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A PERCEPTION OF IMPROPRIETY: THE USE OF PACKAGE DEALS IN COLLEGE BASKETBALL RECRUITING

ERICK S. LEE*

ABSTRACT:

In an effort to improve their chances of recruiting elite players to play for their athletic teams, the use of "package deals" by Division I Men's basketball teams has increased in recent years. A package deal commonly involves a college offering employment to an associate of an elite athlete in an effort to entice the athlete to that school. Due to the inherent perception that such hires are done for an improper purpose, this Article argues that the NCAA should enact measures to severely curtail the practice of package deals in the recruitment of Division I basketball players. As the NCAA prides itself on its mission to "govern competition in a fair, safe, equitable and sportsmanlike manner, and to integrate intercollegiate athletics into higher education so that the educational experience of the student-athlete is paramount", the elimination of the package deal practice will serve to further this goal, and reestablish an equal playing field for all schools.

I. INTRODUCTION

The history of college sports is replete with examples of educational institutions recruiting high profile, elite athletes for their sports teams. Littered among stories of successful collegiate athletes and teams is a panoply of infractions involving university boosters, coaches, and agents who shower recruits with sums of cash, gifts of vehicles, and other illegal benefits in an effort to sway the recruits' college selection to the providing institution.

In modern collegiate athletics, the financial rewards of having a successful sports program are large when considering the potential revenue that can come from television broadcasts, merchandise

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sales and other sources. Given the potential rewards, the motivation to utilize illegal or unethical means to ensure that a collegiate team remains successful and competitive has increased. Universities who wish to remain in the media spotlight, and thus keep the sports revenue rolling in, may often operate within the outer edges of legality, employing "rule circumvention, [as opposed to] rule breaking." While the National Collegiate Athletic Association ("NCAA") has continued to monitor compliance with its bylaws and ethical guidelines by member institutions, it has limited resources to police all of its members. Unfortunately, this has meant that

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1. See Phil Richards, One Shining Season, Indianapolis Star, Mar. 26, 2009, at 1A (describing recent trends in revenue generating activities of college sports programs). The online broadcast of these games has generated millions in advertising revenue, with an estimated $30 million dollars in 2009. See Neil Best, Sports Watch: CBS' Online Games in Demand, Newsday, Mar. 20, 2009, at A67 (illuminating revenue generating potential of college sports programs through online 'on demand' games). The free online offering of every game during NCAA March Madness has generated $4 million in advertising in 2006, about $10 million in 2007 and $23 million last year; it is expected to surpass $30 million in 2009. Id. (discussing specific profit growth for March Madness On Demand). See also Richard Sandomir, College Basketball; CBS Will Pay $6 Billion for Men's N.C.A.A. Tournament, N.Y. Times, Nov. 19, 1999, at D5 (discussing contract between NCAA and CBS Sports for rights to televise NCAA Men's Basketball Championship Tournament for 11 years at cost of $6 billion). In the case of college football, ESPN recently negotiated with the Bowl Championship Series, the outfit in charge of organizing college football's postseason, and signed a television contract valued at $500 million over four years. See Iliana Limon, Obama: 'Yes, We Can'; BCS: No, We Can't, Orlando Sentinel, Jan. 20, 2009, at D1 (examining blockbuster sports broadcast contracts). In yet another means for individual universities to earn extra revenue, schools commonly enter into merchandising agreements with apparel manufacturers to outfit their athletics teams, with these agreements routinely valued in the millions of dollars. See, e.g., Eric Prisbell & Steve Yanda, Shoe Company's Ties With Maryland, Link to Top Recruit Raise Questions, Wash. Post, Mar. 1, 2009, at D1 (exploring Under Armour's $17.5 million contract with University of Maryland); see also Notre Dame Signs 10-Year, $60M Deal With Adidas, ESPN.com, Nov. 9, 2005, http://sports.espn.go.com/ncf/news/story?id=2218912 (detailing athletics manufacturer's contract to supply the university's 26 varsity teams with footwear and apparel).

2. See William C. Rhoden, For Coaches, Recruiting Top Players Can Lead to a Dark Side, N.Y. Times, Mar. 30, 2009, at D4 ("The N.C.A.A.'s problem is that big-time intercollegiate athletics create a pressure cooker and place coaches 'in highly competitive environments where there is a culture of cheating.'"); see also Jerry Sullivan, There's a Wealth of Reasons to Question Coaches' Integrity, Buffalo News, Apr. 4, 2009, at B1 ("When college coaches get cornerback money, you know things are getting out of hand. Is it any wonder that coaches are tempted to bend the NCAA rules to get players? If signing some 18-year-old jump shooter could help you hit the lottery, wouldn't you take a chance?").


4. See Don Yeger, Undue Process: The NCAA's Injustice For All 253-54 (Sagamore Publishing 1991) (noting that NCAA's Enforcement Division, which is responsible for policing illegal conduct by its member institutions, has historically been overworked and understaffed).
only the more egregious violations have been addressed while some more insidious practices remain unchallenged. One such practice, that has recently become more newsworthy in light of an investigation by ESPN's "Outside the Lines" program, is the use of "package deals" in collegiate recruiting. Generally, a package deal involves a university "hiring . . . someone related or who has a close relationship to the player to get the recruit." Currently, this practice is permissible under existing bylaws and guidelines. Nonetheless, in light of the newfound public criticism and scrutiny the NCAA has launched a focus group to study the use of package deals by member institutions.

The increased prevalence of package deals and the newfound attention being given by regulatory bodies invites a more in depth examination into the use of the practice. This Article argues that the NCAA should enact new restrictions in order to curtail the practice of package deals, specifically in the recruitment of Division I basketball players. The NCAA prides itself on its mission to "govern competition in a fair, safe, equitable and sportsmanlike manner, and to integrate intercollegiate athletics into higher education so that the educational experience of the student-athlete is para-

5. See, e.g., Bob Dart, NCAA Vows Recruiting Cleanup, ATLANTA JOURNAL-CONSTITUTION, Mar. 12, 2004, at 1C (describing proposed NCAA recruiting reforms to address violations going unpunished amid allegations of recruitment visits involving sex and drugs).


9. See Davis, supra note 8 (describing establishment of NCAA committee to monitor package deals); see also Miller, supra note 8 (noting that package deal arrangements are being looked into by NCAA for possible future corrective legislation).

10. Division I athletics will be the sole focus of this article, as the "[s]chools with the most financially lucrative athletic programs, including, of course, the major basketball and football powerhouses, are found in Division I." W. Burlette Carter, Student-Athlete Welfare in a Restructured NCAA, 2 VA. J. SPORTS & L. 1, 6-7 (2000). Certainly, the practice would equally be applicable in the other divisions, but because the amount of money at stake in Division II and III are significantly less than in Division I, the effect of any impropriety is also reduced.
mount." The elimination of the package deal will serve to reinforce this mission and reestablish an equal playing field for all schools. Part II of this Article briefly traces the history of cheating in collegiate recruiting, noting a number of the more egregious examples of wrongdoing. Part III delves into the recent rise and increasing prevalence of the practice of package deals in collegiate basketball recruiting. In addition, this section will explicate a number of the more common criticisms behind the practice. Part IV of this Article considers the current legal framework regarding this practice by discussing the existing provisions the NCAA have to address the recruitment of athletes and their applicability to package deals. In doing so, this section identifies the loopholes in the present regulations and bylaws that have permitted this practice to pervade the NCAA. Finally, Part V argues that in order to effectuate its goals of eliminating corruption in college athletics and promoting ethical competition, the NCAA must enact greater restrictions to curb the use of package deals by member institutions. To aid in curtailing this practice, I discuss and propose a number of mechanisms for reform.

II. HISTORY OF UNETHICAL AND ILLEGAL ACTIVITY IN COLLEGIATE RECRUITING

The instances of illegal conduct in college athletics recruiting as a whole are voluminous enough to fill a book on the subject, and would be outside the scope of this Article to rehash that discussion. Nonetheless, to illustrate the variety of tactics that coaches


12. See generally Davis, supra note 8 (portraying current issues concerning package deals and NCAA’s displeasure with practice and their hope to correct it).

13. For a discussion highlighting wrongdoing in collegiate recruiting, see infra notes 16-32 and accompanying text.

14. This article will refer to the entity providing both the scholarship offer to the basketball player, and the employment offer to the player’s associate as the university, school, or coach interchangeably. While it is often the case that a university’s athletic department is a pseudo self-governing entity and detached from the university at large, for the purposes of this article, I have imputed the decisions of a basketball team’s coach to the institution as well. Even where a school’s athletic department has significant influence on their own merits, the university as a whole nonetheless retains some measure of supervisory power.

