2002 NSLI Year in Review

by Paul M. Anderson, Editor

During the past year the National Sports Law Institute and the Sports Law Program at Marquette University Law School have continued to provide educational opportunities for law students as well as current and future leaders in the sports industry, while also providing a national forum for the discussion and thoughtful consideration of American and international sports issues and encouraging input by persons and organizations with a wide range of viewpoints.

INTELLECTUAL PROPERTY ISSUES IN SPORTS: HOW THEY HAVE AFFECTED THE MODERN SPORTS INDUSTRY AND ITS BUSINESS PRACTICES

On Friday, October 25, 2002, the National Sports Law Institute hosted a conference on "Intellectual Property Issues In Sports: How They Have Affected The Modern Sports Industry and its Business Practices," sponsored by the NSLI and the law firm of Foley & Lardner, at Marquette University's Alumni Memorial Union. The conference consisted of four panel discussions. The first panel discussed the "Scope of Protectable Rights in Sports Events and Game Accounts." Moderated by Marquette University Law School Assistant Professor Eric Goldman, the panel included: Gregory J. Heller, Associate Team Counsel for the Atlanta Braves, Hawks and Thrashers and Counsel to Turner Sports, Turner Sports Interactive and the Phillips Arena, who spoke on "Protecting Rights in Sports Events and Game Accounts;" Philip Hochberg, of Counsel with Verner, Lipton, Bernhard, et al., in Washington D.C., who spoke on "Copyrights In Game Events And Broadcasts, Including Rules Applicable To Cable TV And Satellite;" and David Swenson, the George G. Kelly Professor of Law at Baylor Law School in Waco, Texas, who spoke on "Misappropriation of Sports Event Information: When Is There a State Law Cause of Action for Communication of Game Accounts Without Permission?"

Professor Matt Mitten, NSLI Director and Marquette University Law School's Associate Dean for Academic Affairs moderated the second panel that discussed "Athletes' Right of Publicity, Licensing & Merchandising." Panelists included: John Collins, partner with Collins & Collins in Chicago, Illinois who presented "History of an Athlete's Right of Publicity;" Bob Lattinville a shareholder in the Corporate Department of Stinson Morrison Hecker, LLP in St. Louis, Missouri, who spoke on "Licensing Publicity Rights;" and Professor Diane Zimmerman from New York University School of Law who presented "Making Money On It Doesn't Make Speech 'Commercial:' Line-Drawing and Publicity Rights."

After a break for lunch, sponsored by the Sports & Entertainment Law Section of the State Bar of Wisconsin, Steve McKeelvey, Assistant Professor of Sport Law & Sport Marketing in the Sport Management Program at the University of Massachusetts - Amherst, the panel titled "Scope of Protectable Rights in Sports Teams and Event Trademarks and Logos." Professor McKeelvey began the panel with his presentation on "Legal Issues & Update on Use of Special Event Tickets and Promotions." Other panelists included: Dan Perini, Associate General Counsel for the United States Olympic Committee in Colorado Springs, Colorado, who presented an "Overview of How Olympic Marks are Protected." John Fredrickson with Boyle, Fredrickson, Newholm, Stein & Gratz, SC in Milwaukee spoke on "Enforcement of Intellectual Property Rights by Leagues - Pushing the Envelope;" and Ken Kantzer, the Assistant General Counsel of Nike, Inc., in Beaverton, Oregon, spoke on "Trademarking Team Names."

The final panel, moderated again by Professor Eric Goldman, focused on the "Scope of Protection for Methods/Styles of Play and Playing Equipment." Panelists included Michelle Bugbee, Associate Patent Attorney with Spalding Sports Worldwide, Inc. in Chicagao, Massachusetts, spoke on the "Scope of Protection and the Difficulty in Enforcing Patents for Sports Equipment and the Crowded Patent Field," and Brian McNamara, a partner and member of the Intellectual Property Department and Electronics Practice Group with Foley & Lardner in Milwaukee.
John Fredrickson, Boyle, Fredrickson, Newholm, Stein & Gratz, SC

Washington, DC, spoke on "Challenges in Obtaining Enforceable Patent, Copyright or Trademark Protection for Methods of Sports Play."

