



Texas Entertainment and Sports Law Journal

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Entertainment & Sports Law Section

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The statements and opinions in the Texas Entertainment and Sports Law Journal are those of the editors and contributors and not necessarily those of the State Bar of Texas, or the Entertainment & Sports Law Section. This publication is intended to provide accurate and authoritative information with respect to the matters covered and is made available with the understanding that the publisher is not engaged in rendering legal or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

Join the Section

All members of the Entertainment & Sports Law Section are encouraged to make sure that their dues are paid. All dues payments are to be made directly to the Section's Treasurer. An application for joining the Section is provided at the end of this publication.

Invitation to Publish

Anyone think they have the talent to write an article? This is your invitation to put that talent to use. The Entertainment and Sports Law Journal is soliciting articles to publish in upcoming issues. Article formats vary from long footnoted analyses to more informal discussions, and topics may span the spectrum of the sports and entertainment fields. Contact the editor and discuss the possibility of writing an article on a subject that interests you.

Articles may be submitted to:

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Chairman's Report

Activities of the Entertainment and Sports Law Section provided members several opportunities to stay abreast of the latest developments in both the entertainment and sports law areas this past year.

At the Section's annual meeting In June, 1996, in Dallas, Robert Carter, Jr. spoke on Artist Management Contracts detailing the legal issues to be considered when representing artists in business negotiations with prospective managers. Gil B. Fried presented a seminar on *Litigating Major Sports Liability Cases*, identifying key issues and legal trends affecting the litigation of sports injury cases.

In October, 1996, in conjunction with the University of Houston Conrad Hilton College and the University of Houston Law Center, the Section sponsored its sixth annual sports law seminar, *How to Start, Develop and Expand a Sports Law Practice*. This seminar provided a unique opportunity on developing a sports law practice and tips on obtaining, representing, and serving sports-related clients. Special thanks to Gil Fried, sports law professor at the University of Houston Law Center, for his work on the program. With the success generated from this seminar, the Section and the University of Houston are planning for the 1997 seminar scheduled this fall in Houston.

Legal Aspects of the Entertainment Industry was the seventh annual entertainment law seminar presented by the Section and the University of Texas School of Law in March, 1997, in Austin, in conjunction with the South by Southwest (SXSW) music festival. Once again, Mike Tolleson put together an excellent program focusing on the basic structure of the music industry, copyright and intellectual property issues, fundamentals of "the band business", the formation and management of new bands, record deals for emerging artists, multi-media/internet deals, and music issues in film and television. Next year's entertainment law seminar will again be held in March in Austin.

The program in conjunction with the Section's upcoming annual meeting at the State Bar Annual Meeting on June 27, 1997, in Houston, features Richard Alderman speaking on *Sports Torts* and Jeffry B. Lewis presenting a seminar on *Legal Issues of Concert Promotion*. Plan to attend the Section meeting and the free two hour CLE program.

The *Entertainment and Sports Law Journal*, published three times a year by editor Sylvester R. Jaime, provides current information to Section members, including caselaw and legislative updates, relating to entertainment and sports law issues. The *Journal* sponsored a student writing contest this past year for students currently enrolled in Texas Law schools for the best article on a sports or entertainment law topic. The editors of the *Journal* selected an article by University of Texas law student, Ragan G. Reeves entitled, *Franchise Blackmail and the NFL: What a City Can Do to Keep its Home Team*. This article was published in the *Journal* and Ragan received a complimentary registration at the Section's sports law seminar. Special thanks to

Matthew J. Mitten, sports law professor at South Texas College of Law for his editorial assistance with the *Journal*.

The Section's Council, which meets three times annually in conjunction with Section-sponsored seminars, is always looking at new ways to add value to Section membership. Suggestions for future programs or endeavors are welcomed.

As my year as Chair draws to a close, I would like to thank all of the officers, Council members, and all those that contributed to the Section's activities this past year. For those of you who would like to participate in future Section projects, please contact any of the Council members listed elsewhere in this issue. We welcome your participation and support!

Steven Ellinger

NOTICE:

The following have been nominated for the positions indicated:

Christopher Kalis	Treasurer/Chair Elect	Dallas
Lawrence Waks	Secretary	Austin
Robert Carter	Director	Austin
Leonard "Ladd" Hirsch	Director	Dallas
Ed Martin	Director	Dallas

Entertainment & Sports Law
JOIN
THE
SECTION

(see application on Page 15)

FOR THE LEGAL RECORD

Texas sports lawyers, teams and athletes, and now students, and educators continue to be in the news ... Houston was the sports law seminar capital of Texas during the 1996-97 academic school year. Not only did the Section co-sponsor a sports law seminar with the University of Houston (spearheaded by Dr. Gil Fried), but Professor Matt Mitten co-ordinated a sports law seminar at South Texas School of Law, featuring *inter alia*, famed activist Dr. Harry Edwards, and Professor Walter Champion held a sports law seminar featuring local sports law experts Randal Hendricks, Steve Paterson, and Steve Underwood at Texas Southern University's Thurgood Marshall School of Law Former Texas Tech defensive lineman, represented by Dallas attorney Christopher Kalis, filed a federal lawsuit alleging, *inter alia*, that Tech engaged in racketeering in its attempt to ensure Gaines' academic eligibility. Tech countered with a sovereign immunity claim and sought to have the lawsuit dismissed ... Although being called "model citizens" by women's athletic director and basketball coach Jody Conratt, two University of Texas female athletes were arrested on charges of robbery by assault. All-America track star Sabrina Kelly, and Angela Brown, a reserve basketball player, were accused of beating a woman and stealing her purse outside an Austin nightclub ... After a Texas A&M alum requested a copy of the University of Texas' football playbook under the Texas Public Information Act, UT alum State Rep. Richard Raymond, sponsored a bill to keep confidential information contained in school and college sports playbooks, plus other information directly related to other athletic and academic competitions. AG Dan Morales had already issued an advisory ruling saying the playbook was not a public record ... Craig Curry, a former UT football player serving as a financial adviser for professional athletes, was found guilty by a federal jury on charges of bank fraud. Curry was indicted on 2 counts stemming from a bank transaction for Corey Sawyer, a defensive back at Florida State. The NCAA had previously found that Curry had arranged for a \$29,000 loan for Sawyer before the 1994 Orange Bowl. The jury found that Curry used a false statement to access another client's line of credit and transferred funds from the account to purchase an automobile for Sawyer ... While Dallas Cowboy player Erik Williams contemplated suing the former topless dancer who lied when she accused him of raping her, the NFL and Cowboy owner Jerry Jones dropped suits against each other. The NFL sought \$300 million damages from deals with PepsiCo Inc. and Nike, Inc., while Jones sought \$750 million for antitrust violations from NFL Properties. The suits were apparently dropped after the parties agreed to discuss changes to the way the NFL operates. Moral of the story, be prepared to play for big money if the Cowboys are involved in your lawsuit

