Texas Entertainment and Sports Law Journal

State Bar of Texas
Entertainment & Sports Law Section

Vol.11 No.1, Spring 2002

SECTION CO-SPONSORS CONFERENCE

Thanks to Dr. Andy Pitman, Associate Professor at Baylor University, the Entertainment & Sports Law Section is a co-sponsor of the *15th Annual Physical Education Recreation and Law Conference* to be held at Baylor University in Waco, Texas on March 7, 8 9, 2002. See page 4 for more information.

JOURNAL LOOKING FOR WRITERS

The call is out for writers.

The *Journal* is looking for writers in the areas of women's sports and entertainment. With the wealth of subject matter, anyone interested in writing may contact the Editor with articles or ideas for an article.

In this Issue:

CHAIRMAN'S REPORT

Post-Mortem on the "Big Announcement"
Just Like Bogie and Bacall in *"The Big "Sleep"*, Our Esteemed Eleventh Annual Entertainment Law Institute *"French Kissed"* the Exalted Austin Film Festival.[1]

The Titillating Details

Attendance
About 100

Speakers
Leading Practitioners from Los Angeles, New York and Austin

Topics
Legal and Business Aspects of Film and *"Tele"*

Post-Party
Reception at Wild About Music

Entertainment
Will Knaak *(an Up and Coming New Talent)*

Post-Post-Mortem
An Encore Performance
*(**Working Title:** "12th Annual Entertainment Law Institute"*
***Release Date:** October, 2002*
***Venue:** Austin)*

Revocation of License to Skip Forthcoming Reports Authored By Yours Truly

As you may recall, the *"Big Announcement" "Kicked Off"* Our Beloved Section's *"Fiscal Year"* with a *"Bang"* not likely to be matched until Yours Truly *"Goes to Stud"*. So Yours Truly issued some sort of *"Impliedly Revocable"* license to skip the Chair's Reports until it's *"Stud Time"*. But, Alas, said license is hereby revoked. **Why?**

Yet Another "Big Announcement"

Just Like Bogie and Bacall in *"The Big Sleep"*, Our Esteemed Annual Meeting Will *"French Kiss"* the Exalted State Bar of Texas Annual Meeting.

The Titillating Details

Working Title
"French Kiss II"

Release Date
June 14, 2002 (2:00-3:30 p.m.)

Venue
Wyndam Anatole Hotel, Dallas

Et Al.

Yours Truly: **J. Edwin Martin**

[1]*The State Bar of Texas was also "Involved", a la "menage a trols".*

NOTICE OF COUNCIL MEETING OF THE ENTERTAINMENT AND SPORTS LAW SECTION

Lord Martin's Proclamation of Yet Another Meeting of the Royal Court

Be it Duly Noted that, at 4:15 p.m. on the 1st. day of March, 2002, in conformance with its Bylaws (and the powers vested in it by the State Bar of Texas), the Royal Court will convene in the Ed Martin Room)located in Greenville Bar & Grill, 2821 Greenville Avenue, Dallas, Texas 75206 (just south of the intersection of Greenville and Goodwin {north of Terilli's and south of Blue Goose}). [1]

Lord Martin's Proclamation of the Dreaded "Kalis Caps"

In keeping with the tradition of "Fiscal Austerity" first instituted by the Recently Deposed But Still Relevant Sir Carter, Lord Martin hereby proclaims that the "Kalis Caps" for this Meeting of the Royal Court are as follows:

Hotel
The Big Goose Egg

Air Fare
Seven (7) Days Advance Purchase on Southwest Airlines [2]

Food and Beverage
To Be Discussed at the Meeting [3]

Ground Transportation
The Usual and Customary Stuff [4]

Closing

Visual
Momentary Darkness

Audio
The "Looney Tunes" Theme Song "Trumps Up"

Visual
A Spotlight of Multicolored Concentric Circles
A Cartoon of Lord Martin "Pops Out"

Audio
The Music Stops
Lord Martin: Th - Th - That's All Folks!

Visual
Fade Out

By: /s/ Lord Martin

1 For further directions, please call (469) 334-0001.
2 Subject, however, to any meritorious "Pleas of Equity".
3 Be it Duly Noted at Royal Rations will be served thereat.
4 Which also describes the Royal Agenda.

EDUCATIONAL OPPORTUNITIES: HOUSTON COMMUNITY COLLEGE - CENTRAL

Classes are held at HCC-Central, 3100 Main, Suite 200. For additional information or to register call (713) 718-5303.

INTRODUCTION TO MOTION PICTURE LAW,

Tuesday and Thursday, February 12th - February 28th.
from 7:00 p.m. - 9:00 p.m.

Houston Community College-Central, Contract Training and Continuing Education is offering Introduction to Motion Picture Law. Motion Picture Law is a combination of Intellectual Property (IP) Law and Contracts Law. This class introduces the business side of the Ebiz[1] to the filmmaker. The class is a contract-intensive course with copies of contracts for students to review. Topics include: the funding of motion pictures through the Private Placement Memorandum Offering and The Subscription Booklet; Legal and Business Problems in Indie Motion Picture Financing; The Motion Picture Production-putting the deal together; Distribution; Music Publishing Problems; Cash Flow Problems; Movie of the Week; Indie Production; Copyright and First Amendment Issues.

Instructor: Mary Jane "MJ" Hancock, MA JD,
Houston Entertainment Attorney
Tuition is $96.

SPORTS LAW,

Monday, Wednesday and Friday - April 1st. - May 10th.
from 11:00 a.m. - 1:00 p.m.

Houston Community College-Central, Contract Training and Continuing Education is offering Sports Law. Sports Law is a multi-faceted course that includes such seemingly diverse topics as Contracts, Torts, Labor Law, Antitrust, Criminal Law, Agency, Workers' Compensation, International Law, Products Liability, Intellectual Property, Taxation and Financial Planning, and Assumption of the Risk. Within these areas discussion will examine both the legal and practical ramifications of the field; for example, "How to Become a Sports Agent," "How to Critically Read a Sports Employment Contract," "How to Reduce Your Client's Tax Load," etc. (36 hours).

Instructor: Walter Champion
Tuition is $249.

FOR THE LEGAL RECORD ...

SHAQ A TRULY AWESOME FORCE! ...

The L.A. Lakers center finally went off! Brad Miller, only a 7 footer, versus the 7 foot plus, 340 plus pound, beforehereto quite giant. Despite any pity for the players from the often "beat-him-up", "ref stay out-of-it" style of NBA big men which often has as its target Shaquille O'Neal, the NBA suspended the biggest, baddest and strongest of the big men. Stu Jackson, NBA Vice-President, handed down the 3 day suspension and a $15,000.00 fine, without comment. A mere pittance, but it proved that Shaq would not be without retribution. Often the subject of intentional and hard fouls, if not just because of his size but his historically poor free throw shooting, the Lakers star will lose $800,000.00 of salary during the suspension. The melee cost Chicago players Brad Miller a one game suspension and Charles Oakley a two game suspension.

But strong play and physical abuse were not the reason for the NBA's fine for Shaq's teammate Mitch Richmond. Richmond was fined $5,000.00 for making an obscene gesture toward Detroit Piston fans ...

HOCKEY GETS FANS AND LAWYERS INVOLVED! ...

Accusations of rough play, led to a hockey dad being accused of pummeling a hockey rink supervisor after rough play during a 10-year-old's hockey practice. The Middlsex County, Mass. case was brought against Thomas Junta for Michael Costin's death. Following an argument at the kid¹s practice, Junta left the rink and returned to allegedly repeatedly pound Costin's head on the floor until Costin lost consciousness.

Thomas Orlandi, Jr., Junta's attorney, argued that his client was defending himself from a Costin "sucker punch" and became enraged while viewing the apparent lack of supervision and the "hitting, fighting, and slashing" during his son's practice. Assistant District Attorney Sheila Calkins contends witnesses will testily that Costin attempted to avoid Junta's blows, which included cuts to Costin's face, neck and shins from Junta's hockey skates. The prosecution¹s witness list includes 11 children who allegedly saw the fight and Costin's death ...

THE FACE OF BASEBALL IS CHANGING! ...

Commissioner Bud Selig is getting heat from the House Judiciary Committee's ranking Democrat, baseball owners, and baseball players. A luxury tax and world draft rights were key issues between union and management, and their lawyers, during a recent bargaining session held in New York.

The current labor agreement expires on Nov. 7, 2002. Selig's 50% luxury tax proposal would effect payrolls over $98 million. Selig also tabled the owner's proposal for world wide rights to players. Cuban players who defect and become free agents, are blamed for the owners' multi-million dollar contracts. The owners argue that world wide draft rights would eliminate such a player's ability to demand the high dollar amounts they pay for such players.

Selig was asked to resign by Michigan Rep. John Conyers, irked by Selig's plan to fold two baseball teams, including the Twins. Conyers has accused Selig of having an "irreparable conflict of interest" between the decision to close two franchises (to help owners who say they are losing money on the franchises), and the Committee's investigation of Selig's loan from Minnesota Twins owner Carl Pohlad, an apparent violation of league rules ...

ABANDONED TRAPS KILL! ...

Texas Senate Bill 1410 converted the nature of property when it made it legal for civilians to remove crab traps in coastal waters. Passed in 2000, the law makes crab traps personal property year around, and therefore litter in the water, exposing the traps to being retrieved by anyone. Prior to the change in the law, only law enforcement personnel were authorized to pick-up abandoned traps, and judges to order the traps destroyed. The new law permits crabbers the week of Feb. 16-22, a week after crab season closes, to remove their traps. The remainder of the closed season permits recreational fishermen, inter alia, to recover fish, shrimp, crab, and the trap, and dispose of the crab traps. Despite the recovery of fish, etc., in the abandoned traps, Texas Parks and Wildlife support the statewide retrieval effort to remove crab traps as litter and rid coastal waters of the hazards caused by crap traps to recreational users as well as to commercial fishermen, shrimpers and crabbers ...

The Journal can be accessed on-line at www.stcl.edu....

