



For The Record

The Official Newsletter of the National Sports Law Institute

INDEX

2008 Joseph E. O'Neill
Recipient Speech

Martin J. Greenberg,
*College Athletics—Chasing
the Big Bucks*

→This article discusses
escalating costs in
college athletics with a
particular focus on
coaching salaries

Lewis Kurlantzick,
*OPINION: What's
Wrong with Steroids?*

→This opinion piece
provides an interesting
perspective on the steroid
controversy

NSLI CALENDAR

SEPTEMBER 27, 2008

Annual Fall Golf Classic
→Scenic View Country
Club

OCTOBER 24, 2008

Professional Sports:
Current Issues and Their
Future Implications
→Marquette University
Alumni Memorial Union

The Honorable Anne M. Burke

2008 Joseph E. O'Neill Award Recipient*



NSLI Director Matt Mitten, Hon. Anne M. Burke, Attorney Mark Vetter

INTRODUCTION BY MATTHEW J. MITTEN**

The Joseph E. O'Neill Award was established by the O'Neill family, the law firm of Davis & Kuelthau, S.C. and the National Sports Law Institute after Mr. O'Neill's untimely death in 1992. This award is given annually to an individual in the sports industry who has made a significant contribution to the field and done so while exemplifying the highest ethical standards. Past recipients of the Award include: 2007 - Frank DeGuire (L'60) (Dean Emeritus, Marquette University Law School); 2006 - Richard Berthelsen (General Counsel, National Football League Players Association); 2005 - Michael Cramer (L'78) (Chief Administrative Officer of Pinnacle Foods Corp., a partner in C. Dean Metropoulos & Co., and formerly Chief Operating Officer of Southwest Sports Group); 2004 - Michael Marcil (L'85) (Commissioner, North Central Conference); 2003 - Robert DuPuy (Chief Operating Officer, Major League Baseball); 2002 - Michael Slive (Commissioner of the Southeastern Conference); 2001 - Martin J. Greenberg (L'71) (Managing Director, ScheerGame Sports

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*This Award was presented to Justice Burke during the National Sports Law Institute's Annual Awards Banquet at the Hilton Milwaukee City Center on Friday, April 25, 2008.

**Professor of Law and Director, National Sports Law Institute, Marquette University Law School.

Development, LLC) and Charles Mentkowski (L'48) (Professor Emeritus, Marquette University Law School); 2000 - Wendy Selig-Prieb (L'87) (former President and Chief Executive Officer, Milwaukee Brewers Baseball Club); 1999 - Daniel R. Doucette (President and Principal Owner, Milwaukee Rampage, and President and Chief Executive Officer, Milwaukee Mutual Insurance Company); 1998 - Charles W. Mulcahy (L'62) (Whyte Hirschboeck Dudek SC, and President, Milwaukee Tennis Classic Foundation); 1996 - Joseph E. Tierney, Jr. (attorney for the Bradley Foundation and Milwaukee Admirals); 1995 - Brian Burke (Vice President and Director of Hockey Operations for the National Hockey League); 1993 - A. Jackson Mills (President, Ascent Sports Management, Boulder, Colorado).

The 2008 O'Neill Award recipient is the Honorable Anne Burke, a justice of the Illinois Supreme Court. One might initially wonder why an Illinois Supreme Court justice is being honored with this award. But after I tell you about Justice Burke's efforts to make sports participation opportunities available to all members of society and her contributions to the dynamic field of sports law, I am sure everyone will see why she is a well-deserving recipient of the O'Neill Award.

Several months ago, I read an article in the *Chicago Tribune* about the City of Chicago's efforts to host the 2016 Olympic Games, an international sports competition well known to all of us. This article also discussed another equally important international sports competition that arose out of the compassion, creativity, and persistence of a 21-year old physical education teacher with the Chicago Park District who volunteered to work with mentally retarded children in 1965. Forty-three years ago, Anne Burke introduced Chicago to the abilities of mentally retarded and learning impaired children by developing athletic competitions for them. At that time our country did not recognize that those with disabilities also had abilities, or that they could enjoy and benefit from athletic participation as much as others. She nurtured this athletic competition into an annual event and founded the Chicago Special Olympics in 1968, which grew to become the International Special Olympics that now has participants from more than 160 countries. As a result, the world now recognizes and better appreciates the talents of these members of our society.

