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APPLICATION OF THE UAAA, RUAAA, AND STATE ATHLETE-AGENT LAWS TO CORRUPTION IN MEN'S COLLEGE BASKETBALL AND REVISIONS NECESSITATED BY NCAA RULE CHANGES

JOSHUA LENS*

I. INTRODUCTION

Opening statements in the October 2018 federal trial regarding corruption in men's college basketball served as a juicy appetizer for what was to come in the rest of the trial. Now former Adidas executive James Gatto, former Adidas consultant Merl Code, and aspiring agent and former runner for NBA agent Andy Miller, Christian Dawkins, faced accusations that they paid money from Adidas to prospective student-athletes and their families to ensure the prospective student-athletes signed with Adidas-sponsored schools, and then with Adidas and certain financial planners and agents once they turned professional.¹ In her opening statement, Casey Donnelly, Gatto's attorney, admitted that Gatto funneled \$100,000 to the family of highly recruited prospect Brian Bowen; paid \$40,000 to the family of current Dallas Maverick Dennis Smith, Jr. while he played for North Carolina State University; and paid \$20,000 to Silvio De Sousa, who played for the University of Kansas during the second semester of the 2017-18 season.² Donnelly went on to state, "The NCAA rules

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1. Mark Schlabach, *James Gatto, Merl Code and Christian Dawkins Found Guilty in Pay-for-Play Trial*, ESPN (Oct. 25, 2018), <http://www.espn.com/espnw/sports/article/25072946/james-gatto-merl-code-christian-dawkins-found-guilty-college-basketball-pay-play-trial> (detailing outcome of trial).

2. Rob Dauster, *Bombshells in Opening Statements of College Basketball Corruption Trial*, MSN (Oct. 2, 2018), <https://www.msn.com/en-us/sports/ncaabk/bombshells-in-opening-statements-of-college->

are not the laws of the country . . . They're the equivalent of the rules in your apartment building. If you break them, you haven't broken the law. It is not against the law to violate NCAA rules."³ Judge Lewis A. Kaplan reminded jurors that NCAA rules were not on trial.⁴ Nonetheless, Donnelly's statement summarized the defendants' primary defense--that their behavior violated NCAA bylaws but did not break federal laws.⁵ After a three-week trial, however, the jury found Gatto, Code, and Dawkins guilty on felony charges of wire fraud and conspiracy to commit wire fraud.⁶

Until recently, NCAA rules had long prohibited a basketball student-athlete from both hiring and accepting benefits from an agent.⁷ Following federal officials' public disclosure of the investigation and release of complaints against the defendants, and two months prior to the initial trial, the NCAA championed

basketball-corruption-trial/ar-BBNQKZj (describing Gatto's legal defense strategy). Defense attorneys contended in their opening statement that payment Adidas and Louisville worked to get for Bowen was necessary to compete with the University of Oregon. See Ricky O'Donnell, *College Basketball Corruption Trial: 5 Things We Learned from Opening Arguments*, SBNATION (Oct. 2, 2018), <https://www.sbnation.com/college-basketball/2018/10/2/17929420/fbi-college-basketball-corruption-trial-oregon-adidas-nike-arizona-kansas-de-sousa> (detailing early portion of initial trial).

3. Mark Schlabach and Jeff Borzello, *Former Adidas Executive James Gatto Didn't Break Law in Orchestrating Payments to Recruits, Attorneys Say*, ESPN (Oct. 2, 2018), https://www.espn.com/mens-college-basketball/story/_/id/24872282/former-adidas-executive-james-gatto-break-law-orchestrating-payments-recruits-attorneys-say (detailing trial's opening statements); see Michael McCann, *College Basketball Corruption Trial: Prosecutor's Case, Explained*, SPORTS ILLUSTRATED, Oct. 12, 2018, <https://www.si.com/college-basketball/2018/10/12/ncaa-corruption-bribery-trial-brian-bowen-christian-dawkins> (noting NCAA amateurism rules are not laws); see also Anne Ryman, *NCAA FBI Investigation: College Basketball Trial and What You Need to Know*, ARIZ. REPUBLIC, Apr. 19, 2019, <https://www.azcentral.com/story/sports/2019/04/18/ncaa-fbi-investigation-college-basketball-trial-arizona-wildcats-sean-miller-adidas-nike-bribery/3468288002/> (noting defense attorney's characterization of prosecution's allegations as a "novel theory").

4. Dan Greene, *College Basketball Trial Was Always About the NCAA's Archaic Rules*, SPORTS ILLUSTRATED, Oct. 24, 2018, <https://www.si.com/college-basketball/2018/10/24/ncaa-rules-recruiting-bribery-corruption-trial-fbi> (explaining that time and time again Kaplan made clear that case's central question was not whether defendants violated NCAA rules but if they undertook criminal actions and hid them from universities).

5. See Marc Tracy, *Three Found Guilty in N.C.A.A. Basketball Recruiting Scheme*, N.Y. TIMES, Oct. 24, 2018, <https://www.nytimes.com/2018/10/24/sports/ncaa-basketball-adidas-guilty.html> (describing trial outcome); see also O'Donnell, *supra* note 2 (stating that defense showed its playbook during in opening arguments); see also Dan Wetzel, *Recruiting Allegations Fly as College Hoops Trial Begins*, YAHOO SPORTS! (Oct. 2, 2018), <https://sports.yahoo.com/opening-statements-college-hoops-corruption-trial-drag-oregon-fray-reveal-strategies-174516177.html> (describing allegations coming out of opening of trial).

6. Tracy, *supra*, note 5 (noting that sentencing would occur in March 2019 with a two to four years prison sentence possible); see Kaelen Jones, *College Basketball Corruption Trial: Three Found Guilty*, SPORTS ILLUSTRATED, Oct. 24, 2018, <https://www.si.com/college-basketball/2018/10/24/ncaa-trial-verdict-fbi-james-gatto-christian-dawkins> (explaining outcome of initial trial).

7. NCAA, 2018-19 NCAA DIVISION I MANUAL art. 12.3.1 at 71 [hereinafter NCAA MANUAL 2018-19].

“significant changes” to men’s college basketball.⁸ Changes included the ability of certain men’s basketball student-athletes to hire an agent to help them make informed decisions about going pro.⁹ Further, these men’s basketball student-athletes may now accept certain benefits from agents under revised NCAA rules. When an agent recruits one of the select men’s basketball student-athletes who may hire an agent, the agent may pay for meals and transportation for the student-athlete and his family when those expenses relate to the agent selection process.¹⁰ Additionally, once the student-athlete signs with an agent, the agent may pay for the student-athlete’s meals, transportation, and lodging when the expenses relate to meetings with the agent or a professional team.¹¹

When implementing these rules changes, the NCAA subsequently recognized that the Uniform Athlete Agents Act (“UAAA”) and relevant state laws based on it regulate the ability of agents to provide certain expenses prior to signing a student-athlete to a representation agreement.¹² Thus, the NCAA determined that the rule change permitting pre-agreement benefits was not effective immediately, but would become effective once states revised their laws.¹³

There is an important asterisk, however, to both the NCAA’s acknowledgment that one of its rule changes impacts an area regulated by states and Donnelly’s assertion of the legality of the defendants’ admittedly NCAA rule-breaking actions. Both the NCAA and the defendants failed to fully recognize and account for the UAAA and its successor, the Revised Uniform Athlete Agents Act (“RUAAA”), either of which the vast majority of states have

8. NCAA, *Statement from NCAA Leaders on College Basketball Reforms*, NCAA (Aug. 8, 2018), <http://www.ncaa.org/about/resources/media-center/news/statement-ncaa-leaders-college-basketball-reforms> (describing changes resulting from federal investigation).

9. *Id.* (describing rules changes related to providing flexibility to men’s basketball student-athletes considering leaving school early to turn professional).

10. See NCAA, *Flexibility for Going Pro and Getting a Degree*, NCAA (Sept. 20, 2018), www.ncaa.org/about/flexibility-going-pro-and-getting-degree (describing NCAA-implemented changes geared toward providing men’s basketball student-athletes additional freedom and flexibility to decide about going pro or getting a college education) [hereinafter *Going Pro*].

11. *Id.* One may note the irony in the NCAA permitting certain men’s basketball student-athletes to hire and receive benefits from agents when it was agents who were partly responsible for the corruption in the first place. See Dan Wolken, *NCAA Changes to College Basketball Seeking Reform are Mostly Cosmetic*, USA TODAY, Aug. 8, 2018, <https://www.usatoday.com/story/sports/college/columnist/dan-wolken/2018/08/08/ncaa-college-basketball-reform-changes-mostly-cosmetic/938698002/> (arguing that permitting certain men’s basketball student-athletes to have agents does not address what is actually against rules: agents funneling money to teenage prospective student-athletes or to student-athletes while in college in exchange for becoming a client once they turn professional). However, others believe the NCAA’s rules are the root cause of the entire scenario. See Greene, *supra* note 4 (arguing that case was about the NCAA rules manual).

12. See *Going Pro*, *supra* note 10.

13. *Id.*

adopted. While the NCAA recognized that its rule change regarding pre-agreement benefits conflicted with the UAAA and relevant state laws, it failed to account for other ways in which its rule changes fail to fully align with the UAAA and RUAAA and state laws based on them. When stating that the defendants' NCAA rule-breaking conduct did not violate the law, Donnelly and the attorneys for the other defendants in the initial federal trial were surely focused on the federal laws at issue. However, their blanket statements that their clients did not break the law failed to recognize that their clients' actions not only broke NCAA rules but state laws based on the UAAA and RUAAA, too.

Section II of this Article describes the federal investigation into, and legal proceedings regarding, corruption in men's college basketball. Section III details the background of the UAAA and RUAAA and applies their provisions to the actions of the various defendants in the previous and upcoming trials. This analysis reveals that the defendants' actions triggered the application of state athlete-agent laws, which, if properly monitored and enforced, could prove an appropriate mechanism for deterring or addressing future similar instances. Section IV details the NCAA's response to the federal investigation, which included revising rules applicable to men's college basketball student-athletes. As the rules changes caused NCAA legislation to fall out of line with UAAA and RUAAA provisions, the Article concludes by suggesting revisions to the acts to align them with these rules changes.

II. LEGAL PROCEEDINGS REGARDING CORRUPTION IN MEN'S COLLEGE BASKETBALL

One of the biggest stories in college sports history came to light in September 2017.¹⁴ Federal investigators turned the men's college basketball world upside down when they made public a series of complaints depicting a thriving black market in which coaches, agents, financial advisors, and shoe and apparel company employees exploited naïve, young basketball student-athletes.¹⁵ On September 26, 2017, the Acting United States Attorney for the

14. See Matt Norlander, *Ultimate College Basketball Corruption Scandal Primer: Explaining the Latest with the FBI Probe*, CBS SPORTS (Apr. 12, 2018), <https://www.cbssports.com/college-basketball/news/ultimate-college-basketball-corruption-scandal-primer-explaining-the-latest-with-the-fbi-probe/> (providing timeline of events associated with investigation and charges). The FBI started investigating men's college basketball after the Securities and Exchange Commission charged financial advisor Martin Blazer with fraud and Blazer informed the FBI that he could bring to light fraud and corruption in college basketball recruiting.

15. Marc Tracy, *N.C.A.A. Coaches, Adidas Executive Face Charges; Pitino's Program Implicated*, N.Y. TIMES, Sept. 26, 2017, <https://www.nytimes.com/2017/09/26/sports/ncaa-adidas-bribery.html> (detailing officials' announcement of charges and description of investigation); see Daniel Rapaport, *FBI NCAA Basketball Investigation Details: What We Know*, SPORTS ILLUSTRATED, Nov. 17, 2017,

Southern District of New York and the Assistant Director-in-Charge of the New York Office of the FBI announced the arrest of ten individuals.¹⁶ The complaints charged then-Adidas employees Gatto, Code, and Jonathan Augustine; athlete-advisors Dawkins, Muhish Sood, and Rashan Michel; and then-assistant men's basketball coaches Lamont Evans (Oklahoma State University), Emanuel Richardson (University of Arizona), Tony Bland (University of Southern California), and Chuck Person (Auburn University) with wire fraud, bribery, travel act, and conspiracy offenses.¹⁷ The defendants, if convicted of the charges, faced maximum prison sentences between 80 and 200 years.¹⁸

The U.S. Attorney's Office for the Southern District of New York and FBI's multiyear investigation revealed two related schemes in the dark underbelly of college basketball: the "Coach Bribery Scheme" and the "Adidas Scheme."¹⁹

A. Coach Bribery Scheme

In the first scheme, athlete advisors Dawkins and Sood allegedly paid bribe money to assistant men's college basketball coaches, and sometimes directly to current and prospective men's college basketball student-athletes, facilitated by the coaches.²⁰ In exchange for the payments, the coaches agreed to pressure and exert influence over student-athletes under their control to retain the services of

<https://www.si.com/college-basketball/2017/09/29/what-we-know-about-each-school-fbi-investigation> (piecing together facts about investigation); see also Michael McCann, *FBI College Basketball Corruption Scandal: Next Steps*, SPORTS ILLUSTRATED, Sept. 26, 2017, <https://www.si.com/college-basketball/2017/09/26/fbi-corruption-college-basketball-fraud-louisville-bribe> (explaining how NCAA notion of amateurism is under attack).

16. Dep't of Just., U.S. Attorney's Office, Southern District of New York Release, *U.S. Attorney Announces the Arrest of 10 Individuals, Including Four Division I Coaches, for College Basketball Fraud and Corruption Schemes*, U.S. DEP'T OF JUST. (Sept. 26, 2017), <https://www.justice.gov/usao-sdny/pr/us-attorney-announces-arrest-10-individuals-including-four-division-i-coaches-college> (detailing investigation and charges resulting therefrom) [hereinafter Department of Justice].

