

BEFORE THE REDSKINS WERE THE REDSKINS:
THE USE OF NATIVE AMERICAN TEAM NAMES IN THE
FORMATIVE ERA OF AMERICAN SPORTS, 1857-1933

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I. INTRODUCTION

The Native American team name and mascot controversy has disrupted the world of American sports for more than six decades. In the 1940s, the National Congress of American Indians (NCAI) began a campaign against a variety of negative and unflattering stereotypes of Indians in American culture.¹ Over time, the campaign began to focus on the use of Native American team names—like Indians and Redskins—and mascots by college and professional sports teams.² The NCAI’s basic argument was that the use of such names, mascots, and logos was offensive and

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1. See *Our History*, NCAI, <http://www.ncai.org/Our-History.14.0.html> (last visited Apr. 19, 2011).

2. See *TEAM SPIRITS: THE NATIVE AMERICAN MASCOTS CONTROVERSY* 4 (C. Richard King & Charles Fruehling Springwood eds., 2001)

demeaning to Native Americans and the product of racist assumptions regarding American Indians. Supporters of the continued use of such names and symbols maintain that the practice actually honors Native Americans and is not demeaning. This controversy has sparked, among other effects, a substantial body of literature that extends across many disciplines.³

3. See generally CAROL SPINDEL, *DANCING AT HALFTIME: SPORTS AND THE CONTROVERSY OVER AMERICAN INDIAN MASCOTS* (2000) (discussing an influential, if somewhat biased, view of the issue a decade ago); *THE NATIVE AMERICAN MASCOT CONTROVERSY: A HANDBOOK* (C. Richard King ed., 2010) (review of a collection of important articles and primary documents relating to the Indian team name and mascot debate from the perspective of those who oppose their continued usage); See generally Ellen J. Staurowsky, *Privilege at Play: On the Legal and Social Fictions that Sustain American Indian Sport Imagery*, 28 J. SPORT & SOC. ISSUES 11, 12 (2004) (analyzing the issue of American Indian sports imagery from the perspective of one sports sociologist). Individuals have also written about the legal implications of the practice. See generally Lauren Brock, *A New Approach to an Old Problem: Could California's Proposed Ban on "Redskins" Mascots in Public Schools Have Withstood a Constitutional Challenge?*, 12 SPORTS LAW. J. 71 (2005); Kristine A. Brown, *Native American Team Names and Mascots: Disparaging and Insensitive or Just a Part of the Game?*, 9 SPORTS LAW. J. 115 (2002); Rachel Kim Chandler Johnson & John Terrence Eck, *Eliminating Indian Stereotypes From American Society: Causes and Legal and Societal Solutions*, 20 AM. INDIAN L. REV. 65 (1995-96); Clark Hughey, *The Impact of Pro-Football, Inc. v. Harjo on Trademark Protection of Other Marks*, 14 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 327 (2004); Gavin Clarkson, *Racial Imagery and Native Americans: A First Look at the Empirical Evidence Behind the Indian Mascot Controversy*, 11 CARDOZO J. INT'L & COMP. L. 393 (2003); Cathryn L. Claussen, *Ethnic Team Names and Logos: Is There a Legal Solution?*, 6 MARQ. SPORTS L.J. 409 (1996); Roger Clegg, *American Indian Nicknames and Mascots for Team Sports: Law, Policy, and Attitude*, 1 VA. SPORTS & ENT. L.J. 274 (2002); Brendan S. Crowley, *Resolving the Chief Illiniwek Debate: Navigating the Gray Area Between Courts of Law and the Court of Public Opinion*, 2 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 28 (2004); Christian Dennie, *Native American Mascots and Team Names: Throw Away the Key; The Lanham Act is Locked for Future Trademark Challenges*, 15 SETON HALL J. SPORTS & ENT. L. 197 (2005); Jeff Dolley, *The Four R's: Use of Indian Mascots in Educational Facilities*, 32 J.L. & EDUC. 21 (2003); Kenneth B. Franklin, *A Brave Attempt: Can the National Collegiate Athletic Association Sanction Colleges and Universities with Native American Mascots?*, 13 J. INTELL. PROP. L. 435 (2006); Ryan Fulda, *Is the NCAA Prohibition of Native American Mascots from Championship Play a Violation of the Sherman Antitrust Act?*, 31 AM. INDIAN L. REV. 163 (2006-2007); Glenn George, *Playing Cowboy and Indians*, 6 VIR. SPORTS & ENT. L.J. 90 (2006); Aaron Goldstein, *Intentional Infliction of Emotional Distress: Another Attempt at Eliminating Native American Mascots*, 3 J. GENDER RACE & JUST. 689 (2000); George Likourezos, *A Case of First Impression: American Indians Seek Cancellation of the Trademarked Term "Redskins,"* 78 J. PAT. & TRADEMARK OFF. SOC'Y 275 (1996); Lynda J. Oswald, *Challenging the Registration of Scandalous and Disparaging Marks Under the Lanham Act: Who has Standing to Sue?*, 41 AM. BUS. L.J. 251 (2004); Kimberly A. Pace, *The Washington Redskins Case and the Doctrine of Disparagement: How Politically Correct Must a Trademark Be?*, 22 PEPP. L. REV. 7 (1994); André Douglas Pond Cummings, *"Lions and Tigers and Bears, Oh My" or "Redskins and Braves and Indians, Oh Why": Ruminations on McBride v. Utah State Tax Commission, Political Correctness, and the Reasonable Person*, 36 CAL. W. L. REV. 11 (1999) [hereinafter Cummings, *Lions and Tigers and Bears*]; André Douglas Pond Cummings, *Progress Realized?: The Continuing American Indian Mascot Quandary*, 18 MARQ. SPORTS L. REV. 309 (2008); André Douglas Pond Cummings & Seth E. Harper, *Wide Right: Why the NCAA's Policy on the American Indian Mascot Issue Misses the Mark*, 9 U. MD. L.J. RACE RELIGION GENDER & CLASS 135 (2009); Regan Smith, *Trademark Law and Free Speech: Protection for Scandalous and Disparaging Marks*, 42 HARV. C.R.-C.L. L. REV. 451 (2007); Daniel J. Trainor, *Native American Mascots, Schools, and the Title VI Hostile Environment Analysis*, 1995 U. ILL. L. REV. 971 (1995); Kristin E. Behrendt, Comment, *Cancellation of the*

II. CURRENT SENTIMENT

Although there is evidence that the Native American community is actually divided on the issue of Indian⁴ team names and mascots, the campaign to eliminate Native American team names in sports has produced significant results, as over the past three decades many high schools and colleges have dropped their Native American-related names and mascots in favor of non-Indian alternatives.⁵ In addition, the state of Wisconsin recently adopted legislation giving local residents who object to race-based mascots, logos, or nicknames a mechanism by which they can challenge the continued usage of such designations before the state superintendent.⁶ Also, a variety of non-Native American groups, including the United States Commission on Civil Rights,⁷ the American Psychological Association, and the American Counseling Association have adopted resolutions calling for the elimination of such names and symbols.⁸ The National Collegiate Athletic Association (NCAA) entered the fray in 2005 by banning the use of Indian names and symbols by teams engaging in post-season play, unless teams using tribal names secured the permission of the tribe itself.⁹

Washington Redskins' Federal Trademark Registrations: Should Sports Team Names, Mascots and Logos Contain Native American Symbolism?, 10 SETON HALL J. SPORT L. 389 (2000); Justin G. Blankenship, Casenote, *The Cancellation of Redskins as a Disparaging Trademark: Is Federal Trademark Law an Appropriate Solution for Words that Offend?*, 72 U. COLO. L. REV. 415 (2001); Jason Finkelstein, Note, *What the Sioux Should Do: Lanham Act Challenges in the Post-Harjo Era*, 26 CARDOZO ARTS & ENT. L.J. 301 (2008); Bruce C. Kelber, Comment, *"Scalping the Redskins:" Can Trademark Law Start Athletic Teams Bearing Native American Nicknames and Images on the Road to Racial Reform?*, 17 HAMLINE L. REV. 533 (1994); Brian R. Moushegian, Comment, *Native American Mascots' Last Stand? Legal Difficulties in Eliminating Public University Use of Native American Mascots*, 13 VILL. SPORTS & ENT. L.J. 465 (2006); Kelly P. O'Neill, Comment, *Sioux Unhappy: Challenging the NCAA's Ban on Native American Imagery*, 42 TULSA L. REV. 171 (2006); John B. Rhode, Comment, *The Mascot Name Change Controversy: A Lesson in Hypersensitivity*, 5 MARQ. SPORTS L.J. 141 (1994); William N. Wright, Note, *Not in Whose Name?: Evidentiary Issues in Legal Challenges to Native American Team Names and Mascots*, 40 CONN. L. REV. 279 (2007).

