

Legal Issues in

COLLEGIATE ATHLETICS

A Report of Court Decisions, Legislation and Regulations Affecting Collegiate Athletics

Presented by Ice Miller LLP

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This special version of Legal Issues in Collegiate Athletics has been created in cooperation with Ice Miller LLP. The firm's lawyers and professionals have more than 30 years of cumulative NCAA experience, recently served as NCAA staff members, have firsthand student-athlete and coaching backgrounds, and are well-versed on NCAA rules, regulations and procedures. The Collegiate Sports Practice also has extensive experience with and detailed knowledge of the NCAA infractions and waivers processes, and the operation of the NCAA governance structure.

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**Legal Issues in
COLLEGIATE ATHLETICS**



NCAA Rules on Berkeley's Violations

By Kristin Gatter, Florida Coastal
School of Law 3L

(What follows is an abbreviated version of what appeared in the Journal of NCAA Compliance)

On December 10, 2010, the NCAA Division I Committee on Infractions (the "Committee") heard arguments on the University of California Berkeley's recruiting infractions in men's basketball.

The infractions involved 365 impermissible recruiting phone calls, which were self-detected and self-reported to the NCAA by the institution's compliance office. The vast majority of improper contact was made by two assistant coaches. Between these two coaches at least 300 impermissible phone calls were made. The remaining contact is attributable to a third assistant coach and the head coach, Mike Montgomery. Of the 365 violations, the Committee found over 300 to be "documentation" violations, amounting to clerical errors, as opposed to intentional violations of NCAA bylaws. On February 25, 2011, the Committee imposed penalties on Berkeley including a two year probationary period, restrictions on recruiting phone calls, restrictions on off-campus recruiting by one of the guilty assistant Coaches, and a limitation on the number of men's basketball official paid visits for two years.

VIOLATIONS

The Committee's report found 365 violations starting in 2008, shortly after Montgomery and his staff were hired. The infractions were first noticed by Berkeley's compliance director on September 11, 2008 while performing a systematic monitoring review of call logs. The institution sprang into action by hiring outside legal counsel with expertise in NCAA infractions matters. With this legal team, the institution reviewed 27,000 recruiting phone calls and ultimately found 300 impermissible calls made by the men's basketball coaching staff.

FINDINGS

The Committee noted in its findings that the compliance office at Berkeley was proactive with this new coaching staff. Shortly after Mike Montgomery and his staff were brought in to the school, the compliance office conducted a one-hour rules session, after which Montgomery passed the 2007-08 NCAA Coaches Certification Exam. Thereafter, the compliance office conducted a monthly coaches meeting with the assistants, which included a rules-education component. On May 27 the compliance staff held a meeting of the entire men's basketball coaching staff to learn the proper rules for logging recruiting phone calls and limitations.

PENALTIES

By a 6-0 vote, the Committee found that 60 of the 365 "improper" phone calls with prospective student-athletes were violations, the Committee offered a light punishment. The Committee stated that the third assistant coach and Montgomery's violations were "relatively few" and that the majority were documentation errors, therefore neither coach was "at risk." Further mitigating any damage to Montgomery was his vast experience in coaching and spotless record with regards to NCAA major infractions. As for the guilty assistant coaches, the Committee prohibited their engaging in certain forms of contact with prospective student-athletes.

CONCLUSION

This ruling is much lighter than other rulings that the Committee has handed down of late that involve similar violations. In this instance, it seems that the Committee made the correct ruling against Berkeley. The violations may have been merely documentation errors, but they were violations nonetheless. Therefore, while Berkeley is being penalized, but not with such vigor that recruiting will be made impossible, the penalties just give a slight advantage to other schools that are in compliance. ■

Best Practices for Negotiating Naming Rights, Sponsorships

By Irwin A. Kishner and Julie Albinsky

Naming rights and sponsorship deals are, of course nothing new, but never before have we seen such a proliferation in the number and permutations of such deals as there have been in recent years. For the most part, such arrangements have been success stories, mutually beneficial for teams and corporate sponsors; however, some vital lessons have emerged for negotiating and structuring such arrangements.

Throughout history, institutions such as schools and hospitals as well as public spaces have been named after benefactors. The first stadium, Wrigley Field, was named after the Chicago Cubs owner and chewing gum magnate William Wrigley in 1926. Today, naming rights and sponsorship deals are booming. More than 80 out of the approximately 120 teams in the NFL, NHL, NBA and MLB have their home stadia or arenas named after corporate sponsors,¹ college and universities have begun seeking out corporate sponsors for their stadiums (for example, the KFC Yum! Center at the University of Louisville) and even the Basketball Hall of Fame is looking to get into the game, reportedly actively seeking a corporate naming rights sponsor.² Naming rights and sponsorship deals are evolving, with package deals becoming more common and teams creatively generating more and more sponsorship opportunities—for example, at Coors Field, the home of the Colorado Rockies, Coors has exclusive pouring rights in addition to other tie-in arrangements³, while financial institutions

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Julie Albinsky is an associate in the Corporate Department of Herrick, Feinstein LLP. Julie concentrates her practice in general corporate law and has worked on a variety of sports-related transactions, including franchise acquisitions, athlete sponsorship agreements, licensing and intellectual property agreements, and joint ventures.

(Citizens Bank, Wachovia, Barclays and M&T Bank to name a few) have various tie-in arrangements such as the right to install ATM's at the stadia that bear their names⁴; another example is Anheuser-Busch's 6-year \$1.2 billion deal with NFL which includes licensing, marketing, media and team sponsorship.

