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Utilization of the National Collegiate Athletic Association (NCAA) Manual as a Teaching Tool

Adam Epstein, *Central Michigan University*



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Utilization of the *National Collegiate Athletic Association (NCAA) Manual* as a Teaching Tool

Adam Epstein and Paul Anderson***

I. INTRODUCTION

Teaching a specialized law course to students who are not in law school is a refreshing venture for most instructors. It often provides the instructor with an opportunity to teach in an area of specific research interest that is much more focused than the general business law or legal environment of business course. Accordingly, for those instructors who have the opportunity to teach a course in sports law in their curriculum in a legal studies program housed in a college of business, a legal aspects of sport or sport governance course in a sport management program, or even in a law school course devoted to collegiate athletics, the most current edition of the *National Collegiate Athletic Association (NCAA) Manual* (the Manual) can be used as part of the pedagogical process in beneficial ways.¹ Many

*Associate Professor, Finance and Law, Central Michigan University. Special thanks to Bridget Niland, Assistant Professor, Daemen College, Michael Gentile, Associate Professor, Niagara University, and Jay Jones, NCAA Director of Membership Services/Division III Governance Liaison for their insights.

**Associate Director, National Sports Law Institute, Marquette University Law School.

¹This article focuses on the provisions utilizing the 2007–8 Division 1 Manual. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2007–2008 NCAA[®] DIVISION I MANUAL (2007), http://www.ncaa.org/library/membership/division_i_manual/2007-08/2007-08_dl_manual.pdf (last visited Nov. 13, 2007) [hereinafter NCAA MANUAL]. Each of these Manuals is available for free on the dynamic NCAA Web site, under the “Legislation and Governance” tab, then by clicking on “Rules and Bylaws.” National Collegiate Athletic Association, <http://ncaa.org> (last visited Jan. 2, 2009) [hereinafter NCAA Web site]. See <http://www.ncaapublications.com/ProductsDetailView.aspx?sku=D109> for the 2008–9 version of the Division 1 Manual since the Manual updates and removes links frequently. It is recommended that instructors use the most recent and particular NCAA Manual for the division of the NCAA that their school’s athletic program is a member of.

students will have some familiarity with the NCAA and its role regulating and administering many of the intercollegiate athletics programs on college campuses across the United States.² However, the vast majority of these same students will never have reviewed or studied the Manual before your class.

Exploring the Manual can be applied in both undergraduate and graduate student settings.³ Utilization of the Manual can lead to detailed discussions of the way in which any business or organization responds and adapts to changing times,⁴ terms,⁵ and technologies.⁶ It also allows for the students and instructor to consider and analyze whether the NCAA has drafted effective and enforceable internal rules, regulations, or policies.⁷

²The NCAA's headquarters is currently in Indianapolis, Indiana, and it remains a diverse, voluntary, nonprofit organization with 380,000 student-athletes and over 1000 member schools. See NCAA MANUAL, *supra* note 1, back cover and art. 4.02.1, at 18. Other organizations that regulate collegiate athletics in the United States include the National Association of Intercollegiate Athletics headquartered in Olathe, Kansas, <http://naia.cstv.com/> (last visited Nov. 13, 2007), and the National Junior College Athletic Association in Colorado Springs, Colorado, <http://www.njcaa.org> (last visited Nov. 13 2007).

³The Appendix provides the selected provisions from the complete table of contents for the current NCAA Division I Manual that experience has taught to be effective at undergraduate and graduate levels.

⁴Possibly in reaction to heightened public criticism over student-athletes whose eligibility expired but did not ever graduate from their institution, the NCAA has focused on programs to put the "student" back in the phrase "student-athlete." Two of these measures focus on maintaining the academic eligibility of student-athletes, the Academic Progress Rates (APR), art. 23.01.1 and measuring student-athlete graduation rates, the Graduation Success Rates (GSR), art. 23.02.2. NCAA MANUAL, *supra* note 1, at 363.

⁵In 2006, the NCAA decided to change its traditional Division I-A classifications from I-A and I-AA to the Football Bowl Subdivision (FBS) and Football Championship Subdivision (FCS), respectively. Also, until 2005, the NCAA Manual referred to the leaders of college campuses as "Chief Executive Officers." This was changed to "Presidents and Chancellors" beginning with the 2006 Division I-A Manual. See, e.g., NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2006–2007 NCAA[®] DIVISION I MANUAL (2006), art. 2.1.1, at 3 http://www.ncaa.org/library/membership/division_i_manual/2007-08/2007-08_d1_manual.pdf (last visited Nov. 13, 2007). See <http://www.ncaapublications.com/ProductsDetailView.aspx?sku=D109> for the 2008–2009 version of the NCAA Division I Manual.

⁶In 2007, the abuse of e-mail and text messaging prompted the NCAA to establish an outright ban on text messages between coaches and prospective student-athletes. NCAA MANUAL, *supra* note 1, art. 13.1.2, at 99.

⁷For example, the instructor may wish to query whether the NCAA has effectively drafted and enforced policies related to student-athletes and employment. In most situations courts have found that student-athletes are not employees of their colleges and universities. See, e.g.,

This also can include an analysis of the role that managers can play in maintaining a diverse⁸ workplace and providing due process when individual members or employees are accused of violating an organization's rules.⁹

At the same time, studying the provisions found within the Manual can also demonstrate examples of poor statutory drafting skills and offers wonderful opportunities for students to debate whether amateur athletic organizations should remain tax exempt.¹⁰ It can even provide comic relief at times due to provisions that often seem odd or misplaced within the Manual.¹¹ The postproduction changes in the most current version of the Manual can be monitored on the NCAA's Web site,¹² and instructors and students can follow the NCAA's Legislative Services Database to track the most up-to-date bylaws and interpretations.¹³

Rensing v. Indiana St. Univ. Bd. of Trustees, 444 N.E.2d 1170 (Ind. 1983). There are many employment law-related provisions found throughout the NCAA Manual with regard to employment of student-athletes by other business entities. See, e.g., NCAA MANUAL, *supra* note 1, arts. 12.4.1 & 12.4.2.1, at 69.

⁸Diversity is a major theme that is found throughout the NCAA Manual. See, e.g., NCAA MANUAL, *supra* note 1, art. 4.02.1, at 18 (a "diverse, voluntary, unincorporated Association") and art. 4.5.1, at 22 ("giving due weight to gender and ethnic diversity").

⁹See, e.g., Gene Marsh & Marie Robbins, *Weighing the Interests of the Institution, the Membership and Institutional Representatives in an NCAA Investigation*, 55 FLA. L. REV. 667 (2003).

¹⁰Richard L. Kaplan, *Intercollegiate Athletics and the Unrelated Business Income Tax*, 80 COLUM. L. REV. 1430 (1980). See also Eric Guruli, *Commerciality of College Sports: Should the IRS Intercept?*, 12 SPORTS LAW. J. 43 (2005); James L. Musselmann, *Recent Tax Issues Regarding Professional and Amateur Sports*, 13 MARQ. SPORTS L. REV. 195 (2003).

¹¹The NCAA Manual's authorship has changed considerably since its inception. It was originally drafted by nonlawyers and now many provisions in recent years sound more lawyer-like, reflecting the changing nature of the Manual in response to changing times. Conversation with Bridget Niland, Assistant Professor, Daemen College and Michael Gentile, Associate Professor, Niagara University (Aug. 14, 2007).

¹²NCAA Web site, *supra* note 1.

¹³Many are unaware that, after the NCAA Manual has gone to production, intermittent changes or modifications are posted to the Legislative Service Database for the Internet (LSDBi) Web site which states,

The LSDBi system's manual bylaws are updated after legislation is adopted, amended or revised. As such, the LSDBi manual cites and text may differ from those in the hardcopy of the bylaw manual that is issued once a year. Please note, the LSDBi system has the most up-to-date version of bylaw cites and text.

LSDBi, <https://goomer.ncaa.org/wdbctx/LSDBi/LSDBI.home> (last visited Nov. 13, 2007).

