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# Note to Athletes, NFL, and NBA: Dog Fighting is a Crime, Not a Sport

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NOTE TO ATHLETES, NFL, AND NBA:  
DOG FIGHTING IS A CRIME, NOT A SPORT

PHYLLIS G. COLEMAN\*

INTRODUCTION

Americans were finally forced to face the issue of animal abuse and professional athletes when investigators discovered 66 pit bulls, in addition to dog-fighting equipment, at a home owned by “pro football’s most electrifying quarterback.”<sup>1</sup> Although Michael Vick insisted that he did not live in the house, and initially denied knowledge of any such activity on his Virginia property, stories of his involvement continued to swirl around the Atlanta Falcons’ franchise player.<sup>2</sup> On July 17, 2007, Vick and three others were indicted by a federal grand jury for competitive dog fighting, procuring and training pit bulls for fighting, and conducting an illegal enterprise across state lines.<sup>3</sup> On August 27, 2007, Vick pled guilty to one count of conspiracy. Shortly thereafter, Commissioner Roger Goodell suspended Vick from the NFL indefinitely and without pay. Approximately a month after the federal guilty plea, a Surry County (Virginia) grand jury indicted Vick on one count of “conspiracy to travel in interstate commerce in aid of unlawful activities and to sponsor a dog in an animal fighting venture.”<sup>4</sup> His jury trial, originally scheduled for April 2, 2008, had to be delayed until June 27 because of the difficulty of transporting federal prisoners back to the state.<sup>5</sup>

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\* Professor of Law, Nova Southeastern University. Special thanks to Mark for his encouragement and Max for his inspiration. Thanks also to Sahily Picon and Jessica Chiappone for their help. The research for this article is current as of April 1, 2008.

<sup>1</sup> Ron Green, Sr., *Actions of a Few Ruin It for Their Peers—and Us*, CHARLOTTE OBSERVER, July 30, 2007, at 2C.

<sup>2</sup> See *infra* note 97 and accompanying text.

<sup>3</sup> See generally Indictment, United States v. Peace, Phillips, Taylor, and Vick, (July 17, 2007) (Criminal No. 3:07-CR) (indicting Vick and others for competitive dog fighting and illegal interstate operation of a business).

<sup>4</sup> See Veronica Gorley Chufu and Alicia P.Q. Wittmeyer, *Vick Indicted On Va. Charges: Suspended QB Accused of Two Felonies Tied to Dogfighting After Pleading Guilty to Feds*, BALT. SUN., Sept. 26, 2007, at 1E (explaining that the owner frequently kills his animal in a horrific way, following a loss).

<sup>5</sup> See Bill Geroux, *New Court Date for Vick On Va. Charges*, RICHMOND TIMES-DISPATCH, Mar. 26, 2008. The bench trial of one of Vick’s co-defendants, Quanis Phillips, was reset for June 13. The jury trial of another co-defendant, Purnell Peace, was rescheduled

While Vick is probably the most famous sports figure to face dog fighting charges,<sup>6</sup> sadly there are many others who

also participate.<sup>7</sup> Nevertheless, the issue of players abusing animals has generally escaped discussion, or even notice, in law reviews.<sup>8</sup> To fill the gap, this article grapples with important questions concerning athletes involved in illegal dog fighting.

Part I includes a brief history, description, and analysis of dog fighting. Part II reviews relevant laws including the recently enacted federal Animal Fighting Prohibition Enforcement Act. However, despite the fact that the underlying reasons to criminalize the conduct are the same no matter who causes the harm, it appears that the legal system may treat professional athletes differently than others who fail to properly protect and care for dogs, cats, and other domesticated critters. If true, this means it is even more important that professional sports leagues step in and punish participants in these illegal competitions. Part III provides examples of sports figures who exploit or otherwise injure dogs through training and forcing them to fight. While no appellate decisions currently exist,<sup>9</sup> this section reviews a number of incidents reported in the media. Finally, in seeking to fashion a just and fair response, Part IV proposes a concrete solution that will not only punish the guilty player for his criminal acts, and his team if they knew about the problem and allowed him to continue on the field or court, but will also benefit the real victims—the animals.

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for June 20. A third Vick co-defendant, Tony Taylor, who has finished serving his federal prison term, is scheduled for a jury trial on the Surry charges on May 7.

<sup>6</sup> See *Noose Tightening Around Vick Quick*, INTELLIGENCER, Aug. 15, 2007, at C1.

<sup>7</sup> See *infra* note 80–82, 136–70 and accompanying text.

<sup>8</sup> There have been a few recent articles that briefly refer to Michael Vick and dog fighting in other contexts. See, e.g., Behnam Dayanim, *Internet Gambling Under Siege*, 11 GAMING L. REV. 536, 539 n.15 (Oct. 2007) (explaining that the Interstate and Foreign Travel or Transportation In Aid of Racketeering Act was the basis for Vick's indictment); Hilary M. Schwartzberg, *Tort Law In Action and Dog Bite Liability: How the American Legal System Blocks Plaintiffs from Compensation*, 40 CONN. L. REV. 845, 859 n.92 (Feb. 2008) (discussing Vicks's legal troubles and arguing for the adoption of an economic perspective to the "dog bite epidemic"); Casey Shilts et al., *Making the Pitch: Player Endorsements In Professional Sports*, 25 ENT. & SPORTS L. 2, 3 (Fall 2007) (stating that the Vick indictment "is a classic example of advertisers reacting directly to public perception" costing him millions of dollars in endorsements); Joel Michael Ugolini, *Even a Violent Game Has Its Limits: A Look at the NFL's Responsibility for the Behavior of Its Players*, 39 U. TOL. L. REV. 41, 43 (2007) (arguing that the NFL should be working toward improving players' conduct).

<sup>9</sup> However, in February 2008, a Minnesota federal district court held that allowing the Atlanta Falcons to recover roster bonus money paid to Michael Vick would violate the Collective Bargaining Agreement. *White v. National Football League*, 533 F. Supp. 2d 929 (D. Minn. 2008).

## I. DOG FIGHTING

People have staged fights between non-human animals<sup>10</sup> “throughout history.”<sup>11</sup> Nevertheless, because combatants die or are seriously maimed during these contests, dog fights are currently outlawed in the United States.<sup>12</sup> Thus, punishing anyone<sup>13</sup> who participates is appropriate. Additional support for the ban can be found in the strong correlation between these activities and other types of criminal conduct.<sup>14</sup> Still, to understand, beyond the negative visceral reaction most people experience, why the prohibitions are necessary and appropriate, it is essential to know a little about the contests themselves as well as the human competitors.<sup>15</sup>

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<sup>10</sup> Animal fighting is a “contest” between non-human animals. Thus, a fight between bull and matador would not fit within this definition, while a dog or cock fight would.

<sup>11</sup> Rhonda D. Evans & Craig J. Forsyth, *The Social Milieu of Dogmen and Dogfights*, 19 *DEVIANT BEHAVIOR* 51, 51 (1998). See *infra* notes 16–28 and accompanying text.

<sup>12</sup> See *infra* note 71 and accompanying text.

<sup>13</sup> While organizing dog fights is illegal in every state, in a few jurisdictions being a spectator is not specifically prohibited. See, e.g., HAW. REV. STAT. ANN. § 711-1109.3 (2007). See also Humane Society of the United States [HSUS], *Ranking of State Dogfighting Laws*, available at [http://www.hsus.org/act/fighting/dogfight-ranking\\_state\\_dogfighting\\_laws.html](http://www.hsus.org/act/fighting/dogfight-ranking_state_dogfighting_laws.html) (last visited Apr. 1, 2008).

<sup>14</sup> See, e.g., Susan E. Davis, *Blood Sport*, CAL. LAW. 45 (Nov. 1997). The author explains that “dog fights so often involve other crimes, such as illegal gambling, drugs and arms possession, that other felony charges, including conspiracy, racketeering, and narcotics and weapons possession, often apply.” *Id.* at 83. Further, she points out that “[t]ransporting dogs across states lines for fighting is also illegal under the Animal Welfare Act which is enforced by the U.S. Department of Agriculture, although that agency rarely prosecutes cases.” *Id.* (emphasis added) (citations omitted). See also Richard A. Webster, *Dog Fighting Remains Big Business In Louisiana*, NEW ORLEANS CITY BUSINESS, Nov. 29, 2007. In fact, according to a senior Louisiana state trooper and former undercover investigator:

Everybody I’ve come across involved in dog fighting has extensive violent criminal histories. We’ve gotten an unbelievable amount of narcotics. We’ve seized kilos of crack, kilos of powdered cocaine, automatic weapons, explosive devices. When we started in 2003 we had to devote a lot of manpower because not only were we arresting the dog fighters, we were making arrests for wanted violent offenders and a tremendous amount of other illegal activity that goes hand-in-hand with dog fighting.

*Id.*; see also Robert Finn, *Most Dog Abuse Escapes the Celebrity Spotlight*, N.Y. TIMES, Aug. 5, 2007, at 1 (quoting an SPCA officer who claims it is a “known fact” that “every serial killer in American history began by torturing animals”); Michael Futch, *Dogfighting In Our Backyard*, FAYETTEVILLE OBSERVER, Oct. 7, 2007. A North Carolina animal cruelty officer said “When you get into (organized) dog fighting, you’re dealing with big-time money. Money laundering. Illegal firearms. Felons. Felons with firearms. Prostitution. It’s all a big smorgasbord of crime.” *Id.*

<sup>15</sup> Actually there does not appear to be much academic interest in animal fighting. Moreover, most of the literature that does exist is about cock fighting rather than dog fighting. Evans & Forsyth, *supra* note 11, at 67.

*A. Background*<sup>16</sup>

Animal fighting can be traced at least as far back as ancient Rome when the Emperor Lucullus had a group of dogs thrown into the Coliseum to be trampled to death by wild elephants.<sup>17</sup> Following the fall of that early civilization, fighting dogs reappeared in medieval England. Around the 12th century, bull and bear baiting, as well as battles between dogs and lions or elephants, grew in popularity.<sup>18</sup>

More modern dog fighting began in the 17th century where the idea was to test whether a specific animal would be effective in protecting his owner and his property. However, while the original concept was utilitarian, the purpose soon became entertainment. Another transformation, this time to “sport,” occurred with industrialization.<sup>19</sup>

Pitting canines against other animals actually continued in England until Parliament banned the practice in the Humane Act of 1835.<sup>20</sup> The high price of bulls and bears, along with the decrease in those populations, had already begun to push people toward only using dogs rather than other four-legged beasts. When baiting larger animals was finally made illegal, dogs became the primary alternative for those who enjoyed animal fighting.<sup>21</sup>

Another factor contributing to the trend was development of the Staffordshire Bull Terrier. These animals “combined the strength of the Bulldog with the quickness and viciousness of the Terrier.”<sup>22</sup> Thus the breed, which produced an “excellent fighting dog capable of engaging in voracious combat for hours,” fueled the interest in such matches.<sup>23</sup>

The activity became part of the American culture after 1817 when the Staffordshire Bull Terrier was brought to this country.<sup>24</sup> The American Kennel Club actually endorsed the “sport” and even created rules and

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<sup>16</sup> For a more extensive discussion of the early history of dog fighting, see MIKE HOMAN, *A COMPLETE HISTORY OF FIGHTING DOGS* 200–02 (1999).

<sup>17</sup> Humane Society of the United States, *Dog Fighting: An Historical Note*, available at <http://www.peoriahs.org/dogfighthistory.htm> (last visited Apr. 1, 2008).

<sup>18</sup> *Id.*

<sup>19</sup> See Rhonda Evans et al., *Dogfighting: Symbolic Expression and Validation of Masculinity*, 39 *SEX ROLES* 825, 827 (1998).

<sup>20</sup> HANNA GIBSON, *DOG FIGHTING DETAILED DISCUSSION* § II (2005), available at <http://www.animallaw.info/articles/ddusdogfighting.htm> (last visited Apr. 1, 2008).

<sup>21</sup> See generally HSUS *Dog Fighting*, *supra* note 17. Another reason to favor dog fighting over other baiting sports is that it is easier to hide than bull or bear baiting which are “highly visible.” See also Evans & Forsyth, *supra* note 11, at 51–52.

<sup>22</sup> See HSUS *Dog Fighting*, *supra* note 17.

