

# **COMMISSION ON COLLEGE BASKETBALL: REPORT AND RECOMMENDATIONS TO NCAA BOARD OF GOVERNORS, DIVISION I BOARD OF DIRECTORS AND NCAA PRESIDENT EMMERT**

## **Executive Summary**

The Independent Commission on College Basketball was established on October 11, 2017, to assess the state of the enterprise and to recommend transformational changes to address multiple issues and challenges.

In brief, it is the overwhelming assessment of the Commission that the state of men's college basketball is deeply troubled. The levels of corruption and deception are now at a point that they threaten the very survival of the college game as we know it. It has taken some time to get here, and it will take time to change course. The Commission offers its recommendations knowing that the road ahead is long – but that the first steps must be taken – and they must be bold. The indictments handed down by the Justice Department and the ongoing FBI investigation spurred the NCAA to ask for this report. Whatever the outcome of the legal process, radical changes are long overdue. We the commissioners believe that this is a final opportunity to turn the course of college basketball in the right direction. Every stakeholder will have to accept responsibility for what has happened in the past and commit to a new future if we are to succeed.

The commissioners want to be very clear: There is much to admire about college basketball even with its significant challenges. The commitment and hard work of student-athletes is seen on basketball courts across the country. At tournament time, underdogs rise up, defeat favorites, and become national darlings. The skill and determination of these young student-athletes reminds all of us what it means to work hard, prepare and perform under pressure. We experience deeply their triumphs and their failures. College communities – including students, faculty, staff and alumni – are bound together in pride and excitement as they support, cheer – live and die – with their teams.

We know too that many young men who would otherwise have little chance of attending college are able to take advantage of their talents to achieve something of great value in our society and economy – a college degree. The scholarships themselves are valuable, as students who finance their own education will attest; the in-kind benefits are worth tens of thousands of dollars more. The lifetime financial benefit of a baccalaureate degree can approach \$1 million, and can

change the recipient's family for generations. See Section 1.D. Of course, student-athletes must earn that degree to receive these benefits.

Lost in the talk of big money and corruption is colleges' central mission to provide higher education to students. There is debate about how to measure the graduation rate for college students, including student-athletes. There is, however, general agreement that the graduation rate for men's Division I basketball players lags behind that of other student-athletes, perhaps significantly.<sup>1</sup> NCAA schools must take seriously the obligation to help all student-athletes obtain the education they are promised.

The Commission believes that the answer to many of college basketball's problems lies in a renewed commitment to the college degree as the centerpiece of intercollegiate athletics. Intercollegiate athletics is a trust based on a promise: athletes play for their schools and receive a realistic chance to complete a college degree in return. Any policy or action that violates that trust is morally wrong.

College basketball, like college sports generally, is to be played by student-athletes who are members of the collegiate community, not paid professionals. Over several decades, however, trends have emerged that call this understanding into question. Millions of dollars are now generated by television contracts and apparel sponsorship for the NCAA, universities and coaches. The financial stake in success has grown exponentially; and thus, there is an arms race to recruit the best talent – and if you are a coach – to keep your job. Future stars and their families know their value – and can be tempted to monetize their worth as soon as

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<sup>1</sup> The two most utilized measures of graduation rate are the Department of Education's Federal Graduation Rate (FGR) and the NCAA's Graduation Success Rate (GSR). The FGR and the GSR treat transferring students differently, and their differing cohorts result in dramatically different graduation rates: The 2017 FGR is 68% for all student-athletes and 48% for men's Division I basketball players. The 2017 GSR is 87% for all student-athletes and 82% for men's Division I basketball players. The meaningful graduation rate is likely somewhere between the FGR and GSR. See NCAA Research, *Trends in Graduation Success Rates and Federal Graduation Rates at NCAA Division I Institutions* (Nov. 2017); T. Petr & J. McArdle, *Academic Research and Reform: A History of the Empirical Basis for NCAA Academic Policy* in *Journal of Intercollegiate Sport* 2012, pp. 39-40; College Sport Research Institute, *2017 Adjusted Graduation Gap Report: NCAA Division-I Basketball*, found at <http://csri-sc.org>.

possible since they will not be compensated in college. Some agents, summer coaches and other third parties act as intermediaries and facilitators. In other words, the environment surrounding college basketball is a toxic mix of perverse incentives to cheat.

The NCAA's investigative and enforcement functions were designed for a simpler time, when rule violations did not put so much at stake. As a result, the NCAA, as an enforcement entity, has little credibility with the public and its members, and what it has continues to dwindle. There are multiple cases of compromised academic standards and institutional integrity to keep the money and talent flowing. The NCAA and its member institutions have been unable to adequately deter or punish bad behavior.

Given the undeniable impact of "big money" on the college game, it is fair to ask whether the ideal of college basketball played by student-athletes who are part of the academic community – not hired guns for a season or two – is still viable. The answer is yes, and the effort is worth making. Transformative changes are necessary, but the goal should not be to turn college basketball into another professional league. Rather, we must change fundamentally the current culture and rules to address the effect that money has had on college basketball, the NCAA and its member institutions.

To this end, the Commission makes a number of recommendations set forth below. To ensure that we take advantage of the current momentum for change, the Commission further calls on the NCAA to draw up its plan to implement the Commission's recommendations, including draft legislation, by early August 2018. The Commission will promptly reconvene and review the NCAA's plans to provide its input and, we hope, its blessing, for the NCAA's concrete measures to renew college basketball.

## **Executive Summary of Recommendations**

### **Section 1: Realistic Pathways for Student-Athlete Success**

#### **A. Separate The Collegiate Track From The Professional Track By Ending One-And-Done.**

The Commission calls on the National Basketball Association (NBA) and the National Basketball Players Association (NBPA) again to make 18-year-olds eligible for the NBA draft, so that high school players who are drafted may proceed to the NBA. The NCAA lacks the legal power to change one-and-done on

its own; the power to make this change lies exclusively with the NBA and the NBPA.

The one-and-done regime may have provided some benefits for the NBA and the NCAA in the past, but all stakeholders agree that the downsides now outweigh any benefits. One-and-done has played a significant role in corrupting and destabilizing college basketball, restricting the freedom of choice of players, and undermining the relationship of college basketball to the mission of higher education. Elite high school players with NBA prospects and no interest in a college degree should not be “forced” to attend college, often for less than a year. These uniquely talented players are the focus of agents, apparel companies, investment advisors, college coaches and others seeking to profit from their skills and offering them cash and other benefits in hope of future gain. If they are allowed to turn professional, some of the pressure on the collegiate model will be reduced. Moreover, the recent commitment of the NBA to improve the G League may enhance its appeal as a professional option for elite players who are 18 and do not wish to attend college.

The Commission seriously considered, but is not recommending, the NBA’s and NBPA’s adoption of a version of the “baseball rule” which would make student-athletes who attend college ineligible for the draft or the G League for two or three years. By requiring students who choose the collegiate path to make a long-term commitment to their education, the baseball rule increases the number of student-athletes who ultimately earn degrees. However, it would also keep collegiate players ready for the NBA in school against their will, where they will be potentially disgruntled magnets for corrupt money and the undermining of the collegiate model. Players with professional earning power should be able to choose a professional path. The Commission’s additional recommendations will make it easier for them to return and complete their degrees.

The Commission is concerned about one unintended consequence of ending one-and-done, specifically the potential abuse of the NCAA’s current practice of granting immediate collegiate eligibility to high school players who “reclassify”—*i.e.*, those who make themselves eligible to enter college prior to the graduation date of their high school class. We fear that, should the NBA and the NBPA make 18 the minimum age for entry into the NBA, the growing trend of reclassification will accelerate, creating a new generation of 17-year-old one-and-done players. The Commission urges the NCAA to monitor this situation and to enact appropriate rule changes if that potential abuse occurs with the end of one-and-done.

We must emphasize that only the NBA and the NBPA can change the one-and-done rule. If they choose not to do so by the end of 2018, the NCAA must still find a way to address this situation. In that circumstance, the Commission will reconvene and consider the other tools at its disposal. These could range from the baseball rule, to freshman ineligibility, to “locking up” scholarships for three or four years if the recipient leaves the program for the NBA after a single year. That would be a disincentive to recruit an athlete for a one-year run at the title. In short, the current situation is untenable.

**B. Allow Student-Athletes To Test Their Professional Prospects And Maintain Their Eligibility If They Do Not Sign A Professional Contract.**

The Commission recommends that high school and college players who declare for the draft and are not drafted remain eligible for college basketball unless and until they sign a professional contract. Specifically, players who are not drafted should be permitted to change their minds and attend college or return to college, provided they remain academically and otherwise eligible. The Commission also recommends imposing two additional conditions on this retention of eligibility: The player must return to the same school, and the player must request an evaluation from the NBA’s Undergraduate Advisory Committee before entering the draft. The NBA has unique credibility with elite players who should have the benefit of the NBA evaluation in deciding whether to enter the draft.

Elite high school and college basketball players tend to misjudge their professional prospects. Players who think they are surefire professionals are often mistaken. The numbers tell this story: Only a very small percentage of NCAA men’s basketball players make it to the NBA (around 1.2%), let alone have successful careers.<sup>2</sup> Yet, an NCAA Survey we commissioned showed that 59% of Division I players believe that they will play professionally,<sup>3</sup> and NCAA research suggests that 76% of Division I players, 48% of Division II players and 21% of Division III players believe that they have a chance to play at the next level.<sup>4</sup>

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<sup>2</sup> NCAA Research, *So, you’re telling me there’s a chance* (Dec. 2013).

<sup>3</sup> NCAA Research, *Division I Men’s Basketball Study on Youth Sport, Recruiting and College Choice*, prepared for the Commission on College Basketball, Dec. 2017.

<sup>4</sup> NCAA Research, *So, you’re telling me there’s a chance* (Dec. 2013).

Erroneously entering the NBA draft is not the kind of misjudgment that should deprive student-athletes of the valuable opportunity to enter college or to continue in college while playing basketball. While this rule change may inconvenience coaches seeking to set their rosters for the following season, we conclude that the student-athletes' interest should govern here. A player chagrined to discover that he lacks an NBA future may grow into his collegiate experience and adopt a different plan for the future. This change, along with several others recommended, will demonstrate that the NCAA is serious about the value and importance of college for student-athletes, and committed to helping them attend and work towards a degree.

The Commission again seeks assistance from the NBA and NBPA to make this recommendation work. Players who enter the draft and are not drafted are free agents under the NBA's current rules, and can sign with an NBA team at any time. To avoid this outcome, the Commission requests that the NBA and NBPA agree that players who are not drafted, and then return to school, lose their eligibility to play in the NBA until they re-enter through the next draft.

For similar reasons, the Commission also has concluded that one aspect of the current transfer rule – the requirement that a player who transfers sit out for a year – remain in place. Even under the current rule, an astounding 600-plus Division I men's basketball players transferred this year, in the hope of greener basketball pastures. Forty percent of players who enter Division I basketball from high school leave their original schools by sophomore year.<sup>5</sup> Players who transfer are less likely to complete their degrees.<sup>6</sup> Third parties often influence transfer decisions for their own purposes and without thought to the impact of transfer on the student-athlete. The detrimental effect of transfer on a student-athlete's education means that transferring should not be made easier for basketball's sake.

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<sup>5</sup> NCAA Research, *Tracking Transfer in Division I Men's Basketball* (Dec. 2017).

<sup>6</sup> T. Paskus, *A Summary and Commentary on the Quantitative Results of Current NCAA Academic Reforms* in *Journal of Intercollegiate Support* 2012, pp. 44-45 (describing transfer as “hav[ing] a long-term negative outcome on the student-athlete” and citing research indicating that “even after we control for academic preparation, the act of transferring itself impacts the time to and probability of obtaining an undergraduate degree”); Community College Research Center, *What We Know About Transfer* (Jan. 2015) (only 17% of community college students who transfer complete a degree).

The Commission also discussed the graduate transfer rule. The NCAA enacted the rule in 2006 to assist academically high-achieving students who had graduated from college with remaining athletic eligibility by allowing them to transfer in order to pursue a graduate degree. In recent years, graduating student-athletes, including in men's basketball, increasingly appear to make transfer decisions for reasons other than academics. In 2011, there were 15 men's basketball graduate transfers; in 2016, there were 87.<sup>7</sup> Only 34% of these transfers graduate from their graduate school programs.<sup>8</sup> We heard that recruiting and tampering related to potential graduate transfers is rising.

We understand that the NCAA's Transfer Working Group is currently considering this issue and potential responses, including "locking down" scholarships for the period of a degree program and imposing an enhanced penalty on a team's Academic Progress Rate if the recipient leaves before completing his graduate program. We ask the NCAA to monitor this issue and develop appropriate legislation to ensure that the rule is serving its intent.

In sum, student-athletes should have more information about their professional prospects and more flexibility to test those prospects and return to school. This change and other related changes should make it easier for them to do so without losing their collegiate eligibility.

**C. Permit Students To Receive Meaningful Assessment of Professional Prospects Earlier With Assistance From Certified Agents.**

The Commission recommends that the NCAA and its member institutions develop strict standards for certifying agents and allow NCAA-certified agents to engage with student-athletes at an appropriate point in their high school careers to be determined by the NCAA. The NCAA must appoint a Vice-President level executive to develop meaningful standards for NCAA certification and administer the program. Among other requirements, the rules should mandate that agents notify colleges when they are retained by a matriculating student-athlete. The

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<sup>7</sup> See NCAA Research, *Changes in the Number of Division I Graduate Transfers* (June 2017).

<sup>8</sup> See NCAA Research, Division I Committee on Academics, *Academic Attainment of Division I Student-Athletes Who Compete as Postgraduates* (Oct. 2015).

program should also educate student-athletes about eligibility rules and requirements.

Elite high school and college players need earlier professional advice, including whether to declare for the draft or whether college basketball offers a superior pathway. If NCAA rules do not allow them to receive that advice openly, they will often seek it illicitly. The NCAA rules should provide that student-athletes may meet and contract with NCAA-certified agents and that they will not lose their eligibility by doing so.

