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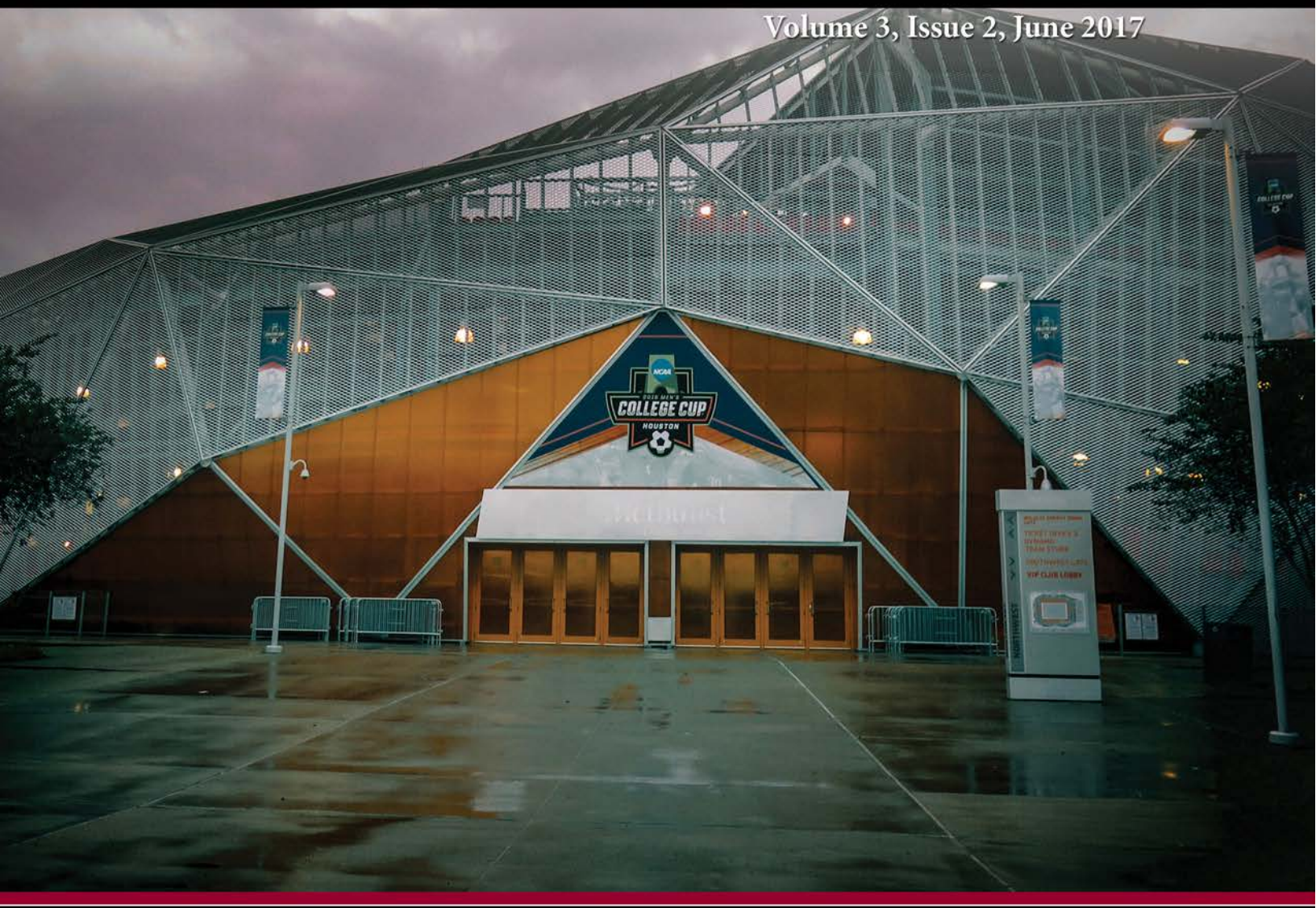

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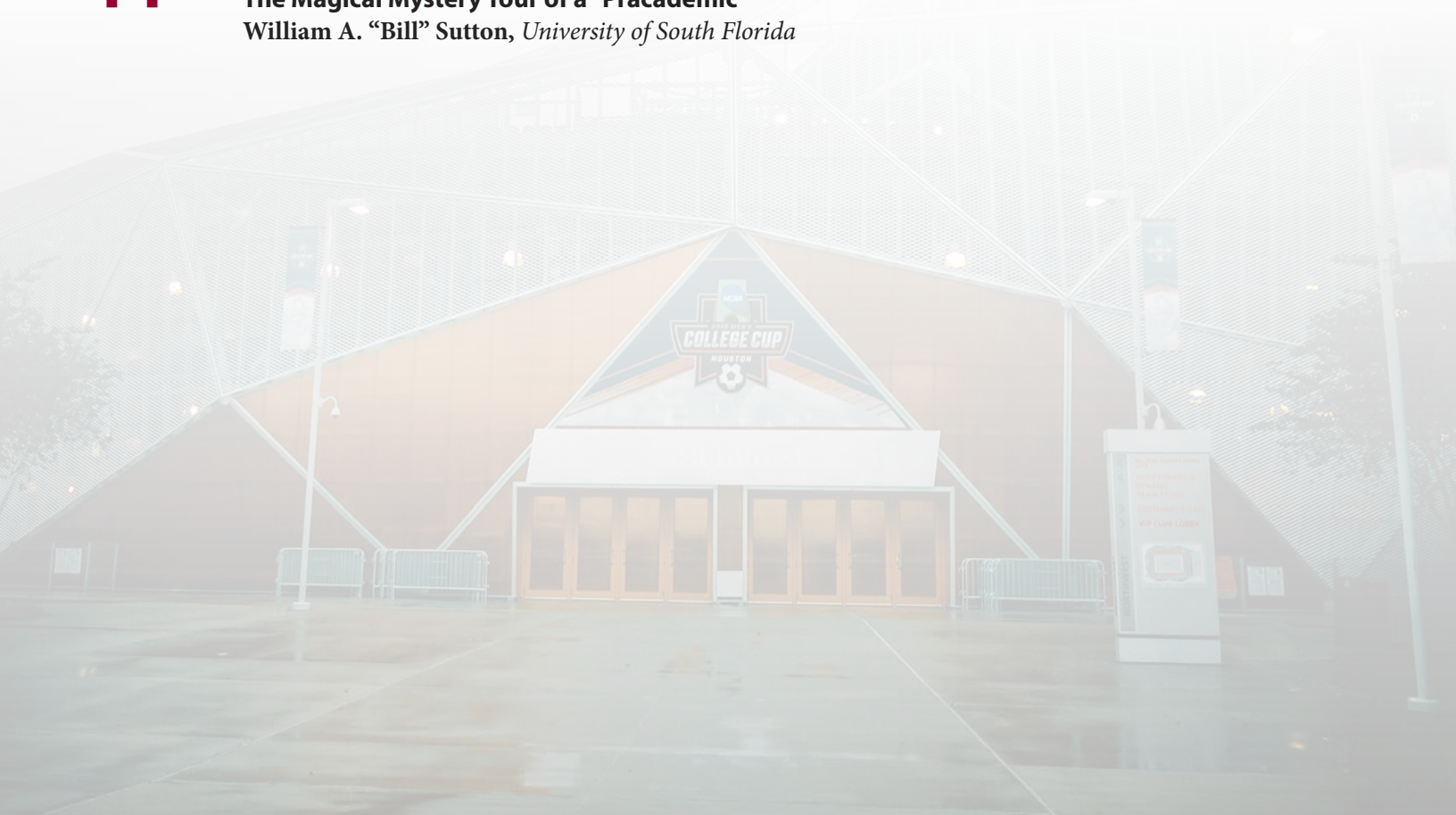

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Preservation of Amateurism and the Commercial Regulation of NCAA Sports

Thomas A. Baker III, *University of Georgia*

No issue is more important to the multi-billion dollar industry of college athletics than the legal preservation of the National Collegiate Athletic Association's (NCAA) unique form of amateurism. The NCAA's version of amateurism refers to regulations that restrict student-athlete compensation to the full cost-of-attendance, an amount set by each school that covers tuition, books, room and board, fees, and some miscellaneous cost-of-living expenses. The NCAA and its media partners push the position that amateurism is vital to the continued commercial success of college football and college basketball because consumers would lose interest in those products if athletes were to be compensated with amounts higher than what they are compensated with currently. As stated by Natasha Brison and I in 2015 (quoting *National Collegiate Athletic Association v. Board of Regents of University of Oklahoma,* 1984, p. 120), this notion stems from Justice Stevens' seminal statements in the Supreme Court decision, *NCAA v. Board of Regents* (*Board of Regents*; 1984), statements that a progeny of district and appellate circuit courts have relied upon in protecting, from judicial scrutiny, all regulations that the NCAA deemed necessary to preserve the "revered tradition of amateur athletics."

For the better part of three decades, judicial respect for preserving amateurism within college sports provided the NCAA with fortification from a barrage of legal challenges brought by student-athletes. Relatively recent legal losses in commercial litigations like *O'Bannon v. NCAA* (2015) and *In Re NCAA Student-Athlete Name & Likeness* (*Keller;* 2013) from the Ninth Circuit, and *Hart v. Electronic Arts, Inc.* (2013) from the Third Circuit, however, demonstrate a decrease in the judicial deference that fortified the NCAA, and its business partners, from antitrust law for most of its existence. The NCAA now appears vulnerable to legal challenge. Two pending antitrust actions (*Jenkins v. NCAA and Alston v. NCAA*) exacerbate the need for research aimed at

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guiding the courts in the resolution of legal issues that potentially could change the way the NCAA regulates the business of college athletics.

This need has not gone unnoticed. Legal scholars and economists have actively engaged in research investigations that examine NCAA regulation of the "revered tradition" of amateur college athletics. The implications of legal decisions involving the NCAA extend well beyond its products and business partners because the law developed in those cases could be applied by analogy to other sport and entertainment producers. With so much money at stake, industrial interest and involvement in pending and future commercial law cases brought against the NCAA will likely increase.

The central purpose of this article is to introduce the reader to the particular legal problems currently facing the NCAA. The information in this article should be of particular interest to those who conduct business with the NCAA and its member institutions in the production, distribution, sponsorship, and marketing of NCAA sports products. This article also involves information concerning legal regulation of media rights management in ways that could influence other entertainment producers, particularly those in the motion picture, radio, and television broadcast industries.

The framework for this article is built on my prior and present research concerning the legal treatment of the NCAA's preservation of amateurism. Over the past seven years, I have conducted seven research investigations on this topic and the findings from those studies are summarized here in a format that explains the importance of consumer interest in shaping the future of intercollegiate athletics. The first step in presenting the research involves an examination of Justice Stevens' opinion in *Board of Regents* (1984) and his description of the NCAA's function in regulating amateurism for the purpose of preserving the product of college football.

