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An Owner's Game

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MARC LASRY

An Owner's Game

63 N.Y.L. SCH. L. REV. 285 (2018–2019)

ABOUT THE AUTHOR: Marc Lasry '84 founded and acts as CEO of Avenue Capital, a leading distressed securities hedge fund. In 2014, Marc became the principal co-owner of the Milwaukee Bucks of the National Basketball Association.

I. AMATEURS AND PROFESSIONALS

Robert Blecker¹: We can distinguish amateurs from professionals not by whether they get paid, but rather by what really motivates them. Thus, an amateur athlete might be highly paid, yet still compete for the *love* of the game or sport. On the other hand, if an athlete does it for the money, fame, prestige, or any other extrinsic reward, that athlete really can't qualify as an amateur. Are some team owners in it for the money, and money only? And other owners in it for other reasons? If so, what are they? And which type of owner are you?

Marc Lasry: Oh, I love the game. When you buy a team, your first goal is to make sure you'll make money. Because you're spending a fortune. When we bought the [Milwaukee] Bucks in 2014, we paid the most that anybody had paid for a franchise—for the worst team in the NBA.² We paid \$550 million for a team that made \$5 million. So normally you would not do that. That means you're making one percent. We had to put up \$400 million of equity. And when you're tying up that much capital, your goal is very much, 'How am I going to make money?' But once you own the team, your focus shifts from making money to 'How am I going to win?' And the money becomes secondary because you come to realize you're actually not the owner of the team; you're the steward of the team. You quickly discover that all the fans—everybody from Milwaukee—all believe *they* own that team. And you're just the one managing it for that period.

Everybody comes up to you: 'We want to thank you for buying the team. We're happy you didn't move it.' People are very embedded. Last night I was in Milwaukee; we played in the MECCA, which is [the venue] where the Bucks had originally started. I was in line getting a hot dog. And the guy behind me goes, 'Why are *you* in line?' 'I don't know where else to get a hot dog, so I'm here in line.' And he said to me, 'My dad died four years ago on this day. And we used to come here all the time to watch the Milwaukee Bucks. I really want to thank you for buying the team and keeping our team here.' People are really invested. You quickly become part of the community, and you understand that they do own a part of the team.

RB: And you feel it?

ML: You do. People stop me on the street and say, 'It's great that you drafted Giannis [Antetokounmpo]; that was a brilliant move.' And I'll always go, 'Thank you.' I don't

1. Robert Blecker, who taught Marc criminal law at New York Law School, developed this transcript over a series of conversations between 2017 and 2018, spurred from an initial public dialogue at the philosophy of sport symposium held at New York Law School on October 27, 2017. For a full transcript of the daylong symposium, see *What Can Law Teach Sport and Sport Teach Law(yers)? A Symposium on the Jurisprudence of Sport*, 63 N.Y.L. SCH. L. REV. 119 (2018–2019).

2. In 2014, the Milwaukee Bucks boasted a 15–67 win-loss record, the worst in the NBA that season. See *2013–2014 Conference Standings*, NBA, http://www.nba.com/standings/2013/team_record_comparison/conferenceNew_Std_Cnf.html (last visited Jan. 30, 2019). As of the 2019 All-Star break, they had the best record in the NBA. *2018–2019 Milwaukee Bucks Schedule and Results*, BASKETBALL REFERENCE, https://www.basketball-reference.com/teams/MIL/2019_games.html (last visited Feb. 23, 2019).

tell them that happened before I bought the team. It's a lot easier to say thank you. And then people give you their advice. So many people come up to me and say, 'You need to do this; you have to trade this guy.' The best line is, 'I don't know if you know this but I won my fantasy league two years straight. You have any openings over there?' And I'm like, 'We could always use somebody like you, sure.'

People feel very involved; it's *their* team. So to answer your question, I think most owners come in saying, 'This is a financial investment.' And then very quickly your focus is trying to win. And it's no longer a financial investment; you're doing it for the love of the game. But you're really doing it because you want to win.

RB: So you began as a professional owner and have morphed into an amateur. Do you feel you have a civic responsibility to Milwaukee?

ML: I do. We kept the team in Milwaukee. We could've gone to Vegas; we could've gone to Seattle. We would have made more money in the bigger markets.

RB: You felt like you owed it to Milwaukee?

ML: I felt that we were going to do fine in our investment. And we had promised to keep the team in Milwaukee. And I actually do believe your word means something.

RB: I remember you told me when you first bought the team that other owners advised you, 'Make sure you don't make friends with the players, because if you start caring about your players then you won't trade them at the right time.' Have you followed that advice?

ML: No. If I get to know somebody as the person they are, maybe that's the person I want on my team. Certain players may not be as skillful, but may have leadership qualities, and will end up doing a far better job in their role. When we were trying to figure out if we should trade for [Boston Celtics point guard] Kyrie Irving—he's a phenomenal talent—I didn't think it made sense to give up the people they wanted in return. Because I really liked those players, as individuals and as players. So if you don't know the people then you'll just try to analyze them purely as talent. I think that's the wrong way to do it. And we will find out, in five or ten years.

