An Outlaw Practice:

Boxing, Governance and Western Law

Ian J.M. Warren

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Abstract

This investigation examines the uses of Western law to regulate and at times outlaw the sport of boxing. Drawing on a primary sample of two hundred and one reported judicial decisions canvassing the breadth of recognised legal categories, and an allied range fight lore supporting, opposing or critically reviewing the sport's development since the beginning of the nineteenth century, discernible evolutionary trends in Western law, language and modern sport are identified. Emphasis is placed on prominent intersections between public and private legal rules, their enforcement, paternalism and various evolutionary developments in fight culture in recorded English, New Zealand, United States, Australian and Canadian sources. Power, governance and regulation are explored alongside pertinent ethical, literary and medical debates spanning two hundred years of Western boxing history.

Acknowledgements and Declaration

This has been a very solitary endeavour.
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I, Ian J.M.Warren, *declare this thesis titled* An Outlaw Practice: Boxing Governance and Western Law *is no more than 100,000 words in length exclusive of tables, figures, appendices, references and footnotes. This thesis contains no material submitted previously, in whole or part, for the award of any other degree or diploma. Except where otherwise indicated, this thesis is my own work.*

Signed and dated [redacted] 23/3/2005

Put bluntly, you do not send an amateur against Joe Louis and expect to win; Neither do you win in the courts unless you are competently, skilfully and energetically represented. I knew that when I was brought to the Row, I realized what a prodigious amount of study, planning and concentrated effort effective self-representation entailed.

So I began to study and I have never stopped. What is the law? Why is the law? Who is the law? I have often spent as many as eighteen hours a day, seven days a week, seeking the answers to those three questions. It didn't take me a day to learn how little I knew of the law. Odd-one can spend a lifetime in lawlessness and still know practically nothing of law or its disciplines.
I enrolled myself in legal kindergarten.

Chessman 1956, p. 281.

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Introduction

Overview

> Anything that looks like fighting is delicious to an Englishman. If two little boys quarrel in the street the passengers stop, make a ring round them in a moment, and set them against one another that they may come to fisticuffs. When 'tis come to a fight, each pulls off his neckcloth and his waistcoat and given them to hold to some of the standers-by. Then they begin to brandish their fists in the air. The blows are aimed all at the face. They kick one another's shins; they tug one another by the hair. He that has got the other down may give him one blow or two before he rises, but no more; and let the boy get up ever so often, the other is obliged to box him again as often as he requires it. During the fight the ring of bystanders encourage the combatants with great delight of heart, and never part them while they fight according to the rules. And these bystanders are not only boys, porters and rabble, but all sorts of men of fashion, some thrusting by the mob that they may see plain, others getting upon stalls; and all would hire places if scaffolds could be built in a moment. The father and mother of the boys let them fight on as well as the rest, and hearten him that gives ground or has the worst
>
> Mission de Valbourg, '*The English Love of fighting*', 1695,
> in Carey ed., 1988: 2003, pp. 192.

Western professional boxing involves an extremely contentious and fascinating set of social and sports customs. Agreed rituals incorporate combative and viewing customs in a multi-faceted interactive web. Isolating each component of any organised or spontaneous event is highly complex, involving consideration of combative movements, motives and tacitly agreed practice norms, entwined with enthusiastic, partisan fight crowds.

For several centuries various movements, skills and attractions of interpersonal combat have evolved to produce contemporary sports boxing. Significant regulatory points in the evolutionary chain include the Broughton Prize Rules of 1743, the London Prize Rules of 1838 and the landmark Queensberry amateur rules invoking padded gloves, round limits and the birth of a modern sports ethos. Each internal regulatory measure is an important counter-measure to widespread public concern over individual and social harms considered inherent in fight sports. McIlvanney eloquently illustrates the difficulties at the foundation of the 'noble art'.

> The most damaging element in the case to be made against [boxing] ... is that it is the one sport in which the fundamental aim of a contestant is to render his immediate opponent unconscious ... Ninety-nine times out of a hundred even the fanciest mover would rather forget about accumulating points and take the early bus home. A sport with such apparently primitive objectives is bound to be seen by many as being morally reprehensible as well as having intolerable physical dangers. Their moral indignation is intensified when they consider the huge sums of money that are often generated by the professional game and the proliferation of non-combatants who insist on grabbing a share of the spoils. Add to that the widespread assumption that most of the spectators at boxing shows are at worst sadists vicariously satisfying a blood lust, or at best benighted souls who somehow feel that they can acquire virility by osmosis in a fight crowd, and it becomes clear that defenders of the sport cannot look for an easy passage
>
> McIlvanney 1993, pp. 15-16.

Sparring as well as professional fight organisation, management and participation are all highly regulated by complex, multi-layered public or

private organisations. The aim is to minimise and ideally remove the immediate risks of serious injury or death to athletes, patrons and innocent non-observers. Indeed contemporary professional boxing is arguably the most highly regulated Western sport. Inherent dangers encourage widespread popular debate and ongoing attempts to prohibit, outlaw or sanitise the practice and minimise identifiable risks to combatants, patrons and the general public.

Legal research (Gunn and Omerod 2000; Anderson 2001; Million 1939) indicates public order and athlete protection were dual rationales informing the emergence of outlaw criminal philosophies during the nineteenth century. Many contemporary sites of opposition to fight sports involve similar paternalistic and harm to others arguments to support blanket criminal or allied legal prohibitions.

Consent

> Ali and Frazier fought of their own free choice. Neither of them has complained that he was forced to submit to brutal and dehumanising treatment. Those who paid money to see the fight did so willingly and most of them thought they got their money's worth ... [W]hat was immoral about this fight? No rights were transgressed. Those who disapprove of professional boxing were not forced to watch.
>
> ... The parallel to declining civilizations of the past referred to in your editorial is without any basis in fact. The contestants in the cruel sports that were practiced in the dying days of the Roman Empire, for example, were not free men with free choice ...
>
> Feinberg 1988, p. 128, references omitted.

Preventing harm to self, or paternalism, and harm to others are dominant themes in Western criminal philosophies and allied debates concerning prohibitions in the sport of boxing. Two prominent sites of paternalism in contemporary sports debates include dubious methods of performance enhancement and dangerous fight sports. Brown (1985) and Dixon (2001) identify overlapping considerations in both settings, focusing on working distinctions between *soft* and *hard* paternalism (Feinberg 1988; see generally Morrison 1997). In the case of *soft* paternalism, the State would appear justified in banning boxing participation to prevent self harm by those considered ill-equipped to understand the risks or handle the rigours of the sport. Children, incompetent adults, or those coerced into participation are commonly protected in this way. However, Western conventions of 'self-determination' or individual freedom to make lifestyle choices demonstrate the complexity of *hard* paternalism. Prohibition to protect an individual or society at large is often difficult to justify. Preventing informed, competent, freely consenting adults to compete in professional or amateur boxing is rare in contemporary society.

Throughout the nineteenth century criminal law attempted to eliminate fight sports entirely using a range of legislative prohibitions, considerable penalties and judicial policy. This was principally justified to prevent the sport's harm to others. Community protection or the maintenance of collective social, moral and cultural order is a prominent justification for protective interventionist state

law-making and enforcement. However, history demonstrates the limitations of this process. Fight sports counter-evolved by implementing a number of progressive reforms to sidestep outright prohibition.

The contentious verdict in *R. v. Brown* (1993) exemplifies the ongoing relevance of these legal, philosophic and sporting developments. Principles of nineteenth century fight law were invoked to sustain criminal assault convictions against five men involved in consensual sadomasochistic group sex. Early organised elite professional sports, overseen by an independent referee within a formal governance framework distinguished legitimate organised sporting activities from seemingly immoral physical harms. Analogies with body piercing, bloodletting, branding and the transfer of bodily fluids formed the basis of comparisons between outlaw prize-fights and dangerous, offensive and criminal albeit consensual sexual *assaults*.

> Although the incidents giving rise to each charge were the subject of a video-recording, these recordings were made not for sale at a profit but for the benefit of those members of the 'ring' ... who had not had the opportunity of witnessing the events in person ... the activities of the appellants, who are middle-aged men, were conducted in secret and in a highly controlled manner, that code words were used by the receiver when he could no longer bear the pain inflicted upon him and that when fish-hooks were inserted through the penis they were sterilised first. None of the appellants however had any medical qualifications and *there was, of course, no referee present such as there would be in a boxing or football match*
>
> *R. v. Brown* [1993] 2 All ER 75-124 at p. 85
> per Lord Jauncey, emphasis inserted.

Western Sports Law

> Once the sovereign has been removed (figuratively and literally) as the originator of law, by what means is the law itself legitimated? The only creator of rights is law ... and the creator of law is the legislator
>
> Eassom 1998, p. 62.

Law governs Western sport under two prevailing frameworks. Direct, centralised public governance coexists with private, specialist internal self-regulation. External legal scrutiny potentially transcends all facets of contemporary sports governance. General law delineates rights, obligations and strictures on individual athletes, sports administrators, clubs or leagues. Law has the capacity to intervene in a range of protective settings, including rights enforcement to enhance participation for handicapped (Appenzeller, Baker and West 1983) or blood-diseased (c.f. Cutri 1999) athletes, interpersonal criminal (Binder 1975; Hechter 1975) or civil assaults (Kelly 1992; Warren 1998), and intentional or accidental injuries to patrons (Bulver 1981; Sarre 1995; Warren 2003).

Judicial decisions are part of a triangulated law-making process shared with Parliament/Congress or the elected legislative arm of government, and the bureaucratic, administrative, executive branch. Throughout the twentieth century constitutional divisions of power have endorsed public licensing and

bureaucratic fight governance. Specialist public agencies with near complete monopoly jurisdiction are open to judicial scrutiny under complex general legislative and administrative principles, offering the most fruitful, detailed, contextualised exposition of specific dilemmas in modern fight governance. Two centuries of institutional, cultural and procedural development spanning the breadth of legal categories (see generally Houlihan 1997; Bryce 1906; Castles 1982; Street and Brazier eds. 1986; Dicey 1915; Fischel 1863; de Toqueville 2003) encompasses fundamental civil rights questions as well as trivial private disputes between elite athletes and fight managers.

Parliamentary and judicial sources of law fuse public, private, self-governing and paternalistic interventions. This combination of laws produces several fundamental tensions. Most discussion invokes principles of sports '*law*' where general legal customs aim to ensure sports conform to other publicly regulated norms. '*Sports*' law is relatively underdeveloped as a separate disciplinary frame in contemporary Western law (see generally Davis, Mathewson and Shropshire 1999; Greenfield and Osborn 2000; Grayson 2000; Barnes 1996) and is a core theme for investigation and analysis throughout this thesis.

Reported judicial proceedings provide the richest and most detailed printed records based on actual legal disputes. Strands of philosophic, historical, social, medical and moral debate are incorporated, rejected, ignored or supported in authoritative linguistic form. The content, methods and strictures of judicial

decision-making and formal reporting methods nevertheless offer the most valuable foundation for ongoing interdisciplinary and contextual examination of popular sports development.

Numerous cultural, linguistic, procedural and paternalistic factors influence dominant trends in Western regulatory development. Various dimensions in the evolution of modern fight sports governance are identified and unravelled within the formal languages of authoritative judicial rulings. Each reported source reflects strongly institutionalised norms of Western adversarial problem construction, procedure and allied paternalistic, protective or punitive forms of public legal intervention. Relatively uniform methods, procedures and formal regulatory outcomes are evident across most English-speaking regions.

Aims and methods

The chronological lineage of Western fight law has hitherto remained hidden within a maze of publicly reported legislative and judicial archives. Parliamentary debates, legislative enactments and judicial rulings provide evidence of perceived legal problems and their immediate and incremental effects in culturally distinct regional and national regulatory settings.

Law reports provide evidence of judicial review practices, enforcement methods and the development of informed rational opinion to formally resolve

interpersonal disputes. Prominent trends in Western dispute construction, advocacy, evidence, courtroom procedure and formal determination are all revealed within the breadth of public and private cases examined in Western courts. Each reported dispute melds specific and general legal considerations within a broader framework of moral, scientific, individual or community-based protections. Each component of the legal chronology of modern Western boxing provides vital insights into broader regulatory patterns in other professional sports and a wealth of untapped information on allied social and legal developments. Rich macro insights into various methodological, theoretical and revisionist lineages of contemporary law under criminal, contractual or personal injury claims initiated by sports fighters abound.

A mere handful of rulings peppered in Western legal records offered little promise of an extensive body of Western fight law. Informed by no personal interest in professional or amateur fight sports, a barrage of popular historical and contemporary fight lore, and a tentative knowledge of the complexity, volume and scope of United States law, a gradual body of cases slowly emerged. A crate-load of photocopied, underlined-coffee-&-cigarette-ash-stained notes was eventually produced. The emphasis on sports, recreational or performative combat and prominent champions noted in popular fight histories eventually produced a total sample of two hundred and one reported Australian, English, New Zealand and North American rulings.

Justice?
- You get justice in the next world,
in this world you have the law

Gaddis 1995, p. 1.

... [P]eople learn more about law through the mediating effects of popular culture than they ever will through the dull and long ponderings of judges or legal academics

Fraser 1993, p. 1.

Each record is evidence of a litigated case adjudged in an authoritative judicial forum. The total sample covers the breadth of Western legal categories, including square ring tragedies and complex fight revenue, contractual or media law disputes. Many were found by chance simply by scanning United States legal digests for the surnames of twentieth century heavyweight champions. This is the first known attempt to trace comparative, inter-jurisdictional legal developments relating to a single sport. Like an athlete seeking glory in 'record sports' (Loland 2001) once the numerical target of 200 verdicts was imminent it became difficult to leave the annals of Melbourne's dank law libraries. After months of meticulous hunting it was [finally] time to sit down, decipher and interpret this complex linguistic, social and cultural digest!

Australian fight law comprises ten verdicts by administrative tribunals and formal courts reported between 1918 and 2003. The most prominent sports hero is Les Darcy, an icon of tragedy embodying the modern Aussie-underdog-fighting ethos. Between January 2001 and December 2003 a cluster of three

reported fight law verdicts represents a significant cluster of contemporary Australian fight litigation after almost a century of no reported criminal proceedings (c.f. Anderson 2001; Gunn and Omerod 2000; Greenfield and Osborn 1995; Barnes 1996; Million 1939; Solinger 1949).

A similar resurgence in contemporary English fight law is evident in the closing decades of the twentieth century. Under a private national model administered by regional branches, English professional boxing gradually evaded criminal prohibition. Spanning two hundred years and the breadth of criminal, contractual, accident compensation and private administrative fields, twenty-four reported verdicts, three unreported case notes and a single and related New Zealand ruling produced a total of thirty fight law cases. Over one third were decided between 1978 and 2002. Virtually identical national fight governance structures in England and New Zealand justifies their consolidation in this section.

United States and Canadian federal and state/provincial judicial sources illustrate how tiers of fight law have emerged in transplanted English law-making and enforcement institutions throughout North America. Conflicts between national and state/provincial law-making, enforcement and judicial power, replicated with considerably reduced scope in Australia, inform a complex web of multi-jurisdictional fight governance with profound historical, social, legal and sporting implications. Rare cross-disciplinary social histories

(Sammons 1988; Reiss 1988), general law commentaries (Million 1939; Sollinger 1949), or annotations in legal digests provided valuable pathways through a surprisingly vast, complex and all-encompassing social, historical, legal, and professional sports database.

One-hundred-and-fifty-nine verdicts, including eight Canadian prosecutions confined between 1901 and 1920, combine single-line 'no opinion' rulings and lengthy examinations of North American fight laws. This contributes to over seventy percent of the total sample of reported Western fight litigation. The United States evidence demonstrates two additional trends. First, court disputes involving elite celebrity athletes and all manner of public and private laws abound. Second, matters irrelevant to the inherent dangers of boxing are equally prominent through a broad definition of 'fight law'. Outlaw fight personalities produce an intriguing dossier of broader criminological significance comprising allegations of rape, fraud, result-fixing, organised crime and racketeering. Federal prohibitions on prize-fight-films invoked between 1914 and 1930 seemingly defy precise regulatory or sporting classifications. This enhances the intrinsically contentious interdisciplinary appeal of a broader, multi-faceted, comparative fight law investigation.

The convergence of issues relating to judicial dispute construction and resolution integrates methods of Western political debate, formal legislative enactment and judicial scrutiny. Each are articulated within the restricted

methodological frames of judicial procedure. Modern jurisprudence informed by critical social, anthropological, criminological and philosophic traditions (Paton 1946; Keeton 1949; Morrison 1995; 1997; Patterson ed 2001; Henry 1980; Freeman and Mensch 1987; Fraser and Freeman 1987; Fraser 1993) is open for immense conceptual revision through this contextualised '*sports*' law inquiry. By unravelling traditional legal terms under the predominant theme of 'fight law', established, desired and highly questioned ideals of rational modern democracy, precedent, problem construction and state institutional power can be developed.

Allied themes invoking social history, sociology and macro sports theory occupy a slightly different intellectual vantage. Building on accumulated data from an applied, empirical phase pioneered during the 1920s, social theory identifies several intersecting strands of sports research: racial (Kirson-Weinberg and Arond 1969; Gilmore 1973; Rex and Mason 1986; Green 1988; Sammons 1988; Gooding-Williams ed. 1993; Matsuda et al. 1993; Walker 1994; Tatz 1995; Anderson 1996; Weaver-Williams 1996; Yarborough 1996; Dorinson 1997; Hoberman 1997), inter-colonial (Howell and Howell 1992; Evans, Saunders and Cronin 1993; James 1993; Beckles and Stoddart 1996), gender (Mennesson 2000; Dowling 2000; Burnstyn 1999; Burton-Nelson 1996; Hargreaves 1994; Polk 1994; Oglesby ed. 1978), age (Donnelly and Young 1988; Pearn 1998) and citizenship (Putnam 2000) converge with class (Cantelon and Gruneau 1982; Gruneau 1983), employment (Beamish 1985; Hemphill 1992;

2002), media and cultural (Klatell and Marcus 1988; van Dijk 1991; Whannel 1992; Craig ed. 1992; Twitchell 1992; Bordieu 1993; Hall 1993; Cunningham and Miller 1994; Hemphill ed. 1998; Zang 2001; Hemphill and Symons eds. 2002; Sklaroff 2002) or related trends (see generally Loy and Kenyon eds. 1969; Sage ed. 1974; Cashmore 1990; Jarvie and Maguire 1994; Horne, Tomlinson and Whannel 1999). Highly debated civilizing discourses and evolutionary patterns de-emphasising modern violence, unethical sports conduct or patron disorder (Agozino 1996; Elias and Dunning 1989; Lewis 1996; Warren 2003) offer prominent analytic themes alongside rational institutional developments in Western legal thought (Robson 1935). Dominant readings of coercive state intervention (Brohm 1989) and accepted historical facts are significantly challenged alongside the diverse legal configurations evident in this research.

Expanding from the dominant focus on Western legislative and judicial institutions is a wealth of medical information underpinning modern political and moral debates on the social desirability of fight sports (see generally Sheard 1998). Recent interdisciplinary studies fuse ethical, political and scientific research largely undertaken in the United States (McCrory 2002; Hall and Lane 2001; Leclerc and Herera 2000; Drachman and Newell 1999; Brayne, Sargeant and Brayne 1998; Quattrocolo, Leombruni, Valua, Berugi, Riva, Bradac and Bergamini 1997; Jordan, Relkin, Ravdin and Jacobs 1997; Jordan, Matser, Zimmerman and Zazula 1996; Lundberg 1996). Clinical studies of physical, dietary, neurological and psychological conditions are prominent in fight sports

medicine. Specialist volumes by boxing doctors (Blonstein 1966; Jordan 1993) and a vast supplementary chronology of medical evidence (Gerrie 1934; Critchley 1935; Critchley 1937; Winterstein 1937; Nesarahah, Seneviratne and Watson 1961; La Cava 1963; Mawdsley and Ferguson 1963; Johnson 1969; Jedlinski, Gatarski and Szymusik 1970; Corsellis, Bruton and Freeman-Browne 1973; Thomassen, Juul-Hensen, Olivarius, Braemer and Christensen 1979; Canadian Medical Association Journal 1983, pp. 1010-1011; Lundberg 1983; Van Allen 1983; Rost and Hollman 1993; Ross, Cole, Thompson and Kim 1983; Strano and Marais 1983; Rodriguez, Ferrillo, Montano, Rosadini and Sannita 1983; Sironi and Ravagnati 1983; Lampert and Hardman 1984; Zuliani, Bonetti, Franchini, Serventi, Ugolotti and Varacca 1985) are conspicuous omissions in most authoritative legal sources. Diagnostic and treatment procedures combine with moral and legal arguments to endorse or resist fight sports and their increased regulation. Human and animal studies speculate on various medical, ethical and legal consequences of repeat physical trauma. Many scientific investigations also refer to *Sports Illustrated* and other fight lore sources, raising numerous questions over the accuracy, credibility and content of prominent debates on modern fight law reform (Ryan 1986).

Themes and Format

> ... [S]pecific medical issues which centre on the inevitability of traumatic fat necrosis to breast tissue, and the high probability of the increased risk of the DPP syndrome (dementia pugilistica, deafness and Parkinson's disease) which is the long-term, potentially high risk for all serious

> boxers, amateurs and professionals alike. Although the absolute force of female blows are, of physiological necessity, almost always less than those of male pugilists, adolescent girls' skulls are thinner than those of males and the protective effect is, of necessity, less. The British neurologist, Peter Harvey of the Royal Free Hospital, noted that it is impossible to say that [the DPP Syndrome of] boxing is safe below a certain threshold. I agree with this view. Whatever that boxing exposure threshold might be, it is almost certainly lower in women, and it unethical to allow this probability to be confirmed by any practical or experimental trial
>
> Pearn 1998, p. 312.

Davis (1993-94) offers a sophisticated outline of ethical, moral and legal convergences involving a mixture of paternalistic motives to strengthen contemporary boxing regulation. Preventing undue pain and physical harm to combatants and associated social risks to athletes and others are prominent justifications for rule modifications or outright prohibition under administrative, criminal or related public laws. Herrera (2002) discusses health risks, underground criminal economies and extensive, potentially illicit rewards for fight communities, invoking several moral justifications for systematic paternalistic bans. Jones (2001), Radford (1988) and Dixon (2001) add to the debate with highly abstracted case scenarios selectively justifying and advocating similar variations in paternalistic, prohibitionist, protective fight governance.

> ... [L]egal toleration of ... [sell-out-Gladiator-battles-to-the-finish-at-Yankee-Stadium] ... even and perhaps especially if accompanied by government regulations, would seem to send a tacit message of official

> approval of violence and cruelty. Moreover, the probable effects on impressionable children, who (even if they are barred from witnessing the contests "live") are likely to idolize successful gladiators, are even more alarming. Consequently, the harm principle itself, which any liberal can embrace without fear of unjust intrusions on individual autonomy, is sufficient to justify Kristol's hypothetical practice of modern gladiatorial contests
>
> Dixon 2001, www.gateway.proquest.com
> referring to Feinberg 1988.

Generalist discussions on sports violence (Parry 1998; Ateyo 1979) also contribute to the ongoing revision of Western fight practices. Evidence of physical dangers, pain, exploitation and long-term disability validate a range of proposed reforms including compulsory protective headgear, bans on punches directed at the head and other fundamental rule changes. Seemingly objective considerations governing these recognised hazards are often framed within emotive arguments with extreme case studies helping to endorse a progression of rule-based reforms to counter the obvious dangers in competitive fight sports.

Western literary traditions intersect with each philosophic, social and moral theme. Roberts (1998; 2001), Burke (1998) and Morgan (1998) emphasise the significance of first-person narratives to contextualise, fortify and unravel specific attractions to dangerous sports. (Auto-)Biographies, coffee-table histories of Western fight sports, popular literature, historical reviews (Russel

Gray 1987-88), news stories ranging from trivial 'sports-chatter' (Eco 1975a; 1975b) to detailed human-interest stories or complex political, legal and moral journalistic discussions (Reel 2001) supplement legal, regulatory and related fight sports debates throughout this investigation.

Re-reading and re-ordering historical and inter-jurisdictional and contemporary boxing litigation involves a lengthy, selective process of narrative (re)construction. Imaginative reconstructions of agreed or dominant conventions help challenge conventional or accepted linguistic, historical and legal 'truths' (McHale 1992). Novel interpretations of literary and documentary archives (Hodder 1994) question dominant signifiers and semiotic meanings of history and folklore (Manning and Callum-Swan 1994), promoting the 'artful' interpretation, re-organisation and presentation of written data (Denzin 1994).

At times invoked in critical legal inquiry (Patterson ed. 2001), such themes are generally beyond accepted methodological strictures of Western law-making, enforcement or judicial scrutiny. Most legal learning involves reciting rather than criticising the content, language and effect of formal regulatory measures. Nevertheless, alongside prominent trends and controversies in Western fight law, dominant legal themes provide essential contextual insights when mapping, unravelling and constructing an evolutionary template for this unconventional '*sports*' law investigation.

Prominent quotes, vignettes and themes have been selected to illustrate authoritative conceptions of modern fight sports in a variety of contested scenarios. Linguistic and regulatory customs elicit, provoke, emphasise and endorse various outlaw, paternalistic and interventionist readings. Dominant interpretive themes are forever 'up-for-grabs' (Roberts 1998, p. 248) in prominent sports and legal contexts. An interdisciplinary web of theoretical, practical and ethical issues raises significant questions regarding the nature of judicial knowledge construction. The practices, controversies and celebrity concerns in modern fight culture are all incorporated in the extensive sample. Distinctions between private self-autonomy and external, public regulatory principles rest at the basis of most documented rulings in four similar yet highly distinct Western jurisdictional settings.

As far as possible the chronological presentation of cases identified in each jurisdiction also refers to parallel fight lore sources. Part I documents the history of reported English fight law rulings from the beginning of the nineteenth century to 2002. Part II consists of United States fight laws, with around thirty percent of cases reported in the state of New York and almost seventy percent involving elite professional athletes documented in popular fight lore. Part III documents the history of Australian fight litigation, and fuses core legal developments with prominent newsworthy issues reported throughout the research period. A cluster of eight Canadian rulings offers several concluding insights on the limits of paternalism through criminal

prohibition, and helps to contextualise general trends in the evolutionary development of Western fight sports and their contemporary legal regulation.

Moments of Impact

Australian footballer Lance Picioane
Davis and Denham,
The Australian 18 Aug 2003, p. 19.

German Boxer Marcus Beyer
AAP, *The Australian*
18 Aug 2003, p. 19.

Scanned photo-imagery, press chatter, literary extracts and a distinct absence of content-based 'sub-headings' all seek to challenge the dominance and complexity of legal terminology (Foley 1992; Rowe 1991). The chronological presentation of reported cases in each section is expressly aimed to erode the linguistic force of accepted legal terminology, reinforcing the predominance of fight law throughout this project. Comparisons with controversies or legal rulings in other dangerous sports are always tempting, yet minimised due to the volume of fight law traced and documented herein. The aim is to describe core elements of each dispute and, including relevant internal administrative developments and broader social reactions to the acceptance of modern boxing.

Legal rulings are powerful, authoritative enforceable guidelines for the conditions of acceptable sports conduct. At times reported verdicts in disputed cases offer little explanation for adopting a particular decision, ruling or line of argument. Each record tends to hide, confuse, limit, evade or contradict others of its class, providing few suggestions of the broader implications of each dispute on any cohesive body of Western fight law. Moral, social or linguistic stereotypes abound in descriptions of pertinent facts and legal rationales underlying each reported verdict. Interdisciplinary fields of language construction, publication, dissemination and content produce a myriad of interrelated themes spanning two centuries of modern law-making, enforcement, judicial review, sporting development and Western evolution.

Is there a law of boxing? Preliminary investigation into Western general law indicates there is. However, the scope, intricacies, personalities, character of disputes and various national and global themes have yet to emerge in previous research. The following provides insights into prominent themes in each of the 201 cases of this boxing law sample and supplementary fight lore. Each narrative highlights the content, functions, ramifications and idiosyncrasies of modern fight law, focusing on the primacy of boxing issues and their representation in reported judicial disputes.

§§§

PART I

ENGLISH FIGHT LAW

1805 - 2002

i. English fight crime 1805 - 1912

Background

From the mid-sixteenth to the beginning of the twentieth centuries Western colonisation influenced most global cultural, linguistic and institutional life. Direct reliance on English common law progressively declined as independent nationhood characterised most colonial governance. England was nevertheless the prominent source of Western law.

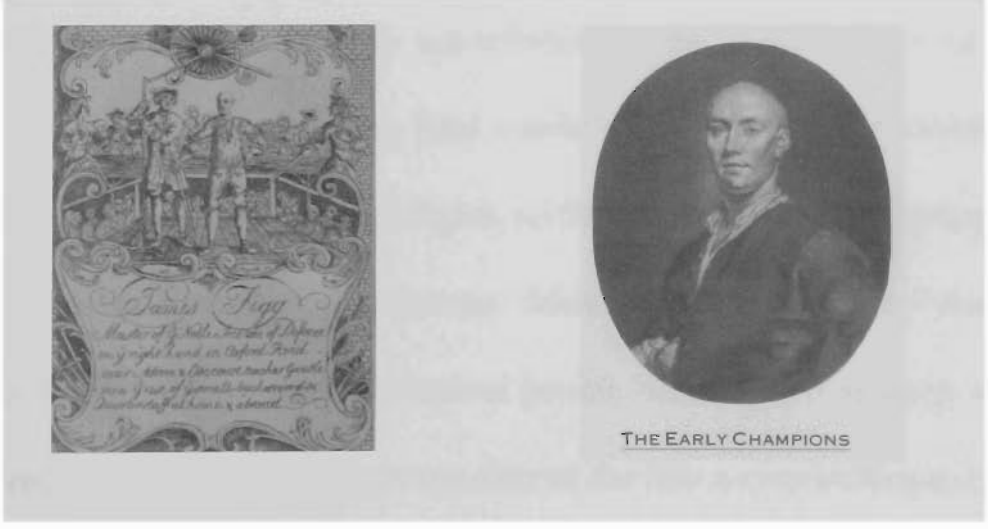
A gradual progression of reported cases, legislation and enforcement actions involving fight law significantly expanded criminal doctrine throughout the first half of the nineteenth century. Common laws and statutory crimes of assault, homicide and public disorder all applied to emerging fight sports practices of the period. Several individual criminal prosecutions and associated bureaucratic regulations assumed the legal origins of Western fight sports rested in the medieval judicial practice of duelling. Throughout the twentieth century this lineage has invited further consideration of English criminal law origins in the realm of modern sport for subsequent generations of research (Anderson 2001; Gunn and Omerod 2000). This was reinforced by the words of English jurist Sir Frederick Pollock, commenting on the legal status of professional boxing in 1912.

> A writer and a legal contemporary asked what Lord Hale understood by prize-fighting. There can be no doubt in the mind of any one moderately acquainted with the literature and manners of the Restoration and the early eighteenth century. The prize-fight of those days was a fight with swords, the weapon being the single edged cutting 'backsword', not the small-sword carried by gentleman, though it seems gentlemen occasionally played at backswords for their own amusement. In other respects the diversion had much the same incidents as the pugilism of the later eighteenth and early nineteenth centuries. Trial by battle (in which the weapons - probably a degeneration of the Frankish double-headed weapons - were horned by staves, not swords) had nothing whatever to do with prize-fights, nor, for that matter, with the point of honour or duelling
>
> *Law Quarterly Review*
> edited by Sir Frederick Pollock 1912, vol 28, p. 125,
> cited in Anderson 2001 n. 11.

Despite many similarities with medieval judicial practices of single combat, championship prize-fighting clearly has an independent history reinforced by early and subsequent examples of modern fight lore. Press narratives and legendary stories documented by Pierce Egan (1812: 1976) and Henry Downes Miles (1906, vols. 1-3) are landmark insights into prominent social, historical and linguistic dimensions of early fight sports customs. Laying at the beginning of the evolutionary chain of modern popular literature, stories of great fighters true and fictitious provide many sites for investigating contemporary origins of male athleticism, celebrity and sports culture, as well as details of contests, settings and patronage customs. Eighteenth century fight revolutionaries James Figg and Jack Broughton begin most chronological narratives of the emergence of modern fight sports, while the ongoing importance of this wealth of

historical and literary narratives and their rich linguistic content remain prominent in late twentieth-century fight lore (see Oates 1994).

> The great charm of *Boxiana* is that it is no mere compilation of synopses of fights. Egan's round-by-round stories, with ringside sidelights and betting fluctuations, are masterpieces of technical reportage, but he also saw the ring as a juicy chunk of English life, in no way separable from the rest. His accounts of the extra-annular lives of the Heroes, coal-heavers, watermen, and butchers' boys, are a panorama of low, dirty, happy, brutal, sentimental Regency England that you'll never get from Jane Austen. The fighter's relations with their patrons, the Swells, present that curious pattern of good fellowship and snobbery, not mutually exclusive, that has always existed between Gentleman and Player in England, and that Australians, Americans and Frenchmen equally find hard to credit Egan is full of anecdotes like the one about the Swell and his pet Hero, who were walking arm-in-arm in Covent Garden late one night, when they saw six Dandies insulting a woman. Dandies were neither Gentleman nor Players, and Egan had no use for them. The Swell remonstrated with the Dandies and one of them hit him. The Swell then cried, "Jack Martin, give it them," and the Hero, who was what we today would call a light-heavyweight, knocked down the six Dandies. From Egan's narrative it is impossible to tell which performance he considered more dashing, the Swell's or the Hero's
>
> Liebling 1956: 1982, pp. 10-11.



James Figg and Jack Broughton
Brooke-Ball pp.94-95.

Outlaw origins: duelling prohibitions

> *... licence to beat me is void, because 'tis against the peace*
>
> *Matthew v. Ollerton* 1619, 90 ER 438.

Generic elements of fatal duelling and outlaw sports fighting inform the modern prohibitionist ethos. Judicial records highlight a linear progression of language, reasoning and state protectionist concerns underpinned the similar combative practices of both duelling and early fight sports.

All forms of disorderly, dangerous and organised combat were illegal under English common law by the early nineteenth century. Previous acceptance of duelling with pistols or swords was a valid, enforceable legal right when conducted according to standardised rules. However, the violence associated with duelling progressively threatened public peace at two levels. Individual and social considerations equally contributed to the development of English criminal law doctrine prohibiting fatal combat. Identical legal rationalisations were then adapted to outlaw fist-fights without weapons, for a prize, before large, potentially disorderly audiences. Most primary legal sources invoke analogous reasoning to endorse criminal prohibition in both settings with few distinctions, with the surreptitious evasion of the law a core determinant of the criminal combatant, patron or backer.

> ... [D]eliberate duelling, if death ensueth, is in the eye of the law murder; for duels are generally founded in deep revenge; and though a person should be drawn into a duel, not upon a motive so criminal, but merely upon the punctilio of what the swordsmen falsely call honour, that will not excuse, for he that deliberately seeketh the blood of another person on a private quarrel acteth in defiance of all laws human and diving, whatever his motive may be
>
> *R. v. Rice* 1808, 7 Rev Reps 523-526 per Grose J at p. 525 citing Mr. Justice Foster, *Crown Law*, p. 296.

Phillips (1805) and *Williams* (1810) offer insights into the character of organised combat under the private law doctrine of 'high treason'. In virtually identical circumstances *Rice* (1808) illustrates similar constitutive dimensions of early duelling and prize-fight customs justifying private or public prosecutions under early English law. Each of these three verdicts upheld the criminal character of challenges to fight either with dangerous weapons or fists, thereby justifying a paternalistic legal stance towards consensual, potentially fatal organised dispute resolution. Protecting an emerging postal system also justified prohibitions against unlawful challenges involving a component of violence in the broader public interest.

> There was a sufficient publication in Middlesex, by putting the letter into the post-office there, with intent that it should be delivered to the prosecutor elsewhere. Had it never been delivered, the defendant's offence would have been the same. On trials for high treason, intercepted letters are received in evidence as overt acts of treason in the county where they were written
>
> *R. v. Williams* 1810, ix Rev Reps 781-782 at p. 782.

Historical and literary compendia illustrate the gradual demise of the duel by midcentury (*R. v. Cuddy* 1843; MacKay 1841: 1995; Bartlett 1980; Russell 1980; Cohen 2002). Individual and social considerations justified outlaw prohibitions in all reported nineteenth century English legal sources. Honour challenges between men gradually eroded in social significance with the demise of the traditional feudal military and order. English courts gradually outlawed all constitutive requirements for prearranged, consensual agreements to fight with swords, fists or other harmful weapons. Assault, homicide, public order and postal laws all endorsed similar rationales in a significant period of criminal, legal, social and sporting flux. Each crime could target combatants, seconds or viewers of these potentially dangerous and often frivolous interpersonal disputes.

> ***Challenge to fight***
>
> It is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the messenger of such a challenge, or even barely to provoke another to send such a challenge, or to fight, as by dispersing letters to that purpose, containing reflections and insinuating a desire to fight ... Thus a letter containing these words, "You have behaved to me like a blackguard. I shall expect to hear from you on this subject, and will punctually attend to any appointment you may think proper to make," was held indictable ... No provocation, however great, is a justification on the part of the defendant; although it may weigh with the court in awarding the punishment
>
> David Power Esq,
> *Roscoe's Digest of the Law of Evidence in Criminal Cases* 6th ed.
> 1862, p. 354, references omitted.

Statutory prohibition codified early common law prohibitions, thereby adapting private law doctrine into public criminal law philosophies of the period. Duelling in any form was considered anathema to civilised Western dispute resolution (see generally Elias 1993; Elias and Dunning 1989). Russell's (1980) extensive review of significant transformations from legal to outlaw status indicates traditional rationales favouring lawful private fighting were subsumed by public interests to preserve both individual and community safety through centralised state law-making, enforcement and criminal punishment. Legal institutions managed to suppress popular acceptance of duelling by applying outlaw labels to principals, seconds and others aiding, abetting or promoting illegal combat regardless of motive. Where a principal died his opponent and each backer could be guilty of murder. Trivial motives often justified prohibitionist court rulings in fatal duels.

I must confess I am surprised that the charge against the prisoner should be put to issue in this way. The trial by battle is an obsolete practice, which has long since been out of use; and it would appear to me extraordinary indeed if the person who has murdered the sister should, as the law exists in these enlightened times, be allowed to prove his innocence by murdering the brother also, or at least by an attempt to do so

Russell 1980, pp. 156-157 citing *Ashford v. Thornton* 1818.

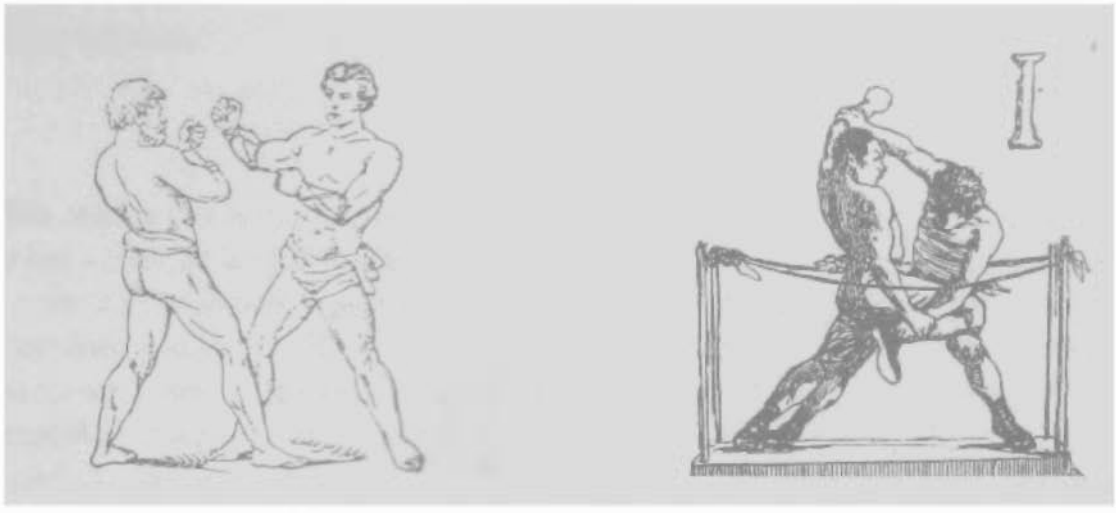
Sterne's father fought a duel about a goose, and the great Raleigh about a tavern-bill. Scores of duels (many of them fatal) have been fought from disputes at cards, or a place at a theatre; while hundreds of challenges given an accepted over-night in a fit of drunkenness, have been fought out the next morning to the death of one or both of the antagonists

Mackay 1995, p. 689; see also p. 658.

While persisting amongst male aristocratic and leisure classes in France and Germany, sparring and fist-fighting characterised the muscular Christian ethos of early English sport. Constitutive similarities justified outlaw status of both practices with endorsement by legal scholars including Lord Justice Pollock (1912). The evolutionary weight of prohibition continually presumes, imposes or infers a direct connection between each custom. Fatal duelling gradually succumbed to outright prohibition while prize-fighting evolved, consolidated and adapted as a noble sporting alternative despite the criminal law (Gunn and Omerod 2000).

Parisian épée duel,
from "Le Duel Pini-San Malato"
in *L'Illustration* 12 March 1904,
McAleer 1994, p. 191.

1822: The Tennis-court Hotel, an outlaw London fight venue



Downes Miles,
Pugilistica: The History of British Boxing containing lives of the most celebrated pugilists; full reports of their battles from contemporary newspapers, with authentic portraits, personal anecdotes, and sketches of the principal patrons of the prize ring, forming a complete history of the ring from Fig and Broughton, 1719-40, to the last championship battle between King and Heenan, in December 1863
vols. 1-3, 1906, vol. 1, p. xvi.

'A Day's Pleasure with the Criminal Classes',
The Cornhill Magazine, vol 9 1864, pp. 627-640 at p. 627.

The earliest express statement of outlaw prize-fight status under English common law is *Hunt v. Bell* (1822). The case is recognised by Justice McInerney in the Victorian case *Pallante* (1976) and the historical research of Anderson (2001), as a landmark private dispute under the law of defamation. The verdict emphasises public order considerations with an analysis of the constitutive dimensions of unlawful fighting after allegations of disorderly contests were raised against the publican of the *Tennis-Court* hotel. Reports of outlaw prize-

fights in a regional newspaper were the source of the defamation claim, with the publican seeking a financial award to compensate for harmed business and personal reputation.

> This was an action on the case, for a libel against the Plaintiff, in regard to his conduct as proprietor of a building called the Tennis-court, which ... he had himself appropriated, and had permitted others (for money therefore paid to him) to appropriate for, (amongst other lawful purposes) the exhibiting from time to time therein of sportive and amicable contests, or matches, in the art of pugilism, or boxing, with padded gloves, commonly called sparring, by and between persons skilled in such art, for the amusement of any persons desirous of being spectators thereof, and paying for their admission into such building a certain sum of money per head
>
> *Hunt v. Bell* 1822, 130 ER 1-3 at p. 1.

Distinctions between lawful sparring and unlawful prize-fighting were founded on the contrast between legitimate recreational self-defence and involvement in unruly, paid contests. Outlaw entertainments included *'unprovoked attacks'* or crude exhibitions of early modern public theatre. Prohibition seemingly minimised the inherent risk-based similarities characteristic of unlawful duelling and gloveless fighting, regardless of the best intentions of combatants, backers or viewers. Each separate opinion in the verdict identifies a combination of inherent risks and collective social interests to support prohibition of Tennis-Court events.

RICHARDSON J.

If the question were merely, whether it is lawful or unlawful for persons to learn the art of self-defence, whether with artificial weapons or such only as nature affords, there can be no doubt that the pursuit of such an object is lawful; but public prize-fighting is unlawful, and any thing which tends to train up persons for such a practice, or to promote the pursuit of it, must also be unlawful

BURROUGH J.

The object for which persons attend these exhibitions is to see and judge the competitive strength and skill of parties, who may be afterwards matched as prize fighters, and that, frequently, to the loss of life; for there can be no doubt that the skill acquired in these schools enables the combatants to destroy life, in some instances, by a single blow; and it is notorious, that persons assembled at these exhibitions engage in illegal bets on the issue of such encounters

Hunt v. Bell 1822, 130 ER 1-3.

Lawful fight sports were '*[u]naccompanied by breach of the peace or danger*' and patronised by learned '*professors of the pugilistic science*'. Public interests in good order and virtuous, scientific contests justified legal recognition. Violent displays before drunken male audiences were certified as outlaw prize-fights. Promoters, organisers and venue managers were all guilty under criminal prohibitions analogising disorderly bare-knuckle exhibitions to fatal duelling. Hunt's reputation was declared untarnished by the published allegations even though all contests occurred in a private, enclosed venue. Substantial proof of disorder at the *Tennis-court* endorsed the 'truth' of Bell's allegations, thus denouncing any claim of a libellous outlaw publication.

1825-1845

> By law, whatever is done in such an assembly by one, all present are equally liable for; which ought to make persons very careful. It cannot be disputed that all these fights are illegal, and no consent can make them legal, and all the country being present would not make them less an offence. They are unlawful assemblies, and everyone going to them is guilty of an offence. The inconvenience in the country is not so great, but nearer London the quantity of crime that these fights lead to is immense. My advice to magistrates and constables is, in cases where they have information of a fight, to secure the combatants before hand, and take them to a magistrate, who ought to compel them to enter into securities to keep the peace till the next assizes or sessions; and if they will not enter into such security to commit them to prison. In this way the mischief would be prevented, and the fights put to a stop
>
> *R. v. Billingham, Savage and Skinner* 1825, 172 ER 106.

'Daniel Rogers, Esquire, a magistrate', successfully charged two combatants and an unnamed person while attempting an organised gathering of *'about one thousand persons ... assembled to witness the fight'*. Rogers was unable to prevent *'a general tumult on the part of the mob'* and attempting to *'rescue ... Skinner'*, a combatant injured at the scene. Lengthy sentences of transportation followed guilty verdicts against each of the three principals, offering compelling evidence of perceived social concern over popular, organised male fight sports.

In a period when all forms of crime threatened collective urban order, state intervention to prevent suspected disorderly prize-fights and related public entertainments endorsed modern police expansion in tandem with general investigative powers over incidents of murder, manslaughter, assault, riot and

rout. Resisting lawful authority was an adjunct to a growing body of offences with prison, transportation and execution all graded according to the severity of harm involved. Despite much popular lore highlighting beneficial elements of orderly exhibitions of sports fighting, judicial rulings and subsequent historical investigations are equally blunt in condemning a popular social pastime.

It appears, in this case, that a great number of persons were assembled together on this occasion, and that there was a breach of the peace. It is clear, that the parties went there intending that a breach of the peace should be committed. There is no doubt that prize-fights are altogether illegal; indeed, just as much so, as that persons should go out to fight with deadly weapons; and it is not at all material which party struck the first blow. It is proved that all the defendants were assisting in this breach of the peace; and there is no doubt that persons who are present on such an occasion, and taking any part in the matter, are all equally guilty as principals

R. v. Perkins and Others 1831, 172 ER 814-815.

The deceased, and another named Cox (who had afterwards died), met, on the day laid in indictment [8th Dec. 1831], at Islington, and there commenced a pugilistic contest. Having been interrupted by the interference of the police, they proceeded to the Isle of Dogs, where they recommenced the fight; and the deceased, Dodd, in consequence of the injuries which he received, died shortly after his removal from the place of combat, on board the hospital ship "Grampus", which was then stationed in the Thames, and within the parish of St. Nicholas, Deptford. The indictment stated, that James Cox made an assault on the deceased, at the parish of All Saints, Poplar, in the county of Middlesex, and beat the deceased, giving him divers mortal bruises and contusions, &c; of which said bruises and contusions the said Richard Dodd, from, &c, until &c, at the Parish of St Paul's, Deptford, in the county of Kent, did languish, &c; and that he there died; and that the said James Hargrave, together with, &c, were then and there present aiding, abetting &c, the said James Cox in the commission of the said felony

R. v. Hargrave 1831, 172 ER 925-926 at p. 925.

The lineage of reported prosecutions is extremely fragmented but relatively easy to trace. Ongoing synthesis of fight law sources and formal police records is required to appreciate the extent of state expansion during this period. A civilising impetus is reinforced with each conviction recorded in English reported verdicts. Unlike general assault law where discretion appears to sanction lenient results in cases involving lawful self-defence, organised contests attracted total prohibition directed at real or imagined physical, moral and social harms seemingly inherent to fight sports practices and viewing customs.

Coronial recommendations for criminal prosecutions in suspicious deaths often produced acquittals or convictions on lesser charges of manslaughter to avoid seemingly unfair punishments. Often, the scenarios involved similar dimensions of male culture and trivial interpersonal disputes in public houses or social settings (see generally Fitzgerald, McLennon and Pawson eds, 1980; *R. v. Caniff* (1840)).

Fight lore, sociological and criminological evidence demonstrate emerging racial, masculine and public order considerations favouring state intervention on protective grounds. Open defiance of the rule of law validated police powers, prosecution testimony and prevailing criminal philosophies in a succession of outlaw convictions during the 1840s.

... [Y]ou ought to consider whether the deceased came by his death in consequence of blows he received in the fight itself; for, if he came by his death by any means not connected with the fight itself – that is, if his death was caused by the mob coming in with bludgeons, and taking the matter as it were out of the hands of the combatants, then persons merely present encouraging the fight would not be answerable, unless they are connected in some way with that particular violence. If the death occurred from the fight itself, all persons encouraging it by their presence are guilty of manslaughter; but if the death ensue from violence unconnected with the fight itself, that is, by blows given not by the other combatant in the course of the fight, but by persons breaking in the ring and striking with their sticks, those who were merely present are not, by being present, guilty of manslaughter; then, as there is no proof that the prisoner had anything to do with this latter violence, he ought to be acquitted. The case is, at most, one of manslaughter only, and the charge of murder is not at all supported

R. v. Murphy 1833, 6 C & P 103; 172 ER 1164.

On the 9th February last I was a constable in the Bedfordshire rural police force; on that day I went to Holcut, in consequence of information that a prize-fight was going to take place there; I found about four hundred persons assembled; there were stakes set and two rings formed with ropes; in the centre I saw two men in fighting attitudes, and other men behind each; there were twenty or thirty persons between the inner and outer ropes, and all the rest outside; I endeavoured to get inside the ring, to take the men who were fighting into custody; I was prevented by the persons who were between the two rings, and there was a shouting of 'Keep him out'; I wore my policeman's uniform and shewed my staff; I called out that I was a police constable; Mr. Cautley went with me to the defendant, who was present; Mr. Cautley mentioned his name to me; I said to the defendant, 'Mr. Brown, I charge you in the Queen's name to aid and assist in quelling this riot'; the defendant was then sitting on the box of a carriage which had four horses and was driven by postilions; the defendant had not the care of any horse; I charged several other persons to assist me, but I received no assistance from anyone; the fight continued a long time after this; I saw Mr. Smith, who is a county magistrate; I assisted him in endeavouring to stop the fight; I took several persons into custody, but they were all rescued ...

R. v. Brown 1841, 1 C & M 314; 174 ER 522-525 at pp. 523-524.

Developments within and beyond fight sports combined to revolutionise legitimate combative practices. Reported criminal appeals between the introduction of London Prize Rules in 1838 and the infamous Sayers v. Heenan heavyweight contest in 1860 demonstrate a gradual consolidation of sporting and legal rules to legitimate recreational and competitive fighting. Orderly, private contests could lead to acceptable individual and social risks, while mass, organised, disorderly public events continued to attract blanket outlaw status.

> ... [A]fter some blows on both sides, the prisoner and deceased wrestled, and both fell, the deceased undermost. The deceased could not get up, and could fight no more, and he complained of his neck and bowels. It further appeared that he died on the following Monday morning, and that, on a post-mortem examination of his body, the vessels of the brain were found to be gorged with blood, and two of the vertebrae of his neck dislocated, which was the cause of death, and it was proved that this might have been occasioned by a fall
>
> *R. v. Lewis*
> 1844, 174 ER 874-875 at p. 874 (UK).

> It seems to me that there is no case against these men. As to the affray, it must occur in some public place, and this is to all intents and purposes a private one. As to the riot, there must be some sort of resistance made to lawful authority to constitute it, some attempt to oppose the constables who are there to preserve the peace. The case is nothing more than this - two persons choose to fight, and others look on, and the moment the officers present themselves, all parties quietly depart. The defendants may be indicted for an assault, but nothing more
>
> *R. v. Hunt, Swanton and others*
> 1845, 1 Cox CC 177 (UK).

Prosecution and coronial testimony emphasises the legacies of brutal physical injuries from bare-knuckled contests. Detailed factual accounts of combatants

and their respective fates justified criminal punishments after documented fatalities or evidence of extensive drunkenness, property destruction and collective disorder. Law enforcers aiming to protect rival combatants, onlookers and residents of villages, towns or early modern cities required strong legal backing. Improved medical knowledge and stern judicial attitudes towards defiant sports fighting accompanied a lull in reported criminal prosecutions until the resurgence of English fight law in the shadow of the landmark Queensberry amateur boxing rules.

1860-1882

> The Marquis of Queensbury rules for the English challenge cups (open to gentlemen amateurs): ... Rule 4. There are to be three judges appointed by the committee. Rule 5. That the boxing is to take place in a 24-foot ring. Rule 6. That no wrestling, roughing, or hugging the ropes [is to] be allowed. Rule 7. That each heat consist of three rounds, with one minute interval between each; the duration of each round to be at the discretion of the judges, but not to exceed five minutes. Rule 8. Any competitor not coming up to time shall be deemed to have lost. Rule 9. That no shoes or boots with spikes or sprigs be allowed ... *Contests for Endurance.* Rule 1. To be a fair stand-up boxing match in a 24-foot ring, or as near that size as practicable. Rule 2. No wrestling or hugging allowed. The rounds to be of three minutes duration, and one minute time. Rule 3. If either man fall, through weakness or otherwise, he must get up unassisted, ten seconds to be allowed him to do so, the other man to retire meanwhile to his corner; and when the fallen man is on his legs the round is to be resumed, and continued until the three minutes have expired; and, if one man fails to come to the scratch in the ten seconds allowed, it shall be in the power of the referee to give his award in favour of the other man. Rule 4. A man hanging on the ropes in a helpless state, with his toes off the ground, shall be considered down. ... Rule 6. The gloves [are] to be fair-sized boxing gloves of the best quality, and new. ... Rule 8. A man on one knee is considered down, and, if struck, is entitled to the stakes [as 'contradistinguished' from the London prize ring rules providing] ...

> (1) That the contests are made without gloves or other covering for the hands; (2) that the fighting boots of the contestants are provided with three metal spikes, which are one-eighth of an inch broad, and extend three-eighths of an inch from the sole, one to be placed on each side of the boot, near the toe, and the other at the heel; (3) that wrestling, roughing, and hugging are not forbidden, - all the prohibitions being attempts to inflict injury by gouging, tearing the flesh with the finger nails, and biting. Contests under the London prize ring rules are usually out doors, in open public view
>
> *State v. Olympic Club* 1894, 15 S 190-199 at p. 195.

A second cluster of reported criminal prosecutions indicate by the mid-1860s *'sparring had become accepted as a respectable pastime, with even the nobility, including the monarchy, being involved'* (Gunn and Omerod 2000). No reported prosecutions were traced during the 1850s. Fight lore documenting the Sayers v. Heenan bout provides clear evidence of widespread support for criminal intervention and an overt albeit reluctant police presence at well-publicised title contests. Extensive rule changes modifying the London Prize Rules of 1838 successfully adapted Western fight customs in a process aimed at countering, avoiding or limiting the prospect of outlaw characterisation and public law intervention.

> The evidence of George Airy, the house-surgeon at Charing-Cross hospital, shewed that the deceased had died five hours after his admission from a rupture of an artery on the brain caused by a bruise over the right ear, which might have been caused either by a blow or a fall ... this witness expressed his opinion that sparring with gloves in the manner described ... might be dangerous to human life; but death would not be a likely - in fact it would be a very unlikely - result from such

> blows as had been given. A man might die from the blow of a cricket ball much sooner than from a blow of a glove. The danger would be where a person was able to strike a straight blow, but that danger would be lessened as the combatants got weakened, as then they would not be likely to strike so straight
>
> *R. v. Young and Others* 1866, 10 Cox CC 371-373.

Justice Bramwell's reasoning in *Young* found an accidental death during a lawful, consensual, private sparring contest. This did not warrant a conviction for intentional murder or accidental death under the law of manslaughter. Several important rules validated the social benefits of *manly* exercises of skill, including compulsory rest periods and evidence the contest was *'unlikely to kill'*. This justified the favourable ruling against those present at the scene. Illicit gatherings for *lucre* in remote public settings contrast as inherently outlaw practices. All combatants, backers, viewers and organisers equally attracted a justified criminal label in these disorderly, seemingly unregulated environments.

In *Young* eight good friends were acquitted of *'feloniously killing'* Edward Wilmot on 9 October 1866 at a venue known for regularly hosting sparring exhibitions in Windmill Street, Haymarket. With new gloves the combatants fought *'a succession of rounds, sparring of an hour'*. Wilmot fell in the final scheduled round after receiving a blow or a push. He landed on *'his posterior'* then struck is head against a post beneath the centre of the ring. His second

'gave in for him' and he was sent to hospital feeling *'queer and giddy'*. No evidence of malice excused each co-accused from criminal liability and punishment. Accident compensation laws are more likely to be invoked than criminal prosecution in analogous contemporary fight scenarios.

> ... [T]his matter ... took place in a private room; there was no breach of the peace; No doubt if death ensued from a fight, independently of its taking place for money, it would be manslaughter, because a fight was a dangerous thing and likely to kill; but the medical witness here had stated that this sparring with gloves was not dangerous, and not a thing likely to kill
>
> The latitude given to manly exercises of the nature above described, when conducted merely as diversions among friends, must not be extended to legalise prize-fighting, public boxing matches, and the like, which are exhibited for the sake of lucre, and are calculated to draw together a number of idle, disorderly people; for in such cases the intention of the parties is not innocent in itself, each being careless of what hurt may be given, provided the promised reward or applause be obtained. And again, such meetings have a strong tendency in their nature to a breach of the peace
>
> *R. v. Young and Others* 1866, 10 Cox CC 371-373.

Over a decade later Alexander Barnsley *Knock* (1877) and William *Bond* (1877) were both acquitted of manslaughter in uncertain circumstances. Each verdict indicates self-defence was critical in reviewing the legality of competitive fighting under English criminal law. Each ruling endorsed jury findings at trial demonstrating reluctance by appeal courts to interfere with public opinion embedded in the emerging criminal justice process (see also Gunn and Omerod 2000 p. 25 referring to *R. v. Orton* 1878). Procedural considerations identified in

prior legal rulings endorsed contests invoking Queensberry amateur conventions in orderly, private settings.

> It was proved by an eye-witness that the men fought with great ferocity, in the words of this witness, "like bulldogs;" that each was severely punished, and that the fight had lasted for nearly forty minutes when the police came up, brought there by information of what was going on, and by a large and disorderly crowd who had assembled on the road outside the building attracted by what was going forward ... each combatant was severely punished, and one of them had his ear bitten through. They were highly exasperated with each other, calling the other a coward, and taunting each other with unfair fighting so much that, even after they were arrested and in the custody of the police, they were with difficulty prevented from closing with each other and renewing the fight
>
> *R. v. Orton and others* 1878, Cox CC 226-228 at p. 227.

Orton (1878) is a landmark ruling involving an outlaw prize-fight in Leicester County. Three charges of *'assaulting police constables in the execution of their duty'* and three allied *'common assaults'* were alleged against fifteen co-accused men. The character of a disorderly public event is reinforced by contrasting depictions of lawful sparring exhibitions in restricted private settings. Where combatants intended to compete *'till one gave in from exhaustion or injury received'* or *'severely maul[ed] the other'*, police intervention should not be impeded. A combination of elements justified mass convictions in *Orton*, highlighting the growing reach of the criminal law in late nineteenth century English public life.

> ... [O]n the afternoon of the 16th of June 1881, at the close of Ascot races, a witness who was proceeding along the high road towards Maidenhead, had his attention directed to some persons coming out of a plantation by the side of the road. He went into the plantation on private ground, and there saw, a few yards from the road, a ring of cord supported by four blue stakes. The prisoners Burke and Mitchell took off their coats and waistcoats, stripped, and went into the ring. Six other persons, of whom a prisoner named Symonds was one, went into the ring, three into each corner. Burke and Mitchell fought from three quarters of an hour to an hour.
>
> Bets were offered by some of the persons in the crowd which consisted from 100 to 150 people. There was no evidence that the fight was for money or reward, nor that any one tried to interrupt it ... it had [also] been rumoured that two naked men were about to race
>
> *R. v. Coney and others* 1882, 8 QBD 534-570 at p. 534.

A carnival setting again led to multiple charges in the landmark ruling *R. v. Coney* (1882). Coney, Gilliam, Tully and five others were charged to appear at the Berkshire county court of quarter sessions for unlawful assault, riot, rout '*& c. & c.*' This significant criminal law assault ruling has application within and beyond Western criminal fight law (Anderson 1991; Million 1938-39; *R. v. Brown* 1993), synthesising principles invoking the protection of combatants, patrons and the broader non-viewing public.

Established distinctions between outlaw prize-fights and lawful sparring are reviewed, consolidated and approved by the appeal court. Contrasts between prize-fighting and lawful sparring provide metaphorical sites for extending these rules beyond the square ring to other harmful, contentious, dangerous or morally questionable activities. Despite free, willing and consensual

involvement, legal intervention on paternalistic, protective moral grounds is validated where overt defiance of recognised criminal law principles underpins organised prize-fighting for reward in any environment. The conviction against all principals provides the foundation of Western statutory and common law assault doctrine throughout the twentieth century.

Taylor (1875) is a rare acquittal for aiding and abetting an unlawful gaming transaction linked to an outlaw prize-fight. Taylor was asked to hold the wager while the unlawful contest was taking place elsewhere. No evidence suggested Taylor's did anything to promote or encourage the ultimately fatal assault, and Chief Justice Cockburn endorsed limiting criminal liability only to those overtly aiding and abetting by their presence at the scene.

> The indictment was for abetting a manslaughter. The facts were that the manslaughter occurred in the course of a fight. The accused was not present at the fight, and all he had to do with it was that he consented to hold 2*l.*, which the men about to fight deposited by way of binding themselves to fight, and to be given to the winner. It appears to me that to support an indictment against a man as an accessory by abetting an offence, there must be some sort of active proceeding on his part. He must incite, or procure, or encourage the act. At first I was struck with the view that the stakes were something essential to the fight, and that the prisoner by holding the stakes might be said to participate in the fight. But I do not think the mere consent to hold the stakes can be said to amount to such a participation as is necessary to support the conviction
>
> *R. v. Taylor* 1875, II CCR 147-149 per Cockburn J. at p. 149.

Two final unreported verdicts cited in Grayson (2000) coincide with the learned opinion of Sir Frederick Pollock (1912). The failed manslaughter charges impliedly endorsed favourable limits on emerging fight sports in the *Coney* ruling three-decades previously. By the new century boxing was a rapidly professionalised and popularised entertainment form in Western public life.

> Harrison was the Friar's Oak blacksmith, and he had his nickname because he fought Tom Johnson when he held the English belt, and would most certainly have beaten him had the Bedfordshire magistrates not appeared to break up the fight. For years there was no such glutton to take punishment, and no more finishing hitter than Harrison, though he was always, as I understand, a slow one upon his feet. At last, in a fight with Black Baruk the Jew, he finished the battle with such a lashing hit that he not only knocked his opponent over the inner ropes, but he left him betwixt life and death for a long three weeks. During all this time Harrison lived half demented, expecting every hour to feel the hand of a Bow Street runner upon his collar, and to be tried for his life
>
> For over twenty years, in the days of Jackson, Brain, Cribb, the Belchers, Pearce, Gully, and the rest, the leaders of the Ring were men whose honesty was above suspicion; and those were just the twenty years when the Ring may, as I have said, have served a national purpose. You have heard how Pearce saved the Bristol girl from the burning house, how Jackson won the respect and friendship of the best men of his age, and how Gully rose to a seat in the first Reformed Parliament. These were the men who set the standard, and their trade carried with it this obvious recommendation, that is one in which no drunken or foul-living man could long succeed
>
> Conan Doyle 1980, pp. 226-227.

Successes of criminal law in eliminating fatal duelling scenarios were not translated to modern fight sports, with several adaptations to rules, supervision and viewing customs helping to evade an expansive criminal law gaze.

Proponents of muscular Christian athletic traditions such as Sir Arthur Conan Doyle, evoke the noble origins of amateur fight culture in a gradual process of sporting development, parallelling the growing reach, consolidation and acceptance of modern institutions of state criminal governance.

In conforming to the rational, civilised detective capacities of Sherlock Holmes, Conan Doyle's fight-narratives emphasise noble sportive ideals invoking fairness, bare skill, a private contained setting and orderly supervised adjudication. *Rodney Stone* embodies the noble, virtuous skilled athlete, mirroring the twentieth century superhero in modern popular culture. Such insider popular accounts emphasised virtuous masculine traits and provided fuel for qualified legal recognition of modified organised fight sports customs. English bare-knuckled sport gradually invoked civilised, rule-driven narratives to forge a disciplined physical ethos with respectable male patronage. Filter effects in other dimensions of Western male physical culture lend support to the influence of popular literary narratives in contributing to judicial, legislative and community recognition of virtuous male fighting ideals in the face of criminal law intervention.

Summary

Each ruling during this significant period of legal, social and cultural reform provides incremental endorsement of legitimate sports fighting in contrast to

unruly, collective, dangerous outlaw fights-to-the-finish. In a self-reinforcing process collapsing motives of individual and collective protection, an incremental evolution embraces amateur sportive considerations to evade outlaw characterisation. Extensive popularity documented in Western fight lore emphasised amateur virtues and civilised dimensions of English combat sports.

He Boxed Twice a Day With Ted Barton
'The Croxley Master'
The Strand Magazine,
October, 1899

Man To Man
Rodney Stone
Chapter XVIII

"'Have a Care, Jack!'"
Rodney Stone
Chapter XVIII

Conan Doyle 1980, pp. 201; 341-342.

Active defiance of state laws including assault, manslaughter and public order crimes and deliberate failure to assist police employed to preserve the peace highlight evident limitations of blanket prohibitionist philosophies. The amateur ethos and an elaborate self-regulatory environment gradually emerged

to counter outlaw labels reinforced by persistent criminal intervention. Unlike fatal duelling contests, a new era of rational scientific, criminal philosophy alongside expanded bureaucratic enforcement helped distinguish malicious, disorderly combat from virtuous, athletic, manly fight sports. This facilitated significant reform to fight practices and their legal regulation throughout the twentieth century.

§§§

ii. Private fight sports governance 1890 - 1978

Overview

A safe, contained, regulated public image was essential to maintaining the ongoing legitimacy of Western fight sports throughout the late nineteenth and early twentieth centuries. Fight clubs emerged from the formalisation of socially and legally desirable elements of the outlaw prize ring ethos. A complex body of common law rules applied general constitutional requirements to private voluntary societies enabling supervised, organised fight sports cultures to flourish. Various taxation, property and formal governance obligations ensued within a largely exclusive male club setting.

Developments in each nation have their own idiosyncratic components. Nevertheless, many generic similarities characterise the structures and methods of twentieth century fight governance. These largely stem from the impact of globalisation and uniformity at world championship level. Complex rules involving membership, event promotion and accountability for executive decisions in English fight law mirror public corporate structures common to United States jurisdictions throughout the same period (Sammons 1988, p. 261 n. 45). The main difference is the private legal classification of professional fight

governance invoked throughout the British Isles and replicated in New Zealand.

For almost one-hundred years a handful of reported verdicts examined the legal intricacies of English professional fight governance. In contrast to most of the nineteenth century, only six reported verdicts were traced between 1890 and 1978. All deal with elements of private administrative law applicable to authorised clubs, with one New Zealand verdict having temporal relevance to this cluster of rulings. In reviewing the legal characterisation and outcome of each dispute, this chapter outlines parallel trends in popular and medical narratives and their relevance during this period of consolidation in English professional fight governance.

The London Pelican Club, 1890

> … I am not satisfied that the resolution of the 29th of January represents the fair and unbiased judgment of the committee. The Marquis of Queensberry, who, on the 8th of January, is reported to have stated that he was entirely satisfied with the result of the committee's inquiry, appears to have urged upon the committee that even if the Plaintiff did not hire the roughs who were present at the fight, he so acted as to render himself responsible for their conduct
>
> *Baird v. Wells* 1890, 44 Ch 661-677, per Stirling J., p. 674.

Founded in 1887 (Anderson 2001 n. 36) and associated with the National (English) Sporting Club established in 1891, London's *Pelican Club* was significant in the evolution of Western sport. The erosion of disorderly bare-knuckled prize-fighting was prompted by sponsors of gloved professional or amateur contests in legally chartered venues. Many were licensed to serve alcohol. Annual membership fees, entry charges and ticket sales reflected an expansive body of fight club law to promote acceptable private and commercial self-regulation. Paid members acquired financial and voting rights and simultaneously owed various legal duties to promote legitimate and authorised club interests. A range of amateur and professional title events were sponsored in club venues with comfortable viewing facilities. Along with an orderly science of attack and defence, private governance facilitated the development of formal legal requirements dealing with membership rights and obligations, access to and the maintenance of professional or amateur fight venues, finance, taxation and even elements of rule-making and enforcement.

> On the 23rd of December, 1889, a prize-fight took place at *Bruges*, in *Belgium*, between two pugilists named *Smith* and *Slavin*, at which the Plaintiff was present, and it was alleged that certain unseemly proceedings occurred in which one of the officials of the club was, as alleged, implicated. On the 24th of December, 1889, an investigation by the committee into the conduct of that official was commenced and prosecuted ... charges were made against the Plaintiff by some of the persons examined; and in particular he was charged with having hired "roughs" who were present at the fight, and with having used violent and abusive language towards *Slavin* ... [and was summoned] to attend before the committee on the 7th of January, 1890
>
> *Baird v. Wells* 1890, 44 Ch 661-677, per Stirling J., pp. 662-663.

Baird v. Wells (1890) considered the legality of membership decisions to outlaw disorderly members allegedly tarnishing the image of organised fight sports. Such disputes provide insights into non-criminal languages informing modern fight law. Civilised rational athletic norms invoked within professional or amateur settings permitted sophisticated, accountable fight administration open to judicial review. Privately elected office bearers were required to conform to general common law rules by maintaining written records on significant internal decisions. Minimal legislative or external public oversight ensured a largely self-regulating private fight club industry.

A series of rule changes implemented by the *Pelican Club* committee allegedly breached authorised election and notification procedures. Constitutional reform was both a response to and a legal requirement in cases involving allegations of improper conduct and the removal of membership rights. Baird sought a court order to overturn a permanent membership ban validated by the rule changes. The verdict provides detailed examination of formal rule-making, membership and related quasi-corporate appointment procedures, and illustrates the complexity and formality of the private self-regulation model.

Numerous procedural irregularities were identified in Baird's systematic, vexatious attempt to discredit each step of the Club's exclusion and rule-making procedures. Arguments asserting both contractual and property rights associated with membership status were rejected in a detailed, step-by-step

analysis of each phase of club decision-making. The general legality of fight sports was an ancillary issue.

English common law courts recognised no inherent property or contractual rights stemming from club membership. The verdict endorses mandatory written notification procedures for significant club business and membership decisions. The content of letters from the Club to Baird provided adequate notification according to the final verdict. Additional rights available in defending these and similar allegations were also noted. Significantly, the verdict is an important evolutionary shift from criminal regulation to formalised private sports governance, invoking and adapting Queensberry amateur traditions in the professional fight realm. However, the specific appeal by Baird was rejected after judicial review to validate the Club's decision.

Outlaw fight space: 1897

> The plaintiffs alleged that on October 9 and October 21, 1896, George Paterson, the sole defendant, had disobeyed this order, by permitting boxing matches upon the premises: and that George Sheppard and Edwin Murray had assisted the defendant in disobeying it; and they moved that the defendant and George Sheppard and Edwin Murray, who were described in the notice of motion as the "agents or servants" of the defendant, might be committed to prison, or that the plaintiffs might be at liberty to issue a writ or writs of attachment against the defendant, and against Sheppard and Murray, for their contempt in having disobeyed, and aided and assisted in disobeying, the order of the court of July 15, 1896
>
> *Seaward v. Paterson* [1897] Ch 545-560 at p. 546-547.

Owners and lessors of 53 Fetter Lane, London, alleged the property was used for outlaw prize fights. Seeking an injunction to restrain further breaches of written terms of a lease, Seaward claimed Patterson '*[u]sed the premises demised*' for unlawful '*meetings*' and '*displays of boxing*'. Reports of '*a serious nuisance*' by '*the owners and occupiers of the neighbouring and adjoining houses*' warranted an appeal for authoritative judicial intervention to end the impasse. Two main legal issues involved the construction, validity and enforcement of the restrictive terms in the private lease and proof of unlawful, disorderly fighting on the premises.

Previous verdicts under general contract and property laws were examined alongside the lease contract. The ruling weighs competing versions of events conducted at the venue and endorses claims of legally recognised breaches of proprietary and contractual obligations. In discussing contribution by two fight organisers to breach the lease under common law rules of ancillary liability, Lord Justice Lindley refers to *Coney* (1882) and its applicability in a distinct private setting.

> Upon this evidence the Court cannot believe that Murray had nothing whatever to do with either of those meetings except as a spectator, and was therefore not an aider and abettor of the flagrant breach of the injunction which thus took lace. I agree with what was laid down in the case of *Reg. v. Coney* by the majority of this Court, namely, that the mere fact of a man being present as a spectator at a prize-fight, or a boxing exhibition, or a like thing, does not make him an aider or abettor of what is going on. But in this case there is evidence which clearly proves that Murray was not there as a mere spectator only, but that he was there

> aiding and abetting in a breach of the injunction which he knew had been granted, and which he flagrantly disobeyed
>
> *Seaward v. Paterson* [1897] Ch 545-560 per Lindley LJ at pp. 557-558.

This interpretation restricts liability for contractual breaches to the primary leaseholder. Paterson is sole leaseholder, unable to claim contribution for any financial, compensatory or punitive damages from Sheppard and Murray. This counters established rules of ancillary liability under nineteenth century English criminal fight laws. Endorsement of the landlord's property rights provides an important means of promoting an orderly civilised fight sports ethic in privately rented settings.

The BBBC (1919) and White City Stadium Fight Contracts (1935)

> On June 29, 1933, the plaintiff entered into an oral agreement through his manager, Dan Sullivan, with F.S. Gentle, to box with Jack Peterson at White City Stadium on July 12, 1933, on the terms that he should receive 3,000*l.* for the fight, win, lose, or draw. The plaintiff alleged that F.S. Gentle entered into the agreement as agent for the White City Stadium Ld. The fight was for the heavyweight championship of Great Britain, and duly took place, but during the second round the plaintiff was disqualified for hitting below the belt and Petersen declared the winner. On July 14, 1933, the secretary of the Board of Control wrote to the plaintiff asking him to appear before the administrative stewards of the Board on July 19, 1933, to explain his conduct in incurring the disqualification and "to give any information to the stewards to enable them to decide how the purse money shall be disposed of." The plaintiff attended at the meeting, answered questions and apologised for what had happened. The Board had previously requested that Jeff Dickson, of Jeff Dickson Sports Promoters Ld., who were promoters of the fight and had hired the White City Stadium for the contest, to pay them the sum of

> 3,000*l*. agreed to be paid to the plaintiff and he had done so, stating in his letter dated July 14, 1933, in which the amount was remitted, that it represented the plaintiff's net share. As a result of the inquiry held by them, the Board suspended the plaintiff's boxing licence for six months ... (i)n these circumstances the plaintiff brought this action against the White City Stadium Ld. and the administrative stewards of the Board of Control, claiming the sum of 3,000*l*
>
> *Doyle v. White City Stadium Limited*
> [1935] 1 KB 110-117 at pp. 112-113.

In 1919 national professional boxing in England was consolidated with the creation of the British Boxing Board of Control (BBBC). The Board mirrored accepted private club and voluntary association structures and related rule-making, accountability and membership obligations outlined in *Baird* (1890). The increasingly formalised control over all administrative dimensions of the sport, and the capacity to oversee regional and local professional contests, the Board signified a period of legal stability for English boxing. From the establishment of the Board to the decision in *Warren v. Mendy* reported in 1989, only two legal challenges were mounted against the Board's administrative practices.

Doyle v. White City Stadiums (1935) is widely recognised as a significant common law precedent dealing with contractual protections for infant performers. The case is almost identical to Les Darcy's rejected *ex parte* verdict reported in New South Wales (*McLaughlin v. Darcy* 1918), and is an influential verdict in entertainment settings beyond the square ring. Infancy equates with inability to

consent to legally enforceable contractual agreements. Motives to modify the infancy rule and enforce contracts for the benefit of performing minors vary slightly in each documented case.

White City Stadiums withheld full, agreed payments after Doyle was disqualified from a contest conducted under official BBBC rules. The minor claimed legal entitlement to the written contractual sum. Unlike previous infant litigants locked in oppressive circus (*De Francesco v. Barnum* 1890) or billiard tour arrangements (*Roberts v. Gray* 1913), Doyle argued for literal contractual enforcement despite contrasting professional fight rules outlawing illicit fight tactics.

> Boxers in case of disqualification are only entitled to receive bare travelling expenses, pending the decision of the board or branch on the circumstances of the case, when the board or branch may deal with money as it thinks fit
>
> *Doyle v. White City Stadium Limited*
> [1935] 1 KB 110-117 at pp. 112-113.

The legal weight of authorised BBBC fight and payment rules was secondary to the specific contractual terms underlying Doyle's claim. Previous rulings suggested Doyle's infancy was insufficient to declare the contract unlawful if the minor received benefits for agreed services. The verdict endorsed the applicability of authorised private fight-Board rules, stipulating payment

would be withheld after disqualification in all cases. Australian cases such as *Pallante #1* (1976) illustrate courts are wary of duplicitous arguments to invalidate analogous fight law arrangements. Legal agreements invoking dubious interpretations of protective infancy laws could be overridden by agreed fight rules under validly circulated governance principles. Analogous fight rule verdicts including the *Pelican Club* (1890) case, *Darcy* (1918) or related criminal rulings have no bearing on the decision to reject Doyle's tautologous infancy defence.

The Trinidad Welterweight Champion (1954)

> To be a champion is to be here today and gone tomorrow. There is nothing inherent to the plaintiff in being a champion. Two minutes in the ring may easily see the end of that on any day. It would be curious if he could obtain the permanent remedy of an injunction against a defendant from representing himself as the champion when tomorrow he may in fact become the champion. It seems to me, therefore, that this is not a case of passing off at all, since there are none of the essential elements of passing off involved
>
> *Serville v. Constance and another* [1954] 1 ChD 662-666 at p. 665.

During the 1950s television, radio and print advertising allowed new methods of fight chatter to supplement immense public interest in modern professional sports. *Serville v. Constance and another* (1954) provides a rare examination of rules designed to ensure accurate fight promotions. Reputations of contracted

performers in all public spheres are often embellished in promotions to capture the imagination of the viewing public. Ethical advertising supports accurate depictions of athlete histories to promote as well as exciting contests for paying viewers at the scene or monitoring events through twentieth century sports media. *Serville* challenges this ethic where promotions involve small fight communities or little-known international title-holders.

Serville complained of two advertisements naming Constance the official 'welter-weight champion of Trinidad'. Constance lost to Serville in a non-title contest before migrating to England to enhance his professional standing. Serville later won the Trinidad national championship. A promotional postcard depicted Constance in fighting pose with manager Jack Burns. Burns was licensed under BBBC regulations but the postcard and promotional caption allegedly breached Board rules against misrepresenting the fight history of billed athletes. Serville reported the matter to Stan Baker, organiser and promoter of the event and also sought legal advice. This prompted the following corrective promotion by Board authorities.

> ***Boxer Hector Constance.*** Hector Constance wishes it to be known that he does not make claim to be the welter-weight champion of Trinidad or British West Indies. Promoters are therefore instructed not to bill or advertise in any way that Constance is the holder of either of these titles
>
> *Serville v. Constance and another* [1954] 1 ChD 662-666 per Harman J at p. 664.

Serville sought compensation for his harmed reputation. The validity of private licensing, rule-making and enforcement rules under the BBBC constitution were not considered relevant. Serville's athletic reputation appears usurped by a promotional glitch. Common law remedies for the tort of passing off require evidence of direct, proven economic loss to the claimant. The court held this was not present on the evidence presented.

As a recent arrival to the English prize circuit there was insufficient proof of a recognisable fight reputation sufficiently damaged by the error. By contrast, Constance was well known among English fight fans and no evidence of deliberate malice underpinned a forgivable advertising error. Judge Harman's ancillary ruling on the lack of property rights in professional sporting achievements is also significant. While in principle Serville's claim appears warranted, insufficiently delineated economic or personal harm ensured the unfavourable ruling.

The BBBC and licence rejection (1978)

> There are many reasons why a licence might be refused to an applicant of complete integrity, high repute and financial stability. Some may be wholly unconnected with the applicant, as where there are already too many licensees for the good of boxing under existing conditions. Others will relate to the applicant. They may be discreditable to him, as where he is dishonest or a drunkard; or they may be free from discredit, as where he suffers from physical or mental ill-health, or is too young, or too inexperienced, or too old, or simply lacks the personality or strength of character required for what no doubt may be an exacting occupation. There may be no 'case against him' at all, in the sense of something

> warranting forfeiture or expulsion; instead, there may simply be the absence of enough in favour of granting the licence. Indeed, in most cases the more demanding and responsible the occupation for which the licence is required, the greater will be the part likely to be played by considerations of general suitability of the applicant, as distinct from the mere absence of moral or other blemishes. The more important these general considerations are, the less appropriate does it appear to be to require the licensing body to indicate to the applicant the nature of the 'case against him'
>
> *McInnes v. Onslow Fane and another*
> [1978] 3 All ER 211-224 at pp. 220-221.

