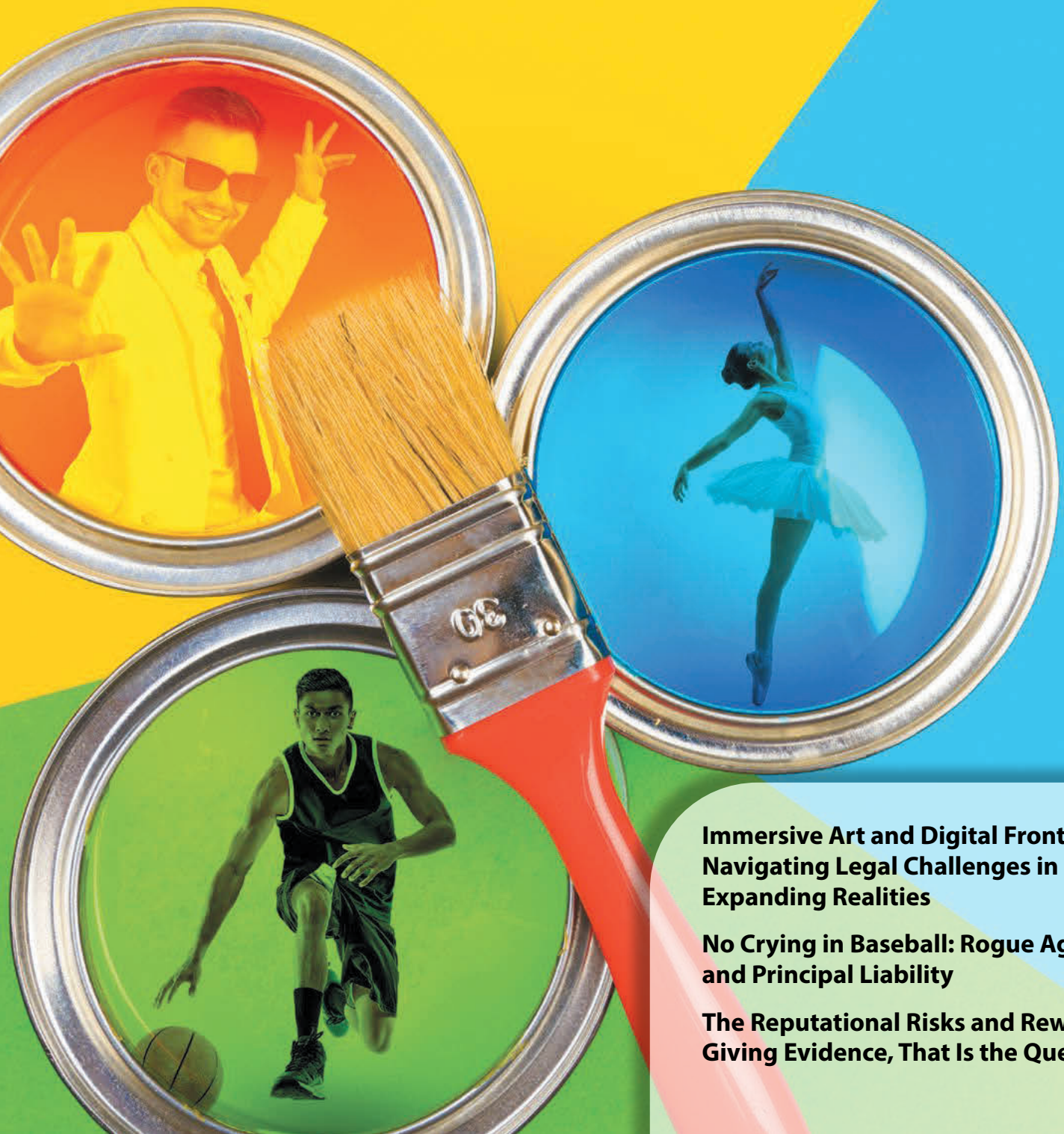
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Entertainment, Arts and Sports Law Journal

A publication of the Entertainment, Arts and Sports Law Section of the New York State Bar Association



Immersive Art and Digital Frontiers: Navigating Legal Challenges in Expanding Realities

No Crying in Baseball: Rogue Agents and Principal Liability

The Reputational Risks and Rewards of Giving Evidence, That Is the Question

THE NEW YORK STATE BAR ASSOCIATION

Annual MEETING '26

150 Years NYSBA



















Thanks to Joyce Dollinger, Barry Skidelsky, and Tenneill "Heaven" Jones for the photos.



150 Years NYSBA

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Entertainment, Arts and Sports Law Journal

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Remarks From the Chair

Dear EASL Members,

Great Programs and Collegiality.

As the new chair of the Entertainment, Arts and Sports Law Section of NYSBA, I am honored and excited to have the opportunity to promote and expand upon these fundamental building blocks that make EASL a particularly dynamic, informative, and influential organization. EASL provides access to the highest level of legal expertise in the entertainment, arts and sports fields. Our frequent CLE programs draw the top lawyers and movers and shakers in the entertainment industry and our multifaceted standing committees are populated with experienced folks who are always game to discuss their areas of practice and to assist a colleague – whether they are new to the field or seasoned entertainment attorneys. EASL is truly one of the best resources for lawyers to learn about legal trends in the entertainment, arts, and sports industries, to have access to practical advice in the field, and for social/business networking with top lawyers with various subspecialties. We are always looking for and welcome new participants to attend our programs and get involved in our committees.

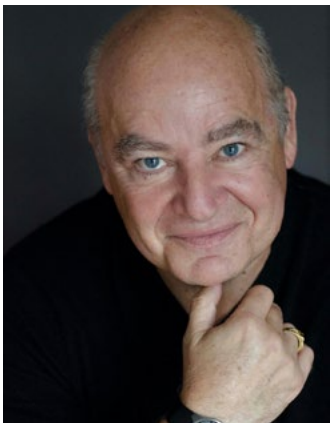
Here's some other good news. With the new NYSBA structure, EASL has more than 400 new members, putting us over the top to exceed 2,000 members! Hey, that's a lot of lawyers and professional talent and it's a propitious time to increase our section's outreach to our membership. That is what I intend to do as chair.

A summary of a few ideas for your consideration:

- We are going to periodically send scholarly articles of interest out to our members.
- Better structure our networking capacity so that members can feel free to ask questions, pick the brains of our experts, and ask for referrals on matters.
- Expand our outreach to young lawyers and law students.
- Have more in-person activities, such as social events tied into some legally informative topic.
- Possibly increase involvement in "do good" legislation, like anti-scalping laws and tax subsidies for the arts.
- Market sponsorships so that we can better finance and expand our excellent CLE programs.

Good stuff like that.

I am hoping to keep up the great momentum that launched EASL's 2026 agenda at the NYSBA's Annual Meeting held in January. Our lively morning committee meetings fostered discussions in practice areas such as music, theater, film, and fine arts and was a great opportunity to discuss substantive issues, have coffee with colleagues, and plan out our programs for the coming year. These committees are well worth joining. Your participation is totally at your pace and level of interest.



This was followed in the afternoon by a CLE program with three top notch panels. The topics included – "Need Money?? Domestic and International Incentives for Film, TV, Videogames and Theater," "Your Name, Your Fame, Your Voice, Your Brand: Rights of Publicity in the Digital Age," and of course what modern CLE would be complete without, "AI Across Entertainment Sectors: Where We Are Now and Where We Are Going."

Well, who knows where we are going, but EASL is going to try and keep our members informed and prepared.

Much of the credit for our successful Annual Meeting, the CLE programs, and the strength of our section goes to Sarah Robertson, who has done a great job as EASL chair for the past two years. Thanks also to our Planning Committee, which included Rosemary Tully, Barry Werbin, Louise Carron, David Friedlander, Anne Atkinson, and myself under Sarah's good leadership.

All of that could not have been accomplished without the hard work of our NYSBA liaison – Sharmin Woodall. We are very lucky to have her.

At the Annual Meeting, EASL members in attendance voted on a new slate of officers that was recommended by our Executive Committee. This included myself as chair, Isaro Carter, first vice chair; Cheryl Davis, second vice chair; Shu Phua, treasurer; Louise Carron, secretary; and Kristin Paradisis, assistant secretary. I am grateful to everyone for entrusting me with the responsibilities of chair and look forward to working with our officers and section members.

Much thanks to Elissa Hecker, who is the driving force behind this amazingly professional and informative publication. It takes a lot of hard work, intellect, and industry know-how to keep such a high-quality publication going. I do not think there is another publication in our industry and profession that consistently has the depth and variety of our

continued on page 5

Editor's Note

By Elissa D. Hecker



Welcome to the first issue of 2026. News is moving at breakneck speed and much of the EASL-related stories are reflected here and in the EASL Blog. Please feel free to reach out regarding any ideas and/or articles that you may have for the *Journal* or Blog at eheckeresq@eheckeresq.com.

In addition to excellent and timely articles, this issue contains several columns written by practitioners who write what they practice and who help all of us be better educated counselors to our entertainment, arts and sports clients. Please feel free to contact the authors as resources and refer clients to them – they are truly experts in their fields.

I'd like to express my gratitude to the outgoing EASL officers, who did a tremendous job over the past two years, including Sarah Robertson (Chair), Judy Bass (First Vice Chair), Judah Shapiro (Second Vice Chair), Christine Marie Lauture (Secretary), Louise Carron (Assistant Secretary), Isaro Carter (Treasurer), and Innes Smolansky (Assistant Treasurer).



I'm also excited to welcome our new officers and incoming committee chairs, including Judah Shapiro (Chair), Isaro Carter (First Vice Chair), Cheryl Davis (Second Vice Chair), Shu Phua (Treasurer), Louise Carron (Secretary), and Kristin Paradisis (Assistant Secretary). Congratulations as well to Emily Poler, the new Litigation Committee chair, Rob Thony, Legislation Committee chair, Christine Marie Lauture as In-house Counsel Committee co-chair, Patricia Limperopoulos as Law Student Committee chair, and Tenneill "Heaven" Jones as Young Entertainment Lawyers Committee chair.

Continue telling me about what inspires you. I am also interested in submissions about the practice of law – how you obtain your clients, how you serve your companies, and how you are growing within your positions. Are you a mentor? Do you need one? Surrounding ourselves with trusted advisors and thought partners are excellent ways to grow, both professionally and personally. It would be helpful for everyone to read about what works and what does not in building successful careers.

Elissa

The next deadline is April 3, 2026.

DO PRO BONO! DO PRO BONO!

Programs & Clinics

Program and Clinic with the Graphic Artist Guild

We are very excited that on March 19th, Carl Cleanthes and Rachel Sheeran from the Graphic Artists Guild (GAG) will be presenting a virtual in-depth program for EASL members about the GAG and what it offers to creatives (including their attorneys). The GAG is a vital service and advocacy organization for creatives that has already achieved historic wins, including the establishment of a Small Claims Forum for Copyright Claims (www.ccb.org). Their talk will focus on who they serve, why the GAG exists, member resources, the present landscape for working artists, and AI today, with ethical use guidelines for creators and their clients.

The Pro Bono Committee is also collaborating with GAG for a virtual Clinic on March 30th from 1:00 to 3:00.

DO PRO BONO! DO PRO BONO!

DO PRO BONO! DO PRO BONO!

Copyright Registration Option For Two Dimensional Artwork

Copyright registration is a prerequisite for bringing a claim in court and for obtaining statutory damages and attorneys' fees. Many artists complain that the current requirement of having to register each work for $55-$65 is burdensome economically and a difficult process. The Copyright Office has established a new option for group registration of up to 20 two-dimensional works published within one calendar year on one application for a fee of $85. The Pro Bono Steering Committee will present a virtual program for lawyers and creatives this spring about the ins and outs of this new process and how to most effectively utilize it. Stay tuned for more information.

Future Program

The Pro Bono Committee will collaborate with the Fine Arts Committee and EASL's Executive Committee to present a panel about the "Legal and Ethical Aspects of DMCA Takedown Notices for Generative AI-Created Works." Stay tuned for more information about this program.

If you are involved with a nonprofit organization that would like to host a clinic, please email Elissa at eheckeresq@eheckeresq.com. We are always looking for good partners so that we can help the many potential pro bono clients who need us.

We encourage EASL members to volunteer as pro bono attorneys, panelists, and webinar speakers for other topics that are relevant to the creative communities. Please contact any of us if you are interested in doing so.

- **Elissa D. Hecker**
  eheckeresq@eheckeresq.com
- **Carol Steinberg**
  elizabethcjs@gmail.com
- **Stephanie Drawdy**
  stephanie@arthausforjustice.com

DO PRO BONO! DO PRO BONO!

Remarks From the Chair *continued from page 3*

EASL Journal. You should keep a copy visible – it will look like you know what you are talking about; further, when you read it, you actually will know what you are talking about. One of my objectives is to proactively disseminate articles of particular interest to our section members that relate to their practice and subspecialties. Help us out with that and let us know what interests you.

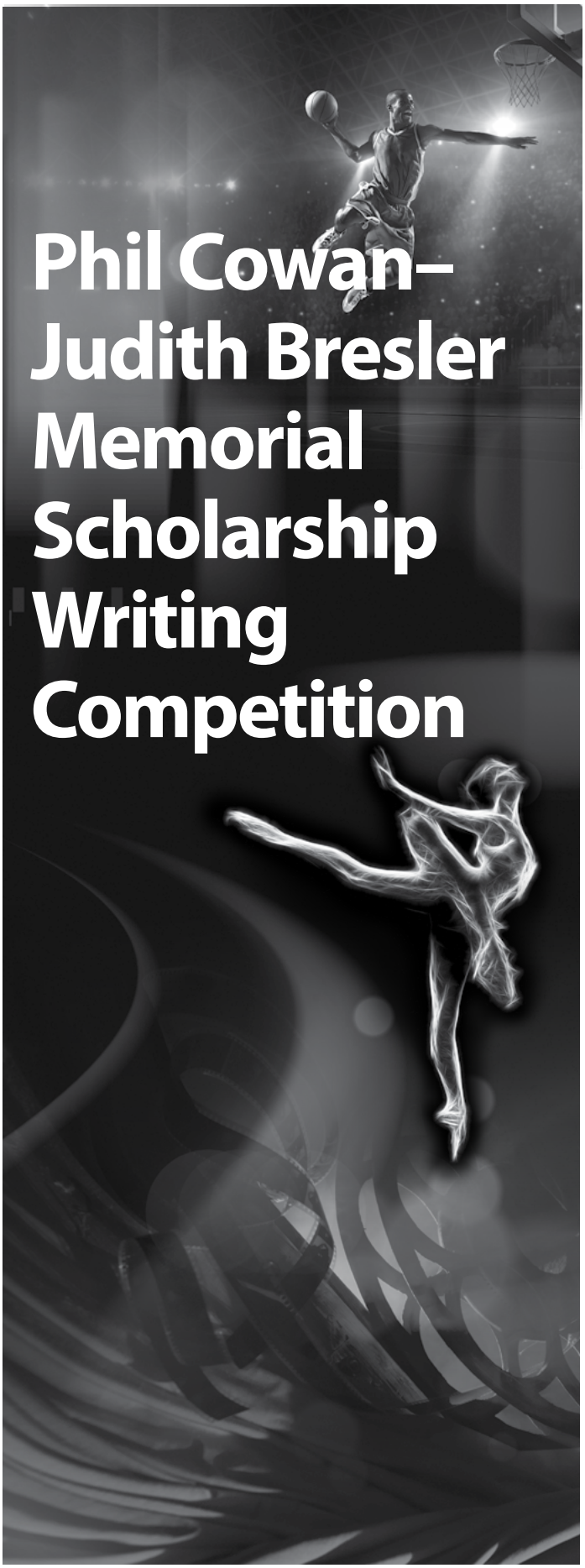
In addition to her Herculean efforts in putting out this thing, Elissa deserves praise and acknowledgement for her efforts to promote pro bono work, along with Carol and Stephanie on the Pro Bono Committee.

I would also like to personally thank my friend Marc Jacobson, an all 'round good guy and good lawyer who I kiddingly call the George Washington of this section. He formed EASL back in the day and got me into this thing about 10 years ago. After serving as co-chair of the Music Law Committee, on the Membership Committee, as treasurer, and vice chair, I will do my best as chair. All of this is fueled by the sense of collegiality with very fine people. It's quite contagious – you should try it by participating!

To better serve our members, it would be really helpful to get your input generally and to know in what areas of the law you have a particular interest. Your feedback is welcome and encouraged and I am going to try to have personal contact with every one of our members during my tenure as chair. Feel free to call or email me at judahshap@aol.com and (917) 225-2026 and reach out as well to any of our Executive Committee members.

