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HOW MIKE WILLIAMS & MAURICE CLARETT LOST THEIR CHANCE TO PERFORM ON COLLEGE ATHLETICS' BIGGEST STAGE

*Michael R. Lombardo**

INTRODUCTION

In the fall of 2002 Maurice Clarett was on top of the world. His team, the Ohio State Buckeyes, had just completed a remarkable season in which they dominated college football. They finished the season a perfect 14-0, winning the Big Ten Conference Championship and the National Championship. In the Fiesta Bowl, the Buckeyes were matched up against the undefeated Miami Hurricanes, who had not lost a game since September of 2000.[1] The Buckeyes were twelve-point underdogs at kickoff and the experts did not give them much of a chance at winning.[2] However, behind the remarkable effort of their star freshman tailback, Ohio State shocked the Miami Hurricanes and the college football world with a 31-24 victory.[3] Clarett scored the winning touchdown in the second overtime, his second touchdown of the game, and the Ohio State Buckeyes were National Champions.[4]

Clarett finished the 2002 college football season with 1,237 yards and eighteen touchdowns.[5] He was named to several 2003 preseason All-America teams, voted the No. 1

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[1] See http://hurricanesports.collegesports.com/sports/m-footbl/archive/061001aac.html (last visited Jan. 22, 2005). The Miami Hurricanes were last defeated 34-29 at the hands of the Washington Huskies in Seattle, Washington.

[2] See http://www.natronbomb.com/Fiesta%20Bowl%202003.html (last visited Jan. 21, 2005).

[3] Josh Dubow, Clarett Steps Up When Buckeyes Need Him Most, OhiostateBuckeyes.collegesports.com (Jan 03, 2003), *at* http://ohiostatebuckeyes.collegesports.com/sports/m-footbl/spec-rel/010303aad.html.

[4] *Id.*

[5] Tom Friend and Ryan Hockensmith, Clarett Claims Cash, Cars Among Benefits, ESPN.com (Nov 09, 2004), *at* http://sports.espn.go.com/ncf/news/story?id=1919059.

running back in college football by the Sporting News, named a first-team All-Big Ten pick, and was named Big Ten Freshman of the Year.[6] Clarett's success, however, was short lived.

On April 16, 2003, the car Clarett had been driving was burglarized while he was at practice.[7] Clarett called the police and filed a police report. On the report, Clarett estimated that a total of $10,500 worth of merchandise had been taken from the automobile.[8] When the NCAA learned of the incident, they began to ask questions. They wanted to know how a freshman with no job could possibly have $10,500 worth of merchandise, and they wanted to know where he got a fully loaded black 2001 Monte Carlo, the car that was burglarized.[9] After giving vague and incomplete answers to investigators, Ohio State suspended Clarett for the 2003 football season pursuant to the NCAA amateurism rules.[10] After realizing that he most likely would not be reinstated for the 2004 football season, Clarett quit school in February of 2004.[11]

With college football no longer an option, Clarett set his sights on the National Football League (NFL). He was an All-American who had just led his team to the National Championship. At six feet tall and 230 pounds, Clarett had NFL scouts and coaches excited about the prospect of him playing for their team, and Clarett wanted to play for them. There was only one problem. The NFL's eligibility rule states that a player is not eligible for the NFL draft

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[6] The Suit: Clarett v. NFL, ESPN.com (Sept. 23, 2003), *at* http://sports.espn.com/espn/print?id=1621954&type=sto.
[7] Tom Friend, My Side, ESPN.com (Nov. 09, 2004) *at* http://sports.espn.go.com/ncf/news/story?id=1919246.
[8] *Id.* The police report listed the following stolen items: cash ($800), various audio components ($5,000), clothing ($300), two CD cases with a total of 300 CDs (estimated $4,500) and a black leather bi-fold. Total: $10,500. *Id.*
[9] *Id.*
[10] *See* 2004-05 NCAA Division I Manual, *available at* http://www.ncaa.org/library/membership/division_i_manual/2004-05/2004-05_d1_manual.pdf (last visited Jan. 22, 2005). NCAA Bylaw Rule 10.1(a) states that unethical conduct includes: Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the individual's institution. Rule 12.1.1(a) states that an individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual uses his or her athletic skill (directly or indirectly) for pay in any form in that sport. More specifically, Rule 12.1.1.1.6 states: Preferential treatment, benefits or services because of the individual's athletic reputation or skill are prohibited. *Id.*
[11] Friend, supra note 7.

until after three full college seasons have elapsed since the player's high school graduation.[12] Clarett was one year short of eligibility. Clarett then brought suit against the NFL, challenging its eligibility rule.

