

What's in a Name: The Controversy Surrounding the NCAA's Ban on College Nicknames and Mascots.

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INTRODUCTION

In August 2005, the National Collegiate Athletic Association (NCAA) issued a controversial decision that “banned the use of American Indian mascots by sports teams during its postseason tournaments, but will not prohibit them otherwise...Nicknames or mascots deemed ‘hostile or abusive’ would not be allowed on team uniforms or other clothing beginning with any NCAA tournament after Feb. 1, 2006.”¹ The schools that were deemed to be offending schools could use the nicknames and mascots during their respective “regular seasons”. However, if the team wished to participate or was selected to participate in a championship tournament, the school would not be allowed to display its nickname or use its mascot.²

The NCAA Executive Committee originally focused on thirty-three schools that were asked to conduct a “self-evaluative study” and were subsequently placed on the NCAA’s watch list.³ Of the original thirty-three schools, fourteen of them “complied with the league’s policy by either removing references to Native American culture or keeping such references out of their athletic programs.”⁴ One school, The University of North Carolina-Pembroke, was immediately taken off the “watch list.” UNC-Pembroke was “founded for the educating [of] Native Americans” and therefore permitted by the NCAA to retain its nickname (the Men are the Braves and the Women are the Lady Braves) because of “the foundation of the school, the history of the school and its continuous union with the Native American community.”⁵

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¹ Seth Perlman, *NCAA Bans Indian Mascots During Postseason*, USA TODAY, Aug. 5, 2005, http://www.usatoday.com/sports/college/2005-08-05-indian-mascots-ruling_x.htm (last visited Oct. 5, 2007).

² *Id.*

³ Glenn George, *Playing Cowboys and Indians*, 6 VA. SPORTS & ENT. L.J. 90, 96 (2006).

⁴ Kelly P. O’Neill, *Sioux Unhappy: Challenging the NCAA’s Ban on Native American Imagery* 42 TULSA L. REV. 171, note 28 (2006); citing Lielana McKindra, *MOIC Forwards Recommendations from Mascots Review*, NCAA News, July 4, 2005, <http://www.ncaa.org> (follow “The NCAA News” hyperlink; then follow “NCAA News Archive” hyperlink; then follow “2005” hyperlink; then follow “Associationwide” hyperlink; then follow “MOIC forwards recommendations from mascots review” hyperlink). The 14 schools that were left off the list were California State University-Stanislaus (Warriors), East Stroudsburg University (Warriors), Eastern Connecticut State University (Warriors), Hawai’i-Manoa University (men are Warriors), Husson College (Changed from Braves to Eagles), Lycoming College (Warriors), Merrimack College (Warriors), San Diego State University (Aztecs), Southeast Missouri State University (Redhawks), University of West Georgia (changed from Braves to Wolves), Stonehill College (changed from Chieftains to Skyhawks), the University of North Carolina-Pembroke (men are the Braves and women are Lady Braves), Winona State University (Warriors), and Wisconsin Lutheran College (Warriors).

⁵ *Id.* citing Earl Vaughan, Jr., *NCAA lets UNCP Keep Nickname*, FAYETTEVILLE OBSERVER, Aug. 6, 2005.

The remaining nineteen schools made the list of schools that the NCAA considered to have "hostile or abusive [racial or ethnic] mascots, nicknames or imagery."⁶ Those schools and their nicknames are as follows: Alcorn State University Braves, Arkansas State University Indians, Bradley University Braves, Carthage College Redmen and Lady Reds, Catawba College Indians, Central Michigan University Chippewas, Chowan College Braves, Florida State Seminoles, University of Illinois at Urbana-Champaign Fighting Illini, Indiana University of Pennsylvania Indians, University of Louisiana at Monroe Indians, McMurry University Indians, Midwestern State University Indians, Mississippi College Choctaws, Newberry College Indians, University of North Dakota Fighting Sioux, Southeastern Oklahoma State University Savages, University of Utah Utes, and College of William and Mary Tribe.⁷

In defense of the policy, the NCAA Executive Committee noted: "Colleges and universities may adopt any mascot that they wish, as that is an institutional matter. But as a national association, we believe that mascots, nicknames or images deemed hostile or abusive in terms of race, ethnicity or national origin should not be visible at the championship events that we administer."⁸ The Executive Committee also stated: "Member institutions are encouraged to educate their internal and external constituents on the understanding and awareness of the negative impact of hostile or abusive symbols, names and imagery, and to create a greater level of knowledge of Native American culture through outreach efforts and other communication means."⁹

The schools on the list that continue to use Native American mascots, imagery and nicknames, wishing to comply with the NCAA's policy, "must exclude all such references from their team, cheerleading, dance team, and band uniforms, as well as any other paraphernalia that might make use of this imagery at all NCAA championships."¹⁰ The NCAA also banned the sale of any related merchandise sold on the campuses of the offending schools.¹¹ The NCAA gave offending schools until February 1, 2006 to comply with the new policy and "if the identified schools do not make changes by February 1, 2006, they will not be able to host future NCAA championships competition, unless they already have been selected as a predetermined site. In those cases, schools still would have to take reasonable steps to cover up the references to Native Americans before the competition begins."¹² And, although not mandatory, it was even suggested by the NCAA that other non-offending schools "refuse to schedule athletic competitions with schools that use Native American nicknames, imagery, or mascots,"¹³ whether

⁶ NCAA press release, *NCAA Executive Committee Issues Guidelines for Use of Native American Mascots at Championship Events*, NCAA.COM, Aug. 5, 2005, http://www2.ncaa.org/media_and_events/press_room/2005/august/20050805_exec_comm_rls.html (follow "Aug. 5, 2005-NCAA Executive Committee Issues Guidelines for Use of Native American Mascots at Championship Events" hyperlink); see also, O'Neill, *supra* at 173-174 (2006).

⁷ *Id.* (The College of William and Mary Tribe was given an extension to complete its self-study on the mascot issue, but were still placed on the "watch list" by the NCAA Executive Committee.)

⁸ Gary T. Brown, *Policy Applies Core Principles to Mascot Issue*, THE NCAA NEWS ONLINE, Aug. 15, 2005, <http://www.ncaa.org/wps/portal/> (follow "Media & Events" hyperlink; then follow "News Releases" hyperlink; then follow "2005" hyperlink; then click on "Policy Applies Core Principles to Mascot Issue" hyperlink).

⁹ *Id.*

¹⁰ *Id.*; See also, Kenneth B. Franklin, *A Brave Attempt: Can the National Collegiate Athletic Association Sanction Colleges and Universities with Native American Mascots*, 13 J. INTELL. PROP. L. 435, 436 (2006).

¹¹ Brown, *supra* note 8.

¹² NCAA press release, *supra* note 6; See also, Franklin, *supra* at 436.