Board of Regents and the Procompetitive Presumption

The ironic thing about *Board of Regents* (1984) is that the case did not involve amateurism. Instead, the case concerned an antitrust action brought by universities that challenged an NCAA television plan that limited (a) the number of college football games on national television, and (b) the number of times each NCAA program could be featured on national television. In writing for the majority, Justice Stevens introduced the financial regulation of student-athletes into the case for the purpose of analogy in his explanation for why the Court needed to search into the reasonableness of the market restraints resulting from the television plan.

Typically, contractual agreements that fix price and limit output in the same way that the NCAA television plan restricted broadcasts are condemned by courts as illegal under antitrust law (Baker, Maxcy, & Thomas, 2011). Sports leagues, however, are unique products in that they require some degree of cooperation among competitors in order to create their respective outputs (Thomas, Baker, & Byon, 2013). Justice Stevens identified the NCAA as a sports league and used student-athlete compensation limits as an example of one of the "myriad of rules" that "defined the competition to be marketed;" the type of rule that could only exist through cooperation among competing institutions (*Board of Regents*, 1984, pp. 101–102).

For Justice Stevens, the NCAA products were defined not only by the constitutive rules for how games were to be played, but also by an academic component that he identified as the "academic tradition" (*Board of Regents*, 1984, pp. 122–123). Justice Stevens believed that consumers looked to the academic tradition as what differentiated the college product from its professional counterparts. Within this academic tradition, Justice Stevens recognized requirements that students attend class and not be paid as key components that consumers valued in their preference for college sports products. Furthermore, Justice Stevens presumed that without a cap on student-athlete compensation, the NCAA sports products would be reduced to those of minor league sports and consumers would lose interest in them.

Without mutual agreement among competing member institutions to preserve amateurism, Justice Stevens found that the desire to win would lead schools to engage in activities (i.e., paying student-athletes) that he believed would threaten the academic tradition and thereby harm consumer interest in NCAA products (*Board of Regents*, 1984). Thus, the NCAA regulation of amateurism was found by the Court to be procompetitive because it widened consumer choice through the provision of an alternative, amateur football product that some consumers preferred to professional football. Based on that finding, the majority in *Board of Regents* (1984) determined that the nature of the NCAA products rendered the antitrust law based per se rule inapplicable, and necessitated an inquiry into NCAA restraints to discern whether they enhanced or inhibited competition.

Justice Stevens, however, was not done commenting on the NCAA regulation of amateurism. In his closing comments, he recognized the NCAA's important role in preserving the "revered tradition of amateurism in college sports" (*Board of Regents*, 1984, p. 120). He further added that "[t]here can be no question but that [the NCAA] needs ample latitude to play that role, or that preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics and is entirely consistent with the goals of the Sherman Act" (p. 120).

With judicial deference for the NCAA in mind, the Court applied the rule of reason test to the NCAA television plan. The rule of reason test provides courts with a mechanism for discerning whether a restraint on trade is reasonable or unreasonable. Through this test, courts balance the anticompetitive harms caused by the restraint against any procom-

petitive justifications proffered by the defendant (Feldman, 2009). If the restraint produces a net procompetitive effect, meaning that the good outweighs the bad, then there is no antitrust violation. If, however, the test balances heavier toward the harms, then the defendant's restraint is unreasonable and violates antitrust law.

The Court in *Board of Regents* (1984) applied the rule of reason to the facts and found that the NCAA television plan prevented individual competitors from competing in the market for college football broadcasts (*Board of Regents*, 1984). This restraint was found to have produced a net anticompetitive effect because it inflated the price paid for broadcasts at the expense of consumer preference for more football game broadcasts. Therefore, Justice Stevens and the majority held that the NCAA television plan violated antitrust law and this ruling effectively stripped the NCAA of its cartel control over the management of media rights for college football (*Board of Regents*, 1984).

Legal Treatment of the NCAA in the Wake of *Board of Regents*

In a study I conducted in 2011 with my colleagues Joel Maxcy and Cyntrice Thomas, we analyzed a line of district and federal appellate circuit cases that interpreted *Board of Regents* (1984) in ways that created a dichotomous application of antitrust law to NCAA regulations. On one side of the dichotomy were NCAA regulations that courts found to have anticompetitive effects within relevant markets because the regulations were viewed as serving an economic purpose.

For example, in *Law v. NCAA* (1998), the Third Circuit found a relevant input market for assistant basketball coaches and held that NCAA regulations that capped coach compensation imposed an unreasonable restraint on that market. In *Metropolitan Intercollegiate Basketball Association v. NCAA* (2004), four member institutions challenged an NCAA policy that limited the number of postseason tournaments for college basketball to one. The policy would have ended the National Invitational Tournament (NIT) postseason tournament. A district court denied the NCAA's summary judgement motion to dismiss the plaintiffs' action based on the finding of a relevant submarket for the operation of Division I men's basketball tournaments. The NCAA ultimately settled the case by purchasing the NIT for $40.5 million.

On the other side of the dichotomy, we found decisions from the Third, Fifth, Sixth, and Seventh Circuit Courts that applied Justice Stevens' statements on amateurism from *Board of Regents* (1984) in ways that insulated from the Sherman Act the NCAA eligibility rules, particularly those that limited athlete compensation. The Third, Fifth, and Sixth Circuit Courts treat any NCAA regulation of student-athletes as involving eligibility rules that are essential to the survival of college football in the face of commercial pressures (e.g., *McCormack v. NCAA*, 1988). The Third and Sixth Circuit Courts go as far as to find that student-athlete regulation is non-commercial and therefore outside the reach of antitrust law (e.g., *Smith v. NCAA*, 1998; *Bassett v. NCAA*, 2008).

Influence of Antitrust Law on the Business of College Sports

The influence and application of antitrust law to NCAA regulation of college sports in *Board of Regents* (1984) extended well beyond the facts of the case and is still being felt. In my study with Brison in 2015, we found that *Board of Regents* set in motion a "tectonic shift in power" that reshaped the business of college athletics from the outside in (p. 341). Specifically, changes in dealings with (outside) media partners produced internal changes to NCAA products. Those outside dealings were made possible because *Board of Regents* effectively stripped the NCAA of its control over media rights management for its members.

With his written opinion in *Board of Regents* (1984), Justice Stevens intended to break up the NCAA's control so that individual institutions would compete within that market to the benefit of consumers. Justices White and Rehnquist wrote a dissent in *Board of Regents* recognizing that the NCAA's role via the plan extended beyond limiting broadcasts. The dissent adopted a practical perspective of how broadcast rights for NCAA football games were—and still are—collectively negotiated and sold within the "competitive marketplace" (*Board of Regents*, 1984, p. 127). The dissenting justices would have preferred for the Court to preserve NCAA control and find that all NCAA regulatory activity fell outside the reach of antitrust law. They believed the NCAA regulatory controls over media rights kept intercollegiate athletics from being "professionalized to the extent that profit making objectives would overshadow educational objectives" (*Board of Regents*, 1984, p. 123; quoting, *Kupec v. Atlantic Coast Conference*, 1975, p. 1380). Justices White and Rehnquist were also concerned with the effect the case would have in harming less prominent schools in the marketplace of college athletics.

Brison and I found that both Justice Stevens and the dissent were correct in their predictions of the effect the decision would have on the market for college football. First, Justice Stevens was right in his position that consumers wanted more televised college football. In fact, consumer demand for broadcasts was so great that the market ballooned over time from a multi-million dollar industry into a multi-billion dollar industry (valued at more than $11 billion in 2014; Edelman, 2014). However, we also found that the dissenting justices in *Board of Regents* (1984) were correct in their position that the "competitive marketplace" for football broadcasts necessitated collective negotiation.

Justice Stevens' vision of media rights management at the institution level never really materialized. Immediately following the decision in *Board of Regents* (1984), one cartel was replaced with another as control over media management shifted from the NCAA to the Collegiate Football Association (CFA), a collection of 64 of the (then) most prominent college football programs. The ink had yet to dry on the words printed in *Board of Regents* before the CFA's cartel control was limited by an antitrust action in *Regents of the University of California, et al. v. American Broadcasting Companies, Inc.* (*ABC Sports Inc.*; 1984).

In *ABC Sports Inc*. (1984), Notre Dame and the Pac 10 (now 12) blocked the CFA's attempt to enter into an exclusive deal with ABC that would have prevented Columbia Broadcasting System (CBS) and the National Broadcasting Company (NBC) from broadcasting Pac 10 and Notre Dame games, respectively. For almost 10 years following *ABC Sports Inc*., the CFA maintained control over media rights for the remainder of its original members. In 1995, the Southeastern Conference (SEC) and the Big East ended the CFA with their decision to break free and manage their own media rights.

Today, very few NCAA member institutions in the Football Bowl Subdivision (FBS— which is the NCAA's highest division of athletic competition—manage all three tiers of their media rights. With the exception of a few independent programs, media rights within FBS are now managed at the conference level. This has bred competition among leagues in the market for lucrative television contracts. The competition for better media rights deals eventually led conferences to expand in ways that changed their shape and composition. Driven by the desire to expand into new and larger media markets, dominant conferences raided weaker conferences and even cannibalized each other. Conference expansion transformed the most prominent football conferences from 8-10 member regional leagues with schools in relative proximity to each other into 12-14 member super-conferences that stretched across the country. Conference realignment also brought an end to several traditional rivalries as schools left their previous rivals for new conferences in the chase for better payouts for their media rights management (e.g., Texas A&M left the Big XII and its rival, Texas; Nebraska left the Big XII and its rival, Oklahoma).

Our review of the influence of *Board of Regents* (1984) revealed that the fears for lesser prominent football programs expressed by Justices White and Rehnquist were also validated. The dissent recognized that the limits within the NCAA plan existed to minimize professionalism within college sports and conserved competitive balance by protecting programs that lacked the television appeal inherent to the more prominent programs (*Board of Regents*, 1984). While competitive balance never really existed within NCAA athletics, the increased revenues flowing in from the opening of television markets within college sports exacerbated the already existing imbalance by providing dominant programs more resources for recruiting college athletes (Baker & Brison, 2015).

The Influence of Procompetitive Presumption on the Market for Student-Athletes

For nearly 30 years following *Board of Regents* (1984), student-athletes did not benefit financially from the billions of dollars in business made possible by their efforts on the fields and basketball courts. The procompetitive presumption produced by *Board of Regents* protected the NCAA's authority to limit student-athlete compensation and manipulated the market for student-athlete services. Increased commercialization of college athletics only increased the competition for the best college talent, for football and men's basketball (the only profit-generating producers for most programs) in particular. Yet the caps blocked schools from spending directly on the talent they coveted, so they redirected money to high-profile coaches and to building lavish facilities as a means for attracting the best student-athletes to their campuses. This spending has been referred to as the "arms race" within the NCAA.

