

Pedagogy in Sport Law Classes: Using *Sports Litigation Alert* Effectively and Creatively

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There is no better way of exercising the imagination than the study of law.

Jean Giraudoux 1882-1944

Those of us who teach sport law know that it is a demanding discipline pedagogically. Not only must we have a command of basic legal principles in a variety of substantive areas, e.g., tort, contract, constitutional and civil rights law, administrative law, labor law, and antitrust law, but also we must be able to help our students apply those concepts to inform managerial practice and operation. So we are always seeking to attain not just the “Ah, ha” moment when students understand the legal principles but the “Oh, yeah” moment when students understand how these principles can be used to improve practice in their future employment.

We are always searching for pedagogical resources to help improve our teaching practices in sport law. Although a great sport law text is an important aspect, the law is so dynamic that we need a reliable source for timely updates with cases and analysis. The *Sports Litigation Alert (SLA)* provides those updates and there are many ways to use that material to challenge and inform students.

The rest of this article is devoted to an exploration of the ways in which subscribers of *SLA* use and expand upon those resources to improve the pedagogy within their sport law classrooms. I gained this information through a recent survey of sport law instructor subscribers to learn the ways in which they implement all of the *SLA* resources, i.e., the newsletters with cases and articles, the questions and answers provided by Holt Hackney, and the archived materials.

Several professors use *SLA* to have students better prepare for class discussion on topics/cases presented by current issues of the newsletter. For example, Brian Crow, professor at Slippery Rock University, provided the following insights:

Sports Litigation Alert is a great tool for an undergraduate sport law course, because it allows students to see real life, timely application of legal theories and topics covered in class, all at a reasonable cost for students.

I use the *SLA* in a variety of ways when I teach during the fall or spring semester.

In the regular semester, I have fluctuated between Cotten and Wolohan’s book and Sharp, Moorman, and Claussen’s book. Each is completely different in terms of layout and resources provided, so which one I use determines how I use *SLA*. Regardless, each student must have his/her own subscription.

During the semester I plan regular discussions in class when the new *SLA* arrives. I see which cases/articles are most relevant to issues we are currently covering, as well as those we have already covered, and assign those as readings. I then assign 3-5 students to lead the discussion in

class, or if pressed for time, require a short, written summary of the topic and how the *SLA* resources helped them understand.

Professor Emily Must from the University of Massachusetts Amherst uses *SLA* in a variety of ways in her classes. She shared her methods as follows:

1) Formulate test question scenarios and in-class examples. I do not use the questions Holt sends because I am either trying to create a multiple-choice question or something a little longer which would require an analysis. I keep a running document of the cases by subject so I can easily find new examples each semester.

2) Have informal 'mock-trials' in class. I will assign a specific article(s) or case (s) (those that are still in the judicial or appeals process). Students have to come to class prepared to defend either side. Once in class they are assigned small groups and their side, and they have 10 minutes to come up with their arguments. Both sides present and the rest of the class serves as the 'jury' and then we discuss.

3) Students must bring in current cases/events for each topic of the semester and *SLA* serves as a great place for them to find examples.

4) I also highlight the in-person interview with a sport law industry professional in a career paths newsletter that I publish each week.

Marcia Mackey, associate professor at Central Michigan University, selects certain articles or cases and expands on the questions provided by Holt Hackney. Students are paired in class to answer the questions and essentially do a case brief. Then the pairs join larger groups in which the cases are discussed focusing on whether the students agree or disagree with the discussion. One of the cases discussed in class becomes an exam question later in the semester.

Kerri Cebula, associate professor at Kutztown University, stated that she uses *SLA* as follows: "This semester, I am using *Sport Litigation Alert* as a jumping off point for discussion. My students have to present an article from *SLA* twice during the semester and then we discuss it in class."

Corinne Daprano, professor at the University of Dayton, requires her students to prepare blog posts using *SLA* resources. She writes as follows: Each time a newsletter is published during the semester, students are expected to select one of the case summaries or articles and write a blog post about the summary/article. This usually equates to 5-6 times per semester. The blog post needs to be 3-4 paragraphs in length and address three things:

- 1) A brief summary of the case summary or article;
- 2) How the information contained in the case summary/article relates to the legal topics we are discussing in class; and,
- 3) How the information in the case summary/article is useful to the student in their future professional endeavors (since sport management as well as exercise science students take this

class it allows students in these different majors to reflect on how legal concerns/issues are relevant to their chosen profession).

