When the NCAA Strikes, Who is Called Out?

Mary Kane

Follow this and additional works at: https://via.library.depaul.edu/jslcp

Recommended Citation
Available at: https://via.library.depaul.edu/jslcp/vol7/iss2/4
WHEN THE NCAA STRIKES, WHO IS CALLED OUT?

INTRODUCTION

On September 20, 2010, Reggie Bush, a professional football player for the New Orleans Saints, broke his right fibula during a game against the San Francisco 49ers. A doctor determined that Bush’s injury would prevent him from competing for four to six weeks during the 2010–2011 National Football League (NFL) season. Some fans called the injury unfortunate; others called it karma.

In the summer of 2010, the National Collegiate Athletic Association (NCAA) penalized Bush’s alma mater, the University of Southern California (USC), after the NCAA completed a four-year investigation into NCAA violations committed by Bush. The NCAA’s investigation revealed that Bush and his family received improper benefits from a sports agent while he was competing as a student-athlete for USC. These actions violated the NCAA’s Amateurism legislation, which prohibits any student-athlete from accepting transportation or other benefits from an athlete agent while competing as a collegiate athlete. As a result, the NCAA penalized USC in 2010. The USC

8. NCAA Bylaw Article 12.3 (“Amateurism”). The prohibition of benefits also applies to the student-athletes’ family and friends. NCAA Bylaw Article 12.3.1.2 (“Benefits from Prospective Agents”). “The term ‘agent’ includes actual agents, runners (individuals who befriend student-athletes and frequently distribute impermissible benefits), and financial advisors.” National Col
penalties were among the most severe penalties the NCAA had handed down since 2002. However, by June of 2010 (just months before the NCAA completed its investigation and handed down sanctions to USC), Bush had already secured a position in the NFL with the New Orleans Saints and therefore hardly felt the repercussions of his actions.

The NCAA enforcement program’s mission in imposing sanctions is to “eliminate violations of NCAA rules and impose appropriate penalties if violations occur.” The NCAA states that it is committed to fairness of sanction procedures and timely and equitable resolutions. In addition, the NCAA declares that an important concern that is considered when it imposes violation penalties on universities is the wish to provide fairness to uninvolved student-athletes, coaches, administrators, competitors, and other institutions and to compensate for any unfair competitive advantage gained by the violation. However, by the time the NCAA discovers an Amateurism violation, the NCAA possess no ability to sanction the individual that violated the Bylaws because that individual is no longer a student-athlete.

It is necessary to punish the individuals that violate the NCAA’s Amateurism Bylaws. However, if the NCAA sanctions are imposed on a university after the university’s student-athlete found in violation of the Bylaws is no longer competing in collegiate athletics, the sanc-
tions are inconsistent with the NCAA enforcement program’s mission.\textsuperscript{18} If the violating individual is a student-athlete who is no longer competing in collegiate athletics, the NCAA possesses no ability to sanction that individual.\textsuperscript{19}

This Comment explores NCAA sanctions for Amateurism violations and analyzes who is actually affected by the imposed penalties.\textsuperscript{20} Part II of this Comment outlines the history of the NCAA and the NCAA’s Bylaws.\textsuperscript{21} Part II also examines three major NCAA Amateurism violations investigated by the NCAA.\textsuperscript{22} Part III explores the sanctions imposed on the violating individuals and their universities.\textsuperscript{23} Part III argues that violations imposed on universities after the individual responsible for violating the Bylaws has left the university are inconsistent with the NCAA’s purpose in imposing regulations.\textsuperscript{24} The argument proceeds by examining who is actually affected by the sanctions at the university when the student-athlete that incurred violations has left the university.\textsuperscript{25} Finally, Part IV examines other sanctions available to the NCAA that would more adequately fulfill the NCAA’s mission in imposing sanctions and curb Amateurism violations.\textsuperscript{26}

II. BACKGROUND

A. The National Collegiate Athletic Association

In 1906, thirteen collegiate universities founded a private association, the Intercollegiate Athletic Association of the United States (IAAUS), to initiate changes in collegiate football.\textsuperscript{27} The universities had major concerns about dangerous practices occurring on the col-

\textsuperscript{18} See id.; Maisel, supra note 10.

\textsuperscript{19} The duty of the Committee on Infractions includes the responsibility to “[i]mpose an appropriate penalty or show-cause requirement on a member found to be involved in a major violation.” NCAA Bylaw Article 19.1.3 (“Duties of Committee”) (emphasis added).

\textsuperscript{20} See infra notes 27–253 and accompanying text.

\textsuperscript{21} See infra notes 27–139 and accompanying text.

\textsuperscript{22} See infra notes 141–177 and accompanying text.

\textsuperscript{23} See infra notes 229–252 and accompanying text.

\textsuperscript{24} See infra notes 178–228 and accompanying text.

\textsuperscript{25} See infra notes 140–228 and accompanying text.

\textsuperscript{26} See infra notes 254–265 and accompanying text.

\textsuperscript{27} “The NCAA was founded in 1906 to protect young people from the dangerous and exploitive athletics practices of the time. The rugged nature of early-day football, typified by mass formations and gang tackling, resulted in numerous injuries and deaths and prompted many college and universities to discontinue the sport.” National Collegiate Athletic Association About the NCAA, http://www.ncaa.org (follow “About the NCAA” hyperlink; then follow “Who We Are” hyperlink; then follow “About the NCAA history” hyperlink) (last visited Nov. 2, 2010) (hereinafter “NCAA History”).
legiate football fields and intended to create an association that would regulate the rules and safety in the sport. In 1910, the IAAUS changed its name to the National Collegiate Athletic Association. Today, the NCAA remains a private membership association comprised of four-year, post high-school colleges, universities, and other educational institutions. Although the NCAA was formed to regulate intercollegiate football, the purpose of the association has greatly expanded. Today, the basic purpose of the NCAA is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports." The NCAA derives its authority from its membership institutions. Representatives from these institutions create the NCAA's rules and policies.

B. The NCAA Bylaws

From the time since the NCAA was formed, it has served as the rule making body for intercollegiate athletics. The quantity of rules and governed categories has immensely grown and expanded since 1906. The NCAA's legislation is contained in the NCAA "Constitu-

29. Id.
30. Id.
31. NCAA Bylaw Article 4.02.1 ("Association"). See NCAA Members By Division, (last visited Nov. 1, 2010), http://web1.ncaac.org/onlineDir/exec/divisionListing (compiling a complete list of "membership institutions").
32. Crowley, supra note 28, at 10.
33. See National Collegiate Athletic Association About the NCAA, http://www.ncaa.org (follow "About the NCAA" hyperlink; then follow "Who We Are" hyperlink; then follow "Core Values" hyperlink) (last visited Oct. 2, 2010) (discussing the values and categories covered by the NCAA's concern and commitment).
34. NCAA Bylaw Article 1.3.1 ("Basic Purpose").
36. National Collegiate Athletic Association About the NCAA, http://www.ncaa.org (follow "About the NCAA" hyperlink; then follow "How we work" hyperlink; then follow "Rules and Committees" hyperlink) (last visited Oct. 2, 2010) ("Representatives from those institutions and conferences create NCAA rules and policies.") An educational institution becomes a membership institution if it applies for membership, meets the eligibility requirements, and is elected by the NCAA to become a member. See NCAA Bylaw Article 3 ("NCAA Membership").
37. See NCAA History, supra note 27.
38. See, e.g, Crowley, supra note 28 at 30 (The "Sanity Code" adopted in 1948 to establish guidelines for recruiting and financial aid.). See also, NCAA History, supra note 27 (The NCAA created the National Basketball Championship in 1939, NCAA’s 75th Convention adopted an
The legislation governs the conduct of the intercollegiate athletics programs of its member institutions and is adopted by the institutions at an annual or special NCAA Convention. The current NCAA Constitution of Operating and Administrative Bylaws cover an infinite number of substantive areas within intercollegiate athletics, including competition rules, scheduling, admission requirements, and academic matters. Because the NCAA Constitution governs all membership institutions, the NCAA acts as a central legislator and regulator for the collegiate athletic programs of all membership institutions. When a membership institution fails to comply with any NCAA rule contained in the legislation, the NCAA applies enforcement procedures on the institution.

