

FULL COURT PRESS: PROBLEMS PLAGUING YOUTH BASKETBALL IN THE UNITED STATES AND AN  
AGGRESSIVE PLAN TO ATTACK THEM

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I. Introduction

Amateur sports in America today, especially youth basketball, are rich sources of opportunities for growth, community, and physical activity for aspiring athletes. The Amateur Athletic Union (AAU) has helped stimulate the growth of basketball in the country exponentially, yet has also contributed to the establishment of an environment infested by corporate jostling over young stars and questionable recruiting tactics used by Division I college coaches.<sup>1</sup> As the most influential and recognizable competitive basketball organizations in the country, it is the responsibility of the AAU, National Collegiate Athletic Association (NCAA),<sup>2</sup> National Basketball Association (NBA),<sup>3</sup> and the newly-formed iHoops (“Youth Basketball Initiative”)<sup>4</sup> to implement changes to address the negative influences on amateur basketball. The AAU and Youth Basketball Initiative must take affirmative steps to significantly strengthen regulations to minimize the influences of sponsors seeking to use the game to exert control over amateur athletes. Furthermore, it is imperative that the AAU work with the NCAA to eliminate grey area in rules that is currently being exploited by Division I college coaches seeking

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<sup>1</sup> See, e.g., Thayer Evans, *Battle Rages for the Soles of a Young Star*, N.Y. TIMES, Apr. 24, 2006, available at [http://www.nytimes.com/2006/04/24/sports/24mayo.html?\\_r=1&oref=slogin](http://www.nytimes.com/2006/04/24/sports/24mayo.html?_r=1&oref=slogin).

<sup>2</sup> The NCAA was formed in 1906 at the urging of President Theodore Roosevelt, who was concerned about the injuries and fatalities occurring from collegiate athletes playing football. GARY R. ROBERTS & PAUL C. WEILER, *SPORTS AND THE LAW* 741 (2004).

<sup>3</sup> The NBA is the most recognizable professional basketball league in America, featuring teams from across the country and holding games from early November until late June. The NBA’s website can be viewed at [www.nba.com](http://www.nba.com).

<sup>4</sup> The Youth Basketball Initiative, formally named iHoops, was a landmark creation in 2008. Funded by the NCAA and NBA, the organization is “designed to reach and benefit everyone who participates in youth basketball programs . . . . The Initiative will create a platform for teaching youth the value of education and the important lessons of fair play.” NBA, NCAA, NBA Join Forces to Form iHoops, a Youth Initiative, NBA.COM (June, 9, 2010), <http://www.nba.com/2009/news/06/09/ihoopsrelease/index.html>. The Youth Basketball Initiative appointed Kevin Weiberg, a former Commissioner of the Big XII conference, as its first CEO in late 2008. Insidehoops.com NewsWire, NCAA-NBA Youth Basketball Initiative Names Kevin Weiberg CEO, INSIDEHOOPS.COM, Nov. 24, 2008, <http://www.insidehoops.com/youth-initiative-weiberg-112408.shtml>.

commitments from AAU participants and other aspiring basketball players.<sup>5</sup> The Youth Basketball Initiative, with support from the NBA, should be utilized to create a system in which basketball development is aided while educational pursuits and personal growth have an increased emphasis.

To effectively analyze the problems within the state of youth basketball across the country today, it is first necessary to discuss the background and structure of the AAU organization that influences the sport in such a strong manner. Part II addresses this issue. Next, Part III provides an analysis of the culture of youth basketball in America, including a case study of basketball in Denver, Colorado for illustrative purposes. A discussion of corporate influences on the amateur levels of the game throughout the country is also provided. Part IV incorporates an overview of current regulations imposed on recruiting by the NCAA. With the status quo established, the facts underlying the problem of devious recruiting tactics used by some Division I basketball coaches can be scrutinized. To illustrate the problem, Part V provides examples of famous recruiting scandals and questionable tactics employed by college coaches. Part VI surveys legal issues and case law influencing efforts to eradicate negative influences from the arena of youth basketball. Combining the discussion of various competing influences in light of the foremost objective of purifying the youth basketball atmosphere in America, Part VII suggests a multi-level approach utilizing NCAA, AAU, Youth Basketball Initiative, and NBA resources to combat the negative influences corrupting the game.

## II. The Amateur Athletic Union

In acquiescence to the need for organization of the surging numbers of American athletic participants, the AAU was established in 1888 “to establish standards and uniformity in amateur sport.”<sup>6</sup> The organization’s stated mission was “to offer amateur athletes and volunteers opportunities to develop to their highest level through a national and local network of sporting events.”<sup>7</sup> In its early stages, the AAU represented the country’s athletic interests on an international level in several different ways, the most important of which was involvement with the Olympic Games as a developmental system for future participants.<sup>8</sup> This focus was altered years later, however, by the Ted Stevens Olympic and Amateur Sports Act (“Amateur Sports Act”) that was passed in the United States in 1978.<sup>9</sup> In the wake of changes made after the Act, the AAU now provides opportunities for amateur athletes in over thirty competitive sports, with girls and boys basketball as the most popular programs.<sup>10</sup> In 2004, for instance, “the AAU boasted over 500,000 members with 50,000 plus volunteers . . . .”<sup>11</sup>

The structure of the AAU is thoroughly outlined in their annually published AAU Codebook. The organization is divided into sixty different districts spread across the United

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<sup>5</sup> Michelle Kaufman, College Basketball Recruiting Enters Halls of Middle School, MIAMI HERALD, Feb. 3, 2009 (on file with author).

<sup>6</sup> Amateur Athletic Union, About AAU, <http://www.ausports.org/AboutAAU.aspx> (last visited Apr. 4, 2010) [hereinafter AAU Homepage].

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> 36 U.S.C. § 220501 (2006).

<sup>10</sup> AAU Homepage, *supra* note 6.

<sup>11</sup> Id.

States and Puerto Rico.<sup>12</sup> A perusal of the governance of these districts and the union as a whole is appropriate to demonstrate the structure of the system through which so many basketball players progress.

The AAU is overseen by a Congress, which the AAU Codebook defines as “the legislative body of the AAU.”<sup>13</sup> The Congress is comprised of district representatives, various sport committee representatives, national officers of the AAU, past officers, representatives appointed by affiliate members, and up to five “members-at-large” appointed by the president.<sup>14</sup> Collectively, these individuals have the power to amend the Constitution and Bylaws of the organization, elect officers, establish dues and fees, approve budgets, establish district territories, grant charters, approve National Sport Committees, remove officers and/or members of Congress, call meetings, assume original and/or appellate jurisdiction, and impose penalties for violations of the Constitution, Bylaws, policies, rules, or regulations.<sup>15</sup>

The Board of Directors of the AAU is a smaller collection of individuals than the Congress.<sup>16</sup> Beneath the Board of Directors in the general hierarchy of the AAU are the Congressionally-elected officers.<sup>17</sup> Subject to the powers of these governing bodies, each of the sixty districts of the AAU is governed by a distinct Board of Managers comprised of clubs, district officers, Sport Committee Directors, and no more than five at-large members selected by the Governor of the district.<sup>18</sup> Furthermore, each district has an Executive Committee composed of elected officers,<sup>19</sup> the Chair of the district’s Finance Committee, and “the Director, or designee, of the District Sport Committee whose District Sport Committee has registered one percent more of the total membership of the district.”<sup>20</sup> Additionally, each district includes various committees assigned to fulfill different tasks. Among these multiple groups, each district’s Review Committee<sup>21</sup> is charged with the duty to “Investigate and review complaints regarding violations of the AAU Code, and to conduct hearings in accordance with Article III

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<sup>12</sup> AMATEUR ATHLETIC UNION, 2009 OFFICIAL AAU CODEBOOK 81 (2009) available at <http://image.aausports.org/codebook/codebook.pdf> (last visited May 9, 2010) [hereinafter AAU CODEBOOK].

<sup>13</sup> AAU CODEBOOK, *supra* note 12, art. I.C, at 3.

<sup>14</sup> AAU CODEBOOK, *supra* note 12, art. I.C.2, at 4.

<sup>15</sup> AAU CODEBOOK, *supra* note 12, art. I.C.1, at 3.

<sup>16</sup> Generally, powers of the Board include the abilities to act for the AAU and on behalf of Congress (subject to Congressional approval), establish national policies and procedures for the AAU, approve National Sport Committee operating rules, approve National Championship events, approve the General Counsel, establish check signing authority, and perform various auditing and financial reviews. AAU CODEBOOK, *supra* note 12, art. I.D.1, at 4-5.

<sup>17</sup> These officers include the President, First Vice-President, Second Vice-President, Secretary, and Treasurer. AAU CODEBOOK, *supra* note 12, art. I.E, at 5.

<sup>18</sup> AAU CODEBOOK, *supra* note 12, art. II.E.1.a, at 12. The duties of these Boards of Managers include the election of district officers and various committees within the district, approval of the district budget, election of delegates to the Congress, and calling of meetings. AAU CODEBOOK, *supra* note 12, art. II.E.1.b, at 12.

<sup>19</sup> The officers of each district are the Governor, Lieutenant Governor, Registrar, Secretary, and Treasurer. AAU CODEBOOK, *supra* note 12, art. II.E.3.a, at 14.

<sup>20</sup> AAU CODEBOOK, *supra* note 12, art. II.E.2.b, at 13-14. The duties of each district’s Executive Committee include representation of the district and/or Board of Managers, scheduling meetings, approving the Sport Committee’s operating rules, filling vacancies in elected offices within the district, reviewing accounts of the District Treasurer, and overseeing budgeting processes. AAU CODEBOOK, *supra* note 12, art. II.E.2.a, at 13.

<sup>21</sup> Each Review Committee consists of five members elected by the Board of Managers for four year terms. The Governor of the district appoints each Review Committee Chair from the elected members. AAU CODEBOOK, *supra* note 12, art. II.E.5.a.3.a, at 17.

and procedures established by National AAU Policy . . . .”<sup>22</sup> The Review Committee may also review decisions that have previously been made to deny membership within the district.<sup>23</sup>

With the multi-tiered, thoroughly outlaid governmental structure adopted by the AAU, it should come as little surprise that judicial processes and remedial measures are similarly explicitly defined. Complaints and investigations proceed through a complex system<sup>24</sup> in which the issue is typically addressed at the district level in its early stages. Rights to appeal are conferred upon parties who disagree with the outcome of initial findings of fact.<sup>25</sup> Within the AAU system, Congress holds the highest degree of power and serves a role comparable to that of the United States Supreme Court in the American judicial system.<sup>26</sup>

Perhaps the most ambiguous yet important clause of the AAU Codebook pertains to the authority of the organization’s judicial bodies. A wide bestowment of responsibility is conferred, yet there is little formal direction for how investigations should take place or designations of parties particularly responsible for various matters. The AAU Codebook simply prescribes that “the appropriate judicial body may exercise its authority as to any member, entity, or affiliate of the AAU which is determined to have violated the AAU Code . . . .”<sup>27</sup> Without further elaboration pertaining to which level of the judicial structure should hold primary accountability for punishing or investigating each infraction, the AAU Codebook includes a non-exclusive list of violations that may warrant the exercise of judicial authority. Such infractions include fraud, competing for money, becoming a professional athlete, aiding or abetting an athlete to disqualify themselves, doping, aiding or abetting the use of controlled substances by

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<sup>22</sup> AAU CODEBOOK, *supra* note 12, art. II.E.5.a.3.b.1, at 18.

<sup>23</sup> AAU CODEBOOK, *supra* note 12, art. II.E.5.a.3.b.2, at 18.

<sup>24</sup> The first judicial body provided for in the AAU Codebook is the National Board of Review, comprised of five members of the AAU including a Chair appointed by the President and an elected member from each of four national zones. AAU CODEBOOK, *supra* note 12, art. III.A.1.c, at 22-23. These five individuals are granted broad jurisdiction such that as a Board they “may review any decision, action, or omission by a member or other entity (other than Congress) which is a part of the Union or any of its activities.” AAU CODEBOOK, *supra* note 12, art. III.A.1.b, at 22. The powers of the National Board of Review are rather broad in scope, including the abilities to initiate complaints and investigations, require production of documents and statements, dismiss complaints or appeals, vacate or modify previous decisions, impose penalties, levy expenses, direct audits, create rules, and interpret the organization’s constitution and bylaws. AAU CODEBOOK, *supra* note 12, art. III.A.1.a, at 22.

