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The Fundamentals of Teaching Sports Law

By Adam Epstein*

INTRODUCTION

The purpose of this article is to provide insight and instruction to successfully prepare for and teach a new course in your program entitled “Sports Law.” In addition to addressing appropriate subjects of instruction, this article will provide current sports law topics, teaching suggestions, and important legal decisions that have shaped the sports law landscape. Teaching sports law presents an opportunity for professors to explore traditional business law concepts in a contemporary context, and requires extensive use of the Internet to remain current on the wealth of issues related to sports and the law.

Many students may look to you for guidance on pursuing the study of sports law as a form of graduate study or even as a career.¹ Regardless of whether you have real-world experience as a practitioner or researcher in sports law, you can use the information found here in conjunction with your individualized preparation. A successful course will place sports law in an historical context by establishing the importance of classic cases while simultaneously keeping current with the daily issues that affect sports law and business.

SPORTS LAW

A sports law class can be a seminar or a full-fledged course that incorporates and reinforces traditional legal concepts such as agency, contracts, torts, and criminal law. It also includes an expanded discussion of constitutional issues, antitrust and labor, alternative dispute resolution, and religion. It is quite plausible to incorporate the study of ethics as well. There are numerous textbooks and casebooks on the subject, and you should explore the various publications to determine which book addresses your undergraduate or graduate needs most effectively.

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¹ Law schools that have distinguished themselves as centers for the study of sports law include Florida Coastal University, Marquette University and Tulane University. There are other numerous law schools which offer the subject as a course and a few have sport and entertainment law journals or law reviews.

Sports law is exciting for many students to study and much of it affects them in some way. For example, legal decisions involving the National Collegiate Athletic Association (NCAA) have a direct impact on student-athletes and other students involved in the intercollegiate setting.² Even if your students are not directly involved in intercollegiate athletics, it is very likely they will know someone who is involved. Students may also have witnessed the impact of sports law decisions just a few years earlier in their interscholastic (high school) environment.

FUNDAMENTALS

A sports law class should address the broad range of basic subjects and avoid excessive time on one particular subject matter. For example, one could devote an entire course to the study of Title IX issues alone, sports torts could be explored for many weeks, and antitrust issues could rival a similar economics course in terms of length. While it is unavoidable that some subjects will take more time than others, remain steadfast in the broad approach by continuing to move forward throughout the semester, and avoid getting bogged down in one section.

During the first class I make a couple of important announcements. First, I encourage students to become subscribers of Street and Smith's *Sports Business Journal* (SBJ).³ SBJ is among the best weekly publications of up-to-date sports business, law, and other topics. There is a special student rate, and if they subscribe it provides them with a chance to see current issues in marketing, law, finance, and accounting in the sports industry, but also offers information on sport-related conferences, workshops, and even job opportunities. Student subscribers may make an effort to demonstrate that they have read the publication by pointing out important articles or insights in class, some of which you may have overlooked during the hectic semester. Some of the SBJ contributors are experts in their respective fields, helping bridge the gap between the classroom and the real world.

² The National Collegiate Athletic Association (NCAA) is a voluntary, non-profit organization with 360,000 student-athletes over 1200 member schools and is headquartered in Indianapolis. Other governing bodies for intercollegiate athletics include the National Association of Intercollegiate Athletics (NAIA) headquartered in Olathe, Kansas, and the National Junior College Athletic Association (NJCAA) in Colorado Springs, Colorado.

³ See STREET & SMITH'S SPORTS BUS. J. et esq., available at <http://sportsbusinessjournal.com>.

Making the course Internet-intensive helps you and your students stay current on issues in sports law. In fact, so much happens so quickly in sports law, it is a disservice to your students if you are not diligent in keeping up with the inevitable cases, claims, rulings, and changes in league policies, that will appear during the course of the semester alone. Throughout the semester I send the entire class, via *Blackboard*, a manageable amount of Internet links to these news reports, legal decisions, and other relevant topics.

An efficient way to encourage students to remain on top of current sports law issues on their own time is to recommend that they visit *Sports Law Blog* frequently.⁴ In addition to the popular sports-specific websites akin to ESPN.com, consider subscribing to FindLaw.com's sports law update that may be emailed to your inbox automatically. From the great plays, to the best hockey fights, to infamous incidents, YouTube.com offers an excellent opportunity to view all sorts of sport-related incidents that are captured on video and uploaded to the Internet.⁵ Finally, I encourage all of my students to either purchase the NCAA Division I Manual or download it online for free.⁶ It allows us to explore the most recent NCAA bylaws related to eligibility, drug-testing, use of sports agents and the like, much of which impacts their world. After making these announcements, I then teach the class in order of the topics that follow. These sections are divided according to my teaching style and preference and certainly may be modified.

SPORTS AGENCY

Instructors might find that many students want to pursue becoming a sports agent as a career. Beginning the course with this subject is an attractive way to capture their attention. One of the drawbacks of beginning with sports agency is that students might also assume the class is a "how to become a sports agent" course. This must be addressed at the outset to preemptively end that discussion. One of the benefits of beginning a course with the study of sports agency is that it allows you to revisit the study of the law between principal and agent, and is a fine segue

⁴ See Sports Law Blog Home Page, <http://sports-law.blogspot.com>, (last visited May 10, 2007).

⁵ YouTube Home Page, <http://youtube.com> (last visited May 10, 2007) (online video sharing often containing egregious or excellent sports-related video clips); see also YouTube, Autistic Basketball, <http://YouTube.com/watch?v=XzX6YjydLyk&search=autistic> (last visited Jan. 14, 2007) (an inspirational video involving autistic high school basketball player Jason McElwain).

⁶ NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2005-06 DIVISION I MANUAL (2006), available at http://www.ncaa.org/library/membership/division_i_manual/2006-07/2006-07_d1_manual.pdf [hereinafter NCAA MANUAL].

to the traditional study of business law, especially for students who might not have studied law at all. I note that sports agents represent coaches, broadcasters, and others--not just professional athletes. A basic discussion of the duties of care, loyalty, good faith and accounting reinforces principal-agency relationships and serves as a fine start.

A mild discourse into the history of sports agency is beneficial as a foundation. It is important to address how the advent of television led to more money in the sports industry, leading to the influx of agents. Then, a discussion of current sports agent regulations, certifications and qualifications is essential. In the major leagues or the "Big Four" sports, National Hockey League (NHL), National Basketball Association (NBA), National Football League (NFL), and Major League Baseball (MLB), the unions (i.e., player's associations) dictate what qualifications are necessary to represent athletes respectively and they have their own certification processes. Encouraging the students to visit the union websites and other online databases is an effective distraction, especially for those interested in exploring other legal issues such as contracts and salary issues.⁷

It is also important to address the development of state and federal laws involving sports agents. This allows you the opportunity to encourage the students to consider the role that the National Conference of Commissioners on Uniform State Laws (NCCUSL) played in developing model acts such as the Uniform Athlete Agents Act (UAAA).⁸ A federal law, the Sports Agent Responsibility and Trust Act of 2004 (SPARTA), now authorizes the Federal Trade Commission to issue injunctions and penalties.⁹ Still, most of the laws related to sports agents are found at the state level.

The NCAA disallows the use of sports agents by current student-athletes.¹⁰ Many state laws governing sports agents also give universities the right to pursue civil actions where agent

⁷ See, e.g., National Football League Players Association, <http://www.nflpa.org> (last visited Jan. 14, 2007); see also USA Today, *Follow the Money Trail*, <http://www.usatoday.com/sports/salaries/index.htm> (last visited Jan. 14, 2007) (online salary databases).

⁸ Uniform Law Commissioners Home Page, <http://www.nccusl.org> (last visited May 10, 2007); see also NCAA UNIFORM ATHLETE AGENTS ACT AND STATUS, available at <http://www1.ncaa.org/membership/enforcement/agents/uaaa/history.html> (last visited Jan. 14, 2007) (listing states that have enacted the UAAA).

⁹ Sports Agent Responsibility and Trust Act, 15 U.S.C. §7801et seq. (2004).

¹⁰ NCAA MANUAL, *supra* note 6, at 73(Use of Agents); see also, Associated Press, *NCAA Cuts Suspension of Kentucky's Morris to 14 Games*, USA TODAY, Dec. 15, 2005, available at http://www.usatoday.com/sports/college/mensbasketball/sec/2005-12-15-morris-suspension-reduced_x.htm.

conduct causes student athletes to lose their eligibility or results in financial sanctions against the universities.¹¹ A well-established principle, an NCAA student-athlete loses the privilege to participate in an intercollegiate sport if he or she ever has agreed, orally or in writing, to be represented by an agent for the purpose of marketing his or her athletics ability in that sport.¹² Emphasizing the “amateur” status of student-athletes also allows for exploration of the NCAA’s infamous “death penalty,” in which the Southern Methodist University football program received harsh sanctions from the NCAA that resulted in suspension for the entire 1987 season.¹³

Sports agent improprieties, including conflicts of interest, breaches of confidence and trust, and even agents stealing clients from other agents should be addressed. For example, consider how sports agents, administrators, promoters, and others might represent clients on both sides of a contract creating potentially huge conflicts of interest.¹⁴ One could also debate how Alan Eagleson was able to serve as the Executive Director of NHLPA and as a sports agent for numerous players at the same time.¹⁵ A discussion of the on-going battle between agent Leigh Steinberg and his former associate David Dunn demonstrates the competitiveness of the sports agent business.¹⁶ If time allows, the agency relationship between universities and college boosters, whom the NCAA refers to as “representatives of athletic interests,” generates an interesting class discussion.¹⁷

In sum, the study of sports agency offers more than a simple review of the fundamental relationship between principal and agent. It also provides a gateway to future sports law topics that your class will study throughout the semester, and offers a chance to explore the NCAA Manual and the NCAA generally. You will likely revisit sports agency throughout the semester

¹¹ See Associated Press, *USC Files Suit Against Agent*, N.Y. TIMES, Oct. 7, 1995, <http://query.nytimes.com/gst/fullpage.html?res=9A0DE3DC1239F934A35753C1A963958260>; see also Tony Biasotti, *Caron in Chapter 7 in Hawaii*, PAC. COAST BUS. TIMES, Apr. 29, 2005, http://www.pacbiztimes.com/index.cfm?go2=articles/wk_042905c.

¹² NCAA MANUAL, *supra* note 6, at 73.

¹³ See David Whitford, *A PAYROLL TO MEET: A STORY OF GREED, CORRUPTION AND FOOTBALL AT SMU* (MacMillan Publ'g Co., 1989); see also, Doug Lederman, *Partial 'Death Penalty' for Baylor Basketball*, INSIDE HIGHER ED, June 24, 2005, <http://insidehighered.com/news/2005/06/24/baylor>.

¹⁴ See, e.g., Terry Smith, *An Outside View: Good Job or Good Riddance?*, SEYMOUR HERALD, July 3, 2003, <http://www.seymourherald.com/story.php?s=2669>.

¹⁵ *Forbes v. Eagleson*, 228 F.3d 471 (3d Cir. 2000).

¹⁶ *Steinberg, Moorad & Dunn, Inc. v. Dunn*, 136 Fed. Appx. 6 (9th Cir. 2005).

¹⁷ NCAA MANUAL, *supra* note 6, at 73(Representative of Athletics Interests).

as contracts are secured or sports agents become involved in controversial (or even illegal) matters in the months ahead.¹⁸

SPORTS CONTRACTS

I begin the study of sports contracts by emphasizing their personal services nature, which involves discussing the unique talents, abilities, and skills of players and coaches.¹⁹ The next discussion is devoted to the general law of contracts. I present basic principles--offer, acceptance, and consideration--to establish the fundamentals and a foundation for more advance concepts, including the statute of frauds or even how the Uniform Commercial Code (UCC) might apply in sports law.

I divide sports contracts into three major categories: standard player contracts (SPK); endorsement contracts; and appearance contracts. While I do not teach contract drafting skills in this course, I do offer some examples of both poorly-drafted and well-drafted agreements. Students will likely explore the contracts on their own time and later offer their opinion on the disparity of contract drafting skills. Many real-world sports contracts are available and easily accessible on the Internet.²⁰ Students enjoy comparing and contrasting various contract provisions including “hazardous activity” or “dangerous activity” clauses, which are designed to deter the athlete from risky off-field behavior.²¹ Great deference should be given to the role that collective bargaining agreements (CBA) play in establishing boilerplate professional sports contracts. Exploring grievance and arbitration provisions in a CBA is worthwhile at this juncture, although I typically address these subjects in greater detail later in the semester.

A relatively recent phenomenon, loyalty clauses are built into many new sports contracts and can be explored as well. Consider how Reebok dropped De Angelo Hall of the Atlanta Falcons as an individual sponsor after he wore Nike shoes on a Monday Night Football

¹⁸ E.g., Associated Press, *NFLPA Suspends Agent Poston for Two Years*, July 28, 2006, ESPN.COM, <http://sports.espn.go.com/nfl/news/story?id=2530936>.

¹⁹ See *Philadelphia Ball Club, Ltd. v. Lajoie*, 51 A. 973 (Pa. 1902).

²⁰ Associated Press, *New Contract Deal Puts Summit in Millionaire Coaches Club*, WATE.COM, May 22, 2006, available at <http://www.wate.com/Global/story.asp?S=4934340>; Associated Press, *O'Brien to Get About \$2.2M for Ohio State Firing*, ESPN.COM, Aug. 2, 2006, <http://sports.espn.go.com/ncb/news/story?id=2536995>.

²¹ See Associated Press, *Roethlisberger Hurt in Motorcycle Crash*, DALLASNEWS.COM, June 13, 2006, <http://www.dallasnews.com/sharedcontent/dws/spt/football/nfl/stories/061306dnsproethlisberger.7c09b2f1.html> (providing a full list of accidents involving professional athletes).

telecast.²² In 2006, the University of Missouri hired head basketball coach Mike Anderson as long as he agreed “to be a loyal employee” and did not bad mouth the school.²³ “Morals clauses” proscribes certain off the field conduct, and might be analyzed in light of the outrageous incidents that involve professional athletes.²⁴ A more novel subject might include exploring “force majeure” clauses in sports contracts and how Hurricane Katrina and other weather issues have impacted sports law.²⁵

Shifting to sports contracts at the intercollegiate level, it is essential to establish that athletic participation involves a contractual relationship. Claims by student-athletes that their institution or the NCAA breached the scholarship contract have consistently failed in the courts. At this point I emphasize that the NCAA is not a state actor, it is not an arm of the state nor of the federal government.²⁶ I also have students analyze the National Letter of Intent (NLI), which is the contract student-athletes sign following university recruitment.²⁷ The NLI is an effective way to study contracts generally, and emphasizes the contractual relationship is formed between the student-athlete and the institution--not with a particular coach. Courts have consistently held that participation in college sports is a privilege and not a right, reinforcing that an athletic scholarship is renewable annually at the option of the school. Consider the unsuccessful breach of contract claims made by Creighton University’s Kevin Ross (basketball) and Appalachian State University’s Jeremy Hart (wrestling).²⁸

²² Darren Rovell, *Reebok Dumps Hall for Wearing Nikes*, ESPN.COM, Oct. 26, 2005, <http://sports.espn.go.com/espn/print?id=2204711&type=story>.

²³ Associated Press, *Anderson’s Contract has Loyalty Clause*, SPORTINGNEWS.COM, Mar. 28, 2006, <http://www.sportingnews.com/yourturn/viewtopic.php?p=536093>.

