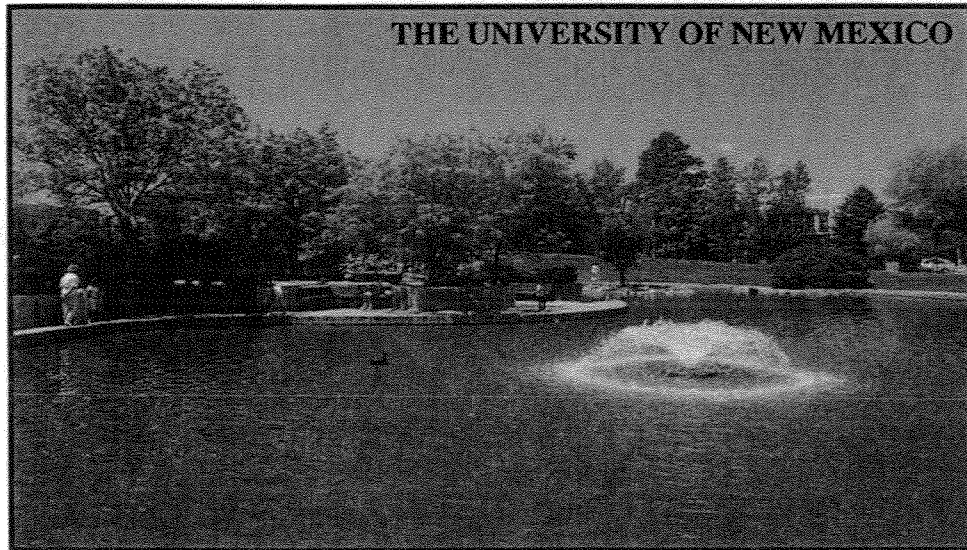


ABSTRACTS

THIRTEENTH ANNUAL SSLASPA

SPORT, PHYSICAL ACTIVITY, RECREATION AND LAW CONFERENCE



SSLASPA Executive Director: Tom Sawyer
Conference Coordinator: Andy Pittman
Site Coordinator: Todd Seidler

March 8-11, 2000
Sheraton Old Town Hotel
800 Rio Grande Blvd., NW
Albuquerque, NM 87104



SELECTED RISK MANAGEMENT PRACTICES OF NIRSA FITNESS DIRECTOR

Daniel P. Connaughton,
University of Florida

In today's litigious society, prudent fitness directors practice risk management to limit liability exposure. The first segment of this presentation will provide the results of a study that was designed to assess selected risk management practices of college-based fitness directors who were professional members of the National Intramural Recreational Sports Association (NIRSA). An 11 multi-item survey was administered via electronic mail and questioned respondents (N = 53) about their compliance with selected Occupational Safety and Health Administration and American College of Sports Medicine health/fitness facility standards and guidelines. Data was analyzed using SPSS and descriptive statistics will be provided. Findings suggest that additional education and/or training in this area may be warranted. The final segment of the presentation will include a discussion of additional risk management strategies for health/fitness facility operators. The intended audience includes instructors, researchers and practitioners interested in risk management strategies for fitness facilities.

LEGAL ISSUES IN CAMPUS RECREATION FACILITIES

Frank R. Veltri, Minnesota State University; John J.
Miller, Western New Mexico University

Security management for recreational facilities can increase revenue, ensure greater safety and reduce incidences that may cause harm to students and employees. A major concern for college campus recreation facilities managers is effective security. A secure and controlled facility will have a better chance of being successful and the number of staff to operate the facility will be minimized.

The purpose of the program is to identify security risks and criminal acts which occur in college recreation centers. A 36-item questionnaire was developed and randomly distributed to 100 college and university recreation center directors to analyze their security

systems. The power point presentation will focus on the following information ascertained from the study:

1. How many respondents possessed a security plan for their facility?
2. Do they possess proper security equipment for their facility?
3. What are the leading contributors to criminal activity in their facility?
4. What are the problems associated security and staff development?

The answers to these questions will be revealed during this presentation. Additionally, proactive security and risk management approaches will be discussed which may help increase the safety aspects of the building and patrons. Recreation facility directors, practitioners or anyone interested in keeping their facilities safe are the intended audience. Audience participation in sharing ideas for security safety will be encouraged.

RISK MANAGEMENT

Aaron L. Mulrooney, Kent State University
Alvy E. Styles, Kent State University

Risk management and its application is a topic that has been discussed on numerous occasions by sport and recreation professionals. Limiting liability exposure and the damages that go along with a lawsuit has long been a problem for this industry. This article is a follow-up to a 1997 article by Mulrooney & Green that discussed the overall risk management process and presented a risk management paradigm for recreational sport facilities.

This presentation will discuss a study conducted of recreational sport facility directors as well as some relevant cases that show what can happen when risk management procedures are either not in place or not followed.

*See you at
Big Cedar Lodge
in Ridgedale, MO*

**DESIGNING AND CONDUCTING A RISK
MANAGEMENT ASSESSMENT FOR
STUDENT AND PUBLIC USAGE
RECREATION FACILITIES**

Justin Friske & Ross Grippi II
University of New Mexico

As more universities, colleges, and private organizations recognize the need to provide fitness & recreation facilities for their constituencies, the need for proper safety measures increases. However, the use of outside consultants is an expensive one. Additionally, knowledge of risk management is important for all facility employees, not just maintenance or building management. Designing and conducting your own assessment will greatly reduce the costs incurred, educate all employees on risk management applications and will allow the facility to be maintained at a safe level throughout the years.

This presentation will take a step by step approach to inform the listeners of the proper steps needed to design a risk management checklist, waivers and exculpatory agreements, and other necessary paper work to ensure legal compliance. Additionally, we will take the viewers step by step through the process of research, which includes an evaluation of all current practices employed by the facility, with collection of all paperwork needed for review as well as procedures used in other facilities. The lecture will then culminate with a detailed explanation of how to conduct an assessment on the facility itself, with our manual as a guide to proper execution.

Through this presentation we will touch on many possible facility risks, allowing facility managers from all different areas to gain some knowledge of practical risk management procedures.

**THE FIRST AMENDMENT AND
MANDATORY STUDENT FEES: AN
ANALYSIS OF THE POTENTIAL
IMPACT OF SOUTHWORTH V. GREBE ON
THE FINANCING OF INTERCOLLEGIATE
ATHLETICS**

Chad D. McEvoy
University of Northern Colorado

American universities use mandatory student fees to fund a variety of projects and organizations, including intercollegiate athletics. Some university athletic programs receive 75 percent or more of their total revenues through student fees. The United States Supreme Court recently heard arguments in the case of *Southworth v. Grebe*, in which a group of students at the University of Wisconsin-Madison sued the university, claiming that the use of mandatory student fees to fund objectionable campus organizations was unconstitutional in that it violates their rights against compelled speech and organization under the First Amendment of the U.S. Constitution. At both the trial court and appellate court levels, the courts ruled on behalf of the plaintiffs, finding that the university's policy of funding objectionable organizations through the use of mandatory student fees was a violation of the students' First Amendment rights. How the decision will effect the funding of intercollegiate athletics through the use of student fees, if there is any effect at all, remains to be seen, however, it is an issue that many athletic administrators are aware of and concerned about. The Supreme Court is expected to rule on the case in June, 2000.

The intended audience of this research is academicians and administrators interested in the legal and financial aspects of higher education, specifically intercollegiate athletics. The presentation will be conducted in a lecture format, utilizing Microsoft Powerpoint as a visual aid.

*Share your Journal
Today
with a Student*

LOCKER ROOM SANCTITY: A COACH'S INSPIRATION OR INTIMIDATION

Larry Waters
Athletic Director, La Cueva High School

For Years the "talks" given at practices and before, at halftime, and after games has been considered a privileged communication between the coach and the athletes. That privileged communication has recently come under scrutiny and the locker room pep talk has been challenged in court. As a result, the use of particular "fighting words" has led many coaches to have to defend their choice of words in the court room. The courts have stated that there is a line between inspiring, inciting, and offending. However, the line is not obvious, distinct, or specific in its direction.

Recent precedent setting court cases have upheld the privileged communications in some instances, and found for the plaintiff in others. It has now become the responsibility of the athletic administrator to inform, educate, and monitor the coach-player communications of the entire staff. This presentation will look at a number of court cases and attempt to help the athletic administrator establish guidelines for their coaching staff.

THE DEVELOPMENT AND UPDATING OF A SELF EVALUATION INSTRUMENT WHICH IDENTIFIES LEGALLY VULNERABLE ASPECTS OF A SECONDARY SCHOOL ATHLETIC PROGRAM.

Gary Rushing,
Minnesota State University

The purpose of this presentation is to provide information related to the development and revalidation of an instrument which provides secondary school athletic supervisors with a means to identify safety and legal liability prone areas within their program. The instrument is comprised of 214 objective statements which represent established standards and practices against which a secondary school's athletic program may be compared. The instrument was first developed in 1986 as part of the presenter's doctoral

dissertation. At that time, it was proven to be reliable and was validated by a group of experts. Recently (1999), to make the instrument more contemporary, the presenter revalidated the instrument by having a panel of current experts (13) rate the value of the standards and practices found in the original document. In addition to the panel of legal experts, a group of high school Athletic Directors (13) were also asked to rate the standards and practices. Based on the panel recommendations and the revalidation process, changes in the instrument were made. These changes and the group differences will be discussed.

This presentation will be a lecture discussion format and should be of interest to students, practitioners and teachers interested in risk management.