¹³ *Id.*

the games be regular season or tournament games. Some schools had already decided that they would not schedule offending schools. For example, the University of Iowa and the University of Wisconsin have decided that they will not schedule athletic contests against universities that use Native American imagery in promoting their teams or allow such imagery on their campuses.¹⁴

The NCAA Executive Committee did establish an appeals process, whereby offending schools can challenge the policy and therefore be allowed to continue using the offending mascot or nickname. The NCAA stated that “individual institutions may appeal their inclusion on the list of schools whose mascots are considered hostile or abusive. The Executive Committee would serve as the appellate body in that case. Also, one or more institutions may seek to amend the overall policy by submitting a request through the applicable presidential governing body. The February 1 effective date allows for both processes.”¹⁵

In response to this policy many schools have appealed the policy, many have changed their nicknames altogether, and others have refused to do anything. The purpose of this article is to explore the different reactions to the NCAA’s ban from both the offending institutions and those institutions that took it upon themselves, usually prior to the NCAA’s ban, to change their offending nicknames. Although there have been various challenges to the NCAA’s decision,¹⁶ this article will not focus directly on the constitutionality of the NCAA’s decision; rather, the paper will focus on the history that led up to the ban and how schools have reacted after the ban was instituted.

The ban has had both positive and negative effects on the members of the NCAA. As a result of the ban, a number of schools have decided to stop using offensive and hostile imagery during sporting events. However, other schools have decided to fight the NCAA’s ban and, through some political backing and large monetary gifts, these schools have been allowed to retain their nicknames and mascots. The NCAA has created a double standard which at times can be difficult to understand and interpret. Part II of this article will discuss the schools that changed their nicknames and stopped using offending mascots prior to the NCAA’s ban, and their reasons for doing so. Part III of this article will explain how different schools that made the list reacted to the ban, what the schools are doing about the ban today, and how the ban has had an economic impact on some of the schools on the list. Part IV will conclude with a brief discussion on the positive and negative effect of the NCAA’s ban and where the NCAA should go from here.

SCHOOLS THAT CHANGED THEIR NICKNAMES AND STOPPED USING OFFENDING MASCOTS PRIOR TO THE NCAA’S BAN

Colleges and universities have been using mascots and nicknames since the 1890s. It is believed that Yale University’s “Handsome Dan,” an English bulldog, was the first university

¹⁴ O’Neill, *supra* note 4 at 183-184.

¹⁵ *Id.*

¹⁶ George, *supra* note 3 at 104-112 (This section outlines the constitutionality of the NCAA’s ban and whether the NCAA overstepped the “mandates of both relevant legal doctrine and the terms of its own policy.”).

mascot in the United States.¹⁷ Since that time colleges and universities across the nation have used mascots and nicknames to invoke “pride and loyalty in its students, alumni, and supporters” and also to achieve brand recognition, consumer loyalty and trademark strength.¹⁸

Choosing a college nickname and mascot varies from school to school. “The two most important factors that a college athletic program must consider when it wants to increase brand value to a national level are the goodwill its mark will evoke and the distinctiveness of its athletic label. When a University obtains and maintains a strong trademark it literally means extra dollars for the school.”¹⁹ For these purposes, and many others, schools must take particular care in choosing their mascot and nickname because a school’s nickname will lead to brand recognition, which leads to greater exposure and higher revenue for the school.²⁰ Colleges and universities will often choose their nicknames for various reasons. Some schools use colors as part of their nickname such as Evansville University Purple Aces,²¹ the Tulane University Green Wave,²² or the Syracuse Orange.²³ Other schools use animals such as the Brigham Young University Cougars²⁴ and the Oregon State University Beavers.²⁵ Other schools use geographic references to help them establish an identity, such as the Appalachian State University Mountaineers²⁶ or The University of Miami Hurricanes.²⁷ Still other schools use ethnic ties to the surrounding community to choose their nickname. These include the University of Pennsylvania Quakers²⁸ and the University of Notre Dame Fighting Irish.²⁹ It is generally this last category of nicknames where the majority of social problems occur. The majority of issues arise when

¹⁷ Yale University Bulldogs, Official Athletic Site, *History of The Yale Bulldog “Handsome Dan,”* <http://yalebulldogs.cstv.com/trads/mascot.html> (last visited Oct. 18, 2007) (The tradition was established by a young gentleman from Victorian England who attended Yale in the 1890s. The line now numbers 16 and the original successors have been the intimates of deans, directors, and coaches. One was tended by a head cheerleader who went on to become the Secretary of State. Another was featured on the cover of a national magazine. Yale was the first university in the United States to adopt a mascot, and to this date, none is better known than Handsome Dan).

¹⁸ Jonathan Gonzalez, *Trademark Goodwill, Brand Evaluation, and the Neo-political Correctness of College Athletics: Did Marquette’s Recent Identity Crisis Cost Them Thousands or Even Millions of Dollars in Brand Value*, 14 SPORTS LAW. J. 195, 196-197 (2007).

¹⁹ *Id.* at 201.

²⁰ *Id.*

²¹ Evansville Athletics, <http://gopurpleaces.com/> (last visited Oct. 18, 2007).

²² Official Athletic Site of the Tulane University Green Wave, <http://tulanegreenwave.cstv.com/> (last visited Oct. 18, 2007).

²³ Syracuse University Athletics, <http://www.suathletics.com/> (last visited Oct. 20, 2007) (Syracuse for years used the “Saltine Warriors” as their nickname but changed from that Indian reference long before its use became a public issue. The Mascot was discontinued in 1979, please see <http://www.nativevillage.org/Messages%20from%20the%20People/timeline%20for%20Indian%20Mascots.htm> (last visited Nov. 16, 2007)).

²⁴ BYUCougars.com – Official Home of BYU Athletics, <http://www.byucougars.com/> (last visited Oct. 18, 2007).

²⁵ OSUBeavers.com – Official Web Site of Oregon State University Athletics, <http://osubeavers.com/> (last visited Oct. 18, 2007).

²⁶ GoASU.com, <http://www.goasu.com/> (last visited Oct. 18, 2007).

²⁷ Hurricanesports.com – University of Miami Official Athletic Site, <http://hurricanesports.cstv.com/> (last visited Oct. 18, 2007).

²⁸ PennAthletics.com – The Official Website of University of Pennsylvania Athletics, <http://www.pennathletics.com/> (last visited Oct. 18, 2007).

