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OUT**

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# **BETTER TALK NOW WINS; STEWARDS RUN OUT**

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## **Better Talk Now Wins, Stewards Run Out**

It's easy to bash stewards in horse racing. In fact, bashing stewards is often the last refuge of the lazy turf critic. It's even easier than bashing the OTB's in New York State.

But the stewards who decided not to change the order of finish in the Breeders Cup Turf event at Lone Star merit bashing. They decided to keep the race winner, Better Talk Now, up. As Better Talk Now was passing the leader, Powerscourt, in the middle of the stretch, he moved towards the inside. To the inside of Better Talk Now, favorite Kitten's Joy, was moving off the rail to challenge for the lead and encountered Better Talk Now. Behind Better Talk Now, was Magistretti who was making his move in the stretch. Kittens Joy took the worse of his meeting with Better Talk Now and was knocked off stride. Magistretti was also forced to steady behind these two horses. Ray Kerrison, covering the race for the New York Post wrote, "It is a wonder the horse [Magistretti] did not go down."

At the finish, Better Talk Now prevailed over Kittens Joy by a length and three quarters. Powerscourt finished third defeating Magistretti for the show position by 2 ¼ lengths. Jockey John Velasquez on Kittens Joy claimed foul on Better Talk Now. Jockey Edgar Prado on Magistretti claimed foul on both Better Talk Now and Kittens Joy. He claimed that the horses had intimidated Magistretti.

The stewards quickly disallowed the foul claims. Steward Chuck Nuber told the public, "There were some problems, but we felt the five horse [Better Talk Now] was obviously going to win. We didn't think it would affect the final placing."

I personally have not seen enough of the tape of the race to have a definitive opinion on whether there should have been a disqualification. But Nuber's statement is clearly objectionable. He is not applying the proper Texas rule. The applicable Texas rule states that you disqualify a horse "where the horse interfered with loses the opportunity to place where the horse might reasonably be expected to finish." Certainly, he forgot totally about Magistretti.

So it's not simply an issue of whether Better Talk Now was going to win. The issue on disqualification was whether the interference might reasonably be expected to prevent Magistretti from finishing third. If Magistretti could reasonably have finished third, then the stewards had to consider whether to disqualify Better Talk Now and/or Kitten's Joy.

Moreover, the way that the Texas rule is written, it's not an issue of whether the stewards thought Better Talk Now would win the race. Rather, Texas has instituted a "reasonable man" standard of whether the incident might affect the order of finish. The issue should be whether a reasonable man would think that the incident might have been expected to interfere with the placing of Kitten's Joy or Magistretti. If a reasonable

person would think that the incident might have cost Magistretti third place or Kitten's Joy first place, then you have to consider disqualifying the offending horse.

Texas employs an objective test of whether it would be reasonable to believe that the horse interfered with might have lost an opportunity to improve its placing. It differs from the subjective test employed by the joint model rules of the two umbrella groups representing racing's regulators, the Association of Racing Commissioners International and the North American Pari-Mutuel Regulators Association. Their model rule states that stewards are to affirm the order of finish "if, in the stewards' opinion, the foul riding did not affect the order of finish." The answer of the Texas stewards stating that the incident did not affect the winner of the race would have been an acceptable rationale for ruling against Kittens Joy's objection in a state with the model rules. It was not the appropriate standard for Texas.

Both the model rule and the Texas rule are a far cry from the traditional rule in racing under which you did not consider or handicap the consequences of a foul. A "foul was a foul, was a foul." Most states have moved away from the traditional standard since it was found to be too harsh when applied against horses that convincingly won their races. Even New York recently altered its rules to allow the stewards to factor in the issue of whether the foul affected the order of the race.

This Better Talk Now incident points out the need for two points of change in American racing. First of all, there is no reason why the rules governing the actual running of the race cannot be uniform throughout North American racing. No state or province has a vested or even a remotely significant policy reason for insisting on its own rules of the race. Bettors who now wager on races conducted throughout the continent need to know that the rules are the same in all jurisdictions. There should be one set of rules governing the running or races in America. See generally "Muddled Rules Put Stewards on the Spot," Baltimore Sun, May 17, 2002  
<http://www2.als.edu/glc/wagering/muddledrules.html>.

Secondly racing does not need a crew of Pontius Pilate wannabes serving as stewards. You can't serve as a steward and wash your hands of problems by ignoring incidents on the track. You can't wish away fouls. You simply can't just say an incident didn't affect the order of finish; so we don't have to look hard at the race. You can't misstate your State's own racing rules on racing's biggest day. Racing's top horse horses compete on Breeders' Cup Day. Racing's top stewards should be there as well.