

THE MISTAKEN VICTIM

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“Cheating in college football is a tradition as old as the sport itself. In fact, it’s hard to imagine one without the other. Scandal is almost as much a part of the sport’s culture as tailgating and fight songs.”²

The same goes for college basketball, if sports agents, grassroots basketball and apparel companies are combined. The NCAA³ has historically bereaved just compensation from those most creditable for its success: the players. In today’s world of unprecedented TV contracts, college athletics is a multi-billion dollar industry.⁴ Eighty-six percent of student-athletes live below the federal poverty line, yet, in the eyes of the NCAA, the players are worth only the insignificant price of a scholarship.⁵

The current NCAA composition breeds the commercial exploitation of its athletes. Students who participate in major college sports such as football and basketball dedicate over 80 hours per week to training and competition in their sport.⁶ Athletes who unfortunately lack sustainable financial means are not afforded the opportunity to seek alternative income such as a

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² Stewart Mandel, SI.com. (did this come from an article? If it’s just from SI generally, it needs to start with *See generally*.)

³ National Collegiate Athletic Association [hereinafter “NCAA”].

⁴ Marc Tracy, *N.C.A.A. Extends Basketball Deal With CBS Sports and Turner Through 2032*, NEW YORK TIMES (April 16, 2016), <https://www.nytimes.com/2016/04/13/sports/ncaabasketball/ncaa-extends-basketball-deal-with-cbs-sports-and-turner-through-2032.html> (last visited April 21, 2018).

⁵ Ramogi Huma and Ellen J. Staurowsky, National College Players Association, *The Price of Poverty In Big Time College Sport* 19 (2011); *see also* 2017-2018 NCAA DIVISION I MANUAL, Article 12, *available at* <https://www.ncaapublications.com/p-4511-2017-2018-ncaa-division-i-manual-august-version-available-august-2017.aspx> [hereinafter *NCAA Manual*].

⁶ Armstrong Williams, *The Exploitation of College Athletes*, THE WASHINGTON TIMES (April 6, 2014), <https://www.washingtontimes.com/news/2014/apr/6/williams-the-exploitation-of-college-athletes/> (last visited May 6, 2018).

part-time job. This arrangement leaves kids with two options: live in poverty while those in their periphery gain wealth as a direct result of the students' athletic ability, or accept money under the table from those willing to circumvent NCAA rules. The scandal that has consumed the college basketball world over the past eighteen months is a story about future NBA players, sports agents, apparel company executives, and their system of righting this wrong.

According to the FBI's investigation, Jim Gatto,⁷ Chris Dawkins,⁸ and Munish Sood,⁹ along with others, conspired to funnel cash payments to elite high school basketball players in an attempt to influence them to sign and play for universities sponsored by Adidas.¹⁰ The overall purpose of the conspiracy was to compensate elite players in exchange for their promise to retain Chris Dawkins and Munish Sood as professional counsel upon entering the National Basketball Association (NBA), who would then, in turn, attempt to persuade the athletes to sign apparel sponsorship contracts with Adidas.¹¹ The prosecution's theory is this behavior constituted criminal fraud.¹² Specifically, the result of the payment scheme caused universities to provide athletic scholarships to players who were ineligible to compete per NCAA rules, and which, if revealed, would have exposed the universities to substantial economic harm at the hands of NCAA sanctions.¹³ The premise of the prosecution's case portrays the universities as victims.

The intention of this paper is to dispute the prosecution's criminal theory with the application of sound, logical reasoning and perspective. Section I of this paper addresses the question of

⁷ James "Jim" Gatto is a senior marketing executive for Adidas. See Superseding Indictment at 6, *United States v. James Gatto et al*, No. S1 17 Cr. 686 (LAK), 2018 WL 1756907 (S.D.N.Y. Apr. 10, 2018) [hereinafter "Indictment"].

⁸ *Id.* Chris Dawkins was an unregistered sports agent.

⁹ Munish Sood was a financial advisor. See Matt Norlander, *Ultimate college basketball corruption scandal primer: Explaining the latest with the FBI probe*, CBS SPORTS (April 12, 2018, 7:16 pm), <https://www.cbssports.com/college-basketball/news/ultimate-college-basketball-corruption-scandal-primer-explaining-the-latest-with-the-fbi-probe/> (last visited May 7, 2018).

¹⁰ Indictment, *supra* note 6.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

whether these universities honestly satisfy the definition of “victim” as a result of the conspiracy. Section II inquires into the potential problems of affording legal weight to NCAA bylaws. Section III challenges the Justice Department on their decades-long delay of enforcing this type of behavior in college athletic recruiting. Section IV brings to light the NCAA’s true motive behind its regulation of college sports. Lastly, Section V keys in on just a few of the many problems of the NCAA’s governing structure in need of reformation in light of the current climate of college athletics.

