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A LEGAL COMMENTARY ON THE NATIONAL FEDERATION OF HIGH SCHOOL ASSOCIATIONS TRACK AND FIELD RULES RELATING TO THE POLE VAULT

RUSS VERSTEEG

INTRODUCTION

This essay explores the National Federation of State High School Associations ("NFHS") track and field rules as they relate to the pole vault. Broadly speaking, the essay offers two types of commentary. Part I examines legal issues. These primarily are safety and liability issues. In Part II, the essay focuses on the rules themselves. Part II considers the rules as a microcosmic "legal" system, by subjecting the rules to legal analysis and pursuing issues of rule interpretation. In particular, Part II discusses weaknesses, ambiguities, and inconsistencies within the pole vault rules. In doing so, it offers potential solutions intended to strengthen, clarify, and harmonize the rules. As may be expected, occasionally the two types of commentary overlap. In such instances, I have tried to discuss those issues in the section that seems most relevant. According to the Rules Book's Foreword, "These rules have been adopted as official by the National Federation of State High School Associations and are recommended for use in all schools and allied organizations. Their use will standardize interscholastic track and field and cross country competition within each state and throughout the nation." Thus, these rules are recommended only. In theory, then, each state association must

1. I have relied primarily on the following three sources as the basis for the NFHS rules: 1) NAT'L FED'N OF STATE HIGH SCH. ASS'N, 2003, TRACK AND FIELD AND CROSS COUNTRY 2003 RULES BOOK (2003)[hereinafter RULES BOOK]; 2) NAT'L FED'N OF STATE HIGH SCH. ASS'N, 2003, TRACK AND FIELD AND CROSS COUNTRY 2003 CASE BOOK (2003)[hereinafter CASE BOOK]; and, 3) NAT'L FED'N OF STATE HIGH SCH. ASS'N, 2003, TRACK AND FIELD AND CROSS COUNTRY 2003 & 2004 OFFICIALS MANUAL (2003)[hereinafter OFFICIALS MANUAL]. In the Foreword to the OFFICIALS MANUAL, it expressly states: "This publication is only a supplement, however, not a substitute for the rules book." OFFICIALS MANUAL 2.

2. In a previous article, I have examined the legal aspects of safety and liability issues in greater detail. See Russ VerSteeg, Negligence in the Air: Safety, Legal Liability, and the Pole Vault, 4 TEX. REV. ENT. & SPORTS L. 109 (2003).

3. RULES BOOK, supra note 1, at 7.
determine for itself whether it will adopt these rules. In practice, all state high school associations have adopted these rules, some with minor modifications.  

I. LEGAL ISSUES

A. Recent Changes Relating to Safety & Liability

The preamble to the rules contains a statement that probably applies to the pole vault more than any other track and field event. The preamble states, in pertinent part, “there is an inherent risk of major or minor injury from participation.” The NFHS has enacted a number of pole vault safety rules in recent years. Generally speaking, these new rules decrease the likelihood of serious injury. Therefore, they have proved beneficial to athletes, and they have helped to reduce liability for schools and officials. In particular, §§ 7-5-8 and 7-5-9 mandate a larger minimum size pit than was previously specified. Other rules that have contributed to increasing safety are the following:

4. Neither Alaska nor Iowa allow the pole vault. Telephone interview with Cynthia Doyle, Editor of the NFHS Track & Field Rules Committee of the NFHS (July 16, 2003).

5. RULES BOOK, supra note 1, at 1.

6. Section 7-5-8 states:

Effective immediately, the overall size of the pole vault landing pad shall be a minimum of 19 feet, 8 inches wide by 20 feet, 2 inches deep. The landing surface measured beyond the back of the standard bases, shall be a minimum of 19 feet, 8 inches wide. The dimension of the landing surface in back of the vaulting box to the back of the landing pad shall be 16 feet, 5 inches deep. The material in the pad shall be high enough and of a composition that will decelerate the landing. When the landing pad is made up of two or more sections, the landing surface shall include a common cover or pad extending over all sections.

Id. at 58.

The front sections of the landing pad, known as front buns, shall be a minimum of 16 feet 5 inches wide so as to cover the entire area around the landing box to the inside edges of the standard bases up to the front edge of the plant box. The maximum cutout for the planting box shall be 36 inches in width, measured across the bottom of the cutout. The edges of the front of the landing pad immediately behind the planting box shall not be placed more than 3 inches from the top of the back of the planting box. The front pad shall be attached to the main landing pad or encased in a common cover.

§ 7-5-9. Id. at 58-59.

7. In addition to these rules, on page 77 in the 2003 Rules Book, there is a section entitled “POINTS OF EMPHASIS.” Point Number 1 is the “Preferred Landing Zone for Pole Vault.” This point reads as follows:

An 8-foot by 10-foot target (also known as a coaching box or target) sewn or painted with 2-to-4-inch wide stripes on the top pad of the surface of the landing system is often used for pole vault. The practice of painting an 8 X 10 rectangle, although not required by rule, is recommended for student athletes while training or competing in pole vault.

This rectangle shall begin 3 feet, 6 inches behind the zero line when the landing pad is set in its proper position.
The new 2003-2004 version of Rule 7-2-10 states: "Illegal aids shall include the practice of taps (pushing the vaulter on his back) at take-off in the pole vault during warm-up or in the competition. Rationale: In order to minimize risk, aids that assist the athlete are not legal."  

The new 2003-2004 version of § 7-5-9 now includes a “Note”: “In the pole vault, the front cutout should be tapered away from the planting box to allow the pole to bend uninhibited. Rationale: This change will minimize obstruction to the bend of the pole.”  

§ 7-5-11: “The width between the pins that support the crossbar shall be not less than 13 feet, 8 inches (4.16m) or more than 14 feet, 8 inches (4.48m) apart.”  

§ 7-5-12: “The nonmetal crossbar shall be 14 feet, 10 inches (4.52m) in length, of uniform thickness, and shall have a weight of not more than 5 pounds.”  

§ 7-5-13 specifies the dimensions of the box and the proper manner for its installation.  

§ 7-5-14: “A minimum of 2-inch dense foam padding (box collar) shall be used to pad any hard and unyielding surface including between the planting box and all pads.”  

The new 2003-2004 version of § 7-5-19 states: “A competitor shall have the pole vault standards or uprights set to position the crossbar from a point 15.5” or 40cm measured beyond the vertical plane of the back of the planting box, up to a maximum distance of 31.5” or 80cm in the direction of the landing surface. Rationale: To minimize the risk of landing on the box, vaulters will be required to land deeper in the

_id_. at 77.

Many coaches and vaulters find the preferred landing zone (“PLZ”) to be a useful tool for assessing a vaulter’s safety. If a vaulter fails to land in the PLZ, that indicates that something needs to be adjusted. An adjustment may be required in the pole selection, run, handgrip, plant, etc. But the PLZ provides guidance for the coach and vaulter.

8. E-mail from Cynthia Doyle, Editor NFHS Track and Field Rules Committee (July 15, 2003). For more regarding the safety and liability issues relating to “tapping,” see VerSteeg, _supra_ note 2 at 165-66.

9. E-mail from Cynthia Doyle, _supra_ note 8.

10. RULES Book, _supra_ note 1, at 60. This provides more space for vaulters and reduces the likelihood of injury.

11. _Id._ at 60.

12. _Id._

13. _Id._ at 61.
Safety and liability are primary concerns for those involved in the pole vault. The NFHS rule makers have done an exemplary job trying to make the sport safer. Both specific and general rules have the potential to increase safety. The preamble makes an open-ended statement which, arguably, even empowers a pole vault event judge or other official to prohibit an unschooled vaulter from participating if the judge or official believes that the vaulter poses an unreasonable risk to himself or herself: “Every individual using these rules is responsible for prudent judgment with respect to each contest, athlete and facility....” 15 In fact, the referee has exceptional powers in this regard. Section 3-4-6 bestows virtually unlimited authority on the referee: “The referee has the sole authority for ruling on infractions or irregularities not covered within the rules.” 16 Hence, a referee has broad discretion to do almost anything to prevent what he or she believes might impose an unreasonable risk of injury. Sections B-G look more closely at several rules that directly relate to pole vault safety.

B. The “Weight Rule”: Pole Markings and Weight-Ratings

Obviously, poles themselves are critical to pole vault safety. In the 2003 Rules Book, the section entitled “POINTS OF EMPHASIS,” Point Number 2, “Equipment,” states: “The NFHS does not perform scientific test[s] on any specific item of equipment or otherwise determine if they pose undue risk to student-athletes, coaches, official[s] or spectators. Such determination is the responsibility of equipment manufacturers.” 17 One of the most controversial high school rules relating to the pole vault is the rule prohibiting a vaulter from using a pole that is rated below his/her body weight (“weight rule”). The weight rule appears in two provisions, but it affects several others as well. Both §§ 7-5-3 and 7-5-4 articulate this general principle.

§ 7-5-3...The competitor’s weight shall be at or below the manufacturer’s pole rating. The manufacturers must include on each pole: the pole rating that shall be a minimum of 3/4 inch in a contrasting color located within or above the top handhold position; a 1-inch circular band indicating the maximum top handhold position

14. E-mail from Cynthia Doyle, supra note 8. The previous version of § 7-5-19 had provided: “A competitor shall have the standards or uprights set to position the crossbar from a point 12 inches beyond the vertical plane of the top of the stopboard, up to a maximum distance of 30 inches in the direction of the landing surface.” RULES BOOK, supra note 1, at 61-62.
15. RULES BOOK, supra note 1, at 1.
16. Id. at 18.
17. RULES BOOK, supra note 1, at 77.
with the position being determined by the manufacturer.\textsuperscript{18}

\S\textsuperscript{7-5-4}. A competitor shall not use a variable weight pole, a pole which is improperly marked or a pole rated below his/her weight during warm-up or competition.\textsuperscript{19}

These substantive rules have necessitated the implementation of a variety of procedural rules designed to ensure that \S\textsuperscript{7-5-3} and \S\textsuperscript{7-5-4} are followed and enforced.\textsuperscript{20} The \textit{Case Book} emphasizes that officials must be able to clearly read the markings printed on the pole: "[E]very pole should be examined very closely."\textsuperscript{21} These rules necessitate two basic factual inquiries. First, meet officials must ascertain the vaulter's weight, and second, meet officials must inspect the pole(s) that a vaulter uses. But before embarking on these fact-finding missions, it is important to appreciate the procedural mechanisms in place for assigning the responsibility for ascertaining these facts. In other words, who is responsible for finding the facts, and what procedures must they follow to make their determinations?

Several rules address the question of jurisdiction over \S\textsuperscript{7-5-3} and \S\textsuperscript{7-5-4}. Section 3-10-1 states: "The field referee or the head field judge . . . shall oversee the . . . inspection of the implements and apparatus . . . ."\textsuperscript{22} Section 3-19-1 provides: "The referee, field referee or head field judge shall have jurisdiction over all implement and apparatus inspectors."\textsuperscript{23} Section 3-19-3 specifically addresses inspection of vaulting poles: "Implement inspector(s) shall inspect vaulting poles to verify that the poles are legal equipment."\textsuperscript{24} Section 3-19-5 requires that someone, presumably the implement inspectors per \S\textsuperscript{3-19-3}, mark poles in such a way that the event judge can distinguish the poles that are legal from those that are illegal: "All implements passing inspection shall be marked in such a manner that the event judges can easily distinguish between a legal and illegal implement or apparatus."\textsuperscript{25}

\begin{footnotes}
\item[18] RULES BOOK, \textit{supra} note 1, at 58. This rule was changed slightly in 2003 so that poles which are not marked by the manufacturer are illegal. Facsimile from Jan Johnson, USATF National Safety Chairman (July 15, 2003).
\item[19] RULES BOOK, \textit{supra} note 1, at 58.
\item[20] \textit{See}, e.g., \textit{id.} at 22, 24-25. \textit{See}, for example, \S\textsuperscript{3-10-1}, 3-19-1, 3-19-3, discussed \textit{infra} Parts I.B, II.A.
\item[21] CASE BOOK, \textit{supra} note 1, at 6.
\item[22] \textit{Id.} at 22.
\item[23] \textit{Id.} at 24.
\item[24] \textit{Id.} at 25.
\item[25] RULES BOOK, \textit{supra} note 1, at 25. \textit{See also} OFFICIALS MANUAL, \textit{supra} note 1, at 13 (granting authority to the games committee to: "Determine the procedure for impounding and releasing illegal implements["])\textsuperscript{2.} \textit{Id.} ("It is the responsibility of the Inspector of Implements to inspect and certify . . . Vaulting poles . . . .") \textit{Id.} at 39.
\end{footnotes}
In addition, the NFHS rules fail to specify how officials will determine a vaulter’s body weight. Instead, the rules defer to the individual state high school athletic associations. This has created an uneven enforcement problem. Some state associations simply allow coaches to sign a form attesting to a vaulter’s weight, while others require “weigh-ins” at meets, similar to the procedures used at wrestling matches. If in the future weigh-ins are going to be the norm, will certified scales be required? It would be sensible for the NFHS to establish a uniform method of ascertaining a vaulter’s body weight.