BBBC Regional Area Councils have primary responsibility for license applications with oversight and co-ordination at national level. The Western Area Council decided Peter McInnes' infrequent license history justified rejecting his application for a professional management license. Between 1955 and 1973 McInnes had no formal fight industry involvement, even though he maintained *'interest'* in fight sports while working in the army and as a free-lance journalist. In February 1973 the Southern Area Council approved a *master of ceremonies* licence and a manager's license was granted three months later. Several formal complaints followed an unfortunate contest held at Bournemouth on 9 April 1973 after two billed athletes failed to appear. McInnes made every effort to save the event but the Southern Area Council commenced a formal investigation under BBBC direction. McInnes was requested to appear at a Council hearing and present a defence with the option of legal representation but ignored the written directive. The Council suspended

McInnes for *reprehensible conduct* and the matter rested until a second license application was made two years later with a different Area Council.

McInnes claimed he was entitled to an oral hearing to defend his rights against the Western Area Council ruling. The BBBC endorsed the Council decision and McInnes sought judicial review. Blanket claims of procedural irregularities and allied breaches of natural justice were rejected outright. The expert power of governing authorities to make discretionary, reviewable membership or licensing decisions in the best interests of the sport is reinforced under general common law rules involving private administrative governance. Legal categorisation as a public or private entity appears to matter little under this realm of Western law. Complex evidentiary considerations including the trail of decision-based communications validate most Association, Board or Commission rulings.

The precise grounds endorsed by the court are complex, and best illustrated by a parallel New Zealand case decided in the same year. The only factual difference between the two cases was the status of each excluded member: McInnes was a fight manager while Stininato was a licensed professional boxer. In both cases the rules of private administrative law tested the power of each private organisation to lawfully exclude paid competing or viewing fight club patrons. Notably, the virtually identical circumstances and legal grounds

argued and endorsed in *Baird* (1890), the first reported verdict of this type, were not canvassed in courtroom argument or the final ruling.

The New Zealand Boxing Association case (1978)

> The New Zealand Boxing Council has received complaint alleging that you refused accommodation provided by the Hawkes Bay Boxing Association in regard to their contest on 16 March 1968. That you refused the statement of account of the Hawkes Bay Boxing Association in respect to your net purse and refused to leave on the midday plane as per the reservation made. That you refused in the first instance to pay the purse and other deductions for licence and medical certificate incurred by the Hawkes Bay Boxing Association.
>
> That on 2 May you gave assault to the manager of the Fijian boxing team which was competing in Auckland. That you demanded sums of money from the manager of Fijian team and that you accepted $7. It is alleged that you forcibly held the arm and demanded money from Mr Max Milburn and claimed you would get the money from the boys in the dressing room, and that none of the Fijian boxers would leave the dressing room until you were paid.
>
> *Stininato v. New Zealand Boxing Association*
> [1978] 1 NZLR 1-30 at per Woodhouse J at pp. 9-10.

Stininato (1978) is the only reported New Zealand fight law ruling. Sharing identical unitary constitutional, institutional and regulatory powers to the BBBC, the New Zealand Boxing Association (NZBA) and subordinate regional councils adopt a monopoly administrative model under a publicly approved private corporate structure. All major administrative decisions, rule-making and enforcement practices incorporate professional licensing requirements,

constitutive fight rules and extensive medical examination procedures. The dispute examined various rights of licensed Association members to be informed of allegations, charges or decisions regarding desirable personal conduct. As with the English decision in *Baird* (1890) a brash fight club member and the validity of an internal expulsion order were principal issues for consideration.

A letter issued by Association executive members summoned Stininato to explain his alleged misconduct and show cause to justify his professional license ban. The North American first fought in New Zealand under license in 1962 but *'acquired something of a reputation as a trouble maker in boxing circles'*. Several *incidents* during subsequent visits seriously questioned Stininato's public demeanour and confrontational attitudes towards managers, promoters and opposing fighters throughout New Zealand.

Several threats to withdraw from contests minutes before commencement led to progressive, widespread industry dissatisfaction with Stininato. Each judgment depicts a greedy, aggressive individual with a severely tainted professional reputation. Persistent unsporting behaviour justified rejecting Stininato's license despite risks of an unlawful restraint of trade. Extensive procedural irregularities in making, communicating and enforcing the ruling were also scrutinised.

New Zealand Boxing Association Licensing Rules

(1) Except in the case of an imported professional boxer, no professional boxer shall take part in any contest unless he is licensed in accordance with these rules at least seven days prior to the contest

(2) Every license shall be issued by the Council

(3) An application for a licence shall be in such form as may from time to time be prescribed by the Council and shall be accompanied with a licence fee of $5

(4) The Council, after considering an application, may grant, postpone, or refuse the same and cause the applicant to be notified accordingly. No appeal shall lie against the decision of the Council with respect to any such application

(5) Where the Council decides to grant an application for a licence, it shall issue to the applicant a licence in such form as the Council may from time to time prescribe

(6) Every licence shall, unless sooner revoked, expire on the 31st day of December next following the date of its being issued

(7) Where a boxer who has been granted a licence is subsequently convicted of any offence for which he is liable for imprisonment or has made an untrue statement when making application for a licence, such licence may be revoked by the Council immediately and without further inquiry, notwithstanding Rule 73 or any provision in any other part of these rules

(7)(a) Where the Council is satisfied by competent and independent medical evidence that it is in the best interests of a boxer's health that he should no longer hold a licence, such licence may be revoked by Council immediately and without further inquiry, notwithstanding Rule 73 or any provision in any other part of these rules

(8) In all other cases Council may suspend the licence at once of any boxer where, in the opinion of Council, the boxer's conduct either in the ring or outside the ring is such that further inquiry is considered necessary

(9) Notwithstanding Rule 73 or any other provision in any part of these Rules, Council may then call upon the boxer to show cause, within seven days, why his licence should not be cancelled and such other penalty imposed as within the power of the Council

Stininato v. New Zealand Boxing Association [1978] 1 NZLR 1-30 at p. 3.

Stininato claimed insufficient notice of the decision and an inadequate right to defend his case. Three New Zealand appeal justices reconstructed each step of the decision-making process, ultimately rejecting any suggestion of extensive procedural irregularities to warrant a favourable court ruling. Slightly more liberal administrative standards than legally required for public administrative bureaucracies were characteristic of private fight governance. Evidence indicated an open and accountable decision-making process warranting no judicial intervention.

Private, self-regulating membership clubs have important roles in establishing a good public image for otherwise contentious pastimes. *Baird* and *Stininato* allow private sports clubs considerable scope to govern membership affairs with minimal external interference. Written notice of disciplinary procedures, exclusion orders or misconduct allegations and evidence of a right of reply will generally validate private administrative, rule-making and licensing decisions. Western courts additionally show distinct reluctance to overturn licensing bans where evidence highlights due effort by public or private organisations to conform to common law natural justice and procedural fairness requirements.

An interesting footnote demonstrates profound limitations of multi-agency governance in diffuse South Pacific fight industries, and the limited power of judicial review to sustain permanent license bans in these settings. Interestingly,

the diverse character of international sports governance facilitates the movement of banned personnel throughout the recognised fight world.

> In 1970 he had two fights in Fiji, and in 1973 or 1974 he had four preliminary fights in Auckland promoted by the newly formed and independent South Pacific Wrestling and Boxing Association. That body, unlike the respondent associations, is concerned with professional contests only and has no responsibility for amateur boxing
>
> *Stininato v. New Zealand Boxing Association*
> [1978] 1 NZLR 1-30 at p. 17 per Cooke J.

Twentieth century fight lore

Chronological and A-Z fight histories (Brooke-Ball 2001; Blewett 1999), instructional guidebooks on 'ring-craft' (James 1987), historic trivia (Kent 2000) and consolidated pictorial histories of individuals such as Ali (Strathmore 2001), or notable personalities in the modern heavyweight lineage (Hill 2002), dominate popular English fight chatter. Specific landmark events such as the unification of three world heavyweight titles by Lennox Lewis (Lawton 2000) provide renewed interest in English fight sports. Consolidated editions of national and international fight commentary (McIlvanney 1996), popular and revisionist histories of noted champions (Myler 1998) and the cultural, social and personal dimensions of contemporary boxing (Shipley 1989) provide an extensive supplement to popular sports chatter in collected volumes (Coleman

and Hornby eds. 1996) or daily news sources. Among many fascinating stories of bruised, battered, battling Englishmen (Healy 1997) are two main themes.

Randolph Turpin, in his last appearance at the Harringay Stadium, was the victim of a running commentary of taunts from those who had come to see him batter his opponent into insensibility and were disappointed. Although Turpin was the winner he was stung into retaliation and shouted as he left the ring,

"You don't want boxing, you want murder!"

Summerskill 1956, p. 31;
See also Ateyo 1979, p. 172.

Randolph Turpin (left) ***v. Sugar Ray Robinson,*** 12 September 1951, Brooke-Ball 1999, p. 99.

Several works directly condemn fight sports, generating lengthy counter-narratives to defend the practice. In 1956 conservative Parliamentarian Dr Edith Summerskill published a strong denunciation of professional boxing stressing inherent dangers, controversies and hypocrisies of mid-century professional English fight sports. Selective descriptions of three-hour contests involving bare-knuckle professional Jem Mace during the 1830s underpin this emotive, prohibitionist argument directed at a dangerous, morally questionable sport.

Common risks in professional and amateur fight sports are graphically described to justify paternalistic controls or outright prohibition as a means of

protecting unwary young fight contenders. The desire for criminal prohibition informs a politically laden depiction of outlaw sports fighting using a selective composite of documented historical controversies. Few specific insights into the content, enforcement and political acceptability of proposed outlaw bans are provided in a moral quest to ban a brutal and degrading fight sport.

Blonstein's research (1965; 1966a; 1966b) is informed by extensive medical knowledge in the treatment of fight sports injuries. The author was senior medical officer of the British Amateur Boxing Association, Chairman of the British Association for Sports Medicine and member of the International Olympic Committee. This insider narrative offers a more informed understanding of safe fight practices directed at professional and lay audiences, and acts as a pertinent counterpoint to arguments endorsing paternalism and their proven limits in eradicating professional athletic boxing.

Some questionable research findings on physical risks in fighting and allied competitive sports are presented. However, in countering many of Summerskill's reductionist, emotive arguments, Blonstein successfully invalidates most concerns over athlete exploitation with extensive domestic and international evidence. Several generalisations also support minimal interference in professional fight governance under criminal, administrative or related public laws. An insider-outsider debate opposed on all fronts characterises this contest over modern fight virtues and effective regulation.

Reported Western Sports Injuries 1946-62

Oslo 1955 [Johansen]		*Great Britain & USA*		
Sport	**Injuries**	**Sport**	**Era**	**Deaths**
Skiing	1,784	Pro Boxing	1946-62	5 in 52,200 bouts
Football	1,320	Amateur boxing	1946-62	9
Gymnastics	622	Horse racing	1953-62	8 in 170,000 rides
Bathing & swimming	523	Flat racing	1954-62	2 in 200,000 mounts
Handball	393	Canoeing	Nov 60 -Oct 62	68
Skating	363	Rock climbing	1961	12
Tobogganing	279	Mountaineering (USA)	1951-60	122
Hockey & Ice Hockey	135	Motor cycle racing	1958-62	45
Wrestling	116	Gliding (UK)	1958-62	2
Boxing	100	Cricket	1962	6
Athletics	90	Rugby football	1962	11
Cross Country Running	57	Association football	1962	7
Tennis	30	Swimming, diving, under-water swimming	1962	2,000
Other	245			
		Total 6,057		

Blonstein 1966b pp. 649-650.

A final theme highlights the periodic re-emergence of military and allied state institutions amongst English fight lore. Closed male occupational cultures often promote competitive fight practices, offering several interesting sites for investigation. Criminal prosecutions and reported lore on duelling, honour and military masculinity endorse direct connections between outlaw fighting and lethal single combat. Prohibitions on duelling emerge in military and allied sources to counter the noble, combative appeal of the practice (Command of the Military Board 1941, p. 426; Lincoln Bouscaren and Ellis 1957, p. 908 c. 2351, § 2). Along with suicide, unlawful fatal combat possesses an inherently outlaw character potentially compromising solidarity, obedience and good order within disciplined, protective male environment. State enforcement institutions often embrace fight sports as a positive disciplinary and fitness practice with implications for desired masculinities at the national level. Physical cultures embodied in both military and fight sports practices are prominent themes in Western fight lore more generally warranting further theoretical and empirical scrutiny.

Summary

For almost a century private governance arguably helped limit judicial scrutiny of dangerous fight sports and their administration. Alongside these six pertinent rulings the rapid global professionalisation of modern fight sports is aptly reflected in the general lack of formal legal intervention. As a parallel

development, fight culture and its emphasis on noble, virtuous and self-defending masculinities consolidated throughout the century. Long aware of the contradictions of state paternalism and its limits in eradicating a popular social custom, Conan Doyle aptly articulated the inherent paradox embedded in public law-and-order culture and private resistance exemplified by institutional, enforcement or safety reforms within a legitimate modern sports template.

> The inspector fell in with the procession, and proceeded, as they walked up the hill, to bargain in the official capacity for a front seat, where he could safeguard the interests of the law, and in his private capacity to lay out thirty shillings at seven to one with Mr. Armitage
>
> Arthur Conan Doyle, 'The Croxley Master'
> first serialised in three parts in *The Strand Magazine*,
> 1899: 1996 p. 43.

A flurry of litigation in England throughout the 1990s and into the first years of the new millennium has significant capacity to modify this template. Renewed debates over the merits of paternalism or blanket prohibition are common responses to several widely publicised square-ring controversies during this period.

§§§

iii. Recent Controversies: 1989-2002

Overview

English fighting and legal traditions provide the evolutionary foundation for all variants in Western social life. Law making, enforcement and decision-making institutions uniformly adopt English language, constitutional forms, reporting methods, debating customs and dispute construction practices. Several important principles relating to modern fight lore are equally prominent within this dominant governance tradition. The initial law-and-order approach to competitive sports fighting progressively gave way to an increased focus on private governance under administrative law principles throughout the bulk of the twentieth century. A centralised national regulatory monopoly and significant global influence over constitutive elements of the professional fight game ensure the ongoing significance of the British Boxing Board of Control in both domestic and international sports administration.

Five reported verdicts between *McInnes* (1978) and 2002, reported in various legal and allied sources, illustrate the gradual refinement of private BBBC rule-making, licensing, contractual and medical procedures under current English law. Similar trends have been mirrored in recent Australian fight law. These verdicts complete a total sample of thirty reported English rulings spanning

over two centuries of common law development. The most significant legal controversy during this relatively short period involved negligence claims over the tragic injuries sustained by Michael Watson in a vicious contest against Chris Eubank at Tottenham Hotspur Football Club on 21 September 1991. Over a decade later *Watson #2* (2001) and the remaining verdicts of this period helped consolidate various dimensions of English professional and amateur fight administration under private common law rules. As will become evident in the remaining chapters, the legal grounds and disputed fight law territory are virtually identical under divergent public or private legal structures in each jurisdiction. Further, most scenarios litigated in England between 1989 and 2002 bear many similarities with allied verdicts reported since *Baird v. Wells* in 1890.

The Dual Licensing Rule (1989) and Michael Watson #1 (1991)

> All professional sports need firm and careful regulatory control, both in the interests of the participants, as well as in the interests of the public ...[b]ut professional boxing needs, perhaps, more careful control than any other professional sport ... Professional boxers in the early years of their professional lives - perhaps in their late teens - will be likely to be unaccustomed to dealing with formal written contracts. Street-wise, hard characters they may often be, but they will seldom be able to bargain on a basis of equality with the managers and promoters with whom they deal. On the other hand, the sums of money available to reward the few who achieve national and international success are staggering. The crock of gold at the end of the rainbow must often dazzle the young boxer starting his professional career. To these features may be added the risk of physical injury that is inherent in all boxing but obviously is much more pronounced in professional boxing than in the amateur game
>
> *Watson v. Prager and another*
> [1991] 3 All ER 487-510 at p. 493 per Scott J.

In 1991 Michael Watson was beginning a promising fighting career. At this crucial time during his professional development, Watson became dissatisfied with alleged conflicts of interest involving his manager, Mickey Duff. The dual licensing rule was formally endorsed by the BBBC in conformity with established industry conventions allowing fight managers to also promote contests in England's small fight industry.

Watson claimed the arrangement was unlawful after an unspecified dispute with Mickey Duff and his management/promotions empire, and also alleged all contracts with Duff and his National Promotions Company were void, unlawful and unenforceable. The ultimate aim was to transfer managers, and seek a similar transfer of scheduled fight commitments to conform to BBBC requirements. Although the rule was legally sanctioned Watson's argument stressed a possible infringement of athlete welfare considerations at the expense of management, promotional and economic interests.

Warren v. Mendy (1989) involved virtually identical issues under the dual licensing rule. The lengthy, complex verdict reveals Warren, a licensed manager, counter-sued Mendy, a rival, unlicensed manager, to assert his management rights over promising fighter Nigel Benn. The only factual contrast with *Watson #1* involved a prohibition motive to Warren's claim. Mendy threatened to take over Benn's management affairs under a rival and potentially invalid contract. An evident dispute between Warren and his fighter

simultaneously tested strict or liberal readings of these private contractual arrangements and BBBC dual licensing policies.

This rare example of judicial intervention in private or public fight management arrangements endorsed the legality, necessity and justifications for dual licensing later adopted and strengthened in *Watson #1*. Lord Justice Nourse demonstrated industry realities necessitated the rule despite acknowledged concerns over unreasonable management practices, particularly to the disadvantage of unwary young athletes. The court would not enforce an unworkable contractual arrangement, and Warren's claim for an injunction to prevent Benn seeking alternate management guidance was disallowed pending Mendy's license approval. Warren's confrontational demeanour throughout this dispute warranted conditional endorsement of the dual licensing rule in this case, although broader problems invariably triggered the allied dispute in *Watson #1*. The nature of contemporary scrutiny over fight governance and conflicts between industry reality and protective, impartial athlete management customs is an ongoing tension throughout the modern history of Western fight law. As with recent Australian experience, minor reactive tinkering to BBBC rules followed each legal ruling.

Mickey Duff's complex web of companies generated considerable scrutiny during the 1980s for suspicious free-market financial, matching and fight management practices (Hauser 1993). Nevertheless, BBBC rules require

mandatory licensing for all professional athletes, management companies, trainers and appointed fight personnel, and Duff was duly licensed and prominent in English professional fight culture. Greenfield and Osborn (1995) express concerns over selective monopoly interests dominating English professional boxing under the contentious rule despite some recognised benefits in a small professional fight market.

> The possible conflict of interest had long troubled the boxing authorities. In the 1950s dual licensing as manager and promoter was not permissible; however the enactment of an entertainment tax to boxing promotions had serious financial implications and led to the Board altering its rules to allow managers to promote and vice versa. This was not universally viewed as progressive, and the position was altered at the Annual General Meeting in 1984 to prevent the dual position. This reversal was very unpopular with some managers who argued that unless they were able to promote their young boxers, there would not be any opportunities for them to box. Accordingly, this policy was reversed by a Special General Meeting later in the year. Following the decision in *Warren* [1989], the board again reconsidered the position and allowed managers to promote all contests except those involving their own fighters. This again brought protests from managers outside of London, but also significantly from the Office of Fair Trading
>
> Greenfield and Osborn 1995, pp. 162-163.

Critics recognise invariable conflicts of interest are perpetuated by dual licensing. Fight lore indicates power imbalances are inherent in national and international fight settings where small, specialist industries and strong elite management groups promote conflicting interests and anti-competitive monopolies. Public or private organisational structures have few distinguishing features in this respect. *Watson #1* (1991) recognised such conflicts are generally

tolerable, with BBBC oversight and judicial review available to correct unduly specific allegations of harsh management and promotions arrangements on a case-by-case basis. Firm statements on the need for protective fight governance under expert private BBBC direction generated minor amendments to dual licensing rules applicable only to title-holders or contenders with increased popular appeal and economic value (Greenfield and Osborn 1995, p. 167). This limited response to the concerns raised by Watson's initial grievance illustrates a well-established albeit problematic English fight management practice, and the limits of judicial review or litigation in challenging such a powerful institutionalised professional custom.

Michael Watson v. Chris Eubank (2001)

Watson v. British Boxing Board of Control (2001) examines liabilities of BBBC officials and duly appointed medical personnel within the ongoing debate over the hazards of professional fight sports. Extensive publicity of this tragedy ensured further debate amongst outsiders, insiders, opponents and supporters revisiting common sites of attack and defence in prohibitionist, paternalistic regulatory and safety debates.

> Talk about the steady improvement in safety procedures represents another unconvincing argument. Headguards, shorter fights, shorter rounds, quicker stoppages, better medical supervision - none of these affects the core element that sets boxing apart from every other sporting endeavour: its primeval essence of destructive motive. That is why the

> lingering belief that Michael Watson should not have been permitted to start the 12th round against Eubank, that the evidence of pathetic disorientation and gross vulnerability discernible from my seat 25 feet away might have persuaded his corner or the referee to end the fight after the terrible violence of the 11th, has only limited relevance. Watson was not a victim of negligence or bad judgement but of the basic nature of his profession
>
> McInvanney 1996, p. 224.

After a flurry of blows Michael Watson crumpled unconscious on his stool at the end of twelve exhausting rounds. The step-by-step factual description of events following Watson's collapse is crucial to the availability of compensation for personal injuries under English negligence law. Intervening medical diagnoses and hospital treatment would absolve the Board from any liabilities. Lengthy descriptions of chaos at the scene provided the basis for a complex medical, legal and factual analysis of the direct causes of injury and any presence of intervening negligence by hospital personnel absolving the Board and its ringside treatment regime.

> There was chaos in and outside the ring and seven minutes elapsed before he [Watson] was examined by one of the doctors who were in attendance. He was taken on a stretcher to an ambulance which was standing by which took him to North Middlesex Hospital. Nearly half an hour elapsed between the end of the fight and the time that he got there. At the North Middlesex Hospital he was intubated, that is an endotracheal tube was inserted, and he was given oxygen. He was also given an injection of mannitol, a diuretic that can have the effect of reducing swelling of the brain. The North Middlesex Hospital had no neurosurgical department, so Mr Watson was transferred by ambulance, still unconscious, to St Bartholomew's hospital. There an operation was carried out to evacuate a subdural haematoma. By this time, however, he

> had sustained serious brain damage. This has left him paralysed down the left side and with other physical and mental disability
>
> *Watson v. British Boxing Board of Control*
> [2001] 2 WLR 1256-1292 at pp. 1259-1260.

Several generations of common law rules worked to negate Watson's claim. The verdict rejects suggestions of BBBC liability for medical costs and lost earnings after a consensual, professional, highly regulated contest. Extensive licensing rules and the viability of medical screening and treatment procedures are highlighted throughout. Consent is central to the determination, with Watson assuming all inherent and probable risks in privately regulated fight-sports.

A participant's knowledge of inherent risks bars compensation for temporary or permanent injuries sustained during dangerous voluntary activities. The Latin term *volenti non fit injuria* declares those consenting to risky behaviour legally accept any dangerous consequences which eventuate. Intervening breaches of separate legal duties by hospital personnel might reduce, but not eliminate, any allied legal obligations arising from Board medical procedures. George indicates (2002) all public and private clubs and voluntary groups are affected by seven core principles of negligence law aimed at preventing serious injury in contemporary sports and recreation settings.

> (1) Mr Watson was one of a defined number of boxing members of the Board.

(2) A primary stated object of the Board was to look after its boxing members' physical safety.
(3) The Board encouraged and supported its boxing members in the pursuit of an activity which involved inevitable physical injury and the need for medical precautions against the consequences of such injury.
(4) The Board controlled every aspect of that activity.
(5) In particular, the Board controlled the medical assistance that would be provided.
(6) The Board had, or had access to, specialist expertise in relation to appropriate standards of medical care.
(7) The Board's assumption of responsibility in relation to medical care probably relieved the promoter of such responsibility. If Mr Watson has no remedy against the Board he has no remedy at all.
(8) Boxing members of the Board, including Mr Watson, could reasonably rely upon the Board to look after their safety

George 2002, pp. 110-111.

Extensive rules applied to all license-holders contributing to greater levels of safety in the broader public interest. Provided the BBBC informs all members of the enactment, enforcement and content of validly enacted rules, liability for common law negligence will not be imposed. Despite questionable elements the aims, content and enforcement of medical screening rules ultimately sought to protect athletes. This cautious approach to imposing financial and legal responsibilities against private, non-profit regulatory organisations under established 'assumption of risk' principles is a significant feature of Western fight law development.

> ... [T]he injuries which are sustained by professional boxers are the foreseeable, indeed inevitable, consequence of an activity which the board sponsors, encourages and controls. The conduct of the activity of

> professional boxing carries with it, for the small body of men that take part in it, the need for the provision of medical assistance to treat the injuries that they sustain and minimise their adverse consequences. It seems to me that, but for the intervention of the board, the promoter would probably owe a common law duty to the boxer to make reasonable provision for the immediate treatment of his injuries. An analogy can be drawn with the duty of an employer, whose activities involve a particular health risk, to make provision for its employees to receive appropriate medical attention
>
> *Watson v. British Boxing Board of Control*
> [2001] 2 WLR 1256-1292 at pp. 1279
> per Lord Phillips of Worth Matravers MR
> citing *Stokes v. Guest Keen & Nettlefold (Bolts and Nuts) Ltd*
> [1968] 1 WLR 1776.

The major distinguishing feature distinguishing English and much United States and Australian fight law is the self-regulating character of the BBBC. Each Australian Association, Board or Commission is the direct creation of state parliament. The BBBC retains a private monopoly over licensing, medical procedures, venue safety and all rule-making and enforcement. Internationally sanctioned fight rules and domestic law equally affect public and private sports organisations under virtually identical philosophies. Minor legal distinctions include more stringent, proximate connections warranting legal liability for negligent governance and increased capacity to immediately rectify problems through compulsory public regulatory intervention (George 2002, p. 114).

This 'keen' attempt 'to confine [the] decision to the case' and its facts (George 2002, p. 119) also demonstrates the conservatism of English common law

growth. As with Australian cases *Brizzi* (1970) and *Pallante* (1976), compensation for personal injuries during fight sports is generally restricted to the specific issues before the tribunal or court. Fight compensation policies are considered legislative issues unlikely to be resolved under the private, voluntary, non-profit BBBC monopoly. Discussion of *Watson* in authoritative legal sources is generally confined to principles of private common law negligence while broader questions involving Watson's right to compensation, or allied fight law developments in English-speaking jurisdictions remain beyond this methodological frame. Eubank continued his career, while Watson was forced to bear sole financial, legal and personal responsibility for his knowledge of the inherent dangers in his chosen sport.

Military Boxing (2002)

Discipline, honour, physical fitness and combative male comradeship are all prominent features of modern Western military and fight cultures. Army, Navy and Air-Force settings pioneer English boxing research through controlled populations of regular competing male fighters. Amongst the notes and miscellanea of the *British Journal of Industrial Medicine* Brennan and O'Connor (1968) outline the results of a long-term study of boxing injuries conducted by the Royal United Kingdom Air Force during the post-World-War II English fight sports boom. Further inquiry on the roles of fight sports in Western military cultures and allied medical and cultural analysis seems warranted.

Injuries Reported by Royal Air Force Fighters 1953-66
(mean work days lost in parentheses)

Year	Head & Neck	Upper limbs & shoulder	Other	Totals
1953	15 (12) + 1 death	7 (14)	3 (27)	26 (14)
1954	20 (9)	5 (22)	9 (35)	34 (18)
1955	20 (9)	4 (15)	10 (10)	34 (10)
1956	13 (7) + 1 invalid	2 (3)	7 (15)	23 (9)
1957	13 (6)	2 (29)	7 (13)	22 (11)
1958	5 (15)	2 (6)	6 (13)	13 (12)
1959	7 (7) + 1 death	4 (5)	3 (6)	15 (6)
1960	20 (8)	6 (8)	3 (3)	29 (8)
1961	1 (5)	2 (7)	6 (20)	9 (16)
1962	7 (7)	1 (13)	3 (6)	11 (7)
1963	4 (5)	0 (-)	0 (-)	4 (5)
1964	8 (9)	1 (22)	1 (6)	10 (10)
1965	4 (5)	3 (9)	0 (-)	7 (7)
1966	2 (14)	0 (-)	1 (14)	3 (14)
Totals	**139 (9)** + 2 deaths, 1 invalid	**39 (12)**	**59 (16)**	**240 (11)**

Brennan & O'Connor 1968, p. 327.

Most reported injuries involved neck and head trauma, and two deaths were reported in the first six years of the study. Recommendations urged greater protective equipment as well as the drafting and enforcement of more vigilant sporting restrictions to help prevent serious injury or death. Regrettably, few allied studies within or beyond English military cultures qualify these findings.

These findings indicate there is an inevitable, albeit low risk of death or physical injury regardless of rule-based modifications or the setting of the contest. *Fox* (2002) endorses this view in the form of a brief case note in the *Journal of Entertainment Law* (2002) yet to be fully published in English law reports. Coincidental timing with *Watson* adds to the scope of recent common law scrutiny of medical hazards in contemporary fight sports. Fox sustained permanent injuries after a supervised contest and claimed negligence liability against his military employer. This less detailed adjunct to *Watson* denied compensation, as insufficient evidence proved breach of recognised medical duties, common law principles or conventional fight rules.

> F joined the army in 1989 and was serving in Bosnia in September 1995. He took part in an inter-competition novice boxing competition. He won his first bout, but in the second bout he sustained a head injury in the third round. As a result he was discharged from the army in June 1997. By his amended pleaded case, he alleged that the MOD [Ministry of Defence] had failed to ensure that the medical officer ('B') at the fight was someone with specialist knowledge of boxing matches and had failed to give F a comprehensive examination. F's temperature before the fight was noted by B to have been 37.4 degrees centigrade. F argued that such a temperature was a sign of possible dehydration, with the effect that he would not have been as alert as he should have been in the ring,

> or alternatively that his temperature was a sign of an infection. The MOD denied liability and the judge ordered that the issue of liability should be determined separately. It was B's evidence that the text and literature on medical examinations with regard to boxers stated that the normal body temperature of a pre-match boxer was 37 degrees plus or minus 0.5. It transpired that at the time B examined F leading up to the competition, B had not been informed that F had taken part in a boxing match in 1989 and sustained concussion, and that in 1993 he had been involved in a motorcycle accident and his head had hit the road after his helmet had split. The judge found B to have been a caring and thorough doctor who had briefed himself on head injuries before the competition. The judge was satisfied that a body temperature of 37.4 degrees would not have indicated to a careful doctor that a boxer was unfit to fight ... in any event there was no causative link between F's body temperature and his injuries
>
> *Adrian Paul Fox v. Ministry of Defence*
> Court of Appeal (Kennedy LJ, Mantell LJ, Neuberger, J, 6 March 2002
> 'Case notes', *Journal of Entertainment Law* vol.1, 2002, pp. 135-136.

Testimony suggested no discernible signs of infection or dehydration to justify medical prohibition for health, safety or protective reasons. A body temperature at least 0.6 degrees or more, and contrary to industry practice was insufficient in fact or law to establish medical negligence. A lack of connection between the athlete's documented temperature and the harm further justified this outcome. Despite obvious similarities the case note provides no reference to *Watson* #2 and its significance in the court's reasoning. The uniform application of recognised consent principles ensured athlete losses lay where they fell. Medical testimony revealing certain harms could not be detected or prevented through standard examination procedures validated legal immunities for

individual doctors and their public or private employers in a significant negligence ruling.

Amateur fight governance (2002)

A second case note illustrates contrasting grounds for judicial scrutiny of English fight rules. An unacknowledged link with Michael Watson follows a contractual trajectory in this example of a litigated membership dispute. The contractual status of letters between two amateur fight associations was considered in *Treherne* (2002). A subtext of ongoing rivalry between British amateur fight governance entities is clear in the brief narrative report.

> (1) ... [A]nalysis of the correspondence highlighted considerable doubt on behalf of the ABAE [Amateur Boxing Association of England (Ltd)] towards WABF's [Wales Amateur Boxing Federation] affiliation ... one letter from the ABAE to the WABF even suggested that the WABF and Welsh Amateur Boxing Association (WABA) should make attempts to overcome the hostility between the two organisations, thereby preventing any affiliation with the ABAE (2) The claimants' case was that, by a letter dated 15 June 1999 from their solicitor to the ABAE's acting company secretary, a contractual offer was made on behalf of WABF applying for membership of ABAE as an affiliated regional association of ABAE ... it was difficult to see how the letter on behalf of 'our clients' was to be regarded by the solicitor as a contractual offer ... (it) was more appropriate to regard that letter as an invitation to treat. (3) No intent to create legal relations existed between the parties. Even if it did, it was entirely inappropriate for the Court of Appeal to start making orders on association membership where the fact was, quite clearly, that the WABF was not wanted. (4) It was regrettable that this case had reached such a stage. It was unfortunate that the WABF had become entangled in this situation, and at such great cost

Alwyn Treherne & 15 others
(Suing on their own behalf & on behalf of members
of the Welsh Amateur Boxing Federation
v. Amateur Boxing Association of England Ltd,
Court of appeal, Buxton LJ, Latham LJ Sir Dennis Henry, 11 March 2003
'Case notes', *Journal of Entertainment Law* vol 1, 2002, pp. 139-140.

Four legal principles illustrate the complexities of multiple governance structures in contemporary British professional and amateur sports. Fragmented institutions replicate public and private regulatory problems evident in federated nations including the United States and Australia. Three private organisational bodies sharing constitutional, governance, rule-making and licensing functions within a limited geographic area generate many administrative tensions and disagreements. Uniform international rules fail to prevent these multi-institutional legacies. Undue duplication of resources, protracted disagreements and personality conflicts influencing administrative practices are exacerbated in a complex dispute where Welsh voting rights on matters of English amateur fight governance appeared to be principal legal questions in a condensed, incomplete factual description of the dispute.

The core legal issue involved the status of association membership and inter-agency communication under the laws of contract. Letters of invitation have no binding contractual force. An 'invitation to treat' requires subsequent written evidence to establish a legally binding agreement. The verdict denies contractual status to an array of preliminary correspondence between English

and Welsh governing bodies, seemingly in relation to a possible merger. Conflicts between two Welsh amateur bodies were beyond the reasonable scope of judicial power to compel a highly problematic merger between one of these authorities and the English amateur body. Any 'offer to make an offer' required further negotiation and a safe, palatable, conservative outcome. The finding provided tacit legal endorsement for this complex inter-jurisdictional arrangement characteristic of modern British fight governance.

Implications and curiosities

Each case illustrates contemporary trends in English professional, amateur and military fight governance. Medical and rule-making functions are of primary focus in late-modern judicial records. Private rule-making powers are validated despite evident concerns over conflicts of interest affecting athletes, managers and promotional companies and their directing interests. Dominant contractual principles offer the principal means for classifying each rule-making and licensing dispute under English common law. The BBBC, ABAE, WABF and WABA are all private, self-regulating legal entities. Similar medical, governance and athlete welfare functions underpin this fragmented, dispute-ridden, fight sports governance regime.

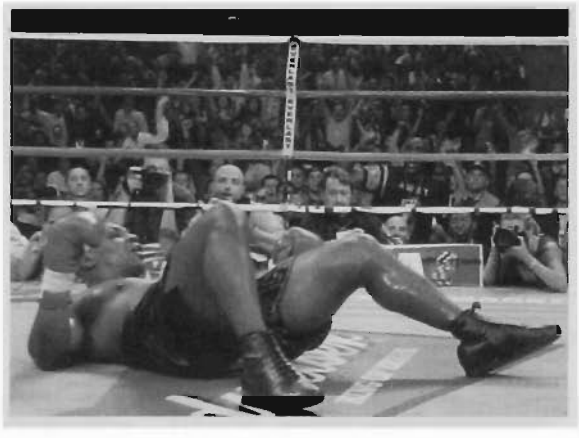
The reliability of medical inspection procedures and their enforcement in personal injury cases is endorsed in each negligence ruling. In this and most

other areas English courts seldom endorse athlete claims. Credibility in professional rule-making and enforcement practices is reinforced by the outcome of each failed compensation claim against the BBBC and licensed managers, promoters and related personnel. The reluctance of judges to interfere with expert private fight governance decisions is clear in modern English fight law records. Athlete concerns are conspicuously silenced within objectified, legal narratives and authoritative rulings examining converged notions of medical and management competence, athlete consent and assumptions of inherent fight sports risks.

The absence of cross referencing with other English fight law rulings is a significant finding, as is the lack of comparative influence of Australian and North American fight laws. Late-modern English fight laws and the content of authoritative rulings are constructed with reference only to general common law principles forged in non-square ring settings. While extensive judicial scrutiny characterised modern fight governance, English common law courts offer many remedies for contractually aggrieved or seriously injured sports fighters, yet the total sample of thirty fight law rulings spanning nearly two centuries clearly indicate these are extremely difficult access.

By the end of the twentieth century Afro-Carribean champions Lennox Lewis and Frank Bruno came to dominate English fight lore. Throughout the 1990s Bruno contended for world heavyweight honours several times but was unable

to secure the title. Lewis bludgeoned his way to become the first Englishman in over one-hundred years of reformed Queensberry competition to wrest the belt from United States champions, and was duly celebrated after destroying 'Iron' Mike Tyson.

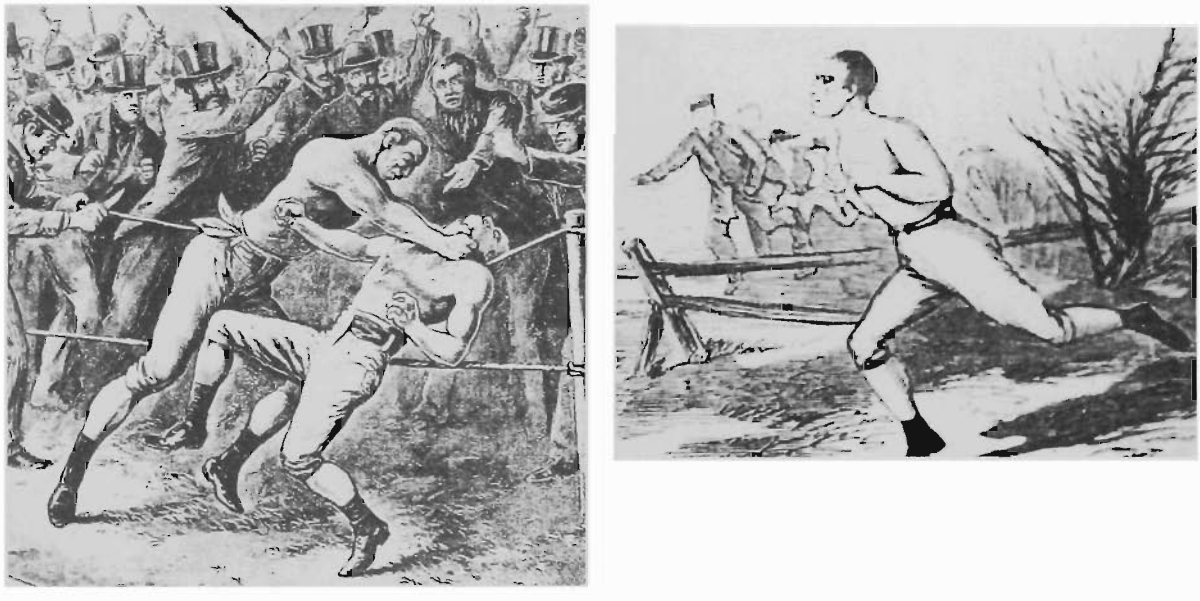


Lennox Lewis, 193 blows v. Mike Tyson, 49 blows
January 2001

Hill 2002, p. 381.

Race is a prominent curiosity in English fight lore, history and culture. In 1860 English champion Tom Sayers and American challenger John Heenan provided a landmark precedent for the modern elite heavyweight lineage. Heenan is depicted in animalistic pose towering over a physically inferior white opponent. The paradox of early fight sports during this era of criminalisation is illustrated by a baying, angry yet ironically respectable audience of men in

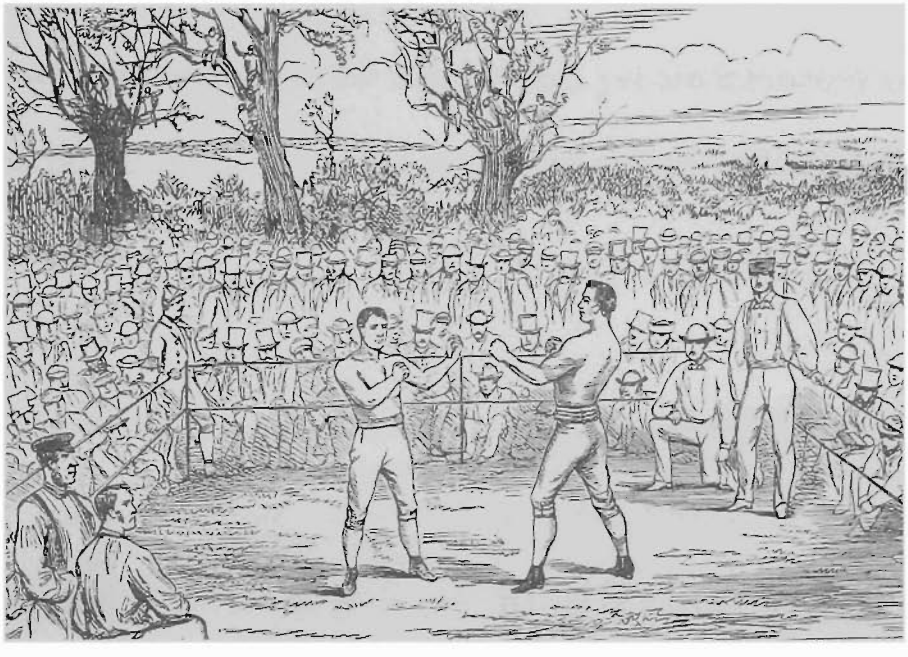
Sunday dress, brandishing canes, fists and angered expressions. The English bare-knuckle champion faces imminent defeat. This popular bout, attended by prominent literati of the time including Thackeray and Dickens (Andre and Fleischer 1975, p. 47) survived all police attempts at prevention despite widely documented public concerns focusing on disorder, interracial fears, and a social Darwinist civilising ethos founded on the newly discovered rationality of English criminal law and enforcement.



Sayers v. Heenan and ***Heenan in flight***
Andre and Fleischer 1975, p. 47.

A subtle background image depicts a shrewd patron with a careful flash of a blade waiting to cut the rope. This signifies an illicit, non-sporting gathering promising an inevitably a disorderly climax. This sinister dimension to popular

depictions of this widely publicised event contrasts with the more genteel, racially-neutral fight-sports ideal depicted in Downes-Miles (1906). By ending the separation between athletes and viewers and threatening a disorderly finish *the outlaw image* of Heenan in flight contrasts with any genuine portrayal of a civilised sporting contest. Fight lore indicates a draw was called after thirty-seven rounds, and Sayers retained the title after several unsuccessful attempts to appease an angered, passionate crowd.



Sayers v. Heenan, 17 April 1860,
Downes Miles vol. 3 1906, frontispiece.

Racial issues evolve with time. Contemporary interdisciplinary knowledge bases can also produce distorted readings of historical case studies and intersectional theories. Nevertheless racial differences have continued

prominence in modern fight lore. Heenan v. Sayers is one of several historical precedents offering impetus for new generations of fighters and their own popular sporting victories, despite ongoing division focusing on the interpersonal and social harms associated with modern fight sports (Anderson 2001; Gunn and Omerod 2000). Popular late-twentieth century United States legends including *the rumble in the jungle* (Mailer 1975) and *the thrilla in Manilla* (Kram 2001), as well as countless known Western examples in modern literary annals, provoke and influence similar extremes of individual self-empowerment and public controversy. Relations between black and white beyond the square ring lurk in the background, yet are intimately connected to the outcome of the physical contest and its reception within and beyond the fight sports world.

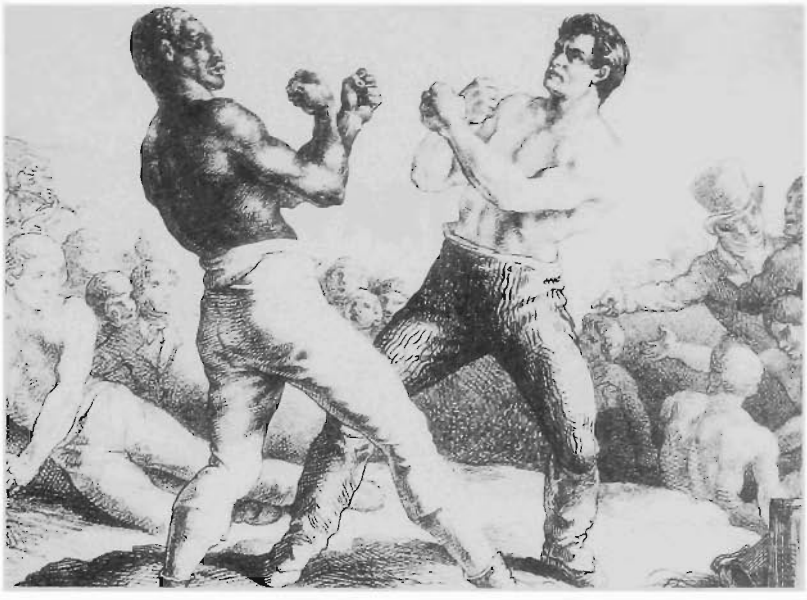
As Bruno and Lewis become markers of racial success in the contemporary world, historical contests are reinvented to an educated consumer audience. A pertinent example is *Black Ajax* (1998) by author of several popular movies and television dramas George MacDonald Fraser. The novel fictionalises routines, public anticipation and dialogues leading to the first recorded inter-racial contest between challenger Tom Molineaux, an emancipated North American slave, and English champion Tom Cribb at an isolated outpost at Copthall Common on 18 December 1810 (Andre and Fleischer, 1975, p. 27). A variety of real and imagined characters reawaken popular conscious of the disciplines of athletic virtue in a violent bare-knuckle thirty-one round victory to the

champion. A prominent inter-racial backdrop combined with the historical longevity of such narratives help to foster greater tolerance, understanding and public knowledge of the relevance and complexity of racial issues to contemporary fight audiences. For two centuries intersecting questions of race, masculinity, violence and celebrity demonstrate constant patterns, with the square ring providing one rare level playing field to prove or settle questions of inter-racial physical supremacy. Notably, despite the extent of modern English litigation on personal injury, safe fight management and outdated criminal prohibitions relating to fight sports, critical discussions of racial social imbalances and how these might be rectified or compounded by Western sports ethics are largely confined to the realms of popular, artistic fight lore. Here, even an English monarch endorses the virtue of an outlaw contest, and sympathises after a 'short count' deprived the challenger of a certain twenty-eight round victory.

His Royal Highness
GEORGE AUGUSTUS FREDERICK,
Prince of Wales
later **KING GEORGE IV**

Molineaux, I maintain, *beat* Cribb! Curse me if he did not!

MacDonald Fraser, 1998, p. 178.



***Molineaux v. Cribb* (1810)**
See Andre and Fleischer, 1975, p. 26;
MacDonald Fraser 1998, front cover.

§§§

PART II

UNITED STATES FIGHT LAW

1876 - 1995

iv. Outlaw origins 1821-1897

Background

The earliest recorded United States verdict defining common law assault marginally predates the first English prize-fight ruling in *Hunt v. Bell* (1822). A different legal trajectory is endorsed in *Stout v. Wren* (1821) through a significant private law doctrine. This private, physical dispute illustrates the importance of consent to absolve legal responsibility for assault under Western adversarial doctrine. As with similar rulings in England, North American laws historically prohibited consensual fist-fighting, with compensation unavailable if injuries were sustained during an unlawful contest. Even though both combatants agreed their combined outlaw conduct prevented legal recognition in state courts. Orderly, non-malicious athletic contests were not considered unlawful, outlaw assaults.

The facts and reasons for the decision highlight a vital distinction between spontaneous, malicious, drunken and illegal fights and fight sports. No private legal rights could be endorsed in cases where a consenting adult was '*so drunk as not to know what he was doing*'. The inability of either combatant to sufficiently appreciate the consequences of their conduct nullified legal recognition of related unsociable harms. Individual and general deterrence directed at fist-

fighting customs aimed at resolving disputes between men are implicit in this landmark United States private assault ruling.

> Upon principle unconnected with municipal law, or policy, I doubt how far a person is entitled to recover damages, after having agreed to take his chance in a combat, and after the event had proved the miscalculation he made on his own strength, considering it merely as a violation of a private right, I should say, **volenti non fit injuria**
>
> ... [I]n those manly sports and exercises which are thought to qualify men for the use of arms, and to give them strength and activity, if two played by consent at cudgels, and one hurt the other, no action would lie. But where in an action for assault and battery, the defendant offered to give in evidence that the plaintiff and he boxed by consent, from whence the injury proceeded, it was held to be no bar to the action, for as the act of boxing in unlawful, the consent of the parties to the fight could not excuse the injury
>
> *Stout v. Wren* 1821, 1 Am 653-655 at p. 654 endorsing *Boulter v. Clark*, Bull NP 16.

A profound gap in reported civil and criminal assaults characterises United States law between 1821 and 1876. Reasons for this are unclear. Between a Massachusetts ruling endorsing *'amicable contest voluntarily continued on both sides without anger or malice'* and orderly tests of *'relative agility and strength'* (*Commonwealth v. Collberg* 1876 (Ma)) and the formation of the New York State Athletic Commission (NYSAC) in 1911, both criminal and civil assault cases are prominent in available legal sources. Familiar criminal law distinctions between outlaw contests leading to individual and social harms are emphasised, with

contests before *'fifty to one hundred persons'* at a *'"run and catch" wrestling match'* warranting compensation. Spontaneous, disorderly arguments or public house-brawls had no legal or perceived social benefit, thereby justifying outlaw characterisation. In contrast, organised carnival events were exempt from both public and private law responsibility under the reasoning in *Collberg*.

An expansion of specific prize-fight prohibitions (Million 1938-39) competing against a rapidly evolving and lucrative entertainment industry tested the limits of public criminal legal and enforcement growth in the federated United States. A patchwork of judicial decisions in several jurisdictions involved both criminal and civil claims directed at famed champions and unknown contenders lost to contemporary fight lore. Disparate settlement patterns in the vast North American continent underpinned relatively uniform democratic, constitutional, law-making and enforcement practices. As the number of self-governing states expanded, varied patterns of statutory regulation and judicial reasoning gradually clarified elements of outlaw prize-fight prohibitions. Vague legislative drafting is viewed by Million as one contributing factor for this high rate of judicial scrutiny. Several legal, cultural, social and commercial themes are also evident in this dimension of United States legal, sporting and social development.

An example of early statutory prohibitions can be found in Vermont criminal laws prohibiting *'quarrelling, challenging, assaulting'* and *'tumultuous and offensive*

carriage'. In *State v. Burnham* (1884) trial convictions were sustained on appeal against two combatants allegedly involved in organised, disorderly prize-fighting. Mirroring the English assault precedent in *Coney* (1882), *Burnham* directed attention to the tendency for fights involving a prize or reward to disturb the public peace and cause serious, undesirable injuries to participants. Fears of collective male disorder were also prominent. Undefined public policy notions endorsed the convictions. The punishment for this and most fight-law disputes of this period remain hidden in early records of the rapidly expanding United States federation.

Women and early fight sports

Challenge

I Elizabeth Wilkinson, of Clerkenwell, having had some words with Hannah Hyfield, and requiring satisfaction, do invite her to meet me upon the stage, and box me for three guineas; each woman holding half-a-crown in her hand, and the first woman that drops the money to lose the battle

I Hanna Hyfield, of Newgate Market, hearing of the resoluteness of Elizabeth Wilkinson, will not fail, god willing, to give her more blows than words - desiring home blows, and from her, no favour: she may expect a good thumping!

Kent 2000, p. 3.

Public athletic displays are repeatedly deemed particularly unfeminine, threatening a range of dominant, self-appointed Western male cultural monopolies over violence, aggression and human physical activity. Doubly

outlawed and trivialised throughout dominant culture, many female duelling, fighting and exhibition contests lie hidden within a myriad of prohibitionist media, academic and legal sources.

One early North American case highlights the legality of female sparring exhibitions in early entertainment culture. No malice characterised a professional skilled demonstration, yet Buffalo prosecutors persisted with charges alleging an unlawful fight contract. The organised event was to be held in Canada due to criminal prohibitions in force in New York State. Public authorities sought to prevent the contest by prosecuting Floss, the male organiser of this potentially unlawful exhibition. The ruling validated both the contract and the contest. However, despite such a favourable outcome most modern Western fight lore strictly condemns female competitive boxing and recreational sparring.

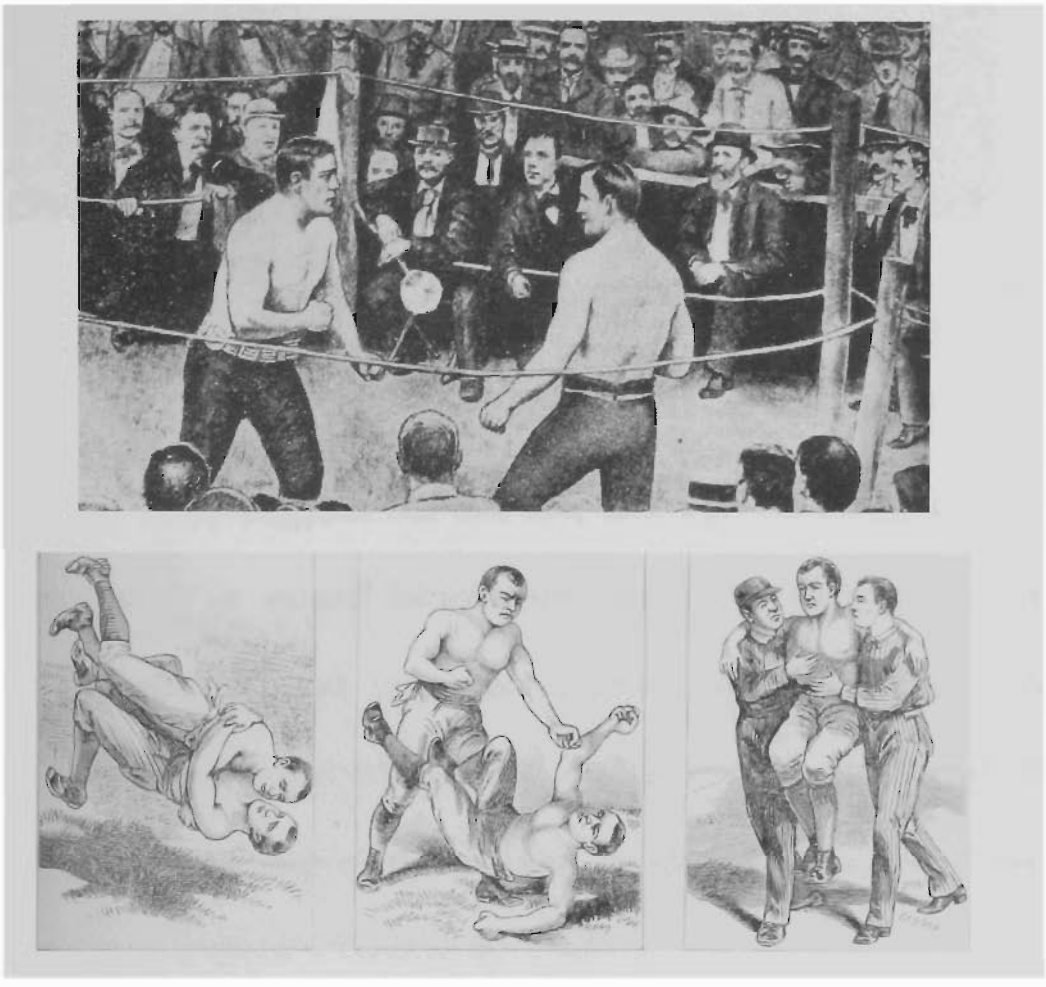
> ... [N]o prize-fight was intended by the parties to ... a scheme intended to advertise one of the principals, that she might demand a better salary for her profession ... the defendant is not connected with the offense with such certainty as is required in criminal actions, to effect a conviction.
>
> *People v. Floss* 1889, 7 NYS 504.

Libbie Spann, *alias* Hattie Leslie, was a recognised professional stage-fighter. The ruling allowed her to compete against Barbara Dillon, *alias* Alice Leary, in a

contest promising all the skills of young male fight compatriots such as 'Ruby' Bob Fitzsimmons. Travelling tent, entertainment and circus shows promoted skilled gloved exhibitions not intended to cause serious physical harm, with agreed performance fees and no expectation of a prize or reward. In contrast to a disorderly 'fight to the finish' the ruling declared the agreement legally valid and reversed the jury's trial decision. Established distinctions between disorderly prize-fights, analogous criminal or civil assaults and lawful sparring exhibitions combined to justify this outcome. Interestingly, no obvious statements favouring paternalistic legal intervention to protect any woman from the risks associated with fight sports participation are expressed in the verdict.

The Boston Strong Boy: 1883 to 1890

In 1883 John L. Sullivan defeated Englishman Charley Mitchell to retain the world-heavyweight title in a re-match held under London Prize Rules. Jake Kilrain also received a title belt sponsored by publisher of the *Police Gazette* after victory in a separate contest. Sullivan denounced this *'dog collar'* in his brash Celtic style. Public demand for a settlement to determine a 'true' world champion was extensive. Both champions were also prominent entertainers earning substantial fees for paid exhibitions when not preparing for lucrative title winnings. Alongside other noted contenders of the age, the gentlemanly persona is embodied in these champions of early modern fight lore.



'The Last Bare Knuckle Championship'
Sullivan v. Kilrain, Richburg Mississippi, 8 July 1889,
originally produced in the Police Gazette and Police News
Andre and Fleischer 1975, pp. 64-65.

Sullivan's reign is significant in the evolution of Western heavyweight fight sports. A progression of rule changes followed several North American state court rulings directly and indirectly targeting recognised professional athletes. 'Gentleman' James Corbett and 'Ruby' Bob also helped pioneer a revolutionary elite fight sports ethos. Overlapping yet distinct personal, legal and sports histories contributed to an incremental adoption of gloved Queensberry amateur rules and modern professional fight sports conventions.

The Prize
Andre and Fleischer 1975, p. 63.

Fight lore (Hill 2002) suggests the last bare-knuckle heavyweight title lasted seventy-five rounds or around two-and-one-quarter hours. Sullivan won and was promptly charged and convicted at trial under Mississippi statutes outlawing prize-fighting and criminal assault. Records do not indicate whether Sullivan's vanquished opponent was also prosecuted and the champion's appeal ultimately sought to overturn the verdict.

Prize-fight 'lexography'

Webster's dictionary		Worcester's dictionary
To fight – to strike or contend for victory, in battle or in single combat; to attempt to defeat, subdue or destroy an enemy, either by blows or weapons	**Prize-fight** – a contest in which the combatants fight for a reward or wager	**Prize** – a reward gained by contest or competition
Prize – that which is obtained against the competition of others; anything carried off as the result or award	**Prize-fighter** - one who fights publicly for a reward	**Prize-fighter** – one who fights or boxes publicly for a reward
	Prize-fighting – fighting, especially boxing, in public, for a reward or wager	**Prize-fighting** – the act or the practice of fighting for a prize

Sullivan v. State 17 March 1890, 7 S 275-278.

Recognised elements of prize-fighting in United States custom were examined at length. Common law fight crimes included 'affray', 'riot', 'assault' and 'battery'. Coexisting with legislation outlawing organised prize-fighting, state constitutional structures permitted appeal scrutiny of trial verdicts and judicial directions to lay juries. The ruling favouring the 'Strong Boy' illustrates United States appeal court methods of this period and a willingness to modify contentious outlaw labels imposed by unsympathetic juries.

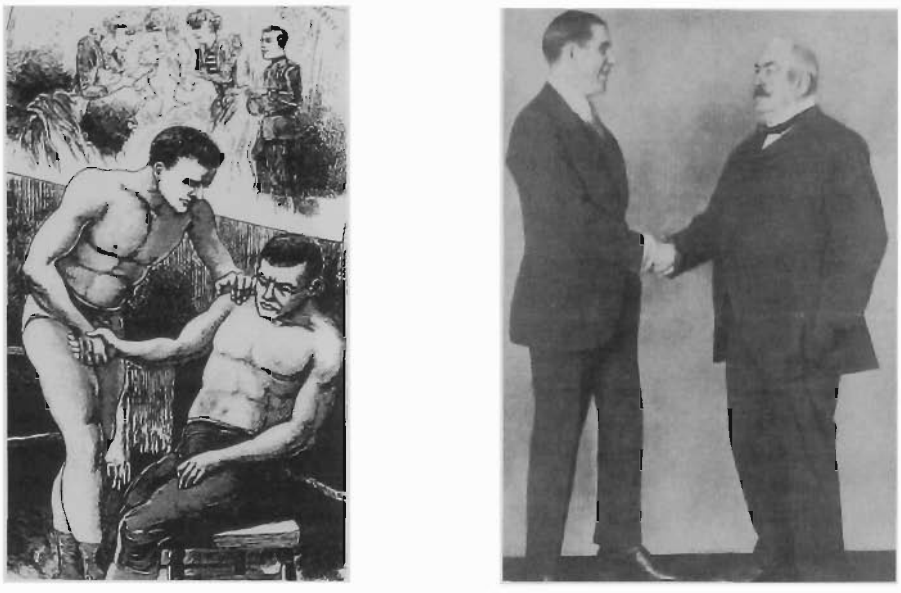
> A private contest between individuals, whether amateurs, or professional fighters or boxers, though it be for a prize or wager, would not be in violation of the particular statute under consideration, though the participants might be guilty of assault and battery, or of gaming. A fight or contest, under such circumstances, would be a fight because a contest determined by blows, and a prize-fight because a prize or wager would be awarded to the victor; but it would not be a prize-fight within the meaning of the statute, which prohibits such fights only as are offences against public peace and order
>
> *Sullivan v. State* 1890, 7 S 275-278 at p. 277.

The potential blot on Sullivan's clean legal record threatened his influence in reforming a popular outlaw sport. A private, orderly venue is the prominent feature justifying the favourable appeal verdict. Different prize-fight scenarios produce contrasting legal outcomes. It seems some reluctance to convict the champion underpins classification of the last official bare-knuckle contest as an organised private, and therefore lawful event. The orderly ticketed regulation of patrons failed to '*disturb the peace and quiet of the community*', while the personable 'Strong Boy' was considered undeserving of the outlaw label.

Sullivan #2, 1893

In 1892 Bob Fitzsimmons and Peter Maher were first recognised professional heavyweights to compete under reformed prize rules requiring gloves and mandatory three-minute round limits. This transition from bare-knuckled 'fights-to-the-finish' to modern professional sports-fighting was encouraged by champions and wealthy backers patronising improved corporate-style male clubs. The New Orleans Olympic Club hosted this inaugural event, and many subsequent title and lower-level contests throughout the 1890s. This revolutionary indoor venue promoted organised, ticketed and advertised sports fights in orderly, well-equipped 'mass private' locations.

Sullivan ultimately became a prominent target for state enforcement scrutiny. Texas legislation enacted on 23 March 1891 outlawed combat 'sport' between *'man and man'*, *'man and bull'*, and *'dogs and bull etc'* in all public areas. The ban specified events staged *'for money or other thing of value, or upon which money is bet, or to see which admission fees are charged'*. Sullivan again challenged an adverse trial ruling for avoiding compulsory $500 'occupation tax' owed to Texas public authorities. Sullivan was charged, convicted and faced an additional fine of between $500 and $1,000 and sixty-days to twelve months imprisonment pending judicial review.



'Gentleman Jim and the Boston 'Strong Boy' ... then and later ...
Myler, 1998

'Gentleman Jim', Myler 1998.

A narrow interpretation of the 1891 law and its evolution endorsed a second favourable ruling, this time on a procedural technicality. Judge Simkins indicated the fee was issued under repealed 1889 taxation laws. The subsequent 1891 Act revoked the fees claimed against Sullivan and his opponent McGhee. The 'Strong Boy' again avoided outlaw status and its direct and indirect legacies. A strong fighting personality, rapid fight-sports professionalism and a

willingness to challenge and even defy the criminal law underpin recorded cases against this revolutionary heavyweight pioneer.

In both cases only Sullivan was charged. This indicates United States law-enforcement zeal is directed at noted victors and lucrative professional fighting rewards. By failing to charge Kilrain and McGhee for corresponding breaches, state prosecutors are targeting the 'Strong Boy' as an example to others contemplating similar outlaw contests. As popular role-models, skilled sports pioneers offer perfect targets for testing the limits of state enforcement power. At a time of significant legal development in the states of an infant nation, judicial discretion to overturn jury convictions tempered the reach of criminal intervention into a rapidly evolving fight-sports culture.

Seville v. Arthur Majesty, 1982

Fight lore of the time and contemporary reflections on sports history abound with descriptions of the honourable legends of Sullivan and compatriot 'Gentleman' James Corbett. Hill (2002, p. 12) indicates in the year prior to their famed gloved title contest in 1893 both champions sparred publicly wearing full evening dress. A progressive series of rulings against unrecognised sports fighters contributed to a growing body of disparate legal rules testing the limits of state intervention in various professional, amateur, recreational and at times disorderly settings.

Seville (1892) is recognised in several modern verdicts examining anti-prize-fight prohibitions throughout the United States. The Ohio Criminal Code of the time targeted principals involved in unlawful prize-fights with punishments of up to ten years imprisonment. Several exemptions were specified and subject to judicial interpretation. Seville was charged with a single count of 'affray' for competing in a 'public' 'sparring exhibition'. The charge was affirmed despite evidence of protective 'gloves' and free consent. Arthur Majesty fought Seville in Athens County on 25 February 1892. Motives for targeting Seville only become apparent with description of events at the conclusion of the reported verdict.

> ... [Coroner's evidence] showed, beyond any doubt, that the combatants met in the ring prepared for the purpose, in pursuance of the agreement previously made, and fought viciously to a finish. They fought 17 rounds, and on the eighteenth Majesty was knocked reeling to the ropes, and carried away in a dazed and unconscious condition, and in a few hours afterwards died from the effect of the blows received. The **post mortem** examination disclosed that his vital organs were in a healthy and sound condition. His skull was fractured by one of the blows, and an artery of the brain ruptured, which caused his death. His head, neck, one arm, and his body showed the severity of the blows he had received. One eye was blacked, his nose cut, his mouth and lips bruised and swollen, and the physicians say that his neck, arm, and body were black and blue from bruised produced by blows. Witnesses describe the blows struck him as bitter blows; and yet, up to the last round, they say Seville's punishment was even greater than that administered to Majesty. When Majesty was carried, disabled and dying, from the scene of the conflict, the prize-money was paid over to Seville, who departed by the first train
>
> *Seville v. State* 1892, 30 NE 621-624 at p. 624.

Majesty is the first reported fight-sports fatality traced in North American legal sources. After a lengthy description of justifications for specific prize-fight prohibitions, prosecution evidence illustrated the contest was organised, widely promoted and well patronised. The graphic extent of Majesty's injuries described in coronial testimony leaves little doubt of the final outcome. The use of prize-fight law is interesting with a manslaughter conviction also possible under related English and United States criminal law precedents. Potentially lower penalties under the statutory offence illustrate prosecution discretion to invoke different local and state criminal laws in each questionable fight setting.

Lawful events	***Unlawful events***
... [E]xercises in any public gymnasium or athletic club, if written permission therefore shall have been obtained from the sheriff of the county or mayor of the municipality	... [I]t [is] an offence, called an 'affray' for any two persons to agree and wilfully fight or box at fisticuffs, or engage in any public sparring or boxing exhibition, with or without gloves; for which the penalty is fine or imprisonment or both

Seville v. State 1892, 30 NE 621-624 at p. 622.

Despite an orderly ethos, Majesty's violent fate provides a graphic record of the seemingly inherent dangers of gloved fight sports. Objective scientific language sought to provide an impartial assessment of Seville's involvement in the fatality, and the appropriateness of a criminal conviction. Judge Williams emphasised qualitative differences between specific prize-fight offences and

generic criminal laws demonstrated an intention by Ohio legislators to outlaw all forms of professional fighting for reward. Components of outlaw prize-fights included a hidden, concealed, surreptitious character, and agreed payments or incentives for combatants to compete 'to the finish'.

The ruling endorsed Seville's jury conviction and highlighted the importance of public opinion in Western criminal law-making. This rare affirmation of a criminal label provides judicial recognition of the ultimate social hazards of emerging fight sports customs despite a range of significant evolutionary and civilising developments throughout the English-speaking world.

Albert Taylor v. Edgar Broom, 1893

In 1893 Michigan public authorities indicted Albert Taylor after an organised fight against Edgar Broom in a remote part of Grand Rapids. The state appealed a jury verdict and further tested prevailing definitions of outlaw criminal prize-fighting. Any violent contests for reward, payment or some other economic incentive could be prosecuted by state authorities using recognised fight law principles. The emphasis on a reward suggests public concerns were also directed at illicit gaming and allied criminal economies working behind the scenes to promote these violent spectacles.

Bare-knuckled fighting was strongly condemned under Michigan prohibitions targeting *'any ... fight in the nature of a prize-fight'*. Much hinges on the capacity of juries, legal advocates and judges to distinguish between dangerous, fatal, unruly contests for reward and civilised sporting variants undertaken for leisure, recreation or health. With no common law roots, vague legislative drafting produces highly discretionary applications in each reported example. Slight variations to identical linguistic definitions outlined in *Sullivan #1* (1980) highlight a general preference for common sense interpretations where evidence of *'expectation of reward ... either to be won ... or ... otherwise awarded'* and *'intent to inflict some degree of bodily harm'* is produced. These pre-requisites delineated illegal contests in most United States prosecutions of the period.

> A prize fight is defined to be where two persons, by an agreement between themselves or by their authorized agents, or by any other person, with their (the principals') consent and acquiescence, meet together in a ring, or its equivalent, in the presence of other persons, present as spectators, and for money or other valuable property strike at and against each other with their hands and fists, whether their hands or fists are bare or inclosed in gloves of any weight, and whether the same is for 'points', so called, or for personal conquest alone, and whether for a limited number of rounds or to a finish, provided that the arrangement or agreement was such that a 'knockout',' so called, shall be deemed to be a point in favour of the contestant inflicting the same and against the person suffering therefrom, to an extent that the greater portion of the money or other valuable thing is given to the one who inflicts the injury and knock-out than is given to him who suffers the same ... [a] fight in the nature of a prize fight is one containing all the elements of a prize fight except that it shall not be necessary to prove that any money or valuable thing is passed to either or both of the contestants on account of the fight
>
> *People v. Taylor* 1893, 56 NW 27-28 at p. 28.

Sullivan #1, Seville and *Taylor* incrementally clarify the reach of specific anti-prize-fight legislation in a brief revolutionary sporting period. Each verdict illustrates a liberal judicial approach to enforcing prize-fight prohibitions against elite or recreational athletic contests. Complex legal terminology and procedures independently endorse related trends in Western fight law with slightly distinct outcomes depending on the level of violence, reward or disorder in each documented scenario. Alongside cases involving 'Ruby' Bob Fitzsimmons (1894) and the contentious activities of the Louisiana Olympic Club (1894), a considerable body of United States fight law progressively blossomed from this initial cluster of specific-purpose and paternalistic legislative bans.

Purtell, 1896

Purtell (1896 (Kan)) was decided in the backdrop of the first modern amateur Olympic Games. The exclusion of amateur boxing (Hill 1996, p. 26), a prominent feeder for many successful elite fighters throughout the twentieth century, ironically helped strengthen the legitimacy of Western professional boxing customs of the period. Patrick J. Purtell and W. R. Johnson were each sentenced to one-year imprisonment after a joint trial in Kansas. The appeal verdict indicates accepted legal definitions of prize-fighting were wrongly applied to produce the convictions.

The event

... [A] contest took place between the defendants at Sapp's Opera House in Galena, at the time charged ... [and] is admitted. It is also admitted that it came off pursuant to a written agreement between the Galena Athletic Club on one part had the defendants on the other, under which the defendants agreed to give a sparring exhibition of 25 rounds with five-ounce gloves, according to the Marquis of Queensberry rules. It provided for a referee, with power to continue the contest for a greater number of rounds. For this exhibition the athletic club agreed to pay each of the defendants $50 ... a contest took place; ... the parties used gloves weighing five ounces each; ... there were 22 rounds of sparring with such gloves; and ... the defendant Johnson was knocked down, and failing to get up, was declared beaten

The verdict

It was even conceded that they engaged in a boxing match, but it was not admitted that they fought. It is a fight, only, that the statute reaches. Wrestling, fencing, boxing, and numberless other matches, in which the physical powers are employed by men in friendly contests with each other, are not punishable. It must be a fight. The word "fight" implies a purpose to use violence for the purpose of inflicting injury; and the jury alone had the right to determine whether the defendants in fact engaged in a fight, or merely in an innocent contest, with no purpose to inflict injury on each others. Whether the gloves used were such as rendered it improbable that the contestants could not inflict injury on each other, or were put on as a mere subterfuge, to disguise a fight, was [also] for the jury to determine

State v. Purtell et al 1896, 23 P 782-783 at p. 783.

'Ordinary' terminology emphasised '*... a fight, or physical contest, between two persons for a prize or reward ...or sum of money to be gained by contest or competition*' were sufficient to amount to a crime. Any small or large event could equally attract state intervention and successful criminal prosecution. An *expectation* of reward implied unlawful planning and financial backing. The undesirability of fighting per-se involved a combination of illicit rewards or incentives, inherent physical dangers and various intentional dimensions including planning,

agreement, finance and preparation. Any combination of acts by combatants or associates operating 'behind the scenes' could be prosecuted.

Conflicting versions of events exacerbate the imprecision of technical legal terms. Contrasting defence and prosecution arguments sought to endorse or oppose the convictions by focusing on the detailed wording of ill-defined legislative terms. The convictions required proof of *'an ordinary brutal fight for money'* of *'the kind the statute was designed to prohibit'*. Evidence demonstrated *'beyond question that the parties fought till one of them was knocked senseless'*. Although the opposing sympathies of counsel, judges and juries at trial are hidden from the written record, the appeal granted a retrial promising to review all evidence and contested legal arguments. The final outcome remains unclear, hidden within a vast maze of modern North American legal archives.

Johnson, 1897

> A corporation organized under the membership law cannot charge an admission fee for sparring exhibitions given under its auspices. The membership law ... provides, among other things, that the term "membership corporation" does not include a stock corporation or a corporation organized for pecuniary benefit ... The same act further provides that a membership corporation may be created thereunder for any lawful purpose, except a purpose for which a corporation may be created under any other article of the chapter, or any other general law ... [a]ll of these provisions were in force prior to the passage of the Horton law, which allows sparring exhibitions by incorporated associations ... the legislature did not intend, in passing the Horton law, to allow associations incorporated under the membership law to engage in business or occupations for pecuniary profit, but intended to allow such associations to have sparring exhibitions for its members privately,

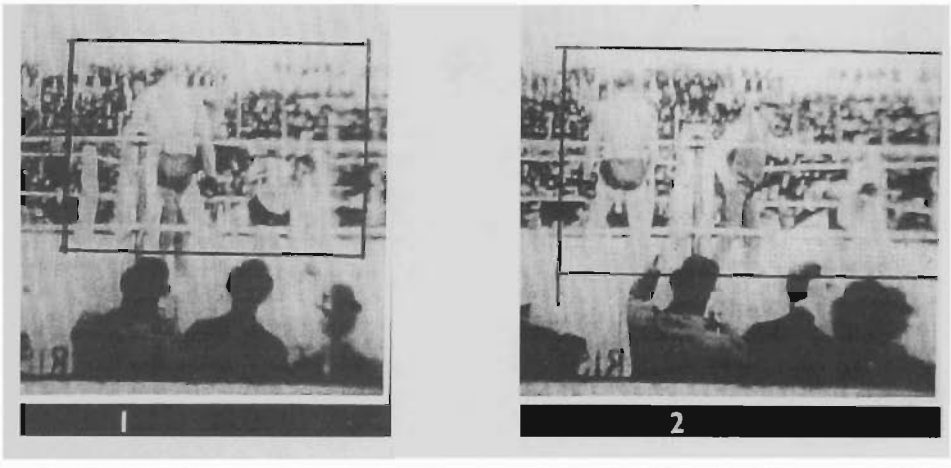
> or, in any event, did not intend to permit such associations to charge admission fees to such entertainments
>
> *People v. Johnson et al* 1897, 49 NYS 382-384 at p. 383 (NY).

Johnson (1897) is one of over thirty New York verdicts and coincided with the first filmed record of a heavyweight title contest. The celluloid imprint of 'Ruby Bob Fitzsimmons' victory over 'Gentleman' Jim Corbett had profound legal, economic and popular significance within the broader context of disparate state assault, homicide and anti-prize-fight prohibitions.

Asbury (1927: 2002) pinpoints the early roots of professional boxing amongst male urban gangs in New York from the 1820s onward. Fighting prowess offered economic hope as well as virtuous discipline and fame for Irish-American migrants fleeing a poverty stricken homeland. Unparalleled in English or Australian social histories, a diverse array of fight sports customs are embedded in the modern New York landscape, psyche and culture. The prominence of New York State rulings among the total sample of United States verdicts is merely a reflection of the city's profound acceptance of, and influence on world professional boxing.

The dispute involved the sale of tickets for a suspected outlaw contest. Proof of an illicit transaction was considered sufficient to warrant conviction under the specific wording of the New York State Horton law. Each co-accused was

convicted and forfeited a nominal bond of $100. A stamp indicating 'Membership Ticket[s]' and the orderly character of proceedings were considered a subterfuge for organised economic crime. However, despite this outcome the penalty is relatively minor and best characterised as a licensing fee rather than a punitive criminal punishment.



Corbett v. Fitzsimmons, Carson City, Nevada, Noon 17 March 1897, reproduced in Tobin 2000, p. 28.

Themes

Each ruling documents an incremental progression of themes under a range of state criminal prohibitions. Outlaw characterisations were endorsed in only two verdicts. Both emphasised a combination of athlete and public harms associated with a broad range of dubiously prohibited ancillary organisational functions to justify the convictions. *Seville* (1892) illustrates public and private legal categorisations often meld indistinctly in judicial articulations of violent or fatal sports fight customs. Rather than eliminating paid fight sports, this body of

criminal laws and judicial rulings seem to consolidate acceptance of the emerging professional fight sports ethos during a period of considerable social and legal change. Elite heavyweight fight lore documents a flourishing competitive sports culture despite persistent legal intervention demonstrated in this cluster of rulings and the extensive body of United States fight laws reported throughout the new century.

§§§

v. 1894

Overview

Two 1894 rulings are of extreme significance in the evolution of Western fight sports. The *Olympic Club* case parallels the English dispute reported in *Baird* (1890) with a unique attempt by Louisiana state authorities to outlaw a lucrative private fight club. This audacious appeal by enthusiastic state authorities legitimated the club's publicly mandated private business powers, only to be overturned in a subsequent unreported ruling (Sammons 1988). This unique example of the scope of state prohibitionist force invariably destroyed a prominent site of modern Western professional fight development at elite and sub-elite levels.

'Ruby' Bob Fitzsimmons was a more unfortunate fight law victim. While the *Olympic Club* verdict labelled 'Boston Strong Boy' John L. Sullivan, 'Gentleman' Jim Corbett and Fitzsimmons outlaw co-conspirators involved in illegal contests in a Louisiana fight club, New York authorities charged 'Ruby' Bob with second-degree manslaughter after his involvement in a fatal sparring exhibition. The landmark ruling on modern laws governing violent Western sports (Hechter 1975) examined the legality of competitive fight demonstrations in travelling entertainment shows. The important synthesis of general homicide

principles and their applicability to a variety of scenarios leading to death, serious injury or permanent harm to consenting fighters has ongoing relevance in contemporary Western sports law.

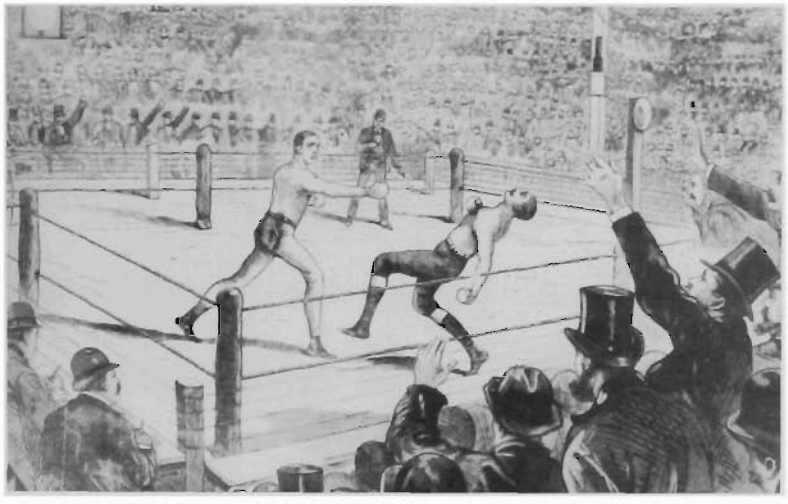
The Louisiana Olympic Club

> I hereby challenge any and all of the bluffers who have been trying to make capital at my expense to fight me either the last week in August or the first week in September this year at the Olympic Club, New Orleans, Louisiana, for a purse of $25,000 and an outside bet of $10,000, the winner of the fight to take the entire purse ... The Marquis of Queensberry Rules must govern this contest, as I want fighting, not foot racing, and I intend to keep the championship of the world where it belongs, in the land of the free and the home of the brave
>
> Open challenge by John L. Sullivan to any takers, 1892
> cited in Myler 1998, p. 2.