II. LOYALTY

RB: Do you have an unusual relationship with your players?

ML: I like to think so. I like to be close to the people I work with. I want to know the players; I want to get to know everything about them. If we're close, they're going to want to stay in Milwaukee—as long as we pay them fairly.

RB: So you expect the same kind of reciprocal loyalty that you're willing to give to the city itself?

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ML: I hope so. Not everybody's going to be able to do that, but that's the goal. If you act a certain way, people will follow suit. Not everybody, but most people.

RB: Loyalty is a major value that you obviously uphold and live by.

ML: Yes, but there's a limit to that. You could ask a player, 'Hey I'd like you to give me a hometown discount.' But if we can only pay him \$15 million and somebody else will pay him \$25 million, they're not going to give you that discount. I would not ask anybody to do that. But if you're ten percent off, I think that's okay. We all have jobs. Maybe you love where you're working; you'd work for ten, maybe twenty percent less than you could get elsewhere. But you're not going to do it for fifty percent less.

RB: Is that hometown discount a rule of thumb across the industry?

ML: Five to ten percent is probably the rule. But that's only with players who are really happy. If you're not happy, you'll just go where you get the most money. Or you'll take less money to go play for a place where you think you've got a better opportunity.

RB: Do you see a diminished sense of loyalty in this age of extraordinarily high salaries? When teams are more willing to trade players, and players are increasingly willing to leave?

ML: I do. Because many people view it purely as a business. I don't see why someone should have loyalty to you if you're not going to have loyalty to them. It gets complicated because the dollars are huge. I never ask somebody to do something that I think is unfair. I say, 'Look, here's what we're trying to do; I need you to help me.' There's a limit to what you can really ask somebody to do. And I think players get that. We had a player we were going to trade. He asked if we would mind trading him to a championship contender. We probably would have gotten a little bit more if we traded him to somebody else, but we were trying to help him. So we traded him to a better team. We didn't get as much. It's life.

RB: You sacrificed something because you liked him?

ML: We sacrificed something because we thought in the end, people will want to come play for Milwaukee because they'll feel it's a place where they'll be treated right. So in the short term we may get hurt, but long term it will benefit the team.

RB: Even loyalty translates effectively into a business decision that becomes profitable: People might be more willing to play because they know if it doesn't work out, you'll make sure they have a soft landing somewhere else. You make it tough to separate pure morality from efficacy.

ML: I think the two can be intertwined. You can always try to be loyal. But at the same time you're trying to help yourself and the players.

RB: We all know of players who have played with injuries because their team desperately needed them, even though it may hurt them later when they sign a new contract. How about a player's loyalty to the team?

ML: He may well pay a price long term—to never be the player he once was or might have become. Never command the salary he might have otherwise.

RB: If you were his father, what would you tell him to do? Play or sit out?

ML: That's a hard question. In the moment, his team needs him. For his long-term future, it may be better for him not to play. But you don't need to look to basketball for that problem. Go to our country's Medal of Honor recipients. Would you tell your son to charge up a hill with bullets flying and a ninety percent probability of death? Somebody's got to charge up that hill and get rid of the gun that's shooting at all of you. Otherwise everybody else behind him dies. So what's the right thing to do? What would I tell my son? 'You've got to get up there; you've got to climb that rope because if you don't, other people are going to die.' These are really hard questions.

RB: Interesting analogy. But it's one thing to sacrifice your life in war to serve your country. And it's another to sacrifice your career in basketball. Obviously they call for sacrifices of a different order and a different magnitude. So the basketball player is your child and asks, 'Dad, what do I do?'

ML: It's hard; I don't know.

III. MONEY AND EGO

RB: Are players too concerned with money?

ML: If anything, they're not concerned enough.

RB: Seriously?

ML: I think fifty percent of the NBA players end up being bankrupt.

RB: Fifty percent! Do the owners have a responsibility to protect them from themselves?

ML: You try. It's hard. I tell all the players, 'Put your money in the bank. At the end of ten years, you'll have \$20 million, \$50 million, \$100 million. Then you can focus on what you want to do.' It's very different than our lives. We get out of school. Hopefully every year we make a little bit more. But we've got a forty- or fifty-year professional lifespan. The average life of an NBA basketball player is about four years. So they go from making a lot of money to no money. And people have a hard time dealing with that. Too often in the beginning players spend their money because they don't fully appreciate that it could end tomorrow. And it *will* end someday soon.

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And that's why a large number of players end up filing for bankruptcy even though they've made millions of dollars.

RB: How has the vast increase in salaries and salary structure changed the attitude of players?

ML: In the past you had no choice. You had to succeed. Players didn't have guaranteed contracts. You were only as good as that year's performance. Now contracts are guaranteed for four or five years.

RB: As a player, will that make you more or less conservative, more or less eager to take the key shot in the game?

ML: Certain players will always want to take the last shot. And other players will pass the ball right back. You have to have a personality where it doesn't bother you to miss in a crucial situation. Because if you're thinking about missing, you've already missed. You see it everywhere. Not just the NBA—college, high school. Who's the person who wants to take the shot? You've got to believe you'll make it. And you've got to be able to deal with the repercussions of not making it.

