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PROGRESS REALIZED?: THE CONTINUING AMERICAN INDIAN MASCOT QUANDARY

ANDRÉ DOUGLAS POND CUMMINGS

I. INTRODUCTION

On every fall Saturday in the United States, a young, white male college student goes about a deliberate ritual that stuns in its audacity. This white student will pull on buckskin leggings with fringes and an intricate bone and pearl breastplate. This white student will paint his face with “war” colors that represent power and tradition. This white student will pull onto his head an

* Associate Professor of Law, West Virginia University College of Law; J.D., 1997, Howard University School of Law. I am appreciative to the Marquette University Law School, which hosted the Sports Law Teaching Symposium held September 27, 2007, where several ideas in this article were initially presented. In addition, other ideas in this article were presented at the West Virginia University College of Law Sports Law Symposium, Reversing Field: Examining Commercialization, Labor and Race in 21st Century Sports Law, held October 4-5, 2007. I am grateful for the outstanding research assistance provided by Brian Hooper, West Virginia University College of Law, class of 2008, and Sheila Hassani, West Virginia University College of Law, class of 2009. I am further grateful to the research contribution of Shaquana Cooper, West Virginia University College of Law, class of 2008. Of course, as usual, the politics and errata of this article belong exclusively to me.

1. See American Indian Clothing and Regalia, http://www.native-languages.org/clothing.htm (last visited Jan. 26, 2008) (“[A]s Indian tribes were driven from their ancient lands and forced into closer contact with each other, they began to borrow some of each other’s tribal dress, so that fringed buckskin clothing, feather headdresses, and woven blankets became popular among Indians outside of the tribes in which they originated.”); Zsuzsanna Cselényi, You Are What You Wear? The Visual Rhetoric of Identity at Indiana Powwows, http://www.arts.u-szeged.hu/american/americana/voll1no1/cselenyi.htm (last visited Jan. 27, 2008) (“Several elements in the men’s Northern Traditional or War Dance outfit reflect items worn by early warriors: a bone breastplate worn for protection against arrows, a neck choker for protection against knives, ankle bells or jingling hooves, and a hide shield decorated with tribal symbols.”); Vikki Rhoan, Native American Dance: Traditional Dances, http://sd.essortment.com/nativeamerican_rosv.htm (last visited Jan. 27, 2008) (“Buckskin pants are sewn in traditional fashion with animal sinew. Usually the dancers will not wear shirts, although occasionally a dancer may wear a buckskin vest. Moccasins are the footwear to compliment the regalia. Usually boot style lace-up moccasins are worn that rise to the knee.”).

2. See Face Painting, http://www.ethnicpaintings.com/painting-trivia/face-painting.html (last visited Jan. 26, 2008) (“Face painting is an important tradition among the native Americans. It is much more than just a beautifying practice. It’s a social act of distinction and a cultural heritage. It was done on special occasion to augment one’s appearance and power. Each tribe of the Indians has its own and unique way of face painting.”); Native American Face Paint, http://www.ethnicpaintings.com/popular-painting-styles/native-american-face-paint.html (last visited Jan. 27, 2008); Grandmother Selma, Face Paint Practices, MANATAKA AM. INDIAN COUNCIL,
elaborate headdress complete with feathers and other sacred charms. Once complete, this white student will solitarily practice war whoops and "Indian" tribal dances he has learned from the previous white male student that occupied his position before him and that he will repeat hundreds of times in front of hundreds of thousands of spectators in college football stadiums.

http://www.manataka.org/page1901.html (last visited Jan. 27, 2008) ("Face paint or 'medicine paint' amongst Native Americans was a social act of cultural heritage, it occurred on many occasions but was a visual indication of the given individual personal power as well as his tribal affiliation. Face paint drew on the natural powers of the universe to enhance the individuals [sic] own personal power and gifts."). Selma Palmer of the Manataka American Indian Council goes on to describe the context of color in American Indian face painting:

Each tribal nation had their own designs and individuals respected those guidelines, however, often the individual "paint design" could be a portrayal of a spirit message, a vision, and have spiritual significance to the individual that was unknown to others.

Red was the accepted color of war, the red was often extended to include the back of the hands, stripes on face only and even on the handle of their weapons or shields.

Black was the accepted color of the living with some exceptions that we will discuss later. White was the accepted color of peace . . . or peaceful endeavors. Green was the color used to aid the wearer in night vision. Yellow was the accepted color of death or deadly encounters (exception: black was the color of war to the Comanche).

Comanche men often painted faces black with two red stripes on the forehead and chin. Comanche women used paint as well. Usually it was bright red inside the ears, orange and red circles on their cheeks with red and yellow around the eyes.

Id.; see also Indian Feathers, INDIANS.ORG, http://www.indians.org/articles/indian-feathers.html (last visited Jan. 26, 2008); Indian Head Dress, http://www.native-languages.org/composition/indian-headdress.html (last visited Mar. 13, 2008) ("Indian headdresses are more than just a symbol of customary identification of a region or clan. It is a symbol of pride, prestige and honor.").
across the United States. As this student engages in his pseudo Native American tribal dance, he encourages his adoring fans to participate in various types of mock American Indian chants, cheers, and “tomahawk chops.” This young, white male student has now “officially” transformed himself into a “Seminole,” or a “Fighting Sioux,” or “Chief Illiniwek.” He will spend the next four to six hours desecrating, mimicking, and debasing an entire tribe of American Indians and, by association, an entire race of Americans.


6. See Brian R. Moushegian, Comment, Native American Mascots’ Last Stand? Legal Difficulties in Eliminating Public University Use of Native American Mascots, 13 VILL. SPORTS & ENT. L.J. 465, 465-66 (2006) (listing the names of the public universities in violation of the NCAA ban); Kelly P. O’Neill, Comment, Sioux Unhappy: Challenging the NCAA’s Ban on Native American Imagery, 42 TULSA L. REV. 171, 174-75 (2006) (discussing all of the NCAA colleges and universities that maintained hostile or abusive Native American nicknames, mascots, or imagery in 2006); Hostile and Abusive, HOOPVILLE.NET, http://www.hoopville.net/content/mascots/hostileandabusive.asp (last visited Jan. 27, 2008) (detailing all of the NCAA member institutions that were originally listed as maintaining hostile or abusive Native American nicknames, mascots or imagery).


[o]n fall Saturdays, 80,000 screaming Florida State University fans jam into Tallahassee’s Doak Campbell stadium. Just before kickoff, the school’s mascot, Chief Osceola, and his powerful steed Renegade charge onto the field waving a flame-burning spear.

They sprint from one end of the field to the other before stomping to the fifty-yard line where he slams the spear into the mascot’s image painted onto the turf. The crowd goes crazy.

Meanwhile, outside the delirious stadium a small group quietly stands with signs protesting the use of Seminole Indian imagery for the school’s sports mascots. They came two hours before the game and they will stay two hours after, holding vigil as fans file in and out, paying little attention to the authentic Seminoles who attend every game, rain or shine.