<sup>23</sup> *Id.*

<sup>24</sup> GIBSON, *supra* note 20, at § II.

sanctioned referees. Notably, although the conduct was illegal in most states by the 1860s, it continued to flourish.<sup>25</sup>

A simple explanation for the increased interest was that, in the second half of the 19th century, thousands of people immigrated to the United States from Europe. Many had ancestors who fought dogs and they wanted to continue the tradition. Meanwhile, Henry Bergh, one of the pioneers in the humane treatment of animals, convinced New York legislators to pass a statute for animal protection and to allow him to incorporate the American Society for the Prevention of Cruelty to Animals (ASPCA).<sup>26</sup> Because the activity was so widespread that even members of the police force were participants, he faced substantial resistance. Thus, he also sought and received authority for the ASPCA to enforce the laws.<sup>27</sup> With these victories, Bergh immediately began seeking compliance with statutes banning dog fights.<sup>28</sup>

Unfortunately, however, people refused to abandon this “sport.” Researchers who study animal fighting suggest historical and emotional reasons that help explain the importance of this activity to the people who are involved in it and why, despite prohibitions and potential legal sanctions, men<sup>29</sup> continue to participate. At the end of the 19th century, the “ideal” male began to be seen as assertive, aggressive, strong, and competitive. Athletics provided a way to prove masculinity in this environment.<sup>30</sup> Thus, sports were not only a “means for building manly character,” they were actually “a source of manhood.”<sup>31</sup> In fact, “competition itself became a masculine obsession, extending from contests directly between men (as in opposing football or baseball teams) to contests

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<sup>25</sup> *Id.*

<sup>26</sup> See Amy A. Breyer, Comment, *Asset Forfeiture and Animal Cruelty: Making One of the Most Powerful Tools In the Law Work for the Most Powerless Members of Society*, 6 ANIMAL L. 203 (2000); see also NICK TOSCHES, KING OF THE JEWS: THE GREATEST MOB STORY NEVER TOLD 155–57 (2006) (detailing one of Bergh’s early battles with Christopher “Kit” Burns who hosted four sporting events at his establishment, rat killing by a weasel, rat killing by a dog, rat killing by a man, and dog fighting).

<sup>27</sup> ASPCA, Fight Animal Cruelty: Dog Fighting FAQ, available at [http://www.aspc.org/site/PageServer?pagename=cruelty\\_dogfighting\\_faq](http://www.aspc.org/site/PageServer?pagename=cruelty_dogfighting_faq) (last visited Apr. 1, 2008).

<sup>28</sup> But it was not until 1976 that Congress passed federal legislation making it a felony to cross state lines with dogs with the intent to fight them. Evans & Forsyth, *supra* note 11, at 52. This is the statute under which Michael Vick was prosecuted. In 2007, it was amended. See *infra* note 79 and accompanying text.

<sup>29</sup> Participants at animal fights are almost all men although some women attend as spectators and gamblers. See Evans & Forsyth, *supra* note 11, at 54.

<sup>30</sup> Evans et al., *supra* note 19, at 826.

<sup>31</sup> *Id.*

in which animals represented men (as in horseracing and cockfighting).<sup>32</sup> This identification between men and their animals still exists today.

### B. Description

Dog fighting is defined as baiting two canines against each other, for entertainment or gain, until one quits or dies. In addition to the animals, generally two handlers and a referee are in the pit while spectators watch and bet on the outcome.<sup>33</sup>

Dogs are taught from a very early age to refuse to give up even in the face of exhaustion.<sup>34</sup> The scope and methods for teaching “gameness” vary depending on the seriousness and type of fighters.<sup>35</sup> For example, in preparing for street competitions, dogs may be drugged, abused, and starved.<sup>36</sup> However, for the more formal, organized contests, the animals are too valuable to mistreat in this way so other, less dangerous strategies are employed.

Handlers use live animals (cats and sometimes even other dogs) as bait to instill or enhance fighters’ taste for blood and to give them practice killing. Once they appear ready, the animals are “rolled” which means they are pitted against stronger, more experienced dogs and, if they pass, they are given matches.<sup>37</sup>

Immediately before the actual bout, dogs are weighed and washed to ensure no one put chemicals on them to gain an advantage.<sup>38</sup> Once this is done, the two dogs are forced together in a pit and required to compete.

During the fight, a dog may have his face ripped off or stomach ripped

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 827.

<sup>34</sup> GIBSON, *supra* note 20.

<sup>35</sup> *Id.*

<sup>36</sup> See Jamey Medlin, Comment, *Pit Bull Bans and the Human Factors Affecting Canine Behavior*, 56 DEPAUL L. REV. 1285, 1301 (2007); see also Jane Huh, *Bill Would Toughen Laws On Dog Fights; Harsher Penalties; Letting Children In Would Be a Felony*, STATE JOURNAL-REGISTER, Jan. 26, 2006, at 1 (explaining that some fighters train their dogs by such methods as injecting them with steroids, suspending them from trees to strengthen their jaw bones, and using smaller animals, such as cats and rabbits, as “bait”).

<sup>37</sup> Trainers provide increasingly tougher opponents ending with a “game test” where the dog is forced to fight several other canines. As the culmination of a three-hour marathon the exhausted animal faces a fresh dog he cannot defeat. If he charges, he earns a passing grade. On the other hand, if he quits, he fails, and the owner “might sell it, give it away or just kill it outright.” Jim Herron Zamora, *Dogfighting: Bloody “Sport” Big In Bay Area*, S.F. EXAMINER, Apr. 14, 1996, at C1.

<sup>38</sup> Gloria Campisi et al., *Savage Combat Beastly Battles No ‘Game’; Philly’s Reputation In Dogfighting Circuit Second-Rate*, PHILA. DAILY NEWS, July 10, 2000, at 3.

out.<sup>39</sup> Some also have their eyes gouged or their bones broken. The animals are separated periodically. What can be done during this time depends on which rules apply. Under the widely used Cajun Rules, sponging is not allowed. The only items that can be taken into the pit are a drink for the dogs and a fan to cool them. Notably, the handlers must taste the liquid in front of the referee to prove that it is not poison.<sup>40</sup>

After a short break, the dogs are sent back into the pit to continue the match<sup>41</sup> until one “makes a turn, which is defined as turning the head and shoulders away from his or her opponent.”<sup>42</sup> When the official “calls the turn” a handler is allowed to work with his dog so long as the animals are “out of holds.”<sup>43</sup> However, to stay in the competition, the dog who made the turn must scratch to his adversary. This means that, usually within 10 to 30 seconds, he must cross a line drawn in the center of the pit and attack his opponent. If he does, the match continues. But, from this point on, the animals can only be handled if they are out of hold and they must scratch in turn. This is important because whenever a dog fails to scratch in turn he loses.<sup>44</sup>

While failure to scratch is the most common way a fight may end, there are three other possibilities. (1) Death of one or both animals during a match is unusual but it does occur, typically between dogs who are willing to fight until they die (called dead game). Because “gameness” is “the most admirable quality among dogmen,” the contests may last for hours before a dog dies.<sup>45</sup> (2) An owner can simply call the match. This is similar to a boxer’s manager stopping a bout. (3) Finally, although it very rarely happens, one of the dogs could jump out of the pit.<sup>46</sup>

Ironically, however, as inhumane as animal fighting is, one of the most disturbing aspects is what happens after the match.<sup>47</sup> Assuming the loser

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<sup>39</sup> Medlin, *supra* note 36, at 1300.

<sup>40</sup> George Dohrmann, *The Case Against Vick*, 107 SPORTS ILLUS. 38, 39 (July 30, 2007) [hereinafter *Case Against Vick*].

<sup>41</sup> Campisi et al., *supra* note 38.

<sup>42</sup> Evans & Forsyth, *supra* note 11, at 66.

<sup>43</sup> “Out of holds” means the dogs are not biting each other. *Id.* at 64.

<sup>44</sup> *Id.*

<sup>45</sup> According to an interview with one of the dog fighters, “If your dog is not conditioned properly he won’t be able to maintain his wind in the pit. Hell, these fights can last anywhere from 30 minutes to 4 or 5 hours.” *Id.* at 57.

<sup>46</sup> *Id.* at 65–66.

<sup>47</sup> Webster, *supra* note 14. Thus it is understandable that although people were obviously distressed that Michael Vick was fighting his pit bulls, stories of the executions by drowning, electrocution, shooting, and hanging seemed to be what caused almost everyone to turn on the disgraced quarterback.



somehow survives, in some warped attempt to defend his honor, the owner frequently executes *his* animal because a dog who is cowardly (“shows signs of being a ‘cur’”) is a poor reflection on the sport and is thus disposable.<sup>48</sup> Dogs are hanged, burned, shot, electrocuted, and worse. Two examples should suffice. One man wrapped his dog’s paws in baling wire and tossed him into the river.<sup>49</sup> Some tape the losing dog’s mouth shut and use him as bait, allowing the other animals to rip him apart. At that point, they cut him up and permit the others to eat him.<sup>50</sup>

### C. Human Competitors

Dog fighting is so repulsive to the average person that it is “routinely discounted as something that happens only in ‘other’ neighborhoods or as a ‘cultural tradition.’”<sup>51</sup> Unfortunately, that is far from the truth. Indeed, experts claim that everyone in any metropolitan area lives within two miles of someone “actively involved in illegal animal fighting, either owning, breeding or training the animals themselves or attending or betting on bloody bouts where animals are forced to fight to death.”<sup>52</sup>

While that appears to be an exaggeration, the Humane Society of the United States (HSUS) estimates that as many as 40,000 people nationwide engage in organized dog fighting with another 100,000 at the street level.<sup>53</sup> These Americans<sup>54</sup> are either spectators, organizers, or breeders.<sup>55</sup> In addition, approximately 250,000 dogs are involved.<sup>56</sup>

Socioeconomic and cultural contexts seem to be important in determining who fights dogs and why they do so. Thus, although originally

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<sup>48</sup> Some people defend the practice by claiming the losers are killed to protect the bloodline. This is clearly not true as neutering is obviously a better, more humane way to reduce the number of unwanted puppies.

<sup>49</sup> Davis, *supra* note 14, at 83.

<sup>50</sup> Webster, *supra* note 14.

<sup>51</sup> Phyllis M. Daugherty, *Animal Abusers May Be Warming Up for More*. DAILY NEWS, Feb. 24, 2005, at N15. The same is true for cockfighting. *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Anita Kumar, *After Vick Case, Dogfighting Bills Flood Va Session*, WASH. POST, Jan. 15, 2008.

<sup>54</sup> Notably, dog fighting is not limited to the United States; in fact, it is a sport seen worldwide, especially in Eastern Europe, where the Russian Mafia is said to be active and the American pit bull is the treasured fighter. See Campisi et al., *supra* note 38, at 8.

<sup>55</sup> See GIBSON, *supra* note 20, at § IV (discussing the culture of dogfighting and its various participants).

<sup>56</sup> Columbian Editorial Writers, *In Our View – Stop the Cruelty; Legislature Has Targeted Dog Fighting*, COLUMBIAN, May 22, 2005, at C10.

the activity was considered respectable because royalty and aristocrats participated, this is no longer true as the upper and middle classes have withdrawn their support.<sup>57</sup> Ironically, there has been such a shift that today most animal rights advocates come from these groups.<sup>58</sup>

Commentators agree that many proponents live in the South.<sup>59</sup> Claims that a large number of these Southerners are Caucasian<sup>60</sup> seem contrary to common perceptions.<sup>61</sup> Still, some blame the media for what they assert is this misconception because, although no one really knows whether minorities are more likely to fight dogs, journalists make it seem that “black culture and dog fighting are inextricably intertwined.”<sup>62</sup>

<sup>57</sup> Evans et al., *supra* note 19, at 829. A similar dichotomy also existed in cock fighting where such famous historical figures as George Washington, Andrew Jackson, Henry Clay, and Benjamin Franklin supported the activity even though some of their contemporaries considered it barbaric and inhumane. In fact, the debate between advocates and opponents has continued for centuries. For example, in speaking to a group who wished to enact federal legislation prohibiting gamecock fighting, Abraham Lincoln purportedly said: “As long as the Almighty permitted intelligent men, created in his image and likeness, to fight in public and kill each other while the world looks on approvingly, it’s not for me to deprive the chickens of the same privilege.” *Lock v. Falkenstine*, 380 P.2d 278, 280 (Okla. Crim. App. 1963). Of course, the President seems to have missed the important distinction that “intelligent men” are presumably capable of making even a bad choice while “dumb animals” are forced into the pit. Nevertheless, present-day advocates echo similar sentiments and insist the competitions “stand[] for all that’s right and good: family, diligence, devotion, conscientiousness, hard work and sacrifice.” Robert Kaiser, *Poor Man’s Racehorse: Cockfighters Consider Contest Noble Sport*, LEXINGTON HERALD-LEADER, Mar. 15, 1992, at A1. One advocate suggests “[t]he game chicken is a poor man’s racehorse . . . . We take better care of these chickens than we take of our wives.” *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Evans et al., *supra* note 19, at 827–28 (“[T]he defining characteristics of and opportunities for expressing masculinity” vary among subcultures. However, because Southern men are disproportionately involved in this activity, it is important to understand whether, as some people insist, they have a “propensity for violence . . . tied directly to a culture of honor . . . in which affronts are met with violent retribution.”). Some studies do support the idea that, to retain their status as men, Southerners must behave in a certain way. *Id.*

<sup>60</sup> *Id.* at 827. “Today, a subculture exists (predominantly among the Southern, white, working class) which is dedicated to the continued survival of the sport of dogfighting.” *Id.* (emphasis added).