RISK MANAGEMENT PRACTICES AT NCAA DIVISION I BASKETBALL FACILITIES

Rob Ammon Jr., Slippery Rock University

The litigious nature of American society requires that proper risk management procedures be in place at university sport facilities. These procedures must also present alternative solutions and make cost effective recommendations to curtail risks. Since these processes are not as pervasive as needed, litigation often ensues (Mulrooney & Ammon, 1995; Fried, 1997; Ammon & Fried, 1998). A thorough review of litigation relating to university sport facilities may enhance understanding the intricacies and nuances which comprise risk management practices.

This study was based on the need within the profession to better protect the public from risks associated with sport facility management. The limited information available regarding university facilities and associated risk management practices, in addition to the lack of data regarding facility liability, highlights a major weakness in facility management research (Ammon, 1995; Farmer, Mulrooney & Ammon, 1996; Ammon & Fried, 1998). The intent of this study was to create a model of risk management practices that could be utilized by university facility managers to establish safe and enjoyable facilities.

This study specifically analyzed the relationship between selected risk management strategies and any resulting litigation, from incidents at athletic events,

that have occurred within the past five years. The subjects for this study were selected from a complete list of all Division I basketball arenas provided by the National Collegiate Athletic Association (NCAA). The survey was piloted by a panel of experienced facility managers from local, non-Division I, universities for their critical review. These individuals analyzed the instrument to determine if it accurately and reliably measured the aspects of relevant risk management issues. A multi-item questionnaire, designed and validated for utilization in a previous 1993 study, was sent to the operational directors of the entire sample. In order to accomplish the purpose of this research all data was collected, analyzed, and reported using categorical data analysis (chi square) and descriptive statistics.

For university facilities with risk management plans in place, the data may provide a liability checklist for managers, against which to compare themselves. For those university facilities with no specific plan, this study provides an industry paradigm which may be easily adaptable. In addition the data established in this study may provide a model from which future workshops and law conferences pertaining to risk management practices could be developed. The material will improve the knowledge of managers and administrators and diminish the possibility of future injury and resulting litigation.

SEXUAL RELATIONSHIPS BETWEEN FACULTY & STUDENTS

Margery Holman and Dick Moriarty

This paper examines the legal position of some universities with respect to sexual relationships between faculty members and students for the purpose of learning applicable principles that may contribute to sport policy. Sexual relationships between coaches and athletes are similar to those relationships between faculty members and students. They often reflect a relationship that is unequal in power. This power differential has legal implications such, as abuse of power, sexual harassment, and conflict of interest. Institutions and their athletic departments must understand the potential risk, vicarious liability and associated responsibility for providing an environment free from harassment due to power imbalances.

GENDER DISCRIMINATION IN SPORT: CAN TITLE IX AND THE EQUAL PAY ACT SOLVE THE PROBLEM?

Andrea Petroczi
University of Northern Colorado

The Fifth and Fourteenth Amendment of the U.S. Constitution guarantee equal protection to all persons found within the United States, regardless of race, color, sex, national origin, and religion. Yet, further legislation, such as Title IX, Title VII, the Equal Pay Act, and state equal protection amendments were needed to affirm gender equity in everyday practices. Title VII and the Equal Pay Act were not designed to specifically attack gender discrimination, however they were often used in such cases. Title VII of the Civil Rights Act (1964) relates to discrimination in employment regardless of the basis of discrimination and applies to all workplace practices (i.e., hiring, firing, advancement). The Equal Pay Act (1964) has a limited scope of gender discrimination since it particularly pertains to wages paid to males and females. Title IX of the Civil Rights Act (1972) is aimed to ensure equal opportunity for men and women at educational institutions, which receive federal funds.

The main goal of the author is to analyze the historical and societal background that led to the passage of Title IX and the Equal Pay Act. The second purpose of the paper is to clarify the misunderstanding around feminism and masculine/feminine characteristics of nations' culture, and its relationship to other important characteristics of a society such as economic status (i.e., wealth), development level, individualism/collectivism, power distance, and uncertainty avoidance, as developed by Geert Hofstede (1980, 1996). It is assumed that there is interconnectedness between the legislators' reasoning and the characteristics of American society.

It is the author's belief that Title IX and the Equal Pay Act were necessary to be imposed on the American society because of its cultural characteristics (a masculine and individualistic society). However, the paradox of the situation also has to be acknowledged. These same characteristics, which once "called" for help from a higher legislative authority, are now standing in the way of a fundamental change in society. Workplace practices are deeply culturally embedded. If the legislation is in

conflict with cultural values and norms, theoretically there are two possible outcomes which can be predicted: (a) the legislation will force cultural change sooner or later; or (b) organizations will constantly find ways to circumvent the rules. The cases, which interpret Title IX and the Equal Pay Act, seem to support the latter alternative.

INTRUDER PREVENTION AND INTERVENTION: A PRELIMINARY INVESTIGATION OF COLLEGIATE ATHLETIC ADMINISTRATORS' PERCEPTION AND RESPONSE TO RISK

Rebecca Mowrey

Across the United States, many elementary and secondary school administrations have established risk management procedures to address the treat of intruders. With the number of incidents targeting these populations, that would appear to be a prudent response. Athletic Administrators from selected regional colleges were surveyed to assess their perception of the risk that intruders present for athletic team activities i.e., practice, competition. Survey participants also indicated what risk management procedures they have established to address the concern of intruders.

Those in attendance, who teach courses in sport management, risk management and sport law. Conference attendees who have supervisory responsibilities in athletic administration will also find this to be relevant.

PEER TO PEER SEXUAL HARASSMENT

Dianne Boswell O'Brien, Ph.D.

In 1999 the United State Supreme Court considered the application of Title IX of the Education Amendments of 1972, 20 U.S.C. §1681-1677 to peer to peer sexual harassment in a public school. For the first time in history, United States Supreme Court held a public school board liable for Title IX sex discrimination in a case of student-on-student sexual harassment which was sufficiently severe, pervasive, and objectively offensive. The Court ruled that the

school board acted with deliberate indifference to known acts of harassment which were reported to the school authorities but no disciplinary action was taken. There was no effort to even separate the fifth grade girl from the harassing male student in her classes for three months. In reversing the lower court decision, United States Supreme Court ruled that monetary and injunctive relief could be sought.

This presentation discusses 1. the facts, 2. the complaint, 3. the points of law, 4. the decision of the court, 5. Conclusions and recommendations for sport and physical education 6. policy recommendations from Legal Aspects of Sport Entrepreneurship and from the School Board Assoc.

Discussion will consider 1. recommendations made by O'Brien and others at the SSLASPA Convention 1999 concerning Davis V Monroe (Did the U.S. Supreme Court follow O'Brien's line of reasoning in 1999?) 2. The present status of Monroe Co. Sch. Superintendent. Audience participation is welcomed.

EXAMINING THE LEGAL STRUCTURES OF PROFESSIONAL BASKETBALL IN THE UNITED STATES AND SOUTH KOREA

Song, Seok-Ho, Jeong, Eug-Sun, Kim, Ae-Rang &
Cho, Woo-Jeong
(University of New Mexico)

With the growing popularity of professional sports in the US, we see legal issues such as contract agreements, free agency disputes, personal damages, and antitrust actions everyday in the newspapers. However, in South Korea, where professional sports have grown out of an entirely different foundation of values, these common aspects of American sport are rarely seen. Using a comparison of the NBA and the Korean Basketball League (KBL), this presentation will examine these differences and attempt to shed light on the reasons behind their existence.

This presentation will manifest the differences through a study of anti-trust law, contract law and tort law as they relate to the professional basketball climate in each country. In Korea, teams are organized and owned by corporations, which use them as public relations tools rather than self-sustaining, profit-generating entities. This difference alone has tremendous

ramifications on anti-trust, as competitive parity is not considered a crucial aspect to sustaining a league. Similarly, the idea of tort law entering the athletic arena is unimaginable. To take action against a rival player, rival team, or one's own team for damages is not even a consideration. Yet in the United States cases involving tort law in sport are commonplace. Also, a comparison of contracts between NBA and KBL will be addressed.

It is our hope that through this presentation we can show how societal ideas and contrasting cultures can modify the formation of sports law and its practice in the professional setting.

REPRESENTING A SPORTS FACILITY OWNER

Gil Fried
University of New Haven

Sports law can be a very difficult topic for students to grasp but can even be that much more difficult for the owner of a sports related business. The complexities of the legal system and the interaction of civil and statutory laws for sports at various levels makes the topic that much more difficult for some professionals to grasp. Understanding this knowledge gap is critical when representing sports business owners. This lecture will attempt to provide the audience with a first-hand perspective concerning how to work with sports business owners to help them understand their legal needs. While a majority of the audience is not licensed to practice law, the information that will be provided can be used as risk management information to help educate students and business owners concerning general concerns ranging from buying a business to filing for bankruptcy protection.

One topic that will be highlighted is risk management. Dr. Herb Appenzeller published a complete text in 1998 on Risk Management in Sports. Sports risk management is gaining popularity in academic publications (see generally van der Smitten, 1990; Fried 1999) the classroom, and industry. The number of injuries that could be avoided through utilizing risk management techniques is impossible to calculate. However, research has shown that a simple trip and fall case can result in substantial monetary awards to plaintiffs (Fried, 1998).

While teaching risk management is an important

component of any sports law class, book knowledge cannot replace the field experience necessary to understand applied risk management. Informing students and business owners about conducting a facility risk management audit has significant value. However, actually taking students/owners to a facility and having them conduct their own applied risk management audit helps enhance the learning process and their professional competence.

The applied risk management audit has been utilized extensively by the presenter for numerous industry professionals. This presentation, besides discussing general business owner's concerns, will discuss how to teach this auditing technique. Attendees will learn how to utilize both on-site and video follow-up methods to help reinforce the students'/owner's learning and ability to apply risk management as a first step to helping avoid legal problems.