²⁴ Ruben Rosario, *‘Love Boat’ Trial an Exercise in Futility*, TWINCITIES.COM, Apr. 20, 2006, http://www.twincities.com/mld/twincities/news/columnists/ruben_rosario/14382474.htm.

²⁵ In 2005, e.g., Hurricanes Katrina and Rita devastated parts of the Gulf Coast and seriously impacted the scheduling of numerous sports teams at the high school, college and professional levels. *See also* Associated Press, *Fire Moves Monday Night Game to Tempe*, NFL.COM, Oct. 25, 2003, <http://www.nfl.com/news/story/6782880>.

²⁶ *NCAA v. Tarkanian*, 488 U.S. 179 (1988).

²⁷ College Commissioners Association, National Letter of Intent, <http://www.national-letter.org> (last visited May 10, 2007).

²⁸ *Ross v. Creighton Univ.*, 957 F.2d 410 (7th Cir. 1992); *Hart v. NCAA*, 550 S.E.2d 79 (W.Va. 2001). *See also*, *Hysaw v. Washburn Univ.*, 690 F. Supp. 940 (D. Kan. 1987) (African-American football players sued after being dismissed from the team following their boycott of practice based on racism claims); *Conard v. Univ. of Washington*, 834 P.2d 17 (Wash. 1992) (Involving football players’ scholarships which were not renewed due to repeated rules violations by the players); *Hendricks v. Clemson Univ.*, 578 S.E.2d 711 (S.C. 2003) (University owed no duty to ensure academic eligibility of student-athlete, and educational malpractice and breach of contract claims failed).

An exploration of the role of third parties to a contractual relationship, including assignment, delegation, and beneficiary designations, is certainly useful.²⁹ Also consider discussion of Personal Seat Licenses (PSL) and special professional sports contracts such as the NHL's unique "two-way" contract³⁰ and the NBA's "ten-day" contract.³¹ Contract waivers like those found on sporting event admission tickets should be discussed. I bring to class an actual ticket stub from a sports contest and discuss why the general disclaimer language, printed on the back of the stub, is often found to be meaningless, especially when it is not conspicuous.³² One could also discuss the role of restrictive agreements in sports such as non-compete clauses,³³ or explore bankruptcy law and how various teams, leagues, and players have filed for bankruptcy.³⁴

In sum, examining real-world contracts adds value to your overall presentation. Discussion of the special clauses, exploration of the Big Four collective bargaining agreements, reviewing contract law principles generally, and analyzing actual contracts will keep the students interested. Expect some students to express their outrage at large sums involved in athlete and coaching salaries, particularly those students about to graduate or currently hold entry-level positions.

SPORTS TORTS

The study of tort law and its close relationship to criminal law rivals all other areas of sports law for length of class study and discussion. Beginning the discussion with the

²⁹ In 2005, an Arkansas State University basketball player had to sit out the first week of the season because he refused to wear the team's Adidas shoes. Consider Michael Jordan's dilemma during the gold medal presentation at the 1992 Olympic Games in Barcelona, Spain, in which he draped an American flag over the Reebok logo on his uniform to avoid controversy with his individual sponsor Nike.

³⁰ Aaron Portzline, *Wright Hoping for Another Stop in Career*, DISPATCH.COM, July 15, 2006, <http://www.dispatch.com/bluejackets/bluejackets.php?story=dispatch/2006/07/15/20060715-C1-04.html> (NHL's Tyler Wright, former Blue Jackets center, said he will sign only a one-way contract and not a two-way deal that allows a player to be sent to the minors without clearing waivers and be paid a much lower salary).

³¹ Mike Finger, *NBA's 10-day Contracts Offer Hope, but It's a Frenzied Life*, MYSANANTONIO.COM, Jan. 6, 2006, <http://www.mysanantonio.com/sports/columnists/mfinger/stories/MYSA012606.2C.finger.page2.16ed933f.html> (10-day contracts allow a team to replace injured players or look at up-and-comers without making a significant financial commitment).

³² *Compare Yates v. Chicago Nat'l League Ball Club, Inc.*, 595 N.E. 2d 570, 581 (Ill. 1992) (disclaimer not a defense to liability because the print on the ticket was too small), and *Benejam v. Detroit Tigers, Inc.*, 635 N.W. 2d 219 (Mich. Ct. App. 2001), with Illinois' Baseball Facility Liability Act of 1992, 745 ILL. COMP. STAT. 38/1 et seq., (States with baseball facility liability statutes).

³³ John Vomhof, Jr., *Brock Lesnar, WWE Settle Lawsuit*, MINNEAPOLIS ST. PAUL BUS. J., Apr. 24, 2006, <http://twincities.bizjournals.com/twincities/stories/2006/04/24/daily6.html>.

³⁴ See generally, Adam Epstein, *Bankruptcy and Sport Management*, 5 INT'L J. OF SPORT MGMT. 4 (2004).

similarities and differences between negligence, intentional torts, strict liability, and products liability is a major shift from contract law. Exploring the issue of frivolous lawsuits in the American legal system provides a springboard into a lengthy class discussion.³⁵ This subject can easily take two or three class periods to cover and you will likely be pressed for time due to the class discussion.

I usually begin the subject of sports torts with the classic cases that pertain to participant liability.³⁶ A discussion of negligence in sports should emphasize how tort laws tend to differ from state to state. The limited duty rule, for example, allows a court to find in favor of the defendant, unless the plaintiff has proven the tortious conditions or conduct were beyond the inherent risks of that sport.³⁷ This includes an examination of the risks assumed by the spectators and the athletes at a sporting event. For example, consider the degree of protective screening required for fans seated at a baseball game. Fans in many states assume some risk of injury (e.g., injuries sustained from flying hockey pucks, bats and balls) as part of the experience of being close to a game.³⁸ Courts in other states, however, apply the traditional rules of negligence, and hold the proper standard of care owed to the spectators is comparable to the business invitee relationship and landowners liability in property law.³⁹

In 2002, several incidents brought national attention to the issue of fan injuries caused by hockey pucks flying into the stands.⁴⁰ The most egregious example involved Brittanie Cecil, age 13, who was hit in the head with a puck during a Calgary Flames and Columbus Blue Jackets game. She died two days later from the injury. Later that same year, the NHL mandated safety netting and the American Hockey League (AHL) and Central Hockey League (CHL) followed

³⁵ Taylor Timmins, *Take Me Out to the Ballgame or I'll Sue*, FOXNEWS.COM, May 17, 2006, <http://www.foxnews.com/story/0,2933,195876,00.html>; see also *Man Says He's Tired of Being Mistaken for MJ*, FOXSPORTS.COM, July 7, 2006, http://eugeneyahiku.newsvine.com/_news/2006/07/08/281385-man-says-hes-tired-of-being-mistaken-for-mj.

³⁶ See, e.g., *Nabozny v. Barnhill*, 334 N.E. 2d 258 (Ill. App. Ct. 1975); *Bourque v. Duplechin*, 331 So. 2d 40 (La. Ct. App. 1976); *Hackbart v. Cincinnati Bengals, Inc.*, 435 F. Supp. 352 (D. Colo. 1977), *rev'd*, 601 F.2d 516 (10th Cir. 1979).

³⁷ See *Schentzel v. Philadelphia Nat'l League Club*, 96 A.2d 181 (Pa. Super. 1953).

³⁸ *Benejam* 635 N.W. 2d at 219.

³⁹ See *Maisonave v. Newark Bears Prof'l Baseball Club, Inc.*, 881 A.2d 700 (N.J. 2005) ("In respect of all other areas of a stadium, the proper standard of care is the business invitee rule, under which the owner or operator owes a duty of reasonable care to guard against any dangerous conditions on the property that he or she either knows about or should have discovered"). *But see*, New Jersey Baseball Spectator Safety Act of 2006, N.J. Stat. § 2A:53A-43 et seq. (2006).

⁴⁰ See Tom Worgo, *The NHL Gets Nets, But Can It Stop Lawsuits - Behind the Scenes - Brief Article*, HOCKEY DIGEST, Nov. 2002, available at http://www.findarticles.com/p/articles/mi_m0FCM/is_1_31/ai_91912859.

suit.⁴¹ Recently, a Pennsylvania court held there was no duty to protect a fan who was injured when a player tossed a baseball into the stands because the risk of injury was inherent to the game.⁴²

Exploration of certain state tort immunity statutes is quite interesting and relevant. These laws protect stadium owners from liability except for gross, willful, wanton or reckless acts (as opposed to ordinary negligence). For example, Arizona, Colorado and Illinois have adopted baseball-specific statutes for liability from a flying ball or bat.⁴³ Illinois and Utah have statutes specific to hockey arena liability for flying hockey sticks and pucks.⁴⁴

To inject some humor into an otherwise serious discussion, I often present how team mascots have become involved in altercations on and off the court.⁴⁵ From the San Diego Chicken to Calgary Flames' Harvey the Hound, mascot misconduct has risen from comedy to criminality. Consider the now infamous "sausage-gate" incident of 2003, during which Pittsburgh Pirates first baseman Randall Simon was cited for disorderly conduct and fined \$432 for knocking a participant to the ground, with his bat, while she was involved in the Milwaukee Brewers "sausage race."⁴⁶

Returning to a more serious topic, a disturbing liability discussion involves post-game celebrations and subsequent injuries to fans. These celebrations might involve fans rushing the field and tearing down the football goal posts, creating considerable risk management concerns for universities and others. In October 2005, during a post-game celebration, a University of Minnesota-Morris student died after being hit by a goalpost as it was being torn down at Cougar

⁴¹ Central Hockey League, *Safety Netting Mandated for CHL Buildings*, Aug. 29, 2002, <http://www.centralhockeyleague.com/news/?id=178>.

⁴² See *Loughran v. Phillies*, 2005 Pa. Super 396 (2005) (holding that both outfielders and infielders routinely tossed caught balls to fans at the end of an inning); see also, *Taylor v. The Baseball Club of Seattle*, 131 Wash. App. 1049 (2006); *Dalton v. Jones*, 581 S.E.2d 360 (Ga. Ct. App. 2003). But see *Jones v. Three Rivers Mgmt. Corp.*, 394 A.2d 546 (Pa. 1978) (fan hit by ball in an internal concourse walkway may have been a result of negligent stadium design); *Cincinnati Base Ball Club Co. v. Eno*, 147 N.E. 86 (Ohio 1925) (fan was hit in an unusual location in unscreened seats).

⁴³ Baseball Facility Liability Act, 745 ILL. COMP. STAT. 38/1 et seq. (2006).

⁴⁴ 745 ILL. COMP. STAT. 38/1 et seq. (2006); UTAH CODE ANN. §78-27-62(2)(a)(2006).

⁴⁵ See *Gil-De-Rebollo v. Miami Heat Ass'n*, 137 F.3d 56 (1st Cir. 1998).

⁴⁶ Associated Press, *Simon Contrite After Hitting Mascot with Bat*, ESPN.COM, July 9, 2003, <http://espn.go.com/mlb/news/2003/0709/1578808.html>.

Field.⁴⁷ Another case in point was the 1993 incident at the University of Wisconsin where fans rushed the field at the end of a football game resulting in many injuries and lawsuits.⁴⁸ In 2002, a Miami University (Ohio) football coach was led from the field in handcuffs, following a loss at Marshall University in which he was accused of striking a Marshall fan after the game.⁴⁹ In 2005, the Southeastern Conference announced a ban on fans' rushing onto football fields and storming the court in basketball to maintain order and reduce potential risk of injury.⁵⁰

Discussing wrongful death is imperative for a successful sports torts lecture. I mention the deaths of MLB pitcher Steve Bechler, Northwestern University football player Rashidi Wheeler, and even the death of professional wrestler Owen Hart, demonstrating how fatalities in sports can happen for a variety of reasons.⁵¹ In 2001, NASCAR driver Dale Earnhardt, died in a crash at Daytona International Speedway.⁵² In 2006, Rookie Indy Car driver Paul Dana died after a two-car crash at Homestead-Miami Speedway, the same track where John Nemechek died 1997.⁵³ One could also discuss medical malpractice issues and the care owed to participants by medical or other on-site staff when an individual suffers physical injury at a sporting event.⁵⁴

Worker's compensation issues and judicial decisions, enables a discussion pertaining to whether student-athletes should be compensated for sports related injuries or be considered university employees.⁵⁵ The important case involving collegiate player Kent Waldrep, who injured his spinal cord and suffered permanent paralysis in a 1974 game between the visiting Texas Christian University football team and the University of Alabama, upheld the principle

⁴⁷ Associated Press, *Student Dies After Goal Post Pulled Down in Morris*, ESPN.COM, Oct. 24, 2005, <http://sports.espn.go.com/nfl/news/story?id=2201014&CMP=OTC-DT9705204233>.

⁴⁸ Heather Kamins, *DPS Fears Injuries if Fans Rush*, MICH. DAILY, Nov. 21, 1997, <http://www.pub.umich.edu/daily/1997/nov/11-21-97/news/news2.html>.

⁴⁹ Associated Press, *Miami Coach Arrested after Shoving Fan*, Nov. 13, 2002, SPORTSLINE.COM, <http://cbs.sportslin.com/collegefootball/story/5883692>.

⁵⁰ *SEC Likely Floored Over Students' Donations*, SAN DIEGO UNION TRIBUNE, Feb. 18, 2005, available at http://www.signonsandiego.com/uniontrib/20050218/news_lz1s18gally.html.

⁵¹ Professional wrestling involves participation from highly trained professional athletes in (usually) scripted performances.

⁵² Frank Pellegrini, *Dale Earnhardt-Why We Chose Him*, TIME.COM, Feb. 23, 2001, <http://www.time.com/time/pow/article/0,8599,100437,00.html>.

⁵³ ESPN.com, *IRL Rookie Dana Dies From Injuries Sustained in Crash*, Mar. 27, 2006, <http://sports.espn.go.com/rp/m/news/story?seriesId=1&id=2384873>; see John Donovan, *Hitting Too Close to Home*, CNNSI.COM, May 13, 2000, <http://sportsillustrated.cnn.com/motorsports/news/2000/05/12/nemechek>.

⁵⁴ See *Maldonado v. Gateway Hotel Holdings, L.L.C.*, 154 S.W.3d 303 (Mo. Ct. App. 2003); see also Adam Epstein, *Body Blow: Boxer Chases Ambulance and Wins Judgment*, 22 ENT. & SPORTS LAW. 1 (2004).

⁵⁵ See, e.g., *Coleman v. Western Michigan Univ.*, 336 N.W.2d 224 (Mich. Ct. App.1983); *Rensing v. Indiana State Univ. Board of Trustees*, 444 N.E. 2d 1170 (Ind. 1983).

that student-athletes are not employees.⁵⁶ You can also mention the case of Boston University hockey player Travis Roy who, only 11 seconds into his first hockey shift, injured his fourth vertebra and remains in a wheelchair.⁵⁷ If time allows, consider a discussion of the hot topic involving worker's compensation laws as related to horse jockeys who are generally considered independent contractors.⁵⁸

A discussion of intentional torts will range from assault and battery to non-violent torts such as fraud and defamation. Consider issues related to late hits (hits after the whistle), kicking cameramen, fighting with fans or sports reporters such as the confrontation between reporter Jim Rome and quarterback Jim Everett.⁵⁹ It should be noted that in 2006 the California Supreme Court held that intentionally hitting the batter is actually a fundamental part of the game of baseball.⁶⁰

One might not appreciate the role of fraud or misrepresentation in sports law until it is characterized as academic fraud, participation fraud, journalistic fraud, and even resumé fraud.⁶¹ Consider the numerous colleges found guilty of pushing student-athletes through illegitimate classes, defrauding the government, or even paying student-athletes in violation of NCAA rules.⁶² Recent examples include the scandals involving high school diploma mills, which some claim are in business, in part, to circumvent NCAA initial eligibility standards;⁶³ or athletes who use the "Whizzinator" to defraud urine samples, attempting to avoid the detection of

⁵⁶ *Waldrep v. Texas Employers Ins. Ass'n*, 21 S.W.3d 692 (Tex. Ct. App. 2000) (student-athlete denied worker's compensation).

