

# PRIVILEGE AT PLAY

## On the Legal and Social Fictions That Sustain American Indian Sport Imagery

Ellen J. Staurowsky

*Using legal scholar Felix Cohen's philosophy of Indian rights, this article provides a broad interpretive analysis of the American Indian sport imagery issue. The article begins with an introduction to Cohen's work and then elaborates on how White privilege operates within the culture. An analysis of various aspects of American Indian sport imagery follows, using a concept Cohen called "transcendental nonsense." Finally, the article concludes with recommendations for how teachers, corporate executives, and government leaders can move beyond the transcendental nonsense that American Indian mascots and team names represent to a better and more meaningful understanding for both American Indians and non-American Indians.*

**Keywords:** *White privilege; athletic mascots; American Indians; racism; Felix Cohen*

**D**uring the decades between the 1930s and 1950s, scholar and philosopher Felix Cohen wrote extensively on matters of law in the United States, working to develop a theory of functional jurisprudence as it related to American Indians. His paramount concern was the impact that legal decisions had on the lives of people and how the law could be used in the fulfillment of democratic ideals and toward the greater good of society. It was in his writings on federal Indian law that he explored the complex interplay between constructions of race within a White-supremacist society and the subsequent fate of American Indians as determined by the courts. In today's parlance, Cohen understood White privilege and the racialized logic that sustains it (see Martin, 1999).

Guided by this understanding, he attempted to find ways to challenge White privilege, not only in the courts but also in society as a whole. Unlike many people today who are unable and perhaps unwilling to develop a critical consciousness on the issue of the misappropriation of American Indian names, symbols, images, and iconography throughout the culture, Cohen fully grasped the connection between the trivialization of American Indians and the collective fate of Americans as human beings. In 1953, he wrote,

It is a pity that so many Americans today think of the Indian as a romantic or comic figure in American history without contemporary significance. In fact,

*Journal of Sport & Social Issues*, Volume 28, No. 1, February 2004, pp. 11-29  
DOI: 10.1177/0193732503261148  
© 2004 Sage Publications

the Indian plays much the same role in our American society that the Jews played in Germany. Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith. (Cohen, 1953, p. 390)

The manufactured images of American Indians that serve to mark and market athletic teams in the United States contribute to the relegation of American Indians to the past, casting them in limited and limiting social roles. The end result is a U.S. populace wantonly undereducated and uninformed about who American Indians are. When viewed from this perspective, American Indian sport imagery is, in a literal sense, a concrete example of the loss that all Americans experience by not having an opportunity to truly know about the history and contemporary experiences of American Indians in their rich span and scope.

This article provides a broad interpretive analysis of the issue of American Indian sport imagery using Cohen's philosophy of Indian rights. The introduction to Cohen's work is foregrounded in a brief consideration of how White privilege operates within the culture and is followed by an application of a concept Cohen called "transcendental nonsense" to various aspects of the issue of American Indian sport imagery. The article concludes with recommendations for how teachers, corporate executives, and government leaders can move beyond the transcendental nonsense that American Indian mascots and team names represent to a better and more meaningful understanding for both American Indians and non-American Indians.

## OF WHITE PRIVILEGE AND TRANSCENDENTAL NONSENSE

---

When one tunes into bits and pieces of conversations as they emerge in the public domain—whether those come from movie dialogue, talk-radio banter, cheers and taunts at football games, or quotes from the newspaper—one can begin to discern the oftentimes subtle and sometimes overt ways in which racialized patterns of logic reveal themselves. For example, consider these two quotations.

*Quotation #1.* Everybody wants to know about old time Indians. It was on a night like this that old Coyote got on a plane to see the Prime Minister in Ottawa. "Boy, are we happy to see you," said the Prime Minister. "Maybe you can help us with our Indian problem." "Sure", said Coyote. "What's the problem?" (spoken by Lionel James, Elder, in the movie *Medicine River* [1994])<sup>1</sup>

*Quotation #2.* I don't think we have a divine right for things to stay the same. The Yavapai (Indians) must have said, "There goes the neighborhood," when the white man came. But growth is the story of the West. (Gail Steiger—ranch manager, film maker, and poet—as quoted in Clarke, 2002)<sup>2</sup>

Each of these quotations is part of a larger discourse in which assumptions and understandings about race are given voice. Each is a reflection of racial separatism, a reflection of White privilege as experienced by two people situated differently within a racial hierarchy based on White supremacy

(Jensen, 1998, 1999; McIntosh, 1988). Ms. Steiger's comments are assertions of White privilege, whereas Lionel James's comments represent acts of Indian resistance.

When viewed as two sides of the same coin, the Indian problem is revealed to be the White problem and vice versa. One goes nowhere without the other. Historically, the "Indian problem" was a construction of Whites who saw Indians as impediments to progress, Westward expansion, and the ongoing forces of colonialism (see Brown, 1991; Friedberg, 2000; Jackson, 1885/1995; Takaki, 1998; Todorov, 1999). Of course, the "White problem" resulted in Indians being problematized and targeted for extinction or assimilation. Coyote's enigmatic question, "What's the problem?" derives from a story of survival.

Ms. Steiger's story of the West is a story of prosperity—but only for some people. Within the narrow confines of a European American construction of societal, governmental, and economic advancement, growth could not have been part of the Indian story because "they" were the "problem"—to be restrained, removed, and dispossessed through conquest. As an heir to the conquest, Ms. Steiger has the privilege to assert the notion that "we" do not have a "divine right for things to stay the same."