On September 8, 2006, the first in a line of cases that eroded the procompetitive presumption was filed with *White v. NCAA*, an antitrust class-action brought on behalf of NCAA student-athletes by Jason White, Brian Polak, Jovan Harris, and Chris Craig. The case was settled before reaching trial, but in Baker et al. (2011) we posited that the plaintiffs' arguments in their second-amended complaint set up a roadmap for future classes of student-athletes to follow, because those arguments exposed a weakness in the NCAA amateurism defense. First, the plaintiffs referred to the business of "big-time college sports" and within that business they recognized two cognizable markets for major college football and major college basketball. We found that the strongest arrow in the White plaintiffs' antitrust quiver, however, was that their prayer for relief (what they requested from the court) did not threaten the validity of amateurism, but instead targeted the gap that existed between what was provided to them by grant-in-aid and the costs they incurred while attending school (Baker et al., 2011).

The second case that eroded the procompetitive presumption came from the Seventh Circuit in *Agnew v. NCAA* (2012). The case was decided 20 years after the Seventh Circuit Court decision in *Banks v. NCAA* (1992) and was delivered by the man who wrote a partial dissent in that case. Writing now for the majority, Judge Flaum rejected the reasoning from the Third and Sixth Circuit Courts that student-athlete eligibility rules were non-commercial and he reiterated his stance in *Banks* that a labor market exists for college athletes. However, in *Banks*, Judge Flaum referred to the procompetitive presumption as "chimerical" but he changed his position in *Agnew* (2012) by holding that amateurism were vital to the

success of college sports. In *Agnew*, however, the majority restrained the reach of the procompetitive presumption to protect only those NCAA regulations that safeguarded amateurism (student-athlete compensation) within the NCAA. While *Agnew* was a significant step for student-athlete plaintiffs, its impact was not nearly as strong as the impacts that would be felt from the cases that followed.

O'Bannon v. NCAA: The Game Changer

In July 2009, about six months after *White* was settled, former University of California Los Angeles (UCLA) basketball standout Ed O'Bannon followed the roadmap set in that case and initiated a lawsuit that would eventually change the procompetitive presumption within the Ninth Circuit Court. In addition to its challenge to grant-in-aid restrictions, O'Bannon's antitrust claims also alleged that student-athletes should be compensated for the use of their names, images, and likenesses (NILs) in sport video games (SVGs) produced by Electronic Arts, Inc. (EA) and in televised broadcasts. On January 15, 2010, the U.S. District Court for the Northern District of California consolidated the O'Bannon litigation with a similar case in the same district filed by former Arizona State and Nebraska football player Sam Keller. Keller's claims included a right of publicity action against the NCAA, the Collegiate Licensing Company (CLC), and EA for their unauthorized use of student-athlete images in NCAA Football and NCAA Basketball SVG franchises. EA filed a motion to dismiss the right of publicity claims against it. The district court denied that motion and the Ninth Circuit Court affirmed that denial in *In Re NCAA Student-Athlete Name & Likeness Licensing Litigation v. Electronic Arts, Inc.* (Keller; 2013).

The right of publicity claims in O'Bannon were almost identical to those asserted in *Hart v. NCAA* (2013), a case brought in the United States District Court for the District of New Jersey by Ryan Hart, a former Rutgers University quarterback. The right of publicity (ROP) is a common law right that has also been codified in 19 states and protects celebrity interests in controlling the value in their NILs (Baker, Byon, Cianfrone & Grady, 2014). The Supreme Court has mandated that the interest celebrities have in managing their publicity must be balanced against the First Amendment's aim of protecting free expression (*Zacchini v. Scripps-Howard Broadcasting Co.*, 1977). In both *O'Bannon* (2015) and *Hart* (2013), the courts balanced those competing interests through the transformative use test, a measure that examines whether the appropriation of NILs is sufficiently transformative and therefore protected by the First Amendment. Transformative use is that in which the NILs are not literal representations used in a way that unjustly enriches the defendant, but instead serve as the raw materials for a new and expressive creation that belongs to the defendant (Baker, Byon, Grady, Cianfrone, 2015).

With that in mind, the Ninth Circuit Court and the Third Circuit Court ultimately sided with their respective plaintiffs in finding that the use of student-athlete NILs in the NCAA Football and NCAA Basketball SVGs were literal and not transformative. Central to the resolution of the transformative use issue in both cases was the fact that the SVGs featured the student-athletes in the same settings that made them famous (*In Re Student-Athlete Likeness Litigation v. EA, 2013; Hart v. EA*, 2013). This finding led EA and the CLC to settle with the plaintiffs on this point in *O'Bannon* (2015) and in *Hart* (2013). The NCAA took issue with the settlements and filed a lawsuit against its former business partners (Hinnen, 2013).

The resolution of their ROP claims, however, was only half of the battle for the plaintiffs in *O'Bannon* (2015) because to profit off of their NILs they still needed to prove that the NCAA caps on student-athlete compensation violated antitrust law. For this to happen, the plaintiffs would have to overcome the procompetitive presumption that consumer interest in NCAA products depended on the preservation of amateurism. The Ninth Circuit Court heard *O'Bannon* on appeal from a district court decision that the NCAA caps on student-athlete compensation imposed an unreasonable restraint within relevant collegiate education and licensing markets. Judge Wilken heard the antitrust arguments at the district court level in *O'Bannon* and she was not convinced of the role of amateurism as a primary driver of consumer interest in NCAA products. Further, she found that amateurism could be preserved through two less restrictive means by (a) extending grant-in-aid to include the full cost-of-attendance, and (b) providing student-athletes with $5,000 per year after graduation in deferred compensation for the use of their NILs (*O'Bannon v. NCAA*, 2014).

On appeal, the Ninth Circuit Court first addressed the NCAA's contention that the procompetitive presumption of validity from *Board of Regents* (1984) exempted its regulation of amateurism from antitrust scrutiny. In doing so, the Ninth Circuit Court disagreed with its sister courts on the basis that the NCAA compensation limits are commercial activity because these rules involved "real money" and student-athlete labor was an essential component of NCAA products (*O'Bannon*, 2015, p. 1064). The Ninth Circuit Court also disagreed with Judge Flaum's interpretation of the procompetitive presumption in *Agnew* (2012), in which he found that amateurism rules should not be subjected to rule of reason review. The Ninth Circuit Court refused to adopt such an aggressive construction of Justice Stevens' statements and instead found that the NCAA had the burden of proving the validity of its amateurism rules.

In addressing the validity of the NCAA amateurism rules, the court in *O'Bannon* (2015) recognized a relevant college education market for student-athlete recruits that included the offering of scholarships and other "amenities" (coaching and facility use). The court also found that the price cap im-

posed by NCAA student-athlete compensation regulations produced anticompetitive effects for the students. In particular, the cap lowered the amounts of money student-athletes would expect to receive in an unregulated market. Thus, the burden should have shifted to the NCAA to defend the reasonableness of its amateurism rules by providing market-based analysis evidencing that its caps on student-athlete compensation produced a net procompetitive effect.

Yet, in Baker and Brison (2015), we found that the NCAA didn't produce the sort of economic evidence typically required of defendants in this step of rule of reason analysis. Rather, the court in *O'Bannon* (2015) recited Justice Stevens' statements in *Board of Regents* (1984) in finding evidence in the record for a "concrete procompetitive effect" in preserving the NCAA's version of amateurism based on the concept's appeal to consumers (O'Bannon, 2015, p. 1074). Accordingly, we found in Baker and Brison (2015) that the Ninth Circuit Court changed the procompetitive presumption of validity for NCAA amateurism restrictions into a procompetitive justification—a justification that did not require economic evidence for its existence. Based on this finding, we also recognized a split in the federal circuits on the application of the procompetitive presumption.

Like the district court, the Ninth Circuit Court also applied the less-restrict-alternative test and found that the NCAA amateurism aims could be achieved by extending grant-in-aid to include the full cost of attendance. The Ninth Circuit Court, did not, however, accept the lower court's second less-restrictive alternative on the provision of deferred compensation in the amount of $5,000 for the use of student-athlete NILs in SVGs and game broadcasts (*O'Bannon*, 2015). In rejecting the $5,000 stipends, the Ninth Circuit Court acknowledged that the NCAA expert (former CBS executive Neal Pilson) testified that he didn't believe consumers would react unfavorably to that amount. Yet, the court asserted that the presumption of consumer interest in amateurism wasn't dependent on the amount that student-athletes would be provided; rather, it turned on whether student-athletes would be paid any amount of money that was untethered to educational expenses. The Ninth Circuit Court believed that the $5,000 stipends would reduce college sports to minor league versions of their professional counterparts and this change would harm consumer interest in NCAA products.

Moving Forward: O'Bannon's Influence on the Business of Intercollegiate Sports

Following the resolution of *O'Bannon* (2015) by the Ninth Circuit Court, there were those who didn't see the significance of a decision that had little impact on the current state of intercollegiate athletics. Yes, the Ninth Circuit Court in *O'Bannon* was the first federal circuit court to subject NCAA amateurism rules to rule of reason review, but the cost-of-attendance extension did little for student-athletes because the NCAA had, mere months prior to the decision, agreed to allow schools to provide cost-of-attendance stipends.

In Baker and Brison (2015), we dug a little deeper with our examination and found that the treatment by the Ninth CircuitCourt of the procompetitive presumption as a justification under rule of reason rather than a quasi-exemption to antitrust set the stage for future antitrust actions challenging the NCAA regulations. So far, our predictions have proven correct as there are already two antitrust actions (*Jenkins and Alston*) currently pending within the Ninth Circuit Court. *O'Bannon* (2015) put the NCAA on the defensive. Student-athletes and their lawyers smell blood in the water because the presumption of validity is no more within the Ninth Circuit Court, and this gives student-athletes the opportunity to test the reasonableness of NCAA restrictions.

Furthermore, we found that the Ninth Circuit Court's treatment of the plaintiffs' evidence in *O'Bannon* (2015) provided future classes of student-athlete plaintiffs with guidance as to the type of evidence needed to rebut the procompetitive presumption that amateurism is essential to NCAA product creation. In *O'Bannon*, the plaintiffs presented very compelling evidence on consumer interest in amateurism in the form of testimony from Daniel Rascher, who brought actual economic evidence before the court demonstrating that consumers did not lose interest in the Olympics when the games opened up to professional athletes. The Ninth Circuit Court dismissed that evidence on the grounds that the Olympics were not comparable because the NCAA products are unique (*O'Bannon*, 2015).