LEGAL DUTY OF FACILITY OWNERS REGARDING "OPEN AND OBVIOUS HAZARDS"

Doyce J. Cotten
Sport Risk Consulting

A health club patron was injured when he hit his head on a bar suspended from a piece of exercise equipment. An adult softball player ran into a metal, unpadded light pole located 12 to 15 feet behind his normal outfield position. A softball player running between second and third base was injured when he stepped into a hole 46 inches deep and 61/2 inches wide. A little leaguer was injured when he struck a deep depression sliding into home plate. What is the duty of facility owners and occupiers when open and obvious hazards exist in and around the sports facility?

Would the facility owner or occupier be liable for the hazards presented in the above paragraph? Some of the answers might surprise you. This presentation will look at the law regarding assumption of risk when participating in sporting or athletic events and open and obvious hazards in and around a sport facility and how that law differs depending upon the state you are in. The law in three of the more populous and more litigious Eastern states will be examined: New York, Illinois, and Florida.

TITLE IX COMPLIANCE: TEN SCENARIOS TO TEST YOUR KNOWLEDGE

John D. McMillen
Bowling Green State University

Over 90 percent of all post-secondary institutions do not fully comply with Title IX. While some may contend that Title IX compliance is directly related to financial considerations, this program approaches compliance from a legal perspective. In some instances, evidence suggests that failure to comply with Title IX is based on a general lack of knowledge and understanding of its federally mandated legal requirements. In this spirit, this program will outline Title IX's three core sections: (1) Athletic Financial Assistance; (2) Accommodating the Interests and Abilities of Students; and (3) Other benefits and Services. Each segment will address current compliance issues and offer possible solutions.

Administrators, general counsel, instructors of sport management, coaches, athletes, and any person who has an interest in the legalities of Title IX and current gender equity issues in sport and the law

THE CAL-NOW GENDER EQUITY AGREEMENT: THE RESULTS ARE IN

Colleen M. Colles
University of Northern Colorado

Victory? Valiant effort? or Mission Impossible? January 1, 2000 was the deadline for California State University campuses to meet Title IX gender equity requirements set forth in a decree following a lawsuit settled in 1993 between the California chapter of the National Organization for Women (Cal-NOW) and the California State University (CSU) system. Failure to meet the requirements may result in serious consequences as schools not in compliance risk being taken back to court.

According to the decree, the schools must meet the following criteria: the operating expenses, budget for scholarships, and number of female athletes must be proportional to the number of female undergraduates on campus. The proportion of female athletes and proportion of scholarships given to female athletes must be within five percentage points of the propor-

tion of female undergraduates, and the proportion of operating expenses must be within ten percentage points. This strict mandate requiring specific percentages is what set this lawsuit apart from other equity cases.

There are twenty-one schools in the CSU system that sponsor athletic teams: eight NCAA Division I, ten NCAA Division II, one NCAA Division III, and two NAIA schools. Over the past seven years little has been written about the progress of the athletic departments within the CSU system. In 1999, The Chronicle of Higher Education gathered information for a nationwide gender equity study. Unfortunately, the study was limited to NCAA Division I schools, thus excluding twelve of the CSU programs. The findings presented in this paper are based on data attained from the universities through the Equity in Athletics Disclosure Act. This lecture will summarize how all twenty-one schools approached the gender equity mandates of the decree. Specifically, the problems, successes, and major issues encountered by these schools will be highlighted and discussed.

STANDARD — LEGAL BANE OR BLESSING?

Betty van der Smitten
Michigan State University

The fields of sport and recreation are replete with "standards" and there has been increasing concern regarding the role they play in the elements of negligence, especially duty and standard of care and, thus, in liability and defenses. We have accreditation -

academic curricula
organized camping
adventure programs
park and recreation agencies

And, we have all kinds of certifications for individuals and immunities in certain states for persons with certain designated certification.

Then, there are facility/area standards, such as for swimming pools, playgrounds, et al - some provided by the industry and other by governmental bodies.

What is the legal effect of such standards on the provider and on the individual employee or volunteer. Do such standards increase liability, as some maintain, or do they reduce liability, or perhaps often there

is no effect on liability?

And, what about the organization/entity which promulgates the standards – what is their liability, if any? What about the instructor for certification courses?

What really does compliance with standards or holding accreditation or certification really mean, if anything, legally, if a person is injured? Where does the negligence concept of proximate cause fit in?

Are standards a bane or a blessing legally?

MULTI OPTION COMPLAINT PROCEDURES ADR IN PRACTICE

Lindy Korn

In landmark decisions issued in 1998, the U.S. Supreme Court ruled that employers are vicariously liable for acts of their supervisors and must take reasonable care to prevent hostile work environments from existing. Thus, Actual Notice to the employer is not necessary to create liability. One way for a company to comply with the Supreme Court decisions is to provide multiple options for safe reporting of workplace disputes.

Employees are often reluctant to report incidents of sexual harassment, or discrimination to their supervisors or human resource personnel for fear of retaliation, or because they don't think anything will be done as a result of reporting, or because they don't wish to harm the harasser!

Alternate dispute resolution options can provide various means for open and safe communications to occur; thereby allowing for early resolution of issues that could result in liability awards. We shall explore the various steps that some companies have used to ensure that a non-hostile workplace exists. Pro-active steps will lead to early reporting and resolution of employment related risks.

* A dramatic role playing presentation shall be performed as a part of this presentation.

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PARENTAL SUPERVISION AND THE LAW

Bruce Hronek, Indiana University

Parents, traditionally have had the ultimate responsibility to supervise their children and watch out for the well-being. Yet, in many sports and recreation activities, the parents are not asked to provide active supervision of their children, in fact, most coaches and recreation specialists do not want "parents hanging around." Coaches and recreation leaders do not necessarily have to assume the role and responsibilities of *in loco parentis*. Agencies and organizations should examine their operational procedures, both written and unwritten, as to who is assuming the legal responsibility for the child's welfare and safety. The question is whether or not the agency or organization needs to assume the risks involved in assuming the role of the parent. This presentation will explore alternatives and methods to reduce the risk of organization and agency child supervision. Recent case law will also be used to illustrate the parental supervision trends in the area of sports and recreation administration.

THE LEGAL ISSUES OF ELITE SPORTS ASSOCIATIONS FOR YOUTH

Merry Moiseichik, University of Arkansas
Kim Bodey, Iowa State University

The fastest growing area of sport, according to Time Magazine (10/1999), is elite sports clubs for children. These programs for kids who want to play a sport on a serious level, require a great deal of time and money. These are the AAU13 basketball programs, the club soccer teams, and the Babe Ruth Baseball leagues. High School is no longer the best place for showcasing talent. These elite sports are important big business and University scholarship scouting grounds. With the growth and importance comes the Legal ramifications.

There are a number of laws that reflect the importance of these teams. High school state associations create rules that do not allow the high school athlete to play the elite sport during the high school season. This has gone to court several times but has not been decided the same in every state.

Many of these elite programs have become non-profit organizations. Such a status requires special legal procedures and tax issues. Greater dollars earned for the sport and the presence of paid coaches creates a different atmosphere for litigation than ever before. The travel involved across state lines and even government boundaries also leads to further questions. Who is responsible for the children that do not travel with their parents? What are the issues that surround problems incurred on the road that are not related to the sport?

Elite athletes get injured often from the shear pressures that year-round activity of a sport will produce. Sport at this level incurs significant injuries and the medical issues become enormous.

These and many other issues will be discussed through the examination of court cases and state laws as they relate to these elite sports associations for youth.

LITTLE LEAGUE: BIG LEAGUE LIABILITY

Michael G. Hypes, Melissa Ann Thomeczek, & Julia Ann Hypes

The purpose of this program is to examine recent litigation concerning Little League and Youth Sport. This session will address the "big league" claims resulting from tortuous actions in Little League and Youth Sport programs.

RISK MANAGEMENT, SAFETY AND LIABILITY IN RECREATION AND SPORT: PROGRAMS, EQUIPMENT AND FACILITIES

Leonard K. Lucenko, PhD
Richard P. Tobin, PhD
JoAnne S. Haffeman
Montclair State University
Upper Montclair, NJ 07043

The explosion in liability litigation in sport and recreation is not abating but increasing. There is a great awareness on the part of the public to injuries in the recreation and sport environment. This awareness has been heightened by the reporting in the media.

The summer of 1999 produced many stories in the daily television expose programs regarding the Increase In accidents and injuries in amusement parks. Vivid stories showed the riding public hanging hundreds of feet in the air waiting for assistance. Other stories included the following: the deaths of several wrestlers due to dehydration and rapid weight loss; injuries associated with co-ed wrestling; the catastrophic injury of the Chinese gymnast during the Goodwill games; increase in golf course injuries; water park school and recreational outing drownings, the season ending injury to Vinny Testaverde on the astroturf of Giants Stadium; the collapse and tipping of soccer goal posts which resulted in death and quadriplegic and the multitude of playground injuries which have occurred across the country.

All of the above recreational, youth, interscholastic, collegiate and professional level injuries reflect that risk management may not be addressed properly. This paper will explore some of these issues and analyze the actions and inactions of management and staff in a variety of recreational, physical education and athletic settings which pose potential risk to students, participants, spectators and parents. A review and recommendations will be made based on sound risk management principles and techniques.

The presentation will also analyze litigated cases and provide insight regarding the need for physical education, sport and recreation risk management.

THE X GAMES: RISK MANAGEMENT CONCEPTS

Susan McGowen, ESPN Director of Medical Services
Nancy Lough, University of New Mexico

The ESPN X Games: Extreme, Exciting, Safe? The organization of this alternative sporting event offers a variety of risk management challenges. Management and supervision are charged with the responsibility of preventing the occurrence of incidents or conditions that could lead to occupational injury. Risk Management must be considered an integral part of quality control, cost containment, job efficiency, and program excellence.

