

OUTLINE FOR
NATIVE AMERICAN MASCOTS:
LEGAL ISSUES SINCE 1970

Introduction:

“Sports mascots have come under increasing fire by American Indians as they try to achieve equal status as an identifiable ethnic group within American society. No other group faces this particular problem, and the unique nature of the situation calls for serious deliberations. Why are Indians singled out as a group of people devoid of the sentiments that characterize other groups? No team in any sport has its logo or slogans used to demean another identifiable ethnic, religious, or economic group.”¹

Voices against Indian mascots include the American Indian Movement, Conference on the Elimination of Racist Mascots, National Indian Education Association, National Congress of American Indians, ALANA (African, Latino, Asian and Native American), various Indian tribes and their inter-tribal councils.

Professional Sports:

-Cleveland Indians and Chief Wahoo

+Cleveland Indian Center suit (filed 1972, settled 1983)

-Legal issues

+Limits to free speech (i.e., commercial speech)

+Sec. 2A, Lanham/Trademark Act (1946)

+Pro-Football, Inc. v. Harjo 284 F. Supp. 2d 96 (2003)

+Title II, Civil Rights Act (1964)

+Prohibition of discrimination based on race, color, religion, and national origin in places of public accommodation

+United Church of Christ v. Gateway Economic Development Corporation of Greater Cleveland 383 F. Sup. 3d 449 (2004)

¹Vine Deloria, Jr., “Forward,” Richard King and Charles F. Springwood, eds., *Team Spirits: The Native American Mascots Controversy* (Lincoln, NE: University of Nebraska Press, 2001), ix.

-Other teams

- +Atlanta Braves
- +Chicago Blackhawks
- +Kansas City Chiefs
- +Washington Redskins

Secondary Schools:

- Munson suit against Mosinee High School (“Indians”), Wisconsin (filed 1994)
 - +Munson v. State Superintendent of Public Instruction 217 Wis. 2d 290; 277 N.W. 2d 387 (1998)
- Basis of suit
 - +”Racially hostile environment” contrary to Title VI, Civil Rights Act (1964)
- Impact: protests, cost of litigation, heightened awareness by school officials

Colleges and Universities:

- Two legal concerns
 - +First Amendment claims about free speech (or, negatively, hate speech)
 - +Racial discrimination claims that rest on federal, state, and/or local statutes
- Limits of “hostile environment” argument for post-secondary institutions
- Other options for litigation include commercial / trademark law, public accommodation statutes, nondiscrimination statutes, IIED (intentional infliction of emotional distress)
- Voluntary changes by some schools (e.g., Stanford University from “Indians” to “Cardinals”; Dartmouth College from “Indians” to “Big Green”; East Michigan State from “Hurons” to “Eagles”; Miami University of Ohio from “Redskins” to “Redhawks”; Marquette University from “Warriors” and “Willie Wampum” mascot to “Golden Eagles”)
- Other schools refuse to yield long-standing traditions (i.e., Florida State University’s “Seminoles”; University of North Dakota’s “Fighting Sioux”; San Diego State’s “Aztecs” and mascot “Monty Montezuma”; University of Illinois’s “Chief Illiniwek”)

David W Fletcher, April 2006

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-Recent litigation

+Crue v. Aiken 137 F. Supp. 2d 1076 (2001); 204 F. Supp. 2d 1130 (2002); 370 F. 3d 668 (2004)

*NCAA rules and U. of Illinois's Preclearance Directive ruled an infringement of students' free speech

+Bellocourt v. Cleveland 104 Ohio St. 3d 439 (2004)

*Free speech of protestors to burn Chief Wahoo in effigy disallowed

-Future possibilities for activism against Indian mascots - permit denials or revocations, statutes denying funding, hate speech codes, pupil discrimination laws, trademark cancellations

-Issue will rest on balance between freedom of speech and harm of ethnic stereotypes