

SPORTS LAWYERS JOURNAL
Volume 3

Todd Fisher, *Amateurism and Intercollegiate Athletics: The Double Standard of Section 12.2.4.2.1*, **3 SPORTS LAW. J. 1 (1996)**

The author argues that the NCAA has compromised its position on amateurism by creating § 12.2.4.2.1 in its by-laws, and that the NCAA's "No Agent" Rule and "No Draft" Rule may advance amateurism at the expense of its athletes.

The author suggests that the NCAA abolish the "No Agent" Rule. The rule states that any agreement for representation between a student-athlete and an agent renders the player ineligible for participation in any intercollegiate sport. The NCAA has consistently argued that the purpose of the rule is to prevent "blurring" between an athlete's amateur and professional status. Commentators and courts refer to this distinction as a demarcation line that promotes the integrity and quality of college sports. The author, on the other hand, argues that the "No Agent" Rule can cause detrimental harm to a student-athlete. He presents that abolishing the rule will protect athletes from unscrupulous agents and allow them to avoid mistakes by making informed decisions.

The author questions the validity of the NCAA "No Draft" Rule. The rule holds that if an athlete asks to be placed on the draft list of a professional sport he forfeits his amateur status. It is argued that the effects resulting from the rule's application hinders the NCAA's purported goal of fostering an athlete's educational pursuits. Basically, if you get drafted, you don't earn a degree; and if you don't get drafted, what incentive is there to finish school without being able to play your sport. The author demonstrates that the "No Draft" Rule only affects football players. (He focuses on the four major sports.) First, hockey players and baseball players are not subject to the same limitations.

Second, basketball players fall within an exception whereby they can enter the draft, be drafted by a team, and decide to return to college within 30 days. For basketball players who opt to use § 12.2.4.2.1, the “No Agent” Rule still applies, and drafting teams retain rights in draftees according to the NBA Collective Bargaining Agreement. The author acknowledges that there are negative effects resulting from the basketball draft exception. He concludes: “The NCAA’s stated purpose of § 12.2.4.2.1 is consistent with the goal of promoting amateurism in intercollegiate athletics. The application of the rule, however, is inconsistent with the NCAA’s pursuit of amateurism because it only applies to college basketball players, rather than college athletes as a whole.”

Stephen M. Schott, *Give Them What They Deserve: Compensating the Student-Athlete for Participation in Intercollegiate Athletics*, 3 SPORTS LAW. J. 25 (1996)

From its inception, the National Collegiate Athletic Association (NCAA) has acted to ensure and to protect the notion of amateurism in intercollegiate athletics. The author of this Article believes that the NCAA has broken its promise to scholarship athletes regarding success as student-athletes. It is argued that as college athletics has become a big business, enriched by direct and indirect revenue, athletes are being commercialized without compensation for their talents, time, and commitments. The author likens varsity athletes to university employees. As amateur sports have developed into an “entrepreneurial enterprise,” it leaves NCAA actions in conflict with its stated goals. The author finds that the athletes, who are not permitted to seek employment while on scholarship, develop a “disrespect” for fundamental NCAA principles and “cheat” the system by accepting secret compensation.

Since the NCAA has not altered its position, the author believes litigation is an alternative. Although plaintiffs have yet to persuade a court, the author suggests that one can bring a successful antitrust claim

against the NCAA's monopsony power. A plaintiff, alleging horizontal price restraint, would need to show: (1) "the amateurism ideal is no longer prevalent in college sports and that it has become a commercial enterprise exploiting the labor of the student-athlete;" (2) "the rules limiting compensation do not further the NCAA's educational goals;" (3) "the restrictions do not promote competitive balance in college athletics or that a less restrictive alternative exists."

The author concludes by offering four alternatives to the existing system. Each alternative offers a form of compensation. They are: a free market "divorced" from university control, a two-league system, a "student-life" stipend, and incentive-based trust funds. A caution, however, is issued to consider justly any effects such compensation would have on non revenue generating sports and on women's collegiate athletics.

Ian Forman, *Boxing in the Legal Arena*, 3 SPORTS LAW. J. 75 (1996)

The author begins with a history of the sport of boxing. He concludes that by its very nature participants will be injured and that they inherently agree to sustain and deliver injuries. Outside of the boxing arena, similar action would always create a cause of action for tortious conduct. Inside the arena, there are exceptional situations for which boxers can raise tort claims. In general, tort actions are brought as an injury occurs, when one person fails to uphold a duty to use due care toward another. In sport injury tort litigation, principles of consent and assumption of the risk are factors that may limit a defendant's culpability. Sport participants are considered to accept all foreseeable consequences that occur within the rules of the event. The author discusses assumption of the risk and separates it into three categories: express, primary implied, and secondary implied. In boxing, however, courts seem to determine that the assumption of the risk carries to the extent that one's opponent acts in a willful, wanton, or reckless manner in inflicting injury. Courts are willing to dismiss such claims if the

defendant meets the burden of proving a lack of reckless or intentionally harmful conduct.