15. For discussion of the possible changes the NCAA may implement see infra notes 135-183 and accompanying text.

16. See generally Bruce Feldman, Meat Market: Inside The Smash-Mouth World of College Football Recruiting (ESPN Books 2007); Dan Wetzel & Don Yaeger, Sole Influence: Basketball, Corporate Greed, and the Corrup-
have employed, in order to gain an edge in recruiting impact players to their programs, this section discusses a number of the more high profile incidents of illicit recruiting.

The payment of money to steer an athlete toward a particular school has historically been considered an improper method of recruiting. In 1988, University of Kentucky assistant basketball coach Dwane Casey mailed a sum of cash to the Los Angeles home of recruit Chris Mills. Fatefully, the package was accidentally opened in transit, prompting an investigation that ultimately led to sanctions against the University, including post-season bans and monetary fines. In the wake of the scandal, Kentucky coach Eddie Sutton resigned, and the player at the center of the maelstrom, Chris Mills, was barred from ever playing basketball for the University.

More recently, in 2002, allegations that a football recruit was paid to attend the University of Alabama led to probationary sanctions against the school. The scandal centered on the behavior of defensive tackle Albert Means' high school coaches, who were accused of "brokering their star player to the highest bidder." Subsequent investigations by the NCAA, federal law enforcement, and other universities revealed a sordid system whereby other schools, not merely the University of Alabama, were throwing cash and gifts at Means' associates in hopes of landing the player. These investigations of America's Youth (Grand Central Publishing 2000); Alexander Wolff & Armen Keteyian, Raw Recruits (Pocket Books 1990) (exploring history of unethical tactics in collegiate athletics recruiting).

17. See Feldman, supra note 16, at 55-57 (noting extent to which universities go to in order to convince high profile athletes to matriculate).


20. See id. (reporting on aftermath of recruiting scandal at University of Kentucky).

21. See Doug Segrest, Keller Attorneys Say NCAA Used Sting Operation to Get Tide, Birmingham News, Nov. 6, 2007, at 5C (recalling NCAA sting operation that landed University of Alabama on probation in Means scandal); see also Don Yeager, Paying the Price: The End of the Road Comes for a Figure in a Recruiting Scandal that Refuses to Die, Sports Illustrated, June 20, 2005, at 20 (recalling Albert Means, once promising defensive lineman, as center of recruiting scandal which ended with one booster headed to prison, two schools on probation and several coaches' careers in disarray).


23. See id. (reporting on money and perks given to Means' inner-circle such as buying groceries and paying some bills for his family). There were allegations that
gations also revealed the existence of "slush funds," which were part of systematic efforts by universities to buy star athletes.\textsuperscript{24} In the wake of the scandal, Means' former high school coaches were indicted by a federal grand jury on charges of conspiracy, bribery, and extortion.\textsuperscript{25}

Furthermore, schools may also provide recruits with other improper benefits, as illustrated by media reports in 2004 which alleged that the University of Colorado football team provided "alcohol, strippers and prostitutes" to recruits at university-sponsored parties.\textsuperscript{26} While the use of attractive females is often a common recruiting tactic, the events at Colorado took this strategy to a new and inappropriate level.\textsuperscript{27} Later investigations by the University revealed the use of sex as a tool to lure recruits; it was reported that players on the team would arrange for strippers from local clubs to meet with recruits, and that athletic department recruiting coordinators had called escort services for parties.\textsuperscript{28} One particularly wild party led to allegations of rape against Colorado players and recruits by three women who attended the gathering.\textsuperscript{29}

Means' high school coaches received free hotel stays, meals, cash and free entry into "golf outings, fantasy football camps and booster clubs" while Means was being recruited. \textit{Id.}

\textsuperscript{24} See \textit{id.} (noting that payments to high school coaches of elite athletes, payments of dormitory rent and meals, gifts of apparel, complimentary standardized test courses, and shopping sprees were exposed as common uses of slush funds).

\textsuperscript{25} See Mark Schlabach, \textit{College Recruitment Tale of Greed; Means Scandal Leads to Bribery, Extortion Charges}, \textit{ATLANTA JOURNAL-CONSTITUTION}, Sept. 23, 2001, at 11F (reporting that Means' coaches were indicted in connection with recruiting improprieties).

\textsuperscript{26} See \textit{Special Prosecutor to Probe Colorado}, \textit{WASH. POST}, Feb. 28, 2004, at D02 (reporting that recruits were given illegal substances and women to entice them to sign).

\textsuperscript{27} See Carroll Rogers, \textit{Recruiting Becomes Women's Work}, \textit{ATLANTA JOURNAL-CONSTITUTION}, Feb. 2, 2003, at 1D (describing "recruiting hostess" program and its use in attracting athletic recruits to particular university). While the official function of these hostesses is to serve as volunteer tour guides, many universities also employ these girls in clerical and organizational functions. \textit{See id.} Rogers, however, relates a number of examples of the lines blurring, detailing instances where a recruit and his hostess engaged in a sexual relationship. \textit{See id.} (noting that occasionally hostess go beyond their formal duties).

\textsuperscript{28} See Kelli Anderson & George Dohrmann, \textit{Out Of Control?}, \textit{SPORTS ILLUSTRATED}, Feb. 23, 2004, at 64 (portraying tawdry recruiting practices employed by the University of Colorado). As the article noted, a Denver strip club owner admitted to sending strippers to University of Colorado recruiting parties for the last 20 years. \textit{See id.} (reporting Harbodies Entertainment had been sending strippers, yet never had coaches made requests).

\textsuperscript{29} See \textit{id.} (reporting how alleged rape of women raised questions about football program and tawdy recruiting practices and Colorado which led to subsequent grand jury investigation into matter and indictment of assistant coach). Two of the alleged victims are currently pursuing a civil suit against the University under Title IX, arguing that their assaults were the result of Colorado's failure to
Most recently, Indiana University's head basketball coach, Kelvin Sampson, was implicated in a scandal involving violations of NCAA rules governing communication with recruits. Soon thereafter, the University of Connecticut's Jim Calhoun, another prominent college basketball coach, was also accused of violating NCAA communication rules. Both coaches were accused of calling and text messaging high school athletes in gross excess of communication limits imposed by the NCAA.

III. THE RISING POPULARITY OF PACKAGE DEALS

In recent years, the use of package deals to lure elite athletes to schools has become a common practice in recruiting circles. Generally, the universities engage in this practice by taking one of three options: the hiring of a player's parent, the hiring of a player's coach, or the offering of a scholarship to a player's close supervise their athletes. See Jennifer Brown & Howard Pankratz, Trial Ordered; Court Revives CU Rape Lawsuit, DENVER POST, Sept. 7, 2007, at A-01 (noting that Title IX protects women from discrimination in education programs).

30. See Skip Myslenski, Coach on the Brink; Allegations of Major NCAA Violations Could Cost Indiana's Kelvin Sampson His Job, CHI. TRIB., Feb. 14, 2008, at C1 (noting that Sampson violated rules by making impermissible phone calls to perspective players). Sampson had been previously disciplined for "violating rules . . . by making numerous, impermissible phone calls to prospective players" at a previous university. Id. He subsequently reached an agreement with Indiana to leave his coaching position in the wake of the scandal. Skip Myslenski, Hoosiers pay a price; Tainted Sampson agrees to $750,000 buyout; players threaten to skip NU game, CHI. TRIB., February 23, 2008, at C1, available at http://sports.espn.go.com/ncb/news/story?id=3258506 (setting forth Sampson and Indiana's choice to buyout Sampson's contract).

31. See Dick Weiss, Calhoun's Legacy on the Line as Recruiting Scandal Swirls, DAILY NEWS, Mar. 29, 2009, at 46 (reporting that former player, Nate Miles, received perks from student-manager). The investigation also turned up over 1500 text messages and phone calls from Calhoun and his staff, to the recruit and his representatives. See id. (noting not just the manager's involvement, but Head Coach Calhoun as well).

32. A coach is permitted to telephone a recruit once per week under current NCAA guidelines, with Sampson and his staff violating this rule more than 100 times during their tenure at Indiana University. See Mark Alesia, What's Ahead for IU's Program?; Sampson's Fate Could Play Role in Possible Punishments, INDIANAPOLIS STAR, Feb. 22, 2008, at 1 (reporting Sampson violated NCAA telephone regulations 100 times while at Indiana University). Similarly, Calhoun and his staff are alleged to have contacted a recruit more than 1500 times. See Michael Rosenberg, No Place to Hide, DETROIT FREE PRESS, Apr. 3, 2009, at 7 (reporting that Yahoo! Sports found 1,565 calls and text messages between UConn coaches and sports agent Josh Nochimson).

friend. This article primarily discusses the use of package deals in college basketball, where the practice is particularly widespread.

