

# *Potential Student-Athlete Liability for NCAA Violations: Can They or Should They Be Held Legally Accountable?*

Anita M. Moorman, J.D.

Department of Health, Physical Education and  
Sport Studies

HP/Studio Arts Bldg., Room 108

University of Louisville

Louisville, Kentucky 40292

Tel: (502)-852-0553

Fax: (502)-852-6683

Email: amm@louisville.edu

Mary A. Hums, Ph.D.

Department of Health, Physical Education and  
Sport Studies

HP/Studio Arts Bldg., Room 107

University of Louisville

Louisville, Kentucky 40292

Tel: (502)-852-5908

Fax: (502)-852-6683

Email: mhums@louisville.edu

## **Background**

Over the last 20 years, the landscape of intercollegiate athletics has undergone many changes. On the NCAA Division I level, the revenue generated by gate receipts, broadcast contracts, corporate sponsorships, and sales of licensed products is now measured in billions of dollars. NCAA Final Four basketball tournaments and the payouts in the college football Bowl Championship Series continue to escalate (Schwartz, 1999). Corporate sponsorship of college football bowl games has further combined commerce and college athletics (McAllister, 1998, Waddell, 1999). On this level, big-time college sport is arguably as much about business off the field as it is about competition on the field. Even though universities are reluctant to openly acknowledge the "business" of college sports, with each new corporate sponsor, corporate named sport facility, and multi-million dollar television contract, college sports continues to call into question whether college athletic competition is truly part of a larger educational and "not for profit" mission.

Balancing the need to operate and manage college athletics in a fiscally responsible manner while espousing the principles of amateurism places numerous and complex demands upon athletic administrators. With the average

NCAA Division I annual athletic operating budget averaging around 30 million dollars, the relationship between the athletic department and the student-athlete merits examination. The athletes are arguably the single greatest resource of a modern Division I athletic department. Division I universities rely on the dollars brought in by major revenue producing sports. Since most Division I sport programs actually lose money, the importance and emphasis placed on producing revenue and reducing costs will continue to rise (Selingo, 1997).

The excitement produced by these sports revolves around the athletes whose performances thrill audiences nationwide. These athletes produce real dollar values for their universities. It should come as no surprise that as the business of college sport expands, the relationship between the student-athlete and the university becomes a financially critical relationship. Schools invest significant time and money in these athletes for expenses such as recruiting, scholarships, uniforms, equipment, and travel. In return, the athletes perform, people pay to watch them play, and schools receive and rely upon the revenue generated from their success.

In order to succeed, athletic programs depend on the student-athletes to perform athletic services. Schools have an expectation that when athletes agree to attend their universities,

these athletes will not act in such a manner so as to jeopardize their ability to perform. However, what happens if that expectation is not met because the student-athlete has acted or failed to act in some way which hinders his or her ability or eligibility to perform? With regard to the physical ability of the student-athlete, universities routinely prohibit a student-athlete from participating in recreational sports to avoid an untimely injury. Universities also regulate the student-athlete's diet, exercise and sleeping patterns. Presumably all of this is done to maintain the athlete's ability to perform athletic services for the university.

However, it appears as though little is done to regulate or monitor the actions of a student-athlete which could jeopardize his or her eligibility to perform. With the complex and changing landscape of college athletics, the importance of the student-athlete and expectations placed on the student-athlete is on the rise. Recruiting the best athletes and retaining their services must be a priority for athletic departments. For many years, the greatest threats to this priority were early departure by the student-athlete to pursue a career in a professional venue or academic failure. Today however, the increasing number of student-athletes who knowingly violate NCAA rules and regulations is a growing concern in college athletics. These actions, more often than not, jeopardize the student-athlete's eligibility and can subject the university to NCAA investigations and sanctions. An athlete can become ineligible for violating NCAA rules dealing with gambling, drug use, academic dishonesty, and contact with sport agents.