This article provides instructors with some ideas as to how they can incorporate the Manual into their own course without having to reinvent the wheel. Part II offers a brief history of the NCAA and provides the proper context for the particular provisions of the Manual. Part III focuses on the Manual itself, including discussions of principles and themes found within its borders, the connection of the Manual to traditional legal and sports law topics, and it offers examples of some oversights and curious provisions for comic relief.

II. NCAA HISTORY

Before utilizing the Manual as a teaching tool, an instructor should provide a fundamental understanding of the history and evolution the NCAA in order to help students appreciate how the Manual has changed over time and to put the organization in proper perspective. The NCAA is an extremely bureaucratic organization. It has evolved from a small group of colleges and universities designed primarily to protect field-of-play injuries (and deaths) involving football's "flying wedge" into a powerful tax-exempt organization with over three hundred employees managing over 1,000 member institutions from its Indianapolis-based headquarters.¹⁴ The NCAA regulates its membership in a federated arrangement of three divisions with Division I being the most powerful and prominent particularly in the revenue generating sports of men's football, men's basketball, and men's ice hockey among the various popular and powerful sports conferences.¹⁵ In Divisions II and III, corporate sponsorships of entire athletic departments, individual teams and postseason bowls or championships are virtually nonexistent when compared to the heavily commercialized environment of Division I, and, in fact, Division III schools do not

¹⁴See generally Joseph N. Crowley, *The NCAA's First Century: In the Arena*, <http://www.ncaapublications.com/ProductsTileView.aspx?t=arena&c=&s=0&p=0&y=0&index=xml&AspxAutoDetectCookieSupport=1> (last visited Jan. 2, 2009).

¹⁵Each NCAA division votes and regulates on matters of its own. There are eleven major football conferences in Division I. See NCAA MANUAL, *supra* note 1, art. 4.2.1(a), at 19–20. See also Sarah M. Konsky, *An Antitrust Challenge to the NCAA Transfer Rules*, 70 U. CHI. L. REV. 1581 (2003) (comparing Divisions I, II, and III regarding promulgation and regulation of rules). See generally Jonathan Jenkins, *A Need for Heightened Scrutiny: Aligning the NCAA Transfer Rule with Its Rationales*, 9 VAND. J. ENT. & TECH. L. 439 (2006) (discussing formation, evolution, and structure of the NCAA and its "Transfer Rule" within or between divisions).

even offer college athletic scholarships at all.¹⁶ The NCAA (as a whole) today is also extremely proactive in promoting student-athlete safety and welfare, and maintaining critical antidiscrimination and gender equity policies.¹⁷ Even so, some outside organizations question the legitimacy of the NCAA and whether it is sincere and effective in promoting, maintaining, and enforcing academic standards at its member institutions.¹⁸

Like all enduring organizations, the NCAA has adapted and evolved over time. As its membership grew, the list of regulatory bylaws expanded necessitating the adoption of the Sanity Code back in 1940.¹⁹ This was the NCAA's first attempt at regulating intercollegiate sports.²⁰ However, compliance with the Sanity Code was merely voluntary. After several revisions in the 1950s, the Manual became a mandatory set of rules that member institutions had to follow.²¹ The NCAA then began to exercise its influence as a regulatory body once it became apparent that member institutions could not be trusted to govern themselves in accordance with their own

¹⁶See Kristin R. Muenzen, *Comment: Weakening Its Own Defense? The NCAA's Version of Amateurism*, 13 MARQ. SPORTS L. REV. 257, 277–82 (2003); see also Lindsay J. Rosenthal, *From Regulating Organization to Multi-Billion Dollar Business: The NCAA Is Commercializing the Amateur Competition It Has Taken Almost a Century to Create*, 13 SETON HALL J. SPORTS L. 321, 340–41 (2003).

¹⁷In 1905, President Theodore Roosevelt summoned representatives from Harvard, Yale, and Princeton to discuss why hundreds of men had died as a result of the game of football and to reduce the risk or end the game. W.Burlette Carter, *The Age of Innocence: The First 25 Years of the National Collegiate Athletic Association, 1906 to 1931*, 8 VAND. J. ENT & TECH. L. 211, 215–16 (2006). At its first convention in 1906, the NCAA (at that time known as the Intercollegiate Athletics Association of the United States) established its purpose: to regulate and supervise college athletics in the United States and to maintain ethics, dignity and the high purpose of education. *Id.* at 217.

¹⁸For example, an organization that consistently criticizes the NCAA and claims that athletic programs of the status quo cannot legitimately coexist within academic institutions is The Drake Group. According to the group's Web site, "[t]he mission of The Drake Group (TDG) is to help faculty and staff defend academic integrity in the face of the burgeoning college sport industry." The Drake Group, <http://www.thedrakegroup.org/> (last visited Nov. 6, 2007).

¹⁹Crowley, *supra* note 14, at 30.

²⁰*Id.* at 30–35 & 176. See also Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time for a New Game Plan*, 46 ALA. L. REV. 487, 491 (1995).

²¹Crowley, *supra* note 14, at 30–31.

rules.²² As a nongovernmental regulatory agency, the NCAA was stymied as to how to regulate improprieties by its member institutions other than the extreme step of expunging a school from NCAA membership.²³ Eventually, the NCAA promulgated legislation that would enable it to effectively punish its individual member institutions or conferences.²⁴ This led to an era of enforcement in which college presidents, chancellors, and the NCAA enforcement staff, worked together to maintain the integrity of the NCAA as an organization focusing on maintaining athletics within educational institutions.²⁵

According to its own Web site (NCAA.org), the NCAA is comprised of 380,000 student-athletes competing in the three divisions (I, II, III).²⁶ It oversees twenty-three sports, eighty-eight championships (forty-one men's, forty-four women's, three coed), and 49,000 student-athletes compete in NCAA championships each year.²⁷ There are approximately 1,162 NCAA members (schools and conferences).²⁸ The NCAA governance structure is made up of more than 125 committees.²⁹ Association-wide committees deal with issues that affect all members of the NCAA and perform duties necessary to the ongoing operation of the association. These committees are made up of members from each of the NCAA's three major divisions.³⁰

²²*Id.* at 492.

²³Although the NCAA does not have governmental power to subpoena its members, the by-laws do mandate self-disclosure of violations. *See* NCAA MANUAL, *supra* note 1, art. 32.2.1.2, at 407 ("Self-Disclosure by an Institution").

²⁴A complete list of NCAA members and the conferences that they belong to can be found on the NCAA Web site. NCAA Member Organization Links, <http://www.ncaa.org/conferences/index.html> (last visited Nov. 6, 2007).

²⁵*Cf.* James Hopkins, *NCAA Penalties: Corporate Accountability for Coaches and Presidents*, 1 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 179 (2003) (suggesting that college coaches and college presidents must shoulder greater responsibility in complying with NCAA regulations or they themselves should be punished individually as well as a matter of corporate accountability).

²⁶NCAA Web site, *supra* note 1 ("About the NCAA").

²⁷*Id.*

²⁸*Id.*

²⁹*Id.*

³⁰Some of the Division I committees include the NCAA Executive Committee, Executive Committee Subcommittee on Gender and Diversity Issues, Competitive Safeguards and

As stated in the Manual, one of the NCAA's primary purposes is that

[t]he competitive athletics programs of member institutions are designed to be a vital part of the educational system. A basic purpose of this Association 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.³¹

Although this may be the stated focus of the NCAA's rules and regulations, the line between the mission of an educational institution and the reality of highly commercialized collegiate sports is often blurred. Some argue that collegiate sports (particularly Division I men's basketball and football) more closely resemble professional sports.³² In addition, the NCAA at times has not been able to effectively control itself or its members to maintain a clear line of demarcation between the amateur and professional ranks with regard to student-athletes, coaches, and athletic administration.³³ For instance, many college coaching salaries greatly exceed that of full professors at powerhouse institutions, which has stirred great debate in

Medical Aspects of Sports Committee, Honors Committee, Minority Opportunities and Interests Committee, Olympic Sports Liaison Committee, Playing Rules Oversight Panel, Postgraduate Scholarship Committee, Research Committee, Sportsmanship and Ethical Conduct Committee, Walter Byers Scholarship Committee, Committee on Women's Athletics, and Student-Athlete Advisory Committees. Most of these committees exist at each division of the NCAA. See NCAA MANUAL, *supra* note 1, at 27 ("Figure 4-2: Association Governance Structure").

