

College Athletics

AND THE LAW

Incorporates Title IX Compliance Bulletin for College Athletics

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LEGAL SPOTLIGHT

TWO-MINUTE DRILL

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COVER STORY

Stay alert for businesses using athletes' names, photos in promotions

You're probably aware of NCAA regulations regarding promotional activities and student athletes. The bylaws spell out what is and isn't permissible.

But what do you do when a local business uses one of your athletes to promote an event? What are your responsibilities? Would you know what to do?

That's what happened recently at the University of Florida. University officials had to write a cease-and-desist letter to a business that used quarterback Tim Tebow's name to promote an event.

There are a couple of lawsuits pending that may change the way an athlete's likeness can be used, but for now, it is up to you to stay alert and take action, if needed. **Full story, pages 4–5. ■**

Review cease-and-desist letter

UF officials asked a business not to use an athlete's image in a promotion. **See page 4.**

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Verdict in heat-related death of player prompts reform

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Character counts in this athletics department

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Avoid these mistakes when hiring employees

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To stay on top of compliance, look beyond NCAA

Robert Lloyd Clayton, a leading attorney in sports compliance, outlines what you need to know to stay out of compliance trouble. **Page 12**

Athletics director resigns, basketball coach suspended

The men's basketball program at the State University of New York at Binghamton is under state investigation after six players were thrown off the team, the athletics director resigned, and the coach was suspended. Allegations of player misconduct, coupled with reports of faculty being pressured to inflate athletes' grades, came to light last month, resulting in Athletics Director Joel Thirer resigning

and Coach Kevin Broadus being put on indefinite paid leave. Broadus admitted to contacting recruits inappropriately. Thirer was reassigned to the provost's office. SUNY officials are investigating. ■

The Two-Minute Drill

Each month, this feature will include a legal pointer, law-suits filed regarding college athletics, and other news regarding athletes and athletics departments nationwide.

University nickname not nixed yet

The University of North Dakota won't have to abandon its nickname the "Fighting Sioux" just yet. The state's board of higher education voted to extend the deadline for the nickname's demise to Oct. 31. In 2006, the university sued the NCAA because it wouldn't grant it a waiver from a policy banning American Indian imagery in nicknames and mascots that the NCAA deemed insensitive. In settling the suit, the university agreed to drop the name unless it could win approval from two Sioux tribes. One tribe has endorsed it but the other has refused to schedule a vote on the issue. ■

NCAA must make records public in FSU cheating case

Florida's open-record or "sunshine" laws have forced the NCAA to make public the documents relating to Florida State University's appeal of an NCAA sanction to strip coaches and athletes of wins in 10 sports. That would include stripping 14 wins from head football Coach Bobby Bowden, dimming his chances of getting winningest coach honors again.

The 1st District Court of Appeal upheld a trial judge's decision ordering the athletics organization to make the documents public after blacking out students' names. The department previously put the records on a secure, read-only Web site. The Associated Press and other media organizations sued the NCAA, the university and FSU's counsel to get the documents released. ■

State-of-the-art facility finally opens for athletics

Rensselaer Polytechnic Institute in Troy, N.Y., recently opened its \$92 million state-of-the-art athletics facility, the East Campus Athletic Village, to coincide with homecoming. Students, alumni and university officials attended the grand opening, which included a ribbon cutting, free food, and tours of the facility. Athletics Director Jim Knowlton credited President Shirley Ann Jackson and the board of trustees with making an "incredible" commitment to all athletes at all levels. Construction has been under way on the facility since 1997. ■

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Not guilty verdict doesn't get ADs, coaches off hook

By Dave O'Brien and Timothy O'Brien

Coaches and athletics administrators should remember Eraste Austin, a high-school student in Florida, and Rashidi Wheeler, a Northwestern University student.

In 2001, these athletes died from heat-related causes stemming from summer football practice. To varying degrees, the football coaching staffs were blamed for

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the deaths. Lawsuits and settlements followed. Last year, this issue resurfaced at the high-school level in dramatic and unprecedented fashion, and every football coach and athletic administrator (at the college or high school level) should take notice.

In 2008, David Jason Stinson, a high school football coach from Louisville, Ky., was charged with wanton endangerment and reckless homicide in the heat-related death of one of his players.

Recently, the trial ended and Coach Stinson was found not guilty. His player collapsed at practice when the team was put through a series of sprints on a hot summer day. He died three days later at a Louisville hospital of heat stroke, sepsis and multiple organ failure. His temperature reached at least 107 degrees.

