

# SPORTS LAW INTRODUCTION

1. ARE ATHLETES OVERPAID ? **DEFINE WORTH OR VALUE**. KERSHAW AND PRICE (7 FOR 215), STANTON (13 FOR 325), DELLAVADOVA (3 FOR 30), LATEST NBA SALARIES.
2. WHY IS FOOTBALL MOST PROFITABLE AND POPULAR AMERICAN SPORT ?
  - A. MADE FOR VIDEO
  - B. VIOLENCE
  - C. GAMBLING (\$ 3.64 BILL FANTASY)
  - D. 16 GAMES (ALL AN EVENT)
3. WHY ARE FOOTBALL PLAYERS PAID LESS WITH LESS SECURITY THAN MLB AND NBA ?
4. ARE TICKET PRICES RISING BECAUSE PLAYER SALARIES ARE RISING ?

# WHY ARE PLAYERS SALARIES RISING ?

1. REVENUE UP (REALLY UP) – (WHEN DOES 27 = 25 ? NFL. 2010 = \$ 8.5 BIL; 2018 = OVER \$ 16.5 BIL).

A. **TICKETS** – PSL, DIFFERENTIAL PRICING, STUB HUB

B. **MEDIA** – NETWORKS, NFL (NETWORK, TICKET, RED ZONE)

STREAMING (APPS, PHONE, ETC), RADIO (SATELLITE) **2021** – NEW NEGOTIATIONS ON TV DEALS

C. **MERCHANDISING**

2. ELIMINATION OF MONOPOLISTIC PRACTICES (MOSTLY) AND REAL COLLECTIVE BARGAINING AGREEMENTS (CURRENT CBA EXPIRES AFTER 2020 SEASON)

3. DISPERSION OF INFORMATION

4. GLORIFICATION OF THE INDIVIDUAL

# 2019 MOST VALUABLE SPORTS TEAMS (FORBES)

1. **2012** – 674 MILLION (RANGERS) – 2.2 BILLION (MAN U)  
**2019** - 2.08 BILLION (SAINTS) – 5 BILLION (COWBOYS)
2. **2012** – 1 TEAM OVER 2 BILLION; **2019** – ALL 50 OVER 2 B.
3. 29 NFL; 9 MLB; 8 SOCCER; 7 NBA
4. 1. COWBOYS – 5 B  
2. NY YANKEES – 4.6 B  
3. REAL MADRID – 4.24 B  
4. BARCELONA – 4.02 B
5. NY KNICKS – 4 B  
6. MAN U - 3.81 B  
7. NE PATRIOTS – 3.8 B

# ARE AMATEUR SPORTS OUT OF CONTROL (CHILDREN) ?

1. DR. NASSAR VICTIM (GYMNAST) “PEOPLE DON’T UNDERSTAND HOW MANY BROKEN GIRLS IT TAKES TO PRODUCE AN ELITE ATHLETE.” July 29, 2019, TIME MAGAZINE. DON’T KNOW OR DON’T CARE ?
2. TRAVEL TEAM, AAU. SPEED COACHES, PITCH COACHES, HITTING INSTRUCTORS, WEIGHT TRAINERS, CONDITIONING, ETC. (\$ 30,000 PER YEAR)
3. WHAT KIND OF PEOPLE ARE PRO ATHLETES ? FOOTBALL PLAYERS – VIOLENT ?
4. THE SCHOLARSHIP MYTH.
5. USA TODAY – COLLEGE RECRUITING COSTS (2018) SEC \$1.3 M; ACC \$938; BIG 10 \$855; PAC 12 \$708. 52 POWER 5 PUBLIC SPENT \$54 M – 2 YEARS AGO \$35.5M. GEORGIA – \$581 IN 2013 – \$2.6M IN 2018. GEORGIA, ALABAMA AND TENN. TRANSPORTATION, LODGING AND MEALS (PRIVATE PLANES).

# PLAYERS SOURCES OF INCOME:

## Team Sports:

1. INDIVIDUAL BARGAINING WITH TEAM
2. BENEFITS FROM COLLECTIVE BARGAINING – IN CBA.
3. ENDORSEMENTS – MOST GET \$0. TEAM = UNIFORM; PLAYER = IMAGE AND LIKENESS.
4. NO SIGNIFICANT COSTS IN TEAM SPORTS.

## Individual Sports:

Winnings on tour, schedule, net of all costs and endorsements/appearances.

WITH PLAYER SALARIES SKYROCKETING, WHY ARE 78% OF NFL PLAYERS AND 60% OF NBA PLAYERS IN FINANCIAL DIFFICULTY WITHIN TWO OR THREE YEARS AFTER RETIREMENT ?

1. SPENDING (PARTIES, FAMILIES)
2. DIVORCE AND CHILD SUPPORT
3. BAD INVESTMENTS
4. UNSOPHISTICATED BACKGROUNDS
5. SHORTER CAREERS
6. MEDICAL EXPENSES

DOES ANYONE CARE ?

## MANAGEMENT REVENUE:

1. WHAT DO YOU OWN WHEN YOU OWN A TEAM ?
  - A. STADIUM AND/OR PRACTICE FACILITY (OR CHEAP LEASE)
  - B. NAME, COLORS, LOGO
  - C. RIGHTS TO PLAYERS CONTRACTS
  - D. MONOPOLY RIGHTS (USUALLY 75 MILES).
  - E. A SMALL BUSINESS IN MANY WAYS.
  
2. SALARY CAP – FIXED COSTS ON BIGGEST EXPENSE ITEM.

## MANAGEMENT INCOME :

1. **TICKETS** – (NBA AND MLB = 80%/20%; NFL = 60%/40%). PREMIUM GAME DIFFERENTIAL PRICING; STUB HUB PARTNERSHIP. **NHL** HOME KEEPS 100%; **MLS** A SINGLE ENTITY.
2. **PERSONAL SEAT LICENSE, LUXURY BOX FEE, JERRY JONES STADIUM SIGNAGE** – NO SPLIT.
3. **PARKING AND CONCESSIONS** - NO SPLIT.
4. **MEDIA REVENUE** – OLD RADIO AND TV. **NATIONAL SPLIT EQUAL, LOCAL KEEP.**  
**NEW MEDIA** – APPS, STREAMING, NFL NETWORK, NFL TICKET, ETC.  
**PAY PER VIEW** – SUPER BOWL AUDIENCE = 2019 – 98.2; 2018 – 103.4 mil; 2017 – 111.3 mil; 2016 – 111.9 mil; 2015 – 114 mil. ASSUME 70 MILLION SETS X \$ 50 = \$ 3.5 BILLION (INTERNATIONAL). COLLEGE – CONFERENCE DEALS, LONGHORN NETWORK, PLAYOFFS (**ESPN –12 YEARS - \$ 7.3 BILLION**). WHY PAY ? **LIVE AND DEMOGRAPHICS.** WHY ARE RATINGS DOWN 12% OVER LAST 2 YEARS ?



MASN DISPUTE – 2006 – IN RETURN OF TERRITORIAL INFRINGEMENT, ORIOLES OWN 90%, NATIONALS 10% (2019 - 77% - 23%) NATIONALS PICK UP 1% PER YEAR STARTING IN 2008, BUT MAX AT 33%. RIGHTS FEES TO BE NEGOTIATED EVERY 5 YEARS . HERE 2012 -2016. DISPUTES TO BE HEARD BY OWNER ARBITRATION.

MASN REVENUE FROM ADS AND MONTHLY SUBSCRIBER FEES. FEES LOW – BELOW AVERAGE. ORIOLES AND NATS SPLIT RIGHTS FEES EQUALLY. BUT RIGHTS FEE SUBJECT TO 34% MLB REVENUE SHARING. ORIOLES KEPT LOW - \$ 29 MIL IN 2011. BUT VALUE OF MASN INCREASES WITH \$\$ NOT PAID OUT – 2014 - \$ 492 MIL.

FOR 2012 – 2016, NATIONALS WANTED \$100 MIL, ORIOLES \$ 35 MIL IN RIGHTS FEES. 3 OWNER MLB OWNER PANEL FOR NATS – SAT ON DECISION FOR 2 YEARS TO COMPROMISE. NY STATE COURT OVERTURNED ON CONFLICT OF SAME LAW FIRM REPRESENTING NATS AND MLB. ON APPEAL. NY COURT RULED IN FAVOR OF ORIOLES BUT SENT BACK TO MLB. \$100 MIL IN DISPUTE. MLB PANEL AND JUDGE RULED IN NATS FAVOR. 2017 -2021 RGTS NOW IN DISPUTE

5. **MERCHANDISING, LICENSING, SPONSORSHIPS.** EXPLODING. ESPECIALLY APPAREL. MERCHANDISING REVENUE NOT SPLIT IF SOLD AT TEAM "STORE".

6. **FRANCHISE APPRECIATION.** BRONCOS – 1981 – BOUGHT FOR \$ 35 MIL – SOLD IN 1984 FOR \$ 70 MIL. **RAMS** GO FROM 1.45 BIL TO 2.9 BIL AFTER MOVE IS FINALIZED (\$ 1.6 BIL NEW STADIUM AND GROUNDS). 2016 – 3 BIL.; 2019 – 3.2  
**2016 (2015 SEASON)** – **DALLAS** AT \$4 BIL (\$ 620 MIL REVENUE)(BUY 1989 FOR \$ 140 MIL – 2,757%) **GREEN BAY** 10<sup>TH</sup> AT \$ 1.95 BIL (\$ 347 MIL) AND **BUFF** LAST AT \$ 1.4 BIL (\$ 296 MIL).

**2017 (2016 SEASON)** – **DALLAS** – 4.8; **GB** – 14<sup>TH</sup> = 2.55; **BUFF** LAST 1.6

**2019 (2018 SEASON)** – **DALLAS** – 5 (30 YEAR RETURN – 3,571%); **GB** – 12<sup>TH</sup> = 2.625; **BALT**- 14<sup>TH</sup> = 2.590; **BUFF** LAST 1.6. **ORIOLES** - \$172 M IN 1993 - \$ 1.3 B IN 2019.

LA CLIPPERS WHEN STERLING IS "FORCED" TO SELL FOR RACIST COMMENTS AFTER 2014 SEASON – S. BALMER PAYS \$ 2 BIL – THOUGHT TO BE WORTH \$ 600 MIL. (NEW NBA TV DEAL – TEAMS FROM \$ 20 MIL - \$ 75 MIL PER.)

**KC ROYALS** - \$ 96 M IN 2000 – FORBES VALUE NOW \$1.1 B – SALE THAT NUMBER

7. **EXPANSION AND MOVEMENT FEES.** LA RAMS - \$ 550 MIL. TO MOVE.  
FEE V MEDIA DILUTION IF EXPAND. NEW TEAM NEEDS TO INCREASE POT.

8. **TAX BENEFITS:**

A. FEDERAL - SINCE 2005, DEPRECIATE 100% OVER 15 YEARS.  
DODGERS – INSURANCE COMPANY - \$ 1.5 BIL = \$ 100 MIL  
DEDUCTION AGAINST OTHER INCOME EVERY YEAR FOR  
15 YEARS.

B. LOCAL - FREQUENTLY RECEIVE PROPERTY TAX CONCESSIONS  
OR OTHER LOCAL TAX EXEMPTIONS

9. **MOVEMENT CONCESSIONS** – LA GETS TEAM, LAS VEGAS. OAKLAND AND  
SAN DIEGO USING THREAT TO TRY AND GET BETTER STADIUM DEALS. FAILED

10. **STADIUM AND PRACTICE FACILITY** – MOST WANT TO OWN NOW – RENT AT FAVORABLE LEASE TERMS. **DESTINATION VENUE** (LA).

HANDOUT – PACKERS INCOME STATEMENTS

COLLEGES WITH SIMILAR INCOME EXPLOSIONS:

AUBURN

2012		2013	2016	2017
103.7	TOTAL REVENUE	113.7	147.5	147.6
104.5	TOTAL EXPENSE	127.3	132.8	139.7
.865	TOTAL P&L	13.6	14.6	7.8
36.3	FOOTBALL EXPENSE	49.6		
38.59	FOOTBALL PROFIT	33.18		49.1
31.8	DONATIONS	39.4 (31.65 = FOOTBALL)		
2.65	COACHES SEVERANCE	4.85		

WHO BENEFITS FROM INCREASED REVENUE IN COLLEGE ?

# HANDOUTS ON COLLEGE REVENUE

2011 – 12 = 11 SCHOOLS OVER \$ 100 MIL

2014 - 15 = 28 SCHOOLS OVER \$ 100 MIL (18 FROM SEC AND BIG 10)

2017- 18 = 38

SEC	\$ 110.3 MIL	(DIFF. BET. ALABAMA AND MISS ST = \$ 82.4)
BIG 10	103.3	(DIFF. BETWEEN OSU AND RUTGERS = \$ 105.8)
BIG 12	99	(DIFFERENCE BET. TEXAS AND IOWA ST \$113.9)
PAC 12	85.6	
ACC	83.3	

## 2014 FOOTBALL PROFITS:

1. TEXAS \$92, 2.TENN \$ 70, 3. LSU \$ 58, 4. MICH \$ 56, 5. ND \$ 54, 6. GEO \$ 50,  
6. OSU \$ 50, 8. OKLA \$ 48, ... 12. FSU \$ 39, 17. PENN STATE \$ 36, 20. S CAR \$ 28

# 2015-2016 FOOTBALL GROSS INCOME AND PROFIT

1. TEXAS – 127.5 – 97.2
2. TENN - 107.1 – 78.94
3. ALABAMA – 103.9 – 47.6
4. NOTRE DAME – 98.5 – 59.5
5. MICHIGAN – 97.1- 60.5
6. OKLAHOMA – 94.1 – 58.4
7. AUBURN – 92.5 – 50.6
8. GEORGIA – 87.6 – 48.72
9. OHIO STATE – 86.6 – 49.3
10. LSU – 85.7 – 55.24
11. FLORIDA – 83.8 – 51.75
12. PENN ST – 75.5 – 39.3
13. TEXAS AM – 73.7 – 43.75
14. WISCONSIN – 71.2 – 40.4
15. WASHINGTON – 69.1 – 37.3
16. ARKANSAS – 68.92 – 34.7
17. OREGON – 66.6 – 42.83
18. NEBRASKA – 65 – 37.51
19. MICH. STATE – 64.7 – 32.72
20. SO. CAROLINA – 59.6 – 29.63
21. MISSISSIPPI – 56.8 – 27.3
22. IOWA – 56.6 – 25.45
23. FLORIDA ST – 55.7 – 13.2
24. TCU – 52 – 32.55
25. U SOUTH CAL – 51.2 – 20.1

FISCAL 2018 (2017 SEASON)

BIG 10 - \$ 54 M (FISCAL 2013 - \$ 25 M, 2017 - \$ 36 M)

SEC - \$43.7 M

BIG 12 - \$34.7 M

ACC/PAC12 - \$29.5 M

POWER 5 GROSS REVENUE

FY18 - \$ 2.75 B

FY17 - \$ 2.46 B

FY 16 - \$ 2.3 B

FY 15 - \$ 2.1 B

FY 14 - \$ 1.57 B

2011 – SEC GETS 13 YEAR, \$ 3 BIL DEAL WITH ESPN AND CBS.

2014 – SEC NETWORK. IN 9 MONTHS, SEC SCHOOLS WENT FROM  
\$ 20.3 MIL PER YEAR TO \$ 31.2 MIL PER FOR TV SHARE.

COLLEGE FOOTBALL COACHES SALARIES HANDOUT – [USA TODAY IS CLASS OFFICIAL SITE.](#)

2006 – AVG FOOTBALL D1 HC ANNUAL COMPENSATION = \$ 950, 000

2014 - “ “ = \$ 1, 950,000

POWER 5 + ND AVG = \$ 2,950,000.

2006 – 1 HC AT \$ 3,000,000 OR MORE

2014 - 34

2017 - 39      2018 = 24 AT \$ 4,000,000 OR MORE

2006 – 42 HC AT \$ 1,000,000 OR MORE

2015 – 71; 2017 – 78; 2018 - 82



2006 – SEC MEDIAN = \$ 1,450,000

2014 – SEC MEDIAN = \$ 3,200,000; 2016 - \$ 4,100,000; 2018 = \$ 4, 642,000

REMEMBER ASSISTANT COACHES (SEE USA TODAY).

USUALLY TOTAL = % OF HC SALARY – HIGH 50% IN RANGE.

2014 - ASSISTANT PAY UP 52% IN PRIOR 5 YEARS.

2015 – 7 ASSISTANTS AT \$ 1,000,000 OR MORE. 2017 -  
73 ASSISTANTS AT \$ 500,000 OR MORE.

ELKO (\$8 mil for 4 years) AND ARANDA (\$10 mil for 4 years).

57% COLLEGE FOOTBALL PLAYERS BLACK (2015 SEASON)

64% COLLEGE BASKETBALL PLAYERS BLACK

87.5% COLLEGE FOOTBALL HC WHITE

76% COLLEGE BASKETBALL HC WHITE

86.7% COLLEGE ATHLETIC DIRECTORS WHITE.

GAMBLING (FROM ESPN THE MAGAZINE FEB. 15, 2015). BILLIONS ON LINE – REALLY LEFT TO CHANCE ?

FAN DUEL - \$ 624 MIL IN 2014. STILL LOSING MONEY.

2014 – \$ 3.64 BIL IN FANTASY SPORTS  
\$ 3.6 BIL LEGALLY BET IN NEVADA  
\$ 1.62 BIL ON FOOTBALL  
\$ 1.05 BIL ON BASKETBALL  
\$ 681 MIL ON BASEBALL  
\$ 205 MIL ON OTHER SPORTS

NCAA BASKETBALL TOURNAMENT:

\$ 200 MIL LEGAL (2015 375.5;2016 – 422;2017 – 429.5)  
\$ 2.6 BIL ILLEGAL

WORLD WIDE – \$ 5.65 BIL (SOCCER AND TENNIS)

**MURPHY V NCAA** (2018) – SUPREME COURT INVALIDATES PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT ON STATE SOVERIGNTY GROUNDS AND ALLOWS STATES TO LEGALIZE SPORTS BETTING UNLESS CONGRESS PASSES SPECIFIC LEGISLATION REGULATING SPORTS GAMBLING.

HOW WILL THIS CHANGE SPORTS ?

HOW WILL LEAGUES MONETIZE THIS ?

WHERE IS THE REAL MONEY ?

