

# AMATEURISM AND THE FUTURE OF THE NCAA

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### I. INTRODUCTORY REMARKS

#### *A. Katherine White*

All right everybody, we're going to go ahead and get started today. I'd like to welcome everyone to the Third Annual Sports Law Symposium. My name is Katherine White and I am the current Editor-in-Chief of Volume III. Today we're really excited because we're here to discuss the concept of amateurism and the impending future of the litigation with the NCAA. So far, the topic of amateurism is a big deal with athletes, coaches, the media, and legal practitioners alike, some of which we have with us here today. As the media highlights student-athletes' quest for a pay-

for-play model, it has left us all wondering what the future of the NCAA and the concept of amateurism is as a whole.

With the case of *O'Bannon v. NCAA* as the forefront of the issue, we are left not only wondering if former athletes and current student-athletes should be paid for their services, but also whether the use of their likeness in video games will lead to them being paid. We hope that today's five distinguished panelists will further the debate on this fascinating issue.

I, along with the executive board, would like to take this time to thank a couple of people that are here with us. First, we'd like to thank Dean Gershon and the rest of the faculty and staff for their continued support of this organization and this program. We'd also like to thank Mr. and Mrs. John Paul Jones for their generous donation that is helping us create a much bigger goal and dream for us here at the Sports Law Review. I would also like to thank all of the current members of the Sports Law Review for their help with this event and their continued dedication to moving the publication forward. Lastly, I would like to thank our faculty advisor here with us today, Professor William Berry.

Professor Berry received his undergraduate degree from the University of Virginia and his law degree from Vanderbilt. He has his doctorate in the Philosophy of Law from the University of Oxford, where he also received his Masters of Science degree in Criminology. Professor Berry is the winner of the law school's Outstanding Law Professor award and he is also the winner of the Outstanding Teacher award for the whole university. We would like to welcome Professor Berry.

### *B. Professor William W. Berry III*

Thank you everyone for being here today. We are very excited about the panel that we have. This is the issue right now in sports law and I cannot think of a better group of people to help us discuss it and engage with it. The biographies of our distinguished panelists are in the program so I'm not going to go deeply into them but I want to introduce them to you quickly and then get out of the way so they can explain to us the landscape that we're dealing with the future of college athletics, maybe where it's going to go after *O'Bannon*, and opinions about all these things.

So first with us, we have Maureen Weston from the University of Pepperdine where she is the director of the Entertainment Media and Sports Dispute Resolution Project. She received her law degree from the University of Colorado and her undergraduate degree from the University of Denver in economics and political science. She has written extensively on this issue so we are excited to welcome Professor Weston. Let's give her a round of applause.

Our second panelist to her right is Matthew Mitten. He is a professor of law and director of the National Sports Law Institute and L.L.M. Sports Law program at Marquette; I think one of the only law schools in the country to offer an L.L.M. in Sports Law. He has written extensively on sports law as well. He has taught at a number of different universities. Let's welcome Professor Mitten.

Our next panelist is Professor Richard Karcher, who is a professor at Florida Coastal School of Law and was the director of their law school center of law and sports from 2005 to 2012. He has likewise written extensively about sports law, as well as testified before Congress. Let's welcome Professor Karcher as well.

Our next panelist is William King. He is a partner with Lightfoot, Franklin & White in Birmingham, Alabama and is one of the nation's leading lawyers in terms of NCAA compliance. He represents this University as well as a number of other universities dealing with those types of issues related to athletes. Let's welcome Mr. King.

Last, but certainly not least we have Jason Levien who is the CEO of the Memphis Grizzlies. He had a distinguished career as a sports agent before he went to the ownership side. He has a number of ideas about this as well. Let's welcome him.

Thank you all. Without further ado, Professor Weston.

## II. PANEL PRESENTATIONS

### *A. Professor Maureen Weston*

Thank you. I'd like to thank the Mississippi Sports Law Review and Editor-in-Chief Katherine White and Professor Berry. It's a pleasure to be here.

So the title that I thought I'd take on this is "Suppose They Win." I'll be focusing my remarks on the litigation rocking,

perhaps earthquake style, certainly the NCAA and EA Sports and intercollegiate athletics as we know it. I'd like to provide a chronology basically of the claims that are at issue and the lawsuits going on and then see where we are - what's pending and some options we could be looking at in this litigation.

We know in intercollegiate sports that the NCAA is an association of over 1,000 member college institutions, conferences, and it's the governing body for intercollegiate sports. The NCAA bylaws and website announced that it was founded in 1906 to protect young people from dangerous and exploitative athletic practices at the time. That was 1906. A lot's changed since then in terms of the technology and the opportunities for exploitation, but the purpose of the NCAA is to provide a governing body to ensure that intercollegiate athletics is part of the educational process and they are there to be sure that there is a clear demarcation between professional and amateur sports.

Of the values that can be provided by participation in intercollegiate athletics, it is an opportunity given to over 450,000 NCAA student-athletes. That's the various Divisions I, II, and III. But many of you are here probably because you love sports and you know the value of sports and the opportunities that it provides to those of us still at it to succeed not only in the field and the classroom and to carry on to our private lives as well. Many students could not attend college without the benefit of the athletic scholarships that are provided through intercollegiate athletics and the NCAA.

So this concept of amateurism, which is the subject of today - the NCAA guards this concept of amateurism. The definition of amateurism, that we've talked about or understand, is this idea that, by definition, amateurism means you play without pay. Professionals get paid to play. So, the NCAA rules provide that only an amateur student-athlete is eligible to participate in an NCAA-sanctioned sport and they may not accept any type of compensation. And there are rules against endorsements so there is this idea of no commercialism in college sports. So we all believe that, I think.

The NCAA requires, as a condition of eligibility, that students are regulated in virtually every aspect of their collegiate experience in terms of GPA, the requirements on practice times,

and they have, as a condition of participating in intercollegiate athletics, are required to sign Form 08-3a. It is a seven-part form that requires waiver of various conditions: agreement to comply with the NCAA eligibility rules and they submit to drug testing authorizations. So there are seven parts to this form and what's relevant here is Part IV regarding the waiver entitling the NCAA to use athlete's images to promote NCAA championships or other NCAA events, activities, or programs. So that form becomes relevant in this litigation.

I thought it would be helpful to say, "well, where does the money go? Where does the money come from and where does it go with the NCAA?" It's CBS It's March Madness. That's their biggest contract. Their contract with CBS. So, in terms of NCAA revenue, eighty-one percent comes from television and marketing rights fees. Most of that is the big contract for March Madness. Football money does not come into the NCAA. That goes to the conferences. So there's a bit of confusion associating the NCAA as being able to have control of that. They would like to control that, but they don't. That's really at the conference level. The NCAA's argument is that, well, the money that we make goes back to the member institutions and it's used to fund the other sports, used to fund the championships. Only twenty-three athletic programs are revenue producing, otherwise athletic programs operate in the red. So, the few make the money for the rest.

We have this concept of amateurism in the purity of college sports and that is called into question when we see the use of student-athletes' images on video games. We have Ed O'Bannon at UCLA, who, I believe, is a car salesman in Nevada. He's home with a friend playing a video game, goes over to his house and says "Wow that looks like me! That's forty-two, that's my height." So recognizing himself in this video game and same thing with Sam Keller. We see these student-athletes seeing the NCAA entering into contracts to license what they think are their images - they are certainly look-a-likes with the same characteristics - and profiting off of them through the sale of video games and more. The media opportunities now with video games just being the beginning. There are many opportunities to market NCAA material with these athletes' images in them.

Sam Keller and Ed O'Bannon brought separate lawsuits both in the Northern District of California in 2009. So, this litigation has been going on for four years and there's not nearly a light yet. Also, Jason Hart, out of Rutgers, brought a similar right of publicity lawsuit against the NCAA for similar reasons. So they were star players while they were in college, they've left college and now they say the NCAA is marketing products with their images.

Two claims that are in play right now. The first is a right of publicity claim. That's a state law claim that is the unauthorized use of a person's image or identity for commercial gain. Each of us has a right of publicity - some more valuable than others. When someone takes our picture and starts putting it on products for sale, we have that claim. So that's the right of publicity claim that the Keller case alleged in its first case. The NCAA and EA Sports' response to that was "this is a creative work. It's a video game. We have avatars. We're doing computer digitization. It's transformative. It's like a book. It's a creative, expressive use of this, so we have a license to use that under the First Amendment."

Going back to that consent waiver 08-3a, the antitrust claim that O'Bannon has brought - and these have now been merged into one lawsuit - O'Bannon is attacking the NCAA rules themselves. The amateurism, the no pay rules, saying that these rules basically amount to a cartel - an agreement among all of the member institutions to suppress the pay and to fix the price of what players, former players, or anyone can get under these rules to zero. They are saying that this is a restraint on trade and it is anti-competitive in violation of the federal Sherman Antitrust Act.

In response, the NCAA has said in motions to dismiss, "we're not precluding former athletes from selling their publicity rights," but are not responding to the fact that they are doing that themselves. The NCAA is citing the 1984 NCAA Board of Regents case - where the NCAA lost big time, by the way, when the University of Oklahoma and other schools sued them on antitrust grounds for the use of the broadcasting rights - using dicta in that case where Justice Stevens says amateurism is essential to the product of college sports and athletes must not be paid, they must go to class. That's the nature of the college football product is

amateurism. The NCAA is banking big on that one sentence in the case so far in its pleadings.

