MISCONDUCT IN INTERCOLLEGIATE SPORTS: INAPPROPRIATE BENEFITS AND COMMUNICATIONS BETWEEN AGENTS AND COLLEGIATE ATHLETES.

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1 The author played Division 1 Basketball and through his experience has met numerous professional athletes who have dealt with agent communications. This paper identifies a current influx in misconduct between agents and collegiate athletes and tries to create a workable solution for the problem.
I. Overview

Over the last thirty years Sports agents have pervaded intercollegiate sports.² This increased presence has been ascribed to an increase of NCAA rule violations pertaining

to communication and benefits between sports agents and collegiate athletes. Traditionally the NCAA has been able to combat misconduct by imposing sanctions upon member institutions.\(^3\) Member institutions then mitigate NCAA sanctions by preemptively self-imposing sanctions and regulating athlete eligibility.\(^4\) Unfortunately, these steps have been ineffective because agents fall beyond the scope of the NCAA’s regulation and the guilty athletes promptly transition from intercollegiate athletics to professional athletics unscathed.\(^5\) Accordingly, traditional means of regulation have little effect on rogue players and agents; whereas member institutions and their remaining eligible athletes are subjected to harsh penalties.\(^6\)

Recently, varying states have enacted the Uniform Athlete Agent Act, (“UAAA”).\(^7\) The Act gives member institutions a cause of action against rogue agents and athletes.\(^8\) Similarly, the United States Congress enacted the Sport Agent Responsibility and Trust Act, (“SARTA”).\(^9\) SARTA gives member institutions a cause of action against rogue agents, amounting to an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act. (15 U.S.C. 57a(a)(1)(B)), if the FTC acquiesces.\(^10\) Unfortunately, the Acts have been ineffective due to a lack of resources.\(^11\) Additionally many schools choose not to pursue legal action because doing so can leave the school vulnerable to additional NCAA investigations.\(^12\)

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\(^4\) Id.
\(^6\) Id.
\(^7\) http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm
\(^8\) Id.
\(^10\) http://www.govtrack.us/congress/bill.xpd?bill=h108-361
\(^11\) http://www.washingtonpost.com/wp-dyn/content/article/2010/07/22/AR2010072205899_pf.html
\(^12\) Id.
Therefore, further proposals have been made to mitigate the epidemic. Unfortunately, many of the proposals are unrealistic, they would have little remedial effect on the problem. Although many current proposals would likely fail, there is a simple solution that would redress the NCAA’s problem. Accordingly, the solution posters itself as follows; the transition from collegiate athletics to professional athletics is unfamiliar to many collegiate athletes. By educating athletes about their options and the consequences of their decisions, the NCAA will eliminate many instances of misconduct induced by deceptive agents. Moreover, many times, the benefits agents bestow upon college athletes are diminutive, amounting to no more than a few hundred dollars a month. Accordingly, if athletic scholarships were broadened to include a living stipend, the NCAA would reduce additional instances of misconduct. Lastly, increasing athlete awareness and broadening athletic scholarships is futile unless schools pursue legal action against rogue agents and athletes. By using the UAAA and SARTA schools, impose consequences for baleful agents and athletes, thus countering the incentive agents and athletes have to cheat. Likewise, by educating athletes and broadening athletic scholarships, the NCAA can offset the incentive to accept improper benefits. In the aggregate, these three steps will diminish the increased incidence of misconduct.

II. Amateurism.

The concern surrounding inappropriate communications and benefits between student athletes and sports agents derives from the maintenance of amateurism. A student

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14 See id.
15 http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2
athlete is ineligible if he fails to meet NCAA amateur requirements.\textsuperscript{17} If at any point the NCAA determines an athlete was ineligible during his collegiate career, the NCAA can impose sanction upon the athlete’s school, which includes probation, post season ineligibility, and scholarship reductions.\textsuperscript{18} In states that have adopted the UAAA, member institutions can bring civil action against former athletes for damages caused by violating the Act, which creates a cause of action against rogue agents and athletes.\textsuperscript{19}

Determining an athlete’s amateur stats can be difficult. Therefore the NCAA has created an “Eligibility Center.”\textsuperscript{20} The Eligibility Center collects information about the prospective student athlete’s athletic history and then determines whether or not the athlete complies with NCAA amateurism requirements.\textsuperscript{21} Accordingly, registering with the Eligibility Center website is a prerequisite to participation in intercollegiate athletics.\textsuperscript{22} While registering with the Eligibility Center, the athlete must answer a number of questions concerning his athletic participation. The following eight pre-enrollment criteria are reviewed: 1) contracts with professional teams; 2) salary for athletic participation; 3) prize money; 4) play with professionals; 5) tryouts, practice, or competition with professional teams; 6) benefits from an agent or prospective agent; and 8) delayed initial full-time collegiate enrollment to participate in collegiate athletics.\textsuperscript{23}

Accordingly, these eight criteria, with regards to this paper, are limited to activities

\textsuperscript{17} \url{http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Legislation+and+Governance/Eligibility+and+recruiting/Eligibility/Amateurism+Certification+Clearinghouse/index}

\textsuperscript{18} See \url{http://www.signonsandiego.com/sports/nfl/20080802-9999-1s2bush.html}

\textsuperscript{19} See \url{http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm}

\textsuperscript{20} \url{http://www.ncaastudent.org/NCAA_Guide.pdf}, at 9

\textsuperscript{21} Id.

\textsuperscript{22} \url{http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Behind+the+Blue+Disk/Behind+the+Blue+Disk+-+The+NCAA=Eligibility+Center}

\textsuperscript{23} \url{http://fs.ncaa.org/Docs/eligibility_center/2009-10_Guide_for_the_College_Bound_Student-Athlete.pdf}, at 9
concerning or involving agent conduct. The information provided to the Eligibility Center is reviewed by Eligibility Center staff, who then determines whether or not the athlete meets NCAA amateurism requirements.\textsuperscript{24} If the Eligibility Center denies the student athlete’s amateur status, the student’s prospective school can appeal the decision to the NCAA Infractions Committee.\textsuperscript{25}

\textit{A. Professional Team.}

For the purpose of determining eligibility, the NCAA considers a team professional (factors 4 and 5) if the team considers itself professional or if the team provides any player with compensation or more than actual and necessary expenses for participation.\textsuperscript{26} The NCAA limits actual and necessary expenses to: 1) meals and lodging directly tied to competition and practice held in preparation for competition; 2) transportation expenses to and from practice and competition; 3) apparel, equipment, and supplies related to participation on the team; 4) coaching and instruction, use of facilities and entry fees; 5) health insurance, medical treatment, and physical therapy; and 6) other reasonable expenses.\textsuperscript{27} Professional teams are normally not a concern with inappropriate communications and benefits between intercollegiate athletes and agents, unless it is a situation where an agent has communicated with a professional team on behalf of an amateur athlete.

At the division 1 level it is impermissible for an athlete to enter into a contract with a professional team, accept a salary, receive expenses from a professional team, or

\textsuperscript{24} Id.
\textsuperscript{25} http://www.ncaa.org/wps/wcm/connect/60ac1e004e0b89fb98dbf81ad6fc8b25?Amateurism_Certification_Process_FAQ.pdf?MOD=AJPERES&CACHEID=60ac1e004e0b89fb98dbf81ad6fc8b25
\textsuperscript{26} http://fs.ncaa.org/Docs/eligibility_center/2009-10_Guide_for_the_College_Bound_Student-Athlete.pdf at 10
\textsuperscript{27} Id.
compete on a team with professionals.\textsuperscript{28} In contrast, student athletes may tryout with professional teams before their initial college enrollment as long as their compensation is limited to actual and necessary expenses for one visit and is less than 48 hours.\textsuperscript{29} If the tryout lasts longer than 48 hours, it must be self financed.\textsuperscript{30} Additionally, student athletes maintain their eligibility if they enter into a professional draft, so long as they do not seek agent representation and do not sign a professional contract as a result.\textsuperscript{31} If the NCAA ever determines that an agent has acted on behalf of a student athlete before the athlete’s eligibility has run, both the agent and athlete are in violation of NCAA amateur rules.\textsuperscript{32}

\textit{B. Sports Agent.}

This paper is only concerned with amateurism as it pertains to the relationship between sports agents and collegiate athletes. A student athlete forfeits his eligibility if he signs an agency contract.\textsuperscript{33} Pursuant NCAA bylaw 12.3 a “student athlete may not agree verbally or in writing to be represented by a sports agent in the present or future for the purpose of marketing the student-athlete’s ability or reputation.”\textsuperscript{34} Furthermore, the student may not accept transportation or other benefits from a sports agent.\textsuperscript{35} This prohibition on benefits extends to the athlete’s family and friends.\textsuperscript{36} Likewise, the term sports agent is expansive. The Term is not limited to an individual who is hired by an athlete to negotiate professional contracts and market the athlete’s athletic ability and

\begin{itemize}
  \item \textsuperscript{28} Id. At 11
  \item \textsuperscript{29} Id.
  \item \textsuperscript{30} Id.
  \item \textsuperscript{31} Id.
  \item \textsuperscript{32} See.
    \url{http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2}
  \item \textsuperscript{33} \url{http://fs.ncaa.org/Docs/eligibility_center/2009-10_Guide_for_the_College_Bound_Student-Athlete.pdf} at 11
  \item \textsuperscript{34} \url{http://grfx.cstv.com/photos/schools/ucf/general/auto_pdf/ncaa-rules-agents.pdf}
  \item \textsuperscript{35} Id.
  \item \textsuperscript{36} Id.
\end{itemize}
reputation.\textsuperscript{37} Sports agent also includes runners, or individuals who befriend student athletes in order to distribute benefits on the behalf of agents, and financial advisors.\textsuperscript{38} Furthermore, the rule that forbids a student athlete to sign an agency contract, extends to signed and unsigned contracts that would not become binding until after athlete’s eligibility has run.\textsuperscript{39}

III. History.

The National Collegiate Athletic Association (“NCAA”), originally known as the Intercollegiate Athletic Association of the United States (“IAAUS”), was founded to regulate collegiate athletics.\textsuperscript{40} Since the NCAA’s creation, it has consistently evolved to relinquish threats against amateurism.\textsuperscript{41} In order to abdicate the current threat against amateurism, it is important to understand the history of the NCAA, which shows that the NCAA has the prerogative to evolve when necessary.

A. Creation.

The NCAA was created as a response to a large number of injuries and deaths resulting from football’s original style of play.\textsuperscript{42} The seriousness of the situation was asserted when President Theodore Roosevelt, threatened to issue an executive order, banning the game, in the absence of reform.\textsuperscript{43}

\textsuperscript{37} Id.
\textsuperscript{38} Id.
\textsuperscript{39} Id.
\textsuperscript{40} See http://ncaa.org/wps/wcm/connect/ncaa/NCAA/About+The+NCAA/Overview/history.html
\textsuperscript{41} See id.
\textsuperscript{42} Id.
\textsuperscript{43} http://www.americanchronicle.com/articles/view/45975
The NCAA was organized on November 28, 1906, at a meeting of 47 schools in Chicago, Illinois. The first meeting was held at the Quadrangle Hotel, and the NCAA was formally incorporated on December 23, 1906. The first NCAA Board of Directors consisted of 16 members, who served for a term of 3 years. The board was responsible for setting the rules and overseeing the operation of the association.

In 1909, the NCAA adopted a new constitution and bylaws, and the first NCAA basketball tournament was held in 1912. The members of the NCAA were divided into two groups: the NCAA men's basketball group and the NCAA women's basketball group. The NCAA men's basketball group consisted of 16 schools, while the NCAA women's basketball group consisted of 16 other schools.

In 1919, the NCAA men's basketball group and the NCAA women's basketball group merged to form the NCAA, and the number of members increased to 44. The NCAA continued to expand over the years, and by the 1930s, the association had more than 150 members.

In 1940, the NCAA adopted a new constitution and bylaws, and the association began to focus on promoting the interests of its members and providing opportunities for students to participate in intercollegiate athletics. The NCAA continued to grow and expand over the years, and by the 1960s, the association had more than 400 members.

In 1970, the NCAA began to implement Title IX, a federal law that prohibits sex discrimination in any education program or activity that receives federal funds. This law required educational institutions that receive federal funds to provide equal opportunities for men and women in intercollegiate athletics.

In 1971, the NCAA established the NCAA Women's Division I Championship, which marked the beginning of the NCAA Women's Division I Championships. These championships provided opportunities for women's teams to compete against each other in a variety of sports, including basketball, volleyball, and softball.

In 1981, the NCAA began to implement the NCAA Eligibility Committee, which is responsible for determining the eligibility of student-athletes to participate in intercollegiate athletics.

In 1999, the NCAA implemented the NCAA Women's Basketball Championship, which marked the beginning of the NCAA Women's Basketball Championship. This championship provided opportunities for women's teams to compete against each other in basketball, and it has since become one of the most popular and highly anticipated events in college basketball.

In 2000, the NCAA implemented the NCAA Men's Basketball Championship, which marked the beginning of the NCAA Men's Basketball Championship. This championship provided opportunities for men's teams to compete against each other in basketball, and it has since become one of the most popular and highly anticipated events in college basketball.

http://www.ncaa.org/wps/wcm/connect/ncaa/NCAA/About+The+NCAA/Overview/history.html

Id.

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Id.
The NCAA evolved when the Sanity Code was repealed at the 1951 NCAA convention. As previously stated, the sanity code was flawed because its regulatory power was limited to expulsion; however, some form of regulation was necessary.
Therefore, a twelve point code was adopted.\textsuperscript{60} The new code created more disciplinary options.

The code created committees and rules which were necessary adaptations to deal with the problems the sanity code was unable to confront.\textsuperscript{61} A nine member committee, including the NCAA president, was established to consider complaints against member institutions.\textsuperscript{62} Furthermore, a Committee on Infractions was established to replace the Membership Committee.\textsuperscript{63} Moreover, subsequent to the code’s enactment, schools began offering financial aid to athletic recruits.\textsuperscript{64} The aid was offered because athletes were unable to maintain outside employment while still competing athletically.\textsuperscript{65} The adoption of athletic aid was important because it showed the NCAA, through the cooperation of its member institutions, was willing to evolve to meet student athlete needs. Additionally, the adoption of athletic scholarships strengthened the NCAA’s unity by motivating its member institutions to coordinate and vote upon the matter.\textsuperscript{66} Similarly, the creation of scholarships is important in today’s context because the creation shows that from time-to-time it is appropriate to extend athlete benefits.