4. The terms "Indian" and "Native American" are used interchangeably throughout this article.

5. See Jay Rosenstein, *American Indian Mascot and Nickname Changes: A Chronology*, in THE NATIVE AMERICAN MASCOT CONTROVERSY: A HANDBOOK, *supra* note 2, at 259, 259-63.

6. WIS. STAT. § 118.134 (LEXIS through 2011 legislation).

7. See U.S. Comm'n on Civil Rights, *Commission Statement on the Use of Native American Images and Nicknames as Sports Symbols*, AM. INDIAN CULTURAL SUPPORT (Apr. 13, 2011), <http://www.aics.org/mascot/civilrights.html>.

8. See THE NATIVE AMERICAN MASCOT CONTROVERSY: A HANDBOOK, *supra* note 3, at 255-57 (listing of organizations that have endorsed the elimination of Native American names and mascots).

9. NCAA Executive Committee Issues Guidelines for Use of Native American Mascots at Championship Events, NAT'L COLLEGIATE ATHLETIC ASS'N (Aug. 5, 2005), <http://www.ncaa.org/wps/ncaa?ContentID=1664>. This exception has permitted the continued use of

Efforts to convince professional sports teams to follow suit have, however, had little success. At the major league level, the Atlanta Braves, Cleveland Indians, Washington Redskins, Kansas City Chiefs, Chicago Blackhawks, and Golden State Warriors have shown no inclination to abandon their team names, although the Warriors abandoned their use of Native American imagery decades ago.¹⁰ On the other hand, no major league professional sports team has adopted a Native American team name since 1963, when the American Football League's Dallas Texans changed their name to Chiefs after relocating to Kansas City.

Among the most highly publicized efforts to restrict the use of Native American team names was an attempt to disqualify the National Football League's (NFL) Washington Redskins from using the name "Redskins" as a registered trademark. In 1992, a group of seven Native American activists, led by Suzan Harjo, filed a complaint with the United States Patent and Trademark Office's Trademark Trial and Appeal Board (TTAB), requesting the Board decertify the team's trademark, which had been registered in 1967. The Harjo petition was based on the claim that the term "Redskins" was particularly offensive to Native Americans and was the equivalent of referring to African Americans as "niggers." The petition requested that Pro-Football, Inc.'s—the corporate name of the Washington Redskins—six separate registrations of its Redskins trademark dating back to 1967 be cancelled on the grounds the mark was disparaging to Native Americans, meaning under the Lanham Act, they should not have been registered in the first place.¹¹ The Lanham Act prohibits the registration of a mark that "[c]onsists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute"¹²

Although the technical legal question was whether the trademark was disparaging or scandalous in 1967 when the mark was first registered, the complainants took position that the term "redskins" had always been offensive to Native Americans. The NFL team defended the name on

Seminoles, Utes, and Chippewas by schools like Florida State, the University of Utah, and Central Michigan University, respectively.

10. See MARK STEWART, *TEAM SPIRIT: THE GOLDEN STATE WARRIORS* 14 (2010).

11. Although the Washington team had used both the name "Redskins" and the team's famous Indian head logo since 1933, it did not register the mark until 1967. Individual teams may have sought to commercially exploit their marks before the 1960s, but the licensing arm of the NFL was not created until 1963, when it became the first North American sports league to actively pursue revenue from collective licensing. 2 *ENCYCLOPEDIA OF INTERNATIONAL SPORTS STUDIES* 753 (Roger Bartlett et al. eds., 2006).

12. 15 U.S.C. § 1052(a)(2006).

grounds that the trademark was not offensive and that the interpretation of the Lanham Act proposed by Harjo and her fellow plaintiffs unconstitutionally violated the team's rights under the First and Fifth Amendments to the United States Constitution.¹³

The *Harjo* legal action went on for almost two decades. In 1999, seven years after the initial claim, the TTAB ruled in favor of the plaintiffs, finding that the Redskins trademark "may be disparaging of Native Americans to a substantial composite of this group of people," and "may bring Native Americans into contempt or disrepute."¹⁴ Consistent with this conclusion, the TTAB scheduled the cancellation of the offending marks.¹⁵ However, the ruling was appealed to the United States District Court for the District of Columbia, which in 2003 ruled the complainants had failed to establish that the marks were in fact disparaging and, in any event, their failure to bring the claim in a timely fashion resulted in the action being barred by the equitable doctrine of laches because twenty five years had passed between the first registration in 1967 and the initial complaint.¹⁶ Upon the appeal of the decision, the Court of Appeals for the District of Columbia ruled in 2005 the laches defense was valid for six of the seven petitioners, but remanded the action to the district court for a determination of whether the defense was valid as applied to petitioner Mateo Romero, who was only one year old when the mark was first registered in 1967.¹⁷ It retained jurisdiction over the "disparagement" claim without ruling whether the TTAB or the district court was correct on that issue.¹⁸

Upon reconsideration, the district court concluded that the laches defense applied to Romero, as well, given the evidence that he was aware of the issue prior to reaching the age of majority and still failed to object to the registration until almost eight years after reaching the age of majority.¹⁹ This decision was upheld by the court of appeals in May of 2009,²⁰ and a

13. See Oswald, *supra* note 3, at 291.

14. *Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705, 1748 (T.T.A.B. 1999). The Board, however, concluded that the mark was not "scandalous." *Id.*

15. *Id.* at 1749. Shortly before the TTAB ruling, the Utah State Tax Commission reached the conclusion that vanity automobile license plates bearing the name "Redskins" were not disparaging to Native Americans, but the Supreme Court of Utah disagreed with the standard it applied in reaching its decision, ordering the Commission to reconsider using an "objective, reasonable person" standard. See *McBride v. Motor Vehicle Div. of Utah State Tax Comm'n*, 977 P.2d 467, 469-71 (Utah 1999); see also Ray Rivera, *Panel Revokes "Redskins" Plates Deemed as Slur*, SALT LAKE TRIB., Mar. 4, 1999, at A1.

16. *Pro-Football, Inc. v. Harjo*, 284 F. Supp. 2d 96, 136 (D.D.C. 2003).

17. *Pro-Football, Inc. v. Harjo*, 415 F.3d 44, 50 (D.C. Cir. 2005).

18. *Id.*

19. *Pro-Football, Inc. v. Harjo*, 567 F. Supp. 2d 46, 56 (D.D.C. 2008).

20. *Pro Football, Inc. v. Harjo*, 565 F.3d 880, 886 (D. C. 2009).

petition to the United States Supreme Court for a writ of certiorari was denied in November 2009.²¹

The failure of the *Harjo* action does not mean the Redskins trademark issue has been put to rest. The issue it raised has prompted a substantial debate among legal scholars who have addressed, in a variety of ways, the implications of the litigation for American intellectual property law.²² Moreover, a similar complaint, *Blackhorse v. Pro Football, Inc.*, is currently pending before the TTAB.²³ The plaintiffs in *Blackhorse* were all young Native American adults when they filed their petition in 2006 and claim that, unlike the challengers in *Harjo*, they had no previous opportunity to challenge the Redskins registration.²⁴ Thus, they argue, they are not barred by the laches-based rulings in the *Harjo* litigation.

More recently, a second new action has been filed by different plaintiffs attacking the legitimacy of six derivative versions of the Redskins trademark—including one for Washington Redskins Cheerleaders—filed since 1992. As with the *Harjo* litigation, these actions are not seeking to deny the Washington team the right to use the name “Redskins”; rather, they are trying to prevent the team from being able to license the mark.²⁵

Throughout the *Harjo* case’s seventeen year timeframe, an extensive debate occurred regarding the question of whether the term “Redskin” was particularly offensive to Native Americans, and, if so, whether it had always been so. The evidence suggests the term was not initially perceived as derogatory. A highly regarded study by Ives Goddard, a senior linguist in the Smithsonian Institution’s National Museum of History’s Department of Anthropology, has demonstrated the term “redskin” originated as a translation from Native American languages. The term was used by Native Americans for themselves, and throughout the nineteenth century, the term was essentially neutral when used by whites, reflecting neither a particularly positive or particularly negative connotation.²⁶ Moreover, the

21. *Harjo v. Pro-Football, Inc.*, 130 S. Ct. 631, 631 (2009).