... Speaking of growing areas of sports law, effective Sept. 1, 1997, there are new regulations facing Texas deer hunters and anglers. Regulations increase the buck bag limit in 11 counties in East Texas, add 21 Central Texas counties to those allowing a muzzleloader-only season for antlerless deer, added a week to the general deer season in 12 South Texas counties, and open a five-day gun deer season for mule deer in 5 Panhandle counties. Fishermen will see limits on ways to trout fish from the Guadalupe River, and cat-fish and striped-bass limits have been cut on the Trinity River below Lake Livingston Dam. The Texas Parks and Wildlife Department also approved a proposal to allow crossbows for all game species during the fall. Has anyone besides the Commission considered these areas of practice? In case you had not, consider the custody case involving a deer head valued at \$45,000.00. A San Antonio district court judge ruled that the deer head belongs to the state of Texas and not the woman who killed the deer. Attorneys for Bexar County and TPWD argued that since the deer was taken in violation of the law, custody of the deer head rests with the state. After the 222-1/8 points buck was awarded to the TPWD, the agency planned to include it in their traveling exhibit aptly called "Operation Game Thief's Wall of Shame," an exhibit of illegally taken trophy deer heads ... Also, make sure you have steel shot instead of lead, and are in possession of the proper state and federal duck stamps

before you make your next trip for ducks and geese. The U.S. Fish and Wildlife Service's law enforcement division, which issues citations for violation of state and federal hunting laws, state that the possession of lead shot and failure to have a state or federal waterfowl stamp are two of the most common hunting law violations. At least 14 officer teams enforce state and federal regulations along the Gulfcoast and Texas/Louisiana border. Unless a hunter has physical possession of a properly signed federal duck stamp, he is in violation of federal law

... Speaking of federal action, the Federal Trade Commission has been asked to investigate whether the college bowl Alliance violates antitrust laws. The investigation has support from Senators, Bob Bennet, R-Utah, Mitch McConnell, R-Kentucky, Mike Enzi, R-Wyoming and Craig Thomas, R-Wyoming. Three of the senators represent constituents from schools in the Western Athletic Conference. WAC champion BYU was not invited to play in the college bowl alliance despite a 13-1 record and No. 5 rank. With Texas schools from the WAC (Rice, SMU, TCU) and Conference USA (Houston) effectively blocked from the bowl alliance in favor of conferences and schools with major TV appeal, expect more rumblings when bowls such as the Liberty Bowl (tie-in with Conference USA) pay \$880,000 and Alliance bowls pay as much as \$8.5 million to their participants. With more schools trying to fund women's sports, expect a change in the way bowls make selections, more government intervention, or lawsuits ... With San Antonio being the site for the second Big 12 Championship game, the NCAA getting \$1 billion for sale of the NCAA tournament TV rights, and \$75 million for radio broadcasts, revenues do not appear to be going down soon for college sports, so the only question is, When will college athletes get their fair share?

... Texas Motor Speedway showed the money, \$4.6 million in purses for the first weekend of racing, and NASCAR returned to Texas. The \$110 million track seats more than 150,000, the second largest in the country. Any lawyers out there participating in this resurgence of Texas racing? If so, you are invited to write and provide insight into the legal issues involved ... Constitutional issues in horse racing? After a 4-1/2 hour hearing, the state was successful in disqualification of Claimjumper's Gold, winner of the seventh race on November 14, 1996, at Sam Houston Race Park. The horse was disqualified and the trainer fined and suspended, after a urine test found traces of an acepromazine derivative ... Despite the fact that a girl was allowed to play because the team could not find enough boys to compete, San Antonio District Judge David Peoples ruled that the Catholic Youth organization and playoff officials were "entitled to make their own rules" when they disqualified the team from participating in the playoffs because a girl played on the all boys 11-year old team

... The National Association of Sports Officials says, "Punch a ref. go to jail". Whether, pro sports or rec sports, citing more than 30 incidents of assaults on refs, the Association welcomes changes in laws which impose stricter penalties on players who assault game officials. Pennsylvania, for example, imposes a first-degree misdemeanor, punishable by up to 5 years in prison, for assault on a referee. Such need arises when a high-school basketball referee is punched in the nose by a 17-year-old player during a game in Philadelphia, or another 17-year-old basketball player knocked a referee unconscious after being ejected from a community-center game in Virginia Beach, VA. A high-school football player's mother argued against criminal prosecution of her son, after he was arrested for knocking a referee unconscious after he was ejected from a game in Fort Wingate, NM. The player's mom saw her son as a victim and contended that "... student-athletes are taught to be aggressive ..." . The referee who was hit wants the student to take responsibility for his acts, but was sympathetic, noting that "He's a victim just like I am in this." This is apparently the message when high-school players see professional athletes, e. g., Roberto Alomar spitting on an umpire and being allowed to serve his suspension the following season, rather than interrupting the player's participation in the MLB playoffs.

RECENT CASES OF INTEREST

Prepared by the South Texas College of Law
Sports and Entertainment Law Society

Long Live the King! Houston Nightclub Remains “The Velvet Elvis”

In *Elvis Presley Enterprises, Inc. v. Capece*, 950 F.Supp. 783 (1996), the U.S. District Court in Houston held that a nightclub’s use of its registered service mark, “The Velvet Elvis,” did not infringe on the famous “Elvis” trademark, amount to unfair competition, or cause dilution. The court did find, however, that certain advertisements using the Elvis name and likeness infringed on Presley’s right of publicity.

In 1993, Barry Capece, part owner of “The Velvet Elvis,” registered this service mark for use in the restaurant and tavern business. Elvis Presley Enterprises, Inc. (“EPE”), owner of the “Elvis” mark, did not object to this use until after Capece closed the bar and planned to reopen at a different location. After Capece reopened his bar under “The Velvet Elvis” name, EPE filed suit for unfair competition, trademark infringement, dilution, and infringement of Presley’s right of publicity.

Relying on the seven factors promulgated in *Conan Properties, Inc. v. Conans Pizza, Inc.*, 752 F.2d 145 (5th Cir. 1985), and focusing on Capece’s parodic intent, the court concluded that the mere use of “The Velvet Elvis” service mark does not create a likelihood of customer confusion and, therefore, does not infringe on the “Elvis” trademark or amount to unfair competition. The court reached this conclusion after considering the nature of plaintiff’s trademark, similarity of the parties’ marks and products, identity of retail outlets and the advertising medium for the parties’ products, the defendant’s intent, and evidence of actual confusion.

Nevertheless, the court found a likelihood of confusion caused by some of Capece’s advertisements using Elvis’ imagery and persona. Finding the ads lacked a connection to Capece’s parodic purpose, the court granted a permanent injunction against emphasizing “Elvis” in the bar’s name and using his image as a marketing tool.

The court, however, found no dilution of the “Elvis” trademark. Capece’s bar decor of varied velvet art accentuated by gallery lights mocking “society’s idolation of less than scrupulous celebrities” did not blur, weaken or tarnish EPE’s strong trademark. Capece’s parody of “an era remembered for its sensationalism and transient desire for flashiness” was found not to weaken the “Elvis” name.

Finding that Texas law applied to the right of publicity claim, the court held that, although the use of the Elvis persona in ads was infringing, the use and function of the memorabilia and art was not to “promote a product or capitalize on the personality of Elvis himself, but rather to recreate an era of which Elvis was a public part.” Accordingly, Capece did not infringe on Presley’s right of publicity.

