

ARTICLES

**Best Case Scenario: The Development of a
Teaching Tool for Sport Law**

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Teaching excellence is the goal of most college instructors with the primary commitment of any professor being the full development of the abilities and talents of all students (Picou & Cantrell, 1998). Picou and Cantrell further proposed that experience-based learning, which includes the use of the case study method, was a pedagogical innovation in teaching college business courses. Yet, in law schools and legal courses across many disciplines, the use of the case method has been in place for over 130 years (Garner, 2000).

In teaching sport law courses, a tool of experience-based learning is finding appropriate case law to illustrate key legal points. Students in sport law courses using the case method benefit by learning how to reason, discriminate and judge legal principles and their application to real situations. Garner (2000) proposed that the case method provides a more realistic view of the law than other methods and equips students with the skills to be "self-educated" (p. 318).

From the sport law instructors' perspective, however, the search for case law is time intensive and not always easy to access. There are legal databases available for anyone to conduct searches for related case law, but one must know where to look on the Internet and take the time to conduct the search. There are two primary legal databases available for the search of case law:

LexisNexis and Westlaw. LexisNexis is an online service providing access to literally billions of documents including its Web-based legal research service (Enhancements to LexisNexis, 2002). Westlaw, introduced in 1975, is also a leading online legal research service provided only to law schools and legal professionals through subscription (About Westlaw, n.d.). While both databases provide vast amounts of information, access through institutional libraries is sometimes limited and not always convenient.

For the instructor teaching a sport law course through a sport management curriculum in a recreation or kinesiology department, access to finding case law is not convenient nor always easy. An additional obstacle for sport law instructors is knowing whether a particular case has been overturned on appeal, reversed, or remanded. The result can be a case that was once appropriate for illustrating a particular legal principle is no longer viewed as good law because it is no longer upheld in the court system. Obviously, a problem of accessing good case law appropriate for illustrating key legal principles in sport law exists. The purpose of this article is to illustrate the development of a teaching tool that was meant to be a solution to this dilemma of access. The authors, all instructors of sport law courses, recognized and experienced the aforementioned problems and sought to solve this problem through research-based methods. The end result was a teaching tool promoting active learning intended to be a supplement to any sport law text or course.

PROCEDURES

Development of Content Areas

One of the initial steps necessary in the process was the identification of the legal content areas appropriate for sport law. In a review of the literature, a number of well-known sport law scholars (Appenzeller, 1970; Appenzeller, 1975; Baker, 1970; Appenzeller & Appenzeller, 1980) emphasized the importance of tort law for administrators, coaches and teachers involved in sport. In the early 1990s, Cotten (1991) and Pittman (1992a; 1992b) published studies among the first efforts to discover what content areas were being included in sport law courses as well as what should be included. Cotten's study revealed negligence (tort law) received the most emphasis of the 12 content areas listed. The results of Pittman's studies ranked products liability, risk management and tort law as primary content areas along with administrative law, constitutional law, and contract law as secondary content

areas. Furthermore, if time allowed, Pittman found that judicial system and legal research should be included as content areas.

In 1993, the National Association of Sport and Physical Education (NASPE) developed their program standards for sport management curricula identifying one of the required content areas as legal aspects of sport. Within this content area, students were to receive instruction in the court system, contract law, tort law, constitutional law, agency law, antitrust law, labor law, discrimination, and risk management. In 2000, the NASPE standards were revised to be more specific. At the undergraduate level, tort law, risk management procedures, product liability, constitutional law, contract law, administrative/statutory law, the legal system, and crowd control/security were all required to be addressed. In addition to these areas, labor/antitrust law and legal research were to be addressed at the graduate level.

Since the publication of the NASPE standards (2000), two studies related to sport law curricula have been conducted. A study by Young (2001) indicated that most sport management curricula were following the 2000 NASPE standards with the content offered in their undergraduate and graduate legal issues courses. Yet, a recommendation was made that further research be conducted to investigate the academic preparation and experience of those teaching legal issues courses (p. 240). In 2002, Batista and Pittman incorporated some of Young's recommendations and partially replicated the earlier study by Cotten (1991). Their research revealed that negligence, constitutional law, statutory law, contract law, and risk management were receiving the most emphasis in college/university classrooms. As a result of the review of literature the following legal content areas for case law in the present study were as follows: antitrust law, constitutional law, contract law, employment/labor law, products liability law, statutory law, Title IX, tort law, and intellectual property law.

