

WITH MANY ADVISORS THEY SUCCEED:
FIXING BASEBALL AMATEURISM IN THE POST-*OLIVER* NCAA

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Amateurism in college sports is at a crossroads. As the lines between amateur and professional become further blurred, the National Collegiate Athletic Association (hereafter “NCAA”) stands firm in its vision of the pure and uncorrupted student-athlete as the basis of its governance. While young athletes need to make decisions that will affect their lives for years to come, the NCAA’s inflexible stance on their amateurism rules become less idealistic and more misguided and stubborn. This is particularly evident in college baseball, where their unyielding bar on agents and advisors has created a system that increasingly appears likely to break down.

This break in the system centers on NCAA Bylaw 12.3.2.1. This bylaw sets prohibitions on student-athletes’ representation during negotiations with professional sports organizations. Bylaw 12.3.2.1 states that student-athletes may not be represented by a lawyer “during discussions of a contract offer with a professional organization” nor may a lawyer have any “direct contact with a professional sports organization” on their behalf.¹

The NCAA is experiencing increasing difficulty enforcing this policy since it has been essentially declared unenforceable from both a legal and public policy standpoint. In *Oliver v. NCAA*, Judge Tygh Tone compared the rule to a patient hiring a doctor, but is told by his insurance company that the doctor cannot be present during a surgical consultation since the doctor’s presence “may improve his patient’s decision making power.”² In this spirit, Judge Tone ruled Bylaw 12.3.2.1 unenforceable as “unreliable (capricious) and illogical (arbitrary).”³

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¹ NCAA MANUAL, Bylaw 12.3.2.1, at 69. <http://www.ncaapublications.com/productdownloads/D110.pdf>.

² *Oliver v. NCAA*, 155 Ohio Misc. 2d 17 (Ohio C.P. 2009).

³ *Id.*

Oliver's settlement of the case preserved the NCAA's ability to suspend players for the use of legal counsel – at least until the bylaw is inevitably challenged again. The NCAA has a choice: they can continue enforcing the bylaw, or they can work towards helping student-athletes in light of the *Oliver* decision.⁴ A modern and more realistic approach would allow the NCAA's vision of amateurism to continue past *Oliver*'s legacy.

Baseball is unlike any other professional sport because student-athletes can enter the professional ranks very early to take advantage of their clubs' minor league training programs. A player who stays in college would enter the minor leagues around age 21-23, giving him a roughly five-year disadvantage against players who turn professional directly after high school. Given these circumstances, finding the best course is extremely difficult without knowing the chances of having a successful career.

One problem lies with the increasingly blurred line between agents and advisors in amateur baseball. An advisor would merely provide guidance on when to pursue a professional career. Without accessible resources, players are forced to turn to agents to receive this advice and the NCAA is concerned about having agents as advisors since they would have financial motivation in having their clients turn professional. But Judge Tone alluded, this decision requires considerable counseling; given its life-changing nature, it is imperative that student-athletes have an avenue to obtain informed assistance in their decision-making process.⁵

It is important to note that athletes in other sports are under similar restrictions. But this issue is not nearly as pertinent because the draft process is handled very differently. In the National Basketball Association (hereafter "NBA"), players must attend college for at least one

⁴ Darren Heitner. "The End Of The Andy Oliver Affair." *Sports Agent Blog*. <http://www.sportsagentblog.com/2009/10/12/the-end-of-the-andy-oliver-affair/>. (October 12, 2009) (last visited March 24, 2013).

⁵ *Oliver v. NCAA*, 155 Ohio Misc. 2d 17 (Ohio C.P. 2009).

year before they can enter the NBA Draft. Similarly in the National Football League (hereafter “NFL”), players must stay in college until their junior year before turning professional.

Furthermore, the NFL and NBA both have advisory councils where student-athletes can turn to find out where they stand in the upcoming draft. These draft advisory boards serve as impartial counseling services where draft-eligible athletes can submit a short application and receive back a report on their chances. They receive this well before they have to declare, giving them the opportunity to assess their chances before having to make their decision.

This practice is something that baseball can use, as it was developed specifically to combat the problems posed by Bylaw 12.3.2.1. History has shown that it works. When the NFL began to allow underclassmen in its draft in 1989 it had similar issues: too many underclassmen would declare for the draft because of the influence of agents.⁶ Out of the first 165 underclassmen to enter the draft, 76 went undrafted at a time where the NFL Draft had 12 rounds instead of the contemporary seven.⁷ But the invention of the NFL Draft Advisory Board helped solve this problem; out of 66 underclassmen in the 2012 Draft, only 21 went undrafted with 34 underclassmen drafted in the first three rounds.⁸ Significantly fewer prospects threw away their educations based on bad advice to turn professional early.

Unfortunately in baseball it is harder to evaluate individual prospects due to the sheer number that are drafted each year. In 2012, over 1,200 players were drafted by Major League Baseball (hereafter “MLB”) organizations in 40 rounds compared to just 60 and 253 players

⁶ Andrew Miller. “NFL Draft Advisory Board has impact on underclassmen decisions.” *The Post and Courier*. <http://www.postandcourier.com/article/20120425/PC20/120429560/1032>. (April 25, 2012) (last visited March 8, 2013).