³¹NCAA MANUAL, *supra* note 1, art. 1.3.1, at 1.

³²Consider that Notre Dame University's Tom Zbikowski (football) was allowed to keep prize money for a professional boxing tournament held at Madison Square Garden as long as he did not accept commercial endorsements. See Associated Press, *Zbikowski Will Make Pro Boxing Debut at MSG*, ESPN.COM, Mar. 29, 2006, available at <http://sports.espn.go.com/ncf/news/story?id=2389473>. However, the University of Colorado's Jeremy Bloom (football) had to relinquish his eligibility in football if he was to accept endorsements for his exploits as an Olympic skier. Christian Dennie, *Amateurism Stifles a Student-Athlete's Dream*, 12 SPORTS LAW. J. 221 (2005). Also consider that an amateur student-athlete may declare himself eligible for a professional draft in football, for example, but the NCAA allows for the same individual to seek reinstatement after the draft and, therefore, remain an amateur on the condition that the student-athlete did not hire a sports agent. NCAA MANUAL, *supra* note 1, art. 12.2.4.2.3, at 68.

³³See Knight Commission on Intercollegiate Athletics, *A Call to Action: Reconnecting College Sports and Higher Education* (2001), available at <http://www.knightcommission.org/about/reports/category/A%20Call%20to%20Action/>.

the academic community as to institutional fiscal responsibility and the relationship to athletic department administration.³⁴

In 2006, a federal congressman demanded that the NCAA answer questions regarding its stated mission and asked why the NCAA should remain a tax-exempt organization especially after its nontaxable multi-billion dollar contract with CBS television in 1999 and the millions of other dollars it generates with its host of postseason championship events, tournaments, merchandise, and so on.³⁵ On the other hand, Dr. Myles Brand (the current NCAA president) remains adamant that the NCAA's primary purpose is educational in nature and that the NCAA and its members should not have revenues taxed as unrelated business income.³⁶ This recent federal inquiry, though the Committee on Ways and Means has yet to respond to the NCAA's response,³⁷ should generate excellent classroom discussion on whether (as some have stated) the NCAA may well be the most powerful nongovernmental regulator in America.³⁸

³⁴For example, University of Alabama head football coach Nick Saban signed an eight-year, \$32 million contract in 2007, becoming the highest paid state employee in Alabama. University of Florida Director of Athletics Jeremy Foley signed an eleven-year contract with an annual salary of over \$1 million. See also Steve Wieberg, *Top College Coaches Getting Top Dollar*, USATODAY.COM, Aug. 3, 2001, <http://www.usatoday.com/sports/college/2001-08-03-coaches-cover.htm>.

³⁵Letter from Bill Thomas, Chairman, Committee on Ways and Means, United States House of Representatives, to Dr. Myles Brand, President, NCAA, Oct. 2, 2006, available at http://www.usatoday.com/sports/college/2006-10-05-congress-ncaa-tax-letter_x.htm. In 1999, the NCAA signed an eleven-year \$6 billion television rights deal with CBS television for its men's March Madness basketball tournament. Crowley, *supra* note 16, at 175.

³⁶Letter from Dr. Myles Brand, President, NCAA, to Bill Thomas, Chairman, Committee on Ways and Means, United States House of Representatives, Nov. 13, 2006. See <http://www.neuro.uoregon.edu/~tublitz/COIA/News%20of%20interest/NCAA%20response%20to%20Thomas%20letter%2013%20Nov%202006.pdf>.

³⁷The committee's year-end report notes the letter sent to the NCAA but does not make any reference to any further actions taken in this matter. *Report on the Legislative and Oversight Activities of the Committee on Ways and Means During the 109th Congress*, Dec. 22, 2006, at 97–98, available at <http://waysandmeans.house.gov/media/pdf/109thlegislativeoversightreport.pdf>.

³⁸Carter, *supra* note 17, at 213.

III. THE MANUAL

One of the first things that students will notice about the Manual is its size. The Manual changes on an annual basis (updates from the previous edition are found in grey-shading) and is also available to download for free via a pdf file.³⁹ It is beneficial for students to buy the actual Manual in tangible book form especially if they are interested in working in the collegiate-athletic environment someday. Regardless, the pdf file found on the NCAA Web site works just as effectively, and as an added bonus, it can be downloaded at no cost to the students or instructor.

Years of using the Manual in a class provides instructors with many pedagogical insights into what will work best in their own classroom environment and what will be most beneficial for their own students. Due to the annual modifications found in the Manual, each year the instructor must update course materials and reassess what is most important and interesting to cover. After the first few semesters of utilizing the Manual, some instructors might find that they were overly ambitious when incorporating the study of the Manual into a sports law course. It can be quite challenging to shift gears during lectures on traditional sports law topics and then turn to the Manual for daily readings. Still, the Manual includes many different principles and themes that can be used within a sports or business law course to challenge students, augment the learning experience, and stimulate critical discussion and possibly constructive criticism for change.

A. Principles and Themes

The Manual is divided into three major categories: Constitution, Operating Bylaws, and Administrative Bylaws. Within the Manual there are sixteen principles that drive the NCAA and its member institutions. These guiding principles are found in the beginning of the Manual in its Constitution: Article 2. These principles also reflect and reinforce the nine general purposes of the NCAA, which are listed on the previous page under Article 1.2 Purposes. These principles provide useful examples to explain the importance of including definitional sections and purpose statements at the beginning of a contract or piece of legislation. These

³⁹The pdf version of the 2007–2008 Division I Manual is available from the NCAA Web site at http://www.ncaa.org/library/membership/division_i_manual/2007-08/2007-08_d1_manual.pdf.

principles are described in greater detail in the Manual, but are listed as follows:

- 2.1: The Principle of Institutional Control and Responsibility
- 2.2: The Principle of Student-Athlete Well-Being
- 2.3: The Principle of Gender Equity
- 2.4: The Principle of Sportsmanship and Ethical Conduct
- 2.5: The Principle of Sound Academic Standards
- 2.6: The Principle of Nondiscrimination
- 2.7: The Principle of Diversity Within Governance Structures
- 2.8: The Principle of Rules Compliance
- 2.9: The Principle of Amateurism
- 2.10: The Principle of Competitive Equity
- 2.11: The Principle Governing Recruiting
- 2.12: The Principle Governing Eligibility
- 2.13: The Principle Governing Financial Aid
- 2.14: The Principle Governing Playing and Practice Seasons
- 2.15: The Principle Governing Postseason Competition and Contests Sponsored by Noncollegiate Organizations
- 2.16: The Principle Governing the Economy of Athletics Program Operation⁴⁰

When reading the general principles, it becomes apparent that certain themes can be found throughout the Manual including concepts of amateurism, sportsmanship, education, gender equity, institutional control (or lack of), nondiscrimination, aspects of paternalism; student-athletes should be students first who compete in athletics as an avocation⁴¹ rather than as a profession. These concepts should be emphasized from the beginning of the course. An instructor will find that he or she will likely return to them throughout the semester as different provisions of the Manual are explored in light of traditional legal subjects.

For example, one important theme throughout the Manual is the duty to cooperate with the NCAA during an investigation of an alleged violation.⁴² Though the NCAA is not a state actor and cannot subpoena its

⁴⁰NCAA MANUAL, *supra* note 1, at 3–5.

⁴¹*Id.*, art. 2.9, at 4–5 (“The Principle of Amateurism”).