Before going further, however, with the discussion of the substantive aspects of the weight rule, it will be prudent to address a problem in the pole manufacturing industry itself. To put it bluntly, manufacturers want to sell as many poles as they can. It is a competitive market. Companies such as Gill Athletics, UCS Spirit, Altius, Essx, and BSN compete for a share of the high school market. These companies are forced to navigate a narrow course between the Scylla and Charybdis: On the one hand being forced by the NFHS to comply with the NFHS pole marking rules, and on the other hand, trying to ensure that their poles are safe as labeled in order to avoid product liability lawsuits. All high school vaulters want to be able to bend the pole when they vault. Bending the pole enables them to grip the pole higher and, therefore, allows higher vaults. If a manufacturer can calibrate its pole-weight-rating-system (“PWRS”) in such a way that an average 130 lb. vaulter can bend a pole rated by that manufacturer as a 130 lb.-test pole, with a handgrip appropriate to his/her abilities, then most high school vaulters will want to use (and therefore, their schools will want to purchase) that brand and model of pole. Simply stated, high school vaulters, who almost by definition are beginning or novice vaulters, want poles that are easy to bend and poles that allow them to reach the pit safely. It is frightening to stall out and land in the planting box area. When a vaulter grips a pole too high or uses a pole that is too stiff, the pole may offer excessive resistance, resulting in an unsafe landing short of the preferred landing zone (“PLZ”). Currently, each manufacturer is free to calibrate its PWRS in any way that it sees fit - only tempered by its own sense of ethics and its fear of causing injury and, therefore, being subject to product liability lawsuits. Thus, it is in the manufacturer’s best marketing interest to make its PWRS as appropriate and useable as possible in order to sell more poles. Vaulters want poles that will bend adequately with a proper handhold and poles that allow them to penetrate and land safely in the center of the PLZ.

Now is probably a good time for the American Society for Testing and Materials (ASTM) and the pole manufacturers to combine forces to devise a

26. See infra note 30.
27. See generally http://www.astm.org/cgi-bin/SoftCart.exe/index.shtml?e+mystore (Jan. 14,
universal, uniform method of calibrating pole weight ratings (i.e., a universal PWRS). As a rule, most companies currently use some type of deflection test to measure the flexibility of poles in order to determine what pole-weight-rating to assign to each pole; and, therefore, what label to affix to each pole.

Although the precise details may vary somewhat from manufacturer to manufacturer, the basic testing system is as follows. After a pole has been made, it is suspended from the two ends and a weight - typically approximately 50 lbs. - is hung from the midpoint. The amount of deflection is then measured. In other words, the goal of the test is to measure the difference in the distance from where the midpoint of the pole was in its naturally suspended state and the point to which it sinks/bends when a 50 lbs. weight is hung from the midpoint. Gill Athletics and UCS Spirit measure the amount of deflection in centimeters, and Altius measures it in inches, to the tenth of an inch (like the old Catapoles). Presently, each manufacturer has its own charts that correlate the amount of deflection to a specific pole-weight-rating, depending also upon the length of the pole.

If the ASTM were to standardize a uniform, universal method of testing, measurement, and correlation between the amount of deflection, the weight used, and the spans to be used to determine the pole-weight-ratings, the current problems of lack of uniformity between brands and the unfairness of having each manufacturer being responsible for its own PWRS would no longer exist. A universal PWRS would also allow older poles to be tested and marked with new labels, for example, by certified/authorized dealers or centers. This also could prove to be a tremendous cost saver for schools that have an inventory of older poles which, due to the current NFHS pole marking rules, no longer are legal. According to Jan Johnson, USATF National Safety Chairman for the pole vault: "All poles in the system of poles used by domestic high school, college, and open vaulters, no matter the brand, or the type, need to be flexed and weighted using one common system. If and when this is done, it will help coaches and athletes alike make better decisions in the acquisition and use of vaulting poles." The system, if implemented, ought to be based upon scientific data collected from average high school vaulters. In addition, the equipment and methodology used to measure poles must be

28. Clearly, in the process of making a pole, a manufacturer has a good general idea of the approximate degree of stiffness that the pole will have once made.
29. The precise distance of the span for testing each pole length is a factor that will need to be determined as part of any universal PWRS.
30. Facsimile from Jan Johnson, USATF National Safety Chairman (July 15, 2003).
31. Id.
Beyond the general issue of standardizing a universal PWRS, one more specific difficulty with §§ 7-5-3 and 7-5-4 and the way that they are currently written is that the legality of a pole depends on a variety of factors. Basically, a pole may be illegal in two distinct ways: It may be illegal as applied to a specific vaulter or per se illegal.

A pole is illegal as applied to a specific vaulter when a vaulter uses "a pole rated below his or her weight during warm up or competition." A pole is per se illegal if it fails to comply with the manufacturer's marking requirements under § 7-5-3, if it is deemed to be "improperly marked," or if it is a "variable weight pole" under § 7-5-4. The Officials Manual provides a model blank form for pole vault event judges that includes spaces for the event judge to record the vaulter's weight and to note which pole(s) the competitor intends to use. Section 7-5-6 provides: "It is the responsibility of the coach to verify the competitor will use a legal pole rated at or above his/her weight." This places legal liability squarely on each coach's shoulders.

The weight rule is intended to increase safety by decreasing the likelihood that a vaulter will miss the landing pads. As such, the weight rule encourages high school vaulters to use a lower hand grip and it reduces the degree of bend that vaulters would achieve if they were allowed to use underweight poles. An

32. Id.

33. RULES BOOK, supra note 1, at 58 (referring to § 7-5-4). Section 3-20 authorizes the state associations who adopt the NFHS Rules to enact their own rules and procedures for implementing and enforcing this rule:

    Each state association has the authority to make decisions and provide coverage relative to a number of specific rules and may individually adopt specific coverage relative to the following: ... 6. Determining a procedure for coaches to verify use of legal vaulting poles and properly rated poles.

Id. at 25. See OFFICIALS MANUAL, supra note 1, at 78 ("A competitor who uses a pole during warm-up or competition that is either improperly marked or rated below the competitor's weight shall be disqualified from the event."). Id.

34. See id., at 58. A pole would also be per se illegal if it were to fail to comply with the tape requirements of § 7-5-2. Id. For more on this topic, see infra Part II.B.

35. See OFFICIALS MANUAL, supra note 1, at 81.

36. RULES BOOK, supra note 1, at 58. "Note: Each state association shall determine its own procedure regarding coaches verification." See also OFFICIALS MANUAL, supra note 1, at 57 (In the NFHS sample "pre-contest meeting" form, the text under the heading "Equipment" states: "Coaches, please... certify... that your [athletes] are legally equipped and uniformed according to the National Federation and State Association rules. **** Pole vaulters must use vaulting poles rated for their weight." Id. (same language appears in sample "Sportsmanship Statement"); Id. ("It is the responsibility of the coach to verify the vaulter's weight. The coach also must verify that each vaulter will use the properly rated pole throughout the competition.") Id. at 83.

37. Arguably, the weight rule ought not apply to a vaulter who does not bend the pole appreciably. Applying this rule to a vaulter who gets no appreciable bend would not serve the purpose of the rule.
article published recently in the *American Journal of Medicine* indicates that a significant percentage of catastrophic pole vault-related injuries have occurred when vaulters suffered accidents in this manner.\(^{38}\) When a vaulter uses a pole rated at or above his/her body weight, it decreases the likelihood of a "blow through," decreases the likelihood of a pole break, decreases the likelihood of stalling out, decreases the likelihood of the vaulter drifting off to the side of the pit, and reduces the risk of loss of control because it increases the likelihood that a vaulter will keep his/her top handgrip relatively low.\(^{39}\)

The weight rule essentially forces schools to purchase an inordinate number of poles in order to suit the needs of each vaulter and forces schools constantly to request the softest (i.e., most flexible) poles available from the seller for any given weight rating. The rule also undoubtedly acts as an inducement for pole manufacturers to calibrate their PWRS in such a way that novice high school vaulters will be able to bend the poles more easily than not. This consequence seems especially unfair since a manufacturer could adjust its flex system to make poles softer in an effort to sell more poles.\(^{40}\) None of these outcomes seems especially desirable.

Although manufacturer’s brands are somewhat different, most who are familiar with pole manufacturing and characteristics agree that manufacturers make poles and calibrate their testing in such a way that their weight-ratings apply when a vaulter’s top handgrip is 3-18 inches from the top of the pole.\(^{41}\) The suitability of pole sizes (i.e., pole length and test weight), as they apply to athletes, should be based upon a variety of variables. These variables include, but are not limited to, the following: body weight, technique, and the speed and strength of average high school male and female vaulters. Due to the laws of physics, any given pole will bend more or less depending on how high a vaulter grips with his or her top hand: the higher the grip, the greater the bend, the lower the grip, the smaller the bend. The laws of physics also instruct that, as a general rule,\(^{42}\) if two vaulters - A who weighs ten pounds more than B - were to grip the same pole with the same top hand grip, the pole would bend more for A than B.


\(^{39}\) A vaulting pole will bend more easily if a vaulter’s top handgrip is high. Simply stated, the higher the handgrip on any given pole, the easier it will be to bend.

\(^{40}\) Presumably, though, each manufacturer will be concerned about the threat of a product liability suit, and therefore will not label its poles in a manner that will render them unsafe. The product liability aspects of pole vaulting may warrant a separate article.

\(^{41}\) Telephone interview with Jeff Watry, Engineering Manager, Gill Athletics, Inc. (July 9, 2003).

\(^{42}\) Other variables such as take off speed, take off angle, and swing style will also affect the pole’s bend.
Although there are variations among brands and models, most in the industry agree that there are ascertainable, mathematical correlations between grip height and weight. For example, a pole that has been tested and labeled as a 13-150 (i.e., a thirteen foot long pole that has been weight-tested and rated for a 150 lb. person) is intended to be used by a person weighing not more than 150 lbs. whose top hand grip is between 11’ and 12’9”. As was stated, if a 150 lb. vaulter grips that pole at 12’9”, it will bend more than if he or she were to grip it at 11’. Those familiar with the industry calculate that each 6 inches of grip height is roughly equivalent to 10 pounds in a vaulter’s weight. Thus, generally speaking, a 140 lb. vaulter who grips a 13-150 pole at 12’6” will get approximately the same amount of bend on that pole as will a 150 lb. vaulter who grips that same pole at 12’0”. This is why a 13-150 is equivalent to a 14-130. The flex characteristics of the two poles are approximately the same.