⁵⁷ See Travis Roy Foundation, *The Travis Roy Foundation*, <http://www.travisroyfoundation.org> (last updated Jan. 22, 2007).

⁵⁸ Associated Press, *Nation's Jockeys Demand Workers Comp*, Jan. 24, 2006, MSNBC.COM, <http://www.msnbc.msn.com/id/10893543>.

⁵⁹ See *eBaum's World*, <http://www.ebaumsworld.com/jimeverett.html> (last visited Jan. 14, 2007) (video of incident).

⁶⁰ *Avila v. Citrus Comm. Coll.*, 131 P.3d 383, 394 (Cal. 2006) (Even if pitcher intentionally threw at the batter, conduct did not fall outside the range of ordinary activity in the sport).

⁶¹ See, e.g., Ruth Teichroeb, *State Takes Stand Against Phonies*, SEATTLEPI.COM, June 21, 2006, http://Seattlepi.nwsource.com/local/274667_tafoyaside21.html (listing several prominent examples of inaccuracies on resumes).

⁶² See, e.g., Associated Press, *Track Coach Found Guilty in Scheme to Pay Student Athletes*, CSTV.COM, available at <http://www.cstv.com/sports/c-track/stories/071206aah.html> (last visited Jan. 14, 2007).

⁶³ Steve Richardson, *Prep Course Patterns Draw NCAA Scrutiny*, USA TODAY, Apr. 19, 2006, http://www.usatoday.com/sports/college/2006-04-19-diploma-mills_x.htm.

performance-enhancing drugs or illegal substances.⁶⁴ Participation fraud might include the alleged cheating at the Boston Marathon.⁶⁵

When addressing the right of publicity (commercial misappropriation) in sports law, you will have an opportunity to discuss constitutional law in a new era involving the Internet.⁶⁶ Websites such as Badjocks.com and Facebook.com, demonstrate how accessible information and pictures have become.⁶⁷ Various colleges and universities have addressed issues involving student-athletes and these websites.⁶⁸ For example, two students were kicked off the Louisiana State University swim team after school officials discovered the two were members of a Facebook.com group that published insulting comments about their swim coaches.⁶⁹ Consideration might be given to journalistic protections related to the non-disclosure of anonymous sources, such as the magazine *Sports Illustrated* and its story on then University of Alabama Head Football Coach Mike Price.⁷⁰

I tend to combine products liability and strict liability for no reason other than to escape the depth the subject of sports torts and to move the course forward. I often mention the safety debate between using wooden baseball bats in the professional ranks while colleges still use aluminum bats.⁷¹ Certainly, the use of defective equipment and defects in warning labels warrant some attention. I often address misleading advertisements, the role of the Federal Trade Commission (FTC), and defective products such as weight-loss supplements. Discussing the FTC also allows further exploration of the role of administrative agencies in law generally.

⁶⁴ Associated Press, *Viking had 'Whizzinator' Drug Masking Kit*, MSNBC.COM, May 12, 2005, <http://www.msnbc.msn.com/id/7816844>.

⁶⁵ See, e.g., *SPORTS PEOPLE; Rosie Ruiz Arrested*, N.Y. TIMES, Nov. 20, 1983, <http://query.nytimes.com/gst/fullpage.html?res=9A0CE2D91339F933A15752C1A965948260>.

⁶⁶ See generally, Greg Auman, *Background Checks Vary; Schools Fear Surprises*, ST. PT. TIMES, Mar. 6, 2005, http://www.sptimes.com/2005/03/06/Sports/Background_checks_var.shtml (considers legality of conducting criminal background checks on potential student-athletes).

⁶⁷ See generally, Ethan Ramsey, *Saving Face*, BUFFALO NEWS, July 13, 2006, http://www.insidehazing.com/articles_view.php?id=52&category=Normal.

⁶⁸ Ryan Loew, *Kent Banning Athlete Web Profiles*, COLUMBUS DISPATCH, June 22, 2006, <http://www.columbusdispatch.com/news-story.php?story=194268>.

⁶⁹ Erik Brady & Daniel Libit, *Alarms Sound over Athletes' Facebook Time*, USA TODAY, Mar. 8, 2006, http://www.usatoday.com/tech/news/internetprivacy/2006-03-08-athletes-websites_x.htm.

⁷⁰ See R. Robin McDonald, *'Sports Illustrated' Ruling Pressures Media Attorneys*, FULTON COUNTY DAILY REPORT, July 19, 2005, <http://www.law.com/jsp/article.jsp?id=1121721618599> (federal appeals court ruled Sports Illustrated is not protected by Alabama's shield law from having to identify a confidential source).

⁷¹ See, e.g., Matthew R. Wilmot, *Baseball Bats in the High Tech Era: A Products Liability Look at New Technology, Aluminum Bats, and Manufacturer Liability*, 16 MARQ. SPORTS L. REV. 353 (2006).

In the end, the sports torts section will rival any other section of sports law in terms of student interest, discussion and length. Throughout the semester you will likely find additional tort claims made or recent cases decided and you will need to keep abreast of these decisions.

SPORTS CRIMES

Teaching criminal law reinforces similar concepts established in sports torts. I emphasize that I am only concerned about those crimes related to sports activities, not those which are indirectly relevant simply because the perpetrator is also a student-athlete or professional athlete.⁷² I want students to ponder the relationship between legitimate and illegitimate sports violence and ask them: Whether illegitimate sports violence should be addressed by internal league controls such as fines and suspensions or by the local police.

Hockey provides a wealth of information related to the debate about criminal liability in sports. Canadian courts address violence in this sport a bit differently than American courts, and several hockey incidents there resulted in Canadian convictions.⁷³ The list of incidents is full and provides a great opportunity for students to do additional research.⁷⁴ In football, consider issues related to the use of illegal equipment designed to intentionally injure the opponent such as the use of razor blades on the helmet.⁷⁵ In basketball, a recent example is the “Malice in the Palace” of 2004, the NBA suspended Ron Artest of the Indiana Pacers for the rest of the season for fighting with fans when a melee broke out at the end of a game against the Detroit Pistons.⁷⁶

After vibrant discussion of Big Four incidents and potential criminal misconduct, it is worth mentioning issues related to less popular sports. Consider the legitimacy of Toughman contests in which fighters with little experience step into the ring to box in three one-minute

⁷² See, e.g., Paul Meincke, *Judge Says Michael Jordan Not Obligated to Pay Former Lover*, ABC7CHICAGO.COM, June 12, 2003, available at <http://abclocal.go.com/wls/story?section=News&id=221275>.

⁷³ Jonathan H. Katz, *From the Penalty Box to the Penitentiary-The People Versus Jesse Boulerice*, 31 RUTGERS L.J. 833 (2000).

⁷⁴ See, e.g., Associated Press, *Two-Handed Stick to Face*, CNN.COM, July 10, 1998, http://sportsillustrated.cnn.com/hockey/news/1998/07/10/assault_update; see also Tracey Oh, *From Hockey Gloves to Handcuffs: The Need for Criminal Sanctions in Professional Ice Hockey*, 28 HASTINGS COMM. & ENT. L.J. 309 (2006).

⁷⁵ N.Y.Times.com, *Player, Father Admit to Sharpening Buckle*, Dec. 25, 1996, <http://query.nytimes.com/gst/fullpage.html?res=9F03E2DA1F31F936A15751C1A960958260>.

⁷⁶ Associated Press, *Suspensions Without Pay, Won't be Staggered*, ESPN.COM, Nov. 22, 2004, <http://sports.espn.go.com/nba/news/story?id=1928540>.

rounds.⁷⁷ In another “sport” called the Ultimate Fighting Championship (UFC), the mixed martial arts competition has been described as modern day human cockfighting.⁷⁸

The crime of hazing has been at the forefront of national discussion in recent years.⁷⁹ Many incidents take place off campus but photographs, published on the Internet, of the hazing incidents have wreaked havoc for student-athletes, coaches, and administrators. Examples of interscholastic and intercollegiate hazing rituals and incidents are numerous. Consider examples involving Frostburg State University,⁸⁰ Northwestern University,⁸¹ and Chico State, just to name a few.⁸²

Discussion of the relationship between the criminal law and sports fans is effective and will also provide much classroom debate.⁸³ In 2005, a Cleveland Browns fan ran onto the field during a game with the Pittsburgh Steelers and was later sentenced for disorderly conduct and criminal trespassing.⁸⁴ That same year, a fan ran onto the field during a Cincinnati Bengals and Green Bay Packers game, and took the football away from Green Bay quarterback Brett Favre. I mention New York City’s “Calvin Klein law,” which provides for fining fans who make physical contact with a sports participant.⁸⁵

⁷⁷ Tom Zucco, *Toughman Death Prompts Call for Reform*, ST. PT. TIMES, June 26, 2003, http://www.sptimes.com/2003/06/26/Tampabay/Toughman_death_prompt.shtml.

⁷⁸ Peter Sanders, *On Vegas Strip, Fast, Brutal Sport Deals Blow to Boxing*, Mar. 15, 2006, POST-GAZETTE.COM, <http://www.post-gazette.com/pg/06074/670652.stm> (comments made by Senator John McCain).

⁷⁹ Thomas O’Toole, *Public Posting of Illicit Photos Revives Hazing Issue*, USA TODAY, May 19, 2006, http://www.usatoday.com/sports/college/2006-05-18-hazing_x.htm.

⁸⁰ Associated Press, *Niagara Sanctions Women’s Lacrosse Team for Hazing*, ESPN.COM, Apr. 7, 2006, <http://sports.espn.go.com/ncaa/news/story?id=2400980> (initiation party included alcohol use and other inappropriate activities).

⁸¹ *Northwestern Women’s Soccer Team Suspended After Photos of Alleged Hazing are Publicized*, USA TODAY.COM, May 16, 2006, available at http://www.usatoday.com/sports/college/soccer/2006-05-15-northwestern-suspension_x.htm (women’s soccer team hazing suspended when pictures appeared of players drinking beer and freshman players with their hands bound in underwear and blindfolded).

⁸² Associated Press, *Chico State Debate Season Cancelled Due to Drug Use*, CBS5.COM, May 27, 2006, http://cbs5.com/topstories/local_story_147170229.html (school banned alcohol at fraternity and sorority houses and events after a hazing ritual resulted in the death of a student).

⁸³ Associated Press, *Streaker Can’t Stop Sharapova from Semis*, MSNBC.COM, July 5, 2006 <http://www.msnbc.msn.com/id/13699541>.

⁸⁴ Associated Press, *Browns Fan Gets Super Bowl Weekend in Jail*, Jan. 17, 2006, USA TODAY, available at http://www.usatoday.com/sports/football/nfl/browns/2006-01-17-fan-jailed_x.htm (sentenced to a few days in jail over Super Bowl weekend in 2006 and ordered not to watch the Super Bowl on television or listen to it while in jail).

⁸⁵ Greg Wyshynski, *Mets Fan Nailed by New Law*, SPORTS FAN MAGAZINE, May 6, 2004, <http://www.sportsfanmagazine.com/sfm/articles.html?id=365> (Calvin Klein grabs the arm of player Latrell Sprewell and speaks to him in the final minutes of a game between the New York Knicks and Toronto Raptors in 2003).

Sports crimes can also occur in high school, youth, and other amateur sports. Students might provide you with examples from their own high school experiences. Issues related to raging parents and parent-coaches at Little League baseball games could evoke additional examples from the students.⁸⁶ Discuss the Massachusetts case in which a parent was convicted of involuntary manslaughter for beating another father to death at a youth hockey scrimmage.⁸⁷

You might explore the state laws related to protecting sports officials, sports agent crimes, and the various state and city ticket-scalping laws. Addressing the validity of the local anti-scalping ordinances of some cities, such as Detroit⁸⁸ and Pittsburgh,⁸⁹ usually provides an excellent class discussion and debate over the need for or efficacy of such laws, especially in the Internet era.⁹⁰ One should also consider online gambling and sports gambling generally⁹¹ and the infamous examples of athletes, teams, and universities involved in gambling incidents.⁹²

The discussion of the criminal law will be comprehensive. As always, it is important to ensure that the students understand the difference between the concepts of criminal liability (guilt in criminal law) and civil liability (actions arising under tort law). For the ambitious professor, additional topics could include whether pat-downs searches prior to attendance at sporting events should be legal;⁹³ why some states have made participation in the sport of

⁸⁶ Sloane Heller, *Coach Arrested for Slapping Umpire*, July 20, 2006, CBS4QC, <http://www.whbf.com/Global/story.asp?S=5179132&nav=0zGo>.

⁸⁷ See CourtTVNews.com, *Hockey Dad Manslaughter Trial*, <http://www.courtstv.com/trials/junta/index.html> (last visited Jan. 14 2007) (complete coverage of the trial and history of the case).

⁸⁸ David Shepardson, *Federal Judge Axes Detroit's Ban on Scalping*, DETROIT NEWS, Jan. 19, 2006, <http://detnews.com/apps/pbcs.dll/article?AID=/20060119/METRO/601190382>.

⁸⁹ David Conti, *Scalpers Call For Injunction*, PITTSBURGH TRIBUNE-REVIEW, May 24, 2005, http://www.pittsburghlive.com/x/pittsburghtrib/s_337363.html.

⁹⁰ Athima Chansanchai, *Ticket Scalpers Enjoy Free Rein*, SEATTLEPI.COM, Sept. 17, 2005, http://Seattlepi.nwsource.com/local/241115_scalpers17.html.

⁹¹ See Michael Levinson, *A Sure Bet: Why New Jersey Would Benefit from Legalized Sports Wagering*, 13 SPORTS LAW. J. 143 (2006); see generally Associated Press, *House OKs Internet Gambling Ban*, FOXNEWS.COM, July 11, 2006, <http://www.foxnews.com/story/0,2933,202983,00.html>.

⁹² Tim Layden, *Unmanageable Addiction*, SI.COM, Jan. 9, 2004, http://sportsillustrated.cnn.com/2004/writers/tim_layden/01/09/viewpoint/index.html (discussion of Pete Rose and Art Schlichter incidents).