Put yourself in the mind of an average NBA basketball player. From twelve years old he's been the best. In his city, his state, in college. You've been the best, the best of the best. You're a lottery pick. Then you get to the NBA. There are 450 players; only fifteen on each side make the All-Star Team—less than ten percent. So now, suddenly, you're no longer the best. You're a guy coming off the bench. And you know that if you miss, you're going right back to the bench. In college you could have missed ten shots and never been taken out. They needed you in there and somehow you'd figure it out. Well now you're a sub coming in for the last four minutes of the first quarter in the NBA. You're on the second team. And if you don't play well, does somebody else get your minutes? That psychological change is massive. A lot of players have a hard time with it—going from the best of the best, to 'If I screw up, I may not even play.' That's not something they're used to. That's why I say it's a personality thing.

RB: I saw something like this at Harvard Law School.

ML: Yes, that's just my point. Almost everybody there coming up in school was the best of the best. Now only ten percent makes law review. So now all of a sudden you're only in the middle. How do you deal with that? Now imagine you're in the NBA and every day you've got 15,000 people watching you. Being in the middle, when you're so accustomed to being the best. A guy like [Golden State Warriors player] Draymond Green, a second-round draft pick, ends up being an all-star. Why? He never thought he should be a second-round draft pick. He thought he was already phenomenal. And couldn't understand why everybody else didn't see it.

RB: Other than Draymond, who set out to prove he should have been a first-round pick, what's the psychology of a second-round pick?

ML: First of all, trying to make the team. You're probably not guaranteed if you're a second-round pick. The real problem for a nineteen- or twenty-year-old who's a second-round pick—and it's a difficult one—is whether to enter the draft when you're not ready. Or, should you develop for another year or two in college hoping to improve your position in next year's draft?

RB: If it were your son?

ML: I'd probably tell him to stay in school and reach his greatest potential. But if my family desperately needed money . . . It's hard, but I'd probably tell him to go in early. And try to prove himself in the League. It's a tough decision. You tear your knee playing that extra year or two of college ball, it could end your career.

RB: Tell me about the psychology of the draft.

ML: It surprises me how many teams overemphasize the possible upside. How about drafting players who are NBA-ready and can help you today? Everybody wants to find the next Giannis who was the fifteenth pick and would be the first pick today. But these days, when players enter the draft at eighteen or nineteen with only a year or two of college, their bodies haven't fully developed yet. And you can't be sure how they will develop. So there's too much emphasis on potential.

RB: Should the NBA continue to allow young talent to go pro after only a year of college? Should they require graduation? Or should they go the other direction? LeBron James came directly out of high school.

ML: I'm not a believer in limiting what people can do. If you're eighteen, you want to come play in the NBA and we're willing to draft you, you should be able to. You're saying to an eighteen-year-old, 'Hey, I don't think it's right. Yes, you could make \$5 million a year but we're going to prohibit you from doing that.' Why should we limit what people can do?

RB: Are players earning too much money?

ML: I don't think so. Market's the market. The player's view is, 'I'm performing a service. I should get paid for it.' I don't begrudge anybody for getting paid what they get.

RB: Pulitzer prize-winning playwrights can't even earn a living, but players can earn enough in two years to live many wealthy lifetimes.

ML: That's not the player's fault. Society is saying, 'I would rather go watch a game than a Pulitzer Prize-winning play.' We can argue this point over and over. Why should a great teacher who influences your kids day-in, day-out not get paid remotely what a basketball player gets? Why do police officers or soldiers who risk their lives get paid a small fraction of a professional basketball player's salary?

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RB: Would you mind answering that?

ML: Wish I could. Society has decided what they think someone is worth.

RB: Believe it or not, this debate goes back 2500 years to Ancient Greece when commentators complained that athletes earned too much money. That ancient Olympic winners were being overvalued; paid too much. And teachers and poets too little.³

ML: We can all look at great athletes and say, 'I can't do that. So that's fair.' But when something is intellectual rather than physical, people assume they can do it.

RB: Does that explain the public's reaction to [Cleveland Cavaliers player] J.R. Smith's terrible blunder in the 2018 Finals when, with the game tied, he dribbled out the clock rather than shoot?⁴ He was subject to such intense criticism because of a mental mistake. Much more so than anyone would have been for a physical mistake.

ML: Exactly!

RB: Why are we so less tolerant of mental error than we are of physical error?

ML: Everybody can say, 'I never would have done that.' Down by one point at the foul line. Plenty of time to think. Everybody knows the shooter's got to make one point to tie, two to win. He makes the first foul shot. Three seconds to go, the game's tied. He misses. You get the ball, you've got to go up! What do you mean you're dribbling out?

Whereas a physical mistake, it's harder for the average person to criticize because the game is so fast. I can't put myself in those shoes. It's hard to say, 'I would have been able to block that without fouling him,' or, 'I wouldn't have travelled.' It's a ridiculous statement. Yeah sure, how could he miss? He was wide open. But there was pressure. People will forgive physical error. They may be mad, but they will forgive it. And they respect physical ability.