You made a smart choice choosing EASL as one of your sections. We encourage you to take the opportunity to get more involved in our professional, intellectual, and social discourse. Our great programs and sense of collegiality can only get better with your individual participation.

Judah S. Shapiro



Phil Cowan–Judith Bresler Memorial Scholarship Writing Competition

Law students, take note of this publishing and scholarship opportunity: Entertainment, Arts and Sports Law Section of the New York State Bar Association (EASL)'s Phil Cowan-Judith Bresler Memorial Scholarship, named after two esteemed former EASL chairs, offers up to two awards of $2,500 each on an annual basis in Phil Cowan's and Judith Bresler's memories to law students who are committed to a practice concentrating in one or more areas of entertainment, art or sports law.

The Phil Cowan-Judith Bresler Memorial Scholarship has been in effect since 2005.

The Competition

The paper should be 12 to 15 pages in length (including *Bluebook* form endnotes), double- spaced and submitted in Microsoft Word format. PAPERS LONGER THAN 15 PAGES TOTAL WILL NOT BE CONSIDERED. The cover page (not part of the page count) should contain the title of the paper, the student's name, school, class year, telephone number and email address. The first page of the actual paper should contain only the title at the top, immediately followed by the body of text. The name of the author or any other identifying information must not appear anywhere other than on the cover page. **All papers should be submitted to designated faculty members of each respective law school.** Each designated faculty member shall forward all submissions to Sharmin Woodall, EASL's liaison to the New York State Bar Association. Sharmin, in turn, will forward all papers received to the committee co-chairs for distribution.

Eligibility

The competition is open to all students – both J.D. candidates and L.L.M. candidates – attending eligible law schools. "Eligible" law schools mean all accredited law schools within New York State, along with Rutgers University Law School and Seton Hall Law School in New Jersey, and up to 10 other accredited law schools throughout the country to be selected, at the committee's discretion, on a rotating basis.

Free Membership to EASL

All students submitting a paper for consideration, who are NYSBA members, will immediately and automatically be offered a free membership in EASL (with all the benefits of an EASL member) for a one-year period, commencing January 1st of the year commencing January 1st of the year following submission of the paper.

Submission Deadline

April 24, 2026: Law School faculty liaison submits all papers she/he/they receives to the EASL Scholarship Committee, via email to Sharmin Woodall at swoodall@nysba.org with subject line "EASL Writing Competition," no later than noon on April 24th.



The winner(s) will be announced, and the scholarship(s) awarded at EASL's spring meeting.

Prerogatives of EASL Scholarship Committee

The Scholarship Committee is composed of the current chair of EASL and, on a rotating basis, former EASL chairs who are still active in the section, section district representatives, and any other interested member of the EASL Executive Committee. *Each winning paper will be published in the* EASL Journal *and will be made available to EASL members on the EASL website.*

The Scholarship Committee is willing to waive the right of first publication so that students may simultaneously submit their papers to law journals or other school publications. *In addition, papers previously submitted and published in law journals or other school publications are also eligible for submission to the Scholarship Committee.*

The Scholarship Committee reserves the right to submit all papers it receives to the *EASL Journal* for publication and the EASL website. The Scholarship Committee also reserves the right to award only one scholarship or no scholarship if it determines, in any given year that, respectively, only one paper, or no paper is sufficiently meritorious. All rights of dissemination of the papers by EASL are non-exclusive.

Payment of Monies

Payment of scholarship funds will be made by EASL directly to the law school of the winner(s), to be credited against the winner('s) account(s).

About the New York State Bar Association

The New York State Bar Association is the official statewide organization of lawyers in New York and the largest voluntary state bar association in the nation. Founded in 1876, NYSBA programs and activities have continuously served the public and improved the justice system for more than 140 years.

The more than 1,400 members of the Entertainment, Arts and Sports Law Section of the NYSBA represent varied interests, including headline stories, matters debated in Congress, and issues ruled upon by the courts today. The EASL Section provides substantive case law, forums for discussion, debate and information-sharing, and pro bono opportunities.

NEW YORK STATE BAR ASSOCIATION



If you have written an article you would like considered for publication, or have an idea for one, please contact the Editor-in-Chief:

Elissa D. Hecker
Law Office of Elissa D. Hecker
eheckeresq@eheckeresq.com

Articles should be submitted in Word format (pdfs are NOT acceptable), along with biographical information and an author headshot.

REQUEST FOR ARTICLES

150 Years

THE NEW YORK STATE BAR ASSOCIATION
ENTERTAINMENT, ARTS AND SPORTS LAW SECTION

Law Student Initiative Writing Contest

The Entertainment, Arts and Sports Law (EASL) Section of the New York State Bar Association offers an initiative giving law students a chance to publish articles both in the *EASL Journal* as well as on the EASL website. The Initiative is designed to bridge the gap between students and the entertainment, arts and sports law communities and shed light on students' diverse perspectives in areas of practice of mutual interest to students and Section member practitioners.

Law school students who are interested in entertainment, art and/or sports law and who are members of the EASL Section are invited to submit articles. This Initiative is unique, as it grants students the opportunity to be ***published and gain exposure*** in these highly competitive areas of practice. The *EASL Journal* is among the profession's foremost law journals. Both it and the Web site have wide national distribution.

Requirements

Eligibility: Open to all full-time and part-time J.D. candidates who are EASL Section members. A law student wishing to submit an article to be considered for publication in the *EASL Journal* must first obtain a commitment from a practicing attorney (admitted five years or more, and preferably an EASL member) familiar with the topic to sponsor, supervise, or co-author the article. The role of sponsor, supervisor, or co-author shall be determined between the law student and practicing attorney, and must be acknowledged in the author's notes for the article. In the event the law student is unable to obtain such a commitment, he or she may reach out to Elissa D. Hecker, who will consider circulating the opportunity to the members of the EASL Executive Committee.

Form: Include complete contact information; name, mailing address, law school, phone number and email address. There is no length requirement. Any notes must be in endnote form. An author's blurb must also be included.

Deadline: Submissions must be received by April 3, 2026.

Submissions: Articles must be submitted via a Word email attachment to eheckeresq@eheckeresq.com.

Topics

Each student may write on the subject matter of his/her choice, so long as it is unique to the entertainment, arts, and sports law fields.

Judging

Submissions will be judged on the basis of quality of writing, originality, and thoroughness.

Winning submissions will be published in the *EASL Journal*. All winners will receive complimentary memberships to the EASL Section for the following year. In addition, the winning entrants will be featured in the *EASL Journal* and on our website.

Navigating the Digital Frontier – Incentives, Artificial Intelligence, and Name, Image and Likeness in the Modern Entertainment Economy

By Tenneill 'Heaven' Jones and Patricia Limperopoulos

The entertainment industry is undergoing a period of profound structural transformation, one increasingly described by practitioners as a legal and economic "wild west." As highlighted across recent industry discussions at the 2026 New York State Bar Association's Entertainment, Arts and Sports Law Section Annual Meeting, three forces now dominate entertainment law and production strategy: financial incentives, artificial intelligence (AI), and name, image and likeness (NIL) rights. These are no longer discrete practice areas. Together, they form an interconnected bundle of legal considerations that determine whether creative projects are viable, defensible, and sustainable in a rapidly evolving global market.

Panel 1: Incentives as Infrastructure: The Economic Reality of Production

The panel titled "NEED MONEY? Domestic and International Incentives for Film, TV, Video Games, and Theater," moderated by Ezra Doner, of the Law Office of Ezra Doner, examined how production incentives have shifted from optional enhancements to foundational financing mechanisms. Tax credits, rebates, development grants, and infrastructure subsidies now routinely determine whether a project proceeds or collapses at the budgeting stage. According to Yoni Bokser, of the New York State Governor's Office of Motion Picture and Television Development/New Media, jurisdictions strategically deploy these incentives to attract long-term industry investment, develop the workforce, and build cultural capital.

New York remains a major creative hub supported by a robust production tax credit system that includes a 30% base credit, enhanced incentives for upstate activity, and tailored programs for post-production, commercials, digital media, gaming, and live theater. Jason Laks, president of the Broadway League, highlighted that Broadway alone supports over 100,000 jobs and generates roughly $15 billion in economic activity, yet it faces mounting pressure from international competitors. John Hadity of Hadity & Associates, Inc. stated that without incentives, it would be financially irresponsible to proceed, explaining that producers routinely compare U.S. jurisdictions with international options, including Canada and the UK, before finalizing their budgets. The United Kingdom's 40% West End incentive and Canada's highly attractive stackable federal and provisional credits, combined with favorable exchange rates and residual buyouts, have made both countries formidable alternatives for producers weighing location decisions. Hadity highlighted ep.com as a great resource, noting that it offers clear and practical information for anyone looking to deepen their understanding of incentives and production management, with insights that help connect strategy to day-to-day operational decisions.

A consistent takeaway from industry professionals is that failing to address incentives early is now financially irresponsible. Decisions around entity formation, financing structure, and production timelines can directly impact eligibility. Missteps may result in the loss of credits altogether, underscoring the necessity of early and integrated legal involvement.

Panel 2: AI and the Boundaries of Authorship

The panel "AI Across Entertainment Sectors: Where We Are Now and Where We Are Going," moderated by Bill Rosenblatt from the Copyright Society, examined AI as a rapidly expanding stick in the entertainment lawyer's bundle, one that touches authorship, licensing, labor, and attribution simultaneously. Recent case law and administrative guidance reinforce this boundary, emphasizing that meaningful human creative control, and not mere prompting, is required for protection. Litigation surrounding AI training data further complicates the landscape, with courts and regulators increasingly focused on whether AI outputs are substantially similar to protected inputs.

AI has emerged as one of the most disruptive forces in entertainment, reshaping how content is created, altered, licensed, and monetized. At the heart of the legal debate lies the question of authorship. As Scott Sholder, from Cowan DeBaets Abrahams & Sheppard LLP, explained, U.S. copyright law remains unequivocal: Human authorship is a prerequisite for copyright protection. Works generated solely through AI prompts are not copyrightable, and creators must disclose AI involvement during registration or risk invalidation. The U.S. Copyright Office's position reinforces a critical point for practitioners: failure to address transparency in AI use can undermine an entire rights portfolio.

Beyond copyright, AI introduces challenges related to attribution, consent, and labor. Simon Pulman of Pryor Cashman, LLP, outlined industry-wide apprehension that voice cloning, deepfakes, and synthetic performers raise concerns about misrepresentation, material alteration of performances,

and the erosion of traditional credit structures. In response, the industry is experimenting with technological solutions, including content provenance standards, watermarking systems, attribution engines, and emerging licensing hubs that serve as "one-stop shops" for large-scale content authorization.

For entertainment attorneys, AI is no longer a niche issue. Contracts must now explicitly define AI use, allocate consent authority, and anticipate future exploitations that did not previously exist.

Panel 3: NIL and the Commercialization of Identity

The third panel, "Your Name, Your Fame, Your Voice, Your Brand: Rights of Publicity in the Digital Age," moderated by EASL's Immediate Past Chair Sarah Robertson of Dorsey & Whitney LLP, focused on identity as a legal asset increasingly vulnerable to technological exploitation.

If AI challenges authorship, NIL challenge's identity itself. Advances in digital replication have made it easier than ever to recreate voices, faces, and performances, intensifying the legal and ethical stakes around consent and control. The protection of NIL has become a central concern for performers, athletes, and public figures alike.

Consent emerged as the dominant theme across industry discussions. Detailed, express consent specifying the purpose, medium, duration, and compensation is increasingly viewed as the gold standard. Collective bargaining agreements, particularly those negotiated by SAG-AFTRA, are frequently cited as models for structuring these protections.

Legal scholars and practitioners, such as Penn Carey Law, University of Pennsylvania Professor Jennifer E. Rothman, have begun categorizing deepfakes into functional "buckets": Authorized, unauthorized, deceptively authorized, and fictional. The most troubling category involves deceptively realistic reuse of prior performances, which can mislead audiences and dilute the value of human labor. Post-mortem rights further complicate the picture. While some individuals proactively restrict posthumous use of their likeness through trusts and contracts, U.S. law remains fragmented, with state-by-state variation and limited guidance on emerging practices such as "grief bots," or commercialized digital resurrections.

Dan Jasnow of ElevenLabs explained that practical guardrails are already in place in the voice-cloning industry, including restricted voice libraries, security controls, and "no-go" lists that bar the use of certain public figures' voices. In professional voice-clone markets, technical editing is generally permitted when there are consent and compensation. By contrast, edits involving "super celebrities" typically require prior approval.

In the absence of a comprehensive federal privacy law, NIL protections largely depend on contract terms and state-based rights of publicity. As a result, identity has become one of the most valuable and vulnerable assets in the digital entertainment economy.

One Integrated Bundle, Not Separate Sticks

Taken together, incentives, AI and NIL are not isolated legal issues. They are interdependent components of a single strategic framework. Incentives influence where and how production occurs. AI reshapes creation, ownership, and monetization. NIL governs who controls the commercial value of human performance within a system.

The overarching lesson for entertainment lawyers and professionals is clear: Effective representation now requires an early, integrated legal strategy. Addressing these issues only after the budgets are finalized, AI tools are deployed, or identities are licensed is no longer sufficient. In today's entertainment landscape, proactive legal planning is not merely best practice, it is a professional necessity.



Tenneill 'Heaven' Jones is a Juris Doctor candidate at Touro University Jacob D. Fuchsberg Law Center, with an expected graduation in May 2026, concentrating in entertainment, sports and intellectual property law. She previously served as the legal music intern at Roc Nation, where she assisted with the drafting and review of recording, publishing, and licensing agreements, and is a former student volunteer with Volunteer Lawyers for the Arts. She is the newly elected chair of EASL's Young Entertainment Lawyers Committee and previously served as chair of the MBBA Entertainment & Sports Law Section. Heaven's academic training, industry experience and leadership shape her practical approach to legal issues in the creative industries.



Patricia Limperopoulos is a second-year Juris Doctor candidate at Quinnipiac University School of Law with experience across sports, entertainment and media law. She currently serves as EASL's Law Student Committee chair. Her professional experience includes talent representation, NIL compliance, music publishing and athlete safety, gained through roles with entertainment agencies, sports governing bodies, and legal startups. Her research and writing focus on sports governance, athlete advocacy, and the intersection of law, culture, and creative industries, with prior publication in the EASL Journal.



Immersive Art and Digital Frontiers: Navigating Legal Challenges in Expanding Realities

By Lorena Guzmán-Díaz

The rapid evolution of immersive art – artistic experiences that engage audiences across multiple senses and often invite direct participation – has opened new creative vistas and legal challenges. From large-scale physical installations to fully digital environments powered by virtual and augmented reality (VR/AR), immersive art blurs the boundaries between observer and artwork. As technology advances, so too do the legal questions at the intersection of art, business, and law.

Drawing on insights from a New York County Lawyers Association (NYCLA) Art Law Committee panel, "Immersive Art & Digital Frontiers: Legal Issues in Expanding Realities,"[1] this article examines the pressing legal issues facing artists, producers, and venues in the immersive and digital art landscape. The panel brought together leading practitioners to dissect the legal intricacies linked to immersive art forms – particularly those that leverage new media, VR, AR, and other digital technologies that permit new levels of public interaction. The discussion illuminated the complexities of copyright, licensing, and public engagement as these innovative art experiences occupy both tangible and digital domains.

I. The Intersection of Business and Legal Realities in Immersive Art

Immersive art encompasses creative works that transcend traditional boundaries, engaging audiences through sight, sound, touch, and even taste or smell. These experiences range from walk-through installations and interactive digital environments to multisensory performances. As the definition of immersive art expands alongside technological innovation, so too must the legal frameworks that govern its creation and presentation.

A. Personal Injury and Risk Management

Unlike traditional art exhibitions, immersive experiences often require physical interaction, increasing the risk of accidents such as slips, falls, or unintended exposure to hazardous materials. Legal counsel must consider:

- ***Client and Venue Type:*** The legal obligations and risk exposure differ significantly depending on whether the client is an individual artist, a producer, or the venue itself. For example, commercial galleries and for-profit event spaces may be subject to different premises lia-

bility standards and insurance requirements compared with nonprofit museums or educational institutions, which may have additional protections or regulatory obligations. The allocation of responsibility for safety measures, indemnification, and compliance with local regulations should be clearly delineated in contracts among all parties involved.