17. See *id.* The Department of Justice release and complaints refer to some entities generically, but numerous individuals and media outlets have identified them (*e.g.*, Adidas is "Company-1"). See also Jason Kirk and Ricky O'Donnell, *FBI College Basketball Investigation: 18 Key Names to Know for Now*, SBNATION (Oct. 10, 2017), <https://www.sbnation.com/college-basketball/2017/9/27/16367814/ncaa-basketball-fbi-investigation-coaches-agents-adidas>. The universities who employed the four assistant coaches have since terminated them. See Norlander, *supra* note 14 (providing timeline of events associated with investigation and charges). Authorities ultimately dropped the charges against Augustine. See *id.*

18. See Department of Justice, *supra* note 16.

19. See *id.*; see also Tracy, *supra* note 15.

20. See Department of Justice, *supra* note 16.

the bribe-payers once the athletes entered the NBA.²¹ Dawkins, “a 20-something upstart” and “linchpin” of the scandal, formerly worked for sports agent Andy Miller before going out on his own to start his own management company called LOYD (“Live Out Your Dreams”).²² The allegations against the four assistant coaches varied.²³

1. Allegations Against Now-Former Auburn Assistant Men’s Basketball Coach Chuck Person

A thirteen-year NBA veteran, now-former Auburn assistant men’s basketball coach Chuck Person is the most prominent name among the defendants.²⁴ Person accepted \$91,500 in bribe payments arranged by Michel from a professional athlete financial advisor and business manager (the “advisor”) in exchange for agreeing to direct certain student-athletes to retain the services of the advisor.²⁵ In helping further the advisor’s recruitment of

21. *Id.* At trial, Dawkins contended that he did not want to pay assistant coaches because he did not believe they could influence student-athletes’ choices of agents, “By the time those kids get to college, the deals are usually done. There’s no need to pay a college coach because these players are coming to college with agents.” See Mark Schlabach and Jeff Borzello, *Assistant: Miller Paid \$10K Per Month to Ayton*, ESPN (May 2, 2019), www.espn.com/mens-college-basketball/story/_/id/26647372/miller-paid-10k-per-month-ayton (describing wiretapped call implicating University of Arizona head men’s basketball coach Sean Miller).

22. See Michael McCann, *NCAA Corruption Trial: What to Expect in College Basketball Case*, SPORTS ILLUSTRATED, April 19, 2019, https://www.si.com/college-basketball/2019/04/19/ncaa-corruption-recruiting-trial-christian-dawkins?utm_campaign=sinow&utm_medium=social&xid=socialflow_twitter_si&utm_source=twitter.com (previewing second trial); see also Gendry Estes, *Who is Christian Dawkins and How is He Tied to NBA Agent Andy Miller?*, LOUISVILLE COURIER J., Feb. 23, 2018, <https://www.courier-journal.com/story/sports/college/kentucky/2018/02/23/christian-dawkins-nba-agent-andy-miller-college-basketball-recruiting/366449002/> (detailing Dawkins’s connections and role in scandal). Miller, once considered one of the most powerful agents in professional basketball with a client list including stars Kristaps Porzingis, Kyle Lowry, Serge Ibaka, Dwight Howard, and Kevin Garnett, relinquished his agent certification in December 2017. *Id.* Authorities have not charged Miller, who many believe is cooperating with the government. See Matt Norlander, *College Basketball’s FBI Probe Gets Specific With Players, Teams Named in Report*, CBS SPORTS (Feb. 23, 2018), <https://www.cbssports.com/college-basketball/news/college-basketballs-fbi-probe-gets-specific-with-players-teams-named-in-report/> (describing content of documents obtained in raid of Miller’s office).

23. In one recorded meeting, Dawkins explained, “agents obvious (sic) have influence, but you gotta get the college coaches too . . . it’s almost like skipping a step if you just deal with agents.” See McCann, *supra* note 15. Authorities caught Dawkins on wiretap explaining that the path to securing commitments from college student-athletes went through assistant coaches, because head coaches “ain’t willing” to take bribes, “cause they’re making too much money. And it’s too risky.” See Tracy, *supra* note 15.

24. See Kirk, *supra* note 17.

25. See Department of Justice, *supra* note 16 (describing allegations against Person). The advisor is a cooperating witness for federal authorities. See also Rapaport, *supra* note 15 (describing Person’s alleged involvement).

student-athletes he coached, Person arranged multiple meetings between them.²⁶ Person went so far as to lie to the mother of one student-athlete that the advisor was Person's own personal financial advisor and also advised NBA Hall of Famer and Auburn alumnus Charles Barkley.²⁷

Person also gave \$18,500 of the bribe money he received to the families of two student-athletes whom Person sought to steer to the advisor.²⁸ Following news of the federal investigation, Auburn suspended men's basketball student-athletes Austin Wiley and Danjel Purifoy indefinitely.²⁹ Later in the season, Auburn deemed Wiley and Purifoy ineligible for the remainder of the 2017-18 season.³⁰ In January 2018, the NCAA declared Wiley eligible for the 2018-19 season, noting Auburn had self-reported NCAA violations involving impermissible recruiting, extra benefits, and agent-related activity.³¹ In March 2018, the NCAA ruled that Purifoy would regain eligibility after sitting out the first 30 percent of the 2018-19 season due to concerns related to his connection to the federal investigation.³²

2. Allegations Against Now-Former Oklahoma State University Assistant Men's Basketball Coach Lamont Evans

Evans's participation in the scheme was similar to that of Person. Evans solicited \$22,000 from two advisors—Sood and the same advisor with which Person was involved—in exchange for Evans's agreement to exert his official

26. Department of Justice, *supra* note 16 (describing allegations against Person).

27. *Id.* (describing allegations against Person).

28. *Id.* (describing allegations against Person).

29. Rapaport, *supra* note 15 (describing investigation's effects on Auburn University).

30. Mike Rutherford, *How the FBI's College Basketball Investigation Impacted Every School Involved*, SBATION (Sept. 26, 2018), <https://www.sbnation.com/college-basketball/2018/9/26/17905914/fbi-college-basketball-investigation-every-school-recruiting-louisville-usc-arizona> (detailing effects of investigation on involved universities).

31. NCAA, *Wiley Eligible for 2018-19 Season*, NCAA (Jan. 11, 2018), www.ncaa.org/about/resources/media-center/news/wiley-eligible-2018-19-season (disclosing Wiley's eligibility decision).

32. ESPN, *Auburn Forward Danjel Purifoy to Regain His Eligibility After First 30 Percent of Next Season*, ESPN (Mar. 20, 2018), www.espn.in/mens-college-basketball/story/_/id/22849959/auburn-forward-danjel-purifoy-regain-eligibility-first-30-percent-next-season (describing NCAA decision regarding Purifoy's eligibility). Auburn's men's basketball program, thanks in part to contributions from Purifoy and Wiley, enjoyed its best season in program history in 2018-19, winning 30 games, winning its first Southeastern Conference tournament championship since 1985, and advancing to its first-ever Final Four. See Josh Vitale, *Looking Ahead to What Auburn Could Lose, Return and Add Next Basketball Season*, MONTGOMERY ADVERTISER, Apr. 9, 2019, <https://www.montgomeryadvertiser.com/story/sports/college/auburn/2019/04/09/looking-ahead-what-auburn-basketball-could-lose-return-add-next-season-harper-wiley-okeke-nba-draft/3408435002/> (summarizing Auburn's season and looking ahead to next season). Wiley may test NBA draft waters and forego his senior season of eligibility while Purifoy already announced he would return next season for his senior year of eligibility. See *id.*

influence over student-athletes he coached to retain the advisors' services once those student-athletes entered the NBA.³³ Evans also received bribe payments from Dawkins when the former coached at the University of South Carolina.³⁴

To assist Sood and the advisor recruit the student-athletes he coached, Evans arranged meetings for them with student-athletes.³⁵ Evans also falsely touted the services of Sood and the advisor to student-athletes and their families, telling one student-athlete, for example, that the manager was Evans's "guy," and promising that, "[i]t's going to benefit you. I promise you that."³⁶

Oklahoma State announced in November 2017 it would withhold its top player, Jeffrey Carroll, from competitions pending review of the program.³⁷ Carroll missed three games before Oklahoma State cleared him to return.³⁸

3. Allegations Against Now-Former University of Arizona Assistant Men's Basketball Coach Emanuel Richardson

Richardson accepted \$20,000 in bribes from Dawkins, Sood, and two undercover law enforcement agents posing as financial backers of the advisor in exchange for Richardson's commitment to steer student-athletes he coached to retain Dawkins and Sood's services upon entering the NBA.³⁹ With respect to one particular student-athlete he coached, Richardson assured Dawkins and Sood that Richardson was the individual who the student-athlete trusted.⁴⁰ Richardson facilitated at least one meeting between Dawkins, Sood, and a representative of a student-athlete for the purpose of the representative committing the student-athlete to retain Dawkins and Sood's services.⁴¹

Richardson kept some of the bribe money and gave some to a recruit believed to be class of 2018 prospective student-athlete Jahvon Quinerly.⁴²

33. Department of Justice, *supra* note 16 (describing allegations against Evans).

34. *Id.*; see Rapaport, *supra* note 15.

35. See Department of Justice, *supra* note 16 (describing allegations against Evans).

36. *Id.*

37. Rapaport, *supra* note 15 (describing effects of federal investigation on implicated universities).

38. ESPN, *Oklahoma State Clears Cowboys Guard Jeffrey Carroll to Play*, ESPN (Nov. 20, 2017), https://www.espn.com/college-sports/story/_/id/21490727/oklahoma-state-clears-cowboys-guard-jeffrey-carroll-play (describing Oklahoma State announcement of Carroll's pending return).

39. See Department of Justice, *supra* note 16 (describing allegations against Richardson). Note the absence of Code from the allegations regarding Richardson, as the University of Arizona is a Nike-sponsored school. See also Rapaport, *supra* note 15.

40. Department of Justice, *supra* note 16 (describing allegations against Richardson).

41. *Id.*

42. Rapaport, *supra* note 15.

Amidst the federal investigation, Quinerly decommitted from attending Arizona and ultimately enrolled at Villanova University.⁴³

4. Allegations Against Now-Former University of Southern California Assistant Men's Basketball Coach Tony Bland

Bland accepted \$13,000 in bribes from Dawkins and Sood in exchange for Bland's agreement to exert influence over student-athletes Bland coached to retain Dawkins and Sood's services once the student-athletes entered the NBA.⁴⁴ In fact, Bland told Dawkins and Sood, "I definitely can get the players And I can definitely mold the players and put them in the lap of you guys."⁴⁵

At Bland's direction, Dawkins and Sood paid or facilitated the payment of an additional \$9,000 directly to the families of two student-athletes.⁴⁶ The media has identified these two student-athletes as now-former USC men's basketball student-athlete De'Anthony Melton and prospective student-athlete Taeshon Cherry.⁴⁷ In return, Bland facilitated a meeting between Dawkins and Sood and one of Melton's relatives.⁴⁸

B. Adidas Scheme

In the second scheme, athlete advisors Dawkins, Sood, and Augustine, working with high-level Adidas executives including Gatto, allegedly paid or conspired to pay bribes to student-athletes playing at, or recruited by, certain universities, or to their families.⁴⁹ Gatto and Code, who was at one time affiliated with Adidas, paid the bribes in exchange for a commitment by the athletes to matriculate at specific Adidas-sponsored universities, sign with Adidas upon turning professional, and a promise to ultimately sign representation agreements with the bribe-payors once the athletes entered the

43. Ryan Kelapire, *Former Arizona Commit Jahvon Quinerly Disgruntled at Villanova?*, SBNATION (Dec. 11, 2018), <https://www.azdesertswarm.com/basketball/2018/12/11/18137174/jahvon-quinerly-villanova-disgruntled-arizona-commit-fbi-investigation-recruiting> (describing timeline of Quinerly's university selection process). Quinerly has played sparingly this season and recently commented on his Instagram, "was my 2nd choice for a reason," perhaps indicating he is unhappy at Villanova. *Id.*

44. Department of Justice, *supra* note 16 (describing allegations against Bland).

45. *Id.*

46. *Id.*

47. Mark Schlabach, *Ex-USC Assistant Tony Bland Reaches Plea Deal in Hoops Scandal Case*, ESPN (Dec. 20, 2018), www.espn.com/mens-college-basketball/story/_/id/25582237/former-usc-trojans-assistant-tony-bland-reaches-plea-deal-hoops-scandal-case (explaining current status of case involving Bland).

48. *See* Department of Justice, *supra* note 16 (describing allegations against Bland).

49. *Id.* (describing Company-1 scheme).

NBA.⁵⁰ The allegations include multiple prospective student-athletes and universities.