Sylvester R. Jaime—Editor

THE FIFTEENTH ANNUAL
SPORT, PHYSICAL EDUCATION RECREATION AND LAW CONFERENCE

at BAYLOR UNIVERSITY • March 7, 8, 9, 2002
The Hilton Waco • 113 South University Parks Drive • Waco, Texas 76701-2241
For Lodging Information and Reservations Call: (254) 754-8484

CONFERENCE OVERVIEW: The conference features over 50 program sessions, the annual SSLASPA Awards Dinner, the annual SSLASPA business luncheon, conference social, and a guest speaker, William Buckley Briggs, Assistant General Counsel, National Football League Management Council.

The 15th Annual Sport, Physical Education, Recreation and Law Conference will be held March 7-9, 2002 at the Baylor University Law School. The Entertainment & Sports Law Section of the State Bar of Texas is a co-sponsor of the conference. Dr. Andy Pittman, associate professor in the Health, Human Performance, and Recreation Department at Baylor, is the conference manager.

The conference registration fee of $255 for professionals and $130 for students will give you access to over 50 programs, a one-year membership in SSLASPA which includes journal and newsletter subscriptions, an awards dinner, a business luncheon, and a conference social. CLEs will be available. After February 7, 2002 a late fee of $50 will be charged.

For additional information contact Dr. Andy Pittman, Baylor University, P. O. Box 97313, Waco, Texas 76798-7313;
ph. 254-710-4002; fax: 254-710-3527; email Andy Pittman@baylor.edu or
visit the SSLASPA website at http://www.ithaca.edu//sslaspa/waco.htm.

CONTRACTION

SOCCER like BASEBALL! ...

Major League Soccer looking to beat baseball to the punch. Financial losses are to blame for the possibility 2 teams could be voted out of the league. The Washington Post report the MLS "50-50" on potentially Miami, Tampa Bay, Colorado or Kansas City being left off the league roster next season.

WINTER OLYMPICS like ENRON! ...

Did the Winter Olympic Games beat Enron to the punch in hiding loses? Pork-barrel spending and non-accounting? "Balderdash," cries Mitt Romney, new head for the scandal-riddled host Salt Lake City and its organizing Olympic committee. The Olympic effort took heat for the Government Accounting Office's estimate not including $1.1 billion for Utah fast track infrastructure, including highways and light-rail. Utah and the Olympic Committee had to defend itself from charges the Winter Games were used to swindle federal taxpayers for in-state benefits. "The road work is money we would have gotten anyway," retorts Lane Beattie, Olympic officer. The scandal resulted in Romney taking over the effort amid accusations the state used "deft maneuvering for federal support" to obtain more than the $350 million allotted for security and temporary parking lots, and further accusations that the GAO's failure in showing the $1.1 billion for infrastructure did not show the real cost to taxpayers of Olympic hosting.

BASEBALL like ANTITRUST! ...

Will Bud Selig lead Major League Baseball away from the long sacred ground of antitrust exemption? Fans, players, and owners may see the dawn for baseball. Armed with accounting results of $519 million in losses, Selig is leading the owners' charge to contract baseball. Minnesota Twins and Montreal Expos may be history if the owners decide to drop teams. Judge Diana Eagon, fired a blow for the Twins and issued a temporary restraining order against the Twins and MLB. With the Attorney General leading the way, Minnesota was first to threaten federal action. Mike Hatch's suit on behalf of Minnesota may be only the first volley if the owners fold teams to increase market share among those remaining. As baseball's collective bargaining agreement negotiations unfold, owners threaten to drop teams, the Players Association side with the fans when Donald Feher states "This (September 11's aftermath) makes it all the more unfortunate that the clubs would choose this moment to dash the hopes of so many of its fans. The head of the Players' Association, was also quoted "We had hope that we were in a new era, one that could see much better relationship between players and owners." With franchises in the $200 - $250 million range, sellers do not appear to be in danger of losing money. However, angry fans in modest revenue markets are not getting the sympathy of big revenue markets. Outside of fans in the cities targeted for contraction, fans outside such cities find it hard to root for the rich owners who spend millions on rich players only to become the payors to the rich players. Are owners going to pass the savings on to the fans? Stay tuned.

Sylvester R. Jaime—Editor

DON'T BELIEVE THE HYPE: DO THE AUTOMATIC SUSPENSIONS OF STUDENT-ATHLETES FOR ALLEGED MISCONDUCT WITHSTAND CONSTITUTIONAL SCRUTINY?

by
Jim Moye[a]
C. Keith Harrison, Ed.D.[a a]

Jim Moye is a 1999 graduate of The Catholic University of America, Columbus School of Law, is an Appellate Attorney for the federal government, and is a member of the Florida Bar. This is the third article he has authored on sports and constitutional law. Dr. C. Keith Harrison is assistant professor of sports management and communication in the Division of Kinesiology at the University of Michigan. He received his Ed.D. from the University of Southern California in 1995. Dr. Harrison is also founder and director of the Paul Robeson Research Center for Academic and Athletic Prowess. His research interests include occupational mindsets of African American male student-athletes in revenue sports, media images of athletes in sport and society, and race relations and sport. He is the creator of the educational documentary *You¹re Blind: The African American Athlete in Advertising* (2001), and the forthcoming *Image is Everything: Education, Media and Sport* with Peter Lang Press.

"Universities are increasingly faced with a Hobson's choice: charged with a duty to protect students from themselves and from the misconduct of their fellow students, they must nonetheless avoid treading on the privacy rights of students and they must provide adequate due process in the prosecution of alleged misconduct."[1]

"*Is Erickson out there winning with criminals again?*"[2]

"Fraschilla's policy, though forward-looking, doesn't go far enough. I say Fraschilla and all college coaches should be even bolder and suspend players for a week the minute they sign their letters of intent. Why take the chance a nasty episode will come up at an inopportune time, say the start of the conference tournament and take a key player from the team just when you need him the most?" [3]

College athletics not only enjoy great popularity, but surely have become big business. To understand this, one only needs to look at the amount of money generated. A recent National Collegiate Athletics Association ("NCAA") report explained that the average athletic revenue generation at Division I schools rose from $17.8 million in 1997 to $21.9 million in 1999, while expenses rose from $17.3 million to $20 million.[4] Over those same years, Division I schools brought in over $3 billion and spent $4.1 billion.[5] Those statistics also show that overall athletic salaries and benefits rose 35 percent,[6] and spending on athletic facilities expanded by 31 percent.[7] Additionally, the universities with the five largest athletic budgets, Ohio State University, University of Nebraska, University of Florida, University of Michigan and the University of Texas, collectively spent over $687 million in the 1999-2000 fiscal year.[8]

The move toward big business does not end there. The Big 12 Conference, one of the most prominent conferences in Division I sports, has managed to designate an "official" soft drink, tire, cookie, oil company, communications firm and sports equipment provider, as corporate sponsors.[9] Of the more than $75 million distributed by the conference to its members, $5 million of that money was listed as corporate sponsorship.[10] Further consider that the four largest college football bowl games, which comprise the Bowl Championship Series, collectively pay out $100 million annually.[11] Finally, the NCAA recently signed a lucrative television contract with CBS worth an estimated $585 million to annually televise the Division I men's basketball playoff tournament.[12] These are great times financially for the college sports world. However, with such immense popularity and financial growth comes unwanted scrutiny. Specifically, there appears to be an outbreak of embarrassing disciplinary incidents involving student-athletes. These incidents have included illegal gambling, theft, rape and other acts of violence.[13] Consequently, there is increased pressure on academic institutions to show greater authority over student-athletes for their non-academic conduct. Understandably, schools have struggled with determining the proper response. Many schools have responded by automatically suspending players who have pending allegations of misconduct.

Three court cases, two of which were decided by the United States Supreme Court, have outlined the process a school must go through in order to take action against a student for conduct violations. In *Dixon* v. *Alabama State Board of Education*, the Fifth Circuit Court of Appeals held that tax-supported institutions are required to provide notice and a hearing to a student facing suspension.[14] In *Goss v. Lopez*,[15] the Supreme Court formalized *Dixon's* proposition regarding tax-supported institutions[16] and in *Board of Curators of Missouri v. Horowitz*, the Court held that due process requirements in student misconduct suspension cases must meet a more

Continued on page 6

Continued from Page 5

stringent constitutional standard than for academic dismissals.[17]

This Comment examines whether schools offend the due process rights of student-athletes when they are automatically suspended, based on alleged misconduct, from participating in their chosen sport. However, this Comment will examine only state universities and colleges, as case law has distinguished an important difference in the relationship between private institutions and their students.[18] Part I will look at case law discussing a student's right to due process for non-academic suspensions. Part II will examine some of the more interesting and controversial incidents involving student-athletes. Part III will analyze, in light of the stated case law, whether automatic suspensions of student-athletes meet constitutional muster. Part IV will provide recommendations for state universities in handling alleged misconduct of student- athletes. This Comment concludes that when state universities automatically suspend student-athletes without the requisite notice and hearing, they offend the due process rights of student-athletes.

I. CASE LAW RELATED TO DUE PROCESS AND STUDENT DISCIPLINE

Three separate cases have created the boundaries in determining what rights a student has when an institution takes action related to his or her alleged misconduct. The issue was first considered in *Dixon v. Alabama State Board of Education*.[19] In *Dixon*, a number of Alabama State College students took part in a protest at a local eatery.[20] Subsequently, the Alabama State Board of Education, considering investigative evidence provided by the President of Alabama State College, the Director of Public Safety for the State of Alabama and the investigative staff of the Alabama Attorney General, voted to expel nine students and place twenty other students on probation for their role in the protest.[21] Acting pursuant to the Board's action, the college president notified all of the students of the sanctions.[22] The president's letter to each student never specifically identified what misconduct brought about these sanctions.[23] Prior to the Board's action there had been no formal charges levied against the students nor were they granted a hearing.[24] The plaintiffs, who consisted of six of the nine expelled students, brought suit alleging that their expulsion violated the due process clause of the Fourteenth Amendment because they had not been afforded any notice, hearing, or appeal.[25] The State responded that (1) the facts set out in the plaintiffs' case did not constitute a violation of the due process clause, (2) the plaintiffs had no constitutional right to attend Alabama State College, and (3) the authorities acted in good faith in determining the sanctions.[26] The District Court upheld the suspension of the students, stating that "[t]he right to attend a public college or university is not in and of itself a constitutional right."[27] The plaintiffs appealed the decision to the Fifth Circuit Court of Appeals. The appellate court reversed and remanded the case. The court opined that due process requires notice and some opportunity for hearing before a student at a tax-supported college could be expelled for misconduct.[28]