---


40. NCAA Bylaw Article 1.3.2 (“Obligations of Member Institutions”); id. Article 2.1.1 (“Responsibility for Control”).

41. See NCAA Bylaw Article 5.1.1.1 (“Annual Convention”) (describing specifics on the “annual convention”).

42. See NCAA Bylaw Article 5.1.1.2 (“Special Convention”) (describing specifics on “special convention”).

43. NCAA Constitution Section III (“Voting Requirements For Manual”).


45. NCAA Bylaw Article 17.33 (“Playing Rules”).

46. See NCAA Bylaw Figure 17–1 (“Maximum Numbers of Contests and Dates of Competition for Each Sport”); id. Figure 17–2 (“First Practice, Contest or Date of Competition and End of Season Dates”).

47. See NCAA Bylaw Article 14 (“Eligibility: Academic and General Requirements”).

48. See id.; see also NCAA Bylaw Figure 14–1 (“Initial Eligibility”).

49. NCAA Bylaw Article 1.3.2 (“Obligations of Member Institutions”).

50. Potuto, supra note 35, at 259.

51. NCAA Bylaws state the following:

Legislation governing the conduct of intercollegiate athletic programs of member institutions shall apply to basic athletics issues such as admissions, financial aid, eligibility and recruiting. Member institutions shall be obligated to apply and enforce this legislation, and the enforcement procedures of the Association shall be applied to an institution when it fails to fulfill this obligation.

NCAA Bylaw Article 1.3.2 (“Obligations of Member Institutions”).
Because of the enormous number of membership institutions,\textsuperscript{52} issues,\textsuperscript{53} and areas to regulate,\textsuperscript{54} the NCAA is divided into five separate divisions.\textsuperscript{55} The NCAA has an Executive Committee, as well as Association-Wide Committees, Board of Directors, President’s Council, and Management Council.\textsuperscript{56} The Executive Committee oversees NCAA-wide issues and ensures each division is operating consistent with the Constitution.\textsuperscript{57}

Each division also empowers a body of institutional presidents and chancellors.\textsuperscript{58} Further, each division creates cabinets, committees, and counsels\textsuperscript{59} that enable experts to evaluate a range of issues and functions.\textsuperscript{60} The NCAA committees, counsels, and cabinets are comprised of faculty, administrators from member institutions, and administrators from athletics conferences.\textsuperscript{61} The NCAA cabinets oversee areas of NCAA responsibility such as championships, amateurism, recruiting issues, and academic standards.\textsuperscript{62} Several committees have responsibilities related to the investigation and resolution of NCAA violations.\textsuperscript{63}

\textbf{C. Ability to Sanction}

This section examines the history of the NCAA’s sanction ability and explores the NCAA’s present sanction authority. Although the NCAA has always been a rule-making body that bound membership

\begin{itemize}
\item \textsuperscript{52} See NCAA Members By Division, (last visited Jan. 15, 2011), http://web1.ncaa.org/onlineDir/exec/divisionListing (compiling a complete list of “membership institutions”).
\item \textsuperscript{54} See NCAA Bylaw Article 1-33.
\item \textsuperscript{55} The membership institutions are divided into three membership categories. The collegiate university members are further divided into three divisions (I, II, and III) based on criteria laid out for each division. See NCAA Bylaw Article 20 (“Division Membership”).
\item \textsuperscript{56} For a diagram of the NCAA governing structure, See NCAA Bylaw Figure 4-2 (“Association Governance Structure”).
\item \textsuperscript{57} The “Executive Committee” consists of 20 members including a president and 19 voting members with representatives from Division I, II, and III. See NCAA Bylaw Article 4.1.1 (“Executive Committee: Composition”).
\item \textsuperscript{58} These bodies set forth policies, rules, and regulations for operating its division. See NCAA Bylaw Article 4 (“Organization”).
\item \textsuperscript{59} NCAA Bylaw Article 4.9 (“Committees/Cabinets”). See NCAA Bylaw Figure 4–1 (“Division I Governance Structure”); \textsuperscript{id.} Figure 4–2 (“Association Governance Structure”).
\item \textsuperscript{60} National Collegiate Athletic Association About the NCAA, http://www.ncaa.org (follow “About the NCAA” hyperlink; then follow “How We Work” hyperlink; then follow “Rules and Committees” hyperlink) (last visited Oct. 15, 2010). See NCAA Bylaw Article 21 (“Committees”) (compiling a complete list of cabinets and committees and their areas of responsibility).
\item \textsuperscript{61} NCAA staff serves as liaisons, not members. Potuto, supra note 35, at 260 n.6.
\item \textsuperscript{62} See NCAA Bylaw Figure 4–1 (“Division I Governance Structure”).
\item \textsuperscript{63} Potuto, supra note 35, at 282.
\end{itemize}
institutions to its rules, prior to 1953, the NCAA sanction committee’s power was limited to expulsion of any violating institution. In 1953, the NCAA’s membership institutions gave the NCAA its first enforcement power. This enforcement power included the ability to both impose sanctions without approval from a majority of delegates and to impose a wide range of sanctions, no longer limited to expulsion. In addition, the NCAA was given the capability to enforce “the death penalty,” which requires a membership institution to drop the offending sport for a specified number of seasons. Today, the NCAA Bylaws explicitly give the NCAA the role as enforcer in collegiate athletics.

Presently, among the NCAA committees responsible for the investigation and resolution of NCAA violations is the Committee on Infractions, the Infractions Appeals Committee, and the Legislative Review and Interpretations Committee. The Committee on Infractions is responsible for determining whether rule infractions occurred, and, if so, for administrating the NCAA enforcement program. The responsibility of the Infractions Committee is to:

[M]ake findings and impose penalties that reflect the magnitude of the violations in a particular infractions case as well as the degree of

---

64. See NCAA History, supra note 27.
65. Until the 1950's, the NCAA's ability to sanction schools was limited to recommending the violating institution for expulsion. After the recommendation was made, it was only enforced if two-thirds majority of the NCAA delegates voted for expulsion. In 1951, the ability to expel was rendered void. See RANDY R GRANT & JOHN LEADLEY & ZENON ZYGMONT, THE ECONOMICS OF INTERCOLLEGIATE SPORTS 32 (World Scientific Publishing Co. 2008).
66. Id. at 33.
67. Id.
68. Id.
69. “The ‘death penalty’ is a phrase used by media to describe the most serious NCAA penalties possible. It is not a formal NCAA term. It applies only to repeat violators and can include eliminating the involved sport for at least one year, the elimination of athletics aid in that sport for two years and the school relinquishing its Association voting privileges for a four-year period.” National Collegiate Athletic Association Key Issues, http://www.ncaa.org (follow “Key Issues” hyperlink; then follow “Rules and Enforcement” hyperlink; then follow “Glossary of Terms” hyperlink) (last visited Oct. 15, 2010).
70. See Potuto, supra note 35, at 259.
71. See supra notes 58–63 and accompanying text.
72. NCAA Bylaw Article 19.1 (“Committee On Infractions”).
73. NCAA Bylaw Article 19.2.1 (“Infractions Appeals Committee”).
74. NCAA Bylaw Article 21.7.8.2 (“Legislative Review/Interpretations Committee”).
75. “The Divisions I, II and III Committees on Infractions are composed of primarily of individuals from NCAA member institutions. The committees are responsible for determining whether rules infractions occurred and, if so, what penalties should be applied.” See National Collegiate Athletic Association About the NCAA, http://www.ncaa.org (follow “About the NCAA” hyperlink; then follow “How We Work” hyperlink; then follow “Infractions” hyperlink) (last visited Oct. 15, 2010). See also, NCAA Bylaw Article 19.1.3 (“Duties of Committee”).
institutional culpability. [The Infraction Committee is also responsible] ... to pay heed to the interests of all member institutions not before it by ... imposing penalties that more than offset any competitive or other advantage gained by rules-violative conduct.\textsuperscript{76}