⁹³ See generally Associated Press, *Judge Rules Against Bucs; League Defends Pat-downs*, SPORTSLINE.COM, <http://cbs.sportsline.com/nfl/story/9576028> (last visited Jan. 18, 2007).

cockfighting a crime;⁹⁴ and how stalking laws have been instituted to protect private citizens including athletes, entertainers and even broadcasters.⁹⁵

TITLE IX AND WOMEN'S ISSUES

No area of sports law brings about more opinionated debate than Title IX. Sometimes Title IX is referred to as “gender equity” and a great way to enter this arena is to simply ask whether or not the word “equity” means “equal” or “equitable” and see where the conversation goes.⁹⁶

A successful presentation on Title IX should begin with the federal law’s history and development. Consider the strides women have made since the 1960s generally; in the sports realm, discuss the gains women have made in the professional sports industry as coaches and players, on teams and in leagues such as the Women’s National Basketball Association (WNBA).⁹⁷ One should address the role of the Civil Rights Act of 1964 and how Title IX was born from that same era. I read aloud the thirty-seven words of this statute, but it is important to note that Title IX is more complicated than the words alone due to the Department of Education (DOE) regulations, policy guidance and clarifications over the years.⁹⁸

Title IX cases, claims, resources, and opinions are abound, and you will have no problem finding statistics and information. A complete discussion of all Title IX materials, the DOE interpretations, the three-part test, and all the Title IX cases, is simply not practical for a survey sports law course alone. Still, I prepare a timeline of the statute’s amendments, regulations, and interpretations. The statute’s historical context is vital for understanding the circuitous course

⁹⁴ J.J. Stambaugh, *All Bets are Off at Cocke Pit*, KNOXNEWS.COM, June 11, 2006, http://www.knoxnews.com/kns/local_news/article/0,1406,KNS_347_4765825,00.html.

⁹⁵ See Associated Press, *Woman Told to Stay Away from Brewers Games*, June 29, 2006, ESPN.COM, <http://sports.espn.go.com/mlb/news/story?id=2503947> (stalking of announcer Bob Uecker).

⁹⁶ For example, I usually conduct an informal poll as to whether the NCAA should sponsor women’s football as a varsity sport. This unscientific in-class poll has always resulted largely in favor and many women in my classes comment that they wish they could play football. See generally NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, GENDER EQUITY IN INTERCOLLEGIATE ATHLETICS: A PRACTICAL GUIDE FOR COLLEGES AND UNIVERSITIES (2007), available at http://www.ncaa.org/library/general/gender_equity/gender_equity_manual.pdf.

⁹⁷ See generally Women’s National Basketball Association, *A History of the WNBA*, WNBA.COM, http://www.wnba.com/about_us/historyof_wnba.html (last visited on Jan. 18, 2007).

⁹⁸ Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681-1688 (1972) (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”).

Title IX interpretation has traveled.⁹⁹ For example, in the 1984 decision, *Grove City College v. Bell*, the Supreme Court held that Title IX was program specific¹⁰⁰ and many collegiate athletic departments hailed this decision because it meant Title IX did not directly apply to them. That victory was a pyrrhic victory; Congress overturned the decision by enacting the Civil Rights Restoration Act of 1987.¹⁰¹

One should consider the decline in volume of male athletic programs since the enactment of Title IX. Due to compliance issues with the statute and meeting its proportionality standards, many universities have decided eliminate or cut men's athletic programs, instead of or in addition to, adding more opportunities for women.¹⁰² Most of the lawsuits that challenge a university's decision end with courts affirming that men's programs may be cut in the process of compliance.¹⁰³ These program cuts in swimming, wrestling, football, hockey, baseball and others men's sports have been quite disappointing to hundreds of male student-athletes, coaches,

⁹⁹ I offer the history via *Blackboard* and I also demonstrate the history using a *PowerPoint* presentation and some handouts. The timeline is quite comprehensive and there are many cases. However, some major Title IX cases might include *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979) (private right of action available under Title IX actions); *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60 (1992) (monetary damages allowable when intentional discrimination is proven); *Cohen v. Brown Univ.*, 991 F.2d 888 (1st Cir. 1993) [Cohen I]; *Cohen v. Brown Univ.*, 101 F.3d 155 (1st Cir. 1996), *cert. denied*, 520 U.S. 1186 [Cohen II] (Brown's decision to eliminate two women's sports and two men's sports constituted a Title IX violation); *Nat'l Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459 (1999) (NCAA was not subject to Title IX jurisdiction due to its receipt of contributions from member colleges and universities); *Mercer v. Duke Univ.*, 181 F. Supp. 2d 525 (M.D.N.C. 2001), *vacated in part by* 20 Fed. Appx. 643 (4th Cir. 2002) (Punitive damages not available against a private university due to the fact that an intervening Supreme Court case, *Barnes v. Gorman*, 536 U.S. 181 (2002), concluded that punitive damages were not available in private causes of action under Title VI of the Civil Rights Act of 1964 which Title IX was modeled after); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005) (there is a private right of action for individuals and whistle-blowers who reveal Title IX violations even though they themselves were not subject to sex discrimination).

¹⁰⁰ *Grove City College v. Bell*, 465 U.S. 555 (1984).

¹⁰¹ 20 U.S.C. §1681(a)(b)(1988).

¹⁰² Some adamantly maintain that men's programs have not been discontinued due to Title IX, that Title IX is not a federally-mandated quota system, or that Title IX still has not gone far enough. Others claim that Title IX application and interpretation has deviated from its original intent and has been used as a weapon to hurt men's programs. Jessica Gavora, *Girl Power Will Feminist Mau-mauing Kill Title IX reform?*, NAT'L REV. ONLINE, Jan. 31, 2003, <http://www.nationalreview.com/comment/comment-gavora013103.asp>; Michael L. Betsch, *Female Athletes Align with Feminists to Tackle Title IX Opponents*, CNSNEWS, <http://cnsnews.org/ViewCulture.asp?Page=%5CCulture%5Carchive%5C200301%5CCUL20030129b.html> (last visited Jan. 14, 2007). *But see* Terri Lakowski, *Title IX at 34: Title IX opened the Door for Female Athletes, but 34 Years Later, Much Still Needs to be Done to Level the Playing Field.*, WOMENS SPORTS FOUNDATION, <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/history/article.html?record=1131> (last visited Jan. 14, 2007).

¹⁰³ *See Neal v. Bd. of Trustees*, 198 F.3d 763, 769 (9th Cir. 1999) (a university may bring itself into Title IX compliance by increasing athletic opportunities for the underrepresented gender or by decreasing athletic opportunities for the overrepresented gender); *see also Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 361 U.S. App. D.C. 257 (D.C. Cir. 2004) (should have sued universities not Department of Education for an alleged violation of Title IX).

administrators, and alumni around the country.¹⁰⁴ Recently, Vanderbilt University decided to cut its men's soccer program, although it was unclear whether it was due to Title IX compliance issues.¹⁰⁵

You must discuss the contact sports (purpose or major activity of the sport involves bodily contact) exception to Title IX. However, there remains some disagreement as to what actually is a contact sport. While boxing, wrestling, rugby, ice hockey, football, and basketball are considered contact sports, the law remains unclear regarding field hockey and lacrosse.¹⁰⁶ If a sport is characterized as a contact sport, males can be excluded from the female program and vice-versa. Currently, men may play on women's field hockey teams in Pennsylvania and New York, but have lost attempts to play in Maine, New Jersey and Rhode Island. State law controversies have also surfaced nationally regarding men wanting spots on women's volleyball, golf, lacrosse and tennis teams as well.¹⁰⁷

Another hot topic is whether or not competitive cheerleading counts as a sport for Title IX compliance.¹⁰⁸ Peripheral to Title IX, I offer that some local communities feel that certain types of cheerleading should be banned altogether (e.g. suggestive cheerleading) at the high school level.¹⁰⁹ Similarly, a great subject for classroom debate is whether the pink paint in the visitor's football locker room at the University of Iowa is demeaning to women and others.¹¹⁰

¹⁰⁴ Michael Lynch, *Title IX's Pyrrhic Victory*, REASONONLINE, Apr. 2001, <http://reason.com/0104/fe.ml.title.shtml>.

¹⁰⁵ Jordan Mamorsky, *Shown the Door*, CNNSI.COM, Jan. 17, 2006, <http://sportsillustrated.cnn.com/2006/sioncampus/02/01/vandy.soccer/index.html>.

¹⁰⁶ Department of Education Office for Civil Rights, 34 C.F.R. §106.41(b) (2000).

¹⁰⁷ See Adam S. Darowski, *For Kenny, Who Wanted to Play Women's Field Hockey*, 12 DUKE J. GENDER L. & POL'Y 153 (2005).

¹⁰⁸ See Ty Allushuski, *Cheerleading Programs Go All-Out for Safety*, USA TODAY, July 10, 2006, available at http://www.usatoday.com/sports/college/2006-07-10-cheerleading_x.htm; see generally University of Maryland Athletics, Competitive Cheer Team, <http://umterps.cstv.com/sports/comp-cheer/md-comp-cheer-body.html> (last visited May 11, 2007).

¹⁰⁹ See Sharon Jayson, *Give Me a 'C'! for Controversy*, USA TODAY, Aug. 23, 2005, http://www.usatoday.com/life/2005-08-23-cheerleaders_x.htm.

¹¹⁰ See Associated Press, *Seeing Red Over Iowa's Pink Locker Room*, Sept. 29, 2005, MSNBC, <http://www.msnbc.msn.com/id/9517000/> ("critics say the use of pink demeans women, perpetuates offensive stereotypes about women and homosexuality...[the locker room was painted pink when] former Iowa coach Hayden Fry, a psychology major who said pink had a calming and passive effect on people").

Also consider women's issues in the male locker room as reporters, in the training room,¹¹¹ in the clubhouse,¹¹² and as umpires.¹¹³

Teaching Title IX and other women's issues in sports law is an engaging prospect. It allows for the study of history, politics, sociology, psychology, and economics. This broad section reinforces constitutional issues and explores the study of the roles of the three branches of government. Instructors can certainly feel free to offer their perspective on the gender-based wrongs that have been righted and the rights that have been wronged. I have found that the most effective way to present this section is to first offer the history and development of Title IX and then offer the contemporary extremist viewpoints on both sides of the issues. After reading the actual language of Title IX, I encourage my students, some of them student-athletes, to decide what they feel is the best way to manage this sensitive legal issue based on their own life experiences.

DISABILITIES AND SPORTS

Presenting material related to disabilities in sports law presents the unique opportunity to explore students' perspectives and the legal issues related to learning, physical, and various other disabilities. It requires a fundamental understanding of the three most relevant federal statutes: the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act (IDEA), and the Americans with Disabilities Act (ADA).

Section 504 of the Rehabilitation Act applies to all agencies and programs that receive federal funding--virtually every public school system in the United States.¹¹⁴ The IDEA applies to students aged 3 to 21 who are identified as eligible under one or more of thirteen categories of disabilities.¹¹⁵ Similarly, the ADA prohibits disability discrimination by private entities that are

¹¹¹ ESPN.com, *Lawsuit Settled; Terms Confidential*, Dec. 23, 2005, <http://sports.espn.go.com/nfl/news/story?id=1694048> (defamation lawsuit brought by Jamie Ann Naughtright filed against Peyton Manning related to various issues related to her employment as a trainer at the University of Tennessee while Manning was a student-athlete there).

¹¹² See Amy K. Nelson, *At an Early Age, Calabrese Learned Life Long Lesson*, ESPN.COM, <http://sports.espn.go.com/mlb/news/story?id=2432750> (last visited July 22, 2006).

¹¹³ See, e.g., *Postema v. National League of Prof'l Baseball Clubs*, 998 F.2d 60 (2d Cir. 1993).

¹¹⁴ Rehabilitation Act, 29 U.S.C. § 794 (2002), (Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service).

¹¹⁵ Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (2005).

places of public accommodation including arenas and stadiums.¹¹⁶ One contemporary issue is whether or not the ADA should apply to Internet websites as a “place of public accommodation.” The answer is not yet clear.¹¹⁷

Once the statutory basis has been established, addressing how these laws relate to interscholastic and intercollegiate sports will focus on the degree that courts should get involved in the daily administrative activities of high schools and state athletic associations. For example, the Age 19 Rule is a per se exclusion for students who turn 19 before some designated date (usually the start of high school in August or September) from participating in certain interscholastic athletic activities. State high school athletic associations claim that the Age 19 Rule is necessary because it ensures the safety of the other students; reduces any potential competitive advantage; and discourages coaches, parents, and administrators from superseding the ideal of promoting fair competition.¹¹⁸ The cases are numerous but the courts are split on the validity of the Age 19 Rule in the context of students with disabilities.¹¹⁹ Most states and courts observe their Age 19 Rule, but a minority of courts have rejected the premise behind the rule altogether and have adopted an individualized analysis approach.¹²⁰

Another high school issue includes maximum participation rules that exclude students who have spent more than eight semesters in school or four seasons in the particular sport. Likewise, “no pass, no play rules” establish minimum academic requirements for participation eligibility. A good case to begin with is *McPherson v. Michigan High School Athletic Ass’n*,

¹¹⁶ Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213(1990) (individual with a “disability” as one who has a physical or mental impairment that substantially limits major life activities, has a record of such an impairment, or is regarded as having such an impairment).

¹¹⁷ *Compare, Rendon v. Valleycrest Productions*, 294 F.3d 1279, 1285 (11th Cir. 2002), and *Nat’l Fed. of the Blind v. Target Corp.*, 2006 WL 2578282 (N.D. Cal. 2006) (Title III specifically obligates entities to: (1) remove communication barriers where such removal is readily achievable; (2) modify its policies and practices where such modification would not cause a fundamental alteration; and (3) provide auxiliary aids and services to the extent this would not be an undue burden. An entity is subject to these provisions even when the discrimination occurs off their physical location), with *Access Now, Inc., v. Southwest Airlines Co.*, 227 F. Supp. 2d 1312 (S.D. Fla. 2000) (physical place did not include “virtual” places of public accommodation).

¹¹⁸ See *Pottgen v. Missouri State High Sch. Activities Ass’n*, 40 F.3d 926 (8th Cir. 1994).

¹¹⁹ See generally, John T. Wolohan, *Are Age Restrictions a Necessary Requirement for Participation in Interscholastic Athletic Programs?*, 66 U.M.K.C. L. Rev. 345 (1997). See, e.g., *Cavallaro v. Ambach*, 575 F. Supp. 171 (W.D.N.Y. 1983); *Reaves v. Mills*, 904 F. Supp. 120 (W.D.N.Y. 1995); *Sandison v. Michigan High Sch. Athletic Ass’n*, 863 F. Supp. 483 (E.D. Mich. 1994), *rev’d in part, appeal dismissed in part by* 64 F.3d 1026 (6th Cir. 1995).

¹²⁰ *University Interscholastic League v. Buchanan*, 848 S.W.2d 298 (Tex. Ct. App. 1993); *Johnson v. Florida High Sch. Activities Ass’n, Inc.*, 899 F. Supp. 579 (M.D. Fla. 1995), *vacated* 102 F.3d 1172 (11th Cir. 1997); *Dennin v. Connecticut Interscholastic Athletic Conference, Inc.*, 913 F. Supp. 663 (D.Conn. 1996), *appeal dismissed as moot* 94 F.3d 96 (2d Cir. 1996).

Inc., in which the Sixth Circuit Court of Appeals denied a waiver request by a student who experienced difficulties in high school and was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) at the beginning of his ninth semester in high school.¹²¹ The court held that the rule is “essential to preserving the philosophy that students attend school primarily for the classroom education and only secondarily to participate in interscholastic athletics.”¹²²

In the collegiate environment, various cases involving students and disabilities can be explored.¹²³ For example, in 2002, Kelly Pryor, an African-American student-athlete with a learning-disabled, claimed that raising academic eligibility standards under NCAA Proposition 16, violated the Americans with Disabilities Act (ADA); the Rehabilitation Act of 1973; and Title VI of the Civil Rights Act of 1964. He alleged that by adopting Proposition 16 the NCAA discriminated against persons with disabilities and the requirements have a disparate impact on racial minorities.¹²⁴ This segues to a discussion of the history of the NCAA bylaws and researching how the NCAA addresses disabilities in sports including students with learning disabilities.¹²⁵

In the professional sports the emphasis is on the ADA. For example, in *Stoutenborough v. National Football League*, the Sixth Circuit Court of Appeals held that a telecast of a professional football game was not subject to the provisions in the ADA since what is televised is not a public service, is not funded with public dollars, and is not provided by a public entity.¹²⁶ Thus, the local NFL “blackout rule” is not actionable by individuals with hearing impairments

¹²¹ *McPherson v. Michigan High School Athletic Ass’n, Inc.*, 119 F.3d 453 (6th Cir. 1997).