Early lessons in how to be heirs to the conquest are enduring, although they are undetectable at a conscious level within schools. Kiowa educator and scholar, Cornel Pewewardy (1998) points out that most elementary school curricula and teachers in non-American Indian schools approach American Indians in superficial and stereotypical ways, relying on "fluff and feathers" curriculum rather than substantive and accurate information.<sup>3</sup> An example of this type of "fluff" was aired on a public access channel in northern New Jersey in April 2002 in a program documenting multicultural activities that occur in the local elementary school. A third-grade teacher was presenting a unit on the Navajo tribe in a program to which parents and other teachers were invited. The unit started with children learning "Indian crafts." Sporting their construction-paper "Indian headdresses," the students were then treated to a session of chanting and drumming; the drumming was performed by the teacher who had made up the song herself. In the course of telling the students about the Navajo, the teacher explained that the real name for the Navajo was "Dine," a term she erred in pronouncing, believing it sounded like the verb "to dine."<sup>4</sup>

As a matter of routine, children in many schools around the country receive limited information or misinformation about American Indians. At the same time, children are rarely taught to critique the messages they receive or to recognize the inherent contradictions that exist within those messages. Thanksgiving Indians give way to the legions of non-Indian, athletic-team braves and warriors and renegades and chiefs running down the basketball court, on the football field, and around the track. As of the summer of 2001, 1,400 high schools and 70 colleges and universities continued to use American Indian imagery in association with their athletic teams.

Stereotypical, decontextualized, and ahistorical depictions of American Indians form the reference points out of which individual, community, and national dialogues regarding American Indians emerge. As a consequence, within this set scheme of stereotypes, the friendly Iroquois Indians of the 1600s (the substance of Thanksgiving narratives) become the fighting Plains Indians of the 1800s (the substance of sport narratives), who seemingly have no motive or cause to fight except their own savagery.<sup>5</sup> The sovereign right of American Indian nations to exist, as recognized by the U.S. Constitution, is rarely explored or even introduced into the curriculum. And what of this trustee/ward relationship that so defines U.S./Indian relations? Despite the enormous responsibilities for all parties associated with these complex governmental, societal, political, cultural, and religious arrangements, children in the United States are taught to be remarkably uncurious as to whether these depictions of American Indians are accurate from the outset, what role the U.S. government played (and continues to play) in enacting its own hostile agenda directed toward American Indians, or the validity of this supposed transformation of friendly Indians into fighting Indians.

Within this selective and controlled racial frame, Ms. Steiger, like so many Americans who are beneficiaries of the conquest, has the luxury, the latitude, and the liberty to not know what happened to American Indians or to forget that it was exactly and precisely a matter of “divine right” as translated into “manifest destiny” that allows her to live the life she so freely lives today. She need not pause to be burdened by a conscious understanding of how this life came to be realized or cultivate an awareness of what it actually means when “your” neighborhood is literally gone or under unrelenting attack or when your culture, language, religious traditions, family, friends, and way of life are taken by force. In the words of 19th century satirist Ambrose Bierce, who wrote *The Devil's Dictionary*, events are calamitous only to those who are disadvantaged by them. For those who gain an advantage, the calamity is good fortune, a reward to be reaped by the righteous, not to be challenged but accepted as part of a larger picture—the will of a Christian God, the fate of a revolutionary nation destined to become the “greatest nation on earth,” the inevitability of “civilized” progress. Dispossession was a calamity for American Indian people, not for the European Americans who became the possessors. As Chief Justice John Marshall explained in the 1823 case of *Johnson v. McIntosh*, a case that ratified the process of American Indian dispossession and contributed to it, “conquest gives a title which the Courts of the conqueror cannot deny” (*Johnson v. McIntosh*, 1823).

Ms. Steiger's casual comments tap into this stream of legal and social ideas and beliefs about property, ownership, sovereignty, liberty, and basic rights. Similar themes are found in court opinions, such as the one written in 1988 by Justice Sandra Day O'Connor in *Lyng v. Northwest Indian Cemetery Protective Association* (485 US 439). In explaining why the Supreme Court would not enjoin the United States to cease construction on a road that went through a sacred site deemed by several tribes of Indians in the Pacific

Northwest to be vital to their spiritual practices, Justice O'Connor recognized that the government's insistence on constructing the road would, in all likelihood, destroy the ability of American Indians in the area to practice their religion. About the constitutional rights of Indians to freely pursue their religious traditions, O'Connor wrote, "whatever rights the Indians have to use of the area . . . those rights do not divest the Government of its right to use what is, after all, *its* land" (Tsosie, 2001).

In Scott Malcolmson's ruminations on what he calls "the American misadventure of race," he further elaborates on these broad and deeply rooted racialized intellectual and societal patterns (2000, pp. 3-122). Distinguishing between racism and the concept of race, he observes that part of our past is

the past of race in America—not the past of racism, but of race in itself, and of race in our selves. The racial roles we play as Americans have tended to be repeated over the course of American history; I should say, we have tended to repeat them. And we regret this, and tell ourselves that we will start fresh, the past will stop now, and will not hold us any more than it holds an innocent child. Then we repeat our race roles again. (p. 6)

Few seem to have understood this better than Felix Cohen, who was described by Rennard Strickland (1982) as the "blackstone of American Indian law" (p. viii). In 1933, Cohen was called on by then solicitor of the U.S. Department of Interior, Nathan R. Margold, to take on the task of providing conceptual clarity and organization to a "body of jurisprudence created by treaties, statutes, executive orders, court decisions, and administrative action defining and implementing the relationship among the United States, Indian tribes and individuals, and the states" (Cohen, 1942, p. 1). His synthesis of this 46-volume collection of federal laws and treaties resulted in the publication of *The Handbook of Federal Indian Law* in 1942.

Cohen's contribution went beyond the simple cataloguing of these items, however. As a legal scholar and philosopher, he brought a profound understanding of the social forces and ideological underpinnings that shaped the social institutions and individual lives affected by that body of jurisprudence. What Cohen had to offer then (and, I would argue, now) is a philosophical foundation from which issues of concern to American Indians and non-American Indians can be considered with greater sensitivity and justice. A passage from the acknowledgments section that Cohen wrote for the original *Handbook* provides insight in this regard.

