Editorial Page

Spring 2018 – Inaugural Issue

The Rice Sport Law Review (RSLR) is produced by the Department of Sport Management, Sport Law Concentration (a/k/a Sport Law Society).

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*Cover Picture is from USA Today Sports From The Win (https://ftw.usatoday.com/2017/03/joe-thomas-colin-kaepernick-protests-anthem-browns-free-agent)

RSLR April 2018
Editorial

This is the inaugural issue of the Rice Sport Law Review (RSLR). The decision by the Sport Management Department, Sport Law Concentration (soon to be Sport Law Society) to create the RSLR came from a deep interest and enthusiasm about law in general and more specifically where sport and law converge. It was also born out of the recognition that there are many important issues arising in the area of sport that have intertwined with law in such a way that often requires some degree of scrutiny to fully understand and appreciate.

There are many issues in sport (I dare say all) that have legal implications or impact. Whether it is Colin Kaepernick’s constitutional law first amendment issues surrounding taking a knee and potential NFL collusion (conspiracy) issues; business law franchise issues associated with relocating a major league team; NCAA compliance and labor law issues that arise in discussions about paying university athletes; criminal law issues in hazing and sexual abuse in sports; Title IX and its application to transgender and intersex athletes; and the list goes on.

Because of this clear convergence of sport and law and the issues that are produced by this, the need for a review of these critical issues is of extreme importance. The RSLR is not simply a place for scholarly legal articles. Instead it is a review in its purest sense consisting of summaries, opinions and articles that are sport and law focused, with the intent of informing and encouraging discussion, as well as exposing students and others on the Rice campus (and beyond) to these important issues. Further, the RSLR is intended to provide a unique opportunity for Rice students who have an interest in sport and law to participate in critical review and analysis of current issues, using publication in the RSLR as a vehicle to engage, express and contribute to this important dialogue.

With the recognition that the RSLR seeks to be informative, we also include relevant sport law related information (events, meetings, activities, etc.) that will be of interest to sport management, law and sport law students alike.

We are excited about this inaugural issue of the RSLR and welcome your feedback and input on how we can continue to improve. We hope that you will consider working with the Editorial Board or the Publication Team and will submit articles for consideration. Please send your feedback and article submissions to the RSLR at RiceSportLawReview@gmail.com.

Thank you in advance for your support, as we continue developing the RSLR into an important and valued source for sport and law at Rice.

Sincerely,

Karen L. Jones, JD, MA

Editor, Faculty Advisor Rice Sport Law Review
Faculty Sport Management, Head Sport Law Concentration
Rice University
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Colin Kaepernick’s Collusion Suit Against the NFL

By Michael Abrams-Dyer

In 2017, NFL free agent quarterback Colin Kaepernick filed a grievance against the NFL, accusing the 32 teams of conspiring to not sign him. This was based on his nonviolent protests against racial injustice in the US, including kneeling for the national anthem before football games. It is unclear yet whether his lack of contract offers constitutes collusion in the legal sense - there must be actual evidence of conspiracy - but it is worth monitoring. A successful suit against the NFL could have major ramifications for the league, both legally and for its public image. In the meantime, Kaepernick continues to accrue goodwill, recently completing his pledge to donate $1 million to various charities. This could come in handy as his lawsuit progresses.
Allegation of Misconduct in the Dallas Mavericks Organization

By Michael Abrams-Dyer

On Tuesday, February 20th, Sports Illustrated released a story covering a long term culture of sexual harassment in the NBA’s Dallas Mavericks front office. Longtime CEO Terdema Ussery was accused of many instances of harassment, and Mavs.com reporter Earl K. Sneed was kept on staff after two revealed instances of domestic abuse. The second instance was with another member of the Mavericks’ staff. These allegations are likely to have wide-ranging legal affects. NBA commissioner Adam Silver will almost certainly level some form of punishment on the Mavericks and their owner Mark Cuban, who claims complete ignorance of the situation. The league’s constitution allows Silver to severely punish any owner, franchise, or employee guilty of conduct detrimental to the NBA, in Silver’s opinion. Silver could use Article 24, which authorizes a commissioner to deal out a massive penalty (indefinite suspension, fine of up to $2.5 million, and forfeiture of draft picks) in the event of a situation that was not covered in the constitution. Silver used this clause to punish former Clippers owner Donald Sterling in 2014. He could also launch an investigation by the NBA into the allegations. It remains to be seen how Mark Cuban would respond to any potential action by the NBA. Regardless, these revelations are likely to have a major impact on the employment policies of the NBA and set a new standard for punishment of the league’s owner - particularly when the owner is as well-known as Cuban.
Sport Law Concentration (SpLC) (a/k/a Sport Law Society)