A. Hiring a Player's Parent

One of the first and more significant instances of a package deal occurred at the University of Kansas in 1983. Kansas head basketball coach Larry Brown recruited highly touted prospect Danny Manning to play on his team, a tremendous feat considering that most people at the time believed Manning to be a lock to sign with the University of North Carolina. Two days prior to Manning's official announcement, his father Ed was hired by Brown as an assistant head coach on the Kansas staff. This hiring was viewed as suspect since Ed Manning had spent the three years prior working as a truck driver. While the hiring was lampooned by skeptics as a textbook example of a package deal, Ed Manning's credentials included a nine season professional playing career and a one-year assistant coaching stint at a university. Irrespective of the controversy accompanying Manning's recruitment, the arrangement ultimately turned out to be fruitful for the University of Kansas, as he led the team to the national championship in 1988.

After a seventeen year layoff, Kansas returned to the package deal strategy in 2005 to entice standout player Mario Chalmers. Chalmers has since etched his name in Kansas lore, by making a game-tying three point basket in the 2008 National Championship

34. See Davis, supra note 8 (noting there is more than one way to construct package deal).
36. See id. (noting Ed Manning's ascension from truck driver to basketball coach). For further discussion of Kansas' hiring practices, see infra notes 40-44 and accompanying text.
37. See Garrity, supra note 35, at 78-80 (reporting that many were skeptical of Ed Manning's hiring).
38. See id. at 80 (discussing reasons Larry Brown gave for hiring Ed Manning).
39. See Curry Kirkpatrick, A One Man Show; Danny Manning Rose Far Above Oklahoma to Lift Upstart Kansas to the NCAA Championship, SPORTS ILLUSTRATED, Apr. 11, 1988, at 18 (illustrating Manning's importance to Kansas' defeat of Oklahoma in 1988 NCAA Championship).
game against the University of Memphis.\textsuperscript{41} Kansas later won the game in overtime, bringing the school its first national championship since the aforementioned Danny Manning team in 1988.\textsuperscript{42} Looking on from the bench during the memorable 2008 Championship game was Ronnie Chalmers, the Director of Basketball Operations for the Jayhawks, and Mario’s father.\textsuperscript{43} Ronnie Chalmers was appointed to the position after his son’s commitment to play for Kansas, a position from which subsequently resigned from once Mario turned to the NBA.\textsuperscript{44}

Similarly, in 2005 the University of Southern California ("USC") hired Rudy Hackett as the Strength and Conditioning Manager of their men’s basketball team.\textsuperscript{45} Rudy's son Daniel, a high school standout, joined USC the following year.\textsuperscript{46} As the child of an employee of the University, Daniel Hackett “receive[d] free tuition, which open[ed] up another scholarship for . . . [USC] to use.”\textsuperscript{47} Under NCAA regulations, basketball teams may allocate only thirteen scholarships for each year's roster.\textsuperscript{48} As such, circumventing this rule via a package deal, as was done in this case, has led the NCAA to look into closing the loophole.\textsuperscript{49} USC also hired Dwayne Polee to serve as their Director of Basketball Operations.\textsuperscript{50}

\begin{itemize}
\item \textsuperscript{41} See Pete Thamel, Chalmers and Kansas Are Swinging on a Star, N.Y. TIMES, Apr. 9, 2008, at D3 (discussing Chalmers’ role in Kansas’ 2008 NCAA championship).
\item \textsuperscript{42} Id. (highlighting Kansas' national twenty year national championship drought).
\item \textsuperscript{43} Id. (noting Ronnie Chalmers’ presence on bench).
\item \textsuperscript{47} Associated Press, supra note 45.
\item \textsuperscript{48} See 2008-09 NCAA Division I Manual, §15.5.5.1, 185 (July 2008), available at http://www.ncaapublications.com/Uploads/PDF/Division_I_Manual_200809e9e568a1-c269-4423-9ca5-16d6827c16bc.pdf (providing all NCAA rules and regulations) [hereinafter NCAA Bylaws].
\item \textsuperscript{50} See Player Bio: Dwayne Polee, USC Official Site, http://www.usctrojans.com/sports/m-baskbl/mtt/polee_dwayne00.html (last visited Oct. 31, 2009) (displaying Dwayne Polee’s profile and position with University). Polee was hired by the team in spite of a single game professional NBA career, and a single season as an assistant coach at a Southern California community college. See Ben Bolch, College Bas-
Polee's son, Dwayne Jr., previously accepted an offer to play basketball for USC prior to entering high school.\(^\text{51}\) As in the case with Daniel Hackett, Dwayne Polee Sr.'s status as a university employee would permit his son to attend the school without having to use one of the NCAA allotted scholarships.\(^\text{52}\)

Parental package deals may not necessarily require employment with the athletic team itself.\(^\text{53}\) Soon after her elite basketball player son's commitment, Chris Duhon's mother Vivian Harper moved to North Carolina and began a position at a money management firm headed by a Duke University booster, despite questionable qualifications for the position.\(^\text{54}\) Similarly, a year later, a pharmaceutical company hired the father of Duke forward Carlos Boozer soon after Carlos joined the team.\(^\text{55}\) The head of the company was close friends of Duke Head Coach Mike Krzyzewski, implicating that the hiring was partly due to Carlos Boozer's status as a Duke player.\(^\text{56}\) When questioned about the matter, the parties rejected arguments that there were any prearranged provisions, with the only thing provided being contact information for hiring managers.\(^\text{57}\)

B. Hiring a Player's Coach

While the employment of an athlete's father is one common example of a package deal, an equally common tactic is to hire the athlete's high school or Amateur Athletic Union as a team coach.\(^\text{58}\)


52. See id. (discussing the specific issue of parents freeing up team scholarships by virtue of their university employment).


54. Id. Harper's position was never publicly posted by the company, with the reason for her moving attributed to the fact that Duhon was "going to play for Duke." Id.

55. See Bob Ryan, No Clean Getaways, BOSTON GLOBE, Apr. 6, 2003, at D1 (reporting that Carlos Boozer's father got job at GlaxoSmithKline, which is owned by close friend of Duke's basketball coach).

56. See id. (suggesting possibility that Carolos Boozer's signing to Duke was result of package deal).

57. Peter, supra note 53 (blocking potential questionable actions through statements).

In his two years at Arizona State University, James Harden collected a number of honors including recognition as a First Team All-American and the player of the year of the Pacific Ten Conference in 2009.\textsuperscript{59} Harden’s signing with Arizona State was a major surprise in recruiting circles; the Sun Devils are not a major powerhouse in college basketball, so critics attributed Harden’s unexpected decision to the university’s coincidental hiring of his former high school coach.\textsuperscript{60} Scott Pera left coaching high school basketball in 2006 to take a position as Director of Basketball Operations at Arizona State.\textsuperscript{61} Just eight weeks after Pera’s hiring, Harden announced his decision to play for the Arizona State Sun Devils.\textsuperscript{62} While there was certainly no guarantee that hiring Pera would land Harden, anecdotal evidence suggests that it was a near certainty.\textsuperscript{63}

Another All-American player, Michael Beasley, faced similar controversy as the subject of a package deal during his recruitment involved in traveling club basketball teams, which offer players greater exposure to universities and coaches than traditional high school basketball. See Marlen Garcia and Barry Temkin, \textit{High Schooling; When the Prep Basketball Season End That's When the High-Stakes Games Begin}, CHI. TRIB., Feb. 8, 2004, at C1 (describing shift of amateur players recognition of importance of AAU season). These teams are often sponsored by major shoe companies and travel across the country playing in tournaments organized by the Amateur Athletic Union (AAU). See generally id. (illustrating connection between AAU tournaments and corporate sponsors). AAU basketball critics point to over involvement in athletic shoe company money, lack of any oversight on an institutional level and its prospects of violating amateurism regulations and principles. See id.; see also Eric Prisbell, \textit{Summer Programs Feeling the Heat; NCAA Viewed as Trying to Regulate Basketball Leagues, Coaches}, WASH. POST, May 17, 2004, at D1 (commenting on NCAA’s attempted involvement with issue by labeling one summer coach as representative of major university, thereby sanctioning that program); Bob Hohler, \textit{Wading in Cesspool; System Might Reek, But There’s No Stopping Cash Flowing to Amateurs}, BOSTON GLOBE, July 24, 2006, at E1 (observing inevitable and sanction free nature of AAU and summer leagues).


\textsuperscript{60} See Jeff McLane, \textit{Harden Followed Coach to Arizona St.}, PHILA. INQUIRER, Mar. 18, 2009, at E1 (discussing bond between Harden and Pera that took them both to Arizona State).

\textsuperscript{61} See id. (recounting circumstances of Pera leaving).

\textsuperscript{62} See id. (quoting Pera as saying that there was good chance Harden would follow).