12 STATES HAVE LEGALIZED SPORTS BETTING (FALL 2019)

5 ALLOW MOBILE DEVICES – NEW JERSEY, PENNSYLVANIA, WEST VIRGINIA, IOWA, NEVADA. NEW JERSEY JUST TOPPED NEVADA FOR MOST \$\$\$ BET ON SPORTS.

4 PHYSICAL LOCATION ONLY

3 LEGALIZED BUT HAVEN'T IMPLEMENTED YET.

\$ 150 B IN BOOKIES AND OFF SHORE.

PREDICTING GAMES – NOTHING 100%, BUT IF YOU CAN FOLLOW THE MONEY, YOU WILL BE RIGHT MORE THAN WRONG.

NEWS REPORTS SUPER BOWL 50:

\$ 1.5 BIL BET ON SB 50, 70% ON CAROLINA PANTHERS minus 4 1/2.

IF CAROLINA COVERS

\$ 1050 BIL (PAID TO BETTORS)  
- \$ 105 MIL (VIG TO HOUSE)  
- \$ 450 MIL (LOSING DENVER BETS)  
\$ 493 MIL HOUSE LOSES

IF DENVER COVERS

\$ 450 MIL (PAID TO BETTORS)  
- \$ 45 MIL (VIG TO HOUSE)  
- \$ 1.050 BIL (LOSING CAR BETS)  
\$ 645 MIL HOUSE WINS

THEREFORE WORTH \$ 1.138 BIL (493 + 645) TO THE HOUSE TO HAVE DENVER WIN. IF YOU HAD THAT ON THE LINE, WOULD YOU SPEND \$ 20 MIL TO FIX GAME ? OFFICIALS MAKING \$ 100,000 OR LESS. ODD PLAYS - CATCH NO CATCH FOR PANTHERS ? THOUGHT DENVER PUNT RETURNER HAD CALLED FAIR CATCH ?

GENERAL NEGOTIATIONS:

WHAT IS A GOOD DEAL ?

MED MAL – YOU OPEN AT \$ 1,000,000, HOSPITAL INSURANCE AT \$ 200,000.

WHAT IS LIKELY RESULT ? POSITIONAL, SPLIT DIFFERENCE.

YOU OPEN AT \$ 1,000,000, HOSPITAL INSURANCE AT \$ 25,000. HOW DOES THIS CHANGE THINGS ? PI - OVER/UNDER - HIGH/LOW (CAP MAX = 2.1 MIL, INS AT 1 MIL) ?

HOUSE – PAID \$ 500,000, REAL ESTATE COMPS AT \$ 600,000. WHAT DO YOU LIST IT AT ?

OBJ ? DO BOTH SIDES AGREE HE IS BEST RECEIVER IN FOOTBALL ? \$ 95 MIL OVER 5 - \$65 MIL GUARANTEED.

AROD – OPTS OUT AFTER 2011 SEASON – ONLY OFFER IS \$ 19 MIL PER. YANKEES OFFER HIM \$ 30 PER AND NO PED OUT CLAUSE. WHY ?

## GETTING TO YES BY FISHER AND URY:

1. **POSITIONAL** BARGAINING (SOVIET STYLE – WIN/LOSE) v **PRINCIPLED** BARGAINING (WIN/WIN).
2. **YIELD TO PRINCIPLE, NOT PRESSURE.** CAN'T CONCEDE JUST TO GET IT DONE.
3. **SEPARATE PEOPLE FROM THE PROBLEM.** DON'T LET YOUR EGO OR EMOTIONS BE A FACTOR. LET OTHER SIDE KNOW YOU AS A PERSON. DON'T DEAL WITH PEOPLE PROBLEMS THROUGH SUBSTANTIVE CONCESSIONS. SPEAK FROM YOURSELF, NOT AT THEM EG "I FEEL LET DOWN" INSTEAD OF "YOU LIED".

4. **FOCUS ON INTERESTS, NOT POSITIONS.** ASK QUESTIONS. GO BEHIND NUMBERS TO FIND OUT WHAT THEY REALLY CARE ABOUT – OFTEN BEHIND CONFLICTING POSITIONS ARE COMPATIBLE INTERESTS. SHOW HOW YOUR OFFER ACCOMMODATES THEIR INTERESTS.

AGENT TRYING TO SIGN PLAYER – DO YOU OFFER \$\$\$ ? (FORGET MORALITY)

COACH DISMISSED FOR LYING TO NCAA. BROUGHT IN – TOLD TO RESIGN – DOES. MAKING \$ 40,000 PER MONTH. SCHOOL OFFERS 3 MONTHS AS SEVERANCE. SHOULD HE TAKE IT ? HERE ARE OUR CONCERNS – DUE PROCESS AND LAWYER CONFLICTED. HOW MUCH DO YOU WANT ? OPEN. KEEP DISCUSSING. SCHOOL SAYS DON'T CARE ABOUT LAWYER - LOCK IN SCHOOL, WON'T RELEASE LAWYER. \$ 275. FIGHT OVER LANGUAGE. MORE \$\$ TO RELEASE LAWYER. \$ 320.



5. **INVENT OPTIONS FOR MUTUAL GAIN.** GIVE OTHER SIDE CHOICES. SCHOOL – 275 AND OUR LANGUAGE, 375 AND THEIR LANGUAGE OR ARMAGEDDON.

6. **RELY ON OBJECTIVE CRITERIA** – TRUST BUT VERIFY.

7. B - BEST  
A - ALTERNATIVE  
T - TO  
N - NEGOTIATED  
A - AGREEMENT

OR THE RICH GET RICHER. WHAT ARE LABRON'S ALTERNATIVES TO AGREEMENT? TRY TO CREATE DEMAND FOR YOUR PRODUCT/PERSON. ALL MY PLAYERS APPLIED TO LAW SCHOOL.

8. **CONTINUING RELATIONSHIP v ONE OFF.** ALWAYS NASTIER IF NEVER GOING TO SEE AGAIN.

**WHAT DO YOU DO IF OTHER SIDE SOVIET WITH LEVERAGE ?** UB AND ME. HIRED TO FIX – AGREEMENT UNIVERSITY TAKING TOO MUCH (APP. 45% OF TOTAL LAW INCOME TO UNIVERSITY – 25% HIGH END NATIONALLY) – WILL REMEDY. YEAR 1 AND 2 FINE – LAW KEEPS 66% OF TUITION INCREASE. YEAR 3 – UNIVERSITY 66%. YEAR 4 – TUITION INCREASE = \$ 1.5 MIL, LAW GETS \$ 80,000. ALSO \$ 400,000 CUT TO BUDGET, ADDITIONAL \$ 400,000 FOR FOLLOWING YEAR. **WHAT DO YOU DO ?**

20016 – UNIVERSITY WITH \$ 4 MIL BUDGET SHORTFALL. GOING TO CUT LAW BUDGET. WE HAVE \$ 1.2 MIL IN SALARY SAVINGS FROM RETIREMENTS. UNIVERSITY WANTS ALL OF IT. **WHAT DO YOU DO ?** WE DREW LINE IN SAND – ANYTHING OVER \$ 750,000 UNACCEPTABLE. FUTURE DEAL. UNIVERSITY TOOK ALL OF 3% TUITION INCREASE, SIGNIFICANTLY RAISED YOUR FEES AND TOOK ALL \$ 1.2 MIL IN LAW BUDGET CUT. 2018 - \$ 675,000 + TUT INC

# CLOSIUS GENERAL NEGOTIATION POINTS:

## 1. 3 STAGES OF A NEGOTIATION:

- A. **OPEN** – MOST IMPORTANT – NEVER GET MORE. SETS TONE FOR ENTIRE PROCESS. RUSSIANS IN 1980 OLYMPICS. BASE ON MARKET OR CLIENT, NOT COST. NO ONE CARES ABOUT WHAT YOU PAID FOR IT. ASSUME COACH MARKET IS \$ 50,000, BUT HE WANTS \$ 200,000. WHAT DO YOU DO ? MOST LAWYERS DON'T GET LANDMARK DEAL – PRECEDENT, TOO REASONABLE. TRYING TO GET CLIENTS – 1 OF 500. HOW DO YOU DISTINGUISH YOURSELF ? USUALLY TEAM OR COLLEGE OPENS. RENNIE STENNET (PITTSBURGH PIRATES) STORY.
- B. **MIDDLE** – MOSTLY POSITIONING OR QUESTIONING OR SETTING UP FOR THE CLOSE.

C. **CLOSE** – **COFFEE IS FOR CLOSERS**. TRYING TO GET CLIENT – NOW DOWN TO 3 AND LIKES ALL OF THEM. HOW DO YOU GET THEM TO PICK YOU. STSW AND WILLIAMS & CONNELLY (BIG DC FIRM) COMPETING FOR SAME CASE – HOW DO YOU DISTINGUISH ? WENT A LITTLE CHEAPER (30% v 33%) AND STRESSED PERSONAL SERVICE AND FAMILIARITY WITH FBI AND MARYLAND STATE COURTS. YOUNG LAWYERS TRYING TO SIGN PLAYERS – WHAT IS THE TOUGHEST QUESTION ? WILL YOU SIGN WITH ME ? UB PRESIDENT AND SECOND \$ 5 MIL ON BUILDING GIFT.

2. **PATIENCE** – **ILLIGITIMI NON CARBORUNDUM SUNT**. CLEARLY BIGGEST THING I DO FOR MY CLIENTS. LAWYERS OR CLIENTS WHO WANT A FAST DEAL OR JUST WANT TO GET IT OVER ARE USUALLY GOING TO GET A BELOW MARKET DEAL.

3. **DON'T BE DISHONEST, BUT DON'T TELL EVERYTHING.** SAYING "I WON'T ANSWER THAT" IS NOT LYING. DON'T BE A HARVARD LAW GRAD. IF OTHER SIDE ASKS THE WRONG QUESTION, ANSWER WHAT THEY ASKED, NOT WHAT THEY SHOULD HAVE ASKED. UB AND US NEWS EMPLOYMENT DATA. IF YOUR CLIENT HAS ONE GUN AND HE KEEPS IT IN HIS CAR AND THE OTHER SIDE ASKS IF HE HAS A GUN IN HIS HOUSE, THE CORRECT ANSWER IS "NO".

4. **DEADLINES** – MOST CONCESSIONS HAPPEN ON OR NEAR REAL DEADLINE. BUT WHAT IS REAL AND WHAT IS FICTITIOUS ? ALWAYS QUESTION WHETHER DEADLINE IS REAL. CHARGERS AND JOEY BOSA – REPORTING TO FIRST DAY OF CAMP v SD PRESS RELEASE V FIRST GAME V CBA MUST SIGN DEADLINE. BATNA

5. **PERCEPTIONS** – HUMANS EXAGGERATE THE BAD EFFECTS OF EVERYTHING – NEVER AS BAD YOU THINK IT WILL BE OVER TIME. 9 YEAR OLD RIDING BIKE, 30 YEAR OLD BREAKING UP WITH BOYFRIEND/GIRLFRIEND. PRECEDENT AND LEGITIMACY (NO CASH CHECKS SIGN) ALWAYS NEED TO BE QUESTIONED. JUST BECAUSE THEY HAVE ALWAYS DONE IT ONE WAY DOESN'T MEAN THEY CAN'T CHANGE FOR YOU – YOU WANT TO BE AN **EXCEPTION**. LEVERAGE.

6. **SILENCE**. ENOUGH SAID.

7. **PREPARATION**. PUT IN THE TIME. PROBLEM WITH PUBLIC DEFENDERS. WORK WEEKENDS. HARD IF GETTING INFORMATION DIFFICULT. DIFFICULT IN 2 WAYS – CAN'T GET ANYTHING, OTHER SIDE GIVES YOU EVERYTHING (PROSECUTOR AND SOLO PRACTITIONER – 2,000 PAGES)

8. **MEDIUM** – IN PERSON, PHONE, EMAIL. EASIER TO BE NASTY IF LESS PERSONAL. TAKE TIME FOR REFLECTION – HANG UP, THINK AND CALL BACK IF PHONE. WORSE ON EMAIL.

9. **BE THE DRAFTER** – BIG FIRM ADVICE. MORE BILLABLE HOURS AND NO ONE KNOWS MY WRITING BETTER THAN ME. ORGANIZATION, LANGUAGE – YOU’LL BE STUNNED AT WHAT YOU GET IN EVEN IF NOT TRYING TO BE DECEPTIVE – CAN’T DISCUSS EVERYTHING IN ADVANCE. IF YOU DIDN’T DRAFT IT, READ IT OVER CAREFULLY.

10. DEAL WITH PERSON WITH **AUTHORITY**. BANKS AND CAR DEALERS.

11. GET OTHER SIDE TO INVEST **TIME AND MONEY** IN THE PROCESS. CAR DEALERS.

## DIRTY TRICKS:

1. COMMON RESPONSE – PUT UP WITH IT (APPEASE) IN HOPES OF GOING AWAY (NEVILLE CHAMBERLAIN v HITLER) OR RESPOND IN KIND.
2. GETTING TO YES – COUNTER WITH PRINCIPLED NEGOTIATION REGARDING THE PROCESS OR A DIRTY TRICK RECOGNIZED AND DISCUSSED LOSES ITS EFFECTIVENESS (EG SILENCE- JUST NO \$\$\$).

## TYPE 1 – DELIBERATE DECEPTION

1. FALSE STATEMENTS. VERIFY. UNLESS GOOD REASON TO TRUST, DON'T.
2. CHECK AUTHORITY



## TYPE 2 – PSYCHOLOGICAL WARFARE

1. ASK YOUR SELF IF YOU FEEL ODDLY UNCOMFORTABLE – MANY BOOKS ON TRICKS.
2. LOWER CHAIRS; LOOK INTO THE SUN; AVOID EYE CONTACT; INTERRUPTIONS AND REQUESTS TO REPEAT; SPILL DRINK ON YOU.

## TYPE 3 – POSITIONAL PRESSURE TACTICS

1. PERSONAL ATTACKS – “WHEN YOU GET MORE EXPERIENCE, YOU’LL UNDERSTAND HOW STUPID THAT IS.” PROFANITY.
2. MAKE YOU FIGHT FOR THE OBVIOUS. YOU REPRESENT A FIRST ROUND NFL DRAFT PICK AND YOU ASK FOR A SIGNING BONUS. REPLY - “I DON’T KNOW THAT EVERY FIRST ROUND DRAFT PICK GETS A SIGNING BONUS.”

3. REFUSAL TO NEGOTIATE. STORY – ENTERTAIN UNTIL HOURS BEFORE FLIGHT LEAVES.

4. EXTREME DEMANDS. KNOW YOU ARE IN FOR A TOUGH ONE.

5. LOCK IN TACTICS. FREQUENTLY STATEMENTS TO THE MEDIA.

6. MUTT AND JEFF – GOOD GUY/BAD GUY PARTNERS. POPULAR WITH COPS.

7. TAKE IT OR LEAVE IT – WON'T BE ANOTHER DIME. BRINKMANSHIP ALL OVER SPORTS. USUALLY BLUFFING, BUT NEED TO ASSESS RISK – WHAT DO YOU HAVE v WHAT ARE YOU RISKING

8. NOW I HAVE TO TAKE IT TO MY BOSS – CAR DEALERS.

DATA SAYS WOMEN PAY MORE FOR CARS – WHY ?

# TEAM SPORTS CONTRACT COMPONENTS (PLAYERS AND COACHES)

## 1. PREPLAY COMPENSATION

- A. **SIGNING BONUS** – IN NFL, MOST FREQUENT GUARANTY. NFL AND MLB SLOTTED (BIGGEST PART OF MINOR LEAGUE CONTRACT).
- B. **WORK OUT BONUS** – USUALLY NFL ONLY.
- C. **REPORTING BONUS** – NO HOLDOUT – REPORT TO CAMP ON TIME
- D. **ACTIVE ROSTER BONUS** – CAN BE SCALED. CAN NEGOTIATE OFF CLUB – ESPECIALLY IN NFL.

## 2. **SALARY** – BASE PAY FOR SERVICES IN DESIGNATED YEAR.

3. **PERFORMANCE BONUS** – AMOUNT FOR OBTAINING SOME KIND OF STATISTICAL ACCOMPLISHMENT (50 HOME RUNS, 1,000 YARDS RUSHING) OR HONOR (CY YOUNG AWARD, ALL NFC). FROM PLAYER'S PERSPECTIVE, BETTER TO STAGGER.
  
4. SECURITY/RISK ALLOCATION. AMOUNT SHOULD CHANGE DEPENDING ON WHO IS TAKING THE RISK. PERFORMANCE BONUSES FREQUENTLY USED TO BREAK DEADLOCKS BUT RISK ON PLAYER – DEPENDS ON HEALTH AND REASONABLY ATTAINABLE FOR THIS PLAYER. SIGNING BONUS (RISK ON CLUB) v. PERFORMANCE BONUS (RISK ON PLAYER) SHOULDN'T BE TRADED ON 1 TO 1 BASIS. (6<sup>TH</sup> ROUND BOWLING GREEN SAFETY WITH A \$ 1.2 MIL CONTRACT, \$ 1 MIL DEPENDENT ON BEING NFL DEFENSIVE PLAYER OF THE YEAR.). **TEAM CONTROLS INCL DATA.**

## 5. GUARANTIES

A. SKILL GUARANTY (NO CUT).

B. INJURY GUARANTY. SEE STANDARD CONTRACT – IN NFL, INDIVIDUAL CONTRACT SAYS SALARY AND MEDICAL EXPENSES FOR YEAR OF INJURY ONLY.

C. CAP GUARANTY – WON'T BE CUT FOR CAP SAVING. **SKILL, INJURY AND CAP ARE TOTAL GUARANTY.**

D. NO TRADE (CAN BE LIMITED TO CERTAIN TEAMS )

E. OWNER'S PERSONAL GUARANTY – USUALLY ONLY WHEN NEW LEAGUE OR REASON TO BELIEVE CLUB IN THE RED.

F. INSURANCE. **CLUB** – CAN BE ANYTHING – TOTAL CONTRACT, LITIGATION, MISS A START. **PLAYER** – USUALLY TOTAL DISABILITY – CAN'T EVER TRY OUT AGAIN. CAN GET MORE PROTECTION BUT PREMIUM HIGHER (JAYLON SMITH – PAY IF NOT FIRST ROUND)

## 6. LENGTH

OLD ADAGE WAS LONGER TERM FAVORED CLUB BECAUSE \$\$ GOING UP SO FAST. NOW HIGHER AND MORE GUARANTEED – LONG FAVORS PLAYERS (ERIC HOSMER HOLDING OUT FOR 8 YEARS INSTEAD OF 7; REOPENERS OR OPT OUT – DARVISH; SABAN – HIGHEST PAID COACH IN COLLEGE FOOTBALL). IF NO GUARANTY, SHORTER DEAL FAVORS PLAYERS – CLUB CAN JUST CUT. IF NOT FULLY GUARANTEED, LENGTH NEEDED TO PROTECT THE SIGNING BONUS.