<sup>25</sup> All decisions from the National Board of Review may be appealed to a separate judicial body, the Board of Appeals, which has the power to “vacate, modify, sustain, reverse, or remand . . . .” AAU CODEBOOK, *supra* note 12, art. III.A.2.a, at 23. To earn a favorable ruling from the Board of Appeals, however, the appellant must demonstrate “misapplication or misinterpretation of AAU Code or policies; newly discovered evidence; findings of fact contrary to the evidence presented; or excessive penalties.” *Id.* The Board of Appeals, which is comprised of two committee chairs and three presidential appointees,<sup>25</sup> reviews decisions based on the sufficiency of evidence using an abuse of discretion standard.<sup>25</sup> AAU CODEBOOK, *supra* note 12, art. III.A.2, at 23.

<sup>26</sup> Congress has the power to review any decision of the Board of Appeals. AAU CODEBOOK, *supra* note 12, art. III.A.2.d, at 23. Most complaints do not reach such high levels of the AAU judiciary structure, however. Instead, they are handled in the individual districts by the various District Review Committees. At this level, the District Review Committee has jurisdiction over “complaints against club or individual members of the AAU in regard to a matter at the district level.” AAU CODEBOOK, *supra* note 12, art. III.A.3.b, at 24. District Review Committees are charged with investigating alleged violations of district members, reviewing decisions of other district committees, holding hearings, and imposing penalties. AAU CODEBOOK, *supra* note 12, art. III.A.3.a, at 24. The Committee’s hearings may be waived by the party entitled to the hearing, but proper notice and formal abidance by standardized AAU procedures must be followed. AAU CODEBOOK, *supra* note 12, art. III.C.1, at 25.

<sup>27</sup> AAU CODEBOOK, *supra* note 12, art. III.B, at 24.

athletes, unfair dealing in connection with competition, violation of AAU rules, aiding or abetting a person to violate the AAU Code, failure to cooperate with AAU judicial bodies, and acts which disturb competition.<sup>28</sup>

This preliminary background of the structure of the AAU provides a framework within which youth basketball in America must be analyzed. The organization in which so many aspiring basketball players participate must be understood to recognize where corruption in the game finds roots. After all, it is this organization that is largely responsible for creating an environment where the game can expose young athletes to both positive and negative influences.

### III. The State of Youth Basketball in the United States

The formally structured AAU system was no small contributor to the exponential growth of basketball's popularity across the world and, in particular, the United States. From the game's humble beginnings as James Naismith's creation when it was played with peach baskets as a way to keep young men occupied during the winter months, basketball has exploded into a multi-billion dollar sports industry.<sup>29</sup> Over the course of the game's history, notable figures like Michael Jordan, Wilt Chamberlain, Bill Russell, Magic Johnson, Larry Bird, and Jerry West have enhanced the game by giving fans identifiable heroes at the professional level.<sup>30</sup> The NBA has featured dynasties like the Boston Celtics and the Chicago Bulls and provided an arena in which rivalries like the Celtics and Lakers and the Bulls and Knicks could flourish. College basketball, too, has provided fantastic moments and figures which have spurred interest in the game, from John Wooden's UCLA dynasty to the fan-favorite rivalry between North Carolina and Duke. Thanks in part to the effect that these individuals and teams have had on fan interest in the sport, it is estimated that over 250 million people across the world now participate in organized basketball.<sup>31</sup> With the broadening interest in basketball, corporations have attempted to capitalize on opportunities within the industry as well.<sup>32</sup> In 1994, for example, Columbia Broadcasting System (CBS) agreed to an eight-year, \$1.7 billion (or \$215 million a year) contract with the NCAA to televise its "March Madness" Division I men's basketball tournament.<sup>33</sup> As interest in the game reached even higher levels, the previous contract was succeeded by an eleven-year, \$6.2 billion (or \$560 million a year) deal that started during March Madness in 2003.<sup>34</sup>

Across the United States, basketball hoops can be found in almost every school and on nearly every playground. Basketball is a common activity during gym class, at recess, and outside of school. For those young athletes who choose to get involved with the game at a formal level, a variety of options exist. A case study of Denver, Colorado's youth basketball structure is illustrative of the myriad options for aspiring athletes in one particular area alone.

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<sup>28</sup> *Id.* at 24-25.

<sup>29</sup> Basketball History: [history-of-basketball.com, http://www.history-of-basketball.com/history.htm](http://www.history-of-basketball.com/history.htm) (last visited Apr. 15, 2010).

<sup>30</sup> NBA, The NBA at 50, NBA.COM <http://www.nba.com/history/players/50greatest.html> (last visited May 4, 2009).

<sup>31</sup> Factmonster.com, Basketball in America: A History, <http://www.factmonster.com/ipka/A0875085.html> (last visited May 4, 2009).

<sup>32</sup> ROBERTS & WEILER, *supra* note 2, at 740.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*



a. Youth Basketball in Denver, Colorado: A Case Study

In Denver, middle school athletes within the city who desire to play organized basketball have a wide selection of leagues and organizations from which they can choose. Public leagues are available for recreational yet organized play through a number of YMCAs,<sup>35</sup> recreational centers, and public school systems.<sup>36</sup> It is typical for teams in these leagues to have one practice and one game per week over the course of a two or three month season, with practices and games usually lasting for approximately one hour. All league games for leagues like these are usually held in the same gymnasium, which is typically located in close proximity to the residences of most participants. Similarly, the Catholic middle schools in the Denver area offer organized basketball on a recreational level through the Parochial League of the Denver Archdiocese. Unlike the public leagues, however, the Parochial League requires participants to play for a team representing the Catholic school within the diocese which they attend.

At a higher level, basketball teams specifically affiliated with a high school in Colorado fall under the jurisdiction of the Colorado High School Activities Association (“CHSAA”).<sup>37</sup> All of the high schools in the state of Colorado are divided by CHSAA into classes based on competitive factors like the size of enrollment compared to other high schools fielding a team for the same sport. Within each class, high schools are divided into conferences that group schools together based on geographic proximity to minimize the travel required for visiting teams. Due to the overwhelming popularity of the game, most of the larger high schools have to “cut” student-athletes from their teams despite the fact that schools commonly field a freshman, sophomore, junior varsity, and varsity team.

For those youth basketball players choosing to pursue a more competitive route in the greater Denver area, several alternatives are available for both middle school and high school students. Junior Athletics of the Midwest (“JAM”), is one of several leagues for boys and girls in the area that desire to compete in both the fall and spring.<sup>38</sup> It is not uncommon for this league to showcase “feeder” teams for local high schools comprised of seventh and eighth graders who plan to play together in a certain high school’s basketball program in the coming years. In a separate division for older athletes, many high schools enter their varsity and junior varsity basketball teams to play against other teams of the same level in the league. By doing so, players are able to gain additional exposure to the game on a much more extended basis than the high school leagues, which commence in November and culminate in March. JAM league games are usually played in local high school gymnasiums and feature a variety of talented athletes, many of which star on high school teams at some point and a number of which later participate at the collegiate level. In addition to JAM, the Gold Crown Foundation<sup>39</sup> provides another competitive

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<sup>35</sup>YMCA of Metropolitan Denver, Youth Sports-Basketball, <http://www.denverymca.org/sports/Sport.aspx?SportID=2> (last visited Apr. 15, 2010) (noting that the Schlessman Family YMCA and the Highline YMCA, for instance, both offer recreational leagues).

<sup>36</sup> The Cherry Creek Public School system offers a league in which teams can be organized by the members and parents and entered each season.

<sup>37</sup>Colorado High School Activities Association, <http://www.chsaa.org/sports/basketball/basketball.asp> (last visited May 4, 2009).

<sup>38</sup> Junior Athletics of the Midwest, <http://www.jamball.com> (last visited Apr. 4, 2010).

<sup>39</sup> Gold Crown Foundation was founded by Bill Hanzlik, a former star basketball player for the University of Notre Dame and the NBA’s Denver Nuggets, along with his business partner, Ray Baker. It has grown to become one of

league for basketball players from ages nine to eighteen, with the majority of the games played in an expansive field house designed specifically for that purpose.<sup>40</sup>

While talent is certainly evaluated by those scouting the organized high school leagues and other competitive leagues like JAM and Gold Crown, the major focus in scouting and recruiting is now at the most competitive level of youth basketball in the country, the AAU basketball programs.<sup>41</sup> AAU teams emphasize a focus on basketball from a young age and attempt to showcase the best players in the area by traveling to compete in various national tournaments. Colorado's AAU crowns district AAU champions for boys and girls teams comprised of athletes as young as fifth graders. A number of AAU tournaments for middle school and high school athletes are held within the Colorado district alone each year.<sup>42</sup> The best teams travel outside of Colorado to play against teams from other parts of the country at tournaments like the Disney Classic, Easter Classic, and the AAU National Championships.<sup>43</sup>

#### b. The Broader AAU and Elite Youth Basketball Scene

The intensely competitive nature of AAU basketball in Colorado is representative of the status quo across the country. Perhaps the most singularly focused, ultra-competitive youth basketball environment in the country is Prince George's County, Maryland, where aspiring basketball players are funneled into the AAU basketball system before middle school.<sup>44</sup> Prince George's County has produced superstars like Kevin Durant, Michael Beasley, Len Bias, and recent college stars like Ty Lawson of North Carolina, Nolan Smith of Duke, and Sam Young of Pittsburgh.<sup>45</sup> As Chris Palmer notes in ESPN the Magazine, AAU basketball played a pivotal role in spurring the growth of the game in places like Prince George's County: "The rise of Prince George's as a basketball power coincides with the explosion of its AAU scene."<sup>46</sup>

With the remarkable growth of AAU basketball nationwide and the corresponding attention paid by young athletes, parents, coaches, scouts, and spectators, it should not be surprising that large corporations and notable figures in the sports world have begun to pump money into AAU team sponsorships. O.J. Mayo, a former AAU standout who went on to star for the University of Southern California and currently plays in the NBA, played for the North Carolina Hill D-I Greyhounds, an AAU team sponsored by Reebok, for most of his AAU career.<sup>47</sup> Despite this Reebok affiliation, Mayo also played briefly for the Tropics, an AAU team funded by Reebok's corporate archrival, Nike.<sup>48</sup> Both shoe companies attempted to build

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the region's most successful youth sports organizations. Gold Crown Foundation,, <https://www.goldcrownfoundation.com/> (last visited June 4, 2010).

<sup>40</sup> Id.

<sup>41</sup> Chris Palmer, Rated PG, ESPN THE MAGAZINE, Dec. 29, 2008, at 53.

<sup>42</sup> Colorado AAU Basketball, <http://www.coloradoaaubasketball.com/> (last visited May 4, 2009).

<sup>43</sup> AAU Boys Basketball, Tournament Information, <http://aauboysbasketball.org> (last visited Apr. 15, 2010) (follow "Events" hyperlink, then "Tournaments" hyperlink, to see current tournaments).

<sup>44</sup> Palmer, supra note 41, at 52.

<sup>45</sup> Id.

<sup>46</sup> Id. at 53.

<sup>47</sup> Evans, supra note 1.

<sup>48</sup> Id.

goodwill from the AAU sponsorship foundation to compete for Mayo's endorsement after his AAU career finished.

One of the most recognizable legacies of Michael Jordan, perhaps the greatest player in the history of the game, is the strengthened affiliations between athletes and companies.<sup>49</sup> Basketball players, like athletes generally, have become associated with brands they are paid to endorse.<sup>50</sup> Jordan's relationship in the 1980s with Phil Knight and his rapidly expanding Nike brand established a precedent of corporate sponsorship many would follow.<sup>51</sup> As Jordan stated before his first retirement from the Chicago Bulls in 1993, "What Phil and Nike have done . . . is turn me into a dream."<sup>52</sup> This pattern of corporate relationships with superstar players has trickled down to the AAU level.

