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WILL ATHLETES EVER LEARN?: EXAMINING WAYS THE
NCAA HAS TRIED TO AND CAN DETER STUDENT-ATHLETES
FROM ACCEPTING EXTRA BENEFITS

I. A REVIEW SESSION

In the summer of 2010, the National Collegiate Athletic Association (NCAA) issued its most severe penalties since 2002 to the University of Southern California (USC).¹ The NCAA punished USC after a four-year investigation into Reggie Bush, a former star running back at USC.² The investigation revealed that Bush and his family received extra benefits from a sports agent while Bush played at USC.³ These actions violated the NCAA's amateurism legislation, Bylaw 12, and extra benefits legislation, Bylaw 16.⁴ As a result, the NCAA sanctioned USC in 2010.⁵

An extra benefit is “any special arrangement by an institutional employee or representative of the institution’s athletics interest to provide a student-athlete or his/her family member or friend a benefit not expressly authorized by NCAA legislation.”⁶ Accepting ex-

1. See Mary Elizabeth Kane, *When The NCAA Strikes, Who is Called Out?*, 7 DEPAUL J. SPORTS L. & CONTEMP. PROBLEMS 119, 119–20 (2011) (explaining USC endured NCAA punishment of 2010 and 2011 bowl bans, all victories in which Bush participated vacated, and thirty scholarships eliminated over three years.)

2. See *id.* (discussing NCAA’s investigation of USC).

3. See Mark Yost, *Schools for Scandals*, WALL ST. J. (Sept. 14, 2010), <http://www.wsj.com/articles/SB10001424052748703453804575479663933878090> (discussing findings of NCAA investigation); see also *infra* notes 100–103 and accompanying text (discussing extra benefits Bush accepted while competing at USC).

4. See *Report of the National Collegiate Athletic Association Division I Infractions Committee*, NCAA (May 26, 2011), available at http://fs.ncaa.org/Docs/PressArchive/2011/Infractions/20110526_USC_Final_Public_Report.pdf [<https://perma.cc/TP79-HE7X>] (acknowledging violations of NCAA Constitution and Bylaws by Reggie Bush); NAT’L COLLEGIATE ATHLETIC ASS’N, 2015–16 NCAA DIVISION I MANUAL, Bylaw 16.01.1 (2015), available at <http://www.ncaapublications.com/productdownloads/D116OCT.pdf> [<https://perma.cc/82M3-GSPA>] [hereinafter “NCAA MANUAL”] (setting out NCAA Bylaws); see NCAA MANUAL at Bylaw 12.1 (discussing eligibility requirements for student-athletes); see also *infra* notes 104–105 and accompanying text (discussing how Bush violated Bylaws 12 and 16).

5. See Lynn Zinser, *U.S.C. Sports Receive Harsh Penalties*, N.Y. TIMES (June 10, 2010), http://www.nytimes.com/2010/06/11/sports/ncaafootball/11usc.html?_r=0 (noting “harshes penalties stem” from Bush accepting improper benefits); see also *infra* notes 106–109 and accompanying text (discussing sanctions imposed on USC).

6. Nate Mink, *What is an Extra Benefit, Other Key Words You May Read in NCAA Report for Syracuse Case (Glossary)*, SYRACUSE.COM (last updated Mar. 6, 2015, 10:58 AM), http://www.syracuse.com/orangesports/index.ssf/2015/03/key_words_syracuse_ncaa_report_extra_benefit_penalty.html [<https://perma.cc/2QH8-3JK8>]

tra benefits violates NCAA Bylaws.⁷ The NCAA created Bylaws 12 and 16 for the purpose of preventing such extra benefits.⁸ Bylaw 12 addresses the eligibility requirements student-athletes must meet in order to maintain their amateurism status.⁹ A student-athlete loses their amateurism and eligibility status under Bylaw 12 when they accept extra benefits from agents.¹⁰ Bylaw 16 places limits on what benefits a student-athlete can receive.¹¹ Any benefit received by a student-athlete that is not authorized by the NCAA is considered an extra benefit, putting a student-athlete's eligibility in jeopardy.¹²

In order to punish violators of these Bylaws, the NCAA created the Committee on Infractions ("Committee").¹³ The Committee makes factual findings, concludes whether the institution violated the NCAA Constitution and Bylaws, and imposes appropriate penalties if a violation occurred.¹⁴ Prior to 2013, the Committee determined sanctions on a two-tiered penalty structure.¹⁵ In 2013, due to criticism of the two-tiered penalty structure, the NCAA implemented a four-tiered penalty structure to create clearer and stricter

(discussing terms used in Syracuse infractions case); NCAA MANUAL, *supra* note 4, at Bylaw 16.02.3 (defining extra benefit).

7. See NCAA MANUAL, *supra* note 4, at Bylaw 16.01.1 (acknowledging Bylaws prohibit extra benefits)

8. See *id.* at Bylaws 12.01, 16.02.3 (stating legislations implemented by NCAA on member institutions).

9. See *id.* at Bylaw 12.1 (noting in order to maintain amateur status, student-athlete must first be certified as an amateur and then must maintain their amateur status through their time playing in college athletics).

10. See *id.* at Bylaw 12.1.2 (stating student-athlete loses amateur status if they accept improper expenses, awards, and benefits); *id.* at Bylaw 12.02.1 ("An agent is any individual who directly, or indirectly: [r]epresents or attempts to represent an individual for the purpose of marketing his or her athletics ability or reputation.").

11. See *id.* at Bylaw 16.01.1 (noting accepting extra benefit can affect student-athletes' eligibility). The NCAA Manual also lists permissible and impermissible extra benefits. See *id.* at Bylaw 16.11.

12. See *id.* at Bylaw 16.01.1 (acknowledging if student-athlete accepts extra benefit not authorized by NCAA legislation, student-athlete becomes ineligible in sport in which extra benefit was received but if student-athlete receives extra benefit not authorized by NCAA legislation, student-athlete is ineligible in all sports).

13. See *id.* at Bylaw 19.3.3 (discussing hearing panel constituting of not less than five and not more than seven members on Committee of Infractions for violations).

14. See *id.* at Bylaw 19.3.6 (stating the Committee cannot suspend or terminate an institution's NCAA membership for violating NCAA Constitution and Bylaw).

15. See NAT'L COLLEGIATE ATHLETIC ASS'N, 2012-13 NCAA DIVISION I MANUAL, Bylaw 19.02.2 (2012), available at <http://www.ncaapublications.com/productdownloads/D113.pdf> [<https://perma.cc/S526-YQMW>] [hereinafter NCAA MANUAL 2012-13] (noting violations categorized as major or secondary violations).

penalties.¹⁶ However, the NCAA's punishments and penalty structures may not deter student-athletes, as they continue accepting extra benefits.¹⁷

This Comment explores NCAA Division I extra benefit violations and whether previous sanctions imposed on institutions and the penalty structure deter student-athletes from accepting extra benefits.¹⁸ Section II highlights the history of the NCAA and explains the NCAA Bylaws.¹⁹ Section II also addresses the way in which student-athletes are bound to the NCAA Constitution and Bylaws.²⁰ Section III first examines the two-tiered penalty structure and how student-athletes continued to accept extra benefits despite previous institutions being sanctioned and the penalty structure.²¹ Next, Section III discusses the change to the four-tiered penalty structure and how student-athletes continued to accept extra benefits despite previous sanctions on institutions and the new penalty structure in place.²² Third, Section III discusses how agents are being regulated under the Uniform Athletes Agents Act (UAAA) and the Sports Agent Responsibility and Trust Act (SPARTA) and how these acts do not deter agents from providing extra benefits to student-athletes.²³ Finally, Section IV concludes by discussing the next

16. See Gary Brown, *Violator Beware: Penalties in New Enforcement Structure Pack a Punch*, NCAA (Jan. 9, 2013, 12:00 AM), <http://www.ncaa.org/about/resources/media-center/news/violator-beware-penalties-new-enforcement-structure-pack-punch> [https://perma.cc/WR8A-T86T] (discussing how four-tier penalty structure lays out consequences expected for violations).

17. See *infra* notes 72–173 and accompanying text (discussing how student-athletes at University of Wisconsin, University of Miami, USC, Syracuse University, Wichita State, and University of Mississippi took extra benefits despite rules and teams being punished previously).

18. See *infra* notes 72–173 and accompanying text (laying out extra benefit violations).

19. See *infra* notes 25–60 and accompanying text (discussing development of both the NCAA and rules that govern it).

20. See *infra* notes 61–65 and accompanying text (discussing how student-athletes are bound to NCAA rules).

21. See *infra* notes 66–119 and accompanying text (discussing how athletes at University of Wisconsin, University of Miami, and USC accepted extra benefits despite rules in NCAA Constitution and Bylaws, violations they could endure under two-tiered structure, and previous sanctions against teams).

22. See *infra* notes 120–174 and accompanying text (laying out change to four-tiered penalty structure and how student-athletes at Syracuse University, Wichita State, and University of Mississippi took extra benefits despite rules in NCAA Constitution and Bylaws, increased penalty structure, and previous sanctions against teams).

23. See *infra* notes 175–238 and accompanying text (acknowledging how Uniform Athlete Agents Act and Sports Agent Responsibility and Trust Act attempt to regulate agents and how agents are not following rules).

steps NCAA could take to deter student-athletes from accepting extra benefits and deter agents from providing extra benefits.²⁴

II. A CRASH COURSE ON THE NCAA'S HISTORY

In 1905, after multiple deaths and injuries during college football games, President Theodore Roosevelt sought a presidential intervention to review collegiate football rules.²⁵ This intervention led to the creation of Intercollegiate Athletic Association of the United States (IAAUS) in 1906.²⁶ In 1910, IAAUS was renamed the National Collegiate Athletic Association (NCAA).²⁷ Initially, the NCAA was formed to review college athletics rules; however, the NCAA has expanded to creating and enforcing rules.²⁸

The NCAA is a membership-driven organization dedicated to implementing and enforcing rules to allow student-athletes to compete in college athletics.²⁹ The NCAA consists of 1,200 member schools which are broken into three divisions: Division I, Division II, and Division III.³⁰ Division I schools generally have the largest student bodies, the largest athletic budget, and the most scholarships.³¹ This division consist of 300 colleges and universities, 6,000

24. See *infra* notes 239–248 and accompanying text (discussing how paying college athletes and NCAA working with agents may prevent student-athletes from accepting extra benefits).

25. See Rodney K. Smith, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS L. REV. 9, 12 (2000) (acknowledging history of NCAA).

26. See Kane, *supra* note 1, at 121 (noting IAAUS was created to reform college football rules); see also Smith, *supra* note 25, at 12 (noting in 1905 “there were over eighteen deaths and one hundred major injuries” in college football).

27. See Kane, *supra* note 1, at 122 (discussing NCAA consisting of “four-year, post high-school colleges, universities, and other educational institutions”).

28. See *id.* (noting today, NCAA participates in educational program of colleges and college athletics); see also *NCAA Sports Contracts and Amateurism*, USLEGAL, <http://sportslaw.uslegal.com/sports-agents-and-contracts/ncaa-sports-contracts-and-amateurism/> [<https://perma.cc/4V7B-4RZ8>] (last visited Jan. 28, 2016) (acknowledging NCAA is “largest amateur organization in United States related to the regulation of athletes”).

29. See *About the NCAA*, NCAA, <http://www.ncaa.org/about> [<https://perma.cc/D4CN-82XA>] (last visited Jan. 28, 2016) (discussing purpose of NCAA).