Mike Williams' story is somewhat different than Clarett's, but he is ultimately faced with the same predicament. As a sophomore wide receiver at the University of Southern California, Williams helped lead his team to a 12-1 record and a share of the National Championship.[13] In a 28-14 Rose Bowl victory over the University of Michigan, Williams caught eight passes for eighty-eight yards and threw a touchdown pass.[14] Over the course of the 2003 season, Williams caught ninety-five passes for a total of 1,314 yards and a school-record sixteen touchdowns.[15]

NFL coaches and scouts were very impressed with Williams. The six-foot-five, 230 pound sophomore was projected as a high first-round draft pick.[16] He, just like Clarett, was one year shy of the NFL's draft eligibility rule. Williams was therefore faced with the same problem as Clarett: The NFL would not allow him to enter the draft. Instead of taking action against the NFL, Williams watched from the sidelines as Clarett's lawsuit unfolded, knowing that the decision on whether Clarett would be able to enter the NFL draft would be binding on him as well.

The purpose of this article is to give an in depth analysis of the rulings at every stage of the Clarett lawsuit, and to shed light on why the second circuit district court's decision was

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[12] Clarett v. National Football League, 306 F. Supp. 2d 379, 386 (S.D.N.Y. 2004).
[13] Associated Press, 3 Coaches Vote for USC, ESPN.com (Jan. 05, 2004), at http://sports.espn.go.com/ncf/bowls03/news/story?id=1700487. The BCS Championship game was played between the Louisiana State University Tigers and the University of Oklahoma Sooners at the Sugar Bowl in New Orleans, Louisiana. The Tigers won 21-14, thereby automatically winning the National Championship from the Coaches Poll. USC, however, was voted National Champions by the Associated Press Poll. *Id.*
[14] *See* http://sports.espn.go.com/ncf/bowls03/bowl?game=rose (last visited Jan. 20, 2005). Williams threw a touchdown pass to quarterback Matt Leinart. *Id.*
[15] Associated Press, NCAA Ruling Makes Mike Williams A Football Star Without A Team, ESPN.com (Aug. 26, 2004), *at* http://sports.espn.go.com/espn/wire?section=ncf&id=1868863. Williams' freshman statistics were equally as impressive. He caught 81 passes for 1,265 yards and 14 touchdowns. *Id.*
[16] *Id.*

overturned on appeal. Further, this article will discuss how Mike Williams relied on the decision of the district court to his detriment and was therefore not allowed to rejoin his team at the University of Southern California.

Part I of this article will focus on the initial lawsuit won by Clarett in the United States District Court for the Southern District of New York. Clarett sued the NFL under the Sherman Act, asserting that the league's rule limiting eligibility for its draft to players three seasons removed from their high school graduation constituted an unreasonable restraint of trade. The District Court found for Clarett,[17] opening the door for Clarett and Williams to enter the NFL Draft. Part II will discuss the NFL's appeal of the District Court decision. The Appellate Court found that the challenged eligibility rule was shielded from antitrust laws and on that basis reversed and remanded the case for the district court to enter judgment in favor of the NFL.[18] Because of this decision, Williams and Clarett were no longer eligible to participate in the 2004 NFL Draft.

Part III will analyze how Williams relied on the District Court's decision to his detriment. Williams was not only forbidden from entering the NFL draft, but because of the NCAA's rules on amateurism was also not allowed to return to USC for his Junior year. Finally, Part IV of this article will address public policy considerations involved in admitting underclassmen in the draft and denying reinstatement to those athletes who choose not to abide by the NCAA's rules of amateurism in regards to the 'no-agent' and 'no-draft' rules. This article will attempt to show how, after all proceedings were finally completed, the legal system and the NCAA were correct in their respective rulings.

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[17] *Clarett*, 306 F. Supp. 2d at 379.
[18] Clarett v. National Football League, 369 F.3d 124 (2nd Cir. 2004).

II. CLARETT'S INITIAL CASE AGAINST THE NFL

Clarett sued the NFL under Section 1 the Sherman Act,[19] claiming that the NFL's eligibility rules, which state that a player must be three years removed from his high school graduation in order to enter the NFL draft, constituted an unreasonable restraint of trade.[20] In order for conduct to be deemed illegal under Section 1 of the Sherman Act, the restraint must affect trade or commerce among several states and there must be an agreement that is sufficient to constitute a contract, combination or conspiracy.[21] Clarett claimed that the NFL had created a group boycott by excluding a large class of players from gaining employment in the NFL.[22] In its defense, the NFL stated three arguments: (1) the eligibility rules were the result of a collective bargaining agreement between the NFL and the players, therefore the rule was immune from antitrust scrutiny; (2) Clarett had no standing under the antitrust laws to bring suit; and (3) the eligibility rules were reasonable.[23] The district court performed a thorough examination of the defenses presented by the NFL and found that it could not prevail on any of its arguments.[24]

A. Were the Eligibility Rules the Result of the Collective Bargaining Agreement?

The first question to be answered by the district court was whether the league eligibility rules were in fact the result of the collective bargaining agreement between the league and the player's union.[25] If it was found that the NFL eligibility rules were indeed bargained for,[26] they