This finding inspired a forthcoming study in which sport economist Nicholas Watanabe, sport law expert Marc Edelman, and I measured consumer interest in college football following changes in student-athlete compensation that now allow for cost-of-attendance stipends that are, in actuality, cash payments that student-athletes can spend as they see fit. Despite the Ninth Circuit Court's interest in tethering all student-athlete compensation to educational expenses, cost-of-attendance has no actual tether, other than the fact that the word "attendance" is used in its description. In fact, schools factor in non-education costs in deciding the cost-of-attendance, which is, in effect, a cost-of-living measure. In our forthcoming study we found consumer interest in college football was not sensitive to changes in student-athlete compensation. The findings from our forthcoming study challenge the validity of the procompetitive presumption as a justification for the NCAA caps on student-athlete compensation and could provide persuasive evidence in pending antitrust cases like *Alston and Jenkins*.

The NCAA is so concerned with the threat posed by those cases that it has increased lobbying efforts designed to persuade Congress to establish an antitrust exemption for NCAA athletics. A second lobbying group composed of

athletic departments has also been formed with the same purpose. NCAA business and media partners need to keep track of the Ninth Circuit Court in how it resolves *Alston and Jenkins*, and also monitor Congressional treatment of the NCAA in response to lobbying from those who want to preserve the status quo. However, based on our findings in Baker and Brison (2015) and my forthcoming study with Watanabe and Edelman, I suggest that consumer interest in intercollegiate sports is not threatened by the outcomes in those two cases. If the NCAA were to lose its procompetitive justification and student-athletes were to be paid more than they are now, then the markets within intercollegiate athletics likely would adjust without any significant impact on the consumption of NCAA products.

Granted, there is no way to safely predict exactly what will happen in terms of whether the judiciary will continue to protect NCAA preservation of amateurism. Any further erosion of amateurism from the Ninth Circuit Court, or any other federal circuit court, may eventually pull the Supreme Court into the controversy. What we do know is that that challenges will keep coming and the controversy will only grow in terms of relevance and attention until a final resolution is reached, one way or the other.

The Influence of *O'Bannon* on Entertainment and News Media

The ROP and transformative use aspects of *O'Bannon* (2015) drew considerable interest from the entertainment industry and news media. Media conglomerates that own multiple television networks including ABC, Inc., Fox Broadcasting Company, NBC Universal Media LLC, CBS Corporation, Turner Broadcasting Systems, Inc., A&E Television Networks, and Discovery Communications, LLC joined news media outlets, such as National Public Radio, Inc., and Reporters Committee for Freedom of the Press in writing an *amicus curiae* brief in support of the defendants in *O'Bannon*. They contended that only the producer of an event should have the exclusive property right to license the broadcast of a sports and entertainment event. These amici were not concerned with the court's treatment of amateurism, but were instead worried that a determination in *O'Bannon* that extended publicity rights to student-athletes could extend to cover persons featured in news and entertainment events and that extension could chill production of those events to the detriment of public interest. Similarly, the Motion Picture Association of America, Inc. wrote an *amicus curiae* brief in *Hart* (2013) on the basis that literal uses of NILs in expressive works (e.g., the use of real people spliced into the movie *Forrest Gump*) should not require express authorization.

The other end of the aisle in *O'Bannon* (2015), however, received industrial support by way of an amicus brief filed by the Screen Actors Guild-American Federation of Television and Radio Artists (SAG). SAG supported the ROP claims from student-athletes on the premise that a legal decision diminishing laws protecting the right of publicity could be "ruinous" to performers in other fields of entertainment. The concerns addressed by the amici in *O'Bannon and Hart* (2013) highlight how legal applications of the ROP and transformative use test in cases involving the NCAA and its business partners produce interpretations of law that have the potential to influence other industries. For the purpose of this article, I conducted a review of all the cases citing *O'Bannon* (2015) (including *In Re Student-Athlete Likeness Litigation*, 2013) and *Hart* (2013) and found that, to date, the fears of chilled expression from EA entertainment and news media amici are unfounded. It's only been three years, but, so far, courts have yet to apply either case in the ways cautioned by EA in their briefs.

Perhaps the most pronounced influence of *O'Bannon* (2015) was felt by EA and the video game industry. Following the resolution of *O'Bannon* and *Hart* (2013), there was hope that the *NCAA Football* SVG would continue on without the use of student-athletes, but the NCAA pulled its support for the products and EA decided to pull the plug on the successful SVG franchise (Rovell, 2013). What's interesting about the ROP claims in *O'Bannon* (2015) and *Hart* (2013) is in how the NCAA could have protected EA, its media partner, and the CLC, its licensing agent, with the defense that EA had permission to use student-athlete NILs in the games. In a study I conducted with John Grady and Jesse Rappole (2012), we found that Form 11-3a, a document signed by all student-athletes, authorizes the NCAA—or a third party acting on behalf of the NCAA—to use student-athlete NILs for promotional activities. We also found that this form not only permits the NCAA and its member institutions to use student-athlete NILs to promote NCAA events, it also compels student-athletes to assign the rights to the NILs to the NCAA and its member institutions, who can then license those rights to others for any arguably promotional purpose (e.g., SVGs). The contractual relationships between EA, the CLC, and the NCAA allowed for the use of NCAA football and basketball attributes, but NCAA bylaws prohibited the use of student-athlete NILs in commercial products for the sake of preserving amateurism (Cianfrone & Baker, 2010).

In 2014, I conducted a study with Beth Cianfrone, Kevin Byon, and John Grady in which we examined the role of student-athlete likeness in the NCAA Football SVGs and the results from our study revealed that the use of student-athlete likeness was significantly related to the continued commercial success of the NCAA Football SVGs. So, while consumers of the successful NCAA Football franchise may view the termination of the series as an unfortunate result of *O'Bannon* (2015) and *Hart* (2013), the results from our 2014 study suggest that EA made the right decision in not continuing the game without the inclusion of student-athlete likeness.

The outcomes of *O'Bannon* (2015) and *Hart* (2013) serve as a cautionary example to video game producers that want to include electronic representations of real people, or virtual representations that resemble real people to the point that consumers are able to identify those persons in the game. What can be learned from the ROP aspects of those cases is that licensed authorization is needed for video games to include representations that identify real people. Without licensed use of likeness, video game producers must include enough expressive content in their reproductions so as to transform the person's identity into something new and expressive. This transformation may come through alterations that take the person out of the settings for which they became famous, along with changes to their appearances to the point that they become new creations altogether. Transformative expression may also be added by using literal representations that are infused with new meanings, such as uses of likeness for parody or social commentary. Still, the safest play is to follow the reasoning in *Zacchini* (1977) and compensate celebrities in exchange for licensed authorization for uses for which celebrities would naturally expect compensation.

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Drugs in the Sport and Entertainment Industry: Beyond Hyperbole and the Need for a Humanistic Approach for Drug Management

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In December 2014, the German broadcast station ARD aired a documentary that alleged doping among Russian athletes was widespread and systematically organized. This subsequently led to an investigation and condemnation by the World Anti-Doping Agency (WADA) and the decision by the International Association of Athletics Federations to ban all Russian track and field athletes from the 2016 Rio Olympic Games. The International Paralympic Committee went further and banned all Russian athletes from the Rio Paralympics Games. This was undoubtedly one of the biggest drug-related sport scandals ever witnessed, the fallout to which has yet to be entirely resolved. However, smaller stories also routinely emerge that remind us of the use and abuse of drugs in sport. For example, former Ultimate Fighting Championship (UFC) fighter and current World Wresting Entertainment (WWE) wrestler Brock Lesner tested positive for the banned substance clomiphene at the beginning of the year. In the National Basketball Association (NBA), Joakim Noah of the New York Knicks tested positive in March 2017 for a banned substance contained in an over-the-counter supplement—a scenario of apparent unintentional use. Moreover, in Major League Baseball (MLB), a handful of drug-related suspensions occur each year, some of which involve high-profile athletes (e.g., Alex Rodriguez).

These revelations receive substantial attention from the fourth estate. Moral panic ensues and concerns are raised over the purity of sport and athletes' virtue. The debates on the use of drugs in sport that play out in the media are contentious and polarized. This is, in part, because sport is often romanticized as an endeavor that is noble, builds character, and promotes the ethos that hard work prevails. The disclo-

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sure that athletes use drugs punctures this veneer. However, the existence of drugs in sport is not new. Veteran sport scholar Ivan Waddington (2000) informs us that the use of stimulants and drugs dates back over 2,000 years. Efforts to regulate drug use in sport began in the 1960s, and only in recent decades have we had the technology in place to effectively detect drug use. Meanwhile, scientific advances such as the gene editing technology CRISPR make it even more difficult in the future to control drug use in sport.

In contrast, some argue that we should just allow athletes to use drugs and that the current crusade against drugs in sport violates athletes' personal privacy and autonomy. There is also the case of marijuana, a drug once denounced but now legal in many states for recreational and medical use. Yet, it is still prohibited by many sport organizations, and thus, the topic of drugs in sport is convoluted and constantly evolving, which is one reason it has sparked my research interest.

Unfortunately, perhaps because it is so complex, there are many misconceptions that serve to obscure the debate. For instance, the human body is an intricate organism and individual responses to drugs are not always uniform. Yet, we often think intuitively, analogize that the body is like a machine, and make simplistic calculations that more of something (e.g., drugs, food, training) will have a compounding effect (Mottram, 2011). If only it were so simple.

In this article, I will highlight some of the misconceptions I have encountered and challenged in my research. These studies cast doubt on some of the justifications used for regulating drugs in sport. However, this is not to claim that drug use is not a problem in sport. It surely is, as described earlier. Yet, if we are to craft appropriate policy, we should know, as best we can, the extent of drug use in our industry. I will,therefore, summarize what we know on this front and demonstrate areas of concern for managers in sport and entertainment, which collectively I call the *performance industry.* Moreover, I will assert that drug use occurs precisely because of the occupational demands related to performance. I will conclude by arguing that, because of this connective tissue, managers have a duty to address this issue in the workplace, and should do so in a humanistic way that places primacy on performer health and safety.

Role Models?

My first encounter with drug policy involved a research study with Phil Swain, a graduate student of mine at the University of Texas (Woolf & Swain, 2013). Our interest was prompted by a decision by Texas legislators to instigate a massive drug-testing program in 2007 targeted at the 763,967 high school athletes in the state (NFHS, 2017). There were concernsthat anabolic steroid abuse was endemic and on the rise among high school students. A contributing factor fueling the lawmakers' appetite for this legislation was drug scandal in professional sport (particularly baseball) and concerns that there would be a trickledown effect from the professional ranks to high school. However, their concerns may have been unfounded, andat least should have been tempered. Over the course of its eight-year existence, the program conducted 66,036 tests. Of these, only 46 (0.07%) were positive, 37 (0.06%) were unresolved, and 168 (0.25%) were declared protocol positives, which indicated a refusal to be tested (UIL, 2017). The program was canceled in 2015, after Texas lawmakers voted to defund it. In total, the state had spent approximately $10 million on the program (Vertuno, 2015).