30. See Jean S. Frankel & Nancy Alexander, *Pumped-Up Governance: Lessons from the NCAA's Restructuring*, ASSOCIATIONS NOW (Feb. 1, 2015), <http://association-snow.com/2015/02/pumped-up-governance-lessons-from-the-ncaas-restructuring/> [<https://perma.cc/Q8L8-XKEN>] (acknowledging that each division has its own board of directors, made up of regional athletic conferences, and stakeholders such as athletic directors, coaches, faculty, and 460,000 student-athletes).

31. See *NCAA Division I*, NCAA, <http://www.ncaa.org/about?division=D1> [<https://perma.cc/6KU9-8TSS>] (last visited Jan. 28, 2016) (noting Division I is subdivided based on football sponsorship).

athletic teams, and 17,000 student-athletes.³² Division II is the division below Division I; however, student-athletes are just as competitive and skilled as Division I athletes.³³ Compared to Division I schools, Division II schools generally do not have the same financial resources to devote to athletics.³⁴ Division II consists of over 300 colleges and universities and thousands of student-athletes.³⁵ Division III is the bottom division in the NCAA, with student-athletes primarily focusing on academics.³⁶ Division III schools help student-athletes focus on academics by having shorter practices and playing seasons, thereby minimizing conflicts Division I and Division II student-athletes may experience.³⁷ Division III consists of 450 colleges and institutions and more than 18,000 student-athletes.³⁸

A. NCAA Constitution and Bylaws

Since the NCAA's inception, it has been the rule-making body for college athletics.³⁹ The quality and quantity of rules have "immensely grown and expanded since 1906."⁴⁰ The NCAA's legislation, which governs the NCAA's member institutions' conduct, is contained within the NCAA Constitution and Bylaws.⁴¹ The legislation covers many areas of college athletics including principles of conduct, NCAA membership, ethical conduct, amateurism and athletics eligibility, benefits, and enforcement.⁴²

32. *Id.* (discussing Division I concept).

33. *See About NCAA Division II*, NCAA, <http://www.ncaa.org/about?division=D2> [<https://perma.cc/FP92-LQ3Y>] (last visited Jan. 28, 2016) (acknowledging Division II student-athletes are "recognized for their academic success, athletics contributions and campus/community involvement").

34. *See id.* (noting Division II offers a "partial-scholarship," which is a "mix of athletic scholarships, academic aid, need-based grants and/or employment earnings").

35. *See id.* (discussing background of Division II).

36. *See NCAA Division III*, NCAA, <http://www.ncaa.org/about?division=D3> [<https://perma.cc/5SAQ-TDXW>] (last visited Jan. 28, 2016) (acknowledging Division III student-athletes are "integrated on campus and treated like all other members of the student body").

37. *See id.* (discussing life of Division III student-athlete).

38. *See id.* (discussing makeup of Division III).

39. *See Kane, supra* note 1, at 122 (noting original purpose of NCAA was to create rules for college football).

40. *Id.* (discussing growth of NCAA through its history).

41. *See NCAA MANUAL, supra* note 4, at *Organization of the NCAA Manual* (noting NCAA Constitution "consists of information relevant to the purposes of the Association" and NCAA Bylaws are "to promote the principles enunciated in the constitution and to achieve the Associations purposes").

42. *See id.* at Const. arts. 1–6, Bylaws 10–22 (discussing composition of NCAA Constitution and Bylaws).

B. Governing the NCAA

In order to achieve its goals, the NCAA “is committed to enforcing the rules, creating fair competition, and establishing a positive competitive environment for student-athletes across the country.”⁴³ In order to uphold the integrity and fair play among the NCAA membership and to impose appropriate and fair penalties, the NCAA created the infractions program.⁴⁴ The NCAA also established a governance structure that “consists of a legislative bodies . . . that govern each division . . . [and] committees that set association-wide policy.”⁴⁵

The Committee acts as the judge and jury for the infraction process.⁴⁶ It makes factual findings, concludes whether the institution violated the NCAA Constitution and Bylaws, and imposes appropriate penalties if a violation occurred.⁴⁷ The NCAA also created an Infractions Appeals Committee to hear appeals from decisions involving Level I and Level II violations.⁴⁸ The Infractions

43. *Fairness and Integrity*, NCAA, <http://www.ncaa.org/about/what-we-do/fairness-and-integrity> [<https://perma.cc/F2GF-DJR9>] (last visited Jan. 28, 2016) (acknowledging “[v]alues such as respect, caring, fairness, civility, honesty, integrity, and responsibility are equally important on and off the field”). For further discussion on how the NCAA governs college athletics, see *infra* notes 43–49 and accompanying text.

44. See NCAA MANUAL, *supra* note 4, at Bylaw 19.01.1 (acknowledging “ability to investigate allegations and penalize infractions is critical to the common interests of the Association’s membership and the preservation of its enduring values”).

45. *Governance*, NCAA, <http://www.ncaa.org/governance> [<https://perma.cc/AS5X-LWTV>] (last visited Jan. 28, 2016) (noting legislative bodies consist of volunteers from member schools). The committees “manage topics affecting sports rules, championships, health and safety, matters impacting women in athletics and opportunities for minorities.” *Id.*

46. See NCAA MANUAL, *supra* note 4, at Bylaw 19.3.1 (noting Committee is appointed by Board of Directors and consists of no more than twenty-four members).

47. See *id.* at Bylaw 19.3.6 (discussing duties of Committee). The Committee also has a duty to

- (d) Coordinate with the office of the Committees on Infractions as necessary for logistic, administrative or other support related to implementation of the committee’s decisions;
- (e) Monitor compliance with prescribed penalties . . . ;
- (f) Consider complaints alleging the failure of any member to maintain the academic or athletics standards required for membership . . . ;
- (g) Formulate and revise internal operating procedures and revise investigative guidelines . . . ; and
- (h) Carry out such other duties directly related to the administration of the Association’s infractions programs.

Id.

48. See *id.* at Bylaw 19.4.1 (stating five members comprise Infractions Appeals Committee).

Appeals Committee has the authority to review the Committee's ruling and decide whether to overturn or affirm its decision.⁴⁹

C. NCAA Amateurism: Bylaw 12

Amateur competition is the driving factor behind college athletics and the NCAA.⁵⁰ Amateurism rules ensure fair competition for all student-athletes.⁵¹ In order to keep professional sports separate from college athletics, the NCAA only allows student-athletes with amateur status to participate in college sports.⁵² A student-athlete must follow the eligibility requirements under Bylaw 12 in order to maintain their amateur status.⁵³ A student-athlete loses their amateur status if they accept transportation, cash, entertainment, or other extra benefits from an agent while competing in college athletics.⁵⁴ However, this Bylaw is not

49. See *id.* at Bylaw 19.4.5.

The Infractions Appeals Committee shall:

(a) Consider appeals from decisions of a hearing panel of the Committee on Infractions involving Level I and Level II violations; [and]

(b) Affirm, reverse, or vacate and/or remand the panel's findings, conclusions, penalties, corrective actions, requirements, and/or other conditions and obligations of membership prescribed for violations of the NCAA constitution and bylaws[.]

Id.

50. See *Amateurism*, NCAA, <http://www.ncaa.org/amateurism> [<https://perma.cc/R4MJ-AUDF>] (last visited Jan. 30, 2016) (discussing amateurism is "a bedrock principle of college athletics and the NCAA").

51. See *id.* (stating "all incoming student-athletes must be certified as amateurs").

52. See NCAA MANUAL, *supra* note 4, at Bylaw 12.01.1 (stating only athletes with amateur status are eligible for college athletics participation).

53. See *id.* at Bylaw 12.1 (noting general principles of maintaining amateurism or situations in which student-athlete may lose amateur status).

54. See *id.* at Bylaw 12.1.2 (discussing how student-athlete loses amateurism status). A student-athlete loses their amateurism status if the student-athlete:

(a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;

(b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;

(c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1;

(d) Receives, directly or indirectly, a salary, reimbursement of expenses, or any other form of financial assistance from a professional sports organization based on athletics skills or participation, except as permitted by NCAA rules and regulations;

(e) Competes on any professional athletics team per Bylaw 12.02.11, even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.3.2.1;

(f) After initial full-time collegiate enrollment, enters into a professional draft; or

(g) Enters into an agreement with an agent.

the only one to abrogate a student-athlete's participation eligibility.⁵⁵

D. NCAA Extra Benefits: Bylaw 16

Bylaw 16 provides limitations of allowable awards, benefits, and expenses student-athletes can accept while playing.⁵⁶ A student-athlete becomes ineligible when they accept an award, benefit, or expense not authorized by the NCAA legislation.⁵⁷ An extra benefit is "any special arrangement by an institutional employee or representative of the institution's athletics interest to provide student-athlete or the student-athlete family member or friend a benefit not expressly authorized by NCAA legislation."⁵⁸ Accepting extra benefits violates NCAA rules.⁵⁹ However, extra benefits are not a characterized violation if the benefit is available to general population or student body.⁶⁰

E. Student-Athletes Are Bound to NCAA Rules

All colleges, universities, athletic conferences or associations, and other groups that are related to college athletics can be a member of the NCAA.⁶¹ Colleges and universities choose to become a member of the NCAA by applying and being elected into active

Id.; see also *NCAA Sports Contracts and Amateurism*, *supra* note 28 (discussing evolution of amateurism); NCAA MANUAL, *supra* note 4, at Bylaw 12.02.1 ("An agent is any individual who, directly or indirectly: [r]epresents or attempts to represent an individual for the purpose of marketing his or her athletics ability or reputation[.].").

55. See NCAA MANUAL, *supra* note 4, at Bylaw 16 (stating how student-athlete can lose their eligibility status by accepting extra benefits).

56. See Keith Starr, *The Path to Antitrust Success Against The NCAA Is More Limited than You Think*, 79 MO. L. REV. 1157, 1171 (2014) (discussing extra benefits given to student-athletes "because of their athletic ability").

57. See NCAA MANUAL, *supra* note 4, at Bylaws 16.01.1, 16.02.1–16.02.3 (defining award as "an item given in recognition of athletics participation of performance," an excessive expense as "one not specifically authorized under regulations of the Association concerning awards, benefits, and expenses," and an extra benefit as "any special arrangement by an institutional employee or representative of the institution's athletics interests to provide a student-athlete or student-athlete family member or friend a benefit not expressly authorized by NCAA legislation").

58. *Id.* at Bylaw 16.02.3 (defining extra benefit).

59. See *id.* (discussing extra benefit violations).

60. See *id.* (stating benefit is not characterized as violation "if it is demonstrated that the same benefit is generally available to the institution's students or their family members or friends or to a particular segment of the student body . . . determined on a basis unrelated to athletics ability").

61. See *id.* at Const. art. 3.1 (noting colleges, universities, athletic conferences or associations, and other groups must be accredited by one of six regional accrediting agencies and must be located in United States, its territories, or possessions).

membership.⁶² When an active member, the institution must comply with the NCAA’s Constitution and Bylaws and other legislation.⁶³ As members, the institutions have the responsibility to ensure their athletic programs, which include participating student-athletes, are in compliance with the rules and regulations.⁶⁴ A student-athlete agrees to these rules by joining a member institution and signing a Student-Athlete Statement each year.⁶⁵

III. THE NCAA’S UNSUCCESSFUL ATTEMPTS ON PUNISHING EXTRA BENEFIT VIOLATIONS

A. Two-Tiered Penalty Structure

Prior to 2013, the NCAA created and enforced a two-tiered penalty structure.⁶⁶ The Committee punished violators of the penalty structure.⁶⁷ Violations under this penalty structure would have been characterized as a secondary or major violation.⁶⁸ A secondary violation was “a violation that [was] isolated or inadvertent in nature, provide[d] or . . . intended to provide only a minimal recruiting, competitive or other advantage and does not include

62. See *id.* at Const. art. 3.2.1 (stating institutions must apply and be elected to active membership).

63. See *id.* at Const. art. 3.2.1.1 (acknowledging “[a]ctive membership is available to four-year colleges and universities, accredited by the appropriate regional accrediting agency . . . and duly elected to active membership”).