\textsuperscript{63} See Dick Jerardi, \textit{Arizona State Guard Harden No Longer a Secret}, PHILA. DAILY News, Mar. 18, 2009, at 77 (reciting classic basketball story of how Harden and Pera both ended up in Tempe, Arizona). As Jerardi related, Arizona State “coach Herb Sendek offered Pera the director of basketball operations job... [Sendek] liked Pera; loved Harden.” Id. Furthermore, in response to the news that Arizona State had offered Pera a position, Harden was noted as remarking “Coach, if you go to a major school, I’ll come with you.” Id.
Arguments exist that Beasley had played for the Wildcats only because the university hired his former traveling team coach, Dalonte Hill, as an assistant. Hill previously mentored and coached Beasley during his days with the DC Assault AAU team. After Hill left the DC Assault to coach at the University of North Carolina-Charlotte, Beasley announced that he would follow and made an oral non-binding commitment. When Kansas State offered Hill a position as an assistant coach with the university, Beasley soon followed despite his ignorance regarding the school and its location.

Likewise, soon after the University of Memphis secured the services of freshman point guard, Tyreke Evans, Coach John Calipari hired Evans' personal trainer, Lamont Peterson, as an administrative assistant for the team. In response to criticism that Peterson's hiring was made to secure Evans' commitment to the school, Coach Calipari argued that he "frequently fills entry-level positions with those looking to break into college coaching." The Evans/Peterson arrangement followed in the footsteps of the school's hiring of Milt Wagner, father of superstar Dajuan Wagner, as Coordinator of Basketball Operations; this hiring was immediately criticized as a tactic to lure his son to Memphis. While the elder Wagner was a former star basketball player at the University of Louisville, critics argued that he was under qualified since he lacked a college de-

64. See Canner-O'Mealy, supra note 33 (cataloging examples of package deals across nation).

65. See Marlen Garcia, No Blues in Memphis; Tigers Are Riding 25-Game Winning Streak Into NCAAs, USA TODAY, Mar. 18, 2009, at 1C (reminding that head coaches of other teams are employing package deals to get players)

66. See Dan Wiederer, What's the Deal with John Wall?, FAYETTE OBSERVER (Fayetteville, N.C.), Jan. 25, 2009 (disclosing previous relationship between Beasley and Dalonte Hill, who was his former team coach).


68. See Grant Wahl, B-Easy Does It, SPORTS ILLUSTRATED, Jan. 14, 2008, at 66 (relating Beasley's recent success and history behind Beasley and Hill's relationship). Beasley "readily admits, [that Dalonte Hill was] the primary reason the young star signed with the Wildcats." Id. "My first question for Dalonte was, 'What is Kansas State?" says Beasley. "I couldn't find Kansas on a map. I didn't know [Kansas State] was a big-time school." Id.

69. See Garcia, supra note 65 (noting that Calipari's actions placed him as subject in controversy of potential package deal).

70. Id.

Milt Wagner stayed on the staff of Memphis for an additional four years after Dajuan left the school to pursue a professional playing career, thereby tempering critics of the package deal. The University of South Florida debuted Gus Gilchrist as their budding star player in hopes of changing their fortunes in the notoriously difficult Big East conference in 2008. Soon after Gilchrist committed to play for South Florida, the school created the position of video and conditioning assistant for his close associate, Terrelle Woody. Woody had previously served as Gilchrist's personal trainer, adviser and spokesman during his AAU playing days. Critics cite this package deal as the reason Gilchrist failed on his commitment to the University of Maryland. The coach at Maryland refused to comply with demands to employ Woody, and proceeded to release Gilchrist from his letter of intent to play for the university. In light of the often strong bond between a developing player and his coach or trainer, more examples and demands for package deals are inevitable in the near future.

72. See Andrew Wolfson, Beyond Calipari's Winning Ways; Recruiting, Temper Questioned, THE COURIER-JOURNAL (LOUISVILLE, KENTUCKY), Mar. 31, 2009, at 1A (arguing that Wagner's experience was insufficient for position).
73. See Monte Burke, Back to School, FORBES, Dec. 10, 2007, at 60 (acknowledging that hiring of Wagner's father was suspicious, but conceding that it was ultimately deemed within permitted rules of behavior).
75. See Brett McMurphy, USF Hires Woody as Assistant, TAMPA TRIB. (FLORIDA), Aug. 27, 2008, at 5 (stating that USF hired Gus Gilchrist as men's basketball team's video and coaching assistant).
76. See id. (recounting relationship between Gilchrist and Woody).
77. See John Feinstein, The Turtle Has Itself to Fear, WASH. POST, Jan. 29, 2009, at E1 (insinuating that Gilchrist was responsible for Woody backing out of his deal with University of Maryland).
78. See id. (describing why Gilchrist was released from Maryland). The Maryland Coach, Gary Williams, has noted that "he refused to allow Gilchrist and Woody to force him into giving Woody a job." Id.
79. See Roger van der Horst, Wall: A King in Search of a Court, NEWS & OBSERVER (Raleigh, NC), Feb. 8, 2009 (maintaining that recruitment of star point guard John Wall of North Carolina is being closely followed, not only because of his talent, but also to see if he will follow his mentor and coach to Baylor University). Earlier this year, Baylor hired Dwon Clifton to serve as Director of Player Development. See id. (unfolding facts that might lure wall to Baylor). Clifton has addressed criticism that his hiring was a mere ploy to entice Wall to Baylor by arguing that he was hired long before Wall was to choose a college, and that he had had a prior connection to a Baylor assistant coach. See id. (defending hiring of Dwon as untainted and offering alternative explanations).
C. Granting a Scholarship to a Player’s Friend

It is also common for schools to recruit friends and teammates of star players in hopes of persuading the star athlete to join them at that university. The University of Memphis has employed this type of package deal during its recruitment of star player Dajuan Wagner. The University offered Wagner’s close friend an athletic scholarship despite the friend’s limited athletic abilities. Memphis also hired Wagner’s father to serve as an assistant coach on the basketball team. In recent years, the school has also offered an athletic scholarship to C.J. Henry, despite his lack of recent basketball experience. Perhaps not coincidentally, Henry’s younger brother Xavier, an elite prospect among the best players in the country, decided to commit to Memphis to play college ball.

More recently, the University of Southern California received a commitment from star high school player Demar DeRozan in 2008. Joining DeRozan on the team, and at the podium during the public announcement of his commitment to USC, was his friend Romeo Miller. Miller, the rap artist formerly known as Lil’ Romeo, and the son of record mogul “Master P”, was not considered to have the athletic ability to play basketball at the Division I level. Nonetheless, USC offered Miller a scholarship to play on


81. See Rosenberg, supra note 80.

82. Jones, supra note 71; see also Wolfson, supra note 72; Burke, supra note 73.

83. See Forde, supra note 80.

84. See id. (implying that offer to Miller was part of package deal used to secure acquisition of DeRozan).


86. See id. (implying that offer to Miller was part of package deal used to secure acquisition of DeRozan).

87. See Jon Weinbach, A Hot Prospect?, WALL ST. J., Mar. 7, 2008, at W1, available at http://online.wsj.com/article/SB120485166974418241.html (discussing fundamental purpose behind athletic scholarships). In his senior season at Beverly Hills High School, Miller was injured for the majority of the season, and even when he was healthy enough to play his statistics were far from the gaudy accomplishments common in Division I athletes. Id. As Weinbach notes, Romeo Miller never completed a full season of high school basketball, and averaged less than ten points per game for a last place team. Id.; see also Julian Benbow, USC Duo Demands Spotlight; One Is a Likely NBA Star, the Other a Famous Rapper, BOSTON GLOBE, Mar. 17, 2009, at C5 (noting Miller’s minimal playing time and low scoring record, both in high school and at USC).
the team, due in part to his long-standing friendship with DeRozan. In fact, USC coach Tim Floyd admitted that a package deal was in place to bring DeRozan and Miller together during the players' recruitment. A scholarship offer to a player with a nondescript high school playing career shocked many collegiate recruiting analysts, leading one to remark that it was "very rare to give a scholarship to someone who may never play."

D. Criticisms of the Practice

While the use of package deals is currently legal under NCAA Bylaws, the practice is not without its detractors. Many college coaches have criticized package deals as inherently smarmy. For example, Coach Phil Martelli of Saint Joseph's University commented that he was approached by three separate parties for a job opening on his staff with the offer that "If you hire me, I can deliver this guy (high school player) to your program." Martelli noted that the offer "made [his] skin crawl," and made the analogy that the practice was akin to a form of slavery. University of Wisconsin coach Bo Ryan has also noted that package deals were likely unethical, but in light of the competitive nature of the business it would be difficult to legislate against the practice. Other coaches have acknowledged the presence of the practice, but few have gone on record condemning the use of package deals. Perhaps this ambivalence is due to a desire to avoid calls of hypocrisy if these same coaches are ever in the position of being offered a package deal. Furthermore, coaches recognize that the probability of being caught arranging a package deal, and the subsequent proof of liability for such an arrangement by the NCAA is low. Additionally,

88. See Benbow, supra note 87. (questioning whether Miller took advantage of his friendship with DeRozan to acquire his scholarship and place on team); Foster, supra note 85. As the article noted "Miller and DeRozan have been friends since middle school and were teammates on a club team run by Miller's father." Id.