Often an athlete's ineligibility results from NCAA-prohibited contact with an agent. Consider the situation of Marcus Camby at the University of Massachusetts. During his last year of eligibility accepted gifts from an agent which resulted in his ineligibility. Despite his ineligibility, he participated in the NCAA Tournament and exposed UMass to NCAA penalties including forfeiture of tournament revenues. What was the resulting affect on Marcus Camby for his

actions? He signed a three year, eight million dollar professional basketball contract as a first round draft pick with the NBA Toronto Raptors. A similar scenario was seen in football when Penn State lost the services of Curtis Enis for its season ending bowl game. Enis was later drafted fifth overall by the Chicago Bears and eventually signed a three year deal worth almost \$5.6 million (Mulligan, 1998).

Indeed, much has been written concerning unethical behavior by agents. So concerned are some with the perceived threat of sport agents, that almost every state in the U.S. and the federal government has or will consider legislation regulating the activities of sport agents before the end of this century. Many states have already enacted legislation creating both civil and criminal penalties for violations (Curtis, 1998). A few states have also included civil penalties for student-athletes as well as agents for violations (Remis, 1998). This raises an interesting question - could or should universities seek to recover damages from student-athletes if they engage in actions which cause them to become partially or totally ineligible, or which cause the university to be exposed to NCAA penalties?

### **Student-athletes and Contractual Obligations** The athletic scholarship transaction

In order to determine upon what basis the university could seek a remedy or recovery from the student-athlete, the contractual relationship between the student-athlete and the university must be examined. For many years, it was unclear whether an athletic scholarship was a contract subject to the same rules of construction and interpretation as other contracts. At first glance, it may appear that the contractual relationship between an athlete and a university for an athletic scholarship is fairly simple. The student-athlete signs a National Letter of Intent (NLI) and the university extends a scholarship promise which takes the form of a financial aid agreement. However, the relationship is quite complex and involves many more agreements than just a National Letter of Intent and a

Financial Aid agreement. In addition to these agreements, the athlete and/or an athletic director execute a variety of documents including Drug Consent Forms, Disability Insurance and Gambling Statements, Summer Employment Forms, NCAA Student-athlete Statements, and Agent Affidavits. All of these agreements contain representations and statements which may potentially form the basis of a contract between the student-athlete and the university.

The basic relationship is indeed evidenced by both a National Letter of Intent and a Financial Aid Form. Most courts reviewing these agreements have concluded that the “basic legal relation between a student and a private university or college is contractual in nature” (Ross v. Creighton, 1992; Zumbrun v. University of Southern California 1972). All essential elements of a contract are present in the athletic scholarship (Davis, 1991). The university offers a scholarship and the student accepts this offer with his or her commitment to attend the university and participate in athletics (Yasser, McCurdy, & Goplerud, 1997; Davis, 1991). Many cases where a contractual relationship was examined by the courts were initiated by student-athletes who alleged breach of contract by their university (Taylor v. Wake Forest, 1972; Rensing v. Indiana State Univ. Bd. of Trustees, 1983; Begley v. Corporation of Mercer Univ., 1973). These decisions have consistently used a contractual analysis to resolve the dispute; however, the “contract” has been construed very narrowly, and arguably against the student-athlete (Taylor v. Wake Forest, 1972; Ross v. Creighton, 1992).

#### Contract interpretation and construction

Courts have required students suing under a contractual theory to allege a specific promise that has been breached by the university and have not been willing to imply promises such as educational guarantees (Ross, 1992). Failure to allow the student to play or promises surrounding the importance of the athlete to the team have not been held to be specific enough to sustain a breach of contract claim (Ross, 1992;

Jackson v. Drake 1991). This limitation or strict construction has sidelined most educational malpractice claims where a student has argued a failure to educate on the part of the university (Ross, 1992). In those actions, the university promises to provide the opportunity to be educated, and in order to breach the university must fail to educate at all, not just provide deficient educational opportunities (Ross 1992). In addition, a university’s termination of a scholarship has been upheld when a student decided not to attend practices in football until he improved his grades (Taylor, 1972). The student’s promise was to stay both academically and physically eligible. In order to be relieved of his obligation to play and practice, the student had to be injured or excused. Spending more time on his studies was not a valid excuse (Taylor 1972).