Each NCAA division has its own Infractions Appeals Committee, whose primary purpose is to hear any appeal by a penalized university and act on the findings of major violations by the Committee on Infractions.\textsuperscript{77} The Legislative Review/Interpretations Committee is responsible for determining interpretations of all NCAA legislation and reviewing interpretations issued by the membership services staff.\textsuperscript{78}

\textbf{D. NCAA Amateurism: Bylaw Article 12}

In the current collegiate athlete industry, the terms “amateurism” and “ineligible athlete” are common vocabulary in conversation.\textsuperscript{79} The NCAA proclaims that a membership institution’s educational program and student-athlete’s experience with the program is the superior purpose for allowing intercollegiate athletics.\textsuperscript{80} The NCAA intends for a membership institution’s athletic program to be an integral part of the institution’s educational program. The student-athletes are intended to be an integral part of the institution’s student body.\textsuperscript{81} To fulfill this goal, the NCAA retains a line of demarcation between intercollegiate athletics and professional sports.\textsuperscript{82} Without this line, the educational program would no longer be the superior purpose because the athletics would have taken precedent.

To protect this line of demarcation, the NCAA rules only allow student-athletes with amateur statuses to be eligible for intercollegiate

\textsuperscript{76} Potuto, \textit{supra} note 35, at 300.

\textsuperscript{77} See National Collegiate Athletic Association Key Issues, http://www.ncaa.org (follow “Key Issues” hyperlink; then follow “Rules Enforcement” hyperlink; then follow “Glossary of Terms” hyperlink) (last visited Oct. 15, 2010).

\textsuperscript{78} NCAA Bylaw Article 21.7.8.2.2 (“Duties”).


\textsuperscript{81} See NCAA Bylaw Article 12.01.2 (“Clear Line of Demarcation”).

\textsuperscript{82} “A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.” NCAA Bylaw Article 1.3.1 (“Basic Purpose”).
WHEN THE NCAA STRIKES

2011

athletics participation. To maintain an amateur status, the student-athlete must follow the eligibility requirements laid out in the Article 12 Bylaws. Article 12 states that an individual loses his or her amateur status, and therefore is ineligible for intercollegiate competition if/when the individual:

(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; (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 skill or participation, except as permitted by NCAA rules and regulations; (e) competes on any professional athletics team, even if no pay or remuneration for expenses was received; (f) after initial full-time collegiate enrollment, enters into a professional draft; or (g) enters into an agreement with an agent.

Situations where a sports agent and a student-athlete are in communication threatens the line of demarcation and accordingly, threatens the student-athlete's amateur status. Article 12 was enacted to deal with this problem and deems an individual ineligible for intercollegiate competition if he agrees verbally, or in writing, to be represented by an athlete agent in the present or in the future for the purpose of marketing the individual's athletic ability or reputation in that sport. In addition, the individual may not accept transportation or other benefits from an agent or any person who represents any individual in the marketing of his athletic ability. This prohibition also applies to the individual's relatives and friends.

83. NCAA Bylaw Article 12.01.1 ("Eligibility for Intercollegiate Athletics").
84. See NCAA Bylaw Article 12 ("Amateurism"). Although the NCAA draws a difference between an "individual" and a "student-athlete," amateur status may be lost or compromised as a result of activities prior to enrollment in college. NCAA Bylaw Article 12.01.3 ("Individual vs. Student-Athlete"). See id. for differences in the meaning of "individual" and "student-athlete."
85. NCAA Bylaw Article 12 ("Amateur status"). Prohibited forms of "payment" include, but are not limited to, salary, gratuity compensation, bonuses, game receipts, expenses, awards, benefits, payment based on performance, preferential treatment, and prizes for participation in an institution's promotional activity. See NCAA Bylaw Article 12.1.2.1 ("Prohibited Forms of Pay").
86. NCAA Bylaw Article 12.3.1 ("General Rule").
87. NCAA Bylaw Article 12.3.1.2 ("Benefits from Prospective Agents"). "The student-athlete shall not receive any extra benefit. The term 'extra benefit' refers to any special arrangement by an institutional employee or representative of the institution's athletics interests to provide the student-athlete or his or her relatives or friends with a benefit not expressly authorized by NCAA legislation." NCAA Bylaw Article 16.11.2 ("General Rule").
88. NCAA Bylaw Article 12.3.1.2 ("Benefits from Prospective Agents").
E. Responsibility of Membership Institutions

Although the NCAA's regulation of Amateurism deals primarily with the student-athlete, membership institutions are also responsible to assist in maintaining the line of demarcation. The NCAA Bylaws state that each membership institution has a responsibility to control its intercollegiate athletic program in compliance with all applicable NCAA rules and regulations. The institution is required to monitor its programs to ensure it is in compliance, and to identify and report to the NCAA instances where compliance has not been achieved. In a situation where compliance has not been achieved, the institution is required to fully cooperate with the NCAA in its investigation and take appropriate corrective actions for remedying the fault.

The NCAA further attempts to curb violating conduct by holding membership institutions accountable for any violating actions by the institution's representatives, which occur within its institution, and the institution knew or should have known occurred there. Each membership institution is responsible for the conduct of its intercollegiate athletic program, which includes responsibility for the actions of all members of the institution's staff, student-athletes, and other individuals and groups representing the institution's athletics. In other words, the NCAA Bylaws require each institution to "exert proper institutional control" over these parties. In addition, membership

---

89. "It is the responsibility of each member institution to establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience." NCAA Bylaw Article 2.2.1 ("Overall Educational Experience").

90. NCAA Bylaw Article 2.1.1 ("Responsibility for Control"). The institution's responsibility for the conduct of its intercollegiate athletics program includes the "responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution." NCAA Bylaw Article 2.1.2 ("Scope of Responsibility").

91. NCAA Bylaw Article 2.8.1 ("Responsibility of Institution").

92. Id.

93. NCAA Bylaw Article 6.4.2 ("Representatives of Athletics Interests"). An institution's "responsibility" for the conduct of its intercollegiate athletics program shall include responsibility for the acts of an independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization when a member of the institution's executive or athletics administration, or an athletics department staff member, has knowledge that such agency, corporate entity or other organization is promoting the institution's intercollegiate athletics program. NCAA Bylaw Article 6.4.1 ("Independent Agencies or Organizations").

94. NCAA Bylaw Article 2.1 ("Responsibility for Control"). See also, NCAA Bylaw Article 2.1.1 ("Scope of Responsibility") (stating that the institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution).