I. ARE THE UNIVERSITIES TRULY VICTIMS?

Throughout its pontification of college basketball’s black-market underworld, federal prosecutors have failed to show how these sports agents and apparel company executives benefitted at the universities’ expense. While their overall objective was to compensate the players in exchange for a simple promise to retain their professional consulting services, the agents profited in no way unless the player upheld his end of the bargain.¹⁴ For instance, documents seized from the office of Chris Dawkins’ former agency revealed former North Carolina State basketball star Dennis Smith was paid roughly \$117,000 through a series of payments.¹⁵ Despite the generous contribution, Dennis declined to sign with Dawkins after leaving school and instead signed an endorsement contract with Under Armour.¹⁶

According to the details of the operation, the agents clearly never intended to injure the universities. If anything, this recruiting system directly and immediately benefitted everyone involved but the agents. That includes the universities, the

¹⁴ Indictment, *supra* note 6.

¹⁵ Pat Forde and Pete Thamel, *Exclusive: Federal documents detain sweeping potential NCAA violations involving high-profile players, schools*, YAHOO SPORTS (Feb. 23, 2018, 4:33 am), <https://sports.yahoo.com/exclusive-federal-documents-detail-sweeping-potential-ncaa-violations-involving-high-profile-players-schools-103338484.html> (last visited April 15, 2018).

¹⁶ *Id.*; see also Michael D. Sykes, II, *Dennis Smith spurns Adidas and Nike to join Under Armour. Here’s why that’s a big deal.*, SB NATION (Aug. 8, 2017, 12:36 pm), <https://www.sbnation.com/2017/8/8/16112342/dennis-smith-jr-under-armour-shoe-deal> (last visited April 15, 2018).

players, and the NCAA through March Madness TV revenue.¹⁷ In the event these agents realized any profit at all, it would occur long after the player had left campus.

If the intent of preventing criminal activity is to serve and protect the greater public good, then what public harm is the Justice Department attempting to prevent?¹⁸ Considering the schools involved in the FBI's investigation have yet to be punished by the NCAA, what damages have the universities suffered? If the "harm" the prosecution alleges came in the form of additional wins, excess TV exposure, escalated ticket sales, increased student applications, and enhanced alumni donations, then this case is a lock for the U.S. Attorney. In the era of one-and-done basketball in the NCAA, blue-chip athletes are a coveted commodity. Not only do these stars cultivate a healthy win column, their mere presence on campus snowballs their program into a money-making machine.

By way of example, consider the revenue generated by one of college basketball's most adored blue-blood programs, the University of Kentucky, who consistently dresses out future NBA first round draft picks.¹⁹ The 2012 national champion Kentucky Wildcats generated approximately \$20.8 million in revenue.²⁰ Kentucky's national title, along with its mountain of cash, came about to the tune of four first-round draft picks.²¹ Most notably Anthony Davis and Michael Kidd-Gilchrist²², the first and second overall picks.²³

¹⁷ Tracy, *supra* note 3.

¹⁸ Michael McCann, *The 'Crime' of Paying College Basketball Stars: Form over Substance?*, HARV. L. REV. BLOG (Mar. 20, 2018), <https://blog.harvardlawreview.org/the-crime-of-paying-college-basketball-stars-form-over-substance/> (last visited April 15, 2018); *see also* Hanna Cheryl, *No Right to Choose: Mandated Participation in Domestic Violence Prosecutions*, 109 Harv. L. Rev. 1849 (1996), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1276830 (last visited April 15, 2018).

¹⁹ Real GM, *Kentucky NBA Draft Pick*, <https://basketball.realgm.com/ncaa/conferences/Southeastern-Conference/8/Kentucky/258/nba-draft> (last visited April 15, 2018).

²⁰ Glenn Logan, *Kentucky Football: What's Worth More, UK Basketball or Football?*, SBNATION (Sept. 18, 2012, 7:34 PM), <https://www.aseaofblue.com/2012/9/18/3354632/kentucky-footall-whos-worth-more-uk-basketball-or-football> (last visited April 15, 2018).

²¹ Basketball Reference, *2012 NBA Draft*, https://www.basketball-reference.com/draft/NBA_2012.html (last visited April 15, 2018).