RB: We all pride ourselves on an ability to play games. But we're not all athletes.

ML: Correct. We can all look at LeBron James and go, 'I can't do *that*.' But you look at what *I* do, and you'd go, 'I *can* do *that*.'

RB: Does a superstar like LeBron have all the leverage?

ML: He has a lot of leverage.

3. See DAVID C. YOUNG, *A BRIEF HISTORY OF THE OLYMPIC GAMES* 85–96, 99–101 (2004).

4. See Ben Golliver, *Anatomy of a Blunder: Inside J.R. Smith's Devastating Game 1 Mistake*, *SPORTS ILLUSTRATED* (June 1, 2018), <https://www.si.com/nba/2018/06/01/jr-smith-blunder-mistake-nba-finals-game-1-warriors-cavs-lebron-james>.

RB: What about a star player who's not necessarily a superstar? Is the power balance about even?

ML: A lot depends on the coach. And how an organization deals with players makes a big difference. If other players see that the superstar gets away with murder, nobody's happy. So you try to form a relationship with your star to explain to him the responsibility he has by being the best player on the team: 'Everybody's looking at you. Everybody's trying to see if you're being treated differently. And yes, I get it; you want to be treated differently. But if you do, it will cause other issues. And those issues will outweigh the benefit of being treated differently.'

RB: Who has that conversation with the star? The owner, the general manager, the coach?

ML: Whoever can get through to him.

RB: Did you have that conversation with Giannis?

ML: No one needed to talk to Giannis. Giannis is a great kid. He gets all of this. He was a street kid growing up in Greece, day-in, day-out trying to survive. And he played basketball. In the 60 Minutes interview he talks about how he and his brother used to share sneakers.⁵ One would wear the sneakers and play, and the other would wait for the game to be over so he could wear them next. Somebody who's gone through that does not feel entitled.

RB: Will you take that into account when you decide whom to draft?

ML: Yes. Do we want a great kid? Or do we want a phenomenal basketball player? You need great kids on the team. But ultimately talent prevails.

RB: How about leverage between the general manager and the coach?

ML: It depends. That's a difficult relationship. The GM is building a team that he thinks will win over the next three years. The coach needs a team that will win today. So the GM says, 'Look, I'm going to get you this role player.' The coach says, 'I don't need that role player. I need this guy who can help me more.' And the GM goes, 'Yeah. But for the culture of our team; for how I look at building this team over the next three to five years, I need this guy to develop and all these things to happen.' He's looking at a bigger time frame, a bigger canvas. And he's got the luxury of time to paint on that canvas. The coach has a smaller canvas and less time. He's got to do it right away.

RB: Is that why [former Bucks coach] Jason Kidd was fired?

5. *60 Minutes: Kabul Under Siege, Feeding Puerto Rico, 'The Greek Freak'* (CBS television broadcast June 3, 2018), <https://www.cbsnews.com/video/giannis-antetokounmpo-the-milwaukee-bucks-greek-freak-60-minutes>.

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ML: It's complicated, but we felt we should be doing a lot better than we were.

RB: In most cases is it the GM who fires the coach?

ML: Yes.

RB: But does he go to the owner first?

ML: Depends on the relationship you have with ownership. A smart GM always lets the ownership know what they're doing.

IV. THE COST-BENEFIT OF WINNING

RB: Chief Justice Oliver Wendell Holmes famously said that to a bad man, there's no difference between a tax and a fine.⁶ Whatever you call it, it's all the same money you've got to pay. But traditionally, there is a difference. A fine is something you pay for doing wrong; a tax is a payment you make for exercising an option. The luxury 'tax'—is it really a luxury *fine*?

ML: I think it's a tax. At the end of the day, you're taxed for going above a certain amount. Its purpose is to make things more competitive. And then the following year, if you're paying a luxury tax again, if you're a repeat offender, you end up paying a much higher luxury tax.

RB: Oh. That makes it sound like a fine. The penalty for recidivism.

ML: And the third year it goes up even higher. Eventually it becomes prohibitive.

RB: Is it working?

ML: I think so. Here's the problem: When you're really good—if you're in the top ten, top five—you feel you're one player away. That if you could get *this* player, that would get you over the hump and you'd be able to win. So being competitive, you'll say, 'Well, that may cost me an extra \$30 million, since it puts me at \$5 million over the cap.' You come to the conclusion, 'If I'm one player away, this is the year I'm going to go for it.' Nearly everybody who's paying the luxury tax ends up being there because they thought they were one player away. And they weren't. They were much further away than they thought. So now they're stuck and they're trying to reduce their payroll.

RB: Do you calculate the extra value of a winning franchise to offset your payout from the extra salary and tax?

ML: No. You just look at it and say, 'I'm one player away. I'm doing this.' And then you will find out very quickly if you are or not.

6. See Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 461–62 (1897).

RB: If a team does succeed by paying the luxury tax, do the other owners resent it? 'You may have won it, but you won it by going over the limit.'