Id.; see also Wise, supra note 4; Jon Saraceno, Native Americans Should Decide Themselves on Offensive Mascots, USA TODAY.COM, Feb. 21, 2007, http://www.usatoday.com/sports/columnist/
American Indian mascot continues to live, chant, dance, and desecrate on college campuses and in professional sports arenas throughout our nation.\(^8\)

Rarely has a symbol, mascot, or moniker meant such completely different things to divergent groups of people. To some, American Indian mascots represent strength, power, reverence, and dignity.\(^9\) For others, Native American mascots are deeply offensive and mock ancient and sacred culture.\(^10\) Historically, professional and collegiate athletic teams have unabashedly sported American Indian mascots and monikers, and it has not been until recent decades that this issue has arisen as offensive or insensitive. In the past thirty or so years, there have been many high school and university administrations that have voluntarily switched their team mascot and moniker from an American Indian to a race-neutral one.\(^11\) Still, some university administrations and many professional sports franchises strenuously eschew calls to remove these racially insensitive mascots, believing that their moniker represents tradition and honor and as such remains a vital part of school or team tradition.\(^12\) These proponents argue that the elimination of their Native

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8. See Native American Mascots Big Issue in College Sports, supra note 7.


12. Hostile and Abusive, supra note 6 (explaining that Central Michigan is free to use the mascot because it received approval from the local tribe); Doug Lederman, Two More Universities Off NCAA’s Mascot List, INSIDEHIGHERED.COM, Sept. 6, 2005, http://www.insidehighered.com/news/2005/09/06/mascot (“The National Collegiate Athletic Association on Friday dropped Central Michigan University and the University of Utah from its list of institutions deemed to have ‘hostile and abusive’ Native American nicknames and therefore restricted from participating in NCAA championships” as the University of Utah was able to keep its “Ute” Tribe mascot because it received approval from the tribe.); NCAA Decision on “Catawba Indians,” May 30, 2006, http://www.catawba.edu/ncaa (indicating that this school is free to use the Indian mascot because they
American mascot at their sporting events would destroy the cultural fabric of their respective institutions. Therefore, the use of these mascots is justified in the minds of these proponents.

Still, some identifiers indicate that as a society, we have entered into a period where more Americans are aware that American Indian mascots offend Native Americans and other non-native U.S. citizens alike. This enlightenment has resulted in the increasing number of sporting teams that have voluntarily changed their offensive mascot and moniker.

When writing about this topic nine years ago in “Lions and Tigers and Bears, Oh My” or “Redskins and Braves and Indians, Oh Why,” I optimistically forecasted a day when all American universities, and perhaps even some U.S. professional sports franchises, would feel a twinge of conscience and abandon the American Indian mascot and/or team moniker to which they had historically clung. Much has transpired in the past nine


Some might argue that, perhaps, these staunch supporters of Native American mascots are simply misled because they are blissfully unaware of the extent that these mascots denigrate Native American culture and dehumanize American Indians as individuals. Interestingly, when those that support the use of Native American mascots are informed of the way that mascots offend American Indian citizens, often their positions do not change. In fact, proponents dig their heels in, supporting the continued use of their offensive mascots. Unfortunately, their human instinct that enables individuals to stop engaging or encouraging behavior that offends and denigrates their fellow man is not triggered. See generally IN WHOSE HONOR?, supra note 13.

See supra note 11.


Id. at 34 (“Nevertheless the sea change has begun. In Cleveland, Ohio, the public library system has enacted a new policy prohibiting its employees from wearing any paraphernalia that
years on the American sports frontier in connection with the Native American mascot debate—some very positive and some quite disheartening. The irony in the statement “some positive and some disheartening” is that individuals on both sides of the debate feel equally strong in their position. On one side are the proponents of American Indian mascots—those individuals that believe that a team nicknamed the “Redskins,” the “Braves,” or the “Fighting Sioux” is an honorarium for the first inhabitants of the Americas. The mascot that dresses up like an Indian chief is respectfully representing a tradition of a school, team, and people. On the other side are the detractors, activists, and critics of those schools, teams, and organizations that continue to employ a team moniker and/or mascot that harkens back to the days of “Cowboys and Indians.” The mascot that dresses up like an Indian chief is mocking sacred rituals, mimicking hallowed traditions, and caricaturizing a proud race in debilitating ways. This continues to be an issue that delves displays the ‘Chief Wahoo’ moniker.”

18. See supra note 11.
19. See supra note 12.
20. See Bill Plaschke, This Mascot Is of Chief Concern, L.A. TIMES, Jan. 1, 2008, at D1. Plaschke writes:

Those who cheer the Chief say that opponents are politically correct posers who don’t understand. They remind people that the Chief has been part of the university’s tradition since 1926. They say he quietly represents the school’s heritage, and its students’ values. “It’s in the mind-set of the students, it’s our history, it’s who we are,” said David Shief, a sophomore treasurer for the Students For Chief Illiniwek group.


In many instances, however, it is not merely the use of names that is so offensive to Native Americans but also the “sham rituals such as . . . smoking so-called peace pipes, beating of tomtooms, fake dances, . . . Indian songs, . . . war-whoops, and painted faces. . . .” Moreover, stereotypical portrayals such as the “tomahawk chop,” the Chief Wahoo logo, the Washington Redskins fightsong, the Florida State University mascot, and the University of Illinois mascot Chief Illiniwek are considered direct attacks upon the spirituality and traditional beliefs of Native Americans.

Id. at 536-37 (internal citations omitted); see also Stacie L. Nicholson, Indian Mascot World Series
deep into the psyche of U.S. citizens.

Nine years ago, I predicted that U.S. colleges, universities, and professional franchises stood at a historic moment, one in which a sea change was developing:

To many American Indians, the use of certain slang terms (i.e., "redskin") is symbolic of racism. The use "symbolizes a continuing lack of understanding the complete and diverse cultures and the heritage of native peoples, and it is offensive to anyone aware of the history of native peoples in North America." Disregarding the setting of the displayed Indian team name does not alleviate the promoted racial insensitivity. Due to our society's increased attention to sports, Americans frequently witness the racist portrayals of American Indians. For young American Indians who attend schools or watch sports games with teams that have names such as Indians, Redskins, etc., and witnessing "a distorted and historically inappropriate caricature" of an American Indian on a school gym wall, participating takes on a new connotation. This often requires "the swallowing of cultural pride, suppression of anger against insensitivity, and the giving up hope of being understood as to their heritage." By continuing to discriminate against American Indians in athletics, teams will aid the promotion of "social discrimination against American Indians" along with sustaining "latent racism for future generations."