²² Both players have earned Nike sponsorships after leaving Nike-sponsored Kentucky. *See* <http://hoopshype.com/category/sneakers/> (last visited April 15, 2018); *see*

Revenue generated by Kentucky's basketball program continues to grow with each passing season. The Wildcat's 2016-2017 squad raked in approximately \$28 million in revenue.²⁴ That team, led by AAU standouts De'Aaron Fox and Malik Monk²⁵, also made a deep tournament run until it lost to North Carolina in the Elite Eight.²⁶ Choosing to forfeit their remaining three years of NCAA eligibility, Fox and Monk declared for the NBA draft shortly afterward.²⁷ As what has become custom among Big Blue nation, they too were first round draft picks.²⁸

History has clearly revealed how success in athletics triggers not only a substantial escalation in revenue but will improve the overall quality of a university's campus. The most direct evidence of such is displayed by the effect Nick Saban has had on the University of Alabama.²⁹ Athletic department revenue has nearly

also SI Wire, *How Adidas, Nike and Under Armour Have Divvied Up Major College Basketball*, SPORTS ILLUSTRATED (Oct. 02, 2017), <https://www.si.com/college-basketball/2017/10/02/adidas-nike-under-armour-contracts-schools-conferences> (last visited April 15, 2018).

²³ *Id.*

²⁴ *University of Kentucky: Revenue and Expenses*, U.S. DEPT' EDU., <https://ope.ed.gov/athletics/#/institution/details> (last visited April 15, 2018).

²⁵ Jenny Dial Creech, *De'Aaron Fox, Justin Jackson part of Houston AAU team for the ages*, CHRON (June 26, 2017), <https://www.chron.com/sports/rockets/article/De-Aaron-Fox-Justin-Jackson-part-Houston-AAU-team-11239382.php> (last visited April 15, 2018); *see also* Future 150, Malik Monk, <https://future150.com/hs/basketball-profiles/malik-monk-pg-2016> (last visited April 15, 2018).

²⁶ Associated Press, *Kentucky Falls to UNC in Elite Eight Battle*, SEC SPORTS, <http://www.secsports.com/article/19011124/kentucky-falls-unc-elite-eight-battle> (last visited April 15, 2018).

²⁷ Kyle Boone, *Kentucky's Malik Monk joins De'Aaron Fox in declaring for 2017 NBA Draft*, CBS SPORTS (April 4, 2017), <https://www.cbssports.com/college-basketball/news/kentuckys-malik-monk-joins-deaaron-fox-in-declaring-for-2017-nba-draft/> (last visited April 15, 2018).

²⁸ Josh Moore and Dennis Varney, *NBA Draft recap: Fox, Monk and Bam picked in the lottery; other Cats enter free agency*, KENTUCKY SPORT (June 23, 2017, 12:01 PM), <http://www.kentucky.com/sports/college/kentucky-sports/ex-cats/article157703229.html> (last visited April 15, 2018); Like previous Kentucky basketball lottery picks, both Fox and Monk signed sponsorship contracts with Nike. *See* Slam Staff, *De'Aaron Fox Reportedly Signs with Nike*, SLAM (June 01, 2017), <http://www.slamonline.com/kicks/de-aaron-fox-reportedly-signs-with-nike/> (last visited April 15, 2018); *see also* Hoops Hype, <http://hoopshype.com/2017/07/16/which-2017-nba-rookies-have-shoe-deals-with-nike-adidas-and-more/> (last visited April 15, 2018).

²⁹ Tom Van Riper, *The Magic of Nick Saban: Everyone Wants To Go To Alabama*, FORBES (May 13, 2013, 11:50 AM), <https://www.forbes.com/sites/tomvanriper/2013/05/13/the-magic-of-nick-saban-everyone-wants-to-go-to-alabama/#2ec823a6393a> (last visited April 15, 2018).

doubled since his arrival in 2007.³⁰ Thanks to Alabama's amplified national exposure under Saban's tenure, out-of-state student level increases have resulted in a 126% increase in overall tuition revenue, and alumni donations have reached its highest levels ever totaling \$600 million and counting.³¹ The recent spike in student applications has allowed Alabama's admissions office to choose more quality caliber students.³² A consequence of Alabama's higher standard for admissions is its 241 National Merit Scholars, the most of any other public university.³³

The vital point of this illustration is that Nick Saban was not dressed out to play in any of his six national titles. He did not throw a single pass, rush for a single yard, or kick a single field goal. His success, and ultimately the University of Alabama's success, rested on the backs of his nine top-five ranked recruiting classes.³⁴

In short, federal prosecutors have set forth insufficient evidence to plausibly show how the defendant agents and apparel company executives benefitted, or intended to benefit, at the universities' peril. Their conduct simply persuaded high-caliber athletes with whom to sign their letters of intent. Universities blessed with the opportunity to have such program-changing athletes model their school colors to a nation-wide audience cannot accurately be portrayed as "victims."