¹²² *Id.* at 456.

¹²³ See *Bowers v. NCAA*, 9 F. Supp. 2d 460 (D.N.J. 1998); *Matthews v. NCAA*, 79 F. Supp. 2d 1199 (E.D. Wash. 1999); *Tatum v. NCAA*, 992 F. Supp. 1114 (E.D. Mo. 1998).

¹²⁴ *Pryor v. NCAA*, 288 F.3d 548 (3d Cir. 2002)(Kelly Pryor, an African-American student-athletes with a learning-disabled, signed a National Letter of Intent to play at San Jose State University but failed to meet the eligibility requirements mandated by Proposition 16. He brought suit claiming the NCAA intentionally discriminated against him in violation of Title VI of the Civil Rights Act; the Americans with Disabilities Act (ADA); and the Rehabilitation Act of 1973 alleging that the NCAA discriminated against her because of her learning disability. the Third Circuit upheld the dismissal of Pryor’s ADA and Rehabilitation Act claims for both lack of redress and lack of ripeness, however, the appellate court reversed the dismissals of Title VI claim); see also *Cureton [I] v. NCAA*, 198 F.3d 107 (3d Cir. 1999); *Cureton [II] v. NCAA*, 252 F.3d 267 (3d Cir. 2001) (Tai Kwan Cureton and Leatrice Shaw, both African-American student-athletes, lost first-year athletic eligibility by failing to meet Proposition 16’s minimum SAT requirement. Their Division I scholarship offers disappeared even though they satisfied the minimum GPA requirement and earned other academic honors).

¹²⁵ NCAA MANUAL, *supra* note 6, at 150 (Students with Learning Disabilities) (2005-2006).

¹²⁶ *Stoutenborough v. NFL Inc.*, 59 F.3d 580 (6th Cir. 1995).

under the ADA.¹²⁷ However, in *PGA Tour, Inc. v. Martin*, the Supreme Court ruled that permitting the use of a golf cart by Casey Martin did not constitute a fundamental alteration to the game of golf.¹²⁸

Other claims by disabled participants involve the use of wheelchairs in various sports including track and racquetball. In Massachusetts, a nationally ranked wheelchair racquetball player sued a fitness club and wanted an accommodation so that he would be permitted two bounces of the ball while footed players receive one bounce. The court ruled that two bounces would fundamentally alter the nature of the standard rules and the game of racquetball, thus, the requested accommodation was not a reasonable accommodation.¹²⁹ Similarly, in 2006, a Maryland high school wheelchair competitor garnered national news when she competed in a 1,600-meter race. However, she was also later disqualified at the state meet when she was accused of pacing a teammate in violation of the rules.¹³⁰ Consider the ADA claim by a Big Ten Conference referee that he should be able to keep his job even though he has sight in only one eye.¹³¹

Finally, I emphasize the distinction between the Special Olympics and the Paralympic Games. The Paralympic Games is for elite athletes who have physical disabilities and is organized under the auspices of the International Paralympic Committee (IPC).¹³² On the other hand, participants in the Special Olympics have intellectual disabilities and all participants receive medals. The Special Olympics is offered year-round and is usually a state-based entity.¹³³

¹²⁷ *Id.* at 583.

¹²⁸ Compare *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001), with *Olinger v. United States Golf Ass'n*, 205 F.3d 1001 (7th Cir. 2000), *vacated*, 532 U.S. 1064 (2001).

¹²⁹ *Kuketz v. Petronelli*, 821 N.E.2d 473 (Mass. 2005).

¹³⁰ Associated Press, *Groundbreaking Wheelchair Athlete Disqualified at State Meet*, USA TODAY, May 28, 2006, http://www.usatoday.com/sports/preps/track/2006-05-28-mcfadden_x.htm.

¹³¹ Wayne Drehs, *Partially Blind Official Wants Job Back*, USA TODAY, July 20, 2006, <http://sports.espn.go.com/ncf/news/story?id=2525351>.

¹³² Other Disabled Sport Organizations include Disabled Sports USA; Dwarf Athletic Association of America; National Disability Sports Alliance; U.S. Association of Blind Athletes; USA Deaf Sports Federation; Wheelchair Sports USA.

¹³³ See Ty Allushuski, *ISU to Host First Ever Special Olympics National Games*, USA TODAY, June 28, 2006, http://www.usatoday.com/sports/olympics/2006-06-28-special-olympics_x.htm; see also Associated Press, *Pressure on for Gatlin to Explain Positive Test*, ESPN.COM, July 31, 2006, <http://sports.espn.go.com/oly/trackandfield/news/story?id=2534770> (list of athletes who have been suspended who all had the same track coach as well).

Studying disability issues in sports law gives you the chance to view sports in a different light. It forces students to consider how to address situations that involve persons with intellectual or physical disabilities. It allows you to address many issues that may have directly touched or have affected some of the students sitting in your classroom.

DRUGS AND SPORTS

This area is already one of the hottest in sports law and the list of athletic scandals involving drugs continues to grow.¹³⁴ While the use of drugs in sports has been an issue for many years, the public's perception of illegal drugs in sports took a huge turn in 2005 with the Congressional hearing on the allegations of steroid use in Major League Baseball.¹³⁵ The issue of drugs and sports provides an excellent opportunity to address constitutional law and how state actors differ from private entities in terms of due process and privacy. Exploration of reasonable and unreasonable searches is also a great review of the criminal law while privacy issues will also be reminiscent of earlier discussions in the course in sports torts.¹³⁶

I begin the discussion of drugs in sports with a simple yet broad question such as: "Why should we test for drugs at all?" Some students will claim that it is to ensure fair competition among student-athletes or professionals. Others will offer that it promotes integrity among competitors. Finally, some may suggest that drug use is actually unfair to poor athletes because they might not have the funds to purchase performance-enhancing drugs. It is important to recognize the difference between illegal drugs, performance-enhancing drugs, and nutritional supplements. There are various federal laws that the students can research outside of class, such as the Controlled Substances Act (CSA)¹³⁷ and the Dietary Supplement Health and Education Act of 1994 (DSHEA).¹³⁸ One can also address pressures to succeed in the high school

¹³⁴ See, e.g., CBC SPORTS ONLINE, *10 Drug Scandals*, Jan. 19, 2003, <http://www.cbc.ca/sports/indepth/drugs/stories/top10.html>.

¹³⁵ See Ted Barrett, *McGwire Mum on Steroids Hearing*, CNN.COM, Mar. 17, 2005, <http://www.cnn.com/2005/ALLPOLITICS/03/17/steroids.baseball>.

¹³⁶ See generally, Janet Kornblum & Mary Beth Marklein, *What You Say Online Could Haunt You*, USA TODAY, Mar. 8, 2006, http://www.usatoday.com/tech/news/internetprivacy/2006-03-08-facebook-myspace_x.htm.

¹³⁷ Controlled Substances Act, 21 U.S.C. § 801 et seq. (1970) (statute created five schedules (classifications) with varying qualifications for drugs); *Raich v. Ashcroft*, 352 F.3d 1222 (9th Cir. 2003), *vacated Gonzales v. Raich*, 545 U.S. 1 (2005)(In 2003, Ninth Circuit ruled the CSA illegal as it applied to the use of medical marijuana holding vacated and remanded by Supreme Court).

¹³⁸ Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §321(ff)(1997).

environment from parents and the hope of obtaining a college scholarship, which might tempt young athletes to use performance-enhancing drugs to gain a competitive advantage.¹³⁹

I like to begin with the Supreme Court decision in *New Jersey v T.L.O.* and the Seventh Circuit Court of Appeals decision in *Schail v. Tippecanoe County School Corporation*.¹⁴⁰ Seven years later in *Vernonia School District 47J v. Acton*, the U.S. Supreme Court upheld a random, suspicion-less drug testing program for student athletes in Oregon, opining that students within the school environment have a lesser expectation of privacy than members of the population generally and student-athletes have an expectation of privacy even lower than that of other students.¹⁴¹

More recently, the Supreme Court held in *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, that a drug testing policy applied to extracurricular activities such as the “Academic Team, Future Farmers of America, Future Homemakers of America, band, choir, pom-pom, cheerleading, and athletics” was constitutional and collecting urine was “minimally intrusive.”¹⁴² Also, in *Joye v. Hunterdon Central Regional Board of Education*, the Supreme Court of New Jersey ruled that a high school random drug and alcohol testing program was constitutional and applied to athletes, non-athlete extracurricular participants, and those who held school parking permits.¹⁴³ In 2005, New Jersey also became the first state in the country to mandate steroid testing for high school athletes--effective in 2006.¹⁴⁴

In the intercollegiate environment, I focus on the NCAA drug-testing policies.¹⁴⁵ I remind students that the NCAA is not a state actor and its annually evolving bylaws are not “law” per se. However, the organization does act like a private government by promoting social

¹³⁹ Taylor Hooton Foundation Home Page, <http://www.taylorhooton.org> (last visited Jan. 14, 2007).

¹⁴⁰ *New Jersey v T.L.O.*, 469 U.S. 325 (1985) (school authorities can conduct personal searches of a student and a student's belongings on the basis of a reasonable suspicion); *Schail v. Tippecanoe County Sch. Corp.*, 864 F.2d 1309 (7th Cir. 1988) (upholding the school policy of random testing for athletes upheld for all interscholastic student-athletes and cheerleaders in its school system).

¹⁴¹ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995); *Todd v. Rush County Schs.*, 133 F.3d 984 (7th Cir. 1998) (upholding policy requiring all students who wanted to participate in extracurricular activities to consent to random drug testing since participation in extracurricular activities was voluntary and a privilege).

¹⁴² *Board of Educ. Indep. Sch. Dist. #92 of Pottawatomie v. Earls*, 536 U.S. 822 (2002).

¹⁴³ *Joye v. Hunterdon Cent. Reg. Bd. of Educ.*, 826 A.2d 624 (N.J. 2003).

¹⁴⁴ Associated Press, *New Jersey Institutes High School Steroid Testing*, USA TODAY, June 7, 2006, <http://sports.espn.go.com/sports/news/story?id=2474534>.

¹⁴⁵ The NCAA tests both performance-enhancing and street drugs.

policy and change.¹⁴⁶ NCAA Bylaw 31.2.3.4 lists the banned drug classes, and I encourage students to visit the NCAA website and to print out this list to enhance classroom discussion.¹⁴⁷ I also provide a history of NCAA drug-testing policies.¹⁴⁸ The NCAA voted in 2006 to adopt a year-round (summer included) drug testing program focusing on football and baseball, and the NCAA out-sources testing to the National Center for Drug Free Sport.¹⁴⁹

In the professional sports environment, the focus is on the policies found in the collective bargaining agreements of the Big Four sports.¹⁵⁰ In 2005, MLB changed its drug-testing policy.¹⁵¹ It should be noted that minor league baseball has its own drug-testing program independent from the major leagues.¹⁵² A possible research assignment is to have the students compare and contrast the drug testing policies of professional sports such as tennis, golf, and other sports outside the collective bargaining process using the Internet for research.¹⁵³

In the Olympic Movement, it is vital to explore the role of the World Anti-Doping Agency (WADA), which promulgates a growing list of banned substances and polices for Olympic competition. As a prerequisite, athletes around the world must remain drug free to participate in the Olympics.¹⁵⁴ Examples abound, but I usually mention the cases of two former

¹⁴⁶ *Tarkanian*, 488 U.S. 179 (example of the NCAA promoting social change or policy, consider the efforts to ban hostile or abusive mascots). See also Joseph Person, *Clemson's Role as Baseball Host Unfurls Flag Flap*, THE STATE, July 23, 2006, <http://www.thestate.com/mld/thestate/sports/15102666.htm> (2002 NCAA ban on South Carolina colleges hosting any NCAA championship events remains in effect though now consideration is given to prohibition of any post-season competition within the state at all).

¹⁴⁷ NCAA MANUAL, *supra* note 6, at 422-423.

¹⁴⁸ For example, testing of student-athletes at championships and post-season bowl games began in 1986. Voluntary off-season testing was adopted in 1989. In 1990, Prop. 53 passed which replaced the voluntary off-season drug testing program for Division I-A and I-AA. Year-round testing began in 1990.

¹⁴⁹ See National Center for Drug Free Sport, Inc., Drug Free Sport Home Page, <http://www.drugfreesport.com> (last visited Jan. 14, 2007).

¹⁵⁰ See Canadian Press, *CFL: Drug Testing to Follow Ricky?*, SPORTSNET.CA, May 9, 2006, http://www.sportsnet.ca/football/cfl/article.jsp?content=20060509_165910_4584(Canadian Football League (CFL) does not have a formal drug testing policy as of the time of this writing).

¹⁵¹ See Mel Antonen, *Players Stay Positive after the Positive*, USA TODAY, http://www.usatoday.com/sports/baseball/2006-01-23-dirty-dozen_x.htm.

¹⁵² Associated Press, *Five Minor Leaguers Suspended for Positive Tests*, ESPN.com, Apr. 19, 2006, <http://sports.espn.go.com/mlb/news/story?id=2413003>.

¹⁵³ *A Look at Steroid Policies Sport by Sport*, ESPN.COM, June 7, 2006, <http://sports.espn.go.com/espn/news/story?id=2474104>.

¹⁵⁴ See World Anti-Doping Agency Home Page, <http://www.wada-ama.org/en> (last visited Jan. 14, 2007)(created in 1999, the burden of proof standard “beyond a reasonable doubt” was replaced with the standard of “comfortable satisfaction of the . . . hearing body” in the arbitration of all track and field cases initiated after Mar. 1 of 2004. In this country, the United States Anti-Doping Agency (USADA) is in charge of drug testing American athletes); see also Vicki Michaelis, *USOC Wants to Sanction Coaches*, USA TODAY, July 31, 2006, http://www.usatoday.com/sports/olympics/2006-07-31-usoc-doping_x.htm.

sprinters Canadian Ben Johnson and American Harold “Butch” Reynolds, as well as the sad case of Romanian gymnast Andrea Raducan who had her gold medal taken away when she tested positive for pseudoephedrine. The chemical was traced to her cough medicine.¹⁵⁵ Also consider the drama in 2006 involving U.S. skeleton slider Zach Lund when he tested positive for drug masking agent Finasteride, which is also sold as a hair restoration drug under the brand name *Propecia*.¹⁵⁶

Recent drug issues focus on illegal and unauthorized use of ephedra, androstenedione (“Andro”), erythropoietin (EPO), human growth hormone (HGH), and masking agents, just to name a few.¹⁵⁷ In 2006, federal agents searched the home of a MLB player as part of an investigation into steroid use by athletes. HGH was allegedly part of the reason for the search.¹⁵⁸ Still, uncertainty remains for testing the undetectable designer steroids, such as the infamous Bay Area Laboratory Cooperative (BALCO) designer drug THG (tetrahydrogestrinone).¹⁵⁹ With the ever-growing list of banned drugs and designer steroids, I highly recommend practicing the proper pronunciation of the drugs prior to class in order to establish credibility.