22. See, e.g., Sonia K. Katyal, *Trademark Intersectionality*, 57 UCLA L. REV. 1601, 1602-03 (2010).

23. As of May 11, 2011, the action was still pending. See *Trademark Trial and Appeal Inquiry System*, U.S. PAT. & TRADEMARK OFF., <http://ttabvue.uspto.gov/ttabvue/v?qt=adv&pno=92046185> (last visited May 11, 2011) (TTAB Pending Cancellation Action No. 92046185). Native Americans Amanda Blackhorse, Marcus Briggs, Phillip Glover, Shquanebin Lone-Bentley, Jillian Pappan, and Courtney Tsotigh filed their application on August 11, 2006. *Id.*

24. *Id.*

25. See Rob Capriccioso, *Building a New Generation to Take on the Redskins Case*, MCCLATCY-TRIB. BUS. NEWS (Washington), Nov. 25, 2009 (discussing the suits regarding removal of the trademark).

26. Ives Goddard, “*I am a Redskin*”: *The Adoption of a Native American Expression (1769-1826)*, 19 EUR. REV. NATIVE AM. STUD. 1, 1 (2005), available at <http://anthropology.si.edu/goddard/redskin.pdf>.

frequently repeated story that the term referred to the British government's practice of paying bounties for the bodies, or skins, of slain Indians during the colonial period has been thoroughly discredited. The claim that there was any systematic practice by anyone in early America of paying bounties for bloody red skins and scalps of Native Americans has little support, but has been repeated by critics of the use of Native American team names.²⁷ On the other hand, it does appear that during the era of the "Hollywood Western," from roughly 1920 to 1970, the term "Redskins" was used regularly to refer to Native Americans who were especially primitive and war-like and rarely in ways that were flattering.²⁸ Many contemporary Native Americans and non-Native Americans alike perceive the term to be

27. See, e.g., Suzan Shown Harjo, *Fighting Name-Calling: Challenging "Redskins" in Court*, in TEAM SPIRITS: THE NATIVE AMERICAN MASCOTS CONTROVERSY, *supra* note 2, at 189, 190. Harjo wrote

[t]he term *Redskins* has despicable origins in the days of Indian bounty hunting in the 1600s and 1700s. Bounties under a dollar were paid for Indian children, women, and men, dead or alive. For ease of commerce, few live Indians were delivered to the marketplace, and trade in dead bodies flourished. It quickly became too cumbersome for bounty hunters to transport wagon loads of bodies and gunny sacks of heads, and too bothersome for bounty hunters to dispose of them. Thus began the practice of paying bounties for the bloody red skins and scalps as evidence of Indian kill.

Id.

Harjo made these assertions without offering any specific historical evidence or scholarly support, and none of those who have embraced the story have provided compelling support. See, e.g., Cummings & Harper, *supra* note 3, at 146 (citing an earlier article by Cummings and the 1996 Ken Burns documentary, "The West," in stating "the term 'redskin' is the practice wherein the English Crown offered a bounty for killing American Indians in the 1700s. To receive payment and as proof of the kill, bounty-collectors were required to bring the bloody skin or scalp of the murdered Native American to a specified location."). A 1999 article by Professor André Douglas Pond Cummings made a similar assertion, but its only source of authority for the claim is a dissenting opinion of a Utah Supreme Court justice from the *McBride* case. Cummings, *Lions and Tigers and Bears*, *supra* note 3, at 13. For her claim, the dissenting justice in *McBride* cites a typewritten, privately published educational handbook by George Russell, entitled "American Indian Digest: Contemporary Demography of the American Indian." *McBride v. Motor Vehicle Div. of Utah State Tax Comm'n*, 977 P.2d 467, 472 (Utah 1999) (Durham, J., dissenting). In the digest, Russell mentions Indian bounties but in no way connects the practice with the term "Redskins." GEORGE RUSSELL, THE AMERICAN INDIAN DIGEST 11 (2d 1993), available at <http://www.eric.ed.gov/PDFS/ED368516.pdf>. Russell reproduced a 1755 proclamation from Massachusetts colonial governor William Shirley which did authorize the payment of bounties for killing or capturing members of several Native American tribes. *Id.* What Russell did not appreciate, however, is that this proclamation was a consequence of the beginning of the French and Indian War. *Id.* The bounties were available only to soldiers in the colonial army and applied only to members of tribes supporting the French. *Id.* Tribes loyal to the English, like the Penobscotts, were specifically excluded, which presents a different story than the claims of Harjo and Cummings.

28. See Lee Sigelman, *Hail to the Redskins? Public Reactions to a Racially Insensitive Team Name*, 15 SOC. SPORT J. 317, 317-25 (1998). See generally MICHAEL HILGER, THE AMERICAN INDIAN IN FILM (1986) (describing negative film portrayal of Native Americans); JOHN E. O'CONNOR, THE HOLLYWOOD INDIAN: STEREOTYPES OF NATIVE AMERICAN IN FILMS (1980) (same); THE PRETEND INDIANS: IMAGES OF NATIVE AMERICANS IN THE MOVIES (Gretchen M. Bataille & Charles L. P. Silet eds., 1980) (same).

a racial epithet, but how the transition in meaning occurred is not at all clear.

The situation is further complicated by evidence that many Native Americans apparently do not believe the use of Indian team names is objectionable.²⁹ A widely-cited poll of Native Americans by *Sports Illustrated* magazine conducted in 2002 reported that a significant majority of Native Americans supported the continued use of Native American team names.³⁰ Moreover, a number of Native American-controlled schools still use Indian nicknames for their sports teams. For example, the Haskell Indian Nations University of Lawrence, Kansas calls its teams the “Indians” and uses a drawing of an Indian in full native headdress as its logo, and the University of North Carolina at Pembroke, founded as a state university for Native Americans, has a special dispensation from the NCAA to call its teams “Braves.”³¹ The teams of Red Mesa High School on the Navajo Reservation in Teec Nos Pos, Arizona are known as the “Redskins.”³²

III. A BRIEF HISTORY OF NATIVE AMERICAN TEAM NAMES

One noticeable aspect of the *Harjo* litigation, and much of the literature it has generated, is that no one associated with either side of the dispute appeared to know the details of how the Washington NFL team came to be known as the Redskins or, for that matter, anything in detail about the historical origins of the use of Indian names for sports teams. The record in *Harjo* merely showed that the team was founded in 1932 as an NFL expansion team for Boston and that it initially played under the name “Boston Braves.” The record also explained that in 1933, the team name was changed to Redskins—a decision, according to spokesmen for the team, supposedly made to honor the team’s Native American coach,

29. See, e.g., Charles Fruehling Springwood, “I’m Indian Too!” *Claiming Native American Identity, Crafting Authority in Mascot Debates*, 28 J. SPORT & SOC. ISSUES 56, 57 (2004).

30. S. L. Price, *The Indian Wars*, SPORTS ILLUSTRATED, Mar. 4, 2002, at 66-72.

31. HASKELL INDIAN NATIONS U., http://www.haskell.edu/athletics/quick_facts (last visited June 5, 2011); *The Braves*, U. OF N. C. AT PEMBROKE ATHLETICS, <http://www.uncpbraves.com/tradition/nickname> (last visited June 5, 2011). Haskell is not a member of the NCAA, though as a historically Native American school, it would qualify for a waiver of the rule prohibiting generic Native American nicknames.

32. See *Red Mesa High School*, ARIZ. INTERSCHOLASTIC ASS’N, <http://www.aiaonline.org/schools/school.php?id=142> (last visited June 5, 2011) (identifies the Red Mesa High School team as the Redskins); RED MESA HIGH SCH., <http://www.rmhsd.net/education/school/school.php?sectiondetailid=75&linkid=nav-menu-container-4-1086> (last visited June 5, 2011) (Red Mesa High homepage). In spite of the lack of hard evidence of the derogatory character of “Redskins,” between 1991 and 2008, eleven high schools and two colleges (Miami of Ohio and Southern Nazarene University) nevertheless abandoned the use of “Redskins” as their team name. See Warren Richey, *Washington Redskins Can Keep Team Name; Supreme Court Refuses Native Americans’ Suit*, CHRISTIAN SCI. MONITOR, Nov. 16, 2009, available at <http://accessnews.com/index.php/articles/show/id/19063>.