²⁹ NOTRE DAME FIGHTING IRISH. The Official Athletic Site, <http://und.cstv.com/> (last visited Oct. 18, 2007).

schools decide to use Native American tribes, imagery and symbols for their nicknames and mascots.³⁰

A number of colleges and universities prior to the NCAA's 2005 ban took it upon themselves to change their nicknames, mascots, and logos "due to their offensive nature."³¹ Some of the larger profile schools to change their nicknames and mascots from Native American to non-offensive nicknames and mascots in the last fifty years are Stanford University, St. John's University, Marquette University, Dartmouth University, and the University of Oklahoma.³²

The first university to decide to change its nickname was Dartmouth University, an Ivy League school located in New Hampshire.³³ The school was founded in 1769 with the primary goal of educating the "American Indian youth in the region."³⁴ In the 1920s, a number of sports writers in the area began calling the Dartmouth University athletic teams the "Indians."³⁵ For the next fifty years this nickname was used by Dartmouth, although never formally accepted by the University.³⁶ However, the Indian symbol appeared on uniforms of athletic teams during this period.³⁷ Between 1972 and 1974 the University decided that it would no longer use the "Indian" as its unofficial mascot, and decided to use "The Big Green" as its official nickname.³⁸ The University stated that it recognized "the adverse effects of use of the Indian symbol upon the College's Native American Program and its students...and the College's Board of Trustees [decided] that [the] use of the (Indian) symbol in any form [was] inconsistent with present institutional and academic objectives of the College in advancing Native American education."³⁹ Dartmouth decided, without any major social challenges, that the use of any Native American symbols did not promote the school's goals, and that the University would be better served with a more generic nickname.⁴⁰

³⁰ Robert Laurence, *Me, Randy Lee and the Susans: An Informal, Mostly Non-Legal Essay on the Use of Indian Nicknames for Sports Teams*, 81 N.D. L. REV. 451, 453 (2005).

³¹ Andre Douglas Pond Cummings, *"Lions and Tigers and Bears, Oh My" or "Redskins and Indians, Oh Why": Ruminations on McBride v. Utah State Tax Commission, Political Correctness, and the Reasonable Person*, 36 CAL. W. L. REV. 11, 22-23 (1999); citing *McBride v. Motor Vehicle Division of Utah State Tax Comm'n*, 977 P.2d 467, 473 (1999) (Durham, A.C.J., dissenting).

³² Ashley Michael, *Schools Urged to Change Mascots*, <http://www.bpsports.net/bpsports.asp?ID=2071>, Apr. 30 2001 (last visited Oct. 18, 2007). Other schools included in the list of Division 1 schools to change their mascots include Siena College (from "Indians" to "Saints"), Saint Mary's College (from "Red Men" to "Cardinals") Eastern Washington University (from "Savages" to "Eagles") and Miami University (Ohio) (from "Redskins" to "Redhawks"). A more extensive list can be found at http://www.inwhosehonor.com/documents/mascot_changes.html (last visited Oct. 20, 2007).

³³ DartmouthSports.com – Official Website of Dartmouth Varsity Athletics, *The "Big Green" Nickname*, http://dartmouthsports.xosn.com/ViewArticle.dbml?DB_OEM_ID=11600&ATCLID=590538 (last visited Oct. 20, 2007).

³⁴ *Id.* (The term Native American is an Anglo politically correct term. Indians generally call themselves Indians).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

The University of Oklahoma decided on its own to stop using their offensive mascot "Little Red" during University-sanctioned athletic events.⁴¹ For forty years a male member of the student body would dress in Indian apparel and excite "the crowd with 'war chants' and 'Indian dances'-mainly woo-woo-woo yells and acrobatic leaps [with a] g-stringed OU breechcloth flapping in the breeze."⁴² In 1970, following a Native American sit-in at the president's office, the school's human relations committee called for the total abolishment of "Little Red."⁴³ Following these and other demonstrations, the University president banished "Little Red" from any University-sanctioned athletic event.⁴⁴

Stanford University was the next prominent university to change its nickname, as the school went from the Indians to the Cardinal.⁴⁵ "Stanford officially adopted the Indian nickname on Nov. 25, 1930 after a unanimous vote by the Executive Committee for the Associated Students."⁴⁶ When the resolution passed to adopt the Indian as its nickname, the resolution read, "whereas the Indian has long been unofficially recognized as the symbol of Stanford and its spirit, and whereas there has never been any official designation of a Stanford symbol, be it hereby resolved that the Executive Committee adopt the Indian as the symbol of Stanford."⁴⁷ However, in 1972 the Indian symbol was dropped after meetings between Stanford Native American students and President Richard Lyman.⁴⁸ "The 55 [Native American] students, supported by the other 358 American Indians enrolled in California colleges, felt the mascot was an insult to their culture and heritage. As a result of these talks and the ensuing publicity, the Stanford Student Senate voted 18-4 to drop the Indian symbol, and Lyman agreed."⁴⁹ After the Stanford Student Senate voted to drop the Indian as Stanford's symbol, there were two student-wide votes, one in 1972 and another in 1975, to reinstate the Indian. However, both student-wide votes failed, which has left the Cardinal as the school's official nickname.⁵⁰

St. John's University, located in the state of New York, was one of the more recent schools to change its nickname. St. John's originally was given the nickname "The Red Men" in 1923, because "it was around that time that then-director of athletics and football coach Ray Lynch had his players wear red uniforms in games, the local media picked up on it, and dubbed the St. John's athletic teams, the Red Men."⁵¹ However, the school decided in 1994 that it was time to change its nickname. When the school decided to change from the Red Men to the Red Storm the school stated, "colleges nationwide [are] becoming more sensitive to mounting Native American concerns in reference to collegiate and professional team nicknames that reference

⁴¹ The University of Oklahoma Visitor Center, <http://www.visit.ou.edu/HTML/history.htm> (last visited Oct. 20, 2007).

⁴² Suzan Shown Harjo, *Chief Offenders*, NATIVE PEOPLES MAGAZINE, Aug. 1, 1999, <http://www.nativepeoples.com/article/articles/145/1/Chief-Offenders/Page1.html> (last visited Oct. 20, 2007).

⁴³ *Id.*

⁴⁴ The University of Oklahoma Visitor Center, *supra*.

⁴⁵ On Campus – Stanford University Official Athletic Site, What is the history of Stanford's mascot and nickname?, <http://gostanford.cstv.com/school-bio/stan-nickname-mascot.html> (last visited Oct. 20, 2007).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Official Website of St. John's University – St. John's Red Storm, <http://redstormsports.cstv.com/trads/stjo-trads.html> (last visited Oct. 20, 2007).

Native American culture. Although the nickname “Red Men” was instituted because the men of St. John’s wore red, and did not have an original basis in Native American culture, it did eventually evolve into a nickname that referenced Native American symbology. St. John’s wanted to make a change that would stay true to its tradition, but also be distinctive and unique. Thus, the new nickname Red Storm was born.”⁵² St. John’s is another school that took it upon itself to change its offensive nickname rather than face any public scorn.

