

**Integrating Fields in Sport Law:  
Using the *O'Brien v. Ohio State University* Case to Teach  
Principles of Contract Law, NCAA Compliance, and International Arbitration**

**Anastasios Kaburakis**  
Saint Louis University

**Linda A. Sharp**  
University of Northern Colorado

**David A. Pierce**  
Ball State University

Case law discussions in sport management scholarship and pedagogy frequently focus exclusively on one primary topic area. Thus, a case serves as a textbook example of a specific legal theory and management practice points. Occasionally, a multi-faceted case allows for an elaborate, comprehensive analysis, integrating teaching concepts from several areas of the law. Such is the factual scenario of *O'Brien v. Ohio State University*. This teaching case study offers lessons in Contract Law, NCAA Compliance, and International Arbitration. The complex web of these three intersections of sport law, policy, and management provides students and scholars the opportunity to both delve deeper into concepts and learn crucial details in a broader context. Key facets of each portion instrumentally affected the other portions of the case, triggering chain reactions. Teaching this case contributes to students' appreciation of these intertwining concepts, and creates overall awareness of potentially far-reaching ramifications for each action.

In early January 1999 former Ohio State head basketball coach Jim O'Brien placed \$6,000 cash in an unmarked envelope with instructions to have the money delivered to the Radojevic family in Yugoslavia. By doing so, he jeopardized his future tenure at The Ohio State University and future employment at other National Collegiate Athletic Association Division I (NCAA DI) member institutions. He also triggered the early stages of a case that spanned twelve years and two continents (see Table 1). This case study addresses the facts of the case in relation to contract law, NCAA compliance (particularly, but not limited to division I), and international alternative dispute resolution (ADR). A teaching note in each of these areas is presented after the facts of the case are introduced.

The contract law teaching note addresses O'Brien's wrongful termination claim and Ohio State's claim that O'Brien's conduct constituted a material breach of contract (*O'Brien v Ohio State*, 2006). In August, 2006, the Ohio Court of Claims held in favor of O'Brien as it found that the university did not follow the conditions of the contract in dismissing him. The Ohio Court of Appeals affirmed this decision in September, 2007, as it upheld damages of approximately \$2.4 million. In February, 2008, the Supreme Court of Ohio declined to review Ohio State's appeal, thus yielding a final award to O'Brien in the \$3 million range. The pedagogical focus of this section is on termination clauses and what Ohio State could have done better in drafting and enforcing the termination clauses in O'Brien's contract.

The NCAA Compliance segment addresses pertinent NCAA Bylaws (mostly at the DI level) specifically focusing on Student Athlete Reinstatement (SAR) of international student-athletes subsequent to amateurism violations. Additionally, recruiting violations and their handling by NCAA enforcement staff with the important adjudication phases by the NCAA DI Infractions and Infractions Appeals Committees are explored. Students are called to research the most up-to-date NCAA policies applicable to such cases, and resources to accomplish that

task are presented. It is imperative for future managers and intercollegiate athletics administrators to understand the entanglements in each section of NCAA Compliance, and given the annual legislative reform cycle of the NCAA, such educational tools are necessary to prepare students for their ensuing employment appointments.

Finally, the matter of the Radojevic arbitration between the Toronto Raptors and Radojevic's former team in Yugoslavia, Buducnost, is addressed. An agreement between the National Basketball Association (NBA) and the International Basketball Federation (FIBA) governs such disputes, which are submitted to final and binding arbitration. After the Ohio State "saga" and the ineligibility decision rendered by the SAR Committee, Radojevic was drafted (12<sup>th</sup> overall) in the 1999 NBA Draft. However, before signing with the Toronto Raptors, the matter of his prior contract with Buducnost had to be resolved. Radojevic would not have been allowed to sign for an NBA team had the international arbitrator found that he was still bound by a valid contract in Yugoslavia. The arbitration decree resolved the key contractual issue – that of specified term and salary "or other compensation" (*In re: Raptors v Buducnost*, 1999) – in favor of the Raptors and eventually Radojevic. Hence, important teaching points pertaining to international transfers, contractual clauses, and international governing bodies' legal interaction are examined in this section.

### The Case

A full timeline of facts in the case is found in Table 1. The case commences late in the spring of 1996, when Alexander Radojevic accepted Buducnost's offer to play for the team on the top professional league in Yugoslavia. As in most cases of international recruits, Radojevic had achieved notoriety after displaying his basketball skills on both the club and junior national team competitions, which attracted the interest of NCAA DI basketball coaches. And as has been the case with many international prospects for DI teams, Radojevic followed the prescription of an academic and athletic transition into the world of U.S. basketball through the Junior College system, landing in Kansas at Barton County Community College, in the summer of 1997.

While still under contract with Buducnost, Radojevic selected to remain in the U.S., played very well in Junior College competitions, and generated considerable attention by several DI and professional teams' coaches, including Jim O'Brien. By April of 1997, O'Brien had obtained a coaching contract with The Ohio State University, thus Radojevic's first season in the U.S. (1997-1998) coincided with O'Brien's first season at the helm of the prestigious Ohio State Buckeyes in the competitive Big Ten Conference. O'Brien saw in Radojevic the pivotal piece in a championship caliber team. During 1998-1999, O'Brien heavily recruited Radojevic to land him on campus for the 1999-2000 season.

### International Prospective Student-Athletes NCAA DI Recruiting and Amateurism

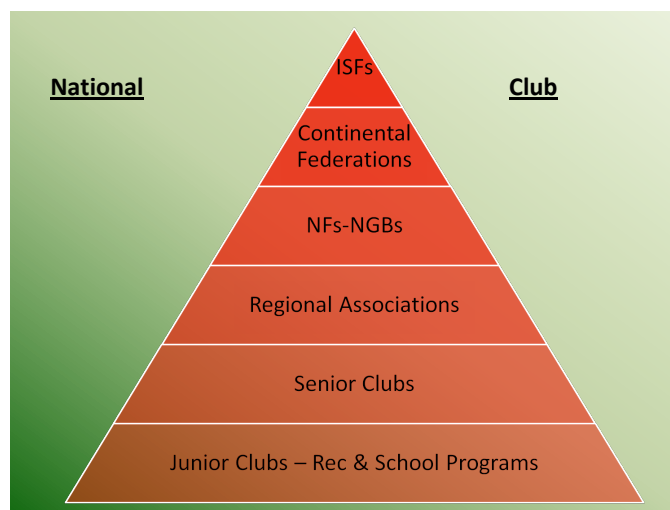
Radojevic's recruitment by O'Brien and Ohio State is a representative example of the problems existing in international prospective student-athletes' (IPSAs) cases. These problems have been identified in scholarship (Kaburakis, 2005; Kaburakis, 2007; Pierce, Kaburakis, & Fielding, 2008; Pierce, Kaburakis, & Fielding, 2010). IPSAs who consider athletic scholarship opportunities in the United States have to confront not only the challenges related to cultural, language, and academic transition, but also the additional hurdles posed by the incompatibility of the different sport governance systems around the world. According to Kaburakis (2007, p. 101), "Although according to the laws of their [IPSAs] own countries and the regulations of their specific sport entities they are not considered professional athletes, the NCAA DI respective regulations classify them as such, and find them ineligible..." The most significant reason for doing so has been established as maintaining "a clear line of demarcation between intercollegiate athletics and professional sports" (NCAA, n.d., Bylaw 1.3.1, Constitution, Fundamental Policy), thus upholding the spirit of amateurism on which intercollegiate athletics were set. Per Bylaw 2.9, The Principle of Amateurism:

Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated

primarily by education and by the physical, mental, and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.

The main theoretical framework on amateurism is found in Bylaw 12. “Only an amateur student-athlete is eligible for intercollegiate athletics participation in a particular sport” (Bylaw 12.01.1). Bylaw 12.02 contains crucial definitions and applications. For example, it covers what is considered “pay,” “professional athlete,” and “professional athletics team.” Bylaw 12.02.4 in particular is instrumental for cases of IPSAs, as it exempts “actual and necessary expenses” from impermissible benefits by a professional team, and does so through an exhaustive list of ten permissible items, such as meals, lodging, apparel, health insurance, transportation, etc. Bylaw 12.2.3.2 importantly refers to the impact of participation in competition with professionals: “An individual shall not be eligible for intercollegiate athletics in a sport if the individual ever competed on a professional team (per Bylaw 12.02.4).”

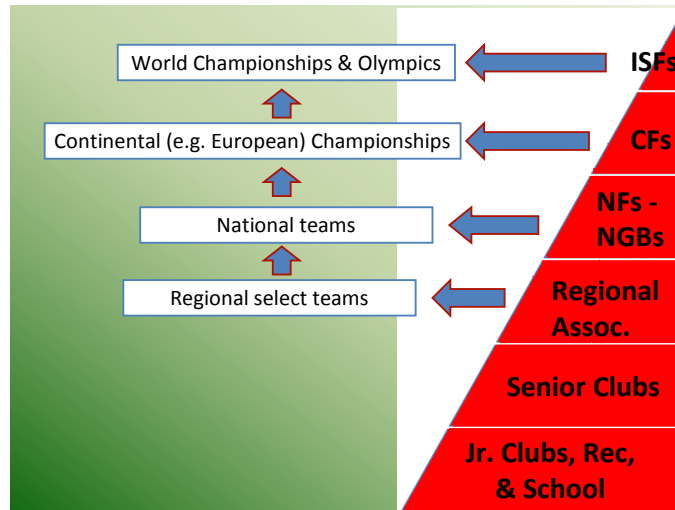
These Bylaws were applied in Radojevic’s case. In late September or early October 1998 (*O’Brien v. Ohio State Univ.*, 2006, p. 2), the Ohio State coaching staff discovered that Radojevic had signed a professional contract with a Yugoslavian team. According to the aforementioned Bylaws, and specifically 12.1.1(c), Radojevic had lost amateur status. The discovery of the contract’s existence notwithstanding, Ohio State continued to recruit Radojevic. The reason was obvious, wishing to gain a competitive advantage, gambling on a potential positive reinstatement decision, had the NCAA staff not been able to find the information the Ohio State coaching staff already knew.



**Figure 1. Pyramid Model of International Sport Governance**

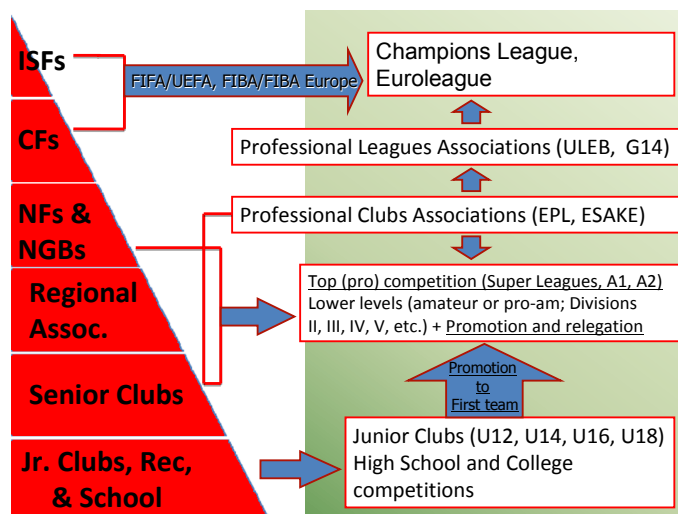
In regard to Radojevic’s recruitment, it is useful to briefly describe the international federalized club-based model, which brings forth the incompatibility problems in IPSAs cases that lead to the process of SAR. Figures 1-3 describe the pyramid model of international sport governance (Weatherill, 2005). The infrastructure and grassroots start with the sport clubs, which in the early stages of athletic talent development are the centers of attention, next to recreational and school sport programs. These junior clubs are directly funded and supported by the main sporting club, which selects the most talented athletes for participation in the respective age group, progressing to the senior club. These clubs form regional associations and organize local and regional competitions and leagues, sanctioned by the respective National Federation (NF) and National Governing Body (NGB). These NFs are members of the Continental Federation (CF), for example UEFA for European soccer, and FIBA Europe for European basketball. The overarching authority lies with the International Sport Federation (ISF), which has the oversight of rules

and policies for each sport (e.g. FIFA for soccer, FIBA for basketball). Frequently, the ISF will defer matters of continental and regional interest to the respective CFs and NFs.