95. NCAA Bylaw Article 6.01.1 ("Institutional Control").
institutions are also responsible for the actions of outside entities that the institution knows or should know promotes or participates in the institution's intercollegiate athletic program.96

If the NCAA determines an individual that represents the institution's athletic program has violated the NCAA Bylaws, the institution can be found to have failed to "exert proper institutional control."97 When the NCAA Committee on Infractions receives indication of a possible violation of institutional control, the committee determines if the institution violated its responsibilities by considering what activities the institution knew about and when it became aware of these activities.98 When an institution's coach or staff member learns of a possible violation, they must fulfill their obligation of institutional control to avoid possible violation.99 To fulfill the obligation, the institution's representative must proceed in three stages.100 First, they must assess the credibility of the allegations, and if they think a violation may have occurred, they must turn the matter over to the institution's compliance department.101 Second, the institution's compliance officers must conduct a similar assessment, and if they have reason to believe a violation may have occurred, they must begin an investigation.102 Finally, if the compliance officer's investigation reveals that a rule infraction may have occurred, the institution must inform the NCAA.103 If the institution does not comply with these requirements, the NCAA will find that the institution failed to "exert proper institutional control."104

F. Discovery of NCAA Amateurism Violations

Although the NCAA has had problems with Amateurism for years,105 the NCAA was apprehensive to punish membership institu-

96. NCAA Bylaw Article 6.4 ("Responsibility of Actions from Outside Entities"). See NCAA Bylaw Article 6.4.2 ("representatives of Athletics Interests") (discussing the criteria for outside institutions that the member institution knew or should have known was acting as a representative for that school).
98. Id.
99. Id.
100. Id.
101. Id.
102. Id.
103. Id.
104. See NCAA Bylaw Article 32.2 ("Preliminary review of Information").
105. For some time, sports agents and other third-parties have infiltrated the NCAA's enterprise, budding up with assistant coaches, and making a joke out of the NCAA's "amateurism" regulations. See Stewart Mandel, With Harsh USC Penalties, NCAA Sends Warning to All Elite
tions for their alleged violations evident by the lack of Amateurism sanctions imposed. However, in the last twenty years, the NCAA has put its foot down against multiple institutions' football programs' Article 12 violations.

1. Auburn University

In 1991, Erik Ramsey, a defensive back at Auburn University (Auburn), admitted to an Alabama newspaper that he had received improper benefits, including financial benefits and payments for his performance on the football field from an Auburn booster, and the university's athletic director and head football coach, Pat Dye, while competing for the university. In a separate interview, Dye admitted that he was aware Ramsey had received improper benefits while at Auburn. NCAA Bylaw Article 12.1.2.1.5 explicitly prohibits any payment conditioned on the student-athlete's performance.

In 1993, after an extensive investigation, the NCAA released a report that announced that Ramsey and Auburn violated NCAA Amateurism regulations beginning in 1991. Because Dye was a representative of Auburn athletics and admitted he was aware of Ramsey's violations, the NCAA found that the university had failed exert proper institutional control. The NCAA also found Auburn committed two other NCAA violations: unethical conduct and er-
roneous certification of compliance with NCAA regulations.\textsuperscript{115} Although the school was heavily sanctioned in 1993 at the completion of the investigation,\textsuperscript{116} Ramsey graduated from Auburn in 1992,\textsuperscript{117} before the NCAA investigation was complete.\textsuperscript{118} The Kansas City Chiefs selected Ramsey in the 1991 NFL draft.\textsuperscript{119}

2. University of Alabama

In 1995, at Auburn's rival institution, the University of Alabama (Alabama), the NCAA completed an investigation of the acts committed by an Alabama cornerback, Antonia Langham.\textsuperscript{120} In its investigation, the NCAA determined that Langham signed with a sports agent and applied for the NFL draft\textsuperscript{121} in 1993, while he was compet-

\textsuperscript{115} See Potuto, supra note 35, at 290 n. 147.
\textsuperscript{116} See infra notes 144–152 and accompanying text.
\textsuperscript{117} See Reed, supra note 108.
\textsuperscript{120} Maisel, supra note 17.
\textsuperscript{121} There are exceptions to the general NCAA rule, that an individual loses his or her amateur status if, after initial full-time collegiate enrollment, enters into a professional draft. See NCAA Bylaw Article 12 (“Amateurism”). In football, without affecting his amateur status, an enrolled student-athlete (as opposed to a prospective student-athlete) may enter the NFL draft one time during his collegiate career without jeopardizing eligibility in that sport, provided the student-athlete is not drafted by any team in that league and the student-athlete declares his intention to resume intercollegiate participation within 72-hours following the National Football League draft declaration date. NCAA Bylaw Article 12.2.4.2.3 (“Exception—Football”).
ing as a student-athlete for Alabama. The report announced that after Langham signed with the agent and applied for the NFL draft, he informed Alabama's head football coach, Gene Stallings, about the draft but told Stallings no agent was involved. The NCAA decided that Stallings was responsible to pursue the matter more diligently and when he failed to do so, he violated his responsibility to exert proper institutional control. The NCAA determined that Langham lost his amateur status starting at the time of the acts and became ineligible for intercollegiate competition at that time. The NCAA also concluded that Stallings's actions constituted "lack of institutional control." The NCAA imposed sanctions with Alabama's football team in 1995. However, Langham entered the NFL draft one year earlier and was selected in the first round by the Cleveland Browns.

3. University of Southern California

Most significantly, in June of 2010, the NCAA completed a four-year investigation into the USC's athletic program. The NCAA's report stated that, among other USC sports' violations, USC's starting running back from 2003 to 2005, Reggie Bush, accepted improper benefits in violation of Article 12. The report determined that Bush and his family had accepted more than $100,000 from "marketing agents" in the form of gifts, merchandise, trips, cash, an automobile, housing, hotel lodging, and transportation starting in December 2004, while Bush was competing as a student-athlete for USC. The NCAA investigation determined that Bush lost his amateur status, and, therefore, became ineligible for intercollegiate competition when the improper benefits began by at least December of 2004.

123. Id.
124. Id.
125. See id.; Maisel, supra note 10.
126. See NCAA Bylaw Article 6.01.1 ("Institutional Control").
127. See infra notes 152–158 and accompanying text.
130. See NCAA USC Report, supra note 4, at 1.
131. Id. at 4.
133. See NCAA USC Report, supra note 4, at 4–7.
134. See NCAA Bylaw Article 12.1.2 ("Amateur Status.").
WHEN THE NCA A STRIKES

The NCAA also determined that USC violated the NCAA’s Bylaws because it failed to exert proper institutional control over Bush.136 The investigation found that one of USC’s assistant football coaches, Todd McNair, had been in contact with the sports agent and knew, or should have known, that Bush and the agency partners were engaged in violations that negatively affected Bush’s Amateurism status.137 Furthermore, McNair provided false and misleading information to the NCAA enforcement staff concerning his knowledge of agency partner activity and signed a document certifying that he had no knowledge of NCAA violations.138 In 2006, before the NCAA issued any report regarding Bush’s conduct at USC, Bush entered the NFL and signed a six-year, twenty-six million contract with the New Orleans Saints.139

G. Who is Sanctioned?

By the time the NCAA discovers an Amateurism violation, the NCAA often possesses no ability to sanction the individual that violated the Bylaws because that individual is no longer a student-athlete.140 Accordingly, the violations imposed on universities affect the wrong parties.141 When wrong parties or innocent parties are affected by the sanctions, the sanctions are inconsistent with the NCAA’s purpose of imposing regulations.142

I. Sanctions Imposed on Violating Institutions

a. Auburn University

As explained above, in 1993, the NCAA heavily sanctioned Auburn’s football program for Ramsey and Dye’s actions.143 As a result of Auburn's failure to exert proper institutional control, the NCAA handed down some of its most severe sanctions to that point.144 The sanctions included a two-year postseason bowl ban, a one-year televi-
sion ban, and the loss of multiple football scholarships spread over a four year period.145 The sanctions began in 1993.146 The NCAA also forced Dye out from all Auburn.147 Meanwhile, Ramsey graduated from Auburn in 1991148 and the Kansas City Chiefs drafted him in the 1991 NFL draft.149 Accordingly, by the time the NCAA sanctioned Auburn, Ramsey was already finished with his collegiate football career and was making an NFL salary.150 Because the NCAA no longer possessed authority over Ramsey,151 the NCAA never sanctioned him; therefore, Ramsey never felt the consequences of his actions.152

b. University of Alabama

In 1995, following the NCAA’s investigation into Langham’s acts, the NCAA imposed multiple sanctions on Alabama’s football program.153 The NCAA Committee on Infractions vacated “twenty-five or so” of Alabama’s football scholarships and put the university’s athletic program on a three-year probation.154 The NCAA also banned the football team from all bowl games following its 1995 season and forfeited the team’s first eleven games from its 1993 season.155 Although Alabama appealed the sanctions to the Infractions Appeals Committee,156 the NCAA only reduced the sanctions to seventeen va-
cated scholarships and a two-year probation but upheld the bowl ban and forfeited record. Because Langham left Alabama in 1994 and was drafted by the Cleveland Browns, he did not endure the NCAA sanctions.