ML: Not really. It's up to people if they want to pay.

RB: Sometimes in life and sport you win by losing. Is it legitimate to tank? Is it cheating to purposely lose today in order to improve your future draft position?

ML: There's a fine line here. If you say to yourself, 'If I give my younger players more opportunity, the likelihood is we'll lose. But they'll develop faster. And I'll get better draft picks.' That to me makes sense. But if you say to the players, 'Make sure we don't win,' that's wrong.

RB: What if you bench your starters to play veteran bench players? You don't tell them to try and lose. You still want them to try their hardest. But you rest your best and put an inferior team on the floor—is that legit, or illegit?

ML: I would have a problem with that. When we bought the team, we had that option. But we wanted to establish a culture of winning. Quickly. And when you lose, you develop a culture of losing. And that impacts you long term.

RB: Winning's important?

ML: Yes.

RB: Why? Why do you want to win a championship? Strictly for the financial reward?

ML: No. There's definitely an emotional reward. Nobody wants to own a team that just loses. That's not fun.

RB: Even if it makes money?

ML: That would not be enjoyable to me. Why would you want that? I want to win a championship because that's the goal. You strive for excellence.

RB: Doesn't a team get revenue from playoff games?

ML: Yes.

RB: So you'd rather win a seven-game series than win in four?

ML: I'd rather win in four.

RB: But you would make more money if there's a seven-game series. People have accused every professional sports league of intentionally signaling the refs to extend the series. It makes the league more money. And it's more exciting if there's a seventh game.

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ML: I'd rather win right away and move on. It's just easier. Why chance things?

RB: Well, up 3-0 there might be an incentive not to make it a 4-0 sweep.

ML: Never.

RB: Really?

ML: You want to win. Shit just happens. All the time. That's rule number one: Shit happens. And you don't want it to happen. You want to just keep winning. You want the team to rest; make sure nobody gets hurt. If you're winning, put your foot on somebody's throat. And just make sure you crush them and move on.

RB: Do all the owners see it the same way? Do some just want to make their money and don't really much care about winning anymore?

ML: Some owners may not be as passionate about it. But most owners would rather just win. For the vast majority it's not about collecting revenue.

V. THE OWNERS' TEAM

RB: What's your relationship with the other owners? Are they your opponents? Or are you all part of the same team? Do you play as teammates for the 'NBA Owners Team'?

ML: They're your partners and at the same time you want to beat them. If the collective whole does well, everybody does well. But each of the thirty owners wants to win a championship. You're only going to win a championship by either drafting or signing the better player. And you constantly find yourself bidding against somebody else. You're trying to help each other, but once you get on the court you're competing.

RB: Leading sport philosophers have made a similar claim about competing athletes: They oppose you and attempt to frustrate you, but you both have to cooperate in order to compete. So players engage in competitive cooperation whereas owners engage in cooperative competition?

ML: It amounts to about the same thing, doesn't it?

RB: Even with teammates on the same team, can't there be a mixed motive? The better your teammate does and the more he contributes to the team, the better your team does. On the other hand, he might think, 'If he does a lousy job, I might get his minutes.'

ML: There *is* a mixed motive. Look at football. Tom Brady's a great example. Drew Bledsoe was a phenomenal quarterback. He gets hurt, Brady steps in, and a legend is made. He was only able to shine because somebody got hurt. You don't have to be a

professional athlete. In any job, you've got that dilemma—I want us to do well as a group, but I could do a better job in *that* seat.'

RB: Help me better understand this relationship among owners.

ML: We're partners. We're thirty teams. And as partners, we're trying to do what's best for the League. And what's best for the League benefits all of us. So we're all partners in that. And we all make decisions of how we are going to grow. Do we do more in China? When we end up signing a new television contract, that ends up being to the betterment of all thirty owners. How are we going to handle legalized sports betting?

RB: Sometimes what's best for the team may not be best for the League. Is your primary allegiance to your team? Or to the common good?

ML: It depends. You can end up asking yourself, 'Is this a fight I want to have?' It's hard because you have twenty-nine partners. We all have different views. You're looking at what's better for your team. But a lot of times you'll compromise because it's beneficial for the League.

RB: How do owners resolve conflicts between what's best for their team, and what's best for the League?

ML: Some owners only propose what's good for them personally. On the other hand, there are others—[Chicago Bulls President] Michael Reinsdorf is a perfect example. Good guy; smart, fair. He's always trying to see what's best for the League, even at some personal sacrifice. He'll say, 'Look, we're all in this for the greater good. We're partners.' He's very well respected. [Owner] Josh Harris has done a really good job with the 76ers, trying to do what is right, trying to bring value to all of us, rather than just what benefits him. So you respect these guys more.

People will pay more attention to those with a reputation for winning. If they think you got lucky it's different. But if they think you're winning because you've got a great organization, you're doing things the right way, your scouting is better, then everybody follows you. San Antonio has an outsized reputation because they are a small market team that wins year after year, with a great coach, a great GM. And they have a great owner. So every assistant coach, every assistant GM—all the people who came out of San Antonio—people would hire them. We just hired a coach who was an assistant with the Spurs for seventeen years. Owners listen to and follow folks who've had success. When the Lakers and Celtics dominated, those owners had more sway over things than other owners. People respect success.