Before the implementation of §§ 7-5-3 and 7-5-4, it was possible, for instance, for a 130 lb. vaulter to use a 14-130 (e.g., gripping at 13’6”) and his/her teammate, a 140 lb. vaulter to use the same 14-130 pole, gripping at 13’0”. This situation produced roughly the same bend for each vaulter and allowed the school to save money by having one pole suit the needs of two vaulters. Today, however, under §§ 7-5-3 and 7-5-4, a school would be forced to purchase a 14-130 and a 13-140 in order to fit the needs of these two vaulters, while complying with the rules. Given our ability to calculate relative pole equivalencies, the NFHS should consider amending the weight rule to take equivalencies into account. In the 1960s and 70s, Skypoles and Thermoflex poles were manufactured with a label that specified different handgrips based on a vaulter’s weight. This would essentially be a “multi-weight handgrip rule.” Such a rule could permit three maximum handgrips. These weights and maximum handgrip heights should be based on the principle that 6 inches is equal to 10 lbs. in increasing values as they descend down the pole. A label at the top of a 14-130 pole could state, for example, as follows:

<table>
<thead>
<tr>
<th>VAULTER’S WEIGHT</th>
<th>MAXIMUM HANDGRIP HEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>130 lbs</td>
<td>13’9”</td>
</tr>
<tr>
<td>140 lbs</td>
<td>13’3”</td>
</tr>
<tr>
<td>150 lbs</td>
<td>12’9”</td>
</tr>
</tbody>
</table>

43. See, e.g., www.pvscb.com (Polevault Safety Certification Board website).
44. See www.skyjumpers.com.
45. See RULES BOOK, supra note 1, at 58.
46. RULES BOOK, supra note 1, at 58.
Thus, the multi-weight handgrip rule would allow a vaulter to add two additional maximum handgrip bands, clearly marked, by a contrasting color tape: one band would be six inches below the manufacturer's top maximum handgrip band, and the other would be one foot below the manufacturer's maximum handgrip band. By using contrasting colored tape to indicate the two additional handgrip bands, a pole vault judge will be able to enforce this rule with very little difficulty. Although a pole vault event judge would have to make a little more effort to police vaulters' handgrips, the minimal effort would be worthwhile given the tremendous cost savings that would accrue to high schools. Back in the early 1990s when the NFHS issued its rules, mandating that vaulters use a pole rated at or above their body weight, American high schools were forced to increase spending on poles in an effort to comply. In 2003, thousands of high schools across the country purchased new pits (typically at a cost of $7,000.00 - $12,000.00 each) in order to comply with the new NFHS rules. The aggregate cost to high schools has certainly run into the millions. Admittedly, these rules are designed to increase safety and to reduce liability, and such measures are, generally speaking, laudable. However, amending the pole-weight rules to permit manufacturers to label poles to accommodate two-to-three different body weights is likely to reduce school costs and, so long as coaches and event judges are vigilant, still permit high school athletes to vault safely.

In addition to being illegal as applied to a specific vaulter, a pole may be per se illegal. Per se illegality under §§ 7-5-3 and 7-5-4 cannot be corrected by a competitor at a meet (e.g., a pole without a top hand hold band supplied by the manufacturer). Let us tackle the issues that seem rather easy first. Since "use" of a pole that is "improperly marked" or a "variable weight pole" is ground for disqualification, clearly such poles should be considered per se illegal and so marked. It is not necessarily simple to determine, as a factual matter, what constitutes "improperly marked" and what the rule makers meant by the term...
There are several ways that a pole could be considered "improperly marked." For example, a manufacturer could fail to comply with the labeling requirements of § 7-5-3. A manufacturer might mislabel a pole. Mislabeling by a manufacturer could create a number of problems. But if the mislabeling were a weight-rating mistake (e.g., a 14-140 mislabeled as a 14-150), it could be nearly impossible for an implement inspector to detect. On the other hand, if the mislabeling were a length mistake (e.g., a 14-150 mislabeled as a 15-150), an implement inspector might be more likely to discover a manufacturer's error of that nature. A pole could be deemed "improperly marked" if someone has altered the manufacturer's labels (e.g., removing the manufacturer's label and substituting a counterfeit) or if someone has altered the pole (e.g., cutting several inches from the bottom in order to make the pole function in a manner that is "softer" than the manufacturer's labeled weight-rating). Presumably, these types of alterations would render a pole "improperly marked." The Case Book offers an illustration of an improper marking:

7.5.4 SITUATION C: Prior to beginning pole vault warm-ups, Al presents to the Inspector of Implements his/her pole for inspection. The engraved manufacturer['s] weight marking on the pole indicates the pole has a weight rating of 130 pounds. [A]nd the marking on the top hand hold band indicates the pole is rated at 140 pounds. RULING: The pole is declared to be illegal and is not marked as approved for competition or warm-up. COMMENT: The Inspector of implements has no idea which rating is correct and makes the right decision when he declares the pole as illegal equipment. In this case, the pole should be returned to the manufacturer for proper marking.

This Case Book illustration demonstrates that inconsistent or contradictory weight markings on a pole will render that pole "illegal equipment." Presumably, the same conclusion could apply to an inconsistent or contradictory length marking. But, unlike the situation involving an inconsistent or contradictory weight marking, an official can easily measure the length of the pole. So, arguably an inconsistent or contradictory length marking should be considered differently than an inconsistent or contradictory weight marking. With a weight marking, "The Inspector of Implements has no idea which rating is correct," whereas with the length, an inspector does have the means by which to ascertain the actual length of the pole. Arguably, also, if a pole were to become

53. CASE BOOK, supra note 1, at 78.
54. Id.
55. Id.
more flexible over time through repeated use - and many in the industry claim that this phenomenon does, in fact occur -, such a pole could be considered improperly marked.56

Apparently, the rules committee outlawed “variable weight” poles because a number of manufacturers make and sell “training poles” that are labeled with variable weights; for example, 12-130-150.57 Historically, these poles were often grossly “over-weighted” so that they could be used for short-run vaulting.58 However, since these poles were designed for short runs, they used to offer less resistance than other commonly used brands.59

There are a number of possible effects of this rule on the industry and the use of training poles in the sport. Manufacturers might quit manufacturing training poles. Alternatively, they might decide to no longer label these poles as variable weight poles. The way that § 7-5-4 is written actually creates a loophole. Because the rule prohibits use of “variable weight” poles but does not expressly forbid use of “training” poles, it appears to leave open the possibility that a manufacturer could continue to make training poles but could label them with a fixed-weight label rather than a variable weight label.60 But earlier, in § 4-5-12, the rules explicitly prohibit the use of training poles and make the consequences for violation crystal clear: “A competitor shall not use a training pole or a pole which is either improperly marked or rated below his/her weight, during warm-up or competition.”61 The penalty for an infraction of § 4-5-12 is disqualification.62

The Case Book illustration relevant to this rule also indicates that the drafters

56. Facsimile from Jan Johnson, USATF National Safety Chairman (July 15, 2003).
57. See, e.g., GILL ATHLETICS, TRACK & FIELD 2003 13 (2003) (offering “The Pacer Training Pole” in variable weights such as 12’-110-130 lbs.).
58. See infra text accompanying note 59.
59. Manufacturers construct training poles in a manner unlike ordinary competition poles. Telephone interview with Jeff Watry, Engineering Manager, Gill Athletics, Inc. (July 9, 2003). Ordinary competition poles contain a “sail piece,” which, generally speaking, is a triangular-shaped piece of sheet fiberglass which is wrapped into the body of the pole. See Dave Neilsen, The Vaulting Pole, 9 POLE VAULT STANDARD 3-4 (Fall 2002)(explaining pole manufacture and the sail piece). Manufacturers can vary the stiffness and flexibility characteristics of a pole, in part, by placing the sail piece either lower on the pole or higher up: the lower the sail piece, the slower and more flexible the pole; the higher the sail piece, the quicker and stiffer the pole. Similarly, a smaller sail piece results in a slower, softer pole, whereas a larger sail piece results in a quicker, stiffer pole. Manufacturers make “training poles” or “variable weight” poles with no sail piece at all. They also construct such poles with thicker walls, making them heavier than competition poles. Therefore, training poles bend more easily and are generally more durable than ordinary competition poles.
60. RULES BOOK, supra note 1, at 58.
61. Id. at 29.
62. Id. “PENALTY: (Arts. 4,7,8,9,12) Disqualification from the event.” See also OFFICIALS MANUAL, supra note 1, at 82 (In the sample “Pole Vaulter’s Weight Verification Form” under a section entitled “Note to School Officials,” the last sentence states: “Training poles shall not be used in warm-up or in competition.”).
intended to outlaw training poles, even though § 7-5-4 itself does not expressly say that.

7.5.4 SITUATION A: While inspecting vaulting poles prior to the start of warm-ups, the head field judge notices that a particular pole has the proper markings, but it is a training pole. RULING: A training pole is not legal equipment and, therefore, shall not be used for warm-up or competition.63

Note that a vaulter who uses an improperly marked pole or a variable weight is disqualified.64 If the person responsible for inspecting poles has fulfilled his/her duty, a disqualification for this reason should rarely occur. The inspector should ordinarily discover, and mark as illegal under § 3-19-5, an improperly marked or variable weight pole (“training pole”) before a vaulter has had an opportunity to use it.65

Although there may be other companies that currently sell training poles, at least three still actively market them: Gill Athletics, Altius International, and BSN.66 I recently ordered a BSN Catapole that is listed on the BSN website as a “prep-model 11’-110-125 lbs.67 When it arrived, although it was heavy and thick-walled (i.e., it clearly was manufactured as a training pole), it was labeled as an 11-125. One plausible interpretation of this occurrence is that BSN has decided to label these poles in such a way that, technically, they will comply with the letter of § 7-5-4 (because the labeling does not expressly indicate that these poles are variable weight). Query whether these poles should be considered “improperly marked” pursuant to § 7-5-4? To their credit, when I sent an e-mail

63. CASE BOOK, supra note 1, at 78.
64. RULES BOOK, supra note 1, at 58. The penalty appears immediately following § 7-5-4 (“PENALTY: Disqualification from the event.”). Id.
65. RULES BOOK, supra note 1, at 25.
66. See GILL ATHLETICS, supra note 57 (offering “The Pacer Training Pole” in variable weights such as 12-90-110 lbs. and 13-130-150 lbs.); http://www.nwpolevault.com/pages/altius_poles.html (offering the Altius International “Sports Trainer Poles”). BSN Sports’ website, www.ssgecom.com, advertises its variable weight pole as follows:

The EZ-Prep Competition vaulting pole is an economical choice designed for beginning to intermediate vaulters. Best suited for vaulting 13’ or less and at or below the athlete’s hand hold. The EZ-Prep is an easy to bend, full run competition pole that reacts more slowly than high performance CATA-POLES and allow the vaulter more time to get in the proper position. This pole has a wider weight range than high performance poles and allows the coach to have a greater number of athletes use the same pole.

• Easy to bend for any vaulter within range of the pole!
• Durable, long-lasting pole great for the novice vaulter who has trouble bending high-performance poles.

Although BSN refers to this as a “competition pole,” this description suggests that it is actually a training pole.

inquiry to Altius regarding their 11-135 lb. training pole, asking whether it could qualify as a legal "competition" pole, they responded that it could not and opened a discussion with me about their 11'5" competition models. If § 7-5-4 is to be effective, it would be sensible for the rule to be amended to read "thicker-walled training pole" instead of "variable weight pole." If the NFHS wishes to prevent use of these poles in competition, it would be prudent for the NFHS to conduct an independent investigation of the current pole manufacturers to ascertain which poles fall into this category. After compiling this data, the NFHS could include a list of these "banned poles" in an appendix to the rules.

But there is a larger issue lurking beneath the surface of this variable weight/training pole debate. Again, that issue is the standardization of a universal PWRS. If all poles are tested and labeled using a universal PWRS, then neither the thickness of a pole nor the presence or absence of a sail piece should matter. Therefore, if the ASTM first will establish a universal PWRS, then the NFHS could eliminate these specialized rules relating to variable weight/training poles. The NFHS could then simply require that all poles be labeled either by the manufacturer or by an ASTM-authorized/certified entity. This would increase efficiency, simplify the rules, generate cost savings for schools, and significantly increase the safety of the sport. Talk about a win-win-win situation.