Another school to change its nickname was Marquette University. The students of Marquette adopted the nickname of “Warriors” in May 1954.⁵³ In February 1961, the University’s mascot “Willie Wampum” made his first appearance at a Marquette basketball game.⁵⁴ The use of Willie Wampum only lasted until 1971 when Willie was retired. However, the University retained and used the nickname “Warriors” until 1993, when Marquette announced its decision to discontinue the use of the “Warriors” name and logo.⁵⁵ Students and alumni were immediately upset by the decision to drop the nickname. From the time that the Warrior nickname was taken away until early 2005 Marquette University students called for a reinstatement of the “Warrior” nickname. The students claimed that Marquette’s new nickname the “Golden Eagles” was boring, weak and common.⁵⁶ In 2004, Wayne Sanders, vice chair of the university’s Board of Trustees, announced that “he and an anonymous trustee were each prepared to pledge \$1 million to the university if the institution would consider a return to the Warriors nickname by the time Marquette enters the BIG EAST Conference in 2005-06.”⁵⁷ Marquette’s president, Robert Wild, quickly rejected the donation and stated: “While I recognize that some people will be disappointed that we are not reinstating the Warriors nickname, we cannot teach one principle about respect for human dignity in our classrooms and then fail to act by that same principle when making decisions. The nickname ‘Warriors’ will always be part of our proud athletics tradition, and we will honor that tradition. But we live in a different era than when the nickname ‘Warriors’ was selected in 1954. The perspective of time has shown us that our actions, intended or not, can offend others. We must not knowingly act in a way that others will believe, based on their experience, to be an attack on their dignity as fellow human beings.”⁵⁸

For the Marquette president, the decision to change the school’s nickname was based on conversations the Board had with Native American communities in the area which led them to be “convinced that the Warriors nickname could not be separated from past imagery.”⁵⁹ Although the school lost out on the one-million-dollar donations, for the school it “became clear...that as stewards of the university’s mission, we had to be guided by conscience, not emotion.”⁶⁰

⁵² St. John’s University, http://www.stjohns.edu/alumni/resources/alu_athfaq.stj (last visited Oct. 20, 2007).

⁵³ Marquette University, <http://www.marquette.edu/opa/newsroom/nickname/timeline.shtml> (last visited Oct. 20, 2007).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* See also, Marquette University, <http://www.marquette.edu/omc/newsroom/nickname/decision.shtml> (last visited Oct. 20, 2007) in a survey given by Marquette University to its students “the terms respondents most often used to describe the Golden Eagles nickname are boring (57 percent), weak (55 percent) and common (52 percent).”

⁵⁷ *Id.*

⁵⁸ Marquette University, <http://www.marquette.edu/omc/newsroom/nickname/decision.shtml> (last visited Oct. 20, 2007).

⁵⁹ *Id.*

⁶⁰ *Id.*

The aforementioned schools, along with many others, decided to change offensive mascots and nicknames prior to the NCAA's ban and did so based on the schools own respect for culture and Native American tribes and communities. Some schools have offended alumni, others have lost out on substantial donations; however, the schools on their own decided to discontinue offensive and hostile nicknames and mascots.

THE SCHOOLS ON THE BANNED LIST: A MIXED BAG

From the original list of nineteen schools that made the list of schools that the NCAA considered to have "hostile or abusive [racial or ethnic] mascots, nicknames or imagery,"⁶¹ several high profile institutions immediately challenged the NCAA's authority.⁶² As a result of using the NCAA appeals process to challenge the NCAA's authority, many national profile schools have been allowed to retain their nicknames, despite the NCAA's displeasure, through the influence of powerful officials and their connections.⁶³

Other smaller profile schools reacted differently to the NCAA's ban. Some schools decided to change their nicknames,⁶⁴ while other schools decided to ignore the ban and continue using Native American mascots and imagery.⁶⁵ The smaller schools often do not have the same alumni base, the funds or political connections that larger institutions have, and therefore have been forced to change their nicknames.⁶⁶

One such school that originally decided to ignore the ban was Newberry College in South Carolina. Until recently it decided to use "Indians" as its mascot and claimed to "have no intention of changing" its nickname.⁶⁷ Newberry College appealed the NCAA's ban, but was denied and asked to change its nickname.⁶⁸ However, Newberry College decided, "to stick with its nickname even though the NCAA turned down the school's request to be removed from a list of colleges whose American Indian mascots, logos and nicknames will be banned in postseason

⁶¹ NCAA, Press Release, *NCAA Executive Committee Issues Guidelines for Use of Native American Mascots at Championship Events*, (Aug. 5, 2005), available at http://www2.ncaa.org/media_and_events/press_room/2005/august/20050805_exec_comm_rls.html; see also, O'Neill, *supra* note 4 at 173-174.

⁶² George, *supra* note 3 at 99.

⁶³ Brian R. Moushegian, *Native American Mascots Last Stand? Legal Difficulties in Eliminating Public University Use of Native American Mascots*, 13 VILL. SPORTS & ENT. L.J. 465, 467-478 (2006).

⁶⁴ O'Neill, *supra* note 4 at 180. (Schools that decided to change their mascots and nicknames all together, The Carthage College men's teams will go by Red Men instead of Redmen, Chowan College will be known as the Hawks instead of the Indians, Midwestern State University will be the Mustangs instead of the Indians, Southeastern Oklahoma State University will be the Savage Storm instead of the Savages, Indiana University of Pennsylvania will be the Crimson Hawks instead of the Indians).

⁶⁵ George, *supra* note 3 at 102-103; O'Neill, *supra* note 4 at 180; <http://asunews.astate.edu/MascotSelectionRec.htm> (last visited Oct. 25, 2007), (Newberry College, Arkansas State University and Alcorn State University have been some of the more outspoken schools refusing to change their nicknames However, Arkansas State University recently has decided to change its mascot and stop using "Indians" as its nickname, a new mascot and nickname will be initiated sometime between 2008-2009).

⁶⁶ George, *supra* note 3 at 97-100.

⁶⁷ O'Neill, *supra* note 4 at 181.

⁶⁸ *Newberry School Loses Appeal but will Keep Mascot*, <http://sports.espn.go.com/espn/print?id=2204132&type=story> (last visited Oct. 25, 2007).

play starting next year.”⁶⁹ In its appeal to the NCAA, Newberry College claimed that its “athletic logos include a red spear and a jagged arrowhead with the letters ‘NC’ connected inside it. A slogan on the school’s Web site advises, ‘Fear the Spear’.”⁷⁰ Newberry College also cited the “overwhelming support by American Indians for the use of the nickname and mascot.”⁷¹ In response, Bernard Franklin of the NCAA said Newberry’s first argument missed the point “because it values intent over effect,” something that was not in the school’s scope to judge.