The jury reached a verdict after deliberating less than two hours. Although it was a rare criminal prosecution of a coach, it will probably not be the last one. Since 1995, there have been 39 football deaths from heat-related injuries, according to the National Center for Catastrophic Sports Injury Research at the University of North Carolina. While lawsuits have resulted, no coach before Stinson is

believed to have faced criminal charges.

Players testified Stinson ordered the sprints or "gas-sers" as punishment for lack of effort at practice on a day when the temperature and heat index were both 94 degrees. The prosecution relied on the testimony of team members who said several teens became ill, vomiting or bowing out of the running.

The incident has prompted reform. Jefferson County Public Schools now require all athletes, and at least one parent, to watch a 40-minute video touching on everything from dietary supplements to bacterial infections. High school coaches must attend a seminar on using positive reinforcement with students. The National Athletic Trainers' Association issued a report recommending more stringent heat-related guidelines. Among them: eliminate two-a-day practices at the high school level during the first week of August and give players more time to recuperate.

From a legal liability perspective, athletic administrators and football coaches have many supervisory duties that, if properly followed, can ensure student-athlete safety and protect everyone from civil and criminal liability. These include the duty to:

- Exercise reasonable care for players' safety under hot and humid conditions.
- Instruct athletes regarding safe procedures to minimize heat-related incidents and injuries.
- Warn players of the inherent risks of exertion during summer practices so they recognize the signs of heat exhaustion.
- Provide medical equipment for players, including cooling stations and ice buckets.
- Not force players to participate when they have already demonstrated heat-related problems or if there is a risk further participation will increase the chances of a problem.
- Take reasonable steps to provide medical assistance once a problem arises. ■

Take precautions during summer practice sessions

ADs should take the time to review their policies regarding practices before next year's summer heat sets in. Here are some specific suggestions for coaches and athletic administrators to follow regarding summer sports practices:

- Schedule pre-season football practices to avoid the hottest part of the day. Schedule practices during the cooler morning and evening hours.
- Monitor student-athletes who are most prone to heat-related problems, such as those who are overweight or who

have been worn down due to recent illness or injuries. Pay special attention to student-athletes who have had past heat-related incidents or who have not yet acclimated to the heat.

- Adjust daily workouts to accommodate for hot conditions and players' physical symptoms.
- Allow players to recover in cool conditions long enough to allow their body temperatures to return to normal.
- Before, during and after play, provide cold water, as well as shaded, cool-down areas with circulating air. ■

Keep student-athletes' off-campus promotions in check

How far is too far when it comes to athletes and promotional events? NCAA bylaws outline what is and isn't permissible. Athletics programs must prevent the commercial use of an athlete's image or name or risk their eligibility.

But the rules do allow athletics programs to make uses of an athlete's likeness for commercial endeavors.

For example: promotions involving NCAA championships, events, activities or programs are OK for student-athletes. A name-the-player contest involving a local business is not. Maybe you think you don't have to worry about this because you don't have any athletes on any of your sports teams who have reached superstar status. Think again.

In markets where college athletics is the only game in town, you need to be diligent about how you work with the business community. Certainly you don't want to sour relationships with business owners, but it is up to you to protect your athletes and know the rules.

"When athletics directors hear of these things, they are obligated under the bylaws to send cease-and-desist letters," said Rick Karcher, director of the Center for Law and Sports at Florida Coastal School of Law in Jacksonville.

He added it would be smart for athletics directors to talk to student-athletes about the perils of promotional activities

in advance of their season. That way, if student-athletes are approached about a promotion, it should automatically raise a red flag.

It might also help if the business community was better educated on the issue, said Mike McCann, associate professor of law at Vermont Law School.

"There's a disconnect," McCann said. Business owners may think, "Schools promote themselves, so why not assume that applies to individual players?" he said.

He suggested that ADs work with their local chambers of commerce to set up education programs or devise a question-and-answer session based on the NCAA bylaws concerning promotions.

Either way, Karcher and McCann agree, athletics directors must stay on top of these issues before they become problems.

This August, University of Florida officials were forced to send the Fort Myers Miracle, a minor league baseball team, a cease-and-desist letter (*see sample letter*) after they caught wind of a promotion involving star quarterback Tim Tebow. "What Would Tim Tebow Do?" night was meant to have some fun with the quarterback's exalted status, said Miracle General Manager Steve Gliner.

Although the promotion was on the schedule since the season began in April, once the letter arrived, it was changed to "What Would TT Do?" night.