During the regular school year we have a monthly SpLC meeting, 12:00-1:00 PM, third Wednesday of each month (subject to change) in the Kinesiology/Sport Management conference room, Tudor Fieldhouse building. It is a "Brown Bag" so bring your lunch.

We start off with a sport law topic discussion then get into the meeting content (Agenda posted monthly).

Some of our recent Agenda items have included:

- Important updates on paid law practicum opportunities
- Summer classes
- Rice Sport Law Review (RSLR) status/update
- International Study Abroad Program
- Sport Law Teaching Assistant opportunities
- Careers in law and sport law

All Sport Management, Sport Law Concentration students are expected to attend. All sports management students and anyone interested in law are welcome.

We hope to see you on Wednesday during the regular school year!...and bring your lunch!

For more information contact Faculty, Sport Management, Head Sport Law Concentration, Karen L. Jones, JD, MA kljones@rice.edu.
FAIR COMPENSATION FOR HARD LABOR: A CALL TO PAY NCAA DIVISION I MALE BASKETBALL AND FOOTBALL PLAYERS

Andrew Ledet

Rice University
Exactly one second remains on the clock as Hunter Renfrow tumbles to the ground, securing the 2016 College Football Playoff National Championship for Clemson with his game-winning touchdown catch. Clemson will make millions of dollars off that catch. Merchandise and ticket sales skyrocket. The championship cements Clemson’s place among the college football elite and will inevitably boost recruiting and donations from enthusiastic alumni. But what does that catch mean to Renfrow? Even though Clemson will make millions off the catch, the school pays Renfrow nothing.

Renfrow does not bear this injustice alone. Nearly fifteen thousand male student athletes compete in Division I football or basketball each year, and all are unable to reap proper financial benefits from their grueling labors. Although participating on a college sports team requires the dedication of an actual job — college football players spend over 40 hours a week practicing [1] — players do not receive compensation like actual employees. Universities provide athletes with a temporary place to live and a free education. But when the athletes practice around five hours a day on their sport, academics have to take a back seat. The NCAA has faced mounting criticism in recent years for its inability, or refusal, to adapt to the economic realities of modern college sports. Longtime agent Leigh Steinberg claims: “The current system is seriously antiquated and in need of reform.” [2] College sports now generate over a billion dollars annually. It is time for the NCAA, or its member universities themselves, to pay the athletes that generate the bulk of that revenue: Division I college football and basketball players.

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The most obvious reason to pay these athletes is the billions of dollars college sports generate annually by way of TV deals, ticket sales and merchandise sales. The Division I Men’s College Basketball Tournament provides an example of the enormous revenues generated by television contracts. According to NCAA.org, the NCAA currently has a 14-year, $10.8 billion contract with CBS Sports that allows CBS to televise that tournament, an annual event that lasts a mere three weeks. Each school earns $1.7 million per tournament game played in, and a trip to the 2017 Final Four was worth over $8.5 million [1].

Ticket sales and merchandise also provide a steady flow of revenue. For example, the 64 college football programs in the power five conferences combined to make $2.8 billion in 2014, and a large portion of that money came from ticket sales [4]. Once again, the players — the ones whose hours of hard work and sweat contribute heavily to this windfall of cash — get no money for their endeavors.

Nowhere else in America are people generating such enormous profits without payment, with the possible exception of those involved in charitable and volunteer work. In a capitalist society such as America, workers are supposed to enjoy the fruits of their labor. Unfortunately, college athletes do not share these benefits of capitalism. College athletes generate billions of dollars for their schools and the NCAA, who in turn deny them even small amounts of this large revenue pool. It is unfair for anyone, college student or not, to generate billions of dollars for someone and not get any of the money themselves.

