

Ohio and Sports Law

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Repository Citation

Adam Epstein, *Ohio and Sports Law*, 25 Marq. Sports L. Rev. 363 (2015)
Available at: <http://scholarship.law.marquette.edu/sportslaw/vol25/iss2/2>

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ARTICLES

OHIO AND SPORTS LAW

ADAM EPSTEIN*

I. INTRODUCTION

The purpose of this paper is to offer a broad perspective on how individuals, universities, and professional teams associated with the State of Ohio have had a varied impact on sports law in general.¹ Many of the cases and decisions discussed in this paper include familiar incidents and issues involving basketball coach Jim O'Brien, pitcher Andy Oliver, running back Maurice Claret, sprinter Harry "Butch" Reynolds, high school football player Bobby Martin, Major League Baseball (MLB) manager Pete Rose, and others.² This article could also be viewed as a starting point for further research involving this Midwestern state, also known as the Buckeye State, the seventh most populous in the United States.³

* J.D., M.B.A., Professor, Department of Finance and Law, Central Michigan University. Special thanks to the members of the Tri-State Academy of Legal Studies of Business in Akron (2011) and the members of the invited symposium panel at Marquette University Law School's National Sports Law Institute's 25th Anniversary Conference in Milwaukee (2014) who provided keen insights into this paper.

1. Ohio has nine law schools including Capital University Law School, Case Western Reserve University School of Law, Cleveland-Marshall College of Law, Ohio Northern University College of Law, Ohio State University Moritz College of Law, University of Akron School of Law, University of Cincinnati College of Law, University of Dayton School of Law, and University of Toledo College of Law. See *Ohio Law Schools*, SUPREME CT. OF OHIO & OHIO JUD. SYS., <http://www.supremecourt.ohio.gov/RelatedOrgs/schools/> (last visited May 10, 2015) (offering links to each of the schools). Ohio is among the four states within the Sixth Circuit Court of Appeals including Michigan, Kentucky, and Tennessee. See U.S. CT. OF APPEALS FOR THE SIXTH CIRCUIT, <http://www.ca6.uscourts.gov/internet/default.html> (last visited May 10, 2015).

2. I have focused on a limited number of cases and examples. However, exploration of examples of impropriety might surely include the misbehavior of former Ohio State University's pugnacious and legendary football coach Wayne Woodrow "Woody" Hayes, who punched Clemson University nose guard Charlie Bauman in the throat after the game-ending interception in the 1978 Gator Bowl. See Brian Bennett, *Woody Hayes' Last Game Coaching*, ESPN, http://espn.go.com/college-football/bowls13/story/_id/10215217/the-punch-ended-woody-hayes-career (last updated Dec. 30, 2013).

3. See Tim Warsinskey, *NFL Draft Once Again Proves Buckeye State a Favored Source for Talent*,

As a result of the actions of these individuals and others related to or emanating from Ohio, sports law cases and contemporary concerns involving issues related to contract law, constitutional law, antitrust law,⁴ disability issues, criminal law, and many other areas have been enhanced as well.⁵ Ohio's relationship to sports law has been especially marked by legal and ethical issues emanating from The Ohio State University (OSU), including the chaos surrounding the 2011 resignation of OSU head football coach Jim Tressel after numerous allegations of violations of the National Collegiate Athletic Association (NCAA) rules by him and at least six of his players.⁶

Rich with history, this Article demonstrates that the State of Ohio continues to have a significant impact on sports and the law and, in some cases, sets the tone of the discussion at the national level emanating from Lake Erie to the Ohio

CLEVELAND.COM (Apr. 27, 2009), http://www.cleveland.com/timstake/index.ssf/2009/04/nfl_draft_once_again_proves_bu.html (offering that in the 2009 NFL draft, the State of Ohio "produced the fourth-most draft picks (16) behind Texas (39), California (28) and Florida (17)," whose states represent three of the top four most populous).

4. It is noteworthy that the Sherman Antitrust Act (1890) is named after Senator John Sherman from Lancaster, Ohio, who was also the younger brother of Civil War General William Tecumseh Sherman. See *John Sherman: A Featured Biography*, U.S. SENATE, http://www.senate.gov/artandhistory/history/common/generic/Featured_Bio_Sherman.htm (last visited May 10, 2015).

5. Ohio, like many other states, has recently introduced youth sport concussion-related laws. See Regulations for Prevention of Concussion and Head Injuries in Schools, OHIO REV. CODE ANN. § 3313.539 (LexisNexis 2013) (effective Apr. 27, 2013); see also Todd Jones, *New Concussion Law Guards Kids in Sports*, COLUMBUS DISPATCH (Apr. 26, 2013), <http://www.dispatch.com/content/stories/sports/2013/04/26/new-concussion-law-guards-kids-in-sports.html> (stating that Ohio joined forty-four other states and D.C., starting with Washington state in 2009).

Under the law, a young athlete showing concussion symptoms must be removed from a game or practice and not be permitted to return to competition for at least 24 hours and until cleared by an authorized physician or licensed health-care provider.

....

The law [also] offers immunity from liability, unless there is willful or wanton misconduct.

Id. Ohio also recently updated its laws related to home-schooled high school sports participants such that homeschoolers may now participate as members of their local high school team even if they are not enrolled in classes at that public school. See Amy Hansen, *Ohio's Homeschoolers Can Now Join Public School Sports Teams*, STATE IMPACT (Nov. 11, 2013), <http://stateimpact.npr.org/ohio/2013/11/11/ohios-homeschoolers-can-now-join-public-school-sports-teams/> (offering that effective 2013, "Ohio's more than 23,000 homeschooled students can participate in any activity that's offered at their home school district without being enrolled in any classes," whereas previously the policy was that the student had to be enrolled in at least five classes).

6. See Associated Press, *Tressel Resigns from Ohio State*, *Sports Illustrated*, <http://www.si.com/college-football/2011/05/30/tressel-resigns> (last visited May 10, 2015); see also Associated Press, *Chronology of Ohio State Scandal*, NCAA.COM, <http://www.ncaa.com/news/football/article/2011-12-21/chronology-ohio-state-scandal> (last updated Dec. 21, 2011) (providing a summary of the events that led up to Jim Tressel's resignation).

River and all the major cities in between including Toledo, Cleveland, Columbus, and Cincinnati.⁷

II. CONTRACT LAW

Ohio courts have played a significant role in matters involving contracts in professional sports and at state universities.⁸ Over 100 years ago, for example,

7. Ohio is home to major professional sports teams in baseball, basketball, football, hockey, and soccer, including the Cincinnati Reds (MLB), Cleveland Indians (MLB), Cincinnati Bengals (National Football League (NFL)), Cleveland Browns (NFL), Cleveland Cavaliers (National Basketball Association (NBA)), Columbus Blue Jackets (National Hockey League (NHL)), and the Columbus Crew (Major League Soccer (MLS)). *Ohio Sports*, OHIO SECRETARY ST., <http://www.sos.state.oh.us/sos/profileohio/ohiosports.aspx> (last visited May 10, 2015). Also, the American Professional Football Hall of Fame is located in Canton. *Id.* Further, Ohio has eight NCAA Division FBS college football teams, divided among three different conferences. Ohio has six teams represented in the Mid-American Conference (MAC): the University of Akron, Bowling Green State University, Kent State University, Miami University, Ohio University, and the University of Toledo. *2014–15 MAC Sport Sponsorship*, MID-AMERICAN CONF., http://www.mac-sports.com/sports/2014/6/28/GEN_0628141058.aspx?path=general (last visited May 10, 2015). The MAC headquarters are, in fact, based in Cleveland. *Ohio Sports*, *supra* note 7. Currently, the University of Cincinnati Bearcats are in the American Athletic Conference (AAC). AMER. ATHLETIC CONF., <http://theamerican.org/> (last visited May 10, 2015). It is also worth noting that former University of Toledo quarterback, Chuck Ealey, has not yet been inducted into the College Football Hall of Fame though the website InductChuck.com hopes to change that. *See* Dave Woolford, 'Hall' Gives Vague Explanation for Chuck Ealey's Exclusion, TOLEDO FREE PRESS (Oct. 19, 2007), <http://www.toledofreepress.com/2007/10/19/hall-gives-vague-explanation-for-chuck-ealeys-exclusion/>.

He guided UT to a record 35 consecutive victories from 1969 to 1971, all three years being named Mid-American Conference Player of the Year. He finished eighth in the Heisman Trophy balloting in 1971 and never lost a game in either high school or college with a 63-0 record as an amateur. Ealey was voted a first-team All-American by the Football News and was named to the second team by United Press International and the third team by the Associated Press.

Id.

8. *See, e.g.*, Columbus Base Ball Club v. Reiley, 11 Ohio Dec. Reprint 272, 385 (Ohio Ct. Com. Pl. 1891) (holding that a court of equity will not enforce a personal services contract by an injunction unless those services were “peculiar, unique and extraordinary” in their nature); *see* Matt Norlander, *Kent State Wins \$1.2 Million Lawsuit Against Former Coach Geno Ford*, CBS SPORTS.COM (July 17, 2013), <http://www.cbssports.com/collegebasketball/eye-on-college-basketball/22794453/kent-state-wins-12-million-lawsuit-against-former-coach-geno-ford> (offering that Geno Ford, a Cambridge, Ohio native and Ohio University graduate, would have to pay back \$1.2 million in liquidated damages to Kent State University where he coached from 2008–2011. Now at Bradley University, the court opined that Ford prematurely ended his Kent State contract (which was effective through 2015)); *Geno Ford Named Bradley Basketball Coach*, BRADLEY UNIV. (Mar. 27, 2011), <http://www.bradley.edu/inthespotlight/story/?id=130817> (offering that Bradley hired Ford away from Kent State in March 2011).

the Cleveland Bronchos⁹ baseball club was indirectly involved in a contract dispute (and court-ordered injunction) involving star player Napoleon Lajoie, who had just been traded to the team and could not play in the City of Philadelphia.¹⁰ Lajoie could not play in Philadelphia because he could not play for any other team in Pennsylvania according to a court order involving the legal battle between the Philadelphia Phillies of the National League, the Philadelphia Athletics of the American League, and the interpretation of baseball's reserve clause, the infamous clause that restricted player movement and curtailed player rights.¹¹ However, Lajoie became so beloved in Cleveland that the team eventually changed their name to the Cleveland Naps in 1905.¹²

In a case from the 1970s, *Cincinnati Bengals, Inc. v. Bergey*,¹³ an NFL team sought an injunction against Bill Bergey, one of the team's star linebackers, from joining the Virginia Ambassadors of the World Football League (WFL).¹⁴ The Bengals claimed that signing a "future services" agreement with the WFL¹⁵—even though the contract would not begin until after his Bengals contract ended—would have a detrimental effect on Bergey's performance, and morale, for the remainder of his current contract.¹⁶ The U.S. District Court for the Southern District of Ohio disagreed, noting that Bergey would still be concerned over his own reputation as a player and his pride.¹⁷ The court held that

9. Editors of Encyclopædia Britannica, *Cleveland Indians*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/121431/Cleveland-Indians> (last updated Oct. 27, 2013) (discussing the various names the Cleveland team had including the Blues (for one season), then the Bronchos, and ultimately the Naps, literally named after Nap Lajoie).

10. See Napoleon Lajoie, *Cleveland Indians Great: Life Stories Revisited*, CLEVELAND.COM (Feb. 7, 2011), http://www.cleveland.com/obituaries/index.ssf/2011/02/napoleon_lajoie_cleveland_indi.html.

11. See C. Paul Rogers III, *Napoleon Lajoie, Breach of Contract and the Great Baseball War*, 55 SMU L. REV. 325, 335 (2002) (noting that the Pennsylvania injunction in *Philadelphia Ball Club, Ltd. v. Lajoie*, 51 A. 973 (Pa. 1902) was limited to its own jurisdiction and not Ohio, with the Court of Common Pleas for Cuyahoga County that same year stating that the injunction-remedy was "remedial in its character . . . and . . . [could] have no force to control . . . personal conduct outside of . . . [its] jurisdiction" (quoting *Phila. Baseball Club Co. v. Lajoie*, 13 Ohio Dec. 504, 511, 1902 Ohio Misc. LEXIS 127, *19 (C.P. 1902))); see also James R. Devine, *Curt Flood and a Triumph of the Show Me Spirit*, 77 MO. L. REV. 9, 29–30 (2012); Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. LEGAL ASPECTS SPORT 5, 6–14 (2011) (discussing the reserve clause, the best interests of baseball clause, and others); *Napoleon Lajoie, Cleveland Indians Great: Life Stories Revisited*, *supra* note 10.

12. *Napoleon Lajoie, Cleveland Indians Great: Life Stories Revisited*, *supra* note 10 (quoting the actual, original obituary for Lajoie which was published in THE PLAIN DEALER on Feb. 8, 1959).

13. See generally 453 F. Supp. 129 (S.D. Ohio 1974).

14. *Id.* at 131.

15. *Id.* at 136.