89. See Foster, supra note 85. (citing statements alleging Floyd admitted that Miller received his scholarship due to his friendship with DeRozan). For example, as Foster related: "Last April, Mr. Floyd [said], Percy Miller called while driving both players from a tournament in Fayetteville, Ark. Percy Miller said 'Demar and Romeo are ready to make their decision, and would you like to have them both on scholarship?' remembers Mr. Floyd. 'I said absolutely.'" Id.

90. Id.

91. See generally Kriegel, supra note 44 (criticizing NCAA's failure to address issue of package deals in NCAA basketball recruiting).

92. See, e.g., infra notes 93-96 and accompanying text (relating the thoughts of two prominent college basketball coaches on the topic).

93. Johnson, Kaufman and Williams, supra note 74.

94. Id.

95. See Davis, supra note 8 (discussing prospect regulation of package deals).
the presence of an elite athlete on a team has the potential to provide coaches with increased success on the court, appearances in post season tournaments, increased media exposure, increased financial support from boosters, and most importantly, recruiting acumen for future players. In light of the low risk and potential high reward, it is not surprising that few coaches are willing to publicly criticize the practice.96

Package deals have received criticism from the media as well.97 One reporter characterized the practice as “squirrelly” in an article discussing ethics in college athletics.98 Furthermore, the practice has been riled for being “fraught with potential conflict and impropriety.”99 Critics have also argued that awarding package deals is not “merely unseemly,” but “at best, it gives the appearance of a conflict.”100 The perception asserted by one critic is that “it’s a form of payment, a way of compensating a player’s family for services rendered.”101

Even if the practice is not outright illegal per NCAA regulations, the employment of package deals to secure the services of elite athletes at the very least creates the perception of impropriety. This perception is particularly magnified in cases where the “secondary portion” of the package, i.e. the coach being hired, or the player being offered a scholarship, is marginally qualified for the benefit. While the specter of a package deal is lessened where the parent or coach has years of previous experience to offer, or the player is an immense talent in their own right, this is often the exception rather than the rule in these arrangements.

E. Continuing Practice in Face of Scrutiny

Despite increased scrutiny by the media over the inherent illegitimacy of this practice, and calls for reform by coaches, the NCAA and its member universities have resisted addressing the existence

96. See Steve Wieberg & Marlen Garcia, Troubles Still Shadow College Hoops; Payoff, Fraud Reports Sully Men's Game, USA TODAY, June 24, 2009, at 1C (describing change that may occur, as result of NCAA and college coaches associations' attempt to eliminate number of ills of sport).
97. See, e.g., infra notes 98-101 and accompanying text (noting comments of several sports writers).
99. Miller, supra note 8.
100. Kriegel, supra note 44.
101. Id.
of package deals. This inactivity may be the result of a number of considerations; the most relevant of which is the effect that restraining package deals would have on revenue streams. As previously mentioned, the NCAA and universities earn significant sums of money from television broadcast rights. The television exposure generated by a successful basketball team will more often than not, increase revenue for the university. As a result, schools may be less apt to restrain themselves from declining to arrange package deals if, in doing so, it ensures that they remain among the more competitive and successful teams. Universities gain financially from having a successful basketball team, with few coaches willing to turn down the money, publicity and recruiting boost that may accompany a package deal. The NCAA may also be less willing to intervene if restricting the practice has the effect of ebbing media interest in its basketball games, thus slowing one of the organization's major revenue sources.

For the sake of the NCAA's own image, any practice that raises serious concerns about potential impropriety and unethical conduct should be severely restricted, even if that comes at the expense

102. See Canner-O'Mealy, supra note 33 (observing NCAA's lack of action in addressing the persistence of package deals); see also Davis, supra note 8 (acknowledging tougher legislation will need to be enacted by NCAA in order to address misuse of package deals).

103. See infra notes 104-108 and accompanying text (discussing the potential effect of loss of revenue for unsuccessfully performing teams).

104. See generally Richards, supra note 1.

105. See, e.g., Successful Coaches Deserve High-End Salaries, PITTSBURGH POST-GAZETTE, Feb. 24, 2009, at D1 (attributing University of Connecticut's twelve million dollars in revenue from basketball program in part to television broadcasting deals); see also Joey Johnston & Mick Elliott, Gators Bank on Winning Ways, TAMPA TRIB., June 7, 2009, at Local News 1 (identifying direct correlation between television exposure and increased revenue); Pete Thamel, Chief of Tennis Tour Will Head the Pac-10, N.Y. TIMES, Mar. 25, 2009, at B15 (noting Pac-10's increase in revenue due to sports broadcasting deals with its football and basketball programs).

106. See Paul Pringle, USC: Silence is Cardinal Rule; The University Has Not Addressed Allegations of Improper Benefits for Some of its Athletes, or Questioned Key Accusers, L.A. TIMES, May 31, 2009, at C1 (noting that among penalties for improper conduct by college athletics team is "ban on lucrative television appearances.").

107. See generally supra note 1 and accompanying text (detailing the high monetary value of today's college athletics). See also Marlen Garcia, In fight, Vaccaro's No Amateur; Promoting Athletes' Rights, Famed Basketball Adviser Squares off Against NBA, NCAA, USA TODAY, May 12, 2009, at 1C (noting the rise in commercialization of collegiate athletics.).

108. See Michael Hiltzik, Foul Play: The Charade in College Basketball, L.A. TIMES, June 18, 2009, at B1 (commenting on effect of television contracts on NCAA's reluctance to enact reforms). "The NCAA system is extremely broken . . . If the NCAA wants true amateurism, then don't take money from TV. If it's for-profit, then let the players participate. Either way, the NCAA would be on higher moral ground." Id.
of the organization's major source of funding. If the NCAA is truly concerned about its founding principles of equal competition among its member schools, then reform is necessary to stem the popularity of package deals. Any practice whereby wealthy universities with large athletic department funds have a higher probability of securing these arrangements, as opposed to small schools which cannot meaningfully compete, raises significant concerns as to equality in competition. Reining in this practice and placating the questions raised by its critics would aid the NCAA in eliminating the perception of impropriety surrounding the use of package deals, and close a loophole being exploited by schools seeking an unfair advantage.

IV. NCAA BYLAWS: ESTABLISHING A HIGH STANDARD FOR ETHICAL COMPETITION

This article acknowledges that the NCAA concludes that current existing bylaws explicitly bar the use of package deals but the difficulty of proving an intentional arrangement has made the use of such tactics practically legal, if not widely approved. This standing, however, does not take away from the criticisms and question marks surrounding the practice. As the NCAA has itself recognized, change and reform is necessary. The Association's enforcement bureau has warned that college coaches have become "a little too comfortable with the fact that intent is hard to prove," and that the organization will become more aggressive in enforcing regulations and bylaws. To date, only one coach has been found liable for violating the rule against conditioning an athlete's commitment to a university on the employment of that athlete's associate.

109. See Davis, supra note 8 (relating the concerns of NCAA's associate director of enforcement as to possible regulation of package deals).
110. See Kriegel, supra note 44, at 104.
111. See Tom Hoffarth, Our Daily Dread: Check Out That Package, DAILY NEWS (Los Angeles), Feb. 20, 2009, available at http://www.insidesocal.com/tomhoffarth/archives/2009/02/our-daily-dread-16.html (according to NCAA associate director of enforcement L u a n n H u m p h r e y , "[the NCAA has] had a difficult time addressing that issue, but in the last several months since the formation of the basketball focus group we have tried to become smarter about the basketball recruiting environment. I think that snowball is rolling down the hill and we need to stop the bleeding.").

Id.
112. Davis, supra note 58.
113. Former New Mexico State coach Neil McCarthy is the only recent example of a coach sanctioned for violating this bylaw back in 1996. See, e.g., Davis,
It has been a long standing NCAA rule that schools may not engage in any quid pro quo arrangements in the recruitment of athletes.\textsuperscript{114} As noted in a popular treatise on sports law, the "rules and regulations included in the NCAA Bylaws are clear... [there] can be no improper inducements to lure an athlete to a particular school."\textsuperscript{115} Specifically noted as one of "the more common illegal recruiting practice[s]... [is the] arrangement of employment for relatives of a prospective athlete."\textsuperscript{116} Nonetheless, despite the seemingly unmistakable mandate barring the conditioning of a position on the coaching staff for the athlete's recruitment and the threat of substantial sanctions, the use of package deals has flourished in part due to difficulty explicitly proving the arrangement's existence.\textsuperscript{117} As I discuss later in this section, universities and coaches have exploited the loophole permitting package deals, as proving intent to establish a quid pro quo exchange is a predicate requirement to finding a violation of the relevant bylaws.\textsuperscript{118}

As an overarching theme, the NCAA Bylaws establish a fundamental principle that collegiate athletics retain attributes of sportsmanship and ethical conduct.\textsuperscript{119} Evidence of just how greatly the NCAA values ethical conduct is illustrated by an entire chapter dedicated to the subject.\textsuperscript{120} Article 10.01.1 states that generally, col-
legiate athletics shall be conducted "with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports." Thus, arguably, even attempts by schools to act within the gray areas of impermissible conduct may be considered a violation of the high ethics standards delineated in Article 10. As a number of commentators have noted, the inherent unseemliness and impropriety associated with the use of package deals should have raised red flags within the NCAA, since the practice is fundamentally inconsistent with the higher standards of ethical conduct under the bylaws. This point is particularly relevant since a latter subsection in Article 10 specifically lists a number of actions which may be deemed unethical, including "knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit."