- ***Format and Scope:*** The specific format of the immersive experience – whether it is a large-scale festival, a temporary pop-up, or a long-term exhibition – will determine the necessary level of precaution and planning. Festivals or events with high foot traffic may require crowd control measures, emergency response plans, and heightened insurance limits. Pop-ups and site-specific installations may need special permits, temporary use agreements, and tailored risk assessments, while permanent installations might demand ongoing maintenance protocols and periodic safety reviews.
- ***Releases and Consents:*** All participants, including attendees, performers, contractors, and staff, should be required to sign customized releases of liability that address the particular risks of the experience. For unconventional or experimental installations – such as those involving edible components, sensory deprivation, or altered states of perception – comprehensive disclaimers, informed consent forms, and clear participant guidelines are crucial to mitigate liability. These documents should be drafted to comply with applicable state laws and should be easily understandable to participants.
- ***Multi-Jurisdictional Issues:*** When immersive art installations travel across state or national borders, legal counsel must address varying liability standards, safety codes, and regulatory requirements in each jurisdiction. Establishing separate corporate entities or special-purpose vehicles for each location or tour leg can help compartmentalize liability and shield the parent organization's assets from claims arising in a particular venue or region. Coordination with local counsel is often advisable to ensure compliance and effective risk management.
- ***Insurance:*** It is essential to communicate to insurance providers the unique, interactive nature of the installation so that the policy accurately reflects the risks involved. This may include obtaining specialized coverage for participant injury, property damage, or product liability if consumables or interactive devices are used. Gaps in coverage can arise if insurers are not fully informed about the scope of activities, so detailed descriptions and risk assessments should be provided during the underwriting process.

Practical Protocols: Staff and volunteers must receive thorough training on enforcing waivers, monitoring participant safety, and responding to incidents. Hazardous materials – such as fog machines, electrical components, or substances used in sensory installations – must be clearly labeled and



stored in compliance with safety regulations. Additionally, a clear and efficient claims processing procedure should be established in advance to handle any incidents or injuries, including documenting the event, notifying insurers, and communicating transparently with affected parties.

B. Right of Publicity and Privacy in Immersive Environments

Immersive art frequently incorporates surveillance, data collection, or recording of participants, raising significant privacy and publicity concerns:

- ***Expectation of Privacy:*** Attendees at public or semi-public exhibits generally have a diminished expectation of privacy compared to private settings. However, the boundaries can blur in immersive environments where participants may not realize they are being recorded or monitored. To mitigate risk, organizers should implement highly visible signage at all entry points and throughout the installation, explicitly informing attendees of any audio, video, or photographic recording. Written disclosures in ticketing materials and digital consent forms are also recommended, ensuring that attendees are aware of and consent to the recording practices before participating.
- ***Biometric Data:*** The use of advanced technologies – such as facial recognition, motion tracking, or other sensors that capture biometric identifiers – raises heightened legal and ethical concerns. Several states, including Illinois, Texas, and Washington, have enacted laws that strictly regulate the collection, storage, and use of biometric data, often requiring clear, informed, and written consent from participants. Violations can result in significant statutory damages and class action liability. Organizers must conduct a jurisdiction-specific legal analysis, implement opt-in consent mechanisms, and provide detailed privacy notices explaining the purpose, duration, and handling of biometric data.
- ***Data Protection:*** Any personal data or recordings collected from participants must be safeguarded with robust cybersecurity protocols to prevent unauthorized access, leaks, or misuse. This includes encryption, secure storage, access controls, and regular audits. If participant data or recordings may be incorporated into future artworks or shared with third parties (such as collaborators, sponsors, or media), transparency is critical. Privacy policies should clearly outline how data will be used, stored, and shared, and participants should have the opportunity to opt out or request deletion of their data where feasible, in compliance with applicable data protection laws, such as the European Union's General Data Protection Regulation (GDPR) or California's California Consumer Privacy Act (CCPA).
- ***Right of Publicity:*** The right of publicity protects individuals against the unauthorized commercial use of their name, likeness, or other recognizable aspects of their persona. While incorporating attendee images or recordings into an artwork may be permissible with adequate notice and consent – especially if the use is non-commercial or transformative – using those same images for commercial purposes, such as advertising, merchandise, or promotional materials, generally requires explicit, written consent. The scope of protection varies significantly by jurisdiction: for example, New York's law is limited to commercial uses and does not extend posthumously,[2] whereas California's statute is broader and includes postmortem rights.[3] Organizers must tailor their consent forms and practices to the relevant state laws and clearly distinguish between artistic and commercial uses in their documentation.

Best Practices: Legal counsel should advise immersive art producers to work closely with privacy and intellectual property specialists to design comprehensive participant disclosures, consent forms, and data management protocols. Regular staff training on privacy compliance and incident response is also essential to minimize legal exposure and maintain public trust.

II. Protecting Intellectual Property in Immersive and Digital Art

The rise of immersive and digital art – particularly in VR and AR environments – has created new opportunities for creative expression, but also new challenges for protecting intellectual property. In digital spaces where artworks can be easily copied, modified, or distributed across platforms, questions of authorship, licensing, and compensation become more complex and require careful contractual planning. Artists, producers, and legal counsel must address these complexities to ensure that creative rights are preserved and that all parties are fairly compensated.

A. Licensing, Compensation, and Contractual Clarity

Licensing forms the backbone of the business model for immersive and digital art, yet it is often overlooked or handled informally, leading to confusion and disputes down the line. The following considerations are critical:

- ***Contractual Relationships:*** By default, copyright law vests ownership of a creative work in the original creator. However, in collaborative or commissioned projects – common in immersive and digital art – ownership and usage rights can become ambiguous without

clear, written agreements. Contracts should specify whether the work is a "work-for-hire," whether the rights are being assigned or licensed, the scope and duration of any license, and any restrictions on modification, reproduction, or sublicensing. Even preliminary deal memos or letters of intent should outline key terms to prevent misunderstandings.

- ***Compensation Structures:*** The method of compensating artists can vary widely and should be tailored to the nature of the project and the relative bargaining power of the parties. Options include flat fees for specific deliverables, milestone-based payments, commissions based on sales or usage, or ongoing revenue-sharing arrangements tied to ticket sales, downloads, or in-app purchases. For digital and VR/AR works – where ongoing exploitation and adaptation are common – revenue-sharing and royalty models may be particularly appropriate but require careful accounting provisions and audit rights.
- ***Due Diligence:*** Before agreeing to revenue-sharing or deferred compensation, artists and their representatives should conduct due diligence on the producer, platform, or commissioning party. This includes reviewing their financial stability, history of timely payments, reputation in the industry, and the track record of past projects. Where possible, artists should seek references or testimonials from other creators who have worked with the same partners and may wish to negotiate for escrow arrangements or minimum guarantees.
- ***Copyright Registration:*** Registering digital and immersive works with the U.S. Copyright Office (or the relevant authority in other jurisdictions) is a critical step before delivering any work under a licensing agreement. Registration not only establishes a public record of authorship and ownership but is also a prerequisite for bringing a copyright infringement lawsuit and for seeking statutory damages and attorney's fees. For works that may be modified or updated over time – such as VR installations or interactive experiences – consider registering both the original version and any major updates or derivative works.

B. Intellectual Property Challenges Specific to Immersive Experiences

Immersive art installations are at the frontier of creative expression, often combining visual, auditory, kinetic, and algorithmic elements to create multisensory environments. This convergence of media raises unique intellectual property challenges, as traditional legal frameworks may not always fit the evolving nature of these works. Artists, producers, and legal counsel must navigate a patchwork of protections – copyright, trademark, and beyond – to safeguard their creations and commercial interests.

- ***Copyrightability:*** While copyright law traditionally protects fixed, original works of authorship, immersive and interactive installations test the boundaries of what is considered "fixed" and "creative." Courts have recognized that installations with fixed, tangible elements – such as sculptural components, video projections, or programmed sequences – are eligible for copyright protection.[4] However, ephemeral or variable aspects – such as participant-driven movement, real-time algorithmic responses, or the use of scents – may fall outside copyright's scope. In such cases, creators may need to explore alternative protections, such as patents for novel interactive mechanisms or trademarks for distinctive sensory experiences.
- ***International Considerations:*** The legal standards for what constitutes a protectable work, and the requirements for fixation, can vary significantly by jurisdiction. For example, while U.S. copyright law requires that a work be "fixed in a tangible medium of expression,"[5] some countries, such as Japan, do not impose a fixation requirement,[6] potentially allowing for broader protection of ephemeral or performance-based works. Artists and producers planning to exhibit or license immersive works internationally must conduct a jurisdiction-specific analysis to understand the scope of available protections and the steps required to secure them.

  Why International Differences Matter for Immersive Art: Immersive art is uniquely vulnerable to inconsistencies in international intellectual property law because it often exists in both physical and digital forms and is designed for global audiences. A VR installation created in the U.S. may be exhibited in Europe, streamed in Asia, or adapted by collaborators in Australia. Each jurisdiction may have different rules about what is protected, how long protection lasts, and what constitutes infringement. For example, a sensory experience protected as trade dress in the U.S. may not be recognized in another country and moral rights (such as the right to prevent modification) may be stronger in Europe than in the U.S. This patchwork creates risk for both artists and producers, who must proactively address these gaps in their contracts and protocols.
- ***Trade Dress and Branding:*** In cases where copyright protection is ambiguous or unavailable – such as for the overall "look and feel" or multisensory "vibe" of an installation – trade dress or trademark law may offer alternative avenues for protection. Trade dress can safe-

guard the distinctive visual appearance, configuration, or sensory elements that signify the source of a work, provided they are non-functional and have acquired distinctiveness in the marketplace. Ongoing litigation in the art and entertainment sectors highlights the growing importance of trade dress and trademark claims in protecting the unique branding and aesthetic signatures of immersive experiences,[7] especially as creators seek to prevent unauthorized imitation or dilution of their creative identity.[8]

III. Protocols and Legal Frameworks Unique to Immersive Art

As immersive art straddles the line between the tangible and the virtual, and often involves international collaborations, it demands protocols and legal frameworks that are uniquely tailored to its risks and opportunities. Unlike traditional visual art or even most performing arts, immersive art is inherently interdisciplinary and technologically driven, often blending physical installations with digital interfaces, interactive elements, and real-time audience participation. This hybrid nature means that the legal and practical considerations for immersive art projects are far more complex, requiring a holistic and adaptive approach to risk management, intellectual property protection, and participant engagement. Moreover, as immersive works are frequently designed to be experienced across borders – whether through touring exhibitions, online platforms, or virtual reality environments – they must navigate a fragmented global legal landscape, where rules governing copyright, privacy, and liability can differ dramatically from one jurisdiction to another.

A. Why Protocols Must Be Unique

Traditional art law protocols – such as standard gallery contracts or film production agreements – are often insufficient for immersive projects due to the multifaceted nature of these experiences. Immersive art typically involves the convergence of multiple creative and technical disciplines, each bringing its own set of legal considerations. For instance:

- ***Multiple Layers of Intellectual Property:*** Immersive installations often combine software code, sound design, visual art, choreography, and live performance, each of which may be created by different individuals or teams. Each layer can be subject to its own copyright, licensing, and moral rights regimes, and the integration of these elements can raise questions about joint authorship, derivative works, and the allocation of rights among collaborators. For example, a VR installation might use proprietary code developed by

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a tech partner, music licensed from a composer, and visual assets created by freelance artists, all woven together into a single experience. Without protocols that clearly delineate ownership and usage rights for each component, disputes can easily arise over credit, compensation, and control.

- ***Real-Time Collaboration:*** The creation and operation of immersive art often depend on real-time collaboration among artists, technologists, engineers, curators, and even artificial intelligence (AI) systems. This collaborative process can blur the lines of authorship and complicate questions of who holds what rights in the final work. In some cases, the audience itself becomes a co-creator, influencing the outcome of the experience through their interactions. This dynamic environment requires protocols that address not only initial authorship but also ongoing contributions, modifications, and updates, ensuring that all parties' rights and responsibilities are clearly defined from the outset.
- ***Participant Data and Privacy:*** Many immersive art projects rely on the collection and use of participant data – such as biometric information, behavioral responses, or even emotional feedback – to personalize or drive the experience. This raises significant privacy and data protection concerns, particularly when sensitive data is involved or when installations are presented in jurisdictions with strict privacy laws, such as the European Union's GDPR. Protocols must therefore address not only intellectual property issues, but also the lawful collection, storage, and use of participant data, including clear disclosures, informed consent mechanisms, and robust cybersecurity measures.
- ***International Distribution:*** As immersive art is increasingly distributed across borders—whether through physical touring, digital streaming, or virtual reality platforms – projects must comply with a complex patchwork of local, national, and international laws. This includes not only intellectual property and privacy regulations but also safety standards, accessibility requirements, and consumer protection laws. The global reach of immersive art makes it particularly vulnerable to legal uncertainties and enforcement challenges, underscoring the need for protocols that are flexible, comprehensive, and adaptable to multiple legal environments.

1. Implementing Unique Protocols

To address these multifaceted challenges, immersive art projects require the development and implementation of protocols that are specifically tailored to the unique demands of this field:

- ***Custom Collaboration Agreements:*** Unlike standard contracts used in traditional art or entertainment projects, collaboration agreements for immersive art must account for the interdisciplinary and often iterative nature of the work. These agreements should clearly define the roles and contributions of each collaborator – whether they are artists, programmers, designers, or engineers – as well as the ownership, licensing, and revenue-sharing arrangements for each layer of the project. Special attention should be given to provisions governing international exhibitions, digital adaptations, and future modifications, ensuring that all parties understand their rights and obligations throughout the life cycle of the work.
- ***Jurisdiction-Specific Intellectual Property Strategies:*** Given the international scope of many immersive art projects, it is essential to develop intellectual property strategies that are tailored to the legal requirements of each key market. This may involve registering copyrights, trademarks, or design rights in multiple jurisdictions; drafting licenses that comply with local laws, and anticipating enforcement challenges in countries with different standards for intellectual property protection. For example, a work that is protected as a copyrighted installation in the U.S. may need to be registered as a design or trade dress in Europe or Asia, and licenses may need to be translated and adapted to meet local legal standards.
- ***Integrated Privacy and Intellectual Property Policies:*** As participant data is often integral to the operation and experience of immersive art, protocols must integrate privacy and intellectual property considerations into a single, coherent policy framework. This includes ensuring that data collection practices comply with applicable privacy laws, that participants are fully informed and have provided valid consent, and that data is securely stored and handled. At the same time, protocols must address how participant data may be incorporated into the artwork itself – such as through personalized content or data-driven installations – while respecting both privacy rights and the intellectual property interests of the creators.
- ***Ongoing Legal Review:*** The rapid pace of technological change and the evolving nature of immersive art mean that protocols cannot be static. Legal counsel and project managers must regularly review and update their protocols to reflect new risks and opportunities, such as the emergence of AI-generated content, changes in international treaties, or shifts in industry best practices. This ongoing review process helps ensure that immersive art projects remain legally compli-

ant, ethically responsible, and resilient in the face of new challenges.

The unique characteristics of immersive art – its interdisciplinarity, technological complexity, reliance on participant data, and global reach – demand protocols and legal frameworks that go far beyond what is required for traditional art forms. By investing in robust, adaptive, and context-sensitive protocols, artists and producers can better protect their creative interests, foster successful collaborations, and deliver innovative experiences to audiences around the world.

