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CHAIRMAN'S REPORT

One of the best things our section has to offer is the Entertainment Law Institute. This year's presentation, our Twelfth Annual, will be held on October 11-12 in Austin at the Omni Hotel. *Legal and Business Aspects of the Film and Music Industries* presents practice-expanding opportunities for us through networking, its correlation with the Austin Film Festival and, of course, substantive CLE (11.5 hrs. with 2 hrs. of ethics.) There will also be a party, live music included. Entertainment and sports lawyers — and especially their clients — must have parties.

We also must have a commitment to support the Entertainment and Sports Law Section. In Texas, where there's probably a real estate or family law seminar somewhere on any given day, now is the time to take advantage of an opportunity for which we normally have to travel to New York, Nashville, or Los Angeles. As perennial planning chairman of this event, entertainment law practitioner Mike Tolleson orchestrates (and does most of the work for) this event, and more people need to utilize it.

I also encourage each of you to tell me what you would like to see the section doing in the months and years ahead. Included with your suggestions I hope will be some of your time devoted to making those things happen.

Email me at lawyerfogelman@aol.com. See you in Austin.

Evan M. Fogelman
Chairman

UNDER CONSTRUCTION: The Entertainment & Sports Law Section is constructing a new website to better serve members of the Section. Though the site is not yet complete, we hope to add substantive content in the near future to provide a valuable resource for Section members.

The website address is: www.txesl.org

To access the *Members Only Section*, Enter the following Information:

username: member

password: 0000txesl

We plan to update the password in subsequent issues of the Journal, so please continue to consult the Journal for updated information.

Please send any suggestions for content for the website to June Higgins Peng at higginsj@ev1.net.

FOR THE LEGAL RECORD ...

SPORTS:

NCAA AND INSURANCE COMPANY DO THE RIGHT THING!

San Jose State football player Neil Parry underwent 20 operations and 15 prosthetics after he suffered a compound fracture on his right leg during a game during the 2000 football season. Part of the leg was amputated but the reserve defensive back rehabilitated himself to be able to play football again. However, when Mutual of Omaha said they would not cover the player if he returned, the insurance carrier reversed itself when it gained NCAA approval to modify the benefits insurance coverage resulting in Parry being available for the Sept. 28, 2002 home opener against the University of Texas at El Paso. Jack Weekly, Mutual of Omaha Chairman and CEO, in seeking the NCAA's approval for the catastrophic insurance coverage modification termed it "[A]" extraordinary case ..." Former President Bill Clinton, when informed of Parry's case, vowed to attend the Spartan's opening game in which Parry was scheduled to play ...

PARENTS v. TEXAS YOUTH FOOTBALL IN THE COURTROOM!

Houston 61st District Court Judge John Donovan was asked to penalize Katy Youth Football because the league purportedly changed its rules regarding 5th and 6th grade players. The lawsuit, brought by the attorney-father of an 11 year old 5th grader, claimed that the 75 pound boy was switched from a grade school-level team to a junior high school-level team. Claiming that the payment of the $110 league registration fee was a contract, the boy's parents alleged that the league changed its rules from the May registration, when it assigned players by grade, to the August implementation, when it assigned players by age. The parents of the 5th grader, who turned 11 in August 2002, argued that the rule change affected their child and approximately 85 other 5th graders who were forced to play with bigger players, i. e., 6th graders. When an emergency coaches' meeting was held to discuss the rule change, armed security and identification were required. No lawyers were allowed. The 5th grader's father was quoted as saying "Boys grow big-time in that year [between] 11- and 12-year olds and some of them are up to 160 pounds." ...

THE FRUITS OF CHEATING!

Finding academic fraud, and recruiting and eligibility violations, the NCAA banned the University of California at Berkley's football team from playing in a 2002-03 bowl and placed the program on 5 years probation. The program would also lose 9 scholarships, and the vacation of the records of the 2 athletes who were alleged to have participated illegally. The University said it would appeal ... The University of Arkansas acknowledged an overpayment by a booster/employer to a player after a joint inquiry by the school and the NCAA. Chancellor John White implemented additional corrective and punitive measures following the findings, deemed minor, which were violations similar to conclusions reached in a previous inquiry conducted 2 years ago. The University extended an existing football scholarship penalty from 2 years to 4 years (resulting in only 83 scholarship being awarded through 2004 and a loss of 8 scholarships in the year 2004-05) and also imposed a 1 year penalty on its basketball program (resulting in 8 vs. 12 scholarships for 2002-03 and a loss of 1 scholarship for the year 2003-04) ...

ENTERTAINMENT:

HOUSTON, TEXAS, HOME TO INTERNATIONAL CONSPIRACY ACTION:

Alleging a conspiracy between the actor's son, Mario Arturo Moreno Ivanova, and the attending physician, Dr. Victor Rivera—deputy chief of neurology for Baylor College of Medicine, nephew Eduardo Moreno Laparade filed suit in Houston District Court. Ivanova was the only child of Mexican actor Cantinflas (whose real name was Mario Moreno). Laparade and Ivanova were in a legal fight over the rights to 39 films in which the famed Mexican actor starred. Cantinflas, who achieved stardom in the U. S. as well as Mexico, died of lung cancer in 1993. However, Dr. Rivera, who attended to Cantinflas while he was a patient at Houston's Methodist Hospital, testified that the famed actor was not legally competent when he purportedly signed over the rights to the films to Laparade. The Houston-based 1st Court of Appeals, after reviewing the 1999 final judgment, favored the doctor in what Rivera's appellate lawyer Russell Post considered "More than 95 percent of the case ..." Jack G. Carnegie, the nephew's appellate lawyer, termed the action an effort to "[C]lear his name." Prior to reaching the Texas District Court, the dispute between the son and the nephew's involved courts in California and Mexico, with the nephew being jailed by the Mexican attorney general's office. The 2002 appellate court decision sent the partial summary judgment to the District Court on the conspiracy issue ...

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HOUSTON BASED RAP MUSIC STAR HEADED TO THE BIG HOUSE:

Rapper Carlos Coy, better known as South Park Mexican, was held without bail and finally convicted of sexually assaulting a 9 year-old girl. Defense lawyer Chip Lewis and prosecutor Lisa Andrews were opposing attorneys in State District Judge Mark Kent Ellis's courtroom involving the co-founder of Houston based Dope House Records. The 31-year old Coy, was found guilty of aggravated sexual assault of a child and sentenced to 20 years to life, had been an ascending star in rap music and had his most recent album released in August, 2002 ...

COPYRIGHT POLICE VS. CHINESE PIRATES:

The Recording Industry Association of America (RIAA), representing 13 record companies, took on AT&T Broadband, Cable & Wireless, Sprint Corp. and World Com's UUNet to shutdown the Listen4ever website. The Chinese website was charged by RIAA with distributing pirated music in violation of provisions of the 1998 Digital Millennium Copyright Act. After the site discontinued operations, the lawsuit was dropped. RIAA threatened to revive the lawsuit if the website appeared under a new name or at a new location ...

ON-LINE FREE MUSIC VS. ON-LINE PAY MUSIC:

After winning in the courtroom, MusicNet (a joint venture of software firms RealNetworks, AOL Time Warner, Bertelsmann and EMI Group) and Pressplay (a joint venture of Sony Music Entertainment and Universal Music Group), the leaders in pay music sites, now turn their attention to payment strategies and online royalty rates. After spending their money for lawyers to shut down free music-swapping services, and despite the fact that free services continue to attract millions of users, the LA based music firms are aggressively marketing pay music sites. The strategy is to build on-line music libraries which will allow customers access to music from the five major recording companies. Pressplay appears to be ahead in the effort after its inclusion in Microsoft's test version of its latest Windows Media Player. MusicNet chief executive Alan McGlade observed "... [O]ur services will improve and the free sites will decline." ...

OF CRIME AND CRIMINALS:

Who can broker media deals about crime and criminals? Texas law allows seizure of proceeds from such deals. Other states have such laws. Are the so-called "Son of Sam" laws in jeopardy? The case of Andrea Pia Yates, convicted of drowning her 5 children, may be on the verge of "[O]pening Pandora's box ..." states Andy Kahan, director of the Houston Victims Assistance Center. After Yates signed over her movie and publication rights to her Houston attorney Gorge Parnham, Kahan asked the Texas Attorney General about the Texas law similar to the 1977 New York law that prevented serial killer David Berkowitz from making money from his story. The Texas AG's office responded that Kahan had no standing to request an opinion in the Yates case. Kahan then turned to the Harris County District Attorney to determine whether Yates' lawyer can legally profit from the signing. While Texas law allows seizure of income that a person accused or convicted of crime or their representative or assignee received from a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, or live entertainment in which the crime was re-enacted, is the tide changing? Several recent events of note:

1) Attorney Parnham has been quoted as having discussed the Yates signing with the State Bar of Texas and received a response that the arrangement was legal and ethical;

2) A Washington State Court of Appeals ruled that a school teacher convicted of child rape for a relationship with a 6th grader who fathered 2 of her children, could earn royalties from books, movies and interviews; and

3) The California Supreme Court ruled that one of the kidnappers of Frank Sinatra, Jr., could sell his story for profit.

The Washington, California, and New York laws were found to violate state and federal free-speech rights. Bill Delmore, of the Harris County District Attorney's office, is examining whether i) Yates can sign the deal with her lawyer; ii) whether Yates' family can profit from a media deal or sign over their rights; and iii) whether the Texas law is constitutional. Sidney Buchanan, professor at the University Houston Law Center, stated "If litigation proceeds from the constitutionality of the Texas "Son of Sam" law, ... it probably would meet the same fate as New York's [law]." ...

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

Note that the Entertainment and Sports Law Section's website is under construction and will be available soon.

Sylvester R. Jaime—Editor

POLICY, PATRIARCHY, AND PROGRESSIVE: MINDSETS OF WOMEN IN INTERCOLLEGIATE SPORTS

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Key terms and concepts: Student-athletes, career transition, athletic identity, self-schema, females, and gender.

C. Keith Harrison is a faculty member at the University of Michigan in the Division of Kinesiology of the Department of Sports Management and Communication. Harrison studies race relations, sports in higher education, and the effects of media images on African American male student-athlete career aspirations and desires. Harrison is founder and director of the Paul Robeson Research Center for Academic and Athletic Prowess which examines the impact of popular culture on the mindsets of student-athletes at all levels. Harrison would like to dedicate this article to his parents Claude and Maxine Harrison, to former colleague B. Patrick Maloy, and to the following scholars that have influenced him to examine gender in his research: Yevonne Smith, Sue Durrant, Mary Lou Cappel, and Leslie Roman.

Suzanne Malia Lawrence is a faculty member at Coker College in the Physical Education and Sport Studies Department. Lawrence focuses her research on social justice issues in sport, career transition of athletes, and the experiences of African American athletes. Ms. Lawrence implemented a sport psychology concentration at Coker, which is unique to the southeast region on the undergraduate level. Ms. Lawrence dedicates this article to her family for their endless support. She would like to thank Dr. Craig Wrisberg her advisor at University of Tennessee. To her parents Terry and Dee Dee Lawrence, her brother Brent Lawrence, and grandmother Helen Hovde, your love and support is much appreciated.

Acknowledgments

Thanks to all the Division II student-athletes in the study. To the entire faculty, staff, coaches, and administrators at the selected southeastern university, your support is most appreciated. This study was also supported by the University of Michigan and the following organizations and individuals: Dr. Lester Monts, Vice-Provost for Academic Affairs, the Division of Kinesiology, Department of Sport Management, and the Paul Robeson Research Center for Academic and Athletic Prowess laboratory team.