RB: So when the thirty of you sit in a room—

ML: It's not a room of thirty equals. You might like it to be. But if our team is consistently losing, there's a perception that we don't know what we're doing. Every

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person in that room has had success in business. Yet, if your team is losing consistently, you're going to have less say.

RB: Who are the most respected organizations?

ML: Micky Arison—the owner of the Miami Heat—is very well respected. As an organization, the Celtics have done a really good job.

RB: Does [Boston Celtics GM] Danny Ainge get a lot of that credit?

ML: Ainge has done a phenomenal job. I think he's probably the best GM. That whole organization has done a really good job.

RB: During the Deflategate controversy, which I'm convinced was an NFL fraud, Robert Kraft, the Patriots owner, while decrying the Patriots' innocence, also accepted without a fight the Patriots' million-dollar fine and loss of a first-round draft pick. He later apologized to the fans and said it was a mistake.⁷ But at the time he seemed to be sacrificing the team that he owned to improve his own position as an owner within the League itself. Do you play two games simultaneously? As one of thirty players on the 'Owners Team', and the other as the Team Owner?

ML: I think Robert Kraft was probably saying, 'Look, if we fight it, it's going to create more issues for me. It's better for me not to have the League against me.'

VI. CHEATING AND RESPECT FOR THE GAME

RB: You played college basketball. I know you respect the game.

ML: I'd like to think so.

RB: Is flopping cheating? Does it disrespect the sport? And if it does, why don't the owners do something about it?

ML: We did. So now you're seeing a lot less flopping. The referees aren't calling the foul and I think there's a fine for flopping. The message goes from the owners committee on rules who recommends it to the full owners, who then recommends it to the commissioner. And then the commissioner tells whoever runs the referees, 'That's the new rule or change in how to enforce the rule.'

RB: Is it 'recommend,' or command?

ML: Recommend. Everything's friendly. But if you've got thirty owners 'recommending' something, you're doing it.

RB: Talk to me about Hack-a-Shaq, or Hack-a-Jordan, or Hack-a-whomever.

7. See Shalize Manza Young, *Robert Kraft Defends Tom Brady, Attacks NFL's Suspension*, Bos. GLOBE (July 30, 2015), <https://www.bostonglobe.com/sports/2015/07/29/patriots-owner-robert-kraft-blasts-nfl-over-deflategate-penalty/18IqKehM9nAbE51OOQzOAK/story.html>.

ML: If that's the rule, you can go hack somebody. Or change the rule.

RB: There's no allegiance to the *spirit* of the game, or the unwritten rules? No commitment to playing basketball the way it *should* be played?

ML: Sure, if everybody's going to do it that way. But if not, then follow the rules. And if the rule allows it, if I think it's to my benefit to foul someone because the odds are that he will only make one out of two foul shots, and we're shooting better than fifty percent or can shoot a three and we'll win, I would foul him.

RB: And yet Jason Kidd, a coach for whom you have tremendous respect, declared when interviewed about Hack-a-Shaq, 'We don't do that.' And when this interviewer asked him, 'Why not? Because you don't think it works?' Kidd replied, 'It's just something we don't do.'⁸ He implied a respect for the game as it should be played. He seemed to reject what he feels befouls the game.

ML: That's his call. The coach should do what he thinks is right.

RB: Morally right, or most efficient?

ML: If Jason felt strongly about it, I wouldn't fight him. Either way. If you want to do it, and it's within the rules, do it. If you don't want to do it, and say, 'I respect the game, I don't think it's right,' I get it. I wouldn't fight you on it.

RB: Can anybody claim Hack-a-Shaq reflects the game in its best light?

ML: Maybe the best way to deal with it is to allow the team who is repeatedly fouled to designate who takes the foul shot. But the owners have resisted that rule change. They think foul shooting is part of the game. It's a skill. And if you can't do it well, your team should pay a price. To return to your question, I *do* respect the game. But I also know what the rules are. If I think following this rule helps me win, and if I were the coach, I probably would do it.

RB: No unwritten rules?

ML: Unwritten rules are fine *if* everybody follows them. If you know that your opponent has a huge respect for the spirit of the game, I would have that same respect. If we were both following unwritten rules that's great. But if I'm the only one who's following it, I'm at a huge disadvantage. And I'm not good enough to give everybody a huge advantage all the time.

RB: There's controversy among philosophers of sport over the status of intentional fouls. Is it cheating to intentionally foul to stop the clock?

ML: No. I get six fouls. So I'm allowed to foul six times.

8. Conversation between Robert Blecker and Jason Kidd, then head coach of the Milwaukee Bucks, in Milwaukee, Wis. (Feb. 23, 2016).

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RB: That seems like an oxymoron: 'Allowed to foul.'