⁴²*Id.*, art. 32.1.4, at 407 (“Cooperative Principle”).

members during an investigation,⁴³ its bylaws clearly state that an institutional member has an affirmative duty to assist in an investigation and even has an affirmative duty to self-report any violations. Self-disclosure is specifically mentioned in the Manual in Article 32.2.1.2, which states: “Self-disclosure shall be considered in establishing penalties, and, if an institution uncovers a violation prior to its being reported to the NCAA and/or its conference, such disclosure shall be considered as a mitigating factor in determining the penalty.”⁴⁴

Though many students might shrug this off with an “okay,” it is important to tie such affirmative duties to general legal concepts and applications. For example, this affirmative duty to assist the NCAA can be compared to the Uniform Commercial Code’s theme of the duty of cooperation, including principle themes of good faith, honesty in fact, mitigation of damages, and so on.⁴⁵ Another way to tie-in affirmative duties is to discuss the various special relationships in tort law such as landlord-tenant, parent-child, employer-employee, and carrier-passenger in which a duty of care is imputed in these special relationships.⁴⁶ Along the same lines, seasoned business law professors might even compare the duty to assist the NCAA in an investigation to the role that whistle-blowing⁴⁷ has affected organizations, prompting enactment of laws which emphasize full disclosure, including the Sarbanes-Oxley Act of 2002 (SOX) that was promulgated following corporate scandals including Enron and WorldCom.⁴⁸

⁴³See *NCAA v. Tarkanian*, 488 U.S. 179 (1988) (holding that the NCAA is not a state actor).

⁴⁴NCAA MANUAL, *supra* note 1, art. 32.2.1.2, at 407. Self-disclosure is also mentioned in Articles 23.01.3 and 30.1.

⁴⁵For example, “[g]ood faith’ in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.” Uniform Commercial Code (U.C.C.), § 2-103(1)(b), available at <http://www.law.cornell.edu/ucc/2/2-103.html>.

⁴⁶RESTATEMENT (SECOND) OF TORTS § 314A (1965). Special relationships that give rise to a duty to aid or protect include common carriers and passengers, parent and children, innkeepers and guests, hospitals and patients, business owners and invitees, and employers and employees.

⁴⁷See, e.g., Joe Vardon, *Reinstated Whistle-blower Sues UT, Seeks Damages*, TOLEDOBLADE.COM, NOV. 13, 2007, available at <http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20071113/NEWS02/711130350>.

⁴⁸Public Company Accounting Reform and Investor Protection (Sarbanes-Oxley) Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002). See generally Scott Harshbarger & Goutam U. Jois, *Looking Back and Looking Forward: Sarbanes-Oxley and the Future of Corporate Governance*, 40 AKRON L. REV. 1 (2007).

There may be no more important theme in the Manual than the role and importance of gender equity. The phrase “gender equity” is utilized throughout the 2007–2008 Manual,⁴⁹ and the creation of a mandatory administrative position known as the Senior Woman’s Administrator reflects the NCAA’s commitment to gender equity within collegiate athletics.⁵⁰ This certainly complements a general discussion of the evolution of Title IX of the Education Amendments of 1972 over the years and recent gender equity reporting requirements for colleges mandated under the Equity in Athletics Disclosure Act.⁵¹

⁴⁹NCAA MANUAL, *supra* note 1, arts. 2.2.2, at 3; 2.3, at 4; 20.3.1.5 (c), at 318; 20.7.1.2(b), at 323; & 22.2.3, at 358–60.

⁵⁰NCAA MANUAL, *supra* note 1, art. 4.02.4, at 18. This commitment to gender equity is particularly interesting as the Supreme Court has held that the NCAA is not subject to Title IX and its regulations. *NCAA v. Smith*, 525 U.S. 459 (1999).

⁵¹Title IX of the Education Amendments of 1972, 92 P.L. 318; 86 Stat. 235 (1972), 20 U.S.C. § 1681 et seq. (2007). Some major Title IX cases might include: *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979) (making private right of action available under Title IX actions); *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60 (1992) (allowing monetary damages when intentional discrimination is proven); *Cohen v. Brown Univ.*, 991 F.2d 888 (1st Cir. 1993); *Cohen v. Brown Univ.*, 101 F.3d 155 (1st Cir. 1996), *cert. denied*, *Brown Univ. v. Cohen*, 520 U.S. 1186 (1997) (finding that Brown’s decision to eliminate two women’s sports and two men’s sports constituted a Title IX violation); *NCAA v. Smith*, 525 U.S. 459 (1999) (finding that NCAA was not subject to Title IX jurisdiction due to its receipt of contributions from member colleges and universities); *Mercer v. Duke Univ.*, 181 F. Supp. 2d 525 (M.D.N.C. 2001), *vacated in part*, 20 Fed. Appx. 643 (4th Cir. 2002) (not allowing punitive damages against a private university because an intervening Supreme Court case, *Barnes v. Gorman*, 536 U.S. 181 (2002), concluded that punitive damages were not available in private causes of action under Title VI of the Civil Rights Act of 1964, P.L. 88–352, 78 Stat. 252 (1964) (on which Title IX was modeled)); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005) (finding a private right of action for individuals and whistle-blowers who reveal Title IX violations even though they themselves were not subject to sex discrimination); *NCAA v. Smith*, 525 U.S. 459 (1999) (Supreme Court held that the NCAA does not directly receive federal financial support and so is not a recipient of federal funds covered by Title IX).

Equity in Athletics Disclosure Act of 1994, Pub. L. No. 103–382, 108 Stat. 3969 et seq. (1994) 20 U.S.C. §1092 (2007). Students often find it interesting to research the information reported by particular schools on the federal government’s Equity in Athletics Web site. U.S. Department of Education, Office of Postsecondary Education, Equity in Athletics Data Analysis Cutting Tool Web site, *available at* <http://www.ope.ed.gov/athletics/> (last visited Nov. 7, 2007).

B. Application to Traditional Business Law Subjects

When utilizing the Manual, an effective way to bridge the gap to the real world is to explore significant legal decisions involving the NCAA. Many of these decisions actually reference the Manual itself. Even if the court decisions do not reference the Manual, they can provide students with a useful perspective on the application of the NCAA's regulatory authority. By comparing the provisions found in older cases, students can learn how the current Manual may have adapted to reflect the judicial decisions of the last several decades. Exploring the Manual can be especially insightful for the student who has studied law previously in a business law, legal environment of business course, or general survey course in sports law.

For starters, anyone who has taught aspects of administrative law should appreciate the role that the NCAA plays in promulgating rules, enforcing bylaws, maximizing revenues, and protecting its brand name and product. Understanding the principles of self-regulation and institutional control are of vital importance and can lead to discussions related to administrative law and the rights of private organizations to make and enforce their own rules.⁵² Instructors should recognize that the Manual does not always mean what it says and that there are various stated exceptions to the bylaws found within the bylaws themselves.⁵³

For those instructors who focus on constitutional and criminal law issues and the role of sport governance generally, the Manual is full of provisions that can be used to compare and contrast the role of governmental administrative agencies in making and enforcing regulations. For example, the NCAA's Committee on Infractions (COI) has the ability to investigate both lesser "crimes" (secondary violations) found in Article 19.1⁵⁴ and major crimes (major violations) as found in Article 19.5.⁵⁵

⁵²*See, e.g.,* De La Salle Institute v. Illinois High School Ass'n, No. 05CH16410 (Cir. Ct. Cook County, Oct. 5, 2005) (finding that as long as the association followed its own rules, it could enforce membership rules against private and public schools).

⁵³NCAA MANUAL, *supra* note 1, arts. 12.1.2.4 (Exceptions to Amateurism Rule) & 12.1.2.4.12. (describing a host of exceptions to the NCAA policies involving the line between amateur and professional), at 65–66.

⁵⁴*Id.*, art. 19.1, at 304–05.

⁵⁵*Id.*, art. 19.5, at 306. This discussion can also lead to issues related to concerns over student-athletes receiving extra benefits not available to the student body as a whole which is in violation of NCAA bylaws. *Id.*, art. 14.01.3.2, at 125.