Methodology

The Delphi technique was the method selected to obtain a consensus on the case law that best represented each legal area. The Delphi utilizes a small group of experts through a series of three to five rounds of questions designed to gain consensus on the topic under study. Since its inception, however, the Delphi has been implemented in a wide variety of areas including education, health-care, recreation, tourism and business. According to Delbecq, Van de Ven, and Gustafson (1975) the applications for Delphi have broadened to the extent that it has become a "multiple-use planning tool" (p. 84).

Delbecq et al. (1975), Rotondi and Gustafson (1996), Turoff (1975), and Ziglio (1996) all suggested that the Delphi has some specific merits in eliciting and processing judgmental information. First, the Delphi focuses the attention of the participating panel of experts directly on the issue under investigation. This focus can be achieved through a classical or modified Delphi approach. The Delphi technique provides a specific framework to enable individuals with diverse backgrounds to participate and engage in work on the same problem. For example, in this project, sport law scholars came together to focus upon identifying the case law that best represented legal concepts most frequently found in sport management.

The participants in a Delphi study can be geographically dispersed and still participate affording greater flexibility in the selection of an expert panel. Another merit of the Delphi is its anonymity feature (Martino, 1983). Because the members of the panel do not know who else is in the group and because group members may be geographically dispersed, the tendency to follow-the-leader, or the band-wagon syndrome, is minimized. This design of the Delphi results in an opportunity for equal and balanced participation afforded to all respondents.

A final benefit, or merit of the Delphi method is that upon completion of the process, a precise, documented record of the group consensus results. Because respondents are submitting their written responses to each round of the questionnaire, a written documentation is the final result at the completion of the rounds. This feature demonstrates the degree of difference of opinion that existed within the group and results in showing the entire perspective of an issue. Ng (1988) commented on this feature by stating "the differences between convergence and divergence may be used analytically to further understand the entire possible future event" (p. 35).

A modified Delphi technique was selected as most appropriate for this project. This meant cases would be selected by the researchers prior to being presented to the panel in the first round of the Delphi, as opposed to having panel members select all the cases. The researchers conducted a content analysis of 22 texts and treatises (see Appendix A) noting over 120 cases that frequently appeared or were selected as leading cases. These cases were categorized into the nine content areas and submitted to the panel of experts.

Selection of Panel of Experts

The panel members were identified through the network sampling method because the individuals sought did not "form a naturally-bounded group, but were scattered throughout the population" (McMillan & Schumacher, 1997, p.

398). The most likely source of experts in sport law came from the Sport & Recreation Law Association (SRLA, and formerly known as Society for the Study of Legal Aspects of Sport and Physical Activity). The executive director of SRLA was contacted and asked to make recommendations for the panel.

The development of criteria for the selection of the panel of experts strengthened the study by validating the credibility of the jury. Delbecq et al. (1975) suggested that criteria may include published contributions, established practice and reputation in the field, membership in professional organizations, and peer recognition. The criteria for selection to the panel for this study were individuals interested or teaching in the sport law area, knowledgeable in sport case law, recognized by their peers as having pertinent knowledge in sport law, and who were willing to make the time commitment to the study. The key informant (SRLA Executive Director) nominated 78 SRLA members fitting the criteria. These individuals were sent correspondence explaining the process and requesting their nominations of individuals fitting the prescribed criterion. As a result of this mailing, 161 nominations were received recognizing 52 individuals as experts in legal aspects of sport. Since a number of the nominees received more than one nomination, potential panel members were ranked according to the number of nominations they had received. Letters of invitation were mailed to 25 individuals who had received a minimum of three nominations. From this group, 18 individuals consented to participate in the study.