Teams and leagues are drawn to such arrangements because they present a significant revenue stream, and corporate sponsors vie for and pay top dollar for the invaluable advertising and goodwill. Most such arrangements are a success for both sides, but there have been several cautionary tales. The Astros' stadium naming rights deal with the Enron, which the team was forced to quickly dismantle after the 2002 scandal, and the 49ers naming rights deals with 3Com and Monster Cable, which were reviled by fans and local media (who continued to refer to the stadium as Candlestick Park and finally passed a referendum requiring the name of the stadium to be reverted to Candlestick Park)⁵ speak to

the reputational risk in associating one's organization with another entity. There is, of course, no way to predict an Enron-type scandal or extreme fan backlash to corporate sponsorship; however, it is vital to build contingency plans into naming rights and sponsorship deals. For example, termination provisions are important—what will trigger either party's right to terminate (e.g., public accusations of moral turpitude? indictment for a felony? conviction for a felony? bankruptcy?) and how fees and/or royalties will be addressed in case of termination are points that should be thoughtfully negotiated and meticulously worded in the agreement. It is also important for teams that are entering into naming rights or sponsorship arrangements, such as the 49ers who are giving naming rights sponsorship another go, reportedly actively seeking a naming sponsor for their new \$937 million stadium⁶, to coordinate with the corporate sponsor to develop a public relations strategy both from the outset and

1 Sam Hollis, "Stadium Naming Rights—A Quick Tour," March 13, 2008, available at: http://www.couchmansllp.com/documents/d-080313-sh_NamingRightsArticle.pdf (last visited June 3, 2011).

2 Tabetha Esry, "Basketball Hall of Fame Plans to Sell Title Sponsorship," March 24, 2011, available at: <http://www.theemzone.com/vnews/display.v/ART/2011/03/24/4d8a0bd3747a2> (last visited June 3, 2011).

3 Robert J. Sherwood, "Nine Strikes and You're

Out!," August 28, 2002, available at: http://www.forbes.com/2002/08/28/0828sf_print.html (last visited June 3, 2011).

4 Billy Solun, "Making A Name For Yourself Doesn't Come Cheap," September 7, 2003, available at: <http://www.highbeam.com/doc/1G1-119675888.html> (last visited June 3, 2011).

5 Shelley DuBois, "The Best and Worst Stadium Naming Rights Deals," March 30, 2011, avail-

able at: http://money.cnn.com/galleries/2011/fortune/1103/gallery.stadium_names.fortune/index.html (last visited June 3, 2011).

6 Curtis Echelberger, "CAA Hired to Sell Naming Rights for San Francisco 49ers' Proposed Stadium," April 27, 2011, <http://www.bloomberg.com/news/2011-04-27/caa-hired-to-sell-naming-rights-forsan-francisco-49ers-proposed-stadium.html> (last visited June 3, 2011).

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Arkansas State University Gets Self-Punishment Right

By Derek M. Husar, Florida Coastal
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(What follows is an abbreviated version of what
appeared in the *Journal of NCAA Compliance*)

During the December 2010 NCAA Infractions Committee meeting, a summary report of Major NCAA violations involving the Arkansas State University football, men's basketball, women's soccer and men's baseball programs was reviewed and confirmed.

Arkansas State was penalized, receiving two years of probation and the vacation of victories in which 31 ineligible players were involved. Over 30 victories were lost because of the use of ineligible players. A public reprimand and a reduction in the total allocated athletic financial aid for a two-year period were additional self-imposed penalties by Arkansas State that were accepted by the NCAA Infraction Committee. The violations were found to be unintentional, and the penalties imposed were all suggested by Arkansas State, which agreed to all the factual findings and was forth-coming with the NCAA involving

the investigation.

VIOLATIONS

The NCAA requires that in order for a student to maintain eligibility, the student must complete a minimum percentage of course requirements towards their specific degrees. If the student fails to meet this requirement they are not eligible to play. The 31 student-athletes at Arkansas State failed to meet this requirement, some even playing several semesters before their eligibility was restored. During this time of ineligibility, the players received travel expenses which were also NCAA violations. Even though these violations were found to be unintentional, the NCAA infractions committee found a failure to monitor on the part of Arkansas State.

PENALTIES

A formal hearing did not take place in this instance. Once Arkansas State is covered the errors, it complied with NCAA legislation and reported the violations. This case was instead resolved through the summary disposition process, which is a cooperative

effort whereby the NCAA enforcement staff, the university and the individuals involved with the infractions, agreed to the facts of the case and discussed the self-imposed penalties implemented by the institution. The NCAA infractions committee found the above violations to be major violations. Because Arkansas State committed a major infraction, they are now subject to the provisions of NCAA Bylaw 19.5.2.3 which concerns repeat violations over a 5-year period. If Arkansas State commits another violation within the next five years, the penalties will be more severe.

CONCLUSION

Arkansas State is a perfect example of why it is smart not to hide NCAA violations when they are discovered. The school took action and were allowed to work with the Committee on Infractions to come up with self-imposed penalties. Had it tried to hide these violations and fight the imposition of penalties, its fate could have been much worse than what some might call a slap on the wrist. ■

Controversy Brews at UT over Firing of Cleve Bryant

University of Texas officials would rather have the spotlight on the many positives associated with its athletic department this summer, such as the soon-to-launch Longhorn Network and the upcoming football season.

Instead, the Cleve Bryant controversy continues to lurk, forcing those same officials to talk about something that they wish would go away.

Bryant was the associate athletics director for football operations and right-hand man to Mack Brown, and was reportedly sued for sexual harassment by a female employee in the athletic department. The

employee then hired high-profile attorney Gloria Allred.

Bryant, whose base salary was \$237,309 a year, was fired last March, according to his attorney Tom Nesbitt.