As was the case when Michael Jordan rose to prominence, fellow basketball superstar LeBron James became the focus of corporations hopeful to sign him to endorsement contracts when he concluded his AAU career and became a professional. Sonny Vaccaro, a former Nike employee who left for rival Adidas after luring Michael Jordan's endorsement of Nike,<sup>53</sup> was the individual in charge of establishing a relationship on behalf of Adidas with LeBron James. Although James eventually signed an endorsement contract with Nike, Vaccaro and James developed a close relationship during the latter's years of involvement with AAU.<sup>54</sup> Vaccaro's influence during LeBron James' ascent to stardom was not atypical; the corporate magnate has become increasingly present and powerful on the youth basketball scene in recent decades.<sup>55</sup>

Consistent with these developments, it is not uncommon for sponsors to spend thousands of dollars on an AAU team.<sup>56</sup> "The Richmond-based Squires Boys Basketball Education Foundation received \$18,000 in 2003 from Adidas to sponsor its program . . . ."<sup>57</sup> A similar program, the Boo Williams Summer League, was the recipient of a \$115,000 contribution in 2004 from Nike.<sup>58</sup>

Corporations' involvement with youth basketball does not end with AAU team sponsorships, however. Several shoe companies, for instance, attempt to further expose their names and products to young athletes through both team camps and showcase camps for star teams and players from across the country. Through Sonny Vaccaro, Reebok now sponsors the famous ABCD camp each year in which the top high school players from AAU and other competitive teams across the country can showcase their skills for scouts and coaches.<sup>59</sup> In

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<sup>49</sup> See generally DAVID HALBERSTAM, *PLAYING FOR KEEPS: MICHAEL JORDAN AND THE WORLD HE MADE* (The Amateurs Limited 2000) (1999).

<sup>50</sup> See generally DONALD KATZ, *JUST DO IT: THE NIKE SPIRIT IN THE CORPORATE WORLD* (Adams Media Corporation 1994).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 8.

<sup>53</sup> Ric Bucher, *The Last Don*, *ESPN THE MAGAZINE*, Oct. 22, 2002, available at <http://espn.go.com/magazine/vol5no23vaccaro.html>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Eric Prisbell, *Basketball Recruiting on the Nonprofit Margins*, *WASH. POST*, Dec. 31, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/30/AR2006123000194.html>.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Reebok ABCD Camp, <http://www.reebokabcdcamp.com/home.html> (last visited May 1, 2010).



addition, Nike hosts a similar “camp” for top high school basketball players and promotes it using their largely successful Jordan brand.<sup>60</sup> Top college coaches from across the country attend both camps as “instructors,” although they are certainly there to evaluate the talent of prospects as well.<sup>61</sup> Hundreds of other individuals, collectively referred to as “talent scouts” within the industry, can also be found in attendance to watch the top players.<sup>62</sup>

The shoe companies are not the only corporations seeking exposure through youth basketball, however. McDonald’s sponsors a high school All-American game each year in which professional superstars like Dwight Howard, Kobe Bryant, Carmelo Anthony, Chris Paul, and LeBron James have participated.<sup>63</sup> The game is nationally televised each year on ESPN, which also benefits derivatively from this use of youth basketball.

It is into this dizzying array of competitive AAU teams, vying corporations, and aspiring, easily-influenced young athletes that Division I college coaches insert themselves through the recruiting process. With money passed to AAU teams and coaches through various means, there is ample opportunity for corruption. Furthermore, the rules governing recruitment of prospects yield ample grey area in which recruiters can manipulate the spirit of the regulations without violating the proverbial “letter of the law.”

#### IV. NCAA Rules Governing Recruiting by Division I Men’s Basketball Coaches

The NCAA defines recruiting as “any solicitation of a prospective student-athlete or a prospective student-athlete’s relatives . . . by an institutional staff member or by a representative of the institution’s athletic interests . . . .”<sup>64</sup> These actions within the definition of recruiting must be “for the purpose of securing the prospective student-athlete’s enrollment and ultimate participation in the institution’s intercollegiate athletics program.”<sup>65</sup> Due in large part to the possibility that the interests of student-athletes may be compromised by coaches seeking to advance the interests of their own programs, the NCAA has adopted specific measures to regulate the area of recruiting. The NCAA regulations, outlined in the NCAA Division I Manual, prohibit and standardize a wide range of conduct in the recruiting process.

Importantly, the NCAA stipulates that each recruit “is responsible for his or her involvement in a violation of NCAA regulations during the student’s recruitment, and involvement in a major violation . . . may cause the student to become . . . ineligible . . . .”<sup>66</sup> Such a provision clearly minimizes the effectiveness of an ignorance defense. The NCAA also holds the programs themselves accountable for recruiting misconduct.<sup>67</sup> Programs like that of

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<sup>60</sup> Five Star Basketball Training Camp, <http://www.5starbball.com/> (last visited May 1, 2010).

<sup>61</sup> Joey Johnston et al., Recruiting in the Shadows, TAMPA TRIB., Dec. 14, 2008, available at <http://www2.tbo.com/content/2008/dec/14/140011/na-recruiting-in-the-shadows/>.

<sup>62</sup> Id.

<sup>63</sup> McDonald’s All Americans Alumni, [http://www.mcdonaldsallamerican.com/Boys\\_Alumni.pdf](http://www.mcdonaldsallamerican.com/Boys_Alumni.pdf) (last visited Apr. 15, 2010).

<sup>64</sup> NAT’L COLLEGIATE ATHLETIC ASS’N, 2008-09 NCAA DIVISION I MANUAL, art. 13.02.12, at 79 [hereinafter DIVISION I MANUAL].

<sup>65</sup> Id.

<sup>66</sup> DIVISION I MANUAL, *supra* note 64, art. 13.01.1, at 77.

<sup>67</sup> Associated Press, Northeastern Penalized for Recruiting Violations, CBS SPORTS, Apr. 25, 2009, available at <http://wbztv.com/sports/ncaa.northeastern.university.2.994339.html>.

Northeastern University, for example, have faced probation and an imposed reduction in the number of scholarships the program may grant to student-athletes.<sup>68</sup>

For recruiting purposes, the NCAA broadly defines a prospective student-athlete as “a student who has started classes for the ninth grade.”<sup>69</sup> In January of 2009, however, the NCAA altered the rule for men’s basketball to apply to seventh and eighth grade students as well.<sup>70</sup> Such a policy change was specifically designed to limit interaction between middle school basketball players and college coaches.<sup>71</sup> The NCAA distinguishes a prospective student-athlete from a “recruited” prospective student-athlete by establishing several factors which lead to classification in the latter category. Among these are an institution’s participation with an official visit of the recruit; arranging telephone contact or an in-person, off-campus encounter with the prospect or the prospect’s parent(s), relatives, or legal guardian(s); and “issuing a National Letter of Intent or the institution’s written offer of athletically related financial aid to the prospective student-athlete.”<sup>72</sup>

The term “contact,” which appears throughout the NCAA Division I Manual, is defined as “any face-to-face encounter between a prospective student-athlete or the prospective student-athlete’s parents, relatives, or legal guardians and an institutional staff member or athletics representative during which any dialogue occurs in excess of . . . greeting.”<sup>73</sup> Even if no conversation takes place, contact within the boundaries of the NCAA rules also consists of any “face-to-face encounter that is prearranged . . . or that takes place on the grounds of the prospective student-athlete’s educational institution or at the site of organized competition or practice . . . .”<sup>74</sup> Incorporating this meaning of the term, “contact” is restricted in accordance with various times of the year.

The NCAA divides the calendar year into several periods during which recruiters must conform to different standards of conduct. During “Contact Periods,” “it is permissible for authorized athletics department staff members to make in-person, off-campus recruiting contacts and evaluations.”<sup>75</sup> “Quiet Periods” are more restrictive, as they are times “when it is permissible to make in-person recruiting contacts only on the institution’s campus. No in-person, off-campus recruiting contacts or evaluations may be made . . . .”<sup>76</sup> The most restrictive periods, however, are “Dead Periods,” during which time “it is not permissible to make in-person recruiting contacts or evaluations on or off the institution’s campus or to permit official or unofficial visits by prospective student-athletes to the institution’s campus.”<sup>77</sup> Off-campus recruiting contacts are prohibited before the July following completion of a prospect’s junior year of high school.<sup>78</sup> As defined by the NCAA, an “Evaluation Period” constitutes an interval

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<sup>68</sup> Id.

<sup>69</sup> DIVISION I MANUAL, supra note 64, art. 13.02.10, at 79.

<sup>70</sup> DIVISION I MANUAL, supra note 64, art. 13.12.1.1, at 119.

<sup>71</sup> Charlie Zegers, *NCAA Declares Seventh Graders “Prospects,”* ABOUT.COM, <http://collegebasketball.about.com/od/recruiting/a/seventh-grade.htm> (last visited May 4, 2009).

<sup>72</sup> DIVISION I MANUAL, supra note 64, art. 13.02.12.1, at 79.

<sup>73</sup> DIVISION I MANUAL, supra note 64, art. 13.02.3, at 78.

<sup>74</sup> Id.

<sup>75</sup> DIVISION I MANUAL, supra note 64, art. 13.02.4.1, at 78.

<sup>76</sup> DIVISION I MANUAL, supra note 64, art. 13.02.4.3, at 78.

<sup>77</sup> DIVISION I MANUAL, supra note 64, art. 13.02.4.4, at 78.

<sup>78</sup> DIVISION I MANUAL, supra note 64, art. 13.1.1.1, at 80.

in which “it is permissible for authorized athletics department staff members to be involved in off-campus activities designed to assess the academic qualifications and playing ability of prospective student-athletes. No in-person, off-campus recruiting contacts shall be made . . . .”<sup>79</sup>

Moreover, NCAA men’s basketball recruiting regulations rely heavily on the use of “Recruiting-Person Days.” As defined, a “Recruiting-Person Day” occurs when a coach is “engaged in an off-campus recruiting activity of a men’s basketball prospective student-athlete, including a prospective student-athlete who has signed a National Letter of Intent . . . .”<sup>80</sup> The presence of two coaches from the same institution at an event constitutes the use of two recruiting-person days.<sup>81</sup> Division I men’s basketball recruiting rules limit each institution to “130 recruiting-person days during the academic year contact and evaluation periods.”<sup>82</sup> With regards to specific prospects, the NCAA restricts each men’s basketball program “to seven recruiting opportunities (contacts and evaluations combined) during the academic year per prospective student-athlete . . . .”<sup>83</sup> Over the course of the recruit’s senior year of high school, however, “the institution is limited to not more than three in-person, off-campus contacts . . . .”<sup>84</sup> To protect these provisions from abuse, the NCAA prevents staff members from recruiting off-campus until they have been certified as familiar with recruiting regulations.<sup>85</sup> Restrictions may also “be placed on the number of staff members who are permitted to recruit off campus . . . .”<sup>86</sup>

Importantly, NCAA rules prevent coaches’ contact with a prospect during the academic year “at any basketball event . . . that is not part of a prospective student-athlete’s normal high school . . . season, or any event that is not approved, sanctioned, sponsored or conducted by the applicable state high school or . . . National Federation of State High School Associations . . . .”<sup>87</sup> Broadly, communication “as a result of the prospective student-athlete’s participation in basketball . . . is prohibited during the time period in which the prospective student-athlete is participating in a summer certified event . . . [h]owever, printed materials . . . may be sent . . . .”<sup>88</sup> Furthermore, institutional staff members are limited to “one occasion during a particular week within a contact period” on which they may visit a prospect’s school, “regardless of the number of prospective student-athletes enrolled in the institution or whether any prospective student-athlete is contacted on that occasion.”<sup>89</sup> When a staff member visits a recruit, he or she is not permitted to “expend any funds other than the amount necessary for his or her own personal expenses. . . .”<sup>90</sup>

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<sup>79</sup> DIVISION I MANUAL, *supra* note 64, art. 13.02.4.2, 78. See generally DIVISION I MANUAL, *supra* note 64, art. 13.1.8.8, at 92.

<sup>80</sup> DIVISION I MANUAL, *supra* note 64, art. 13.02.7, at 79.

<sup>81</sup> *Id.*

<sup>82</sup> DIVISION I MANUAL, *supra* note 64, art. 13.1.8.8.a, at 92.

<sup>83</sup> DIVISION I MANUAL, *supra* note 64, art. 13.1.8.5, at 92.

<sup>84</sup> *Id.*

<sup>85</sup> DIVISION I MANUAL, *supra* note 64, art. 13.1.2.1.1, 81.

<sup>86</sup> DIVISION I MANUAL, *supra* note 64, art. 13.01.3, at 77.