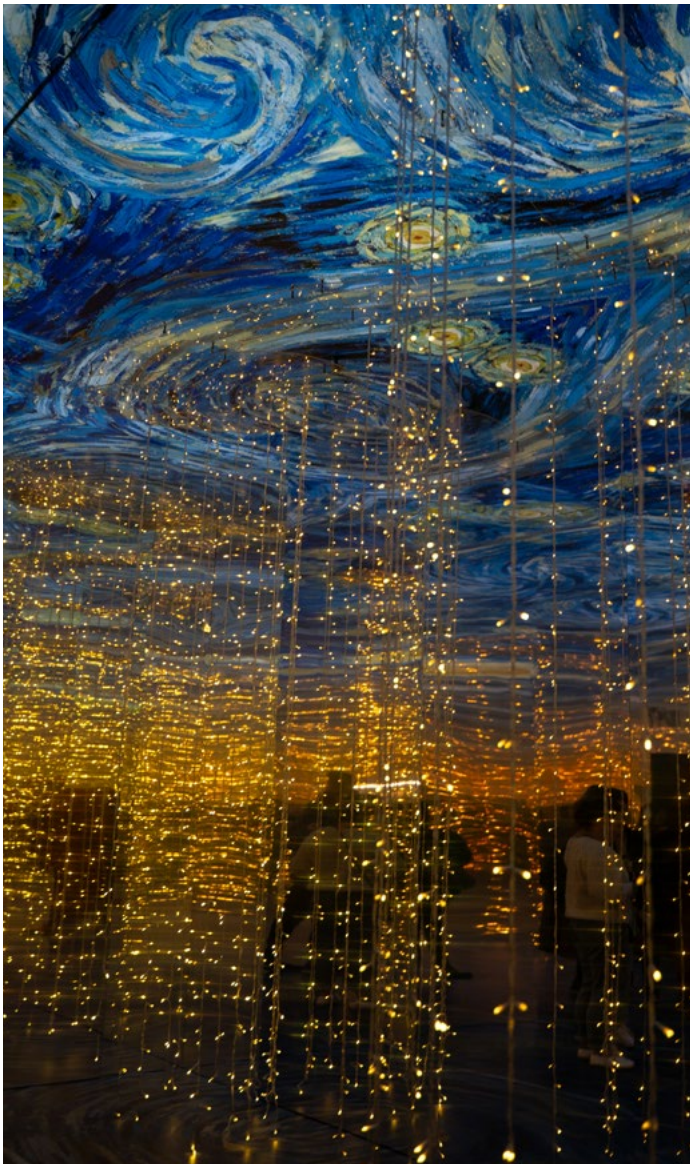
B. Authorship and Collaboration in the Digital Space

Collaboration is at the heart of immersive and digital art, but it introduces a host of legal and practical complexities:

- ***Defining Authorship:*** U.S. copyright law recognizes joint authorship when two or more human creators intend their contributions to be merged into inseparable or interdependent parts of a unitary whole.[9] However, the use of AI tools and algorithmic processes complicates this analysis. The law currently does not recognize AI or non-human agents as authors, meaning that works generated solely by AI are not eligible for copyright protection. When AI is used as a tool, the key legal question becomes whether the human input rises to the level of creative authorship. This requires careful documentation of the human creator's role in directing, selecting, or modifying the AI's output, and may necessitate new contractual language to address ownership and control of AI-assisted works.

- ***Studio Practices:*** The creation of immersive and digital art often involves teams of assistants, fabricators, coders, sound designers, and other technical collaborators. Without clear, written agreements, disputes can arise over the extent and significance of each person's contribution, potentially leading to conflicting claims of authorship or co-ownership. For example, a programmer who writes custom code for an interactive installation may later assert joint authorship if their contribution is not clearly defined as a work-for-hire or subject to an assignment of rights. Proactive management of studio practices – including regular documentation of contributions and clear communication of expectations – is essential to prevent misunderstandings.

- ***Protocols and Agreements:*** Legal counsel should advise artists and studios to implement standardized protocols for onboarding all collaborators, assistants, and technical contributors. Even simple written agreements can clarify the scope of each person's role, the nature of their contribution, and whether their work is being performed as a work-for-hire or subject to assignment.



These agreements should also include waivers of potential claims to authorship, moral rights, or future royalties, as appropriate. In larger or more complex projects, it may be advisable to include provisions addressing dispute resolution, confidentiality, and crediting practices to further minimize the risk of future conflicts.

IV. Enforcement, Monitoring, and the Global Digital Landscape

As digital art and immersive experiences proliferate, so too do the risks of unauthorized copying, distribution, and exploitation. Proactive enforcement of intellectual property rights is critical in the digital realm, where works can be instantly replicated and disseminated worldwide. In response, artists and rights holders are increasingly turning to new technologies and innovative legal strategies to safeguard their creations. However, these emerging tools must be carefully evaluated for both their effectiveness and their potential legal implications.



- ***International Enforcement Challenges:*** Even with robust intellectual property protection in one country, enforcing rights abroad can be difficult and costly. Some countries may not recognize certain rights or may have weak enforcement mechanisms. Immersive art, which is often designed for global audiences and distributed digitally, is particularly exposed to these challenges. Therefore, artists and producers must develop enforcement strategies that include international monitoring, local counsel, and the use of international treaties where available.
- ***Technology-Assisted Enforcement:*** The rise of AI-powered monitoring tools has made it possible to automate the detection of copyright or trademark infringement across vast swathes of the internet. These tools can identify unauthorized uses, flag suspicious activity, and even initiate takedown requests with platforms. Similarly, blockchain-based tracking systems are being developed to record and verify the provenance, licensing, and authorized use of digital artworks, providing a transparent and tamper-resistant record for enforcement purposes.
- ***Active Monitoring:*** Given the speed and scale at which digital works can be copied and shared, artists and their representatives must actively monitor for potential infringement, especially on social media, NFT marketplaces, and other online platforms. Timely detection is crucial, as damages for copyright infringement are generally limited to the three years preceding the filing of a lawsuit. Many artists employ dedicated staff or third-party services to conduct regular scans for unauthorized uses.
- ***Watermarking and Content Poisoning:*** Artists are adopting innovative techniques to protect their digital assets from unauthorized use or AI training. Watermarking embeds invisible or visible markers in digital files, making it easier to identify and prove ownership if works are misused. Content poisoning tools, such as Nightshade and Glaze, subtly alter images to "corrode" their value for AI training or to make them easier to track online. These methods can act as both deterrents and enforcement aids.
- ***Blockchain Solutions:*** Blockchain technology is being explored as a means of establishing and tracking the provenance, licensing, and usage of digital artworks. By recording each transaction or transfer of rights on a decentralized ledger, artists and collectors can more easily verify authenticity, ownership, and licensing terms. This can help reduce disputes and streamline enforcement, especially in the context of NFTs and digital collectibles.

Risks and Considerations: While these emerging tools offer significant promise, they also introduce new risks and legal questions. For example, aggressive content poisoning could inadvertently affect the quality or usability of legitimate images, and blockchain solutions may raise concerns about privacy, data permanence, and regulatory compliance. Artists and rights holders should consult legal counsel to assess the practical and legal implications of these technologies, ensuring that enforcement efforts are both effective and compliant with applicable laws.

V. Ethical and Practical Considerations for Counsel Representing Digital Artists

Representing digital artists in the rapidly evolving world of immersive and digital art requires more than just a strong grasp of intellectual property law. Counsel must be attuned to the unique challenges, opportunities, and ethical questions that arise in this dynamic field. Effective advocacy demands a holistic approach – one that combines legal expertise with industry insight, collaborative problem-solving, and sensitivity to the broader cultural and ethical dimensions of creative work.

- ***Industry Understanding:*** Attorneys advising digital artists must go beyond traditional legal research and stay current with the latest technological trends, platforms, and monetization models shaping the digital art landscape. This includes understanding how works are exhibited (*e.g.*, in VR/AR environments, NFT marketplaces, or interactive installations), how revenue is generated (such as through licensing, microtransactions, or royalties), and the potential risks associated with new technologies. Keeping pace with industry developments enables counsel to anticipate legal issues, craft relevant agreements, and provide strategic advice that aligns with clients' creative and business goals.
- ***Collaboration and Specialization:*** The interdisciplinary nature of immersive and digital art often means that legal issues intersect with technology, contract law,

international regulation, and even privacy or data law. Recognizing the limits of one's expertise is essential for providing competent representation. Attorneys should not hesitate to co-counsel with specialists in intellectual property, technology law, or local counsel in foreign jurisdictions as needed. This collaborative approach ensures that clients receive comprehensive advice and that complex, cross-border issues are handled appropriately.

- ***Client Education and Expectation Management:*** Many digital artists are unfamiliar with the intricacies of intellectual property law, the costs of enforcement, or the risks associated with emerging technologies. Lawyers should take the time to educate clients about the scope and limitations of legal protections, the practical realities of enforcing rights (including potential expenses and timelines), and the risks posed by new tools or platforms. Clear communication and expectation management empower clients to make informed decisions about how to protect and commercialize their work and can prevent misunderstandings or disappointment down the line.
- ***Societal Values and Labor Recognition:*** The collaborative nature of digital and immersive art challenges traditional notions of individual authorship and raises important ethical questions about labor recognition, credit, and compensation. As the art world increasingly values the contributions of assistants, fabricators, and technical collaborators, attorneys should help clients understand both the legal requirements for authorship and the broader cultural and ethical considerations at play. This may involve advising on fair compensation structures, transparent crediting practices, and protocols for acknowledging collaborative labor, all of which can foster a more inclusive and equitable creative ecosystem.

The digital and immersive art landscape is characterized by rapid evolution, driven by technological innovation, new modes of creative collaboration, and the continual redefinition of cultural and legal norms. In this environment, artists, producers, and their legal representatives must adopt a proactive and adaptive mindset – one that blends established legal frameworks with emerging technologies and a nuanced understanding of ethical considerations. Effective protection of digital and immersive works requires not only the strategic use of traditional tools like copyright and trademark registration, but also the integration of advanced monitoring technologies, blockchain solutions, and thoughtful protocols for authorship and collaboration. Moreover, ongoing education, open communication, and a willingness to engage with interdisciplinary expertise are essential for navigating the complexities of this field. By embracing these strategies, the art law community can help ensure that creative innovation is supported by robust, equitable, and forward-looking legal protections – empowering artists to thrive in a dynamic and ever-changing cultural landscape.

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Endnotes

1. Presented at the 16th Art Law Institute on May 15, 2025.
2. N.Y. Civil Rights Law §§ 50-51 (2024).
3. Cal. Civ. Code § 3344.1 (2024).
4. *See, e.g.*, *Tangle Inc. v. Artizia Inc.*, 125 F.4th 991, 996 (9th Cir. 2025) (explaining that a toy manufacturer's kinetic and manipulable sculptural works were sufficiently "'fixed' in a tangible medium" of expression to be entitled to copyright protection, "even when its pose changes," analogizing the moveable sculptures to dance, movies, and music); *TeamLab Inc. v. Museum of Dream Space, LLC*, 650 F. Supp. 3d 934, 949-53 (C.D. Cal. 2023) (finding that immersive art installations with interactive components are eligible for copyright protection due to their fixed elements and creative authorship, even if user experiences differ); *see also* Eileen Kinsella, *TeamLab Wins an Early Victory in Its Copyright Suit Against an L.A. Museum It Says Copied Its Immersive Installations*, Artnet (Jan. 13, 2023), https://news.artnet.com/art-world/teamlab-copyright-lawsuit-mods-victory-2242654.
5. Copyright Act of 1976 § 102, 17 U.S.C. § 102 (2012).
6. Japanese Copyright Law (JCL), Arts. 21-27.
7. *See Meow Wolf, Inc. v. Wake The Tiger Ltd.*, [2024] EWHC (Ch) IL-2024-000149 (Eng.); *see generally* Dawn Limbu, *Wake the Tiger faces lawsuit from American company*, BBC (Sept. 26, 2024), https://www.bbc.com/news/articles/c70zn8501lyo; *see also* Laura Lorek, *Expect Wave of Litigation Over Immersive Art*, Tex. Lawyer (Mar. 11, 2025; 8:59 AM), https://www.law.com/texaslawyer/2025/03/11/expect-wave-of-litigation-over-immersive-art/?slreturn=2025060434928.
8. *See generally Gifford v. Sheil*, No. 1:24-CV-00423-RP (W.D. Tex. May 28, 2025) (stipulation of dismissal) (stipulating dismissal of copyright lawsuit involving content creators battling over "neutral, beige, and cream aesthetic" and alleged copying of poses, styling, and product choices; settlement reached for $0 and no restrictions on defendant's future content, raising novel questions about copyright and trade dress protection for social media aesthetics).
9. *See* 17 U.S.C. § 101 (defining "joint work" as "a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole").

The Reputational Risks and Rewards of Giving Evidence, That Is the Question

By Amber Melville-Brown

> To give evidence, or not to give evidence – that is the question:
>
> Whether 'tis nobler in the court of public opinion to suffer
>
> The slings and arrows of outrageous accusations,
>
> Or to take arms against a sea of cross-examination,
>
> And, by opposing, end them. But to speak – to risk;
>
> And more; as by that risk we may not end
>
> The whispers and the wounds that reputation bears.
>
> 'Tis a reckoning devoutly to be weighed.[1]

What Is the Question?

The British royal family member formerly known as Prince Andrew Mountbatten-Windsor has been suffering the slings and arrows of what he might consider outrageous or at least unwelcome requests to appear before U.S. Congress. The request is that he give evidence in connection with his friend Jeffrey Epstein, arising out of the accusations of sex-offenses made by Epstein's accusers and victims, including the late Virginia Giuffre.

Shakespeare's Hamlet ponders the philosophical question of life versus death in his soliloquy "To be or not to be" – he weighs the benefits of death to end his pain but also fears it as the "undiscovered country from whose bourn no traveler returns." In weighing the benefits and disbenefits of giving evidence, the more prosaic question for Mountbatten-Windsor is whether acceding to the request will end his publicity pain, or whether doing so will set him further on a trajectory of reputational ruin from which he can never return.

To speak or not to speak is the question that will face many who either voluntarily bring or are forced to defend in litigation, those who are invited or subpoenaed to attend inquiries and tribunals, and those receiving requests for comment from the media and calls for transparency from the public. This article reflects upon the choices made by some notable characters facing that dilemma, and the slings and arrows they faced by the choices that they made.



Congress Calls

In February 2022, the then-Prince Andrew settled a civil case brought against him under New York's Child Victims' Act[2] by the prominent victim of sex offender Jeffrey Epstein, Virginia Giuffre (née Robert), who has subsequently taken her own life. Since settling the case, the lips of the now Mountbatten-Windsor have remained – largely – sealed; he has certainly not rushed to respond to calls for him to testify before or give an interview to the U.S. House Oversight Committee.[3] The Epstein Files Transparency Act (H.R. 4405),[4] signed into law in November 2025, mandated the release by the Department of Justice of all unclassified records related to Epstein and Ghislaine Maxwell, his former girlfriend, who is serving a 20-year prison sentence having been convicted[5] of multiple sex trafficking and conspiracy charges for her role in Epstein's sexual abuse of minors. At the time of writing, thousands of additional documents and photographs have been released as a result of the act, intensifying pressure for Mountbatten-

Windsor to engage with Congress and provide what the House Oversight Committee considers may be crucial evidence.

From a reputational perspective, to give evidence or not to give evidence is *the* question. While the Dane[6] does not immediately provide an answer to the question he poses himself (save, spoiler alert, that he chooses life over death), the answer to my bastardized version for the former prince is that he is damned if he does, and damned if he does not. Continuing to decline Congress's polite but persistent invitation leads to criticism for not assisting those seeking the truth, or suggestions that he has something to hide. Yet acceding to the request and submitting to the scrutiny of and robust challenges to his evidence could do more reputational harm than good through a misjudged comment or the unravelling of an evidential thread.

The *EASL Journal* offers readers a smorgasbord of hearty offerings and tasty treats of interest to attorneys practicing in each of its eponymous fields. This article therefore approaches the subject of evidence-giving – whether formally in court or informally in the court of public opinion – from a reputational perspective, dipping into some of the brand-bruising issues those facing these choices. For to speak or not, is indeed, a reckoning carefully to be weighed.

The Andrew Affair

Prince Andrew, as he was known at the time, was publicly insinuated into the Jeffrey Epstein saga when he was named by Virginia Giuffre, prominent accuser of the American financier and convicted sex offender, as being on the receiving end of Epstein's then alleged sex trafficking and Giuffre alleged that she was forced to have sexual relations with the then Prince when under the U.S. age of consent of 17. It is worth noting at the outset, to avoid unnecessary repetition throughout, that Andrew Mountbatten-Windsor – his title since having his more regal titles removed by King Charles III following these controversies in 2025[7] – denies any recollection of meeting Virginia Giuffre, of being aware of Epstein's unlawful activities, or of being involved therein.

The claims and accusations were, inevitably, widely reported in the media, including a photograph featuring Prince Andrew with his arm around the young Giuffre (the authenticity of which he questions), which was odd considering his assertions that he had not met her, let alone abused her. While other tongues wagged as the rumor mill turned, the lips of Mountbatten-Windsor's representatives remained more tightly sealed, in tune with the "never complain, never explain"[8] mantra preferred by his grandmother, the Queen Mother. Those lips were then ill-fatedly parted when he sat down for a public and highly publicized chinwag in 2019 with Emily Maitlis for BBC Newsnight.

If it had not been the most admirable thing to do, largely keeping mum may have been the sensible thing. By offering up his own side of the story and sitting down with the cool, calm, yet ultimately cut-throat Maitlis was, few would now challenge, a classic case – to borrow an analogy line from Shakespeare's Hamlet – of being hoist with your own petard. Here, the perfect petard – the bomb – was an incendiary interview, which was hoisted in the Prince's face.