"Cleve Bryant appealed that decision pursuant to university policy, [to the school's provost,] the attorney added. "Our appeal was filed within 10 days of the decision. We requested an immediate hearing. Because of the scheduling issues for the university and its legal team, we've been told that a hearing will not be held until mid-August. Bryant and I believe the termination was unjust, and he will fight for his job."

Bryant originally came to Texas in 1991

as an assistant to coach John Mackovic. He left in 1995 to work for Brown at North Carolina, and returned to Austin in 1998 with Brown.

His job description, prior to his departure, was working "extensively in handling and supervising all of the administrative operations and responsibilities of the football program. He oversees everything from team travel and event scheduling, to recruiting weekends, housing and game day operations."

Bryant's wife, Jean Bryant, a life skills counselor for the football team, also took a leave of absence around the same time the la ■

Thoughts on Effective Supervision of Strong Coaches

By Constance E. Zotos

One of the most important responsibilities of an athletics director is to decide on the reporting lines for the head coaches that do not report directly to him or her. Some organizational charts will show an equal distribution of sport programs among the associate and assistant athletics directors. In other words, each associate or assistant athletics director will be responsible for five teams. Others will show only one direct report responsible for all remaining sport programs, often called the associate director for sports, while others will almost have a scatter gun depiction with one team under this supervisor and four teams reporting to another supervisor and so on. The organizational chart does not tell the story of how or why these decisions were made.

While each athletics department is different and there is no right answer in determining who will supervise head coaches, several factors should be considered. First, the most important factor is that the administrator be self-confident enough to supervise coaches. As mentioned earlier, coaches are the experts in their sport and some have little tolerance for supervision. The administrator must recognize the importance of the coach's role but not be intimidated by it. Second, the fewer administrators overseeing head coaches the better. One thing that an athletics department needs is a consistent level of behavioral expectations and work performance from coaches. The ethos and the culture of the department rely heavily on the attitudes and actions of coaches. Therefore, consistent oversight is essential and may be compromised by supervision that is highly distributed among the senior staff. At the very least, if the department is tiered and there has to be multiple supervisors, it may make sense to have all coaches of teams in the same tier supervised by the same person to add some consistency to the mix.

Zotos is a Senior Associate at Sports Management Resources (www.Sports-ManagementResources.com) and a Clinical Associate Professor of Sports Management at New York University

Even if there are no direct reporting lines between coaches and some senior staff members, the athletics director must establish lines of control that clearly reinforce the role of management without compromising the positive impact of coaches. Coaches can be "control freaks". They may want a say in all event decisions, how many press releases sports information directors send out about their programs each week, when facilities are open to their teams, and a multitude of other decisions. Where are lines drawn between the wants and the needs of a coach and the expertise and right to decide by a manager? It is impossible to determine a right or wrong answer for every situation but there are a few rules of thumb that may help. First, it is essential that managers are diligent about knowing and implementing policies that reinforce legal obligations, ethical decisions, and governing body rules. In addition, managers are expected to reinforce department policies that are related to standardization of treatment of teams, consistency of quality of events, control of costs, duty of care for student-athletes, and other variables that should not be compromised. Athletics directors have to reinforce the importance of these variables, support senior staff efforts to control coach conduct, and consistently communicate why managers have both the right and the responsibility to make these decisions.

The importance of the coaching staff cannot be understated. At the end of the day, they are primarily responsible for making the most significant contributions to the success of the athletics program. They

have the closest connections to student-athletes, their parents, donors, alumni and other important constituents. There is a very strong correlation between their winning percentages and the power they wield. This combination of power and ultimate responsibility creates a situation where coaches want to run their own programs unilaterally, with little interference or oversight from anyone. They can become very myopic, separating themselves from the rest of the department. In addition, like most human beings, as people become more and more enamored with them, their confidence can turn into arrogance. Often, the organizational structure of the athletics program supports this behavior by allowing winning coaches to work in a vacuum, turning a blind eye to the additional expectations of being a community member who is expected to reinforce department ethos and culture.

It is important to remember that coaches expect senior managers to play two vital roles: 1) boundary managers to protect them from outside interference, and 2) budget managers and fundraisers to secure the money they need for their program. These roles are realistic and important but senior managers must recognize that their responsibilities, as they relate to coaches, go beyond those of mere support. They must set expectations for coaches other than winning and have the courage to hold them accountable for meeting those compliance expectations. There is no doubt that some coaches have enough power to threaten an athletics director's or senior manager's job. However, this does not release senior managers from doing their job as supervisors. Job descriptions and evaluation instruments and processes for coaches are important tools that help managers formalize the performance expectations of coaches while holding them accountable for meeting other expectations.

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Experienced Sports Attorney Joins Ice Miller LLP

Ice Miller LLP has announced that Stuart Brown has joined the Firm as of counsel and co-chair of its collegiate sports practice group.

He previously was a principal at an Atlanta-based law firm where he represented college coaches and student-athletes regarding NCAA infractions and student-athlete eligibility issues. He also counseled college coaches and universities regarding employment and athletics business matters. Brown has "extensive experience representing clients in hearings before the NCAA Committee on Infractions," according to Ice Miller.

Brown told *Legal Issues in Collegiate Athletics* that the decision to join Ice Miller was an easy one.

"At a time when collegiate athletics stakeholders face so many difficult challenges beyond the playing fields, I'm thrilled to join Ice Miller's Collegiate Sports Practice and be part of a knowledgeable, experienced, and highly respected team that provides university, conference, and sport-business clients with sophisticated and practical counsel across an array of college athletics issues ranging from NCAA infractions and coach-school employment contracts to sponsorship agreements and stadium financing," Brown said.

