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Policing Twitter: Analyzing Social Media Policies and Privacy Law at the Collegiate Level

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Legal aspects

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**20-minute oral presentation
(including questions)**

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With billions of people around the world using social media sites to connect with friends near and far, it is not surprising that these sites have infiltrated the world of sports. As a business built on live updates, social media in sport provides for 24/7 updates for those who cannot attend the event or watch in real time on television. This new medium also provides the fan with access to their favorite players. While there are many benefits to the use of social media in sport, this constant access to athletes has blurred the line between a public and a private persona, especially for student-athletes. Blurring this line often comes with the unintended consequence of NCAA violations and other legal difficulties.

The concerns associated with student-athlete use of social media made headlines in 2010 when it was speculated that the NCAA investigation of the University of North Carolina (UNC) for possible academic misconduct and improper student-athlete/agent relationships stemmed in part from posts on then-student-athlete Marvin Austin's Twitter account. The public infractions report given to UNC from the NCAA's Committee on Infractions confirmed suspicions by noting a violation of NCAA Constitution 2.8.1 (failure to monitor the conduct and administration of a program). As a part of this failure to monitor, the Committee on Infractions alleged that the institution did not consistently monitor the social media activity of student-athletes. Unfortunately, this incident is just one of many potential NCAA violations triggered by student-athlete use of social media. These sites are used to communicate with friends and peers, making it easy to forget that when you are student-athlete, your posts represent yourself and your university as well.

A tweet does not have to be promoting an NCAA violation, like Austin's, to be controversial. Should a student-athlete send a message of congratulations to a potential recruit, that message violates NCAA provisions against publicly contacting unsigned recruits. Because social media has become a source of NCAA violations, universities are quickly establishing policies to monitor or even prohibit the use of these sites by student-athletes. Recently, the University of Michigan formalized social media guidelines and had student-athletes sign a use agreement that includes potential punishments for violation of the social media policy. While instincts might lead some towards a blanket ban or excessive monitoring of these sites for student-athletes, overly restrictive policies could lead to a violation of student rights.

For public universities, a student's right to free speech (First Amendment) and the right against unreasonable search and seizure (Fourth Amendment) are at issue. These students are free to say what they wish within certain parameters and, like with drug testing, they have a reasonable expectation of privacy. Social media sites may be public sources, but student use of privacy locks on these sites could lead to invasions of privacy due to excess monitoring by a university. Further, several states are considering legislation to limit monitoring access by both schools and employers, which would affect both public and private universities. Governor Jerry Brown of California signed into law on September 27, 2012, a bill to protect college student social media accounts. While the limits this law poses on social media monitoring remain unclear, it is enough to rethink stringent social media policies.

This presentation will explore the legal complications associated with social media monitoring policies. In particular, the talk will explore a university's concerns related to social media use by student-athletes, the related social media policies and monitoring systems, and how these policies may conflict with advancing privacy law. The major concern here is the interaction between privacy rights and monitoring, especially for universities hoping to avoid NCAA sanctions that could affect eligibility and finances received from post-season play.