C. Area For Pole Vault Coaches

An important addition in the 2003 rules is § 3-2-4g, which permits a pole vault coach to give a vaulter assistance in a specific area of the track designated by the games committee: "The games committee may designate a specific area for pole vault coaches, so that coach-athlete communications are made easier. Rationale: Increase opportunity for communication between coach and athlete." The Case Book includes an interpretation of the pole vault coaching area: "The coaching area is a courtesy determined by the games committee. In most cases, this area will not be on the field, but will be positioned so a coach and athlete can communicate during the event." This provision makes it possible to enhance communication between pole vault coaches and their athletes. A multiplicity of variables affects the safety of the pole vault. This rule increases the likelihood that a coach will be able to spot a potentially
dangerous error (i.e., one of those multiple variables) and communicate to his/her vaulter, thereby avoiding injury. This is an excellent rule that should increase safety and decrease both accidents and liability. Because of the danger associated with the pole vault, it is important to allow coaches to communicate with their vaulters. Increased communication will allow a coach to make suggestions about the vaulter’s run, plant, handgrip, etc. which might decrease the likelihood of injury. This rule must be interpreted in a manner that is consistent with § 4-5-9: “It is an unfair act when a competitor receives any assistance from any other person that could improve [a] competitor’s performance.”

Quite clearly, § 3-2-4g, because it is more specific and because it is more recently enacted than § 4-5-9, takes precedence. Thus, a coach who is in an area designated by the games committee pursuant to § 3-2-4g may legally provide assistance in order to improve a vaulter’s performance. This interpretation is strengthened by § 4-5-9f which prohibits “coaching a competitor from a restricted area.” The note following this provision expressly states: “A coach may verbally instruct a competitor provided the coach is positioned in an unrestricted area.” To be sure, any area designated pursuant to § 3-2-4g is, by definition, an “unrestricted area.” Given that increased communication is the express goal of this rule, the NFHS should also consider permitting coaches to communicate with vaulters using cell phones or some other type of wireless communication. This would decrease the numbers of individuals around the track and pole vault area.

D. “Comments on the 2003 Rules Revisions”: Standards of Reasonable Conduct

The Rules Book contains a section entitled “COMMENTS ON THE 2003 RULES REVISIONS.” These comments address the notoriety that the sport acquired in the early 2002 season. They also place additional burdens on

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74. RULES BOOK, supra note 1, at 29.
75. Id. at 2.
76. Id. at 29.
77. Id.
78. RULES BOOK, supra note 1, at 78-79.
79. Three teenage vaulters died during competition in early 2002. Two of them were in high school and one was just a sophomore in college. Jesus Quesada from Clewiston, Florida, was 16 in early February when he died from injuries he sustained when he landed partially on and partially off of the pit, striking his head. Samoa Fili, from Wichita, Kansas, was 17 in March when he died in a vaulting accident nearly identical to Jesus Quesada’s. Kevin Dare died at 19 while competing for Penn State University in the Big 10 Indoor Championships on February 23 when he failed to reach the pit and landed directly in the plant box. For more details regarding these incidents, see for example, Jeff Hollobaugh, Coaches Need to Get Serious About Pole Vault Safety, April 9, 2002.
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coaches and meet officials. There are five comments, in particular (i.e., a), d), e), f), g)), that require discussion.

Coaches, prior to any practice, and officials prior to any warm-ups and competition should make sure the following are in place:

(a) The landing system is the specified size and all pads in the primary system are covered by a common cover or pad so that all seams are protected. In addition, any hard and unyielding surfaces surrounding the pits are covered by a minimum of 2" of dense foam or other suitable materials (7-5-10).

(b) The poles are inspected to make sure they follow the specifications outlined in the rules (7-5-3). This includes checking the placement of the top handhold band, numerical pole ratings a minimum of 3/4 inches in a contrasting color located within or above the top hand-hold band, and proper binding of not more than two layers of adhesive tape of uniform thickness.

(e) The coach verifies that each vaulter’s weight is at or below the manufacturer’s pole rating.

(f) The runway is free of any obstacles, and if permanently marked, they follow the specifications in Rule 7-5-20.

(g) It is highly recommended that meet management make sure that the coaches have the ability to communicate with their vaulters during competition from a designated coaching area.

In addition to these comments, there are two separate paragraphs at the conclusion of this section.

The wearing of a helmet is not prohibited under NFHS rules. Since the industry does not provide a specific standard for pole vault helmets, choosing one is between parent and student.

As with most sports, coaching is the key to minimizing risks. Coaches should study techniques used to teach the event and to minimize risk for competitors. Inspecting facilities for at least the minimum


80. RULES BOOK, supra note 1, at 78-79.

81. For a discussion of helmets, safety, and liability, see VerSteeg, supra note 2, at 160-65.
standards is also very important. Educational materials, clinics, and other tools are being developed to help meet this goal. For information about NFHS pole vault, see the NFHS news release at www.nfhs.org.  

These comments and paragraphs are significant. In litigation, coaches and officials will be judged according to standards established by the industry. High school coaches will be held to a standard of reasonable care using the minimal level of knowledge and skill required by others in the profession.  

There is a strong case to be made that it is negligence (in a legal sense) when a coach or official causes an injury by failing to comply with one of the applicable NFHS rules. For example, it would be negligence if a coach or an official were to permit a vaulter to use a pole in competition rated below the vaulter's weight in violation of § 7-5-3. This analysis is essentially the same as a typical negligence per se analysis, where violation of a statute occurs.  

Vaulters are within the class of persons whom the NFHS rules are intended to protect and personal injury is the type of harm that the NFHS rules are intended to prevent.  

But the “comments” on pages 78-79 are not “rules,” they are precatory: “Coaches... and officials... should make sure that the following are in place.”  

Nevertheless, as these comments relate to officials, they essentially serve merely to emphasize the rules, since the wording states “officials prior to any warm-ups and competition...”. Indeed, as regards the duties and standards of care for pole vault officials (presumably the event judge, implement inspectors, and referee), these comments mirror or echo specific rules: Comment a) corresponds to §§ 7-5-8, 7-5-9, and 7-5-10; Comment b) corresponds to §§ 7-5-13 and 7-5-14; Comment c) is merely practical advice for compliance with § 7-5-19; Comment d) corresponds to §§ 7-5-3 and 7-5-4; Comment e) corresponds to § 7-5-4; Comment f) corresponds to § 7-5-20; and, Comment g) corresponds to § 3-2-4g.  

What makes these comments extraordinary is that the introductory sentence expressly states that the comments directly apply to a coach’s duties “prior to any  

82. RULES BOOK, supra note 1, at 78-79.  
83. See VerSteeg, supra note 2, at 132-46.  
84. See W. PAGE KEETON ET AL., PROSSER AND KEETON ON TORTS § 36, 220-34 (5th ed. 1984) [hereinafter KEETON].  
85. See Id. at 231 (“If the statute is construed as not covering the plaintiff, or the particular type of harm, many courts have held that its violation is not even evidence of negligence, and can have no effect on liability at all.” (footnote omitted)).  
86. RULES BOOK, supra note 1, at 79 (Emphasis added).  
87. Id.  
88. See RULES BOOK, supra note 1, at 17, 58-62.
practice. 89 During the 2003 season it has become common knowledge among the high school track and field community that in order to have a "legal pit" it must comply with the size requirements of §§ 7-5-8 to -10. However, there has been speculation that it is not "illegal" to practice on a pit that does not meet those size requirements. 90 To be sure, there are no specific criminal sanctions that attach to using a non-compliant pit for practice. In terms of civil liability, however, it appears that allowing students to practice on a non-compliant pit would expose the coach and the school to significant liability.

Suppose, for example, that a vaulter were to sustain injuries while practicing on a non-compliant pit, and suppose further that the accident would not have occurred had the pit complied with §§ 7-5-8 to -10. A plaintiff's lawyer surely would point directly to this comment, stating that:

coaches, prior to any practice...should make sure the following are in place: a) The landing system is the specified size and all pads in the primary system are covered by a common cover or pad so that all seams are protected. In addition, any hard and unyielding surfaces surrounding the pits are covered by a minimum of 2” of dense foam or other suitable materials (7-5-10). 91

It would be understandable if a jury were to find this argument appealing. Although not "rules" per se, arguably these comments establish a standard of reasonable care for all high school coaches, and failure to comply may be interpreted as conduct falling below that standard – in other words, negligent conduct.

A similar argument may be premised on other comments in this section. For example, Comments d) and e) establish that, as far as the NFHS is concerned, it is a coach's duty to inspect all vaulting poles, and to verify that a vaulter is not using a pole rated below his or her body weight. 92 Thus, if a coach were to allow a vaulter even to practice using a pole rated below his/her body weight, it is to be expected that, in the event of an injury and litigation, a plaintiff's lawyer would introduce these comments into evidence in an attempt to prove that the coach's conduct fell below acceptable standards. Again, it would be understandable if a jury were to find this argument persuasive.

Similarly, the final paragraph in these comments exhorts coaches to study techniques and to acquire appropriate training. 93 In the event of an injury and

89. Id. at 79.
90. See discussion of this matter on www.polevaultpower.com.
91. RULES BOOK, supra note 1, at 79.
92. Id.
93. Id.
litigation, a plaintiff's lawyer will introduce this paragraph into evidence as proof of the NFHS standard of reasonable care, and then would ask the coach to testify regarding what he or she had done to comply. Specifically, a plaintiff's attorney will ask the coach what seminars, clinics, certification programs, etc. that the coach has completed. The lawyer will ask what books and manuals, publications, training, safety booklets, or videos that the coach has used. As was suggested above, these comments and paragraphs, although they do not technically constitute "rules" per se, arguably establish the standards by which pole vault coaches will be judged.

These issues are especially significant because many coaches permit their vaulters to practice using poles rated below their body weight. In fact, it is a commonly accepted coaching technique to allow vaulters to use poles rated below their body weight in two specific situations: 1) when a vaulter is learning to bend the pole; 94 and 2) when a vaulter is practicing a short run with a low handgrip. 95 It is common for a vaulter to use an under-weight pole in the initial phases of learning to bend. Vaulters are able to vault much higher by bending the pole ("flex vaulting") as opposed to vaulting with no bend in the pole ("straight vaulting"). As far as the physics of the sport go, there are at least two reasons for this. First, when the pole bends, a vaulter can use a higher top handgrip because the distance between the vaulter's top hand and the bottom of the pole shortens. Thus, simply by being able to use a higher handgrip, a vaulter can jump higher. Second, the potential energy that is stored in a bent pole returns when it unbends as the vaulter is moving up toward the bar. Therefore, the bending and unbending action allows a vaulter to hold higher and thus vault higher. Hence, in order to be successful and competitive, high school vaulters today need to bend the pole when they vault. A soft pole (i.e., an under-weight pole) is a useful tool for a vaulter in the beginning stages of learning to bend. Since the vaulter is gradually moving from straight vaulting to flex vaulting, there is very little risk of injury involved (i.e., risk due to over-bending) in these early stages. Thus, although the NFHS Comment ostensibly establishes a standard of reasonable conduct, Comments d) and e) ignore the fact that it is commonly accepted practice for vaulters to use an under-weight pole when they are first learning to bend. 96 Therefore, I suggest that it is not unreasonable for a vaulter to use an under-weight pole if he or she is straight vaulting, and it is not unreasonable for a coach to permit a vaulter to use an under-weight pole during the period of time when the vaulter is learning to bend the pole. Some vaulters may learn within a matter of days, for others it may take months. Consequently, evidence that a vaulter is in

94. Telephone interview with Jeff Watry, Engineering Manager, Gill Athletics (July 9, 2003).
95. See VerSteeg supra note 2, at 135-36.
96. See RULES BOOK, supra note 1, at 78-79.
the learning-to-bend phase ought to be sufficient to rebut the presumption raised by comments d) and e).97

Similarly, vaulters commonly use under-weight poles for short run practice vaults while employing lower handgrips. Vaulters typically use a pole rated well below their body weight and well below the stiffness of pole that they would use for a full approach run. In his book *Modern Pole Vaulting*, Brian Ferry describes short run vaults as follows:

This is the same as the... half-approach drill, but the athlete will bend the pole and execute a full jump. The distance of the runup should be between 5 and 6 left steps. A shorter and lighter pole should be used in this drill to allow for proper penetration into the pit. The focus is on a powerful runup, takeoff, and hang-drive with a smooth transition into the upswing, pull-turn, and landing. These half-approach vaults are great for working on smoothly blending all of the phases of the vault together into one, continuous whole movement.98

Consequently, evidence that the vaulter was using an under-weight pole for a short run vault should also be sufficient to rebut the presumption raised by comments d) and e).99

E. Unacceptable Venue

Section 3-4-4 provides: "[u]pon determining that the event venue does not meet the criteria set forth in the rules, the referee can declare that the event will not be contested. Rationale: This change reinforces minimizing risk when venues do not meet NFHS standards."100 The real problem with this rule is that it uses the word "can" instead of "shall". The pole vault venue is clearly one of the prime examples of a venue that could cause this rule to come into play. For example, the pit might be smaller than the legal dimensions required by § 7-5-8 (i.e., 19'8" x 20'2") or there may be inadequate padding to cover hard surfaces surrounding the pit pursuant to § 7-5-10.101 In such circumstances, as the rule is written, a referee would be within his/her rights to "declare that the event will not be contested."102 According to the rules, when the referee invokes this provision, the host team forfeits all of that event's

97. See Id.
98. BRIAN FERRY, MODERN POLE VAULTING 75-76 (Tafnews Press 1998)(emphasis added).
99. See RULES BOOK, supra note 1, at 78-79.
100. RULES BOOK, supra note 1, at 2.
101. Id. at 60.
102. Id. at 18.
points to the visiting team(s). Section 2-1-4 states: "[e]vent points will be awarded to the opposing team(s) upon the determination by the referee, that the venue is unacceptable for competition. Points will be totaled and divided equally among visiting teams. The host team will receive no points."