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In addition to the large amounts of revenue they generate, College Division I football and basketball players deserve payment because of the amount of time they spend on their sport. In 2015, the Pacific-12 Conference conducted an internal report that, according to CBS Sports, determined the conferences’ athletes spent an average of 50 hours a week on their sport when factoring in travel time[^1]. A similar survey conducted by Business Insider found Division I football players practice 43 hours a week, and male basketball players practice 39[^2]. These hours make playing college sports effectively a full-time job. In fact, a poll conducted by CNN places the average American work-week at 34.4 hours[^3], which is noticeably fewer hours than the average Division I football or basketball player spends on his sport each week. Athletes work as hard or harder than most paid laborers. They deserve payment just as much as ordinary employees. Furthermore, the numerous hours spent practicing often prevent athletes from earning money in other ways, such as through a “real” job.

In fact, the length, frequency, and physicality of athletes’ practices and competitions often require them to forego many other opportunities, both while playing college sports and for years afterwards. Economics experts stress the importance of factoring in the opportunity (or implicit) costs of every activity, which include any possibilities given up to engage in the activity. The implicit costs of playing a college sport are staggering, particularly for physical sports such as football.

[^1]: Dodd, Dennis. “Pac-12 Study Reveals Athletes ‘too exhausted to study effectively’.” CBS Sports. 21 April 2015. Web. 11 April 2018
Many football players sustain career-ending or career-limiting injuries in college, preventing them from earning millions of dollars in professional leagues. For example, South Carolina running back Marcus Lattimore was once the NCAA football freshman of the year and considered a sure-fire first round NFL draft pick. Unfortunately, Lattimore endured season-ending knee injuries in both his sophomore and junior seasons, causing him to fall all the way to the fourth round of the NFL draft. First round picks generally receive contracts worth between $8 million and $28 million (often fully or almost-fully guaranteed), second round contracts average $5.1 million, and third round contracts average $3.3 million, with only about $756,000 guaranteed [4]. This means an injury such as Lattimore’s will likely cost a player over $7 million in guaranteed money.

Lattimore is not alone: in the 2016 draft, linebackers Jaylon Smith and Myles Jack were both projected to be top 10 picks until sustaining injuries late in their final college seasons. Both players became second round draft picks and will likely obtain rookie contracts valued at more than $4.5 million, but experts projected Smith and Jack to earn rookie contracts of over $15 million before their injuries [5]. Injuries cost a few college athletes millions of dollars each year, and every athlete who steps on the field takes the same risks as Lattimore, Smith, and Jack. They deserve compensation for taking those risks.

College football and basketball players forfeit even more than these potential riches: they often forfeit their education. College athletes spend several years at universities receiving “valuable” educations, but often find themselves unable to capitalize on this free education due

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to their demanding practice schedules. A 2006 NCAA survey revealed that Division I men’s football players spend a daily average of 6.4 hours practicing during the season, while male basketball players spend an average of 5.6[^10]. With this great commitment to athletics, many athletes find themselves unable to dedicate much time to their education. Stephanie Stark of USA Today claims that college athletes usually end up behind their “non-athletic peers when it comes to the ultimate purpose of college: career preparation”[^11]. College football and basketball players dedicate thousands of hours to their sports, and they pay for their dedication both physically and mentally.

Some opponents to paying college players argue that the athletes receive payment enough through their free educations. As noted above, though, athletes often spend so much time practicing that they lack ample time to dedicate themselves to their studies. As a result, their grades often suffer, which threatens their eligibility to compete in sporting events. Many schools recognize this problem, and push their money-making athletes (generally men’s football and basketball players) towards easy classes.

For nearly three decades, the University of North Carolina (UNC) urged athletes to partake in a “shadow curriculum,” consisting of skeleton classes with inflated grades. Counselors directed struggling UNC athletes to enroll in classes where the only grade was for “a research paper that was often scanned quickly by a secretary, who gave out high grades regardless of the


quality of work” [12]. Actions such as these keep athletes from truly bettering their intellectual capacities while in college.

According to Sarah Ganim of CNN, in an average public university, “between 7% and 18% of revenue sport athletes [...] are reading at an elementary school level” [13] It is impossible for college athletes to apply their supposed “college educations” when they read no better than a fourth grader. Nevertheless, these athletes somehow manage to maintain eligibility at prestigious public universities. The value of a real education comes not simply from receiving it, but from being able to utilize it in the future; this is something athletes cannot possibly do if they cannot even understand the basic course material.

