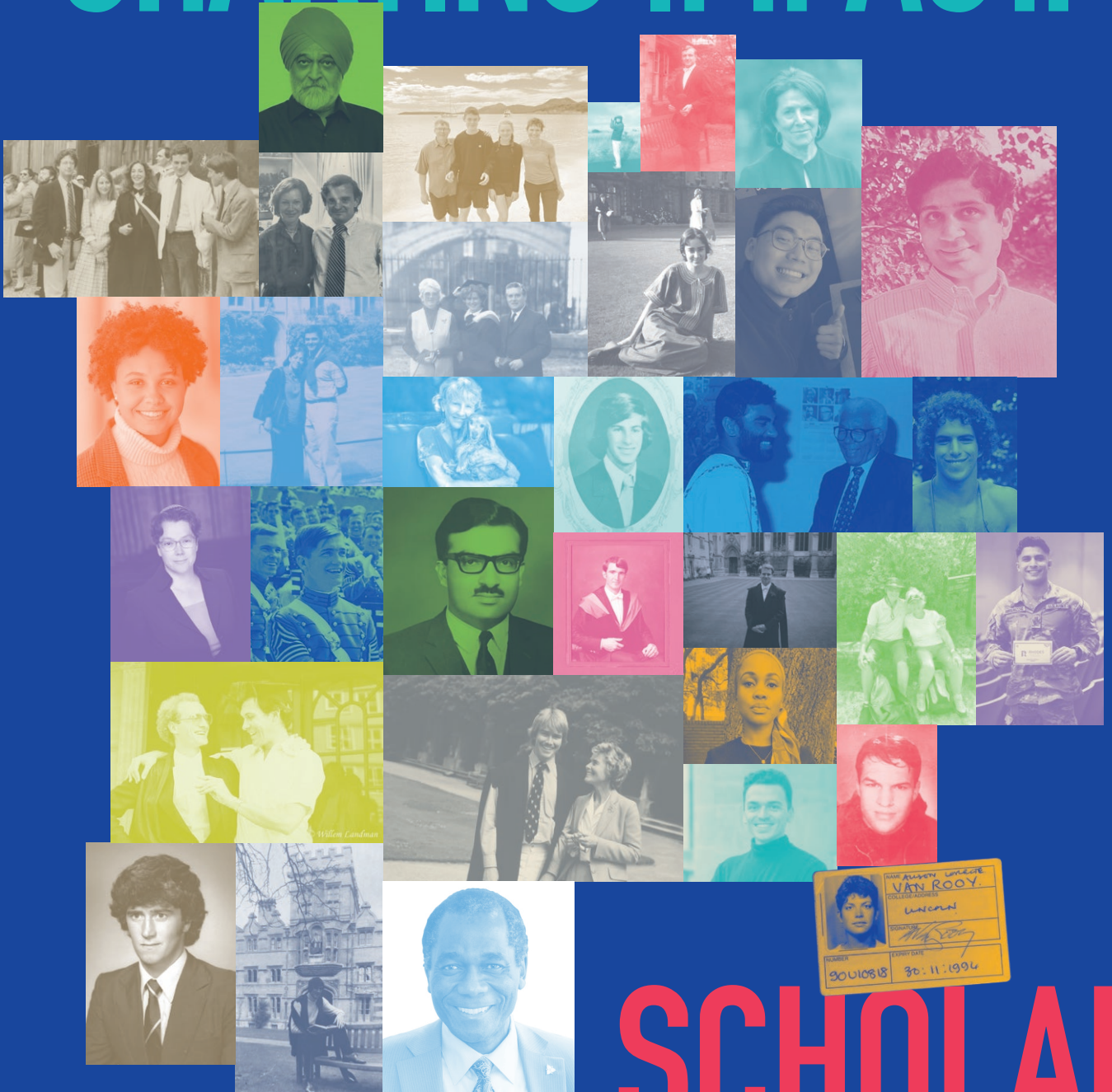


RHODES SCHOLAR 2025^{#12} CHARTING IMPACT:





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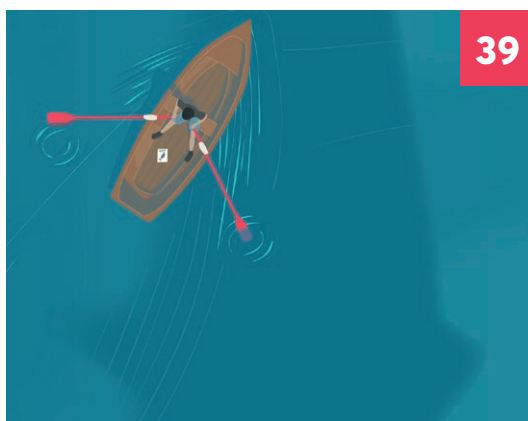
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Intellectual Property and Social Justice