By Ken Pajak

College Basketball Coaches Convicted in Academic Eligibility Scam

In *U.S. v. Gray*, 96 F.3d 769 (5th Cir. 1996), the Court of Appeals for the Fifth Circuit affirmed the convictions of three Baylor University men’s basketball coaches for conspiracy, mail fraud, and wire fraud in connection with a fraudulent scheme to establish academic eligibility for transfer students to play basketball. The Fifth Circuit concluded that defendants’ conduct was criminal and not merely a breach of fiduciary duty.

Defendants provided five potential recruits from two-year colleges with written course work or answers to correspondence exams which allowed the students to obtain the credits required by the NCAA for eligibility when transferring to Baylor, a four-year university. These actions may also have enabled these five students to obtain scholarships from Baylor.

The defendants argued that the evidence is not sufficient to support their convictions of conspiracy, mail fraud, and wire fraud in violation of federal law. First, they argued that scholarships and degrees are not the kind of property encompassed in the subject criminal statutes and asserted that the property loss to Baylor from granting scholarships and degrees to ineligible players does not amount to fraud because there was no transfer of money or property to themselves. Looking at the specific language of 18 U.S.C. § 1346, the court focused on the phrase “scheme or artifice to deprive another of the intangible right of honest services” and held that “a transfer of some kind” is not required. Furthermore, Baylor was defrauded because it was deprived of the intangible right of the “honest services” of its employees.

Second, the defendants argued that they lacked the requisite intent to harm Baylor or obtain personal benefits; therefore, convictions for their conduct improperly criminalized mere deceit. They also argued that their plan was to help, rather than harm, Baylor by ensuring a successful basketball program. The court observed that, to provide a basis for criminal liability, the withheld information must be material, and must lead a reasonable person to believe that if the information was known, a reasonable employer would have changed its business conduct.

The court found that because of the “coaches’ cheating scheme,” Baylor did not get the quality of student that it was expecting. This made the withheld information material because Baylor could have recruited other qualified eligible students for their basketball team. The scheme also forced Baylor to withhold players suspected of being ineligible from competing on its basketball team while a costly investigation was conducted. The court reasoned that, had Baylor known of the “cheating scheme”, it would be quite reasonable to believe that their business conduct would have been different, thereby satisfying the materiality requirement.

By James Kincade

Coaches Face Trial for Disciplining Student

In *Spacek v. Charles*, 928 S.W.2d 88 (Tex. Ct. App. 1996), the Fourteenth Court of Appeals ruled on the applicability of the qualified immunity defense in connection with the use of excessive force by two high school coaches, Larry Spacek and Steve Ramsey, in disciplining a student. Spacek and Ramsey allegedly used excessive force in the disciplining of Joshua Maxey, a student. Maxey was called into the coaches' office to discuss his poor grades. In an attempt to motivate him to improve his academic performance, Ramsey allegedly held a starter pistol to Maxey's head and threatened to kill him, and Spacek threatened to hang Maxey with an extension cord.

Maxey's guardian brought a suit against the coaches and the school district asserting various constitutional violations and state law claims under 42 U.S.C. § 1983. The coaches appealed the trial court's denial of their summary judgment motion to dismiss all claims based on the defense of qualified immunity. This defense shields public school employees from civil damages and liability when performing discretionary functions if their actions are reasonably consistent with the constitutional rights allegedly violated. Finding that the coaches' alleged conduct did not violate the Fourth Amendment's prohibition

against unreasonable searches or the Eighth Amendment's prohibition against cruel and unusual punishment, the appellate court reversed this aspect of the lower court's holding. However, plaintiff's Fifth Amendment denial of due process and Fourteenth Amendment equal protection claims were not barred by qualified immunity under the facts.

The appellate court held that the coaches' qualified immunity defense under Texas Education Code § 21.912 raised fact issues precluding summary judgment in their favor. This defense precludes personal liability for a professional school employee's acts performed within the scope of his/her employment requiring the exercise of judgment or discretion. Liability will attach, however, if there is excessive force or negligence that results in bodily injury to a student. The court of appeals found a fact issue exists as to whether the coaches' use of force in disciplining Maxey was excessive.

By Michael J. Lowenberg

Student Writing Contest

The editors of the TEXAS ENTERTAINMENT AND SPORTS LAW JOURNAL ("Journal") are soliciting articles for our second annual writing contest for students currently enrolled in Texas law schools for the best article on a sports or entertainment law topic. Last year's winner was Ragan G. Reeves, a University of Texas law student, with his article entitled *Franchise Blackmail and the NFL: What A City Can Do To Keep Its Home Team*.

The winning student's article will be published in the Journal. In addition, the student may attend either the annual Texas entertainment law or sports law seminar without paying the registration fee.

This contest is designed to stimulate student interest in the rapidly developing field of sports and entertainment law and to enable law students to contribute to the published legal literature in these areas. All student articles will be considered for publication in the Journal. Although only one student article will be selected as the contest winner, we may choose to publish more than one student article to fulfill our mission of providing current practical and scholarly literature to Texas lawyers practicing sports or entertainment law.

All student articles should be submitted to me at the above address and conform to the following general guidelines. Student articles submitted for the writing contest must be received by me no later than June 15, 1997.

Length: no more than twenty-five typewritten, double-spaced pages, including any endnotes. Space limitations usually prevent us from publishing articles longer in length.

Endnotes: must be concise, placed at the end of the article, and in Harvard "Blue Book" or Texas Law Review "Green Book" form.

Form: typewritten, double-spaced on 8½ x 11" paper and submitted in triplicate with a diskette indicating its format.

We look forward to receiving articles from your students. If you have any questions concerning the contest or any other matter concerning the Journal, please call Matthew J. Mitten Professor of Law and Articles Editor, Texas Entertainment & Sports Law Journal, at 713-646-1845

RISK MANAGEMENT FOR RECREATION PROGRAMS IN THE 1990's

By Gil Fried, Esq.¹

Numerous authors have analyzed risk management concerns associated with sports and recreation programs.² The primary focus of such analysis has traditionally centered around mismatched opponents, negligent supervision, negligent maintenance and related claims.³ While these areas represent significant liability concerns, little empirical evidence has been presented to show that these concerns are in fact the major risks faced by sports and recreational programs. Due to the lack of empirical data supporting what concerns represent the greatest challenge to sports programs, the author examined incident reports generated in the Houston Park and Recreation Department (HPRD) to determine the most common risks impacting the fourth largest park and recreation program in the United States.⁴

Between November 1995 and November 1996, 579 incident reports were submitted by HPRD employees. These incident reports were broken down into six specific categories. The categories include: incident location; was a person, property or vehicle damaged; what was injured; what was the response to the injury; the incident date; and the time of the incident.

The author's initial hypothesis centered around personal injury during sports participation as the primary risk management concern associated with HPRD activities. Research results showed that while personal injury concerns during sports participation represent a significant concern, criminal activities were a more significant concern. This article will examine the study's results, analyze the current case law highlighting liability for the criminal conduct of third parties, and suggest specific risk management strategies to handle effectively the increased criminal activities associated with sports and recreational programming.