We've had the separate lawsuits popping up all over the country. On the motions to dismiss, the plaintiffs have prevailed and, with respect to the right of publicity, the 9th and 3rd Circuit courts have said that video games are protected by the First Amendment, but when you're literally recreating these players' identities in the video games then it's not a creative use. It's not transformative and, therefore, the motions to dismiss based on First Amendment grounds were denied and upheld in the 3rd and 9th Circuits. With respect to O'Bannon's claim under the antitrust laws, Judge Wilken has denied the motion to dismiss, saying that "they have sufficiently plead facts to show an antitrust violation."

So they've had the separate lawsuits' motions to dismiss denied and now, in July of this year, the plaintiffs have merged together. We have fifty-eight law firms signed on to a 106-page complaint, which they call the Third Consolidated Amendment Class Action Complaint. It has been re-titled the NCAA Student-Athlete Name and Likeness Licensing Litigation. This has added current student-athletes. The NCAA thought they were just dealing with the rights of former athletes and they thought they were just talking about video games. There were some other claims, but basically just the publicity and the antitrust claims.

Now, adding current student-athletes, they are also saying that we have athletes from the 1950s signed on. It's literally hundreds of thousands of Division I student-athletes that are potentially in this class because they have a whole range of products now. Now, this is what gets me - who has the time to say "let's go back and get a NCAA game from the fifties," but you know, it's possible. They've been able to digitize all of the NCAA content and have it available for sale. Those of you in the technology world know, if we're streaming this live, we can get some of these products just anywhere. So that's fair game now, or that's being alleged it's beyond the video games. There are photos and photo libraries, and other merchandizing. They haven't touched on this one but they're going after the game footage photos. Then the big one is live broadcasts and so they are adding current student-athletes. These are the allegations in the 106-

page complaint with fifty-eight law firms. So that's the earthquake that hit in July with respect to this lawsuit.

So what are they seeking? The complaint says that they want money. They want a piece of the action. Actual damages. Statutory damages. If they prevail on the antitrust claim, they get triple damages, punitive, and interest. So you assume the complaint is probably going to ask for the kitchen sink. Also, disgorgement of all profits. They've separated the antitrust plaintiffs into the injunctive class and the damages class. So one wants an injunction against any further use of this. Seizure, also. I'd like to see that. "Give me all of your video games!" It's like me with my son. Of course, the big one is attorney's fees. I'm sure that's not the primary motivator here.

The NCAA, in response, keeps coming back, almost with a mantra, saying student-athletes do not have a right to their name, image, or likeness in a live broadcast. There's no injury to the student. The class is so broad and there are conflicts within the class. Some are the superstars. If you have a class that involved the superstars and just the walk-on players who didn't play the game, is this appropriate for a class action? What's the real injury? Former student-athletes can go out and try to get their own market. We aren't preventing them from doing that. We don't sell images, is one of the defenses. And again, they cite amateurism, amateurism, amateurism. It's pro-competitive and that's what they're saying defends all this.

So just within the last week or so, Electronic Arts said, "we're getting out this business. We can't take all this litigation and all the lawsuits." So they are getting out of sports. They are dropping NCAA football after 2014. They've also entered into a tentative settlement with the plaintiffs for what's reported to be in the range of \$40 million. All of this is still up in the air because the plaintiff's lawyers came back once EA said that they're not going to get into this college football quagmire anymore. The plaintiff's lawyers said "Well we never intended for them to stop making the games. Can we get along?" But then the settlement comes before there's been a certification of the class so with whom are you settling and how do you determine who gets what? You have different plaintiffs with publicity rights whose images were used and then you have the antitrust plaintiffs whose issues are very



broad and their images weren't necessarily used. Those are still some of the open questions now. Of course the NCAA is taking this very pit bull tone saying "We're going to fight this to the Supreme Court" and sticking with their defense of amateurism.

They have, however, decided not to renew their contract with EA for any future video games. The next day, EA signed with the 150 schools and conferences. They will call this "EA College Football" rather than "NCAA Football." Maybe the conferences will be buying the litigation. The class certification question is huge. Those of you who have taken Civil Procedure know that class certification is called the death knell of the litigation. If the class is certified there is huge power. If it is not and they have to go individually, it is unlikely that individuals will pursue claims, other than the big stars. I teach arbitration and I'm thinking "Why doesn't the NCAA put arbitration clauses in that form?" You can ban class actions. But that's another story. If they are doing this that would get them out of class actions.

Trial is set for June of 2014. So this is where we are. Should the NCAA settle? Should they settle before class certification as EA did? I think EA still has to sort that out. What are some legal questions and practical questions, assuming the plaintiff's prevail?

So Title IX requires gender equity. If we say that certain players would be paid and the plaintiff's in this case are the Men's Division I football and basketball, is it ok to pay just the revenue generating sports? What impact does that have on the other federal statute requiring gender equity in the treatment of all the student-athletes? Will this put us in a situation, I think Professor Berry's written on this or can talk about it, about where student-athletes are employees and therefore are entitled to federal protections under the National Labor Relations Act? So being designated, or if you are being paid, does that put you in a category of employee with those type of rights?

Professor Mitten, I think is going to talk about, what if Congress stepped in and created a statutory exemption for the NCAA. But then also some practical questions. How do you pay these players, if you pay them at all? How much? When do you pay them? So there have been proposals about a student-athlete trust fund and maybe you have severance payments where you don't get paid while you are in school, but when you're out and

then maybe put some into other funds for health insurance and filling the costs that aren't covered by scholarships. There are questions about that.

So I want to leave it there and pose that for us to think about. Is amateurism dead, should it be or what will happen to the non-revenue sports?

*B. Professor Matthew Mitten*

Well good afternoon everyone. It is really a pleasure to be here and I want to thank Katherine and the editors and members of the Mississippi Sports Law Review for organizing this. I also want to congratulate Professor Berry for the fine sports law program he is developing. It's an honor to be part of this distinguished panel.

What I'm going to talk about is maintaining the educational values and economic sustainability of intercollegiate sports though the professional sports model of governance, which might surprise you, but hopefully I can convince you this might be the way to go.

The NCAA . . . what are its objectives? 1) To maintain intercollegiate athletics as an integral part of the educational program; 2) the athlete as an integral part of the student body; and 3) by doing so, maintain a clear line of demarcation between intercollegiate and professional sports. The other provision that I think is relevant in the NCAA constitution is the one that says "student-athletes shall be amateurs and their participation shall be motivated primarily by education, as well as the physical, mental and social benefits to be derived." The idea being that participation by students is an avocation and this is an interesting one, "student-athletes should be protected from exploitation by professional and commercial enterprises."

Now this idealized view has been characterized as the amateur education model. And its amateurism component, I think, accurately describes Division III intercollegiate sports competition and student-athletes and perhaps also Division I and II women's and men's sports that do not generate net revenues in excess of their production costs. Consistent with its educational component, student-athletes participation in college sports does provide several academic and future career benefits. And this is from a 2007 NCAA study of 8,000 former student-athletes. Eighty-

eight percent of them earned baccalaureate degrees. Ninety-one percent of former Division I student-athletes are employed full-time and average higher income levels than non-student-athletes. Here's an important one – eight-nine percent of them believe that the skills and values that they learned from participating in intercollegiate athletics helped them obtain their current employment in a career other than playing professional sports. Twenty-seven percent of former Division I student-athletes earned postgraduate degrees. And these figures have been substantiated. There was a similar 1991 study with roughly the same results.

By comparison, the commercial education model assumes that college sports is a commercial enterprise, much like the professional sports industry. I think it fairly describes intercollegiate sports, such as Division I FBS football and men's basketball.

Now, it's important to recognize upfront that the enormous popularity and commercialization of college sports is not a recent phenomenon. The very first intercollegiate competition, which was a rowing competition between Harvard and Yale back in 1852, was sponsored by a railroad seeking to attract passengers to the lake where it was held. In the 1890s, football teams from prominent universities, many of the Ivy League schools, played before very large crowds of exuberant students and alumni. College athletes used to be professionals. In the nineteenth century, successful members of Harvard's rowing team were paid prizes anywhere from \$100 to \$500. A lot in today's value. At the time the NCAA was founded in 1906 many college baseball players played in summer professional baseball leagues and that was okay. The Big 10, which was the country's first athletics conference, permitted two professionals on each team. The 1929 Carnegie Report noted the "rampant commercialization of intercollegiate sports." So this has been around for a long time. And what is really fueling it today are new media technologies, which need popular entertainment content to attract viewers and advertisers. Sports are one of the few things we watch live, so advertisers are more likely to get their message out. I rarely watch any other shows live. I just tape them and go through them in about forty minutes.

What has happened is the US marketplace has responded to the cultural forces and strong public demand for popular products such as intercollegiate football and basketball games and this directly reflects the marketplace realities of our society. It seems that humans have a primal need to compete physically or witness athletic competitions. If you go back, sports historians have documented that sports have been around since the earliest recorded times. There is no doubt that higher education is a competitive industry. Universities compete among themselves for a variety of things - students, faculty, grant money, etc. There are intense pressures to attract larger incoming classes and students, stronger academic credentials to gain political and cultural support for their institutions, all of these things. So what happens is that in these extremely competitive higher education markets, universities use intercollegiate sports as a means to achieve these legitimate needs. This is essentially rational conduct. It is merely a facet of competition in a well-functioning, democratic society. Universities in turn will allocate funds to intercollegiate athletics based on their perceived institutional value, much the same way they allocate funds to any other department or college of the university. Sports economist Rodney Ford has characterized universities funding of its athletic department as a "budget allocation to provide its service." For example, entertainment, identity, loyalty, branding that furthers these broadening institutional objectives. Increase giving to the university general fund. More and better student applications. Favorable legislative treatment. Better faculty members and administrators. Values added to students. There have been many universities that have in fact used intercollegiate athletics as a tool to achieve greater public recognition and prominence. Notre Dame for example, its reputation, even internationally, developed pretty much in lock step with its football program. University of Florida, after winning multiple national football and basketball titles, had a huge increase in its fundraising. University of Connecticut based its wealth and development on an intercollegiate basketball centered strategy. Boise State University has done the same thing with its football program.