**c. University of Southern California**

In the 2010 case, the NCAA determined the university was a repeat violator since USC had also violated NCAA Bylaws in 2001. As a result of its 2010 investigation, the NCAA issued multiple sanctions on USC's football program, which included a two-year postseason bowl ban from 2010–2012, a four-year probation, and a loss of thirty football scholarships from 2011–2013. The NCAA also vacated the 2004–2005 USC football team's fourteen victories from December 2004 through the 2005 season, including a Bowl Championship Series (BCS) title game, and potentially a national championship. This sanction included a requirement that USC reconfigure the head coach, Pete Carroll's, records to reflect the vacated results. In addition, all 2004–2005 USC football records had to be reconfigured in all publications to reflect the forfeited record. This included USC's media and electronic guides, recruiting materials, and archives. Similarly, the NCAA required USC to remove any reference to the vacated results, including the bowl wins and championships from USC's stationary, banners and any other forums where

give written notice of appeal of the committee's findings of major violations, the penalty, or both to the Infractions Appeals.

158. Alder, supra note 128.
159. See Litsky, supra note 122.
160. See NCAA Bylaw Article 19.5.2.3 (“Repeat Violators”).
161. “This was the institution's sixth major infractions case. Most recently, the institution appeared before the committee in June 2001 for a case involving the football and women's swimming programs. Accordingly, USC is considered a 'repeat violator' under NCAA Bylaw 19.5.2.3.” NCAA USC Report, supra note 4, at 3.
162. NCAA USC Report, supra note 4, at 57.
163. Id.
164. *Id.* at 57–63.
165. The NCAA determined that Bush had accepted improper benefits by December 2004. At the time the first improper benefits were accepted, Bush compromised his amateur status, and therefore, was ineligible for intercollegiate competition at that point. See *id.* at 57–58.
166. See *BCS Likely to Force USC to Vacate 2004 Title*, NBCSPORTS.COM (June 10, 2010), http://nbcspports.msnbc.com/id/37625939/ns/sports-college_football.
167. See NCAA USC Report, supra note 4, at 58.
168. *Id.*
169. *Id.*
they appear. Due to his involvement, McNair was banned from all recruiting activities for a year.

Bush conceded his Heisman Trophy on September 10, 2010, before the NCAA or the Heisman Foundation required him to do so. It was presumed that Bush would have been stripped of the Trophy if he did not relinquish it first. Aside from this, the NCAA did not sanction Bush. In fact in 2006, four years before the NCAA handed down USC’s sanctions, Bush signed a six-year contract with the New Orleans Saints for a $26.3 million salary. Again, Bush, the individual who caused the problems at a membership institution, no longer attended the institution when the NCAA imposed its sanctions.

III. WHO IS CALLED OUT?

Although all above NCAA violations occurred while the student-athletes were competing for a membership institution, none of the violating athletes were still at the institution to endure the NCAA sanctions. In fact, by the time the sanctions were handed down to each athlete’s alma mater, a professional NFL team had already drafted all three of the athletes. Accordingly, the individuals most at fault in the situation got off scot-free. However, because the student-ath-
When the NCAA strikes, the athletes involved in the violations did not endure the NCAA’s sanctions, individuals that were uninvolved in the violations are the individuals who were actually affected by the sanctions.181

Bush’s example is the most illustrative. The result of USC’s sanctions? Although no other player on the 2004–2005 USC football team was involved in the violation,182 the entire 2004–2005 USC football team was forced to forfeit its season.183 This includes the possibility of striping eighty-five players184 of a national championship and the hard work, effort, and practice that came along with it.185 The NCAA also erased Bush’s former teammates’ record from all USC archives, banners, guides, and many fans’ minds.186 At a minimum, the former players (the teammates who assisted Bush in receiving a National Championship and a Heisman Trophy187) were innocent parties punished by the NCAA’s sanctions.188

The sanctions also imposed a significant blow to USC’s athletic department and future USC football players.189 The lost scholarships190 and the bowl game ban191 will have an enormous impact on the university’s ability to recruit players,192 and accordingly, on the university’s athletic department.193 The limited scholarships prevent the

---

181. See infra notes 182–217 and accompanying text.
182. See id. at 1–67.
183. “Pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and 31.2.2.3-(b), the institution will vacate all wins in which student-athlete 1 competed while ineligible, beginning in December 2004.” Id. at 57.
185. “I don’t think any teammate of Bush wants to hear an apology. They lost more than Bush for doing nothing at all. They did it the right way and earned every amount of success that the 2005 team deserved. It’s pretty sad that one player messes everything up for all of them.” Matt Petropulos, Reggie Bush Doesn’t Deserve His Heisman, DAILY TITAN (Sept. 21, 2001), http://www.dailytitan.com/2010/09/21/should-reggie-bush-be-stripped-of-his-heisman/.
186. See NCAA USC Report, supra note 4, at 58.
187. Bush commented on receiving the Heisman Trophy, “But I know that the Heisman is not mine alone. Far from it. I know that my victory was made possible by the discipline and hard work of my teammates, the steady guidance of my coaches.” Id.
188. See id.
189. See Maisel, supra note 10.
190. NCAA imposed a limit of 15 football scholarships and 75 total grants in football for each of the 2011–12, 2012–13 and 2013–14 academic years. See NCAA USC Report, supra note 4, at 58.
191. “The institution’s football team shall end its 2010 and 2011 seasons with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition, including a bowl game, following the season.” Id. at 57.
192. See Maisel, supra note 10.
193. Id.
university from helping pay 30 student-athlete’s tuition.\textsuperscript{194} Although USC has been known as one of the best places in the country to play college football, for many the school is extremely expensive to attend without financial support from athletic scholarship money.\textsuperscript{195} USC’s inability to provide athletes scholarship money is an enormous deterrent from attending the university for prospective collegiate football players because a student-athlete being recruited by USC could commit to another football powerhouse, which would be able to pay for some (or all) of his tuition.\textsuperscript{196} As a result, the ten football scholarships taken from USC each year from 2011–2014 will have a significant impact on USC’s athletic department because the university will have a difficult time recruiting the top high-school players in the nation.\textsuperscript{197}

The two-year postseason bowl ban will also have a serious impact on USC’s athletic department.\textsuperscript{198} A coach familiar with the situation commented on the affect,\textsuperscript{199} “[t]he bowl ban will handicap USC’s ability to bring in the top recruits . . . . [Y]ou can’t get the top notch guys. They won’t listen to you . . . . When it [comes] down to it, they would go somewhere they had a chance to play a big-time bowl game.”\textsuperscript{200} The top high-school players in the nation want to play collegiate football for the university with the most “glamour.”\textsuperscript{201} When USC competes for the best high-school players, the bowl ban will prevent the university from recruiting these players because a university without the capability of playing post season is not appealing, let alone “glamorous.”\textsuperscript{202}