D. The Creation of Divisions.

Today the NCAA is broken into three divisions, referred to as: Division 1, division 2 and division 3.\textsuperscript{67} Furthermore, Division 1 football is divided into divisions 1-A

\begin{thebibliography}{99}
\bibitem{60} Id.
\bibitem{61} See id.
\bibitem{62} Id.
\bibitem{63} Id.
\bibitem{64} Id.
\bibitem{65} Id.
\bibitem{66} Id.
\bibitem{67} Id.
\bibitem{68} See id.
\bibitem{69} http://www.ncaa.org/wps/wcm/connect/ncaa/NCAA/About+The+NCAA/Overview/history.html
\end{thebibliography}
and 1-AA.\textsuperscript{68} The initial division occurred in 1973 and the legislation dividing division 1 football into 1-A and 1-AA, occurred in 1978.\textsuperscript{69} Schools are placed into their respective division based on the number of varsity sports offered.\textsuperscript{70} Each division has different eligibility requirements, concerning academic and benefit standards.\textsuperscript{71} Division 1 basketball and division 1-A football are considered the most elite divisions. Moreover, in 1983 the NCAA adopted women’s athletic programs, which are divided in the same fashion.\textsuperscript{72} Because division 1 is the highest level of collegiate competition, division 1 produces the most professional athletes. Moreover, men’s basketball and football are the largest collegiate revenue producers. Accordingly, the most agent violations occur at the division 1 basketball and division 1-A football levels. Therefore, this paper’s focus is limited to division 1 men’s basketball and football. For the purposes of this paper, division 1 football refers to division 1-A. Although female athletics and the other divisions are not analyzed further, the creation of three divisions and the adoption of female athletics, show that from time-to-time it is appropriate to make adjustments to meet the needs of collegiate athletes.

\textbf{E. Contemporary Changes.}

Since the adaptations in the 1970’s there have been numerous changes enacted by the NCAA. Three of these changes are addressed here. In 1997 the NCAA established a federated structure which gave more autonomy to membership divisions and more

\begin{itemize}
\item \textsuperscript{68} Id.
\item \textsuperscript{69} Id.
\item \textsuperscript{70} http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBALCONTEXT=/ncaa/NCAA/About+The+NCAA/Membership/div_criteria.html
\item \textsuperscript{71} Id.
\item \textsuperscript{72} http://www.ncaa.org/wps/wcm/connect/ncaa/NCAA/About+The+NCAA/Overview/history.html
\end{itemize}
control to the presidents of member institutions.\textsuperscript{73} This is important because it helped maintain the NCAA’s organized structure and it more clarified the relationship between the NCAA and its member institutions.

Furthermore, in 2004 the NCAA adopted a number of recruiting reforms which eliminated many of the lavish perks prospective students would receive throughout the recruitment process, particularly the celebrity-like treatment offered on recruitment visits, such as flying prospective students to campus on private jets.\textsuperscript{74} These reforms reaffirmed the NCAA’s stance that student athletes are students first and athletes second. The reforms also reaffirmed that student athletes are amateurs and should be treated as such.

In 2008 the NCAA joined forces with the National Basketball Association, (“NBA”) to oversee youth basketball leagues.\textsuperscript{75} Many amateurism violations, which would make student athletes ineligible for collegiate participation, take place during the summer months or prior to the commencement of the athlete’s college career. By working with the NBA, the NCAA showed its willingness to cooperate with other athletic Associations to fight its battle against amateurism violations. The NCAA’s cooperation with the NBA also showed that the NCAA’s fight against amateurism violations extended beyond the college season. Extending the fight against amateurism violations makes life more difficult for rogue agents. Agents are less likely to extend inappropriate benefits to collegiate athletes if it becomes more difficult to do so.

IV. Relationships.

Understanding the legal relationships between the various parties affected by change, is a prerequisite to NCAA reform. A clear understanding of the various

\textsuperscript{73} Id.
\textsuperscript{74} http://nytimes.com/2009/09/17/sports/17brand.html
\textsuperscript{75} Id.
relationships is necessary to determine whether or not a proposed change is viable, or, even legal.\textsuperscript{76} The relationship between parties, such as the NCAA and the student athlete may inhibit some current solutions. The importance of these relationships becomes apparent as the various relationships are broken down in this section.

\textbf{A. The Relationship between the State and the NCAA.}

The NCAA is a private non-profit organization. Although some member institutions are state universities, the NCAA is not a state actor.\textsuperscript{77} Determining that the NCAA is a private actor is important because if the NCAA were a state actor, the NCAA would have to discipline state members differently than private members. This is because state member institutions, like private member institutions, are held to NCAA due process standards and regulations, not constitutional standards, as state institutions would be if the NCAA were a state actor.\textsuperscript{78} Accordingly, if the NCAA were a state actor, every time the NCAA disciplined a state school, the ruling would derive from state law. Because state law is not uniform, NCAA regulation would become inconsistent. If the NCAA is a state actor and regulation become inconsistent, equal protection and due process claims may arise. Thus, considering the NCAA a private actor is important for cohesion and uniformity.\textsuperscript{79}

The NCAA was not a state actor when it compelled UNLV to impose disciplinary sanctions against its basketball coach, in compliance with the rules and regulations of the NCAA.\textsuperscript{80} Upon investigation, the NCAA found 38 violations of NCAA rules, 10 of

\textsuperscript{76} For this paper it is important to understand the relationships between the State, NCAA, Member Institution, Collegiate Athlete, and Agent.
\textsuperscript{78} See id. at 189
\textsuperscript{79} See id.
\textsuperscript{80} Id.
which were committed by the sitting men’s head basketball coach.\textsuperscript{81} Accordingly, UNLV, not the NCAA, decided to sever the head coach’s relationship with the UNLV athletics program.\textsuperscript{82} When determining if the action was brought by the NCAA as a state actor, the court stated that the “inquiry must be whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may fairly be treated as that of the State itself.”\textsuperscript{83} Logic follows, that if the NCAA’s regulatory power comes directly from the state, then the NCAA is a state actor.

The NCAA did compel the state university to take action against its basketball coach; however it was the state actor itself who decided to terminate the state employee.\textsuperscript{84} UNLV is a member institution, thus Nevada had some impact on NCAA policies, but some impact is not enough.\textsuperscript{85} The court noted that the NCAA is comprised of hundreds of universities, some private and some public; many of which are located outside of Nevada and do not act under the color of Nevada law.\textsuperscript{86} Accordingly, the source of the NCAA’s regulatory power was not the State of Nevada, but instead came from the collective membership acting through the NCAA.\textsuperscript{87} The holding established that the NCAA’s rules and regulations are not state powers, but instead powers of a private organization over its member institutions, granted by the member institutions.\textsuperscript{88} The holding is important because it established that the NCAA is a private actor, thus affecting the NCAA’s method of regulation, and clarified the relationship between the NCAA and the state.

\textsuperscript{81} Id. at 180
\textsuperscript{82} Id.
\textsuperscript{83} Id. at 192
\textsuperscript{84} Id. at 193
\textsuperscript{85} Id.
\textsuperscript{86} Id.
\textsuperscript{87} Id.
\textsuperscript{88} Id.
Moreover, the court emphasized that the university had alternative options, thus although the NCAA compelled the state actor to act, it was the state actor who made the final determination rather than the NCAA itself.\textsuperscript{89} Instead of severing all ties with the coach, the state actor may have ignored the NCAA’s suggestions and accepted any sanctions the NCAA would have imposed on the university.\textsuperscript{90} Furthermore, the state actor had the option of removing itself from the NCAA entirely.\textsuperscript{91} Although the alternative options presented to UNLV may not have been practical, it does not follow that a private actor is a state actor because the private actor is able to impose its will over a state actor by threatening not to deal with the state actor.\textsuperscript{92} This understanding is important because it shows the extent of the NCAA’s power over the state.

Furthermore, the NCAA does not possess governmental powers to facilitate its investigation or imposition of sanctions.\textsuperscript{93} That is, the NCAA does not have the power to subpoena, impose contempt sanctions, or assert authority over any individual.\textsuperscript{94} Likewise, implementing sanctions in order to maintain amateurism at the collegiate athletic level is not a traditional power of the state, let alone an exclusive state function.\textsuperscript{95} Taking everything into consideration the court held that UNLV did not grant the NCAA any exclusive governmental power.\textsuperscript{96} The court also held that UNLV was acting jointly with the NCAA under its membership to the NCAA, rather than the NCAA acting under the color of Nevada law. Therefore, the NCAA is not a state actor.\textsuperscript{97}

\textsuperscript{89} Id. at 187
\textsuperscript{90} Id.
\textsuperscript{91} Id.
\textsuperscript{92} Id. at 198,199
\textsuperscript{93} Id. at 197
\textsuperscript{94} Id.
\textsuperscript{95} Id. at 197, 198
\textsuperscript{96} Id. at 195, 196
\textsuperscript{97} Id. at 199
Determining that the NCAA is a private actor rather than a state actor is important because it clearly establishes the NCAA’s relationship with the state. The determination establishes the extent of the NCAA’s power over the state and distinguishes the investigatory tools the NCAA has available, from the investigatory powers the state possesses. Although the NCAA has power over its state members, the NCAA must still comply with state law. Distinguishing between the state and the NCAA will clarify the difficulties present in some current solutions to the rogue agent epidemic.

**B. The Relationship between the State and the Member Institution.**

The NCAA is comprised of 346 division 1 institutions; some are private and some are public.98 Public schools are considered to be state actors.99 Because a number of the member institutions are state actors and a number are private actors, the relationship between the state and the university may vary from school-to-school. Although by definition, state schools are inherently different that private schools, the NCAA’s regulatory power and status as a private actor reduce any potential confusion.

Although both private and public member institutions must comply with the law of the state in which the institution resides, establishing that the NCAA is a private actor removes the state’s influence in other areas, such as sanctions and uniformity of NCAA rules and regulations. By joining the NCAA, member institutions contractually obligate themselves to comply with NCAA bylaws.100 In doing so the member institution subscribes, by way of the NCAA’s bylaws, that “enforcement procedures are an essential part of the intercollegiate athletic program of each member institution.”101 As a result,

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100 See id. at 193
101 Id. at 179
state institutions remove themselves from the realm of the state and enter into the realm of the NCAA. Therefore, because the school’s membership to the NCAA is purely contractual, the relationship is not constitutionally limited.\textsuperscript{102} The state’s power over the university is limited to its traditional authority over resident schools.

Although the state has limited power over the member institution concerning the school’s compliance with NCAA bylaws, some states have adopted the Uniform Athlete Agent Act, which creates private rights of action for NCAA members against individual athletes and agents for damages caused by amateurism violations.\textsuperscript{103} The UAAA will be discussed in depth later, but its existence is worth noting in this section because it expands the state’s role vis-à-vis private actors.

\textbf{C. The Relationship between the State and the Collegiate Athlete.}

The relationship between the state and the collegiate athlete is minimal. The collegiate athlete must comply with the laws of the state, but the state’s only power over the athlete, when addressing inappropriate communications and benefits between athletes and agents, derives from the UAAA and SARTA, which gives the state’s attorney general a cause of action to bring civil suits against rogue athletes on behalf of the people of the state.\textsuperscript{104} Beyond those acts, which will be discussed in detail later, the state does not have any power to compel the athlete that it does not have over any other student.\textsuperscript{105}

\textbf{D. The Relationship between the State and the Sports Agent.}

Recently, States have begun to enact the Uniform Athlete Agent Act, (“UAAA”) and utilize the Sports Agent Responsibility and Trust Act, (“SARTA”), which give

\textsuperscript{102} See id. at 189
\textsuperscript{103} See http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm
\textsuperscript{104} Id.; http://www.govtrack.us/congress/bill.xpd?bill=h108-361
universities private rights of action against agents if the agent’s conduct violates the Acts, which is essentially the codification of NCAA amateurism rules. These Acts are analyzed in depth later; however it is necessary to recognize their existence when establishing the relationship between the state and the sports agent.

Accordingly, when working within a state, the sports agent must comply with the state’s law. The state’s power over the agent is not limited to the agent’s physical presence within the state. If the agent’s conduct creates a minimum contact with the state, the state will have jurisdiction to bring action against the agent. The minimum contact is not necessarily the physical presence in the state, although a physical presence would give the state personal jurisdiction. Modern forms of technology may allow an agent to recruit and sign an athlete without ever physically entering the state, thus the important factor is not the agent’s presence itself, but rather the agent’s conduct. In states that have enacted the UAAA and utilized SARTA the attorney general has the power to bring civil suits on behalf of the state’s residents. The cause of action arises when the agent violates amateurism requirements set by the Acts.

E. The Relationship between the NCAA and the University.

The NCAA and its member institutions have a contractual relationship. Member institutions make up the NCAA and give the NCAA its power to regulate. If the member institutions, as a whole, decided to leave the NCAA, the NCAA would cease

107 Id.
108 Id.
109 Id.
111 Id.
113 See id.
to exist.\textsuperscript{114} Likewise, without the member institutions’ approval, the NCAA would have no power to implement its rules and regulations.\textsuperscript{115} This does not mean that a single institution can refuse to adhere to the NCAA’s rules and regulations, as the institution pleases. In such a situation, the NCAA has the power to revoke the institution’s membership.\textsuperscript{116} If a member institution is unpleased with the NCAA’s conduct, the institution can motivate its fellow membership to invoke change through the NCAA’s legislative process.\textsuperscript{117} The member institution’s drive for change may result from a particular rule or sanction. The traditional sanctions imposed by the NCAA onto member institutions will be discussed later in this section.

The NCAA’s power to regulate is limited in another legal sense. Courts traditionally give deference to the NCAA when courts find that the NCAA’s actions were reasonable and taken in an effort to maintain amateurism in intercollegiate athletics.\textsuperscript{118} The NCAA is given deference because courts have recognized that the NCAA produces a unique product, i.e. amateur athletics, and that the NCAA’s product could not exist without leniencies concerning horizontal price fixing.\textsuperscript{119} This does not mean that the NCAA is completely exempt from antitrust laws. When courts find that the NCAA has regulated beyond the scope amateurism and as a result has committed an unlawful restraint on trade, courts have enjoined the NCAA’s action vis-à-vis the Sherman Act.\textsuperscript{120}

\begin{table}
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\hline
\textsuperscript{114} See id. \\
\textsuperscript{115} See id. at 194 \\
\textsuperscript{116} Id. at 197 \\
\textsuperscript{117} Id. at 193 \\
\textsuperscript{118} See Law v. N.C.A.A, 134 F.3d at 1017, 1022(10th cir. 1998) \\
\textsuperscript{119} Id. at 1017 \\
\textsuperscript{120} Id. at 1024
\end{tabular}
\end{table}
i. Antitrust.