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[19] 15 USC § 1
[20] *Clarett*, 306 F. Supp. 2d at 382.
[21] Villanova
[22] *Clarett*, 306 F. Supp. 2d at 390.
[23] *Id.* at 382.
[24] *Id.*
[25] *Id.* at 384. There were two specific provisions of the Collective Bargaining Agreement actually at issue in the case, and the NFL and Clarett were at odds over whether these provisions were actually bargained over. Article III, section 1: "The NFLPA and the Management Council waive all rights to bargain with one another concerning any subject covered or not covered in this Agreement for the duration of this Agreement, including the provisions of the NFL Constitution and Bylaws." Article IV, section 2: "Neither the NFLPA nor any of its members, agents acting on its behalf, nor any members of its bargaining unit will sue, or support financially or administratively any suit against, the NFL or any Club relating to the presently existing provisions of the Constitution and Bylaws of the NFL as they are currently operative and administered." *Id.*

would be immune from antitrust scrutiny.[27] There are two ways in which labor laws can be held immune from antitrust scrutiny. The first is the statutory labor exemption. In 1914, the Clayton Act created statutory labor exemptions for certain activities engaged in by labor unions, such as boycotts and picketing.[28] The eligibility rule, however, does not fall within the stated exemptions of these acts.[29]

If an exemption were to apply it would have to come in the form of a nonstatutory labor exemption.[30] The nonstatutory exemption, created by the Supreme Court, was designed to favor federal labor law by permitting collective bargaining between unions and employers over wages, hours and working conditions.[31] The exemption also allows meaningful collective bargaining to take place by protecting restraints on competition from antitrust scrutiny.[32] The nonstatutory labor exemption is limited to mandatory subjects of collective bargaining and covers only conduct that arises from the collective bargaining process.[33]

Courts have consistently applied a three part test, created in Mackey v. National Football League, in order to measure whether the nonstatutory labor exemption applies.[34] First, the provision sought to be exempted must concern a mandatory subject of collective bargaining.[35] Second, the restraint on trade must affect only the parties to the collective agreement.[36] Finally, the agreement must be the product of arm's length negotiation between the parties involved.[37]

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[26] *Id.* The Current NFL Collective Bargaining Agreement took effect on May 6, 1993 and expires in 2007. *Id.*
[27] *Id.* at 390.
[28] United States v. Hutcheson, 312 U.S. 219 (1940).
[29] *Clarett*, 306 F. Supp. 2d at 391.
[30] *Id.*
[31] Local Union No. 189, Amalgamated Meat Cutters & Butcher Workmen of North America v. Jewell Tea, 381 U.S. 676, 689 (1965).
[32] Brown v. Pro Football, 518 U.S. 231, 239 (1996).
[33] *Id.*
[34] Mackey v. National Football League, 543 F.2d 606, 614 (8th Cir. 1976).
[35] *Id.*
[36] *Id.* Mandatory subjects of bargaining pertain to wages, hours, and other terms and conditions of employment. National Labor Relations Act, 29 USC § 158(d).
[37] *Id.*

The district court concluded, after applying the *Mackey* test, that the NFL eligibility rules were not covered by the nonstatutory labor exemption.[38] The eligibility rule did not address a mandatory subject of collective bargaining.[39] Under the National Labor Relations Act (NLRA), "mandatory subjects of collective bargaining between employers and unions pertain to wages, hours, and other terms and conditions of employment."[40] Nowhere, the district court reasoned, is there a reference in the eligibility rule to wages, hours, or working conditions.[41] The NFL responded by arguing that since the draft itself is protected by the nonstatutory labor exemption, then the rules controlling the draft had to be protected too.[42] The NFL relied on three cases,[43] none of which were parallel to their argument because these cases all involved wages, hours, or working conditions while the Clarett case involved job eligibility.[44] Because the eligibility rule did not discuss wages, hours, or working conditions, it was not covered by the nonstatutory labor exemption and therefore failed the first prong of the *Mackey* test.[45]

The district court also concluded that the nonstatutory labor exemption was inapplicable because the eligibility rule affected Clarett, who was not part of the bargaining relationship.[46] The eligibility rule affected parties outside the collective bargaining agreement such as Clarett. Although there was no disagreement that collective bargaining applied to both prospective and current employees, Clarett was not even a prospective employee because of the rule that temporarily denied him the option of going to the NFL.[47] The court found that those who were

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[38] *Clarett*, 306 F. Supp. 2d at 393.
[39] *Id.*
[40] 29 U.S.C. § 158(d).
[41] *Clarett*, 306 F. Supp. 2d at 393.
[42] *Id.*
[43] *See* Caldwell v. American Basketball Association, 66 F.3d 523 (2nd Cir. 1995), NBA v. Williams, 45 F.3d 684 (2nd Cir. 1995), and Wood v. National Basketball Association, 809 F.2d 954 (2nd Cir. 1987).
[44] *Clarett*, 306 F. Supp. 2d at 395.
[45] *Id.* "The restraint on trade must primarily affect only the parties to a collective bargaining relationship." *Id.*
[46] *Clarett*, 306 F. Supp. 2d at 395.
[47] *Clarett*, 306 F. Supp. 2d at 396.

categorically denied eligibility for employment cannot be bound by the terms of employment they cannot obtain.[48] For this reason, the NFL had also failed the second prong of the *Mackey* test.

