

1999 SSLASPA Conference ABSTRACTS

WHO'S SUING WHOM AND WHY?

Guest Speaker
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LAWSUIT DATABASE BY VENUE

n = 428

recreation	n = 207	48%
instruction	n = 137	32%
team	n = 84	20%

LAWSUIT DATABASE BY ALLEGATION

n = 428

environmental conditions	n = 227	53%
selection & conduct of the activity	n = 103	24%
supervision	n = 98	23%

ALLEGATIONS WITHIN INSTRUCTIONAL VENUES

n = 137

supervision	n = 36	26%
selection & conduct of the activity	n = 58	42%
environmental conditions	n = 43	32%

ALLEGATIONS WITHIN RECREATION VENUES

n = 207

supervision	n = 40	19%
selection & conduct of the activity	n = 16	8%
environmental conditions	n = 151	73%

ALLEGATIONS WITHIN TEAM VENUES

n = 84

supervision	n = 22	26%
selection & conduct of the activity	n = 29	35%
environmental conditions	n = 33	39%

LAWSUIT DATABASE BY ACTIVITY

n = 428

playground	n = 76	17.75%
softball	n = 47	10.98%
basketball games	n = 39	09.11%
	n = 36	08.41%
gymnastics	n = 34	07.94%
fitness	n = 21	04.90%
aquatics	n = 20	04.67%
baseball	n = 16	03.73%
soccer	n = 15	03.50%
wrestling	n = 13	03.03%
cheerleading	n = 12	02.80%
track & field	n = 12	02.80%
football	n = 10	02.33%

ACTIVITIES INVOLVED IN INSTRUCTIONAL VENUES

N = 137

games	n = 26	19%
gymnastics	n = 25	18%
basketball	n = 15	11%
fitness	n = 10	7%
flagball	n = 7	5%
floor hockey	n = 6	4%

ACTIVITIES INVOLVED IN RECREATIONAL VENUE

n = 207

playground	n = 71	34%
softball	n = 32	15%
basketball	n = 21	10%
aquatics	n = 16	8%
fitness	n = 10	5%
games	n = 9	4%

ACTIVITIES INVOLVED IN TEAM VENUES

n = 84

baseball	n = 16	19%
cheerleading	n = 12	14%
softball	n = 10	12%
football	n = 9	11%
wrestling	n = 9	11%
track&field	n = 8	10%
soccer	n = 7	8%
gymnastics	n = 5	6%

PLAY GROUNDS

n = 76

climber	n = 23	30%
slide	n = 14	18%
horizontal ladder	n = 13	17%
swing	n = 8	11%
track/rings	n = 5	7%

PLAYGROUNDS

n = 76

environment	n = 70	92%
surface	n = 49	64%
usezone	n = 7	9%
supervision (horseplay)	n = 6	8%

SOFTBALL/BASEBALL

n = 63

environment	n = 50	79%
buffer/fence	n = 15	24%
maintenance	n = 14	22%
fixed base	n = 11	17%
base anchor	n = 4	6%
indoors	n = 4	6%
selection/conduct	n = 10	16%
drill	n = 4	6%
supervision	n = 3	5%

BASKETBALL

n = 39

environment	n = 29	74%
buffer	n = 18	46%
surface	n = 7	18%
rim/boards	n = 3	8%
supervision	n = 7	18%
control	n = 5	13%
selection/conduct	n = 3	8%
drill readiness	n = 3	8%

GAMES

n = 36

environment	n = 14	39%
buffer	n = 9	25%
surface	n = 4	11%
selection/conduct	n = 13	36%
bad game	n = 8	22%
readiness	n = 5	14%
supervision	n = 9	25%
control	n = 9	25%

GYMNASTICS

n = 34

tumbling	n = 13	38%
vault	n = 12	35%
uneven bars	n = 4	12%
trampoline	n = 2	6%
parallel bars	n = 1	3%
beam	n = 1	3%
horizontal bar	n = 1	3%

GYMNASTICS

n = 34

selection/conduct	n = 24	71%
readiness	n = 12	35%
spotting	n = 10	29%
environment	n = 6	18%
mats	n = 6	18%
supervision	n = 4	12%

FITNESS

N = 21

weights	n = 8	38%
machines	n = 8	38%
aerobics	n = 5	24%

FITNESS

n = 21

selection/conduct	n = 13	62%
readiness	n = 7	33%
instruction	n = 4	19%
spotting	n = 2	10%
environment	n = 6	30%
maintenance	n = 4	19%
buffer	n = 2	10%
supervision	n = 2	10%

LAWSUIT DATABASE

N = 428

- Failure to provide a proper buffer zone was claimed in 13% of all cases.
- .46% of all basketball cases
- 25% of all cases involving games
- 24% of softball/baseball cases
- 10% of cases involving fitness

LAWSUIT DATABASE

N = 428

- Failure to provide proper control was claimed in 11 % of all cases.
- 39% of all flagball cases
- 27% of soccer cases
- 25% of cases involving games
- 13% of basketball cases

LAWSUIT DATABASE

N = 428

- Lack of participant readiness was claimed in 7% of all cases.
- 35% of gymnastics cases
- 33% of cases involving fitness
- 25% of cases involving cheering
- 14% of cases involving games

Name of Database: National Sport Lawsuit Database

Sponsor: School and Community Safety Society of America (SCSSA)

Purpose of Database: To identify, the key issues within sport-related, personal injury lawsuits since 1990, regardless of whether the cases are settled, dismissed, tried, appealed, etc.

Coding Format: (1) Plaintiffs last name (kept confidential with database number assigned), (2) State, (3) Year, (4) Activity, (5) Type of agency, (6) Setting in which injury occurred, (7) Key issue or issues related to the action.

Important Note: It is not the purpose of this database to record the result of an action filed, such as a settlement, jury verdict, appellate decision, etc. We, as educators, researchers, and leaders of sport-related programs, are primarily interested in the nature of the issue or issues addressed in each lawsuit. Similarly, it is important to know the specific activity and the setting in which the injury occurred. Knowing the nature of the specific issues in these actions filed will enable program leaders to plan their programs in light of this important information.

Address: Send case information and requests for database printouts to:

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13th Annual SSLASPA Conference

March 8-11, 2000 • Albuquerque, NM

Title IX and Its Application to the National Collegiate Athletic Association

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The National Collegiate Athletic Association (NCAA) has often claimed whatever was necessary to exempt itself from legal agreements. In the issue of state action, cases prior to the 1980 found the NCAA to be a state actor as was found in *Parish v. National Collegiate Athletic Ass'n*, 361 F. Supp. 1220 (W.D. La. 1973), *aff'd.*, 506 F.2d 1251 (9th Cir. 1974). However, in *NCAA v. Tarkanian*, 109 S. Ct. 454 (1988), the Supreme Court of the United States found the NCAA was not a state actor.