What has made this work possible, in the final analysis, is a set of beliefs that form the intellectual equipment of a generation—a belief that our treatment of the Indian in the past is not something of which a democracy can be proud, a belief that the protection of minority rights and the substitution of reason and agreement for force and dictation represent a contribution to civilization, a belief that confusion and ignorance in fields of law are allies of despotism, a belief that it is the duty of the Government to aid oppressed groups in the understanding and appreciation of their legal rights, a belief that understand-

ing of the law, in Indian fields as elsewhere, requires more than textual exegesis, requires appreciation of history and understanding of economic, political, social, and moral problems. These beliefs represent, I think, the American mind in our generation as it impinges upon one tiny segment of the many problems which modern democracy faces. (Cohen, 1942, p. xi)

Having studied the issue of American Indian sport imagery for a number of years, it occurs to me that there are parallels between the assignment undertaken by Cohen and the one yet to be fully undertaken with regard to team mascots and the misappropriation of American Indian imagery. Just as Cohen was asked to bring order to what had been a “mish-mash” of rulings, statutes, and legislative initiatives (to borrow Justice Felix Frankfurter’s characterization of the situation at that time), the discussion surrounding American Indian sport imagery begs for such a synthesis. There are more than 100 different resolutions and statements regarding the inappropriateness of using American Indian imagery and iconography for team mascots, names, and logos. Legal challenges by American Indian plaintiffs have sought the eradication of these images on the grounds that they are defamatory, derogatory, and injurious to American Indians. “Mascot” schools have, over a 30-year span of time, taken up the matter, weighing the interests of a small number of American Indians with that of larger communities and school populations.

Notably, ambivalent results have been realized. Some school districts, such as Ossining (New York), have handled the retirement of their American Indian name through measured dialogue with community constituents, whereas others, such as Eaton (Colorado), Fullerton High School (California), Nyack (New York), and Onteora (New York), have experienced rancor so extreme in some cases that physical threats of violence have occurred.<sup>6</sup> Within government agencies, progress has been greeted with setbacks. After the U.S. Patent and Trademark Office Trial Appeals Board in *Harjo v. Pro Football, Inc.* and the states of Utah and California determined that the term “redskins” was a racial pejorative that had at least one contemptuous meaning, the state of Virginia, in June 2002, entered into an agreement with the Washington football franchise to put the name on vanity license plates (Harjo, 2001; Sanchez, 2002).

Whereas some commentators—including Abigail Thernstrom from the U.S. Commission on Civil Rights, the Independent Women’s Forum, journalist John Leo, and Colorado Republican Bob Schaffer—have argued that the issue of American Indian sport imagery is a mere exercise in political correctness, it is salient that the holographic quality of these linked identities—an American Indian identity giving way to a non-American Indian identity and back again—are ever shifting in these discussions (Cornelius, 2001; Leo, 1999; Miller & Ponnuru, 2001; Shiflett, 2002). Daniel Snyder, owner of the Washington football franchise, is a non-American Indian, and yet, he claims over and over and over again a proprietary right to being a “redskin.” Through the convergence of a corporate interest protected by the



U.S. Patent and Trademark Office, the Cleveland baseball franchise, with its all-White ownership group, may well be the most widely known federally recognized Indian “tribe” in America. In school settings, White children and their parents regularly defend their “right” to “Indian” identities. As one student from a school in western New York stated in 2001, he wanted to be a “redskin” just like his father and grandfather before him (Fisher, 2002; Monnin, 2001; Staurowsky, 2000).

Because American Indian sport imagery does, in fact, exist at the intersections between American Indian and non-American Indian worlds, multiple escape routes are available to those who wish to avoid accountability for the negative impact these images have and the perpetuation of race prejudice they represent. Buoyed by race privilege, those who support the continued use of these images slip into and out of contact with beliefs about American Indians, selectively choosing to honor faux American Indians while ignoring real American Indians, expressing a feigned desire to be a “redskin” when to live the reality of being labeled a “redskin” would be intolerable. The discussion to follow about transcendental nonsense is intended to illuminate ways that these escape routes can be shut down and to create awareness that will lead to educators, public policy makers, and corporate executives retiring these images.

---

#### COHEN’S NOTION OF TRANSCENDENTAL NONSENSE

---

In an era when approaches to science, commerce, and the law were governed by ideas of scientific objectivism and deductive reasoning whereby decisions were reached by locating fixed principles and following them to their logical conclusions, in the early and mid-20th century, Cohen introduced the radical idea that the principles themselves were value laden, that they were entrenched in belief systems that had elements of subjectivity and bias. He urged lawyers and judges to be cognizant of the fact that “the traditional language of legal argument and opinion neither explains nor justifies court decisions.” He further cautioned that those in the legal profession and society at large who misinterpreted the “vivid fictions and metaphors of traditional jurisprudence . . . as reasons for decisions” would forget the social forces that created the law and its ultimate impact on people (Martin, 1999, p. 168).

Significantly, the rationale for the dispossession of American Indian people of their lands, as articulated in the *Johnson v. McIntosh* case, is anchored in that convincing and damning fiction that Indians were more resistive than the average foe an aspiring European conquering nation might encounter in their quest for land acquisition. Regarding the necessity of subduing American Indians, Chief Justice Marshall wrote,

But the tribes of Indians inhabiting the country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country was to leave the country a wilderness; to govern them as distinct people, was impossible because they were as

brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence. (Cohen, 1942, p. 590)

For a conquering nation who wished to maintain a position of moral superiority, the fiction of a savage Indian enemy was a crucial element of successful conquest. For a Christian populace who believed in the Ten Commandments, who subscribed to the idea that one loved their neighbor as themselves, the enemy had to be a savage, someone less than human, uncivilized. Otherwise, the (in)humanity of the conqueror's own actions would have been indefensible.

Cohen was also aware that "legal language could be used to make a decision sound reasonable, when in fact the effect of the decision was unreasonable." Through the use of what he described as "weasel words," Cohen engaged in a form of truth-telling, pointing out that legal jargon, when adeptly crafted, could obscure the rights of certain people while providing convenient grounds within a legal system based on precedent to insure that those rights would continue to be obscured into the future (Martin, 1999, p. 169).