ML: That's how it works, isn't it? At the end of the day, as a player, the game gives me six fouls. The real problem is the referee's discretion to call those fouls. If you walk up to a player who's standing still and you push him that's definitely a foul. Every ref will call it. If you're jockeying for position then he falls, some referees may call it, others may not. But you get six fouls. So I don't view it as an issue if you're using one of your fouls.

RB: I would think you'd say, 'The sixth one gets you thrown out of the game.' But in your view, you're still allowed to do it?

ML: Yes. You ask yourself, 'Was it worth it? Did I want to stop that person so badly that it was worth it for me to foul out of the game?' Those are the rules. You get six fouls. And how you use them is up to you. With four or five fouls you might hang back and play more carefully. But you *get* six fouls in the NBA.

RB: Look at what that logic commits us to. It may be worth it to dump cancer-causing PCBs into a stream as long as you don't get caught, or if you do, it's worth paying a fine after a long-delayed litigation.

ML: That's different. That's wrong.

RB: Most prisoners I've interviewed used your logic: 'If I'm willing to take the consequences, I can rob, I can kill. I can do anything as long as I'm willing to risk what comes behind it—willing to pay the price. I do a cost-benefit analysis and ask whether it's worth it. I take my chance, I'm caught, I'm punished, I don't complain. The penal code gives me those fouls by specifying the penalty.' I'm confident you'll reject that analogy.

ML: I do reject it.

RB: But if you view penalties as the price you pay for exercising an option, why not always ask yourself, 'Is it worth it?' What's different?

ML: One is a game. There's an obvious difference where somebody gets hurt.

RB: Take physical injury out of it. I embezzle money; I calculate the odds. I figure, 'I'll live well for a few years. And *if* they catch me some day, I might spend my last years in prison. Meanwhile I've lived very well.' Is that okay?

ML: No. It's not right. Within a sport or game I understand what the rules are. Within society it's very different where you hurt others.

RB: And when you hurt others on the playing field? A football player may choose to inflict injury hoping either the refs won't catch it, or even if they eject me after I've knocked out the other team's superstar, it's a good trade for my team.

ML: That's wrong. If you hurt somebody *unintentionally*, that's part of the game. But you can't be out there trying to hurt somebody.

RB: I press you on this because it divides philosophers of sport. You insist, 'The game gives me six fouls. So I don't view it as an issue if I'm using one of my fouls.' By your logic you're also *allowed* a Flagrant 2.⁹ It might be worth it to intentionally injure the other team's star and get thrown out of the game for it. And later fined.

ML: Fortunately there's very little of this in the NBA. But if you *intentionally* injure someone, you should never play in the League again. Simple as that. We agree on this. It's wrong to intentionally injure another player. Some things are just wrong. It's not complicated.

RB: You contrast intentional versus unintentional injury.

ML: Yes.

RB: What about *reckless* injury, where it's not your intent but you recklessly risked somebody else's body and career.

ML: It gets more difficult to decide when you've crossed the line. But if you intended to injure another player you should never play in this League again.

VII. AN INCH FROM THE LINE OR OVER IT?

RB: So intentional injury clearly crosses the line. It's still not entirely clear to me what your limits are to getting a *legitimate* edge. Where does gamesmanship end and cheating begin?

ML: There's a line. And we all know what's *clearly* over that line. What we don't know is the grey area in front of it. Should you be an inch away, a foot away, two feet away? Some people get as close to the line as humanly possible. Others stay clearly away from that line. Being an inch away from the line definitely gives you an edge. But sometimes the line moves. You may not know it, and then you find yourself on the wrong side. That can cost you dearly. Whereas if you're a foot away, you don't have to worry about it. But you've lost that edge.

RB: Let me give you a few examples. Tell me whether it's a legitimate edge—an inch from the line, a couple of feet from the line, or over the line? A pitcher throws a spitball.

ML: That's over the line.

9. A Flagrant 2 denotes a foul of excessive or unnecessary contact, resulting in immediate ejection from the game. *Rules & Regulations*, NBA.COM, http://www.nba.com/news/rulesregulations_2010_04_17.html (last visited Jan. 30, 2019).

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RB: Even though Gaylord Perry made it to the Hall of Fame constantly throwing spitters? And declared in his autobiography—*Me and the Spitter*¹⁰—that he threw spitballs every time he pitched?

ML: It's illegal.

RB: James Harden [of the Houston Rockets] intentionally draws shooting fouls by hooking the defender's arm as he goes up for the shot.

ML: That's part of the game. And the NBA has discouraged it by changing it from a shooting foul to a regular foul.

RB: But when he did it—

ML: In every game, people have advantages because of their skill set. Or their intelligence. Whatever it is. They tested James Harden. He can stop on a dime faster than 99.99% of the people in the world. That's his edge. So when you see him dribble and he can stop suddenly and pull back—when you're looking at it with normal eyes, you think, 'Harden's not doing anything. Cover him. What's so hard?' But he can move forward, stop, as you're moving backwards. You're stopping like a normal person but that takes you a quarter of a second longer than it does him. So he's got this edge that nobody else has. And he's turned it into a massive edge. That he can stop and go, faster than anybody. How can that be cheating if it's within the rules?