So the use of intercollegiate sports by university leaders, as part of their efforts to enable their respective institutions to

flourish in an increasingly competitive environment, it's a rational response to marketplace realities. But here's where the problems result. This commercial exploitation of the entertainment value, of particularly Division I FBS football and basketball creates an inherent tension with the university's academic missions and has the potential to overshadow or marginalize the educational aspects of intercollegiate athletics. It also blurs the clear line of demarcation between intercollegiate athletics and professional sports that the NCAA seeks to maintain. Third, it raises the question of whether maintaining the "amateur nature of sports" is appropriate given twenty-first century economic realities. We have the NCAA, most recent Final Four basketball contract that is going to generate \$11 billion in revenues. Numerous athletic departments generate more than \$100 million annually in revenues. Coaches, some of them make millions of dollars.

Now here's the thing that is very ironic. Despite the multi-million dollar revenues that are collectively generated, relatively few Division I athletic departments - approximately twenty to twenty-five each year - generate revenues that equal or exceed the cost of producing intercollegiate athletics. So there is a real economic sustainability issue here.

Like professional football and basketball, college football and basketball are enormously popular forms of entertainment with very substantial commercial value. However, intercollegiate sports aren't based on a commercial/professional model, which would underpin for example the NFL and NBA. College football and basketball players are student-athletes who are expected to strive for excellence in academics, as well as athletics, unlike professional athletes who focus solely on the later objective. As former Ohio State football coach, Woody Hayes said, "a coach will squeeze every bit of football from each player that he can," but in return the coach must give that man every legitimate measure of help needed to get "the rest of his education. We feel that the man that plays college football and does not graduate has been cheated." I'll let you draw your own conclusions about where I went to undergrad.

The appropriate response I think to the multi-billion dollar commercialization of Division I FBS football and men's basketball is not professionalization of those who participate in the sport. No

question, the demands of these sports, particularly in-season, requires significantly more time than a mere avocation. Virtually all participants receive an athletics scholarship, which in reality is a form of pay-for-play, which negates any true amateur status. Nevertheless, their participation shall not be motivated solely or primarily by economic rewards as professional athletes receive. If college football and basketball players, as well as others who participate in the net revenue generating sports are compensated based on the revenues they generate, or their athletic fame during the time they are students, they would be appropriately characterized as professional athletes, university employees and this would raise a host of new tax, labor, antitrust, and workers comp issues, among others.

In my view, a better alternative is to ensure that intercollegiate football and basketball players, who generally devote more time to their respective sports than other intercollegiate athletes and have lower graduation rates - figures would show anywhere from nine to thirteen percent and in football and basketball players - their graduation rate is lower than the rest of the intercollegiate athletes. It's important to ensure that they receive the educational, mental, and social benefits of their bargain with their respective universities, which in turn would provide them with more significant long term economic benefits than compensating them for their playing services like professional athletes. For this to occur however, there is going to have to be significant legal and structural NCAA governance reforms.

Back in 2010, I co-authored an article titled "Targeted Reform of Commercialized Intercollegiate Athletics" and we observed that court's reliance upon the amateur education model of intercollegiate athletics, they relied on that to reject student-athletes antitrust challenges to the NCAA's amateurism eligibility rules. This is really inconsistent with the current economic realities of Division I FBS football and men's basketball. Under current antitrust law, a broad range of NCAA rules designed to preserve amateurism is legal regardless of any adverse economic effects on student-athletes economic interests, including prohibiting pricing competition among universities - that's currently okay - or payment of fair market wages for their athletic

services, or not allowing them to receive any athletics interested pecuniary benefits from non-family third parties. So I think courts should just take a hard look in the mirror and recognize that the commercial education model applies to big time intercollegiate football and basketball, and characterize NCAA amateurism rules, which would include - this is basically the substance of the NCAA name and likeness litigation - as restraints on economic competition among universities for student-athlete services, which in turn would subject that to a very rigorous antitrust scrutiny under *Board of Regents* rule of reason framework.

So this would require the NCAA to prove, as a matter of fact, that the anticompetitive effects of these rules, which are the product of an agreement among the NCAA's member universities, are outweighed by their pro-competitive effects. For example, preserving a different brand of athletic competition than professional sports or maintaining competitive balance among its member institutions, which cannot be substantially achieved by less restrictive means. That's a very high burden to satisfy. So although NCAA amateurism rules have an effect of artificially reducing the costs, the universities labor costs, to produce it because they currently limit the economic value that goes to student-athletes - room, board, tuition, and books - which isn't even equal to the full cost of attendance. These are used to fund arguably desirable social objectives, such as subsidizing the costs of producing female and male intercollegiate sports that don't generate net revenues. On the other hand they clearly subsidize some undesirable ones, such as paying absorbent annual salaries well in excess of \$1 million, much more than that to head coaches in certain sports. What they also do is these amateurism rules have the unintended consequence of encouraging inefficient non-price competition for student-athlete services. Anyone see the University of Oregon's new training and locker facilities? I mean that's pretty incredible.

However, I know I'm running out of time so I'll go pretty quickly here, we don't think antitrust law is the most effective means of ensuring that the revenues generated by these sports effectively further a university's academic mission and student-athletes welfare. Antitrust law, although it prohibits unreasonable conduct that has adverse economic effects, it does not require any

reasonable conduct on the part of anyone, and it's not well suited to externally regulate the NCAA's internal governance of intercollegiate athletics, particularly rules and agreements that define this unique brand of athletic competition. Moreover, a piecemeal approach through antitrust litigation that considers really the legality of a particular restraint does not effectively solve the macro-systemic problems inherent in the production of commercialized intercollegiate sports where we have some of these problems that result.

So what my co-authors and I advocated was that Congress should provide the NCAA and its member institutions with immunity from antitrust liability under Section I, at least in the input market. That would include the two main inputs - student-athlete services and coaches. So those things could not be subject to antitrust challenge. Expressly conditioned on the adoption and implementation of several targeted reforms to 1.) ensure that commercialized intercollegiate sports furthers legitimate higher education objectives, 2.) provides student-athletes with the full benefits of their bargain, and 3.) enhances the likelihood that they will obtain a college education that maximizes their future career opportunities other than college sports.

So I'll just briefly go through four things we mentioned. One, at least a four-year athletics scholarship that covers the full annual cost of college attendance, as well as tuition funding for additional years of eligibility to complete one's degree, if necessary to complete a bachelors degree as long as they are in good academic standing. There is some good research out there that shows that even football and basketball players get close to ninety percent graduation rates if they are given five or six years. They should get free medical care or health insurance if they are injured because in these sports it is basically a cost of doing business. That's the injuries. Mandatory remedial assistance in tutoring for entering student-athletes if they have indexed academic credentials below a certain percentile. We just threw out there twenty-fifth percentile. And then what we propose is that some of these revenues be used to create a post-graduate scholarship program. Things coming in from the sales of merchandise, incorporating aspects of student-athletes persona, which would be sales of team jerseys, broadcasting and video



game rights. And this ought to be available to all athletes that participate in these sports, not just the “superstars” because everyone’s collective efforts contribute to that.

Now we built on that a little bit, where given the likely future restructuring of NCAA Division I governance, I think it’s appropriate to appoint an independent commissioner or multi-person commission to oversee Division I sports, which has best interest authority to develop and implement internal reforms to ensure that commercialized intercollegiate athletics, primarily an educational endeavor, and its student-athletes and sports generating net revenues receive valuable educational benefits. I think that there is just too much money involved to expect the participants to police themselves. That’s just contrary to economic theory. For many years, the US major professional leagues have very effectively been governed by an independent commissioner with broad best interests of the game authority. I have the real privilege of co-teaching professional sports with commissioner Bud Selig and I’ve learned a lot in teaching with him for over five years and how he does it, and it works pretty well. Baseball is doing well. I think by following that model college sports would be better.

Just, real briefly - what should the commissioner have the power to do? I’d say at least three things. To require each Division I university’s intercollegiate athletics department to be financially self-sufficient. So, its revenues ought to at least equal its expenses over a designated period of perhaps, three to five years, which would give each university the flexibility to determine which mix of sports to offer and invest in to achieve its individualized objectives consistent with Title IX gender equity concerns. Notice this wouldn’t be a cap. This would be more analogous to UEFA’s financial fair play rules, where you basically say, “You can spend what you want, but you better make sure that it’s at least equal to your costs.” Second, the commissioner should have a pool of money, and I would say perhaps at least twenty percent of the pooled football and basketball revenues, to reward universities for achieving objectives consistent with the values of intercollegiate sports. For example, higher graduation rates may be what’s necessary to maintain competitive balance. That’s what Commissioner Selig has, and that’s what’s resulted in positive

things in baseball, like competitive balance. And then finally, perhaps authority to discipline individual universities for egregious conduct inconsistent with intercollegiate athletics.

Thank you very much.

*C. Professor Richard Karcher*

First of all, I really want to thank the Mississippi Sports Law Review for inviting me to speak today. I want to thank Katherine for all of her assistance and everything with getting me here. When she contacted me and asked if I'd be interested in speaking on the future of amateurism I said, "sign me up!" That's all I needed to hear, I love the topic - "The Future of Amateurism." I also even agreed to write a paper for the Review, but I'm going to go over a little bit of some of my thoughts on what I wrote about.