Curiously, at the back of the Rules Book in a section entitled “Points Of Emphasis”, Point 6 “Unacceptable Venues” states: “[w]hen venues do not meet the NFHS minimum standard, the referee shall declare the event will not be contested. One example of an event that does not meet NFHS standards is a host school failing to cover hard and unyielding surfaces around the pole vault landing system.” Apparently, the drafting committees failed to proofread and harmonize these two provisions effectively. It is simply inconceivable that the NFHS actually intended to make these two provisions inconsistent; the rule itself (§ 3-4-4) merely giving the referee discretion to declare the venue unacceptable (“can”) and the point of emphasis (no. 6) making the declaration of venue unacceptability compulsory (“shall”).

A related issue is raised by Point Number 4, “Non-School Facilities” that states: “[c]ollege and community facilities are often used in high school track and field and cross country meets. When non-school facilities are used, a host team shall be identified to work with the meet director to assure NFHS standards are met.” Point Number 4 may be especially important for the pole vault because of the need for a proper venue. The “host” team could be penalized pursuant to § 2-1-4 which states: “Event points will be awarded to the opposing team(s) upon the determination by the referee, that the venue is unacceptable for competition. Points will be totaled and divided equally among visiting teams. The host team will receive no points.” Therefore, for example, in a conference championship involving six teams at a college facility, each school would receive 6.2 points (10+8+6+4+2+1 = 31, total points divided by 5 = 6.2), if the referee were to decide that the pole vault venue did not comply with the NFHS regulations. This places a special burden on those individuals responsible for the “host” team when communicating with the operators of non-school facilities. The risks could be costly in terms of team championships.

Since § 3-4-4 grants to the referee the authority to decide when a pole vault

103. Id. at 14.
104. Id.
105. RULES BOOK, supra note 1, at 78 (emphasis added). A technical amendment is probably in order here. I believe that the word “venue” should replace the word “event” in this sentence, and thus, “a” should replace “an”: “One example of a venue [an event] that does not meet . . . .”
106. Id. at 78.
107. Id. at 77.
108. Id. at 14.
venue fails to comply with the rules, presumably it will always be the referee's responsibility to inspect the pole vault venue. If an accident were to occur in a pole vault venue that did not comply with the rules, a plaintiff's attorney would certainly include the meet referee on the list of named defendants, since it is his/her responsibility to make that determination. The event judge does not have this authority. Nevertheless, it would be reasonable for an event judge, who believes that the venue fails to comply, to report that information to the referee so that the referee may issue a ruling. An event judge may actually be more familiar with the specifications of the pole vault venue than the referee in some situations. If an event judge were to fail to report suspected non-compliance to the referee, arguably the event judge may be subject to liability for negligence.

F. Time

Section 7-2-5a permits a vaulter to take one and one-half minutes for preparation: “A competitor shall initiate a trial that is carried to completion within . . . One and one-half minutes . . . .” This is thirty seconds more than is permitted for all other jumping events. Similarly, “when three or fewer competitors remain in the competition . . . those in the pole vault [will be allowed] four minutes to initiate a jump . . .” whereas if there are only two or three high jumpers remaining, they are allowed only three minutes. And when a single vaulter is left, he or she is permitted six minutes whereas a lone high jumper is permitted five minutes.

Section 7-5-29 provides: “[i]t is a foul if the competitor . . . Fails to initiate a trial that is carried to completion within the defined time period (1 minute) after being called and after the crossbar and standards have been set.” Obviously, this is a technical error. Apparently, when § 7-2-5a was amended to change the time for the pole vault to one and one-half minutes, the drafters neglected to change this coordinate provision as well. The parentheses should be amended to read “(1.5 minutes).”

These rules that permit extra time for pole vaulters enhance the safety of the event. Because pole vaulters have a greater distance to travel from the pit to their starting point on the runway than a high jumper and because the pole vault

109. Id. at 18.
110. Id. at 53.
111. See RULES BOOK, supra note 1, at 53.
112. Id.
113. Id.
114. Id.
115. Id. at 62-63.
ordinarily involves a greater risk than the high jump (due to the greater heights), it is logical to allow pole vaulters a little more time to prepare than high jumpers.

**G. Shoes**

Section 7-2-10 states, in pertinent part, “[t]hey shall not wear a shoe or shoes which incorporate or contain any device that gives the competitor an unfair advantage.”116 The rule, however, fails to either define or illustrate what “unfair advantage” means. Vaulters, for example, often wear heel cups for added protection. Many athletes today use orthotics; either over-the-counter, commercial orthotics or prescription orthotics to ease the strain on the plantar fascia. Presumably, neither heel cups nor orthotics should be considered providing “an unfair advantage” because health and safety considerations ought to outweigh any potential unfair advantage.

**H. Equal Protection: Gender Discrimination**

Rule 4-3-lb(2) (old § 4-3-1lb(7)) states: “[l]oose fitting boxer-type shorts are permitted for boys and girls and closed-leg briefs/shorts are acceptable for girls. Rationale: Officials have interpreted the definition of a closed-legged brief many different ways. This change will help officials interpret the rule.”117 To be sure, this rule applies to all track and field athletes, not just pole vaulters.118 But, given that many pole vaulters prefer relatively tight fitting clothing, because it reduces the likelihood that clothing might contribute to dislodging the crossbar, the rule may be a special concern for pole vaulters.

This provision has serious constitutional problems because it differentiates acceptable apparel on the basis of gender. Given that various state high school athletic associations have been held to be “state actors” for purposes of constitutional analysis,119 the application of this apparel rule could raise the question of whether this disparate treatment on the basis of gender can pass constitutional muster. Girls are permitted to wear “closed-legged briefs/shorts” but boys are not. As a gender-based form of discrimination, a federal court would analyze this rule using a so-called “middle level” or “intermediate

116. RULES BOOK, supra note 1, at 53.
117. Id. at 3.
118. Id. at 26.
level" of constitutional scrutiny. In other words, in order to be considered constitutional, a court would have to decide that the rule is designed to achieve an important government objective and that the rule is narrowly fashioned to achieve that important government objective. This rule seems woefully lacking. I am hard pressed to imagine any important government objective that this rule serves. Apparently, the NFHS arbitrarily has decided that closed-legged briefs are inappropriate for boys solely based on the fashion sense of the NFHS. Without an important government objective, it is not even necessary to ask the next question regarding how narrowly the rule is fashioned to achieve that objective. In remarking on § 3-7-4 and the rules regarding jewelry (tongue piercing in particular), the Case Book states: "COMMENT: The official is to consistently apply the NFHS rules." I would argue that this advice should also apply to the rule regarding shorts. There should be no gender discrimination.

II. RULES AS A MICRO COSM IC "LEGAL" SYSTEM

A. Jurisdiction of Officials

Track and field meets require many different officials. In order for disputes to be resolved quickly and appropriately, it is important to know which officials have authority over the various types of issues and rules. For example, the games committee, meet director, referee, implement inspector(s), and event judge all have various degrees of authority related to the pole vault. Unfortunately, the

120. WONG, supra note 119, § 5.4.3, at 214.
121. Id.
122. Another troublesome rule relating to shorts is § 4-3-1b, which requires that a competitor's uniform "shall consist of... track shorts issued by the school." RULES BOOK, supra note 1, at 26. This rule strikes me as odd. It probably opens the door for a petty opposing coach to investigate whether a vaulter is wearing "track shorts issued by the school." Id. First, it is difficult to imagine a universally accepted or acceptable definition of "track shorts." Second, it is equally difficult to imagine why a competitor must wear shorts "issued by the school." If a competitor or a competitor's parents were to purchase shorts that were identical or nearly identical to those issued by the school, why should that be ground for disqualification? If a vaulter, for example, were to purchase red Nike shorts because s/he prefers the fit and comfort of that brand to the team-issued Puma shorts, why should that be grounds for disqualification? A rule like this invites abuse by petty-minded individuals. I propose that the rule be amended to read "shorts." After all, the subsequent subsections of § 4-3-1b. go into greater detail concerning the length, style, color, and fit. In fact, the specificity provided by subsections 1, 2, 5, 6, 7, and 8, relating to shorts truly makes the general phrase "track shorts issued by the school" unnecessary, especially given the potential for inconsistent interpretation. Id.
123. CASE BOOK, supra note 1, at 5.
124. See RULES BOOK, supra note 1, at 15; § 3-1-1 "MEET OFFICIALS," which lists the "games committee," "meet director," "referee," (§ 3-1-1a.), and "event judges" (§ 3-1-1c.). The Officials Manual
rules are not entirely clear about who all of these officials are, much less are they clear regarding the respective powers and authority of these officials. For example, § 3-10 is entitled "FIELD JUDGES" but § 3-1-1 which lists "meet officials" does not list "field judges." Rather, § 3-1-1 lists "Field-event officials," "head field judge," and "event judges." Section 3-10-1 refers to the "field referee or head field judge" but this provision fails to articulate whether these terms are used as synonyms or whether the "field referee" and "head field judge" are actually two different and distinct meet officials. This same ambiguity occurs in § 3-10-7 which makes decisions by an event judge final upon authorization "by the field referee or the head field judge." The Officials Manual uses the terms as synonyms. But further complicating matters, § 3-10-2 grants certain authority to the "head field judge" but unlike §§ 3-10-1 and 3-10-7, § 3-10-2 does not also give authority to the phantom "field referee." If these are intended to be synonyms - merely two names for the same individual - (and I believe that they are), then § 3-1-1 should be amended to clarify that fact. For example, the rule could simply have the words "field referee" inserted in parentheses after the term "head field judge" in § 3-1-1c. If the terms are not synonymous but instead are intended to refer to two separate individuals, then § 3-1-1 should make that clear by adding the term "field referee" to the list of meet officials and listing "field referee" and "head field judge" separately on different lines.

This same type of problem regarding these terms occurs in § 4-1-2, where the rule states: "[c]ontestants officially become competitors when they report to the clerk of the course or the field-event judge for an event in which they are entered." In § 3-1-1c, the rules list as officials a "head field judge" and an "event judge" but there is no mention of a "field-event judge." The Officials Manual perpetuates this inconsistent use of terminology. Quite clearly, explains who might comprise the Games Committee. See OFFICIALS MANUAL, supra note 1, at 7.