Mitchell Zias, the president of Newberry College stated, “The whole thing is nonsense. The NCAA is not the arbiter of political correctness in this country. My view is that ‘Indian’ in and of itself is not a derogatory term and is not hostile or abusive any more than Fighting Irish or Minnesota Vikings or Spartans or Trojans -- all of which are human-image mascots. What are the limits of this? Are the [Presbyterian College] blue hose-wearing Highlanders insulting to people of Scottish descent?”⁷² Newberry College changing its nickname would “indicate that we [Newberry College] did not truly believe in the validity of our appeal, or that our moral compass was subject to be swayed by the collective opinion of the NCAA Executive Council.”⁷³ In a letter to NCAA president Myles Brand, President Zais stated: “We understand that the NCAA may be embarrassed by some schools’ use of a mascot or nickname in such a way that stereotypes or demeans a race or group of people. Newberry College is not one of those schools.”⁷⁴ However, after the football team finished the 2006 regular season with a 10-1 record, the school’s president changed his tune and acquiesced to the NCAA.⁷⁵ The College has informed the NCAA that it has initiated the process of examining its nickname with the goal of resolving its dispute with the NCAA by the fall of 2008.⁷⁶ As a result of the College changing its “tune,” the NCAA lifted the hosting ban and the College’s athletic teams will be able to use the Indian nickname and all current imagery until the fall of 2008.⁷⁷ Newberry College has not adopted a new nickname yet, but rather than face any sanctions Newberry decided that it would succumb to the NCAA and change its nickname.

While some schools decided to fight the NCAA’s ban, Bradley University, a small university in Peoria, Illinois, decided to comply with the ban while at the same time retaining its nickname. Bradley filed an appeal with the NCAA and was allowed to retain its nickname of “Braves” after it removed Native American symbols from its logo.⁷⁸ The Executive Committee agreed that Bradley had previously removed all Native American imagery associated with its athletics programs and only kept the generic “Braves” nickname. Bradley had actually stopped using a mascot and Indian imagery about ten years prior to the NCAA’s 2005 ban of Native

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Liz Clark, *In North Dakota Controversy has a Name*, (article written Nov. 2005)

http://www.washingtonpost.com/wp-dyn/content/article/2005/11/05/AR2005110501337_pf.html (last visited Oct. 25, 2007).

⁷³ O’Neill, *supra* note 4 at 180.

⁷⁴ *Newberry School Loses Appeal but will Keep Mascot*, <http://sports.espn.go.com/espn/print?id=2204132&type=story> (last visited Oct. 25, 2007).

⁷⁵ O’Neill, *supra* note 4 at 180.

⁷⁶ *Newberry College Reaches Agreement with NCAA on Post-Season Events*, <http://newberryindians.athleticsite.com/article.asp?articleID=1946> (last visited Oct. 25, 2007).

⁷⁷ *Id.*

⁷⁸ George, *supra* note 3 at 100-101.

American imagery, a move that the NCAA officials applauded.⁷⁹ Based on information contained in Bradley's appeal, the Executive Committee found that Bradley demonstrated its ability to provide an environment that is not hostile or abusive to Native Americans and one that is consistent with the NCAA's Constitution and commitment to diversity, respect and sportsmanship. And as a result Bradley was allowed to fully participate in and host NCAA championships without restrictions, and was able to retain its nickname.⁸⁰

Dr. David Broski, the President of Bradley University said, "Bradley University has used the 'Braves' name since 1937 and we are pleased that the many generations of Bradley athletes to come will continue to bear that name, representative of the pride and tradition of our University. The University will continue to encourage in our student body the qualities of honor, courage, tenacity, loyalty, and endurance associated with the Braves name. Additionally, the University will continue its commitment to encourage our students to learn about and respect Native American peoples and traditions. Bradley does not now and will not in the future use Native American depictions in its logo."⁸¹ Although Bradley was allowed to keep its nickname, the NCAA placed Bradley on a "watch list" because the school no longer used Native American imagery to promote its teams with the exception of its nickname.⁸² The NCAA decided that it would observe the school's use of Native American imagery for five years.⁸³ The NCAA now monitors Bradley's use of its nickname and imagery at games, on campus and on Web sites.⁸⁴

While Newberry College and Bradley have had serious restrictions placed upon them, other schools are still allowed to use Native American imagery and mascots in any athletic event, with NCAA approval. The Florida State University Seminoles,⁸⁵ just days after the NCAA's 2005 ban, was the first university to appeal the matter to the NCAA.⁸⁶ Florida State University's Board of Trustees gave the school permission to sue the NCAA for the right to continue using "Seminoles" as the school's mascot.⁸⁷ In fact the Florida legislature threatened to open an antitrust investigation into the NCAA.⁸⁸ Even the Governor of Florida at the time, Jeb Bush, criticized NCAA officials for their decision to penalize Florida State University for using an American Indian nickname and symbols, calling the ban "ridiculous."⁸⁹ Governor Bush went on to say, "How politically correct can we get? The folks that make these decisions need to get out

⁷⁹ *NCAA Puts Bradley on Watch List*, <http://sports.espn.go.com/ncaa/news/story?id=2425381> (last visited Oct. 25, 2007).

⁸⁰ *NCAA Allows Bradley to Keep Braves Nickname*, http://www.bubraves.com/ViewArticle.dbml?SPSID=19447&SPID=1510&DB_OEM_ID=3400&ATCLID=271847, (last visited Oct. 25, 2007); *Id.*

⁸¹ *Id.*

⁸² O'Neill, *supra* note 4 at 181.

⁸³ *NCAA Allows Bradley to Keep Braves Nickname*, http://www.bubraves.com/ViewArticle.dbml?SPSID=19447&SPID=1510&DB_OEM_ID=3400&ATCLID=271847, (last visited Oct. 25, 2007); *Id.*

⁸⁴ *Id.*

⁸⁵ Official Athletic Site of Florida State University, <http://seminoles.cstv.com/trads/fsu-trads-osceola.html> (last visited Oct. 20, 2007).

⁸⁶ Paul McMullen, *Florida State Mascot Removed from NCAA Banned List*, <http://media.www.kykernel.com/media/storage/paper305/news/2005/08/24/CampusNews/Florida.State.Mascot.Removed.From.Ncaa.Ban.List-969140.shtml> (last visited Oct. 25, 2007).

⁸⁷ O'Neill, *supra* note 4 at 175.