The Commission further recommends that the NCAA incentivize better behavior from agents. This can be done through making clear the benefits of certification and the cost of the loss of certification. An agent who participates in an NCAA rules violation must lose his or her certification. A student-athlete who enters into an agreement, or whose family members enter into an agreement, with a non-certified agent will lose his eligibility. In addition, the NCAA and the NBPA should report to each other agents' violations of their respective rules, increasing the potential costs of violating NCAA rules.

As described below, in its specific recommendations about non-scholastic basketball, the Commission urges additional efforts at educating high school players about their professional and collegiate prospects, NCAA eligibility rules, their health and more. Student-athletes must have the information they need to understand their real choices and be better positioned to take advantage of either the collegiate or the professional path they choose.

#### **D. Provide Resources To Make The Promise of A College Education Real.**

The Commission recommends that the NCAA immediately establish a substantial fund and commit to paying for the degree completion of student-athletes with athletic scholarships who leave member institutions after progress of at least two years towards a degree. Colleges and universities must fulfill their commitments to student-athletes to provide not just a venue for athletic competition, but also an education. They must promise student-athletes that the option to receive an education will be there, even after the athlete is finished with his athletic career. This will be expensive, but it is necessary to restore credibility to the phrase student-athlete.

Many NCAA member institutions already provide Degree Completion Programs. NCAA rules should standardize this offering. The NCAA must also define a category of relatively disadvantaged schools for which this requirement would impose a substantial burden, and create a fund to provide the benefit for students at those institutions, using the revenues of the NCAA Basketball tournament.

The NCAA is frequently criticized for not permitting payment to student-athletes, on the ground that these young people are engaged in an activity that generates billions of dollars and yet they do not benefit. The debate is longstanding; views are entrenched; and both sides make important points. One significant counter to that argument is that many Division I student-athletes benefit enormously from engaging in intercollegiate sports. In addition to receiving full scholarships up to the cost of attendance (ranging from \$13,392 to \$71,585 for in-state students and from \$18,125-\$71,585 for out-of-state students depending on the institution),<sup>9</sup> student-athletes often receive benefits such as academic support, meals, travel, coaching, trainers, career advice and more. The value of these extra benefits may be tens of thousands of dollars annually.<sup>10</sup> As noted above, for student-athletes who receive a degree, the enhanced value of their lifetime earnings averages \$1 million.<sup>11</sup> Again, the Commission agrees that for these benefits to be realized, colleges must make good on their commitment to assist student-athletes in earning their degrees.

The Commission is familiar with the related debate about whether student-athletes should earn some financial benefit from the marketing of their names, images and likenesses (NIL). Many argue that allowing these payments would be

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<sup>9</sup> See NCAA Financial Reporting System.

<sup>10</sup> See, e.g., *USA Today analysis finds \$120K value in men's basketball scholarship*, USA TODAY (March 30, 2011).

<sup>11</sup> Georgetown University Center on Education and the Workforce, *The Economic Value of College Majors*, Executive Summary, p. 5, Figure 3 (2015); Pew Research Center, *The Rising Cost of Not Going to College*, (Feb. 11, 2014) (“Millennial college graduates ages 25 to 32 who are working full time earn more annually – about \$17,500 more – than employed young adults holding only a high school diploma”); (“College-educated Millennials are also more likely to be employed full time than their less-educated counterparts (89% vs. 82%) and significantly less likely to be unemployed (3.8% vs. 12.2%)”).

analogous to the receipt of funds by collegiate Olympians and thus consistent with the collegiate model, particularly if students did not receive the funds until after college. The NCAA is a defendant in litigation involving such payments, which appears to raise fundamental questions about whether these and similar payments are consistent with the collegiate model. The court stated that “[t]he difference between offering student-athletes education-related compensation and offering them cash sums untethered to educational expenses is not minor: it is a quantum leap. *Once that line is crossed, we see no basis for returning to a rule of amateurism and no defined stopping point.*” *O’Bannon v. NCAA*, 802 F.3d 1049, 1078 (9th Cir. 2015) (emphasis added).

If a college or university is using a student-athlete’s NIL for commercial purposes, the school must ask that student-athlete for consent, which must be voluntarily given. *See also* NCAA Bylaw 12.5 (Promotional Activities) (describing permissible and non-permissible uses). When the legal parameters relevant to this issue are clearer,<sup>12</sup> the Commission also believes that the NCAA should reconsider its treatment of student-athletes’ NIL. In the current uncertain legal setting, however, the Commission has decided to focus its recommendations on supporting the college model. It seeks to address the charge of player exploitation in other ways – specifically, by opening and keeping open a player’s professional pathway, by welcoming the return of undrafted players, by funding degree completion by athletes who return to school, by providing benefits that

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<sup>12</sup> In *O’Bannon*, the court of appeals vacated the district court’s requirement that the NCAA allow payments of limited deferred compensation related to use of student-athletes’ NIL. The court of appeals held that “allowing students to be paid NIL compensation unrelated to their education expenses” does not promote the NCAA’s procompetitive purposes as effectively as a rule forbidding cash compensation, even if payments are limited and in a trust fund. 802 F.3d at 1076. And, the NCAA continues to be in the midst of substantial litigation challenging the collegiate model, including multi-district litigation alleging more broadly that the NCAA and eleven of its conferences “fixed prices for the payments and benefits that the students may receive in return for their elite athletic services.” *See* Order Granting in Part and Denying In Part Cross-Motions for Summary Judgment at 1, *In re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litig.*, Nos. 14-md-02541-CW, 14-cv-02758-CW (Mar. 28, 2018). *See also infra*, n. 17 (citing a number of cases challenging the college model). Again, the Commission strongly recommends that the NCAA reconsider its rules in this area once the legal context is clarified.

allow student-athletes to be both students and athletes and by imposing significant punishment on those who undermine the premise that student-athletes must receive an education that is valuable, not a pretense. The NCAA will have to incur substantial costs for several of these recommendations. But it will be money well spent.

## **Section 2: Establish Professional Neutral Investigation and Adjudication of Serious Infractions and Hold Institutions and Individuals Accountable**

### **A. Implement Independent Investigation and Adjudication of Complex Cases.**

The Commission recommends that the NCAA create independent investigative and adjudicative arms to address and resolve complex and serious cases (hereafter “complex cases”) involving violations of NCAA rules.

Stakeholders informed the Commission that when the stakes are high, colleges are not complying with the NCAA’s shared governance and cooperative principles and NCAA rules often are not enforced. Specifically, the NCAA’s investigative and enforcement powers are inadequate to effectively investigate and address serious violations of NCAA rules in consequential situations. No stakeholder supported the current system for handling high-stakes infractions. Many informed us that when the U.S. Attorney’s Office announced the charges that led to this Commission, the reaction was that “everyone knows” that these payments occur. That state of affairs – where the entire community knows of significant rule breaking and yet the governance body lacks the power or will to investigate and act – breeds cynicism and contempt.

The NCAA’s investigative and enforcement processes require a complete overhaul. Complex cases must be thoroughly investigated, and resolved by neutral professional adjudicators, with authority to impose punishment that will have a significant deterrent effect. The investigative arm must be independent and empowered to require the cooperation of witnesses and the production of documents, including financial information, from NCAA member institutions and their employees and contractors, with significant penalties for non-cooperation. In addition, these and all NCAA investigators must exercise reasonable prosecutorial discretion and common sense so that resources are focused on serious infractions and punishment is appropriately calibrated and consistently administered. There are multiple examples of minor infractions that are not worth the time and effort that the NCAA now spends on them.

Volunteers who are members of fellow NCAA member institutions should not resolve cases. Instead, a panel of professional adjudicators, appointed for a term of years, must make final and binding decisions and must have the authority to impose substantial punishments, including the loss of post-season play and the revenues from post-season play. To restore credibility to this process, the investigation, enforcement and resolution of high stakes cases must be placed in the hands of independent professionals and neutrals.

**B. Enact and Impose Core Punishments With Significant Deterrent Effect.**

The Commission recommends that the NCAA enact significant increases in the penalties imposed on institutions and individuals for violations of NCAA rules. Currently, the rewards for violating the rules far outweigh the risks. To reverse this calculation, the Commission recommends a number of changes in the NCAA's penalty structure.

First, the Commission recommends the following increases in the core penalty structure: (i) increase the competition penalties for Level I violations to allow a five-year post-season ban; (ii) increase the financial penalties for Level I violations to allow loss of all revenue sharing in post-season play, including the NCAA tournament, for the entire period of the ban; (iii) increase the penalties for a show-cause order to allow life-time bans; (iv) increase the penalties for head coach restrictions to allow bans of more than one season; and (v) increase the penalties for recruiting visit violations to allow full-year visit bans.

In addition, the Commission recommends that member institutions that employ a coach or athletic director under a show cause order for a previous violation of NCAA rules be subject to significantly increased penalties if that individual's program re-offends, up to and including a ban of up to five years from post-season tournaments, including the NCAA tournament, and a loss of revenues from those tournaments for that same period. There must be significant risk associated with employing an individual who is under a show cause order.

Relatedly, the Commission recommends a significant expansion in *individual accountability* for rules violations for coaches, athletic directors and college presidents. The NCAA must amend its rules to require colleges to include in contracts with administrators and coaches individual contractual obligations to cooperate with NCAA investigations, including financial disclosure, and individual agreement to submission to NCAA enforcement proceedings, decisions and discipline, up to and including discharge.

Moreover, the Commission recommends that the NCAA enact a rule requiring coaches, athletic directors, and college presidents to certify annually that they have conducted due diligence and that their athletic programs comply with NCAA rules.<sup>13</sup> These individuals will find it much easier to do so if they enact comprehensive compliance programs at their institutions. The costs of compliance may be significant, but they should be small by comparison to the costs of being found in violation of NCAA rules. The NCAA rules should provide for significant penalties for those individuals if they knew or should have known of violations and did not address them, up to and including termination. These penalties should be mitigated or enhanced depending upon the presence and effectiveness of the institution's compliance program.

Coaches are the public focus of blame for NCAA violations. For too long, college presidents and administrators have not been viewed as accountable for the conduct of their athletic programs. That will have to change. College presidents and high-level administrators cannot be permitted to turn a blind eye to the infractions in those programs.

Finally, among other substantive rules changes, the Commission recommends that the NCAA revise and clarify its role in addressing academic fraud or misconduct by member institutions and make application of those rules consistent. The NCAA must have jurisdiction to address academic fraud and misconduct to the extent it affects student-athletes' eligibility. Member institutions cannot be permitted to defend a fraud or misconduct case on the ground that all students, not just athletes, were permitted to "benefit" from that fraud or misconduct. Coaches, athletic directors and university presidents must be held accountable for academic fraud about which they knew or should have known. The standards and punishment for academic fraud must be clarified and then enforced consistently.

### **Section 3: Mitigating Non-Scholastic Basketball's Harmful Influence on College Basketball**

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<sup>13</sup> This rule would be analogous to the Sarbanes Oxley Act, 15 U.S.C. §7241, Corporate Responsibility for Financial Reports (2006), which requires the Chief Executive officers of public companies to personally certify their financial reports.

Virtually all of the top recruits for each collegiate recruiting class participate in non-scholastic basketball. The Commission recommends that the NCAA take short and long-term actions to reform non-scholastic basketball and disassociate the NCAA and its member institutions from the aspects of non-scholastic basketball where transparency and ethical behavior cannot be assured. As part of this effort, the Commission recommends that the NCAA partner with USA Basketball, the NBA, the NBPA and others to create and administer new resources and programs for youth basketball development, including substantial regional camps for collegiate prospects in July where NCAA coaches would evaluate players.

**A. Reform Non-Scholastic Basketball and Make Its Finances Transparent.**

In the near term, the Commission recommends that the NCAA promptly adopt and enforce rigorous criteria for certifying the non-scholastic basketball events that its coaches attend. In order for the NCAA to certify a non-scholastic basketball event, the owners, event operators, sponsors, and coaches for the event must agree to financial transparency about all events they run, including those that are not certified by the NCAA. This requirement includes agreement (i) to be subject to audit and to provide all required IRS and other tax filings upon request; (ii) to disclose all sources of financing and other payments and the recipients of all funds provided for or collected in relation to the event; and (iii) to disclose any financial relationship between the event sponsors and coaches with any administrator, coach or booster at any NCAA school. The money flowing from apparel companies and other third parties into non-scholastic basketball must be disclosed and accounted for, in order to address the corruption arising from non-scholastic basketball.

Further, the NCAA's rules already require NCAA-certified events to have educational components; the NCAA must immediately implement and enforce that requirement more effectively. All benefits provided to participants and their families, including travel, meals, accommodations, gear of any sort, and any other benefit, must be disclosed to the NCAA, along with the source of their provision. The NCAA must enforce the requirement that such benefits be reasonable and appropriate and assure that these restrictions are not circumvented by delaying the timing or providing the benefits to another.

Currently, non-scholastic basketball is an ungoverned space with coaches, players and their families, agents and sponsors exchanging money and goods in the hope of future benefits and without accountability. Of particular importance to the Commission are the cases in which non-scholastic basketball event operators and

coaches seek benefits from colleges and college coaches in exchange for influencing their players' college choices. To recruit effectively, many NCAA coaches need to attend non-scholastic basketball events in which large numbers of elite players participate. In turn, these events, leagues and teams attract high school players by giving them the opportunity to be seen and evaluated annually by college coaches. Thus, using its certification requirement, the NCAA has some leverage to impose the financial transparency requirements and other reforms that the Commission recommends above.