For almost 20 years, **Ron Katz** (Missouri & Balliol 1967) has been working with Howard University's Institute for Intellectual Property and Social Justice, which was established to address the social justice implications of intellectual property law. Here, he shares his own journey within this ever-expanding area, supporting student athletes to grow awareness of their rights

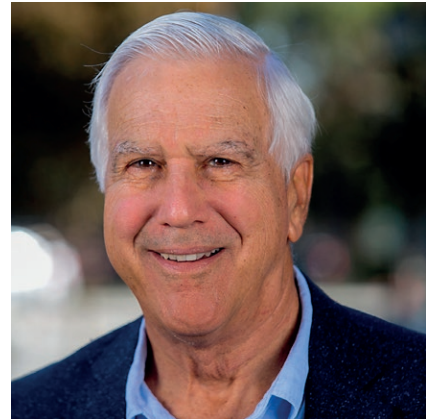
Intellectual property (IP) is by far the most valuable property today. The ability, for example, to instantaneously reach millions of people with software and hardware protected by patents and copyrights creates generational wealth in far less than a generation. As intellectual property was burgeoning in value in the early part of this century, it was not normally associated with sports or with civil rights. As a business-oriented IP trial lawyer in Silicon Valley, I certainly did not make those connections.

That changed in 2007, when I was asked by some sports contacts to bring a lawsuit on behalf of a class of approximately 2000 retired NFL players against their union, the National Football League Players Association (NFLPA). That lawsuit – which involved the use of the players' images in lucrative video games without the permission of the players or payment to them – opened my eyes to several issues.

First, the players were not very aware of their IP rights. This was particularly unfortunate because IP rights were probably their most valuable asset. Most of them were not at all affluent: many had not handled the money they made from football wisely and were not well equipped to make a living outside the world of sports. Exacerbating these problems was the fact that many had serious physical and mental injuries from football. Second, the amount of money being generated by the video games was significant. The NFLPA at that time was receiving about \$100 million per year for the use of players' images. Third, the way some courts were interpreting IP rights did not sufficiently take into account issues in minority communities. For example, some courts had ruled that the use of images in video games constituted free speech rather than the exploitation of a basic right to control one's image in a commercial context.

The result of the case was a \$28 million verdict against the NFLPA. Another result was that I came to realise that intellectual property could be a factor in civil rights, because many of the 2000 class members were African-Americans.

I started to work with an organisation started by Professor Lateef Mtima at Howard University Law School, a prominent HBCU (Historically



Intellectual property
could be a factor
in civil rights



Black College/University). He called it the Institute for Intellectual Property and Social Justice (IIPSJ), connecting those two concepts in a singular way.

IIPSJ worked on the exact issues I had observed in the NFLPA case: lack of awareness of IP rights in minority communities and IP laws that treated minority communities unfairly. On the awareness issue, for example, IIPSJ has convened numerous informational/educational gatherings about IP in minority communities and has provided Congress with testimony in support of laws like the Unleashing American Innovation Act, which, among many other things, established, in underserved communities, satellite offices of the US Patent and Trademark Office.

On the unfair treatment issue, IIPSJ has filed friend-of-the-court briefs on issues of importance to minority communities. For example, IIPSJ weighed in on a case involving the musician, Prince, whose photo, with minor changes, had been appropriated by Andy Warhol for commercial purposes. The US Supreme Court ruled that Warhol infringed the copyright on the photo.

IIPSJ has been successful over its 22 years of existence. It has attracted contributions from major high-tech companies and has expanded its board of directors from three to fifteen. I am vice-chair of the board and continue work on behalf of minority athletes with IP issues. The latest project deals with name, image and likeness (NIL) issues in collegiate sports. Until very recently, the National Collegiate Athletic Association (NCAA) did not permit college athletes to monetise their NIL, even though any other student on campus could do that. This rule was supposedly in the service of amateurism, but, in recent cases, the NCAA has been unable to define that term in a way that justifies the egregious situation in college sports: coaches, administrators and the schools make millions of dollars, but the players in the revenue-producing sports (football and men's basketball) were not permitted to make any money, whether from salary or from the commercial exploitation of their NIL. A substantial number of the players – particularly the stars – in these sports are African-Americans.

The IIPSJ project that I am helping to organise in the NIL area is to establish an information bureau, at Howard University Law School, where college and high school athletes, their parents and their coaches can get unbiased information about the NIL situation, which *Sports Illustrated* has described as 'The Wild West'. Without such unbiased information, the likelihood that a poorly represented student would sign away his IP rights for a pittance is substantial.

It is unknown at this time what the ultimate NIL regime will be for college and high school athletes. The hope at the IIPSJ is that its efforts will make the ultimate NIL regime reflect social justice in a way that student athletics have not done for decades.



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