16. *Id.*

17. *Id.*; see also *World Football League v. Dall. Cowboys Football Club, Inc.*, 513 S.W.2d 102, 105

it was a valid contract, would not have an adverse impact on the Bengals, and simply furthered the competitive interests of the WFL, so no injunction was granted.¹⁸

Certainly one of the most well-known and infamous contract cases involved a settlement agreement after Art Modell, the owner of the Cleveland Browns, announced on November 6, 1995, that he was moving the team to Baltimore. Naturally, the announcement outraged Browns fans, and the city was reeling.¹⁹ The City's attorneys filed a breach of contract claim in the form of an injunction to prevent Modell from moving the team.²⁰ Further, "a trademark [law]suit was filed to prevent him from taking the Browns' name."²¹ "More than 10,000 orange postcards . . . were distributed by the Browns Backers, [a] . . . network of 120 fan clubs worldwide."²² Cleveland Mayor Michael R. White testified before Congress over the matter and held a sign on network news shows that "declared NFL really stood for 'No Fan Loyalty.'"²³

As a result, in February 1996, the NFL owners voted for a global settlement,²⁴ allowing "Modell to move [the] team to Baltimore, but also guarantee[ing] Cleveland an expansion team for the 1999 season . . . as well as a \$48 million advance to construct a new stadium."²⁵ "Cleveland dropped all lawsuits

(Tex. App. 1974) (in negotiation with a new league, concerns about reduced effort and effect on team morale are outweighed by the desirability of protecting players' and prospective employers' freedom to contract); Geoffrey Christopher Rapp, *Affirmative Injunctions in Athletic Employment Contracts: Rethinking the Place of the Lumley Rule in American Sports Law*, 16 MARQ. SPORTS L. REV. 261, 274 (2006) (referencing the *Bergey* decision and stating, "In sports contracts, there are natural devices to prevent 'dogging it' that should relieve courts' worries about the 'illusory' aspects of affirmative injunctions").

18. *Bergey*, 453 F. Supp. at 138.

19. See Alvin B. Lindsay, Comment, *Our Team, Our Name, Our Colors: The Trademark Rights of Cities in Team Name Ownership*, 21 WHITTIER L. REV. 915, 917, 961 (2000) ("This Comment is dedicated to the City of Cleveland and Browns fans everywhere," citing the author's biography). Similarly, Cleveland Cavaliers fans were equally outraged when Akron native LeBron James, as part of *The Decision*, decided to leave the NBA's Cleveland Cavaliers for warmer pastures in south Florida with the Miami Heat. He, too, returned to northeast Ohio, just like the Cleveland Browns. See Dan Devine, *The Essay: LeBron Announces Return to Cleveland in His Own Words, and They Were Worth the Wait*, YAHOO SPORTS (July 11, 2014), <https://sports.yahoo.com/blogs/nba-ball-dont-lie/the-essay--lebron-announces-return-to-cleveland-in-his-own-words--and-they-were-worth-the-wait-172337473.html>; see also Martin Rogers, *How Akron Differs from Cleveland on LeBron James*, USA TODAY (Oct. 28, 2014), <http://www.usatoday.com/story/sports/nba/2014/10/27/lebron-james-akron-ohio-cleveland-cavaliers/18030069/>.

20. Lindsay, *supra* note 19, at 918.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 919.

25. *Id.*

against Modell, and Modell paid Cleveland \$12 million in damages.”²⁶ The settlement contract, in fact, stipulated “the Browns’ name and colors [were] to stay in Cleveland, along with the Browns’ history, records, and memorabilia, which would remain in an NFL trust.”²⁷ On September 12, 1999, as quarterback Ty Detmer “took the first snap of the season for the new Browns in their new stadium, the team and the City of Cleveland” celebrated the return of football to the shores of Lake Erie.²⁸

A prominent—and more contemporary—contract and employment case arose in 2004 when OSU’s athletic director Andy Geiger fired head basketball coach Jim O’Brien with three years remaining on his contract after O’Brien admitted to giving a \$6,000 loan to a prospective Serbian recruit six years prior.²⁹ After his termination, O’Brien sued and alleged that OSU could not terminate him, even if he violated NCAA rules, unless he had committed a material breach of his contract and had first been given due process to address any allegations of a breach in accordance with his agreement.³⁰ The Ohio trial court held that the violation of NCAA rules and the failure to disclose the violation were not a material breach of the contract and, therefore, OSU could not utilize for-cause termination on that basis.³¹

On appeal, OSU was forced to pay O’Brien approximately \$2.5 million, which included interest, for the breach of his employment contract.³² The Court of Appeals of Ohio ruled against the university and stated, “OSU was the drafting party. OSU is not lacking in sophistication, and has only been prejudiced

26. *Id.*

27. *Id.*

28. *Id.*; see also Bill Landis, *Where’s Ty Detmer? Catching up with the Cleveland Browns Starting Quarterbacks Since 1999*, CLEVELAND.COM (July 7, 2014), http://www.cleveland.com/browns/index.ssf/2014/07/wheres_ty_detmer_catching_up_w.html.

29. *O’Brien v. Ohio State Univ.*, 10th Dist. Franklin No. 06AP-946, 2007-Ohio-4833, ¶¶ 1, 28; see also Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. LEGAL ASPECTS OF SPORT 5, 18–19 (2011).

30. *O’Brien*, 10th Dist. Franklin No. 06AP-946, 2007-Ohio-4833, ¶ 44. The court stated,

OSU could not terminate O’Brien without “cause,” which was defined in Section 5.1 [of his contract as] . . . a material breach of this agreement by Coach, which Coach fails to remedy to OSU’s reasonable satisfaction, within a reasonable time period, not to exceed thirty (30) days, after receipt of a written notice from Ohio [S]tate specifying the act(s), conduct or omission(s) constituting such breach.

Id. ¶ 15. However, the court further noted, “OSU could terminate O’Brien without cause, but, if so, [it] would be obligated to pay O’Brien liquidated damages.” *Id.* ¶ 16.

31. *Id.* ¶ 2.

32. *Id.* ¶¶ 3, 93.

as a result of being held to its own bargain.”³³ “O’Brien’s case set an example for university counsel, athletic directors and contract drafters to consider ways to tighten college coaching contracts.”³⁴ “Subsequently, O’Brien’s replacement, Coach Thad Matta, ha[d] [fifteen] grounds for termination [addressed] in his agreement.”³⁵

III. TORT LAW

There are plenty of Ohio-related cases involving tort claims.³⁶ In *Hackbart v. Cincinnati Bengals, Inc.*,³⁷ a sports participant case from Colorado, “defensive back Dale Hackbart (Denver Broncos) was hit by running back Charles “Booby” Clark (Cincinnati Bengals) in the back of the head” during an on-field

33. *Id.* ¶ 95.

34. Epstein, *supra* note 11, at 19. Jim O’Brien was not the only OSU coach to be terminated without controversy. See also Martin J. Greenberg, *Representation of College Coaches in Contract Negotiations*, 3 MARQ. SPORTS L.J. 101, 108 (1992).

Probably the most famous termination case in this area involved Earl Bruce, former Ohio State football coach. He was a winner and a good coach. Then he offended somebody. When Ohio State said goodbye to him, he answered with a \$7.45 million lawsuit for breach of contract, slander, and wrongful discharge. Bruce also raised constitutional issues—state action, equal protection, denial of due process, and deprivation of property without compensation. Bruce settled for \$471,000.

Id.

35. Epstein, *supra* note 11, at 19; see *Mackey v. Cleveland State Univ.*, 837 F. Supp. 1396, 1411 (N.D. Ohio 1993) (offering that alcoholism is covered under the Rehabilitation Act, 29 U.S.C. § 701 et seq.). For further discussion on the case of former CSU coach Kevin Mackey who was employed there from 1983 until 1990, see also Scott Raab, *The Fall of Kevin Mackey, the NCAA Tournament’s Junkie Cinderella*, STACKS (Apr. 7, 2014), <http://thestacks.deads핀.com/the-fall-of-kevin-mackey-march-madness-junkie-cinder-1553579005> (discussing the totality of circumstances surrounding Mackey’s removal as head coach and a life riddled with alcohol and drugs).

36. See, e.g., *Jones v. Multi-Color Corp.*, 670 N.E.2d 1051, 1057–58 (Ohio Ct. App. 1995) (holding that despite the employee—who died of a heart attack—signing a waiver for injury prior to attending an employer-sponsored fitness day, the decedent’s family was still able to pursue worker’s compensation death benefits, reversing a prior denial); see also *Bentley v. Cleveland Browns Football Co.*, 194 Ohio App.3d 826, 2011-Ohio-3390, 958 N.E.2d 585, ¶¶ 4, 5, 18, 19 (8th Dist.) (citing *Jurevicius v. Cleveland Browns Football Co. LLC*, N.D. Ohio No. 1:09 CV 1803, 2010 U.S. Dist. LEXIS 144096 (Mar. 31, 2010)) (both involving claims of fraud, negligent misrepresentation, and malpractice stemming from acquiring a staph infection allegedly due to the unsanitary conditions at the Browns training facility in Berea, Ohio while going through post-operative rehabilitation); *Barakat v. Pordash*, 164 Ohio App.3d 328, 2005-Ohio-6095, 842 N.E.2d 120, ¶ 15 (8th Dist.) (holding that the plaintiff’s claim for negligence against the Sambo instructor at a fitness club was properly administered through summary judgment because no reasonable minds could have concluded that the instructor intentionally or recklessly injured the victim who volunteered to participate in the high-contact sport that involved various physical maneuvers).

37. 601 F.2d 516 (10th Cir. 1979).

incident in a 1973 game in Denver.³⁸ As a result of the hit, Hackbart unknowingly suffered a neck fracture during the game.³⁹ The case was filed in Colorado⁴⁰ and the Tenth Circuit Court of Appeals held that if such intentional hits were not an intended part of the game, then such conduct by Clark constituted a *reckless disregard* of the rules of football.⁴¹

After remand for a new trial, the case settled out of court for \$200,000.⁴² However, this case involving a member of the Cincinnati Bengals was one of the first of its kind to address the duty of care owed by one participant to another during a contact sport event,⁴³ and it is sometimes viewed as a reference in criminal law, though it is not a criminal law case per se.

In the study of sports law, the issue of whether spectators may sue for injuries sustained during a game is inconsistent across states.⁴⁴ With regard to flying objects emanating from the field of play, whether it be a flying tire, a hockey puck, or as in the Ohio case, *Harting v. Dayton Dragons Professional Baseball Club, L.L.C.*,⁴⁵ a foul ball, it really depends upon which legal theory a state adopts with regard to the duty of care owed to those in the stands from flying objects.⁴⁶ In *Harting*, Roxanne Harting, a spectator at a minor league baseball game, claimed she was distracted by the famous San Diego Chicken mascot and, therefore, should not be held responsible for assumption of the risk after

38. *Id.* at 518–19. Note that the courts spelled it “Booby,” though “Boobie” is most likely the correct spelling of the nickname. See, e.g., Charles “Boobie” Clark, BETHUNE-COOKMAN ATHLETICS, http://www.bcuathletics.com/ViewArticle.dbml?DB_OEM_ID=23910&ATCLID=205718913 (last visited May 10, 2015).

39. *Hackbart*, 601 F.2d at 519.

40. *Hackbart v. Cincinnati Bengals, Inc.*, 435 F. Supp. 352 (D. Colo. 1977).

41. *Hackbart*, 601 F.2d at 525.

42. ADAM EPSTEIN, SPORTS LAW 119 (2013).

43. *Id.* at 118; see also *Hanson v. Kynast*, 494 N.E.2d 1091 (Ohio 1986) (holding that in a sports participant injury case involving lacrosse, a cause of action exists when a participant intentionally injures another player that does not arise out of the conduct of the sport itself, but found that the evidence was insufficient to establish an intentional tort by the offending player and summary judgment was appropriate thereby affirming the trial court’s order); Geoffrey Christopher Rapp, *The Wreckage of Recklessness*, 86 WASH. U. L. REV. 111, 121 n.42, 127 n.94, 136–37 (2008) (discussing the seminal *Hackbart* decision, and subsequently noting in notes 49 and 94 that *Hackbart* might have been able to pursue his claim as an intentional tort, but he missed the deadline for filing the lawsuit in that recklessness had a six-year statute of limitations under Colorado law, while battery had a one-year statute of limitations). Rapp also demonstrated in this piece that the *Hackbart* decision, at that time, “ha[d] been cited sixty-one times by other courts, ranking it second behind *Nabozny v. Barnhill*, 334 N.E.2d 258 (Ill. App. Ct. 1975), (112 citations), among leading recklessness cases.” *Id.* at 136 n.159.

44. EPSTEIN, *supra* note 42, at 119–24.

45. See generally 171 Ohio App.3d 319, 2007-Ohio-2100, 870 N.E.2d 766 (2d Dist.).

46. EPSTEIN, *supra* note 42, at 119–24.

being hit by a foul ball.⁴⁷ In fact, she was knocked unconscious.⁴⁸ The court disagreed with her assertion that the Famous Chicken's antics were an intervening cause outside the normal course of the game, and held that in Ohio, it was reasonable for a spectator to observe these types of mascots at games, thereby relieving the team of liability because the Chicken's antics were a "common phenomena."⁴⁹

In an assumption of risk⁵⁰ and waiver case, *Zivich v. Mentor Soccer Club, Inc.*,⁵¹ "appellant Pamela Zivich registered her seven-year-old son, appellant Bryan Zivich, for soccer with Mentor Soccer Club, Inc." in 1993.⁵² The Club's registration form, signed by Pamela, stated,

47. *Harting*, 171 Ohio App.3d 319, 2007-Ohio-2100, 870 N.E.2d 766, ¶¶ 3, 51.

48. *Id.* ¶ 3.

49. *Id.* ¶¶ 51-53.

The consensus [of the above] opinions is to the effect that it is common knowledge that in baseball games hard balls are thrown and batted with great swiftness, that they are liable to be thrown or batted outside the lines of the diamond, and that spectators in positions which may be reached by such balls assume the risk thereof.

Id. ¶ 14 (emphasis omitted) (citing *Cincinnati Baseball Club Co. v. Eno*, 147 N.E. 86, 87 (Ohio 1925)). Ohio, like the majority of states, has explicitly adopted the Baseball Rule, also known as the limited duty rule. *See, e.g., Maisonave v. Newark Bears Prof'l Baseball Club, Inc.*, 881 A.2d 700, 705 n.2 (N.J. 2005) (referencing *Cincinnati Baseball Club Co. v. Eno*, and citing Ohio and other states' decisions, as well). It is worth noting, however, that New Jersey did legislatively overturn the *Maisonave* decision when it adopted the New Jersey Baseball Spectator Safety Act of 2006. N.J. STAT. ANN. § 2A:53A-46 (West 2013); *see also South Shore Baseball, LLC v. DeJesus*, 11 N.E.3d 903, 908 n.5 (Ind. 2014) (discussing the Baseball Rule and its limited duty owed to spectators, citing *Eno* and quoting, "management performs its duty toward the spectators when it provides screened seats in the grand stand and gives spectators the opportunity of occupying them").