RB: In track, for several years the rules said that whoever commits the *second* false start is disqualified. If you're a slow starter, is it cheating intentionally to false start so the whole group is now at risk and the fast starters will be forced to hang back that extra instant to avoid the risk of being disqualified?

ML: You're getting an edge or negating their edge legally.

RB: The rules were never designed to allow intentional false starting as a strategy.

ML: I'm simply competing to win. I know I'm a good starter, but the other guy's a *great* starter. And one false start keeps everybody in check. It's not against the rules.

RB: By doing that you may prevent me from setting a world record—from pushing the boundaries. Doesn't that disrespect the sport?

ML: I don't think so.

RB: I'm preventing you from displaying the characteristic physical excellence that the sport was designed to test. There's both a contest and a test. The test is how fast can you run. The contest is whether you can beat the next guy. And they're happening

10. GAYLORD PERRY, *ME AND THE SPITTER: AN AUTOBIOGRAPHICAL CONFESSION* (1974).

at the same time.¹¹ The better you are at the test, ideally the better you should be at the contest. By intentionally false starting, I'm prioritizing the contest over the test.

ML: I disagree. You may be an exceptional starter while I'm a good starter. We're both exceptional runners. So let's find out who's the better runner on a level playing field. The race is not really about who's a better starter. It's a running race, or should be. You may have exceptional hearing so you can hear that click a fraction of a second earlier. That's not what the race is about. You might argue it's about all of it. All right, I get that. But if I can make it more about the running, I'm respecting the sport.

RB: How about legendary Celtics coach Red Auerbach making the visitors' locker room hot in order to enervate the players?¹²

ML: That crosses a line. You're trying to give yourself an illegitimate edge, whereas James Harden uses the rules and his skill set to get a legitimate advantage. The opposing player may do the exact same thing if he could. So that's different.

VIII. LESSONS FOR THE FUTURE

RB: When James Naismith invented basketball in 1891, there was no dribbling, no dunking, no backboard or rebounding.¹³ The sport's been evolving since its invention.

ML: Yes. And it will continue to evolve. The game used to center around a big center. That was Shaq's game. Now what happens to those strong guys who can power inside? That lumbering center gets eaten alive by a guy who can shoot from the outside, or just drive right by them. Think about it: The Celtics' Al Horford, who's nearly seven feet tall, shoots three-pointers. Giannis is our point guard and he's 6'11". So the NBA is evolving pretty quickly. The game is becoming much more fluid, with players able to do more things. And those players who defy traditional positions are becoming the NBA's future stars. Everybody's going to smaller lineups with players who can shoot from the three-point line, dribble, who can play small forward, forward, center. Giannis can play all five positions. I think professional basketball is evolving very, very quickly. It's now about three-point shooting. The NBA has gone from being a position game toward a position-less game.

RB: Speaking of evolution, are data and analytics ruining sport? In baseball, after four innings, managers pull pitchers while they're pitching very strong games because the analytics show that the third time through the rotation gives the hitters a

11. See R. Scott Kretchmar, *The Nature and Value of Sporting Tests and Contests*, 63 N.Y.L. SCH. L. REV. 219, 226 (2018–2019).

12. See Sam Smith, *Red Auerbach 1917–2006*, CHI. TRIBUNE (Oct. 29, 2006), <https://www.chicagotribune.com/news/ct-xpm-2006-10-29-0610290324-story.html>.

13. See *James Naismith and the Invention of Basketball*, JR. NBA, <https://jr.nba.com/james-naismith-invention-basketball> (last visited Feb. 18, 2019).

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significant advantage. Some commentators insist that analytics have gone too far. Are data and analytics ruining or improving the game of basketball?

ML: Analytics are interesting to know. But ultimately you've got to have a real feel for the game. That's what separates great coaches. Analytics will tell you to take a three-point shot when you're in the corner because that's the shortest three. So pass the ball around until you get that shot. We've got a couple of players on our team who hate taking corner threes. They would rather be facing the basket even though that's a longer shot. For them, mentally, it's an easier shot. But the analytics would tell you the best shot is the one in the corner. You've got to understand the players. And then adjust your analytics.

RB: Has it gone too far?

ML: With a number of teams it has. It depends on your coach. Some coaches just follow the analytics, others use it, and others don't even pay attention to it.

RB: Stepping back, what has business taught you about sport? What has sport taught you about business?

ML: You should take whatever business culture made you successful and translate it into sports ownership. So if you have a really inclusive culture, as I do in my business, make it that same way with the team. But there *is* a difference between ordinary business and sports ownership. There's an emotional, non-rational aspect to sports ownership. You can either make \$20 million, or sign a key player that will enable you to win but will leave you flat on a revenue basis. You'll probably sign the \$20 million player although he doesn't produce an extra \$20 million in revenue. You have to try to make the team better. So you will do irrational things that you would never otherwise do in your other business. Because, as I've said, you come to understand that you don't really own the team, you just rent it for a while.

RB: Spoken like a true amateur.