Wealthy land-owning entrepreneurs are prominent in the development of elite professional sport in the United States. Lucrative patronage of professional boxing abounds in a post-slavery climate throughout the Southern states. Restrictive public licensing and the contentious legality of popular ticketed contests ensured fight clubs provided an important avenue for the development of modern sports traditions both within and beyond the square ring.

The business of modernising popular North American sports required administrative and social space as well as extensive property development.

Images from the period reveal two prominent themes. The first depicts the relative order and gentility amongst masses of male viewers at elite contests and extravaganza fight-festivals. This carnival atmosphere hides overt references to outlaw criminal gatherings prominent in legal narratives of disorderly, unruly fight crowds. Presumably most backers had sufficient impetus to engage in orderly conduct in the face of criminal prosecution. Secondly, crowd size, density and images of masculinity all focus on skilled, regulated contests with hopes of an exciting and decisive 'knockout' victory. A carefully constructed 'pen' or 'ring separates athletes from layers of viewers surrounding the action extending to vast outer bleachers beyond view. A lone referee within this fixed, elevated, structure is seemingly disengaged from the main emphasis on each combatant. The panoptic effect essential to viable fight space is designed to enhance viewing with varying levels of comfort, social delineation and patronage extending from the focus of attention at ringside. Unlike championship contests in remote, hidden settings common in early English and United States fight lore, venues such as the Olympic Club pioneered the standardisation of modern spectator facilities in privately owned or rented spaces.



Bob Fitzsimmons v. Peter Maher # 1.
New Orleans Olympic Club, 2 March 1892
Andre and Fleischer 1975, p. 75.

A permissible suspension of orderly life underpins civilised sports environments (see generally Dunning and Sheard, 1989) while the mandatory use of gloves and pauses between rounds reformed bare-knuckle endurance contests under London Prize Rules. With lawfully acquired, well-managed social spaces United States fight clubs enhanced modern sports governance, organisation and popular dissemination of fight lore throughout Western culture. Later Australian and earlier English clubs such as London's *Pelican Club* mirrored legal structures, functions and social purposes of the *Olympic* and other early United States private male clubs.

Most United States fight clubs were publicly licensed corporations (Sammons 1988). Detailed legislative provisions allowed self-regulation within an umbrella of minimal state oversight. Similar to contemporary Australian public corporations, regulatory licensing allows private corporate powers to be

identified and periodic review of core business, finances, official appointments, rule-making and membership decisions. Within broad corporate charters both the *Olympic* and London's *Pelican* clubs many early sports clubs facilitated the development, maintenance of and access to sports facilities for paid and registered members. Major events catering for sporting, literary or artistic endeavour were authorised under similar public charters. Constitutive functions of the Olympic Club provided the most legitimate source of professional fight governance during a time of rapid sporting, technological and legal evolution.

> ... [The charter permitted t]he establishment and maintenance of rooms for literary purposes; for the collection of valuable works of art, books, maps, charts, statuary, coins, etc.; for the promotion of social intercourse, enjoyment, comfort, harmony, refinement of manners, and intellectual improvement; to encourage physical culture and development of athletic exercises, such as boxing, wrestling, fencing, and exhibitions of athletic sport; to organize one or more military companies; to promote and maintain a natatorium, gymnasium, athletic grounds, rowing clubs, bowling alleys, and such other features as may be found necessary to fulfil the purposes for which the corporation is formed
>
> *State v. Olympic Club* 1894, 15 S 190-199 at p. 190.

Louisiana criminal laws outlawed prize-fighting as a misdemeanour with minor penalties including fines or short imprisonment terms. The state claimed several breaches of publicly chartered powers by emphasising the inherently unlawful character of bare-knuckled and gloved exhibitions at club premises. Gloved contests were expressly permitted within customarily vague language

in the charter. An injunction or court declaration permanently revoking the public license would involve complete dissolution of the Olympic Club, a permanent ban on all fight sports throughout the state and the '*appointment of a receiver to take charge of ... [Club] ... assets and property, and to liquidate and wind up ... [its] affairs*' completely (*State v. Olympic Club* 1894 at p. 190).

> Even by the somewhat loose standards of nineteenth-century prize-ring venues, the old Olympic Club in New Orleans was somewhat lacking in terms of facilities. A gentleman's club it wasn't – the ring itself was simply a square of earth, tastefully surrounded by a six foot-high barbed-wire fence ... the captain of the local police force had stated that if anyone so much as put a hand on it [the fence] he would shoot him where he stood
>
> Webb 2000, p. 55.

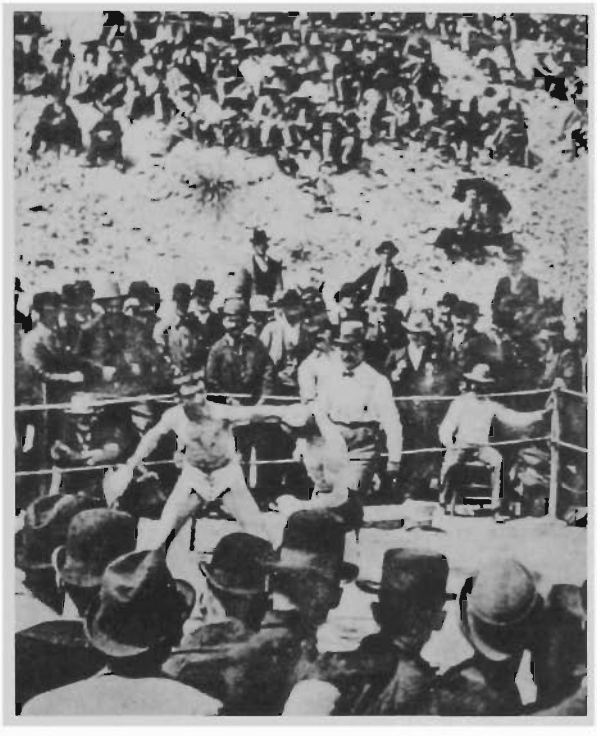
> The corporate-like atmosphere in which the Olympic Club operated and conducted its prizefights was not only evident in its hierarchical structure, shareholding membership system, and professional conduct of boxing contests but also was attested to by the advertisements in the souvenir program. These ads were for local business establishments and far-ranging firms like the Emerson Drug Company of Baltimore, which made Bromo-Seltzer to treat the headache caused by Paducah Club Whisky of Paducah, Kentucky
>
> Sammons 1988, pp. 261-262 n. 45.

Fight histories tell varied stories of notable contests and core club business. Contemporary fight lore focuses on major heavyweight contests with high stakes, large attendances and extensive interest throughout the Western sports world. Economic turnover varied with the quality of fighters, the size of each gate and amounts charged for prime seats near the centre of the action. At one level the *Olympic* is depicted as a volatile pit of diverse inter-class, -city, -racial

and -national travelling men. This mix of the masses produced lucrative rewards for the best-of-the-best and complex economies of scale in fight viewing, membership, fund raising and related and organisational customs under the sophisticated corporatism of this emerging form of Western sports governance.

The Three-Day Carnival of Champions, Pelican Athletic Club, New Orleans, 5-7 September 1892, Andre and Fleischer 1975, p. 68.

Alongside biographies of noted elite fighters, early public law records emphasise contentious elements of the Olympic Club's sporting, revenue and order maintenance practices. Compared with unregulated public fight spaces of the early-gloved period, concerns over disorderly environments and male patrons could theoretically be sidestepped in private fight premises.



Bob Fitzsimmons v. Peter Maher # 2, 21 Feb 1896, near Langtree, Texas
Brooke Ball 2001, p. 160.

Cumulative, systematic breaches of liquor licensing laws at the *Olympic* and other fight clubs justified state claims to outlaw these corporate fight monopolies. Any example of poor regulation or minor disorder fuelled prohibition arguments directed at male-only fight-clubs. Evidence in the *Olympic Club* verdict indicates a *'bar room and retail liquor establishment'* and extensive fight purses provided the grounds for state intervention into the club's seemingly dubious economic, social and sporting activities.

Seventeen outlaw contests

Year	Fighters	Purse	Winner	Loser
1890	*T. Ward v. K. Wilson*	$ 400	$ 300	$ 100
16/9/1890	*J. Carroll v. A. Bowen*	$ 3,000	$ 2,500	$ 500
14/1/1891	*B. Fitzsimmons v J. Dempsey*	$10,000	$ 9,000	$ 1,000
22/9/1891	*C. McCarthy v. T. Warren*	$ 1,500	$ 1,000	$ 500
19/11/1891	*J. Griffin v. J. Larkin*	$ 2,500	$ 2,000	$ 500
22/12/1891	*B. Myer v J. Carroll*	$ 5,000	$ 4,500	$ 500
27/1/1892	*C. McCarthy v T. Callaghan*	$ 2,000	$ 1,500	$ 500
2/3/1892	*B. Fitzsimmons v. P. Maher*	$10,000	$ 9,000	$ 1,000
5/9/1892	*J. McAuliff v B. Myer*	$10,000	$ 9,000	$ 1,000
6/9/1892	*G. Dixon* (Negro) *v J. Skelly*	$ 7,500	$ 7,500	0
7/9/1892	*J. Corbett v J. Sullivan*	$25,000	$25,000	0
2/3/1893	*B. McMillan v B. Hinds*	$ 800	$ 600	$ 200
31/3/1893	*N. Smith v J. Goddard*	$10,000	$ 8,500	$ 1,500
6/4/1893	*A. Bowen v J. Burke*	$ 2,500	$ 1,250	$ 1,250
31/5/1893	*A. Bowen* (mulatto) *v J. Everhardt*	$ 2,000	$ 2,000	0
20/10/1893	*J. Van Heest v W. Napier*	$ 2,000	$ 1,700	$ 300
17/10/1893	*J. Gorman v J. Levy*	$ 1,000	$ 700	$ 300
	Totals	$95,200	$86,050	$9,150

State v. Olympic Club 1894, 15 S 190-199 at p. 191.

Each contest listed in the verdict allegedly contributed to a range of systematic and ongoing breaches of the Club's legal charter. Sullivan, Corbett and Fitzsimmons are noted champions among several unknown contenders in appearing in the famed Louisiana fight venue. This important dossier invokes several branches of North American criminal, corporate and constitutional laws, incorporating the familiar prohibitionist terminology characteristic of statutory and judicial prize-fight regulation of the age.

Athlete safety at sponsored Club events is secondary to a more complex outlaw equation. A potentially disorderly environment dovetailed with the availability of alcohol, potentially disorderly male crowds and significant financial turnover. Despite varying purses and rewards for white, coloured and multi-caste fighters, the Club stressed each suspect contest was lawful with lengthy written agreements formalising newly accepted Western fight conventions.

> We, the undersigned, Stanton Abbott, of London, England, and Andrew Bowen, of New Orleans, La., do hereby agree to engage in a glove contest to a finish before the Olympic Club of New Orleans La., on November 15th, 1893, at nine o'clock p.m., sharp, for a purse of two thousand five hundred dollars, the winner to receive two thousand dollars and the loser five hundred dollars of said purse; said Bowen and Abbott to receive each three hundred dollars for expenses as soon as forfeit of $500.00 is deposited with the Olympic Club. The contest to be with five-ounce gloves, and according to Marquis of Queensberry rules. The club is to select the referee and official time keeper, each of us reserving the right to appoint a time keeper to represent us, said time keeper to be subject to the approval of the club. The referee shall have the power to stop and decide the contest when so directed by the seconds and the contest committee. Should either of us commit a deliberate foul, thereby injuring the other's chances of winning, the one

> so doing shall lose all interest in the aforesaid purse. We each hereby agree to weigh 133 lbs. At the ring side at 9 o'clock p.m. on day of said contest. To guaranty the faithful performance of the above obligations, we each hereby agree to deposit the sum of five hundred dollars in the hands of the Olympic club. Should either of us fail to appear at the proper time and place, the one so doing shall forfeit his deposit to the club. [Signed] A. Bowen. Stanton Abbott and Witnesses ... Sept. 25, 1893
>
> *State v. Olympic Club* 1894, 15 S 190-199 at p. 193.

Public safety is simultaneously threatened and enhanced by the Club's conduct. The interplay of economic, biologic, racial and athletic issues underpins an extensive hidden web of stories associated with this legal claim, the personalities named, the venue, its events, and its core patrons. Judicial scrutiny weighs detailed oral evidence of generic fight practices and recorded testimony on each major and minor contest. In addition, several insider accounts highlight the lawful character of Olympic Club activities.

Billy Edwards' Art of Boxing and Manual Training (unsourced) and various principles adapting Queensberry Rules to professional contests underpin the Club's male sports ethos. Contestants were matched according to appropriate weight divisions, contributing to an emphatic judicial endorsement of orderly, self-governing, rule-based activities. Tensions between public and private interests in this contentious setting are highly blurred within the formal language of the verdict.

> The mere place of exhibition and the patronage of a club does not legally save the situation. It is the popular idea of prize fighting, and the common meaning of those words, and not the idea of professional sportsmen, which are to control courts in dealing with criminality in this matter. We are not dealing with prize fighting and glove contests technically, but from the standpoint from which the law directs us to view them, - prize fights from the standpoint of what are so considered by the people at large, and glove contests as necessarily subordinated to prize fights as so viewed. I am of the opinion that testimony as to what constitutes prize fighting and what glove contests in a "technical" sense was irrelevant to the issue before the court; that it should have been excluded, but that, having been admitted, it should carry no weight. I am of the opinion that the contests which have been permitted to take place in the Olympic Club fall under the prohibitory terms of the law, and that their further continuance should be checked by injunction. I do not think the charter of the club should be forfeited
>
> *State v. Olympic Club* 1894, 15 S 190-199 at p. 199.

The ruling endorsed the social legitimacy of early modern athletic clubs and their positive impact in the evolution of popular fight sports. However, the verdict was overruled in a second unreported appeal (Sammons 1988). Organised membership, elite and minor event promotion and a recognised sports ethos were prominent in the formal wording of the charter, and its endorsement in the reported legal verdict. Only secondary research into the history of United States professional boxing produced revealed the existence of the appeal. This illustrates an abundance of hidden stories on local, national and international fight sports beyond the printed legal record.

> The excitement in New Orleans was intense from the start, as this was the first heavyweight championship fight ever arranged to be fought under the protection of the police. All other fights up to this time had

> been under London prize-ring rules and with bare knuckles, and, being against the law, had been pulled off in private.
>
> Just before we left New York for New Orleans, I had told Brady to see how much money he could dig up to bet on me. He took all the money his wife had and what he could skirmish up himself, and it amounted to $3,000 - we had used up so much for training expenses; but that morning I gave it to Brady and said, 'You take this 900 and the 3,000 you have, and go down and put it on me.'
>
> 'Jim', he said, 'I'll bet my 3,000, but you had better keep your money. If we should lose the fight, that's all we'd have, and we'll have to ride the brakes out of town'
>
> Rayvern Allen ed. 1998, p. 18
> reproducing James J. Corbett's comments on
> heavyweight title contest against
> 'Boston Strong Boy' John L Sullivan,
> New Orleans Olympic Club, 7 September 1892,
> originally in *The Roar of the Crowd*, Curtis Publishing, 1924.

Fight lore documents the excitement, anticipation, and festival surrounding major title events in New Orleans during this period. Criminal philosophies sought to crush a rapidly evolving sports industry and all related actual and perceived social ills. Outlaw gaming, alcohol supply and disorderly crowds of male fight fans gathering from all parts of the nation were significant in the emergence of a modern fight sports ethos despite a widespread perception of vast criminal influence. Technical distinctions between 'gloved contests' and 'prize-fights' fused several dimensions of professional fight sports administration including club membership, rule-making, financial accountability and public order are prominent in this and related United States rulings. Contradictory laws in different states demonstrate the social legitimacy

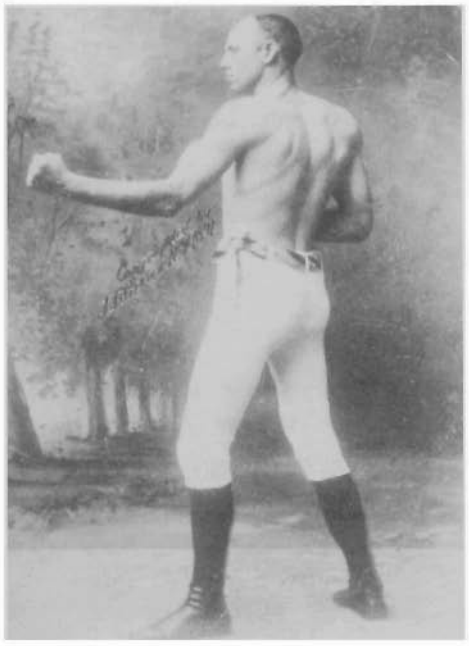
of fight sports in certain settings *'under the supervision of the police authorities'*. This helped to gradual erode the outlaw reputation of private fight governance in many United States jurisdictions, and is reflected in this unique, albeit ultimately successful public takeover.

People v. 'Ruby' Bob Fitzsimmons

> At Syracuse N.Y., on Nov. 17, Con Riordan, the sparring partner of Bob Fitzsimmons, died at 3:30 in the morning from the effects of injuries received while sparring with Fitzsimmons. Riordan had been drinking hard, and just before the bout he bought and drank a half-pint of Scotch whiskey. He gave evidence of his condition as he walked on to the stage of Jacobs' Opera House, but despite this he was allowed to enter into the bout. There were a few exchanges and then Fitzsimmons, with a quick pass, landed on Riordan's jaw with his right. There are differences of opinion as to the force of the blow, but it was sufficient so that Riordan reeled and fell to his knees. Then he lopped over like a dead man. The audience was worked up to a fury of excitement. Boys and men stood up in their seats and shouted. Back in the wings the unconscious man lay in his ring costume, with two physicians vainly endeavouring to bring him back to consciousness. Riordan remained unconscious, despite every effort to revive him. The probable fatal results were announced after midnight by Dr. Tolman. Fitzsimmons was taken before County Judge Northrup at noon and his bail was fixed at $10,000 to answer to the charge of manslaughter in the first degree. In the court room Fitzsimmons said he would not have killed Riordan for $100,000, and then broke down in tears. Con Riordan was regarded as one of the cleverest boxers in the country, but owing to his lack of gameness he was never a success as a fighter. He was born in Bandon, Ireland, about thirty years ago, and when quite young went with his two brothers to Melbourne, Australia, where they opened a grocery store. He began his boxing career in that country as an amateur, and when he left to come to San Francisco in 1884 he was considered the best in the amateur ranks. While in California he devoted most of his time to training boxers. He was nearly six feet tall, and in condition would weigh about 170 pounds. The body of Riordan was laid in a vault at Oakwood Cemetery, on Nov. 18. After the services Fitzsimmons and his company left for Boston. No blame whatever is laid to Fitzsimmons for the unfortunate accident. All

> the witnesses concur in the statement that the blow which felled Riordan was an extremely light one
>
> *National Police Gazette*, December 1894, p. 10.

The 'Boston Strong Boy', the San Francisco 'Gentleman' and the New Zealand blacksmith 'Ruby' Bob helped revolutionise modern elite heavyweight fight sports. Only Corbett was immune from direct criminal scrutiny. The prominent and well-publicised death of another Western fight sports journeyman illustrates the limited reach of United States criminal philosophies on elite sporting personalities at the close of the bare-knuckle era.



Ruby Bob
Blewett 1999, p. 3; Webb 2000.

Lucrative rewards attracted both Fitzsimmons and Riordan to North America, but differing styles and abilities ensured this victim always sparred in 'Ruby' Bob's immense physical shadow. After professional debuts in Australia, both ventured to the free-market entertainment industry popular throughout the United States. Unlike England, New Zealand and Australia, North America offered the prospect of a full-time professional fighting occupation with considerable rewards for paid demonstrations and official title contests. Fitzsimmons' distinct muscular stance, unusually long, powerful reach and trademark 'solar plexus punch' were formidable threats to the championship lineage. In contrast, Riordan's unfortunate demise illustrates a lesser fighting ability and a tendency to succumb to arduous travelling, rehearsal and competition schedules.

> ... [T]he deceased, Riordan, came to the opera house a little before 10; that a few hours afterwards, he was taken from there in a dying condition, and, subsequently, in the morning ... Now, the claim of the people, gentlemen ... is that this man Riordon's [sic] death was caused by a blow struck by the defendant, - struck while engaged in a contention, or fight ... ; or struck while engaged in the commission of an assault and battery ... ; or without due regard and circumspection, if you should find that the acts were lawful; that the immediate cause or the necessary cause of this homicide was the acts of the defendant; that the ultimate or ordinary or probable consequence of that act was the death of Riordon; that that act was perpetrated with such criminal intent as is necessary under the statute to complete the crime charged. The contention of the defendant is that this was an excusable homicide; that this death was an accident which happened under circumstances ... defined as an excusable homicide; and that these men were engaged in a lawful encounter, simply a contest of power and of skill; and that this was simply one of the circumstances which is liable to follow
>
> *People v. Fitzsimmons* 1894, 34 NYS 1102-1114 at p. 1104.

Fitzsimmons #1 presents a landmark synthesis of Western homicide laws with particular emphasis on the crime of manslaughter. The consensual, fatal event contained few hallmarks of an outlaw prize-fight. As with *People v. Floss* (1889), a New York verdict endorsing a contracted exhibition contest between two women, *Fitzsimmons #1* involved a demonstration with agreed payment rates, no prize, an intention to demonstrate genuine fighting skills and no malicious or violent intention. This suggests the fatality was purely accidental. Contemporary reconstructions of the Fitzsimmons legend by Webb (2000) and Tobin (2001) suggest Riordan was no match for the former Australian light-heavyweight champion. Alcoholism and a low-paid routine significantly reduced the speed and dexterity of the champion's 'mutinous [sparring] employee'. Some suggestion of anger emerges in contemporary biographies of Fitzsimmons, however the champion strenuously denied any malicious intent to cause harm and showed considerable remorse.

A step-by-step summary of each component of Western homicide law is applied to a detailed assessment of all relevant facts leading to Riordan's death. In a paradigm example of the range of fatal scenarios and different categorisations of homicide law, the specific character of prize-fight prohibitions is secondary. Measures to protect combatants in fight sports do not automatically imply criminal punishment is warranted. Malicious, deliberate, negligent or reckless fighting causing death or serious injury all rest at the basis of prosecution constructions of this unfortunate fatality.

Western Homicide Laws

Legal issues	*Description*
Proof	Presumed innocent; proof beyond reasonable doubt
Manslaughter	Outlawed by Henry VIII with criminal punishments
Manslaughter in the second degree	Non-excusable, justifiable homicide; included criminal negligence and involuntary manslaughter with no malicious or intention to kill during lawful activity; absence of care victim's welfare
Justifiable homicide	Killing while victim resists or flees a public officer, or in self defence to protect an immediate family member or property
Excusable homicide	An accident while lawfully correcting a child or servant, or doing any lawful act with caution or no malice
Murder in the first degree	Intent to kill with premeditation and design
Murder in the second degree (manslaughter)	Intent to kill with no premeditation; included plans to harm persons or property during a crime, crimes of passion with evidence of cruelty, reckless use of a dangerous weapon
Causation	*'... death ... caused by the act of the defendant'.*
Crime of prize-fighting	*'A person who, within ... [New York], engages in, instigates, aids, encourages or does any act to further a contention or fight, without weapons, between two or more persons, or a fight commonly called a ring or prize fight, ... is guilty of a misdemeanor'* (§458)
Public Peace	Justified most prize-fight prohibitions

People v. Fitzsimmons 1894, 34 NYS 1102-1114.

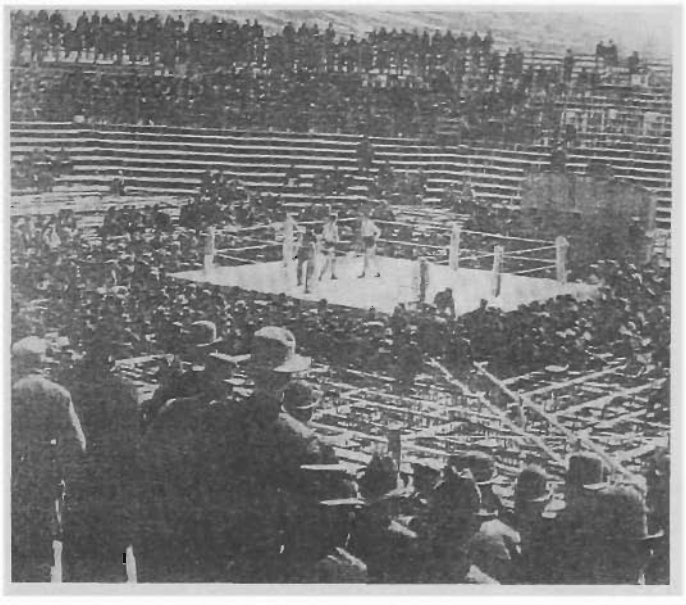
Fitzsimmons was ultimately acquitted of all charges. The synthesis of applicable homicide law provides a workable series of instructions to reach this outcome. The jury agreed Riordan knew or should have known the possible consequences of sparring against a skilled champion, regardless of his level of intoxication. Consent doctrine helped to absolve the champion from the consequences of a homicide conviction. A common sense approach suggested the context, setting and demeanour of both combatants favoured exoneration, despite the inherent or known dangers of engaging in a gloved sparring exhibition.

> Oblivious to the crowd and their surroundings, they could have been in a downtown bar or backstreet alleyway, such was the venom and vigour of their efforts ... Fighting toe to toe, no holds were barred in this thinly disguised brawl. It was soon obvious why one man was a world-rated champion, and the other a mere foot-soldier. Piston-like fists slammed into Riordan's head and chest, spinning him from side to side and forcing him backwards, like a swordsman on the defensive. Damaging blows rained down on him from all sides and angles. Already unsteady on his feet, he was beaten into submission within minutes, slumping to the floor in a daze, soundly chastised for his audacity and impudence
>
> Webb 2000, pp. 106-107.

> After sparring 30 or 35 seconds, the defendant struck Riordon, upon the side of the jaw, face, and chin, a blow, the force of which was described by the witnesses ... a light tap ... not ... a blow of great severity ... upon being struck Riordon's head and body straightened up; he then made an effort to put up his arms in position to guard and strike; and then gradually sank to the floor, like a person lying down
>
> *People v. Fitzsimmons* 1894, 34 NYS 1102-1114 at p. 1102.

The scales of criminal justice demand public accountability to ensure people act safely and responsibly in day-to-day contacts with others. Clearly Riordan contributed to his own demise. Western courts balance the rights of elite fighters to earn income from public, theatrical performances against various risks to actual or prospective fighters. The acquittal provides complete exoneration and no further legal consequences for the champion. A genuine accident provides immunities for remorseful risk-takers where death or serious injury results. Nevertheless, evolving cultural standards across time, space, history and context could equally produce the opposite result under identical homicide principles.

The verdict reconfigures the incident into an objective, impartial language. Detailed recitation of established principles inform the prosecution's expansive criticism of the legality of the bout. At stake are the legitimacy of exhibition contests and the sanctity of an expanding Western criminal justice bureaucracy. Medical, coronial and police testimony paint a uniformly negative picture of this and related contests with similar violent legacies. However, in contrast to English trends and the wealth of legislative prohibitions throughout the United States, the 'people' ultimately declared 'Ruby' Bob's competitive sparring a lawful sports and entertainment practice.



'Gentleman' Jim v. 'Ruby' Bob
before 13,000 vacant terraces,
St. Patrick's Day, 17 March 1897 in Tobin 2001, p. 27.

Con Riordan has clouded, murky, largely unknown history, and is always shadowed by the dominant focus on the future world heavyweight champion. United States *Police Gazettes* and similar Western sports news of the time might reveal many silenced elements to this tragic fighter's historical biography. For Fitzsimmons the charges did not stall a lucrative professional fight career. The former bare-knuckle prospect defeated 'Gentleman' Jim Corbett in 1897 to inherit the world heavyweight title. This success continued in two lower weight divisions until a second reported New York fight law verdict permanently outlawed the ailing champion in 1914 at the age of fifty-three. The landmark challenge to a New York State Athletic Commission decision to reject the champion's application for a professional fight license forced the inevitable

retirement of an aging, elite, highly respected outlaw of early modern professional fight sports.

Themes

Two themes are prominent in each legal statement on the diminishing outlaw character of Western fight sports. First, both prosecutions target elite clubs, practitioners and exhibitions within the lucrative United States fight sports industry. Both claims are highly ambitious, testing the boundaries of state law-making power, judicial interpretation and public opinion in complex jury trials. Second, constitutive reforms to professional boxing embracing Queensberry amateur Rules, detailed fight contracts and organised club or travelling demonstrations are vital to the legal acceptance of this contentious sports practice. In line with allied civilising developments of the time the concordance of amateur rules, judicial endorsement of fight clubs and popular, 'gentlemanly' celebrity champions of the time facilitated the broader legal acceptance of modern fight sports. Nevertheless, the outcome of both 1894 verdicts along with the parallel expansion of specific prize-fight prohibitions in many North American states illustrates numerous tensions between Western law, policies of enforcement, state paternalism and a developing fight sports culture.

§§§

vi. 1902-1914

Overview

Between Bob Fitzsimmons' heavyweight title victory in 1897 and the landmark defeat of Tommy Burns by the first Afro-American world 'Papa' Jack Johnson in 1908, several legal rulings challenged a rapidly evolving sports industry throughout the United States. The heavyweight lineage was subject to a succession of barely known twentieth century challengers and champions including Marvin Hart (1905-1906) and Tommy Burns (1907-1908) in a generally lean period for heavyweight fight aficionados. Four rulings from different states reported between 1902 and 1905 examined status of professional fighting and those involved in organising, backing or participating in suspect contests. This is supplemented by an important general law assault ruling distinguishing common public fighting scenarios from organised sports and recreational sparring. Former champions James J Jeffries and 'Ruby' Bob Fitzsimmons are involved in an additional three reported and failed appeals to bring the cumulative sample of United States verdicts to eighteen.

The most significant development transcending celebrity, sporting and legal controversies of this period was the creation of the New York State Athletic Commission (NYSAC) in 1911. Prior to this revolutionary turning point in

modern fight governance five of sixteen reported fight law verdicts dating back to *Collberg* (1876) were decided in New York courts. This is one signifier of the importance of fight sports to the city's social development. The Commission's functions and structure are virtually identical to analogous public and private organisations in England, Australia and wherever formalised fight sports are popular. This first major publicly created fight sports body has a prominent place in both state and national fight law records throughout the remainder of the twentieth century.

Patten v Dickerson, 1902

The first reported United States verdict of the new century examined Indiana laws directed against those classed as '*backer, trainer, second, umpire, assistant, or reporter*'. The prohibitions defined an outlaw contest as any event or prior arrangement to engage in a fist-fight for a wager. Similar to prize-fight laws in other North American states and throughout the English common law world, several classes of ancillary parties not immediately engaged in outlaw fighting *per se* were considered worthy of a criminal label under these restrictive statutory provisions.

> When it is said that one, in pursuance of a previous arrangement and appointment with another, did unlawfully engage as principal in a fight with that other with their fists, for a wager, there is, by one of ordinary understanding, no mistaking the nature of the act

State v. Patten 1902, 64 NE 850-851 at p. 851.

Patten (1902) involved a state appeal against a trial ruling acquitting Robert Patten. Evidence indicated the fight he allegedly organised was not an outlaw *fist*-fight under the prohibitions. The contest involved Patten and William Dickerson and was staged in Sullivan County on 25 June 1901, but details of the precise events are unclear in the reported verdict.

As with many previous reported fight law disputes, the Indiana legislation left particulars of the term 'prize-fight' ill-defined. Referring to definitions in *Webster's* and *The Century Dictionary* as well as several interstate verdicts including *Seville* (1892) and *Taylor* (1893), the ruling supported convictions principal fighters and secondary backers involved in disorderly contests for reward. An ill-defined public interest justification validates the state's claim and the matter was remitted for re-trial. This body of accumulated fight law offers several persuasive precedents to reinforce convictions for principal fighters where few rules or questionable financial motives characterised any planned contest.

A semi-organised 'bar-room-brawl'

> It was a physical contest, without weapons, between two individuals, for the purpose of entertainment. Those who were present each contributed

> $1 for the purpose, we may assume, of compensating the contestants; and, as it is conceded that one of the men in the arena was knocked down once or twice, and that the contest lasted for 10 or 15 minutes, with intervals of rest, it is hardly to be doubted that it was such a meeting as the law was intended to prevent. The mere fact that the fighting space was not marked off by ropes into a "ring" of 16 or 24 feet, or that the evidence does not show what rules were in vogue, is of little practical importance. The contest, by whatever name it may be called, was evidently what 99 people of every 100 in the ordinary walks of life would call a ring or prize fight, and it was this kind of contests which the Legislature sought to prohibit ...
>
> *People v. Finucan* 1903, 80 NYS 929-931 at pp. 930-931.

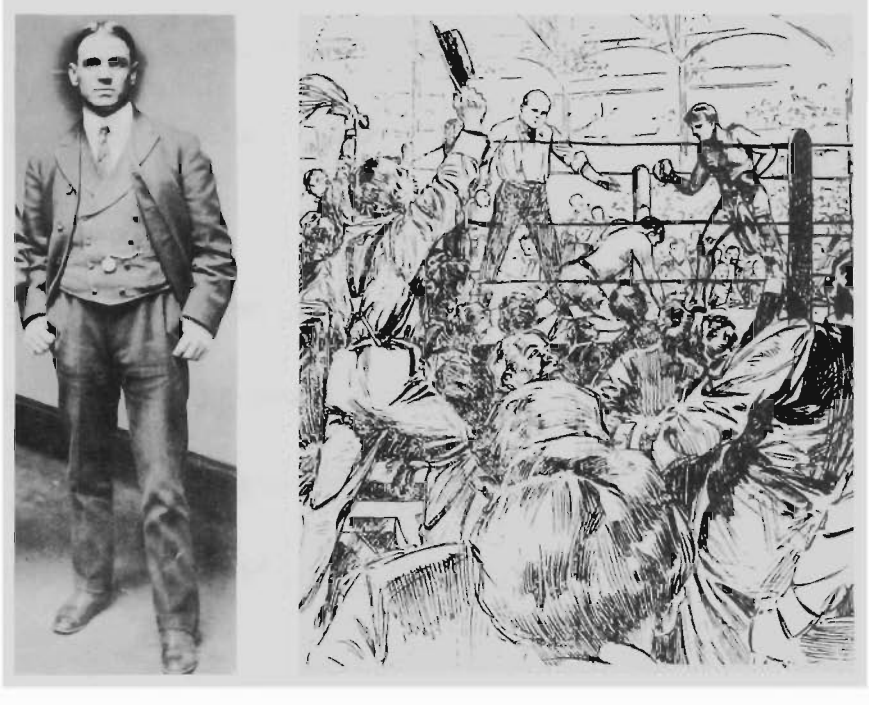
Finucan (1903) reiterated ill-defined public interest justifications to endorse an outlaw label against at the owner of a disorderly New York fight premises. Rougher versions of elite, professional, filmed fight-sports reinforced the social legitimacy of chartered fight clubs. Copycat 'bar-room' champions encouraged a range of compounded harms including excessive alcohol consumption, violent masculinity and potentially fatal unregulated disorder. Police evidence stresses the outlaw character of semi-organised barnyard brawls and threats to public order where no civilised sports ethos seemed evident. The remoteness of the venue perhaps attracted copycat punters with motives unrelated to illegal fighting *per se*. Implied knowledge of an unlawful purpose was sufficient to validate the conviction, with extensive police testimony characterising the event as a brutal unskilled brawl.

> The very circumstance that the defendant, knowing that the place was rented for the use of a crowd of men, made no effort to find out what use

was to be made of the premises, but avoided going into the building during the day, is enough to justify a suspicion, at least, that he did not want to know what was in fact to be done ... the evidence showed that the greater part of the crowd were present in his barroom before the contest ... the tickets were on sale there, or were handed around in his presence, the evidence points unmistakably to the conclusion that the defendant either knew of the real purpose, or took such pains not to know as amounts to the same thing. The defendant could not close his eyes to matters which were passing about him, and allow his premises to be used in violation of law, and escape responsibility

People v. Finucan 1903, 80 NYS 929-931 at pp. 930-931.

'Terrible' Terry McGovern, 1903



'Terrible' Terry McGovern
at Madison Square Garden
against Frank Erne, 16 July 1900,
from *New York Herald*,
Andre and Fleischer 1975, p. 324.

'Terrible' Terry McGovern cast a tenacious, terrier-like image. Recognised by noted champions of his time including contentious heavyweight champion 'Papa' Jack Johnson (Johnson 1927: 1992) the popular flyweight also attracted controversy as a prominent celebrity in United States criminal law records.

An application for an injunction to prevent a lucrative title contest by Kentucky state authorities illustrates judicial review procedures typecasting McGovern within a violent 'fighting' template. The sole manager and stockholder of the Southern Athletic Club was enjoined to support the state's claims of a potentially disorderly and violent contest attracting all manner of criminal patrons from all parts of the United States and beyond.

A temporary injunction was granted at an unreported trial to avert stark threats to peace, good order and safety feared throughout the Louisville community. The ruling strongly denounced McGovern's reputation despite efforts to promote an orderly, ticketed, professional title contest of an appealing, high standard.

An indoor venue with a capacity of 4,000 and limits on the number of available tickets between $5 and $20 per seat were cited as evidence of the orderly intentions of event promoters. However the court was not convinced these measures would prevent the disorderly consequences of travelling fight patrons on Louisville citizens, or the safety of McGovern's willing opponent.

His upper lip was cut in two places – one side clear through to the teeth, completely severed, and the other side was nearly through. His upper lip was swollen about three or four times its normal thickness, and one eye completely closed and swollen very much. Both lids were swollen about an inch in thickness, due to the extravasation of blood. He could not open one of his eyes. The other was very nearly as bad. He had a cut over one eye, about an inch and a half in length, in which we had to take three or four sutures. We took six or eight sutures on his lip. His face was very much bruised; looked like a piece of raw beef. Blood was oozing from different parts of it ... When I first saw him, the feeling I had was of sickening disgust

Evidence presented by Dr Gossett for the prosecution after examining Bill Harrahan at Louisville, November 1901

Such a meeting as would have been held in the Auditorium, in Louisville, to witness the prize-fight between McGovern and Corbett, if that fight had occurred, would doubtless have attracted many of the better and law-abiding class of citizens, curious to see such a spectacle as a prize-fight; but for every such reputable citizen thus attending there would have been present a dozen gamblers, confidence men, bunco steerers, or pickpockets, gathered from all parts of the United States, men of idle, vicious, and criminal habits and practices, whose business is to prey upon the public in some form or other, and many of them would remain in the community after the combat to ply their nefarious callings. Such an assembly would easily be led into a riot, or other unlawful disturbance of the public peace. In addition to the evils suggested, there would be the contaminating effect of such a meeting upon the youth of the city and state, which might prove of incalculable injury to their morals and future welfare. Such a gathering, too, would demand increased vigilance in the protection of the property of the city and its inhabitants, be a menace to good order, and disturb the peaceful pursuits and happiness of citizens who would be unwilling to patronise such an enterprise

Commonwealth v. McGovern et al. 1903, 75 SW 261-267 at p. 263 and p. 266.

A $20,000 purse and extensive national interest generated widespread concerns justifying a permanent extension of the injunction. Highly emotive language pervades the reported verdict is unable to objectively balance public order fears and the poorly advocated social benefits of this popular, lucrative, and highly contentious outlaw contest.

> [T]he prize-fight if allowed to take place, would bring to the city of Louisville a great number of sporting men, disorderly persons, and criminals, and that the persons so drawn to the city would constitute a lawless, turbulent, and dangerous assembly of many thousands of people, and would produce breaches of the peace and other violations of the law, which would have a demoralizing effect upon the good order and well-being of the community, and produce a public nuisance ... a criminal prosecution of the principals and others connected with them would not prevent the great injury that would be done to the people of the state by holding the prize-fight within its bounds, and ... the commonwealth has no adequate remedy at law for the injury which would result to the public welfare if the prize-fight were allowed to be held
>
> *Commonwealth v. McGovern et al.* 1903, 75 SW 261-267 at p. 262.

This paradigm example of judicial conservatism reinforces the outlaw reputation of North America's most popular yet brutal professional sports fighter. Expert testimony emphasised the *'unusual endurance and extreme brutality'* promised by a disorderly *'feast of blood'*. Themes of overt violence and risk-taking are embedded in the reputation of a young man known for his athletic aggression and shrewd commercial professionalism. As with similar events reported in Western criminal sources of the time, a combination of

physical risk to combatants and concerns over disorderly patronage meld to endorse this outlaw, paternalistic and protective ruling for fearful, law-abiding Louisville residents not interested in monitoring the event.

Two dimensions of modern fight trivia emerge from this outcome. First, rather than adapting judicial attitudes or the circumstances of the contest to come to an agreeable compromise palatable to all concerned, *McGovern* illustrates conflicting legal attitudes to professional fight sports often varied from extremes of outright prohibition to non-regulation. As such, organisers could easily avoid the effects of prohibition orders by relocating outlawed events to more receptive interstate settings. Where Kentucky courts were fearful of the potential consequences of such a major, popular event, Denver, Colorado readily accepted the invitation to host McGovern's title defence.

Second, the identity of 'Young' Corbett is an interesting footnote. Several fighters of the time adopted the 'Gentleman' title in deference to the noted heavyweight's style, persona and ring-craft. William H. Rothwell and a 'black bantamweight' named 'James J. Corbett Junior' are both reported to have fought McGovern during this period. The former was victorious on a Thanksgiving Day bout in 1901 (Myler 1998, pp. 224-225). The latter was knocked out after twelve rounds in Chicago but further details are sketchy. Records are likely to indicate a lithe, gentlemanly character diametrically contrasting with the brutal fighting McGovern depicted in the Louisiana courts.

The result of the relocated bout is also unclear. Nevertheless, McGovern continued a lucrative professional career, with an impressive tally of fifty-nine victories in seventy-seven recorded contests and thirty-four knockout results (Andre and Fleischer 1975, pp. 324-325). 'Terrible' Terry's reputation is the dominant emphasis in testimony, embodying all evils of the professional fight game and its practitioners. Any noble 'gentlemanly' traits are silenced in an emphatic criminal prohibition.

Unlawful prize-fights and assaults, 1905-1909

Commonwealth v. Mack et al (1905) is a short verdict cited by Million (1939) as an exemplar of prohibitionist philosophy. After a guilty plea seemingly to minimise the level of punishment, the appeal ruling endorsed outlaw classification of a ticketed, advertised contest operated through a private membership scheme. Public interest justifications again supported this characterisation.

As with most reported contests involving conflicting testimony, elements of the event's outlaw character are unclear. Community standards reflected in jury verdicts and endorsed on appeal sanctioned the criminal label to in this contest held on private leasehold property. Despite the need for a 'public' contest under

Massachusetts anti-prize-fight-laws prosecution evidence provided sufficient grounds to endorse the guilty verdict.

A relevant counterpoint to criminalisation and specific prize-fight prohibitions is illustrated in the Nebraska case *Morris v. Miller* (1909). The verdict provides an extensive synthesis of common laws of assault and illustrates the procedures for awarding compensation to victims of unlawful harm. The case reviewed an extensive list of previous civil assault rulings, and emphasised the limits of attributing legal responsibility and criminal punishments for harms stemming from consensual interpersonal fighting.

> ... [W]here two parties fight voluntarily, either party may recover from the other the actual damages suffered and the consent of the plaintiff to engage in the combat will not bar his suit to recover. In jurisdictions where punitive damages are allowed, the consent will prevent the allowance of such damages, but will not prevent recovery for the actual loss or damage
>
> *Morris v. Miller* 1909, 119 NW 458-461 at p. 460.

A chronological summary of early nineteenth century precedents illustrates ongoing reluctance by United States juries to award damages to consenting fighters within or beyond the square ring. Judicial languages focus on the combination of public interest condemning violent armed or unarmed assaults in public or private life. However considerable lenience is demonstrated in case where evidence proves the ability of one or both people to freely consent is

impaired by alcohol, other forms of intoxication, youth and even female gender traits. A lack of malice generally distinguished lawful sports contests with gloves and other protective measures from outlawed criminal and civil assaults. Identical terminology is invoked in both branches of modern United States fight-law, although state imposed penalties contrast with compensation payable by the wrongdoer in private civil assaults.

'Gentleman' James J. Jeffries, 1910

> As long ago as 1910 the boxer James Jeffries found his niche in sporting history by being first to claim he had been doped to lose a fight. He had been knocked out by Jack Johnson, and Jeffries claimed that his tea had been drugged on the eve of the fight, although the allegation was never proved
>
> Woodyard 1980, p. 113.

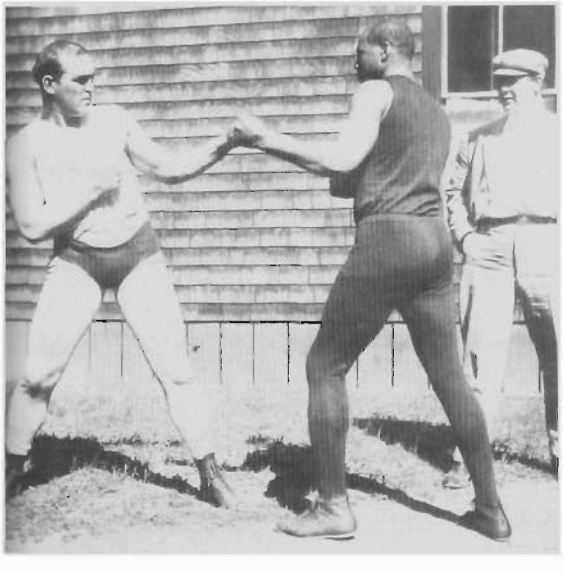
Popular fight commentators remember the successor to 'Ruby' Bob Fitzsimmons less for his title reign between 1899 and 1905 and more for his unsuccessful attempt to regain white pride by challenging 'Papa' Jack Johnson in 1910. Most 'white hopes' typically spent more time avoiding Johnson's persistent challenges, and Jeffries was ultimately coaxed out of retirement and physically under-prepared for an eager defending champion. 'Papa' Jack's superior reach, power and defensive technique led to an emphatic and socially divisive victory. Jeffries' retired and his subsequent legal biography involved a

relatively benign, trivial dispute with immense ongoing relevance to United States privacy laws throughout the twentieth century.

Jeffries alleged unlawful interference with private economic rights after an extract of his autobiography was published in the *New York Evening Post*. The text reviewed the former champion's professional fight history as well as personal life truths and secrets to his success, and was an early pioneer of this popular fight lore tradition. The article, uncited in the verdict, allegedly breached exclusive private rights to the contents of the champion's life story. Jeffries sought $25,000 compensation to preserve the *'great financial value'* of his work and a court order preventing the Journal *'from using the name, portrait or picture ... in or in connection with a so-called [serialised] biography or life history'* in any future publications.

> ... [P]laintiff relies upon section 51 of the civil rights law which prohibits the use of any person's name, picture, or portrait without his written consent "for advertising purposes or for the purposes of trade." He attempts to bring the case within the statute by alleging that his picture gives defendant's newspaper "an increased circulation" and thereby "increased value as an advertising medium"
>
> According to the plaintiff's construction [of the civil rights privacy legislation in New York], the picture of a pugilist or president would bring the case within the statute where that of an obscure and quiet citizen would probably not; nor does he, indeed, object to his picture, except in connection with his biography
>
> *Jeffries v. New York Evening Journal Publishing Company* 1910, 124 NYS 780-781 at pp. 780 and 781.

The Journal had national circulation presenting jurisdictional problems for the New York state court. The permanent injunction would only restrict publication within the state. Only a successful federal claim would prevent duplication or syndication beyond New York State. Regardless, the short verdict bearing many similarities to Western copyright laws bluntly rejected the claim. Allowing the appeal would unduly stretch the intention, content and application of New York privacy laws *'ad absurdum'* (1910, p. 781), with Jeffries clearly over-exaggerating the level of personal and economic harm attributable to the *Journal's* work. Judge Whitney indicated the use of the champion's image by the print media was an *'advertising purpose'* under the literal wording of the civil rights protections, enforceable when designed to attract broader commercial profits through domestic inter-state *'trade'*. The piece was ruled a legitimate a news story of general public interest.



'Gentleman' Jim Jeffries
sparring with Bob Armstrong,
1910 Hill 2002, p. 23.

This liberal construction of the dispute favoured an emerging media industry, and ensured all public figures including Jeffries had limited monopoly or privacy rights over published depictions of their celebrity lives. The effect subordinates private economic rights alongside the more significant public interests in promoting newsworthy stories on popular individuals and events. While the case illustrates the preparedness of elite professional fighters to contest legal issues in North American state and federal courts, the outcome is a significant reminder of the complexities of formal litigation in media law disputes.

'Papa' Jack Johnson's legal encounter, 1914

Negative accounts of the first modern Afro-American world heavyweight champion 'Papa' Jack Johnson in the post-slavery social order of the United States abound. Strong emotive contradictions pervade most descriptions of 'Papa' Jack's highly disrupted professional fighting career. Considerable reluctance by white contenders such as 'Gentleman' Jim Jeffries to 'cross the colour line' against the intimidating giant underscored more general concerns over the champion's influence on black communities more generally. After 'Papa' Jack defeated Canadian Tommy Burns in 1908 at the unlikely venue of Rushcutters Bay, Sydney, Australia, both public opinion and various strands of United States Federal law sought to cut down the new world champion at several interconnected sites. Both real and imagined fears of riots, disorder and

the uncontrolled rape and pillage of innocent white women in the United States provoked unique legal measures aimed directly at the contentious celebrity and others 'of his type'.

... Frank Force, sports writer for the *Police Gazette*, ... stated that Johnson

"is the vilest, most despicable creature that lives ... In all sporting history, thee never was a human being who so thoroughly deserved the sneers and jeers of his fellow creatures ... he has disgusted the American public by flaunting in their faces an alliance as bold as it was offensive ... and has shown himself in every way to be what he *is*, an ingrate of the worst description"

Gilmore 1973, p. 21
citing *Police Gazette* quoted in
Minneapolis Tribune
10 November 1912, p. 7.

Never in my life have I seen a finer, fairer, and more orderly ringside crowd, and in this connection ... the majority were in favour of the man who was losing. That many thousands of men could sit quietly for forty minutes and watch their chosen champion hopelessly and remorselessly beaten down and not make the slightest demonstration is a remarkable display of inhibition. There is no use minimising Johnson's victory in order to soothe Burn's [sic] feelings. It is part of the game to take punishment in the ring, and it is just as much part of the game to take unbiased criticism afterward in the columns of the press. Personally, I was with Burns all the way. He is a white man, and so am I ...

Jack London, '*On the fight*',
in Corris and Parish eds. 1996,
pp. 345-346.

A sustained political, moral and enforcement purge tarnished most of the champion's seven-year title reign. Johnson was directly prosecuted under *Mann Act* prohibitions against 'white slave trafficking'. Allied attempts to suppress fight film trafficking, trade and public displays under the *Sims Act* targeted

'Papa' Jack's image and the broader public influences of his contentious celebrity. Historian Randy Roberts (1983) demonstrates the scope of public anxiety in 'white' United States communities immediately following the champion's easy victory over Jeffries in 1910. The very real prospect of collective celebratory violence was embodied in each trajectory of the champion's documented life.

> In Houston, Charles Williams openly celebrated Johnson's triumph, and a white man "slashed his throat from ear to ear", in Little Rock, two blacks were killed by a group of whites after an argument about the fight on a streetcar; In Roanoke, Virginia, six blacks were critically beaten by a white mob; in Norfolk, Virginia, a gang of white sailors injured scores of blacks; in Wilmington, Delaware, a group of blacks attacked a white and whites retaliated with a "lynching bee"; in Atlanta a black ran amuck with a knife; in Washington, D.C., two whites were fatally stabbed by blacks; in New York City, one black was beaten to death and scores were injured; in Pueblo, Colorado, thirty people were injured in a race riot; in Shreveport, Louisiana, three blacks were killed by white assailants. Other murders or injuries were reported in New Orleans, Baltimore, Cincinnati, St. Joseph, Los Angeles, Chattanooga, and many other smaller cities and towns. The number of deaths and injuries is unknown. Different accounts give contradictory figures. But that the result of the fight [between Johnson and white hope James J. Jeffries in 1910] was the triggering issue is not questioned
>
> Roberts 1992, p. 109, sources omitted.

The *Mann* or *White-slave Act* outlawed the interstate traffic of women for the purposes of prostitution. Historian Herbert Asbury documents the context of this entrenched industry in New York (2002), Chicago (2003) and Louisiana (2004) in his 'underground' excursions into organised crime. Gangs of men,

women, families, brothel owners and publicans sponsored lucrative domestic and international criminal 'people-trafficking' industries. Irish- and Afro-Americans were prominent targets of these prohibitions. Highly paternalistic moral arguments directed at protecting vulnerable women from predatory male and female slave-owners were underpinned by an extensive racially fuelled, outlaw criminal purge centring on the world heavyweight title-holder.

> The investigation undertaken by the Chicago Vice Commission in 1910 disclosed that the average age of the parlor-house prostitute was twenty-three and one-half years, and that the professional life of a girl in the "big-time" resorts was seldom more than five years. After that she drifted downward into the lower-priced houses, then to the streets and the back rooms of saloons, and finally into such houses as those of the Jungle and Bed Bug Row. In consequence of this rapid turnover of what the vice lords callously called "stock", constant recruiting was necessary, and to supply the large demand and keep the brothels filled with fresh and attractive girls was the profitable business of the numerous gangs of procurers and white-slavers which operated, not only in Chicago, but in other large American cities ... [D]espite the efforts of police departments throughout the country the traffic was never brought under even a semblance of control until the federal government entered the fight, operating at first under the immigration laws and later under the Mann Act of 1910
>
> Asbury 1940: 2003, pp. 266-267.

Johnson was a perfect target for interstate federal surveillance and enforcement. His well-publicised flamboyant character, widely documented attractions to white women and frequent inter-state travels conformed to all legal criteria under the *Mann Act* prohibitions. Johnson played the high life under a racial

template of brash, offensive male physicality. Circumstantially, the prohibition validated extensive under-cover surveillance by specialist and expanded national enforcement authority with enormous implications on many facets of United States life throughout the twentieth century.

Johnson and first wife Etta
Hill 2002, p. 29.

Road Work
Johnson 1927: 1992.

The reported appeal focused solely on Johnson's outlaw character and perceived unjustified targeting by federal agents. Lucille Cameron, the 'white-slave' with a widely documented immoral attraction to the champion's glamorous lifestyle, was similarly tarnished with an implied outlaw label. The language, emphasis and conduct of proceedings continually assume Cameron's complicity in an illicit, immoral liaison. The white-slave's voice is suppressed

by the direct focus on Johnson's contentious personality throughout the written record.

> ... [P]roviding of interstate transportation for the mere purpose of attempting to lead a chaste girl into unchastity is a felony without proof that the defendant intended to be the debaucher, or that he expected to profit by the girl's hire if she should become a prostitute. So it becomes apparent that "commercialized vice" or "the traffic in women for gain" is not the common ground, that the nexus indicative of the genus is sexual immorality, and that fornication and adultery are species of that genus
>
> *Johnson v. United States* 1914, 215 F 679-687 at p. 683
> *per Baker with Kholsaat and Mack in agreement.*

The United States Supreme Court unanimously regarded proof of unlawful sex traffic was sufficient to justify the conviction, even though there was no overt commercial motive by either consenting party. The champion's flamboyant, promiscuous, morally dubious persona within and beyond the square ring was conclusive to justify the ruling in the national public interest. Racial anxieties offered tacit support for this successful prosecution.

A retrial on certain counts was ordered in Johnson's favour while the constitutional validity of the *Mann Act* was reinforced by the outcome of this unsuccessful federal appeal. Johnson was ultimately convicted and sentenced to twelve months imprisonment on each proven charge. He served months in

Leavenworth Prison after a period of national exile and his title loss to Jess Willard in 1915.

Johnson v. United States 1914, Rulings

Evidence: sufficient to convict for interstate commerce but insufficient for causing transport of white women for purposes of prostitution

Federal statutory power: no evidence of public debates or legislative intention admissible to justify legality of *Mann Act*

Prostitution: *'commercialised vice'* or *'other immoral purpose'* including *'sexual debauchery'* with or without *'profit sharing'*

Interstate Commerce: essential to constitutional validity of federal *Mann Act* involving proof of any travel by accused and *'girl'*

White Slave Act: federal felony with constitutional authority aimed at preserving public morals and inter-state transport

Proof: *'crime against nature upon* [Johnson's] *body'* not sustained by state testimony

Cross examination: Unfair questions and irrelevant evidence justified retrial; hypothetical scenario of violence against women deemed inadmissible against Johnson

Separate Counts: Failure to convict on one charge does not prevent re-trial for unsuccessful allegations

Johnson v. United States 1914, 215 F 679-687.

'Ruby' Bob Fitzsimmons #2-3, 1914

> Prize fighting has been defined as the act of fighting for a prize, or boxing in public for a reward or wager. Several of the states have either prohibited prize fighting altogether, or strictly prescribed the conditions under which such contests can be conducted ... the Legislature, in creating the New York State Athletic commission, has attempted to legalize boxing when conducted under the jurisdiction of the State

> Athletic Commission. Confronted with the question as to whether it should prohibit prize fighting or sparring altogether, or leave such contests unaffected by legislation, the lawmaking body of this state has adopted a middle course, and has legalized boxing when conducted under state control ... To achieve those purposes the state has created the Athletic Commission and authorized that Commission to prescribe stringent rules governing the conditions under which such contests can be held ... section 12 of the act, creating the defendants the New York State Athletic Commission, excepts from the operation of the penal law boxing contests conducted by clubs licensed by the defendants the New York State Athletic Commission ... it is apparent that the vocation of prize fighting or sparring is an occupation subject to governmental control. While the prohibition contained in the penal law against such contests does undoubtedly impair the liberty of those who desire to pursue such a vocation, it does so only in the sense that other provisions of the penal law restrain persons from the exercise of a liberty which is deemed harmful to the community
>
> *Fitzsimmons v. New York State Athletic Commission et al #2*
> 1914, 146 NYS 117-123 at pp. 120-121.

Bob Fitzsimmons had long passed his fighting peak by 1914. Despite achieving world champion status in three weight divisions, the NYSAC was not convinced by the legend's failing abilities. Three years after this landmark institution provided the model for Western fight governance, Fitzsimmons again defended his square ring reputation in an important legal ruling.

No histories of the NYSAC have been traced in available Australian sources. However, greater demands for high quality, filmed championship events held in mass-indoor venues enabled the 1911 model to administer a complete public monopoly over all forms of fight governance throughout the state.

The Commission appears to have evolved from disparate private administrative roots and persistent failed attempts to suppress organised fight sports under early criminal laws. Its development provided vital legislative recognition of the futility of legal attempts to blanket-ban all lucrative, popular or disorderly fight sports industries. The centralised, streamlined public administrative structure enabled standardised professional licensing for all athletes, fight clubs, managers and medical authorities. All non-sanctioned personnel and events were subject to the standard array of criminal laws, precedents and punishments.

'Ruby' Bob at fifty-seven, 26 March 1917
Tobin 2000, p. 44.

In conforming to NYSAC rules Fitzsimmons submitted a standard application form and medical report endorsing his physical fitness. The Commission rejected the application, emphasising the ex-champion's age and poor physical condition. Fitzsimmons challenged the ruling after expecting mandatory

Commission approval to validate a related private agreement with the Atlantic Garden Athletic Club.

The veteran of over 390 reported professional contests agreed *'to box any person deemed suitable'*, and would receive 45% of the gate an incentive for his belated professional comeback. Advertising, film and print interest in the event would accompany any financial backing provided by the Club. It was intended by all concerned the event would have the necessary approval, oversight and direction under NYSAC licensing rules. For 'Ruby' Bob this was a career-ending mistake.

Two main purposes of this revolution in statutory regulation were identified in the ruling. Preventing *'brutal and degrading features'* of modern fight sports, and promoting *'legitimate limits of a sport'* for general community benefit equally informed NYSAC governance philosophies. A combination of public and private interests melded under these rationales with only *'arbitrary'*, *'capricious'*, unfair or unjustified Commission rulings warranting formal judicial intervention. The protection of aged or infirm athletes was an additional dimension of NYSAC authority designed to improve the public image and safety of modern fight sports.

The verdict recognised the significant transition from unregulated prize-fighting to an acceptable modern sports tradition. While professional and

amateur boxing had long been 'Ruby' Bob's occupation, the very existence of the Commission and 'expert', specialist fight governance required discretionary rulings to prevent avoidable injuries or death even to the most acclaimed practitioner. Risks to credibility of the sport and its new administrative structure were by no means outweighed by the losses to the aging champion.

The outcome effectively ended a lucrative, pioneering fight career. The days of stage performances with a pear-shaped 'calf-skin' bag threatening to concuss awe struck front-row patrons were over. The former world middle-, light- and heavyweight champion, noted for defeating 'Gentleman' Jim Corbett and losing controversially to Tom Sharkey in a bout refereed by famed 'gunslingin'' sheriff Wyatt Earp (Andre and Fleischer 1975, pp.75-83; Blewett 1999, pp. 1, 3, 180-181, 227, 299, 314-315, 342, 383; Brooke-Ball 2001, pp. 32-35, 160-161; Hall 2002, pp. 15-16), could not live up to his youthful reputation. Three years later the cumulative effects of a prolific history of recorded sports contests and countless travelling exhibitions marked the death of one of Western sport's most significant heavyweight fighting journeymen.

> The best pucker going for strength was Fitzsimmons. One puck in the wind from that fellow would knock you in the middle of next week, man
>
> 'Irish writer James Joyce refers to Fitzsimmons
> in his masterpiece novel *Ulysses*,
> see Tobin 2000, frontis piece.

Fitzsimmons # 2 (1914) is a landmark precedent but is seldom invoked in subsequent fight law rulings. Similar licensing decisions uphold identical perceived interests of the athlete, the sport, its administration and the broader 'public'. Provided such decisions conform to validly enacted legislation, internal decision-making procedures and the overall welfare of the sport, contrasting evidence of an athlete's previous sporting glories means little. The precedent in *Fitzsimmons # 2* was unanimously affirmed without opinion in *Fitzsimmons #3* (1914), and is the first judicial endorsement of the Commission and its non-criminal alternative to modern fight sports administration.

> At the subsequent appeal court hearing, Fitzsimmons duly rounded on the judge, insisting that he was more than fit enough to go back between the ropes, and could comfortably defeat a man half his age. The judge obviously wasn t convinced, as he ruled against Bob, upholding the Commission s decision. A desperate offer on behalf of the former champion to stage an exhibition bout there and then in the courtroom in order to display his fitness was politely - but firmly - declined. From that moment on, the veteran was barred for life from boxing within the entire New York State. Other bodies said they d take a similar line if he applied for a licence within their jurisdictions. Whether he liked it or not, Bob s career was over
>
> Webb 2000, p. 177 (apostrophes absent in original).

Themes

Of a cumulative total of eighteen fight law cases between *Collberg* (1876) and *Fitzsimmons #3* (1914), twelve directly involved a progressive clarification of specific criminal prohibitions against organised prize-fights for reward. While

most prosecutions failed in the decade preceding the new century, a resurgence of convictions between 1902 and 1905 is evident. Similar motives for criminal intervention to prevent organised fighting are evident in reported English cases throughout the nineteenth century. Notably, six United States verdicts in this lineage have directly or indirectly involved noted personalities or champions well documented in modern fight lore.

The NYSAC shifted the prevailing regulatory focus to a public administrative or bureaucratic model with significant ramifications for United States federal and state fight law. The timing of Fitzsimmons' career embodies the transition from a failed criminalisation ethos to a publicly regulated sport. The clash between the aging champion and NYSA-Commissioners represents a revolutionary shift to a 'civilised', rational, bureaucratic method of sports governance. Athlete protection and orderly event management are merely two of a range of motives validating this method of fight sports administration in an otherwise fragmented, unregulated, and potentially dangerous outlaw industry.

§§§

viii. 1918 - 1930

Overview

Eighteen reported cases follow the controversial legal legacies of 'Papa' Jack and the final fight-film bans of the 'roaring twenties'. Challenging several traditional dimensions of statutory outlaw status, this cluster of verdicts illustrates new and complex administrative themes involving both public and private fight governance. A combination of state and federal laws again tested the conduct of famed and silent heroes of Western fight lore. From Washington DC to the Mexican border, elite heavyweight champions and lesser-known boxers were equally prominent in reported legal verdicts in a largely prosperous inter-war period.

Jess Willard, 1918

After a fatal thirteen round contest in 1913 when Bill Young sustained a broken neck and died in the ring, Jess Willard promptly retired only to return and challenge 'Papa' Jack Johnson in their infamous forty-five-round bout in the heat of a Cuban afternoon. Willard won after twenty rounds and Johnson (1927: 1992) claimed he threw the bout to gain favour with federal authorities and facilitate his return to the United States. The new champion was widely recognised for hammer-fisted power and a reluctance to defend his title. Jack

Dempsey convincingly defeated the 'The Cowboy Fighter' in 1919, transferring the title lineage to a personality more at home with the glamour of post-'great'-war New York celebrity life.

Willard's contribution to modern fight law (1918) involved a private dispute associated with a proposed title rematch against Johnson scheduled to be held in Juarez, Mexico. The contest did not eventuate, although Knoblauch, the champion's assistant, rented training quarters in Mexico through an agent based in Texas. Knoblauch was Willard's agent and paid all expenses for the property. The legal issue involved a claim for reimbursements.

Willard's counter-claim involves an obvious contradiction recognised in the court's verdict. Any professional fighter relying on the illegality of his craft is unlikely to gain formal support to avoid contractual, financial or other privately arranged agreements. The fight contract was prepared, signed and ratified in New York and Willard claimed Texas prohibitions negated any further legal obligations related to this outlaw event. The rental agreement was arranged in Texas and was also considered unlawful under this ambitious reasoning.

The lease for the premises was clearly incidental to Willard's agreement to fight Johnson. Relevant Texas landlord and tenant laws also required no proof of unlawful uses of rented property to maintain the legal enforceability of any written property contract. The champion was ordered to pay all outstanding

rents, with the court declaring *'it is not unlawful for persons to train for a prize-fight in Texas'* (*Willard et al. v. Knoblauch* 1918, 206 SW 734-735). Willard's attempt to evade an equivalent trial ruling would invariably stretch the tolerance of most Western appeal courts.

The Montana Kiley Bill (1913), 1919

The Montana Supreme Court ruling in *Esgar* (1919) examines the broader interplay between a unique constitutional dimension of Western governance, judicial review and criminal law. Article §8576 of the 1913 Criminal Code prohibited *'boxing, wrestling and slugging matches'* throughout the state.

The Kiley law sought to administer professional boxing through a public licensing Commission mirroring the NYSAC model. The 1906 Montana state constitution required a public referendum for specified enactments successfully completing lower and upper house legislative scrutiny. Adapted from Swiss law, this third-tier of statutory law-making is generally absent from Western public governance structures. Along with many general licensing, administrative and zoning powers requiring endorsement at referendum the Kiley fight-law was rejected at a general public election.

> ... [I]n Indiana, Nebraska, Ohio, and Oregon, the legislature submitted amendments extending the suffrage to women, and the people in all four States refused the extension. In Colorado, where the Constitution of 1876

> had provided for taking a special vote on the point, the legislature passed its woman franchise law, and laid it before the people in October 1877, when it was rejected by 14,000 votes to 7400. So West Virginia by her constitution of 1872, and South Dakota by hers of 1889, submitted proposals for proportional representation, which failed of acceptance
>
> Bryce 1906, vol. 1, p. 471.

Historical trends indicate most Western referendum procedures fail to endorse constitutional or legislative changes due to a variety of institutional and political factors. In *Esgar* voters rejected the public licensing proposal in unclear circumstances. In reviewing the conviction of Richmond Gex, an outlaw fight promoter, *Esgar* considered the impact of the failed referendum on the ongoing validity of enacted Criminal Code prohibitions.

Gex was convicted and imprisoned by a Justice of the Peace after failing to pay a $50 fine imposed under the original Code. A writ of *habeas corpus* was then granted compelling state authorities to pardon or release Gex pending trial. This feature of United States judicial review has distant historical origins but little contemporary relevance under English criminal law. The writ is usually invoked in cases involving highly disputed evidence, possible miscarriages of justice or significant crimes demanding remand or imprisonment for community protection.

On 3 November 1913, almost three months after Gex was released, the Kiley law was rejected at referendum. Gex claimed his conviction under the predecessor to the rejected Kiley proposal was unlawful, as the latter had successfully passed through the Montana legislature pending the result of the public vote. As the two laws were so inconsistent this argument suggested the Kiley law was in force while awaiting public approval. Any convictions recorded under the 1906 law during this period were invalid due to the amendment of the original Criminal Code.

Judge Cooper forcefully denounced each argument as an 'absurd and calamitous' interpretation of referendum procedures under recognised constitutional doctrine. The Kiley law only overruled the Criminal Code to the extent each was inconsistent. The failed referendum automatically re-activated the criminal Code while both laws were in force pending the outcome of the popular vote.

> If the Kiley bill was effective for the purpose of repealing section 8576, Revised Codes, then by rejecting it at the polls, the people gave their consent to boxing, wrestling, and slugging matches without any regulation or restriction whatever, although they manifested their disapproval of legalizing boxing in the most emphatic form
>
> *State ex rel. Esgar v.District Court of Ninth Judicial District, Gallatin County et al.*1919, 185 P 157-161 per Holloway J. with agreement from Brantly C. J. and Patten J. at p. 161.

Slightly different reasoning in each separate verdict highlights growing confusion over the breadth of issues canvassed under modern United States prize-fight law. Various logical twists are used to endorse the legality of Montana's unique constitutional procedures. A further, implied justification indicates no attempt was made by elected state authorities to establish a licensing process under the proposed Kiley reforms. In constitutional cases such as *Esgar* the legality of the state's law-making and enforcement processes are of primary legal concern. After an unsuccessful appeal it is likely Gex was returned to custody to serve his full specified prison term.

Sham contests

> ... [A]ny person who shall engage in any public sparring or boxing exhibition, or who shall aid, abet, or assist in any such exhibition, or who shall furnish any room or other place for such exhibition, shall be deemed guilty of a misdemeanour
>
> ... [D]efendant Dillon and one N.O. Brown started to give a pretended boxing exhibition, but refused to give a scientific and skilful boxing exhibition, as he had contracted and agreed to give, or to give any boxing exhibition of which he represented himself to be able to give and would give before the plaintiff's members
>
> *Coliseum Athletic Association v. Dillon et al.* 1920, 223 SW 955-958 at pp. 957 and 956.

The St Louis Court of Appeals reinforced several well-documented fight-law principles in a verdict involving a contract between the Coliseum Athletic Association and a professional fight demonstrator. Over two-years after

proceedings commenced the Club sought judicial review to enforce the potentially unlawful contract.

Dillon agreed to perform for $750 in a refereed contest comprising '*... eight rounds, of three minutes each, of scientific and skilful boxing*'. However, members protested Dillon's performance was a sham. The referee issued several warnings during the contest, but it became clear Dillon overstated his abilities when negotiating the bout.

The verdict outlines authorised licensing powers of state approved private self-governing fight clubs. Publicly authorised sports clubs received a legislatively approved charter delineating major sporting functions. The legal effect of club status ensured personal liabilities for individual members, administrators and contracted performers were maintained within the club's corporate constitutional framework. The court allowed the organisation to initiate the claim, granting legal status to the Club entity independently of its members.

Dillon suggested the Club acted unlawfully by scheduling an outlaw prize-fight. Statutory prohibitions in force in St Louis, combined with numerous precedents in other jurisdictions, re-examined the early criminal law development outlawing organised prize-fighting. It was alleged the Club acted beyond publicly mandated functions identified in its public charter. The Latin concept *ultra vires* encapsulates conduct by state or private agencies and their

members, agents or employees, declared *'beyond authorised power'*. This involved *quo warranto* examination of the Club's authorised franchise and possible dissolution and forfeiture of all joint Club property with an appropriate court order.

> The science and skill of boxing is best attained by conforming with the rules of the game, and the chief function of the referee is to enforce them. In this case he had the added duty of judging of whether or not Dillon was honestly performing as a scientific and skilful boxer. It was as much his duty to see that the exhibition of boxing, if private, did not degenerate into a prize fight as to determine the plaintiff was not being imposed upon by a lack of science and skill on the part of Dillon. His task was a difficult one, perhaps, one fraught with the danger of prosecution for the commission of a felony ... as umpire thereof, and the plaintiff with loss of its charter upon **quo warranto** proceedings, and prosecution under the same statute
>
> *Coliseum Athletic Association v. Dillon et al.*
> 1920, 223 SW 955-958 at p. 958.

Common law verdicts in *Mack* (1905), *Olympic Club* (1894) and *State v. Burnham* (1884) illustrated the well-established outlaw character of United States prize-fight conventions. All prohibitions were statutory creations with minor, subtle distinctions. A 1909 St Louis ordinance defined *'boxing or sparring exhibition(s) or contest(s)'* as unlawful misdemeanours only when conducted in a licensed dramshop. Connections between alcohol consumption, public disorder and viewing unlawful fights in crowded private venues justified this restriction. A

criminal prohibition of the same year also outlawed *public sparring or boxing exhibitions*, targeting athletes and any others *who shall aid, abet or assist.*

This private, ticketed, 'members-only' event arguably conformed to licensed Coliseum Club functions. Evidence ultimately proved the Club acted within lawful chartered powers, while the questionable nature of Dillon's involvement warranted further trial proceedings. Testimony on the '*unscientific*' nature of the performance and any '*misrepresentation*' influencing the Club's event management were considered best reviewed in a jury setting with appropriate judicial guidance on relevant legal requirements.

1921-1922

> ... [O]n or about the 15th of May, 1917, this club, known as the Business Men's Athletic Association and Business Club, staged a series or card of fistic contests, among which were encounters between two individuals, one by the name of Tom Story and another designated as "Young Fitzsimmons," and another between Nate Jackson and Earl Puryear. The exhibitions given on this particular occasion were attended by over 300 spectators, who paid admissions ranging from the price of 50 cents each to $1 each; that there were seats provided in tiers, one above the other, surrounding the roped arena, from which seats the spectators viewed the contests
>
> *Sampson v. State* 1921, 194 P 279-281 at p. 279.

A cluster of four criminal cases reviewed common fight-law terrain. Accounts of individual athletes and their performances combine with judicial scrutiny of formal rules and informal organisational conventions to determine the legality of different classes of fight sports. Venues and settings, ring dimensions, requirements for gloves, limits on the length and number of rounds, payment for entry, rewards to combatants and general order maintenance considerations were all critically examined in this cluster of three rulings. This series of cases suggests a renewed attempt by state public authorities to identify, prosecute and punish organised prize-fighting within a familiar outlaw template.

Fines were generally imposed where convictions were sustained or retrials affirmed outlaw criminal status. *Sampson* (1921) sustained trial convictions under 1910 Oklahoma bans against a private club matchmaker, promoter and licensed official charged with aiding and abetting an unlawful event. *Corbett* (1922) and *Shirley* (1922) reinforced the reach of equivalent Colorado prohibitions outlawing promoters and others aiding, abetting or present at an organised contest for reward. Former heavyweight champion 'Gentleman' Jim Corbett finally received the outlaw label for his square-ring management activities.

> A person who, within this state, engages in, aids, encourages or does any act to further a contention or fight without weapons, between two or more persons, or a fight commonly called a ring or prize fight *** or who engages in a public or private sparring exhibition, with or without gloves, within the state, to attend which an admission fee is charged or

> received *** is guilty of a misdemeanor; provided, however, that sparring exhibitions with gloves of not less than five ounces each in weight may be held by a domestic incorporated athletic association in a building leased by it for athletic purposes only, for at least one year, or in a building owned and occupied by such association, upon the payment of a yearly license of not less than one thousand dollars ($1,000) into the treasury of the city or town wherein such association has its building, or if such building be not situated within the limits of any incorporated town or city, then such yearly license shall be paid into the treasury of the county wherein such building is situated
>
> *People v. Corbett* 1922, 209 P 808-809 at p. 808
> Supreme Court of Colorado per Burke, J.

McAdams (1922) is the first reported United States private claim involving wrongful death during an athletic sparring contest. McAdams' widow sued Windham to obtain an unspecified compensation award. Windham claimed the unfortunate accident occurred during a consensual lawful sparring contest. Both combatants had met many times and testimony highlighted the friendly, sporting character of their encounters. Allegations of unlawful negligence were rejected in a significant affirmation of private negligence law doctrine. The Latin *volenti non fit injuria* - one who consents may claim no damage - was the basis for rejecting the claim due to the emphasis on informed consent provided by the unfortunate victim.

> The contest had progressed only a short while at the defendant's place of business - several blows having passed, striking one another with their bared fist - when suddenly the plaintiff's intestate was seen to stagger, and was caught by one Waldrop, a spectator, who laid him upon the

> floor where he died in a few minutes. There is no controversy about the fact that this sparring match was carried on in entire good faith by both parties, in a spirit of play, and there is no contention that their conduct was unlawful. Upon the examination of the body of the deceased it was found there was a bruised place over the heart, and it is surmised that the blow struck by defendant upon that particular spot proved fatal
>
> *McAdams v. Windham* 1922, 94 S 742-743 (Al).

Risks of death or permanent, serious injury were considered likely in all competitive sports. However, risks of harm were not always foreseeable by consenting, friendly opponents, well-intentioned organisers or orderly patrons. Despite medical evidence establishing a direct relationship between the fatal event and the infliction of serious physical blows, consent provided the foundation for rejecting Mrs McAdam's claim. This liberal ruling mirrors the verdict in Australian case *Pallante* (1976) and the recent English verdict in *Watson # 2* (2001; George 2002) and many subsequent claims involving compensation for injured or killed athletes during professional, amateur or recreational sports contests.

Madison Square Garden #1, 1925

Throughout the twentieth century Madison Square Garden has been New York City's principal fight sports venue. This centrepiece of entertainment culture has undergone many transformations with four known refurbishments, but

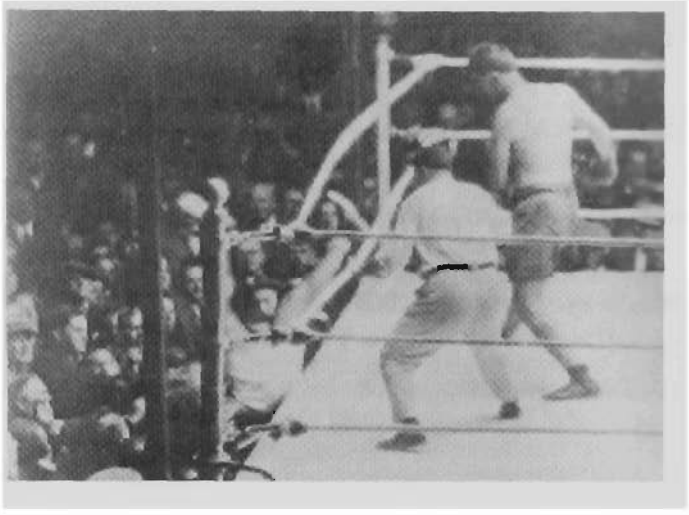
unfortunately no available venue biography documenting its rich history (cf. Smith, 1999). The Garden's prominence in modern fight culture is reinforced by many references to the venue in reported New York fight law disputes throughout the twentieth century.

Robert P. Marshall and Company agreed to rent the Garden for a five-year period and undertake structural modifications as required. Yearly rents of $7,000 were payable in monthly instalments. *Garden* owners claimed outstanding sums of $1750.02 after a bankruptcy declaration was filed by the failing Company. The lease contained an express clause allowing *Garden* owners to terminate the contract if a lessee commenced bankruptcy proceedings. The lease was duly terminated and a two-month bond forfeited. Venue owners also sought completion of agreed modifications, despite wording in the contract indicating *'each party shall be and is released from all obligations hereunder'* once the termination option was invoked.

Justices McAvoy, Clarke, Dowling and Merrill upheld the express term allowing Garden owners activate the termination clause. Related implied contractual rights under New York law gave additional weight to express contractual terms in such complex property, commercial and business transactions. The ruling endorsed completion of any commenced works once Garden owners asserted any documented leasehold rights. This produced a seemingly harsh decision against the tenant in the face of express terms in the

lease terminating the agreement if the option was exercised. Nevertheless, the ruling ensured all incomplete modifications to the venue would be completed for the benefit of the land-owner.

Jack Dempsey v Louis Firpo, Polo Grounds, 1926



Dempsey v. Firpo,
Polo Grounds, New York,
14 September 1923,
Blewett 1999, p. 140.

Heavyweight personalities during the 1920s benefited from increased public support for elite performing celebrities. Film, general and sports news and generations of popular mythology characterise many prominent fight sports controversies and combatants of this tumultuous decade. Roger Kahn (1999) provides a lengthy contemporary revision of the 'Manassa Mauler', Jack Dempsey and his contributions to the modern heavyweight championship

lineage. Within and beyond the ring immense Dempsey's public appeal firmly consolidated his predecessor Jess Willard's acceptance as a virtuous, deserving white title-holder. This in turn generated renewed popular interest in fight sports during the immediate post-war social, cultural and entertainment boom.