In a limited period of time here, this is so complicated and there are so many issues surrounding the legal issues of college sports. It's not as simple as saying "Well 'amateurism' means this." That is at its core, the issue right now, and all kinds of litigation - not just the *O'Bannon* case - there are some recent decisions just within the past, you know, since 2006 really, that are very significant. We're seeing a huge shift in the way that courts are looking at this question of "what does 'amateurism' mean?" At its core is that - what does it mean? And then the second question that I view as to being a core question in all this is who gets to decide what it means? So we can look at the professional models and we can look at sort of our views about what the world of amateur sports should look like according to us and our own individual ways and what we think we'd like to see happen. I think that what ultimately you have here is a situation where the players are standing up and they are speaking out. They are more litigious. We didn't used to see this. We used to have a situation where players never questioned anything. Now you have a situation where they're questioning everything the NCAA does and is all about, and they're willing to do it publicly. They're willing to sign their names to a petition - 300 student-athletes sign a petition at the major schools saying "Hey, we think that we deserve some of this revenue, of this broadcast licensing revenue."

I believe in the *O'Bannon* case, one of the most significant pieces of the *O'Bannon* litigation is not the outcome of what's going to happen - because I even think if they lose the case, if the plaintiffs lose the case, I think we're eventually going to come to a situation where the principles of supply and demand are going to dictate a shift in the way amateurism is handled and the way in which players organize themselves, in any way, shape, or form they decide to do, and get more benefits and rights, whatever that looks like, and I'm not even going to speculate as to what those might be or should be. The fact that current student-athletes, with eligibility remaining, have signed their name to a complaint, a class action complaint against the NCAA, in-and-of-itself is significant to me. Another piece. It shows some sort of starting of a collective effort and organization, and challenging what amateurism means and who gets to decide what it means.

We've seen some cases where courts very recently, in recent years, have sort of shifted their views on what, and sort of deferring just to the NCAA on what "amateurism" means. The Seventh Circuit last year, just as a matter fact in a 2012 decision in the *Agnew* litigation, even though the court of appeals dismissed the plaintiff's complaint - it was an antitrust case challenging the one-year scholarship limit and the number of scholarships that can be awarded on antitrust grounds - even though the court said, "we're dismissing you because your complaint doesn't sufficiently define a relevant product market for antitrust purposes," the court went way out of its way to explain that it completely disagrees with its decision twenty years ago in the *Banks* litigation where Banks, the court of appeals Seventh Circuit said that players don't make up a labor market for antitrust purposes. The Seventh Circuit in this case went out of its way to say "we were wrong there", there's clearly a labor market here for antitrust purposes, and it's just that the plaintiffs didn't define it as such at all.

I was involved in a case, in the *Oliver* case, which was, now - as time is flying by - four years ago maybe, five years ago. This was a situation where a college baseball player was challenging the NCAA's "no agent" rule. Well he had been drafted out of high school and he decided to go to college. He was drafted and he had somebody represent his interests with a professional club to try to

come to an agreement to decide if he was going to go pro or go to school. He decided to go to school. Well the NCAA got wind of this a couple of years later, into his junior year, so - no, it was after his sophomore year, I'm sorry, after his sophomore year, right after the end of the season - and basically declared him ineligible for having a lawyer represent his interests in a negotiation with a professional team, taking the view that "Well, that violates amateurism." Well he sued the NCAA and he argued that there's a lot of precedent on the books. Jeremy Bloom comes to mind. So those of you who follow sports law, he was declared ineligible years ago, 2004 I guess, for violating the "endorsement" rule. There's another rule, right, which says that you can't market your likeness in a product or service in a licensing transaction. What he challenged was on the grounds of arbitrary and capricious rule-making - that the rule on its face was arbitrary and capricious, and the application of that rule to his transaction, if you will, as being arbitrary and capricious - and the court said that, you know, the standard to apply there, to determine if something is arbitrary and capricious with the NCAA rules would be if it is rationally related to the - we've heard this I think three times, Maureen and Matt - maintaining the clear line of demarcation between amateur and professional sports. So if it's rationally related to that purpose, right, then it's not arbitrary and capricious.

Well the court said "No, it's not arbitrary and capricious because we think that amateurism somehow means that you shouldn't be a commercial billboard," or something like that, right. "Shouldn't be billboards for commercialism," or something to that nature. That was 2004, and that was a state court in Colorado. I would question today how a court might look at that situation and say, "is this 'endorsement' rule really preventing amateurs from being billboards for commercialism?" I mean, come on, today's day and age? Are they really - is that rule really preventative if they're already billboards of commercialism, isn't that what this is all about? I mean its commercialism to its highest extreme. I question whether the same court would decide that case today.

Nevertheless, in the Andy Oliver case, he challenged the NCAA's "no agent" rule on the same grounds, arbitrary and capricious. Well the court agreed, and said, how does having a lawyer, how do - when you retain a lawyer to represent your

interests in a professional contract that you might sign, you're trying to find out if you want to sign it, and then you don't sign it, go back to college and play ball, I mean how does that cross the line of amateurism and into professionalism? It doesn't. In fact that was the argument, you know, they basically said it's keeping you an amateur and that the NCAA should really have no interest in how much money you make after you are no longer an amateur. It should have no bearing on any decision that you make.

The other issue that's happening here is that college players are worth a lot more. And I don't mean just from the standpoint - they are worth a lot more in the business model of NCAA sports without question - but I'm talking about after they graduate. That is significant too, because the more you have players that are playing college sports that have the opportunity to play professionally, not only play professionally, but earn the kind of money that they're making today, in the rounds that they're making. So you can go into baseball in like the fifth round, through the fifth round you're talking, you know, 150 picks or so, well I mean they're making significant bonuses. Andy Oliver, who ended up getting drafted in the fifty-eighth pick of the draft, and his bonus was around \$1.5 million. So why is that significant? Well it's hard to argue in a lot of these situations that their damages are speculative. "Oh, well they're just college students," - if to the extent that had been an argument in the past - is that "Well, damages are speculative, and they're just college students."

The other thing that happened in that case was that the NCAA didn't really try to argue how it does, in fact, cross the line of demarcation from amateur to professional sports. There wasn't an argument. The argument was, under private association law we can do what we want because we're a private association and, basically, we get to decide what our rules are, and they can't really be challenged because we're a private association, which is not entirely accurate, because you can challenge it as being arbitrary and capricious because the players have standing to do that as third-party beneficiaries to the NCAA bylaws.

This issue of who gets to decide what amateurism is and what it means, until - in my view - until the NCAA sits down and actually works with some representative voice of these players and comes to an agreement on what is fair - and I'm not even

going to tell you what should be fair and what shouldn't be - but until they do that, I think there are going to be more and more challenges. The reason you don't have this type of issue going on in the professional sports is because it's essentially governed all by labor law, so there are no lawsuits that can be challenged on antitrust grounds because it's going to be preempted so it's essentially going to be exempt by the nonstatutory labor exemption. We don't have that issue in college sports. A lot of the issues that the professional sports league can use as defenses, for example, cannot be raised with college athletes. A college athlete is asserting intellectual property rights, for example, of some sort, whether it's an intellectual right of publicity, or whatever it might be, you can't argue that, well, the "work for hire" doctrine bars them from bringing that claim because we know that you can't make *that* argument because that would mean that they are employees. So, right, so what is then the justification?

So what's going to happen is essentially, in my view, is some sort of resolution with - and I completely agree with Matt - only the big five BCS conferences, and I would probably even primarily talk about football in this discussion, because that's where the revenue is. When you look at the revenue numbers and the profits generated in football, the top fifty programs in college football, are generating profits, not revenues, I'm talking just - profits are less than revenues - profits, after they pay their coaches millions of dollars, the head coaches and the assistant coaches, anywhere from \$9 million to \$70 million in profit in the top fifty programs in football. I think it's pretty significant, and I think to try to dismiss it as "Well, you know, let's look at only twenty-three of 120 athletic departments actually profit," what we're talking about here is big-time college sports, so I don't know why the revenues - or I should say the profits, if there are any - that are generated by the other dozen sports in the athletic department, right, why that should be included in the mix of the discussion about the revenue that is generated and the profits that are generated in the sport of football. These players are not fungible; this product doesn't exist without them. They're not fungible. These players are nationally known and recognized as four- and five-star recruits. The only reason that a university pays a college coach the amount that they do is because the labor is artificially capped, the players' labor is

artificially capped, so what you have is a situation where the money that would otherwise go to the players to produce the product is funneled to the coaches to get those players. So when you have coaches making two to five million dollars, the reason that they're going to pay them that, it's a rational economic decision. I'm not saying "don't pay these people," I'm just stating it as a fact that it's a rational economic decision to do so if that can get you a winning program and get you the players that you need to get. If the starting offensive line for Alabama, before the start of the season, walks into Nick Saban's office and says, "coach, you know, we've just decided some things. We're probably not going to play this year unless we, you know, get somebody talking to us a little bit," that team is not even in the conversation for a national championship. That team, if that happens and they sit out, just that starting offensive line, if they sat out, they're not even in the Top 25. That's some serious power and some serious leverage. I think that what you're ultimately going to have because of that - because they're not fungible, because Rick Karcher can't go in and play quarterback for Alabama's football team, as much as I'd like to - it's not going to work. There's a limited supply of these elite athletes at this level of play and that level of play is different than even the other division, you know, other non-FBS football schools. I mean we're talking basically the big five conferences I think in terms of the value that they bring.

