Leveraging Competitive Advantage: Creating Synergy between Strategic Management and Contract Law in College Athletics

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The purpose of this presentation is to provide a conceptual framework explaining how strategic management principles may be incorporated into human resource management in college athletic departments. Specifically, this presentation focuses on how legal acumen can be used to create value and manage risk in the negotiation and drafting of coaching contracts.

There are many perspectives on strategy (Mintzberg, 1987). For this presentation, the work of Kaplan and Norton in Strategy Maps (2004) will be used as the framework. One underlying theme in Strategy Maps is that intangible assets, which include human capital, are the ultimate source of sustainable value creation, and only take on value in the context of strategy. Additionally, Kaplan and Norton (2004) state that human capital must be aligned with strategy if the organization is to gain value from its employees’ competencies. In order for this alignment to occur, the organization must implement strategic initiatives, outside of day to day operations, that are designed to help the organization achieve its targeted long-term performance (Kaplan & Norton, 2004). Further, investments in human capital in the form of recruitment, training, and retaining superior human resources are the bases for sustained competitive advantage (Lado & Wilson, 1994; Lepak & Scott, 1999).

Human resources, as a source of competitive advantage, have been found to be even more pronounced in service organizations, such as intercollegiate athletics, where effectiveness is dependent on the excellence of athletes and the coaches who foster that excellence (Cunningham & Ashley, 2001; Cunningham, 2003). Within a college athletic department, the drafting and signing of coaches’ contracts are important strategic initiatives that can have a dramatic effect on long-term financial health. Smart and Wolfe (2000), in their study of the Penn State football program, found that the organizational resources and the culture of coaching staffs are the most important determinants of sustained competitive advantage in intercollegiate athletics, even more so than physical resources and player talent. In order to reach these goals, it is important to note that the keys to securing appropriate human resources include intensive recruitment of employees and competitively compensating the workforce (Pfeffer, 1998; Banker et al., 1996). Further, it has been observed that traditional forces, such as the professionalism of top managers and alumni/NCAA pressures, have less effect on athletic departments than the choices that are made by key personnel within the organizations themselves (Cunningham & Ashley, 2001). These choices would certainly include the athletic director’s role in recruiting coaches and drafting contractual agreements that will be advantageous for both parties. Clearly, finding and retaining quality coaches for revenue-generating sports will have a profound long-term effect on the overall success of an athletic department.

The effective negotiation and drafting of coaching contracts in college athletic departments is premised upon the ability to use contract law and employment law principles knowledgeably. Bagley, in her book entitled Winning Legally (2005), discusses a variety of ways in which businesses can use the law to create value, marshal resources and manage risk. Rather than looking at law as an organizational constraint, managers should appreciate the empowering nature of the law. Law should not be viewed as an impediment but rather as a facilitator of value creation. Employees at any level of the organizational hierarchy and at any point in the value chain may “discover opportunities to capture value by harnessing the power of the law” (Bagley, 2005, p. 3). To illustrate this fundamental point, Bagley also uses the work from Strategy Maps (2004) to address the legal strategies that are relevant in the human resources context.

As discussed above, it is imperative that college athletic departments incorporate human resource management principles and legal knowledge into their strategic initiatives. Much of the litigation that is filed against educational institutions pertains to employment disputes (Prairie & Garfield, 2004). College athletic departments and universities are often embroiled in legal disputes with current and former employees. Many of these disputes are with former and current coaches regarding aspects of their employment contracts. Some of the more notable disputes in the last few years have been the following: 1) O’Brien v. Ohio State University which culminated in a
judgment of almost $3 million against the university in a dispute related to termination for cause (Fitzgerald, 2008); 2) West Virginia University v. Rodriguez, a dispute over a buyout clause, which was settled by a $4 million payment to West Virginia (Rodriguez paid $1.5 million and current employer University of Michigan paid $2.5 million) (Hickman, 2008); 3) Gillispie v. University of Kentucky, a breach of contract and fraud lawsuit, settled with a payout to the former coach of $2.98 million (Alessi, 2009); and 4) Marist College v. Brady, a lawsuit by Marist College against its former basketball coach, Matt Brady and his current employer James Madison, alleging that Brady breached his contract with Marist by recruiting former Marist players to play at JMU (Foster, 2009). 

Aside from the multitude of disputes, the world of college coaching is becoming even more results-driven with an average tenure of a major-college football coach at approximately 5 years (Wieberg, 2008). Further, in these economically troubled times, there are many constituents who are quite critical of the astronomical salaries of the big-time college coaches (Ryman, 2009), such as the $31.65 million agreement (over 8 years) with University of Kentucky basketball coach John Calipari (Alessi, 2009). Finally, in this era of renewed concern regarding the academic performance of student-athletes, provisions in coaching contracts can be an important vehicle in rewarding and reinforcing this priority (Solomon, 2008; Gurney & Weber, 2008). It is imperative, therefore, in the current climate of big-time college sport, that college athletic departments and university counsel use a competitive strategy analysis to factor the legal ramifications of contract issues into their negotiations with college coaches.

The presenters will conclude with examples of legal strategies that may be interwoven with strategic management to facilitate value creation through the negotiation and drafting of contracts with college coaches.