In the instance of anti-trust issues, the NCAA was always exempt from the Sherman or Clayton Anti-Trust Acts due to the nonprofit status of the membership institutions. However, in *NCAA v. Board of Regents of University of Oklahoma*, 468 U.S. 85 (1984), the Supreme Court of the United States said that the television package of 1982-1985 violated federal antitrust laws.

Recently, the NCAA indicated that it was not held to the guidelines of Title IX stipulations when Renee Smith filed a Title IX action against the NCAA (*Smith v. National Collegiate Athletic Ass'n*, 139 F.3d 180: (1998 U.S.)). The United States District Court supported Smith in her Title IX claim against the NCAA since the NCAA's member institution receives federal funding, the NCAA must follow the guidelines set forth in Title IX with respect to discrimination. Smith claim her appeal to waive the eligibility rule in her specific case was denied by the NCAA and the denial was discriminatory.

The NCAA Partially Consents To The ADA

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As the body which regulates a significant amount of intercollegiate athletics, the NCAA sets eligibility standards for the participation of individual student-athletes. Since these standards affect the eligibility of certain student-athletes, by disallowing their participation in intercollegiate athletics, student-athletes have challenged these standards as discriminatory.

Disabled student-athletes have found these eligibility standards to be particularly cumbersome. For various reasons, disabled student-athletes often must take special courses at the high school level which are necessitated by their disability. As a result they can not meet the minimum eligibility requirements established by the NCAA.

These student-athletes have then sued the NCAA claiming that they are being discriminated against in the application of the NCAA's eligibility requirements, as a result of their disability. The most recent of these lawsuits have been brought under the Americans With Disabilities Act (ADA).

In general, the ADA provides protection to disabled individuals in three distinct titles. Much like the PGA Tour and other entities, the NCAA has consistently denied liability under any title of the ADA. Courts have seemed to address this assertion, still, the NCAA has clung to its position.

This presentation will discuss the cases that disabled student-athletes have brought with special focus on *Ganden*, *Butler*, and *Bowers*, and how these cases and the Justice Department's review lead to the Consent Decree of May 1998 which changes the way in which the NCAA's initial eligibility requirements apply to disabled individuals. Even so, this Decree may not change the NCAA's position regarding its responsibility under the ADA.

The Current Status of Litigation in Youth Sport

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The purpose of this program is to examine the most recent court cases in the area of youth sport. Traditionally, youth sport has not been subjected to the number of lawsuits that we have on the interscholastic and intercollegiate level. However, recent trends indicate that youth and volunteer leaders are becoming more prone to litigation than in the past. This program will seek to focus on the number of lawsuits and the areas of litigation and the legal responsibilities of adult leaders.

The key question to be addressed is, how will those court cases impact on the future of sports participation in America?

The Evolution of Title IX: A Legal and Managerial Implications Analysis

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The enforcement of Title IX has produced a storied history. Initially there was much debate as to whether Title IX was applicable to athletic programs. Legal challenges and debate centered on whether athletic programs should be under Title IX's purview, as well as how to interpret federal funding and its relationship to collegiate athletic programs. Since the passage of the Civil Rights Restoration Act of 1987 legal challenges have become directed toward the actual compliance requirements of the Office of Civil Rights' (OCR) policies contained in its Athletic Investigator's

Manual. 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 the Spring 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. As women make gains in participation opportunities and athletic scholarship aid, there are indications that the next legal battleground will be in the area of benefits and opportunities provided to participants. Finally, *Smith v. NCAA*, currently before the U.S. Supreme Court will address whether Title IX is applicable beyond educational institutions and to the governing bodies of collegiate athletics.

As college and university presidents and athletic administrators have become more informed about the enforcement criteria applied to athletics, the method in which they choose to achieve compliance varies. For example, the University of Florida and the University of Massachusetts Amherst added womens sport programs and increased scholarship aid to female student-athletes in order to comply with Title IX. In contrast, Boston University dropped men's football which ran a deficit program in order to elevate funding for primarily women's, but some men's Olympic sport programs such as crew and soccer. Despite OCR clarification letters to the contrary, educational institutions such as University of New Hampshire and Providence College continue to cut men's sport teams to comply with Title IX. As information is shared and a better understanding for Title IX compliance requirements occurs, athletic administrators are also faced with challenges to Title IX compliance decisions in other areas such as provision of equipment, facilities, scheduling of game and practice times, and marketing/promotional activities.

This paper will focus on the legal interplay between the OCR administrative function and the judicial system and the response of sport administrators to legal decisions and OCR mandates. Further this paper will discuss the managerial implications facing athletic administrators as a result of these court decisions and administrative clarifications.

Playground Supervision and Litigation

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The presenter will demonstrate through the media of: overheads, 35 mm slides, and the VCR *supervision principles on the playground* for elementary school children. The lecture will explore some actual litigation cases involving playground supervision. The presenter will rely on his experience as an expert witness.

The lecture will cover the following areas within the lecture: sightlines, the concept of roaming for good supervision, overcrowding in games and on the playground equipment, human target games, physical conditions of the playground, and lining up students to re-enter the building. Research regarding kickball, horizontal ladders and track rides will be discussed with the implications for better supervision. These areas also have implications for litigation as well. The presenter will also discuss the latest figures for safe ratios for students to staff on a playground regarding supervision. This has a direct impact on lawsuits. Risk management techniques on the playground will also be discussed.

The intended audience would be professionals involved in teaching sport law courses, since, this area may often be overlooked (i. e. elementary children and playground supervision.)

Level of Knowledge and Practice of Pre-game Prayers by Class 1A and Class 6A Illinois High School Football Coaches

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The United States was founded under principles emanating from the religious context of the Founding Fathers. An essential part of their governmental philosophy was to ensure the freedom to practice religion as the individual saw fit, without governmental control. The authors of the Constitution and specifically the First Amendment, also had lived under the tyranny of a state controlled church. To this end, the founders also included the Establishment Clause in the First Amendment, that guaranteed the right of citizens to be free of the yoke upon individual freedoms created when the state either established or controlled religious activities. In many cases, these two rights have come into conflict with one another as citizens attempt to practice their religious rights within governmental entities.

This paper presents the results of research done in the state of Illinois on the level of knowledge of allowable pre-game prayers under the Constitution by high school football coaches. The current practice of these football coaches will also be studied. A comparison between Class 1A (small schools within the state) and Class 6A (large schools within the state) schools will be presented in both the coaches knowledge and current practice concerning pre-game prayers.