Study Results

Before examining the results, it is imperative to analyze problems inherent in the reporting process that affect the results. Several major concerns were identified which are probably present in most incident reporting processes. Some incident reports were filled out incorrectly with inaccurate or missing information. The incident reports had several check-off boxes which forced individuals completing the reports to fit their analysis into only one box, rather than a more appropriate incident description.

The reports contained one box to check for a personal injury. However, no separate categories existed to differentiate between injuries received from sports participation versus misconduct or a rules violation that result in injuries.

Other concerns identified while analyzing the reports include:

- reports contained subjective information rather than objective information;
- HPRD employees sometimes did not complete the forms (i.e. did not list the value of lost property);
- HPRD employees sometimes did not complete the report immediately after an incident (thus, leading to many unknown or inaccurate incident times);
- HPRD employees listed a vague or inaccurate location (thus making it difficult to pinpoint exactly where an accident occurred or where a dangerous condition might exist);
- No differentiation was made between injuries to employees versus injuries to participants unless the person completing the report specifically mentioned whether or not an employee was involved in the incident.

It should be clearly understood that these problems can be found in most incident reporting processes, and HPRD employees should not be blamed for inaccurate reporting if they had not received proper instruction concerning which forms to complete and in which manner. By instituting a comprehensive risk management program, many concerns associated with inaccurate reporting can be minimized. Accurate incident reports are needed not just for internal review. Clear, succinct, and objective incident reports are critical for defending any claim raised by an injured participant or spectator.

Findings

The largest number of reported incidents occurred in or affected structures such as gymnasiums, playgrounds, buildings or offices. The 157 structure-related incident reports represented 27.1% of all reported incidents. Personal injuries accounted for 56.7% (89 incidents) of all incidents occurring in structures. Most personal injuries were miscellaneous injuries such as contusions, broken bones, cuts, etc., which represent 62.9% (56) of all personal injuries. The next most frequent type of personal injuries in structures involved falls (slip and falls and/or trip and falls), which were reported 13 times during the survey period.

Property-related structural incidents primarily related to criminal activity. Eighteen of the 60 property related incidents involved burglary (30.0%) while the next two most frequent incidents involved vandalism and thefts (16.6% each). Another major concern with structural safety involved unsecured doors, which were reported nine times and represented 15% of the property incidents.

The incident reports provide the following highlights:

- Only two heart attacks were reported, and they both occurred during competitions on playing fields.

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- Children were most frequently lost at the zoo.
- Almost all (92.3%) non-HPRD incidents reported involved traffic accidents.
- All pool-related property incidents were burglaries.
- A significant percentage (23.8%) of all incidents occurred in areas which were either unknown or impossible to determine from the facts provided in the incident report.
- Assaults (20.0%) and inappropriate conduct (23.5%) represent two of the most frequent incidents that occurred in unknown locations.
- Approximately 17% of the incidents occurred at the zoo.
- The most frequent injuries occurring at the zoo were the result of falls, slip and falls, or trip and falls (28.7%).
- Animal bites at the zoo resulted in 16 incidents (22.0%).

The most significant action taken in response to an incident involved contacting the police. The Houston Police Department (“HPD”) was summoned 124 times, representing 21.2% of all reported incidents. Most incidents, however, were resolved internally by the HPRD. Thus, while the police were called for some matters, other illegal incidents were summarily handled with police or court assistance.

Illegal incidents were defined as burglary, theft, assault, inappropriate conduct, or related incidents. While 186 illegal incidents occurred, the police department was only summoned to handle 124 (66.6%) incidents. The remaining incidents were either handled by supervisors, merely reported, the offender’s guardian was contacted, or the offending party was provided counseling.

The greatest number of illegal incidents were reported in May (30). On average, over 15 illegal incidents were reported each month. The police were called an average of 10 times per month in response to various illegal incidents.

The police figures, above, can be compared with official police records analyzing police activities between January 1, 1996 through December 31, 1996. The Houston Police Department’s 72 different patrols received 1,928 calls for service to parks or areas immediately adjacent to parks.⁵ Over 9,900 foot patrol hours were provided by the HPD.⁶ During 1996, 262 HPD incident reports were completed while 1,401 curfew warnings were given to individuals violating Houston’s curfew law.⁷

Patrols represented one component of HPD’s involvement with the parks. Additional police time and effort were utilized to arrest individuals. The following represents the total arrest activity for various illegal activity. The HPD spent approximately 22,969 hours processing citations and arrests in and around city parks.⁸

<u>ACTIVITY</u>	<u>ARRESTS</u>
Traffic Citations	5,198
City Ordinance Citations	1,399
Curfew Citations	129
Criminal Trespass Citations	395
Misdemeanor Arrests	590
Felony Arrests	50 ⁹

These figures might appear to demonstrate an underreporting of illegal activities. However, the HPD records do not reflect when certain illegal activities occurred. Many arrests could occur at night or when recreational centers are closed. Furthermore, an arrest or citation might not have come to the attention of a HPRD employee. This is especially true regarding traffic and curfew violations.

In addition to requiring police assistance, HPRD often required special medical assistance. Sports participation can cause numerous bodily injuries. Medical assistance was required for 161 sports- or recreation-related injuries. Medical assistance ranged from providing basic first aid, calling emergency medical technicians (“EMTs”), or transporting participants to the hospital. EMTs were called 64 (39.7% of all medical incidents) times in response to various incidents. First aid was provided to treat injuries in 121 (75.1%) incidents. Twenty incidents involved administering first aid and contacting the EMTs.

Fire represents a significant concern both to HPRD and the Houston Fire Department. Due to the presence of numerous trees and dry brush in and around parks, even small fires have the potential for rapid expansion into a disaster. The incident reports highlighted 18 fires, which represent only 3.6% of all incident reports. However, the fire department was only called to handle six incidents. It is presumed that the other incidents involved small fires extinguished by employees or fires already out before they were discovered. Fire origination was fairly easy to determine as seven reported fires involved nine portable toilets. Most fires occurred between January and March. The incident reports indicated an inordinately large number of fires immediately after the new year. One HPRD employee suggested that fires in portable toilets around New Year’s Day were attributable to children lighting celebratory fire crackers and throwing them into the portable toilets.

In addition to analyzing the months of occurrence, incidents can be examined to determine the time of occurrence. Due to reporting deficiencies, the most frequent time cited for incidents occurred at “unknown” times. Approximately 20% (113 incidents) of all incidents occurred at unspecified times. Approximately 53 incidents (47%) occurring at unknown times involved personal injuries. Additionally, 33 incidents (29.2%) occurring at unknown times involved illegal activities/injuries. Another 32 incidents (28.3%) involved miscellaneous injuries

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and 11 injuries (34.3%) were caused by falls. Incidents occurring prior to 8:00 a.m. concerned primarily property-related incidents and illegal activities. The time periods from 8:00 a.m. through 10:00 a.m. and 1:00 p.m. through 3:00 p.m. represented the most frequent times for vehicle-related incidents. Personal injuries occurred most frequently between 10:00 a.m. and 6:00 p.m.. Thus, personal injuries were fairly well distributed throughout HPRD's operation hours for park and recreation facilities. Miscellaneous injuries were prevalent throughout the day. Nighttime created opportunities for illegal activities, and the incident reports clearly show that after 4:00 p.m., illegal activities represented the greatest concern. Inappropriate conduct was the most prevalent illegal activity, with theft the next most frequently reported illegal activity.