125. RULES BOOK, supra note 1, at 15, 22.
126. See OFFICIALS MANUAL, supra note 1, at 38.
127. RULES BOOK, supra note 1, at 25. It should be noted that this rule creates an interesting loophole. Because an athlete does not officially become a "competitor" until s/he has checked in either with the clerk of course or with the event judge, any unofficial warm-up that s/he undertakes prior to checking in is technically not subject to the rules that govern what a competitor may and may not do. Therefore, for instance, prior to checking in, technically, an athlete (i.e., "contestant") may use a pole rated under his/her weight or a training pole. Presumably this loophole could be closed by adding a prefatory statement at the beginning of § 7, expressly stating that all rules relating to pole vaulters' weights and pole ratings (including but not limited to §§ 7-5-3 and 7-5-4) apply whether or not any given contestant has officially checked in with the clerk of course or event judge, thereby becoming a "competitor"). In other words, these rules apply to both "contestants" and "competitors."
128. See OFFICIALS MANUAL, supra note 1, at 39 (under the heading "FIELD JUDGES", the text refers to "event judges." RULES BOOK, supra note 1, at 22.
though, the reference to a "field-event judge" in § 4-1-2 is understandable and apparently intended to encompass or refer to an "event judge." But in the interests of consistency in terminology, it would be preferable to make a technical amendment by changing the reference in § 4-1-2 to read "event judge" rather than "field-event judge." The same type of inconsistency appears in § 4-1-3 where the rule refers to "the judge...in the field events." It would be preferable to amend this rule to read "event judge" for the sake of consistency.

The sloppiness in terminology may be due to amendments that have evolved through the years. But whatever the source of these various and inconsistent names for officials, in order to clarify which persons have authority to exercise judgment in certain circumstances, changes should be made to eliminate ambiguity and uncertainty. These criticisms may seem hyper-technical. However, given that the rules grant specific jurisdiction and authority to certain specific officials, it is essential that the rules make it clear what officials have these responsibilities. If inconsistencies or ambiguities exist in these rules, mistakes, injustice, anger, and appeals are likely to follow. Interpretations of rules frequently turn on technicalities, and rule-makers should seize very opportunity to harmonize terms in the interests of clarity and consistency.

According to § 3-2-3g, "[t]he games committee has the authority to determine the: Starting height and successive heights of the crossbars." As a practical matter, in most dual meets, a friendly atmosphere prevails, and it is typically the event judge who decides the starting height in the pole vault after consulting with the contestants themselves. This same decision-making process is often also followed regarding "j. Order in which competitors take their trials," "k. Time limitation or number of warm-up opportunities in the field events," and "l. Time limit and procedure to follow when competitors are excused to compete in another event." Since the pole vault event judge, in reality, often makes these judgment calls using his/her discretion, especially in regular season dual meets; it would make sense for the rule on the books to reflect that custom. This may be accomplished by inserting the phrase "or delegate the authority to so determine to other meet officials (e.g., for g, j, k, and l, the pole vault event judge)" between the words "determine" and "the." Thus, the stem of § 3-2-3 would read as follows (additions in italics): "[t]he games committee has the authority to determine or delegate the authority to so determine to other meet

129. Similarly, the caption of § 3-10 could be changed from "Field Judges" to "Field Event Officials."

130. RULES BOOK, supra note 1, at 16. See also OFFICIALS MANUAL, supra note 1, at 12, 77. ("The starting height of the bar and each successive height shall be determined by the games committee.")

131. See RULES BOOK, supra note 1, at 16. See also OFFICIALS MANUAL, supra note 1, at 12.

132. RULES BOOK, supra note 1, at 16.
officials (e.g., for g, j, k, and l the pole vault event judge) the:” This emendation would better reflect the practical reality of the manner in which many meets actually operate.\footnote{133}

B. Tape & Videotape

1. Adhesive Tape

Part I considered certain safety issues regarding the legality of poles. In particular, Part I discussed the weight-rating rules and the roles of officials in determining whether poles are legal. This section looks at those rules as they relate to illegal taping. As was noted above,\footnote{134} pursuant to § 3-19-3, an implement inspector should determine that a pole is not “legal equipment” if it is “improperly marked,” a “variable weight pole,” or if it has a binding of “more than two layers of adhesive tape” or if the tape is not “of a uniform thickness.” The rules concerning the taping of poles are actually slightly redundant. Section 7-5-2 states: “it may have a binding of not more than two layers of adhesive tape of uniform thickness.” And § 7-5-5 states that an official (“field referee, head field judge or assigned inspector of implements”) “shall inspect each pole to be used in the competition” to check “the proper binding of not more than two layers of adhesive tape of uniform thickness.”\footnote{135} As is the case with an improperly marked pole or a training/variable weight pole,\footnote{136} an illegally taped pole is also per se illegal. Although the rules expressly provide that a competitor who uses an “improperly marked” pole or a “variable weight pole” either “during warm-up or competition” is disqualified,\footnote{137} the rules fail to provide a penalty specifically directed at use of a pole that is either taped with more than two layers or taped in a way that the binding’s thickness is not uniform (hereinafter I refer to both of these types of infractions collectively as a “§ 7-5-2 tape violation”). It is arguable that a § 7-5-2 tape violation should result in disqualification pursuant to the penalty clause that follows § 7-5-4 which states: “PENALTY: Disqualification from the event.” One could argue that that penalty provision\footnote{138} is intended to apply not only to § 7-5-4, the provision that immediately precedes it, but also to §§ 7-5-1 to -4, and, therefore, § 7-5-2. But there are other places in

\footnote{133} Similarly, in § 3-2-4, the introductory sentence should be amended as follows: “The games committee either by itself or by means of delegating authority to other meet officials also may . . . .”
\footnote{134} See supra note 25.
\footnote{135} RULES BOOK, supra note 1, at 58.
\footnote{136} See supra Part I.B.
\footnote{137} See RULES BOOK, supra note 1, at 58 and accompanying applicable penalty provision.
\footnote{138} This provision appears between §§ 7-5-4 and 7-5-5.
the rules where it is clear when a “PENALTY” is intended to apply to multiple infractions that are listed in sequence. In those instances, the rules expressly spell out to which provisions the penalty is intended to apply.\textsuperscript{139} Thus, given the drafters’ care in other provisions to specify precisely to which articles a penalty clause applies, it is more likely that the penalty clause that follows § 7-5-4 applies only to §7-5-4 and not to §§ 7-5-2 (or articles 1 and 3).

Even in § 7-5-29, the provision which enumerates the circumstances which constitute a “foul” (i.e., a “miss”) in the pole vault, the rule does not state or even imply that the use of a pole with a § 7-5-2 tape violation constitutes a foul. Thus, there is no penalty directly assigned for a § 7-5-2 tape violation. However, although there appears to be no specific penalty that applies to a pole that has a § 7-5-2 tape violation, there is at least one general penalty provision that may govern § 7-5-2 tape violations. Section 4-5-8 provides: “A competitor shall not compete while... using an illegal implement.”\textsuperscript{140} Since § 7-5-2 prohibits a pole that has more than two layers of tape and a pole whose tape is not “of uniform thickness,” arguably a pole that does not comply should be deemed an “illegal implement.” Section 3-19-1 grants general jurisdiction for this decision to “the referee, field referee or head field judge” who supervise and have authority over all implement inspectors.\textsuperscript{141} But it is the duty of the implement inspectors to make this determination in the first instance\textsuperscript{142} and to identify and distinguish legal poles from the illegal ones.\textsuperscript{143}

The tape regulations articulated in §§ 7-5-2 and 7-5-5 which spell out a maximum of two layers and which mandate that the tape be “of a uniform thickness” require further consideration. At first blush, one might believe that a vaulter may legally use an improperly taped pole in warm-up. Under § 4-5-8, it is not grounds for disqualification merely for a vaulter to use an illegally taped pole in warm-up.\textsuperscript{144} Section 4-5-8 clearly states that a vaulter “shall not compete while... using an illegal implement.”\textsuperscript{145} On the other hand, § 7-2-11 is a provision that apparently renders the issue moot: “A competitor shall not use an

\textsuperscript{139} See e.g., RULES BOOK, supra note 1, at 26-27. Here the penalty clause expressly states: “PENALTY: (All articles) For an illegal uniform the competitor is disqualified from the event.” See also Id. at 29, where the penalty clause expressly identifies which articles it applies to: “PENALTY: (ARTS. 4, 7, 8, 9, 12) Disqualification from the event”; § 5-11-1 a.-e., where the penalty clause clearly applies to a-e; § 5-12-(1-2), where the penalty clause explicitly states that it applies to both articles one and two; § 5-13-2a.-f., where penalty clause specifically applies to a-f.

\textsuperscript{140} Id.

\textsuperscript{141} See supra Part II.A. regarding these officials.

\textsuperscript{142} See RULES BOOK, supra note 1, at 25.

\textsuperscript{143} See Id.

\textsuperscript{144} Id. at 29.

\textsuperscript{145} Id. at 53 (emphasis added).
illegal implement during warm-up or competing." The penalty for violating this rule is disqualification: "PENALTY: (Arts. 10, 11) Disqualification from the event." Plainly, so long as a pole with a § 7-5-2 tape violation is considered an "illegal implement," § 7-2-11 resolves any doubt about the disposition of this matter. And although the rules fail to define "illegal implement," two provisions lead to the conclusion that a pole with a §7-5-2 tape violation should be considered an "illegal implement." Section 3-19-5 requires that implement inspectors mark all implements that pass inspection so "that event judges can easily distinguish between a legal and illegal implement or apparatus." Section 4-19-3 mandates that "Implement inspector(s) shall inspect vaulting poles to verify that the poles are legal equipment." Clearly more precise drafting would have been to say "illegal implements" rather than "illegal equipment," thus erasing any doubt regarding this matter. Nevertheless, if an illegally taped pole under § 7-5-2 is indeed an "illegal implement," it is important to alert implement inspectors and pole vault event judges to the problem and to establish a reasonable protocol for dealing with § 7-5-2 tape violations. Mere possession of an illegally taped pole is not a violation. A § 7-5-2 tape violation is a materially different type of per se illegality problem from a pole marking problem. Either a vaulter or coach is physically able to correct a § 7-5-2 taping violation on the spot. The manufacturer, however, must correct a pole marking violation. It would be unreasonable and draconian for an implement inspector simply to declare that a pole is illegally taped in violation of § 7-5-2, mark it as illegal, and ban it from competition pursuant to §§ 3-19-3 and 3-19-5. Rather, it would be preferable for an inspector to call the illegal taping to the attention of the vaulter and coach and to request that the pole be re-taped according to the requirements of § 7-5-2. Similarly, if an event judge were to discover a vaulter preparing to use an illegally taped pole in warm-up, he or she likewise should call it to the vaulter’s and coach’s attention and request that the pole be re-taped. If the vaulter and coach refuse or otherwise fail to comply with the implement inspector’s request or the request of the event judge, then the implement inspector or event judge should report the matter to the referee, field referee, or head field judge for a

146. Emphasis added.
147. RULES BOOK, supra note 1, at 25.
148. I have searched the RULES BOOK, CASE BOOK, and OFFICIALS MANUAL, but I have been unable to discover any definitions of "illegal implements" or "illegal equipment." Nor have I discovered any statements, which explain whether there is any meaningful distinction. It appears as though this is an example of drafters, perhaps inadvertently, adopting synonyms (i.e., "implements" = "equipment"). According to the OFFICIALS MANUAL, "Any pole not properly marked will be considered illegal equipment." OFFICIALS MANUAL, supra note 1, at 83.
149. i.e., taped with a maximum of two layers and "of a uniform thickness." RULES BOOK, supra note 1, at 58.
ruling, since, pursuant to § 3-19-1, only they have ultimate jurisdiction over these matters.

A scenario that would be especially difficult, however, would occur if an implement inspector(s) were to fail to discover a § 7-5-2 tape violation, but then later, during warm-up, an event judge were to discover the violation. Should the vaulter then be disqualified for using an illegal implement during warm up (per § 7-2-11) even though the implement inspector failed to mark the pole as illegal pursuant to §§ 4-19-3 and 4-19-5? I would argue that in this case disqualification is unwarranted. There is certainly room for some subjective difference of opinion regarding what constitutes “more than two layers” and “uniform thickness.” If a vaulter has relied on an implement inspector who has not declared the pole an “illegal implement” “prior to warm-up” (as required under § 7-5-5), then, unless s/he has subsequently re-taped the pole in violation of § 7-5-2, use of such a pole during warm-up ought not be considered grounds for disqualification. Such “innocent” use of an illegally taped pole during warm-up ought to be excused. Rather, upon discovery, the event judge should call the violation to the vaulter’s attention and request that the pole be re-taped.