1. Allegations Involving Then-Pro prospective Student-Athlete Brian Bowen and the University of Louisville

Gatto, Code, Dawkins, and Sood worked together to funnel \$100,000 from Adidas to the family of then-high school basketball student-athlete Brian Bowen in exchange for the Bowen's commitment to both play at the University of Louisville and retain Dawkins and Sood upon entering the NBA.⁵¹ Now-former Louisville men's basketball head coach Rick Pitino requested that Dawkins make the payments.⁵² Because the payments violated both NCAA rules and federal legislation, Gatto, Code, Dawkins, and Sood used fake purchase orders, invoices, and related documents to try and disguise the payments.⁵³

Louisville suspended Bowen from the team indefinitely following the allegations and ultimately released him from his scholarship.⁵⁴ Bowen, who never played a college game, entered the 2018 NBA draft pool but teams did not consider him a viable prospect.⁵⁵ Bowen now plays in Australia and recently brought a lawsuit against Adidas and some of its employees and consultants based on alleged violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act.⁵⁶ In large part due to the events surrounding Bowen, Louisville fired Pitino and its athletic director at the time, Tom Jurich.⁵⁷

50. *Id.*

51. *See id.* (describing allegations against Gatto, Code, Dawkins, and Sood). The complaints did not mention Bowen or Louisville by name but several media outlets identified them as the relevant parties, and Louisville confirmed its involvement in the investigation. *See also* The Courier-Journal, *University of Louisville Scandal: Brian Bowen's Mom Says She 'Didn't Know Anything,'* LOUISVILLE COURIER J., Sept. 27, 2017, <https://www.courier-journal.com/story/sports/college/louisville/2017/09/26/university-louisville-recruits-college-basketball-scandal/703820001/> (detailing University of Louisville's alleged involvement in scandal).

52. *See* Thomas Novelly, *1,300 Calls Part of Evidence in FBI's College Basketball Investigation*, LOUISVILLE COURIER J., Dec. 21, 2017, <https://www.courier-journal.com/story/sports/college/louisville/2017/12/21/fbi-college-basketball-investigation-university-louisville/973195001/> (describing investigation, specifically as it pertained to Louisville).

53. Department of Justice, *supra* note 16 (describing allegations against Gatto, Code, Dawkins, and Sood).

54. Novelly, *supra* note 52 (describing Bowen's current status).

55. Matt Norlander, *Former Louisville Recruit Brian Bowen Sues Adidas and Wants it to Stop Sponsoring College Basketball*, CBS SPORTS (Nov. 19, 2018), <https://www.cbssports.com/college-basketball/news/former-louisville-recruit-brian-bowen-sues-adidas-and-wants-it-to-stop-sponsoring-college-basketball/> (detailing Bowen's lawsuit against Adidas).

56. *Id.*

57. *Id.*

2. Allegations Involving Prospective Student-Athlete Balsa Koprivica and the University of Louisville

Dawkins and Augustine agreed to facilitate payments to the family of a high school basketball student-athlete believed to be class of 2019 prospect Balsa Koprivica in exchange for his commitment to play at Louisville and ultimately retain Dawkins's services.⁵⁸ Recruiting analysts rank Koprivica, who is originally from Serbia, as a top prospect in the 2019 high school class.⁵⁹ Upon implication in the federal probe, Koprivica's Florida high school withheld him from competition pending investigation to ensure his actions did not violate state high school athletics regulations.⁶⁰ Koprivica has since verbally committed to attend Florida State University.⁶¹

3. Allegations Involving Prospective Student-Athlete Nassir Little and the University of Miami

Gatto, Code, Dawkins, and Augustine agreed to attempt to make payments totaling as much as \$150,000 from Adidas to prospective student-athlete Nassir Little in order to secure his commitment to Adidas-sponsored University of Miami.⁶² In exchange for the payment, Little would commit to both retaining Dawkins's services and signing with Adidas once he entered the NBA.⁶³ Little

58. *See id.* The complaints did not mention Louisville or Koprivica by name but several media outlets identified them as the relevant parties, and Louisville confirmed its involvement in the investigation. *See* Gentry Estes, *Louisville Recruiting Scandal: Did Documents Reveal Player 11?*, LOUISVILLE COURIER J., Aug. 30, 2018, <https://www.courier-journal.com/story/sports/college/louisville/2018/08/30/louisville-recruiting-scandal-player-11-revealed-documents/1141432002/> (piecing together facts that identify relevant prospective student-athlete).

59. *See* Buddy Collings, *Balsa Koprivica Sits, Watches, Waits for Word on FBI Basketball Probe*, ORLANDO SENTINEL, Nov. 21, 2017, <https://www.orlandosentinel.com/sports/highschool/os-sp-hs-balsa-koprivica-sits-20171121-story.html> (describing allegations involving Koprivica and current status with his high school team).

60. *Id.* (noting that Koprivica and his mother deny wrongdoing).

61. *MVA Basketball Athlete Balsa Koprivica Commits to FSU*, MONTVERDE ACAD. (Oct. 29, 2018), <https://mvasports.com/news/2018/10/29/boys-basketball-mva-basketball-athlete-balsa-koprivica-commits-to-fsu.aspx> (describing Koprivica's verbal commitment and talents).

62. *See* Dep't of Justice, *supra* note 16. The complaints did not mention Miami or Little by name but several media outlets identified them as the relevant parties, and Miami confirmed its involvement in the investigation. *See also* Rapaport, *supra* note 15. Trial evidence included text messages between Augustine and Dawkins that revealed that the Little family was not interested in receiving any money, clearing the family of wrongdoing. *See also* Mike Rutherford, *5 Winners and 7 Losers From the Big College Basketball Corruption Verdict*, SBNATION (Oct. 24, 2018), <https://www.sbnation.com/college-basketball/2018/10/24/18009130/college-basketball-trial-winners-and-losers-arizona-louisville-duke-lsu> (identifying perceived winners and losers from the initial trial's outcome).

63. Dep't of Justice, *supra* note 16 (describing allegations against Gatto, Code, Dawkins, and Augustine).

ended up committing to attend and play basketball for the University of North Carolina.⁶⁴

Little averaged just under ten points and five rebounds per game for the Tar Heels as a freshman in 2018-19.⁶⁵ Shortly after the conclusion of his freshman season Little declared for the NBA draft, hired an agent, and stated he will not return for his sophomore season.⁶⁶

4. Superseding Indictment Against Gatto, Code, and Dawkins

In April 2018, federal authorities released a superseding indictment against Gatto, Code, and Dawkins.⁶⁷ This indictment expanded the scope of the charged wire fraud conspiracy to include alleged payments to the families of six student-athletes in connection with their decisions to attend four universities—the University of Louisville, the University of Miami, the University of Kansas, and North Carolina State University.⁶⁸ Adidas sponsored all four universities.⁶⁹

The superseding indictment contains additional details on how the defendants steered, with tens of thousands of dollars, student-athletes to the universities.⁷⁰ For example, while unnamed in official records, multiple media outlets reported that Code and Dawkins engaged in wire fraud to ensure that highly coveted athletes Silvio De Sousa and Billy Preston enrolled at the University of Kansas.⁷¹

64. Rapaport, *supra* note 15 (describing effects of federal allegations on University of Miami).

65. Brett Friedlander, *UNC Freshman Little Declares for NBA Draft*, N. ST. J., April 1, 2019, <https://nsjonline.com/article/2019/04/unc-freshman-little-declares-for-nba-draft/> (describing Little's freshman season and decision to enter draft).

66. *Id.*

67. See Dep't of Just., U.S. Attorney's Office, Southern District of New York Release, *U.S. Attorney's Office Announced Additional Charges Against Athletic Apparel Company Executive and Others for Allegedly Defrauding Four NCAA Division I Universities*, U.S. DEP'T OF JUST. (April 10, 2018), <https://www.justice.gov/usao-sdny/pr/us-attorney-s-office-announces-additional-charges-against-athletic-apparel-company> (announcing filing of Superseding Indictment) [hereinafter Superseding Indictment].

68. *Id.* (describing allegations in Superseding Indictment).

69. *See id.*

70. *See* Norlander, *supra* note 14 (updating effects of charges on college basketball). Authorities dropped Sood from the superseding indictment, indicating he cooperated with authorities. *See* Aaron Moody, *NCAA College Basketball Fraud Scandal: FBI Investigation Info*, NEWS & OBSERVER, Oct. 4, 2018, <https://www.newsobserver.com/sports/article208880939.html> (describing investigation, relevant individuals, and theories of case). In fact, Sood reached a plea deal with federal prosecutors in which he pled guilty to three felonies and agreed to testify against other defendants. *See* Mark Schlabach, *Munish Sood Pleads Guilty in NCAA Basketball Corruption Case*, ESPN (Aug. 31, 2018), https://www.espn.com/mens-college-basketball/story/_/id/24539543/munish-sood-pleads-guilty-ncaa-basketball-corruption-case (detailing Sood's plea deal).

71. Norlander, *supra* note 14.

C. Trials

Two federal trials regarding corruption in men's college basketball took place. Throughout their fall 2018 trial on charges related to the alleged "Adidas Scheme," Gatto, Code, and Dawkins admitted they violated NCAA rules in order to induce prospective student-athletes to attend Adidas-sponsored schools; however, each denied committing federal crimes.⁷² The jury heard testimony detailing gas station meetups, cash-stuffed magazines, secret "bat phones," and sham invoices.⁷³ Testimony implicated, or at the very least mentioned, high-profile schools like Kansas, Louisville, Arizona, NC State, LSU, DePaul, Duke, Kentucky, and North Carolina.⁷⁴

A New York jury unanimously convicted Gatto, Code, and Dawkins of wire fraud and conspiracy to commit wire fraud.⁷⁵ Prosecutors won because they convinced the jury that the defendants paid top men's basketball prospects thousands of dollars to attend certain Adidas-sponsored universities in violation of NCAA rules.⁷⁶ Intending to send "a great big warning light to the basketball world," a judge sentenced Gatto to nine months in prison and Code and Dawkins six months in prison apiece.⁷⁷ Attorneys for Gatto and Dawkins indicated their clients will appeal.⁷⁸

The second trial, which particularly garnered attention from men's college basketball's coaching fraternity, pertained to the alleged "Coach Bribery Scheme."⁷⁹ Prosecutors alleged that Dawkins and Code bribed a number of

72. Jones, *supra* note 6.

73. Danielle Lerner, *College Basketball FBI Trial: Verdict Sets Tone for Future*, LOUISVILLE COURIER J., Oct. 19, 2018, <https://www.courier-journal.com/story/sports/college/louisville/2018/10/19/college-basketball-recruiting-fbi-investigation-trial-verdict-sets-tone-future-cases/1682044002/> (describing testimony and evidence presented at trial).

74. *Id.*

75. Michael McCann, *Why the Prosecution Won in the College Hoops Corruption Trial and What's Next*, SPORTS ILLUSTRATED (Oct. 24, 2018), <https://www.si.com/college-basketball/2018/10/24/ncaa-corruption-fbi-trial-verdict-analysis> (explaining trial outcome and likely outcomes); see Tracy, *supra* note 5 (describing trial outcome).

76. See McCann, *supra* note 75 (noting that those in the basketball and apparel industries knew of this practice for decades).

77. Christian Red, *Three Men Sentenced to Prison for Role in FBI College Basketball Corruption Case*, USA TODAY, Mar. 5, 2019, <https://www.usatoday.com/story/sports/ncaab/2019/03/05/fbi-college-basketball-trial-prison-sentences-handed-out-three-men/3067964002/> (describing March 2019 sentencing of three defendants).

78. Tracy, *supra* note 5 (explaining initial trial's outcome and its lack of effects on everyday operations in men's college basketball); see Jones, *supra* note 6 (noting that appeal timeline is undetermined).

79. See Matt Norlander, *Christian Dawkins' Compelling and Contentious Testimony vs. Prosecutors Highlights College Hoops Federal Case*, CBS SPORTS (May 2, 2019), <https://www.cbssports.com/college-basketball/news/christian-dawkins-compelling-and-contentious-testimony-vs-prosecutors-highlights-college-hoops-federal-case/> (describing Dawkins's testimony).

assistant coaches, including Bland, Richardson, Evans, Creighton assistant coach Preston Murphy, and TCU assistant coach Corey Barker.⁸⁰ Jurors in the second trial returned guilty verdicts on two (of six) charges faced by Dawkins and on one (of four) charges faced by Code.⁸¹ Jurors convicted Dawkins of bribery and conspiracy to commit bribery while they convicted Code of conspiracy to commit bribery.⁸² Jurors found Dawkins and Code not guilty on charges of wire fraud and conspiracy to violate the travel act and, in the case of Code, not guilty on a bribery charge.⁸³ Sentencing will occur at a later date.⁸⁴ While Dawkins and Code face maximum prison sentences measured in years, in reality those sentences will likely last a few months each.⁸⁵

In the meantime, all four assistant coaches reached plea agreements with federal prosecutors.⁸⁶ Bland pled guilty to one count of federal funds bribery, for which the punishment could range from probation to a one-year prison sentence.⁸⁷ In April 2019, Bland received a sentence of two years of probation and 100 hours of community service for his involvement in the scandal.⁸⁸ Richardson pled guilty to one count of federal funds bribery and faces up to two

80. See Michael McCann, *What's Next for Sean Miller, Arizona After the Final Week of the College Basketball Corruption Trial?*, SPORTS ILLUSTRATED, May 3, 2019, <https://www.si.com/college-basketball/2019/05/03/college-basketball-corruption-trial-christian-dawkins-merl-code-arizona-university-legal-takeways> (describing second trial).

81. Michael McCann, *Federal Prosecutors Get Underwhelming Win in Second College Hoops Corruption Trial*, SPORTS ILLUSTRATED, May 8, 2019, https://www.si.com/college-basketball/2019/05/08/corruption-trial-christian-dawkins-merl-code-guilty-verdicts?utm_source=twitter.com/&utm_medium=social&utm_campaign=sinow&xid=socialflow_twitter_si (describing results of second trial and characterizing verdicts as a win for prosecutors but not a knockout).

82. *Id.*

83. *Id.*

84. *Id.*

85. Larry Neumeister, *2 Convicted in College Basketball Corruption Trial*, STAR TRIBUNE, May 8, 2019, www.startribune.com/2-convicted-in-college-basketball-corruption-trial/509651602/ (detailing outcome of second trial).