**Figure 2. International Competition among National Teams**

In Figure 2, one observes the national teams’ facet of international sport competitions. After regional select teams are formed, the NFs name the rosters for the national teams, which participate in continental and world championships, as well as the Olympic tournaments every four years, again organized by each ISFs, as recognized by the International Olympic Committee (IOC). In Figure 3, one observes the areas where most IPSAs’ problems occur. According to NCAA legislation, national teams’ competitions are considered amateur events, whereas club competitions at the top level of each country are not.



**Figure 3. International and National Competition among Club Teams**

In Figure 3, at the bottom of the pyramid, one notes the existence of both educational institutions’ competitions and age-specific club leagues and events. Unlike the US, in the international pyramid model of sport governance

educational institutions' competitions are secondary to club competitions. The problem for IPSAs lies precisely in the arrow displaying the promotion to the first/senior team of each club. Given the talent level, a solid prospect conceivably may play for even 10 or more age-specific, select, club and school-based teams a year. The club may participate in the top leagues (e.g., "Super Leagues" in soccer, A1 or A2 in basketball, etc), which presumably involve professional players. These top leagues may be organized by professional club associations (e.g., English Premier League soccer, or ESAKE for Greek A1 basketball), as opposed to the traditional model of the state-supported national federation organizing top competitions (e.g., Greek Basketball Federation organizing the top competition prior to ESAKE). In recent years, private entities either created or entertained the notion of creating private top-level professional competitions. For example, the Union of professional basketball leagues (ULEB) organized the Euroleague, the top competition in European basketball. Conversely, the G14, until 2008 the eighteen most powerful soccer clubs in Europe, considered creating a breakaway private "Champions' League." For the time being, these efforts have sufficiently been kept at bay by the international sport federations, either via negotiations and legal settlements, or via the financial difficulties such private ventures posed for investors. Namely, ULEB's private Euroleague lasted from 2000 through 2003, before ULEB joined forces once again with FIBA Europe to organize Pan-European top club-competitions jointly. Similarly, in 2008 the G14 settled with FIFA/UEFA, the latter still maintaining the reigns for the highly lucrative Champions' League in European soccer.

According to NCAA DI legislation, which has undergone various changes in the period 1998-2010, if one player is a professional on a team (i.e., signed contract, receiving above and beyond permissible expenses per Bylaw 12) then the entire team is rendered professional, including young IPSAs. The clubs may alternatively participate in lower division or regional leagues, which may not necessarily trigger the definition of professional team and competition with professionals, according to the facts of each case.

It was through this model of global sport governance that Radojevic was minted as a highly touted DI prospect. Similarly to many IPSAs cases, Radojevic pursued the US college basketball transition via the Junior College route (Barton County Community College in Great Bend, Kansas), prior to the much anticipated transfer to a major DI program. This recruitment, however, did not have a happy ending for any of the parties involved. In a process that spanned February through May of 1999 (*O'Brien v. Ohio State Univ.*, 2006, p. 4), the NCAA SAR staff and Committee delivered opinions according to which Radojevic should not be reinstated, as he had compromised his amateur status by playing professionally in his native Yugoslavia. The SAR process analysis follows in the ensuing section. Ironically, during the same timeframe (March-April 1999) Ohio State men's basketball experienced its most successful season in recent memory, advancing to the Final Four, and securing national coach of the year honors for Coach O'Brien. The latter received a newly negotiated contract, after signing a Certificate of Compliance for the previous year, 1998-1999, the season in which the Radojevic recruitment occurred. The new contract was much more favorable for the coach (*O'Brien v. Ohio State Univ.*, 2006, p. 5), and it was this contract that was the subject of dispute in *O'Brien v. Ohio State*.

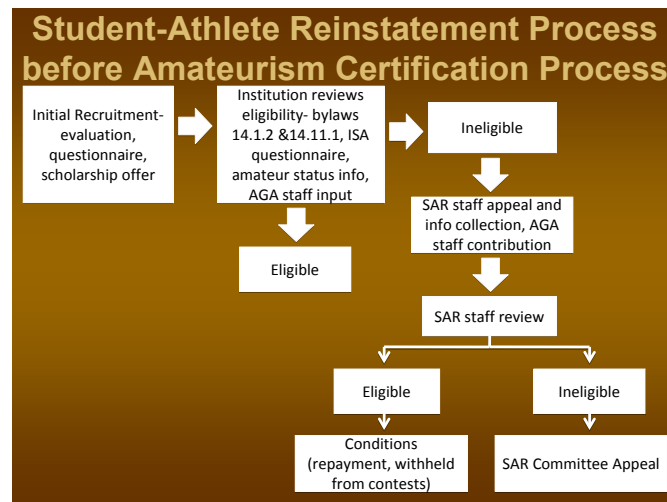
Early in his second season in Junior College competition, Radojevic's father passed away in Yugoslavia. At this stage, and during the recruiting process, Coach O'Brien arranged to have a \$6,000 "loan" delivered to the Radojevic family. O'Brien was asked to provide financial assistance to the family, however, "details surrounding the request are sketchy" (*O'Brien v. Ohio State Univ.*, 2006, p. 3). It was mentioned during depositions that the request originated from Spomenko Patrovic, a waiter in New York City who claimed to be either a relative or legal guardian of Radojevic (*O'Brien v. Ohio State Univ.*, 2006, p. 3). Patrovic received the \$6,000 from Assistant Coach Paul Biancardi and was to deliver it to the Radojevic family in Yugoslavia. According to O'Brien, there was no loan agreement and no conditions of repayment discussed. He further maintained that "it was Radojevic's dire family circumstances" that prompted him to provide the loan and not his interest in Radojevic as a prospective Ohio State student-athlete (*O'Brien v. Ohio State Univ.*, 2006, p. 4). In the interim, the NCAA, and shortly thereafter Ohio State Athletics staff, became aware of the existence of Radojevic's contract with Buducnost. Nevertheless, Ohio State continued to recruit him and invited him on campus for an official visit. Radojevic signed the National Letter of

Intent with Ohio State on November 11, 1998.

During Ohio State's Final Four season in March of 1999, athletic administrators were battling for Radojevic's reinstatement. Knowing of the Buducnost contract, the Ohio State Compliance staff followed normal procedure, declared their highly touted prospect ineligible, and pursued his reinstatement to eligibility through the SAR process. However, due to the preexisting contract with Buducnost and his professionalization, Radojevic was not reinstated. Instead, he declared for the 1999 NBA draft and was drafted 12<sup>th</sup> overall in June of that year.

### Student-Athlete Reinstatement

The SAR process is described in Figures 4-8. It is important to distinguish between the SAR process during Radojevic's recruiting, and the new amateurism certification process (ACP) initiated with the advent of the NCAA Eligibility Center in 2006. Figure 4 describes the steps involved in the treatment of Radojevic's case. Ohio State recruited Radojevic and discovered the existence of his contract with the Yugoslavian team. A few months later the NCAA staff followed suit, and Ohio State declared Radojevic ineligible and pursued the SAR process. The SAR staff reached a decision of permanent ineligibility after reviewing the facts of the case, policy interpretations, and case precedent. The decision was upheld by the SAR Committee.



**Figure 4. Student-Athlete Reinstatement (SAR) Process before Amateurism Certification Process (ACP)**

Past research (Kaburakis, 2005; Kaburakis, 2007; Pierce, Kaburakis, & Fielding, 2008, 2010) has indicated that cases such as Radojevic's, where PSAs are declared permanently ineligible, amount to only 5% of the total number of SAR cases. The majority of cases are reinstated with withholding conditions, such as repayment of prize money or being withheld from competition. It is also worth noting, however, that in the cases which do feature withholding conditions, the vast majority of those prospects are IPSAs (Mangarelli, 2009).

Figures 5 and 6 describe the new SAR process as part of the ACP at the NCAA Eligibility Center. One observes that in the new ACP the institution has additional options to challenge negative developments in the review of cases, starting with appeals at the Amateurism Fact Finding Committee and eventually the Amateurism Cabinet (Figure 6, process arrow 1). Thereafter, the institution can always challenge the interpretation of a regulation or policy via the usual means of legislative review. After these first two steps, and if SAR has not been triggered earlier via ACP, the institution may pursue reinstatement and a final appeal for any negative decisions with the SAR Committee.

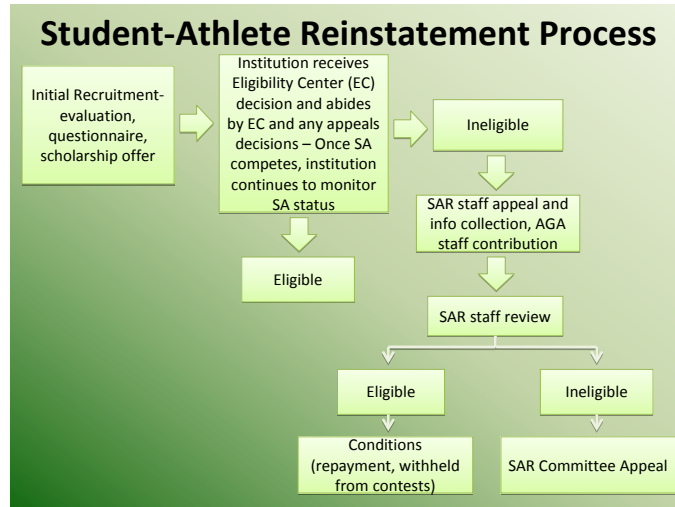


Figure 5. Student-Athlete Reinstatement (SAR) Process

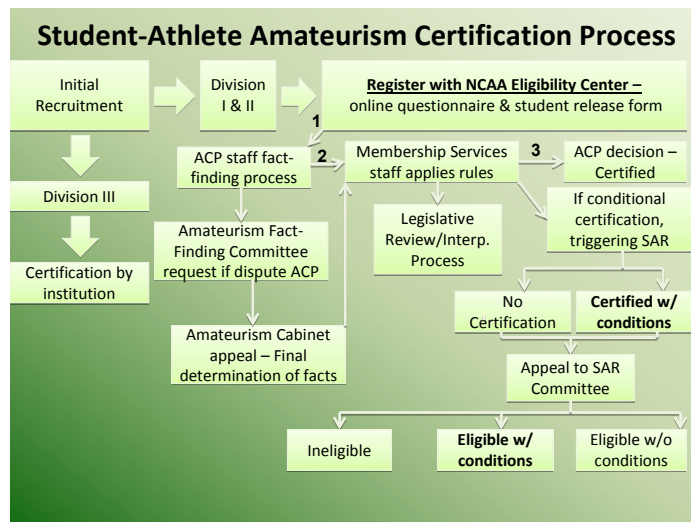


Figure 6. Amateurism Certification Process (ACP)

Figures 7 and 8 describe the important policy developments in SAR decision-making, from the time Radojevic was recruited, to 2010. One recent proposal (2009-22; for analysis refer to Kaburakis, 2010a, and Kaburakis, 2010b), in the 2009-2010 legislative cycle, led to an amateurism policy overhaul, as it preemptively treats the pre-enrollment competition with professionals issue by allowing it without withholding conditions, provided there have been no benefits above and beyond reasonable expenses allowed under Bylaw 12.02.4.

**NBA-FIBA Agreement**

By late in the spring of 1999 when the SAR process concluded, Radojevic was able to receive the due attention by NBA scouts, and eventually landed a very high draft selection (12<sup>th</sup> overall by the Toronto Raptors) in late June 1999. Nonetheless, the impact of the preexisting contract with Buducnost on his prospective employment by the Toronto Raptors complicated matters. According to the agreement the NBA had signed with FIBA, there would be

no release of players under an existing contract with a FIBA club. This was precisely the object of the international arbitration that ensued, to determine whether there was indeed a valid and binding contract in existence between Radojevic and Buducnost. The wording of the NBA-FIBA agreement in regard to forms of compensation, the norms and custom of several European regions, and the apparent breach from both parties rendered this an intriguing first arbitration under the agreement. It is worth noting that during the international arbitration that followed there was no mention of the Ohio State recruitment's specifics, the SAR process, nor, of course, any allusion to O'Brien's "loan" to the Radojevic family. Thus, it was not until years later, during the Salyers depositions, that O'Brien's conduct was discovered, thus triggering the NCAA Enforcement mechanism elaborated below.