Since the courts have interpreted the athletic scholarship so narrowly when enforcement is sought by a student-athlete, it is reasonable to conclude that it will be construed as narrowly, if not more so, if the university were seeking to enforce it against a student-athlete. Generally, if language in a contract is unclear, the contract will be construed in favor of the party not creating the uncertainty (Farnsworth, 1998). Since the university is the drafter of these agreements, the agreements must be construed *contra proferentum* (against the profferer or drafter). In addition, this rule of construction is especially favored when standard form contracts are used (Farnsworth, 1998). Thus, to sustain an action against a student-athlete, the university would have to point to a specific, clear, and identifiable promise the student-athlete failed to perform.

#### Specific promises made by the student-athlete

A few of the promises made by student-athletes include:

1. “I must conduct myself in accordance with the rules of the NCAA”; “any involvement in gambling or illicit drugs may result in my suspension from the team and or termination of this

financial award”

2. “You affirm that, to the best of your knowledge, you are eligible to compete in inter-collegiate competition”

3. “I understand the ... rules and regulation regarding ... gambling activities”

4. Student-athletes may also execute an Agent Affidavit. The Agent Affidavit affirms that the student-athlete has not been paid or promised any money or benefit by an agent; and has not signed or verbally agreed to sign a contract with an agent

These promises are fairly specific especially as to gambling and drugs, but as to involvement with an agent, they seem to lack the specificity required in Taylor, Ross, and Jackson. The only specific references to agents are contained in the Agent Affidavit and it is a current affirmation that no contact has occurred prior to their first competition. The Agent Affidavit is not a specific promise to not contact, or receive money or benefits from an agent. Presently, neither the agreements described above nor the standard National Letter of Intent (NLI) expressly incorporates all NCAA rules and regulations. In fact, the only specific reference to misconduct in the NLI involves the recruiting process.

Students who have successfully sued universities were able to incorporate all specific promises and representations contained in the university’s brochures, catalogs, and student handbooks into their contractual agreement. In order to extend the language to include dealings with an agent, the entire rules of eligibility of the NCAA must be presumed to be incorporated by reference into the financial aid form, or a separate agreement pertaining to agents would have to be executed. Universities could easily revise their financial aid forms to expressly incorporate the NCAA rules and regulations to form the basis of a specific promise on the part of the student-athlete not to violate such rules and regulations. However, the blanket incorporation of literally hundreds of pages into a one page contract would certainly seem to be contrary to the very narrow and strict construction which has been afforded

the athletic scholarship to date.

It is also important to remember that for a court to construe the financial aid agreement to incorporate all NCAA rules and regulations, it would have to ignore general contract principles where a contract is construed most strongly against the drafting party. These principles are further strained because many would consider the athletic scholarship to be an adhesion contract since it is offered to a student-athlete on a take it or leave it basis and the student-athlete has no meaningful opportunity to negotiate terms on equal basis with the university. Those who argue the athletic scholarship is an adhesion contract contend that the essential elements of a contract are not met when equality of bargaining power does not exist (Conrad, 1997).

It is readily apparent that both parties do not have equal bargaining power in a typical student athletic scholarship transaction. The scholarships are offered on a take it or leave it basis, have a duration of only one year even though the average time needed to earn a degree is 4-6 years, and prohibit student-athletes from seeking outside income. As one critic pointed out “between 1956 and 1973, [the NCAA] engaged in a series of legislative maneuvers that gave coaches the kind of control over the daily lives of athletes that one usually associates with employment” (Sack, 1999). This control includes the elimination of the true four year scholarship in 1973, and the power granted to coaches in 1967 to revoke scholarships for missing practices or not following directions (Sack, 1999). In this circumstance, the drafting party should not profit from its unequal bargaining position (Farnsworth, 1998).

Thus, while a contract action clearly is available to the university, is it the best course of action? Even if the university could overcome the legal obstacles posed by strict construction and adhesion contract principles, many political, public relations, educational, and social issues will undoubtedly be raised if a university sues a student-athlete. Instead the university may wish to rely on the athlete agent legislation which exists in several states and is presently being consid-

ered by the National Conference of Commissioners on Uniform State Laws. Many of these state statutes create express rights for universities to recover losses suffered as a result of a violation of the statute. To fully understand the scope and impact of these rights, the common language contained in many of the statutes must be examined.