Use this cease-and-desist letter as a model

Below is the actual letter that Jamie McCloskey, the University of Florida's senior athletics director, sent to the general manager of the Fort Myers Miracle baseball team. Known as a cease-and-desist letter, it asks that the organization not use the image or name of star quarterback Tim Tebow for a promotion. Adapt or tailor it to fit your institution's needs.

August 26, 2009

Media Relations Manager/PA Announcer
Fort Myers Miracle Professional Baseball
14400 Six Mile Cypress Parkway
Fort Myers, Florida 33912

Dear Gary:

This is in reference to the promotion "What Would Tim Tebow Do? Night" containing Tim Tebow's name. Tim is a student-athlete at the University of Florida.

Under NCAA rules it is not permissible to use the name or picture of a student athlete in the promotion of a commercial product or service. This would include the promotion and marketing of "What Would Tim Tebow Do? Night." Therefore, the University of Florida respectfully requests that you no longer use the name or picture of any Florida student-athlete in promotions or advertisements.

Failure to abide by this rule would result in the student-athlete being ruled ineligible. I realize that you were not aware of this rule and that you would not want to do anything that could jeopardize the eligibility of student-athletes or the university's athletic program.

We appreciate your help in this matter. Should you have any questions, please do not hesitate to contact me at (352) 3750-4683, Ext. 6022. Attached for your review is a copy of a "Guide to Compliance" that was developed to assist individuals in their understanding of NCAA rules and regulations.

Sincerely,
Jamie McCloskey
Senior Associate Athletics Director ■

Review NCAA bylaws governing student-athlete promotions

The following is a quick glance at what student-athletes can and cannot promote according to NCAA bylaws. For the full text, see www.ncaa.org and click on “legislation and government,” then “rules and bylaws.”

Permissible promotional activities:

- Institutional, charitable, education or nonprofit promotions.
- Promotions involving NCAA championships, events, activities or programs.
- Promotions involving commercial locations/sponsors. Note: provided the commercial establishment is not a co-sponsor of the event and the student-athlete does not promote the sale of a commercial product.
- U.S. Olympic committee/national governing body advertisement prior to collegiate enrollment.
- Continuation of modeling and other nonathletically related promotional activities after enrollment.
- Congratulatory advertisement.
- Educational products that are related to sports-skill instruction.
- Camps.
- Promotion by third party of highlight film, videotape or media guide.
- Promotion of NCAA and conference championships.
- Olympic, PanAmerican, World Championships, World Cup and World University Games.

Nonpermissible promotional activities:

- Advertisements and promotions after becoming a student-athlete. Specifically restricted activities include: name-the-player contests, athletics equipment advertising and promotional contests.
- Media activities during the playing season: A student-athlete may appear on radio and television or engage in writing projects when they are related in any way to athletics ability or prestige, provided the athlete does not receive any remuneration.
- Media activities outside the playing season: Student-athletes may appear on radio and television or engage in writing projects when their participation is related in any way to athletics ability or prestige, provided they are eligible academically to represent the institution and do not receive any remuneration.
- Use of logos: A student-athlete may use athletics equipment or apparel that bears the trademark or logo of an athletics equipment or apparel manufacturer or distributor in athletics completion and pre- and post-game activities provided that equipment bears only the manufacturer's normal label or trademark; the institution's official uniform has only a single manufacturer's or distributor's normal label or trademark not to exceed 2¼ square inches in area.
- Laundry label: Must not exceed 2¼ square inches and be within a four-sided geometrical figure. Size restrictions apply to pre- or post-game activities. ■

Are lawsuits changing the rules?

As commercialism in college sports grows, questions about who can and should profit from athletes' images are at the core of a couple of lawsuits filed by former players.

Sam Keller, a former Arizona State quarterback, filed a class action lawsuit this spring regarding the EA Sports college football video game. The game features university teams with their official uniforms and other realistic features, but excludes players' names. The NCAA has a licensing agreement with the company and has denied any wrongdoing with regard to student-athlete likeness rights and is certain it's in compliance with NCAA bylaws, said NCAA spokesman Cameron Schuh.

“They know they're not going to make much money out of this,” said Karcher of the Keller suit. “It's a statement that says ‘this isn't right.’”

Another class-action suit was filed this year by former University of California at Los Angeles

basketball player Ed O'Bannon. It cited the same video game Keller did, as well as action figures of former players, highlight DVDs, and other uses of players' images.

So far, the NCAA has not responded to either complaint, McCann said. But he's keeping an eye on the O'Bannon case. The suit has the ability to effect policy change and “to empower graduates from making money off their images,” he said. “What is the NCAA rationale for preventing them from collecting money?”