Those of us practicing in the reputation management field are accustomed to undertaking a risk reward assessment when considering whether, and if so how, where, to whom, and when a client may sensibly tell one's story when others are, inaccurately, telling it for them. The legal tool of a defamation lawsuit may be a large, costly, time-consuming, and heavy hammer with which to crack the damaged reputation nut. So, eschewing the court but embracing the court of public opinion may be the better path to antidoting any misinformation poison. However, when Mountbatten-Windsor chose to open the medicine chest in that interview,[9] he proved only too well that the seeming cure proved significantly worse than the disease. Under the reporter's polite and professional questioning, Mountbatten-Windsor was largely seen as unsympathetic, arrogant, devoid of empathy, and lacking in repentance. He sought to bat away liability with an "I don't sweat defense," in that he did not dance sweatily with Giuffre at Annabel's nightclub, which, he said, was "proven" by the evidence that he did not sweat. He also chose the high-handed "Pizza Express defense" to scoff at suggestions that he had met her on a particular occasion; in that he would not forget scoffing down a pizza in Woking, as it was a "very unusual thing" for him to do. Unsurprisingly, the interview did not put him on the road to reputation recovery, but rather caused his name further to decline.

Mountbatten-Windsor was not done with unfortunate choices. In 2021, he was sued by Giuffre in the U.S. District Court for the Southern Department of New York,[10] under New York's Child Victims' Act.[11] Attorneys should not be criticized for zealously defending their clients, and Mountbatten-Windsor's defense was entitled to go on the attack. However, seeking to rely on a previously sealed settlement agreement from 2009 with (the by-then deceased) Epstein and Giuffre, absolving an array of others "from any and all liability," seemed uncomfortable, to say the least.[12]

With the discovery process underway and evidence sought from witnesses via depositions in England,[13] reportedly including Mountbatten-Windsor and potentially his former wife and daughters, giving evidence under oath became a reality. The ensuing reality was settlement of the claim on confidential terms[14] and without word one of Mountbatten-Windsor's evidence being uttered in court. Yet words were uttered in the form of a carefully crafted statement,[15] rather than under robust questioning and cross-examination.

While settling the case and avoiding evidence gave him a pass, it denied others the opportunity of delving into the detail of what may, or may not, have occurred and subjecting the facts to the disinfectant of sunlight. This potential witness may have dodged the bullet of evidence-giving under oath and avoided the painful experience of cross-examination by a skilled advocate, but that bullet has boomerang-like qualities. As Hamlet lay dying in Shakespeare's play, his friend Horatio offers, "Good night, sweet prince, and flights of angels sing thee to thy rest!"[16] The former Prince Andrew, however, has not been sweetly sung to a reputational rest, but has rather drawn further attention through even more scandals, including: The British police began investigating claims that he had tried to obtain personal information about Giuffre via his protection office in 2011;[17] it came to light that he had been paying only a "peppercorn rent" for his residence of Royal Lodge, a property of the Crown Estate, which profits went to the UK Treasury and thus was effectively living at the expense of the largely hostile and unsupportive British taxpayer;[18] there have been alleged ties with an alleged Chinese spy;[19] and, at the time of writing, documents disclosed from the Epstein Files – including an email indicating that despite telling Newsnight's Maitlis that he had cut off contact with Epstein in 2010, two months after the alleged cessation of contact, he had written to the sex offender that they were "in this together" and would "have to rise above it."[20] All of these have led to renewed scrutiny and questions. While Mountbatten-Windsor avoided being exposed through the clever and quick cross-examination by a professional attorney, submitting to a televised interview may have had a similar effect over a longer period.

The U.S. House Oversight Committee wants to know the truth. It has urged Mountbatten-Windsor to testify and sent a formal request seeking a transcribed interview.[21] As a non-U.S. citizen, he cannot be compelled to give evidence, and to date he has declined to do so. To borrow a line this time from the English band, The Clash, should he stay or should he go now? If he stays there may be reputational trouble, but if he goes it may be double.

A Roguish Gallery of Reputational Errors – and the Reputational "R"s of Responding

Many like Mountbatten-Windsor have sought reputation protection or remediation through appealing to the court of public opinion. One need not look much further than his nephew Harry and niece-in-law Meghan. The Duke and

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Duchess of Sussex famously sat down on the chat show couch with American host and talk show queen Oprah Winfrey.[22] Their bombshell interview lobbed grenades at the British royal family, lambasting the "institution" with accusations of racism and for lack of support, including over Markle's mental health struggles. Some saw these revelations as a brave move and a successful way to control their own narrative. In other quarters, the allegations were considered improper, unedifying, and have done as much damage to their reputations as the allegations might have done/been intended to do to the family.

Others have been undone by their outspoken commentary. In 2010, following the Deepwater Horizon spill, reported to be the worst oil spill in U.S. history, BP's CEO Tony Hawyward uttered the "thoughtless" plea, "I would like my life back."[23] Demanding restoration of his privacy and normal life after many had lost theirs entirely was highly inappropriate.

Saying too little can be as dangerous as saying too much; and being overly controlling can be as harmful as being out of control. Now rehabilitated golf star Tiger Woods went for a tightly controlled mea culpa about his highly publicized infidelities, leaving audiences questioning its genuine nature and disappointed at the lack of possible interaction on the subject with a "no questions" scripted statement.[24] After years of denials, fellow sports star and cyclist Lance Armstrong chose to sit on Oprah's couch to confess his doping history, but the stage-managed event, lacking the appearance of contrition, was not the panacea for which he might have hoped.[25]

Persisting in denials in an attempt to save a reputation can make it almost unsalvageable when the truth comes out. "I did not have sexual relations with that woman" is a denial most will recognize as a statement that came back to bite former U.S. President Bill Clinton.[26] As it turned out (according to the DNA on the much-discussed dress of Monica Lewinsky), that he did just that.

> Note: Whether inside or outside the courtroom, care must be taken in considering the risk and not just the perceived reputational reward in speaking out. Where possible, deciding whether to speak or not to speak should be taken calmly after careful consideration, and on the advice of professional advisers, as well as with engagement with support mechanisms. At times of crisis, time may be a luxury, but readers will agree that the advice of attorneys and reputational and communications professionals must always be considered essential.



A Wilde Idea

An early example of self-inflicted harm is the notable libel action brought by the 19th century English author Oscar Wilde against the Marquis of Queensbury in 1895.

In late February 1895 the Marquis of Queensbury – father of Lord Alfred "Bosie" Douglas, with whom Wilde had a close relationship, hotly disapproved of by Douglas's father – left a calling card at Oscar Wilde's private club, accusing him of "posing somdomite," a misspelling of the word "sodomite." Homosexuality being then unlawful, Wilde chose not to turn the other cheek, but rather to turn to the libel courts, suing his lover's father for criminal libel under the Libel Act 1843.[27] The burden fell on the defending Queensbury to prove his accusations, and in the first trial he failed to do so before an ultimately hung jury. However, a second trial proved spectacularly damaging for Wilde, who was subjected to aggressive cross-examination and detailed discussions about his writing, private life, and relationships. While Wilde was a witty raconteur, a libel trial before a sober, middle-class Victorian jury proved not to be the place to exercise his clever tongue. Wilde flashed his wit before the 12 good men as if he were entertaining friends at a dinner party rather than defending himself before those who held his reputation and, it turns out, his life in their hands. They punished him for it. The jury was unimpressed by his condescending defense that he had not kissed a particular young male servant because the boy was not pretty enough.

Monumental miscalculations of this nature led the jury to find that the accusations were "true in substance and in fact." With that libel loss, Wilde lost everything. He was bankrupted by the legal costs, the trial publicity on both sides of the Atlantic led him to become something of a cause célèbre, and he was socially ostracized. He was charged with criminal offenses

and convicted of gross indecency, leading to imprisonment and two years of hard labor. His wife left him, his children were shunned, and he died a ruined man at the age of 46. All for a libel action over a calling card, which asserted a truth.

> Note: If the former Prince Andrew had read the history of Wilde prior to volunteering for the Newsnight interview, he might have taken pause that where the audience has the speaker's life or reputation in their hands, haughty or clever remarks are not necessarily as smart as they may seem.

Running From the Law

A more recent Oscar suffered a reputational downfall from his own actions.

Oscar Pistorius was something of a celebrity – a double amputee and former professional sprinter, he fought to compete both in the Paralympic and Olympic Games, and won both his legal dispute to compete with non-disabled athletes and a medal therein. However, fame became infamy as he was tried in the High Court in Pretoria, South Africa for shooting and killing his girlfriend Reeva Steenkamp through a locked bathroom door in his home, on Valentine's Day 2013.

Unlike Oscar Wilde, Oscar Pistorius did not have the luxury of choosing whether or not to attend trial. Having remained silent before the televised trial, he took to the stand. There, he gave detailed and tearful testimony about his fear of an intruder in his house, how he had panicked as a vulnerable disabled person with significant security concerns, and how as a result he had shot repeatedly through the door, unintentionally killing her. At first instance the judge rejected premedicated murder and he was found guilty of culpable homicide (a form of negligent killing),[28] then was sentenced to six years imprisonment.

However, the state appealed to South Africa's Supreme Court, advancing that the court had erred in law by treating Pistorius' stated fear as excusing his failure to foresee that shooting through the closed door of the bathroom would likely kill whoever was behind it – girlfriend or intruder.[29] His own detailed evidence was thus reassessed to evidence that his intention was not solely to defend himself, but to kill (whomever was there), resulting in an increased sentence by the Court of Appeal to 13 years.[30]

> Note: There are echoes between the two Oscar cases. Taking the stand and committing to a detailed narrative and cross-examination enabled the respective courts to scrutinize, deconstruct and assess the evidence voluntarily given, and ultimately finding against the two men. If Mountbatten-Windsor was glued to his TV set during the runner's trial, he may have seen the many obstacles on the track for one who runs the risk of live questioning in a court arena.

Wife Beater

Hollywood royalty Jonny Depp saw his reputation as tattered and soiled as the sleeveless "wife-beater" undershirt of the caricatured violent men said to sport them when he lost his libel action against NGN, the publishers of the British tabloid *The Sun*, over accusations – vehemently denied – that he had been violent toward his wife, fellow actor Amber Heard.

Readers of the *EASL Journal* may recall we have considered the Depp/Heard trials before, commenting on how Depp lost the first libel action in London, allowing the public to persist in accusations of wife-beating, while later convincing an American jury in Virginia, in a trial against his former wife over similar allegations, that he was nothing of the sort.

In subjecting himself to these legal actions, Depp has eloquently evidenced my proposal that England and America are two countries united by a common language, but divided by differing legal systems, as the two legal actions meant that the loser became the winner, and the wife-beater became the misunderstood hero. That said, the English and Virginia cases are not strictly irreconcilable because they featured different parties, concerned different publications and were heard in different jurisdictions under different legal rules. Yet they do sit somewhat uncomfortably side by side in an awkward tension.

Where they harmonize, however, is that both actions are excellent illustrations of how high-stakes legal actions can damage, rather than repair, reputation, irrespective of the outcome. Depp and Heard were both subjected to the kind of granular, intense and intensely public cross examination from which neither was able fully to extract themselves with reputations tarnish-free. Their evidence pitted them against each other while exposing them both to the public, which chose sides and doubled down on them. The main accusa-



tion centered around violence – but we heard about mood swings and jealousies, drug use and "mega pints" of wine, and feces in the couple's bed, canine or human. While Depp beguilingly entertained with the perceived vulnerability of his evidence, Heard was lambasted for theatricality and lack of credibility, and subjected to cruel online memes.

The swashbuckling Depp has largely salvaged his reputation, including by leaning into the bad-boy, wild-man image, retaining his place as the face for Dior's best selling men's fragrance, Sauvage, which translates in English to "wild." What is good for the gander, however, is often not good for the goose. While her fans continue to support her as a victim of a smear campaign, Heard has been vilified elsewhere as a liar and a manipulator and her reputation and career have been slow to recover. Indeed, while Depp enjoys the publicity of sauntering like a cool cowboy across the rugged deserts of Tereul, Spain in the recent Dior Sauvage advertising campaigns,[31] Heard is reported to have moved to Spain to seek privacy after the savaging of her reputation.[32]

> Note: Had Mountbatten-Windsor been following either of these two legal cases, he would surely be reminding himself that giving evidence is not a one-handed fictional play by an actor who writes his own lines, but it is a dangerous reality directed by an intelligent and erudite opposing advocate.

Trusty Sword of Truth

The libel action brought in the courts of England and Wales by Scottish politician Jonathan Aitken against the *Guardian* newspaper and the broadcaster Granada is a textbook example of an individual piously proclaiming his innocence only has his arms of choice – a libel action and a press conference – proving to be the very weapons that destroyed his reputation.

After serving as a cabinet minister in the mid-1990s, Aitken was accused by the *Guardian* and Grenada television of having improper links with Saudi interests, evidenced by his stay at the Ritz hotel in Paris, allegedly paid for by Saudi contacts while he was in office. He responded to these accusations by issuing legal proceedings for defamation and at a press conference he publicly declared that he would fight these heinous accusations, with "the simple sword of truth and the trusty shield of Fair play," to "cut out the cancer of bent and twisted journalism."[33] It was a fantastic sound bite for sure, intended to grab the attention of the media and the public, and to set on a pedestal of proprietary in the eyes of the public. However, the simple sword of truth uncovered untruths, and the cancer excised was his own reputation.

Central to the case was who had paid the bill for a stay at the Ritz hotel, with Aitken literally swearing under oath that it was his wife. Yet the newspaper and broadcaster continued to employ their not inconsiderable investigative skills, ultimately uncovering records evidencing that Aitken's wife was with their daughter in Switzerland at the relevant time and thus could not have paid the bill as he asserted. The libel action blew up like Hamlet's anticipated petard in his face, and he was charged with perjury and perverting the course of justice.[34] Aitken pleaded guilty and received an 18-month prison sentence,[35] was bankrupted by legal costs, and suffered comprehensive personal and professional reputational ruin.

As a reputation attorney and communications advisor, I am not averse to telling a client's truthful story in the most compelling and captivating manner – and an appropriate soundbite, provided it is rooted in truth, can do wonders to get a message across. However, where one decides to engage in purple prose or colorful oratory akin to Aitken's sword and shield, one must be sure that those weapons are not blunt tools capable of being cudgeled against he who seeks to use them. Aitken volunteered attention-grabbing terminology to place him on a very high moral pedestal, from where he spectacularly fell with a hard reputational crash.

> Note: Aitken proclaimed a desire to cut out the cancer of bent and twisted journalism – his libel action, in fact, exposed his own bent and twisted perjury. Mountbatten-Windsor's voluntary interview with Newsnight and his soundbites of sweat and pizzas resulted in self-induced pain. It may be inevitable that he considers this misstep as he considers the House committee's invitation.

Billions of Reasons to Behave

Where Wilde was destroyed by his own sworn narrative in a libel action brought by him, the reputation of Alex Jones took a battering – save with his own loyal fanbase – as a result of libel actions brought against him.

In December 2012, a mass shooting occurred at Sandy Hook Elementary school in Connecticut, with 20 children and six adult staff members killed. The 20-year-old gunman killed himself at the scene.[36] Jones, an American political commentator, radio host, and the founder of the website and media platform InfoWars, repeatedly claimed that the shooting was a hoax, staged by the government to promote gun control, and he offensively alleged that the victims were "crisis actors" and not, in fact, killed.[37] As a result of these false claims, the families endured harassment and threats from those who believed these conspiracy theories. Not until the families brought legal actions to counter the false accusations in Texas[38] and Connecticut[39] did Jones ultimately concede that the shooting was indeed real and that he had been irresponsible to call it a hoax.[40] Ultimately, he was ordered to pay nearly $1.5 billion

in damages to the families.[41] During the process he failed to comply with Connecticut discovery orders, particularly concerning financial documents and web analytics data evidencing the extent to which InfoWars' content translated into revenue, and thus was found to have shown a "callous disregard" for discovery obligations.[42] As EASL readers may know, entering default judgment is usually a rare and last resort section. However, the Connecticut court in this case noted that Jones' conduct had undermined "fundamental fairness" such that the plaintiffs' ability to prepare their case was significantly reduced and thus default judgment was the relevant remedy.

> Note: If Wilde and Aitken were undone by their high-minded appeals to tell their own truths, which were ultimately shown to be very far from the truth at all, the Jones case shows the adjacent for a party to legal proceedings who treats those proceedings disrespectfully.

History and Lessons Learned

Mountbatten-Windsor is safe within the protective walls of his British home. While he remains in England, Mountbatten-Windsor cannot be compelled to give evidence to Congress. If he were considering the House request, however, these examples from history surely show that once you step into an adversarial evidential arena, the risk is not only what others say about you, but what you also say about yourself, how you assert your own narrative, how you express yourself through your demeanor, and the oral and documentary evidence that you do or do not disclose. These may all be woven into the tapestry of litigation and at any point, may start to become unraveled.