Introduction

Previous studies of intercollegiate athletics and women focus on Title IX policy implications (Birrell, 1987/1988; Zimbalist, 1999), women's division platform and special needs for women (Sack & Staurowsky, 1998), gender equity (Zimbalist, 1999), equal opportunity for athletes (Zimbalist, 1999), equal pay for coaches (Zimbalist, 1999), the effects of gender on academic performance (Sperber, 1990), the effect of the dismantling of the Association of Intercollegiate Athletics for Women (AIAW) (Sperber, 1990), and the examination of female student-athletes' experiences, attitudes, and feelings (Meyer, 1990).

Brown, Glastetter-Fender, and Shelton (2000) suggested a need for qualitative design to better understand the multidimensional and complex aspects of the career – and identity- development processes of student-athletes. Doyle (1986) found female student-athletes choose a college on a different set of criteria than men. Females explore the programs of study, major curriculum, and the atmosphere while males examine the scholarship, atmosphere, and the reputation of the athletic teams. The current study qualitatively examines female student-athletes' responses to a visual narrative of a student-athlete (Will Brooks) that has made the transition out of sport successfully. The visual narrative is one portion of the Life After Sports Scale (LASS**).** Self-schema (Markus, 1977) and the "Trickle Down Theory" **(**Stoll, Beller, & Herman, 2002) lend themselves to the current research. This study also synthesizes quantitative empirical findings from the LASS.

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Females and Self-Schemas in Sport

Fiske and Neuberg (1990) defined schema as a cognitive structure that contains knowledge about expected attributes of a certain category as well as links among these attributes. The individual cognitive structures that come together to create the self-concept are called "self schema" (Harrison, 2001; Markus, 1977). These self-schemata serve as catalysts for developing skills and abilities viewed as appropriate for one's social group.

Traditionally, women have been subjected to sex role stereotyping and sex role issues, both of which affect their development. Powerful stereotypes in regards to the woman's role in the house and the primary care giver for children have eroded society and influenced women's career decisions and aspirations. Stereotypes can affect not only developmental issues such as choosing a career path but also participation and socialization in sport. Female student-athletes' identities as athletes can be influenced by their self-schema and thus affect their sport socialization and sport participation patterns. Traditionally, there were not any opportunities for women to participate in sports. When woman began playing sports they played basketball, tennis, and track and field.

Harrison, Lee, and Belcher (1999) found support that boys and girls are highly influenced by constructs of race and gender when participating in athletics. Female student-athletes' retention rates in higher education have been consistently higher than males (Birrell, 1987/1988). Female student-athletes' graduation rates in higher education have been equal to or surpassing those of male student-athletes (Carlson, 1986; Henschen & Fry; 1986; Purdy, Eitzen, & Hufnagel, 1982). For this study's purpose, women in intercollegiate sports tend to fit into a category of academic and athletic prowess. This is the impetus for the current study, to investigate how women student-athletes will associate with a visual stimulus that affirms their schema as scholars and "ballers" (Harrison & Lawrence, in review). The female student-athlete focus will be discussed in the following section on "Trickle Down Theory" (Stoll et al., 2002).

"Trickle Down Theory": Women Student-Athletes and Balanced Mindsets

Stoll et al. (2002) have recently suggested that during the rise of the commercialization and professionalization of women's competitive sport that women have increasingly lost sight of their educational endeavors. This phenomenon that women are losing their focus on academic accomplishments is what researchers term the Trickle Down Theory. These researchers focus on women's high profile basketball (Division I), which is the next highest division affiliation from the current sample. The current data comprises the Division II student-athlete, and primary researchers contend that *women* at any level, as student-athletes are more focused on academics and long-term planning. Based on the dynamics of gender discrimination in society and historical barriers to opportunities in sport, primary researchers contend that the student-athlete visual narrative affirms the ideology of the dominant female student-athlete experience. This leads to the central research questions: a) Do female student-athletes spend time planning and preparing for their life after sport?; b) Do female student-athletes have aspirations to play professional sport?; c) What were the primary thoughts experienced by the female student-athletes after viewing and reading the career transition profile?; and, d) What are the differences between women and men in terms of how they perceive sport and societal opportunities?

The Study

Qualitative analysis involves an immersion in the details and specifics of the data to discover important categories, dimensions, and interrelationships. Such an exploration begins by asking genuinely open questions rather than by testing theoretically derived hypotheses (Patton, 1990, p. 40). The current study utilizes the qualitative approach along with visual elicitation. Visual elicitation is a technique of interviewing in which photographs are used to stimulate and guide a discussion between the interviewer and the researcher(s) (Synder & Kane, 1990). This method has been exhausted by anthropologists, but has been used little by sport science researchers (Curry, 1986).

Acknowledging the salience of cultural artifacts and images in sport, the use of photographs is pertinent to study the attitudes and meanings people associate with sports (Gonzalez & Jackson, 2001). Johnson, Hallinan, and Westerfield's (1999) study titled, *Picturing Success: Photographs and Stereotyping in Men's Collegiate Basketball*, built on two previous studies, one conducted by Synder and Kane (1990) who explained, "Photographs may be used as a research tool to evoke thoughts, reactions, and feelings from individuals about some aspect of social life" (p. 256). Also, Cauthen, Robinson, and Karauss (1971) claimed, "The use of pictures is the best because it allows the most latitude in determining the content of the stereotype" (p. 105).

Participants consisted of 64 female student-athletes from a southeastern Division II NCAA institution. Participants (N=64) came from six different sports: basketball, soccer, volleyball, cross country, tennis, and softball. Male student-athletes (N=79) in the study were only used as a comparison group with survey items in the study, their qualitative responses are not considered for this study.

Participants contributed to this investigation on a voluntary basis. Each participant received a six-course dinner as part of his/her incentive fees for participating in the study. Initially, participants were informed of their rights to confidentiality by reading and signing the consent form. In the first domain of the LASS, participants had five minutes to read the student-athlete profile (See Figure 1.1). Then, they were instructed to write in response to the profile for five minutes. Finally, participants were instructed to complete the additional 57 items of the LASS. The remaining items entail 54 quantitative items, and three sentence completion items. The reliability for these remaining 54 items will be explored in future papers. A pilot study was conducted specifically for the visual elicitation portion of this study. Evidence was found that the visual elicitation technique would be reliable for qualitative theme and narrative collection. Five student-athletes and five intercollegiate athletic administrators participated in the pilot study.

Figure 1.1

STUDENT-ATHLETE PROFILE

Please write your thoughts based on the former student-athlete profile. Respond to his athletic, academic, and bio story. Please relate this profile to your personal reality as a student-athlete. You have 5 minutes to express your personal feelings about this profile.

Above - James is pictured in action protecting the quarterback. Below - A photo of a debonair James in 1995 with an award winning smile.

Former Student-Athlete Profile:

Will James Brooks

Will James Brooks is a former student-athlete now working for Whitehall-Robins in Dallas, Texas. James, an offensive lineman, was the starting left guard for the 1995 Aggie Football team that won the Alamo Bowl. Prior to the 1995 season, James was a member of three A&M teams (92,93,94) that reached the Cotton Bowl. Included in those seasons were two Southwest Conference Championships in 1992 and 1993.

While at A&M, James received a Bachelor of Science degree in Agriculture Economics (May '96). He made the Dean's List in 1993 with a 4.0 GPA. James was very active as a member of several organizations. He was involved with Southwest Black Student Leadership Conference (SBSLC), elected SBSLC director of hospitality and entertainment, directed the SBSLC career fair, SBSLC guest speaker host, Fellowship of Christian Athletes (FCA), and Aggie Athletes Involved (AAI).

Upon graduation in 1996, James began working for Armour Swift-Eckrich. He was an account manager for Randall's in Houston, Minyard's in Dallas, and Sack N' Save in Dallas. Currently James is working for Whitehall-Robins as a Pharmaceutical Sales Manager and is based in Dallas. He began working for Whitehall-Robins in 1998 and enjoys working for them. James enjoys managing his own territory, which includes managing brokers throughout the southwest area. He also enjoys developing quarterly business plans concentrating on growth for Texas, Louisiana, Arkansas, and New Mexico.

James is a family man who enjoys spending time with his 19-month-old son Will James Brooks III and his wife. He also enjoys traveling with his wife who works in the airline industry. Outside of his family, James continues to stay in shape by "shooting hoops" and lifting weights. Occasionally getting the opportunity to hang out with a few of his former teammates gives him the opportunity to reminisce about the old times.

When asked what advice he would give to current Aggie athletes James stated, "Find a career which best suits your personality. You'll achieve greater success, with a since of pride in the quality of work you produce. Also, dedicate yourself to learning on a year round basis, most companies seek employees that are ambitious and eager to learn."

5 http://sports.tamu.edu/career

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Life After Sports Scale

This scale was developed and constructed based on relevant literature and previous instruments that investigated athletic identity issues in sport psychology and sport sociology. Participants completed the Life After Sports Scale (LASS), a 58-item inventory utilized to examine seven different domains that influence perceptions of the career transition process. The seven domains are as follows: 1) open-ended and visual narrative; 2) career transition; 3) athletics; 4) academics; 5) social; 6) sentence completion; and 7) background information. The scope of the current study encompasses the first domain in which participants were elicited with a visual and narrative representation of a student-athlete's transition process. Participants were asked to respond to the student-athlete (Will Brooks) profile by relating it to their own lives as student-athletes. Additionally, they were directed to offer their thoughts and feelings in response to reading the profile. This study also encompasses empirical comparisons of female and male responses to LASS items.

Data Analysis

According to Flick (1998), "Narrative analyses start from a specific form of sequentiality" (p. 204). Participants were presented with a visual elicitation and student-athlete profile (see Figure 1.1) and instructed to offer an open-ended response to the profile. After the written responses to the profile were collected, they were transcribed into a hard copy (text) for data analysis. An investigative team, which consisted of four individuals trained in qualitative research methodology two of which were the primary researchers, was utilized throughout the data analysis process.

Hierarchical content analysis, as suggested by Patton (1990), was utilized throughout the analysis. Following transcription, each investigator read each of the participants' transcripts in order to get a sense of the student-athletes' experiences. Each investigator independently identified raw-data themes that characterized each participant's response. Raw-data themes are quotes that capture a concept provided by the participant. Then, the investigative team met to discuss the transcripts. The primary purpose of this meeting was to interpret and identify major themes. Raw data themes were utilized in conducting an inductive analysis in order to identify common themes or patterns of greater generality. Themes were derived from all of the transcripts and attempts were made to interpret commonalties among the experiences described in each of the transcripts (Patton, 1990). Major themes and subthemes were identified across transcripts and support for each theme was located in each of the transcripts (Patton, 1990).

Finally, utilizing the themes that were previously identified, transcripts were coded and categorized by a trained researcher. Meaning units associated with each theme were identified in each of the transcripts in order to determine the number and percentage of participants that responded within each of the seven major themes.

To examine the responses to the different measures on the LASS primary researchers used the Statistical Package for the Social Sciences (SPSS). A cross tab and Chi-square test were run to discern differences between women and men on the quantitative items of the LASS.

Qualitative Findings

The following seven major themes emerged which are descriptive to the female student-athletes' perceptions, thoughts, and feelings concerning the visual representation of the career transition profile: Inspiration, Academic and Athletic Prowess, Professional Career Choice, Work Ethic, Educational Emphasis, Athletic Lessons, and Family Devotion. Four out of the seven themes (Inspiration, Work Ethic, Educational Emphasis, Athletic Lessons) involved participants' ability to identify with the profile and relate it to their life experiences as student-athletes.

Inspiration

The first theme, Inspiration, involves the student-athletes' positive feelings and self-reflective thoughts in response to the successful transition made by the student-athlete (Will Brooks). This theme describes female athletes' feelings of admiration and aspiration to succeed in life. It also depicts the inspiring feelings that athletes experience in regards to making the transition, consider these examples from participants:

> As a student-athlete I am inspired by his ability to be a great athlete and to be taking academics seriously! Which is what I am also trying to accomplish for myself (80).