The holding in *Dixon* was refined in the Supreme Court case, *Goss v. Lopez*.[29] *Goss* involved students in the Columbus Public School System who had been suspended for 10 days for disruptive or disobedient behavior.[30] Prior to their suspensions, none of the students received a hearing nor were they subsequently given an opportunity to appeal the suspensions.[31] The students brought a class action suit against the Columbus Public School System seeking a declaration that the Ohio statute permitting such suspensions violated the due process clause of the Fourteenth Amendment.[32] A three judge panel of the United States District Court for the Southern District of Ohio held that the students were denied due process and that the statute was unconstitutional.[33] The school system appealed and the Supreme Court affirmed. Justice White, writing for the majority, held that ten day suspensions were not *de minimis*, to impose such a suspension without a hearing was in complete disregard of due process and that "neither property interest in educational benefits temporarily denied nor liberty interest in reputation, which is also implicated, is so insubstantial that suspensions might be constitutionally imposed by any procedure the school chooses, no matter how arbitrary."[34] Further, Justice White clearly stated that "[a]t the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing."[35]

The third and final case is *Board of Curators of the University of Missouri v. Horowitz*.[36] The case involved a medical student at the University of Missouri-Kansas City.[37] The medical student, who had received numerous negative evaluations in her first and second years of

Continued on Page 7

Continued from Page 6

medical school, was dismissed from the medical school for academic deficiencies and faculty dissatisfaction with her performance.[38] The medical student, after her case was considered and suspension upheld by the Dean, medical school Coordinating Committee and the Provost for Health Sciences, filed suit in the United States District Court for the Western District of Missouri claiming a deprivation of her due process rights.[39] That court ruled in favor of the board of curators and the student appealed.[40] The United States Court of Appeals for the Eighth Circuit reversed the decision.[41] The board of curators appealed to the United States Supreme Court, which reversed.[42] Justice Rehnquist, writing for the majority, stated that the school "fully informed respondent of the faculty's dissatisfaction with her clinical progress and the danger that this posed to timely graduation and continued enrollment…These procedures were sufficient under the Due Process Clause of the Fourteenth Amendment."[43] Of greater importance, the Court drew a distinction between the procedural requirements necessary to remove a student for failure to meet academic standards and the failure to abide by rules of conduct. "The need for flexibility," wrote Justice Rehnquist, "is well illustrated by the significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct. This difference calls for far less stringent procedural requirements in the case of an academic dismissal."[44]

II. CONTROVERSIAL CASES INVOLVING ALLEGED STUDENT-ATHLETE MISCONDUCT

"FSU hardly stands alone at the magistrate's office. In recent years, North Carolina, N.C. State and many other schools have needed an assistant athletics director for 2 a.m. lockup. The episodes raise questions about the athletes some colleges admit and ultimately about the colleges' aims."[45]

As mentioned earlier, several student-athlete suspensions made the front pages of America's newspapers. One case involved Derrius Monroe, a defensive end on the Virginia Tech football team. Monroe, 21, was suspended indefinitely from the football team after being charged with felony distribution of cocaine.[46] According to sources, the player was charged in connection with the arrest of two former Virginia Tech football players.[47] School policy required that any student-athlete charged with a felony face automatic suspension from participating in their chosen sport.[48] Further, under the school's policy, if Monroe were found guilty or plead guilty to the charges, he would be dismissed from the team.[49]

A second case involved members of the University of Maryland football team. Marlon Moye-Moore, a starting linebacker, and Andrew Smith, a backup cornerback, were indefinitely suspended from the football team for their alleged role in a violent incident in February 2001, at a suburban Washington, D.C. night club.[50] Specifically, the two players allegedly took part in the robbery and assault of a night club patron.[51] Both men were charged with felonious assault and robbery and were immediately suspended from the team.[52] Both players were allowed to stay in school and participate in team study hall and tutoring sessions.[53] Even though Ralph Friedgen, the University of Maryland's head football coach, would not comment on why both players were suspended, [54] under the Terrapin Student-Athlete Code of Conduct, players charged with felonies are not allowed to participate in on-field activities until their cases have been resolved.[55]

San Diego State University dealt with a similar issue during the 2001 summer. Two football players, Loo Heather and Ryan Iata, were allegedly involved in a fracas with a fraternity student.[56] Originally, Iata was arrested and charged with felony battery charges for hitting the student and was automatically suspended from the team.[57] Eventually, Iata had the charges dropped against him.[58] Heather, the other player allegedly involved, was arrested subsequent to the charges being dropped against Iata and he was charged with felony battery against the student.[59] Per university guidelines, Heather was suspended indefinitely until the matter could be resolved.[60]

Another situation involved Rachael Honegger, a former Indiana University women's basketball player and a single mother. Honegger, who was a fifth-year senior, was suspended for four games during the 2000-2001 season after she plead guilty in October 2000, to stealing $13,000 from a local grocery store.[61] Interestingly enough, Honegger had continued to play for Indiana University even after she plead guilty and was not suspended until after she received her sentence.[62] The media attention was so intense from the incident, that the Indiana athletic department, in September 2000, before Honegger plead guilty to the charges, adopted a code of conduct for athletes.[63] At the time that Honegger was suspended from

Continued on Page 8

Continued from page 8

playing basketball, her suspension timeframe was deemed to be indefinite.[64] Honegger was eventually dismissed from the team after a subsequent arrest.[65]

A fifth major incident took place at the University of Minnesota. Two football players, Steven M. Watson and Mackenzy Toussaint, were suspended from the football team after they were charged with first and third degree sexual assault.[66] The incident allegedly happened on July 6, 2000, in a university-owned apartment in which neither of the suspects lived.[67] The incident went unreported for more than two weeks.[68] University of Minnesota policy calls for athletes to be automatically suspended if arrested or charged with sexual misconduct or domestic abuse.[69] Glen Mason, the head football coach at the University of Minnesota, said the two players were suspended from the team for what was termed as "possible violations of team rules."[70]

The two most high-profile incidents, though, occurred in the shadows of two of America's most storied collegiate football programs. The first involved Peter Warrick, a star receiver on the 1999 number one ranked Florida State University football team and front-runner for college football's most cherished individual award, the Heisman Trophy. On October 7, 1999, Warrick, along with fellow teammate Lavernues Coles, was arrested and charged with felony grand theft after the two players bought over $400 worth of clothes from Dillard's, but were only charged $21.[71] Pursuant to university policy, Warrick was automatically suspended from the team, while his teammate Coles was dismissed from the team altogether.[72] Instantly, there was a barrage of media coverage surrounding the star receiver's arrest.[73] A firestorm of criticism was hurled at Florida State University President Talbot "Sandy" D'Alemberte for his delay in responding to the situation.[74] D'Alemberte responded by announcing that he would consider the charges unresolved, meaning Warrick could not play, if Warrick received any jail sentence even if that sentence was delayed until after the season and reduced to a misdemeanor.[75] The media frenzy was so pervasive that the prosecutor in the case, Leon County State Attorney Willie Meggs, stated "I did have a degree of frustration about the hysteria created in the community, the athletic director's office, and in the media about this issue. It was to the point no one cared about the facts: What is the fair, right thing to do?"[76] After two weeks of rampant speculation, Warrick's lawyer reached a plea agreement with the prosecutor that reduced the charges from felonious grand theft to misdemeanor petty theft and helped him avoid any jail time.[77] In those two weeks, Warrick watched his chances for the Heisman Trophy disappear and almost lost his opportunity to finish his collegiate football career.

The second incident involved Rashard Casey, the star quarterback of the Penn State Nittany Lions. In the early morning hours of Sunday, May 14, 2000, Casey was arrested with another man outside of a nightclub in Hoboken, New Jersey.[78] The two men were arrested for allegedly assaulting an off-duty police officer and Casey plead not guilty at his arraignment the following day in Jersey City, New Jersey.[79] Within days of the incident, Joe Paterno, Casey's coach at Penn State, voiced his belief that Casey was innocent of the charges.[80] Neither Paterno, nor the university, suspended Casey from the team. Thus began months of media speculation around the case, and of course, the wisdom of Joe Paterno's decision to not discipline Casey.[81] As one article discussed, Penn State's football team is a program that had traditionally done things "by the book" and had never encountered such problems.[82] For months, the questions lingered and the program limped through the beginning of its season.[83] No matter how intense the pressure got, Paterno refused to suspend the embattled quarterback.[84] In late October, newspaper stories start to surface that Casey had been indicted of the alleged charges by a New Jersey grand jury.[85] The stories turned out to be baseless and on October 31, 2000, Casey was cleared, as the grand jury was unable to find probable cause.[86] Afterwards, Paterno publicly reiterated his belief in Casey and rebuffed those who criticized him for not suspending Casey.[87]

III. DOES THE AUTOMATIC SUSPENSION OF STUDENT-ATHLETES FOR ALLEGED MISCONDUCT MEET CONSTITUTIONAL MUSTER?

"In the disciplining of college students there are no considerations of immediate danger to the public, or of peril to the national security, which should prevent the Board from exercising at least the fundamental principles of fairness by giving the accused students notice of the charges and an opportunity to be heard in their own defense."[88]

In light of procedural due process case law and some of the high profile cases discussed above, the question must be asked: "Do automatic suspensions of student-

Continued on page 9

Continued from page 8

athletes for alleged misconduct meet constitutional muster?"

To qualify for procedural due process protection under the Fourteenth Amendment, a party must demonstrate that a state governmental entity, acted to deprive them of life, liberty or property.[89]

A. IS THERE STATE ACTION?

First, for a suit to be successful, it would have to be established that the state has taken some form of action against the injured party. In the instant matter, the institutions in question are tax-supported, state-run colleges and universities acting pursuant to their own promulgated policies. If the decisions were unilaterally made by an administrator not acting within the scope of their authority or the authority of the institution, then maybe it would not be considered "state action." However, that does not appear to be the case here.