Much of the discussion involving drugs and sports centers on the cat and mouse game between the drug users and the agencies charged with testing athletes. Students will likely provide examples of how their high schools tested for drugs, how they competed against individuals who took drugs, or even their own experiences using various substances. If you have a passion for constitutional law, this is a great section for you. It is important to recognize that the NCAA is not a state actor, courts have held that high schools around the country have the ability to test for drugs for various reasons, collective bargaining agreements form the basis of

¹⁵⁵ Associated Press, *Romania Gives Raducan a Hero's Welcome*, CNN.COM, Nov. 13, 2000, http://sports.illustrated.cnn.com/olympics/2000/gymnastics/news/2000/09/30/raducan_romania_ap/index.html; see also *Reynolds v. Int'l Amateur Ath. Fed'n*, 841 F. Supp. 1444 (S.D. Ohio 1992), *Reynolds v. Int'l Amateur Ath. Fed'n*, 23 F.3d 1110 (6th Cir. 1994).

¹⁵⁶ Associated Press, *Lund Tests Positive for Drug Masking Agent*, NBCOLYMPICS.COM, Jan. 10, 2006, http://www.nbcolympics.com/skeleton/5083639/detail.html?ib_oll=TopStoriesBox.

¹⁵⁷ CBC Sports Online, *The Dope on Banned Drugs*, <http://www.cbc.ca/sports/indepth/drugs/glossary/dictionary.html> (last visited July 23, 2006) (drug dictionary). Consider the recent publication of WADA exemptions for legitimate use of what would otherwise be considered performance-enhancing drugs, however. This requires considerable paperwork and doctor certification for a therapeutic use exemption (T.U.E.). For example, this could include the use of an inhaler for exercise-induced asthma. See <http://www.wada-ama.org/en/exemptions.ch2>.

¹⁵⁸ ESPN.com, *Grimsley Reportedly Admitted to Illicit Drug Use*, June 9, 2006, <http://sports.espn.go.com/mlb/news/story?id=2473485>.

¹⁵⁹ CBC Sports Online, *How the THG Scandal Unfolded*, Jan. 19, 2003, http://www.cbc.ca/sports/indepth/drugs/stories/thg_timeline.html.

the testing relationships in the Big Four, and that Olympic athletes must consent to mandatory and unannounced in-competition testing and out-of-competition testing as a condition of participation.¹⁶⁰

INTERNATIONAL SPORTS ISSUES

Addressing drug-testing issues and the Olympic Games is a fine transition to discussion of international sports law. Your class should be able cover international sports law issues in one or two class periods at the most. You might be fortunate enough to teach the course during an Olympic year. I prepare a timeline of how the Olympic Games evolved from idealistic amateurs-only to the contemporary world of professionalism.¹⁶¹ I emphasize the political influence involved in international issues and the Olympics.

After a brief history lesson, I turn to the Olympic structural hierarchy. This will require that you understand the relationship between the various Olympic Committees: International Olympic Committee (IOC); the International Sport Federations (ISF); the National Olympic Committees (NOC) such as the United States Olympic Committee (USOC); and the National Governing Bodies (NGB) such as USA Track & Field. I also address how the Amateur Sports Act of 1978 offered minimal rights for Olympic athletes, but how the advent of the Ted Stevens Olympic and Amateur Sports Act of 1998 (TSOASA) offers much more.¹⁶² While I do address the role of the Court of Arbitration of Sport (CAS) in the Olympic Movement and elsewhere in sport, I find that this is better served in a later class session on alternative dispute resolution.

An area which steers away from legal issues is the political landscape of the Olympic Games. For example, the Olympic Games were cancelled due to World War I (1916) and World War II (1940 and 1944). I mention the 1972 Munich Olympics in which eleven members of the Israeli Olympic team were taken hostage by terrorists. In the 1980s, there were several Olympic boycotts based upon differing political views. The United States boycotted the Moscow

¹⁶⁰*Drug Free Sports Act of 2005: Hearing on H.R. 1862 Before the Subcomm. on Commerce, Trade, and Consumer Protection, 109th Cong. (2005)* (statement of Mr. Frank Shorter, Former Chairman, United States Anti-Doping Agency).

¹⁶¹ For example, I note that the NBA Dream Team made up most of the USA roster in 1992. In 1998, NHL players were allowed to compete. As of 2006, the only Olympic sport in which professionals cannot compete is boxing.

¹⁶² Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220501 et seq. (2006) (TSOASA charters and grants monopoly status to the United States Olympic Committee. It also states that being an amateur is no longer a requirement for competing in most sports, that the USOC's role includes the Paralympic Games).

Olympics of 1980 due to the Soviet invasion of Afghanistan, while the Soviet Union returned the favor in 1984 at the Los Angeles Olympics.¹⁶³

Although numerous international law issues exist in sports law, I prefer to focus on the Olympics. However, I do briefly explore the Canadian Football League (CFL) and policies that favors players of Canadian citizenship (classified as “non-imports”) over American players (“imports”).¹⁶⁴ I highly recommend preparing a chart for students on the structure of the IOC. Presenting the various NGB’s from the United States gives students a larger perspective on the breadth of sports covered by the Olympic Games.

ANTITRUST AND LABOR ISSUES IN SPORTS

While antitrust law and labor law are considered distinct areas of the law, they are very much related in sports law. I combine antitrust and labor issues in sports law for the sake of time. Unfortunately, this section will require several class periods to offer the students valuable discourse and instruction. Major sports law antitrust issues have focused on a variety of issues including minimum salaries, the role of arbitration in deciding disputes, free agency, television broadcast rights, limiting college coaching and player salaries, eligibility and transfer rules for college athletes, and the professional player entry draft.¹⁶⁵ Before jumping into antitrust issues and litigation, it is wise to present a history of antitrust law in America for proper perspective.

Antitrust

Discussion of the Sherman and Clayton Acts introduces students to the fundamental federal laws that govern anticompetitive business behavior.¹⁶⁶ I also address the historical aspect and influence of the National Labor Relations Act (NLRA) and the National Labor Relations Board (NLRB). I note, for example, that the NLRB entered professional sports in 1969 asserting jurisdiction over major league baseball. I emphasize that antitrust lawsuits have been litigated

¹⁶³ See *DeFrantz v. United States Olympic Comm.*, 492 F. Supp. 1181 (D.D.C. 1980), *aff’d*, 701 F.2d 221 (D.C. Cir. 1980).

¹⁶⁴ You could also consider immigration issues in sports law. For example, silver medal figure skaters Ben Agosto (American) and partner Tanith Belbin (a Canadian turned American just before the 2006 Olympics).

¹⁶⁵ See *Law v. NCAA*, 134 F.3d 1010 (10th Cir. 1998); see also *U.S. Football League v. NFL*, 842 F.2d 1335 (2d Cir. 1988).

¹⁶⁶ Sherman Act, 15 U.S.C. §§ 1-7 (1955)(Section 1 of the Sherman Act forbids contracts, combinations or conspiracies that unreasonably restrain trade while Section 2 of the Act prohibits monopolization of trade and commerce).

frequently in professional sports and mention that the NCAA suffered some major antitrust setbacks in the 1980s and 1990s.¹⁶⁷

I then return to the collective bargaining process and the role of collective bargaining agreements (CBA). Minimum salaries and salary caps fall under the compulsory subjects of a CBA. Students often want to discuss player salaries and I note how effective the collective bargaining process is when establishing salary rules. Reminiscent of the discussion on contract law, I offer examples of provisions found in a SPK and CBA of the Big Four, including signing and performance bonuses, renegotiation options, endorsement and appearance clauses, and termination clauses such as the hazardous activity and morals clauses.

Addressing the various league strikes and lockouts again provides an historical context for the students.¹⁶⁸ For example, there have been five strikes by players and three lockouts by owners in MLB.¹⁶⁹ Professional hockey has had three noteworthy labor disputes. In 1992, the NHL players went on strike for ten days. Owners of NHL teams implemented a lockout during the 1994-1995 season that lasted for 104 days. The most recent NHL labor strife cancelled the entire 2004-2005 season.¹⁷⁰ The NBA had a lockout in 1998 lasting 202 days and the season failed to start until February 5, 1999.¹⁷¹ The NFL has had a few strikes as well.¹⁷² Comparison of the labor issues also allows for a discussion of the efficacy of the Commissioners' leadership in the Big Four sports from an historical perspective.

The non-statutory labor exemption, a judicially created rule that protects union activity from anti-trust scrutiny, is a key concept in antitrust and labor law. It has been the heart of nearly all antitrust actions in professional sports. In MLB, the focus of attention is on the outdated "reserve clause" in which players were required to sign contracts that permanently bound them to their teams unless they were traded or released. MLB has held a unique blanket

¹⁶⁷ See *Law v. NCAA*, 134 F.3d 1010 (10th Cir. 1998); *NCAA v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85 (1984).

¹⁶⁸ See generally Evan Weiner, *Don't Believe the Gripe: The NHL is Back*, N.Y. SUN, June 16, 2006, available at <http://www.nysun.com/article/34542>.

¹⁶⁹ See Daniel C. Glazer, *Can't Anybody Here Run This Game? The Past, Present and Future of Major League Baseball*, 9 SETON HALL J. SPORTS L. 339 (1999) (strikes occurred in 1972, 1980, 1981, 1985 and 1994-95, and the lockouts occurred in 1973, 1976 and 1990).

¹⁷⁰ *Id.*

¹⁷¹ NBA Player's Association, NBAPA History, <http://www.nbpa.com/history.php>.

¹⁷² See Larry Weisman, *NFL Players Ecstatic for Long-Awaited Labor Peace*, USA TODAY, http://www.usatoday.com/sports/football/nfl/2006-03-08-labor-deal-reaction_x.htm (last visited July 23, 2006).

exemption from antitrust laws in accordance with the controversial interpretation of the Supreme Court in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*.¹⁷³ In 1998, the Curt Flood Act attempted to remove the blanket exemption but without much effect.¹⁷⁴

The NFL provides a plethora of antitrust cases for discussion.¹⁷⁵ In *American Football League v. National Football League*, the AFL sued the NFL under section 2 of the Sherman Act and alleged that the NFL had established a market monopoly.¹⁷⁶ The Court ruled in favor of the NFL on the basis of insufficient evidence of the NFL's intent to monopolize. In *Mackey v. National Football League*, future Hall of Fame Tight End John Mackey challenged NFL salaries and the "free agency" system in place at that time.¹⁷⁷ I particularly enjoy discussion of *United States Football League v. National Football League*.¹⁷⁸ The NFL lost this legal fight against the now defunct spring football league and the USFL was awarded truly nominal damages from the jury in the amount of \$1, which was later trebled to \$3.¹⁷⁹ Consider *McNeil v. National Football League*¹⁸⁰ in which led to the establishment of unrestricted free agency in the NFL, and in *Clarett v. National Football League*, Ohio State star football player Maurice Clarett, unsuccessfully claimed that the NFL high school graduation rule, that prevented him from entering the draft, impeded his ability to make a living.¹⁸¹

¹⁷³ *Federal Baseball Club of Baltimore, Inc. v. National League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922); *Toolson v. New York Yankees*, 346 U.S. 356 (1953); *Flood v. Kuhn*, 407 U.S. 258 (1972).

¹⁷⁴ Curt Flood Act, 15 U.S.C. § 26b (2004) (Curt Flood Act amends the Clayton Act to declare that the antitrust laws apply to the conduct, acts, practices, or agreements (conduct) of persons in the business of organized professional major league baseball relating to or affecting employment of major league baseball players to play baseball at the major league level to the same extent that such laws apply to such conduct of any other professional sports business affecting interstate commerce); see generally Lacie L. Kaiser, *Revisiting the Impact of the Curt Flood Act of 1998 on the Bargaining Relationship Between Players and Management in Major League Baseball*, 2 DEPAUL J. SPORTS L. CONTEMP. PROBS. 230 (2004).

¹⁷⁵ E.g., *Radovich v. National Football League*, 352 U.S. 445 (1957) (NFL player Radovich tried to return to NFL but was denied based upon disloyalty. Supreme Court ruled that the NFL, however, was subject to antitrust laws).

¹⁷⁶ *American Football League v. National Football League*, 323 F.2d 124 (4th Cir. 1963); NFL.Com, NFL History, <http://www.nfl.com/history/chronology/1961-1970> (last visited May 11, 2007) (AFL and NFL merged in 1968).

¹⁷⁷ *Mackey v. National Football League*, 543 F.2d 606 (8th Cir. 1976).

¹⁷⁸ *U.S. Football League v. Nat'l Football League*, 887 F.2d 408 (2d Cir. 1989).

¹⁷⁹ *Id.*

¹⁸⁰ *McNeil v. National Football League*, 790 F. Supp. 871 (D. Minn. 1992).

¹⁸¹ *Clarett v. National Football League*, 369 F.3d 124 (2d Cir. 2004). See also *Boris v. United States Football League*, No. CV 83 4980, 1984 U.S. Dist. LEXIS 19061 (C.D. Cal. Feb. 28, 1984).

The NBA has had a formidable history of antitrust litigation as well, while the NHL has had the fewest antitrust challenges.¹⁸² A major case involving the NBA is the Supreme Court's holding in *Haywood v. National Basketball Ass'n.*, where a basketball player challenged the four year after high school graduation eligibility rule. The District Court in *Denver Rockets v. All-Pro Management* ruled in favor of Haywood and granted an injunction that allowed him to play in the NBA favoring his claim of an illegal group boycott under antitrust law.¹⁸³

After the professional sports context, I return to the antitrust challenges of the NCAA. I find that there are simply too many cases to explore related to the NCAA and antitrust law. I expect students to research the plethora of various cases outside of class.¹⁸⁴ This also provides an opportunity to explore the NCAA Manual once again and to consider how it has been shaped by antitrust concerns. Consider exploring the bylaws related to student-athletes maintaining amateur status and remaining in good academic standing. Also, the NCAA requires that incoming student-athletes meet specific academic requirements to be initially eligible to participate in NCAA-sponsored sports.

NCAA antitrust litigation focuses on a combination of amateurism, antitrust, and eligibility issues. It also includes cases holding that certain television contract limitations and capping coaching salaries violated federal antitrust laws. Though the NCAA has won the vast majority of antitrust claims, the two major losses it has suffered are *National Collegiate Athletic*

¹⁸² See, e.g., *Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.*, 351 F. Supp. 462 (E.D. Pa. 1972). See also *NHLPA v. Plymouth Whalers Hockey Club*, 325 F.3d 712 (6th Cir. 2003), *appeal after remand* at 419 F.3d 462 (6th Cir. 2005).

¹⁸³ *Denver Rockets v. All-Pro Management, Inc.*, 325 F. Supp. 1049 (C.D. Cal. 1971); see also *Wood v. Nat'l Basketball Ass'n*, 602 F. Supp. 525 (D.C.N.Y. 1984) (held that the non-statutory labor agreement barred an antitrust challenge to the NBA's salary cap and college draft); *Bridgeman v. Nat'l Basketball Ass'n*, 675 F. Supp. 960 (D.N.J. 1987) (once impasse has been reached, an employer may unilaterally implement changes that are reasonably comprehended within the pre-impasse proposals). Cf., *Brown v. Pro-Football, Inc.*, 518 U.S. 231 (1996); *Nat'l Basketball Ass'n v. Williams*, 45 F.3d 684 (2d Cir. 1995) (draft and salary cap were protected by the non-statutory labor exemption).