Title IX: Proportionality Is Not The Law

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Title IX and Proportionality. The two have become synonymous. The very mention of either cause some type reaction in anyone even remotely associated with college athletics. They are viewed by some as knights in shining armor while others sincerely believe they will bring about the demise of college athletics. To others, this pair is simply a hurdle that must be overcome. Finally, there are those who are confused and simply delay worrying about them until told or forced to do so. But to all, Title IX and proportionality are constantly present — the unknown that could bring about unknown changes at some unknown time.

This state of affairs should not exist and would not exist except for a widespread and significant misunderstanding; namely, that proportionality is the status quo for Title IX compliance — the standard by which compliance is to be measured. Federal Courts, ignoring the will of Congress have exacerbated the problem by following the “interpretations Of Title IX offered by the Office of Civil Rights. Not only is proportionality not the standard by which Title IX compliance is to be measured, it is the standard by which Title IX compliance IS NOT TO BE MEASURED!

Principle Plus Pragmatism: The Debate Over Title IX and Athletics

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This is a lecture presentation intended to provide sport law educators with an analysis of the role of rhetoric in the legitimization of the gender equality principle, particularly as applied to Title IX and college athletics. Although equality is one of our nation's cherished ideals and fundamental rights, we are plagued with divisiveness as to its nature and the appropriate means to its attainment. An example is the continuing dissension over Title IX of the Education Amendments of 1972 and its particular application to the issue of gender equity in intercollegiate athletics. This federal law has failed to achieve gender equity in most college athletics programs despite its having been in existence for over 25 years. Many have placed the blame for this failure on the unwillingness of university athletics departments to redistribute resources from men's to women's programs during the current era of financial difficulties in higher education. It is important, however, to attempt to understand how a financial concern can so easily detract from support for a fundamental right. This requires an exploration of whether or not the failure to implement Title IX rests on the failure of the concept of gender equality to achieve the status of a cherished ideal. Such a failure might render us unable to pursue equality on the basis of principle alone.

Research has demonstrated that in attempts to enact federal laws protecting employment opportunities for women, the use of justifications that relied primarily on an appeal to equality as a worthy ideal was not a successful argumentation strategy. Instead, the legitimacy of these laws has consistently been established by supplementing idealistic calls for equality with appeals based on the pragmatic grounds of women's well-being and domestic needs (Claussen, 1996). The use of an idealistic rhetorical strategy by prominent Title IX advocates might explain the failure to achieve widespread acceptance of the gender equity principle in college athletics. In contrast, a recent tactic used by both the Women's Sports Foundation and Nike to garner support for women's athletics has been to appeal to the health benefits of women's participation in sport. This may reflect the same pragmatic rhetorical strategy that achieved success in legitimizing earlier federal laws pertaining to employment opportunity for women. The continued use of such a rhetorical tactic would indicate that the principle of gender equality has still not achieved the status of an ideal worth pursuing on principle alone. The purpose of this research was to examine whether the debate over the legitimacy of Title IX, both during its legislative process as well as in recent attempts to popularize its application to gender equity in athletics, is similar to that of the debate over earlier federal employment laws.

The Congressional Record is examined to identify the rationales used in debating the enactment of Title IX. Argumentation in judicial opinions construing Title IX athletics cases is also examined to identify the rhetorical strategy utilized in the years following passage of Title IX. Finally, recent literature from the Women's Sports Foundation and rhetoric from Nike television commercials is examined to analyze a potential tactical shift in argumentation supporting women's sport participation. The rhetorical strategies used in the Title IX gender equity debate are compared with the strategies identified for earlier federal laws pertaining to employment opportunity for women. Conclusions regarding the status of gender equity as an ideal and its acceptance in college athletics are drawn on the basis of a comparison of the rhetorical patterns utilized in the debates attempting to justify and legitimize these two sets of laws.

Analysis Of Case Law Using Descriptive Research Techniques

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Standard descriptive research techniques will be used to analyze case law. Playground litigation has been selected as the topic for analysis. State and federal cases from 1960 to 1998 are the data base.

Among hypotheses to be tested are:

- * Males will be the subject of litigation more often than will females.
- * The majority of the incidents will include chasing and/or running.
- * Incidents will occur in non-supervised settings.
- * Immunity will determine the results of litigation in the majority of incidents.

Among the research questions are:

- * Who is the person involved in playground litigation?
- * When does the incident take place?
- * What equipment and events contribute most often to litigation?

Ample time will be provided to discuss the use of descriptive research in legal case analysis. The presentation will be of interest to researchers and those searching for new ways to approach the law in the classroom.

Sport Law Problems: How They Are Handled in Real Life

Panelists:
John R. Collins
School Board Attorney, Monroe County Schools, Florida
David (Bucky) Wagner
Former Athletic Director, Georgia Southern University, Statesboro, Georgia
Gary Ness
Lynchburg College, Lynchburg, VA
Former Athletic Director, University of New Mexico

Moderator:
Doyice J. Cotten
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Most of us have experienced sport law through text books, classes, and reading cases. But what is happening out there in the real world of sport law? What is it that the books and cases do not tell us? Some experiences may be frightening when we see the exposure to liability. On the

other hand, some may be very funny.

Richard Coffins has many years of experiences which involve injuries, lawsuits, and potential lawsuits in both physical education and athletic situations. He will select several interesting situations and explain how they were handled and why.

Bucky was a very successful athletic director at Georgia Southern for many years. He built the program from a very small program to a successful Division I-AA power. During this time he had little legal knowledge and little legal help from the University. He will tell of some of the practices that created considerable exposure and how he handled (for better or worse) some interesting situations.

Gary was athletic director at the University of New Mexico for several years and spent a large portion of his time concerned with legal matters. In contrast to Bucky Wagner, Gary had almost unlimited legal help from the University. He will describe some interesting situations and how he dealt with them.

By hearing these experiences, SSLASPA members will be able to gain more insight into how legal problems are addressed in real life. The session should prove to be both entertaining and enlightening.

The Comprehension of Legal Terms Associated with Negligence Liability by Physical Education Teachers in Florida

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In today's litigious society, physical educators must be knowledgeable about negligence liability as it relates to their profession. This exploratory study was designed to assess the knowledge of a convenient sample of physical education teachers (n =41) from a rural, public school district in Florida, about legal terms associated with providing physical education activities. A 22-item survey was administered at an in-service training session. Data was analyzed using descriptive statistics. Findings suggest that additional education in this area may be warranted.