The 2003 Case Book provides two examples that illustrate other, related nuances of the § 7-5-2 tape rules.

7.5.2 SITUATION A: A1 has cleared the pole-vault bar on his first attempt at three successive heights. A2 clears the bar at two successive heights before the coach of Team B protests that A1 and A2 are using a pole which has not been inspected and: (a) excessive layers of adhesive tape, or (b) no markings or illegal markings are present. Upon inspection, the judge agrees the pole is illegal in both (a) and (b) in its present form. RULING: A1 and A2 shall be disqualified in both (a) and (b). (4-5-8; 7-4-3 [obviously a typographical error: 7-5-3 is the correct reference]).

Situation A is helpful in some respects but it is poorly written. The problem is that the hypothetical situation contains three facts, any one of which could be grounds for disqualification under the rules. The vaulters have used 1) a pole that was not inspected; 2) a pole with excessive layers of tape; and, 3) a pole lacking the legal markings. The “Ruling” fails to identify which of these facts constitutes grounds for disqualification. The “Ruling” does state that both the excessive taping (a) and the lack of legal markings (b) provide grounds for disqualification. But the facts of this hypothetical situation also provide that the

150. CASE BOOK, supra note 1, at 77.
151. See Id.
152. Id.
pole in question "has not been inspected." That fact alone may be considered
grounds for disqualification. Therefore, as written, this example does not
clarify whether the excessive taping or the lack of legal markings by themselves
would be grounds for disqualification if the pole had been inspected. Situation B
which immediately follows Situation A in the 2003 Case Book may help our
understanding.

7.5.2 SITUATION B: Following a successful trial, the judge notices
that the tape in the gripping area of Al's pole has rolled down to
provide ridges. Prior to competition, all poles had been inspected and
approved. RULING: The successful trial will stand. The judge will
inform Al that he has the option of securing another pole, or retaping
the gripping area so that the tape is of uniform thickness and free of
ridges.154

Here, in Situation B, the facts are similar in some respects to Situation A but
different in other respects. In each hypothetical, a vaulter has completed a
successful trial and a § 7-5-2 taping violation has been identified after that
successful trial. But there are significant differences between the hypothetical
situations presented in B versus the ones in A. In A the pole had not been
inspected prior to competition but it had been inspected in B. In A the pole has
excessive layers of tape but in B the tape "has rolled down to provide ridges." In
A the pole lacked legal markings (b) but in B there is no mention of markings. In
A the infraction is identified by an opposing coach but in B it is the judge who
notices the infraction. Since the Rulings in A and B are 180 degrees apart,
logically the reason for the disparate Rulings must lie in the factual differences
between the hypotheticals. The Case Book, alas, fails to identify which factual
differences account for the difference in the Ruling. First, it is unlikely that the
fact that in A an opposing coach called the infraction to the judge’s attention and
in B the judge noticed it on his/her own should make a difference in the Ruling.
Second, A subdivides its facts into (a) the tape violation and (b) the lack of
markings.155 The Ruling explicitly states that a disqualification would be
appropriate in either case.156 Thus, the fact that there is no mention in B
regarding the pole’s markings is apparently immaterial. This leads us to ask the
difficult question. Does the material difference - that is, the distinguishing
difference - lie in the fact that in A the pole was not inspected before competition
but the pole in B was, or does the difference lie in the fact that the infraction in A
is excessive layers of tape whereas in B the infraction is tape that has rolled

153. See RULES BOOK, supra note 1, at 25, 58.
154. CASE BOOK, supra note 1, at 77-78.
155. Id. at 77.
156. Id. at 77-78.
down? Under § 7-5-2, it is both illegal to use a pole with more than two layers of tape and illegal to use tape that is not "of uniform thickness." The rule on its face does not state or even imply that one is a more egregious infraction than the other. The rule treats each as equal wrongs. Thus, it would be illogical to rule that a vaulter who successfully uses a pole with more than two tape layers should be disqualified but that a vaulter who successfully uses a pole with tape that is not of a uniform thickness (i.e., tape that has rolled down) should not be disqualified (but, rather, merely be instructed to secure a different pole or re-tape that one prior to subsequent attempts). Instead, the key to understanding the distinction between Situations A and B is to recognize that the pole in A had not been inspected whereas the pole in B had been inspected.\textsuperscript{157} That is the only distinction that appears to have any relevance. But if that was the only point that the drafters were trying to make, they certainly could have said so much more directly and clearly: "Because the pole(s) in A were not inspected, they are illegal." It is possible, however, that the \textit{Case Book} authors were trying to pinpoint a far more subtle distinction. Possibly, they intended to suggest that there really is a material difference between the vaulter in A who uses a pole with more than two tape layers, since that vaulter uses the pole either intentionally or with constructive knowledge of the violation (i.e., because the pole was not inspected); whereas the vaulter in B uses the pole with wrinkled tape in a circumstance where the tape that has rolled down has rolled down inadvertently during the normal course of use during the competition (i.e., the vaulter in B could not be using the illegally taped pole intentionally, since it passed inspection, and he or she has no constructive knowledge of the infraction, for the same reason). On this interpretation, there could be a meaningful difference between tape that has developed a non-uniform thickness in the ordinary course of use (i.e., an unintentional or inadvertent § 7-5-2 tape violation) versus tape that has been intentionally applied in more than two layers. If this is the distinction that the \textit{Case Book} authors were trying to isolate, the Ruling fails to make that distinction clear. If this is the distinction that they wish to highlight, these situations must be rewritten to make these facts clear. For example, in A the facts could state that someone intentionally applied more than two layers of tape, and in B, the facts should state that the non-uniformity and ridges developed unintentionally or inadvertently as a result of normal use. This distinction is jurisprudentially supportable. Although § 7-5-2 does not distinguish between intentional versus unintentional infractions, arguably a vaulter may be charged with greater responsibility when intentionally using a pole with more than two layers of tape as opposed to using a pole whose tape has wrinkled during normal use in competition. Presumably a vaulter, his/her coach, or a teammate is

\textsuperscript{157} \textit{Id.} at 77-78.
typically responsible for taping a pole. Thus, it would be logical and reasonable for rule-makers to consider that a vaulter is ordinarily responsible for ensuring that no more than two layers of tape are on his/her pole prior to inspection, and that vaulters are then obligated not to retape a pole in violation of § 7-5-2 before starting down the runway.\textsuperscript{158} Similarly, it would be reasonable for rule-makers to assume that a vaulter may rely upon the decision of an implement inspector and, therefore, in the heat of competition, might not notice that his/her tape has begun to wrinkle to the point of violating § 7-5-2’s uniform thickness rule. Supporting this interpretation is the Case Book illustration entitled “ILLEGAL IMPLEMENTS AN AID.”\textsuperscript{159} This situation gives an example of a pole vaulter whose tape has rolled down.\textsuperscript{160}

4.5.8. SITUATION: During competition . . . the pole-vault judge notices the tape on vaulter B1’s pole has rolled down to provide ridges in the gripping area. RULING: . . . B1 will be requested to remove and replace the tape on his/her pole. (6-4-1; 7-4-2) COMMENT: Implements and equipment that become illegal through use during the meet must be replaced, but marks made prior to the discovery will stand.\textsuperscript{161}

This illustration shows that the drafters do not consider disqualification the appropriate remedy when tape develops a non-uniform thickness during competition through ordinary use. If this is the point that the drafters of the Case Book were driving at, they have failed to make this clear. If this is the point that they were trying to make, I suggest that in subsequent editions of the Case Book, the authors spell this out in the “Ruling”. If read quickly and without careful analysis, one might be tempted to conclude that vaulting with more than two layers of tape is ground for disqualification but that vaulting with tape of a non-uniform thickness is not. That interpretation is clearly incorrect.

2. Videotape

Section 4-5-9(g) is especially relevant to the pole vault. Because vaulting is such a technical event, both vaulters and coaches can learn a great deal of useful

\textsuperscript{158} One can imagine, however, in an impure world, that some diabolical opponent or opposing coach might one day sneak off and add a third layer of tape to an adversary’s pole. If that could be proved, I would strenuously urge the obvious: that the offender be punished and that the vaulter’s attempt, if successful, be allowed to stand.

\textsuperscript{159} Case Book, supra note 1, at 40.

\textsuperscript{160} Id. This illustration also involves a shot putter whose shot has developed an indentation. In order to promote clarity for purposes of illustration, I have edited out the portions applicable to the shot putter.

\textsuperscript{161} Id.
information by studying videotape. It would provide a significant advantage to a vaulter, for example, if s/he were able to review a tape of a missed vault before another attempt during a meet. The 2003 version of this rule prohibited a vaulter from looking at videotape during competition. It stated that it was grounds for disqualification when "a competitor views a videotape prior to the completion of the competition."\(^{162}\) Presumably, since the opportunity to review tape is not necessarily available to all competitors, the rule-makers reasonably decided that the ability of some to study tape would provide an unfair advantage. Although it would be possible to question the wording of the phrase "prior to the completion of the competition,"\(^{163}\) a more problematic aspect of this rule was the use of the term "videotape." Quite clearly, video technology is not standing still. Soon individuals will be able to record visual images using compact disks, mini-disks, and memory sticks. Thus, in order to prevent new video technology from outrunning the letter of § 4-5-9(g), the 2004 version of this rule has been amended to read: "A competitor views a videotape, or any other visual reproduction of competitor's performance, prior to the completion of the competition. **Rationale:** This rule change will clarify that viewing any form of visual aid, not just videotape, prior to completion of the competition could be deemed an unfair act."\(^{164}\)

\section*{C. Steadying the Crossbar}

Section 7-5-29(h) provides that it is considered a foul if a vaulter "steadies the crossbar with a hand(s) or arm(s)."\(^{165}\) It is not uncommon for a vaulter to make contact with the crossbar on a successful attempt. Occasionally a vaulter hits the crossbar rather hard, but it still stays up. This rule is designed to prohibit a vaulter from purposely or intentionally trying to keep the crossbar on the pegs. The *Case Book* illustration entitled "COMPETITOR STEADIES CROSSBAR" makes this point clear.

\textbf{7.5.29 SITUATION B:} As A1 goes over the pole vault crossbar, he/she touches the bar causing it to bounce up. While coming down A1 has the awareness and the athletic skill to steady the bar with a

\footnotesize

\(^{162}\) Id.

\(^{163}\) See id. Literally speaking, even viewing videotape before the beginning of a competition would be viewing videotape "prior to the completion of the competition."

\(^{164}\) E-mail from Cynthia Doyle, supra note 8. Perhaps it would be wise to add a parenthetical to the Rationale stating: ("this includes compact disc, dvd, memory stick, or other media now known or later developed which achieves a substantially similar result to videotape, allowing a competitor to view sequential visual images.").

\(^{165}\) See RULES BOOK, supra note 1, at 63. See also OFFICIALS MANUAL, supra note 1, at 77 ("It is a foul if the competitor... Steadies the crossbar with a hand(s) or arm(s).").
hand, keeping it on the original pin setting. The event judge rules this to be a failed jump because A1 had dislodged the bar. A1’s coach appeals the decision of the event judge citing that the bar was not dislodged from the original pin setting. **RULING:** Appeal denied. (7-5-29h) **COMMENT:** It is ruled a failed attempt if a competitor steadies the crossbar with the arms or hands.166

To be certain, it is quite possible that a vaulter’s hand(s) or arm(s) could strike the crossbar unintentionally and result in the crossbar staying on the pegs. When that occurs, technically speaking, the current § 7-5-29h would render that vault a foul. As presently written, the rule fails to distinguish intentional from unintentional steadying. An aggressive, opposing coach, for example, could argue that the vaulter’s hand(s) or arm(s) steadied the crossbar on contact. Since the rule does not expressly state that it is designed to prohibit only intentional or purposeful contact, arguably even inadvertent, unintentional contact with the hand(s) or arm(s) could result in a foul. Therefore, I recommend that the rule be amended to insert the words “purposely or intentionally” before the word “steadies.”167 This will differentiate intentional versus unintentional steadying of the crossbar.