B. IS THERE A PROTECTABLE INTEREST?

Next, the injured party would have to prove what, if any, interest (life, liberty or property) has been harmed. Obviously, such suspensions do not interfere with the deprivation of life, hence making it frivolous to discuss such an interest. Property interests, on the other hand, "are defined by existing rules or understandings that stem from an independent source such as state law."[90] Here, however, there are no state laws or regulations that confer upon student-athletes the ability to compete in their chosen sport. Therefore, it would seem that the only basis for due process protections under these circumstances would fall under the rubric of liberty interests. Liberty interests have been defined as, among other things, the right to contract, engage in common occupations and "enjoy those privileges long recognized at common law as being essential to the pursuit of happiness by free men."[91] The Supreme Court, in *Goss v. Lopez*, further expanded upon the theme of liberty interests. "The Due Process Clause also forbids arbitrary deprivations of liberty," wrote Justice White, "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of the Clause must be satisfied."[92]

There is no doubt that when a student athlete is suspended, their reputation is tarnished and character questioned. For those athletes looking to move on to professional sports leagues, the "character" stigma can have a negative effect. Sports leagues, now, more than ever, are very image conscious and an athlete that has had run-ins with his school or the law could be passed over. A good example of that is Cecil Collins, a former running back with the Miami Dolphins. Collins, was a prized running back at Louisiana State University.[93] He was twice charged with unauthorized entry of apartments and failed three drug tests while at LSU.[94] He was dismissed from the team and transferred to McNeese State University.[95] While at McNeese State, he again tested positive for marijuana and was subsequently thrown off the team.[96] He spent a month in jail, four months in a halfway house and eventually plead guilty.[97] Even though he was extremely talented, National Football League teams were wary of Collins' past and the Dolphins did not take him until the 134th pick.[98]

A second example was Randy Moss, the star receiver of the Minnesota Vikings. Moss, who left Marshall University after his sophomore season, had previously lost a scholarship with the University of Notre Dame, been dismissed from the Florida State University football team for smoking marijuana, and both he and the mother of his child were arrested for misdemeanor domestic abuse charges after he arrived at Marshall.[99] Moss was expected to be one of the top five players taken in the 1998 National Football League draft, but was not.[100] Moss fell down to the number twenty one pick, which was owned by the Minnesota Vikings, because of what were termed "character concerns."[101]

The character issue is very important to many professional coaches. Tom Coughlin, head coach of the Jacksonville Jaguars of the NFL, said, "It's a major issue. How are you going to evaluate people, and are you willing to take chances on people who have any types of incidents in their past that might be reflective of someone who has a propensity for being outside the law?"[102] Dave McGinness, head coach of the Arizona Cardinals stated "I'm going to research the character, work ethic, and goal-orientation of everyone we draft. If you overlook that then you're looking with one eye."[103] Finally, Dave Wannstedt, head coach of the Miami Dolphins, believes "[C]haracter is the foundation for a lot of different

Continued on Page 10

Continued from page 9

traits that you look for in a draft pick. Character tells you how hard the guy's going to work. Character tells you how disciplined the guy will be on and off the field. The only thing it doesn't tell you is talent. Most reasons why a talented guy doesn't work out is some kind of character issue."[104] Thus, any type of conduct problem could cause a student-athlete to be stigmatized and effect his or her opportunity to continue playing as a professional. In *Goss*, the Court clearly discussed this issue. "School authorities here suspended appellees from school for periods of up to 10 days," wrote Justice White, "based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment."[105] Accordingly, a student-athlete's reputation is at stake when a school suspends that athlete for alleged misconduct. As such, due process procedural requirements would apply.

Some critics may argue that the ability of student-athletes to participate in sports is not a constitutional right, nor is there any obligation on the part of the school to allow such participation. Such thoughts are erroneous. It is well settled law that just because a person does not have a constitutional to do a certain action, the government cannot prohibit that action outside of the bounds of the Due Process Clause.[106] As was written in *Dixon*, "One may not have a constitutional right to go to Bagdad, but the Government may not prohibit one from going there unless by means consonant with due process of law."[107] Hence, state universities would not be relieved of its duty to present student-athletes with due process protections.

C. WHAT ARE THE PROCEDURAL REQUIREMENTS AND HOW DO THEY APPLY IN THIS MATTER?

As discussed earlier, due process requires that state educational institutions offer its students notice and a hearing.[108] The automatic suspension system utilized by many state-supported colleges and universities seems to fly in the face of case law on the subject. The instant matter enjoys some of the same procedural flaws as was pointed out in the case law above. In *Dixon* and *Goss*, state authorities took action against students for alleged misconduct. In the instant matter, state authorities are acting against student-athletes based on alleged misconduct. In *Dixon* and *Goss*, the suspending authority relied upon the fact finding of other entities to make its decision.[109] In *Goss*, the Court found that the failure to properly fact find was a factor in the unconstitutional suspensions.[110] In the instant case, the state institutions have relied upon the fact finding of others to determine whether a student-athlete should be suspended. In *Dixon* and *Goss*, the suspended students had a liberty interest at stake with their suspensions. In the instant matter, as discussed above, student-athletes have a liberty interest at stake. In *Dixon* and *Goss*, the suspended students were not given an opportunity to present evidence, witnesses or their sides of the story. Here, student-athletes are not given the opportunity to present evidence, witnesses or their version of the facts. In *Dixon* and *Goss*, the suspended students were not given an opportunity to appeal their suspensions. In the instant case, student-athletes are not given an opportunity to appeal their suspensions. Accordingly, the automatic suspension system so closely mirrors the unconstitutional actions taken in *Dixon* and *Goss*, that it is apparent that these suspensions do not meet constitutional muster.

IV. RECOMMENDATIONS

Before there can be an educated discussion on how to stop these incidents from happening in the future, we must briefly look at the reason student-athletes find themselves in such situations.

A. SOCIAL STIGMAS, LABELED DECISIONS AND STUDENT-ATHLETES

Many educators and theorists believe that student-athletes are stigmatized in society. In one study, the authors concluded that "Relatively little research has focused on the subjective experience of members of stigmatized groups. Understanding the consequences of social stigma requires an understanding of the phenomenology of being stigmatized."[111] Throughout this Comment, it has been argued that the selected high-profile cases of student-athlete disciplinary legal situations are "a vessel of stigmatized expression and experiences."[112] We are in no way excusing the

Continued on page 11

Continued from Page 10

individual responsibility of the student-athletes in the case-by-case analysis. However, there appears to be a "structural communication gap" between the student-athlete, the athletic culture, state universities and the law.[113]

A study conducted by Harrison and Hart supports the notion that, in some fashion, that student-athletes lack the knowledge of right and wrong.[114] Specifically, many of the student-athletes who participated in the study felt that they had not been properly oriented to the all of the rules and regulations by which they are governed.[115] Further, when these student-athletes were polled on what exactly conduct was legal under NCAA regulations, the data showed a sense of confusion among the student-athletes.[116] Equally, as appalling, most of the student-athletes polled revealed that they did not believe the NCAA was representative of them and that they promulgated rules without respect for the student-athlete.[117] The overall impression left by this and other studies is that there is a functional disconnect in communication between the student-athletes and the rulemakers. As long as such a disconnect exists, it almost assured that student-athletes will continue to engage in illicit behavior and place themselves and their universities in no-win situations.

B. WHAT STEPS ARE NECESSARY TO CORRECT THE CURRENT TREND?

There are a number of ways in which schools can deal with the embarrassment of alleged student-athlete misconduct and still safeguard their constitutional rights. First, institutions should follow the lead of some of the larger schools and create a separate and distinct code of conduct for athletes. The code would address both on and off-field behavior. The conduct code would clearly outline the type of behavior that is expected of each student-athlete and be unambiguous about the kind of behavior that will not be tolerated. For instance, many schools suspend a student-athlete when they have been charged with a felony. In an ideal student-athlete conduct code, schools should consider all criminal activity, be it misdemeanor or felony, a violation of the code. The sanctions for violations of the student-athlete code should be unmistakable.

Next, student-athletes should be required to attend seminars where they would be thoroughly briefed on the code of conduct and given an opportunity to ask pointed questions. Once they have attended such a seminar, they would be required to sign a form stating that they understand the code of conduct and understand the consequences of violations of the code. This would, at least theoretically, place some of the responsibility squarely on the athletes.

Third, there should be a student-athlete consultant group formed by the universities. The body would exist to give athletes and opportunity to give the administration feedback on the effectiveness of the code of conduct, point out strengths and weaknesses with the code, as well as properly give the student-athletes a voice in the behavior module. As discussed in subsection (a), student-athletes feel that they do not have a voice in the rulemaking process and this consultant group would hopefully eviscerate such feelings.

Fourth, the schools should prepare a review board especially to hear violations of the student-athlete code of conduct. The review board would consist of a member of the athletic department, a faculty member, a student, and a Student Affairs Division representative. The panel would always be on call and would convene within 24 hours of outside legal charges being brought against a student-athlete. The purpose of the hearing would be to hear the charges that have been brought against the student-athlete, give him/her the opportunity to present witnesses and evidence in support of the case, and assess whether he/she does not pose a threat to his/herself, teammates or the university community. Based on the strength of the evidence and the severity of the charges, the board would vote on whether to suspend the athlete from participating in their chosen sport during the pendency of the charges. The board would not be concerned with the athlete's innocence or guilt, would not relieve the athlete of any pending legal action or action by the university's conduct review process. The basic purposes of the board would be to give the athlete an opportunity to explain the outside charges, meet the university's due process obligation, and make the necessary suspension determinations within a reasonable time.

Continued on Page 12

Continued from page 11

Finally, schools should appoint a "behavior compliance officer" to serve in the athletics department. This person would be responsible for continually monitoring of student-athlete behavior, ways to improve upon the student-athlete code of conduct, and serve as a contact for athletes and administration with regards to conduct issues. This person would serve as the enforcing authority for all decisions of the conduct board described above and would also serve as a consultant to the board.

These suggestions would not only bring school responses to student-athlete alleged misconduct into constitutional compliance, but would also serve to reverse the trend in the rising numbers of student-athlete incidents.

CONCLUSION

When the Fourteenth Amendment Due Process Clause is applied against the policy of automatically suspending student-athletes for alleged misconduct utilized by most state institutions of higher education, these policies fail to meet constitutional muster. These policies fail because the student-athletes have a liberty interest at stake and schools have ignored the requisite need for notice and a hearing before the athlete is suspended. The risk of stigmatizing innocent student-athletes is too great for schools to continue ignoring due process. With all the money being made by state universities and colleges, they should not forget their responsibility to those who have an integral part in that process. This is the stretch run for state institutions and they should step to the plate and properly insure the rights of student-athletes.