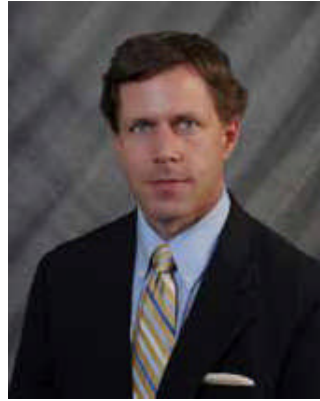
Brown graduated from the Vanderbilt University School of Law. After completing law school, he was an assistant coach for the men's basketball teams at Wake Forest, Alabama, and Georgia Southern University. During Brown's coaching career he participated in multiple NCAA tournaments and helped recruit or develop more than a dozen NBA players.

Brown began his legal practice in 1999. His practice primarily involves counseling collegiate athletics stakeholders regarding NCAA rules compliance and infractions issues, employment and endorsements contracts, coach-school disputes, student-athlete eligibility issues and athletics

business matters. Brown has regularly appeared before the NCAA Committee on Infractions on behalf of clients and has also represented clients in NJCAA and athletics related law enforcement investigations.

"Stu's combined coaching and legal background and his experience with the NCAA enforcement process enables him to provide sophisticated athletics related counsel to our growing roster of college and university athletics departments," said John Thornburgh, chair of the firm's collegiate sports practice. "He brings a wealth of legal experience and knowledge of the NCAA bylaws and procedures that is necessary when analyzing the complex compliance issues facing many institutions."

Brown's responsibilities at Ice Miller include advising institutions on NCAA compliance matters and counseling institutions regarding secondary and major



Stuart Brown

violations of NCAA rules. He assists colleges and universities with internal investigations, imposition of penalties and preparation of reports to the NCAA staff or the Committee on Infractions. Brown also works on behalf of the firm's clients to conduct compliance reviews to assess the effectiveness of an institution's NCAA compliance monitoring and education program. Additionally, Brown advises the firm's clients regarding athletics employment contracts and athletics related business opportunities.

Brown is a member of the Georgia and Illinois State Bar Associations. He is admitted to practice law in state and federal courts.

Ice Miller offers a full complement of NCAA compliance, legislative and infractions related services that include preventative initiatives, education and training programs, and guidance and representation regarding potential NCAA rules violations. ■

USF Identifies Secondary Violations in Report

The University of South Florida reported five secondary violations during the 2010-11 academic year.

Responding to an open records request from the St. Petersburg Times, USF officials said the violations were uncovered through routine audits of expense reimbursement, travel lists and practice logs.

The first violation involved the women's soccer coach allowing a student-athlete to compete in an exhibition match on Aug. 9, four days before the NCAA certified her as eligible, which resulted in a one-game suspension for the coach. The second occurred when a school official changed, at the school's expense, plane tickets for four women's basketball players, which allowed

them to travel directly home after a tournament. The third violation centered on a golf assistant coach's purchase of two meals for the brother of a men's golf signee during the signee's official visit. Fourth, the coach of the women's tennis team gave her players only one day off, instead of the required two, on consecutive weeks.

This led to a 2-for-1 penalty where the team had four days off, instead of two, during the following week.

Finally, an assistant coach for the men's track team called a recruit, who had signed with USF, twice during a "quiet period." In response, the school prohibited its entire track staff from calling recruits for one week.

The Academic Progress Rate Generates Lively Discussion at This Year's College Sport Research Institute Conference

Gregory Lewinter, SM '11 & Ellen Staurowsky, Ithaca College

Scholars, professors, industry leaders, and students gathered April 20th through 22nd in Chapel Hill, North Carolina for the Fourth Annual College Sport Research Institute Conference. Among the topics receiving prominent attention was the impact of the Academic Progress Rate (APR) on athletic department budgets, coach recruiting strategies, and issues associated with athlete academic preparedness.

The APR, officially implemented by the National Collegiate Athletic Association (NCAA) on April 29, 2003, is a "real-time, snapshot" tool used to measure both academic success and graduation rates. The APR, initially used in Division II Athletics to test its feasibility, was implemented to measure the success and/or failure of both individual teams and coaches to retain and graduate their student-athletes. The system is based on a 1000-point scale, where a 925 is considered a passing mark. The APR score for the team and coach are determined utilizing a point system based on student-athlete eligibility, retention, and graduation. This annual measurement has instituted a three-strike rule to punish a team or coach for a failing APR score, which can lead to a loss of scholarships and/or a ban on postseason play. A seemingly transparent initiative to measure academic success and to demonstrate the prioritization of academics in the scheme of the many concerns facing college sport has ultimately left the NCAA with only more questions regarding the academic integrity of intercollegiate athletics.

Within individual athletic departments, there is also the practical reality of how to provide the necessary infrastructure to respond to the need to provide additional academic support to athletes, especially in the sports of football and men's basketball.

As Nathan Kirkpatrick from the University of Georgia pointed out in his presentation, the NCAA acknowledged in June of 2010 that APR compliance standards were proving to be difficult to meet for non-Bowl Championship Series (BCS) and low resource institutions. In the aftermath of the economic downturn, while some NCAA Division I institutions have been able to ensure financial viability through the negotiation of television contracts and merchandising deals, others have struggled to maintain market position. Based on a pilot study of athletic administrators, athletic directors, and faculty athletic representatives at five low resource/non-BCS institutions, Kirkpatrick found that institutional decision makers are reallocating financial resources to invest in academic support personnel leading to cuts in non-revenue programs and other personnel areas within athletic departments.