Id. at 344 (internal citations omitted); see also Jeff Dolley, The Four R's: Use of Indian Mascots in Educational Facilities, 32 J.L. & EDUC. 21, 26 (2003) ("Opposers also insist that such uses are dehumanizing because they remove humane characteristics from Native Americans, depicting them instead as objects, cartoon characters, and savages. This has the detrimental affect of creating a perception of Native Americans as mythical ornaments, relegating them to an archaic, nonhuman, beastly status."); Tessa Melvin, Indians No More? John Jay Vote Rejects School's Symbol, N.Y. TIMES, Nov. 5, 1989, at 1; Isabel Wilkerson, Indignant Indians Seeking Changes, N.Y. TIMES, Jan. 26, 1992, at 114. Wilkerson notes that:

When Washington Redskins' fans crowd the Metrodome here on Sunday, many of the most zealous will be wearing war paint or feathers. Outside the Super Bowl stadium, real Indians, just as zealous but in ordinary dress, will be marching in protest. What they want is to get the Redskins and every other sports team with an Indian-related name to find some other identity and thus to put an end to stereotypes that have haunted Indians for generations. It is part of a cultural reawakening sweeping reservations and Indian community centers, a kind of nationalism that has made many Indians less forgiving of the routine use of their names and symbols for things like automobiles and sports teams. ... "It's to show that we are not just savages captured in the distant past and not to be made a mockery of."

[Recent events] mark the beginning of the sea change with respect to Native American symbols, names and rituals as mascots and logos . . . . Additionally, as courts across the country move toward opening and redefining the reasonable person standard to a point where offensiveness will be determined according to a reasonable person of the target group standard, the force of judicial opinion should finally shift. Ultimately, the distant yet distinct voice of Native American citizens will be heard.22

Undoubtedly, from one perspective, progress has been made in the nine years since Lions and Tigers and Bears was published. Still, that progress has been awkward, and American Indian mascot proponents' calls of "political correctness run amok" have become shrill and testy. In some instances, the parties have drawn a line in the sand.

This article will examine the state of affairs with respect to the use of Native American mascots in U.S. sports. Part II will describe the recent progress and victories since 1999 of those that oppose the use of American Indians as mascots or monikers. Part III will detail the lack of progress and disappointing results or "victories" for those that support the use of Native American mascots. This article will conclude with a summation and prediction of what the next decade holds in this volatile arena.

II. HALTING PROGRESS

While a sea change in attitude toward American Indian mascots and imagery has been prevalent in many circles, progress in the elimination of such has been halting at best. In fits and starts, some university administrations and state legislative bodies have introduced legislation to ban mascots, nicknames, and imagery that have been deemed offensive and hostile.23 Still, those that support the continued use of hostile American Indian imagery have hunkered down, believing that they are resisting the

22. cummings, supra note 16, at 37 (internal citations omitted).

23. See, e.g., James May, Third Try for California Mascot Bill, INDIAN COUNTRY TODAY (Canastota, N.Y.), Apr. 22, 2005, http://www.indiancountry.com/content.cfm?id=1096410798 ("Sacramento, CA: California Assemblyman Jackie Goldberg, D-L.A., is hoping that the third time really is a charm. Rebuffed during two previous efforts to ban the use of American Indian-themed mascots, Goldberg is trying again. The bill would ban the use of the term 'Redskins' in the state's public schools, making California the first state to make such a ban legally binding."); David B. Driscoll, Indian Mascots in Wisconsin, http://www.wisconsinstories.org/2002season/sports/closer_looking.cfm (last visited Jan. 29, 2008) ("Several attempts to pass legislation banning Indian mascots in Wisconsin schools have failed.").
political correctness movement and are in fact supporting tradition and honoring native peoples.24

A. Mascot and Moniker Changes

In the past decade, several university administrations have voluntarily retired their American Indian mascots and monikers and have adopted race-neutral, non-discriminatory mascots, nicknames, and logos in their places.25 Following in the footsteps of forward-thinking administrations at Dartmouth,26 Stanford,27 St. John’s,28 and Marquette,29 who all voluntarily changed their offensive American Indian mascots and imagery long before the National Collegiate Athletic Association (NCAA) promulgated its Native American mascot policy,30 late-arriving universities such as Seattle University,31 San Diego State University,32 Colgate University,33 and Southeast Missouri State34 also removed their abusive or hostile mascots before the NCAA pressured

24. See Press Release, Dr. Mitchell Zais, President, Newberry College, Response to NCAA’s Appeal Rejection (Sept. 12, 2005), available at http://newbrryindians athleticism.com/article.asp?articleID=1189 (announcing Newberry’s response to its NCAA appeal to keep its American Indian mascot); cummings, supra note 16, at 36 (“Washington [NFL Football Club] team officials claim that ‘their name honors Lone Star Deitz, an early coach of the team who was part Sioux.’”).
28. St. John’s to Drop Redmen Nickname, N.Y. TIMES, Nov. 19, 1993, at B10 (“St. John’s announced that a university committee has been established, chaired by the former head basketball coach, Lou Carnesecca, to review nickname changes for the Redmen. The administration has decided to drop the nickname Redmen in sensitivity to Native American communities.”); see also Sandy Keenan, New Mascot Not Suited for Some Redmen Fans, NEWSDAY, Dec. 4, 1988, at 11.
30. See infra Part II.B.
31. Hail to the Redhawks, SEATTLE TIMES, Jan. 10, 2000, at B4; Roberto Sanchez, Seattle U. Hatches Redhawk as New Mascot, SEATTLE TIMES, Jan. 6, 2000, at B1.
them to do so. Perhaps moved by demonstrations of the protesting Native American and non-native students on their campuses, some public and private university institutions paid attention to those that are offended.

In the years prior to Lions and Tigers and Bears, and before much protest had been lodged by American Indian activists, Dartmouth University changed its mascot and moniker from “Indians” to “Big Green.” Stanford University, also formerly the “Indians,” changed its moniker to “The Cardinal.” Responding to early calls for sensitivity and respect from Native Americans in the 1990s, St. John’s University changed from “Redmen” to its current moniker, “Red Storm.” Later, Marquette University switched from its use of “Warriors” to its current mascot and logo, “Golden Eagles.”

In very recent years, Seattle University changed its mascot and moniker from that of “Chieftain” to the current university nickname of “Redhawks.” San Diego State University maintained its moniker of “Aztecs” but retired its caricatured mascot, “Monty Montezuma.” Colgate University voluntarily removed the word “Red” from its moniker of “Red Raiders,” instead adopting the nickname of “Raiders.” Southeast Missouri State decided to drop “Indians” as its moniker and mascot, instead adopting “Redhawks” as its current nickname. While this voluntary sensitivity by major NCAA member institutions came as welcomed news and relief to activist and opponents of hostile and derogatory American Indian mascots and monikers, many leading institutions thumbed their noses at calls for reform of racially disturbing and harmful uses of such logos, names, and mascots. To those that refused to hear or consider the views of American Indian activists, the NCAA stepped in to assist in the crusade against such damaging imagery.