The blog posts are graded as homework assignments (0-2 points each) and often discussed in class. By the time the students have written a couple of these blog posts they have begun to develop a much better understanding of legal concepts because of course textbook readings, in-class discussions and these blogs, which are a way for students to reflect on the applicability of legal concepts to real world situations.

Libba Galloway, assistant professor at Stetson University, provided the following information regarding a take-home assignment for her students: “Three or four times during the semester I have students do take-home assignments based on the most recent issue. I do not use the questions Holt sends out, but instead do 10 questions of my own, which usually require longer answers and more thought process. For example, here are questions that I used with the August 30, 2019 issue of *SLA*: ”

Case Summary: “Hawaii District Court Says High School Athletes’ Title IX Claims May Proceed under ‘Controlling Authority’ Theory”

1. What part of Title IX was at the crux of the motion to dismiss filed by the Oahu Interscholastic Association (OIA)?
2. What parts of the plaintiff’s complaint did the court look to in denying the OIA’s motion to dismiss?

Case Summary: “Wrestling with Referees: *Halter v. Wisconsin Interscholastic Athletic Association*”

3. Summarize the facts that gave rise to this lawsuit.
4. What did the judge in this case issue, and why did he issue it?
5. Do you believe courts should step in and overturn calls made by referees? Give the reasons for your answer.

Article: “College Presidents Choose to Enable Academic Fraud in Athletics”

6. Of the various steps that The Drake Group proposed that institutions take to increase academic integrity within intercollegiate athletics without any NCAA involvement, which one do you think would do the most to achieve that goal? Give the reasons for your answer.

Article: “The Philly Phanatic Goes to Court”

7. What law was invoked by Harrison and Erickson, Incorporated (H/E) in the termination letter it sent to the Phillies last year, and what is H/E looking to do based on this law?
8. What claim was made by the Phillies in response to the termination letter?

Article: “KU Football Coach’s Lawsuit Survives Motion to Dismiss”

9. Summarize the facts that gave rise to this lawsuit.
10. How does the motion to dismiss that was filed by the University of Kansas (KU) in May relate to what we covered in class last week regarding jurisdiction?

Ted Curtis, associate professor at Lynn University, shared the following assignment that he has prepared for his Sport Law undergraduate class:

For this unit, you are to demonstrate an appreciation of issues in sports law. From any of this calendar year's issues of *Sports Litigation Alert*, select THREE articles that discuss a court's decision of a recent lawsuit.

One article MUST relate to professional sports, one article MUST relate to intercollegiate/Olympic/amateur sports, and the third article MUST relate to stadium/arena/facility management.

- (1) Explain the parties involved, the court, specifying civil/criminal, state/federal and the name of the specific court, providing the legal issue involved and the court's decision;
- (2) Analyze the decision's place in the governance of professional athletics for the first article, intercollegiate/Olympic/amateur sports for the second article, and stadium/arena/facility management for the third article;
- (3) Explain -- and supporting with well-reasoned arguments -- widely-held concepts of justice, such as those held through natural law or Judeo-Christian law that we have discussed in class; and
- (4) Last, put it all together -- as we simplify in class, answering the question: “In today's world, is the decision of the court fair?” Do this by (a) connecting your own concept of personal justice to how it impacts your view of the court decision, and (b) connecting and applying your view of civil discourse to the real-world setting of the communities of diverse legal perspectives, synthesizing them together to provide your own perspective and theory on social justice in this modern, 21st century legal world.

Steve McKelvey, professor at the University of Massachusetts Amherst, provided the exercise entitled All Rise: Using *SLA* for Mock Trials. The exercise explained by Professor McKelvey follows:

Given the oft-changing landscape of case law within the sport industry, it is important to supplement textbook readings and lectures with discussion and analysis of current legal cases. To

facilitate this, I utilize an in-class mock trial assignment that provides a meaningful way to incorporate the students' bi-weekly on-line subscription to *Sports Litigation Alert* (SLA Student Edition), as well as SLA's invaluable archives (which itself is well worth the price for any instructor looking to keep their lectures up to date!). I called these assignments "The Professor's Court".

My in-class mock trials are designed to:

- 1) Familiarize students with current legal issues and trends within the sport industry;
- 2) Strengthen students' ability to research case law, identify key legal issues, apply the law, and hone their legal reasoning skills to recently decided cases;
- 3) Gain appreciation for how different jurisdictions decide similar cases in often conflicting ways;
- 4) Hone their legal writing skills; and
- 5) Enhance students' ability to make public oral presentations and "think on their feet."