Finally, the NFL failed to show that the eligibility rule was the product of bona fide arm's length negotiations. The collective bargaining agreement never directly mentioned the eligibility rule. The CBA references the NFL Constitution and Bylaws, but these references did not prove that the eligibility rule was directly negotiated during the process of collective bargaining.[49] The NFL failed the third prong of the *Mackey* test because while Clarett offered no evidence on the issue of arm's length bargaining, he certainly highlighted the NFL's absence of proof of such bargaining.[50]

B. Did Clarett Have Standing to Sue the NFL?

Having rejected the NFL's first argument that the eligibility rule was protected under the nonstatutory labor exemption, the court then addressed whether Clarett had standing to bring suit under antitrust laws.[51] In order to prove antitrust standing, Clarett had to show that he suffered an antitrust injury.[52] Clarett successfully did this by showing that the eligibility rule was a naked restraint on competition for player services because it excluded a class of players from entering the market.[53] The eligibility rule harmed competition because a certain class of players was not allowed to enter the draft and compete in the NFL.[54] Clarett's injury was a direct result of the anticompetitive effects of the rule, and thus constituted antitrust injury. Therefore, according to the district court, Clarett had antitrust standing.

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[48] *Id.*
[49] *Id.*
[50] *Id.* at 397.
[51] *Id.*
[52] Brunswick Corp v. Pueblo Bowl-O-Mat, 429 U.S. 477, 489 (1977). Antitrust injury is (1) injury of the type the antitrust laws were intended to prevent and (2) injury that flows from that which makes defendants' acts unlawful.
[53] *Clarett*, 306 F. Supp. 2d at 398.
[54] *Id.*

C. Was the Eligibility Rule a Reasonable Restraint of Trade?

The final argument the NFL presented was that the eligibility rule was a reasonable restraint of trade.[55] It was undisputed that the eligibility rule was the product of concerted action among NFL teams and it was up for the court to decide whether or not the rule was a reasonable restraint of trade.[56] Courts will use either a *per se* or rule of reason approach in deciding whether or not there is a violation of Section 1 of the Sherman Act.[57] A *per se* approach is often used because "some types of restraints have such predictable and pernicious anticompetitive effects, and such limited potential for procompetitive benefit, that they are deemed unlawful under a *per se* standard and no further inquiry is required."[58]

However, sometimes it is not obvious that there is a violation of antitrust laws. In these cases, a rule of reason approach is needed. This approach requires analysis of various factors including information about the relevant business, its condition before and after the restraint was imposed, and the restraint's history, nature, and effect.[59] Although Clarett alleged a group boycott, an activity usually governed by the per se analysis, the district court decided to analyze

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[55] *Id.* at 382.
[56] *Id.* at 404.
[57] Northern Pacific Railway Co. v. United States, 356 U.S. 1 (1958).
[58] *Id. Per se* treatment is appropriate "once experience with a particular kind of restraint enables the court to predict with confidence that the rule of reason will condemn it. *Citing* Arizona v. Maricopa County Medical Society, 457 U.S. 332, 343 (1982).
[59] Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918):

> The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its conditions before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained are all relevant facts. *Id.*

the complaint under the rule of reason analysis because the eligibility rule that was being challenged as a restraint of trade arose in the context of a sports league.[60]

In evaluating this case under a rule of reason analysis, the court applied a three-step burden-shifting test in order to determine whether the NFL eligibility rule was reasonable.[61] Clarett had the initial burden of showing that the eligibility rule had an adverse effect on competition.[62] Clarett met this burden by showing that age-based eligibility restrictions in professional sports were anticompetitive.[63] They limited competition in the NFL player market by excluding players less than three years removed from high school graduation.[64] The burden then shifted to the NFL to offer a procompetitive argument for the eligibility rule.[65]

The NFL offered four procompetitive justifications for the eligibility rule.[66] While acknowledging that some of the NFL's arguments were commendable, such as its desire to keep young men from using steroids or risking injury, the court found all of the NFL's arguments to be concerns rather than justifications and insufficient under the antitrust law.[67] Therefore, the NFL failed to shift the burden back to Clarett.[68] Under the rule of reason approach, Clarett had