Once the panel was established, it was determined that not all panel members would have expertise in all nine content areas of case law. This is a limitation of the Delphi method that was discussed in the literature. Ng (1988), while acknowledging that experts are the individuals who are knowledgeable in a particular area, also questioned whether that expertise and competency of the panel was relevant to the multidisciplinary nature of issues studied through the Delphi method. Linstone (1975) cautioned against illusory expertise if "subsystem specialists" (p. 581) were utilized. Often, individuals who are experts in one particular aspect of a subject area cannot be considered experts of the entire subject area. The problem tends to be that these experts maintain too narrow of a focus. Helmer (1968) countered this disadvantage by suggesting that researchers make the most constructive and systematic use of the experts' opinions. In a similar fashion, assessing the knowledge base of experts can be conducted by asking potential jurors to estimate their own levels of expertise.

Each of the 18 panel members was sent a self-assessment of their expertise in the nine content areas of law. Based upon their assessments of expertise,

panel members were assigned to different legal areas, with no panel member being assigned to more than three legal areas. This meant that panel members would only review the cases in their assigned content area.

RESULTS

The first round of the Delphi commenced with 102 cases representing nine legal areas being sent to panel members via email. The email method of correspondence was used in an effort to save both time and money (Young & Jamieson, 2001). Panel members were asked to review case summaries and rate the representativeness on a 5-point Likert scale (1=poor case representativeness; 5=best case representativeness) of each case for its particular content area. Panel members were also asked to list other cases of which they were aware that were representative of their legal area for inclusion in the second round of the study. Using this method, 63 new cases were recommended by the panel for round two. The rate of response in the first round was 100%.

Round two indicated two tasks for the panel to accomplish. First, the results of round one with each case and its mean rating score were provided. Panel members were asked to indicate whether they agreed or disagreed with the group rating score for each case. If they did disagree, they were asked to write a score they felt was more appropriate for that case, and briefly state their reason for doing so. The second task required panel members to review and rate the representativeness of new cases in their area(s) that had been suggested in round one. As in round one, a 100% response rate was received in round two.

Since the goal of the Delphi was to identify those cases most representative of each legal area, a score of 3.51 on the 5-point Likert scale was chosen as the cut-off score for determining the cases that would be selected for the casebook. A cut-off score of 3.51 and higher represented the lower real limit of the "good case representativeness" category along with the "best case representativeness" category for rating cases. By the end of round two, a general consensus had been achieved for 61 cases that received a consistent rating of 3.51 or higher on the 5-point scale over the first two rounds of the Delphi. While a portion of the Delphi was complete, a third round was necessary in order to gain feedback on the new cases that had been rated in round two. The third and final round of the Delphi was sent to the panel with instructions to review and re-rate the group rating of each case. Upon completion of round three, with a 100% response rate, 48 additional cases had consistently been rated at 3.51 or higher. With the Delphi

process completed, 109 cases had been selected as the best cases representing the nine legal areas for the casebook (see Table 1).

TABLE 1

Cases Receiving Mean Scores of 3.51 or Higher After Two Delphi Rounds

<u>Legal Area Category</u>	<u>Number of Cases</u>
Antitrust - College	4
Antitrust - Professional	14
Contract	5
Constitutional - College	6
Constitutional - High School	11
Products Liability	10
Statutory	10
Title IX	10
Tort - Professional	5
Tort - College	11
Tort - High School	6
Tort - Recreation	11
Intellectual Property	6

The Westlaw KeyCite® system was utilized to check the status of all the cases to determine which ones were still valid and considered good law (Westlaw, 2000). Any case that was red-flagged on Westlaw, indicating that it was no longer valid for at least one of the points it contained, was eliminated. Yellow-flagged cases, indicating some negative history but no reversal or overruling, were retained as were those with a blue H (indicating a case with some history) or green C (indicating a case citing references but no direct or negative indirect history). As a result of this scrutiny, 90 cases were selected as accurately representing primary legal points and principles (see Appendix B for a complete list).