---

[a] B.A. University of Southern California, 1995; J.D. The Catholic University of America, Columbus School of Law. The author would like to dedicate this Comment to Mr. and Mrs. Eddie L. Land and Jimmie Moye for their love, patience, and support. The author would also like to thank Dr. Pamela Porter for her many years of support and guidance.

[aa] B.A., West Texas State University, 1990; M.A., California State University, Dominguez Hills, 1992; Ed.D., University of Southern California, 1995. C. Keith Harrison is assistant professor of sports management and communication in the Division of Kinesiology at the University of Michigan. Dr. Harrison is also founder and director of the Paul Robeson Research Center for Academic and Athletic Prowess.

[1] John Friedl, *Punishing Students for Non-Academic Misconduct*, 26 J.C. & U.L. 701, Spring 2000.

[2] Personal Communication, 2001.

[3] Jim Gordon, *The Anti-fan: Keeping the Thugs Eligible*, Santa Fe New Mexican, Aug. 20, 2001, at C1.

[4] *See* Doug Alden, *Nebraska paying big bucks for athletic success*, Associated Press Newswires, July 19, 2001. A quote from the article best sums up what athletic departments have become: ""The days of the old coach being promoted to be the athletics director have changed," he said. "We're running multimillion dollar businesses now."

[5] *See id.*

[6] *See Survival of the Richest? As college sports becomes bigger and bigger business, schools are scrambling to generate as much revenue as possible to keep up in the 'arms race'*, Times-Picayune, August 25, 2001, at 06.

[7] *See id.*

[8] *See id.* Specifically, Ohio State spent $72 million, Florida $48.8 million, Michigan $43.7 million, Texas $42.2 million and Nebraska $41.5 million. *See id.*

[9] *See Selling of sports is criticized, Knight Commission report says colleges shouldn't run sports like "big business,"* October 3, 2001, Omaha World-Herald at 1C. The members of the Big 12 Conference are the University of Texas, Texas A&M University, Baylor University, Texas Tech University, University of Oklahoma, Oklahoma State University, University of Colorado, University of Nebraska, University of Missouri, Kansas State University, University of Kansas and Iowa State University.

[10] *See id.*

[11] *See supra note 5, at 06.* The Bowl Championship Series is compromised of the Rose Bowl (Pasadena, California), Tostidos Fiesta Bowl (Phoenix, Arizona), FedEx Orange Bowl (Miami, Florida), and the Nokia Sugar Bowl (New Orleans, LA).

[12] *See id.*

[13] *See* Michael DiRocco, *Dupay done at UF, Troubled guard ruled ineligible*, Florida Times-Union, September 8, 2001, at D1 (discusses the plight of Teddy Dupay, a University of Florida basketball star, who was implicated in an illegal gambling scheme); *See Indiana Basketball Player Sentenced*, Associated Press, February 2, 2001 (details the case of Rachael Honegger, an Indiana University women's basketball player who embezzled money from a local grocery store); *See Two Minnesota football players charged with sexual assault*, Associated Press Newswires, August 17, 2001 (discussion of the pending sexual assault case against two football players and subsequent University of Minnesota response); and *see* Casey charged with assault, San Antonio Express-News, May 16, 2000, at 02C (describes assault charges filed against Rashard Casey, a star member of the Penn State University football team).

[14] *See generally* 294 F.2d 150 (5th Cir. 1961).

[15] *See generally* 419 U.S. 565.

[16] *See generally* 435 U.S. 78.

[17] *See id.* at 85.

[18] *See generally* Lisa Tenerowicz, *Student Misconduct at Private Colleges and Universities: A Roadmap for "Fundamental Fairness" in Disciplinary Proceedings*, 42 B.C. L. Rev. 653, May, 2001.

[19] 294 F.2d 150 (5th Cir. 1961).

[20] *See id.* at 152. Twenty nine students, including the six plaintiffs, entered the eatery, which was located in the basement of the county courthouse in Montgomery, Alabama, and asked to be served. *See id.* When they were refused service, the students refused to leave and the police were called. *See id.* The students were ordered out of the eatery where "they remained in the corridor of the courthouse for approximately one hour." *See id.*

[21] *See id.* at 154. At the Board meeting, the President of the college reported that these types of protesting activities were having a "disruptive influence on the work of other students at the college and upon the orderly operation of the

Continued on page 13

Continued from page 12

college," and that in his opinion, as he could not control future disruptions and demonstrations. *Dixon*, 294 F.2d at 154.

[22] *See id*.

[23] *See id*. at 152. In his letter to the students, the president remarked that "As reported through the various news media, the State Board of Education considered this problem of Alabama State College at its meeting on this past Wednesday afternoon. You were one of the students involved in this expulsive-directive by the State Board of Education. I was directed to proceed accordingly." *Id*.

[24] *See id*.

[25] *See id*. at 150. Specifically, "The complaint alleges that 'Defendant Trenholm on March 4, 1960, notified plaintiffs of their expulsion effective March 5, 1960, without any notice, hearing, or appeal,' and further avers: 'Expulsion from Alabama State College came without warning, notice of charges, opportunity to appear before defendants or at any other hearing, opportunity to offer testimony in defense, cross-examination of accusers, appeal, or other opportunity to defend plaintiff's right not to be arbitrarily expelled from Defendant College." *Dixon*, 294 F.2d at 150.

[26] *See id*. at 150.

[27] *See id*. at 155.

[28] *See id*. at 154-57.

[29] 419 U.S. 565.

[30] *See id*. at 569. The Court stated in its opinion that "The proof below established that the suspensions arose out of a period of widespread student unrest in the CPSS during February and March 1971." *Id*.

[31] *See id*. Six of the students, Rudolph Sutton, Tyrone Washington, Susan Cooper, Deborah Fox, Clarence Byars and Bruce Harris attended Marion-Franklin High School. "None was given a hearing to determine the operative facts underlying the suspension, but each, together with his or her parents, was offered the opportunity to attend a conference, subsequent to the effective date of the suspension, to discuss the student's future." *Id*. (White, J.). One of the other students, Betty Crome, was present at a demonstration at a school other than her own and was arrested. *See id*. "Before she went to school on the following day, she was notified that she had been suspended for a 10-day period. Because no one from the school testified with respect to this incident, the record does not disclose how the McGuffey Junior High School principal went about making the decision to suspend Crome, nor does it disclose on what information the decision was based. It is clear from the record that no hearing was ever held." *Goss*, 419 U.S. at 571.

[32] *See id*. "Ohio law, Rev.Code Ann 3313.64 (1972) provides for free education to all children between the ages of six and 21. Section 3313.66 of the Code empowers the principal of an Ohio public school to suspend a pupil for misconduct for up to 10 days or to expel him. In either case, he must notify the student's parents within 24 hours and state the reasons for his action. A pupil who is expelled, or his parents, may appeal the decision to the Board of Education and in connection therewith shall be permitted to be heard at the board meeting. The Board may reinstate in (sic) pupil following the hearing. No similar provision is provided in 3313.66 or any other provision of state law for a suspended student. Aside from a regulation tracking the statute, at the time of the imposition of the suspensions in this case of the CPSS itself had not issued any written procedure applicable to suspensions." *Id*. at 567. (White, J.).

[33] *See id*. at 565.

[34] *See id*. at 575-76.

[35] *Goss*, 419 U.S. at 579. (White, J.).

[36] 435 U.S. 78.

[37] *See id*.

[38] *See id*. at 80-81. Specifically, during the student's first year of medical school, some faculty members were not satisfied with her clinical performance during a pediatrics rotation. *See id*. Even though faculty members expressed these concerns, the Council on Evaluation advanced the student to her second and final year on a probationary basis. *See id*. In her second year, the student's faculty advisor found her performance "unsatisfactory" and the Council on Evaluations met again in the middle of the year and held that the student would not be allowed to graduate and that "absent 'radical improvement,' respondent be dropped from the school." *Id*. (Rehnquist, J.). The student, as an appeal, was allowed to take oral and practical examinations with seven practicing physicians. *See id*. Of the seven physicians, two recommended the student be allowed to graduate on schedule, two recommended that she be immediately dropped from the medical school, and three recommended that she not be allowed to graduate, but be allowed to continue on probation ending further reports on her clinical progress. *See Board of Curators*, 435 U.S. at 80. The Council of Evaluations reaffirmed its prior decision. *See id*. After further evaluation, the Council forwarded its recommendation to the medical school Dean and Coordinating Committee, which both affirmed the decision. *See id*. at 82. The student appealed to the University's Provost for Health Sciences, who sustained the earlier decisions. *See id*.

[39] *See id*. at 78.

[40] *See Board of Curators*, 435 U.S. at 78.

[41] *See id*.

[42] *See id*.

[43] *Id*. (Rehnquist, J.).

[44] *Id*. (Rehnquist, J.).

[45] Lenox Rawlings, *FSU Woes: Bowden Says He Has Control of the Program*, Winston-Salem Journal, August 14, 2000, at 1. Article discusses, at length, the negative publicity surrounding the Florida State University football team. *See id*. Over a two year period, there were ten arrests of members of the team. *See id*.

[46] *See* Angie Watts, *Va. Tech Suspends Monroe Indefinitely*, Wash. Post, Feb. 11, 2000, at D06.

[47] *See id*. The Roanoke Times reported that Manny Clemente, 22, who left the football team prior to the 1998 season, and Jermaine Hinkson, 20, who left the team in mid-September, 1999, were indicted on similar charges. *See id*.

[48] *See id*.

[49] *See id*. "Monroe will remain suspended from the team until there is a resolution to the charges, according to school policy. Should he be found guilty or plead guilty, Monroe will be dismissed from the team." *Id*.

[50] *See* Josh Barr, *Terps' McCall Quits; Friedgen Suspends 2 Football Players*, Wash. Post, April 6, 2001, at D01.

[51] *See id*. "According to court documents filed by prince George's County police, Smith and Moye-Moore confronted the victim in the bathroom area of the nightclub in the 1900 block of University Boulevard. The documents state that Moye-Moore asked the victim, 'Were you the one messing with my sister last year?' When the victim replied, 'No, you got the wrong guy,' according to the document, Smith and Moye-Moore began punching and kicking the victim about his head and body without provocation. . . 'After assaulting and robbing the victim, [Moye-Moore] told the victim, 'If you tell the police, we will get you.'" *Id*.