The purpose of this program is to present the multitude of risk management concepts centered around

the organization, construction, and production of the ESPN X Games. Approximately 2500 individuals are charged with the task to create a competition for 450 athletes to showcase their talents in nine sport disciplines, twenty-six competitions at four different venue sites. The tremendous success of the ESPN X Games relies on the extreme attention to safety and on the implementation of the fundamental risk management principles of prevention and preparation.

This lecture and video presentation will attract those individuals intrigued by alternative sporting events, and those interested in the planning and implementation of a multitude of the risk management principles required to successfully produce an extreme, exciting and safe event, the ESPN X Games.

SINK OR SWIM: TRAINING AND SUPERVISING AQUATIC PERSONNEL FOR MUNICIPAL POOLS

Jean S. Hughes, Southwest Missouri State
University

Angie Nix, University of Arkansas

This presentation will summarize the contributing factors to drowning deaths in municipal swimming pools. There will be a brief review of negligence issues in relation to training and supervising aquatic personnel. Attention will be given to a comparison of instruction, supervision and evaluation practices of the leading authorities in the field: Ellis & Associates and American Red Cross. This presentation will provide a comparison of education goals and procedures of the two certifying agencies. This program is important to those who oversee risk management strategies for aquatic facilities.

HAZING IN COLLEGE AND HIGH SCHOOL ATHLETICS: IMPLICATIONS FOR ATHLETIC ADMINISTRATORS

Brian Crow, Hampton University
Ben Goss, Winthrop University
Dennis Phillips, University of Southern Mississippi

The term *hazing* has various legal definitions, but

specifically means to harass with meaningless or humiliating tasks or to initiate by exacting humiliating performances. Thirty-five states have hazing laws, but few specifically address student-athletes. Hazing has long been associated with fraternities and sororities, but only recently has attention been focused on hazing of interscholastic and intercollegiate athletes.

A hazing incident involving football players at Alfred University in Alfred, NY, prompted the president of that institution initially to forfeit a football game and suspend the athletes, and subsequently commission a nationwide study of hazing in intercollegiate athletics. The results of that study, completed in September 1999, will be addressed. In addition, a summary of recent hazing incidents involving high school and college athletes will be presented. Recommendations and implications for athletic administrators will then be discussed.

HAZING IN SPORTS HOT TOPIC ROUNDTABLE

Todd Seidler

Nancy Lough

David Scott

Cliff Summar

The University of New Mexico

The idea behind this session is to select a sport-related topic that is in the news, and have an open discussion/debate concerning the related legal and ethical ramifications.

Hazing in sport programs is definitely one of those hot topics. With recent articles appearing in Sports Illustrated, NCAA News, and USA Today among others, hazing has touched off a debate both within and outside of the sports world. Some are saying that hazing is an essential part of the sport experience while others say there is no place in sport for this abusive behavior. Some feel that a little is all right but where does hazing cross the line and become a tortious or even criminal offense? Others feel that hazing is an important aspect of team building and developing loyalty.

Everyone is invited to participate in this session. The discussion will be recorded and, following the conference, it will be transcribed and distributed to all attendees. With good participation, this could be an

excellent opportunity for give and take and may identify new approaches for research on the topic. It may also provide an excellent resource for classes in sport law or ethical issues in sport.

If this discussion is successful, the Hot Topic Roundtable could become an annual feature of the Sport, Physical Activity, Recreation and Law Conference. A new topic that is "in the news" can be selected and debated each year. This session may be most successful if it is held at a time when there are no other sessions being offered.

VIOLENCE AGAINST SPORTS OFFICIALS: OLD PROBLEM, NEW REMEDIES

Linda L. Schoonmaker
Southeast Missouri State University

It is believed by many that abuse, usually verbal, from athletes, coaches, spectators and media commentators is an occupational hazard for any sports official. Recently, however, in addition to this verbal abuse, many officials have experienced physical attacks, leaving some with permanent physical and/or mental disabilities.

This presentation will examine the extent of this problem, the current status and content of state statutes and state high school athletic associations regulations that have been implemented to imposed stiffer penalties or sanctions against an individual who physically attacks a sports official, and risk management procedures that can be implemented by sport managers to protect sports officials.

THE INCLUSION OF THE PARALYMPICS IN THE OLYMPIC AND AMATEUR SPORTS ACT: LEGAL AND POLICY IMPLICATIONS FOR INTEGRATION OF ATHLETES WITH DISABILITIES INTO THE UNITED STATES OLYMPIC COMMITTEE

Mary A. Hums, University of Louisville
Anita M. Moorman, University of Louisville
Eli Wolff, Brown University

When the Amateur Sports Act was passed in

1978, it empowered the United States Olympic Committee (USOC) to oversee and coordinate the activities of the Olympic Movement in the United States. Recent amendments (the Stevens Amendment) to the Amateur Sports Act resulted in a new name for the Act. It is now known as the Olympic and Amateur Sports Act. Among other changes initiated by amendments to this act, formal language is now included which incorporates the Paralympics and elite disabled athletes. In the United States, the USOC functions not only as the official National Olympic Committee (NOC), but also acts as the official National Paralympic Committee (NPC). This is a very unusual structure, as in the majority of countries in the world, these two governing bodies are distinctly separate. The implications of these amendments are not yet clearly defined, but undoubtedly will result in the USOC to revisit the resources and services it provides to athletes with disabilities.

The implementation of these amendments has also become more complicated by the recent lawsuit filed by Mark Shephard, Manager of the USOC's Disabled Sports Services, against the USOC and the IOC. Shepherd alleges the USOC discriminated against athletes with disability in services and resources provided compared to able bodied athletes. Shepherd is seeking \$1 million in personal damages and \$10 million in punitive damages.

EVERYTHING YOU ALWAYS NEEDED TO KNOW ABOUT WAIVERS... BUT WERE AFRAID TO ASK!!!

Doyice J. Cotten
Sport Risk Consulting

This presentation will cover most of the things that you really need to know about liability waivers. Some of the topics include: 1) The fundamental concept of a waiver — for what type of situation are they designed and what is the benefit of using them? 2) What are the basic requirements of a legal waiver? 3) What is the waiver law in each state? There have been many important changes since my book was published. 4) How to write the three types of waivers — Stand alone, Waiver within another document, and Group waiver. 5) What can service providers do when the participant is a minor? 6) Administering the waiver.

er — some tips.

As you know, waiver law is constantly changing as new cases are reported in each state. This presentation is designed to eliminate some common misconceptions regarding waivers and to bring you up to date on the latest cases.

DISCRETIONARY FUNCTION—CHANGING TO PERSPECTIVE - WHAT MIGHT IT MEAN?

Betty van der Smitten
Michigan State University

Discretionary function has long had governmental immunity, however, that immunity usually was provided to policy entities for the planning function, in contrast to ministerial acts by operational personnel.

Today there seems to be not only a redefinition of what a discretionary function is and to whom it is applicable, but also an extended application, often seemingly in conjunction with an effort to obtain immunity not otherwise provided under that state's tort claim act.

Is this use of discretionary function a "cop-out" for not providing services? Often lack of funds to provide services is cited as a discretionary decision, claiming thus no liability for not providing services.

Is this changing perspective impacting on the long-standing concept of duty to protect against unreasonable risks and, in fact, lowers the standard of care? Or, is this perspective in keeping with efforts to place greater responsibility upon the participant in activity and user of natural areas?

INHERENT RISKS – A COBRA IN THE COCKPIT?

Charles R. Gregg
Locke Liddell & Sapp LLP

The growth of Comparative Fault and Recreational Safety Acts has focused new attention on the doctrines of inherent risks and as assumed risks. These categories of risks provide some protection from liability for a sponsor or provider of an activity.

The drawing below presents a range of conduct from intentionally wrongful acts of the provider on the other, and highlights what I describe as the liability battleground. That battleground covers the negligence of the parties and a collection of events or circumstances that includes inherent risks, some categories of assumed risks, "acts of God," etc.

With the increasing acceptance of prospective releases for negligence, a careful drafter can shrink that battleground or take her client completely out of the contest. An effective release document signed by an adult may make irrelevant the location of the not-so-bright line between negligence and inherent or assumed risks. If there is no duty, there is no need for the traditional negligence analysis.

Increasingly, however, federal public land managers are limiting or prohibiting the use of releases, leaving the permittee only an acknowledgment and assumption of inherent risks as a shield from liability. A release signed by a minor is essentially worthless and a release signed on behalf of a minor should not be relied upon. Courts are inspecting releases carefully to be assured that they cover the parties' claim and loss in question, and can withstand challenges under consumer protection statutes, and claims of incompetency, coercion, and mutual mistake or lack of consideration.

So, an understanding of inherent risks and a careful articulation of those and others which are to be assumed are critical aspects of a good program, whose risk management includes education of participants and conscientious stewardship of the assets of the program.

THE CURT FLOOD ACT AND THE CURRENT STATUS OF MAJOR LEAGUE BASEBALL'S ANTITRUST EXEMPTION

John Wolohan
Ithaca College

In holding organized baseball exempt from federal antitrust law, the Supreme Court in *Flood v. Kuhn*, 407 U.S. 258, 92 S.Ct. 2099, 32 L.Ed. 2d. 728 (1972), blindly followed Justice Holmes' decision in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200, 42 S.Ct. 465, 66 L.Ed. 898 (1922) and held that if there were

"any inconsistency or illogic" in the decision it was up to Congress to remedy it, not the Court. In 1998, after twenty-six years, Congress finally acted to remedy the inconsistency in baseball's antitrust exemption. The Curt Flood Act, which overturns part of baseball's 76-year-old antitrust exemption, grants to major league baseball players, for the first time, the same rights under antitrust law as other professional athletes.