Last thing I want to mention this right of publicity issue. I'm fascinated right now with the Third Circuit's ruling and the Ninth Circuit's ruling. They're very significant rulings which said, this year, that the First Amendment does not trump the players' right of publicity in video game uses. It's a message that says, you know what, we're not even going to defer to commercial enterprise anymore to use your likeness. You can bring your claim. And that's why they settled, because it's a winner on all fours, this right of publicity question. There is no defense. That's why EA had to settle. Okay, you've got two federal circuits that decided, and I believe rightfully so - it doesn't matter what I think - that it's not trumped by the Fourth Amendment. So what do you do about it? You settle! All that is, is an ex post licensing transaction. So, in other words, we've just decided that we're going to pay the players a licensing transaction fee, current ones too, which they have

every right to get because it's a property right. The NCAA cannot say you do not have that right. They cannot say that you cannot enforce your property right. Just like if somebody stole their wallet, they couldn't say that he couldn't enforce his right to get it back, because it's a property right. It's his property. That's why the NCAA, I believe, had no choice really but to say to Johnny Manziel "you can sue for use of your name on a t-shirt." Someone selling his "Johnny Football" t-shirts. It's his property. There's no loophole. There's booster loophole. What there is, is someone who stole his identity and was making money off it.

Here's something I've always wondered about this. What would happen if a third party decided to take their likeness and make money off it and said, "Ok, good! Now, you sue me, and you can get the settlement or I can fight it – if I lose I lose and I'll pay the judgment." What's the substantive difference between an ex post licensing transaction that's not allowed or permitted to happen? The NCAA rules are saying, you cannot enter into a licensing transaction, but we are going to make you go through the costs and litigation to sue, for violation of your right of publicity, and all the inconvenience to get the licensing money. I think, substantively, this is a circus. It doesn't make a whole lot of sense. I do believe that this issue of challenging the use of one's name and likeness is going to continue. It's not going to continue just for third parties. It wouldn't surprise me if someone sued a university for using their widely recognized number on a jersey and selling that to make a lot of money. I can foresee that claim coming as violation of right of publicity. That form you saw that they sign, if you read it real closely - and the NCAA would never take this position either - it doesn't say that they are signing their right of publicity to the university or even to the NCAA to use their names and likenesses to sell for commercial profit. They would never even take that position because that goes against the principles on amateurism. They basically prevent third parties from doing just that; bylaws require they to do that. That is what's interesting, if players should be compensated for the use of their likeness and things like jerseys. My personal opinion - again it doesn't really matter what I think - but my personal opinion is that I don't understand how a lot of these issues, the supposedly



affect amateurism; I'm not sure how they do, from an objective standpoint.

This whole amateurism idea is like the Blob - like the 1958 movie *The Blob* - that just keeps grabbing, consuming different things. They say you cannot have a lawyer to represent you in a contract negotiation with a club. You cannot sell your pants that you own title to, your football pants that you got from winning a game. You can't sell that because that violates amateurism. It just keeps growing and grabbing and pulling in things.

I happen to believe that some of these things are going to be challenged more frequently because the economics drive that resolve. It makes sense from an economic standpoint. It makes sense for lawyers to get involved in this. It makes sense, from an economic standpoint, for the players who have a lot riding on their career, based on how much they are going to get paid in the different draft rounds and the signing bonuses, to get more involved. I am all for it. I'm ok with lawyers. I think when lawyers make more money it's a good thing too.

I'll end on that. Thank you.

#### *D. William King*

Good afternoon. I'm William King. I'm from Birmingham. I work for Lightfoot, Franklin, and White.

I am one of the luckiest lawyers alive because I am a huge sports fan. I fought it my whole life. I finally gave up; that's just who I am and I now get to combine that with my job every day. I have been working in college sports law for the last fifteen years. The last twelve years has been in infractions and for the last five years that's pretty much all I do. I work on a lawsuit every now and then, kicking and screaming, because the college sports stuff is a lot more fun.

In the last five years, I've had the good fortune to represent Auburn University - you may have heard about Cam Newton. Southern Cal; Reggie Bush and OJ Mayo. Texas A&J; Johnny Manziel. For those of you who want to ask me about Johnny, I will be happy to meet you back in this room at six o'clock tonight. I will be safely back in Alabama, across the state line, and you can all talk amongst yourselves. Also, I represented North Carolina and South Carolina in their football cases. Have you noticed a theme

here? These are all football cases. My partner, Gene Marsh, represented Michigan and Georgia Tech. Jim Tressel. Sorry Matt. Penn State, with the Sandusky stuff, which I maintain has nothing to do with compliance, but they needed help. I've also represented Division III schools. One is the top five academic schools in the country. If you want to talk about a change of pace what I've been accustomed to. It was absolutely wonderful working with them because they did not know the first thing about NCAA rules. It was very fun.

I want to make a disclaimer at the outset. We've talked a lot about the NCAA like they are the bad guys. Anything I say that may that may be viewed as critical towards the NCAA, is not indented to come across that way. The people I work with, ninety-nine percent of them are in enforcement, they don't make the rules. They don't have any say so in what the rules are. Their job is to enforce the rules, whether they agree with them or not. I've had conversations with them about some rules and they don't think makes sense either, but that's their job. You cannot imagine how difficult their job is. To try to do get anything done without subpoena power - any person who is outside the university or is not a student-athlete or employee, has no obligation whatsoever to talk to them, to answer their call, or to do anything. I have a lot of good friends at the NCAA. I often disagree with them, but there are a lot of good people there. Just remember, as they will be quick to tell you, it's the schools that make the rules. They guide the process and have input, but at the end of the day it's the universities and colleges that make the rules.

Another thing that should be obvious by now is that I'm not an academic. Please, don't ask me about any of the cases that they [other panelists] were talking about. I used to know about cases, but that was before I started doing this. That's one of the great things about it, is that there is very little research. The NCAA Committee on Infractions will tell you that you can talk about prior cases all you want to, but they have no binding effect; no precedent on us. Every case is a new day. Also, I don't have to answer discovery, interrogatories, or requests for production. For those of you who are law students, you don't know what I'm talking about, but you soon will.

I love college sports and the fact that all of you are here on a beautiful Friday afternoon suggests to me that either you do too or your professor told you that you could have extra credit if you signed up . . . I saw those notepads out front.

These are turbulent times. I haven't been around forever, but I've been doing this long enough to know that things were sailing pretty smoothly until the last couple of years. I think that everyone - people on campus, people with the conferences, people in Indianapolis with the NCAA - all want to protect college sports. They all want to see college sports continue to thrive and do well.

In order to know what to protect you have to identify why we all love college sports. What's so great about it compared to other things? I'm from the South, I grew up in SEC football, and we are different. I can tell you, we are different. Other schools love their football, but there is a point where they gain some sense of rationality and come back to reality. Not us! We just keep going straight ahead.

So, why do we like it so much? Many of you will probably be in the Grove tomorrow. I think for a lot of people it's like a small family reunion when they go to a college football game. They see family - usually family they want to see - they can select who they want to go to the game with them. They see friends from college. They see people they don't see outside of a business context. I think that's a big part of it. There are fierce rivalries and most take great pride in their school - whether they went there or not. Especially in my state, Alabama, there are a people who never darkened the door of a classroom, but that doesn't matter. I think college sports bring back great memories. You know, for those of you who are my age, think about that big game you were at when your team won and how much fun that is. It makes you realize that you should have appreciated more just how lucky you were when you were eighteen to twenty-two on that college campus. I suppose we could probably come up with a million different answers if we sat here and talked about it.

The one answer I don't think you would hear as to why we love college sports is the notion today that it is in some way more "pure" than anything else; that these kids are out there because they love the game and they're playing just for the love of the game and that's why we like it so much. That's not the reality

anymore. It's just not. It's ok to say that because it's not. The kids I interview when I go on campuses, no matter how disappointing their career has been, their plan is that they are going to play pro sports. Every kid who signs with an SEC team thinks they're going to play in the NFL. Every basketball player, certainly in Division I and maybe Division II, see the NBA as their plan. In a survey of all Division II players conducted five years ago, some fifty percent said their plan was to play in the NBA. They weren't even good enough to get a Division I scholarship. I don't think they're going to be playing for the Grizzlies anytime soon. So, I just don't think that should be a part of the analysis anymore.

I am a huge fan of Bobby Jones, the golfer, for those of you who are too young to know that. He won the Grand Slam in golf in 1930. He played as an amateur. He refused to play as a pro. He played in an era where he was the embodiment of amateur sports. He was not tainted by money, but that was eighty-three years ago when he won the Grand Slam. Then he went on to become very wealthy living off his successes as an amateur. Those days are gone. They just are and there's nothing wrong with talking about it.

College sports are a big business today. The fact that I can do nothing but represent colleges trying to get to the truth, but at the end of the day if there is a problem to minimize the damage, especially when it comes to football, because football is the train that drives the engine. It is. It makes so many things possible for other sports. I'm going to disagree a little bit with the analysis about athletic departments not being profitable. If you're look at just that bottom line, ok, a lot of them are not. But, if you look in terms of what a successful, thriving athletics program will do for your donations outside of athletics, will do for the quality of your student body, and how you value those types of things, like the overall image of the university. I think that for a lot of the ones that may be in the red, when you look at their overall contribution the university, they are profitable.

I'll give you an example: Texas Christian University. I live in Birmingham and I had never heard of a student from our city interested in TCU. Starting about three or four years ago, every year, two or three of my friends would say that they were going to look at TCU for their daughter or son. When you look at TCU,

their scores are rising and their applications are rising. It just happens to coincide when they went 14-0 and beat Wisconsin in the Rose Bowl. I think it put them on the map.

Texas A&M - this is all public information - they announced the Monday after the Alabama game that they had raised \$740 million in donations for the university in the prior twelve months. Do you know what the number was the year before Johnny Manziel started at quarterback? \$400 million. I don't know what their bottom line looks like on athletics, but I would argue that their football team and the athletics program, as a whole, are very profitable at that school.