The Sherman Act prohibits contracts in restraint of trade. The NCAA bylaws essentially create a contract between the NCAA and its member institutions. Therefore NCAA decisions are scrutinized under antitrust law’s rule of reason because whatever anti-competitive effects the NCAA may have are counterbalanced by its social benefits.\(^{121}\)

Accordingly, whenever an action by the NCAA is called into question under the antitrust laws the affected party must show that the NCAA participated in an agreement that unreasonably restrained trade.\(^{122}\) If the court determines that the NCAA took part in a horizontal agreement that restrained trade, the court should then subject the questioned action to a rule of reason analysis.\(^{123}\) Antitrust rule of reason requires: 1) a determination of whether the challenged restraint has a substantially adverse affect on competition; and 2) whether the precompetitive virtues of the alleged wrongful conduct justify the anticompetitive acts.\(^{124}\) Although this lesser standard gives the NCAA tremendous power to regulate its member institutions, it does not exempt the NCAA for all anticompetitive action.\(^{125}\)

The NCAA is not exempt and is in violation of the Sherman Act when it makes a horizontal agreement restraining trade beyond the scope of reasonably maintaining amateur intercollegiate athletics.\(^{126}\) Reducing the alloted number of coaching positions on a division 1 basketball team, to reduce the cost of intercollegiate athletic programs, was

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\(^{121}\) [http://usgovinfo.about.com/library/weekly/blsherman.html](http://usgovinfo.about.com/library/weekly/blsherman.html); Horizontal price fixing and output limitations are generally condemned as “illegal per se;” however, courts hold the NCAA to a rule of reason standard because college amateur athletics would cease to exist if the NCAA could not implement horizontal restraints.

\(^{122}\) *Law v. N.C.A.A.*, 134 F.3d at 1016, 1017 (10th cir. 1998)

\(^{123}\) Id. at 1017

\(^{124}\) Id.

\(^{125}\) See id.

an improper restraint on trade and violated the Sherman Act.\textsuperscript{127} Likewise, the NCAA violated the Sherman Act by requiring member institutions to abide by a NCAA television plan, which gave ABC and CBS the exclusive first rights to negotiate with member institutions regarding live broadcast of football games.\textsuperscript{128} The NCAA is given a lot of leeway when it pertains to the maintenance of amateurism, but the NCAA’s power over its member institutions does not extend to anti-competitive measures beyond that scope.\textsuperscript{129}

ii. Traditional Sanctions.

Courts give deference to NCAA sanctions in accordance with its rules and regulations.\textsuperscript{130} The NCAA can impose any sanctions that are authorized by its bylaws. The following are the primary sanctions the NCAA may impose; 1) reprimand and censure; 2) probation for one year; 3) probation for more than one year; 4) ineligibility for invitational and postseason meets and tournaments; 5) ineligibility for one or more National Collegiate Championship events; 6) ineligibility for any television programs subject to the Association’s control and administration; 7) ineligibility of the member to vote or its personnel to serve on committees of the Association, or both; 8) prohibition against an intercollegiate sports team or teams participating against outside competition for a specified period; and 9) prohibition against the recruitment of prospective student-athletes for a sport or sports for a specified period.\textsuperscript{131} The NCAA can impose sanctions upon a member institution for the institution’s conduct or for the conduct of a

\textsuperscript{127} Law v. N.C.A.A, 134 F.3d 1010(10th cir. 1998)
\textsuperscript{129} Id.
\textsuperscript{130} N.C.AA v. Tarkian. 488 U.S. at 184 (1988).
\textsuperscript{131} Id. at 184
representative of the institution.\textsuperscript{132} If the NCAA imposes a sanction upon a member
institution or one of the institution’s representatives, the member institution has the right
to appeal the decision.\textsuperscript{133}

iii. Appeals.

When the NCAA’s Committee on Infractions subjects a member institution or one
of its representatives to sanctions, the institution may appeal to the NCAA’s Infractions
Appeals Committee.\textsuperscript{134} The appeals committee only looks at evidence presented
previously and must reverse or modify any previous rulings only if the school can prove
one of the following: 1) the ruling was clearly contrary to the evidence; 2) the school or
its representative did not actually break NCAA rules; 3) there was a procedural error
which resulted in the finding; or 4) the penalty was excessive and is an abuse of
discretion.\textsuperscript{135}

\textit{F. The Relationship between the NCAA and the Intercollegiate Athlete.}

Unlike the relationship between the NCAA and the university, there is no
contractual relationship between the NCAA and the intercollegiate athlete. Although the
NCAA does not have a direct relationship with the intercollegiate athlete, the NCAA may
still impose its will over athlete vis-à-vis member institutions.\textsuperscript{136} If a student athlete
breaks a rule or regulation of the NCAA, the NCAA cannot directly discipline the
student, but the NCAA may discipline that student’s university if the institution refuses to
discipline the athlete.\textsuperscript{137} Because the NCAA can coerce the university discipline the

\begin{flushright}
\textsuperscript{132} Id.
\textsuperscript{133} Id.
\textsuperscript{134} http://www.ncaa.org/wps/wcm/connect/public/NCAA/Issues/Enforcement/The+Appeal+Process
\textsuperscript{135} Id.
\textsuperscript{136} Id.
\end{flushright}
athlete, the NCAA can affectively impose its will upon the student athlete. Breaking
down the relationship between the athlete and the institution will make this power clear.
It is important to note that the indirect power over the student, actually gives the NCAA
more power over the athlete than it would normally possess. Because the NCAA does not
have a direct relationship with the student athlete, the student athlete is not afforded
rights such as due process. The byproduct that results from the student athlete’s lack of
rights will be examined to a greater extent later in this paper.

G. The Relationship between the NCAA and the Sports Agent.

Although the NCAA has little, to no, disciplinary power over the sports agent, the
NCAA does possess the power to regulate sport agent conduct. The NCAA controls
agent conduct by establishing rules that limit the agent’s ability to communicate with and
give benefits to the athlete. Member institutions face sanctions if the institution’s
athletes violate agent regulations. The power the NCAA holds over member
institutions motivates institutions to strictly enforce agent restrictions. Accordingly, the
NCAA has a remarkable amount of power over the agents, which many fail to recognize.

H. The Relationship between University and the College Athlete.

The collegiate athlete is bound to the university by the National Letter of Intent. The
National Letter of Intent is a binding agreement in which the university offers an
academic scholarship to an athlete to participate on a particular team for one year.
scholarship is renewable every year until the athlete’s amateur status ends. In return, the athlete declares that he will comply with the academic and athletic rules imposed by the institution and the NCAA. These rules require that the athlete maintain eligibility, both academically and athletically. The NCAA and its member institutions relate the obligations of the student athlete to the obligations of a student on an academic scholarship. Therefore, the agreement signed between the two parties is seen as an educational grant, rather than a traditional contract.


The university is able to impose its will over the athlete by way of the National Letter of Intent. If an athlete breaches the letter, the school may declare the athlete ineligible and rescind his scholarship. Furthermore, if the athlete opts to transfer, the act of transferring is considered a breach and the student may lose eligibility for a year. In order to transfer, the student must submit a release request form. Upon completing the release form, the original signing institution may grant the athlete a complete release. If the athlete is granted a complete release, he does not lose eligibility. In contrast, if the university decides not to release the student from their obligation, the

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145 Rensing v. Ind. St. u. bd. of trustees, 444 N.E.2d at 1171 (Ind. 1983)
146 See Taylor v. Wake Forest U., 16 N.C.App. 117 (N.C. App. 1972)
147 Id.
149 See id. at 200
150 Id.
151 Id.
152 Id.
153 Id.
154 Id.

http://www.ncaa.org/wps/wcm/connect/2f47b5004e0dc6de94eff41ad6fc8b25/App...
student will then suffer a one year ineligibility penalty.\textsuperscript{155} If the student is denied a release the student may appeal the decision to the National Letter of Intent Committee.\textsuperscript{156}

ii. Appeals.

Although the university possesses a majority of the power, the student athlete is not without recourse if he has violated his agreement with the school.\textsuperscript{157} If the student wishes to transfer and his respective school refuses to give them a full release, he may appeal to the National Letter of Intent Committee.\textsuperscript{158} The appeals committee takes a number of things into consideration, including any evidence of extenuating circumstances.\textsuperscript{159} When other violations are found against a player he or his institution may appeal to the Infractions Appeals Committee.\textsuperscript{160} The appeals process for the student follows the same procedure as the appeals process for the university as previously discussed.\textsuperscript{161}

iii. Employer/Employee Relationship.

Courts have traditionally held that there is not an employer-employee relationship between a university and its athletes unless the athlete performs a job for the university outside of that student’s respective sport.\textsuperscript{162} Determining that the athlete is not an employee is important when establishing the relationship between the student and the university. Employees receive more rights. For instance, if a student athlete is an employee and is then injured while participating in his sport, he may file for Workmen’s

\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Id.
\textsuperscript{158} Id.
\textsuperscript{159} Id.
\textsuperscript{160} Id.
\textsuperscript{161} See 58 A.L.R. 4th 1259 (1987)
Compensation. Furthermore, if the student is an employee they receive additional rights from the NCAA. The student is then treated as any other athletic employee of the institution. Currently university employees, such as coaches, are granted due process by the NCAA; athletes are not granted due process.

Courts have not accepted arguments that athletes have employment contracts, either express or implied, with the university, unless the student is employed by the university outside of his athletic commitment. In order for there to be an employment contract, both parties must intend for it to be formed. If there were an employment contract it would be superseded by the National Letter of Intent. By signing the National Letter of Intent, the student agrees to abide by the rules and regulations of the NCAA. The NCAA has always taken the stance that the athlete is a student first and an athlete second. Furthermore, the agreement explicitly states that the athlete is an amateur and not a paid student athlete. A college football player was not an employee of the school when he brought a workmen’s compensation suit against his school after a practice injury left him a quadriplegic. The court found that the student was not an employee because the university lacked the intent to create an employment agreement, the scholarship was not considered pay, the student did not report the scholarship as

163 Id.
166 Rensing v. Ind. St. u. bd. of Trustees, 444 N.E.2d at 1173 (Ind. 1983)
167 http://www.ncaa.org/wps/wcm/connect/2f47b5004e0dc6de94eff41ad6fc8b25/Appels+Process+Sheet+2810.01.10%29.pdf?MOD=AJPERES&CACHEID=2f47b5004e0dc6de94eff41ad6fc8b25
168 http://www.tulane.edu/~finaid/idxathletic_scholarship.htm
170 Rensing v. Ind. St. U. Bd. of Trustees, 444 N.E.2d at 1173 (Ind. 1983)
171 Id.
wages for tax purposes, and the scholarship would not have been revoked, for the year in question, based on injury or lack of talent. 172

Furthermore, as previously stated, all student athletes sign the National letter of intent and in doing so the athlete agrees to abide by the NCAA rules. The rules state that an athletic scholarship is not an employment wage and the athlete is a student, not a professional.173 Therefore, unless the student performs work outside of his athletics, he is not an employee of the institution.174 The court history with regards to explicit or implied employment contracts between athletes and member institutions is clear and therefore any solutions regarding the increase of agent misconduct must acknowledge such findings.

I. The Relationship between University and the Sports Agent.

The relationship between the university and the sports agent is based on the rules established by the state in which the university resides, the bylaws of the NCAA, and the particular rules of the university regarding communication between agents and athletes. The university has no direct relationship with the agent, but usually feels the brunt of the harm caused by inappropriate athlete-agent relations. At a glance the hardship placed upon the institution may seem counterintuitive, but it happens because the athlete generally goes pro, whereas the university is left to deal with NCAA sanctions.175 For this reason, universities take athlete-agent relations seriously. The university’s first line of

172 Id. at 1173
174 See U of Denver v. Nemeth, 127 Colo 385 (1953)
defense derives from NCAA rules regarding athlete-agent relations. These rules give the institution leverage because the student is required to abide by NCAA bylaws.

The NCAA has four bylaws pertaining to athlete agent relations: 1) bylaw 12.3.1 (general rule); 2) 12.3.1.1 (future negotiations); 3) 12.3.1.2 (prospective agents); and 4) 12.2.5.1 (non-binding agreements). Although this section pertains to the relationship between the agent and the university, because the university must abide by the NCAA bylaws, it is necessary to examine the NCAA’s power over the relationship.

i. General Rule.

The NCAA expresses its general rule against agent athlete relations in bylaw 12.3.1. The rule reads: “an individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletics ability or reputation in that sport. Further, an agency contract not specifically limited in writing to a sport or particular sports shall be deemed applicable to all sports, and the individual shall be ineligible to participate in any sport.”

The first section of this rule is relatively straight forward; if an athlete agrees to representation or marketing the athlete is ineligible. If an athlete signs with an agent, he fully understands that he is losing his eligibility. Because this type of agreement is explicit and difficult to hide, the problem concerning misconduct between agents and athletes normally does not derive from this type of breach.

177 Id.
178 Id.
Similarly, the second aspect of the general rule is straightforward; if an athlete signs an agent contract that does not specify a sport; the athlete is ineligible for all collegiate athletics. Problems arise in this area when a student agrees to representation in one sport and then at a later date, returns to college to play a different sport. Generally problems that arise in such a situation are not a result of inappropriate communications or benefits. If this particular problem arises in the context of this paper, it is because an agent has not taken the time to explain the consequences of the athlete’s potential actions before the athlete signs the contract. The UAAA and SARTA, which will be examined in depth, address this situation and implement new laws that require an agent to inform the athlete of the consequences that will result from signing the agreement.

ii. Future Negotiations.

The NCAA’s rule pertaining to future negotiations is expressed per bylaw 12.3.1.1. The rule reads: “an individual shall be ineligible per bylaw 12.3.1 if he or she enters into a verbal or written agreement with an agent for representation in future professional sports negotiations that are to take place after the individual has completed his or her eligibility in that sport.”

The future negotiations rule addresses conduct taken by rogue agents to lock athletes into agency contracts. The rule, as it reads, is straightforward; the source of the problem comes when agents ignore the rule. In most instances, improper benefits are given to athletes when an agent tries to induce a student athlete into signing a future

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179 Id.

As a result, many universities implement specific steps an agent must take to communicate with an athlete. These attempts will be examined to a greater length later in this section.

iii. Prospective Agents.

Agents are not allowed to give student athletes any sort of benefit, but when rogue agents violate the rule, they frequently use prospective agents to deliver benefits to athletes. Having prospective agents or other representatives, such as runners, deliver benefits, allows the agent to break NCAA rules without directly linking themselves to the athlete. The rule which addresses prospective agents is codified per bylaw 12.3.12. The rule reads: “an individual shall be ineligible per 12.3.1 if he or she (or his or her relatives or friends) accepts transportation or other benefits from: a) any person who represents any individual in the marketing of his or her athletics ability. The receipt of such expenses constitutes compensation based on athletics skill and is an extra benefit not available to the student body in general; or b) an agent, even if the agent has indicated that he or she has no interest in representing the student-athlete in the marketing of his or her athletics ability or reputation and does not represent individuals in the student-athlete’s sport.”