Kirkpatrick's work takes on new meaning in light of penalties leveled by the NCAA in May of 2011 against Grambling University, Jackson State University, and Southern University because of sub-par academic performance. While Grambling and Jackson State have been barred from post-season play in the sport of football, Southern became the first institution in the country to be barred from post-season in both football and men's basketball. According to the *Washington Daily News*, of the 58 harshest APR sanctions handed down by the NCAA, nearly half were assessed to historically black institutions.

Not only has the APR generated a financial strain based on the need for appropriate academic support, it has also impacted the approach coaches take to recruiting athletes in some cases. Based on the results of a study of 103 NCAA football operations coordinators (FOCs), John Barnes (University of New Mexico)

and Joshua Castle (Indiana University of Pennsylvania) found that 45.6% indicated that they changed their approach to recruiting. When assessing prospective players who might be perceived as potential discipline problems, more than half (56.3%) of the coordinators were "at least slightly less likely" to recruit them because of the APR. Sixty four percent (64%) of the football operations coordinators were more hesitant to recruit athletes they perceived to be academically challenged while 45% indicated that they would be reluctant to recruit "special admits". In order to ensure that APR standards are being met, FOCs reported that 66% of football programs and 75.7% of athletic departments had either put more money into academic support or increased resources in some other way.

According to this group of FOCs, not only has the APR affected recruitment strategies. Programs are also dealing with issues related to retention once an athlete becomes part of a team. The APR is cited as a reason for retaining football players who are described as discipline problems, however, the nature of the infraction or behavior does appear to have an effect on how coordinators view retention issues. While more than half of the respondents expressed a belief that the APR would encourage them to keep athletes in their program who violated a team or institutional policy, approximately 60% of respondents indicated that retention strategies did not change as a result of the APR, especially for athletes convicted of misdemeanors or felonies. At the same time, when deciding the status of an athlete who was convicted of a misdemeanor, 17.5% were more likely to retain the athlete. Castle and Barnes conclude that while the passage of the APR legislation has had a positive impact on the recruitment of more academically qualified

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Best Practices for Negotiating Naming Rights, Sponsorships

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in real-time response to shifting media and fan opinion.

Another risk that must be dealt with in naming rights and sponsorship deals are lockouts and other work stoppages which can occur because of natural disasters or collective bargaining disputes, such as the currently ongoing NFL labor dispute. Although a naming rights or sponsorship deal is profitable to the corporate sponsor regardless of such events, because the sponsor's name is part of a local and beloved sports institution, garnering invaluable advertising and community goodwill, the sponsor is likely to request that payments be pro rated for the time period that the stadium is not in operation. The team may wish to counter with an offer of additional advertising or branding tie-in opportunities in compensation (e.g., the sponsor's sign may be lit up and displayed during concerts and other events held at the stadium, instead of just for team games), which would allow the team to maintain its revenue stream at a time when it is especially needed. It would be prudent for teams to take a cue from the NFL—in anticipation of a possible 2011 lockout (which did come to fruition), the NFL renegotiated its television contracts to provide that networks would pay for scheduled games that were not played due to a lockout.⁷ The NFL thus protected itself from grave financial consequences and preserved at least one (albeit very significant) revenue stream while other revenue sources are comprised due to the lockout. Teams should attempt to garner such protective provisions for contingencies such as lockouts; although, of course, it should be noted that the networks agreed in the NFL's case because NFL games draw enormous audiences and thus the NFL had

7 Lester Munson, "An NFL Labor Impasse Primer," March 11, 2011, available at: <http://sports.espn.go.com/espn/commentary/news/story?id=6207473> (last visited June 3, 2011).

great leverage.

In negotiating naming rights and sponsorship agreements, attention should be given not only to unfavorable contingencies, but also to issues that arise from the evolving and ever expanding nature of naming rights and sponsorship deals. Constant technological advances and the development of new forms of media such as Twitter require careful wording in contract provisions regarding what rights are being granted to a corporate sponsor. For example, a corporate sponsor may request guaranteed mentions of its name in connection with the team in all media, now existing or hereafter invented, while the team will want to explicitly delineate the forms of media involved in order to leave space for other (perhaps as yet unforeseen) sponsorship opportunities and to prevent inadvertently granting conflicting rights to different sponsors because of ambiguity in contract language. As in any deal, leverage in such negotiations will depend on the popularity and success of the team as well as the sum involved, among other factors.

Negotiating leverage also plays a role in how successfully a team may be able to avoid exclusivity period and right-of-first-offer provisions in naming rights and sponsorship deals. A corporate sponsor will likely require that at the end of the contract term, the team must negotiate exclusively with the sponsor for a set period (one month would be typical) and/or that if the team receives deal offers from other sponsors, the team must offer the same deal to the current sponsor on the same terms. It is in the team's interest to avoid such provisions since they are restrictive, and often lead to uncertainty and thus pose a litigation risk. On the other hand, a favorable provision that teams should seek to negotiate is, instead of a locked-in fee structure, increasing fees and premiums for positive performance, such as a winning streak, post-season games and championships or high media ratings.

Sports teams are continually carving out new and creative sponsorship opportunities, such as the Florida Panthers who recently signed a deal to name the ice floor of their arena, BankAtlantic Center, Lexus Rink—this is only the second of such naming rights deals for playing surfaces, the first being Mall of America's three year deal to put its name on the Vikings' Metrodome field.⁸ Sports teams are also exploring new branding opportunities, such as the Dodgers and Lakers-branded water that is distributed by Branded Bottle and sold in the Los Angeles Area.⁹ In creating such new opportunities, teams and sponsors should be aware that league approval may be required and, if the stadium or arena is publicly owned as opposed to team owned, the approval of local government may be required as well for any naming rights to the stadium. While major league teams have a certain level of autonomy, there are certain rules imposed and rights reserved by the leagues. League rules vary; for example, the NFL prohibits corporate logos of any kind on the field, while the NHL allows teams to sell four advertising positions on the ice.¹⁰ Leagues also have varying rules regarding licensing of the team logo or other intellectual property; typically, the league has the right to enter into national agreements on behalf of all of its member teams and the teams retain various local licensing rights.