⁸⁸ *Id.*

⁸⁹ *Florida Gov. Bush calls Seminole Mascot Ban Ridiculous*, <http://sports.espn.go.com/ncaa/news/story?id=2130079> (last visited Oct. 25, 2007).

more often.”⁹⁰ The comments from Governor Bush led Florida State Vice President Lee Hinkle to say, “If you have the Seminole Tribe and Gov. Bush on your side, how can you go wrong?”⁹¹ As a result of the political and social attention that Florida State University was receiving the NCAA, less than a month after announcing its ban, recanted and retreated on the use of “specific tribe names where an institution had a relationship with the tribe and permission to use the name in question.”⁹²

Florida State University has chosen to adopt the Seminoles and Chief Osceola as its nickname and mascot, respectively.⁹³ The University uses Native American imagery in many of the school’s athletic events. For example, before every home, and sometimes away, football games a student “wearing moccasins, a tasseled leather ‘Indian’ outfit, face paint, and a large bandanna, hoisting a large feathered lance charges down the field riding an appaloosa horse named Renegade and hurls a flaming lance downfield.”⁹⁴ The school states that only students with high moral character who are willing to undergo a two-year apprenticeship can “don the famous headdress of the Chief.”⁹⁵

The nickname and mascot have received approval from the Seminole tribe in Florida, and therefore the University is allowed to continue using the nickname and mascot, according to the NCAA’s new policy.⁹⁶ However, the Seminole Nation as a whole has not approved Florida State’s use of Seminole imagery. The Seminole Nation of Oklahoma opposes the use of Florida State University’s use of “Seminoles” as a nickname and mascot. David Narcomey, a council member for the Seminole Nation of Oklahoma, said that the Seminole Nation’s council has plans to pass a resolution opposing the mascot. Narcomey criticized the Seminole Tribe of Florida for supporting the name. Narcomey told USA Today: “As far as the complexity of the mascot issue and the harm it brings, they don’t seem to have an understanding that should be there. Their understanding is just that of the average non-Indian person.”⁹⁷ Notwithstanding the Seminole Nation of Oklahoma’s opposition to Florida State University using its nickname and mascot,⁹⁸ the NCAA withdrew Florida State from its list of sanctioned schools and Florida State was allowed to continue use of its nickname and mascot.⁹⁹

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² George, *supra* note 3 at 99.

⁹³ Official Athletic Site of Florida State University, <http://seminoles.cstv.com/trads/fsu-trads-osceola.html>; *see also*, Kenneth B. Franklin, *A Brave Attempt: Can the National Collegiate Athletic Association Sanction Colleges and Universities with Native American Mascots?* 13 J. INTELL. PROP. L. 435, 441-442 (2006).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Kenneth B. Franklin, *A Brave Attempt: Can the National Collegiate Athletic Association Sanction Colleges and Universities with Native American Mascots*, 13 J. Intell. Prop. L. 435, 442-443 (Spring 2006). *See also*, Robert Laurence, *Me, Randy Lee and the Susans: An Informal, Mostly Non-Legal Essay on the Use of Indian Nicknames for Sports Teams*, 81 N.D. L. REV. 451 (2005).

⁹⁷ *Seminole Nation Opposes FSU ‘Seminoles’ Mascot*, <http://www.indianz.com/news/2005/008920.asp> (last visited Oct. 25, 2007).

⁹⁸ O’Neill, *supra* note 4 at 200-201.

⁹⁹ See Press Release, NCAA, Statement by NCAA Senior Vice President for Governance and Membership Bernard Franklin on Florida State University review, available at http://www2.ncaa.org/media_and_events/press_room/2005/august/20050823_franklinstmtappeal.html, found in George, *supra* note 3 at [FN 35]. (FSU Trustee Richard McFarlain, summarized Florida State University’s opinion of the Seminole Nation of Oklahoma’s objection to the Seminole nickname: “I could care less what the Seminole Tribe in Oklahoma think. They’re in

Two other schools received a pass from the NCAA because of their close relationship with local tribes. In examining the Central Michigan University Chippewas,¹⁰⁰ “the NCAA staff review committee noted the relationship between the University and the Saginaw Chippewa Indian Tribe of Michigan ... as a significant factor”¹⁰¹ in taking Central Michigan University off the banned list. The NCAA also allowed the University of Utah Utes to retain its nickname.¹⁰² “The university had sent a seven-page appeal to the NCAA on Wednesday, asking that it be removed from a list of 18 schools subject to restrictions because they have American Indian nicknames, mascots or images.” Michael Young, the president of the University of Utah stated: “We are very pleased that the NCAA has recognized our close and mutually respectful relationship with the Ute Tribe and accordingly has removed the University of Utah from their list of schools that use Native American names or imagery inappropriately. We appreciate their prompt attention to our appeal.”¹⁰³

Other schools have not received the same treatment from the NCAA because local tribes have refused to approve the continued use of offending nicknames and mascots. The two most well-known schools to be affected by the ban are the University of Illinois Fighting Illini,¹⁰⁴ and the University of North Dakota Fighting Sioux.¹⁰⁵

The University of Illinois “Fighting Illini” has a long and storied athletic tradition in the Big Ten Conference. Although the nickname of the Fighting Illini has come under considerable scrutiny, the University’s use of its mascot, Chief Illiniwek, has drawn public outcries, complaints and lawsuits.¹⁰⁶ Chief Illiniwek was introduced in the late 1920s, but did not become the official mascot until an Illinois versus Army football game in 1930.¹⁰⁷ Chief Illiniwek has been a staple at athletic events for eighty-one years until recently when the mascot was officially retired.¹⁰⁸ During that time the Chief Illiniwek symbol had occupied “a space at the heart of University of Illinois sporting events,” at prominent places throughout the University campus and even used in honorary societies and on officially licensed merchandise.¹⁰⁹

Oklahoma...They got run out of here by—who was it, Andrew Jackson or somebody like that? The Trail of Tears? The real Seminoles Stayed here.”); *See*, O’Neill, *supra*, citing, Steve Bousquet, *Florida State Prepares to Fight*, http://www.sptimes.com/2005/08/11/news_pf/State/Florida_State_prepare.shtml (Aug. 11, 2005).

¹⁰⁰ <http://www.cmuchippewas.com/>

¹⁰¹ *See NCAA Approves CMU's Mascot*, DETNEWS.COM, PP 1-3, Sept. 4, 2005, <http://www.detnews.com/2005/college/0509/09/C09-303392.htm> (noting NCAA's approval of CMU mascot), Moushegian, *supra* note 63 at FN19.

¹⁰² Official website of Utah Athletics, <http://utahutes.cstv.com/> (last visited Oct. 25, 2007).

¹⁰³ Mike Sorenson, *Utes Get to Keep Name*, DESERETNEWS.COM, PP 1-5, Sept. 3, 2005, <http://deseretnews.com/dn/view/0,1249,600160847,00.html>, Moushegian, *supra* at FN18.

¹⁰⁴ The Official Site of University of Illinois Athletics, <http://fightingillini.cstv.com/> (last visited Oct. 25, 2007).

¹⁰⁵ The Official Site of University of North Dakota Athletics, <http://www.fightingsioux.com/> (last visited Oct. 25, 2007).

¹⁰⁶ Brendan S. Crowley, *Resolving the Chief Illiniwek Debate: Navigating the Gray Area Between Courts of Law and the Court of Public Opinion*, 2 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 28 (2004).

¹⁰⁷ *Id.* at 32-33.

¹⁰⁸ AP, *University of Illinois' Controversial Mascot is Retired*, <http://www.foxnews.com/story/0,2933,253520,00.html> (last visited Oct. 27, 2007).