**B. Enlist the Apparel Companies in Transparency and Accountability Efforts.**

The apparel companies that actively sponsor non-scholastic basketball are public companies. It appears, however, that they do not have effective controls in place in their spending in non-scholastic basketball. The Commission calls on the boards of these companies to publicly support and implement financial transparency and accountability with respect to their own investments in non-scholastic basketball. Particularly in light of the facts uncovered in the recent FBI investigation, these public companies should be concerned about how their money is used in non-scholastic basketball. We expect that these companies will insist that all employees provide detailed accountability about such expenditures and cooperate with new NCAA rules about financial transparency and accountability.

**C. In Cooperation with Partners, Establish NCAA Youth Basketball Programs.**

With respect to the longer term, the Commission recommends that with a goal of 2019, the NCAA work with USA Basketball, the NBA and the NBPA and others to establish and administer new youth basketball programs. We would expect the NCAA to devote significant resources and attention to these programs. Briefly, the Commission proposes that youth basketball players be identified and developed at three levels: Level 1, players with National Team potential; Level 2, players with Highest Collegiate potential; and Level 3, players with Collegiate potential. At each level, players would have to be identified, developed and evaluated by appropriate stakeholders. Critically, that development would include not only basketball, but also academic and life skills, health and collegiate eligibility. One centerpiece of this program would be NCAA-administered regional non-scholastic basketball events in July that NCAA coaches would exclusively attend. The Commission also recommends that the NCAA – in collaboration with USA Basketball, the NBA, the NBPA, the WNBA and the

WNBPA – consider similar initiatives to enhance the development of young women basketball players.

In sum, the NCAA and NCAA coaches may no longer associate with non-scholastic basketball events that are not financially transparent and otherwise compliant with NCAA requirements regardless of when they are held. Moreover, in light of the recommendation that players be permitted to choose a professional pathway at an earlier time, the NCAA and others should devote significant resources to earlier development, including education, for players in youth basketball. The corruption we observe in college basketball has its roots in youth basketball. The reforms recommended by the Commission will be fruitless unless the NCAA gives serious attention to regulating summer programs.

**D. Enact Changes in Rules Governing Recruiting and Coaches' Interaction with Recruits and Student-Athletes.**

The Commission also endorses and recommends adoption of a number of the rule changes recommended by the National Association of Basketball Coaches and other organizations to reduce the influence of third parties and increase the ability of college coaches to interact with recruits and current players.

**Section Four: Add A Significant Cadre of Public Members To The NCAA's Board of Governors.**

The Commission recommends that the NCAA restructure its highest governance body, the Board of Governors, to include at least five public members with the experience, stature and objectivity to assist the NCAA in re-establishing itself as an effective and respected leader and regulator of college sports. One of these public members should also serve on the NCAA's Executive Board. The current Board of Governors includes 16 institutional presidents or chancellors, the chairs of the Division I Council and the Division II and III Management Councils, and the NCAA president. NCAA Constitution 4.1.1 (Composition). Like public companies, major non-profit associations usually include outside board members to provide objectivity, relevant experience, perspective and wisdom. Board members with those qualities will provide valuable insight to the NCAA generally, and as it works towards the restoration of college basketball. The NCAA should promptly identify candidates with the appropriate stature and characteristics, and change its rules to require public voting members on its highest governing body. The Commission will make independent board member recommendations to the NCAA to assist it in assembling a first-rate list of candidates.

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The NCAA has often failed to carry out its responsibilities to “maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body.” NCAA Constitution 1.3.1 (Basic Purpose). But, the NCAA is not really Indianapolis: It is the sum total of its member institutions. When those institutions and those responsible for leading them short-circuit rules, ethics and norms in order to achieve on-court success, they alone are responsible. Too often, these individuals hide behind the NCAA when they are the ones most responsible for the degraded state of intercollegiate athletics, in general, and college basketball in particular. The Commission makes these recommendations to support fulfillment of the NCAA’s purposes and to impose accountability on institutions and individuals undermining their achievement.

## REPORT OF THE COMMISSION

### Introduction

On September 26, 2017, the United States Attorney’s Office for the Southern District of New York announced the arrest of ten persons for involvement in fraud and corruption schemes related to college basketball – four NCAA Division I college basketball coaches, a senior executive and two employees at a major athletic apparel company, and three athlete advisors. The first scheme involved allegations that college coaches took cash payments from athlete advisors to steer players and their families to the advisors making the payments. The second scheme involved allegations that a senior executive at a sports apparel company worked with athlete advisors to funnel payments to high-school players and their families to obtain their commitment to attend universities sponsored by the apparel company.

After the announcement of these charges, the NCAA’s President, Mark Emmert, stated that it is “very clear the NCAA needs to make substantive changes to the way we operate, and [to] do so quickly.” *Statement from Pres. Mark Emmert*, Oct. 11, 2017. He continued: “[w]hile I believe the vast majority of coaches follow the rules, the culture of silence in college basketball enables bad actors, and we need them out of the game. We must take decisive action. This is not a time for half-measures or incremental change.” As a first step, he announced that the NCAA Board of Governors, the Division I Board of Directors and the NCAA President had established an independent Commission on College Basketball, chaired by Dr. Condoleezza Rice. The Commission was to “examin[e] critical aspects of a system that clearly is not working” and focus on three areas:

- The relationship between the NCAA national office, its members, their student-athletes and coaches and third parties, including apparel companies, non-scholastic basketball and athlete agents and advisors.
- The relationship between the NCAA and the NBA, including the challenging effect of the NBA’s current age eligibility rule which created the one-and-done phenomenon in men’s college basketball.
- The creation of the right relationship between the NCAA’s member institutions and its national office to promote transparency and accountability.

The NCAA appointed the following additional members of the Commission:

- Mary Sue Coleman, President, Association of American Universities
- General Martin E. Dempsey, U.S. Army, Retired, Chairman, USA Basketball
- Jeremy Foley, Athletic Director Emeritus, University of Florida Athletic Association
- Jeffrey Hathaway, Vice President/Director of Athletics, Hofstra University
- Grant Hill, Owner/Vice Chairman, Atlanta Hawks
- Rev. John I. Jenkins, C.S.C., President, University of Notre Dame
- Mike Montgomery, Retired Basketball Coach, Analyst, PAC-12 Networks
- David Robinson, Founder, Admiral Capital Group
- Kathryn Ruemmler, Former White House Counsel, Partner, Latham & Watkins LLP
- Gene Smith, Sr., Vice President and Wolfe Foundation Endowed Athletics Director, Ohio State University
- John Thompson III, Board of Directors, National Association of Basketball Coaches

The Commission was charged with gathering information and expert opinions for making “transformative recommendations” to the Division I Board of Directors and NCAA Board of Governors on “legislation, policies, actions and structure(s) to protect the integrity of college sports, with a focus on Division I men’s basketball.” Members of the Commission were appointed for an initial six-month term. The Commission’s goal was the completion of its work and a report to the NCAA Boards for action at their April 2018 meetings. This document is that report, and it contains the Commission’s recommendations with respect to the challenges currently facing college basketball.

Before going further, however, the Commission believes it is important to confront the uncomfortable fact that the challenges identified in this report have been part of the landscape of pre-professional basketball for many years, and that

others have previously made serious efforts to address them with only limited success. To be sure, these challenges have become more prominent in the past decade as elite basketball – pre-college, in-college and post-college – has become exponentially more lucrative. The fact remains, however, that today’s issues have been around a long time, and their existence is widely acknowledged. Virtually all stakeholders and others providing information to the Commission at some point uttered the discouraging phrase: “Everyone knows what’s been going on.”

The Commission now recommends that the NCAA seeks changes from other organizations, such as the NBA and the NBPA, and that it make significant internal changes, including fundamental changes to the process, rules and penalties related to compliance. However, the Commission recognizes that some humility is required in light of past failures and the size of the challenge. Stakeholders do *not* agree about either the causes or the potential solutions to the current challenges that face pre-professional basketball. The Commission believes that these challenges will persist unless all stakeholders accept responsibility for the credibility of the game, the reputations of the schools who field teams and the integrity of the athletes who compete.

## **The Commission’s Process**

### **A. Information Gathering: Conversations with Stakeholders**

From mid-October 2017 through early April 2018, the Commission sought the views of stakeholders. In meetings, the Commission directly heard the views of a number of parties. In addition, the Commission opened a portal and solicited public comment on its work, receiving numerous helpful written responses. The Commission heard directly from the NBA, the NBPA, USA Basketball, numerous NCAA offices and departments, multiple athletic conferences, several apparel companies and agents, college and high school coaches associations, student and faculty associations, athletic directors’ associations, other interested associations and groups, the Uniform Law Commission, athletes and other individuals. The Commission appreciates all of this helpful input into its work.

### **B. Information Gathering: Briefings from the NCAA, Its Agents and Others**

The Commission also benefited from the following briefings:

*Path of an elite men's basketball player*, Dan Gavitt, Senior Vice President of Basketball, NCAA;

*Current NCAA eligibility, accountability and infractions framework*, Donald Remy, Executive Vice President of Law, Policy & Governance and Chief Legal Officer, NCAA; Oliver Luck, Executive Vice President of Regulatory Affairs, NCAA;

*NCAA Compliance and Infractions Model*, Kay Norton, President, University of Northern Colorado; Greg Christopher, Director of Athletics, Xavier University;

*Prosecutions Involving NCAA Division I Coaches*, Ron Machen, Partner, Wilmer Hale, outside counsel to the NCAA;

*Division I Men's Basketball Study on Youth Sport, Recruiting and College Choice*, NCAA Research, presented by Lydia Bell, NCAA.

### **C. Deliberations**

In its meetings, the Commission spent close to 70% of its time in executive session to discuss its dialogue with stakeholders and the materials and presentations it had received. The Commission's discussions were enhanced by the varied and deep experience of its members, including former student-athletes, former professional athletes, coaches, athletic directors, university presidents and provosts and NBA owners. The Commission also benefited from the insights, experience and expertise of its members who are "outsiders," and brought to bear their unique perspectives from government and the military on the current problems of men's Division I basketball. Through executive session discussions, the Commission was able to assess how the information it received and the perspectives of stakeholders might affect potential NCAA actions to address the issues identified for the Commission's consideration.

### **Summary Identification of the Issues**

Both Division I men's basketball and the NBA are multi-billion dollar enterprises. Many individuals and entities earn a living and more by direct and indirect association with these entities. Thus, the financial stakes are high for elite

players,<sup>14</sup> coaches, athletic directors, colleges and universities, apparel companies, agents and athlete advisors of all stripes. Where this much money is at stake, the incentives to break rules are high. To identify issues and craft potential recommended responses, the Commission was asked to focus on three categories of relationships in college basketball: (1) the relationships between college basketball and the NBA and NBPA; (2) the relationships between the NCAA and its member institutions; and (3) the relationships between college basketball and apparel companies, non-scholastic basketball (coaches and leagues), agents and other third parties.

#### **A. The Relationships Among College Basketball, The NBA and The NBPA**

In 2006, the NBA and the NBPA first entered into a collective bargaining agreement that made high school players ineligible for the NBA draft. There is, however, a small group of elite players who would prefer to bypass college and play in the NBA after high school and who would be drafted, were it permitted under the NBA's and NBPA's collectively bargained rules. These players often do not find the alternative professional options – such as the G League or non-U.S. leagues – as desirable as making a name for themselves in Division I men's basketball. Thus, these players, colloquially referred to as one-and-done players, attend college for a single year – and sometimes only until the day their schools are eliminated from the NCAA tournament.

Since 2006, NBA teams have drafted an average of eight college freshman each year. Most of these one-and-done players attended one of six schools.<sup>15</sup>

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<sup>14</sup> There is no single definition of elite. There is a small group of players each year considered to have the potential to jump from high school to the NBA (single digits); a larger group of 25-30 players heavily recruited by prominent Division I programs; and still a larger group playing in the elite apparel companies' circuits (perhaps 800 spread over four recruiting classes). All told, Division I schools recruit roughly 1125 basketball players each year. Each of these categories may be referred to as "elite."

<sup>15</sup> Over the past decade, the number of one-and-done players has ranged from five to 18. In the past four years, the range is 9-18 (9 in 2014, 13 in 2015, 14 in 2016, and 18 in 2017). *Backup Information Regarding "One-and-Done" Players*, Dec. 6, 2017.

However, the small numbers mask a large issue with respect to third-party influence and corruption, as well as the corruption of academic standards.

Many who number among elite players while in high school believe and expect that they will play professional basketball. *See* Executive Summary (ES) Section 1.B. Many third parties – *e.g.*, agents, apparel companies and other athlete advisors – see some high school players’ potential for a professional career, and the potential for earnings for themselves, and are willing to invest in a significant number of players in the hope that some will be drafted and yield returns. Thus, the incentives for third parties to make improper payments to players and others with influence over players exist beyond the small group of players who may be one-and-done, and extend into the slightly larger group of players who will play additional years of college basketball before playing professionally. Nonetheless, it is fair to say that substantial third-party attention, including financial attention, will focus on one-and-done players and a relatively small additional group.

For a subset of these players who have no intention of spending more than a year or two in college or whose time is fully consumed by basketball, maintaining academic eligibility to play may be a challenge. If that player is good enough, however, the school may be strongly motivated to assist that student-athlete in maintaining his eligibility. This situation creates another opening for corruption – the manipulation and dilution of academic standards by school officials, along with other academic misconduct. A series of recent cases involve this phenomenon. Other cases illustrate the lack of clarity about the NCAA’s rules and the likely punishment for academic misconduct, as well as inconsistency in the NCAA’s application of the rules.<sup>16</sup> This problem of corruption of college standards clearly is not restricted to one-and-done players, but these players effectively illustrate one

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<sup>16</sup> *See, e.g., University of North Carolina at Chapel Hill Public Infractions Decision*, Oct. 13, 2017 (holding that only member institutions – not the NCAA – can determine whether academic fraud has occurred and that student-athletes did not receive extra benefits because the sham courses at issue were available to all students); *University of Notre Dame Infractions Decision*, Feb. 13, 2018 (upholding decision that Notre Dame must vacate all records in which student-athletes participated while ineligible due to academic misconduct in which a full-time student working a part-time job as a student trainer was involved); *Georgia Southern Univ. Public Infractions Decision*, July 7, 2016 (finding that institutional staff members provided impermissible academic assistance where one gave a student-athlete a flash drive containing completed coursework and another wrote and submitted extra credit papers for student-athletes).

issue created by the matriculation of student-athletes who enroll in school solely to play basketball.