William “Lonestar” Dietz—and that after five years of poor attendance in Boston, the team’s owner, George Preston Marshall, relocated the franchise to his hometown of Washington, D.C. However, no evidence was introduced regarding the general practice of using Native American names.

The actual story of how the Redskins acquired their name in 1933 is somewhat complicated, but its origins follow a basic story.³³ In July 1932, the NFL awarded an expansion franchise for a team to be placed in Boston to George Preston Marshall and his three partners. Given naming practices for NFL teams in the 1920s and 1930s, it was predictable that a new team in a city that already hosted a Major League Baseball (MLB) team would choose a name that was identical to, or at least reminiscent of, the baseball team. In 1931, there had been ten teams in the NFL, five of which bore the name of a city with an MLB team. Of these, three—the New York Giants, the Brooklyn Dodgers, and the Cleveland Indians—shared a name with their more senior baseball counterparts, and a fourth team, the Chicago Bears, used a name clearly derived from that of the Chicago Cubs baseball club. Only the Chicago Cardinals had their own name, but the name was also used by one of the MLB teams in St. Louis.³⁴ When teams Pittsburgh and Cincinnati gained teams for the 1933 season, they began play as the Pirates and Reds, respectively.³⁵ The following year, the Portsmouth Spartans relocated to Detroit where they changed their name to the Lions, an obvious reference to the baseball Detroit Tigers.³⁶ It is clear that in this era, MLB teams did not assert that they had the exclusive right to the use of their team names.³⁷ Therefore, it was entirely predictable that a new professional football team in Boston would have been called the “Braves” or “Red Sox.”

33. The story of the early history of the Boston/Washington Redskins is told in detail in THOMAS G. SMITH, *SHOWDOWN: JFK AND THE INTEGRATION OF THE WASHINGTON REDSKINS*, 1-17 (2011).

34. *1931 NFL Standings, Team & Offensive Statistics*, PRO-FOOTBALL-REFERENCE.COM, <http://www.pro-football-reference.com/years/1931/> (last visited June 5, 2011). The other five teams were the Green Bay Packers, the Portsmouth Spartans, the Providence Steamroller, the Staten Island Stapeltons, and the Frankford, Pennsylvania Yellow Jackets. *Id.*

35. *1933 NFL Standings, Team & Offensive Statistics*, PRO-FOOTBALL-REFERENCE.COM, <http://www.pro-football-reference.com/years/1933/> (last visited June 5, 2011). However, the new Philadelphia team chose the name Eagles, rather than the baseball counterparts of the Phillies or Athletics. *Id.*

36. *1934 NFL Standings, Team & Offensive Statistics*, PRO-FOOTBALL-REFERENCE.COM, <http://www.pro-football-reference.com/years/1934/> (last visited June 5, 2011).

37. *See generally NFL & Pro Football League Encyclopedia*, PRO-FOOTBALL-REFERENCE.COM, <http://www.pro-football-reference.com/years/> (last visited June 5, 2011) (providing other examples of NFL teams imitating the names of MLB teams such as the Cleveland Indians, Washington Senators, Detroit Tigers, the original New York Giants, Detroit Panthers, New York Yankees, and the Brooklyn Dodgers).

One of the first tasks of the new Boston owners was to find a venue to play. Marshall and his colleagues had no intention of building their own stadium, and it was highly unlikely that Harvard University would have permitted a professional football team to play in its famous stadium. Consequently, the two most likely venues were the city's two MLB stadiums, Braves Field and the Red Sox's Fenway Park.

However, as it turned out, Fenway Park was not an option in 1932. A Boston city ordinance prohibited the staging of commercial athletic events on Sundays if the location of the event was within a thousand feet of a church.³⁸ Because of its location, Fenway Park was within the prohibited zone, but Braves Field was not. Thus, with this ordinance, which had been adopted when the city repealed its outright ban on Sunday sporting events, Marshall and the Red Sox were forced to play their Sunday home games at Braves Field.³⁹

Although the law in question was amended to permit games in Fenway Park in May of 1932—before the beginning of the football season—the change had not been foreseen a few months earlier when Marshall entered into a lease with the owners of Braves Field. Since the new professional football team was to play in Braves Field, it made sense to name the team the Braves, as well. As it turned out, though, attaching a Native American nickname to the team also appealed to lead owner Marshall, who had a long time fascination with Native Americans due to his family's connection with the town of Romney, West Virginia, site of the one of the best known Indian burial mounds in the eastern United States.⁴⁰

After the 1932 season, Marshall bought out his partners and became the sole owner of the team. When the team's initial head coach, Lud Wray, resigned to become part owner of a new NFL team in Philadelphia, Marshall strengthened the teaming Native American connection by signing as Wray's replacement William "Lonestar" Dietz, a well-known college coach widely believed to be a Native-American. Before Dietz readily accepted Marshall's offer in March of 1933,⁴¹ he coached at Washington

38. See CHARLIE BEVIS, *SUNDAY BASEBALL: THE MAJOR LEAGUES' STRUGGLE TO PLAY BASEBALL ON THE LORD'S DAY, 1876-1934* 244 (2003).

39. *Id.*

40. See *Indian Mound Cemetery, Romney, WV.*, [WWW.HISTORICHAMPSHIRE.ORG](http://www.historichampshire.org/cems/indian.htm), <http://www.historichampshire.org/cems/indian.htm> (last updated May 21, 2010). Although Marshall himself had not been born in Romney, both his father and grandfather were natives of the village, and both were buried there in a Confederate cemetery that had established on the Indian Mound.

41. *Lone Star Dietz Turns to Pro Grid Coach Job*, *SPOKANE DAILY CHRONICLE*, Mar. 8, 1933, at 24. However, Dietz's biography suggests that Marshall originally offered the position to Dietz before the 1932 season. TOM BENJAY, *KEEP A-GOIN': THE LIFE OF LONE STAR DIETZ* 277 (2006). The story of Marshall and Dietz is the subject of the author's forthcoming, *The Birth of*

State College and at the Haskell Indian School. An accomplished artist and illustrator, as well as a coach who had taken two different teams to the Rose Bowl, Dietz also appears to have designed the famous Redskins Indian head logo shortly after joining the team, although the team was still known as the Boston Braves at the time.⁴²

Sometime between March and July of 1933, Marshall and the owners of Braves Field failed to reach an agreement to renew the team's lease for the upcoming season. Now free to negotiate a lease with Tom Yawkey, the new owner of Fenway Park, Marshall did so, and both agreed to move the team there for the 1933 season. Given that his team was no longer going to play in Braves Field, it would have been confusing for the team to have retained the Braves name; consequently, Marshall decided to change the name of the team. It is clear that Marshall wanted to retain the association with Native Americans, particularly given the hiring of Dietz, who had already begun to recruit Native American players for the team. Eventually, six different Native Americans, most of whom had played for Dietz at Haskell, suited up for the 1933 edition of the team.

With "Braves" now out as a team name, a logical substitute would have been "Indians." However, it seems likely that name was being kept in reserve for the NFL's Cleveland franchise. Although the NFL Cleveland Indians dissipated after the 1931 season, there was most likely a general agreement that that "Indians" name should be reserved for the future use of a Cleveland franchise if the team was to return. Given these considerations, "Redskins" followed as a replacement name, which echoed the principle sounds of "Red Sox," the baseball inhabitants of Fenway Park.⁴³

Moreover, the Haskell team, which Dietz had coached between 1929 and 1932, and which was officially named the Indians, was regularly referred to in newspaper accounts as the Redskins. Dietz and the Haskell alumni on the team appear to have voiced no objections to the name. Finally, the name resonated with the 1929 silent film "Redskin" which featured a surprisingly sympathetic portrayal of Native Americans and

the Redskins: George Preston Marshall, William "Lonestar" Dietz, and the Racial Underpinning of American Sport in the 1930s.

42. See BENJEY, *supra* note 40, at 278 (displaying the original Braves logo). In a general way, the original Boston Indian logo resembled that adopted several years earlier by the Chicago Blackhawks of the National Hockey League. See *Chicago Blackhawks Logos*, SPORTSLOGOS.NET, <http://www.sportslogos.net/team.php?id=7> (last visited June 5, 2011) (showing the original Blackhawks logo). Both appear to have been inspired by the profile on the Native American that had appeared on one side of the United States' Buffalo Head nickel since 1909.