Broken windows represented a critical risk area. While several building windows were broken due to vandalism, the primary concern related to car windows broken by rocks or other projectiles from lawn maintenance equipment, not by vandals. Over 32 automobile windshields and windows were broken by weed eaters in the 12 month period. Other windshields were reported broken on both HPRD vehicles and non-HPRD vehicles, but the exact source for these damaged windshields was not known. Most broken windows occurred between 8:00 a.m. through 10:00 a.m. and immediately after lunch. Thus, vehicles should be parked away from curbs, and special safety precautions should be taken whenever operating weed eaters near automobiles. Employees should also be instructed to take extra precautions, and perhaps have an extra cup of coffee early in the morning and to not be groggy or inattentive after lunch. Weed eaters were also responsible for starting two fires.

Most incident reports contain brief incident descriptions. While these descriptions were often cryptic, they did provide some important information concerning the incidents. Employees were specifically identified as the injured party in 58 incidents. These incidents were primarily personal injury matters and some vehicle-related matters. However, it is assumed that more vehicle-related incidents involved employees, but were not reported as employee-related incidents.

Protecting children represents another major concern faced by park and recreation programs. Children represented a significant injury and liability risk due to the inapplicability of the assumption of risk defense.¹⁰ Out of 320 incidents of personal injury, at least 116 (36.2%) incidents specifically mentioned injuries to children. These injuries primarily occurred during sports/recreation competition or when children fell while running.

Injuries during sports activities represented a significant risk which can be directly impacted by risk management techniques designed to make sports participation safer. Participation injuries included several broken ankles, strained knees or shoulders, collisions between participants, and fights occurring within recreational/sports activities. Incident reports identified 79 injuries that occurred during activities. The greatest number of these injuries occurred during basketball competitions. There were 24 injuries that occurred during basketball games, practices

or free play. Soccer was the next most injurious sport with six injuries. Two additional soccer-related incidents involved goals that fell and injured someone.

Problems Identified by Findings

The author's hypothesis was proven incorrect because the most frequent concern faced by HPRD related to illegal conduct, rather than sports participation injuries, which was the most frequent occurrence. Trip and falls or slip and falls were the third most frequently reported incidents. Besides identifying the incidents occurring most frequently, the survey results highlight specific liability concerns that must be addressed by any sports risk management program.

A major concern identified the lack of a communicated or recognized protocol for when to: contact an EMT, apply first aid, contact the fire department or police, notify guardians, send people to a hospital, utilize any post-injury follow-up, or handle criminal or illegal activity internally. A lack of proper protocol represents a significant liability concern regarding handling various matters because utilizing the wrong steps will often lead to a negligence claim. This concern is especially acute when criminal conduct occurs and is not handled through the proper channel. Such a misstep may facilitate future crimes by the same individuals, with HPRD becoming liable for failing to take necessary steps to prevent foreseeable criminal conduct within their programs or facilities.

Sports-related activity concerns point to several risk management issues such as closer supervision for basketball, making sure tripping hazards are removed from walkways, locking portable toilets when a park is closed, specifying proper procedures for reuniting parents and a lost child, and securing animals to reduce animal bites.

Various crime reduction issues are raised by the study's findings. These concerns are magnified by the desire to reduce inner city crime through youth sports programs and the increase in criminal activities associated with sports and recreation programs.

Crime Reduction

Houston is not alone in providing an increased police presence dedicated to making parks safe and reducing criminal activity.¹¹ Other cities have also significantly increased the money and effort expended to improving sports and recreational opportunities for their citizens. St. Louis, Missouri is a good example.¹² St. Louis increased participation numbers from 14,000 youths to almost 40,000 in five years, and increased its recreation budget 193% from \$1.6 million to \$4.7 million.¹³ St. Louis has successfully implemented Midnight Basketball as an anti-crime program, giving men and women between 18 and 26 a challenging way to spend their evenings while providing educational, conflict resolution, and career counseling.¹⁴

With cities' increased desire to attract those with

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criminal propensities to sports and recreation programs, there exists the prospect of some criminals utilizing a sports opportunity to engage in criminal misconduct. This concern has to be weighed in traditional risk management plans along with other criminal activity overtaking sports programs throughout the world.

Prevalence of Criminal Activity

News headlines are replete with stories demonstrating criminal or illegal conduct in sports. Many such incidents are finally resolved in court. Some criminal misconduct occurs between participants, coaches and referees.¹⁵ However, most criminal conduct involves individuals who engage in criminal misconduct against individuals inside or outside a sports facility.¹⁶

In the United States, several major crowd control problems have occurred inside football stadiums which necessitated police intervention.¹⁷ The worst incident in the past 20 years occurred after the 1993 Michigan-Wisconsin football game when 77 people were trampled in a crowd surge just before the game ended.¹⁸

Numerous crowd-related incidents have arisen in stadiums or arenas when jubilant or distraught fans took the law into their own hands.¹⁹ In the 1980's, Detroit suffered significant criminal activities involving baseball fans.²⁰ After the 1986 World Series, rioting fans left one dead, 80 injured, and caused more than \$100,000 in damages with 41 people arrested.²¹ Furthermore, crowds have engaged in criminal mischief by damaging a playing facility. After the Cleveland Browns' last home game, the infamous "Dawg Pound" erupted with fans vandalizing the facility by breaking seats and other stadium parts to take home souvenirs.²²

Professional sports, Olympic events, and intercollegiate athletics are not the only activities with crime-related concerns. High school football and basketball games have been moved to neutral sites, played without any fans, played at night, played under tight armed security and/or with metal detectors to avert violence.²³ Even recreational sports leagues have faced violence, especially in gang or high-crime areas.²⁴

The Law

Individuals participating in or viewing sports events are normally considered business invitees to whom the event sponsor owes the duty to inspect the premises, to warn of inherent, unknown risks, to maintain and repair the facility, and to keep patrons reasonably safe.²⁵ While a facility manager typically does not have a duty to protect patrons from the criminal acts of third parties, a duty exists if the facility knew or should have known it was reasonably foreseeable that criminal activity or behavior would occur.²⁶

Various criminal issues can also involve civil liability matters. Cases brought against sports programs by those injured

from the criminal acts of third parties often allege negligence claims such as poor lighting, missing or broken light bulbs, weak locks, no access control, poorly trained guard(s) or poor management policies.²⁷ To date, the civil cases reported primarily relate to negligence in crowd control and supervision. Liability for failure to properly supervise crowds has been analyzed in several sports and entertainment industry cases. One key case involving the failure to prevent a fan stampede prior to a rock concert is *Bowes v. Cincinnati Riverfront Stadium*,²⁸ which was brought after 11 fans were trampled to death. The court concluded that the facility was liable because it was foreseeable that injuries would occur with the chosen seating arrangement.²⁹ The facility utilized a general seating arrangement where the first people into the facility had the first seat choice, thereby creating an incentive for a stampede.³⁰

Notice is the key requirement for proving foreseeability. In a suit stemming from a brawl during a 1980 AC/DC concert, the concert promoter claimed they did not have notice of such an incident because, "no unruly behavior had taken place in the arena, no fights had broken out and no drinking had been observed."³¹ Even though the arena had no prior problems, the court concluded that the promoter was on notice because a police officer had investigated prior tour stops and had informed it of various problems including drunk, rowdy and drug-using crowds at past concerts.³²

When a sports administrator has information concerning possible criminal conduct, a duty arises to provide proper warning and protection. Thus, a facility owner was found negligent for failing to take any remedial steps when prior robberies occurred in the facility's parking lot and the facility was located in a high crime area.³³

Event Safety Strategies

Criminal activity can be reduced through implementing appropriate security measures and effective event supervision.³⁴ Proper supervision entails properly trained security, in an appropriately sized security force, utilizing the most appropriate security equipment and following event supervision guidelines.