¹⁰⁹ Crowley, *supra* note 106 at 33.

The first challenge to the Chief Illiniwek mascot occurred in 1989 when an Illinois student and member of the Spokane tribe began “a campus-wide movement in protest of Chief Illiniwek” that continued until the mascot was retired.¹¹⁰ However, in 1995 the Peoria tribe approved the use of the Chief Illiniwek mascot and said, “We’re proud that the University of Illinois is the major institution in the state, a seat of learning, and they are drawing on the background of our having been there. And what more honor could they pay us.”¹¹¹ The Peoria tribe would later recant its approval and passed a resolution in 2000 requesting that the University of Illinois end its use of Chief Illiniwek.¹¹²

The next problem for the University came in 2001 when a group of Illinois students and faculty, who opposed the use of Chief Illinwek, brought a First Amendment suit against Michael Aiken, a former chancellor of the University, in federal district court alleging a prior restraint of their right to freely communicate with prospective Illinois students.¹¹³ The plaintiffs in *Crue v. Aiken* expressed an interest in contacting prospective student-athletes to provide information and share their concern over the Chief Illiniwek controversy. Chancellor Aiken was worried that the communications could “violate recruiting guidelines of the NCAA and lead to the imposition of sanctions” so Aiken decided to send an email to faculty, students and administrators “forbidding communication with prospective students-athletes without consent of the Director of Athletics.”¹¹⁴ The court ruled in favor of the plaintiffs and wrote, “The corresponding duties resulting from the University’s voluntary decision to be a member of the NCAA cannot mean that the University has a right or obligation to check the First Amendment rights of its students and faculty at the property line of the campus.”¹¹⁵ The students were then allowed to send letters to prospective student-athletes regarding the Chief Illiniwek debate, which would not break any NCAA recruiting rules.¹¹⁶ Although the students were allowed to contact prospective student-athletes, the University was still allowed to use Chief Illiniwek and continued to do so until the NCAA’s 2005 ban on offensive mascots.

After the 2005 ban, the University of Illinois successfully argued that its use of the term “Illini” is “defensible based on its close association with the state name.”¹¹⁷ However, the University remained on the sanctioned list because of its refusal to discontinue the use of Chief Illiniwek as “a mascot or the logo of the Native American in headdress.”¹¹⁸ Illinois decided to follow the example of Florida State and others schools and appeal the NCAA’s ban on its use of Chief Illiniwek.¹¹⁹ On April 28, 2006, the NCAA denied Illinois appeal and informed the school that it would be subject to restrictions if it continued to use Native American imagery during

¹¹⁰ *Id.* at 34 and [FN26] (The student’s name was Charlene Teters, and although her focus was Chief Illiniwek, she also lead a group that sought to eliminate other collegiate and Professional Sports Mascots, logos, and names that referenced symbols or people)

¹¹¹ *Id.* at 34, Citing *The Chief Illiniwek Dialogue Report*, taken from http://www.uiuc.edu/dialogue/report_files/V.html (retrieved by Mr. Crowley on Jan. 24, 2004).

¹¹² *Id.*

¹¹³ *Id.* at 37-43 citing *Crue v. Aiken*, 204 F.Supp.2d 1120 (C.D. Illi 2002), *aff’d*, 370 F3d 668 (7 th Cir. 2004).

¹¹⁴ *Aiken*, 204 F.Supp.2d at 1134-1137.

¹¹⁵ *Id.* at 1146.

¹¹⁶ Crowley, *supra* note 106 at 41-42.

¹¹⁷ George, *supra* note 3 at 100.

¹¹⁸ *Id.*

¹¹⁹ University of Illinois, <http://www.uillinois.edu/trustees/NCAA%20Appeal/NCAA%20Appeal%202006.pdf> (last visited Oct. 27, 2007).

athletic events and around campus.¹²⁰ Due to the University's refusal, the Illinois Men's tennis team was the first team to be penalized by the NCAA's policy. The team was ranked eighth in the nation and was supposed to host the first and second rounds of the NCAA tournament in 2006. However, the team was told that it would have to travel to the University of Louisville¹²¹ because Illinois continued to use "Native American Imagery."¹²² After the men's tennis team was punished by the NCAA, the *Crue v. Aiken* lawsuit, and growing public opposition, the University of Illinois decided to review its decision of using Chief Illiniwek during athletic events. After careful consideration the school decided to retire Chief Illiniwek. The University reasoned that it would retire its mascot, "so that the University can be removed from the list of NCAA policy violators, move our institution forward and allow our student athletes to compete at the highest levels and free of sanctions."¹²³ Chief Illiniwek was retired on February 21, 2007, and as a result of its decision, the University was removed from the list of sanctioned schools and will no longer be subject to any NCAA sanctions.¹²⁴

The University of North Dakota (UND) has decided to fight the NCAA's ban and probably face a "potentially insurmountable obstacle" in its attempt to continue using its nickname – Fighting Sioux.¹²⁵ UND officially adopted the name "Fighting Sioux" in honor of the first inhabitants of the region and some of the American Indian tribes of the state.¹²⁶ Since 1930, UND has used an American Indian head as its symbol.¹²⁷ With a storied athletic program and its use of "Fighting Sioux" for almost seventy-five years, UND was disappointed in the NCAA's 2005 mascot and nickname ban.¹²⁸

Within one month of the NCAA's announcement UND had sent off an appeal to the NCAA with the request of being able to retain its nickname.¹²⁹ UND had three basic arguments in its appeal:

- (1) The nickname and logo are used with the utmost respect and class and are in no way inherently hostile or abusive.

¹²⁰ University of Illinois, <http://www.uillinois.edu/trustees/NCAA%20Appeal/NCAA%20Ltr%204-28-06.pdf> (last visited Oct. 27, 2007).

¹²¹ University of Louisville "Cardinals" therefore not on the list.

¹²² O'Neill, *supra* note 4 at 178-179; NCAA Sports, *2006 Division I Men's tennis Team Championship*, http://www.ncaasports.com/tennis/mens/brackets/viewable/straight64_dyn/2006/DI (accessed by Kelly P. O'Neill Jan. 29, 2006).

¹²³ Statement by Board of Trustees Chair Lawrence C. Eppley, statement made January 18, 2007, <http://www.uillinois.edu/trustees/dialogue/LEppleyStmnt.html> (last visited Oct. 27, 2007).

¹²⁴ Letter from the NCAA dated February 15, 2007, <http://www.uillinois.edu/chief/NCAA.Letter.pdf> (last visited Oct. 27, 2007).

¹²⁵ O'Neill, *supra* note 4 at 203.

¹²⁶ History of the Fighting Sioux Nickname, <http://www.universityrelations.und.edu/logoappeal/history.html> (last visited Oct. 27, 2007).