Another concern for teams in creating new sponsorship opportunities is violating

8 Don Murret, "Lexus Buys Naming Rights to Panthers' Rink," April 4, 2011, available at: <http://www.sportsbusinessdaily.com/Journal/Issues/2011/04/04/Marketing-and-Sponsorship/Lexus-Panthers.aspx> (last visited June 3, 2011).

9 Terry Lofton, "Liquid License," March 21, 2011, available at: <http://www.sportsbusinessdaily.com/Journal/Issues/2011/03/21/Marketing-and-Sponsorship/Lofton-column.aspx> (last visited June 3, 2011).

10 See footnote 8.

See BEST PRACTICES on Page 9

Academic Progress Rate Generates Lively Discussion

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prospects who may have fewer disciplinary issues, some programs appear to be retaining football players who would otherwise be released due to misconduct because of the pressure to meet APR compliance standards.

While FOCs may have greater hesitation about actively recruiting academically at risk athletes known as “special admits”, a further consequence of the public transparency of the APR has been a growing awareness of the degree to which NCAA eligibility standards need to be revisited and the assumptions underlying the NCAA academic reform movement critically examined. As Gerald Guerny and Carla Winters from the University of Oklahoma reviewed in their presentation on the academic preparedness of specially admitted college athletes, the NCAA changed initial eligibility standards in 2003, providing for a sliding scale that allowed athletes to qualify for admission even if their standardized test scores were alarmingly low as long as they had an appropriate high school grade point average. Recognizing that grade inflation has been occurring throughout US educational institutions, they conducted

a study using data from the Wide Range Achievement Test IV (WRAT IV), a test designed to measure basic academic skills in the areas of word recognition, sentence comprehension, spelling, and math computation, comparing specially admitted athletes who met standards in place prior to 2003 and specially admitted athletes who qualified under the 2003 standards. From those specially admitted athletes who met NCAA standards after 2003, there were significant differences in the levels of basic skills between the groups in the three of the four areas (word recognition, sentence comprehension, and spelling). Thus, as the academic reform movement within college sport continues, and as greater pressure is exerted on athletic departments to meet the standards established for the APR, eligibility requirements for athletes may need to be revisited as well.

Graduation rates and academic eligibility have ultimately risen since 2003; however, many questions still remain surrounding the APR. Are the financial and administrative pressures as a result of the APR too great for institutions to handle? Are coaches using illegal strategies to main-

tain a passing APR mark? Is there now too much pressure on the student-athlete? All of these questions remain unanswered as experts and professionals in the industry need more time to understand and examine the usefulness of the APR. It is clear that the APR has created more questions for the institutions, athletic departments, and the NCAA than anticipated. ■

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Best Practices for Negotiating Naming Rights, Sponsorships

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the contractual rights of its existing sponsors. If a team granted the title of official beverage to Pepsi, for example, it may be contractually prohibited from entering into different sponsorship arrangements with Pepsi's competitors or companies that Pepsi does not wish to be associated with (e.g., in the interest of maintaining its family friendly image, Pepsi may not wish to have signs advertising adult magazines displayed at the stadium where it is the official beverage), and may also be prohibited from granting

the title of official water to another company since that may, depending on the contract, create a conflict. In addition to foregoing conflicting sponsorship arrangements, the team and corporate sponsor should negotiate and address how to handle and protect both parties' contractual rights in the event of ambush marketing (that is, a marketing strategy where a company capitalizes on an event or team name without paying a fee; one classic example is Nike papering Atlanta in ads during the 1996 Olympic Games, thereby benefiting from the focus on the

Olympics without paying for the privilege).

In contemplating and negotiating naming rights and sponsorship deals it is always prudent to proceed with a certain amount of caution, and with the benefit of good advice as well as lessons learned from recent history. That being said, few would dispute that naming rights and sponsorship arrangements have proven to be meaningful revenue generators for teams and great investments for companies, and we will likely see many more such arrangements in the near future. ■

News Briefs

Attorney Fires Warning Shot in Front of Potential Antitrust Action

An attorney at Washington D.C.-based Dechert LLP has sent IMG College and its licensing division, Collegiate Licensing Co., a letter challenging what it called a “concerted effort” by the company to limit the number of manufacturers allowed to make collegiate apparel items. Attorney Steven G. Bradbury is representing “various stakeholders who share a common interest in preserving competition and choice in the supply of licensed collegiate merchandise,” i.e., a group of manufacturers and/or retailers. CLC has close to 200 clients, accounting for nearly three-fourths of the \$4.3 billion retail market for collegiate licensed merchandise. The letter is believed to be a warning shot for a potential antitrust action. Bradbury wrote in his letter, which was also sent to 27 Football Bowl Subdivision schools, that “by severely reducing the number of licensees and eliminating competition from the excluded suppliers, the restraint will allow CLC and the universities to garner increased royalty revenues from the remaining licensees, both through higher royalty rates and through higher wholesale prices.” IMG College staked out its own public position, noting that as schools “become more advanced brand stewards,” they have made a decision to “effectively grow and protect their respective brands, enhance their respective competitive position, generate revenue for the respective institution and align better with the respective school”

It added that, “we are confident each school can and should continue to make its own decision about how to best manage its brands.”