The one-and-done phenomenon has provided some benefits to colleges and universities and to elite high school basketball players. Schools achieve national notice and prominence with athletic success and championships due to the presence of these players, with associated financial and reputational benefits. As for players, many believe that they will have the opportunity to play professional basketball if they can draw the attention of professional coaches and scouts. Playing Division I men's basketball allows players to make a name for themselves among professional leagues and teams. Further, these players receive some of the educational and other benefits associated with a year in college.

In addition, elite high school players currently understand that in order to play Division I basketball, they must meet the eligibility requirements to attend a Division I school. *See* NCAA Division I Bylaw 14.3 (Freshman Academic Requirements). Because numerous players who will not play professional basketball nonetheless believe that they will, these players gain the benefit of educational levels and opportunities that they might otherwise have forgone. The Commission takes these benefits seriously and, in particular, does not underestimate the transformative possibilities in attaining academic eligibility for college or in spending a year or more in college.

Finally, many high school and collegiate student-athletes do not receive the information and assistance they need to accurately determine whether and when to pursue professional basketball. The NCAA's current rules on amateurism place limits on the ability of those players to test the professional market for their services and to obtain assistance from an agent in assessing their potential value. This, in turn, may prevent student-athletes from taking full advantage of their collegiate opportunities.

## **B. The NCAA's Relationship With Member Institutions**

The Commission heard from many commenters who identified both the NCAA's *enforcement process* and the *substance* of the NCAA's rules as inadequate to deal with the challenges presented by Division I men's basketball.

### **1. Process**

There appears to be a strong consensus that when the stakes are high – *i.e.*, when violations are serious and the potential penalties are substantial – the

NCAA's member institutions are not complying with the NCAA's shared governance and cooperative principles and NCAA rules are not being effectively enforced. *See* NCAA Division I Bylaw 19.2 (Expectations and Shared Responsibility); NCAA Division I Bylaw 19.2.3 (Responsibility to Cooperate); NCAA Constitution 2.8 (The Principle of Rules Compliance). Specifically, the NCAA's investigative and enforcement powers are limited and often appear inadequate to effectively investigate and address serious violations of NCAA rules in consequential situations. The Commission did not hear from a single stakeholder who supported the current system in addressing high-stakes infractions.

In support of the allegation that the NCAA's investigative powers are insufficient, many stakeholders noted that when the U.S. Attorney's Office announced the charges that prompted the NCAA to establish this Commission, no one in the relevant community expressed surprise and many stated that "everyone knows" that these kinds of payments occur. Where an entire community is aware of substantial rule breaking and the governance body fails to act, the result is cynicism and contempt.

Virtually all stakeholders, including NCAA staff, expressed the view that the current model for adjudication of NCAA rules violations should not continue. Representatives of member institutions that have crosscutting and potentially self-interested incentives with respect to punishment administer the NCAA's current adjudication process. While many stakeholders expressed gratitude and respect for the hard work of the volunteers who administer the current infractions process, all expressed the belief that the current system is not working in cases involving serious violations.

## **2. Substance, Including Penalties**

Stakeholders further suggested that the Commission consider whether the substantive content of certain NCAA rules is contributing to the problems identified above. Stakeholders identified numerous issues with the NCAA's current rules governing eligibility, amateurism and recruiting. As noted above, they also expressed the view that the consequences for rule violators were insufficient in many instances and excessive in others.

*Eligibility and Academic Misconduct.* The Commission heard criticism of the NCAA's rules related to academic eligibility. *See* NCAA Bylaws, Art. 14. With respect to post-enrollment academic performance, the NCAA's "progress towards degree" requirements determine whether individuals remain eligible to

play. Stakeholders did not take issue with the substance of these rules. Instead, the Commission heard criticism about the NCAA's relationship with member institutions' course offerings and academic requirements.

Some stakeholders believe that the NCAA should not be in the business of enforcing academic standards. However, many others assert that the NCAA's current rules with respect to academic standards undermine the integrity of the collegiate experience and game. All agree that the NCAA's jurisdiction to address academic fraud and misconduct as related to athletic eligibility must be clarified and become more consistent.

*Amateurism.* The Commission also heard from critics of current NCAA rules regarding amateurism. NCAA rules require that students who play for college teams qualify as "amateurs" and continue to be so qualified throughout their collegiate years. Although there are exceptions and complexities, the Bylaws forbid college athletes to receive compensation in any form in the sport, to accept a promise of pay, to sign a contract or commitment to play professional athletics, to receive consideration from a professional sports organization, to compete on a professional team and to enter into an agreement with an agent. In addition, a student-athlete cannot receive preferential treatment, benefits or services because of his athletic reputation or skill, unless specifically permitted by NCAA rules. NCAA Division I Bylaws 12.1.1.2.1 (Amateur Status After Certification); 12.1.1.1.3 (Eligibility for Practice or Competition), 12.1.2 (Amateur Status); 12.1.2.1.6 (Preferential Treatment, Benefits or Services).

Some stakeholders note that many elite players receive some form of payment to play basketball before attending college; that student-athletes are bringing substantial sums into NCAA and collegiate coffers; and that playing Division I men's college basketball is essentially a full time job that does not leave room for a normal college experience. They conclude for some or all of these reasons that players should receive some recompense (beyond the full value of their education) for playing basketball.<sup>17</sup>

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<sup>17</sup> The NCAA has faced and continues to face *legal* challenges to its amateurism rules under antitrust and employment theories. *Northwestern Univ. and College Athletes Players Ass'n*, Case 13-RC-12135, 362 NLRB No. 167 (Aug. 17, 2015) (declining to accept jurisdiction over bargaining unit of Division I FBS football players who receive scholarships); *In re: National Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litigation*, Case No. 4:14-md-2541-CW (N.D. CA 2014) (challenging failure to pay Division I men's and women's basketball and

Others recognize the validity of some of these points, but contend the student-athletes receive significant benefits from their college experiences, including the value of the scholarship (the full cost of a college education), the associated training, coaching and benefits of being on a collegiate team, and the lifelong incremental increase in earning power resulting from a college degree. *See* ES Section 1.D. Many believe that paying players is not financially or legally feasible and that doing so would fundamentally alter the nature of the collegiate game. They support a variety of means – other than payment – to address the economic circumstances and equities of student-athletes in high-revenue sports, and to ensure that they receive the education that the college promises. In addition, they support continued enforcement of the amateurism rules.

Still others believe that the NCAA rules are so focused on pre-professional sports that the NCAA has failed to create a system that makes sense for the majority of student-athletes who will not make a living at their sports. Under these rules, stakeholders assert, student-athletes who accept any “benefit,” no matter how small, risk losing their eligibility to compete. The NCAA’s administration of the “no benefit” rule, *see* NCAA Bylaw 16.11.2 (Nonpermissible), was criticized as penalizing student-athletes and preventing them from engaging in normal interactions with friends and mentors. Those holding this view suggest that the NCAA should engage in common sense calibration of the “no benefit” rule for particular contexts.

*Agents.* NCAA rules further forbid collegiate athletes to enter into any agreement (oral or written) with agents for purposes of marketing their athletic ability or reputation for financial gain, even if that agreement is limited to *future* representation. Prohibited marketing includes negotiations with professional teams, seeking product endorsements and efforts to place an athlete at a particular school. The rules likewise forbid family members or other representatives to enter

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FBS football players the difference in the value of an athletic scholarship and the full cost of attendance); *Jenkins et al. v. NCAA*, Civil Action 14-CV-3:33-av-0001 (D.N.J. 2014) (challenging agreement not to compete for services of Division I men’s basketball and FBS football players as violation of the antitrust laws without legitimate pro-competitive purposes); *O’Bannon v. NCAA*, 802 F. 3d 1049 (9th Cir. 2011) (challenging NCAA’s bylaws limitation precluding compensation for student-athletes’ images and likenesses in violation of the antitrust laws); *Berger v. NCAA*, 843 F.3d 285 (7th Cir. 2016) (alleging that all Division I student-athletes are entitled to minimum wage for practice and competition as employees regardless of whether they receive athletic-related scholarships).

into such an agreement on behalf of an athlete. In addition, athletes may not accept benefits from agents even if those benefits do not have strings visibly attached. NCAA Division I Bylaws 12.3.1 (General Rule); 12.3.1.2 (Representation for Future Negotiations); 12.02.1 (Agent); 12.3.3 (Athletics Scholarship Agent); 12.3.1.3 (Benefits from Prospective Agents).<sup>18</sup>

Some stakeholders expressed the view that agents should be permitted to have earlier access to athletes, potentially as early as during high school, and certainly at the beginning of each academic year in college. Agents opined that parents, families and students are eager for knowledge about their collegiate, professional and post-collegiate options and that they will find that information one way or another. They assert that student-athletes routinely misunderstand their own professional prospects and their best path to success and that agents and advisors could assist student-athletes in making the best choices about eligibility, including choices that would result in higher levels of educational achievement.

In addition, many stakeholders, including agents, told the Commission that agents are determined to develop relationships with professional prospects and, whatever the rules provide, will find ways to make contact with student-athletes and those who influence them. Most stakeholders believe that many agents are already communicating with elite high school players and with collegiate players with professional prospects, often in violation of NCAA and school rules. It would be better, stakeholders argue, if these contacts were in the open and regulated by the NCAA, including by requiring NCAA certification and registration with schools and by restricting contact to specific times and places.

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<sup>18</sup> There are some exceptions to this prohibition. For example, a student-athlete may use the services of an attorney or other individual to evaluate a professional sports contract (though that person may not be present for or otherwise represent the athlete in negotiations with a professional team). NCAA Division I Bylaw 12.3.2 (Legal Counsel). A school's professional sports counseling panel is permitted to review a proposed professional contract and provide other services to student-athletes considering a professional career, NCAA Division I Bylaw 12.3.4 (Professional Sports Counseling Panel). An athlete may also engage and pay a recruiting service to provide information to colleges on the athlete's behalf, provided the fee paid to such a service is not based on placement of the prospective student-athlete in a college as a recipient of institutional financial aid. NCAA Division I Bylaws 12.3.3 (Athletics Scholarship Agent); 12.3.1 (Talent Evaluation Services and Agents).

Still other stakeholders, including a number of agents, took the position that allowing agents to have contact with high school students will result in even earlier agent involvement in student-athletes' decision making, including their selection of a grassroots or non-scholastic basketball coach, a high school, a college, etc. These stakeholders maintain that the barriers to entry for professional agents should be higher (while recognizing that the NBPA has recently taken important steps to improve the quality of the agent cadre), and that the penalties for agents who violate NCAA rules should be higher (either through enforcement of state laws or through reporting of violations to the NBPA or other unspecified rule changes).

*Recruiting.* In the view of many Division I coaches, the NCAA rules hamstring college coaches and allow non-scholastic coaches and other third parties to become the primary influences over elite high school players. For example, Division I coaches have limited opportunities to evaluate high school players in both scholastic and non-scholastic settings, and those players cannot officially visit colleges and universities until late in their junior year. *See generally* NCAA Division I Bylaws, Art. 13. Indeed, Division I coaches complain that they are dependent on non-scholastic coaches, leagues and events for opportunities to view players, giving those third parties even more leverage over high school players. In the interim, high school players are playing non-scholastic basketball sponsored by apparel companies who provide those high school players with gear, travel and experiences. Division I coaches seek to increase their direct contact with high school players at critical junctures, and to limit their dependence on non-scholastic coaches, leagues and apparel companies for access to high school players.

*Penalties.* Finally, most stakeholders believe that the NCAA must have authority to impose harsher penalties on schools, coaches and administrators (including presidents) who violate the rules or know of rules violations and do nothing or who fail to cooperate with NCAA investigators. There was a strong sentiment that the NCAA must have the ability to impose loss of post-season play, including the NCAA tournament, and loss of revenue from post-season play on those who commit serious infractions and those who decline to cooperate with NCAA investigations. They believe that the availability – and utilization – of these penalties would get presidential and board-level attention at colleges. These persons further note that administrators, athletic directors and coaches who violate the rules often move on to other member institutions, and do not pay a significant price for violations that occur on their watch. Moreover, the institutions that hire individuals who have violated the rules pay no significant price for taking the risk of hiring past offenders.

### **C. The Relationships Among College Basketball, Non-Scholastic Basketball, Apparel Companies, Agents and Other Third Parties**

Currently, the NCAA “certifies” some non-scholastic or non-scholastic basketball events and leagues. NCAA Division I Bylaws 13.18 (Basketball Event Certification); 17.31.4.1 (Summer Basketball Leagues). Coaches at NCAA member institutions can attend these summer events only if the NCAA certifies them. Unfortunately, however, the requirements for NCAA certification are minimal, to be generous; and some of the requirements are poorly implemented while others are not enforced. Non-scholastic basketball is largely unregulated.

While an elite basketball player is in high school, he will virtually always develop a relationship with a non-scholastic basketball team and coach and with an apparel company – most likely one of Nike, Adidas or Under Armour. Specifically, apparel companies sponsor elite high school teams that participate in NCAA-certified and other events around the country, including all-star games, camps, and other so-called elite experiences. In addition, Nike sponsors the USA Basketball Men’s Developmental National Team. By funding non-scholastic basketball, the apparel companies receive valuable input about their products, important exposure and credibility through their products’ use, and an opportunity to form early relationships with future college and professional athletes. In connection with participating in these events and experiences, elite players (and their families) may receive luxury travel, gear and other benefits. Sometimes the apparel companies pay the non-scholastic basketball coaches for working with these teams and/or participating in their events.