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[60] *Clarett*, 306 F. Supp. 2d. at 405. The Supreme Court had previously held that sports leagues are unique and need to be studied under the rule of reason approach even though their actions would usually fall under a per se approach. *NCAA v. Board of Regents of the University of Oklahoma*, 468 U.S. 85 (1984).
[61] *Capital Imaging Associates v. Mohawk Valley Medical Associates*, 996 F.2d 537, 543 (2nd Cir. 1993).
[62] *Clarett*, 306 F. Supp. 2d at 405.
[63] *Id.*
[64] *Id.*
[65] *Clarett*, 306 F. Supp. 2d at 408.
[66] *Id.* The four justifications put forward by the NFL were: (1) protecting younger and/or less experienced players-that is, players who are less mature physically and psychologically-from heightened risk of injury in NFL games; (2) protecting the NFL's entertainment product from the adverse consequences associated with such injuries; (3) protecting the NFL clubs from the costs and potential liability entailed by such injuries; and (4) protecting from injury and self-abuse other adolescents who would over-train and use steroids in the misguided hope of developing prematurely the strength and speed required to play in the NFL.
[67] *Id.*
[68] *Id.* at 409.

proven that the eligibility rule was an unreasonable restraint of trade. The NFL was therefore in violation of the Sherman Act.[69]

III. THE NFL'S CASE ON APPEAL

Immediately following the ruling in the District Court of the Southern District of New York, the NFL filed a motion for a stay of the court's order pending appeal.[70] The stay was denied on February 11, 2004 because, according to the court, the NFL would not suffer irreparable harm absent the stay, the case had a low probability of success on appeal, and the public interest also favored denying the stay.[71] But most of all, the court denied the motion for a stay because of the substantial injury that Clarett would suffer had the appeal been granted.[72] It was highly probable that the court of appeals would not rule on the case until sometime after the April 2004 NFL draft, in which case Clarett would miss the draft and effectively lose his original lawsuit.[73]

The NFL immediately appealed the decision of the district court, petitioned to have the appeal heard on an expedited basis, and again moved to stay the district court's decision pending appeal.[74] The appellate court granted the NFL's motion for a stay on April 19, just five days

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[69] *Id.* at 410.
[70] Clarett v. National Football League, 306 F. Supp. 2d 411 (S.D.N.Y. 2004). 4 criteria are relevant in determining whether to issue a stay pending appeal: (1) whether the movant will suffer irreparable injury absent a stay, (2) whether a party [opposing the stay] will suffer substantial injury if a stay is issued, (3) whether the movant has demonstrated a substantial possibility, although less than a likelihood, of success on appeal, and (4) the public interests that may be affected. Hirschfeld v. Board of Elections, 984 F.2d 35, 39 (2nd Cir. 1992).
[71] *Id.*
[72] *Id.*
[73] *Id.* at 414.
[74] *Clarett*, 369 F.3d at 129. On March 30, 2004, the appellate court agreed to hear Clarett's case on an expedited basis and set a substantially compressed briefing schedule.

before the 2004 NFL draft.[75] Clarett immediately filed two applications with the Supreme Court to lift the appellate court's stay order.[76] Both applications were denied.[77]

Because the appellate court granted the NFL's motion for a stay of the district court's order, Clarett did not participate in the 2004 NFL Draft.[78] His only hope was to await the outcome of the appellate court and, in the event that the court decided in his favor, he would then be eligible to participate in a special supplemental draft. However, on May 24, 2004 the appellate court ruled in favor of the NFL, deeming the supplemental draft unnecessary.[79]

A. The Appellate Court's Denial of the Mackey Test

In siding with the NFL, the appellate court stated that the labor market for NFL players was organized around a collective bargaining relationship that was provided for and promoted by federal labor law.[80] NFL clubs could therefore act jointly in setting terms and conditions of players' employment without risking antitrust injury.[81] It has been held that certain concerted activity among and between labor and employers must be held to be beyond the reach of the antitrust laws.[82] While the district court relied on the three-prong *Mackey* test in deciding that the NFL eligibility rules did not fall under the protection of the nonstatutory labor exemption, the appellate court ruled that applying the *Mackey* test was inappropriate and insufficient in coming to a proper conclusion.[83] *Mackey* relied too heavily on cases such as *United Mine Workers v. Pennington* and *Amalgamated Meat Cutters v. Jewel Tea.* This is of little help in cases involving

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[75] *Id.* at 130. The court granted the stay because of what they felt was a likelihood that the NFL would win on appeal. Even if the NFL did not win its appeal, the harm to Clarett would be minimal because of the NFL's promise to hold a supplemental draft for Clarett and players in his situation.
[76] *2004 U.S. Lexis 3231.* Clarett applied to both Justice Stevens and Justice Ginsburg.
[77] *Clarett*, 369 F.3d at 130.
[78] *Id.*
[79] *Clarett*, 369 F.3d 124.
[80] *Id.* at 130
[81] *Id.*
[82] Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940).
[83] *Clarett*, 369 F.3d at 133. These decisions are of limited assistance in determining whether an athlete can challenge restraints on the market for professional sports players imposed through a collective bargaining process. *Id.*

an athlete's challenge of restrictions based on a collective bargaining agreement because Jewel Tea involved an injury to an employer who asserted that it was being excluded from competition.[84]

The appellate court instead followed a different line of cases, all of which are similar to Clarett in that they claimed that the actions of a sports league violated antitrust law by imposing a restraint on the market for player's services.[85] In each of these cases it was held that the nonstatutory labor exemption defeated the player's claims.[86] A brief discussion of each case in this line of reasoning is necessary in order to show why Clarett's antitrust claim failed.