Another common argument against paying college athletes is that interest in college sports would dwindle if the NCAA ended the practice of amateurism [14]. This argument relies on the notion that fans watch college sports due to shared experiences with the athletes, and that paying athletes would create a disconnect between the alumni fans of a school and the school’s current athletes. However, paying athletes would do nothing to diminish the shared experiences between alumni and the athletes themselves. Both alumni viewers and current athletes will have walked the same halls, worn the same school colors, and participated in the same traditions regardless of whether or not the college athletes get paid for playing their sport.

College football and basketball players dedicate thousands of hours to their sports, sacrificing their physical health and intellectual growth while generating billions of dollars of

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revenue for the NCAA and millions of dollars for their individual schools. These actions merit monetary compensation. Paying athletes would admittedly be complicated: even those who support paying athletes disagree on how to implement a payment plan. Joe Nocera, a business sports columnist for The New York Times, lays out a thorough plan for paying college athletes. Nocera supports a $3 million salary cap per team and a $25,000 minimum salary for college football players, similar to the professional leagues, and with smaller limits for college basketball players [15]. While $3 million seems like a lot of money, many Division I coaches make more than that annually. Alabama paid head coach Nick Saban $11.25 million for coaching the 2016-2017 football season [16].

Fortunately, there are other ways for college athletes to make money, such as endorsement deals or memorabilia sales. College athletes currently lose out on opportunities to make incomes due to NCAA rules that prevent college athletes from sponsoring brands or selling autographs. But in reality, athletes would cause little harm by sponsoring a line of clothing or selling autographed jerseys to supportive fans. Through these measures, athletes could earn money without requiring direct payment from their schools or the NCAA, while also creating a public image that could continue to help them after they graduate. Athletes could also receive royalties from ticket and merchandise sales, similar to musical artists or movie actors.

Regardless of how the athletes earn their money, the fact remains that they deserve some form of compensation. According to the NCAA, only about 1.5 percent of college football players eventually play in the NFL, and only about 1.1 percent of male college basketball players

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play in the NBA [17]. The other 98 percent leave college after four years of grueling work, having sacrificed four years of their lives for their college teams, with no monetary compensation to show for it. It is time for these college athletes to get the payment they deserve.

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Jacobs, Peter. "Here's the Insane Amount of Time Student-Athletes Spend on Practice."


MISSION

The Rice Sport Business Society (RSBS) is a student-run organization whose mission is to create or improve awareness about the Sport Management major and connect Rice students with valuable opportunities in the sports industry. We will serve as the premier group to facilitate interaction between the sports business community (including the Department of Sport Management) and Rice students.
Legal battle brewing over potential Columbus Crew relocation

By Michael Abrams-Dyer

The MLS’s Columbus Crew owner Anthony Precourt is looking to move his team to Austin, Texas, but the state of Ohio put a provision against losing their sport teams into law in 1996, after the Browns relocated to Baltimore. Under the law - named the Modell Law after the owner who moved the Browns - if a professional sports team has received anything of value from taxpayers it must give six months’ notice of a possible move and give locals a chance to buy the team. This law has never been used before, and therefore presents a bevy of legal twists and turns. Ohio Attorney General Mike DeWine is leading the charge against Precourt, but whether the Modell Law has the ability to keep the Crew in Columbus is unknown. Language in the law is vague in key areas, and hasn’t yet had a chance to be interpreted. It doesn’t say how a team is supposed to notify the city that it plans to leave and doesn’t explain what it means to give locals an “opportunity” to buy the team. Some believe federal law could interfere with the Modell Law, particularly the Commerce Clause. The case will play out over the coming year, and many in Ohio are simply hoping to win a preliminary injunction and delay Precourt’s plans enough to motivate him to give in. Regardless, if the law is proved constitutional and enforceable it could open up possibilities for any city or state in danger of losing its professional sports team.
NCAA athlete suing over right to compensate from Youtube videos

