

THE BUZZER SOUNDS FOR THE JOURNAL OF SPORTS AND ENTERTAINMENT LAW

Charles A. Sullivan

It is with more than a little sadness that I write to bid farewell to the *Journal of Sports and Entertainment Law*. Born in 1991 as the *Journal of Sport Law*, it was from the beginning a premier chronicler of the intersection of law and sports in America. In 2004, with Volume 14, it added “Entertainment” to its title, but continued to have a primary focus on the world of sports. The issues it addressed over the years were many and varied as it provided a unique forum for views of scholars, practitioners, and students on the problems of the day.

The *Journal of Sport Law* was founded by Professor Lawrence Bershad, whose vision and energy were largely responsible for its success. It continued under his guidance until 2004, at which point Professor Michael Zimmer became faculty advisor. When Mike visited at another school shortly thereafter, I came off the bench for that year. A decade later, I find myself still subbing for him as I write this eulogy.¹

The *Journal* published more than 300 articles, notes, comments and essays, often featuring lead articles from major figures in the sports law arena, including Professors Roger Abrams,² Water T. Champion, Jr.,³ Marc Edelman,⁴ Douglas

1. No allusion is intended to Wally Pipp and Lou Gehrig. See Amy Bernstein, Comment, *Into the Red Zone: How the National Football League’s Quest to Curb Concussions and Concussion-Related Injuries Could Affect Players’ Legal Recovery*, 22 J. SPORTS & ENTER. L. 271, 309 n.22 (2012) (describing how, during the 1925 baseball season, Pipp, then the New York Yankees first-baseman, was benched due to a concussion-related headache stemming thus opening the door for Lou Gehrig; Pipp was traded the next season).

2. *The All Star Baseball Law Team*, 1 SETON HALL J. SPORT L. 201 (1991); *Crick-et and the Cohesive Role of Sports in Society*, 15 SETON HALL J. SPORTS & ENT. L. 39 (2005); *The Trial of Rube Waddell*, 19 SETON HALL J. SPORTS & ENT. L. 1 (2009) (with Alan Levy).

3. *Car Race Waivers’ Checkered Flag on Third Party Loss of Consortium Claims*, 14 SETON HALL J. SPORTS & ENT. L. 109 (2004); *Oh, What A Tangled Web We Weave: Reality TV Shines A False Light on Lady Duff-Gordon*, 15 SETON HALL J. OF SPORTS &

Leslie,⁵ and Ray Yasser.⁶ Their work and the contributions of numerous other professors, practitioners and industry figures, brought Seton Hall Law School significant attention in other legal literature.⁷ More remarkably, the student work published in the *Journal* often broke new ground in analyzing cutting edge issues from a legal perspective. Last but not far from least, the *Journal* provided a signal service over the years by bringing together major players (I use the term in both senses!) in the Sports Law Symposium, which typically dealt with a “hot topic” making headlines at the time, and whose Proceedings were available to the world upon publication in the *Journal*.

The topics treated were as varied as sports itself and, later, of entertainment. But the issues we addressed over the years were often ones that continue to resonate today. For example, the very first lead article in Volume 1 dealt with *Amateurism and Compensation*, a hot topic at the moment as Northwestern college football players seek recognition by the National Labor Relations Board.⁸ And gender equity was a continued focus of a number of articles as Title IX changed the face of college athletics.⁹

While sports remained the primary focus of the *Journal*, the world of entertainment was not neglected after 2004. Entertainment and popular culture was a focus of Professor

ENT. L. 27 (2005); *Looking Back to Mackey v. NFL to Revive the Non-Statutory Labor Exemption in Professional Sports*, 18 SETON HALL J. SPORTS & ENT. L. 85, 102 (2008).

4. Could the New Women’s Professional Soccer League Survive in America? How Adopting A Traditional Legal Structure May Save More Than Just A Game, 19 SETON HALL J. SPORTS & ENT. L. 283 (2009) (with Elizabeth Masterson).

5. Douglas Leslie, Sports Liability Waivers and Transactional Unconscionability, 14 SETON HALL J. SPORTS & ENT. L. 341 (2004).

6. *Attacking the NCAA’s Anti-Transfer Rules as Covenants Not to Compete*, 15 SETON HALL J. SPORTS & ENT. L. 221 (2005) (with Fees); *In the Heat of Competition: Tort Liability of One Participant to Another: Why Can’t Participants be Required to be Reasonable?*, 5 SETON HALL J. SPORT L. 253 (1995).

7. The *Journal* has been cited more than 1500 times (search conducted on Lexis Advance, March 25, 2014).

8. Ben Strauss, *In a First, Northwestern Players Seek Unionization*, NY TIMES, Jan. 29, 2014, B-10. As this went to press, Region 13 of the National Labor Relations Board ruled that the players were “employees” and directed an election among Northwestern’s scholarship football players. See http://www.cnn.com/2014/images/03/26/Decision_and_Direction_of_Election.pdf.

9. E.g. Arline F. Schubert, *Changes Influenced by Litigation in Women’s Intercollegiate Athletics*, 1 SETON HALL J. SPORT L. 237 (1991); Bethany Swanton, *Girls Can Play, Too: Has the Lack of Female Leadership in NCAA Athletics Become an Afterthought?*, 20 SETON HALL J. SPORTS & ENT. L. 1 (2010).