86. Larry Neumeister, *Ex-Auburn Assistant Chuck Person Pleads Guilty in Basketball Bribery Scandal*, ARIZ. DAILY STAR, March 19, 2019, https://tucson.com/sports/ex-auburn-assistant-chuck-person-pleads-guilty-in-basketball-bribery/article_2bc3da9e-4a94-11e9-a03e-1395946c7141.html (detailing Person's plea deal).

87. Joey Kaufman, *Former USC Assistant Tony Bland Reaches Plea Deal in College Basketball Corruption Case*, ORANGE CTY. REG., Dec. 20, 2018, <https://www.oregister.com/2018/12/20/former-usc-assistant-tony-bland-reaches-plea-deal-in-college-basketball-corruption-case/> (detailing Bland's plea deal).

88. Emily Carton, *Ex-USC Assistant Tony Bland Sentenced in College Basketball Corruption Trial*, SPORTS ILLUSTRATED (June 5, 2019), <https://www.si.com/college/2019/06/05/former-usc-assistant-tony-bland-sentenced-college-basketball-corruption-trial>.

years in prison.⁸⁹ Evans pled guilty to a federal conspiracy bribery charge, admitting he received \$22,000 to steer student-athletes he coached to certain financial advisors and business managers.⁹⁰ Evans, a citizen of Barbados, faces not only up to two years in prison but also the possibility of deportation.⁹¹ Person pleaded guilty to a bribery conspiracy charge, which typically carries a prison sentence of two to two and a half years.⁹² Person admitted to accepting \$91,500 in bribes to steer players to a financial adviser and will forfeit that amount as part of the plea.⁹³ In all, ten men were found guilty or accepted plea deals.⁹⁴

D. Aftermath of Trials

Many wonder whether the guilty verdicts in the initial trial will effect what is widely considered business as usual in college basketball.⁹⁵ Some believe that, despite the guilty verdicts that laid bare the open secret of the vast influence of apparel companies in men's college basketball, basketball operators continue to connect families of valuable prospects with money in violation of NCAA

89. Alexis Mansanarez, *Former Arizona Assistant Book Richardson Reaches Plea Deal in Bribery Case*, SPORTING NEWS (Jan. 7, 2019), <https://www.sportingnews.com/us/ncaa-basketball/news/ncaa-mens-basketball-news-former-arizona-wildcats-assistant-book-richardson-reaches-plea-deal-in-federal-bribery-case/14fnc4i27ut4m1gefby4c1qt1> (describing Richardson's plea deal).

90. ESPN News Services, *Lamont Evans Pleads Guilty to Bribery Charge*, ESPN (Jan. 30, 2019), https://www.espn.com/mens-college-basketball/story/_/id/25885440/lamont-evans-pleads-guilty-bribery-charge (describing proceedings involving Evans).

91. *Id.* (quoting Evans, "I now know that accepting those funds in exchange for introducing them to any one player was wrong and violated the law.").

92. Neumeister, *supra* note 86 (detailing Person's plea deal and noting Person's sentencing will occur in July 2019).

93. *Id.*

94. Pat Forde, Pete Thamel, & Dan Wetzel, *Can NCAA Handle Hoops Scandal? 'It's Time to Get This Right'*, YAHOO! SPORTS (May 9, 2019), https://sports.yahoo.com/can-ncaa-handle-hoops-scandal-its-time-to-get-this-right-173558292.html?soc=source-social-sh&soc_trk=tw (anticipating NCAA investigation).

95. Tracy, *supra* note 5 (explaining initial trial's outcome and its lack of effects on everyday operations in men's college basketball); see Ben Gamble, *How Did College Basketball Land in Federal Court and Where Does it Go from Here?*, ST. LOUIS U. L. J., <https://www.slu.edu/law/law-journal/online/2018-19/college-basketball-federal-court.php> (predicting aftermath of initial federal trial); see also Will Hobson, *Charges Involving Kansas, N.C. State Make It Clear: FBI Is Enforcing NCAA Rules*, WASH. POST, April 13, 2018, <https://www.washingtonpost.com/sports/colleges/latest-college-basketball-charges-make-it-clear-the-fbi-is-enforcing-ncaa-rules/2018/04/13/d49e40f4-3e8e-11e8d53-eba0ed237/>; see also Dan Wetzel, *How One Basketball Middleman Exposed College Amateurism and Clowned the FBI*, YAHOO! SPORTS (May 1, 2019), <https://sports.yahoo.com/how-christian-dawkins-exposed-college-amateurism-231944769.html> (describing Dawkins's testimony in second trial); see also Dan Wetzel, *FBI Surveillance Videos Show How College Athletics Is a Cesspool, But NCAA Doesn't Care Enough to Watch*, YAHOO! SPORTS (Apr. 25, 2019), <https://sports.yahoo.com/fbi-surveillance-videos-show-corruption-everywhere-in-college-athletics-210716764.html> (noting that NCAA power players did not come view trial).

amateurism rules.⁹⁶ For example, Syracuse University head men's basketball coach Jim Boeheim stated, "The verdict doesn't mean anything. What's there is there. What's there is not good . . . They broke an awful lot of NCAA rules. I'm not sure they broke the law."⁹⁷

However, contrary to both Boeheim's thoughts and defense attorney Casey Donnelly's claim in opening statements of the initial trial, the cases serve as precedent that violating NCAA legislation can result in consequences beyond NCAA penalties.⁹⁸ Further, U.S. District Court Judge Loretta A. Preska rejected Person's argument in a pretrial motion that the federal government was attempting to make federal crimes out of unreported NCAA rules violations.⁹⁹ Anyone associated with men's college basketball who tries to bribe others not only has to worry about possible adverse NCAA and employment consequences, but the far worse prospect of a prison sentence.¹⁰⁰

Those who feel that the trials will not change the underground landscape of men's college basketball note the lack of charges against head coaches.¹⁰¹ Defense attorneys subpoenaed Louisiana State University ("LSU") head men's

96. Tracy, *supra* note 5; see Jeremy Bauer-Wolf, *New Pressures*, INSIDE HIGHER ED (Oct. 26, 2018), <https://www.insidehighered.com/news/2018/10/26/guilty-verdict-college-basketball-corruption-trial-puts-new-pressure-ncaa> (describing outcomes of initial federal trials); see also Sam Mellinger, *The Shame of the NCAA's Handling of Kansas Basketball Player Silvio De Sousa*, KAN. CITY STAR, Jan. 2, 2019, <https://www.kansascity.com/sports/spt-columns-blogs/sam-mellinger/article223798645.html> (explaining that NCAA was embarrassed when its sausage-making secrets went public); see also Andy Staples, *What Has the NCAA—or Anyone—Learned from the College Basketball Black Market's Time on Trial?*, SPORTS ILLUSTRATED, May 9, 2019, https://www.si.com/college-basketball/2019/05/09/ncaa-trial-fbi-bribery-corruption-mark-emmert?utm_source=twitter.com&utm_medium=social&utm_campaign=social-share-article&utm_content=20190509 (contending that federal investigation and tax dollars spent on it netted "A fart in a stiff wind").

97. Luke Decock, *Guilty Verdicts Irrelevant to NCAA's Task Ahead, But This May Offer Impetus for Action*, NEWS & OBSERVER, Oct. 24, 2018, <https://www.newsobserver.com/sports/article220559155.html> (predicting NCAA's actions in light of verdict). Some believe the defendants should not have been prosecuted in the first place, as the prosecutions raised the question of overcriminalization; in other words, prosecutors misused the law in an attempt to solve a societal ill and punish a paltry iniquity. See Sally Jenkins, *As Next College Basketball Corruption Trial Begins, It's Time to Ask: Is This Worth It?*, WASH. POST, April 21, 2019, https://www.washingtonpost.com/sports/colleges/as-next-college-basketball-corruption-trial-begins-its-time-to-ask-is-this-worth-it/2019/04/19/8eb429da-62ca-11e9-bfad-36a7eb36cb60_story.html?utm_term=.2ab1d6e4695c (questioning propriety of prosecuting Code and Dawkins).

98. See Tracy, *supra* note 5 (quoting former Big 12 commissioner Dan Beebe, "Now you don't just have to worry about what the NCAA does to you—you have to worry about going to jail.").

99. Mark Schlabach, *Charges from FBI's College Corruption Investigation to Remain*, ESPN (Jan. 4, 2019), www.espn.com/mens-college-basketball/story/_id/25677971/federal-charges-college-corruption-probe-go-forward (describing outcome of hearing on Person's motion seeking dismissal).

100. McCann, *supra* note 80 (adding that this additional deterrence could dissuade some from partaking in wrongdoing).

101. *Id.*; see Billy Witz, *Who's on Trial in the College Basketball Scandal? Not the Big Names*, N.Y. TIMES, April 23, 2019, <https://www.nytimes.com/2019/04/23/sports/college-basketball-trial-arizona-lsu.html>.

basketball coach Will Wade and University of Arizona head men's basketball coach Sean Miller to testify at the second trial.¹⁰² Defense attorneys hoped to elicit testimony including discussion of Wade's alleged phone conversation with Dawkins in which Wade speaks freely about a "strong ass offer" he made to a prospective student-athlete, likely Javonte Smart, who ultimately enrolled at LSU and played for Wade.¹⁰³ When news of the scandal broke, reports linked Miller to Dawkins through phone records.¹⁰⁴ Specifically, media scrutinized the University of Arizona's recruitment of DeAndre Ayton, who played at Arizona for a year before entering the NBA draft, in which the Phoenix Suns selected him as the first overall pick.¹⁰⁵ However, a judge, on a motion by prosecutors, ruled that the anticipated testimony describing Dawkins's relationship and interactions with both Wade and Miller was irrelevant and thus they did not have to testify.¹⁰⁶

Federal authorities recently gave the NCAA the green light to proceed with investigating potential NCAA rules violations.¹⁰⁷ Many, however, grow

102. Pat Forde et al., *Exclusive: Wiretap Reveals LSU Coach Will Wade Discussed Recruiting "Offer" with Hoops Scandal Middleman*, YAHOO! SPORTS (Mar. 7, 2019), <https://sports.yahoo.com/exclusive-wiretap-reveals-lsu-coach-will-wade-discussed-recruiting-offer-hoops-scandal-middleman-175046487.html> (describing Wade's alleged role in scandal).

103. *Id.* LSU suspended Wade after he declined to speak with university officials as part of the investigation into the wiretapped phone conversation between Wade and Dawkins. See Charlotte Carroll, *Will Wade Reinstated by LSU After Meeting with School, NCAA Officials*, SPORTS ILLUSTRATED, Apr. 14, 2019, <https://www.si.com/college-basketball/2019/04/14/lsu-reinstated-head-coach-will-wade-recruiting-scandal> (describing circumstances surrounding Wade's suspension and reinstatement). LSU reinstated Wade a little more than a month later after he met with university and NCAA officials. See *id.*

104. Glenn Guilbeau, *Report: LSU's Will Wade, Arizona's Sean Miller Face Subpoenas in FBI Corruption Case*, USA TODAY, Feb. 26, 2019, <https://www.usatoday.com/story/sports/ncaab/2019/02/26/sean-miller-will-wade-subpoena-fbi-basketball-corruption-case/2989524002/> (describing circumstances leading to subpoenas for Miller and Davis).

105. *Id.* Jurors heard an FBI-intercepted call between Dawkins and Richardson during which Richardson told Dawkins that Miller was paying, or had promised to pay, \$10,000 a month for Ayton. See Pete Thamel and Dan Wetzel, *Wiretaps Played in Federal Court Allege Arizona's Sean Miller Paid Players*, YAHOO! SPORTS (May 1, 2019), <https://sports.yahoo.com/arizona-sean-miller-paid-players-wiretaps-federal-hoops-corruption-case-153718418.html> (describing trial ongoings implicating Miller). Miller denies any wrongdoing. See *id.*

106. Jason Owens, *Sean Miller, Will Wade Won't Testify in College Hoops Corruption Trial; Wiretaps Won't Be Heard*, YAHOO! SPORTS (Apr. 19, 2019), <https://sports.yahoo.com/sean-miller-will-wade-wont-testify-in-hoops-corruption-trial-wiretaps-wont-be-heard-201612772.html> (describing judge's ruling). The decision on Miller and Wade sparked cynicism among the coaching community. See Pat Forde et al., *Judge's Ruling Rocks College Hoops World: 'I Should Have Cheated My Whole Career.'* YAHOO! SPORTS (Apr. 19, 2019), <https://sports.yahoo.com/judges-ruling-rocks-college-hoops-world-i-should-have-cheated-my-whole-career-234403238.html> (describing judge's decision and reactions to it). "If these guys get away with it," one veteran head coach said, "I should have cheated my whole career." See *id.*

107. Gamble, *supra* note 95. The NCAA Enforcement Staff provided a verbal notice of inquiry to the University of Louisville in March 2019. See Tim Sullivan, *Louisville Receives NCAA Notice of Inquiry*;

increasingly frustrated with the NCAA's enforcement of its rules, especially considering it was federal authorities, not the NCAA, who discovered the NCAA rules-violating actions in the first place.¹⁰⁸ More than fifty schools have at least been named in one form or fashion via federal documents, court evidence, testimony, or original reporting.¹⁰⁹

III. UAAA AND RUAAA BACKGROUND AND THEIR APPLICATION TO THE DEFENDANTS' ACTIONS

A. UAAA and RUAAA Background

The Uniform Law Commission ("ULC"), also known as the National Conference of Commissioners on Uniform State Laws, provides states with non-partisan legislation that attempts to bring clarity and stability to critical areas of state statutory law.¹¹⁰ Recognizing that an agent's recruitment of an enrolled student-athlete can lead to eligibility problems for both the student-athlete and university, severe economic sanctions, and loss of scholarships, the ULC drafted the UAAA in 2000 to govern relations among student-athletes, athlete-agents, and universities.¹¹¹ Thus, the UAAA protects the interests of student-athletes and universities by regulating athlete-agents and their actions.¹¹² Some say that, in protecting these interests, UAAA drafters focused solely on deterring athlete-

Mack, Brown Jr. Respond, LOUISVILLE COURIER J. (Apr. 10, 2019), <https://www.courierjournal.com/story/sports/college/louisville/2019/04/10/university-louisville-receives-notice-inquiry/3429881002/> (describing response to notice). The allegations against the four assistant coaches, if true, could result in the NCAA Enforcement Staff charging the assistant coaches with violations of NCAA legislation including Bylaw 11.1.3, which prohibits athletics department staff members from: (1) representing an individual in the marketing of his athletics ability or reputation to an agent and (2) receiving compensation or gratuities for same. See NCAA Manual 2018-19, *supra* note 7, at § 11.1.3. While reports have not directly implicated the head coaches at these four universities, NCAA rules presume responsibility for head coaches for major violations of NCAA legislation within their programs. See generally Josh Lens, *NCAA Head Coach Responsibilities Legislation*, 14 DEPAUL J. SPORTS L. 33 (2018) (detailing NCAA head coach responsibilities legislation and its application and providing recommendations for head coaches to consider implementing to mitigate likelihood of allegation or finding).