### **State Athlete Agent Legislation**

Athlete agent legislation originally was intended to protect student-athletes, however, that purpose is not expressly identified in most current statutes. Twenty-seven states currently have adopted agent athlete legislation (Curtis, 1998). Some of the states enacted athlete agent legislation in response to specific finding that “dishonest or unscrupulous practices by agents who solicit representation of student-athletes can cause significant harm to student-athletes and the academic institutions for which they play” (Flat Stat. Ann. § 468.451 (1999 Supp.)). However, many state athlete agent acts are silent as to the purpose of the legislation. Even the federal government has identified athlete agent activities as a problem as shown in the “Protection of Student-athletes Act of 1997” which was introduced in the U.S. House of Representatives. However, federal athlete agent legislation has not been seriously considered by Congress (Curtis, 1998). Assuming there is at least some consensus that regulating the activities of athlete agents is warranted, next one must examine the scope and substance of this regulation.

#### Responsibilities of agents

According to the majority of state statutes, athlete agents are required to take numerous steps in order to conduct business including registering with the state and/or universities, becoming certified, paying annual fees, receiving continuing education, reporting on activities, providing notices to universities and state commissions, and many other duties. In addition, the state legislation also affords some protection to the student-athlete. For example, most statutes require all agent contracts to con-

tain a warning to the student-athlete such as: “Warning to student-athlete: if you sign this contract, you will lose your eligibility to compete in your sport. Talk to your coach before you sign this contract. You and your athlete-agent both are required to tell your athletic director if you do sign this contract. If you sign, you may cancel this contract within seven (7) days of signing it. Cancellation of the contract may not reinstate your eligibility” (Proposed Uniform Athlete Agent Act, 1998).

As mentioned in the warning, student-athletes generally have a right to rescind or cancel the agent contract within three to seven days after it is signed. Agents are also prohibited from providing false or misleading information to student-athletes, or providing anything of value to student-athletes to induce them to enter into an agent contract.

#### Responsibilities of the student-athlete

While the legislation clearly regulates agents, many statutes also regulate the student-athlete. The responsibilities and duties imposed upon the student-athlete also vary among states. However, for the most part, a student-athlete must notify his or her athletic director that he or she has entered into an athlete agent contract (Flat Stat. Ann. § 468.454 (1999 Supp.); Missouri Ann. Stat. § 436.209 (1999 Supp.); Tenn. Code Ann. § 49-7211 3(a)(4) (1996)). This notification is usually required within 72 hours of signing the contract or prior to the athlete’s participation in any further sport contest on behalf of the university, whichever comes first. Any student-athlete who has entered into an athlete agent contract is or may be ineligible to participate in any further collegiate athletic contests. As such, in order for the university to prevent a potentially ineligible student-athlete from participating, it must have adequate notice and time in which to determine if the student-athlete’s eligibility is indeed forfeited. If an ineligible student-athlete participates in a collegiate athletic contest, at a minimum the university will be required to for-

feit the game, and at worst could be subjected to further investigations and potential sanctions. Even if further investigations do not result in sanctions, the university still has incurred legal and administrative expenses to respond to the investigation and has suffered negative media exposure.

#### Penalties and remedies

Penalties imposed upon agents for violations of athlete agent legislation range from civil fines to criminal felony charges. In addition, some states limit the scope of the penalty provisions only to agents (and their representatives) who have violated the act, while other states have adopted a much broader “any person” definition of potentially liable parties. For example, states adopting the “any person” standard would allow a university to sue “any person” who violated the act and damaged the university by causing a student-athlete to become ineligible to compete. Potential damages often include up to three times the value of the student-athlete scholarship. Some state statutes which have provided for a civil remedy for educational institutions, also have expanded the scope of recoverable damages to include:

- Lost revenue from media coverage of a sports contest
- Lost ticket sales from regular season or post-season athletic events
- Lost rights to grant athletic scholarships
- Lost rights to recruit athletes
- Losses resulting from post-season playing bans
- Lost proceeds from any revenue sharing agreements with conferences
- Losses resulting from forfeiting athletic contests