Thereafter, the NSLI hosted a reception for all attendees. Approximately 130 individuals from the sports industry and academia attended the conference. A limited number of conference materials are still available from the NSLI for $35.00. For more information, contact the NSLI at 14-288-5815, or check the NSLI's website at http://www.marquette.edu/law/sports/pubs.html#conference.

NSLI BOARD OF ADVISORS

The National Sports Law Institute's Board of Advisors assists the NSLI's Directors with conference and educational programs, fund raising efforts, award nominations, and helps guide the future direction of the NSLI and Marquette University Law School's Sports Law Program. New additions to the Board in 2002 include Kenneth L. Shropshire, the David W. Hauck Professor at the Wharton School and the Chairman of the Legal Studies Department at the University of Pennsylvania in Philadelphia, Pennsylvania; Stephen Ross, Professor of Law at the University of Illinois College of Law in Champaign, Illinois; Jill Pilgrim, Senior Counsel, USA Track & Field, Indianapolis, Indiana; Scott Blackmun, Chief Operating Officer, Anschutz Entertainment Group, Los Angeles, California; Alan Ostfield, Senior Vice President of Business and Legal Affairs, Palace Sports & Entertainment, Auburn Hills, Michigan, and Clark Griffith, Owner/Attorney, CCG, PA, Minneapolis, Minnesota. Also, Bill Miller, Executive Vice President/Professional Sports, The Leib Group, LLC, is the new Sports Law Alumni Association Liaison to the Board of Advisors.

SPORTS LAW ALUMNI ASSOCIATION

The Marquette University Law School Sports Law Alumni Association developed from what was originally known as the NSLI Alumni Board. The Association consists of Marquette University Law School Alums who are committed to supporting the NSLI and the Sports Law Program. The Association is run by its Management Committee and includes an Awards Committee that selects the annual winner of the Sports Law Alumnus of the Year Award; a Scholarship Committee that assists in obtaining funds for the Annual Alumni Scholarship; and a Programming/Publications Committee that assists in planning alumni events and in publishing the Alumni Newsletter.

The Alumni Association also hosted the first Sports Law Alumni Golf Outing on July 16, 2002. The outing raised approximately $1,000 that was donated to the Annual Alumni Scholarship Fund.

SPORTS LAW CERTIFICATE

The following individuals earned the NSLI's Sports Law Certificate upon graduation from Marquette University Law School in the spring semester of 2002: Josh Brady, Eugene LaFlamme, Ben Menzel, Erika Olander, Christy Sitter, Mike Sneathem, Jeff Stobbe and Melissa Tuskaik. Ian Harper and Tyler Qualio earned their Certificates when they graduated in December of 2002. The requirements for the NSLI's Sports Law Certificate are available on the web at http://www.marquette.edu/law/sports/sl_cert.html.

AWARDS & SCHOLARSHIP DINNER

On April 19, 2002, the NSLI hosted its annual Awards & Scholarship Dinner at the Wisconsin Club in downtown Milwaukee. At the dinner the NSLI honors the winners of several student awards and scholarships.
recognizes its Sports Law Certificate candidates and Sports Law Moot Court team, thanks the outgoing members of the Marquette Sports Law Review while also introducing the following year's editorial board, and honors the annual winner of the Joseph E. O'Neill Award.

STUDENT AWARDS & SCHOLARSHIPS

Francis D. & Jane Keogh Kelly Scholarship

The Francis D. & Jane Keogh Kelly Scholarship was established in 1997 to recognize a student in the Sports Law Program at Marquette for his or her excellence in the study of sports law and his or her service to the Sports Law Program at Marquette. The 2001-2002 winner of the Scholarship was then Marquette Sports Law Review Editor-in-Chief, Ben Menzel.

Joseph E. O'Neill Prize for Student Writing

Each year since 1997, the Joseph E. O’Neill prize for Student Writing has been presented to the Marquette University Law School student who is judged to have authored the best student article published in the Marquette Sports Law Review during the previous academic year as judged by the Sports Law Review’s Advisory Board. In

April of 2002, the Prize was presented to Editor-in-Chief, Ben Menzel for his article "Heading Down the Wrong Road: Why Deregulating Amateurism May Cause Future Legal Problems for the NCAA," which appeared in Volume 12, Number 2 of the Sports Law Review.