> I believe Will Brooks is a very inspirational student-athlete. He not only was involved in extra-curricular activities, including clubs and a time-consuming sport like football, but he was able to stay ahead academically. Very impressive man that I now have full respect for. Not only does he have ambitions athletically but he obviously had a plan for a promising career that he is able to support a family on (130).

A few participants acknowledge the importance of having role models.

> It's impressive to read about a student-athlete who's done so well for himself. I hope people look up to him as a positive role model. As an athlete I know how hard it is to not only dedicate yourself to a sport but also to academics (34).

> It is vital to success in our future after graduation that we (student-athletes) lead a well-rounded life. Will James Brooks was a prime example of how athletes should look to lead their lives (56).

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Another aspiring student-athlete compares herself to Brooks.

> I'm pleased to see that James Brooks has done well for himself. I believe that I myself might one day become a great athlete (020).

Participants (19/64 = 30%) experience a sense of inspiration and realize the significance of having role models.

Academic and Athletic Prowess

The second theme, Academic and Athletic Prowess, describes student-athletes looking to Will Brooks (the student-athlete) in the profile as a role model and also using him as a motivator. Participants express the significance of both academic and athletic success. Participants also experience self-reflection in response to the profile. One student-athlete recognizes both academic and athletic achievements made by Brooks,

> I think it's great to read about such great achievements especially from an African-American student-athlete. This shows that an athlete had to express his talent in the classroom as well as on his or her field of competition. His profile somewhat correlates with my student profile academically. It's also great to hear that he loves to spend time with his family and is successful in his work environment (035).

Another participant related the profile to herself,

> Brooks has proven that he had dedicated his life to succeeding. As an athlete he tried to reach and overcome each task that was put in front of him. In academics, he made sure that he graduated with honors so he has no excuse of getting the best jobs. With his family he made sure he changed everything for the positive. Just like Brooks I to am working on being the best I can be in anything I put my mind to (057).

Participants realize the hard work put forth both on the field and in the classroom, consider the following quotes,

> I think he sounds like a great athlete and a good student. Based on his involvement in football, his schoolwork and the extracurricular clubs, etc. He seems to be a dedicated student-athlete (46).

> He is a very impressive man. He was able to achieve a lot outside of his sport. It impresses me that he had such a high GPA while being a college athlete because I know it is very hard to be very committed to both college sports and college classes. Also the fact that he was involved in many other curricular activities shows me that was an extreme overachiever (51).

> He had succeeded, and although that he was an athlete (spending a lot of time for practice) he was a good student and was able to organize his time in such a way that he had also time for some organization. He was a good athlete and student (30).

30% (19/64) of the participants mention both the academic and athletic achievements in the career transition process.

Professional Career Choice

The theme of Professional Career Choice consists of participants' reality concerning playing professional level sport and their aspirations and/or lack of hope to compete professionally. It involves participants' recognition of choosing a career that best fits their personalities.

> I feel that this student-athlete is one of very few. Too many student-athletes have dreams to go pro yet 90% will never make it. It was a great achievement for him to earn his degree and do it so well. He sounds as if he has everything he wants in life which is exactly what I want. I'm sure he had to work so hard at his studies and sport to achieve what he has and I intend on doing the same. A back-up to not being able to go pro is what college is for. I think student-athletes forget that this is a main reason for going to school. It's not just about the game, it's about getting your education, and this man is the great example of student-athletes today (14).

One participant reports aspirations to play professional sport.

> I'm pleased to see that James Brooks has done well for himself. I believe that I myself might one day become a great athlete. I would hope to go pro one day, but I'm not sure that playing at a Division II school will help me to do so. I was thinking of transferring, but because of the academics here I've chosen to stay. I believe that my brains will outlast my physical capabilities one day. I love sports but I'm realistic. He has a great life and I'm happy for him (20).

Another example explains that finding a field that is enjoyable will lead to a future job.

> After he graduated I think that its great for him to do what he loves as a career. He seems to have accomplished a lot in his life. I think he's right when he said, "Find a career which best suits your personality". That is very true, in life I know I want to work hard and graduate so I can wake up every morning and go to a job I enjoy (36).

The following participant recognizes a lack of hope to play professional sports.

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> It is important to be successful on and off the field, especially when there is not hope for continuing the sport of your profession. Even though it is hard to keep up your grades and focus on your sport. I rarely have time for a social life, outside of studying and practicing. I am hoping this hard work will not go unnoticed when applying for dental school and interviewing for a job. His hard work paid off for him in the long run (86).

Female student-athletes (16/64 = 25%) report the importance of career choice and acknowledge the advice given in the profile.

Work Ethic

The fourth theme, Work Ethic, involves the student-athletes' self-reflective thoughts in response to the successful transition made by Will Brooks (the student-athlete). This theme describes female athletes' recognition and value of hard work in the career transition process as the following quotes explain,

> Will Brooks knew that there was a life outside of football and that he should work hard in school. He became involved in activities in college such as FCA & AAI. His strong work ethic made him a successful student that carried over into his professional career. He understood what it takes to be successful on and of the field (40).

> He has accomplished quite a few things. He was striving athletically and academically. He obviously worked hard at what he set his mind to and accomplished it. He found a job he was happy with, that's great! (41).

Another participant acknowledges the importance of working hard toward goals.

> That was a great story on the former athlete. Some people probably sit and dream of becoming as successful as he did. It seems like he worked really hard to achieve his goals and it worked out for him (49).

The following participant realizes the strong work ethic displayed in the profile.

> He took advantage of everything college had to offer. Without knowing his personality, I would have to believe that he has an incredible work ethic (67).

Participants recognize the hard work displayed in the profile, 22% (15/64) mention the necessary dedication and determination in the career transition process.

Educational Emphasis

The third theme, Educational Emphasis, involves the participants being able to self-reflect and identify with the necessary career transition process. This theme involves participants' which commend the academic excellence portrayed by the student-athlete in the profile. Student-athletes report the academic emphasis that was depicted by the athlete in the profile, as the following comments illustrate:

> I find that by being a student-athlete it motivates me more to do good in the classroom. I don't want to be a "dumb jock" so I work harder. I'm also involved with a lot of campus activities/clubs. It makes me a better person – I can relate to all types of people (76).

> Will was obviously a hard worker. His hard work and determination paid-off on and off the field. He proves not all athletes are idiots. I too work hard and find athletics help discipline (26).

Another student-athlete experiences a desire to be the type of athlete that was portrayed in the profile.

> Reading the student-athlete profile, I've came to the conclusion that if you're an athlete, you should not only get it done on the field and court, but in the classroom as well. Education plays a very important role in an athlete's life. You can have all the talent in the world, but if you don't have any book knowledge, it will be hard on you in the long run. It's good that James got his degree, because you have something to fall back on. Those who are trying to go pro and rely on their talents to make money, have to be aware that they could get hurt or anything. I plan to graduate from here in 2004. I love the game of basketball, but I refuse to depend on basketball, and basketball only to make a living. If you have an education, I'm more than likely to get the job that I prefer. I encourage any athlete to try and get the best education possible cause it will pay off in the long run (68).

Another example acknowledges the great accomplishment in the classroom depicted in the profile.

> James academic abilities being able to accomplish a 4.0 GPA while playing a college sport just shows that a real athlete also does well not only on the playing fields but more importantly in the classroom (044).

Participants recognize the significance of academic prowess. The theme of Educational Emphasis consists of 13% (8/64) of participants realization of great classroom accomplishments.

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Athletic Lessons

The theme Athletic Lessons involves the participants being able to self-reflect in their responses. In this theme, participants attribute success in life to their athletic experiences. Participants see the significance of competing in sports and realize the valuable lessons they have learned from sport. The following participants explain,

> For me, as a student-athlete, I have to mange my time carefully and perform well in the classroom to be able to play my sport. My academics come first and softball in second. I feel that it is easier for me to manage my time while I am in season rather than when I am not in season. Because I have more deadlines and stay on track much better (120).

> I think athletics is really important when you're in college. It teaches competition and how to manage your time. It teaches dedication and it teaches you to love what you do or find love in what you are doing. Sports help define your personality and social skills (138).

One participant realizes that athletic experience can lead to career success.

> I think that his experience in sports helped him succeed in his job. Sports help people want to become successful in everything they do. I take my will to do good on the field and apply it to everything I do. Sports also teach dedication, hard work, and perseverance. By having these qualities, I can become successful at everything I try (83).

Another participant explains how being on a team will prepare her for the world.

> I work hard in the classroom and also very active on campus. Being on a team gives me reality of what's to come in the real world (75).

Exactly 11% (7/64) of the participants report the valuable lessons that can be gained through athletic participation.

Family Devotion

The final theme of Family Devotion in which participants recognize the importance and reality of having a family. For example, one athlete was aware of family devotion,

> James was also a man of family devotion. He enjoyed being with his wife and son. It think his family was his main choice of choosing the right career for him. I think by reading this profile; it gives me greater pleasure to follow my dreams because with a little time and effort, anything is possible (87).

One particular student-athlete was able to self-reflect and explain how she could follow in Brooks' footsteps.

> Overall I think James is a great man because he is one of few men who actually care about his future and takes care of home, meaning keeping his family happy as well. With determination such as James' one, I feel more athletes would be better off because most go to school for sports and not an education. I feel I could follow James' footsteps and be successful one day (044).

Another participant reports success in both career and family.

> It's also great to hear that he loves to spend time with his family and is successful in his work environment (35).

Recognition of family focus was expressed by several participants as the following comments illustrate:

> James can still find time to spend time with his wife and baby (53).

> With his family he made sure he was and is the best father and husband. Even if his childhood was rough he made sure he changed everything for the positive. Just like Brooks I to am working on being the best I can be in anything I put my mind to (57).

A total of 11% of the female student-athletes report that the consideration of family is central to career transition.

A Woman's Worth: Quantitative Findings

The gender distribution of the sample is female (N=64) and male (N=79). A Chi-Square test showed that the type of sport played differed significantly by gender (Chi-Square=70.13, p<.001). Compared to men, women were more likely to play softball, volleyball, tennis, soccer, cross country, and participate in more than one sport. On the other hand men were more likely to play baseball, golf, and basketball than women (see Table 1).

Table 1
Sport Played by Gender

	Percent (N)	
	Female	Male
Softball	100.0 (15)	0.0 (0)
Volleyball	100.0 (6)	0.0 (0)
Tennis	75.0 (6)	25.0 (2)
Cross Country	60.0 (3)	40.0 (2)
Soccer	52.0 (13)	48.0 (12)
Baseball	0.0 (0)	100.0 (33)
Golf	0.0 (0)	100.0 (10)
Basketball	40.0 (12)	60.0 (18)
More than one sport	80.0 (8)	20.0 (2)
Total	100 (63)	100 (79)

Chi Square=70.12, p<.001
Note: The zeros indicate sports either not offered for that gender in intercollegiate sports or for men or women at the university in the present study. One female did not report which sport she participated in.

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An independent t-test was used to examine gender differences on student-athletes perception of academics, career and sport. Men were more likely than women to focus on becoming professional athletes and on their possible careers after college as professional athletes (see Table 2). Women were more likely to be focused on academics and on attending graduate school and less focused on playing professional sports after college (see Table 3).

The differences between women and men in terms of how they perceive sport and societal opportunities are represented via their quantitative answers to items on the LASS. Using the statistical package for the social sciences (SPSS) a cross tab and Chi-square test were run to discern differences between women and men on the quantitative items of the LASS.

SPSS was utilized to run a cross tab and Chi-square test to determine differences between women and men on the different measures of the LASS. These quantitative results are best presented in the following two tables (Tables 2 & 3).