35. See infra notes 45-48 and accompanying text.
36. See IN WHOSE HONOR?, supra note 13.
37. Key Moments in Indian Mascot Debate, supra note 26; What’s in a Name?, supra note 26.
38. Burnon, supra note 27 (“On Jan. 26th President Hennessy released a statement condemning the use of the now defunct Indian Mascot in association with the University, on the grounds that the retired mascot constituted a racist depiction of Native Americans.”); Mascot Debate Back at Stanford, supra note 27.
39. Keenan, supra note 28; St. John’s to Drop Redmen Nickname, supra note 28 (“St. John’s announced that a university committee has been established, chaired by the former head basketball coach, Lou Carnesecca, to review nickname changes for the Redmen. The administration has decided to drop the nickname Redmen in sensitivity to Native American communities.”).
40. Hunt, supra note 29; Marquette Will Drop “Warriors,” supra note 29.
41. Hail to the Redhawks, supra note 31; Sanchez, supra note 31.
42. Perry, supra note 32; San Diego State Officials Hope New Mascot Is Culturally Considerate, supra note 32.
43. Colgate Drops “Red” from Its Nickname Red Raiders, supra note 33.
44. College Drops Indians Nickname, supra note 34; Frankel, supra note 34.
B. NCAA Policy Promulgation

In 2005, the NCAA adopted a policy that prohibited member institutions from participating in NCAA-sanctioned postseason events if the institution maintained a mascot, moniker, nickname, or logo that was offensive to Native American citizens. In the policy announcement, the NCAA described its purpose: "The presidents and chancellors who serve on the NCAA Executive Committee have adopted a new policy to prohibit NCAA colleges and universities from displaying hostile and abusive racial/ethnic/national origin mascots, nicknames or imagery at any of the [eighty-eight] NCAA championships." The NCAA went further and identified a host of schools that it placed on notice of being in violation of this new policy. If member institutions were designated as being in violation of the new policy, then these schools would be prohibited from displaying their offensive logos on the field of play or court or on a uniform, or having a student dress up as an offensive mascot during postseason play or tournaments. The original list of member institutions in violation of the NCAA’s new policy included: Alcorn State University Braves, Central Michigan University Chippewas, Catawba College Indians, Florida State University Seminoles, Midwestern State University Indians, University of Utah Utes, Indiana University-Pennsylvania Indians, Carthage College Redmen, Bradley University Braves, Arkansas State University Indians, Chowan College Braves, University of Illinois-Champaign Illini, University of Louisiana-Monroe Indians, McMurry University Indians, Mississippi College Choctaws, Newberry College Indians, University of North Dakota Fighting


46. Press Release, supra note 45.


Sioux, and the Southeastern Oklahoma State University Savages.49

Scholars and commentators have weighed in on the NCAA’s policy offering both support and criticism.50 One commentator harshly criticized the NCAA for acting tepidly in promulgating its policy by simply barring institutions that employ offensive mascots and nicknames from participating in postseason play rather than banning outright offensive monikers and logos in total.51 While the adoption of the NCAA’s policy has been dramatic and controversial,52 it has motivated several institutions to reconsider their discriminatory monikers and nicknames, leading to forward-thinking changes and new nicknames and logos.53 Several identified institutions immediately took action to remove their names from the NCAA’s list of hostile and abusive imagery. Carthage College,54 Midwestern State University,55 William & Mary,56 Southeastern Oklahoma State University,57 West Georgia University,58 University of Louisiana-Monroe,59 and the University of

49. Hostile and Abusive, supra note 6.
51. Seth Harper, Wide Right: Why the NCAA’s Most Recent Decision on the Native American Mascot Issue Is No Good (2006) (unpublished manuscript, on file with author) (“Although the NCAA should be given some credit for finally taking action in an area of consistent debate and contention for the past three decades, the current policy does not begin to truly address the issue or even find a reasonable solution.”).
52. See infra Part III.B-C (detailing the resistance to the NCAA policy from the University of Illinois and the University of North Dakota).
53. See supra note 11.
57. Scott Wright, Southeastern Name Now the Savage Storm, DAILY OKLAHOMAN (Oklahoma City), Jan. 21, 2006, available at 2006 WLNR 1169081; Press Release, Southeastern Oklahoma State University, Southeastern's New Nickname: Savage Storm (Jan. 1, 2006), available at http://www.sosu.edu/news/2006/savage-storm ("It's official—the Southeastern Oklahoma State University Savages will soon be known as the 'Savage Storm.' . . . No Native American imagery will be associated with the new nickname, in compliance with the NCAA policy guidelines. The new nickname and imagery is expected to be in place by May 15, 2006.").
59. Laura Harris, ULM Unveils New Mascot, June 27, 2006, http://www.ulm.edu/
Illinois all elected to change their discriminatory American Indian imagery in an effort to comply with the NCAA’s new policy prohibiting postseason activity for those that continued to use abusive and hostile mascots and logos.

Now, three years later, the policy continues to be controversial. Many university administrations have recognized the financial impact missing out on NCAA postseason tournament play may have on their institutions and have acted accordingly by convincing trustees, alumni, and administration members to officially end the era of racist mascot imagery and stereotyping. Still, other administrators have fought the NCAA mightily, even threatening litigation, in an effort to continue to use American Indian imagery and hostility.

Still, the NCAA policy prohibiting hostile or abusive Native American imagery in its postseason tournaments has had the intended effect of forcing many member institutions to change their offensive monikers and mascots. Other important victories for those intent on eradicating American Indian mascots have been won through the courts.

C. United States Commission on Civil Rights

In 2001, the U.S. Commission on Civil Rights took a policy position in the American Indian mascot debate. The Commission on Civil Rights “criticized the use of Indian images and nicknames by non-Indian schools.” In criticizing those that choose to use Native American images and nicknames, the Commission called such offenders “insensitive in light of the long history of forced assimilation that American Indian people have endured in this country.” With the U.S. Civil Rights Commission weighing in on the debate, and coming down on the side of those that oppose such imagery and the use of such mascots, yet another important entity has called upon citizens of the United States to reject the use of American Indians as mascots, caricatures, logos, and monikers.

universityrelations/news/june06/warhawk2.html ("Joined by over 1,000 excited ULM family members, students, faculty, staff, alumni and community supporters, the University of Louisiana at Monroe proudly welcomed the Warhawk as its new mascot Monday, June 26 at Fant-Ewing Coliseum.").


61. See infra Part II.B.


63. Id.
D. Harjo v. Washington Football Club

In 1992, Suzan Shown Harjo and a group of Native American activists filed a petition with the Trademark Trial and Appeal Court (TTAC) seeking to cancel the trademarks held by the Washington National Football League (NFL) Football Club for the term "redskin," based on its offensive and inflammatory nature. Harjo claimed in her petition to cancel the trademark that the term "redskin" disparages American Indians because the term was used by bounty hunters in the 1800s to refer to the skins of dead Native Americans. In 1999, responding to this claim, the TTAC cancelled six trademarks in connection with the Washington Redskins.