64. See *id.* at Const. art. 6.01 (noting “[a]dministrative control or faculty control, or a combination of two, shall constitute institutional control”); see also *Principles of Institutional Control*, THE OFFICIAL ATHLETICS SITE OF GEORGE MASON, http://www.gomason.com/ViewArticle.dbml?DB_OEM_ID=25200&ATCLID=205072664 [<https://perma.cc/H2KD-YQGB>] (last visited Mar. 6, 2016) (discussing how to be in compliance with NCAA institutional control rule).

65. See NCAA MANUAL, *supra* note 4, at Const. art. 3.2.4.6 (noting all active member institutions must administer Student-Athlete Statement form annually); *Form 15-3a Academic Year 2015–16: Student-Athlete Statement – NCAA Division I*, NCAA, available at http://lehighsports.com/documents/2015/8/4/Form_15_3a_Student_Athlete_Statement.pdf?id=1353 [<https://perma.cc/EWE7-3JNE>] (last visited Mar. 22, 2016) (noting athletes must sign Student-Athlete Statement every year agreeing to understanding NCAA rules in order to be eligible for collegiate competition); see also NCAA MANUAL, *supra* note 4, at Bylaws 12.1.2, 16.01.1 (stating extra benefits received from an agent affects eligibility).

66. See *Note re: New NCAA Division I Enforcement Model*, ICEMILLER LLP (Dec. 2012), <https://www.nacwaa.org/sites/default/files/images/notes%20new%20naaa%20d1%20enforcement%20model%2012%202012-c.pdf> [<https://perma.cc/96EN-QGNG>] (discussing NCAA’s two-tiered penalty model).

67. See NCAA MANUAL 2012–13, *supra* note 15, at Bylaw 19.1 (stating Committee was “responsible for administration of the NCAA enforcement program”).

68. See *id.* at Bylaw 19.02.2 (discussing two-tiered structure used by NCAA prior to 2013).

any significant impermissible benefit.”⁶⁹ A major violation included “[a]ll violations other than secondary violations.”⁷⁰ However, despite the NCAA, the Committee, and the penalty structure, athletes continued to accept extra benefits.⁷¹

1. *University of Wisconsin*

From 1993 to 2000, the University of Wisconsin athletes accepted unadvertised shoe discounts from a local shoe store, The Shoe Box.⁷² In what is now known as the University of Wisconsin Shoe Box Scandal, investigators found that 157 athletes in fourteen sports violated the NCAA Bylaws by accepting at least \$23,000 in unadvertised discounts.⁷³ In some instances, athletes even exchanged university-issued athletics equipment for items in the store.⁷⁴ At least seven men’s basketball players, twenty-six football players, and one women’s soccer player accepted discounts and several did not pay back interest-free credit accounts at the store.⁷⁵ These discounts and interest-free accounts were not available to other students and thus a violation of the NCAA Bylaws.⁷⁶ The NCAA also found a booster provided transportation to two men’s

69. *Id.* (discussing violations “including, but not limited to, an extra benefit, recruiting inducement, preferential treatment or financial aid”).

70. *Id.* (noting major violations include “extensive recruiting or competitive advantage”).

71. *See infra* notes 72–119 and accompanying text (discussing student-athletes accepting benefits at University of Wisconsin, University of Miami, USC, and University of Tennessee).

72. *See* Andy Hall, *Shoe Scandal Ripple Through UW Athletics*, THE JOURNAL TIMES (Sept. 2, 2000), http://journaltimes.com/shoe-scandal-ripples-through-uw-athletics/article_5aa7b63d-898e-5fa2-8989-634619c9582b.html [<https://perma.cc/R86L-AXRQ>] (noting football and basketball players were biggest recipients of discount); *see also* Andy Baggot, *Scandal All but Behind Badgers UW Will Come Off Probation for the Shoe Box Affair Tuesday*, MADISON.COM (Oct. 1, 2006), http://host.madison.com/sports/scandal-all-but-behind-badgers-uw-will-come-off-probation/article_3fe02600-81cc-565b-a90e-9204fbf7d051.html [<https://perma.cc/B4CW-PYSN>] (discussing Shoe Box Scandal); *University of Wisconsin, Madison Public Infractions Report*, NCAA (Oct. 2, 2001, 2:00 PM), <https://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102185> [<https://perma.cc/98DX-K7US>] [hereinafter *Wisconsin Infractions Report*] (discussing official infractions decision by Committee).

73. *Badgers Get Probation in Football, Men’s Hoops*, ESPN (Oct. 2, 2001), <http://espn.go.com/gen/news/2001/1002/1258244.html> [<https://perma.cc/55KA-P2T2>] (noting discounts ranged from twelve to fifty percent).

74. *See Wisconsin Infractions Report*, *supra* note 72 (discussing ways student-athletes received extra benefits).

75. *See* Hall, *supra* note 72 (noting all athletes were ordered to pay back value of their discounts to charity).

76. *See id.* (detailing extra benefit violations at University of Wisconsin); *see Wisconsin Infractions Report*, *supra* note 72, at 5 (explaining “extension of credit was based upon their status as student-athletes”).

basketball players on one occasion.⁷⁷ Prior to the NCAA's sanctions, the University of Wisconsin self-imposed its own sanctions: three years of probation, a \$150,000 fine, and an exclusion of four football and one men's basketball scholarship.⁷⁸

On October 2, 2001, the Committee determined this conduct was a major violation of Bylaw 16 under the two-tiered penalty structure.⁷⁹ Student-athletes violated Bylaw 16 when they accepted discounts and interest free credit accounts from The Shoe Box that were not available to the rest of the student body.⁸⁰ In addition, men's basketball players violated Bylaw 16 when they accepted transportation from a representative.⁸¹ Due to these violations, the NCAA put Wisconsin on five years of probation and took away multiple football and basketball scholarships.⁸² The University of Wisconsin's punishment did not educate student-athletes at other schools on punishment they would face when accepting extra bene-

77. See *Wisconsin Infractions Report*, *supra* note 72 (noting violation would usually be considered secondary violation; however, violation was more serious because it indicated "an elevation of the relationship between athletics representative and student-athlete"). The NCAA Manual defines a booster as an individual who is known (or should have been known) by a member of an institution's executive or athletics administration to:

- (a) Have participated in or to be a member of an agency or organization promoting the institution's intercollegiate athletics program;
- (b) Have made financial contributions to the athletics department or to an athletics booster organization of that institution;
- (c) Be assisting or to have been requested (by the athletics department staff) to assist in the recruitment of prospective student-athletes;
- (d) Be assisting or to have assisted in providing benefits to enrolled student-athletes or their families; or
- (e) Have been involved otherwise in promoting the institution's athletics program.

NCAA MANUAL, *supra* note 4, at Bylaw 13.02.14.

78. See *Wisconsin Infractions Report*, *supra* note 72 (noting school also banned players from shopping at The Shoe Box); see also *Badgers Get Probation in Football, Men's Hoops*, *supra* note 73 (acknowledging University of Wisconsin "banned athletes, coaches, and athletic administrators from shopping at the Shoe Box").

79. See *Baggot*, *supra* note 72 (stating this was third major violation in eight years at University of Wisconsin).

80. See *Wisconsin Infractions Report*, *supra* note 72 (discussing ways student-athletes received extra benefits).

81. See *id.* (discussing ways student-athletes accepted extra benefits); see also NCAA MANUAL, *supra* note 4, at Bylaw 16.11.2.2(d) (acknowledging transportation is expressly prohibited).

82. See *Badgers Get Probation in Football, Men's Hoops*, *supra* note 73 (acknowledging NCAA reduced number of football scholarships offered in 2002–2003 and 2003–2004 school year from twenty-five to twenty and cut one men's basketball scholarship in 2003–2004). Notably, because of its self-imposed sanctions, Wisconsin was not stripped of its 2000 Final Four appearance. See *id.*

fits.⁸³ In light of the deterrence the NCAA was trying to accomplish, these punishments were not nearly enough to deter and prevent extra benefits.⁸⁴

2. *University of Miami*

Despite the NCAA's education on the penalties student-athletes will face for accepting extra benefits, it did not deter student-athletes at the University of Miami from accepting extra benefits from a booster and equipment manager from 2002 to 2010.⁸⁵ Booster Nevin Shapiro provided student-athletes with meals, cash, lodging, transportation, and entertainment.⁸⁶ Shapiro provided entertainment to student-athletes by hosting them at his home and on his yacht, paying for their beverages, providing admissions into nightclubs and strip clubs, and providing access to private rooms at Miami-area nightclubs and strip clubs.⁸⁷ In addition, Shapiro was an investor in a sports agency and arranged meetings between student-athletes and his partner, a registered sports agent.⁸⁸ Also, acting on behalf of the sports agency, Shapiro provided benefits to encourage student-athletes to seek representation from the sports agency.⁸⁹ Student-athletes also accepted extra benefits from a for-

83. See *Wisconsin Infractions Report*, *supra* note 72 (discussing penalties imposed on University of Wisconsin); see *infra* notes 85–110 and accompanying text (discussing extra benefits student-athletes accepted at University of Miami and USC).

84. See *supra* notes 72–82 and accompanying text (noting extra benefits student-athletes accepted).

85. See *Badgers Get Probation in Football, Men's Hoops*, *supra* note 73 (discussing penalties imposed on University of Wisconsin and its student-athletes); see also *infra* notes 86–91 and accompanying text (discussing extra benefits accepted by student-athletes at University of Miami); see, e.g., *University of Miami Public Infractions Report*, NCAA (Oct. 22, 2013) [hereinafter *Miami Infractions Report*], available at <http://www.ncaa.org/sites/default/files/Miami%20Public%20Inf%20Rpt.pdf> [<https://perma.cc/F5CD-U7ZE>] (discussing University of Miami's penalties imposed by NCAA).

86. See *NCAA Infractions Case*, HURRICANE SPORTS (Dec. 13, 2013), <http://www.hurricanesports.com/ViewArticle.dbml?ATCLID=209340356> [<https://perma.cc/D8MA-HPD5>] (discussing NCAA infractions case against University of Miami); see also Charles Robinson, *Renegade Miami Football Booster Spells Out Illicit Benefits to Players*, YAHOO! SPORTS (Aug. 16, 2011, 5:37 PM), <http://sports.yahoo.com/news/renegade-miami-football-booster-spells-213700753-spt.html> [<https://perma.cc/4DZN-GGGU>] (acknowledging University of Miami booster, Nevin Shapiro, claimed he provided “thousands of impermissible benefits to at least seventy-two athletes from 2002 to 2010”).

87. See *Miami Infractions Report*, *supra* note 85, at 35–41 (discussing extra benefits student-athletes received).

88. See *id.* at 9, 19 (noting meetings “identifying and recruiting potential clients” took place over course of two to three years).

