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Scott Semaya

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Cardozo AELJ Author Interview Series: Scott Semaya, Class of 2023

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Cardozo AELJ **Author** Interview Series

Scott Semaya, '23

Articles Editor, *Cardozo Arts & Entertainment Law Journal* Vol. 41

Interviewed by Liana Weitzman, Acquisitions Editor, Vol. 42

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Name, Image and Likeness: Giving College Athletes the Clearest Guidance to Best Profit off Their NIL

CARDOZO AELJ
Arts & Entertainment Law Journal

The Cardozo AELJ Author Interview Series seeks to give our readers further insight into the Articles and Notes published in the Cardozo Arts & Entertainment Law Journal. In this interview, Scott Semaya discusses his Note, Name, Image and Likeness: Giving College Athletes the Clearest Guidance to Best Profit off Their NIL, which was published in Volume 41, Issue 2.

Scott Semaya, Cardozo Law Class of 2023, was an Articles Editor for Volume 41 of the Cardozo Arts & Entertainment Law Journal. Scott got his undergraduate degree at Cornell University, where he majored in Psychology with minors in Business and Law. In law school, Scott spent a semester interning in the Southern District of New York, and his legal interests revolve around Real Estate and Intellectual Property. In his free time, Scott likes to spend time with his Australian Shepherd named Clyde and watch his favorite New York sports teams.

Our interview with Scott was conducted by Liana Weitzman. Liana is a rising Third Year Law Student at the Benjamin N. Cardozo School of Law and an Acquisitions Editor on Vol. 42 of the Cardozo Arts & Entertainment Law Journal. Liana is interested in health law, entertainment law, and family law.

LW: What made you come up with this Note topic idea? Had you heard about the *Alston*¹ decision before, or were you interested in sports and did research on college athletes/court decisions regarding college athletics? Were you a college athlete yourself?

SS: I've been a sports fan my entire life, and I've always believed that college athletes should be compensated in some way for the time and effort that they sacrifice to excel in their sports. The summer that I joined *the Cardozo Arts & Entertainment Law Journal* was the same summer that the *Alston* decision came down. So when we started thinking about our Note topics, the *Alston* decision and paying college athletes became a focal point of mine. Upon conducting my own research, I settled on a topic I thought was fitting, which was an overview of the current Name, Image, Likeness ("NIL") landscape and my suggestion for how certain major NIL issues should be handled going forward.

LW: When reading the *Alston* opinion and seeing the statistics of the revenue built from college athletics and the salaries of participating members of the NCAA, what was your first reaction?

SS: These statistics were something that I had been aware about for some time and is one of the reasons I have always believed that college athletes should be able to get their fair share. Pretty much everyone involved in college athletics except for the student-athletes themselves has profited immensely. So why should those student-athletes not be able to reap their own financial benefits? The *Alston* decision was a major first step in allowing this to happen, and I'm glad the Court cited some of those statistics to highlight one of the major reasons for this change.

LW: Do you think student athletes should be a salaried employee or do you think they should be able to profit in their own way (i.e., brand deals, sponsorships, TV rights)?

SS: This is a tough one, and something that I only mentioned in passing in my Note (partially because it could be an entire note topic in itself, which I would love if someone did in the future). If student athletes become salaried employees, it opens the door to a lot of possibilities, including the option to unionize and collectively bargain. While I think there are a lot of pros and cons to this, I'm not exactly sure how I feel about this. This is one of the reasons I discuss leaving certain decisions to individual states and schools. Schools and states should be able to customize certain decisions based on the laws and norms that they already abide by.

LW: Do you think it matters that many athletes coming into college are 18 years old, with some even being 17 years old (minors)? Who would represent them? Their parents? Would you then have to set up more rules for the underage athletes to not be taken advantage of by both the NCAA and their parents? In addition, would something like Texas' financial literacy requirement help solve this issue?

SS: This is something I really tried to stress in my Note and I thought was a no-brainer provision that should be included in a federal NIL law. Financial literacy is extremely important for student athletes considering the amount of money they can now earn via NIL deals. Most student athletes, no matter their financial or educational background, probably do not have much training in terms of personal finances. So providing them with those resources is critical to teach them how to best manage these new income streams. Additionally, though it was not as heavily stressed in my Note, I think that some form of agency certification could be a useful tool to ensure that anyone who seeks to represent a college athlete meets certain minimum requirements.

LW: Are you worried about states trying to gain recruitment advantages through legislation? Or do you think this is the way it should be: that some schools will, and should, have a competitive advantage?

SS: I think this is one of the more important balancing acts that we're currently seeing and what a federal law must deal with. There have been, and will always be, competitive advantages among different schools. Certain schools have historically good programs in certain sports while others do not. NIL is now just another factor in that equation. But I think a federal law can help ensure that, no matter what school an athlete attends, they will have the same basic rights and privileges as anyone else. Beyond that, states and schools can continue to enact their own policies consistent with already-existing law to entice students with NIL opportunities.

LW: Do you believe there is a chance that some student athletes will take advantage of the medical expenses provision? If so, is that a good enough reason to take the provision out of the proposed legislation?

SS: If anything I don't think this is a concerning provision. I think it's important that if a student athlete decides to play for their school, they shouldn't have to be concerned with getting injured and then worrying about being covered insurance and possibly liable for enormous medical bills. With the proper federal guidance that both creates a medical fund and a set of guidelines for how student-athletes can properly take advantage of those available funds when necessary, I think that

it will help create a safer environment that mitigates short- and long-term injuries for student-athletes.

LW: For having the NCAA be the governing body for this NIL federal legislation, does the NCAA really have student athletes' best interests at heart? As stated, the NCAA has exploited student-athletes for years. Can they really be expected to change? Should the NCAA be the governing body because we have no better solution besides creating something brand new?

SS: I think part of the answer to this is that the NCAA already exists with its extensive infrastructure, broadcast deals, etc. This means that an entirely new governing body doesn't need to be created. But more importantly, I think that giving the NCAA this new responsibility will allow them to right their many years of exploiting college athletes.

LW: For the medical coverage provision, you suggest that Congress commission medical studies for conditions such as Chronic traumatic encephalopathy ("CTE") and the like to determine specific compensation. How many medical studies will be published? There are so many differing injuries with differing healing times. Would this not cost Congress a significant amount of money?

SS: This is definitely an area that has a lot of uncertainty, and unfortunately is something I don't think there will be a definitive answer for years to come. Brain injuries like CTE are so complicated and possible compensation for such injuries is impossible to calculate. But that doesn't mean that it should be forgotten altogether. The most newsworthy CTE cases that we hear about involve professional athletes (most often the NFL). But former college athletes (specifically football players) also have a high rate of CTE, as some of the cited studies in my note show. So if there is a future solution to the CTE problem it will not only involve the NFL, but also college athletics and all the way down to pee-wee football where collisions and head injuries first begin. So to answer the question, I'm not sure how many studies are needed or how much it will cost, but to solve such an important problem, more money needs to be allocated. A federal NIL bill is one path that can help get us closer to the ultimate goal.

1. NCAA v. Alston, 141 S. Ct. 2141 (2021).