In addition to coaching, experience, gear and travel, these non-scholastic basketball teams and events offer players exposure, including to Division I coaches. For example, Division I coaches attend and recruit at the NCAA-certified events which are held in April and July each year. Many summer coaches have ongoing relationships with Division I coaches. They can thus bring “their” players to the attention of Division I coaches and potentially influence players to attend particular schools, including schools where “their” apparel company is a sponsor.

The Commission heard varying views on whether the NCAA should be more or less or differently involved in non-scholastic basketball. All stakeholders agreed that non-scholastic basketball has provided substantial benefits to many student-athletes – competition, gear, travel and similar enriching experiences, coaching, exposure to college coaches and an opportunity to receive a college scholarship, among other things. In addition, many college coaches use the events at which significant numbers of high school players gather to evaluate potential

recruits efficiently and economically. Coaches at less advantaged schools rely on these large gatherings to scout the numbers of players they must see in order to put their teams together.

That said, virtually all stakeholders expressed the view that currently, non-scholastic basketball lacks sufficient regulation, with detrimental effects on college basketball. For example, significant money flows into summer ball from apparel companies, agents, investment advisers and other sources, and there is little accountability or transparency about many of the sources and expenditures of those funds. Many state that it is well known that student-athletes are paid – either directly or indirectly (through family members or otherwise) – to play for particular summer teams. Almost all elite basketball players participate in non-scholastic basketball. Thus, as noted above, many players and their families are accustomed to being paid before they attend college.

Many stakeholders further observed that non-scholastic event operators and coaches are sometimes paid to influence student-athletes on their teams to attend particular schools or to work with particular agents and advisors. Players and their families often are not aware of these relationships, and thus not aware that the coach has a financial interest in the player’s decisions about school or representation. Further, college coaches seeking to recruit a player with a relationship to a non-scholastic basketball event operator or coach may have to pay or provide benefits to that operator or coach to be successful in recruiting that player.<sup>19</sup>

A number of stakeholders expressed the view that one way to lessen the negative influence of non-scholastic basketball event operators and coaches would be for the NCAA to administer its own regional non-scholastic basketball camps in July and to restrict NCAA coaches to those NCAA camps for July. Coaches would be able to see numerous elite high school players in one location, in theory without the need for an advance blessing from a non-scholastic basketball coach.

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<sup>19</sup> Sports journalists have recounted the stories of non-scholastic basketball, as summarized in the Pac-12 Men’s Basketball Task Force Report & Recommendations, pp. 16, 19-22 (Mar. 2018) (citing G. Dohrmann, *Play Their Hearts Out* (Ballentine Books 2010); K. McNutt, *Playing Time: Tough Truths About AAU Basketball, Youth Sports, Parents and Athletes*, African American Images, ch. 2 (2015)).

Even putting non-scholastic basketball aside, an elite high school player will develop relationships with a variety of other third parties who may affect his college eligibility and career. Most notably, as already discussed, many of these players will have relationships with agents, often through a “runner” for an agent who is hoping (and perhaps paying) to secure the player as a future client. Sometimes a player’s family members have substantial influence with the player; and they, too, may be paid by agents or other third parties hoping to develop relationships with a future professional.

Thus, when a college coach first reaches out to a high school player, that player may already have a coach to whom he is loyal, and that coach may have relationships with other Division I coaches. The player will also be on a team associated with and loyal to a particular apparel company, and be at the center of a web of other influences and loyalties beyond family and friends, often including an agent. Of course, the college coach too may have a contract with an agent or apparel company. This context makes college recruiting complex and challenging.

Under the current system, Division I men’s basketball players are amateurs (student-athletes) and may receive a scholarship to matriculate and play basketball for their institution, but may not be paid for doing so. In the context described above, however, a player may be strongly tempted to break NCAA rules and enter into a relationship with an agent or attend a particular college in order to be paid. Similarly, coaches and other college representatives may be strongly tempted to pay players, family members and others who can influence players to attend particular schools. As illustrated by the recent charges brought by the U.S. Attorney’s Office, this possibility is not merely theoretical.

This situation is exacerbated for elite players who have solid professional prospects in the NBA, and thus potential future earnings in the tens or hundreds of millions. Apparel companies and agents will be highly motivated to start paying a player (and those who may influence the player) even before he attends college to develop as deep a relationship as possible.

Many of these incentives for third-party conduct are present not only when high school players enter college, but also when college players consider transferring to another institution. As noted above, roughly 40% of freshmen in Division I men’s basketball depart the institution they choose to attend by the end of their sophomore year. Third parties influence many of these transfers. The question of improper influence, accordingly, clearly extends to transfers.

In sum, numerous players provide value to their schools and to third parties who may benefit from their success, and they and/or their families may receive offers of financial support for choices that they make. Some players and/or their families may be in challenging financial circumstances; others may become accustomed to receiving financial support and benefits even before attending a college or university. Student-athletes are currently restricted in their ability to earn income related to their status as student-athletes while matriculating. *See, e.g.,* NCAA Division I Bylaw 12.1.2 (Amateur Status). Thus, players or their families may be offered and receive money the NCAA rules prohibit them from taking, and coaches and others associated with NCAA member institutions may be involved in those payments or themselves take payments to influence players in a variety of ways.

### **Development of a Framework and Commission Recommendations**

As it gathered information and listened to stakeholders, the Commission heard numerous recommendations for specific reforms to address the issues in Division I men's basketball described above. In assessing both the challenges and the potential reforms, the Commission accepted as its foundational principle the collegiate model of athletic competition. The NCAA's basic purpose is "to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports." NCAA Constitution 1.3.1 (Basic Purpose). Member institutions are responsible for controlling their intercollegiate athletics program "in compliance with the rules and regulations of" the NCAA. NCAA Constitution 2.1.1 (Responsibility for Control). "It is the responsibility of each member institution to establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience." NCAA Constitution 2.2.1 (Overall Educational Experience). The Commission's recommendations seek to support and further both the NCAA's purpose and its members' acceptance of responsibility for its achievement.

The Commission recognizes that Division I men's college basketball is just one part of a much larger ecosystem that includes Youth, High School, Non-Scholastic and Professional Basketball. Stakeholders include student-athletes, parents and extended families, coaches, trainers, agents and other advisers, apparel companies, colleges and universities, professional leagues and players' associations and others. In making its recommendations, the Commission sought to take into account these other parts of the basketball ecosystem.

The issues currently confronting the NCAA and Division I men's college basketball are long standing and complex. The Commission believes, however, that implementing the recommendations below will support the integrity of the collegiate game and the NCAA's member institutions without unduly limiting the individual opportunities of student-athletes.

## **Recommendations**

### **Section 1: Realistic Pathways for Student-Athlete Success**

#### **A. Separate The Collegiate Pathway And The Professional Pathway By Ending One-And-Done.**

The Commission concludes that requiring elite high school players whom the NBA would draft to attend college contributes significantly to the corruption of college basketball and higher educational institutions generally. Holding college players with professional prospects captive, and depriving them of the opportunity to earn professional salaries, also fuels the firestorm of complaints that the NCAA and its member institutions are exploiting college players. *Only the NBA and the NBPA can change this rule.* Thus, the Commission calls on the NBA and the NBPA promptly to negotiate NBA eligibility for players who are 18 years old.

Before 2006, extraordinary high school graduates such as Kevin Garnett, Kobe Bryant and LeBron James bypassed college and went directly to the NBA. Numerous other high school players, however, were drafted and struggled. The NBA began to push for a minimum age requirement – to provide teams with more time to evaluate developing young talent – and this effort succeeded in 2006. Starting with the 2006 draft, elite basketball players graduating from high school who are capable of playing in the NBA have not been eligible to do so because they are not 19 years old. Thus, to compete at a high level, these players must either attend a Division I school with a high quality basketball program or play professional basketball overseas. The vast majority do not view the international professional option as viable and choose to attend college. The Commission concludes that elite high school athletes should be able to choose a professional pathway if one is available.

In the Commission's view, preventing young athletes capable of and preferring to play in the NBA from doing so, and pushing them into enrolling in college for a single year (or less), is doing more harm than good for college basketball and college. The potential earning power of marquee college players

who can win championships for their schools is an irresistible draw for third-party attention and money, most notably from athlete advisors. Their game-changing potential for a college team creates the strongest motivation for improper payments from third parties and violations of NCAA rules by school administrators, coaches and other persons associated with member institutions.

The Commission heard from many stakeholders that agents and associated advisers are the primary source of money used for direct and indirect payments to players and their families and for payments to coaches and other persons of influence with players. To state the obvious, agents receive enormous commissions for negotiating the NBA, shoe and apparel, and other endorsement contracts of professional players. Financial advisers earn significant commissions for investing professional players' funds. Competition to sign potential professional players is cutthroat. Agents and other advisers seek to enter into relationships with potential professionals when those players are in high school and in college, and they do so by paying the players and those with influence over the players, including family members and coaches, in violation of NCAA rules. Agents and other advisers also appear to have (and many actually have) valuable information and access to opportunities, such as coaching, training and exposure to college coaches. Agents and other advisers thus form early relationships with potential professional players and their "influencers," and players and their "influencers" become accustomed to being paid.

Eliminating one-and-done players from college basketball will remove the group of most likely future professionals, and the associated potential for corrupt payments from agents. Allowing collegiate players who become clear professional prospects to depart when they choose to do so should similarly lessen the temptation to cheat while in college.

Student-athletes, of course, are not the only ones subject to these financial temptations. The potential financial benefits that these players bring to a college can also corrupt the school's academic program and standards; schools might offer special benefits to these athletes in violation of NCAA rules or dilute the education of all students. Finally, the matriculation of players virtually certain to attend school for a short time primarily to play Division I basketball is a public acknowledgement that certain student-athletes will not, as a practical matter, be college students.

The Commission is not naïve. It understands that implementation of this recommendation will not eliminate the problems described above, most notably

third-party payments to athletes to attend particular colleges and the resulting potential for corruption of collegiate programs. Many Division I college basketball players who will never play in the NBA will bring championships and money to their schools and, as a result, may be offered payment by those who would benefit or by boosters. In addition, many of those players will have professional potential and receive payments based on the mistaken hopes of third parties for eventual rewards. Colleges, too, will reap enormous benefits from the attendance of players unlikely to make it to the NBA, and thus may be motivated to compromise academic standards. Many student-athletes who play Division I college basketball have the “student” part of their student-athlete experience diluted so they can focus on basketball, without regard to their professional potential.

Nonetheless, the Commission believes that its recommendation both expands opportunity for individuals and significantly reduces the incentives for improper payments, and is thus one important part of an overall effort to limit corruption in college basketball and to support the collegiate model. The Commission recognizes that this change will be most effective in combination with the other recommendations it is making, including reformed and improved NCAA investigative and adjudicative processes, higher penalties for infractions, and new requirements for financial transparency and accountability in member institutions’ athletic programs and in non-scholastic basketball.<sup>20</sup>

The Commission considered alternatives to the recommendation above. In light of the value and importance of staying in college for more than a year, the Commission carefully considered recommending adoption of the so-called baseball rule.<sup>21</sup> To oversimplify, that rule would provide that if a player enrolls in college, his eligibility terminates on the first day of matriculation and he remains ineligible to play in the NBA or G League until he is at least 21 years old or his entering class completes its third year in college. This rule offers some significant benefits. It would require students who choose the collegiate path to understand that they are making a serious commitment to their education, and it would create a context in which athletes are ultimately more likely to receive their degrees.

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<sup>20</sup> As noted in the Executive Summary, Section 1.A., the NCAA should also monitor the impact of this change in areas such as reclassification in case further action is required.

<sup>21</sup> Office of the Commissioner of Baseball, *The Official Professional Baseball Rules Book*, Rule 4-First-Year Player Draft.

However, the baseball rule would also force collegiate players who could sign with an NBA team to remain in school, with the negative consequences that would entail. Moreover, both the culture and professional path of a major league baseball player differ dramatically from that of an NBA player. Baseball has a tiered, large-scale minor league system, and even elite players often spend years developing in the minors. In addition, one baseball player generally cannot change the fortunes of a baseball team. As a result, the baseball rule does not translate perfectly to basketball.

If the NBA and the NBPA were to adopt the “baseball rule,” we believe that the challenges created by the presence of one-and-done players would simply migrate to older future NBA players unhappily captive in their second and third collegiate years. Holding players with NBA opportunities hostage also feeds the narrative of collegiate player exploitation, putting pressure on the NCAA’s commitment to the collegiate model. Players with professional earning power should have the freedom to choose a professional path. The Commission believes that student-athletes should be encouraged but not forced to remain in college.

The Commission also considered ending freshman eligibility. This change would penalize many student-athletes ready to play Division I college basketball in their first years (and their schools) in order to address a problem created by a small group. As an alternative to the blanket elimination of freshman eligibility, the Commission also considered conditioning such eligibility on some additional measure of Freshman Readiness, a demonstration that a student-athlete’s high school experience has prepared him for college academic requirements. As a less drastic measure, the Commission considered making all Division I basketball scholarships three or four year scholarships such that colleges would be required to “lock up” scholarships if they recruited a player unlikely to matriculate for more than a year or did so regularly. There are serious downsides to each of these alternatives.

The Commission is optimistic that the NBA and the NBPA will agree with its assessment. If the NBA and the NBPA are unable to negotiate an end to one-and-done by the end of 2018, however, the Commission will reconvene and reassess the viability of some of these alternative tools. The current situation is unacceptable.

**B. Allow Student-Athletes To Test Their Professional Prospects And Maintain Eligibility If They Do Not Sign A Professional Contract.**

The Commission recommends that student-athletes be permitted to enter the draft and retain their collegiate eligibility if they are not drafted, provided they otherwise remain eligible to do so and they return to the same school.