Eight states impose (either directly or indirectly) civil liability upon a student-athlete for violations of the state statute and five states provide for criminal sanctions against student-athletes (Remis, 1998). These eight states are Florida, Tennessee, Missouri, Iowa, Kansas, Mississippi, Nevada, and South Carolina (Remis, 1998). The degree of specificity of the statutory

language varies from one state to the next. For example, Tennessee expressly names a “student-athlete” as a potential party liable to a university for violations of the act. The Tennessee act states that if “both are at fault, the student-athlete and the sports agent shall be jointly and severally liable for any damages awarded to an institution...” (Teen. Code Ann. § 49-7-2115(e) (1996) (emphasis added)). However Iowa and Florida’s statutory language is more open ended. Iowa and Florida permit an educational institution to sue for civil damages for violations of the act, but do not specifically identify a student-athlete as one of the potentially liable parties. Instead, both states choose to rely on the broader “any person” standard.

Arguably, a student-athlete who knowingly violates NCAA eligibility rules within the class of persons intended by the “any person” standard. However, in Florida such may not be the case since Florida’s previous athlete agent act expressly named a student-athlete as a liable person. It is arguable that the legislature intended to exclude student-athletes from liability when it amended the statute in 1995 and omitted those express provisions (Hanson, 1996). Since no university has filed an action pursuant to this state legislation, it is still unclear how these issues would be resolved by the courts.

This uncertainty has fueled efforts by the National Conference of Commissioners on Uniform State Law to draft a Uniform Athlete Agent Act. The Uniform Act provides for civil remedies for violations of the Act. The Uniform Act also only identifies “an athlete agent” as being liable for violations. Agents are liable for actual damages and attorney’s fees. Student-athletes are not expressly named in the act as a potentially liable party. The Uniform Act also provides for a civil right of action by an educational institution against an agent if “because of activities of the athlete agent, the educational institution is penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by self-

imposed disciplinary action to mitigate sanctions” (Proposed Uniform Act, 1998).

Thus, at least eight states would allow a university to sue a student-athlete for monetary losses resulting from the student-athlete’s dealings with an agent. This specific statutory remedy may provide the athletic director with an alternative to pursuing an action against a student-athlete based upon a breach of contract theory. However, since only eight states include civil remedies against a student-athletes, and only 27 states impose penalties upon athlete agents, most universities will have to resort to basic contract remedies in order to recover for damages incurred as a result of the conduct of athlete agents and student-athletes.

Despite the criticisms of the athletic scholarship as unfair and overreaching, others, including state legislators, believe student-athletes are adults and in some instances are quite sophisticated in the workings of power and influence in college athletics. What benefits do student-athletes enjoy? They receive free tuition, room and board, per diem payments, practice and game apparel and shoes, travel, medical treatment, personal training services, massage therapy, access to fitness and training facilities, publicity, coaching, and academic support.

Shouldn’t a student-athlete who agrees to accept these benefits have some degree of responsibility for breaching their promises and exposing universities to monetary loss as well as public embarrassment. Shouldn’t UMass and Penn State consider the option of pursuing legal action against the now multi-millionaires, Marcus Camby and Curtis Enis? The Commonwealth of Pennsylvania, at the insistence of Penn State, tested its new statute regulating sports agents against the agent who provided Curtis Enis with his gifts (Naughton, 1998). The agent ultimately was suspended by the NFL Players Association and received a criminal conviction in Pennsylvania for violation of the Pennsylvania athlete agent statute (“Agent in Enis Case Pleads No Contest”, 1998, “Players Union Suspends Enis’ Former Agent”, 1998).

However neither the Commonwealth of Pennsylvania nor Penn State seem to think that Curtis Enis has any responsibility for his own actions. Admittedly, the Pennsylvania athlete agent statute does not contain any provisions extending liability to student-athletes (Pa.C.S. Title 18 § 7107 (1998)). In addition, it does not create a private civil action remedy for the injured university like that contained in many state statutes. However, should Penn State consider a breach of contract action against Curtis Enis. Such a result is exactly what common principal/agent rules would suggest. After all, it is the principal (student-athlete) who has allowed and even empowered the sport agent to act on his behalf. If action is to be taken though, what are the ramifications of taking legal recourse against a student-athlete?