50. *See Collier v. Northland Swim Club*, 518 N.E.2d 1226, 1227-28 (Ohio Ct. App. 1987) (discussing and analyzing the differences between primary and secondary assumption of risk doctrines in which an eleven-year-old girl was injured when she struck her head on the bottom of an in-ground swimming pool during diving practice); *see also Gallagher v. Cleveland Browns Football Co.*, 659 N.E.2d 1232, 1235 (Ohio 1996) (reversing the Ohio Court of Appeals and reinstating the trial court decision in favor of appellant-sportscaster in his negligence action against the Browns and others for injuries he incurred when football players collided with him while he was videotaping a game).

51. *See generally* 696 N.E.2d 201 (1998). *Compare Curtis v. Hoosier Racing Tire Corp.*, 299 F. Supp. 2d 777, 779, 781 (N.D. Ohio 2004) (holding that both race car driver and owner (brothers) were entitled to bring a lawsuit under strict product liability for injuries caused as a result of an unreasonably defective tire and subsequent blow-out despite having executed an express release of liability), *with Thompson v. Otterbein Coll.*, 10th Dist. Franklin No. 95APE08-1009, 1996 Ohio App. LEXIS 389, *16 (Feb. 6, 1996) (reversing and remanding trial court decision because the release in question was "at best confusing.").

52. *Zivich*, 696 N.E.2d at 202.

Recognizing the possibility of physical injury associated with soccer and for the Mentor Soccer Club, and the USYSA [United States Youth Soccer Association] accepting the registrant for its soccer programs and activities, I hereby release, discharge and/or otherwise indemnify the Mentor Soccer Club and the USYSA, its affiliated organizations and sponsors, their employees, and associated personnel, including the owners of the fields and facilities utilized by the Soccer Club, against any claim by or on behalf of the registrant as a result of the registrant's participation in the Soccer Club.⁵³

On October 7, 1993, Bryan attended soccer practice, and after an intra-squad scrimmage he "jumped on the goal and swung back and forth."⁵⁴ The goal tipped backward, and Bryan broke three of his ribs and his collarbone, and severely bruised his lungs.⁵⁵

In January 1995, the lawsuit alleged negligence and reckless misconduct against the soccer club and the City of Mentor, which owned the park where they held practice.⁵⁶ The city settled with the appellants and was dismissed from the lawsuit.⁵⁷ The trial court granted summary judgment for the defendants and the Ohio Court of Appeals affirmed, stating that the waiver was effective.⁵⁸ Interestingly, although Ohio's General Assembly later enacted legislation affording "qualified immunity to unpaid athletic coaches and sponsors of athletic events,"⁵⁹ at the time of the *Zivich* case, Ohio did not have legislation providing volunteers any immunity from liability.⁶⁰

53. *Id.* at 203 (citing Mentor Soccer Club's registration form).

54. *Id.*

55. *Id.*

56. *Id.* at 203 n.1.

57. *Id.*

58. *Id.* at 203. The court also stated,

[W]e believe that public policy justifies giving parents authority to enter into these types of binding agreements on behalf of their minor children. We also believe that the enforcement of these agreements may well promote more active involvement by participants and their families, which, in turn, promotes the overall quality and safety of these activities.

Id. at 372, 696 N.E.2d at 205.

59. *Id.* at 371, 696 N.E.2d at 205.

60. *Id.* According to a Lexis search, the *Zivich* case was later superseded by statute as stated in *Zwerin v. 533 Short N. LLC*, No. 2:10-cv-448, 2012 U.S. Dist. LEXIS 165825, *5 (S.D. Ohio Nov. 20, 2012). *See also* *Cooper v. Aspen Skiing Co.*, 48 P.3d 1229, 1236 (Colo. 2002) (en banc). In note 14,

In *Estate of Richardson v. Bowling Green State University*,⁶¹ a wrongful death case from 2004, Aaron Richardson was an eighteen-year-old freshman at Bowling Green State University (BGSU) and a walk-on defensive back for the university's football team.⁶² On September 15, 2004, in eighty-five degree heat, Richardson ran "gassers," a conditioning exercise involving interval sprints from sideline to sideline.⁶³ While stretching, he complained about cramps in his legs and then returned to the locker room and laid on the floor.⁶⁴ His condition worsened, as he suffered cramps all over his body.⁶⁵ Athletic trainers attempted to assist, performing CPR and using an Automatic Electronic Defibrillator (AED).⁶⁶ Paramedics came to the scene after 911 was called, at which point Aaron Richardson was pronounced dead.⁶⁷

It was discovered that he had been diagnosed with sickle cell trait as a child, though BGSU was unaware of his condition.⁶⁸ In fact, Richardson failed to note his sickle cell trait status on BGSU's medical history form.⁶⁹ A lawsuit was filed against BGSU for wrongful death and survivorship.⁷⁰ The lawsuit alleged that BGSU did not meet the standard of care required, and that a call for emergency medical attention made at an earlier time would have given life-saving treatment.⁷¹ However, the court found that "the standard of care did not require [the BGSU] training staff to perform an [exam] on Aaron before he left the field" and concluded that cramping in Aaron's legs was a common condition.⁷²

the case offers,

Although Ohio's General Assembly later enacted legislation affording "qualified immunity to unpaid athletic coaches and sponsors of athletic events," *Zivich*, 696 N.E.2d at 205, at the time the *Zivich* case arose, Ohio did not have legislation providing volunteers any immunity from liability. Subsequently, the Ohio legislature repealed these laws. See Ohio Rev. Code Ann. § 2305.381 (Anderson 2002) (repealed 2001); Ohio Rev. Code Ann. § 2305.382 (Anderson 2002) (repealed 2001).

Id. at 1236 n.14.

61. See generally Ct. of Cl. No. 2005-10179, 2010-Ohio-3475.

62. *Id.* ¶ 2.

63. *Id.*

64. *Id.* ¶¶ 3, 7.

65. *Id.* ¶ 10.

66. *Id.* ¶¶ 10-13.

67. *Id.* ¶¶ 13.

68. See *id.* ¶¶ 15, 26.

69. *Id.* ¶ 26.

70. *Id.* ¶ 1.

71. *Id.* ¶ 18.

72. *Id.* ¶ 27.

BGSU won the case.⁷³ Since August 1, 2010, NCAA Division I student-athletes are now required to be tested for sickle cell trait as part of their physical examination, unless they sign a waiver to opt out of the screening.⁷⁴

In another torts case, the Ohio Court of Appeals affirmed the trial court's decision that the noise emanating from a race park did not constitute a nuisance in *Brackett v. Moler Raceway Park, L.L.C.*⁷⁵ The plaintiffs were residents of Sterling Township who lived near Moler Raceway Park, east of Cincinnati.⁷⁶ The park was situated on forty acres of land on which a quarter-mile dirt track motor raceway was operated.⁷⁷ Notably, there were no zoning regulations or noise ordinances in the township.⁷⁸ The residents sought damages for loss of use and enjoyment of property, and diminution of property values, including injunctive relief, to no avail.⁷⁹

Other significant Ohio-related torts cases include some that settled out of court. For example, "On March 18, 2002, 13-year-old [spectator] Brittanie Cecil was hit in the head by a puck . . . during an NHL game between the Columbus Blue Jackets and the Calgary Flames."⁸⁰ "She died two days later . . ."⁸¹ "[I]t was not common practice for NHL arenas to have any netting behind the Plexiglas."⁸² As a result, "the NHL added a nylon mesh safety netting for the 2002–03 season Cecil's family settled out of court."⁸³

In 2012, the Cleveland Indians settled a wrongful death lawsuit stemming from a collapsed inflatable slide with the widow of a Pennsylvania man who died nine days after being struck by the slide outside Progressive Field.⁸⁴

73. *Id.* ¶ 48.

74. *See, e.g.,* Alicia Jessop, *A Costly Decision: Sickle Cell Trait Testing of NCAA Student-Athletes*, BUS. OF COLL. SPORTS (July 21, 2011), <http://businessofcollegesports.com/2011/07/21/a-costly-decision-sickle-cell-trait-testing-of-ncaa-student-athletes/> (discussing the cases of Dale Lloyd II and Ereck Plancher).

75. *See generally* 195 Ohio App.3d 372, 2011-Ohio-4469, 960 N.E.2d 484, ¶ 1 (12th Dist.).

76. *Id.* ¶ 4.

77. *Id.* ¶ 2.

78. *Id.*

79. *Id.* ¶ 15.

80. EPSTEIN, *supra* note 42, at 126.

81. *Id.*

82. *Id.*

83. *Id.*; *see also* Greg Wyshynski, *Ten Years After Death of Brittanie Cecil, Recalling Backlash over NHL Safety Netting*, YAHOO SPORTS (Mar. 15, 2012), <http://sports.yahoo.com/blogs/nhl-puck-daddy/ten-years-death-brittanie-cecil-recalling-backlash-over-214937256.html>.

84. Peter Krouse, *Cleveland Indians Settle Wrongful-Death Lawsuit Stemming from Collapsed Inflatable Slide*, CLEVELAND.COM (Oct. 22, 2012), http://www.cleveland.com/metro/index.ssf/2012/10/cleveland_indians_settle_wrong.html.

“Douglas Johnson . . . attend[ed] an Indians game on June 12, 2010, when the slide for a ‘Kids Fun Day’ fell on top of him,” breaking three bones in his back.⁸⁵ “[He] died nine days later after suffering a pulmonary embolism brought on by the fractures and inactivity”⁸⁶ Through the Ohio Department of Agriculture’s investigation, it was determined that the slide was operated “in an unsafe and negligent manner.”⁸⁷

Finally, consider the case involving former Cleveland Browns offensive lineman Orlando “Zeus” Brown.⁸⁸ During the NFL game between the Browns and Jacksonville Jaguars on December 19, 1999, a penalty flag thrown by NFL official Jeff Triplette struck Brown in the right eye.⁸⁹ Brown later stormed on the field, pushed Triplette to the ground, and was suspended.⁹⁰ “Brown, whose father was blind from glaucoma, said concern for his eyesight caused him to confront Triplette[, and] Brown was hospitalized for six days”⁹¹ Brown sued the NFL for \$200 million.⁹² As a result of this incident, weighted penalty flags with BBs were discontinued.⁹³

85. *Id.*

86. *Id.*

87. *Id.*

88. Associated Press, *Ex-Ravens Tackle Orlando Brown Dies*, ESPN, http://espn.go.com/nfl/story/_id/7009067/former-baltimore-ravens-tackle-orlando-brown-dead-40 (last updated Sept. 23, 2011) (offering that he “played 10 NFL seasons—four with the Cleveland Browns (1993–95 and 1999) and six with the Baltimore Ravens (1996–98 and 2003–05)”).

89. Daniel E. Slotnik, *Orlando Brown, Who Sued N.F.L. over Errant Flag, Dies at 40*, N.Y. TIMES (Sept. 23, 2011), http://www.nytimes.com/2011/09/24/sports/football/orlando-brown-who-sued-nfl-over-errant-flag-dies-at-40.html?_r=0.

90. *Id.*

The [NFL] suspended him indefinitely for assaulting Triplette but lifted the suspension after it was found that the flag had temporarily blinded [him]. The Browns released him in 2000.

...

In 2001, Brown sued the league for \$200 million According to reports, he settled for a sum between \$15 million and \$25 million in 2002.

...

[Brown] was signed as an undrafted free agent by the Browns in 1993.

Id.

91. Associated Press, *supra* note 88.

92. *Id.*

93. See Jarrett Bell, *Dispute over Flag Continues*, available in Jarrett Bell, *Brown Thunders Back into NFL*, USA TODAY (July 10, 2003), http://usatoday30.usatoday.com/sports/football/nfl/ravens/2003-07-10-brown-cover_x.htm.

IV. NCAA

Andy Oliver, a Vermilion, Ohio, native, was drafted by the Minnesota Twins out of high school, but chose instead to pitch for Oklahoma State University (OKSU).⁹⁴ When making the decision to become a student-athlete, Oliver consulted with the Baratta brothers, both certified Major League Baseball Players Association (MLBPA) agents and attorneys, who served as his advisors in the process.⁹⁵

After two years at OKSU, Oliver decided to use another agent, Scott Boras, as his actual contract adviser when entering the draft.⁹⁶ As a result, the Barattas sent Oliver a bill for \$113,750 for their services provided prior to his tenure at the university and reported this incident to the NCAA in an attempt to demonstrate to the NCAA that Oliver should lose his collegiate eligibility.⁹⁷ Subsequently, OKSU officials requested that Oliver no longer compete for the team during the post-season of the regional final of the 2008 College World Series.⁹⁸ The NCAA remained convinced that Oliver's consultation with the Barattas violated the NCAA's no-agent rule, and the NCAA rendered him permanently ineligible.⁹⁹

NCAA rules allow baseball student-athletes to *consult* with a legal advisor, but the advisor cannot orally or formally agree to negotiate on the player's behalf.¹⁰⁰ After losing NCAA eligibility, Oliver was drafted by the Detroit Tigers in the second round of the 2009 draft.¹⁰¹ However, Oliver sued the NCAA in

94. *Oliver v. Nat'l Collegiate Athletic Ass'n*, 155 Ohio Misc.2d 17, 2009-Ohio-6587, 920 N.E.2d 203, ¶¶ 2, 4 (C.P.).