FOR ROOKIES, CONTROLLED BY CBA IN NFL AND NBA. NFL – FIRST ROUND = 4 YEARS + CLUB OPTION. MOST WON'T SEE SECOND CONTRACT (AVG NFL CAREER = 3.4 SEASONS).

IF CONTRACTS NOT GUARANTEED, ARE THEY CONTRACTS ?

LUMLEY v WAGNER – CAN'T GET MANDAMUS ORDERING TO PERFORM

## 7. DEFERRED COMPENSATION

- A. DFD COMP = ANYTIME MONEY IS EARNED BUT PAID AT A LATER DATE. CAN BE MONTHS, CAN BE YEARS.
- B. WHY ? ENFORCED SAVINGS, GET MORE MONEY FROM CLUB, TAX SAVINGS IF RECEIPT IN LOWER BRACKET YEARS (LESS LIKELY WITH MODERN SALARIES).
- C. SIMPLE - \$ 1,000,000 SB - \$ 500 NOW, \$ 500 A YEAR FROM NOW. COMPLEX – SET UP ACCOUNT PAYABLE OVER YEARS STARTING ON FUTURE DATE. NUMERATOR IS 1, DENOMINATOR IS NUMBER OF DRAWS LEFT (IF PAY EACH QUARTER OVER 12 YEARS STARTING IN 2025, FIRST DRAW IS 1/48, SECOND IN 1/47 AND LAST IS 1/1).
- D. NEED **PRESENT VALUE TABLES** TO EVALUATE ACCURATELY.
- E. CHRIS DAVIS – ANNOUNCED AS 7 YEARS, \$ 161 MIL (LOOKS LIKE \$ 23 PER) BUT EACH YEAR \$ 6 MIL DEFERRED – \$ 42 TOTAL. \$ 42 MIL PAID FROM 2023 – 2027. AT 4% INTEREST RATE, REALLY WORTH \$ 126 MIL (\$ 18 PER).

- F. IF COMPLEX, MUST AVOID CONSTRUCTIVE RECEIPT OF INCOME. TAXED NOW, PAID LATER. CAN'T BE SET ASIDE IN PLAYER'S NAME. IF SIMPLE, PLAYER RUNS RISK OF LOSING ALL IF CLUB GOES BANKRUPT.
- G. OLD ABUSE – AGENTS DEFER TO BUILD UP PERCEIVED DOLLAR AMOUNT, THEN TAKE 3% UP FRONT. EARL CAMPBELL PROBLEM.

## 8. INTEREST FREE OR BELOW MARKET LOANS

- A. GIVE PLAYER NON-TAXABLE MONEY NOW. CAN HAVE IMPUTED INCOME ON DIFFERENCE BETWEEN INTEREST CHARGED AND MARKET RATE. (SABAN HOUSE VARIANT)
- B. WHAT IS PLAYER DOING WITH MONEY? BEST IF USED FOR MORTGAGE. WORST IF BAD BUSINESS OR BIG PARTY
- C. MUST BE PAID BACK WITH AFTER TAX DOLLARS
- D. OLD ABUSE – TIE REPAYMENT INTO DEFERRED COMP \$\$\$\$. CLEAR TAX SCAM. PLAYER CRUSHED BY TAX OWED ON REPAYMENT \$\$\$.



## COLLECTIVELY BARGAINED BENEFITS – THE NFL EXAMPLE:

1. MINIMUM PAY – 2016 - \$ 450,000 FOR ROOKIES, \$ 985,000 FOR 10 YEARS PLUS. 2019 - \$ 495,000; \$1,030,000  
A CREDITED SEASON MEANS THAT YOU HAVE BEEN ON A CLUB'S ACTIVE/INACTIVE/INJURED RESERVE ROSTER FOR AT LEAST 3 GAMES (ACTIVE = 46 PLAYERS; INACTIVE = 7 PLAYERS).
2. PERFORMANCE BASED POOL - \$ 3,460,000 PER CLUB. PAYMENTS BASED ON PLAYING TIME.
  1. DIVIDE PLAYING TIME % BY PARAGRAPH 5 SALARY (INCLUDING PRO RATED SIGNING BONUS). THIS IS YOUR INDEX
  2. DIVIDE YOUR INDEX BY TOTAL OF ALL INDEXES.
  3. MULTIPLY RESULT OF 2 ABOVE BY TOTAL \$\$\$ IN POOL.
3. TERMINATION PAY – IF 4 OR MORE CREDITED SEASONS, PLAYER GETS REMAINDER OF HIS SALARY IF CUT AFTER GAME 1. ONLY ONCE IN CAREER.

4. INJURY BENEFIT. INDIVIDUAL CONTRACT PROVIDES SALARY AND MEDICAL CARE FOR SEASON OF INJURY. CBA PROVIDES, IF HURT IN LAST GAME, THEN DO REHABILITATION, THEN FAIL PHYSICAL FOR START OF NEXT SEASON, THEN PLAYER RECEIVES 50% OF NEXT YEAR'S SALARY (MUST BE ANOTHER YEAR CONTRACT) TO MAX OF \$ 1,200,000 IN 2019.
5. RETIREMENT. 5 YEAR VESTING (PRIOR CBA'S WERE 4 – NFL AVG. 3.4 YEARS). RETIREMENT AMOUNT INCREASES WITH NUMBER OF CREDITED SEASONS AND YEARS PLAYED (\$ 250 PER MONTH PER SEASON IF BEFORE 1982 - \$ 560 PER MONTH IN 2014)
6. SECOND CAREER SAVINGS PLAN. CLUB MATCHES AT 2 – 1 UP TO \$ 26,000 PER YEAR AFTER 3 YEARS OF CREDITED SERVICE.

7. PLAYER ANNUITY. CLUB CONTRIBUTES \$ 80,000 PER YEAR ONCE PLAYER HAS 4 YEARS OF CREDITED SERVICE.
8. TUITION ASSISTANCE PROGRAM. CLUBS WILL REIMBURSE UP TO \$ 20,000 IN TUITION AND BOOKS. PLAYER MUST HAVE 1 CREDITED SEASON AND BE ON AN ACTIVE OR INACTIVE ROSTER.
9. SEVERANCE. IF PLAYER HAS ACHIEVED 2 CREDITED SEASONS, THEN ENTITLED TO \$ 20,000 PER YEAR FOR EACH CREDITED SEASON HE PLAYED WHEN HE RETIRES.

FOOTBALL NEGOTIATION PROBLEMS

# PROBLEM 1 - 11<sup>TH</sup> ROUND DRAFTEE – 1981 - BENGALS

.

## FACTS:

1. 1980 - 9<sup>TH</sup> ROUND DRAFTEE - \$ 8 SB; \$ 7 AR; 35-40-50.
2. 1981 – UNDRAFTED FREE AGENT - \$ 5 SB; 35-45
3. 1981 – 10<sup>TH</sup> ROUND - \$ 10 SB.
4. CLUB HISTORY OF NO PERFORMANCE BONUSES.

## FOOTBALL PROBLEM 2 – 1984 FREE AGENT WIDE RECEIVER

AS DRAFT WINDING DOWN, I TELL HIM NOT GOING TO BE DRAFTED BUT TEAM REPRESENTATIVES WILL CONTACT HIM DURING THE NIGHT. MOST IMPORTANT – DON'T WAKE ME UP. THEY WILL BE HIGH SCHOOL COACHES WITH AN EXPENSE ACCOUNT – GO TO DINNER OR BREAKFAST BUT DON'T SIGN ANYTHING OR TALK \$\$\$\$\$. I GO TO MY OFFICE THE NEXT MORNING AND PLAYER IS THERE WITH A REPRESENTATIVE OF THE SEAHAWKS AND BRONCOS AND HANDS ME A LETTER ON COWBOYS STATIONERY.

# FOOTBALL PROBLEM 3 – 1986 4<sup>TH</sup> ROUND, 9<sup>TH</sup> PLAYER TE BENGALS

1. PLAYER LIVED IN CINCINNATI BEFORE GOING TO MICHIGAN.
2. PLAYER WILL NOT HOLD OUT – CAMP STARTS JULY 15.
3. CLUB PRACTICE – NO PERFORMANCE BONUSES.

## FOOTBALL PROBLEM 4 – 1986 LB ENTERING 6<sup>TH</sup> YEAR – STARTER FOR 4.

1. 4 YEAR ROOKIE DEAL EXPIRED.
2. PRIOR YEAR CONTRACT (YR 5– 1 YEAR DEAL - \$ 235,000 PLUS PERFORM. BONUSES FOR TOTAL TACKLES, INTERCEPTIONS AND SACKS.
3. CLUB CONTACTS ME IN FEBRUARY AND SAYS HE IS A PRIORITY AND THEY WANT TO SIGN HIM TO A NEW MULTI-YEAR DEAL ASAP.
4. PLAYER GOAL IS TO MAKE \$ 300,000.

# COLLEGE COACHES CONTRACTS

## 1. HARBAUGH \$\$\$

A. \$ 2,000,000 SIGNING BONUS

B. \$ 500,000 BASE

C. \$ 4,500,000 ADDITIONAL COMPENSATION (\$ 2M LIFE INSURANCE)

D. DEFERRED COMP ACCOUNT AS APPROPRIATE AFTER YEAR 1.

E. IN YEAR 3, 10% RAISE. IN YEAR 5, ANOTHER 10% RAISE (MORE IF FAIR).

F. \$ 4,000 IN ADIDAS APPAREL

G. 2 CARS AND EXPENSES

H. 180 DAYS HOUSING

I. BOX FOR HOME GAMES + 16 TICKETS

J. REVENUE FROM SUMMER CAMPS

K. PRIVATE PLANE – 25 HOURS FLIGHT TIME FOR PERSONAL USE

L. \$ 30,000 FOR LEGAL FEES

M. PERFORMANCE BONUSES (P. 5) AND ACADEMIC PROGRESS BONUSES (P.5)



# HARBAUGH CONTRACT NON \$\$\$ - 7 YEAR TERM (INCLUDES 2021 SEASON)

1. MUST GIVE MICHIGAN 48 HOURS NOTICE AFTER ENGAGING IN TALKS WITH OTHER TEAM.
2. TERMINATION WITHOUT CAUSE – MICHIGAN PAYS ALL MONEY DUE UNDER CONTRACT. HARBAUGH MUST MITIGATE (P. 8).
3. TERMINATION WITH CAUSE – MICHIGAN NOT LIABLE FOR ANY ADDITIONAL MONIES AFTER DATE OF SUCH TERMINATION. **FELONY, PUBLIC DECENCY AND NCAA VIOLATION.** HARBAUGH HAS 30 DAYS TO CURE.
4. BUYOUT – PRO RATA SIGNING BONUS REPAYED IF HE LEAVES IN FIRST 4 YEARS. NO BUYOUT THEREAFTER.
5. ASSISTANT COACHES POOL - \$ 4 – 5 MIL. 10% INCREASE YEARS 3 AND 5.

# COLLECTIVE BARGAINING

OWNERS (MANAGEMENT)

! !

BARGAINING TEAM (NFL MGT COUN.)

! !

UNION (LABOR)

! !

BARGAINING TEAM (NFLPA)

! !

MANDATORY SUBJECTS OF BARGAINING – WAGES, HOURS AND TERMS AND CONDITIONS OF EMPLOYMENT.

GOOD FAITH BARGAINING UNTIL IMPASSE.

AT IMPASSE, MANAGEMENT CAN IMPLEMENT LAST OFFER.

CBA – ALL ASPECTS OF PROFESSIONAL LIFE IN THE SPORT AT ISSUE.

# BARGAINING THEORIES

1. NFLPA – PROP UP FLOOR BENEFITS – MINIMUM WAGE, PENSION, ETC. (TRADITIONAL UNION THEORY). HURTS BEST WORKERS. HOSTILE TO FREE AGENCY (ED GARVEY – WAGE SCALE).
2. MLBPA - UNRESTRICTED FREE AGENCY, ESPECIALLY FOR STARS. STARS PULL UP EVERYONE. IF PAYING DAVIS \$ 20 MIL, DIFFICULT TO PAY HARDY \$ 40,000. (MARVIN MILLER).

NON-STATUTORY LABOR LAW EXEMPTION – PLAYERS CAN'T SUE FOR ANTITRUST VIOLATIONS (MACKEY v NFL)

1. CBA TERM AFFECTS ONLY PARTIES TO BARGAIN. RELATIONSHIP
2. TERM IS A MANDATORY SUBJECT OF BARGAINING
3. TERM IS THE PRODUCT OF ARM'S LENGTH, GOOD FAITH BARGAINING.

## NFL CBA ARTICLE 7 – ROOKIE COMPENSATION

NFLPA ALWAYS HATED ROOKIES – BIG CONTRACTS TO UNPROVEN TALENT. NO ONE IN NFLPA REALLY REPRESENTS ROOKIES – NOT VOTING UNTIL AFTER THEY HAVE SIGNED. REAL ISSUE – ARE ROOKIES IN THE UNIT AND THEREFORE BARRED FROM BRINGING ANTITRUST LAWSUIT ? COURTS HAVE ANSWERED YES, CAN'T SUE.

1. TOTAL ROOKIE POOL (LEAGUE) – APP. \$ 251.13 MIL FOR 2019 (4.17% TOTAL).
2. YEAR 1 ROOKIE COMPENSATION POOL (LEAGUE) – FOR 2019, APP. \$ 105.2 MIL (41.86 % OF 1).
3. TOTAL ROOKIE ALLOCATION (TEAM) – SHARE OF 1 BASED ON # OF PICKS AND ROUND AND ORDER.
4. YEAR 1 ROOKIE ALLOCATION (TEAM) – SHARE OF 2 BASED ON SAME.

EACH PICK HAS A CAP NUMBER FOR THAT DRAFT.

RULES:

1. PRORATE THE SIGNING BONUS FOR CAP PURPOSES – 4 YEAR CONTRACT, \$ 800,000 SB – DIVIDE 800 BY 4 = \$ 200,000 ANNUAL CAP HIT. CASH = \$ 800,000 YEAR PAID.
2. 25% RULE – INCREASE MAY NOT EXCEED 25% OF FIRST YEAR CAP NUMBER. 4 YEAR DEAL, \$ 800 SB AND \$ 400 FIRST YEAR SALARY = CAP HIT IS \$ 600 AND INCREASE FOR ANY YEAR MAY NOT EXCEED \$ 150. FOR YEAR 2, MAX IS \$ 750 (600 + 150) BUT ALREADY \$ 200 IN PRORATED SB. THEREFORE, SALARY MAX FOR YEAR 2= \$ 550. FOR YEAR 3, MAX IS 900 (750 + 150) BUT ALREADY \$ 200 IN PRORATED SB SO SALARY MAX IS \$ 700. YEAR 4 SALARY MAX = \$ 850.

3. ONLY BONUSES PERMITTED ARE SIGNING BONUS, WORKOUT, REPORTING, ROSTER AND % OF PLAYING TIME PERFORMANCE BONUSES. NO ADDITIONAL PERFORMANCE BONUSES. (RDS 3- 7 – PERFORMANCE ESCALATOR)

4. LENGTH:

A. FIRST ROUND – 4 YEARS WITH CLUB OPTION

B. SECOND - SEVENTH ROUND – 4 YEARS, NO OPTION.

C. UNDRAFTED – 3 YEARS, NO OPTION.

GET TO SECOND CONTRACT FASTEST. MOST NEVER GET (3.4 YRS AVG. NFL CAREER). POSSIBILITY OF **FRANCHISE** AND **TRANSITION** TAGS – CAN CONTROL FIRST ROUNDERS UP UNTIL 8 YEARS. MORE LEAVING COLLEGE AFTER 3 YEARS (ELGIBLE FOR DRAFT 3 YEARS AFTER HIGH SCHOOL GRADUATION).

ONLY NEGOTIATION – HOW MUCH GUARANTEED, OFFSETS (MITIGATION), LANGUAGE IN ROSTER BONUS AND DEFERRAL OF SIGNING BONUS.

PAXTON LYNCH DEAL - QB - 4 YEARS - 2016 - PICK 26

TOTAL DEAL - \$ 9,476,306. INCLUDED SB = \$ 5,091,181

YEAR 1 = \$ 450,170 (ALL GUAR.) + 1,272,795 = 1,722,965 CAP

YEAR 2 = \$ 880,911 (ALL) + 1,272,795 = 2,153,706 CAP

YEAR 3 = \$ 1,311,652 (ALL) + 1,272,795 = 2,584,447 CAP

YEAR 4 = \$ 1,742,393 (\$600) + 1,272,795 = 3,015,188 CAP

TOTAL CAP 9,476,306

25% OF 1,722,965 = 430,741. \$ 8,333,404 GUARANTEED.

MYLES GARRETT – CLEVELAND – 2017 – PICK 1

TOTAL \$ 30,412,255 FULLY GUARANTEED; SB = \$ 20,258,004

YEAR 1 (FULLY) - \$ 465,000 + 5,064,501 = \$ 5,529,501 (CAP)

YEAR 2 (FULLY) - \$ 1,847,375 + 5,064,501 = \$ 6,911,876 (CAP)

YEAR 3 (FULLY) - \$ 3,229,750 + 5,064,501 = \$ 8,294,251 (CAP)

YEAR 4 (FULLY) - \$ 4,612,126 + 5,064,501 = \$ 9,676,627 (CAP)

25% OF \$ 5,529,501 = \$ 1,382,375.25

YEAR 1 CASH = \$ 465,000 + 20,258,004 = \$ 20,723,004



BAKER MAYFIELD – CLEVELAND – 2018 – PICK 1

TOTAL: \$ 32, 682,980 FULLY GURANTEED

SB = \$ 21, 849,440

	BASE	SB	ROSTER	CAP
2018	480	5, 462,360	-	5,942,360
2019	570	5, 462, 360	1,395,390	7,427,950
2020	660	5,462,360	2,791,180	8,913,540
2021	750	5,462,360	4,186,770	10,399,130

25% OF 5,942,360 = 1,485,590

KYLER MURRAY – FIRST PICK 2019 – FULLY GUARANTEED-TOTAL = \$ 35, 128,644  
SB = \$ 23, 589,924

	SALARY	SIGNING BONUS	AR	CAP
2019	495,000	5, 897, 481	---	6, 392,481
2020	585, 000	5, 897, 481	1,508,120	7, 990, 601
2021	675, 000	5, 897, 481	3,016,240	9, 558, 721
2022	765, 000	5, 897, 481	4,524,360	11,186, 841

25% OF \$ 6,392,481 = \$ 1, 598, 120 (SALARY INCREASE PLUS AR)

YEAR 1 CASH TO MURRAY - \$ 23, 589, 924 + 495,000 = \$ 24, 084, 924

## ARTICLE 12 – CALCULATION OF THE CAP

1. AT END OF SEASON, TRUE UP (SEASON COMPLETED) AND PROJECTED (NEXT SEASON). BEFORE SEASON, PROJECTED. AFTER SEASON, ADJUSTMENTS TO WHAT ACTUALLY HAPPENED, + OR -. FLUID.