<sup>87</sup> DIVISION I MANUAL, *supra* note 64, art. 13.1.7.2.2, at 90.

<sup>88</sup> *Id.*

<sup>89</sup> DIVISION I MANUAL, *supra* note 64, art. 13.1.5.1, at 87.

<sup>90</sup> DIVISION I MANUAL, *supra* note 64, art. 13.14.2, at 122.

Staff members' acceptance of telephone calls, codified as "all electronically transmitted human voice exchange (including videoconferencing and videophones)," <sup>91</sup> is subject to recruiting regulations as well. Beginning in July following the student-athlete's completion of his sophomore year of high school, coaching staff members are permitted to accept collect phone calls from the student-athlete, his or her parent(s), and legal guardian(s).<sup>92</sup> Other telephone calls made "at the prospective student-athlete's own expense," however, may be received by institutional coaching staff members "at any time, including before July 1 following the prospective student-athlete's junior year in high school."<sup>93</sup> Telephone contact between institutional coaching staff members and prospects' high school coaches is prohibited in times when the recruit "is participating in a summer certified event" unless "the high school coach or administrator is not in attendance at that event."<sup>94</sup>

It should not be surprising that the NCAA limits recruiters' participation with prospects' teams and tournaments. Specifically, a coach or staff member "involved in the recruiting of student-athletes" is prohibited from participation "in the management, coaching, officiating, supervision, promotion, or player selection of any all-star team or contest" involving players who were members of high school teams during the previous academic year.<sup>95</sup> Coaches are permitted to attend "Elite International Events" like the Olympics, but "attendance at qualifying competition for such events, including tryouts, remains subject to the applicable recruiting calendars."<sup>96</sup>

Coaches' involvement with the camps that are so central to the youth basketball system in the United States is also regulated. Coaches may be involved in the camps at their own institutions, provided those camps take place on weeks containing days in the months of June, July, or August.<sup>97</sup> Coaches and basketball staff members are prohibited, however, from being "employed at other institutional camps or clinics or at non-institutional privately owned camps or clinics."<sup>98</sup>

An extremely noteworthy change was made to the NCAA recruiting rules in January of 2009 in response to lavish compensation from college coaches for speeches made by AAU coaches and parents of prospects at camps.<sup>99</sup> The regulations now forbid coaches from employing a person tied to a prospect at a camp or clinic, making payments to nonprofits in which someone associated with a recruit has a financial interest, and using 1-900 numbers for recruiting.<sup>100</sup> Many of the most notable figures in college athletics, including several conference commissioners, championed this new legislation in efforts of purifying the game.<sup>101</sup> In addition,

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<sup>91</sup> DIVISION I MANUAL, *supra* note 64, art. 13.02.14, at 80.

<sup>92</sup> DIVISION I MANUAL, *supra* note 64, art. 13.1.3.6.1, at 86.

<sup>93</sup> DIVISION I MANUAL, *supra* note 64, art. 13.1.3.2.2, at 85.

<sup>94</sup> DIVISION I MANUAL, *supra* note 64, art. 13.1.7.2.2.1, at 90-91.

<sup>95</sup> DIVISION I MANUAL, *supra* note 64, art. 13.13.1, at 122.

<sup>96</sup> DIVISION I MANUAL, *supra* note 64, art. 13.1.8.18, at 94.

<sup>97</sup> DIVISION I MANUAL, *supra* note 64, art. 13.12.2.3.2, at 121.

<sup>98</sup> *Id.*

<sup>99</sup> Charlie Zegers, Elite Camp, ABOUT.COM, <http://collegebasketball.about.com/od/collegebasketballglossary/g/elite-camp.htm> (last visited May 4, 2009).

<sup>100</sup> Dana O'Neil, Rules Impact Cash Flow to Third Wheels, <http://sports.espn.go.com/ncb/news/story?id=4606269> (last visited Apr. 27, 2010).

<sup>101</sup> *Id.*

the NCAA now also wisely prohibits a school from compensating a coach based on the number of camp participants that coach provides.<sup>102</sup> Despite the changes, the elusive nature of the problem makes it likely that deviant coaches will still be able to funnel money to persons associated with prospects if they so desire.

Prospective student-athletes are subject to intense regulation on visits to school campuses. “Unofficial visits,” as determined by the NCAA, occur when a student-athlete’s visit to an institution is made at his or her own expense.<sup>103</sup> “The provision of any expenses or entertainment valued at more than \$100 by the institution or representatives of its athletic interests shall require the visit to become an official visit . . . .”<sup>104</sup> In Division I men’s basketball, unofficial visits are not permitted in the month of July.<sup>105</sup> “Official visits” must not exceed forty-eight hours,<sup>106</sup> during which time the prospect “shall be provided lodging and take meals as regular students normally do.”<sup>107</sup> Institutions are barred from publicizing recruits’ visits.<sup>108</sup> This stance espoused by the NCAA is extended to a prohibition of introduction of prospects “at a function . . . that is attended by media representatives or open to the general public.”<sup>109</sup>

Finally, loans and financial assistance are regulated by the NCAA. The regulations stipulate that “[a]rrangement of educational loans by an institution for a prospective student-athlete shall be permitted, provided the loan is not made prior to the completion of the prospective student-athlete’s senior year in high school.”<sup>110</sup> Schools are barred from offering or providing, directly or indirectly, financial assistance “to pay (in whole or in part) the costs of the prospective student-athlete’s educational or other expenses for any period prior to his or her enrollment or so the prospective student-athlete can obtain a postgraduate education.”<sup>111</sup>

This lengthy review of current regulations governing Division I men’s basketball recruiting provides a comprehensive view of the restrictions on coaches during their attempts to lure talent to their programs. Recruiting is an essential element of success; as such, many coaches have been willing to compromise ethics in attempts to advance the interests of their programs.<sup>112</sup> It is this willingness to disregard standards of recruiting “the right way” that makes regulation so necessary and, simultaneously, a seemingly-elusive goal.

#### V. Notable Past Violations and Other Questionable Tactics Used in Basketball Recruiting

The need for thorough regulation in Division I men’s basketball recruiting is readily apparent from a survey of violations over the past several decades. Some of the most famous coaches and Division I college basketball programs have been tarnished by recruiting scandals

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<sup>102</sup> DIVISION I MANUAL, *supra* note 64, art. 13.12.2.2.1, at 121.

<sup>103</sup> DIVISION I MANUAL, *supra* note 64, art. 13.02.15.2, at 80.

<sup>104</sup> *Id.*

<sup>105</sup> DIVISION I MANUAL, *supra* note 64, art. 13.7.1.1, at 109.

<sup>106</sup> DIVISION I MANUAL, *supra* note 64, art. 13.6.4, at 106.

<sup>107</sup> DIVISION I MANUAL, *supra* note 64, art. 13.6.6, at 106.

<sup>108</sup> DIVISION I MANUAL, *supra* note 64, art. 13.10.5, at 113.

<sup>109</sup> DIVISION I MANUAL, *supra* note 64, art. 13.10.6, at 113-14.

<sup>110</sup> DIVISION I MANUAL, *supra* note 64, art. 13.2.4, at 97.

<sup>111</sup> DIVISION I MANUAL, *supra* note 64, art. 13.15.1, at 123.

<sup>112</sup> Sean Cunningham, *Dirty Teams in NCAA Tournament History*, *ESQUIRE*, available at <http://www.esquire.com/the-side/feature/college-basketball-history-2009> (last visited Mar. 18, 2010).



and allegations.<sup>113</sup> Past infractions illustrate the ethical problems underlying the recruiting process and demonstrate how violations have occurred at some of the country's most notable programs even in today's climate of intense scrutiny.

Recruiting issues are not a new phenomenon; rather, alleged improprieties existed over forty years ago at what was perhaps the greatest college basketball program in history.<sup>114</sup> Over the course of a career in which he won ten titles, John Wooden gained the adoration of the basketball world and was dubbed the "Wizard of Westwood" for his basketball acumen.<sup>115</sup> Nevertheless, one of his own standout players, Bill Walton, later cast doubt on his former coach's ethics in recruiting by stating: "[i]f the UCLA teams of the late 1960s and early 1970s were subjected to . . . scrutiny . . . , UCLA would probably have to forfeit about eight national titles and be on probation for the next 100 years."<sup>116</sup> Even if spoken with partial hyperbole, such a remark by a former player about John Wooden's teams casts a shadow of doubt on the recruiting practices that helped build the Bruins' dynasty.

Unlike John Wooden and UCLA, Jerry Tarkanian was subject to intense scrutiny in his years in college basketball.<sup>117</sup> Perhaps angered by Tarkanian's sudden departure from Long Beach State immediately before the program was supposed to go on probation,<sup>118</sup> the NCAA aggressively pursued a case against Tarkanian when he coached at the University of Nevada-Las Vegas (UNLV).<sup>119</sup> Alleging "bought players, illegal transportation of prospects, fraudulent grades and illegal cash handouts," the NCAA attempted to suspend Tarkanian from coaching while he was at UNLV.<sup>120</sup> Although his subsequent legal actions temporarily restored him to his position as UNLV's head basketball coach,<sup>121</sup> Tarkanian's image nevertheless was permanently scarred by the allegations of recruiting improprieties. While his actions at UNLV were certainly suspicious, recruiting problems were not uncharacteristic for Tarkanian. In fact, "a subsequent NCAA investigation showed that the Long Beach basketball program under Tarkanian was guilty of 23 infractions."<sup>122</sup>

Recruiting scandals have had drastic effects for several Division I programs. In 1973, the North Carolina State Wolfpack basketball team finished the season with a record of twenty-seven wins and zero losses behind the efforts of superstar David Thompson.<sup>123</sup> Despite their unblemished season, however, the team was unable to compete for the national championship because they were serving probation for previous recruiting violations. Similarly, Memphis State's program was marred by problems in 1985 after an improbable run to the Final Four of the

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<sup>113</sup> Id.

<sup>114</sup> Id.

<sup>115</sup> Id.

<sup>116</sup> Id.

<sup>117</sup> Rick Telander, *The Shark Gets a Ruling With Bite*, SPORTS ILLUSTRATED, Oct. 10, 1977, available at <http://vault.sportsillustrated.cnn.com/vault/article/magazine/MAG1135754/index.htm>.

<sup>118</sup> Tarkanian later attributed his decision to leave Long Beach State to poor attendance at the team's games even after they had been ranked in the top ten during four consecutive seasons. TERRY PLUTO & JERRY TARKANIAN, *TARK: COLLEGE BASKETBALL'S WINNINGEST COACH* 102 (1988).

<sup>119</sup> Telander, *supra* note 117.

<sup>120</sup> Id.

<sup>121</sup> See *Nat'l Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179 (1988).

<sup>122</sup> Telander, *supra* note 117.

<sup>123</sup> Cunningham, *supra* note 112.

NCAA tournament.<sup>124</sup> “Their coach would be jailed for tax evasion, after first being fired for recruiting violations that resulted in the NCAA vacating the Memphis State . . . Final Four run, meaning none of it ever happened . . . .”<sup>125</sup>

Eddie Sutton, who was plagued by a number of problems throughout his coaching career,<sup>126</sup> resigned from his coaching position at the University of Kentucky largely because of recruiting misconduct. The most notable incident during Sutton’s tenure at Kentucky occurred when a package sent from Dwayne Casey, one of Sutton’s assistant coaches, to the father of prospect Chris Mills, broke open during the mailing process.<sup>127</sup> Unfortunately for Sutton and his staff, the \$1,000 contained in the package spilled and a recruiting scandal soon erupted.<sup>128</sup>

Perhaps the most decorated recruiting class in basketball history, Michigan’s “Fab Five,” was also tarnished by violations.<sup>129</sup> “Chris Webber, Juwan Howard, Jalen Rose, Ray Jackson, Jimmy King & Co. won 56 games and reached the NCAA final in each of their two seasons together. Their talent was breathtaking; their trash-talking, baggy shorts style endearing . . . .”<sup>130</sup> With their on-court success, however, came scrutiny that eventually led to discovery of illicit funds accepted during the recruiting process.<sup>131</sup> As a result of the recruiting scandal, Chris Webber subsequently faced federal perjury charges and the banners commemorating the two Final Four appearances were no longer permitted to be displayed by the University of Michigan.<sup>132</sup>

Not surprisingly, recruiting improprieties have persisted as the game has become more of a spectacle. With growing emphasis on acquiring superstar talent out of high school, college coaches have felt pressure to obtain commitments from prospects that will help their programs win sooner rather than later. Kelvin Sampson, who was plagued by recruiting scandals at the University of Oklahoma, was the subject of further NCAA investigation shortly thereafter when he became the head basketball coach at Indiana University.<sup>133</sup> Sampson had obviously failed to learn to abide by the rules; NCAA investigators alleged his noncompliance with sanctions imposed for impermissible calls made while at Oklahoma.<sup>134</sup> In addition, Sampson was also accused of participation in prohibited phone calls, impermissible recruiting conduct at a two-day camp held on Indiana’s campus, and actions contrary to “ethical conduct.”<sup>135</sup> Indiana’s athletic

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<sup>124</sup> Id.