II. SHOULD EVADING A PRIVATE ORGANIZATION'S BYLAWS BE ILLEGAL?

A formal description of the NCAA is it is a voluntary organization made up of its member academic institutions, and its purpose is to implement and enforce its athletically focused

³⁰ *Id.*; see also *University of Alabama: Revenue and Expenses*, U.S. DEPT' EDU., <https://ope.ed.gov/athletics/#/institution/details> (last visited April 21, 2018).

³¹ Riper, *supra* note 28.

³² *Id.*

³³ *Id.*

³⁴ Michael Casagrande, *Ranking Alabama's best recruiting classes in the Nick Saban era*, AL.COM (February 02, 2017, 8:25 AM), http://www.al.com/alabamafootball/index.ssf/2017/02/ranking_alabamas_best_recruiti.html (last visited April 15, 2018).

bylaws and regulations.³⁵ In other words, the NCAA is merely a “club,” which decided it wanted some club rules.

The club’s official rulebook establishing its governing bylaws is published annually, and included among these bylaws are rules and regulations concerning the recruitment of athletes, along with promulgating its commitment to the principle of amateurism.³⁶ Specifically, NCAA bylaws prohibit recruits, current student athletes, and their families from accepting anything of value from agents or financial advisors.³⁷ According to the NCAA, an “agent” is “any individual who, directly or indirectly...seeks to obtain any type of financial gain or benefit from securing a prospective student-athlete’s enrollment at an educational institution or from a student-athlete’s potential earnings as a professional athlete.”³⁸

Through its indictment, the prosecution has effectively criminalized circumventing NCAA rules and regulations.³⁹ Embedded within the government’s criminal theory is the idea these universities were defrauded when they allocated financial aid to student-athletes who were ineligible according to NCAA bylaws.⁴⁰ Specifically, the federal government allocated funds to these universities who then theoretically used a portion of those funds to finance athletic scholarships to ineligible student-athletes.⁴¹ In effect, the government would have an indirect, quasi-stake in the harm if any economic punishment were handed down to these institutions for breaking club rules.⁴² Although the prosecution’s argument is compelling, it cannot be ignored the Supreme Court’s holding that an institution’s choice to adopt NCAA bylaws does not “transform” them into law.⁴³ On that basis,

³⁵ Over 1,100-member academic institutions. NCAA, www.ncaa.org (last visited April 10, 2018).

³⁶ NCAA MANUAL, *supra* note 4.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Indictment, *supra* note 6.

⁴⁰ *Id.*

⁴¹ McCann, *supra* note 17.

⁴² *Id.*

⁴³ NCAA v. Tarkanian, 109 S.Ct. 454, 455 (1988) (“UNLV’s decision to adopt the NCAA’s rules did not transform them into state rules and the NCAA into a state actor, since UNLV retained plenary power to withdraw from the NCAA and to establish its own standards”).

why here should the NCAA's rules and regulations be afforded the guardianship of the U.S. Justice Department?

Furthermore, how can these sports agents be prosecuted for circumventing bylaws of a private organization of which they were not members? Granting legal teeth to rules drafted by members of a voluntary, private association may breed potentially adverse consequences. By way of example, consider the recent displays of protest that has engulfed the National Football League (NFL).⁴⁴ In opposition to police brutality and racial inequality, NFL players have been kneeling as opposed to standing while the national anthem plays prior to games.⁴⁵ Suppose the NFL implemented a league wide rule that players were prohibited from kneeling for the national anthem, and any player who does will be subject to punishment from the league office. Likewise, any team that allows this behavior to occur will also be risking sanction from the NFL.

Moreover, what if behind the scenes a political activists group influenced various players to kneel in protest despite the newly founded rule? If the sanctions handed down by the NFL generated any economic harm to the penalized teams, have these protests subjected the acting parties to criminal liability? Even though these political activists are not subject to NFL bylaws, are they criminals for influencing players who are under the NFL's jurisdiction to circumvent league rules? According to the prosecution's case against Jim Gatto and Chris Dawkins, the answer is yes. As a society we must ask ourselves, is this the standard we are willing to set?

III. WHY HAS THE FBI CHOSEN TO ENFORCE THIS BEHAVIOR NOW?

It is a secret to no one that for decades boosters and agents have used what the NCAA calls "impermissible benefits"⁴⁶ to persuade talented high school athletes of where to attend college. Not only is this fact well known among those associated with the

⁴⁴ Lauren Cook, *NFL players kneeling during national anthem: How Colin Kaepernick started a movement and why*, AM NEW YORK (December 14, 2017, 3:04 pm), <https://www.amny.com/news/nfl-players-kneeling-during-national-anthem-how-colin-kaepernick-started-a-movement-and-why-1.14287523> (last visited April 15, 2018).