According to Jill Martin, a professor of legal studies, Cohen believed this was especially true in cases involving American Indians. In defining the contours of the judicial system's relationship with Indians, Cohen noted that the legal community adopted a "second-string substitute vocabulary" so as to avoid the untidy complications of recognizing that the "fixed principles" of equality and justice were not accessible to all but were dependent on their racial group and social class. To illustrate the power of this manipulation, Cohen wrote,

In many cases . . . the courts will apply to Indians terms that are ordinarily applied to animals, thus conveying the impression that the relation of an Indian to his land is similar to that of an animal to its habitat and therefore not a subject of enforceable rights. Thus, while a white man "travels" or "commutes", an Indian (like a buffalo) "roams." A white man may be of "mixed ancestry," an Indian (or a cow) is a "mixed breed". Land held by a group of white men in accordance with an intricate apportionment of individual rights is called a "corporation" or "partnership" or "family" property. Land held by a group of Indians under arrangements equal or of greater intricacy is dubbed "communally occupied." (Martin, 1999, p. 170)

## AMERICAN INDIAN SPORT IMAGERY AND TRANSCENDENTAL NONSENSE

---

Cohen's arguments from 7 decades ago register in today's treatment of the American Indian sport-imagery question both in general society and in the courts. Elaborate fictions are woven to justify stereotypical imagery that simply would not be acceptable otherwise. As a case in point, Cleveland's professional baseball franchise has cultivated a myth that the "Indians" name was chosen to honor Louis Francis Sockalexis, who the franchise claims is the first Native American to play professional baseball, and serves



as the “good reason” for the continued marketing of the racist image “Chief Wahoo” (Powers-Beck, 2001; Staurowsky, 2000, 2001a, 2001b).

Professional sport franchises, educational institutions, corporations, and communities frequently defend the use of American Indian imagery by attempting to establish the specialness of their claim or the originality of the motivating factor that led to the adoption of the image. As a representative example, members of the Board of Trustees at the University of Illinois defend the institution’s creation and commitment to “Chief Illiniwek” as an act of remembrance for the loose confederation of Algonquian tribes of that name who once lived in the area. According to the university’s press office, the performance of the “Chief” at halftime is “one of the most dramatic and dignified traditions in college athletics. . . . Since 1926, this symbol has stirred pride and respect in audiences” (King & Springwood, 2001, pp. 41-75; Prochaska, 2001; Spindel, 2000).

Regardless of the rhetoric, the imagery associated with American Indian mascots and team names are generic in nature, apart from stylistic nuances. Conforming to Stanley Milgram’s concept of six degrees of separation (see Gladwell, 2000), all of these images have roots in the vivid fictions and vital lies that formed the rationale for the dispossession of American Indians of their land and later formed the basis for the misappropriation of American Indian culture and identity in the advertising and marketing of products (Bird, 1996; Deloria, 1998; Root, 1998).

As an example, in 1915, the Cleveland baseball franchise adopted the name Indians in the wake of the Boston Braves winning the World Series, a team that had miraculously ascended from the basement in league standings to win the ultimate prize. On January 18, 1915, a quote appears in *The Cleveland News* from fan James Thayer “who thinks the ‘Indians’ may emulate the example of their National League counterparts, the Boston ‘Braves,’ and show just such a wonderful reversal in form the coming season as the ‘Braves’ did in 1914” (“Indians is Popular Nickname,” 1915).

Similarly, the term “Chief” was a routine stereotype imposed on American Indian players in major league baseball throughout the first half of the 20th century. As scholar Jeffrey Powers-Beck (2001) notes, “They were called ‘Chief’: the dozens of Native Americans who played major league baseball from 1897 to 1945 and the hundreds who played minor league ball” (p. 508). The use of this term was not accidental but a calculated attempt on the part of owners, sportswriters, and fans to emphasize the “otherness” of American Indians while also building interest and market appeal by using the exoticism associated with American Indians.

This same kind of connection can be found when one traces the history of the Washington football franchise. In defense of their use of the name “Redskins,” the franchise has argued that the name “exists in tribute to the American Indian. And ‘Redskins’ is a term of honor, celebrating persons of bravery, endurance and strength” (Leiby, 1994). As recently as January 2002, Karl Swanson, vice-president of media relations for the club, said “the team’s name is not offensive and symbolizes courage, dignity and leader-

ship" (DeMillo, 2002). However, even in its own rendering of the name's origins, the Washington franchise acknowledges the crass business motive that served as the basis for the adoption of the name and imagery. According to the franchise's Web site, "The Washington Redskins were founded in Boston as the Boston Braves in 1932, playing at Braves Field. In 1933, the team moved its games to Fenway Park, home of the Boston Red Sox, and changed its name to the Boston Redskins in an effort to resonate with, but be different from, the baseball team." Further, as football historian Richard Whittingham points out, the team's name was selected as part of the exploitation of an "Indian motif" by owner George Preston Marshall (DeMillo, 2002; Leiby, 1994; Whittingham, 2001, pp. 1-24).

The freewheeling nature of the misappropriation of American Indian images and the convoluted logic offered by non-American Indians to explain away this form of usury, exploitation, and misappropriation is further revealed when the connections between these images are traced within school settings. For example, one need only turn to school yearbooks to discover that the "Indians" of Onteora High School (New York) are often represented with the same imagery used to represent the "Chiefs" of Southern Cayuga High School.<sup>7</sup>

When viewed through the lens of transcendental nonsense, the power of precedential thinking and the reinforcement of ideas about American Indians across the culture in various institutional settings becomes clearer. The fiction of the "savage" image and the impact that this has on American Indian people can be traced from the Declaration of Independence to Chief Justice Marshall's opinions and on through to Justice Sandra Day O'Connor's reasoning in the *Lyng* case. In similar fashion, the perception of American Indians as fierce, fighting, warlike, and brave form the necessary ingredients that allowed these images to be adopted so widely by the public.