The presentation examines both the Curt Flood Act of 1998 and the impact it will have on baseball. The presentation begins with a brief historical review of baseball's antitrust exemption. The review is broken into two sections: Baseball's Supreme Court trilogy and post Flood v. Kuhn. Next, the presentation examines the Curt Flood Act of 1998; its origins, purpose and the potential impact it may have on future labor negotiations and disputes. Finally, the presentation concludes by looking at what is left of Major League Baseball's antitrust exemption after passage of Curt Flood Act of 1998 and the impact the Act will have on future antitrust lawsuits against Major League Baseball.

**THE EFFECTS OF UNION ROYALE BELGE
DES SOCIETES DE FOOTBALL
ASSOCIATION ASBL V. BOSMAN:
IMPLICATIONS FOR FREE AGENCY AND
PLAYER MOBILITY**

Alexandros Taliotis
Maureen P. Fitzgerald
The University of Texas

Zinion Royale Belge des Societes de Football Association ASBL (URBSFA) v. Bosman was decided in favor of Jean Marc Bosman, a Belgian soccer player, by the European Court of Justice (ECJ) on December 15, 1995. The focus in this case was on the contractual obligations and freedom of movement for professional athletes in the European Union. The case is analyzed and its effects on several aspects of European sports are examined.

The main provisions of the European Economic Community Treaty, otherwise known as the Treaty of Rome, were key focal points for the court in the Bosman decision. These key provisions will be outlined and discussed.

The Bosman ruling impacted the following: freedom of individual athletes (i.e., citizens of member-countries of the European Union) to be under contract and participate as nationals in more than one member-country of the European Union; the abolishment of the traditional transfer fee policy; and, the concomitant economic impact of the resulting European sport free agency. In addition, the impact of the ruling on the development of talent for the national teams (i.e., teams for each individual country) and the implications for the player recruitment for elite teams will be explored.

An analysis of comparable legal statutes in the US Legal System will be presented. Finally, possible solutions to the problems caused by the court's decision in URBSFA v. Bosman (1995) will be discussed relative to professional sports in the United States.

**"PROMOTIONAL ADVERTISING AND THE
EXPERT WITNESS"**

Thomas W. Bowler
Total Playground Consulting Services

The presenter will demonstrate through the medium of an overhead projector the concepts of promotional advertising for the expert witness involved in sports law. The lecture format will explore: printed directories, internet directories, brokerage firms, the concept of national vs. regional listings, financial costs to the expert witness, and random types of advertisements. The random types of advertising will cover: lectures, networking, investigative firms, and in-service work.

The purpose of the program will be to provide professionals in the audience, who are considering options for advertising, to make informed choices. There are many venues of advertising available for the sports law professional. Some are more profitable than others. The presenter will show insights into his experiences with the printed media and internet.

**Share Your Journal
with
a Colleague**

SUDDEN CARDIAC DEATH IN ATHLETES

How can you and your organization protect yourself?

Matthew Doles
University of New Mexico

Sudden cardiac death can occur at any time, to any person. Although this is a rare occurrence, the unexplainable death of an athlete can shake the whole sports community to its foundations. This lecture will look at the causes of sudden cardiac death and conditions that make certain individuals susceptible. It will also look at way in which an organization can screen athletes and identify those that have these conditions. The lecture will also look at ways in which the organizations can protect themselves from liability and lawsuits stemming from sudden cardiac death in athletes. This would be an ideal lecture for administrators of exercise programs both private and public, as well as athletic trainers, and athletic directors.

GROSS V. FAMILY SERVICES AGENCY AND POSSIBLE IMPLICATIONS FOR SPORT MANAGEMENT INTERNSHIPS

Susan Brown
Ilagler College

While failure to warn of a danger in a sport can be a breach of duty, very few lawsuits or situations have dealt with the failure of a faculty member or an institution to warn of dangerous situations at internships sites. Gross v Family Services Agency resulted in a settlement out of court with the third party (FSA), but resulted in a Florida appellate court reversal against the university. This presentation will discuss:

- this lawsuit;
- other lawsuits that have dealt with an institution's duty to warn of unsafe premises;
- third party involvement; and
- implications for placing students at sport management internship sites which may be in an unsafe area.

APPLICATIONS OF RISK MANAGEMENT THEORIES IN UNIVERSITY PHYSICAL ACTIVITY PROGRAMS

John J. Miller, Western New Mexico University,
Frank R. Veltri, Minnesota State University

One of the primary concerns of physical education activity program is to provide the safest environment possible to the students. This safety factor may result in increases of class size rather than a decrease. Despite the overwhelming need to provide appropriate risk management, how many institutions actually practice it? This presentation will introduce four risk management theories as they apply to physical activity programs. The four theories discussed will be: sovereign immunity, catastrophe avoidance, threshold of effective zerohood, and risk evaluation and management.

This presentation will focus on the findings of a 41-item questionnaire that was distributed to 400 randomly selected university and college physical activity directors in the United States to analyze which risk management theory they used. The purpose of the presentation will be to identify the following:

1. How many of the respondents used a risk management plan?
2. What safety certifications did the physical activity director possess?
2. Which risk management theory was favored by the respondents.
3. How did the individual's awareness of risk management affect the application of a risk management plan?
4. How did the individual's attitude towards risk management affect the application of a risk management plan?

The answers to these questions will be revealed during this presentation. Proactive risk management approaches and legal issues will also be discussed. The presentation is intended for all physical education, recreation, or sport administrators and practitioners. Dialog with the audience will be especially encouraged

AUTHORITY AND TRANSFER OF RESPONSIBILITY FROM AN INJURY ON THE PLAYING FIELD TO TREATMENT IN THE HOSPITAL: WHO IS IN CHARGE?

Cliff Summar
University of New Mexico

Some of the larger high schools in Texas and New Mexico have team doctors and registered trainers on the sidelines during games; however, this is not often the norm with smaller schools. Regardless of medical staffing, when a player is injured on the field, and the injury requires immediate attention, who is in charge? Are trainers, doctors, coaches, administrators, parents, the injured player himself, or EMT's? Does it really matter? What happens if there is a disagreement? What is the legal duty each of the previous individuals owes, if any, to the injured student athlete and can this responsibility be transferred. If so, when does this transfer occur?

This study was conducted in an attempt to increase the communication between athletic officials, administration, and emergency personnel before the athletic season starts. Protocol must be in place to insure the safe and proper care of any injured athlete.

This presenter feels that by increasing communication before an accident happens, minor accidents may be prevented from becoming major ones. Also well established protocol and procedures may help prevent future lawsuits from being filed.

SPORTS TEAM PHYSICIAN LIABILITY

Thomas H. Sawyer
Indiana State University

A professional basketball player, while participating in a regular season game, leaps for a pass and during his fill-away jump shot, is fouled in mid-air by his opponent. The sixfoot ten inch, 250 pound player crashes to the floor using his wrist to break the fall. The force of the fall dislocates a bone and tears several ligaments in the player's right wrist. The basketball organization and owners had recently invested \$50 million to keep the player with the team for the next five years and had spent an additional \$300 mil-

lion on players to complement him.

The team physician, an orthopedic surgeon, examined the injured player. Despite the seriousness of the injury, the doctor informed the player that his wrist was only slightly injured, would require a non-invasive procedure, and that he would be playing in only a matter of days. Unbeknownst to the player, the team physician had an ownership interest in the basketball team.

Following the player's surgery, he had regular therapy for approximately a week, including the use of a wrist brace, which was new on the market. Even though the player knew he was not one hundred percent recovered, he convinced the team physician that he was ready to play, and the physician cleared the player for competition in the next game. Also unknown to the player was the fact that the team physician was a member of a Sports Team Physician Association that endorsed and marketed a new line of sports injury rehabilitation equipment used by the team.

The player's next game was the worst of his career due, in large part, to the injured wrist, which had not been allowed to rehabilitate completely. During the following game, the player fell again and reinjured the same wrist. This fall caused even greater damage to the wrist, and ultimately the player was put on the disabled list for the remainder of the season.

The above paradigm depicts several of the most common legal issues and conflicts of interest arising out of the relationship between team physicians, players, and management. The enormous increase in salaries paid to professional athletes, the prestige of being a team physician, and the high financial stakes for athletes and the teams that invest in them, are the major factors contributing to the conflicts of interest and legal issues involving today's team physicians in professional sports.¹

Team physicians continue to encounter divided loyalties to team management and the players. They place pressures to retain their team doctor positions and may compromise their medical ethics by providing less than quality health care to professional sports team athletes. The landmark case of *Krueger v. San Francisco Forty-Niners* appears to have had a positive effect on team physicians and professional sports team owners and managers. The demand for quality of health care has resulted in an increasing numbers of team physicians to either consciously, or out of fear

of a lawsuit, to refer players to specialists, recommend second options, and to more fully disclose all medical information.

Professional sports teams are highly motivated to win because of the obvious economic and commercial interests at stake. Those interests certainly are legitimate. However, professional teams should not have the right to interfere with team physicians' medical decisions for the enhancement of their economic goals. Individual lives and careers should have priority and take precedence over management's financial interests.

Professional teams should adopt policies where medical care consistent with the athlete's best interest is provided. Team physicians should fully inform athletes of all relevant information concerning medical conditions and injuries. After full disclosure, athletes should be more responsible for their own health care needs and decisions.