WVU Settles with Departed Coach

West Virginia University has reached a \$1.65 million settlement with former football coach Bill Stewart. Stewart resigned June 10 after he was accused of undermining offensive coordinator and coach-in-waiting Dana Holgorsen. The settlement contained a confidentiality agreement, which stated, “all of the terms and information contained herein, all of the negotiations leading to it, all of the communications generated pursuant to it, and the implementation hereof shall, to the extent allowable by law, be kept strictly confidential.” More specifically, the involved parties agreed to not “engage in any conduct or communications that disparage.”

Female Athletic Officials Sue Slippery Rock

A coach and an athletic department official have sued Slippery Rock University for retaliation. Volleyball coach Laurie Lokash and Assistant to the Athletic Director Pearl Shaffer claimed, specifically, that after they spoke out against Athletic Director Paul Lueken they suffered adverse actions. The school allegedly told Lokash that it

would allow her contract to expire in 2013. Meanwhile, Shaffer was allegedly given “massive amounts of work.” The controversy started when 12 female student-athletes and another coach sued SRU for violating Title IX.

NCAA and UND in Stare Down over Mascot Issue

The NCAA has warned the University of North Dakota that it has no intention of changing its position on the use of Native American mascots. “If the University of North Dakota continues to use the nickname and logo past the August 15 deadline, due to state law, it will be subject to the parameters of the policy,” wrote the NCAA. “This means the university could not host any championships or use the nickname and logo at any championship events.” The statement came after the state legislature approved a bill that would prevent UND from following through on its plans to retire its use of an American Indian-themed mascot, logo and nickname in mid-August.

School Plans to Sell Beer Sponsorships

Jacksonville State University is reportedly seeking sponsorships from state distributors for national beer brands such as Coors and Budweiser. JSU School President Bill Meehan gave Athletic Director Warren Koegel permission to pursue talks with companies for the sponsorships. However, Meehan is not in favor of the school selling beer at games. “Corporate sponsorship would be a lot different than the promoting of alcoholic beverage,” he told the media, comparing such a sponsorship with one the school currently has with Alabama Power. “It’s signage,” he added. JSU would be the only school in the Ohio Valley Conference to sell such sponsorships.

Ohio State Cleared of Wrongdoing Around Car Deals

After investigating the selling of cars to Ohio State athletes or their families, the Ohio Bureau of Motor Vehicles found no wrongdoing on behalf of the two car dealers, who sold the vehicles, or the school. Specifically, the OBMV found that the dealerships made money on 24 of 25 sales that took place between 2006 and 2010, while the other car had been sitting on the lot for more than 150 days. The issue over the car sales surfaced while the school was being scrutinized for alleged NCAA violations involving improper benefits. In a statement, Ohio State’s Director of Compliance Doug Archie said: “Today’s report from the Ohio Bureau of Motor Vehicles supports the sworn statements two Columbus auto dealers

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provided us that the manner in which they conducted sales with Ohio State student athletes and their families adhered to university and NCAA rules.”

UH Spent \$200,000 in Scholarship Suit

It was reported last month that the University of Hawaii spent almost \$200,000 defending itself against a lawsuit led by football player Daniel Smith. Smith alleged that, three years ago, he had committed to the Warriors, after the school offered him a scholarship. The school, which allegedly told him to refuse other offers, then reneged on its promise, leaving him without a scholarship on national letter of intent day in 2008. The case ultimately settled with UH paying Smith \$41,500 “in order to avoid further controversy and the time, expense, risks and costs inherent in litigation.” UH paid outside attorneys \$151,764 to help defend the case.

Did Facebook Rant Cost Scholarship?

Softball Player Caitlin Ortiz has sued Molloy College, claiming the school kicked her off the team because of entries she made on her Facebook. Ortiz also claimed she was discriminated against because she was the only Hispanic member of the team. [Athletic Director] Susan Cassidy-Lyke referred Ortiz to a

printout of her Facebook page and stated that “she should not have posted the typo-filled song lyric—[including] ‘andd imm put this drink upp like its my last’ because she did not want recruiters to think Molloy’s softball team was ‘full of thugs,’” according to the complaint.

Fourth Circuit Holds ADA Requires Expanded Access to Aural Content in Stadiums

In *Feldman v. Pro Football, Inc.*, the 4th U.S. Circuit Court of Appeals has affirmed the ruling of a district judge and held that, to provide full and equal enjoyment of the entire entertainment experience of a sporting event in a stadium, FedEx Field must provide individuals, who are deaf or have a hearing impairment with the auxiliary aids and services necessary to benefit from the content broadcast over the stadium’s public address system during Washington Redskins home games. This content includes: game-related information; emergency information; advertisements; public service announcements; and song lyrics. After the suit was initially filed, the Redskins immediately began complying with the Americans with Disabilities Act and moved to dismiss the lawsuit because the claim was arguably moot. The district court disagreed, finding that the compliance was voluntary and that a requirement must be put in place. ■

Personnel Moves

Southeast Missouri State University has announced that Athletic Director **John Shafer** is retiring after two and a half years on the job. He said in a statement that while he “loves his job,” it is “time for me to devote some quality time to my family.” Shafer had replaced Athletic Director Don Kaverman in 2008.

Centenary College has named **Dr. William Broussard** as its new director of athletics. Broussard came from Northwestern State University, his undergraduate alma mater, where he was serving as Associate Athletic Director for External Relations and the Executive Director of the NSU Athletic Association.

Joan Cronan, the Women’s Athletic Director at the University of Tennessee, has been named Vice Chancellor and Interim Athletic Director in the wake of former AD Mike

Hamilton’s departure. Cronan also figures to be a central figure in the consolidation of the men’s and women’s programs, which will go into effect in July 2012. Texas was the only other Division I school in the country with separate departments after Arkansas merged its programs in 2007.