The first section of this rule deals with prospective agents and runners. The rule stops the agent or any of the agent’s representatives from giving the athlete inappropriate

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182 See. http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2
185 Runner- a runner is an individual used by agents to deliver benefits to prospective clients. Many times, runners befriend the student athlete before recruiting for the agent or delivering benefits for an agent. Anyone, including family and friends of the athlete, may be used by the agent as a runner.
benefits. The problems this section tries to rectify directly correlate with the previous rule concerning future negotiations. Agents often use benefits to secure future negotiations. This section expands the prohibition beyond the athlete and the agent. It incorporates both representatives of the agent and family and friends of the student athlete. This rule prohibits agents from giving the athlete’s family and friends benefits to convince the athlete to sign with said agent. Many universities implement rules that expand the definition of an agent and therefore expand the prohibition.

The second aspect of the rule is more controversial because it may affect agents and athletes acting in good faith. The second aspect of the rule restricts any sort of benefit or transportation given to the athlete from an agent, even if he or she has no interest in representing the client. The rule makes things very complicated for athletes who have agents as family friends or agents representing family members or friends. The NCAA is contemplating a change, which would allow more leniencies with regards to athletes communicating with agents. This rule would likely be affected by such changes.

iv. Nonbinding Agreements.

The fourth bylaw concerning agent-athlete communications addresses nonbinding agreements. The rule is codified per bylaw 12.2.5.1. The rule reads: “an individual who signs a contract or commitment that does not become binding until the professional organization’s representative or agent also signs the document is ineligible, even if the

187 Id.
188 Id.
189 See.
190 http://www.lsusports.net/rls/5200/assets/docs/ad/compliance/pdf/compliance_agent_policy.pdf?DB_OEM_ID=5200
contract remains unsigned by the other parties until after the student-athlete’s eligibility is exhausted.”

This rule stops agents from presenting athletes with contracts which do not become binding until after the student has exhausted their eligibility. Like the general rule, this rule is straightforward and violations are easily detected, thus most current issues do not arise under this rule.

v. NCAA Suggestions towards Agents.

Rules regarding athlete agent communications and benefits are stringent and easily; thus, to clarify, the NCAA provides agents with a list of do and don’ts. This list provides: an agent should: 1) make sure he or she is properly registered to act as an agent in accordance to the appropriate state law; 2) make sure he or she is properly registered with the athlete’s university or conference, and that he or she is certified in accordance with the rules of the relevant professional player’s association before contacting a student athlete; 3) encourage the athlete to comply with his institution’s compliance office before forming an agreement, so that the athlete fully understands the consequences of the agreement; 4) inform the student athlete of the services the agent, the agent’s firm, or the agency can provide if the athlete decides to go pro; 5) cooperate with the institution’s professional sports counseling panel; 6) encourage the student to keep his institution’s compliance officers appraised of any conversation between the athlete and agent, so that the compliance office may be prepared to respond to NCAA or media inquiries; and 7)

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192 Id.
familiarize yourself with the UAAA or any other applicable legislation that has been enacted.\textsuperscript{194}

Following the seven steps will help the agent comply with State, NCAA, and university rules. Adhering to the steps will ensure that the agent’s actions do not result in the athlete losing eligibility. Although the athlete is responsible for his own choices and his own amateurism, it is important that agents do not take advantage of students or their families and friends.

Moreover, the NCAA provides five steps the agent should avoid.\textsuperscript{195} These five steps are as follows: 1) the agent should not enter into an agreement for future representation with a prospective or an enrolled student-athlete with remaining eligibility, even if the contract is not binding until after the athlete’s eligibility has exhausted; 2) the agent should not have runners or business associates provide benefits to athletes with remaining eligibility, or to their friends and relatives; 3) the agent should not represent athletes with remaining eligibility in negotiations with professional teams; 4) the agent should not market the athletic talents or abilities of athletes with remaining eligibility; and 5) the agent should not communicate with professional sports teams on behalf of the student athlete.\textsuperscript{196}

It is important that the agent acts responsibly and does not endanger the student’s remaining eligibility. These suggestions help the agent make responsible decisions when communicating with student athletes. The agent should always look towards the state, the NCAA, and the respective university in order to make sure that their actions comply with

\textsuperscript{194} Id.
\textsuperscript{195} Id.
\textsuperscript{196} Id.
any applicable rules. These rules are valuable, but it is still in the agent’s interest to attract college athletes, thus there rules are not enough to stop agent misconduct.

vi. State’s Role in Agent University Relationship.

The relationship between the university and the agent is further defined by any statute the university’s resident State has enacted to regulate said relations. There are two primary acts, which the university may utilize. The Sports Agent Responsibility and Trust Act, (“SARTA”) was federally enacted and is regulated by the FTC. The Act allows the attorney general in the respective state to bring civil action against the agent on behalf of the people of the state. The second act is the Uniform Athlete Agent Act, (“UAAA”). The UAAA was created by a committee that acted on behalf of the National Conference of Commissioners on Uniform State Laws. The UAAA was made to bring uniformity to State laws regarding sports agent conduct. The Act gives the university a right of action against the agent or athlete for damages that have resulted by violation of the act. Both SARTA and the UAAA will be analyzed in depth in a later section, but they are worth noting because they give the university a cause of action against rogue agents and athletes. Both SARTA and the UAAA codify NCAA rules regarding improper agent communication and add a number of rights for athletes to help protect the athlete from malicious agents.

198 Id.
199 http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm

200 Id. at 3,4,5.
201 Id. at 8,9.
202 Id. at sec. 16
vii. University’s Role in Agent University Relationship.

The University must comply with the law of the state in which it resides and with the rules and regulations of the NCAA, but as long as the school complies, the university may apply further restrictions on agent-athlete relations. Institutions often apply further restrictions on agent-athlete relations because institutions are frequently the most harmed by NCAA sanctions. Accordingly, many schools require agents to agree to the conditions of the school’s policy regarding agents, register to the athletics compliance office, and receive approval from the university’s Professional Sports Counseling Panel. Many school policies require the agent to: 1) register with the attorney general and athletic department; 2) be certified by the appropriate professional players association; 3) notify the head coach or athletic director, within a specified period, of his or her intentions to contact an athlete; 4) forward mail directed towards the student athlete to the athletics compliance office; and 5) refrain from in-person or telephone communication with an athlete before the completion of his senior year, unless the communication is approved and arranged by the athletic director. Moreover, some schools require the agent to identify themselves as a registered agent with the school in materials provided to the athlete and his family; and the agent must provide the athletics compliance office with materials highlighting the agent’s credentials, background, and services. Because sanctions resulting from improper agent-athlete relations significantly harm the school, it is important that the institution is diligent in enforcing its rules and regulations.

204 See. id.
205 Id.


**J. The Relationship between College Athletes and Sports Agents.**

The relationship between the student athlete and the sports agent in the professional sense is different than in the amateur sense. This paper focuses on the relationship between the two parties while the athlete is still an amateur.

The relationship between the amateur athlete and the sports agent is important because the athlete can easily forfeit their eligibility by communicating with an agent. The NCAA recognizes the difficulties strict rules create and therefore has begun to propose new ways to allow students to communicate with sports agents.\(^{\text{207}}\) These current steps will be talked about in depth in a later section of this paper. This section focuses only on actions which are currently acceptable.

It is not difficult for a student athlete to lose eligibility, but the school generally receives the brunt of the harm caused by agent-athlete violations.\(^{\text{208}}\) The relationship between the agent and the student athlete is defined by the rules and laws of the State, the NCAA, and the school; not by the student athlete or agent. If an athlete’s relationship with an agent extends beyond the scope of these rules or laws before the student athlete has exhausted their eligibility, the student will likely lose their eligibility and the university may face sanctions from the NCAA.\(^{\text{209}}\) Thus, it is important that the agent abide by the respective rules in order to safeguard the athlete’s eligibility.

Each university may impose different guidelines regarding agent-athlete relations. Many schools provide services to prospective professional athletes that inform the athlete


\(^{\text{208}}\) See. http://basketball.about.com/od/teamsandconferences/a/mayo.htm

\(^{\text{209}}\) See. id.
and his family of the consequences of their decisions. These services educate the athlete of his responsibility for maintaining his own amateur status. Because each school’s rules vary, the agent-athlete relationship will vary from case-to-case. In contrast, although school rules vary, the different state laws and NCAA bylaws, previously discussed, provide a fairly comprehensive understanding of the agent-athlete relationship.

IV. Current Problem.

Intercollegiate athletics is no stranger to corruption and scandal, however over the past few years there has been an increase in the number of reports concerning inappropriate agent-athlete communications. Sports agents are able to make a significant amount of money from signing an athlete. The NFL limits sports agents to a 3% cut of player contracts and the NBA limits agents to a 4% cut, but when the average NFL compensation is $1.8 million and the average NBA compensation is $5.85 million, the small percentage may produce a large sum. Additionally, sports agents receive a cut of endorsement contracts, ranging from 15% to 20%. Because the stakes are high, many sports agents are tempted to violate amateurism rules.

Likewise, many collegiate athletes are tempted by the glitz and glamour of the professional life, not to mention the financial reward. Currently collegiate athletes are considered amateurs and are not compensated for their services beyond their athletic scholarship. Athletic scholarships are very generous; they are initially given for one year.

http://www.lsusports.net/fls/5200/assets/docs/ad/compliance/pdf/compliance_agent_policy.pdf?DB_OEM_ID=5200
http://www.usatoday.com/money/media/2010-06-20-endorsements-tiger_N.htm
and may be renewed annually, up to five years within a six-year period of continued college attendance.\textsuperscript{214} Scholarships may be renewed, reduced, increased or canceled after one year for nearly any reason, as long as the university provides the athlete with an opportunity to appeal adverse decisions.\textsuperscript{215} Athletes with the talent to attract agents receive full scholarships. Full scholarships include tuition, fees, room, board, and books. The athlete is responsible for any costs not covered by the scholarship, such as transportation between home and school, and walk around money.\textsuperscript{216}

Many collegiate athletes come from underprivileged households, thus their parents are unable to provide spending money or transportation costs. Accordingly, uncovered expenses, such as spending money, manifest the temptation to accept benefits. To exasperate the problem, many collegiate athletes are treated like celebrities by their fans, student peers, and in some instances, their institution’s faculty. As a response many athletes believe they deserve more.\textsuperscript{217} The athlete’s limited finances, coupled with a self-deserving attitude, are one of the reasons many athletes are tempted by agent benefits.

\textbf{A. Types of Benefits.}

Collegiate athletes must not accept any benefit from agents while the athlete maintains his amateur status. If an athlete accepts an agent benefit, the athlete forfeits his remaining eligibility.\textsuperscript{218} Benefits come in many different forms. Some benefits are small, such as accepting transportation or a free meal from an agent.\textsuperscript{219} Other benefits are much larger, such as hundreds of thousands of dollars, cars, or even renting homes for family

\textsuperscript{214} http://www.tulane.edu/~finaid/idxathletic_scholarship.htm
\textsuperscript{215} Id.
\textsuperscript{216} http://www.ncaastudent.org/NCAA_Guide.pdf at 17
\textsuperscript{217} http://www.nytimes.com/2010/10/30/opinion/30garrett.html
\textsuperscript{218} http://grfx.cstv.com/photos/schools/ucf/genrel/auto_pdf/ncaa-rules-agents.pdf
\textsuperscript{219} http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2 at 5
members.\textsuperscript{220} No matter how significant the benefit, it is easy to see the temptation an underprivileged athlete may face.

Recently the University of Southern California was harmed significantly by NCAA sanctions resulting from USC athletes accepting inappropriate benefits. The men’s basketball program was handed down a one year post season ban and a two year scholarship reduction after investigations showed that O.J. Mayo, now playing with the NBA’s Memphis Grizzlies, accepted thousands of dollars and other gifts from street agents, otherwise known as runners.\textsuperscript{221} Mayo’s coach, Tim Floyd, resigned as a result of the allegations.\textsuperscript{222}

Likewise, USC’s football team received hefty sanctions after allegations showed that Reggie Bush, currently playing for the NFL’s New Orleans Saints, accepted a wide range of improper benefits.\textsuperscript{223} These benefits include but are not limited to, spending money for Reggie and his family, rent-free living for Reggie’s family, airfare, limousine transportation, luxury hotels, and the settlement of his family’s pre-existing debt.\textsuperscript{224} As a result, the USC football program was sanctioned with a two year post-season bowl ban, four years probation, forfeiture of the season’s record in which he was found ineligible, and a loss of scholarships.\textsuperscript{225} Furthermore, after being declared retrospectively ineligible, Reggie returned the Heisman Trophy he won in 2005. Reggie’s coach, Pete Carol, left

\textsuperscript{220} http://sports.espn.go.com/los-angeles/ncf/news/story?id=5572827
\textsuperscript{221} http://basketball.about.com/od/teamsandconferences/a/mayo.htm
\textsuperscript{222} http://basketball.about.com/od/teamsandconferences/a/mayo.htm
\textsuperscript{223} http://sports.espn.go.com/los-angeles/ncf/news/story?id=5272615
\textsuperscript{224} http://sports.espn.go.com/los-angeles/ncf/news/story?id=5272615
\textsuperscript{225} Id.
USC to coach the NFL’s Seattle Seahawks shortly before the NCAA revealed its findings.²²⁶

Both O.J. Mayo and Reggie Bush received many benefits while in school, were caught, and ended up relatively unscathed. Both athletes have signed multimillion dollar deals since leaving their college programs.²²⁷ Beyond losing their eligibility and records, both players went unharmed, whereas the USC athletic program was hit with major sanctions. Current USC student athletes are prohibited from post season play for things that they were not part of.²²⁸ The seriousness of the USC sanctions, show how important it is for universities to vigorously regulate their athletes.

B. Josh Luchs Scandal.

A story given to ESPN by former agent, Josh Luchs, confirmed that paying collegiate athletes is a widespread problem.²²⁹ According to Luchs, he paid over thirty athletes throughout his twenty year career.²³⁰ Some of his payments were in the thousands, but many of the benefits he gave players were smaller, such as a couple hundred dollars a month, meals, and a place to stay if an athlete were in the L.A. area. Luchs’ story was confirmed by a number of athletes alleged of taking benefits; many of which said they took the benefits because their scholarships did not provide enough money for rent and food.²³¹ The NCAA has a four year statute of limitations on

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²²⁶ http://www.nfl.com/teams/coaches?coaType=head&team=SEA
²²⁸ http://basketball.about.com/od/teamsandconferences/a/mayo.htm;
²²⁹ http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2
²³⁰ Id.
²³¹ Id. at 1,5
violations, thus many of the athletes were willing to confirm the story without fear of reprimand.232

According to Luchs’ story, he also gave many benefits to the families of potential clients. As an example, Luchs gave players money to help parents who had fallen ill or gotten behind on rent payments.233 As previously mentioned, many student athletes come from under privileged family situations. Thus, the temptation to accept inappropriate benefits increases when a player sees an opportunity to benefit his family.