Ordinary Negligence vs. Gross Negligence: Distinguishing Between the Two and Why It Is Important

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In teaching sport law, we talk about ordinary negligence and gross negligence. We define them carefully and assume that the students understand the difference between the two. However, in speaking to groups, the presenter has found that while many in the audience are familiar

with the definitions and the concepts, they have no clear understanding of what type of act bridges the gap from ordinary negligence to create gross negligence.

There are two purposes of this presentation. First, the presenter will distinguish between the type of act that constitutes ordinary negligence and that which constitutes gross negligence. Examples from actual case rulings will be used to illustrate situations involving gross and ordinary negligence.

Second, the presenter will address why the distinction is important. He will point out the effect of gross negligence on Immunity Laws (i.e., Respondeat Superior, Recreational User Statutes, Good Samaritan Laws, and Volunteer statutes), on waivers, and on the awarding of exemplary or punitive damages.

College and Professional Sport Officials: Compensation and Other Issues

Brian Crow • Hampton University
Matthew Robinson • York College of Pennsylvania
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Purpose

Sport officials play an important role in athletics at all levels of competition, but nowhere are they more visible and their decisions more subject to controversy than in college and professional sport leagues. Detailed research has been conducted to determine the administrative structure of professional sport leagues, but minimal research deals with management of sport officials. The purpose of this project is to examine the following issues in sport officiating: legal liability, tax issues, salary structure, recruitment, training, evaluation and dismissal, opportunities for advancement, selection for post-season assignments, off-season requirements, and supervision. Also studied will be the managerial principles used in the administration of the officiating programs in the National Collegiate Athletic Association, National Football League, Major League Baseball, the National Basketball Association, and the National Hockey League.

Safe Steps : A Volunteer Screening Process for Recreation and Sport

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Screening is a poorly understood and relatively new concept in sport organizations. Screening is an ongoing 10-step process designed to identify any person - whether paid or unpaid, volunteer or staff- who may harm children, youth or other vulnerable persons. Sport organizations are not obligated to accept everyone who wants to volunteer, however, appropriate screening of

any person who will have access to vulnerable people is a legal responsibility. This responsibility is legislated under the "Duty of Care" concept. "Duty of Care" is a legal principle that identifies the obligations of individuals and organizations to take reasonable measures to care for and protect their clients. "Players First", a report prepared by the Canadian Hockey League, investigated the issues of harassment and abuse. The report recommended defensive measures such as screening and education with respect to the causes and consequences of harassment.

In 1996, Volunteer Canada initiated a National Education Campaign on Screening for social service organizations. The following year the campaign was expanded to include recreation and sport. Two resource handbooks have been developed through the campaign. "Safe Steps: A Volunteer Screening Process for Recreation and Sport" published by Volunteer Canada (1998) and "Speak Out!... Act Now! A Guide to Preventing and Responding to Abuse and Harassment for Sport Clubs and Associations" published by the Canadian Hockey Association (1998).

General Managers from the Ontario Hockey League (N=20) were surveyed regarding the practical application of these resources on sport organizations within the OHL. The survey included interpretation of information, viability of the screening process, the perceived benefits of the resources, and the perceived barriers to implementation. An analysis of the data, the final results of the study, conclusions, recommendations and implications for practicing Sport Managers will be presented.

The Association of T.V. Hockey Night in Canada and Domestic Violence as Reflected in Police Records and Case Histories

by Marge Holman and Dick Moriarty
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Finally, you, or the appropriate committee, may want to consider this last presentation by Marge Holman and me. This is the result of a major grant of \$25,000.00 which Marge Holman has received from the Federal Government for a major shelter here in the Windsor region and she has also had the cooperation of the police and court authorities. The results of this study will be released the latter part of this year or the early part of 1999. I've pretty well talked her into making the presentation if you or the appropriate committee are interested.

This presentation will summarize a portion of the results of a federally funded research project on sport, the media and domestic violence. In the first phase of this study, an attempt was made to assess the relationship between media presentations (CBC television) of violent sport (NHL playoff games) and the frequency of domestic violence complaints lodged with the police in Canadian cities who are home to NHL franchises. Individual police services in eight NHL cities and a five year period a number of non-playoff dates as control dates. For the non-NHL cities, the request included a random sample of playoff dates and the same control dates as NHL cities. The results of this analysis, including the judicial process of collecting and recording domestic violence statistics, will be presented..

A Comparative Study of Risk Management in Playgrounds: Japan and the United States

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A primary concern of municipal park administrators in the United States is the risk of law suits resulting from negligence claims. In the United States, risk managers and playground safety specialists play key roles in park and recreation departments in a variety of park settings and circumstances. The job of these individuals is to identify hazards and reduce the risks which are the source of injuries to users. In the last few decades, recreation administrators have learned that users of their facilities and participants in their programs will demand compensation and if necessary will sue if they are injured. Municipal governments are particularly susceptible to litigation because they fit the category of being financially able to pay the damages (deep pocket doctrine).

Litigation and law suits are nearly non-existent in Japan's society. This fact is verified by both observations, and discussion with prominent legal experts and park administrators in Japan. The design and maintenance of facilities and playgrounds in Japan's city parks indicate that risk management is not a primary concern of park managers and administrators. The primary expectation is that parental supervision is the key to safety in parks. The administrators design play and camping areas with the user's enjoyment and aesthetics as the primary factors in playground design decision making.

This lineal study investigates and documents the use of parks and playgrounds in two cities - Tsukuba, Ibaraki Prefecture, Japan and Bloomington, Indiana, USA. The two cities were studied during the same summer time period and same days of the week. This study and presentation is illustrated with pictures of park play equipment in the two cities. The primary focus of the study is to highlight the differences in the two cultures, their approaches to playground safety, legal ramifications of play equipment, cultural aspects of parental supervision, and playground safety and risk management.

NCAA Eligibility And Student Athletes With Learning Disabilities: A Legal Analysis

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EXECUTIVE SUMMARY

I. Introduction

II. NCAA Eligibility Time-Line

-This section gives a brief overview of the development of the NCAA's eligibility program over the past 30 years.

- * 1972 and before - "1.6 Rule"
- * 1972 - 2.0 high school GPA
- * 1984 - Proposition 48
- * 1989 - Proposition 42

- * 1992 - Proposition 16
- * 1995 - Eligibility standards upgrade
- * 1998 - U.S. v. NCAA

III. Title III and Section 504

- This section summarizes Title III of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Discrimination under these protective orders is the common claim brought against the NCAA by student-athletes with learning disabilities who are declared ineligible to participate in intercollegiate athletics.