43. There is no evidence that Marshall seriously considered naming the team the "Red Sox." For reasons that are not apparent, the "Sox" naming convention appears to have only been used in the sport of baseball, even though players in other team sports also use colored stockings.

which apparently used the term Redskin to describe a status between Indian and white.⁴⁴ As a result, on July 8, 1933, Marshall announced that the team's new name would be the Boston Redskins.⁴⁵ In order to determine the repercussions of the naming in ways not discussed for addressed in the *Harjo* litigation, the following sections of this article will examine the pre-1933 frequency and significance of Native American names by predominantly white sports teams.

IV. THE FIRST USAGES OF NATIVE AMERICAN TEAM NAMES IN AMERICAN SPORT

The first examples of the practice of attaching Native American names to sports teams in the United States came in the 1850s. Initially, such names referred to the name of the team itself, rather than as a nickname for its players.⁴⁶ Native American names appear to have been chosen to emphasize the “Americaness” of the team and its patriotic character, not any particular Indian-like characteristics of its players.

In the early decades of professional baseball, from roughly 1870 to 1910, team nicknames were usually unofficial and were often given to the teams by sportswriters and fans as opposed to being formally adopted by the owners. Nicknames were often geographic or based on some characteristic of the city in which the team played and were usually intended to be humorous. For example, Native American nicknames were usually attached to teams because they played in cities with “Indian” names, like Indianapolis or Oshkosh, or because they were located in an area that was associated with Native Americans generally, such as Oklahoma or northwest Arkansas. In rare cases in which teams had one or more Indian players, they were invariably nicknamed Indians, just as individual Indian players seem to have invariably been nicknamed “Chief.” In this era, Native American names were primarily geographic locators, and generally were not intended to make a statement about the players on the team, or for that matter, about Native Americans.

In the 1910s and 1920s, professional and college teams began to formally adopt Native American team names, not because of their location, but because of a growing association in the public mind between Native

44. *Redskin*, THE INTERNET MOVIE DATABASE, <http://www.imdb.com/title/tt0020320/> (last visited June 5, 2011). “Redskin” also emphasized the athleticism of Native Americans and assimilation to mainstream white culture. *Id.*

45. *Washington NFL Team's “Honored” Namesake, “Lone Star” Dietz, a Fraud*, AM. INDIAN SPORTS TEAM MASCOTS, <http://www.aistm.org/lonestar.htm> (last visited June 5, 2011) (providing an excerpt of the 2003 *Harjo* decision).

46. For example, the Osceola club of Brooklyn was not the Brooklyn Ocoeloas. “Osceola,” not Brooklyn, was the name of the club.

Americans and success in athletics, particularly baseball, football, and track and field. Thanks to the accomplishments of individual athletes like Jim Thorpe, Chief Meyers, and Chief Bender and of teams like the Carlisle and Haskell Indian Schools, the independent Nebraska Indians baseball team, and the Oorang Indians of the NFL, a new association developed between Indians and athletic proficiency. With such a perception embraced, names referred Native Americans' acquired skills in American team sports rather than supposedly savage qualities. However, in the 1930s, the meaning of Native American nicknames changed again. Reinforced by powerful images of exotic, warlike Plains Indians in Hollywood films and a new widely-adopted practice of associating team names with the ferociousness or guile of the players, Native American team names and logos took on a new meaning and became a source of crowd-pleasing pageantry.

A. NATIVE AMERICAN TEAM NAMES IN EARLY BASEBALL

The use of images of American Indians as national symbols began not long after the American Revolution.⁴⁷ As historian Cheryl Walker has noted:

[I]n the eighteenth century the need to find a language for American difference [from Englishmen and other Europeans] drew Euro-Americans back to the figure of the Indian, who now reemerged as a national symbol. In the nineteenth century the figure of the Native American became central to national identity in many respects, not least in the creation of an "American" literature.⁴⁸

Native Americans also played prominent roles in the writing of many of the best known and highly regarded writers of antebellum America, including Charles Brockton Brown, James Fennimore Cooper, William Gilmore Simms, and Henry Wadsworth Longfellow, as well as lesser, but quite popular, literary figures like Joaquin Miller and Thomas Mayne Reid.⁴⁹

47. There is rich literature on the use of Native American imagery by whites in American history. See generally ROBERT F. BERKHOFFER, JR., *THE WHITE MAN'S INDIAN: IMAGES OF THE AMERICAN INDIAN FROM COLUMBUS TO THE PRESENT* (1978); E. McClung Fleming, *Symbols of the United States: From Indian Queen to Uncle Sam*, in *FRONTIERS OF AMERICAN CULTURE* (Ray B. Browne et al. eds., 1968) at 1, 1-24; ROY HARVEY PEARCE, *SAVAGISM AND CIVILIZATION: A STUDY OF THE INDIAN AND THE AMERICAN MIND* (1988); CHERYL WALKER, *INDIAN NATION: NATIVE AMERICAN LITERATURE AND NINETEENTH-CENTURY NATIONALISMS* (1997).

48. WALKER, *supra* note 46, at 26.

49. See WARD CHURCHILL, *Literature and the Colonization of American Indians, in FANTASIES OF THE MASTER RACE: LITERATURE, CINEMA, AND THE COLONIZATION OF THE AMERICAN INDIANS* 17, 24-25 (M. Annette Jaimes ed., 1992).

Given the popularity of Indian symbols in mid-nineteenth century America, it is not surprising that as organized baseball clubs proliferated in the United States in the 1850s and 1860s, some clubs would choose to identify themselves with Indian names. In baseball's formative era, larger communities featured numerous clubs, each with a status approximately equal to that of many other clubs. Consequently, teams had to be identified by names other than that of the city in which they were located. Native American names were not the most common choice for names; most early club names appeared to celebrate either the athletic ability of the members, as in Excelsior, Athletic, Alert, or Olympic, or some geographic reference other than the city. The most famous of the early clubs, the Knickerbocker Club, borrowed its name from the history of New York, and most clubs that chose Native American names most likely acted according to a similar impulse.⁵⁰

The National Association of Base Ball Players (NABBP) was organized in 1857 as an organization of the nation's leading baseball teams who played by the so-called New York Rules—the rules that we have come to associate with the “official” version of baseball. The association was initially made up of teams only from the New York metropolitan area, featuring teams with names like Atlantic, Bedford, Continental, Eckford, Excelsior, Harmond, Nassau, Olympic, Putnam, Union, Baltic, Eagle, Empire, Gotham, Harlem, Knickerbocker, Mutual, Athletic, Newark, Eureka, Adriatic, Americus, Pioneer, Active, Liberty, National. Beginning in 1858, the association also featured the Brooklyn-based Hiawatha, Osceola, and Mohawk.⁵¹

The Mohawks were a branch of the Iroquois who originally lived in upstate New York and who were strongly associated with New York's history.⁵² Hiawatha and Osceola were also well-known historical figures. Hiawatha was a founder of the Iroquois Confederacy and lived in North America long before the arrival of European settlers. Henry Wadsworth Longfellow's famous poem, “Hiawatha,” loosely based on the historical Hiawatha, was published in 1855, and its popularity may have reinforced

50. The early history of baseball in the United States has been the subject of a wide array of scholarly work. *See generally* EARLY INNINGS: A DOCUMENTARY HISTORY OF EARLY BASEBALL, 1825-1908 (Dean A. Sullivan ed., 1995); WARREN GOLDSTEIN, PLAYING FOR KEEPS: A HISTORY OF EARLY BASEBALL (1989); PETER MORRIS, BUT DIDN'T WE HAVE FUN?: AN INFORMAL HISTORY OF BASEBALL'S PIONEER ERA, 1843-1870 (2008); HAROLD SEYMOUR, BASEBALL: THE EARLY YEARS (1989); JOHN THORN, BASEBALL IN THE GARDEN OF EDEN: THE SECRET HISTORY OF THE EARLY GAME (2011); MARSHALL D. WRIGHT, THE NATIONAL ASSOCIATION OF BASE BALL PLAYERS, 1857-1870 (2000).

51. *See* WRIGHT, *supra* note 49.

52. *See generally* DEAN R. SNOW, THE IROQUOIS (1994) (writing about the Mohawk tribe and New York Indians).

the attractiveness of the name.⁵³ The same factor probably influenced the choice of Osceola, who was an Alabama-born Seminole chieftain.