89. See *id.* at 38 (acknowledging booster tried to secure student-athletes as clients for agency by providing meals and in one instance providing \$50,000).

mer equipment staff member when they accepted meals, entertainment, and football gear.⁹⁰ The coaches knew student-athletes received extra benefits and in some instances even arranged for student-athletes to receive them.⁹¹ Prior to the NCAA sanctions, Miami imposed its own postseason ban for two seasons.⁹²

The Committee determined, under the two-tiered penalty structure, that this was a major infractions case; Miami's student-athletes violated both Bylaw 12 and 16.⁹³ These Bylaws were violated when Shapiro, a booster and an investor in a sports agency, arranged meetings between student-athletes and an agent and bribed student-athletes with benefits to sign with his agency.⁹⁴ Further, Miami's student-athletes violated these Bylaws when they accepted meals, cash, and entertainment.⁹⁵ The NCAA placed Miami on three years of probation.⁹⁶ The football program lost nine scholarships and men's basketball program lost three for multiple academic years.⁹⁷ These extra benefits just continued to show why

90. See *NCAA Infractions Case*, *supra* note 86 (noting equipment manager provided student-athletes extra benefits from 2007 to 2011).

91. See *id.* (noting University of Miami also reduced number of official visits by twenty percent from 2012 to 2013, reduced fall evaluations from forty-two to thirty-six from 2012 to 2013, and reduced available contact days by twenty percent from 2013 to 2014).

92. See *Miami Infractions Report*, *supra* note 85, at 3–4, 63 (discussing self-imposed ban by Miami); see also Tim Daniels, *Miami Hurricanes Sanctions Announced by NCAA*, BLEACHER REPORT (Oct. 22, 2013), <http://bleacherreport.com/articles/1820323-miami-hurricanes-sanctions-by-ncaa-reportedly-revealed> [<https://perma.cc/6NFA-RX72>] (noting self-imposed bowl ban deterred NCAA from imposing a longer bowl ban).

93. See *Miami Infractions Report*, *supra* note 85, at 35–44, 46 (discussing violations of Bylaws 12.3.1.2, 16.11.2.1, and 16.11.2.3(d)).

94. See *id.* at 35–38 (detailing extra benefits are violations of Bylaw 12).

95. See *id.* at 6 (recounting “booster was major donor to institution’s athletics programs”).

96. See *id.* at 63 (noting probation spanned from October 22, 2013, to October 21, 2016); see also Andrea Adelson, *No Bowl Ban for Miami Hurricanes*, ESPN (Oct. 23, 2013), http://www.espn.com/college-sports/story/_/id/9861775/miami-hurricanes-avoid-bowl-ban-lose-nine-scholarships-part-ncaa-sanctions [<https://perma.cc/FTY7-2K3H>] (due to Miami’s self-imposed sanctions and cooperation during NCAA investigation, Miami avoided major penalties).

97. See *Miami Infractions Report*, *supra* note 85, at 63 (noting football program lost scholarships during 2014–2015, 2015–2016, and 2016–2017 academic years); see also Adelson, *supra* note 96 (stating former Miami basketball coach, Frank Haith, was suspended five games and former assistant basketball coach, Jorge Fernandez, and former assistant football coaches, Clint Hurtt and Aubrey Hill, received two-year show-cause penalty).

the NCAA needed to impose harsher penalties on student-athletes and schools; however, extra benefits did not stop here.⁹⁸

3. *University of Southern California*

Despite everything the NCAA did to deter student-athletes from accepting extra benefits, it was not working.⁹⁹ After a four-year investigation by the NCAA, the Committee concluded that USC's star running back, Reggie Bush, and his family received extra benefits from 2004 to 2005.¹⁰⁰ Bush and his family accepted "hundreds of thousands of dollars in gifts . . . from sports agents Lloyd Lake and Michael Michaels."¹⁰¹ The extra benefits included round-trip airfare, limousine transportation, weekly payments of at least \$1,500, and hotel accommodations.¹⁰² Bush also entered into an agreement with an agent to establish a sports agency featuring him.¹⁰³

In the summer of 2010, the Committee determined this was a major violation of Bylaws 12 and 16.¹⁰⁴ Bush and his family violated Bylaws 12 and 16 when Bush entered into an agreement with an agent and when they accepted cash, airfare, and transportation.¹⁰⁵

98. See *supra* notes 85–97 and accompanying text (discussing extra benefits student-athletes accepted); see also *infra* notes 99–119 and accompanying text (observing other extra benefit violations)

99. For a summary of previous sanctions imposed on institutions and tiered penalty structure, see *supra* notes 65–97 and *infra* notes 100–110 and accompanying text.

100. See Kane, *supra* note 1, at 132 (noting Bush and his family began receiving extra benefits beginning in December 2004).

101. Yost, *supra* note 3 (discussing extra benefits violations at USC surrounding Bush); see also Charles Robinson & Jason Cole, *Cash and Carry*, YAHOO! SPORTS (Sept. 15, 2016), <https://sports.yahoo.com/ncaa/football/news?slug=ys-bush-probe> [<https://perma.cc/L6RV-XLMY>] (noting Bush's current marketing agent Mike Ornstein and one of his employees also provided extra benefits).

102. See Robinson & Cole, *supra* note 101 (acknowledging Bush and his family accepted \$595.20 of round-trip airfare, \$250.65 in limousine transportation, suits for Bush's stepfather and brother, \$1,500 weekly payments to the Bush family, \$623.63 for hotel stay at Venetian Resort & Casino, \$1,547.68 for hotel stay at Manchester Hyatt, \$13,000 for Bush to purchase and modify car, \$54,000 in rent-free living for a year, \$28,000 to Bush's family to help settle pre-existing debt, and thousands of dollars in spending money to Bush and his family); see also Yost, *supra* note 3 (noting under NCAA rules, student-athletes can only be paid by a small stipend from the university and cannot have contact with an agent until the student-athlete declares for the draft).

103. See *Report of the National Collegiate Athletic Association Division I Infractions Committee*, *supra* note 4 (discussing Bush's involvement with agents).

104. See *id.* (discussing characterization of violation); see also Kane, *supra* note 1, at 119 (acknowledging this was "among . . . most severe penalties . . . NCAA had handed down since 2002.").

105. See *Report of the National Collegiate Athletic Association Division I Infractions Committee*, *supra* note 4 (discussing violations of Bylaws 12 and 16); see also NCAA

Due to these violations, the NCAA barred the football team from bowl games in 2010 and 2011, forced the football team to vacate all victories in which Bush participated beginning in 2004 through 2005, and eliminated thirty scholarships over three years.¹⁰⁶ In response to the penalties, “USC made moves to completely dissociate itself from Bush, including ‘remov[ing] his jersey from the steps of the [football stadium]’ and ‘remov[ing] all references to Bush at the school’s Heritage Hall.’”¹⁰⁷ The NCAA was never able to punish Bush because he left USC before the NCAA issued its sanctions.¹⁰⁸ However, Bush returned the Heisman Trophy he received in 2005 because he failed to comply with the Heisman Trophy ballot.¹⁰⁹ These sanctions are some of the most severe ones the NCAA has applied; however, it proved not to be enough.¹¹⁰

4. *University of Tennessee*

While the NCAA discovered some extra benefit violations, it did not discover them all, giving student-athletes the idea they might be able to get away with accepting extra benefits.¹¹¹ From 2005 to 2008, Arian Foster accepted extra benefits while playing football at the University of Tennessee.¹¹² Due to financial constraints, Foster accepted money so he did not have to decide be-

MANUAL, *supra* note 4, at Bylaw 12.1.2 (asserting Bylaw 12 prohibits college athletes from entering into contract with sports agents); *id.* at Bylaw 16.11.2 (listing impermissible benefits).

106. See Zinser, *supra* note 5 (noting Committee commented USC lack institutional responsibility and vacated wins included Orange Bowl victory which produced Trojans’ Bowl Championship Series Title in January 2005); see also Yost, *supra* note 3 (noting Todd McNair was also banned from off-campus recruiting for one year because NCAA concluded that he knew Bush was taking extra benefits).

107. Jessica Mullican, *The Little College Ball Player and the Big Bad Agent*, 15 TEX. TECH. ADMIN. L.J. 253, 264 (2013) (alternation in original) (quoting Yost, *supra* note 3) (noting steps USC took to remove Bush from its campus).

108. See Kane, *supra* note 1, at 136 (acknowledging Bush left USC in 2006 for NFL).

109. See *id.* at 136, 136 n.174 (explaining that “[t]he Heisman ballot states, ‘The recipient must be in compliance with the bylaws defining the NCAA student-athlete,’” and Bush was not in compliance).

110. See Kane, *supra* note 1, at 119 (acknowledging harshest penalties since 2002); see also *infra* notes 112–119 and accompanying text (discussing University of Tennessee extra benefit violations).

111. See *supra* notes 72–82, 86–97, 100–109 and accompanying text (noting punishment imposed on University of Wisconsin, University of Miami, and USC); see also *infra* notes 113–115 and accompanying text (discussing impermissible benefits Arian Foster received while playing at University of Tennessee).

112. See Tania Ganguli, *Arian Foster Says He Took Benefits*, ESPN (Sept. 20, 2013), http://espn.go.com/college-football/story/_/id/9698504/arian-foster-says-took-benefits-playing-tennessee-volunteers [<https://perma.cc/G359-3ZZR>] (discussing Arian Foster accepting benefits).

tween paying rent and buying food.¹¹³ In one circumstance, when Foster had no food and no money, he called his coach and said, “[e]ither you give us some food or I’m gonna do something stupid.”¹¹⁴ In response, the coach bought Foster and three others fifty tacos.¹¹⁵ Foster was never punished for receiving extra benefits while in college because it was not publicly known until he was playing in the National Football League (NFL).¹¹⁶ However, the Committee would have likely found Foster violated Bylaw 16 when he accepted cash and food from individuals and coaches, and the Committee would have punished him under the two-tiered penalty structure.¹¹⁷ The two-tiered penalty structure and sanctions were not enough to deter student-athletes from accepting extra benefits.¹¹⁸ The next step the NCAA needed to take was changing the penalty structure.¹¹⁹

B. Four-Tiered Penalty System

In 2010, the NCAA began to discuss changing the two-tiered penalty structure.¹²⁰ The panel discussed increasing the punishment from athletes paying fines for losing their college eligibility to

113. See *Arian Foster Admits in Documentary He Took Money at Tennessee*, SPORTS ILLUSTRATED, <http://www.si.com/football/2013/09/20/arian-foster-documentary-comments-about-being-paid-tennessee> [<https://perma.cc/LY3X-WV2B>] (last visited Jan. 28, 2016) (reporting Foster received money); see also John Taylor, *Arian Foster Says He Accepted ‘40, 50 Grand’ from Vols Boosters*, NBC SPORTS (Jan. 30, 2015, 2:19 PM), <http://collegefootbaltalk.nbcsports.com/2015/01/30/arian-foster-says-he-accepted-40-50-grand-from-vols-boosters/> [<https://perma.cc/U378-3FES>] (noting Foster estimated he accepted between \$40,000 and \$50,000 throughout his entire college career).

114. Ganguli, *supra* note 112 (noting Foster saw “nothing wrong” with accepting extra benefits).

115. See *id.* (describing how Foster took food but “never took money from coaches, but there were always people . . . to help him financially”).

116. See *id.* (concluding Foster brought to light violations in a documentary called *Schooled: The Price of College Sports*); see also Taylor, *supra* note 113 (reporting Foster played for University of Tennessee from 2004 to 2008 and documentary aired in 2013).

117. See Ganguli, *supra* note 112 (discussing extra benefits Foster accepted); see also NCAA MANUAL, *supra* note 4, at Bylaw 16.02.3 (noting extra benefits include special arrangements by and institutional employee).