<sup>125</sup> Id.

<sup>126</sup> ESPN, Sutton Takes Leave of Absence; Cited with DUI, ESPN.COM (Feb. 14, 2006), <http://sports.espn.go.com/ncb/news/story?id=2329109>.

<sup>127</sup> Dana O’Neil, Gray Scale: Recruiters Struggle with Perfectly Legal Yet Ethically Questionable, ESPN.COM (Aug. 6, 2009), <http://sports.espn.go.com/ncb/columns/story?id=3710807>.

<sup>128</sup> Id.

<sup>129</sup> Steve Wieberg, Fab Five Anniversary Falls Short of Fondness, USA TODAY, Mar. 8, 2002, available at <http://www.usatoday.com/sports/college/basketball/men/02tourney/2002-03-27-cover-fab5.htm>.

<sup>130</sup> Id.

<sup>131</sup> See Id. (reporting that Chris Webber was accused of accepting \$280,000 while in high school and college, and three other Michigan players also reportedly received a sum of \$336,000).

<sup>132</sup> Dan Wetzel, Revolutionary Fab Five Still Resonates, Yahoo! Sports, <http://rivals.yahoo.com/ncaa/basketball/news?slug=dw-fabfive040509&prov=yahoo&type=lgns> (last visited May 4, 2009).

<sup>133</sup> ESPN, *NCAA Lists 5 Major Violations; IU AD ‘Profoundly Disappointed,’* ESPN.COM (Feb. 15, 2008), <http://sports.espn.go.com/ncb/news/story?id=3243793>.

<sup>134</sup> Id.

<sup>135</sup> Id.

director expressed his personal and professional “profound disappointment” at the allegations,<sup>136</sup> and Sampson’s tenure as the Hoosiers’ head basketball coach ended abruptly.<sup>137</sup>

Recruiting scandal also rocked the powerhouse men’s basketball program of the University of Connecticut (UConn) in early 2009, when Yahoo! Sports reported NCAA rules violations by the Huskies’ staff.<sup>138</sup> Although the fallout remains to be seen, allegations of recruiting improprieties involving the recruitment of Nate Miles, a former guard at the school, implicated several notable figures, including Hall of Fame coach Jim Calhoun.<sup>139</sup> The Connecticut staff allegedly “committed major recruiting violations by exceeding NCAA limits on phone calls to Miles and those closest to him . . . .”<sup>140</sup> According to the investigation, 1,565 phone and text communications were made between Miles and members of the Connecticut basketball staff; additionally, “Miles was provided with lodging, transportation, restaurant meals, and representation by Josh Nochimson- a professional sports agent and former UConn student manager- between 2006 and 2008 . . . .”<sup>141</sup> In response to these serious accusations, the University of Connecticut promised cooperation with the NCAA.<sup>142</sup> The program, however, may nevertheless face punishment for noncompliance.<sup>143</sup>

The watchful eyes of NCAA compliance personnel have also recently turned towards institutions like Harvard University, known primarily as a bastion of intellectual development, yet also corralled into the expanding number of potential recruiting derelicts.<sup>144</sup> In March, 2008 Harvard basketball coach Tommy Amaker was described as having “adopted aggressive recruiting tactics that skirt, or in some cases, may even violate National Collegiate Athletic Association rules.”<sup>145</sup> Two student-athletes who were granted admission to Harvard admitted that they worked with Kenny Blakeney, who was hired as an assistant basketball coach by Tommy Amaker shortly thereafter.<sup>146</sup> Such conduct is strictly forbidden by NCAA regulations which, as described by an NCAA employee, provide that “should a coach recruit on behalf of a school but not be employed there, he or she is then considered a booster and that recruiting activity is not allowed.”<sup>147</sup> Additionally, “accusations include illegal conduct with prospects and their parents, as well as going after students who score below the Ivy League’s Academic Index minimum of 171.”<sup>148</sup> Specifically, Amaker reportedly contacted the parents of a prospect at a

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<sup>136</sup> Id.

<sup>137</sup> ESPN, *Indiana, Sampson Reach \$750,000 Settlement to Part Ways*, ESPN.COM (Feb. 23, 2008), <http://sports.espn.go.com/ncb/news/story?id=3258506>.

<sup>138</sup> Adrian Wojnarowski & Dan Wetzel, *Probe: UConn Violated NCAA Rules*, Yahoo! Sports (Mar. 25, 2009), <http://rivals.yahoo.com/ncaa/basketball/news?slug=ys-uconnphone032509&prov=yhoo&type=lgns>.

<sup>139</sup> Id.

<sup>140</sup> Id.

<sup>141</sup> Id.

<sup>142</sup> Id.

<sup>143</sup> Id.

<sup>144</sup> D’Angelou, *Athletic Recruiting Scandal at Harvard?*, ASSOCIATED CONTENT (Mar. 7, 2008), [http://www.associatedcontent.com/article/639665/athletic\\_recruiting\\_scandal\\_at\\_harvard.html](http://www.associatedcontent.com/article/639665/athletic_recruiting_scandal_at_harvard.html).

<sup>145</sup> Pete Thamel, *In a New Era at Harvard, New Questions of Standards*, N.Y. TIMES, Mar. 2, 2008, available at <http://www.nytimes.com/2008/03/02/sports/ncaabasketball/02harvard.html>.

<sup>146</sup> Id.

<sup>147</sup> Id. (Interpretation of rule by NCAA spokesman Erik Christianson for The New York Times).

<sup>148</sup> D’Angelou, *supra* note 144.

grocery store to suggest their son consider playing for him at Harvard.<sup>149</sup> Although their son did not count Harvard among the programs for which he would play, the conversation still violated NCAA rules which limit recruiting contact to “happenstance” during the time of year at which the discussion purportedly took place.<sup>150</sup> Moreover, “even if Harvard did not break any NCAA rules, many in the coaching community said Amaker’s staff had behaved unethically.”<sup>151</sup>

Unfortunately, such an accusation is not uncommon in Division I men’s basketball recruiting. Even programs that have not been formally accused or found guilty of recruiting violations have been characterized as “shady” by coaches like Texas Tech’s Pat Knight.<sup>152</sup> “Carefully choreographed elite camps; travel team coaches suddenly ending up on college benches with their super-stud players conveniently going along . . . ; speaking fees for those . . . coaches at colleges . . . recruiting their players . . . . It’s all ethically questionable . . . .”<sup>153</sup> Despite the aspersions cast on the conduct of some coaches, however, much of the “shadowy” recruiting of this sort escapes punishment from the NCAA because it does not violate the proverbial “letter of the law.”<sup>154</sup> It is in this realm that AAU clubs and other squads playing under the auspices of an “AAU team” provide opportunity for exploitation and manipulation of NCAA regulations.<sup>155</sup> Coaches for these teams have openly solicited donations to help meet the expenses incurred from travel and tournament fees<sup>156</sup> in exchange for access to players on their roster.<sup>157</sup>

Coaches seeking to follow the formalities of NCAA regulations yet avoid upholding their underlying spirit typically realize that “getting the star might mean first taking care of his friend, family members, or those in the inner circle who simply have their hands out.”<sup>158</sup> According to Phil Martelli, the head basketball coach at St. Joseph’s University, this can be accomplished rather easily by catering to a prospect’s coach or former coach.<sup>159</sup> When a position became available on his coaching staff, Martelli received three different phone calls promising to “deliver” a prospect to his program in exchange for the coaching position.<sup>160</sup> While Martelli claimed such a notion “made his skin crawl,” coaches like Baylor’s Scott Drew and the Kansas Jayhawks’ Bill Self have shown propensities to yield to such temptations.<sup>161</sup> Drew recently hired Dwon Clifton, the former coach of top prospect John Wall’s D-One Sports AAU team, as a member of his Baylor basketball staff.<sup>162</sup> Baylor is now among the final schools Wall is

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<sup>149</sup> Thamel, *supra* note 145.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> O’Neil, *supra* note 127.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Where Most Needed, AAU Basketball Programs Use Charities to Funnel Payments for Recruits, [http://www.wheremostneeded.org/2007/01/aau\\_basketball\\_.html](http://www.wheremostneeded.org/2007/01/aau_basketball_.html) (last visited May 4, 2009).

<sup>156</sup> *Id.* (stating that the Squires an AAU team from Richmond, Virginia organized as a “charity” for tax purposes, amassed approximately \$40,000 in expenses in 2005, \$11,000 of which came from airplane transportation and \$8,000 of which resulted from AAU tournament fees).

<sup>157</sup> *Id.*

<sup>158</sup> Johnston et al, *supra* note 61.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

considering attending.<sup>163</sup> In a similar vein, Bill Self's staff at Kansas featured Ronnie Chalmers, the father of standout guard Mario Chalmers, as the Director of Basketball Operations during the team's 2007-2008 championship season.<sup>164</sup> Highly-touted center Gus Gilchrist committed to the University of South Florida Bulls in 2008. "Shortly after Gilchrist entered USF's program . . . the Bulls created a job as a video and conditioning assistant for one of his closest friends."<sup>165</sup> James Harden, the talented shooting guard for the Arizona State Sun Devils, conceded that his recruitment process was affected by the fact that his former high school coach was on the Sun Devils' coaching staff.<sup>166</sup> Similarly, Tyreke Evans, the decorated guard for the Memphis Tigers, shared "bench space with his personal strength and conditioning coach, Lamont Peterson, an administrative assistant to John Calipari . . ."<sup>167</sup>

The same questionable recruiting associations have created "pipelines" of sorts to several notable programs. The 2007-2008 National Player of the Year, Michael Beasley, revoked his commitment to play for head coach Bobby Lutz at Charlotte when his former DC Assault AAU team coach, Dalonte Hill, left Lutz's staff for a \$400,000 salary at Kansas State University.<sup>168</sup> In addition to Beasley, three other former DC Assault players followed Dalonte Hill to Kansas State.<sup>169</sup> Highly-touted prep star Wally Judge, also a member of DC Assault, has signed a letter of intent to play for Kansas State beginning in 2009.<sup>170</sup>

Cliff Findlay, a University of Nevada Las Vegas (UNLV) booster, has been accused of attempting to create another "pipeline" from a "prep" team to the Runnin' Rebels basketball program.<sup>171</sup> Findlay Prep, which bears the booster's name, consists of some of the top prospects in the country and won the inaugural ESPN Rise National High School Invitational Tournament on April 6, 2009.<sup>172</sup> Contrary to what the name might suggest, however, Findlay Prep is not a high school or affiliated with any academic institution whatsoever; rather, the organization represents "the latest step in the evolution of elite . . . basketball: a program that operates completely outside the traditional high school system and makes no pretense about its top priority- to acquire the best talent from all over the world."<sup>173</sup> Perhaps surprisingly, there has been no action taken by the NCAA against Findlay or his team despite the fact that the players are housed in a \$425,000 home, amassed 30,000 travel miles in the 2008-2009 season, and attend a private school which costs \$16,000 annually per student, all of which was funded by the booster.<sup>174</sup> Findlay emphasizes that the organization was established in conformance with

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<sup>163</sup> Shawn Siegel, John Wall to Baylor: A Done Deal?, College Hoops Net, July 31, 2008, <http://www.collegehoopsnet.com/john-wall-baylor-a-done-deal-49251>.

<sup>164</sup> Johnston et al, supra note 61.

<sup>165</sup> Id.

<sup>166</sup> O'Neil, supra note 127.

<sup>167</sup> Id.

<sup>168</sup> Id.

