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Foreword

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SYMPOSIUM:

SPORTS LAW: MARQUETTE UNIVERSITY LAW SCHOOL FACULTY PERSPECTIVES

FOREWORD

In their seminal treatise *The Law of Sports*, Professors John Weistart and Cym Lowell noted the continuing debate “about whether there really was any such thing as ‘the law of sports’.”¹ This debate focuses on whether “what we really had was ‘the law,’ and while this applied to sports, it also applied equally to other activities and industries. Hence, it could be doubted whether there was anything special to be said about the application of legal doctrine to sports issues.”² This debate has continued, as some scholars have postulated that “[t]he common phrase ‘Sports Law’ is a misnomer. Sports is a form of human activity and an increasingly lucrative enterprise; it is not a field of law,”³ while others recognize that “[a] growing body of thought . . . sees the emergence of a recognizable [sic] body of statutory and case law as a subject that can be designated as a distinct legal area, namely, sports law.”⁴

In the late 1980s, led by Professors Martin Greenberg and Jim Ghiardi, Associate Dean Charles Mentkowski, and Dean Frank DeGuire, Marquette University decided to devote its resources to creating an organization that could focus on this issue by studying the ways that the law regulates and impacts the sports industry. On February 15, 1989, Marquette University announced the creation of National Sports Law Institute. In addition to promoting the development of ethical practices in all phases of amateur and professional sports, the Institute also aimed to upgrade the level of information and education available to lawyers and sports industry personnel.

Beginning operation on July 1st, 1989, the Institute soon took the lead “in

¹ JOHN WEISTART & CYM LOWELL, *THE LAW OF SPORTS* xviii (1979).

² *Id.*

³ PAUL WEILER & GARY ROBERTS, *SPORTS AND THE LAW: CASES, MATERIALS AND PROBLEMS* v (1993).

⁴ Martin J. Greenberg, *Foreword*, in SIMON GARDINER, ALEXANDRA FELIX, MARK JAMES, ROGER WELCH & JOHN O’LEARY, *SPORTS LAW* vii (1998).

producing a journal completely dedicated to the scholarly treatment of sports law issues”⁵ by publishing the *Marquette Sports Law Journal*. Volume 1, Number 1, the Fall 1990 issue, was first published on January 15th, 1991. Renamed the *Marquette Sports Law Review* in 2000 with Volume 11, Number 1, in order to reassert its preeminence in the field, the *Sports Law Review* continues to provide a “national forum for discussion and consideration of important issues affecting American and international sports.”⁶ This focus helps the National Sports Law Institute realize its mission of “striv[ing] to be the leading national educational and research institute for the study of legal, ethical, and business issues affecting amateur and professional sports from both an academic and practical perspective.”⁷

Thirteen years ago the *Sports Law Review* published a symposium containing contributions from many members of the Marquette University Law School faculty.⁸ As the National Sports Law Institute culminates the celebration of the twenty fifth anniversary of its founding, there is no better place to reassert its commitment to its educational mission than by publication of this second Marquette University Law School faculty symposium. This symposium issue once again “demonstrates that ‘sports law’ is broad in nature and consists of many discrete and related areas of law.”⁹ In addition, as several of the faculty members included in this issue do not teach any discrete sports law course, they bring a different perspective on how the areas of law they study and teach within impact the sports industry in many different ways. These articles also address many of the current important issues facing the sports industry today.

Several articles in this symposium draw on other academic theories and disciplines as they analyze interesting issues within the sports industry. For example, professional sports teams and leagues have struggled recently with players such as Jason Collins and Michael Sam who have publicly announced that they are gay. Through the prism of masculinity theory, Professor Lisa Mazzie explores how these players may change sports culture by questioning our natural assumption of what it means to be “masculine” within the sports context.¹⁰ Pro-

⁵ Fay Vincent, *Preface*, 1 MARQ. SPORTS L. J. (1990).

⁶ Matthew Mitten, *Forward: Symposium: Sports Law: A Law Faculty’s Individual and Collective Perspectives*, 12 MARQ. SPORTS L. REV. 1 (2001).

⁷ BY-LAWS OF THE NATIONAL SPORTS LAW INSTITUTE OF MARQUETTE UNIVERSITY LAW SCHOOL, Article I, Section 2: Mission (adopted Oct. 6, 2006).

⁸ *Symposium: Sports Law: A Law Faculty’s Individual and Collective Perspectives*, 12 MARQ. SPORTS L. REV. (2001).

⁹ Mitten, *supra* note 6, at 1.

