.

Don't get me wrong. It's important for any organization to have policies in place to make sure its members are safe. But sometime those policies fail miserably. During the past decade 36 members of USA Swimming have

been banned for life from the organization due to sexual misconduct. A recent investigative news feature on ABC described the situation as a "culture of sexual misconduct," and stories were uncovered about young swimmers allegedly being secretly videotaped, abused sexually and even impregnated by coaches who were

members of USA Swimming. Some critics of the organization, claiming that USA Swimming has not taken this issue seriously, have drawn parallels between the organization's attitude and the sexual abuse issues that have been associated with the Catholic Church.

This is a public relations nightmare. It certainly discourages parents from having their children involved in swimming, and it has huge financial ramifications in terms of potential sponsors. How quickly do sponsors react to bad press? Just ask Tiger Woods. And despite one's popularity, it may not be possible to recover from bad press. Mel Gibson's movies have earned more than \$2 billion just in the US. Chris Brown's album *Exclusive* has sold three million copies (and counting). And John Edwards raised over \$23 million in campaign contributions when he ran for the presidency in 2008. Although these individuals certainly have enough money to live out the rest of their lives comfortably, there is nothing they can buy, do or say to overcome the negative publicity from their behavior.

## Black and White, or Gray?

What a background check does is show what kind of legal action has been taken against a person. If they've had a felony conviction, even if it was 20 years ago and they've paid their debt to society, it would show up.

In most organizations, you only have to do a background check every two years. With USA Gymnastics, we discussed the issue of performing background checks for many, many years and in 2008 established a policy that required mandatory background checks of their coaches every two years. With USA Gymnastics, basically you'd do a background check yourself. On

the organization's website, you'd go to the section about background checks, put in the necessary information – which includes your social security number – pay your 20 bucks with a credit card, and within the next few days you'd receive a document with the results. Other organizations may or may not do it that way.

Let's say you are a school principal who needs to hire a bus driver. In that situation it will be important to know if any of the candidates have had a DUI. A past DUI may or may not affect someone's ability to be hired – but certainly it's something you want to be aware of. What if one candidate is 50 years old and had a DUI when they were 18, but has had no incidences since and has been a model citizen? Is 34 years enough time for redemption?

It's true that some employers consider any criminal action a deal breaker for prospective employees. But in some fields, popularity seems to



BFS clinician Paula Davis working with a young athlete. Coach Davis is one of the 50 certified teachers who are part of the BFS team that conducts sports training and character education seminars.

override questionable behavior. Let's say an individual has a history of substance abuse that resulted in jail time. Let's say the job is acting, the actor is Robert Downey, Jr., and the role is a movie called *Iron Man*. Or let's say the charge was a DUI, your name is Dick Cheney and the job is vice president of the United States. Or perhaps your name is George W. Bush and the job is the president. Cheney had two DUIs, at age 21 and 22; and Bush had one, at age 30.

So this is where we stand so far: The background check is used to determine if there has been a conviction. It provides a first look at whatever illegal went on in a person's life up to the present. That's all a background check does – with a few exceptions, it should not be used as the sole determining factor as to whether or not someone should be hired, or for that matter if that individual is a risk for coaching young athletes.

Yes, a background check will certainly indicate if someone has been convicted of child molestation. If a pedophile is interested in applying for a position as a coach with a youth sports program such as Little League or Pop Warner football, even up to the high school level, that's something you want to know. And a background check would show that. But as USA Swimming is learning, background checks may not be enough.

In one lawsuit for which I was hired as a consultant the employer not only didn't do a background check, they never even checked the person's resume. A background check can create a false sense of security about the people you are hiring. What I've found in four sports that I've been researching is that a background check is not an incontestable defense that you did everything you could to prevent a

kid from being sexually abused. The background check, by itself, may not be enough because it will only show if a predator was arrested, tried and convicted – that’s all a background check does. But consider the factor of time.

A background check is generally performed every two years, but that doesn’t mean that the company conducting this service is continually informing the hiring organization about the subsequent criminal activity of its employees – or, in the case of a sports organization, of all its coaches and others involved with working hands-on with young people. What happens when a coach comes through squeaky clean in a background check, but gets convicted of a sex crime involving a minor a month after you’ve completed the background check? You will have to wait 23 months until the next background check is performed to hear about it.

It’s critical to understand that in the hiring process, a personnel file is considered a private document that is protected by privacy laws. Is the information discoverable in litigation? Yes, but exposing it to the general public is not allowed. A sports organization may think it’s doing a great service by releasing on a website or other method of communication that someone has a jail record, or even a serious medical condition, but they cannot release this information. Not only is it unethical, but it may be illegal and could result in huge lawsuits.

## The Total Picture

If an individual is being considered for a job, or even a volunteer coaching position, a background check is just one aspect of the hiring process. It’s a starting point. Let me cover a few other aspects.

First, there are resumes and

references to consider. Perhaps the coach you want to hire was fired from their previous coaching position for making inappropriate advances to other coaches on the staff, and the organization agreed not to file charges if the person simply quit – a background check wouldn’t reveal this information. In fact, you may also find that in researching the resume, a coach may have lied about his or her previous employment – that should be a red flag in regard to the character of this individual.