Frank G. Mencke's (Rayvern Allen ed 1998: 1944) unfairly truncated extract from the immediacy of the scene at the legendary Polo Grounds event supplements a patchwork of reproduced film images, fight-lore and United States legal narratives on this famed incident in modern sports history. Interestingly, the event has also lived on in contemporary folklore, with today's fight trivia buffs able to speculate on cartoon renditions of the event. However, the legal ramifications of the event and its impact on twentieth century venue management are not revealed in available fight lore sources.

> Dempsey's legs shot off the ground, and his head shot backwards. A world champion spun around much as does the piece of wood one uses in playing tiddlywinks. And in a head-first backward dive, Jack Dempsey, ruler of the fistic world, went into the press row – while 85,000 persons looked on in hushed amazement
>
> Mencke, *The Sporting News* 27 Jan 1944
> reproduced in Rayvern Allen 1998, pp. 51-52.

Hyman Gallin paid $24 for a reserved twenty-fourth row seat. Famous celebrity promoter Tex Rickard adapted the baseball venue by installing 20,000 removable wooden bleachers around a temporary elevated ring between the

pitcher's mound and second base. This supplemented 35,000 fixed seats in the converted baseball arena. The total of 55,000 was perhaps an underestimate of the immense popularity of the event, and attendance figures in contemporary fight lore sources range from 70,000 to 80,000 fight fans.

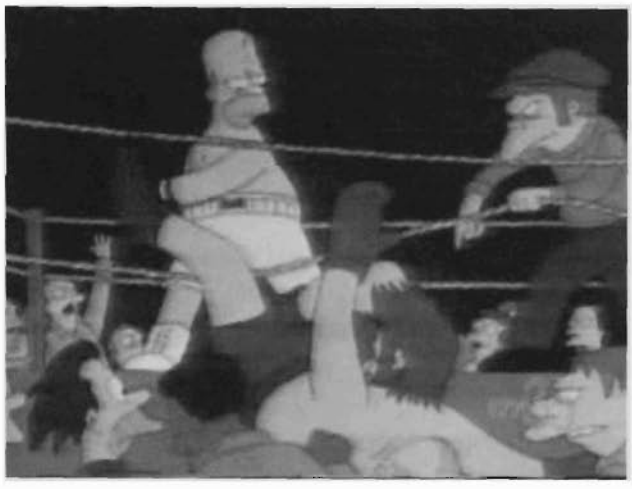
> After a few knockdowns, everybody was in a pitch of excitement, but when Dempsey was knocked out of the ring the real commotion started, and as well as I can remember now everybody was getting up on the benches, and the next thing I knew we were pulled - the bench went over on us, with us sitting on it, the other gentleman and myself, and we found ourselves in a heap, and Mr. Gallin was very badly hurt, and we picked him up
>
> *Gallin v. Polo Grounds Athletic Club* 1926, 214 NYS 182-186 at p. 184.

As Firpo crowded Dempsey and the champion fell through the ropes *'nearly everybody stood up, shouting and yelling'*. Evidence reproduced in the verdict stated:

> *[t]he entire gathering was in an uproar'* as *'[h]undreds of people stood upon the seats of the benches ... with one foot on the back of one bench and the other foot on the back of another bench, pulling one another, and shouting, and yelling, while others ran down the aisles to the ringside'*.

During the peak of confusion the bench on which Gallin was standing broke and splintered, causing injuries as he fell during the pandemonium while Dempsey struggled back into the ring. Rickard sought to avoid payment of $536

for medical expenses by arguing the bleachers were constructed and installed according to lawful safety requirements.



Homer Simpson, The Last Great White Hope
based on Tunney v. Firpo, 1923
www.cyberboxingzone.com

The court was not prepared to extend the *volenti* principle to paying spectators despite ample testimony from Rickard on safe venue management and construction requirements. Rough use of sports venue amenities was to be expected at an elite professional title-fight. Liability for a relatively minor financial sum against the 'million-dollar' profits from an elite, championship contest attended by 'a number [of people] greater than the combined population of several of the large cities in this state', justified a negligence ruling against the entrepreneurial promoter. Compensation was granted, and the verdict provides a landmark statement of negligence liabilities parallelled in

many subsequent claims by injured spectators at privately managed sports venues.

'A Flame of Pure Fire', 'The Manassa Mauler' Jack Dempsey
Kahn 1999.

The Outlaw Ticket Collector, 1927

> Whoever shall voluntarily engage in a pugilistic encounter between man and man *** for money, other thing of value, any championship, or on the result of which any money or thing is bet or wagered, or to see which any admission fee is directly or indirectly charged, shall be imprisoned no more than five years

Dane v. United States 1927, 18 F 2d 811-813 at p. 812.

Frank Dane collected admissions and checked tickets at an unspecified venue in Washington DC. Both combatants at the unspecified bout were also charged and acquitted at a separate federal trial. Dane claimed his indictment was defective by failing to specify the illegality of collecting gate receipts. The conviction was also considered inconsistent with the acquittal of each combatant.

> ... [T]he jury found that the appellant had induced or procured his co-defendants to engage in the encounter, and had charged and received admission fees to see the same, although the co-defendants did not know that such a charge was made, a verdict of guilty should be rendered against appellant and not guilty against his co-defendants
>
> *Dane v. United States* 1927, 18 F 2d 811-813 at p. 813.

Dane's argument was rejected with approval of the three-member Federal Court. The ruling emphasised gate collecting gave express license to any unlawful professional sports fight. This outcome reinforces modern trends of appeal court non-intervention to preserve jury findings in adversarial trials, even though seemingly harsh on the unfortunate ticket collector.

Barr #1-2, 1927-1928

In contrast to England and Australia where common law conventions dominate most legal proceedings, constitutional issues are commonly argued in United

States federal and state criminal cases. Judicial review examines the legality of legislatively mandated and discretionary administrative decisions. Procedural fairness and rights to appeal are common subjects of this branch of Western public law. Where a person is convicted and imprisoned constitutional doctrine can overrule the punitive decisions of public justice authorities. Identical to administrative review methods applicable to NYSAC public fight governance illustrated in *Fitzsimmons* #2 (1914), two New York appeals seeking writs of *habeas corpus* illustrate familiar judicial review practices regarding legislatively sanctioned policing, fight-licensing and prison discipline regimes.

Barr appealed to the warden of Tombs prison after convictions under New York prize-fight bans. Evidence indicated Barr invested $500 on the outcome of the Jack Delaney v. James Maloney fight on 18 February 1927. Sections 1710 and 1712 of the New York Penal Law were enacted in 1920 and stipulated misdemeanor penalties where suspects were proved to '*engage in, instigate, or further a prize-fight*'. Wagering on '*the result of "such a fight"*' was also outlawed. Justice Valentine provided a comprehensive review of the evolution of New York fight crimes since the first criminal laws of 1856. Significant qualitative differences between professional, amateur and disorderly unskilled fighting replicated established outlaw traditions under punitive nineteenth century criminal philosophies.

Chronology of NY Boxing laws 1856-1921

1856 ch. 98 – outlawed prize & game animal fights

1859 ch. 37 – *'[an] [A]ct to prevent and punish prize fighting'*

1860 ch. 141 – modified the 1859 law

1881 Penal Code s. 460 – original version of ss. 1710 & 1712 of 1927

1896 ch. 301 – permitted 'sparring' in buildings owned or leased by any 'domestic athletic association' for no less than 1 year; repealed by 1900 ch. 270

1911 ch. 799 – NYSAC law

1920 ch. 912 – NYSAC amendments;

s. 1710 Penal Law – misdemeanor to engage in, instigate, or further a prize-fight;

s. 1712 Penal Law – misdemeanor to wager money or other property on the result of ***such a fight;***

1921 ch. 714 – Walker Law – exemption to penal law for *'boxing, sparring or wrestling match or exhibition'* where all *'contestants are amateurs'*

People ex rel. Weiner v. Barr No #1 1927, 225 NYS 346-350.

Barr argued the charge, conviction and trial were an illegal exercise of state enforcement power. Inconsistencies with the very legality of the Delaney v. Maloney were insufficient to convince the court of the unlawful conduct under sections 1710 and 1712 of the 1920 Penal Law. There is no suggestion in the ruling the fight had NYSAC approval. The New York gaming ban was directed at unlicensed prize-fights. Barr claimed his suspect wager was beyond the reach of section 1710 despite the vague, emphatic wording of 1921 outlaw

amendments, while the state of New York counter-appealed, seeking a declaration to keep Barr in protective custody pending further trial or appeal proceedings.

Chapter 353 of 1923 Walker Law only permitted gaming on professional contests licensed by the NYSAC. The logic of Justice Valentine's comprehensive reasoning stressed the failure of this legislative pastiche to categorically legalise gaming in professional fight sports. The ruling endorsed the trial conviction with most Western courts highly reluctant to 'legislate' on gaming issues. Barr's criminal transaction was endorsed by extensive prosecution testimony, and abuses of police, trial, legislative or imprisonment procedures were sufficient to deny the state's claim.

> When the Walker Law permitted fights under proper regulation, it did not go to the extent of permitting a wager or stake to be held on a fight where the fight was held under license. This permission runs only for the holding of exhibitions of sparring or fighting. It does not go to the extent of legalizing betting or stakeholding, and if it did, it would probably be in violation of the Constitution (article 1, § 9, Constitution of New York [not reproduced])
>
> *People ex rel Weiner v. Barr* # 2 1928, 228 NYS 192-194 per McAvoy J. at p. 194 with the court concurring.

Roger Gregory, 1928

The Delaware Supreme Court agreed with a ruling by Chief Justice Pennewill to deny an appeal to quash charges against the promoter of an unlawful prize-

fight. The wording of the 1915 Revised Criminal Code contained prohibitions on gaming transactions, and no substantive evidence was produced to justify revoking the convictions. Relevant facts included payment of $50 to *'each of the principals or contestants'* and the impact of the reward on the final outcome of this unlawful contest.

> We are not much impressed with the argument of the defendant based on the difference between a prize fight in 1861 when the statute was passed, and a boxing contest to-day. No doubt a prize fight 60 years ago was more brutal and dangerous than a boxing match to-day. But no matter ... [I]f the fight the defendant is charged with promoting was a prize fight wherein or on the result of which a sum of money was dependent, it was in violation of the statute and unlawful, no matter to what extent the lives and persons of the contestants were safeguarded. The question is not whether the fight or contest was brutal and dangerous, but whether it was one wherein a sum of money was dependent
>
> *State v. Gregory* 1928, 143 A 458-459 at p. 459.

Justice Harrington outlined various considerations involved in contested prize-fight appeals. This dissenting opinion recognised any rewards in the present scenario involved *'chance or uncertainty'* characteristic of an unlawful prize. The agreed sum equated with payment or compensation for the performance, and the outcome not "dependent" on any bet or wager. Nevertheless, these considerations were insufficient to override the majority opinion upholding the convictions. Fears of the effects of illicit fight economies on the legitimate sports

industry justified criminal punishments despite extensive disagreement emblematic of broader Western appeal court practice.

'The Manassa Mauler' #1-2, 1928

As with previous generations of modern heavyweight champions, the 'Manassa Mauler' and the disciplined military gentleman Gene Tunney grappled with popular adulation focusing on the opposition, rivalry and ongoing competition between each champion. Both mixed with wealthy and notorious personalities of the roaring twenties, and their widely anticipated confrontations generated the first million-dollar purse in modern professional sports history. Taxation records indicate a turnover of almost $2 million for the second Tunney v. Dempsey bout. These figures demonstrate the popularity of these two elite personalities and the ever-present threat of litigation over the rewards of heavyweight prize-fight success.

> It took years, but all of Kearns's lawsuits were dismissed. Court proceedings revealed that he never possessed a valid written contract with Dempsey. The so-called contract has long since been lost. Dempsey said it was a hastily typed document, prepared only when the New York State Boxing Commission demanded that Kearns produce a contract. "I didn't sign my name to it," Dempsey testified under oath. "Kearns signed my name. Later he pleaded with me to ink over the signature he made so he couldn't be thrown in prison for forgery. I went along with him"
>
> Kahn 1999, pp. 393-394.

Complex legal proceedings marked the end of Jack Dempsey's lengthy seven-year reign and his relationship with sparring partner, manager and mentor Jack 'Doc' Kearns. By the crash of the New York Stock Exchange of 1929 the commercialism and largesse of elite fight sports was firmly entrenched in United States entertainment culture. Extensive revenues from lawful and outlaw film, gaming and associated economic 'crimes' are prominent in contemporary fight histories of the period (Kahn 1999). Within a permissive moral backdrop, private contractual disputes over rights to organise, stage and profit from elite professional sport frequently involved heated relationships between strong-willed sparring partners.

Dempsey's first legal claim reported in 1928 involved unspecified payments owed after alleged breaches of a legally valid contract to fight challenger Harry Wills. The Indiana Appeals Court unravelled the complex relationships between dual Commission and criminal regulation, vigilant police enforcement and growing legal complexity of the professional fight industry. Multiple forms of regulation and associated legal, licensing and procedural uncertainties ensured athletes, promoters or managers avoided New York City where possible despite its status as the locus for popular fight sports. Public agencies often working at cross purposes combined with an expansive body of private law rules involving negligence, wrongful death, assault and the interpretation of lengthy contractual arrangements to produce a fragmented window for viewing post-World-War-I professional fight law.

The court also considered whether a temporary injunction preventing the Wills contest until September 1926 should also be enforced. The claim was dismissed as the injunction had lapsed making the appeal unnecessary. The direct purpose of Dempsey's failed claim remains unclear. The only significant legal feature involves the effect of a court injunction on a champion's right to work or to defend his title. The injunction in this case applied only in the city of Chicago and had no effect on attempts to relocate or re-schedule the contest as agreed.

A second dispute was resolved under Californian law. A contract for a proposed tour of Canada involving Dempsey and Kearns generated a lengthy ruling to apportion royalty payments to performers, managers, ticket collectors and related travelling personnel. The dispute arose from an unfortunate series of events.

Box office receipts for a Sunday performance in Kansas City were stolen from a safe owned by Pantages, the troupe manager. A hired agent deposited the cash for 'safe-keeping' and disappeared with the cash. Tour managers were not guilty of culpable negligence after receipts for the evening remained unaccounted. Dempsey later sought payment of $4,000 from Dempsey-Kearns Incorporated as outstanding '*salaries*' for the tour.

Private law distinctions between a partnership and joint venture were crucial to identifying agreed proportions owed to each contracting party under the

written arrangement. All signatories in a partnership are jointly liable for contracted rewards and losses. Joint ventures allow proportionate apportionment of profits, losses and agreed fees for service. At trial Pantages claimed a partnership between Dempsey and Kearns did not require payment of the full contracted sum. In contrast, express contractual provisions required the managers to meet any shortfall in wages if gate receipts were lower than $4,000 per week. The joint venture argument favoured the 'Mauler's' claim for full and agreed payments. Accordingly, Pantages was considered to have independent control and legal responsibility for all missing revenues under the tour contract regardless of any negligence or other culpable act leading to the theft.

Courts aim to respect the intentions of parties when interpreting legally enforceable contracts. Implied terms may supplement express omissions in written contractual language. Dempsey, Kearns and all related staff clearly delegated all financial and payment functions exclusively to Pantages under the legally valid arrangement. Administrative functions included paying 'salaries' and entertainment taxes as well as 'the entire burden of carrying out the enterprise' on the champion's behalf. The wording and spirit of the contract endorsed Dempsey's claim and commensurate liability for payments from any balance of the stolen takings or independent source.

Fight Mentors, 1930

Safro (1930) examined the legality of a consensual agreement between an experienced mentor to provide fight management, teaching and training services and an aspiring young professional fighter. Analogous to an employment arrangement under contract law, the five-year arrangement was duly signed, endorsed and witnessed by each party and an independent person.

Counter-arguments were emphatically rejected by the court's stern language, and failed to establish the contract was illegal under Minnesota prize-fight laws. The court was reluctant to compel binding contractual performance where relations between the parties had clearly soured. Rather than enforcing the employment agreement or a contract for specialist, personalised training services, a novel relationship was developed to resolve this fight-contract impasse.

> There is force in the contention that the contract created a partnership or joint enterprise; hence the remedy for violation of its terms is an action for dissolution and accounting and not for injunctive relief
>
> *Safro v. Lakofsky* 1930, 238 NW 641-642 at p. 642 per Holt J (Minn).

Lewis Frost v Byron Boyer and Cartwright v Geysel, 1930

> Speaking of the fight, Frost's last fight, the witness said:
>
> ...
>
> **Q:** Where did you hit him?
> **A:** Well, the last blow was a left hook to the jaw.
>
> **Q:** Well Byron, did you hit him in the body?
> **A:** I believe I hit him in the body once.
>
> ...
>
> **Q:** Where were you trying to hit him in the body?
> **A:** Solar plexus.
>
> **Q:** Did you hit him there?
> **A:** No, sir. I must have missed, because if I had I would have paralysed him and would have knocked him out
>
> *Teeters v. Frost et ux* 1930,
> 292 P 357-362 at p. 359 per Hall C.

Wrongful death principles under United States private law articulated in *McAdams* (1922) were re-considered after the deaths of Lewis Frost and Hamilton L Cartwright in separate contests reported in 1930. While precise statistics on the number of square-ring fatalities are unavailable, the increasing popularity of fight sports is demonstrated by these two unfortunate cases and their place in the overall rise of fight sports litigation during this period.

United States State prize-fight laws 1892-1930

Cases & legislation	Propositions
Seville, 1892; *Taylor*, 1893 *Barrett* [unavailable]; *Patton* [sic] 1902; *McGovern* 1903;	Outlawed a *'pugilistic encounter' 'boxing match for wager'* and any *'exhibition for reward or stake'* and confirmed popular prize-fight terms;
Olympic Club 1894	Supported minimal prohibition under a licensing scheme licenses for sparring and boxing in specified cases;
Oklahoma Statute 1921 s. 2015	Made it an offence to instigate, engage in, encourage, or promote any ring, prize or 'premeditated' fight;
Stout v. Wren 1821	Outlaw agreements directly breached criminal laws;
McNeil v. Mullin 1905	*'If men fight, the state will punish them. If one is injured, the law will not listen to an excuse based on a breach of the law. There are three parties here; one being the state, which, for its own good, does not suffer the others to deal on a basis of contract with the public peace'*
Sampson v. State 1921	Banned contests for a *'stake'* or *'reward'*; - if the purse was equally divided the contest was still illegal; - supported common-sense prize-fight definitions
	Teeters v. Frost et ux 1930, 292 P 357-362 (Ok).

Frost's parents unsuccessfully sued Tol Teeters, operator of the Palace Theatre in Oklahoma City, claiming $25,000 compensation after their son Lewis died

during a three or four round touring exhibition bout. All contracted fighters were paid a flat rate of $1 regardless of the outcome. Teeters unsuccessfully appealed a lesser award of $5,000 granted after a jury trial.

Opposing views

Affirmative

... [O]ne who engages in prize fighting even though prohibited by positive law, and sustains an injury, should not have a right to recover any damages that he may sustain as the result of the combat, which he expressly consented to and engaged in as a matter of business or sport.

Justice Main endorsed by Chief Justice Mitchell and Justices Parker, Tolman, Beals, Millard and Beeler

Dissent

Our statute ... makes prize fighting unlawful. Hence, there could be no lawful consent to such a combat. Physical combats are against the peace anyway. Had it been a duel, it would have been unlawful and consent ... would not prevent recovery by either those injured, on the ground of excessive force, or the heirs or personal representatives of those injured

Justice Holcomb with Justice Fullarton agreeing

Hart v. Geysel et al. 1930, 292 P 570-573 at pp. 572 and 573.

Boyer struck Frost in the solar plexus. Frost collapsed at ring-side and died of heart failure later in hospital. A coronial report emphasised Frost was an inexperienced last minute replacement for 'Speedy Culbertson' the *"grand champion of the Oklahoma national guard"*. Culbertson failed to appear as billed and the two 'ring-ins' agreed to compete on a roped stage before a referee at the

last minute. No evil intent *'other than those injuries that usually or often accompany a prize fight'* could be gleaned from testimony reproduced in the verdict. After around two minutes it appeared young Frost was grossly outmatched and could not resist the onslaught from a more experienced, skilful opponent. Even regulation protective twelve-ounce gloves could not help minimise the severity of Frost's fatal injuries. These considerations warranted some compensation despite the importance of consent to confine liability under Western private law doctrine.

In contrast a majority of six Washington Supreme Court Judges invoked paternalistic rationales to produce a contrasting result in *Hart v. Geysel et al* (1930). This private compensation claim was directed against Cartwright's opponent Geysel, after the fatality occurred before a small number of viewers. As in *McAdams* (1922) the administrator of the deceased fighter's estate commenced proceedings. A strong affirmation of Western consent doctrine as the foundation for determining liability in wrongful death actions led to a rejection of the claim. Nevertheless, strong policy considerations produced a compelling dissenting opinion favouring compensation for unanticipated or accidental square-ring fatalities.

Themes

> I had always liked reading - and this had a practical side. I found that books helped in training for boxing bouts ... [by] relieving tension in

> training-camp, getting one's mind off the fight ... I didn't like jazz, and the mysteries of pinochle were too deep for me
>
> Gene Tunney, 'My Fights With Jack Dempsey' 1926, in Leigton ed,1964, pp. 162-178 at p. 171.

After a brief title reign, Tunney escaped fighting life to pursue literary ambitions, fraternising with the likes of Ernest Hemmingway, Ring Lardner, Damon Runyon and other popular fight lore greats. The convergence of Dempsey's private disputes with two wrongful death actions after travelling fight exhibitions illustrates distinct economies of scale entrenched throughout the first fifty-years of United States fight law. Elite athletes are more likely to receive favourable treatment in the courtroom. Lavish rewards accompanying professional success contrast with the harsh realities of criminal, negligence and related outlaw characterisations affecting battling athletes, managers and lower-level fight personnel. Injury compensation, employment and financial rights and duties provide many novel issues for legal consideration throughout the 1920s and beyond, highlighting the ongoing legal importance of the elite professional fighter's *piece of steak* (London 1911: 1958).

§§§

ix. 1931 - 1949

Overview

The years immediately preceding and following World War II are dominated by two distinct trends. First, after an initial period where several heavyweight champions led to an unstable title lineage, the 'Brown Bomber' Joe Louis stamped his character on the elite fight world. Louis is revered in modern fight lore as a worthy champion applauded by all races. Unlike many long-term title-holders of the twentieth century, Louis had few reported encounters with complexities of heavyweight modern fight law. The stakes of wartime fighting professionalism and the growing scope of radio, television and associated broadcast revenues, continued to expand the elite fight industry within and beyond the United States.

Secondly, twenty-three of thirty-one reported verdicts of the period involve disputes under New York State and allied federal laws. The rulings include single paragraph statements clarifying NYSAC powers and a series of related disputes expanding or modifying contractual terms, privacy, negligence and media law rules. The frequency of litigation highlights the centrality of New York as the home of elite professional boxing, as well as a particularly litigious legal culture unique to the United States. This theme extends to the succeeding

decade with a gradual expansion of reported litigation in West Coast states, notably California.

Madison Square Garden v. Primo Carnera, 1931

Litigation involving Madison Square Garden Corporation is prominent in this period. Primo Carnera, considered one of the *poorest* heavyweight champions of modern times (Hill 2002, p. 84), was involved in a contractual dispute with the Garden involving federal law claims two years before his defeat of Jack Sharkey for the title in 1933.

The dispute concerned an exclusive clause binding Carnera to the sole direction of Garden promoters, managers and event organisers. The eleven-clause agreement enabled Garden personnel to obtain exclusive advertising, promotion and film revenues for Carnera's services. Percentage gate receipts and other payments were also specified.

Garden representatives alleged an independent contest arranged by Carnera to fight Sharkey breached the agreed 'First Contest' clause with the Garden. Venue representatives sought to *'restrain the defendant from carrying out his contract to box Sharkey'* and obtained a preliminary injunction at trial. This was subsequently appealed under New York law.

The validity of a *negative* or *restrictive covenant* in contracts for *personal services* replicates principles similar to Australian fight-compensation law. Carnera's *unique* and *extraordinary* services justified this classification. A negative clause binding Carnera exclusively to Garden management was deemed valid in personal services cases of this nature.

Despite imposing obvious restrictions against athletes seeking alternate fight arrangements, Circuit Judge Chase found an implied employment contract with specified percentage payments. This protected Carnera's interests through the restrictive services clause. The validity of the contract was upheld in favour of Garden management, preserving the venue's monopoly over elite professional title contests.

3 NYSAC prosecutions, 1931-1932

A cluster of three New York prosecutions illustrates how periodic amendments to specialised fight governance rules could influence contests overseen by small registered athletic associations. The scope, legality and desirability of police enforcement measures under anti-prize-fight laws stretched accepted legal definitions of dangerous outlaw combat. Commissioners Mulrooney and Salberg adopted a highly confrontational enforcement agenda in cases where token fees for viewing amateur contests seemingly threatened the NYSAC fight governance monopoly throughout the state.

New York Public Boxing Laws in Force, 1931-1932

Provision	Laws
1923 Ch. 353 s. 3	Allowed boxing, sparring and wrestling for prize, purse or with admission except on Sundays; Commission had *'sole direction, management, control and jurisdiction'* over professional fight sports;
1923 Ch. 353 ss. 6 & 8 amending 1921 c. 714	Commission had sole authority where prize, purse or admission was charged; *four deputies at each contest & licensing committee* had discretion to issue or reject licenses to *corporations, physicians, referees, judges, professional boxers, professional wrestlers, managers, trainers, & seconds*; ***Professional = for money or prize;***
1923 s. 22	No payment if judge or referee ruled fight was not genuine;
1923 ss. 25 - 26	Department of State paid 5% of gross receipts from each contest; tickets must state full admission charges;
1923 ss. 27-28 amending 1921 Ch. 714	Participants exempt from criminal law and mandatory licensing where the contest was amateur and no evidence of admission, prize or purse was present;
Penal law s. 1710; amending s. 458; 1896 Ch. 301; 1900 Ch. 270	Prohibited prize-fights & sparring; amateur contests with no admission were lawful; misdemeanor penalties for combatants & those aiding and abetting (including trainers) in public or private contests, with or without gloves or entrance fees

City Island Athletic Club Inc v. Mulrooney et al. 1931, 258 NYS 768-773;
McHugh v. Mulrooney et al. 1932, 179 NE 2d 753-755;
Bridge City Athletic Club Inc v. Salberg et al. 1932, 254 NYS 777-781.

City Island Athletic Club (1931) involved an injunction sought by the Club to restrain Mulrooney and allied enforcement personnel from persistent raids on a small private venue during seemingly lawful amateur contests. Patrons willingly paid a minimal $1 entrance fee, however no NYSAC licensing approval was sought or granted for these contests.

Dual Commission and criminal laws and a maze of patchwork amendments complicated each verdict. The legislative intention to create a monopolistic public licensing model to administer the sport was endorsed by distinguishing professional and amateur governance requirements. Mulrooney and Salberg claimed no distinctions between each type of fist-fighting, thereby justifying state intervention where minor admission fees were charged and willing paid by viewers as token payments for combatants or fight demonstrators. As with theatres under the federal prize-fight-film prohibitions, amateur athletic clubs widely resented the extent of legal scrutiny by two highly enthusiastic fight law-enforcers.

City Island (1931) followed a complex trail of legislative reforms and licensing provisions aimed at promoting safety for professional athletes through compulsory medical supervision and ongoing inspection of professional fight venues. Mulrooney claimed removal of the $1 entry fees would ensure all regional amateur events conformed to NYSAC licensing and public criminal laws. Affiliation with the state Amateur Athletic Union, *'an organization of high*

repute', did not assist the Club. The verdict ensured all amateur competitions with small entry fees were outlawed. This validated legislative intentions to prevent full *'commercialization of the sport without state supervision'* through NYSAC governance, oversight or scrutiny of all professional contests even where minor revenues were involved.

McHugh (1932) reviewed this ruling by again considering the legal distinction between amateur and professional contests. Justice Crane opposed the verdict in *City Island* suggesting contests should only be regulated by the Commission or police if *'they become disorderly or a nuisance under some other provision ... '* An injunction to prevent future police interference even where amateur associations charged small fees for admission directly contrasts with, but does not overrule *City Island*. These contrasting policies demonstrate the flexibility of distinct court interpretations involving similar fact scenarios.

Bridge City (1932) settled this issue by applying *McHugh*. An injunction was sought and granted to prevent further police interference in a similar amateur setting where minor viewing fees were charged. The court emphasised the need for further legislative clarity, sending a firm message to state law enforcers on the limits of prosecutions directed against amateur fighters or sports clubs under the distinct climate of NYSAC professional fight governance. Self-regulation for small, non-profit fight clubs warranted specific legislative exemptions under the combination of dual Commission and criminal laws. All

three cases provided strong impetus for systematic legislative reform with several compelling recommendations outlined by a clear majority of four Supreme Court Justices in *Bridge City*.

City Island (1931, pp. 772-773) refers to the unavailable Supreme Court ruling in *United Friends of Harlem Inc. v. Farley* (219 NYS 929). This dispute involved an application for the constitutional remedy of mandamus by an amateur boxing club against NYSAC enforcement officials. This remedy is designed to compel a public agency or its staff to adopt a particular course of administrative action. The claim sought the court's direction to compel Commission to grant a licensing permit for amateur contests to be held at the Club. The claim was rejected on appeal, as New York law required no amateur licensing. The ruling supports the outcomes in *McHugh* and *Bridge City*, endorsing common sense policies for recreational competitive fighting in supervised club environments.

> As amateurs, whether an admission fee is charged or not, do not contest for profit but for prizes, it is difficult to understand wherein the attitude of the contestants would be different in the one case from the other. Neither brutality in nor admission fee to contests among amateurs is unique to boxing contests
>
> *Bridge City Athletic Club Inc v. Salberg et al.* 1932, 254 NYS 777-781 at p. 780.

Each ruling identified numerous problems with persistent criminal enforcement in small, localised contexts. Virtually identical facts in *Bridge City* (1932) and

McHugh v. Mulrooney (1932) illustrate the effects of legislative tinkering aimed at closing numerous gaps in New York public licensing rules. Several difficulties in defining, interpreting, applying and clarifying technical fight law principles in a self-regulating amateur setting are evident in this ambitious cluster of criminal prosecutions. Similar themes are prominent in several related NYSAC rulings throughout this period.

An Injured Patron, 1932

After a contest at Newark's Laurel Gardens a spectator seeking an unorthodox exit from the venue fell and sustained unspecified injuries. After climbing over some bleachers and between two metal radiators. Johnson fell through a structural defect in the rented property. He sued the owner and lease-holders. Zemel, the landowner, had no direct involvement in running, promoting or staging the exhibition.

> According to the plaintiff's evidence, the hole was a defect in the floor of an aisle constructed, and intended to be used, for the passage of patrons. There were indicia, as for instance the evenly cut edges of the surrounding boards, that the condition was purposeful and was not the result of wear or of a recent mishap
>
> *Johnson v. Zemel et al* 1932, 160 A. 356-357 at p. 357 per Case J.

The court placed sole legal responsibility for venue's disrepair on the lease-holder and event organiser. The owner maintained legal rights of entry, inspection and occupancy under the provisional lease. Both landlord and tenant were jointly liable for all structural maintenance to prevent foreseeable injuries to all paying fight fans. Even though Johnson used unconventional means to ensure a quick exit from the venue, the court declared safety considerations demanded compensation in this personal injury claim.

Tommy Farr v. Joe Louis, 1937

Rudolph Mayer Pictures Inc. and Others, Respondents v.
Pathe News Inc., and R.K.O. New York Corporation, Appellants.
Supreme Court, Appellate Division, First Department. April 15, 1932.
F.H. Wood, of New York City, for appellants.
E.K. Ellis, of New York City, for respondents.
Order affirmed, with $10 costs and disbursements.
No opinion. Order filed

Rudolph Mayer Pictures Inc. and Others v.
Pathe News Inc., and R.K.O. New York Corporation 1932, 255 NYS 1016.

Judicial verdicts often provide no guidance on the character, context or parties to a dispute requiring a formal ruling. The only available records of the *Mayer v. Pathe News* case (1932) document a verdict with no supporting opinion. Secondary sources provide relevant clues on the importance of this ruling in the development of media laws governing the modern fight game.

> In *Rudolph Mayer Pictures, Inc. v. Pathe News, Inc.* ... an injunction order was sustained where motion pictures had been taken of a boxing exhibition held on Ebbets Field from a building overlooking the same. It was there argued that the taking of the pictures was an invasion of the property rights of the promoters. No opinion was written in that case, and it is therefore difficult to determine the *ratio decidendi* [binding reasons for the verdict]. In the present case, however, the defendants' plan for broadcasting an account of the exhibition will necessarily be based to a substantial degree upon the use of the plaintiffs; broadcast. Under all the circumstances, this court cannot reach any conclusion other than that the plan submitted by defendants cannot be utilized without an unlawful appropriation of the substance of the plaintiffs' broadcast
>
> *Twentieth Century Sporting Club Inc. et al. v. Transradio Press Services Inc. et al.*
> 1937, 300 NYS 159-162 per Pecora J. at p. 162

The *Mayer v. Pathe* verdict offers the foundation for a central principle in contemporary sports media. Disputes between primary and secondary news, broadcasters and major event managers, owners, organisers and participants involve tensions complex between exclusive ownership of event imagery and its commercial, and public interests in newsworthy sport. These tensions are emblematic of a series of United States fight-sports-media developments over lucrative national commercial broadcast rights throughout the latter half of the twentieth century.

Transradio (1937) involved a complex web of private contracts secured an agreement between the National Broadcasting Company (NBC) and Yankee Stadium for exclusive rights to broadcast the Joe Louis v. Thomas Farr title

contest on 30 August 1937. Separate contracts also conferred exclusive advertising rights to the Buick [auto] Company.

> It is the plan of the defendants, unless otherwise ordered by this court, to obtain tips from the ringside broadcast as to the facts of the progress of the fight, and to authenticate them by independent investigation by newsgathering representatives of defendants located at vantage points outside the stadium but within view of the bout
>
> *Twentieth Century Sporting Club Inc. et al. v. Transradio Press Service Inc. et al.* 1937, 300 NYS 159-162 at p. 160.

> The defendant alleged ... it did not record the entire event but *"only enough to convey to the public, by an actual reproduction of the events, the news that the fight took place and that it ended in a draw"*. The plaintiffs ... insisted that the court must distinguish between *"public events and private events affected with a public interest"* ... that the court granted the injunction ... indicates that at least one court may have accepted the view that a running account of an event is not news even though the result of the event may be
>
> Solinger 1949, p. 858.

Twentieth Century sought an injunction to prevent a problematic form of sports news transmission. Transradio advertised *'up to the minute descriptions from the ringside on the night of the fight ...'* seemingly in breach of the exclusive and lucrative commercial media arrangements. Ownership rights to news information, advertising profits and their preservation highlight significant limits of recognised property based legal categories and their relationship to emerging media production customs.

Tommy Farr v. Joe Louis
Yankee Stadium 30 Aug 1937,
Brooke-Ball 2001, p. 72.

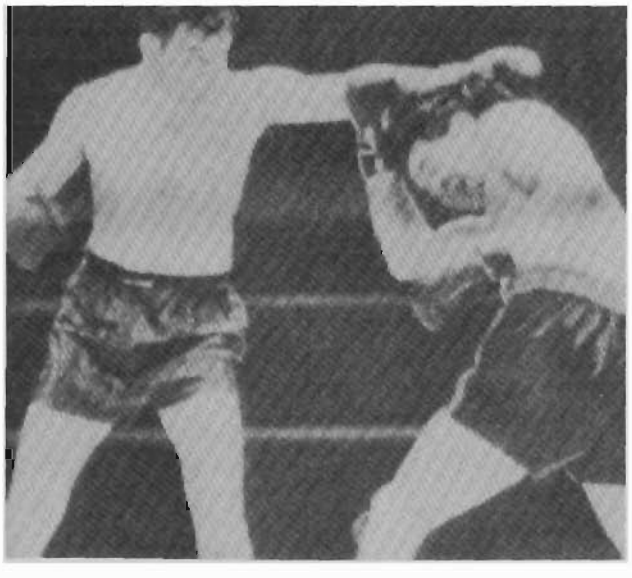
Justice Pecora characterised the legal issue as a question of *rebroadcasting*. Updates of proceedings would be manually conveyed from ringside to a Transradio broadcast point near Yankee Stadium. This sought to undermine the exclusive agreements under the NBC contracts by pirating the information and disseminating it to the public using second-hand descriptions of proceedings from 'close-to-the-scene'.

Significant property rights were conferred on the content of major sporting events held in private venues. This theme was also endorsed in a prominent Australian High Court ruling involving similar violations at major horse race meets (*Victoria Park Racing v. Taylor*, 1937). Regardless of the level of public interest in rival, competitive sports broadcasting practices, the court preserved

the NBC monopoly and its commercial value against an innovative outlaw pirate competitor. NYSAC approval of this monopoly arrangement is tacitly accepted throughout the verdict.

Twentieth Century Boxing Club Press Room
during the Braddock v. Baer contest at the Garden Bowl,
13 June 1935
Andre and Fleischer 1975, p.126.

James J. Braddock v Madison Square Garden #1-2, 1937



James Braddock v. Max Baer, Long Island 13 June 1935,
Brooke-Ball 1999, p. 175.

Long Island was the setting for Max Baer's defeat of Primo Carnera. After accepting a challenge from James J. Braddock, the venue became the site for a surprise title victory with a unique legal history. Two reported verdicts considered the legality of fight contracts associated with the contest. The dispute revisits many difficulties of exclusive management, promotion and 'employment' rights involving viable title competitors seeking lucrative Madison Square Garden sponsorship.

> Since it appears that the negative covenant here involved fails to fix any definite limitation as to the length of time of its existence and might therefore forever deprive Braddock of his right to make a living in the occupation he has chosen, I am of the opinion that the covenant places an unreasonable restraint upon his liberty
>
> *Madison Square Garden Corporation v. Braddock* 1937, 19 F Sup 392-394, (F-NJ) 14 May 1937 per Fake DJ at p. 394.

> ... [T]his court, even assuming the existence of a negative covenant, could not as a matter of law enjoin Braddock from engaging in the contest with Louis upon June 22, 1937, or in any other boxing contest
>
> *Madison Square Garden Corporation v. Braddock* 1937, 90 F 2d 924-929 (F-NY) 18 June 1937 per Biggs CJ at p. 927.

As with *Carnera* (1931) the Garden sought injunctions to prevent Braddock from any title defence without express managerial consent. Braddock was required to fight Max Schmeling on 3 June 1937 but independently negotiated a contest against Joe Louis scheduled for 22 June 1937. Federal courts were asked to interpret the validity of the restrictive fight clause in the Schmeling contract.

The champion countered the rigidity of the clause by successfully claiming an unreasonable restraint on employment freedom.

District Judge Fake distinguished Braddock's contract from a traditional fight agreement for personal services. The contract bound Braddock to the Garden for an indefinite, unspecified, restrictive and seemingly permanent time. The combination of a negative restrictive clause and no specified limitation period were sufficient to deny both Garden appeals and the enforceability of the restrictive clause.

The immediacy of Braddock's scheduled contest against Louis on 22 June 1937 was a significant factor. A NYSAC ruling outlawed the Braddock v. Louis contest, although the court found no connection between this decision and the endorsement of the exclusivity clauses. Public anticipation for the Braddock v. Louis contest was extensive despite these intentional breaches. Braddock won in court but relinquished his title in Chicago to the legendary 'Brown Bomber' after eight pulverising rounds. The verdicts contribute to the gradual refinement of Commission powers in an ever-expanding fight industry.

Fight Lore

Two trajectories in modern fight research close the 1930s. After several decades of complex, multi-jurisdictional public regulation, the first academic synthesis

of United States fight laws was conducted by Elmer J. Million (1939) in two significant examinations obscured by years of dust in the annals of Western law libraries. Both are paradigm examples of refereed legal scholarship.

Medical publications also recognised several new diagnostic fight risks. Sheard (1998) outlines a highly sporadic history of medical research notes within scientific annals of the prohibitionist era. Until detailed anatomical knowledge became available in published diagrammatical volumes (see Spaldeholtz 1927), studies invoking modern scientific methods were often biased, speculative and subordinated by complex moral and religious traditions. Martland's (1928) record of fight harms reported in the *Journal of the American Medical Association* and Parker's (1934-35) detailed supplementary case study of *traumatic encephalopathy* combine with Millspaugh's medical-legal synthesis to promote a complex, technical body of fight lore. During the 1930s the increased emphasis on medical risks associated with fight sports sought to overcome traditional diagnostic methods replete with *'[t]all tales and amusing anecdotes concerning the erratic behavior of fighters* ... (Millspaugh 1937, p. 302).

> Martland, in 1928 ... assumed that the condition ['punch drunk'] affected, in mild or severe form, at least 50 per cent. of pugilists of a certain type who had kept at their profession over a certain period. It is not so common among successful pugilists who reach their eminence by rapidly disposing of their less expert adversaries, but with little injury to themselves. Quick, agile, clever boxers who guard themselves well and take little punishment seem to escape. Chiefly affected are the less expert but courageous men who take considerable injury in the hope of wearing out their opponents until they can get in a final knock-out blow, and

> those used for training, who are accustomed to be knocked down several times a day. Aggressive, hardy fighters who like to give the crowd an exhibition of blows, and who lead the fight to the end, are likely to suffer, and the degree of facial disfigurement is the index of the susceptibility to 'punch drunk' ... the early symptoms of the disease are represented by occasional clumsiness of one foot, seen in walking to the corner of the ring, slight ataxia and periods of confusion; at this stage ability to fight may not be seriously impaired ... in the more severe types the legs drag in walking, and tremors, dysarthria, deafness, physical slowing-up and even mental deterioration which requires commitment to an institution may supervene ... [i]t is well understood, moreover, that pugilists are not immune to the ravages of syphilis, alcohol or even epidemic encephalitis, and certainly the incidence of these diseases is no lower among pugilists than in the general population
>
> H. L. Parker 1934, pp. 20-28 at pp. 20-21.

Parker confined analysis to a single documented case. The lengthy description provides a thorough diagnostic, athletic and personal history of the patient. A significant feature involves the permanency of the condition. Management directives, reported medical symptoms after professional competition and the short and long term effects of repeat trauma all contributed to an unfortunate prognosis for an unidentified, twenty-four-year-old, male 'case study'.

> The patient was well developed and muscular, weighing 120 pounds (54.4 kg.) and showing obvious signs of his previous profession in the form of thickened auricles and flattened nose. His systolic blood pressure was 130 mm. of mercury, and his diastolic 76. He walked slowly and unsteadily. His lower limbs were stiff and slow, the right being the worse of the two. At the same time, he staggered on turning suddenly and was somewhat ataxic. He held the right arm flexed when walking, and stiffly at his side, and did not swing it like the other. He hopped clumsily on the right foot, but did better with the left. The toes of both shoes were well worn down. There was a coarse, pill-rolling tremor of both hands, more marked on the right. Slight tremor of the head was

> present, but speech was unaltered. Speed was diminished on the right side, in both the upper and lower extremity, especially for rapid movements like drumming with fingers on a table. All tendon reflexes were greatly exaggerated, but there was no Babinski's sign on plantar stimulation. Romberg's sign was positive, and slight, horizontal nystagmus was present. Facial expression was normal and labile. Urinalysis and examination of the blood disclosed nothing abnormal, and the flocculation test for syphilis performed on the blood was negative. X-ray studies of the skull gave no evidence of fracture or other abnormality
>
> Parker 1934-35, pp. 21-22.

Millspaugh combined technical descriptions of traumas witnessed during years of supervision at naval athletic contests with a review of prominent fight techniques and the legal functions of boxing doctors. The narrative outlines common fight sports injuries, suitable ringside interventions and ongoing treatment, recovery and monitoring duties. Professional medical and legal narratives defending sports fighting provided significant data either tempering or supporting the well-established risks of square ring participation with continuing relevance in contemporary sports medicine.

> ... I did a fight this week. A fighter had a nosebleed and contusion under the eye and wasn't breathing well out of the nose. We gave a 60-day suspension and requested the fighter have an ENT *[ear, nose and throat]* evaluation before being allowed to compete again. Not only can't the fighter step into a ring for 60 days, the fighter will need medical clearance from that particular specialist ...
>
> Shelton 1999 quoting boxing doctor Michael Schwartz
> www.gateway.proquest.com

NYSAC 1937-1947

i) Origins

A series of interconnected disputes involving NYSAC rules tested the limits of judicial tolerance for contentious fight sports governance during a backdrop of wartime conflict. A combination of intentional licensing breaches and multiple, persistent appeals to higher courts aimed to subvert the gradual expansion of the public fight governance monopoly. Thirteen reported New York cases spanning four lengthy, heated legal disputes re-examined the content, character and legality of Commission licensing rules as well as a variety of non-professional recreational fight customs.

> ... [A] copy of the managerial contract must be filed with the Commission for approval and that a contract of this character becomes null and void if at any time during its term the manager is not duly licensed by the Commission
>
> *Casarona v. Pace et al.* 1940, 22 NYS 2d 726-728, per Schmuck J at p. 727.

Salvatore Casarona alias Tom Sharkey was an unlicensed manager seeking to prevent his fighter Pace from competing in New York until the Commission endorsed his re-registration. The trainer forgot to re-apply after the annual expiry period. The conjunction of public licensing powers and private contractual relations were emphasised amongst revised histories of outlaw criminal prohibitions and NYSAC professional monopoly fight governance.

Validly enacted licensing rules were declared *'condition[s] precedent to any [private] contractual right[s]'*, therefore mandatory for all fight personnel operating throughout the state.

This unsuccessful appeal uncritically endorsed a similar ruling in *Rosenfeld v. Jeffra et al.* (1937). *Rosenfeld* examined the legality of an identical private management contract where no Commission license was issued. Notionally supporting NYSAC powers delineated in *Fitzsimmons # 1* (1914), the failure of professional athletes or their managers to comply with reasonable licensing prerequisites logically outlawed both contracts due to registration anomalies.

ii) Zwirn v. Galento 1941-1942

Joe Jacobs and referee Jim Crowley
Jack Sharkey v. Max Schmeling, Yankee Stadium, 12 June 1930,
Andre and Fleischer 1975, pp. 116-117.

'Wild-swinging' 'Two Ton' Tony Galento v. Joe Louis
Yankee Stadium 1939, Andre and Fleischer 1975, p. 135.

Joe Jacobs and 'Two Ton' Tony Galento (Blewett 1999, pp. 170-171) were prominent in New York fight lore throughout the 1930s. In 1939 the blustering challenger with his learned manager confronted Joe Louis at the peak of his destructive abilities. In contrast to the natural movement of the pre-military Louis, Galento was a true battler in style, physique and fighting demeanour. A lengthy financial dispute emerged after Jacobs' untimely death, occupying prominent space in New York wartime legal records.

The claims involved an unpaid contractual debt owed to Jacobs after preparations for Galento's bout against Max Baer were complete. The agreement stipulated a fixed percentage of Galento's purse was owed for training, management and related services. Jacobs had bequeathed this sum to a person named expressly in the will. Galento counter-claimed, arguing the contract was unlicensed under mandatory NYSAC rules endorsed in *Rosenfeld*

(1937) and *Casarona* (1940). Under this reasoning withholding the payment was justified due to the failure to conform to valid and judicially endorsed licensing requirements.

Joe Jacobs' will & NY Commission Rule 32

Citation & Date	NY Supreme Ct judges	Outcome
Zwirn v. Galento # 1 30 NYS 2d. 132-133 6 Sept 1941	Pecora J	Application denied
Zwirn v. Galento # 2 32 NYS 2d 126 5 Dec 1941	Unanimously affirmed & no opinion	Application denied
In re Jacobs' Will 31 NYS 2d 536-537 8 Dec 1941	Lazansky, PJ; Hagarty, Carswell, Johnson (dissenting in part) & Adel JJ	Application denied
Zwirn v. Galento # 3 43 NE 2d 474-477 29 Jul 1942	Rippey J, Loughran, Finch, Lewis and Desmond JJ concurring; Lehman CJ & Conway J dissenting	Application granted; previous orders reversed

The first three rulings upheld the requirement for compulsory lodgement of all professional fight contracts under NYSAC Rule 32. Agreements failing to comply with the rule were considered void, illegal and technically unenforceable. Jacobs failed to register with the Commission prior to his death, thereby negating any legal obligation to receive payment as agreed from Galento, his employer.

Annie Jacobs then lodged a third reported claim seeking interpretation of the will and the bequest of certain items including *'books, documents and jewellery'* held as security for loans made to her deceased husband. The declaration for production of each item under civil rules of 'discovery' was rejected under strict interpretations of written terms of the will and applicable Supreme Court rules.

The final verdict (*Zwirn #3*, 1942) raised the additional legal claim of *quantum meruit* to support enforcement of Galento's written legal, financial and contracted obligations. This common law ground of contractual relief enforces obligations to pay for agreed, received services even if the recipient is unhappy with the work. A three-year agreement signed in 1939 and a related document dated March 1940 provided evidence of binding, enforceable relations despite failure to conform to Rule 32. Preparation for the Baer fight scheduled *'at Roosevelt field in Jersey City N.J., on May 28, 1940'* and related training services sports were specified as 'services rendered' in the verdict.

> If plaintiff could recover in New Jersey he should be allowed to recover here... There is nothing unjust or immoral in the contract before us, but injustice would result if defendant were allowed to retain the whole benefit of the New Jersey contract secured by plaintiff's intestate and if plaintiff were denied the right to recover for services which plaintiff's intestate rendered in obtaining that contract
>
> *Zwirn v. Galento* # 3 1942, 43 NE 2d 474-477
> per Rippey J. at p. 475 and p. 477.

Galento rescheduled the contest to 2 July 1940 after notification of Jacob's death, and again claimed all agreements were invalid. Fair public policy ensured this conduct and reasoning were at last rejected by New York appeal courts.

When interpreted narrowly Rule 32 became a prerequisite for the right to *'participate in a boxing, sparring or wrestling match or exhibition'*. This did not deprive managers or other fight personnel to negotiate legally enforceable contracts in other fight jurisdictions. A factual technicality produced this reasoning, sidestepping direct examination of the relationship between mandatory Commission licensing requirements and fight contracts negotiated yet not filed in New York. The Baer contest was arranged and scheduled in New Jersey, therefore producing no technical breach of NYSAC Rule 32.

Efforts made by Jacobs to secure the contest against Baer validated the *quantum meruit* claim. The legality of both written contracts and all determinations under the will were endorsed, and Galento was ordered to pay $33,571, comprising one third of agreed fixed earnings and additional unspecified sum *'for radio and movie rights'*. Where no fraud characterised private contracts between managers, fighters and other personnel, compulsory licensing could thus be sidestepped even though such agreements were otherwise unenforceable. Considerations of fairness and extensive discretionary powers allowed courts to overrule regulatory or licensing anomalies in such exceptional fight law disputes.

iii) The Outlaw Wallman Contracts, 1945-1947

Several amendments to Rule 32 were invoked between *Rosenfeld* in 1937 and the final ruling on the Jacobs' will. By 1945 a complex patchwork of licensing rules sought to overcome loopholes generating several legal disputes involving professional fight managers and NYSAC licensing procedures. Two privately negotiated management contracts expressly breached all standard NYSAC rules designed to protect competing fighters. The Wallman and Baski claims sought declarations to invalidate these agreements due to clearly intentional breaches of standardised management functions. As the complex dispute unravels a clear intention to subvert increasingly expansive and restrictive NYSAC fight governance rules informed Wallman's defiant protest.

Under Commission rules separate licensed contracts were required for each professional manager. Wallman's single contract appointed two managers. Specified percentage fees exceeded NYSAC restrictions by 17.6 per cent. Wallman claimed he was a business manager beyond the mandatory licensing regime directed at trainers, contenders and fight managers. These deliberate, intentional breaches tested judicial preparedness to 're-legislate' an increasingly technical and compulsory fight law regime.

Wallman's 7 NYSAC licensing appeals 1945-1947

Citation & Date	NY Supreme Ct judges	Outcome
Wallman v. Wolfson 53 NYS 2d 586-589 24 Feb 1945	Eder J	Motion denied
Wallman v. Wolfson 54 NYS 2d 700 21 Mar 1945	No opinion	Affirmed
Baski v. Wallman et al # 1 59 NYS 2d 294 16 Nov 1945	Unanimous agreement; no opinion	Affirmed with $10 costs
Baski v. Wallman et al # 2 63 NYS 2d 26-33 12 Feb 1946	Walter J	Motion granted; contract invalid
Baski v. Wallman et al # 3 63 NYS 2d 215 14 Jun 1946	No opinion	Affirmed with $20 costs
Baski v. Wallman et al # 4 65 NYS 2d 894-898 15 Nov 1946	Dore J, Martin PJ, Glennon, Cohn, Peck JJ concurring	Affirmed and modified
Baski v. Wallman et al # 5 65 NE 2d 172-173 22 May 1947	New York court of appeals; no opinion	Affirmed with costs

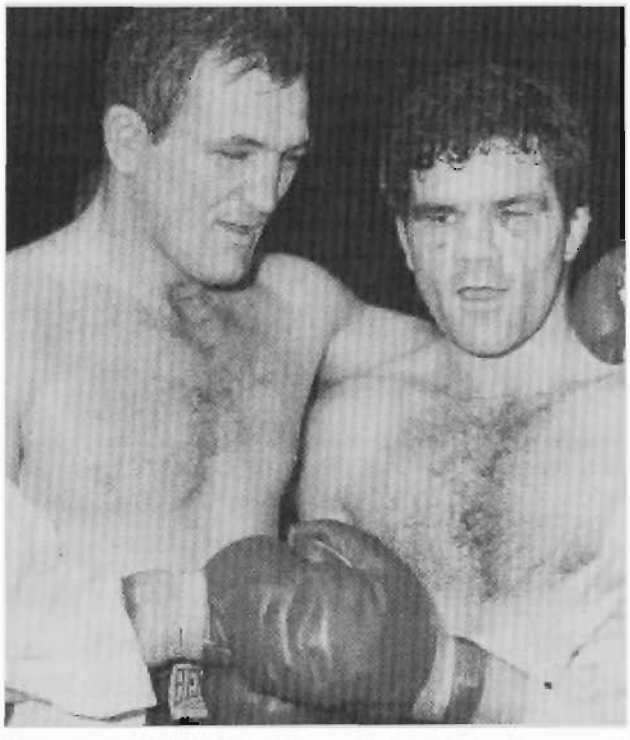
Wolfson is prominent in New York fight lore of the 1940s (Liebling 1956: 1982). He sought to renege on agreed payments for fight revenues and disbursements, contending the business contract must conform to NYSAC Rules 31 and 32. A

narrow ruling on the scope of NYSAC compulsory licensing and contractual requirements would lead to a declaration the agreements were illegal and unenforceable. A broad reading would produce the opposite outcome despite compulsory licensing, lodgement and approval requirements. Each verdict declares the agreement unenforceable due to the intentional character of the violations and the public interest in supporting legislatively mandated NYSAC fight governance.

> If a contract which conflicts with the statute and rules in all those respects can be stamped as legal, it seems to me that the entire system of regulation so carefully worked out by the Legislature and the Commission is made a dead letter and practically repealed
>
> *Baski v. Wallman et al # 2* 1946, 63 NYS 2d 26-33 at p. 31.

Joseph Baski co-conspired in Wallman's outlaw contractual game by signing a virtually identical agreement. The athlete sought similar declarations, arguing sound public policy warranted judicial relief from all agreed yet unlicensed obligations. The second Wallman contract clearly violated five NYSAC rules, specifying two fight managers, one of whom could remain unlicensed in New York. Interestingly, it appears the Commission granted notional approval to the renegade contract, with Baski's consent evidenced by his signature on the document to certify a legally binding contract effectively designed to breach the public licensing requirements.

Baski # 5 finally declared the contract illegal, unenforceable and against public policy. The deliberate subversion of NYSAC licensing, rule-making, enforcement and lodgement procedures replicated in *Wallman #2* was designed expressly to usurp Commission policies, expertise and the spirit of professional fight management throughout the state. The NYSAC public monopoly had strong legislative, judicial and medical endorsement and should not be undermined by such outlaw, private negotiated agreements irrespective of common sense industry-based justifications for this audacious fight law protest.



Freddie Mills and Joe Baski
Harringay, England, November 1946
Hill 2002, p. 108.

iv) High School Fight Sports

The final New York ruling before extensive Federal litigation during the 1950s involved compensation for injured fighters. After a supervised physical education bout in a public school, an injured student sued his gym teacher under private negligence law.

The New York Board of Education, a statutory authority with similar legislative origins to the Commission, was enjoined in the dispute. This suggested a direct connection between the student's permanent head injuries and breach of a lawful supervisory educational duty. The seven-year period between the contest and the final resolution of the dispute illustrates the complexity of injury compensation measures under Western private litigation.

Fight school testimony

Medical attendant	**Student plaintiff**
'... [H]e was lying on the couch having a convulsion. His left arm and left leg were in a state of convulsion and his right side was in a state of tonic spaticity [sic]. He was semi-conscious and could not be roused'	'In the second round we started just as bad as ever and I got hit in the temple *** I became dizzy and staggered'

LA Valley v. Stanford 1947, 70 NYS 2d 460-462 at p. 461.

An award of $1,500 against the teacher and $2,000 payable by the Board were sustained on appeal. Expert medical testimony and public interest in the safe, accountable supervision of school sports were equally prominent in declaring a breach of negligence obligations with due apportionment between each school authority.

California Fight Laws, 1946-1949

i) Overview

Two additional disputes provide evidence of the expansion of NYSAC governance principles throughout the United States professional fight industry. Specific purpose bribery legislation was examined alongside athlete compensation rules in three reported Californian verdicts. Both disputes illustrate prominent concerns shrouding professional fight sports throughout the bulk of the 1950s.

ii) Abe Phillips, 1946

> The evidence showed that the offers of bribes involved two different sums of money offered on different days; one offense was completed and an interval of several days elapsed before the second act occurred. Under such circumstances each act constituted a separate and distinct violation of the statute punishable as such
>
> *People v. Phillips* 1946,172 P 2d 392-398 at p. 398 per Nourse PJ.

Originally targeting only baseball, section 337b of California the Penal Code enacted in 1941 outlawed proven offers or attempts to bribe any competing athlete. Abe Phillips *aka.* Charles Kelso(n) appealed three convictions under the provisions. One count alleged conspiracy to bribe an athlete and evidence included three transactions witnessed by state police. Two additional charges included testimony from fighter Jackie Cooper *aka.* Willie Carter involving sums offered by Phillips to *'induce him not to use his best efforts to win a boxing contest with his opponent, Freddie Dixon'*. Carter stated he was training when first approached to 'rig' the outcome a week before the event. The verdict provides pertinent details of each dimension of the outlaw arrangement under criminal proof requirements in a rare sports bribery ruling.

Subterfuge, deception and the fundamental breach of accepted sports ethics pervade the legal narrative. The financial sums involved provided sufficient evidence of an unlawful arrangement compromising the legitimate interests of the fight sports community. A $1,000 fine and sentence re-hearing to review a twelve-month imprisonment term imposed at trial provides an example of the consequences of result fixing and corruption when detected and prosecuted under specific-purpose criminal laws.

iii) Hudson #1-2, 1948-1949

Two contrasting verdicts invoked opposing public policy justifications for compensation eligibility for injuries sustained to a combatant in an unlicensed travelling exhibition bout. Dominant opinion favoured compensation on appeal after rejection in *Hudson # 1* (1948). Evidence of an extremely unequal employment relationship justified the favourable outcome despite recognised *volenti* or consent principles.

Young Hudson *"was violently struck in and about the face and body"* and suffered a *"broken jaw, concussion of the brain, numerous bruises and contusions about his face and body, and severe shock"* (*Hudson* #2 1949). Prominent distinctions between outlaw public demonstrations and valid professional fight sports led to divided judicial opinion amongst the Californian appeal courts. Ultimately, fairness to the deceased and his family informed a justifiable albeit legally questionable ruling under a complex web of Commission-style legislatively endorsed rules, private negligence laws and workplace safety requirements.

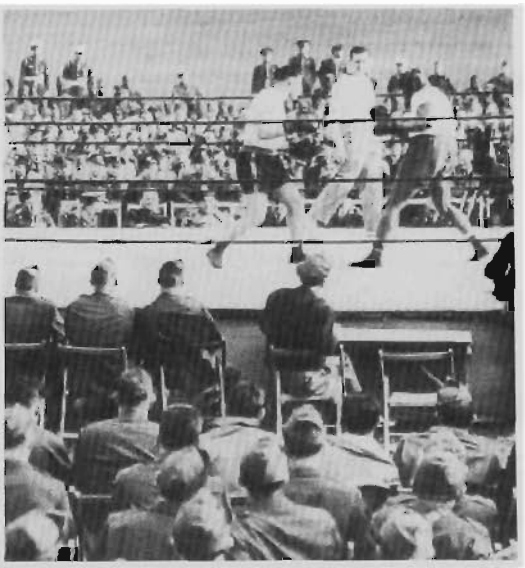
> The facts pleaded in the complaint sufficiently charge an employment which required the performance of the employee's duties under unsafe working conditions. With the further allegations in regard to the injuries sustained by the minor as a result of boxing under the those conditions, a cause of action for damages is stated
>
> *Hudson et al v. Craft et al* # 2 1949,
> 204 P 2d 1-6 per Edmonds J. concurring at p. 6.

Each requirement sought to protect young, vulnerable male fighters. New trajectories of United States sports employment signify a problematic tension between travelling entertainment promoters and athlete health, welfare and remuneration. In contrast to the lucrative elite fight industries judicial intervention to protect unsung consenting athletes favoured imposing private financial, supervisory and legal responsibilities against fight managers, promoters or employers in potentially dangerous and exploitative workplace environments. Sporting policy considerations informed the selective application of diverse legal rules to produce such desirable outcomes in the face of countervailing principles under different governance models.

The Enigmatic 'Brown Bomber

'

Entertaining Private Louis
Andre and Fleischer 1975, p. 137.



Entertaining the troops
Hill 2002, p. 108.

Unlike many heavyweight celebrities including 'Papa' Jack Johnson, Australian Les Darcy, Jack Dempsey and 'The Greatest of All Times' Muhammad Ali, Joe Louis willingly enlisted for military service. Sklaroff (2002) indicates a complex interplay of developments helped 'manufacture' a desirable public profile contrasting with the brash Negro paradigm fostered by 'Papa' Jack. Working with the popular media was essential to establishing and maintaining an acceptable public image in a conflict-laden racial, political and historical setting. The following protocols illustrate the 'Brown Bomber's' highly manufactured 'code of ethics'.

1. He was never to have his picture taken along with a white woman.
2. He would never go into a nightclub alone.
3. There would be no soft fights.
4. There would be no fixed fights.
5. He was never to gloat over a fallen opponent.
6. He was to keep a 'dead pan' in front of the cameras.
7. He was to live and fight clean

Sklaroff 2002: www.gateway.proquest.com

Only Solinger's valuable research (1949) provides insights into a cluster of injunctions seeking to prevent media *rebroadcasts* and invasions of the champion's privacy by news organisations. Simultaneous proceedings in several state courts granted three orders to prevent infringements of exclusive broadcast rights owned by the champion under validly licensed title contracts. Immediate judicial relief to preserve the monopoly arrangements ensured little

prospect of published reasons to support each ruling. Time is generally the conclusive factor underpinning a temporary or permanent injunction to restrain threatened or anticipated interference with another's legal rights.

Elite celebrities such as Louis could negotiate lucrative licensing arrangements to maximise his economic value under exclusive broadcast and sponsorship deals. In contrast, most unrecognised competitors such as 'Chavez' clearly have reduced bargaining power over the public use, dissemination and commercial exploitation of their fight images. Mirroring the claim in *Jeffries* (1910) these unreported rulings grapples with contrasting public and private rights delineating the boundaries of published news coverage. Tensions between public interests in popular celebrity and sports issues and the private exploitation of media publicity persist in several Western fight and sports law rulings throughout the twentieth century.

Beatrice Norman, 1949

The final reported verdict in this cluster of rulings involved a growing body of state and federal litigation over fight broadcast rights. A complex tension between national prohibitionist expansion and disparate state laws dealing with media technologies generated extensive authoritative consideration of contractual provisions, landlord and tenancy agreements and technical interpretations of licensed *broadcast* agreements.

On the eve of the recent Louis-Walcott championship fight in New York City, the promoters, the fighters, the broadcasting stations, and the commercial sponsor joined in a series of suits to enjoin a motion picture theatre operator and a hotel owner in Philadelphia, a ballroom operator in New York, and a ballroom operator in Boston from picking up a telecast of the fight. In each instance a temporary injunction was granted ...

Solinger 1949, pp. 850-851 citing *Louis v. Friedman* unreported (Pa), *Louis v. Richman* unreported 1948 (Pa), *Louis v. California Productions*, unreported 23-24 June 1948 (NY); *Twentieth Century Sporting Club Inc. v. Massachusetts Charitable Mechanic Association* 22 June 1948 (Mas).

... [A] prize fighter, who sought to restrain a telecast of a bout in which he planned to engage, alleging an invasion of his privacy, was denied an injunction in *Chavez v. Hollywood Post* ... 'A prize fighter who participates in a public boxing match waives his right of privacy as to that fight. Unless the fighter in his contract reserves television rights, the promoter dictates who may and who may not use a television camera on the premises'

Norman et al v. Century Athletic Club 1949 15 ALR 777-798 at p. 794, annotated comment.

Norman rented the Baltimore Coliseum with express, exclusive provisions allowing "the privilege of broadcasting" Monday night fights at a prime sports venue with "Western Union wires [installed] direct to the ring". Norman made radio broadcasts throughout the United States with sponsorship from a hat manufacturer and was paid "between $1000 and $1250 each week for ten consecutive weeks". World championship contests were also conducted at the Coliseum allowing "*the privilege of having sports writers from the leading newspapers of the country telegraph the blow-by-blow description to their various home papers*".

Norman sought judicial clarification of her ability to install television cables under the rental agreement. Her intention was to cash in on a rapidly evolving nationwide fight media industry. The rigid endorsement of a highly technical broadcasting distinction underpins an important series of general sports law precedents noted in lengthy annotations to this significant verdict.

> Plaintiff contends ... 1. That radio and television operate on the same scientific principle, differ only in details, are two means to one end, and the "privilege of broadcasting" should therefore be construed broadly as including the end by either means ... 2. That if the "privilege of broadcasting" does not include television, then "the exclusive use and possession" of the property leased, independent of paragraph 6, includes all uses not expressly reserved to lessor, and therefore includes both radio and television. We are unable to concur in either of these views
>
> *Norman et al v. Century Athletic Club Inc.* 1949 699 15 ALR 777-798 per Markell J. at p. 780.

Citing *348 Madison Avenue* (1925), *Johnson v. Zemel* (1932) and a series of rulings in allied sports broadcast litigation, the proprietary character of published fight messages transmitted by a novel technological process justified a restrictive interpretation. The lease confined broadcasts from the venue to radio, and the landlord had full and exclusive rights to enforce the lease to the letter. Technical processes of television and radio communication and their contrasting economic, proprietary and legal classifications were examined in detail. The ruling endorsed precise linguistic terminology to specify all particulars of a

lucrative broadcasting arrangement on private fight space. The effect of this distinction seemingly allowed a shrewd landlord to cash in on Ms Norman's business acumen by permitting increased rents, prohibiting television installation totally, or allowing installation with all profits to be assigned under an amended lease agreement.

Themes

The broad range of legal categories invoking public licensing, private negligence and a pastiche of contractual, proprietary, media and criminal laws highlights the fragmentation and complexity of modern United States fight governance. In two decades a combination of elite, sub-elite, professional, amateur, educational, management and employment disputes continued to challenge the capacity of judicial methods, languages and procedures to critically and effectively scrutinise elite and recreational fight sports practices. Medical, evidentiary and public enforcement themes are also incorporated into a complex body of federal and state fight laws with some discernible precedents endorsed in highly publicised rulings. Many issues raised during this litigious period have ongoing significance in contemporary public and private sports governance within and beyond North America's diverse fight cultures.

§§§

x. 1950 - 1963 and the IBC outlaw monopoly

Overview

Three themes dominate reported boxing cases during the prosperity of post-World War II United States economic, political and legal culture. First, several additional New York cases further clarified the scope, powers and rule-making validity of the NYSAC public licensing monopoly, supplemented by two 1956 cases under alternate public licensing models. Second, media depictions of incidents, individuals and great sporting moments are prominent. Third, concerns over private monopoly governance and suspicions over corruption, organised crime and pervasive outlaw economies led to extensive anti-trust and federal criminal litigation against the International Boxing Club (IBC), highlighting the breadth of federal, state and common law regulation of a sport seemingly in perpetual legal crisis. As with previous United States rulings, both elite and unknown athletes of continued to emerge in reported fight law disputes throughout the 1950s.

Jack Sharkey, 1950

Jack Sharkey had been in retirement for fourteen years when he reignited scrutiny of the *Jeffries* ruling of 1910. In the New York division of the Federal

District Court Sharkey claimed the National Broadcasting Company (NBC) television show *Greatest Fights of the Century*, a compilation of edited highlights sponsored by the Chesebrough Manufacturing Company, unlawfully used the former champion's 'name, portrait, or picture' for advertising purposes. A series of breaches were alleged in the content of the show and printed advertisements using Sharkey's image without the athlete's consent. NBC and several co-defendants sought to strike the claim from the record.

Jack Sharkey circa 1932
Andre and Fleischer 1975, p. 119.

The verdict provides scant information on the grounds argued. Brief reference to Sharkey's professional activities '*in the fields of entertainment and sports*' and

their tendency to *'keep his name and pictures in the public mind and eye, with consequent pecuniary* value' indicated the champion's newsworthy celebrity. This justified NBC's counter-claim. The ruling also provides few insights into the scope of private rights protected under New York civil rights laws. Similar to a preliminary hearing, the Sharkey ruling found sufficient merit in the claim to proceed to trial, but the absence of subsequent reported proceedings suggests either an out of court settlement or cessation of the claim.

Tennessee Anti-Bribery Laws, 1952

Complex investigative, evidentiary and policing methods are demonstrated in an important Tennessee bribery prosecution mirroring the Californian *Phillips* case of 1946. *Casone* (1952) produced around five-hundred pages of testimony. Ten charges relating to a single attempt to produce a fixed result were proved with detailed evidence from police under-cover surveillance targeting an unknown mobster. The character and nature of an allegedly outlaw offer and predetermined sporting result involved clear evidence of intention, deception and fraud revealed by a state Athletic Commission inquiry into the allegations.

> ... [W]hile these parties were in this room the plan of throwing the fight was arranged and it was practiced for Scott and Buchanan to square it off and then the promoter was to step in between them and as he did so Scott was to step back and at this time the other fighter was to throw a punch at Scott and Scott was to go down. All of this was to occur in the third round. This procedure was rehearsed there in the hotel room. Scott further testified that it was arranged between him, the plaintiff in error

> and the promoter for him, Scott, to receive his share of the gate receipts plus one-third of the bets put down. The plaintiff in error was to make the bets. Scott testified that the fight did end in the third round as planned, but that he received a broken vertebra in his neck, which was not planned
>
> *Casone v. State* 1952, 246 SW 2d 22-28 at p. 24.

A meticulous 'rehearsal' of the outlaw 'sham' could not ensure all would go smoothly as intended by each co-conspirator. Witnesses betting on the outcome and a state Commissioner suspected the contest was not 'on-the-up-and-up' and a formal administrative inquiry followed. Both fighters testified against Casone but records are unclear on whether either athlete was also prosecuted. Casone's appeal against conviction and sentence were firmly rejected and the Tennessee court affirmed an eleven-month-and-twenty-nine-day sentence at the Shelby County Penal Farm plus substantial fines.

NYSA Commissioner Robert Christenberry #1, 1952-1953

Eboli v. Christenberry et al. (1952) is one of several rulings during the 1950s providing further judicial interpretation of NYSAC licensing, membership and inquiry procedures. The dispute involved the scope of employed Commission delegates to punish fight license holders for proven internal rule breaches. Powers to revoke licensing privileges, impose fines and review allegations of

professional misconduct were also examined in the first of several cases initiated by vigilant Commission enforcer Robert Christenberry.

Two licensed managers were charged under Commission rules after assaulting a referee during a contest at Madison Square Garden on 11 January 1952. Both were instructed to appear before Christenberry to explain their conduct at a preliminary hearing. Commission investigators allowed legal representation, nevertheless Eboli, a licensed manager and second, declined to testify.

The incident stemmed from a decision by Christenberry to stop a licensed contest after suspicions the result was rigged. A formal investigation followed and Eboli was again invited to testify, declined, fined $3,000 and received a state-wide life ban. Tommy Ryan was also suspended and appealed both the fine and licensing ban as arbitrary, capricious decisions against the weight of evidence. An additional argument suggested the penalty violated Ryan's constitutional rights by enforcing an unreasonable 'restraint of trade' in the New York fight industry.

A writ of mandamus was sought to declare each public administrative ruling void. However, several legislative provisions appeared to endorse Christenberry's intervention. Section 6 of NYSAC laws created a public monopoly over professional fight governance throughout the state. Section 17 outlined discretionary powers to revoke or suspend any license upon proof of

conduct detrimental to the interests of boxing or wrestling. Section 17A also allowed maximum 'civil penalties' of $5,000 enforceable by the Attorney General where fines remained unpaid.

The court noted a license to engage in professional boxing or related managerial, training and promotion functions has no personal vested or inherent rights. All applicants required NYSAC licensing approval. A general discretion to accept or revoke a license was considered a significant Commission power. Where clear evidence suggested breach of fight Commission or licensing rules, permanent revocation orders were justified after open internal investigation procedures and an opportunity for the suspect to defend the allegations.

Western judicial custom suggests courts are generally reluctant to overturn specialist inquiry findings of state bureaucratic agencies unless clear abuses of process are evident. A thorough, two-tiered inquiry process was sufficient to deny both claims, with no inherent constitutional rights to work infringed by the Commissioner's rulings at ringside or in subsequent inquiry proceedings.

NYSA Commissioner Robert Christenberry #2, 1953

Allegations raised in *Tilelli v. Christenberry et al.* (1953) exemplified widespread concerns over institutionalised corruption in professional fight sports. Despite

greater integrity under mandatory public governance, Robert Christenberry was again at the centre of a contentious decision to reverse a seemingly valid square ring result. The case highlights the importance of judicial review to scrutinise dubious elements of public or private fight governance, and the questionable enforcement discretion of vigilant fight Commissioners.

New York fight laws conferred no express discretionary powers on Commissioners to make or overrule ringside decisions. Strong regulation was argued by NYSAC advocates to counter public suspicions of corruption, result-fixing and racketeering. Public monopoly regulation was seen to temper surreptitious market forces embedded in a seemingly inherently corrupt industry. Athlete exploitation, illegal gaming and unclarified dimensions of social, moral and sporting degeneration invariably required strong public regulatory intervention in the broader public interest (see Riess 1988).

By avoiding the 'statutory badlands' of criminal prohibition, NYSAC mandatory fight licensing sought to achieve a middle ground. The gradual progression of rulings from *Fitzsimmons* (1914) onwards, along with clear legislative intentions promoted the virtues of public monopoly governance within a network of largely unsupervised private outlaw relations. The inherently 'brutal and degrading' character of professional fight sports plus Commission powers outlawing licensed personnel from 'consorting' with

'criminals, gamblers' and 'bookmakers' validated discretionary licensing powers.

> The Legislature was plainly apprehensive of the unwholesome influence exerted by gamblers, criminals and other disreputable persons who dominated professional boxing. Since it featured violence, the sport attracted full-blooded patrons who bet heavily on the outcome of the bouts. And since the moral stamina of pugilists, in that era at least, was often weaker than their physical stamina, many were not averse to "fixing" fights at the behest of professional gamblers. Judging from newspaper comment in 1920, the public was revolted by the sordid spectacle ...
>
> The Commission's rules recite the following factors, among others, which must be taken into account by ring officials in rendering their decisions: damaging effect of blows, aggressiveness, defensive work, ring generalship and sportsmanlike actions. At best, these general standards furnish no chart for a mathematical ticking off of points. A boxing official's judgment reflects not only his perceptiveness and experience, but is inevitably colored by his own sense of prize fighting values ... a substantial scoring differential among ringside officials ordinarily excites no alarm in boxing circles ...
>
> *Tilelli v. Christenberry et al* 1953, 120 NYS 2d 697-704 at pp. 700 and 704.

However, evidence failed to justify this unusual ruling by Commissioner Christenberry to reverse a professional fight outcome at ringside. The court found insufficient proof of 'fraud upon the public and one of the contestants' to endorse the Commissioner's decision or any rumours of a rigged contest.

A Fighter's Public Image, 1953

It's a filthy enterprise ... and if you stay in it long enough your mind will become a concert hall where Chinese music never stops playing. Old fighters who do not go insane are exceptional ...

Jimmy Cannon
'rounding' 'the sweet science'
Esquire Magazine 1948,
cited in Ateyo 1979, p. 172.

The article is written in racy sensational style about alleged corruption and degradation in professional boxing with illustrative anecdotes. It emphasizes that innocents are drawn into the field by highly speculative opportunities of making substantial windfall sums. It likewise emphasizes the physical dangers to professional fighters

Oma v. Hillman Periodicals Inc. et al
1953, 118 NYS 2d 720-726
per Breitel J, with Peck PJ, Cohn,
Callahan & van Voorhis JJ concurring
at p. 722.

Jimmy Cannon was one of several fight reporters sensitive to the modern contradictions between fight-fandom, public opinion and dangerous, corrupt, exploitative professional sports. Regenerated interest in live and televised boxing in all weight divisions underpinned growing public debate over various social benefits and harms of post-War fight practices under a confusing mixture of public Commission oversight of private organisational conventions. Dangers evident in graphic medical descriptions of temporary and permanent athlete disability combined with widespread fears of pervasive organisational corruption. Each reported death or serious square-ring injury helped re-ignite

media debate on the social acceptability of all professional and amateur fight sports.

Bearing many similarities with English predecessor *Hunt v. Bell* (1822), *Oma* (1953) reconsidered alleged privacy violations examined in *Jeffries* (1910) and the Braddock rulings. This aggrieved fighter claimed illegal, non-consensual use of a photographic image accompanying an extremely condemnatory article highlighting individual, physical and economic hazards of modern fight sports. Analogous to private defamation laws, the action again relied on New York civil rights protections against the non-consensual commercial trade and profit of a public figure's personal information. The aim in this case was to seek compensation for false inferences relating to Oma's exploitive fight experiences stemming from Cannon's work.

> *** [I] is a crime against him that he is allowed to fight *** But the fighter is the servant of managers and matchmakers and is the puppet of promoters. Many fighters are ruined because of the greed of managers ***
>
> *Oma v. Hillman Periodicals Inc. et al* 1953,
> 118 NYS 2d 720-726 at p. 723.

The figther's claim was rejected demonstrating a conservative reading of the civil rights laws. The content, layout and inferences within the publication failed to discredit Oma directly. Only those close to the fighter would link the

image to Jimmy Cannon's scathing commentary. Minimal embarrassment, humiliation, discomfort or ridicule was associated with the unauthorised use of this professional fighter's public image. As one of a generic class of athletes mentioned in the text, this technical privacy violation produced a token twenty-dollar award as nominal compensation for any harm to Oma's reputation stemming from the published misrepresentation.

Fight Research, 1953

Media and public titillation for 'maiming', 'killing' or inherent yet 'rationalised' fight risks have generated significant intellectual scrutiny throughout the modern era. Several academic investigations sought to verify, denounce and further inform the research knowledge of modern fight sports involvement and its various attractions, rewards and acknowledged short- and long-term hazards. A significant investigation by Kirson-Weinberg and Arond (1952: see Loy Jr and Kenyon eds 1969) highlighted prominent traits of professional boxing culture in a Chicago location during the post-war era.

A sample of sixty-eight competing and retired athletes, seven trainers and five fight-managers provided extensive qualitative evidence for this landmark social-scientific investigation. Honour, respect and self-satisfaction accompanied the excitement victory in professional competition were core attractions to fight sports. Arduous training rituals to maintain a winning streak

and machismo meld in the background of a multi-faceted story of the rise of an aspiring professional fighter. Occasional grudge contests, ineffective referees and overtly illegal tactics contrasted with genuine sporting traits of skill, endurance, stamina and resistance to pain. Inevitable minor injuries were overcome by increased grit. Inventiveness and the development of unique, specialist moves produced few economic rewards for the majority of young, part-time professionals locked into a fighting career or similar low-paid, high-risk, mundane employment.

> ... [O]f 95 leading former boxers with over $100,000 total ring earnings] ... two became wrestlers; twenty-six worked in 'fronted-for', or owned taverns; two were liquor salesmen; eighteen had unskilled jobs, most commonly in the steel mills; six worked in the movies; five were entertainers; two owned or worked in gas stations; three were cab drivers; three had newsstands; two were janitors; three were bookies; three were associated with the race tracks (two in collecting bets and one as a starter) and two were in business, one of them as a custom tailor
>
> Kirson-Weinberg and Arond 1952: 1969, p. 452.

Albert Ettore #1-2 1954 and 1956

Albert Ettore once fought Joe Louis. The *Pugilistica* of modern professional fight lore by Andre and Fleischer (1975) does not mention the event or Ettore. However, a significant extension to the *Oma* (1953) ruling under ambiguous federal privacy laws seemingly makes a more significant albeit unsuccessful contribution to modern fight law developments.