B. Cases in Line with the Appellate Court's Rationale

In *Wood v. National Basketball Association*, Leon Wood, a college graduate drafted by the Philadelphia 76ers, brought an antitrust action against the NBA.[87] Wood claimed that the salary cap and college draft violated Section 1 of the Sherman Act.[88] Wood argued that he should have been free to negotiate with any team and subsequently offer his services to the highest bidder.[89] However, federal labor law states that a union is the exclusive bargaining representative, and must represent all of the employees for the purposes of collective bargaining.[90] Once the union has been selected, the individual employee is forbidden by federal law from negotiating directly with the employer absent the union's consent.[91]

Wood provided many arguments as to why he should have been free to negotiate his own contract. The first argument was that his superior abilities should enable him to bargain

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[84] Wood v. National Basketball Association, 809 F.2d 954, 963 (2nd Cir. 1987).
[85] *See* Caldwell v. American Basketball Association, 66 F.3d 523 (2nd Cir. 1995); *National* Basketball Association v. Williams, 45 F.3d 684 (2nd Cir. 1995); Wood v. National Basketball Association, 809 F.2d 954 (2nd Cir. 1987).
[86] *Clarett*, 369 F.3d at 135.
[87] *Wood*, 809 F.2d at 954.
[88] *Id.* at 956.
[89] *Id.* at 959.
[90] 29 USC § 159(a).
[91] NLRB v. Allis-Chalmers, 388 U.S. 175 (1967).

individually for a higher salary.[92] However, the court concluded that collective bargaining agreements routinely set standard wages for employees with differing responsibilities, skills, and levels of efficiency.[93] Wood then argued that the draft and salary cap assigned him to work for a specific employer at a reduced wage.[94] The court, comparing this to the hiring practices of other industries, stated that it was commonplace for workers to be referred to a specified employer at a set wage.[95] Wood further argued that the draft and salary cap disadvantaged new workers.[96] The court, seeing no problem with this practice, stated that there were many instances in which new employees found themselves at a disadvantage to veteran workers.[97] Finally, Wood argued that the salary cap and draft affected employees outside the bargaining unit.[98] The court stated that this too was a common byproduct of collective bargaining agreements.[99] Also, the NLRA specifically defines "employee" in a way that includes workers outside the unit.[100] The court concluded that the draft and salary cap were not the product of an agreement among horizontal competitors. Since they were the result of a collective bargaining agreement between the NBA and the NBA Players Association, the NBA could not be subject to antitrust attack because of its protection under the nonstatutory labor exemption.[101]

In *National Basketball Association v. Williams*,[102] a group of NBA players challenged the legality of the NBA draft and salary cap.[103] What made this case unique was the fact that the

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[92] *Wood*, 809 F.2d at 960.
[93] *Id.* "Congress gave to the majority representative the task of harmonizing and adjusting the conflicting interests of employees within the bargaining unit, no matter how diverse their skills, experience, age, race or economic level."
[94] *Id.*
[95] Local 357 International Brotherhood of Teamsters v. NLRB, 365 U.S. 667 (1961).
[96] *Wood*, 809 F.2d at 960.
[97] Ford Motor Company v. Hoffman, 345 U.S. 330, 337 (1953).
[98] *Wood*, 809 F.2d at 960.
[99] *Id.*
[100] 29 USC § 152(3): "The term employee shall include any employee, and shall not be limited to the employees of a particular employer, unless this chapter subchapter explicitly states otherwise." *Id.*
[101] *Wood*, 809 F.2d at 959.
[102] NBA v. Williams, 45 F.3d 684 (2nd Cir. 1995).
[103] *Clarett*, 369 F.3d at 136.

collective bargaining agreement had expired at the time this suit was brought forth. The players believed they were not technically bound by any such agreement.[104] They claimed that by acting together to impose the college draft and salary caps after the expiration of the collective bargaining agreement, the NBA teams were acting as a cartel and committing a *per se* violation of the Sherman Act.[105] The court recognized that employers can unilaterally implement terms and conditions of employment after a legal impasse has occurred and can also resort to economic force, including lock-outs, in support of their demands.[106] Therefore, because the salary cap and college draft were a part of the previous collective bargaining agreement, and because the NBA bargained for a new collective bargaining agreement in good faith to no avail, they were obligated to maintain the status quo and implement these provisions again until a new agreement was reached.[107] The NBA's conduct fell within the nonstatutory exemption.[108]

In *Caldwell v. American Basketball Association*,[109] Joe Caldwell claimed that he was blacklisted by team owners from playing in the American Basketball Association because, as union president, he refused to approve the terms of a new collective bargaining agreement.[110] The ABA claimed that it refused him employment because of his physical limitations.[111] The court held that the nonstatutory labor exemption excluded Caldwell's claims because employers are allowed to act jointly when they have a collective bargaining relationship with a common union.[112] The court further held that multi-employer bargaining groups do not violate antitrust