The NCAA should provide high school and college players with additional flexibility in retaining collegiate eligibility while assessing their professional prospects. Under current NCAA rules, players may apply for an NBA Undergraduate Advisory Committee evaluation and participate in the NBA Combine, but players lose their collegiate eligibility if they do not remove their names from the draft within ten days after the NBA Combine. NCAA Division I Bylaw 12.2.4.2.1 (Exception – Basketball). It is easy to say that young players should know that they will not be drafted and that they “make their own beds” when they fail to withdraw from the draft. But, this kind of misjudgment is widespread, and the penalty for it should not be so high, if we are serious about the value and importance of college. The quality and value of the college experience increases with the amount of time a student-athlete spends on campus. With the completion of each academic year, a student will face a lower hurdle to earning a degree. Student-athletes who are wrong about their professional prospects should retain the opportunity to work toward the degree they were promised.

We recognize that this regime has some downsides. Under current collectively bargained rules, a player who declares for the draft, but is not drafted, is a free agent and may sign with any NBA team at any time, including the middle of the next college season. To address this problem, the Commission requests that the NBA and the NBPA agree that players who are not drafted become ineligible for the NBA until they enter the draft again.

In addition, if players remain in the draft until it occurs, college coaches will not know until June which players are eligible for, or remain on, their rosters for the next season. However, the NBA draft is two rounds and involves only 60 players. Data show that international players will take approximately 40% of these slots. Thus, this uncertainty implicates very few players (around 36), and we believe that college coaches are sufficiently experienced and knowledgeable to accurately predict whether a young player is, in fact, likely to be drafted. Student-athletes may make some decisions that cost them collegiate eligibility, but the Commission recommends that these points of no return be modified in light of current realities.

The Commission also has concluded that the NCAA should retain one aspect of the current transfer rule, which provides that players who transfer must sit out a

season before returning to college basketball competition. NCAA Division I Bylaw 14.5.1 (Residence Requirement – General Principle). Students who transfer face serious disadvantages in completing their degrees, and are less likely to do so. Despite this issue, over the last few years, hundreds of players transfer each year, and the trend is upward.<sup>22</sup> Division I basketball players who transfer overwhelmingly do so in order to be in a better “basketball situation,” without regard for earning their degrees. Moreover, third parties influence many transfers for their own purposes, often without the best interests of the player in mind. Thus, the Commission recommends that the “residence requirement” of the transfer rule remain in place, whatever other changes are made in the NCAA’s transfer rules.<sup>23</sup>

The Commission believes that this and other rule changes will provide student-athletes with better information about their likely professional careers and a greater likelihood of ultimately achieving a college degree.

**C. Permit Students To Receive Meaningful Assessment of Professional Prospects Earlier With Assistance From Certified Agents.**

The Commission recommends that the NCAA and its member institutions develop strict standards for the certification of agents, and authorize and make opportunities for those certified agents to engage with student-athletes at school at specific times during the calendar year. To implement this requirement, the NCAA must appoint a Vice-President level executive to develop detailed standards for NCAA certification and administer the program. The NCAA’s program should also educate elite student-athletes at member institutions about NCAA eligibility rules and requirements and professional prospects.

The NCAA’s rules already allow student-athletes to retain lawyers and advisors to provide professional advice at market value, provided the lawyer or advisor does not engage in the representational activities of agents. NCAA-certified agents should also be permitted to provide such advice. Further, high school players considering entering the draft should be allowed to engage NCAA-

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<sup>22</sup> NCAA Research, *Tracking Transfer in Division I Men’s Basketball* (Dec. 2017).

<sup>23</sup> The Commission further recommends that the NCAA and its Transfer Working Group examine the growing trend in graduate transfers, along with their falling degree completion rate, to ensure that the graduate transfer rule continues to serve its purposes. *See* ES Section 1.B.

certified agents and advisors just as high school baseball players may engage agents for advice about the draft. *Cf.* NCAA Division I Bylaw 12.3.1 (Exception – Baseball and Men’s Ice Hockey – Prior to Full-Time Collegiate Enrollment).

As stated above, both high school and college students misjudge – that is, over rate – their chances of a professional basketball career. Very few high school players will play professional basketball. Yet, many high school student-athletes believe they have professional prospects, and they work hard in high school to maintain eligibility to play that one-and-done year in college. The concern is that, with the end of one-and-done, misguided high school players will assume that their NBA careers will start at 18 without a backup plan to attend college. College students, too, misunderstand their prospects. In addition, the families of players lack objective, credible sources of information about the professional and collegiate paths. All of these students need timely, reliable and trusted sources of information about their likelihood of professional success.

Current NCAA rules forbid players, their families and their associates to enter into written or oral agreements with, or to receive benefits from, individuals whom NCAA rules define as “agents”<sup>24</sup> or their employees. However, the Commission was advised that agents court elite players from an early age, and that many such players are paid, either directly or indirectly.<sup>25</sup> Yet, virtually all agents with whom the Commission met advised the Commission *not* to allow high school or collegiate athletes to enter into *agreements* with agents in advance of their professional careers. They generally thought that this would simply increase the influence of corrupt agents at an even earlier age. Instead, agents recommended creating opportunities for “good” agents to talk with high school and collegiate players and make their cases so that players would have all available options

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<sup>24</sup> An agent is any person who either directly or indirectly represents a prospective or current student-athlete in marketing his athletic ability or reputation for financial gain or seeks to obtain any kind of financial gain or benefit from securing a student-athlete’s enrollment at an institution or potential earnings as a professional athlete. NCAA Division I Bylaws 12.02.1 (Agent); 12.02.1.1 (Application).

<sup>25</sup> Virtually all such payments, including those involved in the indictments that led to appointment of the Commission, would be unlawful under the Revised Uniform Athlete Agent Act. *See* Uniform Law Commission, Acts, Athlete Agents Act, [www.uniformlaws.org](http://www.uniformlaws.org). More than forty states have adopted either the Revised or original Act, but it is rarely enforced.

*before* they enter the professional market. The Commission intends NCAA-certification to provide these opportunities for “good” agents.

Players and families desperate for information are entering into relationships with agents, sometimes as early as the player’s sophomore year of high school. The NCAA should bring these conversations into the light and allow elite players to discuss their prospects with agents whom it certifies under NCAA-approved standards. This would provide a channel through which information about a player’s professional prospects and value could flow.<sup>26</sup>

The Commission understands that contact with agents can lead to illicit payments and other rule violations. It thus recommends serious consequences for NCAA-certified agents who participate in violations of NCAA rules. For example, such agents should lose their NCAA certification and be barred from non-scholastic basketball events certified by the NCAA (*see* Section 3, *infra*). In addition, agents who the NCAA decertifies may not pass along representation of their student-athlete clients to other agents at the same agency. Such agents should also be reported to the NBPA. Finally, a student-athlete who enters into an agreement, or whose family members enter into an agreement, with a non-certified agent should lose his eligibility.

The Commission also recommends that the NCAA work with the NBA and the NBPA to establish additional venues for representatives of those entities to meet with collegiate players and provide information about professional status and opportunities. The NBA and the NBPA have unique credibility with collegiate athletes. Players would make more informed choices about college if they had additional opportunities to hear from the NBA and its players.

#### **D. Provide Resources To Make The Promise Of A College Education Real.**

The Commission recommends that the NCAA immediately establish a substantial fund and commit to paying for degree completion for student-athletes with athletic scholarships who leave college after progress of two years towards a degree. The NCAA must *require* Division I programs to establish a Degree

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<sup>26</sup> The Commission also recommends that the NCAA itself make additional educational efforts directed at high school players during NCAA non-scholastic basketball camps. *See* Section 3.C., *infra*.

Completion Program to support degree completion by student-athletes who compete and complete two years of college and then leave school, but later seek to return to college to finish their education. The NCAA and its member institutions must keep focused on the prize here – a college degree.

As described above, the Commission starts from the premise that students who are athletes – not paid professionals – play college sports. It is worth noting that student-athletes *choose* the collegiate path, and we want to enhance their ability to decide whether to do so. But they are making a choice; if it is not the right choice and a professional path is more desirable, they should take it.

We recognize that many do not accept that premise, and instead argue that those who play men’s Division I football and basketball earn substantial revenues for their schools, cannot participate fully in the academic and social experience of college, and therefore should be treated as professional athletes and paid more than the full cost of their college educations. Proponents of pay-for-play contend that it is past time to recognize that men’s Division I football and basketball players are not student-athletes, but are instead professional athletes who are *not* receiving a college education. As a matter of fairness, they contend, the players who earn these massive revenues should share in them, rather than seeing the money flow to coaches, athletic directors, excessive facilities and elsewhere. Thus, the argument continues, colleges should openly bid for players’ services, instead of obtaining their services through a corrupt process as they are alleged to do now.<sup>27</sup>

Opponents of pay-for-play strongly believe that college basketball should remain a game played by student-athletes that has unique value and appeal. They also strongly resist the argument that student-athletes do not benefit from attending

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<sup>27</sup> The public argument about pay-for-play includes hundreds of articles and opinion pieces. Here is a small sample: J. Thelin, *Paying College Athletes: How will colleges pay the price?* in *Inside Higher Education* (Feb. 2018); M. Lemmons, *College Athletes Getting Paid? Here Are Some Pros and Cons* in *HuffPost* (March 29, 2017); J. Nocera, *A Way to Start Paying College Athletes* in *The New York Times* (Jan. 8, 2016); T. Ross, *Cracking the Cartel: Don’t Pay NCAA Football and Basketball Players*, in *The New Republic* (Sept. 2, 2015); J. Solomon, *NCAA Critics Offer Way to Begin Paying College Players* in *CBS Sports* (2014); P. Hruby, *Should College Athletes Get Paid? Ending the Debate Once and For All* in *The Atlantic* (Apr. 2011); T. Branch, *The Shame of College Sports* in *The Atlantic* (Oct. 2011).

college and participating in intercollegiate basketball. Their counter is simple. Student-athletes in fact benefit enormously. They receive full scholarships up to the cost of attendance, *see* ES Section 1.D. Students with demonstrated financial need are also eligible for Pell grants of \$5,800 annually. Student-athletes often receive benefits such as meals, special academic support, travel expenses, coaching, training and nutritional advice, career guidance and more, worth tens of thousands of dollars annually. Obviously, student-athletes who remain in school for four years receive four times this value, along with the increased earning power of a college degree, which is roughly \$1 million over a lifetime. *See* ES Section 1.D.

In addition, all agree that the complexities of developing a lawful and fair pay-for-play system are staggering. In an open market for player services, payments would vary based on the talent of the individual, the revenue that he or she would generate, the local sports market, etc. It is unclear what happens to the players who are not worth that much in a pay-for-play model, or whether colleges can compete for players' services annually. Opponents of pay-for-play also point out that no system would be fair to all students, sports and schools, and that many programs would cease to exist, depriving large numbers of student-athletes without professional potential of an opportunity to attend college. They also observe that if players were paid a salary instead of the full cost of attendance at college, they would pay taxes on that salary, and thus receive little benefit. Paying student-athletes, others assert, would erode the associations between athletes and their schools, athletes and their teammates, and athletes and their fellow students.

This debate is longstanding, and many have entrenched views. College basketball has earned billions for NCAA institutions. Indeed, the major, revenue-generating college sports have supported the inter-collegiate athletic experiences of thousands of athletes in sports that are not profitable and have provided a multitude of other benefits to member institutions. However, those billions have also been used to finance breathtaking salaries for some coaches in revenue-generating sports and extravagant athletic facilities, while some colleges reduce academic offerings. Many, including some members of this Commission, wonder whether colleges and universities are making the right choices about their institutions' educational missions.

The Commission has already expressed its view that student-athletes receive valuable benefits by pursuing a degree and participating in intercollegiate sports. In addition to the economic benefits detailed above, college sports is a valuable part of a college education, as illustrated by numerous student-athletes who study,

train and compete with no thought or possibility of “going pro.” But the Commission shares the concerns of those who believe that the athletes generating these billions in revenues for NCAA colleges and universities and their coaches and administrators often are *not* receiving the benefit of the college education that they are promised. This problem is compounded when players with professional options are not permitted to leave college and play professionally. The Commission likewise believes that the large sums of money and the prestige that accompany college basketball championships can corrupt colleges’ admission standards, academic offerings and integrity.

One aspect of this debate is particularly relevant to the Commission’s mandate. Paying modest salaries to Division I basketball players will not address the particular corruption the Commission confronts; nor will providing student-athletes a modest post-graduation trust fund based on licensing of names, images and likenesses. None of the contemplated payments would be sufficient to reduce the corrupt incentives of third parties who pay certain uniquely talented players in the hope of latching onto their professional futures, of coaches and boosters seeking to secure the success of their programs, or of colleges willing to undermine their education mission to ensure the eligibility of players. One would have to adopt a full-scale professional model to forestall that corruption or, as the Commission recommends, try instead to revitalize the college model.

Finally, the Commission is also aware of many voices suggesting that allowing student athletes to earn some financial benefit from the marketing of their names, image and likenesses (NIL) is consistent with the collegiate model, particularly if students do not receive those funds until after college. Notably, the NCAA is a defendant in litigation involving the NCAA’s refusal to allow students to do so. The court suggested that if the NCAA allowed students to benefit financially from NIL marketing, plaintiffs would then be able to argue that *all restrictions* on income are anti-competitive. The court stated that “[t]he difference between offering student-athletes education-related compensation and offering them cash sums untethered to educational expenses is not minor: it is a quantum leap. Once that line is crossed, we see no basis for returning to a rule of amateurism and no defined stopping point.” *O’Bannon v. NCAA*, 802 F.3d 1049, 1078 (9th Cir. 2015) (emphasis added).

A number of members of the Commission were drawn to the idea of reforms in this arena. However, given the lack of legal clarity on this matter, the Commission was concerned about the unintended consequences of such changes. *See* ES Section 1.D. The Commission recommends that if the legal context

changes or clarifies, the NCAA should remain open to rule changes addressing student-athletes and NIL. But, in the current legal circumstances, the Commission decided to address the charge of exploitation by providing individual student-athletes with access to professional opportunities, and ensuring that the student portion of student-athlete is real. Specifically, the Commission recommends allowing student-athletes with a professional pathway to make the choice to leave college every year, creating resources so that they can make an informed choice whether to do so, welcoming back student-athletes whom the NBA does not draft, making a serious financial commitment to degree completion and severely punishing those who undermine the premise that student-athletes must receive a valuable – not a sham – education.