That could create challenges for future athletes and athletics directors though, McCann added.

“Will freshman athletes need to have counsel with them when they sign athletics documents or meet with athletics directors?” he asked.

Karcher agreed it's a slippery slope. “Where do you draw the line in this commercial exploitation?” he added.

Contact Rich Karcher at rkarcher@fcs1.edu and Mike McCann at mmccann@mc.edu. ■

TERRY WANLESS, ATHLETICS DIRECTOR, SACRAMENTO STATE UNIVERSITY

Create environment for staff, student-athletes to thrive

There's a saying at Sacramento State University that sums up the athletics program in three words: character before talent.

Since taking over the athletics program at Sac State eight years ago, athletics director Terry Wanless, who was named this year's Western Region Athletic Director of the Year, has made that three-word phrase his motto. And his staffers emphasize it in recruiting student-athletes, too, he said.

"Some young men and women are too often mesmerized by talent," he said. "A student-athlete may not be the most talented, but that doesn't mean you can't be successful. Passion can overcome talent."

And Wanless and his teams are out to prove that. In the last three years, they've racked up 25 conference wins. Academics are also high on Wanless' priority list. Six years ago, seven teams had an Academic Progress Rate of 899. Today, eight teams have a perfect 1,000 score, he said.

So how has he achieved these outcomes?

One of the first things Wanless did when he arrived on campus was evaluate his staff.

"Some moved up, some moved out. I had to have a change in personnel," he said.

With the right staff members in place, Wanless set

about devising an environment where they would thrive.

Creating openness between himself and his coaches, fostering their trust and building relationships were critical.

"It's up to me to put a support structure around them," he said.

And he's consistent with his message. Character before talent is something he, his coaches and administrators talk about constantly over coffee, in one-on-one meetings and especially with student-athletes.

"When I see them [students] outside the athletic world, I ask them how they are and how they are doing academically," he said. He meets personally with all the student-athletes his coaches recruit. He attends every home game. He keeps a candy bowl on his desk, in case a student-athlete drops by.

"It's a way to show our commitment to excellence," he said.

Though it hasn't always been easy, he's proud of how far he and his staff have come.

"It's taken seven years and we still have a lot of work to do," he said. "It's like stirring the pot. The longer it boils, the better it is."

Contact Terry Wanless at sacad@skymail.csus.edu. ■



TERRY WANLESS

To lay groundwork for success, set strategic goals

To create a successful athletics program, it helps to have a blueprint. About a year ago, Terry Wanless, athletics director of Sacramento State University, and his staff created a strategic plan. The goals are straightforward: "We want to keep growing and getting better. We want to have a great experience for our student-athletes," he said. They also want the university considered among the elite top two or three teams in the Big Sky conference.

So how do they plan to achieve these goals?

First, you have to have resources and that's been a bit of a struggle, Wanless admits. His biggest challenge at the university so far has been improving the athletics facilities.

"We were way behind," he said. But last year, they opened a \$12 million field house, thanks to an aggressive president and a successful fundraising campaign. Next they hope to renovate the gym.

Second, have a philosophy that you're comfortable with,

he said. His is "character before talent" and he imbues that into every facet of his department.

Third, build relationships with your coaches, Wanless said. After all, they are the ones dealing directly with the win/loss columns. When he joined the university eight years ago, Wanless knew that putting together a first-rate staff was a priority. Today, "I am totally committed to every staff member I have," he said.

Fourth, teach student-athletes to play better than they are, he said. It isn't all about talent. He and his coaches specifically recruit student-athletes who might not dazzle on the field, but who have a sense that they can overcome obstacles to be the best they can be.

On recruiting trips, his coaches talk to high school coaches, of course, but they also talk to school counselors, the janitor and teachers.

"We want to know, is he a Boy Scout? Is she involved in community activities?" he said. ■

Fans apply full-court press over reseating policy

By James T. Reese, Mark A. Dodds and David L. Snyder

If you're thinking of changing the way you offer season tickets to sporting events, take into consideration what happened at the University of Pittsburgh in 2005.

That's when a group of longtime season ticket holders for men's basketball filed a class-action lawsuit for breach of contract over a change in ticketing policy. The lawsuit has since been resolved, but the case illustrates the legal ramifications — and public relations and marketing implications — that can arise if you change season ticket-holder policies in an attempt to enhance revenue.

In February 2005, Pitt announced it was changing its policy on distributing season tickets for men's basketball. Beginning with the 2005–06 basketball campaign, season ticket holders would be reseated annually, based on priority points earned through donations to the Panther Club, the fundraising organization.