The reliance on "weasel words" in defense of these images, delivered as they are in highly romantic and touching stories of honor, dignity, and respect, serve to cover up and cover over the offensiveness of behavior expressly directed toward American Indians. To illustrate, Dave Hill, an artist from the Onondaga Nation, writes about the dismissiveness and mistreatment of American Indians in contemporary society:

yet you would still treat us like children  
 bestowing upon us this—*honor*  
 to be your good luck charm  
 is this the honor you mean to give  
 because we can survive all that you do  
 is this the symbol of perseverance you pass to your children  
 is this the integrity you boast to the world  
 if-we had more consumer buying power-you might hear  
 if-we got involved in your virtuous political scene—you might see  
 but what makes you feel?  
 Is it that your lack of cultural identity causes a sort of—envy

in the face of maladjustment you can cause delusions to the point of absurd fantasies making prejudice an honor? (Hill, 2000; excerpt from "Official Team Mascots: Lions and Tigers and . . . Oh My!!!" April 13, 2000).

As Hill points out, within the context of a sports arena, imitation is clearly not the sincerest form of flattery. Rather, imitation can be read as a disguised assertion of power and admission of how American Indians have been used for profit and entertainment. In the spring of 2002, a group of Native American and non-Native American graduate students from the University of Northern Colorado attempted to demonstrate this point in a gently satirical and humorous way by naming their intramural basketball team The Fighting Whites (a.k.a., The Fighting Whities), adopting the slogan, "Everythang's gonna' be all white" (<http://www.fightingwhites.org>).

American Indian imagery in sports is as effective an instrument in the process of forgetting and obfuscation as legalese has been in hiding outcomes that negatively affect American Indian people. Consider how Florida State's mascot, "Chief Osceola," smoothes over obvious racial lines of dehumanization and cultural genocide by granting permission for masses of FSU fans to identify with "Seminoles" so as to get into the "fighting spirit." The vivid fiction of the "Seminoles tradition" at Florida State was articulated in 1993 by former president Dale Lick. The account, as he wrote it, continues to appear on the school's athletics Web page to justify its behavior. According to Lick (1993), "The history of the Seminole Indians in Florida is the story of a noble, brave, courageous, strong and determined people who, against great odds, struggled successfully to preserve their heritage and live their lives according to their traditions and preferences." The rhetoric belies the substantial marketing interest the university has in the image, an image they claim as their own property right.

The very haunting and tough questions that could be raised about the image are forbidden. Within a commercial sea of acceptance and affirmation for the image and the supposed benign motive behind it, to speculate about whether the gesture is considered to be appropriate and genuine recognition of Osceola and the Seminole people for their resistance of conquest is almost inconceivable. The most haunting aspect of this scenario however involves the representation of "Chief Osceola" himself.

As tradition dictates, the "Chief" appears on horseback, riding at top speed to the center of 83,042-seat Doak Campbell Stadium, replete with a big-screen video system referred to as the "War Board." Approaching midfield, the "Chief" releases a flaming spear to the wild applause and tomahawk-chopping delight of the fans ready for a victory. Central to this spectacle is the juxtaposition of the disembodied head of Osceola placed at the 50 yard line; the sport of American football, a national militaristic metaphor for "might makes right" in the acquisition of territory and ultimate victory, is a game that is often described as a "war." An implied, although never

acknowledged, part of the spectacle of the contest is the symbolic erasure of Osceola's head as the movements of teams in military formations and bands in full military splendor march back and forth over his image, over his face, erasing his memory so completely that the unsavory realization that this entire enactment is being played out for a man whose fame derives from resistance to Whites, who was captured by White soldiers and eventually beheaded by a White physician, becomes out of reach. By the time the ritual runs its course, Osceola is transformed from fighting figure to dismembered figure to distant and hazy memory, having served as the centerpiece in an entertainment vehicle designed to appeal to a White-majority audience that produces substantial revenue for a primarily all-White leadership structure.<sup>8</sup>

#### WEASEL WORDS 101: THE TRAPPINGS OF THE OBJECTIVE, REASONABLE PERSON STANDARD

In January 1999, the Utah Supreme Court issued an opinion in the case of *McBride v. Motor Vehicle Division of Utah State Tax Commission*. The plaintiffs in the case were two Native American residents who challenged the appropriateness of the state issuing vanity license plates featuring the term "redskins" to fans of the Washington football team, arguing that the term was a derogatory, vulgar, and obscene racial epithet. The case has been described as historic because "the five Justices of the Supreme Court reversed a previous administrative decision which had found that the term was 'not offensive' and was simply a mascot used for a professional sports franchise" (Cummings, 2003, p. 12). Despite all five justices agreeing that the Tax Commission had erred in its determination (and on remand the Tax Commission ultimately revoked the license plates), the question of the source of the commission's error was a matter of debate among the justices.

The majority opinion written by Justice Leonard Russon focused on a seeming dilemma. On one hand, the Utah Code has a rule preventing the motor vehicle division from issuing personalized license plates that have "any connotation that is vulgar, derogatory, profane, or obscene [or] that express[es] contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender or political affiliation" (*McBride v. Motor Vehicle Division*, 1999, p. 10). On the other hand, "no guidance" could be found either statutorily or in administrative rules, to determine "whose perspective the Commission" (p. 10) should have used in deciding if the term "redskins" was, as the plaintiffs alleged, derogatory and held American Indians up to contempt and ridicule.

In the absence of an established standard and left to their own devices, the majority on the Tax Commission opted to use their own personal viewpoints or those of the general public as the appropriate standard. The Tax Commissioners argued that because the word "redskins" was neither offensive to them nor to the general public, given the widespread popularity and acceptance of the Washington football team and its name, there was no violation of the Utah Code.

Whereas Justice Russon and the majority on the Utah Supreme Court noted the self-serving nature of the commissioners' reliance on their own personal standard of acceptability and the potential for the general public to be uneducated as to the offensiveness of certain terms, Justice Russon took the intriguing step of rejecting the legitimacy of the plaintiffs' stance as well. Rather, Justice Russon labeled the position of the Native American plaintiffs as mere opinion and equated it with the commissioners' personal opinions on the issue. Having neutralized all perspectives on the issue, making them all the same, the question of what standard could be used remained.