108. See McCann, *supra* note 15 (noting that NCAA lacks both resources and, as a private actor, subpoena power); see also Norlander, *supra* note 79 (noting that it took a 26-year old runner and convicted felon to voice truth to problems facing men's college basketball).

109. Forde, *supra* note 94 (noting that more than half the programs from the seven most prominent conferences have been associated with activity that could draw scrutiny).

110. REVISED UNIFORM ATHLETE AGENTS ACT, About UCL (UNIF. LAW COMM'N. 2015), [hereinafter RUAAA] available at <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=6a97db74-446e-e102-f517-0bd54fbb7ff4&forceDialog=0> (last visited Feb. 11, 2019) (describing ULC and its functions).

111. *Id.* at 1 (providing reasons for drafting the UAAA).

112. *Id.*

agents from encouraging amateur athletes to turn professional or accept money in violation of NCAA rules.¹¹³ Forty-two states enacted the UAAA.¹¹⁴

On its website, the NCAA states it “supports the Uniform Athlete Agents Act (UAAA) and its adoption in every state.... The UAAA is an important tool in regulating the activities of athlete agents and protecting NCAA student-athletes and member institutions.”¹¹⁵ In fact, the NCAA’s website includes a page entitled, “Need For and Benefits of the Uniform Athlete Agents Act (UAAA).”¹¹⁶

As time passed, several states amended their respective acts to deal with a perceived lack of enforcement, broaden coverage of the act, and require notice to educational institutions prior to an agent contacting an enrolled student-athlete.¹¹⁷ Variations between states put uniformity at risk and may have discouraged reputable agents from complying with the UAAA.¹¹⁸ To address these issues and modernize the UAAA in an ever-evolving sports commercial marketplace, the ULC drafted the Revised Uniform Athlete Agents Act (“RUAAA”) in July 2015.¹¹⁹

Fourteen states have enacted the RUAAA, and nine other states introduced it in 2019.¹²⁰ Further, dozens of college athletics administrators and coaches voiced support for and urged adoption of the RUAAA in a memo to officials who work with legislators in each state.¹²¹ Among the 55 individuals who signed the memo are 16 athletic directors at Autonomy Five conference schools;

113. Marc Edelman, *Disarming the Trojan Horse of the UAAA and Sparta: How America Should Reform its Sports Agent Laws to Conform with True Agency Principles*, 4 HARV. J. SPORTS & ENT. L. 145, 169 (2013) (explaining that “groupthink” led to this approach as no drafter had participated in college or professional sports).

114. ATHLETE AGENTS ACT, REVISED, *Enactment Map: Description*, UNIF. LAW COMM’N, <https://www.uniformlaws.org/committees/community-home?Communitykey=4d46906c-2d24-4ede-84ab-a57b40fa5c37&tab=groupdetails> (last visited Feb. 11, 2019) (providing interactive map detailing individual states’ adoptions of athlete-agent laws) [hereinafter RUAAA Map].

115. NCAA, *Agents and Amateurism*, NCAA, www.ncaa.org/enforcement/agents-and-amateurism (last visited Feb. 11, 2019) (describing the UAAA and NCAA’s support of it).

116. NCAA, *Need For and Benefits of the Uniform Athlete Agents Act (UAAA)*, NCAA, www.ncaa.org/enforcement/agents-and-amateurism/need-and-benefits-uniform-athlete-agents-act-uaaa (last visited Feb. 11, 2019) (listing benefits of UAAA) [hereinafter NCAA Need For and Benefits of the UAAA].

117. RUAAA, *supra* note 110, at 2 (explaining reasons behind drafting of the RUAAA).

118. *Id.*

119. *Id.*; see *Why Your State Should Adopt the Revised Uniform Athlete Agents Act (2015)*, UNIF. LAW COMM’N, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=a59a2fe8-009d-fdab-dcb1-402b39176bb3&forceDialog=0> (last visited April 25, 2019) (detailing benefits of RUAAA).

120. RUAAA Map, *supra* note 114.

121. Aaron Beard, *Schools, Coaches Push for Adoption of Strengthened Agent Law*, ASSOCIATED PRESS (Dec. 6, 2017), <https://www.apnews.com/273a069e034d4a12ab0bd8f6c67e01f3> (detailing memo).

NFL agents Jack Bechta, Bus Cook, and Bruce and Ryan Tollner; and coaching figures including University of Connecticut head women's basketball coach Geno Auriemma, University of Virginia head football coach Bronco Mendenhall, now-former Louisiana State University (and current University of Kansas) head football coach Les Miles, former University of Nebraska head football coach Tom Osborne, Florida State University head football coach Willie Taggart, and University of North Carolina head men's basketball coach Roy Williams.¹²² With the support of these administrators and coaches, Dale G. Higer, an Idaho attorney who helped draft the RUAAA, hopes over half of the states adopt it by 2020.¹²³ Of note is the fact that, in light of the federal investigation and cases involving men's college basketball, Southeastern Conference Commissioner Greg Sankey recently reiterated that states should have a role in pursuing these cases.¹²⁴

B. Application of UAAA and RUAAA Provisions to the Defendants' Actions

The NCAA, college athletics administrators, coaches, and agents support the UAAA and RUAAA for myriad reasons, including the hope that the acts effectively regulate agents due in large part to the acts' potential for criminal, civil, and administrative penalties.¹²⁵ Most states have adopted the UAAA or RUAAA.¹²⁶ As the following examples illustrate, the alleged actions of the defendants in the college' men's basketball cases, if true, trigger the application of several UAAA and RUAAA provisions and thus imposed several obligations and restrictions on these individuals.

1. The alleged actions of defendants Dawkins, Sood, Code, Gatto, and the four assistant coaches, if true, meet UAAA and RUAAA definitions of "athlete-agent" and thus trigger athlete-agent status

Whether an individual triggers athlete-agent status under the UAAA and/or RUAAA depends not on how the individual refers to herself or himself but rather on the individual's actions. The UAAA defines an athlete-agent as an individual who solicits or recruits a student-athlete to enter into an agency

122. *Id.*

123. *Id.*

124. Associated Press, *Violation of Sports Agent Laws Tough for States to Prosecute*, USA TODAY, Nov. 1, 2017, <https://www.usatoday.com/story/sports/ncaab/2017/11/01/violatoin-of-sports-agent-laws-tough-for-states-to-prosecute/107223304/> (examining reasons why states fail to prosecute violators).

125. *See NCAA Need For and Benefits of the UAAA*, *supra* note 116; *see also* Beard, *supra* note 121.

126. *See* RUAAA, *supra* note 110, at 2; *see also* RUAAA Map, *supra* note 114.

contract.¹²⁷ Thus, the UAAA definition of athlete-agent could include licensed financial advisors, even those who do not refer to or consider themselves athlete-agents, if they recruit a student-athlete to enter into an agency contract.¹²⁸

Because financial advisors often failed to register as athlete-agents and comply with the UAAA, the ULC revised the definition of “athlete agent” in the RUAAA such that it includes an individual who:

- (1) directly or indirectly recruits or solicits a student-athlete enter into an agency contract; (2) for compensation or in anticipation of compensation related to a student-athlete’s participation in athletics, serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or (3) in anticipation of representing a student-athlete for a purpose related to the athlete’s participation in athletics, gives consideration to the student-athlete or another person.¹²⁹

In revising its definition of athlete-agent in the RUAAA, the ULC intended to remove ambiguity of its applicability to financial advisors.¹³⁰

In both acts, the ULC defined recruit and solicit as attempting to influence a student-athlete or her or his parent or guardian on the choice of an athlete-agent.¹³¹ The UAAA was silent on the issue of whether a college coach’s actions could trigger athlete-agent status; however, when considering the definition’s verbiage, a coach who recruited or solicited a student-athlete to enter into an agency contract was an athlete-agent.¹³² The UAAA does not contain an explicit exception for college coaches. In a Comment to the RUAAA, the ULC explained that coaches and parents who receive compensation or expect to receive compensation in exchange for advising a student-athlete to select a particular agent meet the definition of athlete-agent and thus trigger athlete-agent status.¹³³

The alleged actions of defendants Dawkins, Sood, Code, Gatto, and the four assistant coaches fall within the acts’ definitions of athlete-agent. The federal complaints describe Dawkins as an athlete-advisor and allege that he bribed the

127. RUAAA, *supra* note 110, at 8 (explaining that ULC outwardly expanded definition of athlete-agent to include financial advisors because, due to ambiguity of UAAA definition of athlete-agent, financial advisors often failed to register as athlete-agents).

128. *See id.*

129. *Id.* at 4. The definition of “student athlete” applies to individuals who are not yet in college; thus, it includes high school students. *See* RUAAA, *supra* note 110, at 9.

130. RUAAA, *supra* note 110, at 8.

131. *Id.*

132. *Id.*

133. *Id.* at 8-9.

four assistant men's basketball coaches to direct their student-athletes to retain Dawkins once the student-athletes entered the NBA.¹³⁴ Federal authorities alleged that Dawkins is a runner—he befriended elite prospective student-athletes and NBA prospects in hopes of both becoming their manager and influencing their choices regarding financial advisors, shoe companies, and agents.¹³⁵ For example, Dawkins was allegedly among a group that attempted to funnel \$150,000 to Little to get him to commit to the University of Miami, then sign with Adidas and Dawkins's agency upon turning professional.¹³⁶

At one point in his career, Dawkins made \$50,000 in annual salary recruiting NBA draft prospects on behalf of a financial advising firm.¹³⁷ Dawkins also worked for ASM Sports, the sports agency of the aforementioned Andy Miller that represented professional basketball players.¹³⁸ Dawkins helped ASM Sports sign 2017 NBA draftees Justin Patton of Creighton University and Edmond Sumner of Xavier University.¹³⁹ By soliciting student-athletes on behalf of agents and advisors and paying assistant coaches Richardson and Bland to exert their influence over student-athletes to eventually sign with Dawkins, Dawkins's actions meet the athlete-agent definition under both the UAAA and RUAAA.

Sood founded Princeton Capital, an investment services firm that manages professional athletes' finances.¹⁴⁰ The UAAA and RUAAA definitions of athlete-agent both include financial advisors.¹⁴¹ Further, Sood allegedly made bribe payments to the four assistant coaches in exchange for their agreement to direct student-athletes they coached to retain Sood once the student-athletes entered the NBA.¹⁴² By making bribe payments to assistant coaches so they would exert influence over student-athletes to retain Sood once they entered the NBA, Sood's actions triggered athlete-agent status under the RUAAA definition of athlete-agent.¹⁴³

134. Department of Justice, *supra* note 16 (describing allegations against Dawkins).

135. Mark Schlabach and Jeff Goodman, *How Christian Dawkins Went from Unknown to a Central Figure in a Scandal that Has Rocked College Basketball*, ESPN (Oct. 9, 2017), https://www.espn.com/mens-college-basketball/story/_id/20946451/how-christian-dawkins-went-unknown-central-figure-scandal-rocked-college-basketball (describing Dawkins's background and alleged roles in corruption in men's college basketball).

136. Rapaport, *supra* note 15 (describing individuals facing federal charges).

137. Schlabach & Goodman, *supra* note 135.

138. *Id.* (explaining that Dawkins may have actually worked for the financial advising firm and sports agency simultaneously, the subject of a lawsuit).

139. *Id.* (noting that both players fired ASM after federal authorities arrested Dawkins).

140. Rapaport, *supra* note 15.

141. *See* RUAAA, *supra* note 110, at 8-9.

142. Department of Justice, *supra* note 16 (describing allegations involving Sood).

143. *See* RUAAA, *supra* note 110, at 4.