Other clubs in the New York area in the 1850s and early 1860s that bore Native American names included Meitowak and Wyandank in Flatbush; Neosho in New Utrecht; Niagara and Peconic in South Brooklyn; Oneida, Oneonta, Tomahawk, and Powhatan in Brooklyn; Passaic in Belleville, New Jersey; Seneca, Tuscarora, and Uncas in New York; Watsessing in Bloomfield, New Jersey; Wawayanda in Gravesend; and Wyandot in Flatlands Neck. There were also three clubs with the name Montauk located in Brooklyn, Bedford, and Hoboken. Pre-Civil War baseball clubs with Native American names were also prevalent in Massachusetts, including the Massapoag in Sharon; Annawan in Mansfield; Nonotuck in Northampton; Uncas in Franklin; Neponset in Walpole; Winnissimmet in Chelsea; Pentucket in Haverhill; and Niagara in East Cambridge. In Connecticut, there were the Pequot in New London; Hockanum in Manchester; Quinnipiack in New Haven; and Uncas in Norwich.⁵⁴ Finally, in Pennsylvania, there were clubs consisting of the Kickenepawling in Johnstown; Hiawatha in Kittanning; Osceola in Frankford; Indian Queen in Phoenixville; and Seneca in Oil City.

Not all of the club names are actual tribal names; some were place names, historical figures, or names of characters lifted from James Fennimore Cooper, Henry Wadsworth Longfellow, and other antebellum northern writers. Many were slightly corrupted versions of the actual Native American names. Even so, all of the names clearly suggested a Native American connection for the club, and thus, the practice of using Native American names for baseball clubs goes back to the beginning of baseball as an organized sport.

In the post-war period, the ranks of the NABBP swelled with clubs from outside the Northeast. By 1867, among the 340 affiliated clubs members with Native American club names were the Kewanee in Kewanee, Illinois; Wahkongga in Ft. Dodge, Iowa; Tuscarora in Leesburg, Virginia; and Miami in Yellow Springs, Ohio. Enthusiasm for Indian team names appears to have peaked in the mid-1860s, at least among the better teams. Marshall Wright's list of 180 leading amateur baseball teams in 1870 contains only thirteen that have Native American names, and eight of the

53. See CHARLES C. CALHOUN, *LONGFELLOW* 25, 202-14 (2004) (discussing the poem "Hiawatha").

54. See WRIGHT, *supra* note 44, at 325. I am also indebted to baseball historians Craig B. Waff (New York and Massachusetts) and John Daly (Connecticut) of the 19th Century Committee of the Society SABR for several of the club names on this list.

thirteen were in the Northeast.⁵⁵ Moreover, none of the sixteen openly professional teams, which had appeared for the first time in 1869, had a Native American club name.⁵⁶

B. NATIVE AMERICAN TEAMS NAMES IN EARLY PROFESSIONAL BASEBALL

As mentioned, Native American team names were not at all common among professional teams in the 1870s.⁵⁷ In fact, the only two such teams affiliated with recognized professional leagues during the decade were the Kekionga Club of Ft. Wayne, Indiana, and the Tecumseh Club of London, Ontario. The Kekionga Club competed for the 1871 championship of the National Association of Professional Base Ball Players, the first professional sports “league” in North America, before reverting to amateur status, while the Tecumseh Club was a member of the International Association, the first minor league, in 1877 and 1878. The Tecumseh Club was organized in 1868 through the merger of two existing clubs and apparently took its name from the Tecumseh House Hotel, which was owned by club president and sponsor John Brown.

The structure of early professional baseball encouraged teams to identify themselves by the city in which they were located, thereby removing the need for more imaginative names. Given the lack of need for identifying team names, nicknames that did exist were rarely official. In most cases, they were attached to the team not by the team itself, but by the team’s followers or by journalists. Sportswriters, tired of repeatedly referring to the teams they were covering by their city name, frequently assigned their unofficial names. Most modern team’s names actually originated in this manner. For example, the Chicago National League team was referred to over the course of the final quarter of the nineteenth century at various times as the White Stockings, Colts, Orphans, and Cubs, before the team finally embraced the latter as its official name.

Beginning in the mid-1880s, some sportswriters began to use Native American names for certain teams. Perhaps the most obvious example was a professional team in Indianapolis which played in several different leagues, including the American Association, the Western League, and the National League. Although the team was most frequently referred to as the

55. *Id.* at 324-27.

56. *See id.* at 308 (demonstrating how none of the sixteen original professional teams had Native American names).

57. ENCYCLOPEDIA OF MINOR LEAGUE BASEBALL (Lloyd Johnson & Myles Wolfe eds., 3d ed. 2007). Statements in the following paragraphs that refer to the nicknames of professional sports teams, unless otherwise noted, are drawn or inferred from this source.

“Hoosiers,” it was also dubbed the “Indians” on many occasions for no other reason than that Indianapolis means “City of Indians.”

Other references were less obvious. In 1887, New York City newspapers began to refer to the American Association’s Metropolitan Club based in New York as the Staten Island Indians, or just as the Indians. In an attempt at humor, writers for the *New York Sun* went so far as to assign Native American monikers to each of the team’s players. Catcher Dave Holbert was dubbed, “Man Not Afraid of the Umpire”; portly first baseman Dave Orr was “Eat-a-Heap”; outfielder James Roseman was called “Big Chief” or “Rain-in-the Face”; shortstop Paul Radford was “Little Dog”; and pitcher Ed Cushman was “Long Horse.” While the nicknames were all in jest, Roseman’s nickname stuck with him for the remainder of his playing career.⁵⁸

Several minor league teams of the late 1880s also had unofficial Native American nicknames. In fact, the practice of identifying professional teams by Indian names most likely began in 1886. There were no Native American team names in 1885, but the following year there were teams called the Indians in Oneida, New York; Springfield, Missouri; Ft. Smith, Arkansas; Mansfield, Ohio; and Scranton, Pennsylvania. In addition, there are teams known as Braves in Wichita, Kansas and Waco, Texas, while the team in Zanesville, Ohio was known as the Kickapoos.

It is easy to understand why Indian names would be attached to teams in Oneida and Wichita, which are tribal names as well as city names. Moreover, in the 1880s, places like Springfield, Missouri; Waco, Texas; and Ft. Smith, Arkansas were still close enough to their frontier origins or to Indian Territory that people might have still associated Native Americans with those communities. For example, bordering on Indian Territory, Ft. Smith supposedly had a larger percentage of mixed race (Native American-Caucasian) residents than any American community.⁵⁹

The other connections are not so obvious. Scranton’s name apparently derived from the fact that several of the original amateur clubs in the city bore Native American names like Susquehanna, Wyoming, and Modoc. Also, the professional team’s manager, “Hustling” Dan O’Leary, had previously managed Indianapolis whose players had apparently been dubbed “O’Leary’s Indians.” Another contributing factor was that a number of Scranton players had previously played with the above-mentioned New York Metropolitan. Local histories of Scranton in the late

58. BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/r/rosech01.shtml> (last visited May 23, 2011).

59. Mary Landreth, *Becoming the Indians: Fashioning Arkansas State University’s Indians*, in TEAM SPIRITS: THE NATIVE AMERICAN MASCOTS CONTROVERSY, *supra* note 2, at 46.

nineteenth century also emphasized that the land on which the city was situated had been purchased by William Penn from the Delaware Indians, and Scranton's county was an Indian name, Lackawanna.⁶⁰ Presumably, some similar explanation exists for the team in Mansfield, Ohio.

Until the first decade of the twentieth century, the attachment of a Native American name to a baseball club was usually intended to emphasize the "American" nature of the game of baseball. Having such a name was more likely to occur in the Eastern United States where Native Americans were treated as a historical phenomenon or an abstraction. Use of a Native American name also provided a humorous alternative to simply referring to a team by its city name. The choice of names does not appear to have had any particular reference to the athletic prowess of Native Americans; that is, until the first decade of the twentieth century.

By the end of the first decade of the twentieth century, the modern practice of professional teams selecting an official nickname had been widely embraced. Humorous nicknames became less common, and there was a growing tendency to select names that suggested aggressive qualities. It was also in this era that some teams began to officially adopt Indian names as a "label" for their players.