According to Justice Russon and the majority, the answer resided in "the only reasonable standard," which is "the objective, reasonable person" standard. In theory, the majority argued, the Tax Commission's work would have been aided by the application of a standard in which the position of an objective, reasonable person had been taken. When presented with all of the evidence, they would have then been able to conclude that the term "redskins" contains at least one vulgar, derogatory, profane, or obscene connotation; or expressed contempt, ridicule, or superiority of race or ethnic heritage.

The dizzying circularity of this argument, however, is worth considering. First, aren't terms like "objective" and "reasonable" part of the job description for a member of the judiciary? Weren't objective, reasonable people supposed to be deciding this case? This is a dilemma, indeed, given the fact that the commissioners had been presented with evidence that at least one negative connotation existed.

Second, were the plaintiffs really expressing their own "personal opinions" on the matter, or had they presented a factual case on which a legitimate violation could have been found, regardless of who was making the determination? Associate Justice Christine Durham, in her dissent, took to task her colleagues on the Utah Supreme Court who voted in the majority for ignoring "the fact that while the Tax Commissioners did rely upon their personal opinions in deciding this issue, the petitioners introduced far more than mere opinion as to the term's offensiveness into evidence," providing dictionary definitions of the term, documenting that it was a term equivalent to the racially familiar and charged "n" word, explaining the historical roots of the term as explained in texts and articles, and providing expert testimony. Chiding them for not ruling on the offensiveness of the "redskins" license plates outright and for ignoring every piece of evidence and testimony presented by the Native American plaintiffs, Associate Justice Durham concluded that no court in the country would have approved the issuance of license plates with a racial epithet. And yet, the court here could not bring itself to do so, remanding it back to the Tax Commission.

This case represents another permutation on the theme of transcendental nonsense. The trappings of the "objective, reasonable person" offer little assurance that other Native American plaintiffs will be treated any better the next time they pursue such a complaint as long as the majority of justices on the Utah Supreme Court believe that the historical and contem-

porary social forces that shape Native American lives can be viewed as mere personal opinion rather than either informed opinion or, more importantly, reality. In an analysis of this case, andre cummings (1999) observed, "The McBride majority seemed intent on protecting the status quo by selecting a safe, friendly standard that keeps the power firmly rooted in the Court and not with the offended Native American citizens" (p. 25). cummings raised an important point. When considered within the context of U.S. judicial history relative to Native Americans, just how race neutral is the objective, reasonable person standard and the persons who apply that standard?

Numerous legal scholars have argued that for members of under-represented racial groups, little justice accrues from the adoption of an objective, reasonable standard. In the alternative, cummings argues that a more desirable way for questions regarding the offensiveness of Native American sport imagery to be resolved is by using the standard of an objective, reasonable Native American person. Whereas there is tremendous value in considering ways to bring balance into the judicial system that often shows bias against Native American plaintiffs, nevertheless, there is something to be said for holding judicial officials accountable to an objective, reasonable standard. It is not only reasonable but long since past the time when Native Americans should expect that when they enter a court room in the United States, their voices and concerns will not be automatically or routinely dismissed or ignored. Judges, when presented with historical accounts that document the history of American Indian genocide, should set their subjectivities aside and respond to the history in an objective fashion. In the most ideal sense, it is time for the American public to adopt an objective, reasonable standard free from the encumbrances of the White privilege that goes with race prejudice against Native Americans fostered by a culture saturated with race prejudice. The elimination of these kinds of images would go a long way toward accomplishing this goal not only in the courts but in society as a whole.

#### MOVING BEYOND TRANSCENDENTAL NONSENSE

---

When considered in light of Cohen's notion of transcendental nonsense, the sheer number of American Indian sport images and the resistance to changing them demonstrates the profound legacy left by the mass internalization of vivid fictions about American Indians that sustains a racial hierarchy fueled by White privilege. The mascots themselves have come to serve as the "second-string substitute" curriculum perpetuated by educational systems that shape perceptions of American Indians—not as American Indians are but as they must conveniently be represented for the dehumanization and dispossession of American Indian people and culture to continue. Whereas there is an enormous denial regarding the harm these images do, to critically examine the phenomenon of American Indian sport imagery is to encounter the messages encoded in the them. Through the familiarity and accessibility of these images, non-American Indian children



and adults learn to selectively take American Indian identity as their own, to believe that one of the few times an American Indian identity is of societal value is when it is adopted within the context of a metaphor for battle, to become accustomed to taking American Indian objects without permission and without asking, to believe that an American Indian identity can be acquired and discarded as easily as putting on and removing an athletic uniform, and to construct American Indian identity as they imagine and in a fashion that suits their purpose.

Despite the fact that America is obligated by agreements entered into by the U.S. government to act in the role of trustee for American Indian welfare, the psychological, social, and educational investment in American Indian mascots and the attendant failure of schools to genuinely adopt curricula that include accurate information about American Indian history and experience is a testament to the mass abdication of that trustee obligation. Whether American Indian children are enrolled in mascot schools or whether American Indians comprise a large enough consumer group or fan base are not the determining factors in whether citizens should acknowledge the damaging effects of this imagery. To build a case for accountability around American Indian numbers, or lack thereof, is perhaps the most transparent of all fictions because it obscures the reality and legacy of the genocide and forced assimilation that occurred. The use of American Indian sport imagery, as part of the larger issue of the misappropriation of American Indian imagery within popular culture, is a shared problem and responsibility. Every citizen has a responsibility to understand the impact this imagery has on the way in which American Indians are viewed and the way they are treated.