Josh Luchs’ confession is important because it sheds light on the types of, and, the motivation behind, the most common improper benefits. It is easy to believe all improper benefits amount to substantial amounts of money, but the reality is quite different. Many athletes accept benefits in order to get by or to improve their life in the most modest of ways. Understanding the types of common improper benefits can help the NCAA make modest adjustments to curb the problem.

Furthermore, Luchs’ story sheds light on the agent’s perspective. Agents are often portrayed as deceitful and money hungry. In contrast, many of the payments Luchs made were to students who came to him for help.234 Luchs, like many other agents, saw himself helping young underprivileged kids, rather than breaking rules.235 If Luchs’ story is taken as true, and his reasoning is genuine, the logic would follow that a simple adjustment to scholarship benefits could eliminate a large percentage of the improper benefits given to athletes.

232 Id. at 2
233 Id.
234 Id. at 5
235 Id.
C. Improper Communications.

Student athletes can lose their eligibility if they improperly communicate with agents. Improper communications can be more difficult to ascertain because the line between right and wrong is not as clear as the prohibition on benefits. For this reason, it is important that both the agent and the athlete take the steps provided by the athlete’s institution to ensure that the athlete’s eligibility is maintained.

As previously noted; the state, the NCAA, and the member institution; dictate the relationship the student athlete may have with the sports agent. If the agent fails to follow the mandated rules, the agent may endanger both the student’s eligibility and the agent’s own career.236 The increase of inappropriate communications has led some schools to take action against the agent using the UAAA and SARTA.237 Accordingly, in addition to NCAA guidelines, the agent must also look towards the state and the school to determine an appropriate method of communication.

School rules regarding agent-athlete communications may vary, thus an agent should always ascertain the prospective client’s school’s rules before contacting the potential client with remaining eligibility. Not all communications between agents and athletes are impermissible.238 Many schools hold pro days, where agents may interact with potential professional athletes.239 Furthermore, athletic departments may facilitate meetings between agents and players.240 It is important that while communicating with the athlete, the agent does not try to induce the athlete into signing a contract or does not

237 Id.
238 http://www.sportsagentblog.com/2010/03/03/james-paxtons-college-baseball-career-is-over/
try to speak with a professional team on behalf of the athlete. Both actions may potentially strip the athlete of his eligibility. Problems arise when agents communicate with athletes in ways contrary to established amateurism rules.

i. James Paxton.

Although this paper’s focus is on college basketball and football, a recent action involving James Paxton, a University of Kentucky pitcher, who turned down a seven figure contract with the MLB’s Toronto Blue Jays, exemplifies how communications with agents may strip the athlete of his eligibility. It is important to note that the NCAA has different draft rules with regards to baseball than it does with football and basketball. Unlike college basketball and football it is common for baseball players to enter the MLB draft and return to college without signing a professional contract or hiring an agent.

Paxton was suspended by the University of Kentucky after he refused to cooperate with NCAA investigators concerning allegations that his advisor, Scott Boras, (a notable sports agent) had direct communications with the Blue Jay’s organization after Paxton was drafted. If the allegations are correct, Boras’s conduct would be in violation of NCAA amateurism rules. Kentucky suspended Paxton to mitigate any possible future sanctions by the NCAA. Because there is no direct relationship between the NCAA and collegiate athletes, Paxton had no direct obligation, but through his relationship with his university, Paxton does have an obligation to answer questions relating to his amateur status. Although Paxton has no direct obligation to the NCAA.

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242 http://www.sportsagentblog.com/2010/03/03/james-paxtons-college-baseball-career-is-over/
243 Id. at 3
to cooperate, he cannot appeal the decision until he and his family fully cooperates with the NCAA.\textsuperscript{245}

The NCAA’s ability to coerce players to cooperate, even without an obligation to do so, exemplifies the plenary power the NCAA possesses. Due process requires that rules are not arbitrarily construed or administered. Forcing Paxton to cooperate without Paxton having the duty to do so, is a violation of due process; however, unlike member institutions and employees of member institutions, the NCAA does not extend due process rights to collegiate athletes.\textsuperscript{246} Accordingly, the indirect relationship between the NCAA and collegiate athletes gives the NCAA an inordinate amount of power. In fact, if Paxton went to the interview and asserted his attorney-client privilege of confidentially, the NCAA would interpret the assertion as a lack of cooperation and the university would ultimately have to suspend Paxton to avoid NCAA sanctions.\textsuperscript{247} Paxton’s case is an interesting one; it shows the excessive amount of power the NCAA holds over the athlete. It also shows how careful an agent must be, so not to forfeit an amateur athlete’s eligibility.

\textbf{ii. John Blake.}

Agents violate amateurism rules when they use intermediaries or coaches to establish relationships with student athletes.\textsuperscript{248} As seen in Josh Luchs’ story, rogue agents often attempt to create firm relationships with schools to gain a recruiting advantage.\textsuperscript{249}

Currently the NCAA is investigating former University of North Carolina assistant

\textsuperscript{245} Id.
\textsuperscript{246} Id.
\textsuperscript{247} Id.
\textsuperscript{248} \url{http://rivals.yahoo.com/ncaa/football/news?slug=cr-blakefolo101910}
\textsuperscript{249} \url{http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2}
football coach, John Blake. Blake allegedly acted as a runner for agent Gary Wichard. If the allegations are correct, Blake introduced players to Wichard, recruited players for Wichard, and even transporting players to meetings with Wichard. The investigation only concerns communications; as of now, there are no allegations of inappropriate benefits.

Blake’s case shows how delicate agent communications are. If proven, Blake’s actions would violate bylaw 10.1, which determines unethical conduct of staff members. Ultimately the actions alleged would regard Blake as an agent “runner.” Coaches are important members of the university staff; players place trust in their coaches and assume that the coach has their best interests in mind. Blake’s case shows athletes must take responsibility for maintaining their own eligibility; because what appears to be innocent communications may strip the athlete of his eligibility. Therefore, if athletes cannot depend on their coaches for guidance, it is important that athletes are given the tools to learn the rules, thus protecting themselves from inadvertently violating amateurism rules.

iii. Raymond Savage.

Rogue agents can suffer serious repercussions for improperly communicating with amateur athletes in violation of state legislation. Recently a Tuscaloosa court issued a writ of arrest for an agent, Raymond Savage, who failed to appear in court to reduce a felony charge for failing to register as an Alabama sports agent. Prior to the writ of arrest, Savage agreed to plead to a misdemeanor with a $2,000 fine for failing to

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251 Id.
252 Id. at 2
254 Id.
register.\textsuperscript{255} Under the plea, Savage would be restricted from traveling into Alabama, banned from dealing with Alabama athletes, and required not to contact Prothro or any other witnesses.\textsuperscript{256} Savage’s failure to appear, although allegedly for health reasons, took the plea agreement off of the table and subjected him to the original felony charges.\textsuperscript{257}

The pending felony charges, arose after Savage allegedly sent an employee, Jason Goggins, to visit Tyrone Prothro, a University of Alabama football player, in the hospital after Prothro broke his leg.\textsuperscript{258} Because Savage was not registered as a sports agent, in accordance with Alabama state law, the communication with Prothro would violate amateurism laws.\textsuperscript{259} The action was brought against Savage, although the university was not injured and Prothro retained eligibility.\textsuperscript{260}

After the writ of arrest was implemented, Alabama’s assistant attorney general, Don Valeska, said, “we want the message to go out that nobody comes to Alabama without following the law and talks to college athletes about going pro.”\textsuperscript{261} Valeska said further, that down the road when the defense says that it is selective prosecution, they didn’t go after so and so.\textsuperscript{262} “Yes, we do. We go after all of them. We take their information to a grand jury and let the citizens decide.”\textsuperscript{263}

The Savage case shows how important it is for agents to follow all the rules and the consequences which may arise if they fail to do so. It also shows the current change in attitude towards agent-athlete communications. The increase of athlete-agent violations

\textsuperscript{255} Id.
\textsuperscript{256} Id. at 2
\textsuperscript{257} Id.
\textsuperscript{258} Id. at 1
\textsuperscript{259} Id.
\textsuperscript{260} Id. at 2
\textsuperscript{261} Id. at 3
\textsuperscript{262} Id.
\textsuperscript{263} Id.
has led many schools to take action when available. The repercussions of Savage’s actions show that states and schools are no longer willing to give leniencies to agents. For these reasons and all the reasons exemplified throughout this section, it is vital that agents take the appropriate steps when communicating with athletes. By following the rules, agents will protect both their own career and athlete amateurism.

V. Reasons for Increased Violations.
The NCAA has always faced scandal, but it appears that there has been an increase of agent-athlete misconduct. Traditionally, the drive to win has been a prominent motivating factor behind misconduct; but agents benefit from athletes leaving school, thus the motivation derives elsewhere. There are four primary contributors: 1) lack of accountability; 2) heightened demands; 3) new technologies; 4) pecuniary interests. Considering the four factors holistically will explain the increase.

A. Lack of Accountability.
A lack of athlete and agent accountability has been attributed to misconduct. As previously discussed, conduct by Reggie Bush and O.J. Mayo levied hefty sanctions against USC.264 While the USC athletic program suffered greatly, both O.J. and Reggie were left seemingly unscathed. Yes, both athletes lost eligibility, which resulted in losing records and in Bush’s case, forfeiture of his Heisman Trophy; but compared to the multimillion dollar contracts they have since signed, the consequences of their conduct is relatively small.265 Similarly, Bush’s agent, Mike Ornstein, was involved in the

misconduct, yet he was not disciplined for his action.\textsuperscript{266} Likewise Bill Duffy, the agent associated with O.J. Mayo, remains unharmed by his conduct.\textsuperscript{267}

The lack of accountability is attributable to a number of factors. First, the NCAA does not have jurisdiction over agents.\textsuperscript{268} Second, many of the allegations are rumors therefore; with limited resources the NCAA choose its course of action prudently.\textsuperscript{269} Third, although the Uniform Athlete Agent Act and the Sports Agent Responsibility and Trust Act give universities a cause of action against rogue agents and athletes, many schools choose not to pursue action.\textsuperscript{270} Schools choose not to pursue action because doing so requires a large amount of resources and; furthermore, pursuing action can motivate the NCAA to investigate the school’s athletic program, leaving the school vulnerable.\textsuperscript{271}

The University of Alabama football coach, Nick Saban, suspended All-American left tackle, Andre Smith, due to contact one of Smith’s family members had with an agent.\textsuperscript{272} When asked about the situation, Coach Saban said; “you know, we probably could have prosecuted, but in prosecuting the guy that did wrong, we would have put our institution in jeopardy, possibly, from an NCAA standpoint.”\textsuperscript{273} Agents have no reason to follow amateurism rules if schools are unwilling to pursue action.

Similarly, NCAA bylaws inhibit universities from attacking agents on the grounds of both the tortious inducement of breach of contract and the tort of intentional interference with prospective economic advantage. The common law tortious inducement

\textsuperscript{266} http://sports.espn.go.com/espn/commentary/news/story?page=bryant/100922
\textsuperscript{267} http://sports.espn.go.com/ncb/news/story?id=3389049
\textsuperscript{268} http://www.washingtonpost.com/wp-dyn/content/article/2010/07/22/AR20100722205898_pf.html at 2
\textsuperscript{269} Id. at 3
\textsuperscript{270} Id.
\textsuperscript{271} Id.
\textsuperscript{272} Id. at 2
\textsuperscript{273} Id. at 3
of breach of contract is traditionally available when either the defendant acts with the purpose and desire to interfere with an existing contract or when the defendant does not act with the desire to interfere, but knows that the interference is certain.\textsuperscript{274} Likewise, the tortious interference with an economic advantage is available when the plaintiff pleads that the defendant engaged in an independently wrongful act and that the defendant knew that the interference was certain or substantially certain to occur as a result of his action. An act is independently wrongful if it is unlawful, i.e. “if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.”\textsuperscript{275}

The crux of the issue is the NCAA’s definition of amateurism and its stance that an athletic scholarship is essentially the same as an academic scholarship.\textsuperscript{276} Accordingly, the tortious intentional inducement of breach of contract is unavailable to universities because, although the NLI creates a binding agreement between the athlete and university, the agreement is considered an academic grant, not a contract. The logic follows; an agent is unable to interfere with a contract that does not exist.

In contrast, tortious interference with an economic advantage does not require a contract. There are three requirements to meet the standard for tortious interference with an economic advantage. First, does agent-athlete misconduct interfere with an economic advantage?\textsuperscript{277} The NCAA and its member institutions have a large pecuniary interest in intercollegiate athletics. Moreover, the NLI binds the athlete to the university, giving the university an economic advantage, thus the first requirement is met. Second, do agents

\textsuperscript{274} Restatement (Second) of Torts §766(b)
\textsuperscript{275} Korea Supply Co. v. Lockheed Martin Corp. 63 P.3d 937 (Cal. 2003)
\textsuperscript{276} Kavanagh v. Trustees of Bos. U., 795 N.E.2d 1170, 1175 (Mass. 2003)
\textsuperscript{277} Korea Supply Co. v. Lockheed Martin Corp. 63 P.3d 937 (Cal. 2003)
intend or know that interference is certain or substantially certain to occur as a result of their action? When an agent offers an athlete improper benefits or attempts to improperly communicate with an athlete, the agent is aware that the athlete may lose his eligibility, thus the agent is substantially certain interference will result. Third, is the action taken by the agent independently wrongful? The third requirement is likely fulfilled by the enactment of the UAAA and SARTA. Although courts may find the agent’s misconduct fulfills the requirement in their entirety, the tort is still unavailable. The NCAA is a 501(c)(3) organization, i.e. a non-profit organization. Therefore the NCAA is an organization that is non-profit seeking. Because the NCAA is non-profit seeking, the ncaa cannot seek an economic advantage. Therefore, an agent is unable to interfere with an economic advantage, the NCAA is not seeking.

The lack of accountability is a major reason agents continue to act contrary to NCAA amateurism rules. As long as agents see the benefit outweighing the consequences, agents will continue to act contrary to NCAA rules and regulations.