⁴⁵ *Id.*

⁴⁶ NCAA MANUAL, *supra* note 4 at Bylaw 13.2.

college athletics underworld, such behavior has been thoroughly documented by the NCAA through its droves of infractions cases.⁴⁷ Three of the more famous infractions cases involved the football programs of Southern Methodist University (SMU), University of Southern California (USC), and the University of Miami (“Miami”).⁴⁸ In each case the NCAA found that either boosters or agents had compensated star players for these programs in numerous ways including money, cars, and homes.⁴⁹ As a result, the NCAA charged each school with “lack of institutional control,” and handed down sizeable penalties in the form of scholarship loss along with a ban from postseason play.⁵⁰ Penalties of this magnitude can foist substantial economic harm upon a university. If the postseason ban includes forfeiting the university’s share of postseason conference revenue, the cost could be millions of dollars.⁵¹

In light of the before mentioned misconduct, why did the FBI refrain from imposing its role as the watchdog of justice? With SMU, USC, and Miami, it appears that criminal fraud was present just as it’s portrayed in the current NCAA basketball scandal.⁵² In each case the booster or agent’s conduct caused the university to agree to issue athletic scholarships to players who were ineligible to compete per NCAA rules.⁵³ As a result, their behavior deprived the university of its right to decide how to

⁴⁷ NCAA Legislative Services Database (LSDBi), <https://web3.ncaa.org/lcdbi/search?types=major&q=> (last visited April 15, 2018).

⁴⁸ *Id.*

⁴⁹ Fatima Ahmed-Farouta, *A Brief History of College Cheating Scandals*, History News Network (May 28, 2013), <https://historynewsnetwork.org/article/152053> (last visited April 15, 2018).

⁵⁰ Dennis Dodd, *30 years later: the legacy of SMU’s death penalty and six team nearly hit with one*, CBS SPORTS (Feb. 22, 2017), <https://www.cbssports.com/college-football/news/30-years-later-the-legacy-of-smus-death-penalty-and-six-teams-nearly-hit-with-one/> (last visited April 15, 2018); *see also Lack Of Institutional Control Is Gateway To Severe Penalties*, CBS MIAMI (Feb. 20, 2013, 11:14 am), <http://miami.cbslocal.com/2013/02/20/lack-of-institutional-control-is-gateway-to-severe-penalties/> (last visited April 15, 2018).

⁵¹ Mark Schlabach, *Ole Miss football self-imposes one-year postseason ban for 2017*, ESPN (Feb. 23, 2017), http://www.espn.com/college-football/story/_/id/18743461/ole-miss-rebels-self-impose-1-year-postseason-ban-2017 (last visited April 15, 2018) (“Ole Miss would have to forfeit its share of SEC postseason revenues for this coming season, which could be as much as \$7.8 million”).

⁵² Indictment, *supra* note 6.

⁵³ *Id.*

allocate its athletic scholarships.⁵⁴ Unlike the current situation, concrete, economic harm to the universities had actually materialized. Of all the universities named in the indictment, not one has been reprimanded by the NCAA.

An interesting element of the NCAA's enforcement procedures is its definition for "lack of institutional control." The NCAA Constitution states that member institutions are responsible for the compliance of its athletic department staff, student-athletes, and any other individuals or organizations "representing the institution's athletics interest."⁵⁵ Institutional responsibility encompasses the oversight of apparel corporate entity conduct.⁵⁶ The trigger point for this responsibility is when any member of the institution's executive or athletic department's staff knew or should have known such an individual or organization was assisting in the recruitment of an athlete or otherwise was "involved in promoting the institution's athletics interest."⁵⁷ Given that most top-tier universities have enormous collegiate sponsorship contracts with Adidas, Nike, and the like, coupled with the indictment's allegation that coaches arranged these impermissible payments, the above-mentioned standard is undoubtedly satisfied.⁵⁸

Placing the burden on the university to prevent improper recruiting tactics is the fundamental pillar of NCAA enforcement. And when the NCAA finds the university has failed to do so, the wrath is unleashed on its athletic program.⁵⁹ Being that NCAA policies and bylaws are the bedrock of the prosecution's criminal theory, the NCAA's stance that universities possess

⁵⁴ *Id.*

⁵⁵ NCAA MANUAL, *supra* note 4 at Article 2.8.1.

⁵⁶ NCAA MANUAL, *supra* note 4 at Article 6.4.2.