Joseph E. Tierney, Jr. Award

This award was created in remembrance of Joseph Tierney Jr., a former NSLI Board Member and strong supporter of the Institute. The Award is given annually to the Marquette University Law School student in the Sports Law Program who graduates with the highest grade point average in sports law classes while completing the requirements for the Sports Law Certificate. The 2002 winner of this award was Michael Sneathern.

In addition, Mrs. Bernice Y. Tierney, the widow of Joseph E. Tierney (L'41), recently pledged an annual $11,000 gift to the Sports Law Program at Marquette, of which $1,000 will be used to fund the Tierney, Jr. Award. The remaining $10,000 will support scholarships for the Editors of the Sports Law Review.

Martin J. Greenberg Award

This award was established in honor of former Director and current NSLI Board of Advisors Member Martin J. Greenberg. It is given annually to the third year law student who has excelled in the study of sports law and service to the sports law program. The 2002 winner of the Award was Ben Menzel.

Carl Scheer Venue Excellence Award and Martin J. Greenberg Venue Book Awards

The Carl Scheer Venue Excellence Award was created through the generosity of the Greenberg family trust, and is given to the student who writes the best analytical paper in the Sports Venues: From Election Day to Game Day, course taught by Professor Martin J. Greenberg. The 2002 winner of this award was Jeff Tanner.
JOSEPH E. O'NEILL AWARD

The Joseph E. O'Neill Award was established by the O'Neill family, the law firm of Davis & Kuelthau, S.C. and the National Sports Law Institute after Mr. O'Neill's untimely death in 1992. The award is given annually to an individual in the sports industry who has made a significant contribution to the field and done so while exemplifying the highest ethical standards. The 2002 winner of the O'Neill Award is former Conference USA Commissioner and current SEC Commissioner Mike Slive, a longtime member of the NSLI's Board of Advisors and supporter of Marquette's Sports Law Program.

CAREER PANELS

On Thursday, March 28, 2002, the NSLI hosted its Fifth Annual Sports Law Alumni Career Panel presenting alumni perspectives on breaking into the sports industry. Panelists included: Timothy Baldwin (L'00), Director of Tax and Business Consulting, Empowered Financial Group, Milwaukee, Wisconsin; Eryn Doherty (L'00), Attorney, United States Government, National Labor Relations Board, 30th Region, Milwaukee, Wisconsin; Shawn Eichorst (L'95), Director of Athletics, University of Wisconsin-Whitewater, Whitewater, Wisconsin; and Chris Meisel (L'94), Christopher E. Meisel Law Office, SC, Glendale, Wisconsin.

On Thursday, October 24, 2002, the NSLI hosted another alumni panel discussing "Careers in Athletics." Panelists included: Keith Miller (L'01), Director of Compliance, University of Southern California, Los Angeles, California; and Greg Heller (L'96), Assistant Team Counsel, Atlanta Hawks & Atlanta Thrashers & Counsel, Turner Sports, Turner Sports Interactive & Phillips Arena, Atlanta, Georgia.

GUEST SPEAKERS

In 2002 the NSLI continued hosting sports law experts to share their perspectives with our students. On Thursday, January 31, 2002, Professor Richard McLaren, a member of the University of Western Ontario Law School faculty in London, Canada, Salary Arbitrator for the National Hockey League and the National Hockey League Players Association, member of the Court of Arbitration for Sport (CAS), and a member of the NSLI Board of Advisors, spoke on "Money Earned and Money Lost. NHL Salary Arbitration; Pro Tennis Doping Sanctions." On Friday.

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April 19, 2002, Attorney Michael Janecek of Hughes, Watters & Askanase, LLP in Houston, Texas, spoke on "Combining the Practice of Law with Player Representation." Also, on Wednesday, November 13, 2002, Professor Paul Anderson, NSLI Associate Director, presented his first annual "Current Issues in Sports Law."

WELCOME MIXER

On Wednesday, September 4, 2002, the NSLI hosted its second annual Welcome Mixer for students and alumni interested in the Marquette University Law School Sports Law Program at McGillieuddy's Bar in Milwaukee.

