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Supplementary Materials
Part 2

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NFL Officials Constantly Face Further Review
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Mike Pereira knew instantly last Sunday that the NFL had a big problem.
The league’s vice president of officiating was in the command center at his office in New
York, where he spends every Sunday during the season. He was surrounded by enough television
screens for him and his colleagues in the officiating department to watch 10 games at once, and he
saw referee Ed Hochuli botch the call in Denver that almost certainly cost the San Diego Chargers
a victory and ignited a controversy that raged all week.

Like nearly everyone else watching the game, Pereira knew that Hochuli had blown the call
by signaling an incomplete pass when the ball slipped from the hand of Broncos quarterback Jay
Cutler. But Pereira knew more than other observers. He knew that the NFL rulebook prohibited
Hochuli from overturning the erroneous call via an instant replay review. He knew plenty of people
were about to be very, very agitated.

“It was one of those where you knew immediately,” Pereira said in a telephone interview late
in his hectic week. “I saw the play and I knew right away it was a mistake, just like Ed knew when
he looked under the hood it was a mistake. The thing I knew right away because of the rule was that
San Diego wasn’t going to get the ball. Any time something like that happens at that point in a game,
you know it’s gonna be a firestorm. At that point, it becomes a matter of alerting everyone -- the
commissioner, the PR staff -- what’s coming.”

The Hochuli call put in motion a week of apologizing and agonizing for the veteran referee
and for everyone else in the officiating department. NFL representatives said Hochuli’s misjudgment
would affect his grade in the elaborate evaluation system the league uses for officials to determine
which of them earn postseason assignments and which are retained the following season. But few
outside the league know just how exacting that grading system is.

It all begins in the Sunday command center with Pereira and his cohorts stationed by screens
monitoring every game. There are 10 TV feeds into the room, plus one huge screen on which Pereira
can put the feed of his choosing. Every penalty called in every game is charted, along with every
injury and every play that might result in a player being disciplined by the league. Pereira bounces
from screen to screen when summoned by a co-worker.

“Someone might shout out to me, ‘Hey, Mike, I have a roughing-the-passer in Cincinnati,’
and I’ll go over and look,” he said. “I’ll look at the replay and see if it was right. I really most likely
would be able to tell you within 20 seconds if the call is correct or not.

“Really, I pretty much have a pulse on what has happened pretty much as it’s happening. I
want to be prepared for the coaches’ calls I get Monday. I want to have a head’s up. Ninety percent
of the time when a coach calls me, I know what he’s calling about.”

Around 1 a.m. each Monday, a couple of hours after the Sunday night game is done, Pereira
does a video recording for NFL Commissioner Roger Goodell with any officiating controversies
from Sunday’s games. He puts it on Goodell’s desk around 2 a.m. so Goodell can view it when he
gets to the office, just in case any angry team owners directly call the commissioner.

Each Monday, Pereira and his seven officiating supervisors gather to evaluate all of that
weekend’s games. They divide up the games, meaning each of them gets an average of two per week, and go through them play by play. The average game has about 153 plays. The person doing the evaluating looks at the TV shot and replays of each play and also at the coaches’ tape of the play, with one thing in mind: Was it officiated correctly? If the answer to that is yes, the officiating crew gets marked for having the play correct. If not, the questions are: Who made the mistake? And why?

Each officiating crew receives a first report on the game it worked that weekend. Pereira calls this report a “project.” There are notes and thoughts on individual plays. He read a few notes from Monday night’s Eagles-Cowboys game as examples. On one first-quarter play, an official called holding but the report said: “When you look at it on the coaching tape, it just doesn’t seem strong enough.”

Each official is given a chance to respond on any call alleged to have been wrong. Then each Wednesday, Pereira and his supervisors meet and go over each of those calls. The group is told what the report says and what the official’s response was. Sometimes the official agrees that a mistake was made; sometimes not. The play is shown and a vote is taken on whether an error was made. Majority rules. In the case of a 4-4 tie, the official gets the benefit of the doubt and no mistake is charged.