QUESTION DEVELOPMENT

Once the cases had been selected to illustrate key legal points and principles, efforts to apply the results of the Delphi to the classroom as a teaching tool needed to be undertaken. At the heart of using the case method in a class is a discussion facilitated and guided by the course instructor. Heath (1999) suggested the discussion's "effectiveness depends upon well-crafted questions" (p. 32). As a result, discussion questions for each case needed to be developed to assist instructors in facilitating and guiding discussions. In addition to facilitating class discussions, the questions were developed to help the student read the cases more carefully and cull key facts and principles from each case. This purpose was supported by Wood and Anderson (2001) when they stated "clarifying and probing questions leads students to better understand how they learn, how they process knowledge, and how to hold images and reflect upon their visualizations" (p. 6). Furthermore, the questions were developed to stimulate more critical thinking on the part of the student in terms of legal principles. McDade (1995) supported this criteria for discussion questions by stating questions should be designed to guide "students through a sequence of critical thinking in which the students think out loud to share their thinking processes with their teacher and their student colleagues" (p. 10). Through the use of questions, the purpose was to propel the case study method into a unique learning experience.

Published court decisions are comprised of certain basic elements. This provides a good framework for question development. The basic elements of a case are case facts, legal issues, arguments, and the judicial decision (McDonnell, 2002). Additionally, problem solving (the ultimate goal of the case method approach) involves four interrelated steps from the Learning Styles Inventory developed by Kolb, Rubin and McIntyre (1974). These steps are applicable to the elements of a case and also help provide the basis for

question development. The first step is the encounter with a concrete set of experiences corresponding to the data or facts in a case. The second step in the Learning Styles Inventory is reflective observation. This involves assessing the concrete situation in a functional manner without first making value judgments or fixing blame. The third step is abstract conceptualization of the problem involving knowledge of theories and concepts to place information in a conceptual framework and better define the problem. The fourth, and final step is active experimentation. This involves developing and testing various hypotheses that leads to making and implementing a final decision.

The literature suggested that questions related to case studies should open issues and perhaps use a series of simpler questions leading to more complex questions to address the main issues (McDade, 1995; Picou & Cantrell, 1998). In an attempt to follow this pattern as well as incorporate Kolb et al. (1974) learning styles, a set of factual questions was developed for each case. These questions were simple questions requiring factual statements as answers. The purpose of these questions was to require the students to read the case and respond with accurate information regarding the factual background of each case. In terms of the Learning Styles Inventory (Kolb et al.) this type of question represented the encounter with the concrete set of experiences. These questions could either be open-ended, encouraging students to summarize the facts of a case in a clear and concise manner, or very specific, encouraging students to seek key facts of the case. Examples of factual questions included identification of the plaintiff and defendant, the court deciding the case, the facts of the case, the cause of action and the disposition of the court.

The next type of question leading to the main issues required students to identify underlying legal principles, explain legal theories, and make application of the principles or theories to the case. Legal issues represent the second element of a case upon which questions may be developed. A case is decided based upon both the facts of a case and the relevant law. The issues of a case are the legal questions that, in light of the facts, form the basis for the judicial decision. Questions relevant to legal issues would represent reflective observation, the second step in the Learning Style Inventory (Kolb et al., 1974). This involves assessing the concrete situation in a functional manner without first making value judgments or fixing blame and would be the equivalent of applying the relevant law (legal issues) to the concrete situation (facts) in an objective manner. Questions asking students to define doctrines or explain legal principles as they applied to the case at hand provided a way for instructors to reinforce the learning process of a previously discussed topic.

The last type of question was meant to stimulate the critical thinking of the students and to serve as a catalyst for more in-depth class discussions.

Questions such as "What steps could have been taken to avoid this case?" and "Do you agree or disagree with the disposition of the court on this issue. . .why, or why not?" were developed for each case. McDade (1995) referred to this type of learning as "first-person analysis" (p. 9) requiring the students to ascertain resources, constituencies, and constraints as well as determine the source of conflicts. By contemplating these questions, students are forced to employ critical thinking through identifying relevant and irrelevant information in the arguments, selecting what they believe to be the best argument, and providing their rationale for it (Tomey, 2003). From the Learning Styles Inventory (Kolb et al., 1974), these questions represent abstract conceptualization of the problem. Using knowledge of legal theories and concepts set forth by the attorneys in the case, students place information in a conceptual framework better defining the problem while determining the key issues and best arguments in the case. Additionally, these types of questions provide the opportunity for students to develop their problem solving skills in terms of critiquing the judicial decision in the case. In developing answers to these questions, students would be required to identify alternatives as well as anticipate and assess consequences of decisions and actions they might take. In the Learning Styles Inventory (Kolb et al.) this is referred to as active experimentation involving the development and testing of various hypotheses. In a legal case study, the hypotheses represents alternative case outcomes while leading to the final aspect of problem solving as well as making and implementing a final decision.