Founding the Special Olympics is only part of Anne Burke's lifetime devotion to public service. Throughout her life, she has focused on serving as a children's advocate and endeavored to provide a voice to society's most vulnerable citizens. After earning her B.A. in Education from DePaul University and graduating from Chicago-Kent College of Law, Illinois Institute of Technology in 1983, she began a neighborhood law practice that included representing the interests of children and families in cases involving issues of neglect, abuse, delinquency, and parental custody. She has written extensively about children, the disabled and ethical leadership. Throughout her career, she has served on numerous boards and foundations including Special Children's Charities and the Caritas Foundation, the Persons with Disabilities Fund Board of Advisors, and the St. Rose School for the Mentally Disabled. Justice Burke has also received significant recognition and several awards for her many achievements, including Chicago-Kent College of Law's Distinguished Service Award, the Catholic Lawyers Guild of Chicago's Lawyer of the Year Award, and an honorary doctorate from St. Ambrose University.

In 1987, Governor James Thompson appointed her as a judge of the Court of Claims, and she served on this court until her April 1994 appointment as special counsel to the Governor for Child Welfare Services. In August 1995, she was appointed to the Illinois Appellate Court, First District and was elected in 1996 for a full term. On July 6, 2006, she was appointed to the Illinois Supreme Court. Justice Burke recently authored the majority opinion in *Karas v Strevell*,¹ in which the court redefined the Illinois tort liability standard for injuring a fellow athlete during contact sports. Her opinion also established the state's tort liability standard for sports leagues, governing bodies, and referee associations

1. 227 Ill. 2d 440 (2008).

for injuries to competing athletes. I am proud to note that she cited and relied upon a 2006 article in the *Marquette Sports Law Review* in her opinion.²

Please join me in welcoming the Honorable Anne Burke, this year's Joseph E. O'Neill Award recipient.

REMARKS OF ANNE M. BURKE

Good evening ladies and gentlemen. Many thanks for that kind introduction. First of all I want to congratulate the student award recipients and the Charles W. Mentkowski Sports Law Alumnus of the Year, Jim Gray, for their awards. Congratulations.

I cannot remember a day in which sports were not an important part of my life. Even as a young girl growing up on the South side of Chicago – I was always in the parks. The parks were an endless source of excitement, challenge and growth.

I am not certain I always had a philosophical understanding of sports – but if you could throw it, kick it, hit it, bounce it, twirl it, ride it, climb it, slide down it or swing from it – that was for me.

I loved the daring, harrowing, uplifting surprise of sports in which best friends were discovered, and the most noble of intentions created champions.

Sports shaped neighborhood life, and local reputations, house-by-house and block-by-block.

Neighborhood sports gathered us near to each other, and sustained us through childhood, by bonds of high purpose. Sports became our dream through countless championship seasons. In the end, sports gave us the right heart for our times. This is underscored by that old saying – *Sports do not build character. They reveal it.*

I believe that the athletic first part of my life prepared me for public service, the second part of my life.

When I first began to teach physical education in the Chicago Park District at 18 years of age, it was that familiar love of sports that gave me the reassurance and knowledge that I could accomplish anything I set out to do.

When I began to work with children with special needs, it was my love of sports, and the belief that everyone could be a champion, which pushed me on. It was really from this, that the Chicago Special Olympics were born 40 years ago. As Vince Lombardi said – *People who work together will win, whether it be against complex football defenses, or the problems of modern society.*

I have always believed this to be true – for I have witnessed it first hand.

Sports taught me that it is always safe to take a risk. Being Catholic taught me it is always permissible to take a risk for others.