The format of the mock trial is as follows (from my syllabus):

Throughout the semester, students will work in teams (as selected by the professor) to illuminate a current legal risk management issue through a "mock trial" format. This assignment requires use of the *Sport Litigation Alert* (SLA) newsletter and archives (in addition to online legal resources). Typically, there will be two students representing the plaintiff and two representing the defense. These mock trials will last approximately 30 minutes total; I serve as the judge and the class serves as the jury.

Procedure: At least one week prior to each mock trial date, I will assign an appropriate case to the teams. Once you get the case citation, each team is responsible for retrieving the actual case decision from WestLaw (an online database) as well as any other case information from sources like *Sports Litigation Alert*. Approximately four days before the mock trial, both sides meet with me separately to discuss our legal arguments and strategy.

By 10 AM on the date of the mock trial, both parties must provide me with a written "legal brief" to be minimum four pages/maximum six pages double-spaced (teams on both sides of the trial will submit ONE brief). The brief lays out your statement of the facts, your legal claim(s), and the prior case law you are relying on to support your position. Your legal brief must include a minimum of three cases (from your research of the SLA Archives and/or WestLaw) used to support or distinguish your arguments (note: you will also need to anticipate the cases that the other side will rely on). The Actual Decision of the case is NOT to be included in your briefs! Remember, the trial has not yet begun!

On the day of the mock trial, the process will flow as follows: Plaintiff Statement of Facts & Legal Arguments. Defendant Statement of Facts/Legal Arguments. P's 4-minute rebuttal. D's 4-minute rebuttal. Again, teams MUST NOT reveal how the case was actually decided. This will

provide the forum for in-class discussion and debate. Your individual grade on this assignment will be based on overall team grade.

Dr. Daprano also uses the *SLA* as an important resource in developing a mock trial exercise. She shared the following: “I incorporate the *SLA* into a mock trial assignment that includes a written report and end of the semester mock trial role-play presentation (their final exam). As part of the requirements of the mock trial assignment students are placed onto teams (plaintiff or defendant). Each team must determine what role the members of the team will play during the mock trial presentation (attorney, plaintiff/defendant, witness) and then begin researching and preparing their case (written report).

“As part of the written report they must research law review articles and similar court cases. Each team member must write up a one-page summary of one law review article and two relevant court cases (one that was decided in favor of the plaintiff and one in favor of the defense). The summary must include a one-to-two paragraph summary of the article/case and one-to-two paragraph explanation of how the article/case is relevant to their mock trial scenario.

“Because the students in this class are primarily undergraduates (1-3 graduate students take the class each semester), I have replaced the requirement that they review articles from law review journals with the stipulation that they find review articles in the *SLA* and/or trade publications (*Sports Business Journal, Athletic Business, Athletic Management, Training & Conditioning*) that are related to their mock trial case. This allows me to easily access the articles they are reviewing, particularly the *SLA* articles, and to ensure the articles are related to sport, recreation, and fitness legal topics. Also, the *SLA* articles are much shorter than a typical law journal article and more easily understood by undergraduate students.

“I have noticed over the past several semesters, since instituting this change, that many of the students now use *SLA* articles that they’ve either already written about for their blog posts or others contained in the *SLA* archives. In fact, most of the law review articles they now use for their research are from the *SLA*.

“In summary, the *SLA* has been a great addition to my sport law course. Although, the students are only required to read and review one *SLA* article every two weeks they often read several because they are interested in particular cases they’ve heard about in the news. There is much better in-class discussion of legal topics and cases because they’ve actually read the *SLA* case summaries and articles. This allows them to better apply legal concepts to real world situations and to ask better questions about concepts that they don’t fully understand simply from reading the course textbook.”

Cara Henri Wright of Trinity University and William Robers at UCCS also report that they use *SLA* as the focus for mock trials (oral arguments).

Dr. Crow also uses *SLA* in the semester-long legal research project. He states:

“Students, generally in groups of two, must research a broad legal topic area, putting it into historical perspective, showing current examples of its application, and projecting how they will be able to use this knowledge in their careers. I encourage them to use the *SLA* archives as a

resource and a starting point, although many (to their regret) choose to conduct Google or other Internet searches first.”

Thank you to all of the professors who so graciously shared their insights on using *SLA* to foster superior learning environments in their sport law classes.