Table 2
Independent t-Test Results: Items Women Scored Higher on Than Men

Women are more likely than men to…..	Significance
Think about life after sport	t=-4.46, p<.01
Believe that they will be able to pursue excellence in other non-sport related areas	t=-2.17, p<.01
Desire to excel in a non-sport related field	t=-2.28, p<.05
Feel anxious about graduating from college and becoming a former collegiate student-athlete	t=-2.90, p<.01
Have a plan for themselves once they complete their athletic involvement	t=-3.47, p<.001
Say that their number one goal as a student-athlete is to graduate	t=-4.16, p<.001
Have considered attending graduate school	t=-2.29, p<.05
Say that their high school academic prep has enabled them to be successful in the classroom	t=-3.00, p<.01
Think that their academic major is conducive to succeeding in their ultimate career goal	t=-3.24, p<.01
Say that academics play a strong role in the pursuit of their ultimate career goal	t=3.28, p<.01
Say that performing well in academics is important to them	t=-4.33, p<.01
Have specific goals solely related to academics	t=-3.35, p<.01
Engage in summer internships and or courses related to their non-athletic career	t=-3.18, p<.01
Say that their teammates take academics seriously	t=-2.96, p<.01
Say that their friends encourage them to do well in their academic courses	t=3.92, p<.01

Table 3
Independent t-Test Results: Items Men Scored Higher on Than Women

Men are more likely than women to…..	Significance
Think that their life will drastically change upon exiting from college	t=2.18, p<.05
Aspire to combine their love of sport with a professional career after competing in sports	t=3.43, p<.05
Have career aspirations to be a professional athlete	t=6.95, p<.001
Say they will stay involved in sport after college	t=3.91, p<.001
Say that due to the time demands of their sport they have not given their non-athletic career goal much thought	t=4.76, p<.001
Say that their number one goal as a student-athlete is to play professional sport	t=5.95, p<.001
Say that their desire to continue their athletic career outweighs any of their academic goals	t=5.88, p<.001
Say that their desire to continue their athletic career outweighs any of their career goals	t=4.21, p<.001

Conclusion

This study examined the timely issue of career transition while attempting as Coleman and Barker (1993) suggested the necessity of "a new paradigm and model to facilitate and incorporate research that will hopefully lead to a better understanding of student-athletes" (p. 89). Based on a majority of the themes in the current study, evidence was found that the female student-athletes connected with the visual elicitation that they were asked to respond to and experienced some new thoughts in regards to their own career transition process. In terms of the quantitative findings, results clearly indicate that women are more focused on educational development and transcending the sporting world than men. Some might argue that the "carrot" of professional sports only impact men at the Division I level versus Division IAA, II, or III. The current findings indicate that this was not the case at this Division II institution, where there has never been a student-athlete go on and play professional sport. More female and male comparisons of Division I and II academic and athletic mindsets must be investigated in future research.

The women in this study displayed both concern and focus for classroom accomplishments and sport participation which is an indication of their academic and athletic prowess. Finally, Birrell (1987/1988) suggested, "Women's athletics may provide a special kind of identification of the student-athlete role that should be marketed and promoted to alumni and alumnae" (p. 95). Alumni are graduates of universities/colleges and female student-athletes have been documented as successful graduates- this connection between academic success and successful career transition by both identities is the type of image that universities seek to cultivate and connect.

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THERE'S NO BUSINESS LIKE SHOW BUSINESS:

ADR in the Entertainment Industry

By
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What happened when LeToya Luckett and LaTavia Roberson were kicked out of Destiny's Child? What happened when Prince wanted out of his contract with Warner Brothers? What happened when New Line Cinemas named the third installment of its Austin Powers spy series, "Austin Powers in Goldmember"? What happened when a pornographic movie star said that Tom Cruise is a homosexual? And what happened when supermodel Naomi Campbell hit her assistant over the head with a telephone?

The entertainment industry is constantly plagued with disputes, but the nature of the industry dictates that the show must go on. In a business that is built on creativity, products that are time-sensitive and relationships, where its key players live in a fishbowl, alternative dispute resolution ("ADR") is a wonderful solution to the disputes that arise. This paper will explore the following: 1) the types of disputes that arise in the entertainment industry, 2) the types of ADR that are available, 3) the benefits of ADR in the entertainment industry, 4) the views of entertainment industry executives with respect to ADR, 5) the views of entertainment attorneys with respect to ADR and 6) the future of ADR in the entertainment industry.

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I. Types of Disputes in the Entertainment Industry

People in the entertainment industry face all of the same possible legal issues as any other person. E! Online News lists hot, ongoing and resolved cases involving the industry. The cases involve, but are not limited to, bankruptcy, contract disputes, copyright infringement, criminal charges, defamation, divorces, landlord/tenant disputes and ownership of likeness. There are 125 ongoing cases listed on the website, involving plaintiffs and defendants who are actors, game show participants, managers, models, musicians and production companies.[1] The following is a sample of some of the more commonly listed disputes that entertainers and entertainment executives face, chosen to illustrate the types of disputes that could be resolved by ADR.

A. Band breakups

"Band breakups are like marital breakups,"[2] says Julee Milham, an entertainment lawyer, certified mediator and certified arbitrator.[3] First and foremost, band breakups involve relationships. Like marriages, bands are made up of friends or people who have known each other for some period of time. Next, band breakups give rise to other actions. Rather than custody battles and financial settlement agreements, there are issues about who has the rights to the music, products created by the band and profits from the music and products.

For example, consider the very public break-up of the original line-up of the members of Destiny's Child. In 2000, after recording a second album, the Houston-based group suddenly had two new members. The original line-up of Beyoncé Knowles, Kelly Rowland, LeToya Luckett and LaTavia Roberson had been performing together since 1992. Luckett and Roberson were replaced after they filed a lawsuit against the group and its manager (and Beyoncé's father) Matthew Knowles, ending a seven-year relationship.[4] The original dispute reached a settlement in December 2000, but Luckett and Roberson filed a second lawsuit on February 27, 2002.[5]

B. Contract disputes

The entertainment industry centers on contracts. As a result, there are contract disputes about everything from level of creativity to level of payment. In recent history, the musical artist Prince changed his name to an unpronounceable symbol and wrote the word "SLAVE" on his cheek in protest of his contract with Warner Brothers. The cast of the television show "Friends" held the show's fate in their hands as they asked for more money per episode.

C. Copyright infringement

In an industry that relies on creativity, there are also disputes about who owns the rights to certain intellectual property, like copyrights. Copyright infringement occurs when a person claims that he has created a work that is substantially similar to the original work of another. In January 2002, MGM Studios ("MGM") alleged that New Line Cinemas ("New Line") infringed on its copyright for the movie "Goldfinger," when New Line used "Goldmember" as the title for the latest installment of the Austin Powers spy series.[6] An arbitrator's ruling barred New Line from using the title, "Austin Powers in Goldmember" for the movie and the Motion Pictures Association of America (the "MPAA") upheld the ruling.[7] The MPAA found that New Line failed to follow proper regulations in registering the title.[8]

D. Defamation

The Real Life Dictionary of the Law states the following about defamation: the act of making untrue statements about another, which damages his/her reputation. If the defamatory statement is printed or broadcast over the media it is libel and, if only oral, it is slander. Public figures, including officeholders and candidates, have to show that the defamation was made

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with malicious intent and was not just fair comment. Damages for slander may be limited to actual (special) damages unless there is malice. Some statements, such as an accusation of having committed a crime, having a feared disease or being unable to perform one's occupation, are called libel per se or slander per se and can more easily lead to large money awards in court and even punitive damage recovery by the person harmed. Most states provide for a demand for a printed retraction of defamation and only allow a lawsuit if there is no such admission of error.[9]

Recently, actor/producer Tom Cruise filed a 100 million-dollar defamation suit against Chad Slater, also known as Kyle Bradford.[10] The lawsuit alleged that Bradford "concocted stories and spread false rumors" about Tom Cruise's sexual orientation.[11] Cruise filed another 100 million-dollar defamation lawsuit against a man name, Michael Davis, alleging that Davis sent e-mails to media outlets claiming that he had proof that Cruise is gay.[12]

Another example of defamation comes from the Destiny's Child break-up discussed earlier. The second lawsuit filed by Luckett and Roberson against Destiny's Child and Sony Music alleges that they Knowles' song, "Survivor," contained "disparaging" remarks toward the two former members of the group.[13] Luckett and Roberson are seeking "a restraining order and an injunction to prevent the song from ever being played or performed again."[14]

E. Tort claims

Like all citizens, celebrities are subject to criminal laws; however, their fame and money probably make celebrities more attractive defendants in civil suits resulting from acts that break criminal laws. In October 1998, supermodel Naomi Campbell's former assistant, Georgina Galanis, claimed Campbell hit her over the head with a telephone twice, grabbed her neck and slammed her into a wall.[15] The police charged Campbell with assault.[16] Galanis filed an eight million-dollar lawsuit against Campbell alleging that the supermodel committed the tort of battery.[17]

Stories about celebrities being sued by paparazzi arise frequently. In October 1996, video cameraman, Henry Trappler of Paparazzi TV, sued Tommy Lee, of Motley Crüe.[18] Trappler claimed that Lee attacked him as he tried to videotape Lee, and then wife, Pamela Anderson.[19] Police charged Lee with misdemeanor battery, but Trappler settled his case, which alleged Lee committed assault, battery and negligence, for an undisclosed amount.[20] With all of the disputes that face entertainers and the entertainment industry, people in the industry and entertainment have started to explore the possibilities of ADR in resolving disputes.

II. Types of ADR available to the entertainment industry

There are many different types of alternative dispute resolution available to the entertainment industry. While all of the different forms of ADR are briefly explained below, the two forms of ADR most often used in entertainment-related disputes are arbitration and mediation.

A. Binding ADR

"Arbitration is a simplified version of a trial involving no discovery and simplified rules of evidence,"[21] and depending on the provisions of the contract between the parties, the resulting decision can be a binding. Both parties agree on one arbitrator, or each party selects one arbitrator and the two arbitrators elect the third forming a panel of arbitrators.[22] Arbitration hearings usually last only a few hours and the opinions are not public record. There are federal and state laws on ADR and thirty-five states have adopted the Uniform Arbitration Act as state law.[23] Therefore, "the arbitration agreement and final decision of the arbiter may be enforceable under state and federal law."[24]

B. Non-Binding ADR

Forms of non-binding ADR include mini-trials, summary jury trials, early neutral evaluation, arbitration, and mediation. In a mini-trial, attorneys present their cases before parties, or representatives of the parties that have settlement authority, a judge and a jury.[25] Summary jury trials involve a similar presentation before a judge and jury.[26] Early neutral evaluation provides a reasoned, oral evaluation of the merits of a case.[27] All of these proceedings are confidential, meaning that the documents generated during the proceedings cannot be included in court files or disclosed to the court.[28] These proceedings, even if there is no settlement, are an inexpensive means for the parties to identify the strengths and weaknesses of their cases.[29] Arbitration as described above can also yield a non-binding settlement.

Mediation is process in which a neutral facilitates a settlement between two parties.[30] Unlike an arbitrator, a mediator does not decide a case and most do not comment on the merits of a case.[31] Ms. Milham states that mediators should only suggest solutions in the form of a question such as, "Would it resolve you concerns if…."[32] Mediation is voluntary and settlement-driven.[33] The mediation process typically begins with joint conferences with both parties.[34] The mediator's role is to figure out the goals of the parties.[35] Ms. Milham says that she does this by continuing to posit solutions based on what appear to be the parties' goals, which usually roots out their actual goals if the actual goals are different.

After an initial joint conference, the mediator will usually conduct caucuses, which are private meetings with each party. The purpose of a caucus is for the mediator to open communication, to foster "reality checks," to identify the terms of settlement and to permit the parties to mold a settlement that fits each party's needs.[36] Mediation is confidential and nothing disclosed in mediation may be included in subsequent litigation unless the parties expressly agree to make such disclosures.

