

Game On—

How Litigation Is Like College Football

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Your gut is churning, but your gaze is steady—you are resolute. It's game day and you are there to win. You've done your drills, you know your opponent, and you are suited up.

A college football player or a lawyer getting ready to enter the courtroom? It could be either—there are many similarities between litigation and college football.

Let's start with rules—rules govern both litigation and most sports. Discovery deadlines, number of time-outs, Rules of Civil and Criminal Procedure, National Collegiate Athletic Association guidelines.

If you violate the rules, there are sanctions or penalties. These “pow pows” range from having your pleadings stricken to losing yardage. A bad call can cost you the game, no matter what you are playing—law or football.

Someone oversees the proceedings. In court, it's a judge; on the field, it's a referee. Both are supposed to know the rules, and sometimes they make a bad call. In college football, there used to be the notion of “there's always next week.” Now there are instant replays and coaches' calls. Lawyers have appellate courts.

Know your judge—watch him or her in the courtroom and check out the judge's game-day calls.

Lawyers “play” for their clients; college football players play for their schools. It's important to remember that you aren't playing for your own glory, but for the client you represent.

The Role of Skill

The skill of players is important in both endeavors. Highly ranked high school football players are recruited to Division I schools. These “stars” are courted assiduously, promised much time on the field, and told that the world will be their oyster if only they sign up with the recruiter's team, just as law students from good schools or with good grades are courted assiduously, promised much time in court, and told that the world will be their oyster if only they sign up with the recruiting firm. Money, fame, and a happy life await these talented players if they make the right choice.

Both recruits and summer associates are treated to fancy steak dinners before they've even played a snap or passed the bar.

Alas, skill sometimes takes a person only so far. Unexpected injuries, physical or psychic, can turn a highly ranked recruit or associate into a benchwarmer. Great minds or great bodies take a person only so far. There has to be that intangible “it” factor—the desire to win.

That brings us to the “walk-on” or the young lawyer who did not graduate with bells, whistles, and a big job offer. Hunger, hard work, and hustle count for a great deal both in games and in the game of life.

I went to law school with John Morgan of Morgan and Morgan



fame. John was the funniest guy in the class but certainly not the most studious. He was notable for having a potbellied pig as a pet and for adopting two kittens I foisted on him. What John did have was moxie, and now he is by far and away the most successful guy in the class. He plays hard to win.

Part of a winning strategy for college football and court is properly suiting up. College football players have different uniforms depending on whether they are the home or away team. There are specialty uniforms. Lawyers suit up as well—at least they should. Colors are more muted than on the field, lots of blue and gray; brown is a no-go.

The late Judge Lenore Nesbitt of the Southern District of Florida was a stickler for proper attire, and she would throw you off the field (out of the courtroom) if you were not properly dressed. No open-toed shoes, no loud ties. Most judges are OK if you have some variation of a practice uniform on for hearings, but game-day outfits for jury trials most suit the occasion—and juries notice.

Back in my younger days when I was an assistant U.S. attorney (AUSA), I had five back-to-back trials. When I did my last

closing on the last day of the final trial, I wore glasses, something I never did for closing. The jury took an hour or so to decide what I thought was a slam-dunk case. The judge let me speak to one of the jurors afterward. (He wanted me to give her a ride to Sally Russell's, a local watering hole—I am not making this up.) She said they had all voted "guilty" within five minutes, but they were perplexed as to what I was trying to signal to them by wearing glasses. They thought there was some meaning, some secret message in the specs. I told her that I wasn't trying to tell them anything, that I was just really tired and my eyes felt like peeled grapes.

Preparation

But even the most resplendent game-day uniform won't help win the game if there isn't good product on the field. There can be great talent and great facts or a great game plan, but it is all for naught if there is not great preparation.

Natural talent takes a person only so far. Football players run drills and so do litigators. Opening and closings are practiced

multiple times, witnesses are swabbed out, and examinations are finely honed. The best players still have choke days, but that is far less likely if pregame work was put in.

Have a game plan—a well-thought-out recipe for success. Coaches do that for their players, and you should do it for your client. Start the trial notebook early on—you can trim it down or bulk it up before trial. If you have a good idea, write it down.

Hunger, hard work, and hustle count for a great deal both in games and in the game of life.

Part of the pregame/pretrial workout is knowing and understanding your opponent. Football players watch game-day films of the opposing teams. Litigators are well served to do the litigation equivalent. See if opposing counsel has published opinions, look up counsel on LinkedIn, ask around and find out the lawyer's reputation. What are the lawyer's weaknesses and what are the lawyer's strengths?

Even a solo practitioner is part of a team. There is support staff, the court reporter, the judicial assistant, and the client. If you practice Big Law, the equivalent of playing for a Southeastern Conference school, you typically have the equivalent of University of Florida support. Paralegals, great legal assistants, primo office services people. College football players have trainers, nutritionists, and Gatorade folks. A good team often lifts a good player up—but rarely is a game or a case won because of one person.

Fans

Which brings us to fans. Fans are often a critical part of a team's success. Those roars and school cheers, university fight songs, the school colors, and mascot are all motivators and factors in a win. Fans are still possible in a courtroom, albeit on a smaller scale.

When I was an AUSA, there was a group of retired guys, "court watchers" who showed up every day at trial. I loved having them there—they would let me know how I was doing, if the witnesses were believable, whether or not the other side was scoring any points.

Fans lift you up, even if it's one person from your office.

In one big case that I had at "the office," many of my fellow AUSAs would stroll over after lunch to watch the action. I

loved having them there—they gave me the same sort of energy as screaming fans give football players.

Once my dad, Dick Stapleton, drove to Miami unannounced from Clearwater. After I got over my initial shock that he had showed up, I liked having him in the courtroom—he was rooting for me.

In another huge, hotly contested trial, I turned around and there was my ex-boyfriend, whom I was still madly in love with. I was so happy to see him on a day that the judge had yelled at the lawyers nonstop and told us all to bring toothbrushes the next day because he was going to hold us in contempt and put us in jail. I married my ex-boyfriend shortly after the trial—a game that I lost, but that's another story.

Home field advantage is a real thing. At home, you have your fans, the judges you know, the courthouse where you know where the cafeteria and bathroom are. More importantly, the judge generally knows you.

A lawyer from Gainesville, Florida, once said, "A hog in his own waller is a mighty big hog." So it goes with football and litigation.

Even if you have on your best game-day outfit, it's easy to feel like Joe Pesci in the movie *My Cousin Vinny* when you are in a different district from where you usually practice. You are a stranger in a strange land.

College football players travel to away games, but they travel in packs, so a different location is not as stark as a hearing or trial in a place where you don't know anyone. As a litigator, all you can do is put on your game face.

Winning . . . and Losing

The game of football and litigation both have uncertain outcomes. Even the best, most highly ranked teams get trounced once in a while. And dear sports fans and litigators, even great litigators, get their asses handed to them from time to time.

Of course, winning in litigation and college football is magnificent. It would be unseemly to spike an imaginary ball or do the happy dance in the courtroom, but there are many ways to celebrate post-victory.

College football is a game, and while winning and losing have consequences, they are rarely of the same magnitude as losing a trial or a big hearing.

Win or lose, you are a player—you went for it and didn't sit on the sidelines. ■