Statistics alone would suggest that the hypocrisy surrounding this issue simply cannot be sustained by a thinking, feeling people. Although there is tremendous fondness for the romantic stories that so often accompany these images, there is little factual information to support the contention that these images foster attitudes of reverence, respect, and appreciation for American Indians. Quite the contrary. The expressions of fondness are for the mascots themselves, not for American Indians as human beings. It is significant that in the same school systems that have fostered these images, American Indians are among the most at-risk students, registering dropout rates of roughly 50% (Huff, 1997). Similarly, according to data compiled by the U.S. Department of Justice, American Indians and Alaska Natives are victims of violent crime at rates that far surpass every racial and ethnic group. Based on the data presented in the *Violent Victimization and Race Report* for the years 1993 to 1998 produced by the Bureau of Justice Statistics, American Indians were victims of violent crime at about twice the rate of Blacks, Whites, or Asians during 1998 (Rennison, 2001). More telling, American Indians are three-and-a-half times more likely to be the victims of violent crimes directed at them by members of other racial groups. An objective, reasonable person, when presented with this data,



would have to conclude that these images have not held American Indians up to the level of honor and respect contended, but rather to levels of contempt, ridicule, disparagement, and harm.

If there is hope for us to fulfill the promise of the democratic ideals Cohen wrote about, educators, public policy makers, and corporate executives need to heed his cautionary warnings from years ago. "Mascot" curricula must be replaced with substantive education about American Indian history and issues. Educators must give greater thought to the role they play as trustees in preparing both American Indian and non-American Indian children to deal with the complexities of issues for which they share responsibility. Seven generations from now, how will our record read on this issue? Will we have taken the challenge of getting beyond the transcendental nonsense that has shaped all of our lives? Or will we continue, at the risk of diminishing our collective humanity, to allow these symbols of race prejudice to perpetuate future cycles of racism and oppression of American Indians? The choice is ours. What will it be?

#### AUTHOR

---

*Ellen J. Staurowsky is a professor in the Department of Sport Management and Media at Ithaca College in New York.*

#### NOTES

- 
1. Dialogue from the 1994 movie *Medicine River* is based on the book by Thomas King (1990; New York: Viking).
  2. Ms. Steiger is quoted in an article that appeared in *USA Today* about tourism in the Southwest (Clarke, 2002).
  3. Similar sentiments were expressed on May 31, 2002, in an address to the National Multicultural Institute Forum on Public Policy; former Principal Chief of the Cherokee Nation Wilma Mankiller observed that educational systems in the United States have yet to develop the necessary worldview and curriculum to appropriately address the needs of American Indian students. She also noted that schools fail in their delivery of accurate and balanced information about American Indian history and the history of the United States.
  4. Gary Brouse (Ponca), director of equality for the Indigenous Peoples Program, Interfaith Center for Corporate Responsibility, gave a presentation as part of a program entitled "Indigenous Peoples' Images in Sports and Media" on May 12, 2002, at the American Museum of Natural History in New York City. In the course of his presentation, Gary showed this video.
  5. For one example of a this kind of Thanksgiving Day description, see the Embassy of the United States site (last accessed on February 21, 2003) at <http://www.usis.usemb.se/Holidays/>
  6. Robert J. Roelle, "The Use of Native American Names, Symbols, and Mascots Within the Ossining Union Free School District," *A Report Including Recommendations Presented to the Ossining Board of Education*, June 4, 2002; Owen S. Good, "School's Nickname Fuels Fury: American Indians March Against 'Reds' Moniker", *Rocky Mountain News*, May 20, 2002; David Haldane, "School Mascot Protesters, Police Clash Outside Fullerton Meeting," *Los Angeles Times*, June 19, 2002; Associated Press, "Nyack Joins Schools Dropping Use of Indian As Mascot", *Boston Globe Online*, June 27 2002 (at their June 25, 2002 school board meeting, the board voted unanimously to eliminate the use of an Indian as the mascot for the district.

However, the board believed that the step of referring to their athletic teams as “Indians” and the cessation of the use of an Indian logo were items that would require public comment and hearings). See also Paul Brooks and John Milgrim, “School Mascot Controversy: Inspiration or Degradation?” *The Times Herald Record Online*, September 21, 2000. This particular case is of interest because the school board voted to eliminate the Indian name and mascot in January 2000, passing a resolution that the district would not use the race or ethnicity of a group of people for their mascot. The controversy was so great surrounding this decision that pro mascot political parties formed, with the result being a change in board membership that spring. In September 2000, the newly elected board reversed the decision, becoming the first institution in the country to go on record as formally approving the adoption of a racial image as a mascot.

7. The author went to the libraries of each of these schools and examined copies of their yearbooks during the summer of 2000.
8. This is referring to the governor of Florida (Jeb Bush), the president of Florida State University (Talbot D’Alembarte), the athletic director (Dave Hart), the coach of the football team (Bobby Bowden), the executive director of the National Collegiate Athletic Association (Cedric Dempsey), and the commissioner of the Atlantic Coast Conference (John Swofford). During the 1999-2000 academic year, the revenue generated from the Florida State University football program was reported to be \$16,404,402 (statistics from The Chronicle of Higher Education data). FSU football receives national media coverage on ABC, CBS, FOX Sports, ESPN, and regional coverage from the Sunshine Network and Comcast Sports. All of these organizations have White ownership groups or individuals. For a compelling account of the misappropriation of Osceola’s name and persona throughout the culture, see Richard Grounds (2001).

## REFERENCES

- Bird, E. (Ed.). (1996). *Dressing in feathers: The construction of the Indian in American popular culture*. Boulder, CO: Westview.
- Brown, D. (1991). *Bury my heart at wounded knee*. New York: Henry Holt.
- Clarke, J. (2002, June 21). Going down that long lonesome road: Cowboys, Indians and the Arizona desert. *USA Today*, pp. 1D-2D.
- Cohen, F. S. (1935). Transcendental nonsense and the functional approach. *Columbia Law Review*, 35.
- Cohen, F. S. (1942). *The Handbook of Federal Indian Law*. Washington, D.C.: Government Printing Office.
- Cohen, F. S. (1953). The erosion of Indian rights, 1950-1953: A case study in bureaucracy. *The Yale Law Journal*, 62, 348.
- Cornelius, C. (2001, June 21) Schaffer dons “Reds” Jersey: Lawmaker’s gesture called “slap in face”. *The Denver Post*, p. B-01.
- cummings, a. (2003). “Lions and tigers and bears, oh my” or “Redskins and braves and Indians, oh why”: Ruminations on McBride v. Utah State Tax Commission, political correctness, and the reasonable person. *California Western Law Journal*, 36, 11.
- Deloria, P. (1998). *Playing Indian*. New Haven, CT: Yale University Press.
- DeMillo, A. (2002, January 10). COG asks Redskins to drop “demeaning” team name. *The Washington Post*, p. B01.
- Fisher, M. (2002, January 26). American Indians among admirers of Redskins name. *The Washington Post*, p. B01.
- Friedberg, L. (2000). Dare to compare: Americanizing the Holocaust. *American Indian Quarterly*, 24, 353-380.
- Gladwell, M. (2000). *The tipping point: How little things can make a difference*. Boston: Little, Brown.

