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Saints get hit with new allegations

New Orleans and its football team, the Saints, still are reeling from the unprecedented punishment meted out by NFL Commissioner Robert Goodell in response to "Bountygate" (See Rules of Game column in May 2012 Chicago Lawyer), however, Saints general manager Mickey Loomis now faces additional and potentially even more serious allegations.

Reports recently broke that from 2002 to 2004 Loomis had access to in-game communications among opposing team coaches. According to reports based on anonymous sources, an electronics system was installed by the Saints' prior general manager that allowed those in the GM's Superdome skybox to listen in on conversations among Saints coaches. The latest allegations claim that Loomis secretly rewired the electronic system to provide access to an opposing coach's communications through an earpiece.

According to reports, a switch in the skybox could be flipped to cycle between conversations among opposing offensive or defensive coaches. While the reports focus on the existence of the monitoring system, it is not clear what, if any, evidence exists that it was put to use by Loomis.

Unlike deciphering an opposing team's signs for stealing bases in baseball, any sports fan will admit that eavesdropping on another team's coaches through the use of electronic monitoring amounts to cheating. The NFL bylaws and its constitution, in Article 9, expressly ban telephone tapping or bugging devices or any other form of electronic device that might aid a team during the game. At the moment, though, additional pun-

ishment from the NFL may not be the most critical concern.

In 1986, Congress signed into law the Electronic Communications Privacy Act (ECPA), which among other things prohibits any person from using an electronic or mechanical device to intercept communications. The crux of the law is not just on whether the listening was intentional, but whether a "device" was intentionally used to intercept communications.

According to the recent reports, the Saints used a metal box containing two belt packs to power an earpiece listening device. Anonymous sources cited by the reports claim that the earpiece was similar to a transistor radio. On April 24, the Louisiana State Police and the FBI confirmed the establishment of a joint task force to investigate potential violations of state and federal wiretapping laws based on the allegations. State police Col. Mike Edmonson described the task force as "an excellent opportunity to share resources to see if federal or state wiretapping laws were, in fact, broken." The U.S. attorney in New Orleans also acknowledged that his office has been provided with information, but refused to comment further.

The Saints issued an immediate denial stating the claims were "1,000 percent false." Jim Haslett, former Saints head coach, said "at no time during my tenure as head coach with the New Orleans Saints did Mickey and I discuss monitoring opposing team coach's communications." Loomis himself stated he has a clear conscience and that he never listened to an opposing team's communications. In addition, he claims to be exploring all legal avenues given that the exposé, which started

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the controversy, was based on anonymous sources. Former Saints defensive coordinator Rick Venturi also denied ever hearing of, or having access to communications, but admitted that the ability to listen in on opposing communications would be a "stupendous advantage."

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In September 2005, Katrina damaged much of New Orleans and the Gulf Coast region. The Superdome sustained considerable damage as a result and was used as a staging ground for relief efforts. At some point following the hurricane, during the refurbishment of the Superdome, the device Loomis allegedly used was dismantled and removed. We can be sure that any investigation will need to focus on whether the system actually

existed, whether it was modified at Loomis' direction and when it last was used. The timing could be critical. The ECPA has a five-year statute of limitations and the Louisiana state statute against eavesdropping has a six-year statute of limitations. Generally speaking, any victim of eavesdropping could file a civil suit within two years from when they had a reasonable opportunity to discover the violation.

All of this presents some interesting legal issues for sure, but there is a related question of whether the Saints actually benefited from any eavesdropping, if true. We may never know. It should be noted that the Saints were 12-12 in home games at the Superdome during the time period the device allegedly was in place. The Saints were 3-13 during season after the alleged device stopped operating, however, it also should be noted that they were not able to play any "home" games at the Superdome that year because of the damage done to the stadium by Hurricane Katrina.

Unfortunately for the NFL, it faces another controversy. It is not yet clear how the league will respond. What is alleged reaches deep into the integrity of the game.

If the allegations contained within the reports are true, Loomis could be facing a far more severe punishment than his current eight-game suspension for his role in "Bountygate." Unfortunately for Loomis, he appears to be suffering from a credibility problem with the league. Goodell reportedly was angry that Loomis was instructed to stop the team's bounty program, but failed to do so. Looks like it will continue to be tough off-season for the Saints.