Wilde's intended witty repartee was seen as posturing, evasiveness and contradiction and led to his reputational downfall and ultimate demise, while Aitken's simple sort of truth turned against him and carved out a perjury conviction. Pistorius's self-defense narrative of panic and fear was reread on appeal as proof of legal intent. Depp and Heard each were subjected to intense examination and each carries matching scars to their reputations. After failing to comply with the rules of the legal road, Jones was hit dramatically in his pocket. If Mountbatten-Windsor were to accede to a congressional request to give evidence, he would need to treat it very much less as a conversation akin to that in which he engaged with Emily Maitlis of BBC's Newsnight, and more of a significantly high-risk evidential exercise.

The courts and tribunals are venues for structured, contested evidence-testing toward the ultimate goal of establishing the truth and achieving justice. To that end, parties and witnesses are required to tell the truth, the whole truth, and nothing but the truth – and a party who cannot or will not do so offers lies in place of truth, attempts to game the legal system or not engage properly with the process may ultimately and perhaps inevitably, find themselves subject to reputational reckoning.

To protect our reputational ars*s, we may consider the "Rs" of reputation remedy: Recognizing the event and/or the harm done; where appropriate, accepting Responsibility and expressing Regret; offering Remediation and providing Remedy … and in doing so, we may put ourselves on the path to Reputation Rehabilitation. Whether we are celebrities or civilians, royals or regular Joes, princes or paupers, we must carefully weigh the risks and the opportunities of whether to give evidence, in court voluntarily or otherwise, and to the court of public opinion. As the royal family member formerly known as Prince Andrew considers these options, he will be well aware that 'tis a reckoning devoutly to be weighed.[43]

Postscript

On February 19, Mountbatten-Windsor was arrested in the U.K. on suspicions of misconduct in public. This came after accusations were made that he shared confidential information with Epstein while serving as a trade envoy. An investigation is ongoing.[44]



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No Crying in Baseball: Rogue Agents and Principal Liability

By Neville L. Johnson, Douglas L. Johnson, and Hunter S. Litterio

On March 17, 2022, baseball fans across the country were met with seismic news: Freddie Freeman was leaving the powerhouse Atlanta Braves for their equally stacked National League rival, the Los Angeles Dodgers.[1] Fans were even more shocked when it was revealed that the move was apparently against Freeman's wishes. In the heat of contract negotiations, Freeman's agent presented the Braves with an offer and a deadline. When the Braves' counteroffer was rejected, the team believed that Freeman was going to sign with another team and quickly put together a trade for All-Star first baseman Matt Olson, ending negotiations with Freeman altogether.[2]

We may never know exactly what happened among the Braves, Freeman, and his agent. Freeman's agent claimed that the Braves' recounting of the situation was false,[3] but Freeman called the situation "very emotional" and stated that he needed to "[work] through some issues with my longtime agents."[4] Whatever the story may be, the situation brought into stark focus the power agents hold over their clients' lives. Years after the Freeman move, another Dodgers superstar has been drawn into a different kind of ordeal by his agent, and this time it could cost far more than hurt feelings.

The Shohei Ohtani Lawsuit

On August 8, 2025, real estate developers Kevin Hayes and Tomoko Matsumoto brought suit against Shohei Ohtani and his agent, Nez Balelo, alleging tortious interference with contractual and business relations and unjust enrichment for a real estate deal gone wrong. As alleged in the First Amended Complaint (FAC), plaintiffs Hayes and Matsumoto had conceived of a premium residence within the Mauna Kea Resort, in which they partnered with Kingsbarn Capital LLC (Kingsbarn).[5] To help it attract potential investors, Hayes and Matsumoto struck a deal with Shohei Ohtani to promote and endorse the project.[6] Upon execution of the agreement, Hayes and Matsumoto claimed that Balelo became intimately involved in the project and soon became a "disruptive force."[7] The relationship between the plaintiffs and Balelo became so bad that Balelo allegedly approached Kingsbarn to demand that the plaintiffs be removed from the project, or else Ohtani would withdraw.[8] Upon their removal, the plaintiffs brought suit against both Balelo and Ohtani.

In response to the allegations, Balelo and Ohtani filed a motion to dismiss and a separate special motion to dismiss, claiming, among other things, that the alleged tortious interference is protected by litigation privilege,[9] that the actions taken by Balelo were justified,[10] and that the FAC failed to allege any tortious conduct by Ohtani.[11] The last argument is perhaps the most relevant to Ohtani, as it seeks to fully relieve him from liability for Balelo's alleged actions. In particular, the motion claims that any action by Balelo, to the extent unlawful, was outside the scope of his authority, and thus could not render Ohtani liable.[12]

Respondeat Superior, Apparent Authority, and Principal Liability

The Ohtani case is relevant nationwide, as agency law exists in every state, and even the most basic transactions occur through agents. This is particularly true in New York, where many high-level agencies reside. Yet, despite agency law's impact on everyone's daily lives, many people are shockingly underinformed about what an agent is and the authority agents have over their principals' affairs. In New York, an agency relationship arises from "the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent be the other so to act."[13] This does not require a formal written agreement, nor does it depend on the actors labeling it as such.[14] An agency relationship arises explicitly when one party authorizes another to act on their behalf in dealing with a third party.[15]

In the latter situation, problems can, and often do, arise when communication breaks down, as appears to be the case with both Ohtani and Freeman. Often, a principal is only bound when their agent is acting within the scope of their authority.[16] This can either be expressly granted or implied by the principal's conduct toward the agent.[17] However, two separate but related doctrines exist that can bind the principal, even when the agent acts against the principal's wishes: respondeat superior[18] and apparent authority.

Under the doctrine of respondeat superior, a principal is responsible for the tortious conduct of their agent if the acts were committed in the scope of the agency relationship and in furtherance of the principal's affairs.[19] Though a principal rarely instructs their agent to intentionally commit torts, the principal may still find themselves liable for intentional conduct "so long as the tortious conduct is generally foreseeable and a natural incident" of the agency relationship.[20] Given that the agent must be acting in furtherance of their principal's interest, respondeat superior does not apply where an agent "departs from the line of…duty so that for the time being [their] acts constitute an abandonment of...service."[21] The scope of the agency relationship is often a fact-based inquiry.[22]

Apparent authority is an entirely separate doctrine from respondeat superior, although the two are often confused. Apparent authority arises from the principal's conduct or actions expressed to the third party, creating the appearance that the agent is authorized to act on the principal's behalf in a certain manner.[23] Further, the third party must rely on that representation, and the reliance must be objectively reasonable.[24] As such, the third party bears some responsibility for investigating the actual scope of the agent's authority.[25] Outside of the tort context, a principal can also be bound by contracts formed by their agent acting with apparent authority."[26] Apparent authority differs from respondeat superior in that a plaintiff must not show the conduct was done in furtherance of the principal's business, but they must prove that the principal "created an appearance of authority on which the plaintiff reasonably relied, thereby enabling the agent to successfully perpetrate the tort."[27]

It is not quite clear under which doctrine Hayes and Matsumoto seek to hold Ohtani liable. The FAC states that "[a]s is customary in the professional sports industry, Otani entrusted Balelo and CAA with broad authority to manage his business and commercial affairs, including the solicitation and negotiation of endorsement agreements."[28] This appears to be an attempt to claim respondeat superior, as it highlights the perceived scope of Balelo's agency relationship, and the acts that may be done in furtherance of Ohtani's interests under that relationship.

However, the FAC later states that "Balelo's and CAA's authority as Otani's agent was manifested in the Endorsement Agreement…"[29] This speaks more to potential apparent authority, as it relates to Ohtani's representations about Balelo's authority as his agent. Though seemingly a minor distinction, it could play a big role in the outcome of the litigation. If the basis for liability is respondeat superior, the plaintiffs will have to show that the conduct was in the scope of Balelo's authority; if it is based on liability, the plaintiffs only need to show that they reasonably relied on Ohtani's representations about the scope of Balelo's authority, and that reliance created the circumstances whereby the tortious conduct could have occurred.

Ohtani's motion to dismiss focuses almost entirely on respondeat superior. It states that the FAC "does not allege that Ohtani expressly directed, authorized, or ratified Balelo to threaten litigation against Kingsbarn, the intentional act which forms the basis of Plaintiffs' claim."[30] Instead, the defendants claim that the allegations are merely conclusory and fail to establish Balelo's scope of authority.[31]

It is difficult to say how Ohtani's motion to dismiss the claims stemming from Balelo's alleged conduct will play out. On one hand, the scope of Balelo's employment and authority is highly fact-intensive, making it less susceptible to attacks at the pleading stage. On the other hand, the FAC's central allegations related to the scope of Balelo's authority rely heavily on custom and practice, and a clause in the endorsement agreement between the plaintiffs and Ohtani.[32] Whether this is sufficient to establish a reasonable factual basis for the claim at the pleading stage is an open question.

Riding the Fine Line

While the Freeman and Ohtani situations present extreme examples of the role an agent has in their client's affairs, and the consequences that may have, one of the biggest stories this

Major League Baseball (MLB) offseason has centered around an agent simply doing his job. Cody Bellinger saw his market value rise on the strength of his 2025 play, leading to heated negotiations between his agent, Scott Boras, and the New York Yankees.[33] Boras has drawn the ire of fans for his unflinching negotiation tactics, demanding a contract that some view as unwarranted.[34] Yet Boras' job is not to care what disgruntled fans think; it is to get his clients their best possible outcome – and he has proven to be quite good at that. In the 2024 offseason alone, Boras negotiated Juan Soto's 15-year, $765 million deal with the New York Mets, Corbin Burnes' six-year, $210 million deal with the Diamondbacks, Blake Snell's five-year, $182 million deal with the Dodgers, and Alex Bregman's three-year, $120 million deal with the Red Sox, among others.[35]

Whatever one may think about Boras' approach (or any other agent's for that matter), his negotiation with the Yankees this offseason highlights the delicate balance agents often must strike – push too little and potentially leave money on the table, push too hard and risk losing everything. As the adage goes, "pigs get fat, hogs get slaughtered." Put simply, an agent's job is hard. It creates opportunities in which agents may overstep, to the detriment of their client, or, in the most extreme cases, it may give them a level of power and leverage they attempt to misuse.

In the high-leverage world of sports and entertainment negotiations, athletes, artists, and entertainers often have to bear the risks (and consequences) associated with this balancing act. The difficulty arises when a client disapproves of their agent's actions. This alone is often not enough to avoid liability. So, what can be done?

As always, principals can best protect themselves by seeking legal advice to understand the risks and potential consequences of any actions undertaken on their behalf. However, agency relationships arise to expedite a principal's affairs and to handle tasks they cannot or do not wish to oversee, so this offers little practical advice. To best ameliorate the majority of issues principals may face, a good starting point is to include an indemnification clause in their agreements with their agents, shielding the principal from legal costs arising from the agent's conduct.

Additionally, defining the scope of the agency relationship is key for both the agent and a third party with whom the agent is authorized to interact. For example, a principal can expressly state to a third party that the agent lacks authority on a particular issue and that any action taken on that issue must first be discussed with the principal. Further, when an agency relationship ends, a principal must notify any third party who was previously aware of the relationship as soon as possible to avoid being bound by an agent's conduct thereafter.

Principals can also protect themselves from misunderstandings with their agent by clearly communicating their utmost priorities to ensure both understand their ultimate goals. One can only wonder what the conversations between Freeman and his agent looked like, and whether it was made clear that a top priority for Freeman was to stay with the Braves. If communication had been clearer, or if Freeman's agent had acted according to Freeman's wishes, there is no telling how different the MLB landscape would look – though the Dodgers may well have two fewer World Series rings to add to their collection.

We have also seen an increasing number of athletes represent themselves. Notably, Lamar Jackson, the two-time MVP quarterback, secured a five-year, $260 million contract with the Baltimore Ravens, and Bobby Wagner represented himself in attaining a one-year, $10 million deal going into his eleventh season.[36] However, this approach poses obvious risks, not least of which is the fact that agents have a level of expertise and understanding of the business side of sports and entertainment that athletes and artists might lack. Beyond that, it can be a headache to handle every single deal on one's own while focusing on one's craft.



Whatever approach an athlete or artist chooses, the key to any relationship, agency or otherwise, is to ensure that those who earn their trust are actually deserving of it. Otherwise, they could find themselves shedding a few tears.





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Endnotes

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7. *Id.* at ¶22.
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10. *Id.* at pp. 12-13.
11. *Id.* at pp. 15-17.
12. *Id.*
13. *Deep Blue Ventures, Inc. v. Manfra, Tordella & Brookes, Inc.*, 6 Misc.3d 727, 732 (2004).
14. *Id.*
15. *See Deutsche Bank National Trust Co. v. Pietranico*, 33 Misc.3d 528, 543 (2011).
16. *See, e.g., O.A. Skutt, Inc. v. J. & H. Goodwin*, 251 A.D. 84, 86 (1937) ("A principal is responsible only for the appearance of authority which he himself has created and for that which is produced by the agent alone.").
17. *See, e.g., VFP Investments I LLC v. Foot Locker, Inc.*, 2015 WL 6499513, *5 (2015) ("Implied actual authority is dependent on verbal or other acts by a principal which the agent reasonably believes give her the authority to conduct the transaction.").
18. Respondeat superior is considered a subset of the broader vicarious liability doctrine. *See, e.g., Smith v. Ryder*, 82 Misc.3d 812, 813 (2024) ("One form of vicarious liability, which plaintiff asserts in this case, is called respondeat superior.").
19. *See N.X. v. Cabrini Medical Center*, 97 N.Y.2d 247, 251 (2002); *see also Parlato v. Equitable Life Assur. Soc. of U.S.*, 299 A.D.2d 108, 113 (2002) (applying respondeat superior in the agency context).
20. *Rivera v. State*, 34 NY3d 383, 389 (2019).
21. *Id.* (quoting *Judith M. v. Sisters of Charity Hosp.*, 93 N.Y.2d 932, 933 (1999)).
22. *Id.* at 390.
23. *See Hallock v. State*, 64 N.Y.2d 224, 231 (1984).
24. *Id.* (citing *Wen Kroy Realty Co. v. Public Nat. Bank & Trust Co.*, 260 N.Y. 84, 92–93; Restatement, Agency 2d, § 8).
25. *See Ford v. Unity Hospital*, 32 N.Y.2d 464, 473 (1973) ("One who deals with an agent does so at his peril, and must make the necessary effort to discover the actual scope of authority.").
26. *See Utopia Home Care, Inc. v. Revival Home Health Care, Inc.*, 176 A.D.3d 900, 902 (2019) (stating that, under contract law, "[i]n the absence of actual authority, a principal may still be bound by the actions of a person who has apparent authority.").
27. *Parlato*, 299 A.D.2d at 114.
28. FAC at ¶20.
29. *Id.* at ¶21. The clause of the Endorsement Agreement is redacted, and, as such, the legal effect of it cannot be gleaned from the FAC itself.
30. MTD at p. 16. The brief appears to address the apparent authority question in a footnote, in which it states "Plaintiffs also attempt to bolster this argument [redacted]. But that is yet another conclusory allegation that does not demonstrate that either Balelo or CAA knew about or ratified the relevant conduct." Without knowing exactly what the clause says, it is impossible to conclude anything about whether this argument will be availing. However, if the clause in the endorsement agreement appears to confer Balelo the authority to act, it only matters whether he does so act, and not whether he was aware of the apparent authority vested in him.
31. *Id.*
32. FAC at ¶¶20-21, 46. As above, the clause that allegedly authorizes Balelo to act on Ohtani's behalf has been redacted from in the public filing, and, as such, any analysis of this issue is necessarily restricted.
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Sports and Entertainment Immigration: Some Get In, but Many Do Not. Volleyballers and Little Leaguers Blocked From Entering the United States… Enforcement, but of What?

By Michael Cataliotti

Considering the last few months have seen more immigrant visa (i.e., green card) restrictions and a whole lot of inside-the-U.S. activity by Immigration and Customs Enforcement (ICE), and we have already discussed how foolish all of this is as it relates to sports and entertainment (notably, the U.S.'s upcoming World Cup and Olympics hosting), let us dispense with the pleasantries and dive in.