So, we've already talked about March Madness and how college sports is a big business. The March Madness contract has made \$10 Billion dollars in the last fourteen years. \$10 billion to the NCAA! The University of Texas topped the revenue charts last year with \$163 million in revenue, \$103 million of which was from football. In the SEC, there are four teams with over \$100 million and five with between \$80 and \$100 million in revenues.

NCAA coaches' salaries: The first work I did in this business was with Auburn University. Terry Bowden resigned in the middle of the season in 1998. His buyout with four years left on his contract totaled to \$620,000. He was making \$155,000 a year. Flash forward thirteen years and I helped write the contract for Gene Chizik after Auburn won the Championship. He made \$3.6 million a year. That made him fourth. Fourth in the country, right? No. Fourth in the SEC West. Nick Saban, Les Miles, Bobby Patino. and then Gene Chizik. \$3.6 million will get you almost to the mid-point in the SEC West.

Assistant coaches: There are a couple of coordinators that make over a million dollars a year now. All of this is public information. It's crazy. And, it's across the board. Administrators' salaries and people who work in athletics, it's all been on the uptick since I doing this work. Guess who's still stuck back there with Bobby Jones winning the Grand Slam for free? Student-athletes. Nothing has changed for them. The nature of the beast has changed. You can watch Ole Miss on TV every weekend now. You can watch every team in the SEC. If you look hard enough you can find it. When I was your age there was one or two games a

weekend. That was it. It's a completely different animal we're dealing now.

So, that brings us back to *O'Bannon*. I have followed *O'Bannon* just like you have. I read what's in the papers. I learned so much from Weston's presentation earlier. I was taking notes. I was thinking, this is good stuff. Now, I know what this is all about.

I have been really busy the last few years trying to focus on rules that are in place right now and trying to deal with them and the NCAA. There's no question that *O'Bannon* has put this all in focus. When this was filed I thought, video games? Who cares about that? But, now look at it. When I was working on the stuff for Texas A&M, a journalist and friend of mine, Jay Bilas, notes that if you went to the NCAA's website and typed in "Johnny Manziel," it would take you straight to his jersey. Clowney? Straight to jersey number 7 for South Carolina. We noticed that it went down the list of probably the top ten Heisman contenders. We also found that you could find autographed items for sale on that website. They shut the website down but we were able to get some of this stuff. Not current student-athletes, but former ones. Someone had just gotten their cleats and helmets out of the locker room when they moved on from college to the NFL and their autographed items end up for sale on the website.

So, the inconsistencies between athletes and the rest of the world are more glaring than ever and they're definitely more in the public's attention. I have seen a change in mindset. I know my views have changed drastically about what's really fair here. I'll talk about two things that I think should happen or I would like to see happen or I think is at least is going to be discussed in the not too distant future. These are benefits for student-athletes. One is need-based aid and the other has to do with market driven ability to be compensated.

Need based. I cannot tell you how many times I have interviewed a student-athlete on a college campus where there was no question about whether there was a violation and after the student-athlete told me why they did what they did, I felt terrible that I had to tell that young man or woman or their school, I am sorry but this person is ineligible. Maybe we can fix it, but this person is ineligible. Many of these student-athletes come from

abject poverty with literally zero ability to get money from anybody back home. Often times, if they qualify for Pell Grant aid, they are sending money back home to mom or grand mom or whoever it is who helped them get through high school and where they are. I can tell you that I have been sitting in that room many times and thought to myself that I would have done the same thing. I know these rules better than the students do, but I would have done the same thing.

I think there has to be some discussion about additional need based aid. There's no way these athletes can get a job. I've spent most of my time around football and there's no way they have time to do that. Between class, mandatory study hall, tutoring sessions, lifting, running, practice, film, travel for games, and catching up on schoolwork when they get back, there's just no way.

President Mark Emmert of the NCAA proposed a \$2,000 dollar stipend and some schools actually offered it and then it was pulled back. I think it was mainly by the schools that don't have the ability to do that, to pay that money. Let's break it down to the BCS and the rest of world. The BCS schools are over here and the rest of the schools, I'm not talking about Divisions II or III, I'm talking about Division I, are here. They are so different in every aspect of their operations. The amount of resources they have, what their goals are, what their facilities are, and what their long-term plans are. They're so different that there has to be some recognition that the majority can't always rule. They either have to break them apart or have some system where the BSC schools that have the funds and the desire to do more are given the discretion to do so. I don't have all the answers, but I can tell you that that's my view and that's definitely the view of the schools that fall into the have category, at least ones that I am familiar with.

You'll notice this summer before all the media days, every conference commissioner made some comment about change. Significant change. Significant reform. We can recognize that we are not all alike anymore. That is something that I hope we will see and we will see soon. I don't have any sympathy for the kids that get their schools in trouble when they go on boondoggles, such as when agents take them to Miami or New York or LA and they know it's wrong and it's not to meet a need. I have read

articles recently where a student sent Pell Grant money home to his grandmother who raised him until he ran out and then he had to ask somebody for help. A wife and a young daughter and he couldn't work, couldn't make ends meet, had to get help to pay for necessities like diapers and baby food and things like that. Those are the people I think we have to do more for. I don't think it shifts the balance any because competitively because the schools that have the ability to do more, the best athletes are already going there. It's not like I would have gone to a small school in the middle of nowhere, instead of Notre Dame or Michigan. The kids are going there anyway and that's not going to change. I really think competitively, especially in football, I don't really think it makes much difference.

The other thing I want to talk about, the secondary benefits, is the market base or Olympic model. I have really come along full circle on this one. I think the reality is that there is going to be some discussion about whether an athlete is good enough that a company wants to seek an endorsement deal or some type of arrangement with that person, betting on that this person is going to be a good spokesperson when he or she is professional for many years to come. That is something that needs to be looked at.

I am not in favor of paying players or bidding for recruits or anything like that. I just think it would be great for me. Could be a lot more work to do if you turn the boosters loose. No question about it. I am really trying to do what is best for the model and not what is best for me. But I just think about that, especially when you see a kid like Marcus Lattimore, who, last year has a devastating knee injury. His second one, but this one was awful and, especially in football, there's a short window before the players' bodies break down or somebody younger, faster, better comes along. The serious injury rate is so high these days as the game becomes more violent, bigger, and faster that I just don't think that there is a legitimate basis for saying you have to wait until you're twenty-two before you can do that. I think the market would regulate itself. Sure, the local boosters may want the entire starting twenty-two for the University of Alabama to help them sell cars at a car lot or something like that, but I think that eventually the market would regulate itself and only the Nikes,



the Adidas, the big companies would go after only the really truly elite athletes.

The basis in my mind for why we view student-athletes differently is there are really two. One is the NCAA rules say so. Most of those rules were drafted long ago or at least the notion or the philosophical basis for the rule is something that dates back decades, and decades, and decades. The second reason is because of this notion that you are going to destroy sports, you are going to ruin the whole model of college sports and the fans enjoyment of it if the players receive anything at all and I just don't think that holds much water anymore.

The last thing I want to talk about, which is a pet peeve of mine that I talk about anytime I get the chance to, is following up on what Rick Karcher was talking about: this baseball rule. I deal with this about once a year. The rule that's actually, I think Rick described it as charitably as it can be described. The rule is, in baseball, if you are in high school, you are in the draft whether you like it or not. You don't declare, you are in. So teams routinely draft lots of high-school players. The NCAA, I think with very good intentions, said we need a rule that will allow these young men to get the guidance they need.

The rule is that you can get an advisor, but you cannot get an agent. So if, you are drafted, who are you going to ask to help you? Who is going to be the person best qualified to tell you what to do? Of course, it's baseball agents. So they go straight to the agents, but the players can't hire them as such so they just hire them as advisors and you have to pay them for what they do. No agent that I know of works by the hour. It's usually percentage based so they have to come up with some kind of compensation system.

The rule says that the advisor may have no contact at all with a major league team. One phone call, one anything, and you are ineligible. You may not agree and say "I am going to go to the Dodgers, instead of going to play at Ole Miss. I want you to be my agent." The minute you do that, even you go to Ole Miss to play for three years you're ineligible. You've hired an agent in the eyes of the NCAA. The thing that absolutely drives me crazy is when the kid who was drafted is going to sit down with the Yankees to talk about his contract, the advisor may have no contact with the team and may not be in the room. He or she may be in the next room

where the family can run back and forth, but can have no role in the process. I don't think that makes sense, but ethically as a lawyer, and usually it involves lawyers, ethically your job is to represent your client. You're ethically required to represent your client zealously. In the Andy Oliver litigation, I'm familiar with the lawyer that represented Andy, that was a big part of his argument, "the NCAA cannot tell me what I do as a lawyer or how I fulfill my ethical obligations." So, that is one that definitely needs to be revisited.

I think that if you allow them to have an agent who basically negotiates for them, and then the young man decides whether he wants to go to college or not. If he ends up going to college, and most of them do, it doesn't hurt the model at all. If it makes it more likely that a baseball agent will be able to sign the left handed pitcher that went to Ole Miss for three years when he is in the draft after his junior year at Ole Miss, I do not have a problem with that as long as they are not giving them a bunch of money or cars or things while they are here. If it's just talking to them about the draft, I think that's fine. That's really all I have. It's going to be an interesting couple of years in the NCAA and I am already kind of thinking about what I am going to do in my next job in case the whole thing blows up.