C. ADR provisions in contracts

Parties can agree to participate in ADR before they ever reach litigation. Before drafting such a provision, an attorney should identify and analyze his client's needs to determine the

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ADR structure that will work best for the client.[37] Next the attorney needs to decide which ADR provider should be designated, usually choosing between the American Arbitration Association ("AAA"), AFMA, and JAMS/Endispute.[38] Other considerations for the provision are choice of law, whether state or federal, level of discovery, empowerment or restriction of the neutral in awarding certain awards and any special needs of the client.[39] AFMA rules allow the arbitrator to engage in mediation of the dispute at any time during the proceedings to encourage settlement.[40] AAA provides a "specially-trained panel of mediators"[41] and suggests a combination of mediation and arbitration, where mediation is tried and if it fails then the parties proceed to arbitration.[42] Once parties draft and arbitration agreement or choose another form of ADR, they can enjoy the benefits that ADR has to offer if a dispute arises.

III. "THE SHOW MUST GO ON":

The Benefits of Using ADR in the Entertainment Industry

There are several benefits to using ADR in the entertainment industry. Because the industry is built on creativity, images, relationships, ADR can provide a good solution for parties involved in entertainment related-disputes because of its benefits. Some of the benefits of ADR include confidentiality, cost savings, efficiency of the process and neutrals with experience.

A. Confidentiality

The fact that 125 ongoing cases involving the entertainment industry can be discovered on the Internet is reason enough to engage in ADR. When cases are filed, it is a matter of public record and anyone can have access to matters that people in the entertainment industry would probably desire to keep private. Confidentiality is assured in ADR proceedings because the decisions are not reported.[43] As mentioned previously, settlements reached through mediation may not even be included in subsequent litigation without the express consent of the parties.[44] Even after a case is filed against someone in the industry, using ADR can keep the settlement agreement of the parties confidential. Therefore, if parties in the industry use ADR they have a better chance of protecting their image by keeping matters private.

B. Cost savings

The costs of litigation can be unbearable. Attorneys for parties have to draft pleadings and motions, conduct discovery and attend hearings and a trial. Participants in arbitration can save money because there is limited discovery, depending on the agreement and the amount of time spent is arbitration is generally less than that of a trial. Participants in mediation dramatically decrease costs because the parties control the procedure[45] and even if a settlement is not reached the issues for litigation can be decreased, saving time, which saves money.[46]

C. Efficiency of the process

The relative speed of non-binding ADR is a benefit to parties in the entertainment industry because the products are time-sensitive.[47] Rather than waiting for a court date, parties can schedule mediation and resolve issues on their own, creating a better possibility of releasing an album or movie by its intended release date.

D. Neutrals with experience

The three main organizations that are used to solve entertainment-related disputes are AAA, AFMA, and JAMS/Endispute. AFMA has administered the resolution of over one thousand cases, involving millions of dollars in claims since its inception in 1984.[48] AFMA arbitrators are entertainment attorneys who resolve domestic and international entertainment disputes. These arbitrators handle disputes arising out of "production agreements, talent agreements, motion picture, television and multimedia licensing agreements, financing agreements and sales agency agreements."[49] The arbitrators have expertise in the entertainment industry. AAA Arbitrators are also experienced entertainment attorneys.[50] JAMS/Endispute arbitrators are former judges.

E. Possibility of maintaining business relationships

Finally, participation in ADR proceeding can help salvage business relationships because the settlements are either crafted by the parties or by a neutral with experience in the industry. ADR may have been beneficial to MGM in its case against New Line over the Austin Powers title. MGM has been trying to get Austin Powers' star, Mike Myers, to agree to star in its remake of *Pink Panther*.[51] However, Myers may never agree to take the part in the movie because of the rift that the copyright infringement case caused.

ADR is not perfect, nor is it appropriate for every type of dispute. There are some disputes that should not be mediated because the parties will not be able to achieve a solution. There are some that should not be arbitrated because the outcome will be used to set a precedent for future disputes. Nevertheless, the entertainment industry has unique issues that can make ADR a better choice for dispute resolution. Entertainers generally want to keep as much privacy as they possibly can and ADR can provide that. Television shows concerts, album and movie releases require cost-effectiveness and ADR can provide that. The products are also time-sensitive and disputes that halt the production of these products need to be solved in a timely manner; ADR can provide that. Further, entertainment-related disputes require special knowledge about the industry and ADR can provide that. Finally, it is wise for people in the entertainment industry not to "burn bridges" and ADR can provide that. Entertainment industry executives and entertainment attorneys are starting to recognize how successful the use of ADR can be.

IV. "MEDIATION'S NOT MUSIC TO MY EARS":

The Views of ADR by Entertainment Industry Executives

The Los Angeles and New York firm of Phillips, Salman

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& Stein conducted a survey of seventy-five entertainment companies (the "Phillips Survey, Part 1").[52] The general or deputy counsel of the companies, which consisted of small, medium and large television and music companies, answered questions about mediation and arbitration. These results show that there is a trend in the entertainment industry towards using ADR. They also show that executives who have elected to use ADR have been pleased with the experience.

A. Mediation

The results of the survey with respect to mediation are as follows. Forty-three percent of the companies generally favor the use of mediation.[53] Sixty-six percent replied that when mediation was employed the disputed was resolved.[54] Twenty-nine percent of the companies reported that they often discuss retaining a mediator when they are unable to resolve disputes.[55] Sixty-three percent stated that their companies had an excellent or good experience with mediation.[56] Although the results of the survey are generally positive, entertainment companies are a little reluctant to pursue mediation. Some of the reasons cited for this reluctance are that management is not knowledgeable about mediation, corporations are not structure to asses all claims and determine if mediation should be used, counsel are normally trained to be litigators, some outside counsel selected by house counsel do not advance the goal of the company to quickly and inexpensively resolve disputes, while preserving relationships, business executive allow their attorneys to deal with litigation and lower levels of employees may see too much risk in recommending mediation to their boss.[57]

B. Arbitration

The results of the survey with respect to arbitration are as follows.[58] Sixty percent of the companies favor the use of arbitration.[59] Eighty percent stated that their company's experience with arbitration was excellent or good.[60] Sixty percent stated that their executives are not knowledgeable about arbitration and mediation.[61] One music executive noted that it seems that music companies are less likely to use mediation or arbitration.[62] General counsel of a major music company explains this by stating that the nature of contract disputes and copyright infringement claims in the music industry require the certainty of the application of the law.[63]

While the results of this survey show that, in general, entertainment executives have had excellent or good experiences with ADR, it also shows that it is harder to use ADR in the music industry because of disputes that require the certainty of the law. Further, the survey shows that with better education about ADR for industry executives, ADR will become a more popular form of dispute resolution in the industry.

V. "LIGHTS, CAMERA, ARBITRATE":
The Views of ADR by Entertainment Lawyers

The Los Angeles and New York firm of Phillips, Salman & Stein also conducted a survey of entertainment attorneys about mediation and arbitration (the "Phillips Survey, Part 2").[64] The results of this part of the survey also show that entertainment attorneys are recognizing the benefits of ADR and the majority of those who elect to use it have excellent or good experiences.

A. Mediation

Thirty percent of the attorneys interviewed have participated in mediation with an entertainment client.[65] Eighty-six percent of those who participated reported that their experience with mediation was excellent or good.[66] Seventy-five percent stated that the dispute was resolved through mediation.[67] Ninety percent stated that they are generally in favor of mediation.[68] Fifty-seven percent reported that they recommend mediation when the parties are unable to resolve a dispute.[69]

B. Arbitration

Sixty-one percent of the attorneys interviewed stated that they had participated in arbitration during the past three years.[70] Eighty-four percent stated that their experience with the arbitration process was excellent or good.[71] Fifty percent reported that they recommend arbitration to resolve a dispute before it goes to court if there is no prior agreement between the parties.[72] Seventy percent stated that they recommend a provision for arbitration in agreements.[73] Seventy-eight percent stated that their clients are not generally knowledgeable about arbitration and mediation.[74]

C. Volunteer Organizations

There are several volunteer organizations that provide legal help in resolving disputes for parties in the entertainment industry. Since 1980, Arts, Arbitration and Mediation Services (AAMS), a program of California Lawyers for the Arts, has provided ADR to artist and entertainers. AAMS provides both mediation and arbitration. In addition to AAMS, there are volunteer organizations in other regions of the United States that encourage the use of ADR in the entertainment industry by providing pro bono and low cost ADR solutions such as the St. Louis Volunteer Lawyers and Accountants for the Arts, Washington Accountants and Lawyer for the Arts and New York Lawyers for the Arts.

Entertainment attorneys are also recognizing the benefits of ADR. The attorneys recognize that their clients need more education about ADR, but they still recommend forms of ADR in resolving disputes. Not only are the attorneys using mediation and arbitration to successfully resolve disputes, but also, through volunteer organizations, entertainment attorneys are making it less difficult for parties in the entertainment industry to use ADR.

VI. "MORE THAN 15 MINUTES OF FAME":
The future of ADR in the entertainment industry

The entertainment industry is inundated with all types of

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disputes, from band breakups to tort claims, and the industry could benefit greatly from using ADR. By using binding and non-binding arbitration and mediation, people in the entertainment industry can keep matters confidential, save money and time, maintain important business relationships, and have knowledgeable neutrals making sound decisions for them. Having knowledgeable neutrals is of particular importance because the main issue that thwarts the use of ADR in entertainment-related disputes is the entertainers' and entertainment executives' lack of knowledge about ADR.

Sixty percent of entertainment companies, who participated in the Phillips Survey, Part 1 stated that their companies will very likely use mediation in the future. Fifty-two percent of entertainment companies said that their company would likely use arbitration more in the future. Sixty-five percent stated that their agreements would likely have arbitration provisions in the future. The number of entertainment-related cases administered by AAA between 2000 and 2001 increased by forty-two percent. JAMS/Endispute also reports that it has had a steady increase in the number of entertainment-related disputes that it administers.

With the increases in the use of ADR in the entertainment industry and the number of volunteer attorneys who promote the use of ADR in the industry, it seems that the industry is well equipped to take advantage of the benefits of ADR in resolving disputes. As the saying goes, there is no business like show business. This creative industry, where time is money and relationships are everything, should continue to utilize ADR's creative solutions that save time, money and relationships.