Harjo and the group of activists were able to successfully argue that the trademarked term was disparaging to Native Americans under 15 U.S.C. § 1052(a) of the Lanham Act. This provision of the Lanham Act provides that a trademark may be cancelled if it can be construed as disparaging because it brings a group into contempt or disrepute. Under the Lanham Act, "disparagement" is defined as "dishonor by comparison with what is inferior." Harjo presented evidence indicating that the term "redskin" was in fact disparaging, based on the testimony of activists, historical evidence showing the term to be disparaging (including linguistics analysis, dictionary meanings, and historical data), and a survey finding that thirty-six percent of Native Americans and forty-six percent of the U.S. population found the word offensive. In a landmark ruling, the TTAC held that the Washington NFL Football Club's trademarked name was offensive and disparaging, and ordered it canceled.

The thrill of victory was later clouded in 2003 by the reversal of the TTAC's cancellation. In Pro-Football, Inc. v. Harjo (Harjo II), the federal district court essentially reversed the holding of the Trademark Court. The court held that the TTAC decision was not supported by substantial evidence because (1) there was no direct evidence of intentional disparagement by the football team; (2) the historical evidence that was relied upon was simply the

66. Id. at 1749.
67. Id.
70. Id. at 1727-33.
71. Id. at 1749.
73. See generally id.
TTAC’s observations as to the conflicting evidence presented by both parties; and (3) the evidence, especially the survey, was flawed because it did not consider how a substantial composite of Native Americans viewed the word “redskins,” but merely assumed how Native Americans should feel.74

Additionally, the court found that Harjo’s claim was barred by laches, which prevents a party from waiting too long to adjudicate a claim.75 The court found that all but one of the petitioners could have filed suit against the Washington NFL Football Club in 1967, when the “Redskins” trademark was filed.76 Therefore, the petition was barred.77 In 2004, Harjo and her co-petitioners appealed the reversal of the cancellation, but the decision was subsequently affirmed in 2005.78 However, in the affirmance, the court only addressed the laches issue.79 The court remanded the case because one of the petitioners was a minor in 1967 and could not file a petition at the time the “redskin” term was registered.80 Presently, the case is on appeal.

For the part of the Washington NFL Football Club, canceling the trademark of “Redskins” could have potentially devastating consequences. If the Washington NFL Football Club’s trademark is cancelled for disparagement, the team will still be able to use the name “Redskins” but will lose all exclusive rights to the trademark, which would no longer be legally protected.81 “If the federal registration of the Redskins trademark is cancelled because the mark disparages Native Americans, and the common law denies protection to the mark despite its long use in commerce, then the trademark owner would not be able to exclude others from adopting the mark.”82 One commentator noted that “[i]f those registrations are canceled, . . . [p]eople who’ve taken licenses to produce memorabilia . . . are still bound by licensing agreements. They’re still bound to pay royalties.”83

74. Id. at 127-36.
75. Id. at 144.
76. Id. at 141-42.
77. Id. at 142.
78. Pro-Football, Inc. v. Harjo (Harjo IV), 415 F.3d 44 (D.C. Cir. 2005).
79. Id. at 46.
80. Id. at 50.
There is conflicting information about whether the Washington NFL Football Club will assume a significant financial burden if its trademark is cancelled. In 2001, a commentator noted that “the Washington franchise is unlikely to take a significant financial hit from the loss of federal trademark registration.”\(^8\) This author reasoned that because it is the words/terms “REDSKINS, SKINS, REDSKINNETTES,” etc., that might be cancelled and not the logos of the team, the franchise will not lose money, as it is the “distinctive artwork” that consumers are attracted to, not just the word/terms.\(^8\) Others have suggested that if the Washington NFL Football Club loses its trademark, it would take a significant financial hit. As reported in the *Washington Post*, “Daniel M. Snyder holds exclusive rights to use the team name and logo on T-shirts, caps and other items worth an estimated $5 million a year” and “[t]he outcome ultimately could affect millions of dollars in sales of Redskins paraphernalia.”\(^8\)

At bottom, if the court decides to cancel the Washington NFL Football Club’s “Redskins” trademark, the team will still be able to utilize the name without the term being legally protected, it simply would not be able to exclude others from the use of the name, and that constitutes a strong possibility of a financial loss. A further consideration is that if the term loses trademark protection and could be legally used by anyone, there could be a greater proliferation of the term as enterprising merchandisers could begin selling “Redskins” paraphernalia. Therefore, the cancellation of a Native American mascot may be antithetical to the goal of eliminating the use of Native American mascots.

**E. McBride v. Motor Vehicle Division of the Utah State Tax Commission**\(^8\)

In 1995, Michael McBride and Jay Brummet, two Native American citizens of Utah, challenged the use of the term “REDSKIN,” “RESKNS,” and “RDSKIN” on the Utah license plates of three Washington Redskins fans.\(^8\) The suit alleged that the term “redskin” was a violation of a state statute and an administrative rule forbidding vanity license plates that were “offensive to good taste and decency” and bearing terms that were “vulgar, derogatory, profane, or obscene.”\(^8\) On August 28, 1996, the Utah State Tax Commission

\(^{84}\) Blankenship, *supra* note 81, at 453.
\(^{85}\) *Id.*
\(^{86}\) *Id.* note 81.
\(^{88}\) *Id.* at 468.
\(^{89}\) *Id.; see also* UTAH CODE ANN. § 41-1a-411(2) (1993); UTAH ADMIN. CODE R. 873-22M-34
held a hearing in which McBride and Brummet were able to relay their experiences with the term “redskin” and produced evidence that revealed the origins of the term.90 Furthermore, the owners of the license plates testified at the hearing “that the only reason they requested the plates was to show their support and admiration for that team.”91 Ultimately, after numerous administrative hearings and cases before the Utah trial and appellate courts, the Utah Supreme Court ended up with the case and the responsibility to determine ultimately whether the term “redskin” was vulgar, derogatory, profane, or obscene.

The vigorous debate before the Utah Supreme Court at oral argument focused on whether the term “redskin” was a derogatory, vulgar, and obscene racial epithet, or whether it had become a benign nickname of a professional sports franchise, and therefore was not offensive.92 The American Indian petitioners claimed that the term “redskin” was descriptive of an early practice in the colonial United States whereby “the British Crown offered a bounty for the scalps of Native American men, women, and children.”93 In order to collect the bounty, the colonials were required to “skin the body of the Native American and bring in the ‘Red skin’ as proof of the kill.”94

The vanity plate owners countered that “they harbored no ill-will” toward their Native American neighbors.95 Rather they wanted to express their

(1995). Section 41-1a-411(2) provides that the Motor Vehicle Division “may refuse to issue any combination of letters, numbers, or both that may carry connotations offensive to good taste and decency or that would be misleading.” UTAH CODE ANN. § 41-1a-411(2). Rule 873-22M-34 of the Utah Administrative Code provides in pertinent part:

B. Pursuant to Section 41-1a-411, the division may not issue personalized license plates in the following formats:

1. Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane or obscene. . . .

4. Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.

UTAH ADMIN. CODE R. 873-22M-34.