More directly on point, a number of NCAA Bylaws address aspects of the package deal, and thus have the potential to be extended to effectively bar, or restrict, the practice. Article 13.2.1 generally prohibits an "institution's staff member or any representative of its athletics interests . . . [from being involved] directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her relatives or friends." More specifically, Bylaw 13.2.1.1.(a) expressly prohibits an "employment arrangement for a prospective student-athlete's relatives." Thus, "hiring a coach on the condition of a player's enrollment is a direct violation of [now enacted NCAA Bylaw 13.2.1.1.(a)] . . . which prohibits any kind of [quid pro quo] employment agreement." Despite the seemingly clear prohibition in Bylaw 13.2.1.1.(a), package deals are not only

121. See id. at art. 10.01.1. (setting principles for bylaws).
122. For a discussion of critics' viewpoints on the ethics of package deals, see supra notes 97-101 and accompanying text.
123. See NCAA Bylaws, supra note 48, at art. 10.1(c) (providing example of unethical conduct).
124. See id. at art. 13.2.1 (outlining general regulations for offers and inducements).
125. See id. at art. 13.2.1.1(a) (including illustrations of prohibited actions).
126. See Davis, supra note 58 (noting that the Bylaw's intention is to bar relatives from being hired as a condition of the student's enrollment at the school).
in existence, but are becoming commonplace. The difficulty posed by using this provision to regulate and prevent the practice, is the requirement to prove that the hiring arrangement was done with the express intent and reason of inducing the player to the school. Schools may circumvent this prohibition by simply citing a prospective coach's other attributes beyond that of their personal connection to the player. For example, USC has cited the personality and "great demeanor" of Dwayne Polee as the primary reasons for his hire, while downplaying his limited coaching experience, professional playing career, and the talents of his son. While such hires may perhaps be easily proved on a circumstantial basis, the absence of any clear evidence showing an explicit intent for a quid pro quo arrangement provides a serious impediment to any potential NCAA sanctions.

Additionally, the Bylaws impose restrictions on package deals in two other separate provisions which address the ability of schools to contract with high school or two-year college coaches for future employment. These provisions mandate that such coaches may not begin work for the university while remaining associated with a former school. While universities are permitted to make such hires, the Bylaws specifically dictate that these hires may not be "contingent upon the enrollment of a prospective student-athlete." Just as the prohibition on package deals under Article 13.2.1.1.(a) is rendered practically ineffective due to the difficulties in proving a contingent hire of the athlete's parent, the prohibition on conditional hires per Articles 11.4.1.1 and 13.8.3.3.1 is made futile if the NCAA must first affirmatively prove an intent that coaches were hired based on an arrangement to bring along a player.

Regardless of the difficulties in establishing a package deal as a sanctionable violation of NCAA Bylaws, the inherent perception that teams are offering coaching positions solely to lure athletes to enroll in their universities does not comport with the ideals of eq-
uity and honest competition the NCAA seeks to uphold.\textsuperscript{133} While the spirit of the Bylaws may have been violated by the conduct of universities engaging in package deals, nevertheless such teams have not broken any specific regulations.\textsuperscript{134} As the NCAA has tools in place to address the dilemma, revisions to existing Bylaws and regulations may prove the best means of addressing and closing the loopholes currently permitting the practice.

V. REGULATING PACKAGE DEALS AND SUGGESTED MEANS FOR REFORM

Mechanisms for reform to close the loophole permitting the legality of package deals in recruitment is necessary in order to fulfill the NCAA’s long held policies of ensuring fair and even competition among its member universities.\textsuperscript{135} As noted by legal commentators, the NCAA is “dedicated to the objective, as described in its first constitution, of maintaining athletic activities ‘on an ethical plane in keeping with the dignity and high purpose of education.’”\textsuperscript{136}

Furthermore, the original NCAA constitution called for the member schools to “agree to take control of student athletic sports, as far as may be necessary to maintain in them a high standard of personal honor, eligibility, and fair play, and to remedy whatever abuses may exist.”\textsuperscript{137} As the use of package deals creates, at the very least, a perception of impropriety, it is in the best interest of the NCAA and college athletics to prevent this practice.\textsuperscript{138} Conse-

\textsuperscript{133} See, e.g., NCAA Bylaws, supra note 48, at art. 2.4 (explaining ethical conduct in athletics).

\textsuperscript{134} See Davis, supra note 8 (clarifying how package deals are not prohibited per se).

\textsuperscript{135} See Ronald J. Waicukauski, The Regulation of Academic Standards in Intercollegiate Athletics, LAW & AMATEUR SPORTS, 162, 181 (Ronald J. Waicukauski ed., Indiana Univ. Press 1982) (discussing creation of NCAA). “The NCAA was formally organized on March 31, 1906, following a conference convened late in 1905 by President Theodore Roosevelt. . . . Roosevelt was concerned in particular about brutality in intercollegiate football and what he perceived as an increasingly perva-

\textsuperscript{136} See Waicukauski, supra note 135, at 162 (setting forth foundation of NCAA).

\textsuperscript{137} See Carter, supra note 135, at 220 (highlighting NCAA founding principle of schools’ responsibility in regulating ethics in collegiate sports).

\textsuperscript{138} See Sally Jenkins, College Athletics’ Rookie Mistake, WASH. POST, June 2, 2009, at D1 (postulating that restoring “competitive balance” is key reason for enacting reforms in collegiate sports).
quently, this article notes a number of different means for regulation and restriction.

A. Lowering the Standard of Proof of Existing NCAA Bylaws

As discussed earlier in this article, a number of the NCAA’s Bylaws are sufficiently equipped to address the issue of package deals. Due to the heightened requirements of demonstrating intent of an illicit quid pro quo arrangement, these Bylaws have proved to be ineffective in slowing the popularity of the practice. Thus, one additional means of rectifying the loophole permitting package deals is to lower the standard of proof necessary to find violations.

Bylaw 13.2.1.1(a) prohibits any kind of “employment arrangement for a prospective student-athlete’s relatives.” As this provision has proven to be ineffective, I propose creating an additional new provision that would permit NCAA officials to better conclude that such an arrangement has taken place. While the language will likely need to be subsequently fine tuned, the following may be used as an example:

Proof of the existence of such an employment arrangement prohibited by Bylaw 13.2.1.1.(a) does not need to be express. A violation of this Bylaw occurs, if given the totality of the circumstances, it can be concluded that the hiring was more likely than not made for the purpose of securing the commitment and enrollment of a student-athlete.

With this lowered standard of proof, much of the difficulty in proving explicit intent is eliminated. Consequently, this lower threshold will permit the NCAA enforcement committee to easily determine and find violations of NCAA Bylaws. Schools would likely be less willing to engage in the practice over the fear and threat of potential sanctions. Also, this lowered standard of proof proposal would also not necessarily preclude universities from hiring individuals who have a prior standing relationship with other players. Instead, such a proposal would eliminate the more egregious examples of package deals, while permitting those arrangements where a person has significant attractive attributes to

139. NCAA Bylaws, supra note 48, at art. 13.2.1.1(a).
140. Cf. Davis, supra note 8 (claiming how intent is hard to prove with current regime).
141. Cf. id. (explaining difficulties of determining violations under current Bylaws).
142. Id. (explaining implications of lower standard).
offer a team regardless of personal connection. Schools serious about offering a potential package deal would first need to determine if there is sufficient objective proof to show that the hiring is based on more than a quid pro quo arrangement to procure the elite athlete’s commitment. Thus a coach bringing significant prior experience to a university in addition to a prospective athlete would likely meet the objective proof standard.

1. An Outright Bar of the Practice

Certainly the most effective mechanism for regulating the use of package deals is to create an outright ban on the practice. This rule would bar any relative or coach of an athlete from being employed by the athlete’s university in any capacity. Additionally, it would also prohibit a school from circumventing the regulation by giving an athlete’s associate a “straw-man” position elsewhere in the university. The perception of improper recruitment would be minimized as the possibility that an athlete is drawn to a school based on a benefit to an athlete’s associate is eliminated.