Extending the Restrictions on Countries

As you may recall, in June 2025, in Proclamation 10949, published online (and tweeted or truthed or whatever it was), titled, "RESTRICTING THE ENTRY OF FOREIGN NATIONALS TO PROTECT THE UNITED STATES FROM FOREIGN TERRORISTS AND OTHER NATIONAL SECURITY AND PUBLIC SAFETY THREATS [capitalization in original]," a number of citizens/nationals of countries were either barred from entering the United States in sum, or restricted from obtaining certain types of visas (generally, Bs, Fs, Ms, and Js).[1]

The countries' nationals who were fully barred from entering the United States were Afghanistan, Burma, Chad, the Republic of Congo, Equatorial Guina, Eritrea, Haiti, Libya, Somalia, Sudan, and Yemen.[2] Partial restrictions were applied on nationals from Burundi, Cuba, Laos, Sierra Leone, Togo, Turkmenistan, and Venezuela.[3]

Exceptions to these restrictions were made to include:

> (b) Exceptions. The suspension of and limitation on entry pursuant to sections 2 and 3 of this proclamation shall not apply to:
>
> (i) any lawful permanent resident of the United States;
>
> (ii) any dual national of a country designated under sections 2 and 3 of this proclamation when the individual is traveling on a passport issued by a country not so designated;
>
> (iii) any foreign national traveling with a valid nonimmigrant visa in the following classifications: A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, NATO-1, NATO2, NATO-3, NATO-4, NATO-5, or NATO-6;

(iv) any athlete or member of an athletic team, including coaches, persons performing a necessary support role, and immediate relatives, traveling for the World Cup, Olympics, or other major sporting event as determined by the Secretary of State;

(v) immediate family immigrant visas (IR-1/CR-1, IR-2/CR-2, IR-5) with clear and convincing evidence of identity and family relationship (e.g., DNA);

(vi) adoptions (IR-3, IR-4, IH-3, IH-4);

(vii) Afghan Special Immigrant Visas;

(viii) Special Immigrant Visas for United States Government employees; and

(ix) immigrant visas for ethnic and religious minorities facing persecution in Iran.

(c) Exceptions to the suspension of and limitation on entry pursuant to sections 2 and 3 of this proclamation may be made for certain individuals for whom the Attorney General finds, in her discretion, that the travel by the individual would advance a critical United States national interest involving the Department of Justice, including when individuals must be present to participate in criminal proceedings as witnesses. These exceptions shall be made only by the Attorney General, or her designee, in coordination with the Secretary of State and the Secretary of Homeland Security.

(d) Exceptions to the suspension of and limitation on entry pursuant to sections 2 and 3 of this proclamation may be made case-by-case for individuals for whom the Secretary of State finds, in his discretion, that the travel by the individual would serve a United States national interest. These exceptions shall be made by only the Secretary of State or his designee, in coordination with the Secretary of Homeland Security or her designee.[4]

U.S. Citizenship and Immigration Services Gets in on the Fun!

Well, on or about December 2, 2025, U.S. Citizenship and Immigration Services (USCIS) decided that it would:

1. Place a hold on all Forms I-589 (Application for Asylum and for Withholding of Removal), regardless of the alien's country of nationality, pending a comprehensive review;

2. Place a hold on pending benefit requests [fn2] for aliens from countries listed in *Presidential Proclamation (PP) 10949, Restricting the Entry of Foreign Nationals To Protect the United States From Foreign Terrorists and Other National Security and Public Safety Threats*, [fn3] pending a comprehensive review, regardless of entry date [fn4]; and

3. Conduct a comprehensive re-review of approved benefit requests for aliens from countries listed in PP 10949 who entered the United States on or after January 20, 2021. [fn5][5]

Not only did USCIS decide that it would suspend, "effective immediately," all petitions or applications by individuals from those countries, but that it *did not matter if those applicants were dual nationals, using a different nationality than one of those restricted countries*.[6]

Back to the White House and State Department

Then, on or about December 19, 2025, the decision was made to issue Proclamation 10998,[7] which expanded upon those restrictions to include around 20 new countries. As per the State Department's "Suspension of Visa Issuance to Foreign Nationals to Protect the Security of the United States":

> Effective January 1, 2026 at 12:01 a.m. EST, in line with Presidential Proclamation 10998 on "Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States," the Department of State is fully suspending visa issuance to nationals of 19 countries – Afghanistan, Burma, Burkina Faso, Chad, Republic of the Congo, Equatorial Guinea, Eritrea, Haiti, Iran, Laos, Libya, Mali, Niger, Sierra Leone, Somalia, South Sudan, Sudan, Syria, and Yemen – and to individuals traveling on any travel documents issued or endorsed by the Palestinian Authority, for all nonimmigrant and immigrant visa categories with limited exceptions for:

- Certain diplomatic and official visas
- Immigrant visas for ethnic and religious minorities facing persecution in Iran
- Dual nationals applying with a passport of a nationality not subject to a suspension

- Special Immigrant Visas (SIVs) for U.S. government employees under 8 U.S.C. 1101(a)(27)(D)
- Participants in certain major sporting events
- Lawful Permanent Residents (LPRs)[8]

Lovely, is it not? In theory, I suppose it sounds nice – protecting the security of America – but well, let us look at the potential impact of this.

As Ben Sisario writes in *The New York Times*, "'An Unbelievable Mess': Artists Are Stymied by Trump Travel Bans":

> In November, agents for the Grammy-winning African guitar band Tinariwen booked the group on an extensive North American tour for this year, and began to prepare their visa applications.
>
> But by December, those plans were dashed when the Trump administration announced travel restrictions on 19 countries, including Mali, where most of Tinariwen's members are from. The tour, set for theaters and clubs throughout the United States and Canada, was canceled, and Patrick Votan, the group's manager, said he had no expectation that anything would change in the near future.
>
> "It's completely hopeless now to tour in the U.S.," Votan said in an interview. "There's not really any solution to come back again."[9]

Not ideal, is it?

Many individuals, groups, and institutions within the United States rely on these artists and entertainers from around the world. Go to any large festival, and you are bound to come across at least one musician or crewmember who is not from the United States. Spend a bit more time there, and you will find dozens of musicians and their crews.

Like most things, these are not great policies or practices, particularly as they are so often done ham-handedly. Yet, there is even more.

Immigrant Visa ('Green Card') Pause

On January 14, 2026, the Department of State confirmed that "Effective January 21, the Department of State is pausing all visa issuances to immigrant visa applicants who are nationals of the following countries: Afghanistan, Albania, Algeria, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas,

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As per the administration's usual communications, this was reported elsewhere in the morning of January 14, without immediate confirmation or denial, which left things unknown and unclear. Eventually, the State Department confirmed that immigrant visa applicants "who are nationals of affected countries may submit visa applications and attend interviews, and the Department will continue to schedule applicants for appointments, but no immigrant visas will be issued to these nationals during this pause," and that "[d]ual nationals applying with a valid passport of a country that is not listed above are exempt from this pause."[11]

What was most important to many was that it does not apply to non-immigrant visa applications, such as Os, Ps, or tourist visas, because "this pause is specifically for immigrant visa applicants,"[12] and it only impacts those immigrant visa (green card) issuances outside of the U.S. at U.S. embassies and consulates for nationals of those countries listed above. Despite this, however, the array of incorrect information and nonsense that is running rampant on the internet, throughout social media, and all over, is absolutely deafening. I have spent hours trying to explain to people how this rule does not impact their tour, does not mean that the petition filed for them – whether for a non-immigrant visa like an O or P, or for an immigrant visa (i.e., an EB-1A or an EB-2 NIW, or an EB-5) – with USCIS will be suspended or paused, and does not mean that they should just wait to file anything until (I love reading this one) "it's guaranteed to work."

It would have been nice if there was a carveout for certain categories, considering the basis of this unlawful pause is "President Trump has made clear that immigrants must be financially self-sufficient and not be a financial burden to Americans. The Department of State is undergoing a full review of all policies, regulations, and guidance to ensure that immigrants from these high-risk countries do not utilize welfare in the United States or become a public charge."[13]

The reality is that this is the landscape of the immigration policy that we are dealing with: messy, confusing, and illogical. It is also extremely slow and subject to change, and becoming more costly. So, what to do: Keep on moving forward and start early, and by "start early," I mean *actually start*, engage in the process with drafting, and getting materials ready, not simply waiting until one to two months before your clients want to be in the United States, or one to two months before the last possible date by which you need to have the petition approved. I recommend starting seven or eight months out, and aiming to file four to six months before your clients need to be in the United States.

'Time keeps on slippin', slippin', slippin'. . . into the future'[14]

This brings me to the next point at issue: Processing times for O and P visa petitions – which must always be filed with USCIS first, and then approved, before those individuals can obtain their visa stamps (if applicable), to come to the U.S. to play, write, tour, coach, and the like – have slowed down dramatically.

Just a year ago, we were seeing many cases process within two to three months of filing, with regular processing, but now, that is anywhere from six to 10 months. There are several reasons for this, but one that I find to be most noteworthy here is that with the H visa under such intense scrutiny and attack (*see* the $100,000 fee being levied on some folks), individuals and their employers have looked to other visa categories, and as the O has come up (as it does year after year, after the H-1B lottery). Many inadequate O-1 cases get filed that have no business going in for review. This inundates USCIS with extra work, heightens its scrutiny, and as it is already dealing with short staffing and poor to no training of immigration services officers, the result is inconsistency, foolishness, little to no understanding of the statutory language, rules or regulations, and ultimately, *more time spent trying to get the approval we all want (and our clients deserve)*.

Unfortunately, the only way to shorten that time frame with any level of confidence is to pay $2,965 as of March 1, *per petition*.[15]

The costs can add up quickly in those scenarios. While the nature of the sports and entertainment industries is that bookings may happen at the last minute, it is also worth strategizing about what makes the most sense for your clients: Athletes typically have set arrangements and contracts, or at least seasons, where they know if they will be needed. For them, this is not too much of a concern. However, in the case of those entertainers who may not get the green light to perform at a festival until one or two weeks before the festival itself – usually due to another artist who dropped out—or, perhaps, a last-minute tour, it makes sense to try and obtain the visa that will help them get here as quickly as possible to be able to perform, work, and do what they do best (this would be the P visa, usually); *however*, considering how un-

predictable the U.S. immigration policy and visa practices are at present, it is prudent to plan strategically to have your clients able to hold onto a visa that will allow them to come and go for a protracted period of time (and this would be the O visa).

There are other visas, of course, but the two here tend to be the most common and most applicable, and also most suitable to folks in these fields.

Concluding Thoughts

In the last installment of this column, I wrote, "We are in unprecedented times in terms of the antagonism, hostility, haphazardness, and overall sloppiness presented by the federal government and its agencies at a broad group of individuals: those who were not born here. I'm sure some would argue I'm being too restrictive with that statement, but for our purposes, I'm leaving this as-is. And we haven't even discussed the absurdity of what has been happening with visa processing at the USCIS service centers! We must carry on, continue fighting, and continue being mindful of the fact that things will continue to be messy, and will likely get messier, more difficult, and require more patience and strategizing. Onward we go, and hopefully upward in the near future."

Well, things have unfortunately become objectively worse. The question, then, is simply, how do we manage within this quagmire, without getting paralyzed or trapped? In my opinion, the best ways are to plan ahead and have at least three backup plans whenever possible.

Processing will stay slow and sloppy, as well as ignorantly hostile: I recently had a case where a USCIS officer wrote that the publications about my client were published too close to the time of filing, meaning that they were unreliable and not valid, while also writing that, as per USCIS's research, the publications do not have editorial standards. To the former, that does not exist anywhere in the statutory language, rules, regulations, or guidelines set forth by USCIS (and I would argue, and did argue, that plenty of times, press takes time to be published, at which point, the parties to a filing no longer want to wait, nor should they have to). To the latter, I contacted the publications and they confirmed that both articles were published in line with their editorial standards and that they do not offer any such "pay-for-publish" option.

Stay calm, stay nimble, and try to stay ahead: Everyone wants to rush right now, and everyone is on high alert, scared for their ability to enter or remain in the United States. Now is not the time to rush; it is the time to act methodically, with intention and force, as early as possible.

Until next time!



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Back Between the Lines: Can Collective Bargaining Provide a Playbook To Frame the NIL Moneyball?

By Michael Marino and Milo Young

In 1880, Yale faced Harvard under Walter Camp's newly crafted rules, creating what is now recognized as modern American football. While we cannot know with certainty what motivated those Ivy League students to take the field, it is likely they were animated by the ideals of amateur competition and the desire to transform from "boys to men." The foundational elements of discipline, dedication, preparation, and attention to detail remain essential today. Yet college football – and all of college sports – now operate in a landscape increasingly defined by commercialization, lucrative media rights, and direct financial compensation to athletes.

The year 2021 marked a watershed moment with the formal introduction of Name, Image, and Likeness (NIL) rights. Student-athletes now owned their personal brands and could monetize them. Although agents and alumni had long sought creative ways to incentivize athletes – sometimes through illicit benefits such as off-the-books payments or cars – the NCAA continued to prohibit direct payments from schools to athletes. That world has now changed.

The landmark *House v. NCAA* settlement in June 2025 accelerated the final transformation of the student-athlete model by authorizing direct payments to, and revenue sharing with, college athletes. Under the settlement, participating Division I schools may distribute up to $20.5 million annually in direct compensation to athletes, with that amount scheduled to increase over time. The *House* settlement not only attempts to resolve years of antitrust litigation, but also dismantles core elements of the NCAA's amateurism model by replacing scholarship limits with roster caps and establishing a proposed regulatory framework for NIL deals. As college athletics begins to mirror professional leagues in both structure and economics, the legal framework governing it remains tethered to obsolete conceptions of amateurism that no longer exist. The result is a chaotic free-for-all that threatens the long-term stability and integrity of college athletics.

College Sports in Transition: A Rapidly Changing Landscape

For more than a century, amateurism served as the cornerstone of college sports. Love of the game outweighed financial opportunity. When the NCAA was founded in 1906, the amateurism model aligned closely with the educational missions of universities and emphasized sport as a means of cultivating life skills in young men – and, 75 years later, women – preparing them to become well-rounded adults and engaged citizens. College sports fostered character and school spirit, offering lifelong bonds among students and alumni.

The landscape has now fundamentally changed. Competition, team development, discipline, and hard work remain central values, but the ecosystem surrounding college sports has transformed dramatically. Television broadcasts that be-

gan in the mid-20th century have expanded to include digital streaming, social media platforms, and sophisticated data analytics, pouring billions of dollars into college athletic departments and conference budgets. Football and basketball dominate the national marketplace, yet through national, regional, and local broadcasts, college sports of every kind are now viewable year-round on televisions, computers, and mobile devices.

Universities and athletic conferences negotiate enormous media rights agreements, routinely sell out stadiums, and benefit from merchandise, licensing, and corporate sponsorships – all while attempting to maintain the traditional "amateurism" model. It was inevitable that the creators of these commercially valuable products – the athletes themselves – would ultimately demand a share of the revenue they generate. The *House* settlement merely formalized a shift that had become unavoidable: direct compensation for college athletes as a condition of sustaining modern athletic programs.

Legitimizing college athletes' ability to establish true market value for their NIL opened the floodgates and fundamentally altered the dynamics of college sports. No longer bound by school loyalty or regional ties, talented athletes began offering their NIL rights to the highest bidder. Colleges and universities have struggled not only to meet these rapidly escalating financial expectations, but also to preserve the legal fiction that student-athletes are not employees. Extending employee classification to athletes for labor and employment purposes would dramatically increase financial exposure and operational complexity. As a result, athletes are now compensated for their personal brands rather than their on-field production.

The post-*House* settlement framework was intended to provide stability by establishing a unified system of direct compensation, an oversight committee, and clearer rules of engagement.[1] Instead, it has fallen short. A lack of transparency in NIL negotiations, combined with the emergence of player representation without meaningful guardrails, has produced a marketplace resembling the Wild West – one where the richest programs grow richer and competitive balance erodes. Without enforceable standards for valuation, contract structure, or institutional conduct, a clear and present danger now threatens the long-term viability of sustaining a broad range of collegiate athletic programs.

Time for a New Playbook

As the industry continues its rapid transformation, the search for a sustainable regulatory structure has accelerated. Traditional labor and employment lawyers are increasingly focused on a solution once viewed as unthinkable in college sports: a collective bargaining agreement. Historically, universities have vigorously opposed such efforts. Beyond formally ending the amateurism model, classifying athletes as employees would trigger enormous legal and financial exposure. Every major law governing the workplace – workers' compensation, wage-and-hour obligations, unemployment insurance, ERISA, health care mandates, and retirement plans – would immediately become relevant. The potential cost implications for institutions would be profound.