As with *Jeffries* (1910), *Sharkey # 1* and #2 (1937) and *Oma* (1953) the outcome indicates a somewhat frivolous, trivial and unworthy legal claim. Two reported verdicts and extensive annotations in media law research accompany the second ruling. The Chesebrough Corporation was also listed as sponsors jointly responsible for any proven breaches of justiciable privacy rights.

> The plaintiff will offer further testimony that at the time of the telecast plaintiff told his friends to watch for the 3rd round, which was his outstanding round; that he felt embarrassed after the fight, because the 3rd round was not shown; that is something he cannot forget about; that he feels like a heel, that he really feels bad; that he wanted them to see that he could fight; but on the television they saw nothing; he was really a bum on television
>
> *Ettore v. Philco Television Broadcasting Corp and Chesebrough Manufacturing Co. Consolidated # 1*
> 1954, 126 F Sup 143-151
> per Watson CJ at p. 146.

> Ettore insists that the telecasts of the boxing contest, were unfair to him because the third round, "his best round," was omitted ... [T]he telecast was not embellished or truncated in any way substantially unfavourable to Ettore [and] was merely condensed to meet the time requirements ordained by the sponsor, the defendant and Chesebrough. A viewing of the film compels us to the conclusion that, were the case to go off on the telecasts to Ettore's prowess as a boxer or skill as a performer, we would hold that the omissions were *de minimis*
>
> *Ettore v. Philco Television Broadcasting Corp and Chesebrough Manufacturing Co. Consolidated # 2*
> 1956, 58 ALR 2d 626-658
> per Biggs CJ at p. 647.

Federal and Pennsylvania laws were invoked after national transmission of the edited highlights package. Ettore's choice of both laws was equally sound despite insufficient proof of legally recognisable economic harm. Nevertheless a

retrial, unreported in subsequent United States legal sources, was ordered to review a clarified hierarchy of federal, Pennsylvania and New York privacy laws under the appeal ruling.

The Boxing Managers Guild #1-2, 1955-1956

Two additional cases highlight the level of vigilance against suspected corruption in the New York fight industry throughout the 1950s. Again, Robert Christenberry, this time acting alongside Commissioner Julius Helfand, were subject to judicial review after official decisions to revoke professional fight management licences.

Christensen v. Helfand (1955) involved a decision to revoke the management license of Charles Bauer. The ban was invoked after Bauer failed to testify at a formal Commission investigation *'into irregularities in the conduct of boxing in this state'*. Helfand commenced the inquiry after allegations of corruption within the Boxing Managers Guild (BMG). Chris Christensen, Bauer's employer and a promising young fighter, sought judicial review of the ban and validation of several fight-contracts negotiated by his long-time mentor.

Bauer arranged for Christensen to fight Gene Poirer at St. Nicholas arena with London Sporting Club sponsorship and requisite Commission approval. At the time Bauer was suspended from all licensed management functions for an

unrelated matter. Inferences in the verdict suggest Bauer was aware of his unlicensed status but continued to engage in customary management duties.

> A great deal of latitude and discretion must be accorded a commission which is responsible to the people of the state for the maintenance of fair dealing, honesty, and clean sport in a field which has in the past been infested with undesirable elements. Its rules should be enforced by the courts unless shown to be clearly arbitrary. Its determinations, particularly when supported by evidence, should be upheld
>
> *London Sporting Club and Stephen v. Helfand and Christenberry (New York State Athletic Commission)* 1956, 152 NYS 2d 819-825 per Eder J at p. 824.

The rulings of the New York *Baski* verdicts were upheld to deny the validity of all Bauer contracts. Insufficient financial losses to Christensen were proved to justify compensation or judicial interference to correct any unreasonable trade restraints in this case.

This was followed by a separate application by the London Sporting Club to review the legality of NYSAC inquiry procedures. Co-petitioner Stephen Sullivan and the Club were investigated and punished for making unauthorised payments to the BMG from Commission sources. Sullivan's license was revoked and the Club was fined a substantial sum. Helfand and Christenberry were convinced the Guild was responsible for extensive corruption and coercive management practices, leading to several detailed

claims involving the abuse of lawful, public monies and statutory investigation powers.

Fight lore reveals few details of Guild functions, composition and activities. Throughout the 1950s private and public tensions within the New York fight industry spiralled within a broader pattern of professional industry turmoil. Two strong Commission administrators persistently attempted to squeeze all BMG influence from legitimate fight business and enforce NYSAC bans on simultaneous Guild and Commission membership. The Club opposed renewed Commission scrutiny and threatened to remove all televised matches from New York's St. Nicholas Arena to Baltimore. The interstate move would allow Club managers to remain affiliated with the BMG while retaining lucrative rewards from authorised professional fight coverage beyond New York territory.

The Club's promoter and principal match-maker were both de-registered for breaches of the anti-Guild amendment and sought judicial reversal of the bans and $5,000 fines. The verdicts were upheld with insufficient evidence of 'arbitrary' or 'capricious' conduct by Christenberry or Helfand. All licensed personnel asked to testify were clearly advised of NYSAC motives, procedures and potential license ramifications. Sufficient notice of the inquiry and the right to legal representation were consistent in Commission inquiry procedures designed to 'clean-up' a highly suspect outlaw industry. Licensees of all classes were notified of the anti-Guild-membership ban, and previous New York

verdicts denying any enforceable proprietary rights in professional license privileges ensured the expulsion and fine levying powers were lawfully and reasonably exercised under valid statutory authority.

George Flores #1-3, 1955-1959

Most wrongful death claims in United States fight law are directed at opposing combatants or outlaw organisers with no public licensing approval or oversight. Liability for wrongful death may target several persons. The *volenti principle* determines an athlete's awareness of inherent and potentially fatal risks to preclude private legal responsibility in all bar the most serious cases. Managers, trainers or seconds might employ a controversial healing, training or dietary technique or encourage performance beyond the athlete's physical tolerance. Venue managers might fail to conform to recognised licensing policies aimed at safe ring-design, patron seating or other recognised harm minimisation principles. Licensed officials might falsify results and damage the sport's integrity and public image. Medical practitioners similarly have various legal functions subject to common law negligence obligations and liabilities.

> [Dr. Nardiella] agreed ... good medical practice demands a layoff for boxers who have suffered a knockout or a severe beating about the head, the layoff to be from six weeks to two months. He agreed that in no event should such a boxer be subjected to the possibility of further trauma within that time ... He showed wonderment when he asked Flores why he was fighting when he had been technically knocked out two weeks before. After that, he found out ... [Flores] had also had another

> knockout three weeks before that ... [T]he State of New York wanted the benefit of his medical judgment. He knew that he had the power to suspend Flores. The question logically presents itself - why didn't he do it? Because, he says, the matter of suspension was up to Dr. Bockner - he had been the attending physician at Flores' last fight
>
> *Rosensweig (administrator of George Flores) v. State of New York #1*
> 1955, 146 NYS 589-599 at p. 592.

Increased medical awareness of direct short and long term square ring risks emerged throughout the 1950s. Medical journals documented case studies of neurological trauma (Taylor 1953; Neubeuger, Sinton and Densey 1959), recommended surgical or corrective treatment for eye injuries (Doggart 1955) for 'knockout' blows (Critchley 1957), cuts, lacerations and broken noses (Blonstein 1959). Expert boxing doctors contributed to an extensive post-war scientific discourse readily embraced by public licensing authorities. Amongst a web of technical examination and treatment procedures, scientific technology played an important range of functions in modern fight sports. As Blonstein and Clarke (1954) illustrate electroencephalographic (EEG) technologies provided suitable albeit imperfect screening data to determine athlete health and fitness, and were widely endorsed by public and private agencies to minimise the growing knowledge of common fight sports risks.

Within this backdrop the executor of deceased fighter George Flores alleged negligence against the NYSAC over the accuracy of compulsory medical screening tests. Recognised breaches in the enforcement of technical knockout

bans were alleged to have contributed to Flores' death at a Commission sanctioned nine-bout-card at Madison Square Garden on 29 August 1951. Various dimensions of Commission governance were reviewed with over 550 pages of written testimony considered by the court in three reported appeals.

The athlete's professional and personal histories, medical hazards, diagnostic methods, protective equipment and mandatory rules aimed at preventing fatal square-ring injuries were detailed. Seemingly flawed medical protections and limitations in the accuracy of E.E.G. technologies were insufficient to sustain the claim for *'conscious pain and suffering, hospital and medical expenses'* against the NYSAC. An additional general sum for wrongful death was also rejected in a third and final ruling eight years after the fatal contest (*Rosensweig #3* 1959). Questionable yet *honest* professional medical judgments did not warrant outlaw characterisation against either the examining physician or the NYSAC as the authorised appointment body.

> Defendant was engaged in a concededly dangerous activity. From his experience he knew that he would likely be struck by blows to the head. In fact, the very objective of the contestants, well known in advance, is to "knock out" the opponent and cause him to fall to the floor in such condition that he is unable to rise to his feet for a specified time. Decedent assumed the risks known to be inherent in the fight. We do not agree with respondent that there was a violation of a statutory duty. Because the State undertook to make a dangerous sport less dangerous by some regulation does not make the State an insurer of the participants
>
> *Rosensweig (administrator of George Flores) v. State of New York #2* 1958, 171 NYS 2d 912-915 per Coon J at pp. 914-915.

'Sugar' Ray Robinson, 1959

'Sugar' Ray Robinson
Brooke-Ball 1999, p. 83.

... and Joe Louis
Blewett 1999, p. 352.

The last of eight reported New York verdicts during the 1950s involved a challenge by world-middleweight-title-holder 'Sugar' Ray Robinson against duly enacted NYSAC rules. Robinson's nine-year reign highlighted the lucrative potential of non-heavyweight professional fight success during the 1950s. This high-profile companion of Joe Louis and one of many fighters to embark on a dubious musical career (Blewett 1999, p. 283) is revered for considerable ongoing influence on subsequent generations of young black men fighting at all competitive levels.

Robinson sought to stay a NYSAC ruling compelling the champion to accept a title challenge by Carmen Basilio scheduled for 13 April 1959 and a further stay against an order to vacate the title after failing to conform to Commission rules. Fight lore commentator Nat Fleischer testified on professional ranking procedures and the status of each contender for Robinson's belt. The verdict restored the NYSAC ruling with a fifteen-day period of grace allowing Robinson to accept the preferred challenge under the public ranking system. Failure to comply would allow the Commission to vacate the title. Any right to an internal Commission hearing and further review was considered unnecessary in lieu of prompt compliance with the verdict.

> Concededly, Basilio is the leading contender. Concededly, the rules give the Commission the right to vacate the title of a champion who has not defended his title for over six months. Admittedly, Robinson did not accept Basilio's challenge. Admittedly, Scholz, whom Robinson wishes to fight, is rated fourth among the contenders for Robinson's title. The material facts are clear and undisputed ... There is no point in directing an idle hearing which could serve no useful purpose
>
> *Ray Robinson v. Melvin L. Krulewitch, James. J. Farley Jr. Julius Helfand and the New York State Athletic Commission*
> 1959, 187 NYS 2d 937–945
> per Saul S Streit J at p. 943.

The Wisconsin and Rhode Island Public Licensing Commissions, 1956

> ... [W]e believe it to be a matter of common knowledge that the decisions of judges, umpires or referees in athletic contests and games are to be final and not subject to reversal unless the rules under which the contest or game is staged plainly so provide

State ex rel. Durando v. State Athletic Commission of Wisconsin
1956, 75 NW 2d 451-454 at p. 453 per Currie J.

Two cases under similar public Commission models indirectly revisited elements of NYSAC fight governance during the 1950s. Both independently endorsed prevailing opinion on the sanctity of publicly enacted sports rules.

The Supreme Court of Wisconsin in *Durando* (1956) supported the need for express legislative provisions to justify state Commission reversal of ringside adjudications as noted in *Tilelli* (1953). In the same year *Zanelli* (1956) endorsed a decision of the Rhode Island Racing and Athletics Hearing Board to reject a license application by an aging fighter, justifying the ruling '*against the interests of the individual and of the public*'. As with *Fitzsimmons #1* and *#2* (1914) and related paternalistic bans, judicial review in both cases endorsed the protective discretionary decisions of public licensing officials.

> It is well known that prize fighting is a vocation dangerous to the principals and open to exploitation of the public by unconscionable persons. The safeguarding of a professional boxer from serious bodily harm or even death and the maintenance of boxing exhibitions as a sport for the benefit of the public are matters of concern to the state. When the statute in question is read as a whole, it is plain that the legislature had these considerations in mind in prescribing a system of licenses to be administered by a state agency. In our judgment, it thereby clothed the commission with discretionary power to investigate not only the qualifications and standing of a person applying for a license to promote a boxing exhibition, but also to inquire into the temperament, training and character of an applicant for a boxer's license ... the public is entitled

> to air matches with a minimum of danger of physical harm to the principal and without suspicion that it is being exploited by them and others merely for personal advantage
>
> *Zannelli v. Di Sandro* 1956, 121 A 2d 652-657 at p. 456
> per Capotosto and Condon JJ.

Two Unsung Fight Legends

Two final verdicts warrant further investigation for their impact on race relations in modern United States history. Sammons (1988) identifies these anti-segregation rulings as landmarks of modern fight law. Redolent of previous controversies embedded in Western racial politics, these two unknown heroes of modern fight law challenged the scope of vague constitutional police powers justifying illegal prohibitions on mixed race fight sports.

I. H. "Sporty" Harvey sought a professional license under Texas law but the application was rejected under amendments to Commission rules barring inter-racial contests. "Sporty" claimed the laws infringed federal constitutional rights under the Fourteenth Amendment guaranteeing racial equality in all contexts. Federal Civil Rights prohibitions against overt racial discrimination were also invoked.

Evidence from Texas public officials emphasised a range of individual and collective hazards associated with inter-racial fighting. Laws aimed at preventing public disorder were entwined with inherent dangers provoked by

fight sports patronage to justify the prohibitions. Segregation protests were common in civil rights battles over education, urban land settlement and fundamental state and national constitutional freedoms. Fears of collective, volatile disorder after inter-racial sports fights validated the ban and its initial application to 'Sporty' in the broader public interest. Contrasting evidence highlighted widespread misconceptions over the communal, individual and moral welfare considerations at stake throughout the state of Texas.

> The evidence is undisputed that Negro and white professional players have engaged in the same baseball, basketball and football contests in Texas and that no disturbance due to such mixed contests ever occurred.
>
> It is also undisputed that amateur Negroes and whites have lawfully engaged in mixed sporting events, including boxing, in Texas without racial incidents. Some of those testifying to having witnessed such events without observing any race tensions or incidents were George Harond Scherwitz for 34 years sports editor of the San Antonio Light, Edgar L. Berlin, attorney and member of the Texas House of Representatives from Jefferson County, Dick Peebles, sports editor of the San Antonio Express since 1936, and Stanley Caufield, attorney, Deputy Boxing Commissioner of Texas and member of the Texas House of Representatives from El Paso
>
> *I.H. "Sporty" Harvey v. M.B. Morgan* 1954, 272 SW 2d 621-627 at p. 623 per. Hughes J.

'Sporty's' successful and gallant fight against the outlaw Texas prohibitions invoked concerns over institutionalised legislative racism under a growing body of protectionist state criminal law. Tensions between segregation policies and fundamental human rights under federal and state administrative laws

pinpoint the landmark ruling in *Brown v. Board of Education of Topeka* (1954) as an important example of federal judicial preparedness to temper overt, discriminatory and *legally enforced* racial segregation.

> It is true that the Legislature may have feared evil results from mixed boxing but this record establishes those fears to have been unfounded. Consistent with this record is what we believe to be common knowledge to the same effect
>
> *I.H. "Sporty" Harvey v. M.B. Morgan* 1954, 272 SW 2d 621-627 at p. 625.

Joseph Dorsey Jr. was similarly excluded by a virtually identical prohibition under Louisiana law. Dorsey sought a federal court injunction to restrain his State Athletic Commission from enforcing an identical segregationist rule. Both the law and public licensing rules were declared unconstitutional, supporting the *Harvey* ruling and ultimately compelling both states to repeal all outlaw segregation prohibitions.

> [T]his Court must hold with the plaintiff that, as to athletic contests, Act 597 of 1956 is unconstitutional on its face in that separation of Negroes and whites based solely on their being Negroes and whites is a violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States. Rule 26 [of the Louisiana State Athletic Commission] is of course no less unconstitutional
>
> *Dorsey v. State Athletic Commission* 1958,
> 168 F Sup 149-153 per Wisdom CJ at p. 152-153.

The IBC, 1955-1963

Sherman Act

§ 1	§ 2
... Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal ... Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor ...	... Every person who shall monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor ...

United States of America v. IBC NY Inc et al # 2 1955, 346 US 236-254 per Warren CJ at pp. 238-239 at nn. 1-2.

Outsiders examining the web of Sherman Act prosecutions in many professional United States sports leagues would be startled at the volume of anti-monopoly or anti-competition litigation reported during mid-century (Topkis 1949). The International Boxing Club (IBC) was the primary target for federal anti-trust scrutiny, replicating the tarnished history of elite professional fight sports management. In a background of inherent suspicion names including Bugsy Seigel, Al Capone, Jimmy Hoffa, Frankie Carbo and Blinky Palermo dominated both criminal and boxing underworlds of the early twentieth century. IBC divestiture proceedings followed extensive federal and

state prosecutions against prominent 'mob' affiliates under a voluminous body of state and federal *outlaw-fight-law*.

> "To better myself I join union. What a wonderful country for the working man I tell wife. Man can join union to better himself. For a long time union OK but then come repeal of prohibition ... bootleggers out of work, Capone gang, the syndicate ... Kickback, shakedown, protection all the same. All the hoodlums making big money selling protection to theatre owners. Bomb twentyseven theatres in one winter. Owners fight back. Hire lawyers, bribe politicians, stir up district attorney, police. Big row in newspapers. Maybe you remember? Seven men went to pen for extorting a million dollars from theatre owners".
>
> Dos Passos 1961, pp. 104-105.

All stereotypes of twentieth century mob history converge in this persistent attempt to reform a complex, multi-dimensional private fight empire. Chicago and New York Greek, Italian and Irish *families* were entwined in an overt Federal enforcement purge. Suspicions of dirty money, violent standover tactics and union shakedowns are embedded in a fusion of racial, commercial and criminal discourses. A roller coaster of investigative proceedings into pirate broadcast companies acting as the *colossus* (Kefauver 1952, p. 39) for illegal inter-state gaming and money laundering in theatre and transport industries, with tentacles reaching into professional baseball, horseracing and boxing, generated volumes of official and unofficial speculation despite extensive public regulatory oversight. Liebling (1956: 1982) documents IBC sponsored flights to heavyweight training camps and million-dollar-profits from television

and broadcast industries were some of lavish rewards generating considerable federal enforcement scrutiny.

> ... [T]he IBC was an extraordinary success right from the start. Between 1949 and 1953 it staged 80 per cent of all the championship fights held in the United States. In addition to arenas Norris and Wirtz controlled outright, the IBC had exclusive use of New York's St. Nicholas Arena and the city's three major league ballparks. Furthermore, the IBC established a virtual monopoly over the lucrative television market which proved to be a bonanza. Sponsors paid about $100,000 a week for the right to advertise their products on the network fights, while the fighters on the Friday Night Fight got only $4,000 apiece. The IBC actually became too successful for its own good, capturing the attention of the Justice Department which in 1952 initiated an anti-trust suit against the corporation
>
> Reiss 1988, p. 42.

The first reported ruling (*Shall* 1955) was a private claim. Shall managed Clarence Henry and was entitled to a percentage of any winnings as payment for licensed services. The claim sought a court order to freeze the unpaid sum and an account of any moneys paid to co-managers 'Stiefel and Palermo'. The order was rejected with complex rules governing the appropriate *forum* for litigation indicating the case was beyond the court's jurisdiction.

> In the instant case, plaintiff's testimony reveals that he has never engaged in the fight promotion business; indeed, a part of the injury alleged in his complaint is the frustration of his desire to "attain standing" as a championship professional boxing promoter. His sole venture into the field is the embryonic effort involved herein, which he

> carried on, apparently, as a sideline to his vocation as a salesman. By his own admission, he has never been licensed in that capacity by any boxing commission. We can conclude, at most, only that he desired to enter the business, but has never been engaged in it
>
> *Peller v. IBC Ill, Chicago Stadium Co. Del, Norris, Wirtz, Gibson, Cohen, Graziano, Gainford & Robinson # 3*
> 227 F 2d 593-596 at per Lindley DJ at p. 596.

Barney Peller's private attempt to activate a 'treble damages' clause linking the Sherman and Clayton Acts as 'two-pronged' deterrents for anti-trust conduct resulted in three lengthy rulings highlighting the context of the IBC fight monopoly. After the case was dismissed with a brief opinion (*Peller #1* 1955) District Judge Knoch in the Illinois division of the United States Federal Court rejected allegations Peller was victim of a *'conspiracy to frustrate ... attempts at promotion of specific professional boxing matches'* (*Peller* #2 1955). Three Supreme Court Justices unanimously sustained this ruling in *Peller # 3* (1955).

The dispute involved an attempt by Peller and his sponsor, the 'Foundation For Boys, Inc', to organise a promotion between 'Sugar' Ray Robinson and middleweight champion Rocky Graziano without licensing by the Cincinnati Boxing and Wrestling Commission. Each verdict agreed there was no valid fight contract, but merely a series of unenforceable, pre-contractual negotiations. Similarities with contemporary English amateur fight governance documented in *Treherne* (2002) provided the basis for rejecting this ambitious

quasi-public, privately instigated claim. The reality of the incomplete, inept contractual negotiations produced mere suspicions of an organised anti-trust conspiracy to prevent the bout, with insufficient evidence supporting the need federal statutory relief.

> When boxers travel from state to state, carrying their shorts and fancy dressing robes in a ditty bag in order to participate in a boxing bout, which is wholly intrastate, it is now held by this Court that the boxing bout becomes interstate commerce
>
> *United States of America v. IBC NY Inc et al # 2*
> 1955, 346 US 236-254 per Frankfurter J at p. 248.

The most profound influence of the Sherman Act produced seven reported verdicts, culminating in the complete dissolution of the IBC fight monopoly. Federal public authorities and several noted figures in professional fight governance engaged in a lengthy, 'winner-take-all' 'battle-royale' targeting extensive underground interstate mob-ruled economies. Prominent themes in previous generations of Western fight governance are evident in a renewed attack on the inherently criminality of the IBC and its influence on the United States professional fight industry.

> Of the 44 professional championship contests presented in the United States between June 16, 1949, the date of the first championship contest

> promoted by defendants, and May 15, 1953, the defendants promoted, or controlled the promotion of 36, or approximately 81% of them
>
> *United States of America v. IBC NY, IBC Ill, Madison Square Garden Co. NY, Norris & Wirtz # 3*
> 1957, 150 F Sup 397-422 per Ryan DJ at pp. 419 and 421.

A mountain of allegations targeted the breadth of IBC commercial, promotional, broadcast and management activities. Reams of prosecution testimony offer a detailed insight into all constitutive and regulative aspects of IBC business at the time. Additional federal taxation violations and money laundering from extensive fight media revenues were also considered by appeal federal judges.

By *USA v. IBC NY #3* several additional private management and sports administration bodies were enjoined in the cross-jurisdictional web of outlaw influence. District Judge Ryan's pivotal role as an expert judge presiding in the bulk of reported cases produced a lengthy divestiture order to formally dissolve the IBC and its outlaw criminal influences.

Several attempts to modify the rigidity of the order were rejected between 1957 and 1963. Constant judicial scrutiny and oversight by public Commission authorities in New York and Illinois ensured strict adherence to measures aimed at destroying any market influences of this suspicious mob economy.

IBC Divestiture Order, 2 July 1957

1. Definitions identifying each organisation subject to the terms of the order	2. Order binding on parties and all relevant officers & attorneys	3. All exclusive contracts involving professional boxers are null & void
4. All parties restrained from direct or indirect contracts to exclude a professional fighter from competing except under IBC management	5. All parties restrained from maintaining contracts with venue operators for professional contests	6. All parties restrained from the sale of radio, television, motion picture, theatre or related broadcasts & promotions
7. Restraints from agreements with radio, television and broadcast sponsors	8. Norris & Wirtz to dispose of all Madison Square Garden interests within five years	9. Trustees to administer sale of Garden interests owned by Norris & Wirtz
10. Trustee empowered to invest Garden profits	11. Payments for trustee services	12. Norris & Wirtz to sell all Garden stock
13. Norris & Wirtz banned from Garden voting procedures	14. Norris & Wirtz to resign as Garden directors	15. Norris & Wirtz barred from professional fight deals
16. Garden Corporation restricted to two annual championship promotions	17. Norris & Wirtz restricted to only two annual championship promotions for five years	18. Garden to be leased to alternate promoter licensed under NYSAC rules
19. Norris & Wirtz to divest interests in Chicago Stadium	20. Five year bans subject to extension through judicial review	21. IBC NY & IBC Ill to be dissolved in each state of incorporation
22. Pending dissolution IBC restrained from all fight business	23. IBC allowed to conduct business outside USA	24. Department of Justice to access all IBC books, documents & property
25. NY District Court retains jurisdiction over order		26. Defendants to pay all costs and taxes

United States of America v. IBC NY et al # 4 1957, 171 F Sup 841-845.

Parallel anti-racketeering prosecutions ensured prominent IBC members were attacked on other outlaw enforcement fronts. Complete destruction of this undesirable influence in United States society adds a variety of new racial, criminological and enforcement dimensions to the modern lineage of Western fight law.

Reported Federal Mob Prosecutions 1958-1962

Citation & Date	Issues	Outcome
Palermo v. United States of America 254 F 2d 130-131, 14 April 1958	Appeal against tax evasion convictions	All grounds rejected
Carbo v. USA, 277 F 2d 433-436 23 March 1960	*Habeas corpus ad prosequendum*	State claim granted
Carbo, Palermo, Sica & Dragna v. USA & R.W. Ware (US Marshall) 288 F 2d 282-287, 3 March 1961	Bail; *habeas corpus*; effect of bail bonds	Granted for remand & re-hearing
Carbo, Palermo, Sica & Dragna v. USA 288 F 2d 686-690, 15 March 1961	Bail revoked on re-hearing	Appeal denied
Carbo & Sica v. USA 300 F 2d 889-891, 22 January 1962	Evidence applicants will abscond	Granted for remand & re-hearing
Carbo & Sica v. USA 302 F 2d 456-457, 13 February 1962	Final bail application	Appeal granted & all appeals to be expedited

Threats to corrupt state criminal proceedings with violent standover tactics are well documented in modern fight sources listing Carbo, Palermo, Joseph Sica and Tom Dragna. Repeat attempts to apply for pre-trial custodial release were rejected due to realistic threats of violence against prosecution witnesses, or concerns each suspect would flee beyond the reach of United States authorities. Evidence included extensive financial, telephone and undercover surveillance, producing a voluminous dossier of unlawful transactions spanning over two-decades of private fight administration overseen by various public corporate, criminal and commission licensing regimes. The inability of public regulatory oversight to erode these legacies of private fight management and contractual arrangements is a prominent theme in modern United States fight governance. Fears of Carbo's ill health and incapacity were considered insufficient to outweigh any risks to the administration of justice, and each co-accused served considerable jail time for their organised, criminal fight sports activities.

Themes

Charles 'Sonny' Liston is perhaps the most tragic victim of elite Western heavyweight custom. The champion was involuntarily enmeshed in the web of 1950s outlaw mob governance, and despite the promise of a virtuous reign is generally seen as the stereotypic face of the exploited 'minority' fighter. Liston is continually read through his more prominent opponents. Suspicions of fight fixing, drug abuse and a well-publicised addiction to Las Vegas casinos trap

Liston in the gutter of United States sports celebrity. As with other fallen sports heroes of combative fame such as baseball icon Ty Cobb (Stump 1993), retirement from the limelight led to aimless wanderings, producing many sad, lonely footnotes in an otherwise controversial, revolutionary heavyweight career.

Charles 'Sonny' Liston 1956 and Frankie Carbo,
Tosches 2000.

Complex inter-racial tensions between involving black, Italian and other 'minorities' during the 1950s added to the violent, surreptitious fight management history embedded in modern United States criminal law records. As a malleable, able, poverty-stricken Afro-American youth within the fighting template identified by Kirson-Weinberg and Arond (1952: 1969), Liston produced a legacy replete with all stereotypes, virtues and harms forged by previous generations of elite African-American professional champions. Within this template Liston is the ideal victim, tempted into and wasted by recognised

exploitative hazards of modern fight sports fame, celebrity and largesse. No legal, political or moral protections directed at commonly recognised boxing harms were available to avert Liston's involuntary, fatal plight. Inadvertent links with the mob and a history of juvenile crime were somewhat averted by his square-ring successes, nevertheless poor 'Sonny' is arguably the most tragic high-profile victim of the organised criminal influences prevalent throughout 1950s professional fight culture.

§§§

xi. Benny 'Kid' Paret, Rubin 'Hurricane' Carter, Cassius Marcellus Clay, and the 'Greatest' Muhammad Ali

Overview

Kennedy, King and Malcolm X dominate public records of the tumultuous 1960s. Diverse, multi-media accounts of the time produce multiple historic truths influenced by widespread speculation over contentious political, social and cultural *facts*. Conservative or conspiracy theories defy ideas of any uniform, agreed truth.

During the political and social turmoil of the 1960s Cassius Clay became the most renowned sports celebrity of the twentieth century. No other modern heavyweight has won or ceded the title three times. In a professional career spanning eighteen years Clay's celebrity status relied equally on his confrontational personality within and outside the ring.

Alongside Ali's lengthy contribution to United States military law, two additional controversies paralleled the emergence of the self-appointed 'greatest' fight hero of *all times*. The square ring death of Benny 'Kid' Paret and a series of protracted appeals challenging wrongful murder convictions against Ruben 'Hurricane' Carter and his non-fighting ally John Artis, spanned each

highly publicised life transition of Muhammad Ali's public celebrity. While Paret's death revisited the well-worn path of inherent fight risks, Carter and Ali's legal contributions bear little direct relationship to the outlaw character of professional boxing *per se*. Nevertheless, the strong, brash persona of each 'negroe' fighter is embedded in judicial records spanning two decades of state and federal legal scrutiny. The tragedy of Paret's death, the volume of modern narratives on the Ali enigma and the 'Hurricane's' outlaw persecution provide a fitting cluster of themes indicative of the racial, social and political tumult of the 1960s.

Benny 'Kid' Paret v Emile Griffith, 1962

The 1960s is the beginning of a post-modern world, where multiple vantages generate varied depictions of single, controversial events. Deaths in or associated with popular elite sports are highly controversial in today's news environment. Truths informing stark or innocuous public events are often confounded by multiple accounts published at the time or in subsequent reflective inquiries. Agreement between writers on *what happened* in significant social and sports controversies is seldom evident.

3 versions of death

Benny "Kid" Paret ... was 24 years old when he died ... Before entering the world championship bout with Emile Griffith (who was 23), Paret, in a fight of 10 rounds against Gene Fulmer, had already "taken severe punishment", as the sports press reported unanimously. Then, several months later, Paret took again a heavy series of blows to the head and body from Griffith. In the 12th round he was quite groggy, his neck muscles were hypotonic, and his head bounced in every direction that the **25 or more hammering blows** could drive it. At last, Paret dropped unconscious ... Neurosurgery was ineffective; the "kid" died after 9 days of prolonged coma ... Had he survived, Paret probably would have suffered the permanent damage that is known to follow such a long series of blows. This fact is securely established by the transferral of experimental results from animal to man

The reaction worldwide was predictable but no less disturbing, and according to TV commentator Don Dunphy, the tragedy caused television executives to do a rethink about the then popular *Friday Night Fights* programme.
Based loosely on the rumour that Paret had accused Griffith of being gay at the weigh-in for the fight, a stage play called *Blade to the Heat* attempted (unsuccessfully) to recapture the drama when it ran briefly at the Public Theatre in New York in late 1994

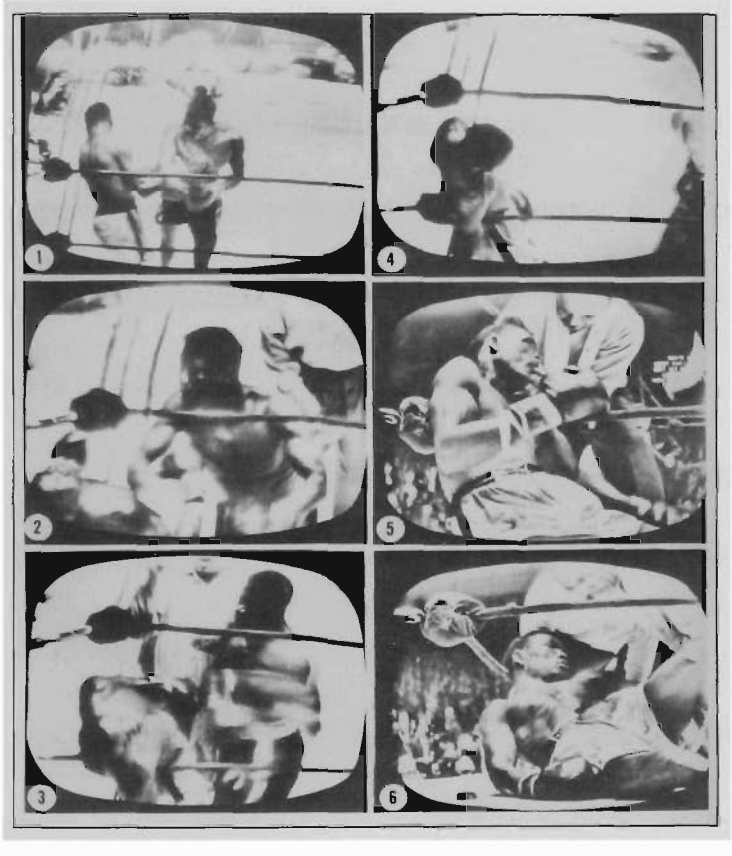
...

Paret died on his feet. As he took those **eighteen punches** something happened to everyone who was in psychic range of the event ... As he went down, the sound of Griffith's punches echoed in the mind like a heavy ax in the distance chopping into a wet log

Unterharnscheidt 1970, p. 463; Blewett 1999, p. 127; Oates 1994, pp. 103-104 citing Mailer.

Benny 'Kid' Paret was first the square ring fatality televised in the United States. A re-reading of each version of the incident pinpoints several features informing the production of popular narratives on single news incidents (Hodder 1994; Manning and Callum-Swan 1994). *Fixed* and *floating* narrative

content produce multiple discursive truths, granting credibility to all published versions irrespective of different interpretations of core *factual* issues. A central element in any narrative involves the distinction between *dominant* and *subordinate* readings. In Paret's case, each dominant focus emphasises a different number of punches leading to the ultimate square ring fate. The fact of Paret's death is the obvious *signifier* for a broad range of narrative themes informing the content, tone and character of each published commentary.



Benny 'Kid' Paret v. Emile Griffith
Andre and Fleischer 1975, p. 270.

Unterharnscheidt illustrates the physiological effects of Emile Griffith's bludgeoning ring-craft. This authoritative medical voice, directed principally to an audience of knowledgeable practitioners, emphasises the ubiquity of permanent physical injury and death associated with combat sports throughout modern and ancient history. Paret's fate is persuasively situated in this context to verify and enhance the scientific credibility of well-documented fights sports risks, favouring prohibition, outlawry and hard paternalistic harm prevention to avert similar future tragedies.

Experiments on monkeys, rabbits and cats are unlikely to be granted state or private ethical approval in twenty-first century society. In attempting to mimic ring conditions, Unterharnsheidt developed several experimental scenarios aimed at inducing *KO* and sub-*KO* force blows using gloves of different sizes and weights, and detailed measurements of the acceleration and impact on the unsuspecting research subjects. Regardless of various methodological and ethical flaws, such investigations produced valuable results on the physics of punching with ongoing influence on the development of offensive and defensive square-ring techniques.

> **Rotational traumas** were investigated in the squirrel monkey (Samiri sciureus) ... in terms of their mechanics and pathomorphology. Angular accelerations between 100,000 and 400,000 rad/sec^2 were employed. These produced a complete spectrum of clinical and morphological findings, ranging from normal to immediate unconsciousness to primary traumatic injuries and immediate death of the animal. In the initial phase of a rotational trauma, the accelerated skull moves ahead while the

> motion of the brain is delayed on account of its inertia. This produces considerable strain and shearing forces ... rotational impact lesions were located radially symmetric along the midline of the brain. Findings included subdural hemorrhages caused by tearing of bridging veins, subarachnoidal hemorrhages situated mainly close to the midline, straining and tearing of vessels in cranial nerves, in superficial layers of the cerebral cortex, and with increasing impact intensity, in deeper portions of the brain ... These experiments, too, have direct significance for the boxing injury, for the experimental results yield insights into the pathogenesis of subdural hemorrhages; these account for more than 75% of ring incidents, and thus occupy first place in the cause of boxer deaths, including acute fatalities in the ring
>
> Unterharnsheidt 1970, pp. 441-443.

Blewett (1999) merges the problematic signifier of *death* with the equally problematic signifier of television. Highlighting the *medium* of transmission this sports narrative focuses on the ethics of the direct and immediate publicity of the tragedy. Widespread criticism influenced media executives to re-think the merits of fight telecasts. Allegations of Griffith's sexuality become part of the story, adding titillation to an unfortunate, violent tragedy. Interdisciplinary medical and media studies involving frame-by-frame scrutiny of the 'knockdown blow' (Govons 1968) are loosely related to generalist fight lore by providing interesting although somewhat deceptive scientific findings.

> With the loss of balance, the boxer began his descent to the canvas under the force of gravity and in the fall displayed reflex activity. In the frames where head position could be clearly followed, the head turned abruptly to gaze in the direction of the fall; this was followed by a drop to the knee, then to the glove fist or elbow; the head was always the last portion of the body to reach the canvas. From the punch to the complete loss of body posture, less than 0.8 second elapsed. If the head were a freely

> falling object, and fell 6 feet, it would take 0.6 second for the head to reach the ground. Considering that the descent of the head did not begin until after an interval of about 0.3 second, and taking into account that the fall was impeded by the extremities and muscle tonus of the neck, the rate of the fall was too rapid to be considered a passive motion. For these reasons, it seemed that the boxer literally threw himself to the ground as an overreaction to the punch
>
> Govons 1968, pp 61 and 82.

Mailer (see Oates 1994, pp. 103-104), from close proximity to the action, pulls no punches. His monumental excursion through *The Rumble In the Jungle* (1975) remains a classic of late-twentieth-century fight lore. Rather than applauding or denouncing either combatant, Mailer emphasises the shock value of the incident as an artistic moment in sport, laden with brutal, lethal reality. No attempt is made to shroud the fatal effects of each blow. Like a photograph of an unsuspecting United States president with a mystery bullet careening through the back of his skull, Mailer's reality is blunt, tempting each reader to explore personal reactions through graphic analogy. Mailer's words *take the reader to ringside* where death invariably occurs from time to time. Something of the tragedy, emotion and shock experienced by all at the scene is darkly conveyed. The unfortunate event, rather than 'bull-shitty' causal medical or tele-visual explanations, becomes the principal signifier in its brutal totality. While allied news, social and scientific narratives *problematise* the incident, perpetuating factual discrepancies over the number of punches landed, Mailer

lays down the ultimate harsh fact: death is an ever-present, albeit infrequent reality in modern square ring sports.

Unlike Fitzsimmons, Griffith was not charged with any criminal offence. Public licensing regimes and strict controls over late-modern sports governance ensure immunities from homicide prosecutions in contemporary square ring deaths. Autopsy findings or medical evidence on specific causes of injury, and public debates on the incident remain to be examined in this poignant controversy, where each new story adds a layer of factual uncertainty to the ultimate search for truth.

Ruben 'Hurricane' Carter #1-8, 1969-1986

Rubin 'Hurricane' Carter and John Artis were convicted of three counts of murder. The crime was particularly brutal. Two armed *Negroe* men entered the *Lafayette Bar and Grill* in Paterson, New Jersey, killing the bartender and two patrons. Another patron was shot in the head but miraculously survived. Witnesses were unable to positively identify each accused.

This prominent example of a wrongful conviction is immortalised in late-twentieth popular film and literature as a prize-fight of triumph against a justice system unwilling to concede its self-perception of right. For over twenty-years Carter and Artis were wrongfully imprisoned and denied legal redress

despite numerous questions over outlaw New Jersey police investigation tactics. Hirsch (2000), Chaiton and Swinton (2000) and Carter's prison biography highlight abundant racial fears invoked by the fighter's combative resistance to state police and prison authority. Each example of Carter's resistance justified additional state counter-suppression, only resolved by gradual publicity of the case in Western news, literature and popular music.

Trial convictions were sustained largely on the basis of circumstantial testimony and police interviews conducted less than an hour after the incident. A brash white car with *out-of-state plates* and tailfins resembling *butterflies* matched descriptions of the getaway car driven from the bloody scene. A *live .32-caliber S. & W. long bullet* was found under the right front seat of Carter's vehicle along with and *a live 12-gauge shotgun shell* in the trunk *under boxing gear*. This was sufficient to hone attention on the two unfortunate suspects, with all subsequent investigative leads seeking to prove the inevitable. As with all criminal suspects, Carter's persistent claims of innocence had no credit, with investigators convinced their line of inquiry represented the correct, undoubted truth.

Rubin 'Hurricane' Carter KO's Emile Griffith, December 1963, Chaiton and Swinton 2000.

Carter conformed to the 'brash nigger' template. The flamboyant professional boxer was known for considerable square ring potential and loved the high life. After his arrest, Carter disobeyed every rule applicable to the innocent murder suspect. His persistent anger towards the circumstantial case resembles many prominent miscarriages of justice under United States law before and since. Artis was an accidental accomplice, guilty by association and equally unable to convince the trial jury or numerous appeal courts of his innocence. The vociferous nature of Carter's denials contrasted with the dubious integrity of New Jersey's criminal justice system and one of its longest serving criminal investigators.

Reported appeals against conviction and sentence by Rubin 'Hurricane' Carter and John Artis 1969-1986

Citation	Issues	Outcome
State of New Jersey v. Rubin Carter & John Artis 255 A 2d 746-755 15 July 1969	Appealed convictions; unlawful arrest & doubtful state testimony	All grounds rejected
Rubin Carter & John Artis v. State of NJ 25 L Ed 2d 130, 27 Feb 1971	Certiorari to Supreme Court of New Jersey	Denied
State of New Jersey v. Rubin Carter & John Artis 345 A 2d 808-829 10 December 1974	Convictions unsafe due to new evidence, false & withheld state testimony	Retrial denied
State of New Jersey v. Rubin Carter & John Artis 347 A 2d 383-388 11 February 1975	New, recanted & withheld state evidence; discovery of police files	Retrial denied
State of New Jersey v. Rubin Carter & John Artis 354 A 2d 627-635, 17 March 1976	Retrial & overturn trial verdict; state withheld evidence	Retrial granted
State of New Jersey v. Rubin Carter & John Artis 449 A 2d 1280-1309, 17 August 1982	Review of suppressed evidence & prejudicial effect; 36 grounds argued	Retrial denied
Rubin Carter & John Artis v. J.J. Rafferty (Rahway State Prison) & C. Deitz (Parole Board) 621 F Sup 533-560, 13 November 1985	Unconstitutional violation of due process rights; failure to disclose polygraph results; habeas corpus	Granted
Rubin Carter & John Artis v. J.J. Rafferty (Rahway State Prison) & C. Deitz (Parole Board) 781 F 2d 993-999, 17 January 1986	Federal power to grant habeas corpus against state institutions; 'dangerousness' of Carter justifying detention; state psychiatric evidence	Motion granted

Carter and Artis were unable to compete against the culture of a criminal justice process determined to produce results. Each claim of state illegality during the 1960s and 1970s was firmly rejected by state and federal appeal courts. Only fulltime devotion to Carter's cause from a group of benevolent Canadians offered realistic potential to challenge the coercive, questionable, misguided uses of state enforcement power. Allegations of suppressed testimony, illegal coercion of defence witnesses, and failure to disclose significant prosecution evidence gradually emerged after both wrongfully accused languished in New Jersey prisons for over two decades.

> During the course of a criminal investigation and preparation for trial, the State accumulates a large quantity of raw data. Much of this information or material can be fairly characterized as lacking in any real probative value. As to such material, ordinarily, the State would have no obligation to disclose, absent proper inquiry ... In the present case, though, both the October 11 tape and the promises made to Bradley clearly possessed the capacity to have affected the jury's evaluation of the credibility of Bello's and Bradley's identification testimony. The State, therefore, had the obligation to disclose, even absent inquiry
>
> *State of New Jersey v. Rubin Carter & John Artis* 1976, 354 A 2d 627-635 at p. 635 per Sullivan J granting a retrial due to doubtful identification testimony against Carter and Artis.

Carter overtly failed to succumb to desired state labels directed at any compliant, remorseful 'convicted' murderer. This bind is prominent in the film *Hurricane* (1998) based on Chaiton and Swinton's (2000) involvement in the saga. Coercive state discipline, power, and wilful defiance of authority

generated a confrontational spiral reinforcing Carter's inevitable guilt. Within hidden stories of unethical conduct by state officials, notions of justice crumbled in stereotypic fashion against two more black *minority deviants*.

> In this case ... the State['s] ... sole concern appears to be Carter's general dangerousness to society. Moreover, the psychiatric examination which the state asks us to order for Carter relates only to his dangerousness and does not relate to assuring Carter's appearance in future federal proceedings. Although a psychiatric examination might be justified where the State presents evidence that a petitioner's mental condition may keep him from honoring a federal court's process, an examination for this purpose was not, and is not, sought in this case ...
>
> *Rubin Carter & John Artis v. J.J. Rafferty (Rahway State Prison) & C. Deitz (Parole Board)* 1986, 781 F 2d 993-999 pp. 995-996 per Garth CJ.

Boxing and its respective disciplines contributed to Carter's resilience. Equally, it contributed to a public perception of Carter's ongoing threat to peaceful, law-abiding society. Each of his denials provided the very justification for his continued incarceration. His own conduct produced an ongoing series of implied dangers associated with his release, despite the credibility of defence arguments and meticulous investigation by lay volunteers.

Eventually, *truth* prevails as federal judicial scrutiny unravelled the myopia of state criminal justice practices. The boxing career so central to Carter's outlaw persona was forever lost to the ravages of ill health, age, fatigue and the might of state institutional power over any unsuspecting citizen. As with Liston and

countless non-fighting 'minority' black suspects (Gooding-Williams ed. 1993), Carter perfectly conforms to the stereotypical criminal template where every defiant move is met with greater, lawful combative force. The incredulity and audacity of Carter's denials provided an unacceptable yet predictable challenge to state power, concealing unethical law enforcement regardless of any private or public interests compromised along the way.

From Cassius Clay to Muhammad Ali

Ali at the 1960 Rome Olympics and with Angelo Dundee and Drew 'Bundini' Brown, Miami 1964, Colling ed. 2001.

Cassius Clay is synonymous with naïve, youthful, *pretty* sports innocence. After victory in the Rome Olympics and his return from the international stage to Louisville, Clay experienced the fate of many black athletes in the post-emancipation history of United States racial exclusion. A fighting self-aggrandisement and perceived manipulation by wealthy white Southern

backers forged Muhammad Ali's destiny as successor to Sonny Liston's tainted, mob-governed throne. Ali's public celebrity template is indicative of 'Papa' Jack Johnson's confrontational racial paradigm in a more vociferous global political, media-driven, wartime setting.

***Ali v. Liston* #2**
Andre and Fleischer 1975, p. 161.

Speculation surrounds Clay's transition to Ali. This is equally attributable to his brash personality, multi-media public depictions and the contentious political times. Ali's timing could not have been worse, or better! Courted by Elijah and Malcolm, two notorious Black Muslim leaders challenging the stark realities of Western political and social ideals, *Muhammad X* continually attracted the

media's focus in contentious public debates on race, civil rights and the Vietnam War. *Side taking* is prominent in accounts of Ali as a sporting icon and public figure throughout the 1960s and the remainder of the century. Invariably, his own words provoked, challenged and defied dominant ideals of the virtuous fight-sports ethos with racial politics and his sublime poetic ringcraft his principal fighting legacies.

> "I'm young. I'm handsome. I'm fast, I can't possibly be beat. I'm ready to go to war right now. If I see that bear on the street, I'll beat him before the fight. I'll beat him like I'm his daddy. He's too ugly to be the world champ. The world's champ should be pretty like me. If you want to lose your money, then bet on Sonny, because I'll never lose a fight. It's impossible. I never lost a fight in my life. I'm too fast; I'm the king. I was born a champ in the crib. I'm going to put that ugly bear on the floor, and after the fight I'm gonna build myself a pretty home and use him as a bearskin rug. Liston even smells like a bear. I'm gonna give him to the local zoo after I whup him. People think I'm joking. I'm not joking. I'm serious. This will be the easiest fight of my life. The bum is too slow; he can't keep up with me; I'm too fast. He's old, I'm young. He's ugly, I'm pretty. It's just impossible for him to beat me. He knows I'm great. He went to school; he's no fool. I predict that he will go in eight to prove that I'm great; and if he wants to go to heaven, I'll get him in seven. He'll be in a worser fix if I cut it to six. And if he keeps talking jive, I'll cut it to five. And if he makes me sore, he'll go like Archie Moore, in four. And if that don't do, I'll cut it to two. And if he run, he'll go in one. And if he don't want to fight, he should keep his ugly self home that night"
>
> Hauser 1997, p. 60, reference omitted.

Each addition to the mountain of Ali-lore adds depth to popular feeling for or against his brash fighting personality. The Muhammad Ali Centre, sponsoring a dvid/interview compilation titled *Through the Eyes of the World* (2001),

reproduces diverse opinions by noted journalists, politicians and athletes prominent in late-twentieth century Western culture. Ring craft, celebrity, political influence and ailing health are all prominent themes. An autobiographical volume (1977), countless recorded and reproduced television, radio and ringside interviews, and a complex range of conservative, revisionist and radical political narratives highlight the champ's ongoing global sports and political influence. His notoriety, adoration and popularity are unique, justifying his immortality as one of modern history's noble sporting greats in contrast to many less eloquent predecessors or compatriots.

> Oscar Bonavena is big and tough and has two words of English. They are "motherfucker" and "cocksucker". He is a white Argentinean and he is so strong he would probably argue that power is the only ingredient necessary to make good prize-fighters. While not as big and powerful as that other Argentinean, Luis Angel Firpo, el Toro de las Pampas, who once hit Jack Dempsey so hard that Dempsey landed in a sportswriter's lap. Bonavena is still a good puncher, who can always take a man out with one of his wild cannonball shots
>
> Torres 2002, p. 37.

Ali's biography is the product of selectively defined snapshots of twenty-year world heavyweight career as well as a holistic portrait of the child, the retired fighter and the ailing victim of chronic Parkinson's syndrome. Analyses of core periods in his biographical path include his rise to heroism amidst a backdrop of rebuked Muslim transformation and dominant fears of Black Panther counter-nationalism (Remnick 2000). The *Rumble in the Jungle* and its

significance as a global socio-political sports event (Mailer 1975), and prominent moments against noted opponents including Charles 'Sonny' Liston (Tosches 2000), George Foreman (Torres 2002), and 'Smokin'' Joe Frazier (Kram 2001) focus on the champion's influences beyond conventional heavyweight lore.

Rules of My KYTCHEN

1 PLEASE TO KEEP PUT except on express permission of cooke

2 COOKE shall designate pot scourers pan polishers peelers scrapers and COOKE has supreme **AUTHORITY AT ALL TIMES.**

3 NO REMARKS AT ALL WILL BE TOLERATED concerning the blackening of toast the weakness of soupe or the strength of the garlic stewe.

4 What goes in stews & soups is **NOBODY'S** dam business.

5 If you **MUST** sticke your finger in something stick it in the garbage disposal.

6 DON'T CRITICIZE the coffee you may be olde and weak yourself someday.

7 ANYONE bringinge guests in for dinner without **PRIOR NOTICE** will be awarded thwacks on skull with sharpe object.

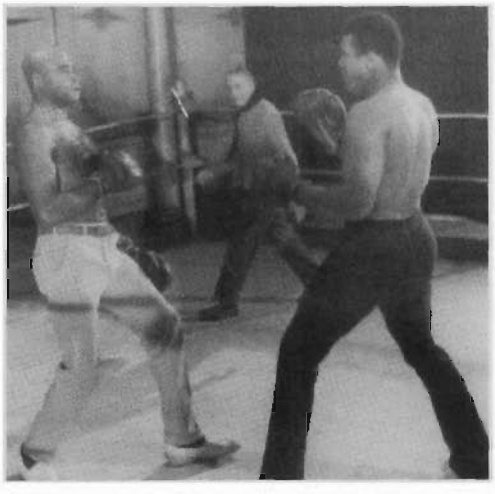
8 PLEASE WAITE Rome wasn't burnt in a day and it takes awhile to burne the **ROASTE.**

9 IF YOU MUST pinche something in this **KYTCHEN PINCHIE the COOKE!**

10 this is my kitchen and if you don't believe it **START SOMETHING.**

Ali's Kytchen, Brockris 2000, p. 23.

Detailed biographical works offer lengthy narratives of career, childhood and retirement histories (Hauser 1997). Literary accounts of notable moments appear in large edited volumes (McIlvanney 1996; Corris and Parish eds. 1996; Rayvern-Allen ed. 1998; Halberstam ed. 1999), coffee table pictorials (Strathmore, 2001) and insider fan-based (Oates 1994) or family (Ali 2000) biographies. Comparative psychoanalytic studies documenting political, athletic, and popular cultural legacies (Reemtsma 1998), and stylistic, poetic memories of noted encounters or revealing moments (Bockris, 2000) also provide snapshots of this 'ultra-elite' fight celebrity, contrasting in volume and form with standard narratives of lesser heavyweight champions or contenders.



'The Greatest' with Malcolm X and James Earl Jones, Hauser 1997.

Chronological biographies and collections of journalistic and magazine reports (Early ed. 1998) combine with film compilations, documentaries, archival

histories and Hollywood life reconstructions. Credible first-hand accounts of encounters with *the champ* are increasingly rare. Davis Miller's important memoirs of both good and troubled times with the champ as he approached his sixtieth year (1998; 2002) emphasise courage, stoicism, dedication and humour as the effects of Parkinson's disease produce their own day-to-day challenges. The voluminous edited collection of *Best American Sports Writing of the Century* (Halberstam ed. 1999) devotes a prominent section to the 'Greatest of All Times', and is one of several examples of this champion's immense sporting, celebrity and global popular appeal.

> Even when he's talking about race - when he says, "I don't want to be bombed, I don't want to be set on fire, I don't want to be lynched or have no dogs chase me" - he's expressing more of a general fight than he is a real racial attitude. I think he finds it safer to be with Negroes, his own kind. It allays his fear of all those things his father used to tell him the whites'd do to him. He keeps this tight little Negro group around him and he's scared to death to venture away from it
>
> Hare 1974 in Sage ed. pp. 370-371 references omitted.

Ali & the young Beatles, Strathmore 2001, p. 55;
Carter and Dylan, Hirsch 2000.

Ali v USA #1-2 and Ali v NYSAC #1-2, 1968-1971

Ali's official photographer, Howard L. Bingham (2001) provides a detailed review of Ali's *greatest fight* against the United States military draft. The text says much about the public dimensions of a contentious legal case, combining direct observations and photographs drawn from first-hand contact with the champ. Two reported federal court appeals and a further two New York State court rulings provide more technical legal insights, covering familiar ground in validating Ali's five-year professional fight licensing ban.

In April 1960 Cassius Clay registered for military service in Louisville, Kentucky, but received no documented classification by the Board. By 1962, Clay had received 1-A classification by the same Board. Under this ruling the promising contender was declared suitable for active service. In March 1964 Clay was reclassified 1-Y and declared ineligible for service after failing a *physical examination* and intelligence test. This classification indicated he was *not qualified* [for service] *under current standards.*

The Louisville board again reviewed Clay's record and declared him suitable for induction without further physical or psychological tests. The following day Clay was mailed notification of the board's decision, along with a *Special Form for Conscientious Objector.* The latter was duly filed along with a claim to review his official classification status. The board allowed Clay to personally appear

and state a case against the 1-A classification, and a claim for judicial review was lodged immediately after rejection of this claim.

A federal draft board rejected Clay's claim of 1-O *conscientious objector* status, unconvinced by his listed employment status as a *Minister (of Religion) of the Lost Found Nation of Islam (Black Muslims)*. A Federal Bureau of Investigation (FBI) inquiry and an exhaustive paper trail involving the Kentucky and federal draft boards endorsed the 1-A classification, leading to protracted judicial proceedings after the champ refused compulsory military induction.

The maze of hearings, re-hearings, determinations, classifications and re-classifications provides a lengthy chronological record of all bureaucratic, military procedures invoked in this contentious scenario. Thirty-seven legal grounds were considered for federal judicial review. The primary aim was to overturn a jury conviction and sentence of five-years imprisonment for refusing military induction. By extension, a ban imposed by NYSAC officials immediately on notification of the conviction was subject to familiar grounds of judicial review.

> Emmett Till and I were about the same age. A week after he was murdered in Sunflower County, Mississippi, I stood on the corner with a gang of boys, looking at pictures of him in the black newspapers and magazines. In one, he was laughing and happy. In the other, his head was swollen and bashed in, his eyes bulging out of their sockets and his mouth twisted and broken.

> His mother ... refused to let him be buried until hundreds of thousands marched past his open casket in Chicago and looked down at his mutilated body. I felt a deep kinship to him when I learned he was born the same year and day I was
>
> Ali 1977, pp. 39-40.

In challenging the validity of military draft processes, the structure, composition and administration of national and regional draft boards were scrutinised at length. The unsuccessful claim suggested boards could only make lawful rulings binding on *minority* populations if the federal government ensured proportionate racial membership and participation in core decision-making.

The United States Supreme Court emphatically rejected Ali's claim by stressing the administrative discretion granted to board personnel was in the best interests of efficiency and national defence. Equal apportionment on the basis of race is potentially inefficient and impractical. Therefore, judicial endorsement of federal military bureaucratic decision-making mirrors rulings on state athletic commission powers under identical administrative law principles.

Propositions on Military Powers under the US Constitution
Ali v. US #1 397 F 2d 901-924, June 6th 1968

Just government & reciprocal obligations justify conscription	Conscription is justified under the constitution in the national interest	Malapportioned Draft Boards are not unconstitutional or in breach of military law
No need for a per-capita proportion of Negro Draft Board members	Local Board errors overturned by internal and judicial review	Negro citizens have no right to Negro Board
De-facto political authority of Board was no bar to malapportionment	Board rectified errors alleged with full re-consideration	Draft rules are distinct from a criminal trial and penalty
Exemptions to ministers of religion are matters of legislative grace	Refusal to accept induction justified conviction	No under-representation of Negroes proved
Exemptions are congressional not constitutional	Discovery of military files is a matter of judicial discretion	No automatic right to discovery on all military procedures
No constitutional right to objector status	No error to refuse access to Board documents	Evidence justified 1-A classification
Board subject to appeal to overrule or reverse classification	Most documents evidence available from public sources	Board to examine beliefs of conscientious objector
Appeal Board decision supersedes local board	Limited power to review Board decisions	Evidence rejected objector status
Courts reluctant to substitute Board decisions	Applicant to establish religious vocation & exemption	Board procedures are informal compared with court trials
Board procedures non-judicial / non-criminal	Congress sanctioned 'orderly drafting'	Habeas corpus rectifies the conviction

Evidence sought to establish the systematic exclusion of Afro-Americans (Negroes) from the composition of federal draft boards. Under federal legislation, as opposed to constitutional decree, boards were to be *composed of citizens who are not members of the armed forces*. Each board consisted of five personnel directly nominated by the President on recommendations from state governors. Population statistics for Kentucky and Texas highlighted significant Afro-American under-representation in local draft boards. Much of this evidence came from published military reports readily available to the public. In both jurisdictions the level of under-representation suggested administratively endorsed racial bias. In Ali's case *there was no Negro member on any of the local or appeal boards*.

> According to the ... National Advisory Commission on Selective Service (the Marshall Commission), in Kentucky, only 0.2% of 641 local board members is Negro, though 7.1% of the total population is Negro. In Texas, only 1.1% of local board members is [sic] Negro, though 12.4% of the total population is Negro. In the City of Louisville, the total population (1964) is 389,044, of which the white population is 310,717 and the Negro population is 78,245, or 21% of the total population. The Jefferson County, Kentucky, total population (1960) number 610,947, of which there are 532,057 whites and 78,350 Negroes, or 12.8% of the total population. In Harris County, Texas, of a total population of 1,243,158, 19.81%, or 246,351, is Negro ... the unequal percentage of Negroes on draft boards was not peculiar to Kentucky, Texas or the South, but the imbalance was nationwide
>
> *Cassius Marsellus Clay Jr. v. The United States of America*
> 1968, 397 F 2d 901-924 at pp. 909-910 per Ainsworth CJ.

Regardless of these statistics the composition, internal appeal procedures and related administrative practices were declared *fair and just*. The protection of domestic, national and international interests through discretionary military powers was endorsed in each ruling. Provided these powers had legislative sanction and viable internal appeal procedures, unequal racial composition did not ensure board decisions were biased, undemocratic, discriminatory or unlawful.

Conscientious objector status involved a different form of administrative discretion. The decision to grant or revoke this classification ultimately rested with the federal executive officials charged with overseeing national military affairs. The court emphasised Ali's dominant career paths fused prize-fighting and Muslim clerical service. Throughout, it is clear federal authorities viewed both occupations with scepticism.

The sanctity of military bureaucracy and state delegation of administrative authority is preserved. This appears logical given the importance of national security noted throughout each verdict. In turn, this reasoning provided some judicial support for the legitimacy of prize-fighting as *employment*. The failure to criticise this vocation's historical illegality provides tacit acceptance of the sport's entrenched legitimacy in late-modern society. While prize-fighting gains through unquestioned judicial assumptions, Muslim attitudes to war were unravelled with clear emphases on confrontation, hatred and separatist racial

nationalism. For once, focus is shifted from the contentious nature of fight sports to another 'minority' practice founded on threatening and contradictory religious, political and violence-based precepts.

> Elijah Muhammad has said:
>
> ...
>
> The truth of the white race will make all black mankind hate them. The truth of the white race and kind will make all black mankind hate them regardless of their color; black, brown, yellow or red. The truth of the white race is a part of that secret which was withheld by Allah to allow them, the devils, to live their time, six thousand years ... If you understood it right you will agree with me that the whole Caucasian Race is a race of devils
>
> Malcolm X, at the time a 'minister of the Muslims, said of an airplane accident in which more than 120 white people were killed:
>
> Well, somebody came and told me that he really had answered our prayers over in France. He dropped an airplane out of the sky with over one hundred twenty white people on it, because the Muslims believe in an eye for an eye and a tooth for a tooth, but thanks to God or Jehovah or Allah we will continue to pray and we hope that every day another plane falls out of the sky
>
> *Cassius Marsellus Clay Jr. v. The United States of America*
> 1968, 397 F 2d 901-924 at p. 919 n. 4.

Throughout, each legal opinion illustrates the undercurrent of political turmoil at the time. The religious teachings of the Lost and Found Nation are ridiculed as war-mongering security risks. Ali's assent to these teachings sits alongside his dubious occupation as a professional fighting athlete. Arguably, the entire saga offered to over-politicise federal judicial functions, while risking to usurp democratic governance by public bureaucratic monopolies. The lengthy ruling identified thirty significant points of constitutional and military law, and

upheld a variety of national public interests to force another black fighting legend into a period of athletic and social exile.

> The prizefighter in America is not supposed to shoot off his mouth about politics, particularly when his views oppose the government's and might influence many among the working classes who follow boxing. The prizefighter is considered by most people to be merely a tough, insensitive man, a dumb half-naked entertainer wearing a muzzled mouthpiece. He is supposed to stick to his trade - fighting and keeping his mouth shut and pretending that he hates his opponent
>
> 'In Defense of Cassius Clay'
> Floyd Patterson with Gay Talese, 1966
> reproduced in Early ed. 1998, pp. 64-71 at pp. 64-65.

On 24 December 1969 an appeal to the United States District Court sought to overturn a NYSAC license ban. The claim was rejected and affirmed several previous decisions validating the Commission monopoly and discretionary licensing powers throughout in the State of New York.

> To implement its various objectives, the Commission is entitled to wide freedom both for expert technical controls and for more romantic, even "mid-Victorian" judgments of moral, quasi-aesthetic value
>
> *Muhammad Ali v. The Division of State Athletic Commission of the Department of State of the State of New York and Edwin B. Dooley, Albert Berkowitz and Raymond J. Lee as Chairman and Members thereof*
> 1969, 308 F Sup 11-19 at p. 16 per Frankl DJ
> citing *Fitzsimmons #2, London Sporting Club* and
> *Cazdilla v. Dooley* 1968, 286 NYS 2d 510, an appeal against a NYSAC decision to reject a female professional wrestling license application.

Civil rights and abuse of process arguments failed to convince the federal court. The decision-making expertise of NYSAC public monopoly governance is prominent in the reasoning. Ali's conviction and five-year sentence for refusing military induction provided ample justification for the conclusion *that a breach of legal duty in the face of sanctions so serious is a bar to licensure.* Despite posting $5,000 bail, the five-year term of imprisonment was crucial to upholding the Commission's decision. Spurious arguments over discrimination on religious grounds, cruel and unusual punishment, insufficiency of evidence and the irrationality or illegality of the decision were similarly rejected.

FBI phone taps and several private communications with Malcom X, Dr. Martin Luther King and other notable activists offer a fascinating supplement to this confrontational political setting. Federal military, police and surveillance practices are documented at length, illustrating the scope of official interest sparked by the champ's contentious stance. Significant policy implications are evident throughout the narrative in *Ali #3* (1970). All attempts to compel public disclosure of authorised federal surveillance procedures were rejected as contrary to national security and public safety.

> No one would seriously doubt in this time of serious international insecurity and peril that there is an imperative necessity for obtaining foreign intelligence information, and we do not believe such gathering is forbidden by the Constitution or by statutory provision [under state or federal telecommunications law]
>
> *United States v. Clay* 1970, 430 F 2d, 165-172 at p. 172.

Ali finally had a victory in the combative setting of the federal courts on 14 September 1970. While the 'Hurricane' languished in Rahway State prison New Jersey for most of Ali's fight career, compulsory public licensing ensured a final site of judicial review. Ali applied for a federal injunction, arguably contrary to New York state law (*Muhammad Ali v. Division of State Athletic Commission of the State of New York* 1970, 316 F Sup 1246-1253 per Mansfield DJ at p. 1248) to renew his 'licensure' after the controversies of the Vietnam War subsided. Irrespective of jurisdictional questions the court was forthright in granting Ali's claim. Throughout, it is clear the suspension was no longer justified in a tempered political environment or the best interests of fight sports administration. The ruling is significant for extensive documentation of Commission licensing trends. The right to box is often granted to persons with lengthy criminal records. In a direct reversal of judicial logic the verdict endorses the right to a professional fight license despite the severity of Ali's anti-draft conviction and five year imprisonment penalty.

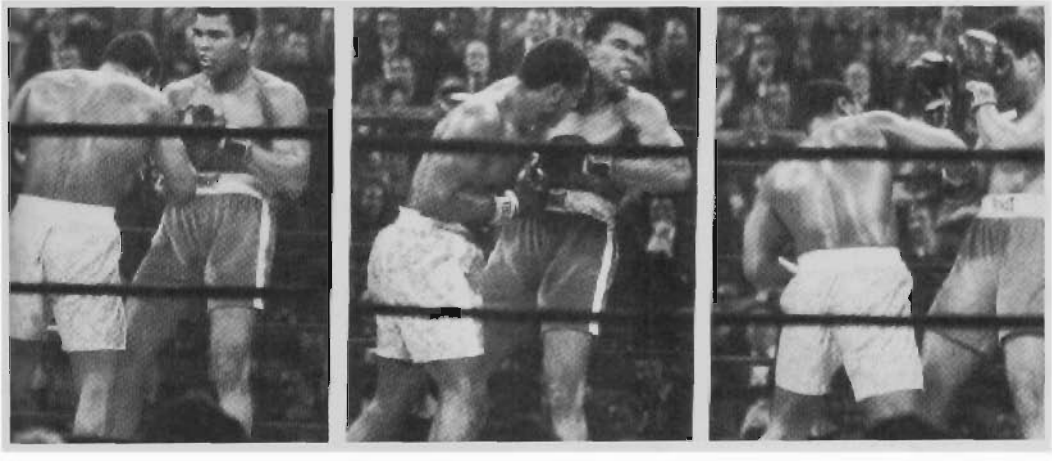
> In 1970 the Commission granted a boxing license to a parolee who had been convicted of three felonies, attempted robbery in the second degree in 1960, attempted robbery in the third degree in 1955, and robbery in the third degree in 1953. Also in 1970, the Commission granted a license to an individual convicted of simple assault on a police officer, a misdemeanor, in 1969. A number of licenses were granted to convicted felons and misdemeanants in 1969, but it does not appear whether the Commission so acted before or after the denial of Ali's application. In any event, 35 licenses were granted to felons and misdemeanants in 1968 and 1969, subsequent to the suspension of plaintiff's license by the

> Commission in 1967, which was similarly based on his refusing induction
>
> *Muhammad Ali v. Division of State Athletic Commission of the State of New York* 1970, 316 F Sup 1246-1253 at p. 1248.

For the Commission to justify ongoing enforcement of the ban it was ruled the conviction should ideally relate *directly to the standards of character and conduct properly demanded* within fight sports. Professional fighting ability remained largely unaffected by criminal convictions. [P]*roclivity to corruption* or *the general reputation of professional boxing as a sport* might warrant denial of licenses in cases involving fraud, dishonesty, or organised crime. None of these were evident with ancillary arguments emphasising the likelihood Ali would serve his five-year imprisonment term in part or full were rejected as remote and unforeseeable. The court also referred to the *criminal character* or *profile* of the typical draft offender. All relegate Ali's outlaw status to a trivial, 'one-off' incident, largely irrelevant to any ongoing license prohibition.

The court stated boxing was Ali's *chosen trade* and primary source of income. As Bingham and Wallace (2001) and many others indicate the suspension during Ali's his prime athletic years cost millions in lost ring earnings. University campus speeches provided some remuneration unparalleled by professional championship 'prizes'. In addition, extensive reference to statistical data on Commission licensing practices offered little doubt for judicial intervention

given the outlaw backgrounds of most licensed professional fighters. To single out Ali with further licensing restrictions, based largely on irrelevant or remote justifications, amounted to a discriminatory evasion of constitutionally recognised equal protection rights generating arbitrary, discriminatory, unequal treatment. As such, Ali was wrongly and unfairly singled out under routine Commission licensing rules.



Ali v. Frazier, Madison Square Garden, 1971 Riger 1980, p. 177.

Themes

> Nineteenth century African-American philosopher Frederick Douglass described these [pugilistic] matches as "among the most effective means in the hands of the slaveholder in keeping down the spirit of insurrection". At the peak of his career, Muhammad Ali captured Douglass's scepticism in describing how he felt when he performed for the crowd: "We're just like two slaves in that ring. The master gets two of us big old black slaves and let us fight it out while they bet: 'My slave can whup your slave.' That's what I see when I see two black people fighting"
>
> Bingham and Wallace 2001, p. 30.

Racial politics were fundamental to the courtroom fights of Muhammad Ali and Ruben 'Hurricane' Carter. As with Jack Johnson, Ali's legal experiences confronted many elements of United States law and enforcement activity within and beyond the square ring. In contrast, Benny 'Kid' Paret is tragic minority face of modern Western boxing. While Ali and Carter received various levels of persecution, neither were total victims of the exploitative physical, economic and performative risks inherent in modern fight sports.

Post-1970 narratives on Ali, boxing and medical connections between *punch drunk* symptoms emphasise the obvious long-term effects of fight sports on brain, nervous and motor functions. Images of Ali as a sixty-year old, celebrating memorable glories and forgettable defeats, are prominent signifiers of the dangers to short and long-term health from repeated sparring and professional competition. Regardless of strict rules and their enforcement by fight sports officials, referees, managers and seconds, Ali's physical degeneration provides ample evidence inherent fight sports risks affect even the greatest combatants of all times.

As *rope a dope* tactics for the *rumble in the jungle* were developed to tire George Foreman and ensure retention of title honours Ali could take solace. Most commentators ignore the New York license ban in twentieth century fight lore. Ali remains recognised as the uncontested champion for the duration of this tumultuous period. The incremental effects of legal, financial and global fight

demands ultimately consumed the champ after one-too-many final shots at the lavish rewards and physical costs of elite fight immortality.

> There are nearly constant tremors in his hands, particularly the left, and when he is concentrating or anxious (as when he feels compelled to perform in front of television cameras), his head shakes, more so when he is tired. His facial features have the muscular rigidity - the 'mask' - that is associated with Parkinsonism. He is more expressive with friends and with children. His eyes are inordinately sensitive to light; for this reason, he often wears sunglasses. When in a bright room or in direct sunlight, he blinks rapidly. In the hundreds and hundreds of hours I've spent with him, only twice have I seen him frustrated by his health. 'God gives people trials,' he says. 'This is my trial. It's His way of keepin' me humble'
>
> Miller 2002, pp. 46-47.

§§§

xii. 1966 - 1987

Overview

Eleven reported verdicts span the period from the tumultuous 1960s to the contentious heavyweight reign of 'Iron' Mike Tyson. Four rulings offer further clarification of NYSAC powers and fight contracts used by Madison Square Garden for elite title contests. The remaining cases involve several recognised heavyweight professionals well-documented in late modern fight lore. A combination of public licensing rules and private fight contracts generated several disputes relating to employment, media broadcast rights and fatal square ring injuries.

Emile Griffith, 1966

While his nemesis Rubin Carter was contemplating the first in a series of fruitless criminal appeals, Emile Griffith moved on to win the world-welterweight title. As with 'Ruby' Bob Fitzsimmons, Griffith was a highly skilled fighter in several weight-divisions. In January 1966 he was permitted by the NYSAC fight for the world middleweight title. A contract was signed to fight Dick Tiger on 25 April of that year. Griffith won the Commission endorsed bout and gained simultaneous title status in two weight divisions.

NYSAC Rule H subdivision 6 outlawed professional fighters from holding championship titles in more than one division. Griffith argued the rule was invalid as an unreasonable restriction on his freedom to trade as a professional fighter. The claim was rejected with three arguments justifying the restriction.

The Commission argued Rule H was a valid regulatory measure to *insure active competition, to promote safety* and to *avoid* [public] *confusion* regarding legitimate title standings. Despite Griffith's efforts the decision upholds previous verdicts asserting Commission monopoly powers over all aspects of fight governance including title prerequisites. The ruling also provides tacit support for early United States and English decisions suggesting no inherent property rights are vested in title honours.

> ... [T]he existence of championship titles may safely be said to be an integral and necessary part of the sport of boxing. A commission appointed to regulate that sport, and vested with sole jurisdiction over it, necessarily possesses authority to regulate, for the area over which it has jurisdiction, the manner in which titles shall be won, lost and vacated. Such authority in the Commission is implicit in the grant to it of exclusive jurisdiction over the sport of boxing in the State of New York
>
> *Griffith v. Krulewitch (and members of the New York State Commission)*, 1966, 273 NYS 2d 168-170 per Gold J citing *In Matter of Robinson v. Krulewitch* 187 NYS 2d 937 at p. 941.

The practical effect of the verdict remains unclear from the reported source. Andre and Fleischer (1975, p. 272) indicate Griffith ceded the lower division title. Commission rule-making and enforcement policies can therefore lawfully restrict an exceptional fighter's ability to compete in multiple weight divisions. Again, little criticism of the public governance monopoly informs the content, characterisation and outcome of this dispute.

Emile Griffith v. Italian Nino Benvenuti,
New York, 17 April 1967,
Brooke-Ball 1999, p. 210.

Ali v. Liston #2, 1966 and 1971

Ali v. Liston #2 was the champ's first successful world title defence, preceding his outlaw status during the end of the 1960s. The fight is generally regarded as a low-point in heavyweight lore. Highly divided public emotions for or against the brash youngster, and failed promises of redemption after organised crime influences plaguing Liston's title reign, generated widespread suspicion over

the credibility of the deposed champ's efforts. In the background, a series of complex multi-party fight contracts generated a lengthy dispute over gate-recepts from *Ali v. Liston #1* with interesting ramifications for the heavyweight title lineage.

The first reported verdict involved an agreement by on-the-scene promoter William MacDonald to pay *Inter-Continental Promotions* a specified amount of $625,000 for exclusive rights to stage *Ali v. Liston #1* in Florida. Ali was victorious after seven lacklustre rounds. Allegations of cheating by the Liston camp emerged after the fifth-round. Ali complained of a 'stinging' lotion allegedly transferred from Liston's gloves during the clinches. Only the quick work of Ali's camp ensured sufficient time to regain his vision. Rumours of a faked shoulder injury preventing Liston's appearance beyond round seven ensured a new heavyweight reign under highly questionable circumstances.

Gate-receipts were well below rates identified in the Inter-Continental agreement. The company would receive gross returns of $225,000 after the gate was assessed. MacDonald was sued for the balance of $400,000 under the contract and claimed no obligation to meet the short-fall by suggesting the contest was an illegal prize-fight. As with English case *Doyle* (1935) and several New York decisions culminating in the *Baski* rulings, Western courts are highly reluctant to support arguments where the party alleging illegality seeks to avoid their own partly- or fully-performed contractual obligations.

Prize fight terms considered in Intercontinental Promotions Inc #1
1966, 367 F2d 293-303 per Wisdom CJ

MacDonald contract: *contestants referred to as 'fighters'; involved a "fight' for the heavyweight championship'*

Defendants claimed 'pugilistic exhibition' *is not a* ***'fight', 'encounter'*** *or a* ***'prize-fight'****; unlawful contracts involve* ***'fight or encounter'***

Sullivan 1890: ***prize-fight*** *has no technical common law meaning* at p. 297

Dr Johnson *defined* ***'prizefighter'*** *as 'one that fights publicly for reward'* at p. 297

Olympic Club 1894: lawful *'exhibitions & glove-contests [in] chartered athletic clubs'* at p. 299

Encyclopedia Brittanicca 1929: ***Boxing:*** *'the art of attack and defense with the fists protected by padded gloves' distinguished from* ***pugilism*** *with 'bare fists or some kind of light gloves affording little moderation of the blow'*

Webster's New International Dictionary 2nd ed:
'fight'*: a 'violent physical struggle for victory';* ***'encounter':*** *any 'meeting with hostile purpose';* ***'exhibition':*** *'any public show; a display as of feats of skil (sic)'*

s. 548.03: ***Pugilistic exhibition, encounter or fight****, with or without gloves … is … any voluntary fight or personal encounter, by blows, between two or more persons, for money, prize of any character, points, distinction or fame, or other … value, or upon the results … any money or … value is bet or wagered, or for which an admission fee is charged, directly or indirectly* at p. 296

Definition invoked in verdict:
'Pugilistic exhibition': *'… any voluntary fight or personal encounter by blows *** at which an admission fee is charged'; 'public fights for money' or ' in short* ***'prize fights''****; applies to 'all fights of that character *** whether witnessed by many or by few'* (citing *Seville*, 1892); ***'exhibitions'*** *are a 'public show' or 'display' of pugilism as opposed to 'private fights'* at p. 297

'To accept the notion that a pugilistic exhibition is a mere demonstration of shadow boxing or sparring, one would have to assume that the Florida legislature put such an offense on the same level as bare knuckle fighting. Both offenses would be subject to a fine of not less than $2,500 or more than $5,000 or imprisonment for not more than five years' at p. 298.

Definitions of unlawful 'prize-fighting' and lawful 'sparring' and 'boxing' exhibitions under United States law were revisited in the reasoning. Distinctions between prize-fighting in 1890s social culture and the character of *Ali v. Liston #1* on 25 February 1965 were central to granting Inter-Continental's claim. Historically, legislative policies targeted outlaw bare-knuckle fighting. Significant qualitative distinctions legitimised modern 'civilised' exhibitions of skill, with gloves, not calculated to do great bodily injury.

Chief Justice Wisdom should be considered a recognised boxing justice (see *Clay* #2 1970). Pierce Egan's *Boxiana* (1818), *Pugilistica* (1906), the *Gentleman's Magazine* (1731-1832), Heinz's *Fireside Book of Boxing*, Andre and Fleischer (1959), and rulings in *Sullivan* (1890), *Seville* (1892), *Olympic Club* (1894), and *Purtell* (1896) are all cited to emphasise the historical transition from outlaw fight customs to modern fight sports. The 'Boston Strong Boy's' biography *The Life and Reminisces of a 19th Century Gladiator*, and more generalist sources including Menke's *Encyclopedia of Sports* (1944) all provide insights to assist the court. From the 23rd Olympiad (688 BC) until relatively recently, protective rather than potentially lethal gloves, removal of shields and a defensive ethos forged the evolutionary development of professional fight sports, largely due to the adoption of the Queensberry amateur rules. A cumulative body of technical, medical and safety-based modifications produced a fundamental distinction between lawful and outlaw Western sports fighting.