[1] Ongoing Cases, http://www.eonline.com/News/Court/index2.html, http://www.eonline.com/News/Court/index2a.html, http://www.eonline.com/News/Court/index2b.html (last visited March 26, 2002).
[2] Interview with Julee L. Milham, Esquire, Law Office of Julee L. Milham, in Tampa, Fla. (March 18, 2002)
[3] Julee L. Milham, Esquire is a solo practitioner in Tampa, Florida who is chair-elect of the Entertainment, Arts and Sports Law Section of the Florida Bar. Her practice began in entertainment law, business law and commercial litigation, but she has expanded her practice to include alternative dispute resolution. Ms. Milham is a certified mediator and arbitrator and has been a speaker and panelist at several entertainment-related conferences and seminars.
[4] Luckett v. Destiny's Child, http://www.eonline.com/News/Court/0302.destiny.html (last visited March 26, 2002).
[5] Id.
[6] Grossberg, Josh, MPAA: Never Say "Goldmember" Again, E Online News, at http://www.eonline.com/News/Items/0,1,9459,00.html (February 1, 2002).
[7] Id.
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[9] http://dictionary.law.com/
[10] Cruise v. Slater, http://www.eonline.com/News/Court/0105.cruise.html (last visited March 26, 2002).
[11] Id.
[12] Id.
[13] Luckett, supra note 4.
[14] Luckett, supra note 4.
[15] Galanis v. Campbell, et. al., http://www.eonline.com/News/Court/9901.campbell.htm (last visited March 26, 2002).
[16] Id.
[17] Id.
[18] Trappler v. Lee, http://www.eonline.com/News/Court/0497.lee.html (last visited March 26, 2002).
[19] Id.
[20] Id.
[21] http://www.law.cornell.edu/topics/adr.html
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[24] Id.
[25] Lepara, Christine and Costello, Jeannie, Benefits of Mediating Intellectual Property and Entertainment-Related Disputes, 13 PLI/NY 731, 733 (FN8) (January 1998).
[26] Id.
[27] Id.
[28] Id.
[29] Id.
[30] Id.
[31] Id.
[32] Interview of Julee Milham, Esquire, Law Office of Julee L. Milham, in Tampa, Fla. (March 18, 2002).
[33] Lepara, supra note 25 at 733.
[34] Id.
[35] Id.
[36] Id.
[37] Phillips, Gerald F., Art and Entertainment Law: A well-tailored arbitration provision that designates the arbitration provider andthereby the governing rules can help quickly solve industry disputes, 605 PLI/Lit 625, 627 (June 1999).
[38] Id.
[39] Id.
[40] Id.
[41] Id.
[42] Phillips, Gerald F., Second Stage, Providing for Both Mediation and Arbitration, 605 PLI/Lit 631 (June, 1999).
[43] Lepara, supra note 25 at 733.
[44] Id.
[45] Id.
[46] Phillips, Gerald F., and Ignacio, Vanessa A., Entertainment Industry Recognizing the Benefits of Mediation, 17-WTR Ent. and Sports Law 29 (Winter 2000).
[47] Lepara, supra note 25 at 733.
[48] http://www.afma.com/Arbitration/arbitration.asp
[49] Id.
[50] Phillips, supra note 37 at 627.
[51] Grossberg, supra note 6.
[52] Phillips, Gerald F., the Entertainment Industry is Accepting ADR, 21 NO. 1 Ent. L. Rep. 5 (June 1999) (publication page references are not available for this document).
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[56] Id.
[57] Phillips, Gerald F., and Tatum, Arianna, Survey: A Look at ADR in the Entertainment Industry, 54-MAY Disp. Resol. J. 57, 59 (May 1999).
[58] Phillips, supra note 52 (publication page references are not available for this document).
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[64] Id.
[65] Id.
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[68] Id.
[69] Id.
[70] Id.
[71] Id.
[72] Id.
[73] Id.
[74] Id.

JOURNAL LOOKING FOR WRITERS

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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.

FROM THE NCAA

With the start of the 2002-03 school year, high school and college athletes, coaches, administrators will be faced with many questions related to redshirts, eligibility, and banned substances. Referenced below are some answers provided by resources from the NCAA. Obviously there are a myriad of questions and below are just some of the issues which may apply both high school and college athletes. Please contact the certifying institution or conference for additional information. The source and answers below are from the NCAA. You also may contact the NCAA membership services staff at 317/ 917-6222 if you have further questions.

Frequently-Asked Questions on Redshirts, Age Limits and Graduate Participation

Redshirting:

1. What is a redshirt?

2. Is there an age limit for participating in college sports?

3. Can I participate if I'm enrolled in a graduate or professional school?

A Redshirt Definition: The term "redshirt" is used to describe a student-athlete who does not participate in competition in a sport for an entire academic year. If you do not compete in a sport the entire academic year, you have not used a season of competition. For example, if you are a qualifier, and you attend a four-year college your freshman year, and you practice but do not compete against outside competition, you would still have the next four years to play four seasons of competition.

Each student is allowed no more than four seasons of competition per sport. If you were not a qualifier, you may have fewer seasons of competition available to you. NCAA rules indicate that any competition, regardless of time, during a season counts as one of your seasons of competition in that sport. It does not matter how long you were involved in a particular competition (for example, one play in a football game, one point in a volleyball match); you will be charged with one season of competition.

NCAA Student-Athlete Reinstatement

Q. What is the process for reinstatement of a student-athlete's eligibility?

A. The student-athlete reinstatement process provides for the evaluation of information submitted by an NCAA member institution on behalf of student-athletes/prospective student-athletes who have been involved in violations of NCAA regulations that affect their eligibility. The objective of the review is to assess the responsibility of the student-athletes/ prospective student-athletes and to determine appropriate conditions for reinstatement of eligibility under national standards established by the NCAA membership, Management Councils (Divisions I, II and III) and Student-Athlete Reinstatement Committees (Divisions I, II and III). The request is processed by the NCAA student-athlete reinstatement staff.

Q. What type of reinstatement cases does the student-athlete reinstatement staff handle?

A. Requests for reinstatement of eligibility by institutions whose student-athletes were in violation of ethical conduct, amateurism, recruiting, eligibility, financial aid, extra-benefit and drug-testing legislation. Six types of waivers: 1) Five year/ 10-semester period of eligibility waivers (NCAA Bylaws 14.2.1, 14.2.2.and 30.6.1); 2) Athletics Activity waiver (NCAA Bylaw 14.2.1.5.1); 3) injury/illness hardship waiver [independent institutions only] (NCAA Bylaw 14.2.5); and 4) season-of-competition waiver (NCAA Bylaw 14.2.6, 14.2.7).

Q. How does the process work?

A. An institution determines that a prospective or enrolled student-athlete was involved in a violation that affects eligibility. The institution declares student-athletes/prospective student-athlete ineligible. The institution investigates a situation and gathers facts (the NCAA student-athlete reinstatement staff is not investigative in nature and it is the institution's responsibility to determine the facts of each case). The institution submits an eligibility reinstatement request to the NCAA student-athlete reinstatement staff. The NCAAs Staff reviews the request, focusing on the student-athlete's or the prospective student-athlete's responsibility.

The NCAAs Staff reviews precedent with similar facts to determine what conditions for reinstatement should be imposed, if any. The student-athlete reinstatement staff attempts to put the individual back in the position they would have been in had the violation not occurred.

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The NCAAs Staff, on behalf of Student-Athlete Reinstatement Committees, can do one of three things:

1. Reinstate eligibility without conditions.

2. Reinstate eligibility with conditions such as repayment, return of benefit, withheld from one or more contests, lose one or more years of eligibility.

3. Not reinstate eligibility at that institution or at any institution.

Q. Can an institution appeal the student-athlete reinstatement staff decision?

A. Appeals are submitted to members of the NCAA Student-Athlete Reinstatement Committee from the division in which the institution holds membership.

Q. Is the student-athlete reinstatement staff involved in the process of student-athletes gaining academic eligibility?

A. No. The NCAA student-athlete reinstatement staff's function is to review cases of student-athletes involved in violations of NCAA legislation and to determine conditions for reinstatement of athletic eligibility. For example, if appropriate, repayment issues are considered in cases of student-athletes receiving extra benefits.

The determination of academic eligibility is the responsibility of the NCAA's Initial Eligibility Clearinghouse, the recruiting institutions and the NCAA's membership services staff.

NCAA WARNING:

Nutritional supplements are not strictly regulated and may contain substances banned by the NCAA.

The NCAA bans substances in five different categories:

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Including heroin, marijuana and THC (tetrahydrocannabinol)

PEPTIDE HORMONES AND ANALOGUES:

Including corticotrophin (ACTH), erythropoietin (EPO), growth hormone (HGH, somatotrophin) and related compounds*

STIMULANTS:

Including amphetamines, cocaine, methylenedioxy-methamphetamine (MDMA Ecstasy) and related compounds*

ANABOLIC AGENTS:

Including anabolic steroids; androstenedione, dihydrotestosterone (DHT) and related compounds*

DIURETICS:

Including acetazolamide, bumetanide, ethacrynic acid and related compounds*

The term ìrelated compoundsî comprises substances tat are included in the class by their pharmacological action and/or chemical structure. No substance belonging to the prohibited class may be used, regardless of whether it is specifically listed as an example.

Source: www.ncaa.org/sports_sciences

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Friday 5.75 hrs. (1.5 hrs. ethics)

8:00 Registration

9:00 Welcoming Remarks and Program Introductions
Program Director
Mike Tolleson, *Austin*
Mike Tolleson & Associates, Inc.

9:15 **The Music Industry Today** *.75 hr. (.25 ethics)*
A short film on the State of the Music Industry.

10:00 **Rhythm & Rap: What's Happening in the Hood** *.5 hr*
A look at the Rap and R&B scenes, Indie deals and taking the music from the neighborhood to the majors.
John P. Kellogg, *New York*
Law Offices of John P. Kellogg

10:30 --Break--

10:45 **The Sound of Musica** *.5 hr.*
The politics, economics, and legal issues of the booming latin music business from Tejano to Pop.
Yocel Alonso, *Houston*
Alonso, Cersonsky & Garcia, P.C.

11:15 **Independent Record Production: The Role of the Indie Producer** *.5 hr.*
A presentation on the art of developing talent and selling records.
Randall Jamail, *Houston*
President, Justice Records

11:45 **Breaking Into Foreign Markets with Indie Product: Fact and Fiction** *.5 hr. (.25 ethics)*
Foreign licensing, sub-publishing, touring, and finding markets for Texas music product.
Al Staehely, Jr., *Houston*
Law Office of Al Staehely

12:15 --Lunch (on your own)--

1:45 **Recording Artists v. Record Companies** *1 hr. (.25 ethics)*
A panel of the previous speakers compares experiences and looks at major issues in the recording industry today, such as the California 7 year rule, termination rights, sound recording performance royalties, work-for-hire, domain names, controlled compositions, merchandising, piracy, and the internet.
Moderator:
Mike Tolleson, *Austin*
Mike Tolleson & Associates, Inc.

Panelists:
Yocel Alonso, *Houston*
Alonso, Cersonsky & Garcia, P.C.

Randall Jamail, *Houston*
President, Justice Records

John P. Kellogg, *New York*
Law Offices of John P. Kellogg

Al Staehely, Jr., *Houston*
Law Office of Al Staehely

2:30 **Music Publishing: So You Own It, Now What Do You Do With It?** *.75 hr.*
Review of various ways to exploit and administer publishing, such as administration deals, sub-publishing, sales, co-publishing, etc. Bug Music has become one of the leading administrators of artist-owned publishing catalogs and represents many Texas-based songwriters.
David Hirschland, *Los Angeles*
Bug Music, Inc.

3:15 --Break--

3:30 **Ethics Review for Entertainment Attorneys** *.75 hr. ethics*
Who's the client? What's the scope of the representation? What disclosures need to be made, and what standards must be followed? Are there really answers to these tough questions, or should I just turn in my license now?
Walter L. Taylor, *Austin*
Law Office of Walter Taylor

4:15 **Copyright in the World of E-Commerce** *.75 hr*
An analysis of E-Copyright transactions in computer software, sound recordings, literary works, motion pictures, television and visual arts.
Laura Lee Stapleton, *Austin*
Jackson Walker, L.L.P.
Editor , "E-Copyright Law Handbook"

5:00 --Adjourn--
Don't miss Friday evening events!
(see next column)

6:30 **Speakers' Reception**
(all registrants welcome)
Wild About Music, 721 Congress Ave.

7:30 --Dinner on your own--

9:00 ***Party & Music Showcase***
The Victory Grill, 1104 E. 11th St.
($10.00 at the door, cash bar)

Saturday 5.75 hrs. (.5 hr. ethics)

9:00 **Introductions**
Evan M. Fogelman, *Dallas*
Chair, Entertainment & Sports Law Section
State Bar of Texas
Law Offices of Evan M. Fogelman

9:15 **Year in Review: Court Decisions and Legislation Impacting the Entertainment Industry** *.75 hr.*
State and federal legislative issues, as well as court rulings on legal malpractice claims against film and television lawyers, attorney conflicts of interest, jurisdiction over film distributors, defamation claims over films, music royalty cases, rights of publicity in music videos and sound recording rights on the internet.
Stan Soocher, *Denver*
Editor-in-Chief,
"Entertainment Law & Finance"
Chair, Music and Entertainment Industries Studies
University of Colorado at Denver

10:00 **Music to Film Buy: How You Get It, What You Pay and What You Say** *.75 hr.*
Review of issues involved in acquiring music for motion pictures and audio-visual works; discussion of methods and techniques for keeping music costs within the budget.
Steve Winogradsky, *North Hollywood*
President, The Winogradsky Company

10:45 --Break--

11:00 **Don't Mess With the Bunny, Honey** *.75 hr. (.25 ethics)*
The intersection of copyright, trademark and domain names with fair use and free speech including a case study of Playboy's court battles to protect its intellectual property.
Lawrence A. Waks, *Austin*
Jackson Walker, L.L.P.