2. PLAYER COSTS (CBA BENEFITS - EG, RETIRED PLAYERS, PENSION, INSURANCE, TRAVEL, MEDICAL, WORKERS COMP + INDIVIDUAL COMPENSATION TOTALS) =

55% OF LEAGUE MEDIA

45% OF NFL VENTURES/POSTSEASON REVENUE

40% OF LOCAL REVENUE

50% OF NEW REVENUE (IF APPLICABLE)

47.5% OF JOINT CONTRIBUTION AMOUNT (\$ 55 MIL IN 2012-5% UP)

48.5% - 46.5% OF ALL REVENUE – GUARANTEE OF 47% - NO FLOOR.

TEAM CAP = (PLAYER COSTS – BENEFITS) / 32. 2018 = \$ 177.2 MIL; 2019 = 188.2

3. GUARANTEED CASH =
  - A. LEAGUE = 95% OF CAP (OVER 4 YEARS).
  - B. TEAM = 89% OF CAP.

## ARTICLE 13 – CAP RULES

1. ALL VALUE INCLUDED IN ALL PLAYER CONTRACTS INCLUDED. ANY DEFERRED COMPENSATION COUNTS IN YEAR EARNED AT PRESENT VALUE.
2. SIGNING BONUS PRORATED OVER LIFE OF THE CONTRACT WITH 5 YEAR MAXIMUM. IF CUT OR TRADED, AMORTIZED SB REMAINING IS ACCELERATED. IF BEFORE JUNE 1, THAT YEAR; IF AFTER JUNE 1, NEXT YEAR. IF \$ 1 MIL SB IN 5 YEAR DEAL, \$ 200,000 PER YEAR FOR CAP. IF TRADED BEFORE JUNE 1 OF 3<sup>RD</sup> SEASON, \$ 600,000 CAP HIT FOR THAT YEAR. ANY GUARANTEED PRE PLAY BONUS COUNTED AS SB FOR CAP PURPOSES. **TOTAL SIGNING BONUS IN YEAR IT'S PAID COUNTS FOR THE CASH REQUIREMENT.**

3. PERFORMANCE BONUSES – ONLY ONES LISTED IN CBA ALLOWED. CONSIDERED LIKELY TO BE EARNED AND THEREFORE COUNTING TOWARDS CAP IF PLAYER OR TEAM ACCOMPLISHED GOAL IN PRIOR SEASON. THIS IS FOR PROJECTED CAP. ADJUSTMENTS FOR WHAT IS ACTUALLY EARNED - + OR - - AFTER SEASON IN TRUE UP.

2019 CONTRACT FOR 4 YEARS - \$ 10 MIL SB

2019 - \$ 1 MIL IN PAR 5. CAP = 3,500,000

2020 - \$ 1 MIL ACTIVE ROSTER ON FIRST GAME  
\$ 1.5 MIL IN PARA 5. CAP = 5,000,000

2021 - \$ 2 MIL IN PARA 5  
\$ 500,000 IF RUNS FOR 1,000 YDS. CAP = 4,500,000 IF DIDN'T  
RUSH FOR 1,000 IN PRIOR YEAR, 5,000,000 IF DID. TRUE UP

2022 - \$ 800,000 IN PARA 5. CAP = 3,300,000

IF CUT OR TRADED AFTER 2020, 5 MIL CAP HIT – 2020 OR 2021 B/A JUNE 1

IF ORIGINAL DEAL = 5 YEARS WITH \$ 15,000,000 SB

YEAR 4 - \$ 12 MIL (NO GUAR) PARA 5                      CAP = 15,000,000

YEAR 5 - \$ 15 MIL (NO GUAR) PARA 5                      CAP = 18,000,000

IF NEW 5 YR DEAL PRE YEAR 4 WITH NEW SB OF \$ 20,000,000

YEAR 1 (4) \$ 6 MIL PARA 5.                      CAP = 13,000,000 (INC 3 MIL OLD SB)

YEAR 2 (5) \$ 9 MIL PARA 5.                      CAP = 16,000,000 (INC 3 MIL OLD SB)

YEAR 3 \$ 10 MIL PARA 5.                      CAP = 14,000,000

YEAR 4 \$ 15 MIL PARA 5.                      CAP = 19,000,000

YEAR 5 \$ 18 MIL PARA 5.                      CAP = 22,000,000

CBA ENDS AFTER 2020 SEASON. VETS CAN PRORATE 5 YEARS UNLESS IN VIOLATION OF DION RULE. 30% OF LAST CAP YR RAISE LIMIT. DOESN'T APPLY TO ROOKIES

## NFL CAP – ROOKIES:

1. PRO RATE SB BY 4 YEARS
2. RAISE FOR CAP NUMBER BETWEEN YEARS CAN'T BE MORE THAN 25% OF FIRST YEAR CAP NUMBER

## NFL CAP – VETERANS:

1. PRO RATE SB BY NUMBER OF YEARS (5 MAX)
2. PREFORMANCE BONUSES – LIKELY TO BE EARNED – DID PLAYER OR TEAM ACCOMPLISH THE STATISTIC IN THE PREVIOUS YEAR ?

## CUT OR RETIRED:

1. BEFORE JUNE 1 OR AFTER DETERMINES YEAR
2. ACCELERATE AMORTIZED SB AND GUARANTEED MONIES

## 2019 CAP SPACE (AS OF 3/1/19)

1. COLTS	\$ 117,586,980
2. JETS	91,792,909
3. BILLS	83,816,670
4. BROWNS	83,775,263
29. BUCS	12,643,360
30. VIKINGS	7,025,401
31. JAGUARS	3,175,153
32. EAGLES	14,150,726

CARRYOVER – UNUSED CAP FROM PRIOR YEAR

ADJUSTMENTS – FREQUENTLY, CASH SHORTAGE FROM PRIOR YEAR

YEAR 1 ROOKIE CAP PART OF OVERALL TEAM CAP (INCL IN 188.2)



# 2019 RAVENS CAP - AS OF 10/2/2019

2019 CAP =	\$ 188,200,000
2018 ROLLOVER =	\$ 4,504,955
ADJUSTMENT	\$ 5,000,000
TOTAL =	\$ 187,704,955
CAP SPACE =	\$ 10,270,694

CONTRACTS –	145,566,236
IR \$\$ -	5,355,562
DEAD \$\$ -	25,022,463
PRACTICE -	1,490,000
TOTAL -	177,434,261
FLACCO =	\$ 16M OF DEAD

J SMITH	15.85	B CARR	7
B WILLIAMS	14.17	E THOMAS	7
T JEFFERSON	12.5	R STANLEY	6.517
M YANDA	9.1	J HURST	– 4.750
W SNEAD	7.2	J TUCKER	– 4.656

L JACKSON – 2.152

1. FREE AGENCY - 6 GAMES ACTIVE ROSTER = 1 SEASON (3 FOR OTHERS)
  - A. LESS THAN 3 YEARS – EXCLUSIVE PLAYER RIGHTS
  - B. 3 BUT NOT 4 – RESTRICTED FREE AGENT – RIGHT OF FIRST REFUSAL BUT ONLY IF OLD CLUB MADE QUALIFYING OFFER DEPENDENT ON PRIOR CONTRACT AND DRAFT RD.
  - C. 4 OR MORE YEARS – UNRESTRICTED FA.
  
3. FRANCHISE PLAYER – FULLY GUARANTEED – ONLY 1 PER TEAM
  - A. NON-EXCLUSIVE TENDER – 1 YEAR – GREATER OF 120% OF PRIOR YEAR’S CAP SALARY OR AVG. OF 5 HIGHEST CAP SALARIES AT POSITION IN PRIOR YEAR.
  - B. EXCLUSIVE TENDER – 1 YEAR – GREATER OF NON-EXCLUSIVE OR AVG OF 5 HIGHEST CAP SALARIES AT POSITION AT END OF RESTRICTED FREE AGENCY PERIOD
  - C. THIRD TIME FRANCHISE – AVG OF 5 HIGHEST IN NFL, 120% OF AVG 5 HIGHEST AT POSITION OR 144% OF PRIOR (ALL CAP SALARIES).

3. TRANSITION PLAYERS – 1 TRANSITION + 1 FRANCHISE OR 2 TRANS.

A. GREATER OF CAP AVERAGE OF 10 HIGHEST AT POSITION IN PRIOR YEAR OR 120% OF PRIOR YEAR'S CAP NUMBER.

B. OLD CLUB RECEIVES RIGHT OF FIRST REFUSAL (GUARANTEED \$\$, PARA 5 SALARY, LIKELY TO BE EARNED PB = PRINCIPAL TERMS)

C. OLD CLUB CAN WITHDRAW.

4. ALL FREE AGENTS MUST SIGN WITH NEW CLUB BY JULY 22. AFTER THAT, ONLY SIGN WITH OLD CLUB UNTIL 10<sup>TH</sup> GAME. SIT FOR REST OF THE YEAR IF NOT SIGNED BY 10<sup>TH</sup> GAME.

# NATIONAL BASKETBALL ASSOCIATION – 2017 CBA – AGREEMENT UNTIL AFTER 2023-2024 SEASON BUT EITHER SIDE CAN OPT OUT AFTER 2022-2023 SEASON.

1. CAP = (44.74% OF BASKETBALL RELATED INCOME – PLAYER BENEFITS) \*/\*  
NUMBER OF TEAMS (30).

2016-17 = \$ 90,100,000 (9 YEAR, \$ 24 BIL MEDIA DEAL)

2017-18 = \$ 99,093,000

2018-19 = \$ 108,000,000 (FORECASTED)

2019-20 = \$ 109,000,000 (FORECASTED)

2. FORECASTED BRI AND ACTUAL BRI

3. MINIMUM AND MAXIMUM CONTRACTS – HANDOUT 16 AND 17. SEE CHARTS. EXCEPTIONS – FREE AGENT MAX IS GREATER OF CHART OR 105% OF PRIOR YEAR'S SALARY; GOOD ROOKIES QUALIFY FOR 5<sup>TH</sup> YR. 30% MAX. ONLY FIRST YEAR OF NEW DEALS SUBJECT TO MAX BUT RAISES LIMITED.

4. EACH TEAM LIMITED TO 12 ACTIVE AND 1 -3 INACTIVE (14.5 GUARANTY) SIGNING BONUS LIMITED TO 15% OF TOTAL DEAL. PRORATED OVER GUARANTEED YEARS OF THE CONTRACT (MOST ARE). FOR CAP COUNT:

- A. SALARIES OF ALL ACTIVE AND INACTIVE
- B. LIKELY TO BE EARNED BONUSES
- C. GUARANTEED SALARIES BEING PAID TO WAIVED PLAYERS
- D. **CAP HOLDS** - CERTAIN FILED GRIEVANCES, AGREED BUT NOT YET EXECUTED, PRIOR SALARY OF UNRENOUNCED FREE AGENTS, SALARIES FOR FIRST ROUND DRAFT PICKS AND 10 DAY CONTRACTS.

5. SALARY CAP EXCEPTIONS – HANDOUT 25.

6. PLAYERS GUARANTEED 50% OF FORCASTED BRI (+ OR -) 60.5% OF THE AMOUNT ACTUAL REVENUE EXCEEDS OR FALL SHORT OF FORECASTED, WITH A LOWER LIMIT OF 49% OF BRI AND AN UPPER LIMIT OF 51% OF BRI. SEE CHART ON 18.

7. ESCROW SYSTEM. PLAYERS HAVE 10% OF THEIR MONEY HELD BACK. CAN NEVER LOSE MORE. SEE CHARTS 19 AND 20.

8. LUXURY TAX. PAY \$ 1.50 FOR EVERY DOLLAR TEAM IS OVER THE SPECIFIED TAX NUMBER (2018-19 = \$ 123,700,000 THEN % OF CAP). IF MORE THAN \$ 6,000,000 OVER THE TAX NUMBER, HIGHER NUMBER AND VARIOUS NON-FINANCIAL PENALTIES ALSO KICK IN (USUALLY LOSING SOME CAP EXEMPTION) (CAVS PAID \$ 54,000,000 FOR 2015-16.)

9. REVENUE SHARING. HIGHLY PROFITABLE TEAMS MAKE PAYMENTS TO LESS PROFITABLE TEAMS. LOGIC - HIGH TEAMS DRIVE UP CAP AND MINIMUM PLAYER PAYMENTS FOR ALL - THIS SUBSIDIZES FOR THAT.

# REVENUE SHARING EXAMPLE

	TEAM A	TEAM B
TOTAL REVENUES	84	281
PROFIT BEFORE REVENUE SHARE	(20)	165
PERCENTAGE TO FUND POOL	55.8%	55.8%
AMOUNT CONTRIBUTED TO POOL	46.9	156.8
TOTAL POOL SIZE	2,075	2,075
1/30 OF POOL	69.1	69.1
NET PAID/RECEIVED	22.2 REC	87.7 P
CONTRIBUTION LIMITS	NA	48
ACTUAL AMOUNT PAID/RECEIVED	22.2	48
PROFIT AFTER REVENUE SHARING	2.2	117.9

10. MINIMUM PAYMENTS TO PLAYERS = 90 % OF THE CAP. CAP 2016-2017 = \$ 90,000,000, MINIMUM = \$ 81,000,000. WELCOME TO DELLAVADOVA CONTRACT.

11. 2017 CBA RUNS THROUGH 2023-2024 SEASON (EXPIRES JUNE 30, 2024). HOWEVER, EITHER NBA AND NBAPA CAN TERMINATE AFTER 2022-2023 SEASON BY GIVING NOTICE OF INTENT TO DO SO ON OR BEFORE DECEMBER 15, 2022. **IF YOU ARE NBAPA, DO YOU TERMINATE ?**

MLB CBA - 2017-2021 (TERMINATE DEC 1, 2021)

1. FIRST CLASS TRAVEL, SINGLE ROOM ON ROAD, \$ 92.50 MEAL AND TIP MONEY. \$ 545,000 IS MLB MINIMUM FOR 2018, \$ 555,000 FOR 2019.

2. IF RELEASED IN OFF SEASON OR SPRING TRAINING, 30 DAYS PAY. IF RELEASED IN REGULAR SEASON, FULL YEAR'S PAY. IF INJURED, FULL YEAR.



3. ACTIVE PLAYER LIMIT – 25 MAXIMUM, 24 MINIMUM. RESERVE LIST – 40 (COUNTING MAJORS AND MINORS).
4. 172 DAYS ON ACTIVE ROSTER, DISABLED LIST OR SUSPENDED LIST = 1 YEAR OF CREDITED SERVICE.
5. POST SEASON POOL – 60% OF GATE RECEIPTS. SCALED TO PLAYERS – 36% TO WORLD SERIES WINNERS, 3% TO WILD CARD LOSERS.
6. SALARY ARBITRATION. 3 OR MORE BUT LESS THAN 6 YEARS OF CREDITED SERVICE OR 2 YEARS BUT LESS THAN 3 IF 86 DAYS OF SERVICE IN YEAR 1 AND TOP 22% IN TOTAL SERVICE IN CLASS OF PLAYERS WHO HAVE AT LEAST 2 BUT LESS THAN 3 YEARS OF CREDITED SERVICE.

FILING DATE = JANUARY 15, EXCHANGE DATE = JANUARY 18.  
HEARINGS FEB 1 – 20 IN DESIGNATED CITIES. BOTH SIDES EXECUTE  
CONTRACT WITH SALARY BLANK. 1 HOUR PRESENTATION EACH, 30  
MINUTE REBUTTAL EACH. PLAYER GOES FIRST. EACH SIDE SUBMITS  
SALARY FIGURE – ARBITRATOR PICKS 1, CAN'T COMPROMISE. CAN  
SETTLE ANY TIME BEFORE DECISION.

FACTORS – CONTRIBUTE TO CLUB (PERFORMANCE, LEADERSHIP,  
PUBLIC APPEAL), LENGTH OF SERVICE AND CONSISTENCY OF  
PERFORMANCE, PAST \$\$\$, COMPARATIVE BASEBALL SALARIES,  
PLAYER'S PHYSICAL AND MENTAL DEFECTS, RECENT RECORD OF  
CLUB AND RECENT ATTENDANCE. CAN'T MENTION – PLAYER OR  
CLUB FINANCES, PRESS REPORTS OR ACCOLADES OR PREVIOUS  
OFFERS.

7. FREE AGENCY – 6 YEARS OF CREDITED SERVICE OR MORE. QUIET PERIOD – ONLY DEAL IN \$\$\$ WITH OLD CLUB, CAN TALK TO OTHERS ABOUT INTEREST, NO \$\$\$\$. OLD CLUB MUST MAKE QUALIFYING OFFER – 1 YEAR, GUARANTEED, AVERAGE OF TOP 125. IF LOSE PLAYER, SIGNING CLUBS THIRD HIGHEST DRAFT PICK FOR NEXT DRAFT (CAN LOSE \$\$ FROM INTERNATIONAL SIGNING BONUS POOL)

8. COMPETITIVE BALANCE TAX. TAKE ACTUAL PAYROLL AND SUBTRACT TAX THRESHOLD AMOUNT (2018 = \$ 197 MIL, THEN 206, 208 AND 210), THEN TAX DIFFERENCE – 20% OF DIFFERENCE IF DIDN'T EXCEED THRESHOLD IN PRIOR YEAR, 30% IF TAXED AT 20% IN PRIOR YEAR, 50% IF TAXED AT 30% IN PRIOR YEAR. ACTUAL PAYROLL = SALARIES, SIGNING BONUS PRORATED OVER GUARANTEED YEARS AND PERFORMANCE BONUSES ACTUALLY EARNED. USES = PLAYER BENEFITS AND GROWTH FUND.