*E. Jason Levien*

Thanks very much. I think I'm the last speaker. I will be very brief, so we can have some good dialogue. My name is Jason Levien. I am the CEO of the Memphis Grizzlies and an owner of the major league soccer team DC United. This is a subject that is very near and dear to my heart because I spent more than a decade as a player agent. So, I think I was talking with one of the panelists and they asked me how does it feel now to be part of the dark side, but I think when I was an agent, everyone sort of thought I was the dark side. I'm also a former college athlete, Division III and never even had the glimmer of hope that I was going to be a pro.

But what does amateurism mean? I come from the perspective, having been an NFL Players Association Registered Agent and certified agent, as well as NBA, and I can't tell you how difficult it is to be in that position and to follow the rules properly

and at the same time, represent your client to the best of your ability. I know that was just recently touched on, but that is very difficult and the first thing I will tell you is that there is a lot of pressure on an agent to be more than an advisor and to become a bank because these players that have these needs are looking for an opportunity to give money to their family, to feed themselves, and they see the agent as an opportunity to provide them with that before they turn professional. There is a lot of pressure on agents to break rules constantly and the athletes are certainly in that position as well. What I can tell you, in my interactions with college athletes turning professional and those that became professionals, is that a significant number of them, made their income at the universities they were at. Some of them, so much so, that they did not want to turn professional because they felt they were getting compensated more as a college athlete than they would if they turned pro. So, the big joke I would have often with friends and colleagues of mine would be when a player decided to stay in school, we would say, well there is no salary cap at that university. I think there are issues all the way around.

I will tell you that I have also represented college coaches who are compensated well and also feel the pressure to keep their student-athletes in school. I was most intimately involved in that in the context of basketball, professional basketball, representing players who wanted to turn pro. The rules and the road blocks that were there for student-athletes to decide whether they wanted to turn pro were significant and they have gotten more significant and made it more difficult for players and college students to decide, "do I want to be a professional athlete or not?" What a lot of the rules do is put the student-athlete in a position of not have transparency. Not having transparency about their opportunity and where they will get drafted.

In the NBA, there are only two rounds where sixty players get drafted. The first round is where you get guaranteed contracts and most student-athletes want to be in that first round because if they are going to turn pro, that gives them the best opportunity to advance in their careers and be successful as professionals. The roadblocks that are put up by the rules make it difficult for them to really know what their options are and it denies them the transparency I think to make a good decision.

For example, they set a very early date before the season ends to decide if they are going to declare for the draft and stay in the draft. They are not allowed to hire an agent. The draft process really starts after the Final Four in April and goes to early June. The best way for basketball players to get exposure to teams is through workouts and through dialogue with these teams about what their status is as a draftable candidate. The best person to give them that advice would be an agent because they deal with those teams year in and year out, have a sense for what the market place really is, and whether or not this player has an opportunity to turn pro and maybe be a first round draft pick. The rules deny them the opportunity to speak with the people with the most insight and could give them the best information. Certainly, there is a hard line where the agents cannot set up workouts with the players.

I can tell you that I have represented players that navigated these hurdles successfully. One of them is Kevin Martin, who is a client of mine, and who decided ten years ago, from Western Carolina, to turn professional. He was getting pressure from his college coaches to stay in school, and he was getting pressure from all sorts of angles about what to do. Western Carolina, prior to having Kevin drafted in the first round, had never had a first round draft pick in any professional sport. There was pressure all the way around, and so certainly the college coaches, that are compensated so handsomely, who want to do the right thing want to retain their best players and it's in their interest to do so.

Kevin made the decision that I'm not going to walk the fine line of trying out for the NBA without having the right information, so I want to sign and move on and take the risk of doing that. Now God forbid if it didn't work out for Kevin, he wouldn't get to go back to school and wouldn't have that opportunity. Having the chance to go professional in a manner in which he had transparency and had proper information, he gave up the right to go back and be a student-athlete. I've seen that in other examples, by the way, where it has worked out very badly. Most student-athletes try and walk the line of hoping to hold on to their eligibility while also embarking on this process and it puts a lot of stress on them. I would say that it probably makes it more

difficult on them mentally and physically to have the opportunity to enter their profession at the right time.

So, I guess I come at it from that perspective in understanding what amateurism means. Whether or not these rules are set up to support student-athletes in their opportunity to turn professional. Certainly, I think about the collaboration between professional ranks and the college ranks and the student-athletes in a way now that's different for me because now I'm running an NBA team. I know that the teams in the NBA are also thinking what's in their best interest. When do we want these student-athletes to turn professional? What's the right timing for that? What's the right mechanism for that? Certainly it's a big business for professional basketball. It's a big business for the college sports teams and it's the once in a lifetime opportunity for these student-athletes.

A lot of it comes from these need-based situations where the majority of the student-athletes that I represented were certainly looking to get paid handsomely and as soon as possible, but they had needs that needed to be met. They had family relying on them, they had aunts and uncles relying on them, and in many cases they had children of their own relying on them. They had to figure out how to navigate that as a teenager themselves in making the right decisions for themselves, their future, and their long term opportunities. I think the rules are messy and complicated now. I think it is certainly messy and complicated to start compensating student-athletes, but I don't think that that is a reason not to consider it and start figuring out a way to improve the system.

I'm reminded of Ed O'Bannon, who is a contemporary of mine. He played at a much bigger university and was a much better player, but I followed Ed's career very closely and he was someone whose trajectory was to stardom. I think he was one of the top one or two basketball players in the country when he went to UCLA. He was set to be a multi-millionaire at an early age. The rules were set up back then in a way that made it more difficult to turn professional as early as they are now. Those rules have evolved back and forth. LeBron James is an example of someone who could come from high school right to the professional ranks.

Since that time, there have been some restrictions put on that by the NBA not just the NCAA.

Ed O'Bannon is an example of someone who could have been an all-star in the NBA and made over a hundred million dollars in his professional career, in terms of his ability, and it was cut short by injuries. His career and his opportunity for economic gain were cut short because of injuries and the timing may not have been perfect for him, but certainly the rules governing college athletes and how they turn professional, where that line for demarcation is drawn for amateurism had a big impact on Ed O'Bannon's career, his economic opportunity, and certainly now as a plaintiff in this case. Ed O'Bannon is an example that some of my colleagues talk about of someone who maybe didn't time properly when he turned professional and his career could have turned out very differently. So thank you very much for having me, I am looking forward to the discussion.

### III. PANEL DISCUSSION

**Berry:** Given our short amount of time, I think I am going to open it up for questions. We have a lot of ideas on the table here. I want to open it up to you all to ask what questions you have for our panel.

**Audience Member:** I kind of have a question from when we discussed more about football and basketball and how they are more of a revenue making sport. I myself was a collegiate swimmer and a lot of collegiate swimmers have not yet been endorsed but Michael Phelps for example was endorsed when he was eighteen years old before he went to Michigan. He did not swim at Michigan because of the endorsements. Should endorsements for these Olympic sports that do not make revenue like swimming, should that be considered arbitrary and thrown out?

**Karcher:** When you say, should it be thrown out, should it be deemed arbitrary, the question whether payment for endorsing a product crosses that line of demarcation into professional sports and my personal opinion is that it does not. I don't care if you're a swimmer or you're a basketball player or football player and

whether they did it before college or whether they did it during college. Why is it if you receive some money for your name on a product that means you're not an amateur football player? Why is that? Because you got money? What is it that means you are no longer an amateur. That just doesn't make sense. You get paid from your parents, you get paid from your friends. I think it's the context in which somebody gets paid.

If a university is paying you to play, that's a professional. To me that's the drawing line, whether it's a booster or the university, paying you to play for them, that's it. That violates amateurism. Then you don't even have a product of amateur sports, when universities or people connected to them are paying them to play. But I don't understand why any company can't pay somebody because they are really good and they want to make money with their likeness. Why does anybody have a problem with that? Does anybody in the room have a problem with that? Would you stop watching Mississippi play? Would you stop watching Texas A&M? Would you think, "Hey Johnny Manziel got some money today, change that station. I don't want to watch that today." My guess is, if Texas A&M or boosters were paying him, it would change our thinking. Now we would think, "This is not a college sport anymore. This changes the entire competitive field. Now we're going to be competing for wages." We've completely changed it I think. That's a long answer to your question.

**Mitten:** It's still a hard line to draw. What if we've got the broadcasters and they are the one paying it and the school says keep \$20 million of that and pay it to the athletes? Under your definition, as I understand it, that would be okay. It's still basically the same thing. It's really hard what constitutes paid-for-play amateurism. It's really hard to justify any of the rules under, what I consider, is an antiquated amateurism model. It's never really existed except back in Britain where it was designed to make class based distinctions. It would seem to me that, under an appropriate analysis, the question is you could put a limit on it, and say everybody can have "X amount" like \$5,000-\$10,000 a year, and then all the universities and athletes are on the same playing field. I think that's what the focus ought to be: what's

necessary to maintain the competitive balance. I think it's really hard to draw these artificial lines of amateurism.

**Karcher:** But if Nike pays and if there is no booster loophole, that is, if there is no connection between the University and the payment, is there a competitive edge? If some company, some food company, McDonalds, wants to pay Johnny Manziel, where is the competitive disadvantage to other teams that are playing Texas A&M? I guess I don't see the competitive disadvantage to a team playing Texas A&M, regardless of how much McDonald's decides to give Johnny Manziel. It just means that Johnny Manziel might have more money in his pocket. Why is that helping Texas A&M on the field have a competitive advantage?

**Mitten:** But the person making the decision in those companies probably have some allegiance to the University.

**Karcher:** Okay well then, then I see the problem, but if there's no connection. What happens in this discussion, the house of cards are going to come crumbling down. It's a slippery slope, that's what we always do, saying "oh well if you do this, or you do this...No, stop it there." Let the rule say, "If you have a connection to a booster or a university, then that violates the rules of amateurism." If we have that connection then it violates amateurism. I don't like the going down the slippery slope argument of booster loopholes.