B. Heightened Demands.

Athletic scholarships were created because the athlete’s athletic obligation inhibited the athlete’s ability to maintain side jobs. Athletic scholarships are limited and do not extend beyond living necessities. Traditionally athletes have worked over summer breaks to cover expenses beyond those covered by scholarships; however, over time NCAA athletics have become more time consuming. Many schools mandate

\[\text{Id.} \]
\[\text{Id.} \]
\[\text{See. } \text{http://www.govtrack.us/congress/bill.xpd?bill=h108-361; see. } \text{http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm} \]
\[\text{See. } \text{http://sports-law.blogspot.com/2006/03/congress-investigating-possible-ncaa.html} \]
\[\text{http://fs.ncaa.org/Docs/NCAANewsArchive/1999/19991122/active/3624n24.html} \]
summer school and summer training camps for football teams.\(^{283}\) Likewise, the NCAA has recently proposed a measure that would require all division 1 basketball players to attend mandatory summer school sessions.\(^{284}\) The arduous summer schedule inhibits the athlete’s ability to earn money, thus the temptation to accept inappropriate benefits grows. The Josh Luchs story showed that most illegal benefits are only enough for the athlete to live a normal college life.\(^{285}\) Accordingly, if the NCAA is going to increase the demand placed upon student athletes, the NCAA must find a way for athletes to earn money. If the NCAA finds a way to supplement the modest needs of student athletes created by heightened demands, the NCAA will abrogate many instances of improper benefits.

**C. New Forms of Communication.**

Social networks make agent-athlete communications effortless. Within only an hour of searching, agents may contact a large number of athletes with ease. Traditionally, in order to contact athletes, agents would have to find a way to gather phone numbers, addresses, and e-mail addresses; now all agents have to do is search a name on the network’s database. The ease of use creates opportunities for agents with fewer resources. A larger pool of actors leads to an increased chance of inappropriate behavior. Similarly, the larger pool allows more desperate actors to participate. When an agent is desperate to sign his or her first client, the agent is more likely to separate themselves by offering improper benefits.

\(^{283}\) http://summer.stack.com/TheIssue/Article/DefaultSummer/Football/10/7403/Inside_Bama_Footballs_Weight_Room_.aspx

\(^{284}\) http://www.upbeacon.net/2.10853/ncaa-proposes-summer-school-for-athletes-1.1513159

\(^{285}\) See. http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2
Moreover, the nature of social networks, such as facebook, makes it very difficult to regulate.\(^{286}\) Privacy settings allow the athlete to determine what outside parties may see. Schools are unable to ascertain who the athlete’s contacts are and what their conversations entail.\(^{287}\) Even if the school were able to determine who the athlete is connected with, it is easy to create a false profile, thus allowing the agent to mask their true identity. Furthermore, if the university or NCAA were to ban social networks, regulating such behavior would require more resources than realistically plausible. Especially because the player, like the agent, can create a false profile, leaving his communication with agents undetected. It is important to understand that the agent is not always the aggressor, athletes and their families may contact agents looking for an easy pay check.\(^{288}\) The unpredictable nature of the dichotomy and the nature of the websites make social networks extremely difficult to regulate.

Contrarily, for many of the same reasons social networks make inappropriate communications more prevalent, social networks may also make it easier to learn of violations athletes. People often divulge information without considering the implications of their postings. Major investigations have commenced resulting from tweets and facebook posts regarding trips and parties.\(^{289}\) When an athlete posts pictures or talks about a party, he is inadvertently posting evidence of inappropriate benefits. Players may not include agent names or agent involvement, but the NCAA is able to deduce such involvement based on the time and location of said events.\(^{290}\) Accordingly, although


\(^{287}\) Id.

\(^{288}\) See [http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2at5](http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2at5)


\(^{290}\) Id.
social networks may increase improper communications, the networks also divulge information that would traditionally remain unknown. Collegiate athletes must take particular care when using social networks, so not to forfeit their amateur status over what may appear to be an innocent conversation. Accordingly educating athletes is of the utmost importance.

**D. Pecuniary Interests.**

Rogue agents are willing to spend a considerable amount of money, risk their reputation, and possibly even their career, because the return from signing a top client is tremendous. To put it in perspective, NFL agents customarily take a 3% commission on player contracts and NBA agents take 4%.\(^{291}\) Furthermore, agents generally take anywhere from 15% to 20% on endorsement contracts.\(^{292}\) The average NFL salary is just under 1.8 million dollars and the average NBA salary is 5.85 million dollars; whereas, in 2000 the average NFL salary was $787,000 and the NBA $4.2 million. Average salaries, in both the NFL and NBA have grown by more than one million dollars in only 10 years.\(^{293}\) Therefore, the average agent makes an additional $30,000 in the NFL and $66,000 in the NBA for average player contracts. Accordingly, as player contracts have increased, so has the motivation for agents to sign athletes. The agent’s perceived benefit from cheating grows as his or her return on investment grows; therefore an increased

\(^{292}\)http://www.usatoday.com/money/media/2010-06-20-endorsements-tiger_N.htm
return means more agents will be willing to take the risk. For these reasons, the enforcement of UAAA and SARTA is essential to deter rogue agents.

VI. The Uniform Athlete Agent Act and the Sports Agent Responsibility and Trust Act.

Traditionally the NCAA and its member institutions have had limited means of regulatory power over agents, which has been confined to the NCAA’s power to sanction its members and the member institutions power to strip athletes of their eligibility. These traditional powers have a greater adverse affect on member institutions than the guilty parties. As a result 39 states have adopted the Uniform Athlete Agent Act, (“UAAA”), which gives member institutions a cause of action against former players and agents.294 Moreover, the United States Congress enacted, the Sports Agent Responsibility and Trust Act, (“SARTA”), which allows attorney generals and member institutions to pursue civil action against sports agents for deceptive practices.295 These acts are a start, but unfortunately, the Acts have been ineffective.296 To pursue legal action, member institutions must exert a large amount of resources.297 Furthermore, many institutions are weary of such action because pursuing legal action may open the university to sanctions from the NCAA.298 Additionally, agents are very careful to cover money trails and communication trails, making investigations difficult and costly.299

294 http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm
296 http://www.washingtonpost.com/wp-dyn/content/article/2010/07/22/AR2010072205899_pf.html
297 Id.
298 Id.
299 Id.
Although the UAAA and SARTA have been ineffective to date, as the problem festers schools have become more willing to exert the resources necessary to pursue legal action. As schools become more likely to pursue legal action the consequences of misconduct become real. When the consequences become real, the motivation to cheat diminishes, thus as more schools take legal action instances of misconduct will diminish. Therefore, the UAAA and SARTA are powerful weapons member institutions may use to fight misconduct, when traditionally they have had very little power.

A. Uniform Athlete Agent Act (2000).

The UAAA was drafted by a seventeen member committee of the National Conference of Commissioners on Uniform State Laws in 2000. The UAAA acknowledges that a minority of agents and prospective agents have caused serious problems for student-athletes and educational institutions through tactics of “secret payments or gifts to the athlete, undisclosed payments or gifts to friends and relatives who may be in the position to influence the athlete, unrealistic promises, and considerable arm-twisting.”

The Act further acknowledges that agent-athlete misconduct strips athletes of eligibility and may harm professional careers. Furthermore, the Act recognizes the serious sanctions member institutions face as a result to agent-athlete misconduct. These sanctions may result in loss of, or liability to return, revenues from post-season

301 http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm
302 Id. at 8
303 Id.
304 Id.
events, tarnished reputation, and severe disruptions in athletic programs which have long-term adverse affects.\textsuperscript{305}

Although the UAAA is an attempt to regulate misconduct by sports agents, the UAAA also attempts to assist agents by creating a uniform registration process.\textsuperscript{306} According to the Act, twenty-eight states have enacted legislation to regulate athletes and sports agents.\textsuperscript{307} Of those states, two-thirds impose registration requirements; however, these registration requirements; including, procedures, disclosures, record maintenance, reporting, renewal, notice, warning, and security vary greatly.\textsuperscript{308} Furthermore, most states require notification to the state, institution, or athlete pertaining to certain matters which vary.\textsuperscript{309} Moreover, the system is further convoluted by varying registration terms.\textsuperscript{310} Accordingly, the Act was established to reduce misconduct, give institutions a weapon against misconduct, and make life easier for agents by creating uniformity.\textsuperscript{311}

i. TERMS OF UAAA.

Under the act, an agent must register with the State before initiating contact with a student-athlete to induce the signing of an agency contract.\textsuperscript{312} The Act defines an agent as an “individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract.”\textsuperscript{313} The definition does not include a spouse, parent, sibling, grandparent, or guardian of the
athlete or an individual acting solely on behalf of a professional sports team.\textsuperscript{314} It does however include other individuals or “runners” used by the agent to recruit or solicit the student-athlete to sign a contract.\textsuperscript{315}

Furthermore, an agency contract is defined as an ‘agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract.”\textsuperscript{316} If the Athlete contacts the agent, the agent must register within seven days after commencing any effort to induce such a contract.\textsuperscript{317} Only those who fall within the definition of an “athlete agent” must register. It is important to note that unlike the NCAA, which may sanction schools due to mere communication with an agent, the UAAA does not give a cause of action against agents fail to recruit or solicit athletes to sign a contract.\textsuperscript{318} For the purposes of the UAAA, a student athlete is an athlete with remaining or future eligibility.

\textit{a. Registration.}

As noted, the UAAA requires that an agent register before initiating contact with an athlete for the purposes of inducing the athlete to sign an agency contract.\textsuperscript{319} In order to make the registration requirement as broad as constitutionally permissible under the minimal contact requirement set out in International Shoe, the UAAA gives a seven day registration window when an athlete contracts an agent.\textsuperscript{320} If the agent does not comply

\textsuperscript{314} Id.
\textsuperscript{315} Id.
\textsuperscript{316} Id.
\textsuperscript{317} Id. at §4
\textsuperscript{318} Id. at §16
\textsuperscript{319} Id. at §16
\textsuperscript{320} Id.
with the registration requirement or with the safe harbor rule i.e. the seven day window, any resulting agency contract is considered void, rather than voidable.\textsuperscript{321}

In order to register the agent must submit a registration application with the Secretary of State.\textsuperscript{322} The application is a public record and must be signed or authenticated under the penalty of perjury.\textsuperscript{323} The application requires: 1) the name of the applicant and his or her principal place of business; 2) the name of the applicants business or employer; 3) any business or occupation the applicant has taken part in for the five years preceding the application; 4) a description of the agents formal training as an agent, practical experience as an agent, and educational background relating to his or her activities as an agent; 5) three non-related reference; 6) the name, sport, and last known team of any athlete the agent has represented in the five years preceding the application; 7) the names and addresses of partners, members, officers, managers, associates, and profit sharers of the agent’s business if not a corporation; and if a corporation, the names of the officers, directors, and shareholder of the corporation having an interest of five percent or greater; 8) the identity of any convictions of crimes that would involve moral turpitude or felony; 9) whether any administrative or judicial determination has determined that the applicant has made a false, misleading, deceptive, or fraudulent representation; 10) any instances of conduct that have resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event; 11) any sanction, suspension, or disciplinary action taken against the applicant arising out of occupational or professional

\textsuperscript{321} Id.
\textsuperscript{322} Id. at §5
\textsuperscript{323} Id.
conduct; and 12) whether the applicant has been denied for suspension or revocation of, or refusal to renew, the registration or licensure in any State.  

The Secretary of State will accept any registration or certificate in another state in lieu of submitting an application if the application or certification was submitted in the other State within six months preceding the current submission and the information is current, contains information substantially similar to that required in the current State, and if the information was signed by the applicant under penalty of perjury. It is important to note that acting as an agent is considered to be outside of the scope of legal services, thus the attorney-client privilege does not apply and the attorney must therefore comply with the Act.

The registration process makes the sports agency business an exclusive business. It inhibits unsavory individuals from inducing college athletes to sign agency contracts. The Savage case shows that, the registration requirement may be a powerful tool to curb misconduct.

The prospective agent’s application to practice may be denied if it is determined that the applicant has engaged in conduct that has significant adverse effect on the applicant’s fitness to act as an agent. Beyond the particular actions which may deem a prospective agent unfit, the ruling considers how recent the conduct has occurred, the nature of the conduct, and any other relevant conduct of the applicant. When making the determination, the Secretary of State may consider action taken in other states; however, the UAAA does not require Secretaries of State to cooperate with one another;
it is just assumed that the secretaries will cooperate to reduce administration costs.\textsuperscript{329}

Furthermore, the Secretary of State has the power to suspend, revoke, or refuse to renew registration for conduct that would warrant the denial of an original application. If such an action occurs, the agent is given proper notice and an opportunity for a hearing.\textsuperscript{330}

\textit{b. Agency Contract.} 

The UAAA establishes requirements that must be met to maintain the legality of any agency contract. First, the contract must be in record, signed, or otherwise authenticated by the parties.\textsuperscript{331} Furthermore, the contract must contain: 1) the amount and method of calculating the consideration paid to the agent by the athlete and any other consideration the agent has received or will receive from any other source for entering into the contract; 2) the name of any person not listed in the application for registration who will be compensated per the contract; 3) a description of any expense the athlete agrees to reimburse; 4) a description of the services provided to the athlete; 5) the duration of the contract; and 6) the date of execution.\textsuperscript{332}

Furthermore, within close proximity of the signature block, there must be a warning notice in boldface type, in capital letters, explaining to the athlete that: 1) the athlete will lose their amateur status; 2) within 72 hours of signing the contract both the athlete and the agent must notify the athlete’s athletic director; and 3) the athlete may cancel the contract within 14 days of signing it, but the cancelation will not result in a reinstatement of the athlete’s eligibility.\textsuperscript{333} If the agent does not comply with the warning

\begin{footnotes}
\item[329] Id.
\item[330] Id. at §7
\item[331] Id. at §10
\item[332] Id.
\item[333] Id.
\end{footnotes}
notice, the contract is considered to be voidable by the athlete.\textsuperscript{334} If the athlete voids the contract, the athlete is not required to pay any consideration under the contract or return any consideration the athlete has received from the agent to induce the signing of the contract, therefore, decreasing the incentive to give inappropriate benefits.\textsuperscript{335}

The contract requirements protect the athlete from unsavory agents. The requirement ensures that the athlete is aware of the consequences of his actions and protects him if the agent does not comply with the Act. The idea is that the more educated the athlete's decision is, the less likely the athlete is to partake in misconduct.

Furthermore, the right to cancel the contract within 14 days of signing is implemented to curb the disparity of sophistication between the parties.\textsuperscript{336} It is presumed that protecting athletes from fraud and deceptive agent practice will reduce the instances of misconduct. Likewise, agents are less likely to give improper benefits if they are aware of the right to cancel without the duty to return consideration for inducement.

Similarly, the notification requirement ensures that the school can protect itself from sanctions. If the athlete is required to notify the athletic director of any agency contract, the member institution will not inadvertently allow a disqualified athlete to participate in an amateur event.\textsuperscript{337} The requirement is intended to lessen the adverse affects on universities where student athletes sign agency contracts prior to the end of their eligibility.\textsuperscript{338}

\textsuperscript{334} Id.
\textsuperscript{335} Id.
\textsuperscript{336} Id. at §12
\textsuperscript{337} Id. at §11
\textsuperscript{338} Id.
c. Prohibited Conduct.