All security personnel should be properly trained to accomplish their required task.³⁵ Peer security forces tend to be much more successful at controlling crowds. The University of Nebraska utilizes ROTC cadets dressed in bright orange security jackets, rather than police officers, in the stands of sporting events because the cadets get along better with the students in the bleachers and can more effectively maintain order.³⁶

Proper training may require adherence to specific state requirements. New Jersey is currently considering a new state regulation that would improve screening and training for private security guards.³⁷ The law requires all new guards to undergo eight hours of basic training, eight hours of on-site instruction with veteran guards, and special preliminary and yearly training for armed guards.³⁸

Besides proper training, there should be an adequate number

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of security personnel or police available to handle all criminal matters when they arise. The Houston Police Department utilized over 32,950 hours (4,118 eight hour shifts) to patrol, arrest, and issue citation in and around Houston parks.³⁹ The Los Angeles Police Department put 4,000 officers on the streets during the 1984 Summer Olympic Games.⁴⁰ The 1996 Summer Olympic Games utilized Atlanta's 1,550 member police force and volunteer security professionals from throughout the world, and over 11,000 soldiers to complete the security staff numbering nearly 20,000.⁴¹

Having enough security personnel is critical for resolving any potential crowd disturbance. The Riddick Bowe versus Andrew Gollota fight at Madison Square Gardens illustrates this need. The post-fight melee which started in the ring before spreading into the stands resulted in 22 injuries and 16 arrests.⁴² Eighteen New York City Police officers were assigned to patrol outside the arena, but the Gardens and event promoter were responsible for internal security, which consisted of 70 security officers and 50 ushers.⁴³ Some commentators claimed the melee could have been prevented or diminished if additional security forces comprised of uniformed police officers had been used inside the arena.⁴⁴

Proper training and adequate personnel are also being complemented by additional, high-tech security mechanisms. The 1996 Summer Olympic Games utilized such techniques as installing and monitoring over 1,000 video cameras, utilizing scanned hand-prints to access residential areas, and having radio frequency fields programmed to scan an employee's identification card and allow access only if the identification card is approved for that designated area.⁴⁵ Video security is increasingly being deployed to monitor student sections and to monitor police arrest procedures.⁴⁶

In order to ensure adequate security, the facility or event administrators must effectively coordinate all security matters with local police, sheriff or other law enforcement entities.⁴⁷ Pre-event cooperative meeting with all uniformed security and law enforcement personnel is critical for event safety.

Proper Event Supervision Guidelines

The first step to properly managing illegal conduct entails developing, communicating and enforcing written guidelines setting forth specific prohibited conduct and the measures that are to be taken when someone violates the guidelines.⁴⁸ Key concerns that should be addressed by the security guidelines include establishing proper seating arrangements, preventing possible projectiles from coming into the facility, reducing alcohol consumption, educating individuals about possible repercussions from illegal acts, and increasing police and/or activity in and around sports facilities.

Facilities should refrain from using standing room only seats or general seating whenever possible.⁴⁹ Such a step should hopefully reduce fan concentration in certain areas which could escalate into a crowd control problem. Fixed seating normally

avoids the specter of fans fighting over seating assignments.

It is advisable not to give away items which can be used as projectiles to throw at other individuals. Major League Baseball has faced significant scrutiny when ball giveaways have resulted in fans pelting the field and opposing players.⁵⁰ Similar to baseballs, bat giveaways also represent a significant concern. Any hard item part of a giveaway promotion should be given after the game, or fans can be given a coupon to obtain the item at a latter date.⁵¹ Special attention should be given to checking individuals entering a facility to prevent the entry of bottles, cans, and fruit.⁵² In addition to not distributing any projectiles and preventing projectiles from entering a facility, special care has to be taken to make sure the facility does not possess certain natural elements, such as accumulated snow, which could lead to a dangerous snow-ball fight.⁵³

Arrests at sports events often revolve around alcohol abuse or intoxicating behavior.⁵⁴ Special precautions need to be employed whenever alcohol is being served or consumed. Various sports facilities are designating certain areas as alcohol-free family areas or eliminating the sale of alcohol after a certain period in the competition.⁵⁵

A facility should provide appropriate warnings to patrons in areas with high gang or criminal activity. Warnings have to be effectively transmitted and understood by patrons to satisfy legal requirements.⁵⁶ If adequate police protection cannot be provided, individuals utilizing the park or facility should be warned about any reasonably foreseeable criminal activity.⁵⁷

Besides giving warnings, providing proper education is also a critical concern.⁵⁸ All affected parties should be regularly educated as to the potential repercussions which could result from illegal conduct. Individuals need to be told that their improper conduct could lead to criminal prosecution, and, often more important, continued conduct could force a team or program to cease operations.⁵⁹ Such a threat has been effectively used by coaches and referees making announcements indicating that the home team would forfeit a game if the illegal conduct continued.⁶⁰ Such warning should be given early in a game to hopefully prevent such conduct, not just when the negative conduct arises.

Safety Comes First

The research presented in this article clearly indicates that reducing criminal activity associated with sports and recreational activity and facilities is a greater concern than previously documented or explored. In addition to focusing on preventing participant injuries, special emphasis has to be placed on reducing criminal activity. With more and more dollars, supplies, people and activities affecting sports and recreational programs, the risk management concerns associated with reducing criminal activity will continue to grow.

To reduce criminal misconduct, and, hopefully, legal liability associated therewith, criminal risk management guidelines

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should be thoroughly researched, printed, distributed and enforced to maintain consistent vigilance. Additionally, effective risk management dictates that in addition to properly training security personnel, all fans and participants need to be educated concerning appropriate conduct and the punishment that may occur if someone violates the guidelines.

FOOTNOTES:

- ¹ Gil B. Fried, Esq. is an Assistant Professor and Coordinator of the Sports and Fitness Administration curriculum at the University of Houston. He also serves as an adjunct faculty member with the University of Houston Law Center teaching sports law. He is Of Counsel with the Houston based firm of Bisk & Lutz, L.L.P.
- ² See generally, Betty van der Smissen, *Legal liability and Risk Management for Public and Private Entities*. Cincinnati: Anderson Publishing Co. 1990. and W. Whitfield III, (1996, Oct.-Dec.). *Legal Liability in Crowd Management*. 3 *CROWD MANAGEMENT* 2, 9-15, Oct.-Dec.