Under the revised policy, fans who donated between \$250 and \$499 annually received preferred seating options in the general seating area. This change contradicted information in Pitt's advertising literature distributed to fans in 2002, which did not include minimum donation amounts to retain seats.

The 2002 brochure stated: "By maintaining or increasing your level of annual support to Team Pittsburgh and purchasing season tickets each year, you will guarantee your right to the same seats." The brochure also stated, "Seating assignments will not change, as long as donors maintain or increase their annual giving donation level from the previous year."

When the new system was announced, John Stember, an attorney, alumnus and 35-year Pitt season ticket holder, expressed concerns about the legality of the policy change. He suggested it was initiated by an increase in demand for tickets to Pitt men's basketball games. This increased demand provided Pitt with an opportunity to generate additional revenue by mandating a minimum level of donations to gain access to preferred seat locations. His comments led to a class-action suit for breach of contract being filed on March 29, 2005 on behalf of approximately 650 season ticket holders.

In response, Jeff Long, athletics director for Pitt at the time, released numerous statements admitting the policy change was made to raise money for scholarships and enhance athletic facilities.

One statement by Long read in part, "Although we firmly believe Pitt athletics already is living up to its past commitments, there was some misunderstanding about those commitments. Our goal is to generate additional funds to provide student-athletes with the best opportunity for academic and athletic success, while also rewarding fans who have maintained or increased their contributions to support our growth."

After extensive negotiations, a settlement agreement was announced on May 31, 2005. Members of the class action suit were allowed to retain their existing seats, provided they met a minimum donation level to the Panther Club, depending on the ticket holder's classifications under the terms of the settlement. Pitt also agreed to pay the plaintiffs' attorneys' fees: \$35,000.

Contact the authors at James.Reese@Cortland.edu; Mark.Dodds@Cortland.edu; David.Snyder@Cortland.edu. ■

About the authors

The authors are based at the State University of New York College at Cortland in the Sport Management Department. James T. Reese, Ed.D., is an associate professor and graduate coordinator. Mark A. Dodds, J.D., is an assistant professor and David L. Snyder, J.D., is a professor. ■

Take steps to avoid legal, PR problems with ticket holders

When the University of Pittsburgh altered its ticket policies in 2005, it set off a firestorm of reactions that eventually led to a class-action lawsuit by ticket holders.

Follow the advice below to prevent something similar happening at your institution:

- Remember the contractual nature of marketing materials. All ticket-marketing materials are a contract with season ticket holders. That includes brochures, information on Web sites, advertisements, press releases

and ticket renewal forms, etc.

- Be aware of how sensitive fans are to policy changes. Think carefully about the potentially negative impact policy changes may have on ticket holders before acting.
- Consider the long-term effects. The best marketing strategy is not capitalizing on short-term profitability, but instead developing and implementing a strategy based on long-term relationship building.

— James T. Reese, Mark A. Dodds, David L. Snyder. ■

Did student's allegations support her Title IX claims?

M. Miles was a female student-athlete at Carl Albert College when she was allegedly raped by Jack Washington, the women's assistant basketball coach. She filed a Title IX action against Washington, the college and several of its officials. She alleged that they were deliberately indifferent to the sexual harassment she experienced at the institution. She also claimed that the college retaliated against her when she reported the sexual harassment.

Miles alleged that Washington had given her an alcohol-laced drink at a party in a student's dorm room and then raped her. When she reported the rape to the head women's basketball coach, he allegedly warned Miles that pursuing the matter would get her in trouble.

Washington was later fired for drinking alcohol with students. After he told students about his termination, several female student-athletes stormed Miles' residence hall and tried to beat down the door to her room.

Miles was asked to leave the dorm for the weekend and return when the other students calmed down. She moved out that night and never returned to the college.

Miles filed a restraining order against the students who had threatened her. The college's athletic director and the head women's basketball coach accompanied the accused students to court. At the hearing, the officials allegedly expressed their disgust and displeasure with Miles and her mother.

The college moved to dismiss the claims, asserting that it did not have prior knowledge of Washington's conduct. However, Miles introduced evidence showing that the college was aware that

Washington had previously been present at student parties and consumed alcohol at the events. The college also alleged that it could not be held liable for its students' actions.

Miles v. Washington, et al., No. CIV-08-166-JHP (E.D. Okla. 02/02/09).

Did the District Court dismiss Miles' claims against Carl Albert College?

A. Yes. The college was not liable for the unexpected actions of its students or for the coach's alleged misconduct.

B. Yes. Miles' evidence did not support her claim of deliberate indifference while the students' misconduct could not be attributed to the college or its officials to establish the retaliation claim.