118. See *supra* notes 72–116 and accompanying text (observing two-tiered violations).

119. See *infra* notes 120–140 and accompanying text (discussing change to four-tiered penalty structure).

120. See NCAA, *Pros Team Up to Stop Improper Benefits Violations*, AFRO (Oct. 27, 2010), <http://www.afro.com/ncaa-pros-team-up-to-stop-improper-benefits-violations/> [<https://perma.cc/4CTT-S8ME>] (summarizing “potential post-NCAA penalties” for student-athletes who takes extra benefits).

suspending players during their rookie season in the NFL.¹²¹ The two-tiered penalty structure faced a lot of criticism because the “process was inefficient, lacked transparency, and was too protracted.”¹²² The NCAA concluded certain major violations punishments “failed to delineate sufficiently between individual and institutional culpability for infractions.”¹²³ The case that brought the most criticism to the two-tiered penalty structure was the University of Miami case; however, other cases also revealed gaps in the penalty structure.¹²⁴ “These deficiencies threatened the NCAA’s legitimacy and weakened member institutions’ and the public’s trust in its ability to effectively handle rules violations.”¹²⁵ The two-tiered structure was unsuccessful in discouraging violations and holding violators accountable.¹²⁶ Therefore, the NCAA created the four-tiered penalty structure to respond to the criticism and “restore trust in the [NCAA’s] ability to fairly and efficiently govern Division I intercollegiate athletics.”¹²⁷

In 2013, the NCAA, enacted a new four-tiered penalty structure in order to focus on “conduct breaches that seriously undermine or threaten the integrity of the NCAA Constitution.”¹²⁸ The new structure was formatted to “get rid of the risk/reward analysis that has

121. *See id.* (discussing guideline that would cause student-athletes who lost their college eligibility for taking improper benefits from agents to pay fines prior to entering NFL and suspending players six to eight games during their rookie season in NFL for taking improper benefits from agents). Mike Slive, president of the NCAA’s Southeastern Conference, stated, “our intent is not to eliminate NCAA oversight of agent issues, but rather modify the NCAA’s philosophical basis for these rules from enforcement to an assistance-based model.” *Id.* He further stated, “dealing with improper agent conduct has been a challenge for a long time, not only for college athletes, but also for the many agents who try to follow the rules.” *Id.*

122. Timothy Davis & Christopher T. Hairston, *Majoring in Infractions: The Evolution of the National Collegiate Athletic Association Enforcement*, 92 OR. L. REV. 979, 990 (2014) (discussing change from two-tiered penalty structure to four-tiered penalty structure).

123. *Id.* at 1002 (noting four-tiered penalty structure “will provide member institutions and involved individuals with better notice of infractions, and the level of seriousness assigned infractions, for which they will be held accountable if NCAA Bylaws are violated”).

124. *See id.* at 984 (discussing cases that brought criticism to two-tiered penalty structure).

125. *Id.*

126. *See id.* at 985–86 (explaining reasoning for four-tiered penalty structure).

127. *Id.* The two-tiered penalty structure failed to incentivize institutions and coaches to comply and encourage student-athletes to comply with the rules. Critics argued individuals would engage in a risk-reward analysis to determine whether the benefits outweighed the violations under the two-tiered penalty structure. *See id.* at 986, 1018 (discussing reasons NCAA enacted four-tiered penalty structure).

128. *New Violation Structure*, NCAA (Aug. 1, 2013, 12:00 AM), <http://www.ncaa.org/about/resources/media-center/news/new-violation-structure>

tempted people . . . to break the rules in the hopes that either they won't get caught or that the consequences won't be very harsh if they get caught."¹²⁹ The NCAA created a clearer "if you do this, then you can expect that" penalty structure by creating a structure that lays out the consequences for various types of violations.¹³⁰ The four-tiered structure also holds those who break the rules "more accountable for their actions."¹³¹

Level I violations of the four-tiered structure address "severe breach of conduct."¹³² These violations "seriously undermine[] or threaten[] the integrity of the NCAA."¹³³ Violations include a "significant recruiting or competitive advantage" and a "significant impermissible benefit."¹³⁴ Level II violations are a "significant breach

[<https://perma.cc/NB5W-X298>]. See also Brown, *supra* note 16 (discussing how "penalty guidelines show potential rule-breakers there is no reward for the risk").

The new enforcement structure targets improving the enforcement process in three significant ways. First, a four-tiered penalty structure designed to focus primarily on conduct that seriously undermines and/or threatens the integrity of the NCAA will replace the current two-tiered 'major/secondary' distinction. Second, the enforcement process will become more open and expedited. Last, the new process will place a greater emphasis on head coach accountability, as well as shared sense of responsibility to uphold the core values of the NCAA.

Casey C. Kannenberg, *The New NCAA Enforcement Model*, AM. BAR ASS'N, http://www.americanbar.org/groups/young_lawyers/publications/the_101_201_practice_series/the_new_ncaa_enforcement_model.html [<https://perma.cc/YK8R-P78Y>] (last visited Mar. 6, 2016).

129. Gary Brown, *Board Adopts Tougher, More Efficient Enforcement Program*, NCAA (Oct. 30, 2012, 12:00 AM), <http://www.ncaa.org/about/resources/media-center/news/board-adopts-tougher-more-efficient-enforcement-program> [<https://perma.cc/R45U-4H7U>]. See also Brown, *supra* note 16 (discussing Enforcement Working Group trying to make strong and "clearer 'if you do this, then you can expect that' model for violations and penalties"). The Enforcement Working Member Group consisted of thirteen members composed of presidents, athletic directors, commissioners, and others. *Id.*

130. Brown, *supra* note 16 (declaring NCAA needed to create "stiffer and more predictable penalties").

131. *Enforcement Model Changes Endorsed*, NCAA (Aug. 3, 2012, 9:17 AM), <http://www.ncaa.com/news/ncaa/article/2012-08-02/enforcement-model-changes-endorsed> [<https://perma.cc/PWR7-SUTW>] (detailing changes from two-tiered penalty structure to four-tiered penalty structure).

132. *Violation Structure*, NCAA, <https://www.ncaa.org/sites/default/files/EnforcementHandout%20-%20Violation%20Structure.pdf> [<https://perma.cc/P7HD-2VYA>] (last visited Mar. 6, 2016) (explaining "Level I and Level II violations are resolved by Committee on Infractions . . . Level III violations are resolved by enforcement staff, . . . [and] Level IV violations are processed by conference offices without involvement by NCAA").

133. *Enforcement Model Changes Endorsed*, *supra* note 131 (determining Level I violations are highest violations).

134. *Id.* (explaining multiple violations from other category may collectively become Level I violation and individual conduct that is unethical may be Level I violation, even if institution violations are not classified in this category).

of conduct.”¹³⁵ Violations include “minimal to significant recruiting or competitive advantage[s], . . . minimal to significant impermissible benefit[s,] or . . . a pattern of systemic violations in a particular area.”¹³⁶ Level III violations are “isolated or limited in nature.”¹³⁷ Violations include “no more than a minimal recruiting, competitive, or other advantage” and a “minimal impermissible benefit.”¹³⁸ Level IV violations are “incidental issue[s].”¹³⁹ Violations are “minor infraction[s] that [are] inadvertent and isolated, technical in nature and result[] in a negligible, if any, competitive advantage.”¹⁴⁰

1. *Syracuse University*

The NCAA put its new penalty structure to the test when Syracuse University’s basketball and football players accepted extra benefits from a booster and a Syracuse staff member from 2001 to 2011.¹⁴¹ On at least five occasions, a Syracuse staff member provided two student-athletes with transportation that did not fit the definition of “local,” as defined in the NCAA Bylaws.¹⁴² Between 2002 to 2003 and 2006 to 2007, a booster provided or arranged

135. *Id.* (stating this is second highest violation).

136. *Id.* (noting multiple violations from less serious levels may collectively be considered Level II violation and some individual conduct that is unethical or dishonest may be Level I violation, even if institutions violations are not classified in this category).

137. *Id.* (noting Level III violations are second lowest violation).

138. *Id.* (explaining multiple Level IV violations collectively may be considered Level III violations).

139. *Id.* (stating Level IV violations are lowest violations).

140. *Id.* (noting “Level IV infractions generally will not impact eligibility”).

141. *See, e.g.*, NCAA COMMITTEE ON INFRACTIONS, SYRACUSE UNIVERSITY PUBLIC INFRACTIONS DECISION 1 (2015) [hereinafter SYRACUSE UNIVERSITY INFRACTIONS DECISION], available at <http://www.ncaa.org/sites/default/files/Syracuse%20Final%20Public%20Infractions%20Decision%20%28Corrected%29.pdf> [<https://perma.cc/2DZ7-8QS9>] (announcing punishment imposed on Syracuse University by NCAA). *See also* Nate Mink, *NCAA Investigation: Syracuse Basketball, Football Violations Involve Extra Benefits, ESPN Report Says*, SYRACUSE.COM (last updated Oct. 23, 2014, 11:41 PM), http://www.syracuse.com/orangebasketball/index.ssf/2014/10/ncaa_investigation_syracuse_mens_basketball_football_programs_alleged_violations.html [<https://perma.cc/V78D-HEXE>] (discussing infractions report from NCAA); *Timeline: NCAA Releases Details of Syracuse Infractions Case*, DEMOCRAT & CHRONICLE (Mar. 6, 2015, 1:16 PM), <http://www.democratandchronicle.com/story/sports/college/2015/03/06/syracuse-infractions-case-timeline/24502985/> [<https://perma.cc/RS6F-D2JQ>] (detailing timeline of Syracuse infractions).

142. *See* SYRACUSE UNIVERSITY INFRACTIONS DECISION, *supra* note 141, at 12–13. In 2004, an assistant men’s basketball coach drove a student-athlete forty-five miles. In the spring of 2005, a football student-athlete was provided round trip transportation on four occasions totaling 128 miles by an institutions football academic support employee. *See id.* at 13.

transportation, over 750 miles, for student-athletes.¹⁴³ The booster also provided student-athletes with money from a bank account registered for a YMCA.¹⁴⁴ In total, the booster provided five student-athletes with twenty-one checks, ranging from \$100 to \$3,100, totaling \$8,335.¹⁴⁵ Further, the booster provided fast food meals to a student-athlete.¹⁴⁶

On March 6, 2015, the Committee determined Syracuse violated Bylaw 16.¹⁴⁷ The student-athletes violated this Bylaw when five student-athletes accepted cash, transportation, and food from a representative and Syracuse staff member.¹⁴⁸ Because the violations straddled the old penalty structure and the new penalty structure, the Committee decided to conduct a penalty analysis under both penalty structures and implemented the less stringent structure.¹⁴⁹ As a result, the NCAA placed Syracuse on a five-year probation and required Syracuse football to vacate all wins from multiple academic years.¹⁵⁰ Additionally, the men's basketball program lost three scholarships multiple academic years.¹⁵¹ Finally, the NCAA suspended the men's head basketball coach, Jim Boeheim, for the first nine conference games of the 2015–2016 season.¹⁵² The

143. *See id.* at 12 (discussing extra benefits received by student-athletes).

144. *See id.* at 10 (noting representative opened bank account around the time Syracuse accepted and “allowed him to be embedded in the institution’s men’s basketball and football program”).

145. *See id.* at 10–13. Syracuse’s athletics department had summer jobs at the YMCA for basketball and football student-athletes. The student-athletes and the representatives could not provide information regarding the kind of work actually performed or the rate the student-athletes were paid. In another instance, the student-athletes’ checks “did not coincide with YMCA related events.” *Id.* Finally, the YMCA was unable to pay the student-athletes and the representative believed the student-athletes should be paid. *See id.*

146. *See id.* (discussing payment of student-athletes for their work at YMCA).