## 9. REVENUE SHARING PLAN.

A. 34% OF NET LOCAL REVENUE AND DIVIDE BY NUMBER OF CLUBS. NET LOCAL = GROSS REVENUE MINUS CENTRAL REVENUE (NATIONAL MEDIA, MLB PROPERTIES, ETC.). IF NET LOCAL = \$ 2.2 BILLION, 34% = \$ 750,000,000. DIVIDE BY 30 = \$ 25,000,000 PER CLUB. CLUBS CONTRIBUTE IF OVER THAT AMOUNT RECEIVE DIFFERENCE IF UNDER THAT AMOUNT. NY YANKEES \$ 60,000,000 MINUS \$ 25 MIL = \$ 35 MIL NET CONTRIBUTION. SIMILAR TO NBA

B. SECOND POOL OF 14% OF NET LOCAL (OUR EXAMPLE – 14 % OF \$ 2.2 BIL = \$ 308, 823, 529).  
FOR CLUB SHARE OF THIS AMOUNT, DIVIDE 30 CLUBS – 13 CONTRIBUTORS AND 17 RECIPIENTS. PAY AND RECEIVE BASED ON VARIETY OF PERFORMANCE FACTORS (INCLUDING MARKET SIZE AND ACTUAL NET LOCAL v PROJECTED – OVER/UNDER PERFORMING).

10. IF 10 YEARS OR MORE CREDITED SEASONS AND 5 MOST RECENT YEARS WITH SAME CLUB, CAN'T BE TRADED WITHOUT CONSENT.

11. CLUBS MUST FULLY FUND DEFERRED COMPENSATION ACCOUNTS AT TIME \$\$\$ IS FULLY EARNED BY PLAYER.

HOW DO YOU GET CLIENTS (ATHLETES OR LAW) ?

SOLICITING ? MEETING ? FAMILY CONNECTIONS ? RECRUITING ?

DO YOU OWN THE LIVING ROOM ?

NFLPA AGENT REGULATIONS

1. APP = NON REFUNDABLE \$ 2,500. APP BET JAN 5 AND FEB 5.

2. LIST UNDER AND POST GRADUATE DEGREES.

3. CONSENT TO BACKGROUND CHECK.

4. MANDATORY 2 DAY SEMINAR AND LIABILITY INSURANCE

5. WRITTEN TEST ON CBA AND REGULATIONS – JULY – 60 MC – 3 HOURS

6. ANNUAL FEE = \$ 1,500 (1-9 PLAYERS), \$ 2,000 (10+ PLAYERS).
7. STANDARD REPRESENTATION AGREEMENT – MAX FEE OF 3%, 2% IF FRANCHISE OR TRANSITION. REP AGREEMENT AMENDED TO STATE 1.5% - NEED REASONS IF ABOVE, TO 3% MAX.
8. CAN'T GIVE FINANCIAL BENEFIT TO SIGN WITH YOU.  
GUARANTEED MERCHANDISING CONTRACT OK IF PAID AT SIGNING WITH AGENT, NOT BEFORE.
9. CONFLICT OF INTEREST – DISCLOSE IF REP MANAGEMENT.
10. CAN'T RAID CLIENTS OF ANOTHER CONTRACT ADVISOR UNLESS
  - A. PLAYER INITIATES OR
  - B. WITHIN 60 DAYS OF EXPIRATION OF PLAYER'S CONTRACT.

11. CONTRACT ADVISOR CAN'T BE FINANCIAL ADVISOR. SEPARATE LIST OF CERTIFIED FINANCIAL ADVISORS.

12. ARBITRATION CLAUSE. DISCIPLINARY COMMITTEE.

13. MUST NEGOTIATE 1 PLAYER CONTRACT WITHIN 3 YEARS.

## MLB REGULATIONS

1. **GENERAL** – FULL AGENT

2. **LIMITED** – RECRUITING OR CLIENT MAINTENANCE FOR GENERAL

3. **EXPERT AGENT ADVISOR** – HELP GENERAL IN NEGOTIATIONS

4. **DRAFT ADVISORS** – NO REAL REGULATION.

5. DISCIPLINARY COMMITTEE, ARBITRATION CLAUSE

6. NO \$\$\$ TO SIGN

7. IF SALARY ARBITRATION, CONSULT WITH MBLPA EACH PHASE.

8. NO FANTASY BASEBALL OF ANY KIND.

9. NO MAX FEE, BUT NO CHARGE ON CBA OR POST SEASON OR MIN \$\$.

10. MANY REP FOR \$0 IN MINORS, HOPE TO GET IN MAJORS (DUMPED).

# UNIFORM ATHLETE AGENT ACT

1. ALMOST EVERY STATE HAS SOME VARIANT OF THIS ACT (41 STATES). ESSENTIALLY CRIMINALIZES THE NCAA MANUAL. MIKE TROPE, JERRY ARGOVITZ, NORBY WALTERS – SIGNED COLLEGE PLAYERS EARLY AND PLAYERS LOST ELIGIBILITY. GOOD IDEA? WHAT ABOUT COLLEGE COACHES AND DONORS ?

2. COVERS AGENTS AND ANYONE SOLICITING ON BEHALF OF. MUST REGISTER BEFORE ANY CONTACT WITH NON-PROFESSIONAL ATHLETE WITHIN STATE. CAN REFUSE TO CERTIFY IF CRIME, FALSE STATEMENT, MORAL TURPITUDE. ANNUAL FEES – SOME REQUIRE BONDS. DETAILS AGENT/PLAYER CONTRACT. MUST NOTIFY ATHLETIC DIRECTOR WITHIN 72 HOURS OR BEFORE NEXT EVENT IF SOONER. ATHLETE CAN CANCEL WITHIN 14 DAYS OF SIGNING. CAN'T FURNISH ANYTHING OF VALUE TO THE ATHLETE, CAN'T PREDATE OR POSTDATE. CRIMINAL TO STATE – CIVIL TO THE UNIVERSITY.



3. **LEGISLATIVE JURISDICTION PROBLEMS** ? ATHLETE FROM CALIFORNIA, PLAYING IN GEORGIA, AGENT IN SEATTLE. AGENT NEVER IN GEORGIA. DRAFTED BY NY GIANTS – AGENT VISITS FOR GAME IN ATLANTA. ARRESTED. JURISDICTION ? AGENT STORY ABOUT TEXAS UNRAFTED WIDE RECEIVER. COACH CALLS – WENT TO PRO DAY.

4. **DORMANT COMMERCE CLAUSE PROBLEMS** ? RESTRAINING INTERSTATE COMMERCE.

5. UNSCRUPULOUS DON'T REGISTER. REAL BIND IF TRYING TO DO THE RIGHT THING – REGISTER JUST TO TALK. CAN'T MAKE PHONE CALL. MOST BIGGER AGENTS REGISTER IN MANY STATES – GETS EXPENSIVE. TRYING TO MAKE TRUE NATIONAL REGISTRATION AND REGULATION.

# SPORTS AGENT RESPONSIBILITY AND TRUST ACT OF 2004 (FEDERAL)

1. ILLEGAL TO – PROVIDE FALSE INDUCEMENT, GIVE ANYTHING OF VALUE TO PLAYER BEFORE CONTRACT, PRE OR POST DATE CONTRACT. MUST PROVIDE WARNING ON LOSE ELIGIBILITY AND GIVE NOTICE TO ATHLETIC DIRECTOR WITHIN 72 HOURS OF SIGNING OR NEXT EVENT IF SOONER. STATE OR UNIVERSITY CAN BRING A CIVIL ACTION FOR VIOLATION. SENSE OF CONGRESS THAT STATES SHOULD ENACT UNIFORM ACT.

2. NO REGISTRATION REQUIREMENT.

3. HOW MUCH OF THIS IS POLITICAL GRANDSTANDING ?

WHAT ABOUT ADIDAS AND NIKE BASKETBALL PAYMENTS ?

## DETROIT LIONS v ARGOVITZ (1984)

BILLY SIMS A SUPERSTAR WITH LIONS. HIS AGENT (ARGOVITZ) BUYS OWNERSHIP SHARE IN HOUSTON USFL TEAM AND BECOMES ITS PRESIDENT. NEGOTIATES WITH LIONS BUT HAS SIMS SIGN WITH HOUSTON. DOESN'T TELL SIMS ABOUT LIONS LAST OFFER AND DIDN'T CALL LIONS AND GIVE THEM CHANCE TO RESPOND. SIMS ANGRY BECAUSE HE THINKS LIONS DON'T CARE. DEAL WITH HOUSTON IN RANGE OF LIONS BUT CONSIDERABLY LESS THAN HOUSTON GIVES QB JIM KELLY SHORTLY AFTER. ARGOVITZ HAD BRAD LERNER (PARTNER IN HOUSTON) AND GENE BURROUGHS (HIS RUNNER) FINISH THE DEAL. LIONS CONTACT SIMS – SIMS ANGRY WITH ARGOVITZ AND WANTS TO SIGN WITH LIONS (LAST OFFER ABOUT SAME AS HOUSTON).

1. FIDUCIARY – DUTY OF LOYALTY, GOOD FAITH AND FAIR AND HONEST DEALING. CAN'T HAVE SELF DEALING. EVEN IF CONTRACT FAIR TO PRINCIPAL, SELF DEALING GIVES RIGHT TO VOID.
2. RULE IS CONTRACT IS VOIDABLE UNLESS FIDUCIARY CAN SHOW BY PREPONDERANCE OF EVIDENCE THAT HE INFORMED SIMS OF EVERY MATERIAL FACT THAT MIGHT HAVE INFLUENCED SIMS' DECISION ON WHETHER OR NOT TO SIGN THE CONTRACT.
3. FAILURE TO GIVE SIMS THE KELLY DEAL IS DAMNING.

# COLLEGE SPORTS – NATIONAL LETTER OF INTENT

1. FOR DIVISION 1, 4 YEAR INSTITUTIONS
2. WRITTEN OFFER OF FINANCIAL AID FOR THE ENTIRE YEAR – TERMS, CONDITIONS AND AMOUNTS. NOT ALL FULL RIDES – 1 YEAR
3. PARENT/LEGAL GUARDIAN AND PLAYER.
4. IF NOT RENEWED, NLI RELEASED. NLI YEAR TO YEAR – SOME CONFERENCES AND SCHOOLS GOING TO 4 YEARS.
5. IF PLAYER SIGNS AND GOES TO ANOTHER UNIVERSITY, LOSE A FULL YEAR OF ELIGIBILITY AND SIT FOR 1 YEAR. BUT CAN HAVE RELEASE FOR EXTRAORDINARY CIRCUMSTANCES. WHAT ABOUT PLAYERS WHO HAVE GRADUATED ?
6. CAN'T SIGN EARLY IN ANOTHER SPORT IF PLAYING FOOTBALL.
7. NULL AND VOID – NOT ADMITTED, NON-QUALIFIER BY NCAA RULES, SIT FOR 1 YEAR WITH NO FALL FINANCIAL AID OR RECRUITING VIOLATION ABOUT THE PLAYER.

8. COACHES LEAVE, NLI STILL BINDING.

9. COACHES CAN'T DELIVER NLI.

NCAA RULES – TOO STRICT – NO BENEFIT TO ATHLETE. SCHOOLS BREAKING EVERY DAY. CORRUPT SYSTEM. NCAA RESPONDS TO MEDIA AND SMALL SCHOOL.

ALABAMA - INFRACTIONS REPORT JUNE 11, 2009

201 STUDENT ATHLETES GET IMPERMISSIBLE BENEFITS – 22 INTENTIONAL WRONGDOING. 125 UNDER \$ 100 – RESTITUTION. ALL ON SOME VARIETY OF TEXTBOOK SCAM. UNIVERSITY FAILED TO MONITOR. ALABAMA A REPEAT OFFENDER (FOOTBALL 1995 AND 2001 AND BASKETBALL 1999). NCAA CONSIDERED “LACK OF INSTITUTIONAL CONTROL” RATHER THAN “FAILURE TO MONITOR” BUT DIDN'T BECAUSE SELF-REPORTED. HIGHEST AMOUNTS OF FRAUD HERE BY 4 FOOTBALL PLAYERS (\$ 3,947).

PROCESS HAD NO LIMITS ON DOLLAR AMOUNTS OR NUMBER OF TIMES STUDENT ATHLETE COULD PURCHASE BOOKS. DID SO FOR FRIENDS AND FAMILY. NO ID REQUIRED. NO REVIEW OF MONTHLY BILLINGS AT DEPARTMENT LEVEL.

MAJOR VIOLATION BUT CONSIDER SELF-IMPOSED – NOT SUFFICIENT BUT FACTOR. ALABAMA REQUIRED RESTITUTION FOR ALL UNDER \$ 100, REPRIMANDED ASSISTANT ATHLETIC DIRECTOR, CHANGED ITS TEXTBOOK POLICIES, NEW TRAINING AND EDUCATIONAL SESSIONS AND COOPERATION.

PENALTIES:

1. PUBLIC REPRIMAND
2. 3 YEARS PROBATION
3. **VACATE** ALL 22 WINS IN WHICH 7 FOOTBALL PLAYERS PLAYED
4. FINE OF \$ 43,900
5. EDUCATION PROGRAM.

APPEAL – ALABAMA ARGUES ABUSE OF DISCRETION. FACTORS – INCORRECT LEGAL STANDARD, CLEARLY ERRONEOUS FACT FINDING, FAILED TO CONSIDER MATERIAL FACTORS, ARBITRARY AND CAPRICIOUS, AND DEPARTED FROM TEXT BOOK AND VACATION OF WINS PRECEDENT.

NCAA DENIED APPEAL – CHARGES DUES TO ALABAMA BEING A REPEAT OFFENDER. COMMITTEE HAS DISCRETION.

ALABAMA 2002 – FOOTBALL – PAID \$\$\$\$ TO HIGH SCHOOL PLAYER, DAD AND HIS HIGH SCHOOL COACH. ASSISTANT COACH LIED TO NCAA. REDUCED SCHOLARSHIPS, 2 YEAR POST SEASON BAN, 5 YEAR PROBATION AND DISASSOCIATE 3 FROM PROGRAM.



## USC – JUNE 10, 2010 FOOTBALL, BASKETBALL AND TENNIS

FOOTBALL – ATHLETE SET UP MARKETING AGENCY WITH DAD AND 2 AGENTS. CASH, CAR AND HOUSING. DECEMBER 2004 – JANUARY 2006. ASSISTANT COACH LIED TO NCAA. ASSOCIATE AD PROVIDED SUMMER INTERNSHIPS WITH 2 AGENTS – ONLY USC FOOTBALL PLAYERS – FAKE. ALSO USED AN “EXTRA” COACH FOR FILM AND WENT TO PRACTICE. OWNER OF RESTAURANT ALSO PROVIDE IMPERMISSIBLE BENEFITS. (REGGIE BUSH)

BASKETBALL – 2 OTHER AGENTS PROVIDED \$\$\$ TO PLAYER, BROTHER, GIRLFRIEND AND GIRLFRIEND’S MOM. (OJ MAYO)

TENNIS COACH ALLOWED PLAYER TO USE OFFICE PHONE TO CALL EUROPE (HIS HOME) = \$ 7, 535.

NCAA FOUND LACK OF INSTITUTIONAL CONTROL. REPEAT VIOLATOR. CLOSE CALL BUT NO TV BAN.

# PENALTIES

1. PUBLIC REPRIMAND AND CENSURE
2. 4 YEARS PROBATION
3. INSTITUTION – POST SEASON BAN AFTER 2009-10 SEASON BASKETBALL
4. POST SEASON FOLLOWING 2010 AND 2011 SEASONS BASKETBALL
5. VACATE ALL WINS AND ADJUST RECORDS – FOOTBALL AND BASKETBALL
6. FOOTBALL – LIMIT TO 15 SCHOLARSHIPS PER YEAR AND 75 TOTAL  
FOR 2011-12, 2012-13 AND 2013-14 SEASONS
7. REDUCED BASKETBALL RECRUITING
8. FINED \$ 206,020 + ALL \$\$ FROM 2008 BASKETBALL REVENUE SHARE
9. DISASSOCIATION OF 2 FOOTBALL AND 1 BASKETBALL AND 1 AGENT
10. NEED TO REGULATE LOCKER ROOM AND SIDELINES AND FACILITIES
11. PUBLICIZE ALL PENALTIES
12. EDUCATIONAL PROGRAMS FOR ALL.

DEATH PENALTY ? REDUCE SCHOLARSHIPS INSTEAD ? PENN STATE ?

## DL COACH BO DAVIS, ALABAMA AND THE NCAA

“BRUSH” CONTACT WITH 3 TOP 10 RECRUITS AT EPISCOPAL HIGH IN HOUSTON. NCAA THINKS PREARRANGED. LIED TO NCAA. REPRESENTED BY LAW SCHOOL EMERITUS PROF – FORMER REP OF ALABAMA AND ON NCAA INFRACTIONS COMMITTEE. IN SECOND MEETING, AFTER LIE SAID, NEVER SAID ANYTHING. THEN INSISTED BO TELL TRUTH IN MEETING 3.

MAKING \$ 350,000. ALABAMA OFFERED \$ 45,000 IN SEVERANCE. ULTIMATELY GOT \$ 317,000.

ALABAMA - \$ 5,000, DISASSOCIATION FROM BOOSTER AND REPLACEMENT DL COACH CAN'T RECRUIT FOR 39 DAYS.

BO – 2 YEARS SHOW CAUSE, CAN'T RECRUIT OFF CAMPUS. COULD HAVE BEEN 5-10 YEARS AND ALL ATHLETIC ACTIVITIES. FROM DAY OF DECISION 4/13/17 NOT DAY OF FIRING 4/29/16. APPEAL DENIED 12/14/17. UTSA AND LIONS.

RECRUITING – CESSPOOL - RAMPANT CHEATING. TWO BIG KINDS - \$\$\$ AND ACADEMIC FRAUD.

**CASH** – MANY TIMES DONORS CUTTING DEAL WITH LIMITED COACH INVOLVEMENT.

**ALABAMA** – 2002. PAID \$ 20,000 TO HS PLAYER, \$ 10,000 TO DAD AND \$ 100,000 + 2 SUV'S TO HS COACH. VARIOUS TRIPS FOR ALL. AFTER INELIGIBLE TO ENROLL, PLAYER WENT TO ALABAMA PREP SCHOOL AND RECRUITMENT ALL OVER AGAIN. ALABAMA OFFERS \$ 5,000 + \$ 500 A MONTH WHILE IN SCHOOL, \$ 500 FOR EACH GAME STARTED AND \$ 5,000 FOR HIS MOM FOR EVERY CHRISTMAS IN SCHOOL. WHEN PLAYER SAID NOT SIGNING WITH ALABAMA, DOUBLED OFFER. TOTAL OF APP \$ **288,000**.

