

## Key Governance Lessons From Baseball's Sign-Stealing Scandal

Baseball may be America's pastime, but it's also providing valuable lessons on corporate governance. For the current sign-stealing scandal underscores the importance of board oversight of an organizational culture of integrity, and the risks that can arise when such culture is lacking.

*By Michael W. Peregrine*

Baseball may be America's pastime, but it's also providing valuable lessons on corporate governance. For the current sign-stealing scandal underscores the importance of board oversight of an organizational culture of integrity, and the risks that can arise when such culture is lacking. And that's a critical message for corporate boards across industry sectors who, with the help of general counsel, might do well to consider the relevance of this controversy to their own operations.

Baseball is, of course, a game—but also a very big business. It's an iconic American industry regularly in the public spotlight; subject to multiple rules and regulations; dependent not on the production of products but rather on the skills of individual employees; operating in an extraordinarily competitive

environment that heavily incentivizes individual performance. Its business model is grounded in a commitment to integrity and compliance, without which public confidence in its service would suffer. And that's a description that could fit a whole lot of companies.

Baseball's controversy may be industry-specific. The widespread use of electronic equipment for the purpose of stealing signs from the catcher or a coach, in apparent violation of established rules and with the support, acquiescence or indifference of team leadership.

But the controversy's import is broadly relevant: the breakdown of corporate culture within a highly successful, innovative and financially sophisticated



**baseball equipment**

business. And to that end, it demonstrates the reputational harm to a company that can occur from workforce misconduct. All in all, fodder for discussion at the audit committee level, if not that of the full board.

And what would be the focus of that general counsel-led discussion?

First: There will always be employees who are willing to freelance “in the gray zone” of rules, and executives willing to “turn a blind eye” to unethical conduct. To be sure, sign

stealing has always been part of the game, and to a certain extent an element of its charm. But there were rules—perhaps vague—in place prohibiting the use of technology to steal signs. But bright, prominent, highly compensated employees chose not to seek interpretation of those rules.

Second: No matter the industry sector, the pressure to “win”—to achieve greater business success—may carry more sway than might measured judgment or inquiry. The opportunity to seize a competitive edge, to obtain an advantage, to surpass objectives (personal or organizational) can be blinding. The “smartest guys in the room” exist in every industry.

Third: Organizational ethical and compliance “firewalls” may not always work. Well-designed compliance programs, confidential reporting systems and codes of ethics will only be as successful as the organizational commitment to them and the vitality of the “tone at the top.”

Fourth: The cost of scandal can be incalculably high. Achievements are undermined, jobs are lost, reputations—both individual and organizational—are severely damaged. Recovery from integrity-based controversy can be near-insurmountable.

Fifth: If it could happen to baseball, it could happen anywhere. The Major Leagues represent the absolute highest level of a sport’s talent and competence—the best players, the best executives, the best organizations. An extraordinary combination of skill and commitment, which ultimately failed to prevent misconduct.

So the sign-stealing scandal provides an unusually recognizable platform for some serious corporate accountability reflection. It’s a process that should be led by the board, given its fundamental responsibility for the oversight of corporate culture. With the support of the general counsel and the compliance officer, the board could ask itself the difficult questions, such as:

- Just how widespread is acceptance of our company’s culture of integrity?
- Will our employees instinctively “do the right thing” when the right call is unclear?
- Are our executives and employees comfortable in seeking legal or compliance advice?
- Are our managers and executives sensitive to complaints from those they supervise?

- Are our compensation and promotion incentives aligned with corporate values?
- Does the company’s discipline of rule-breakers send the proper internal message?
- Just how comprehensive is governance oversight of culture and compliance?

Spring training, that great elixir for winter’s gloom, is almost upon us. With it comes for each team the prospect of a more successful season. But this year’s promise will be tinged with lingering sentiments of concern, mistrust and suspicion. And for baseball, as well as for commerce in general, this will be a reminder that optics count, ethics matter and leadership must take seriously its obligation to corporate accountability.

**Michael W. Peregrine**, a partner at the law firm of McDermott Will & Emery, advises corporations, officers, and directors on matters relating to corporate governance, fiduciary duties, and officer and director liability issues. His views do not necessarily reflect the views of the firm or its clients.