By Michael Abrams-Dyer

University of Central Florida football player Donald De La Haye is suing the university with accusations of causing him “irreparable harm” under the First and Fourteenth Amendments. De La Haye had been making popular Youtube videos tangentially related to his football prowess since high school and had received “modest compensation” from the site. UCF rescinded his scholarship based on NCAA violations regarding athlete compensation. De La Haye is directing much of his ire toward the NCAA and its restrictions, arguing that he has a First Amendment right to engage in free speech on social media platforms. He is also arguing that the scholarship revocation was “arbitrary and unreasonable” because it wasn’t related to his academic standing or athletic performance. Unfortunately for De La Haye, the NCAA is a private entity, not a state actor, and thus couldn’t be accused of a constitutional violation. His lawsuit will likely fail, but it may also contribute to public pressure eventually leading the NCAA to change its rules.
THE HOUSTON DYNAMO

The Houston Dynamo are offering Rice students a once-a-year opportunity to watch their upcoming match against defending MLS Cup Champion Toronto FC. Tickets are discounted over 30%, and only cost $19.50. Students will get to participate in pre-game festivities, including walking out with the players and watching warm-ups on the field!

If you purchase a ticket and invite your friends, you will be guaranteed to sit together!

Take a look at the Facebook event:
https://www.facebook.com/events/259550907919229/

To buy your discounted ticket now, go to
https://www.fevo.com/edp/Rice-Students-Day-with-the-Dynamo-AdPVsReg
Murphy v. NCAA and the Integrity Fee

Michael Dyer
A Supreme Court case is primed to change the landscape of sport in the United States. In 2011, New Jersey voters voted for a state constitutional amendment to legalize sport betting. This violated the Professional and Amateur Sports Protection Act of 1992 (PASPA), which prohibited state-sanctioned sport gambling (excepting Nevada, Oregon, Delaware, and Montana). The NCAA immediately sued to enjoin the amendment, and the case was decided for the NCAA in 2016. The Supreme Court then agreed to hear an appeal in 2017, and decide whether PASPA should be ruled unconstitutional. This appeal has been given the title Murphy v. NCAA, so named for New Jersey governor Phil Murphy. Since, justices have released public comments spanning the spectrum on approval of the amendment. A decision is expected in mid-2018, and if favorable for New Jersey, will likely open the floodgates for sport betting to be legalized in more states, potentially all of them. Many legal experts expect the Supreme Court to overturn the 2016 decision.

Meanwhile, twenty state legislatures have at least begun the process of crafting legislation to ensure that sport betting will be legal, accessible, and policeable within their borders. These states are betting on Murphy winning the case against the NCAA. If the federal law prohibiting sport gambling is struck down, cash-hungry states will immediately look to capitalize. Legislators are largely optimistic and clearly rooting for the law to be revoked. Sport leagues are more ambiguous: the NBA and MLB are in favor, the NCAA is against, and the NFL has not yet taken a stance.

1 https://www.law.cornell.edu/uscode/text/28/part-VI/chapter-178
The NBA then went so far as to formally request a set of laws for the NBA's involvement in sport betting, should it eventually be legalized. NBA attorney Dan Spillane made the NBA's plan clear to a New York State Senate committee on January 24, 2018. The league would take 1 percent of every bet made on its games (fascinatingly referred to as an “integrity fee”). The integrity fee was first presented in the Indiana state legislature. Other potential regulations included more widespread access, such as the legalization of gambling with smartphones. This NBA move seemed to again suggest that sport betting will soon become legal outside of Nevada.

As the NBA, accompanied by the MLB, continued to lobby state governments for the inclusion of integrity fees, they began to find out that the casino and gaming industry holds quite a bit more clout in state government. The gaming industry has a vested interest in keeping as much of the profits for themselves (and away from the leagues) as possible. These are experienced lobbyists who’ve dealt with legislation and regulation in their industry time and time again. The gaming industry is particularly incensed about the prospect of the integrity fee, which would make a big dent in their profits.