**CAM NEWTON'S DAD AND \$ 180,000 ? SERIOUSLY ?**

**BASKETBALL ? JUST ADIDAS ?** FRAUD ON SCHOOLS – PARENTS TAKE \$\$ THEN SIGN FORMS SAYING NO NCAA VIOLATION. TAX THREAT ON PARENTS TO TURN (EVEN IF “LOAN”). BASKETBALL ALWAYS MOST CORRUPT. ACTUAL \$\$ MORE.

**TYRELL PRYOR AND SUGAR BOWL ? 1 GAME.**

# ACADEMIC FRAUD

DOING PAPERS FOR THE ATHLETE, TAKING TESTS FOR THE ATHLETE, GOOD GRADES FOR NEVER ATTENDING.

LEGITIMATE – EASY CLASSES, PE MAJORS, NOT MAJOR OF CHOICE (NO LABS), NOT CARING ABOUT GRADES ABOVE C.

## TAYLOR v WAKE FOREST (1972)

FOOTBALL PLAYER – GPA OF 1.0 FIRST SEMESTER, 1.9 SECOND.  
MAINTAINED ELGIBILITY (WAKE ONLY REQUIRED A 1.35 AFTER FRESHMAN YEAR – NCAA ONLY IMPOSES A 2.0 AFTER THREE YEARS – BEFORE THAT, SATISFACTORY ACADEMIC PROGRESS DEFINED BY SCHOOL). REFUSED TO PLAY SO HE COULD WORK ON GRADES. WAKE REVOKED SCHOLARSHIP. PAID FOR 2 YEARS, GRADUATED, THEN SUED.

P CLAIMED ORAL CONTRACT THAT IF CONFLICT BETWEEN ATHLETICS AND ACADEMICS, ACADEMICS WERE PRIORITY. NO. ONLY WRITING SAYS HE WILL KEEP HIMSELF IN SHAPE AND ACADEMICALLY ELIGIBLE. WAKE FULLY COMPLIED – TAYLOR BREACHED BY REFUSING TO PRACTICE. TAYLOR DOESN'T GET TO DECIDE WHAT CONSTITUTES ACADEMIC PROGRESS.

## ROSS v CREIGHTON UNIVERSITY (1992)

ROSS = BASKETBALL. LOWER 5<sup>TH</sup> PERCENTILE IN ACT. PLAYED FOR CREIGHTON FROM 1978 – 1982. HAD A D GPA AND ACQUIRED 96 CREDITS. MANY IN MARKSMANSHIP AND THEORY OF BASKETBALL WHICH DIDN'T COUNT TO 128 NEEDED TO GRADUATE. LEFT CREIGHTON WITH 4<sup>TH</sup> GRADE LANGUAGE SKILLS AND 7<sup>TH</sup> GRADE READING LEVEL. CREIGHTON PAID FOR 1 YEAR REMEDIAL SCHOOL IN CHICAGO (WITH GRADE SCHOOL CHILDREN.)

### A. NEGLIGENCE

1. **EDUCATIONAL MALPRACTICE** - MOST STATES REJECTED: a) NO STANDARDS TO EVALUATE EDUCATOR b) CAUSE AND NATURE OF DAMAGES – HOW MUCH FAULT OF THE STUDENT ? c) POSSIBLE FLOOD OF LITIGATION AND d) FORCE COURT INTO OVERSEEING DAY TO DAY ACTIVITIES OF SCHOOL.

2. **NEGLIGENT ADMISSION** – TOO SUBJECTIVE. IF ONLY ADMIT “REASONABLY QUALIFIED STUDENT”, HURT DIVERSITY AND GIVING LESS PREPARED A CHANCE.

3. **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS** – NEED 1 OR 2 ABOVE TO SUPPORT.

B. CONTRACT

WON'T GET INTO QUALITY OF THE EDUCATION. **NO CLAIM FOR “NOT GOOD ENOUGH”**. A VALID CONTRACT CLAIM IF DIDN'T PROVIDE TUTORS OR TOTALLY DENIED ACCESS TO ACADEMIC CURRICULM AS PROMISED.

ROSS SETTLED FOR \$ 30,000.

## JACKSON v DRAKE (1991)

BASKETBALL PRACTICES INTERFERED WITH STUDY AND TUTOR TIME. WENT TO PRACTICE UNDER THREATS SCHOLARSHIP WOULD BE REMOVED. COACHES DID PAPERS FOR PLAYERS TO TURN IN – JACKSON REFUSED. COACHES INSISTED HE TAKE CERTAIN “EASY” COURSES – JACKSON REFUSED AND PICKED HIS OWN. COACHES IMPOSED EXTRA RUNNING, SIT UPS AND PUSH UPS. HEAD COACH YELLING AND DEROGATORY NAMES. QUIT TEAM AND AID TERMINATED. DRAKE WINS ON ALL CLAIMS BUT FRAUDULENT MISREPRESENTATION. SENT BACK TO TRIAL COURT ON THAT ISSUE BUT EVENTUALLY AFFIRMED SUMMARY JUDGMENT FOR DRAKE ON ALL COUNTS.



# UNIVERSITY OF NORTH CAROLINA – BLACK HISTORY MAJOR

NO WORK – ALL A/B GRADES.

NCAA SAYS NO VIOLATION – ALL STUDENTS, NOT JUST ATHLETES,  
GETTING THOSE GRADES OF NO WORK.

## REALITY OF TUTORS

ALL TEAMS HAVE THEM – TRAVEL. NORTHERN BASEBALL TEAMS ?  
FOOTBALL PLAYOFFS – 8 ?

LINE BETWEEN HELP AND DOING FOR THEM ? PAPERS ?

# O'BANNON v NCAA AND EA SPORTS

USED PLAYERS IMAGE AND LIKENESS FOR YEARS WITHOUT CONSENT OR PAYMENT.

DC – VIOLATES ANTITRUST LAW. PAY COSTS OF ATTENDANCE AND \$ 5,000 FOR RIGHTS.

9<sup>TH</sup> CIRCUIT – JUST COSTS OF ATTENDANCE.

SETTLED FOR \$ 60 MIL.

2003-2014

21,309 BASKETBALL PLAYERS

111,174 FOOTBALL PLAYERS

AVG = \$ 1,200 – MOST = \$ 7,020 **LAWYERS** - \$ 41,000,000 FEES AND COSTS

# REALIGNMENT AND SOCIAL MEDIA

1. MARYLAND v ACC – ISSUE OF COMPENSATION OR PENALTY.
2. 4 CONFERENCES OF 16 TEAMS ? FUTURE OF NCAA ?
3. UNIVERSITY RESTRAINTS ON SOCIAL MEDIA:
  1. FIRST AMENDMENT ?
  2. NLRB FOR PRIVATE ?
4. COMPENSATION FOR ATHLETES ?
5. SPORTS AND RACIAL EQUALITY ? (NEXT SLIDE)
6. SPORTS AND PERSONAL PRIVACY – ESP MEDICAL INFORMATION

## NFL AND RETIREE HEALTH PROBLEMS:

1. WORKMEN'S COMPENSATION
2. CONCUSSION LITIGATION
3. PAINKILLER LITIGATION

## SPORTS AND RACIAL EQUALITY.

1. JACKIE ROBINSON AND MLB.
2. UNIVERSITY OF MISSISSIPPI – SEC FORFEIT (1963)
3. TEXAS WESTERN NCAA BASKETBALL (1966)
4. ALI REFUSAL TO BE DRAFTED (1967).
5. TOMMIE SMITH AND JOHN CARLOS – 1968 OLYMPICS
6. USC AND ALABAMA FOOTBALL GAME (1970). FIRST BLACK PLAYER ON ALABAMA TEAM BUT FRESHMEN INELIGIBLE TO PLAY THEN. USC ALL BLACK BACKFIELD SCORED ALL TD'S IN 42-21 ROUT.

# MCNAIR (6'4 325)TIMELINE:

CONDITIONING AT PRACTICE FIELD NOT FIELDHOUSE – 5 TRAINERS

415 – CONDITIONING STARTS – 10 FOR 110 YDS

MCNAIR GOOD ON FIRST 7 – LOOKS EXHAUSTED

OTHER PLAYERS HELP HIM FINISH 10 – TRAINERS CURSING HIM

453 – TRAINERS NOTE CRAMPS AND EXHAUSTION – BEGIN CARING FOR MCNAIR. NOW FATIGUE, BACK PAIN, CRAMPS, HYPERVENTIATING, AND PROFUSE SWEATING.

527 – TAKEN FROM PRACTICE FIELD TO FIELDHOUSE. ON MAT – WET TOWELS. MOOD SWINGS AND SCREAMING. DIDN'T IMMERGE IN AVAILABLE TUBS – FEAR OF DROWNING.

555 – CALL TEAM DOCTOR. TELLS THEM TO CALL 911

602 - SECOND 911

627 - LEFT IN AMBULANCE.

LIVER TRANSPLANT AT HOSPITAL

# DURKIN COMMISSION

## A. CHARGE

1. IS FOOTBALL CULTURE TOXIC ?
2. WERE THERE SPECIFIC INSTANCES OF ABUSE ?
3. RECOMMENDATIONS

## B. CONCLUSIONS

1. THANK PLAYERS WHO SPOKE UP
2. UNDER DURKIN
  - A. ATH DEP LACKED CULTURE OF ACCOUNTABILITY
  - B. ATH D DID NOT ADEQUATELY OVERSEE FOOTBALL
  - C. ATH D DID NOT PROVIDE RESOURCES TO EDUCATE  
DURKIN AS FIRST TIME COACH
3. COURT ACTED INCONSISTENT WITH UNIV VALUES



RESULTS:

JORDAN MCNAIR DEAD

DURKIN REINSTATED – UNFAIRLY BLAMED FOR DYSFUNCTION IN ATH DEPT.

CULTURE OVERSIGHT COMMITTEE

PRESIDENT LOH TO RESIGN AT END OF YEAR

MUCH BLAME ON FORMER ATH DIR KEVIN ANDERSON.



# HOW DO YOU CREATE A NEW SPRING FOOTBALL LEAGUE ?

## A. WHY DID ALLIANCE OF AMERICAN FOOTBALL LEAGUE FAIL ?

1. BAD LEADERSHIP ?
2. BAD PRODUCT ?
3. NO MARKET FOR SPRING FOOTBALL ?
4. INSUFFICIENT CAPITAL INVESTMENT ?
5. RELATIONSHIP WITH NFL/COLLEGES ?

## B. WILL XFL SUCCEED ?

1. SIMILARITIES/DISIMILARITIES FROM AAFL ?
2. WOULD YOU INVEST ?
3. WHAT ADVICE WOULD YOU GIVE ?
4. RELATIONSHIP WITH NFL/COLEGES ?

# ESPORTS – THE NEXT BIG THING (?)

1. FIRST TALKED ABOUT THIS IN FALL, 2017
2. BIGGER IN EUROPE AND ASIA THAN US – US LATE TO PARTY
3. NUMBERS OF SPECTATORS (174,000) AND VIEWERS FOR DOTA2 TOURNAMENT IN POLAND
4. ANNUAL GROSS INCOME OVER \$ 1 B. MANY PLAYERS OVER \$ 1 M PER
5. INVESTORS FROM ESTABLISHED SPORTS TEAMS.
6. DIFFERENT LEAGUES FOR DIFFERENT GAMES
7. WHAT YEAR WILL ESPORTS SURPASS MLB IN GROSS REVENUE ?

# WORKMEN'S COMPENSATION

NOT JUST NFL AND NHL, BUT BIGGEST. WHAT IS FAIR RESPONSE TO HEALTH PROBLEMS OF FORMER PLAYERS ?

PLAYERS CAN CLEARLY GET FROM STATE IN WHICH THEY LAST PLAYED. TWO BIG QUESTIONS:

1. CAN YOU COLLECT IN MULTIPLE STATES ? OLD RULE IN CALIFORNIA – JUST PLAY 1 GAME IN STATE AND YOU ARE ELIGIBLE. WORKMEN'S COMPENSATION – NOT FROM TAXPAYERS, EMPLOYER FUNDED. BUT VISITING PLAYERS DO PAY INCOME TAX ON GAME CHECKS.

2. WHAT ABOUT CUMULATIVE INJURY ? CAN'T TRACE TO 1 PLAY.

NFL HAS SPEARHEADED A MASSIVE EFFORT TO REDUCE WORKMEN'S COMP PAYMENTS TO RETIRED PLAYERS.

1. WHILE PLAYING, CONTRACT NOW SAYS ONLY 1 STATE.
2. LOBBYING LEGISLATURE TO CHANGE THE LAW. SUCCESSFUL IN MANY STATES - CALIFORNIA (NO LONGER 1 GAME) AND FLORIDA (ATHLETES NOT COVERED).
3. LITIGATION

MATTHEWS v NFL (2012 – 9<sup>TH</sup> CIR.)

BRUCE MATTHEWS OL FOR 19 YEARS IN NFL. RETIRED IN 2002 – FILED IN CALIFORNIA IN 2008. CLAIMED PAIN AND DISABILITY FROM PLAYING. HIS NFL CONTRACT SAID ALL WC CLAIMS EXCLUSIVELY DECIDED UNDER TENNESSEE LAW (PLAYED FOR THE TITANS). NFL BROUGHT TENNESSEE ARBITRATION CASE AGAINST HIM TO PREVENT CA FILING. ARBITRATOR ISSUES CEASE AND DESIST. HE FILED FEDERAL LAWSUIT TO VACATE ARBITRATION. DC CONFIRMED ARBITRATOR.

DEFER TO ARBITRATION UNLESS AGAINST PUBLIC POLICY. CAN'T WAIVE STATE LAW WORKMEN'S COMPENSATION BENEFITS COLLECTIVELY OR INDIVIDUALLY. BUT MATTHEWS HASN'T SHOWN HE IS ENTITLED TO AN AWARD IN CALIFORNIA. HE DIDN'T ALLEGE HE PLAYED IN CALIFORNIA AND DIDN'T ALLEGE ANY INJURY IN CALIFORNIA. JUDICIAL NOTICE HE PLAYED 13 GAMES IN STATE. CANNOT SAY THOSE LIMITED CONTACTS BRING HIM WITHIN CALIFORNIA WORKMEN'S COMPENSATION LAWS. DOESN'T HAVE TO PROVE HE WILL WIN \$\$\$ FROM CALIFORNIA, JUST PRIMA FACIE SHOWING HE IS WITHIN THE SCOPE OF THE STATUTE.

# CONCUSSION LITIGATION

LAWSUITS FILED ACROSS COUNTRY – MULTI-DISTRICT LITIGATION HEARING – SEND ALL TO PHILADELPHIA. PLAINTIFFS ARGUE MEDICAL EVIDENCE SINCE 1928. MONETIZED VIOLENCE. 1994 – COMMITTEE, THEN DID NOTHING. INFLUENCE RESEARCH AND LIED TO PUBLIC AND PLAYERS.

NFL FILES MOTION TO DISMISS – PREEMPTION IS MAIN ARGUMENT. NFL ARGUES THAT STATE TORT ACTIONS SHOULD BE THROWN OUT OF FEDERAL COURT IF THE RIGHT ASSERTED **ARISES FROM A COLLECTIVE BARGAINING AGREEMENT OR IS SUBSTANTIALLY DEPENDENT ON THE INTERPRETATION OF A TERM IN THE CBA.** SECTION 301 PREEMPTION

JUDGE STATES STRONG ARGUMENTS ON BOTH SIDES OF PREEMPTION AND PUSHES SETTLEMENT TALKS. FIRST SETTLEMENT AGREEMENT REJECTED BY DISTRICT COURT – HAD LIMITED DAMAGES TO \$ 750 MIL. FINAL SETTLEMENT UNCAPPED. APPROVED BY COURT AND THIRD CIRCUIT.

APPEAL TO SUPREME COURT – CERT DENIED.

SETTLEMENT – PAY FOR

1. DEMENTIA 1.5, 2
2. ALZHEIMER'S
3. ALS
4. PARKINSON'S
5. CTE IF DEAD ON SETTLEMENT DATE AND PROOF (EG J. SEAU).

NFL CAN APPEAL, PLAYERS CAN'T. MADE SECOND SETTLEMENT WORSE FOR PLAYERS. GROUP OF PLAYERS APPEALED ON UNFAIRNESS OF SETTLEMENT. LOST. CHECKS NET OF LIENS – MEDICAL AND LAWYERS.

ATTORNEYS' FEES = \$ 112,000,000 (UPFRONT), 5% OF ANY ACTUAL RECOVERY PLUS VARIOUS COSTS (EG \$ 4,000,000 TO MAIL TO CLASS, ANNUAL FEE FOR SITTING ON OVERSIGHT BOARD). PLUS OUT OF POCKET EXPENSES. NFL JUST INITIATED ACTION FOR FRAUDULENT CLAIMS.

# NHL CONCUSSION

STSW GETS 80 FORMER PLAYERS SIGNED – FILE COMPLAINT IN DC. DRAW GREAT JUDGE – 45 YEAR OLD WOMAN. 2 OTHER COMPLAINTS FILED. MDL – ARGUMENT IN KC OVER WHERE – MINNESOTA. KILLED ON NAMED PLAINTIFFS.

HOCKEY PLAYERS MORE DAMAGED THAN NFL – 40 MPH INTO BOARDS OR HARD ICE. FIGHTING. ENFORCERS.

PLAYERS WIN PREEMPTION ARGUMENT IN NHL MOTION TO DISMISS. WIN STATUTE OF LIMITATIONS ARGUMENT AT MTD STAGE. NHL MANAGEMENT TOUGH – COMMISSIONER BETTMAN DENIES ANY CONNECTION BETWEEN CONCUSSIONS AND CTE IN LETTER TO SENATE COMMITTEE. CLASS CERTIFICATION NEXT.



LOSE ON CLASS CERTIFICATION

THREAT OF INDIVIDUAL LAWSUITS MEANS NHL STILL  
CONCERNED. SETTLEMENT DONE FOR NOT MUCH MONEY.

PAINKILLER LITIGATION – DENT v NFL.