<sup>61</sup> See, e.g., Dan Wakefield, *Bloodsport and Stereotypes*, BOS. GLOBE, Sept. 8, 2007, at 11A (discussing stereotypes that “bloodsport” is part of America’s ethnic minority culture where dog fighting is considered as arising from “black” or “African-American” culture and cockfighting stemming from “Latino” or “Hispanic” culture).

<sup>62</sup> Kathy Rudy, *Race an Issue In How We Look at Vick*, S. FLA. SUN-SENTINEL, Sept. 9, 2007, at 5G. An African-American award-winning actress failed to make this distinction and created quite a stir when she defended Michael Vick on national television after his confession and apology. Lisa de Moraes, *Whoopi, Day 2: She Doesn’t Condone Dogfighting*, WASH. POST, Sept. 6, 2007. Whoopi Goldberg introduced the topic on her daytime talk show and

Dog fighters actually appear to fall into three diverse groups. The first are professionals who “breed generations of skilled ‘game dogs,’” take a great deal of pride in the lineage of their animals, and charge enormous stud fees.<sup>63</sup> Because they are “so geographically dispersed,” they use the internet to communicate.<sup>64</sup> They design their web sites to look like they are breeders and even publish disclaimers asserting they do not condone dog fighting.<sup>65</sup> These fighters, who are “wealthy and experienced,” spend thousands of dollars on their animals and host contests that are “extremely well organized and difficult for law enforcement to find.” One reason is that participants and spectators are not even told the location until just before the match.<sup>66</sup>

The second group consists of hobbyists or enthusiasts. These mid-level fighters are more likely to operate within a particular geographic area, probably know each other, and generally return to the same venue. While they may have criminal backgrounds, they might also appear to be respected community members. Spectators vary widely and include “hard core criminals” as well as “families with children.”<sup>67</sup>

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said,

“One of the things I haven’t heard anybody say is . . . this is not an unusual thing from where [Vick] comes from. It’s like cockfighting – cockfighting in Puerto Rico . . . . There are certain things that are indicative to certain parts of our country. He’s from the South. . . . From the Deep South.” [When one of her co-hosts interrupted and asked] “How about dog torturing and dog murdering,” Goldberg replied, “[u]nfortunately, it’s part of the thing.” [Not surprisingly, many people were outraged and by the next day Goldberg was explaining that she was not condoning what Vick did but merely trying to point out that he] “is a kid who comes from a culture where this is not questioned.”

*Id.* The HSUS president and CEO Wayne Pacelle immediately objected, saying Goldberg is “flat wrong when she says that dogfighting is acceptable in the South or any other part of the country for that matter. . . . It’s treated as a felony in the South. And while there’s a history of dogfighting in the rural South among whites, urban dogfighting is a much more recent phenomenon.”

Richard L. Eldredge, *Wednesday Talk*, ATL. J. CONST., Sept. 5, 2007, at B2.

<sup>63</sup> GIBSON, *supra* note 20, at § IV.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* See also George Dohrmann, *The House On Moonlight Road*, 106 SPORTS ILLUS. June 4, 2007, at 45, 48 [hereinafter *House On Moonlight Road*] (stating that HSUS investigated one case where participants were told to meet miles from the actual location and, when they arrived, were required to surrender their car keys and cell phones before they were taken to the fight).

<sup>67</sup> *Id.* at 45. See also Paula Zahn Now: *Michael Vick Pleads Not Guilty to Dogfighting Charges; How Widespread Is Dogfighting In America?* (CNN television broadcast July 27, 2007). One especially troubling aspect of this activity is the number of minors who are involved. An early survey of the Chicago Anti-Cruelty Society found that one in five grammar school children “actively participat[ed] in dogfighting.” In other words, they not

Street fighters, the third group, are the most violent. In fact, many are criminals and gang members who use the competitions for gambling and drug trafficking. To these people, the dogs reflect and establish their status. It is easy for them to acquire animals as they either purchase them for a few hundred dollars or, more likely, breed or steal them. Championship matches “aggrandize the gang leader’s supremacy and intimidate younger members.”<sup>68</sup>

Clearly, despite the fact that very different groups sponsor these events, they all seem to be associated with criminals, gambling, and other illegal activities.

## II. THE LEGAL LANDSCAPE

State and federal statutes prohibit cruelty to animals.<sup>69</sup> Dog fighting is abuse. It is illegal in every state<sup>70</sup> as well as under federal law.<sup>71</sup>

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only saw the bouts but “[t]hey were getting the dogs, bringing the dogs, and involved in the fights.” *Id.* Accord Gov. Blagojevich Signs Legislation Toughening Penalties Against Owners of Vicious Dogs That Endanger Public, US ST. NEWS, May 31, 2006. Concerned about the effect this could have on youngsters, legislators passed, and the governor signed, a bill making it a Class 4 felony to bring someone under 13 years old to a dog fight the first time and a Class 3 felony thereafter, punishable by a sentence of two to five years in jail. *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> George Chidi, *Dead Dog Rechecked in Falcon’s Case*, ATLANTA J. CONST., Aug. 15, 2007, at J3. Unfortunately, professional athletes also commit other types of animal abuse completely separate from fighting. For example, in February 2007, police charged Michael Vick’s teammate, Jonathan Babineaux, with felony animal-cruelty. Following a disagreement between the Falcons defensive tackle and his girlfriend, she left the house. But he called her and told her she needed to return because something had happened to her dog, Kilo. When she arrived the pit bull mix was in “severe physical distress.” His girlfriend took the pit bull to an animal emergency center. Hospital officials contacted police after pronouncing Kilo dead. Babineaux was arrested but released from jail on \$2,300 bond. *Id.* See also Andria Simmons, *Charge Dropped In Dog’s Death: Stakes High Falcons’ Babineaux Says Name Cleared*, ATLANTA J. CONST., Nov. 8, 2007. Although an autopsy revealed that the animal died due to blunt trauma, the district attorney dropped charges in November because both the cause of death and how the injury occurred remained unclear. Babineaux had insisted from the beginning that he did not intentionally hurt the dog. His lawyer said the football player was just protecting himself and his five month old daughter when he spun the animal around in a circle by swinging the leash, a technique his trainer recommended he use if Kilo became aggressive. But the trainer insisted “spinning” could not cause such a traumatic injury. “All you do is use centrifugal force . . . . It’s quite safe.” *Id.*

<sup>70</sup> See Humane Society of the United States, Fact Sheet—Dogfighting: State Laws, (2008) [hereinafter Humane Society Fact Sheet], available at [http://www.hsus.org/web-files/PDF/dogfighting\\_statelaws\\_1.pdf](http://www.hsus.org/web-files/PDF/dogfighting_statelaws_1.pdf) (providing a table with statute numbers, penalties, and loopholes).

<sup>71</sup> 18 U.S.C. § 49 (2000); 7 U.S.C. § 2156 (2000). The Animal Fighting Prohibition Enforcement Act amends the Animal Welfare Act by increasing the penalty for animal

Nevertheless, these competitions are “undergoing a resurgence, transformed from a once largely rural and illicit sport into a fashionable pastime with a certain outlaw cache in many urban neighborhoods.”<sup>72</sup> Today this criminal activity ranges from “highly organized, well-attended matches featuring tens of thousands of dollars in betting pools and prize money to impromptu bouts on street corners and in playgrounds.”<sup>73</sup>

#### A. State Law

Dog fighting is a felony in 48 states; it is a misdemeanor in Idaho and Wyoming.<sup>74</sup> However, even where it is a felony, possession of fighting animals or equipment and/or attending a match might only be a misdemeanor.<sup>75</sup>

Constitutional challenges to such statutes based on overbreadth<sup>76</sup> or void for vagueness<sup>77</sup> are generally rejected. Courts also decide that such laws are a valid exercise of the police power.<sup>78</sup>

#### B. Federal Law

On May 3, President Bush signed the Animal Fighting Prohibition

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fighting violations from a misdemeanor to a felony. *Legislative Review*, 12 ANIMAL L. 277, 285 (2006).

<sup>72</sup> Steve Malanga, *The Sick Hipness of Dog Fighting: For Too Many Top Athletes and Entertainers, This Savage Sport Is Outlaw Cool*, CHI. SUN-TIMES, June 17, 2007, at B2.

<sup>73</sup> *Id.* See also Evans & Forsyth, *supra* note 11, at 56 (stating that wagers generally range “from a couple hundred dollars to as much as \$100,000”).

<sup>74</sup> Humane Society Fact Sheet, *supra* note 70 (describing dog fighting as a felony in 48 states, the District of Columbia, Puerto Rico, and the Virgin Islands).

<sup>75</sup> *Id.*

<sup>76</sup> See, e.g., *Gonzalez v. State*, 941 So. 2d 1226, 1229 (Fla. Dist. Ct. App. 2006) (holding that Florida law prohibiting knowingly promoting or knowingly attending fighting or baiting of animals was not overbroad as to person attending cockfight because the conduct had to be done “knowingly” and thus the statute required a level of mens rea that would preclude punishing innocent bystanders).

<sup>77</sup> See, e.g., *State v. Arnold*, 557 S.E.2d 119, 122 (N.C. Ct. App. 2001) (holding that a North Carolina law providing that a “person who participates as a spectator at an exhibition featuring the fighting or baiting of a dog is guilty of a Class H felony” was not unconstitutionally vague as the plain language “is adequate to convey a clear understanding of what conduct is unlawful”).

<sup>78</sup> *Id.* at 121 (holding that the law criminalizing being a spectator at a dog fight was a valid exercise of the police power as the statute was enacted to protect the animals and to conserve public morals). The *State v. Arnold* court stated that the law’s objective of discouraging spectators was valid because if no one attended the events, either for amusement or profit, dog fighting as a group activity would be in jeopardy. *Id.*

Enforcement Act of 2007.<sup>79</sup> Under this statute, a violation of the federal animal fighting law became a felony and the maximum jail time increased from one year to three.

Although this new legislation showed that Congress realizes animal fighting is very serious, fortunately for Vick, charges against him stemmed from a drug search involving his cousin just eight days before the law was signed. Thus, even though investigators found 66 animals (mostly pit bulls), and equipment used in dog fighting, on the star quarterback's rural property, the federal charge was only a misdemeanor. However, in Virginia, dog fighting is a felony and Vick is currently facing state charges and a jury trial.

Obviously legislators and judges recognize that dog fighting is bad for the participants—both the human and nonhuman animals. Because of the devastating effect on the animals, and the criminal activity surrounding the fights, people who engage in such behavior—even if they are good with a baseball, basketball, football, or hockey puck—should be prosecuted.

### III. SPORTS FIGURES

#### *A. Athletes*

Despite the absence of reported appellate cases, a number of professional athletes engage in illegal or inappropriate activities involving animals.<sup>80</sup> In fact, animal advocates say dog fighting is pervasive among these players,<sup>81</sup> especially in the NFL.<sup>82</sup> While most people generally agree such behavior is unacceptable, sadly, when a popular or talented player is involved, fans may be conflicted. Specific examples are helpful in trying to

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<sup>79</sup> 18 U.S.C. § 49 (2000); 7 U.S.C. § 2156 (2000). *See, e.g.*, Veronica Gorley Chufo, *Old Law Applies In Vick Case*, DAILY PRESS, July 20, 2007, at A1.