<sup>169</sup> Id. (referring to Jamar Samuels, Dominique Sutton, and Ron Anderson, all former DC Assault players who are currently on the Kansas State men's basketball roster).

<sup>170</sup> Rivals, Wally Judge, YAHOO SPORTS (Aug. 6, 2009), <http://rivals.yahoo.com/basketballrecruiting/basketball/recruiting/player-Wally-Judge-66239>.

<sup>171</sup> Phil Taylor, March Madness Comes to High School Hoops, SPORTS ILLUSTRATED Apr. 13, 2009, at 38.

<sup>172</sup> Id. at 40 (referring to McDonald's All-American Avery Bradley who recently committed to Texas, as well as D.J. Richardson and Tristan Thompson, who have committed to play at Illinois and Texas, respectively).

<sup>173</sup> Id. at 42.

<sup>174</sup> Id.



NCAA rules.<sup>175</sup> While such an assertion may be factual in nature, the underlying purposes of Findlay Prep and the booster's close affiliation with UNLV contradict the basic functions of NCAA recruiting guidelines.

Apart from the shadowy associations that suggest impacts on recruits' college commitments, direct payments to prospects' closest kin have plagued the recruiting scene and been decried as "laughable" by University of California coach Mike Montgomery.<sup>176</sup> Larry Orton, for instance, the father of highly recruited star Daniel Orton, was paid \$4,800 by former University of Kentucky coach Billy Gillespie simply as compensation for speaking at the school's basketball camps.<sup>177</sup> Orton's stepbrother was compensated \$1,950 for similar engagements.<sup>178</sup> Kenny Boynton Sr., father of University of Florida commitment Kenny Boynton, stated that "he rebuffed calls from recruiters and 'street agents' offering to broker deals."<sup>179</sup> Although payments of this nature were not in technical violation of the language of any particular NCAA rule, they clearly contradicted the underlying purpose of the NCAA's efforts to regulate Division I men's basketball recruiting. Jim Boeheim of Syracuse University and Tom Izzo of Michigan State, among others, have both expressed concern about the state of the system and certain colleagues' attempts to circumnavigate NCAA provisions.<sup>180</sup> To the dismay of the coaches who abide by the rules, however, there are a number of others in the mold of Billy Gillespie, "who impishly tweaks the NCAA at every turn . . . ."<sup>181</sup>

Gillespie's conduct in particular has drawn criticism in recent years. Although fired by the University of Kentucky in 2009,<sup>182</sup> his recruiting tactics drew the ire of some because of his savvy ability to funnel money in efforts to sway prospects' college choices.<sup>183</sup> In addition, Gillespie was largely responsible for the NCAA changing the definition of the word "prospect" to include seventh and eighth grade basketball players.<sup>184</sup> Gillespie was able to lure a verbal commitment to Kentucky from Michael Avery, an eighth grader the coach watched at an AAU tournament.<sup>185</sup> Gillespie's actions are more absurd in light of the fact that Avery had not yet selected a high school to attend at the time he assured Gillespie he would attend the University of Kentucky.<sup>186</sup> Avery is not alone as a target in the recruiting process at such a young age. Prince George County sensation Jordan Goodman, another product of the DC Assault AAU program, received multiple college scholarship offers before he played in his first high school game.<sup>187</sup> It

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<sup>175</sup> Id.

<sup>176</sup> O'Neil, *supra* note 127.

<sup>177</sup> Johnston et al, *supra* note 61.

<sup>178</sup> Id.

<sup>179</sup> Id. (referring to AAU squad Team Breakdown member Kenny Boynton, 2008's eight highest ranked prospect in the country)..

<sup>180</sup> O'Neil, *supra* note 127.

<sup>181</sup> Id.

<sup>182</sup> ESPN, Gillespie, Kentucky Part Ways, ESPN.COM (Mar. 28, 2009), <http://sports.espn.go.com/ncb/news/story?id=4021232>.

<sup>183</sup> O'Neil, *supra* note 127.

<sup>184</sup> Kaufman, *supra* note 5.

<sup>185</sup> Id.

<sup>186</sup> Id.

<sup>187</sup> Palmer, *supra* note 41.

is largely because of situations like these that the NCAA expanded the definition of “prospects” in basketball recruiting.<sup>188</sup>

Other recruiting conduct blatantly violates NCAA rules yet remains concealed. The NCAA has specifically prohibited a school “to pay, or arrange for its boosters or coaches to pay, any portion of a recruit’s expenses for any period before he enrolls in college. Donations to a recruit’s AAU team violate that prohibition . . . .”<sup>189</sup> Nevertheless, Sonny Vaccaro estimates that ten to fifteen colleges annually arrange for gifts exceeding \$20,000 to AAU teams.<sup>190</sup> A large number of AAU programs are established as nonprofit charity organizations under IRS standards so that they can be the recipients of tax-deductible donations.<sup>191</sup> In a report by The Washington Post, “two AAU coaches said college recruiters offered them donations without being prompted. One AAU coach said that over the past decade almost two dozen college coaches . . . have offered to arrange for donations, ranging from \$20,000 to \$50,000 . . . .”<sup>192</sup> An unnamed college coach clarified the purpose implicit in such payments, namely that “a very large donation usually means the team is guaranteed to land all but the most elite players.”<sup>193</sup> Despite such speculations and claims, however, the majority of these suspected payments remain concealed. Accordingly, those involved are able to avoid retribution. The NCAA’s case against former Baylor basketball coach Dave Bliss is the only documented occurrence of a coach attempting to impact recruiting by channeling funds to an AAU program.<sup>194</sup>

The problematic recruiting scene is exacerbated by the tight-lipped mindset of college coaches. “Coaches are guided by a no-snitch mentality as strict as any you’ll find anywhere, terrified that the same group that preaches collegiality will shun a rat in an instant (ask Bruce Pearl).”<sup>195</sup> Perhaps because of the lack of a substantial number of explicit disavowals of questionable recruiting tactics by college coaches, the subject is now somewhat polarizing. University of Florida men’s basketball coach Billy Donovan has declared that adults have failed young athletes.<sup>196</sup> On the other hand, Sonny Vaccaro has described the system as “brilliant”<sup>197</sup> and “simply doing business. Nothing more.”<sup>198</sup> In the words of Vaccaro, the crafty schemes of funneling payments from college programs to parties associated with top prospects are “a unique, newer, and cleaner way of getting money to people who have players who may or may not end up at your school . . . .”<sup>199</sup>

Improper recruiting has extended beyond coaches’ and boosters’ conduct recently.<sup>200</sup> Fans have recognized the importance of successful recruiting for college programs, leading some

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<sup>188</sup> Id.

<sup>189</sup> Prisbell, *supra* note 56.

<sup>190</sup> Where Most Needed, *supra* note 155.

<sup>191</sup> Prisbell, *supra* note 56.

<sup>192</sup> Id.

<sup>193</sup> Id.

<sup>194</sup> Id. (reporting that Dave Bliss was responsible for payments in excess of \$110,000 to a Houston AAU team. \$87,000 came from boosters, while \$28,000 was donated directly by Bliss).

<sup>195</sup> O’Neil, *supra* note 127.

<sup>196</sup> Johnston et al., *supra* note 61.

<sup>197</sup> Prisbell, *supra* note 56.

<sup>198</sup> Johnston et al., *supra* note 61.

<sup>199</sup> Prisbell, *supra* note 56.

<sup>200</sup> Justin Pope, Student Warned Over Facebook Site Wooing Prospect, News Vine, [http://www.newsvine.com/\\_](http://www.newsvine.com/_)

to attempt to actively participate in the process.<sup>201</sup> Taylor Moseley, a freshman at North Carolina State University, recently implored prospect John Wall to commit to the school's program.<sup>202</sup> As a result, Michelle Lee, North Carolina State's compliance director, sent Moseley a cease and desist letter that threatened "further" measures if he did not comply.<sup>203</sup>

The problems currently plaguing the basketball recruiting process are controversial and complex. Despite the fact that some questionable recruiting tactics are vehemently defended by those like Vaccaro, it is clear that the climate surrounding youth basketball has been corrupted by jockeying corporate interests and Division I coaches willing to circumvent ethical boundaries for the advancement of their programs. The essence of amateurism in youth basketball has been compromised to a point of near-nonexistence. Moreover, the interests of the participants at the very core of the system have been diminished. No longer is it the development of the student-athlete that is primarily encouraged; rather, those who have the resources and power to control the youth basketball environment have prioritized the advancement of corporate and collegiate programs' interests. As a result, the atmosphere of growth that served as a foundation upon which youth sports in America were established has been jeopardized. It is now the responsibility of those with the means to effectuate change to fix the polluted system so that youth basketball can once again provide opportunities for student-athletes to embrace the lessons of the game free from predatory influences.

#### VI. Relevant Case Law and Legal Factors

Before any changes to the system can be posited, however, an overview of legal issues in the area is critical to ensure that changes enacted will withstand challenges in American jurisprudence. Among the range of applicable legal principles, equal protection, due process, and antitrust considerations are especially important. Therefore, modifications must be carefully tailored so as to effectuate changes in conformance with precedent in these areas. With the threat of litigation minimized, efforts to improve youth basketball in America will have more credibility and an increased likelihood of providing long-term benefits.

The case of *Colorado Seminary (University of Denver) v. NCAA* established that intercollegiate athletic participation is not a civil right protected under the United States Constitution.<sup>204</sup> Similarly, participation in college sports is not a protected property right.<sup>205</sup> Within this degree of latitude, the NCAA has enacted provisions consistent with their primary purpose, espoused in the NCAA Constitution, to "maintain intercollegiate athletics as an integral part of the educational program and the athlete, as an integral part of the student body and, by so doing, retain a clear line of demarcation between college athletics and professional sports."<sup>206</sup>

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news/2009/04/10/2666469-student-warned-over-facebook-site-wooing-prospect?category=sports (last visited June 20, 2010).

<sup>201</sup> Id.

<sup>202</sup> Id.

<sup>203</sup> Id.

<sup>204</sup> See *Colorado Seminary (University of Denver) v. Nat'l Collegiate Athletic Ass'n*, 570 F.2d 320 (10th Cir. 1978).

<sup>205</sup> See *O'Connor v. Board of Educ. School Dist. No. 23*, 645 F.2d 578 (7th Cir. 1981).

<sup>206</sup> DIVISION I MANUAL, *supra* note 64, at art. 1.3.1.

Stemming from the incident in which UNLV and the NCAA attempted to suspend Jerry Tarkanian after a host of alleged recruiting improprieties, the coach brought one of the most important legal cases that shaped the scope of the NCAA's powers.<sup>207</sup> The United States Supreme Court eventually held that Tarkanian was incorrect in his claims that "the NCAA was a state actor because it misused power that it possessed by virtue of state law" and, through this misuse of power, "the two entities acted jointly to deprive Tarkanian of liberty and property interests, making the NCAA as well as UNLV a state actor . . . ."<sup>208</sup> Justice Stevens analyzed "whether the State was sufficiently involved to treat that decisive conduct as state action,"<sup>209</sup> which "may occur if the State creates the legal framework governing the conduct; if it delegates its authority to the private actor; or sometimes if it knowingly accepts the benefits derived from unconstitutional behavior."<sup>210</sup>

While UNLV, a state university, was "without question . . . a state actor,"<sup>211</sup> the issue in the case was "whether UNLV's actions in compliance with the NCAA rules and recommendations turned the NCAA's conduct into state action . . . ."<sup>212</sup> The Court held that "neither UNLV's decision to adopt the NCAA's standards nor its minor role in their formation is a sufficient reason for concluding that the NCAA was acting under color of Nevada law when it promulgated standards governing . . . recruitment, eligibility, and academic performance . . . ."<sup>213</sup> Furthermore, "UNLV delegated no power to the NCAA to take specific action against" Tarkanian, a university employee.<sup>214</sup> Nor was the NCAA an agent of UNLV,<sup>215</sup> or in possession of "governmental powers to facilitate its investigation . . . ."<sup>216</sup>

Ultimately, the United States Supreme Court reversed the Nevada Supreme Court, holding that "[i]t would be more appropriate to conclude that UNLV has conducted its athletic program under color of the policies adopted by the NCAA, rather than that those policies were developed and enforced under color of Nevada law."<sup>217</sup> Thus, Tarkanian was not entitled to the due process protections to which he would have been guaranteed from a state actor as prescribed by the Fourteenth Amendment. Such a holding was contrary to previous lower court holdings<sup>218</sup> that had characterized the NCAA as a state actor in its dealings with all universities.<sup>219</sup> Since Tarkanian was decided, "a number of states (including Nebraska, Florida, Illinois, and, not surprisingly, Nevada) passed legislation requiring the NCAA to comply with federal and state due process principles as a matter of statutory law . . . ."<sup>220</sup>

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<sup>207</sup> Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 185 (1988).