Although the NCAA is not a state actor, its appellate process does allow for significant due process for schools or individuals charged with violating NCAA bylaws.⁵⁶ The NCAA is not subject to due process requirements, but the majority of NCAA institutions are state actors, and therefore, they must follow constitutional due process requirements. NCAA due process is laid out in Article 32.8.7.⁵⁷ It provides a high level of protection for named parties even though during an investigation the NCAA is both the prosecutor and the judge.⁵⁸

Students are often interested in learning about the NCAA enforcement process, which is described in Article 19 within the Manual.⁵⁹ Violations come to light in many ways, from coaches, student athletes, or members of the general public reporting violations to the NCAA,⁶⁰ or from schools themselves because Article 1.3.2 requires that they apply and enforce the rules found in the Manual to their own athletic programs.⁶¹ The NCAA's enforcement staff then goes through an extensive investigative process, including interviews with the individuals involved, culminating in a hearing before the COI.⁶² The process before the COI is much like the process before a normal court of law, and students will find it interesting that the NCAA provides such due-process-like protection, even though it is not bound by such constitutional provisions.⁶³ After the hearing, the COI

⁵⁶*Id.*, art. 19.6, at 310 ("Rights of Members to Appeal"). See also Katherine Elizabeth Maskevich, *Getting Due Process into the Game: A Look at the NCAA's Failure to Provide Member Institutions with Due Process and the Effect on Student-Athletes*, 15 SETON HALL J. SPORTS & ENT. L. 299 (2005).

⁵⁷NCAA MANUAL, *supra* note 1, art. 32.8.7, at 414–15. See also Kenneth J. Martin, *The Infractions Appeals Committee: Procedure, Precedent and Penalties*, 9 SETON HALL J. SPORT L. 123 (1999).

⁵⁸See Mike Rogers & Rory Ryan, *Navigating the Bylaw Maze in NCAA Major-Infractions Cases*, 37 SETON HALL L. REV. 749, 754 (2007).

⁵⁹See NCAA MANUAL, *supra* note 1, art. 19, at 303–11.

⁶⁰*Frequently Asked Questions about the NCAA Enforcement Process*, available at http://www.ncaa.org/enforcement/faq_enforcement.html (last visited Jan. 24, 2008) [hereinafter *Frequently Asked Questions*].

⁶¹NCAA Manual, *supra* note 1, art. 1.3.2, at 1.

⁶²*Frequently Asked Questions*, *supra* note 60.

⁶³*Id.* ("Although the United States Supreme Court determined that the NCAA is not a 'state actor' and therefore is not subject to the due-process clause of the Federal Constitution, the NCAA membership believes its procedure provides a meaningful and fair opportunity for institutions and involved individuals to be involved in these processes").

is then authorized to impose any penalties and sanctions on the school involved.

Tying the Manual to more established areas of sports or business law does not have to be a challenge. For example, one might not appreciate the role of fraud or misrepresentation in the Manual (or within collegiate athletics generally) until it is characterized as academic fraud, participation fraud, and even resume fraud.⁶⁴ It is interesting to note the numerous colleges that have been accused of (and in some cases been found guilty of) pushing student-athletes through illegitimate classes, throwing games, or even paying student-athletes in violation of NCAA rules.⁶⁵ One could certainly explore the recent scandals involving high school diploma mills that some claim are in business (in part) to circumvent NCAA initial eligibility standards.⁶⁶

Exploring the minimum standards in order to enroll in an NCAA institution can also be engaging for your students. One issue that can be discussed is the fact that when the NCAA pushes to raise these standards, minority student-athletes have sued (often successfully) claiming that changing initial eligibility requirements via Proposition 16 and other initiatives violates Title VI of the Civil Rights Act of 1964 because of the disparate impact these measures have on them.⁶⁷ Other litigation focused on the impact of these standards on disabled student-athletes, and this area leads to interesting class discussions focusing on the history of the NCAA bylaws and the ways in which the NCAA addresses and accommodates student-athletes with disabilities.⁶⁸ An ambitious instructor might even ask the students about the need for or efficacy in having prospective student-

⁶⁴See Ruth Teichroeb, *State Takes Stand Against Phonies*, SEATTLEPI.COM, June 21, 2006, available at http://Seattlepi.nwsource.com/local/274667_tafoside21.html) (listing several prominent examples of inaccuracies on resumes).

⁶⁵The academic scandals among NCAA institutions and student-athletes are far too numerous to list. See, e.g., Associated Press, *Track Coach Found Guilty in Scheme to Pay Student Athletes*, CSTV.COM, <http://www.cstv.com/sports/c-track/stories/071206aah.html> (last visited July 22, 2006).

⁶⁶NCAA MANUAL, *supra* note 1, art. 14.3.1.1.1., at 142–43. See also Steve Richardson, *Prep Course Patterns Draw NCAA Scrutiny*, USA TODAY, Apr. 19, 2006, available at http://www.usatoday.com/sports/college/2006-04-19-diploma-mills_x.htm.

⁶⁷Title IV of the Civil Rights Act of 1964, P.L. 88–352, 78 Stat. 252 (1964); *Cureton v. NCAA*, 198 F.3d 107 (3d Cir. 1999); *Cureton v. NCAA*, 252 F.3d 267 (3d Cir. 2001). See also *Pryor v. NCAA*, 288 F.3d 548 (3d Cir. 2002).

⁶⁸NCAA MANUAL, *supra* note 1, art. 14.3.1.2.1.2, at 144 (“Students with Learning Disabilities”).

athlete criminal background checks prior to being awarded an athletic scholarship.⁶⁹

The impact that sports agents have had on NCAA legislation allows one to explore the role that the National Conference of Commissioners on Uniform State Laws (NCCUSL) played in developing model acts including the Uniform Athlete Agents Act (UAAA).⁷⁰ The NCAA disallows the use of sports agents by current student-athletes, and that conduct violates the NCAA's general position on amateur participation.⁷¹ An NCAA student-athlete loses the privilege to participate in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletics ability in that sport.⁷² Emphasizing the "amateur" status of student-athletes also allows for exploration of the NCAA's infamous "death penalty," the penalty imposed upon Southern Methodist University causing the suspension of the football team for the entire 1987 season.⁷³ If time allows, an area that generates interesting class discussion deals with whether boosters of collegiate athletic programs (also known as "representatives of athletic interests" according to the Manual) have an implied agency relationship with the college or university.⁷⁴

For instructors who have either an academic or practical interest in contract law, this class can explore the National Letter of Intent (NLI) program. The NLI is available online and is the initial document that prospective student-athletes sign to express their agreement to attend a

⁶⁹Press Release, 2007 NCAA Backgrounder—Sports Wagering, available at http://www2.ncaa.org/portal/media_and_events/press_room/2007/march/20070307_sportswagering_bckgrndr.html (last visited Nov. 13, 2007).

⁷⁰Uniform Athlete Agents Act, drafted by the National Conference of Commissioners on Uniform State Laws (2000), available at <http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm>. See also *Uniform Athlete Agents Act (UAAA) History and Status*, <http://www1.ncaa.org/membership/enforcement/agents/uaaa/history.html> (last visited July 21, 2006).

⁷¹NCAA MANUAL, *supra* note 1, art. 12.3, at 68–69 ("Use of Agents"). See also Associated Press, *NCAA Cuts Suspension of Kentucky's Morris to 14 Games*, USA TODAY, Dec. 15, 2005, available at http://www.usatoday.com/sports/college/mensbasketball/sec/2005-12-15-morris-suspension-reduced_x.htm.

⁷²NCAA MANUAL, *supra* note 1, art. 12.3, at 68–69.

⁷³DAVID WHITFORD, *A PAYROLL TO MEET: A STORY OF GREED, CORRUPTION AND FOOTBALL AT SMU* (1989). See also Doug Lederman, *Partial 'Death Penalty' for Baylor Basketball*, INSIDEHIGHERED.COM, June 24, 2005, <http://insidehighered.com/news/2005/06/24/baylor>.