¹⁸⁴ I provide a timeline similar to Title IX issues and students to consider cases including *Jones v. NCAA*, 392 F. Supp. 295 (D. Mass. 1975) (NCAA declared student-athlete ineligible and the district court noted that he was a student, not a businessman); *Hennessey v. NCAA*, 564 F.2d 1136 (5th Cir. 1977) (rule that limited the maximum number of assistant football and basketball coaches Division I institutions could employ did not violate antitrust laws); *Justice v. NCAA*, 577 F. Supp. 356 (D. Ariz. 1983) (NCAA sanctions were acceptable because the sanctions were reasonably related to NCAA goals of preserving amateurism and promoting fair competition); *NCAA v. Tarkanian*, 488 U.S. 179 (1988) (NCAA is not a state actor); *Smith v. NCAA*, 139 F.3d 180 (3d Cir. 1998) (Sherman Act did not apply to NCAA eligibility rules); *Metro. Intercollegiate Basketball Ass'n v. NCAA*, 339 F. Supp. 2d 545 (S.D.N.Y. 2004) (settled out of court when NCAA buys National Invitation Tournament); *NCAA v. Yeo*, 171 S.W.2d 863 (Tex. 2005) (swimmer's reputation of "the most decorated athlete in the history of the Republic of Singapore" did not enjoy a special protection under the Texas Constitution).

*Ass'n v. Board of Regents of University of Oklahoma*¹⁸⁵ and *Law v. National Collegiate Athletic Ass'n*.¹⁸⁶ If time allows, I ask the students to address whether they believe the Bowl Championship Series (BCS) is an illegal restraint of trade under antitrust laws.¹⁸⁷ Concerns remain over the clarity of the line between the amateur student-athlete and the professional.¹⁸⁸ Congress has even considered whether or not it should become more involved in "regulating" the NCAA.¹⁸⁹

One might also explore anti-trust law by looking at the federal Sports Broadcasting Act of 1961, which exempts television agreements entered into by professional football, baseball, basketball, and hockey leagues from the federal antitrust laws.¹⁹⁰ For example, the NFL is allowed to blackout non-local games when local teams are being telecasted and the game is not a sellout.¹⁹¹ Also, I recommend pursuing antitrust issues in the high school environment if time allows. If it does, consider the endless litigation of Brentwood Academy, a high school outside of Nashville. In 2006, the Sixth Circuit Court of Appeals held that a private school can use antitrust laws to challenge the way competition and championships in high school sports in Tennessee are structured, sending the case of *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n* back to the District Court for a third time.¹⁹²

Labor

The discussion of antitrust laws and legal decisions will be exhaustive, but it is important to relate federal and state employment laws to antitrust issues. I like to remind students of the role of the Equal Employment Opportunity Commission (EEOC) and how it enforces various federal laws including Title VII of the Civil Rights Act of 1964, the ADA, and even the Age

¹⁸⁵ *NCAA v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85 (1984) (restricted television broadcast plan violated antitrust laws).

¹⁸⁶ *Law v. NCAA*, 134 F.3d 1010 (10th Cir. 1998) (Restricted Earnings Coach (REC) rule violated antitrust laws).

¹⁸⁷ The BCS was created in 1998, and the national champion in Division I-A is determined by the various polls unlike any other NCAA Championship. Prior to the BCS, there was the Bowl Coalition (1992-94) and the Bowl Alliance (1995-97). In 2006, the BCS expanded to five games with a stand-alone national title game added to the existing four bowls.

¹⁸⁸ See generally Knight Commission on Intercollegiate Athletics, <http://www.knightcommission.org> (last visited Nov. 23, 2006); see also The Drake Group, <http://www.thedrakegroup.org> (last visited Nov. 23, 2006).

¹⁸⁹ Barry Svrluga, *NCAA Methods Questioned on Hill*, WASHINGTONPOST.COM, Sept. 15, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A20903-2004Sep14.html>.

¹⁹⁰ Federal Trade Commission Act, 15 U.S.C. §§1291-1295 (1982).

¹⁹¹ *Id.* §1292.

¹⁹² See *Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass'n*, 442 F.3d 410 (6th Cir. 2006).

Discrimination in Employment Act (ADEA).¹⁹³ I recommend exploring your own state's anti-discrimination laws, too. It might be worth exploring the NFL's "Rooney rule" that requires NFL teams to interview minority candidates for a head coaching opportunity.¹⁹⁴

Hot topics in labor law include the dress code instituted by the NBA in the 2005-2006 season and contemporary topics concerning minimum age and draft-eligibility issues. I ask students to compare and contrast the Big Four CBAs. For example, under the 2005 NBA CBA, the minimum age for drafting high school seniors has been increased in the NBA from 18 to 19 years of age.¹⁹⁵ Determining what counts as one's high school class for the purposes of the NBA's minimum age requirements presents a curious problem, especially if an athlete was held back in school.¹⁹⁶ MLB has not really had issues related to minimum age other than those involving the signing of international players under the age of sixteen, which is against MLB policy.¹⁹⁷ One can also consider that MLB established a policy in 2002, known as the "Darren Baker Rule," which requires batboys and batgirls be at least 14 years of age.¹⁹⁸

While I do not suggest getting too bogged down in the minimum age issues in various sports, it does make great class discussion and offers another chance for students to voice their opinions. Once you endure the comprehensive discussion of antitrust and labor issues generally, you will probably ponder how you will be able to cover the rest of the material in the course.

¹⁹³ See Adam Epstein, *The ADEA and Sports Law*, 16 J. OF LEGAL ASPECTS OF SPORT 2 (2006).

¹⁹⁴ See Associated Press, *Lions' Millen Fined \$200K for Not Interviewing Minority Candidates*, SPORTSLINE.COM, (July 25, 2003), <http://cbs.sportsline.com/nfl/story/6498949>.

¹⁹⁵ NAT'L BASKETBALL PLAYERS ASS'N, COLLECTIVE BARGAINING AGREEMENT, Art. X, §1, http://www.nbpa.com/cba_articles/article-X.php#section1.

¹⁹⁶ See Greg Doyel, *Ohio Star Walker Loses Eligibility, Draft May Be In Store*, SPORTSLINE.COM, July 10, 2006, <http://www.sportsline.com/nba/story/9548336> ("The Ohio high school athletic association ...cleared the way for Bill Walker to become a lottery pick in the 2007 NBA Draft...[and] determined that Walker...played four years of varsity basketball since completing his eighth grade season...[thus satisfying the] NBA's draft-eligible requirements for high school seniors -- which says that a high school senior can enter the draft if it has been a year since his original high school class graduated").

¹⁹⁷ See Vanessa Marie Zimmer, *Dragging Their Devotion: The Role of International Law in Major League Baseball's Dominican Affairs*, 4 NW. U.J. OF INT'L HUM. RTS. 418, 421-423 (2005), available at <http://www.law.northwestern.edu/journals/jihr/v4/n2/6/Zimmer.pdf> ("Dodgers third baseman Adrian Beltre was signed illegally...at age fifteen when a Dodgers scout ... altered Beltre's birth certificate.... [T]he Florida Marlins signed a Dominican pitcher...Ricardo Aramobles [who] was only fourteen years of age.... The Cleveland Indians ...sign[ed] fifteen-year-old Laumin Bessa, dating relevant documents in advance so as to appear that they were signed after Bessa's sixteenth birthday).

¹⁹⁸ Associated Press, *Baker's Son Having a Field Day*, ST. PT. TIMES, Feb. 24, 2003, http://www.sptimes.com/2003/02/24/Sports/Baker_s_son_having_a_.shtml.

Antitrust and labor issues are lengthy, but they provide valuable historical perspectives for the sports law students as well.

INTELLECTUAL PROPERTY

The study of intellectual property (IP) focuses on the fundamentals of establishing copyrights, patents, and trademarks, and protecting against IP infringement. The advent of the Internet created a whole new world in which computers and their users are sharing, without the consent of the original authors (i.e. infringing), copyrighted, trademarked, and patented, visual and audio information and products for free. Words, names, sounds, colors, scents, symbols and shapes (including combinations) have been held to be legitimate trademarks.¹⁹⁹ I feel that a discussion of patents in sports law, though relevant, should be minimal. For example, it is usually eye-opening for students to see that the game of Arena Football is patented.²⁰⁰

I usually begin with a discussion of the federal Lanham Act and the role of the U.S. Patent and Trademark Office (USPTO).²⁰¹ I then offer *Pebble Beach Co. v. Tour 18, Ltd.*, in which two Texas golf courses contained copies of golf holes from several famous golf courses.²⁰² The defendant used topographic maps, photos, and videos to re-create each of the original golf holes and even built a small-scale replica of the landmark Harbour Town lighthouse. In the end, the 5th Circuit permitted Tour 18, Ltd. to operate both golf courses and use the words “Pebble Beach” and “Pinehurst” and “Harbour Town,” provided it informed the public about the golf holes it copied from the famous courses. The defendant was also required to prominently display a disclaimer that the Tour 18, Ltd. courses were not licensed by or affiliated with the owners of the famous courses.²⁰³

Applying copyright and trademark issues to the Internet requires a review of the role of the World Intellectual Property Organization (WIPO), which is responsible for the promotion of

¹⁹⁹ See *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995) (as long as the public associates color of the product with the source of goods in question, it can be protected by trademark law).

²⁰⁰ U.S. Patent No. 4911443 (filed Sept. 30, 1987) (Arena Football Game Systems and method of play are protected under patent law); see also Canadian Patent No. 1314062; Japanese Patent No. 2654822 and Mexican Patent No. 168556.

²⁰¹ Trademark Act of 1946, 15 U.S.C. §1051 et seq. (1946).

²⁰² *Pebble Beach Co. v. Tour 18, Ltd.*, 155 F.3d 526 (5th Cir. 1998).

²⁰³ *Id.* at 550.

the protection of intellectual rights throughout the world.²⁰⁴ It is also worthwhile to explore the Anti-cybersquatting Consumer Protection Act, which amended the Lanham Act and prohibits registering a domain name in bad-faith with an intent to profit from the trademark.²⁰⁵

One of the most interesting hot topics in intellectual property involves the use of nicknames or mascots associated with Native American tribes by high school, college, and professional sports teams. In 2005, the NCAA required 31 schools to explain the necessity of their use of American Indian tribes as mascots or nicknames with the intent to eliminate those mascots or nicknames that are hostile or abusive.²⁰⁶ In 2006, the NCAA rejected the University of Illinois appeal that the mascot Chief Illiniwek was not hostile or abusive.²⁰⁷ Also, though the NCAA agreed that the nickname “Chippewas” was not hostile or abusive, the Central Michigan University field hockey team was unable to play a game at the University of Iowa in 2004 because Iowa’s administration said it would not play non-conference teams that had American Indian nicknames.²⁰⁸ Students will likely engage in lively debate and cite other examples including why the University of Notre Dame’s nickname “Fighting Irish” appears to be immune from the NCAA’s scrutiny while the University of North Dakota’s “Fighting Sioux” is clearly a target.²⁰⁹

Hostile or abusive nicknames are not the only intellectual property issue for the NCAA. The organization has trademarked numerous phrases on its own including the terms “Final Four,” “Sweet 16,” and “March Madness,” which are phrases used in conjunction with the annual NCAA Men's Division I Basketball Championship.²¹⁰ The phrase “March Madness” is actually a trademark owned by the March Madness Athletic Association (MMAA) L.L.C., which

²⁰⁴ World Intellectual Property Organization, About WIPO, http://www.wipo.int/about-wipo/en/gib.htm#P52_8261.

²⁰⁵ Consolidated Appropriations Act of 2000, 15 U.S.C. § 1125(d) (2000). See also *Shields v. Zuccarini*, 254 F.3d 476, 483 (3d Cir. 2001) (typosquatting is a form of cybersquatting).

²⁰⁶ NCAA.org, *NCAA Executive Committee Issues Guidelines for Use of Native American Mascots at Championship Events*, Aug. 5, 2005, <http://www.ncaasports.com/story/8706763>. However, hostile or abusive should in no way be confused with “too fun and informal.” See Associated Press, *Kansas Decides Mascot ‘Too Fun’ For School Correspondence*, USA TODAY, Apr. 30, 2006, http://www.usatoday.com/sports/college/other/2006-04-26-kansas-logo_x.htm.

²⁰⁷ Michael Marot, *NCAA Declines Illinois’ Appeal on Indian Mascots; Adds Bradley to Watch List*, USA TODAY, Apr. 28, 2006, http://www.usatoday.com/sports/college/other/2006-04-28-nickname-appeals_x.htm.

²⁰⁸ Dominic Adams, *NCAA Asks for Nickname Justification*, CENT. MICH. LIFE, Apr. 13, 2005, available at <http://www.cm-life.com/vnews/display.v/ART/2005/04/13/425ca5f35e91b>.

²⁰⁹ Associated Press, *North Dakota to Sue NCAA over Fighting Sioux Nickname*, SPORTSLINE.COM, June 15, 2006, available at <http://cbs.sportslines.com/general/story/9508688/rss>.

²¹⁰ NCAA MANUAL *supra* note 6 at 430 (Names and Marks).

includes both the NCAA and the Illinois High School Association as members. Both the Illinois High School Association and NCAA license the term for their respective tournaments.²¹¹

The topic of trademark infringement is chock-full of cases involving the Olympics. The IOC has exclusive right over the use of the Olympic Symbol, the Flag, Motto, Anthem, and of course the Olympic Games themselves. The IOC has recognized the USOC as the NOC for the territory of the United States. Since 1950, the Olympic marks and emblems have been protected federally and are now codified in the Ted Stevens Olympic and Amateur Sports Act.²¹² Protecting the name has been fierce and at times ridiculous.²¹³ For example, the Ferret Olympics were ordered to cease and desist operations in 2005 when the USOC threatened to sue its organizer.²¹⁴ In another prominent legal battle, *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, the Supreme Court held that Congress could grant exclusive use of the word "Olympic" to the USOC, upholding an injunction preventing San Francisco Arts and Athletics (SFAA) from using the word "Olympic" to promote the Gay Olympic Games (now known as the Gay Games).²¹⁵

Other interesting IP issues include how Texas A&M University has twice registered the trademark "The 12th Man" in 1990 and 1996, and how the use of the mark without permission has been an issue for several NFL teams.²¹⁶ Similarly, consider the debate over the attempted use of the phrase "Three-Pete" as opposed to the similar and trademarked phrase "Three-Peat."²¹⁷ You might also consider former St. Louis Blues hockey player Tony Twist's successful

²¹¹ See generally *Mar. Madness Athletic Ass'n, L.L.C. v. Netfire, Inc.* 310 F. Supp. 2d 786 (N.D. Tex. 2003).

²¹² 36 U.S.C. §220501 et seq.

²¹³ See Bernhard Warner, *Cybersquatters Face Olympic-sized Lawsuit*, CNN.COM, July 13, 2000, <http://archives.cnn.com/2000/TECH/computing/07/13/squatters.v.games.idg> (In 1996, the USOC coerced a restaurant in Tonawanda, N.Y. to change the name of its particular brand of salad dressing from Olympic Specialty Foods to Olympus Specialty Foods).

²¹⁴ Associated Press, *USOC Forces 'Ferret Olympics' Name Change*, ABC NEWS, Aug. 14, 2005, <http://abcnews.go.com/US/wireStory?id=1036350>.