11:45 **Motion Picture Rights Acquisition in a Literary Work** *.75 hr (.25 ethics)*
Review the rights acquisition process for life stories, fiction and screenplays.
William Nix, *New York*
Baker Botts L.L.P.

12:30 --Lunch (on your own)--

1:45 **"Music in High Places"** *1 hr.*
Case study of the legal and business aspects of a popular television series & DVD product, featuring music performances shot on exotic locations around the world.
Henry Root, *Santa Monica*
Grakal, Root & Rosenthal, LLP

Steve Winogradsky, *North Hollywood*
President, The Winogradsky Company

2:45 --Break--

3:00 **Funding the Indie Film Project**
.75 hr.
Everything you need to know about financing your independent film production.
Michael Norman Saleman, *Austin*
Law Offices of Michael Norman Saleman

3:45 **Television Program Funding and Production** *1 hr.*
Lion's Gate is at the forefront of creative financing for television programs, and utilizes tax credits and shelter benefits, advertiser sponsorships, and other techniques. Learn how they acquire and develop their program series and movies.
John Drinkwater, *Marina Del Ray*
Lion's Gate Entertainment

4:45 --Adjourn--

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  -OR- State Bar College member.
- ❑ **No charge** for Qualifying Judge

❷ **My registration fee after all calculations:**

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Prayer at Public School Athletic Events: Clarifying Misperceptions of *Santa Fe ISD v. Doe*

By Paul J. Batista[1]

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Football fans throughout the state of Texas are familiar with the pre-game ceremony and pageantry associated with high school football games. On June 19, 2000, one such ritual was held to violate the First Amendment of the United States Constitution. In *Santa Fe Independent School District v. Doe*,[2] the United States Supreme Court invalidated a Texas public school district's policy authorizing prayer at football games.

Since that opinion , many critics of the decision look only at the end result of the case, drawing the conclusion that "the Supreme Court said that we (students) can't pray at football games or at school," or that "the Court has removed God from our schools." Indeed, in an article in a prestigious sport law journal, two university professors concluded that "the Supreme Court has slammed the door on religion in the public schools."[3]

Unfortunately, whether there has been an innocent misunderstanding or an intentional misrepresentation to further a personal agenda, many have drawn an erroneous conclusion regarding the effect of *Santa Fe* on religious activities in public schools. This article will attempt to clarify misperceptions of the Supreme Court's decision.

BACKGROUND OF THE *SANTA FE* CASE

One of the contributing factors to misperceptions about the Supreme Court opinion in *Santa Fe* is the specific facts of the case. Considering those facts, to construe the opinion as prohibiting all prayer or other religious activities in public schools is at best an oversimplification, and at worst a complete misunderstanding or misrepresentation of the Court's decision.

The case was filed in April 1995 by two students in the Santa Fe Independent School District ("SFISD") seeking to enjoin delivery of a prayer at the 1995 high school graduation exercises. The suit also enumerated other activities (including pre-game prayer at football games) the student plaintiffs believed violated the Establishment Clause of the First Amendment to the Unites States Constitution.

The First Amendment contains two distinct provisions relating to religion. The first phrase is known as the Establishment Clause – "Congress shall make no law respecting an establishment of religion . . ." The second phrase is known as the Free Exercise Clause – ". . . or prohibiting the free exercise thereof." The Courts frequently refer to them jointly as the "Religion Clauses."

Acting on the complaint by the students, the U. S. District Court entered a temporary order allowing an "invocation and/or benediction" at the approaching 1995 graduation ceremonies, to be delivered by a senior student selected by the graduating class.[4] The order allowed delivery of the prayer on the condition that it was "non-denominational," and allowed references to religious figures "such as Mohammed, Jesus, Buddha, or the like" so long as "the general thrust of the prayer is non-proselytizing."[5]

One of the ancillary issues presented by the plaintiffs was SFISD's policy allowing "overtly Christian prayers over the public address system at home football games."[6] In response to entry of the temporary order, SFISD began to consider adoption of policies dealing with prayer at various school functions, and ultimately approved a policy entitled "Prayer at Football Games." That policy was adopted in August of 1995.

Prior to adoption of that policy, the elected chaplain of the Santa Fe High School Student Council presented prayers before varsity football games by using the public address system at the school's stadium. In an effort to avoid an injunction prohibiting pre-game prayer, the new policy created two student elections concerning prayer at football games. The first election determined whether invocations would be delivered at games. If a majority of students voted to have an invocation, the second election would choose the student "to deliver the prayer at varsity football games."[7]

Thereafter, in October of 1995, SFISD amended the policy to omit the word "prayer", and re-named it "Pre-Game Ceremonies at Football Games." The new policy allowed a "message", "statement" or "invocation" before games.[8] Considering the policy as enacted, the District Court entered another order prohibiting enforcement of the August policy, holding that "delivering a prayer 'over the school's public address system prior to each football and baseball game coerces student participation in religious events,'"[9] and, therefore, violated the Establishment Clause. The Fifth Circuit affirmed.

ISSUE BEFORE THE COURT

The U. S. Supreme Court granted certiorari to decide the sole issue before the court: "Whether petitioner's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause."[10] The Court answered affirmatively, holding that the SFISD policy violated the Establishment Clause of the First Amendment.

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ANALYSIS OF THE SUPREME COURT OPINION

SFISD argued that the "student-led, student-initiated prayer" was private speech protected by the Free Exercise Clause of the First Amendment. In considering this Free Speech argument, the Court recognized that "there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."[11] However, the Court was not persuaded that the pre-game invocations were private speech based on the language and possible effect of the policy. The Court rejected the free speech argument and found that the SFISD policy had an unconstitutional purpose, listing three grounds as the basis for its opinion: (a) the majoritarian elections, (b) the encouragement of messages with religious content, and (c) school sponsorship of the messages.

The Court first found that the policy establishing the elections was sufficient involvement by SFISD to defeat the argument that the invocation was "student-led" or "student-initiated", and thus free speech. The Court recognized that "the majoritarian process implemented by the District guarantees, by definition, that minority candidates will never prevail and that their views will be effectively silenced."[12] The Court found that the elections did nothing to protect minority views, and reiterated that "fundamental rights may not be submitted to vote: they depend on the outcome of no elections."[13]

The Court next found that the policy "invites and encourages religious messages"[14] and that "the expressed purposes of the policy encourage the selection of a religious message, and that is precisely how the students understand the policy."[15]

Finally, the Court held that the policy constituted an impermissible sponsorship of a religious message by SFISD. The Court pointed out that SFISD did not attempt to hide the school's objective, since it entitled the August policy "Prayer at Football Games." The Court found that such a school policy "that explicitly and implicitly encourages public prayer – is not properly characterized as 'private' speech."[16]

SFISD also argued that by initiating the elections, the District's policy was a "hands-off" approach to the pre-game prayer, thereby making its policy "one of neutrality rather than endorsement" with the student elections serving as the "circuit breaker" between the government (SFISD) and the individual student.[17] The Court rejected that argument concluding that the "degree of school involvement" established that the pre-game prayers "bear 'the imprint of the State'."[18]

Based on other facts set forth in the District Court's temporary order, it is apparent that the Court believed the social culture at SFISD demonstrated a strong desire by the administration to encourage religious activities (apparently limited to Christian doctrine) at school functions. Among the other questionable activities enjoined by the District Court were "overt or covert sectarian and proselytizing religious teaching, such as the use of blatantly denominational religious terms in spelling lessons, denominational religious songs and poems in English or choir classes, denominational religious stories and parables in grammar lessons and the like."[19]

In summarizing the case, the Supreme Court recognized "the important role that public worship plays in many communities, as well as the sincere desire to include public prayer as a part of various occasions so as to mark those occasions' significance. But such religious activity in public schools, as elsewhere, must comport with the First Amendment."[20] The Court went on to say "it is reasonable to infer that the specific purpose of the policy was to preserve a popular 'state-sponsored religious practice,'" and that "[s]chool sponsorship of a religious message is impermissible"[21] and violates the First Amendment.

MISPERCEPTIONS OF THE COURT'S OPINION

Based on public reaction to the case, it is obvious that many citizens misinterpret the Court's invalidation of the SFISD policy to mean the Court has prohibited religious activities in the public schools, specifically in the realm of athletics. However, a careful reading of the case establishes that the Court did not "slam the door on religion in the public schools."

The first inquiry about the misperceptions of the Court's ruling must include a review of the issue before the Court. It is important to note that the Court was not asked to resolve the constitutionality of "student-led, student initiated prayer" at football games or on campus, but whether SFISD's policy violated the Establishment Clause. In resolving this limited issue, the Court found the SFISD policy invalid. However, the Court did not declare that prayer or other religious activities in public schools would be unconstitutional under all circumstances.

To the contrary, while acknowledging the Establishment Clause prohibitions, the Supreme Court affirmed that private religious speech was protected even in public school settings: "The Religion Clauses of the First Amendment prevent the government from making any law respecting the establishment of religion or prohibiting the free exercise thereof. By no means do these commands impose a prohibition on all religious activity in our public schools."[22]

The Court further reiterated that only religious speech sponsored or encouraged by government was invalid: "[N]othing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday. But the religious liberty protected by the Constitution is abridged when the State affirmatively sponsors the particular religious practice of prayer."[23]

Therefore, the decisive factor for determining the constitutionality of religious activities in public schools is whether the activities are government sponsored, encouraged or endorsed, or whether they are the result of voluntary activities by private individuals (as opposed to representatives of the state, e.g., teachers, coaches and administrators).

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RESPONSES TO *SANTA FE*

High school football fans, or individuals seeking to make a political statement about religion, or others seeking continuation of religious traditions or activities before games, have reacted to the Court's opinion in various ways. Some of the reported activities include:

- In Santa Fe, home of the SFISD, fans prayed and sang hymns outside the gates of the stadium, the high school booster club wore shirts saying "Gotta Believe", and businesses sported signs saying "Good Luck Indians and God Bless America" and "Our Prayers Are With You."[24]
- In Jonesboro, Ga., fans entering the game were handed cards encouraging them to pray, leading to recitation of the Lord's Prayer after playing of the national anthem.[25]
- In Eldorado, Texas, a band member played a hymn during a moment of silence that replaced the traditional pre-game prayer, but the playing of the hymn was later eliminated based on a mutual decision between the band member and school superintendent. After the hymn was discontinued, members of the community's ministerial alliance decided to congregate at the bottom of the stands before the game and ask the crowd to join them in prayer.[26]
- In Iraan, Texas, supporters hung a banner behind the end zone that proclaimed "Iraan Supports Prayer."[27]
- Many schools established a "moment of silence" before the game, and had a student read a poem or other inspirational message other than a prayer or religious message.[28]
- Ministers used bullhorns to lead the crowd in prayer, and fans used personal radios to broadcast a local radio station's pre-game prayer in the stands.[29]

The constitutionality of these activities depends on their origin. If the public school supports or encourages these activities (as the SFISD policy did), then they would probably violate the Establishment Clause. On the other hand, if these activities are performed by private citizens, not representing the school (such as the ministerial alliance leading voluntary prayer at the bottom of the stands before the game), they are clearly characterized as Free Exercise.[30]

TEXAS EDUCATION CODE PROVISION

Seeking to clearly define the line of constitutionally acceptable activity, in 1995 the Texas Legislature inserted into the Education Code a provision entitled "Exercise of Constitutional Right to Pray" stating that:

A public school student has an absolute right to individually, voluntarily, and silently pray or meditate in school in a manner that does not disrupt the instructional or other activities of the school. A person may not require, encourage, or coerce a student to engage in or refrain from such prayer or meditation during any school activity.[31]

Although this statute has not been challenged in Court, it appears to be consistent with *Santa Fe* and other Supreme Court decisions in religion cases.