Even though they were affiliated with Adidas and were not contract or financial advisors, the alleged actions of Gatto and Code likewise elicit athlete-agent status under both the UAAA and RUAAA. Federal authorities allege that Gatto and Code were among a group that paid prospective student-athletes to attend certain universities and then sign with Adidas and a particular contract advisor or financial manager upon turning professional.¹⁴⁴ For example, along with Sood, Gatto and Code allegedly paid \$100,000 to prospective student-athlete Brian Bowen so he would verbally commit to attending the University of Louisville, have Sood manage his money, and sign with Adidas upon entering the NBA.¹⁴⁵ By soliciting or recruiting someone to enter into an agent agreement and providing him compensation in anticipation of representing him for a purpose related to the athlete's participation in athletics (*e.g.*, as an Adidas client), Gatto and Code's actions meet both the UAAA and RUAAA definitions of athlete-agent, rendering them subject to the acts and state laws based on them.

By attempting to influence a student-athlete's choice of financial advisor and/or agent and receiving compensation for it, the actions of the four assistant coaches trigger athlete-agent status under both the UAAA and RUAAA and thus they were subject to state laws based on them. More specifically, Person allegedly accepted bribe payments in exchange for agreeing to direct certain student-athletes to retain the services of a financial advisor, arranged meetings between student-athletes and the advisor, and paid families of two student-athletes whom Person sought to steer to a manager¹⁴⁶ Richardson, Bland, and Evans allegedly accepted bribe payments in return for their commitments to steer student-athletes they coached at their respective universities to retain Dawkins's and/or Sood's services upon entering the NBA.¹⁴⁷ Both Richardson and Bland also facilitated at least one meeting apiece between Dawkins, Sood and a student-athlete or his representative so the student-athlete would commit to retaining Dawkins and Sood's services.¹⁴⁸

144. Rapaport, *supra* note 15 (describing individuals facing federal charges).

145. *Id.* (identifying Nassir Little as another prospective student-athlete with whom Gatto and Code attempted to become involved).

146. Department of Justice, *supra* note 16 (describing allegations against Person).

147. *Id.* (describing allegations against Richardson, Bland, and Evans).

148. *Id.* (describing allegations against Richardson and Bland).

2. The UAAA and RUAAA and states that adopted them require an individual to register with and hold valid certification from the state before lawfully acting as an athlete-agent within the state.¹⁴⁹

As shown in the previous section, the actions of defendants Dawkins, Sood, Code, Gatto, and the four assistant coaches conferred athlete-agent status on those individuals under both the UAAA and RUAAA. Thus, in UAAA and RUAAA states, athlete-agent laws required them to register in, and hold valid certification from, the states in which they acted as athlete-agents for those actions to have been lawful.¹⁵⁰

It is highly unlikely that Dawkins, Sood, Code, Gatto, and the four assistant coaches thought to register as athlete-agents in the states in which they acted as such, let alone took steps to register as athlete-agents. For example, The State of Alabama has enacted the RUAAA.¹⁵¹ Alabama law requires an individual to register with the state prior to acting as an athlete-agent within the state.¹⁵² Person allegedly: (1) accepted bribe payments from a financial advisor in exchange for agreeing to direct certain Auburn student-athletes to retain the advisor's services; (2) arranged meetings between student-athletes and the advisor; and (3) gave bribe money to the families of two student-athletes to steer them to the advisor.¹⁵³ By those actions, Person garnered athlete-agent status under Alabama law.¹⁵⁴ However, Person is not listed in the Alabama Secretary of State's online database listing registered athlete-agents.¹⁵⁵ Under Alabama law, an athlete-agent may not initiate contact to recruit a student-athlete to enter an agency contract within Alabama unless the athlete-agent first registers.¹⁵⁶ By recruiting student-athletes to enter an agency contract as an unregistered athlete-agent, Person committed a Class A misdemeanor.¹⁵⁷ Further, Person could be subject to a civil penalty up to \$50,000 for violating Alabama athlete-agent laws.¹⁵⁸

149. RUAAA, *supra* note 110, at 10-11.

150. *See id.*

151. RUAAA Map, *supra* note 114.

152. Alabama Revised Athlete Agents Act §8-26B-4 (2016), <https://www.sos.alabama.gov/sites/default/files/2016-415.PDF>.

153. *See* Department of Justice, *supra* note 16 (describing allegations against Person).

154. *See* Alabama Revised Athlete Agents Act §8-26B-2(2) (2016), <https://www.sos.alabama.gov/sites/default/files/2016-415.PDF>.

155. *Athlete Agent Listing*, Alabama Secretary of State, <http://arc-sos.state.al.us/cgi/athname.mbr/output> (last visited Sept. 27, 2019).

156. Alabama Revised Athlete Agents Act §8-26B-14(b)(1) (2016), <https://www.sos.alabama.gov/sites/default/files/2016-415.PDF>.

157. *See id.* at §8-26B-15(c).

158. *See id.* at §8-26B-17.

3. The UAAA and RUAAA prohibit athlete-agents from giving materially false or misleading information or making a materially false promise or representation.¹⁵⁹

Both the UAAA and RUAAA prohibit athlete-agents from giving materially false or misleading information or making a materially false promise or representation during recruitment of a student-athlete.¹⁶⁰ Person falsely told the mother of an Auburn student-athlete he coached that the financial advisor to whom Person sought to steer the student-athlete was Person's own advisor and also advised Charles Barkley.¹⁶¹ In doing so, Person broke Alabama's version of the RUAAA prohibition on giving materially false or misleading information or making a false representation during recruitment of a student-athlete.¹⁶² Under Alabama law, Person's misrepresentations constitute a Class B felony.¹⁶³

Evans also falsely touted the services of Sood and the advisor to Oklahoma State student-athletes and their families, dishonestly telling one student-athlete, for example, that the manager was Evans's "guy."¹⁶⁴ The State of Oklahoma adopted a version of the UAAA.¹⁶⁵ By falsely telling or misleading a student-athlete that Evans used Sood's services, Evans violated Oklahoma law.¹⁶⁶ Thus, under Oklahoma law, Evans committed a misdemeanor that could subject him to a fine between \$10,000 and \$250,000 and/or imprisonment up to one year.¹⁶⁷

4. The UAAA and RUAAA contain prohibitions on athlete-agents offering items of value to certain individuals during recruitment of student-athletes.¹⁶⁸

During an athlete-agent's recruitment of an athlete, the UAAA and RUAAA prohibit an athlete-agent from furnishing anything of value to an athlete prior to the athlete entering the agency contract.¹⁶⁹ The RUAAA also prohibits an

159. RUAAA, *supra* note 110, at 2, 41.

160. *Id.*; see *The Revised Uniform Athlete Agents Act (2015) – A Summary*, UNIF. LAW COMM'N, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=aceaa94e-e641-45a6-f481-b43973739b82&forceDialog=0> (describing agents who mislead student-athletes as unethical).

161. See Department of Justice, *supra* note 16 (describing allegations against Person).

162. Alabama Revised Athlete Agents Act §8-26B-14(a)(1) (2016).

163. Alabama Revised Athlete Agents Act §8-26B-15(a) (2016).

164. Department of Justice, *supra* note 16 (describing allegations against Evans).

165. See Kelli Masters, *So You Want to Be a Sports Agent?*, OKLA. BAR J. (Oct. 2018), <https://www.okbar.org/barjournal/oct2018/obj8926masters/> (describing requirements of athlete-agents).

166. 70 OKLA. STAT. §70-821.94.A.1 (2014).

167. 70 OKLA. STAT. §70-821.95 (2018).

168. RUAAA, *supra* note 110, at 2.

169. *Id.*

athlete-agent from: (1) encouraging any other individual to take or assist another individual in taking any prohibited actions on behalf of the agent and (2) making any payment or providing anything of value to an individual who is in a position to influence a student-athlete to enter into an agency contract unless that individual is registered as an athlete-agent.¹⁷⁰

The allegations surrounding Person provide an example of the application of the legislation. An advisor, who by his actions is an athlete-agent under Alabama law, paid bribe money to Person in exchange for Person agreeing to direct student-athletes to retain the advisor's services.¹⁷¹ Person, whose actions also trigger athlete-agent status under Alabama law, allegedly paid \$18,500 to the families of two student-athletes whom Person sought to steer to the advisor.¹⁷² In making the payments, the advisor and Person both violated Alabama's version of the RUAAA prohibition on athlete-agents furnishing anything of value to certain individuals.¹⁷³ By engaging in this prohibited conduct, both Person and the advisor committed Class B felonies under Alabama law.¹⁷⁴

5. The RUAAA requires athlete-agents to notify a university's athletic director prior to lawfully engaging in certain contact with student-athletes.¹⁷⁵

The RUAAA requires an athlete-agent to notify the university's athletic director prior to communicating or attempting to communicate with: (1) a student-athlete to influence him to enter into an agency contract or (2) another individual to have that individual influence the student-athlete.¹⁷⁶ In adding these requirements, the ULC intended that universities receive prior notice of communication between an athlete-agent and an enrolled student-athlete.¹⁷⁷

Person allegedly accepted \$91,500 in bribe payments from an advisor in exchange for agreeing to direct certain student-athletes to retain the services of the advisor.¹⁷⁸ Person arranged multiple meetings between student-athletes and the advisor during which Person (falsely) touted the advisor's qualifications.¹⁷⁹ It is highly unlikely that the advisor notified Auburn's athletic director of his

170. *Id.* at 2-3, 41.

171. Department of Justice, *supra* note 16 (describing allegations against Person).

172. *Id.*

173. Alabama Revised Athlete Agents Act §8-26B-14(a)(3) (2016).

174. *Id.* at §8-26B-15(a) (2016).

175. RUAAA, *supra* note 110, at 38-39.

176. *See id.*

177. *See id.* at 39.

178. Department of Justice, *supra* note 16 (describing allegations against Person).

179. *Id.*

communication with Person (someone with influence over a student-athlete) or the meetings with student-athletes. Further, it is highly unlikely that Person notified Auburn's athletic director of the meetings Person arranged between the student-athletes and the advisor (whose actions triggered athlete-agent status). In fact, Auburn president Steven Leath said shortly after Person's arrest that there was no indication that anyone at Auburn knew anything about Person's involvement in the scandal.¹⁸⁰ Thus, both the advisor and Person violated Alabama law notification requirements that mirror RUAAA provisions.¹⁸¹

6. Both the UAAA and RUAAA provide for civil penalties and remedies.¹⁸²

Both the UAAA and RUAAA permit the state official or entity responsible for enforcement of the act to assess a civil fine on athlete-agents for violating the legislation.¹⁸³ Further, the UAAA provides for a civil cause of action for a university against a student-athlete for damages caused by a violation of the act.¹⁸⁴ Under the RUAAA, a university or student-athlete may bring an action against an athlete-agent if the university or student-athlete is adversely affected by an athlete-agent's violation of the act that results in suspension of the student-athlete.¹⁸⁵

The situation at Auburn again provides an example of the legislation's potential application. Auburn suspended men's basketball student-athletes Austin Wiley and Danjel Purifoy following news of the federal investigation.¹⁸⁶ Auburn admitted that Person gave \$11,000 to Purifoy's mother and \$7,500 to Wiley's mother and thus Auburn would withhold the pair from competitions "to avoid any potential issues."¹⁸⁷ Because Person's action (providing money to the student-athletes' mothers) resulted in the suspensions of the student-athletes, Alabama's law based on the RUAAA affords Auburn and the student-athletes a

180. See Tom Green, *Auburn President on Chuck Person Arrest: "This Was an Isolated Individual,"* AL.COM (Sept. 27, 2017), https://www.al.com/auburnbasketball/2017/09/auburn_president_on_chuck_pers.html (providing Leath's reaction to Person's arrest).

181. Alabama Revised Athlete Agents Act §8-26B-11(f) (2016).

182. See RUAAA, *supra* note 110, at 43-44.

183. See *id.*

184. See *id.*

185. See *id.*

186. See Rapaport, *supra* note 15.

187. See Erik Hall, *Danjel Purifoy: A Timeline of His Auburn Basketball Career, FBI Investigation Fallout*, MONTGOMERY ADVERTISER, Dec. 15, 2018, <https://www.montgomeryadvertiser.com/story/sports/2018/12/14/danjel-purifoy-timeline-auburn-college-basketball-fbi-fallout-bruce-pearl/2318376002> (providing timeline of Purifoy's Auburn career).

civil cause of action against Person.¹⁸⁸ Under Alabama law, a prevailing plaintiff may recover actual damages, costs, and reasonable attorney's fees.¹⁸⁹ Further, if enforced, Person would be subject to an Alabama Secretary of State fine of up to \$50,000 for violating the act.¹⁹⁰

C. State Athlete-Agent Laws and Lack of Resources

The UAAA and RUAAA, and state versions of them, were applicable to the actions of the defendants in the men's college basketball case yet there are no public reports of state authorities using athlete-agent laws to discipline the defendants. States rarely enforce their respective versions of the UAAA or RUAAA.¹⁹¹ In fact, there are few cases of prosecution of agents under the acts.¹⁹² One prominent agent describes enforcement of state agent laws as "lacking."¹⁹³ In fact, a recent Associated Press review found that more than half of the then 42 states with athlete-agent laws had yet to revoke or suspend a single license or invoke penalties of any sort.¹⁹⁴

According to the individual state entities responsible for enforcing their athlete-agent laws, a main reason for the lack of enforcement is that athlete-agent laws often come with no funding.¹⁹⁵ This lack of resources negatively affects the success of state athlete-agent laws in deterring illicit acts, including

188. Alabama Revised Athlete Agents Act §8-26B-16(a)(1) (2016). Auburn self-reported violations of NCAA amateurism provisions involving recruiting issues, extra benefits, and agent-related activity. See Matthew Stevens, *NCAA Rules Danjel Purifoy to Serve Suspension But Will be Eligible for 2018-19 Season*, MONTGOMERY ADVERTISER, Mar. 20, 2018, <https://www.montgomeryadvertiser.com/story/sports/college/auburn/2018/03/20/ncaa-rules-danjel-purifoy-serve-suspension-but-eligible-2018-19-season/444143002/> (describing NCAA rulings on Purifoy and Wiley).