Our study was conducted early in the program's life span. We organized a variety of experts in drugs, from scientists, anti-doping agency executives, and advocates for legalization, to engage in a discussion on the issues of steroid use among high school athletes. The majority believed that steroid use was underestimated among youth athletes, and would likely increase slightly in the future, in part due to the trickledown effect from professional athlete use of steroids, and an increase in acceptance by society to use performance enhancement techniques. The panel was split on whether drug testing should be conducted at the high school level, with some arguing that the prospect of being tested served as a deterrent. Our study also highlighted the complexity of developing an effective program to prevent drug use. For one, despite its size and funding, the program's ability to effectively catch drug users was hampered by the sheer number and variety of high school athletes in Texas. Despite the panel's expertise, when challenged to propose alternative strategies to educational initiatives and drug testing, none were forthcoming. There was, in effect, no easy answer on how to handle the issue of steroid use at the high school level—a scenario that seemingly plays out at every other level of sport, as well. However, what stuck with me after the study was the uncritical acceptance that there is indeed a trickledown effect. That is, professional athletes who use steroids influence younger athletes to do so also. As such, I decided to investigate to what extent this was true.

My colleagues, Rajiv Rimal and Pooja Sripad, and I (2014) surveyed over 400 male high school athletes from football, baseball, and basketball to evaluate the trickledown effect. In this study, we sought to determine the influence of others on these athletes. In particular, we examined four separate levels of potential influencers (i.e., friends, teammates, college athletes, and professional athletes) and two types of influence. The first type of influence was *descriptive norms,* which involves the perception of the prevalence of a behavior. In effect, this is the athlete's belief of how many people use steroids. If more people are doing a certain behavior, we might be impelled to follow suit. The second *was injunctive norms*, which involves the perception of what others expect of us. In this regard, we are concerned with what others think we should do—if we do not act as expected, we risk disapproval from these influential people. We discovered that both de-

scriptive and injunctive norms were predictive of the high school athletes' intention to use steroids. However, we found quite interesting results when we examined the effect of different sources of influence.

As mentioned, common knowledge suggests that if professional athletes use steroids then this will trickle down to high school athletes. Further, if lots of professional athletes use steroids, then descriptive norms tell usthis would mean lots of high schoolers would be tempted, too. Basically, the young athlete might think, "If the pros are using, why shouldn't I?" In our study, the high school athletes did believe (perhaps quite logically) that the prevalence of steroid use among professional athletes was greater than at other levels of sport. This was predictive of intentions to use steroids. However, the magnitude of the predictive power of descriptive norms was larger the closer the influencer was to the athlete, even though these closer influencers were thought to use steroids less frequently. Put simply, what matters more is if high school athletes believe that their friends or teammates are using steroids, and not the supposed role models of professional or collegiate athletes.

What wasmore telling was the effect ofinjunctive norms on high school athletes. Whereas friends and teammates mattered, collegiate and professional athletes did not. This means that high school athletes are not concerned with what professional athletes think they should do, which raises the question of whether we should use professional athletes as spokespersons for anti-steroid campaigns. Instead, the implications are that we should be focused on emphasizing the low prevalence of steroid use among their peers and on what their peers would think of them. The trickledown effect, while not nonexistent, is overemphasized and afforded more weight in policy decisions than is warranted. This focus on the prevalence of use among professional and elite athletes led me to a series of studies to examine why it is thought to be of such importance.

All Athletes Use Drugs, Right?

A popular thought experiment in sport is the Goldman dilemma. I first heard about it when I was a teenager, and I have had countless people mentioned it to me unsolicited or by recall when I described it to them. The dilemma asks if you would be willing to take a substance that will guarantee you will win an Olympic Gold medal, but you will die five years later. The startling statistic that is reported is that among elite athletes, 50% say they would take the substance.

The dilemma originated in a 1978 sport medicine textbook by Gabe Mirkin and Marshall Hoffman. Bob Goldman and his colleagues created their own version that was featured in two books in 1984 and 1992. However, it rose to prominence when a *Sports Illustrated* article by Michael Bamberger and Don Yaeger was published in 1997. These authors interviewed Goldman, who informed them that he had conducted his survey every two years since 1982 and had, more or less, obtained the same 50% affirmative response.

The Goldman dilemma, as fanciful as it was, is important because it added weight to the argument that drug use in sport was out of control. If athletes were willing to die for short-term glory, what else would they be willing to do? The outcome statistic is often cited in popular and scientific literature as evidence that athletes will do anything to winand that, therefore, sport is in need of regulation. Such a narrative is problematic, particularly if it is inaccurate. This is one reason why my research partners, Jason Mazanov and James Connor, and I engaged in a series of studies to investigate this dilemma.

In our first study published in2013 in the *British Journal of Sports Medicine*, we wanted to see if current athlete responses to the proposed dilemma had changed compared to their counterparts from decades earlier. We replicated Goldman's study, using a much more rigorous experiment, by asking 212 elite and highly competitive track and field athletes if they would take the deal. We also tried out different wording and sentence structures to obtain more insight into athletes' decisions. What we found was that less than 1% were willing to accept the proposition in its original form. When we stated the substance was legal but would still cause their death, 6% said they would take it. When we just informed them that the substance was illegal, but left out the fatal outcome of consumption, the number rose to nearly 12% acceptance. These results are in sharp contrast to the 50% figure frequently cited, and they challenge whether the dilemma is relevant to contemporary sport. We speculated that changesin societal norms, increases in knowledge on drugs, and the growth of the anti-doping movement might explain why our results were so different from Goldman's results. However, we wanted to know more about how athletes think about this dilemma and how the original dilemma was constructed and tested. This led to our next study published in the *International Journal of Sport Policy and Politics* in 2016.

When we reviewed the original work on the Goldman dilemma we concluded that how it was designed, implemented, and reported was so questionable that it makes it extremely difficult to accept it as legitimate scientific evidence. It is surprising that it has endured as long as it has, but then again, myths and urban legends sometimes take on a life of their own. Still today, I come across people who have heard it and accept it as fact. Thus,it is troubling that it is seen as evidence to support the accepted wisdom that athletes will do anything to win. In our study, we interviewed 30 elite athletes from a range of sports and asked them about their thought processes when considering the dilemma. Athletes found the proposal implausible because sport outcomes are so unpredictable (you cannot guarantee winning), death was too high a price to pay, and scientific advancements make drug detection more probable, especially if samples are stored for

future tests (which they often are). Furthermore, when athletes think about winning it is not the glory of fame and fortune that comes to mind. Instead, they think of all their hard work and the work of others and how, by winning, it can be justified. Consider that many athletes start playing sport at a young age and train, day in and day out, for many years before reaching their pinnacle. At this point, sport has dominated their lives, so it is understandable that there would be a sense of vindication or even relief in reaching one's goal. This is in sharp contrast to the idea that athletes are focused on the glory of winning for fame and fortune.

Working with my colleague Jason Mazanov (2017), we dug a little deeper into the data and painted a rather different picture of elite athletes than we sometime see depicted in the media. Rather than moral deviants who are single-minded in their pursuit of winning at all costs, elite athletes are much more introspective, contemplative, and considerate. For instance, elite athletes see themselves in multiple roles both now and in the future. They know their sport career is just a small part of their path through life. While they are highly motivated and goal-oriented when it comes to sport, they also have other personal goals, such as getting married, raising a family, and having a career outside of sport that are just as important to them, if not more important. Further, they are not cold, calculating machines that engage in a rational cost-benefit analysis when it comes to using drugs. Instead, emotions and conscientiousness weigh heavily upon them. Instead of being selfish narcissists, they clearly think about the impact their actions will have on others, particularly their family and their coaches. The notion that athletes will "do anything to win" comes across as just an overhyped and overused cliché.

These observations that athletes are not the role models some if not most assume are important because it challenges some of the justifications for drug policy in sport. This is not to suggest that athletes do not use drugs; we know that they do because many of them have tested positive in various sports over the past decades and continue to do so today. So, just how many athletes use drugs? That is a difficult question to answer, but let us look at what we know.

Prevalence of Drug Use in Sport

There are a number of challenges to accurately determine how many athletes use drugs. Athletes are unlikely to declare they use drugs, as this may have legal and career consequences. Survey research does enable athletes to declare their use anonymously; however, there is no guarantee they will respond accurately, particularly given the stigma associated with drug use. In addition, athletes may provide socially desirable answers, as they do not want to look bad, even to themselves. The whole topic of drug use is complicated, as I alluded to earlier. Athletes may not realize a substance they are taking is a banned substance, perhaps because they bought it online or at a nutritional supplement store (e.g., Joakim Noah's case). Thus, they may not know they are using a banned substance, and this may only come to their attention when it turns up on a positive test. Some drugs were once on the list of prohibited substances and then taken off (e.g., caffeine), whereas, others were not on the list, but then added later (e.g., meldonium). In the case of meldonium, although WADA did notify athletes that it was to be added and were given time to cease using it, some athletes did not read the notice (e.g., Maria Sharapova), while other athletes (particularly Russian athletes) still tested positive after having had stopped using itdue to the time needed for it to clear the body (Bonesteel, 2016). Such was the controversy that WADA had to issue new guidelines on meldonium testing (WADA, 2016). To this end, it is not a simple process to accurately estimate drug use. Adding proverbial mud to the water and fuel to the fire is when athletes, coaches, and sport commentators publicly speculate on the percentage of athletes using drugs (Woolf, 2017). These numbers, similar to the Goldman dilemma, are typically sensational.

However, we can look at the official number of positive tests for insights. WADA's own numbers approximates that 2% of athletes test positive for a banned substance. We know that not all athletes who use drugs will be caught, which makes this number almost certainly an underestimation. This has been acknowledged by the former director general of WADA, David Howman,who has publically estimated that drug use is somewhere above 10%. A trio of Dutch researchers, de Hon, Kuipers, and Van Bottenburg, published a review in 2014 of prevalence data. Based on their analysis of sophisticated questionnaire methodologies and estimates using models of biological parameters, they concluded that it is likely the prevalence rate is somewhere between 14% and 39% for elite athletes.They noted that prevalence rates are probably different based on what sport is played, the country in question, and on training groups, as some groups have more permissive attitudes towards drug use than others.

