

Is Risk Management at Risk?

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INTRODUCTION

Risk management is considered by legal scholars and practitioners alike to be a central concept of instructional techniques. As such, it is advocated that all physical educators, coaches, and other professionals engaged in teaching sport, fitness and recreation activities practice risk management on a daily basis as a defense against injuries and claims of negligent behavior. However, in spite of the importance of using risk management techniques, personal injury lawsuits have increased in frequency over the last 30 years (Hronek and Spengler, 1997). One possible explanation for this fact is that risk management techniques are not being practiced as frequently as they should be. That is, risk management, as a pedagogical construct, is itself at risk.

The present paper first proposes that there are several factors that collectively serve as the driving force behind the increased number of lawsuits filed against professionals involved in teaching physical and recreational skills. Namely, factors that result in increased participation across all age groups. As participation rates increase so must the number of teachers, instructors and recreation leaders. However, if these practitioners are not incorporating risk management techniques into the instructional format it is reasonable to assume that the standard of care and duty owed participants will fall short of that established by the courts. Consequently, negligent behavior will be commonplace and the frequency of injuries and legal action will rise together.

One reason why practitioners are not incorporating risk management into instructional material is that they may have little, if any, knowledge of these techniques. For example, a 1990 survey of 216 colleges and universities indicated that 62% of the institutions surveyed reported no sport law course at the undergraduate level (Cotton, 1991). With regard to training of professionals entering recreational sports the same state of affairs has been noted by Young and Jamieson (1999). They conclude, “[c]olleges and universities providing this training and curriculum for recreational sport practitioners will need to offer a comprehensive risk management curriculum which is aligned with current court decisions and standards” (p. 160).

It could be argued that in light of heightened awareness concerning the need to protect professionals against legal action the degree of training received by undergraduate students in sport law and risk management issues has increased over the last decade. Therefore, the second part of the paper evaluates the accuracy of this statement by surveying universities in the State of California that offer a major in Kinesiology (the descriptor Kinesiology is used as an umbrella term to include Physical Education, Exercise Science, Movement Studies and Human Movement). This discipline is particularly germane to the issue of risk management since Kinesiology graduates serve as the main supply of public school physical education teachers and coaches.

INCREASED RATES OF PARTICIPATION

The following factors are proposed as major determinants of increased rates of participation.

The Aging Population

At the end of the year 2000, an estimated 35 million Americans, or approximately 12.8% of the US population, will be 65 or older. This number will increase to 40 million (13.3%) by the year 2010. Stated another way, over the next 30 years, people in the 50 plus age group will increase by 74% while the number of individuals below the 50 year mark will grow by 1%. Furthermore, this elderly group will have more disposable income than any previous generation. When large numbers of participants with discretionary income are combined with a highly developed desire to stay vital and healthy by being active a unique and dominating marketplace will emerge. The sheer number of older individuals fitting this profile will demand that a greater number and variety of organized sport, exercise and recreation programs be provided.

Title IX

The enactment of Title IX of the Education Amendments of 1972 provides a legal mandate for equal opportunity for females to participate in interscholastic and intercollegiate sports. The extent to which the law has facilitated female participation has generated considerable discussion and controversy (Fleischman, Byers & Lincoln, 2000; Hickman, 1992). But the fact remains that female participation has dramatically increased as documented by the National Federation of State High School Associations (1999) which reports that for the period from 1972 to 1999 the number of females athletes increased from 294,015 to ap-

proximately 2.65 million. During the same period the number of male participants increased slightly from 3.6 to 3.8 million.

Commercialization of Sport

The development of any sport, exercise and recreational activity is greatly influenced by television exposure. 24 hour sport channels, programming devoted solely to outdoor recreational activities, and major network coverage of both traditional (e.g. football, basketball, baseball) and newly developed professional sports (e.g. roller hockey, mountain biking, surfing, snowboarding, triathlon) directly translates into a larger viewing audience. This self-perpetuating cycle of increased ratings, greater corporate sponsorship and prize money, which raises the quality of competition, and in turn generates more viewers, all but guarantees growth of the sport. There is however, a secondary, but very important, by-product of this commercialization. Namely, increased amateur participation, particularly at the youth sport level. Soccer serves as a case in point. Commitments by network television to provide full coverage of the men's and women's World Cup competition and the newly formed United States outdoor-professional league have done much to popularize the game beyond all previous efforts. For example, during the year 1998-1999 the American Youth Soccer Organization reported a 61% and 39% increase in enrollment for boys and girls respectively.