90. McBride, 977 P.2d at 468.
91. Id.
92. See id. at 470-71 (reviewing the arguments and exhibits presented at the formal hearing before the Tax Commission, which arguments were primarily the same as those argued before the Utah Supreme Court).
93. Id. at 472 (Durham, A.C.J., dissenting).
94. Id. (Durham, A.C.J., dissenting).
95. Id. at 468.
unabashed joy in, and support for, their favorite NFL football team.96

Siding with the Native American petitioners, the Utah Supreme Court reversed the Tax Commission’s holding that the term “redskin” was not offensive and ordered it to apply a “reasonable person” standard in determining whether “any connotation” of that term could be considered offensive.97 On March 4, 1999, the Tax Commission returned a unanimous decision that found the term “redskin” did indeed contain at least one connotation that was offensive, and was therefore in violation of the commission’s own administrative rule.98 The personalized vanity plates at issue were revoked.99

A dissent was filed in this case because the dissenting justices believed that the majority did not go far enough in holding for the American Indian plaintiffs.100 The dissent was critical of the majority for ignoring the testimony and affidavits of educators and clinical psychiatrists when it refused to declare the term “redskin” offensive and derogatory.101 The dissent pointed out that the majority ignored facts that showed conclusively that the term “redskin” is “the name and symbol of the genocidal practice of paying white soldiers a bounty for the bloody skins of murdered Native Americans.”102 Further, the dissent was critical of the adoption of the “reasonable person” standard, when in reality the sensibilities of American Indians should be considered when determining what is vulgar, profane, derogatory, or offensive.103

Still, with noted progress as evidenced by the NCAA policy prohibiting hostile or abusive mascots or monikers, the voluntary “retiring” of offensive mascots, the initial victory in the Trademark Court, and the Utah Supreme Court opinion, the use of bewildering mascots, logos, nicknames, and imagery

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96. Id.
97. See id. at 471.

The four-person commission, which includes three new panel members, voted unanimously to reverse its 1996 decision allowing the personalized plates, which said ‘REDSKIN,’ ‘REDSKNS,’ and ‘RDSKJN.’ The change of heart came a month after the Utah Supreme Court ruled the commission should have considered what an ‘objective, reasonable’ person would find offensive.

Id.
99. cummings, supra note 16.
100. See McBride, 977 P.2d at 472 (Durham, A.C.J., dissenting).
101. Id.
102. Id.
103. Id.
III. SLIPPING

A. NCAA Appeal Process

The NCAA, after carefully considering and adopting its new policy prohibiting offensive or hostile imagery, took a decided step backward in allowing an appeals process giving university administrations that championed these derogatory and discriminatory American Indian images an opportunity to keep their hostile mascots. The NCAA made a determination that if member institutions could provide support for their continued use of American Indian mascots, then they would be removed from the postseason ban list and could continue with their hostile tradition unencumbered.

Since its adoption of the "one step forward, two steps back" policy, the NCAA has granted appeals to Florida State University and the University of Utah, allowing both to keep their nicknames (Seminoles and Utes, respectively) and to keep their mascots, traditions, and mockery. For all intents and purposes, it appears that the NCAA has adopted a bright line policy that allows a university to maintain its American Indian mascot, moniker, and tradition if a local tribe approves of or is supportive of the purported use by the university. While the NCAA has been harshly criticized for this adoption of an appeals process, perhaps the NCAA was

104. See supra Part II.B.
109. See Approval from American Indian Tribes to Be Factor in Mascot Appeals, KAN. CITY STAR, Aug. 20, 2005, at D2.
merely adopting a reasonable person standard, relying on the reasonable American Indian tribe member in coming to its conclusion.\textsuperscript{111}

While the NCAA's decision to allow appeals to its "hostile and abusive" policy appears weak and undermining of the goal to eliminate derogatory American Indian imagery, the development of the policy has seemed to focus on one factor most important to an appealing school: whether the local Native American tribe has acquiesced to the university's use of the nickname, logo, and/or mascot.\textsuperscript{112} In coming to this place, where the NCAA will grant an appeal and excuse a university from the "hostile and abusive" list if it can prove that it has the support of the local Native American tribe in its imagery, it seems to have adopted, at least in part, a weighing of a reasonable person standard from the perspective of the offended party.\textsuperscript{113} While I believe that the NCAA should ban outright the use of discriminatory American Indian imagery as mascots and monikers, I acknowledge that weighing the appeal decision by accounting for the wishes of the reasonable person in the local tribe is a positive step in recognizing the autonomy and desires of the offended parties. I advocated for such a position in 1999, at the conclusion of \textit{Lions and Tigers and Bears}.\textsuperscript{114}

At that time, I took issue with the Utah Supreme Court majority in \textit{McBride} for basing its finding on an objective reasonable person standard rather than a "specific race and gender conscious reasonableness standard[]."\textsuperscript{115} In 1999, I argued as follows:

The [\textit{McBride}] majority, in its rush to declare an objective, reasonable person standard, utterly failed to provide explanation or justification for rejecting more appropriate standards. Perhaps more telling in its rush, the majority did not even address or analyze the national trend toward more specific race and gender conscious reasonableness standards, preferring instead to claim that relying on "any one group" is unreasonable because virtually any term could be objectionable. The \textit{McBride} majority seemed intent on protecting the status quo by selecting a safe, friendly standard that keeps the power firmly rooted in the Court and not with the offended Native American citizens. . . .

For years the objective, reasonable person standard has done

\begin{footnotes}
\item[111] cummings, \textit{supra} note 16, at 32 ("Notwithstanding, the majority dismisses with no analysis or thought the standard suggested in the dissent, that of an objective, reasonable Native American.").
\item[112] See Harper, \textit{supra} note 51, at 28-35.
\item[113] See cummings, \textit{supra} note 16, at 26-33.
\item[114] See \textit{id.} at 37.
\item[115] Id. at 26.
\end{footnotes}
nothing more than perpetuate the viewpoints and biases of the white male judges applying that standard. Historically, reliance on the objective, reasonable person standard has been a tool used by United States’ courts to aggressively guard the status quo and maintain positions of power and influence crafted by and protected by the white male dominant voice. Judicial officials relying upon an objective, reasonable person standard will generally draw only upon their own personal life experiences and when historically the cloth from which most judicial officers have been cut is that of a white male upbringing of privilege, life experiences dealing with race, discrimination, poverty, equity and gender often escape or elude them. Beyond the typical judge’s life experience that may be devoid of interaction with difficult issues of race, discrimination and poverty, one scholar writes that the goal of some in powerful positions focus on ensuring that the United States remain “a white man’s country.”