### **Discussion**

The choice to take legal action against a student-athlete who has been declared ineligible is complex. In those states with specific legislation imposing penalties and civil liability upon student-athletes, the university may simply seek redress according to the athlete agent statute. However, in most states where no such specific legislation is available, the university must resort to basic contract law. Pursuing a contract action against a student-athlete, as discussed previously, is not a simple task, and may not even be a prudent decision. Athletic directors and university presidents must be aware of the potential ramifications of taking such action. These managers must look at the repercussions on their campuses and beyond. Choosing to take such actions will effect an institution’s reputation, which in turn can have economic consequences.

#### Effects on Institutional Reputation

Education v. business. If a school decides to take action against a student-athlete, what impact does it have on the educational integrity of that institution? Taking such action as a purely economic based business decision makes the case that intercollegiate athletics is just that - a business - rather than an extension of the educa-

tional mission of the university. The mission statement for the University of Louisville Athletic Department provides:

Our mission is to support and counsel our student-athletes so they will maximize their potential at U of L and be successful in preparing for their future lives.

We will provide leadership for our student-athletes to inspire their achievement of the goals established in this mission statement. U of L's competitive athletics provide an outstanding leadership laboratory, and its high quality classroom instruction provides outstanding educational opportunities. It is our responsibility to assure that our student-athletes benefit from these educational and athletic experiences at the University of Louisville.

To help accomplish our mission, we provide superior services to our fans and donors, the primary financial resources that support our programs. These services result in the best opportunities for our student athletes to participate in well-supported, competitive programs that bring renewed spirit to our campus, our alumni, and the Louisville community (UofL Mission Statement, 1999).

On the other hand, one must also realistically assess the current financial realities of NCAA Division I football and basketball programs. Agree or disagree, these programs are in essence not-so-small businesses being operated with a profit motive. For example, Stanford University's athletic department produced 38.6 million dollars in revenue in 1998-99 (Suggs, 1998b).

If an athletic department chooses to take legal action against a student-athlete for costing the school potential revenues, this makes an interesting philosophical statement. In essence, the school has admitted what many want to deny - that intercollegiate athletics is about business rather than about education. Currently money generated from athletics is not taxable because

“Under Section 501c(4) of the Internal Revenue Code (I.R.C.), a nonprofit organization, which is organized and operates exclusively for social welfare and devotes its profits to charitable, educational, or recreational purposes, is exempt from taxation” (Farbman, 1995, p. 55). Admitting that student-athletes are costing the university in terms of lost revenue reduces athletics to something besides just an educational outreach of the university - it admits athletics are a for-profit venture. This admission could hinder a university's non-profit status. However, if Congress ever decides that income generated by athletic teams is in fact unrelated business income and taxes it, then there is nothing to stop universities from seeking money from student-athletes who cost the university revenues.

State legislature's view. If a state university is involved, how would litigation of this type be viewed by the state legislature? For some states, this issue has already been decided. A number of states have adopted legislation specifically regulating student-athletes' as well as agents. In those states, student-athletes are potentially liable parties to the university. It would belie the state legislature to create a remedy for the university and then criticize it for pursuing the statutory remedy. In states without such legislation, however, some questions and even criticisms may arise. Undoubtedly packed with graduates of the institution in question, the legislature's responses could be quite interesting. Legislators may see the suit as a waste of time and money on the university's part, or they may view it as an action aimed at insuring a school's positive reputation. Legislators are also fans, of course, which may impact their voting when it comes to distributing state money to the institution. Knowing full well the economic impact a successful team has on their home state, lawmakers may see the litigation as money well spent to insure long term success since student-athletes would think twice about engaging in behavior which would place them in legal jeopardy.