147. *See id.* at 30–31 (noting all violations were Level III violations that collectively became Level II violation).

148. *See id.* at 30 (explaining representative violated Bylaw 16 when they provided student-athletes with payment for volunteer work at YMCA). Also, Bylaw 16 expressly identifies transportation from a booster as a prohibited benefit. In addition, Bylaw 16 prohibits institutional staff members from providing non-local transportation. *See id.*

149. *See, e.g., id.* at 29–62 (acknowledging case involved Level I, Level II, and Level III violations).

150. *See id.* at 62–69 (noting vacations include regular season competition, conference tournaments, and NCAA postseason competition). Syracuse was forced to vacate wins from the academic years of 2004–2005, 2005–2006, 2006–2007, 2010–2011, and 2011–2012 in men’s basketball and 2004–2005, 2005–2006, and 2006–2007 in football. *See id.*

151. *See id.* at 2–3 (reporting men’s basketball lost scholarships during 2015–2016, 2016–2017, 2017–2018, and 2018–2019 academic years).

152. *See id.* at 2–3, 65 (discussing punishment imposed on Syracuse’s coach by NCAA).

NCAA was unsuccessful in deterring extra benefits under the new penalty structure because the sanctions were still not harsh enough to deter student-athletes from accepting extra benefits.¹⁵³

2. *Wichita State University*

The NCAA's reaction to Wichita State's violations exemplify lenient sanctions.¹⁵⁴ From 2011 to 2013, Wichita State's baseball team accepted extra benefits.¹⁵⁵ During these years, "twenty-one baseball players purchased shoes, clothing, hunting gear, and other non-athletics items for a total of \$7,594.18, using [a] fifty percent discount."¹⁵⁶ Athletes received these discounts through an account set up by the institution's athletics apparel provider and administered by Shelly Wombacher, a former baseball administrative assistant.¹⁵⁷

On January 29, 2015, the Committee categorized the violations of Bylaw 16 as Level II under the four-tiered penalty structure.¹⁵⁸ The NCAA implemented the four-tiered penalty structure in this case because the breaches occurred both before and after October 30, 2012, and the NCAA processed the violation after August 1, 2013.¹⁵⁹ Student-athletes violated Bylaw 16 when they ordered discounted items through the apparel account controlled by Wombacher.¹⁶⁰ Due to these violations, the NCAA placed the

153. For a discussion of violations at Wichita State University, *see infra* notes 155–161 and accompanying text.

154. For a discussion of violations at Wichita State University and subsequent penalties, *see infra* notes 155–161 and accompanying text.

155. *See* Paul Suellentrop, *NCAA Puts Wichita State Baseball on Probation; Team Vacates Victories*, THE KANSAS CITY STAR (Jan. 29, 2015, 12:59 PM), <http://www.kansascity.com/sports/college/article8570213.html> [<https://perma.cc/WNQ5-BLYF>] (stating Wichita State also was charged with failure to monitor); *see* Brown, *supra* note 16 (noting four-tiered penalty structure was implemented in 2013).

156. Suellentrop, *supra* note 155 (internal quotation marks omitted) (observing NCAA rules allow athletes to purchase items related to their sport).

157. *See id.* (reporting institution's athletic apparel provider was Under Armour).

158. *See, e.g.*, NCAA COMMITTEE ON INFRACTIONS, WICHITA STATE UNIVERSITY PUBLIC INFRACTIONS DECISION 1 (2015) [hereinafter WICHITA STATE UNIVERSITY INFRACTIONS DECISION], *available at* <http://www.ncaa.org/sites/default/files/Wichita%20State-Infractions%20DecisionPUBLIC.pdf> [<https://perma.cc/9HZ9-8J48>] (discussing characterization of violations).

159. *See* Brown, *supra* note 16 (concluding violations that occurred before and after October 30, 2012, and were processed after August 1, 2013, are subject to four-tiered penalty structure as long as most of violations occurred after October 30, 2012).

160. *See* WICHITA STATE UNIVERSITY INFRACTIONS DECISION, *supra* note 158, at 14 (acknowledging Wombacher also committed Level III violation when she allowed softball coach from two-year institution to order discounted items for his team through her account).

school on a one-year probation, vacated all the wins in which ineligible baseball players competed, and required the school to pay a \$5,000 fine.¹⁶¹ Still, these penalties were not harsh enough on student-athletes to deter other student-athletes from considering accepting extra benefits.¹⁶²

3. *University of Mississippi*

Despite all the institution and student-athlete sanctions before him, Laremy Tunsil, a former football player at the University of Mississippi, accepted extra benefits from an agent, his coach, and a teammate's friend.¹⁶³ Tunsil received three separate loaner vehicles over a six-month period without paying.¹⁶⁴ In addition, Tunsil received a "four-month interest-free promissory note on a \$3,000 down payment for a used vehicle, two nights of lodging at a local home, an airline ticket purchased by a friend of a teammate, and a one day use of a rental vehicle."¹⁶⁵ Further, Tunsil spent a night at a University of Mississippi's assistant coach's house.¹⁶⁶

The Committee punished Tunsil under the four-tiered penalty structure for violating Bylaws 12 and 16.¹⁶⁷ The NCAA implemented the four-tiered penalty structure because all violations occurred after the four-tiered penalty structure went into effect.¹⁶⁸ Tunsil violated Bylaws 12 and 16 when he accepted loaner vehicles, a promissory note, lodging, airline tickets, and a vehicle from an

161. See *id.* at 17 (noting \$5,000 fine was self-imposed by Wichita State).

162. See *infra* notes 163–174 and accompanying text (recounting violations at University of Mississippi).

163. See Sam Cooper, *NCAA Finds Ole Miss OL Laremy Tunsil Accepted Extra Benefits*, YAHOO! SPORTS (Oct. 12, 2015, 10:33 PM), <http://sports.yahoo.com/blogs/ncaaf-dr-saturday/ncaa-finds-ole-miss-ol-laremy-tunsil-accepted-extra-benefits-023316546.html> [<https://perma.cc/93P9-ZKQ5>] (reporting Tunsil was not forthcoming during the NCAA investigation); *NCAA Decision on Laremy Tunsil Announced*, OLE MISS SPORTS (Oct. 12, 2015), <http://www.olemisssports.com/sports/m-footbl/spec-rel/101215aae.html> [<https://perma.cc/5P43-7QN3>] (discussing NCAA punishment on Tunsil).

164. See Cooper, *supra* note 163 (listing extra benefits Tunsil received).

165. *Id.* (internal quotation marks omitted).

166. See *Sources: Ole Miss Football Cited in 13 of 28 Rules Violations by NCAA*, ESPN (Feb. 10, 2016), http://espn.go.com/college-football/story/_/id/14749886/21mississippi-football-program-cited-13-28-rules-violations-ncaa [<https://perma.cc/P6QV-RCK7>] (noting five violations involved Tunsil).

167. See Brown, *supra* note 16 (discussing four-tiered penalty structure); see also NCAA MANUAL, *supra* note 4, at Bylaw 12.1.2 (prohibiting student-athletes from taking benefits from agents); *id.* at Bylaw 16.11.2 (listing of impermissible extra benefits which include, but are not limited to, transportation, signing a note, and money loan).

168. See Brown, *supra* note 16 (observing NCAA implemented four-tiered penalty structure on August 1, 2013).

agent, his coach, and a teammate's friend.¹⁶⁹ The NCAA punished Tunsil with a seven game suspension, ordered him to pay the value of the extra benefits to charity, perform community service, and make a vehicle down payment.¹⁷⁰

However, the NCAA did not discover all the extra benefits Tunsil accepted while playing at the University of Mississippi.¹⁷¹ After leaving the University of Mississippi, Tunsil admitted to accepting additional extra benefits that the NCAA did not discover during their investigation.¹⁷² Tunsil accepted money from the University of Mississippi's assistant athletic director John Miller for rent and for Tunsil's mother's \$305 electric bill.¹⁷³ Here, not only did past penalties not deter Tunsil, but the NCAA did not find all the extra benefits in its investigation.¹⁷⁴

C. Agents

In an attempt to regulate contacts between agents and student-athletes, the state and the government created two acts: the Uniform Athlete Agents Act (UAAA) and the Sports Agent Responsibility and Trust Act (SPARTA).¹⁷⁵ Both of these acts prevent agents

169. See *supra* notes 163–166 and accompanying text (reporting extra benefits Tunsil received from agent and friends).

170. See Cooper, *supra* note 163 (discussing punishment imposed by NCAA); see also Jeff Gray, *Ole Miss' Laremy Tunsil Suspended 7 Games, Will Be Back for Texas A&M*, SB NATION (Oct. 12, 2015, 10:09 PM), <http://www.redcuprebellion.com/2015/10/12/9506037/laremy-tunsil-ncaa-suspension-investigation-return-memphis-seven-games> [<https://perma.cc/QV7E-DCV8>] (noting six games he sat out prior to NCAA's decision, counted towards suspension).

171. See Mark Schlabach, *Laremy Tunsil Says He Took Money from Coach at Ole Miss*, ESPN (Apr. 29, 2016), http://espn.go.com/college-football/story/_/id/15424437/2016-nfl-draft-laremy-tunsil-admits-taking-cash-ole-miss-rebels-coach [<https://perma.cc/BT2K-FCA6>] (discussing extra benefits Tunsil accepted while playing football at University of Mississippi).

172. See *id.* (reporting that when asked whether Tunsil accepted money from coach, Tunsil responded, "I'd have to say yeah.").

173. See *id.* (considering extra benefits Tunsil accepted that NCAA did not find in their investigation). Just prior to the 2016 NFL Draft, somebody hacked Tunsil's Instagram account and posted a screenshot of a text conversation showing Tunsil requesting money from John Miller. See *id.*

174. See *supra* notes 163–173 and accompanying text (summarizing violations by Tunsil).

175. See Michael L. Martin, *It's Not a Foul Unless the Ref Blows the Whistle: How to Step Up Enforcement of the UAAA and SPARTA*, 19 SPORTS LAW. J. 209, 210 (2012) (arguing how UAAA and SPARTA helps eliminate contacts between agents and student-athletes); see also UNIFORM ATHLETE AGENTS ACT (2000) [hereinafter UAAA], available at http://www.uniformlaws.org/shared/docs/athlete_agents/uaaa_finalact_2000.pdf [<https://perma.cc/DHW4-2WVR>] (discussing UAAA act); 149 Cong. Rec. H3620-02 (daily ed. May 1, 2003) (noting SPARTA does not supplement state law).

from “trick[ing] or brib[ing] student-athletes into signing an agency contract.”¹⁷⁶ The UAAA, state law, and SPARTA, federal law, both have state and political support.¹⁷⁷

In 2000, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) ratified the UAAA into legislation to regulate agents.¹⁷⁸ In 2015, the NCCUSL approved changes to the UAAA to strengthen the act.¹⁷⁹ The NCCUSL created the UAAA to “govern[] relations among student-athletes, athlete agents, and educational institutions.”¹⁸⁰ Currently, there are forty states along with the District of Columbia and the U.S. Virgin Islands that have adopted the UAAA.¹⁸¹ The act “imposes significant disclosure, registration, and record-keeping requirements on athlete agents.”¹⁸² The UAAA prohibits agents from “intentionally initiat[ing] contact with a student-athlete” unless the agent is registered under this act, “predat[ing] or postdat[ing] an agency contract,” and “provid[ing] materially false or misleading information” when registering or re-

176. See Martin, *supra* note 175, at 210 (noting both agent and student-athlete can face civil liability).

177. See *id.* (explaining UAAA has political support from United States Congress and states that adopt it and SPARTA has political support from United States Congress).