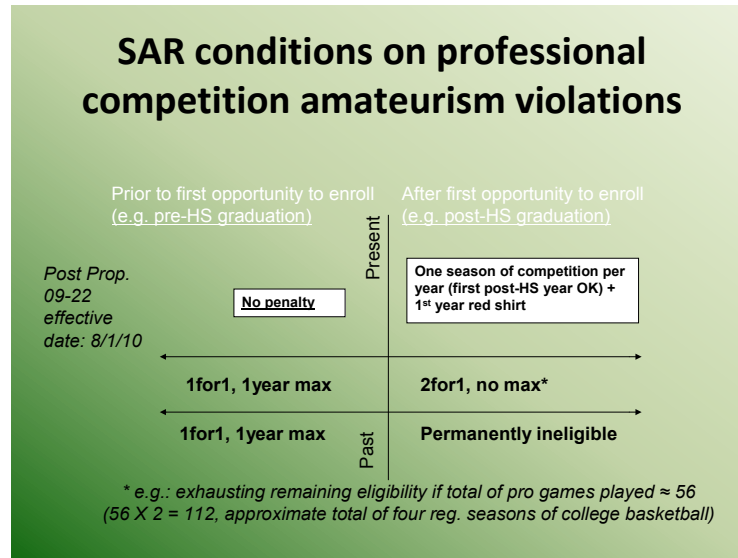


Figure 7. SAR Conditions on Professional Competition Amateurism Violations

### SAR Decision Making Philosophies and Withholding Conditions Structure

|                                      | Post Prop. 09-22<br>effective date: 8/1/10 |                                |                                     |                                     |   |
|--------------------------------------|--|--------------------------------|-------------------------------------|-------------------------------------|---|
| Philosophy                           | Intent to Professionalize                  | Intent Revised                 | Reasonable Person                   | Less Restrictive                    | Equitable & focus on SA – No Vicariously Professionals                                      |
| Year                                 | Through 2000                               | 2001                           | 2002-2005                           | 2006-2010                           | 2010-   |
| Prior to First Opportunity to Enroll | 1 for 1 withholding                        | 20% withholding<br>8 games max | 1 for 1 withholding<br>1 season max | 1 for 1 withholding<br>1 season max | <b>No penalty</b>   |
| After First Opportunity to Enroll    | 1 for 1 withholding                        | 20% withholding<br>8 games max | INELIGIBLE                          | 2 for 1 withholding<br>No max       | One season of competition per year (first post-HS year OK) + 1 <sup>st</sup> year red shirt |

Figure 8. SAR Decision-making Philosophies and Withholding Conditions Structure



Contractual disputes and related eligibility matters are governed by an agreement the NBA signed with FIBA on March 14, 1997 (*Agreement*, 1997). If Radojevic was bound by a valid contract he had previously signed with Buducnost, he would not be able to sign a contract with the Toronto Raptors. D. R. Martens (personal communication, August 1, 2007), who drafted the agreement for FIBA, focused on three objectives: (1) ensure contracts' stability and mutual recognition between FIBA and NBA teams; (2) introduce binding arbitration for any potential disputes, and; (3) guarantee that international players would be released by their (NBA) clubs to participate in national teams' competitions.

According to the agreement, a player moving from a FIBA team to an NBA team requires a letter of clearance from the respective Federation (*Agreement*, 1997, p. 5 § 3.1). The only ground on which the letter of clearance may be denied after the request of the NBA team (in the Radojevic case, the Toronto Raptors), "is that the player is subject to an existing and validly binding Player Contract" (*Agreement*, 1997, p. 5 § 3.2).

Any dispute as to whether a player is subject to an existing and validly binding Player Contract with any FIBA team, or whether such Player Contract has been properly and effectively terminated, shall be resolved finally and conclusively by an International Arbitrator selected jointly by the parties to this Agreement (*Agreement*, 1997, p. 6 § 3.3).

Further, the definition of a "Player Contract" according to the agreement is "a written agreement requiring the performance of services as a basketball player for a specified term and for a specified salary or other compensation" (*Agreement*, 1997, p. 3 § 1.1). The three arbitral awards that ensued (in *Radojevic*, *Tsakalidis*, and *Parker*; all won by the NBA team involved, the Raptors, Suns, and Spurs respectively) entailed an analysis of these particular contractual issues (D. R. Martens, personal communication, August 1, 2007). The matter of including "other compensation" in the definition has been problematic as the Radojevic case demonstrated.

### **The Arbitration**

At the request of the Toronto Raptors, the arbitration hearing took place in London, England, on August 19, 1999, and Iain Patrick Travers, the international arbitrator mutually appointed by FIBA and the NBA, delivered the award. The Raptors moved for arbitration as the request of a letter of clearance for Radojevic was denied by the Yugoslav Federation, which held the player had a valid contract with Buducnost. It is useful to note at this point that European basketball federations, members of FIBA Europe, traditionally have been disinclined to release players wishing to continue their careers in the NBA. Several of these federations would err on the side of interpreting a questionable contractual agreement as valid and binding (as demonstrated in the aforementioned arbitration awards). Such international sport governing bodies' administrators have often embellished the differences between the NBA and European basketball (Vassilakopoulos, quoted in Kaburakis, 2007, p. 117 fn. 6).

The two major legal questions the arbitrator was called to answer in the proceedings were whether Radojevic was subject to an existing and validly binding player contract (as defined above), and if so whether that contract had been properly and effectively terminated. It was undisputed that Radojevic entered into a contract with Buducnost on May 30, 1996. One of the contract's highlights and the core of the dispute was this clause: "For the following three years (1998-1999, 1999-2000, and 2000-2001), the Player's compensation shall be agreed upon after the first two seasons have elapsed" (*In re: Toronto Raptors v. Buducnost*, p. 5, § (f).)

Radojevic was examined-in-chief by his counsel and cross-examined by Dr. Dirk Reiner Martens, who represented FIBA and Buducnost in this arbitration (as well as the ones to follow in *Tsakalidis*, 2000, and *Parker*, 2001). Interestingly, according to the arbitrator's own account, Radojevic was honest, "to the extent that, on occasion, he gave answers which might not have been entirely helpful to his cause" (*In re: Toronto Raptors v. Buducnost*, p. 7, § 13). The balance of interests weighed in this arbitration was eloquently expressed as the player's "future

livelihood... [in] that the outcome of this arbitration will have important human consequences” and the fundamental contractual theorem that “an individual must comply with a contract that he enters into” (*In re: Toronto Raptors v. Buducnost*, p. 7, § 13).

Arbitrator Travers noted three issues he attempted to resolve during the course of the hearings, with the second and third being mutually complementing as the same issue:

- (1) Whether the contract between Radojevic and Buducnost was a valid and binding Player Contract as defined in the NBA-FIBA agreement, thus a written agreement which requires the performance of services as a basketball player for a specified term and for a specified salary or other compensation.
- (2) Whether or not Buducnost was in breach of the obligations owed by it to Radojevic by failing to pay amounts required under the contract and, if it was in breach, whether Radojevic was entitled to, and did, treat that breach as a repudiatory breach of that contract.
- (3) Whether or not Buducnost failed to provide the medical aid that it was obliged to provide to Radojevic under that contract and, if it did so fail, whether Radojevic was entitled to, and did, elect to treat that breach as a repudiatory breach of that contract (*In re: Toronto Raptors v. Buducnost*, pp. 7-8, § 14).

### **The Contractual Issue**

The claimants argued that the agreement was not a valid binding contract, since there was no specific stipulation of compensation for the last three years of the agreement. They claimed that the failure to include such a material clause in the agreement excluded it from the meaning of the Player Contract definition per NBA-FIBA agreement.

It is insightful to include the respondents' counterarguments, evident of the culture and past practice especially in former Eastern Block countries in regard to the relationships between professional athletes, teams, and the overarching auspices of the respective sport federation. Arguing that the compensation for the remaining three years of the contract was deferred to the Yugoslav Basketball Federation's respective regulations, they noted:

[I]n order to protect players from being exploited for a salary below a fair and equitable amount the Federation fixes a minimum which must be paid in any event. The maximum salary is fixed in order to prevent the Clubs from competing for players beyond their financial abilities. They say that the type of contract signed by them with Aleksandar Radojevic is not unique but is, in fact, universally applied throughout former Yugoslavia and other countries in the former Eastern Block. They say that the system is designed to ensure that the teams invest their limited means, not in excessive salaries for players, but in the formation of young players. They say that the draftsmen of the 14 March 1997 agreement did not have in mind a situation such as the above. They say that the circumstances that the agreement [were] intended to deal with were where a Club would simply sign a young player without any meaningful compensation, just to be able to collect a very high amount of money when the player is transferred to another Club (*In re: Toronto Raptors v. Buducnost*, p. 9, § 18).

The claimants argued that the maximum and minimum limits set by the Yugoslav Federation did not constitute “a specified salary or other compensation.” The notion of “other compensation” was a highly contested one in this and the ensuing arbitrations, thus demonstratively problematic in view of the NBA-FIBA agreement's possible future amendments. The respondents did go the length of the legal argument, supporting that lodging, meals, medical aid, and necessary support should be construed as “other compensation.” The arbitrator disagreed (*In re: Toronto Raptors v. Buducnost*, pp. 10-12, §§ 22 and 30). He held that the contract provided for material compensation and bonuses specifically set for the first two years, whereas the remaining three years lacked any specificity as to material compensation.

Further abiding by the NBA-FIBA agreement, the governing law that should be applicable is the Law of New

York, under which the claimants argued the agreement would not be considered a valid contract. The arbitrator did not have sufficient assistance in determining exactly how New York Law would apply to the contract dispute, but while deciding this particular matter in the light most favorable to the respondents, he found that even if Yugoslav Federation rules were incorporated to solve the problem of the contract's lack of specificity as it pertained to the last three years of its duration, such rules "do not provide a sufficiently specific or certain mechanism to cure the alleged defect" (*In re: Toronto Raptors v. Buducnost*, p. 11, § 26).

Recapitulating on the issue of "other compensation" vs. "specified salary," the arbitrator concluded:

A salary is a sum of money to be paid, usually by installments, on a periodic basis. To be specific, one would have to specify the amount of money and the occasions on which it was to be paid... The words "or other compensation" defeat the specific nature of the preceding words if they are construed in a less specific manner. Thus "an amount to be agreed on an unspecified date"... does not have that sufficient degree of certainty... [T]he word "specified" appears twice in the same sentence... [T]he clause is intended to achieve a high degree of certainty. A contract... of five years, which provides that the salary or other compensation in the final three years is to be agreed at the end of the second year, does not... have the required degree of certainty... I am only concerned with what the words mean on their proper construction (*In re: Toronto Raptors v. Buducnost*, p. 11, § 28).

I have therefore concluded that the contract dated 30 May 1996 is not a Player Contract with the meaning of that term as contained in the Agreement dated 14 March 1997 (*In re: Toronto Raptors v. Buducnost*, p. 12, § 31).

I therefore hereby award and determine that Aleksandar Radojevic is not subject to an existing and validly binding Player Contract with Buducnost (*In re: Toronto Raptors v. Buducnost*, p. 20, § 59).

After determining that the agreement between Radojevic and Buducnost was not a validly binding player contract under the scope of the NBA-FIBA agreement, the determination of the medical issue and any circumstances of Buducnost breaching the agreement became secondary. The arbitrator remarked that had the arbitration issue been dependent upon the medical issue and alleged breaches by Buducnost, he would have allowed respondents' the opportunity to present supplementary evidence (*In re: Toronto Raptors v. Buducnost*, pp. 13-14, § 35), as Dr. Dirk Reiner Martens and Danilo Mitrovic, the general manager of Buducnost, had requested in advance (adjournment of 15 days) (*In re: Toronto Raptors v. Buducnost*, p. 3, § 5).

Hence, it may be concluded that it was not so much the various conflicting laws and regulations (i.e. New York Law, English Law, Yugoslav Law, Yugoslav Basketball Federation policy) that impacted the outcome of this alternative dispute resolution; rather, it was the international arbitrator's interpretation of the particular clauses stipulated in the contract, and the parties' conduct around this conflict. One could summarize accordingly:

- Had the NBA-FIBA agreement not included the wording "or other compensation" in the definition of a validly binding Player Contract, the outcome of such arbitration would have been much less entangled and controversial, considering regional culture, practice, and sport policy. It would have been much clearer that, absent contract duration and salary specificity, such an agreement would not have been considered as a validly binding Player Contract.
- Had the contract been deemed valid, the arbitrator would have accumulated more evidence in regard to the specific conditions of Radojevic's medical care by Buducnost, measured not against U.S. standards, but against a reasonably prudent approach that would render the employer abiding by regional policy. The feasibility of providing with better care did not constitute a differentiating factor for this arbitration, and the

issue of Buducnost's alleged breach was not analyzed further.