95. *Id.* Many attribute the modern era of sports agency to Mark McCormack who represented professional golfer Arnold Palmer, establishing the Cleveland-based agency IMG in the process. See Damon Hack, *McCormack and Palmer Changed the World of Sports and Business Forever*, GOLF.COM (Aug. 6, 2009), <http://www.golf.com/tour-and-news/mccormack-and-palmer-changed-world-sports-and-business-forever>.

96. *Oliver*, 155 Ohio Misc.2d 17, 2009-Ohio-6587, 920 N.E.2d 203, ¶ 6.

97. *Id.* ¶¶ 6, 7.

98. *Id.* ¶ 8; see also Jonathan Mahler, *NCAA Crushes Another College Star*, BLOOMBERG VIEW (Feb. 20, 2014), <http://www.bloombergview.com/articles/2014-02-20/ncaa-crushes-another-college-star>.

99. *Oliver*, 155 Ohio Misc.2d 17, 2009-Ohio-6587, 920 N.E.2d 203, ¶ 7.

100. *Id.* ¶ 38.

101. See Darren Heitner, *Why the Philadelphia Phillies and NCAA Deserve Your Scorn*, FORBES (Feb. 23, 2014), <http://www.forbes.com/sites/darrenheitner/2014/02/23/why-the-philadelphia-phillies-and-ncaa-deserve-your-scorn/> (discussing the NCAA's no-agent rule and the Andy Oliver affair). Andy Oliver has had an interesting professional career, including a stint with the Toledo Mud Hens, the Triple-A team currently affiliated with the Detroit Tigers, and made famous by the television show *M.A.S.H.* See *Toledo Mud Hens*, OHIO HISTORY CENTRAL, http://www.ohiohistorycentral.org/w/Toledo_Mud_Hens?rec=1656 (last visited Feb. 18, 2015); see also *Andy Oliver, Stats, Highlights, Bio*,

the State of Ohio claiming, “[H]e hired the Barattas in part because they were attorneys and they promised that they would protect his amateur status.”¹⁰²

Erie County Common Pleas Judge Tygh Tone¹⁰³ ordered the NCAA to reinstate Oliver, finding that NCAA bylaw 12.3.2.1 violated public policy and that Oliver, like anyone in Ohio, was allowed to seek legal counsel to make informed decisions about his career.¹⁰⁴ Judge Tone issued a permanent injunction against the NCAA.¹⁰⁵ The NCAA settled the *Oliver* case for \$750,000.¹⁰⁶ In sum, Judge Tone sent a strong message to the Indianapolis-based NCAA that in Ohio, NCAA rules do not trump well-established Ohio legal principles, including the right to counsel, and opined, “the scales of justice have tilted in the plaintiff’s favor.”¹⁰⁷

V. ANTITRUST LAW

Ohio has had its share of sports-related antitrust lawsuits.¹⁰⁸ One case that was not adjudicated in Ohio, but involved an Ohio resident, occurred in 2004 when Maurice Clarett sued the NFL to force the league to allow him to become

MiLB.COM, http://www.milb.com/player/index.jsp?sid=t512&player_id=501989#/career/R/pitching/2014/ALL (last visited Feb. 18, 2015). With respect to Toledo and baseball from a historical perspective, it is very noteworthy that Moses Fleetwood Walker was actually the first African-American to play professional baseball in the United States, having played catcher for the Toledo Blue Stockings on opening day of the 1884 season against the Louisville Eclipse. See Barry Regan, *Moses Fleetwood Walker: The Forgotten Man Who Actually Integrated Baseball*, BLEACHER REPORT (Apr. 16, 2012), <http://bleacherreport.com/articles/1147947-moses-fleetwood-walker-the-forgotten-man-who-actually-integrated-baseball>.

102. *Oliver*, 155 Ohio Misc.2d 17, 2009-Ohio-6587, 920 N.E.2d 203, ¶¶ 9, 40.

103. See Associated Press, *Judge Rules Player to Be Reinstated*, ESPN, <http://sports.espn.go.com/ncaa/news/story?id=3903336> (last updated Feb. 12, 2009).

104. *Oliver*, 155 Ohio Misc.2d 17, 2009-Ohio-6587, 920 N.E.2d 203, ¶¶ 41, 43.

105. *Id.* ¶ 59.

106. Mahler, *supra* note 98.

107. *Oliver*, 155 Ohio Misc.2d 17, 2009-Ohio-6587, 920 N.E.2d 203, ¶ 60.

108. See, e.g., *Worldwide Basketball & Sport Tours, Inc. v. Nat’l Collegiate Athletic Ass’n*, 388 F.3d 955, 957 (6th Cir. 2004) (reversing the district court’s ruling that the NCAA’s “Two in Four Rule” violated Section I of the Sherman Antitrust Act. This rule prevented basketball teams from participating in more than two exempt tournaments over four years in Division I basketball). In 2006, the NCAA changed these restrictions anyway, allowing teams to participate in a special event-exempt tournament every year, but not the same tournament twice within a four-year period. See Neil Morris, *What’s up with All These Tropical Early-Season Basketball Tournaments?*, INDYWEEK (Dec. 5, 2012), <http://www.indyweek.com/indyweek/whats-up-with-all-these-tropical-early-season-basketball-tournaments/Content?oid=3208369> (discussing the NCAA Bylaw 17.3.5.1.1, also known as the “‘qualifying regular-season multi-team event’ (MTE),” and noting that “early-season and holiday tournaments are nearly as old as college basketball itself.” As a result of the rule change, “an explosion of MTEs has taken place over the ensuing six years: Battle 4 Atlantis, Puerto Rico Tip-off, the EA Sports Maui Invitational, the Old Spice Classic near Disney World and more.”).

draft eligible.¹⁰⁹ Clarett, a native of Youngstown, Ohio, was a star running back at OSU, a Big 10 Freshman of the Year, and the first true freshman to start for OSU since 1943.¹¹⁰ Clarett helped lead OSU to a national championship in 2003.¹¹¹ However, Clarett ran into various troubles and left the team before his second season in 2003–2004.¹¹²

Clarett requested that he be considered for the NFL draft that spring.¹¹³ However, NFL eligibility rules since 1990 have permitted a player to enter the draft only after three full seasons had passed since that player's high school graduation.¹¹⁴ The NFL refused to change its position, even when Clarett claimed that the NFL rule impeded his ability to profit and make a living.¹¹⁵ He brought an antitrust lawsuit against the NFL to challenge its draft eligibility rule.¹¹⁶ However, unlike OSU's coach Jim O'Brien, OKSU pitcher Andy Oliver, and others who sued within Ohio's borders, Clarett's legal team sued in federal court in the Southern District of New York.¹¹⁷

The United States District Court for the Southern District of New York

109. *Clarett v. Nat'l Football League*, 306 F. Supp. 2d 379, 382 (S.D.N.Y. 2004) [hereinafter *Clarett I*], *rev'd*, 369 F.3d 124 (2d Cir. 2004) [hereinafter *Clarett II*], *cert. denied*, 544 U.S. 961 (2005).

110. *Clarett I*, 306 F. Supp. 2d at 387–88. Clarett did not win the Heisman Trophy, the award for the most outstanding college football player, that year. See *List of Heisman Trophy Winners*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_Heisman_Trophy_winners (last modified Feb. 17, 2015). However, there are more Heisman Trophy winners from OSU than any other school (tied with Notre Dame), including Les Horvath (1944), Vic Janowicz (1950), Howard Cassady (1955), Archie Griffin (1974 and 1975), Eddie George (1995), and Troy Smith (2006). Griffin is the only two-time winner. See *Heisman Winners*, HEISMAN TROPHY, <http://heisman.com/roster.aspx?path=football> (last visited Feb. 18, 2015). Of course, the trophy is named after John Heisman, the first head football coach at Oberlin College in Ohio, the school that became infamous for having one of the longest losing streaks in college football history. See *Readers: Worst College Football Team*, ESPN (Sept. 11, 2002), <http://espn.go.com/page2/s/list/readers/worstCollegefb.html>.

111. *Clarett II*, 369 F.3d at 126; see also Rusty Miller, *Clarett Suspended for 2003 Season for 16 NCAA Violations*, USA TODAY (Sept. 10, 2003), http://usatoday30.usatoday.com/sports/college/football/bigten/2003-09-10-clarett-suspension_x.htm.

112. Miller, *supra* note 111.

113. *Clarett II*, 369 F.3d at 126.

114. *Id.*

115. *Id.*

116. *Id.* at 125, 139 (discussing why antitrust law does not apply throughout the decision, reversing the district court decision, and holding that the proper analysis is on labor law's non-statutory labor exemption instead).

117. *Clarett I*, 306 F. Supp. 2d at 382. As discussed further *infra*, former Ohio State University and Olympic runner Harry "Butch" Reynolds sued the IAAF, the international federation that governs track and field ("Athletics"), in the Southern District of Ohio and won a huge judgment against the international organization initially, though it was later overturned by the Sixth Circuit Court of Appeals located in Cincinnati. One wonders why Clarett's legal team chose to venture so far away to a New York federal district court because it appears that Ohio courts at both the state and federal levels seemed to favor such high-profile athletes and coaches who sued behemoth, out-of-state defendants.

ruled in favor of Clarett and ordered that he be eligible to be drafted.¹¹⁸ Judge Shira A. Scheindlin stated that the NFL was really the only professional game in town and its draft rules violated federal antitrust laws.¹¹⁹ However, the United States Court of Appeals (Second Circuit) reversed and opined that that the non-statutory labor exemption bars antitrust challenges to these draft rules and, therefore, an agreement is governed by labor laws instead.¹²⁰ Clarett and his legal team were sacked by the Second Circuit Court of Appeals in an opinion authored by Sonia Sotomayor, now a Supreme Court Justice.¹²¹

VI. CRIMINAL LAW

Ohio is riddled with decades of sport-related examples of criminal misconduct of various sorts, including mascot misdeeds. For example, the University of Cincinnati's Bearcat mascot was arrested for throwing snowballs during a game in 2010.¹²² Meanwhile, Ohio University's mascot, Rufus, drew national attention for his attack on The Ohio State University's Brutus Buckeye when Rufus tackled Brutus as the team ran onto the field in Columbus that same year.¹²³ Interestingly, the young man who played Rufus was not even a student at Ohio University.¹²⁴ No criminal charges were ever filed for the attack.¹²⁵

On June 4, 1974, an out-of-control incident occurred when the Cleveland Indians held Ten Cent Beer Night at Cleveland Stadium.¹²⁶ "The club intended to offer as much eight-ounce Stroh's beer as fans could drink—and for only 10 cents"¹²⁷ The Indians played the Texas Rangers, and a brawl ensued among

118. *Id.* at 410–11; *see also* EPSTEIN, *supra* note 41, at 354.

119. *Clarett I*, 306 F. Supp.2d at 407 n.173 (stating "no football player would see the Arena League or the Canadian League as a reasonably good substitute for the NFL").

120. *Clarett II*, 369 F.3d at 125, 139. *See generally* Adam Epstein, *The Empire Strikes Back: NFL Cuts Clarett, Sacks Scheindlin*, 22 ENT. & SPORTS LAW 12, 12–17 (2005).

121. *Clarett II*, 369 F.3d at 125.

122. Michael McCarthy, *When Mascots Go Bad: Cincy Bearcat Arrested*, USA TODAY (Dec. 5, 2010), <http://content.usatoday.com/communities/gameon/post/2010/12/when-good-mascots-go-bad-cincy-bearcat-arrested/1> (offering that the Cincinnati Bearcat mascot was arrested for disorderly conduct during a snowy December game against the University of Pittsburgh).

123. *Id.*; *see also* Andy Staples, *Fuzzy Friends Speak after Brutus Assault That Rocked Mascot World*, SPORTS ILLUSTRATED (Sept. 23, 2010), <http://www.si.com/more-sports/2010/09/23/mascot-wars>.

124. *See* Staples, *supra* note 123 (noting that the student who played Rufus dropped out of Ohio University and actually was attending Hocking College, a two-year school in Nelsonville, Ohio).

125. *Id.*

126. *See* Giants27, *Cleveland Indians' Ten Cent Beer Night: The Worst Idea Ever*, BLEACHER REPORT (Mar. 21, 2009), <http://bleacherreport.com/articles/142952-ten-cent-beer-night-the-worst-idea-ever>.

127. *See* Staples, *supra* note 123.

the players.¹²⁸ “Six days earlier there was a bench-clearing brawl between the two teams at Arlington Stadium in Texas.”¹²⁹ That “brawl . . . featured Texas fans pouring beer on the Indians players,” and the umpire forfeited the game to Texas.¹³⁰ “The [Cleveland] Indians, who had scheduled three more of these beer nights, changed it from unlimited beer to four beers per person for the rest of the promotions,”¹³¹ and unruly spectators that night were arrested for disorderly conduct.¹³²

The following sections represent some other noteworthy crime-related incidents emanating from Ohio in the context of sports law.

A. *University of Toledo: Point-Shaving Scenario*

A federal grand jury in Detroit returned a twenty-count indictment in 2009 that accused seven former University of Toledo (UT) student-athletes of conspiring with two Detroit businessmen to influence the outcomes of college football and basketball games that the businessmen placed bets on in 2004.¹³³ In 2010, four former Rockets entered guilty pleas in the alleged point-shaving scheme, including former UT football player Harvey “Scooter” McDougle.¹³⁴ One of the players “was accused of intentionally missing two free throws in a [basketball] game . . . on Feb[ruary] 4, 2006, against Central Michigan [University].”¹³⁵ The “federal investigation cost McDougle his [final] football season

128. *Id.*

129. *Id.*

130. *Id.*

131. See *Cleveland Indians' Ten Cent Beer Night: The Worst Idea Ever*, *supra* note 126.

132. See Staples, *supra* note 123; Jeff Young, *Indians' Dime Beer Night Showed Baseball and Cheap Beer Don't Mix*, SUITE, <https://suite.io/jeff-young/551j25h> (last visited May 10, 2015); see also Paul Jackson, *The Night Beer and Violence Bubbled over in Cleveland*, ESPN, <http://sports.espn.go.com/espn/page2/story?page=beernight/080604&sportCat=mlb&lpos=spotlight&lid=tab4pos1> (last updated June 4, 2008).