Litigation occurs not only between boxers, but also between boxers and their promoters. In the second part of this Article, the author provides a history of boxing promotions using Don King and Don King Promotions. Using King as the prime example, the author offers that claims are made for breach of contract and breach of fiduciary duty. Most promoters are apparently savvy enough to avoid being found in the wrong. The author concludes that tort and contract lawsuits will not prevent people “to enjoy the spectacle of boxing for generations to come.”

J. Timothy Gorman, *Athletic Competition and Individuals with Disabilities: Statutory Safeguards for the “Otherwise Qualified” Athlete*, 3 **SPORTS LAW. J.** 103 (1996)

In an effort to prevent discrimination against persons with disabilities, Congress enacted the Rehabilitation Act of 1973 (Act) and the Americans with Disabilities Act (ADA) in 1990. Section 504 of the Act and certain provisions of the ADA create a statutory right for students with disabilities to participate in sport activities. The ADA clearly defines a “qualified individual with disability;” and the Act delineates four requirements that must be met in order to challenge one’s exclusion from activities. The four requirements are as follows: “(1) they are ‘handicapped individuals’ under the Act; (2) they are ‘otherwise qualified’ . . . [to participate]; (3) they were excluded from . . . [participation] solely by reason of the handicap; and (4) the program or activity in question receives federal financial assistance.” (Note that the ADA uses “disability” instead of “handicap” due to societal norms. The words are interchangeable.) The Act defines “handicap” as “physical or mental impairment that substantially limits one or more of such person’s major life activities.” The ADA expanded the scope of the Act by protecting against discrimination in “public entities” and in “places of public accommodation.” With this arsenal of legislative power, many students have overcome restraints and are able to enjoy school

athletics. There are, nevertheless, cases where administrative bodies have successfully met the burden of showing a “substantial justification” which prevents a disabled student’s participation. According to the Supreme Court, it is first essential that a petitioning student be an “otherwise qualified handicap individual” who is “able to meet all of the program’s requirements in spite of his handicap.” *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). There is leeway for reasonable modification consideration. Second, a student and his parents must demonstrate an educated awareness of any potential risks, and, in some instances, waive the school’s liability. The author believes legislation has greatly assisted disabled persons, but that certain students still suffer unjust discrimination due to consequences of a learning disability.

John P. Gillard, Jr., *An Analysis of Salary Arbitration in Baseball: Could a Failure to Change the System Be Strike Three for Small-Market Franchises?*, 3 **SPORTS LAW. J.** 125 (1996)

Baseball’s salary arbitration system adversely affects small-market teams and proposes change in baseball’s current structure that would help ensure the continuing viability of small-market franchises. Baseball’s current system of salary arbitration disadvantages small-market franchises. There are means by which baseball could remove the harmful effect of salary arbitration on small-market teams.

Brian E. Dickerson, *The Evolution of Free Agency in the National Football League: Unilateral and Collective Bargaining Restrictiveness*, 3 **SPORTS LAW. J.** 165 (1996)

Free agency gives an athlete the ability to test an unrestricted market and obtain the best financial offer. Through the courts, the players have been able to curb the owners’ illegal restraints on player movement and, finally, to obtain free agency. Even though the players have obtained greater free agency in the 1993-2000 collective bargaining agreement, the players still have many restrictions placed on their ability to negotiate

contracts freely. The current collective bargaining agreement provisions, such as the salary cap accrued season requirements, franchises and transition designation, the duration of the agreement, restrictions on the college draft, and the rookie salary cap all place restrictions on a player's ability to obtain his full market value.

Michael Tannenbaum, *A Comprehensive Analysis on Recent Antitrust and Labor Litigation Affecting the NBA and NFL*, 3 SPORTS LAW. J. 205 (1996)

The standard draft process allocates to the various clubs in the league the exclusive right to negotiate with amateur athletes. The league would argue that the draft is procompetitive because it creates a mechanism that should lead to competitive balance among teams. The counter argument is that the draft limits the amount of the player's salary. When antitrust law collides head-on with the labor laws' endorsement of multiemployer collective bargaining, players' claims must fail.

***Tulane Moot Court Mardi Gras Invitational: Problem and Winning Brief*, 3 SPORTS LAW. J. 261 (1996)**

Appeal by plaintiffs and cross-appeal by defendants is from an Opinion and Order in which the United States District Court for the District of Tulania held: (1) plaintiffs had a likelihood of success on the merits of their Title IX case as regarding the elevation of the women's club rugby team to varsity status and (2) plaintiffs did not have a likelihood of success on the merits of their Title IX case as regarded the inclusion of revenue produced by the University of Liberty's football team in the University's athletic budget.