- In the final dispute over owed compensation and parties' breach, the arbitrator concluded that the right to cancel the contract by a unilateral statement of will had not arisen at the time of Radojevic's departure for the U.S. Stated differently, one could propose that there was a mutual breach of contract thereafter, since the team did not complete due payments, nor did the player fulfill contractual obligations.

### Contemporary Dispute Resolution

Established in 2007, there is currently another avenue for resolving such contractual disputes between players and FIBA teams, the FIBA Arbitral Tribunal (FAT), provided there is a clause for such alternative dispute resolution (ADR) stipulated in the contract (FIBA Arbitral Tribunal, n.d. b). Given time and education of FIBA member federations' administrators, contemporary FIBA teams' contracts with their players should feature such a stipulation for ADR, thus allowing for less litigation and more conflicts' resolution via this internal mechanism. (Note: During time of print, the International Basketball Federation significantly amended FAT regulations. Thus, the reader should retrieve the most up-to-date resources, commencing with links included in the references' section of the manuscript, and revisit regularly as they may be edited on the FIBA website under (the new) Basketball Arbitral Tribunal (BAT) presentation per: <http://www.fiba.com/pages/eng/fc/expe/fat/p/openNodeIDs/6807/selectNodeID/16807/pres.html>)

On the appellate level, the only recourse after FAT awards is submitting matters to the Court of Arbitration for Sport (CAS). According to recent accounts (Dedes & Zaglis, 2006), CAS has been acknowledged as the world's foremost legal authority on sport matters and the preferred ADR means of most international sport federations (ISFs), either as a *stricto sensu* arbitrating body, or as an appellate body for decisions of internal committees and ADR mechanisms of ISFs, e.g. FIBA's FAT or FIFA's Dispute Resolution Chamber (DRC). While both CAS and FAT proceedings are held according to Swiss Law, FAT decisions appealed to CAS cannot be appealed to the Swiss Federal Tribunal; as with the international arbitration analyzed herein, FAT procedure does not oblige the arbitrator to use a particular Law on the merits when deciding on a case, rather selecting "general considerations of justice and fairness", absent parties' choice to the contrary, opting for a particular legal system (FIBA Arbitral Tribunal, n.d. a, p. 8 § 15).

There are three important points to consider when analyzing such cases and forecasting future prospects for dispute resolution. Each point refers to international sport governing bodies' relations:

- Any dispute between an NBA team and a FIBA team over a particular player, including resolution of the player's contractual dispute with the player's (former) FIBA team, would generally be governed by any standing NBA-FIBA agreement. Practically, however, with the evolution of FAT as an ADR avenue for FIBA teams' contractual disputes, the international arbitrator deciding the NBA-FIBA dispute will in all likelihood defer to FAT for a prior resolution of the contractual matter, and then proceed with resolving the NBA-FIBA dispute, based on what the FAT arbitration awarded on the contractual matter. Furthermore, as a direct result of the FAT's advent, it becomes even more so imperative to update the NBA-FIBA agreement, so as not to have material overlap and conflicts of *fora*. It would be forthcoming if FIBA clubs' contracts contained precise language, including pre-stated liquidated damages clauses by which an NBA team could buy-out the remaining duration of a player's contract, avoiding time-consuming litigation, or ADR. As the arbitration at hand demonstrated, the imprecision of a contract's operational language can lead to detrimental entanglements serving neither party.
- The contribution of CAS may prove instrumental in these matters, in addition to the multi-faceted service it has provided sport in the past 20 years. It would not be inopportune to assign arbitral awards emanating from NBA-FIBA disputes directly to CAS at some point. Furthermore, the international arbitrators involved in CAS decisions enjoy world legal acclaim and are of acknowledged objectivity.
- As was established during times of friction in the world of international basketball administration, whilst

the Union of Professional Basketball Leagues (ULEB) had decided to sever its ties with FIBA and organize its own Euroleague competition, featuring arguably the best and financially most powerful teams in Europe, there were further problems. One could argue justifiably that since the breakaway league's teams were not members of FIBA any longer, they were not subject to any FIBA binding agreements with the NBA, and absent an alternative agreement, e.g. ULEB-NBA, the players could be signed by the NBA teams as free agents (P. Dedes, personal communication, July 27, 2007). Perhaps fortunately, FIBA Europe's agreement with ULEB on November 3, 2004, addressed such problems preemptively. Thereafter, the two entities have been organizing their competitions, mutually acknowledging each other's legal and administrative obligations and priorities. ULEB's teams are governed by FIBA regulations and as such by the NBA-FIBA agreement.

### **Employment Contract Principles and the Jim O'Brien Lawsuit**

Before discussing the particulars of the O'Brien dispute, it is important to understand the underlying relevant contract law principles.

#### **Termination for Just Cause**

Termination for just cause implies that an employee may be terminated for behavior that violates the standards of job performance set by an employer. For example, an employee may fail to meet the requirements of the job. The expectations concerning job performance should be clearly stated in the employment contract (Sharp, Moorman, & Claussen, 2007).

In some cases, the objectionable behavior may be criminal behavior that violates the morals clause of his/her contract (*Maddox v. University of Tennessee*, 1995). For example, in *Maddox*, an assistant football coach was terminated for driving under the influence of alcohol. In other situations, the termination for just cause may take effect when an employee has engaged in behavior that is unfavorable to the employer although not criminal in nature. The university has an interest in protecting itself should a coach engage in behavior that may bring ridicule or unfavorable media attention to the university. Further, in college coaching situations, often the contract identifies violations of NCAA, conference, or university rules as grounds for termination. Usually, the types of rules violations that would lead to a termination for just cause are intentional violations of major rules or repeated, willful violations of minor rules (*McKenzie v. Wright State University*, 1996).

The negotiated language in the termination for just cause clause epitomizes the competing interests between a coach and the university because the university prefers to have considerable leeway in identifying behavior that may be grounds for termination, whereas the employee wants to have the grounds delineated very narrowly. For example, a university may wish to include "any" criminal behavior as grounds for termination but the coach would try to negotiate for only a "felony involving moral turpitude" as grounds for termination. The coach would also try to exclude the rather nebulous language concerning "behavior unfavorable to the university" since that ambiguity would allow the university quite a bit of discretion in characterizing any behavior by a coach as grounds for termination.

#### **The O'Brien Court Case and Decision**

Jim O'Brien failed to disclose the "loan" made to Radojevic until April 2004, approximately six years after the loan was made. O'Brien only disclosed the payment at this late date because he knew that a lawsuit had been filed in which the loan would be revealed. After an internal investigation of this matter, O'Brien was terminated for cause in June, 2004. O'Brien then sued Ohio State alleging that he was wrongfully terminated.

Ohio State alleged that O'Brien violated Section 4.1(d) of his employment contract that required him to "know, recognize, and comply" with all rules of the NCAA and to "immediately report to the AD" if he had "reasonable cause to believe that any person had violated such laws, policies or regulations" (*O'Brien v. Ohio State Univ.*, 2006

Ohio Misc. LEXIS 52, ¶ 43). Ohio State argued that O'Brien's failure to report the loan he made to Radojevic violated this section and was a material breach of contract. Therefore, the university asserted that it could terminate O'Brien for just cause under Section 5.1(a) which stated that the university could terminate the contract if a material breach occurred. Section 5.1(b) was not mentioned as a reason for termination; that language referred to a rules violation committed by a coach that leads to a "major" infraction investigation by the NCAA or Big Ten Conference. The university received a notice from the NCAA that it was investigating the men's basketball program in May, 2005. Three of the violations cited by the NCAA pertained to the Radojevic loan.

Section 5.1 of O'Brien's employment contract provided as follows: Termination for Cause - Ohio State may terminate this agreement at any time for cause, which, for the purposes of this agreement, shall be limited to the occurrence of one or more of the following:

- (a) a material breach of this agreement by Coach, which Coach fails to remedy to OSU's reasonable satisfaction, within a reasonable time period, not to exceed thirty (30) days, after receipt of a written notice from Ohio State specifying the act(s), conduct or omission(s) constituting such breach;
- (b) a violation by Coach... of applicable law, policy, rule or regulation of the NCAA or the Big Ten Conference which leads to a "major" infraction investigation by the NCAA or the Big Ten Conference and which results in a finding by the NCAA or the Big Ten Conference of lack of institutional control over the men's basketball program or which results in Ohio State being sanctioned by the NCAA or the Big Ten Conference...;
- (c) any criminal conduct by Coach that constitutes moral turpitude or other improper conduct that, in Ohio State's reasonable judgment, reflects adversely on Ohio State or its athletic programs (¶ 92-95).

It is important to note that the termination for cause clauses in O'Brien's contract did not give Ohio State great latitude in terminating this coach. In fact, when O'Brien negotiated the renewal of his contract, his advisors negotiated very diligently on his behalf to arrive at termination for cause provisions that greatly favored O'Brien. Ohio State was willing to do so in view of the success that O'Brien had brought to the university's basketball team (Greenberg, 2006). Therefore, there were only three reasons to terminate O'Brien for cause found in Section 5.1: a) A material breach, the definition of which was not set forth in the contract, thus leaving that term for interpretation by a court; b) a violation of a NCAA or conference rule which leads to a finding of a "major" infraction which results in sanctions or a finding of a lack of institutional control; or c) criminal conduct which constitutes moral turpitude or "other improper conduct that, in Ohio State's reasonable judgment, reflects adversely on Ohio State or its athletic programs." Section 5.1 (b) could not have been applicable when O'Brien was terminated in June, 2004 since no NCAA investigation had yet taken place. Ohio State did not attempt to argue that O'Brien's conduct was "improper conduct" which reflected adversely upon Ohio State. This failure to allege Section 5.1 (c) can arguably have been an error in legal strategy by the university.

The Ohio Court of Claims heard this matter and rendered a judgment for O'Brien finding that Ohio State had breached the contract. The judge found as a "fact" that O'Brien made the loan for humanitarian reasons, not for a recruiting advantage, and that Radojevic was ineligible to play college basketball at the time of the loan. However, it should be noted that O'Brien still recruited Radojevic despite his play in a professional basketball league in Yugoslavia. The court further held that O'Brien did violate § 4.1 (d) of his employment contract but this was not a "material breach" under § 5.1 (a).

The court defined material breach as "a failure to do something that is so fundamental to a contract that the failure to perform that obligation defeats the essential purpose of the contract or makes it impossible for the other party to perform under the contract" (Williston on Contracts, 1972, Chapter § 63:3, ¶97).

After providing this definition, the court used the criteria for material breach found in Restatement of the Law 2d, Contracts, § 241. The Restatement test was dispositive for the Ohio Court of Claims. The criteria are as follows:

1. the extent to which the injured party will be deprived of the benefit which he reasonably expected;
2. the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
3. the extent to which the party failing to perform... will suffer forfeiture;
4. the likelihood that the party failing to perform... will cure his failure, taking account of all the circumstances including any reasonable assurances;
5. the extent to which the behavior of the party failing to perform comports with standards of good faith and fair dealing (§98-105).

In applying these criteria to this situation, the court found that the extent to which Ohio State was deprived of the benefit it expected from the employment contract with O'Brien was not as significant as the university had argued. The court noted that, in its view, the NCAA sanctions were minor, the damage to Ohio State's reputation was minor, and the breach of trust was reparable. Further, the court found that O'Brien's forfeiture of salary and benefits was substantial.

Additionally, according to this court, O'Brien made a good faith effort to resolve the dispute and Ohio State did not. The court noted that NCAA compliance is important to the university BUT the wording of § 5.1(b) contemplated that the coach could retain employment during the NCAA investigation and remain employed unless serious sanctions were imposed.

Therefore, the Court of Claims, in a separate proceeding, awarded O'Brien just over \$2.25 million on August 2, 2006 (*O'Brien v. Ohio State Univ.*, 859 N.E. 2d 607). This amount was determined by reference to the liquidated damages provisions in the contract (Sections 5.2 & 5.3).

The Ohio Court of Appeals (2007 Ohio App. LEXIS 4316) affirmed the decision of the trial court. The court held that under broader contract terms not favoring the employee to such a degree the result would not be the same. A contract, opined the court, must honor the parties' agreement absent unconscionability, which was not applicable here. The Ohio Supreme Court in 2008 (2008 Ohio LEXIS 465) declined to hear a further appeal.