MOOT COURT


INTERNSHIPS

The NSLI's internship program offers students in Marquette University Law School's Sports Law Program opportunities to intern with various sports organizations for one semester. In 2002 the NSLI offered internships with Conference USA, GameBreakers Group, Marquette University's Department of Intercollegiate Athletics, Miller Brewing Company, the Milwaukee Brewers, the Milwaukee Bucks, the Milwaukee Rampage, the Milwaukee Tennis Classic Foundation, the Milwaukee Wave, ScheerGame Sports Development LLC, and the University of Wisconsin - Whitewater. New internships have recently been created with the University of Wisconsin - Milwaukee, Intersport in Chicago, and the Pettit National Ice Center.

PUBLICATIONS

Marquette Sports Law Review

Under the leadership of former Editor-in-Chief Ben Menzel, Volume 12, Number 2, of the Marquette Sports Law Review was published in the spring of 2002. The issue included the following articles on various topics including:

- Marketing, Protection and Enforcement of NCAA Marks
- The Game Behind the Games
- Me and Muhammad
- Quid Pro Quo: Restoring Educational Primacy to College Basketball
- Shaking up the Line-Up: Generating Principles for an Electrifying Economic Structure for Major League Baseball
- Media Leagues: Australia Suggests New Professional Sports Leagues for the Twenty-First Century
- Heading Down the Wrong Road?: Why Deregulating Amateurism May Cause Future Legal Problems for the NCAA
- Stop the Presses! First Amended Limitations of Professional Athletes' Publicity Rights

Under the leadership of current Editor-in-Chief, Kristin Muenzen, Volume 13, Number 1 was recently published and included the following articles:

- Taxation of U.S. Athletes Playing in Foreign Countries
- Baseball Spectators' Assumption of Risk: Is It "Fair" or "Foul"
- Benjamin N. Cardozo: New York Giant
- Pay Equity for Intercollegiate Coaches: Exploring the EEOC Enforcement Guidelines
Each issue of Sports Facility Reports also includes cumulative Facility Update Charts that provide brief synopses of each team in the four major sports leagues. This newsletter is only available online at www.mu.edu/law/sports/sfr/sfr.html.

You Make The Call...

Two issues of the National Sports Law Institute’s sports law case reporting newsletter You Make the Call... were published in 2002. Volume 4, Numbers 1 and 2, included case reports on 11 recent sports cases. This newsletter is only available on the internet at www.mu.edu/law/sports/call/call.html.

WEBSITE

The website for the National Sports Law Institute and Marquette University Law School’s Sports Law Program was recently significantly revised. Please visit the site at www.mu.edu/law/sports/index.html for further details on sports law events, publications, the NSLI’s Sports Law Certificate, and the Sports Law Program at Marquette University Law School.

MEDIA COMMENTARY

During the past year, NSLI Director Matt Mitten and Associate Director Paul Anderson have offered commentary on sports-related issues to various media including the Chicago Tribune, the Cincinnati Inquirer, the Pittsburgh Post-Gazette, SportsBusiness Journal, the Washington Post, and Fox Morning News with Mark Cancannon.
NATIONAL SPORTS LAW INSTITUTE DIRECTORS SERVICE, PUBLICATIONS & PRESENTATIONS

In 2002, the Directors of the National Sports Law Institute of Marquette University Law School to be engaged in several sports-related activities, produced several publications, and spoke at several sport law conferences.

In addition to being named the Associate Dean for Academic Affairs at Marquette University Law School, Professor Matt Mitten, the Director of the National Sports Law Institute, is the Chair of the NCAA's Committee on Competitive Safeguards and Medical Aspects of Sports, a Member of the Board of Directors of the Start Playing Safe Foundation, Inc., and a member of the Planning Committee for the 2003 Sports Lawyers Association conference.