The integrity fee is a controversial idea for a number of reasons beyond the financial concerns of the gaming industry, though. It could create new issues for the NCAA, whose stated purpose is to put the student athlete first. The NCAA is already facing scrutiny over its questionable practices regarding its athletes, and receiving a cut of sport betting would only further emphasize any accusations of hypocrisy. It would undermine legal arguments the organization has used dating back to NCAA v. Board of Regents of the University of Oklahoma, which separated professional sports from collegiate sports. As the MLB and NBA lead the push

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4 https://www.legalsportsreport.com/17933/nba-testifies-at-ny-sports-betting-hearing/
5 http://abcnews.go.com/Sports/indiana-house-bill-includes-percent-integrity-fee-nba/story?id=52581140
for the integrity fee, the NCAA hasn’t budged from its original public stance - it is adamantly opposed to sport betting⁶. The NCAA could also push for laws that allow individual leagues to opt out of sport betting, which could cause them to lose out on a massive windfall. In all likelihood, the NCAA would look to avoid any integrity fee, which would only add to the hefty pile of controversy already accumulating.

Even for leagues fully on board with gambling and its repercussions, the integrity fee is a bad look. It’s unclear why an organization with no active role in the prospective gambling industry should be entitled to a cut of its profits. While leagues would likely take on some gambling-related costs, they would not be launching their own infrastructure. The fee is a cash grab, through and through. And it’s one that could have negative effects on sports bookies looking to create above-board opportunities. If their overall costs increase, they could pass that cost on to the consumer.

The leagues will face scrutiny from legislators and competition from gaming lobbyists in their pursuit of an integrity fee. And before that can even happen, all involved parties will have to wait on a decision from the Supreme Court. But this is new territory for America’s major sport organizations. The result has been frenzied, creative solutions like the integrity fee - solutions that could hurt more than they help.

⁶ https://www.si.com/college-football/2017/06/30/ncaa-gambling-paspa-sports-betting-compensation
Arkansas State Sues University of Miami

By Michael Abrams-Dyer

In 2017 the University of Miami (UM) cancelled a football game against Arkansas State due to the inbound probable impact of Hurricane Irma. Arkansas State is now suing UM for cancelling the game, which would have brought major profits to the university. They are seeking $650,000 in damages. The schools’ contract included a force majeure clause, which frees both parties from the contract in the wake of an unforeseeable, extraordinary event. Arkansas State’s response in their suit is that the actual word “hurricanes” was not included in the language of the contract, making the clause an inappropriate defense. This is a rather weak argument, making it extremely likely that Arkansas State will settle for much less than their target. This case nonetheless demonstrates the importance of every word in a contract. Miami will likely include the term “hurricane” in their force majeure clauses moving forward.
New York Yankees' foam prints violate MLB policy

By Michael Abrams-Dyer

Directly before the 2018 MLB season, the New York Yankees demonstrated technology that would allow them to print players’ likenesses into beer and coffee foam. They showed examples including the heads of Gary Sanchez, Aaron Judge, Giancarlo Stanton, and Aroldis Chapman. MarketWatch reported that the beer foam art would be available at the stadium during the 2018 MLB season. MLB then warned the Yankees that doing so would be against league policy. MLB league policy does not allow player likenesses to be used to sell alcohol domestically. This stems from alcohol being a potentially dangerous product. The MLB does not want its players to be tied to any negative influence on young fans, or exacerbate any problems. The Yankees for their part denied that they were actually planning to roll out the product this season, and instead were demonstrating the efficacy of the printing. They seem fully willing to cooperate with ceasing the beer printing. But the issue points to an interesting hypocrisy in the policy, considering the MLB and its teams have no problem taking sponsorship money from beer companies. Why they should operate on a different level than their players - who are not allowed to do any alcohol promotion whatsoever - is unclear.
We Are Girls Houston – Conference

The We Are Girls Conference, produced by Girls Empowerment Network (GEN) are held in Austin and Houston, Texas annually and are designed especially for thousands of 3rd – 8th grade girls and the adults who care about them. With dynamic break-out sessions and an empowering dance party, girls get to be totally in charge of their day. They walk away inspired by what’s possible and with a new belief in their personal power. The 2017-2018 theme is “Become Unstoppable.” Leadership positions are available for high school girls. Tickets cost $30 per person and 50% of attendees receive scholarships.