### **Responses and Critiques of the O'Brien Decision**

As was established during the *O'Brien* litigation, Radojevic had signed a contract to play professional basketball for a Yugoslavian team (Buducnost) and had received some of the compensation due him under the contract (*O'Brien v. Ohio State Univ.*, 2006). The acknowledgment by the coaching staff that Radojevic had thus crossed the professionalization threshold (Kaburakis, 2005), combined with the insistence of O'Brien to continue recruiting him, issuing a NLI and inviting him for his on-campus official visit, with the additional factor of the improper loan to the Radojevic family, might (in other jurisdictions perhaps) render O'Brien's conduct a material breach of his coaching contract with Ohio State. This fact is further documented by the proceedings in the Ohio Court of Claims. During cross-examination even O'Brien's expert witness, David Swank, past Chairman of the Committee of Infractions, could not respond to the key question on why O'Brien continued to recruit Radojevic, offering an official visit and the National Letter of Intent (NLI), which Radojevic signed, if he had known Radojevic was not going to be eligible. Professor Swank considered the reinstatement prospects irrelevant (*O'Brien v. Ohio State Univ.*, 2006, p. 18). Yet the answer is precisely the reinstatement process, on which O'Brien entrusted the hope of a positive outcome in Radojevic's case. As Commissioner Dan Beebe, Ohio State's expert witness testified, O'Brien violated NCAA rules by providing an improper inducement per Bylaw 13.2.1, which prohibits financial aid, benefits, and arrangements that include, but are not limited to the following: an employment arrangement for relatives, gifts of clothing or equipment, cosigning of loans, providing loans to an athlete's relatives or friends, cash or like items, or any tangible items.

It becomes evident that O'Brien knowingly violated NCAA rules, and did so in a way that violated Bylaw 10.1 on unethical conduct, in particular:

- (c) Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid; (*Revised: 1/9/96*)
- (d) Knowingly furnishing the NCAA or the individual's institution false or misleading information concerning the individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation...

For these reasons, it may reasonably be construed that the Ohio courts erred in their examination of O'Brien's material breach and the aspects of contract law analyzed herein.

Within the community of college athletic administrators, the unfavorable outcome for Ohio State was a great cause for concern. In particular, the characterization of O'Brien's actions as "humanitarian" and that those actions did not result in significant reputational harm for Ohio State were rejected in the amici curiae brief filed with the Ohio Court of Appeals (Amici Curiae, No. 06-AP-946). This brief, which was joined by all of the other Big Ten schools, the Big Ten Conference, the Pac-10 Conference, the Big 12 Conference and eight other prominent Division I-A schools, urged the appellate court to consider O'Brien's actions under a very different light. The amici asserted that O'Brien's loan to Radojevic, even if for "humanitarian" reasons, should not excuse the act. Further, the amici argued that the violation was not technical, but went to the fundamental principles of amateurism. Also, the amici stated that a violation of this nature resulted in a significant loss of trust and that there was significant reputational harm to Ohio State. In short, the amici made it clear that they viewed the Court of Claims' decision as quite harmful to the university prerogative of terminating employees who act in ways quite detrimental to a university's reputation.

The termination clauses of employment contracts with coaches must be drafted with care. Due to the continual turnover in the employment of big-time college coaches (Wieberg, 2008), it becomes even more important to draft the termination clauses with great consideration since disputes over termination and buyout clauses are quite frequent. For example, in addition to the O'Brien dispute, West Virginia University (WVU) sued its former football coach, Rich Rodriguez, to recover \$4 million allegedly owed by the coach after he breached his employment contract. After six months of litigation, Rodriguez paid \$1.5 million to WVU. The University of Michigan, Rodriguez's current employer, also paid \$2.5 million to WVU ("Michigan to pay \$2.5 M...", 2008). Also, the University of Kentucky (UK) paid almost \$3 million to Billy Gillispie, its former basketball coach, to settle a breach of contract and fraud lawsuit (Alessi, 2009). After Gillispie's departure, UK contracted with John Calipari to pay him approximately \$32 million over 8 years (McMurray, 2009). Many constituents of colleges are becoming increasingly appalled by the astronomical sums paid to college coaches (Ryman, 2009) with some assistant football coaches' salaries well over \$500,000 yearly (Person, 2009). In this climate, students who aspire to the athletic director role must understand contract law pertinent to coaches' contracts, and specifically, comprehend the complexities of termination clauses.

The effective negotiation and drafting of coaching contracts in college athletic departments is premised upon the ability to use contract law and employment law principles knowledgeably. Bagley, in her book entitled *Winning Legally* (2005), discussed a variety of ways in which businesses can use the law to create value, marshal resources, and manage risk. Rather than looking at law as an organizational constraint, managers should appreciate the empowering nature of the law. Law should not be viewed as an impediment but rather as a facilitator of value creation. Employees at any level of the organizational hierarchy may "discover opportunities to capture value by harnessing the power of the law" (Bagley, 2005, p. 3).

As Bagley (2005) pointed out in *Winning Legally*, there is a great opportunity for managers to use the law to gain a competitive advantage. The negotiation and drafting of employment contracts with coaches provides a great learning experience for students, especially those who hope to become athletic directors, to understand how these



contracts can be used to create value for an organization as well as manage risk.

Although the judiciary may not have understood all of Ohio State's arguments in terms of the damage to its reputation, Ohio State did itself a disservice by failing to negotiate stronger termination for cause provisions. The culture of "winning" often influences the negotiation process. Competent legal advice is useless in the face of an athletic department and university that care only about hiring or retaining a winning coach.

In the aftermath of the O'Brien situation, Thad Matta, the successor to O'Brien, essentially "paid the price" for being his immediate successor. Matta signed a 10-year deal with Ohio State beginning in 2006 and ending in 2015. Ohio State, in an attempt to eliminate all the favorable "coach" language that it had drafted in its contract with O'Brien, went to great lengths to make sure that the contract with Matta could only be construed very favorably to the university in any prospective dispute over the termination for cause provisions. Matta's contract has 15 specific grounds for termination. They include: 1) the "commission of a crime whether prosecuted or not..."; 2) a "failure to manage Team in a manner that reflects the academic values of Ohio State..."; 3) "Commission of...any act... which in OSU's reasonable judgment brings Coach into public disrepute, contempt, scandal or ridicule..."; 4) "Significant or repetitive or intentional violation (or if OSU has a reasonable basis for believing that a significant or repetitive or intentional violation has occurred) by Coach (or any other person under Coach's supervision and direction, including student-athletes) of any law, rule, regulation, constitutional provision, bylaw or interpretation of Ohio State, the Big Ten Conference or the NCAA." Further, the university defined material breach as follows:

A material breach of this agreement by Coach after receipt of a written notice from Ohio State specifying the act(s), conduct, or omission(s) constituting such breach, which breach cannot be or has not been cured within thirty (30) days after the date that a written notice by Ohio State identifying such breach is sent. (Employment Agreement between The Ohio State University and Thad M. Matta).

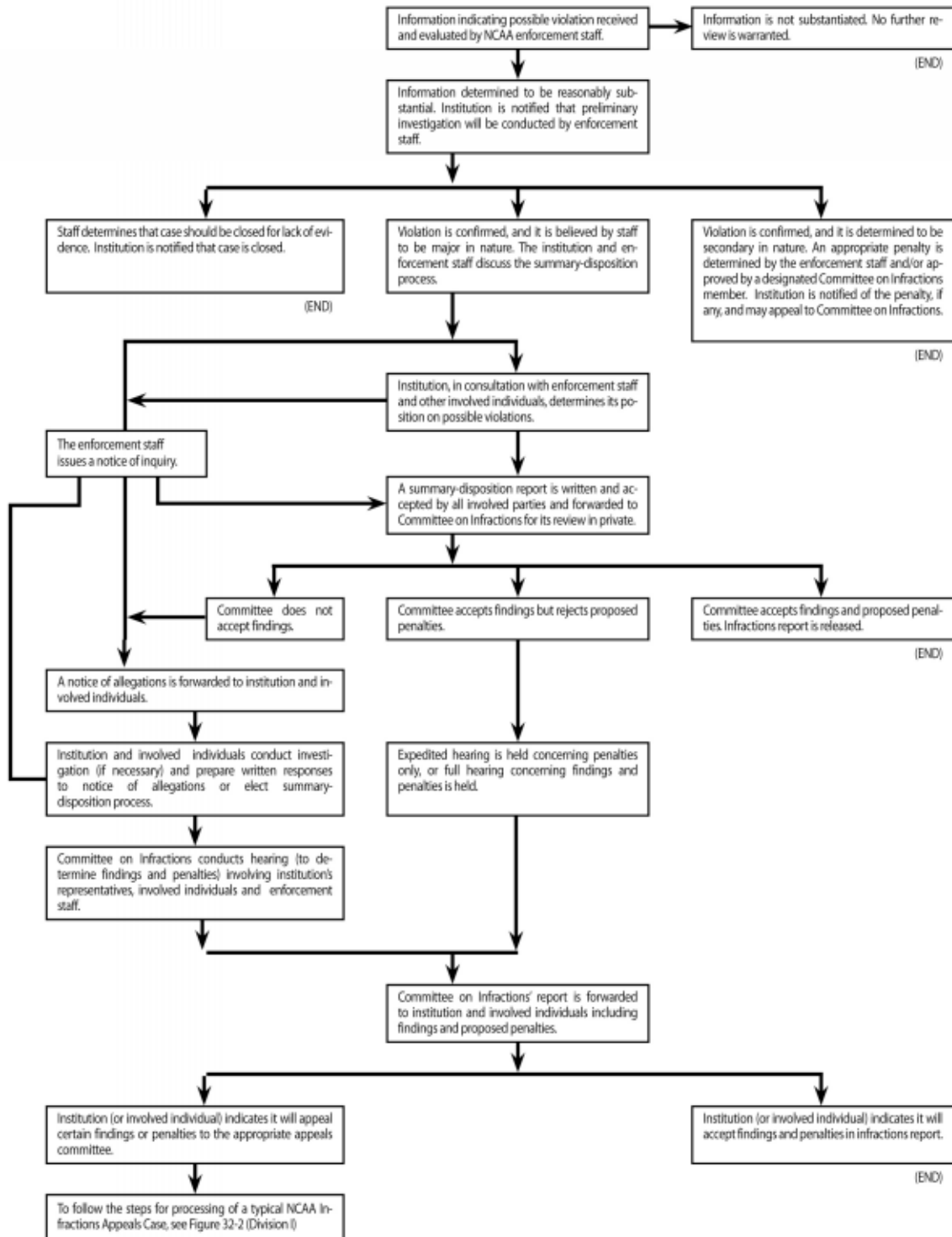
Matta's contract provides Ohio State with quite a number of occurrences that give rise to just cause for termination. "In drafting Matta's contract, OSU clearly was doing everything possible to avoid another problem like the O'Brien situation" (Greenberg, 2006, p. 221).