Faith, we learn, connects us to everything that our eyes cannot see. For me this is a winning dynamic. I

2. Timothy Davis, *Symposium: National Sports Law Institute Board Of Advisors: Avila V. Citrus Community College District: Shaping The Contours Of Immunity And Primary Assumption Of The Risk*, 17 MARQ. SPORTS L. REV. 259 (2006).

have always remained committed to that sense of faith. It is like something Martin Luther King, Jr., said – *Take the first step in faith. You don't have to see the whole staircase, just take the first step.*

Faith teaches that each one of us can be an advocate on behalf of those who are most vulnerable in our midst. Wherever we are and whatever we do, we can reach out and enter the life of others and lift them up. We can change the world around us by our willingness to take a risk.

As we observe the 40th anniversary of the founding of the Chicago Special Olympics, I have been reflecting on these four decades. I have come to see the changes and the impact of the Games this past October when our family traveled to Shanghai, China for the Special Olympic Games there.

Just four years earlier our family and about 100 friends went to Dublin for the games there. And of course we had the time of our lives – how could we not. But I did not know what to expect in China.

Once again it was a transforming experience. The opening ceremonies were held in a beautiful stadium and the grandstands were over-flowing with close to 100,000 people and 8,000 Special Athletes from 179 countries. As I looked on I remembered Chicago's Soldier Field, the site of the first Games in July 1968 – we had one thousand athletes from 23 states and Canada and hundreds of volunteers on the field then, and virtually no one in the grandstands.

In Shanghai, as the opening ceremony began, hundreds of Chinese drummers entered the stadium all beating their drums in unison. When they arrived at the center stage they were joined by others with even larger drums all beating together. They were iconic sights and sounds for the Games' theme – *All Hearts Beat the Same*. It echoed across the stadium. After some time, a young Special Olympian appeared with his own drum and began to play along. Sometimes he played with the larger group; at times he played solo, reinforcing the theme. And then I began to cry – because I realized, that before us, was the great face of China, and it truly had changed. Here we were, at a global event, celebrating the achievements of young people with mental disabilities; here we were in China no less.

Not long ago there could have been no Special Olympics hosted in China – children with disabilities like this young man before us would never exist. And now, here before us, was a China willing to let such children grow and succeed and become special champions. And the whole world was watching. The drums continued; it was true – *All Hearts beat as one; all hearts beat the same.*

It was both an emotional and historical recollection for me in those grandstands in Shanghai that night. Who could have predicted 40 years ago that the Games would have become an international institution? Who could have predicted that the Games would have created such an impact around the globe? Who would have thought they could change the Chinese mind? This could only have occurred because of Eunice Kennedy Shriver and the Joseph P. Kennedy, Jr. Foundation organizing the Games nationally and internationally in the model that was born in Chicago.

I am deeply touched to be honored by this prestigious law school and university. I am awed to have my name associated with this remarkable Joseph E. O'Neill Award which memorializes a noble man of faith; and so captures the athletic spirit of Marquette and the Ignatian ideal. I am honored to be included among these previous recipients. To be among the outstanding previous recipients of the Joseph E. O'Neill Award humbles me.

There is an old Irish saying – *You have to do your own growing, no matter how tall your grandfather was.* That is sound advice in every family, every team, every sport, and in all that we do in life.

My friends, we carry the cherished lessons of sports with us, I believe, to the end of all we do. How grace-filled is this gift from God. How playful He chooses to be in our hearts. What delight He takes in our efforts and willingness to achieve. Ignatius of Loyola summed it all up best, I think, when he first taught his “company” the great lessons of generous living – *Teach us to give*, he implored, *and not to count the cost*. Thank you from the bottom of my heart.

And now please permit me to share with you this short video commemorating forty years of the Special Olympics.