C. No. Miles' allegations regarding the coach's previous conduct cast doubt on the college's claim that it did not have prior knowledge. That, along with the other coaches' actions at the criminal hearing, was sufficient to defeat the college's motion to dismiss.

D. No. Under Title IX, educational institutions are always liable for the actions of its students and employees.

Correct answer: C.

The U.S. District Court denied the defendant's motion to dismiss. It ruled that the college's knowledge of Washington's prior inappropriate behavior coupled with the college officials' conduct at the hearing on the restraining order were sufficient evidence to create plausible claims for deliberate negligence and retaliation under Title IX.

Editor's note: This feature is not intended as instructional material or to replace legal advice. ■

You Make the Call

This regular feature details a recent court case. Review the facts. Think about how you would have handled the situation. Then test your legal knowledge by trying to determine how the court ruled.

College Athletics and the Law Board of Advisors

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Avoid common mistakes when interviewing job candidates

MANAGING YOUR OFFICE

This regular feature provides you with guidance to help you sharpen your management skills.

The recession has led to layoffs and hiring freezes at many colleges. So it is more important than ever that you know how to hire talented people your institution will want to keep even in a depressed economy.

A key to getting the right person in the right job is the interview, said Lynn Nemser. She's president of Partners in Performance, Inc., a Pittsburgh-based HR consulting firm.

"Too often, hiring managers make common mistakes that result in bad hires," Nemser said. "But there are things you can do to avoid the deadliest interviewer errors."

Use her list of typical mistakes — and how to avoid them — to help you make good hiring choices.

Nemser said many errors occur during the interview process, including:

- **Violating the Pareto principle.** The Pareto principle holds that 80 percent of effects come from 20 percent of causes. Proper Pareto interviewing requires you to listen 80 percent of the time and talk just 20 percent of the time, Nemser said. "Most violations of the Pareto principle occur because of insufficient preparation."
- **Leading the candidate.** Don't ask leading questions. "Watch what you say and your body language so you don't give away the answer or intimidate the candidate," Nemser said.
- **Asking the same things everybody does.** Coordinate with other interviewers. "Design a bank of questions. Limit two interviewers to each competency," Nemser said.
- **Making too much ado about everything.** Interviewers often ask too many questions and try to cover too many topics. "Be realistic about your time," Nemser said. Limit the interview to critical areas and focus on details, she noted. "Plan follow-up probes in advance."
- **Asking for or accepting hypotheticals.** "Ask about the real world," Nemser said. Listen for words such as "if" or "would" and require examples.
- **Asking for or accepting opinions.** Listen for phrases such as "if you ask me ..." If a candidate offers opinions, ask for what led to that opinion and for examples that support it, Nemser said.
- **Accepting generalizations.** "Get the specifics," Nemser stated. Listen for general words, such as "always," "never," "generally" and "everything." When candidates start to generalize, ask for details and use who, what, where, when and how questions.
- **Accepting the word "we."** When inquiring about past jobs or projects, use the phrase "walk me through" and ask candidates who did what, Nemser said.
- **Deciding before evaluating.** Develop and use easy interview tools, and build them into your process, Nemser said. "Coach and build your tool skills."
- **Comparing candidates.** Avoid this trap by comparing the candidate to the position's roles and responsibilities. "Only compare qualified candidates," Nemser said.
- **Halo, horns and pitchfork effects.** The halo effect occurs when one good trait makes a candidate look good in other areas. The horns or pitchfork effect occurs where a negative perception is generalized to other aspects of the candidate. "Don't make judgments based on first impressions," Nemser warned. "And don't set out to hire yourself."

For more information, you may contact Lynn Nemser at lnemsere@nb.net. ■

FUNDRAISING

**Use of funds, not policy,
determines tax exemption**

Case name: *Comptroller of the Treasury v. Johns Hopkins University*, No. 532, September Term, 2008 (Md. Ct. Spec. App. 06/09/09).

Ruling: Maryland's Court of Special Appeals upheld the state tax court's decision that Johns Hopkins University did not have to pay admissions and amusement taxes on gross receipts from sales of tickets to intercollegiate men's lacrosse games.

What it means: Courts interpret tax exemptions narrowly and generally defer to the judgment of the agency charged with interpreting and applying the state's tax code.

Summary: Johns Hopkins University applied for a refund of admissions and amusement taxes it paid to Baltimore City on gross receipts from ticket sales to intercollegiate men's lacrosse games in 2002, 2003 and 2004.

