

How Facebook and Twitter are Affecting Major Sports and Individual's First Amendment Rights

Social networking sites such as Facebook and Twitter have made a profound impact upon the world of sports, especially within the past few months. Some leagues and sports teams have taken the stance that some postings should be censored or eliminated, which could violate an individual's First Amendment freedom of speech rights.

Twitter is a social networking site in which users post real time updates of up to 140 characters for their followers to read. Coincidentally many athletes and individuals involved in the sports world have decided to participate in the Twitter revolution and publish their thoughts online for anyone to read. This phenomenon has impacted the National Basketball Association ("NBA") and its personalities the most. When Milwaukee Bucks forward Charlie Villanueva decided to post on Twitter at halftime during a game last March, he was heavily criticized by his head coach, Scott Skiles, who has since banned Twitter from the locker room.¹ The coach's argument was that posting on Twitter during half time gave the appearance that his team was not focused. Other popular NBA personalities such as Shaquille O'Neal and Dallas Mavericks owner Mark Cuban have climbed aboard the Twitter bandwagon as well. O'Neal is one of Twitters' most popular members, with over 500,000 followers. A couple weeks ago, O'Neal posted about a new endorsement deal, quite possibly eliminating the need for journalists to break such stories.² Cuban used the social networking site in a different manner, when he was fined \$25,000 for criticizing the officiating in an NBA game last month. Criticizing the officials is nothing new for Cuban; he just found a new and costly medium in which to communicate his frustrations.³

Facebook is a hugely popular social networking site in which users can reconnect with old friends, share pictures, and also start and join fan groups such as the group "John Wall Please come to NC State!!!!" There are several groups on Facebook that attempt to encourage potential recruits like John Wall, the #1 rated high school basketball player in America, to attend a particular school. However, the National Collegiate Athletic Association ("NCAA") has objected to fan groups on Facebook which could influence a student athlete to choose one school over another, believing that these groups may violate NCAA rules. The NCAA has attempted to take action against individuals who start such groups. Potential repercussions could include refusing to sell tickets to individuals responsible for starting these groups or dissociation from an athletic program.⁴

This begs the question, should the NBA, the NCAA and other governing bodies in sports be permitted to limit an individual's First Amendment rights by limiting postings on Twitter and Facebook? In order for an individual to claim his/her First Amendment rights have been violated, the violators must be a public entity or supported by public funding. The NBA is a private entity which employs and regulates individuals who must abide by the NBA's collective bargaining agreement ("CBA") and team rules. Thus the First Amendment does not apply, and the NBA and its teams may limit the speech of players and employees. This is the reason why the Milwaukee Bucks were able to ban Twitter from the locker room and why the NBA was able to fine Mark Cuban.

The NBA teams pay players' salaries, and if the players don't like the rules, they can play in another league. If the NBA felt that Twitter was causing conduct detrimental to teams and the league, they could add a rule to the CBA banning Twitter from locker rooms or limit players' Twitter content to non-NBA activities. Presently, the NBA has not indicated that they will seek to limit the use of Twitter among those associated with the NBA. In fact, some coaches have stated that they don't mind players posting on Twitter as long as the postings do not affect performance on the court. It looks as if the NBA is embracing the new digital medium to market their product, rather than outlawing this new means of communication. Most NBA teams now have their own Twitter pages, which mean that the players, and even some coaches, will continue to share their thoughts online in the future.

The NCAA is a private entity like the NBA; however, many universities governed by the NCAA are public and thus supported by state and government funding. Therefore, the First Amendment is applicable to public universities, in which case the government may limit speech if the speech falls into a regulated category, or if the regulation is necessary to achieve a compelling government interest. Regulated categories include speech that incites violence or is obscene among other things. Limiting speech to help recruit players through Facebook does not fall under one of the regulated categories. However, an argument could be made that the limitations may be necessary to achieve a compelling government interest, to make sure public universities do not violate NCAA bylaws.

If limiting speech is valid, a university may refuse to sell tickets to violators or choose not to let an individual participate in university sponsored events. In the case of a non NCAA student athlete who starts a recruiting Facebook group with no intention of attending a game or interacting with a university, it is likely that no action will be taken. However the NCAA could decide to punish schools who allow violating groups to be formed, in which case the schools could ask their fans to refrain from creating such groups. The NCAA and public universities may encounter challenges in regulating these groups unless the NCAA forces Facebook to eliminate groups by threatening to pull NCAA related content from the site, such as March Madness Brackets or other fan groups.

With Twitter and Facebook still in their infancy it will be interesting to observe how their influence in the world of sports evolves, while allowing for the expression of First Amendment freedom of speech rights of individuals.

¹ Matt Watson, *Skiles: No Tweeting in the Locker Room!*, March 17, 2009,

<http://nba.fanhouse.com/2009/03/17/skiles-no-tweeting-in-the-locker-room/>

² Darren Rovell, *The Tweet Heard Around The Endorsement World*, April 2, 2009,

<http://www.cnn.com/id/30014050>

³ Matt Watson, *Mark Cuban Rips Refs on Twitter*, March 28, 2009,

<http://nba.fanhouse.com/2009/03/28/mark-cuban-rips-refs-on-twitter/>

⁴ Justin Pope, *Facebook Lobbying May Violate NCAA Rules*, April 11, 2009,

http://seattletimes.nwsources.com/html/collegesports/2009021968_facebook11.html