178. See *Need for Benefits of the Uniform Athlete Agents Act*, NCAA, <http://www.ncaa.org/enforcement/agents-and-amateurism/need-and-benefits-uniform-athlete-agents-act-uaaa> [<https://perma.cc/QV6M-N5CY>] (last visited Jan. 28, 2016) (discussing problems of agents not being “readily identified” to student-athletes and “lack of uniformity” among states).

179. See *Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved*, ESPN (July 15, 2015), http://espn.go.com/college-football/story/_/id/13263390/law-commission-approves-changes-strengthen-uniform-athlete-agents-act [<https://perma.cc/ZX4Y-G76J>] (describing reason for amending UAAA was because many states amended old act and it was “not as uniform as it should be”).

180. *Athlete Agents Act*, UNIFORM LAW COMMISSION, <http://www.uniformlaws.org/Act.aspx?title=athlete%20Agents%20Act> [<https://perma.cc/62GF-SDV4>] (explaining act “protects the interests of student athletes and academic institutions by regulating the activities of the athlete agents”).

181. See *Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved*, *supra* note 179 (noting “structure and penalties can vary from state to state”).

182. *Athlete Agents Act Summary*, UNIF. LAW COMM’N, <http://www.uniformlaws.org/ActSummary.aspx?title=athlete%20Agents%20Act> [<https://perma.cc/65C4-DF5A>] (last visited Jan. 28, 2016).

The act requires agents to disclose their training, experience, and education, whether they or an associate have been convicted of a felony or crime of moral turpitude, have been administratively or judicially determined to have made false or deceptive representations, have had their agent’s license denied, suspended, or revoked in any state, or have been the subject or cause of any sanction, suspension, or declaration of ineligibility.

Id.

newing registration under the act.¹⁸³ Further, the act requires the agent to inform the school before contacting athletes or their family and friends.¹⁸⁴ The act attempts to prevent misconduct by agents by imposing civil and criminal penalties for violations of the act.¹⁸⁵ Under Section 15 of the UAAA, a violator is guilty of a misdemeanor or felony and, if convicted, is punished based on state laws.¹⁸⁶ Additionally, the act establishes civil remedies for educational institutions damaged by a student-athlete's or an agent's violations.¹⁸⁷

SPARTA is the "federal backstop" for the UAAA.¹⁸⁸ SPARTA "protects student-athletes by making it illegal for sports agents to entice student-athletes with false or misleading information, promises, or representations in order to lure them into a contract."¹⁸⁹ SPARTA prohibits agents from "directly or indirectly recruit[ing] or solicit[ing] a student-athlete to enter into an agency contract," prohibits agents from allowing student-athletes to enter into an agency contract without first warning the student-athlete that they may lose their eligibility, and prohibits "predat[ing] or postdat[ing] an agency contract."¹⁹⁰ If an agent violates this law, the agent is subject to monetary damages.¹⁹¹

1. *Agent Terry Watson*

A notable agent who violated the UAAA and SPARTA is Terry Watson.¹⁹² In 2010, Watson, a Georgia-based agent, provided "thousands of dollars in cash and benefits" to three former Univer-

183. *Id.* (noting agent also "may not refuse or willfully fail to retain or permit inspection of required records" or "fail to notify a student athlete (prior to signing) that signing an agency contract may make the student ineligible to participate as a student athlete in that sport").

184. *See Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved*, *supra* note 179 (reporting this was an addition in the updated act).

185. *See UAAA*, *supra* note 175 (discussing punishment imposed on agents when violating the Uniform Athlete Agent Act).

186. *See id.* § 15 (discussing UAAA).

187. *See id.* at *Prefatory Note* (considering civil remedies available to the educational institution).

188. *See* 149 Cong. Rec. H3620-02 (daily ed. May 1, 2003) (determining SPARTA does not supplement state law).

189. *Id.* (explaining SPARTA is used to "protect student-athletes when they travel to other states").

190. 15 U.S.C. § 7802(a) (2004) (discussing prohibited activities under SPARTA).

191. *See* 15 U.S.C. § 7804 (2004) (discussing actions taken by states for violating SPARTA).

192. *See Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved*, *supra* note 179 (discussing agents who violated the act).

sity of North Carolina football players: Marvin Austin, Greg Little, and Robert Quinn.¹⁹³ The North Carolina UAAA “prohibits illegally luring collegiate athletes into contracts by providing them money, gifts, or other items of value.”¹⁹⁴ Any agent who violates this provision is guilty of a Class I felony.¹⁹⁵ Watson “allegedly attempted to induce” Austin, Little and Quinn “into signing an agency contract with him.”¹⁹⁶ Austin received \$2,000 in cash.¹⁹⁷ Watson provided Little with \$20,457.24 in benefits, including \$18,200 in cash, to cover two airline tickets to Florida and a hotel room.¹⁹⁸ Quinn received \$1,525.45 of benefits, which included \$100 in cash, two airline tickets to Florida, and a hotel room.¹⁹⁹ The grand jury indicted Watson on fourteen felony counts based on Athlete Agent Inducement and Felony Obstruction of Justice.²⁰⁰ This crime is a Class I felony with a possible penalty of fifteen months incarceration per count of athlete-agent related charges and thirty months in jail for obstruction of justice.²⁰¹ He also faced civil penalties up to \$25,000.²⁰² Despite the UAAA and SPARTA in

193. *Id.* See *As Part of UNC Probe, Former College Player Indicted for Breaking Sports Agent Law*, FOX SPORTS (Aug. 31, 2015), <http://www.foxsports.com/college-football/story/in-north-carolina-football-probe-former-player-indicted-for-breaking-sports-agent-law-083115> [https://perma.cc/J8VB-JBZF] (reporting UNC tutor was also charged but charges were later dropped).

194. *As Part of UNC Probe, Former College Player Indicted for Breaking Sports Agent Law*, *supra* note 193 (reviewing North Carolina UAAA).

195. See D’Bria Bradshaw, *North Carolina Sports Agent Scandal Receives New Date for Hearing*, SPORTS AGENT BLOG (June 24, 2014), <http://sportsagentblog.com/2014/06/24/north-carolina-sports-agent-scandal-receives-new-date-for-hearing/> [https://perma.cc/K6L4-DXMP] (reporting on penalty for violating UAAA in North Carolina).

196. Darren Heitner, *Football Agent Terry Watson Facing 14 Felony Counts for Violating North Carolina Athlete Agent Law*, FORBES (Oct. 9, 2013, 3:04 PM), <http://www.forbes.com/sites/darrenheitner/2013/10/09/football-agent-terry-watson-facing-14-felony-counts-for-violating-north-carolina-athlete-agent-law/#64d26e001337> (analyzing reasons Watson provided benefits to UNC players).

197. See *Sports Agent Indicted in North Carolina*, USA TODAY (Oct. 9, 2013, 5:57 PM), <http://www.usatoday.com/story/sports/ncaaf/acc/2013/10/09/georgia-agent-terry-watson-arrested-in-north-carolina-agents-probe/2953075/> [https://perma.cc/66V6-C2KH] (discussing benefits Watson provided to Austin).

198. See *id.* (discussing benefits Watson provided to Little).

199. See *id.* (discussing benefits Watson provided to Quinn).

200. See Heitner, *supra* note 196 (noting nine charges focused on Little, three charges focused on Quinn, and one charge focused on Austin).

201. See Cullen Browder, Derek Medlin & Aaron Schoonmaker, *Sports Agent Terry Watson Faces 14 Felony Counts in UNC Scandal*, WRAL SPORTS FAN (last updated Oct. 10, 2013) <http://www.wralsportsfan.com/sports-agent-connected-to-unc-scandal-charged/12976259/> (noting “individuals with little or no previous criminal record will likely be subject to probation and/or fines”).

202. See *Sports Agent Indicted in North Carolina*, *supra* note 197 (discussing civil penalties Watson could face).

place, Watson took the risk of providing student-athletes with extra benefits and was reprimanded.²⁰³ Watson's actions prove that the NCAA must incorporate greater penalties to deter agents from providing extra benefits.²⁰⁴

2. *Agent Josh Luchs*

However, the UAAA and SPARTA did not catch every violation of the rule.²⁰⁵ Josh Luchs is a former sports agent who admitted to providing benefits to more than thirty former college players.²⁰⁶ Luchs supplied athletes with money, automobiles, bail money, and various luxuries.²⁰⁷ The first player Luchs provided benefits to was Kanavis McGhee, a University of Colorado football player.²⁰⁸ Luchs provided McGhee with \$2,500 because McGhee's mother lost her job and was behind on rent.²⁰⁹ The Government and state never punished Luchs under the UAAA or SPARTA.²¹⁰ Luchs's information did not come to light until his book was published in 2010.²¹¹ If the NCAA changes its policies regarding interaction between student-athletes and agents, extra benefits violations may possibly diminish.²¹²

D. How the NCAA Can Deter Extra Benefits

Many college athletes take extra benefits, such as money and food, because they cannot afford the essentials.²¹³ In addition to the penalty structure, there are other options for the NCAA to de-

203. See *supra* notes 193–199 and accompanying text (summarizing Watson providing extra benefits to student-athletes).

204. See *supra* notes 193–202 and accompanying text (acknowledging violations by Watson).

205. See *infra* notes 206–211 and accompanying text (discussing extra benefits provided by Luchs to student-athletes).

206. See *The 'Illegal Procedure' of Paying College Athletes*, NPR (Mar. 28, 2012, 11:59 PM), <http://www.npr.org/2012/03/28/148610494/the-illegal-procedure-of-paying-college-athletes> (discussing Luchs's history of providing college athletes benefits).

207. See *id.* (discussing ways Luchs provided benefits to college athletes).

208. See *id.* (reporting Luchs first paid McGhee in 1990).

209. See *id.* (noting Luchs provided money to McGhee because he believed it would help "develop a relationship;" however, Luchs ended up not signing him).

210. See *id.* (explaining Luchs was suspended for rules infraction).

211. See *id.* (stating Luchs's book is called *Illegal Procedure*).

212. See *infra* notes 213–238 and accompanying text (laying out ways to prevent extra benefits).

213. See *The 'Illegal Procedure' of Paying College Athletes*, *supra* note 206 (noting Luchs came out with this information after he was no longer an agent).

ter student-athletes from accepting extra benefits.²¹⁴ For example, the NCAA could pay student-athletes.²¹⁵ Student-athlete compensation came to light in 2009 when Ed O'Bannon brought a case to have student-athletes paid for the use of their name, image, or likeness.²¹⁶ In *O'Bannon v. NCAA*²¹⁷ a group of current and former college football and men's basketball players brought a class action against the NCAA challenging the NCAA's restriction on compensation for student-athletes.²¹⁸ The plaintiffs claimed the NCAA rules and Bylaws were an "unreasonable restraint of trade," violating the Sherman Act.²¹⁹ The District Court ruled in favor of the plaintiffs, concluding the NCAA's rules violated the Sherman Act.²²⁰ The District Court concluded student-athletes should receive compensation, up to \$5,000, for the use of their names, images, and likeness.²²¹ The NCAA appealed the District Court's ruling to the Ninth Circuit Court of Appeals.²²² The Court of Appeals overturned the District Court's ruling, concluding the cost of attendance, not more, is compensation for use of a student-athlete's name, image, and likeness.²²³ The plaintiffs petitioned for a rehearing of the case before a larger panel of judges; however, the Court of Appeals denied the petition.²²⁴ Both the NCAA and the

214. See *infra* notes 216–238 and accompanying text (suggesting ways to prevent extra benefits).

215. See *infra* notes 216–238 and accompanying text (explaining paying student-athletes could deter extra benefits).

216. See Ben Strauss, *Catching Up with the O'Bannon Ruling, Soon to Go into Effect*, N.Y. TIMES (July 29, 2015), http://www.nytimes.com/2015/07/30/sports/catching-up-with-the-obannon-ruling-soon-to-go-into-effect.html?_r=0 (noting O'Bannon sued NCAA "for using his name and image in TV broadcasts and video games").