By 1911, a number of minor league teams embraced Native American nicknames likely influenced, at least in part, by the successes of the Carlisle Indian Institute, the Nebraska Indians, and individual athletes like Sockalexis, Bender, Meyers, and Thorpe. For example, in 1911, there were teams named the Indians in Indianapolis, Newark, Pueblo, Sioux City, Spokane, Savannah, Oshkosh, Huntington, and Keokuk. There were also the Topeka Kaws, the Utica Utes, the Cadillac and Altus Chiefs, the Lawton Medicine Men, the Edmonton Eskimos, the Hanford Braves, and the Muskogee Redskins. Most of the teams were in cities with Indian names or were located in areas still associated with Native Americans, but at least a few, like the Newark, New Jersey and Savannah Indians, were not.

The first major league baseball team to intentionally adopt a Native American team name was the Boston National League team in 1912, and in doing so, it made clear reference to the idea that Indians had special athletic

60. FREDERICK L. HITCHCOCK, 1 HISTORY OF SCRANTON AND ITS PEOPLE 3 (1914). For additional information on the history of baseball in Scranton, see Paul Browne, *Dan O'Leary*, THE BASEBALL BIOGRAPHY PROJECT, <http://bioproj.sabr.org/bioproj.cfm?a=v&v=l&bid=1279&pid=10567> (last visited May 24, 2011); see also NICHOLASS E. PETULA, HISTORY OF SCRANTON PROFESSIONAL BASEBALL 1865-1953 (1989); *Scranton Baseball History (1886-1939)*, WORDPRESS.COM (Feb. 2, 2007, 3:34 AM), <http://finner68.wordpress.com/2007/02/scranton-baseball-history-1886-1906/> (discussing the history of Scranton baseball); *Scranton/Wilkes-Barre Professional Baseball History*, HAPPENINGS MAG. (Apr. 2007), <http://www.happeningsmagazinepa.com/SWB Yankees/history.html>.

skills. Currently playing as the Atlanta Braves, the Boston franchise was, and still is, the oldest professional baseball team in the United States, having played continuously since 1871. Originally known as the Red Stockings, the team was subsequently referred to by a variety of names including the Red Caps, the Beaneaters, the Doves, and the Rustlers. The decision to change the name of the team from Rustlers to Braves was made in December 1911, a decision made by new co-owner John Montgomery Ward.⁶¹

Ward's decision appears to have been influenced by a number of factors. His co-owner, James Gaffney, was a member of New York City's Democratic Tammany Hall political machine, whose operatives were known jokingly as "braves." Moreover, the name "Braves" resonated with Boston's history of pretend "braves" who threw the British tea overboard during the Boston Tea Party. In addition, the term "Boston Braves" had earlier been attached to the Honorable Artillery Company, an honorary military unit based in Boston. Although it traced its origins back to 1638, the Honorable Artillery Company's function by the end of the nineteenth century was entirely ceremonial, and its ranks were drawn from the city's social elite.⁶²

The Braves were also the first major league team to place a pictorial logo on their uniforms that reflected their nickname. The head of a Native American wearing a full headdress was on the uniform's left sleeve, yet the word "Braves" did not appear on the team's new 1912 uniforms.⁶³ The patch remained on the sleeve until the middle of the 1915 season when it was relocated to the left front of the jersey, and it remained there until 1920. The Indian head was removed from the uniform in 1921, although it was brought back for the 1925 season. In 1927, the word "Braves" replaced "Boston," which appeared on the front of the team's road jersey, and beginning in 1928, "Braves" appeared on both the home and away uniforms. In 1929 and 1930, the Indian head was returned to the uniform, but was sewn on the back of the jersey. In 1931, the patch returned to the left sleeve.

61. See BRYAN DI SALVATORE, *A CLEVER BASE-BALLIST: THE LIFE AND TIMES OF JOHN MONTGOMERY WARD 370-80* (1999); DAVID STEVENS, *BASEBALL'S RADICAL FOR ALL SEASONS 205-11* (1998) (discussing acquisition and management of the Boston Braves by John Montgomery Ward).

62. *Kind Words for Boston's Braves*, N.Y. TIMES, May 24, 1869, at 4 (quoting the British journal, *The Spectator*) ("Socially, the [Company] is of great importance. Its 200 members are among the wealthiest and most respected business men of the city, and among them, we are told, are 'several millionaires.'").

63. The image appears to have been identical to the image which appeared on the United States five-dollar gold piece.

Although the team's new park, Braves Field, was quickly dubbed "the Wigwam," and Boston sportswriters peppered their coverage of the team with references to "going on the warpath" and "getting scalped," the team did relatively little to exploit the Native American connection, beyond the team name and the design of the uniform. It did not, for example, obtain any Native American players until the 1917 season when it acquired the then-New York Giant catcher, Chief Meyers. Later, in 1919, the team acquired the great Native American athlete Jim Thorpe in a trade with the New York Giants. The team did no more to promote the fact that it had a real-life "Brave" on its roster than it had done with Meyers. However, before the beginning of the 1920 season, Thorpe was assigned to a minor league team. Apparently, there was no premium for having actual Indians on a baseball team named the Braves.

The change of ownership and the name change in 1912 had little immediate effect on the team's fortunes. However, the success of the Braves in 1914 likely prompted the Cleveland team of the rival American League to change its nickname from Naps to Indians. Since arriving in Cleveland in 1900, the team had used a number of different names including Lake Shores, Bluebirds, and Blues before settling on Naps in honor of its star player, Napoleon Lajoie. Occasionally, but infrequently, a sportswriter would refer to the team as "the Indians." In 1915, after the departure of Lajoie, the team decided to officially assume the name Indians. While later accounts of the naming claimed that it was in honor of Sockalexis or the result of a public survey, there is no contemporary evidence to support such claims.⁶⁴ It seems more likely that the Cleveland owners in the winter of 1914-1915 were hoping that the change to Indians would somehow lead to the type of success achieved by the Braves the previous year.

However, having adopted the name change, the Indians did even less than the Braves to exploit the linkage to Native Americans. The team did not attach an Indian head logo to its uniforms until 1928, and the first version of the infamous Chief Wahoo logo did not appear until 1946. It also did not print the name Indians on its uniforms until after World War II.

With regard to football, while the Carlisle Indian School's success in football was well-known, there is little evidence that early professional football teams leaned toward Native American names. The NFL was organized in 1920 as the American Professional Football Association (APFA). During the inaugural season, the league decided to count for

64. Ellen J. Staurowsky, *An Act of Honor or Exploitation? The Cleveland Indians' Use of the Louis Francis Sockalexis Story*, 15 SOC. SPORT J. 299 (1998).

standings purposes all games played by its members, whether or not the opponents were members of the APFA. Of the forty-six teams whose games counted in the standings, only one, the non-member Rochester Scalpers, had a nickname that referred to Native Americans.

The first NFL team to have a Native American name was the 1921 Cleveland Indians of the still-named AFPC. Cleveland played in 1920 as the Cleveland Tigers, but it had good reasons to adopt the name Indians for 1921. Not only had it signed Jim Thorpe as player-coach, providing it with an actual Indian, but in 1920, the baseball Cleveland Indians had won both the American League championship and the World Series, which concluded shortly before the football Indians opened the 1921 season.

The Cleveland Indians football team folded after 1921, freeing Jim Thorpe to organize the Oorang Indians for the 1922 season, the first played by the league under the label of the National Football League.⁶⁵ Like Carlisle, the Oorang Indians were an actual Indian team composed entirely of Native American players. The Oorang Indians were the unlikely product of the combined efforts of Thorpe and a Larue, Ohio dog-breeder named Walter Lingo. Lingo owned the Oorang kennels, which was well-known within dog breeding circles. Thorpe shared Lingo's interest in dog breeding, and the two men had become friends and hunting partners. Prior to the 1922 season, Lingo acquired a franchise from the newly renamed NFL for \$100 and convinced Thorpe to put together an all-Native American team that would combine football-playing ability with knowledge of Indian crafts and culture. They played all but one game on the road with the idea in mind that the popularity of Thorpe and Indian football would attract large crowds, and Lingo and Thorpe could recoup their investment from the road team's share of the proceeds.