<sup>80</sup> Alan Judd, *Vick Incident Nothing New, Troubling Legal Issues Have Dotted Falcons Star's Career*, COLUM. LEDGER-ENQUIRER, July 22, 2007. People allow talented athletes "incredible leeway," according to psychologists and others who study the actions of elite players. *Id.* "To some degree, there is a sense of entitlement and a sense of things get overlooked and things get taken care of and the rules don't apply," said a New York psychologist who consults with professional sports teams. *Id.*

<sup>81</sup> Laura Allen, *Vick Dogfighting Investigation Widens With Feds Getting Involved* (2008), available at <http://network.bestfriends.org/news/print.aspx?np=14947> (last visited Apr. 1, 2008) (stating that authorities believe that dog fighting is part of the professional athletes' culture and that they participate for the excitement).

<sup>82</sup> *See, e.g.*, Alicia P.Q. Wittmeyer, *Vick Indicted; Hearing Date Expected Today for Football Star, Three Others*, DAILY PRESS, July 18, 2007, at A1 (describing the prevalence and popularity of dog fighting amongst NFL players as well as the charges Vick faces).

understand the problem.

### 1. Michael Vick

As previously mentioned, recent allegations concerning Michael Vick's participation in dog fighting ignited nationwide interest in this "blood sport."<sup>83</sup> It is useful to review the facts and reactions to charges of horrific abuse committed by the once-popular quarterback.

The saga apparently began early in 2001 when Michael Vick and his two friends, Quantis L. Phillips<sup>84</sup> and Tony Taylor, decided to sponsor dog fighting competitions.<sup>85</sup> Taylor found property they believed would be good for training pit bulls to fight.<sup>86</sup> Then, just 51 days after Vick—the first player selected in the 2001 NFL draft—inked a six-year, \$62-million contract with the Falcons, he bought the 15-acre Surry County land for \$34,000.<sup>87</sup> Vick, Phillips, and Taylor began acquiring canines and, from that point on, they used the property for housing and training pit bulls and hosting dog fights.<sup>88</sup> They named their business Bad Newz Kennels.<sup>89</sup>

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<sup>83</sup> See, e.g., Tom Weir, *Vick Case Sheds Light On Dark World of Dogfighting*, USA TODAY, available at [http://www.usatoday.com/sports/football/nfl/falcons/2007-07-18-vick-cover\\_N.htm](http://www.usatoday.com/sports/football/nfl/falcons/2007-07-18-vick-cover_N.htm) (last visited Apr. 1, 2008) (stating that the Vick case has helped bring dog fighting to the attention of the world and shows the importance and the need to stop it). To animal advocates who have watched dog fighting explode into a multimillion-dollar industry that includes magazines, underground DVDs, and music (videos by rappers such as DMX and Jay-Z), seeing Vick implicated in dog fighting is "like landing the great white whale." Dohrmann, *supra* note 66, at 47. They have been helping build the case against Vick both in the media and with the police for two reasons. First, of course, they believe the quarterback was involved based on years of rumors that he participated in dog fighting. Second, and possibly even more important, is that an indictment filed against an NFL superstar will help combat this abusive behavior. "There exists a dogfighting subculture in the NFL and NBA," according to Wayne Pacelle, president of HSUS. *Id.* "And to have an athlete of [Vick's] stature charged would be an enormous wake-up call to everyone in professional sports who has dabbled in or dived into the underworld of dogfighting." *Id.* On a related note, HSUS sued Amazon.com as well as publishers of magazines that promote animal fighting. See Humane Society of the United States, *Amazon.com and Animal Fighting*, June 7, 2007, available at [http://www.hsus.org/acf/news/amazoncom\\_summary.html](http://www.hsus.org/acf/news/amazoncom_summary.html) (last visited Apr. 1, 2008).

<sup>84</sup> Phillips, Vick's teammate in high school, later worked for MV7, the quarterback's marketing company. *Case Against Vick*, *supra* note 40, at 38.

<sup>85</sup> Indictment, *supra* note 3, at ¶ 4.

<sup>86</sup> *Case Against Vick*, *supra* note 40, at 38.

<sup>87</sup> *Id.*

<sup>88</sup> Indictment, *supra* note 3, at ¶¶ 6–7.

<sup>89</sup> *Id.* at ¶ 10. "Bad Newz" is the street nickname for Vick's hometown and how Vick referred to it on his website. Veronica Gorley Chufo, *Feds Might Have More Cards In Vick Case*, DAILY PRESS, July 22, 2007, at A6.

Between 2002 and 2005<sup>90</sup> they developed the property, including the addition of a fence to shield the compound from view, to further the fighting operation.<sup>91</sup> Dogs were tested. If they failed, they were executed.<sup>92</sup> There were approximately 30 fights, either onsite or held at other locations.<sup>93</sup>

Betting on a fight's outcome is part of the sport of dog fighting. Some of the purses soared as high as \$26,000 on a single fight.<sup>94</sup> However, it seems unlikely that Vick was financing the venture to make money because, in 2004, Nike introduced a line of his shoes<sup>95</sup> and he signed a 10-year, \$130-million contract, which included a \$37-million signing bonus. At that time, his was the largest contract in NFL history.<sup>96</sup>

Vick's wealth and popularity made it even more surprising<sup>97</sup> that, on

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<sup>90</sup> Although the indictment is somewhat vague on specific fight dates it seems he was involved during the football season. In 2003, for example, Vick allegedly attended two matches in the fall. This was his third NFL season, during which he missed Atlanta's first 11 games due to injury. Several other bouts occurred "late in a year," which also would have been while he should have been playing. *Case Against Vick*, *supra* note 40, at 39

<sup>91</sup> Indictment, *supra* note 3, at ¶ 11.

<sup>92</sup> *Id.* at ¶¶ 12–17. In April 2007, Vick, Peace, and Phillips executed an estimated eight dogs by hanging and drowning. At least one animal was killed by being slammed to the ground. *Id.* at ¶ 83. An HSUS animal fighting expert says he knows many ways fighters kill dogs that will not fight but he had never heard of anyone slamming a canine into the ground until it was dead. "I assume these were young dogs because the effort it would take to kill a full-grown fighting dog in this way would be incredible." *Case Against Vick*, *supra* note 40, at 39. Vick's co-defendants were willing to testify that he killed dogs. Troy Johnson, *Final Whistle May Have Blown On Vick's Career*, COLUM. LEDGER-ENQUIRER, Aug. 19, 2007. Of course, that became unnecessary in the federal prosecution when he pled guilty.

<sup>93</sup> Indictment, *supra* note 3, at ¶¶ 18–82.

<sup>94</sup> John W. Allman, *Local Officials: Take Offensive On Dog Fighting: 7 Arrests So Far In '07, 10 Cases Are Pending*, TAMPA TRIB., July 28, 2007, at 1.

<sup>95</sup> *Chufu*, *supra* note 89, at A6.

<sup>96</sup> *Case Against Vick*, *supra* note 40, at 39.

<sup>97</sup> Vick's name surfaced in connection with dog fighting during a 2004 investigation of David Ray Tant (one of the most notorious pit bull breeders). Tant is currently serving a 40-year sentence in a South Carolina prison after being charged with 41 counts of dog fighting and one count of assault and battery of a high and aggravated nature. (This sentence is believed to be one of the heaviest ever involving dog fighting.) Ohm Youngmisuk, *NFL Star's Name Came Up In 2004 Dogfighting Investigation*, COLUM. ST., July 30, 2007, at A1. While William Frick, the attorney who successfully prosecuted Tant, said that they had received information that Vick "possibly had some dogs somewhere here in South Carolina," he admitted he found no ties between the two during his extensive inquiry. However, when Virginia authorities began their 2007 probe into the football player's possible involvement in illegal dog fighting, a state investigator traveled to South Carolina to interview a prisoner they would not identify. One HSUS official speculated that the inmate was Tant; however he could not be certain because South Carolina's attorney general "has thrown a lot of dogfighters in jail." Nevertheless, the timing was right as the 18-page indictment against Vick alleges that the quarterback and his associates traveled to South Carolina in 2003 to participate in a dog fight. Although the facts lead some people to believe Vick might have been mixed up with



April, 25, 2007, investigators discovered 66 pit bulls, many injured and scarred, as well as dog fighting equipment,<sup>98</sup> on his Surry County property.<sup>99</sup> The search warrant had been issued after his cousin, Davon Boddie, who was living in the home, was arrested and charged with possession of marijuana with intent to distribute. As soon as the story came out, Vick insisted he was “never” at the house.<sup>100</sup>

On July 6, 2007, federal agents returned to the property and removed evidence.<sup>101</sup> Eleven days later Vick was indicted on conspiracy charges: “to travel in interstate commerce in aid of unlawful activities and to sponsor a dog in an animal fighting venture.”<sup>102</sup>

Just a few days after Vick was indicted, Nike suspended the release of Zoom Vick V, a new shoe that was named after the quarterback.<sup>103</sup> Nike issued a statement that it “consider[s] any cruelty to animals inhumane and abhorrent.”<sup>104</sup> At approximately the same time, Reebok stopped sales of Vick’s jersey and Upper Deck, a trading card company, announced they were pulling his cards from new packs.<sup>105</sup>

Falcons owner Arthur Blank considered suspending Vick for four games while the facts were sorted out but the NFL asked him to wait until the league conducted its own investigation.<sup>106</sup> However, Commissioner Roger Goodell did order Vick to stay away from training camp.<sup>107</sup>

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Tant, the breeder denies knowing the football star. *Id.*

<sup>98</sup> The equipment included treadmills used for conditioning dogs, a stick to pry fighting dogs apart, and a “rape stand,” a device used to hold down aggressive females for breeding. Alicia P.Q. Wittmeyer, *Vick Indicted; Hearing Date Expected Today for Football Star, Three Others*, DAILY PRESS, July 18, 2007, at A1.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Indictment, *supra* note 3, at Count One.

<sup>103</sup> See Whitney Beckett, *Nike Suspends Release of Vick Shoe*, WOMEN’S WEAR DAILY, July 20, 2007, at 2 (stating Nike’s belief that Vick should be afforded due process but that his shoe will be delayed as a marketing decision).

<sup>104</sup> *Id.*

<sup>105</sup> See AP, *NFL Report*, NEWSDAY, July 28, 2007, at A34 (discussing the consequences of protests surrounding Vick’s case); see *infra* notes 116–121 (discussing the financial costs to Vick).

<sup>106</sup> Under the collective bargaining agreement the most severe discipline a team can impose is for “conduct detrimental to the club.” Based on such behavior, the franchise can impose a fine of up to a week’s salary or suspend the player without pay for up to four weeks. Jan Stiglitz, *Player Discipline In Team Sports*, 5 MARQ. SPORTS L.J. 167, 182 (Spring 1995). The league’s new conduct policy permits the Commissioner to impose a harsher penalty. ESPN.com News Services, *Falcons Had Planned to Suspend Vick Before NFL Told Them to Hold Off*, July 25, 2007, available at <http://sports.espn.go.com/nfl/news/story?id=2947821>.

<sup>107</sup> See ESPN.com News Services, *Vick Ordered to Avoid Camp During Investigation*,

Although some football players and other famous people jumped to Vick's defense, in the face of substantial criticism, they subsequently tried to "clarify" their statements. Probably the best example is Clinton Portis who plays for Washington. After stating that he believed dog fighting should be legal, the Redskins running back claimed the activity is a "prevalent part of life" and he appeared stunned that Vick might be incarcerated "for no reason—over a dog fight."<sup>108</sup> When his comments sparked a firestorm of negative publicity, Portis apologized, said he was joking, and admitted his statements were inappropriate.<sup>109</sup>

Animal rights advocates organized protests calling for Vick's suspension. At Falcons headquarters in Flowery Branch, Georgia, approximately 50 protesters from People for the Ethical Treatment of Animals (PETA) brought their dogs and carried signs stating "Sack Vick," "Kick Vick," and "Tackle Cruelty."<sup>110</sup> About 50 people also picketed on Park Avenue in front of NFL offices demanding that the league suspend the quarterback. The Commissioner was not in the building at the time because he was meeting with American Society for the Prevention of Cruelty to Animals (ASPCA) officials.<sup>111</sup> Companies for whom Vick was a spokesman were not spared. The Humane Society of the United States (HSUS) organized rallies to convince Nike to stop selling Vick merchandise<sup>112</sup> and forwarded to the company more than 165,000 messages that they received on their web site to persuade it to suspend the accused quarterback.<sup>113</sup>

Despite his initial protestations of innocence, after his co-defendants

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July 24, 2007, available at <http://sports.espn.go.com/nfl/news/story?id=2946832> (explaining the Commissioner's stance on the Personal Conduct Policy as it applies to players).