IV. Ground Breaking Cases

- This section introduces three important cases which helped spark the Department of Justice's 2-1/2 year investigation of the NCAA initial-eligibility program for student-athlete's with learning disabilities.
- * *Ganden v. NCAA*
- * *Tatum v. NCAA*
- * *Butler v. NCAA*

V. US. Department of Justice v. NCAA

- This section discusses the landmark consent agreement entered into by in the U.S. Department of Justice and the NCAA

VI. Bowers V. NCAA

- This section examines this significant case which recently resulted in a ground-breaking decision in which the court determined that the NCAA could be sited under the ADA because it acts as a place of public accommodation.

VII. Conclusion

Legal Ramifications of Providing Care for HIV/AIDS Positive Athletes

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HIV/AIDS and other bloodborne pathogens are specters that continue to hover over sports today. Rule changes, universal precautions and advances in educating the athletes, coaches, health care providers and the public in general have done little to remove the stigma associated with HIV and AIDS. The fear and the sometime resulting discrimination associated with HIV and AIDS are issues that sport managers/administrators will need to address well into the new millennium.

The presentation is divided into three parts. First, there is an overview of current positions of different organizations (i.e. NCAA, NATA) regarding the possibility of the transmission of bloodborne pathogens such as HIV and AIDS. Secondly, there will be an in-depth discussion of when an HIV/AIDS positive athlete should or should not be allowed to participate, the risk of disease transmission in sport, medical confidentiality and discrimination. The third and final segment will focus on examples of related legal cases and a look into the future.

Bicycle Helmet Laws and Standards: The Consumer Product Safety Commission Standards — Law in 1999

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Brief description:

In March, 1999, the same time as the National Convention, the first nationally prescribed standards for bicycle helmets will become law. This presentation will briefly trace the history of the development of bicycle helmet standards, discuss the role played by the Consumer Product Safety Commission (CPSC) leading up to the law, describe the new law, and demonstrate how those mandated standards relate to standards set by other agencies (e.g. ASCI, Snell, ASTM). Within the framework of these topics, potential legal implications will be presented.

Diversity Training-Workplace Solutions, Inc.

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The ADA and the Interplay of Workers' Compensation

This presentation shall explore the definitional differences between the ADA and Workers' Compensation Systems and the Public Policy behind both statutes. Some of the issues to be discussed are:

- a. What impact do disability discrimination claims have on the traditional workers' compensation exclusive remedy doctrine?
- b. What overlapping considerations exist surrounding return to work issues under the ADA and workers' compensation statutes?
- c. How can one best manage claims to benefit both the employer and the injured worker?
- d. What role does Alternate Dispute Resolution play in resolving these types of claims?

The following cases will be handouts and analyzed:

1. Cleveland v. Policy Management Systems Corp., U.S.
2. California Supreme Court, City of Moonpark v. Superior Court of Ventura County (August 17, 1998)
3. Michigan Court of Appeals, Tranker v. Figgie International (8/1 1/98)
4. Parkhurst v. District of Columbia Department of Employment Services, D.C., 4/22/98

.....
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.....

THE OSHAct - IT'S THE LAW

Teaching Occupational Safety and Health using the Case Method

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The OSHAct (Public Law 91-596) was signed into law in 1970. However, for many managers in the *service industry*, the OSHAct was considered *manufacturing industry* legislation. Suddenly the service industry was faced with increasing Workers Compensation costs due largely to an increase in claims. A growing awareness among employees and an increase in occupational health-related legislation and regulation was impacting this growth in employee claims. Standards and guidelines were established related to ergonomics, chemical hazards, and bloodborne pathogens. And, managers were facing issues of cumulative trauma disorders like carpal tunnel syndrome; low-back injury and/or pain; chemical hazard exposure; and, exposure to bloodborne pathogens and other potential infectious materials.

Understanding the various aspects of the OSHAct and Workers' Compensation is only the first step for managers today. Because occupational safety and health is a shared responsibility between employers and employees, it is essential that workers become invested in *their health-their safety*. Managers must understand how to create policies that are congruent with OSHA standards and guidelines. Further, managers must be capable of implementing employee training related to established plans for worksite safety and health.

Today, educators in pre-professional programs such as: Physical Education, Athletic Training, Exercise Science, Sport Management, and Recreation; must share in the responsibility of preparing future managers (directors, teachers, etc.) for legislative mandates, including the OSHAct. Harvard University has long been known for, the case method approach to pedagogy. For three years, the presenter served as a Visiting Scholar in a National Institute for Occupational Safety and Health (NIOSH) funded program within the School of Public Health at Harvard. It was there that the presenter began writing case studies to use with pre-professionals in each of the above disciplines.

"The OSHAct - It's The Law" will serve to remind participants of important legal concepts related to the OSHAct, and also include: a brief overview of the history leading up to the Act; the Act's impact on Workers' Compensation; and, OSHAct regulations and guidelines. The presentation ~will also offer a methodology for teaching occupational safety and health to preprofessionals. Case studies will be available and the case method utilized, to present various aspects of worker safety in each of the following academic disciplines: Physical Education, Athletic Training, Exercise Science, Sport Management, and Recreation.

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Key Considerations In Risk Management: The Problems With Pre-Participation Physical Exams in Interscholastic Athletics

The Needless Deaths of High School Athletes

Presented by:
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Richard P Tobin, PhD
JoAnne S. Haffeman
Montclair State University
Upper Montclair, NJ 07043

ABSTRACT

The sudden deaths of Interscholastic athletes attributable to unknown cardiac problems has led to public concern regarding the content of pre-participation physical examinations being carried out in the schools across the country. These deaths have been caused primarily by congenital cardiovascular problems which are detectable with thorough and effective examinations.

One of the most important legal duties of a coach is to insure that the student athletes under the coach's control and supervision undergo a pre-participation physical examination before participating in any Interscholastic sport. The purpose of these pre-participation examinations is to insure the health and welfare of the student athlete, to detect hidden medical conditions that pose a risk of serious injury or death to the athlete, to detect any medical conditions requiring treatment and/or rehabilitation, and to determine if the athlete is capable of playing the specific sport.

This paper will address the importance of pre-participation physical examinations, the controversial issues surrounding pre-participation examinations, such as the need to develop a national pre-participation examination form and standards for examiners conducting these examinations, as well as the positions of various professional organizations on these issues. Examples of specific state athletic association requirements for pre-participation examination are also presented. There will also be a discussion of Italy's experience with a national program of pre-participation screening and a comparison of the Italian experience with U.S. programs.

An analysis of a litigated case in which a student athlete who had not undergone a pre-participation physical died after being coerced into participating in the first football practice, by his coach, points up the critical importance of these examinations and the need to have a complete and thorough medical evaluation of each student athlete before he or she begins participation in the chosen sport. The very reason these medical examinations are required is to prevent the tragic situation described in this case.