⁵⁷ *Id.*

⁵⁸ Carly Benjamin, *The 65 Most Valuable College Sports Apparel Deals*, FORBES (Jul. 12, 2016, 3:34pm), <https://www.forbes.com/sites/carlybenjamin/2016/07/12/the-65-most-valuable-college-sports-apparel-deals/#9e4eb308f6df> (last visited April 20, 2018); *see also* Indictment, *supra* note 6. .

⁵⁹ NCAA COMM. ON INFRACTIONS, UNIVERSITY OF MISSISSIPPI PUBLIC INFRACTIONS DECISION (2017), http://www.ncaa.org/sites/default/files/Dec2017COI_MississippiIIIInfractionsDecisionPUBLIC_20171201.pdf; *see also* Doug Lederman, *The Rule Breakers*, INSIDE HIGHER ED (Jan. 11, 2016) ("96 Division I colleges violated major NCAA rules in the last decade"), <https://www.insidehighered.com/news/2016/01/11/96-division-i-colleges-violated-major-ncaa-rules-last-decade> (last visited April 15, 2018).

comprehensive responsibility for the actions both inside and outside its athletic department is in stark contrast with the prosecution's premise that these universities are the victims.

IV. WILLFUL BLINDNESS SHOULD NOT BE REWARDED.

While the FBI was investigating Chris Dawkins and his fellow confidants, where was the NCAA? Any college sports fan knows the NCAA enforcement staff does not make a practice of letting rule violations go unpunished.⁶⁰ Perhaps instead of deploying the guardians of amateurism to clean up college basketball, Mark Emmert⁶¹ was at home counting money.

The deceitful intermingling of apparel companies with college basketball recruiting was once the worst kept secret in college sports. As documented in ESPN's *30 for 30: Sole Man*, shoe company finances have been pouring into college basketball programs since the 1970's.

Sonny Vaccaro, the "God Father of Basketball Sneaker Culture," organized the first Dapper Dan Roundball Classic in 1965.⁶² This nationwide, all-star basketball game for high school players eventually led to what is known today as grassroots basketball, which has served as the incubator for underground, black-market recruiting.⁶³ Whether it has been displayed through

⁶⁰ Lederman, *supra* note 58.

⁶¹ Mark Emmert is the current president of the NCAA. NCAA, <http://www.ncaa.org/about/who-we-are/office-president/ncaa-president-mark-emmert> (last visited April 20, 2018).

⁶² Brandon Edler, *Who Is Sonny Vaccaro? A Guide to the Godfather of Basketball Sneaker Culture*, COMPLEX (April 16, 2015), <http://www.complex.com/sneakers/2015/04/who-is-sonny-vaccaro/> (last visited April 20, 2018).

⁶³ The term "grassroots basketball" refers to the current state of elite high school basketball in the United States. High school basketball has become a year-round commitment. Starting as early as age 14, teams are formed by accumulating the most highly talented players in a city, state, or region. These teams then travel to different cities to play in tournaments against other all-star teams. Tournaments take place during the spring, summer, and fall months when the regular school team basketball season is on break. There are various grassroots basketball leagues to choose from, nearly all of which are sponsored and administered by different apparel companies (i.e. Nike, Adidas, and Under Armour). The American Athletic Union ("AAU") is often mistakenly used to refer to "grassroots basketball" in its entirety. AAU is an additional organization within the grassroots basketball structure, but is not sponsored by apparel companies. Culturally, the term "AAU" is to grassroots basketball what "Kleenex" is to tissue paper. Grassroots basketball gives players the opportunity to display their skills on a national scale against the most elite talent in the country each

published journalism, an ESPN short film, or a top player's eyebrow-raising choice of school, the comprehensive proof of shady recruiting in college basketball has been broadcasted for decades.⁶⁴

Despite its quest to impede commercial exploitation in college athletics, the NCAA's blueprint for doing so, in turn, gave birth to the current pay-for-play culture.⁶⁵ To demonstrate, consider the cash mammoth that is college sports. Intercollegiate athletics generates approximately \$11 billion per year.⁶⁶ The 2018 NCAA basketball tournament alone pocketed \$875 million, and is estimated to generate more than \$1 billion annually in years to come.⁶⁷ Further, economists value the current basketball sneaker market at approximately \$950 million per year.⁶⁸

and every weekend. See Scott Phillips, *A college basketball fan's guide to the current grassroots basketball scene*, NBC SPORTS (Jul. 8, 2014, 9:00am), <http://collegebasketball.nbcsports.com/2014/07/08/a-college-basketball-fans-guide-to-the-current-grassroots-basketball-scene-2/> (last visited April 21, 2018); see also Joel Blank, *Corruption in basketball is nothing new, but latest scandal touches all levels*, SPORTS MAP (Feb. 26, 2018), <https://houston.sportsmap.com/joel-blank-corruption-basketball-is-nothing-new-latest-scandal-touches-all-levels/> (last visited April 21, 2018).