⁷⁴NCAA MANUAL, *supra* note 1, art. 13.02.13.1, at 81 ("Representative of Athletics Interests").

particular university in exchange for a renewable (at the college's option) one-year scholarship and the opportunity to participate in athletics.⁷⁵ Analyzing the NLI is an effective way to analyze contracts generally and emphasizes that the contractual relationship is between the student-athlete and the university itself, and not the particular coach who may have recruited the student-athlete.⁷⁶ An interesting side note to this area of discussion is that while courts find that the NLI and scholarship does establish a contract,⁷⁷ they also have consistently held that participation in college sports is a privilege and not a legal right, thus reinforcing the idea that an athletic scholarship is renewable annually at the option of the school and is simply not a four-year guarantee.⁷⁸

Another interesting topic for discussion is drug testing and its relationship to constitutional law.⁷⁹ The Manual references a list of prohibited drugs (both performance enhancing and street drugs), and references the organization's drug testing program.⁸⁰ Encouraging students to visit the NCAA Web site to print out the list enhances classroom discussion.⁸¹ It is also useful to include a history of NCAA drug-testing policies.⁸² Analyzing the NCAA drug-testing policy can lead the instructor and students to interesting comparisons to the policies in place for various professional

⁷⁵See National Letter of Intent, Text of the National Letter of Intent, *available at* <http://www.national-letter.org/> (last visited Nov. 7, 2007); NCAA MANUAL, *supra* note 1, art. 13.02.10, at 80.

⁷⁶NCAA MANUAL, *supra* note 1, art. 13.02.10, at 80.

⁷⁷*See, e.g.*, Taylor v. Wake Forest Univ., 191 S.E.2d 379 (N.C. Ct. App. 1972) (one of the first cases holding that there is contract between the student-athlete and the university based on the scholarship the student receives).

⁷⁸*See, e.g.*, Ross v. Creighton Univ., 957 F.2d 410 (7th Cir. 1992); Knapp v. Northwestern Univ., 101 F.3d 473 (7th Cir. 1996).

⁷⁹The courts have uniformly upheld the NCAA's right to implement a drug testing policy. *See, e.g.*, Hill v. NCAA, 865 P.2d 633 (Cal. 1994).

⁸⁰NCAA MANUAL, *supra* note 1, art. 31.2.3.4, at 391-92; NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, DRUG-TESTING PROGRAM 2007-2008 (2007).

⁸¹*See* NCAA Banned-Drug Classes 2007-2008, http://www1.ncaa.org/membership/ed_outreach/health-safety/drug_testing/banned_drug_classes.pdf (last visited Nov. 6, 2007).

⁸²For example, testing of student-athletes at championships and postseason bowl games began in 1986. Voluntary off-season testing was adopted in 1989. In 1990, Proposition 53 passed, which replaced the voluntary off-season drug testing program for Division I-A and I-AA. Year-round testing began in 1990. *See* Crowley, *supra* note 14, at 155 & 244.

sports leagues and the latest World Anti-Doping Agency (WADA) list which is the model for the Olympic Movement. Exploring the NCAA drug-testing policy (and others) should allow for the consideration of the changing nature of student and student-athlete privacy rights, court decisions, and laws that have evolved heavily since the 1980s, the advent of the Internet, and, of course, the 9/11 tragedy.⁸³

Instructors who favor antitrust perspectives in sports law have numerous opportunities to engage students in discussion of whether particular bylaws might constitute unreasonable restraints of trade.⁸⁴ For example, limiting the number of coaches per sport per institution for football,⁸⁵ limiting the number of official visits by a prospective student-athlete,⁸⁶ mandating that attendance at football games average at least 15,000,⁸⁷ capping the number of pages that a football press guide can have to 208 pages with no color on the inside pages,⁸⁸ and, of course, the minimum academic standards needed to be able to participate in college sports⁸⁹ all smack of potential contracts, combinations, or conspiracies that might constitute restraints of trade.⁹⁰ At the very least, a discussion of the

⁸³New Jersey v T.L.O., 469 U.S. 325 (1985) (upholding school authorities conducting personal searches of a student and a student's belongings on the basis of a reasonable suspicion); Schail v. Tippecanoe County Sch. Corp., 864 F.2d 1309 (7th Cir. 1988) (upholding the school policy of random testing for athletes for all interscholastic student-athletes and cheerleaders in its school system). Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995); Todd v. Rush County Schs., 133 F.3d 984 (7th Cir. 1998) (upholding policy requiring all students who wanted to participate in extracurricular activities to consent to random drug testing since participation in extracurricular activities was voluntary and a privilege). Bd. of Educ. Indep. Sch. Dist. #92 of Pottawatomie v. Earls, 536 U.S. 822 (2002). Joye v. Hunterdon Cent. Reg. Bd. of Educ., 826 A.2d 624 (N.J. 2003). Associated Press, *New Jersey Institutes High School Steroid Testing*, USA TODAY, June 7, 2006, available at <http://sports.espn.go.com/sports/news/story?id=2474534>.

⁸⁴Sherman Act, 15 U.S.C. §§ 1-7 (2007) (Section 1 of the Sherman Act forbidding contracts, combinations, or conspiracies that unreasonably restrain trade while Section 2 of the act prohibits monopolization of trade and commerce).

⁸⁵NCAA MANUAL, *supra* note 1, arts. 11.7.2 & 11.7.3, at 54-56.

⁸⁶*Id.*, art. 13.6.2.2, at 104 ("Number of Official Visits-Pro prospective Student-Athlete Limitation").

⁸⁷*Id.*, art. 20.9.7.3, at 330-34 ("Football-Attendance Requirements").

⁸⁸*Id.*, art. 13.4.1.(g), at 99 ("Athletic Publications").

⁸⁹*Id.*, art. 14, at 125-74 ("Eligibility: Academic and General Requirements").

⁹⁰*See also* Jones v. NCAA, 392 F. Supp. 295 (D. Mass. 1975) (NCAA declaring student-athlete ineligible and the district court noted that he was a student, not a businessman); Hennessey v. NCAA, 564 F.2d 1136 (5th Cir. 1977) (limiting the maximum number of assistant football and

reasonableness of such restrictions can provide a nice segue into a discussion and analysis of the many antitrust claims that were brought against the NCAA in the 1980s and 1990s.⁹¹ Though the NCAA has won the vast majority of antitrust claims against it, it is interesting to discuss two cases, *NCAA v. Board of Regents of University of Oklahoma*⁹² and *Law v. NCAA*,⁹³ where the NCAA did not win. If time allows, this may also lead to a discussion of the Bowl Championship Series (BCS) and its possible review under the antitrust laws.⁹⁴

C. Oversights and Curious Provisions

As the semester fights its way to the end and students become bogged-down in the Manual's bylaws, it is often a welcome relief to explore provisions in the Manual that represent potential oversights on the part of editors or are simply downright curious (if not comical). For example, in the 2006–2007 Division I Manual, there was a typo that referred to a

basketball coaches Division I institutions could employ did not violate antitrust laws); *Justice v. NCAA*, 577 F. Supp. 356 (D. Ariz. 1983) (accepting NCAA sanctions because the sanctions were reasonably related to NCAA goals of preserving amateurism and promoting fair competition); *NCAA v. Tarkanian*, 488 U.S. 179 (1988) (finding NCAA not a state actor); *Smith v. NCAA*, 139 F.3d 180 (3d Cir. 1998) (finding Sherman Act did not apply to NCAA eligibility rules); *Metro. Intercollegiate Basketball Ass'n v. NCAA*, 339 F. Supp. 2d 545 (S.D.N.Y. 2004) (settling out of court when NCAA purchased National Invitation Tournament); *NCAA v. Yeo*, 171 S.W.2d 863 (Tex. 2005) (finding swimmer's reputation of "the most decorated athlete in the history of the Republic of Singapore" did not enjoy a special protection under the Texas Constitution).

⁹¹See *Law v. NCAA*, 902 F. Supp. 1394 (D. Kan. 1995), *aff'd*, 134 F.3d 1010 (10th Cir. 1998) (finding NCAA's Cost Reduction Committee's decision to establish Restricted Earnings Coach for basketball assistant coaches violated federal antitrust laws); *NCAA v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85 (1984) (finding restricted television broadcast plan violated antitrust laws).

⁹²468 U.S. 85 (1984).