### **Enforcement, Investigations, Infractions Committee and Appeals**

Figures 9 and 10 and the updated resources provided by the NCAA (2010, March 24) describe the Enforcement process, which concludes with the Committee of Infractions (COI) decision, and the procedure at the Infractions Appeals Committee level, where COI decisions may be appealed. It is useful to note that in 2009 the NCAA Enforcement staff processed 24 major infractions cases. In 15 of those cases, the institutions and all parties involved agreed with the NCAA Enforcement staff as to the facts of the case, and they were settled by summary disposition. Both figures were annual records (Hosick, 2010). In this case, the process commenced with the notice of allegations (Bylaw 32.6) sent by the NCAA Enforcement staff to OSU on May 13, 2005, and received by OSU on May 16, 2005. These dates were procedurally crucial for the outcome of the OSU infractions' case. There is a general statute of limitations outlined in Bylaw 32.6.3. Investigations may only cover possible infractions that had occurred not earlier than four years prior to the institution receiving notice of the investigation. There is a three-pronged exception to this provision:

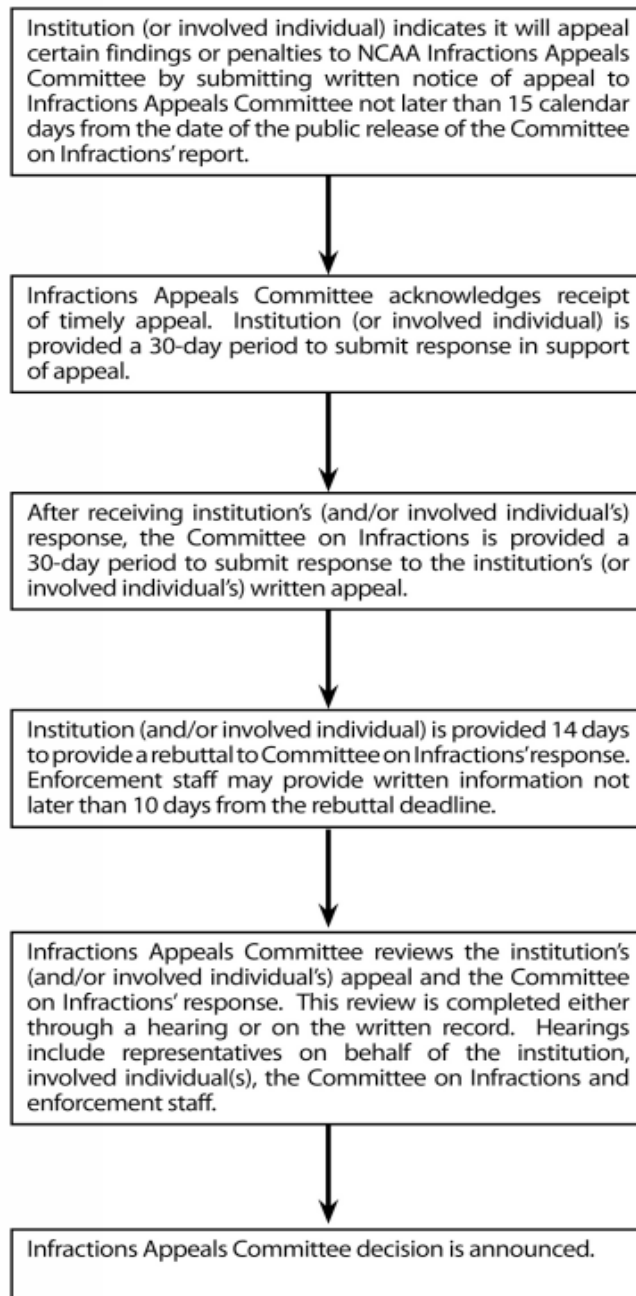
- (a) Allegations involving violations affecting the eligibility of a current student-athlete;
- (b) Allegations in a case in which information is developed to indicate a pattern of willful violations on the part of the institution or individual involved, which began before but continued into the four-year period; and
- (c) Allegations that indicate a blatant disregard for the Association's fundamental recruiting, extra-benefit, academic or ethical-conduct regulations or that involve an effort to conceal the occurrence of the violation. In such cases, the enforcement staff shall have a one-year period after the date information concerning the matter becomes available to the NCAA to investigate and submit to the institution a notice of allegations concerning the matter.

**FIGURE 32-1**  
**Processing of a Typical NCAA Infractions Case**



**Figure 9. Process of a Typical NCAA Infractions Case**  
 ©2009 NCAA. Reprinted with permission.

**FIGURE 32-2**  
**Processing of a Typical NCAA Infractions Appeals Case**



**Figure 10. Processing of a Typical NCAA Infractions Appeals Case**  
©2009 NCAA. Reprinted with permission.

The COI decided in its first infraction report that the exception allowing NCAA Enforcement staff the opportunity to investigate allegations beyond the four-year statute of limitations would be based on 32.6.3(b), in regard to a pattern of willful violations (NCAA, 2006, March 10, pp. 11-12). This pattern was reflecting the men's basketball staff's consistent recruitment practice of particular Serbian players, including improper inducements, benefits, known intermediaries, and OSU representatives of athletics interests. The COI further applied the exception under 32.6.3(c), as these violations were considered blatant and willful, buoyed by O'Brien's conduct subsequent to the loan/improper inducement to Radojevic, as well as his overall effort to tacitly conceal the rules' violations from Ohio State and NCAA staff. Importantly, the COI found that the NCAA Enforcement staff would be able to use the one-year period subsequent to the information becoming available to the NCAA, and the key interpretation by the COI was that "submit" under 32.6.3(c) meant "sent" (NCAA, 2006, March 10, p. 13).

Upon remand from the NCAA DI Infractions Appeals Committee (NCAA, 2007, May 9), however, application of 32.6.3(b) was deemed erroneous, via a strict interpretation of "pattern" and COI precedent (NCAA, 2007, April 13, pp. 13-14). Neither was the exception of 32.6.3(c) applicable, as the Infractions Appeals Committee held that "submit" should stand for "received by the institution within the one-year period" (NCAA, 2007, April 13, p. 17). The key procedural point was that the important date for the application of 32.6.3(c) would be construed as the date the institution received the notice of allegations, not the date the NCAA Enforcement staff mailed it. Thus, the Enforcement staff was held to have missed the one-year deadline by two days, as the Enforcement staff member who received the first indication of a violation from the institution's compliance officer received it on May 14, 2004 (NCAA, 2006, March 10, p. 13). This procedural point has significant precedential value. It means that *any* leads to allegations and contacts with *any* members of the NCAA Enforcement staff trigger the one-year clock of 32.6.3(c).

In sum, violations of NCAA legislation in the Ohio State men's basketball program involved recruiting, extra benefits, academic fraud, unethical conduct and failure to monitor. Overall, the combination of self-imposed penalties and COI sanctions amounted to important restrictions for the institution's athletic program, including the following: public reprimand and censure; three years of probation; reduced official visits; reimbursement to the Association an amount equal to 90 percent of revenue resulting from the Big Ten Conference distribution for the 1999, 2000, 2001 and 2002 championships; vacation of team and individual records (to include the former head coach) for the 1999, 2000, 2001 and 2002 tournaments; show cause imposed on the former head coach for a period of two years (after appeal, initially set at five years); annual compliance reporting required, and others (NCAA, 2006, March 10, pp. 40-44). It is important to stress that during the COI and Infractions Appeals Committee deliberations, O'Brien's legal team staged a relentless fight both in Ohio courts' litigation, which was successful on the contract breach claim elaborated above, as well as during the NCAA's enforcement process, in which O'Brien was able to minimize the harm sustained by the entire investigation, and even be eligible for a new position without a show-cause condition by March 10, 2008 (NCAA, 2008, January 31).

### Conclusion

There are important lessons to be learned from this multi-faceted case. From a contract law perspective, the *O'Brien* case is as instructive regarding the culture of big-time athletics as it is relevant to the foundational principles of contract law. If The Ohio State University had not been so anxious to renew the contract of Jim O'Brien, the university would have been able to negotiate a more favorable contract, particularly in regard to what behavior could be grounds for termination for just cause. Therefore, the contract was only as good as the circumstances allowed. Termination clauses, and in particular termination of the coach/employee for cause, need to be clearly drafted and connected to the coach's compliance duties.

In regard to NCAA Compliance, it is imperative for all stakeholders (e.g., coaches, administrators, prospects, representatives of athletics interests) to communicate transparently and be well-informed of legislative amendments, interpretations, and any policy of impact. For example, the question of whether Radojevic was still considered a

prospect was a highly contested issue during O'Brien's litigation. It is generally accepted that a reasonably prudent coach should have known that recruiting a player with prior professional experience posed problems, let alone providing a recruited athlete a loan or related benefit, which is easily construed as an improper inducement. If the OSU staff specifically advised the coach that Radojevic was still clearly a prospect, the burden of proof for justifying his actions would be even more difficult to bear. Naturally, that poses immense pressure on Compliance personnel and Athletic Department officials, who need to constantly balance policing duties with educational efforts in collaboration with their coaches. With unprecedented regulatory evolution pending (Proposal 2009-22 effective date: August 1, 2010; delayed enrollment portion effective date: August 1, 2011; for more analysis refer to Kaburakis, 2010b), coaches and administrators need to be constantly ahead of developments, on the one hand ensuring they may secure a competitive advantage via timely application of contemporary policies, and on the other minimizing the chances of violating NCAA rules. Further, with COI precedent constantly contributing to a more constrained environment of Enforcement, NCAA and membership personnel need to communicate effectively and efficiently, in hope of reducing the number of cases the COI hears.

This case also presents the rare opportunity to look at such a factual scenario from a global perspective. It is important to realize there are several governing bodies and contributing actors that impact the legal handling of a prospect's case. Knowing how ADR mechanisms operate and the options for resolution afforded by the constituent governing bodies saves valuable resources. There are significant differences in the systems of sport governance internationally, and this case epitomizes the complex matrix of variables that impact a young athlete's participation in amateur and professional sport. It is a meaningful exercise to elucidate Radojevic's ensuing procedural entanglements in his professional basketball pursuits, subsequent to his recruitment by Ohio State.

## **Contract Law Teaching Notes**

### **Contract law learning objectives, student questions and discussion points**

#### **Learning objectives.**

- 1) Students will appreciate the complexity of termination for cause clauses in employment contracts for coaches.
- 2) Students will appreciate the importance of negotiating the termination clauses with diligence.
- 3) Students will understand that unless "material breach" is defined within the contract, it will be a question of fact for a jury or a judge to determine, often without a full understanding of the environment of college coaching.
- 4) Students will understand the necessity of adopting a "worst case scenario" when drafting contracts.

#### **Student questions.**

The following questions related to the *O'Brien* case are offered as suggestions for student discussion and/or for written examination.

- 1) The Court of Claims' judge in this case interpreted the facts in favor of O'Brien when the judge characterized the loan as for humanitarian reasons and not to gain an improper recruiting advantage. What facts might support a more sinister interpretation of the coach's conduct?

**Discussion points.** O'Brien's "story" was inconsistent. If he really felt that Radojevic was ineligible to play college basketball, why did he have Radojevic sign a National Letter of Intent and come for an official visit? Then O'Brien changed his story again and told Geiger (then A.D.) that he thought Radojevic's eligibility could be restored.

- 2) Discuss how Ohio State could have strengthened its grounds for termination for cause. How would the

termination section of O'Brien's contract have been drafted in a more beneficial way for Ohio State?

**Discussion points.** When Ohio State negotiated the employment agreement with O'Brien it could have drafted language that provided that any failure to immediately report any violation of NCAA or Big Ten rules is a material breach of the contract. In that way, it would not be up to a fact-finder to decide, as here, that a single failure to report was not a material breach. OSU negotiated a termination clause favorable to O'Brien and it paid the price. A review of successor Thad Matta's contract shows the degree to which a lengthy list of behaviors could all be grounds for termination. Ohio State could also have waited to see if the Radojevic incident would be investigated by the NCAA as a major infraction. But in this case the NCAA did not investigate for another 11 months after O'Brien was terminated, so relying on this clause would have meant that Ohio State would not have been able to terminate O'Brien at the earlier date, when there was a need to do so based on public concern about the program.

- 3) Discuss the implications of this decision relative to other colleges that may wish to terminate coaches "for cause."

**Discussion points.** This ruling may deter schools from trying to use the "for cause" provisions in coaches' contracts. Often schools have chosen to take the easy way out in these types of situations by terminating the contract without cause and paying a buy-out, instead of risking litigation by the coach who has been terminated for cause. The interpretation of the facts here in favor of the coach, even if that interpretation seems misguided, is a deterrent to colleges that might be considering using the "for cause" provisions instead of buying out a coach who has acted in a less than honorable fashion.

- 4) Compare O'Brien's, Matta's, and Calipari's contracts (available under <http://kaburakis.com/protected/O%27BrienCaseStudy-teachingresources.zip>) and pay particular attention to the termination portions of each. Considering each coach's case, what are important items to derive therefrom?

**Discussion points.** All three basketball coaches were highly sought after, and had an established record of success at different times and with different levels of leverage against the employing institution. With Calipari obviously having the most leverage and University of Kentucky being in need of urgent recruiting help and always faced with increased scrutiny by fans and media, that agreement is on the extreme end of contracts and its termination "for cause" clauses lean in favor of the coach (pp. 10-16; refer to adverbs "knowingly", "significant misconduct... and criminal conviction", "major violation", and the most impressive in favor of Calipari provisions on p. 14 of the agreement, whereby "it is not the intention of the parties to terminate the agreement for minor, technical, or otherwise insignificant violations...", particularly rendering secondary violations extremely minor offenses on which the coach would only have to document corrective action; there is no mention of "pattern" or repeated secondary violations, although one could construe those elevating the misconduct to ground for cause termination in cases where major infractions and penalties against Kentucky could be levied by the NCAA). Would one say that Matta's and O'Brien's contracts fall somewhere in between on the coach-institution continuum, and where would they fall? In hindsight, one would need to consider Matta's greatly favoring the institution, whereas O'Brien's apparently left a lot of room for interpretation, which eventually meant the coach had the upper hand in judicial proceedings. Calipari's contract, at least in certain aspects of the termination portion, also leaves room for interpretation, and in certain conditions favors the coach greatly.