⁶⁴ *30 for 30: Sole Man* (ESPN television broadcast April 16, 2015); see also Edler, *supra* note 61; see also Chris Johnson, *Malik Newman could be key piece in revival at Mississippi State*, SPORTS ILLUSTRATED (April 24, 2015), <https://www.si.com/college-basketball/2015/04/24/malik-newman-mississippi-state-bulldogs> ("One of the top prospects in the country will attend a school that has not reached the NCAA tournament this decade and made a coaching change just last month.") (last visited April 21, 2018).

⁶⁵ Jay Bilas, *Why the college basketball scandal won't get fixed until the NCAA pays athletes*, ESPN (Sept. 28, 2017), http://www.espn.com/mens-college-basketball/story/_id/20841877/until-ncaa-solves-money-problem-pays-athletes-problems-continue (last visited April 21, 2018).

⁶⁶ Andrew Syrios, *The NCAA Racket: \$10 Billion 'Non-Profit' Organization*, VALUEWALK (Sept. 16, 2014, 7:38 pm), <https://www.valuwalk.com/2014/09/ncaa-business/> (last visited April 21, 2018).

⁶⁷ Alex Kirshner, *Don't miss the point about all the money the NCAA tournament makes—The players involved get exceptionally little.*, SB NATION (Mar. 7, 2018, 3:19 pm), <https://www.sbnation.com/college-basketball/2018/3/7/17093112/ncaa-tournament-revenue-tv-athletes-2018> (last visited April 21, 2018).

⁶⁸ Will Hobson and Jesse Dougherty, *Is the FBI cleaning up college basketball, or wasting its time?*, WASHINGTON POST (Mar. 9, 2018), https://www.washingtonpost.com/sports/is-the-fbi-cleaning-up-college-basketball-or-wasting-its-time/2018/03/09/9a77a868-22a3-11e8-badd-7c9f29a55815_story.html?utm_term=.4251fab81904 (last visited April 21, 2018).

When an industry reaps more than a billion dollars per year, and the primary components of the product are not adequately compensated, the natural outcome is the formation of a secondary, black-market.⁶⁹ Elite basketball talents in this country are worth millions of dollars to everyone involved: the universities, coaches, agents, and apparel companies. Yet, with 86% of college athletes living below the federal poverty line, the NCAA expects them to continue on as free advertising for the before mentioned powers that be.⁷⁰

In the spirit of institutional responsibility, its irrefutable the NCAA “should have known” of this beneath the surface recruiting system. Nevertheless, in order for Mark Emmert to craft a near \$20 billion TV contract with Turner and CBS Sports,⁷¹ he needed to protect the product. The circumstantial evidence needed to justify opening an investigation into college basketball was low-hanging fruit for the NCAA, yet that stone was left unturned. “If your decisions reveal your priorities, the NCAA’s first priority is money.”⁷² This investigation perceives the NCAA as victims. Willful blindness should not be rewarded.

V. THE CURRENT NCAA STRUCTURE IS INCOMPATIBLE WITH PRESENT-DAY COLLEGE ATHLETICS.

For any industry, change is both natural and inevitable. As evolution takes its course, those involved must decide to change with it. The inability to deviate will undoubtedly result in a disruption of the status quo. As the tide continues to shift in college athletics, those in power have become hesitant to adjust. Industry leaders should not tolerate the NCAA’s reluctance for change while the FBI taints its product on a national scale. If universities hope to sufficiently address the problems surrounding college sports today, they must acknowledge the flawed ways of the past and collectively set rules and regulations more appropriate for the current climate.

⁶⁹ Bilas, *supra* note 64.

⁷⁰ Huma and Staurowsky, *supra* note 4; *see also* Bilas, *supra* note 64.

⁷¹ Tracy, *supra* note 3.

⁷² Bilas, *supra* note 64.

Prior to 2006, high school basketball players were eligible to enter the NBA draft.⁷³ Currently, the NBA requires players be at least one year removed from high school graduation before becoming draft-eligible.⁷⁴ If the new NBA collective bargaining agreement opts to change back its draft eligibility criteria, the college game will have to appropriately adjust its rules as well. For instance, college basketball's recruiting guidelines should be aligned with those governing college baseball. High school baseball players drafted by a Major League Baseball (MLB) club are permitted to hire agents to assist them in negotiating a contract between the player and the team who they were drafted by.⁷⁵ After the contract-negotiating phase has commenced, and in the event the player decides to forego playing professional baseball, his college baseball eligibility remains intact, and he is able participate in college athletics free of penalty.⁷⁶ The same should be true for high school basketball recruits. Choosing whether to turn pro or go to college is a life-altering decision. Being that nearly all recruits are teenagers, and 86% of college athletes live below the federal poverty line, they are exactly the class of people who need professional guidance most.