²¹⁵ *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm'n*, 438 U.S. 522 (1987).

²¹⁶ Associated Press, *Texas A&M Unhappy Seattle Fans Called '12th Man'*, ESPN.COM, Jan. 28, 2006, <http://sports.espn.go.com/espn/print?id=2309668&type=story>.

²¹⁷ See Darren Rovell, *What the Trojan's Won't Do: Three-Pete*, ESPN.COM, Dec. 23, 2005, <http://sports.espn.go.com/nfc/news/story?id=2270041>.

lawsuit against the creator of the “Spawn” comic series who used a fictional character named “Antonio Twistelli” as a mobster.²¹⁸

Ambush marketing has its place in sports law and the IOC requires every host city to prevent such marketing tactics during the Games.²¹⁹ Intellectual property issues also include stadium naming rights, digital media rights, and fantasy sports. In 2006, St. Louis-based CDM Fantasy Sports sued Major League Baseball Advanced Media (MLBAM) for the failure of MLBAM to grant them a license, claiming the information is in the public domain.²²⁰ Finally, I like to close the subject matter by having students explore the role of major licensing agencies such as Collegiate Licensing Company²²¹ and Licensing Resource Group,²²² comparing which universities lead in terms of sales and revenues. Usually, a student in the class will have one of the universities’ apparel on at the time, which makes the subject matter even more interesting and fun.

ALTERNATIVE DISPUTE RESOLUTION IN SPORTS

Alternative Dispute Resolution (ADR) has been used in many instances to resolve disputes in both amateur and professional sports. The Big Four have arbitration procedures set forth in their respective CBA. These procedures focus on the filing of grievances involving discipline, fines, franchise disputes, and salary disputes. In amateur sports, the focus of ADR centers on rule interpretations, eligibility, and discipline disputes. Generally, binding arbitration

²¹⁸ See Cheryl Wittenauer, *Appeals Court Upholds \$15 Million Verdict for Tony Twist*, YAHOO.COM, <http://sports.yahoo.com/nhl/news?slug=ap-comicspeech&prov=ap&type=lgns> (last visited July 25, 2006) (Missouri appeals court upheld a \$15 million jury verdict against Todd McFarlane, the creator of the comic series, The lawsuit actually began in 1997 and a jury awarded Twist \$24.5M in 2000, but trial judge threw out that award).

²¹⁹ See generally Anita M. Moorman and T. Christopher Greenwell, *Consumer Attitudes of Deception and the Legality of Ambush Marketing Practices*, 15 J OF LEGAL ASPECTS OF SPORT 183 (2005)(“Ambush marketing ...defined many ways ...from an intentional effort to weaken or ambush a competitor's official association with a sports organization ...to the 'ability to reasonably confuse' the consumer regarding the ambushing company's status as an official sponsor...although usually legal, has been criticized as deceptive and unethical.. ambush marketing is ethically and legally correct since official sponsors only buy the official association with a particular event ... rather than the entire thematic space surrounding the event...one cannot sell what one does not own, and no sport organization owns the entire concept of or aura surrounding a sport”).

²²⁰ See *Feist Publ'ns v. Rural Tel. Serv. Co. Inc.*, 499 U.S. 340 (1991) (sports statistics are facts and are not copyrightable unless the arrangement demonstrates sufficient “originality” to merit protection); see also, *National Basketball Assoc. v. Motorola, Inc.*, 105 F.3d 841 (2d Cir. 1996) (defendants only produced factual information and did not infringe on the copyright of the broadcasts).

²²¹ Collegiate Licensing Company Home Page, <http://www.clc.com> (last visited May 14, 2007).

²²² Licensing Resource Group, Licensed Vendors, <http://software.trademarxonline.com/forms/LicensedManufacturerList.aspx>.

has been quite effective in deciding cases in the Olympic movement. ADR has also gained momentum in the very litigious and adversarial American legal system.²²³

I try to emphasize the general success of arbitration in Olympic sports. In 1983, the IOC established the Court of Arbitration of Sport (CAS) to resolve issues under its jurisdiction in order to end the litigation (or the threat of litigation) involving athletes and countries for numerous disputes arising out of the Olympic Movement. There are several excellent examples of the swift and final decisions made by the CAS. This includes the Paul Hamm incident at the 2004 Athens Olympics as to whether he or Korean gymnast Yang Tae Young should have received the gold medal. I also offer American Apolo Ohno's dispute in the 2002 Salt Lake City Games, involving the Korean Olympic team's appeal of the disqualification of Kim Dong-Sung for "impeding." Finally, I offer *Lindland v. United States Wrestling Ass'n*, which I characterize as "ADR gone wild," where several courts and arbitrations battled over who had the authority to decide the appropriate selection process for the United States wrestling team.²²⁴ Today, Olympic athletes must agree, by contract, that the CAS will be the ultimate arbiter and interpreter of international amateur rules and enforcement.

Courts give great deference to an arbitrator's decision.²²⁵ Studying arbitration in sports allows the instructor to reinforce the principle that an arbitrator's decision is final and binding. Overturning an arbitrator's decision is almost impossible. Under federal law, an arbitrator's decision may only be overturned in limited circumstances, such as if one can demonstrate evident partiality.²²⁶ Mediation, on the other hand, is simply not common in sports law and I ask the students to explain why that is.

Finally, I emphasize the role that technology plays in ADR for resolving on-court disputes, such as instant replay. For example, in 2006 the NCAA approved the use of standardized instant replay for football games. Teams receive one challenge per game of an on-field referee decision and a failed challenge costs the team a timeout. Instant replay is not a

²²³ See, e.g., Roger Parloff, *Judge Orders Lawyers to Play Game*, FORTUNE, June 7, 2006, available at http://money.cnn.com/2006/06/07/magazines/fortune/rps_fortune/ (Orlando, Florida judge orders lawyers to resolve a dispute via the game of rock, paper, scissors).

²²⁴ *Lindland v. United States of America Wrestling Ass'n, Inc.*, 230 F.3d 1036 (7th Cir. 2000).

²²⁵ See *Major League Baseball Player's Ass'n v. Garvey*, 121 S.Ct. 1724 (2001) (Supreme Court affirmed that judicial review of an arbitrator's decision is almost impossible).

²²⁶ Federal Arbitration Act, 9 U.S.C. §§ 1-14 (1947).

perfect system, however. For example, faulty switches and malfunctioning television monitors added drama and controversy to the 2005-2006 NCAA National Championship football game between the University of Texas and the University of Southern California.²²⁷ Even tennis announced in 2006 that an instant replay system would be used in North American professional tennis matches, beginning with the NASDAQ-100 Open in 2006.²²⁸

ADR in sports law emphasizes how disputes can be resolved outside the courts.²²⁹ The Olympic model of mandatory and binding arbitration is arguably the most effective private legal system in the world. Arbitration in the Big Four allows you to revisit discussion of the role of collective bargaining and the finality of arbitration in the American legal system. The study of ADR in sports law allows you to discuss the role of trial lawyers and frivolous lawsuits.

RELIGION AND SPORTS

The changing views and perceptions related to religious tolerance in sports law reflects societal changes. Whether the act is pointing fingers to the sky or kneeling on the field after the game and praying, acts of religious expression are common in sports. Since this is usually the last major topic for the semester, I often present the students with rhetorical questions. Since this is usually the last major topic for the semester, I often present the students with rhetorical questions: Where do we draw the line between permissible religious actions in sports and those that violate the Establishment Clause; are all religious activities in the public schools prohibited; when state actors (state colleges, universities, coaches and administrators) sponsor prayer before, during or after a sports contest or practice, is this merely an example of team unity or is it an example of religious proclamation and proselytizing; and is it appropriate for a public high school or college to have a team chaplain?²³⁰ Many of these questions lack clear answers.

²²⁷ Dennis Dodd, *Bowl Notebook: Replay Growing Pains Evident in Postseason*, SPORTSLINE.COM, Jan. 9, 2006, <http://www.sportsline.com/collegefootball/story/9154768>.

²²⁸ Jake Curtis, *Computers That Call the Lines – Tennis Now Entering the Replay Age*, July 16, 2006, S.F. CHRON., <http://sfgate.com/cgi-bin/article.cgi?f=/chronicle/archive/2006/07/16/SPGEAK037N1.DTL> (two challenges per set and one during tie-breakers).

²²⁹ See generally Adam Epstein, *Alternative Dispute Resolution in Sport Management and the Sport Management Curriculum*, 12 J. OF LEGAL ASPECTS OF SPORT 153 (2002).

²³⁰ See Associated Press, *AU Clears Team Chaplain of Major NCAA Violations*, THE DECATUR DAILY, Jan. 8, 2005, available at <http://www.decaturdaily.com/decaturdaily/sports/050108/au.shtml>.

I begin the historical perspective with *Engel v. Vitale*.²³¹ The Supreme Court held that state officials shall not mandate that a prayer be recited at the beginning of each school day, even if the prayer is denominationally neutral and student participation is optional. I also offer *Wallace v. Jaffree* in which the Supreme Court struck down an amendment to an Alabama statute that added “or voluntary prayer” to the state law which authorized a period of silence “for meditation” in public schools. The Court found that the statute was motivated entirely by a religious purpose.²³²

I mention numerous cases of the 1990s and the disparity in decisions around the country. This includes *Jones v. Clear Creek Independent School District*, in which certain student-led prayer was permissible at high school graduation ceremonies.²³³ Later, the Fifth Circuit made it “clearer” that the *Clear Creek* rule applied only to high school graduations, and school-encouraged prayer was constitutionally impermissible at school-related sporting events.²³⁴ In *Doe v. Duncanville Independent School District*, the court held that while a coach’s practice of leading and participating in prayers with a basketball team before and after games was constitutionally impermissible; a high school graduation is “a significant, once in-a-lifetime event” and is distinguishable from athletic events, “a setting that is far less solemn and extraordinary.”²³⁵

More recent examples include the Supreme Court decisions in *Santa Fe Independent School District v. Doe* and *Adler v. Duval County School Board*.²³⁶ In seemingly endless high school litigation, student-led graduation messages which opponents called official school prayer in disguise, could continue in Jacksonville high schools. I offer the recent plight of a New Jersey

²³¹ *Engel v. Vitale*, 370 U.S. 421, 430 (1962).

²³² *Wallace v. Jaffree*, 472 U.S. 38, 56 (1985).

²³³ *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963, 969 (5th Cir. 1992).

²³⁴ Cases are also known as *Jones I* and *Jones II*. *Jones I* was vacated by the Supreme Court in light of *Lee v. Wiseman*, 505 U.S. 577 (1992).

²³⁵ *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 406-07 (5th Cir. 1995).

²³⁶ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Adler v. Duval County Sch. Board*, 530 U.S. 290, 317 (2000) (student led prayer prior to school football games was public speech, authorized by a government policy, taking place on government property at government-sponsored school-related events and school district's policy to allow such public speech violated the Establishment Clause of the U.S. Constitution).

high school football coach who resigned after school administrators told him that he could not lead the team in prayer prior to sports contest dinners.²³⁷

At the intercollegiate level, one should address the Brigham Young University (BYU) rule that existed until 1998. BYU refused to participate in athletic competition on Sundays. The NCAA eventually eliminated the rule altogether, and now requires that if a university competing in an NCAA championship has a written policy against competition on a particular day for religious reasons, the championship schedule must be adjusted to accommodate that institution.²³⁸ Another issue that may elicit class discussion involves religious preference at the United States Air Force Academy. Fisher DeBerry, Air Force's head football coach, hung a religious banner on the wall of his team's locker room instructing his players to "go to church."²³⁹

In professional sports, I offer various examples of somewhat controversial displays of religious expression. MLB player Sandy Koufax, who regularly pitched on the Jewish Sabbath but never pitched on the first day of Passover, is one example. In 1965, he refused to pitch in Game One of the World Series because it fell on the same day as Yom Kippur. Similarly, consider Mahmoud Abdul-Rauf of the Denver Nuggets refusing to stand for the Star-Spangled Banner in 1996. In NASCAR, the Church of Scientology once sponsored a car and advertised the religion on the race track.²⁴⁰ In 2006, the Colorado Rockies were accused of promoting Christian values as part of its organization.²⁴¹

In the end, religion and sports law issues are divided sharply between interscholastic, intercollegiate, and professional sports. This is the least clear area of sports law. Battles rage around the country over the use of religion in high school sports and high school generally, which has led to inconsistent decisions in public school systems. I often leave this section by

²³⁷ Doug McKenzie, *EBHS Coach's Resignation Sparks Nationwide Debate*, SENTINEL, Oct. 13, 2005, http://www.egmnews.com/news/2005/1013/Front_Page/002.html (the coach was later reinstated).

²³⁸ NCAA MANUAL, *supra* note 6 at 417 (Day of Competition).

²³⁹ See Sally Jenkins, *Football's Religious Kick*, WASHINGTONPOST.COM, May 21, 2005, http://www.washingtonpost.com/wp-dyn/content/article/2005/05/20/AR2005052001718_pf.html.

²⁴⁰ See Associated Press, *Church of Scientology to Sponsor Race Team*, MSNBC.COM, <http://www.msnbc.msn.com/id/13189261>.

²⁴¹ See Bob Nightengale, *Baseball's Rockies Seek Revival on Two Levels*, USA TODAY, June 1, 2006, http://www.usatoday.com/sports/baseball/nl/rockies/2006-05-30-rockies-cover_x.htm.

having students consider whether the real debate is over the freedom of religion, the freedom from religion, or something else entirely.²⁴²

SPORTS ETHICS

If time allows, one might be able to consider the following ethical issues found in sports law. It is probably better to include ethical issues throughout the semester; sprinkled from topic to topic, rather than during one class period alone. Due to time constraints, the following issues may be considered as a subject for a term paper rather than or in addition to classroom discussion.²⁴³ These issues are designed to evoke vigorous consideration and debate: Whether the word “Lady” such as “Lady Vols” is condescending to women; to what degree should race or ethnicity be a consideration for hiring decisions in sports; should student-athletes be paid a salary by the college or university they represent (i.e., should student-athletes should be considered employees); should the NCAA remain a non-profit organization for federal IRS tax purposes; should parents of little league players be required to sign an agreement that allows the parent to be “disbarred” from being able to attend sports contests for unruly behavior; and should state athletic associations establish mercy rules in sports contests?

CONCLUSION

Teaching sports law is an ambitious undertaking, requires serious preparation and covers a wide variety of subjects. This article is designed to provide a springboard for preparing to teach sports law for the first time. It provides some major cases, offers various hot topics, and may be used for future reference. The Internet provides a window to the world of the ever-evolving nature of sports law and the sports business generally. Utilizing the Internet is a must for teaching a successful course. In fact, the Internet has created sports law-related issues of its own.

²⁴² See Associated Press, *Braves Boot Conservative Group at Faith Day*, Aug. 11, 2006, MSNBC.COM, <http://www.msnbc.msn.com/id/14309640>.

²⁴³ For term papers, I usually offer five to ten general subjects that students may research. We then hold a draft in which the students draw numbers from a hat. Since some students might want to write on a subject that they did not draft, I usually offer a short period of time for trades in which students may trade their topic with another student as long as I, as the Commissioner, am notified and approve of the trade.

Analyzing the classic sports law cases is vital, but today's students do not want to get bogged down in cases from their grandparents' generation. Make an effort to steer the course away from becoming a discourse in sports trivia and maintain the legal perspective. If you teach sports law again, you must keep current during the off-season; however, you will have mastered the basics.