## NCAA Compliance Teaching Notes

### International Recruiting Learning Objectives, Student Questions, and Discussions Points

#### Learning objectives.

- 1) Students will learn the constitutional principles of the association.
- 2) Students will learn amateurism regulations, interpretations, parameters and exceptions.

- 3) Students will understand how policies regarding unethical conduct, recruiting, eligibility, and financial aid may impact IPSAs.  
Students will learn the international federalized club-based governance system and be able to explain why it poses problems for IPSAs attempting to maintain amateur status in the NCAA.

**Student questions.**

- 1) Compare the stated purpose of the NCAA's amateurism policy to criticisms leveled by critics of the NCAA (e.g., Sack & Staurowsky, 1998; Sperber, 2000; Thelin, 1996; Wheeler, 2004; Yaeger, 1991).
- 2) You are a compliance officer for a Division I institution assigned to educating coaches on the NCAA rules regarding the amateur status of IPSAs. Create a brief PowerPoint presentation that you would use at a meeting with all coaches in the athletic department. Ensure you educate coaches on aspects of the international federalized club-based structure of sport, the problems that exist due to the fact talented prospects frequently are promoted to the top-level clubs in the international system of sport governance, the steps of the process they need to consider, as well as the options the institution might have through the amateurism fact-finding and certification process, reinstatement, and the potential withholding conditions their prized recruits might have to fulfill prior to competing.
- 3) If you were the sport manager supervising men's basketball as the Ohio State coaching staff continued to recruit Radojevic, how would you have advised the coaches to handle the recruitment of Radojevic?
- 4) Describe the ways in which Bylaw 10.1 is related to Bylaw 13.2.1.
- 5) Explain why IPSAs face a difficult time remaining amateurs under the NCAA's definition of amateurism. Do you believe the NCAA should attempt to develop legislation to address this issue? Why or why not?
- 6) Conduct research on the questions asked of prospective student-athletes by the NCAA Amateurism Clearinghouse created in 2007. How might these questions have clarified issues that developed in the Radojevic case?

**Discussion points.** It is difficult to maintain a clear line of demarcation between professional and amateur sport in the US, let alone apply amateurism rules in IPSAs cases, considering the nature of the pyramid model, with intimate ties between the junior clubs whence IPSAs emanate, and their senior professional club teams. When a coach knowingly provides improper inducements and benefits to IPSAs, he/she triggers unethical conduct rules.

**SAR Process Learning Objectives, Student Questions, and Discussion Points**

**Learning objectives.**

- 1) Students will learn the SAR process.
- 2) Students will learn the ACP as part of the Eligibility Center review.
- 3) Students will have the opportunity to conduct SAR precedent research and trend analysis (LSDBi).
- 4) Students will learn how to monitor policy developments.
- 5) Students will learn how SAR is connected to other parts of NCAA operations (especially Amateurism Certification and Enforcement).

**Student questions.**

- 1) In your own words and in your own style, create a process diagram of the SAR process.
- 2) In less than fifty words, summarize the amateurism certification process.
- 3) The ncaa.org website and the LSDBi are used by the association to inform its member institutions of policy updates. Identify one proposed piece of legislation from two years ago, and summarize the life cycle of the legislation. For example, why was the legislation proposed? What was the end result? Was it accepted or rejected by the membership? Was there an override vote? If so, what does your research yield in regard to the voting outcome at the respective NCAA Convention, and what do you think was the most decisive factor the membership considered when deciding on the pertinent legislation?

- 4) In your opinion, did Coach O'Brien make a wise decision to pursue reinstatement for Radojevic? Explain.
- 5) Write a position statement on Proposal 2009-22, which makes it easier for IPSAs to maintain NCAA DI amateurism status.

**Discussion points.** Coaches have a difficult decision: they can elect not to pursue a prospect they deemed a professional, thus not recruitable; then, they may see this prospect compete against them for a team that did not go into the recruiting process with the due diligence the other institutions did. From a competitive advantage and strategic perspective, coaches need to find the edge in recruiting, and that may mean monitoring SAR trends and identifying potential difference-making IPSAs who could be reinstated. As long as there is no willful violation of any policies and coaches' conduct does not fall under Bylaw 10.1, such practices would not be considered unethical in contemporary college sports management.

### **Enforcement Learning Objectives, Student Questions, and Discussion Points**

#### **Learning objectives.**

- 1) Students will learn the Enforcement, COI, and Infractions Appeals' process.
- 2) Students will have the opportunity to conduct research and trend analysis of major infractions (LSDBi).
- 3) Students will learn how to monitor legislative amendments, Enforcement policies, and sanctions' updates.
- 4) Students will learn how Enforcement is connected to other parts of NCAA operations (especially SAR and Amateurism Certification).

#### **Student questions.**

- 1) Discuss the role played by the COI in the NCAA enforcement process.
- 2) What does the NCAA attempt to accomplish by sanctioning member institutions? In your opinion, has the NCAA been effective with its approach?
- 3) Do you agree with the COI's and/or the Infractions Appeals Committee's findings and final decisions on O'Brien and Ohio State?
- 4) Use the Major Infraction Case Search tools tab under the NCAA Legislative Database for the Internet (<https://web1.ncaa.org/LSDBi/exec/miSearch>), to compare and contrast the findings and outcome in the O'Brien case to other major infractions cases.

**Discussion points.** It is important for aspiring professionals in the sport industry to realize the delicate balances this case underscores. Coaches, Compliance and administrative staff, SAR and Enforcement staff, SAs and their families, need to work together, however that frequently entails conflicts. In addition, NCAA personnel need to closely collaborate and communicate fast and in transparent fashion, to avoid procedural errors, such as the one leading to O'Brien's amended show-cause penalty.

### **International Arbitration Teaching Notes**

#### **Learning Objectives, Student Questions, and Discussion Points**

##### **Learning objectives:**

- 1) Students will learn the different structures of global sport governance impacting the interactions between sport governing bodies.
- 2) Students will be able to identify differences in structure, policy, culture, and practice impacting sport governing bodies and migrating athletes.
- 3) Students will explore the different ADR systems and methods of resolving conflict in several sport governance settings.
- 4) Students should attempt to develop a broad knowledge base of concepts and principles that overlap among different sport structures and assume a pluralistic view of sport governance and management.



**Student questions.**

- 1) Identify methods utilized to resolve disputes between international governing bodies.
- 2) What was the fundamental purpose of the NBA-FIBA agreement? What did this agreement consider a “player contract?”
- 3) What factors undergirded the Raptors decision to move for arbitration?
- 4) When the case went into arbitration, what were the two major questions that needed be answered by the arbitrator?
- 5) Create a grid or chart that summarizes the positions of the parties involved in the arbitration.
- 6) What factor ultimately led the arbitrator to conclude that Radojevic’s contract with Buducnost was not a valid player contract under the terms of the NBA-FIBA agreement?
- 7a) Examine recent FAT awards (FIBA Arbitral Tribunal, n.d. c) to pinpoint key contract clauses and trends that led to successful claims brought by players, the number of cases that are successful for the claimant, and the amount of money awarded to the claimant.
- 7b) Select one case from the FAT database and assume the sides of claimant and respondent (e.g., the moving player, coach, agent, team). Conduct a moot arbitration in class based on the facts of the case. When possible, film the arbitration, request other members of the class or external reviewers to grade the presentation, and use the film for self-reflection and self-evaluation for moot arbitration actors.

**Discussion points.** There are many cases of IPSAs using sport as the avenue toward a brighter future, especially when they need to escape war-torn environments and difficult socio-economic backgrounds. In the process there are several key variables to consider, and the interactions among international sport governing bodies complicate such migration. In the absence of agreements and ADR mechanisms, the convoluted plane of conflicting principles, practices, and policies may be too difficult or even impossible for an IPSA to navigate. Aspiring sport managers need to possess a solid understanding of methods and systems available to resolve conflicts, assisting athletes and institutions. In addition, contemporary managers need to consider evolving trends, legal and policy progress, and changes in management practice, whilst amending outdated agreements and systems. Moreover, talented sport managers shall be able to substantially forecast nascent problems and ensuing economic, legal, policy, and management paradigm shifts in a very dynamic era of sport management. The Radojevic case presents ample examples of ways sport managers may instrumentally contribute to improving sport practice reality.

**Table 1. O’Brien/Radojevic Timeline**

|             | <b>Radojevic</b> |  | <b>O’Brien</b> |              |
|-------------|------------------|--|----------------|--------------|
|             | <b>Date</b>      | <b>Event</b>                                     | <b>Date</b>    | <b>Event</b> |
| <b>1996</b> | 30-May           | Enters into contract with Buducnost              |                |              |
|             | 4-Sep            | Injures knee in training (2 weeks before season) |                |              |
|             | 11-Oct           | Knee surgery                                     |                |              |
|             | November         | On Buducnost roster for 8 regular season games   |                |              |

|      |   |  |
|------|---|--|
| 1997 | <p>14-Mar 4/15-4/16 Agreement made b/t FIBA and NBA Buducnost season ends (playoff elimination)</p> <p>4/20-4/25 Speaks to Buducnost secretary who says that all required payments were made</p> <p>13-May Goes to U-22 National training camp, ~5 days</p> <p>19-May July Leaves for United States from camp Buducnost training camp, Radojevic does not attend. Plays next two seasons (97-98, 98-99) at Barton County CC (KS)</p>  | <p>12-Apr Hired by Ohio State</p>  |
| 1998 | <p>September Buducnost finds and calls Radojevic to play, Radojevic refuses</p> <p>Late September Father dies</p> <p>October NCAA becomes aware of Radojevic's contract with Buducnost and informs Ohio State of ineligibility</p> <p>11-Nov Signs National Letter of Intent</p> <p>13-Dec Official visit to Ohio State (2 days)</p>  | <p>9-Sep Agrees to give loan to Radojevic</p> <p>Sept-Feb Between September '98 and February '99 actual loan was given (envelope with ~\$6,000)</p> <p>October NCAA becomes aware of Radojevic's contract with Buducnost and informs Ohio State of ineligibility</p>   |
| 1999 | <p>February Declared ineligible by NCAA reinstatement representative</p> <p>24-Mar Ohio St. files application for Radojevic's reinstatement</p> <p>24-May Reinstatement application denied and subcommittee denies appeal</p> <p>24-Jun NBA asks FIBA for letter of clearance</p> <p>28-Jun FIBA denies letter of clearance</p> <p>30-Jun NBA Draft (12th overall)</p> <p>30-Jul NBA contacts Travers (international arbitrator)</p> <p>19-Aug Arbitration hearing b/t Raptors and Buducnost</p> <p>24-Aug Arbitrator decides in favor of Raptors</p> | <p>February Radojevic declared ineligible by NCAA reinstatement representative</p> <p>March Buckeyes advance to Final Four</p> <p>24-Mar Ohio St. files application for Radojevic's reinstatement</p> <p>24-May Reinstatement application denied and subcommittee denies appeal</p> <p>12-Sep Signs newly negotiated contract with Ohio State</p> <p>15-Sep Signs NCAA Certificate of Compliance</p> |