In its quest to preserve the integrity of college sports, the NCAA has imposed the narrative that agents and apparel company executives are to blame for the exploitation of elite high school athletes. By uncovering the truth of college basketball's pay-for-play culture, Justice Department officials have aimed to grant that assertion legitimacy. Be not deceived, for the NCAA methodically and deliberately molded intercollegiate sports into the multibillion-dollar industry it is today.⁷⁷ Moreover, while it's

⁷³ Yannis Koutroupis, *The History of the 'One-And-Done' Era*, BASKETBALL INSIDERS (March 9, 2014), <http://www.basketballinsiders.com/the-history-of-the-one-and-done-era/> (last visited April 21, 2018).

⁷⁴ Khadrice Rollins, *Report: Adam Silver Wants to Improve NBA's Relationship With Elite High School Players*, SPORTS ILLUSTRATED (March 5, 2018), <https://www.si.com/nba/2018/03/05/adam-silver-elite-high-school-player-one-and-done-change-g-league> (last visited April 21, 2018).

⁷⁵ Gregg E. Clifton, *NCAA Changes Course: High School Baseball Draftees Allowed To Hire Agents*, COLLEGIATE & PROF. SPORTS L. BLOG (Jan. 19, 2016), <https://www.collegeandprosportslaw.com/uncategorized/ncaa-changes-course-high-school-baseball-draftees-allowed-to-hire-agents/> (last visited April 21, 2018).

⁷⁶ *Id.*

⁷⁷ *Id.*

undeniable the current college basketball recruiting structure breeds exploitation of young athletes and their families, the root of such abusive conduct stems from the actions of those tasked with its oversight.

The antique notion of placing academics above athletics has gradually been suffocating. Millions of dollars trickle through Division I football stadiums and basketball arenas every year as universities have placed an unprecedented priority on enhancing their athletic departments' artillery.⁷⁸ As the volume of money in college sports continues to expand, the argument that players should be paid has become more and more compelling. To illustrate, the University of Alabama's football program generated approximately \$108 million during the 2016-2017 fiscal year.⁷⁹ If NCAA rules permitted, the University of Alabama had enough money left over to pay every player on the team approximately \$540,000.⁸⁰ Likewise, if the University of North Carolina were forced to pay its basketball players 50% of the team's revenue—as required in the NBA—then each scholarship player would have earned roughly \$824,000 for winning the national championship in 2017.⁸¹ Instead, the NCAA precludes player compensation from exceeding that of a mere scholarship.⁸² Capping player compensation to such low figures yields a healthy cut of the winnings for the NCAA and its member athletic departments. The pie is too large for the players not to eat.

A remodeling of the college athletics landscape is certainly on the horizon. And when that day comes, those with a seat at the table must ask, "Is the NCAA necessary?" Is it efficient to have a

⁷⁸ Will Hobson and Steven Rich, *Colleges spend fortunes on lavish athletic facilities*, CHICAGO TRIB. (Dec. 23, 2015, 6:40 am), <http://www.chicagotribune.com/sports/college/c-t-athletic-facilities-expenses-20151222-story.html> (last visited May 7, 2018).

⁷⁹ University of Alabama: Revenue and Expenses, *supra* note 29.

⁸⁰ *Id.* Total expenses for the 2016-2017 Alabama football program was \$62,252,389. The NCAA allows each Division I FBS football program to have a maximum of 85 scholarship players. Subtracting expenses from revenue and then dividing by 85 equals approximately \$540,000. *See also* NCAA MANUAL, *supra* note 4 at Article 15.5.6.1.

⁸¹ A similar calculation was used here as was used in note 79. *University of North Carolina at Chapel Hill: Revenue and Expenses*, U.S. Dep't Edu., <https://ope.ed.gov/athletics/#/institution/details> (last visited April 21, 2018); *see also* NCAA MANUAL, *supra* note 4 at Article 15.5.5.1; *see also* David J. Berri, *Paying NCAA Athletes*, 26 Marq. Sports L. Rev. 2 479, 487 (2016).

⁸² NCAA MANUAL, *supra* note 4.

governing body like the NCAA place so much red tape on an industry that is crying out for deregulation? Meaningful structure reform by the universities must take place in response to the oppressive behavior of the monster they helped create. Uprooting families and sending fathers and husbands to jail cannot, and should not, be the price for saving the good ole days of amateurism.