Florida law allowed contests by authorised public or private organizations. These included *the American [L]egion, disabled American veterans, or companies or detachments of the Florida national guard, Y.M.C.A., junior chamber of commerce or any college which is a member of any recognized amateur* athletic association or the [charitable] Circulo Cubana Club (*Intercontinental Promotions #1* 1966, p. 295 n. 3). The court accepted the legality of the 'Clay-Liston entente cordiale', and declared a valid municipal license was granted to the Veterans of Foreign Wars of the United States to oversee the event. The outstanding sum of $400,000 was agreed under a legally valid contract, and a re-trial reversing the verdict in MacDonald's favour was granted to establish precise rights and liabilities before a duly instructed jury.

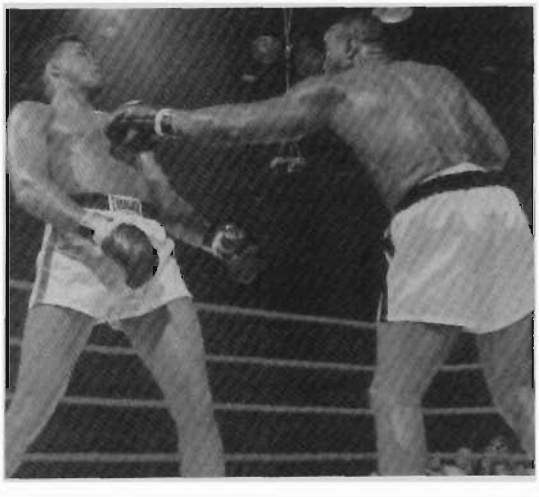
An appeal was lodged after MacDonald passed away. Executors of his will continued to resist the claim despite further trial and Federal Court declarations favouring payment. In contrast to *Inter-Continental #1* broader questions regarding the historical illegality of prize fighting were overlooked. Proof of insufficient organizational involvement by the Veterans of Foreign Wars (VFW) in planning, advertising and staging *Ali v. Liston #1* were alleged to deny the obligation for outstanding payments. Evidence indicated Florida authorities were duped into believing the VFW was active in promoting the contest, with evidence demonstrating several unlicensed organisers, vendors, ticket-collectors and revenue distributors comprised a web of sub-contracted, non-VFW members. A token inducement of $500 to print VFW logos on the tickets

and provide complimentary entry for registered members underpinned a more sinister reality involving use of a valid municipal fight license as a shroud for unauthorised management of the contest.

Public policy demanded strict conformity to Florida licensing provisions. The clear intention to side-step this requirement justified a declaration to outlaw the contract. Inter-Continental was permitted to retain any sums paid by MacDonald with no further legal action possible.

> The conclusion is inescapable that the Liston-Clay fight was not held under the auspices of the VFW. The use of the organization's name was a mere fiction to avoid the prohibitory Florida statute, and representation on the printed tickets of VFW sponsorship was an obvious subterfuge designed to present a nominal compliance with Florida law

Inter-Continental Promotions, Inc v. The Miami Beach First National Bank and Balsden (executors of W.B. MacDonald)
1971, 441 F 2d 1356-1361 at p. 1360.



Ali v. Liston #1, Miami, 25 February 1964
Brooke-Ball 1999, p. 209.

Any challenger to the heavyweight title has important rights at stake. Title-holders often used elaborate corporate organizations and sub-contracting procedures to organise events and maximise profits. *Intercontinental # 2* indicates delegation of management and organisational functions to sub-contracted corporations or fight clubs may compromise such events against identified public policy considerations. This begs the question: is Ali's first title is valid? The correct sporting answer was reinforced in Miami during a controversial victory inside two minutes where Ali successfully defended his crown won under contracts later declared void by the Florida district of the United States Supreme Court.

George Foreman, 1974

I have squandered my resistance
For a pocket full of mumbles

Such are promises
All lies and jest

Still, a man hears what he wants to hear
And disregards the rest

Paul Simon
cited in *George Foreman and Associates Ltd v. Foreman & Saddler*
1974, 389 F Sup 1308-1317 at p. 1314 n. 2
per Peckham DJ.

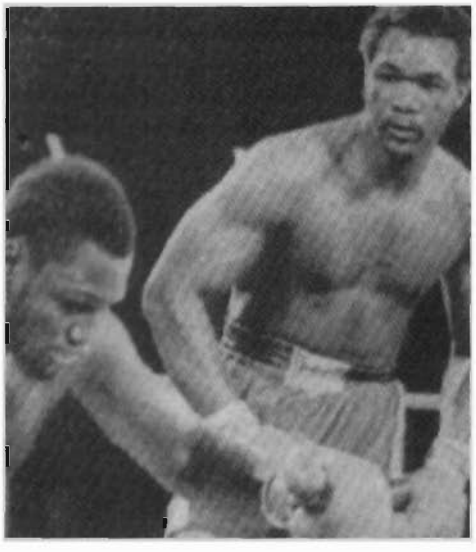
A series of contracts between George Foreman, manager and trainer Charles 'Dick' Saddler and a company established to administer payments for professional exhibition bouts were litigated in 1974. The company sought to enforce the contracts, while Foreman and Saddler claimed each was void and illegal under Californian laws where the agreements were drafted and signed.

The company was formed specifically to organise and promote Foreman's exhibitions, and stipulated fifty percent of all gate receipts were to be paid to the heavyweight contender. A further agreement triggered the dispute after Foreman defeated Joe Frazier in Kingston, Jamaica, for the world title in January 1973. Foreman's winnings from the bout against Joe 'King' Roman in Tokyo on 1 September 1973, and the title defence against Ken Norton on 24 March 1974 were added to this sum in the corporate fund. Associates claimed a payment of $350,000 to Leroy Jackson indirectly covered the sums owed and challenged any further payment obligations.

> For many years, boxing was plagued by revelations of sordid abuses. Managers were accused of living off the earnings of impoverished fighters who received virtually nothing in return, having bartered away the right to their future earnings in exchange for the most meagre present returns; close underworld connections often resulted in defrauding the public through the 'fixing' of fights. These abuses ultimately prompted the extensive statutory and regulatory framework administered by the State Athletic Commission, a framework ... evincing 'an unusually strong policy' of public regulation, one of whose primary goals is 'to provide safeguards for the protection of persons engaging in the activity.' The statutes and regulations indicate a clear purpose to safeguard boxers against the temptation to mortgage their futures in exchange for relatively meagre present consideration; in light of that

> purpose, it is appropriate and even necessary to interpret advance payments (such as those made to Foreman under the 1972 Agreement) as falling within the scope of the 'services' which trigger the licensing requirement and other statutory protections
>
> *George Foreman Associates Ltd & Martin Erlichman v. George Foreman & Charles R. Sadler et al*
> 1974, 380 F Sup 1308-1317 at pp. 1313-1314 per Peckham DJ.

The California State Athletic Commission was charged with regulating all fight contracts with 'sole authority and jurisdiction over the licensing of participants in boxing contests'. Within this framework, Associates agreed to obtain the best fight deals for Foreman. The company had power under a series of private contracts to approve Foreman's choice of manager. The court recognised this dimension of the agreement governed one of a boxer's most important decisions with significant implications on athlete autonomy.



Joe Frazier v. George Foreman, 22 January 1973, Kingston, Jamaica, Brooke-Ball 1999, p. 217; ***'Evergreen' Foreman v. Michael Moorer***, 1994 at p. 244.

Associates suggested its contracted functions were confined to advancing money for training expenses, travel expenses incident to training and boxing, and guaranteeing Foreman annual salaries of $25,000. The court indicated these were services relating to Foreman's boxing activities, subject to mandatory Commission authority. The historical rationales for public Commission regulation and the protection of boxers from under-handed dealings by entrepreneurial managers were central justifications for this ruling.

Again, the New York *Baski* rulings were highly persuasive. Both disputed contracts required mandatory lodgement with the Commission. Each agreement contained several terms outside the licensing provisions involving manager obligations to athletes. The failure to lodge the contracts and appear before the Commission was crucial in determining the invalidity of the agreements, thereby invalidating Foreman's claim. ''Unusually strong' public regulatory policy' supported this outcome.

Although none of the contests arranged under the unlicensed contracts were to be held in California, the court indicated Commission regulations applied to all contracts between boxers and managers, with no express legislative clause or rule precluding mandatory licensing. The agreements were ultimately declared unenforceable, largely to the detriment of Foreman's personal, corporate and professional interests. All monies paid into court were to be returned to Associates for redistribution to their original source. The court provided several

compelling justifications for mandatory public licensing and lodgement of all elite fight contracts, despite evident problems where contests are scheduled to take place outside the relevant Commission's jurisdiction.

> ... [T]he private interests of the parties cannot overcome the interest of the state in the enforcement of its laws; however, where the public cannot be protected because portions of a transaction have already taken place, and where one party would be unjustly enriched at the expense of another, the courts have fashioned equitable remedies to mitigate the harshness of the result [against Associates]
>
> *George Foreman and Associates Ltd v. Foreman & Saddler*
> 1974, 389 F Sup 1308-1317 at p. 1316.

Eugene 'Cyclone' Hart, 1974

Eugene 'Cyclone' Hart was injured in a competition sanctioned by the Commonwealth of Pennsylvania State Athletic Commission. The precise nature of injuries is unclear in a joint negligence claim directed against the Arena, the Commission and the appointed referee. Each defendant raised a counter-claim invoking the doctrine of sovereign immunity. This ensures negligence cannot be asserted against employees of state agencies 'acting within the scope of their [lawful] authority' (*Hart v. Spectrum Arena Inc* 1974, p. 313). Courts have the power to sidestep this doctrine where the interests of justice demand or where proof indicates a state employee acted beyond the employer's lawfully delegated powers. In such cases recognised Western accident compensation principles impose personal liabilities where negligence is established.

The court ruled sovereign immunity applied to all Commission staff including those charged with licensing or ringside duties. Each agent suspected of negligence could not be exposed to legal liability. The doctrine sought to protect 'high' officials executing authorised statutory functions, with 'lesser' officials subject to reduced immunities based on the scope of employment authority and the character of harm sustained by the aggrieved claimant. Where conduct is not intentionally malicious, wanton or reckless the protective element of the doctrine can be invoked. The court found insufficient evidence to warrant setting aside the doctrine, thereby rejecting the 'Cyclone's' negligence allegations.

Jackie Tonawanda, 1975

> Patronizing male chauvinism of this type not only has no place in our legal system, but should not be countenanced at any level in our society and has hopefully been relegated to the historical oblivion which it deserves
>
> *Application of Jacqueline Garrett aka. Jackie Tonawanda v. New York State Athletic Commission and E. Dooley*
> 1975, 370 NYS 2d 795-798 at p. 798 per Frank J.

Fight law characterises female muscularity in various ways. Narratives of female contests are peppered throughout a male dominated sports history

(Kent 2000). Variants of the Western male elite standard are subordinated in sports literature, media and popular fight chatter. Female fight narratives generally offer trivialised snapshots of fight lore or appeals to allow women access to develop combat skills. Legal argument and decision-making often avoids core ethical divisions between public interest and private exclusion for aspiring professional female fighters.

New York law provides a rare endorsement of a legal right to professional female sports fighting contrasting with express prohibitions under various Australian, English and United States laws. Jackie Tonawanda sought judicial review and revocation of a decision rejecting a professional license by the NYSAC. Overt criticism of paternalistic and restrictive public administration powers abounds in a rare statement supporting the aggrieved fighter's claim. Justice Frank considered gender restrictions infringed equal and inherent rights to public licensing privileges in an uncharacteristically liberal judicial approach to female sports fighting.

> The image that boxing presents to the public is all important to its acceptability as a professional sport. It is 'the manly art of self-defense'. The licensing of women as professional boxers would at once destroy the image that attracts serious boxing fans and bring professional boxing into disrepute among them, to the financial detriment of those whose livelihoods depend upon this activity.
>
> Neither is the Commission satisfied that women boxers would not be unduly endangering their reproductive organs and breasts; despite the use of whatever protective devices may be available. The avoidance of serious physical injury is a major responsibility of the Commission.

> Finally, the Commission is not satisfied that there are a sufficient number of qualified women available as professional competition for petitioner
>
> *Garrett v. New York State Athletic Commission,*
> 1975, 370 NYS 2d 795-798 at p. 797 documenting
> NYSAC[ommissioner] Dooley's response to Jacqueline Garrett's
> professional fight license overturned by Judge Frank.

Distinct approaches to gender inclusion under Western fight law are shrouded by a uniformly hidden contradiction. Only New York law provides a legal expectation or right for women and other marginal groups to box professionally. Most Western rulings challenging paternalism in these cases subsume private rights to choose a preferred sport with imprecise statements of intervention justified under equally vague public interest considerations. Both sex and age restriction cases silence broader classes of aspiring boxers through unqualified acceptance of paternalistic, prohibitionist rationales. Support for licensing restrictions enacted by experts in public fight sports governance generally overshadows the narratives of individual athletes to endorse prohibition on seemingly objective grounds. In most cases, affected athletes are forced to pursue acceptable, safe recreations.

Madison Square Garden, 1977

The Garden today.

In 1977 the New York division of the Federal District court considered the legality of a series of fight contracts between Garden managers, Ernie Shavers and Muhammad Ali. The agreement resulted from negotiations between Teddy Brenner, matchmaker at the Garden, and Shavers' business manager Frank Luca. By 16 May 1977 the agreement was close to finalisation and Luca was asked to accept the Garden's offer. Shavers, Luca and Joseph Gennaro, the challenger's manager, signed a telegram forming the basis of the Garden's claim.

> ERNIE SHAVERS WILL BOX MUHAMMED ALI FOR THE HEAVYWEIGHT CHAMPIONSHIP OF THE WORLD IN MADISON

> SQUARE GARDEN ON OR BEFORE OCTOBER 10 1977. SHAVERS IS TO RECEIVE A MINIMUM GUARANTEE OF $200,000.00 IF BOUT IS NOT SIGNED FOR BY JUNE 15 1977 $10,000.00 WILL BE FORFEITED TO SHAVERS. SHAVERS WILL GRANT MADISON SQUARE GARDEN BOXING OPTION OF FIRST REFUSAL ON FIRST AND SECOND TITLE DEFENSES AT TERMS MUTUALLY AGREEABLE. THANK YOU
>
> *Madison Square Garden Boxing Inc v. Ernie Shavers* 1977, 434 F Sup 449-452 at p. 450 per Owen DJ n. 1.

Venue managers sought to enforce this seemingly legally binding agreement. This would invalidate any alternate contracts arranged by or for the promising contender. Garden agents later reached a multi-million dollar broadcast agreement to televise the Ali v. Shavers bout under the presumption of a valid contract. Brenner prepared a detailed letter outlining core obligations including an express non-competition clause. Evidence indicated the Garden also held an option contract with Ali for a title contest between 1 September and 10 October 1977, scheduled to expire on 1 July 1977 unless Garden agents exercised the option by 30 June.

The verdict indicates this chain of transactions produced a legally enforceable contract in its final form. Despite numerous irregularities, an enforceable contract with sufficient detail was negotiated and completed. In discrediting attempts by Shavers and Luca to evade any binding legal obligations, the court highlighted several personal fight services specific to the agreement justified its enforcement. Mandatory NYSAC approval, severe economic harm sustained by

the Garden and evidence of completed, signed agreement were all influential factors supporting this outcome.

> ... [T]he Garden is, to a measurable extent, irreparably injured as a viable promoter of major boxing matches were Shavers with impunity able to simply disavow a prior agreement with the Garden to take advantage of a later-made more attractive offer. The Garden's credibility could be destroyed in the eyes of boxing managers, as well as various media representatives, such as television producers, or others, who, in reliance, enter into further contracts that in fact may well represent the major source of income from the event being promoted ... In any event, it is beyond question that the balance of hardships is in the Garden's favor
>
> *Madison Square Garden Boxing Inc v. Ernie Shavers* 1977, 434 F Sup 449-452 at p. 451 per Owen DJ n. 5 and p. 452.

Eddie 'Flame' Gregory, 1980

A similar dispute to the *Foreman* case involved an unsuccessful claim by Eddie 'Flame' Gregory against his management company. Evidence traced each detailed step of a lengthy negotiation process to establish any legally enforceable rights, duties and payment obligations to the 'Flame'. Most of the *Scorcia* verdict is concerned with technicalities of the negotiation process between Gregory, agents entrusted with his management and delegates of the World Boxing Association (WBA), the NYSAC and designated venue managers.

> It appears that Gregory and Scorcia had periodic minor disputes from at least the latter part of 1977, and that by December 1979 Gregory had become generally and thoroughly dissatisfied with Scorcia. In particular, Gregory felt that Scorcia was not obtaining sufficiently profitable fights

> for him or accommodating him with suitably posh training quarters. No evidence was adduced, however, demonstrating any sound basis for these feelings or showing that Scorcia used other than his best efforts to obtain remunerative fights for Gregory and to advance him through the ranks
>
> *Eddie 'Flame' Gregory v. Joseph Scorcia and Flame Gregory Enterprises Ltd.*1980, 495 F Sup 984-991 per Milton Pollack DJ at p. 986.

Gregory's major objection to the contract involved restrictive options clauses endorsed under WBA rules. The challenger was only prepared to sign single-fight contracts to increase his economic value *if* he won the title. In an ongoing series of transactions Gregory maintained his stance despite threats of being delisted from all WBA professional rankings.

After a series of telegrams, a confirmation was received by Bob Arum from Scorcia indicating Gregory was prepared to fight Marvin Johnson for the light-heavyweight title before the end of February 1980. Gregory sought to annul this agreement and raised several vociferous objections to Scorcia's conduct. The verdict indicated undue demands by Gregory were insufficient to revoke an agreement negotiated in good faith for the athlete's benefit. All NYSAC licensing and investigative procedures were validly conducted, and despite the perceived restrictive character of the options clauses, it was clear Gregory's confrontational attitude contributed to the negative ruling.

The *Baski* rulings were again significant precedents endorsing public Commission authority. However, the verdict illustrates significant limits of

NYSAC licensing requirements involving professional contests within New York territory. Both Commission rules and judicial review endorsed the binding, ongoing character of Gregory's problematic management relationship. Nevertheless, the contract was enforceable due to public interests favouring mandatory NYSAC lodgement, even if the contest was to take place beyond the state of New York.

CBS v. ABC, 1982

A complex dispute between CBS and ABC broadcast companies involved two consolidated legal claims over exclusive rights agreements for a 10 round heavyweight fight at Ceasar's Palace, Las Vegas, between Jerry Cooney and either Marty Monroe, Franco Thomas or Eddie 'Animal' Lopez. CBS held an exclusive broadcast license to televise a contest between Cooney and an unnamed opponent scheduled on 5 December 1981. CBS assented to Joe Bugner's challenge, however Cooney was forced to postpone due to a back injury and the bout was promptly cancelled.

A separate agreement dated 11 December 1981 was the product of negotiations between ABC and Cooney's managers, and secured exclusive broadcast rights for an exhibition [four-round] bout between Cooney and Bugner to take place on 22 January 1982. This contest would be followed by two-three-round bouts with opponents to be determined. ABC agreed to televise all contests on the

Wide World of Sports program, and CBS sought an injunction to prevent this broadcast. The claim sought to assert exclusive broadcast rights to Cooney's 10 round heavyweight fight. ABC opposed the claim, with both companies seeking judicial clarification of each broadcast arrangement.

> ... [A] 10 round 'Fight' results in a decision, said decision becomes a part of the fighters 'won/lost' record thereby determining his rank, all rounds are scored; the fight is held under the aegis of boxing regulatory agencies, the contestants wear eight ounce (8 oz.) regular boxing gloves and no head gear.
>
> In contrast, in an 'exhibition', there is no scoring; no decision of a winner or loser; the contestants wear protective head gear and oversized sixteen ounce (16 oz.) gloves; and the rules of boxing regulatory agencies do not govern
>
> *CBS Inc. v. ABC Inc, Tiffany Promotions Inc., Glass, Cooney, Bugner and Westbury Music Fair* 1982, 447 NYS 2d 367-371 at p. 371 per Ryp J.

Linguistic distinctions between a fight and an exhibition were central to the outcome. Despite clear evidence of losses suffered by CBS, the court emphasised the wording of its September 1981 agreement guaranteed exclusive broadcast rights to Cooney's title contest. The competing agreement between ABC and Cooney team was independent of the CBS contract, referring solely to an exhibition consisting of three shortened contests between agreed opponents. The injunction was considered an unduly drastic remedy given the clear wording of each arrangement and recognised fight and broadcast industry practice.

Willie 'Macho' Classen v. Wilfred Scypion #1-2, 1984-1987

The final dispute against NYSAC fight governance involved two compensation appeals after the death of a licensed professional boxer. Marilyn Classen was administratrix of the estate of Guillermo aka. William 'Macho' Classen. On 23 November 1979 'Macho' fought Wilfred Scypion at Madison Square Garden and was knocked out in the tenth round. Five days later Classen died from the effects of a subdural hematoma, a brain haemorrhage only treatable with radical internal surgery.

Previous wrongful death actions generally targeted the surviving opponent. *Classen #1-2* examined the role of Commission personnel in screening athletes to prevent serious injury or death. Evidence of negligence by Commission employees and duly appointed ringside doctors provided the basis for this protracted, unsuccessful legal claim.

In principle, sovereign immunity exemptions canvassed in *Hart* precluded any award if NYSAC agents were acting within authorised legislative powers. Both verdicts devoted considerable attention to Macho's fight history prior to the fatal event. It was claimed medical personnel should have prevented Macho from competing due to a history of suspensions aimed at protecting licensed

athletes. A complex web of factual considerations militated against this decision.

'Macho' was knocked out after eight rounds against Johnny Locicero in May 1979. The Commission immediately imposed a suspension under mandatory *KO* rules, and reinstatement was not permitted until an electroencephalographic scan was conducted. During his period of suspension 'Macho' continued to spar against medical advice and Commission rules. Without Commission knowledge, 'Macho' also went to London and fought Tony Sibson on 9 October 1979. He was knocked down in the first round but regained his feet after a count of three or four. Complaining of slightly blurred vision, 'Macho' continued and was knocked down twice more before the referee stopped the bout. On returning to the United States he informed Commission representatives of the London contest but made no mention of the knockdowns.

An electroencephalographic examination was conducted on 13 November 1979 by a licensed Commission technician. The findings indicated 'Macho's' brain physiology was within normal limits. One week later and three days before the contest with Scypion, Dr. Edwin Campbell, NYSAC medical director with over forty-years experience in square ring medicine, conducted a thorough physical examination, and declared the fighter to be in excellent physical condition. A fight permit pending formal license renewal was granted, allowing 'Macho' to compete.

'Macho' was knocked-down by Scypion early in the third-round but rose by the count of four and survived a standing eight-count. During the middle rounds the fight appeared even, however during the ninth round 'Macho' received several blows to the head and was propelled into the ropes. Dr. Richard Izquierdo conducted a brief ringside examination after a second standing eight-count and no evidence suggested the fight should be stopped. On commencement of the tenth round Scypion moved quickly to end the contest. Two sharp blows were delivered to 'Macho's' head, driving his upper body through the ropes. 'Macho' was immediately lowered to the ring apron, examined once again, and informed Dr. Izquierdo he could not squeeze his left hand. The fight was immediately stopped and awarded to Scypion, and it was clear 'Macho' had experienced some neurological damage. Treatment continued until an ambulance arrived and ferried 'Macho' to Bellevue Hospital for observation. A burr hole craniotomy designed to relieve pressure on the brain failed to avert death five days after the contest.

The Commission defended negligence allegations by relying on precedents established in the *Rosensweig* cases of the 1950s. Rather than invoking the sovereign immunity doctrine, *Rosensweig* emphasises a lack of legislative intention to extend liability to state appointed medical and administrative officials. Discretionary expertise and licensing requirements under separate medical laws suggested no legal responsibility for treatment provided under

Commission regulatory procedures. In other words, medical personnel were not classified as employees of the state, with professional expertise as independent contractors producing a legal relationship beyond direct NYSAC control.

The NYSAC Medical Director had discretionary powers to designate ringside physicians from an approved pool of qualified practitioners. The Commission also endorsed payment once a nomination was made. Legislative intentions suggested physicians held primary legal responsibilities to individual athletic clubs rather than the Commission, ensuring medical personnel were potentially liable for negligent actions independently of mandated Commission roles.

This line of reasoning was supported in principle by extensive support for Commission discretionary licensing powers endorsed in *Griffith* (1966), *Tilelli* (1953) and the *London Sporting Club* (1956) cases. Factual questions involving medical negligence produced insufficient justification to outlaw the unfortunate combatant prior to the fatal contest. 'Macho's' failure to inform Dr. Campbell 'whether he was ever knocked out, ever knocked unconscious or whether he suffered from headaches or blurred or defective vision' justified medical negligence immunities in this case.

'Macho's' EEG reading provided clear evidence of fitness to compete. As such, there was no objective medical reason to order a supplementary computerised

axial tomography (CAT) scan before the fatal bout. Accepted examination procedures and imperfections in complex screening technologies were inevitable legacies of late-modern medical science. To find negligence liability in 'Macho's' case would produce an unjustifiable outcome given widespread knowledge of diagnostic limitations in Western fight medicine. Claims indicating suspensions should be publicised to ensure athletes are unable to compete in other publicly or privately regulated jurisdictions were similarly rejected. Such requirements would impose unduly onerous burdens on Commissions and medical practitioners, with significant reliance on the accurate and honest statements of individual fighters a necessary component of public licensing effectiveness.

> It is not this Court's province to comment on the alleged 'legal savagery' of boxing 'exhibitions' in this state and elsewhere. The permissibility and regulation of boxing are legislative functions. We merely ponder the public policy considerations in allowing a sport to continue wherein it is estimated that '... eighty-seven percent of the professional boxers had definite evidence of brain damage'
>
> *Classen v. State of New York*, 500 NYS 2d 460-468 at p. 468
> citing Casson, Siegel, Sham, Campbell,
> Tarlau and DiDomenico, 1984 at p. 2663.

A revised claim alleged negligence by Dr. Izquierdo, the Garden and Commission delegates in allowing the bout to continue until the tenth round. Event organisers were also claimed to have provided faulty emergency equipment at ringside, including a broken, inoperable oxygen tank. Counter

arguments emphasised Commission regulations did not require an ambulance at licensed professional contests and direct testimony from Dr. Izquierdo indicated the oxygen tank was *in* good working order when tested prior to the contest. In a rare acknowledgement of medical research seldom apparent in modern fight law, the verdict again endorsed NYSAC licensing, medical and ringside examination practices.

The *volenti* principle was crucial to this outcome. 'Macho' Classen was considered to have willingly participated in the event and therefore accepted all overt, inherent risks in a dangerous sport. With no evidence of official Commission or medical misconduct, Judge Freedman saw no need to consider 'Macho's' failure to accurately disclose his recent *KO* history in rejecting this amended appeal by his executrix.

> Willie Classen, as a professional boxer, had participated in approximately twenty professional bouts between 1977 and 1979 at many facilities including the Felt Forum [at Madison Square Garden]. As such, he knew or should have known of the risks of injury inherent in the sport of professional boxing. The risk to a seasoned professional boxer of improperly maintained or faulty emergency equipment is substantially equivalent to the risk of a 'cuppy' track to an experienced jockey. Both are reasonably foreseeable under the circumstances and, thus, Madison Square Garden's only duty was to avoid reckless or intentional acts. By complying with state regulations, it clearly did so
>
> *Classen v. Izquierdo, Warner, Tarlau, Campbell, Eskin, Madison Square Garden Inc and Madison Square Garden Boxing Inc.*
> 1987, 520 NYS 2d 999-1002 per Freedman J.

While this outcome is unfortunate, private athlete insurance may not have provided the desired compensation. 'Macho's' non-disclosure of his fight history is a significant breach of statutory licensing obligations. Further, unlike criminal regulation or private wrongful death litigation, the legitimacy of boxing *per se* under this ruling is unquestioned. Sovereign immunity protections can be invoked, with all medical and licensing functions clearly surviving extensive New York appeal scrutiny.

Themes

The claims of a grieving widow unable to obtain 'fight death' compensation and the disgruntled fighter with little faith in his manager's negotiation practices are subordinated beneath the primacy and authority of public governance bureaucracies. The gradual clarification of NYSAC fight governance practices from 1914 onwards continually reinforced state monopoly powers as the ideal method of legitimating a highly problematic sports custom.

Each verdict in this grouping of predominantly New York and federal rulings strengthens the legal authority of public Commission licensing, administrative and medical procedures in all cases bar Jacqueline Tonawanda's exceptional fight licensing decision. A complex mix of public and private interests encompassing contractual, media and broadcast rights, liabilities for personal injury and expert statutory licensing clearly support extensive Commission

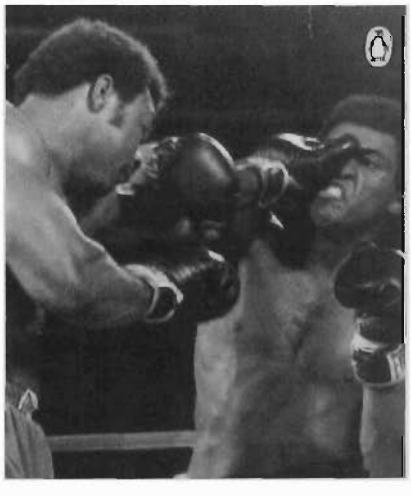
monopoly control over dangerous and potentially exploitative fight sports practices. State and federal courts are highly reluctant to impose liability against Commission officials, medical personnel or ancillary organisational staff, regardless of the consequences to individual athletes or their dependents. Formal legal justifications for *civilised* administrative, medical and contractual scrutiny characterises the range of public and private interests examined in United States fight law rulings in this concluding period of late twentieth century sports governance.

§§§

xiii. Tyson and King

Background

Controversial managers are renowned in modern fight lore, particularly after the turmoil of 1950s professional fight governance. Commercial largess, lucrative rewards and successes in training, mentoring and engaging victorious athletes are legacies of Don King's high-profile management of the 'best and baddest' Afro-American heavyweights of the late-twentieth century.



Foreman v. Ali
Kinshasa 30 October 1974
Mailer 1975.

Don King after successfully defending Federal 'wire fraud' charges in 1995
Hoffer 1998.

From Ali to the bludgeoning 'pit-bull' champion of the 1980s 'Iron' Mike Tyson, the *Thrilla in Manilla* and the landmark *rumble* in the jungles of Kinshasa (Mailer

1975; Polygram 2002), King's charismatic persona, organisational and promotional skill, confrontational public manner and suspicious underworld connections embrace all contemporary stereotypes of the outlaw fight promoter. The vast corporate shield of *Don King Productions Inc* (DKP) underpins popular opinion of King's promotional, managerial and entrepreneurial conduct, while Tyson, his prize-fighting pit-bull terrier viciously snaps at his master's heels.

Fight lore is highly critical of King's activities and promotional legacies. Popular media comment risks defamation proceedings, with King always prepared to invoke United States law to protect his private and corporate integrity. A contentious monopoly over professional heavyweight management and closed circuit broadcast arrangements are core business functions emblematic of King's fight empire. An aggressive, deprived upbringing including a homicide conviction during the early 1950s led to endorsement of the separatist racial philosophies promoted by the Nation of Islam and Malcolm X (1968). Legacies of this 'minority' outlaw status re-emerge in ongoing controversies generated by King's management empire.

Suspicions of organised crime have pervaded generalised assessments of King's involvement in the world heavyweight fight game. As with the IBC during the 1950s King's image is enmeshed in previous generations of suspicion directed at professional fight management customs. Despite no criminal history reported

in United States federal or state legal sources, vigilant private litigation involving King's corporate endeavours provides several insights into this late-modern fight sports entrepreneur.

> 'Life within the law ... is where the real villains are. I didn't invent the rules, but I played within the rules and I've been successful. There's nothing wrong with options. Options are everywhere. In movies, in sports. Options is not a dirty word. My morals are no different from those of any other chief executive officer. I'm a promoter in business to make money. All I'm doing is working the tradition of America. This nonsense, complaining about me and my son. Lou Duva trains and manages fighters. His son Dan promotes them. And he's got another son and a daughter and I don't know who else in the business. I dig it. I like it. But with the white populace, which controls the media, they extol Lou. He's got 'the first family of boxing'; the whole family working together. Me, I got one little son. People just don't like me for the same reason they didn't like Muhammad Ali. We're the wrong kind of nigger. We're not quiet. We stand up and be counted. We're the best, and we're heard. I'm getting very tired of everyone making me out to be a nigger; like I can't do anything right on my own; like I can't get anything done without breaking the law. Every day is a struggle for me. I've always had to go out and fight because I'm a black man. It's not fair
>
> Hauser 2000, p. 115 quoting Don King.

Racial issues offer the most prominent emphasis even where successful financiers and entertainment backers abide by authorised legal obligations. *Tall poppy syndrome* is a common theme in Western sport, exacerbated by extreme financial rewards for the few and failed aspirations for many aiming for their cut of professional fighter's *'piece of steak'*. Strong, aggressive, competitive men who are noticed obtain the benefits.

King's links with Ali offer the perfect template for lucrative elite manager, promoter and athlete relations in a culture where racial discrimination was seemingly endemic. Both King and Ali are strong, charismatic, fighting personalities enmeshed in a political climate brewing with racial dissent. King shadowed Ali during his prominent career, evoking identical racial, cultural and political narratives.

If Ali the *champion of all times* is the 'field Negro' throwing cotton on the flames of the burning slave owner's house (Reemtsma 1998, p. 38), King the promoter, manager and provider, holds the dreaded torch and controls the water supply as 'house Negroes' fry. King's public image is constructed through innuendo, speculation and stereotypy. As each publicised incident generates further speculation, truths involving this contentious celebrity's sporting influences are difficult to identify.

> 'Later on, I trained at Don King's camp in Ohio, and that was horrible. Everybody who was in Ali's camp loved him. Just about everybody who was in Don King's camp hated Don's guts. Hell, at Don's camp, lots of times there wasn't even enough to eat. We had to buy our own food. And I remember, one time at Don's, I asked for beef bacon because I didn't eat pork, and Don made a big laugh out of it. He said, 'I know where you learned that; from Ali. Well, Ali's gonna be eating pork bacon before he's done''
>
> Hauser 1997, pp. 402-403
> quoting interview with Tim Witherspoon.

Conflicts of interest cause several dilemmas for the governance of professional sports. As with England (see *Watson #1* 1991) and many public Commission regimes throughout North America, dual promotion and management licenses are lawful. Industry realities justify this rule, with a limited number of elite managers simultaneously involved in the affairs of several top contenders. Competition for the best chance to secure riches, immortality and status from professional fighting ensures persistent demands for the most successful, prominent managers. Lucrative elite management monopolies raise several ethical and legal questions over potential conflicts of interest, lawful managerial rights and responsibilities and private powers to organise and promote professional fight sports. Free-market business realities present significant tensions between private management business and public fight licensing throughout the United States.

Exclusive, preferential, or 'different' treatment for successful champions ensures less able athletes might be disaffected by these institutionalised conflicts. Pressures to conform to public licensing obligations, organisational rules and disclosure duties are minimal. Legally, King's conduct is shielded by various privileges available to private self-governing corporations. As a director responsible for the bulk of promotional and management functions, King avoids personal liabilities for any managerial conduct. Western law stipulates corporate business is independent of the organisation's membership under recognised taxation, contractual and negligence exemptions.

The corporate veil is difficult to pierce. State regulatory scrutiny is similarly restricted to annual review of financial, trading, membership and executive functions. Specialist fraud, embezzlement and white collar enforcement agencies must conform to complex evidentiary and procedural requirements, stifling the power of state intervention to outlaw shady business dealings. Annual general meetings, reports to shareholders and other interested citizens, criminal enforcement and the popular press offer ancillary forms of accountability beyond a myriad of questionable public corporate governance provisions. Private contracts standardise contentious business practices within and beyond corporate sports management, while complex trails of investment are regulated on stock exchange floors and occasional state inquiries.

King's private contracts must conform to rules in forty-three states with mandatory professional licensing Commissions (Hauser 2000, p. 58) as well as general United States federal and state laws. Inter-state dealings complicate reported judicial proceedings involving King's fight business. Conflicts of interest between individual managers or corporations are excused as an inevitable market reality in contemporary elite fight sports, with King at the forefront of a contentious, potentially outlaw business regime.

Conflicting Interests under DKP management contracts

Gerry Cooney - At present, he is under contract to King-Tiffany, Inc., a company half owned by Don King productions, to fight Larry Holmes.

Greg Page - promotional ties in dispute

Randy 'Tex' Cobb - DKP contract for three fights

Renaldo Snipes - DKP contract for three fights and scheduled to fight Scott Frank for DKP

Lynn Ball - DKP contract fighting against Mike Dokes and scheduled to fight George Chaplin for DKP

Larry Frazier - contract to DKP with scheduled fights for DKP

Mike Dokes - under a promotional agreement with DKP for several years and managed by Carl King, Don King's son

Trevor Berbick - DKP contract

Leon Spinks - DKP contract and fought against Ivy Brown in Atlantic City for DKP

Jimmy Young - DKP contract for several years

Bernardo Mercado - DKP contract fighting against 'Tex' Cobb for DKP

James 'Quick' Tillis - has a letter agreement with DKP and contract being prepared

Hauser 2000, pp. 112-113.

James 'Buster' Douglas v. Don King #1-4, 1990

> The career of an ogre of the ring tends to be a one-way street with a cliff at the end of it ...
>
> ... Tyson, at 23, had his dreams of invincibility pulverised by an opponent whose credentials suggested beforehand that he and the same chance as a trout being dropped into a bathtub with a hungry pike. If there is a Richter Scale for sporting earthquakes, what happened in Japan last Sunday would have to be considered two or three points clear of any other shock in twentieth-century boxing.
>
> Don King's scandalous attempts to minimise the devastation could only exacerbate in the end the damage done to the principal victim, Mike Tyson. It was predictable that King would mount blustering protests

> about the length of time Douglas was on the canvas after he was left in a sprawling daze by a classic right uppercut from Tyson in the last seconds of the eighth round. The promoter tried to harry the notoriously malleable officials of the World Boxing Council and the World Boxing Association into accepting the monstrous contention that by failing to be precise in his counting the referee had permitted a knockout in the eight which invalidated a total demolition of Tyson in the tenth
>
> McIlvanney 1996, p. 203.

James 'Buster' Douglas ended Mike Tyson's brief heavyweight title reign in a result shocking most heavyweight aficionados. The surprise victory generated unprecedented protest over King's conflicts of interest and a series of protracted legal claims by the new title-holder to break the shackles of DKP's exclusive contractual hold over the management of reigning world-heavyweight champions.

> On Feburary 21, 1990, Douglas, Johnson and the Mirage filed suit in Nevada state court, seeking a judicial declaration that the contracts between DKP and Douglas / Johnson were void in their entirety or alternatively without force with respect to the exclusivity clause. Grounds for invalidation included that King had breached duties he owed to Douglas under the contracts and that a regulation of the Nevada State Athletic Commission prohibited exclusive contracts between a boxer and promoter
>
> *Don King Productions Inc. and Trump Plaza v. Douglas, Johnson, Golden Nugget Inc. and the Mirage Casino Hotel #1* 1990, 735 F Sup 522-537 at pp. 525-526.

A series of contracts between King and Trump Plaza were challenged in the New York division of the United States Federal Court. The new world champion sought to assert rights to defend his title under a rival contract with Mirage Casino, in a clear attempt to resist any obligations under his management agreements with DKP. Publicity arrangements, broadcast rights and detailed statements in press conferences are examined in the verdict. Underpinning the dispute is a fundamental clash of personalities between an elite heavyweight manager and a fighter seldom recognised for his square ring exploits against a seemingly invincible title-holder.

> ... King became excited ("jubilant") when Tyson knocked Douglas down, yelling words to the effect that the "fight was over." He advanced to the nearby officials' table, where were seated representatives of two sanctioning bodies, the World Boxing Association and World Boxing Council. Douglas then got up from the count, causing King to say to the head of the World Boxing Council in loud and profane language, that the referee was "getting his man beat," that the "fight was over" and that it ought to be stopped. King returned to his seat mid-way through the ninth round, World Boxing Council official having taken no action to stop the fight nor having said anything to King. In the tenth round, Tyson was knocked out by Douglas, ending the fight
>
> *Don King Productions Inc. v. Douglas, Johnson, Golden Nugget Inc. and the Mirage Casino Hotel #3*
> 1990, 742 F Sup 741-777
> at pp. 766-767.

Each contested transaction involved complex legal dimensions of federal inter-state trade. The choice of appropriate law was the core problem raised in the first reported verdict. Evidence indicated most claims invoking New York

jurisdiction had little to do with any adverse effects on business dealings conducted in that state. Allegations by DKP of tortious interference stemming from the rival Mirage contract were insufficient to warrant judicial interference. Counter arguments by Douglas seeking transfer of proceedings to a Nevada court were similarly rejected due to the remote connection between the agreements, the conduct of each party and a choice of forum clause in the DKP agreements ensuring New York was the appropriate, agreed legal venue.

The first verdict was delivered on 4 April 1990. Five days later a Nevada Federal District Court issued a second ruling granting a counter-motion by DKP to dismiss any claims by Mirage. District Judge McKibbon found insufficient evidence of a valid rival contract between Mirage and Douglas to justify displacement of the DKP agreements. With only future speculative rights at stake, the ruling favoured DKP regardless of any actual or potential conflicts of interest affecting Douglas.

> The court is satisfied from the present record that a judgment declaring the validity of the agreement between Douglas and The Mirage is not yet ripe. First, the agreement is speculative and may never come into existence. Second, the agreement is between Douglas and the Mirage, not DKP
>
> *James 'Buster" Douglas, John Johnson, and the Mirage Casino-Hotel (Nevada) v. Don King Productions Inc (NY) #2*
> 1990, 736 F Sup 223-225.

King v. Douglas # 3 (1990) again examined the appropriate legal forum and its impact in resolving the impasse. Citing *Foreman* (1974), the verdict affirmed the need for a dominant working connection between the contract and the correct judicial forum. Despite arguments from Douglas insisting the laws of Nevada applied, each previous verdict endorsed the appropriateness of New York law. New York City was the location of DKP's incorporation where the majority of global elite fight business is conducted. Virtually identical public licensing regimes in both jurisdictions would arguably produce the same results regardless of the ultimate site of judicial review.

The crux of Douglas' claim involved several vague terms in the DKP contracts. Allegations stressed 'indefinite consideration' or insufficient provision of specific fight payments. These concerns were rejected in *Douglas* # 3. Customary procedures in complex fight contracts supported leaving payment levels open to maximise any contender's selling power. Douglas' increased financial value post-Tyson ensured a base negotiation rate with sufficient economic precision to endorse DKP's contractual arrangements.

> Whether one million dollars is token consideration must be assessed by reference to Douglas' expected future value as a fighter at the time the agreement was entered into, *i.e.*, before his unexpected defeat of Tyson ... the parties, after ... negotiations, fixed a figure ... $1.3 million - for services to be rendered in a title fight with an undefeated heavyweight champion. Thus, when Douglas and Johnson signed the Bout Agreement they evidently did not regard one million dollars as a "peppercorn", even if they did not regard it as the full value to be affixed to Douglas' services when defending a championship. The subsequent change in

> Douglas' relative fortunes does not provide a legal basis now to disregard his prior agreement as to the reasonable floor at which to begin discussion of the value of his services as defending heavyweight champion
>
> *Don King Productions Inc. v. Douglas, Johnson, Golden Nugget Inc. and the Mirage Casino Hotel*
> 1990, 742 F Sup 741-777 at p. 761.

An exclusive options term binding Douglas to DKP for an unspecified period was also endorsed. The Promotional and Bout Agreements stipulated a three-year arrangement with optional extensions while *[Douglas is] world champion*. The verdict acknowledged the possible oppressive consequences of clauses binding Douglas to DKP for two years after his square ring retirement, yet considered both agreements sufficiently precise to warrant enforcement. Sufficient evidence indicated a complete series of inter-state negotiations leading to a valid, enforceable contract. The failure of King to act in Douglas' best interests after the Tyson contest was inconsequential, despite inherent dual management conflicts potentially at odds with general law contractual principles.

King v. Douglas # 4 sought summary judgment against the champ for failing to present sufficient grounds for judicial intervention. Delivered on 29 June 1990, the verdict endorsed the legality and enforceability of the completed DKP agreements. Each Douglas allegation was denounced against the more credible legal rights of the contentious fight manager. Additional counter-claims

alleging slander against Douglas during the height of King's protests in Tokyo highlight the extent of animosity developing over these lengthy contractual disputes.

> ... [N]one of King's *explicit* comments target the character or performance of Douglas ... an implied factual proposition - that Douglas would not have been capable of resuming the fight in the eighth round had the referee's count not lasted too long - necessarily underpinned King's assertion that Tyson should have been credited with a knockout ... [such an assertion] is nonactionable ... [and not] "sufficiently factual to be susceptible of being proved true or false"
>
> *Don King Productions Inc. v. Douglas, Johnson, Golden Nugget Inc. and the Mirage Casino Hotel #3* 1990, 742 F Sup at pp. 773-774.

All orders claimed by the champion were rejected outright by the combined effect of each reported decision. Fight lore indicates Douglas retired promptly after his victory over Tyson, highlighting the ultimate power to withdraw all professional fight services rests with the athlete in unresolvable personal management conflicts.

> So you have these kind of agreements to help fighters, young fighters in their development and their growth, and you have to do it with a promotional agreement, otherwise you can't promote them or as a businessman, making a business decision to invest in a talent, you invest in a talent with the hopes of some day getting some redeeming value from the talent you have invested in
>
> *Don King Productions Inc v. Douglas, Johnson, Golden Nugget Inc. and the Mirage-Casino Hotel #3* 1990, 742 F Sup 741-777 at p. 770 per Sweet D.J.

citing testimony from Don King regarding management relations with James 'Buster' Douglas.

Pinklon Thomas v. DKP #1-2, 1991

> In 1986, [Pinklon] Thomas lost his World Boxing Council heavyweight title to Trevor Berbick; in accordance with the terms of the stipulation of settlement, $50 thousand was paid to Gidron from the purse for that fight. Thereafter, in May 1987, Thomas suffered a devastating knockout loss to Michael Tyson. After defeating Thomas, Tyson went on to defeat Tony Tucker, the then-International Boxing Federation heavyweight titleholder, resulting in the unification of the heavyweight championship titles - World Boxing Council, World Boxing Association and International Boxing Federation - in one professional boxer. After further litigation, Gidron was able to recover $50 thousand from the proceeds of the Tyson match
>
> *Don King Productions Inc. v. Thomas, Gidron and the United States #1* 1991, 945 F 2d 529-535 at p. 532.

On 2 October 1990 the first of two reported verdicts involving the priority of federal taxation duties, a family law paternity award and contracted fight management payments again reviewed DKP business practices. The dispute involved a web of claims involving '$50 thousand' proceeds after Pinklon Thomas' unsuccessfully challenged unified world-title-holder 'Iron' Mike Tyson.

Several parties were involved in the claim. DKP paid the disputed sum into court pending the formal ruling. Aletha Jones, Thomas' former partner, had

won a separate paternity suit and sought priority after receiving a favourable maintenance ruling. The United States government was also joined, claiming outstanding taxes on Thomas fight earnings.

> Common sense dictates that a lien cannot attach to child support monies that are exempt from [taxation] levy; otherwise, the money would remain in limbo and not be available for use by anyone. The rationale ... is obvious; exemption allows the delinquent taxpayer to fulfil his court ordered obligation to support his children. If the debtor does not support his children, the government will end up doing so. The legislative purpose behind excepting from levy income necessary to comply with child support orders would be frustrated if the exemption only shielded child support monies from levy, but did not allow the tax debtor to support his children
>
> *Don King Productions Inc. and King v. Thomas #2*
> 1991, 749 F Sup 79-85 per Haight DJ at p. 84.

The first ruling endorsed priority for Jones over federal taxation authorities. Public policy and the interests of justice supported this outcome for children of separated parents. Despite Gidron's viable contractual rights, Thomas' children warranted primary legal recognition. Appeal Circuit Judges Miner, Cardamone and Mahoney endorsed this outcome on 23 September 1991. The government appealed the priority award, with Gidron and Jones again enjoined. Amongst analysis of Thomas' professional fight history, considerations of justice and fairness ensured Jones, then Gidron then United States taxation officials had respective priority claims over fight winnings retained by DKP.

Lovato v. DKP, 1995

> Plaintiff Don King Productions/Kingvision owned the exclusive California proprietary rights to distribute, promote, and exhibit the Chavez v. Lopez championship boxing match ... which was broadcast nationwide on December 10, 1994, via closed circuit TV. Only those subscribers paying the subscription fee were entitled to receive and exhibit the fight in their commercial establishment. Plaintiff retained investigators to monitor various restaurants and bars in California to determine whether the establishments were receiving and broadcasting the Program in violation of plaintiff's exclusive licensing agreement
>
> *Don King Productions/Kingvision v. Lovato*
> 1995, 911 F Sup 419-424 per Henderson CJ at pp. 421

The final chapter of Don King's reported legal history the most interesting, and revisits several issues raised in previous media law rulings. A private enforcement action was initiated by DKP under Californian broadcast law. King sought to retain exclusive broadcast and economic rights for the junior-lightweight title contest between Julio Cesar Chavez and 'Lopez'. DKP claimed Lovato unlawfully appropriated the closed circuit images by showing the contest to paying diners at a Los Angeles restaurant.

DKP alleged wrongful conversion of telecommunication images and damages for the tort of *intentional interference with prospective economic advantage.* The claim is analogous to the *Transradio* ruling of 1937, and highlights DKP's considerable enforcement muscle aimed at protecting lucrative private fight sports rewards from extensive television revenues. As with attempts to retain

property rights attached to the proceedings of major sports events (see *Transradio* 1937), King sought equivalent protection of private closed circuit television rights and their unquantifiable commercial value.

> ... [E]ven assuming that the broadcast signals are intangible property, defendants' motion to dismiss must fail because, in appropriate instances, a valid claim may be brought for conversion of such property. In California, conversion has three elements: (1) ownership or right to possession of property, (2) wrongful disposition of the property right of another, and (3) damages ... plaintiff's alleged exclusive rights to distribute the Program in California satisfy the first element of conversion (i.e., that the plaintiff owns a right to possession of property)
>
> *Don King Productions/Kingvision v. Lovato*
> 1995, 911 F Sup 419-424
> per Henderson CJ at p. 423.

An exclusive contractual right to broadcast the contest and evidence of substantial economic losses were sufficient to endorse DKP's claims of unlawful 'virtual' misappropriation. Evidence indicated a deliberate, intentional breach of closed-circuit media laws overriding any counter-claim suggesting insufficient economic harm was proved. This private enforcement measure is analogous to modern laws of theft in the virtual broadcast world and was supported by extensive media law precedents. As with most reported Western decisions references to previous fight law rulings are conspicuous by their absence.

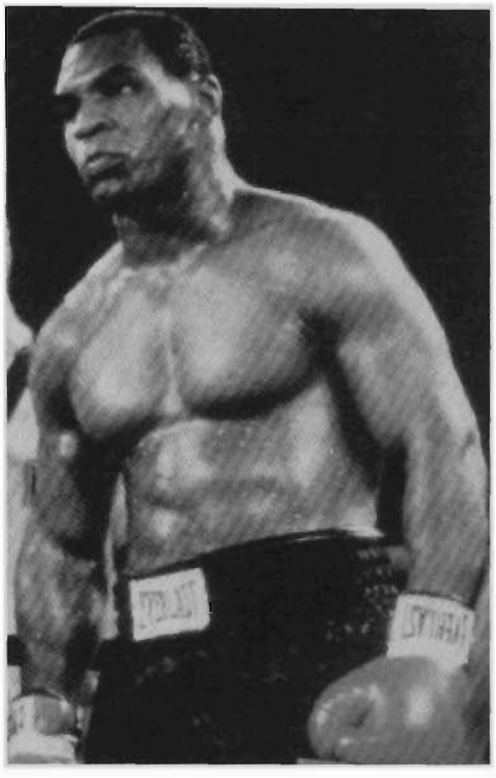
'Iron' Mike Tyson, 1992-1996

Tyson's release from Indiana prison
Hoffer 1998.

At times Tyson lived on the Bedford-Stuyvesant streets, slept in abandoned buildings like a feral child. When he was arrested, aged eleven, and sent to the Tryon School for Boys, no one could have guessed how his life, ironically, had been saved. He was violent, depressed, mute; one of the most intractable of the "incorrigible" boys. When he broke loose it required several adult men to overpower him. One official recalls having seen him dragged away in handcuffs, to be locked in solitary confinement

Oates 1994, pp. 134-135.

Tyson's personality mystifies. A conviction for rape in the state of Indiana endorses a pervasive 'animal' label in contemporary media sources. Few justifiable motives can be found for the athlete's controversial, at times dangerous civilian and square ring conduct. Reports of bankruptcy and a series of prominent turning points in a tragic personal biography underpin a predictably outlaw narrative. Despite several rugged, angry, bludgeoning square ring victories, a range of popular and academic accounts emphasise a vulnerable, tortured, contemplative, at times reserved young man.



'Iron' Mike, Brooke-Ball 1999, p. 125.

Six reported appeals reinforce Tyson's vulnerabilities well documented by Jefferson (1996; 1997) and several fight lore biographers (Heller 1989; Illingworth 1992; Oates 1994; Hoffer 1998). The persistent series of bail and *habeas corpus* applications supplement the limited official record into the terrier's legal history. The effects of prison-life on a 'little fairy boy' (Jefferson 1996) with a hyper-exaggerated outlaw streak are also evident. Each failed attempt to reduce the six-year term for rape is thwarted by considerable public fears of the angry fighter's unpredictable behaviour. Persistent failures to acknowledge any criminal wrongdoing highlight common adversarial legacies of sex assault law.

> ... [A]t common law letting to bail, after conviction, was a matter of grace, extended by the King through his Judges of the King's Bench, to the convicted party, in their sound discretion. It is fundamental that when a thing is a matter of *grace*, the party extending the grace has a right to prescribe the terms and conditions upon which such grace will be extended. The legislature of this state is the "mouthpiece" of our King - the people - and ... the terms and conditions have been declared and fixed upon which such grace can be by us extended
>
> *Tyson v. State of Indiana* 1992, 593 NE 2d 175-181 per Shepard CJ
> at pp. 176 and 177 n. 1
> citing the origins of Indiana bail law in
> *Ex parte Pettiford* 1929, 167 NE 154.

Tyson # 1 involved an application for bail and release pending appeal against his rape conviction. In reviewing the history of bail as a discretionary element of pre-trial procedure, the court rejected a claim involving a legal *right* to release pending appeal. Similar grounds were claimed and rejected by outlaw mobsters under federal anti-trust and racketeering purges of the 1950s and 1960s.

Each subsequent appeal reiterated widespread scepticism of Tyson's persistent, desperate claims for early release. All assertions of a miscarriage of justice and excessive criminal punishment are continually rejected, with outside influences including King and the Nation of Islam seemingly behind this barrage of legal appeals. Each failed claim reinforced speculation over Tyson's immaturity, with continual reference to his victim's contribution to a seemingly consensual sexual escapade with a renowned public celebrity.

Tyson cites portions of D.W.'s (Desiree Washington's) testimony which he asserts created an impression of innocence, including that she was active in her church, a doer of good deeds, and an award-winning student. He contends that the State's characterisation of D.W. during opening and closing arguments as a "kid" with "eyes this big" who put on her "jammies" before bed and who expected to go home "the same girl" after her date with Tyson further enhanced his image ... Tyson argues he should have been permitted to impeach this "angelic image" by cross-examining her about her prior sexual conduct

Washington gathered up her clothes, put them on and hastened out the door, down to the lobby and out to the limousine. The driver agreed to drive her to her hotel, where she went to her room, informed her roommates of what had occurred, showered and went to bed. The next day (July 19th [1991]) she continued her participation in the beauty pageant activities as a contestant. After her parents arrived from out of town later that evening, she notified the authorities. A medical examination disclosed two (2) abrasions near the opening of Washington's vagina which were consistent with an injury from non-consensual intercourse

Tyson v. State 1993, 619 NE 2d 276-309
at p. 290 note 15 per Shields J;
Tyson v. Trigg 1994, 883 F Sup 1213-1222
at p. 1215 per Barker CJ.

As with most allegations of sexual offending, the ultimate contest is between gendered norms of obedient femininity and masculine denial. Throughout, Tyson seeks to discredit both the trial process and the credibility of Washington's allegations. As with all sexual assaults in Western criminal adversarial trials, the victim's sexual privacy is laid bare for open public scrutiny.

> ... [T]he transformations of subjectivity ... are of a piece with the dual-sided nature ... little fairy boy / bully boy; passive quitter / compleat destroyer; gentle / vicious; needy / needing no one, and so on. In looking closely at these apparent contradictions ... [on becoming a bully and then a boxer], I have tried to show their ... connectedness: the psychic roots of social 'rage'
>
> Jefferson 1996, p. 166.

> ... [T]he state of race relations, in which black men are an inferior 'other', ensures that super-sexuality has negative connotations too, as a sign of animality. It is arguable that the superiority of the black body is commonly accepted (in athletics, sports, sex, dancing, etc.) but this also implies intellectual and moral inferiority
>
> Jefferson 1997, p. 287.

Within a template of modern rape law, Jefferson identifies numerous sites of investigation. A history of youth crime, violence, gang thefts and male-only reform schools provided Tyson's induction into supervised fight sports. A hyper-exaggerated contradiction of power and vulnerability abound in his uprooted childhood narrative. When plans went astray Tyson reverted to an unskilled street fighter or a defeated, cowering 'sissy'. When in form, Tyson was invincible.

Tyson's Violent Kiss
Hoffer 1998

In rounds six and seven, the trouble the heavyweight champion was in became more apparent. A relaxed, confident Douglas, sticking to his game plan, staying off the ropes, where Tyson can inflict heavy damage, continued to double on his jab and bang the stiff right hands off Tyson's face. While a desperate Snowell told Tyson in the corner, 'You gotta punch, Mike ... gotta back this guy up.' Douglas's cornermen advised him, 'Stay alert ... it's your fight, your show ... beautiful jab ... The fuckin' guy is scared to death'

Heller 1989, p. 360.

In Scranton, it was not just the prospect of losing the fight that had paralysed Tyson. It was that in defeat the emotional attachments with D'Amato, Ewald, the other boys in the house, and Atlas would be severed. Fighting, and winning fights, made those bonds possible. Losing confirmed the fear he had lived with since childhood: that he was alone, unloved, and quite possibly unlovable

Illingworth 1992, p. 48.

Themes

Dreaderick Tatum and Luscious Sweet
at a press conf... parole hearing,
'The Homer they Fall',

www.cyberboxingzone.com

Confrontational extremes of character invite extensive parody of the Don King - 'Iron' Mike Tyson alliance. As the world waits for the next chapter in each outlaw narrative, a convergence of race, violence, arrogance, and hedonistic

indulgence in square ring successes typifies both personalities. Tyson's public template is imprinted with an animal-outlaw moniker, while King retains his distance from the intrusive public gaze. Within these dominant frames, Tyson's appreciation and respect for modern fight traditions pioneered by idols including 'Papa' Jack Johnson, is lost. A confrontational temper, bizarre square ring antics, prominent facial tattoo and the inevitable belated, ill-advised comeback after bankruptcy proceedings reinvents a pattern of accumulated outlaw traits embedded throughout elite United States fight lore within an extreme, pathological, vicious persona.

§§§

PART III

AUSTRALIAN FIGHT LAW

1918 - 2003

xiv. Australian Fight Lore:

Myths and Legends

Overview

In each culture fight narratives serve a variety of historical, legal and sports functions. Discernible similarities and differences in the life-stories of famed sports professionals illustrate several dominant trends in Western elite fight lore: celebrity, fandom and cultural production. Revolutionary literary methods offer considerable scope for the reinvention of popular historical fight narratives in new generations of popular sports and biographical lore.

'Papa' Jack Johnson's 'Bad Nigger' paradigm is notorious in popular Western sports culture. Joe Louis, Muhammad Ali (see Dorinson 1997), Mike Tyson and several other modern Afro-American champions have all consciously or inadvertently adopted elements of Johnson's persona in their own unique contributions to the modern heavyweight championship lineage. Johnson's biography is complex with many legal encounters reinforcing his inherent threat to United States social order. In contrast, Australian Les Darcy continually escapes criminal responsibility for his innocent, reckless youthful conduct, signifying numerous themes emblematic of the Australian and New

Zealand Army Corps (ANZAC) tragedy and reverence in dominant Australian popular culture.

Imagining Fight Lore

> "You've established a wonderful thing here with Hitler. You created it, you nurtured it, you made it your own. Nobody on the faculty of any college or university in this part of the country can so much as utter the word Hitler without a nod in your direction, literally or metaphorically. This is the centre, the unquestioned source. He is now your Hitler ... It must be deeply satisfying for you. The college is internationally known as a result of Hitler studies. It has an identity, a sense of achievement. You've evolved an entire system around this figure, a structure with countless substructures and interrelated fields of study, a history within history. I marvel at the effort. It was masterful, shrewd and stunningly preemptive. It's what I want to do with Elvis"
>
> DeLillo 1985, pp. 11-12.

Don DeLillo (1985: 1999), Peter Carey (2000), Joyce Carol Oates (2001), Thomas Wolfe (1999) and Anthony Elliott (1999) establish a fascinating, varied postmodern tradition overtly hijacking accepted truths in popular celebrity narratives. Impressionistic styles, themes, fictitious adaptations and interpretive commentaries often blatantly distort conventional, accepted historical truths. Various dimensions of history, culture, fame, masculinity and sport emerge in popular creative narratives testing dominant conventions of historical method, literary style and Western knowledge building.

Cynicism, realism and irony are taken to new sporting lengths in *End-zone* (1986). From page-one dualistic faces of Western sports, racial and education practices are laid bare. Set in a Texas university, the narrative documents United States campus life and the fusion of athletics, study and masculinity. The focus is the school's first black scholar, also a promising college footballer. The introduction to his sophomore year after successfully negotiating each tedious hurdle of university entry combines themes of diligence, athleticism, intelligence and academic promise. As the narrative peaks the 'true' conspiracy becomes apparent: this prodigy was also '*selected for his speed*' (De Lillo 1986, p. 3).

DeLillo suspiciously denounces dominant, conservative readings of modern United States history. Conventional truths form the framework for complex, entertaining narratives abounding with conspiracy. Insights into Western trends of mass celebrity, television and popular culture, domestic and global politics and displaced sporting and non-sporting selves twist and embellish accepted truths of modern Western social freedom.

Frank Sinatra, Jackie Gleeson and J. Edgar Hoover casually discuss mob-crime and federal law in the legendary Polo Grounds bleachers during the 1951 World Series. DeLillo's narrative moves through the subsequent life of a missing game ball melding themes of United States law, enforcement corruption, politics and sport (DeLillo 1999). The venue embodies an outlaw

fighting tradition as the site of the Dempsey v. Firpo title clash twenty-eight-years previously. In a pertinent commentary informed by the multiple contradictions of elite Western social culture, *Underworld* begins in a notorious fighting context as a young 'negro' boy playing hooky to watch the ball game is enmeshed in an intergenerational epic, and a weathered outfield fly-ball traces a path into late modern sports memorabilia.

> Russ feels lucky to be here. Day of days and he's doing the game and it's happening at the Polo Grounds - a name he loves, a precious echo of things and times before the century went to wat. He thinks everybody who's here ought to feel lucky because something big's in the works, something's building. Okay, maybe just his temperature. But he finds himself thinking of the time his father took him to see Dempsey fight Willard in Toledo and what a thing that was, what a measure of the awesome, the Fourth of July and a hundred and ten degrees and a crowd of shirtsleeved men in straw hats, many wearing handkerchiefs spread beneath their hats and down to their shoulders, making them look like play-Arabs, and the greatness of the beating big Jess took in that white hot ring, the way the sweat and blood came misting off his face every time Dempsey hit him
>
> DeLillo 1999, pp. 15-16.

Similar literary conventions underpin many contemporary works on famed historical figures. Peter Carey (2000) Joyce Carol Oates (2001) and Tom Wolfe (1999) each challenge dominant constructions of modern celebrity and outlaw life by questioning accepted biographical and historical truths. Wolfe contextualises these themes in an exposition of outlaw motor sports redolent of many allied fight scenarios prominent in modern English-language

entertainment lore and literature. The emphasis on enforcement ethics and rebel sports practices is of particular significance.

> The fox and the dogs! Whiskey running certainly had a crazy game-like quality ... considering that a boy might be sent up for two years or more if he were caught transporting. But these boys were just wild enough for that. There got to be a code about the chase. In Wilkes County nobody, neither the good old boys nor the agents, ever did anything that was going to hurt the other side physically. There was supposed to be some parts of the South where the boys used smoke screens and tack buckets. They had attachments in the rear of the cars, and if the agents got too close they would let loose a smoke screen to blind them or a slew of tacks to make them blow a tire. But nobody in Wilkes County ever did that because that was a good way for somebody to get killed ... whenever an agent did get killed in the South, whole hordes of agents would come in from Washington and pretty soon they would be tramping along the ridges practically inch by inch, smoking out the stills. But mainly it was — well, the code. If you got caught, you went along peaceably, and the agents never used their guns. There were some tense times. Once was when the agents started using tack belts in Iredell County. This was a long strip of leather studded with nails that the agents would lay across the road in the dark.
>
> A man couldn't see it until it was too late and he stood a good chance of getting killed if it got his tires and spun him out. The other was the time the State Police put a roadblock down there at that damned bridge at Millersville to catch a couple of escaped convicts. Well, a couple of good old boys rode up with a load, and there was the roadblock and they were already on the bridge, so they jumped out and dove into the water. The police saw two men jump out of their car and dive in the water, so they opened fire and they shot one good old boy in the backside. As they pulled him out, he kept saying:
>
> "What did you have to shoot at me for? What did you have to shoot at me for?"
>
> It wasn't pain, it wasn't anguish, it wasn't anger. It was consternation.
>
> The bastards had broken the code
>
> Wolfe 1999, p. 54.

Carey (2000) and Oates (2000) reconstruct (McHale 1992) their knowledge of celebrity history by adopting the persona of their primary subject. Autobiographies of outlaw bushranger Ned Kelly and iconic actress Marilyn Monroe are re-imagined through generations of time, history, language and lore. As credible versions truth are re-invented through popular literature, both works highlight contemporary views of historical sexuality, conspiracies, fears, premonitions and feelings otherwise lost in conventional modern histories.

Anthony Elliott (1999) reconstructs the life and meaning [sic] of John Lennon and his works based on sociological, psychological and academically informed re-readings of this late-modern popular cultural icon and his musical legacies. While unravelling many dimensions of Lennon's hedonistic 'rock-star' behaviour and tragic murder, the critique highlights an interesting fusion of intellectualism and subjective impressionism. As a self-confessed fan Elliot reveals many personal associations with Lennon's work. Fusing objectivity, subjectivity, and extensive insight into contemporary Western social theory, the author's blurred, biased vantage highlights distinct limits in postmodern intellectual comment masterly sidestepped through interesting, persuasive, intellectually informed story-telling.

Fixed truths in any historical narrative have renewed flexibility in a post-modern literary world. Nevertheless, core realities and established facts remain constant reference points for story construction. By adapting recognised truths

with contemporary linguistic, moral, intellectual and social trends, new versions of old themes in 'sports chatter' are subject to ongoing development, reinvention, and popular cultural currency.

Despite such inventive potential, dominant reconstructions of popular Australian fight narratives, emblematic of the folklore status of Les Darcy, retain dominant nationalistic significance alongside the fallen tragedies of ANZAC heroism. This level of constancy is also evident in much English and North American popular fight lore throughout the modern era. This theme warrants further investigation alongside the concrete 'facts' revealed in legal proceedings and relevant historical. The temporal connections between Darcy and 'Papa' Jack Johnson offer numerous imaginary possibilities in light of similarities, differences, and ongoing reinventions of their dual, hitherto independent or *dis*connected fight histories.

Nineteenth Century Fight Sports

Western fight lore includes stories of noted contests (Mailer 1975), square ring personalities (Myler 1998; Tosches 2001), venues (Smith 1999) and sports records (Andre and Fleischer 1975). Outlawry is prominent in many fight narratives. Forged by nineteenth century authors including Sir Arthur Conan Doyle (1980), an extremely rich literary tradition of Western fight lore

documents heroism, idealism and public adulation of both noble and ignoble sports fighters.

> If all work and no play makes Jack a dull boy, continual stealing and no recreation will certainly not make Prig a better member of society, and fights and executions furnish the only kind of recreation he cares about. As surely as there will be flies where there is garbage, so surely will there be criminal classes in a large city; sanitary reform may do a great deal, but the plague will always exist to some extent. In certain *cafes* in fly-plagued towns, they leave out lumps of sugar and messes of sweetstuff which become centers of insect enjoyment, and save some considerable consumption of refreshments. In the same manner would London gain if amusement were more liberally provided for its predatory tribes. Hangings now occur so rarely, and at such irregular intervals, that they can no longer be depended upon as a source of amusement, and perhaps we are to some extent bound to make up for the deficiency by an enlightened policy with regard to prize-fights
>
> Anon 1864, p. 635.

Australian fight lore includes contemporary reconstructions of historical fight personalities, contests, as well as stories of athletic and civil life. Content is largely derived from on press reconstructions of significant issues and implied dimensions of 'sports chatter' (Eco 1975) generally reporting secondary sources. Syntheses of print news, early entertainment journalism and related sports chatter are reconstructed at length in contemporary fight histories. In contrast to volumes of synthesised fight records in English (Egan 1976; Downes Miles 1906) and United States (Andre and Fleischer 1975) popular culture, many Australian fight lore narratives are subject to ongoing historical conjecture.

Early fight narratives # 1

The vigilance of the Police in preventing the disorderly assemblage of persons, whatsoever be the occasion, was yesterday eluded, to the no small satisfaction of some of the pugilistic amateurs. Two champions, who arrived by the Fortune, exchanged gloves on the previous evening, and appointed to meet in a field on the road to Botany, about half a mile from the Race Course. - The combatants were, John Berringer and Charles Sefton; the former about twenty, and standing near 5 feet 9, and the latter about thirty, and about 5 feet 7. They set to with equal spirit and confidence (Sefton possessing greater skill, but his adversary greater activity, and a longer reach), in a ring formed by a multitude of spectators, which was not less than 30 feet diameter. They fought two hours, and had upwards of 50 rounds, being timed to half minutes, so that out of two hours there was a full hour and a half of hard fighting; during the whole of which neither fell without a blow, and seldom closed. It was long doubtful upon which side the victory was likely to spread her wreath; but within the few last rounds Sefton's strength had observably declined much more than that of his adversary, to whose superiority he was at length obliged unwillingly to yield

The Sydney Gazette, 8 January 1814
in Headon ed 2001, p. 5

Pugilism is suited to those classes of society by which it is professed. Men of education seldom have recourse to this species of argument in settling a dispute. They are less apt to quarrel, and when quarrels do arise, have a more refined method of closing a difference. But other classes of people hold less restraint on their passions - they are actuated by the impulse of the moment, and avenge an insult immediately. This is real life - not ideal. Therefore, it being admitted that there are classes in any society who revenge affronts instanter, we ask every man of common sense - of common humanity - whether the shut fist is not preferable to the stiletto? This, we are convinced, will not cost a moment's consideration. The shut fist will obtain the preference. Now, although an evil, it is an unavoidable evil: but being an evil, everything which tends to lessen the consequences of this evil must in effect be good. The rules of the prize-ring enforce fair play; they condemn all mean advantages - all foul blows - no biting nor kicking; in effect, they lessen the danger of a personal contest; therefore, the prize ring is a good, and everyone who is opposed to the prize-ring is, in fact, opposed to common sense and common humanity!

The Currency Lad, 27 October, 1832
in Headon ed 2001, p. 8

In contrast to most Western jurisdictions Australian legal records produce no criminal prosecutions in a one-hundred-and-fifty-year history. Nevertheless, police, coronial and public archives are likely to reveal a 'dark-figure' of prosecutions during the global nineteenth century transition from bare-knuckle to gloved sports fighting. A permissive, non-criminal language produced some 'clandestine' organised events including the Alex Agar v. James Lawson bout held at dawn on 17 April 1884 behind Sydney's Randwick racecourse (Petersen unpublished). Reports indicate around 100 patrons witnessed a fatal contest with prominent racial undertones. Banner headlines in the Sydney *Evening News* reported a "***Fatal Prize Fight: A White Man Killed by a Nigger***". Peterson's discussion of early fight audiences indicates assault charges were laid against four male patrons: '*tinsmith aged 23, laborer aged 24, no occupation 29, and no occupation period*''. Further research into primary institutional sources of the time is likely to produce a wealth of detail to supplement these piecemeal histories.

Unlike England, the United States and Canada, Australia's approach to early-modern fight law facilitates a permissive, orderly, sports ethos. Burns v. Johnson embodied this tradition despite undercurrents of racial turmoil making the event impossible on United States soil. Considerable financial backing sponsored a growing, privately governed fight culture unique amongst most Western regions with less political, moral and legal intolerance.

Parodies of restrictive English state criminal expansion and prohibition during the early modern era highlight extensive support for early Australian fight sports. Extensive popular appeal amongst young male participants and viewers of all classes ensured ample resistance to colonial authority offers a prominent counter-responses to outlaw criminal purges elsewhere throughout the English-speaking world.

> **Essex to wit.** The jurors for our Lady the Queen upon their oath, present that A.B., D.D., & E.H., together with divers other well-disposed persons, to the jurors aforesaid unknown, on the first day of June, in the year of Our Lord 1855, at the parish of B., in the county aforesaid, quietly did assemble together in a certain private field far from any highway or public place, by and with the consent of the proprietor of the said field first had and obtained for that purpose, and the said A.B. & C. D. did then and there, without enmity or malice, and with the sole view of determining who was the better man, with fists only, and in a fair and honest manner, fight a prize-fight, the said E.F. and G.H. and the said other persons aiding and abetting them therein, without riot, rout, tumult and without causing either during the said fight or after the same any disturbance or without doing any damage to either the persons or the property of Her Majesty's subjects, or any of them
>
> Corris 1980, p. 29.

As with other parts of the English-speaking world British Islanders of all backgrounds, including free settlers and convicts, transported outlaw fight traditions to Australian colonial outposts. Fight sports have a paradoxical reverence in popular Australian lore. The untamed, uncivilised environment allowed recreational, entertainment and muscular displays to develop a popular, highly important connection with male physical culture. Inner-city

pubs, travelling carnivals and temporary rural outposts sponsored regular amateur and professional fights (Corris 1980). Demands for mass sports venues later produced world-class facilities for championship fights as well as many allied popular entertainments (Smith 1999).

Early fight narratives # 2

'In 1886 ... Jim Howard, an ex bare-knuckle fighter from Birmingham and licensee of the *Buckingham Hotel*, Footscray, announced that he would award a medal to the value of five guineas to the winner of a tournament for amateur middleweights. Two shrewd Melbourne sportsmen conducted the tournament which attracted scores of entries. They charged admission and made a good thing of the venture. Betting on such 'amateur' events was heavy an winners did not always have to be content with a medal or a cup'

Corris 1980, p. 58

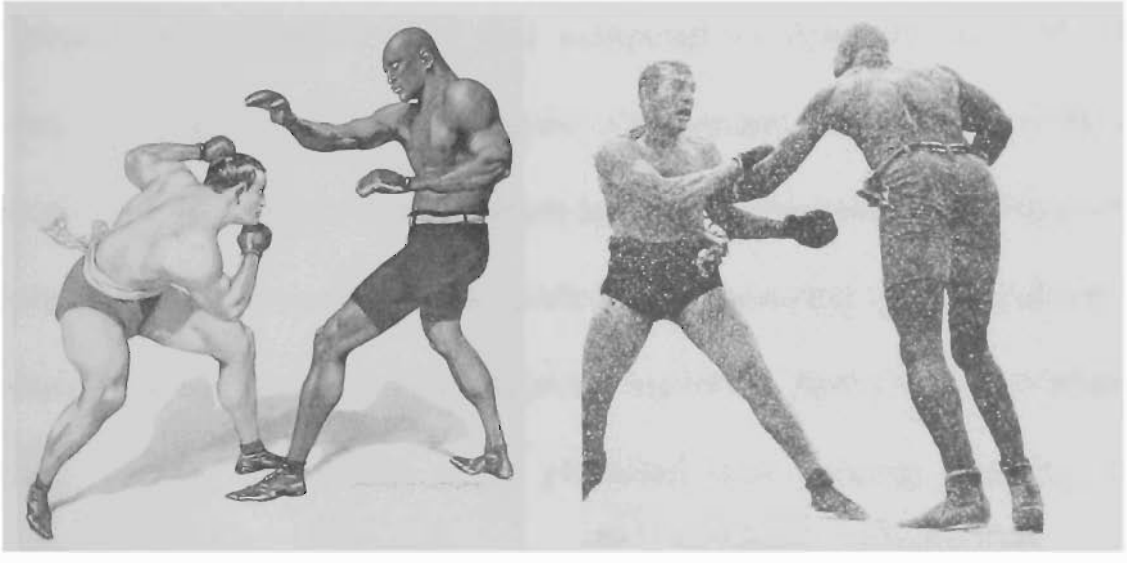
One of the most notable fights that old Towersites reminisced about was the one in early 1875 between Ted Easton and William Brown, a Cornishman and veteran of over one hundred fights. A properly staked and roped ring was set up and seconds, umpires, referees, timekeepers and bottleholders were all organised. By the third round, Brown's face was so bunged up that his second cut open his cheek with a blunt knife and the cut bled freely. However, the veteran did not admit defeat until the fifty-second round. The fight lasted a total of two hours and five minutes, and was fought according to the London prize-ring rules

Howell & Howell 1992, p. 259

'Papa' Jack in Australia

Jack Johnson's seven-year heavyweight title reign was fraught with controversy. A dapper public fight persona and suspicions of promiscuous,

inter-racial sexuality pervade autobiographical (Johnson 1992: 1927) and biographical (Roberts 1982) narratives of 'Papa' Jack's championship era. By World War I, Johnson revolutionised a professional fight culture preoccupied by racial fears. By defeating Tommy Burns in Sydney on Boxing Day 1908, Johnson brashly claimed supremacy in a highly divisive and long-standing racial debate with significant implications throughout the Western world.



Burns v. Johnson, Sydney, Boxing Day 1908, stylised impression by Norman Lindsay and photograph reproduced in Wells 1998.

Extensive public denunciation, state intrusion and dominant racial stereotyping characterise the bulk of historical narratives on Johnson. Inherent, animalistic, uncivilised threats to model English (Green 1988), Australian (Broome 1979;

Wells 1898) and North American (Gilmore 1973) social norms dominate this black fighter's public identity during a controversial wartime era.

Johnson's autobiography (1992; 1927) outlines a lengthy process to successfully compete for the world title. Burns reluctantly crossed a problematic colour line. The white gentlemanly ethos dominating the sport's revolution during the late nineteenth century faded with the realistic prospect of a Burns defeat.

Both Johnson and Burns toured and competed in Australia in 1907. This provided a viable test for the famed Rushcutters Bay event, with the combination of geographic distance from fears of widespread racial disorder in the United States and a welcoming sports culture securing the title contest for the following year. Both competed against Australian heavyweight champion Bill Lang, and a world title event promised vast gaming, ticketing and promotional revenues to entrepreneurial, pioneering, revolutionary fight promoters.

> Hardly had "Massa" Johnson beamed down on the crowd to reveal his dazzle of gold dental fillings, than the menacing cloud above the ring burst. A deluge descended on Richmond and the 15 000 fight fans were drenched in a few minutes. Yet they stuck it out grimly while curtains of rain almost blotted out the two men in the ring.
>
> From the very first blow Bill Lang had no chance against the prancing Negro. While the Australian slid on the rain sodden ring floor, Johnson waltzed about as if it were dry. He toyed with his opponent. He parried Lang's charges but left it at that. He could not have held himself more in

> reserve had he agreed to allow his opponent a few rounds of practice before going in to finish him. Lang fought with determination, but not until the seventh round could he goad Johnson out of his defensive role. Then Bill was crashed for six seconds with a left uppercut, and a smash to the jaw sent him down for seven.
>
> ...
>
> That was the last outdoor fight promotion of John Wren. He was still without a stadium, and pressure brought on the Government had closed the Exhibition Building against him. He began to ponder on the possibilities of the Cyclorama when the old rotunda suddenly leapt into the news
>
> Buggy 1977, pp. 130-132.

John Wren's links with Sydney compatriot Hugh 'Huge Deal' McIntosh shared Australian football, horse racing and professional fight sports management interests. A complex web of gaming and related investments produced considerable innuendo in popular lore hinting at organised criminal links. Global and domestic controversy surrounding the legitimacy of professional fight sports underpinned a more complex economic reality involving lucrative gate, gaming and associated revenues.

McIntosh sponsored and refereed the title bout a year later and reported $100,000 profits from gate and gaming sources (Kahn 1999, p. 40). Important connections in the United States professional fighting world (Roberts 1992, pp. 55-57) secured a title event unlikely to gain public acceptance in the United States. Financial sums are considerable by millennium standards. Burns received $20,000 for two preliminary victories in 1907 before ceding the title.