Anne Wall Brand Protection Scholarship Award

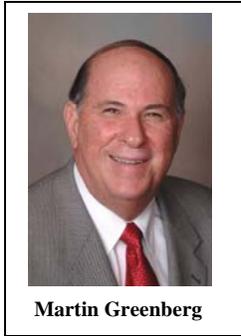
During the National Sports Law Institute's Annual Awards Banquet at the Hilton Milwaukee City Center on Friday, April 25, 2008, Anne Wall, a member of the NSLI's Board of Advisors announced the creation of the **Anne Wall Brand Protection Scholarship Award**. The goals of the **Award** are to raise awareness about the importance of brand protection in the field of sports entertainment; to contribute to the development of a knowledge base about brand protection by encouraging student academic writing about this topic; and to help Marquette University Law School and the National Sports Law Institute maintain their status as leading providers of sports law education by studying new ways to protect sports-related intellectual property rights.



Anne Wall

To be eligible for this **Award**, authors must be second or third-year JD or joint JD/MBA students at Marquette University and write an article that meets all guidelines for submission to the *Marquette Sports Law Review*. The article must be about "sports brand protection," meaning the protection of trade names, trademarks, service marks and copyrighted works owned or licensed by sports organizations and rights holders against misuse and unlawful use, and also protection of the exclusive rights of their official marketing partners (e.g., contractual relationships with broadcast rights holders and other media partners, corporate sponsors, licensees and suppliers) against ambush marketing. Intellectual property rights issues chosen as topics for this paper should focus on sports properties that are national or international in scope and should be relevant, timely and newsworthy. The article must address both business issues (e.g., sports marketing, prevention, deterrence and enforcement measures) and legal issues (e.g., of copyright, trademark and patent law, contract law, trade accords and agreements, etc.) relating to brand protection.

At the beginning of the 2008 fall academic semester information about this **Award** will be posted on the NSLI website and a handout will be distributed to interested students. In addition, Anne Wall will give a presentation to students about career opportunities in brand protection and potential article topics based on insights from her experience as a brand protection specialist and knowledge she has gained from researching and writing law journal articles published on this subject.



Martin Greenberg

College Athletics—Chasing the Big Bucks

By **Martin Greenberg**, Greenberg & Hoeschen, & Member, National Sports Law Institute Board of Advisors

College athletic programs have experienced an enormous growth in contributions to help underwrite the facilities arms race, spiraling coaches salaries, and other escalating costs. The country's largest athletic departments and booster clubs have raised more than \$1.2 billion in 2006-2007, according to the *Chronicle of Higher Education*, with some programs more than tripling their annual gifts in the past decade.¹

The *Chronicle* report indicates that between 2002 and 2007, colleges in the nation's six premier athletic conferences raised more than \$3.9 billion for capital expenditures alone. Many athletic programs are expanding their fund-raising staffs to solicit contributions. While donations to the country's largest 119 athletic departments have risen significantly in recent years, overall giving to those colleges has stayed relatively flat according to an article in the April issue of the *Journal of Sports Management*.²

In 1998 athletic gifts accounted for 14.7% of all contributions. By 2003 sports donations had reached 26 percent. In recent years spending on sports has grown at a rate three times faster than for spending on the rest of the campus.

The *Chronicle* survey found that last year 27 athletic programs raised more than \$20 million each, and 10 programs brought in more than \$30 million each. The University of North Carolina led the way collecting \$51 million, the University of Virginia collected \$45 million, and the Ohio State University collected \$39 million.³ T. Boone Pickens, oil and hedge fund mogul, gave \$30 million to Oklahoma State University Athletic Department to renovate the football stadium and to put his name on it, and also committed \$165 million more to build an athletic village on campus, while Philip H. Knight, co-founder of Nike, has donated in excess of \$100 million to the sports program at the University of Oregon.⁴

The business of college sports has become a big business, a sophisticated business wherein athletic directors oversee multi-million dollar licensing deals, integrated sponsorships, apparel contracts, preferred seating, seat licensing programs, and cable and TV contracts. And booster clubs, such as the Seminole Booster Club (Florida) and the Tiger Athletic Foundation (LSU), have become institutions unto themselves.