For more information and to register, click the link below.

https://www.girls empowermentnetwork.org/get-involved/parents/we-are-girls-conference/
Autonomy for Athletes:

A Critical Analysis of the Draft Eligibility Policy in the NBA

Samuel Tekie
Abstract

The National Basketball Association (NBA) is often considered the most culturally progressive of the Big 3 North American sports, yet is lagging behind in its outdated and nuanced rules as to when athletes can be drafted into the league. This has resulted in a cycle of extremely talented players attending college as a pit stop for one year, before reaping the financial and societal benefits that being drafted by an NBA team provides. This system can and should be changed, and the leadership at the top of the hierarchy (Commissioner Adam Silver) is open to dialogue as to how it can better serve its future athletes. As such, this article addresses the current flaws in the NBA draft eligibility policy, and a few corrective measures in regards to solving the problem.
In 2005, former NBA commissioner David Stern enacted a highly controversial policy that impacted the rights of players: he created a strict dress code for players before and after games. Although he didn’t mandate a uniform of any kind, Stern outlawed artistic fashion expressions such as pendants, headgear or sunglasses inside the arena. Despite the explanation that David Stern provided about wanting to create a classier pre and post-game experience, players felt that it was discriminatory and infringed upon their employee rights. Fast forward to 2017, and there is another rumbling debate about NBA policy, this time on the status quo draft eligibility rules. The NBA draft eligibility rules mandate that a player is both at least 19 years and at least one year removed from high school. This policy came into effect after the 2005 collective bargaining agreement, as athletes who had graduated high school could come directly to the NBA prior to 2004. Consequently, there has been heated discussion as to the most effective reform to the current system, as current NBA commissioner Adam Silver acknowledged in the May 2017 interview with Sports Illustrated that “our current draft rules are in dire need of change”. In light of this acknowledgement from Adam Silver, this paper serves as a critical examination of the draft eligibility guidelines. Based on both past precedents and comparative scope analysis, I believe allowing players to declare for the draft immediately after high school would serve as the most practical

1 Samuel Tekie, Class of 2020, Smt9@rice.edu
compromise for eligibility rules. More specifically, The NBA should revamp their
draft eligibility policy in a dual fold manner. First, the NBA needs to revitalize its
currently stagnant G-league by treating it similarly to the farm league system in
Major League Baseball (MLB). Second, the NBA should take a page from the
National Football League (NFL) playbook, and create an advisory committee that
gives advice to potential draftees about whether or not they should declare for the
draft.

To understand the origins of the NBA’s draft policy, it is of paramount
importance to understand the historical context surrounding the policy. In 1968,
Spencer Haywood filed an anti-trust lawsuit against the NBA for voiding his
newly-signed 6-year contract with the Seattle Supersonics.4 The NBA and then
NBA commissioner J. Walter Kennedy, claimed that Haywood hadn’t satisfied the
policy that was in place at that time, which required a player to be at least 4 years
removed from their high school graduation in order to play. Haywood successfully
argued that the NBA voiding his contract was effectively a “group boycott”, and thus
violated the Sherman Antitrust Act. This landmark decision not only upheld the
eligibility of Mr. Haywood’s contract, but enabled future generations of athletes to
avoid being blocked from NBA greatness by arbitrary and tedious draft eligibility
policies.

4 Gurney, Gerald, et al. Unwinding Madness What Went Wrong with College Sports - and How to Fix
Generally speaking, this had little impact on the next wave of NBA players, as stars like Larry Bird, Scottie Pippen, Magic Johnson and Michael Jordan all attended at least 3 years of college. However, superstars such as Kobe Bryant, LeBron James and Dwight Howard all came to the NBA straight from high school. They all were extremely hyped players coming out of high school, and had the raw talent and physical dominance to make an immediate impact in the league.

The ethical dilemma in the current draft policy manifests itself in a few fundamentally important ways. For example, the existing policy hinders the ability of a player to immediately make an income; many of which come from low income backgrounds. The *International Review for the Sociology of Sport* discovered in 2010 that 34 percent of athletes in the NBA grew up earning no more than 150 percent of the poverty line ($22,050 for a family of four). This is critical to note, as these players feel immense social pressure to immediately provide for their family. Although concerns about the cognitive ability of an athlete fresh out of high school to make consequential financial decisions are valid, these players should still have the ability to declare for the draft if it behooves them. Another aspect of the dilemma comes in the form of player development, as many claim that athletes’ time in college only stifles their nascent abilities. Every student-athlete is at different stages of development when they graduate high school, so creating a uniform one-size-fits-all policy for draft eligibility isn’t appropriate reform to the