The NCAA. How would the NCAA react to all of this? This is an intriguing question. The



NCAA has long maintained that intercollegiate athletics is an extension of the educational mission of institutions of higher education, hence the NCAA's continued non-profit status. Is this type of legal action consistent with the Knight Foundation's call for financial integrity? The Foundation stated:

"Big-time sports programs are economic magnets. They attract entertainment and business interests of a wide variety. They support entire industries dedicated to their needs and contests. But while college sports provide a demonstrably effective and attractive showcase for the university, potential pitfalls abound because of the money involved. Particular vigilance is required to assure that central administrators set the terms under which the university engages the larger economic environment surrounding big-time college sports." (Knight Foundation, 1991, p. 19).

On one hand, having a member institution pursue a student-athlete for economic reasons may not be viewed as an action taken with "particular vigilance". On the other hand, the NCAA may support the action as it serves to send the message that its rules are to be taken seriously.

The public's reaction. What will be the public's general perception of and reaction toward an institution which sues one of its own student-athletes, especially if the student-athlete is very talented and has brought a great deal of positive attention to the institution? Alumni may not be as vocally supportive, and consequently, less financially supportive of their alma mater. Thus, with the importance of marketing and fundraising to the financial stability of college sport programs, institutions must be prepared for negative public reaction among alumni, fans, and donors. Public reaction will undoubtedly be influenced by the media. Thus, media reaction will be of particular concern for the university and the athletic program.

The media reaction. When the first university sues the first student-athlete for money

damages it will attract media attention on a national scale. How will the media present this news to the public? Editorials and commentaries will probably take all sides and explore the social, legal, ethical and philosophical issues raised by this action. There is no way to accurately predict the media's reaction or the impact of this reaction, but some recent incidents do provide insight into the type of commentary that could likely occur. The University of Kentucky is considered one of the premier college basketball programs of the 90's. Recently, several basketball players have decided to leave the University of Kentucky. Some are departing early for the pros, others cite personal reasons for transferring to another school. Whatever the reason, a team with the winningest record in college basketball during the 90's was faced with some serious erosion of the talent depth usually present in their lineup. This situation prompted the UK Athletic Director, C.M. Newton, to publicly comment that "you've not only got this situation where players are leaving early for the pros, now you've got almost an element of free agency in college. It's like players say, 'I'll play there a couple of years, then if it doesn't suit me, I'll go somewhere else'" (Hampton, 1999). Newton even questioned the players "sense of loyalty" to the program (Kelly, 1999).

Within just days of that comment, Greg Kelly (1999) with Sports Illustrated characterized C.M. Newton as a "hoopocrite". Kelly (1999) lashed out at college basketball athletic directors and coaches, referring to them as control freaks rivaled only by the Olympic organizing committee. Kelly also observed that Newton didn't seem to mind free agency when players transferred from other schools to Kentucky. Finally, Kelly closes with the observation that "the system has been rigged against athletes for so long, it's a pleasure to see things go the other way once in a while."

One can imagine how Greg Kelly, as well as other journalists, would react to the first law suit filed by a university against a student-athlete. Before initiating an action against a student-ath-

lete, a university will certainly need to carefully develop a publicity plan, anticipate media skepticism if not criticism, and possess a history of fair treatment of student-athletes.

Student-Athlete's view. Student-athletes may wonder what they might do which may put them in jeopardy. They may start asking questions such as if I gamble or take drugs can I be sued by the institution? Student-athletes may question why a university would choose to pursue them for breach of contract, when universities rarely take such action against coaches who violate NCAA rules, or who seek to terminate their contracts to pursue other coaching positions. What would the impact be on future recruiting? Athletes who are being recruited by schools have a keen sense of what they are looking for in an institution and are now, more than ever, informed consumers who are making a well-researched choice about which institution they wish to represent.

A university that sues a student-athlete makes the statement that it is interested in student-athletes who want to go to school and represent their institution, rather than perhaps just using the institution for personal gain. If a potential student-athlete realizes the hard stance an institution takes against student-athletes who jeopardize their eligibility, the message has been clearly sent that the university sees this type of behavior as unacceptable. An institution is directly saying "Following the rules matters." Athletes looking for institutions which would "look the other way" would most likely shy away from a school which would hold them personally financially responsible for their actions.