<sup>208</sup> Id. at 192.

<sup>209</sup> Id.

<sup>210</sup> Id. (citation omitted).

<sup>211</sup> Id.

<sup>212</sup> Id. at 193.

<sup>213</sup> Id. at 195.

<sup>214</sup> Id. at 195-96.

<sup>215</sup> Id. at 196.

<sup>216</sup> Id. at 197.

<sup>217</sup> Id. at 199.

<sup>218</sup> See generally *Howard Univ. v. Nat'l Collegiate Athletic Ass'n*, 510 F.2d 213 (D.C. Cir. 1975).

<sup>219</sup> ROBERTS & WEILER, *supra* note 2, at 750.

<sup>220</sup> Id. at 757.

The classification of the NCAA was previously addressed in relation to eligibility issues as well. In *Arlosoroff v. NCAA*,<sup>221</sup> the Fourth Circuit held that the NCAA was a private actor; thus, there was no validity to a “constitutional challenge against an NCAA rule restricting the eligibility of foreigners brought by a student at Duke University, a private institution.”<sup>222</sup> Moreover, the importance of national uniformity of NCAA regulation was recognized by the Ninth Circuit in *National Collegiate Athletic Association v. Miller*.<sup>223</sup> In *Miller*, the Court addressed interstate consistency in NCAA practices, stipulating that such standardization “among members must exist if an organization of this type is to thrive, or even exist. Procedural changes at the border of every state would . . . surely disrupt the NCAA . . .”<sup>224</sup>

As in *Tarkanian*, protections under the United States Constitution were also unsuccessfully invoked in a 1987 lawsuit brought by Hersey Hawkins and the Bradley University men’s basketball team against the NCAA<sup>225</sup> when the team was excluded from participation in “the NCAA basketball tournament because of earlier school violations. The players asserted that imposing such a penalty on them . . . violated the Equal Protection and Due Process Clauses of the Constitution.”<sup>226</sup> Hawkins’ suit was dismissed, however, because an Illinois District Court found that “the acts of the NCAA did not constitute state action. Consequently, plaintiffs’ claims of a due process and equal protection violation cannot be sustained.”<sup>227</sup> Furthermore, the Court validated the NCAA’s regulatory actions, stating that “restrictions regarding a member institutions’ contact and encouragement of high school athletes to attend its institution” are “rationally related to the NCAA’s fundamental purpose of promoting both educational and athletic values.”<sup>228</sup>

NCAA regulation of other issues has also withstood due process and equal protection challenges. In Robert Parish’s 1973 lawsuit against the NCAA challenging eligibility requirements, the United States District Court for the Western District of Louisiana held that the NCAA’s maintenance of minimum academic standards for athletes does not violate the Equal Protection Clause.<sup>229</sup> In the analogous case of *Mitchell v. Louisiana High School Athletic Association*, the Fifth Circuit restricted due process rights with regards to interscholastic athletic participation generally, holding that “the privilege of participating in interscholastic athletics must be deemed to fall . . . outside the protection of due process.”<sup>230</sup>

As demonstrated, courts have held the NCAA to be a private actor and, thus, immune from many due process and equal protection requirements with which state actors must comply. The ability to avoid challenges of this nature confers a greater ability on the NCAA to regulate athletics under their jurisdiction. Moreover, sentiments like those expressed in *Miller* reflect the judiciary’s understanding of the need for uniform regulation of collegiate athletics. As such, the

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<sup>221</sup> *Arlosoroff v. Nat’l Collegiate Athletic Ass’n*, 746 F.2d 1019 (4th Cir. 1984).

<sup>222</sup> *ROBERTS & WEILER*, supra note 2, at 750. See generally *Graham v. Nat’l Collegiate Athletic Ass’n*, 804 F.2d 953 (6th Cir. 1986).

<sup>223</sup> *Nat’l Collegiate Athletic Ass’n v. Miller*, 10 F.3d 633 (9th Cir. 1993).

<sup>224</sup> *Id.* at 640.

<sup>225</sup> *Hawkins v. Nat’l Collegiate Athletic Ass’n*, 652 F. Supp. 602 (C.D. Ill. 1987).

<sup>226</sup> *ROBERTS & WEILER*, supra note 2, at 768.

<sup>227</sup> *Hawkins*, 652 F. Supp. at 606.

<sup>228</sup> *Id.* at 615.

<sup>229</sup> *Parish v. Nat’l Collegiate Athletic Ass’n*, 361 F. Supp. 1220 (W.D. La. 1973).

<sup>230</sup> *Mitchell v. La. High School Athletic Ass’n*, 430 F.2d 1155, 1158 (5th Cir. 1970).



NCAA enjoys a significant degree of latitude with regards to prospective measures to combat negative influences in college basketball. It is realistic to expect more stringent NCAA recruiting rules to withstand legal challenges in much the same manner that the eligibility requirements at issue in *Parish* were upheld.

Any changes implemented to improve the youth basketball system in America must also be made in conformity with antitrust issues that have been litigated. After all, changes that will not withstand antitrust challenges could be frustrated and nullified by litigation. Although the subject matter of past cases does not exactly parallel the issue of eliminating corruption within youth basketball, several holdings are tangentially analogous.

Of particular importance to the issue of amateur basketball was the case of *Pocono Invitational Sports Camp, Inc. v. NCAA*,<sup>231</sup> decided by the United States District Court for the Eastern District of Pennsylvania in 2004. In *Pocono*, the NCAA was sued on the premise that recruiting restrictions, specifically those influencing recruiting at a basketball camp, were improper restraints on trade or commerce.<sup>232</sup> The Court disagreed with the allegations, however, and granted summary judgment to the NCAA.<sup>233</sup>

*NCAA v. Board of Regents of the University of Oklahoma*<sup>234</sup> “is the only Supreme Court decision to consider how to apply substantive antitrust law to the sports industry.”<sup>235</sup> Although television contracts were the subject matter at the core of the litigation and the case is not specifically on point,<sup>236</sup> Justice Stevens’ majority opinion included several statements that should guide regulatory modifications of amateur basketball. Stevens affirmed the NCAA’s importance, claiming that it “plays a critical role in the maintenance of a revered tradition of amateurism in college sports.”<sup>237</sup> While also recognizing the “ample latitude” needed “to play that role,” the Court nevertheless held that “rules that restrict output are hardly consistent with this role.”<sup>238</sup> With respect to the television contracts that were the products at issue in the case, the Court stipulated that “by curtailing output and blunting the ability of member institutions to respond to consumer preference, the NCAA has restricted rather than enhanced the place of intercollegiate athletics in the Nation’s life.”<sup>239</sup>

Fourteen years later, the United States Court of Appeals for the Tenth Circuit addressed another antitrust issue involving collegiate athletics in *Law v. National Collegiate Athletic Association*.<sup>240</sup> In *Law*, the Court confirmed the NCAA’s need to “ensure . . . competitive equity between member institutions in order to produce a marketable product . . . .”<sup>241</sup> Maintaining competitive balance, the Court implied in a subtle manner, should be more important than other

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<sup>231</sup> *Pocono Invitational Sports Camp, Inc. v. Nat’l Collegiate Athletic Ass’n*, 317 F. Supp. 2d 569 (E.D. Pa. 2004).

<sup>232</sup> *Id.* at 581-84.

<sup>233</sup> *Id.*

<sup>234</sup> *Nat’l Collegiate Athletic Ass’n v. Board of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984) [hereinafter *Board of Regents*].

<sup>235</sup> *ROBERTS & WEILER*, *supra* note 2, at 853.

<sup>236</sup> *Board of Regents*, 468 U.S. at 85.

<sup>237</sup> *Id.* at 120.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Law v. Nat’l Collegiate Athletic Ass’n*, 134 F.3d 1010 (10th Cir. 1998).

<sup>241</sup> *Id.* at 1023-24.

factors including the cost-cutting considerations at issue in the case.<sup>242</sup> Moreover, the Tenth Circuit affirmed the need for certain restrictions: “the ‘product’ made available by the NCAA in this case is college basketball; the horizontal restraints necessary for the product to exist include rules such as those forbidding payments to athletes . . . .”<sup>243</sup>

As can be inferred from the holdings in both Board of Regents and Law, antitrust challenges to changes implemented to improve the amateur basketball system are unlikely to be successful. Nevertheless, the cases are important to provide a legal framework within which modifications must be made. With these equal protection, due process, and antitrust principles in mind, affirmative measures must now be taken to combat the negative influences corrupting youth basketball in the United States.

#### VII. Changes that Should be Made to Purify the Polluted Environment of Youth Basketball

The presence of corporate influences and “shady” recruiting conduct continues to cloud the atmosphere of youth basketball in America at an intolerably high level. The need to reform the amateur basketball structure into a positive environment for growth has been amplified by recent developments, including the choice of highly-touted prospect Jeremy Tyler’s decision to forgo his senior year of high school to play professional basketball in Europe.<sup>244</sup> Thus, action must be taken immediately to develop a system of youth basketball throughout the country that provides an environment in which basketball skills can be developed while educational pursuits, ethical conduct, and personal growth are encouraged.

Previous attempts to address issues in amateur basketball, while serving as positive foundations from which to build, have failed to implement the widespread changes needed. In 2000, for instance, the NCAA’s “newly created Division I Basketball Issues Committee . . . proposed a combination of certification, education, regulation and accommodation to redesign the Division I men’s basketball recruiting environment.”<sup>245</sup> The certification element of this approach was intended to “require comprehensive financial audits of all summer basketball events, including camps, tournaments and traveling teams. The certification . . . also would identify those individuals . . . who have fiduciary relationships with NCAA coaches. . . .”<sup>246</sup> Additionally, the certification prong suggested by the Committee was designed to monitor particular behavior and organizations, including companies’ payments to coaches and teams. While certification played a major role in the posited changes, a decrease in the length of the summer evaluation period and a mentoring program for elite prospects were two recommendations that were also incorporated.<sup>247</sup> Although the summer evaluation period has been shortened since 2000,<sup>248</sup> many of the proposed implementations never came to fruition.

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<sup>242</sup> Id. at 1024.

<sup>243</sup> Id. at 1018.

<sup>244</sup> Chris Ballard, Study Abroad: Hoops Major, *SPORTS ILLUSTRATED*, May 4, 2009, at 76.

<sup>245</sup> NCAA, Basketball Issues Group Takes Initial Strides Toward Recruiting Reform, *NCAA NEWS*, Dec. 18, 2000, available at <http://www.ncaa.org/wps/ncaa?ContentID=15355>.

<sup>246</sup> Id.

<sup>247</sup> Id.

<sup>248</sup> Id.

Similar concerns were raised by the Student Basketball Council (SBC) in 2001.<sup>249</sup> Unlike the NCAA's Division I Basketball Issues Committee and the Youth Basketball Initiative, however, the SBC lacked power to actually effectuate change.<sup>250</sup> Instead, it was merely "an organization comprised of forty-eight Division I men's basketball players established to voice student concerns about a number of issues currently facing collegiate basketball . . ."<sup>251</sup> The SBC's composition of athletes intimately familiar with the problems infesting the game, however, lends credibility to their concerns. Among the sentiments echoed by the SBC, negative corporate influences, players and coaches cheating, and recruiting issues were of foremost importance.<sup>252</sup>

The problems facing youth basketball are complex and multi-faceted. As such, proper corrective measures will require a prolonged and thorough collaboration of efforts from the AAU, NCAA, Youth Basketball Initiative, and, to a lesser extent, NBA. The most appropriate approach is a tiered attack on negative influences in which problems at the high school/AAU and collegiate levels are isolated and addressed. Utilization of the Youth Basketball Initiative and support from the NBA are also crucial to the operation's success.

a. Alterations at the High School/AAU Level

The AAU should utilize its unique position in the youth basketball industry to serve as the primary catalyst for change in pre-collegiate competitive basketball. The AAU bears the responsibility to implement these measures so the organization's operation increasingly resonates with the professed "amateur" essence at its very nature. The AAU's fulfillment of its responsibilities is essential to providing an environment conducive to academic and personal growth as compliments to basketball development, all of which are objectives harmonious with the nature of the organization.