A proper sports medicine standard of care must be established, and medical societies should develop specific guidelines for sports medicine physicians in providing medical care to professional athletes. Team physicians should aim to reduce the conflicts of interest without compromising their medical decisions and strive to provide quality health care to professional athletes.²

¹See Glen Wong & Robert P. Fleischman, Professional Sports Team Physician Liability, Sports Lawyer, Jan.-Feb. 1995, at I

²See Twila Keim (1999). Comment: Physicians for professional sports teams: Health care under the pressure of economic and commercial interests. 9 Seton Hall J. Sports L. 1g6 at 224225.

SURVEY OF LAW/LEGAL LIABILITY CONTENT IN MASTER ACADEMIC PROGRAM IN SPORTS MEDICINE AND EXERCISE SCIENCE

JoAnn Eickhoff-Shemek and Jennifer Evans

The major purpose of this study was to determine to what extent graduate academic programs in sports medicine and exercise science are including content in the law. A survey was mailed to all (N=153) depart-

ment heads of U.S. academic programs listed in *ACSM's Directory of Graduate Programs in Sports Medicine and Exercise Science*, published in 1999. Of the 153, 95 (62.1%) returned the survey. Participants in the study were instructed to answer all questions in reference to their Master degrees or specializations that prepare students as practitioners or managers of health/fitness programs. Based on one of the first questions in the survey, respondents or the institutions they represent were grouped as follows:

- 1) Group A—those that offered an entire course in this context (29.3%)
- 2) Group B—those that included this content within an existing course (27.2%)
- 3) Group C—those that did not include this content in any course (43.5%)

Follow-up information for each group was also obtained and will be presented. For example, respondents in Group A answered questions that addressed items such as: a) the title of the course, b) how many students complete this course/year, c) whether the course is a requirement or an elective, d) how important it is to the curriculum, e) legal background of the professor, and, f) title of text used.

Follow-up information obtained for those in Group B included: a) title of the major course where law content is covered, b) title of the text used, c) approximate number of contact hours of instruction in the law that students receive in this course, d) how important it is for students to have background in this area, and e) given available resources, desire to offer an entire course in this area.

For those in Group C, follow-up information obtained included: a) reasons why no content addressing the law is included in the curriculum, b) future plans to offer graduate course work in this area, c) how important it is for students to have background in this area, and d) given available resources, desire to offer an entire course in this area.

If applicable, respondents also indicated to what extent their undergraduate programs included content in the law as follows:

- 1) Those that offered an entire course in this content (15.9%)
- 2) Those that included this content within an existing course (60.2%)

3) Those that did not include this content in any course (23.9%)

This slide presentation, intended for those interested in academic preparation, will include all of the results of this study as well as conclusions and recommendations.

EJECTED FROM THE GAME AGAIN?

Felicia Goett, Amy Gusso, Angie Eliason,
and Nita Unruh

This study is a work in progress and is anticipated to be complete for purposes of this presentation by January 2000.

The research study is to determine if there are established alcohol policies for, either on or off, campus Division I athletic venues. To do this questionnaires were sent to 87 Division I institutions that were randomly selected that had a combination of 1, 3, or 3 of the following men's sports football, basketball and hockey. The questionnaire looked at issues such as on and off campus alcohol policies as well as tailgate party policies. It also asked questions related to the number of people ejected from university sporting events and the reasons for those ejections.

The intended audience for this presentation is college athletic directors, professors in sport administration, sport law or facility and design, NCAA officials and sport administration students both at the undergraduate and graduate level.

The final presentation will be given as a PowerPoint presentation and should take approximately 30 minutes to execute with questions and answers at the end.

THE ADOPTION OF AN EDUCATIONAL HINDRANCE CLAIM: A REVIEW OF LEGAL AND POLICY CONSIDERATIONS

Linda A. Sharp
Richard M. Southall
University of Northern Colorado

Educational malpractice is a cause of action

which, although often praised by legal commentators, has been overwhelmingly rejected by courts on various legal and policy grounds. Most often, courts have rejected such claims based on the difficulty of establishing a standard of care, the lack of a casual connection, and the fear that the adoption of such a cause of action could open the floodgates of litigation. This approach has been adopted generally and was used to reject educational malpractice claims by student-athletes in *Ross v. Creighton University* and *Jackson v. Drake University*.

However, it may be argued that, based on the special relationship which exists between the university and the student-athlete, a claim for "educational hindrance" should be adopted by courts. An "educational hindrance" claim is not premised on the quality of instruction received, like the usual educational malpractice claim, but instead, focuses on actions taken by the university which hinder a student-athlete's ability to pursue a meaningful education (Emerick, 1997). The presenters will discuss the legal justifications permitting courts to adopt such a cause of action.

Additionally, from a policy perspective, the presenters will address reasons why courts should take the initiative of adopting such a cause of action, since voluntary action by universities to remediate the obstacles which it places in the way of student-athletes who truly desire a meaningful education is unlikely. The presenters contend that athletic departments and the NCAA are inherently incapable of determining whether they are adequately meeting the educational needs of student-athletes. This contention is based on the theoretical framework of Groupthink (Janis, 1972, 1977, 1982, 1989) and Formal Structures Theory (Duimering & Safayeni, 1998).

THE APPEARANCE OF IMPROPRIETY AND CONFLICTS OF INTEREST WITHIN ATHLETICS DEPARTMENTS

Robin Chandler
University of South Carolina

To create awareness in those charged with the administration or oversight of collegiate athletic programs of obvious but often overlooked conflicts of interest associated with athletic department's supervi-

sion of the academic support function of the athletic department. It will be shown that placement of academic support staffs and compliance officers under the ultimate control and authority of the athletics department creates two egregious conflicts of interest that certainly creates an appearance of impropriety. These conflicts of interest are so obvious that no amount of asserted "athletic department integrity" could remove the appearance of impropriety.

NCAA COMPLIANCE: THE SPIRIT OR THE LETTER OF THE RULE

Gary Ness, Lynchburg College
Robert Desiderio, University of New Mexico School of Law

NCAA compliance is given great latitude as to whether rules should be followed to the letter or interpreted so as to be consistent with the spirit of why the rule was implemented in the first place. The presenters, one a former Division I director of intercollegiate athletics and the other a former NCAA Faculty Representative at the same institution, discuss examples, both hypothetical and actual, of situations revealing both extremes of the continuum. Are such interpretations congruent with mission statements concerning the program of athletics at the institution? How consistent are the applications of rules—in spirit and letter—across major areas of recruiting, enrollment, continuing eligibility, benefits to athletes, employment, gender equity, etc.?

Audience will be asked to respond to rule interpretations and implementations in either "to the letter" or "in the spirit" fashion. Expect surprising results.

OHIO®

Matthew T. Brown & Andrew L. Kreutzer
Ohio University

On August 26, 1993 Ohio University filed a trademark application for the mark "OHIO" to be used on clothing and for entertainment services with the U.S. Patent and Trademark Office. The mark was registered to Ohio University on May 9, 1995 (Reg.

No.1,893,175). When Ohio University applied for an additional trademark combining "OHIO" with its "attack cat" (Serial No.75-152,074), The Ohio State University filed an opposition to the "OHIO" plus "attack cat" logo and also filed for cancellation of the "OHIO" registration. The Ohio State University believed that confusion would be created if another university were given exclusive use of a term as broad as OHIO.

The purpose of this study was to identify the legal issues involved in the dispute over the mark "OHIO" focusing on both Ohio University's and The Ohio State University's claims to its use. Further, the settlement agreement reached between the two universities on May 24, 1999 will be presented and discussed. Finally, the authors will theorize on the ramifications of this trademark dispute on the sport industry if The Ohio State University had successfully opposed the registration of the "OHIO" plus "attack cat" mark and cancelled the "OHIO" registration.

THE CHANGING FACE OF INTELLECTUAL PROPERTY LAW

Annie Clement
Florida State University

The past two years has witnessed a massive change in intellectual property law. These changes were prompted by the enactment of new statutes, results of court decisions and the use of technology. Intellectual property law serves as a major source of protection for businesses. Patent portfolios are now listed among the assets of a corporation on financial reports. The presentation, in lecture/discussion format, will highlight changes in the law of copyright, trademark and patent and is intended for all persons teaching law in sport and physical activity.

Copyright law changes include: Sonny Bono Copyright Term Extension Act of 1998, Digital Millennium Copyright Act, and the results of *Eldred v. Reno*. Methods for protecting athletes performance and designating ownership of data bases will be addressed.

The Madrid Protocol, an international agreement that unifies trademark practices around the world; Brookfield Communication Inc; Washington Redskins; Harjo; Resorts of Pinehurst; Samara; and

Vision Sports Inc. illustrate the changes in trademark law. In addition domain name and personal trademarks will be discussed.

Results of the Pfaff and State Street Bank and Trust cases and the American Inventors Protection Act of 1999 have influenced patent law changes. Design patents and computer implemented inventions will be presented.

**THE RIGHT TO PRIVACY OF
PROFESSIONAL ATHLETES:
Do Professional Athletes Have Any Privacy
Rights? When
is Enough, Enough**

Anita M. Moorman, University of Louisville
Mary A. Hums, University of Louisville

The purpose of this presentation is to examine recent claims both by and against sport figures for defamation or invasion of privacy. Entertainment and sport celebrities are among those classified as public figures for purposes of defamation law. Professional athletes at virtually every level are subject to public commentary by the media, sport journalists, fans, talk show hosts, and many other persons in public forums. In addition, professional athletes have become the object of photographers and rabid fans similar to entertainment celebrities.

Many celebrities chose to pursue claims alleging invasion of privacy rather than defamation due to the difficulty of proving that the publisher of a statement had done so with "malice". Traditionally a public figure has been unable to recover for defamation absent a showing of actual malice on the part of the person publishing the alleged defamatory statement. However, recently a number of celebrities have successfully sued publishers and photographers under an invasion of privacy theory. Consistent with this attempt by celebrities to protect their rights to privacy, many professional athletes are beginning to challenge the unbridled access of the media and the public to their private lives. Fuzzy Zoeller sued the Orlando based Florida Today newspaper for statements published by one of its sportswriters. Conversely, John Calipari and the New Jersey Nets have been sued over comments Calipari made about a journalist.