⁹³134 F.3d 1010 (10th Cir. 1998). See also *Metro. Intercollegiate Basketball Ass'n v. NCAA*, 339 F. Supp. 2d 545 (S.D.N.Y. 2004) (denying NCAA motion to dismiss antitrust lawsuit by National Invitation Tournament (NIT)). This case did not go to trial as the NCAA eventually purchased the NIT for \$40.5 million. *NCAA Buys Tournaments, Ends NIT Litigation*, SBRFORUM.COM, <http://forum.sbrforum.com/ncaa-basketball-handicapping/293-ncaa-buys-tournaments-ends-nit-litigation.html> (last visited Nov. 15, 2007).

⁹⁴The BCS was established in 1998, and the national champion in the Football Bowl Subdivision (i.e., formerly known as Division I-A) is determined by various polls unlike any other NCAA Championship. See *BCS Chronology*, <http://www.bcsfootball.org/bcsfb/history> (last visited Nov. 15, 2007).

student-athlete as a studnet-athlete (notice the misspelling).⁹⁵ Noting Manual errors or omissions can generate insightful class discussion and also provides an instructor with the opportunity to emphasize the role of proper editing, the use of spell-check and other word processing document-checking programs in general. Interestingly, this error was found under a section involving the use of an interpreter.⁹⁶ Offering extra credit to students who find such errors or omissions might encourage an even greater emphasis on attention to detail and could be couched in terms of enhancing better statutory, legislative, or contract drafting skills.

Other provisions in the Manual cry for an explanation as to why certain items are mentioned at all. For example, it might seem odd (but understandable) that the NCAA had to pass legislation regarding the maximum size of a manufacturer's or distributor's label on a student-athlete's uniform or jersey. Specifically a logo must not exceed 2.25 square inches, but the Manual goes further and parenthetically mentions three other geometrical figures as well: "rectangle, square, parallelogram."⁹⁷ An instructor might query why rhombus and trapezoid were left off the list.

When prospective student-athletes (i.e., "prospects") visit the campus on one of their five official visits,⁹⁸ they are entitled to three square meals⁹⁹ in addition to reasonable snacks such as pizza and hamburger. This of course begs the question of how pizza and hamburger can be classified as "snacks." Additionally, prospects must only be provided normal lodging without "special accessories," such as Jacuzzi's,¹⁰⁰ and transportation to the campus itself must utilize normal commercial transportation at coach-class airfare.¹⁰¹ Helicopter and limousine transportation for prospects are prohibited¹⁰² and recognition of these modes of transportation usually draws

⁹⁵NCAA MANUAL, *supra* note 1, art. 13.1.2.2 (f), at 87 ("General Exceptions, Interpreter" originally spelled incorrectly as studnet-athlete [sic]).

⁹⁶*Id.*

⁹⁷*Id.*, art. 12.5.4.1, at 74 ("Laundry Label").

⁹⁸*Id.*, art. 13.6.2.2, at 104 ("Number of Official Visits-Prospective Student-Athlete Limitations").

⁹⁹*Id.*, art. 13.6.7.7, at 108 ("Meals on Official Visit").

¹⁰⁰*Id.*, art. 13.6.6, at 106 ("Accommodations on Official Visit").

¹⁰¹*Id.*, art. 13.5.2.3, at 102 ("Air Transportation").

¹⁰²*Id.*, art. 13.5.2.1, at 102 ("General Restrictions").

immense laughter and discussion from the students as to why such provisions had to be included and whether the use of horse-and-buggy rides (or any other form of transportation for that matter) would be a violation.

More recent provisions that are also curious include the necessity of changing football Division I classifications from Division I-A, I-AA to the Football Bowl Subdivision (FBS) and Football Championship Subdivision (FCS) in the 2007–2008 Manual.¹⁰³ The class discussion can focus on whether the NCAA really believes that changing these terms is a good decision and if so, why? Another interesting provision was recently added to the Manual that provides that student-athletes who start their own business may not even use their own name, image, or likeness to promote that business.¹⁰⁴

IV. CONCLUSION

Having the opportunity to teach a specialty course in sports law can be an exciting venture for instructors who might have such a research or pedagogical interest. However, one does not have to reinvent the wheel in order to offer the students an insightful exploration into the important role that the NCAA plays in the amateur sport landscape in the United States. By incorporating provisions from the latest version of the NCAA Manual into a sports law or sport governance course, students who have taken a general business law or legal environment of business course should be able to appreciate the NCAA even more.

Because it changes annually and reacts to changing times, terms, and technologies, an instructor will be served best by trial-and-error experience in using the Manual regularly in this course to suit his or her own points of emphasis. This article was intended to provide basic ideas and suggestions as to how an instructor who is unfamiliar with the Manual might find ways to incorporate it as part of the educational experience in interesting and challenging ways. As a head start, we recommend the by-laws listed in the Appendix.

Instructors who emphasize the many varied principles and themes that can be found within the Manual will be able to generate excellent

¹⁰³*Id.*, arts. 11.7.2, at 54 (FBS) & 11.7.3, at 55 (FCS).

¹⁰⁴*Id.*, art. 12.4.4., at 70 (“Self Employment”).

classroom discussion on timely topics. Relating such material to traditional business law topics and cases will only enhance the classroom learning environment. In the end, although many of the rules and legal principles discussed by using the Manual will be challenging for students, incorporating the more curious provisions allows for some form of comic relief and can even call into question why some of the provisions had to be incorporated in this ever-evolving body of work in the first place.

APPENDIX: 2007–2008 NCAA DIVISION I MANUAL (SELECTED PROVISIONS)

1: NAME AND PURPOSE

1.2 (Purposes)

1.3.1 (Basic purpose: “clear line of demarcation”)

2: PRINCIPLES

2.01 (General)

2.1 (“Institutional Control and Responsibility”)

2.2.2 (Diversity/Gender Equity)

2.2.3 (Health and Safety)

2.2.4 (Positive S-A/Coach Relationship)

2.6 (Non-discrimination)

2.9 (Amateurism)

2.10 (Competitive Equity)

3: NCAA MEMBERSHIP

3.02.3 (Membership categories)

3.02.3.1 (“Member”)

3.02.3.1.1 (“Consortium”)

3.02.3.3 (Member Conference)

3.1.1 (USA only)

3.2.4.4 (APR/GSR)

3.2.4.5.2 (Emerging Sports)

3.2.4.7 (Drug-Testing Consent Form)

3.2.4.9 (HIPAA/Buckley Amendment)

3.2.4.12 (“personal honor”)

3.3.2.2.4 (Football issues)

3.7.2 (Annual dues)

4: ORGANIZATION

4.01.1 (Presidents and Chancellors [used to be termed “CEO’s”])

4.02.1 (“Association”)

4.02.2 (Faculty Athletics Representative)

4.02.4 (Senior Woman Administrator)

4.1.1 (notice 1-A, 1-AA, 1-AAA)

4.2.1 (again, gender and ethnic diversity, and notice the various conferences)

4.2.1.1 (1-A, 1-AA, 1-AAA)

4.5.1 (again, gender and ethnic diversity-also notice the various conferences, notice 1-AA list)

Note: 1-A: Football Bowl Subdivision (FBS); 1-AA: Football Championship Subdivision (FCS)

5: LEGISLATIVE PROCESS

5.1.1.1 (Annual convention)

5.1.4.3.4 (Football issues)

5.1.4.3.4.1 (Football issues)

5.4.1.2.1 (Role of membership services)

6: INSTITUTIONAL CONTROL

6.01.1 (“Institutional control”)

6.1.1 (“President/Chancellor”—used to say CEO)

6.1.2 (Athletics Board)

6.1.3 (Faculty Athletics Rep.)