First, the AAU should implement provisions that limit sponsorship of teams that participate in their tournaments. This limitation should permit corporations and private parties to provide teams with travel expenses incurred en route to competitive basketball tournaments. In addition, the limitation should yield a very small window in which the corporate sponsor could provide necessities that the athletes could otherwise not afford. Basketball shoes and uniforms, for instance, could be supplied. The dollar amount should be limited per team and player, however, to prevent lavish spending by sponsors hoping to influence possible endorsement decisions or college commitments in the future.

The AAU should actively encourage sponsorships of tournaments as an alternative to sponsorship of individual teams, however. Sponsors of tournaments should be permitted to provide the reasonable travel expenses incurred by participating teams. The sponsors should be barred, however, from spending in excess or lavishing extravagances on players in much the same manner that they would be limited in sponsorship of individual teams.

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<sup>249</sup> John Slosson, *Restoring Joy to Bracketville: Problems Facing College Basketball Stimulate Responses from the NCAA and the Newly Formed Student Basketball Council*, 8 *SPORTS LAW. J.* 125, 126 (2001).

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.* at 127-29.

It would also be appropriate for the AAU to annually cap the amount a sponsor could spend on tournaments and teams participating in AAU events. While this might frustrate some teams and tournaments, which would inevitably have to be dropped as beneficiaries by major companies forced to decrease their expenditures, it would simultaneously diminish the power of the large corporations on the AAU basketball scene. Admittedly, this may lead to an increased number of corporate sponsors necessary to cover expenses. Nevertheless, a series of smaller sponsors carry less weight and have less of an omnipresent essence than several large sponsors, as is the case with major shoe companies like Nike and Adidas right now.

Because of the gravity of the problems currently troubling AAU basketball, enforcement provisions must bear enough force to deter violations. Thus, the AAU should institute harsher punishments for those found guilty of transgressions under the new regulations. Bans from AAU competitions ranging from one year to five years, depending upon the seriousness of the offense, would provide a significant deterrent.

Oversight and enforcement of these changes to the AAU Codebook should become a responsibility of officers of the various AAU districts. Complaints could be brought before a newly-established committee in each district charged with specifically overseeing this area. Complaints deemed valid by the committee should be presented to the district officers, who would then have a duty to take appropriate punitive action. Officers found to have acted negligently in their enforcement duties should be removed from their position. Such a harsh measure would undoubtedly incentivize those in power to ensure the proper administration of the rules.

In addition, the Youth Basketball Initiative could collaborate with the AAU to implement strict limits on interaction between representatives of sponsors and participants in AAU events. This additional oversight provided by the Youth Basketball Initiative would provide an expanded means of confronting the issue of corporate moguls like Sonny Vaccaro inserting a heavy commercial influence in the AAU scene. Ideally, the Youth Basketball Initiative would serve as a complimentary presence to the AAU's regulatory efforts and help to ensure the AAU fulfilled their responsibilities.

Such steps, if taken by the AAU, would create a firm stance against negative influences on youth basketball. While these changes alone would not solve all of the current problems, they have the ability, in conjunction with other actions taken by the NCAA, NBA, and Youth Basketball Initiative, to play an integral role in a significant move towards freeing the game of many corrupting influences. Thus, the AAU's support and participation are extremely important.

#### b. Modifications in NCAA Regulations

The NCAA must serve as a compliment to the AAU in efforts to purify youth basketball. As a highly visible organization, the NCAA has the power to effectuate noticeable change. By controlling the widely publicized actions of Division I coaches and boosters, the NCAA can create a standard of conduct that has the potential to trickle down to lower levels of amateur basketball.

First, the NCAA must tighten regulations to prohibit operations like Findlay Prep. Such an establishment, while concededly in conformance with the rules, exposes a flaw that allows a booster to provide a lavish lifestyle for top recruits. The ability of a booster to use money to

potentially create sentiments of loyalty and indebtedness in the minds of recruits is blatantly wrong and has no place in youth basketball. Because of the possibility to affect recruiting, the NCAA must prohibit those with ties to college programs from becoming such a strong source of financial support for prospects. The Youth Basketball Initiative could facilitate coordination between the NCAA and AAU to further this objective.

Next, the NCAA must strongly enforce the policy of banning all payments from college programs to parents or relatives of top recruits. This provision should be extended to prohibit employment of these individuals as speakers or counselors at college camps in any capacity. An exception should be provided, however, for parents and relatives of top prospects who have already committed to another institution. Should the recruit revoke his prior commitment and instead attend the school that furnished the payments to his family member(s), all compensation should have to be refunded to the school immediately. Furthermore, the NCAA must closely monitor standardized levels of payments to AAU coaches as compensation for work at colleges' summer camps. This oversight must ensure that programs do not attempt to influence recruiting decisions through excessive payments to prospects' coaches.

In addition, the NCAA should prevent prospects' coaches from being hired by a program in which one of their former players participated for a three-year interval after the player's arrival at that school. The same rule should apply to relatives of a prospect. Such a change would certainly create a great deal of controversy, yet its importance is paramount. While there are no specific affirmations that this hiring tactic has actually been utilized by coaches specifically to influence recruiting decisions, its widespread practice indicates the likelihood that this is the underlying motivating factor. A provision of this nature would minimize the risk of college coaches employing such a devious strategy.

As punishment for violations of any of these new provisions, the NCAA should implement monetary penalties. The tarnished images of programs and coaches that would ensue from public punishment would amplify the deterrent effect of these fines. The money derived from these penalties should be channeled to provide additional financial support for the Youth Basketball Initiative.

### c. The Role of the Youth Basketball Initiative

In addition to providing assistance in limiting interaction between recruits and those with financial means to possibly influence their decisions, the Youth Basketball Initiative must play an integral role in further corrective efforts. Because of its affiliation with both the NCAA and NBA, the Initiative possesses a unique ability to perpetuate improvements. The resources and contacts at its disposal have conferred upon it a special power to influence rule changes and facilitate unified support for the cause.

In 2008, former Georgetown Hoyas and USA Basketball coach John Thompson posited a radical new idea.<sup>253</sup> At the foundation of Thompson's theory was the fact that the foremost desire of many top prospects, perhaps due to corporate influences amalgamating temptations of wealth, is playing professional basketball in the NBA.<sup>254</sup> Contrary to the professional ambitions

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<sup>253</sup> Lance Pugmire, John Thompson Sees Trouble in Basketball Recruiting, L.A. TIMES, July 22, 2008, available at <http://articles.latimes.com/2008/jul/22/sports/sp-thompson22>.

<sup>254</sup> See id.



of some prospects, however, the NBA now requires that players be at least nineteen years old.<sup>255</sup> This requirement has led to a steady influx of “one and done” players<sup>256</sup> in top college programs,<sup>257</sup> a trend that the former coach laments.<sup>258</sup> This has resulted in many players overestimating their worth<sup>259</sup> and undervaluing education.

As an alternative plan, Thompson has proposed a right conferred upon prep prospects to try out for NBA teams at the conclusion of high school.<sup>260</sup> Should the athlete prove to scouts that he is ready for an NBA career, he will be able to pursue it.<sup>261</sup> In the more likely case that scouts determine the prospect needs further physical or athletic development, however, the athlete will not be permitted to enter the NBA.<sup>262</sup> Such a measure would funnel prospects towards college programs and temporarily away from the professional ranks. Moreover, this feedback from those affiliated with the NBA could be reasonably expected to spur aspiring players’ motivation to utilize the various opportunities presented by college basketball.

In turn, the NBA should raise the age minimum for players to twenty-one years. This should be a non-negotiable limitation except, however, for those deemed ready to compete immediately after high school. The NCAA should also actively encourage prospects to play multiple seasons in college instead of opting to develop overseas. To provide credibility to the NCAA’s efforts in this regard, the NBA could institute an even higher age minimum for those American, NCAA-eligible players who choose to play professionally elsewhere instead. Such measures would play a pivotal role in increasing the presence and, hopefully, the value of education in the student-athlete’s life. The Youth Basketball Initiative could provide a means to this positive end by helping orchestrate the “scouting days” on which NBA personnel would determine if a high school product was prepared to compete at the professional level. Additionally, the Initiative could facilitate the complimentary NCAA and NBA rule changes to ensure they effectively encourage aspiring basketball players to attend college.

In addition, the Youth Basketball Initiative could use money obtained from fines of non-complying collegiate programs to support its own Elite Camps. Developmental camps for top prospects in which the best players are provided opportunities to hone their skills against similarly talented individuals are unique and important. The presence of major shoe companies, however, is an unnecessary corporate influence. While it is likely that functions like the ABCD camp will continue, the Youth Basketball Initiative should capitalize on its affiliation with the NBA and NCAA to sponsor elite camps for top prospects free from corporate influence. NBA and NCAA players and coaches<sup>263</sup> could be assembled at the Initiative-sponsored elite camps to provide some of the best instruction possible.

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<sup>255</sup> Glenn Dickey, *NBA’s Age-Limit Rule a Disaster for Colleges*, S.F. EXAMINER, January 26, 2009, available at [http://www.sfexaminer.com/sports/Dickey\\_NBAs\\_age-limit\\_rule\\_a\\_disaster\\_for\\_colleges.html](http://www.sfexaminer.com/sports/Dickey_NBAs_age-limit_rule_a_disaster_for_colleges.html).

<sup>256</sup> Such a phrase is an informal label for players who attend college for one year before they become old enough to pursue a career in the NBA, at which point they leave school.

<sup>257</sup> Dickey, *supra* note 255.

<sup>258</sup> See Pugmire, *supra* note 253.

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> DIVISION I MANUAL, *supra* note 64, art. 13.12.2.3.2, at 121 (requiring modification to create an exception whereby Div. I coaches would be permitted to work at these camps).

Finally, the Youth Basketball Initiative should take an active role in recruiting oversight. College programs should have to report recruiting actions to the Initiative on a regular basis, including frequent updates of prospects contacted, types of contact used, and times of contact. Although this would decrease privacy and cause additional work for college coaches, it would provide transparency that would make the recruiting process much easier to monitor. This change would also provide the NCAA with another ally in efforts to combat recruiting improprieties.

Such burdens are certainly large for any newly-formed entity, especially one like the Youth Basketball Initiative, which is already saddled with many responsibilities. Nevertheless, the Initiative has the capacity to serve as a catalyst for major positive changes in the game. With the diverse contacts at its disposal and the Initiative's potential to grow, this emerging organization should be able to shoulder these responsibilities and advance a cause that resonates with its own.

#### d. The Role of the NBA

Because the NBA is somewhat separate from youth basketball and college recruiting, its role in these efforts would be significantly less than those of the AAU, NCAA, and Youth Basketball Initiative. Nevertheless, the NBA could still help by providing scouts to evaluate high school prospects who desire to bypass college for a career in the NBA. On a broader scale, the NBA could also use the power of its name and the influence of its superstar players to promote the importance of secondary education. Such a campaign could be effective if designed in a similar manner as the current "NBA Cares" television advertisements. Finally, the NBA could encourage its coaches and players to assist with elite camps sponsored by the Youth Basketball Initiative. Most importantly, however, the NBA's public support of these principles and objectives would provide increased credibility and likelihood of success.

### VIII. Conclusion

The current bevy of negative influences, from excessive corporate involvement to devious recruiting tactics of some Division I coaches, is threatening the purity of a game that has the ability to provide many positive opportunities for young men and women in America. The "amateur" nature of youth basketball has been marginalized by those seeking to advance the interests of corporations and college programs. As a result, fundamental lessons central to the sport are being largely overlooked in the chaotic system that now exists.

The AAU, NCAA, Youth Basketball Initiative, and NBA have the resources and ability to effectuate changes in amateur basketball. These entities' collaboration and significant involvement are vital to the success of any corrective efforts. Their level of cooperation with this multi-faceted approach that addresses the issues at various levels of the sport will dictate the extent to which improvements are made. A purge of negative influences from the youth basketball environment will ensure, in turn, that the game remains a source of physical, personal, and educational development for generations to come.