Hopkins sought its refund on the ground that a state's statute prohibited the imposition of admissions and amusement taxes if the gross receipts were used exclusively for charitable, educational or religious purposes.

The record showed the men's lacrosse games generated gross receipts of about \$140,000. Of that, around \$100,000 was spent to cover the costs of games. The remaining funds were used to make repairs to an athletic field.

When the city's comptroller denied the refund request, Hopkins filed a challenge in Maryland's Tax Court. The tax court granted the refund.

After that decision was affirmed on judicial review by the Circuit Court for Baltimore City, the comptroller appealed. He claimed the tax court erroneously decided Johns Hopkins used the gross receipts from intercollegiate athletic events exclusively for educational purposes.

The comptroller argued the decision to deny the refund was based on a long-standing administrative policy that intercollegiate athletics did not meet the statutory "educational purpose" requirement. Only intramural athletics were recognized as serving an educational purpose.

Maryland's Court of Special Appeals affirmed the tax court's decision. "We give deference to the Tax Court's application of [the statute], not the Comptroller's, as the Tax Court is the agency charged with interpreting and applying the Maryland tax code," the court stated.

**LAWSUITS &
RULINGS**

This regular feature keeps you informed about recent lawsuits affecting athletics.

It found that Hopkins' evidence showed that the gross receipts were primarily used for educational purposes. The monies benefitted the university, intercollegiate athletes, other nonparticipating students and spectators of the sports. Additionally, the court noted most of the net proceeds for the three years in question were spent directly on maintaining and repairing an athletic field used by all students and their families for commencement exercises, as well as by some students for ROTC and intramural games. ■

TITLE IX

**Female-athletes win injunction
to prevent team's elimination**

Case name: *Biediger et al. v. Quinnipiac University*, No. 3:09cv621 (SRU) (D. Conn. 05/22/09).

Ruling: The U.S. District Court, District of Connecticut granted the plaintiffs' motion for a preliminary injunction to prevent Quinnipiac University from eliminating its women's volleyball team.

What it means: Given the fleeting nature of college athletics, courts are likely to find a university's decision to eliminate a women's varsity sports team will cause irreparable harm to team members.

Summary: Five current and incoming members of Quinnipiac University's varsity women's volleyball team and their coach filed an action seeking a preliminary injunction to prevent the elimination of women's volleyball as a varsity sport.

The university announced that due to budgetary constraints it was planning to cut two men's teams — golf and outdoor track — and the women's volleyball team. It also announced a plan to add a varsity women's competitive cheerleading team to maintain compliance with Title IX's equal sports participation opportunities requirement.

The students alleged the university's plan was not sufficient to be in compliance with Title IX requirements.

They claimed the team's elimination would cause irreparable harm because they had a limited amount of time to compete in college athletics and specifically chose to attend Quinnipiac to play volleyball.

The court agreed with the students. It held that "given the fleeting nature of college athletics," they would suffer irreparable harm if the team was disbanded.

The court also found the university's system of manipulating athletic rosters probably would fail to satisfy Title IX requirements at a trial on the strategy's merits.

The court ruled the students met their burden of proving irreparable harm and a likelihood of showing the university was not providing genuine athletic

participation opportunities in substantial proportionality to the gender composition of its full-time undergraduate enrollment.

The court granted a preliminary injunction to prevent the elimination of the women's volleyball team until the case was tried on its merits. ■

TITLE IX

Court allows Title IX action filed under fictitious name

Case name: *Roe v. Saint Louis University*, No. 4:08CV 1474 JCH (E.D. Mo. 04/02/09).

Ruling: The U.S. District Court, Eastern District of Missouri denied in part and granted in part Saint Louis University's motion to dismiss a lawsuit alleging Title IX violations and intentional infliction of emotional distress.

What it means: Courts will allow plaintiffs alleging deliberate indifference under Title IX to file their action under a fictitious name if the allegations require disclosure of information of the "utmost intimacy."

Summary: Joan Roe, using a fictitious name, sued SLU after she was allegedly raped at a fraternity party and dismissed for poor academic performance. Roe attended SLU on a field hockey scholarship, but was dropped by the team after suffering a disabling back injury. Roe allegedly complained to coaches and trainers and received medical attention from university personnel. However, her coaches forced her to participate in full-time practices until an MRI

showed a herniated disc.

Roe's academic performance declined after the alleged rape. She was ultimately dismissed from SLU for failure to maintain academic standards.