Admittedly, such a proposal is likely overbroad and extreme as a means of restricting and regulating the use of package deals. Furthermore, such an outright ban would likely violate a common labor law policy which strictly interprets any condition that affects the right of an individual to pursue a chosen livelihood. In California for example, Business and Professions Code Section 16600 prohibits conditions whereby a party “is restrained from engaging in a lawful profession, trade, or business of any kind.” A number of cases assert that arrangements limiting a person’s right to work should not be permitted beyond any means solely necessary to pro-

143. Id. (detailing package deal arrangements).
144. Cf. id. (maintaining that schools are not currently deterred away from package deals).
146. See generally infra notes 147-157 and accompanying text (discussing how an outright ban may be in contrary to established public policy and unfairly punish innocent parties).
tect an employer's interests. For example, in *American Broadcasting Companies v. Wolf*, the court wrestled with the issue of whether a television network could enforce a non-competition clause in a broadcaster's employment contract that would effectively bar that broadcaster from beginning work for a competing network.\(^{149}\) The court concluded that public policy disfavors anti-competitive covenants in contracts, because they would be enforcing policies that would affect a party's right to a livelihood and work.\(^{150}\) Similarly, in the context of trade secret disputes, courts resist enforcing restrictive covenants that prevent departing employees from beginning work at competing companies.\(^{151}\) Only in instances where the court has determined that a particular employer would be irreparably harmed by the party's employment with a competitor, have these courts enforced limitations on a person's ability to work.\(^{152}\) Even in such cases, these restrictions must be carefully tailored in such a manner so that it does not extend any greater than is necessary to protect the employer's trade secrets.\(^{153}\)

149. Am. Broad. Cos. v. Wolf, 420 N.E.2d 363, 367-68 (N.Y. 1981). In that case, ABC entered into an employment contract with sportscaster Warner Wolf, which included a good faith renewal clause that would govern negotiations at the end of the contract term. *Id.* at 364. The contract also included a non-competition clause, which prevented Wolf from working as a broadcaster for a competing network for a period of three months in the event that a renewed contract could not be negotiated. *Id.* Ultimately, Wolf and ABC could not agree on a new employment contract, leading Wolf to accept an offer with CBS. *Id.* at 365. Subsequently, ABC sought to enjoin Wolf from starting his new position with CBS. *Id.*

150. See *id.* at 366-68 (holding that defendant is not barred from accepting competing job offer); see, e.g., Metro Traffic Control v. Shadow Traffic Network, 22 Cal. App. 4th 853, 859-60 (Cal. App. 2d Dist. 1994) (stating that "California courts have consistently declared [CAL. BUS. & PROF. CODE § 16600] an expression of public policy to ensure that every citizen shall retain the right to pursue any lawful employment and enterprise of their choice."); see also *Latona v. Aetna United States Healthcare, Inc.*, 82 F. Supp. 2d 1089, 1093-97 (C.D. Cal. 1999) (carving out exemptions to CAL. BUS. & PROF. CODE § 16600).


An alternative to enacting an outright ban on universities from hiring associates of elite players is preventing the enrollment of any prospective student athlete where an associate of theirs has been previously hired by the school.\textsuperscript{154} This proposal would be ineffective due to the inequity in barring an athlete from pursuing an education at a desired school. Despite skepticism to the contrary, student athletes are first and foremost attending college for educational reasons, with intercollegiate competition a secondary focus.\textsuperscript{155} Although, such a proposal would effectively close the loophole allowing the practice, by taking away much of the impetus for engaging a package deal, the student athlete would be the one perhaps unfairly punished for the wrong doing of others.

A ban on package deals may nonetheless remain a viable option if limited exceptions and sufficient safeguards are created in order to avoid implicating the public policy against over restricting employment. Certainly, there may be instances where hiring a coach is based on the merits of the coach’s qualifications, and not based on their contacts to elite athletes. Thus, an outright ban would unfairly punish a coach, regardless of qualifications, by preventing their hiring simply because of that coach’s past relationships.\textsuperscript{156} This proposal may also unfairly prevent young coaches an opportunity to gain experience serving as an assistant on a Division I team. Coach John Calipari has previously noted that assistant coaching positions on his staff are often filled by people looking to enter college coaching.\textsuperscript{157} As this Article seeks to provide proposals

\textsuperscript{154} See infra note 155-156 and accompanying text (addressing the potential effect of barring students from attending the school of their choice).


\textsuperscript{156} For example, Scott Pera, former high school coach of standout James Harden, was highly accomplished coach in his own right. See McLane, supra note 60. Pera had coached a Pennsylvania high school team to a state championship prior to his move to California. Id. During his term at Artesia High School in Lakewood, California, Pera established the school as a perennial candidate for state championships in basketball. Id.

\textsuperscript{157} See Garcia, supra note 65 (discussing Memphis’s use of package deals); see also Hoffarth, supra note 111 (quoting USC Coach Tim Floyd on his hiring of potential recruit, Dwayne Polee Jr.’s, father, “I think he’s more qualified than 90 percent of the assistants that come into college basketball based on his playing experience and what he can bring to the table for us at SC through his contacts in our area.”).
for reform and the means of regulating unethical coaching arrangements, an outright ban would be overly expansive to accomplish this result.

2. Applying a Presumption of Illegality

A previously introduced proposal by the NCAA may also be revived as potential solution to address the practice. A group of NCAA leaders in conjunction with NBA Commissioner David Stern recommended instituting increased hiring standards as a means of addressing "connect-the-dots hires." Specifically, the group advocated that when "an institution hires an individual who has either coached or is related to a prospect that ultimately enrolls at that institution, there should be a rebuttable presumption that the hiring violates NCAA legislation." The group further argued that this "presumption would be triggered if the individual were hired within two years, either before or after, of the prospect's initial enrollment at the institution." Any hires that would trigger the presumptions of this proposal would then shift the burden to "the institution to prove to the enforcement staff that the hiring did not violate NCAA rules."

The proposal was immediately met with criticism regarding its merits in principle versus its practicality. Furthermore, the proposal would essentially turn a long-standing American credo of "innocent until proven guilty," on its head. Instead, the onus would be on the university to prove that the hiring was done with a legitimate purpose. As the NCAA currently has difficulty in proving improper intent by colleges, universities forced to rebut the presumption of illegality under the aforementioned proposal would additionally have similar difficulties in establishing a proper hire.

158. Davis, supra note 8. As the article noted, the main purpose of this investigative group sought to look at "problems facing youth basketball," particularly attempting to "[rein] in abuses in summer basketball." Id. See Wieberg & Garcia, supra note 96 (stating concerns over misconduct have resulted in formation of joint venture between NCAA and college coaches, ethics coalition).

159. Davis, supra note 8.

160. Id.

161. Id.

162. See id. (reviewing reaction of coaches regarding assumption of illegality rule).

163. See id. (exploring implications of rule assuming impropriety).

164. See id. (examining implications of application of rule).

165. See id. (discussing opening of Pandora's Box issues with applying proposed rule assuming impropriety).
Arguably, this proposal may serve to strike a proper balance between over and under broad restrictions on the use of package deals. Such a presumption would not necessarily bar schools from employing package deals, but it would at least require schools to meet and satisfy the NCAA's standards of ethics. As previously noted, the burden of work should be on the universities to counter the inherent perception of impropriety and unethical conduct surrounding package deal arrangements.\textsuperscript{166} While this proposal would require some fine tuning, such as establishing how stringent a standard and what level of proof would be necessary to meet the burden of persuasion, it would also correctly force the individual universities to prove the propriety of their planned hire.\textsuperscript{167}

D. Enacting a “Rooney Rule” Like Procedure for Package Deal Hires

An additional mechanism of reform to address the practice of package deals is the enactment of a bylaw similar to the “Rooney Rule” currently in place in the National Football League (NFL).\textsuperscript{168} The rule was named after Pittsburgh Steelers owner Dan Rooney, the chair of the [NFL’s] Diversity Committee and proponent of the regulation.\textsuperscript{169} In an effort to address historical barriers facing minorities seeking head coaching positions in the NFL, the league enacted a new regulation mandating “every NFL team interview at least one minority candidate upon the vacancy of a head coaching position.”\textsuperscript{170} A further requirement dictated that these interviews must be “meaningful,” and “that the interviewers be among the team’s primary decision-makers.”\textsuperscript{171} The Rooney Rule has been

\textsuperscript{166}. See Streeter, supra note 98 (discussing perception of impropriety at USC in particular). For discussion of the responsibilities of individual universities under the NCAA leaders’ proposal see supra notes 159-161 and accompanying text.

\textsuperscript{167}. See Davis, supra note 8 (addressing opposing opinions to proposed standard where universities would be guilty until proven innocent).


\textsuperscript{169}. Id.