CONCLUSION

The athletic fields and classrooms of public schools have been the setting for many of the cases attempting to identify the boundary between the Establishment and Free Exercise Clauses of the First Amendment. Defining these boundaries has not been an easy task for the Supreme Court, requiring it to "draw lines, sometimes quite fine,"[32] to balance the conflicting provisions of the Religion Clauses. In order to resolve Establishment and Free Exercise cases, the Court must closely scrutinize the specific facts of the particular case. Many of the misperceptions of the rule established in *Santa Fe* arise because of a failure to understand the factual background of the case.

While the Court has admitted there is "considerable internal inconsistency"[33] in its religion jurisprudence, the Court has continued to require governmental neutrality in matters of religious activities, stating that "in the relationship between man and religion, the State is firmly committed to a position of neutrality,"[34] because "a government neutral in the field of religion better serves all religious interests."[35] The SFISD policy was invalidated precisely because it abandoned neutrality and crossed the Court's fine line.

Perhaps the most succinct summary of the Court's position on religious activities in public schools was expressed by Chief Justice Burger in 1969: "The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion."[36]

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[2] 530 U.S. 290 (2000).

[3] F. King Alexander, & Ruth H. Alexander, *From the Gridiron to the United States Supreme Court: Defining the Boundaries of the First Amendment's Establishment Clause*, 10(3) J. LEGAL ASPECTS OF SPORT 129, 136 (2000).

[4] *Santa Fe* at 295-6. The Court followed Fifth Circuit precedent citing *Jones v. Clear Creek Independent School Dist*., 977 F.2d 963 (1992), allowing nonsectarian and nonproselytizing prayer at high school graduation ceremonies. However, in its opinion, the Supreme Court did not address the issue of graduation prayer.

[5] *Id*. at 296.
[6] *Id*. at 295.
[7] *Id*. at 298.
[8] *Id*.
[9] *Id*. at 299.
[10] *Id*. at 301.
[11] *Id*. at 302, citing Board of Education of the Westside Community Schools v. Mergens, 496 U.S. 226, 250 (1990).
[12] *Id*. at 304
[13] *Id*. at 304-5 citing West Virginia Board of Education v. Barnette, 319 U.S. 624, 638 (1943).
[14] *Id*. at 306.
[15] *Id*. at 307.
[16] *Id*. at 310.
[17] *Id*. at 305.
[18] *Id*.
[19] *Id*. at 296 n.3.
[20] *Id*. at 307.
[21] *Id*. at 309.
[22] *Id*. at 313.
[23] *Id*.
[24] Dirk Johnson, *Prayer Comes First, but Football Game Is the Main Event*, N.Y. Times, September 2, 2000, *available at* http://www.nytimes.com/library/national/090200prayer-football.html.

[25] Associated Press, *Fans protest court ruling with prayer* (September 10, 2000), *available at* http://www.jacksonville.com/tu-online/stories/091000/met_4025790.html

[26] Jonathan Miller, *Faithful to the Law*, San Angelo Standard-Times, November 19, 2000, *available at* http://www.texaswest.com/archive/00/november/19/1.html.

[27] *Id*.
[28] *Id*.
[29] Alexander, *supra* note 3, at 135.

[30] For an analysis of other athletic related religious activities, see Paul J. Batista, *Balancing the First Amendment's Establishment and Free Exercise Clauses: A Rebuttal to Alexander and Alexander*, 12 J. LEGAL ASPECTS OF SPORT 87 (2002).

[31] TEX. EDUC. CODE ANN. § 25.901 (2002).
[32] Rosenberger v. Rectors & Visitors of the University of Virginia, 515 U.S. 819, 847 (1995).
[33] Walz v. Tax Comm'r of the City of New York, 397 U.S. 664, 669 (1970).
[34] Sch. Dist. Of Abington Township, Pennsylvania v. Schempp, 374 U.S. 203, 226 (1963).
[35] Engel v. Vitale, 370 U.S. 421, 443 (1962).
[36] *Walz*, 397 U.S. at 668.

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 January 3, 2003.

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.

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RECENT CASES OF INTEREST

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

Students: Nonathletes Subjected to the Same Drug Test as Athletes

The United States Supreme Court recently decided that a school district's policy, requiring middle school and high school students who participate in competitive extracurricular activities to consent to drug testing, did not violate the Fourth Amendment constitutional rights of the students. *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 122 S. Ct. 2559 (2002).

The school district for the city of Tecumseh, Oklahoma had adopted a policy for "Student Activities Drug Testing." This Policy required all middle school and high school students who participated in any extracurricular activity to consent to drug testing. The drug tests were done on a random basis. According to the Policy, students were required to produce a urine sample behind a closed stall while a faculty member listened on the other side. This method was an attempt to prevent students from tampering with the urine samples. Two students, Lindsay Earls and Daniel James, alleged that this Policy violated their "Fourth Amendment as incorporated by the Fourteenth Amendment" and brought a 42 U.S.C. § 1983 action against the school district.

The United States District Court for the Western District of Oklahoma embraced the United States Supreme Court's ruling in *Vernonia School Dist. 47J v. Action*, 551 U.S. 646 (1995) and found that the Policy adopted by the Tecumseh's school district was Constitutional. The district court ruled that the Policy was properly aimed at the "special need" of deterring drug use in the district's schools. The United States Court of Appeals for the Tenth Circuit reversed on the basis that the school district had not presented evidence of a drug problem in the schools and thereby failed to prove that a "special need" existed for the drug testing. The United States Supreme Court reversed and upheld the decision of the district court.

The Supreme Court first found that the collection of the urine samples was a "reasonable means" of furthering the school district's interest in preventing and deterring drug use among its students and therefore did not violate the Fourth Amendment. The Court reaffirmed its finding in *Vernonia* that the degree of "reasonableness" changes in the context of a school because of the "custodial" role between the school and students, and the school's duty to provide a safe environment. The Court identified two special needs that justified the drug testing policy: "preventing and deterring drug use amongst students" and the "safety of students." Therefore, the drug testing policy was reasonable under the Fourth Amendment because it promoted the school district's "legitimate interests."

The Court also found that students who participated in extracurricular activities knew that they were subject to additional requirements or intrusions. Students knew that all of the extracurricular activities had their own rules and requirements for participating students, and the participating students knew that these rules did not apply to the student body as a whole. Therefore, students who participated in extracurricular activities had a lower expectation of privacy as compared to the students who opted out of extracurricular activities.

Finally, the Court upheld the drug testing procedures because the degree of intrusion caused by the Policy was negligible given the method used for collecting the urine samples. In fact, the methods used were even less intrusive than the procedures found Constitutional in *Vernonia* because the students in the present case were allowed to produce the urine samples in a closed bathroom stall.

In dissent, Justices Ginsburg, Stevens, O'Connor, and Souter noted that this case differed from *Vernonia* where the Court found the drug testing of student-athletes "reasonable." In Vernonia, the Court found that the school district's policy for drug testing athletes was "reasonable" for three reasons: (1) it was targeted at a subpopulation of students (student-athletes) who had a reduced expectation of privacy, (2) these student-athletes faced special health risks to themselves or others if they competed under the influence of drugs, and (3) evidence showed that these student-athletes were "leaders of the drug culture." The dissent found that none of these reasons, or any other tenable justifications, applied in the current case. In fact, the dissent noted that the drug testing policy at issue targeted a subpopulation of students (students participating in nonathlethic extracurricular activities) who were the least likely to be at risk from illicit drugs and their damaging effects. Thus, the dissent noted that policy was not reasonable, but capricious and perverse.

By: Aimee Maldonado

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Texas Basketball, Fax Machines, and Governmental Immunity

The recent case *Axtell v. Univ. of Texas at Austin*, 69 S.W.3d 261 (Tex. App. – Austin 2002, no pet. h.) is the story of Luke Axtell, a freshman basketball player at the University of Texas during the 1997-1998 school year. On March 18, 1998, Axtell was suspended from the basketball team for academic deficiencies. The *Austin American Statesman* newspaper reported Axtell's suspension and suggested he was unhappy with the head basketball coach, Tom Penders. On that same day, a fax message was sent to two radio stations in Austin, KVET and KJFK. The fax, which contained a portion of Axtell's educational record, was sent from the men's basketball office. KVET broadcast the faxed information. Axtell sued the University, the University's men's athletic director DeLoss Dodds and the former men's head coach Tom Penders for negligence under the Texas Torts Claim Act and for statutory violations under the federal Family Educational Rights and Privacy Acts. The University moved to dismiss Axtell's suit claiming that the University had not waived its governmental immunity. The trial court granted the University's motion and dismissed Axtell's action. On appeal, Axtell dropped his claim under the Family Educational Rights and Privacy Act and the sole issue was whether the University had waived its governmental immunity under the Texas Tort Claims Act.

According to the Texas Torts Claim Act, governmental immunity is waived when a personal injury is "caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law." *See Tex. Civ. Prac. & Rem. Code Ann.* 101.021(2) (West 1997). Axtell contended that the University waived its immunity under the Act when his personal injury was caused by the University's use of tangible property, a fax machine. Axtell's argument was based on the concept that the tangible property, the fax machine, actually caused his injuries. The University argued that its immunity was not waived because it was the disclosed information, not the fax machine, that caused Axtell's injuries. Under the University's theory, the actual use of the property must cause the injuries before governmental immunity is waived.

The Court ultimately held that the fax machine did not cause the alleged injures. Instead, the Court held that the disclosure of the confidential information was the cause of Plaintiff's claims. Thus, since Axtell's injuries were not caused by tangible property (the fax machine), the University had not waived its governmental immunity under the Act. The Court noted that the fax machine did not produce the confidential information, it only transmitted the information. Further, the Court pointed out that Axtell would have suffered the same type of injuries whether the information was released by fax, phone, mail or hand-delivery. It was the information that caused the injury, not the fax machine.

For Axtell to have a claim against the University, he needed to prove that the fax machine, tangible property, caused his injury. However, since Axtell was only claiming that the information from the fax caused him harm, Axtell did not have a claim against the University under the Act. Axtell could not prove that the fax machine itself caused his harm.

By: Ashlea Willingham

MUSIC BUSINESS AND LAW-RELATED WEB SITES

ascap.com - American Society of composers, Authors and Publishers. Performing Rights Organization web site.

benedict.com - contains both basic and advanced information on copyright and cutting-edge copyright related issues.

billboard.com - Billboard Magazine's web site. Includes trade articles and charts.

bmi.com - Broadcast Music, Inc. (BMI) Performing Rights Organization web site.

copyright.net - contains news and informatin on copyright, intellectual property issues, and service providers.

futureofmusic.org - The Future of Music Organization's web site contains articles, news stories, and a calendar of events.

governor.state.tx.us/music - the Texas Music Office's web site includes useful information on copyright, and resources available for the music industry, including links to talent, press,a dn radio stations.

grammy.com - the official web site of the National Academy of Recording Arts and Sciences.

ipmag.com - Intellectual Property Magazne contains law related articles and links.

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mi2n.com - Music Industry Network. Contains news and information relating to the music business.

narip.com - National Association of Record Industry Professionals.

nmpa.org - National Music Publishers Association (Harry Fox Agency)

sesac.com - Performing Rights Organization web site.

southwestwhole.com - the Distributor's web site includes overall "Best Seller," charts and also by music genre.

ubl.com - general music web site also contains top stories and headlines from trade papers and magazines.

uspto.gov - U.S. Patent & Trademark Office.

velvetrope.com - The Velvet Rope. Music industry gossip.

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