Often then, historically and still today, when a mostly male, mostly white court decides to apply an objective, reasonable person standard, the interpretation and subsequent result will likely be typical, traditional, slanted heavily toward the white male bias, and often unfortunate. The very use of the objective, reasonable person standard is by historical definition, sexist and racist.116

After noting the above nine years ago, it seems to now denote progress that the NCAA, while regrettably allowing appeals for infringing schools, recognizes that the opinion, attitude, and desire of the most likely offended party is paramount in determining whether a school like Florida State University or the University of Utah may continue as the Seminoles and the Utes, respectively, if the local tribe supports the imagery and moniker use.117

B. North Dakota Fighting Sioux

The University of North Dakota has mightily resisted changing its nickname since its appearance on the NCAA hostile and abusive list.118 The

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116. cummings, supra note 16, at 26-30 (internal citations omitted).
117. See supra notes 11-14.
sentiment in North Dakota runs deep for its “Fighting Sioux.”\textsuperscript{119} While the local Sioux tribe has affirmatively acknowledged, on many occasions, the offensive nature of the North Dakota mascot and moniker,\textsuperscript{120} the university is determined to continue in its discriminating tradition.\textsuperscript{121} Rather than comply with the NCAA policy and change its mascot, North Dakota first appealed. Lacking the support of the local tribe, the NCAA rejected North Dakota’s appeal.\textsuperscript{122} Still determined to continue as the Fighting Sioux, the University of North Dakota sued the NCAA in federal court seeking an injunction against the NCAA’s action.\textsuperscript{123} Facing protracted litigation, the NCAA and the University of North Dakota recently settled the lawsuit where the “Fighting Sioux” has three years to phase out the hostile moniker and mascot or convince the local Sioux tribes to grant their support to the university, allowing the mascot to continue to offend.\textsuperscript{124}

\textsuperscript{119} See Dodds, supra note 118; Wieberg, supra note 118.

\textsuperscript{120} See STANDING ROCK SIOUX, RESOLUTION IN OPPOSITION TO THE UNIVERSITY OF NORTH DAKOTA’S USE OF THE FIGHTING SIOUX (2007), available at http://aistm.org/20071109.standing.rock.UND.resolution.htm. By clear resolution the local North Dakota Sioux tribe has voted in overwhelming opposition to the university’s use of the moniker “Fighting Sioux” and resolves that its opposition will certainly extend for the period of three years negotiated by the university and the NCAA. See id. The resolution states: “Therefore Be It Resolved, that the Standing Rock Sioux Tribal Council hereby states definitively that the SRST opposes the use of the UND ‘Fighting Sioux’ nickname and logo and rejects the notion that UND can ‘win the support’ of the SRST on this issue.” Id.

\textsuperscript{121} See North Dakota Suing NCAA Over ‘Fighting Sioux’ Ban, CHI. SUN-TIMES, June 16, 2006, at 39; Dean Spiros, Sioux Nickname, Logo Ban Upheld by NCAA: University of North Dakota Officials Said They Would Continue to Push Their Point that the School Was “Respectful” of Tribes Affected, MINNEAPOLIS STAR TRIB., Sept. 29, 2005, at 1C.

\textsuperscript{122} Fighting Sioux Remain on Banned List, PHILA. INQUIRER, Sept. 29, 2005, at D3; Michael Marot, North Dakota Loses Nickname Appeal, ST. PAUL PIONEER PRESS, Apr. 29, 2006, at 3D.


\textsuperscript{124} Press Release, National Collegiate Athletic Association, NCAA Statement on Settlement of University of North Dakota Mascot Lawsuit (Nov. 19, 2007), available at http://www2.ncaa.org/portal/media_and_events/press_room/2007/november/20071119_und_statemen t_rls.html. In announcing the settlement with UND, the NCAA release observed:

The NCAA believes, as a general proposition, that the use of Native American names and imagery can create a hostile or abusive environment in collegiate athletics. However, the NCAA did not make any other findings about the environment on UND’s campus. The NCAA also acknowledges that reasonable people can disagree about the propriety of Native American imagery in athletics. The NCAA believes that the time has come to retire Native American imagery in college sports.
C. University of Illinois – Chief Illiniwek

Chief Illiniwek has engendered a frightful passion amongst many of the white students and alumni of the University of Illinois – Champaign.\textsuperscript{125} Aghast at the prospect of losing the beloved mascot, the University of Illinois appealed the NCAA’s decision to place it on the hostile and abusive list when promulgated.\textsuperscript{126} As the Illini can find no support amongst local American Indian tribes to continue the use of the Chief and the moniker, the NCAA has rejected the Illinois appeal.\textsuperscript{127}

Recognizing that its postseason play would be in serious jeopardy if it persisted, the president and board of the University of Illinois voted to “retire” Chief Illiniwek from any further participation on the campus at Champaign.\textsuperscript{128} Viewed as a positive, although forced, move by some, this decision led to a firestorm of protest from Illini alumni who belittled the administration for caving to political correctness pressure and repeated the callow call that Chief Illiniwek is ultimately an honorarium for local American Indian tribes.\textsuperscript{129}


Under the terms of the settlement, the university will have three years to obtain approval of the mascot from the two Sioux tribes with a significant presence in the state. If the tribes approve the mascot, the university will receive a waiver from the NCAA’s policy, which bars colleges from using American Indian imagery it deems hostile and abusive.

If the tribes do not approve the mascot, the university must adopt a new logo and mascot that do not violate NCAA policy. If the university keeps the mascot without tribe approval, it will be subject to certain NCAA restrictions.

\textit{Id.}

125. See \textit{In Whose Honor?}, supra note 13.


129. See \textit{In Whose Honor?}, supra note 13; see also \textit{Chief Illiniwek Gone}, supra note 128; \textit{Illinois Trustees Retire Chief’s Name, Images}, supra note 128; Kumar, supra note 126; Milbert, supra note 127; \textit{NCAA Rejects Appeal on Chief Illiniwek}, supra note 127; \textit{NCAA Rejects Illini}, supra note 127; \textit{No More Chief Illiniwek: U. of I. Trustees Rescind Controversial Mascot}, supra note 128;
Once Chief Illiniwek was retired, the NCAA removed the University of Illinois from the "hostile and abusive" mascot list and allowed the university to maintain its nickname of "The Illini." However, the NCAA required that the university not only retire Chief Illiniwek, but that it eliminate its logo, which contained an elaborate portrait of a Native American chief in feathered headdress within an orange and blue circle.\footnote{Ruibal, supra note 126.}

While officially retired, Chief Illiniwek continues to appear at sporting events and parades.\footnote{cummings, supra note 123 ("In a controversy that has plagued the University of Illinois for at least the past fifteen years, administration officials finally bowed to pressure applied by the NCAA, deciding to discard the 'mascot' that has represented the University since the 1920s.")}. Further, the university now intends to market the "logo" on official "throwback" or vintage gear and memorabilia.\footnote{Susan Saulny, University Reverses Policy to Allow Mascot's Return, N.Y. TIMES, Oct. 28, 2007, at A16 ("Months after the University of Illinois decided to retire the mascot . . . the image of Chief Illiniwek, a buckskin-clad American Indian, was allowed to return to an event . . . this weekend."); Chief Illiniwek OK for Homecoming Parade, BOSTONGLOBE.COM, Oct. 28, 2007, http://www.boston.com/news/nation/articles/2007/10/28/chief_illiniwek_ok_for_homecoming_parade (describing Chief Illiniwek's appearance at the University of Illinois' 2007 homecoming).} The university has complied in letter to the NCAA policy, but the spirit of its compliance is lacking badly. Chief Illiniwek continues to mock tradition and culture at Illinois.