In addition, since the death of Princess Diana, several states have considered legislation protecting the private lives of public figures from the constant pursuit of the paparazzi. California has enacted a law which prohibits the filming or recording of anyone "engaging in personal or family activity in circumstances where they had a reasonable expectation of privacy." Presumably, this new legislation suggests that the right to privacy, even of public figures, must be protected and preserved.

**THE RIGHT OF PUBLICITY: FOUNDATION
FOR LEGAL CHALLENGES TO NCAA
RESTRICTION OF STUDENT-ATHLETE
COMPENSATION**

Joel Rush

The "right of publicity" contains two essential elements: a person's marketability or celebrity, and that person's consent to the use of their name or likeness. Some college athletes certainly meet the celebrity requirement but under NCAA rules cannot use their name or likeness for financial gain. In a perplexing irony, colleges and other institutions use the names and likenesses of college athletes to generate vast quantities of revenue for themselves while athletes receive no compensation. The purpose of this presentation is to outline the "right of publicity" as a standard in both common and statutory law, examine possible implications of this "right" of future legal challenges to NCAA restrictions on compensation, and to present some egregious examples of how institutions and the NCAA to co-opt athletes' likenesses for their own financial gain. This multimedia presentation is intended for academics and sport managers interested in student-athletic compensation issues, NCAA regulation of student-athlete behavior, and the exploitation of college athletes.

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2001 Sport Law Conference
March 7-10, 2001
Big Cedar Lodge, Ridgedale, MO**

FINES IN PROFESSIONAL SPORTS: PUNISHMENT OR PUBLIC RELATIONS?

Richard M. Southall, M.A.
University of Northern Colorado

Mark Nagel, Ed.D.
San Jose State University

Players' associations (unions) in professional sports have flourished – notwithstanding the recent NBA lockout – for a variety of reasons (Quirk & Fort, 1999). In addition to their function in bargaining minimum salaries and benefit packages, players' unions provide support for players in disputes involving disciplinary actions. This support is necessary to insure players have legal representation and protection from possible arbitrary actions on the part of their employers (Miller, 1991).

Professional sports' leagues appear to act quickly and decisively when confronted with illicit and/or socially unacceptable behavior by their players (Steinmetz, 1999). However, agreements between players' unions and the four major professional leagues limit a league's power to enact fines and suspensions. Too often players' behavior results in a fine that has little or no impact upon their yearly income. Unfortunately many of the fines, though inconsequential to the players, are reported in the media and perceived as substantial by most fans, since their income is considerably less than the players committing the infractions (Del Grande, 1999).

The purpose of this paper was to analyze the present fine structure in professional sports. The following areas framed the authors' research. 1) The annual amount of fines levied by the four major United States' professional leagues. 2) Yearly fines imposed, expressed as a percentage of annual revenues and salaries in the four major professional leagues. 3) The negotiated basis of fines and the system of publicizing fines by league offices. Using a conflict theory framework, the authors proposed that the present suspension and fine system in professional sports is not designed as a deterrent to violent behavior, but is an example of collusion between management and players. The present system is a negotiated public-relations tool, consistent with management and players efforts to maintain a monopolistic, professional sports structure (Taylor, 1997) and avoid outside legislative

intervention into criminal behavior by athletes.

RECENT DEVELOPMENTS IN TITLE IX LITIGATION: NEW DEFENSES, ARGUMENTS AND COURT DECISIONS

Carol A. Barr
University of Massachusetts Amherst

The evolution of Title IX interpretation and enforcement is ongoing as the courts are being presented with unique arguments and defenses to Title IX compliance. The enforcement of Title IX is guided by the Code of Federal Regulations (C.F.R.) and further assisted by the 1990 Office of Civil Rights (OCR) Athletics Investigators Manual which provides standards and requirements for schools to comply with Title IX. In January of 1996 the OCR released a clarification letter addressing interpretation and enforcement of the three-part test for compliance with Title IX standards for participation opportunities. More recently, in July of 1998, the OCR released a clarification letter stating that male to female athletic scholarship proportions must be within one percent for a program to be found in compliance with Title IX. The courts have used these policy interpretations and clarification letters issued by the OCR as guidelines in litigation involving Title IX.

As information and awareness surrounding Title IX has increased, so too have the various arguments, defenses, and interpretations of compliance standards used within Title IX litigation. For example, *Boucher v. Syracuse University* [1998 U.S. Dist. LEXIS 5042 and 164 F.3d 113 (1999)] marked the first time a safe-harbor defense was used successfully relying on the school's ability to show a history and continuing practice of expanding opportunities for women. In *Neal v. Board of Trustees of California State University* [Case No. CV-F-97-5009REC (E.D. Ca. 1999)] the court ruled that California State University at Bakersfield could not reduce the number of members in its male wrestling program as a means of obtaining Title IX compliance as far as male-female participation opportunities was concerned.

This paper will focus on providing a review of recent developments surrounding Title IX litigation including arguments and defenses that have been used, and recent court decisions that have been hand-

ed down. Implications surrounding these court decisions and future Title IX compliance strategies will also be discussed.

SPORTS EMPLOYMENT, EMPLOYEE HARASSMENT AND ANTI-DISCRIMINATION LAW: RECENT DEVELOPMENTS IN THE UNITED STATES AND THE UNITED KINGDOM

David McArdle
De Montfort University

A series of high-profile race and sex discrimination cases arising from the activities of sports organisations and the individuals employed by them were heard by the English industrial tribunals in the period 1998/99. In those cases, the tribunals were scathing of the sports' governing bodies' failure to prevent or remedy the discriminatory conduct and recommended the introduction of proper grievance procedures, effective anti-harassment policies and mandatory equal opportunities training at the organisations concerned. Consequently, sports organisations in the United Kingdom are now under pressure to produce workable and effective anti-harassment policies: pressures which are not dissimilar to those imposed in the United States as a consequence of the Supreme Court rulings in *Farragher and Burlington Industries*.

In late 1999, the Presenter was involved in drafting such an anti-harassment policy for one sport's governing body. That policy drew on similar documents created in the United States in the wake of those Supreme Court cases and also drew on models recently developed by sports organisations in Australia.

Accordingly, the purpose of this program is to invite (critical?) comment on the contents of this anti-harassment policy; and to share ideas as to what constitutes 'best practice' so far as harassment prevention is concerned. The program will be delivered by way of an outline of the salient cases and an introduction to the Code of Conduct that the Presenter helped to formulate, followed by discussion. It is hoped that the program will be of particular interest to those concerned with the operation of Title VII and Title IX and those involved in the delivery and implementation of anti-discrimination policies within Universities, Colleges and sports organisations.

RELIGIOUS PRACTICE IN SCHOOL-SPONSORED EVENTS

Alexandros Taliotis
The University of Texas at Austin

This paper discusses the issue of prayer in school-sponsored events, with a focus on sporting events. A Fifth Circuit US Court of Appeals decision earlier this year banning pregame prayers at football games in Texas and deeming such practice unconstitutional is the initiating factor for this discussion.

The First Amendment and the Equal Access Act of 1984 are defined, tying the two major pieces of legislation that the courts have referred to when analyzing the issue of public prayer in schools. Subsequently, the case law surrounding the subject is discussed, showing the majority of the decisions leading toward maintaining the separate nature of state and religion.

Furthermore, the position of students, schools, and the community in general on the issue, as well as the alternative practices to pregame prayer are discussed.

The conclusion of this paper argues that keeping religion within oneself and his or her family is of much greater value than using religious practice as a tool for public demonstration.

SPORT SAFETY STATUTES: A DESCRIPTIVE REVIEW OF SPORT SPECIFIC LEGISLATION

John O. Spengler
University of Florida

Sport safety statutes exist in most states to protect sport and recreation providers from liability. The theme of these laws is to place responsibility on participants for risks which they voluntarily assume. These risks are referred to as inherent risks and are often listed in the statute. Defining inherent risks has become a key aspect of many sport specific legislative initiatives. The most common types of sport safety statutes are those which provide legislative protection for snow skiing, roller skating and equestrian activities. The list of protected activities, however, has expanded to include limitations on liability for activ-

ities as diverse as hang gliding, snowmobiling, and whitewater boating.

This presentation will present the results of a descriptive study on sport safety legislation. A description of the types of sport and recreational activities covered by legislation and the states where they exist will be presented. Selected statutes will be reviewed as to the protection they afford sport providers and the risks which have been identified as inherent to various activities. Also, legal cases which have addressed various aspects of selected sport safety statutes will be discussed. The purpose of this presentation is to inform teachers and practitioners of the scope of legislative protection in the area of sports and to further an understanding of the inherent risks assumed by sport participants in an activity covered by a sport safety statute.

MISMATCHES

Todd Seidler
Cliff Summar

The University of New Mexico

One of the widely recognized legal duties that coaches and physical education teachers are expected to carry out is to avoid situations where a physical mismatch can occur. Whenever there is enough difference in age, weight, skill, strength or maturity between two participants that it becomes foreseeable that an injury could occur as a result of the difference, coaches and teachers have a duty to adjust the activity to make it safer.

There are two basic types of mismatches to be concerned with. The first is children participating with other children. It is not unusual for one 15 year old boy to be 5'1", 120 lbs. and still very much a boy, and another 15 year old boy be 6'3", 210 lbs. and have the body of a grown man. Pitting these two against each other in a contact activity is an obvious mismatch and it may be reasonably foreseeable that an injury may result.

