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Human Kinetics
COMMENTARY

Editor's Note

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In February of this year, Gabe Feldman addressed the Sport and Recreation Law Association (SRLA) at its annual conference in New Orleans, LA. He described his speech that day, on the topic of sport's uniqueness, as an expression of his stream of consciousness. Professor Feldman's use of the word 'unique' in this context concerned how the law treats sports. The question posed was whether the sport industry is distinctly different from other industries so as to deserve unique applications of law. The extant case law includes examples in which courts have carved out exceptions or contorted the law in ways to reach desired outcomes for the purpose of protecting sport. In *Federal Baseball Club v. National League*, the honorable Justice Holmes insulated professional baseball from the application of the antitrust laws with the finding that professional baseball involved exhibitions rather than commerce. In *Board of Regents of the University of Oklahoma v. NCAA*, Justice Stevens recognized that sports leagues are unique businesses that require for their operation practices that would lack redeeming value if applied in any other commercial setting. *Hackbart v. Cincinnati Bengals, Inc.* provides a tort law example in which an appellate court treated conduct as reckless that would be intentional if not for the fact that it occurred during the performance of a professional football game.

There are so many other examples that seem to suggest that the courts will sometimes treat sport as unique, but these cases beg the question of whether the law *should* apply to sport in ways distinct from other types of activities or industries. Professor Feldman did such a wonderful job with his presentation in New Orleans and this issue of the *Journal of Legal Aspects of Sport* (JLAS) follows in the spirit of that discussion by publishing works that touch on how general legal applications operate within sport settings. Should labor law principles be ignored for the purpose of preserving college sports? Does a multi-billion dollar business in the NFL deserve to be treated as a nonprofit and avoid tax liability? Within this issue of JLAS are also two articles on the operation of waivers, negligence release agreements, in sport and recreation. One study involves the effectiveness of notifications within waivers for risks inherent to triathlons, while the other measures the effectiveness of waiver use by health and fitness facilities. By their nature and operation, waivers have grown in use in the U.S. and in other nations as a contractual tool for safeguarding sports and recreation activities from being litigated into nonexistence.

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This issue of JLAS also marks the end of my first full year as editor-in-chief and is the first issue for the journal's new associate editor, Natasha Brison. During that first year, many changes to the journal have been made. First, we have expanded the editorial board and encourage readers to glance at the list to see the scholars who have been added to the fold. JLAS has also recently made the shift from exclusive to nonexclusive submissions, so as to comport with other business and law journals. The move has already increased submissions from the business law and law school communities because it facilitated the use of ExpressO, a service that helps authors with mass submissions. ExpressO,

I am encouraged about the future of JLAS, the only peer-reviewed journal dedicated to sport law scholarship. And this brings me back to Professor Feldman's speech on uniqueness. Quality research represented by a flagship journal is the best way for sport law to stand out as a unique area of study that is distinct within law, sport business, and sport management. So please take this invitation to contribute to *your* flagship journal by submitting research to JLAS and by citing articles published in JLAS.

Thank you for your time and please enjoy this issue.