In October 2006, the House Ways and Means Committee questioned the NCAA as to why it is deserving of its tax exempt status and why the federal government should subsidize college athletics when money helps pay for escalating coaching salaries, some of which reach seven figures. Former Ways and Means Committee Chairman Bill Thomas criticized "highly paid coaches with no academic duties," and wrote that Division 1 football and men's basketball "more closely resembled professional sports than amateur sports."⁵

According to a *USA Today* article, for the 2006 season 42 of the 119 Division 1-A coaches were earning

1. Brad Wolverton, *Growth in Sports Gifts May Mean Fewer Academic Donations*, THE CHRON. OF HIGHER EDUC., Oct. 5, 2007, at A1.

2. *Id.*

3. *Id.*, see also Selena Roberts, *At Colleges, Money Doesn't Talk, It Screams*, N.Y. TIMES, Sept. 30, 2007, at SP8.

4. Wolverton, *supra* note 1, at A1; Jon Weinbach, *Inside College Sports' Biggest Money Machine*, WALL ST. J., Oct. 19, 2007, at W1.

5. Weinbach, *supra* note 4, at W1.

one million dollars or more, up from five in 1999.⁶ “Nick Saban alone has Alabama donors emptying their houndstooth cookie jars and Roll-Tide money clips to pay an 8-year, \$32 million deal filled with the CEO perks from a Jack Welsh dream. All this after the public university paid out nearly 6 million dollars to sack Mike Shula and his staff last year.”⁷

Nick Saban was named the University of Alabama’s 27th head football coach on Wednesday, January 3, 2007. Saban compiled a record of 106-59-1 (642) in 13 seasons as a head coach, having also led programs at Louisiana State, Michigan State, and Toledo. Saban’s short-term tenures has given his contracts a “nomadic tendency” -- Toledo (1990), Michigan State (1995-1999), LSU (2000-2003), Miami Dolphins (2005-2006).⁸

Saban took over the Alabama program after serving two seasons at the helm of the National Football League’s Miami Dolphins. He was earning approximately 4.5 million dollars per season.⁹ “With resounding success at the college level, Saban has earned a reputation as an outstanding tactician, leader, organizer and motivator.”¹⁰ As a result, according to one agent, “Saban’s contract with Alabama is a result of the strongest leverage of any coach in the history of college football. The circumstances combined to form one of the most one-sided contracts ever.”¹¹

Nick Saban’s 32-page contract with the University of Alabama was actually executed by Saban on June 13th and by the University on June 15, 2007.¹² The term of the contract is eight years commencing January 4, 2007 and ending January 31, 2015. Eight years is a fairly long term for a college football coach employment contract. Other top football coaches have initial terms as listed in the following chart.

COACH	SCHOOL	TERM
Chan Gailey	Georgia Tech	5 years
Bill Doba	Washington State	
Ron Prince	Kansas State	
Jerry Dinardo	Indiana	
Gary Pinkel	Missouri	
Mike Davis	Alabama-Birmingham	6 years
Bret Bielema	Wisconsin	
William Brown	Albany	
Jim Larranaga	George Mason	
Jim Tressel	Ohio State	
Dennis Franchione	Texas A&M	7 years
Jim Calhoun	Connecticut	
Bill Callahan	Nebraska	
Urban Meyer	Florida	
Mark Richt	Georgia	
Dan McCarney	Iowa State	8 years
Richard Rodriguez	Virginia	
Les Miles	Louisiana State	
Tommy Bowden	Clemson	
Jeff Tedford	California	

6. Jodi Upton & Steve Wieberg, *Million-Dollar Coaches Move Into Mainstream*, Oct. 16, 2007, http://www.usatoday.com/sports/college/football/2006-11-16-coaches-salaries-cover_x.htm.

7. Roberts, *supra* note 3, at SP8.

8. Nick Saban Named Head Football Coach at the University of Alabama, http://www.rolltide.com/ViewArticle.dbml?PALBID=14720&DB_OEM_ID=8000&ATCLID=736499&SPID=3011&SPSID=37423 (last visited Oct. 16, 2007).