133. See *Ex-Toledo University Football Player 'Scooter' McDougle to Plead Guilty in Point-Shaving Case*, TOLEDO BLADE (June 27, 2011), <http://www.toledoblade.com/sports/2011/06/27/Ex-Toledo-University-football-player-Scooter-McDougle-to-plead-guilty-in-point-shaving-case.html>.

134. See *id.*; Associated Press, *Quinton Broussard Pleads Guilty*, ESPN, http://espn.go.com/college-football/story/_id/6895890/former-toledo-rockets-player-quinton-broussard-pleads-guilty-sports-bribery-investigation (last updated Aug. 25, 2011).

135. See Joe Vardon, *4 Ex-Rockets Expected to Plead Guilty in Alleged Point-Shaving Scheme*, TOLEDO BLADE (Dec. 9, 2010), <http://www.toledoblade.com/local/2010/12/09/4-ex-Rockets-expected-to-plead-guilty-in-alleged-point-shaving-scheme.html> (offering that “Rockets basketball player Sammy Villegas, [who] . . . was accused of intentionally missing two free throws in a game as a senior on Feb. 4, 2006, against Central Michigan,” was “charged in June, 2008, with shaving points and recruiting others to join the plot,” as well).

with the Rockets.”¹³⁶

B. University of Cincinnati: Intramurals Assault

In *State v. Guidugli*, the Hamilton County Municipal Court convicted Geno Guidugli of misdemeanor assault for his role in a fight in an intramural basketball game at the University of Cincinnati (UC).¹³⁷ He was sentenced to a 180-day suspended jail sentence, sixty days of home incarceration, one year of probation, anger management counseling, a fine, and court costs.¹³⁸ The trial court “rejected Guidugli’s claim of self-defense, stating that the evidence showed that he had punched . . . in retaliation rather than to protect himself.”¹³⁹ The appellate court affirmed the trial court’s judgment.¹⁴⁰ Guidugli was a quarterback for UC from 2001–2004 and set many school records.¹⁴¹

C. Ohio State University: Chaos to the Extreme

The State of Ohio’s flagship university has been the center of attention in recent years for issues related to sportsmanship, sports, and the law.¹⁴² For ex-

136. *Id.*; see also *Detroit Trial in Toledo Point-Shaving Case Delayed*, CBS DETROIT (Oct. 24, 2013), <http://detroit.cbslocal.com/2013/10/24/detroit-trial-in-toledo-point-shaving-case-delayed/> (offering that the reason for the delay in the trial was that Ghazi Manni, one of the two Detroit businessmen, got a new lawyer who needed more time to prepare the case, and offering that “[f]ormer Toledo basketball players Anton Currie, Kashif Payne and Keith Triplett are facing trial along with Manni,” at the time of this writing as well).

137. *State v. Guidugli*, 157 Ohio App.3d 383, 2004-Ohio-2871, 811 N.E.2d 567, ¶ 1 (1st Dist.) (noting that the assault violated OHIO REV. CODE ANN. § 2903.13(A)).

138. *Id.* ¶ 9.

139. *Id.*

140. *Id.* ¶ 38.

141. See Rob Howard, *Arrested Development*, DAILY ORANGE (Sept. 15, 2004), <http://dailyorange.com/2004/09/arrested-development-2-2/>; see also Tom Farrey, *Timeline: Jim Tressel’s Fall*, ESPN (May 30, 2011), <http://sports.espn.go.com/nfl/news/story?id=6607982> (chronicling concerns about football players receiving extra benefits, and OSU head football coach Jim Tressel’s awareness of them, for many years).

142. Not all publicity is negative publicity. Compare Jerry Hinnen, *Ohio State Fans Can Text to Report Other Fans*, CBS SPORTS (Sept. 3, 2014), <http://www.cbssports.com/collegefootball/eye-on-college-football/24692917/ohio-state-fans-can-text-to-report-other-fans-for-standing> (in 2014, Ohio State instituted a policy in which spectators there in Columbus could report unruly individuals by texting appropriate authorities), with Jeff Seidel, *Big Ten Flips Off Sportsmanship by Not Suspending Ohio State Lineman*, DETROIT FREE PRESS (Dec. 3, 2013), <http://www.freep.com/article/20131203/SPORTS07/312030042/Jeff-Seidel-Big-Ten-flips-off-sportsmanship-by-not-suspending-Ohio-State-lineman> (discussing how Ohio State offensive lineman Marcus Hall flipped off the crowd at the 2013 game against Michigan in Ann Arbor after he was ejected for fighting, but was not suspended and only given a public reprimand).

ample, on April 1, 2010, Edward Rife's residence was raided as part of a criminal drug trafficking investigation.¹⁴³ Rife owned a Columbus tattoo parlor, and large quantities of OSU football memorabilia were found at his residence.¹⁴⁴ Rife allegedly sought counsel with a lawyer, Christopher Cicero, who subsequently sent an email to then OSU head football coach Jim Tressel alerting him to the fact that OSU players were selling memorabilia for tattoos.¹⁴⁵ The NCAA banned Ohio State football from a post-season bowl game the following year as a result of this incident—characterized as *Tattoo-gate*—in which eight players took cash and tattoos in exchange for jerseys, rings, and other memorabilia from Rife.¹⁴⁶ Jim Tressel resigned in May 2011 as a result of the incident.¹⁴⁷ Cicero's law license was suspended for one year.¹⁴⁸ In 2014, Tressel was named the

143. See Associated Press, *Ohio State Case Lawyer Suspended*, ESPN.COM, http://espn.go.com/college-football/story/_id/8685683/court-suspends-ohio-state-case-lawyer-1-year-jim-tressel-scandal (last updated Nov. 28, 2012) (offering that lawyer Chris Cicero wanted to know if his client, Joseph Epling, was involved since Epling was Rife's business partner as well).

144. *Id.*

145. *Id.* (offering, "Justice Judith Lanzinger said the case went to the heart of the importance of confidentiality between a prospective client and an attorney").

146. *Id.*; see also Roger Groves, *Top 10 Lessons from Ohio State's Tattoo-Gate*, FORBES (Dec. 21, 2011), <http://www.forbes.com/sites/sportsmoney/2011/12/21/top-10-lessons-from-ohio-states-tattoo-gate/> (offering that OSU was also ineligible for the Big Ten Championship in 2012, scholarships were reduced from eight-five to eighty-two through 2014–2015 academic year, it was ordered to repay \$338,811 (its share of revenues from the Sugar Bowl game in 2011), and it was mandated that it vacate all its football victories from 2010).

147. Associated Press, *supra* note 143. Interestingly, OSU President Gordon Gee retired from the university effective July 1, 2013, and he had been quoted with regard to potentially firing Coach Tressel, "No. Are you kidding? Let me just be very clear. I'm just hopeful the coach doesn't dismiss me." See George Schroeder, *College Football Proved to Be Gordon Gee's Undoing*, USA TODAY (June 4, 2013), <http://www.usatoday.com/story/sports/ncaaf/bigten/2013/06/04/college-football-ohio-state-president-gordon-gee-retires/2390019/>.

148. Associated Press, *supra* note 142. "Cicero played on the OSU football team from 1980 to 1984." Daniel Werly, *The Attorney that Brought Terelle Pryor, Jim Tressel, and the Ohio State Buckeyes Crashing Down*, SPORTS LAW 101 (June 11, 2012), <http://www.sportsmedia101.com/sportslaw/2012/06/11/the-attorney-that-brought-terelle-pryor-jim-tressel-and-the-ohio-state-buckeyes-crashing-down/>.

[The] recommendation for suspension was based on Ohio Rule of Professional Conduct 1.8: Confidentiality of Information: "Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation" Although Cicero never actually retained Rife as a client[,] . . . he still owed Rife a duty of confidentiality.

Id. Rife pleaded guilty to drug trafficking and money laundering and was sentenced to three years in prison. *Id.*; see also Associated Press, *Edward Rife Sentenced to Prison Term*, ESPN (Oct. 26, 2011), http://espn.go.com/college-football/story/_id/7152089/edward-rife-man-linked-ohio-state-buckeyes-scandal-sentenced-prison (last updated Oc. 26, 2011). For exploration of an Ohio sports agent/lawyer

president of Youngstown State University after having served in administration at the University of Akron the previous two years.¹⁴⁹

The chaos for OSU continued into 2013, when the head of OSU's cheerleading squad was fired after she failed to report the sexual harassment of a cheerleader by two assistant coaches.¹⁵⁰ Then, in 2014, "[t]he director of Ohio State University's marching band [was] fired after an . . . investigation found he presided over routine sexual harassment among students"¹⁵¹:

A [twenty-three]-page report . . . on the investigation, conducted by the university, state[d] that the director, . . . knew or should have known about a variety of inappropriate rituals and traditions among student members, including an annual practice when students march in their underwear, the expectation that first-year members perform "tricks" on command, and the performance of sexual poses on bus trips.¹⁵²

D. Other Examples

It is not surprising that incidents related to criminal law form the headlines of newspaper and Internet articles, and Ohio has had its share of examples of criminal misconduct, some of which have attracted national attention due to the

case, *see* Cuyahoga County Bar Ass'n v. Glenn, 649 N.E.2d 1213, 1213–14 (Ohio 1995) (holding by the Supreme Court of Ohio for the suspension of lawyer and sports agent Everett Glenn from the practice of law for one year after he obtained \$20,000 from Chicago Bears' player Richard Dent, albeit fraudulently and without his client's consent).

149. Karen Farkas, *Jim Tressel Signs Contract and Is Officially President of Youngstown State University*, CLEVELAND.COM (May 12, 2014), http://www.cleveland.com/metro/index.ssf/2014/05/jim_tressel_signs_contract_and.html (offering that Tressel was also one of three finalists considered at the University of Akron but withdrew his application after being named president at Youngstown State University).

150. Dan Hope, *Ohio State Cheerleading Coach Lenee Buchman Fired, Interim Coach Named*, LANTERN (Nov. 26, 2013), <http://thelantern.com/2013/11/ohio-state-cheerleading-coach-longer-listed-athletic-website-interim-coach-named/>; *see also* Eric Seger, *New Ohio State Cheer Coach Aims to Grow Program 'From the Ground Up'*, LANTERN (Apr. 9, 2014), <http://thelantern.com/2014/04/new-ohio-state-cheer-coach-aims-grow-program-ground/> (offering that Buchman was fired "for cause").

151. Andy Thomason, *Ohio State Fires Band Director for Tolerating Sexual Harassment*, CHRON. HIGHER EDUC. (July 24, 2014), <http://chronicle.com/blogs/ticker/ohio-state-fires-band-director-for-tolerating-sexual-harassment/82635> (offering that the investigation started after a parent complained).

152. *Id.* (quoting Michael V. Drake, OSU President, "'aspects of how the band was guided are not acceptable in the modern world'"); *see also* Collin Binkley, *Ohio State Band Director Jonathan Waters May Fight Firing*, COLUMBUS DISPATCH (July 25, 2014), <http://www.dispatch.com/content/stories/local/2014/07/24/ohio-state-band-waters.html> (providing video and referencing other college band-related scandals in recent years at Florida A&M, Texas Southern, Jackson State, and Mississippi).

prominence of the persons involved.¹⁵³ For example, Ohio University's head football coach, Frank Solich, was cited for driving under the influence (DUI) in 2005 when he was discovered asleep in his car.¹⁵⁴ The previous year, University of Cincinnati (UC) head basketball coach Bob Huggins was suspended with pay for drunk driving as well.¹⁵⁵

In 1982, the NFL's Baltimore Colts selected Art Schlichter, an Ohio native, as the fourth overall pick in the NFL draft from OSU, where he was an All-American.¹⁵⁶ In a September 2011 deal with state and federal prosecutors, Schlichter pled guilty to twelve theft counts and one corrupt activity count and was sentenced to prison for a multi-million dollar ticket scam.¹⁵⁷ Schlichter had a compulsive gambling addiction and was ultimately suspended permanently by the NFL for betting on sports after a relatively short career with the Colts and the Buffalo Bills.¹⁵⁸

Meanwhile, Cincinnati native and Cincinnati Reds baseball player (and later manager) Pete Rose agreed to permanent ineligibility with MLB in 1989 after an investigation concluded he had bet on Reds games over the years dating back

153. See, e.g., Alex Perez, *Steubenville, Ohio Teen Returns to the Football Field After Rape Conviction*, ABC NEWS (Aug. 13, 2014), <http://abcnews.go.com/US/steubenville-ohio-teen-returns-football-field-rape-conviction/story?id=24958411> (discussing the case involving an Ohio high school student who was allowed to return to his "football team after serving over nine months of a one-year sentence for rape" in a case involving him and others who were involved directly and indirectly "of sexually assaulting a 16-year-old girl after a night of [misconduct] and partying in August, 2012"). Thanks to Dr. Robert McDonald, Franciscan University of Steubenville, for his insights to this reference.

154. Associated Press, *Solich Apologizes for DUI, Will Remain Ohio Coach*, ESPN, <http://sports.espn.go.com/ncf/news/story?id=2240823> (last updated Nov. 29, 2005) (offering that Solich "was found guilty after pleading no contest[,] had his license suspended for 180 days, was fined \$250 and ordered to complete a three-day driver intervention program").

155. *Recent Coaching Drunk Driving Scandals*, CBSSPORTS (Nov. 17, 2011), <http://www.cbssports.com/mcc/blogs/entry/6270202/33365217> (discussing Solich, Huggins, and a few others).

156. See *Schlichter Sentenced to 10 Years in Jail*, FOXSPORTS, <http://msn.foxsports.com/nfl/story/Art-Schlichter-sentenced-to-10-years-in-jail-091511> (last updated June 2, 2014).