For the first time, football fans would have the opportunity to see "Indian football" played at the professional level. Of the twenty men who played on the Indians in 1922, representing nine different Indian tribes, thirteen had played at Carlisle and two had played at the Haskell Indian School in Kansas, the Midwestern counterpart of Carlisle. The Indians were capable of playing exciting football at times and could easily defeat non-league opponents in exhibition games, but they were more often than not out-matched by their NFL opponents. However, the 1922 Indians

65. See generally Charles Frueling Springwood, *Playing Football, Playing Indian: A History of the Native Americans Who Were the NFL's Oorang Indians*, in *NATIVE ATHLETES IN SPORT AND SOCIETY* 123 (C. Richard King ed., 2005) (discussing the Oorang Indians); Charles Frueling Springwood, *Playing Indian and Fighting (for) Mascots: Reading the Complications of Native American and Euro-American Alliances*, in *TEAM SPIRITS: THE NATIVE AMERICAN MASCOTS CONTROVERSY*, *supra* note 2, at 304 (same); ROBERT L. WHITMAN, *JIM THORPE AND THE OORANG INDIANS: THE NFL'S MOST COLORFUL FRANCHISE* (1984) (same).

appear to have been successful enough to inspire a new Cleveland team in 1923 to adopt the name Indians. Of course, the decision may have been based as much on the continued popularity of the baseball Indians and the fact that the previous APFA team had been called the Indians as it was due to the success of the Oorang experiment.

Unfortunately, the 1923 edition of the Oorang Indians proved to be even more unsuccessful on the field than the 1922 team. The failure of the Oorang team may have tarnished the attractiveness of the idea of the Native American team name. For the 1924 season, the football Cleveland Indians, who had been revived in 1923 establishing two NFL teams named Indians, changed their team name to Bulldogs, and for the next seven years, there were no Native American inspired team names in the NFL.

However, in 1926, the Duluth Kelleys changed their name to the Eskimos, but while Eskimos, or Aleuts, are clearly native North Americans, few likely associated Eskimos with Indians in the 1920s. Moreover, for Duluth, the name Eskimos was clearly chosen as a reference to the city's extreme northern location and not to evoke some characteristic of the Aleut people. The same is true for the Minneapolis Red Jackets who joined the NFL in 1929. Although Red Jacket was a once famous Seneca chieftain and orator, the 1929 reference to Red Jackets appears to have referred to the team's red uniforms, similar to the team name, Yellow Jackets, which had been used by the Frankford, Pennsylvania NFL team since 1924 and by collegiate powerhouse Georgia Tech since, at least, the 1910s.

Native American names returned to the NFL in 1931 with the third effort to establish a team in Cleveland. Although the team folded after a single season, it played under the name Cleveland Indians. However, at this point, the impetus was likely to associate the team with the city's MLB franchise than it was to evoke anything about Native Americans.

C. NATIVE AMERICAN TEAM NAMES IN COLLEGE SPORT

College sports teams using Indian names was relatively rare prior to the 1920s for two primary reasons. One is the fact that early college team nicknames, like their professional baseball counterparts, were originally unofficial and typically coined by sportswriters. Notre Dame, for example, was frequently referred to as the "Roves," "Ramblers," and "Terriers" during the Knute Rockne era, and the official embrace of "Fighting Irish" did not come until, at least, the late 1920s. The second reason is that the presence of actual Indians teams in college football may have made the use of Native American nicknames for non-Indian teams seem inappropriate. Few of the major college teams that became associated with Native American team names and symbols were so connected prior to 1930.

There were, however, some exceptions. William & Mary changed the name of its sports teams from the “Orange and White” to the Indians in 1917, and by the early 1920s, its athletic teams were regularly referred to by that name.⁶⁶ Newberry College in South Carolina was another school that used the nickname Indian at an early date, but the decision to do so had little relationship to specific ideas about Native Americans. The school’s baseball team played in bright red uniforms, which led them to be called the Red Men. At some point, a sportswriter, noting that “Red Men” was a synonym for Native Americans, began referring to the team as the “Indians,” and over time, the name stuck.⁶⁷ Although the teams at all the Indian schools were frequently referred to as “Redskins” throughout their history, the first non-Indian school to use the nickname “Redskins” was Miami of Ohio. “Miami” is the name of a Native American tribe, now based in Oklahoma, but prior to the 1930s, the school’s team was varyingly known as the Miami Boys, the Red and Whites, and the Big Red. The name was switched to Redskins in 1931, supposedly to avoid confusion with the teams from Denison College, another Ohio school with teams called the Big Red.⁶⁸

Many colleges adopted official nicknames for the first time in the 1920s, and several of them chose Native American names. However, since the usage of Native American names as team nicknames had already been established by professional baseball teams well before the 1920s, schools that chose names like Braves or Indians were choosing names that were already well-established in the world of sports terminology. It would thus be a mistake to read too much significance into the decisions of individual schools to choose Native American team names.

V. CONCLUSION

The early Native American team names were just that—team names. The exploitation of the Native American connection that one associates with the second half of the twentieth century—colorful “Indian” mascots, mock Native American chants and gestures, caricatured logos, marching bands in headdresses, and cheerleaders in Indian costumes—are all post-1933 developments. In fact, no one was more instrumental in the exploitation of Native American iconography than George Preston Marshall of the Washington Redskins. Not only did Marshall hire an Indian coach

66. See, e.g., *William and Mary Win at Basketball*, DANVILLE BEE, Feb. 12, 1923, at 8.

67. *Newberry Retires Indians*, NEWBERRY C. (Nov. 7, 2009), <http://www.newberry.edu/news-events/news.aspx?id=904>.

68. *Traditions-Nickname History*, MUREDHAWKS.COM, <http://www.muredhawks.com/trads/mioh-nickname.html> (last visited May 25, 2011).

and a handful of Native American players, but he also insisted that his coach occasionally walk the sidelines wearing a Sioux headdress and his players, both white and Indian, wear war paint when they took the field.⁶⁹ He also eventually created the Indian-garbed Redskins Marching Band, which featured no Indian members, as well as commissioned the first fight song—“Hail to the Redskins”—which included versus sung in a mock Indian dialect. He prominently displayed the drawn Native American logo on the team uniforms, and he placed a cigar store Indian in the team offices. However, in 1933, this type of exploitation was in the future, and not the past.

Although the general treatment of Native Americans by the mainstream American culture throughout history was patronizing, insensitive, and immoral at times, the early use of Native American team names does not, in the context of sports team names, appear to have been particularly disparaging. Teams were named after Native Americans as patriotic gestures, as geographic identifiers, and occasionally as humorous references, but almost never with the intention of insulting or making fun of Native Americans specifically. The practice of adopting Native American names predates the practice of adopting the names of fierce animals as team nicknames; consequently, it seems unfair to suggest that Native American and animal nicknames sent similar messages, at least in the pre-1933 period. Moreover, the most famous teams bearing Native American names adopted before 1933—the Boston (now Atlanta) Braves and the Cleveland Indians of the MLB, the Boston (now Washington) Redskins of the NFL, and the Chicago Black Hawks of the National Hockey League (NHL)—⁷⁰ chose their names, at least in part, as a reference to the supposed athleticism of Native Americans and their special successes in team sports.

It is also true that the Washington Redskins played a central role in the exploitation of Native Americans. Initially, owner George Preston Marshall seemed to feel that it was necessary to have a real Indian presence on the Redskins to exploit the theatrical potential of Indian culture, just as Indian

69. This was a short-lived experiment, as his players complained bitterly about the problems of melting war paint getting into their eyes.

70. The Chicago Blackhawks hockey club received its name from the 33rd Machine Gun Battalion of the division of the 86th Infantry Division of the United States Army in the First World War. John Chi-Kit Wong, *Entrepreneurship and the Rise of the Chicago Blackhawks*, in *THE CHICAGO SPORTS READER: 100 YEARS OF SPORTS IN THE WINDY CITY* 254, 255 (Steven A. Reiss & Gerald R. Gems eds., 2009). The team was known as the “Blackhawk Division” named in honor of Chief Black Hawk, a leader of the Saux tribe of Native Americans who had figured prominently in the early history of Illinois. *Id.* As with the Redskins logo, the Black Hawks’ logo bore a strong resemblance to the Native American pictured on the Buffalo nickel. See *Chicago Blackhawks Logos*, CREAMER’S CHRIS, SPORTSLOGOS.NET, <http://www.sportslogos.net/team.php?id=7> (last visited Jan. 5, 2012).

football and baseball teams had exploited it in the early part of the century. There is no question that Marshall sought to exploit commercially the Native American imagery he adopted for his team, but he may also have intended to exploit it for complex psychological reasons, as well.

The exploration of the early history of Native American team names does not resolve the questions posed in the *Harjo* litigation. It does, however, remind us that such questions are extraordinarily complex and cannot be adequately answered without considering the ways in which Native American imagery has always been woven into the fabric of American sport.