Looking for a chance to be published?

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Experiential Learning and the Law

by Merry Moiseichik, Ph.D., University of Arkansas
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and Jean Hughes, Ph.D., Southwest Missouri State University

The purpose of this hour presentation is to introduce approximately 10 experiential teaching techniques to be used in undergraduate and graduate legal aspects of sport and recreation courses. Participants will leave with some creative techniques for helping students learn difficult concepts or increase motivation. Case law, legal research, supervision, political process, and risk management are a few the topic areas that lend themselves to these teaching methods.

The intended audience is anyone who is looking for some different teaching ideas for sport law courses. A combination of computer enhanced presentation and participation in some of the teaching techniques will be used. Participants are encouraged to share some of the methods they use as well.

Potential Student Athlete Liability for NCAA Violations: Can they or should they be held accountable?

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A growing problem in college athletics involves the increasing number of student athletes who violate NCAA rules and regulations. These actions more often than not jeopardize the student athlete's eligibility and can subject the university to NCAA investigations and sanctions. Much has been written concerning the responsibility of agents for unethical behavior and many states have enacted legislation creating both civil and criminal penalties for violations. A few states have included civil penalties for student athletes as well as agent for violations. This raises an interesting question of whether universities could or should seek to recover damages from student athletes if they engage in actions which cause the student athlete to become partially or totally ineligible, or which cause the university to be exposed to NCAA penalties.

This paper examines current statutory and common law remedies available to universities against student athletes. In addition, the business and ethical ramifications of pursuing legal action against student athletes are discussed and examined.

Practical, Legal, and Safety Considerations for Staging Triathlons

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With triathlon on the Olympic program for the first time in the year 2000 in Sydney, Australia, the sport has been growing rapidly internationally. This presentation will introduce steps that a multi-sport race director can take to promote safety and reduce exposure to lawsuits. The presentation will focus on course selection and design issues for each stage of a triathlon. In addition, other safety considerations such as staff, volunteers, police, and medical personnel requirements will be discussed.

The Exercise and Sport Science Academician as Expert Witness

Milledge Murphey, Ph.D.
Robert F. Millott, Ed.D.
University of Florida
Gainesville, FL

PURPOSE:

This presentation will cover the rationale for use of academicians as expert witness consultants in sport science, exercise, and physical education cases. Rationale and advantages/disadvantages of using these persons as compared with "commercial experts" in winning cases. Expert witness responsibilities, potential uses (jury selection, etc.) and strategies for successful depositions, and testimony will also be discussed.

Pros and cons of functioning as an expert witness will be discussed including failure to pay problems in dealing with attorneys, cross examination techniques specific to academic experts, using the academic's credentials to defeat all opposing experts, qualification of academic experts at trial, and many other topics will be covered.

Case selection, fees, operating within ones areas of true expertise (what does it take for an academic to consider her/himself an expert, methods for advertising your availability for such work, and other similar issues will be explored.

Questions will be entertained during the presentation.

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Player Drafts: Is It Legal For The National Football League and Women's National Basketball Association to Restrict Eligibility?

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The National Football League (NFL) and the Women's National Basketball Association (WNBA) currently restrict player eligibility. The NFL will not permit a player to join the league unless three years have elapsed from their high school class graduation (Player Personnel Handbook, Bylaw A-I). The WNBA mandates players fulfill one of the following requirements: be at least 22 years old, have four years elapsed from the date of high school graduation, have graduated from college, or have played professional basketball for at least two years.

During the 1997 football season, sophomores Ron Dayne of Wisconsin and Andy Katzenmoyer of Ohio State considered challenging the rule against the NFL's eligibility restrictions (King, 1997). Women's college basketball players have recently discussed suing the WNBA to rescind the restrictive eligibility rules (Butler, 1998). Despite potential litigation, the leagues have reaffirmed their commitment to current policies (Hieber, 1998; King, 1997). The history of the legal challenges to professional sports drafts will be examined. Included in the analysis will be Radovich v. National Football League, Denver Rockets v. All-Pro Management, Inc., and Linseman v. World Hockey Association. The potential arguments a player might employ in the event of a lawsuit against the NFL or WNBA will be analyzed.

Who Gets The Tickets When Dad Dies?

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While it may appear to be only a nuisance, the question of who retains the options of renewing premium tickets when the status of the owner changes can breach the peace of any ticket office. Ticket managers, athletics directors, legal counsels, faithful patrons, even members of the same family may find themselves in serious conflict over the answer to question of who exercises the option to renew "hot tickets". For instance:

1. In the off-season, a once blissful couple struggles through a divorce. While they may not have been faithful to each other, they are faithful-enough sports fans to both demand the option of renewing their same seats in the stadium. Who gets the seats?
2. Ol' Pops died during the off-season. Although he had renewed the tickets for 27 years, his son and daughter-in-law have been using them the last 8 seasons. But if the son tried to renew, he would have to pay a premium of \$1,000/seat/year that Ol' Pops didn't have to pay since he began his patronage before the premiums policy took effect. If the tickets stay in the family,

- can they continue to be “grandfathered” if Pops included them in his will?
3. What happens if the owner of a “seat license” is divorced, dies, or moves from the continent?
- The purpose of this program is to sort out some of the issues facing sports administrators who have the enviable yet highly irritating problem of determining ticket renewals in a high demand situation. Property rights and public relations are strange bedfellows.
- Presentation will be lecture-discussion, possibly including a *quiz!*

It's Not Just Horesplay Anymore — Male to Male Sexual Harrassment in Violation of Title VII

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Sport managers may be liable for peer-to-peer sexual harassment on the job and in the school. The Court is taking a new view of Title VII of the Civil Rights act of 1964 and of Title IX of the Educational Amendments of 1972. For years the circuit courts have had mixed rulings on whether Title VII of the Civil Rights Act of 1964 applied to sex discrimination related to male employees who were harassed by other male employees. In a new decision, the U.S. Supreme Court has held that male-to-male sexual harassment was actionable under Title VII; the law protects men as well as women (Oncale v. Sundowner Offshore Services, 1998). The presentation will discuss the Court's reasoning on homosexual proposals, sexual conduct that is discriminatory conduct, locker room conduct that constitutes a “hostile environment” that is a discriminatory environment. Discussion will include the Court's distinction between a coach's pat on the buttocks of a football player and the same pat given to the coach's secretary — a reasonable person's perspective.

Purpose. The purpose of this session is to help sport managers understand the new court decisions and the new regulations regarding sexual harassment, sex discrimination, hazing, and assault. Sport managers of spectator events, school events, and recreational establishments will benefit from this research.