The University of Miami has named **Steve Wald** as its senior associate athletic director for strategic planning. Waterfield will be in charge of overseeing the men’s and women’s basketball programs, as well as strategic operations, facilities and maintenance, departmental policies and procedure, capital projects and construction and sports medicine and drug testing.

Illinois State University has announced that **Gary Friedman** will be its athletic director. Friedman, who previously served

as the senior associate athletic director at Louisville, was chosen from approximately 45 applicants.

The University of San Francisco has selected **Scott Sidwell** as its athletic director. Sidwell served most recently as the executive senior associate athletic director at Syracuse University, where he headed all external operations for the perennial BIG EAST Conference power and directed the department’s marketing, communications, ticket sales and media properties efforts.

Patrick Nero has been named the new athletic director at George Washington University. Nero was previously the commissioner of the Division-I America East Conference. Nero replaces outgoing athletic director Jack Kvancz, who retired after 17 years at GW. ■

Judge Finds College Had Legitimate Reasons for Firing Coach

A district judge from the Middle District of Pennsylvania has adopted the report and recommendation of a magistrate judge, granting summary judgment to Lock Haven University and Athletic Director Sharon E. Taylor, who were sued by a disgruntled former coach amid allegations of a hostile work environment and racial discrimination.

Plaintiff John Wilson, Jr. sued the defendants in 2009, alleging that he suffered adverse employment actions at the hands of the defendants based upon his race. “Notably,” wrote the court, Wilson “does not dispute that from 2002 to 2009 he received numerous sub-par performance reviews, based on, inter alia, the team’s win-loss record, the low grade point averages of his team members, various budgetary issues, including scholarships and fundraising, and several documented NCAA rules violations.”

After the defendants moved for summary judgment, a magistrate judge agreed, finding that while the plaintiff stated a prima facie case for racial discrimination under Title VII and the Pennsylvania Human Relations Act (PHRA), the defendants “adequately rebutted the presumption of discrimination with legitimate, non-discriminatory reasons, and that the plaintiff has not produced any evidence

tending to show the defendants’ reasons were pretext.”

On appeal, the plaintiff “reargued that the evidence already presented in the record before Magistrate Judge Prince shows that the defendants’ proffered reasons for terminating him were pretext,” wrote the district judge in the instant opinion.

“To be sure, the plaintiff has offered no direct evidence of discrimination, thus his task is to show that the defendants’ reasons were ‘weak, incoherent, implausible or so inconsistent that a reasonable factfinder could rationally find them unworthy of credence.’ *Sarullo v. U.S. Postal Serv.*, 352 F.3d 789, 800 (3d Cir. 2003) (quoting *Keller v. Orix Credit Alliance, Inc.*, 130 F.3d 1101, 1108-09 (3d Cir. 1997)). Alternatively, the plaintiff may provide ‘evidence that the employer’s articulated reason was not merely wrong, but that it was so plainly wrong that it could not have been the employer’s real reason.’ *Id.* (quoting *Jones v. Sch. Dist. of Phila.*, 198 F.3d 403, 413 (3d Cir. 1999)). Within his objections, just as in his brief in opposition to the summary judgment motion, the plaintiff makes only conclusory arguments that (he) was treated differently than non-African-American coaches and in doing so, (he) submits that the defendant, in making its decision to no longer employ the plaintiff, was motivated by discriminatory reasons rather than legitimate ones.’

Self-serving arguments such as these do not suffice to overcome the defendants’ multiple proffered legitimate non-discriminatory reasons for, inter alia, not renewing the plaintiff’s employment contract.”

The district judge also noted that the plaintiff “does not object to the magistrate judge’s recommendation that summary judgment be granted with respect to his hostile work environment claim. As discussed by (the magistrate judge), the burden for establishing a hostile work environment claim is high, and mere ‘offhanded comments’ or ‘isolated incidents’ are insufficient to sustain such a claim. Rather, the ‘conduct must be extreme enough to amount to a change in the terms and conditions of employment.’ *Faragher v. City of Boca Raton*, 524 U.S. 775, 788, 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998). We agree ... that there is absolutely no evidence, direct or otherwise, of racially charged conduct that rises to the level of a hostile work environment.” ■

John Wilson, Jr. v. Lock Haven University, et al.; M.D.Pa.; 4:09-cv-2566, 2011 U.S. Dist. LEXIS 39639; 4/12/11

Attorneys of Record: (for plaintiff) Christian A. Lovecchio, LEAD ATTORNEY, Campana, Lovecchio & Morrone, P.C., Williamsport, PA. (for defendant)

Patrick S. Cawley, LEAD ATTORNEY, Pennsylvania Office of Attorney General, Harrisburg, PA.

Thoughts on Effective Supervision of Strong Coaches

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An important responsibility that must be communicated to head coaches is their important role in the supervision of assistant coaches and other staff. This starts with an expectation that each head coach will produce very specific job descriptions and fully participate in department annual evaluation procedures. It is also the head coach’s responsibility to convey the depart-

ment’s mission, as well as goals and expectations of the program to their assistants and other staff members. It is critical for every assistant coach to understand how s/he fits into the immediate and future needs of the program and must conform to the same ethical and professional responsibilities as the head coach. All job responsibilities, evaluation procedures, and ethical expectations must be clearly articulated and shared

in writing. Head coaches must remain vigilant in monitoring the activities of assistants for rules compliance and integrity standards. It is also another responsibility of head coaches to help assistants advance in their careers. Head coaches must always remember that they serve as mentors and must never lose sight of the significance of that responsibility. ■