157. *Id.*; see also Associated Press, *Art Schlichter May Face More Prison Time*, ESPN (Sept. 26, 2011), http://espn.go.com/college-football/story/_/id/7023916/ex-ohio-state-buckeyes-qb-art-schlichter-facing-additional-prison-time (last updated Sept. 26, 2011); Associated Press, *Art Schlichter to Plead Guilty to Fraud*, ESPN, http://espn.go.com/college-football/story/_/id/6969563/former-ohio-state-buckeyes-qb-art-schlichter-plead-guilty-fraud-charges (last updated Sept. 14, 2011).

158. *Schlichter Sentenced to 10 Years in Jail*, *supra* note 156 ("Schlichter received a lifetime suspension from then-commissioner Pete Rozelle after he was arrested . . . in connection with a sports-betting operation."); Associated Press, *Art Schlichter Sentenced to 11 Years*, ESPN, http://espn.go.com/college-football/story/_/id/7890630/ex-ohio-state-buckeyes-indianapolis-colts-qb-art-schlichter-gets-11-years-prison (last updated May 4, 2012) (offering that Schlichter spent time in prison in Indiana related to his gambling addiction, and he tested positive for cocaine use while on house arrest after a guilty plea for the ticket scam case).

to the mid-1980s.¹⁵⁹ After years of denials, Rose confessed to betting on the Reds in a 2004 book, *My Prison Without Bars*.¹⁶⁰ It is interesting to note that the Rose case drew attention to MLB's "best interests of baseball" clause found in Section 3(g) of its Constitution and how MLB Commissioners have invoked the clause throughout the years, in particular banning Rose from MLB for gambling,¹⁶¹ and suspending Cincinnati Reds owner Marge Schott for one year in 1993 for inappropriate racial epithets.¹⁶² The issue of whether Rose should be admitted to the Baseball Hall of Fame opened up the discussion and further exploration of the role and power of the Commissioner of MLB in conjunction with the unique "best interests" clause.¹⁶³

159. See Jill Lieber & Craig Neff, *The Case Against Pete Rose*, SPORTS ILLUSTRATED (July 3, 1989), <http://www.si.com/vault/1989/07/03/120139/the-case-against-pete-rose-one-day-after-the-cincinnati-manager-got-a-boost-from-a-victory-in-court-baseball-issued-a-scathing-report-that-concludes-he-bet-on-the-reds-one-key-figure-has-given-si-his-account-of-how-he-booked-some-of-roses-action>.

160. PETE ROSE WITH RICK HILL, *MY PRISON WITHOUT BARS* 316 (2004).

161. See Ronald J. Rychlak, *The Dowd Report: Pete Rose, Bart Giamatti, and the Dowd Report*, 68 MISS. L.J. 889, 892–95 (1999) (offering that MLB commissioner, "Bart Giamatti, former president of Yale University, wanted Rose to explain the rumors of his gambling," Rose's denial, and Giamatti's belief that Rose was lying. Giamatti asked Fay Vincent to conduct an investigation, and Vincent suggested John Dowd, who had started his career as a prosecutor with the justice department. Rose was ultimately permanently suspended from baseball, but not without a fight. In fact, "Rose won a fourteen-day temporary restraining order against the commissioner, but the case was then removed to federal court," and Giamatti died of a heart attack eight days later); see also *Rose v. Giamatti*, 1st Dist. Hamilton No. C890390, 1989 Ohio App. LEXIS 2542, *22 (June 28, 1989) (holding that Rose was entitled to the temporary restraining order (TRO) because basic justice required that plaintiff not be required to submit to a disciplinary hearing decided by defendant commissioner where it was shown that defendant commissioner had prejudged the issue of plaintiff's improper gambling activity); *U.S. v. Rose*, 1990 U.S. Dist. LEXIS 8629 (S.D. Ohio July 19, 1990) (sentencing Rose to five months of imprisonment, followed by three months in a community treatment center or halfway house as a condition of his one-year supervised release. The court also imposed a fine and special assessments against Rose for the crime of filing false tax returns).

162. See, e.g., Mike Bass, *Marge Schott: 'A Mouth Unfiltered,'* ESPN, http://espn.go.com/mlb/story/_id/10532174/mlb-marge-schott-today-world (last updated Mar. 2, 2014). Actually, Schott was not the only state of Ohio owner to be involved in nationally discussed racial insensitivity issues. For example, former Cleveland Cavaliers owner Ted Stepien was involved in making several remarks to the press related to blacks that caused the team, city and league quite an embarrassment. See Bill Livingston, *He Wasn't Donald Sterling, but Late Cavaliers' Owner Ted Stepien Had Some Racist Moments Too*, PLAIN DEALER, http://www.cleveland.com/livingston/index.ssf/2014/04/he_wasnt_donald_sterling_but_t.html (last updated Apr. 30, 2014) (quoting Stepien from Sport Magazine's April, 1981 issue, "I feel that whites should have a position in the athletic world. Sometimes they've given it up").

163. See, e.g., Alan J. Hart, *Barry Bonds and the Baseball Hall of Fame: Is It In the "Best Interest of Baseball"?*, 40 SW. U. L. REV. 175, 182–83 (2010) (offering that "[i]n March of 1989, then Commissioner Peter Ueberroth . . . investigat[ed] . . . allegations that Pete Rose had bet on baseball games[.] . . . and [h]is successor [A. Bartlett] Giamatti, permanently banned Rose on August 24, 1989, following the investigation"); see also Matthew J. Parlow, *Professional Sports League Commissioners' Authority*

VII. OLYMPICS

There is a strong connection between a discussion of Ohio and sports law and the Olympic Games.¹⁶⁴ One might explore the historical and socio-political impact related to the Olympic Games from Ohioans, including Jesse Owens' four gold medal performance during the 1936 Berlin Olympics¹⁶⁵ to the 1972 gold medal performance by Canton, Ohio, native Dave Wottle in the 800m.¹⁶⁶

As far as legal disputes, Harry "Butch" Reynolds, born in Akron, Ohio, was a world record holder and American sprinter who attended OSU and eventually coached there from 2005–2008.¹⁶⁷ Reynolds ran in a meet in Monte Carlo on August 12, 1990, and was randomly tested for drugs by the International Association of Athletics (IAAF), the international federation for track and field.¹⁶⁸ Reynolds's drug test proved positive for the performance-enhancing steroid Nandrolone, and the IAAF suspended him for two years, which disqualified him from the 1992 Olympics in Barcelona, Spain.¹⁶⁹

Reynolds contested the suspension and brought a lawsuit against The Athletic Congress of the United States (TAC) in the U.S. District Court for the Southern District of Ohio.¹⁷⁰ Meanwhile, Reynolds made the U.S. Olympic team as an alternate for the 400-meter relay, but the IAAF still refused to let

and *Collective Bargaining*, 11 TEX. REV. ENT. & SPORTS L. 179, 193–94 (2010).

164. It is worth noting that Geneva, Ohio, forty miles east of Cleveland, boasts the Spire Institute chosen to be the independent U.S. Olympic training site. See Tim Warsinskey, *Spire Institute in Geneva Chosen to be Independent U.S. Olympic Training Site, Sources Tell The Plain Dealer*, PLAIN DEALER (Feb. 22, 2013), http://www.cleveland.com/olympics/index.ssf/2013/02/spire_chosen_to_be_us_olympic.html (offering that "[t]he U.S. Olympic Committee owns and operates [various] training centers in Colorado Springs, Colo.; Chula Vista., Calif.; and Lake Placid, N.Y.," and has agreements with independent training sites around the United States).

165. See Darren Rovell, *Jesse Owens Gold Goes for \$1.47M*, ESPN, http://espn.go.com/olympics/trackandfield/story/_/id/10101684/jesse-owens-gold-medal-1936-olympics-sells-147-million (last updated Dec. 8, 2013).

166. See David Briggs, *Memories Fresh of Day Wottle Shocked World*, BLADE (June 24, 2012), <http://www.toledoblade.com/sports/2012/06/24/Memories-fresh-of-day-Wottle-shocked-world.html> (discussing how the then 21-year-old, a Bowling Green State University graduate, came from last place to win the 800m in the 1972 Munich Olympics, the same Olympic Games surrounded in turmoil after eleven members of the Israeli Olympic team were taken hostage and killed by the Palestinian group Black September).

167. See Bill Livingston, *Olympic Sprinter Butch Reynolds Still Stands Tall*, PLAIN DEALER (July 31, 2010), http://www.cleveland.com/livingston/index.ssf/2010/07/post_5.html (discussing, inter alia, Reynolds' protracted legal battle related to his suspension for testing positive for Nandrolone, and how his legal victory was short-lived after the federal court of appeals declared Ohio did not have jurisdiction over the IAAF, the international sport federation for track & field).

168. Reynolds v. IAAF, 23 F.3d 1110, 1112 (6th Cir. 1994).

169. *Id.*

170. *Id.* at 1112–13.

him compete in the 1992 Olympics and forced TAC to remove him from the Olympic team roster.¹⁷¹

On the day before Reynolds's two-year ban by the IAAF was to expire in 1992, the IAAF extended the suspension until January 1, 1993, as a form of punishment for his participation at the U.S. Olympic Trials.¹⁷² Reynolds filed a supplemental complaint in the Southern District of Ohio, and the court awarded Reynolds \$27.4 million in compensatory and trebled punitive damages.¹⁷³ When Reynolds attempted to collect the judgment, however, the IAAF appealed to the Sixth Circuit Court of Appeals, and the appellate court reversed the \$27.4 million judgment, citing lack of personal jurisdiction.¹⁷⁴ As a result of the *Reynolds* case and others, the Court of Arbitration for Sport (CAS) now requires that Olympic participants sign a release that mandates resolution of all disputes related to the Olympics via arbitration rather than litigation.¹⁷⁵

VIII. DISCRIMINATION AND EMPLOYMENT

In *Weaver v. Ohio State University*, field hockey coach Karen Weaver claimed that she was terminated from her position as head coach by OSU in violation of Title VII, the Equal Pay Act, and Title IX.¹⁷⁶ She alleged that she

171. *Id.* at 1113.

172. *Id.*

173. *Id.* at 1113–14 (offering that the district court found that the IAAF “acted with ill will and a spirit of revenge towards Mr. Reynolds.”). The Sixth Circuit Court of Appeals showed that the IAAF was served with notice, but did not appear in the case and a default judgment was entered at the District Court level, stating,

The district court also found that it had personal jurisdiction over the IAAF. The court held that the Ohio long-arm statute was satisfied because the IAAF transacted business with Reynolds in Ohio, and the IAAF's public announcement of Reynolds' positive drug test adversely affected Reynolds in Ohio. The court held that the IAAF had the required minimum contacts with Ohio

....

Id. at 1114.

174. *Id.* at 1114, 1118, 1121 (citations omitted) (Lively, J., Senior Circuit Judge, wrote, “In conclusion, we do not believe that holding the IAAF amenable to suit in an Ohio court under the facts of this case comports with ‘traditional notions of fair play and substantial justice’”).

175. See Adam Epstein, *Go for the Gold by Utilizing the Olympics*, 29 J. LEGAL STUD. EDUC. 313, 315–326 (referencing the Ted Stevens Amateur and Olympic Sports Act of 1998 (TSOASA), 36 U.S.C. § 220521 et seq. (2012), the 1998 law mandating that U.S. Olympic-related disputes must be resolved via arbitration rather than litigation, and discussing the *Reynolds* case and others in which arbitration was used to attempt to resolve disputes); see also Stephen Wilson, *Athletes Must Accept Arbitration, Reject Litigation*, AP NEWS ARCHIVE (May 9, 1996), <http://www.apnewsarchive.com/1996/Athletes-Must-Accept-Arbitration-Reject-Litigation/id-3fbf03700eebb0d0ef9564efbe7e4644>.

176. *Weaver v. Ohio State Univ.*, 71 F. Supp. 2d 789, 791 (S.D. Ohio 1998); see also *Yellow Springs*

was retaliated against because she made comments concerning the condition of the artificial turf.¹⁷⁷ The court granted the motion for summary judgment in favor of OSU, holding that Weaver “produced no direct evidence of a discriminatory motive on the part of” OSU.¹⁷⁸ The court noted that she was replaced by a woman,¹⁷⁹ and Weaver did not show that she was terminated in retaliation for her complaints.¹⁸⁰ Additionally, OSU produced evidence of a legitimate, nondiscriminatory reason for Weaver’s termination, including outside complaints about her coaching abilities.¹⁸¹

Weaver used the men’s ice hockey coach and men’s basketball coach to support her Equal Pay Act claim, but the lower court’s finding that the male coaches’ ability to raise more revenue than the plaintiff was a significant factor under the Equal Pay Act to justify the differential in pay.¹⁸² Additionally, the court offered that the men’s lacrosse team used the same practice field assigned

Exempted Vill. Sch. Dist. Bd. of Educ. v. Ohio High Sch. Athletic Ass’n, 647 F.2d 651 (6th Cir. 1981) (reversing the judgment of the District Court which held that 45 C.F.R. § 86.41 [Title IX] is unconstitutional); Diane Heckman, *The Entrenchment of the Glass Sneaker Ceiling: Excavating Forty-Five Years of Sex Discrimination Involving Educational Athletic Employment Based on Title VII, Title IX and the Equal Pay Act*, 18 VILL. SPORTS & ENT. L.J. 429, 467–68 (2011) (discussing the *Weaver* case).

177. *Weaver*, 71 F. Supp.2d at 791.

178. *Id.* at 793.

179. *Id.*

180. *Id.* at 797.