Risk management grew from the growing specter of liability which loomed over public facilities. Bernard P. Maloy, *Planning for Effective Risk Management: A Guide For Stadium and Arena Management*, 2 *MARQ. SPORTS L. J.* 89 (1991).
- ³ Robert Ammon, Jr., *Alcohol and Event Management*. 1 *CROWD MANAGEMENT* 4, 18, April-June, 1995. See also A.W. Miller, A.W., *Risk Management*. In G. Nygaard & T. Boone (Eds.), *Law for Physical Educators and Coaches* (pp. 419-437). Columbus, OH: Publishing Horizons, 1989.
- ⁴ HPRD participation numbers
- ⁵ Houston Park and Recreation Department, *COPS MORE GRANT PROGRAM, JANUARY 1, 1996 TO DECEMBER 31, 1996, 1997* at 3. Approximately 59,000 citizen contacts were made during 1996 and 17, 797 self initiated investigations were undertaken by HPD. Id.
- ⁶ Id.
- ⁷ Id.
- ⁸ Id.
- ⁹ Id.
- ¹⁰ Betty van der Smissen, *Supra* note 2 at 234 (*citing* *Gottesman v. Cleveland*, 52 N.E.2d 644 (Ohio 1944)).
- ¹¹ See generally, S.K. Bardwell, *After Downward Spiral, Crime Edges up in '96*, *HOUSTON CHRONICLE*, Feb. 1, 1997, 31A, Rad Sallee and Lisa Teachey, *Violent Crimes by Juveniles Down Again*, *HOUSTON CHRONICLE*, Oct. 3, 1996, 29A.
- ¹² See generally Edward R. Davis, Jr., *Mayor Bosley Says Statistics Prove Recreation Decisive in Fighting Crime*, *NEWS*, May 13, 1996 (Press release from the Mayor's

office). Police Department statistics showed that overall crime was down nine percent in areas with recreational programs and seven percent overall throughout the city. Id. Several districts with increased recreation programming and hours showed double digit declines in criminal activity. Id.

- ¹³ Id.
- ¹⁴ Gail Compton, *St. Louis Repeats as Midnight Basketball National Champs*, *NEWS*, August 15, 1996.
- ¹⁵ See generally, *Hackbart v. Cincinnati Bengals, Inc.*, 435 F. Supp. 352 (D. Colo. 1977), *Manning v. Grimsley*, 643 F. 2d 20 (1st Cir. 1981), and *Bourque v. Duplechin*, 331 So. 2d 40 (La. Ct. App. 1976). See also, Tom Pedulla, *Bowe Fight Ends in Ring Riot*, *USA TODAY*, July 12, 1996, 1C, wherein a fight erupted after a boxer was disqualified. Europe has had its share of criminal assaults and criminal activity primarily associated with soccer matches. A lawsuit was filed in Belgium when one soccer player punched another so hard while they were jockeying for position that the injured person will probably never play again and might lose an eye. Alex Johnson, *Comment: Violence, Cynicism Eating Away at Soccer*, *THE OTTAWA CITIZEN*, December 28, 1996, C2. Soccer players were not the only ones who faced assaults. In 1996 a Russian referee was punched unconscious after awarding a controversial penalty, a Cypriot league referee was rushed to a hospital after being attacked and a Bulgarian referee who had a live snake thrown at him. Id.
- ¹⁶ See generally Eric Dunning, Patrick Murphy and John Williams, *The Roots of Football Hooliganism, An Historical and Sociological Study*, Routledge, 1988. Edward Grayson, *Sports and the Law*, Butterworth & Co., 1988, at 125 et seq. Malcolm Jones, Jr., *Far Into the Madding Crowd*, *NEWSWEEK*, June 1, 1992, 69. *Soccer match Deaths Bring Inquiry*, *SAN JOSE MERCURY NEWS*, January 15, 1991, 3A (42 dead after soccer game in South Africa).

Soccer is not alone in the violence that can be generated by hostile crowds. A cricket match at Eden Gardens in India attracted 110,000 fans who were upset when officials awarded the World Cup semifinal match to Sri Lanka. *World Cup Cricket Fans Riot*, *LOS ANGELES TIMES*, March 14, 1996, C11. The fans threw rocks and bottles, set fire to the stands, and stormed the field. Id. In September 1989, a fighter was attacked by his opponent's mother who climbed into the ring and attacked him with her high-heeled shoe. *Action Outside the Ring Must Have Been better*, *THE COLUMBUS DISPATCH*, March 27, 1990, 6C.
- ¹⁷ George Hesselberg, *UW Football Fans Have History of Unruly Conduct*, *WISCONSIN STATE JOURNAL*, October 31, 1993, 8.
- ¹⁸ Rick Berg, *Stem the Stampede*, *ATHLETIC BUSINESS*, 9, November 1994.
- ¹⁹ A crowd of several hundred Ohio State fans celebrated a 1996 football victory over Notre Dame by overturning cars,

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setting fires, and throwing rocks in Columbus, Ohio. Not So Fantastic, USA TODAY, September 30, 1996, 3C.

- 20 See generally, John Leo, Take Me Out to the Brawl Game, TIME, October 29, 1984, 87.
- 21 Id.
- 22 W.H. Stickney, Jr., Browns Leave Their faithful With One to remember, HOUSTON CHRONICLE, December 18, 1995, 1C, 6C.
- 23 See generally Gates Offers Police For Game, SAN JOSE MERCURY NEWS, November 1, 1991, 4B. Los Angeles' Police Chief, Daryl Gates, offered the security after three students were injured in two gang-related shootings at a city run stadium. Id. See also, Four Arrests After Football Game Brawl, SAN JOSE³²

RISK MANAGEMENT FOR RECREATION PROGRAMS IN THE 1990's

By Gil Fried, Esq.¹

LOCATION OF INJURIES												
Location	Number	Percent	Incident		Injury							
			Type	Number	Percent	Type	Number	Percent	Type	Number	Percent	
Field	107	18.50%	Animal	1	0.09%	Death	1	100%				
			Personal	53	49.50%	Animal bite	1	1.90%				
						Assault	3	5.60%				
						Broken bones	4	7.50%				
						Death	1	1.90%				
						Falls	4	7.50%				
						Heart Attacks	2	3.80%				
						Inapp. Conduct	9	17.00%				
						Injuries	24	45.30%				
						Lost Child	5	9.40%				
					Property	19	13.50%	Fires	4	21.00%		
								Inapp. Conduct	2	10.50%		
								Theft	3	15.80%		
					Vandalism	5	26.30%					
		Vehicles	35	31.80%	Broken window	25	71.40%					
					Collisions	8	22.80%					
Golf Course	2	0.03%	Personal	2	100%	Contusions	2	100%				
Nature	3	0.05%	Personal	2	66.60%	Injury	2	100%				
			Vehicle	1	33.30%	Collision	1	100%				
Non-HPRD	26	4.50%	Property	2	7.70%	Collisions	18	75.00%				
			Vehicle	24	92.30%	Broken window	4	16.60%				
Parking lot	19	3.30%	Personal	2	10.50%	Theft	3	75.00%				
			Property	4	21.00%	Vandalism	1	25.00%				
						Collisions	7	53.80%				
					Vehicles	13	68.40%	Broken window	4	30.70%		
								Theft	1	7.70%		
Pool	25	4.30%	Personal	21	84.00%	Assault	1	4.70%				
						Poss. drowning	3	14.30%				
						Inapp. Conduct	3	14.30%				
						Injury	13	62%				
					Property	4	16.00%	Burglary	4	100%		
					Personal	2	100%	Injury	2	100%		
Public area Structure	157	27.10%	Personal	89	56.70%	Animal bite	3	3.30%				
						Assault	4	4.50%				
						Broken bones	1	1.10%				
						Falls	13	14.60%				
						Inapp. Conduct	9	10.10%				
						Injuries	56	62.90%				
						Lost Child	1	1.10%				
					Property	60	38.20%	Burglary	18	30.00%		
								Fire	4	6.60%		
								Unsecured	9	15.00%		
								Theft	10	16.60%		
								Vandalism	10	16.60%		