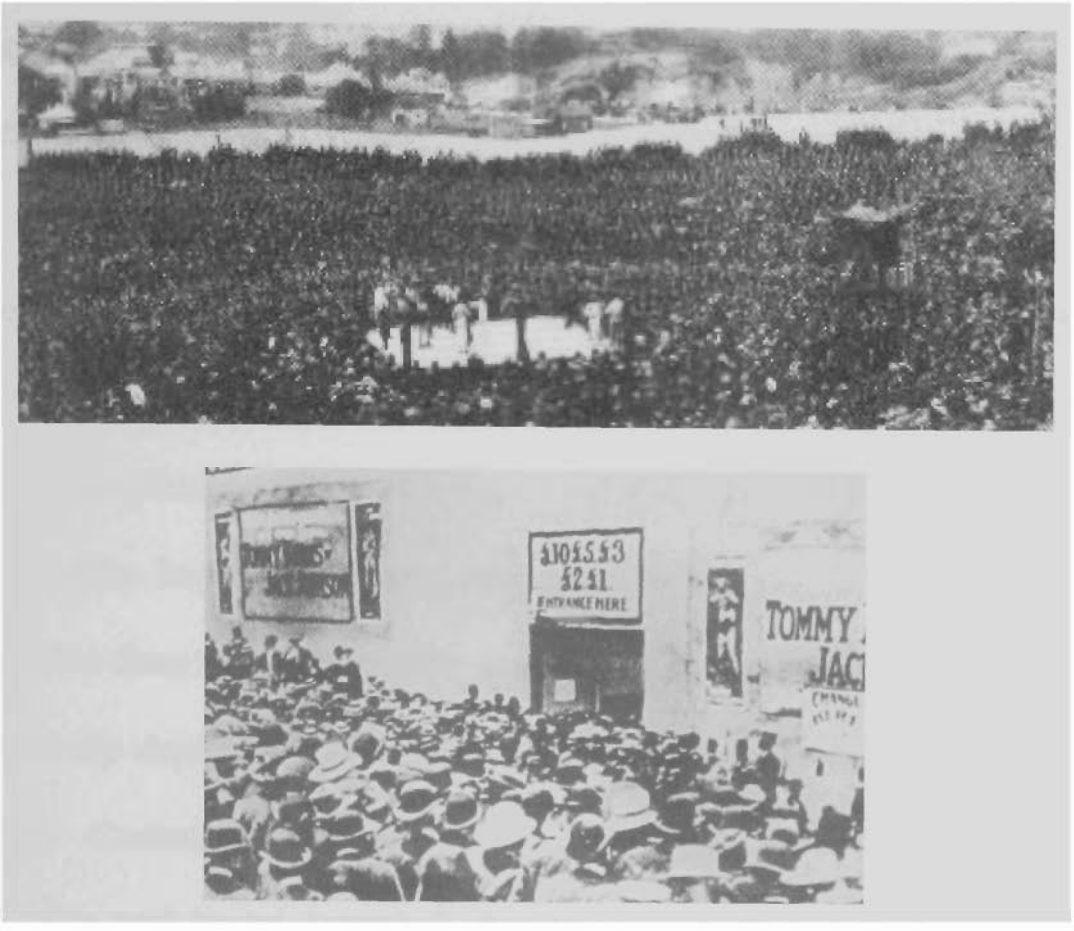
Innumerable domestic, international, legal and illicit transactions are beyond accurate gross estimates.

Richard Broome (1979) indicates racial emphases and social Darwinism were embedded in Johnson's encounters with early Australian nationhood. Athletic success, stature and brash gentlemanly manner confronted a dominant, white civilised aspirations of the age. Visual and written depictions highlight innate human differences and biological roots for supreme fighting prowess. Failure to produce a viable 'white hope' threatened what was considered the natural order under a civilised Darwinian ethos, reinforcing the prospect of uncontrolled mass disorder as the consequence of a victorious black role model.

> Burns was depicted as a clean-cut Spartan with massive head, arms, legs and torso, which were all accentuated by his remarkably small stature (of 170 centimetres) for a heavyweight champion. His boxing brain and courage were the attributes most journalists stressed. "I do not think Johnson is his equal in the all important matter of brains", was a typical comment ... On the other hand, racist ideas current in boxing and other circles suggested that black men could withstand more pain at least on the head, because they were less civilized and sensitive than white men. Some even suggested physiological and medical evidence for this. Johnson, who was 185 centimetres tall (and some even alleged 195 centimetres), was said to have massive natural strength, but it was claimed that he trained on women and champagne, when he bothered to train at all ... The fight was portrayed as a contest between the brains and dedication of Burns and the brute strength and flashness of Johnson. The image was of Beauty and the Beast. It was as much racial prejudice as knowledge that caused ex-champions J.J. Corbett and Jim Jeffries, most of the journalists, and the sporting public to predict (and hope for) a Burns victory
>
> Broome 1979, pp. 352-353, references omitted.

Debates over the legality of fight sports and Johnson's own influence on public morality reinforced broader concerns over lawless, defiant, exuberant black men tainted by excessive attraction to idleness and provocative outlaw fight sports. On his return to the United States as undisputed world heavyweight champion, several filter effects of Johnson's public and private lives affected black populations in social, legal and cultural terms. Opinion on racial issues was invariably divided, particularly amongst fight fans attracted to diverging traits of skill, personality and fight lore tradition.

Major sports events require considerable organisation, planning, finance, advertising and publicity. Media communication at the scene requires film, radio and journalistic input. Until the mid-1970s Leichhardt Stadiums and Stadiums Limited were two fight corporations established after the immense commercial successes of the Burns v. Johnson contest. With publicly licensed organisational structures and several high-profile entrepreneurial owners, these entities held a private monopoly over professional fight governance endorsed throughout the nation for most of the twentieth century, and based largely on the popular local and global appeal of the 1908 Boxing-Day event.



Johnson v. Burns at Rushcutters Bay & Sydney Stadium 1908, Smith 1999, pp. 6 & 30.

The landmark Australian novel *Power Without Glory* by Frank Hardy (1977), in contrast to Hugh Buggy's defence of Wren's contributions to Australian sports professionalism (1977), raised extensive unproved allegations targeting Stadiums Limited business personnel and conduct from the 1920s onwards. Nevertheless Australian fight law sources report no criminal prosecutions against Wren, McIntosh or any Stadiums Ltd or Leichhardt Stadium personnel. Despite vociferous opposition to the gaming, sports venue and hotel conglomerate, federal or state enforcement authorities throughout the twentieth

century were largely unable to make the criminal label stick against various suspicious dimensions private fight governance of the period.

Further details of Johnson's Australian adventures are likely to be traceable in press and related historical sources. However, the Australian connection had significant implications in developing a modern global sports controversy. Only a 'great white hope' could bring true respectability to the heavyweight title lineage. Yet there is a grim reality underpinning this connection. Jack London prophetically depicts a likely yet fallen challenger from an underdog fighting tradition. Contrasts between the proud infant nation's consciousness, masculinity and brutal historical realities as ANZAC troops were violently butchered on Gallipoli's impenetrable shores, suggest Les Darcy was the person in mind when London penned his profound invitation.

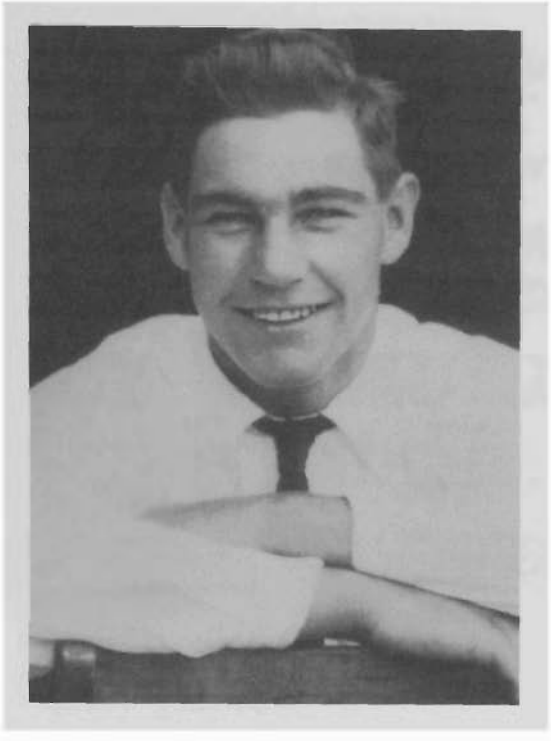
> It was full two miles to the Gaiety, and as he walked along he remembered how in his palmy days - he had once been the heavy-weight champion of New South Wales - he would have ridden in a cab to the fight, and how, most likely, some heavy backer would have paid for the cab and ridden with him. There were Tommy Burns and that Yankee nigger, Jack Johnson - they rode about in motorcars. And he walked! And, as any man knew, a hard two miles was not the best preliminary to a fight. He was an old un, and the world did not wag well with old uns. He was good for nothing now except navvy work, and his broken nose and swollen ear were against him even in that. He found himself wishing that he had learned a trade. It would have been better in the long run. But no one had told him, and he knew, deep down in his heart, that he would not have listened if they had. It had been so easy. Big money - sharp, glorious fights - periods of rest and loafing in between - a following of eager flatterers, the slaps on the back, the shakes of the hand, the toffs glad to buy him a drink for the privilege of five minutes' talk - and the glory of it, the yelling houses, the whirlwind

> finish, the referee's "King wins!" and his name in the sporting columns the next day
>
> Jack London, 'A Piece of Steak', 1911
> in Schwed and Wind 1958, p. 109.

Les Darcy

For several generations Les Darcy has occupied central space in Australian fight lore. Recent biographies by Park and Campion (1995) and Fenton (1994) reinforce the mystique, adventure and confused youthful masculinity in Darcy's narrative. Each edition of Darcy lore mirrors established conventions of Western sports biography, while imagined versions of accumulated lore provide generations of speculation over unanswered historical questions. Dubious conspiracies of murder or other sinister conduct emerge from an open-ended, 'truthless' postmodern lens. Deconstructing multiple narratives and re-configuring traditional sports narratives enable new imaginings of Darcy's mythic fight story.

Each variant of Darcy lore reiterates core, agreed historical facts in his tragic life story. The sum combination of fighting promise, youthful innocence and a reckless, outlaw pursuit of sporting fame ensures Darcy is re-immortalised in each generation. The hopeful Aussie underdog tragically and prematurely cut down like many ANZAC compatriots is Darcy's place in popular Australian fight sports lore.



Les Darcy
Park and Champion 1995.

Darcy's fighting pose and portraiture evoke a sense of innocent male loss emblematic of ANZAC traditions of his day. Fatalistic depictions of youthful wartime identity and confused infant nationhood characterise Darcy's journey to the United States and promises of hope, adventure and lucrative professional rewards. Realistic prospects of international sporting successes dominate Australian and New Zealand cultural hopes of the period (Keane 2002, pp. 10-18). Like 'Ruby' Bob Fitzsimmons and several able contenders before and since, lucrative United States professional fight economies offered tempting financial rewards unknown in other Western nations.

Swanwick 1965.

Biographies of Darcy reiterate several possible factors contributing to his mysterious, premature death while on tour in the United States. Ideals of male tragedy, fallen youth, unfulfilled promise and innovative athleticism converge to produce the template for Darcy's fighting enigma. His flight from Australia and the realistic prospect of military conscription, then adventures to the United States via Argentina by sea, provide the backdrop for tantalising new imaginings of Darcy's lived adventures. Various intriguing and radical questions involving Western wartime history, Darcy's place in United States fight culture and the sinister character of elite fight sports management also emerge.

Fenton (1994) illustrates how narratives of Darcy's ANZAC peers converge with his own tragic premature death. Young fighting men defending vague notions of Western nationalism and freedom highlight the complexities of wartime colonial masculinity. Common signifiers of modern Australian cultural identity are established under a template of honourable fight lore memorialising Darcy and other real and imagined male compatriots. A dominant historical template of adventure, bravery, and danger facing active, expendable men is prominent through a twenty-first century intellectual vantage.

> True courage is more often found in the sick room than on the fields of battle, because in the latter there is the influence of so many extraneous factors to work upon the human mind and give it the impudence necessary for daring acts; whereas in the former there is only the inborn spirit of the man that makes the fight. Never has there been a man who displayed the heart and determination to win, that Les Darcy has shown in the past few weeks. Thousands of miles from home, and only a lad, he has made a fight against death with a smile that has been the admiration of the doctors and nurses around him. "Thank you" and "That's dandy" have been the constant response from a pair of lips that were quivering with the struggle for air. There were five anxious days when Darcy's respiration rate was three times its normal and each breath was taken at the expense of excruciating pain, but through those five days the only answer to those around him was, "I'm feeling fine." No one can know the humiliation of seeing a patient struggling against air hunger, and when asked if anything can be done for him to have only the same response, "I'm feeling fine." The personality of the man was certainly brought out in this battle with the Grim Reaper, and my only regret is that the man who christened him a slacker was not able to become associated with him during such a time as this, for I am sure that he would have been like the rest of those around ... surely here was a champion among men. On one occasion the head nurse was heard to exclaim, "I wish he would fuss a little and I would not feel so bad about his serious condition." This is only one example of the love one naturally acquired for Darcy from being around him and seeing the fight he was

> making against odds sufficient to have killed two men. His courage was a lesson for us all and went to show that a champion is made from different fibre from the pretender. Only when he would doze off for a short nap would his mind ramble, and on the day of his crisis he thought that in his delirium he was down, but the spirit of never give up asserted itself and he mumbled, "Seven is all you count over me, never will it be ten"
>
> Fenton 1994, pp. 188-189.

Les Darcy and the NSW Supreme Court

Dominant white racial norms ensured Darcy was extensively mourned throughout North America and on returning to Australia. Coronial investigations, news stories, medical speculation and generations of fight lore reinforce Darcy's tragedy for ongoing biographical revision. A posthumous contractual dispute reported in 1918 further illustrates how Darcy's innocence permeated formal, protective legal terminology into the fighter and his fate.

> The late James Leslie Darcy, who was a professional pugilist, was an infant at the time he entered into the contract with the plaintiff, which is the subject of the present action. Finding he was unable to obtain any engagements for his services as a pugilist in the Commonwealth of Australia the late Darcy was desirous of going to America, where he had waiting for him both lucrative employment and also instruction in his particular line of business. To enable him to leave Australia and go to America it was necessary to obtain a passport from the Commonwealth authorities. Feeling himself incapable of representing his case properly to those authorities for the purpose of securing the necessary passport, Darcy agreed with the plaintiff, who was a solicitor, that the plaintiff should go to Melbourne and interview the authorities on his behalf and endeavour to obtain a passport for him, and should be paid a certain remuneration for those services whether successful or not in obtaining the desired passport. The plaintiff, in accordance with that agreement, went to Melbourne and interviewed the authorities, and although he did

> not obtain a passport for Darcy he succeeded in getting a promise from the authorities to favourably consider Darcy's request for that passport at an early date. The late Darcy, however, without waiting for the result of the plaintiff's mission to Melbourne, absconded from the Commonwealth, and went to America, and died there. The plaintiff then brought this action against the executors of Darcy's estate to recover the remuneration agreed on between him and the late Darcy for his services in going to Melbourne. It is clear that Darcy's estate is not liable unless Darcy himself had he lived would have been liable on his contract with the plaintiff without any question of ratification after he attained his majority. It is also clear that the liability of Darcy or his estate depends upon whether the contract with the plaintiff was or was not for the supply or necessaries to an infant contractor
>
> *McLaughlin v. Darcy* 1918, 28 NSWSR 585 - 595
> at p. 593 - 594 per Justice Gordon.

McLaughlin sought compensation for expenses after a journey to Melbourne on Darcy's request. The solicitor was to consult federal immigration authorities for lawful passage to the United States. Meanwhile, Darcy embarked on his own adventure by ocean passage via Argentina, seemingly to avoid conscription (Park and Champion 1995; Fenton 1994). After incurring 82*l.* expenses while acting in reliance on a legal contract and receiving no ultimate benefit, McLaughlin sought and was granted the full amount claimed as unpaid fees against the deceased athlete's estate.

Darcy's legal narrative emphasises noble ambitions amidst protectionist common law language. The reasoning outlaws contracts with *infant* fighters unless there is substantial benefit to the infant or expense by the contracting mentor. Far from punishing the deceased legend the verdict endorses important

Western exemptions to legal relations involving performing minors. Where benefits ensue from a contract the law opposes any claim to sidestep binding relations by an aggrieved or unwilling infant. This contentious aspect of Western theatrical, performance and sports law replicated in the 1935 English fight law dispute between Doyle and White City Stadiums, validated McLaughlin's claim emphasising the solicitor's reliance, expense and time in following his infant client's instructions.

Themes

Johnson's biography offers a predictably unfortunate template of racial controversy seemingly embedded in dominant Western culture. Moral emphases on race, inherent dimensions of outlaw sports combat and a brash, combative, overtly sexual personality contrast starkly with Darcy's innocence in a vast, uncertain adventure. While Johnson is worthy of police surveillance state prosecution and imprisonment for his outlaw racial brashness, Darcy's mysterious premature death from a septic dental abscess provides a tragic counter-narrative within a revered underdog template of nationalism, masculinity and military combat.

An inherently outlaw character does not require a criminal label. The loss of a promising, desirable contender by tragic, unclear circumstances in unfamiliar fighting territory is simultaneously reconfigured into a loss of Australian

infancy and national innocence. Parallel wartime narratives eulogising ANZAC traditions of youth, adventure, risk and death produce a revered status for Darcy accompanied by an underlying impetuous masculinity bordering on the recklessly, defiantly, and anti-militaristic criminal.

Each legal record overtly and impliedly reinforces these themes, which in turn are reproduced in subsequent generations of fight lore. Within these dominant templates multiple narratives involving managers, entrepreneurs, criminals and any number of real and imagined associates offers ample fuel for innovative literary embellishments and revisionist truths to reinvent and reproduce popular fight biographies for new generations of discerning sports fans.

§§§

xv. 1929 - 1976

Overview

The majority of Australian fight law developments are reported in the 1970s during the demise of the Stadiums Limited private corporate management monopoly. Between Darcy's posthumous ruling in 1918 and the first significant attempt to challenge long-criticised athlete welfare practices in 1970, only two reported cases emerge in formal judicial records. Both relate to an industrial dispute over the construction of Brisbane Stadium, and are ancillary developments in the evolution of Australian fight law *per se*. By 1976 a series of developments contributed to a fundamental revolution in Australian fight governance. In tracing this shift from private to public professional fight administration this chapter outlines a combination of legal, political and sporting developments of the period within a broader context of minimal state, federal or judicially considered twentieth century fight law.

'Reid', 1929

Medical and anecdotal evidence attributes one death every five years to professional fight sports. Popular sources vary on the frequency of reported sports harms more generally with vague, imprecise data often synthesised from newspapers sources. Occasionally legal sources report compensation

proceedings involving professional fighters and other entertainment performers.

Private corporate responsibilities and public employment compensation laws were scrutinised in two reported adjudications separated by nearly fifty years of Australian sports, political and industrial relations history. Each illustrates similar methods of judicial procedure, legal argument and problem construction involving professional fight contracts administered under a combination of overlapping public and private law principles.

> The objects for which the respondent company was established included carrying on at Leichhardt Stadium the "business of proprietors, managers, promoters and purveyors of stadiums, theatres, palaces and halls, boxing, sparring, athletics, wrestling, physical culture, callisthenics, eurythmics and feats of skill and strength; to produce, manage, conduct and represent at any stadium, theatre, hall or place of amusement or entertainment or in the open air such boxing, wrestling, athletic and ju-jitsu contests ... as the company may from time to time think fit; to hire, engage or otherwise contract with boxers, sparrers, pugilists, athletes, wrestlers ... and other experts, adepts, exponents and artists whether professional or amateur"
>
> ... [T]he greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the grounds for holding it to be a contract of service (providing eligibility for compensation) and similarly the greater the degree of independence of such control the greater the probability that the services rendered are of the nature of professional services, and that the contract is not one of service ... to be a workman there must be control of how the work is to be done in detail
>
> *Reid v. Leichhardt Stadiums Ltd*
> [1929] 3 NSWWCR 139-141 at p. 139 and p. 141
> citing *Simmons v. The Health and Laundry Company* 3 BWCCC 200.

Corporate objects in the Stadiums Limited charter outlined diverse functions amongst professional fight administration, management and promotion throughout Australia's major Eastern cities. Professional, amateur, permanent and free-lance employees were commissioned under private contractual agreements to perform before fee-paying audiences open to the public at permanent indoor venues or travelling entertainment shows.

In the same year as the establishment of the British Boxing Board of Control, a fighter known only as 'Reid' died after a contest organised by Leichhardt Stadiums against Bill Lyle. Reid sought advice on the match-up from his private manager-trainer-masseur and mentor. A standard rate of '*£2 for four rounds, win, lose, or draw*' was stipulated, with payments withdrawn '*if a man went down without getting hit*'. This sought to encourage competitive exhibitions appealing to paying spectators. After compulsory medical examinations and introductions by the referee the fight proceeded and Reid collapsed in the ring. His death remains unreported in Australian fight lore, representing an additional statistic amongst a large dark figure of fatalities hidden from popular sporting sources.

New South Wales employment laws of the time enabled persons classified as 'workers' and their dependants to obtain compensation for death or serious injury resulting from workplace activity. Public compensation was funded by compulsory employer contributions and administered by state bureaucracies. This industrial relations ethos sought to promote the identification, remedy and

prevention of recognisable workplace harms entrenched in Australian public law. Football referees (*McNab v. Victoria Soccer Federation* 1970), acrobats (see *Zuijs v. NSW* 1959; *Zuijs v. Commonwealth* 1959) and Commonwealth public servants engaged in workplace cricket matches (*Commonwealth v. Oliver* 1961) have also been considered under Australian state and federal employment compensation laws.

Reid's family appealed an initial decision of the compensation Board to reject the claim. Rules designed to protect athlete and workplace safety under the company's legal mandate invoked several protective requirements including the use of padded gloves, compulsory rest breaks, and medical examinations before and after each contest. Evidence indicated a company agent offered £4 compensation to Reid's trainer after the fatality.

The core legal issue involved the problematic employment law characterisation of Reid as a 'worker' or 'independent contractor'. Independent contractors were considered private specialists appointed for expert personal services and bearing sole responsibility for related physical and income depriving losses. English and Australian law adopts this distinction in various industrial settings.

Low levels of control or direction over paid workplace functions characterise independent contractual relations. The dominant purpose of such agreements facilitates one-off appointment common to entertainment and performance

contracts, with one notable case involving a touring child billiards performer with unique creative skills (see *Roberts v. Gray* 1913). Expertise inherent in these subcontracted arrangements highlights personalised discretion in the performance of the activity is best protected by private insurance rather than publicly funded workplace injury compensation.

Insufficient control by Leichhardt over Reid's fighting conduct justified rejecting the claim. Specific terms in the performance contract decided the matter. Significant independent discretion and professional autonomy countered suggestions of a standard employment or *service* relationship. Any independent contract for specific personal *services* did not warrant public compensation or related private contribution by Stadiums Limited. Suggestions of 'instruction' by encouraging 'interesting' contests were deemed insignificant to justify legal redress. Contemporary Australian law tacitly encourages private indemnity, occupation and personal injury insurance to protect athletes of all competitive classes from hazards of performance-related injuries. Athletes, entertainers, artists, authors, musicians and performers are all affected by the independent contractor classification.

A Fighter's Narrative

In the world of low-paid, professional Australian fighting, rulings such as *Reid* (1929) place a strong burden on individual athletes and their backers to resist

pressure from fight organisers, promotion companies and other private entertainment industry sources. Inappropriate matching arrangements or coercive pressures to perform when billed athletes are unable to appear are common causes of death or serious injury reported in Western fight litigation. High athlete turnover, short career spans and inevitable physical dangers compound problems exemplified by Reid's tragic experience.

Sullivan and Sullivan (1996) illustrate disputes between this network of elite professional entertainment companies and Australian athletes between 1920 and the mid-1970s were relatively common. Private self-regulatory governance and minimal public intervention placed exclusive responsibility for enforcement of athlete rights on the performers themselves. George Barnes presents an atypical narrative of his experiences as Australian welterweight champion during the 1950s highlighting several consequences of resisting Stadiums Limited authority in the small professional fight industry of the time.

> Most references to Australian boxing as business focus on the activities of such ventures as Stadiums Limited, acquired by John Wren in 1915, which held a near monopoly of boxing in the eastern states until 1975. Inevitably the perspective tends to be from the top down. George Barnes, in a view from below, saw himself operating a small family business. His trade was boxing and his returns had to be maximised against the competing claims of other boxers and more particularly against those of boxing promoters, managers, trainers and government. Barnes's individualism, enlightened pursuit of self-interest, and informed family network enabled him to defy Stadiums Limited when he believed his own well-being or financial returns were at stake. In 1950 he was banned from fighting by John Wren after he failed to attend a bout in Brisbane with Max Skinner for which a large crowd had assembled. Barnes defied

> Stadiums Limited because he believed that the fight was a mismatch, with Skinner too heavy an opponent for him and because of the promoter's failure to insist on a weight limit
>
> Sullivan and Sullivan 1996, p. 55 reference omitted.

Imbalances in bargaining relationships between contractors and performers and inappropriate venue conditions illustrate the plight of the non-elite professional fighter, often exploited in a self-regulating, lax enforcement context. Small fight economies such as Australia arguably favour public compensation for personal injuries sustained in fight sports to help ensure corporate managers promote, enforce and establish effective harm minimisation strategies. Barnes was a forceful personality, with a combination of unique strength of character and recognised fighting ability enabling defiance of unpalatable matching, contractual, venue and payment arrangements. Despite evident pressures from Wren and other fight company directors, Barnes provides a rare example of successful resistance to questionable private fight governance facilitated by independent contract laws. Informal, discretionary exclusions and strict enforcement of minor rules governing rewards, safety, rights and contractual issues can be effective measures helping to drive away even the most resilient of aspiring athletes.

The Brisbane Entertainment Centre, 1959-1960

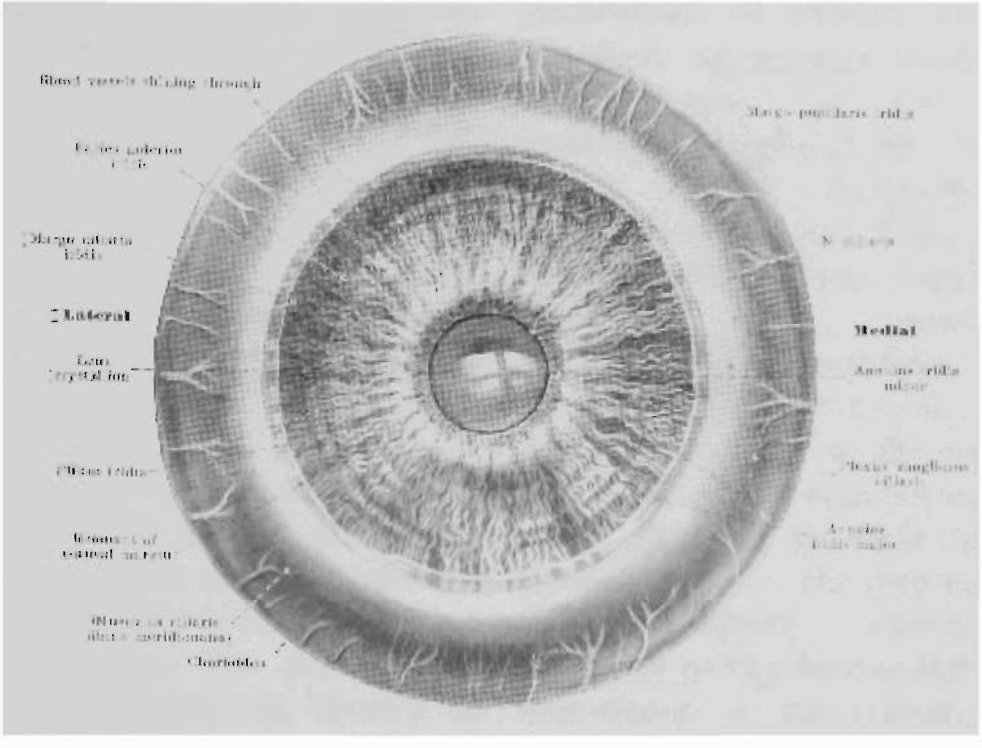
Aside from an isolated industrial dispute over construction of the Brisbane Entertainment Centre (*Stucoid Pty Ltd v. Stadiums Pty Ltd # 1* 1960; *Stucoid Pty Ltd v. Stadiums Pty Ltd # 2* 1960) Stadiums Limited seldom attracted legal scrutiny for outlaw fight business during the twentieth century. Two unanimous verdicts by four appeal justices rejected a subcontractor's claim for an outstanding £3,000 payment owed by the company after work was completed under a series of building contracts.

A liquidated company was appointed by Stadiums Limited and hired a subcontractor who claimed the outstanding sum. Queensland industrial relations law invalidated the claim as Stucoid failed to complete agreed work by the date court proceedings commenced. This rare example of judicial support for the commercial, industrial and business activities of a notorious private Australian fight company contrasts with the bulk of twentieth century fight litigation involving rights to athlete compensation for square ring injuries.

Ben Brizzi, 1970

Ben Brizzi's claim in an unreported Victorian Worker Compensation Board verdict revisited virtually identical issues examined in *Reid* (1929) forty years

earlier. *Brizzi* is the first of several incidents triggering substantial reform to late-modern Australian fight laws.



898. Iris of a greyish-blue right eye, along with corpus ciliare and chorioidea
Spalteholz 1927, vol III, p. 797.

Waning popularity for television coverage and live attendance at professional contests compounded a history of minimal financial rewards for fighters under private Stadiums Limited governance. Strong athletes confident in challenging the conglomerate began to chip away at the company's contractual practices, claiming legal rights to public compensation for square-ring-fight-work-injuries.

The question that follows is the difficult one, namely whether on the facts found by the Board the ultimate authority over the applicant in the performance of his work resided in the respondent so that he was subject to the latter's orders and direction. Without acting in a deliberately dishonest fashion it is difficult to see how the respondent could have had the ultimate authority over the applicant's performance in the ring. There were, of course, always two preliminary fighters each, no doubt, anxious to acquit himself well and win so as to attract further engagements and promotion into the higher ranks. It is reasonable to assume that both would be trying to win unless one were instructed not to do his best and lose the fight. This would be a most dishonest act on the part of the respondent or its servants. There is no evidence before the Board to suggest that the respondent's agents acted dishonestly and at no stage was any suggestion made that they did

(h) ... [T]o hire engage or otherwise contract with boxers sparrers pugilists athletes wrestlers runners cyclists players actors singers performers conjurers jugglers and other experts adepts exponents and artists whether professional or amateur to make all necessary agreements contracts and arrangements for any options privileges or rights of into or over any person contest competition play composition or place of entertainment amusement recreation or sport and for the hire or purchase of accommodation buildings grounds conveyances and provisions ... one of the main activities of the company is to arrange and present boxing contests at its Stadium in West Melbourne [Festival Hall] ... The respondent paid the contestants varying rates according to their boxing skills and the importance of the contest. On the programs to which the paying public is admitted there are usually a number of short contests prior to the main for [sic] feature contest. These contests have come to be known as "preliminaries"

Brizzi v. Stadiums Ltd., Workers Compensation Board of Victoria, Commonwealth of Australia 1974, attachment iv, at pp. 106 & 104.

Distinctions between *service* and *services* contracts are again central to the outcome. *Reid* (1929) is cited along with extensive descriptions of Stadiums Limited governance and safety practices. The flexibility of Western quasi-judicial administrative Boards was critical to endorsing the claim. Adapted,

streamlined formalities mirroring judicial review methods produce a landmark example favouring public compensation an injured paid fighter.

Ben Brizzi is depicted as a hard-working Melbourne fighter making the bulk of his income as a panel beater. The twenty-four year old with Italian-born parents first fought for Stadiums Limited on November 19th, 1966 and had several agreements for further preliminary contests. Brizzi was restricted from pursuing rival management or promotional arrangements under the standard contractual terms. Norman Foster was employed as matchmaker instructed to schedule fights *likely to please the public*. He often encouraged Brizzi to *smarten up* or *mix it more*. The agreed $4 per completed round was sponsored by gate takings and weekly television coverage usually aired on Saturday evening.

All rules of modern professional boxing including compulsory medical examinations and licensing requirements for athletes, trainers, promoters, referees and allied personnel were enforced at this event. As with Leichhardt the company arranged boxing, theatrical and other public entertainments in permanent and travelling venues. The mandated functions of both corporations are virtually identical, though any direct relevance of this issue to any legal grounds raised in either disputes remains unclear.

Brizzi was scheduled and contracted to meet an opponent named 'Fogas' on 28 July 1967. Dr Nathan was appointed medical practitioner and declared Brizzi fit

to compete. During the contest he received several blows to the face and eyes and testimony indicated the fighters clashed heads on one occasion. Brizzi won but complained of blurred vision in his right eye persisting with a mild headache the following day.

Several brief examinations by Dr. Nathan followed suggesting a dust fragment or other foreign substance might have caused the irritation. Dr. Galbraith, a specialist at the Melbourne Eye and Ear Hospital, was consulted on 17 August and recommended a surgical procedure with a remote, eleven percent success rate. Brizzi agreed but sustained complete loss of vision and sought a ruling under the Victorian compensation provisions against the fight company.

> Dr. Nathan, a retired general practitioner ... is an old man and appeared to have little if any recollection of the incidents described by the applicant. He was forced to rely on a book kept by him of reported injuries. Since the applicant's alleged injury was not recorded, Dr. Nathan felt justified in stating that the applicant's version of his examination of the applicant's right eye and his advice to the applicant was incorrect. It is sufficient to say that the Board accepts the applicant's account of his dealings with Dr. Nathan notwithstanding the latter's denial
>
> *Brizzi v. Stadiums Ltd.*
> Workers Compensation Board of Victoria
> Commonwealth of Australia 1974, attachment iv at p. 106.

Stadiums Limited opposed the claim, emphasising the accuracy of Dr. Nathan's opinion a fragment from Brizzi's full-time workplace was the sole cause of

injury. Brizzi's trainer was also unaware of any injury sustained during the Fogas contest. The Board discredited its aging doctor's memory and vague record-keeping practices, and questioned the accuracy of most Stadiums Limited evidence. Expert and contrary evidence from Dr Galbraith supported the connection between Brizzi's injuries and the contest. Discussion then turned to the extent of liability under the independent contract exemption identified in *Reid.*

Total surgical expenses were calculated at $2,500. The *Past and Present Boxer's Association* assisted with $64 to cover lost fight earnings during the first eight weeks after the contest. Stadiums Limited offered no direct compensation and denied responsibility throughout. An additional unspecified amount for lost fulltime wages was also claimed but rejected in an otherwise successful ruling.

The agreement was classified as an independent contract technically beyond recognised employment law principles. Lost fulltime earnings beyond the square ring were unavailable. Medical expenses directly connected with treatment were granted, with implied recognition of Dr. Nathan's diagnosis justifying this outcome.

The award seems a reasonable compromise for an unfortunate square ring accident. Policy considerations contrast with *Reid* (1929) to endorse the compensatory, non-punitive award notwithstanding significant ongoing

implications on the credibility of Stadiums Limited private corporate governance in a broader context of Australian professional fight sports decline.

The Commonwealth National Fight Law Inquiry, 1974

In isolation *Brizzi* offers little suggestion of a pending legal revolution. Two widely publicised square ring deaths in 1971 heightened public and political concern over rules and procedures adopted by Stadiums Limited to protect contracted athletes from inherent fight-sports risks. Roko Spanja and Alberto Jangalay are both casualties of lax Australian fight governance recorded in sports lore of the period (Shepherd 1974; Corris 1980). Combined with Brizzi's successful compensation verdict and a flurry of publicised injuries reported in 1972 and 1973, renewed public debate triggered calls for uniform national legislation to revolutionise Australian professional fight governance in the last quarter of the twentieth century.

Role duplication and inefficiencies characterise depictions of modern fight governance under Australian state laws. Suggestions a unified national regulatory structure would best rectify problems inherent in multiple forms of private corporate management emerged throughout the early 1970s. A highly reformist federal Labor government elected in 1972 sought to minimise inconsistencies and bureaucratic overlaps inherent in Australian federalism in a variety of regulatory settings. Each reported fight sports controversy adds to a

gradual push for national legislative reform of a fragmented, quasi-private-quasi-public interstate licensing framework.

> Between 1965 and 1972, the total claims against the Boxers Provident Fund for injuries totalled 74. Statistically this represents a 0.9% claim - a very clear indication of the thoroughness and precautionery [sic] measures taken by Stadiums. During 1971 and 1972 only 11 claims were made
>
> Submission by Father Peter James, Secretary, Stadiums Ltd, Commonwealth of Australia 1974, attachment iii, p. 204.

Those involved in Stadiums Limited and the Australian corporate fight industries clearly defended institutionalised medical, rule-making and enforcement practices. Opponents emphasised the desirability of uniform national licensing to overcome perceived limitations of private fight governance. Similar to courtroom argument, dichotomised political discourses threatened to spiral into confrontational, generalised contests of attack and defence, rather than critical informative dialogues on this contentious social issue (Tannen 1998).

In April 1973 the Commonwealth Department of Tourism and Recreation was commissioned to review all national, state, private and public arrangements for professional boxing and allied combat sports. An Interdepartmental Committee conducted fifty-four interviews with event organisers from Sydney, Melbourne, Brisbane, Canberra and Adelaide and regular consultations with state Ministers

of Sport. One hundred and eight written submissions examined eleven terms of reference endorsed by Federal Parliament. Most are appended to the final report.

Doctors

Two doctors - one Australia's most experienced in handling boxers, and a younger assistant - attend all programmes. The senior doctor officiated at the 1956 Olympic Games and in 1962 Commonwealth Games. The first examination is carried out before matching and boxers in main events and supporting contests are examined TWO days before their bout AND on the night of the fight. The doctor's room has the following equipment:

Examination table; stretcher; oxygen; heater; medical chest and all necessary surgery items; hot and cold water; steriliser; medical cards for boxers (original examination and subsequent periodical [sic] examinations)

General Procedure

Two clerks at ringside and doctor's room. Referees inspect taping and bandaging of hands. 8 oz. gloves are used by boxers in all contests. (6 oz. are used overseas.) Wrestling mat covers ring boards. Corners are padded and ring measurements are 20 ft. x 20 ft. external and 16 ft. x 16 ft. internal. Steel ropes are covered with plastic. Swinging seats are in each corner. Bottom rope is not too close to the mat. Timekeepers are at ringside, and observed easily by referees when applying count. Scales used at Stadiums office for main event weighing and those at Festival Hall are checked regularly by Council weights and measurements [sic] officials. Representatives of Australian Boxing Alliance attend all programmes. Records are kept of all Australian Boxers and overseas Boxers who appear here. Only the most experienced matchmakers are used to draw up Stadiums programme. Stadiums T.V. Ringside programme on HSV 7 has had more than 500 bouts (all under the above supervision) annually

Stadiums Ltd medical policies,
Commonwealth of Australia 1974,
attachment iii, pp. 203-204.

Twenty-four recommendations encompassed the breadth of private administrative functions conducted by Stadiums Limited and other registered promotional companies including rule making, enforcement, licensing and medical examinations. Professional fight governance under the Australian Boxing Federation (ABF) umbrella generated virtually unanimous industry-wide agreement for more effective public oversight of medical, insurance, welfare, legal, television, financial, administrative and venue management roles in each state. The consultative, industry-based inquiry method is a landmark in modern Australian national sports governance.

The *Australian Combat Sports Commission* (ACSC) would administer professional boxing under the authority of the Federal Minister of Sport, Recreation and Tourism. Federal Parliamentary ordinances would be enacted for the Northern and Australian Capital Territories, while bi-lateral support between existing state and private authorities necessary for the reforms to proceed was never pursued. The wholesale transfer of state legislative responsibility for professional fight administration was the focus of the final recommendations.

As with many Parliamentary investigations predetermined support for uniform fight governance is evident in a political context favouring strong, efficient national reform. Regardless, this detailed snapshot of late-modern public fight law is unique in Western political records.

Australian Boxing Federation Scoring Rules

Direct Clean Hits ... (a). A touch or push with a glove, or a slap with the open glove does not score because it does not constitute a punch. However, a punch with, say, 100 units of power, does not score more than a punch with, say, 50 units of power. It is pointed out that some boxers naturally hit harder than do others. A powerful puncher has the ability to KO or daze an opponent, which is to his advantage. The lighter hitter will rely on punch output for scoring

Defence. Brilliant evasion should merit credit, but it must be emphasised that evasion gains its own reward in its perpetrator not being hit, thus not gaining points for his adversary. Evasion should be accompanied by counter work in striking the opponent or placing him in such position to make him vulnerable for counter-attack.

Brilliant evasion may gain more credit than blind ill-directed aggression. The relative merit of the aggression and defence will be left to the discretion of the referee and judges

Agression (sic). Agression (sic) means the sustaining of the action by attack. However, it must be noted that aggression without landing punches does not score points. A boxer may land more punches while on the backmove than does his opponent while moving forward. Therefore, in this case, the backward-moving boxer would score more points than his agressive (sic) opponent

Ring Generalship. Where ring generalship is conspicuous, credit should be given in the event of both boxers landing an equal number of punches. Ring generalship comprises such points as ability to grasp quickly, and take advantage of, every opportunity offered; the capacity to cope with situations which may arise; to foresee and neutralise an opponent's method of attack; to force an opponent to adopt a style of boxing at which he is not adept

Sportsmanship. Outstanding acts of sportsmanship, close adherence to the rules (the spirit as well as to the latter (sic) thereof), and for refraining from taking technical advantages of an opponent, should be considered when assessing points, following an equal number of punches landed by both contestants

NOTE: Sportsmanship does NOT mean shaking hands at every opportunity. The times for shaking hands are specifically laid down

Commonwealth of Australia 1974, pp. 157-159.

Tensions between state and national legislative powers inherent in federated government would invariably hamper reform (Castles 1982; Houlihan 1997). Public athletic commissions in the United States and related private governance models including British Boxing Board of Control (BBBC) were considered to produce certain benefits and difficulties in unitary or federated constitutional settings.

Uniform national regulation was considered the ideal solution for problems of multi-agency governance largely framed within a public order mandate. Disparate regulatory methods contributed to many examples of inefficient or insufficient role identification, inconsistent rules and questionable medical practices identified in the final report. Proposed ACSC functions involved complete oversight of Australian professional fight sports. Athlete licensing, medical examinations, higher minimum ages for competition, uniform data collection and extended rest-periods after knockouts were all core ACSC roles provided legislative authority was granted to the proposal with the authority of both houses of the national parliament.

Constitutive elements of the sport would continue to be dictated by international governing bodies such as the New York State Athletic Commission (NYSAC) and the BBBC with ring dimensions, glove sizes and scoring procedures incorporated into ACSC rules. Exclusive power to co-ordinate and oversee the implementation of uniform national fight laws would

seemingly remove any private monopoly powers indicative of floundering Stadiums Limited and related corporate governance.

Australian Fight Laws

NSW. Compulsory licensing of entertainment venues or major public events under s. 27(2) of the *Theatres & Public Halls Act* 1908 allowed the elected Minister to outlaw licensees from staging boxing or wrestling for public or private entertainment;
cls. 11 & 64 of *NSW Police Instructions* allowed police to grant boxing and wrestling permits & outlawed female contests

Queensland. *Criminal Code* s. 74 prohibited competing in, subscribing to or promoting prize fights;
Queensland Police Manual pp. 286-288 outlined state supervision and inspection roles ensuring scientific displays did not become prize fights

Western Australia. *Police Act 1892-1972* stipulated $80 fines and 3 months prison for challenges to fight for money or encouraging a prize fight by mail, writing or other publication;
s. 73 outlawed conducting, subscribing or promoting prize fights

South Australia. *Places of Public Entertainment Act* 1913 required all public entertainment venues to be licensed with no specific controls over boxing or combat sports;
Police Offences Act 1953-1972 s. 8 exempted organised boxing from summary prosecution if a challenge was issued and accepted rules were invoked

Australian Capital Territory. *Theatres & Public Halls Ordinance* 1928-1971 governed public venue licensing with no controls on boxing or combat sports;
Police Offences Ordinance 1930-1970 s. 21(1) outlawed any challenge for money by word or letter or any prize fight with $40 fines or 3 months imprisonment

Victoria. Victoria Police reg. 267 required organisers to reimburse police for costs where admissions were charged

Northern Territory. *Places of Public Entertainment Ordinance 1949-1959* and *Police and Police Offences Ordinance* 1923-1971 s. 21(1) replicated ACT

Commonwealth of Australia 1974, attachment iv, pp. 93-96.

Interestingly, many propositions stemming from *Brizzi* avoided direct public regulation under the proposed national model. Measures aimed at protecting athletes are confined to identified physical, medical and environmental risks associated with professional fight sports management. Compensation for personal injury, payment for performance or television royalties, and related 'employment' criteria are all largely overlooked in the final recommendations.

Australian Fight Compensation Laws

NSW. Professional boxers and referees defined as *workers* entitled to compensation as members of a troupe, where members of the public pay for admission and the venue owner would be deemed an employer, or where the contest is in a *licensed club*. Not applicable to exhibition bouts where no admission is charged; professional boxers with one manager or agent working under contract is an *independent contractor*;
Worker compensation is standard employment procedure but not mandatory for professional fighters

South Australia. No compulsory insurance in professional or amateur fighting; companies reluctant to provide cover to amateurs due to risks in combat sports; some youth club members can obtain private cover

Western Australia. No boxers declared workers by the Worker Compensation Board or the State Government Insurance Office;
Voluntary private insurance with view to adopting NSW approach after policy review by Australian Boxing Federation state branch

Queensland. *State Government Insurance Office* does not cover injuries in amateur sports; professional boxers are self employed requiring private cover

Victoria. No coverage for amateur athletes but professional boxers defined as *employees* of the promoter; *Brizzi* restricts compensation to medical costs

Tasmania. Boxers not considered *workers*

Commonwealth of Australia 1974, pp. 22-24.

Unrelated political events ensured the ACSC was never established. Seven months after publication of the report the dissolution of both houses of federal parliament triggered a national election (see generally Zines 1977). Gough Whitlam's Australian Labor Party was returned with a reduced number of seats, complicating the deadlock. The following year the Senate rejected the government's 'supply' or principal funding legislation. Governor General Sir John Kerr dismissed Prime Minister Whitlam after all government business was effectively frozen. The Queen of England is Australia's constitutional Head of State and intense public debate followed Kerr's appointment of Liberal leader Malcolm Fraser as interim Prime Minister. The Liberal Party won enough lower and upper house seats in a second national election to form a majority government. Most reform proposals of the previous government, including the ACSC, were lost in this unique Australian constitutional crisis.

Pallante #1-2, 1976

After four days of legal argument the Victorian Supreme Court issued a landmark fight ruling in *Pallante v. Stadiums Limited # 1* (1976). The verdict rejects many comparisons between modern professional boxing and unlawful criminal and civil assault. The case is also significant after the combined influences of *Brizzi* (1970) and the failed Interdepartmental Committee reforms. Recognised domestically and internationally as a prominent common law analysis (Gunn and Omerod 2000, p. 26), Justice McInerney raised several

interconnected criminal, civil and evidentiary issues in an incomplete yet significant examination spanning two centuries of modern English and United States law.

> [T]he distinction...between "prize fights" and "sparring exhibitions" and "boxing exhibitions" is only to be understood in the light of what is known as to the history of boxing or pugilism in England. As a matter of history, one John Broughton, who was champion from 1734 to 1770, and who drew up a set of rules which were known as the Prize Ring Rules, is credited with the invention of boxing gloves. These, however, were in the first instance and for a long time thereafter used only in practice or for the instruction of young bloods by famous fighters such as Cribb, Mendoza, Mace and Jackson. For over a century after the promulgation of John Broughton's prize Ring Rules - these were from time to time amended - all matches under prize ring rules were fought with bare fists. The use of boxing gloves in boxing matches or contests was first prescribed in the Marquis of Queensberry Rules drawn up in 1865. These prescribed the use of boxing gloves, a limited number of three-minute rounds, forbade wrestling or hugging, and introduced the count of ten seconds before the floored man was declared the loser. Under the former Prize Ring Rules, wrestling and throwing had been allowed, rounds were of unlimited duration in point of time, ending only when one of the combatants fell or was knocked down. The Broughton Prize Ring Rules permitted, in such circumstances, a break or interval, initially of one minute, later reduced to thirty seconds, but subject to such breaks the contest continued until one of the combatants "failed to come up to scratch" or to "toe the mark" in the centre of the ring. Many contests fought under those conditions lasted for a very considerable period of time, ending only when one or other of the combatants was finally battered into exhaustion or inability to continue to fight. The adoption of the Marquis of Queensberry Rules ushered out the era of bare knuckle fighting, although, as a matter of record, it was not until 1892 that the first World Heavyweight Championship was fought with gloves. In that fight John L. Sullivan, who had won his title in bare fist days, lost to James J Corbett, more commonly referred to as "Gentleman Jim"
>
> *Pallante v. Stadiums Ltd. # 1* [1976] VR 331-344 at p. 336.

Pallante sought compensation for permanent eye injuries sustained after competing in a paid contest organised by Stadiums Limited. Unlike *Brizzi* the court was asked to identify any common law negligence duties not to promote dangerous fight contests (see *Watson* #2 2001; George 2002). Medical expenses and estimated past and future earnings within and beyond the square ring were claimed using highly tautologous reasoning. By alleging the company incited an unlawful civil assault, Pallante's claim relied on dated legal prohibitions to establish a common law right to compensation.

Stadiums Limited, the appointed matchmaker and referee, the fight promoter and his trainer were all sued. Potential joint liability would complicate the court's adjudicative task. Differing levels of financial contribution required detailed consideration of each version of the incident. The Stadiums Limited corporate charter provided the foundation for examining the development of modern Western fight governance, although no reference to allied developments such as *Brizzi* or the Interdepartmental Committee report are evident in the lengthy ruling.

> [I]t is difficult to formulate the precise distinction between those fights which are assaults, and as such criminal offences, and those which are manly pastimes, exercises of strength, skill and activity, and as such, lawful...the question must be determined by reference to the intention of the parties and the mode and conditions of the particular encounter. If the encounter is conducted either from its inception or if not from some point in its course by either, or both of, the contestants, in a spirit of anger or a hostile spirit and with the predominant intention of inflicting substantial bodily harm so as to disable or otherwise physically subdue

> the opponent it may be an assault on the part of the contestant or contestants so animated, even though each contestant may have consented to the infliction of blows on himself and whether or not that encounter is for reward, in public or in private, bare-fisted or in gloves. It may be an assault, at all events, from the time when the element of hostility becomes the predominant motive. On the other hand, boxing is not an unlawful and criminal activity so long as, whether for reward or not, it is engaged in by a contestant as a boxing sport or contest, not from motive of personal animosity, or at all events not predominantly from that motive, but predominantly as an exercise of boxing skill and physical condition in accordance with rules and in conditions the object of which is to ensure that the infliction of bodily injury is kept within reasonable bounds, so as to preclude or reduce, so far as is practicable, the risk of either contestant incurring serious bodily injury, and to ensure that victory shall be achieved in accordance with the rules by the person demonstrating the greater skill as a boxer
>
> *Pallante v. Stadiums Ltd. # 1* [1976] VR 331-344 at p. 343.

The relevance of nineteenth century English prize-fight bans in courtroom argument is unclear. Snapshots of legal principle in the verdict highlight the dubious merits of a consolidated claim based on historic criminal prohibitions against most forms of fist fighting. The focusing on the legality of a contentious athletic craft rather than any administrative rights to compensation for sports injuries suggests numerous misconceptions inform the claim. References to medical, licensing and other regulative issues are spurious. Historical precedents steer the ruling in an unfavourable direction.

Distinctions between unlawful 'prize-fights' and lawful 'sparring' or 'boxing' contests included various elements unique to each litigated case. Descriptions of Stadiums Limited events during the early 1970s seemingly defy logical

characterisation as outlaw, criminal behaviour under dated nineteenth century criminal or civil law principles.

Subsequent analyses (Anderson 2001; Gunn and Omerod 2000; *R. v. Brown and others* 1993) emphasise any contests before an audience, regardless of the level of harm caused to combatants, were illegal, disorderly, criminal assaults. Public order considerations endorsed this characterisation. Private, orderly, non-malicious sparring of a discernibly athletic character was considered scientific, leisurely and warranting judicial endorsement.

One-on-one combat with gloves was legitimate in contained, private environments. Degrees of harm inflicted to athletes and broader notions of public order were emphasised in each nineteenth century ruling. The demeanour of contestants, viewing customs and consequences on practitioners and others affected by large male crowds were all relevant factual considerations justifying criminal convictions in this historical context. Homicide, assault and riot prosecutions targeted contests where evidence indicated malice, danger, risk and harm to either or both consenting athletes, willing male patrons or disinterested community members.

Manly pastimes were lawful within an amateur, scientific ethos. Skilful attack and defence characterised modern amateur and professional boxing. Significant evolutionary transitions in fight rules from Jack Broughton's seventeenth

century principles to the gloved conventions under Queensberry Rules of the 1860s endorsed this reasoning. Disorderly non-constitutive elements including public drunkenness, unlawful assaults, property damage and other secondary social harms were absent from legitimate athletic contests. English and United States verdicts reinforced these principles and their transferability to Stadiums Limited fight governance in Australia throughout the twentieth century.

Consenting athletes voluntarily engaged in harmful albeit regulated sports are not entitled to compensation under established negligence principles. All claims were rejected although the final outcome remains uncertain. Two weeks later a second verdict ruled on the relevance of expert testimony in a Victorian lower court retrial. Prominent Melbourne trainer Jack Rennie left his Essendon gym before the first trial to pursue professional ambitions in the United States. As Rennie had not been subpoenaed to testify the case could proceed without his influential insider knowledge (*Pallante #2* 1976). In retrospect, Pallante might have been more successful by lodging a public worker compensation claim for medical expenses and lost fight earnings, rather than invoking failed, lengthy and costly negligence proceedings in a formal court of record.

Fight Associations, Boards and Commissions

Brian J. Dixon was *one of the finest* [Australian Rules Football] *wingers of the post-World War II era* (Main and Holmesby 1992, p. 99). Among several professional

Australian footballers to combine careers in state politics and sport, Dixon was appointed Minister for Youth, Sport and Recreation in the 1975 Victorian Liberal government led by Premier Rupert Hamer. Responsible for drafting and introducing the *Professional Boxing Control Bill* into state Parliament, Dixon's landmark proposal usurped the Interdepartmental Committee recommendations for uniform national professional fight governance. Simultaneously, existing private governance practices would be subsumed by this revolutionary fight law development.

> The [Professional Boxing Control] Bill is the result of the work of the Victorian Professional Boxing Co-ordination and Advisory Council, which was established by the former Minister for Youth, Sport and Recreation, Mr Brian Dixon, to investigate the professional boxing industry and to ascertain what was needed and whether self-regulation could be introduced. In August 1982 the council handed to the current Minister a report which recommended the establishment of a professional boxing control board, to which the Minister agreed. In March 1983 the minister appointed an interim board with Mr Kevin Hayes as chairman. One or Two members of the board have resigned and at present it comprises Mr Jack Dunn, Mr John Famechon, Mr John Hare and Dr Clancy. It is sad that only two days ago the vice-chairman of the board, Mr Ken Brady, passed away. He was a former champion boxer, referee and administrator who, like many others in the industry, was extremely highly respected ... It is sad that the Bill to which he devoted so much hard work is being debated in the Chamber only two days after his death
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> Mr. Reynolds, Member of the Legislative Assembly for the electorate of Gisborne, *Hansard (Parliamentary Debates)*, 25 May 1985, vol 337, p. 45 [p. 799].

The law established a mandatory public licensing scheme for professional fighters applicable throughout Victoria. Enhanced medical scrutiny was a prerequisite for license approval, administered directly by the state Minister for Sport. All professional contests, athletes and promotions agents required annual registration under the centralised scheme. Any unregistered contest, organiser, athlete, trainer and medical official could be liable to criminal assault or related charges and penalties for specific breaches of these consolidated rules. An expanded Commission was introduced in 1986 preserving the essence of the original Dixon law.

By 1980 New South Wales established the first Australian public professional boxing Authority. Western Australia followed in virtually identical form in 1986. Most recently the Australian Capital Territory (1993) and South Australia (2002) have embraced this public administrative framework. These developments prevent uniform national regulation as recommended by the Interdepartmental Committee yet embrace several desirable elements of mandatory public licensing. Each Association, Board or Commission mirrors the regulatory model pioneered by the NYSAC in 1911, and is a publicly constituted variant of private governance under Stadiums Limited. All have sole rule-making, administrative, licensing and data maintenance functions. Australian Association, Board or Commission members are public service employees accountable to state Parliamentary Ministers and subject to several possible administrative law grounds for judicial review.

All constitutive and regulative elements of professional fight sports are incorporated into these public legislative mandates. Specialist governance is seen to minimise inherent dangers in contemporary sports fighting. Former athletes, politicians and medical personnel are among notable Association, Board or Commission appointments in each jurisdiction. Variations to fight sports rules or licensing requirements must be written into the legislative mandate or administrative rules of each agency and approved by the governing state Parliament. Unauthorised personnel or contests retain outlaw status.

14. Approval for female boxing contests

1. An application by a female for approval to engage in a professional boxing contest shall –
    a. be in a form approved by the Minister;
    b. be accompanied by a certificate of a medical practitioner,
    c. obtained by the applicant not more than 14 days before the date of the application, certifying that, in the opinion of the medical practitioner, the applicant is medically fit to engage in the proposed contest; and be accompanied by the determined fee.
    d. The Minister may, by written notice, require an applicant for an approval to furnish to the Minister, either orally or in writing, such further information relating to the application as specified in the notice.
    e. The Minister may –
        i. approve the application;
        ii. approve the application subject to conditions; or
        iii. refuse to approve the application.

Boxing Control Act 1993, Australian Capital Territory updated 9 December 1998.

Tasmania, the Northern Territory and Queensland all resist centralised regulatory control. These smaller fight economies sustain viable localised police oversight under the traditional Australian public law framework. Decentralised private governance is more effective in disparate, remote, economically restricted fight industries. Pressure to conform to internationally sanctioned rules ensures relatively uniform administrative practices for professional sports fighting in any remote outback location.

Dear Sir ...

With the pending boxing legislation in mind I write to you with the express purpose of indicating the loyalty and support of this league to the Professional Boxing Control Board of Victoria.

Since the Board was formed two years ago we have not always been 'on side' with them particularly in their early days, but over the past several years we have come to appreciate their position and their importance and now support them 100%

It has been made very clear by people from the International Boxing Federation, who visited us from U.A.A. and other parts of the world for the recent world title fights, that our previous situation of having officials connected directly with boxers would not be looked upon favourably. We also believe this to be the case and viewpoint of the other world boxing bodies, W.B.C. & W.B.A. and this was behind the reasoning of the Board when they restricted the activities of A.B.F. officials, e.g. Secretary not to promote, President not to select ring officials

Mr. Cos Brizzi
Victorian Professional Boxing Trainers League (VPBTL)
to Mr. McGrath, Legislative Assembly,
Hansard, 25 May1985, vol 337, p. 49 [p. 803].

Themes

The Hon. H.R. Ward
MLC, South Eastern Province

There is some concern about the regulations covering the operation of a fight program. My colleague in another place, the honourable member for Gisborne, expressed grave concern that Parliament would not be seeing these regulations. I understand that consideration was being given to the proposal that the regulations would be prepared and placed before Parliament prior to the Bill being formally approved by the Governor-in-Council.

There appears to be a volume of regulations setting out the rules and regulations covering measurements for many things involved with putting on a fight program. I seek an assurance from the Minister that the Minister for Sport and Recreation will bring in these regulations and I ask whether it will be long before those regulations are available

The Hon J.E. Kirner
Minister for Conservation
Forests & Lands

I thank the honourable member for his comments. The Minister for Sport and Recreation is not prepared to accept the amendment as he believes the regulations should be subject to the normal process of review under the Subordinate Legislation Act. Therefore, there is no need for a special provision. Provisions for the making of regulations under the Bill are in standard form provided in most Acts and it is not considered that there are any special circumstances in the Bill to alter the situation nor is it a reflection on the powers of Parliament. As with all other regulations, they will be made under scrutiny by the legal and Constitutional Committee. I understand that the regulations will be prepared in two to three months. The government opposes the amendment

Hansard, Legislative Council
5 June 1985, vol. 378, p. 790 [62].

This cumulative patchwork of Australian fight laws illustrates the rapid expansion of modern public bureaucratic sports governance since the 1970s. The transition from private to public oversight precipitates national and state

tensions regulatory inherent to modern Western federalism. Democratic Parliaments create publicly appointed agencies, largely replicating or subsuming existing private, corporate governance procedures. Unlike hard paternalistic philosophies of nineteenth century Western criminal law, expert, centralised, mandatory rule-making and enforcement aims to develop, rationalise and protect the public reputation of professional fight sports. Martial arts and allied combat sports are logical regulatory extensions incorporated in contemporary Australian public fight laws. Centralised public monopolies establish all constitutive, bureaucratic and procedural requirements to legitimise these dangerous, contentious sports practices.

Several themes emerge in this fragmented evolutionary process. Bureaucratic overlaps, role duplication and inefficiencies evident in private, inter-state governance are subsumed then replicated under contemporary public fight law. Legislatively endorsed administrative rules define all elements of Australian millennium fight sports with prominent sites of divergence and overlap. Accident compensation, negligence liabilities and repatriation after serious physical injuries are notably omitted from each regulatory model. Within confined procedural, legislative and political boundaries each form of contemporary fight governance endorses, mirrors and adapts traditional classifications of outlaw fight sports. As mandatory public licensing usurps a questionable private monopoly, many unregulated facets of immense legal

concern are sidestepped under a highly fragmented Australian federal law system.

§§§

xvi. Recent controversies

Overview

Three cases reported between 2001 and 2003 represent a significant cluster of litigation in the broader context of Australian fight law development. Two verdicts under New South Wales law deal with contentious professional licensing exclusions validated under the governing Authority's rules and by state and federal court judges despite contrasting anti-discrimination legislation. The third is a novel claim against the Queensland state government over the missing fight winnings of 1950s Australian bantam and featherweight champion Elliott Bennett.

Alongside formal legal records several reported controversies emerged during the period of this research. Ranging from the idiosyncratic behaviour of flamboyant square ring personalities to the surprise periodic tragedy during a professional contest, prominent fight news spanning the first three years of the twenty first century is intertwined with the growth of public law governance and increased judicial scrutiny of contemporary Australian fight sports. This series of themes is presented as a snapshot of contemporary fight news controversies and their relevance in the broader context of modern fight law development.

Holly Ferneley, 2001

> Under this legislation, women will not be allowed to fight as boxers or kick boxers, amateur or professional. Part of the reason is that the spectacle of women attacking each other is simply not acceptable to a majority of people in our community. It may be said that people do not have to go along and watch such spectacles. However, the Government is unwilling to condone behaviour that is unacceptable by community standards. In addition, on the advice to the government, it would appear that women are more at risk from this kind of sport than men. I have received advice from the State branch of the Australian Sports Medicine Federation which says, in part:
>
> *'Special risks for women appear to be associated with injury to the reproductive organs and, in particular, to a potential risk to an unborn foetus if a women [sic] were pregnant at the time of her involvement in a boxing match'*
>
> *Ferneley v. The Boxing Authority of New South Wales*
> [2001] FCA 174, www.austlii.edu.au/boxing
> citing Mr. M A Cleary MP, second reading speech
> on New South Wales licensing restrictions against women boxers.

Michael Burke (1998) and Terry Roberts (1998) suggest this is an undue restriction against private autonomy. By suppressing consideration of athlete voices recent Australian fight verdicts highlight several limitations of Western legal method and judicial dispute construction.

'Protective intervention' directed at the physically and intellectually vulnerable questions the legal capacity of women, children or aged fighters to comprehend and provide informed consent to participate in any dangerous activity.

Complex, abstract, real and hypothetical considerations inform moral and philosophic discussions of hard paternalistic, public rule-based prohibitions and their ongoing relevance to contemporary fight sports (Dixon 2001). The most apt characterisation of sex, age and related bans outlawing consensual fight participation under a government subsumed public obligation '*to define and suppress depravity as an inherent evil*' (Feinberg 1988, p. 128) is hard paternalism based on a person's *status*. As with questioned sexual morality, conflicting public messages stress highly emotive considerations to oppose or justify prohibition within a converged individual and social protective template.

... Kay O'Sullivan wrote in 1998 that '*boxing is no sport; indeed it mocks the meaning of sport*'. In my view, boxing embodies the very ideals most sports aspire to: competition between equals, a contest unsullied by malice, and an adherence to strict rules of play, not to mention a necessity for near-physical perfection, speed, strength, fitness, toughness, grace and intelligence. '*Bashing someone about*,' says O'Sullivan, is '*bestial*'. And she's correct. Bashing someone about is not very nice. But she is talking about something other than boxing in which competitors are matched by weight and experience. She ... is apparently unaware of the defensive aspect of boxing. A good boxer will not get hit

Merz 2000, p. 85.

Debates on professional fight bans indicate widespread moral repugnance supports the express New South Wales licensing prohibitions against female

professional fighting. Analogous reasoning applies to age, physical, neurological and related status exclusions under a common mix of Western fight governance principles.

> The female fighting aesthetic has become a recurrent image over the past few years. It has cropped up in advertising from time to time and has been used in photography. The imagery is appealing and sexy, and many women are drawn to it, Muhammad Ali's daughter Laila the most notable among them. After opening her own fingernail salon, she clipped her own and began throwing leather. A woman kickboxing was even used in a tampon advertisement a couple of years ago. It is an image of strength and grace and speed, which has always been what boxing, at its best, is about. Movement, agility, poise. These features would be almost feminine, if it were not for the pain, fear and danger that accompanied them, and the risk and the bloodshed ... it is little wonder that women are also attracted to its intensity. Yet I have often felt awkward defending my love for this sport. It is like an attraction to a bad man, both beautiful and cruel, yet somehow disarmingly honest. That, I suppose, is the sport's redemption; the confrontation is pure
>
> Merz 2000, p. 6.

Holly Ferneley is an accomplished professional fight champion. She organised a professional contest at the University of Newcastle, seemingly in overt defiance of the sex restrictions under New South Wales legislation. On the evening of the event student organisers were advised police would attempt to enforce the hard paternalistic ban, presumably under powers to disperse, arrest and criminally charge either athlete, and any officials or viewers at the scene. Ferneley subsequently and unsuccessfully challenged the legality of the sex-exclusion rule in the Federal Court of Australia (*Ferneley* 2001; Merz 2002). The verdict

highlights a familiar combination of public interest, bureaucratic expertise and the paternalistic protection of women to reject the claim and endorse the legality of the exclusion over and above parallel state and federal anti-sex-discrimination provisions.

> The sport of boxing entered the sex-testing controversy as the presence of women in both amateur and professional boxing in the United States grew. In 1995 women were introduced into the prestigious Golden Gloves amateur boxing tournament and into the realm of professional boxing. In New York State the first professional boxing match for women received live television coverage. Controversy erupted when the New York State Athletic Commission ordered gynaecological tests as a prerequisite for the fight. The commission mandated these tests be performed in spite of certification of testing from the women's own physicians
>
> Dowling 2000, p. 179.

> ... [T]he girls defined themselves in opposition to other members of the family (most often sisters or brothers) and presented themselves as 'the most dynamic' or 'the most sporty' Early participation in competitive sports seemed to contribute to this identity-building: 'I have tried all sports since I was very young, I'm the tough one in the family, my sister has never done intense sport, she learnt to dance, horse-ride, she was different' (Sandrine, French boxing)
>
> Mennesson 2000, pp. 25-26.

Several insider and philosophic narratives document aesthetics of female sports fighting (Burke 2003; Sekules 2001, Dowling 2000; Burnstyn 1999; Burton-Nelson 1995). Advertisements depict combative women use boxing and martial arts movements to quench nicotine cravings and promote an active, healthy community. At competitive level patriarchal administration, promotion and

organisational structures undermine female participation in conventional 'male' sports. Such prohibitions outlaw the skill development and self-esteem derived from the knowledge, ability and mastery of physical movements involving defence and attack. Despite legal restrictions and paternalistic undertones, popular fight and academic lore provide a growing body of interview, statistical and qualitative evidence demonstrating gradual cultural acceptance of female professional and amateur boxing and their myriad of positive individual and social effects.

Domestic and international press reports during 2001 reinforced several broader concerns over professional female fighting. Jessica Hudson from Cambridge University and model Tamsin Mallia were to headline a bout on a male-dominated card in Hereford, UK when Dr. Loosemore of the British Amateur Boxing Association declared both fighters were beyond designated weight limits. He would not countenance the exhibition bout and described the contest as *'abhorrent'* (*MX*, 12 December 2001, p. 18). Disappointed patrons, some paying £110 UK per ticket, protested the decision.

When convicted armed robber Clifford Etienne fought Mike Tyson early in 2003 the undercard included the professional debut of infamous ice skater Tonya Harding against Samantha Browning. Jay-Z provided rap backing for the extravaganza (*The Sunday Age*, 23 February 2003, Sport, p. 20). Harding's attempts to injure skating opponent Nancy Kerrigan in the build-up to the 1994

Lillehammer Olympics by hiring a hammer-wielding hit-man, and a jail term for drunk driving and assaulting a boyfriend with a hub cap, provide a suitable outlaw affiliate for Don King's former pedigree champion. Harding continues to skate and also anticipates '*a great career in boxing*'.

> Jane's barrister 'Dinah Rose' opened by pointing towards a case of 'classic gender stereotyping'. Dinah went one by one, through the stated medical reasons of the boards [sic][license] refusal. These ranged from the possibility of non-malignant lumps appearing on the breasts to being unstable if suffering from PMT. She went on to say that the Board had no knowledge of Jane Couch's medical condition, as they had never even examined her. A male applicant would be examined by one of the Board's doctors prior to any license consideration
>
> www.punkcast#4.com.uk
> Jane Couch tribunal hearing
> Croydon UK, 12 and 13 February 1998.

Since 1986 the New South Wales Boxing Authority has exercised sole administration of professional fight governance throughout the state. As the background to *Ferneley* (2001) indicates police enforcement under Ministerial directives is likely to follow unlicensed contests with possible convictions, fines and imprisonment for unlawful assault and public order offences. Powers, appointments and core Authority decisions are overseen by Parliament under the *Boxing and Wrestling Control Act* (1986). Similar Authorities, Boards and Commissions exist in most Australian states without these contentious sex or age restrictions.

Vince Ippolito, 2002

Mr Ippolito's ability, both medically and otherwise, to engage in professional boxing was not in issue. What was in issue was whether the abovementioned rules in respect of age limitation applied to his application

Age Limitation Rule #2
Any boxer not registered with the Authority in the calendar year immediately preceding his thirty-sixth (36) birthday is ineligible to be registered

Ippolito v. Boxing Authority of NSW
[2002] NSWADT 134 at www.austlii.edu.au/boxing.

Vince Ippolito's contribution to Australian fight law follows several sex restriction cases outlawing female professional fighters and access to other popular Australian sports (see Burke 2003; Merz 2000; 2002). The '*Age Limitation - Professional Boxers Rule*' indicates the character of mandatory licensing restrictions commonly enforced in Western fight law and the reluctance of judges to overturn valid rule-making and enforcement decisions enforced by public licensing authorities.

The Administrative Decisions Tribunal reviewed New South Wales Boxing Authority powers to reject Ippolito's licence application. When submitting compulsory registration papers Ippolito was aged thirty-six years and three months. Rule 3, deemed inapplicable to the outcome, allows license consideration where applicants aged thirty-six years or over are registered in another jurisdiction. Both rules might work in tandem to prevent aged

professional fighters in any class from making belated, ill-advised comebacks. Health, welfare and athlete protection inform this and allied hard paternalistic bans.

While *Ferneley* (2001) examined the very legality of her exclusion in light of parallel state and federal anti-sex-discrimination prohibitions, Ippolito merely sought review and reversal of the Authority's decision. Commonly, each rule restricts license availability throughout the state based on the personal attributes of each class of applicant (Burke 2003). Age-restriction Rule 2 simultaneously identifies two prohibitions. Any first-time applicant aged thirty-six is unable to box. By extension, to be considered eligible an applicant must be registered in New South Wales at thirty-five years. These requirements prohibit licensing despite a history of registration in the state before reaching thirty-five years. The narrow, prohibitionist character suggests a discriminatory, protective exclusion directed at the *best interests* of all aging athletes.

As a first time applicant with no previous licensed fight history, Ippolito could not waive the 'Age Limitation' rule. Short- and long-term medical fitness, venue and order maintenance, ticketing, advertising and related management, training and administrative functions are all subject to any exemptions at the discretion of the Authority. The verdict provides no discussion of legality of the 'Age Limitation' rule or its potentially discriminatory effects.

Any appeal to a higher court is unlikely and ill advised. *Ferneley's* widely publicised 2001 case offers a cautious precedent. Anti-discrimination exemptions uphold state rights to exclusively administer professional boxing through public Authorities, Boards or Commissions. Several legal and political justifications endorse this governance process. Ethically, the verdict simultaneously ignores, limits and restricts individual athlete voices at the expense of various external, public, paternalistic interests.

At stake in each ruling are rights of elected public, state officials to exclusively govern fight sports within specific geographic boundaries. Recognised general principles of public administrative law and judicial review can endorse or overrule decisions of all public licensing bodies. *Ferneley* (2001) and *Ippolito* (2002) demonstrate the unwillingness of appointed judges to overturn expert rule making, enforcement and policy decisions authorised under validly enacted public sector licensing provisions. Further, *Ippolito* is silent on broader measures of athlete protection for middle-aged fighters under the *'Age Limitation'* rule.

John Dalungdalee Jones, 2003

Claim

> *The Plaintiff claims monies received by the Director of Native Affairs and held in Trust Accounts, the Director being the Trustee and not accounted for by the Public Trustee in finalising the Estate of Elliot Bennett, the monies being: -*

Trust accounts $ 13,262.00
Together with $19,271,736.00 interest and appreciated value

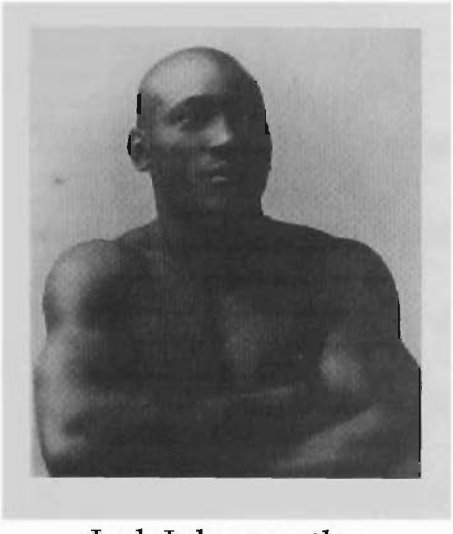
www.brumbywatchaustralia.com

John Dalungdalee Jones is an Indigenous Australian elder. His claim as a beneficiary to Elley Bennett's missing square ring earnings exemplifies continuous racial tensions embedded in modern Western culture. The square ring offers a confrontational microcosm of broader social tensions. Binary themes invoking human evolution and pathological, uncivilised difference abound in modern legal, sports, political and cultural narratives.

Bennett was Australian bantam and featherweight champion in 1952. All winnings from his ten-year professional career were automatically placed in public trust funds under Queensland 'Aboriginal Protection' legislation. In a variant of common outlaw paternalistic themes pervading modern fight law, public regulatory philosophies deemed Bennett a non-citizen, unable to privately manage his lucrative square ring rewards.

Unlike many suppressed Indigenous communities, Bennett's 'mob' is relatively easy to locate. Elder Dalungdalee Jones is the oldest descendent of the Dalungbara peoples and a direct blood cousin of the champion fighter. In an ongoing saga spanning fifty years of investigations and litigation, Elder Jones is

attempting to trace up to £16,000 of missing earnings for the benefit of his deprived community.



Jack Johnson, the American heavyweight, hated by all Australians

(*Alick Jackimos Collection*)

Tent boxing – a rich segment in Australian sporting life: Jimmy Sharman Sr., founder of the famous travelling troupe of boxers & wrestlers (*People Magazine*)

Elley Bennett, Australian bantam & featherweight champion, whose ring earnings went directly to the Aboriginal Sub-Department of the Department of Death and Home Affairs in Queensland (*News Limited*)

Tatz 1995, pp. 109, 111 and 112.

Within a backdrop of outlawed non-citizenship emphasised in the brash persona of Anthony 'Chock' Mundine, the counter-claim alleges no state impropriety. Public interest justifications for Aboriginal 'protection' legislation during the 1950s were a legacy of the age, and cannot be rectified by such an audacious financial claim. Various public works including hospitals, schools

and roads are all possible, yet poorly documented sources of expenditure. Newspaper investigations highlighted the controversy during the early 1990s, in turn sparking a flurry of litigation to trace the missing funds.

This dispute is by no means unique. Fight law often deals with conflict pitting black against white. Social context dictates judicial scrutiny provides a limited outlet in the search for displaced 'minority' identity, exacerbated by all the benefits and evils of elite, square ring 'employment'. Tatz (1995) combines photographs and a unique statistical and narrative compilation situating boxing alongside other Indigenous contributions popularised and silenced in Australian sports lore. Official records and stories of cultural empowerment, hardship and masculinity, including the Bennett trusteeship dispute, highlight numerous social, environmental, political and racial dimensions significant to national and international fight lore. A context of non-citizenship and denial in mainstream Australian culture founds the need for such a human rights focus, emphasising ongoing discrimination, hardship, displacement and deprivation at times overcome and at others perpetuated by professional sports involvement. British conquest legacies and limitations of Western post-colonial governance are embedded in numerous tragic stories of temporary success, premature death and minimal recognition within a largely silenced narrative field. The Dalungdalee Jones case and its complex historical dimensions suggest this minimal recognition has significant intercultural legacies unlikely to

produce a satisfactory outcome for the former champion's surviving descendants.

Nathan Croucher, Ahmat Popal and Patricia Devellerez, 2001

> As I warned repeatedly, it took a fatality to get action from the Government of the day. That fatality occurred in my home city of Geelong. A person from the street went to a tent fight, was knocked semiconscious and was carried away by his mates, slung over a shoulder, up the main street of Geelong. He died in hospital that night. If some control had been exercised over professional boxing then as it is now, that fatality would not have occurred ...
>
> The Hon. Mr. Tresize, MLA and
> Minister for Sport and Recreation
> *Hansard* (Parliamentary Debates), Legislative Assembly,
> vol. 377, 25 May 1985, p. 56 [p. 810].

Most developments in late modern boxing are evident in Nathan Croucher's outlaw status under Victorian fight law. Amendments tightening compulsory pre-fight medical testing procedures were promptly introduced after television and press coverage of Ahmad Popal's tragic square ring death in 2001. An extensive patchwork of reforms instigated by the elected Parliamentary Minister for Sport now requires mandatory Magnetic Resonance Image (MRI) scans with all athlete license applications lodged in Victoria.

Hassen's anguish at Kemp's Death

> **Wednesday, 21 September [1949]** Victorian boxer Archie Kemp died this morning in St. Vincents hospital. He did not regain consciousness after being knocked out in the 11th round of the Australian lightweight championship by Jack Hassen at Sydney Stadium last night. A deeply distress Jack Hassen said today he is considering quitting the fight game. The dynamite Aboriginal champion said he just could not risk badly hurting someone else. However, the Hassen stable is adamant that he will fight on despite the accident. They believe that Kemp was harmed by three previous fights against imported opponents earlier this year
>
> Random House 2001, p. 273.

Between 1970 and 1986 Victoria frequently consolidated public licensing requirements for all professional fighting. Lance Hobson's death in 1996 (Warren 1998) reignited safety concerns revisited five years later with two widely publicised incidents within a two-week period. The political response to these unfortunate, unpredictable accidents resulted in the introduction of compulsory MRI screening.

Victorian licensing rules first introduced in 1975 were consolidated by the formation of the Professional Boxing Board of Control in 1980. Periodic amendments to Board powers, rules and licensing requirements illustrate a gradual expansion of restrictive prerequisites. Most involve increased license fees, tighter medical scrutiny, bans on sparring and competition after recorded knockdowns and ongoing monitoring of athlete physical and psychological health. Consolidated internet records or printed editions of legislation and

statutory rules are publicly available, however tracing the meanings, origins and requirements of this complex web of provisions involves piecing together a jigsaw of political, legal and square ring developments.

The inquest heard Popal had never fought more than four rounds until he met Pappa for an eight-round bout for the Victorian title. Pappa had 35 amateur bouts and six professional fights

G. Kaszbuska
'Boxer 'had no hope' in fatal fight'
The Australian, 3 May 2003, p. 3.

Boxing officials privately admit a shortage of capable fighters and anomalies between the state control boards mean there will always be trainers and promoters willing to match fighters who have no business sharing the same ring

C. le Grand
'No match for death'
The Australian, 3 May 2003, p. 3.

All suspicious deaths invoke coronial inquiry. This ancient office of Western public law has sole investigative power over determining, recording and recommending criminal proceedings arising from potentially unlawful deaths (Russell 1980). Medical narratives pervade coronial methods, and either criminal or civil litigation may follow.

Unfortunate sports tragedies individuals generate news interest. Press, radio, television and multi-media formats aim to report incidents *as they occur*. Employing text, images and standardised production and dissemination processes (van dijk 1991; Whannel 1992), popular Western news targets diverse

communities of interest depending on degrees of local, national, international and cultural focus. Deaths, accidents and tragedies associated with most sports receive widespread coverage. At the time this consists of possible causes of the harm, while retrospective accounts seek to attribute blame, cause and responsibility. Regardless, the merits of contemporary media publicity as a conduit for meaningful fight sports reform are highly debatable given the dichotomised, adversarial nature of Western public debates (Tannen 1998).

Almost two-years after initial reports on Ahmat Popal's death early suspicions the incident was another preventable square ring tragedy appeared to be confirmed. Popular reportage emphasises shock, drama and potential negligence contributing to an untimely sporting tragedy. Details of time delays, conflicting evidence and potential legal proceedings follow each step of the media's investigation and depiction of the incident. Each shocking discovery justifies all elements of state involvement in constructing an official fact finding narrative and a palatable legislative response. As time passes a complete re-construction of the character of outlaw contests and dominant, identified causes of harm seems progressively less clear even to attentive fight or legal readers.