Professor Matt Mitten produced the following publications:


- **Criminal Consequences of Commotio Cordis, 89 Amer. J. Cardiology 210 (with Barry J. Maron, M.D., and Catherine G. Burnett, J.D.) (2002).**

Professor Mitten's presentations include:

- **Speaker, Advanced Team Physician Course, San Antonio, TX, December 5-6, 2002 (six panel presentations).**

- **Panelist, Why Sports Journalism Matters, Winning and Losing: The Ethics of Sports Journalism, The Lucius W. Nieman Symposium, Marquette University, November 6, 2002.**


- **Instructor, Sports Law Arbitration: An American Perspective, Graduate Arbitration Program, TC Beirne School of Law, The University of Queensland, Brisbane, QLD Australia, July 25, 2002.**


- **Speaker, Careers in Sports Law, St. John’s Jesuit High School, Toledo, OH, May 10, 2002.**

- **Speaker, Drug Testing Issues in Sports, South Texas College of Law Sports and Entertainment Conference, Houston, TX, April 26, 2002.**

- **Moderator and Panelist, Professional Sports League Contraction: Historical, Legal, and Business Perspectives, UTLAW and Toledo Bar Association CLE Conference, Toledo, OH, April 11, 2002.**


Professor Paul Anderson, the Associate Director of the National Sports Law Institute, is the Editor of the Journal of Legal Aspects of Sport, produced by the Society for the Study of the Legal Aspects of Sport and Physical Activity; the Vice-Chair and Program Coordinator for the Sports & Entertainment Law Section of the State Bar of Wisconsin; and a member of the State Bar of Wisconsin’s Section Leaders Advisory Council and its Subcommittee on Section Membership and its Law Student Membership Committee. Professor Anderson is a member of the Editorial Board of Athletic Business Magazine, the International Sports Journal, the Sports Law Reporter, and is the legal column editor for SportsTravel Magazine.

Professor Anderson also produced the following articles:

- **Codes of Conduct: Taking Steps to Avoid Sexual Harassment Within Sports Organizations, SPORTSTRAVEL, (October 2002).**

- **A Cart That Accommodates: Using Case Law to Understand the ADA, Sports and Casey Martin, 1 VIRGINIA SPORTS & ENT. LAW JOURNAL 211 (2002).**

- Stadiums, Arenas, And Sports Referendums: A Comparative Analysis Of Cities Involved In The Stadium Game, (with Michael Mondello), has been accepted by the INTERNATIONAL JOURNAL OF SPORT MANAGEMENT.

- The Internship Agreement: Recommendations and Realities, with Lori Miller and Ted Ayres, 12 JOURNAL OF LEGAL ASPECTS OF SPORT 37 (2002).

Professor Anderson's presentations include:


- Risk Management for Athletic Associations, during a Sports & Fitness Management open house at the University of Wisconsin - Parkside, April 25, 2002.


What is Sports Law, American Bar Association/Law Student Division, Seventh Circuit Spring Meeting, February 23, 2002, Milwaukee, Wisconsin.

NSLI BOARD MEMBER PROFILE
Charles Mulcahy

Chas Mulcahy has been involved with the NSLI since its inception. Chas was President of the Woolsack Society (a support organization for the Marquette University Law School) when the idea for the NSLI was originally presented. The Society endorsed the concept while providing seed money to commence the planning and implementation process.

Chas served as an adjunct professor in the Marquette Law School from 1975 through 1990, teaching the dispute resolution course. He is a graduate of Marquette University and the Law School. He also has served as President of the Law School Alumni Association.

In 1975, with the help of Marquette Athletic Director Al McGuire and a small group of volunteers, Chas formed the Milwaukee Tennis Classic ("MTC"), which is now the largest and longest running men's and women's intercollegiate tennis tournament in the U.S. MTC has a Foundation with an MTC/ Milwaukee Public Schools Scholarship Program as well as an extensive TEAM Community Outreach Program.

Chas does all this while serving as a partner of Whyte Hirschboeck Dudek S.C., a Milwaukee based business law firm. He has represented various participants in the business of sports and negotiated numerous contracts to protect their interests.

Chas is also involved in a wide variety of community projects. He has been recognized on numerous occasions for his community contributions including the Human Relations Award from the National Conference on Community and Justice as well as the NSLI's Joseph E. O'Neill Award. Chas is married and he and his wife Judy have three daughters, Mary, Meg and Beth - who played on the Varsity Tennis Team at Marquette. In 1988, Chas was elected to the Marquette M Club Athletic Hall of Fame.

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