Teaching the Anthem Protests: A Law, Policy, and Governance Case

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Teaching/Learning - Teaching strategies/methods (Professional Sport)
20-minute oral presentation (including questions)  
Abstract 2019-273  
Friday, May 31, 2019  
3:50 PM  
Room: Napoleon A2

Teaching law to undergraduate students has become complex, requiring a multidimensional approach, and it is difficult to develop pedagogical methods uniquely suited to the study of law (Bajpai & Kapur, 2018). However, “modern teaching pedagogy suggests that students need to be actively involved with their learning” (Blissenden, 2015). Further, those teaching law must consider various teaching techniques which “motivate critical thinking, diverse opinion, and logical argumentative skills” (Bajpai & Kapur, 2018). Specifically, two pedagogical approaches to teaching the law, the Problem Method and the Collaborative Method, allow students to actively participate, while thinking critically about the material presented despite diverse personal opinions. The Problem Method uses factual scenarios from hypothetical or real-life current events as the center of student learning (Ogden, 1984). The Problem Method also requires students to share and discuss solutions; this is an integral part of the pedagogy (Hoffman, 2012). The Collaborative Method allows students to actively participate in the learning process through interaction and by considering the point of view of others, as well as their own. An assignment that blends both the Problem and Collaborative Methods is an effective way to develop a course module on constitutional protections in sport for an online undergraduate sport law class.

The “anthem” protests, initiated by Collin Kapernick and others, fumbled by the NFL, and inflamed by President Trump, provide a current event for teaching fundamental concepts across many content areas within a sport law course using the Problem Method. Specifically, these concepts include First Amendment free speech, Employee free speech rights and limitations, sport governance, and social justice issues in sport. This current event is also useful for teaching legal analysis and advocacy skills, requiring students to “be the lawyer” and advocate for one side’s “best” legal case, using the Collaborative Method. What makes the case unique is that the case involves players’ speech rights as employees (Edelman, 2017) and several sport management topics are intertwined in the case.

Brennan (2016) noted that when the athlete protests began, “the vast majority of these athletes [were] NFL players, but not all.” As the protests spread to other sports, the stakes were raised on how the NFL and team owners would respond. Behind the scenes, the legal rights of players to protest were being dissected by legal scholars as well as by the players’ labor union. In classrooms, professors who teach law began using this issue as the basis of problem and collaborative method assignments. Additionally, when teaching undergraduate students about this controversy, professors must clarify that students’ personal beliefs are separate from the arguments and legal advocacy that benefits each side in the dispute. Using a blend of the two pedagogical approaches accomplishes this goal.

This presentation offers a road map to incorporate this controversy, and pedagogical models, into a constitutional protections module in an online undergraduate sport law class. A scored sample rubric will be shared to illustrate how students typically respond to the case scenario. Identifying common flaws and pitfalls in student’s legal analysis will also be explored.