<sup>108</sup> Jim Ducibella, *The Fur Flies After Comments By Portis On Vick, Dog Fighting*, VIRGINIAN-PILOT & LEDGER STAR, May 23, 2007, at 1.

<sup>109</sup> See Tom Knott, *Redskins' Portis Turns Tail On Dogfight Remark*, WASH. TIMES, June 7, 2007, at B02 (explaining the backlash that a fellow football player received after downplaying animal cruelty).

<sup>110</sup> Dorrie Turner, *Protesters Chide Vick: Animals Advocacy Group Demands QB's Suspension*, RICHMOND TIMES-DISPATCH, July 24, 2007, at D3.

<sup>111</sup> See Judy Battista, *N.F.L. Faces Protests and Pressure Over Vick*, N.Y. TIMES, July 21, 2007, at D4 (explaining pressure on the league to suspend Vick). Ironically, earlier in 2007, the NFL and the ASPCA had begun working together on public-service announcements and programs to help educate people, including athletes, about the proper treatment of animals. *Id.*

<sup>112</sup> See *Nike Dogged By Relationship With Michael Vick*, PORTLAND BUS. J., July 20, 2007 (referring to a protest being organized by HSUS to demand Nike discontinue its relationship with Vick).

<sup>113</sup> Richard Sandomir, *In Endorsements, No Athlete Is a Sure Thing*, N.Y. TIMES, Aug. 1, 2007, at D5.

pled guilty on August 17, 2007 and agreed to testify against him, Vick also filed a plea agreement.<sup>114</sup> Federal prosecutors suggested 12 to 18 months incarceration. However, the judge warned Vick that he was not bound by their recommendation. Shortly after his guilty plea, Vick made his first public comments and apologized to the NFL Commissioner, the Falcons, and “to all the young kids out there for my immature acts.”<sup>115</sup>

Nevertheless, the NFL suspended him indefinitely without pay. Goodell also authorized the Falcons to seek return of the \$22,000,000 in signing bonus money that Vick received as part of his 2004 contract.<sup>116</sup> However, the Commissioner said he would wait to see what happened with the legal proceedings before determining what other sanctions the league would impose. Under the personal conduct policy, associating with gamblers is enough to impose a lifetime ban from the NFL.<sup>117</sup>

In fact, experts estimate that Vick will lose more than \$200,000,000 based on his contract, endorsements, and potential income such as personal appearance fees.<sup>118</sup> Although the Falcons have not yet cut Vick because they would lose too much under the salary cap, they are expected to do so. That move alone will cost him \$70,000,000. In addition, the team sought to recover approximately \$20,000,000 in bonus money.<sup>119</sup>

As a result, in October, Special Master Stephen B. Burbank ruled that the Falcons were entitled to recover \$19,970,000 in bonuses paid from 2004

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<sup>114</sup> See ESPN.com News Services, *Vick Timeline In Dogfighting Case*, available at <http://sports.espn.go.com/nfl/news/story?id=2983141> (last visited Apr. 1, 2008) (supplying a timeline of legal and non-legal events in the Vick case).

<sup>115</sup> Sam Farmer, *Vick Vows to Lead New Life; QB Apologizes to Goodell, Team, 'Kids'*, CHI. TRIB., Aug. 28, 2007, at 3.

<sup>116</sup> See ESPN.com News Services, *Vick Suspended Indefinitely by NFL*, Aug. 24, 2007, available at <http://sports.espn.go.com/nfl/news/story?id=2990157> (last visited Apr. 1, 2008) (discussing the Commissioner's decision to suspend Vick from the NFL).

<sup>117</sup> See ESPN.com News Services, *Vick To Be Sentenced Dec. 10 After Guilty Plea*, Aug. 28, 2007, available at <http://sports.espn.go.com/nfl/news/story?id=2992890> (last visited Apr. 1, 2008) (discussing Vick's pleading guilty to animal cruelty). Goodell was also angry that Vick had lied to him when speculation about his involvement first surfaced right before the April 2007 draft. Following a shooting at Virginia Tech, Vick's alma mater, the league was honoring the school and had invited him to attend. At that time, Goodell asked Vick about the rumors and the quarterback assured him that he knew nothing about dog fighting on his property. Gary Myers, *Words Will Come Back to Bite Vick*, Aug. 21, 2007, available at [http://www.nydailynews.com/sports/football/2007/08/21/2007-08-21\\_words\\_will\\_come\\_back\\_to\\_bite\\_vick.html](http://www.nydailynews.com/sports/football/2007/08/21/2007-08-21_words_will_come_back_to_bite_vick.html) (last visited Apr. 1, 2008).

<sup>118</sup> See Tim Lemke, *When It All Falls Down, Vick's Conviction Likely to Cost Him About \$200 Million*, WASH. TIMES, Dec. 12, 2007, at C02 (discussing the financial consequences to Vick).

<sup>119</sup> *Id.*

through 2007 because the quarterback used proceeds from his contract to finance illegal activities.<sup>120</sup> However, in February 2008, District Judge David Doty, who has handled cases involving the collective bargaining agreement for nearly 20 years, granted the Players' Union's appeal. He concluded that teams cannot recover roster bonuses as players earn them when they make the roster. By contrast, signing bonuses are governed by separate rules so teams can get them back.<sup>121</sup>

Notably, while on the day of his guilty plea the judge had warned Vick that he would not look favorably upon any further trouble, while awaiting sentencing, the former quarterback tested positive for marijuana which was a violation of the conditions of his release. As a result, U.S. District Judge Henry Hudson ordered Vick confined to his Virginia home between 10 p.m. and 6 a.m. with electronic monitoring.<sup>122</sup>

Also while awaiting sentencing, Vick attended an eight-hour PETA "Developing Empathy for Animals" class. Despite the fact that he appeared attentive and interested, the teacher vehemently denied rumors that the quarterback was going to do a public service announcement.<sup>123</sup>

In November 2007, Vick's Virginia property was sold for \$450,000 to Todd Builders who planned to auction it off for a profit. However, it failed to sell after the owner rejected the \$747,000 high bid even though that equaled the assessed value. As of this writing, the home was on the market for \$1,100,000.<sup>124</sup>

Three weeks before the hearing, Vick surrendered to start serving his

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<sup>120</sup> See Steve Karnowski, *Vick Awaits Ruling On Bonus Money*, VIRGINIA PILOT AND LEDGER-STAR, Dec. 1, 2007, at 2 (explaining the union lawyer's argument that Vick's "roster bonus" cannot be forfeited under the collective bargaining agreement because it should be treated the same as a "performance bonus" and the NFL attorney's counter-argument that it should be treated like a "signing bonus allocation" which can be forfeited).

<sup>121</sup> *White v. National Football League*, 533 F. Supp. 2d 929 (D. Minn. 2008); see also ESPN.com News Services, *Federal Judge Rules Vick Can Keep More Than \$16 Million In Bonus Money*, Feb. 5, 2008, available at <http://sports.espn.go.com/nfl/news/story?id=3229782> (last visited Apr. 1, 2008).

<sup>122</sup> Associated Press, *Drug Test Lands Vick In More Trouble*, CHARLESTON DAILY MAIL, Sept. 27, 2007, at 5B.

<sup>123</sup> See *Bottom Lines*, ALBANY TIMES UNION, Oct. 6, 2007, at C2. ("If Michael Vick went on TV and said, 'Look at me. I have lost everything—my career, my income, respect, friends. I've hurt my family, and I am an object of scorn. My life is ruined. I have gone from being a star to the gutter, and now I'm going to jail. Don't be like me. If you fight dogs, stop. And if you don't, don't start,' we would be very pleased. Short of that, it's not happening.")

<sup>124</sup> See Veronica Gorley Chufo, *Ex-Vick House On the Market for \$1.1M*, DAILY PRESS, Jan. 1, 2008, at B1 (explaining the financial status of the property used to store Vick's animals).

prison term.<sup>125</sup> Despite his handwritten plea, sent from jail, for leniency—and letters from supporters including home run slugger Hank Aaron and boxer George Foreman—on December 10, 2007, Judge Hudson sentenced Vick to 23 months.<sup>126</sup> The judge said he was “not convinced [that Vick had] fully accepted responsibility.”<sup>127</sup>

On November 27, 2007, Vick agreed to pay nearly \$1,000,000 for the care of the pit bulls removed from his property.<sup>128</sup> Although some of the dogs had to be euthanized, 47 were saved and sent to eight different no-kill shelters or animal sanctuaries around the country. A few were put up for adoption but most will live out their lives with rescue organizations.<sup>129</sup>

Meanwhile, a state judge set an April 2, 2008 trial date on the Surry County dog fighting and animal-cruelty charges. Although Vick, who had already begun serving his federal sentence, initially said he planned to fight state charges because he cannot be convicted twice for the same crime, his lawyer refused to give any indication of what the strategy would be when questioned after the hearing in November of 2007.<sup>130</sup>

On January 7, 2008, Vick was transferred to the minimum security

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<sup>125</sup> See AP, *Vick Surrenders to Begin Serving Sentence Before Dec. 10*, Nov. 19, 2007, available at <http://sports.espn.go.com/nfl/news/story?id=3119025> (explaining that Vick began serving his sentence early).

<sup>126</sup> Adrienne T. Washington, *Vick Gets Prison, But Also a Second Chance*, WASH. TIMES, Dec. 11, 2007, at B02. Two of Vick's co-defendants were sentenced November 30, 2007. Purnell Peace received 18 months and Quanis Phillips received 21 months. *Id.* On December 14, 2007, Tony Taylor was sentenced to two months in prison. Although prosecutors recommended he not get jail time because he cooperated with police and provided information that helped make the case against the other defendants, and ultimately led to their guilty pleas, the judge said it would not be fair to let him off with only probation because he was “as much an abuser of animals as any other defendant in this case.” Associated Press, *Judge: “You Were As Much An Abuser of Animals As Any Other Defendant,”* Dec. 14, 2007, available at <http://sports.espn.go.com/nfl/news/story?id=3154573>. Taylor was released on March 20, 2008 but still faced state charges on May 7, 2008. Veronica Gorley Chufó, *New Trial Date To Be Set for Vick On State Charges*, DAILY PRESS, Mar. 24, 2008.

<sup>127</sup> Mike Hiserman & Sam Farmer, *This Isn't the End of Vick's Career: But First, QB Faces 23 Months In Prison*, ST. PAUL PIONEER PRESS, Dec. 11, 2007, at D5. The judge agreed with a probation officer's finding that Vick lied about his role in killing dogs and about his drug use. In addition, he was angry that Vick tested positive for marijuana on September 13, 2007, shortly after he pleaded guilty in the case. *Id.*

<sup>128</sup> Dave Forster, *Judge Sets Trial Date for Vick On State Charges*, VIRGINIAN-PILOT & LEDGER STAR, Nov. 28, 2007, at 1.

<sup>129</sup> See *News Services, Digest*, ST. LOUIS POST-DISPATCH, Jan. 3, 2008, at A3 (stating that Vick's pit bulls were transferred to no-kill shelters).

<sup>130</sup> See Veronica Gorley Chufó, *Vick to Face Jury Trial On Surry Charges*, DAILY PRESS, Nov. 28, 2007, at A1 (referring to Vick's attorneys' statements that suggest the former quarterback may no longer be fighting state charges).

facility in Leavenworth, Kansas, according to his attorneys.<sup>131</sup> Based on his positive drug test while awaiting sentencing, Vick appears to be eligible for the Residential Drug Abuse Program (RDAP).<sup>132</sup> RDAP accepts inmates who qualify for early release (sentence reduction of up to 12 months) if they successfully complete the program, even if they were not convicted of drug-related offenses, provided they meet certain requirements.<sup>133</sup> The program consists of intensive therapy that lasts six to 12 months, with a minimum of 500 hours of treatment.<sup>134</sup> Although the reason is not clear, as of March 8, 2008, Vick was not yet in the RDAP.<sup>135</sup>

## 2. LeShon Johnson

Around 10 p.m. on February 12, 2000, an Osage County deputy learned of a pit bull fight on property owned by LeShon Johnson, a running back for the New York Giants.<sup>136</sup> When witnesses reported seeing vehicles hauling many dogs, investigators assembled a variety of police who arrived approximately an hour later. Officers approached a barn and heard “people yelling and saw individuals running to a house” nearby. They observed the animals in cages.