**Audience Member:** There are many who say the NCAA has lost its power or desire to enforce its rules. All the schools, all the boosters in the NCAA are taking a blind eye. Especially the good friend of Nick Saban who is the head of the NCAA. What is the future of the NCAA's ability to enforce its own rules and to keep the boosters from subsidizing their programs?

**Weston:** I shouldn't say the NCAA has been weakened. Without subpoena power, they are trying to change the enforcement process, so it relies on self-reporting and the powers of the conference at the conference level. The NCAA doesn't have that type of power, so they are accountable to all of the member



institutions, especially the big schools about which we have concerns. I don't know if the conferences are as concerned. There's a power-shift that goes to the conference level.

**Mitten:** Having been an anti-trust lawyer for a number of years advising trading, and the NCAA is basically a "trade association," it is really hard for associations to agree upon rules and then to effectively police cheating. I think you're going to need an independent third party, if that's what you really want to do. I mean who catches entities engaged in price fixing and market division? It's the Justice Department's antitrust division.

**Audience Member:** Thank you guys for being here. One of the things I wanted to ask, what are you guys' thoughts regarding player's associations for the college system? It's been my observation that players have basically no rights.

**Karcher:** First, there is one. It's called the National College Players Association out in California. The issue then is then, what leverage or power can it get without a labor union or a true formation under the National Labor and Relations Act? There are some who make very convincing arguments, some very smart people, in fact my former sports law professor has written a fabulous article as to why he believes that college athletes have the ability to even form a labor union under the labor laws based on the control they are under the university, that they fit the definition of an employee for purposes of the NLRA. Putting that aside, I think the inevitable result is some sort of continued organization. We're seeing it happening in a variety of forms, and what happens is the media brushes this stuff aside. When top players get on a conference call and they decide that they are going to wear a wristband with the letters APA for "All Players United." You can say that didn't really do anything because the message wasn't clear what they were getting at, and nobody really spoke to what it was about. To me, it's extremely significant because all that matters is what they decided on that call, what it means, and what they are trying to accomplish, right? It doesn't really matter other than that.

The more that they are able to get organized, whether it's through an association or whether it's sort of informally on their own. I think that you're going to see some of that. I don't know how long it will take. I just think it's inevitable based on the revenue that's going up, and their staying the same. It's going to come to a point where a player says, "Hey let's talk if you want me to show up today." Players have done that before. Before a championship basketball game years ago, where they were literally not going to play. When March Madness started, they weren't even going to play. They were just going to let the ball roll out there. When does it go that step from that type of discussion and thinking about it and talking about it to doing it. I don't think it's that big of a step, that's my personal opinion.

**Weston:** I agree that it's long overdue and the players deserve to have a voice in this process. The pie is getting larger, the opportunities for more revenue for participation are there, and all this litigation is screaming for it. If the parties can come to more of a problem solving approach on how we can all participate and get together makes complete sense.

**Mitten:** Here's an interesting take on it. If what Rick suggests is that the players, without unionizing, just collectively get together and say, "We're not going to play." Now the real interesting thing is whether that is an economic boycott which would be subject to Section I of the Sherman Act or, if it's more of a claim to get political or economic rights, which would not be. I think it's a little bit more of an open question than you suggest. I could see if the NCAA starts losing some anti-trust suits—and it's notable that this Agnew case out of the 7th Circuit, which is, by far, the most conservative circuit on antitrust issues, is now saying "these sorts of amateurism rules are, in essence, an agreement among competitors to reduce or limit economic competition." The NCAA universities could well have an interest in these college athletes being professional athletes, having them unionize so they are immune from antitrust suits under the labors non-statutory exemption, so it could conceivably happen that way.

**Audience Member:** Isn't the real problem potentially solved if you had professional alternatives for these athletes, like with the swimming example we had earlier? So a student actually has a viable choice and is choosing to live by these rules as opposed to basketball and football where they really have no choice and therefore creates these tensions with a captive labor market. So if we had some option like in college and pro baseball, wouldn't that resolve all of this?

**Levien:** I think that's a very good point. It's something that is discussed in the basketball context because the NBA has gone to this "one and done" rule when you're out of high school and before you turn professional. The issue there is that there are so many athletes that I speak to who say, "I never wanted to be a college player, they are forcing me to go to school," and they are happy it's a one and done rule because by the time a school catches up that they aren't going to class, they are done. The whole thing is façade and I think it's an issue because there are a lot of young people who, and this is a very small minority of folks, but who are good enough to be professional. By forcing them into a college system where they don't want to be, it doesn't seem like the right alternative.

**Karcher:** Yeah that rule will be challenged soon. The way the NCAA rule works with basketball, I still don't understand. I will read it over and over again, and I don't get it. It says that a player must withdraw from the draft before the draft occurs. So a player must find out and decide whether they want to be drafted and withdraw before the draft occurs. How do you know whether you want to play pro-ball until the draft occurs? Shouldn't the withdraw date for the NCAA be after the draft? It used to be, but they moved it up before the draft so the player has to withdraw from the draft before the draft date even occurs. How does a player do that? I don't know.

**Levien:** You're absolutely right. It's gotten worse and worse because what the schools have done is move that withdraw date up earlier and earlier, giving the player less information. The reason the schools want that is because athletic program and

basketball teams want to know who is coming back so they can decide who to recruit. It used to be that until a week before the draft to withdraw and that was into June, which would put tremendous pressure on the college coach saying, “I’m not sure if this guy is coming back; I don’t know who I should be recruiting.” Then the recruits didn’t want to come if they didn’t have knowledge about who was leaving and who was staying. Now they moved that date up to April. The draft is in late June, but the withdraw date is in April. The whole process you go through from making a decision about whether to turn professional and know your status is months away and you’ve got to decide whether or not you want to turn professional and you can’t go back to school or not.

**Audience Member:** So where does education come into play? All we talk about is money. I mean you say they don’t want to go to school. What about those athletes who want to come back and get a degree but now they’ve left too early? I believe that is an important conversation and it’s one we’ve not talked about .

**Karcher:** I think the NCAA could probably do more that way—to put the emphasis on education. I would agree with you and I think that they could reduce practice time. I think they could reduce the workload. All this conference realignment makes it more difficult for the players in college sports with the travel and everything, as well as the amount of time they are out of the classroom. If it truly is an education and after sports is about an education, I think they should make the rules so it allows the athletes to get more of it. So, the answer to the question is part of the rules and requirements within the system itself.

**Mitten:** I think the realistic thing is, you have to give college athletes the opportunity to focus on their education after they are done with their college career. It’s pretty difficult for anyone to graduate in four years, but especially when you are trying to combine it with the demands of any intercollegiate sport. Jim Delany came out in favor of free tuition for collegiate athletes. I would say so long as you’re in good standing and making some reasonable progress (which we might need to lower that a little

bit), then OK. But I think part of the reason we like college sports is that these are students and it is because of the educational aspect. That's the part that gets really overshadowed and marginalized by commercialization. But that's really where the problem is, in my opinion.

**Levien:** One thing I want to add touches on the survey that William King brought up. He said that fifty percent of Division II athletes think they will play professionally. There certainly needs to be greater transparency and greater information for these student-athletes, because all these students that say I don't want to go to school, I want to play pro, ninety plus percent of them are flat wrong about their opportunity. They don't really understand the opportunities that presented to them as a college athlete: to get a free education, and what that can do for their lives long beyond their playing days.

**King:** I still think that even if someone doesn't want to be in school that the college experience is a positive thing. It gives kids, especially those from a small town who really had not seen much of the world or know anybody from outside of their county, exposure to the world and that's a positive thing in that regard. For the schools I've worked with, it's amazing how much time, effort, and money they spend trying to help a student-athlete get an education, and sometimes making them; even the ones that don't want to. The rules are there to say you have to meet certain minimums in order remain eligible, and the schools have to abide by them. The time I've spent doing this work, the growth of academic centers, academic support staff, mandatory study hall, tutoring, mentoring, and academic advisor meetings every week is now the norm. For a lot of the kids, if you gave them the choice that you can play for three years in a semi-pro football league or you can play in the SEC and you don't have to go to class if you choose option one, a lot of them would choose that. That's because they are seventeen and eighteen years old and I just have to believe the end product that they is some good that comes out of it. There are people on campus that want them to do well.

**Audience Member:** I actually work in the academic center for athletics. Is there any move or shift to possibly follow the European model and go to a more professional organization for students like Jadaveon Clowney or LeBron James, who's ready to go pro but may not be completely ready mentally and maturity wise? Because there has to be, if you're going to make them go somewhere before going professional. There are always mentors and managers available.

**Weston:** How many people watch the minor league baseball?

**Mitten:** To pick up on your education thing, one of the things that opened my eyes is George Koonce who played for the Packers for several years. I was on his Ph.D. dissertation committee and he focused on why there are so many NFL players who are broke, divorced, and in really dire straits. His real focus was when you're so wrapped up as an athlete, you don't take advantage of the educational opportunities. It's a wonderful dissertation that's going to come out in the book. Even football players who make millions of dollars after their career is over when they are very young, that's not going to carry them all the way through. So many of them wish they would have realized the educational benefits that they should have taken advantage of. I think that's the thing that doesn't get focused on. \$100,000 isn't going to go very far at all. That's why I think we have got to provide more educational opportunities. In the long run, the vast majority of student-athletes are going to be a lot better off with education. It just has to be done somehow.

**Berry:** On that note, thank you all so much for coming. This was a fantastic event.