|             | <b>Radojevic</b> |   | <b>O'Brien</b> |   |
|-------------|------------------|---|----------------|---|
|             | <b>Date</b>      | <b>Event</b>                              | <b>Date</b>    | <b>Event</b>  |
| <b>2000</b> | 12-Oct           | Hurts back in game against Vancouver      | March          | Buckeyes win Big 10 Championship  |
|             | 20-Oct           | Back Surgery, out for remainder of season |                |   |
| <b>2001</b> | 12-Jan           | Traded to Denver Nuggets                  |                |   |
|             | 22-Oct           | Traded to Milwaukee Bucks                 |                |   |
|             | Dec-Feb          | Plays for Union Olimpija (Slovenia)       |                |   |
|             | Feb              | Plays for Pallacanestro Livorno (Italy)   |                |   |
| <b>2002</b> |                  |   | March          | Buckeyes capture Big Ten tournament title   |
|             | 02-03 season     | Plays for Telekom Basket Bonn (Germany)   | 98-02          | Salyers provides home, clothing, homework, money, food, and school supplies to Boban Savovic, an Ohio State recruit from Serbia |
| <b>2003</b> |                  |   | Aug            | Salyers sues Ohio State for not fulfilling agreement to pay her for providing benefits to Savovic                               |
|             | 03-04 season     | Plays for PAOK Thessaloniki (Greece)      |                |   |
| <b>2004</b> | 04-05 season     | Plays 12 games with Utah Jazz             | 24-Apr         | O'Brien tells Geiger that depositions from Salyers would reveal payment to Radojevic  |
|             |                  |   | 8-Jun          | Ohio State Fires O'Brien  |

|      |  |  |
|------|--|--|
| 2005 | <p>Jan Released from Utah</p> <p>Jan-Jun Plays for Prokom Trefl Sopot (Poland) &amp; wins national championship</p> <p>05-06 season Signed by Olympia Larissa BC (Greek Basketball league)</p> | <p>May Ohio Judge dismisses Salyers lawsuit (agreements over 1 year must be in writing)</p> <p>13-16 May On 5/16 Ohio State receives Notice of Allegations and files inquiry of infraction and investigation to NCAA, which misses Bylaw 32.6.3 one-year deadline by 2 days</p> <p>1-Aug David Swank (Chair of NCAA infractions committee '92-'99) serves as O'Brien's expert witness in Ohio Court of Claims; testifies that O'Brien did not break rules, says loan was given in December 98, OK to loan \$ to pro athletes, could not think of reasons why OSU would still pursue Radojevic since it was established he was a professional athlete</p> |
|      | 2006   | <p>06-07 season Plays for APOEL Nicosia (Cyprus)</p>   |

|             | <b>Radojevic</b>  | <b>O'Brien</b>  |
|-------------|---|---|
| <b>2007</b> | 07-08 season    Plays for Keravnos Strovolou (Cyprus)       | <p>13-Apr    Report of NCAA DI Infractions Appeals Committee, reverses two findings, and remands five-year show-cause penalty for reconsideration</p> <p>9-May    NCAA DI Committee on Infractions Supplemental Report imposing two-year show-cause order; O'Brien gives notice of appeal</p> <p>20-Jul    O'Brien files appeal for amended decision of NCAA DI Infractions Committee</p> <p>23-Aug    NCAA DI Infractions Committee responds</p> <p>7-Sep    O'Brien files rebuttal to Committee on Infraction's response</p> <p>20-Sep    10th District Court of Appeals affirms Ohio Court of Claims decision (award of 2.4 million to O'Brien)</p> <p>14-Dec    Case heard by NCAA DI Infractions Appeals Committee</p> |
| <b>2008</b> | 08-09 season    Plays for Proteas EKA AEL Limassol (Cyprus) | <p>30-Jan    NCAA DI Infractions Appeals Committee revises two-year show-cause effective date (through 3/9/2008)</p> <p>20-Feb    Supreme Court of Ohio declines to review Ohio State's appeal; O'Brien's final award is approximately \$3mil.</p> <p>10-Mar    O'Brien able to sign new contract w/o show-cause inclusion</p>  |

## References

- Agreement by and between National Basketball Association and Federation Internationale de Basketball (1997, March 14). Available from Federation Internationale de Basketball (Avenue Louis Casai, 53 – 1216 Cointrin, Geneva – Switzerland).
- Amici Curiae brief filed in the case of O'Brien v. Ohio State University, No. 06-AP-946.
- Bagley, C. E. (2005). *Winning Legally*. Boston: Harvard Business School Press.
- Dedes, P., & Zaglis, A. (2006). *The Court of Arbitration for Sport* (in Greek). Athens, Greece: Nomiki Bibliothiki Group.
- DiMatteo, L.A., & Anenson, T.L. (2007). Teaching law and theory through context: Contract clauses in legal studies education. *Journal of Legal Studies Education*, 24(1), 19-57.
- Employment Agreement between Ohio State University and Thad M. Matta beginning July 1, 2006.
- FIBA Arbitral Tribunal (n.d. a). Arbitration Rules. Retrieved January 21, 2008, from [http://www.fiba.com/downloads/v3\\_expe/bat/110401\\_BAT\\_Arbitration\\_Rules.PDF](http://www.fiba.com/downloads/v3_expe/bat/110401_BAT_Arbitration_Rules.PDF)
- FIBA Arbitral Tribunal (n.d. b). Presentation. Retrieved January 21, 2008, from <http://www.fiba.com/pages/eng/fc/expe/fat/p/openNodeIDs/16809/selectNodeID/16809/pres.html>
- FIBA Arbitral Tribunal (n.d. c). FAT awards. Retrieved November 9, 2009, from <http://www.fiba.com/pages/eng/fc/expe/fat/p/openNodeIDs/16810/selectNodeID/16810/fat-awards.html>
- Greenberg, M.J. (2006, Fall). Symposium: National Sports Law Institute Board of Advisors: Termination of college coaching contracts: When does adequate cause to terminate exist and who determines its existence? *Marquette Sports Law Review*, 17, 197-257.
- Hosick, M.B. (2010, March 24). Many NCAA infractions cases move quickly, but complications can slow the process. The NCAA News. Retrieved May 31, 2010, from <http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/How+We+Work/Enforcement+process/Infractions>
- In re: Toronto Raptors v. Buducnost, Iain Patrick Travers International Arbitrator (1999, August 24). Retrieved September 7, 2007, from <http://equeslaw.com/Documents/Read%20the%20decision%20here.pdf>
- Kaburakis, A. (2005). NCAA DI amateurism and international prospective student athletes: The professionalization threshold. (Doctoral dissertation, Indiana University, 2005). *Dissertation Abstracts International*, 67(01), DAI-B. AAT 32904289.
- Kaburakis, A. (2007). International prospective student-athletes and NCAA Division I amateurism. *International Journal of Sport Management and Marketing*, 2(1/2), 100-118.
- Kaburakis, A. (2010a, January 19). Amateurism policy news and props [Msg 1]. Message posted to <http://www.kaburakis.com/2010/01/19/amateurism-policy-news-and-props/>
- Kaburakis, A. (2010b, March 13). Proposal 2009-22 in 2010 [Msg 1]. Message posted to <http://www.kaburakis.com/2010/03/13/proposal-2009-22-in-2010/>

com/2010/03/13/proposal-2009-22-in-2010/

Maddox v. University of Tenn., 62 F.3d 843 (6th Cir. 1995).

Mangarelli, M. (Speaker). (2009). *Issues concerning international student-athletes through graduation*. National Collegiate Athletic Association. Retrieved January 20, 2009 from [http://web1.ncaa.org/web\\_video/convention/2009/sessions/issues\\_concerning.html](http://web1.ncaa.org/web_video/convention/2009/sessions/issues_concerning.html)

McKenzie v. Wright State Univ., 683 N.E.2d 381 (Ohio Ct. App. 1996).

McMurray, J. (2009, April 2). Big green: Calipari's contract loaded with perks. Retrieved on June 29, 2009 from <http://www.signonsandiego.com/news/2009/apr/01/bkc-calipari-contract-040109/>

Michigan to pay \$2.5M, Rodriguez \$1.5M to satisfy WVU buyout. (2008, July 9). Retrieved on June 29, 2009 at <http://sports.espn.go.com/nf/news/story?id=3479493>

National Collegiate Athletic Association. (n.d.). Legislative Services Database for the Internet. Retrieved September 20, 2009, from <https://web1.ncaa.org/LSDBi/exec/homepage>

National Collegiate Athletic Association (2006, March 10). Ohio State University Public Infractions Report. Retrieved September 25, 2009, from <https://web1.ncaa.org/LSDBi/exec/homepage>

National Collegiate Athletic Association (2007). NCAA Division I Committee on Infractions Alters Penalty for Former Ohio State University Men's Basketball Coach. Retrieved September 21, 2009, from [http://www2.ncaa.org/portal/media\\_and\\_events/press\\_room/2007/may/20070509\\_osu\\_showcause\\_rls.html](http://www2.ncaa.org/portal/media_and_events/press_room/2007/may/20070509_osu_showcause_rls.html)

National Collegiate Athletic Association (2007, April 13). Report of the NCAA DI

Infractions Appeals Committee; Report No. 256, former head men's basketball Coach, Ohio State University. Retrieved September 25, 2009, from <https://web1.ncaa.org/LSDBi/exec/homepage>

National Collegiate Athletic Association (2007, May 9). Report of the NCAA DI Committee on Infractions remand of penalty from the DI Infractions Appeals Committee; Ohio State University's former head men's basketball coach. Retrieved September 25, 2009 from <https://web1.ncaa.org/LSDBi/exec/homepage>

National Collegiate Athletic Association (2008, January 31). Report of the NCAA DI Infractions Appeals Committee; Report No. 256, former head men's basketball Coach, Ohio State University. Retrieved September 25, 2009 from <https://web1.ncaa.org/LSDBi/exec/homepage>

National Collegiate Athletic Association (2010, March 24). Illustration of an extended infractions case. Retrieved May 31, 2010, from <http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/How+We+Work/Enforcement+process/Infractions+case+study>

O'Brien v. Ohio State Univ., 2006 Ohio Misc. LEXIS 52 (Ohio Ct. Cl., Feb. 15, 2006).

O'Brien v. Ohio State Univ., 859 N.E.2d 607 (Ohio Ct. Cl. 2006).

O'Brien v. Ohio State Univ., 2007 Ohio App. LEXIS 4316 (September 20, 2007).

- O'Brien v. Ohio State Univ., 2008 Ohio LEXIS 465 (Feb. 20, 2008).
- Person, J. (2009, Jan. 23). SEC ups the ante with assistant coaches' salaries. *The Columbia State Herald*. Retrieved Oct. 31, 2009 from <http://www.heraldonline.com/2009/01/23/1089163/sec-ups-the-ante-with-assistant.html>
- Pierce, D., Kaburakis, A., & Fielding, L. (2008). Compliance Officers' Guide to Navigating NCAA Student-Athlete Reinstatement Cases Involving Amateurism Violations. *Journal of Issues in Intercollegiate Athletics*, 1, 87-106.
- Pierce, D., Kaburakis, A., & Fielding, L. (2010). The New Amateurs: The National Collegiate Athletic Association's Application of Amateurism in a Global Sports Arena. *International Journal of Sport Management*, 11, 2, 304-327.
- Restatement of the Law 2d, Contracts §241 (1981).
- Ryman, A. (2009, Sept. 20). ASU, UA coaching salaries reviewed by Board of Regents. *The Arizona Republic*. Retrieved on Oct. 31, 2009 from [http://www.azcentral.com/sports/asu/articles/2009/09/20/20090920\\_athleticsalaries0919-CP.html](http://www.azcentral.com/sports/asu/articles/2009/09/20/20090920_athleticsalaries0919-CP.html)
- Sack, A. L., & Staurowsky, E. J. (1998). *College athletes for hire: The evolution and legacy of the NCAA's amateur myth*. Westport, CT: Praeger Publishers.
- Sharp, L.A., Moorman, A.M., & Claussen, C.L. (2007). *Sport Law: A Managerial Approach*. Scottsdale, AZ: Holcomb Hathaway.
- Sperber, M. (2000). *Beer and Circus: How big-time college sports is crippling undergraduate education*. New York, NY: Henry Holt and Company.
- Thelin, J. R. (1996). *Games colleges play: Scandal and reform in intercollegiate athletics*. Baltimore: The Johns Hopkins University Press.
- Weatherill, S. (2005). Is the pyramid compatible with EC Law? *International Sports Law Journal*. 3-4, 3-7.
- Wheeler, S. (2004). Rethinking amateurism and the NCAA. *Stanford Law & Policy Review*, 15(1), 213-235.
- Wieberg, S. (2008, Dec.2). Coaches on shorter leashes. *USA Today*, p. 10C.
- Williston, S. (1972). *A Treatise on the Law of Contracts*, 3rd edition. Lawyers Cooperative Publishing Co: Rochester, NY.
- Yaeger, D. (1991). *Undue process: The NCAA's injustice for all*. Champaign, IL: Sagamore.