When we turn to other parts of the entertainment industry we also find concerns over drug use. Parallels can be drawn between sport and entertainment because both rely on the performance of bodies. People may not realize that dancing, singing, and playing music are actually physically and mentally demanding occupations. For example, Tindall (2006), reporting for the *New York Times*, explained that ballet requires a new athleticism as dancers are expected to do more physically impressive feats. Injuries are common and are of concern to dancers (particularly as job security is an issue) such that they may ignore injuries, not report injuries, self-medicate, or seek alternative medical treatment (Mainwaring, Krasnow, & Kerr, 2001). Accordingly, Zenic's research team (2010) reports that analgesic use is common among dancers, with approximately a third reporting use. Dependence issues can arise from using analgesics (Mot-

tram, 2005) and we have seen this in sport with athletes such as Brett Favre's public declaration of addiction.

Among performance artists, beta-blockers are a popular drug, as they relieve the physical symptoms associated with performance anxiety (e.g., shaking hands), which is commonly experienced by artists. Patston and Loughlan (2014) report in their review that approximately 20–30% of musicians use these drugs, and use is often self-prescribed rather than through consultation with a medical practitioner. There are negative side effects associated with beta-blockers; for example,they negatively impact respiration, and withdrawal symptoms such as depression can occur. Drug use to aid performance is also reported by actors. One study by Nwadigwe in 2008 reported that among Nigerian actors 8% reported using steroids, 75% used marijuana, and 11% used cocaine or heroin. It is notable that steroid use was justified, as a muscular appearance can increase one's chances to obtain a role, whereas narcotics use was to facilitate acting performance in roles that were mentally challenging to perform (e.g., intimate and nude scenes). An Australian study by Maxwell and colleagues (2015) also reported actors experience greater anxiety, depression, and stress than the general population and use a variety of drugs to improve their work performance. They cite Seton (2008), who explains that actors can become deeply emotionally emerged in the roles they play so that their performance is authentic. He describes the after-effects of this mental expenditure as post-dramatic stress.

Across the sport and entertainment industry we see evidence that drug use commonly occurs. Not all drug use is associated with performance enhancement. Some is for pain management, while others for stress management. If we factor in alcohol and cigarette use, we start to see that our respective industries havean underbelly marked by unhealthy practices. All of this is important, not because it involves breaking rules or cheating, but because it negatively affects the health of the people we employ. It is illustrative to look at the data on professional wrestlers, as it paints a very disturbing picture. Herman and colleagues (2014) report that professional wrestlers are over 15 times more likely to die from cardiovascular disease (to which steroids and analgesic abuse contribute), and over 120 times more likely to die from a drug overdose. Over 15% of deaths among professional wrestlers occurred below the age of 50. When we start to look at it from this perspective we haveto ask what can be done to improve the situation.

A Humanistic Approach to Drug Management

Up to now, I have deliberately used the term *drug* as opposed to the popular term doping. The reason for this is that doping is associated with performance enhancement, and by extension, cheating. Efforts to address drug use in sport have framed the debate in this way with the goal, ostensibly, being to preserve the integrity and authenticity of sport. These efforts have focused on detecting those who cheat, deterring those who might cheat, and preventing cheating from occurring in the first place, often through education. In each case the athlete is a subject; the athlete is the target. However, the reality is that athlete and performer drug use is often associated with occupational demands. This includes using anabolic steroids to increase performance, analgesics and marijuana to manage pain, smoking to suppress appetite and control weight, and narcotics to deal with stress and anxiety. Outside ofthese occupational demands, would these individuals need or want to consume these drugs? By virtue of this relationship between occupational demands and drug use, managers have a duty to ensure that performers have a workplace where health and safety is protected.

Main Points for Managers in the Performance Industry to Consider:

1. Drug use continues to be an issue for managers in the performance industry, whether this is sport, dance, music, or thespianism.
2. Drug use is a complicated affair and misconceptions and assumptions must be constantly challenged to gauge the veracity of such claims.
3. Drug use is associated with occupational demands and consequently, management has a duty to address this workplace issue.
4. A humanistic approach would make the performer an equal partner with management in crafting workplace drug policy.
5. Workplace drug policy would therefore not be targeted at performers, but instead designed to genuinely promote their health and safety.

One might argue that administrators in the performance industry are overtly concerned about the health and safety of their employees, and current drug testing policies achieve this goal. For example, the World Anti-Doping Code, a policy document designed to harmonize anti-doping efforts globally, places health at the forefront. One of its stated core purposes is to "protect the athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for athletes worldwide" (WADA, 2015, p. 11). However, this becomes difficult to accept when one considers the concussion crisis in sport and previous efforts to deny its existence, or when opioids are overprescribed, as widely reported in the class action lawsuit against the Atlanta Falcons. With regard to musicians, we see evidence to suggest that management condones beta-blocker use (Patston & Loughlan, 2014). Ballerinas are expected to embrace pain (Mainwaring et al., 2001) and maintain a certain appearance. Thus, it appears administrators "cherry pick" when to engage with health and safety, and drug testing serves to provide ev-

idence of their concern. However, rather than focus on the needs of performers, management is focused on the image of the organization. The two only appear to come into accordance when the brand is threatened.

When performers are identified as independent contractors and careers are expected to be transient, as is often the case, then the will of administrators to seriously engage with health and safety may be weak. It is easier to ignore this issue or identify it as the problem or moral failings of the individual. However, there must be a shift from viewing the athlete or performer as a criminal suspect or a mere organizational asset, to a partner in a cherished enterprise. That involves addressing the issue of drug management in a humanistic manner. This means that, rather than using policy to target and uncover "cheaters," or basing decisions on questionable justifications, we design policy so that performers are the recipients of efforts to promote and safeguard health and safety in the workplace.

Such an approach would embrace the performer as an equal and engage with them to promote health and safety at work. This would mean bringing the performer to the table to discuss how best to manage this issue and craft policy. The athlete, dancer, and musician have a stake in this as it involves their safety and the safety of those who participate alongside them. How this might look will be dependent upon the occupational demands of the industry. It may mean allowing marijuana use rather than rely on opioid prescriptions. For example, former NFL players and the advocacy group Gridiron Cannabis Coalition have argued that marijuana use should be allowed for the treatment of injury and illness rather than rely on highly addictive opioids. A humanistic approach would explore such an issue and its legality alongside performers to determine what is in their best interest rather than simply prescribe medication.

This is not to advocate for a permissive policy regarding marijuana use. A true partnership between management and performers would explore when such use was acceptable from a health and safety perspective. In some cases, such as pre-event, marijuana and other substances that affect judgment at work could be prohibited and performers monitored. World Wrestling Entertainment (WWE) takes such a stance, as its Talent Wellness Program bans alcohol consumption 12 hours prior to an event or performance. Similar, though not necessarily identical policies may be suitable for dancers, musicians, and actors. Such a policy may be justified on the grounds that intoxicated performers pose a risk not only to themselves, but their partners in performance—whether this is a collaborative or competitive venture. Post-event alcohol consumption could be discouraged and not enabled through provision, even if the organization or event has alcohol sponsors. Norms of alcohol use to celebrate performances, to prepare for a competition, or to recover from the stress of performance could be challenged. Some may argue this amounts to paternalism. However, there is a difference between individual choice and the unchecked or even encouraged development of a culture that promotes use and potentially misuse of drugs. If management truly cares about the well-being of their employees, they will engage with them on these matters so that their health and safety is safeguarded.

As anxiety and stress are commonly experienced among performance specialists, alternative, drug-free approaches could be provided or advocated in the workplace. Meditation, mindfulness training, and body awareness and relaxation techniques (e.g., yoga, Alexander technique) could be incorporated as part of the performers' training regime (though more research is needed on the effectiveness of these methods). Nutritionists could provide training on how to eat well and maintain a desirable, healthy weight. This could offset temptations to smoke cigarettes to suppress appetite, or consume large quantities of dietary supplements (which may be tainted with drugs) to gain weight. A healthy workplace could further be promoted where smoking is prohibited and norms related to smoking use challenged. This could mean access to smoking cessation programs (whether provided in-house or outsourced) that are commonly available in other workplaces.

But perhaps more importantly, in addition to collaborative efforts to develop drug policy, a humanistic approach would ensureaccess to independent medical practitioners for advice and treatment. Without some level of autonomy, performers will not know whether medical support is serving their needs or the needs of the employer who pays the medical practitioner's salary. For example, the Football Players Health Study at Harvard University has previously declared that NFL doctors have a potential conflict of interest when it comes to treating players and therefore may not do what is in the athletes' best interest. From the performer's perspective, when independent medical services are not provided, and when job security is a concern, use and abuse will be driven underground and self-medication will dominate. Furthermore, coming forward to seek medical help for concerns over drug use or addiction should be met with compassion rather than punishment. The WWE Talent Wellness Program provides such a provision and performers—both current and former—can seek assistance for substance abuse at any certified treatment center with the WWE willing to pay for treatment.

The arrangement of access to independent medical practitioners will be complicated by the size and scope of the organization. Medical practitioners, such as team doctors, could be assigned based on a joint appointment from management and a performer's representative. This may be negotiated at the team or ensemble level, or at a larger level such as with a union (e.g., American Guild of Musical Artists, NBAPlayers Association). Alternatively, performers may be able to select their own doctor pending approval from management, to which the intricacies of what is considered acceptable would need to be negotiated. In any event, by approaching this as

a partnership, the performer is placed with a greater sphere of influence rather than just being the target of policy. As we have seen, drug use is a concern for performers and for management. Yet, in the case of athletes, they are not the influential role models we assume, which makes justifying drug policy based on this assumption disingenuous. Nor are athletes, and one would assume other performers, deviant narcissists hell-bent on achieving fame and fortune regardless of the cost. Instead, they are human beings trying to get by in a demanding occupation. As managers in the performance industry, we are dependent upon them for the show to go on. As such, we have the moral obligation to engage with them to ensure their health and safety.

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The Magical Mystery Tour of a Pracademic

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Since receiving my doctorate 35 years ago, I have consistently straddled the line between academic and practitioner—in fact, I coined the term pracademic to describe myself. As a pracademic, my research, publishing, and experiential learning activities in the classroom were always focused on the sport industry—and primarily the pro sports segment. I left academia twice to work full time as a practitioner—first as an executive in a sport marketing agency and later with the National Basketball Association (NBA). I have also maintained a consulting practice for the past 12 years working with a variety of professional sport organizations and specializing in revenue enhancement and organizational chemistry.

The point I hope to make in this article is that the two domains—academia and the sport industry—do not have to be mutually exclusive, nor should they be. In my world, the sport industry is a thread that is woven into my academic activities and academia is also a thread winding through my consulting activities. The academic benefit of such interaction has been interesting experiential learning opportunities for my students, as well as job placement. On the consulting side, I have been employed numerous times by former students.