9. Saban Contract Largest in History, http://blog.al.com/live/2007/06/saban_contract_largest_in_hist.html (last visited Oct. 16, 2007).

10. Gene Frenette, *Buyout Business*, June 24, 2007, http://www.jacksonville.com/tu-online/stories/062407/col_179690188.shtml.

11. *Id.*

12. Employment Contract between the University of Alabama and Nick Saban § 3.01 (June 15, 2007) [hereinafter Saban Contract].

Saban's compensation from the university comes in two categories: (1) the base salary for the contract, and (2) personal service fees. The annual base salary is \$225,000 and remains at that amount for the periods February 1, 2007 through the end of the contract, i.e. January 31, 2015, as more particularly stated in 4.01 of Saban's contract. Pursuant to paragraph 4.04, Saban also receives additional compensation in the form of a "personal service fee." The personal service fee during the term of the contract is as follows:

2007 - \$3,275,000
2008 - \$3,525,000
2009 - \$3,675,000
2010 - \$3,875,000
2011 - \$3,925,000
2012 - \$3,975,000
2013 - \$3,975,000
2014 - \$3,975,000

In essence, to receive the "personal service fee," Saban is required to participate in certain media programs, obligated events, and non-commercial activities including:

1. No less than one (1) radio program during each week of the regular season and postseason, two (2) radio programs during the spring practice period, and one (1) radio program on or around national signing day (and such other radio programs as may arise due to special events, such as a championship) (plus other short, taped leads directly related to the radio program);
2. No less than one (1) television program during each week of the regular season, one (1) television program prior to any post-season game and/or bowl game, and one (1) television program after the conclusion of any post-season or bowl game (and such other television programs as may arise due to special events, such as a championship) (plus other short, taped leads related to the television program);
3. The production of reasonable content for an internet web-site;
4. University authorized or produced publications (such as football game programs, books in which the primary subject matter relates to the University, its teams, and athletic program, media guides, highlight films, artwork, other media, and videos); and
5. Non-endorsement activities, which shall be limited to fifteen (15) total activities during a contract year. Such non-endorsement activities may include Saban's performance, participation, or appearance on behalf of either the University, athletic department, its supporting foundations, or University-approved marketing contractor, before an alumni club or similar organization, before a University-related or affiliated booster club or similar organization, before other similarly-situated or affiliated groups, clubs, or organizations, or at coaching or other clinics and gatherings related to the University's athletically-related marketing efforts and contracts.¹³

In essence, then, Saban's contract puts him at the top with respect to compensation packages for college football coaches.

¹³ *Id.* §4.04(d)(1-5).

Highest Paid College Football Coaches¹⁴

Coach	School	Age	Conference	Annual Compensation
1) Nick Saban	Alabama	56	SEC	\$4,000,000
2) Charlie Weis	Notre Dame	51	Ind.	\$3,500,000
3) Bob Stoops	Oklahoma	47	Big 12	\$3,450,000
4) Kirk Ferentz	Iowa	52	Big 10	\$2,840,000
5) Pete Carroll	USC	56	Pac 10	\$2,782,000
6) Mack Brown	Texas	56	Big 12	\$2,664,000
7) Tommy Tuberville	Auburn	53	SEC	\$2,231,000
8) Philip Fulmer	Tennessee	57	SEC	\$2,050,000
9) Jim Tressel	Ohio St.	55	Big 10	\$2,012,700
10) Dennis Franchione	Texas A&M	56	Big 12	\$2,012,200
11) Frank Beamer	Virginia Tech	61	ACC	\$2,008,000
12) Rich Rodriguez	W. Virginia	44	Big East	\$2,000,000
13) Les Miles	LSU	54	SEC	\$1,850,000
14) Butch Davis	N. Carolina	56	ACC	\$1,800,000
15) Al Groh	Virginia	63	ACC	\$1,785,000
16) Steve Spurrier	S. Carolina	62	SEC	\$1,750,000

The contract also permits Saban to earn additional compensation while employed by the university. Such sources of additional compensation may include: (1) compensation from endorsements or promotions that do not compete with university promotions; (2) compensation from public speaking engagements; (3) compensation from authoring or co-authoring books or publications; and (4) compensation for media programs and non-endorsement activities.¹⁵ Saban must obtain the prior written approval of the director of athletics or the president, which approval shall not be unreasonably withheld, before engaging in such activities.