Furthermore, the bowl ban will have a massive effect on the university.\textsuperscript{203} USC is known for its BCS bowl appearances\textsuperscript{204} and were any

\begin{itemize}
\item \textsuperscript{194} “A student-athlete may receive institutional financial aid based on athletic ability.” NCAA Bylaw Article 15.1 (“Maximum Limit on Financial AID—Individual”).
\item \textsuperscript{195} USC’s total tuition for an undergraduate student for the 2010-2011 school year was estimated at about $57,000. 2010-2011 Estimate of Costs, UNIVERSITYOF SOUTHERN- CALIFORNIA.COM, http://fbs.usc.edu/depts/sfs/page/4591/est-costs-2010-2011.
\item \textsuperscript{196} See NCAA Bylaw Article 15.1 (“Maximum Limit on Financial AID—Individual”).
\item \textsuperscript{197} See Maisel, supra note 10.
\item \textsuperscript{198} See id.
\item \textsuperscript{199} Buddy Watt was a coach for Alabama’s football team from 2003 to 2006, during a time that the school was living out sanctions imposed by the NCAA in 2002 for a recruiting scandal where boosters were accused of paying money for high school players. John Zenor, NCAA Rolls Crimson Tide for Violations (Feb. 2, 2001), http://www.usatoday.com/sports/college/football/2002-02-01-alabama-violations.htm.
\item \textsuperscript{200} See Maisel, supra note 10.
\item \textsuperscript{201} “They want to play big-time games and be on TV and reap all the benefits of all that glamour.” Id.
\item \textsuperscript{202} “You’re going against Florida and LSU and Auburn. They could go to a bowl game and you can’t.” Id.
\item \textsuperscript{203} See NCAA USC Report, supra note 4, at 57.
\end{itemize}
of the 2011–2014 teams capable of making a bowl game, the sanctions will cost the university millions. Bowl appearances are an enormous source of revenue for any college athletic program, especially one with a reputation for skill. Every BCS bowl game (Orange Bowl, Sugar Bowl, Fiesta Bowl, Rose Bowl, and the National Championship) pays each participant school $18 million. Therefore, were any of USC’s 2011–2014 teams capable of making a bowl game, the sanctions impose a financial penalty on the university.

The sanctions also affect football players that compete for USC during the years the sanctions are imposed. A former USC football player, Ryan Kalil, from the 2003–2006 season commented on the NCAA sanctions,

"I think the most upsetting thing is, regardless of what is factual or not, the kids who are there today are being punished... There’s a team there that has nothing to do with it... But I think it’s tough to accept those facts, that these are the sanctions that [the NCAA] put on them."

The best example of an innocent predecessor paying Bush’s misdeeds is Matt Barkley, USC’s starting quarterback from 2009–2011 who committed to the university in 2008. Although Barkley had offers to play at other universities, he committed to USC and started his career there before the sanctions were imposed. As a result of the NCAA’s ruling, Barkley will never have the hope of postseason bowl play. "It does stink to possibly not play a bowl game, but at

---

205. “[T]he NCAA sanctions could cost the USC athletic department millions of dollars in revenue.” Nakia Hogan, Reggie Bush Investigation Results in Major Sanctions for Southern Cal, NOLA.COM (June 11, 2010), http://www.nola.com/saints/index.ssf/2010/06/reggie_bush_investigation_results.html. See also, Zenor, supra note 199 (referencing Alabama’s 2002 bowl ban: “[t]he sanctions could cost the university millions. Last year, Alabama received about $1.5 million from its share of the Southeastern Conference’s bowl proceeds and its take from the Independence Bowl.”).
206. Money Over Morals, supra note 204.
207. Id.
208. Hogan, supra note 205.
209. See Mandel, supra note 105.
212. See id.
213. “Matt Barkley, ... and the rest of the 2010 and '11 Trojans are the ones who will pay the price for Bush’s misdeeds.” Mandel, supra note 105.
the same time, I came here . . . to win football games. If we play 13 instead of 14, then we’re going to try to win all 13 of those games.”

Other USC players did not have such a positive response. Sean-trel Henderson, considered one of the top football prospects in the nation in the class of 2010, verbally committed to USC in February of 2010. Henderson, initially delayed signing with USC past national signing day as a result of concerns the program might face NCAA sanctions. The sanctions, especially the inability to compete in a postseason bowl game, were enough to convince Henderson to back out of his obligation to USC. In July 2010, after the NCAA sanctions were imposed, Henderson asked to be released from this letter of intent with USC and signed with the University of Miami.

In addition, two USC players also applied to transfer from USC immediately after the sanctions were imposed. Defensive end, Malik Jackson, announced following the sanctions that he would transfer to University of Tennessee, and USC linebacker Jordan Campbell, announced that he would transfer to the University of Louisville.

The effects of the NCAA sanctions at USC were similar to those at Alabama and Auburn. The results show that the individual who

214. Beacham, supra note 129.
217. Id.
220. Id.
223. Id.
224. Pedro Moura, USC’s Campbell Opt for Transfer, ESPN.COM (June 15, 2010), http://sports.espn.go.com/los-angeles/ncaaf/news/story?id=5287292. Because of the NCAA’s regulated free-transfer policy for USC juniors and seniors following the sanctions, juniors and seniors on USC football team were permitted to transfer schools without sitting out a season following the transfer. See Moura, supra note 222.
225. See Litsky, supra note 122.
received the improper benefits is not affected by the sanctions because he has escaped the university before the sanctions are handed down.\textsuperscript{226} Accordingly, the parties that suffer the most are those that were not involved in the violation.\textsuperscript{227} The NCAA has admitted the contradiction: "[un]fortunately, some sanctions, like the ban on postseason competition, . . . also negatively impact innocent student-athletes."\textsuperscript{228}

\textbf{A. Inconsistencies With the NCAA’s Purpose}

When wrong parties or innocent parties are affected by the sanctions, the sanctions are inconsistent with the NCAA’s purpose of imposing regulations.

The NCAA Bylaws provide:

\begin{quote}
It shall be the mission of the NCAA enforcement program to eliminate violations of NCAA rules and impose appropriate penalties should violations occur. The program is committed to fairness of procedures and the timely and equitable resolution of infractions cases. The achievement of these objectives is essential to the conduct of a viable and effective enforcement program. Further, an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions.\textsuperscript{229}
\end{quote}

As seen above, when the NCAA does not impose sanctions on universities until after the violator has left collegiate athletics, innocent parties are affected by the sanctions.\textsuperscript{230} When wrong or innocent parties are the primary parties to pay the price for the violation, the sanctions are inconsistent with the NCAA’s purpose of imposing regulations.\textsuperscript{231}

\textsuperscript{226} The NCAA is “going after schools that have even the slightest problems with money-related issues or issues with players that left years prior, such as Bush.” \textit{Money Over Morals}, supra note 204.

\textsuperscript{227} “To punish future players based on their actions is unfair to the program and to the players.” \textit{Id}.

\textsuperscript{228} National Collegiate Athletic Association Key Issues, http://www.ncaa.org (follow “Key Issues” hyperlink; then follow “Rules Enforcement” hyperlink; then follow “Enforcement Process”) (last visited Nov. 1, 2010).

\textsuperscript{229} NCAA Bylaw Article 19.01.1 (“Mission of NCAA Enforcement Program”). \textit{See also}, National Collegiate Athletic Association Key Issues, http://www.ncaa.org (follow “Key Issues” hyperlink) (last visited Nov. 1, 2010) (“The intent of the penalties is to ensure they are sufficient enough to deter schools from breaking the rules again . . . . The NCAA enforcement process seeks to ensure integrity and fair play among all member schools.”).

\textsuperscript{230} \textit{See supra} notes 177–215 and accompanying text.