To prove a prima facie case of retaliation, the plaintiff must show: 1) that she engaged in protected opposition to Title VII or Title IX discrimination or participated in a Title VII or Title IX proceeding; 2) that plaintiff’s exercise of her protected rights was known to the defendants; 3) that she was subjected to an adverse employment action subsequent to or contemporaneous with the protected activity; and 4) that there was a causal connection between the protected activity and the adverse employment action.

Id. at 793.

181. *Id.* at 795 (stating that then athletic director Andy Geiger stated in his affidavit that “he terminated [Weaver’s] employment due to the complaints of the field hockey team members concerning plaintiff’s competence he received beginning in late 1995. He indicated that he felt that the team members had lost confidence in the plaintiff, that the situation was irreparable, and that a change was needed.”).

182. *Id.* at 801–02.

In determining whether men’s and women’s coaching positions are equal, courts have looked to such factors as team size, the number of assistant coaches, recruiting responsibilities, the amount of spectator attendance and community interest in the sport, the amount of revenue generated by the sport, the degree of responsibility in the area of public and media relations and promotional activities, and the relative importance of the sport in the athletic program as a whole.

Id. at 800 (citing *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1321–23 (9th Cir. 1994)).

to the women's field hockey team.¹⁸³ The Sixth Circuit Court of Appeals upheld the decision in an unpublished opinion.¹⁸⁴

Similarly, in *Murphy v. University of Cincinnati*,¹⁸⁵ assistant swim coach Robin Benté Murphy sued UC alleging sex discrimination and improper retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.¹⁸⁶ The Sixth Circuit Court of Appeals in *Cincinnati* held that the district court properly found that Murphy failed to establish that she was qualified for her position because she failed to meet the university's legitimate expectations.¹⁸⁷ Additionally, the evidence showed that she had a "bad attitude[,] poor work ethic, . . . had violated NCAA rules[,] . . . [and] constantly challenged [the head coach's] orders."¹⁸⁸ According to the decision, even if the assistant coach was qualified for the position, she failed to show that "she was treated worse than a similarly-situated male."¹⁸⁹ Summary judgment for UC was affirmed.¹⁹⁰

In *Clinton v. Nagy*,¹⁹¹ a Cleveland mother, Johnnie Clinton, contended that preventing her twelve-year-old daughter Brenda from playing contact football with the 97th Street Bulldogs was sex-based denial of equal opportunity.¹⁹² The court observed that the mother signed a waiver absolving the city and football association of any liability, even though the same waiver was not required of boys.¹⁹³ The court found that denying Brenda the opportunity to participate in

183. *Id.* at 798.

184. 194 F.3d 1315, No. 98-4295, 1999 U.S. App. LEXIS 33167 (6th Cir. Ohio Oct. 8, 1999).

185. *See generally* 72 Fed. Appx. 288 (6th Cir. 2003).

186. *Id.* at 290.

187. *Id.* at 292–93 (discussing the relationship between Murphy and Head Coach Monty Hopkins).

188. *Id.* at 292.

189. *Id.* at 293.

190. *Id.* at 297 (affirming "the decision of the district court granting summary judgment to UC on the sex-based discrimination issue, and the jury verdict finding for UC" regarding retaliation). In another Title IX case involving UC, *Miller v. University of Cincinnati*, No. 1:05-cv-764, 2008 U.S. Dist. LEXIS 4339 (S.D. Ohio Jan. 22, 2008), female rowers resisted the decision by UC to terminate the rowing team and subsequently filed a class action lawsuit alleging unequal facilities, equipment, and coaching staff, among other claims, but the court sided with the university and granted summary judgment because the opportunities for female athletes were more than proportional each year since 2000, stating "The University has been in compliance with the equal accommodation prong of Title IX and the termination of the rowing team does not place it out of compliance." *Id.* at **19–20.

191. *See generally* 411 F. Supp. 1396 (N.D. Ohio 1974).

192. *Id.* at 1396–97 (providing that the lawsuit was filed against "John S. Nagy, Commissioner of the Division of Recreation of the City of Cleveland; Robert Maver, Director of the Cleveland Browns Muny Football Association; Charles Hall, Director of Class 'F' Muny League teams; and Ralph J. Perk, Mayor of the City of Cleveland").

193. *Id.* at 1397 (offering that "on October 18, 1974, Mrs. Clinton was notified that although the waiver had been received, Brenda could not play because that 'was the law'").

football solely based on her sex did *not* bear a rational relationship to a legitimate state purpose of providing the safety and welfare of females;¹⁹⁴ it granted a temporary restraining order against the defendants because preventing the minor from playing football would have otherwise caused her irreparable harm with only two games remaining that season.¹⁹⁵

In *Bridewell v. Cincinnati Reds*,¹⁹⁶ a Sixth Circuit appellate decision emanating from Ohio, a group of Riverfront Stadium maintenance staff brought suit against MLB's Cincinnati Reds, claiming the Reds violated the Fair Labor Standards Act (FLSA) by failing to pay overtime wages as required by the statute.¹⁹⁷ In fact, the Reds argued that the team was exempt from the law because its baseball season did not run for more than seven months, even accounting for spring training.¹⁹⁸ The court held that the franchise operated a year-round establishment and concluded that there was a distinction between *operating* for more than seven months and merely providing recreation or amusement for its customers for more than seven months.¹⁹⁹ The Reds employed 120 year-round

194. *Id.* at 1398–1400 (stating that although the emphasis of contact sports has been on the growth and development of boys, “the opportunity to qualify to engage in sports activities through which such qualities may be developed has been granted to one class of the young and summarily denied to the other”).

195. *Id.* at 1400. However,

[T]he defendants, their agents, employees, and all persons having actual knowledge of this order are hereby enjoined from prohibiting plaintiff Brenda Clinton from participating as a member of the 97th Street Bulldogs in its football games solely because of her sex. As this Court has already cautioned plaintiff, nothing in this order should be construed as requiring Coach Thomas to put Brenda Clinton into a game, should he determine that she does not qualify on the day of a game or should he deem another member of the team to be better suited to play in the position for which Miss Clinton has qualified.

Id.

196. 68 F.3d 136 (6th Cir. 1995) [hereinafter *Bridewell I*].

197. *Id.* at 137–38; see also *Bridewell v. Cincinnati Reds*, 155 F.3d 828, 829 (6th Cir. 1998) (citing 29 U.S.C. § 207(a)(1) (2012)) [hereinafter *Bridewell II*].

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. § 207(a)(1).

198. *Bridewell II*, 155 F.3d at 829 (referencing 29 U.S.C. § 213(a)(3)(A)).

199. *Id.* (referencing the prior decision of the panel in *Bridewell I*).

workers, and it was clear that their operations extended beyond just the playing season; therefore, the team was subject to the overtime pay requirements of the FLSA.²⁰⁰ It ultimately affirmed the decision of the district court.²⁰¹

Similarly, in 2014 a Cincinnati Ben-Gals cheerleader filed a lawsuit on behalf of the members of her squad, who she said are paid the equivalent of \$2.85 an hour, alleging that the Bengals violated federal wage laws.²⁰² She claimed that the cheer squad puts in more than 300 hours a season attending mandatory practices, charity events, and performing required volunteer work but were paid only \$90 a game for cheering at games during the 2013 season.²⁰³ The Ohio minimum wage in 2013 was \$7.85 hour.²⁰⁴

IX. INTELLECTUAL PROPERTY

There have been distant and recent examples of important trademark issues related to names, logos, and nicknames causing controversy emanating from Ohio teams.²⁰⁵ In particular, the battle between The Ohio State University in Columbus, Ohio, and Ohio University in Athens, Ohio, received national attention in the late 1990s as there was disagreement over who actually owned the

200. *Bridewell I*, 68 F.3d at 138; *Bridewell II*, 155 F.3d at 829.

201. *Bridewell II*, 155 F.3d at 831–32 (expressing that it was sympathetic to the accrual accounting method and that it might best reflect the reality of running the Reds organization, and that “[w]hat sort of amusement establishment could be more seasonal than one whose only business is to showcase the talents of the Boys of Summer?”). The next sentence stated, “But the law is the law.” *Id.* at 832. In his concurrence, Judge R. Guy Cole, Jr. stated, “I believe that we are presented with a difficult question because Congress has provided us with so little guidance in §213(a)(3)(B)’s legislative history.” *Id.*

202. See John Breech, *Bengals Cheerleader Files Lawsuit against Team*, CBS SPORTS (Feb. 13, 2014), <http://www.cbssports.com/nfl/eye-on-football/24441947/bengals-cheerleader-files-suit-against-the-team> (linking to the complaint, available at <http://tribktla.files.wordpress.com/2014/02/ben-galscomplaint.pdf>). For further exploration related to cheerleading, see *Brindisi v. Regano*, 20 Fed. Appx. 508, 510 n.1 (6th Cir. 2001) (discussing, but not deciding, whether or not cheerleading is a sport and holding that student-athletes have neither a liberty nor a property interest in participating in interscholastic athletics).

203. Breech, *supra* note 202.

204. *Id.*

205. See, e.g., Darren Rovell, *Manziel Files for 10th Trademark*, ESPN, http://espn.go.com/nfl/story/_/id/11465461/johnny-manziel-cleveland-browns-files-10th-trademark-johnny-cleveland (last updated Sept. 4, 2014) (discussing Manziel, the 2012 Heisman Trophy winner, and his pursuit to trademark with the U.S. Patent and Trademark Office (USPTO) both *Johnny Football* and *Johnny Cleveland*, as well, among others); see also David Fleming, *Hometown Hero or New Star?*, ESPN THE MAGAZINE (Oct. 1, 2014), http://espn.go.com/nfl/story/_/id/11588966/browns-qbs-brian-hoyer-johnny-manziel-represent-old-vs-new-cleveland (discussing the competition between quarterbacks Brian Hoyer, a native of North Olmstead, Ohio (west of Cleveland and “10 minutes from the Dawg Pound,”) and Johnny Manziel, the star rookie from Texas A&M University who trademarked the name “Johnny Cleveland”).

rights to the word “Ohio” for federal trademark purposes.²⁰⁶ In 1995, “Ohio” became the official trademark of Ohio University (OU).²⁰⁷ “OSU filed a complaint with the trademark office in December 1997 to cancel OU’s . . . trademark [rights].”²⁰⁸ In 1998, the respective university presidents agreed to allow OU to keep “Ohio” as their trademark, but allowed OSU to use “Ohio” when it has historical significance such as the band formation Script Ohio and the Ohio Stadium.²⁰⁹ OSU has licensed trademarks for “Ohio State,” “OSU,” and “Buckeyes.”²¹⁰ Ohio State still may use the word Ohio in historical and traditional circumstances for marketing and merchandising.²¹¹ For example, the Ohio State Marching Band performs the Script Ohio formation in which the band

206. See Joe Blundo, *Joe Blundo Commentary: Ohio State Should Eliminate “The” Boast*, COLUMBUS DISPATCH (Mar. 25, 2014), http://www.dispatch.com/content/stories/life_and_entertainment/2014/03/25/ohio-state-should-eliminate-the-boast.html (opining that since 1986, OSU has placed too much emphasis on the word “The” which precedes it and, in fact, that it may be due to its own pretentious and insecure status).

207. See Shanna Wright, *Dispute over Ohio Name Finally Resolved*, LANTERN (Apr. 29, 1999), <http://thelantern.com/1999/04/dispute-over-ohio-name-finally-resolved/>.

208. *Id.*

209. *Id.*

210. *Id.*; see also Associated Press, *OSU, OU Settle Dispute over ‘Ohio,’* CINCINNATI.COM (Apr. 30, 1999), http://enquirer.com/editions/1999/04/30/loc_osu_ou_settle.html (discussing the agreement between OU President Glidden and OSU President Kirwan and also noting in the settlement agreement that the Ohio attorney general’s office will mediate disputes that the schools cannot settle on their own in the future, if necessary).

211. Associated Press, *supra* note 209. For the settlement agreement, see D.A., *Message to OHIO/Ohio State Trademark Agreement*, BOBCATATTACK.COM, (July 22, 2014, 10:44AM), <http://www.bobcatattack.com/messageboard/topic.asp?FromPage=1&ForumPID=10&PID=149845>.

Ohio State’s use of “OHIO” for historical tradition[s] . . . [of which examples] include, but are not limited to, the following: Ohio Stadium, Carmen Ohio, “Ohio” in script form, i.e., as depicted by The Ohio State University Marching Band[,] . . . and as an integral part of musical compositions and cheers; and as accessories used during performances of said composition and cheers in the future in any manner consistent with its historic and/or present usage . . . includ[ing], but not limited to[,] . . . Fan Cheers, Bass Drum of The Ohio State University Marching Band, Flags, [and] Cheerleaders’ uniforms.

. . . .

Ohio State may use “OHIO” for apparel and/or licensed merchandise in the manner consistent with its historic and/or present uses as of the date of this Agreement. Ohio State may use “OHIO” on or in connection with historical, biographical and documentary materials, commemorative merchandise, and events consistent with Ohio State’s historical traditions. By way of example only, Ohio State may use “OHIO” in connection with activities concerning, or merchandise commemorating, the life and academic and athletic career of Mr. Jesse Owens or any other former Ohio State athlete or Ohio State athletic teams, provided that such usage shall be consistent with the uses of “OHIO” made by Ohio State during the life of Mr. Owens or such other Ohio State athletes or athletic teams, such as on track jerseys and sweatshirts worn by Mr. Owens, or uniforms worn by an Ohio State baseball team.