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problem. In an exclusive 2016 interview with USA Today, Kobe Bryant made interesting comments about his development, as he remarked that, "The best decision (I ever made was) coming straight to the NBA and skipping college. That's it – the best one." He immediately followed by saying, "You have high school players that go to college, stay for four years and come out and they're not ready; you got certain high school players that skip college and they're ready. Ultimately it depends on the teachers that you have and the mentors that you have, You can go to college for four years and get horrible mentorship and be worse off than a kid who came to the league at 17."[^6]

In November of 2017, Commissioner Silver gave some specifics about his suggested improvements to the eligibility policy, as he claimed that the best improvement would be allowing players to either come straight to the NBA from high school or spend a minimum of 2 years in college if they decide to attend college.[^7] The MLB allows players to be drafted straight out of high school and immediately join the farm system for their team. This system works extremely well, as prospects whom teams deem "MLB ready" can immediately jumpstart their careers. Additionally, this also creates a robust farm league that has contributed to an attendance


increase for minor league baseball games over the past decade. Contrarily, the NFL has a starkly different policy, requiring players to be at least 3 years removed from high school. However, the eligibility rules in the NFL tend to be less contentious than those of the NBA due to the extremely physical and violent nature of the NFL. Most players need to spend a couple years in college to acquire the strategic knowledge and physical state that the NFL requires, and most NFL draftees spend 4 years in college.

Ultimately, there is no definite perfect fix for the NBA’s draft eligibility policy. Although different pundits offer different opinions as to what solution would be best suited for the NBA, there is no simple utopian-esque solution to such a complex and nuanced issue. Nevertheless, the current draft system is both unacceptably antiquated and antediluvian. Although Adam Silver has created many positive changes in his short time as commissioner of the NBA, I believe that his proposed reform of making players either declare straight out of high school or spend a minimum of 2 years in college is too staunch and prohibitive. Although change to the current system would be both beneficial and influential, the NBA is at a crossroads in its stance as a professional sports league. With the complaints about the length of MLB games, and the various concussion and health problems plaguing the NFL, the NBA is in an excellent position to secure hegemony in the big 3 sport organizations. A reformed policy that includes talented young players in the newly renamed G-League would help to develop these players in a professional setting,
while opening up a whole new market to monetization.⁸ At the end of the day, the NBA is both image and financially oriented, and will make the decision that they feel best suits those 2 interests. With this in mind, the empirical and rhetorical evidence throughout this research paper suggests that the NBA would achieve its most prosperous outcome through adopting a more player-friendly draft eligibility system.

Modern Fish Act given bipartisan support by U.S. Senate committee

By Michael Abrams-Dyer

The Modernizing Recreational Fisheries Management Act of 2017 (or Modern Fish Act) was overwhelmingly approved on February 28th, 2018 by the U.S. Senate Committee on Commerce, Science, and Transportation. The legislation, introduced by Senators Roger Wicker and Bill Nelson in July of 2017, updates critically important aspects regarding the oversight of federal fisheries. This includes improving data collection techniques and examining outdated fishery allocations. The bill is receiving strong bipartisan support, with the eventual goal being to establish a more distinct line between commercial and recreational fishing. It seems likely to pass through the House and Senate and become law. This bill will hopefully lead to better resources for recreational anglers who in turn can use those resources to be conscientious and conservatory with America’s waterways.
Call for Articles

This call is to request submissions for the Rice Sport Law Review (RSLR). We are seeking fit-to-publish articles, comments or opinion pieces on sport law and general sport related topics such as sports gambling, CTE, sports injuries, paying college athletes, taking a knee, etc.

The format of the article submissions must be as follows:

- Approximately 250-2000 words
- Times New Roman
- 12 font
- double-spaced
- MLA citation format
- Proper Footnotes
- Adherence to Rice University Honor Code

Properly formatted articles will be considered for publication in the online RSLR in the Spring or Fall issue.

Submissions must be made to: RiceSportLawReview@gmail.com.

Questions regarding the RSLR may be directed to:

Andrew Ledet (ajll1@rice.edu), Sid Richardson College
Natalie Zur (NAZ3@rice.edu), Brown College

Faculty Advisor, Karen L. Jones, JD, MA (kjones@rice.edu)