She alleged that although SLU officials knew of the rape allegations, they failed to: 1) provide adequate assistance; 2) share information regarding the assault with her professors and academic counselor; 3) encourage her to reveal the identity of her assailant or to tell authorities or her parents of the assault; and 4) make any special accommodations to ensure there would be no further contact with the assailant.

She charged SLU with disparate treatment under Title IX regarding her back injury; deliberate indifference under Title IX for the sexual assault; and intentional infliction of emotional distress, among others.

SLU moved to dismiss all claims. It alleged the student was precluded by law from suing under a fictitious name. SLU also claimed she couldn't support the intentional infliction of emotional distress charge.

The court dismissed the emotional distress claim. Roe failed to allege she suffered extreme emotional distress resulting in bodily harm, which was essential to that cause of action.

But the court rejected SLU's fictitious name argument. It held plaintiffs were allowed to sue under pseudonyms when lawsuits required disclosure of intimate information.

Allegations concerning rape fit that description, the court explained.

Accordingly, the Title IX claims were preserved for further proceedings. ■

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RESOURCES / IDEAS

**Athletics program
pairs adults, kids**

The University of North Florida athletics department has partnered with Big Brothers Big Sisters of Northeast Florida to promote Sports Buddies, an activity-based mentoring program. Adult volunteers and children can attend and participate in area sporting events, sports clinics, camps and community sporting opportunities.

For more information, visit the Web site www.bbbsnefl.org. ■

**Consider a policy
on social networking**

While you probably can't ban your athletes from using social networking sites, do you have a policy on them? After two football players at Texas Tech University tweeted, Coach Mike Leach banned the team from twittering. Texas Coach Mike Brown said his staff discourages athletes from using social networking sites and monitors what they post if they do. ■

NAMES IN THE NEWS

- Jo-Ann Nester was named director of athletics at Saint Anselm College in Manchester, N.H. She assumed her duties Nov. 2.

- Fred Schnell, athletics director of Mt. Hood Community College in Oregon, was replaced by Daryle Broadsword, health and physical education dean, on Sept. 1. The departments were consolidated. Schnell has gone back to teaching at the college.

- Andrew Steinberg, associate athletics director for marketing and revenue at the University of Kansas, was hired by the Kansas City Wizards as executive vice president of revenue. ■

ROBERT LLOYD CLAYTON, ATTORNEY, JACKSON LEWIS

**Assessing risk is critical
to keep athletics programs in compliance**

Athletics directors would do well to think far beyond complying with what's in the NCAA manual, said Robert Lloyd Clayton, a leading labor law practitioner with special expertise in college compliance and a partner in the Washington, D.C., law firm Jackson Lewis.

"It's critical they go beyond the NCAA manual," said Clayton, who was named Sport and Entertainment Lawyer of the Year by the National Bar Association. "Athletics directors can no longer just look at, 'Am I in compliance with the NCAA in my division?'" he said. They need to be aware of their full range of liability with federal, state and local laws, as well as Office for Civil Rights' regulations.

Because of the disproportionate role athletics plays in our culture, student-athletes, coaches and administrators are under closer scrutiny than those on campus not involved in athletics, Clayton said. For example, if a student was arrested for driving under the influence, it probably wouldn't make news. But if the same thing happened to a student-athlete, it probably would make news — it might even be front-page news — and the entire athletics program could be in jeopardy. A recent scandal at the State University of New York at Binghamton has already forced an AD to resign, a coach to be reassigned and five

players to be kicked off the men's basketball team.

"Nothing good happens between 12 a.m. and 6 a.m.," Clayton said. ADs need to know where their players, coaches and administrators are and what they're doing.

"You have to be prepared to defend the reputation of the brand," and your staff needs to know they will be held accountable for their behavior, Clayton said.

So how do you accomplish that?

**A Conversation
With ...**

Each month, we'll ask an expert to give advice on how to keep your programs outstanding. ■

Make sure there's a code of conduct for student-athletes, as well as for coaches and administrators. Define character requirements in contracts. Look at the culture of your program. How are

your coaches evaluated? How are your resources allocated? Are there appropriate training programs in place?

"Athletics departments need to be more precise in addressing biases because of history," Clayton said. One positive compliance trend he's spotted this year is a crisis management position created at the University of Kansas. It allows administrators to assess their exposure and, therefore, to evaluate risk. What, for example, are your contractual obligations if you have to forfeit a game because players are sick with swine flu? Adding a position like this makes sense, because creating a strategy to deal with risk is going to make you better equipped to deal with a crisis, should one arise, he said.

Contact Robert Clayton at rclayton@dhrinternational.com. ■