



## sports law and much more

by Christine Wilczynski-Vogel

The 1977 edition of “Who’s Who Among American High School Students” lists Matthew J. Mitten’s career aspiration as being a university professor. Mitten comes from a family of teachers, including those who have taught in elementary, physical therapy, and medical schools. But he achieved the objective by a different route: the first and only lawyer in his family, Mitten became a law professor. And after ten years of teaching in Texas, Mitten joined the Marquette law faculty in August 1999, while also being appointed as the Director of the National Sports Law Institute (NSLI). He teaches courses such as Amateur Sports Law, Professional Sports Law, Comparative Sports Law, and a sports law seminar.

Looking back in a recent conversation, Mitten says that, although he did not know any lawyers as a youth, he liked to read books with law-related themes. He initially became interested in being a lawyer after reading *To Kill a Mockingbird* in elementary school. Thereafter, as a student at St. John’s Jesuit High School in Toledo, Ohio, Mitten readily embraced the Jesuit educational philosophy of fully developing one’s talents and using them to benefit others. He loved learning and developed substantial respect and admiration for his teachers. But Mitten says that he remained uncertain about a career in law or teaching because he was afraid of public speaking.

Despite this lingering concern, Mitten attended the University of Toledo College of Law, after earning his undergraduate degree in economics from Ohio State University. By this time, his interests in

law and teaching were coalescing. Mitten relates that, even during his first week of law school, he talked to Professor Ronald Raitt, his civil procedure teacher, about his interest in becoming a law professor. Mitten credits Professor Raitt for encouraging him to pursue his dream.

Mitten first practiced law. After graduating from law school, he began his career as an attorney with Kilpatrick & Cody (now Kilpatrick Stockton LLP) in Atlanta, Georgia. Mitten practiced antitrust, trademark, and unfair competition law as well as general commercial litigation. Although he will not go so far as to say that it contributed to his future move into sports law, Mitten recalls his first assignment with a smile: "It was to obtain federal trademark registration of the mark 'Old Timers Baseball Classic' for an annual baseball game played by former Major League Baseball players at Fulton County Stadium in Atlanta." Mitten's work at the firm also included representing three members of the band known as the Monkees (Davey Jones, Peter Tork, and Mickey Dolenz) in a dispute with Coca-Cola over the legal right to use that name.

One of his most satisfying experiences in Atlanta was providing pro bono representation to indigent clients as a volunteer with the Atlanta Legal Aid Society. In a benefits eligibility dispute, he remembers convincing the Veterans Administration that an elderly woman should continue receiving her deceased husband's benefits. Mitten observes that in his law practice most of the clients were large corporations that could afford to pay his firm's fees and even bear the cost of losing a case. "This individual, on the other hand, had no other means of economic support and could not afford the cost of asserting her rights, but really needed help," says Mitten.

Despite five years of successful law practice and the likelihood of a future offer of partnership from his firm, Mitten felt that something was missing and chose to pursue his interest in law teaching. In 1990 he joined the faculty at South Texas College of Law in Houston, Texas. In addition to teaching torts and antitrust law, he began teaching sports law (a course he did not take in law school) at Dean Bill Wilks's urging. Dean Wilks told Mitten that South Texas law students had submitted a petition demanding a sports law course, but that no one else on the faculty had the background and interest to teach it.

Originally planning to focus on antitrust or torts scholarship, Mitten found that sports law presented a fertile ground for legal scholarship. "This was around the same time as Hank Gathers's death while playing in a 1990 college basketball game for Loyola Marymount," notes Mitten. "That tragic incident stimulated my interest in the intersection of law, medicine, and sports."

The interest has endured. Over the past fifteen years, Mitten has published numerous interdisciplinary articles in law reviews and medical journals on a variety of sports medicine legal issues, including a team physician's legal and ethical duty of care, an educational institution's duty to protect student-athletes' health and safety, and the participation rights of disabled athletes. In August 2003 he testified before a congressional subcommittee about the need for federal regulation of over-the-counter products used by athletes to enhance their performance despite significant health risks. Mitten currently serves as chair of the National Collegiate Athletic Association's Competitive Safeguards and Medical Aspects of Sports Committee, which is responsible for formulating guidelines and recommendations to protect intercollegiate athletes' health and safety.

After ten years at South Texas, Mitten was recruited to become a Marquette Law School faculty member. "I wasn't looking to leave South Texas," Mitten recalls, "but I had to seize the opportunity to return to the Midwest and teach at an excellent law school that is part of a Catholic, Jesuit university." Upon Mitten's arrival, Dean Howard Eisenberg charged him with making Marquette's sports law program the best in the country. With substantial assistance from the Law School's administration and faculty, the National Sports Law Institute's Board of Advisors, and the Institute's Associate Director Paul Anderson, this goal was quickly achieved.

Now the nation's most comprehensive sports law program, Marquette's program attracts students from all over the country. Mitten sketches out some of the program's goals: "Marquette's sports law curriculum gives students the opportunity to study how several bodies of law interrelate in regulating one of the nation's largest and most popular industries. Our program provides students with a readily transferable package of legal knowledge and skills that is valuable regardless of whether they ▶



ever practice sports law. It also gives them an interdisciplinary perspective since economic, sociological, and historical factors have a significant influence on the development of this area of the law.”

Mitten recently completed a two-year term as Associate Dean for Academic Affairs. Serving as the school’s second-in-command is a challenge at any time, and Mitten’s term covered an important transitional period for the Law School. Dean Eisenberg originally asked him to succeed Professor Shirley A. Wiegand and to work with him as Associate Dean, but Eisenberg died a month before Mitten was to assume this position. Mitten thereupon served as Associate Dean for both interim Dean Janine P. Geske and Dean Joseph D. Kearney. He deeply regrets not having had the opportunity to work with Dean Eisenberg in this capacity, but is very enthusiastic about the Law School’s future based on his experiences as Associate Dean. He says with confidence, “There’s no doubt that both Janine and Joe share Howard’s philosophy regarding the future direction of Marquette Law School.”

Now able once again to focus his attention on Marquette’s sports law program and the National Sports Law Institute, Mitten is eager to

develop the growing national and international reputation of the program and the NSLI. This rapidly growing area of law with global implications attracted sports law professors and lawyers from six continents and 14 countries to the NSLI’s 2003 sports law conference in Milwaukee. Mitten currently is coauthoring a sports law casebook that will be published by Aspen in early 2005; one of its unique features is that it devotes an entire chapter to Olympic and international sports law issues. Having recently participated in an international symposium on Sino-American sports law at Huaqiao University in the People’s Republic of China, Mitten is looking forward to teaching a course on American sports law at the University of Melbourne in Australia in February 2006.

Mitten long ago overcame his fear of public speaking and credits careful preparation and now a lot of experience for his having developed the ability to become a law professor who teaches both inside and outside the Law School. He frequently speaks throughout the country before groups of law professors, lawyers, physicians, and athletic administrators on a variety of sports law topics. His peers elected him to the Sports Law Association’s Board of Directors, and he formerly served as chair of the Law and Sports Section of the Association of American Law Schools.

Mitten brings much to Marquette Law School. It is evident that he enjoys using sports law to help provide the school’s students with a well-rounded, interdisciplinary legal education which develops a variety of transferable legal skills. It is equally evident that he provides them an example of how they should strive fully to use their talents, knowledge, and skills to serve others, even if it may be necessary to overcome some personal obstacles in order to do so. •