Yet despite these legitimate concerns, the current model is untenable. Division I programs with massive media-rights revenues, lucrative branding opportunities, sold-out stadiums, robust merchandise sales, deep-pocketed alumni networks, and high-performing football and basketball teams are already paying compensation levels that resemble the National Football League (NFL) and National Basketball Association (NBA) contract structures.[2] Ironically, these payments purport to be for NIL and branding – not athletic performance. Yet as soon as performance-based criteria or institutional "control" enter the equation, the legal barriers preventing employee status begin to erode.

The instability does not only affect high-revenue sports. The broader ecosystem of collegiate athletics is also at risk. While many Olympic and nonrevenue sports – tennis, crew, softball, fencing, and others – do not generate substantial financial returns, they contribute meaningfully to the educational mission of universities and the personal development of students. These programs cultivate teamwork, resilience, leadership, and community, and they represent the historical and cultural fabric of college athletics. Title IX further expanded opportunities, adding women's sports that now command significant national attention, particularly in basketball and soccer. Preserving these programs is essential to maintaining the broader goals of higher education.

This raises the central question: What solutions remain? Increasingly, collective bargaining stands at the forefront. In professional sports – across the NFL, NBA, WNBA, MLB, Major League Soccer, National Women's Soccer League, and others – collective bargaining agreements create clear frameworks that govern the relationship between athletes and management. They establish rules of engagement, define rights and obligations, introduce transparency, and set enforceable standards.[3] Disagreements still occur, but everyone operates under an agreed-upon system.

In the collegiate environment, however, resistance persists largely because collective bargaining is linked to employee status – a classification institutions fear for the reasons already discussed.

Under the National Labor Relations Act (NLRA), private-sector employees have the right to organize and bargain collectively. Yet employee status under the NLRA also tends to trigger obligations under the Fair Labor Standards Act and



a host of additional federal, state, and local employment laws – including EEOC regulations, ERISA, OSHA compliance, and numerous administrative requirements. Public universities introduce further complexity: they are not subject to the NLRA, and several states – including Wisconsin, North Carolina, and Texas – either restrict or ban collective bargaining for public-sector employees altogether. These jurisdictional inconsistencies amplify the difficulty of implementing a uniform national model.

Efforts to unionize college athletes to date underscore the steep legal hurdles that continue to impede collective action under the current framework. The most recent example – the Dartmouth men's basketball team – briefly secured a groundbreaking regional NLRB decision in early 2024 recognizing the players as employees with the right to unionize, but the ruling was vacated after Dartmouth withdrew varsity status from the team, rendering the petition moot and avoiding appellate review.[4] A decade earlier, the Northwestern football team mounted the first major unionization attempt, winning a regional decision but ultimately being denied relief when the full NLRB declined jurisdiction, citing concerns about inconsistent regulation across public and private institutions.[5] These failed efforts illustrate the structural barriers baked into the NLRA: uneven coverage of public universities, fragmented institutional control, and the persistent reluctance of the NLRB to impose a national labor regime on a collegiate system lacking uniform employment characteristics.

Thus, the question naturally follows: How might collective bargaining work in college sports despite the classification problem? Is there a way to grant student-athletes bargaining rights without designating them as employees?

Potentially, yes.

Can Bargaining Rights Be Granted Without Triggering Employee Status?

To address these challenges, this article proposes two legal mechanisms to grant bargaining rights without classifying student-athletes as "employees."

The first mechanism involves federal legislation modeled after California's recently enacted Assembly Bill 1340, which permits hundreds of thousands of ride-share drivers to unionize and engage in collective bargaining while maintaining their classification as independent contractors.[6] The law achieves this by exempting such workers from state and federal antitrust statutes that typically prohibit collective action among independent contractors and by requiring that the entities representing the drivers be driver-led organizations associated with conventional labor unions. By creating a statutory carve-out that exempts the bargaining process from antitrust concerns while preserving non-employee status, the legislation establishes a third category of worker representation that may provide a viable blueprint for college athletics. The law went into effect on January 1st, so the breadth and effectiveness of the resulting benefits of this process for drivers will remain to be seen. Nonetheless, a similar legislative framework could be developed for student-athletes, granting them collective bargaining rights while preserving their non-employee status.

Another option is executive action. The President could issue an executive order granting all college athletes the right to engage in collective bargaining, similar to Executive Orders 10988 and 11491, which extended such rights to federal employees.[7] Prior to these orders, federal workers were prohibited from engaging in collective bargaining.

Much like the current political landscape of college athletics, these executive orders were issued during a time when demands for labor rights for public employees were growing and Congress was reluctant to legislate such protections. Applied to college athletes, such an order could carve out a new category of labor rights tailored to the unique structure of collegiate sports.[8]

A Potential Moneyball Solution

Even with bargaining rights in place, the structure of the bargaining unit presents a significant challenge due to the sheer diversity and scope of the college athletics ecosystem. With over 1,000 institutions, dozens of sports, and athletes whose roles and visibility vary dramatically, the notion of a single bargaining unit for all of college athletics is impracticable and unworkable. The heterogeneity of college sports demands a more flexible model – one that can accommodate variation while preserving core protections. In this regard, there currently exists a bargaining structure that captures the vast diversity of college athletics. That entity is SAG-AFTRA.

SAG-AFTRA currently represents over 160,000 performers across film, television, radio, commercials, and digital media, and has developed a segmented bargaining model that allows it to represent a wide array of workers with distinct needs and working conditions.[9] Rather than negotiating a single contract for all members, SAG-AFTRA organizes its bargaining units by sector (i.e., theatrical productions, commercials, interactive media, and broadcast journalism) each with its own tailored agreement. These contracts reflect the specific economic realities and professional standards of the sector in question, while still adhering to a national baseline of protections for wages, health benefits, and workplace safety.

This segmented approach is particularly instructive for college sports. Just as SAG-AFTRA negotiates separate contracts for actors in commercials versus those in feature films, a college sports bargaining framework could segment athletes by sport, conference, or revenue classification. For instance, football players in Power Four conferences could bargain under one agreement, while athletes in Olympic sports or nonrevenue programs might be covered by another. Such segmentation would allow for nuanced representation that accounts for the vastly different economic and physical demands placed on athletes across the collegiate spectrum.

Moreover, SAG-AFTRA's use of centralized employer representatives offers a model for streamlining negotiations in college sports. Rather than requiring each university to negotiate individually, a third-party entity could potentially represent institutions or conferences in collective bargaining, thereby reducing administrative burden and mitigating antitrust concerns. This structure would also facilitate the creation of a national baseline agreement, ensuring that all



student-athletes receive core protections regardless of sport or school.

Back Between the Lines

The time for creative thinking is here. Bargaining is already gaining traction in various quarters, including among Power Four officials with University of Tennessee Athletic Director Danny White openly calling for it to be adopted as a solution.[10]

In addition, several bills in Congress and executive actions are also attempting to address the evolving complexity of college sports. None, however, resolve the labor and employment law dilemma of classifying student athletes as employees.[11] A hybrid legal solution – granting bargaining rights without employee status and adopting a segmented bargaining model – offers a balanced and sustainable framework. To preserve the new opportunities for athletes and to sustain the viability of a multiplicity of college sports experiences, all parties need to get back between the lines.



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Is Frivolous Spending Really a Problem? Or Is It an Opportunity?

By Jacques Boubli

This article does not constitute investment advice. You should always check with your advisors for guidance based on your specific goals and circumstances.

I have a friend and client – let us call him Rick – who is turning 70 this year. We have been friends for decades and have known each other from our work in the performing arts. Rick reached out to me about a year before he retired and shortly thereafter became a client.

Rick never married and does not have children. He lives modestly, certainly beneath his means, and typically draws less than 2.5% from his portfolio annually. Given his current spending rate relative to his assets, increase in income this year as he starts collecting social security, and a long-term care insurance policy he took out many years ago, it is highly unlikely that he will ever run out of money. Further stress testing his financial plan, I modeled volatile markets, poor returns, and high inflation – and determined he is still on track.

Before we get into the frivolous spending issue, it is important to note the best practices Rick followed:

- For his entire adult life, Rick lived beneath his means. He spent less than he made.
- He did not try to time the markets. He was disciplined in saving and investing, and he did not panic or sell when the markets went down. Rather, he continued to fund his retirement, including when it felt least comfortable to do so.
- He obtained long-term care insurance long ago when the policies were more comprehensive and less expensive, as he knew it would be challenging for him to self-fund these sorts of expenses.

As a result, Rick began his retirement absent the most common and significant financial risk people face – running out of money.

When people in my industry talk about risk, these conversations tend to center around people not wanting to lose money. People want to make money when the markets are going up and not lose when the markets go down. In be-

havioral economics, this is referred to as loss aversion, since losses feel like threats, which trigger stronger negative emotional reactions. We are more sensitive to losses than we are appreciative of gains, and that manifests itself in many ways; including panic selling during market dips, holding losing investments too long, and feeling unhappy even in an up year if there was one big drawdown. This discussion of risk is certainly appropriate, but it is incomplete without addressing a larger risk: the risk of outliving your money. That's the risk and people ultimately have to protect against and should represent a foundational element in every investment plan. Fortunately for Rick, he is not at risk of outliving his money.

Although this sounds like an envious scenario, there was one thing holding Rick back. He was afraid to spend more than he had allotted himself (not your typical problem, but among wealthy clients it is more common than you might think).

I often invite people to dream about how they want to spend their time in retirement and then take steps to make it happen. Rick wanted to travel, go to more concerts, and enhance his lifestyle, incrementally of course. Yet he was afraid to spend the money.

"If only I had a frivolous spending account!" Rick shared with me, and that was all I needed to hear. "We can do that" I told him.

We opened a new account titled "Rick's Frivolous Spending Account" and prefunded it with $10,000. It is also funded automatically each month with additional monies from his accounts with us, and its purpose is simple: to be spent on anything he deems appropriate for enhancing his lifestyle. So far, he has used it for a three-week trip to India and a few trips to see family. He is planning more trips as you read this.

His new account also builds in restraint, something not typically associated with 'frivolous'. Rick cannot spend however much he would like to, but he can and is encouraged to spend whatever is in the frivolous spending account without any need to worry.

This is his money, of course. We just put it in a different pocket for him to access. In some way, we gave him permission to spend and enjoy his wealth, even though he did not need our permission.

Should everyone have a frivolous spending account? Rick is able to have one because:

- He purposely saved money while he was working.
- He lives beneath his means (including this frivolous spending account).
- He had specific goals when we set it up.
- The funding amount meets his needs for the account.

This frivolous spending account helped Rick retire *to* something instead of *from* something. He gets pleasure knowing the money is available for whatever he wants, from attending concerts and taking trips, and recalling those events with friends, family and himself after he returns.

Good planning helped Rick get here. It also helps him enjoy his wealth in retirement without much worry. Good planning can help you too, if you do it right.



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Ice Ice Baby: Phil Esposito and the Hockey Trade That Shocked the NHL

By David Krell

November 7, 1975.

Not since the Boston Red Sox sold Babe Ruth to the New York Yankees had New England's sports fans suffered such unease. The Boston Bruins traded their star, Phil Esposito, along with Carol Vadnais, to the New York Rangers in exchange for Brad Park and Jean Ratelle plus Joe Zanussi of the Providence Reds, New York's team in the American Hockey League.

Esposito started his National Hockey League (NHL) career in 1963 with the Chicago Black Hawks and was traded to the Bruins after four seasons; Chicago's loss was Boston's gain. The Bruins thrived with Esposito, winning the Stanley Cup to cap the 1969-70 season and again for the 1971-72 season. Esposito led the NHL three times in game winning goals; five times in points; and four times in shots on goal.

Boston trading an icon prompted strong feelings, particularly from Esposito, who used the word "shock" to describe his state of mind and expressed dismay at leaving the Bruins. "I'm crushed. I thought I had found a home in Boston." Yet a softening occurred; Esposito also praised Emile Francis, the general manager of the Rangers. "Boston has been a great town for me and I have nothing against the management. I'll be playing in New York for one of the game's great general managers.[1]

Esposito played the rest of the 1975-76 season followed by four-and-a-half seasons in a Rangers uniform, delighting fans with his energetic performances. Inducted into the Hockey Hall of Fame in 1984, Esposito's career statistics put him in 12th place for points, seventh place for goals, and sixth place for hat tricks. When Esposito retired, *Daily News* reporter Mike Lupica praised his ability to score. "He was big and slow, and reminded you of a moose once he set himself in front of the goalie. No one ever confused his skating style with Peggy Fleming's. And he was there, night after night, in Boston and New York, making the red light go on."[2]

Esposito's tenure in New York did not result in a Stanley Cup championship, but he still managed to become a symbol of the Rangers like Tom Seaver for the Mets, Joe Namath for the Jets, and Earl Monroe for the Knicks. His journey to the Big Apple happened because he had no language in his con-

tract preventing a trade or giving him the power to veto one. Tom Fitzgerald of the *Boston Globe* pointed this out when he reported the trade: "There was a mistaken impression that Esposito had one of those 'no-trade' agreements. These are not sanctioned by the NHL in standard player contracts and Phil never had one in any case."[3]

In the 1970s, a seismic shift occurred in the sports world as players increased their power in contracts, notably through free agency. Today, it is evident more than ever. Players want the option to enforce employment with a team through a no-trade clause and/or a no-movement clause, which prevents a team from trading a player, putting them on waivers, or sending them to the team's farm system without consent. "Not only does it appear to be a fight that players and their agents are taking seriously, but one where they are winning more regularly," wrote Jeremy Rutherford and Chris Johnston in the *New York Times* in 2024.[4]

While this power may be liberating for the athlete, it can be restrictive – if not devastating – to the team's executives who rely on freedom to strike deals and improve their squads. Although stars would presumably be safe on their rosters, they are not immune. To wit, Ruth going to the Yankees and leading them to the World Series title four times.

It is logical to presume that Esposito would have exercised these contractual privileges had they existed for him in 1975 and been allowed by the NHL. Nearly 40 years later, Esposito said, "I didn't choose to leave Chicago. I didn't choose to leave Boston. I signed a contract in Boston for less money than I could have gotten from going to the WHA. I could have made millions doing that. And you know how they repaid me? Three weeks later, they traded me (to the New York Rangers)."[5]

Esposito's reluctance to become a Ranger gave way to a glorious era in which the hockey star became aligned with New York City. "All I knew about New York was between Seventh and Eighth avenues and 33rd and 34th streets, Madison Square Garden," said Esposito. "When I did learn the city, it was…the greatest city and the greatest fans. We had some good years."[6]

The Bruins went to the Stanley Cup without Esposito for the 1976-77 and 1977-78 seasons but lost to the Montreal Canadiens both times; Esposito led the Rangers to the Stanley Cup the following year, also against the Canadiens, but it resulted in a loss. Pundits of the puck can ponder whether the same situations with the Bruins and Rangers would have occurred if Esposito had a contractual right to prevent the 1975 trade to New York.

David Krell is the author of *Have Yourself a Merry Legal Christmas: Laws and Justice in Holiday Movies and Television Shows.*



Endnotes

1. Tom Fitzgerald, *Park a Bruin, Esposito a Ranger in five-man 'shocker,'* Boston Globe, November 8, 1975, 1.
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4. Jeremy Rutherford and Chris Johnston, *Inside the NHL's NMC/NTC mania: Why trade protection is booming, and is it changing the deadline?,* New York Times, March 6, 2024, https://www.nytimes.com/athletic/5317255/2024/03/06/nhl-no-movement-trade-clauses-deadline/.
5. Stu Cowan, *Phil Esposito is still bitter about trade from Bruins,* Montreal Gazette, June 16, 2013, https://www.montrealgazette.com/sports/article292155.html. WHA is the acronym for the World Hockey Association.
6. John Kreiser, *Phil Esposito Grew to Love Rangers Fans, Playing in New York,* The Hockey Writers web site, https://thehockeywriters.com/phil-esposito-rangers-tenure-retirement/.

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(September 18, 2025 – January 28, 2026)

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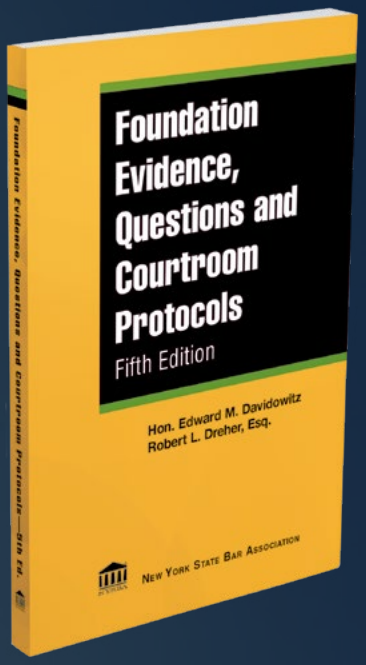
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