Moreover, the UAAA establishes a list of prohibited conduct. The agent may not: 1) give materially false of misleading information or make a materially false promise or representation; 2) furnish anything of value to a student-athlete before the athlete enter into a contract; or 3) furnish anything of value to any individual other than the athlete or registered agent. Moreover, the agent may not intentionally: 1) contact an athlete if not registered in compliance with the Act; 2) refuse or fail to retain or permit inspection of records in accordance with the Act; 3) fail to register if contacted by an athlete; 4) provide false or misleading information in the registration or renewal of registration process; 5) predate or postdate an agency contract; or 6) fail to notify the student athlete before the athlete signs an agency contract that signing the contract may result in the forfeiture of the athlete’s eligibility.

The conduct prohibited by the UAAA codifies many of the prohibited actions set by the NCAA. Therefore, the UAAA gives NCAA bylaws the teeth necessary to prohibit agents from violating amateurism rules. If an agent violates any of the prohibition requirements, the agent is guilty of a misdemeanor or felony as set by the state. The Act acknowledges the significant monetary stakes and thus provides such action as a disincentive for agents who might normally partake in misconduct.

d. Right of Action.

Similarly, the Act gives member institutions the right of action against agents or former student-athletes for damages caused in violation of the UAAA. The Act
provides a remedy which includes costs and reasonable attorney’s fees.\textsuperscript{344} For the purposes of the Act, damages include: 1) loss of expenses incurred as a result of player or agent conduct; 2) the institution was injured by violation of the Act or was penalized, disqualified or suspended from participation in athletics by the NCAA; or 3) by reasonable self-imposed disciplinary action taken to mitigate potential sanctions from the NCAA.\textsuperscript{345} Moreover, the Act does not restrict any rights, remedies, or defenses under the law of equity.\textsuperscript{346}

The cause of action created by the UAAA, supports member institutions in the fight against agent-athlete misconduct. Prior to the UAAA’s enactment, member institutions were subject to draconian rulings, in which universities suffered greatly from conduct the university may have been oblivious to. Now member institutions are able to bring suit against those who have caused harm. This right of action allows member institutions to hold agents and athletes accountable for their conduct. If the agents and athletes are held accountable, the perceived benefits diminish and the risk increases. If the risk increases and the benefits decrease, both the agent and the athlete will be less likely to partake in prohibited action. While the UAAA creates the tools to hold agents and athletes accountable for misconduct member institutions must consistently utilize the UAAA to achieve the desired result, i.e. mollify agent-athlete misconduct.

ii. UAAA Compared to Previous State Law.

The UAAA was enacted to provide uniformity for complying agents.\textsuperscript{347} The UAAA expands the scope of agency contracts, by including agreements authorizing the

\begin{itemize}
\item \textsuperscript{344} Id.
\item \textsuperscript{345} Id.
\item \textsuperscript{346} Id.
\item \textsuperscript{347} Id. at 8
\end{itemize}
individual to negotiate endorsements.\textsuperscript{348} The UAAA expands the number of reasons an agent may be denied or have an application revoked.\textsuperscript{349} The Act eliminates the requirement that an agent post a $100,000 surety bond, which increases the motivation to comply.\textsuperscript{350}

The Act further affects the registration by extending the period from one to two years, adds a safe harbor provision for instances when athletes contact potential agents, and adds provisions for registration and renewal of agents registered in other states.\textsuperscript{351} These provisions protect the agent’s interest. By extending the registration period, adding a safe harbor clause, and incorporating registration in other states, agents are motivated to comply.

Furthermore, the Act alters contract requirements for agency contracts and expands the athlete’s cancelation right from six to fourteen days.\textsuperscript{352} However, the UAAA does not include provisions on interviewing athletes and does not specifically authorize adoption of regulations.\textsuperscript{353} These differences extend protections onto the athlete, so that he is not taken advantage of by ill-willed agents; by doing so athletes will make more educated decisions and will be less likely to partake in misconduct.

Additionally, the UAAA alters provisions pertaining to prohibited conduct and provides a cause of action for member institutions who have been harmed by

\textsuperscript{348} http://cga.ct.gov/2003/rpt/2003-R-0332.html at 1
\textsuperscript{349} Id.
\textsuperscript{350} Id.
\textsuperscript{351} Id. at 2
\textsuperscript{352} Id.
\textsuperscript{353} Id.
misconduct. Unlike the current law, the UAAA does not specifically allow restitution or make violations an unfair trade practice.

The cause of action provided to the member institution is arguably the most important aspect of the Act. The UAAA gives member institutions the tools to fight misconduct by athletes and agents. Utilizing the cause of action is the only power the institution possesses, which reasonably diminishes the athlete and agent’s motivation to partake in misconduct.

B. Sport Agent Responsibility and Trust Act.

The Sports Agent Responsibility and Trust Act, (“SARTA”), was enacted by the Senate and House of Representatives of the United States of America in 2004. SARTA’s goal is to “designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.” Upon its enactment Congress expressed its opinion that States should enact the UAAA. Congress felt that the UAAA is important to protect student athletes and the integrity of intercollegiate sports. As a result, much of the language and definitions in SARTA are very similar to the language used in the UAAA. Similarly, SARTA, like the UAAA, gives member institutions a powerful tool to fight sport agent misconduct. SARTA codifies the NCAA’s agent benefit prohibitions and protects athletes from pernicious agents.
Under SARTA it is unlawful for an agent to recruit an athlete by giving false or misleading information or by making a false promise or representation; or by providing anything of value to the athlete or anyone associated with the athlete.\textsuperscript{362} Essentially, SARTA makes it illegal to break NCAA rules regarding benefits given to athletes by agents. Moreover, SARTA protects athletes from ill-willed agents.\textsuperscript{363} By giving the NCAA constructive force, SARTA is able to deter agents from providing athletes with inappropriate benefits.

SARTA goes on to prohibit both an agent from predating or postdating a contract, and an agent from inducing an athlete to sign an agency contract without providing the athlete with a disclosure document as require by the Act.\textsuperscript{364} The disclosure document is separate from and in addition to any disclosure required under State law.\textsuperscript{365} The document must be signed by the athlete prior to signing the agency contract.\textsuperscript{366} Furthermore, like the UAAA, close to the signature block there must be a warning in boldface type stating: “Warning to Student Athlete: If you agree orally or in writing to be represented by an agent or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have

\begin{footnotesize}
\begin{enumerate}
\item Id. \textsuperscript{362}
\item Id. \textsuperscript{363}
\item Id. \textsuperscript{364}
\item Id. \textsuperscript{365}
\item Id. \textsuperscript{366}
\end{enumerate}
\end{footnotesize}
entered into an agency contract.” The warning is required to protect the student athlete. There is a presumed disparity of sophistication between the two parties, thus the warning lessens that disparity and ensures that the athlete is fully aware of what he is doing. By educating the athlete of his decision and the consequences thereof, the athlete is less likely to violate amateurism rules.

a. Member Institutions.

SARTA not only protects the student athlete, but also protects the member institutions from inequitable rulings handed down by the NCAA. Accordingly, the athlete and the agent must both notify the athletic director of the athlete’s institution, within 72 hours or prior to the athlete’s next scheduled athletic event, that the athlete has signed an agency contract and therefore forfeits his eligibility as an amateur. If the institution is cognizant of the athlete’s ineligibility, the institution should be able to avoid sanctions handed down by the NCAA. Furthermore, SARTA gives member institutions a civil right of action against agents for any damages resulting from a violation of the act. Damages may include but are not limited to actual losses and expenses incurred because, as a result of the agent’s conduct, the member institution was injured by the violation of the Act or was penalized, disqualified, or suspended by the NCAA, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate

367 Id.
368 Id.
369 Id. at §6
370 Id.
371 Id.
sanctions handed down by the NCAA.\textsuperscript{372} Moreover, the court may award to the prevailing party reasonable costs and attorneys fees.\textsuperscript{373}

\textit{b. State Enforcement.}

SARTA violations are to be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act. (15 U.S.C. 57a(a)(1)(B)).\textsuperscript{374} Accordingly, the State, by way of the attorney general, may bring a civil action on behalf of the residents of the State in a United States District court to: 1) enjoin the practice; 2) enforce compliance with the Act; or 3) obtain damage, restitution, or other benefits on behalf of the residents of the State.\textsuperscript{375} Such action is appropriate when the attorney general has reason to believe that an interest of the residents of the State has been, or is threatened or adversely affected by an agent’s conduct in violation of the Act.\textsuperscript{376}

\textit{c. FTC.}

Before an action may be filed, the attorney general of the State must provide a written notice of the action and a copy of the complaint for that action to the Federal Trade Commission.\textsuperscript{377} Upon doing so, the FTC shall have the right to intervene.\textsuperscript{378} If the FTC intervenes, it shall have the right to be heard with respect to any matter that arises in the action; and file a petition for appeal.\textsuperscript{379} Furthermore, if the FTC acts, no state may,
during the pendency of the action, file an action against any defendant named in the complaint. 380

d. Implications.
SARTA is a step in the right direction. It enforces restrictions against misconduct between agents and collegiate athletes. 381 Like the UAAA, SARTA gives universities a tool to fight misconduct. 382 Without SARTA and the UAAA, member institutions would have very little coercive power over the agents. Without the power of coercion, the agent and the athlete have no motivation to comply with amateurism rules. Unfortunately, due to a lack of resources and unwillingness by schools to take action, SARTA has been relatively ineffective. 383 If schools continue to forgo legal action they fail to do so, agents and athletes alike will continue to ignore NCAA rules without fear of repercussion.

VII. Ed O’Bannon Antitrust Suit.
From time-to-time the NCAA has had to evolve in light of threats against amateurism. Currently, former UCLA basketball star, Ed O’Bannon is the lead plaintiff in a class-action antitrust suit against the NCAA and Collegiate Licensing. 384 The suit claims the NCAA, athletic conferences, and member institutions violate federal antitrust laws by usurping the rights of former athletes to earn royalties when the athletes’ likeness and images are licensed by the NCAA for video games, television advertisements, apparel, and other products. 385 The athlete class is arguing that although amateurism

380 Id.
381 Id.
382 Id. at §6
prevents intercollegiate athletes from earning wage from their names and likeness, those rules should not extend to former players.\footnote{http://www.nytimes.com/2010/03/11/sports/ncaabasketball/11colleges.html}

Traditionally courts have given deference to the NCAA for conduct use to further the existence of in maintenance of amateurism.\footnote{http://usgovinfo.about.com/library/weekly/blsherman.html; Horizontal price fixing and output limitations are generally condemned as “illegal per se;” however, courts hold the NCAA to a rule of reason standard because college amateur athletics would cease to exist if the NCAA could not implement horizontal restraints.} This deference does not give the NCAA complete exemption from antitrust law.\footnote{Id.} The O’Bannon case will likely fall outside the scope of the court’s deference because withholding revenues from former collegiate athletes does not reasonably preserve amateurism in intercollegiate athletics. The court has yet to rule; however, in February federal district court judge, Claudia Wilkens, denied the NCAA’s motion to dismiss.\footnote{http://www.usatoday.com/sports/college/2010-02-08-judge-approves-ncaa-suit_N.htm} Similarly, Judge Wilkens dismissed the players’ assertion of common law accounting claims against the NCAA and Collegiate Licensing without prejudice.\footnote{Id.}

Traditionally, the NCAA has been secretive with regards to finances.\footnote{Id.} Many have speculated that for decades, the NCAA has withheld hundreds of millions of dollars from athletes.\footnote{Id.} Accordingly, because the NCAA’s motion to dismiss was denied, the NCAA must comply with the discovery process.\footnote{http://sportsillustrated.cnn.com/2010/writers/frank_deford/03/10/NCAA-amateurism-lawsuit/index.html} The discovery process will shed light on the NCAA’s financial benefit received vis-à-vis former athletes.\footnote{Id.}

The O’Bannon case will have a significant effect on intercollegiate amateurism, to the extent that it may potentially remove amateurism from intercollegiate basketball and
football.\textsuperscript{395} If the NCAA is in fact making hundreds of millions or even billions of dollars off of collegiate athletes, courts will have to reconsider their leniencies towards the NCAA.\textsuperscript{396} Courts have traditionally given deference to the NCAA because it was accepted that intercollegiate athletics is a unique product, which depends on amateurism to exist.\textsuperscript{397} Therefore, divulging evidence of such large profits, will call into question the NCAA’s ability to survive absent amateurism. Even if courts found that horizontal agreement to restrain trade were necessary for the NCAA’s continued existence, the NCAA would still be scrutinized under antitrust rule of reason.\textsuperscript{398} Antitrust rule of reason analysis requires: 1) a determination of whether the challenged restraint has a substantially adverse affect on competition; and 2) whether the precompetitive virtues of the alleged wrongful conduct justify the anticompetitive acts.\textsuperscript{399} If courts find that the NCAA is turning a significant profit at the expense of collegiate athletes, courts might determine that the precompetitive virtues of the alleged wrongful act; i.e. maintaining amateurism, is no longer justifiable.

Either way, whether the court finds in favor of the class of athletes or in favor of the NCAA, the case has brought a lot of unwanted attention to the disparities between collegiate athletes and the NCAA. It is likely that as discovery reveals finances, this attention will grow along side public scrutiny. Therefore, no matter what the outcome, the O’Bannon case will likely lead the NCAA to made changes in its amateurism rules. The regarding amateurism, will have an affect on agent athlete communications. Therefore, if

\textsuperscript{395} http://sportsillustrated.cnn.com/2010/writers/frank_deford/03/10/NCAA-amateurism-lawsuit/index.html
\textsuperscript{396} Id.
\textsuperscript{397} http://usgovinfo.about.com/library/weekly/blsherman.html; Horizontal price fixing and output limitations are generally condemned as “illegal per se;” however, courts hold the NCAA to a rule of reason standard because college amateur athletics would cease to exist if the NCAA could not implement horizontal restraints.
\textsuperscript{398} Law v. N.C.A.A, 134 F.3d at 1016, 1017 (10th cir. 1998)
\textsuperscript{399} Id.
the NCAA is smart, it will invoke change that will not only appease the court and the public, but also, combat athlete-agent violations.

VIII. Proposed Solutions.

The NCAA is currently entertaining solutions to the increased presence of athlete-agent misconduct. These steps address the concerns created in the O’Bannon case and help diminish misconduct between agents and athletes. Agent-athlete misconduct is now threatening the continued existence of amateur intercollegiate athletics, thus the NCAA evolution is necessary before the problem reaches a point of no return.