The contract also contains an incredible amount of perks and perquisites including: a fifteen (15) seat skybox located in the north end zone of Bryant-Denny Stadium; seven (7) additional standup tickets associated with said skybox; twelve (12) tickets per home football game for general admission at Bryant-Denny Stadium; membership privileges in a golf or country club located within Tuscaloosa County; actual and necessary moving expenses incurred; a non-commercial airline plane for Saban's personal, non-business travel for a maximum of twenty-five (25) hours of flight time; and two (2) full-size automobiles for business and personal use and payment of all vehicle operating expenses.¹⁶

Paragraph 5.01(d) (Termination Without Cause) of Saban's contract, indicates that the University has the right at any time to terminate the contract without cause and for its convenience prior to its expiration. However, if the contract is terminated without cause, it is subject to a liquidated damage provision as contained in paragraph 5.01(e), wherein the University agrees to pay Saban as liquidated damages an amount equal to the sum of the annual base salary and personal service fees for each month remaining on the term of the contract calculated from the first full month immediately following the effective date of termination without cause. The liquidated damages shall be paid to Saban over a period of time equal to twice the number of full months remaining on the contract term in monthly installments. However, the liquidated damage payment is subject to an offset and reduction on a monthly basis as specified in Section 5.01(h) which essentially offsets any earnings by Saban personally or through owned business entities owned or controlled by Saban from employment

14. Coaches Hot Seat, www.coacheshotseat.com/SalariesContracts.htm 4.23.2007, April 23, 2007.

15. Saban Contract, *supra* note 12, § 4.04(a)-(d).

16. *Id.* § 4.05(b), (e), (h) & (j).

as a head or assistant coach or as an administrator either at a college or university or with a professional sports organization.¹⁷

Normally a termination without cause-liquidated damage provision will also be followed by an obligation on the part of coach to pay liquidated damage in the event the coach wants to terminate the contract early and take another job. Saban's contract has no such provision. Theoretically, Saban could go back to the NFL at any time without owing Alabama a penny. Industry observers believe Saban's no-buyout clause was an aberration the result of a school desperate to lure him after its pursuit of West Virginia Coach Ron Rodriguez failed. It should be noted that when Saban was at LSU 2002-2004, he didn't have a buyout obligation when he left for the Miami Dolphins. Buyouts have become a golden parachute for fired coaches and an expensive security blanket for successful coaches schools want to keep. Buyouts should offer protection for both sides. Buyouts are becoming almost standard contract ware in the world of college coaching.¹⁸

<u>Coach</u>	<u>Buyout Amount</u>
Houston Nutt (Arkansas)	\$500,000
Tommy Tuberville (Auburn)	\$6 million
Urban Meyer (Florida)	\$150,000
Les Miles (LSU)	\$1.2 million
Mark Richt (Georgia)	\$2 million per year left
Steve Spurrier (S. Carolina)	\$500,000 per year left
Phil Fulmer (Tennessee)	\$1 million

CONCLUSION

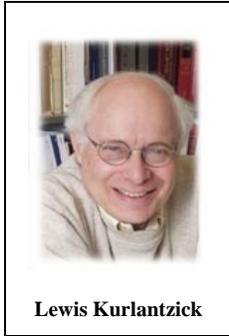
Like facilities, coaches' salaries are part of the spiraling arms race among the top programs in college athletics. Probably for good reason. College coaching is big business, and why not? Major basketball and football programs are the underwriters of Title IX and non-revenue sports, and therefore, an investment in your revenue-producing sports makes all sports a possibility. If programs are successful on the field or on the court and on the bottom line, why shouldn't the person leading the program be paid accordingly? The professional leagues have become major competitors with top college coaching talent. NFL teams have hired four college coaches in the last five-plus years, including Nick Saban from Louisiana State, Dennis Erickson from Oregon State, Steve Spurrier from Florida, and Butch Davis from Miami, giving them contracts that average between 2.5 to 5 million dollars per year. NFL teams have also flirted with Bob Stoops (Oklahoma), Mack Brown (Texas), and Kirk Ferentz (Iowa), among others.