			Vehicle	8	5.00%	Broken lights	3	37.50%
						Collisions	3	37.50%
						Theft	2	25.00%
Unknown	138	23.80%	Personal	75	54.30%	Animal bites	2	2.70%
						Assaults	15	20.00%
						Death	1	1.30%
						Falls	11	14.60%
						Fire	1	1.30%
						Inapp. Conduct	19	25.30%
						Injuries	25	33.30%
						Lost Child	1	1.30%
						Rape	1	1.30%
			Property	31	22.30%	Fire	8	25.80%
						Thefts	11	35.50%
						Vandalism	2	6.40%
			Vehicle	32	23.20%	Broken window	13	40.60%
						Collisions	8	25.00%
						Fire	1	3.10%
						Theft	3	9.40%
Velodrome	2	0.03%	Personal	1	50.00%	Broken bone	1	100%
			Property	1	50.00%	Theft	1	100%
Zoo	98	16.90%	Personal	73	74.50%	Animal bite	16	22.00%
						Fall	21	28.70%
						Inapp. Conduct	7	9.60%
						Injuries	19	26.00%
						Lost child	7	9.60%
						Vandalism	3	4.10%
			Property	23	23.50%	Animals-lost	6	26.10%
						Theft	6	26.10%
						Vandalism	3	13.00%
			Vehicles	3	3.00%	Collisions	3	100%



ATTEND THE 1997 ANNUAL MEETING OF THE STATE BAR OF TEXAS JUNE 25-29, 1997 GEORGE R. BROWN CONVENTION CENTER

**7th ANNUAL ENTERTAINMENT LAW
INSTITUTE
FINAL ANALYSIS**

As many of you know, the 7th Annual Entertainment Law Institute Legal Aspects of the Entertainment Industry was held on March 15, 1997 at the Four Seasons Hotel in Austin. Over 200 people attended, which makes it our largest turnout for the Seminar to date. The response seems to be due to various factors including the expansion of the program to concurrent presentations offering more topics, the location, the additional promotion by the University of Texas and maybe that great brochure cover featuring Armadillo World Headquarters poster art by Jim Franklin.

Although this was our seventh year to produce the seminar, it was a year of significant firsts. It was the first year of the Entertainment and Sports Law Section's association with the University of Texas School of Law as the Sponsor and the first year the Texas based speakers outnumbered the out of state lawyers as we had presentations from: Ernie Gammage, Austin; David Sokolow, Austin; Jeff McDaniel, Austin; Shannon Vale, Austin; Cameron Randle, Austin; Ed Fair, Houston; Steven Zager, Houston; Al Staehely, Jr., Houston; and Richard Perna, Austin.

The audience surveys have provided a great deal of commentary and suggestions which will be very helpful in designing the program for next year as well as an interesting profile of our attendees. For example, 92 % thought the seminar was "excellent" to "good", 89% would attend a similar seminar next year, 47% of the audience was solo practitioners, 32% had been in practice under five years and 20% five to ten years, 24 came from 13 other states; 70 from Austin, 24 from Dallas, 49 from Houston, 14 from San Antonio, and the remainder from 25 other Texas cities.

With a one day seminar of this type, it is always difficult to totally satisfy the needs of each registrant, but it is gratifying to know that we got high marks for trying and generally pleased a very high percentage of the audience. Credit for the success goes largely to the planning committee which worked hard to find the right combination of topics and speakers. The committee consisted of Co-Chairs, Mike Tolleson and David Sokolow, Al Staehely, Jr., Larry Waks, Shannon Vale, Ed Fair, Steven Winogradsky and Michael Esposito. In addition to the planning committee, the staff of the CLE Dept. of the University of Texas Law School did an excellent job of promoting and producing the event.

As a result of our success in '97, we can look forward to the 8th Annual Entertainment Law Institute to be held in March of 1998 in Austin. Look for more details future Journals. For more information on seminars produced by the University of Texas see their web site at www.utexas.edu/law/cle.

From the Editor

The Texas Entertainment and Sports Law Journal is published quarterly. If you are not on the mailing list and wish to be included, forward your name and address to the Section Treasurer along with a check for \$20 payable to the Entertainment and Sports Law Section and indicate that you wish to be included on our mailing list.

We are now accepting advertisements in the Journal. Anyone wishing to advertise in the Journal, should contact the Editor for information on getting your ad in the Journal. Ad rates are: 1/8 page: \$50.00; 1/4 page: \$100.00; 1/2 page: \$150.00; 3/4 page: \$175.00 and Full page: \$200.00.

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Eric E. Bensen, Note, *The Visual Artists' Rights Act of 1990: Why Moral Rights Cannot Be Protected under the United States Constitution*, 24 HOFSTRA L. REV. 1127 (1996).

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Stephanie O. Forbes, Comment, *Securing the Future of Our Past: Current Efforts to Protect Cultural Property*, 9 TRANSNAT'L LAW. 235 (1996).

W.E. Scott Hoot, *Estate Planning for Artists: Will Your Art Survive?*, 21 COLUM-VLA J.L. & ARTS 15 (1996).

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Leonard D. Duboff, *Marks for O.J.: Trade Marks, That is*, 7 ENT. L. REV. 280 (1996).

Beth Freemal, Note, *Theater, Stage Directions, and Copyright Law*, 71 CHI.-KENT L. REV. 1017 (1996).

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Alexander Gigante, *Ice Patch on the Information Superhighway: Foreign Liability for Domestically Created Content*, 14 CARDOZO ARTS & ENT. L.J. 523 (1996).

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Rebecca F. Martin, Note, *The Digital Performance Right in the Sound Recording Act of 1995: Can it Protect U.S. SoundRecording Copyright Owners in a Global Market?*, 14 CARDOZO ARTS & ENT. L.J. 733 (1996).

Anthony P. Polito, *Fiddlers on the Tax: Depreciation of Antique Instruments Invites Reexamination of Broader Tax Policy*, 13 AM. J. TAX POL'Y 87 (1996).

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Claire Miskin, *Death by Entertainment*, 7 ENT. L. REV. 259 (1996).

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Ramon E. Reyes, Jr., *Can the Common Law Adequately Justify a Home Taping Royalty Using Economic Efficiency Alone?* 16 N.Y. L. SCH. J. INT'L & COMP. L. 235 (1996).

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