[52] *See id*. Smith was charged with robbery, conspiracy to commit robbery, second-degree assault, conspiracy to commit second-degree assault, theft of less than $500 and conspiracy to commit second-degree assault of less than $500. *See id*. If convicted, Smith faces a maximum prison term of 53 years and $6,000 in fines. *See id*. Moye-Moore was charged with robbery, first-degree assault, second-degree assault, theft of less than $500 and intimidating/

Continued on page 14

Continued from page 13

influencing a juror. *See id*. Moye-Moore faces 61 ½ years in prison and/or of up $13,000 if he is found guilty on all charges. *See id*.

[53] *See id*.

[54] *See id*. "Friedgen would not say why Moye-Moore and Smith had been suspended." *Id*.

[55] *See id*. "Smith could face additional penalties because of a previous incident in which he was charged with theft and assault. Those charges were placed on an inactive docket but could be recalled because of Smith's latest run-in with authorities." *Id*.

[56] *See* Ed Graney, *Heather pleads not guilty to charges*, San Diego Union & Trib., October 19, 2001 at D9. Allegedly there was a fight with a fraternity student in which the victim suffered a broken jaw.

[57] *See id.*

[58] *See id*. the charges were dropped against Iata because the District Attorney determined that there was no evidence of Iata's involvement. *See id.* "Part of the defense Iata's attorney offered in court was a signed confession from an SDSU player admitting to throwing the punch." *Id*.

[59] *See id*.

[60] *See id*. "He remains suspended until the matter is resolved, per university guidelines on athletes charged with a felony." *Id*.

[61] *See Indiana Basketball Player Sentenced*, Associated Press, February 2, 2001. Honnegger had worked in the grocery store during the offseason for a number of years. *See id*. She was sentenced to a three year jail sentence, but had all but six months of that sentence suspended. *See id*. Hence, she would be required to complete six months of house arrest and pay restitution to the grocery store. *See id*. "A State Police detective said Honegger confessed to forging money orders and taking cash from the store, saying she needed the money because she was planning to marry." *Id*.

[62] *See id*.

[63] *See id*. "In September, the university adopted a code of athletic conduct that says in part that athletes are expected "to exhibit a higher standard of behavior than might be expected of other students ... and to avoid conduct that is likely to appear improper." *Id*.

[64] *See Indiana Dismisses Honegger From Team*, Associated Press, March 5, 2001. "Then, nine days after Honegger was sentenced, she was suspended indefinitely by the university." *Id.*

[65] *See id*. Honegger was arrested for violating the terms of her house arrest. *See id*. Honegger's basketball coach, Kathi Bennett said that she was dismissed from team because she had violated the conditions of her team probation. *See id*.

[66] *See Two Minnesota football players charged with sexual assault*, Associated Press Newswires, August 17, 2001. Specifically, the players were charged with raping and assaulting a 19-year old woman at a university dormitory. *See id*. The criminal complaint filed stated that all three students "were engaged in horseplay until both men made sexual advances on the victim. When she tried to leave, they cornered her, keeping her in the room. The two then allegedly forced the victim to have oral sex with Toussaint. Later, Watson allegedly forced her to have intercourse." *Id*.

[67] *See id*.

[68] *See id*.

[69] *See id*.

[70] *See id*.

[71] *See* Lucy Morgan, *FSU star Warrick cleared to play*, St. Petersburg Times, October 23, 1999, at 1A. *See also* Bruce Lowitt, A chronology of the events involving Warrick, St. Petersburg Times, October 23, 1999, at 10A. "Warrick and Laveranues Coles were charged with grand theft along with a Dillard's clerk, 19-year-old Rachel Myrtil. She was accused of letting the two players buy $412.38 worth of clothing for $21.40 Sept. 29." Associated Press, *Warrick charged with grand theft*, Raleigh News & Observer, October 8, 1999, at C1.

[72] *See id*. "Warrick will be allowed to practice with the team. But under school policy, he cannot play at least until his case is resolved." *Id*. Coles was kicked off the team because of past academic and legal problems. *See id*.

[73] *See generally* Doug Carlson, *Police: No more 'Noles involved*, Tampa Tribune, October 9, 1999, at 5; *See also* Alan Schmadtke and George Diaz, *Warrick Heisman Hopes Hurt, Felony Charge May Sway Voters*, Ft. Lauderdale Sun-Sentinel, October 8, 1999, at 10C. Most of the attention focused on Warrick's chances of still winning the Heisman Trophy and how his possible dismissal from the team would affect the team's national title hopes.

[74] *See* Thomas B. Pfankuch, *Smooth ride for FSU president, despite a few bumps D'Alemberte defends his school track record*, Florida Times-Union, September 12, 2000, at A1. "His delay in publicly reacting to the arrest of football superstar Peter Warrick last year drew 900 mostly angry e-mails from alumni and boosters, some of whom threatened to withhold future financial support of the university." *Id*.

[75] *See* Amy Shipley, *'It's Embarrassing'; As Fla. St. Wins, Image Takes a Beating*, Wash. Post, November 13, 1999, at D01.

[76] *Id*.

[77] *See* Associated Press, *Warrick cleared to face Clemson – Fla. State star escapes jail sentence*, Newark Star-Ledger, October 23, 1999, at 022. "Under the agreement, Warrick will serve one year's probation, donate the clothes to the Children's Home Society, pay $579 restitution, $295 in court costs, have no contact with Dillard's and spend 30 days on a work program where he will probably clean trash from city streets." *Id*.

[78] *See Casey charged with assault*, San Antonio Express-News, May 16, 2000, at 02C. Specifically, Casey and a high school teammate, Desmond Miller, were accused of beating Patrick Fitzsimmons, a white off-duty policeman, because the officer left a nightclub with a black woman. *See* George Dorhmann, *JoePa Knows Best?* Sports Illustrated, August 14, 2000, at 36.

[79] *See id*.

[80] *See* Eduardo A. Encina, *Paterno defends his QB PSU coach Joe Paterno said Rashard Casey will be exonerated of assault charges*, York Daily Record, May 17, 2000, at B01. "I trust that Rashard will be able to proceed with his academic work in summer school with a minimum of distractions. I hope and expect he will be exonerated when all of the facts are examined." *Id*.

[81] *See* Steve Grinczel, *It's an atypical Penn State scene entering season*, Grand Rapids Press, August 26, 2000, at C3. (discussing Penn State's prospects for the 2000 season with the Rashard Casey incident hanging over the team's head); *See also* Bob Baptist, *Lots of Eyes on Paterno*, Columbus Dispatch, August 31, 2001, at 03C.

[82] *See* Bob Cohn, *Tough Call*, Washington Times, September 17, 2000, at A1.

[83] *See* Gordie Jones, *For openers, a State of confusion Trojans capitalize on PSU errors in Kickoff Classic, Lancaster Intelligencer Journal*, August 28, 2000, at C1; *See also* Ronnie Christ, *Lions: It's not over, but frustration is showing in Penn State locker room*, Sunday Patriot-News Harrisburg, September 3, 2000, at P03.

[84] *See* Jeanie Chung & Herb Gould, *Grand jury clears Penn State QB Casey*, Chicago Sun-Times, November 1, 2000, at 132.

Continued on page 15

Continued from page 14

[85] *See id*. Graham B. Spanier, President of Penn State University, stated that "Virtually every newspaper in the state erroneously reported last week that Mr. Casey had been indicted. Shame on the news media for their atrocious handling of this story." *Id*.

[86] *See id*.

[87] *See Paterno Says, 'I told you so,'* Lancaster New Era, November 3, 2000, at C2. "Paterno said he didn't care if 'people liked me or didn't like me, or newspaper guys thought I was right or wrong. That never even came into the decision. The only thing that came into the decision was, 'Did I really believe Casey was innocent?' I couldn't be sure, obviously, but once I felt that — and everybody on our football team shared the same sentiment — it was a no-brainer. It was an easy decision to make.'" *Id*.

[88] *See Dixon*, *supra* note 18, at 156.

[89] *See generally Board of Regents v. Roth*, 408 U.S. 564 (1972); *See also Bishop v. Wood*, 426 U.S. 341 (1976). The Fourteenth Amendment provides, in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law…" U.S. Const. Amend. XIV, sect. 1.

[90] *Roth*, *supra* note 77, at 577. *See generally* Johnson v. Southwest Miss. Regional Medical Ctr., 878 F.2d 856, 858 (5th Cir. 1989); *see also* Evans v. City of Dallas, 861 F.2d 846, 850 (5th Cir. 1988).

[91] *Meyer v. Nebraska*, 262 U.S. 390 (1926). "Similarly, 'liberty,' as guaranteed in the due process clause of the Fifth and Fourteenth Amendments, has been held to denote not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home, and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as being essential to the orderly pursuit of happiness by free men." *Id*.

[92] *Goss*, 419 U.S. at 573.

[93] *See* Paul Needell, *Is he Randy Moss or Lawerence Phillips?*, Star-Ledge (Newark N.J.), Apr. 11, 1999, at 19; *See also* Associated Press, *'Diesel fueling hopes Dolphin desperate for good RB*, Chi. Sun-Times, Sept. 5, 1999, at 20.

[94] *See id*.

[95] *See id*.

[96] *See id*.

[97] *See id*.

[98] *See id*.

[99] *See Falcons Wonder If Moss Can Be Taken*, Assoc. Press, Apr. 17, 1998. Moss lost his scholarship with Notre Dame because of his involvement in a fight with a high school classmate. *See id*. The domestic abuse charges were eventually dropped because Moss and the woman both agreed to attend counseling. *See id*.

[100] *See id*.

[101] *See* Richard Weiner, *Warrick waiting to exhale Florida State star hopes draft starts calmer times*, USA Today, Apr. 13, 2000, at 01C.

[102] Donald F. Staffo, *Strategies for reducing criminal violence among athletes*, J. Physical Educ. Recreation & Dance, Aug. 1, 2001, at 3842.

[103] *Quick Study*, Omaha World-Herald, Sept. 1, 2001, at 10C.

[104] Todd Archer, *The Ins and Outs of… Draft Day Research Done Long Before Saturday*, Palm Beach Post, Apr. 15, 2001, at 1C.