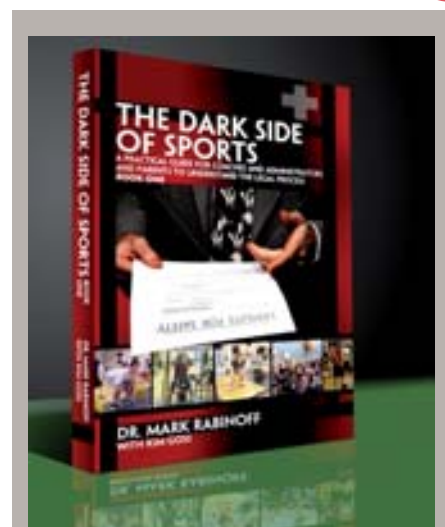
If you’re an employer or perhaps involved with an organization that is simply trying to recruit volunteers for positions that involve working with young people, spend some time calling the references – it may take an hour or so. Ask the hard questions so you get a good grasp of an individual’s character. In one case I was asked to review, the employer called only one reference out of the six provided. That’s unconscionable. Further, coaches should be made aware of the behavior standards expected of their coaching staff and should be required to sign a document showing that they agree to these standards. USA Soccer has produced several such documents that can be used as templates for any youth sports or fitness organization, and USA Gymnastics has a newsletter that frequently discusses these issues. However, having such documents is not enough – sports organizations must ensure that these documents are read and understood by their members. It is also a good idea to have workshops on these topics, just as many businesses have workshops on topics such as sexual harassment.

Sports organizations also should establish a mentoring program for new coaches, especially younger ones just entering the field. In fact, all new

coaches should undergo a probationary period until they have proven they can be trusted without question.

Next, parents must be vigilant about monitoring who is coaching their children. If you’re a parent, get to know your kids’ coaches – don’t just drop your kids off at practice and cheer them on in sporting events. The more that parents attend games and practices, the less likely there will be opportunities for questionable behaviors to take place. Further, parents need to communicate with other parents about the behaviors of their coaches, and they also need to communicate with their children about anything unusual that is going on in practice or games.

We live in a society in which there are people who can harm young athletes, physically and mentally. A background check is just one step in the process of helping to prevent these individuals from putting young people at risk, and there’s more that needs to be done. To keep kids safe, it’s important to be thorough when vetting prospective coaches and volunteers. **EF**



*The Dark Side of Sports: Book One* is the first in a series of books by Dr. Rabinoff that discusses the legal process in sports. It is available through our e-store at [biggerfasterstronger.com](http://biggerfasterstronger.com).

# Cheerleading As Sport: A Moderately Outrageous Opinion

A look at the changing face of high school and college cheerleading



*Hellcats* is a new show from the CW network about the struggles of a college cheerleading squad. Shown left to right are Alyson Michalka, Robbie Jones and Ashley Tisdale.

BY DR. MARC RABINOFF

I'm not a big television watcher, but there's a new show about a cheerleading squad that caught my attention. It's called *Hellcats*, and what struck me was that in the second episode one of the athletes sustained a serious injury while performing a stunt and a comment was made about the sport's extraordinarily high injury rate. Although the show is a work of fiction, when it comes to providing an accurate portrayal of the true nature of cheerleading, *Hellcats* could be considered a form of reality television!

Please note that in the previous paragraph I referred to cheerleaders as athletes and cheerleading as a sport. The physical demands of competitive cheerleading, with its various levels of lifts, stunts and tumbling, put it in the same category as gymnastics. Unfortunately, in 2008 a study was published that looked at the injury rates of three million high school girls who participated in sports the pervious year. Although cheerleaders represented only three percent of these athletes, they accounted for 65 percent of all catastrophic sport injuries! It's my contention that to reduce the risk of injury in cheerleading, it must be taken seriously and the athletes must have access to qualified coaches and

appropriate strengthening and conditioning programs.

USA Gymnastics has proposed to sponsor an association with a working title of Aerobics and Tumbling. They are in fact pushing to get the NCAA to recognize cheerleading as a college sport. I have some issues with this idea, so on September 10th I wrote a letter to Steve Whitlock, Director of Gymnastics for All at USA Gymnastics. Here are some excerpts from my letter:

"I recently read that the cheerleading associations at the college level wanted to start a new sport called something like "cheerleading stunts and tumbling sport." I have a major problem with that, as we in gymnastics already have such programs and there is no need for this. The reason I see for them to offer this is to raise cheerleading to a high level of performance. I have no problem with that as well, but, again, there is no need for another sport. In my professional opinion, having testified in many cheerleading quadriplegic injury cases..., if they want to raise it to another level, [then they need to have] coaches who are competent in gymnastics tumbling and stunting, as all these cheerleading skills are gymnastics movements placed in a

cheerleading setting.

"So my question is 'What is USA Gymnastics doing about this issue that is hurting hundreds of cheerleaders each year?'

"I see no reason for the cheerleading folks to start a sport we always had. I do believe that if a cheerleading team does want to do stunting and tumbling and gymnastics, [they must have] a qualified trainer in gymnastics skills teaching and coaching and spotting, [and then] the squad could be seen as a varsity sport....

"I'd appreciate your thoughts or those of USA Gymnastics, as I have knowledge of some seriously injured cheerleaders who are in litigation for just these concepts."

My letter is just one voice in a growing dialog on the physical risks of cheerleading. Too many young people are suffering life-changing injuries from this sport, and the public needs to know that. Most importantly, we need to move beyond talk and come up with solutions. **BR**

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