\textsuperscript{171}. Duru, supra note 170, at 189.
lauded for its marked effects of increasing minority head coaches in the NFL, and increasing opportunities for such positions.172

Modeled after the NFL's Rooney Rule, a proposed means of regulating the use of package deals is to establish a system whereby collegiate coaching positions would be subject to a series of requirements prior to being filled. Under this proposal, universities who have an opening on the staff of their athletic teams would be obligated to interview candidates who do not have any prior existing relationship with an athlete being recruited by the university. Such interviews must be meaningful and along with the head coach, should include other key decision makers of the university such as the University Athletic Director and, if possible, the University President or Chancellor.173

Admittedly recognizing that this proposal shares the same criticism proffered by opponents of the Rooney Rule, such criticism would be as applicable to the situation herein. Critics of the Rooney Rule argue that the forced interviewing of a minority candidate simply requires teams to offer candidates sham interviews without any intention to actually hire minority coaching candidates.174 Others have argued, however, that interviews conducted under the auspices of the Rooney Rule have provided such candidates an opportunity to surprise hiring managers and meaningfully compete for the positions.175 Thus, schools seeking to hire an athlete's associate as part of a package deal may interview other applicants for the express purpose of satisfying the requirements of this rule, with-

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174. See Hub Arkush, Honorable Intentions Aside, 'Rooney Rule' Is Unfair, PRO FOOTBALLWEEKLY.COM, Dec. 20, 2004, http://pfwweb.goisg.net/PFW/Commentary/Columns/2004/harkushv1924.htm; Bob Hohler, Rooney Rule Cited for its Effectiveness, BOSTON GLOBE, Sept. 21, 2006, at E9; Jay Nordlinger, Color in Coaching: How Racial Games Are Played in the NFL, NATIONAL REVIEW, Sept. 1, 2003, at 25 (quoting Gene Upshaw, head of NFL Players Association, who argued that Rooney Rule would “lead to sham interviews and sham lists.”). Nordlinger also noted that other commentators have argued that the rule would lead to “courtesy interviews” and tokenism during the coaching search process. Id.; see also Collins, supra note 170, at 901-02 (“[I]f an accomplished coach like Mariucci is under consideration, the Rule merely results in an elaborate public charade, in which a team must contact candidates it has no interest in hiring.”).

175. See Hohler, supra note 174 (noting comment made by Richard Lapchick that “I think it's been proven in the NFL that when [minority] candidates are brought into the room under any circumstances they have surprised some people and gotten a real shot at a job.”).
out any intention to actually hire them. Certainly, colleges who make arrangements for package deals with the knowledge that such packages may violate the spirit of NCAA bylaws would likewise not be overly concerned with the ethical ramifications of holding sham interviews. This Article recognizes the difficulty of effectively eliminating the practice of package deals, and it is not the intention to propose means to meet this end. On the contrary, this Article seeks to only raise potential means of creating obstacles for schools looking to employ package deals and decreasing the prevalence of these arrangements. By mandating interviews of non-affiliated candidates, schools may be impressed by the qualifications of such candidates, thereby giving such parties an opportunity for the position.176 Creating an additional hoop for schools to jump through in order to clear potential package deal hires may also have the effect of creating a sufficient impediment that schools may find outweighing any benefit such a hire may bring.

An additional hurdle to the efficacy of a Rooney Rule-like proposal is the NCAA's reluctance to become overly involved in the hiring decisions of their individual member schools.177 NCAA President Myles Brand had argued that efforts to enact a version of the Rooney Rule to improve minority hiring in the collegiate ranks are outside the bounds of power which the organization is responsible for.178 Specifically, Brand argued that individual "institutions are wholly responsible for the hiring of coaches and administrators . . . [and no] outside body, such as the NCAA, should usurp the authority or responsibility of universities and colleges in hiring."179 Nonetheless, as Michael Nichols' article has indicated, such criticism

176. As a number of commentator's have opined, the Rooney Rule has given candidates the opportunity to surprise hiring managers, which they may not have had otherwise. See, e.g., Aaron T. Walker, Title VII & MLB Minority Hiring: Alternatives to Litigation, 10 U. PA. J. BUS. & EMP. L. 245 n. 166 (2007) (noting that "if teams are compelled to expand their pool they eventually will see that there are many qualified minority applicants" as a benefit of the Rooney Rule.); Hannah Gordon, The Robinson Rule: Models for Addressing Race Discrimination in the Hiring of NCAA Head Football Coaches, 15 SPORTS L.J. 1, 10-11 (2008) (relating that "even if some 'courtesy' interviews do occur, the overall benefit [of the Rooney Rule] has been worthwhile . . . [since] one never knows when a coach will surprise his interviewers and beat out the favored candidate.").

177. See Nichols, supra note 172, at 161 ("[T]he NCAA claims that it is not in a position to affect whom its member programs interview and hire at least, by use of hard variants.").

178. See id. (discussing Brand's statements).

holds less weight in light of the ability of the NCAA to regulate a wide range of matters affecting universities.180

As one of the main tenets of the NCAA is to promote amateurism and regulate ethical competition among its member institutions, it is in the best interest of the organization to take the high road, and eliminate any perception of impropriety.181 Thus, centralized efforts to ensure that the hiring of coaches is done in a principled manner and for an ethical purpose should take precedence over the organization's reluctance to become involved in micromanaging universities' hires.

Lastly, the absence of any penalty mechanism that could be levied against any NFL teams who failed to adhere to the Rooney Rule was a common criticism regarding the efficacy of the regulation in professional football.182 Consequently, any proposal akin to the Rooney Rule used to regulate package deals in collegiate recruiting, would need to include some form of sanctions that may be employed to penalize schools who make hires without following established interviewing procedures. Otherwise, the overall effectiveness of any such proposal would be minimized. Ideally, the stigma associated with engaging in this practice may be sufficient impetus for schools to become compliant with this proposal, similar to how the Rooney Rule's efficacy may be partly due to the forced breakdown of previous hiring methods which were based primarily on interpersonal relationships to the detriment of minority candidates.183

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180. See id. at 162 (explaining indications of Nichols' article).

As Nichols relates:

While many areas constitute powers delegated to the NCAA by its member institutions (e.g., drug testing), many others involve general authority delegated to the NCAA to govern member institutions that is often times at odds with the interests of individual institutions (e.g., ban on culturally insensitive mascots or team names). To say the NCAA cannot impose interview requirements for the hiring of coaches seems to be a convenient way of skirting responsibility.

Id.

181. For a discussion of NCAA rules on ethical conduct, see supra notes 109-134 and accompanying text.

182. See Duru, supra note 170, at 190 (discussing consequences of no penalty mechanism for Rooney Rule). See also Neil Forester, The Elephant in the Locker Room: Does the National Football League Discriminate in the Hiring of Head Coaches?, 34 McGeorge L. Rev. 877, 899 (2005) (commentating that a problem of the Rooney Rule is "its general lack of enforcement mechanisms and its failure to provide a positive incentive by which a team owner or general manager might be encouraged to follow its mandate.").

183. See generally Collins, supra note 170, at 905-06 (ascertaining that Rooney Rule's primary purpose was to address persistence of unconscious bias and pinpointing that its effectiveness lies in its potential to deconstruct those hidden bi-
VI. CONCLUSION

The inherent unethical stigma attached to the use of package deals in collegiate basketball recruiting is an issue that must be addressed by the NCAA in light of the increased prevalence of the tactic in recent years. As coaches and universities today are actively and blatantly exploiting a known loophole in the NCAA Bylaws that permit the existence of this practice, measures to correct this oversight and close this loophole are necessary. As this Article proposes, a number of different means can be effectively initiated so that the NCAA may continue its desire to clean up competition in college athletics. By making the practice more difficult to employ, either by turning the onus of proving the propriety of the hire to the universities, or through the use of more transparent and open hiring procedures, teams seeking to use package deals may be forced to weigh the benefit of the arrangement in light of such extra requirements. Alternatively, the threat of easier to establish violations of existing regulations may serve a similar function in deterring the employment of this practice.

With the recent increased attention on package deals and renewed efforts for enacting reforms, the NCAA has an opportunity to ensure that parties seeking to circumvent the spirit of ethical and fair competitions will have to engage in extra efforts and oversight to carry out their plans. By stemming the widespread use of package deals, college basketball as a whole would benefit by having one less specter of impropriety hovering over its history.

184. For a further discussion of the ethics of package deals, see supra notes 91-101 and accompanying text.

185. For a further discussion of the loophole in the NCAA Bylaws and the necessity for change, see supra notes 127-129 and accompanying text.

186. For a further discussion of potential changes to the NCAA Bylaws, see supra notes 139-144 and accompanying text.

187. For a further discussion of requiring universities to demonstrate the propriety of a hired athletic employee and the consequences, see supra notes 158-167 and accompanying text.

188. For a further discussion of implying the assumption of illegality, see supra notes 158-167 and accompanying text.

189. For a further discussion of potential means for the NCAA to regulate package deals, see supra notes 109-134 and accompanying text.