189. Alabama Revised Athlete Agents Act §8-26B-16(b) (2016).

190. Alabama Revised Athlete Agents Act §8-26B-17 (2016).

191. See Commission on College Basketball, *Report and Recommendations to Address the Issues Facing Collegiate Basketball*, COMM'N ON COLLEGE BASKETBALL, 34 n.25 (Apr. 2018), available at www.ncaa.org/sites/default/files/2018CCBReportFinal_web_20180501.pdf (issuing a report and recommendations to NCAA Board of Governors, Division I Board of Directors, and NCAA President Mark Emmert). See also Associated Press, *AP Study: Laws for Sports Agents Rarely Enforced*, DENVER POST, May 5, 2016, <https://www.denverpost.com/2010/08/17/ap-study-laws-for-sports-agents-rarely-enforced/> (detailing AP survey).

192. See James Masteralexis et al., *Enough is Enough: The Case for Federal Regulation of Sport Agents*, 20 JEFFREY S. MOORAD SPORTS L.J. 69, 90 (2013) (suggesting adoption of federal legislation applicable to athlete-agents).

193. See Masters, *supra* note 165.

194. Associated Press, *supra* note 191 (describing state athlete-agent laws as a "low priority" for many states).

195. See *id.* (noting that the State of North Carolina had to use state workers who usually investigated securities fraud to look into possible violation of its athlete-agent laws). See also Associated Press, *supra* note 124 (quoting Sankey, "There's clearly a role for states.").

athlete-agents routinely offering inducements to athletes to sign them.¹⁹⁶ Practically, state-level investigators and prosecutors face a dilemma of where these cases fit when violent crimes and high-level felonies are priorities and space-eaters on court schedules.¹⁹⁷

Unless things change, the unfortunate reality of lack of sufficient funding to give state athlete-agent laws teeth results in potentially effective and deterrent state legislation with the possibility of criminal prosecution, civil fines and civil causes of action left on the sideline. The availability of these private causes of action are especially important for universities, as they face the possibility of losing millions of dollars if subject to NCAA sanctions resulting from a student-athlete's violation of NCAA rules.¹⁹⁸ If the university is state-subsidized, the state may also suffer financial harm due to athlete-agent actions, thus providing even more incentive for states to enforce their athlete-agent laws.¹⁹⁹

IV. SUGGESTED REVISIONS TO THE UAAA, RUAAA, AND STATE ATHLETE-AGENT LAWS TO ACCOUNT FOR THE NCAA'S RECENT RULES CHANGES

State officials responsible for enforcement of athlete-agent laws failed to apply those laws to the actions of the defendants in the federal probe of corruption in men's college basketball. Likewise, the NCAA failed to account for the UAAA, RUAAA, and state athlete-agent laws when it made broad, sweeping changes to rules applicable to men's basketball following news of the federal investigation.

A. The NCAA's Response to the Federal Investigation

1. The Commission on College Basketball and its Report

Federal authorities did not notify the NCAA about the investigation until the day they announced charges against the ten defendants.²⁰⁰ In fact, the

196. See Timothy Davis, *Regulating the Athlete-Agent Industry: Intended and Unintended Consequences*, WAKE FOREST U. LEGAL STUD. RES. PAPER SERIES, 26 (2006)(describing effects of various athlete-agent regulations). See also Masteralexis, *supra* note 192, at 70.

197. See Associated Press, *supra* note 124 (noting that violations of athlete-agent laws, while felonies, are typically low-level felonies).

198. See Timothy G. Nelson, *Flag on the Play: The Ineffectiveness of Athlete-Agent Laws and Regulations—and How North Carolina Can Take Advantage of a Scandal to be a Model for Reform*, 90 N.C. L. REV. 800, 816 (2012) (citing the University of Southern California as an example).

199. See Diane Sudia and Rob Remis, *Athlete Agent Legislation in the New Millennium: State Statutes and the Uniform Athlete Agents Act*, 11 SETON HALL J. SPORT L. 263, 273 (2001) (describing myriad authorities regulating athlete-agents).

200. See Norlander, *supra* note 14.

announcement caught NCAA President Mark Emmert off guard.²⁰¹ In an ambitious response to news of the federal investigation, the NCAA Board of Governors, Division I Board of Directors, and NCAA President established the Commission on College Basketball in October 2017.²⁰² Composed of individuals such as former U.S. Secretary of State Dr. Condoleezza Rice (chair of the Commission), Ohio State University athletics director Gene Smith, NBA legends David Robinson and Grant Hill, and former head coaches Mike Montgomery and John Thompson, III, the Commission's charges included the gathering of information to make transformative recommendations to protect the integrity of men's college basketball.²⁰³

In its 2018 Report and Recommendations to Address the Issues Facing Collegiate Basketball, the Commission acknowledged that men's college basketball is a multi-billion dollar enterprise, which can increase the incentive for elite student-athletes, coaches, universities, apparel companies, agents, and advisors to break rules.²⁰⁴ More specifically, the Commission recognized that third parties--including agents, apparel companies, and advisors--seeking to enter into relationships with potential professionals when they are in high school and college violate NCAA rules by paying players and those with influence over players, including coaches, in hope of future payoff.²⁰⁵ To its credit, the Commission recognized that these payments violate the UAAA and RUAAA.²⁰⁶ Further, college coaches and third parties such as apparel companies, agents, and advisors may pay family members of prospective student-athletes who have influence over the prospect.²⁰⁷

In its Report, the Commission made a number of recommendations including implementation of an NCAA certification process and requirement of athlete-agents as well as providing for opportunities for certified athlete-agents to engage with student-athletes.²⁰⁸ Recognizing that increased contact between athlete-agents and student-athletes can lead to impermissible payments and

201. See Tracy, *supra* note 15 (noting that Emmert pledged the NCAA's support of the federal investigation from the start).

202. See Commission on College Basketball, *Commission on College Basketball Charter*, NCAA, § 1 (Apr. 2018), available at www.ncaa.org/governance/commission-college-basketball-charter (including information on the group including its charges, makeup, and responsibilities).

203. See *id.* at §§ 2-3; see also Myron Medcalf, *New NCAA Rules are More Cosmetic Than They Are Consequential*, ESPN (Aug. 8, 2018), www.espn.com/mens-college-basketball/story/_id/24320626/ncaa-rule-changes-not-address-issues-fbi-investigation (questioning effectiveness of NCAA's changes to men's basketball rules).

204. Commission on College Basketball, *supra* note 191 at 18.

205. See *id.* at 29-30.

206. See *id.* at 44.

207. See *id.* at 25.

208. See *id.*

other violations, the Commission recommended serious consequences for NCAA-certified agents who violate NCAA rules.²⁰⁹ The Commission concluded that apparel companies have served as a harmful influence on men's college basketball, and, as public companies, should provide increased transparency about spending on non-scholastic basketball.²¹⁰

2. NCAA rules changes responsive to both the federal investigation and Commission recommendations

The NCAA created quite a stir with its first legislative action after the federal case became public.²¹¹ In August 2018, the NCAA made “profound and meaningful changes to college basketball” intended to support the success of student-athletes on and off the court.²¹² To do so, the NCAA pushed through rules changes in about three and a half months that would normally take years through the NCAA's standard governance process.²¹³ One intent of the changes is to minimize the leverage of outside influences on prospective and current student-athletes.²¹⁴

For example, the NCAA implemented a rule requiring coaches and athletics staff members to report to university presidents or chancellors athletics-related income from any outside source greater than \$600.²¹⁵ In its release, the NCAA

209. *See id.* at 44. This is all the more reason for increasing education and enforcement of state athlete-agent laws.

210. *See* Commission on College Basketball, *supra* note 191 at 11-14.

211. *See* Jon Nyatawa, *The NCAA Enacted Various Basketball Rule Changes. How Will They Affect Local Teams?*, OMAHA WORLD-HERALD, Aug. 8, 2018, https://www.omaha.com/sports/the-ncaa-enacted-various-basketball-rule-changes-how-will-they/article_2c2fe63d-1606-5518-acd9-bc0ca182f1e6.html (detailing NCAA legislative changes and effects on Omaha-area men's college basketball programs).

212. *See* NCAA, *Statement From NCAA Leaders on College Basketball Reforms*, NCAA (Aug. 14, 2018), <https://www.ncaa.com/news/basketball-men/article/2018-08-08/statement-ncaa-leaders-college-basketball-reforms> (describing purposes behind changing rules applicable to NCAA men's basketball) [hereinafter NCAA Statement]. Some feel the rules changes stop short of accomplishing transformative and meaningful change. *See also* Jeremy Bauer-Wolf, “Committed Change” for Men's Basketball, INSIDE HIGHER ED (Aug. 9, 2018), <https://www.insidehighered.com/news/2018/08/09/new-ncaa-rules-allow-mens-basketball-players-have-agents-return-college-if-undrafted> (characterizing NCAA's reforms as “small” yet cast as “glorious”).

213. *See* Fox News, *NCAA Adopts College Basketball Policy Changes Based on Condoleezza Rice Panel's Recommendations*, FOX NEWS (Aug. 9, 2018), <https://www.foxnews.com/sports/ncaa-adopts-college-basketball-policy-changes-based-on-condoleezza-rice-panels-recommendations> (describing NCAA rules changes).

214. *See* NCAA, *Minimizing Harmful Outside Influences*, NCAA (Aug. 8, 2018), www.ncaa.org/about/minimizing-harmful-outside-influences (describing rule changes intended to reduce the leverage of harmful outside influences on current and prospective men's basketball student-athletes).

215. *Id.*

specifically listed endorsement or consultation contracts with apparel companies as an example of an outside source.²¹⁶

Further, in a stark departure from its longtime ban on agent involvement, the NCAA now permits agent representation for men's basketball student-athletes with remaining collegiate eligibility who request an evaluation from the NBA Undergraduate Advisory Committee.²¹⁷ A recent example of a student-athlete taking advantage of this rule change is University of Minnesota junior guard Amir Coffey. Following the 2018-19 season, Coffey requested an Advisory Committee evaluation, declared for the draft, and hired an agent.²¹⁸ Due to recent NCAA rules changes, Coffey can go through the draft process with the assistance of an agent yet retain collegiate eligibility if he decides to return to school.²¹⁹

Additionally, the NCAA also now permits high school seniors identified as elite prospects to hire agents.²²⁰ The NCAA deemed the rule change permitting agents for certain current men's basketball student-athletes effective immediately and the rule change applicable to certain prospective men's basketball student-athletes effective if or when the NBA and NBPA permit high school students to enter the NBA draft.²²¹

Not only may certain men's basketball student-athletes permissibly hire agents, the NCAA also changed its rules such that it is permissible for agents to pay certain expenses for these student-athletes.²²² Agents may now pay for meals and transportation for student-athletes and their families if the expenses relate to the agent selection process.²²³ Further, once a high school or college student-athlete and agent sign a representation agreement, agents may

216. *Id.*

217. *Going Pro*, *supra* note 10. See Mark Tracy, *N.C.A.A. Alters Rules for Agents and Draft in Wake of Basketball Corruption Scandal*, N.Y. TIMES, Aug. 8, 2018, <https://www.nytimes.com/2018/08/08/sports/ncaa-basketball-agents.html>. The NBA Undergraduate Advisory Committee is composed of NBA team executives who, upon request of an undergraduate student-athlete, provide a confidential projection of a potential draftee's likely draft position. See Memorandum from NCAA to NCAA Division I Directors of Athletics, Senior Compliance Administrators and Men's Basketball Head Coaches (Mar. 13, 2019), https://ncaaorg.s3.amazonaws.com/enforcement/2019ENF_NBAMemo.pdf (describing "testing the waters" process for undergraduate men's basketball student-athletes).

218. See Marcus Fuller, *Amir Coffey Declares for NBA Draft and Will Hire Agent, but Could Return to Gophers*, STAR TRIBUNE, Apr. 4, 2019, www.startribune.com/amir-coffey-declares-for-nba-draft-and-will-hire-agent-but-could-return-to-gophers/508078242/ (describing Coffey's decision and application of new NCAA legislation).

219. *Id.*

220. *Going Pro*, *supra* note 10.

221. *Id.*

222. *Id.*

223. *Id.* Any student-athlete for whom an agent pays these expenses may not miss class and the money must be spent where the student-athlete lives or attends school.

permissibly pay for meals, transportation, and lodging expenses for the athlete and his family members when those expenses relate to meetings with the agent or a professional team.²²⁴

For better or worse, the NCAA pushed these rules changes through without sorting through particulars.²²⁵ Emmert and top NCAA officials acknowledged at the time that they had yet to work out several details.²²⁶ In a statement describing the purposes of the rules changes, Emmert, NCAA Board of Governors chair and Georgia Tech president G.P. “Bud” Peterson, and Division I Board of Directors chair and University of Minnesota, Twin Cities president Eric Kaler noted that the NCAA would continue to pursue collaboration with outside organizations, including the NBA and apparel companies.²²⁷ Dan Gavitt, the NCAA’s senior vice president of basketball, later admitted there was a “breakdown in communications” between the NCAA and the NBA, NBPA, and USA Basketball.²²⁸ Notably absent from the list of entities with which the NCAA stated it would continue to pursue collaboration is the ULC, the entity responsible for drafting the UAAA and RUAAA.²²⁹ This absence is telling, as it shows that the NCAA continues to overlook the importance of alignment with the drafters of the athlete-agent legislation the NCAA, despite pledging full support on its very own website, had just trampled.