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[104] *Williams*, 45 F.3d at 687.
[105] *Id.*
[106] First Nat'l Maintenance Corp v. NLRB, 452 U.S. 666 (1981).
[107] *Williams*, 45 F.3d at 691.
[108] *Id.* at 693.
[109] Caldwell v. Am. Basketball Ass'n, 66 F.3d 523 (2nd Cir. 1995).
[110] *Id.* at 526.
[111] *Id.* at 530. The ABA offered evidence that (1) Caldwell was 33 years old at the time of his suspension and less than 2% of NBA players were 34 years old or older; (2) Caldwell had sustained a torn ligament during the 1971 season; (3) Caldwell had sustained an additional injury in an automobile accident. *Id.* at 526.
[112] *Id.* at 528.

laws although they plainly involve competitors for labor acting together to set terms of employment.[113]

C. The Conclusion of the Appellate Court

In using the rationale from *Caldwell, Wood,* and *Williams*, the United States Court of Appeals for the Second Circuit found that the eligibility rules were mandatory bargaining subjects.[114] This decision was directly contrary to Clarett's argument and the district court's opinion. Even though the eligibility rules did not technically speak of hours, wages, or working conditions, they have tangible effects on the wages and working conditions of current NFL players.[115] The eligibility rules could not be viewed in isolation because their elimination might have altered the collective bargaining agreement between the NFL and its players' union.[116] The court also reasoned that the eligibility rules affect the job security of veteran players.[117] Because the size of an NFL team is capped, the eligibility rules diminished a veteran player's risk of being replaced by a drafted rookie.[118] If younger college players were allowed to enter the draft, it would have an enormous effect on veteran players and the collective bargaining agreement which governs them.[119]

Clarett also argued that the eligibility rules were in violation of antitrust law because they affected players who were not members of the NFL Players Association when the collective

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[113] *Id.*
[114] *Clarett*, 369 F.3d at 140.
[115] *Id.* Many of the arrangements in professional sports that, at first glance, might not appear to deal with wages or working conditions are indeed mandatory bargaining subjects. *Silverman v. Major League Baseball Player Relations Comm.*, 67 F. 3d 1054, 1061 (2nd Cir. 1995).
[116] *Id.*
[117] *Id.* The preservation of jobs is within the area of proper union concern, and union activity having as its objective the preservation of jobs for union members is not violative of the antitrust laws. *Id.*
[118] *Id.*
[119] Michael S. Jacobs & Ralph K. Winter, Jr., *Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage*, 81 Yale L.J. 1, 16 (1971).

bargaining took place.[120] However, as stated in *Wood*, collective bargaining commonly disadvantages prospective employees interested in joining the union.[121] The NFL and the players union could agree that an employee will not be hired or considered for employment for nearly any reason whatsoever, so long as they do not violate federal laws such as those prohibiting unfair labor practices.[122] In the context of collective bargaining, federal labor policy permits NFL teams to act collectively in structuring the rules of play and setting the criteria for player employment.[123] Such concerted action is encouraged as a matter of labor policy and tolerated as a matter of antitrust law.[124]

Clarett argued that the eligibility rule was not specifically negotiated in the most current round of collective bargaining. The court held that the eligibility rules were well known to the union, and if the union felt that the eligibility rules needed to be altered, they could have forced the NFL to negotiate a change.[125] Not only did the union not negotiate for an alteration of the eligibility rules, but it even went so far as to waive any future challenge to the Constitution and Bylaws.[126] In doing so, the Union acknowledged the eligibility rules for the extent of the collective bargaining agreement.[127] Even if it were held that the NFL and the players union did not directly bargain over the eligibility rules, this still would not allow Clarett's action to go forward. Labor law policies that warrant withholding antitrust scrutiny are not limited to protecting only the terms contained in collective bargaining agreements.[128]

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[120] *Clarett*, 369 F.3d at 140.
[121] *Wood*, 809 F.2d at 960.
[122] See Reliance Ins. Cos. V. NLRB, 415 F.2d 1, 6 (8th Cir. 1969).
[123] *Clarett*, 369 F.3d at 141.
[124] *See Williams*, 45 F.3d at 693.
[125] *Clarett*, 369 F.3d at 142.
[126] *Id.*
[127] *Id.*
[128] *Id.* The reach of these policies extends as far as necessary to ensure the successful operation of the collective bargaining process and to safeguard the unique bundle of compromises reached by the NFL and the players union as a means of settling their differences. *Wood*, 809 F.2d at 961.

