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## DA Sends Shockwaves Through Water Polo Community

*By Spencer Silva*

Water polo is one of Lamorinda's most enduring legacies. Over the last few weeks, however, an incident involving a broken nose during a junior varsity match has swelled into a national news item, sending shockwaves through the local water polo community.

According to the San Francisco Chronicle, the Contra Costa County District Attorney's office filed felonious assault and battery charges earlier this month against a 15-year-old Acalanes student who allegedly broke a Bellarmine Prep (San Jose, Calif.) player's nose during a backcourt tussle - in the midst of a turnover and subsequent counter attack - during a tournament at Las Lomas High School on Sept. 19.

Neither the coaches nor the referees saw the incident - in fact, the alleged perpetrator wasn't penalized or removed from the game. Acalanes JV head coach Russ Stryker admitted he didn't think much of the incident until later, when he received a phone call explaining the Bellarmine player not only suffered a broken nose, but the incident was also recorded on video.

The student in question was handed a one-day suspension from school, and was suspended a total of 18 days from the water polo team.

"We feel bad about the Bellarmine boy getting hurt, and our athlete was suspended from school, from the team and was required to take counseling," Stryker said. "The bottom line is we have rules within the schools and within the leagues that take care of these kinds of disciplinary things. In my opinion, it's not something the courts should be dealing with. I would think the DA would look at the totality of the situation, including the student athletes' exemplary school record, great character or at the least the entire game film."

Because the case involves juveniles, the extent of the injury and other crucial facts are sealed. In a brief interview with Lamorinda Weekly, senior deputy district attorney Mary Knox expressed concern over the case's publicity. "Juveniles are entitled to have the entire thing sealed, so that, theoretically, they can move forward with their reputation untarnished," she said. "But when others, unauthorized, publicize this, then forever more, this is in the press."

To those to who have played water polo, the incident itself isn't surprising. In the email that catalyzed the event's subsequent publicity, USA Water Polo pacific zone chair Andrew Morris noted such events happen "hundreds of times per year." He also expressed worry over "the dangerous precedent it would set for high school sports in general." (USA Water Polo later said Morris's views weren't necessarily shared by the organization).

The outrage many in the water polo community feel stems from the district attorney's decision to proceed with criminal charges, and felonious ones, which is nearly unprecedented. Now, a broader debate stirs: should the arm of the law extend to school-sanctioned sports activities, and at what point does a sports action become criminal?

"Generally the incident must be extreme, out of the ordinary and highly dangerous to be considered a criminal act," said Michael McCann, a law professor at the University of New Hampshire who heads the school's Sports and Entertainment Institute. "For that reason, I think the traditional answer is it is an extremely high threshold for when an incident becomes a criminal act, as sports incidents almost never lead to criminal charges."

During KQED's hour-long treatment of the issue on Dec. 22, Alan Milstein, an attorney who specializes in sports litigation, noted that most cases involving sports brutality and criminal proceedings have been in Canada in the sport of hockey. He also noted there are typically four considerations in cases like these: the nature of the game (is it a contact sport?), the nature of the act (was it inadvertent or purposeful?), the degree of force applied, and intent (was there an intent to do harm?).

Water polo is a notoriously difficult sport to referee, since most of the players' bodies are submerged in water.

"You only see the last five percent of the player's body," MAC Water Polo Referee Association

president Jeff Roy explained. "They're just floating heads."

Roy and others pointed out how the pervasiveness of video-recording devices, smart phones and cameras, are changing the game. The ubiquity of such devices have changed the way other realms of law are being prosecuted, perhaps most notably in the scourge of police brutality cases scattered across the country. If homemade videos become part of the fabric of sports and litigation, more cases like this could emerge and some worry there will be costly unintended consequences, like the need for more insurance.

Roy, who's been in the sport for 45 years, expressed this sentiment in a letter to the District Attorney:

"If this criminal case survives our judicial system, contact sports for high school athletics will need to be evaluated upon whether or not schools will continue to offer these athletic events." He continued, "The slope is very slippery if we head down this path, once we let a 'criminal action' of this sort take place. The cost to support high school athletics will probably skyrocket! Liability insurance for everyone who participates will be a costly result."

Reach the reporter at: [sportsdesk@lamorindaweekly.com](mailto:sportsdesk@lamorindaweekly.com)

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