To its credit, the NCAA recognized that the UAAA, RUAAA, and relevant state laws prohibit agents from providing expenses to prospective clients prior to signing them.²³⁰ “Currently, many if not most of all the UAAA laws do not allow for several of the things that we would like this agent relationship to allow for,” said Gavitt.²³¹ “Currently, I believe, agents cannot provide meals and

224. *Id.*

225. See Matt Norlander, *College Basketball Rule Changes: What Will Happen With the NCAA’s New Rules for Recruiting and the NBA Draft*, CBS SPORTS (Aug. 9, 2018), <https://www.cbssports.com/college-basketball/news/college-basketball-rule-changes-what-will-happen-with-the-ncaas-new-rules-for-recruiting-and-the-nba-draft/> (summarizing interview with Dan Gavitt).

226. See Nyatawa, *supra* note 211 (querying whether NCAA moved too quickly).

227. NCAA Statement, *supra* note 212. Both the NBA and USA Basketball had consulted with the NCAA on proposed changes but neither organization believed the group reached a consensus prior to the NCAA announcement of its rule changes. Jim Young, *NCAA Changes Policies on Draft, Agents, Recruiting; NBA Reportedly ‘Blindsided’*, REUTERS (Aug. 8, 2018), <https://www.reuters.com/article/us-basketball-ncaa-ncaa-agents-draft-idUSKBN1KT2D4> (describing interplay between NCAA and various entities prior to NCAA rules changes applicable to men’s college basketball).

228. Andy Katz, *What You Need to Know About Flexibility for Going Pro and Getting a Degree*, NCAA (Aug. 9, 2018), <https://www.ncaa.com/news/basketball-men/article/2018-08-09/college-basketball-rule-changes-what-you-need-know-about> (summarizing NCAA rules changes).

229. See NCAA Statement, *supra* note 212; see also Young, *supra* note 227. The NCAA and ULC were to participate on a conference call in August 2018. See also Nyatawa, *supra* note 211.

230. See *Going Pro*, *supra* note 10.

231. Norlander, *supra* note 225 (noting that NCAA had been in touch with ULC).

transportation and things like that to a prospect and their family—not based on our rules, but UAAA.”²³² Thus, the NCAA made its new rule permitting agents to provide pre-agreement expenses effective after the UAAA, RUAAA, and state laws change and align with the revised NCAA rules.²³³

B. Necessary Revisions to the UAAA, RUAAA, and State Athlete-Agent Laws

The NCAA’s website states that it supports the UAAA “and its adoption in every state....The UAAA is an important tool in regulating the activities of athlete agents and protecting NCAA student-athletes and member institutions.”²³⁴ The NCAA goes so far as to provide a sample advocacy letter to a senator or representative urging adoption of the UAAA, a sample supportive testimony in favor of the UAAA, and a model press release for legislative staffs that sponsor the UAAA.²³⁵ The NCAA has a unique way of showing this support, however, having revised its rules such that some now conflict with UAAA and RUAAA provisions.

Now the ULC and individual states must revise the UAAA, RUAAA, and laws if they desire consistency with NCAA legislation.²³⁶ Politicians in Kentucky, for example, considered revising state athlete-agent laws prior to the scandal in men’s college basketball.²³⁷ Now in the midst of the aftermath of the initial trial, including an NCAA investigation of the University of Louisville, Kentucky lawmakers seek to strengthen state laws governing athlete-agents.²³⁸ Missouri lawmakers responded to the federal probe similarly, introducing a bill that would toughen the state’s athlete-agent laws.²³⁹

232. *Id.*

233. *Going Pro*, *supra* note 10. On the other hand, the new rule permitting expenses for student-athletes who sign with an agent is effective immediately.

234. NCAA, *Agents and Amateurism*, NCAA, www.ncaa.org/enforcement/agents-and-amateurism (last visited Feb. 13, 2019) (describing athlete-agent authorities and NCAA’s position on them).

235. *See id.*

236. One respected academic argues that, instead of individual states conforming their laws to changes to NCAA legislation, the NCAA should conform its legislation to match state laws, as the purpose of state law is to declare and enforce values from which individual organizations may not vary. E-mail feedback from Alfred C. Yen, Professor of Law and Dean’s Distinguished Scholar, Boston College Law School, to Sports Lawyers Association Conference article presentation (May 15, 2019).

237. *See* Linda Blackford, *Kentucky Lawmakers Seek to Tighten Rules on Sports Agents*, LEXINGTON HERALD LEADER, March 7, 2018, <https://www.kentucky.com/news/local/education/article203881199.html> (describing legislative reform efforts in Kentucky).

238. *Id.*

239. *See* Aaron Reiss, *Missouri Legislators Want Sports Agents to Follow These Rules Because of FBI Probe*, KAN. CITY STAR, April 27, 2018, <https://www.kansascity.com/news/politics-government/article209939374.html> (describing legislative efforts in Missouri).

1. Revising the UAAA and RUAAA to more clearly state that the actions of coaches and financial advisors can meet the definition of athlete-agent and trigger athlete-agent status

As seen in Section III.B.1., *supra*, the actions of the defendants in the men's college basketball trial triggered the athlete-agent designation when applying each act's definition of athlete-agent. However, reaching this conclusion requires thoughtful application and research that the ULC could avoid with slight revisions to the UAAA and RUAAA.²⁴⁰ The UAAA is silent on the issue.²⁴¹ The RUAAA references the possibility of coaches triggering athlete-agent status when, for example, advising a student-athlete to select a particular agent when the coach receives compensation from the agent.²⁴² However, this reference is in the definition of "Recruit or solicit" (instead of within the definition of "Athlete agent") and in a comment that may not appear within the legislation itself when adopted and published by states. Thus, ULC drafters should consider explicitly referencing coaches and financial advisors possibly triggering athlete-agent status in the text of any provision that includes the definition of an athlete-agent. This would not only increase clarity but help put those individuals on notice.

2. Revising the UAAA and RUAAA to account for the fact that select men's basketball student-athletes may now hire agents and retain collegiate eligibility to compete

When the NCAA, in a landmark and unilateral decision, permitted select men's basketball student-athletes to hire agents, yet retain collegiate eligibility to compete, the organization overturned its own longstanding rule.²⁴³ When drafting the UAAA and RUAAA, the ULC presumably took the NCAA's prohibition on student-athletes hiring agents for granted, and incorporated the ban into the acts' language. For example, both acts require agents to notify student-athletes who sign an agency contract that signing it may render them ineligible.²⁴⁴ Under recently changed NCAA legislation, however, when an eligible men's basketball student-athlete hires an agent and opts to not enter the

240. See RUAAA, *supra* note 110, at 8-9.

241. *Id.* at 8.

242. *Id.* at 9.

243. See Michael McCann, *What's Really to Come From the NCAA's Student-Athlete Agent Announcement?*, SPORTS ILLUSTRATED, Aug. 8, 2018, <https://www.si.com/college-basketball/2018/08/08/ncaa-agents-student-athlete-one-and-done-nba-draft> (explaining that NCAA long feared that attorneys, accountants, and other informed adults acting as agents would exploit, rather than inform and educate, college athletes).

244. RUAAA, *supra* note 110, at 35-37.

NBA draft and returns to his university, he retains eligibility to compete if he terminates his agreement with the agent.²⁴⁵ Thus, ULC drafters should consider amending the acts to require agents signing a men's basketball student-athlete to notify him how he may retain eligibility to compete collegiately or at least advise him to seek counsel from his university regarding maintaining eligibility. Further, ULC drafters should consider requiring agents to file evidence of termination of the agreement with both the appropriate state entity and athletics department.

3. Revising the UAAA and RUAAA to permit agents to provide certain men's basketball student-athletes and their family members with expenses associated with the agent selection process

Due to the NCAA's recent changes to its longstanding and rigid rules, agents may pay for meals and transportation for select men's basketball student-athletes and their family members if the expenses relate to the agent selection process.²⁴⁶ However, both the UAAA and RUAAA prohibit agents from furnishing anything of value to an athlete or any other individual before the athlete enters into a contract.²⁴⁷ The ULC, if it seeks to align its acts with recent NCAA rules changes, must insert an exception to the prohibition on furnishing anything of value to permit agents to pay for these now NCAA-permissible expenses related to the agent selection process.

Both acts already require athlete-agents to retain and make available to the state records of "the direct costs incurred by the agent in the recruitment or solicitation of each student athlete to enter into an agency contract."²⁴⁸ If agents are aware of and follow this requirement (and states enforce it), they may be less likely to make payments to student-athletes or their family members (*i.e.*, payments beyond the permissible meals and transportation expenses) that could render a student-athlete ineligible to compete under NCAA rules.²⁴⁹ Further,

245. *See* NCAA, *supra* note 8.

246. *Going Pro*, *supra* note 10. *See* McCann, *supra* note 243 (explaining that rule change helps create a normal experience for elite college athletes who sometimes see classroom peers wined and dined by corporate recruiters without accompanying worry of NCAA eligibility).

247. RUAAA, *supra* note 110, at 7, 41.

248. *Id.* at 2, 40.

249. ULC drafters may also consider requiring individuals registering as athlete-agents within a state to disclose during the registration process whether they represent any university employees within the state. Further, both the UAAA and RUAAA require athlete-agents to disclose certain information (*e.g.*, a description of services the agent will provide) to the athlete at signing. *See* RUAAA, *supra* note 110, at 1, 35. ULC drafters should also consider requiring athlete-agents to disclose on the warning provision of the representation agreement whether they represent any employees of the university the student-athletes attend. It is a conflict

the ULC may wish to consider expanding the document retention and availability requirement to allow a university to request and obtain documentation of costs incurred by an agent in the recruitment of the university's student-athlete(s).

4. Revising the UAAA and RUAAA to prohibit agents from offering or providing an item of value to an individual to increase the likelihood that an athlete attends a particular university

The "Prohibited Conduct" section of both the UAAA and RUAAA contain prohibitions on athlete-agents from furnishing anything of value to an athlete prior to the athlete entering into a representation agreement.²⁵⁰ Further, the RUAAA prohibits athlete-agents from furnishing anything of value to an individual other than the athlete.²⁵¹ However, these prohibitions apply to furnishing anything during the athlete-agent recruitment process only.²⁵²

One could argue that the defendants in this case furnished items of value (*i.e.*, money) to prospective student-athletes in order to influence their university selection process separate from the athlete-agent recruitment process. However, federal authorities describe, and jurors confirmed, that the bribe payors paid prospective student-athletes in exchange for a commitment by the athletes to matriculate at a specific university *and* a promise to ultimately sign representation agreements with the bribe-paying advisors.²⁵³ Including in the acts a prohibition on athlete-agents furnishing an item of value to an athlete or another individual in order to facilitate matriculation at a specific university would clear up any confusion. Additionally, including such a prohibition would further align the acts with NCAA regulations. In 2012, the NCAA expanded its definition of agent to include an individual who "seeks to obtain any type of financial gain or benefit from securing a prospective student-athlete's enrollment" at a university.²⁵⁴

of interest for a coach's agent to recruit the coach's draft-eligible underclassman. See Josh Lens, *When a College Coach's Agent Recruits the Coach's Players: Potential Legal and NCAA Ramifications*, 26 JEFFREY S. MOORAD SPORTS L.J. 1, 13-14 (2019). This alerts the student-athlete, and potentially others, of the potential for a conflict of interest and would help mitigate the likelihood of someone the student-athlete trusts falsely telling a student-athlete that an individual represents him such as was the case with assistant coaches Person and Evans.

250. RUAAA, *supra* note 110, at 41-42.

251. *Id.*

252. *Id.*

253. Department of Justice, *supra* note 16.

254. NCAA Manual 2018-19, *supra* note 7, at § 12.02.1.

5. Revising the UAAA and RUAAA to account for the NCAA's new athlete-agent registration

A facet of the package of changes to rules applicable to men's college basketball is a new NCAA agent certification process.²⁵⁵ Several of the acts' provisions dealing with the athlete-agent registration process require the applicable state entity's registration application to inquire of certification by any professional sports players association(s) (*e.g.*, National Basketball Players Association).²⁵⁶ If the ULC wants to recognize the entirety of recent changes to NCAA rules, it should update the acts' provisions regarding the agent registration process to include the NCAA within the list of possible entities with which the agent is certified.

V. CONCLUSION

Most states have passed a version of the UAAA or RUAAA to regulate athlete-agent behavior and protect universities. However, despite recent widespread corruption in men's college basketball, state entities and individuals charged with enforcing state athlete-agent laws failed to detect the transgressions and/or pursue penalties against wrongdoers whose actions should have triggered the application of the laws. Hopefully the recent scandal in men's college basketball brings attention to the need for enforcement of state athlete-agent laws, which, if properly enforced, are equipped to serve not only as a powerful deterrent to illicit behavior by athlete-agents but also protection to student-athletes and universities.

At the same time, the NCAA, in response to the scandal, revised its longstanding rules to permit select men's basketball student-athletes to not only hire agents but allow them to provide benefits to these student-athletes and their family members. While the NCAA maintains that it supports the UAAA, it disregarded it when revising its rules pertaining to athlete-agents. As a result, NCAA rules on athlete-agents in men's basketball no longer align with state athlete-agent laws, the UAAA, and the RUAAA. If drafters of these laws and acts wish to maintain conformity with NCAA legislation, they must revise the laws and acts to take into account the recent changes to NCAA legislation.

255. *Going Pro*, *supra* note 10 (noting that NCAA has not determined deadline for agent certification, but the deadline will not be later than August 1, 2020).

256. RUAAA, *supra* note 110, at 15-18.