**D. Runway Check Marks**

Section 7-5-20 allows “meet management” to provide check marks “on the runway.” These check marks can be extremely useful for vaulters. By having established check marks on the runway, vaulters can save time because they do not need to remeasure in the beginning of every meet. If a vaulter knows his/her distances for a 3, 4, 5, 6, 7, etc. -left approach, then having permanent distances marked by check marks on the runway facilitates a vaulter’s approach and improves safety.168

There are two aspects of the way that this rule is written which should be improved. First, the rule authorizes “meet management” to provide the check marks. Interestingly, the rules fail to define “meet management.” The “Forward” also refers to “meet management” (“These rules also grant authority to meet management for the conduct of these meets.”) but nowhere do the rules articulate what individuals constitute “meet management.” Nor does the **Officials Manual**

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166. **CASE BOOK, supra** note 1, at 81.

167. Of course the word “steadies” would need to be changed to have a lower case s instead of a capital s.

168. For a right-handed vaulter, the left foot is the takeoff foot. As a matter of convention, many vaulters and coaches count the left foot strikes (“lefts”) in order to evaluate the approach. Obviously, for a left-handed vaulter, the vaulter and coach count the “rights.” See Jan Johnson, *Increase Safety, Reduce Cost & Improve Performance*, AM. TRACK & FIELD, Fall 1995, at 55.
provide information regarding who is considered “meet management.” Does the term refer to the “games committee,” “meet director,” “referee,” “head field judge,” “event judge,” or some combination of these or other “meet officials” as listed in § 3-1-a-c? As a practical matter, the pole vault coach at the home venue is probably the person most likely to be responsible for marking the runway in accordance with this rule. The pole vault coach is the person most likely to understand the utility of the marks and to teach that utility to his/her vaulters. Thus, in the off-season or early in the preseason, the pole vault coach him/herself probably will mark the runway or he or she will instruct and/or supervise a groundskeeper or maintenance crew who will mark the runway. Given that this is the practical reality of how a runway is likely to be marked, it would be advisable for the rule to be amended to reflect that reality. Therefore, I suggest adding “or those responsible for the venue (e.g., the host team’s coaches)” after “meet management.” This change would reflect the realities of the customs in place at the present time, and would draw within its scope situations where either a host team’s coach or staff has marked the runway or where the meet is held at a neutral site, such as a college facility. Clearly, at a college or other neutral site it would be inaccurate to state that “meet management” is the entity to “provide check marks.” Besides, if a coach or host were to have marked the runway, query whether “meet management” would have the authority to demand that these check marks be removed. Such a result can hardly have been intended.

The second aspect of the rule that is troublesome as written, is its ambiguity. The rule states “[s]tarting at the back of the planting box, mark intervals in the following manner: . . .”169 Later in the rules, in the section entitled “COMMENTS ON THE 2003 RULES REVISIONS,”170 comment f) states that “coaches, prior to any practice, and officials, prior to any warm-ups and competition should make sure that the following are in place: . . . f) the runway is free of any obstacles, and if permanently marked, they follow the specifications in Rule 7-5-20.” Taken together, the rule and the comment appear to require that, if the runway is marked, it must be marked precisely in the manner specified in § 7-5-20. First, if this was the drafters’ intent, I wish to take a position strongly disagreeing. I agree that check marks on the runway placed at established intervals can be a tremendous aid for improving safety and efficiency. However, it is unnecessary and unwise to mandate that all 19 check marks specified by the rule be placed on the runway, or none at all. The Case Book’s language suggests that, perhaps, the rule should be interpreted in a more relaxed

169. RULES BOOK, supra note 1, at 15, 62.
170. Id. at 78.
171. Apparently the antecedent of the word “they” has been omitted. Presumably, it is the unstated “check marks”.

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manner. The Case Book's graphic entitled "POLE VAULT - PLACEMENT OF CROSSBAR AND CHECKMARKS" includes a block of text which states: "Meet management may provide check marks, not more than three inches long, on the runway." In addition, Rule 7-5-7 provides for a "recommended" minimum runway length of 130 feet. As a practical matter, however, some high school venues may not have 130 feet of space, and so it was both reasonable and prudent for the drafters to fashion this rule simply to articulate the minimum as "recommended." Thus, § 7-5-7 would permit a runway of only 110 feet because the rule merely establishes a minimum "recommended" distance. Few high school vaulters actually require an approach longer than 110 feet. But if Rule 7-5-20 is interpreted as making all 19 check marks compulsory, if check marks are in fact marked at all, it would be possible that a runway could be legal under § 7-5-7 (for example, it could be 110 feet long) but illegal under § 7-5-20 (because it could not accommodate a check mark at 120 feet). Given the purpose of the rule, this would be an undesirable and ludicrous result. Suppose also, for example, that a coach has decided not to clutter the runway with all 19 check marks, but that he or she instead has determined to keep the system rather abbreviated by simply placing marks on the runway at 10, 20, 30, 40, 50, 60, 70, 80, and, 90 feet. Although this manner of marking a runway seems perfectly reasonable and entirely within the spirit of § 7-5-20, if the rule were interpreted as mandating all 19 check marks, then arguably a runway marked in this manner would be deemed a venue that "does not meet the criteria set forth in the rules." As such, a referee would have the power - and, perhaps, would be duty bound, to "declare that the event will not be contested." It is difficult to imagine that the drafters intended such an internally inconsistent result. Thus, the Rules Committee should revise § 7-5-20 to clarify that all 19 check marks are not mandatory (if any marks are used). Rather, the rule, like § 7-5-7 which relates to runway length, should state that these are the check marks that are "recommended." Of course, this would leave one potential negative loophole: it would then be possible for a coach, for example, to mark a runway at strange distances. In order to close this loophole, the rule could be amended to read as follows:

If management or those responsible for the venue provide check marks, starting at the back of the plant box, the following 19 intervals

172. CASE BOOK, supra note 1, at 94 (emphasis added). See also OFFICIALS MANUAL, supra note 1, at 79 (same).
173. RULES BOOK, supra note 1, at 18.
174. See discussion supra Part I.E.
175. RULES BOOK, supra note 1, at 18.
176. For example, a coach, for some reason might mark 17 feet, 27 feet, 37 feet.
are recommended: 6', 7', 8', 9', 10', 11', 12', 13', 20', 30', 40', 50', 60', 70', 80', 90', 100', 110', 120'. Permanent marks shall not be placed on the runway at any distances other than these intervals, but meet management or those responsible for the venue may choose to provide all 19 of these check marks or any combination of these 19, as they deem appropriate.

E. Combining Male and Female Competitors

Section 1-2-3 provides as follows: "Combining male and female competitors in events (while scoring them separately) may occur if the head coaches of the competing teams unanimously agree or the referee deems it necessary. Rationale: When darkness or threatening weather jeopardizes competition, particularly in the distance events and the vertical jumps, this may save time."177 In the pole vault, the capabilities of male and female vaulters may overlap. For example, it may not be unusual to have both boys and girls attempting 8'6". In a regular season dual or triangular meet when both boys and girls are competing, it may often be more efficient than not to combine genders in the pole vault. It may be wise for the referee or pole vault event judge to confer with the head coaches before hand and request that they "unanimously agree" to combine the boys and girls in the interests of efficiency. If the referee is unable to persuade the head coaches to unanimously agree, arguably, the referee could, nevertheless, unilaterally "deem [it] necessary." Although the "Rationale" for the rule gives examples of impending darkness or weather as examples of situations where this rule may be invoked, it does not necessarily limit the invocation of the rule to situations only involving darkness or weather. Thus, arguably, a referee could simply state that he or she deems it necessary to combine genders in the interests of efficiency and time, in order to ensure that the pole vault will be completed by the time that the track events are completed. There is no definition of "necessary" and, although the "Rationale" is helpful, it still leaves room for ambiguity of interpretation. The ambiguity arises, in part, due to the punctuation. Note that a comma separates the word "competition" form the word "particularly." The comma here may suggest that the clause beginning with "particularly" is related to the same idea that appears at the beginning of the sentence; namely, the notion that the referee on his/her own has the authority to supersede the head coaches, meet director, and all other meet officials by unilaterally deciding to put boys and girls together in events in circumstances

177. RULES BOOK, supra note 1, at 2.
when either "darkness or threatening weather jeopardizes competition." Hence, one interpretation of the Rationale for this rule would be that "necessary" refers to situations where either darkness or threatening weather causes the referee to try to economize the time available by combining some boys and girls events. This interpretation would lead to the conclusion that darkness and threatening weather are the only circumstances which may cause the referee to invoke this rule, and that the clause beginning with the word "particularly" is meant merely to suggest that, when darkness or threatening weather jeopardizes competition, the most efficient use of this rule will be to apply it to the distance events and the high jump and pole vault, since combining those events best maximizes the use of time.

On the other hand, it is also possible to interpret the Rationale differently. It is reasonable also to construe the comma as separating the idea in the clause that follows it from the idea in the clause that precedes it. If one interprets the comma as separating the ideas of the sentence, it is possible to read the clause that begins with "particularly" as providing a third example of the type of concern that could be considered "necessary"; namely, the desire to "save time." Interpreted in this manner, the rule could empower a referee to consider it necessary to combine boys and girls in three situations: 1) when darkness jeopardizes competition; 2) when threatening weather jeopardizes competition; and, 3) when the referee desires to save time.

Since the pole vault is commonly one of the most time-consuming events, in meets where boys and girls are present at the same venue, it will ordinarily be more efficient to combine them. Thus, it will often be convenient for the referee to invoke this rule to deem it "necessary" in the interests of time. However, if the rule is interpreted to be more restrictive (i.e., if the clause after the comma beginning with "particularly" is construed to provide merely an example of how the referee might save time when darkness or threatening weather jeopardizes competition only, rather than providing a third, distinct ground for deeming it "necessary" to combine boys and girls), then the referee will be unable to invoke this rule merely in the interests of time.

Since the rule is open to both interpretations, I suggest that the rule be revised to reflect the drafters' intent. I personally would encourage a liberal interpretation of "necessary." If the rule is interpreted restrictively to mean that

178. Other than the games committee and the meet director, the referee has the broadest powers of any official. Section 3-4-1 states: "The referee is directly in charge of activities during the meet. The referee shall answer questions which are not specifically placed under the jurisdiction of other officials." Id. at 18.

179. Id.

180. See id.
darkness and threatening weather are the only two circumstances that may be considered grounds for determining that it is "necessary" to combine genders, then other, legitimate grounds for saving time would be excluded. Examples of other legitimate grounds for deeming it "necessary" to save time include: 1) where one or more teams must travel a great distance; 2) where the interests of a school's transportation company or the fees involved in transportation are affected; 3) where coaches or meet officials will be unduly inconvenienced; and 4) where other school events or functions will cause conflicts. Hundreds of individuals and their families are typically affected by the time involved in running a track meet. Thus, there are innumerable circumstances that may create a situation that would make it reasonable and undesirable for a referee to deem it "necessary" in the interests of economizing time and improving convenience to combine genders, especially in the high jump, pole vault, and distance events. I encourage the NFHS to clarify this rule.

CONCLUSION

The NFHS has been a leader in pole vault safety. NFHS rule-makers have strived to protect athletes while simultaneously balancing and maintaining the integrity of the sport. For those efforts, the NFHS is to be commended. This essay is not intended to be negative. I have not attempted to criticize the NFHS nor its rules in a negative manner. Rather, my goal has been to offer constructive criticism. In Part I, I have tried to identify and examine legal issues either raised directly by or lurking within the subtext of the rules. In Part II, I have explored and analyzed the rules in an effort to grapple with weak, ambiguous, imprecise, and inconsistent language. In sum, then, this essay provides legal analysis of the rules in an attempt to articulate legal issues related to the high school pole vault, and it attempts to strengthen and clarify the language of the rules themselves. I hope that it can be of assistance to the NFHS, meet officials, coaches, school administrators, lawyers, and judges.