> Boxing trainer Antonio Altamura told the court that a punch did not cause Popal's injury. "He hit his head hard on the floor" ...
>
> ...
>
> Mr Altamura said Popal's trainer, Jeff Malcolm, was not present, so promoter Peter Maniatis asked him to look after Popal. Mr Altamura

> said that had he known Popal's professional history and the fact that he had dropped three weight divisions in two years, he would not have let him fight. Anyone who recommended Popal for the fight with Pappa had "rocks in their head", Mr Altamura said
>
> Milovanovic 2003, p. 5.

Two weeks after Popal's death Patricia Devellerez collapsed in a filmed contest held in New Zealand. Merz (2002) suggests this registered professional athlete was over-matched and poorly supervised despite compulsory licensing and extensive medical scrutiny. Public debates justifying tighter regulatory protection for athletes invariably follow the unfortunate coincidence of both cases. Concerns over inherent yet preventable risks and calls for formal rule-changes to enhance athlete safety dominate reports of these and similar incidents.

Any abnormality traced by MRI scanning leads to automatic prohibition under current Victorian licensing rules. Press reports indicate Croucher and two others had failed mandatory scanning requirements since their introduction (Giles 2002, p. 3). Seventy-nine successful applications were reported in 2002 following the reforms. Editorial comment and sports chatter suggest these restrictions are necessary to minimise the dangerous realities of a 'deliberately violent sport' (Editorial 2002, p. 18).

Predictive benefits of scientific technology seek to detect and prevent individual physical risks. Medical inspection or coronial processes have yet to be officially scrutinised in Australian state or federal courts. The legality of these provisions is unlikely to be questioned given the accuracy of MRI technology and its widespread endorsement under Western diagnostic medicine and throughout contemporary Victorian sports and legal cultures.

> Magnetic resonance imaging (MRI) a diagnostic technique based on analysis of the absorption and transmission of high frequency radio waves by the water molecules in tissues placed in a strong magnetic field (see NUCLEAR MAGNETIC RESONANCE). Using modern high-speed computers, this analysis can be used to 'map-out' the variation in tissue signals in any place and thus produce images of the tissues. It is particularly useful for examining the central nervous system and musculoskletal system, and to a lesser extent the chest and abdomen. MRI can be used for the non-invasive diagnosis and treatment planning of a wide range of diseases, including cancer: it has the advantage that it does not use potentially harmful ionising radiation, such as X-rays.
>
> Oxford Concise Medical Dictionary 2000, p. 387.

Two final issues warrant consideration. Justin Madden is another famous Melbourne football name leading the significant push to consolidate professional boxing management in a post-sporting Parliamentary career. Popular jurisprudential, sociological and legal implications raise several important issues for consideration (Morrison 1995; 1997).

Finally, Ahmad Popal was licensed to compete professionally in the state of Queensland. Only Tasmania, the Northern Territory and Queensland have resisted public Authority, Board or Commission oversight. Arguments against mandatory public licensing include the prominence of travelling tent-boxing industries throughout Australia's Northern rural dust lands. These celebrated icons of Australian fight lore (Toohey 2002, p. 3) ensure professional governance favours private self-regulation in these jurisdictions. Little suggestion of any substantive advantages or problems with either public or private fight governance emerges in popular sports narratives despite periodic calls for uniform national and professionally sanctioned fight laws or outright bans.

Medical Lore

> By courtesy of Mervyn Williams, who was until recently boxing editor of The Sporting Globe, I was able to obtain all Press reports of fatalities for the whole of Australia for the years 1922 to 1962. The total was 10, or an average of one death every four years. As this figure itself is not indicative of a contest fatality rate, we were ... able to arrive at the estimate of one fatality per 10,000 contests. The claim is based on the fact that Stadiums Ltd. control the major stadiums in Brisbane, Sydney and Melbourne, and that in the two last-mentioned cities for this period, war time included, no less than two tournaments per week were held. From those three centres alone, since 1920 there have been held more than 60,000 professional boxing contests. Further, although not so regularly, professional tournaments are held in all the other State capitals, and in the major country centres of the more populated States. Mr Williams gives as a conservative estimate some 10,000 supervised contests for the same period (1920 to 1962) for those centres ... If one then added to the supervised 70,000 professional contests the many thousands of amateur contests during the last 40 years, the estimate of one fatality per 10,000

> contests becomes a reasonable estimate. Further, when one considers that this country has probably the highest number of professional contests per capita than any other nation in the world, this figure becomes a reasonable one for boxing in general
>
> Refshauge 1963, p. 611.

No single national or international source maintains accessible, current data on reported square ring injuries and deaths. Comparative searches of formal Authority, Board or Commission histories are likely to produce a fountain of stories and official paperwork to supplement existing knowledge in Australian fight lore. Specialist medical, government and sports literature is testimony to several failings in the interdisciplinary research process. Methodological, political and language differences emphasise widespread divisions of professional opinion in contrasting legal, medical and political fight debates.

Refshauge's presentation at the *First Australian Symposium on Sports Medicine* in Melbourne on 22 February 1962 (1963) reported from extensive observations at *nearly 2000 professional contests*. Sports chatter forms an unscientific albeit central referent for each finding in a significant yet dated investigation. Interestingly, the period between Popal's death in April 2001 and Hobson in 1996 confirms Refshauge's average estimate of one reported death in Australian professional fight sports every five years.

17 Reported deaths in Australian Boxing 1832-1974

Deceased	Date	State	Deceased	Date	State
Brighton Bill	1838	NSW	Lett Shepherd	6 Jan 1935	Qld
Alec Agar	1884	NSW	Reo Rip Bunker	Feb 1947	NSW
2 unnamed combatants at California Club	1893	NSW	Archie Kemp (v Jack Hassen)	1949	Vic
Jack Carter (Whitton v Sharman)	-	NSW	Terry Lynch	1951	NSW
D. Cabanilla (v B. McCarthy)	2-5 July 1921	Vic	George Kraal (v Keith Lewis)	3 Nov 1961	NSW
George Mendies	3 May1924	NSW	Davey Moore	1967	-
Reg Anderson	30 Dec 1924	NSW	Roko Spanja	1971	NSW
Lionel Barnes	1920s	NSW	Alberto Jangalay	1971	Qld
Bob Clements	1930s	Qld	Chuck Wilburn	1976	-
B. McCarthy	6 Jul 1931	Vic	**Total**	**17**	

Shepherd 1974 and Corris 1980.

Total deaths reported in modern fight lore sources may significantly underestimate the extent of documented square ring incidents and precise statistics are unlikely in Australia's or the United States' multi jurisdictional federal settings. Corris (1980) and Shepherd (1974) identify seventeen

prominent deaths in Australia's modern professional sports lineage. Clustered in the populous Eastern states, each pre-dates current licensing requirements and provides a piecemeal history into prominent incidents recorded in modern fight lore.

Reported Deaths in Australian Professional and Amateur Boxing National Health and Medical Research Committee Submission to the Interdepartmental Committee Inquiry into Boxing and other Combat Sports

1893	1	**1940-49**	11 (1 amateur)
1900-09	2	**1950-59**	5 (1 amateur)
1910-19	22 (2 amateur)	**1960-69**	6 (2 amateur)
1920-29	16	**1970-74**	2
1930-39	23 (2 amateur)	**Total**	**88**

Australian Government 1974, attachment i, p. 50.

Evidence presented to the Federal Interdepartmental Committee Report into Boxing and Combat Sports (1974) provides a more reliable estimate of eighty-eight fight deaths between 1893 and 1974. The report is critical in the chronological debate advocating uniform national fight regulation to promote consistency between a complex mix of private and minimal state policing, corporate and venue inspection processes. Statistical differences, methodological limitations and vague data presentation characterise popular,

judicial and Parliamentary fight law sources suggesting the only reliable measure of the frequency of death or serious injury in this and other risk-sports requires detailed examination of all state and territory public records with supplementary verification in popular media, medical and sports archives.

A self-report study of University of Queensland students provides additional data on all organised competitive sports (Baker, Baker and Williams 1964). A low numerical frequency characterised boxing injuries compared with popular team sports such as rugby football and basketball, or high-risk individual sports including gymnastics. Dislocations, fractures, cuts and sprains clearly outnumbered concussions and other head injuries reported in competitive university sports fighting.

Each source provides a vague, inconsistent statistical compilation of reported fight injuries and fatalities. Reversing the chronology through a millennium lens pinpoints several limitations of disparate research findings, methods and speculative medical, political and moral arguments to justify public or private regulatory control. The poor reliability specific information on harms sustained in boxing and other high-risk sports produces a pastiche of contradictory, dated evidence. Formal, centralised public or private licensing methods consistently produce and reproduce these inconsistencies through disparate reporting practices and divergent local, state and national regulatory procedures. The failure of contemporary sources to supplement early medical research and

anecdotes of fight lore is a regrettable omission in the professional Australian sports knowledge base.

Reported Sports Injuries

Activity	Sprain & Strain	Cuts	Dislocate & fracture	Concusⁿ	Disc	Other	Total
Athletics	35	8	7	-	2	10	62
Australian football	5	5	7	-	-	1	18
Badminton	3	2	-	-	-	-	5
Baseball	3	3	1	-	-	-	7
Basketball	20	10	8	-	1	6	45
Boxing	2	1	4	1	-	1	9
Bush walks	-	1	1	-	-	2	4
Cricket	12	19	7	4	2	2	46
Fencing	-	-	-	-	-	1	1
Golf	3	-	-	-	-	-	3
Gymnastics	10	4	7	1	-	-	22
Hockey	5	31	6	-	-	1	43
Judo	3	1	5	-	-	-	9
Rowing	7	7	-	-	-	-	14
Rugby	136	123	141	40	4	47	491
Soccer	6	4	4	-	-	6	20
Squash	6	7	2	1	1	-	17
Swimming	5	4	3	2	-	6	20
Table tennis	-	-	-	-	-	1	1
Tennis	25	14	4	-	3	5	51
Vigoro	1	-	-	-	-	-	1
Volleyball	-	-	1	-	-	-	1
Water polo	-	-	-	-	-	2	2
Water ski	2	-	-	-	-	-	2
Weight lifting	2	-	1	-	-	-	3
Other	2	8	6	1	-	5	22
Totals	**293**	**252**	**215**	**50**	**13**	**96**	**919**

Baker, Baker & Williams 1964, p. 401.

Medical narratives use scientific language to identify specific physical risks of death and serious injury or advocate outright prohibition of dangerous sports. Medical opinion is at the forefront of reform debates in contemporary Australian fight law. Sex and age restrictions and more accurate physiological screening illustrate overlapping paternalistic themes affecting fight practitioners indicative of the *Ferneley* and *Ippolito* rulings. A combination of individual, moral and social arguments and dual coronial and Commission structures equally validate hard paternalistic fight license restrictions founded under a complex, neuro-scientific paradigm.

Chock and Fight Biographies

Champions of Australian sport produce extremely formulaic, stylised popular narratives. Conventions of Western popular consumption and style target interested sports fans (Bordieu 1993). Historical events are told and re-told to new generations of sports lore consumers within a limited range of print, pictorial and multi-media forms.

Autobiographies are prominent in modern fight lore with self-impressions or truths of contentious personal histories seemingly obligatory for all noted contemporary Western athletes (see Johnson 1927: 1992). Chronological descriptions of noted incidents, memories and controversies provide insider truths of professional fight life with few variations. Standardisation, stylistic

uniformity and prominent narrative themes replicate previous texts with a predictable range of sporting themes. Breaking such formulaic narratives by *making the familiar strange* (see Foley 1992) is a core task for contemporary historical and sports lore reconstructions where novel re-readings can produce innovative versions of recognised fight truths (McHale 1992).

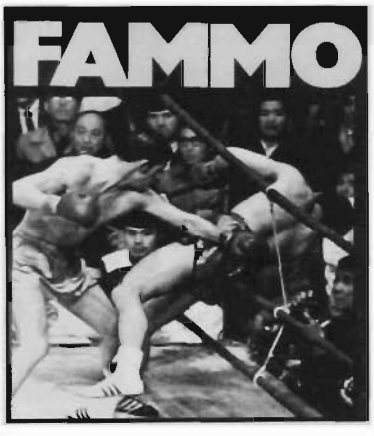
> At the peak of their careers great Australian boxers, such as the late Dave Sands, Johnny Famechon and Lionel Rose, brought credit to Australia as sportsmen. Since that time a lull has occurred in the industry, although we are now seeing the emergence of world standard boxing champions such as Lester Ellis and Jeff Fenech, who recently won world boxing titles. Some years ago, Channel HSV 7 televised TV Ringside, which was a popular show with viewers. They were able to watch good standard boxing from the comfort of their own homes. At that time a great deal of sponsorship and promotion allowed the televising of boxing matches. However, when the program finished, the sponsorship fell away and the boxing industry became less prominent in the minds of sporting Australians. All sport is dependent on sponsorship for its staging and promotion. Unless sound and positive regulations exist, reputable sponsors will not support a sport and put their advertising dollars at risk
>
> Mr. McGrath, Member for the electorate of Lowan
> *Hansard*, Legislative Assembly, 25 May 1985, vol 377, p. 48 [p. 802].

Since the 1960s at least Johnny Famechon has been one of many Australian professional fighters embraced by popular fight lore. Parliamentary recognition indicates enormous public respect for this champion sporting battler. A tenacious, 'minority' ethnic determination, fuse with the pride of Australian nationalism, masculinity and sporting success constructed around Fammo's amicable public persona. His autobiography remains among the first of its type

in late-modern Australian sports literature, providing a template for subsequent boxers and non-fighting athletes in both team and individual sports. Regrettably, after early retirement and no discernible permanent injuries associated with his professional fighting career (Corris 1980, p. 187), the former champion was tragically and permanently disabled after being hit by a car while jogging in 1991 (www.dinkumaussies.com).

This is Ron Casey for the major Australian broadcasting network
...
It's been a long time since the old Albert Hall in London has seen something as exciting as this ...

I think he can win the feather-weight championship of the world ... they're towelling him down in the corner now ... it's seconds out ... its three minutes to go ... three minutes to go in the feather-weight championship of the world ...



And the bell rings in my ears. The crowd noise is mounting, filling the stadium. We touch gloves. The referee, George Smith, a Scot, waves us on. I stick out a left lead and Legra punches his gloves together. I can see by the look on Legra's face that Ambrose is right again. This is sheer desperation. No ...

Famechon 1993, pp. 7-8.

Strong parental influence ensured continuous young Fammo was exposed to the art of sports fighting under a respected professional ethos. Famechon's father was French lightweight champion of the 1940s and conveyed the intricacies of ring craft in a post-World-War II Melbourne suburban garage.

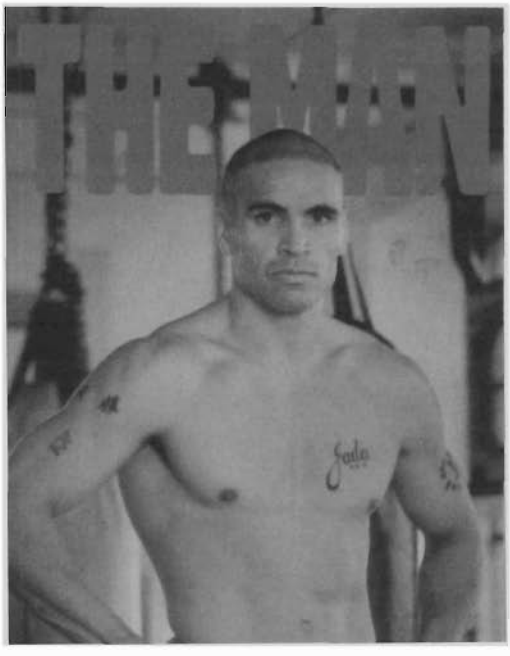
Inferred stereotypes of socially inferior 'wogs', lawbreaking, risk taking and youth forge a strong desire to succeed through disciplined, competitive professional sport. Fight fans living through the era would also remember the voice of commentator and prominent sports media pioneer Ron Casey, host of '*T.V. Ringside*' during the 1960s and 1970s. The famous narrative reproduced in *Fammo* evokes the tension of the contest and the significance of transmission coverage to Australian television audiences. Untouched by public or private legal controversy, *Fammo* is a multi-generational, multi-national and multi-cultural narrative of modern Australian fight sports success.

> For 12 months, back in his struggling youth before his job canvassing for a paint company and working for the Penrith City Council, Bobby Williams had been a circus clown. He was paid to make people laugh.
>
> They were still laughing on October 12, 1984, the night Fenech launched his career as a professional boxer with a two-round display of brute strength and cold-blooded malice that would become his trademark and leave wee Williams mangled on the canvas
>
> Kieza and Muskat 1988, p. 67

Jeff Fenech is a further example of a battling Maltese-Australian Sydney youth achieving international title success (Kieza and Muszkat 1988). Discipline and ethnicity replicate Fammo's landmark fight narrative. With several lucrative post-career business concerns (Dobbin 27 Jan 2002, Sport p. 16) and prominence as a commentator on contentious sports issues, Fenech continues to provide advice and opinion on noted controversies in popular fight news including 'Chock' Mundine's statements on international terrorism (*MX* 23 Oct 2001, p. 3) and the prospects of aspiring challenger Glen Kelly (Daff 19-20 Jan 2002, p. 32). Strong affiliations with 'fight-schools' sponsored by the Newtown and Bankstown Police Citizen's Youth Clubs provide links to local news items emphasising the virtues of supervised boxing to '*keep* ...[adolescent fighting boys] *off the street*' in 'battling' inner-suburban regions (Whalley 23 Jan 2002, p. 99).

The Man (1998) offers some modifications on these standard fight biographical templates. Largely devoted to Anthony 'Chock' Mundine's unique career change from professional Rugby League to international championship fighting, his 1998 autobiography directly reflects and nurtures his controversial public demeanour. Significant family and professional influences converge with forthright opinions on major social issues including Indigenous rights and self-determination. *The Man* is identical to most popular fight autobiographies in

terms of style and form, with brash, fighting undertones mirroring the champion's combative public persona.



> ... [D]uring his [Tony Mundine's] glory days he endured some of the worst criticism ever dished out to any Australian athlete, despite boasting a career record which stands tall along the likes of Les Darcy, Vic Patrick, Jack Carroll, Jeff Fenech and Jeff Harding. My father's career highlights included locking horns with the great middleweight Carlos Monzon when there was only one world title; winning the Commonwealth championship in *two* weight divisions; flooring Emile Griffiths in Paris; and having the legendary boxing trainer Ern McQuillan rate him higher than the great Dave Sands
>
> Mundine with Lane 1998, p. 8

Laden with strong opinions on Australian schooling, politics, government and race relations, the realities of a volatile inner-Sydney upbringing are the source of Chock's competitive fight ethos. Much of the text indicates combative experiences with Australian rugby league administrators leading his highly publicised career change. The intricacies of fight life and insights into complex post-colonial social deprivation emblematic of Australian Indigenous governance highlight the intense self-belief, spiritualism and tenacity of a brash and promising sports fighter.

A controversial public interest justifies 'Chock's' persistent newsworthiness. This vague term suggests certain external, community-determined rights and obligations accompany elite sports participation, success, notoriety and fame. Precise motives for this focus are often unclear. Journalistic style, methodological constraints and editorial discretion combine with mounds of visual images, complex transmission and reception technologies, sponsorship demands and perceived social interest to translate sports behaviour into newsworthy stories. Cultural, technological, linguistic and moral dimensions define and reproduce many private, individual stories as public property, raising numerous questions about manufacturing 'truth' in popular Western media. Banner headlines, cartoons or parody at times accompany revealing photo-imagery or snapshot quotes provided in standard 'back-page' news. Special features and opinion pieces provide further avenues for sports entertainment and celebrity-focused content in large weekend newspapers.

'Pugilistic' Federal Health Minister
Tony Abbott,
The Weekend Australian
30-31 August 2003, p. 17.

'Chock'
Macca
The Herald Sun
27 October 2001, p. 32.

Mundine adapts to each publicised media criticism by raising the bar through combative, opinionated responses. Occasionally he falls in a heap as media narratives question his demeanour, values and contentious political statements. 'Piss-taking' and overt denunciation of 'the man's' political, religious and equal rights beliefs often trivialise the complexity and influence of Mundine in popular media lore. Conventional publication norms reproduce each controversy in Chock's celebrity biography highlighting a growing body of negative, paradoxical, clumsy 'Mundine-isms'.

> Two days after defeating Perth boxer Guy Waters, Mundine was interviewed on morning television by entertainment journalist Richard Wilkins. In response to a question about the United States government's response to the 11 September terrorist attacks, the *'outspoken world title contender'* and convert to the Islamic faith stated: *'Its not about terrorism, it's about fighting for God's laws ... America's brought it upon themselves,*

> *you know, in what they've done in the history of time'*. Wilkins denied any intention to trap Mundine, and during a corrective interview that evening on the same television station the statement was toned-down after considerable publicity on most news and current affair programmes throughout the day
>
> Warren 2002, p. 76 references omitted.

Chock is perhaps the only elite professional athlete invited to comment on global terrorism and its implications after the 11 September 2002 World Trade Centre air attacks (911). Corrective, counter-publicity to correct his media image included participation as a *Big Brother* celebrity 'inmate' where his depiction typified a softer, introspective, spiritual 'Man'.

> Holly Ferneley – a triple world champion kickboxer who has been boxing for five years – is infuriated by Mundine's sexism, but still goes to watch him train to pick up tips. "He's got an exciting fighting style because he's a natural athlete," she says. "If he sticks with it, I think he'll be a serious contender.
>
> Mundine is surprised, bemused and just a little bit flattered to learn that he has become a pin-up boy for such an outrageous demographic
>
> Tom 2001, p. 17.

Emma Tom's bubbly day-in-the-life narrative (2001) brews with imminent reference to hard paternalistic sparring prohibitions against inner-Sydney women under New South Wales fight law. Redfern has numerous licensed

gyms, and the Man's Islamic beliefs impliedly endorse the outlaw sex exclusions. Only the world-super-middleweight title in 2003 has shifted the media focus on this controversial fighter. Despite extensive public criticism 'The Man' retains his brash fightin' demeanour, inadvertently perpetuating the contradictions abounding in his dominant public image.

"... *[H]e probably will never get to fight in the US and really that's where all the big money is*"

IBF vice-president Ray Wheatley

[Mundine's comments] *"are unbelievable and intolerable and seriously hurt world society and boxing ... absurd and denigrating boxing statements"*

WBC President Jose Sulaiman

Lally 2001, p. 9; Kimber 2001, p. 3.

Misconceptions abound in published narratives of Islamic sports achievements (see Morgan 1998). Mundine's blurred public and private persona comprises outspoken, Indigenous, fighting-Islamic masculinity, suggesting the Man best 'shut up and play the game' to avoid inevitable media criticism. Each chapter of Mundine lore contributes to future editions of newsprint as he continues to pursue elite fighting or other professional sporting goals.

In 2001 Mundine was stripped of his world super-middleweight ranking after widespread public criticism for comments supporting Islamic terrorist activities. In November 'Chock' was defeated by Sven Ottke in Germany and

appeared disillusioned on his return to Australia, promising success in Rugby Union or decathlon if fighting was not his game (AAP 10 Dec 2001, p. 21; Guiness 1-2 Dec 2001, p. 54; Hooper 6 Dec 2001, p. 88). Some media commentary reinforced the importance of Mundine's comments in light of fundamental Western constitutional rights to free, unfettered political, social or religious speech (Adams 22-23 Dec 2001, p. 28; Editorial 3-4 Nov 2001, p. 20; Editorial 8-9 Dec 2001, p. 16). Australian Muslim leaders (Nason and McGurie 23 Oct 2001, pp. 1-2) and local boxing authorities (*MX* 26 Oct 2001, p. 18) vowed to back the 'Man' if any formal consequences or legal proceedings threatened to disrupt his fighting career. The impact of this incident soon passed as his square ring international success blossomed.

> "I want Kerryn to come and sit (in the) front row and watch a majestic athlete in action. It will open her eyes to what 'The Man' is capable of. I'll be a gentleman. I'll pay for her ticket and walk her to her seat. Kerryn, darling, don't be afraid of me. Are you scared you will fall in love with this supreme athlete, be wooed by my pretty looks and supreme skills? I won't hurt you, darling. I'm a passive man, I am full of compassion for my fellow man and if you came along ... you would see that ... if you don't (come), don't worry about me. I'll look after the boys in (the) boxing ring and you can look after the girls back home ... give Lester some credit. He has won more titles that I have had fights ... Hardly anyone gets hurt seriously in boxing, crossing the road is more dangerous"
>
> Weilder 14 June 2002, Sport p. 4

At a sanctioned professional bout where he added more notches to his world title resurgence, former International Boxing Federation (IBF) light-

featherweight title-holder of the mid-1980s Lester Ellis confronted the victorious Mundine. Footage aired widely on Australian sports news showed a portly, seemingly drunken Ellis. Eventually, Mundine accepted and won a five round contest with all gate proceeds going to various Melbourne charities.

'Chock' was widely criticised for accepting a challenge from an aging, over-ambitious ex-fighter. Australian Medical Association (AMA) President Kerryn Phelps was most outspoken. On a morning television debate with Ellis and brother Keith, the contest was subject to an extremely personalised public airing. Keith Ellis openly attacked Phelps and her paternalistic health concerns. After asking Phelps whether she was '*offended by boxing*' and receiving the inevitable positive reply, Keith Ellis commented: 'Well I'm offended by the Gay and Lesbian Mardi-Gras' (*Today Show* Channel 9, 15 June 2002). The attack was directed at Phelps' high-profile involvement in the annual Sydney Gay and Lesbian carnival, and provided a perfect confrontational setting for breakfast television audiences.

Mundine's reaction was confined to his crass invitation to Phelps and occasional passing comments uttered to ever-enthusiastic television reporters. Medical concerns focused on the challenger's age, apparent mental infirmity and questionable physical condition. The brief fight invariably proved a gross mismatch. Prohibitionist medical arguments were persistently revisited, highlighting the inevitability of serious risks of permanent injury or death.

Indirect endorsement of restrictive New South Wales fight laws silently underpinned support for this duly supervised consensual exhibition. Mundine reconfigured debate to reinforce his ability while denouncing the AMA President's concerns by targeting her ignorance of fight craft. Through a typical outspoken, '*me-centred*', sexist invitation, Mundine successfully evaded routine public criticism in this oft-repeated outlaw debate. Moral concerns validating paternalistic age restrictions underpin the extensive criticism surrounding this chapter of the Man's fighting resurgence.

These repeat public controversies inevitably silence any positive contributions by the 'Man' to contemporary Australian fight sports. In January 2004 'Chock' received expected criticism for accepting a challenge from thirty-eight year old Yoshinori Nishizawa instead of a younger, more credible opponent. Repeat suggestions of mismatching and the diversion caused by acting fighter Russell Crowe and Nicole Kidman cheering Mundine at ringside (Walter, 20 January 2004, www.smh.com.au/articles) in 'the man's' media bibliography failed to acknowledge this rare, authorised and lawful evasion of the New South Wales 'Age Limitation' rule.

Kostya

Ethnicity, discipline, ability and a highly technical scientific fighting technique characterise popular stories of Kostya Tszyu. In contrast to 'Chock', Tszyu fits

the desired Australian migrant fighter's personality and 'underdog' (Lusetitch 3-4 Nov 2001, p. 52), 'mind-over-muscle' attitude (Callaghan 9-10 Mar 2002, pp. 14-18). The world junior welterweight champion was identified as a promising athlete while growing up in the harsh ice-lands of the former Soviet Union (McIlvanney 1996). Kostya's fighting successes document a less outspoken, modest tenacity when contrasted with many of his more brash colleagues and adversaries.

Veiled threats of legal action from defeated opponent Zeb Judah targeting the Nevada State Athletic Commission and all recognised title bodies accompanied United States reports of Kostya's second round Technical Knock Out (TKO) decision for world title honours (AAP 5 Nov 2001, Sport p. 4; AAP 5 Nov 2001, pp. 108 and 34; Daff 19 May 2002, p. 56). Contrasts with elite United States fight cultures centre around economic largesse and simultaneously reinforce the ubiquitous Aussie underdog status. Judah's confrontational bluster is soon forgotten as more volumes of praise are added to Kostya's noble persona. The champion's ability to draw global title events to major Australian venues and his open respect of the 'Man' add to the desirable public image of one of the nation's most revered contemporary athletes (Cormick 18-19 May 2002, p. 56).

Scrapbook

Toohey's expose on tent boxing in Australia's top-end (24-25 Aug 2002, p. 3) offers one of few non-elite interest stories emphasising the diverse character of Australia's fight traditions. At forty-five years and after close to three decades of travelling competition, Glynn Johnson's retirement from Fred Brophy's travelling tent show provides an important insight into a fading Australian fight industry.

Johnson's undefeated record underpins a laconic approach to what was originally his father's chosen sport. Many challengers are half drunk when 'all comers' are called, even though a *no drunks* rule is rigidly enforced. Tradition, safety and widespread popular appeal offer a mythical dimension to these contests incorporating gloved, amateur, three one-minute-round conventions. A '*few off nights*' are enough to justify closure to Johnson's lengthy fighting career. General descriptive stories of Melbourne fight venues provide windows into charitable, community and lower-level developments (Daffey 28 Oct 2001, Sport p. 2).

Finally, the fallen hero is also a significant part of contemporary fight news. Former world light heavyweight champion Jeff Harding has endured persistent post-retirement hardships (Guiness and Kogoy 12-13 May 2001, p. 50). Broke and bearing the effects of alcoholism, wife bashing, prison and homelessness, Harding is a tragic face in contemporary Australian fight lore. Up to $3.5 million in career winnings are inaccessibly bound in complex trust

arrangements, highlighting the difficulties of managing vast financial rewards after fleeting periods of international victory and public adulation. As new chapters arise in these tragic fight histories, individual life-stories reinvent, sidestep or overturn established outlaw reputations publicly memorialised in press headlines, newsprint or popular television stories.

Themes

Re-interpretations, re-readings and re-productions of popular fight lore demonstrate widespread intergenerational support for certain Australian fighters. Imaginative re-workings of historical text offer new means of conceptualising established facts or truths in these incomplete, at times sinister narratives (Campbell 2002). Conservative and revisionist histories incorporate dimensions of race, sex, male demeanour and square-ring successes or failures. A detailed tapestry of real and imagined sports, political and legal issues combines individual personality traits, adventures and generations of narrative revision, often to reinvent dominant and subverted stories manufactured for public news consumption.

Challenging dominant signifiers in news, biography, biographical histories and special interest sports literature involves a shift from adversarial and extremely narrow public debates to informed dialogue (Tannen 1998) over the merits or

undesirability of social problems. Fight law offers a highly restricted methodological alternative.

Darcy loss sparks riot

Saturday, 18 July [1914] Rowdy fans have rioted at the Sydney Stadium today after promising Australian boxer, Les Darcy, lost a controversial bout to an American opponent. Rated the best young fighter in the Commonwealth, Darcy had a huge contingent of fans from his home town of Maitland, NSW, at the bout against Fritz Holland, his first major Sydney stoush. Over 10 000 Maitlanders made the trek to Sydney by special trains to watch the bout. But when referee Harold Baker ruled a points decision in favour of Holland, the fans went berserk. After booing, jeering and throwing missiles, some spectators then tried to burn down the stadium before order was finally restored.

With boxing currently outlawed in America following the murder of a professional fighter, "Michigan Assassin" Stanley Ketchell, the best fighters from the United States are flocking to Australia in search of worthy opponents. Holland was full of praise for Darcy. "This man is a gilt-edged drawcard," Holland said. "He has the look of a fighter and the skills to match." Despite the loss, the 19-year old Darcy looks to have a big future in the fight game. Strongly built and quick on his feet, Darcy is still raw, but is learning the tricks of the trade

Random House 2001, p. 141.

Recent legislative, judicial and administrative developments evident in *Ferneley* (2001) and *Ippolito* (2002) readily subsume private rights to choose a preferred sport with imprecise statements of public interest to justify hard paternalistic bureaucratic bans. Sex and age restrictions silence broader classes of aspiring

boxers through largely unqualified, a-contextual acceptance of legal principles forged beyond the square ring. The subordination of individual athlete stories helps to endorse objective professional, administrative and medical assessments of risk over the private, personal informed free-will of each outlawed combatant. *Status* bans are mandatory prohibitions, and the most difficult for those affected to viably challenge in Australian review courts.

The unfortunate proximity of the Popal and Devellerez incidents generated a highly reactive approach to Australian fight law-making underpinned by paternalism, public interest rhetoric but little empirical research. Qualitative developments including a fighter's recollections, attractions, impressions and views of contentious public incidents within and beyond the square ring seldom permeate the meaningful development of contemporary Australian fight law. 'Chock' Mundine is the modern public outlaw, continually paying for confrontational opinions on race, 'trash-talk' and provocative fight conduct with a reinvented outlaw media persona. In contrast Les Darcy, Fammo, Jeff Fenech, Kostya and a host of largely unknown names embody the promise, success, underdog determination, despair and mild or conforming ethnicity of the desirable Australian fight athlete. Hidden stories of controversy can be discovered, but their highly selective regeneration over time helps reinforce the outlaw character of outspoken celebrities such as 'Chock'.

Of the nine reported Australian verdicts since Les Darcy's contractual dispute in 1918, the most significant example of outlawry embodies a familiar racial theme. While aspiring fighters banned under age, sex or physiological criteria may renew their citizenship in other locations or sports, Elley Bennett had no legal status. Much public resistance to 'Chock's' public brashness is a direct legacy of the historic denial of coloured male voices embedded in dominant, post-colonial English-speaking nations. With no citizenship rights, Bennett faced the very stereotypical demise typified by Mundine's ongoing protests. In a broader public context of indifference, denial, and outright contempt for Indigenous Australian male voices, it is highly unlikely Elder Dalungdalee Jones will achieve any greater recognition under dominant conventions of Australian court-made law.

§§§

Coda

Overview

Eight remaining Canadian verdicts reiterate the failed attempts to eliminate fight sports under Western criminal law philosophies. In presenting these rulings as concluding examples illustrating broader patterns of modern fight law, some generic themes resulting from this investigation are also examined.

Prominent issues include race, masculinity, violence and the progressive reduction of identified harms stemming from fight sports participation, viewing and organisation. Fight agreements, fight work, fight compensation and fight film cases highlight the complexity of this form of sports law and the impact of multiple forms of regulation at elite, professional, world-championship level. Several interdisciplinary, inter-jurisdictional and international legal, cultural and sporting themes are touched on, with emphasis on dominant problems, benefits and trends in contemporary Western fight law and its evolution as a complex body of modern sports governance.

Canadian Rulings, 1901-1920

Among volumes of Western judicial rulings Canadian sources provide the most accessible legal data, invoking user-friendly format, linguistic content and

indexing. Barnes (1996) reveals a cluster of eight Canadian fight law verdicts reported between 1901 and 1920, with an inevitable dark figure of unreported judgments lurking in the background. The prominence of Tommy Burns as world heavyweight title-holder during part of this significant period informs a more detailed Canadian professional fight history silenced by lucrative free-market professional fight industries south of the border.

Canadian Fight Law Rulings 1901-1920

	Year	Case & Citation	Legal issues	Outcome
1	1901	*Steele v. Maber* 6 CCC 446-452 (Q)	Prize fight; Injunction	Outlaw contest; Injunction granted
2	1904	*R v. Littlejohn* 8 CCC 212-217 (NB)	Prize fight; Public order	Acquittal; lawful sports combat
3	1906	*R v. Wildfong & Lang* 17 CCC 251-259 (Ont)	Prize fight; Public order	Acquittal; lawful sports combat
4	1911	*The King v. Fitzgerald* 19 CCC 145-149 (Ont)	Prize fight; Public order; Assault	Acquittal; lawful though unskilled contest
5	1913	*R v. Pelkey* 21 CCC 387-400 (Al)	Prize fight; Unlawful death	Acquittal; lawful sports combat
6	1916	*R v. Fleming & Wallace* 24 CCC 182-187 (Q)	Prize fight; Fight clubs; Employment	Acquittal; 'very fine' exhibition of combat skills
7	1918	*Bithell v. Butler #1* 30 CCC 275 (Q)	Prize fight; Fight profits	Outlaw agreement unenforceable
8	1920	*Bithell v. Butler #2* 54 DLR 122-126 (Q)	Prize fight; Fight profits	Outlaw agreement unenforceable

Each verdict replicates prominent themes in English common law synthesised *Coney* (1882). A familiar blend of statutory prohibitions and provincial enforcement actions typify this and other failed experiments in the criminal prohibition of modern fight sports.

Canadian prize-fight definitions

Encyclopaedia of the Laws of England vol. 2, p. 231	**Common law**	**Canadian Criminal Code s. 92**
A boxing or sparring match - if it is an honest and friendly contest with gloves, fairly conducted according to the Queensbury rules or other like regulations - seems to be perfectly legal and does not fall within the definition of a prize-fight	An encounter with fists or hands, with or without gloves, for a number of rounds, limited or unlimited, for a purse, stake or prize, but in which it was intended to fight until one or the other of the combatants should give in from exhaustion or injury received	An encounter or fight with fists or hands between two persons who have met for such purpose by previous arrangement made by or for them

R v. Littlejohn (1904) 8 CCC 212-217 (NB)

Criminal enforcement to outlaw fight-sports and other contentious human behaviours is fraught with investigative, evidentiary and other procedural difficulties. Trends in English and United States nineteenth century fight law

clearly had limited impact in achieving the ideal of eliminating a dangerous collective male social custom. Practitioners and viewers of all classes invoked an amateur sports ethos into professional fight lore under the Queensberry Rules. As Anderson (2001) and Gunn and Omerod (2000) recognise, this allowed professional fight sports to evolve in a legitimate, scientific, legally acceptable way despite all state attempts to enforce morality under emerging criminal principles. Over time, criminal law ceded to expert administrative governance, offering tighter regulatory control over fight rule-making, enforcement, management and competition. This is endorsed under a range of public and private legal provisions with essentially the same function. As with developments in fight law throughout the twentieth century, Canadian fight law grapples with common tensions involving different forms of sports governance, with criminal prohibition and regulatory bans having limited effect in eliminating the practice or its popularity.

Contests in Quebec (*Steele v. Maber* 1901) and New Brunswick (*Littlejohn* 1904) invoked federal criminal prohibitions, while subsequent adaptations to provincial Criminal Codes incorporated many common fight law provisions. The final two appeals involved an unlawful gaming transaction, highlighting the progressive acceptance of fight sports *per se*. Canada's institutional framework mirrors national and state tensions emblematic of United States and Australian federalism. Nevertheless, multi-agency governance in England and New Zealand similarly illustrates the bureaucratic largesse also characteristic of

contemporary private fight governance (see *Treherne* 2002), with multiple regulatory agencies engaged in a series of legal battles, often with no discernible prize or reward.

> [W]hen they came into the ring for the first round they rushed at each other in a furious manner and fought in the clinch and Williams was knocked down and the referee counted in the usual way, but on the sixth count he got up dazed and went to his corner. In the second round they rushed and clinched and no attempt at sparring and Williams was knocked down again and out. Inspector Miller, who was present, said: "There were four of five nice bouts, but this one was very rough, without any science", and that the contestants fought like two bull-dogs from beginning to end ... he said they went at each other like wild animals
>
> *The King v. Fitzgerald* 1911,
> 19 CCC 145-149 at pp. 146-147.

Each verdict illustrates a comparatively liberal approach to regulating Canadian fight sports. Both elite and localised amateur contests avoided outlaw categorisation even where death or serious injury to a combatant was involved. Of this cluster of rulings the most interesting case concerned the death of Canadian heavyweight challenger Luther McCarty. During a qualifying bout for the world title before around 3,000 patrons, McCarty collapsed and was counted out by the referee. His opponent, Pelkey, was charged under specific anti-prize-fight-laws in the Alberta Criminal Code of 1881, rather than the more serious charge of manslaughter (c.f *Fitzsimmons #1*, 1894). Fight lore reveals McCarty may have competed with a broken collarbone (Ateyo 1979, p. 169). Nevertheless, a common sense application of established common law

principles was sufficient to counter any prosecution claims of unlawful intention to characterise this event as an unlawful prize-fight.

> Though it cannot be said that such sports are altogether free from danger, yet they are very rarely attended with fatal consequences, and each party has friendly warning to be on his guard
>
> *R. v. Pelkey*, 1913, 21 CCC 387-400 at p. 390
> citing *Russell on Crimes* 7th ed, p. 785.

The limited duration of Canada's criminal law experiment offers compelling evidence of the success of modern fight sports to adapt to confrontational, highly paternalistic, state criminal suppression. This is consistent with trends in England and the United States. The move to expert administrative regulation, and the formalisation of a popular and emerging sports science and recreational pastime shifted the focus to a more accepting body of public regulatory principles.

General Themes

The myriad of themes revealed in this investigation highlight the complex evolutionary development of modern professional sport. Western legal cultures produce a wealth of complex terminology to categorise prohibitionist and regulatory frameworks for the 'noble art' of boxing. Harms to self and others are the predominant rationales for legal intervention. Nevertheless, a series of

allied concerns further illustrate the breadth of issues navigated throughout this chronological analysis and their ongoing relevance to contemporary fight and sports law.

i) Harms to self and others

> ... [N]o doubt, it was one of the purposes of our statute to prohibit public exhibitions of prize-fighting because they tend to incite quarrels and breaches of the peace, it was, we think, none the less its purpose to suppress all prize-fighting, on account of its brutality, and consequent danger to human life, and its demoralising tendencies, and pernicious effects on the peace and good order of society; and hence we hold it is not an essential ingredient of the crime of engaging in a prize-fight, in this state, that it take place in public
>
> *Seville v. State* 30 NE 621-624 at p. 622.

The inherent physical dangers of modern fight sports cannot be questioned. Political, medical, popular and legal narratives continually grapple with various paternalistic tensions in a confrontational spiral of attack and defence. With the growth of multi-media technologies and interdisciplinary 'scientific' inquiries, it becomes increasingly difficult to contradict the truths of both short and long term physical risks stemming from the fundamental practices of the sport.

The risks, however, are not always realised. Statistical evidence in Australia indicates an average of one competitive fight death each five years. Faces heal. Brain damage can be obtained through the repeat heading of a wet soccer ball

(*MX* 12 Nov 2004, p. 13). 'Machine' and 'animal' sports, for example, seem to present greater probabilities of death or permanent physical injury to Formula 1 drivers and jockeys. In most cases participants are fully aware of the risks they face, and their capacity to consent is unaffected.

Ateyo 1979, p. 125.

Boxing is less dangerous than many other sports. Nevertheless, it continues to be seen by many as an abject practice, with unjustifiable risks for both participants and spectators. Legal protections are considered necessary to reflect social and moral improvement and civilised recreational activity. However, many costs are associated with paternalistic controls in boxing. Adult

women and older males wishing to compete, fully aware of their levels of fitness, requisite skills and athletic limits are frequently outlawed by the rules of Western fight governance. Such paternalism can jeopardise informed, free and responsible human choice, a fundamental cornerstone of Western law, culture and democracy.

The New York State Athletic Commission revolutionised modern fight sports governance. With legislative authority the public administrative monopoly aimed for more rationalised fight governance. With greater 'specialist' expertise, alongside greater predictive accuracy in medical technology, the seeds of professional fight law were sown. A gradual expansion of this model and various private law variants helped legitimise a contentious professional sport. Nevertheless, as each example of Commission litigation demonstrates, complex, multi-levelled private industries involving athletes, managers, genuine aficionados and fraudsters undermine centralised fight governance. Within this multi-dimensional template the expert authority of Commission governance and its equivalents in England, New Zealand and Australia is continually supported by judicial review.

> ... [I]n the early periods of their history, it has been the practice of all civilized nations to train up their population to exercises of activity and courage; and, with a view to national defence, to promote emulation in amicable contests of strength...is not fencing the art of attack, as well as of defence, and is it not more dangerous than boxing? But is fencing illegal? or is it illegal to attend a fencing school? is it illegal to practise the bow and arrow? are archery meetings illegal?...I consider that these

> sparring exhibitions are conducted by professors of pugilism, that they are meetings which may tend to encourage an illegal vocation, and to form prize-fighters
>
> *Hunt v. Bell* 1822, 130 ER 1-3 per Chief Justice Dallas.

'Civilised' fight practices demanded 'civilised' fight governance. The transition from outlaw prize-fights to professional fight sports is embedded in civilising narratives. The capacity of fight sports to adapt to public intervention and the enforcement of outlawry involves an integrated process. Elite personalities, well-patronised contests, revolutions in rule-making and enforcement, and a rich tradition of modern fight literature all contribute to this evolution.

While courts, parliaments and influential social institutions nurture sophisticated research cultures, the history of modern fight law suggests an inevitably binary output conforming to adversarial 'reality' underpinning each individual dispute. Litigation involves adversarial procedures instigated by the state or a private disputant. Legislation is informed by oppositional political views. Improved media technologies generate various depictions of *truth*. Manipulation, deception and the novel construction of paternalistic prohibitionist arguments are often uncritically accepted in public discourse. Where the voices of practitioners are silenced, misinformation characterises adversarial public debates.

The first rule about fight club is you don't talk about fight club ...

The second rule about fight club is you don't talk about fight club ...

You don't say anything because fight club exists only in the hours between when fight club starts and when fight club ends ...

Only two guys to a fight. One fight at a time. They fight without shirts or shoes. The fights go on as long as they have to. Those are the other rules of fight club

Palahnuik 1997, pp. 48-49.

Mandatory public licensing seeks to eliminate surreptitious, organised private fight sports of dubious social value. The evil tendencies of outlawed individuals and their exploits are compounded in collective settings encouraging masculinity, alcohol consumption, violence and risk-taking. These considerations historically produced a mountain of paternalistic state concern embodied in civilised legal intervention. Outlaws have several alternatives either in other non-regulated jurisdictions or in a more violent, undesirable form lurking somewhere in the background.

ii) Race

Colour, difference, masculinity and race are primary characteristics of the contemporary professional fighter. Fascination with perceived natural racial differences have focused on square ring combat. Throughout two centuries of sporting, legal and social development, this cluster of variables is clearly of

most significance, yet difficult to analyse historically due to the complexity of contemporary racial theories (Rex and Mason 1986).

High profile fighting celebrities including 'Papa' Jack Johnson, Muhammad Ali, Anthony 'Chock' Mundine, Don King and even the animalistic 'Iron' Mike Tyson epitomise the challenges posed by racial, political and economic self-determination in broader Western culture. Fight sports allow for individual autonomy unavailable to black athletes in team sports contexts. Nevertheless, viable self-determination is only truly available to the ultra-elite professional fighter. For most, fight sports produce exploitation, minimal rewards, and high-levels of risk emblematic of the displacement, discrimination and denial facing many young black males in broader Western culture.

Each new athlete provides a formulaic contribution to the search for a legitimate identity in a world dominated by 'white-law'. Equal, equitable participation in government, law enforcement and general social affairs are all denied to the 'minority' 'native', 'slave' or 'negroe'. Each combative personality challenges, albeit fleetingly, dominant paternalistic, 'civilised' and ubiquitous white racial norms. More frequently, any recourse to racial justice under Western law is mediated within broader discourses of white fear, order and conformity. The deliberate targeting of elite personalities under United States federal laws, including Johnson, Liston, Ali, Carter and Tyson, highlights the

extent of public anxiety caused by the flamboyant, 'trash-talking' confrontational black fighter.

> Muhammad Ali not only behaved like a second Jack Johnson but also acted politically, was political, and had a political effect, and irritatingly, annoyingly, or provocatively declared himself to be a member of a group that not only could lay claim to a fair amount of obscurantism but also definitely exceeded the civil rights movement in radicalness. Muhammad Ali termed the idea of racial integration 'subjugation.' He accepted the rhetoric of Malcolm X, who called black integrationists 'Uncle Toms' and in one speech drew a clear distinction between 'house' and 'field' Negroes. If the slave owner's house caught fire, the 'house Negro' would run inside and save his master's child; the 'field Negro,' however, would haul over bales of cotton to feed the flames. Ali makes it very obvious that he feels connected to the tradition of the 'field Negro' - or let us put it this way: he made it easy for everyone to infer as much
>
> Reemtsma 1998, p. 38.

Throughout modern history paternalistic racial templates have decreed black outlaw sports fighters have few legal rights. Criminals, vagrants, 'white-slaves', and children are all tarnished with the same paternalistic label. However each racial outlaw occupies far more complex, contested terrain than other banned classes of athlete. Theirs is a world where dominant white values often justifiably have little meaning. Conquest, ownership, displacement and exclusion are embedded in contemporary Western legal, political and social institutions and their cultures. While varying degrees of integration characterise Western race relations, the black outlaw template continues to re-emerge, with

the square ring one of few accessible sites offering a limited means of confrontational liberation.

Recognised hazards beyond the square ring invariably take their realistic human tolls. Like 'Poor' Sonny Liston and countless others noted or lost to modern fight lore, Elliott Bennett died poor, drunk and prematurely, with posthumous sporting and legal recognition his most significant ongoing legacy. Others such as Ruben Carter signify the plight of the non-compliant brash 'fightin' niggah', and the power of Western justice to manipulate the truth and counter real or imagined threats posed by overt racial resistance. Texas and Louisiana segregationist fight laws of the 1950s offer an extreme paternalistic backdrop highlighting the malleability of justice in a confrontational, racially charged context. Perceptions of innate physical, biological and intellectual differences overtly challenge dominant civilising discourses pervading modern fight sports, their regulation and broader patterns of legislative and judicial governance.

iii) Hard Paternalism Fight Lore and Fight Sports

Much Western law invokes justifiable paternalistic rationales to protect boxers against self-harm. Children may be especially vulnerable, incompetent or lack the requisite knowledge to make a voluntary and informed choice to engage in

fight sports. This form of soft paternalism is commonly invoked to prevent permanent disability to young people.

When competent and informed adults are outlawed on the same ground, the restrictions on individual freedom of choice produce a hard paternalistic outcome. In addition, the multitude of real and imagined harms to others associated with boxing today and throughout history, incorporate social disorder and moral corruption. The range of paternalistic legacies have both informed and produced a complex web of regulation aimed at either outright prohibition, or incremental levels of 'civilising' constraint.

Medical, literary, political, visual and virtual narratives all contribute to spiralling adversarial tensions in contemporary regulatory debates. The net result is legal paternalism in the regulation of fight sports with a considerable degree of state intervention. Paternalistic variants in the immediate context of each reported dispute warrant further investigation within this complex of fight law requirements. However, it is clear fight sports are a testing ground for novel scientific technologies and their practical applications beyond the square ring.

No amount of 'racy' fight journalism or innovative argumentation seems able to temper the ongoing search for predictive technologies to minimise fight risks. Most nineteenth and twentieth century literary greats have defended the 'noble

art' in the face of persistent hard paternalism through criminal and administrative law. However, their effect is minimal, with sporadic recognition in reported legal narratives offering some solace for any weary investigator.

The impact of legal formalism is embodied by the Queensberry Rules and their ongoing relevance in evolution of modern fight sports. Their acceptance within the professional square ring helped Western legislators and judges to progressively legitimise fight sports practices and recreational sparring. Nevertheless, hard paternalism extends well beyond the constitutive dimensions of contemporary fight sports. While 'expert' public and private regulators have extensive powers to implement bans in individual cases, state and federal legislators, particularly in the United States, demonstrate considerably more power to regulate, suppress and outlaw secondary legacies of fight sports culture.

The transition from criminal intervention to 'expert' administrative decision-making presents numerous difficulties for aggrieved fighters wishing to challenge discriminatory rules, licensing decisions or related participation rulings. Courts and judges appear highly reluctant to overturn these specialist discretionary rulings. Acceptance of the expertise indicative of public and private administrative law-making justifies a conservative, non-interventionist approach. Only in rare cases of overtly unjustified discrimination or where fight governance personnel are clearly testing their administrative powers do judges

seem willing to hear the voices of aggrieved fighters and allied industry personnel.

Most rulings demonstrate the scope of judicial conservatism regardless of the issue. The sanctity of public criminal enforcement and licensing decisions is continually and unquestioningly reinforced with a few select exceptions. Even where objective considerations suggest personal injury compensation, relief from oppressive management contracts or the right to compete as a professional fighter might justify legal rectification, the weight of evidence of this inquiry endorses minimal judicial interference as a uniform trait in modern Western life.

Judicial and legislative methods are extremely narrow. This limits the amount of information and contextual material subject to legal review. As legislators continually tinker with modifications to a complex body of public administrative regulation, aggrieved fighters have minimal recourse for judicial intervention. As the rational, bureaucratic and scientific 'expertise' of fight administrators is continually reinforced in legal rulings, restrictive hard paternalistic bans have fewer visible fault lines to mount credible, counter-paternalistic arguments. While the intricacies of fight lore remain hidden from legal method, hard paternalistic exclusions remain validated by general-law considerations developed for administrative governance largely beyond the square ring.

vi) Directions

The scope, complexity and intricacy of each reported contribution to Western fight law warrants independent, ongoing synthesis and theoretical revision within and beyond square ring governance. Parallel investigations in other Western sports are also warranted to supplement the existing body of knowledge in modern *sports* law.

Adversarial norms of confrontational debate are uniform traits of Western governance. Democracy, inclusion and meaningful dialogue are continually relegated within binary and combative political, linguistic and dispute construction templates. Tannen (1998) illustrates various problematic legacies of common norms of public governance using a wealth of recent and contentious United States examples. The impact of televised sports customs including languages, images and themes is especially prominent.

> Taking part in sports, many believe, teaches cooperation, team spirit, and positive values. But participating in sports is one thing ... On television and radio, sports events are accompanied by running commentary that encourages and enhances the agonistic [combative] elements of sports, emphasizing the ways that sport can be like war ... television sports announcers emphasize not the process of play but the outcome. In other words, the operative principle seems to be "It's not how you play the game but whether you win or lose." Commentators who discuss sports events after the fact concentrate less on skill, artistry, fairness, and so on, and more on why the winners were successful and the losers failed -

> more or less as political campaign coverage tends to focus on who's ahead and why rather than on the candidates' qualifications or positions
>
> Tannen 1998, pp. 48-49.

In argument cultures 'sports chatter' has little scientific or legal weight. English, Australian, Canadian and New Zealand political norms replicate this reductive tendency in virtually identical structural, institutional and cultural contexts. Adversarial procedures in Western courts and parliaments encourage combative, oppositional languages, and limited dialogue on the credibility of fight sports risks.

Each case illustrates ongoing tensions within the strictures of Western legal method. Vague public and private interests validate state criminal intervention and allied paternalistic rulings by expert fight administrators. With each recorded prosecution an adversarial spiral grows, with the vast majority of judicial rulings endorsing imprecise public interests to subsume private fighting autonomy. As rational fight governance developed under expert licensing models, more defined public interests emerge to give the sport credibility. However, each recorded licensing ban and endorsement of discretionary paternalistic exclusions shifts the adversarial spiral to an administrative frame. Again, strictures in accepted legislative and judicial

methods seem incapable of incorporating broader, contextual, common-sense information into the context of their formal, authoritative, fight law decisions.

These methodological constraints help to oversimplify the issues and their complex interrelationships in the evolution of modern fight sports. Fight lore is frequently attuned to these intricacies. Aficionados, combatants, managers and other 'insiders' are similarly attuned, aware, and consenting participants. While fight law is not always pitched at a hard paternalistic, prohibitionist level, the narrow 'case-by-case' process of judicial review and incremental trends in legislative and administrative reform demonstrate relative uniform interventionist expansion throughout this sample. Further comparative investigations in this and the regulation of other contentious, dangerous customs offers a variety of novel insights into the broader understanding of modern sporting, legal and political development to supplement the material in these 201 *sports* law verdicts.

If there is a law of boxing it is highly complex, embedded in and reflecting the social tensions amongst diverse communities. Antagonistic languages often characterise legal, medical, socio-economic, sporting and aesthetic dimensions of the contentious 'noble art'. Finding and interpreting modern fight law is equally complex: an archaeological dig into legal doctrine, legislation and parliamentary debate, management policy, journalism, film and everyday

sports chatter. Where we commence the search ultimately shapes the extent to which boxing is seen as a legitimate sport or a dehumanising, barbaric practice.

§§§

Fight Law Sample

i) Australia

	Year	Case	Citation	Issues
1	1918	*McLaughlin v. Darcy*	[1918] 18 SRNSW 585-595	Contract
2	1929	*Reid v. Leichhardt Stadiums Ltd*	[1929] 3 NSWWCR 139-141	Worker Compensation
3	1959	*Stucoid Pty Ltd v. Stadiums Pty Ltd (No 1)*	[1960] Qd R 135-142	Workman liens; Fight space
4	1960	*Stucoid Pty Ltd v. Stadiums Pty Ltd (No 2)*	[1960] Qd R 300-307	Workman liens; Fight space
5	1970	*Brizzi v. Stadiums Pty Ltd*	Unreported: Workers compensation Board of Victoria: Department of Tourism and Recreation, 1994, attachment vi, pp. 103-109	Worker Compensation
6	1976	*Pallante v. Stadiums Pty Ltd (No. 1)*	[1976] VR 331-344	Civil assault
7	1976	*Pallante v. Stadiums Pty Ltd (No 2)*	[1976] VR 363-370	Evidence
8	2001	*Ferneley v. The Boxing Authority of NSW*	[2001] FCA 174 www.austlii.edu.au/boxing	Licensing; Sex restrictions
9	2002	*Ippolito v. Boxing Authority of NSW*	[2002] NSWADT 134 www.austlii.edu.au/boxing	Licensing; Age restrictions

10	2003	*Dalungdalee Jones et al v. Public Trustee and the State of Queensland*	Supreme Court of Queensland, 16 June 2003, www.brumbywatchaustralia.com	Fight winnings

ii) Canada

	Year	Case	Citation	Issues
1	1901	*Steele v. Maber*	6 CCC 446-452 (Q)	Prize fight; Injunction
2	1904	*R v. Littlejohn*	8 CCC 212-217 (NB)	Prize fight; Public order
3	1906	*R v. Wildfong and Lang*	17 CCC 251-259 (Ont)	Prize fight; Public order
4	1911	*The King v. Fitzgerald*	19 CCC 145-149 (Ont)	Prize fight; Public order; Assault
5	1913	*R v. Pelkey*	21 CCC 387-400 (Al)	Prize fight; Death
6	1916	*R v. Fleming and Wallace*	24 CCC 182-187 (Q)	Prize fight; Fight clubs; Employment
7	1918	*Bithell v. Butler*	30 CCC 275 (Q)	Prize fight; Public exhibition; Profits
8	1920	*Bithell v. Butler*	54 DLR 122-126 (Q)	Prize fight; Public exhibition; Profits

iii) United Kingdom & New Zealand

	Year	Case	Citation	Issues
1	1805	*R v. Phillips*	[1805] 8 KB 511-518	Unlawful challenge
2	1810	*R v. Williams*	[1810] 9 KB 781-782	Unlawful challenge
3	1822	*Hunt v. Bell*	130 ER 1 - 3	Defamation
4	1825	*R v. Billingham, Savage and Skinner*	172 ER 106	Prize fight; Public order; Assault
5	1831	*R v. Hargrave*	172 ER 925-926	Prize fight; Homicide
6	1831	*R v. Perkins and Others*	172 ER 814-815	Prize fight; Public order; Assault
7	1833	*R v. Murphy*	172 ER 1164	Prize fight; Death
8	1840	*R v. Caniff*	173 ER 868-869	Prize fight; Death; Assault
9	1841	*R v. Brown*	174 ER 522-525	Prize fight; Public order
10	1843	*R v. Driscoll*	173 ER 477	Prize fight; Assault; Challenge
11	1845	*R v. Hunt, Swanton and others*	1 Cox CC 177	Prize fight; Fight space; Public place; Public order
12	1866	*R v. Young and others*	10 Cox CC 371-373	Prize fight; Death

13	1877	*The Queen v. Taylor*	[1875] II CCR 147-149	Prize fight; Gaming
14	1877	*R v. Knock*	[1877] 14 Cox CC 1-2	Prize fight; Death
15	1877	*R. v. Bond*	[1877] 14 Cox CC 2-3	Prize fight; Death
16	1878	*R v. Orton and Others*	39 LTR 293-294	Prize fight; Public order; Assault
17	1882	*R v. Coney and others*	8 QBD 534-570	Prize-fight; Assault
18	1890	*Baird v. Wells*	44 Ch 661-677	Fight clubs
19	1897	*Seaward v. Patterson*	[1897] Ch 545-560	Fight space
20	1911	*R v Roberts*	Grayson, 2000 pp. 26-27 Unreported	Prize fight; Death
21	1911	*R v. Driscoll & Moran*	Grayson, 2000 pp. 26-27 Unreported	Prize fight; Public order
22	1935	*Doyle v. White City Stadium Ltd*	[1935] 1 KB 110-127	Prize fight; Fight contract
23	1954	*Serville v. Constance and another*	[1954] 1 All ER 662-666	Media; Defamation; Misrepresentation
24	1978	*Stininato v. New Zealand Boxing Association*	[1978] 1 NZLR 1-30	Licensing
25	1978	*McInnes v. Onslow Fane and another*	[1978] 3 All ER 211-224	Licensing
26	1989	*Warren v. Mendy and another*	[1989] 1 WLR 853-871	Fight contract

27	1991	*Watson v. Prager and another*	[1991] 3 All ER 487-510	Fight contract
28	2000	*Watson v. British Boxing Board of Control*	[2001] 2 WLR 1256-1292	Negligence; Death
29	2002	*Adrian Paul Fox v. Ministry of Defence*	'Case notes', *Journal of Entertainment Law* vol.1, 2002, pp. 135-136.	Negligence Medical examination
30	2002	*Alwyn Treherne & 15 others (Suing on their own behalf & on behalf of members of the Welsh Amateur Boxing Federation v. Amateur Boxing Association of England Ltd*	11 March 2003 'Case notes', *Journal of Entertainment Law* vol 1, 2002, pp. 139-140.	Contract Fight Membership

iv) United States

	Year	Case	Citation	Grounds
1	1876	*Commonwealth v. Colberg*	20 Am R 328-330 (Mass)	Prize fight; Assault
2	1884	*State v. Burnham*	48 Am R 801-803 (Vt)	Prize fight; Public order
3	1889	*People v. Floss*	7 NYS 504-504 (NY)	Prize fight; Contract
4	1890	*Sullivan v. State*	7 S 275-278 (Mi)	Prize fight; Public order
5	1892	*Seville v. State*	30 NE 621-624 (Oh)	Prize fight; Public order
6	1893	*People v. Taylor*	56 NW 27-28 (Mic)	Prize fight
7	1893	*Sullivan v. State*	22 SW 44 (Tx)	Prize fight; Tax
8	1894	*People v. Fitzsimmons*	34 NYS 1102-1114 (NY)	Prize fight; Death
9	1894	*State v. Olympic Club*	15 S 190-199 (L)	Fight clubs
10	1896	*State v. Purtell*	23 P 782-783 (Kan)	Prize fight; Assault
11	1897	*People v. Johnson et al.*	49 NYS 382-384 (NY)	Prize fight; Fight space
12	1902	*State v. Patten*	64 NE 850-851 (Ind)	Prize fight; Licensing
13	1903	*Commonwealth v. McGovern et al.*	75 SW 261-267 (Ky)	Prize fight; Injunction Public Order
14	1903	*People v. Finucan*	80 NYS 929-931 (NY)	Prize fight; Fight space

15	1905	*Commonwealth v. Mack et al.*	73 NE 534-535 (Mass)	Prize fight; Fight space
16	1910	*Jeffries v. New York Evening Journal Publishing Co.*	124 NYS 780-781 (NY)	Media; Defamation; Privacy
17	1914	*Fitzsimmons v. New York State Athletic Commission et al.*	146 NYS 117-123 (NY)	Licensing
18	1914	*Fitzsimmons v. New York State Athletic Commission et al.*	147 NYS 1111 (NY)	Licensing
19	1914	*Johnson v. United States*	215 F 679-687 (Fed)	White Slave Act
20	1915	*Weber v. Freed*	239 US 308-310 (Fed)	Media; Fight films
21	1915	*Kalisthenic Exhibition Co Inc v. Emmons (No 1)*	225 F 902-905 (Fed)	Media; Fight films
22	1916	*Kalisthenic Exhibition Co Inc v. Emmons (No 2)*	229 F 124-127 (Fed)	Media; Fight films
23	1916	*United States v. Johnston et al.*	232 F 970-978 (Fed)	Media; Fight films
24	1918	*Willard et al. v. Knoblauch*	206 SW 734-735 (Tx)	Fight space; Fight contract
25	1919	*State ex rel. Esgar v. District Court of Ninth Judicial District Gallatin County*	185 P 157-161 (Mon)	Prize fight; Constitution Public voting process
26	1920	*Coluseum Athletic Association v. Dillon et al.*	223 NW 955-958 (Missouri)	Fight contract
27	1921	*Sampson v. State*	194 P 279-281 (Ok)	Prize fight Promoter

28	1922	*McAdams v. Windham*	94 S 742-743 (Al)	Negligence; Death
29	1922	*People v. Corbett*	209 P 808-809 (Co)	Prize fight
30	1922	*People v. Shirley*	210 P 327-328 (Co)	Prize fight
31	1925	*348 Madison Ave. Corporation v. Marshall et al.*	209 NYS 412-416 (NY)	Fight space
32	1926	*Gallin v. Polo Grounds Athletic Club*	214 NYS 182-186 (NY)	Negligence; Fight space
33	1927	*Consolidated Amusements Inc. v. Gober*	22 F 2d 296-298 (Fed)	Media; Fight films
34	1927	*Cullen v. Esola et al.*	21 F 2d 877-880 (Fed)	Media; Fight films
35	1927	*Dane v. United States*	18 F 2d 811-813 (DC)	Prize fight
36	1927	*People ex rel. Weiner v. Barr*	225 NYS 346-350 (NY)	Habeas; Miscarriage
37	1927	*United States v. Wilson et al.*	23 F 2d 112-118 (Fed)	Media; Fight films
38	1927	*Atlanta Enterprises Inc. v. Crawford et al.*	22 F 2d 834-837 (Fed-Ge)	Media; Fight films
39	1927	*In re. Film and Pictorial Rep. of Dempsey-Tunney Fight*	22 F 2d 837-840 (Fed - Ge)	Media; Fight films
40	1928	*Dempsey v. Chicago Coliseum Club*	162 NE 237 (Ind)	Fight contract; Unlawful challenge
41	1928	*Dempsey-Kearns Theatrical and Motion Picture Enterprises Inc. v. Pantages*	267 P 550-553 (Cal)	Fight contract; Employment
42	1928	*People ex rel. Weiner v. Barr*	228 NYS 192-194 (NY)	Habeas; Miscarriage

43	1928	*Rose et al. v. St Clair*	28 F 2d 189-192 (Fed)	Media; Fight films
44	1928	*State v. Gregory*	143 A 458-459 (De)	Prize fight
45	1930	*Hart v. Geysel et al.*	294 P 570-573 (Wa)	Negligence; Death
46	1930	*Noall v. Dickinson et al.*	292 P 219-220 (Ida)	Media; Fight films
47	1930	*Teeters v. Frost*	292 P 356-362 (Ok)	Negligence; Death
48	1931	*Madison Square Garden Corporation v. Carnera*	52 F 2d 47-49 (Fed - NY)	Fight contract
49	1931	*City Island Athletic Club Inc. v. Mulrooney et al.*	258 NYS 768-773 (NY)	Prize fight; Fight clubs
50	1931	*Safro v. Lakofsky*	238 NW 641-642 (Minn)	Fight contract
51	1932	*McHugh v. Mulrooney et al.*	179 NE 753-755 (NY)	Prize fight; Fight clubs
52	1932	*Rudolph Mayer Pictures Inc. and others v. Pathe News Inc. and R.K.O. New York Corp.*	255 NYS 1016 (NY)	Media; Copyright; Antitrust
53	1932	*Bridge City Athletic Club Inc v. Salberg et al.*	254 NYS 777-781 (NY)	Fight clubs
54	1932	*Johnson v. Zemel et al.*	160 A 356-357 (NJ)	Fight space
55	1937	*Rosenfeld v. Jeffra et al.*	1 NYS 2d 388-389 (NY)	Fight contract; Licensing
56	1937	*Madison Square Garden Corporation v. Braddock*	19 F Sup 392-394 (NJ)	Fight contract; Employment

57	1937	*Madison Square Corporation v. Braddock*	90 F 2d 924-929 (Fed – NY)	Fight contract; Employment
58	1937	*Twentieth Century Sporting Club Inc. et al. v. Transradio Press Service Inc. et al.*	300 NYS 159-162 (NY)	Fight contract; Media; Antitrust
59	1938	*Cunningham v. Department of State, Division of State Athletic Commission et al.*	6 NYS 2d 823-824 (NY)	Negligence; Injury
60	1940	*Casarona v. Pace et al.*	22 NYS 2d 726-728 (NY)	Fight contract; Licensing
61	1941	*In re Jacobs' Estate: Zwirn v. Galento*	32 NYS 2d 126 (NY)	Wills
62	1941	*In re Jacobs' Will*	31 NYS 2d 536-537 (NY)	Wills
63	1941	*Zwirn v. Galento*	30 NYS 2d 132-133 (NY)	Wills
64	1942	*Zwirn v. Galento*	43 NE 2d 474-477 (NY)	Wills
65	1945	*Baski v. Wallman*	55 NYS 2d 294 (NY)	Fight contract; Licensing
66	1945	*Wallman v. Wolfson*	53 NYS 2d 586-589 (NY)	Fight contract; Licensing
67	1945	*Wallman v. Wolfson*	54 NYS 2d 700 (NY)	Fight contract; Licensing
68	1946	*Baski v. Wallman et al.*	62 NYS 2d 26-33 (NY)	Fight contract; Licensing

69	1946	*Baski v. Wallman et al.*	63 NYS 2d 215 (NY)	Fight contract; Licensing
70	1946	*Baski v. Wallman et al.*	65 NYS 2d 894-898 (NY)	Fight contract; Licensing
71	1946	*People v. Phillips*	173 P 2d 392-398 (Cal)	Bribery
72	1947	*Baski v. Wallman et al.*	74 NE 2d 172-173 (NY)	Fight contract; Licensing
73	1947	*LA Valley v. Stanford*	70 NYS 2d 460-462 (NY)	Negligence; Injury; Schools
74	1948	*Hudson et al. v. Craft et al.*	195 P 2d 857-861 (Cal)	Negligence; Civil assault
75	1948	*Chavez v. Hollywood Post*	Unreported, 22 June 1948: Annotation 15 ALR 2d 794 (Cal)	Media; Privacy
76	1948	*Twentieth Century Sporting Club Inc. v. Mass Charitable Mechanic Association*	Unreported 22 June 1948: Annotation 15 ALR 2d 791 (Mas)	Media; Property
77	1948	*Louis v. Richman*	Unreported 23 June 1948: An 15 ALR 2d 791 (Pen)	Media
78	1948	*Louis v. Friedman*	Unreported 23 June 1948: An 15 ALR 2d 791 (Pen)	Media

79	1948	*Louis v. California Productions*	Unreported 24 June 1948: An 15 ALR 2d 791 (NY)	Media
80	1949	*Hudson and Craft et al.*	204 P 2d 1-6 (Cal)	Negligence; Civil assault; Licensing
81	1949	*Norman et al. v. Century Athletic Club Inc.*	69 A 2d 466-471; 15 ALR 777-798 (Md)	Fight space; Fight contract
82	1950	*Sharkey v. National Broadcasting Co. Inc. et al.*	93 F Sup 986-987 (Fed - NY)	Media; Defamation; Privacy
83	1952	*Casone v. State*	246 SW 2d 22-28 (Ten)	Bribery
84	1952	*Eboli v. Christenberry et al.*	114 NYS 2d 311-314 (NY)	Fight clubs; Fight rules
85	1953	*Oma v. Hillman Periodicals Inc. et al.*	118 NYS 720-726 (NY)	Media; Defamation; Privacy
86	1953	*Tilelli v. Christenberry et al.*	120 NYS 2d 697-704 (NY)	Fight clubs; Fight rules
87	1954	*Shall v. Henry et al.*	211 F 2d 226-231 (Fed – NY)	Monopolies; Antitrust
88	1954	*United States v. International Boxing Club of New York Inc. et al.*	123 F Sup 575-577 (Fed – NY)	Monopolies; Antitrust
89	1954	*I.H. "Sporty" Harvey v. M.B. Morgan*	272 SW 2d 621-627 (Tx)	Licensing; Segregation
90	1954	*United States of America v. International Boxing Club of New York Inc et al.*	346 US 236-254 99 Led 290-302 (Fed)	Monopolies; Antitrust

91	1954	*Ettore v. Philco Television Broadcasting Corp. and Cheseborough Manuf. Co. Cons.*	126 F Sup 143-151 (Fed - Pen)	Media; Privacy
92	1955	*Peller v. International Boxing Club Inc. et al.*	219 F 2d 444 (Fed)	Monopolies; Antitrust
93	1955	*Peller v. International Boxing Club Inc. et al.*	135 F Sup 942-943 (Fed)	Monopolies; Antitrust
94	1955	*Christensen v. Helfand*	143 NYS 2d 285-288 (NY)	Fight contract; Licensing
95	1955	*Rosensweig v. State of New York*	146 NYS 2d 589-599 (NY)	Negligence; Death
96	1955	*Peller v. International Boxing Club Inc. (Ill), Chicago Stadium Corp. (Del), Norris, Wirtz, Gibson, Cohen, Graziano, Gainford and Robinson*	227 F 2d 593-596 (Fed - Ill)	Monopolies; Antitrust
97	1956	*Ettore v. Philco Television Broadcasting Corp. et al.*	229 F 2d 481-498; 58 ALR 2d 626-658 (Fed - Pen)	Media; Defamation; Privacy
98	1956	*London Sporting Club Inc. v. Helfand*	152 NYS 2d 819-825 (NY)	Fight clubs; Fight rules
99	1956	*State ex rel. In the matter of Durando v. State Athletic Commission of Wisconsin and Saddy etc.*	75 NW 2d 451-454 (Wis)	Fight clubs; Fight rules
100	1956	*Zannelli v. Di Sandro (Rhode Island Racing and Athletics Hearing Board)*	121 A 2d 652-657 (RI)	Fight Clubs; Licensing

101	1957	*United States of America v. International Boxing Club of New York Inc. International Boxing Club of Illinois, Madison Square Garden Corp. NY, Norris and Wirtz*	150 F Sup 397-422 (Fed–NY-Ill)	Monopolies; Antitrust
102	1957	*United States of America v. International Boxing Club of New York Inc. International Boxing Club of Illinois, Madison Square Garden Corp. NY, Norris and Wirtz*	171 F Sup 841-845 (Fed–NY–Ill)	Monopolies; Antitrust
103	1958	*Dorsey v. State Athletic Commission*	168 F Sup 149-153 (Fed - Lou)	Licensing; Segregation
104	1958	*Rosensweig v. State of New York*	171 NYS 2d 912-915 (NY)	Civil Negligence; Commission
105	1958	*Palermo v. United States of America*	254 F 2d 130-131 (Fed)	Tax crime Racketeering
106	1959	*Rosensweig v. State*	158 NE 2d 229-237 (NY)	Negligence; Licensing
107	1959	*International Boxing Club of New York Inc. v. United States of America*	3 L Ed 270-288 (Fed)	Monopolies; Antitrust; Divestiture
108	1959	*United States of America v. International Boxing Club of New York Inc. International Boxing Club of Illinois, Madison Square Garden Corp. NY Norris and Wirtz*	178 F Sup 469-471 (Fed)	Monopolies; Antitrust
109	1959	*Ray Robinson v. Melvin L. Krulewitch, James J. Farley Jr. Julius Helfand and the New York State Athletic Commission*	187 NYS 2d 937-945 (NY)	Fight clubs; Fight rules

110	1960	*Carbo v. USA*	277 F 2d 433-436 (Fed)	Habeas; Racketeering
111	1961	*Carbo, Palermo, Sica & Dragna v. USA & R.W. Ware (US Marshall)*	288 F 2d 282-287 (Fed)	Habeas; Racketeering
112	1961	*Carbo, Palermo, Sica & Dragna v. USA*	288 F 2d 686-690 (Fed)	Habeas; Racketeering
113	1962	*Carbo & Sica v. USA*	300 F 2d 889-891 (Fed)	Habeas; Racketeering
114	1962	*Carbo & Sica v. USA*	302 F 2d 456-457 (Fed)	Habeas; Racketeering
115	1963	*United States of America v. International Boxing Club of New York et al.*	220 F Sup 425-429 (Fed - NY)	Monopolies; Antitrust; Divestiture
116	1966	*Griffith v. Krulewitch*	273 NYS 2d 168-170 (NY)	Fight clubs; Licensing; Fight rules
117	1966	*Inter-continental Promotions Inc. v. MacDonald et al.*	367 F 2d 293-303 (Fed)	Prize fight; Profits Employment
118	1968	*Clay v. United States*	397 F 2d 901-924 (Fed)	Military Service
119	1969	*State of New Jersey v. Rubin Carter and John Artis*	225 A 2d 746-755 (NJ)	Murder
120	1969	*Ali v. The Division of State Athletic Commission of the Department of the State of New York*	308 F Sup 11-19 (Fed)	Licensing
121	1970	*Carter and Artis v. New Jersey*	25 L Ed 2d 130 (NJ)	Habeas
122	1970	*United States of America v. Cassius Marsellus Clay Jr.*	430 F 2d 165-172 (Fed)	Military service

123	1970	*Ali v. The Division of State Athletic Commission of the Department of the State of New York*	316 F Sup 1246-1253 (Fed)	Licensing
124	1971	*Inter-continental Promotions Inc. v. The Miami Beach First National Bank et al.*	441 F 2d 1356-1361 (Fed)	Prize fight; Licensing
125	1974	*George Foreman Associates Ltd. v. George Foreman; Foreman and Sadler v. George Foreman Associates Ltd. and Erlichman; Foreman and Saddler v. George Foreman Ltd. & Erlichman*	389 F Sup 1308-1317 (Fed)	Fight contract; Employment
126	1974	*Hart v. Spectrum Arena Inc et al.*	329 A 2d 311-314 (Pen)	Negligence; Injury
127	1974	*State of New Jersey v. Rubin Carter and John Artis*	345 A 2d 806-829 (NJ)	Habeas
128	1975	*State of New Jersey v. Rubin Carter and John Artis*	347 A 2d 383-388 (NJ)	Habeas
129	1975	*Garrett v. New York State Athletic Commission*	370 NYS 2d 795-798 (NY)	Licensing
130	1976	*State of New Jersey v. Rubin Carter and John Artis*	354 A 2d 627-635 (NJ)	Habeas
131	1977	*Madison Square Garden Boxing Inc. v. Ernie Shavers*	434 F Sup 449-452 (Fed - NY)	Fight contract
132	1980	*Eddie "Flame" Gregory v. Joseph Scorcia and Flame Gregory Enterprises, Ltd.*	495 F Sup 984-991 (Fed - NY)	Fight contract
133	1981	*State of New Jersey v. Rubin Carter and John Artis*	449 A 2d 1280-1309 (NJ)	Habeas

134	1982	*CBS Inc. v. American Broadcasting Companies Inc. Tiffany Promotions Inc. Glass, Cooney, Bugner and Westbury Music Fair*	447 NYS 2d 367-371 (NY)	Fight contract; Profits
135	1982	*State of New Jersey v. Rubin Carter: State of New Jersey v. John Artis*	426 A 2d 501-509 (NJ)	Habeas
136	1985	*Classen v. State of New York*	500 NYS 2d 460-468 (NY)	Negligence; Death
137	1985	*Carter and Artis v. Rafferty, Kimmelman and Deitz*	621 F Sup. 533-560 (Fed - NJ)	Habeas
138	1986	*Carter and Artis v. Rafferty et al*	781 F 2d 993-999 (Fed)	Habeas
139	1987	*Classen v. Izquierdo, Warner, Tarlau, Campbell, Eskin, Madison Square Garden Inc. and Madison Square Garden Boxing Inc.*	520 NYS 2d 999-1002 (NY)	Negligence; Injury
140	1990	*Don King Productions Inc. and Trump Plaza v. Douglas, Johnson, Golden Nugget Inc. and the Mirage Casino-Hotel*	735 F Sup 522-537 (Fed - NY)	Fight contract
141	1990	*Douglas v. Don King Productions Inc.*	736 F Sup 223-225 (Fed - NY)	Fight contract
142	1990	*Don King Productions Inc. v. Douglas, Johnson, Golden Nugget Inc. and the Mirage-Casino Hotel*	742 F Sup 741-777 (Fed - NY)	Fight contract
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145	1990	*Don King Productions Inc. and King v. Thomas*	749 F Sup 79-85 (Fed - NY)	Fight contract; Employment Profits
146	1991	*Don King Productions Inc. v. Thomas, Gidron, and the United States*	945 F 2d 529-535 (Fed)	Fight contract; Employment Profits
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148	1993	*Tyson v. State of Indiana*	619 NE 2d 276-309 (Ind)	Rape
149	1993	*Tyson v. State of Indiana*	622 NE 2d 457-461 (Ind)	Parole
150	1993	*Tyson v. State of Indiana*	626 NE 2d 482-491 (Ind)	Parole
151	1994	*Tyson v. Trigg*	883 F Sup 1213-1222 (Fed – Ind)	Parole
152	1995	*Don King Productions / Kingvision v. Lovato*	911 F Supp 419-424 (Fed – Cal)	Media; Profits
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