In order to be competitive for top college coaches, colleges have stepped up accordingly. Feeding the salary spiral is a tidal wave of money from lucrative television and apparel contracts and multi-media and marketing right deals for entire athletic programs or entire campuses. Supporting college athletic programs today is a favorite of alumni and donors and is almost seen as a civic virtue, and finally corporate America has found the college scene to be a good marketing investment.

[Author Note: A special thank-you to Attorney David Espin, Marquette University Law School class of 2008, for his help in editing and footnoting this article]

¹⁷ *Id.* § 5.01(d), (e) & (h).

¹⁸ Frenette, *supra* note 10.



Lewis Kurlantzick

OPINION: What's Wrong with Steroids?

By **Lewis Kurlantzick**, Zephaniah Swift Professor of Law, University of Connecticut Law School, where he regularly teaches a seminar on “Sports and the Law”

Striking, but perhaps unsurprising, in the public discussion of performance enhancement is the lack of attention to the empirical assumptions underlying the case for a ban on the use of steroids. The legitimacy of these assumptions is simply taken for granted, when, in fact, their validity is dubious.

Take, for example, the efficacy of steroid use. The assumption is that such use generally produces significant, if not dramatic, effects on athletic performance, particularly in baseball. But that assumption is far from certain. In December two professors, in a *New York Times* op-ed piece, reported the results of their statistical research on the question of whether performance-enhancing drugs improve performance in professional baseball. Their examination of the data on the players featured in the Mitchell report—pitchers and hitters—suggests that in most cases drugs had either little or a negative effect. While they were unable to test the possibility that one effect of drugs is to help players compensate for decline as they age, there was no evidence in the data for performance enhancement above previous levels. Noteworthy is the fact that these results, which run contrary to the prevailing wisdom, have not penetrated the universe of sports talk radio. In fact, skepticism about the impact of steroids is warranted. And the popular perception that slugging across baseball has increased during the “steroid era” is likely wrong.

Another assumption concerns the health effects of steroid use. Here the premise is that drug consumption will necessarily produce adverse side effects resulting in serious, permanent—perhaps life-threatening—damage. Again, the health picture is more complicated. Despite oft-cited anecdotal reports, such as the self-diagnosis of ex-football player Lyle Alzado linking cancer and steroid use, the long-term, high-dose effects of steroid use are, in fact, largely unknown. Moreover, many health hazards of short-term effects are reversible. Also, most data on the long term effects of anabolic steroids on humans come from case reports rather than formal epidemiological studies. And from these reports, the incidence of life-threatening effects appears to be low. Similarly, there is little evidence of a direct link between steroids and negative psychological effects. Despite popular reference to “roid rage”, aggression, while a potentially serious effect of steroid use, appears to be relatively rare.

Just as these empirical assumptions are open to doubt, so the normative justifications offered to condemn steroid use are also questionable. Without rehearsing the arguments in detail, it is fair to say that these justifications—the “unnatural” performance-enhancing quality of these substances, concern for the athlete’s health, preservation of an equal playing field—are problematic, if not seriously flawed.

My point is not that steroids have no harmful physical and psychological effects or that they have no performance-enhancing effects for some individuals. But rather the evidence for these effects and the contentions derived from them are far from clear. The need is to identify and evaluate the underlying assumptions. And to recognize that in light of the existing ambiguities it is passing strange to condemn those who used (or may have used) these substances at a time when such use was not prohibited by the rules of their sport.

(Volume 19, Number 2 - Page 12)

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