- Grounds, R. (2001). Tallahassee, Osceola, and the hermeneutics of American place-name. *Journal of the American Academy of Religion*, 69(2), 287-322.
- Harjo, S. S. (2001). Fighting name calling: Challenging "Redskins" in court. In C. R. King & C. F. Springwood (Eds.), *Team spirits: The Native American mascots controversy* (pp. 189-207). Lincoln: University of Nebraska Press.
- Hill, D. (2000, April 13). Official team mascots: Lions and tigers and . . . oh my!!!
- Huff, D. J. (1997). *To live heroically: Institutional racism and American Indian education*. Albany: State University of New York Press.
- Indians is popular nickname. (1915, January 18). *The Cleveland News*, front page of the sports section.
- Jackson, H. H. (1995). *A century of dishonor: A sketch of the United States government's dealings with some Indian tribes*. Norman: University of Oklahoma Press. (Originally published in 1885)
- Jensen, R. W. (1998, July 19). White privilege shapes the U.S. *Baltimore Sun*.
- Jensen, R. W. (1999, July 4) More thoughts on why system of White privilege is wrong. *Baltimore Sun*.
- Johnson v. McIntosh, 21 U.S. (8 Wheat) 543 (1823).
- King, C. R., & Springwood, C. F. (2001). *Beyond the cheers: Race as spectacle in college sport*. Albany: State University of New York Press.
- Leiby, R. (1994, November 6). Bury my heart at RFK: How the Redskins got their name, and why just maybe it should be changed. *The Washington Post*, pp. F1, F4.
- Leo, J. (1999, March 8). War against warriors. *U.S. News & World Report*, 126(9), 16.
- Lick, D. (1993, May 18). Seminoles are heroic symbol at Fla. State. *USA Today*, p. 8C.
- Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988).
- Malcolmson, Scott. (2000). *One drop of blood: The American misadventure of race*. New York: Farrar, Straus and Giroux.
- Martin, J. E. (1999). The miner's canary: Felix S. Cohen's philosophy of Indian rights. *American Indian Law Review*, 23.
- McBride v. Motor Vehicle Division of Utah State Tax Commission, 1999 Utah 9; 977P. 2nd 467; 361 Utah Adv. Rep 56.
- McIntosh, P. (1988). White privilege: unpacking the invisible knapsack. Available at <http://www.utoronto.ca/acc/events/peggy1.htm>
- Medicine river [Telefilm]. (1994). Toronto: Medicine River Productions, Ltd.
- Miller, J. J., & Ponnuru, R. (2001, April 10). Beating the drums. *The National Review*. Available at <http://nationalreview.com/daily/rro30901.html>
- Monnin, M. J. (2001, May 15). What's in a nickname? Student athletes oppose change in team names. *The Buffalo News*, p. B8.
- Pewewardy, C. (1998). Fluff and feathers: Treatment of American Indians in the literature and the classroom. *Equity and Excellence in Education*, 31, 69-76.
- Powers-Beck, J. (2001). "Chief": The American Indian integration of baseball, 1897-1945. *American Indian Quarterly*, 25(4), 508-538.
- Prochaska, D. (2001). At home in Illinois: Presence of Chief Illiniwek, absence of Native Americans. In C. R. King & C. F. Springwood (Eds.), *Team spirits: The Native American mascots controversy* (pp. 157-188). Lincoln: University of Nebraska Press.
- Rennison, C. (2001). *Violent victimization and race report, 1993-1998*. Available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/vvr98.txt>
- Root, D. (1998) *Cannibal culture: Art, appropriation, & the commodification of difference*. Boulder, CO: Westview Press.
- Sanchez, R. (2002, Jan 5). Former Redskin told to return team-inspired license plates. *The Washington Post*, p. A03.
- Shiflett, D. (2002). The mascot wars. *The Women's Quarterly*. Available at <http://www.iwf.org>
- Spindel, C. (2000). *Dancing at halftime: Sports and the controversy over American Indian mascots*. New York: New York University Press.

- Staurowsky, E. J. (2000). The Cleveland Indians: A case study in cultural dispossession. *Sociology of Sport Journal*, 17, 307-330
- Staurowsky, E. J. (2001a, August/September). Reflections of a former Methacton "warrior." *Athletic Management*. Available at <http://athleticsearch.com/bonus-mascots.html>
- Staurowsky, E. J. (2001b). Sockalexis and the making of the myth at the core of Cleveland's "Indian" image. In C. R. King & C. F. Springwood (Eds.), *Team spirits: The Native American mascots controversy* (pp. 82-108). Lincoln: University of Nebraska Press.
- Strickland, R. (Ed.). (1982). *Felix S. Cohen's handbook of federal Indian law*. Charlottesville: Bobbs-Merrill.
- Takaki, R. (1998). *A larger memory: A history of our diversity, with voices*. Boston: Little, Brown.
- Todorov, T. (1999). *The conquest of America: The question of the other*. Norman: University of Oklahoma Press.
- Tsosie, R. (2001). Land, culture, and community: Reflections on Native sovereignty and property in America. *Indian Law Review*, 34.
- Whittingham, R. (2001). *Hail Redskins: A celebration of the greatest players, teams, and coaches*. Chicago: Triumph.