In sum, the Commission recognizes that the money generated by Division I basketball makes its task extremely difficult. Nonetheless, the Commission recommends changes intended to expand the professional opportunities of high school athletes who do not wish to attend college, to blunt the incentives to corrupt major college sports, to increase the likelihood that colleges, coaches and administrators participating in corruption will be punished, and to help student-athletes receive the college education they are promised. To meet the latter obligation, the NCAA must establish a substantial fund to assist its member institutions in fulfilling their commitment to student-athletes and mandate that its members establish degree completion programs. This recommendation will be expensive; but in today's world, it is necessary to provide meaning to the phrase student-athlete.

## **Section 2: Establish Professional Neutral Investigation and Adjudication of Serious Infractions and Hold Institutions and Individuals Accountable**

### **A. Implement Independent Investigation and Adjudication of Complex Cases.**

The Commission recommends a prompt radical transformation of the NCAA's investigative and enforcement process for cases involving complex or serious violations (hereafter "complex cases").

The consensus view – including within the NCAA – is that the NCAA investigative and enforcement process is broken. The NCAA's shared governance and cooperative principles do not work in situations when large sums of money and serious reputational damage is at stake. Schools and individuals "lawyer up" to protect their financial and reputational interests. The current NCAA system

does not provide its personnel with the tools and authority necessary to investigate complex cases and effectively prosecute violators of the rules. Decision makers are volunteers and NCAA members; they face perceived conflicts of interest in adjudicating complex cases with adverse consequences for the credibility of the process. Punishment is often unpredictable and inadequate to deter violations. In many cases, the process takes years, and the NCAA imposes punishment long after the departure of bad actors. Prominent coaches and administrators escape accountability for what they knew or should have known was occurring in their programs. A significant institutional overhaul is required.

*First*, the Commission recommends that the NCAA establish two tracks for addressing rules violations – one track for complex cases<sup>28</sup> and a second for all others. The current NCAA process would remain in place for the second category of cases, but the NCAA must create an entirely new process for investigating and deciding complex cases. Most significantly, the Commission recommends that the Committee on Infractions appoint a panel of paid independent decision makers, such as lawyers, arbitrators and retired judges. These decision makers would form a pool from which three adjudicators would be randomly selected to resolve each complex case. Members of the panel would serve for a term of five years (with some shorter and longer terms initially so that the entire panel does not turn over simultaneously). The panel would operate under the rules of the American Arbitration Association or analogous rules; its decisions would be final and binding, subject to review only under the Federal Arbitration Act. Volunteers and members should not decide whether fellow member institutions have violated NCAA rules, nor the appropriate punishment for those violations. It is time for independent adjudication of the NCAA’s complex cases.

The Commission recognizes that instituting an adversary process may further delay a process already criticized as too slow. The Commission recommends two measures to address this issue. First, the NCAA should adopt rules authorizing the independent panel of adjudicators to grant preliminary injunctive relief – that is, to forbid or require certain action while the adjudication

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<sup>28</sup> One threshold question is how to define the cases subject to the new process. The Commission recommends that both the NCAA and the alleged violator be empowered to designate a case as “complex,” provided the panel of adjudicators may disagree and return the case to the second track. In addition, the NCAA may wish to designate cases with certain potential penalties as complex as a matter of rule.

is taking place – against institutions and individuals where the NCAA’s investigator and advocate demonstrates a substantial likelihood of success on the merits and the balance of harms favors immediate relief. This mechanism may be particularly relevant in cases of failure to cooperate. Second, the NCAA should establish reasonable time limits for submission and decision of a case, which must be enforced except in extraordinary circumstances, as determined by the panel.

*Second*, the Commission recommends that the NCAA ensure professional investigation and prosecution of serious violations. There are at least two ways to do so. After its appointment, the independent adjudication panel could create a panel of outside counsel (not the NCAA’s usual counsel who would be in a conflict of interest) to investigate and advocate in complex cases. In the alternative, the NCAA could establish a separate investigation and advocacy office, with rules guaranteeing its independence.

The Commission also recommends that the newly formed investigative office (or appointed law firm) and, indeed, all relevant NCAA investigative bodies, be instructed to exercise appropriate enforcement discretion and common sense – that is, to set appropriate priorities for enforcement, to make reasonable decisions about punishment, and not to expend excessive resources on violations that are *de minimis*. This investigative entity should give serious infractions substantial attention and seek punishments that will deter future violations. But it should also recognize that certain kinds of minor violations should be handled differently, both in terms of resources expended and punishment recommended. In the exercise of such discretion, plainly self-reporting and other indicia of cooperation should be considered.

The NCAA Bylaws require member institutions, their staff and student-athletes to cooperate in NCAA investigations. *See, e.g.*, NCAA Division I Bylaw 19.2.3 (Responsibility to Cooperate). A failure to cooperate is one factor the NCAA can consider in assessing penalties. NCAA Division I Bylaw 19.9.2 (Factors Affecting Penalties). This regime has proved insufficient. The NCAA also must adopt rules that require member institutions and their personnel to cooperate with NCAA investigations, with a failure to respond to investigators’ requests promptly bearing significant consequences, including loss of post-season eligibility and revenues. Specifically, to participate in Division I basketball, member institutions and their presidents, administrators, and coaches must agree to cooperate with NCAA investigations, including by providing documents and testimony where sought by NCAA investigators. In addition, while the NCAA does not have subpoena power, it can adopt rules requiring as a condition of

membership, that member institutions enter into contractual agreements to cooperate in investigations and that member institutions contractually impose the same requirement of cooperation on presidents, administrators and coaches. NCAA rules should specifically protect whistleblowers who report and provide evidence of violations.

Relatedly, the independent panel of adjudicators must have the authority, on a motion to show cause, promptly to impose consequences for failure to cooperate in investigations of complex matters, including, where appropriate, loss of the right to participate in post-season tournaments and other NCAA events and the loss of associated revenues.

In a related point, the NCAA must authorize its investigators and advocates to submit and rely on the evidence admitted in judicial and administrative tribunals and on the decisions of those tribunals. There is no reason to require the NCAA to redo the work of other tribunals. The independent panel of adjudicators can determine the reliability of the evidence and the preclusive effect of other decisions.

### **B. Enact and Impose Increased Core Punishments With Significant Deterrent Effects.**

The Commission recommends significant changes in the penalty structure and the nature of penalties imposed on NCAA member institutions for certain violations. The Commission considers non-cooperation a separate serious offense that should receive substantial penalties, including the loss of participation in and revenues from the NCAA tournament for up to five years. In addition, the Commission believes that serious repeated violations of NCAA rules must be subject to these same severe penalties.

Current core penalties for violations of NCAA rules are set out in the Division I Manual, Article 19, Figure 19.1. The NCAA adopted these penalties in October 2012, effective August 2013. Due to the length of the NCAA's adjudication process, the first cases in which the current penalty matrix applies have only recently been resolved. (The penalty matrix in effect at the time of a violation applies to that violation without regard to subsequent amendments.) The matrix provides appropriate types of penalties for violations by institutions – *i.e.*, probation, fines, suspensions, scholarship reductions, forfeitures, post-season bans, head-coach restrictions, recruiting visit restrictions.

The Commission considered whether the core institutional penalties are sufficiently severe to have the desired deterrent effect. The Commission believes that many at NCAA member institutions consider the rewards of NCAA rule violations to outweigh the risks, and thus it recommends the following changes in the NCAA's *institutional penalties and penalty structure*:

First, the Commission recommends the following increases in the core penalty structure: (i) increase the competition penalties for Level I violations to allow a five-year post-season ban; (ii) increase the financial penalties for Level I violations to allow loss of all sharing in post-season play, including the NCAA tournament, for the same five-year period; (iii) increase the penalties for a show-cause order to allow life-time bans; (iv) increase the penalties for head coach restrictions to allow imposition of more than one season; and (v) increase the penalties for recruiting visit violations to allow full year visit bans. Colleges with comprehensive, effective compliance programs should see their penalties mitigated; those without such programs may see their penalties enhanced.

Second, the Commission recommends that the NCAA inform members that past penalties imposed for particular violations have no precedential value, and that the independent panel shall conduct a *de novo* assessment of the appropriate penalties for violations with the need for deterrence in mind. The panel must be free to calibrate punishment without regard to past practice.

Third, the Commission recommends that member institutions that employ a coach, athletic director or other administrator under a show cause order for a previous violation of NCAA rules must receive enhanced penalties if that individual's program re-offends. Institutions that hire an individual under a show cause order must be aware that they are taking a significant risk.

Fourth, the Commission recommends that the NCAA highlight the availability of a five-year ban from the NCAA tournament and the loss of all revenues from the tournament for that same period for member institutions' programs found to have engaged in systematic, severe and repeated violations of NCAA rules. The Commission acknowledges that imposing this penalty will result in significant punishment of innocent members of the college community and beyond, and that it must be limited to the extreme circumstances. Nonetheless, the NCAA should use this punishment where necessary to address sufficiently grave patterns of misconduct.

In its current enforcement structure, the NCAA addresses individuals who participate in rules violations through punishments imposed on member

institutions. The Commission recommends a significant expansion in *individual accountability* for rules violations for presidents, administrators and coaches:

- a. As noted, the NCAA must require member institutions' contracts with their coaches, athletic directors and other administrators associated with the athletic department to provide that these individuals must cooperate with NCAA investigations and enforcement proceedings.
- b. The NCAA must require member institutions' contracts with these individuals to include agreement to be subject to NCAA enforcement investigations and infractions decisions and discipline, up to and including discharge.
- c. The NCAA must enact a rule requiring college presidents, athletic department directors and coaches to certify annually that they have conducted due diligence and that their athletic programs comply with NCAA rules. The NCAA rules should provide for significant penalties for those individuals if they knew or should have known of violations and did not address them, up to and including termination.

The NCAA is certainly not blameless for its failure to address the corruption in college basketball that led to the recent prosecutions, but the primary failures belong to the individuals at colleges and universities who allowed their programs to be corrupted, averting their eyes to keep the money flowing. With enhanced individual accountability, the Commission believes that more college presidents and athletic directors will find it beneficial to adopt and enforce comprehensive compliance programs. *See also* NCAA Constitution 2.1 (Principle of Institutional Control and Responsibility).

In terms of substantive rules changes, the NCAA's jurisdiction with respect to academic issues must be clarified, stated in amended rules and communicated to member institutions. The rules must be amended to allow the NCAA to address *all* academic fraud and cheating *to the extent it is used to corrupt athletic eligibility*. Member institutions should not be able to shield academic fraud to ensure athletic eligibility by extending that fraud to the entire student body. In addition, the NCAA's imposition of discipline for academic fraud and misconduct has been inconsistent and untimely. The relationship between punishment and the school's involvement, including its self-reporting, is unclear. Member institutions do not fulfill their commitment to student-athletes when they allow them to maintain eligibility through academic fraud or misconduct. The NCAA must also amend its rules to clarify the standard for academic fraud and misconduct and to establish

consistent punishments for the violations of these rules. Going forward, the NCAA must apply a revised standard consistently across member institutions.

Finally, in connection with its certification of agents who may engage in sanctioned on-campus meetings with high school and college students, the NCAA must enact rules to ensure that agents who participate in rules violations are punished. As noted above, agents who participate in violations of NCAA rules must lose their certification and be banned from NCAA-certified non-scholastic basketball events. Decertified agents may not pass along their student-athlete clients to others in their agencies. In addition, the Commission recommends that the NCAA report any agents' participation in NCAA rule violations to the NBPA. The Commission believes that the NBPA would be willing to punish and potentially decertify agents who participate in violations of NCAA rules. Indeed, the NBPA is currently focused on improving the quality and ethics of the agents it certifies. The NBPA has a large stick and its efforts in increasing the standards for certification and in regulating agents will be invaluable to the NCAA's efforts to limit the influence of corrupt agents.

Putting to one side agents paying large sums of money to players, the Commission heard comments that collegiate players or their families may receive from agents a meal or minor travel expenses or some other small benefit that those with limited financial means are strongly tempted to accept. The Commission concludes that the NCAA and its member institutions must enhance the resources of Student Assistance Funds and educate student-athletes about the benefits that it can provide to address the legitimate school-related needs of student-athletes. NCAA Division I Bylaws 15.01.6.1, 16.11.1.8 (Student Assistance Fund). Specifically, the Commission believes that the Fund should be increased and used for additional purposes, such as providing Division I schools with the resources to assist parents and families to travel to student-athletes' games, subject to means testing.

Finally, the Commission is aware of the Revised Uniform Athlete Agents Act ("RUAAA") developed by the Uniform Law Commission, in response to an NCAA request that state law address agents' provision of cash and other economic benefits to student-athletes. Forty-two states, DC, Puerto Rico and the U.S. Virgin Islands have adopted the Uniform Athlete Agents Act and eight have adopted the RUAAA. The Uniform Law Commission provided useful input to the Commission and sought its support in encouraging states to adopt the RUAAA. Unfortunately, while a number of states have enacted state laws regulating sports agents, the Commission is not aware of any significant number of enforcement

actions. The Commission encourages States to both enact *and enforce* state laws regulating sports agents.

### **Section Three: Mitigating Non-Scholastic Basketball's Damaging Influence on College Basketball**

The NCAA must adopt rules that will reform non-scholastic basketball or disassociate college basketball from the corrupt aspects of non-scholastic basketball. The Commission recommends that the NCAA take both short and long-term action. In the short term, the NCAA must adopt rigorous certification criteria for non-scholastic basketball events its coaches may attend, including significant measures to ensure financial transparency and accountability. In the long term, the NCAA should administer its own regional camps for high school players in the group subject to college recruiting in July of each year.