⁷ *Id.*

⁸ “The 2012 NFL Draft: How The Underclassmen Fared.” *Canespace*. <http://canspace.typepad.com/canspace/2012/05/the-2012-nfl-draft-how-the-underclassmen-fared.html>. (May 8, 2012) (last visited March 8, 2013).

drafted by NBA and NFL teams.⁹ This requires more work and resources to accurately determine each baseball player's draft chances.

A player would be given the most accurate projections by clearly defining what grade they would receive. Even in the NFL and NBA, players are not given completely defined draft positions. For example, in the NFL prospects are given one of five grades: a first round grade, a second round grade, a third round grade, a fourth through seventh round grade or a grade showing that the player is not likely to be drafted.¹⁰

Similarly, in baseball an advisory board can give grades in ranges that align with the differences in draft slots according to the new rules implemented in the 2012 Collective Bargaining Agreement. For example in 2012, a player with a first round grade could expect a signing bonus anywhere between \$1.6 million and \$7.2 million.¹¹ But a player rated as a fifth through tenth round pick can expect a signing bonus within a much narrower range of \$125,000 to \$269,700.¹² This allows the Draft Advisory Board to give flexible grades based on large draft-round ranges while still not giving a high range of potential signing bonuses. MLB scouts already rank minor league players with a numerical value system, so the idea is there and ready to be put to use.

⁹ 2012 NFL Draft, http://en.wikipedia.org/w/index.php?title=2012_NFL_Draft&oldid=542752263. (last visited Mar. 8, 2013).; 2012 NBA Draft, http://en.wikipedia.org/w/index.php?title=2012_NBA_Draft&oldid=542971074. (last visited Mar. 8, 2013).; 2012 MLB Draft,

http://en.wikipedia.org/w/index.php?title=2012_MLB_Draft&oldid=542752263. (last visited March 8, 2013).

¹⁰ Andrew Miller. "NFL Draft Advisory Board has impact on underclassmen decisions." *The Post and Courier*. <http://www.postandcourier.com/article/20120425/PC20/120429560/1032>. (April 25, 2012) (last visited March 8, 2013)

¹¹ Staff Report. "Slots You Can Believe In." *Baseball America*.

<http://www.baseballamerica.com/today/draft/news/2012/2613398.html>. (May 16, 2012) (last visited March 8, 2013)

¹² *Id.*

In this regard, the new Draft Advisory Board can give grades along the following framework (based on 2012 signing bonuses):¹³

Grade	Pick Range	Highest Bonus	Lowest Bonus
First Round	1-30	\$ 7,200,000	\$ 1,600,000
Supplemental First Round to Second Round	31-95	\$ 1,575,000	\$ 500,000
Third Round to Fourth Round	96-158	\$ 495,200	\$ 272,300
Fifth Round to Tenth Round	159-338	\$ 269,700	\$ 125,000
Eleventh Round to Fortieth Round	339+	\$ 125,000	\$ -

This new baseball advisory board could also evaluate a player’s future draft potential as they mature both on and off the field, given their specific circumstances. Showing a comparison between a player’s current and future draft stock with proper weight given to the possibility of injury will help decide whether the risks of staying in school to pursue a degree outweighs his draft chances at the specific moment in his career.

An efficient composition of the board could also lead to effective counseling. The NFL and NBA boards are composed of player personnel executives from every team in each league who give a grade for each athlete based on game tape submitted by their schools.¹⁴ This provides players with guidance from people knowledgeable about player evaluation while removing the perils of professional representation.

But since the NFL and NBA have significantly fewer prospects looking to enter the draft and thus applying for evaluation, the MLB system must be set up to evaluate and counsel thousands of young student-athletes in a limited timeframe. In this regard, a better set-up would consist of a number of qualified but unemployed scouts, player personnel executives and young

¹³ *Id.*

¹⁴ Andrew Miller. “NFL Draft Advisory Board has impact on underclassmen decisions.” *The Post and Courier*. <http://www.postandcourier.com/article/20120425/PC20/120429560/1032>. (April 25, 2012) (last visited March 8, 2013); Lou Pascucci. “Leslie Requests Report from NBA Draft Advisory Committee.” *Pack Insider*. <http://packinsider.com/2012/04/leslie-requests-report-from-nba-draft-advisory-committee/>. (April 4, 2013) (last visited March 8, 2013).

baseball professionals who can commit to the board full time. The board would have to either be large enough to handle a huge amount of players or centered regionally with a number of different boards. This would allow the board to give each player the careful scrutiny necessary so they have the information necessary to make an informed decision.

This board could accomplish a number of different things the NFL and NBA systems cannot. Designed properly, this board could give personal attention to individual student-athletes where a staff member has a group of student-athletes that he or she “represents,” giving them informed advice on navigating the draft process while not compromising the student-athletes’ eligibility. Essentially, these staff members would be doing exactly what agents are supposed to do for their draft prospects but without an agent’s financial motivation. These advisors must be trained not just in player evaluation but in counseling and people skills in order to truly help these young student-athletes.

It’s been shown in the NFL and NBA that the creation of a draft advisory board could help the NCAA solve its problems in baseball. Taking the best practices from the other two systems with special consideration for baseball’s fundamental differences will allow student-athletes to make informed decisions on whether to turn professional without the influence of agents. While the draft may never perfectly align the interests of players, the NCAA and MLB clubs, this addition to the current system gives players the resources they require to make a life-changing decision while still protecting the core ideals of amateur sports.