[105] *Goss*, *supra* note 28, at 735.

[106] *See Slochower v. Board of Education*, 350 U.S. 551, 555 (1956); *see also Wieman v. Updegraff*, 344 U.S. 183 (1952); and *United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 100 (1947).

[107] *Dixon*, *supra* note 18, at 155.

[108] *See Dixon*, *supra* note 18, at 150.

[109] *See Dixon*, *supra* note 18. In *Dixon*, the Board of Education relied upon information provided by the President of the College, Alabama Attorney General's office and the Alabama Director of Public Safety. In *Goss*, one student Betty Crome, was suspended because she was arrested in connection with a demonstration she was attending. *See Goss*, *supra* note 28, at 569.

[110] *See id.* at 580. (footnote 9).

[111] J. Crocker, K. Voelkl, M. Testa, & B. Major, *Social Stigma: The Affective Consequences of Attributional Ambiguity*, J. of Personality and Soc. Psych., 1991 at 218-228.

[112] *See generally* J. Coakley, *Sports in Society*, Boston: McGraw Hill (2001); D. Gragg, *NCAA Compliance and the African-American Male Student-Athlete*, Presentation, North American Society for the Sociology of Sport Annual Meeting, October 31-November 3, 2001; R. Lapchick, *Crime and Athletes: New Radical Stereotypes*, Society (2000) at 14-20.

[113] *See generally* A. Hart, *Student-athletes perceptions of the NCAA rules and regulations*, Masters Thesis, Washington State University (1997).

[114] *See generally* C.K. Harrison and A. Hart, Raw data set and unpublished research, 1997. The study involved 60 student-athletes from a northwest Division I university.

[115] *See id.* Specifically, over 78 percent of the student-athletes felt that the NCAA was not effective at educating them of the requisite rules and regulations.

[116] *See id*. Overall, respondents answered 7.29 out of the 14 questions correctly. *See id.* Eight of the 14 questions were answered correctly by just over 50 percent of the student-athletes. *See id*.

[117] *See id*. 73 percent of the student-athletes felt the NCAA did not take their feelings into consideration when promulgating rules.

FIND US ON THE WEB

This and previously published Journal

issues may be accessed on the web at

www.stcl.edu/txeslj/txesljhp.htm

The Section attempts to maintain and update

the Journal on-line in conjunction with

South Texas College of Law.

Although we endeavor to be current,

we apologize if there is a lag from the time the

Journal is published and the Journal is updated on-line.

RECENT CASES OF INTEREST

Prepared by the South Texas College of Law Students
South Texas College of Sports Law & Entertainment Society

March Madness Creates Year-Round Chaos

In 1939, the Illinois High School Association began using the phrase "March Madness" to describe Illinois' annual high-school basketball tournament. Subsequently, in 1982, a reporter from Chicago began using the phrase "March Madness" to describe the NCAA men's collegiate basketball tournament. Ever since that time, as the phrase "March Madness" began to become synonymous with the increasingly popular NCAA men's basketball tournament, many entrepreneurs and corporations became interested in using the phrase "March Madness" in hopes of profiting from the popularity of the tournament. As a result, the phrase "March Madness" has recently created its own madness for a number of organizations, countless litigators, and the United States District Court in Dallas, Texas. March Madness Athletic Ass'n. v. Netfire, Inc., 162 F. Supp.2d 560 (N.D. Tex. 2001).

In February of 2000, the Illinois High School Association and the NCAA entered into an agreement to create the March Madness Athletic Association. This Association held the trademark for the phrase "March Madness" and would be responsible for licensing the phrase to third parties. Additionally, the Association would attempt to stop unauthorized organizations from infringing upon the trademarked phrase. Needless to say, with the explosion of the Internet, the March Madness Athletic Association has stayed busy with a whole new World Wide Web of infringement.

Most recently, a young entrepreneur registered the domain name: www.marchmadness.com. He quickly sold the rights to Netfire, a company affiliated with Sports Marketing International. After these sports marketing companies began using the domain name for their website, the March Madness Athletic Association sued for trademark infringement and cybersquatting. The sports marketing companies filed for summary judgment and also filed a counterclaim for conversion after the March Madness Athletic Association got an administrative Internet organization to place a hold on the domain name (www.marchmadness.com) during the pendency of the litigation.

The Trademark Infringement Claim

A certificate of trademark registration for a particular mark or phrase constitutes prima facie evidence of the validity of the trademark and the need for protection against trademark infringement. However, this presumption is rebuttable and may be overcome by providing evidence that the trademarked phrase has become generic or that the phrase should not be protected as a matter of law. The court first found that the phrase "March Madness" was entitled to protection because it was not generic. The court relied on the following facts: (1) the phrase was used in a non-generic way by the sports marketing companies on a website featuring the NCAA men's basketball tournament, (2) the disclaimer on this website ("marchmadness.com is not sanctioned by, sponsored by, or affiliated with the NCAA") seemed to show that the phrase was not generic, (3) the media, in articles and crossword puzzles, referred to "March Madness" in a non-generic way by directly associating the phrase with the NCAA basketball tournament, (4) advertising and promotional materials directly associated "March Madness" to that tournament, and (5) the deposition testimony of experts directly associated the phrase with that tournament. Despite finding that "March Madness" was not generic, the court found that the "evidence presented on summary judgment demonstrates that reasonable minds could differ as to the strength of MMAA's [March Madness Athletic Association's] association with March Madness." Thus, a question of fact existed as to whether the trademarked phrase should be protected against trademark infringement. The court based this ruling on the following facts: (1) there was no evidence that anyone identified "March Madness" with the March Madness Athletic Association; all associations were with either the NCAA or the Illinois High School Association, (2) there was evidence that the March Madness Athletic Association's Board of Managers admitted that "March Madness" transcended the NCAA and Illinois High School Association tournaments, and (3) there was evidence that the phrase "March Madness" was frequently used, without any objection, for events having nothing to do with basketball. Thus, the court found summary judgment improper and allowed the trademark infringement action to continue.

The Cybersquatting Claim

The court then rejected the sports marketing companies' motion for summary judgment and allowed March Madness Athletic Association's cybersquatting claim to continue. Cybersquatting is an illegal transaction, whereby one secures the Internet domain name of a popular phrase or famous name, and "holds it ransom" until the party possessing the trademark exchanges money or some other service for the rights to the domain name. This practice caused such a commotion during the late 1990's that Congress enacted the Anti-Cybersquatting Act, 15 U.S.C. §1125(d), to protect valid trademark holders. The statute was expanded beyond mere "cyber-kidnapping," to include a bad faith purchase of a domain name with the intent to profit off the trademark of another. The statute states that bad faith "shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful." The court held, however, that there was sufficient evidence to raise a genuine issue regarding whether the sports marketing companies had purchased www.marchmadness.com in a bad faith effort to profit off the trademarked phrase "March Madness." The court reasoned that the bad faith could exist because the term was not generic, the disclaimers on the website showed that the sports marketing companies knew that consumers could confuse their

Continued on page 17

Continued from page 16

website with a product produced by the NCAA, and the owners of the sports marketing companies had even claimed to be working with the NCAA when they bought the domain name from the original owner.

The Conversion Claim

Finally, the court considered the conversion counterclaim made by the sports marketing companies after March Madness Athletic Association had successfully requested an Internet administrative organization to place a hold on the infringing domain name (www.marchmadness.com) during the pendency of the litigation. "Texas law defines conversion as the wrongful exercise of dominion and control over another's property in denial of or inconsistent with his rights." The court found that conversion had not occurred because the March Madness Athletic Association never exercised dominion and control over the www.marchmadness.com domain name. The Association merely successfully requested that an Internet administrative organization exercise its discretion and place the domain name on hold pending the outcome of litigation.

By: Doug Richards

State Athletic Associations Are State Actors

In the recent case of Brentwood Academy v. Tennessee Secondary School Athletic Assoc., a private high school sued a state interscholastic athletic association seeking to prevent enforcement of a rule which prohibited the use of undue influence in the recruitment of student-athletes. 531 U.S. 288 (2001). The suit arose after the Tennessee Secondary School Athletic Association [Athletic Association] found that a private high school had written letters to incoming students and their parents about spring football practice. The Athletic Association found that these letters violated the Association's rule prohibiting "undue influence" in recruiting athletes. The Athletic Association imposed sanctions upon the private high school for violating the rule. The private high school then sued the Athletic Association in federal court under 42 U.S.C. § 1983 claiming that the Athletic Association's action was state action and a violation of the First and Fourteenth Amendments.

The Supreme Court ultimately agreed with the private high school and held that the Athletic Association regulatory activity constituted state action because of the pervasive entwinement of State school officials in the Athletic Association's structure. The Supreme Court concluded that the Athletic Association was a state actor subject to Fourteenth Amendment scrutiny. According to the Court, state action may be found when there is such a "close nexus between the State and the challenged action" such that even private behavior "may be fairly treated as that of the State itself." In other words, a nominally private entity may be a state actor when it is pervasively entwined with governmental policies or when the government is pervasively entwined with the management or control of the entity. Here, the Court found that the Athletic Association's nominally private character was overcome because public officials and institutions had become pervasively entwined in the composition and workings of the Athletic Association. This pervasive entwinement was mainly proven by the fact that 84% of the Athletic Association's membership were public schools who were represented by public school officials in their official capacities. The Court noted that only the small (16%) membership by private schools prevented the Athletic Association from being completely entwined with the public school system. Furthermore, State Board members were assigned to serve as members of the Athletic Association's Board of Control and Legislative Council. Thus, the Court recognized that the Athletic Association had become pervasively entwined with the governmental entities. The Court also noted that every other court, except the Sixth Circuit, had likewise found that statewide athletic associations are state actors.

Justice Thomas, in a dissent joined by Chief Justice Rehnquist, and Justices Scalia and Kennedy noted the Supreme Court has never before found state action based upon mere "entwinement." The dissent explained that the Supreme Court had only "found a private organization's acts to constitute state action only when the organization performed a public function; was created, coerced, or encouraged by the government; or acted in a symbiotic relationship with the government." The dissent also criticized the majority for not only extending the state-action doctrine beyond its permissible limits, but also encroaching upon the realm of individual freedom that the doctrine was meant to protect. Despite the dissent's criticism, it is now clear that statewide athletic associations are state actors and cannot violate Constitutional provisions.