\textsuperscript{231} \textit{See NCAA Bylaw Article 19.01.1 (“Mission of NCAA Enforcement Program”);
1. Eliminate Violations

The NCAA’s primary purpose for imposing regulations on a violating university is to deter future violations. A university that knew about a student-athlete’s involvement in an Amateurism violation should be sanctioned. However, football commentators and coaches seem to believe that the responsibility of the university to exert institutional control over high-profile athletes is unrealistic. If the people on the inside acknowledge the difficulty with the responsibility imposed on universities, the problem is not necessarily the willingness of a university to break NCAA rules, but the near impossi-

232. See id.
233. It is the school’s responsibility to ensure that student athletes are in compliance with the NCAA rules and Bylaws. And where the school knew of the violations, it has a responsibility to uncover it and try to prevent it. See NCAA Bylaw Article 2.1 “Responsibility for Control”); see also Potuto, supra note 35.
235. A NCAA Committee chair was quoted on the situation saying:

If you’re a compliance officer at Florida, Texas or any other school teeming with future first-round draft picks, [the NCAA’s] ruling [against USC] should be sending shivers down your spine. If you happen to be the next great quarterback or point guard in the class of 2010 or ’11, be prepared to have your every hand-shake, conversation or Facebook post with anyone outside of the school monitored. Not that that’s remotely plausible. [USC’s School President Steven Sample responded to the sanctions:] “Monitoring and regulating human behavior is complex at best, and even more so in a far-flung region like Los Angeles, home to a vast entertainment-sports enterprise.” Mandel, supra note 105. See also, Former Reggie Bush Teammate Ryan Kalil on USC Football Sanctions: ‘Something’s Not Right Here,’ supra note 210, stating:

The NCAA’s argument is they (the university) should know what’s going on with their student athletes, in all aspects of their life. That’s not realistic. You can’t tell me the NCAA really believes that the coaching staff, the front office, all the people involved in the athletic department and compliance should know every aspect of a student’s life. I was extremely close to my offensive line coach, but if I called him today he would not be able to tell you what kind of car I drove. As soon as practice is done and we shower in the locker room, we’re back out in the real world, and they have no say about it. I always thought they did a great job of making sure we always knew what the rules were. It’s pretty simple. You don’t have to have too many compliance meetings to understand you cannot benefit in any way because of what you do. In my opinion, there wasn’t anything more the university could have done to know what was going on in the student-athletes’ lives outside of football.

236. “It is not inconceivable to believe USC did not know the extent of what was going on between Bush and the agents. There is also no evidence that these problems were widespread throughout the program.” Money Over Morals, supra note 204.
2011] WHEN THE NCAA STRIKES 143

ble responsibility imposed on the universities.237 Except for limited situations,238 sanctions will do little to deter universities from future violations because the violations are usually unintentional.239

The sanctions are inconsistent with the purpose of deterring future violations by student-athletes.240 If the sanctions were effective in this regard, Bush would have witnessed the repercussions at Alabama and Auburn, and would never have attempted a similar fleet. Instead, Bush broke the Amateurism rules with “flying colors.”241 Presumably, Bush (and other high-profile student-athletes) know that agents and teams want them, and they are also aware that by the time that the hammer drops on their university, they will be safely situated with an NFL team.242 This is not a deterrent. On the contrary, it seems like an encouragement.

237. A source ridiculing the amateurism requirements contended:

Lack of institutional control, however, is a separate violation that arises out of affirmative institutional failure to take appropriate steps to assure rules compliant behavior on the part of those for whom the institution is responsible. These run the gamut from a president or chancellor to a booster unknown to an institution. Except in unusual circumstances, there always is a lack of institutional control when violations are committed by a high-level administrator with responsibility for a program and the authority to administer it. There also is a lack of institutional control when a member institution, through due diligence, should have known about the commission of violations regardless of who committed them.

Potuto, supra note 35, at 298.

238. In a situation where a coach is aware of the violation or assists in the violation, (for example McNair at USC) the sanctions may have a deterrent effect if the NCAA imposes sanctions directly on that coach. However, in McNair’s situation, it was USC who imposed the most severe penalty on McNair, discharging him from the university, not the NCAA. Therefore, the deterrent effect for coaches, which stems from the NCAA’s sanctions, is not substantial. See Ted Miller, Instant analysis: NCAA Didn’t Buy USC’s Defense, PAC-10 BLOG (June 10, 2010, 3:46 PM), http://espn.go.com/blog/pac10; Tim Miller, Report: McNair’s USC Contract Not Renewed, PAC-10 BLOG (July 1, 2010, 2:38 PM), http://espn.go.com/blog/pac10/post/_id/10858/report-mcnairs-usc-contract-not-renewed.

239. Unintentional since the university usually believes it “[is] [going] to extraordinary lengths in its monitoring efforts.” Mandel, supra note 105.

240. See NCAA Bylaw Article 19.01.1 (“Mission of NCAA Enforcement Program”).

241. “[His] conduct while attending USC is nothing short of . . . cheating.” Money Over Morals, supra note 204.

242. “If history has taught us anything, it’s that if people think they can get away with it with little to no consequences to their actions, they’re going to keep doing it.” Eddie Garrison, Who’s To Blame, NCAA Athletes or Agents Who Try to Bribe Them?, (July 21, 2010), http://bleacher report.com/articles/423052-whos-to-blame-ncaa-athletes-or-agents-who-try-to-bribe-them.
2. Provide Fairness

The NCAA also announces a purpose of enforcing penalties is to provide fairness in two ways. The first is to provide fairness to uninvolved student-athletes, coaches, and schools. The second is to provide compensation for any competitive advantage gained by the infractions. Neither is accomplished by the sanctions.

As described above, the goal of providing fairness to uninvolved individuals is unaccomplished because uninvolved individuals bear the burden of the sanctions.

"Does it make sense that USC is on four years of probation in the future for something that happened half a decade ago under a coach that is no longer there . . . ? Obviously USC needed to be punished . . . . But why penalize the future of teams no longer connected to Bush . . . in any way? To punish future players based on their actions is unfair to the program and to the players."

It is clear that the sanctions not only avoid fairness to uninvolved individuals, but also actually punish those individuals.

Furthermore, the sanctions are inconsistent with the compensation for competitive advantage purpose. In Amateurism violations, it is unnecessary to compensate for any competitive advantage gained by the infractions because a university does not gain a competitive advantage. Where a student-athlete loses his amateur status by accepting improper benefits in violation of the Article 12 Bylaws, he and his agent are the only parties benefitting from the actions. Because the acceptance of these improper benefits usually comes in the form of money, cars, trips, houses, the team does not gain a competitive advantage from a team member violating the Amateurism By-

---

243. See National Collegiate Athletic Association About the NCAA, http://www.ncaa.org (follow "About the NCAA" hyperlink; then follow "How We Work" hyperlink; then follow "Infractions" hyperlink) (last visited Nov. 1, 2010).

244. "An important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions." Id.

245. See id. See also National Collegiate Athletic Association Key Issues, http://www.ncaa.org (follow "Key Issues" hyperlink; then follow "Rules and Enforcement" hyperlink; then follow "Glossary of Terms" hyperlink) (last visited Nov. 1, 2010) ("Major infractions usually provide an extensive recruiting or competitive advantage.")