6.3.1 (Self-study)

6.3.2 (Exit interview)

6.4.1 (Responsibility for outside entities)

6.4.2 (Representatives of Athletics Interests (a.k.a. “boosters”))

10: ETHICAL CONDUCT

10.01.1 (Honesty and sportsmanship)

10.1 (Unethical conduct)

10.2 (Banned drugs)

10.3 (Sports Wagering activities)

10.3.1 (Sanctions)

11: PERSONNEL

11.01.1 (Bonus)

11.01.2 (Head or assistant coach)

11.01.3 (Graduate assistant coach)

11.01.5 (Volunteer coach)

11.1.2.1 (Head coach responsibility)

11.1.4 (Marketing athletics ability/reputation)

11.1.5 (Use of Tobacco products)

11.3.1 (Control of Employment/salaries)

11.6.1 (Limitation on scouting)

11.6.2 (Limitation on scouting in sports other than basketball, football and women's volleyball)

11.6.4 (Exchanging "films")

11.7.2 (limit of coaches in 1-A: 1+9+2) [Now called Bowl Subdivision]

11.7.2.1.3 ("Sprint" football)

11.7.3 (limit of coaches in 1-AA: 11) [Now called Championship Subdivision]

11.7.4 (Limitations on number of coaches who can recruit off campus at one time)

12: AMATEURISM

12.01.1 (Eligibility-"amateur")

12.01.2 (Clear Line of Demarcation)

12.01.4 (Grant-in-Aid)

12.02.1 ("Individual")

12.02.2 ("Pay")

12.02.5 ("Student-athlete")

12.1.2. ("Amateur status")

12.1.2.3 ("Road racing")

12.1.2.4 ("Exceptions to Amateurism—explore all that follow)

12.2.4 ("Draft and Inquiry"—note football and basketball exceptions, below")

12.2.5 and 12.2.5.1 (Contracts/Non-binding agreements)

12.3.1 (Use of Agents-General Rule)

12.3.2 (Legal Counsel)

12.3.4 (PSCP)

12.3.4.2 (PSCP-make up)

12.4.1 AND 12.4.2.1(Employment compensation)

12.4.4: Self-Employment

12.5.1.1 (Promotional activities)

12.5.1.1.3 (Player/Trading cards)

12.5.1.4 (Commercial Advertisement)

12.5.1.4.1 (Schedule cards)

12.5.1.7 (Camps)

12.5.2.1 (Non-permissible advertisements)

12.5.2.2 (Name or picture without knowledge)

12.5.2.3.3 (Promotion contests)

12.5.3 (Media activities)

12.5.4 (Use of Logos)

12.5.4.1 (Laundry label)

13: RECRUITING

- 13.01.4 (Recruiting by Representatives of Athletics Interests)
 - 13.01.6 (Emerging sports)
 - 13.02.3 (Contact)
 - 13.02.4 (Contact/Evaluation/Quiet/Dead and Women's Volleyball exception)
 - 13.02.5.1 (d) (unavoidable incidental contact) e 1, f (official visits)
 - 13.02.10 (NLI)
 - 13.02.11 (Prospective student-athlete)
 - 13.02.13 ("Booster" finally defined)
 - 13.02.14 (Telephone calls)
 - 13.02.15.1 (Official visit)
 - 13.02.15.2 (Unofficial visit)
 - 13.1.2 (f) (Interpreter)
 - 13.1.3.1 (Time period for phone calls to prospects)
 - 13.1.3.3.2.1 (NLI phone call feeding frenzy for football)
 - 13.1.5.1.4 (Multiple sport athlete)
 - 13.1.6.1/13.1.6.2 (Contacts to prospects)
 - 13.4.1 (Recruiting materials)
 - 13.4.1.1 (a) and (g)
 - 13.5.2.1 (Transportation on Official paid visit)
 - 13.6.2.2 (Number of official visits generally)
 - 13.6.2.6 a, b, c (Number of official visits per institution)
 - 13.6.2.6.5 (Multi-sport athlete)
 - 13.6.4 (Length of visit)
 - 13.6.4.1 (48 hour period defined)
 - 13.6.6.5 (Student host)
 - 13.6.7.7 (Meals on official visit)
 - 13.7.1 (Number of unofficial visits)
 - 13.10 (Generally)
 - 13.11.3.8/9 (Voluntary summer conditioning and safety exception)
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14: ELIGIBILITY: ACADEMIC AND GENERAL REQUIREMENTS

- 14.01.3.3 (Unethical Conduct)
- 14.1.8.1 (Full-Time Enrollment/Requirement for Practice)
- 14.1.8.2 (Requirement for Competition)
- 14.1.8.2.1.3 (Exception for Final Semester/Quarter)
- 14.1.9.1 (New Graduate Student Transfer Rule)
- 14.2 (Five Year Rule)
- 14.2.1 (Five Year Rule [notice church mission])

- 14.2.1.1 (Five Year Rule)
 - 14.2.1.2 (Armed Services Exception)
 - 14.2.1.3 (Pregnancy Exception)
 - 14.2.4 a, b, c (Hardship waiver [note 20% rule])
 - 14.3 (Freshman Academic Requirements)
 - 14.3.1.1. (Qualifier [notice two rules, one applies now, one applies 2008])
 - 14.4.3.7 (Waiver-Olympics)
 - 14.4.3.8 (Waiver-Learning Disabilities)
 - 14.5.1 (Transfer Regulations-Residence Requirement)
 - 14.5.5.1 (Transfer)
 - 14.5.5.2.3 (Exception for discontinuation of academic program)
 - 14.5.5.2.6 (Exception for discontinuation of sport itself!)
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15: FINANCIAL AID

- 15.5.1.3 (Counter-Illness)
 - 15.5.2.1 (Sports other than FB and BB)
 - 15.5.3.1.1 (Men's Sports)
 - 15.5.3.1.2 (Women's Sports)
 - 15.5.4.1 (Counters/Men's BB)
 - 15.5.4.2 (Counters/Women's BB)
 - 15.5.5.1 (Counters/1-A)
 - 15.5.5.2 (Counters/1-AA)
 - 15.5.6 (Counters/Hockey)
 - 15.5.8.1 (Counter/Football)
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16: AWARDS, BENEFITS AND EXPENSES FOR ENROLLED STUDENT-ATHLETES

- 16.02.3 ("Extra Benefit")
- 16.1.1.3.1 (Olympic Game awards)
- 16.1.4.2 (Awards-Conference, etc.)
- 16.1.6.1 (Booster Club Recognition Banquet)
- 16.2.1 (Complimentary tickets)
- 16.2.1.1.1 (Complimentary tickets)
- 16.3.1.1 (All academic support services and stuff)
- 16.4.1 (f) (Glasses)
- 16.5 (Housing-General)
- 16.5.1.1 (Athletic Dorms)
- 16.5.1.2 (Athletic Blocks)
- 16.5.2g (Nutritional Supplements)

16.6.1.4 (Olympic Games)

16.7.2 (Home contest/movies)

19: ENFORCEMENT

19.02.2.1 (Secondary Violation)

19.02.2.2 (Major Violation)

19.5.1 (Penalties for Secondary)

19.5.2. (Penalties for Major)

20: DIVISION MEMBERSHIP

20.9.3.4 (Mixed Team)

20.9.4.3 (Minimum contests per sport)

20.9.7 → 20.9.7.2.1 (Division I-A requirements)

20.9.7.3 (Football attendance requirements)

22: ATHLETICS CERTIFICATION

22.2 (10 Year Self-Study)

23: ACADEMIC PERFORMANCE PROGRAM

23.01.1 (Purpose of the APR Program)

23.02.2 (Graduation Success Rate)

31: EXECUTIVE REGULATIONS

31.1.4 (Day of Competition)

31.1.4.1 (Day of Competition)

31.1.4.2 (Day of Competition)

31.1.4.3 (Day of Competition)

31.1.14 (Restrictions on Advertising during Championships)

31.1.14.1 (Advertising; “Best Interests” of “Higher Ed.”)

31.1.14.1.1 (Malt beverages, etc.)

31.1.15 (Alcoholic beverages)

31.2.3.4 (Banned drug list: go to website)

31.4.6.3 (Traveling parties)

31.6.1 (NCAA Marks)

31.6.4.5 (Live microphone on coach)

32: ENFORCEMENT PROCEDURES

32.2.1.2. (Self-disclosure)

32.6.3 (Statute of Limitations)

33: ATHLETICS CERTIFICATION

33.6.5 (Exit Interview)