Id.

spells the word “Ohio” and a senior sousaphone player dots the “I” to complete the final movement of the formation.²¹² In 2012, OSU trademarked the image, not the name though, of four persons spelling out the letters O-H-I-O, which led to a subsequent lawsuit against an infringer.²¹³

In *Hawaii-Pacific Apparel Group, Inc., v. Cleveland Browns Football Co.*,²¹⁴ Hawaii-Pacific manufactured and marketed a line of apparel using the “DAWG POUND” phrase as a mark.²¹⁵ Hawaii-Pacific tried to register the mark, but National Football League Properties (NFLP) contested the registration because it had used the same phrase to characterize Cleveland Browns fans, despite never registering the mark.²¹⁶ Hawaii-Pacific had registered the marks “TOP DAWG and LIL DAWG POUND.”²¹⁷ The district court declared NFLP the senior user of the mark Dawg Pound because the Browns and NFLP used the “DAWG POUND” mark prior to Hawaii-Pacific.²¹⁸

Meanwhile, Chief Wahoo of the Cleveland Indians has been characterized as disparaging to Native Americans, and a #DeChief Twitter movement has taken aim at the Indians’ logo as well.²¹⁹ Native Americans and supporters have protested the use of the Cleveland Indians team name and the club’s Chief Wahoo logo at early season home baseball games for over two decades.²²⁰ Similarly, Miami University in Oxford, Ohio, changed the nickname of their athletic

212. See Laura Thompson, *John and Annie Glenn to Dot the “I”*, JOHN GLENN SCH. PUB. AFF., http://glennschool.osu.edu/news/dot_the_i/dot_i.html (last visited Feb. 18, 2015) (offering that Columbus native and heavyweight boxing champion Buster Douglas has been one of the few exceptions, including golfer and OSU alumnus Jack Nicklaus, comedian Bob Hope, astronaut John Glenn (and his wife Annie) and others, who have not been a current student or member of the band).

213. See Tim Feran, *Ohio State Sues over T-shirt of Fans Forming O-H-I-O*, COLUMBUS DISPATCH (July 17, 2014), <http://www.dispatch.com/content/stories/business/2014/07/17/ohio-states-lawsuit-against-t-shirt-maker-shows-breadth-of-trademarks.html>.

214. See generally 418 F. Supp. 2d 501 (S.D.N.Y. 2006).

215. *Id.* at 502.

216. *Id.*

217. *Id.*

218. *Id.*; see also Lindsay, *supra* note 19, at 917 n.18 (offering that “The ‘Dawg Pound’” [represents] a section of the [football] stadium where grown men and women dress like brown and orange dogs and bark”).

219. See Dayn Perry, *The #DeChief Twitter Movement Takes Aim at Indians’ Logo*, CBSSPORTS.COM (Mar. 19, 2014), <http://www.cbssports.com/mlb/eye-on-baseball/24492032/the-dechief-movement-takes-aim-at-indians-logo>; but see Erik Brady, *Selig Claims He’s Received No Complaints over Cleveland Indians’ Logo*, USA TODAY (July 15, 2014), <http://ftw.usatoday.com/2014/07/bud-selig-chief-wahoo>.

220. See Amanda Harnocz, *Washington Redskins Trademarks Canceled: Should Cleveland’s Chief Wahoo Be Next?*, SPORTSFANLIVE.COM (June 18, 2014), http://www.sportsfanlive.com/web/article?action=viewArticle&articleId=15565699&team=mlb-cleveland_indians&tid=th (discussing Chief Wahoo’s logo in light of the recent decision involving the Washington Redskins trademark as being

teams from the Redskins to the Redhawks in 1997.²²¹ Meanwhile, the trophy for the rivalry football game between the University of Toledo and Bowling Green State University, just mere minutes from each other down the highway, has been renamed from the Peace Pipe Trophy to the Battle of I-75 Trophy.²²² It appears as if it is only a matter of time before the Native American culture and caricatures are retired altogether in Ohio.²²³

X. TAX LAW

Ohio has had its share of the discussion related to tax law in the context of sports.²²⁴ Interestingly, Ohio appears to use “sin taxes” to assist in repaying the debt to finance public stadiums.²²⁵ Also, a few of Ohio’s cities have been in the spotlight related to their taxation of professional athletes who play their sport in some of the state’s largest cities, including Cleveland, Cincinnati, and Columbus, all of which have a “jock tax.”²²⁶ Prominent cases involving former NFL

“disparaging to Native Americas,” according to the United States Patent and Trademark Office which canceled six federal trademark registrations).

221. See *Mascot Story*, MIAMI UNIV., <http://miamioh.edu/about-miami/diversity/miami-tribe-relations/mascot-story/> (last visited May 10, 2015).

222. See *Battle of I-75 Winner to Earn New Trophy*, TOLDEO BLADE (Oct. 10, 2011), <http://www.toledoblade.com/College/2011/10/10/Battle-of-I-75-to-winner-to-earn-new-trophy.html> (offering that the trophy replaces the Peace Pipe Trophy that had been used since 1980, in large part due to conversations with Native Americans and the NCAA’s initiative against the inappropriate use of Native American imagery, nicknames, and mascots).

223. See, e.g., Steve Wulf, *Change Is Happening in Cleveland*, ESPN THE MAGAZINE (Sept. 14, 2014), http://espn.go.com/mlb/story/_/id/11574381/cleveland-indians-say-goodbye-chief-wahoo (offering that the Cleveland Indians quietly incorporated the block C as their primary logo in 2014). Wulf, however, also cites a Cleveland.com poll in which 70% were in favor and 28% were against still utilizing the caricature of Chief Wahoo. *Id.*

224. See, e.g., Joseph J. Ecuyer, *No Matter How You Slice (or Demolish) It, Taxpayers Denied Charitable Contribution Deduction for Donations of Homes to Local Fire Departments*, BLOOMBERG BNA ESTATE TAX BLOG (July 12, 2012), <http://www.bna.com/no-matter-slice-b12884910613/> (discussing how former OSU quarterback Kirk Herbstreit attempted, unsuccessfully, to utilize an I.R.S. tax deduction like many Upper Arlington residents, after the federal agency changed its policy and decided to no longer allow for a charitable deduction for burning down your house and donating it to the local fire department for training and demolition purposes).

225. See Matthew J. Parlow, *Equitable Fiscal Regionalism*, 85 TEMP. L. REV. 49, 88–89 (2012) (offering that these sin taxes, “special excise taxes on goods that the government wants to discourage, such as alcohol and tobacco products,” are utilized by Cuyahoga County, Ohio, for the Cleveland Browns Stadium, Progressive Field (Indians), and Quicken Loans Arena (Cavaliers)). The stadiums are “paid [for], in part, by a sin tax on alcohol and cigarettes: \$0.045 per pack of cigarette; \$3 per gallon of hard liquor; \$0.16 per gallon of wine or beer; and \$0.32 per gallon of mixed beverages.” *Id.* at 89. Parlow also notes that OHIO REV. CODE ANN. §§ 307.696, 697 (West 2012) gives “Cuyahoga County the authority to adopt its sin tax,” and that only Minneapolis, Minnesota uses sin taxes to pay for stadiums as well. *Id.* at 88 n.278.

226. See Joseph M. Hanna, *Professional Athletes Fighting “Jock Taxes,”* SPORTS & ENT. L.

players Hunter Hillenmeyer (Chicago Bears) and Jeff Saturday (Indianapolis Colts) have challenged the City of Cleveland for imposing such a tax.²²⁷ The State of Ohio's Attorney General, Mike DeWine, argued, via a brief to the Supreme Court of Ohio, that Cleveland was constitutionally justified in assessing its two percent income tax on out-of-town athletes each time their teams play in the city.²²⁸ The City of Cleveland determined visiting players' taxable income differently than other Ohio cities by using a "games-played" method, rather than a "duty-days method."²²⁹ "Of the eight U.S. cities that have a jock tax—Cincinnati, Cleveland, Columbus, Detroit, Kansas City, Philadelphia, Pittsburgh, and St. Louis—only Cleveland uses a 'games-played' formula"²³⁰ How-

INSIDER (Nov. 6, 2013), <http://sportslawinsider.com/professional-athletes-fighting-jock-taxes/> (offering that Ohio is not the only state to impose a jock tax, as the state of Tennessee and cities such as Detroit and Philadelphia have similar taxes as well).

227. *Id.*; see also Jeremy Pelzer, *'Jock Tax' Exemption in Ohio Law Is Unconstitutional, Ex-NFL Player Tells Supreme Court*, CLEVELAND.COM (May 15, 2014), http://www.cleveland.com/open/index.ssf/2014/05/ohio_jock_tax_law_is_unconstit.html (offering appellant Hillenmeyer's Supreme Court of Ohio brief in which his attorneys asserted that "Ohio law unfairly allows athletes and entertainers to be charged municipal income tax for any work they do in the state[,] . . . [whereas] all other non-resident workers don't [pay] municipal income tax until they spend at least 13 days per year on the job [in Ohio]").

228. See Jeremy Pelzer, *Cleveland's 'Jock Tax' is Legally Justifiable, State Tells Supreme Court*, CLEVELAND.COM (Aug. 26, 2014), http://www.cleveland.com/open/index.ssf/2014/08/clevelands_jock_tax_is_constit.html (quoting DeWine's office's brief, "nothing in the U.S. or Ohio Constitution bars the state from treating high-paid athletes differently from others."). Pelzer continues, "Cincinnati and Columbus also impose a jock tax on visiting players, though they calculate their tax not by game days, as Cleveland does, but by all work days—including practices, team meetings, and pre-season training camps." *Id.*

229. *Id.*; see also Jeremy Pelzer, *Ex-NFL Player's Suit Against Cleveland's 'Jock Tax' Sent to Mediation by Ohio Supreme Court*, CLEVELAND.COM (Mar. 11, 2014), http://www.cleveland.com/open/index.ssf/2014/03/ex-nfl_players_suit_against_cl.html.

Cleveland determines visiting players' taxable income through a "games-played" method, dividing their salaries by the total number of games their teams play. Hillenmeyer and Saturday say that Cleveland should instead use a "duty-days" method: calculating his taxable salary not by game days, but by all work days - including practices, team meetings, and pre-season training camps.

Id.

230. Pelzer, *supra* note 229 (offering that Hillenmeyer sought only a refund of \$5,062, while Saturday asked for \$3,294). For a discussion on the difference between the two methods of calculating a jock tax, see Daniel G. Mazzola, *The Jock Tax: Taxation Without Representation?*, TAX STRINGER, Apr. 2013, <http://www.nyssepa.org/taxstringer/2013/april/mazzola.htm>.

The discrepancy between the two methods is nominal for baseball players, but for football players who have much fewer "games played" days than "duty days" the difference is significant. Making matters even more difficult is how a travel day can actually count as a duty day in both departing and

ever, in early 2015, the Ohio Supreme Court ruled that the games-played formula used by the City of Cleveland was improper.²³¹

XI. DISABILITIES

A couple of recent disability-related cases have drawn national attention. First, a “[hearing-impaired] OSU fan want[ed] the school to put captions on its scoreboards and televisions in concession areas at football and basketball games” at the Columbus stadiums.²³² Vincent Sabino requested “the federal court . . . to order the changes under the Americans with Disabilities Act.”²³³ His case, brought by the National Association of the Deaf (NAD), eventually settled out of court, and OSU agreed to provide captioning for its football and basketball games.²³⁴

Bobby Martin, a Colonel White High School student from Dayton, Ohio, played football on the varsity team, but used his arms to run because he has no legs.²³⁵ Officials told him at halftime of a game that he violated the rules because he did not have thigh pads, kneepads, or shoes.²³⁶ The Ohio High School Athletic Association (OHSAA) subsequently allowed him to play.²³⁷ His challenge to the rules drew considerable attention to students and other sports participants with physical disabilities who are able to overcome such challenges and to compete with their able-bodied teammates and competitors.

XII. CONCLUSION

The purpose of this paper was to demonstrate how the nation’s seventh most populous state has influenced sports and its relationship to the development of

arriving states, depending on specific statute.

Id.

231. See Michael McCann & Robert Raiola, *Ohio Supreme Court Says Cleveland’s ‘Jock Tax’ Formula is Unconstitutional*, SI.COM (May 13, 2015) <http://www.si.com/nfl/2015/05/13/cleveland-jock-tax-ruling>.

232. See Tom Knox, *Deaf Fan Sues Ohio State to Get Captions at Games*, COLUMBUS DISPATCH (July 23, 2009), http://www.dispatch.com/content/stories/local/2009/07/24/osu_deaf_suit.html.

233. *Id.*

234. See *Score for Accessibility: OSU to Provide In-Stadium Captions*, NAT’L ASS’N DEAF (Nov. 23, 2010), <http://nad.org/news/2010/11/score-accessibility-osu-provide-stadium-captions>.

235. Associated Press, *Football Player Without Legs Eligible to Play*, USA TODAY (Sept. 20, 2005), http://www.usatoday.com/sports/preps/football/2005-09-20-legless-player_x.htm.

236. *Id.*; see also Wayne Coffey, *The Heart of a Champion: Born with No Legs, Bobby Martin Rises Above*, N.Y. DAILY NEWS (Oct. 2, 2005), <http://www.nydailynews.com/archives/sports/heart-champion-born-legs-bobby-martin-rises-article-1.643343>.

237. Associated Press, *supra* note 235; see also Coffey, *supra* note 236.

the law and legal issues. Ohio continues to remain at the forefront of the discussion of legal issues in sports law, and these examples demonstrate that Ohio has had a significant influence on sports law and will likely continue in that regard.

From Youngstown-native Maurice Clarett's significant challenge to the NFL's draft eligibility rule, to Jim O'Brien's fight to protect his rights under his employment contract against the Ohio State University, to Akron native Butch Reynolds's suit against the IAAF, to Cincinnati's Pete Rose's legal challenges related to gambling and baseball, to Dayton's Bobby Martin, who simply wanted to demonstrate that he was capable of playing football without shoes because he has no legs, Ohio has been the focus of discussion in sports law circles for many years within its state and among the Sixth Circuit Court of Appeals decisions.

All of this is not surprising, however, given the presence of some of the nation's largest and most influential cities, universities, and professional sports teams within its Midwestern borders. When it comes to sports and the law, Ohio is rife with examples, dots all the "I's," has the bases covered, and often sets the tone for other jurisdictions to follow.