Methods. Standard legal research methodology was utilized, including an analysis of constitutions, statutes, federal regulations and appellate court decisions. Because of time constraints, the author will focus mainly on the new Supreme Court decision (Oncale) which will establish case law and the new Title IX guidelines. Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment because of race, color, religion, sex, or national origin. Title IX of the Educational Amendments of 1972 prohibits discrimination because of sex in any educational program receiving federal funds.

Results and Conclusions. Sport managers may pay damages to employees or patrons in the form of compensatory damages, punitive damages, expert witness fees, back pay and possible attorney fees (Civil Rights Act of 1964, Equal Opportunity Act of 1972, Civil Rights Act of 1991). In addition, damages to students have been paid under Title IX following the Supreme Court decision in Franklin v. Gwinnett County Public Schools (1992).

The newer federal regulations for Title IX in 1997 give rise to further litigation. A new Illinois decision, Doe v. University of Illinois (1998), found that a state university could be held liable under Title IX for its failure to take prompt appropriate action in response to student-on-student sexual harassment while students were involved in university activities under the supervision of university officials who knew the harassment was taking place. Several suits of this nature are

pending.

The new Title IX guidelines "require that a recipient of federal funds notify students and parents of its policy against discrimination based on sex and have in place a prompt and equitable procedure for resolving sex discrimination complaints." (Federal Register, Vol. 62, #49, March 13, 1997, 12038.)

Recommendations. (1) Participants in this session will have recommendations and new sources of information and new court decisions which will assist them in developing policy which aid in preventing litigation based on discrimination, hazing, or assault. A checklist will be given, (2) Participants will understand their civil rights if they are falsely accused, (3) Participants will receive information which will assist them in avoiding charges of negligent hiring or retention of employees who may be involved in sexual harassment situations.

On-Site Sportcourt: Over-Reaction or Risk Management?

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"*Fanatical*" behavior by sport enthusiasts is not a new phenomenon in the sporting world. For many years stories have circulated throughout the world of mass mayhem by out-of-control soccer crowds at soccer events. Media reports of horror stories of "hooliganism" leading to spectator deaths at soccer matches, or officials being attacked following controversial calls have become all too common in the international realm of athletics. However, cases of criminal crowd behavior at sporting events in the United States have been relatively rare and minor in nature. However, concern has been mounting as the number of cases have grown and security has increased. The infamous NFL "iceball game" took place during the San Diego Chargers visit to play the New York Giants in late December 1995. Frozen snowballs raining down on the field thrown by members of a sparse crowd of fans willing to brave the elements after a snowstorm resulted in injuries to players, officials and a cameraman. The incident led to 14 arrests, 175 ejections, 15 minor injuries, and near forfeiture of the game. Five years previously, NY Jets fans set fire to the stands in the upper deck during a Halloween night loss to the Buffalo Bills.

Last year in Veteran's Stadium in Philadelphia, PA., an on-site criminal court was held for violators of standards of behavior at athletic events. With the approval and support of the Philadelphia Phillies, and Philadelphia Eagles professional sport teams, plus Veteran's Stadium management, a plan was devised to immediately place before the justice system criminally

W unruly fans at the sporting event. Judge Shamus McCaffrey, a retired municipal judge and sport enthusiast, led the implementation of an immediate on-site, or near-site, response of the justice system to behavior alleged to be against the law at the game. After a year of implementation the "Sportcourt" is still in session continues to be used as method of risk management.

How successful this approach has been to deter fan violence at sporting events. How has the program changed or evolved during the past year? What have been the most common violations and penalties for the disruptive behavior? How has the media reported the instances and attempts to control fans' actions? How did the idea come to Judge McCaffrey, and has this approach been adopted in other venues. Is this a needed and viable judicial approach to aid in stadium/arena

security management, or is the court of public opinion not ready to support such an initiative on a widespread basis? The presentation will focus on these issues and discuss the future of this approach in the implementation of law and order at the sport venue.

Parks, Sex, and the Law

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Public lewdness laws are invoked against sexual expression and other acts~ including loitering, flirtation, solicitation, and actual sexual encounter outside the home. While public lewdness laws do not specifically refer to homosexuals, the appearance is that they are enforced almost exclusively against gays and those who are perceived to be gay.

The majority of arrests on public lewdness charges are made as part of undercover police operations where a male officer is placed in a public park setting where gays are known to meet. The idea in these cases is that when the officer is propositioned, an arrest can be made for solicitation of sexual acts or public lewdness.

There are a variety of legal issues that come into question with these situations. These include possible entrapment during undercover sting operations, discriminatory enforcement of the laws against homosexuals, and violation of freedom of speech statutes.

Many of these legal issues may never be reviewed by the courts because of the unique nature of the problem and the unwillingness of arrested individuals to fight charges which place their word against that of the arresting officer in court. The vast majority of these cases never go to trial because of the embarrassment and shame felt by the individual stemming from the arrest.

A multimedia presentation will analyze the issues and case law relevant to public lewdness arrests of homosexuals in park settings, its basis in state law, and the methods of defense used by those arrested.

This presentation is intended for persons interested in law as it relates to park and recreation administration as well as those concerned with civil rights issues as they relate to sexual orientation.

Women Golfers: Are They Still Teed Off?

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Many may argue that membership in private golf clubs with full privileges still is a vestige of white male dominance in the world. When many of these golf clubs were formed, they restricted membership based upon race, religion, and gender. Over time, the members of these clubs have asserted that they have a Constitutionally protected right of freedom of association. This right allows a group of individuals to discriminate if they choose to form a genuinely selective and exclusive private club. Over the past decade and a half, as women began to recognize that mem-

bership with full privileges in a private club was essential to professional achievement, they began to fight to gain full membership privileges in these clubs. These women have asserted they have a right to equal protection under the law and to not be discriminated against.

The primary purpose of this presentation is to up-date the research as it pertains to this topic. Specifically, the presentation will examine (1) the issues that surround freedom of association and the right to discriminate, (2) what is a "truly private" club, (3) the issues of public accommodation and its impact on private clubs, (4) the status of legislation passed by states to address this topic, and (5) the status of legal action taken by women to gain membership in these clubs.

Conducting a Facility Risk Review

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The purpose of the program - One of our legal duties as managers of sport, physical education, and recreation programs is to provide gyms, fields, playgrounds, etc. that are safe for the participants. This session will look at the process of performing a facility risk review and some of the common safety problems associated with our facilities, grounds, and equipment. An extensive slide show depicting real safety problems, along with PowerPoint slides and handouts will be used to illustrate the concepts. Elementary, mid and secondary schools are highlighted as well as college and community recreational facilities.