Kimberlianne Podlas's several articles,¹⁰ and other authors wrote on topics ranging from morals clauses in talent contracts¹¹ to the market for fine art.¹² Students working in this space addressed issues as diverse as the effects of the Americans with Disabilities Act on stadium seating in movie theaters,¹³ music sharing on the internet,¹⁴ and the intersection of commercial speech and tobacco advertising.¹⁵

Fast forwarding to the present, the *Journal* continues to play a vital role in the national discourse. Seton Hall's Rodino Law Library is digitizing all the school's law reviews, and, while the project is still in its infancy, downloads from the *Journal* are impressive.¹⁶ Leading the list is a 2011 piece by Joseph Monaghan, class of 2011, whose *Social Networking Website's Liability for User Illegality*¹⁷ recorded an astonishing 9229 downloads. Less stratospheric but still very impressive are the publications of Kevin Hales, whose *A Trivial Pursuit: Scrabbling for a Board Game Copyright Rationale*,¹⁸ was downloaded 904 times. Amy Bernstein, class of 2012, takes the bronze at 607 for *Into the Red Zone: How the National Football League's Quest to Curb Concussions and Concussion-Related Injuries Could Affect Players' Legal Recovery*.¹⁹ As more issues of the *Journal* are digitized by Rodino, the num-

10. *Homerus Lex: Investigating American Legal Culture Through the Lens of The Simpsons*, 17 SETON HALL J. SPORTS & ENT. L. 93 (2007); *Guilty On All Accounts: Law & Order's Impact on Public Perceptions of Law and Order*, 18 21 SETON HALL J. SPORTS & ENT. L. 1 (2008); *Funny Or No Laughing Matter?: How Television Viewers Interpret Satires of Legal Themes*, 21 SETON HALL J. SPORTS & ENT. L. 289 (2011).

11. Fernando M. Pinguelo & Timothy D. Cedrone, *Morals? Who Cares About Morals? An Examination of Morals Clauses in Talent Contracts and What Talent Needs to Know*, 19 SETON HALL J. SPORTS & ENT. L. 347 (2009).

12. Brian D. Tobin, *The Virtues of Common Law Theories and Disclosure Requirements in the Market for Fine Art*, 21 SETON HALL J. SPORTS & ENT. L. 333 (2011).

13. Andrea W. Hattan, Comment, *Stadium-Style Seating Movie Theaters: Does The Cornerstone of the Theater Industry's Recent Transformation Violate the Americans With Disabilities Act?*, 14 SETON HALL J. OF SPORTS & ENT. L. 267 (2004).

14. Tara Touloumis, Comment, *Buccaneers and Bucks from the Internet: Pirate Bay and the Entertainment Industry*, 19 SETON HALL J. SPORTS & ENT. L. 253 (2009).

15. Kate E. Wigginton, Comment, *Will the Supreme Court Knock Tobacco Advertising Out of the Park for Good?: The Commercial Speech Implications of the Family Smoking Prevention and Tobacco Control Act*, 21 SETON HALL J. SPORTS & ENT. L. 533 (2011).

16. All download numbers are as of March 24, 2014.

17. 21 J. SPORTS & ENTER. L. 499 (2011).

18. 22 J. SPORTS & ENTER. L. 241 (2012).

19. 22 J. SPORTS & ENTER. L. 271 (2012).

ber of downloads will continue to grow.²⁰

A look back at the *Journal* over the years reveals its struggles and successes. Volume 1 was about half the size of later volumes of the *Journal*, its two issues totaling only 341 pages, and Volume 3 was even shorter – a single issue of 257 pages. In later years, each of the two issues in any volume would approach or exceed those lengths and the format came to be fairly standard, consisting of symposium proceedings, six to eight lead articles, and six to eight student notes. Given that the membership of the *Journal* hovered around 30, there was, as befits a publication dealing with sports, intense competition among the student members to be published.

It's impossible to acknowledge, much less thank, the literally hundreds of individuals who wrote for, edited, or advised the *Journal* over the years. As the current volume ends, there were 24 Editors-in-Chief and probably 250 or so alumni members, many holding important editorial positions. From Peter Carton, (Volume 1) to Kyle Cassidy (Vol. 24), the dedication put into the *Journal* by the EiC's, E-Boards, and Members is enormous.

With this record of accomplishment, the obvious question is why the *Journal* is closing its doors. To a large extent, it is the victim of its own success in bringing legal analysis to bear on previously ignored fields. As the number of journals devoted to sports and entertainment proliferated in the last decade, it became increasingly challenging to ensure publication of the high-quality articles upon which the *Journal of Sports and Entertainment Law* built its reputation. Rather than lowering its standards, the *Journal's* students and advisors decided to end a very strong run on an upbeat note.

The second reason was simply that declining student numbers in law schools across America, including at Seton Hall, rendered it increasingly difficult to produce the kind of high quality publication that the *Journal's* readers had come to expect. A glance at the masthead for this, the last, issue reveals only eight members. While I cannot say enough about the dedication of each and every one of them, given the disproportionate load they bore in writing their comments and putting out this last issue, the writing was clearly on the wall.

20. Visit the *Journal* on-line at http://scholarship.shu.edu/sports_entertainment/.

2014]

The Buzzer Sounds

- 5 -

And so I end where I began: we're proud of the *Journal* and thankful to all who contributed to it in so many ways during its run.

Charles A. Sullivan
Andrea J Catania Endowed Professor of Law
April 2014