A woman at the house, identified as Michele Lalani Johnson, said 12 to 15 people were “just having a party and visiting.” Deputies found “blood

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<sup>131</sup> See D. Orlando Ledbetter, *Vick Enters Drug Program*, ATLANTA J. CONST., Jan. 8, 2008, at D1 (discussing the Bureau of Prisons’ drug treatment program).

<sup>132</sup> *Id.* While most sources conclude Vick is eligible for the program, not everyone agrees. Some federal authorities in Richmond assert that the prisoner’s sentence must be at least two years to qualify. Bill Geroux & Michael Martz, *Vick Moved to Prison In Kan. With Drug Program: Through Rehab, NFL Star Hopes to Reduce His 23-Month Sentence*, RICHMOND TIMES-DISPATCH, Jan. 8, 2008, at B2. See 18 U.S.C.A. § 3621 (2006) (establishing the residential substance abuse program, providing the criteria, and creating incentive through sentence reduction).

<sup>133</sup> Ledbetter, *supra* note 131.

<sup>134</sup> *Id.*

<sup>135</sup> Michael D. Smith, *Michael Vick Not In Prison Drug Program*, Mar. 8, 2008, available at <http://sports.aol.com/fanhouse/2008/03/08/michael-vick-not-in-prison-drug-program> (last visited Apr. 1, 2008).

<sup>136</sup> See generally Tony Thornton, *Court: Ex-NFL Player Faces Judge Dog Fight Testimony Heard*, OKLAHOMAN, Oct. 28, 2004, at 16A (explaining background of LeShon Johnson and his connection with dog fighting after home searches in July). Johnson was a star running back at Haskell High School in the 1980s and also played at Northeastern Oklahoma A&M in Miami, Oklahoma. He transferred to Northern Illinois and finished sixth in the 1993 Heisman Trophy voting after leading the nation in rushing. In addition to the Giants, Johnson played with the Arizona Cardinals and the Green Bay Packers of the NFL, as well as with the Chicago Enforcers of the XFL. Animal Abuse Database Profile: LeShon Johnson, available at <http://www.pet-abuse.com/profiles/1912/> (last visited Apr. 1, 2008).

washed out of the door onto the ground” in the barn. Several stalls held dogs, “and one had fresh gashes on its head area indicating it had been in a fight.”<sup>137</sup>

Officers found coveralls with blood on a sleeve and an Oklahoma driver’s license in Michele Johnson’s name in a pocket. She claimed the blood got on the overalls when someone handed her an injured dog, but said she did not know if dog fights had occurred in the barn.

Deputies found a severely injured dog in a creek and several others tied to trees not far away.<sup>138</sup> Michele Johnson told police that she and her husband had moved in to the house three months earlier. LeShon Johnson claimed he did not know what occurred in the barn, but that people had previously brought their animals to “show and sell.”<sup>139</sup> He also said he was a dog breeder.<sup>140</sup>

Fourteen people received spectator citations. Even though such events are felonies in Oklahoma, and penalties could range from one to 10 years in prison, in addition to fines from \$2,000 to \$25,000,<sup>141</sup> the county attorney deferred prosecution against Johnson on the condition that he dispose of his dogs and stay away from dog fights.<sup>142</sup>

Johnson was arrested again in 2004. This time the football player was ensnared in what authorities called the “biggest dog-fighting investigation in state [Oklahoma] history.”<sup>143</sup> Officers conducted several raids on two days, seized 225 pit bulls (most of whom had to be destroyed either because they were so injured or too dangerous), and arrested 30 people. Johnson and his brother Luther were charged with multiple felonies, including racketeering and conspiracy.<sup>144</sup>

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<sup>137</sup> See generally Ralph W. Marler, *Dog-Fight Reports Reviewed*, TULSA WORLD, Mar. 22, 2000, at A9 (providing an account of what happened during and after police interrupted dog fighting at LeShon Johnson’s home).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> See Animal Abuse Case Details: Dog-Fighting Skiatook, OK (US), available at <http://www.pet-abuse.com/cases/11451/OK/US/> (last visited Apr. 1, 2008) (stating the reason for LeShon Johnson’s deferred prosecution).

<sup>143</sup> Tony Thornton, *Dog Fight Testimony Heard*, OKLAHOMAN, Oct. 28, 2004, at 16A [hereinafter *Dog Fight Testimony Heard*].

<sup>144</sup> *Id.* Luther’s girlfriend, Shevetta Lee, was also arrested but charges were filed and dropped against the couple twice because they were brought in the wrong jurisdiction. Tony Thornton, *Dog-Fighting Charges Get Second Dismissal*, OKLAHOMAN, Apr. 1, 2005, at 14A. The appropriate attorney refused to prosecute them, as he believed the evidence was insufficient. Thus, after nearly 600 days cooped up in a shelter, despite concerns of the

As is frequently true,<sup>145</sup> other criminal activity accompanied the dog fighting. Thus, one of the busts also netted 23 guns, eight marijuana plants, and five vehicles. According to investigators, drug sales and gambling were common at the fights.<sup>146</sup>

In addition, police found training equipment such as treadmills, hanging ropes (for dogs to develop jaw strength), fighting cocks,<sup>147</sup> and a practice pit where young dogs were matched against experienced fighters. At one location, several dogs were found chained outside. Their only homes were four-foot plastic barrels. A judge issued an order to do “whatever [wa]s in

facility’s employees and animal rights advocates. Lee was able to retrieve 44 pit bulls. Some of the dogs had been euthanized for health reasons. Rod Walton, *Fight Over Dogs Ends As Owner Takes Pit Bulls Home*, TULSA WORLD, Feb. 16, 2006, at A9.

<sup>145</sup> See Webster, *supra* note 14 and accompanying text.

<sup>146</sup> Tony Thornton, *Raids Net Packs of Fighting Dogs: Eighteen People Arrested In Statewide Investigation*, OKLAHOMAN, May 26, 2004, at 1A.

<sup>147</sup> See GEORGE RYLEY SCOTT, *THE HISTORY OF COCKFIGHTING* (1983); see also RUSSELL J. SNOW, *BLOOD, SWEAT & FEATHERS: THE HISTORY AND SPORT OF COCKFIGHTING* 21–69 (2004) (providing comprehensive descriptions of cockfighting and its history).

Some athletes enjoy cockfighting. For example, video of Mets pitcher Pedro Martinez and San Francisco Giant Hall of Famer Juan Marichal releasing two roosters for a cockfight at the Dominican Republic’s preeminent stadium surfaced on YouTube in February 2008. Martinez issued a statement that he was only a spectator.

One sports editor said he had seen many baseball players at cockfights in the Dominican Republic, including Aramis Ramirez (Cubs), Fausto Carmona (Indians), Jos Lima (former Met), and Odalis Perez (free agent). He also claimed Armando Benitez (former Met) trains cocks to fight and owns a stadium.

These enthusiasts insist cockfighting is not cruel because roosters are naturally aggressive. “They are doing what they are meant to do. It’s much sadder when the Mets lose 12 in a row than when a rooster dies.” James Fanelli and Katie Orlinsky, *Blood Sport for the Birds; Pedro’s Savage Pastime*, N.Y. POST, Feb. 10, 2008, at 21.

In addition, the “supposed greatest pound-for-pound fighter” in the 1990s, Roy Jones, Jr., has been one of the leading advocates for the activity. See Editorial, *Knockout of Roy Jones Jr. for the Birds*, WILKES-BARRE TIMES LEADER, May 19, 2004, at 1B (discussing Jones who lives on an 88-acre farm in Pensacola, Florida).

In 2005, prior to the upcoming ban, the boxer bought a major cockfighting arena, “Pearl of the Bayou,” near Franklinton, Louisiana. Bob Raissman, *Roy’s HBO Hopes on the Ropes*, N.Y. DAILY NEWS, Dec. 26, 2004, at 96. Like others who support the “sport,” Jones insists:

Anyone who raises cocks for fighting are [sic] true animal lovers. In order to win, you have to take care of your birds better than some people take care of their kids. It’s in their nature to fight. G-d gave them that trait. They are not happy unless they are allowed to defend their territory. I know because I’m a fighter, and I have that same attitude every time I step into the ring.

Randy Kennedy, *Gamecocks Sending a Bad Message*, PRESS-REGISTER, May 13, 2007, at C1. Of course, like President Lincoln (see *supra* note 57) Jones ignores the fact that he is an adult who makes his own decisions on whether to fight. Obviously, his gamecocks do not agree to fight.



the best interest of the confiscated animals.”<sup>148</sup>

On December 20, 2005, Johnson, pled guilty to one count of possessing dogs for the purpose of fighting, one count of encouraging dogs to fight, and one count of facilitating a dog fight. As part of a plea agreement for these three felonies, the former NFL player’s sentence was deferred. He was placed on probation for five years and ordered to pay a \$2,000 fine, \$1,216 for court costs, and restitution in the amount of \$5,000.<sup>149</sup> By contrast, the following week the last of his co-defendants was sentenced to seven years in prison and eight years probation.<sup>150</sup>

### 3. Nate Newton

Dallas Cowboy lineman Nate Newton was arrested in 1991 along with seventeen others in Liberty City, Texas, when police raided an illegal dog fight. Although charges were later dropped, this turned out to be only the first of several times the popular football player tangled with the justice system. While he was never again caught for dog fighting, speculation is that his interest in this criminal activity, considered by law enforcement to be a bastion of drug use and gambling, brought him into a group of unsavory associates.<sup>151</sup> In fact, “[i]t was laziness, greed and a rough circle of friends met at illegal dog fights that lured Nate into drug trafficking after he retired in ‘99.”<sup>152</sup> As a result, those closest to him should not have been surprised when Newton began selling marijuana.<sup>153</sup>

The trouble began when a policeman made what seemed to be a routine traffic stop because Newton was driving too close to the highway’s dividing line. The officer became suspicious because Newton seemed nervous when they talked near his cruiser. They walked over to the rented van and the

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<sup>148</sup> See *supra* Thornton, note 146.

<sup>149</sup> See Animal Abuse Database Profile: LeShon Johnson, *supra* note 136 (detailing charges and the results of Johnson’s plea agreement).

<sup>150</sup> See *Woman Sentenced In Dogfights*, OKLAHOMAN, Dec. 29, 2005, at 9A (discussing the sentencing of Camille Gann, who was part of the same dog fighting ring as LeShon Johnson).

<sup>151</sup> See Sean Horgan, *The Trouble With Nate: How Did Ex-Cowboy Go From the Good Life to Facing Prison Time?*, DALLAS MORNING NEWS, Mar. 31, 2002, at 1B (discussing events in Nate Newton’s life).

<sup>152</sup> Anonymous, *Pot-Bellied Cowboy; Finally Catching Up With the Late, Great Nate*, DALLAS OBSERVER, Nov. 17, 2005.

<sup>153</sup> Remarkably, however, friends and family did express shock that Newton was involved with drugs. For example, the former lineman’s father said, “I was and still am surprised. I raised four boys and one girl and I never dreamed he’d be the one. He never told me he was involved with drugs. It’s totally out of character for him.” Horgan, *supra* note 151.

trooper thought he smelled marijuana so he asked whether there were drugs in the vehicle. The former football player confirmed there were. Police found 213 pounds of marijuana.<sup>154</sup> Then Newton inexplicably volunteered that he and the two women with him were part of a two-vehicle convoy with a Texas man who was driving Newton's pickup. Police found the man and truck a few miles away. They searched the vehicle and found \$18,000.<sup>155</sup> Newton spent 32 months behind bars but now is remarried and says he is trying to figure out what to do with his life.<sup>156</sup>

#### 4. Todd McNair

In 1993, Todd McNair, who played for the Kansas City Chiefs and Houston Oilers, was charged with animal neglect. He was convicted for failing to display tags on his dogs, placed on probation, and fined.<sup>157</sup>

Three years later, he again came to the attention of the police when a pit bull named Shadow, who was scarred on the face and head, escaped from his property by jumping through a broken window.<sup>158</sup> The investigator heard "dogs in distress, barking, crying and howling" and found other animals who were "extremely agitated, vicious and aggressive."<sup>159</sup> All the dogs were in bad condition and many had to be euthanized. Although the running back insisted he was merely a breeder who had "gotten in over his head," law enforcement officials said, while they did not actually witness a fight, they were sure that was what was happening. "There was a treadmill used for [dog] training, and we found the dogs in an unsheltered, wooded area far from the highway, where they were held down by [automobile towing] chains connected to large tire rims. It was deplorable."<sup>160</sup>

Nevertheless, the judge said the evidence failed to support a dog fighting conviction. Instead, McNair was found guilty of 17 counts of animal cruelty and failure to license dogs. He was fined more than \$4,900 and ordered to perform community service at a Missouri animal shelter. However, according to protestors who showed up at Mile High Stadium when the Chiefs played the Broncos that year, the football player failed to

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<sup>154</sup> Anonymous, *supra* note 152.