Consulting

The first activities I would categorize as "consulting" were in the form of market research studies that I conducted for professional basketball teams while a faculty member at The Ohio State University (OSU). I received a research grant from OSU that enabled me to initiate a relationship with two NBA franchises. I offered my marketing research expertise at no cost as a way of creating an introduction and

demonstrating my capabilities as a researcher/consultant. It also provided an excellent opportunity to teach my students about applied marketing research and involve them in data collection, analysis, and presentation.

While working for what amounts to as "free" to the organization might seem an odd way to begin a business; it was, in effect, a beta test that produced a work sample that enabled me to solicit additional research-based consulting opportunities. In this case, it led to a very large research-based consulting project involving three professional baseball teams, a summer-long research project, and more than $50,000in funding, which helped to employsix graduate students over the summer.

My experience working in the marketing agency and the NBA (discussed later in this article) led me to formalize these activities and form a consulting practice that I now own and operate. This consulting work extends my network and allows me to capitalize on projects that extend my knowledge or stretch my thinking by exposing me to new concepts and ideas. These new concepts and ideas are then integrated into my teaching and lesson planning for my classes. My first consulting practice was called Audience Analysts, as this was a continuation of the work I had done at the sport marketing agency. The main focus of this practice was consumer research, or as the name suggests, analyzing audiences.

After my tenure with the NBA and having enough brand equity and name recognition, I founded Bill Sutton & Associates. The focus of this agency is very different, as I do very little audience research, instead focusing on revenue enhancement in terms of ticket sales and sponsorship sales and activation. I also work on organizational chemistry, which has led to a number of consulting assignments for staffing challenges—or just staffing generally—and staff development.

My consulting practice has led to a number of opportunities for my students as employees of my consulting firm. These opportunities have included research related to franchise movement of a professional team, stadium naming rights, sponsorship trends, and so forth. My consulting experiences form the basis for most of the examples I utilize in my sport marketing class, as well as for helping to create a number of the experiential learning activities discussed later in this article.

Working in the Sport Industry

My two full-time forays into the sport industry were extremely valuable, as they positioned me as a true industry practitioner. My first experience as Vice President of Information Systems for a sport and lifestyle marketing agency offered me the opportunity in 1990 to co-develop a computerized survey technique called RAPS: Rapid Audience Profile System. Essentially, my team and I would go onsite to a venue, such as a golf tournament, and profile the attendees, both demographically and with regard to consumer and lifestyle behavior.

The "rapid" part of the research was the ability to download all of the data within 30 minutes and compile a report for the entity that employed my agency. This proved to be extremely valuable for the sponsor of the golf tournament, which was a car company. For that first golf tournament, we showed the demographic shifts in attendance over a four-day event and suggested that onsite car displays should change each day to align with the demographics and lifestyle preferences of the attendees. So Fridays, a day that attracted a significant under-35 population, featured sportier vehicles, and Sunday, a day that had significantly more families in attendance, would feature minivans. Utilization of RAPS was extended into professional sports arenas and also into shopping malls for mall tours and exhibits. Thus, market research became a significant part of the agency business, and greatly expanded our client base. I was able to work on some significant projects, including the development of a strategic marketing and sponsorship plan for the Rock & Roll Hall of Fame during my tenure with the company.

I spent three years with the agency before returning to academia and the University of Massachusetts Amherst (UMass). While at UMass, I adapted what I had learned at the agency and created an applied marketing research course that resembled what I had done at the agency—we were able to solicit real clients and give the students an opportunity to conduct market research and present their findings to the clients. These activities also generated a modest amount of revenue, which could be used to assist the students with educational costs. During my time at UMass, the applied market research course necessitated a regional approach to find clients, as there are very few opportunities within an hour of Amherst. So, we worked events such as the NBA All-Star game and NBA Draft Oktoberfest in Cincinnati as well asworked with pro teams in Philadelphia and Cleveland.

In the fall of 1999, I was fortunate enough to have a sabbatical approved to work at the NBA headquarters in New York. While most sabbaticals are designed to have the faculty member focus on his or her research, I was fortunate that the leadership at UMass was supportive of the idea of a sabbatical that would be used to grow my network and experiences, which would ultimately benefit the students and alumni.

Based upon my experiences, my first assignment was a league-wide market research audit to determine what types of information were being gathered by the teams, how this was used, and whether there was value incoordinating all research through a league-wide vendor to compare information. I did several more research-based assignments and then I was the beneficiary of a huge break—I began reporting directly to NBA Commissioner David Stern. Working for someone who is demanding and expects excellence every day really contributes to your own personal growth and development. In my new role, I was given responsibility for a very high-profile program, the NBA marketing meetings, in which I would be front and center not only for the league, but

also for the individual NBA teams. Specifically, I was charged with creating all of the content for the ticket sales portion of the meetings and also scheduling and securing outside speakers for specific content areas. This responsibility, and the success of the meetings,enhanced my positionwith the Commissioner and also gave me a platform to present some ideas for his consideration.

The most significant experience of my sabbatical year at the NBA, and one that is still in existence today, was the creation and implementation of TMBO: the Team Marketing and Business Operations department.While serving as a practitioner, this was easily my most significant accomplishment and contribution to the NBA and the industry overall. TMBO-type groups now exist in Major League Soccer (MLS), the National Football League (NFL), and the American Hockey League (AHL) and is under consideration by several sport leagues.

The TMBO concept evolved from my initial experience of analyzing NBA research, where I observed how the League office was perceived by the teams, which at the time was less positive than I thought it should or could be. Initially, my idea was to establish SWOT teams that would visit teams, assess their strengths, weaknesses, opportunities, and threats, and assist with improving business. TMBO has grown dramatically from this first concept and is now vital to the NBA's success. Through the business acumen and expertise provided to its teams and their improved performance, all NBA teams (despite the competition on court) cooperate by sharing vital information about pricing, ticket sales, sponsorship sales activations, staffing models, analytics, business intelligence, and so forth. The acceptance and growth of TMBO led to a full-time job offer as Vice President, TMBO, which I accepted after concluding my sabbatical obligations to UMass.

During my NBA career, I created the NBA Job Fair, which ran for six years, topical business workshops and Stern Safaris (borrowed from Bill Veeck). The Stern Safaris were created to provide a forum for the Commissioner to visit teams in their local markets for business development and local agenda-advancing opportunities in addition to attending games. Both the business workshops and the Stern Safaris are still in existence today.

Here are the key takeaways from my work experience in the agency and at the NBA:

- Demonstrated that academicians can make significant contributions to the sport industry
- Established my credentials and broadened my network with the sport industry
- Enhanced my opportunities and desirability as a consultant
- Built relationships that led to experiential learning and placement for my University of Central Florida (UCF) and University of South Florida (USF) students andalumni from UMass, OSU, and Robert Morris University (RMU).
- Improved my understanding of what the industry is looking for in terms of employees, which then influenced my course content and approach to teaching

Experiential Learning

I have always been a huge proponent of experiential learning. The first application came during my early academic career at RMU in Pittsburgh. I attempted to build a relationship with the Pittsburgh Pirates and was willing to do almost anything to initiate it. At the time, the Pirates had a very poor perception in the market and were having difficulty selling tickets. I created a student project and sales competitionin which the students would actively call on businesses and potential leads in their attempt to sell ticket plans. The top performing student would receive a paid internship position with the Pirates, which, in 1984, was an anomaly for an undergraduate student. The program proved to be successful on a variety of fronts:

- Students received sales training and sales experience
- RMU established a solid relationship with the Pirates
- The student who won the contest received the internship, which led to a full-time position with the Pirates
- *USA Today* wrote a brief story titled, "Tough way to get an 'A'" and our program benefitted from the national exposure
- I was invited to speak at the NBA Marketing meetings that year and it was the first exposure to my future employer

The experiential learning programs I developed at each of my academic appointments included some of the following activities:

- Increased student attendance at non-revenue sporting events by creating a festival with clinics, activities, and sponsorship activities
- Conducted onsite NCAA Championship consumer profiles surveys and studies
- Community intercept studies that assessed the perception of one team in comparison to other teams in the same market
- Sponsorship activation platforms for brands being targeted by professional franchises for sponsorship proposals
- Event management at regional and national events
- Community relations projects and initiatives
- Sales projects involving the students making actual sales calls
- Participation in Fox Sports University (only at USF)

One element that I added to my experiential learning projects at UCF and USF involved the sponsors of the experiential learning projects to evaluate the students and participate in the grading process. I have found that it forces the students to "up their game" and teaches them the skill of presenting to people that they are relatively unfamiliar with but are essential to their future growth and development.

My commitment to experiential learning, however, has reached its zenith through the creation of our residency program at USF. A good friend and colleague, Dr. Dick Irwin, continually impressed me with the community partnerships program he created while a faculty member at the University of Memphis. This program required students to work jobs with community partners while in class in exchange for tuition support, compensation, and great experience. When I was recruited to USF, the Tampa Bay Lightning, which had been instrumental in creating the new graduate MBA/MS program, had offered 10 community partnership-type opportunities. The Lightning termed these *residencies* to infer that the experience was more than an internship and, thus, more would be expected from the students. The Lightning's thought process was to immerse the students (and faculty) in the day-to-day team business. An expectation was that students would bring the classroom knowledgethey had learned to the Lightning, and the experiential knowledge from the team back to the classroom. By doing this, students could come back with possible ideas and concepts to improve the Lightning's performance. This has been most evident in our Sports Analytics class, which is co-taught with Lightning personnel and uses real data in the class. The sales, applied sport marketing research, and service learning classes all have experiential learning components and real clients with expectations and outcomes.

With a projected enrollment of 30 students and the Lightning only offering 10 residencies, it was essential that additional residency partners be identified to provide every student the benefit of such an experience. The program succeeded inadding partners like the Tampa Bay Rays, Tampa Bay Buccaneers, USF Athletics, Tampa Sports Commission, Feld Entertainment, Hard Rock Casino, Women's Tennis Association, Minor League Baseball, and others. These experiences are crucial to our program's ability to attract quality students and place them in good jobs upon graduation.

I have grown to really appreciate the residency model, but I also recognize that my program's location in Tampa offers a unique situation. It is not replicable on this scale in many other markets, but it can be accomplished. When I was in Amherst, one of the smallest college towns in America, I could still create opportunities for my students. While they were project-based and thus short term compared to the residencies that I now offer, my message to faculty is that they can create experiential learning opportunities *if* (and it's a big *if*) they choose to do so. There is no doubt in my mind that students welcome real-life learning opportunities that enable interaction with the sport industry.