#### **A. Reform Non-Scholastic Basketball and Make Its Finances Transparent.**

The Commission heard from numerous stakeholders that non-scholastic basketball provides recreation, competition and gear for thousands of children who will never play elite high school or college basketball, let alone play professionally. The Commission further heard about many selfless individuals who volunteer to administer and coach non-scholastic basketball, investing their skill and countless hours without thought of remuneration or benefit. However, the Commission also heard from many that because non-scholastic basketball is unregulated, some teams, events and tournaments have damaging consequences for college basketball.

The NCAA certifies non-scholastic basketball events and leagues, but the requirements for certification are minimal and those that exist appear to be poorly implemented and inadequately enforced. At the elite levels, apparel companies, agents and other sponsors finance leagues, events and teams, without accounting for the expenditure of the funds. The Commission spoke with several apparel companies that sponsor substantial non-scholastic basketball events and leagues as part of their community partnerships and brand marketing. It did not appear to the Commission that any of these entities carefully followed the money or sought a complete understanding of the financial arrangements of the event operators and coaches of non-scholastic basketball for elite players. The Commission learned that non-scholastic basketball event operators and coaches steer elite players to the agents and advisors who pay them or otherwise provide "favors," and to the

collegiate programs with which they develop relationships. In turn, players (and those who influence them) may be paid or receive excessive travel and other benefits to select particular teams or leagues.

The NCAA must manage its relationships with non-scholastic basketball, with the objective of preventing the corruption of college basketball. The Commission believes that the elimination of one-and-done players from college basketball will diminish the influence of non-scholastic basketball event organizers and coaches with college programs. Clearly, however, problems will remain. College coaches recruit roughly 1125 high school players to Division I programs every year. To the extent college coaches and non-scholastic basketball event organizers and coaches are scratching each other's backs for personal gain, they are corrupting college basketball. To the extent non-scholastic basketball event organizers and coaches are paying – or arranging for the payment of – players and their families to participate in or enter particular summer programs, they are creating a culture that contributes to the expectation of continued payment while in college.

The NCAA and its member institutions have some leverage in their relationship with non-scholastic basketball. Players whom the NBA will not draft from high school – that is, most players – seek to play college basketball. To do so, they must be seen and evaluated by college coaches. Most college coaches cannot see sufficient players by attending high school games, involving only one or two players whom they are recruiting at a time. Instead, they assess players at summer events where numerous players with the potential to play college basketball compete against each other. Put differently, non-scholastic basketball needs NCAA coaches, and NCAA coaches need non-scholastic basketball. The Commission's guiding principle in this area is that the NCAA should not certify, and NCAA coaches should not participate in, non-scholastic basketball events involving coaches, leagues or sponsors who are not fully transparent about the sources and amounts of their financial support.

More specifically, while NCAA coaches are forbidden to attend non-scholastic basketball events not certified by the NCAA, the NCAA's current criteria for certification are plainly insufficient. The new criteria for certification must include detailed requirements for financial transparency. Any person or entity that sponsors a summer league, team or event must disclose any payments made to or received from any coach, event operator, owner or any other entity associated with that league, team or event. Any coach, event operator, owner or other entity associated with that summer league, team or event must disclose any

payment received that is related to the event and how the payments will be expended. The Commission leaves to the NCAA the design of the disclosure forms and the details of the requirements, but it must require the provision of any non-profit organization's financial filings with the government and full financial transparency – going both ways – for non-scholastic basketball sponsors, event operators and coaches.

The Commission further recommends that the NCAA enforce existing requirements and impose additional prerequisites for certification of non-scholastic basketball events. Current NCAA rules require as a condition of certification that non-scholastic basketball events contain an educational component. That requirement is not effectively administered and enforced – a missed opportunity. Moreover, the NCAA should enforce limits on the paid travel and other benefits associated with the events, and require commercially standard charges for admission (where allowed) and programs (rather than allowing individualized expensive arrangements for college coaches). Further, the certification should specifically state that NCAA enforcement personnel have unfettered access to any event, including physical access to the venue and the ability to inspect all financial documentation associated with the event.

**B. Enlist the Apparel Companies in Transparency and Accountability Efforts.**

The Commission notes that during its meetings with representatives of several apparel companies with high profiles in professional and college basketball, all expressed a commitment to a culture of compliance at their companies. This commitment included respect for and adherence to NCAA rules and a willingness to be transparent about their relationships with college coaches and professional agents and about their expenditures in non-scholastic basketball.

While these statements were welcome, the Commission does not believe that the apparel companies have always delivered on this promise. In fact, it was difficult to ascertain how closely these companies track funding for non-scholastic basketball and associated activities. The Commission will formally ask the boards and leadership in these companies to make a commitment to transparency and accountability for the expenditure of company funds in college and non-scholastic basketball, particularly in light of the recent indictments in the Southern District of New York. Indeed, the Commission looks forward to statements but more importantly actions by these public companies that demonstrate their commitment to integrity and accountability in this space.

### **C. In Cooperation with Partners, Establish NCAA Youth Development Programs.**

In this section, the Commission recommends significant changes to the resources and programs available for the development of young, pre-collegiate players, ideally by the summer of 2019. Allowing players to enter the professional ranks earlier brings with it the responsibility to provide appropriate resources for earlier development. We acknowledge that institutional influence—by USA Basketball, the NCAA, and the NBA and the NBPA—has been largely missing in this space for the past 20 years and that non-scholastic basketball has been largely ungoverned. We strongly recommend that the named institutions lend their expertise and, wherever possible, work together to provide an alternative to the individual and corporate influences which currently dominate pre-collegiate youth basketball particularly in the summer. In the Commission’s view, the NCAA, USA Basketball, the NBA and the NBPA all have significant institutional interests in developing prominent roles in non-scholastic basketball, particularly in the areas of player identification, development and evaluation. There is a great deal of work to be done in the development of pre-collegiate players, and the three institutions should also welcome partners and sponsors willing to work within the standards, disciplines, and accountability these institutions will bring to youth development.

The Commission makes distinctions among three levels of players in addressing pre-collegiate youth development: Level 1 for those players across the four high school years with identified *National Team Potential*, Level 2 for those players across the four high school years with identified *Highest Collegiate Potential*, and Level 3 for those players across the four high school years with identified *Collegiate Potential*. Every year, the number of players to be identified, evaluated and developed at each level follows:

<b>Level 1 (National Team Potential)</b>	<b>80-100</b>
<b>Level 2 (Highest Collegiate Potential)</b>	<b>400-500</b>
<b>Level 3 (Collegiate Potential)</b>	<b>2,000-2,500</b>

It is important to note that the Commission believes developing players at each level will require a collaboration among USA Basketball, the NCAA, the NBA and the NBPA. The absence of any one of these stakeholders in the youth

development space will exacerbate the current problems with recruiting and development.

While the NCAA, USA Basketball, the NBA and the NBPA should work out the details, the Commission believes that there is a role for each organization to play at each of the three Levels—although the degree to which each organization takes a leadership role should naturally vary by level. At Level 1, USA Basketball with the NBA should take the lead in organizing and implementing a program targeting this tier of players. USA Basketball with the NCAA should take the lead in organizing and implementing Level 2, and the NCAA should take the lead in organizing and implementing Level 3. Each of the stakeholders will need to bring commitment, experience, financial resources, and the necessary authorities to this shared effort.

The tasks to be accomplished in youth development include:

- **Player identification.** USA Basketball will be primarily responsible for the identification of those players with the highest potential for Level 1 (Junior National Teams). The NCAA will be primarily responsible for identification of those players with the highest potential for Levels 2 and 3. The Commission understands that college coaches annually identify the prospects they seek to recruit using electronic databases and recruiting services. Based on these systems, players can be assigned to an appropriate level based on the interest shown in them. As a further step to ensure that players are properly identified, the Commission recommends that USA Basketball, the NCAA, and the NBA and NBPA establish a “collaborative advisory group” to annually review and validate the player identification and player evaluation processes.
- **Player development.** Player development must expand well beyond basketball to include academic, health, wellness, and life skills. The Commission recommends four physical interactions with pre-collegiate players at each level annually (camps, clinics and tournaments) with continuing on-line education and mentoring throughout the year. The Commission recommends that one of these contacts occur at NCAA-administered regional camps each summer during July, which NCAA coaches would exclusively attend during that time, and that current NCAA-directed recruiting windows be adjusted to account for these events. The Commission also recommends that events organized and implemented under this youth development initiative be required to adhere to USA Basketball

licensing requirements for coaches and the October 2016 Youth Development Guidelines for safe play published by the USA Basketball and the NBA. Finally, the Committee recommends that participation in NCAA summer events be limited to students making appropriate academic progress towards initial college eligibility.

- **Player evaluation.** The most important outcome of player evaluation is a realistic assessment of a player’s potential. The Commission recommends that a “collaborative advisory group” among the NCAA, USA Basketball and the NBA and NBPA be established to provide a realistic assessment of professional potential to players in Levels 1 and 2. Importantly, the Commission believes these evaluations must be transparent and accessible.

The Commission further recommends that working with USA Basketball, the NBA, the NBPA, the WNBA and the WNBPA, as appropriate, the NCAA also consider creating analogous programs and initiatives for the development of young women basketball players for the collegiate and professional levels.

In conclusion, the Commission received extensive commentary about the corruption prevalent in youth basketball organized outside the high school academic setting. We believe that the only way to mitigate the influence of third parties (who may not be working in the best interest of young, talented players) is to introduce financial transparency and accountability to all such entities, establish NCAA youth development programs and provide regulated access to expert player evaluation for students and their families. Individually, none of these reforms is sufficient, but taken together the Commission hopes they will improve the corrosive culture of youth basketball. Protecting, educating and developing youthful players – from the time they first enter high school – is likely to be among the most challenging and important tasks ahead.

#### **D. Enact Changes in Rules Governing Recruiting and Coaches’ Interaction with Recruits and Student-Athletes.**

The Commission endorses NCAA consideration of some of the recommendations made by the National Association of Basketball Coaches (NABC) and other stakeholders with respect to recruiting and coaches’ interaction with their players and recruits. These recommendations are intended to strengthen the relationships between NCAA coaches and prospective and current student-athletes so that these coaches are not required to recruit and instruct through third parties.

First, the Commission supports the NABC's recommendation that the summer recruiting calendar for evaluating college prospects be modified to allow college coaches to attend two weekends of scholastic-sponsored events in June and to attend three weekends of NCAA-sponsored events in July (once established). The Commission further supports the requirement that once NCAA-sponsored events for July are established, NCAA coaches be limited to recruiting at those events during that time. Many of the problems associated with non-scholastic basketball occur in the summer.

Second, the Commission supports NABC's recommendation that official visits be permitted to begin during the summer between a prospective student-athlete's sophomore and junior years. The rules should allow five official visits before completion of the junior year and five additional visits during the senior year, and limit the student to one visit per year per institution. Prospective student-athletes are visiting colleges earlier in their development, and third parties may fund those visits where families cannot afford the trips. The Commission agrees that allowing earlier official visits may alleviate some of this pressure.

Third, the Commission further supports the recommendation that coaches be permitted to provide more than two hours of skills instruction per week in the off-season. We are informed that an unintended consequence of current limits on NCAA coaches' hours of skills instruction is that agents and other third parties pay for trainers, and we agree that allowing coaches additional time to work with players would be preferable.

Finally, to establish additional points of interaction between college coaches and student-athletes, the Commission supports the recommendation that video operators and other "staff" be permitted to coach their teams. The Commission was informed that NCAA schools are not doing enough to develop the next generation of coaches; in any event, this restriction sets artificial limits on relationships between coaching staffs and team members.

The Commission believes that additional recommendations of the NABC and others are worthy of NCAA study. It also supports the NABC's intent to reinvigorate its Code of Ethics and disciplinary rules and enforcement.

**Section Four: Add A Significant Cadre of Public Members To The NCAA Board of Governors.**

The Commission recommends that the NCAA restructure its Board of Governors to include at least five public voting members with the experience, stature and objectivity to assist the NCAA in re-establishing itself as an effective and respected leader and regulator of college sports. It further recommends that at least one of these public members also be a member of the NCAA's Executive Board.

The NCAA Board of Governors is currently composed of presidents or chancellors of NCAA colleges and universities, chairs of NCAA division governance bodies and the NCAA president. NCAA Constitution 4.1.1. Each of these Board members wears a second hat for a school, conference or NCAA division or body that creates at least an appearance that he or she cannot be entirely objective in determining the direction of the Association.

The NCAA administers what is effectively a public trust in the United States — athletic competition among college athletes. Public members of boards serve important functions. They provide objectivity, fresh perspectives and independent viewpoints and judgments. Many non-profit associations utilize public board members for precisely these reasons. The NCAA Board needs excellent public members, with the benefits that such members provide. The NCAA should promptly amend its Constitution to restructure the Board to include public voting members, while simultaneously creating a slate of candidates with the appropriate stature and characteristics. The Commission will provide recommendations to assist the NCAA in ensuring compilation of a high-quality slate of potential public board members.

## **CONCLUSION**

The Commission calls on the NCAA to draw up draft legislation and plans to implement its recommendations for Commission review by early August 2018. The Commission will promptly reconvene and conduct the necessary review.

The Commission has made a number of important recommendations. Some call for action by third parties, such as the NBA, the NBPA, apparel companies and member institutions. Most call for substantial NCAA action. Some are simple in concept, but not in execution — such as creating independent investigative and adjudicative systems. Others should be easy to execute — specific changes in the available punishments under Article 19 and in the recruiting rules. Some do not require rules changes, but instead the devotion of financial and administrative resource to planning, for example, the creation of NCAA non-scholastic basketball

camps. The Commission is committed to completing the task that its recommendations will start. It must have a chance to review the responsive draft legislation and action plan, to provide its viewpoint and, hopefully, its affirmation of the NCAA's plan to help ensure the success of this important effort to renew college basketball.