Government Involvement

Interest in public health by both state and federal government agencies, together with greater emphasis on preventative medicine, will stimulate greater participation across the lifespan (Stone, McKenzie, Welk and Booth, 1998). For example, a report published every five years by the United States Department of Agriculture (USDA) included, for the first time in the year 2000, physical fitness as one of seven dietary guidelines for healthy living (USDA 2000). In a similar vein, the National Institutes of Health recently funded a 6-year \$30 million grant aimed at increasing cardiovascular fitness in middle school girls across six states (McKenzie, 2000). The aging of America and the medical complications resulting from a sedentary lifestyle will force public health agencies to explore and develop preventative programs to offset the prohibitive costs of medical care. The simplest and most cost-effective strategy will be to financially underwrite activity programs designed to educate the public about the benefits of exercise and proper nutrition and simultaneously provide opportunities for the lay public to put this information into practice.

SPORT LAW AND RISK MANAGEMENT TRAINING

For the purposes of the present paper the California State University system was selected as a 'case' study. This university system was chosen because it is a large system of twenty-three universities attended by approximately 360,000 students, and because this higher education system has played a prominent role in teacher training. Graduates from the university system constitute 56% of all teachers receiving a Teaching Credential in the state of California. In recent years this traditional commitment to teacher preparation has become less pronounced as the physical education orientation has changed to assume a broader scientific approach to exercise. As such, many students graduating with a degree in Kinesiology pursue alternative occupations in diverse areas such as athletic training, physical therapy, and allied health. However, these professions are no less immune from being sued and students in these career specializations should also receive training in legal issues as a first line defense against litigation. Therefore, data for these specializations were examined together with the specialization of teacher education.

Method

Of the 23 universities in the system, all but three offer a major in Kinesiology. After an initial telephone contact soliciting support for the project and a commitment to participate, a survey was sent to the Department Chair of each Kinesiology department. The chair was selected as the appropriate respondent as they possessed the best knowledge regarding degree requirements and the structure of the curriculum. 15 of the 20 department chairs responded and one chair delegated the responsibility of completing the survey to a lecturer assigned to the content area of sport law. The 16 responses constituted a survey return rate of 80%.

The survey consisted of 19 questions. Seven questions were designed to provide demographic information and the remaining questions specifically elicited data concerning sport law and risk management training at the undergraduate level. Five of the latter questions required a written response (as opposed to listing data) in which the Department chair described factors and reasons for curricular decisions and implementation of course material. Several of the questions required multiple responses.

Results

A total of 5824 Kinesiology students were enrolled in the 16 departments participating in the survey. The average number of majors in each

department was 385 with a range of 800 (San Diego State University) to 118 (California State University Bakersfield). Approximately 1199 students graduate from these departments each year. Information concerning the specializations (i.e. tracks, course options, emphases etc.) offered throughout the university system and the number of students opting for these specializations is presented in Table 1.

The only specialization common to all departments surveyed was teacher education with a total of 1868 students which accounted for 32% of the total number of students enrolled in the university system. Teacher education was followed by a pre-physical therapy option, which represented 13.4% of the student enrollment ($n = 780$). The fewest number of students ($n = 45$; 0.7%) declared adapted physical education as the specialization of choice.

Departments chairs were asked if a course in sport administration was required in one or more specializations. This question targeted the traditional practice of including sport law issues within an administration course. Of the 16 departments sampled, 69% ($n = 11$) indicated that such a course was required. Data in Table 1 indicates which of the subject specializations require an administration course and the total number of students associated with each specialization. Additionally, the number of departments requiring the course by specialization is also provided. A total of 1459 students were committed to specializations requiring an administration course. Thus, approximately one quarter of the total number of Kinesiology majors complete a course devoted to principles of administration. Nine departments required such a course for teacher education students, which accounted for 1025 or 70.2% of the students with a declared specialization in this content area. This was followed by sports medicine in which four departments required an administration course for a total of 229 students (15.6%).