A. Level Playing Field.

An immediate response to the problem may be to level the playing field between the NCAA and student athletes. As of now, the NCAA has plenary power over the student athlete. The athlete’s lack of voice, which is essentially a lack of rights, contributes to the increase of athlete-agent misconduct. Therefore, the logic follows that if the student athlete were placed on an equal footing with the NCAA or at least given the same rights as the member institutions, instances of misconduct would decrease. Unfortunately leveling the playing field is far easier said than done.

It is difficult to find a solution which would increase athlete rights, while maintaining amateurism. One way to extend rights to the athlete might be to create an employment agreement between the athlete and member institution. If the athlete is considered an employee of the member institution, the athlete extended the same rights as other employees of the institution, such as coaches.\(^\text{400}\)

\(^{400}\) *Ntl. Collegiate Athletic Assoc. v. Tarkian.* 488 U.S. at 202 (1988)
Although creating an employment agreement may be appealing, it does not come without consequences. First, if an athlete were to be considered an employee, the athlete’s scholarship would then be viewed as income rather than as an educational grant. If the athlete’s scholarship is considered income, the athlete would no longer be an amateur. Moreover, the athlete would be liable for taxes on the amount the athlete received. Considering that scholarships are not always sufficient to support athletes, reducing the athlete’s compensation by way of taxation would make the situation worse, thus increasing the instances of player-agent misconduct.

Similarly, rectifying that concern by proposing player salaries is not a viable solution. Currently the NCAA is exempt from antitrust law concerning the maintenance of amateurism within intercollegiate athletics. If players were paid salaries the NCAA would be unable to claim the exemption and therefore would be forced to negotiate with players. Once the NCAA opened to negotiations, a players’ union would likely form. The demands players’ unions would create would likely lead to, not only, the end of intercollegiate basketball and football, but also the end of other sports that depend on the redistribution of basketball and football earnings to survive.

Once schools start negotiating with players, the product becomes purely economic. If the product becomes purely economic, schools may shift focus from academics to athletics. Shifting focus from academics to athletics would have adverse affects on the American educational system as a whole. Thus, such a policy would be contrary to public concern.

402 Rensing v. Ind. St. U. Bd. of Trustees, 444 N.E.2d at 1173 (Ind. 1983)
403 Law v. N.C.A.A, 134 F.3d at 1016, 1017 (10th cir. 1998)
Furthermore, the economics shift would not be the end of the problems concerning the adoption of an employment relationship. Recruiting would become a hot-button topic. Currently, recruiting may start in the athlete’s high school career. Many top athletes begin receiving recruitment letters, their freshman year of high school. If the change occurred young athletes would be faced with decisions concerning employment and education. Salaries may be used to induce susceptible athletes to sign with schools for purely economic reasons. High school students are not in the position to make such decisions, as exemplified with the NBA’s “one and done” rule, requiring athletes to be one year removed from high school before entering the draft. Moreover, employment agreements would likely open the door to many lavish recruiting perks addressed in the 2004 NCAA recruiting reforms. The reforms were backed by the notion that student athletes were amateurs and not professionals. Therefore, removing the amateur label would open Pandora’s box.

Once the NCAA established recruiting regulations, the problems would then concern intercollegiate athletics. Intercollegiate athletics is a unique product because amateurism rules make the athlete a student first and an athlete second. If schools were to include athletes as employees, this cherished belief would perish. Once profit becomes the motivating factor, schools would be less likely to enforce eligibility standards and would be able to fire athletes. Once schools are able to fire students the system becomes unpredictable. Traditionally athletes have stayed in school to earn a guaranteed

404 As a Division 1 collegiate basketball player, myself and many of my peers began receiving recruitment letters freshman year of high school.
405 http://basketball.about.com/od/collegebasketballglossary/g/oneanddone.htm
407 Id.
408 See Rensing v. Ind. St. U. Bd. of Trustees, 444 N.E.2d at 1143 (Ind. 1983)
education. If you are able to fire an athlete mid season, this guarantee goes away, along with the motivation to stay in school and earn an education.

As problems arise, the system would become more confusing and unpredictable. Courts would likely have to decide whether State schools would be held to a different standard than private schools. Courts would likely find that by joining the NCAA the athlete is regulated by a private actor and therefore would be treated the same as an athlete attending a private school.\(^4\) Although state school athletes would be held to the same standard as private school athletes, state athletes would be paid as state employees. This means that state athletes would be paid out of state taxes. This practice would likely cause a public outcry. If state schools were able to get around the criticisms and were able to compete, there would still be distribution problems. The disparity between top tier schools and the bottom tier schools would increase drastically. Many schools would be forced to cut athletic programs due to a lack of resources. The NCAA would shrink drastically and would likely transmute into something resembling a profit seeking organization made of semi-pro teams associated with an educational institution.

The list of difficulties is far too complex for this paper; however it is enough to say that an employment policy would lead to the end of the NCAA. If the attempt is to ascertain a way to diminish improper conduct, while maintaining college athletics, an employment policy is not a reasonable approach.

**B. Create a Legal Fund to Pursue Rogue Agents and Athletes.**

Recently, former; Heisman Trophy winner, professional football player, and USC athletic director; Mike Garrett discussed possible ways to “keep agents off the field.”\(^4\)

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Mr. Garrett acknowledged that with big money, intercollegiate athletics have changed; now players, their families, and agents have attitudes of entitlement in which they believe they are above NCAA bylaws.  These attitudes are fueled by a lack of accountability. Acts such as SARTA and the UAAA are a necessary step to create accountability, but are ineffective if unused. Therefore, Mr. Garrett proposes a tax which the NCAA would impose on athletic conferences. The tax would go towards a legal fund. This legal fund would be used to bring “mandatory” civil suits against agents who interfere with the agreement student athletes have with their university under the National Letter of Intent.

The legal fund would give universities the power to pursue action; however, it is not without fault. There are two primary reasons schools do not pursue action against agents or athletes using the Acts; 1) lack of resources; and 2) fear of further NCAA investigation or sanctions. The fund would do nothing to eliminate the second factor and therefore it would not be as effective as proposed. Furthermore, forcing athletic conferences to pay a tax in order to accumulate resources, sounds great, but is unrealistic. Resources are scarce, taxing athletic conferences would not increase available resources. Money has to come from somewhere and implementing a tax does not make it appear. The money used to pay the tax would likely come from member institutions. Thus, the tax would put member institutions in a worse position by further limiting their individual resources.

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411 Id. at 1
412 Id. at 2
413 Id.
414 Id.
Yes, the idea would work ephemerally. At first it would allow schools to go after a few agents, but when that money emaciates or when the case load becomes too large, conferences would face the same issues member institutions now face the same issues member institutions now face. At that point it would become increasingly difficult to choose which action to pursue. The idea is nice, but in practice would be futile.

C. Post-NCAA Sanctions.

Recently a committee comprised of key members of, NCAA staff, member institutions, the Collegiate Commissioners Association, NFL, NFL Players Association, American Football Coaches Association, state government, and agent community have met to discuss ways to combat inappropriate conduct attributed to rogue agents and their associates. The committee is considering a proposal for the NCAA to cooperate with the NFL to impose penalties on agents and athletes who have given or taken improper benefits while participating at the collegiate level. If accepted, agents involved in the giving of impermissible benefits would be penalized. Moreover, athletes associated with such benefits could face fines and even suspensions upwards of eight games. This policy would create the accountability SARTA and the UAAA are unable to provide due to a lack of resources or an unwillingness by member institutions to open themselves to NCAA investigation. Presumably the NFL has the resources to implement such sanctions. If successful, the NCAA would then presumably cooperate with the NBA to reach similar regulations.

The proposal is far more complicated than it appears on the surface. Relationship issues might be difficult, if not impossible, to surmount. Currently the NFL and the

416 Id. at 6
NCAA have no formal ties. Accordingly, the NFL has no power over the collegiate athlete and the NCAA has no power over the professional athlete. In order for the proposal to work the NFL, the NFL Players Association, and the NCAA would have to cooperate to create a relationship. Although the proposal is in its just in its beginning phase, the Players Association has already said it is “opposed to any penalty being imposed upon a player in the NFL for conduct relating to the receipt of benefits in violation of NCAA rules while the player was in college.” 417 It is highly unlikely NFL players will willingly give up power to the NFL and NCAA, therefore the idea itself seems unrealistic. Furthermore, as you connect the amateurism of the NCAA with the professionalism of the NFL, you may open yourself to antitrust violations.

IX. Solution.

Due to the amount of money associated with collegiate and professional athletics completely removing the agent-athlete problem is unattainable; however, a few simple steps can be taken to significantly diminish the increase of athlete-agent misconduct. The crux the solution is finding a way to educate athletes and meet their financial needs, while maintaining a deterrent for rogue agents and athletes. Answering for all three prongs will greatly diminish misconduct.

A. Educate Athletes and Athlete Families.

The financial reward agent’s receive from signing clients motivates deceptive practices. If student athletes and their families are educated on the consequences of their actions, the subterfuge will be limited. Many athletes know very little about the transition

from collegiate athletics to professional athletics.\textsuperscript{418} Many athletes are victimized because they are unknowledgeable.\textsuperscript{419} Currently the NCAA allows athletes to have advisors, but those advisors cannot partake in negotiations and cannot give the athlete any sort of benefit, thus a potential agent-advisor has a thin line to walk.\textsuperscript{420}

Moreover, the NCAA allows member institutions to have professional-sports counseling panels; however, only a hundred or so schools have such panels.\textsuperscript{421} Furthermore, many of the existing panels have been criticized for being unknowledgeable and unhelpful.\textsuperscript{422} Unfortunately, the NCAA does not allow agents to serve on these panels for fear of misconduct. If agents were allowed to serve on these panels, they would be able to give the insight necessary to adequately inform athletes; however, as is, the ban is reasonable. If agents were allowed to serve on individual panels abuse would likely follow.

Accordingly, there have been recent proposals to adopt a national panel aimed at counseling prospective professional athletes.\textsuperscript{423} Because the NCAA, rather than its member institutions, would regulate the conduct; with the right regulations in place, it may be permissible to allow agents to serve on the national or individual school panels. Allowing agents to serve on the panel would provide the necessary insight to effectively educate student athletes. The bias and undue influence problems could be overcome by creating a contractual relationship between the serving agent and the panel.\textsuperscript{424}

\begin{footnotesize}
\textsuperscript{418} http://chronicle.com/blogs/players/ncaa-mulls-idea-of-a-national-pro-sports-counseling-panel/27598
\textsuperscript{419} Id.
\textsuperscript{421} http://chronicle.com/blogs/players/ncaa-mulls-idea-of-a-national-pro-sports-counseling-panel/27598 at 2
\textsuperscript{422} Id.
\textsuperscript{423} Id. at 1
\textsuperscript{424} http://sports.espn.go.com/ncaa/news/story?id=5423136
\end{footnotesize}
contracts could include a liquidated damages clause, subjecting the agent to substantial penalties if his or her conduct, in any situation leads to a loss of eligibility.\textsuperscript{425} The liquidation damages clause would promote responsibility and deter misconduct.\textsuperscript{426} Accordingly, the perceived risks would be de minimis and the benefits would be maximized. When athletes are educated about their options and the consequences of their decisions, they are less likely to be induced by misconduct. Furthermore, if agents benefit from following the rules they are more likely to do so. Therefore, if adopted, the policy would raise athlete knowledge, thus diminishing misconduct.

\textbf{B. Meet Student-Athlete Financial Needs.}

The Josh Luchs story, made it apparent that most improper benefits are relatively small, amounting to no more than a few hundred dollars a month.\textsuperscript{427} Accordingly, extending athletic scholarships will curtail improper benefits. The demand placed upon athletes from their respective member institution has steadily grown over the years. Most universities mandate summer school and summer training camp for football and now policies are being proposed which would require division 1 basketball players to attend summer school.\textsuperscript{428} Summer school and summer practice make it exceedingly hard for athletes to maintain summer employment. Without summer employment, athletes are unable to save the money necessary to co\textsuperscript{ven} expenses beyond the scope of their scholarships. Saving money over the summer is especially important for student athletes coming from underprivileged households. To make matters worse, student athletes are

\begin{itemize}
  \item Id.
  \item Id.
  \item See. http://m.si.com/news/to/to/detail/2940709;jsessionid=7EF5332AFDF3E41C77AA54E4A127F33D.cnnsi2
  \item http://www.upbeacon.net/2.10853/ncaa-proposes-summer-school-for-athletes-1.1513159
\end{itemize}
often treated like celebrities, such treatment instills a self-righteous attitude. The desperate situation created by the increased time commitment, coupled with self-righteous attitudes, motives many athletes to accept inappropriate benefits.

The solution is to extend athletic scholarships to include a living stipend. The NCAA is able to maintain its devotion to amateurism by broadening the coverage of athletic scholarships, rather than creating an employment agreements. Furthermore the extension is reasonable and promotes the existence of amateurism, thus the broadened scholarship would not bring rise to antitrust violations.

The stipend would be relatively small, something amounting to a few hundred dollars a month. Most schools would have the resources to broaden basketball and football scholarships. The broadened scholarship would be enough to supplement the athlete’s needs. Accordingly, broadening scholarships would diminish the athlete’s desperation. If the athlete is no longer desperate, he will be less likely to risk penalties created by the UAAA and SARTA; also, he will be less likely to tarnish his legacy. Therefore, by evolving to meet the needs of the student athlete, the NCAA can relinquish many circumstances of misconduct. The NCAA will have to find a way to comply with title IX, which mandates that female athletic programs are given the same funding as male programs, before the NCAA can broaden scholarships.

C. Maintain Deterrence.

Lastly, it is important that schools pursue legal action vis-à-vis the UAAA and SARTA. The UAAA and SARTA give member institutions leverage over rogue agents.

430 See. 24 C.F.R. § 3.140
and athletes.\textsuperscript{431} Member institutions are able to hold rogue agents and athletes accountable by utilizing the Acts. Accountability is the lynchpin to change. Unless athletes and agents are held accountable, they will continue to violate amateurism rules. Accordingly, absent the pursuit of legal action, the amount of knowledge and benefits extended to the athlete by the member institution are futile because, without consequence, greed will win.

**X. Conclusion.**

The increase of improper benefits and communications between agents and collegiate athletes is a serious problem which threatens the continued existence of intercollegiate sports. The changes presented in this paper will not entirely remove the agent-athlete problem, but if the proposals are implemented, they will abolish most instances of misconduct. The NCAA has traditionally evolved to confront threats against amateurism, this is yet another threat the NCAA must overcome. With the heightened demand placed upon athletes and the large sums at risk, it is not unreasonable to extend athletic scholarships to include a living stipend. Furthermore, agents must be included in the NCAA education process to raise athlete knowledge, thus protecting athletes from rogue agents. Lastly, for said proposals to work, schools must use SARTA and the UAAA to create consequences for those who refuse to follow NCAA bylaws. If the NCAA and its member institutions are able to the increase of misconduct will be greatly diminished.