<sup>155</sup> Horgan, *supra* note 151.

<sup>156</sup> *Id.*

<sup>157</sup> Lance Pugmire & Gary Klein, *McNair Says His Case Differed From Vick's; USC Assistant Says He Was Involved In Breeding Dogs, But Police Say It Looked Like Fighting*, L.A. TIMES, Aug. 30, 2007, at 1.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

fulfill his service obligations.<sup>161</sup>

McNair, who became an assistant coach at the University of Southern California in 2004, did not list these convictions on his application. But that was apparently not a problem as Head Coach Pete Carroll said he would have hired McNair even if he had known. “I wouldn’t have recognized it as an issue,” Carroll said.<sup>162</sup>

### 5. Tyrone Wheatley

Some players anger people with their rhetoric about animal fighting.<sup>163</sup> For example, following a decisive playoff victory over the Miami Dolphins, Tyrone Wheatley compared his determination to the pack of pit bulls he formerly bred and raised.

A lot of my characteristics can be found in pit bulls . . . Some guys listen to Lombardi or other motivational speakers to get themselves psyched, but I don’t need any corny clichés or other words of wisdom, because with me it’s all instinct. In the world of pit-bull fighting, one pit bull doesn’t give a s— if the other pit bull is a two-time winner. All he knows is, [w]e’re going to fight, and I’m going kick your ass if it takes all day.<sup>164</sup>

By this time, Wheatley, the Giants’ disappointing first round pick, was playing for the Raiders. When these comments sparked an outcry that lasted for almost six months, the running back asserted that he was opposed to dog fighting and that he was misquoted.<sup>165</sup> He explained that he had never even witnessed a dog fight until the neighbor who owned the pit bulls he cared for as a child was arrested. Shortly after his neighbor’s arrest, he saw a video of a fight which sufficed to turn him against the activity.<sup>166</sup>

Wheatley also noted that he was puzzled by the reaction to what he had said because “In football, people say all the time, ‘That was a dog fight.’” However, to make sure he was perfectly clear, he reiterated that he does not

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<sup>161</sup> Annie Hill, *Activists Snarl at Abuse of Dogs By Chiefs Player*, DENV. POST, Oct. 28, 1996, at B03.

<sup>162</sup> Pugmire & Klein, *supra* note 157, at 1.

<sup>163</sup> Several of the people who jumped to Michael Vick’s defense also faced these problems. See *supra* notes 108–09 and accompanying text.

<sup>164</sup> Michael Silver, *Sittin’ Pretty: Following the Lead of Their Heartthrob Coach, The Raiders Turned Heads By Vanquishing the Dolphins*, SPORTS ILLUS., Jan. 15, 2001, at 38.

<sup>165</sup> David Bush, *Wheatley Says Pit-Bull Quote Misinterpreted*, S.F. CHRON., July 19, 2001, at E8.

<sup>166</sup> *Id.*

advocate dog fighting and “never will.”<sup>167</sup>

## 6. Qyntel Woods

When 2002 NBA first-round draft pick Qyntel Woods, who was picked 21<sup>st</sup> by the Trail Blazers,<sup>168</sup> was investigated for dog fighting, the team suspended him without pay. The problems began when he abandoned his two year old female pit bull because “I was going to breed it with my other dog, but they didn’t take, so I just decided to get rid of it.”

Hollywood had wounds on her chest, abdomen, and legs that were consistent with having recently been in a fight. In addition, she was covered with hot tar, frequently used as an inexpensive antiseptic for dogs after a match.

Dog fighting is a felony in Oregon so Woods faced up to five years in jail and \$100,000 in fines. However, he was allowed to plead guilty to a misdemeanor abuse charge and was sentenced to twelve months probation and 80 hours of community service. The judge also ordered him to pay the Oregon Humane Society \$10,000.

Portland waived him the day he was sentenced but he was picked up by the Miami Heat.<sup>169</sup> Although he sought to get a portion of his pay back from the Trail Blazers, as part of a settlement the club retained more than \$500,000 of the \$750,000 that was withheld from his salary for the 2004–05 season.

Woods’ troubles were not over. In October, 2006, a Portland man filed a \$300,000 lawsuit against him and his former Trail Blazers teammate Zach Randolph. The plaintiff claimed they assaulted and harassed him for more than two years, calling him a “snitch” and a “bitch dog” in connection with the dog fighting allegations against Woods.<sup>170</sup>

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<sup>167</sup> *Id.*

<sup>168</sup> Liz Robbins, *In Portland, Misery and Lots of Company*, N.Y. TIMES, Mar. 6, 2005, at 82. Before that, he played for Moberly Junior College and Northeast Mississippi Community College. Players: Qyntel Woods, available at [http://www.hoopshype.com/players/qyntel\\_woods.htm](http://www.hoopshype.com/players/qyntel_woods.htm) (last visited Aug. 13, 2007).

<sup>169</sup> After a short stint in Miami, Woods played for the Celtics for a brief time, and then the Knicks. He currently is out of the NBA. He signed with the Bakersfield Jam (an NBA development league team) in February 2007 but was waived in March. He joined the Olympiacos, a Greek club, in July 2007. Players: Qyntel Woods, *supra* note 168.

<sup>170</sup> Animal Abuse Case Details: Case Updates, available at [http://www.pet-abuse.com/cases/2787/OR\\_US/](http://www.pet-abuse.com/cases/2787/OR_US/) (last visited Aug. 11, 2007).

### B. Increased Penalties

Ironically, although fighting dogs is illegal in all 50 states,<sup>171</sup> the number of participants seems to be growing. In addition, while several sports figures have been identified as involved in animal fighting, “scores of others go unnamed.”<sup>172</sup> An HSUS expert, John Goodwin, said “We hear about athletes all the time.” In fact, shortly after the news broke about Vick, Goodwin received a tip that someone who had played in the NBA ran a fighting ring not far from the quarterback’s property.<sup>173</sup> Wayne Pacelle, the HSUS president and CEO, explained that “Athletes get pulled into the subculture. These are competitive people. They are competitive on the football field and on the basketball court, and they get competitive about their dogs.”<sup>174</sup>

Thus, while it is important for the criminal laws to be enforced against animal fighters, clearly they are not a sufficient deterrent. Prosecutors have not had the resources, or in some instances the interest, to pursue these cases.<sup>175</sup> The problems exist regardless of the identity of the perpetrator. But there are several reasons why it is appropriate to impose additional sanctions when the abuser is a professional athlete.

#### 1. Different Treatment

Athletes frequently receive special treatment when they find themselves in the criminal justice system.<sup>176</sup> Probably the best example is the way people reacted when 1968 Heisman trophy winner O.J. Simpson was arrested for the double murder of his ex-wife (who was the mother of two of his children) and her friend. Cheering fans lined the streets during the

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<sup>171</sup> While cockfighting is also illegal in every state, these prohibitions took longer to enact. For example, Louisiana, which was the last state to do so, did not vote until June 2007 to ban the practice and, even then, it will not go into effect until August, 2008. The New Mexico Legislature also waited until 2007 to outlaw cockfighting. Wakefield, *supra* note 61.

<sup>172</sup> *House On Moonlight Road*, *supra* note 66, at 49.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Failure to prosecute these cases may have contributed to the increase in popularity. Davis, *supra* note 14, at 84. However, it is also important to recognize that it is very difficult to even locate the matches. Urban street fighters have bouts spontaneously in alleys and parks. While the “professional” fights are more elaborately planned, they also employ sophisticated security measures to hide and ensure that only those on the “host’s” approved list attend. “Gaining access to these circles is extremely hard . . . . Often they expect you to fight a dog before you’re really accepted. In those cases, there’s a real risk of entrapment.” *Id.*

<sup>176</sup> The same is often true of any celebrity.

police department's low-speed car chase in pursuit of Simpson, and many placed supportive signs on the former running back's lawn.<sup>177</sup> Once he was jailed, both guards and inmates also gave Simpson special treatment.<sup>178</sup> In addition, the sheriff permitted an exception to the contraband policy when he allowed the Hall of Fame athlete to autograph 5,000 football cards in his cell as part of a profit-making venture.<sup>179</sup>

Interestingly, the same or similar misbehavior may result in disparate punishment depending on the individual player/perpetrator and his importance to the team. Thus, "superstars get fined, suspended, told to enter counseling or rehabilitation programs and return, sometimes only to commit further misdeeds" while "the less-than-superstar player who commits a moral indiscretion" is "traded out of town, waived or fired unceremoniously."<sup>180</sup> For example, during the 2007 season, two Miami basketball players were charged with driving under the influence.<sup>181</sup> Robert Hite, a rookie guard, was arrested in January. Miami Heat coach Pat Riley immediately suspended Hite with pay for nearly two weeks before he was released by the team on February 1. On the other hand, when James Posey—"arguably the Miami Heat's best defender" at the time—was arrested on the same charge a few months later, Riley said he would wait until he had all the facts before taking any action. He explained the disparity by admitting he made a mistake and reacted too quickly with Hite.<sup>182</sup> Of course, this was probably small consolation for Hite.

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<sup>177</sup> Fred Bayles, *Los Angeles Experiences Simpson Drama In Its Unique Way*, FT. WORTH STAR-TELEGRAM, June 20, 1994, at 2.

<sup>178</sup> Ralph Frammolino, *Double Standard for Simpson at Jail Charged*, L.A. TIMES, Dec. 26, 1994, at 1. Guards, who are "normally aggressive with other inmates" were "very solicitous of O.J. . . . almost to the point of toadying to him." As for the inmates, according to the sheriff, "I think he's taken on pretty much of a hero status." When he walked through the facility, other prisoners would cheer him. *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> Marcia C. Smith, *Athletes Often Get Special Handling After Misdeeds*, MOBILE REG., Feb. 16, 2005, at Z13.

<sup>181</sup> Michael Wallace, *Heat's Posey Arrested On DUI*, DESERET MORNING NEWS, Apr. 10, 2007, at D01.

<sup>182</sup> *Bottom Lines*, ALBANY TIMES UNION, July 20, 2007, at B2.

## 2. Role Models

Children (and even many adults) idolize high profile players.<sup>183</sup> Not surprisingly, even athletes who deny this reality are eager to capitalize on it whenever they can. One of the most vehement in rejecting the role model mantle was former-NBA-star-turned-sports-broadcaster, Charles Barkley.<sup>184</sup> He made headlines when, in 1993, he insisted “I am not paid to be a role model. I am paid to wreak havoc on a basketball court. Parents should be role models. Just because I can dunk a basketball, that doesn’t mean I should raise your kids.”<sup>185</sup> As this denial was made as part of a Nike advertising campaign, it seems particularly ironic that Barkley continues to exploit his talent and the fame it brought him when he does commercials.<sup>186</sup>

But some professional athletes, like three-time Olympic gold medalist Jackie Joyner-Kersey, recognize that “whether [high-profile athletes] like it or not, there is always someone, some child or other person, who admires us for what we do and what we say.” Considered by some to be the greatest female athlete in history, Joyner-Kersey explained that sports figures have an impact on people’s lives. Although she said she does not know why this is the case, “because of that, I take being a role model very seriously and responsibly.”<sup>187</sup>

Arguably the relationship with fans imposes an obligation on an athlete to maintain a certain degree of professionalism. The NBA appears to agree. For example, based on his concern about image, Commissioner David Stern

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<sup>183</sup> NFL players, almost by definition, are viewed as heroes by many people, and athletes frequently acknowledge that the cheers mean as much to them as the money. For example, Peter Boulware, a former All-Pro linebacker for the Baltimore Ravens said,

“When I retire, I know I’m going to make a good living. . . I own several car dealerships and I’ll do quite well. But when I sell a car, there aren’t going to be 70,000 people cheering and chanting my name. That’s a feeling you can’t get unless you’re an athlete. That’s what I’ll miss the most.”