¹²⁷ *Id.*

¹²⁸ UND Sends Appeal to the NCAA, <http://www2.und.nodak.edu/our/news/story.php?id=1645> (last visited Oct. 27, 2007).

¹²⁹ *Id.*

- (2) UND has many substantive positive relationships with American Indians and the University has had – and continues to have – the support, including the formal support, of many Indian people.
- (3) The University believes it is “totally unreasonable for the NCAA to ask us to change the terms of a contract in place whereby we would host the regional Division I men’s hockey tournament in the spring.”¹³⁰

Although the NCAA had already granted three appeals,¹³¹ the NCAA denied UND’s appeal. The NCAA’s Bernard Franklin said that it was critical that there was opposition to UND from two of the three local Sioux tribes, in addition to a resolution by the Board of Directors of the United Tribes of North Dakota in support of the NCAA restrictions.¹³²

Although, the NCAA allowed UND to host the NCAA Hockey Tournament the year of the ban, the NCAA required the school to “take reasonable steps to cover up” all Indian references in March when it was to host the hockey regional in Ralph Englestad Arena, which totaled more than 2,000 Fighting Sioux logos.¹³³ Three months later UND filed its second appeal with the NCAA asking to be removed from the sanctioned list.¹³⁴ UND President Charles Kupchella characterized the appeal as “more analytical and legalistic,” and said the appeal is different from the first one in other ways as well.¹³⁵ Kupchella went on to state: “We do all that we do here with class. We do more here for American Indian students and American Indian people on reservations than all of the other institutions already exempted by the NCAA combined.”¹³⁶ The second Appeal was also denied, leaving UND no other recourse but to sue the NCAA. In a letter to University of North Dakota stakeholders and the general public President Kupchella stated: “The NCAA leaves us no recourse but to consider litigation to make the point that the policy you have instituted is illegitimate and that it has been applied to the University of North Dakota in an unfair, arbitrary, capricious, fundamentally irrational, and harmful manner.”¹³⁷

The legal battle took almost a year to resolve itself. However, on October 26, 2007, UND and the NCAA finalized a conditional agreement. The terms of the agreement allow “North Dakota until the end of November 2010 to clear its nickname with both Sioux tribes based in the state, the Spirit Lake Tribe and Standing Rock Sioux Tribe.” Both tribes opposed the use of the

¹³⁰ *Id.*

¹³¹ Florida State University Seminoles, Utah Utes, and Central Michigan University Chippewas. Each of the schools that received a pass from the NCAA had approval of the local tribes, and the NCAA allowed each to retain its nickname and mascots.

¹³² Steve Wieberg, *NCAA denies UND’s appeal over Fighting Sioux Nickname and Logo*, USA TODAY September 28, 2005, http://www.usatoday.com/sports/college/other/2005-09-28-ncaa-und-rejection_x.htm (last visited Oct. 27, 2007).

¹³³ *Id.*

¹³⁴ UND sends Second Appeal to the NCAA November 4, 2005. <http://www2.und.nodak.edu/our/news/archive.php> (last visited Oct. 27, 2007).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Letter written by President Kupchella, dated June 7, 2006, the full letter can be found at: http://www.universityrelations.und.edu/logoappeal/openletter_6-07-06.html (last visited Oct. 27, 2007).

Fighting Sioux at the time the school's appeal to the NCAA was rejected by the association in September 2005.¹³⁸ The agreement also specified that any waiver granted the school after tribal approval of its "Fighting Sioux" nickname would be rescinded if either tribe withdraws its endorsement.¹³⁹ So for now, UND is off of the NCAA's sanctioned list and is allowed to host NCAA tournaments and use its "Fighting Sioux" nickname.

From the original nineteen schools that made the NCAA's sanctioned list, twelve of the cited schools have changed or indicated they will change their nicknames or mascots,¹⁴⁰ five schools were removed from the NCAA list after showing in appeals that they have local tribes' approval of their nicknames,¹⁴¹ and Bradley University is on a five-year NCAA "watch list," unaffected by the policy while working to assure the NCAA that it does not promote any negative or hostile feelings toward Native Americans.¹⁴² Only one school, the Alcorn State University Braves, remains on the NCAA non-compliance list due to the fact that Alcorn State chose not to appeal, but still retained its nickname.¹⁴³ Until Alcorn State either changes its nickname or is granted approval from the NCAA, it will be subject to the penalties imposed by the NCAA.

CONCLUSION

Although the NCAA decided to respond to the extreme public and social pressure being put upon it by Native American tribes and growing public concern, the NCAA's decision was truly ground-breaking. On the other hand, professional sports team owners continue to refuse to abandon discriminatory nicknames and mascots.¹⁴⁴ If professional teams continue to refuse to change their nicknames, many fans of NCAA athletics will continue to be confused as to why their school had to change its nickname while a professional sports team is allowed to continue using offensive nicknames and imagery. The NCAA decided that it was more important for its organization to make a stand against hostile and offensive nicknames and imagery than to allow schools to go through the process of public scrutiny and change their nicknames on their own, as other schools had already done. If the NCAA had not passed its ban, how many of the schools would have changed their mascots in response to social pressure by Native American communities or negative public perception? Or, would schools have continued to use blatantly offensive nicknames and mascots because of the brand recognition that the schools received?

The NCAA took a major risk in deciding to pass the ban on all hostile or abusive nicknames based on race. The controversy will only intensify due to the NCAA double-standard that to some it seemed to create when the NCAA allowed some schools, such as Florida State University and the University of Utah, to continue using their Native American nicknames and

¹³⁸ Steve Wienberg, *North Dakota granted three years to get approval for mascot*, USA TODAY, http://www.usatoday.com/sports/college/2007-10-26-north-dakota-mascot_N.htm.

¹³⁹ *Id.*

¹⁴⁰ *Id.* (Including the University of Illinois, although it did not change its nickname, the Fighting Illini, it retired Chief Illiniwek and thereby complied with the NCAA's policy).

¹⁴¹ *Id.* (Which includes Florida State University Seminoles, University of Utah Utes, Central Michigan Chippewas).

¹⁴² *Id.*

¹⁴³ *Id.*; See also, <http://www.hoopville.net/content/mascots/hostileandabusive.asp>

¹⁴⁴ Harvard Law Review Association, *A Public Accommodations Challenge to the use of Indian Team Names and Mascots in Professional Sports*, 112 HARV. L. REV. 904, 905 (1999).

mascots, while not allowing other schools, such as the Newberry College and the University of Illinois, the use of their nicknames and mascots. Florida State University and other schools used their impressive alumni and fan base to pressure the NCAA to soften its ban allowing those schools to continue using Native American nicknames, mascots, and imagery. The NCAA will continue to be scrutinized by allowing schools to retain their nicknames and mascots, and until the NCAA makes a rule that is non-wavering, the social pressure from Native American and political organizations will continue.