The second type of mismatch occurs when adults participate with children. This often occurs when coaches or teachers participate with their classes or teams or when they invite former players to come back to practice with current teams. These mismatch situations are resulting in injuries and an increasing

number of lawsuits. This session will look at the problem and suggest guidelines for participation in such situations.

INVOCATIONS AND TEAM PRAYERS IN A PUBLIC SCHOOL SETTING

Ruth H. Alexander, University of Florida
F. King Alexander, University of Illinois

The separation of church and state is a continuing question for school administrators and coaches in regard to pre game prayers and invocations at other school functions. The interpretation of the First Amendment guarantees freedom of speech, religion, press and assembly and the right to petition the government for redress of grievances. It also ensures that the government shall make no law respecting an establishment of religion nor prohibit the free exercise thereof. The Free Exercise Clause allows for a Freedom to practice religion as one chooses. The Establishment Clause protects one's freedom of belief and mandates that the state remain neutral.

In 1987 Doug Jager challenged the practice of offering invocations before football games. In *Jager v. Douglas County Schools Board*, Jager argued that the invocations violated all three prongs of the *Lemon* test. The United States Supreme Court has agreed to reenter the emotional debate over school prayer. They have agreed to decide whether public schools can let students lead group invocations at football games. In Galveston County, Texas, a school board is asking the justices to overturn a lower court ruling that said student-led prayers over the public-address system at football games violate the constitutionally required separation of church and state. The last major school-prayer ruling was in 1992 and barred clergy led prayers at public school graduation ceremonies. The state of the law surrounding school prayer is jumbled and the Supreme Court intends to clarify it in 2000.

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FOOTBALL COACHES' PERCEIVED LEVEL OF RELIGIOSITY AND KNOWLEDGE AND PRACTICE OF PREGAME PRAYER

Rodney L. Caughron, Ph.D.
Northern Illinois University

The issue of First Amendment rights and the battle between the Establishment Clause and the Free Exercise Clause has been a point of contention since the *Engel v. Vitale* (1962) case. With other cases such as *Jager v. Douglas County School District* (1987) and *Doe v. Duncanville Independent School District* (1995), the courts have sided with the Establishment Clause argument, stating that the use of a pre-game prayer either for the fans or the athletes, did not pass constitutional muster. A case is currently being litigated in the U.S. Supreme Court to render another decision in this area.

This paper will examine the correlation between Illinois high school football coaches' perceived level of religiosity and their level of knowledge and practice of pre-game prayer issues. Based on the Chatters et. al. (1992) four item analysis of religiosity ("Do you attend religious services or activities"; "Do you personally turn to private prayer"; "Would you describe yourself as: very religious - not at all religious"; and "How much comfort do you find in religion in times of suffering or distress?"), the coaches were asked to respond to the four- or five-point Likert scale questions, based on their perceived level of religiosity. A correlation analysis was then performed between the items to see if any significant correlation existed between the items. An analysis was also performed to demonstrate if there was a correlation between perceived levels of religiosity and the coach's knowledge of currently allowable pre-game prayer practices, and the current pregame practices of the coaches.

The results of the study indicated that the majority of coaches: attended church services at least weekly (55.5%, n=25/45); turned to prayer at least occasionally (93.3%, n=42/45); perceived themselves to be religious to very religious (51.2%, n=23/45); and, gained some to very much comfort from prayer (66.7%, n=30/45). All four items were significantly correlated between the others ($a \leq 0.01$). Analysis of the data also demonstrated no significant difference ($a \leq 0.05$) between the knowledge and practice of the

coaches and their use of private prayer, level of perceived religiosity, and comfort from prayer. A significant difference was demonstrated in the coaches level or knowledge of allowable pre-game prayer practices based on the frequency of church attendance, but not in actual practice.

CHURCH AND STATE REVISITED: ARE WE GOING TOO FAR?

Nita Unruh

The Supreme Court is once again looking at prayer and religion in schools, however this prayer time is not before class, not before a commencement exercise it is before and during athletic event. Students in Montgomery, Alabama are wanting to have prayer before athletic events, Aaron Wills wants to display a religious symbol during NCAA Division 1 football games both which violate Church and State, but do they violate the right to freedom of religion, or speech, of these individuals?

The presentation will review current and past cases on church and state issues pertaining to prayer or religious symbols being used during athletic events. A survey of 25 Division I schools will be discussed on issues such as team led prayer, religious icons and the NCAA rule preventing such things and how these Universities are handling this situation.

The intended audience for this presentation is college athletic directors, professors in sport administration, sport law or facility and design, NCAA officials and sport administration students both at the undergraduate and graduate level.

THE NCAA'S SCHEDULING EXEMPTION FOR RELIGIOUS REASONS: A CLOSER LOOK

Mark S. Nagel, San Jose State University
James T. Reese Jr., Ohio University

For the past 35 years, the National Collegiate Athletic Association (NCAA) has accommodated the scheduling requests of member institutions that do not wish to participate in athletic contests on selected days of the week for religious reasons (Meacham,

1999). When qualifying for NCAA tournament competition, schools, such as Brigham Young University and Campbell University, have been placed in tournament brackets that do not have games scheduled for Sundays.

The request for an exemption for religious reasons has rarely resulted in scheduling conflicts since the first four games of the men's basketball tournament can be played either Thursday-Saturday or Friday-Sunday and the Final Four is contested on Saturday-Monday. However, the recent rise in participation and interest in women's intercollegiate athletics has created a potential conflict since the NCAA women's soccer and basketball championships are scheduled to be played on Sundays. If a school such as BYU were to advance to the championship game in either sport, the NCAA would be forced to either dismiss its established exemption or reschedule the contest on an alternative day.

The purpose of this presentation is to: (a) examine the NCAA's scheduling exemption, (b) discuss the potential ramifications for the NCAA, the media, and attending fans if a championship game were to be rescheduled, and (c) investigate the student athletes' right to maintain their religious freedom while participating in intercollegiate athletics.

THE AMERICANS WITH DISABILITIES ACT AND THE MEANING OF "A DIRECT THREAT TO THE HEALTH OR SAFETY OF OTHERS"

John Wolohan
Ithaca College

Purpose of the program:

The Americans with Disabilities Act (ADA) requires an organization to make reasonable accommodations to the known physical and mental limitations of an otherwise qualified handicapped individual unless, permitting the individual to participate would pose "a direct threat to the health or safety of others." The purpose of this presentation is to examine the meaning of "direct threat to the health or safety of others." The ADA defines direct threat as "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary

aids or services." 28 C.F.R. Section 36.208 (b).

The presentation begins by reviewing the requirement of the ADA, which provides protection to individuals with disabilities in the area of employment, transportation, public accommodations, public services, and telecommunications. Next, the presentation will review some court cases to illustrate the problem of interpreting what constitutes a direct threat. In particular, the presentation will look at the case of Ryan Taylor, a 9-year-old boy with cerebral palsy. Ryan's parents sued their son's Oklahoma soccer league for violating the ADA when the league refused to let Ryan play because it believed that his metal walker was a danger to the other children on the field.

The presentation concludes by offering a set of guidelines for organizations. Organizations can use these guidelines in determining whether an individual would pose "a direct threat to the health or safety of others" or whether there is some reasonable accommodation that the organization can make to eliminate the danger.

SPORT GAMBLING: THE PAST, PRESENT, AND FUTURE

Lori K. Miller, Wichita State University
Cathy Claussen, Clemson University

Gambling on sport events and contests has long been feared for its potential to threaten the integrity of sport by inspiring bribery, point-shaving, and game-fixing schemes. With the explosive growth of online gambling opportunities, efforts to regulate sports gambling are in jeopardy. This proposed presentation provides the audience with an overview of a current issue possessing both sociological and legal concerns that will continue to influence sport gambling behaviors and frequencies. This information can benefit individuals desiring to remain abreast of current issues and related legal issues and implications. In addition, the presentation will provide audience members with current information that can easily be integrated into existing sport law course materials.

Specifically, the presentation would include five different sections. Part I of the presentation would present statistics gathered by the National Opinion Research Center documenting the increase in gambling over the past three decades. Part II of the pres-

entation provides three primary reasons for the phenomenal growth of the gambling industry. Part III provides arguments both for and against the legalization of gambling. Part IV of the presentation examines current federal and state legislation attempting to regulate gambling. Part V elaborates on impediments (i.e., jurisdictional limitations and first amendment constitutional guarantees) to gambling regulation presented by Internet gambling opportunities.

abilities and athletes. But while these acts seem to protect the rights of the disabled athlete, local high school associations and the NCAA continues to deny athletic eligibility to these individuals based on medical biases and outdated rules, with the courts backing. Some cases that will be discussed in the presentation: *Washington v. Indiana High School Athletic Association*, (1999); *Bowers v. NCAA*, (1998); and *Olinger v. United States Golf Association* (1999).

THE RIGHTS OF THE DISABLED ATHLETE

Adele Newsome

This presentation will provide information about the rights of the disabled athlete and how it has become an important issue at all levels of sports. The rights of the disabled athlete is clearly stated in the Rehabilitation Act of 1973, Title II of ADA stating, "no qualified individual with a disability shall by reason of such disability be excluded from participation in or be denied the benefits of the services, program, or activities of a public entity, by any such entity". And Title III of ADA, which deals with learning dis-

THE ADA AND SPORTS FACILITIES. COMMON SENSE OR OVERSIGHT?

Michael G. Homes, Thomas H. Sawyer & Julia Ann Hypes

The purpose of this program is to examine recent litigation concerning sport facilities, performer, and spectator accessibility, as defined under the Americans with Disabilities Act. Attention will be provided to the proposed guidelines for recreational facilities developed by the Architectural and Barrier Compliance Board.

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