John Feinstein, *Vick Should Never Play Football Again*, WASH. POST, Aug. 27, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/27/AR2007082700702.html>.

<sup>184</sup> NBA Encyclopedia Playoff Edition: Charles Wade Barkley, available at [http://www.nba.com/history/players/barkley\\_bio.html](http://www.nba.com/history/players/barkley_bio.html) (last visited Apr. 1, 2008). Charles Barkley was one of only four players in NBA history to compile at least 20,000 points, 10,000 rebounds, and 4,000 assists. (The others are Kareem Abdul-Jabbar, Wilt Chamberlain, and Karl Malone). *Id.*

<sup>185</sup> Charles Barkley & Jackie Joyner-Kersey, *Should Celebrity Athletes Entertainers Be Role Models?*, 63 EBONY 164 (Dec. 1, 2007).

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

instituted a new dress code for players when they are on league or team business.<sup>188</sup>

### 3. Integrity of the League

Related to the role model debate is an “integrity of the league” argument. Shortly after Roger Goodell was selected in August 2006 as the fourth NFL Commissioner he made it clear that the league would no longer ignore or tolerate bad off-field conduct. In announcing the recently amended Personal Conduct Policy, Goodell stated, “It is important that the NFL be represented consistently by outstanding people as well as great football players, coaches, and staff.”<sup>189</sup>

All four major professional leagues attempt to limit bad behavior through morals clauses that provide for fines, suspensions, docked pay, or termination for misconduct.<sup>190</sup> Unfortunately, such provisions have not been adequate. This is probably because they are not harsh enough to really get a high income athlete’s attention.

### 4. Salaries

Exceptional athletes earn multimillions of dollars per year. As a result, financial penalties must be large so that they are, indeed, punishment. Because insignificant fines have no effect, the amount must be based on the individual perpetrator’s financial situation.<sup>191</sup>

For example, controversial receiver Randy Moss, who was playing for the Minnesota Vikings at the time, caused an uproar and was fined \$10,000 when he simulated dropping his pants and mooning the Lambeau Field crowd after a touchdown in a playoff game against the Green Bay Packers. Moss, who earned \$5,750,000 that season, said, “Ain’t nothing but 10

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<sup>188</sup> *An NBA Makeover*, N.Y. TIMES UPFRONT, Jan. 30, 2006, at 5

<sup>189</sup> Letter from Wayne Pacelle, President and CEO of HSUS to Roger Goodell, Commissioner of the NFL (May 3, 2007), available at [http://www.hsus.org/web-files/PDF/NFL\\_animal\\_fighting\\_letter.pdf](http://www.hsus.org/web-files/PDF/NFL_animal_fighting_letter.pdf) (last visited Apr. 1, 2008) [hereinafter Pacelle Letter].

<sup>190</sup> Smith, *supra* note 180. For example, all NFL contracts include a clause that provides that “if player has engaged in personal conduct reasonably judged by Club to adversely affect or reflect on Club, then Club may terminate this contract.” Thomas Stinson, *Falcons Apologize to ‘Fans and the Community’*, ATLANTA J. CONST., July 18, 2007, at A7.

<sup>191</sup> In making this determination, courts can look to punitive damage awards. As is true here, the idea is to punish and deter. The amount that will accomplish those goals varies depending on the wealth of the person being compelled to pay.



grand. What's 10 grand to me?"<sup>192</sup>

The point is that top players are making so much money that even large fines are not effective. As the number one pick in the 2001 draft, Michael Vick, who is at the center of the recent dog fighting scandal, collected \$13,000,000 in salary and another \$7,000,000 in endorsements. Although that is certainly a lot of money, he was only number 24 on the list of the 2006 *Sports Illustrated* top-earning athletes.<sup>193</sup>

Even owners and coaches appear to consider fines as "just a business expense."<sup>194</sup> For example, since Mark Cuban bought the Dallas Mavericks in 2000, he has been fined at least \$1,690,000.<sup>195</sup> However, to demonstrate why these punishments simply do not work, it is necessary to put that number in perspective. Cuban, one of the first to recognize the impact the internet would have, co-founded Broadcast.com in 1995. Just four years later, he sold the multimedia and streaming business to *Yahoo!* for \$5,700,000,000.

While it is true that coaches' salaries are not comparable to those of super star athletes, or the earnings of some owners, even they generally are not hurt financially by fines. Phil Jackson is illustrative. In November 2006, he complained when a referee failed to make calls in favor of his teenage center, Andrew Bynum. Jackson was fined \$25,000. Although that certainly seems like a great deal of money, it appears Jackson can easily afford it. He earned \$10,000,000 in salary, made a substantial sum on his best-selling book, and collected approximately \$100,000 for an off-season motivational talk. As a result, "\$25,000 to him is comparable to paying a parking ticket for many others."<sup>196</sup>

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<sup>192</sup> Smith, *supra* note 180.

<sup>193</sup> Sam Farmer, *This PR Nightmare Is In a League of Its Own*, L.A. TIMES, July 19, 2007, at 1.

<sup>194</sup> Chuck Carlton, *Stern Dips Into Cuban's Wallet: Price Tag This Time Hits \$250,000 for Mavericks Owner*, DALLAS MORNING NEWS, June 21, 2006, at 4C.

<sup>195</sup> Mike Bresnahan, *Cuban Fined \$250,000*, L.A. TIMES, June 21, 2006, at 8. Fined \$250,000 for "several acts of misconduct" after his club's Game 5 loss to Miami in the 2006 finals, the Mavericks owner said. "The league has to do what the league has to do . . . . I accept the fine. It's just a business expense." *Id.* Notably, Cuban had written an email earlier that day promising, as he always did, to donate an amount equal to the fine to charity. *Id.* Thus, his wealth dwarfs the \$1,690,000 paid in fines (even doubled to include the money he donated).

<sup>196</sup> Mike Bresnahan, *Squawk Is Cheap to Jackson: His Latest Blast Costs Him \$25,000, But the Lakers Coach Can Afford It, and It Probably Won't Be His Last*, L.A. TIMES, Nov. 30, 2006, at 1.

## IV. THE SOLUTION

Professional sports leagues have a right,<sup>197</sup> as well as arguably a need,<sup>198</sup> to demand integrity and good character from their players.<sup>199</sup> They do this at least partially through conduct or morals clauses in each contract. Participating in animal fighting is breaking the law and thus a clear violation of these provisions.

Because dog fighting is a felony in almost all jurisdictions,<sup>200</sup> and gambling is typically an important part of these matches,<sup>201</sup> a dog fighting conviction warrants a lifetime ban.<sup>202</sup> There should also be fines against the player and, in some instances, the team. Although it is true that generally an employer is not liable for actions of his employee that are outside the scope of his employment, or for criminal acts, here Commissioners would be imposing penalties in “the best interests of the game.”<sup>203</sup> The idea is that by holding the club responsible, the organization would have more incentive to ensure that they actually seek players with integrity.<sup>204</sup> Further, the leagues should have a rule requiring that these fines be donated to an animal charity because the real victims are the dogs, gamecocks, and other critters used as bait.

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<sup>197</sup> See Stiglitz, *supra* note 106 for a discussion of the disciplinary process in each of the four major professional team sports: baseball, basketball, football, and hockey. Professor Jan Stiglitz acknowledges that it is difficult to explain the disciplinary process for “integrity related misconduct” because the leagues are always changing and amending their rules. Nevertheless, based on similarities in the historical structures, he was able to create a valuable framework for analysis. *Id.* at 177–88.

<sup>198</sup> See Ugolini, *supra* note 8, at 41–42 (arguing that even though the NFL talks about a player’s individual accountability, the league must be aware that it will be responsible whether in court “or the court of public opinion”).

<sup>199</sup> See *id.*

<sup>200</sup> See *supra* note 70 and accompanying text (discussing the penalties, by state, for dog fighting).

<sup>201</sup> See Davis, *supra* note 14 and accompanying text.

<sup>202</sup> During the summer, prior to his plea, when the NFL and Falcons appeared to be dragging their feet as to what to do about Vick, the HSUS president repeatedly urged the league to suspend the quarterback immediately. He warned that failure to act gives people the wrong idea. He urged collaboration between the two groups “to combat animal cruelty and animal fighting in order to send a clear message to the public that the NFL does indeed intend to hold its players to the highest standards.” HSUS, *The HSUS Renews Call for NFL to Suspend Michael Vick*, Animal Cruelty, July 19, 2007, available at [http://www.hsus.org/acf/news/vick\\_reaction.html](http://www.hsus.org/acf/news/vick_reaction.html). He also asked for the NFL to work with HSUS to create “an effective, zero-tolerance policy,” which would certainly be consistent with expulsion from the league. Pacelle Letter, *supra* note 189.

<sup>203</sup> Ugolini, *supra* note 8, at 54–55.

<sup>204</sup> *Id.* at 55.

While certainly not the norm, this idea is not without support in the legal system. In a few instances where athletes have been charged with or convicted of animal abuse, they have either voluntarily or by court order contributed money to shelters or other protective agencies.<sup>205</sup> The case of Qyntel Woods is illustrative. When he agreed to plead guilty to misdemeanor abuse for dog fighting, in addition to 12 months probation and 80 hours of community service, the judge ordered him to pay the Oregon Humane Society \$10,000.<sup>206</sup>

Mel Hall, who played for the New York Yankees at the time, provides another example. After he purchased two cougar kittens as pets, the outfielder was charged with possession of a potentially dangerous animal and importing a wild animal without a permit. Although Hall claimed he did not know it was illegal to own these exotic critters, he agreed to pay \$2,000 to charity in exchange for having the misdemeanor charges dropped.<sup>207</sup>

Of course the donation cannot be a substitute for an investigation and/or prosecution. In fact, accepting money to ignore possible cruelty created problems for a local New Jersey chapter of the SPCA. Allegations of abuse against former NBA star Jayson Williams first became public during his 2004 manslaughter trial for the death of his limousine driver.<sup>208</sup> Williams had apparently shot his pet Rottweiler twice after losing a \$100 bet about the dog's obedience. Once the story was out, the local SPCA was accused of preferential treatment because Williams had written them a \$500 check about two weeks after the shooting. The state SPCA later filed charges against Williams but a court hearing was postponed until after his retrial.<sup>209</sup> In January 2008, the retrial was once again delayed<sup>210</sup> so the abuse issue

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<sup>205</sup> In what may be an analogous situation, HSUS auctioned off the notes from Vick's apology. An employee had discovered the papers on the hotel podium where Vick delivered his speech. The group auctioned the papers on eBay. They were purchased by Carol Leifer, a writer and co-executive producer of *Rules of Engagement*, a CBS comedy. She paid \$10,200 which will be used in the organization's efforts against dog fighting. Associated Press, *TV Producer Pays \$10,200 for Notes from Vick's Apology*, Sept. 14, 2007, available at <http://sports.espn.go.com/nfl/news/story?id=3020177>.

<sup>206</sup> See *supra* note 168–70 and accompanying text for discussion of the Qyntel Woods dog fighting story.

<sup>207</sup> See, e.g., Phyllis Coleman, *Crimes and Misdemeanors*, in *COURTING THE YANKEES: LEGAL ESSAYS ON THE BRONX BOMBERS* 157, 178 (Ettie Ward, ed. 2003).

<sup>208</sup> *Hunterdon SPCA Chapter Gets Its Say, Group Fights Decision to Revoke Charter Over Williams' Dog*, STAR-LEDGER, Nov. 28, 2004, at 35.

<sup>209</sup> *Id.*

<sup>210</sup> Associated Press, *Williams' Manslaughter Retrial Delayed*, NEW JERSEY RECORD, Jan. 4, 2008, at A04.

remains unresolved.

For whatever reason, a number of sports figures seem to be involved with dog fighting. Players, teams, and professional leagues must be made to recognize that this is not a sport and any involvement will result in serious punishment.

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