¹⁰ Lisa Mazzie, *Michael Sam and the NFL Locker Room: How Masculinities Theory Explains the*

fessor Judith McMullen looks to psychology, sociology, anthropology and education, in her analysis of abusive conduct in youth sports.¹¹ Further refining the work of philosophers and psychologists of sport, Professor Chad Oldfather re-frames the analogy of “judge as umpire” by exploring how judges in aesthetic sports like gymnastics and figure skating function, and how their role could be compared to judges in the courtroom.¹²

Other articles address the interplay of certain areas of law, i.e. privacy law, intellectual property law, and contract law, within the sports context. For example, Professor Michael McChrystal analyzes the conflict between the privacy of medical information and its interplay with rights that players potentially bargain away within the professional sports context.¹³ Another potential conflict comes into play with new forms of sports advertising, and Professor Kali Murray looks into the recent phenomena of sponsored content or native advertising and its potential to confuse consumers who do not realize that the content is actually advertising, and analyzes potential Lanham Act claims that may result.¹⁴ Addressing a recurring conflict, Professor Martin Greenberg and sports law alum Attorney Brandon Leibsohn address the dangers that universities may encounter as they attempt to use reassignment clauses to discipline coaches and avoid paying them huge settlements for breach of contract.¹⁵ Professor Matthew Mitten then surveys sports law jurisprudence from courts within Wisconsin and the Seventh Circuit Court of Appeals, finding significant cases dealing with numerous legal issues from state action and constitutional law, to gender discrimination and Title IX, and disability law and the ADA.¹⁶

Other articles within this symposium address the nature of the relationship between team owners and teams and their communities. Filling in a gap rarely addressed in sports law scholarship, Professor Nadelle Grossman avoids the typical antitrust analysis of professional sports leagues and instead analyzes the

Way We View Gay Athletes, 24 MARQ. SPORTS L. REV. 129 (2014).

¹¹ Judith G. McMullen, *Addressing Abusive Conduct in Youth Sports*, 24 MARQ. SPORTS L. REV. 181 (2014).

¹² Chad M. Oldfather, *Of Umpires, Judges, and Metaphors: Adjudication in Aesthetic Sports and Its Implications for Law*, 24 MARQ. SPORTS L. REV. 271 (2014).

¹³ Michael McChrystal, *No Hiding the Ball: Medical Privacy and Pro Sports*, 24 MARQ. SPORTS L. REV. 163 (2014).

¹⁴ Kali Murray, *Competitor Regulation of Sponsored Content in the New Sports Content Media Economy*, 24 MARQ. SPORTS L. REV. 253 (2014).

¹⁵ Martin J. Greenberg & Brandon Leibsohn, *The Disappearance of a Dinosaur: Reassignment Clauses Are Losing Their Footing in College Coaches' Contracts*, 24 MARQ. SPORTS L. REV. 39 (2014).

¹⁶ Matthew J. Mitten, *Seventh Circuit and Wisconsin Sports Law Jurisprudence*, 24 MARQ. SPORTS L. REV. 207 (2014).

organizational structure of the NBA under state organizational law.¹⁷ Professor Edward Fallone then explores the potential use of crowdfunding to support public ownership of professional sports teams, perhaps providing a new perspective on the debate over public financing for professional sports facilities.¹⁸

Although the media often focuses on litigation within the sports context, many disputes in the sports industry are actually resolved through alternative dispute resolution methods. Although arbitration awards are “final and binding,” within the sports industry that does not always seem to be the case, as evidenced most recently by the NFLPA’s appeal of the arbitrator’s decision to uphold the NFL’s suspension of Adrian Peterson.¹⁹ In his article, Professor Jay Grenig analyzes the arbitration process and arbitration awards focusing on what happens after an arbitration award is rendered.²⁰ Taking this analysis of the use of arbitration further, Visiting Scholar Shuli Guo²¹ focuses on the impact that his home country, China, has had on the development of the Court of Arbitration for Sport (CAS)²² in his efforts to determine whether China can follow the CAS model to setup its own domestic system of arbitration to review sports disputes.

As the celebration of the twenty-fifth anniversary of the creation of the National Sports Law Institute of Marquette University Law School comes to an end these articles evidence the incredible growth of the study of “sports law” as a worthwhile academic endeavor. This symposium issue also demonstrates that the study of the laws’ impact on sports continues to grow and evolve. As the Institute enters its twenty-sixth year it will be at the forefront of this growth by continuing to support scholarship within the *Marquette Sports Law Review*. As Professors Weistart and Lowell said thirty-five years ago, “[t]his is not to suggest, however, that there are no interesting sports issues left to be pursued. Indeed, the exploration has probably only just begun.”²³

¹⁷ Nadelle Grossman, *What is the NBA?*, 24 MARQ. SPORTS L. REV. 101 (2014).

¹⁸ Edward A. Fallone, *Crowdfunding and Sport: How Soon Until the Fans Own the Franchise?* 24 MARQ. SPORTS L. REV. 7 (2014).

¹⁹ *NFLPA Sues NFL in Peterson Case*, ESPN.COM NEWS SERVICE, Dec. 15, 2014, http://espn.go.com/nfl/story/_/id/12031568/nfl-players-association-sues-nfl-ruling-case-adrian-peterson-minnesota-vikings.

²⁰ Jay Grenig, *After the Arbitration Award: Not Always Final and Binding*, 24 MARQ. SPORTS L. REV. 65 (2014).

²¹ Professor Guo was a visiting scholar at Marquette University Law School during the 2013-2014 academic year and presented an early version of his article to students within the Sports Law program at Marquette on March 20, 2014.

²² Shuli Guo, *International Sports Law Perspective: China and CAS (Court of Arbitration for Sport)*, 24 MARQ. SPORTS L. REV. 301 (2014).

²³ WEISTART & LOWELL, *supra* note 1, at xviii.

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