It remains possible that sport law instruction is provided in courses other than an administration course. This would result in more students than indicated by the aforementioned data receiving instruction in this content area. Consequently, one question asked if any classes -other than the administration course- provided instruction on legal issues in Kinesiology. Table 1 indicates the distribution of required and elective classes across specializations. Survey responses indicated that 13 of 16 departments (81%) require a class in which legal issues are introduced. (It should be noted that the data in Table 1 provides an inflated total of departments offering other classes because the students of more than one specialization receive education in legal issues). Based on this statistic of 81% it could be concluded that a high percentage of departments

Table 1

Descriptive statistics for the California State University system by Kinesiology specializations

Specialization	Student enrollment	Admin course required	Other classes Req.	Elec.	% of class devoted to legal issues
Pre-Physical Therapy					11.5
Number of students ¹	780	50			
Number of departments ²		3	1		
% taking admin. Course ³		3.4%			
Teacher Education					15.3
N	1868	1025			
Number of departments		9	10	1	
% taking admin. course		70.2%			
Sports Medicine					8.5
N	619	229			
Number of departments		4	3		
% taking admin. course		15.6%			
Adaptive PE					35.0
N	45	45			
Number of depts.			2		
% taking admin. course		3.1%			
Liberal/Movement Studies					11.5
N	565	110	2	1	
Number of departments		1			
% taking admin. course		7.5%			
Exercise Sci					10.0
N	446				
Number of depts			2		
Health/Adult Fitness/wellness					
N	126				
Number of departments			1		5
Undeclared					
N	735				
Other options					
N	640				
Number of departments			1	2	22
Total N	5824	1459			

¹Total number of students in each specialization

²Total number of departments offering a required administration course

³%age of students in each specialization taking and administration course

are addressing the need to train undergraduates in legal issues. At a deeper level of inspection, however, the facts do not support this initial conclusion.

First, it was clear from the survey responses that the question regarding required or elective courses other than the administration course was interpreted to mean that exposure to legal issues occurred in multiple courses and not in a stand-alone sport law course. Indeed, of the 16 departments surveyed only one offered a sport law course at the undergraduate level and that class was an elective option. This class involved a total contact time of 110 hours for four units of credit. Many department chairs responded that legal concepts are integrated into classes required for each specialization. For example, during a methodology class in football the student receives instruction about risk management, etc., as a natural extension of the pedagogical material. This segmented approach does have value in taking advantage of the 'teachable moment' and serves to provide a practical example of risk management as it pertains to the topic under discussion. However, without standardization of the type and depth of legal material introduced this specialization approach can lead to inconsistency in content matter both within and between departments throughout the university system.

Second, the data indicate that the percent of time devoted to legal issues is relatively small. Collapsed across specializations the average percentage time devoted to legal issues (including administration courses) is 25.3% (see Table 1). For teacher education, however, the average time is considerably less at 15.3%, even though this specialization was identified by the largest number of department chairs as needing required class experiences in legal issues. Two respondents answered that they did not know how much time was devoted to legal issues and four department chairs did not respond to this question.

Response data concerning preferences for including a sport law class are presented in Table 2. When asked if a class involving legal issues should be part of the undergraduate experience five department chairs responded yes compared to seven responding no. Four chairpersons failed to respond to the question or expressed no opinion. Thus, only 31.2% of the department chairs sampled were in favor of a sport law class. This result is consistent with the fact that only one elective sport law class is currently offered throughout the 16 universities sampled.

To further explore this problem, the question concerning inclusion of a sport law class was asked a second time with the qualification that it be assumed the department has sufficient resources to include such class in the curriculum. In this scenario, ten department chairs responded they

Table 2
*Response data for inclusion of a class on legal issues and
 risk management*

	Yes	No	No opinion or response
Do you think a class in legal issues should be part of curriculum?	5	7	4
Would you include a class if resources were available?	10	2	4
Reasons for not offering a sport law class			
Would have to drop another class from the major requirement	2		
Needs to be discussed as part of subject specific classes	9		
No opinion or did not respond	5		

would include a class with two having the opinion that this type of course should not be taught. Four chairpersons were undecided or without opinion. Two reasons were cited why a sport law class is not currently part of the curriculum. Nine department chairs expressed the opinion that sport law issues are subject specific and best taught by integrating the material into existing classes required for each specialization. The other reason cited was that another course would have to be eliminated from the curriculum and faculties were not willing to pursue this option.

SUMMARY

The paper presents information that indicates that in the foreseeable future a greater number of people will be active in sports. Second, survey generated data were presented indicating the degree of legal training undergraduate Kinesiology majors receive at 16 California universities. Of these universities, none require a sport law course and only one provides an elective sport law course. Approximately 25% of all students enrolled in the Kinesiology major are required to complete an administration course, yet, teaching of legal concepts is largely subsumed within the general content of classes that are specific to the specialization chosen by the student. Furthermore, data indicates that this approach yields a low exposure rate to legal issues since the majority of class content centers on non-legal information. The most frequently cited reason for not offering a sport law class is that it would not be specialization specific.

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