On the other hand, if a student-athlete is prone to the kind of behavior which could potentially result in losing eligibility, should an institution mind if that particular student-athlete does not enroll at the institution? For example, it could be argued that the University of Nebraska both benefited and lost from the Lawrence Phillips incident. Phillips was suspended from the Nebraska football team for violently assaulting his girlfriend, and then reinstated in time to play

in the Orange Bowl for the National Championship. On one hand, some people argued Phillips served his time by being suspended before coming back to play well helping Nebraska win the Orange Bowl and the National Championship. Other observers criticized that his punishment was not harsh enough and tarnished the university's reputation. So was Nebraska better off overall for Phillips' having been enrolled there?

#### Economic Considerations

The cost of an ineligible student-athlete. The student-athletes inability to play because of ineligibility can cost an institutions thousands of dollars. The difficulty in determining the true extent of economic losses may vary from sport to sport. For example, placing a dollar value on a lost football bowl game, such as Penn State's loss, is not easy, as both teams receive the same amount win or lose. What can be quantified is the amount of money lost if the team qualifies for a lesser bowl or does not qualify for a bowl game at all. If the bowl game slot is designated for the school's conference, the school which did not play in the bowl will still benefit from the conference wide distribution of bowl dollars. However, the amount lost by being banned from the NCAA college basketball championships can be easily quantified as was the case with Marcus Camby at UMass. Each successive round in the NCAA Tournament accounts for a certain amount of money. According to Suggs (1998) each tournament game is worth a unit to a conference, so the farther a school goes in the tournament the more units and therefore the more money goes into the conference and is then distributed to all member institutions. In 1998, each unit was worth \$73,925 (Suggs, 1998a). In actuality, not only is the individual school effected negatively, but the conference loses as well.

In addition, sales of licensed products may be directly effected. Sales would not occur since fans would not have bowl game merchandise to purchase, or may be less likely to purchase licensed product from a lesser bowl game. Television coverage would be less or non-exis-

tent, resulting in less exposure for the university. With the advent of the Bowl Championship Series (BCS), the big money stakes are even higher than before, so not qualifying for one of the games can be very damaging to a school.

**Legal fees.** By using the legal system, the institution would incur legal fees, which would run into the thousands of dollars. A case such as this would most likely not be handled by university legal counsel, but rather would be farmed out to a private law firm which the university retains at considerable expense. Given the escalating cost of litigation, this would be a very expensive proposition.

**Fan support.** Given the potential for negative publicity, what would be the cost in lost financial support if the university takes such action? Would alumni be less supportive financially? Would non-graduate fans switch allegiance, and spend their ticket buying and licensed product purchasing dollars elsewhere? On the other hand, the publicity may not be considered all negative. There are fans and supporters who would believe this to be a wise business decision since the university would not lose money due to transgressions of student-athletes. Others may believe that the "money hungry" student-athlete got what he or she deserved. While fan reaction most likely will be divided, it no doubt will also be emotional.

### **Good Business and Good Ethics?**

The best business reason to sue anyone including a student-athlete is to recover financial losses, but the threat of financial loss resulting from a lawsuit against a student-athlete could be more damaging than the losses caused by the student-athlete. If treatment of professional athletes is of any guidance, the means most commonly used by professional teams and leagues against athletes who do not fulfill their obligations is the imposition of a monetary fine and/or game suspension. This option is not available for most universities since the student-athlete receives no monetary compensation and a single game suspension would not be appropriate if the student-

athlete is no longer eligible to compete at all.

Is suing a student-athlete who has become ineligible and potentially cost an institution thousands of dollars and its good reputation the right thing to do? And who wants to be the first to attempt such litigation? As shown by the above discussion, it is a very complex business decision. While good ethics make for good business, one may argue, however, whether good business is always good ethics. Yet by taking such action, the institution sends a very loud and clear message that behavior which violates NCAA rules, university policies, and contractual promises will not be tolerated. Student-athletes who may be tempted to violate NCAA rules may be deterred by this stance, but at what cost to the university?

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