217. 7 F.Supp. 3d 955 (N.D. Cal. 2014), *aff'd in part, vacated in part*, 802 F.3d 1049 (9th Cir. 2015).

218. See *id.* at 962–93 (discussing class action challenging NCAA's restriction on compensating men's football and basketball players).

219. See *id.* at 963, 971 (noting NCAA "prohibits student-athletes from receiving 'financial aid based on athletics ability' that exceeds the value of a full 'grant-in-aid'"); see also 15 U.S.C. § 1 (2004) (noting Sherman Act prevents restraint on trade or commerce among states).

220. See *O'Bannon*, 7 F.Supp. at 1009 (deciding NCAA violated Sherman Act).

221. See *id.* at 1008 (acknowledging District Court placed a cap of \$5,000 on compensation to student-athletes).

222. See *O'Bannon v. NCAA*, 802 F.3d 1049, 1061 (9th Cir. 2015) (discussing NCAA's appeal of District Court ruling).

223. See *O'Bannon*, 802 F.3d at 1076–77 (determining setting compensation cap at student-athletes full cost of attendance is less restrictive means to accomplishing "NCAA's legitimate procompetitive purposes").

224. See Jon Solomon, *Judges Deny O'Bannon Petition to Rehear Appeal vs. NCAA*, CBS SPORTS (Dec. 16, 2015), <http://www.cbssports.com/collegefootball/writer/jon-solomon/25416207/judges-deny-obannon-petition-to-rehear-appeal-vs-ncaa> [<https://perma.cc/HX7V-W8RL>] (acknowledging Ninth Circuit issued order stat-

plaintiffs sought an appeal in the Supreme Court.²²⁵ Paying student-athletes could decrease the amount of extra benefits student-athletes accept because student-athletes would “have enough money to live and actually attend college.”²²⁶ For example, student-athletes could put money towards food rather than asking their coaches or agents for food, and thus not violate the NCAA By-laws.²²⁷ Student-athletes could also use this money to help their families.²²⁸ For example, if he was being paid, Tunsil could have paid his mother’s electric bill rather than asking the University of Mississippi’s assistant athletic director to do so.²²⁹ Paying athletes is one option the NCAA can prevent student-athletes from accepting extra benefits; however, the NCAA has other options.²³⁰

The NCAA also needs to address the issues of student-athletes interact with agents.²³¹ While the UAAA and SPARTA are in place,

ing “the three judges voted the same way they did on the initial appeal and no other judge requested a vote for a rehearing”).

225. See Steve Berkowitz, *NCAA Asks Supreme Court to Hear O’Bannon Antitrust Case*, USA TODAY (May 13, 2016, 8:02 PM), <http://www.usatoday.com/story/sports/college/2016/05/13/ncaa-asks-supreme-court-hear-obannon-antitrust-case/84341682/> [https://perma.cc/JMV6-EHCR] (noting Supreme Court has ability to deny hearing appeal).

226. Reggie Southall, *Shouts From the Stands: Why NCAA Athletes Should be Paid*, SWIM SWAM (May 7, 2015), <https://swimswam.com/shouts-from-the-stands-why-ncaa-should-be-paid/> [https://perma.cc/DD79-TERY] (declaring students would be “more financially stable and happy”); see also Ikeem Boyd, *NCAA’s Role in College Athletics, Stand on Paying Athletes, and Recent Push for a Union*, WRITING WORKSHOPS (Apr. 26, 2014), <https://writingworkshops14.wordpress.com/2014/04/26/ncaas-role-in-college-athletics-stand-on-paying-athletes-and-recent-push-for-a-union/> [https://perma.cc/8QBX-EF4R] (discussing ways NCAA can prevent student-athletes from accepting extra benefits).

227. See Ganguli, *supra* note 112 (acknowledging Foster accepted food from his coach because he could not afford to buy any, a violation of NCAA Bylaws).

228. See Schlabach, *supra* note 171 (acknowledging Tunsil asked for money for his mother’s electric bill); see also *The ‘Illegal Procedure’ of Paying College Athletes*, *supra* note 206 (acknowledging McGhee accepted money to pay for his mother’s rent).

229. See Schlabach, *supra* note 171 (reporting Tunsil took money from assistant athletic director John Miller).

230. See *infra* notes 231–238 and accompanying (discussing how monitoring student-athlete and agent interactions could prevent extra benefits).

231. See Teddy Mitrosilis, *College Football Rules Violations: NCAA Can Help Prevent Player-Agent Misconduct*, BLEACHER REPORT (Sept. 15, 2010), <http://bleacherreport.com/articles/463410-ncaa-and-college-football-how-ncaa-can-help-prevent-player-agent-misconduct> [https://perma.cc/YD7Z-R7YE] (discussing how UAAA attempts to regulate agents but NCAA can do more); see also Robert Gagliardi, *Can the NCAA Realistically Stop Agents?*, LARAMIE BOOMERANG (July 22, 2010, 12:00 AM), http://www.laramieboomerang.com/sports/article_061bebd0-993a-5821-9830-6e9f4715edca.html [https://perma.cc/L9HA-LA4G] (explaining how working with agents could benefit NCAA).

these laws are not always effective.²³² Instead of banning agents, the NCAA should find a way to work with them on its own terms.²³³ The NCAA may not be able to control “what agents do, but it may be able to control how players interact with them.”²³⁴ The NCAA could create a department that controls communication between players and agents by having agents sign up through the department to meet with a player.²³⁵ During meetings, the NCAA can mandate players “to keep a log of conversations they have with agents.”²³⁶ In addition to the penalty structure, UAAA, and SPARTA, working with agents would just add another layer to preventing extra benefits.²³⁷ This additional protection could prevent agents from sneaking around to speak to student-athletes.²³⁸

IV. CONCLUSION

The NCAA has been unsuccessful in its attempts to prevent extra benefits and protect the integrity of the NCAA.²³⁹ Extra benefits are regulated through NCAA rules and state and federal laws.²⁴⁰ Throughout the NCAA’s history, it has tried different penalty structures to prevent extra benefits.²⁴¹ The two-tiered penalty structure became ineffective after multiple student-athletes accepted extra benefits.²⁴² After shifting to the four-tiered penalty structure, the

232. See *supra* notes 192–199, 206–210 and accompanying text (recognizing agents Watson and Luchs both provided extra benefits to student-athletes).

233. See Gagliardi, *supra* note 231 (discussing how working with agents “would be more advantageous” to the NCAA).

234. Mitrosilis, *supra* note 231 (acknowledging agents are competing in business world and if there is “a loophole,” they will “exploit it”).

235. See *id.* (discussing how department will facilitate interactions).

236. *Id.* (explaining how NCAA can keep track of athlete-agent conversations).

237. See *id.* (noting NCAA would be able to regulate interactions).

238. See *id.* (indicating NCAA could have agent sign up with department then have student-athlete log conversation).

239. See NCAA MANUAL, *supra* note 4, at Bylaw 12.01.1 (stating in order to keep college athletics separate from professional sports, only student-athletes with amateurism status are eligible to play in college athletics); see also *id.* at Bylaws 12, 16 (discussing how student-athletes lose eligibility by accepting extra benefits).

240. See *id.* at *Organization of the NCAA Manual* (stating NCAA Constitution and Bylaws govern NCAA); see generally Martin, *supra* note 175 (discussing UAAA and SPARTA).

241. See Note re: *New NCAA Division I Enforcement Model*, *supra* note 66 (discussing two-tiered penalty structure); Brown, *supra* note 16 (summarizing four-tiered penalty structure).

242. See *supra* notes 72–77, 85–91, 100–103, 112–115 and accompanying text (noting student-athletes at University of Wisconsin, University of Miami, USC, and University of Tennessee accepted extra benefits).

penalty structure still proved ineffective.²⁴³ Student-athletes realized they could get away with accepting extra benefits and not receive harsh punishment, causing the penalty structures to become ineffective.²⁴⁴ Further, state laws and federal laws prevented agents from providing student-athletes extra benefits.²⁴⁵ These laws were not effective considering the NCAA, the government, and the states did not discover agents communicating with student-athletes.²⁴⁶

Despite the NCAA's best attempts, more can be done to prevent extra benefits.²⁴⁷ In order to resolve the foreseeable violations, the NCAA will ultimately need to make a change.²⁴⁸ One possible change would be to pay athletes, allowing athletes to purchase things they would otherwise receive in violation of the NCAA Bylaws.²⁴⁹ A second possible change would be working with agents and student-athletes as a way to closely monitor their interac-

243. See Brown, *supra* note 16 (acknowledging change to four-tiered structure in 2013); see also *supra* notes 141–174 and accompanying text (noting student-athletes at Syracuse University, Wichita State University, and University of Mississippi accepted extra benefits)

244. See *supra* notes 72–77, 85–91, 100–103, 112–115 and accompanying text (acknowledging student-athletes at University of Wisconsin, University of Miami, USC, and University of Tennessee accepted extra benefits despite penalty structure and past sanctions); see also *supra* notes 112–115 and accompanying text (discussing how Arian Foster did not get caught accepting extra benefits); see also *supra* notes 141–174 and accompanying text (noting student-athletes at Syracuse University, Wichita State University, and University of Mississippi accepted extra benefits despite penalty structure and past sanctions); Schlabach, *supra* note 171 (acknowledging NCAA did not discover all of Tunsil's extra benefits).

245. See Martin, *supra* note 175, at 211–13 (noting UAAA and SPARTA were enacted to prevent agents from “trick[ing] or brib[ing] student-athletes into signing an agency contract”).

246. See *Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved*, *supra* note 179 (acknowledging Watson provided three student-athletes with extra benefits); see also *The ‘Illegal Procedure’ of Paying College Athletes*, *supra* note 206 (noting Luchs provided extra benefits to thirty student-athletes and was never caught or punished).

247. See *supra* notes 213–238 and accompanying text (acknowledging NCAA can pay student-athletes or regulate agent and student-athlete contact).

248. See *supra* notes 72–110, 141–172, 192–212 and accompanying text (discussing extra benefit violations despite penalty structure and past sanctions)

249. See Southall, *supra* note 226 (explaining how paying student-athletes may prevent them from taking extra benefits).

tions.²⁵⁰ It is clear these changes could benefit the NCAA in preventing extra benefits.²⁵¹

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250. See Gagliardi, *supra* note 231 (discussing how the NCAA can join forces with agents to regulate athlete-agent contact).

251. See Southall, *supra* note 226 (acknowledging by paying student-athletes they would be more financially stable); see also Mitrosilis, *supra* note 231 (discussing regulating student-athlete and agent interactions it can prevent “shady conduct”).

* J.D. Candidate, May 2017, Villanova University Charles Widger School of Law. I would like to dedicate this article to my family and friends for their endless support and encouragement throughout my academic pursuits. Specifically, I would like to dedicate this to my parents, Randy and Beth, and my sister, Bailey.