\section*{D. Professional Sports Franchises}

Of the primary professional sports leagues in the United States, specifically the NFL, Major League Baseball (MLB), the National Basketball Association (NBA) and the National Hockey League (NHL), each league maintains at least one club that uses an offensive American Indian moniker, mascot, and/or logo. In the NFL, the Washington Redskins and the Kansas City Chiefs maintain Native American logos, nicknames, and mascots.\footnote{Ruibal, supra note 126; UI Does and Doesn't Want Chief, NEWS GAZETTE (Champaign, Ill.), Jan. 10, 2008, at B5 ("To appease critics of the Chief, the UI promises that it will use [the retired Illiniwek logo] only in a limited way by selling Chief Illiniwek-merchandise over the Internet as part of a profit-making venture related to vintage-logo collegiate clothing.").} In MLB, the Atlanta Braves and Cleveland Indians continue to mock American Indian history and culture with their logos, caricatures, and imagery.\footnote{See generally Kansas City Chiefs, http://www.kcchiefs.com (last visited Jan. 31, 2008); Washington Redskins, http://www.redskins.com (last visited Jan. 31, 2008).} In truth, two of the most offensive traditions that mock American Indian culture and tradition take place every night that the professional baseball season is

underway. In Cleveland, the logo of "Chief Wahoo" adorns baseball caps and almost all team memorabilia. The Chief is a dark red, cartoonish caricature of an American Indian smiling broadly (the smile takes up more than one-third of the cartoon face) and wears a feather in the back of its head. In Atlanta, the fans of the Braves mimic war chants and conduct a series of continuous tomahawk chops throughout the entire game. Both activities have been described as deeply offensive by Native American activists. In the NHL, the Chicago Blackhawks skate with an American Indian logo on their sweaters. In the NBA, the Golden State Warriors are often considered to be representing a Native American tradition.

To date, professional sports owners have sloughed off any suggestion that they should respect the traditions of American Indians by changing their team names, logos, and team cultures to a race-neutral designation. With apparently little consideration, team owners remain married to the multi-million dollar intellectual property protections that allow them lucrative marketing income from the current team names and tradition. In the aforementioned Harjo v. Pro-Football, Inc., the American Indian plaintiffs have seen their share of successes and failures. At one point, as indicated above, the TTAC ruled that the term "redskin" was disparaging and because of this finding of disparagement, temporarily withdrew its trademark protection. Ultimately, though, the cancellation of the trademark was overruled by the D.C. District Court because the TTAC finding of disparagement was not supported by substantial evidence and the American Indian plaintiffs' original trademark action was properly barred by laches.

The Washington NFL Football Club has aggressively fought the challenge brought against its trademark for the term "redskin" by Native American activists that challenge the trademark as offensive, derogatory, and demeaning. The Washington NFL Football Club, while losing at the Trademark Court level, but winning in an overturn by the D.C. District Court, is currently fighting afresh, hoping to stave off the claim that the trademark should be revoked based on it being offensive and derogatory. The Washington NFL Football Club appears poised to fight, scratch, and claw for

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135. To view the offensive caricature of the Cleveland Indians' Chief Wahoo, see http://kcillini77.files.wordpress.com/2007/02/chiefwahoologo.jpg (last visited Jan. 29, 2008).
136. See supra notes 5, 21, and the accompanying text.
however long is necessary in order to maintain its offensive and dispiriting moniker, logo, and tradition.\footnote{Harjo III, 284 F. Supp. 2d 96.}

The outcome of the Harjo case is being closely watched, as a cancellation of the trademark would have significant implications. Not only would the Washington NFL Football Club be impacted financially, but it is likely that Native American activists would no doubt bring similar lawsuits against the Cleveland Indians, Atlanta Braves, and Kansas City Chiefs immediately.

Still, calls for professional sports franchise owners to abandon derogatory, hostile, and disrespectful monikers and mascots seem destined to fall on deaf ears as the almighty merchandising dollar remains king.

IV. CONCLUSION

After predicting a wide-ranging “sea change” in the American Indian mascot conundrum nine years ago, it is apparent today that substantial progress has been made, if not the radical transformation, as originally hoped. With the halting, but substantial progress, has come an unfortunately strident backlash from opponents of these progressive advances.\footnote{See supra Part III.B-C.} And, I am not sure I completely appreciated the degree to which alumni of prominent universities would dig their heels in to resist the movement away from racist and stereotyping imagery.\footnote{See supra notes 108-16 and accompanying text.} So, while the Fighting Sioux continue to fight on, while the white male Chief Osceola continues to thrust a burning spear into the center of the football field at Doak Campbell Stadium on the campus of Florida State University each home Saturday football game,\footnote{King, supra note 4 (“At Florida State University, although Chief Osceola does portray a historic war leader of the Seminoles, he defines Indianness solely in terms of aggressiveness, savagery, and violence. At home football games, a white student in racial drag rides an Appaloosa to mid-field and thrusts a lance into the turf. Still others make Indianness a joke, mocking Native Americans as they mimic them.”).} and while Chief Illiniwek refuses to fade to black at the University of Illinois, the activists continue to battle against those that would perpetuate negative, racist monikers and mascots in the United States. And, these activists continue to win concessions in the larger picture. The NCAA policy stands as movement in the right direction, as do the actions of university administrations that voluntarily abandon offensive mascots and those administrations that refuse to schedule non-conference football and basketball games against schools that continue to use the racist images and logos.\footnote{University of Iowa and the University of Wisconsin refuse to schedule non-conference
Admittedly, no progress whatsoever has been made in the professional sports ranks as all of the U.S. teams that use an American Indian mascot that perpetuates racist rituals and chants continue in strength and popularity. While the Washington NFL Football Club has staved off trademark revocation in recent years, and as the case continues on remand,\textsuperscript{147} no movement has been made by any of the professional teams to eliminate their hostile and abusive imagery. The Atlanta Braves, the Kansas City Chiefs, the Chicago Blackhawks, and the Washington Redskins continue to succeed in the field of play while denigrating Native American citizens each season.

The picture, however, is clearer today in 2008, than it was in 1999. The NCAA has recognized that collegiate sports and academic institutions have no business perpetuating racism, discrimination, and the disrespect of citizens of the United States. Continued progress seems clearly on the horizon. Developing an effective strategy to motivate professional sports franchises to move in the direction of collegiate institutions, that is to begin to eliminate hostile and abusive mascots, monikers, and imagery, seems to be the next obvious place for activists and sympathizers to collaborate, plan, and take action.

\textsuperscript{147} See Press Release, \textit{supra} note 45.

See supra Part II.D.