246. See infra notes 248–252 and accompanying text.

247. See NCAA Bylaw Article 19.01.1 ("Mission of NCAA Enforcement Program").

248. Money Over Morals, supra note 204.

249. See supra notes 178–228 and accompanying text.

250. See NCAA Bylaw Article 12 ("Amateurism").

251. Id.
Accordingly, the sanctions do nothing to promote fairness in collegiate athletics.

B. More Effective Sanctions Can Be Imposed to Support the NCAA’s Mission For Enforcement

The NCAA’s decision to sanction USC’s, Alabama’s, and Auburn’s behavior was correct. However, the NCAA should consider other options in imposing the sanctions. On September 22, 2010, the NCAA sanctioned two University of North Carolina (UNC) football players for receiving improper benefits. The players, both of which were returning seniors, were penalized with game suspensions and monetary fines. UNC was not sanctioned. Although UNC contended that the sanctions on the players were too severe, the sanctions are fair because they were imposed directly on the individuals who violated the Bylaws. As explained above, when the individual who violated the Bylaws is no longer at the institution, the NCAA should apply sanctions that affect those who committed the violations and not affect those who were not in violation. In order to more successfully implement sanctions that align with the NCAA’s sanction purposes, the NCAA should consider other sanction options. One option would be for the NCAA to enter into an agreement with the professional sports leagues, specifically the NFL, which would require the league to impose financial or professional penalties on incoming collegiate players that violated the NCAA Amateurism Bylaws while competing in college. Here, the NCAA would come to an agreement with the NFL. Upon the completion of an NCAA investigation, if the NCAA deems that the player entering the NFL violated the NCAA Amateurism Bylaws in college, the NCAA and NFL would impose a penalty on the player for his detrimental conduct.

---

252. See Potuto, supra note 35, at 300.
253. See id.
255. Id.
256. Id.
257. Id.
258. See supra notes 243–253 and accompanying text.
259. When the University of Alabama head football coach Nick Saban organized a conference call, which gathered NFL Commissioner Roger Goodell, representatives from the NCAA, the NFL Players Association to discuss ways to solve the problem of amateurism one suggestion was to impose a penalty on incoming college players that have violated the NCAA amateurism rules. Chase Goodbread, Meyer, Other Coaches Discuss Agents with NFL, GAINESVILLE.COM (Aug. 13, 2010), http://www.gainesville.com/article/20100812/articles/100819806.
260. “Maybe [the] consequences ought to carry over into their NFL career. Is it not conduct-detrimental if a player does the wrong thing in college and gets suspended for his senior season,
NCAA could choose to have the NFL impose the post-NCAA penalties in the form of financial penalties, suspensions during the athlete’s rookie season, or a penalty imposed on the athlete’s draft ability. Any of these options would more effectively work with the NCAA’s purpose for imposing sanctions. These sanctions would more effectively work with the NCAA’s purpose for imposing sanctions because a consequence imposed on the athlete in the NFL regarding his eligibility or financial capabilities would definitely cause a college athlete to think twice about violating Amateurism Bylaws. The post-season sanction would provide fairness to uninvolved individuals because it would allow the NCAA to sanction the violating individuals and not sanction the athletes that attend the school after the violation occurred.

Another possible alternative solution would be for the NCAA to create a preliminary violation consequence. When the NCAA learns of a potential Amateurism violation, it would do a preliminary investigation that would last around a week. After this investigation, the athlete accused of the actions would be placed on a temporary probation if the preliminary investigation uncovered evidence that met a certain burden of proof that he committed an Amateurism violation. For example if a preponderance of evidence indicated that an Amateurism violation occurred, the student-athlete would be placed on temporary probation. While the athlete is on temporary probation, the NCAA would then go through a normal investigation to determine whether or not the athlete violated the Bylaws. If the NCAA determined that a violation did occur, the student-athlete would then be sanctioned immediately, if the NCAA determined that a violation did not occur, the student-athlete would be allowed back on the field.

IV. Impact

The NCAA’s current ineffective approach must be changed if the reputation of college athletics is to be saved. Some recommend eliminating the Amateurism violations all together, while others argue

just so he can play in the NFL? It hurts the NFL, it hurts college, it hurts the player, it hurts everybody, so why shouldn’t he get suspended for conduct detrimental?” Id.

261. See supra notes 232–242 and accompanying text.

262. See Garrison, supra note 242.

263. Because the violation is a civil matter (as opposed to criminal), the burden should be placed in accordance with civil law; accordingly, the initial investigation would require a preponderance of evidence to signal that an Amateurism violation occurred.

that there must be more control over the student-athletes while they are competing at the collegiate level.\textsuperscript{265} Regardless, the way the NCAA deals with this ongoing problem will determine if America's national pastime can be cleaned up to preserve its reputation. The increase in Amateurism violations has caused fans to be cynical about the NCAA's control over athletic programs. If the NCAA changes its enforcement method, the decrease in the violations will reassure fans of their control.

It is easy to see why individuals violate the sanctions. In a highly competitive field, agents and athletes weigh the risks and benefits of committing an Amateurism violation and realize that the benefits of the actions enormously outweigh the few repercussions.\textsuperscript{266} An agent giving a high-profile athlete a couple hundred thousand dollars while he is in college is enough to convince the athlete to sign a two million dollar contract with that agent two years later. And although a student-athlete cannot see the benefits of avoiding a violation while in school, curbing this problem is important for the game. College athletics are amateur sports,\textsuperscript{267} and in order to keep collegiate sports amateur, the NCAA must protect against situations where athletes accept money or other benefits.

College athletes "in every major collegiate sport who are professional prospects [will continue] to retain a representative experienced and knowledgeable in their particular sport to assist them in obtaining maximum draft status, and rightfully so."\textsuperscript{268} The NCCA's decision to change its current approach will have an enormous effect on an agent's actions and a student-athlete's actions. If the NCAA created an alliance with professional sports leagues that allowed the NCAA to sanction athletes playing in the professional sports league, there would be a decrease in the number of violations. Furthermore, this change would protect collegiate athletics as amateur sports.

\textsuperscript{265} National Collegiate Athletic Association About the NCAA, http://www.ncaa.org (follow "Resources" hyperlink; then follow "Latest News" hyperlink; then follow "Interview with NCAA Director of Agent, Gambling and Amateurism Activities" hyperlink) (last visited Jan. 18, 2011).
\textsuperscript{266} See supra notes 232–242 and accompanying text.
\textsuperscript{267} Amateur is defined as "[a] person who engages in an art, science, study, or athletic activity as a pastime rather than as a profession." National Collegiate Athletic Association About the NCAA, http://www.ncaa.org (follow "About the NCAA" hyperlink; then follow "How we work" hyperlink; then follow "Rules and Committees" hyperlink) (last visited Feb. 20, 2011).
Seeing the immense interest and attention in the topic during the 2010-2011 football season indicates sport’s fans fascination and interest in the problem. It is clear that if the NCAA intends to curb the violations, its approach to imposing violations must change. How the NCAA deals with Bylaw violations in the future will determine how successfully the Amateurism problem will be stopped.

V. Conclusion

Article 12 of the NCAA Bylaws sets forth a requirement that all collegiate athletes competing for an NCAA institute maintain their eligibility to compete by requiring the athletes to retain their amateur status. In order to maintain this status, the student-athlete must follow the eligibility requirements laid out in the Article 12 Bylaws, which prohibit the student-athlete from accepting goods, money, or other items for their performance or from any sports agent. Separate Bylaws govern the sanctions available to the NCAA when an Amateurism violation has occurred. The NCAA proclaims that the purpose for the enforcement program is to eliminate violations of the NCAA rules, impose appropriate penalties should violations occur, while considering the fairness to uninvolved student-athletes, coaches, administrators, competitors, and other institutions. However, the NCAA has struggled to keep the Amateurism penalties in line with these purposes. Accordingly, the NCAA must work quickly to determine an alternative solution to the Amateurism problem otherwise the number of violations will continue to rise and collegiate football will continue to be plagued with the problem.

Mary Elizabeth Kane*

270. See supra notes 78–88 and accompanying text.
271. See supra notes 78–89 and accompanying text.
272. NCAA Bylaw Article 19.01.1 (“Mission of the NCAA Enforcement Program”).
273. See supra notes 229–253 and accompanying text.

* J.D. Candidate, 2012, DePaul University College of Law; Bachelor of Science 2008, University of Dayton. Thank you to Professor Todd J. Haugh for invaluable feedback and to my Mom and Dad (Terese and Michael) for your ceaseless love, support, and advice.