With the development of questions for each case, the teaching tool using the case method of learning was complete. The case method of learning provides "a process of participatory learning that facilitates active and reflective learning and results in the development of critical thinking and effective problem-solving skills" (Tomey, 2003, p. 37). The key to providing this learning experience lay in both the selection of cases and the development of questions for those cases.

The final format of the teaching tool was a softcover workbook divided into the nine legal content areas. Each content area contained a brief introduction and was followed by a number of pertinent edited cases. In order to keep the length of the workbook reasonable, the edited cases were contained on a CD-Rom that accompanies the workbook. The workbook pages contain the questions for each case. While the teaching tool has not yet received widespread use by instructors of sport law courses, those who have used it were pleased with the enhancements to learning that it provided.

SUMMARY AND CONCLUSION

The study of law in recreation and sports has gained both popularity and importance given the increasing amount of litigation in the sports industry and a growing interest among students in physical education, recreation, and sport management curricula. More legal courses are being offered in college and university undergraduate and graduate programs along with an increasing number of recreation and sport law texts and treatises entering the market. These texts and treatises serve an important purpose in presenting important information on important legal theories and topics, yet they do not always provide access to good case law appropriate for illustrating key legal principles in sport. As a result, a teaching tool containing time-tested case law in sport and promoting active learning through the case method was developed. The intent of this instructional aid was to not only better prepare students to learn important legal principles in recreation and sport, but to also assist instructors in obtaining teaching excellence in the classroom.

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APPENDIX A

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APPENDIX B

Casebook Court Cases

Antitrust-College

- Ass'n for Intercollegiate Athletics for Women v. NCAA, 735 F.2d 577 (D.C. 1984)
- Banks v. NCAA, 977 F.2d 1081 (7th Cir. 1992), *cert. denied*, 508 U.S. 908 (1993)
- Law v. NCAA, 5 F.Supp.2d 921 (D. Kan. 1998), *cert. denied*, 525 U.S. 822 (1998)
- NCAA v. Board, 468 U.S. 85 (1984)

Antitrust-Professional

- Brown v. Pro Football, Inc., 518 U.S. 231 (1996)
- Chicago Professional Sports, Ltd. v. NBA, 95 F.3d 593 (7th Cir. 1996)
- Federal Baseball Club v. Nat'l League of Professional Baseball Clubs, 259 U.S. 200 (1922)
- Flood v. Kuhn, 407 U.S. 258 (1972)
- Los Angeles Memorial Coliseum v. NFL, 726 F.2d 1381 (9th Cir. 1984)
- Smith v. Pro Football, Inc., 593 F.2d 1173 (D.C. Cir. 1978)

Constitutional-College

- Blair v. Washington State Univ., 740 P.2d 1379 (Wash. 1987)
- Hall v. Univ. of Minnesota, 530 F.Supp. 104 (D.C. Minn. 1982)
- Hill v. NCAA, 26 Cal. Rptr.2d 834 (Cal. 1994)
- NCAA v. Tarkanian, 488 U.S. 179 (1988)
- Univ. of Colorado v. Derdeyn, 863 P.2d 929 (Colo. 1993)

Constitutional-High School

- Denis J. O'Connell High Sch. v. Virginia High Sch. League, 581 F.2d 81 (4th Cir. 1978), *cert. denied*, 440 U.S. 936 (1979)
- Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443 (5th Cir. 1994)
- Jager v. Douglas County Sch. Dist., 862 F.2d 824 (11th Cir. 1989)
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