The gaffes are tallied. A failure to call a penalty that should have been called is a six-point deduction. Calling a penalty that wasn’t a penalty is a 10-point deduction. An incorrect judgment is a deduction of anywhere from six to 10 points, depending on the severity. A perfect score would be 100.

“I haven’t seen too many of those,” Pereira said. “It happens sometimes, but not very often.”

Each individual official gets a grade, and the officiating crew as a whole gets a grade. A computer printout with all the grades comes out late Wednesday, and they’re distributed.

At the end of the season, the grades are added up and the eight highest-ranking officiating crews qualify for the first two rounds of the playoffs. Those crews stay intact to work the first two weekends of the postseason. The final two rounds of the postseason, the conference championship games and the Super Bowl, are worked by mixed crews consisting of the highest-ranked officials at each position. (There also is an experience requirement; rookies can’t work the playoffs and it takes five years to be eligible for the Super Bowl.)

At the other end of the spectrum, the grades also determine which officials are in danger of being dismissed. The league sets what it regards as a minimum standard, and any official whose grade for the season falls below that standard is put on probation. If the same official misses the standard for a second straight season, he’s in jeopardy of being dismissed. The average annual turnover, including retirements, is about six officials, Pereira said. After last season, it was seven.

An officiating crew is graded on about 2,200 plays per season. Hochuli botched one. But it was a memorable one, and an uproar followed. Hochuli reportedly was deluged with hate mail and responded with e-mailed apologies. With a few exceptions, officials are prohibited from speaking to the media. The NFL Referees Association came to his defense, issuing a statement of support. The Chargers were left with an 0-2 record after the 39-38 defeat and did their best to move on.

“Anything that we talk about or anything that is discussed in terms of any of the rules or any of the calls isn’t going to change the outcome of that game,” their coach, Norv Turner, said at a news conference. “That game is going to be 39-38 forever.”

The NFL’s competition committee likely will review the play in the offseason and might consider changing the rule that prohibited Hochuli from awarding the ball to the Chargers after
viewing the replay. The league changed its rule in early 2007 to allow possession to be awarded to
the defense when it recovers a fumble on a play on which it originally was ruled, wrongly, that the
offensive player was down by contact before fumbling and the whistle was blown.

“It’s going to require a great deal of discussion,” Tennessee Titans Coach Jeff Fisher, a
co-chairman of the competition committee, said at a news conference.

But a former member of the committee, Charley Casserly, said he doesn’t see the rule being
changed.

“He was definitive in his call,” Casserly, the former general manager of the Washington
Redskins and Houston Texans, said in a telephone interview. “The whistle is blown, and some
players are gonna stop playing. It’s dramatically different than a down-by-contact call where
everything happens in a close proximity. In this narrow set of circumstances, I don’t see a solution
to it. The call was missed. Sometimes calls get missed. It’s not fair. This one got talked about a little
more, but calls get missed every week.”

Pereira will be back in his office today, watching all those TV screens to see which calls are
right and which aren’t and hoping that another major controversy isn’t ignited.

“Everyone felt horrible,” Pereira said. “Ed felt horrible. It’s a mistake, and we don’t want to
make mistakes. We strive for perfection. You don’t get there very often. If I had to be perfect in my
job, I wouldn’t last here a day. But that’s the goal.”
Statutory Background for *National Petroleum Refiners Ass’n v. FTC*

**Trade Commission Act**


(a) (1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.

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(6) The Commission is empowered and directed to prevent persons, partnerships, or corporations *** from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. *** If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by sections 41 to 46 and 47 to 58 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. ***

(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in [an appropriate] court of appeals of the United States ***.

***


The Commission shall also have power-

(a) Investigation of corporations.

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) Reports by corporations.

To require, by general or special orders, corporations engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or
special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(c) Investigation of compliance with antitrust decrees.

Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(d) Investigations of violations of antitrust statutes.

Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Readjustment of business of corporations violating antitrust statutes.

Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) Publication of information; reports.

To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) Classification of corporations; regulations.

From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of sections 41 to 46 and 47 to 58 of this title.