By: Chad Hyde

RECENT SPORTS AND ENTERTAINMENT LAW PUBLICATIONS

Compiled by Monica Ortale, Faculty Services & Reference Librarian
The Fred Parks Law Library, South Texas College of Law

Sports Law Bibliography

ADA

Charles A. Omage. Comment. *Caught In The Rough Of The PGA Tour And USGA Rules: Casey Martin And Ford Olinger's Fight For The Use Of A Golf Cart Under The Americans With Disabilities Act*. (PGA Tour, Inc. v. Martin, 121 S. Ct. 1879, 2001.) 29 HOFSTRA L. REV. 1401 (2001).

AMATEUR SPORTS

Jason R. Schuette. Student Article. *Adolescent Sports Violence—When Prosecutors Play Referee. Making Criminals Out Of Child Athletes, but Are They the Real Culprits?* 21 N. ILL. U. L. REV. 515 (2001).

John Slosson. Student Article. *Restoring Joy to Bracketville: Problems Facing College Basketball Stimulate Responses from the NCAA and Newly Formed Student Basketball Council*, 8 SPORTS LAW. J. 125 (2001).

Darryl C. Wilson. *Home Field Disadvantage: The Negative Impact of Allowing Home-Schoolers to Participate in Mainstream Sports*, 3 VA. J. SPORTS & L. 1 (2001).

ANTITRUST

Paul D. Abbott. Student Article. *Antitrust and Sports—Why Major League Soccer Succeeds where Other Sports Leagues Have Failed*, 8 SPORTS LAW. J. 1 (2001).

Steven John Kolias. Student Article. *Offensive Interference: How Communities Have Harnessed Market Forces To Retain NFL Franchises, Eliminating The Need For H.R. 3817's Proposed Antitrust Exemption*, 8 SPORTS LAW. J. 43 (2001).

ARBITRATION

Jeffrey M. Schalley. Student Article. *Eliminate Violence from Sports through Arbitration, Not the Civil Courts*, 8 SPORTS LAW. J. 181 (2001).

CONTRACTS

David J. Sipusic. Student Article. *Instant Repay: Upon Further Review, the National Football League's Misguided Approach To The Signing Bonus Should Be Overturned*, 8 SPORTS LAW. J. 207 (2001).

FANS

Michael J. Thompson. *Give Me $25 On Red And Derek Jeter For $26: Do Fantasy Sports Leagues Constitute Gambling?* 8 SPORTS LAW. J. 21 (2001).

GENDER

Amy Bauer. Note. *If You Build It, They Will Come: Establishing Title IX Compliance In Interscholastic Sports As A Foundation For Achieving Gender Equity*, 7 WM. & MARY J. WOMEN & L. 983 (2001).

MISCELLANEOUS

Gary R.Roberts. *The Legality of the Exclusive Collective Sale of Intellectual Property Rights in Sports Leagues*, 3 VA. J. SPORTS & L. 52 (2001).

James Splett. Student Article. *Personal Watercraft Use: A Nationwide Problem Requiring Local Regulation*, 14 J. ENVTL. L. & LITIG. 185 (1999).

PROFESSIONAL SPORTS

Jerry C. Harris. Comment. *The Iakovos Tsakalidis Dispute Between The Phoenix Suns And Greek AEK Before The Court Of Arbitration For Sport*, 19 DICK. J. INT'L L. 531 (2001).

Julie L. Livergood. Note. *Walking With Tradition v. Riding Into Tomorrow* (Olinger v. United States Golf Ass'n, 205 F.3d 1001, 7th Cir. 2000, *aff'g* Olinger v. United States Golf Ass'n, 55 F. Supp. 2d 926, N.D. Ind. 1999, v*acated by* Olinger v. United States Golf Ass'n, 2001 U.S. LEXIS 4150, June 4, 2001.) 51 DEPAUL L. REV. 125 (2001).

RACE

James Moye. *A Slam-Dunk of the Hypocrisy: Preferential Higher Education Admission Standards for Student-Athletes in Light of Attacks on Racial Preferences*, 3 VA. J. SPORTS & L. 33 (2001).

TAX

Kevin Koresky. *Tax Considerations For U.S. Athletes Performing In Multinational Team Sport Leagues Or "You Mean I Don't Get All Of My Contract Money?!"* 8 SPORTS LAW. J. 101(2001).

TORTS

Jeff Kessler. *Note. Dollar Signs On the Muscle... And The Ligament, Tendon, and Ulnar Nerve: Institutional Liability Arising from Injuries to Student-Athletes*, 3 VA. J. SPORTS & L. 80 (2001).

Brian James Mills. *Football Helmets and Products Liability*, 8 SPORTS LAW. J. 153 (2001).

Entertainment Law Bibliography

COPYRIGHT

Daniel J. Gifford. *Innovation and Creativity in the Fine Arts: The Relevance and Irrelevance of Copyright*, 18 CARDOZO ARTS & ENT. L.J. 569 (2000).

Aaron Johnson. Note. *Pirates In Cyberspace: The Copyright Implications Of ...* (A & M Records, Inc. v. Napster, Inc., 114 F. Supp. 2d 896, N.D. Cal. 2000.) 80 NEB. L. REV. 125 (2001).

ENTERTAINMENT

Gary E. Devlin. Comment. *The Talent Agencies Act: Reconciling The Controversies Surrounding Lawyers, Managers, And Agents Participating In California's Entertainment Industry,* 28 PEPP. L. REV. 381 (2001).

MOTION PICTURES

F. Jay Daugherty. *Not A Spike Lee Joint? Issues In the Authorship of Motion Pictures under U.S. Copyright Law,* 49 UCLA L. REV. 225 (2001).

MUSIC

Daniel J. Gervais. *Transmissions of Music on the Internet: An Analysis of the Copyright Laws of Canada, France, Germany, Japan, the United Kingdom, & the United States,* 34 VAND. J. TRANS. L. 1363 (2001).

Jennifer Kuan. *The Phantom Profits of the Opera: Nonprofit Ownership in the Arts as A Make-Buy Decision,* 17 J.L. ECON. & ORG. 507 (2001).

Tamara Milagros-Woeckner. Comment. *Karma Or Golden Opportunity?: A New Business Model For The Music Industry Launching Into Cyberspace*, 30 SW. U. L. REV. 295 (2001).

B.J. Richards. Note. *The Times They Are A-Changin': A Legal Perspective On How The Internet Is Changing the Way We Buy, Sell, and Steal Music*, 7 J. INTELL. PROP. L. 421 (2000).

Kathryn Starshak. Comment. *It's The End of the World as Musicians Know It, Or Is It? Artists Battle the Record Industry and Congress To Restore Their Termination Rights in Sound Recordings*, 51 DEPAUL L. REV. 71 (2001).

Sharonda Williams. Comment. *The Digital Millennium Copyright Act And The European Copyright Directive: Legislative Attempts To Control Digital Music Distribution,* 3 LOY. INTELL. PROP. & HIGH TECH. J. 35 (2001).

SYMPOSIA

Symposium: A Critical Legal Perspective on Entertainment: Sports, Sex, and Identity, 4 J. GENDER RACE & JUST. 159 (2001).

Symposium: Law and Popular Culture, 48 UCLA L. REV. 1293 (2001).

Student Writing Contest

The editors of the TEXAS ENTERTAINMENT AND SPORTS LAW JOURNAL ("Journal") are soliciting articles for the best article on a sports or entertainment law topic for the fifth annual writing contest for students currently enrolled in Texas law schools.

The winning student's article will be published in the Journal. In addition, the student may attend either the annual Texas entertainment law or sports law seminar without paying the registration fee.

This contest is designed to stimulate student interest in the rapidly developing field of sports and entertainment law and to enable law students to contribute to the published legal literature in these areas. All student articles will be considered for publication in the Journal. Although only one student article will be selected as the contest winner, we may choose to publish more than one student article to fulfill our mission of providing current practical and scholarly literature to Texas lawyers practicing sports or entertainment law.

All student articles should be submitted to the editor and conform to the following general guidelines. Student articles submitted for the writing contest must be received no later than May 15, 2002.

Length: no more than twenty-five typewritten, double-spaced pages, including any endnotes. Space limitations usually prevent us from publishing articles longer in length.

Endnotes: must be concise, placed at the end of the article, and in Harvard "Blue Book" or Texas Law Review "Green Book" form.

Form: typewritten, double-spaced on 8½" x 11" paper and submitted in triplicate with a diskette indicating its format.

We look forward to receiving articles from students. If you have any questions concerning the contest or any other matter concerning the Journal, please call Andrew T. Solomon, Professor of Law and Articles Editor, Texas Entertainment & Sports Law Journal, at 713-646-2905.

Notice:

The Journal will provide space for attorneys who are willing to provide their services, such as contract review or consulting, to entertainers, artists, athletes, etc., free or at a reduced fee. Space is limited and we will endeavor to include as many insertions as space permits. The Journal assumes no responsibility or liability for the services provided nor makes any representation concerning the persons providing the legal services.

ENTERTAINMENT & SPORTS LAW SECTION
of the STATE BAR of TEXAS
MEMBERSHIP APPLICATION

The Entertainment & Sports Law Section of the State Bar of Texas was formed in 1989 and currently has over 500 members. The Section is directed at lawyers who devote a portion of their practice to entertainment and/or sports law and seeks to educate its members on recent developments in entertainment and sports law. Membership in the Section is also available to non-lawyers who have an interest in entertainment and sports law.

The Entertainment & Sports Law Journal, published three times a year by the Section, contains articles and information of professional and academic interest relating to entertainment, sports, intellectual property, art and other related areas. The Section also conducts seminars of general interest to its members. Membership in the Section is from June 1 to May 31.

To join the Entertainment & Sports Law Section, complete the information below and forward it with a check in the amount of $25.00 (made payable to ENTERTAINMENT & SPORTS LAW SECTION) to Evan Fogleman, Treasurer, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

NAME: _____

ADDRESS: _____

_____

_____

BAR CARD NO. _____

STATE BAR OF TEXAS
P. O. Box 12487, Capitol Station
Austin, Texas 78711

NON PROFIT ORGANIZATION
U. S. POSTAGE
PAID
PERMIT NO. 1804
AUSTIN, TEXAS