COMPLAINT – ALREADY 500 RETAINED, 8 FAMOUS NAMED PLAINTIFFS, LED BY HOF RICHARD DENT. ROBBINS GELLER CALLS – THEY HAVE 250 RETAINED – JOIN US. 1,800 RETAINED.

PUBLICITY – LET PLAYERS TALK. EVERYWHERE – TWICE ON TODAY SHOW. DEA INVESTIGATING – EVENTUALLY RAID AWAY TEAMS.

NFL FILES MOTION TO DISMISS ARGUING PREEMPTION. STSW DOESN'T EMPHASIZE ILLEGALITY AS ARGUMENT DRIFTS INTO ARBITRABILITY. NFLPA WRITES 2 LETTERS – NOT GRIEVABLE SO NO ARBITRATION. JUDGE DECIDES FOR NFL ON **DECEMBER 17, 2014.**

APPEAL FILED – ORAL ARGUMENT **DECEMBER 15, 2016.**

DECEMBER 2017 – KOZINSKI RESIGNS – METOO MOVEMENT.

SEPTEMBER, 2018 – PLAYERS WIN. NOT DEPENDENT ON A TERM OR PROVISION IN A CBA. ILLEGALITY.

RETURN TO DISTRICT COURT. JUDGE ALLOWS PLAINTIFF TO AMEND COMPLAINT. NFL WILL THEN RENEW MOTION TO DISMISS.

## PAINKILLER LITIGATION – EVANS v 32 TEAMS

FILE IN MARYLAND – NEW NAMED PLAINTIFFS v 32 TEAMS – GROUP OF NAMED PLAINTIFFS COVER EVERY TEAM AND EVERY YEAR SINCE 1972.

NOT FAMOUS – 5 – 10 YEAR VETERANS. SIMPLE CAUSE OF ACTION – INTENTIONAL MISREPRESENTATION AND CONSPIRACY.

MARYLAND JUDGE TRANSFERS BACK TO CALIFORNIA JUDGE ON FAIRNESS GROUNDS (OTHER 4 FACTORS FAVORED MARYLAND).

SAME JUDGE WHO RULED AGAINST PLAYERS IN DENT ON PREEMPTION RULES FOR PLAYERS IN EVANS. DIFFERENT CASE, ONLY INTENTIONAL TORTS (NO NEGLIGENCE CLAIMS).

DISCOVERY – ALWAYS WORSE FOR NFL. DON'T WANT PUBLIC.

CLASS CERTIFICATION – DIFFICULT TO GET ON PERSONAL INJURY CLAIMS – TRY FOR 23C4 – LIABILITY ONLY. FOR 23 B3 – AMEND COMPLAINT – RICO.

P LOSES ON RICO ON STATUTE OF LIMITATIONS GROUNDS – JUDGE RULES P SHOULD HAVE KNOWN EFFECTS. INJURY DISCOVERY RULE. ON APPEAL

JUDGE LATER DISMISSES MOST OF INTENTIONAL MISREPRESENTATION CLAIM ON CLAIM NOT PARTICULAR ENOUGH (RULE 9 AND IQBAL). PAGES OF EMAILS AND DEPOSITION RESULTS. JUDGE SAYS DIDN'T SHOW CAUSATION. THEN DISMISSED SOME CLAIMS AS BARRED BY MARYLAND STATUTE OF LIMITATIONS. THEN DISMISSED REMAINING CLAIMS AS BARRED BY WORKMEN'S COMP AWARDS AS EXCLUSIVE REMEDY.

RICO STATUTE OF LIMITATIONS APPEALED, DIDN'T APPEAL INTENTIONAL MISREPRESENTATION CLAIMS. ARGUMENT DECEMBER 19, 2018.

# PRINCIPLES OF ANTITRUST

1. SHERMAN ACT (1898) – SECTIONS 1 AND 2 ARE BASIC. AS WRITTEN, ENFORCED BY US ATTORNEYS.

2. CLAYTON ACT (1914)

SEC 2. ROBINSON PATTMAN ACT – CAN'T DISCRIMINATE IN PRICE BETWEEN DIFFERENT PURCHASERS OF COMMODITIES OF LIKE GRADE AND QUALITY WHERE EFFECT IS TO LESSEN COMPETITION IN COMMERCE.

SEC 4 – PRIVATE RIGHT OF INDIVIDUALS TO SUE FOR ANY VIOLATION OF ANTITRUST STATUTES.

SEC 7 – MERGER OR ACQUISITION IN LINE OF COMMERCE WHERE EFFECT IS TO SUBSTANTIALLY LESSEN COMPETITION OR TEND TO CREATE A MONOPOLY.

## SHERMAN ACT SEC 2 - MONOPOLIZATION

1. CAN BE UNILATERAL – ANY PERSON.
2. CAN BE ATTEMPT
3. MONOPOLY REQUIRES MONOPOLY POWER IN RELEVANT MARKET
  - A. CROSS ELASTICITY OF DEMAND – DUPONT – CELLOPHANE.  
VOLUME  $\nu$  PRICE CHANGE.
  - B. EXAMPLE – PLAINTIFFS ARGUE MARKET IS DEFINED AS US PROFESSIONAL FOOTBALL. NFL ARGUES MARKET = ALL ENTERTAINMENT.
4. WILFUL ACQUISITION AND MAINTENANCE OF THAT POWER.
5. ATTEMPT – DANGEROUS PROBABILITY OF MONOPOLY REALITY

# SHERMAN ACT SEC 1. – RESTRAINT OF TRADE

1. CONTRACT, COMBINATION OR CONSPIRACY – NEED 2 OR MORE.
2. ACTUAL RESTRAINT OF TRADE.
3. IN THEORY, EVERY CONTRACT RESTRAINS TRADE. STANDARD OIL = ONLY UNREASONABLE VIOLATE. SOME SO CONSISTENTLY FOUND TO BE UNREASONABLE = PER SE VIOLATION.
  - A. PRICE FIXING – VERTICAL OR HORIZONTAL AGREE ON SELL \$\$.
  - B. DIVISION OF MARKETS – YOU DON'T SELL IN MD, I WON'T PA
  - C. TYING ARRANGEMENTS – IBM AND COMPUTER CARDS. NFL ?
  - D. CONCERTED REFUSAL TO DEAL OR GROUP BOYCOTT – WON'T DO BUSINESS WITH YOU. DRAFT.
4. IF NOT PER SE, THEN FULL RULE OF REASON ANALYSIS. POWER, PURPOSE AND EFFECT -PROCOMPETITIVE BENEFITS v ANTICOMPETITIVE EFFECTS IN INDUSTRY.



EARLY SPORTS CASES SAY NO PER SE IN SPORTS – UNIQUE INDUSTRY (COMPETITION) ALWAYS REQUIRES FULL RULE OF REASON INQUIRY.

IF MORE THAN 1 ENTITY, USUALLY GO SEC 1 – LESS PROOF, AVOID WHOLE MONOPOLY POWER/RELEVANT MARKET DISPUTE.

**NON-STATUTORY LABOR LAW EXEMPTION** - USED ANTITRUST LAWS AGAINST UNIONS. CONGRESS AMENDED STATUTE TO GIVE STATUTORY EXEMPTION FROM ANTITRUST LAWS FOR UNILATERAL UNION ACTIVITY. USSC REALIZED TO PROTECT UNIONS, MOST ALSO PROTECT COLLECTIVE BARGAINING AGREEMENT. CAN'T PENALIZE FRUITS OF LABOR NEGOTIATION. (DIFFERENT PREEMPTION IF A PERSONAL INJURY LAWSUIT – SEE CONCUSSION AND PAINKILLER LITIGATION.)

BLACK LETTER LAW FOR NSLLE:

1. AFFECTS **ONLY** PARTIES TO COLLECTIVE BARGAINING RELATIONSHIP **AND**
2. MUST BE A **MANDATORY** SUBJECT OF BARGAINING **AND**
3. MUST BE PRODUCT OF BONA FIDE, **GOOD FAITH** BARGAINING.

## FLOOD v KUHN (1972)

FEDERAL BASEBALL v NATIONAL LEAGUE (1922) HELD THAT BASEBALL NOT INTERSTATE COMMERCE THEREFORE SHERMAN ACT DOESN'T APPLY. CASES IN 1950'S HELD ALL OTHER SPORTS WERE IN INTERSTATE COMMERCE EXCEPT TOOLSON v NY YANKEES WHICH SURPRISINGLY REAFFIRMED FEDERAL BASEBALL.

BASEBALL UNTIL THE DATE OF TRIAL HAD OPERATED UNDER "THE PERPETUALLY RENEWING RESERVE CLAUSE." EACH 1 YEAR CONTRACT HAD AN OPTION THAT THE CLUB COULD EXERCISE AT 80% OF THE PRIOR YEAR'S SALARY AND UNDER THE SAME TERMS AND CONDITIONS. CURT FLOOD WAS AN ALLSTAR TRADED FROM SAINT LOUIS TO PHILADELPHIA. DIDN'T REPORT – SUED INSTEAD. FLOOD 31 WHEN TRADED.

READ LIST AND LANGUAGE. JUSTICE BLACKMUN AFFIRMS BASEBALL'S EXEMPTION FROM THE ANTITRUST LAWS.

1. CONGRESSIONAL INACTION
2. BASEBALL HAS DEVELOPED IN RELIANCE UPON EXEMPTION.
3. STARE DECISIS AND RESPECT FOR PRECEDENT.
4. CHANGE SHOULD COME FROM CONGRESS.
5. EXEMPTION ONLY FOR BASEBALL – ALL OTHER SPORTS SUBJECT TO ANTITRUST LAWS.

FLOOD'S LAWYERS MAKE A MISTAKE – THROW IN CLAIM BASED ON 13<sup>TH</sup> AMENDMENT. PHILLIES HAD OFFERED \$100,000 PER YEAR. MEDIA GOES WILD ON SLAVERY CLAIM. FLOOD, EMBITTERED, LEAVES US.

AFTER THE UNEXPECTED LOSS IN COURT, MILLER LOOKS TO CBA AND FINDS AN ARBITRATION CLAUSE IN FOR CONTRACT DISPUTES. FOUR YEARS LATER, MBLPA BRING ARBITRATION ASSERTING THAT 1 YEAR = 1 YEAR.

# NATIONAL AND AMERICAN LEAGUES v MLBPA (MESSERSMITH 1976)

MESSERSMITH PLAYS OUT OPTION WITH DODGERS, MCNALLY WITH MONTREAL.  
ASKING ARBITRATOR TO DECLARE THEM FREE AGENTS.

1. INDIVIDUAL CONTRACT – CLAUSE 10 CONTAINS OPTION CLAUSE
2. BASIC AGREEMENT – XV – “THIS AGREEMENT DOES NOT DEAL WITH THE RESERVE SYSTEM.”
3. MAJOR LEAGUE RULE 4a – THE RESERVE LIST.

A. AGREEMENT DOES DEAL WITH RESERVE SYSTEM IN MANY WAYS. AMBIGUITY. UNION PUT CLAUSE IN FOR FLOOD LITIGATION (PREEMPTION). ASSUME ARBITRABLE UNLESS CLEARLY EXCLUDED.

B. CONTRACT – 1 YEAR. NOT CLEAR IT IS PERPETUALLY RENEWING. ALL OTHER SPORTS – 1 YEAR = 1 YEAR. FREE ONCE YEAR PLAYED OUT.

C. CONTRACT CONTROLS, NOT STATUS. JUST BECAUSE CLUB PUTS PLAYER ON LIST DOESN'T CHANGE CONTRACT. RESERVE CLAUSE NEEDS A CONTRACTUAL NEXUS.

KC ROYALS v MLBPA (1976)

USSC – STEELWORKERS TRILOGY – LABOR ARBITRATIONS ARE PRESUMED VALID AND NOT EASILY OVERTURNED. DEFERENCE.

ALL MLB PLAYERS FREE AGENTS THIS YEAR OR NEXT. IN NEXT CBA, MILLER GETS SALARY ARBITRATION IN EXCHANGE FOR 6 YEAR LIMIT.

**CURT FLOOD ACT OF 1998.** REGARDING ACTIVITIES RELATED TO PLAYERS AT THE MAJOR LEAGUE LEVEL, BASEBALL IS SUBJECT TO ANTITRUST LAWS. NOT COVERED – DRAFT AND MINOR LEAGUES, UMPIRES, ANY MLB OWNERSHIP ISSUES AND SPORTS BROADCASTING ACT. ONLY MLB PLAYER HAS STANDING TO SUE.

# ANTIRUST CASES

MODERN SPORTS WORLD CREATED IN 1970'S – FLOOD AND MESSERSMITH IN BASEBALL, MACKAY v NFL, PHILADELPHIA WORLD HOCKEY v PHILADELPHIA HOCKEY CLUB AND ROBERTSON v NBA.

## 1. MACKAY v NFL (1976)

CHALLENGE TO ROSELLE RULE – IF FREE AGENT GOES TO ANOTHER TEAM, COMMISSIONER DETERMINES COMPENSATION.

1. NSLLE – 3 PART TEST. NO GOOD FAITH BARGAINING HERE – RR FORCED ON WEAK UNION BY NFL.

2. SHERMAN 1 – NO PER SE. SPORTS UNIQUE ENOUGH THAT ONLY USE RULE OF REASON. IS RESTRAINT JUSTIFIED BY LEGITIMATE BUSINESS PURPOSE AND IS THE RESTRAINT NO MORE RESTRICTIVE THAN NECESSARY ?

3. NFL – COMPETITIVE BALANCE DESTROYED IF NO RR AND PROTECT CLUB INVESTMENT IN SCOUTING AND TRAINING. REJECT – NO COMPETITIVE BALANCE NOW – SAME TEAMS IN PLAYOFFS EVERY YEAR. A SPECIFIED NUMBER OF YEARS GETS RETURN, NOT WHOLE CAREER. MORE RESTRICTIVE THAN NECESSARY – INCLUDES BELOW AVERAGE, UNLIMITED DURATION AND NO PROCEDURAL SAFEGUARDS.

USSC DENIES CERT.

MACKEY = ALEXANDER v NFL – A CLASS ACTION. THAT THEN SETTLED FOR \$\$ AND 1977 CBA.

1982 – 57 DAY STRIKE – REPLACEMENT PLAYERS. NEW CBA.

1987 - STRIKE – PLAYERS CROSS. NO CBA FOR YEARS – PLAN B.

POWELL v NFL (1989) – NSLLE CONTINUES AS LONG AS COLLECTIVE BARGAINING RELATIONSHIP. CITES BRIDGEMAN v NBA - LABOR LAW, NOT ANTITRUST, RULES. NFLPA DECERTIFIES.

MCNEILL AND WHITE v NFL – SETTLED FOR \$\$\$ AND 1993 CBA.

## BROWN v NFL (USSC 1996)

IN MARCH OF 1989 WITH NO CBA IN PLACE, NFL CREATED 6 MAN DEVELOPMENTAL SQUAD PER TEAM. PAY EACH \$ 1,000. UNION REJECTED. NFL DECLARED IMPASSE AND IMPLEMENTED. 235 DEVELOPEMENTAL PLAYERS FILED AT LAWSUIT.

1. PRIMARILY LABOR LAW, NOT ANTITRUST. NSLLE CONTINUES IF, AFTER IMPASSE, MANAGEMENT IMPLEMENTS PROPOSALS CONTAINED IN ITS PRE-IMPASSE POSITION. BUT PROCESS MUST BE FREE OF ANY UNFAIR LABOR PRACTICE. REJECT ARGUMENT THAT NSLLE TERMINATES AT IMPASSE.
2. NOT FOREVER – IMPOSTION MAY BE SO FAR REMOVED FROM BARGAINING PROCESS TO MAKE THE RULE UNRELATED TO IT. ESSENTIALLY CONFIRMS THE POWELL DECISION.
3. BRIDGEMAN HAD SAID NSLLE ONLY IF OLD CBA UNCHANGED. NO.



## WOOD v NBA (1987)

LEON WOOD FIRST ROUND PICK OF PHILADELPHIA. CLUB OFFERED MAX ALLOWED AT TIME – OVER CAP. WOOD CHALLENGED DRAFT, SALARY CAP AND BAN ON PLAYER CORPORATIONS AS AT VIOLATIONS. ARGUED OUTSIDE BARGAINING UNIT – NO CONTRACT, HADN'T PLAYED.

1. HIRING HALLS ASSIGN WORKERS IN MULTI-EMPLOYER SETTING – TELL SOME THEY CAN'T WORK. NEW EMPLOYEE OFTEN DISADVANTAGED.
2. AT LAWS SHOULDN'T SUBVERT LABOR LAWS. LABOR PEACE – DON'T WANT COURTS SECOND GUESSING NEGOTIATIONS.
3. UNION GETS BEST DEAL FOR GREATEST NUMBER. WOOD MAY HAVE CLAIM AGAINST UNION FOR BREACH OF DUTY TO FAIR REPRESENTATION.

## DUTY OF FAIR REPRESENTATION (UNION)

NO HOSTILITY OR DISCRIMINATION TOWARDS A MEMBER.

DISCRETION WITH GOOD FAITH AND HONESTY.

BREACH IF ARBITRARY, DISCRIMINATORY OR BAD FAITH.

SUBSTANTIAL DEFERENCE – NARROW DUTY. NEGLIGENCE = NO BREACH.

NO BREACH ON JUDGMENT ISSUE.

PROSPECTIVE EMPLOYEES (ROOKIES) NOT MEMBERS OF BARGAINING UNIT FOR DUTY OF FAIR REPRESENTATION.

## CLARETT v NFL (2004)

NFL RULE SAYS CAN'T BE DRAFTED UNLESS 3 SEASONS REMOVED FROM HIGH SCHOOL GRADUATION. 2002 – CLARETT A TRUE FRESHMAN – OSU UNDEFEATED AND NATIONAL CHAMPION. 2003 – SUSPENDED. 2004 – PROBABLY SUSPENDED BUT FILES AT LAWSUIT BEFORE SURE.

## SOTOMAYOR (ON 2<sup>ND</sup> CIRCUIT)

1. QUESTION MACKAY'S 3 PART TEST FOR NSLLE. HERE – RESTRAINT IN PLAYER MARKET, NOT HINDERING COMPETITION.
2. BROWN AND WOOD – LABOR LAW SHOULD CONTROL.
3. DRAFT CLEARLY IS A CONCERTED REFUSAL TO DEAL – Q IS NSLLE. UNION CAN FAVOR VETS OVER ROOKIES, PRESERVE JOBS FOR CURRENT EMPLOYEES AT EXPENSE OF PROSPECTIVE

4. CLARETT LIKE ANY DISAPPOINTED JOB SEEKER – CONFIDENT HE DOESN'T HAVE SKILLS BUT DOESN'T MEET QUALIFICATIONS OR THE REQUISITE CRITERIA.