The program will follow this general outline:

- Safe Facilities: What is our Legal Duty?
- The Basis for Facility Hazards
- Performing the Facility Risk Review
- The Initial Inspection
- The Periodic Inspection
- Developing Checklists
- Treating the Risks
- Training Staff
- Documentation
- A look at Common Facility Hazards - Conclusion

Creating a Searchable Database of Sport Law Cases

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The purpose of this program is to introduce participants to a useful method of storing case law information in a searchable database. Maintaining a large collection of legal cases for use in teaching and research is a real challenge. The creation of a database, however, can allow one to efficiently find and retrieve the case or cases which meet the needs of a research project, or a particular legal topic to be covered in class. This presentation will introduce participants to Microsoft

Access software as a searchable database for the storage and retrieval of legal cases. The intended audience is teachers and researchers interested in sport and recreation law. The presenter will use his computer to show the audience how case information is selected and input into a database, how the database can be searched, and how text can be converted to numerical form for quantitative analysis. Examples from the presenter's research involving an analysis of the outcome of sport law cases will be used.

Major League Soccer, Limited Liability Corporations and Federal Antitrust Laws Is this the Future of Professional Sports?

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Purpose of the program:

With the birth of Major League Soccer, people in the United States were finally able to see soccer played at its highest level. MLS is currently the United States' only Division I professional outdoor league, as sanctioned by FIFA and U.S. Soccer. Three years later however, the league seems to be attracting more attention, at least legally, due to the structure of the league. In establishing MLS, the league established itself as a Limited Liability Corporation (LLC). As such the league claims that it is a single entity and therefore outside the reach of the Sherman Antitrust Act.

The purpose of this presentation is to examine the current lawsuit filed by Major League Soccer players in Federal Court against the league, *Fraser, et al v. Major League Soccer*. The players claim that the current policies of the league violate federal antitrust laws. The league defends its rules, which are per-se anti-competitive since they restrict the opportunities available to athletes, by claiming that they are single entities and therefore not subject to antitrust laws.

The presentation will begin by examining the birth of MLS and some of the reason it decided to incorporate as an LLC. As an LLC, all the teams are owned by the league, individuals "invest" in a team, they do not technically owe them. In other words, while Robert Kraft and Lamar Hunt own the NFL's New England Patriots, Kansas City Chiefs respectively, they do not own MLS's New England Revolution or the Kansas City Wizards.

Next, the presentation will examine how the courts have historically viewed the "single entity" argument as it has been used in other sports. Cases involving the NFL and NBA will then be compared to the MLS and the theory behind the LLC. Finally, the presentation will conclude by examining the possible outcome of the case and the impact the decision, either way, could have on the future of professional sports.

**This could be your abstract!
See you in ALBUQUERQUE**

Golf Litigation: A Review of 25 Years of Litigation

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As the number of people who participate in sports grows more and more each year, so do the risks associated with these sports. Consequently, the legal liability of these sports has long since been a concern for recreation and sport professionals alike.

The sport of golf is viewed as both a recreational sport and competitive sport. Whatever the arena, the sport of golf has many more risk than the average recreation sport professional may be aware of. These risks, which often result in litigation, are costly in both time and money. What is most intriguing is that the litigation that golf courses and country clubs are often faced with can be both avoided and prevented through sound risk management practices and programs.

This presentation of golf litigation will outline the legal areas that have played a pivotal role in the courtroom over the last quarter of a century. Over the years, legal issues such as negligence, personal injury, contracts, discrimination, trademark infringement, employment and hiring issues, wrongful death, nuisance, and tax related issues, have surfaced within the legal arena and have earned some much needed attention from golf and legal professionals alike. Negligence was the most troublesome for the golf club owner, comprising almost half of all golf related litigation, while other areas such as breach of contract, personal injury, and tax related issues were close behind.

There are several liability issues that plague the owner and proprietor of a golf course. Such liability issues, if not tended to, can become costly and even detrimental to the organization of agency. Some such liability issues include players hitting other players, players hitting personal property, players being hit by golf carts, as well as discriminatory tee-times and membership privileges.

In addition, this presentation seeks to outline several different approaches to risk management as it pertains to the golf course and recreation sport professional. Such issues as the recreation use law, a truly private club, appropriate signage, maintenance and inspection routines, and lightning warning systems are just a few risk management tips that will be highlighted and discussed.

Reckless Misconduct in Athletics: a state by state review

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Purpose of the program:

This presentation examines the theory of reckless misconduct as applied to athletic. The presentation will begin by reviewing the theory of reckless misconduct. The presentation will review its development and current use in athletic participant injuries.

Next, the presentation will review the finding of a state by state search of the use of reckless misconduct. The presentation will present three groups: those who use the theory of reckless misconduct in athletic cases; those who use the theory of reckless misconduct, but not in athletic cases; and those who do not use the theory of reckless misconduct.

The presentation concludes by exploring the impact the theory' of reckless misconduct has had on the athletic industry since the *Nabozny v. Barnhill*.

Perceived Trends in Liability and Risk Management

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Over the course of the past 30 years, a significant increase in the amount of litigation in recreational sports has been noted in the literature. This threat of litigation has created an additional burden upon the recreational sport practitioner in managing risk. While no decline in the frequency of claims is anticipated, insight into the perceived liability and risk management trends would better prepare recreational sport practitioners to deal with future legal challenges. As a result, a study was designed to gain insight into the perceived liability and risk management trends impacting recreational sports over the next 22 years. This presentation is based upon the results of that study.

Cited by the literature as the most often used technique in forecasting and consensus-building, the Delphi technique was determined as the most appropriate for this study. The panel of experts, comprised of recreational sports administrators and sport liability scholars was selected through a network sampling technique with the executive directors of selected professional organizations encompassing recreational sports programs in commercial, private and public settings serving as the key informants in the identification of the experts. A classical Delphi was implemented with each of the three rounds identified by its own questionnaire, and was distributed to the panel of experts electronically via an Internet web site. The fourth round was implemented to gain the jury's opinions regarding the implications of the trends.

Identifiable key trends regarding liability and risk management that were perceived to have an impact upon the delivery of recreational sports programs were found. Over the course of three-round Delphi, the jury rated 11 trends as having an extreme or great impact upon the future delivery of recreational sports programs. In a test of the mean differences by the two groups on the impact rating, only one of the key trends was found to be significant at an alpha level of .05. Each of these trends will be presented along with their implications and the possible issues which might evolve as a result of the trends.

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13th Annual SSLASPA Conference
March 8-11, 2000
Albuquerque, NM
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