(h) Investigations of foreign trade conditions; reports.

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Notes and Questions

According to the court in Petroleum Refiners, which provision of this statute authorized the agency to promulgate the rule at issue? Looking at that provision in the context of the entire statute, what do you think it means?
**Regulatory Background for *Heckler v. Campbell*: Sample HHS Residual Functional Capacity Table**

**Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Age</th>
<th>Education</th>
<th>Previous Work Experience</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>201.01</td>
<td>Advanced age</td>
<td>Limited or less</td>
<td>Unskilled or none</td>
<td>Disabled</td>
</tr>
<tr>
<td>201.02</td>
<td>do [short for &quot;ditto&quot;]</td>
<td>do</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>do.</td>
</tr>
<tr>
<td>201.03</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable.</td>
<td>Not disabled.</td>
</tr>
<tr>
<td>201.04</td>
<td>do</td>
<td>High school graduate or more—does not provide for direct entry into skilled work.</td>
<td>Unskilled or none.</td>
<td>Disabled.</td>
</tr>
<tr>
<td>201.05</td>
<td>do</td>
<td>High school graduate or more—provides for direct entry into skilled work.</td>
<td>do.</td>
<td>Not disabled.</td>
</tr>
<tr>
<td>201.06</td>
<td>do</td>
<td>High school graduate or more—does not provide for direct entry into skilled work.</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>Disabled.</td>
</tr>
<tr>
<td>201.07</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable.</td>
<td>Not disabled.</td>
</tr>
<tr>
<td>201.08</td>
<td>do</td>
<td>High school graduate or more—provides for direct entry into skilled work.</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>do.</td>
</tr>
<tr>
<td>201.09</td>
<td>Closely approaching advanced age</td>
<td>Limited or less</td>
<td>Unskilled or none.</td>
<td>Disabled.</td>
</tr>
<tr>
<td>201.10</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>do.</td>
</tr>
<tr>
<td>201.11</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable.</td>
<td>Not disabled.</td>
</tr>
<tr>
<td>201.12</td>
<td>do</td>
<td>High school graduate or more—does not provide for direct entry into skilled work.</td>
<td>Unskilled or none.</td>
<td>Disabled.</td>
</tr>
<tr>
<td>201.13</td>
<td>do</td>
<td>High school graduate or more—provides for direct entry into skilled work.</td>
<td>do.</td>
<td>Not disabled.</td>
</tr>
<tr>
<td>201.14</td>
<td>do</td>
<td>High school graduate or more—does not provide for direct entry into skilled work.</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>Disabled.</td>
</tr>
<tr>
<td>201.15</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable.</td>
<td>Not disabled.</td>
</tr>
<tr>
<td>201.16</td>
<td>do</td>
<td>High school graduate or more—provides for direct entry into skilled work.</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.17</td>
<td>Younger individual age 45-49</td>
<td>Illiterate or unable to communicate in English.</td>
<td>Unskilled or none.</td>
<td>Disabled.</td>
</tr>
<tr>
<td>201.18</td>
<td>do</td>
<td>Limited or less—at least literate and able to communicate in English</td>
<td>do.</td>
<td>Not disabled.</td>
</tr>
<tr>
<td>201.19</td>
<td>do</td>
<td>Limited or less</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.20</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.21</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.22</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.23</td>
<td>Younger individual age 18-44</td>
<td>Illiterate or unable to communicate in English</td>
<td>Unskilled or none.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.24</td>
<td>do</td>
<td>Limited or less—at least literate and able to communicate in English</td>
<td>do.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.25</td>
<td>do</td>
<td>Limited or less</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.26</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.27</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Unskilled or none.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.28</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills not transferrable.</td>
<td>Do.</td>
</tr>
<tr>
<td>201.29</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable.</td>
<td>Do.</td>
</tr>
</tbody>
</table>
Statutory Background for *Heckler v. Campbell*

42 U.S.C. § 405(b)(1) provides in part:

The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. Upon request by any such individual * * * the Commissioner shall give such applicant * * * reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the Commissioner's findings of fact and such decision.