Student Placement

Everything discussed to this point—my work experience, consulting, and experiential learning—have all been integral in student placement. It started with internships, but now with the USF Residency Program, the emphasis has shifted to jobs. We have graduated 77 students over the first three years of the program. Of those 77 placements, 38—or slightly more than 50%—were placed through my professional network and contacts. If we include the USF Residency Program, that number grows to 52. Thus, it is clearly evident that faculty experience and creating experiences for their students has a direct impact upon placement.

In addition to what I have described thus far in this article, we have also created a program, managed by Dr. Mary Ann O'Neil, for our second-year MBA/MS students called Power Placement. Power Placement is designed to teach interview skills, conversational skills, and provide an awareness about how to apply for a position, follow up, and create a 90-day plan. The program has been in place for two years, and next year, it will extend to first-year students as well. The aim is to help these students initiate the job search process earlier through focus and an understanding of what they need to do.

I should point out that placement is not an activity that is very common in most faculty job descriptions. In fact, I would be surprised if the number of academic programs that require faculty involvement in student placement exceeds 5%. However, the program at USF, and the expectations of our partners and supporters, have made it a necessity for me. The workload is very high and demanding—it nearly consumes my entire spring and summer semesters. The type of successful placement we do would be impossible for a tenure-track faculty member. Only a tenured faculty member, such as myself, or a non-tenured executive director type position would be capable of handling the demand. While I would like to see this change, I think it is highly unlikely.

Generating Revenue

The key to any successful program is financial autonomy to the greatest extent possible. In times of limited resources and shrinking budgets, the ability to generate revenue for class activities such as field trips, graduation, and conferences is even more critical to a program's recruiting efforts to attract the best students. At USF, we have been fortunate to secure a naming rights partner for our graduate program (to be announced in Fall 2017) as well as the funds to support the entire residency program by securing a variety of partners who provide scholarships and special project funding. In the 2016–17 academic year, those funds will total more than $900,000. In addition, we have positioned our graduate students as consultants, which allows us to generate approximately $25,000 annually through class projects.

Industry Columnist

For the past 13+ years, I have been fortunate to write a monthly column for Street & Smith's *Sports Business Journal*

(SBJ), which has been branded *The Sutton Impact* since 2012. The exposure and national industry readership has been beneficial to me both as an academic and as a consultant, hence the *pracademic*. As an academic, my column is used in sport business programs throughout the country, providing an entrée to potential graduate students as well as offering industry insights as to what is happening and who makes it happen. Frankly, the *Sutton Impact* is read and shared far more widely than any academic paper I have, or could, ever write. I know that statement is distressing to some of you reading this article, but the facts speak for themselves. What I find distressing, although I have written more than 160 columns, is their cumulative total in the academic system of evaluation is not of equal value to one refereed journal article. That is a tragedy and shortcoming of the antiquated system that I have voluntarily joined and adhered to for over 30 years. I have no regrets and would strenuously recommend to any faculty member that this type of publishing needs to be part of your repertoire. Unfortunately, in the majority of cases, it will not help with tenure or promotion.

From an industry practitioner perspective, the column has enabled me to learn a great deal about parts of the industry that might not have been in my key interest areas, which has allowed me to share a lot of knowledge with others. As a direct result of my column, the readership has reached out to me for consulting opportunities, speaking engagements, and student projects.

Bridging the Gap

Over the years, I have been involved in two notable attempts by the academic community to "bridge the gap" between academia and the sport industry. The first of these was the founding of *Sport Marketing Quarterly (SMQ)* in 1992. A number of people, including Dr. Dallas Branch, Dr. Steve Hardy, Dr. Dave Stotlar, Dr. Bernie Mullin, the late Dr. Guy Lewis, and I, were in a hotel lobby in Columbia, South Carolina, attending a conference. We all talked about needing additional publication opportunities for faculty and bemoaned the fact that practitioners had little to no interest in academic journals and for that matter academic research in general. The initial concept for *SMQ* was to launch a journal in which the research would be industry-based and hopefully would create co-authorship opportunities between industry professionals and academicians. In fact, the charge was for academicians to search out such opportunities. Dr. Branch took the lead, formed a relationship with FiT Publishing in Morgantown, West Virginia, and became the first editor of *SMQ*. More than 25 years later the journal is one of the most popular and respected journals in the field. While the cooperation between academicians and practitioners never reached the level that we had hoped for in terms of authorship, it did lead to more research and interaction between academicians and the industry.

The Sport Marketing Association (SMA) was created for similar purposes and also because it was felt that there was not enough integration between the sport industry and academicians in the academic societies/organizations in existence at that time. This time the impetus was Dr. Gregg Bennett, a faculty member at the time at the University of Florida. Dr. Bennett pushed the agenda with some familiar names, including the aforementioned Dr. Irwin, Dr. Stotlar, and I, with Dr. Irwin agreeing to be the first president of the organization and Dr. Bennett and the University of Florida hosting the initial conference in 2001. SMA has remained true to its mission with the annual conference hosting a blend of academic presentations and—borrowing from the National Sports Forum—industry speakers, experiences, and tours.

The creation of *SMQ* and SMA speak to the need and desire for an integrated research, teaching, and service partnership that will hopefully continue to grow, develop, and flourish.

Conclusion

I have led a blessed life that, like everyone, has had its ups and downs. For the most part, there have been far more ups than downs. The choices that I have made have worked for me, but more importantly, I have no regrets about the paths that I have or have not chosento pursue. I would like to close by offering some advice for those who might want to become *pracademics* (to some degree):

- As Shakespeare so eloquently said in Hamlet, "to thine ownself be true"—pursue the things that are important to you regardless of whether they count in the academic world.
- Integrate experiential learning projects into your classes—your students will appreciate the applied learning and it will prove very beneficial as they seek employment after graduation.
- Don't be a prisoner of your own ivory tower—get a first-hand look at how the industry works before you write about it.
- Beta test your consulting capabilities to develop a body of work, references, and a professional reputation before trying to generate income.
- Learn to write without the academic jargon or style and find an outlet that appreciates your writing.
- Generate funds that help you become less dependent and more autonomous.
- Consider a sabbatical or an externship to improve your knowledge of the industry, establish an experiential base, and to build a solid network.
- Attend trade conferences such as *SBJ* seminars and the National Sports Forum to learn about best practices and build relationship

SUBMISSION GUIDELINES

The mission of *Sport & Entertainment Review* (*SER*) is to become the outlet for the best new ideas for people creating, leading, and transforming sport and entertainment organizations and businesses. *SER* seeks to be one of the world's leading journals on publishing cutting-edge, authoritative thinking on the key issues facing executives in the world of sport and entertainment.

Articles published in *SER* cover a wide range of topics that are relevant to the different industries in sport and entertainment (such as professional sport, live performances, music, theater, dance and art, etc.) around the world. To further enhance these industries, authors are invited to write about theoretical concepts in leadership, organizational change, negotiation, strategy, operations, marketing, finance, sales, human resource, and event and project management. Preference will be given to authors able to draw upon previous research they conducted in a particular area and are able to show how their previous studies furthered the understanding of this particular area.

While we encourage diversity in all subjects, all *SER* articles will have certain elements in common: (1) they are written for senior managers who benefit by the content and the article clearly articulates how the knowledge can be applied to the workplace; (2) the ideas presented in the articles can be translated into action and have been tested in a sport and entertainment industry context. Proposals that demonstrate fresh thinking that advances previous knowledge whose practical application has been thought through in clear, jargon-free language are those most likely to meet the readers' needs.

Proposals should answer the following questions:

1. What is the central message of the article you propose to write? What is important, useful, new, or counterintuitive about your idea? Why do managers need to know about your idea?
2. How can your idea be applied in business today?
3. For which kinds of companies would your idea work especially well? For which kinds of companies would the idea NOT work well? Why?
4. What research have you conducted to support the argument in your article?
5. Upon what previous work (either of your own or that of others) does this idea build?
6. What is the source of your authority? What academic, professional, or personal experience will you draw on?
7. What is the applicability of your idea beyond your own discipline of sport or entertainment, and how can it benefit the other fields in sport and entertainment? (e.g., if your study originates in sport, how can it benefit managers working in music, theater, arts, or live performance, and vice versa.)

The proposal should address the questions above (it does not need to be written in question-and-answer format) in a narrative outline (500-750 words). The outline should describe the structure of the article and detail each important point in a separate paragraph (excluding reference list).

Provide not just a sense of your primary ideas, but of how the logic of the ideas will flow. Points should be illustrated with real-world examples or one extended, detailed example.

Proposals will undergo blind peer-review to assess to what extent the proposal fits the submission guidelines of *SER*. This review process will take up to four weeks and could lead to three different decisions:

1. The proposal is accepted and the author(s) will be invited to submit a full article manuscript (3,000-5,000 words).
2. The reviewers provide positive feedback about the proposal, but invite the author(s) to revise the focus of the article and resubmit the proposal before moving on to a full review.
3. The reviewers decline the proposal.

The proposal must include the following elements in the order listed:

1. Title of proposed article.
2. Author's name, institution, contact information.
3. Narrative (500-750 words). Narratives should be submitted in 12-point Times New Roman font, using American Psychological Association (APA) Guidelines.
4. Reference list.

If a proposal is accepted, authors will submit a full-length article (3,000-5,000) for the review process, using the APA guidelines. While it is the intention of the editorial board to accept each article at this point of the review process, acceptance is not guaranteed. Reviewers retain the right to reject the manuscript, particularly if the authors are unwilling or unable to incorporate reviewers' suggestions for revisions.

Proposals should be submitted to SER editor Bob Heere at bheere@hrsm.sc.edu***, or assistant editor Chad Seifried at*** cseifried@lsu.edu

All inquiries about the submission and review process should be directed to Bob Heere via email at bheere@hrsm.sc.edu

SER Advertising Guidelines

Black & White Only Interior Pages
Full Page $296 One Issue
Half Page $170 One Issue

Back Cover, Color Only
Color Only $850 One Issue

Inserts Black & White or Color Provided by Advertiser
Full Page $296 One Issue
Half Page $215 One Issue

Contact FiT Marketing for rates on advertisements in three or more issues.

Closing Dates

Issue	Reserve	Camera-Ready Due
February Issue	November 15	November 30
June Issue	March 15	March 31
October Issue	July 15	July 31

*Note: Submissions received after the camera-ready due dates are accepted on a space-available basis.

Billing and Discounts

Agency discount: 15%

Cash Discounts: Net 30 days from invoice date.

Past Due Accounts: All accounts not paid in full within 30 days shall incur a 1.5%/month late charge from the due date until paid in full. The advertiser agrees to pay for any costs involved in the collection process.

Liability for Payment: Advertisers and its advertising agencies shall be liable jointly and severally for payments due to the publisher for advertising which was published pursuant to request of advertiser or its advertising agency.

First Time Advertisers: Payment with first order is required.