5. INCORPORATED THROUGH ZIPPER CLAUSE. BUT UNION KNEW AND CHOSE NOT TO BARGAIN OVER THE RULE. SAFEGUARD COLLECTIVE BARGAINING PROCESS AND UNIQUE BUNDLE OF COMPROMISES.

ACTUAL RULE IS YOU MUST APPLY FOR SPECIAL PERMISSION TO APPLY.  
RULE IN 2011 CBA.

HAYWOOD v NCAA (1971) – ELIGIBILITY RULES INVALID – ILLEGAL BOYCOTT.

IS CLARETT JUST A DISAPPOINTED JOB SEEKER ?

DOES IT MATTER THAT HE WANTS IN AND WOOD WANTED OUT ?

WHAT ABOUT NCAA ?

DOES 3 YEAR RULE REDUCE RISK OF VETERAN BEING REPLACED ?

# AMERICAN NEEDLE v NFL (2010)

1963 – NFL PROPERTIES CREATED TO MARKET INTELLECTUAL PROPERTY OF NFL TEAMS. 1963 – 2000 – GAVE NON EXCLUSIVE LICENSE TO MANY VENDORS – AN ONE OF THEM. DEC 2000 – EXCLUSIVE LICENSE FOR HEADGEAR TO REEBOCK. DIDN'T RENEW ANY NON EXCLUSIVE. AN SUED ON SHERMAN 1 – NFL ARGUED SINGLE ENTITY IN RESPONSE.

1. FUNCTIONAL DECISION – NEED CONCERTED ACTION JOINING TOGETHER INDEPENDENT CENTERS OF DECISION MAKING. TEAMS INDEP OWNED AND OPERATED. NOT COMMON BUT INDIVIDUAL INTERESTS.

2. NFL PROPERTIES DOESN'T CHANGE INQUIRY. INDEPENDENT TEAMS CHOOSING TO MARKET IN CONCERT. TEAMS HAVE COMMON INTERESTS BUT STILL SEPARATE PROFIT MAXIMIZING ENTITIES.

3. MUST COOPERATE TO HAVE LEAGUE DOESN'T CHANGE HERE.

4. RULE OF REASON PROTECTS WHERE ENTITIES NEED TO WORK TOGETHER IN A SPECIAL INDUSTRY. SHARING PROFITS EQUALLY DOESN'T IMMUNIZE – ALL CARTELS SHARE PROFITS. TEAMS HAVE ECONOMIC INTERESTS APART FROM NFL PROPERTIES WELL BEING

# COLLEGE LITIGATION OVER NCAA RULES

## BANKS v NCAA (1992)

NCAA RULE – LOSE ELIGIBILITY IF ENTER A PROFESSIONAL DRAFT OR AGREE TO BE REPRESENTED BY AN AGENT IN THAT SPORT. BANKS ENTERS 1990 NFL DRAFT – NOT DRAFTED AND NO FREE AGENT CONTRACT. HAS 1 YEAR OF ELIGIBILITY LEFT – TRIES TO RETURN TO ND BUT CAN'T. SUES. DC FOR NCAA.

1. NO MORE RESTRAINT THAN OTHER ELIGIBILITY RULES. DOESN'T RESTRAIN MARKET FOR COLLEGE PLAYERS BECAUSE COLLEGES NOT NFL MINOR LEAGUE BUT OPPORTUNITY FOR COMPETITION FOR STUDENTS. NCAA CREATES BRIGHT LINE BETWEEN STUDENT AND PAY.

2. NCAA NOT PURCHASERS OF LABOR – NO PRICE COMPETITION. VERDICT FOR P WOULD DESTROY AMATEURISM. SHIFT EMPHASIS FROM EDUCATION TO NFL MINOR LEAGUE.

FLAM (C AND D)

1. DOES EFFECT A MARKET – CONTROLS A MATERIAL TERM OF EMPLOYMENT PLAYERS WOULD WANT. HARMS COMPETITION IN THE LABOR MARKET. RECRUITS LOOKING AT MORE THAN JUST VALUE OF TUITION. NO ON MOTION TO DISMISS – LET IT GO TO RULE OF REASON.

WHY ALLOWED IN BASEBALL ?

DO COLLEGE ATHLETES NEED TO BE EMPLOYEES TO WIN CASE ?

NLRB RULING ON SOCIAL MEDIA AFFECT THIS ?

MANY CASES VALIDATING NCAA ELIGIBILITY REQUIREMENTS - PRESERVING AMATEURISM, ACADEMIC VALUES, COMPETITIVE BALANCE.



MEDIA RIGHTS.

FIRST RIGHTS ON RADIO. THEN TV. THEN DELAYED BROADCASTS. HIGHLIGHTS.  
NOW MOBILE APPS. JUST KEEPING TRACK OF MEDIA RIGHTS IS A FULL TIME JOB.

NEW MEDIA DEMANDS CONTENT. SPORTS AND MOVIES STILL BIG DRAW.

RADIO – AM – 1927. CAN'T BROADCAST ON SAME FREQUENCY. 1934 – FCC –  
LICENSE AND “FREE” SYSTEM. THEN TV AND VHF – 1-13 CHANNELS. ADOPT  
SAME REGULATORY SYSTEM. SPECTRUM SCARCITY.

CATV – HIGH ANTENNA. CURVATURE OF THE EARTH AND RURAL AREAS.  
CABLES RUNNING TO HOUSES FROM ANTENNA.

THEN TED TURNER. 1970 – DAD DIES AND LEAVES HIM OUTDOOR ADVERTISING  
BUSINESS. TED SELLS AND BUYS UHF CHANNEL 17 IN ATLANTA. WANTS  
NATIONAL NETWORK – MICROWAVE RELAY TOWER - \$ 50,000 – 100,000 EACH.

PARTY. FRIEND TELLS HIM ABOUT ED TAYLOR. **TRANSPONDERS** – CURVED MIRRORS – RETURN AND DIFFUSE. TAYLOR LEAVING WESTERN UNION TO GO WITH RCA. LAUNCHING 2<sup>ND</sup> SATELLITE. THEN GIVE AWAY CHEAP EARTHLINKS TO CABLE OPERATORS TO PUT ON TOWERS.

CONTENT. SPORTS – BRAVES AND HAWKS IN 1970'S. NEWS – 1982 – **CNN**. MOVIES AND TV SHOWS – 1986 - 3,300 FROM MGM - **TCM**. 1991 – 3,000 EPISODES OF CARTOONS FROM HANNA-BARBERA – **CARTOON NETWORK**.

**LOCAL SIGNALS** – FROM STATIONS WITHIN 35 MILES OF CABLE OPERATOR. GENERALLY ONES PICKED UP “ON THE AIR” AND SENT OUT OVER CABLE.

**DISTANT SIGNALS** – ANY CONTENT NOT LOCAL. EVOLUTION = BIG ANTENNAS – MICROWAVE TOWER – SATELLITE.

**UPLINK** – DEVICE TO BROADCAST UP TO SATELLITE.

**TRANSPONDER** – DEVICE TO REFLECT BACK.

**DOWNLINK** – EARTH STATION WITH RECEIVER. CAN'T BE PICKED UP BY ANTENNA.

**FIBER OPTIC CABLE** – LASER BEAM CABLE – INCREASED CAPACITY FOR NUMBER OF STATIONS THAT CAN BE CARRIED (UNLIMITED). CABLE OPERATORS BUNDLE.

**INTERNET** – DON'T NEED CABLE AND SATELLITE. BYPASS CABLE OPERATORS.

**WIFI AND APPS** – BYPASS INTERNET CABLE. CABLE OPERATORS DONE ?

## METHODS OF REVENUE

1. **BASIC SERVICE** – CHARGE MONTHLY FEE. MUST INCLUDE LOCAL FOR FREE. VARIES – CHANNELS WANT TO BE IN BASIC – OPERATOR PAYS FEE PER SUBSCRIBER. ESPN IN BASIC. MASN IN BASIC. ALSO CAN RUN ADS.

2. **PAY PER CHANNEL** – HBO AND MOVIE CHANNEL MODEL. SPORTS PACKAGE.

3. **PAY PER VIEW** – FIGHTS AND OTHER SPORTING EVENTS – ON DEMAND.

HBO AND NETFLIX – MOVIES AND ORIGINAL PROGRAMMING. BYPASS CABLE OPERATOR – DIRECT TO CONSUMER. APPLE TV. HBO GO – ESPN APPS. TECHNOLOGY BANKRUPTING COMPANIES – SELLING INTERNET ACCESS MAINLY. NO NEED.

HOW DO YOU CHARGE MOBILE DEVICES ? DIFFERENT ADS NOW.

COPYRIGHT REVISION ACT OF 1976 – COMPULSORY LICENSING. ALL **CABLE OPERATORS, SATELLITE CARRIERS AND DISTRIBUTORS OF DIGITAL AUDIO TECHNOLOGICAL RECORDING PRODUCTS** MUST PAY A PERCENTAGE OF THEIR GROSS REVENUES TO THE COPYRIGHT ROYALTY TRIBUNAL. TRIBUNAL DISTRIBUTES \$\$\$ TO PRODUCERS ALLEGING SHARES FOR THAT YEAR.

CAN THERE BE SO MANY GAMES AVAILABLE ON TV THAT IT HURTS OVERALL REVENUE ? DO TV GAMES HURT LOCAL SPORTS (LOYOLA) ?

WHEN WILL NFL BYPASS NETWORKS AND GO DIRECT TO AUDIENCE (PAY PER VIEW OR FEE) ?

WHO CONTROLS HIGHLIGHTS ?

ALL KINDS OF MEDIA – EG LOCKER ROOM SPEECHES. WHO OWNS AND HOW TO BROADCAST ?

3 BIG MEDIA LEGAL EVENTS:

1. SPORTS BROADCASTING ACT OF 1961
2. COPYRIGHT ACT OF 1976
3. NCAA v BOARD OF REGENTS OF OKLAHOMA (1984).

# SPORTS BROADCAST ACT OF 1961.

1. NOT ANTITRUST VIOLATION FOR PROFESSIONAL TEAMS TO COMBINE AS ONE ENTITY FOR PURPOSES OF NEGOTIATING ANY MEDIA DEAL.
2. NOT VIOLATION FOR NFL AND AFL TO MERGE.
3. CAN PROHIBIT BROADCAST IN HOME MARKET WHEN TEAM PLAYING AT HOME AND NOT VIOLATE AT LAWS.
4. NO PROFESSIONAL FOOTBALL GAME ON FRIDAY AFTER 6 PM EAST COAST TIME OR ANYTIME ON SATURDAY DURING THE PERIOD FROM THE SECOND FRIDAY IN SEPTEMBER AND ENDING ON THE SECOND SATURDAY IN DECEMBER.

## COPYRIGHT ACT OF 1976

BROADCAST OF A SPORTING EVENT **COPYRIGHTABLE – NOT THE GAME ITSELF, BUT THE BROADCAST**. GAME NOT AUTHORED IN PROTECTABLE SENSE, BUT VIDEO IS ARTISTIC. ACT PROVIDES FOR INJUNCTIVE RELIEF, ACTUAL OR STATUTORY RELIEF, INFRINGER'S PROFITS AND ATTORNEYS' FEES.

OWNERSHIP AMONG TEAMS, LEAGUES AND BROADCASTERS USUALLY DETERMINED BY CONTRACT. PLAYERS ARE EMPLOYEES AND THE BROADCAST IS IN THE SCOPE OF EMPLOYMENT SO GAMES ARE "WORKS MADE FOR HIRE" AND BELONG TO THE CLUBS (ALSO IN PLAYER CONTRACTS).

IDEAS, PROCEDURES SYSTEMS OR METHODS OF OPERATION ARE NOT COPYRIGHTABLE, BUT MAY BE **PATENTABLE** (CAN'T COPYRIGHT IDEA FOR TRANSCONTINENTAL ROLLER SKATING RACE, ARENA FOOTBALL HAS A PATENT FOR THEIR RULES OF THE GAME).

## NBA v MOTOROLA (1997)

STATS PROVIDES DATA FOR SPORTS PAGING DEVICE. STATS EMPLOYEES WATCH GAME OR LISTEN TO GAME AND FEED DATA INTO COMPUTER WHICH THEN SENDS OUT.

1. NO COPYRIGHT VIOLATION – GAMES NOT AUTHORED.
2. NY MISAPPROPRIATION LAW PREEMPTED. DOESN'T AFFECT PROTECTABLE INTERESTS IN PLAYING GAMES OR BROADCASTING THEM.

LEAGUE NOW PROVIDES

## NFL v MCBEE & BRUNO'S BAR (1986)

BAR CAN'T SHOW STL CARDINAL GAME FROM DISH WHEN IT IS BLACKED OUT IN THE HOME MARKET. COPYRIGHT INFRINGEMENT. NOT STATUTORY EXCEPTION – NOT COMMONLY FOUND IN HOME.



OTHER CASE – SAME RESULT WITH BAR AVOIDING BLACKOUT WITH OVERSIZED ANTENNA.

LEAGUE'S NOW HAVE LEAGUE PACKAGE AT COMMERCIAL RATE.

NEW BOSTON TV v ESPN (1981)

ESPN GETTING HIGHLIGHTS OFF THE AIR AND REBROADCASTING. ESPN CLAIMED FAIR USE BECAUSE OF TAPE DELAY – NOT COMPETING WITH LIVE BROADCAST.

1. RECORDING FOR SOLELY IN HOME, PERSONAL USE NOT COPYRIGHT INFRINGEMENT.

2. VIOLATION HERE – CAN REPORT UNDERLYING FACTS OF GAME BUT CAN'T APPROPRIATE LEAGUE'S ARTISTIC EXPRESSION IN THE BROADCAST. USING IT FOR ECONOMIC BENEFIT.

MODERN RULE FOR PLAYER PUBLICITY RIGHTS –

TEAM OWNS COLORS AND UNIFORMS

PLAYER OWNS LIKENESS AND NAME.

BIG \$\$ FOR PLAYERS PUBLIC RECOGNIZE WITHOUT UNIFORM – PEYTON MANNING, LEBRON. DON'T NEED TO PAY TEAMS.

CBA ART 51 – JERSEYS WITH SPONSOR LOGOS, CLUBS CONTROL GAMEDAY ATTIRE (GLOVES AND FOOTWEAR), NO THIRD PARTY ATTIRE FOR INTERVIEWS IN STADIUM, PLAYERS WILL PROMOTE, NO DEROGATORY PUBLIC STATEMENTS, MICROPHONES AND SENSORS.

PLAYERS HAVE GIVEN UP RIGHTS TO ANY AND ALL USEAGE OF GAME FOOTAGE IN THE STANDARD CONTRACT (SEE BELOW).

## NCAA v OKLAHOMA AND GEORGIA (1984)

NCAA CLAIMS RIGHT TO BE EXCLUSIVE AGENT FOR SCHOOLS FOOTBALL RIGHTS. PRIOR TO 1982, ALL WITH ABC. 13 NATIONAL GAMES AND 45 REGIONAL GAMES. NCAA PAID SCHOOLS \$ 533,600 FOR NATIONALS AND \$ 401,222 FOR REGIONALS. APPEARANCE RESTRICTIONS.

NEW CONTRACT – CBS AND ABC. 3 SPECIAL DATES, 2 EQUITY GAMES EACH. 14 GAMES EACH – 35 GAME MINIMUM. A SCHOOL COULD ONLY BE ON A MAXIMUM OF 6 GAMES OVER 2 YEARS (ONLY 4 NATIONAL OVER 2 YEARS). 82 DIFFERENT TEAMS OVER 2 YEARS. USC – ALABAMA GAME BLACKED OUT FOR APPALACHIAN STATE V CITADEL. NCAA ARGUES KEEP BIG SCHOOLS FROM ALWAYS BEING ON – GIVE SMALL A CHANCE.

ARGUMENT FOR SCHOOLS AND NCAA ?

## SCHOOLS:

1. PRICE FIXING AND LIMITATION ON PRODUCTION – NO LOCAL TV ALLOWED.
2. GROUP BOYCOTT – OTHER STATIONS.
3. MONOPOLIZATION IN MARKET FOR LIVE COLLEGE FOOTBALL. SPECIAL CHARACTERISTICS OF MARKET – PAY A PREMIUM TO REACH.

## NCAA:

1. EDUCATION NOT A BUSINESS – TREAT DIFFERENTLY.
2. VOLUNTARY – APPROVED BY DEMOCRATIC PROCESS.
3. COMPETITIVE BIDDING BY NETWORKS.
4. PROTECT LIVE GATE AND MAINTAIN COMPETITIVE BALANCE.

1. PRICE FIXING – **NO PER SE**. FAILS RULE OF REASON – FEWER GAMES, UNWANTED GAMES. DOESN'T REALLY PROTECT LIVE GATE. DOESN'T HELP COMPETITIVE BALANCE – FEWER GAMES ON. OTHER RULES BETTER FOR COMPETITIVE BALANCE – **EG FEWER TOTAL SCHOLARSHIPS AVAILABLE**. PRICE NOT RESPONSIVE TO QUALITY OR VIEWER PREFERENCES. NO PRO-COMPETITIVE BENEFITS.

2. GROUP BOYCOTT – NOT AS CLEAR.

3. MONOPOLIZATION – MARKET IS COLLEGE FOOTBALL TV. UNIQUE – NO CROSS ELASTICITY OF DEMAND – PRICE INCREASES NOT LIMITED BY COST OF OTHER PROGRAMMING.

WHITE (D)

SHOULDN'T APPLY AT LAWS TO EDUCATION – NOT PROFIT MAXIMIZERS.

DECISION OPENED DOOR TO CONFERENCE DEALS AND ND/NBC DEAL .

#### 4. PUBLICITY AND NFLPA GROUP LICENSING PROGRAM.

(a)

Player hereby grants to Club and the League, separately and together, the right and authority to use, and to authorize others to use solely as described below, his name, nickname, initials, likeness, image, picture, photograph, animation, persona, auto-graph/signature (including facsimiles thereof), voice, biographical information and/or any and all other identifying characteristics (collectively, "Publicity Rights"), for any and all uses or purposes that publicize and promote NFL Football, the League or any of its member clubs in any way in any and all media or formats, whether analog, digital or