The court concluded that this was not a case in which the NFL was alleged to have conspired with the union to drive its competitors out of the market for professional football.[129] The NFL is subject to the nonstatutory labor exemption and is therefore immune from antitrust liability. Therefore, the court did not even discuss the other two arguments put forth by Clarett in the district court.[130]

Finally, eight months after Clarett's original suit was filed against the NFL, it had come to an end. Clarett enjoyed the success of an early victory in the Southern District Court of New York, only to have it taken away from him after a reversal by the Second Circuit Court of Appeals. After months of litigation, motions for stays, and multiple applications to be heard by the Supreme Court, the case was finally settled. After opting to leave Ohio State, Clarett knew that his only other option at playing the 2004 season was in the NFL. With this option no longer available to him, Clarett had no choice but to wait until the 2005 draft. But what about Mike Williams? Williams, unlike Clarett, did not burn any bridges with his university. He was not under investigation by the NCAA for receiving illegal benefits. There were no criminal investigations underway against him by the police. Williams could go back to the University of Southern California (USC). Only one question remained: Would the NCAA allow him to play?

IV. WHY MIKE WILLIAMS WAS DENIED REINSTATEMENT BY THE NCAA

A. Williams Violates NCAA Rules on Amateurism

Immediately following Clarett's victory in the district court in February of 2004, Williams left USC midway through the spring semester, hired an agent, and declared himself

[129] *Id.* at 143.
[130] *Id.* The court did not discuss whether or not he suffered an antitrust injury and therefore had standing, and whether the eligibility rule was an unreasonable restraint of trade. *Id.*

eligible for the 2004 NFL draft.[131] What Williams and his agent did not anticipate was that the case could be overturned on appeal. After the appellate court reversed the district court's decision, thereby reinstating the NFL's eligibility rules, Williams was again barred from entering the draft. Williams immediately severed ties with his agent and applied to the NCAA for reinstatement. He returned to USC for summer school and even practiced with the Trojans before the season began.[132]

On August 26, 2004 the NCAA refused to reinstate Williams for two reasons. The first related to academics. There was a new NCAA rule, adopted for the 2003-04 academic year, that required an athlete to have passed six units in the semester prior to when he or she is seeking reinstatement.[133] When Williams decided to go pro in the spring of 2004, he left school and did not complete the spring semester. Although Williams enrolled in summer classes, summer school credits do not apply to the new rule.[134] Williams therefore did not meet the eligibility requirement relating to academics.

The second, and more complex, obstacle for Williams to overcome related to amateurism and his hiring of an agent to represent him in his dealings with NFL teams. Although Williams immediately severed ties with his agent and provided the NCAA with detailed receipts proving that he had returned all benefits provided to him by his agent and from endorsements, it was still not enough.[135] Williams was declared ineligible to play with USC for the 2004 season. He decided not to file any court motions aimed at forcing the NFL to hold a supplemental draft.[136]

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[131] Williams Doubtful for Opener with Eligibility Uncertain, ESPN.com (Aug. 24, 2004), *at* http://sports.espn.go.com/ncf/news/story?id=1867053.
[132] *Id.*
[133] Carrol Calls NCAA's Denial 'Insensitive,' ESPN.com (Aug 26, 2004), *at* http://sports.espn.go.com/ncf/news/story?id=1868537.
[134] *Id.*
[135] *Id.*
[136] Len Pasquarelli, No Plans to Take on NFL Through the Courts, ESPN.com (Aug. 26, 2004), *at* http://sports.espn.go.com/ncf/news/story?id=1868680.

B. Antitrust Laws and the NCAA

As a result of certain NCAA Rules violations, Mike Williams was deemed ineligible to complete his remaining years of eligibility at USC. NCAA amateurism rules explicitly state that a college athlete loses amateur status if he enters a professional draft or hires an agent.[137] Williams declared himself eligible for the 2004 NFL draft and subsequently hired agent Mike Azzarelli to represent him in negotiations with NFL teams.[138] NCAA rules clearly indicate that once these actions are taken by a player, he forfeits all remaining college eligibility and may not return to his former school. Players have tried to challenge the NCAA eligibility rules in the past to no avail. A closer look at the case law will show why Williams' petition to gain reinstatement was denied by the NCAA, and why Williams would not succeed in an antitrust action against the NCAA to seek reinstatement.

Cases which have evaluated whether the NCAA rules violate antitrust law generally follow one of two lines of reasoning.[139] The first line of reasoning states that the NCAA is not subject to antitrust attack, especially when setting eligibility standards, because collegiate noncommercial activity is not the type of action subject to antitrust litigation.[140] The second line of reasoning courts have followed is that the NCAA is subject to antitrust review when setting eligibility rules, but that the NCAA has not violated the antitrust laws.[141]

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[137] *See* 2004-05 NCAA Division I Manual, *available at* http://www.ncaa.org/library/membership/division-_i_manual/2004-05/2004-05_d1_manual.pdf (last visited Jan. 22, 2005). NCAA Bylaws 12.3.1 states, "An individual shall be ineligible for participation in an intercollegiate sport if he or she has ever agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletics ability or reputation in that sport." 12.3.1.1 states, "An individual shall be ineligible per Bylaw 12.3.1 if he or she enters into a verbal or written agreement with an agent for representation in future professional sports negotiations that are to take place after the individual has completed his or her eligibility in that sport."

[138] Pasquarelli, *supra* note 136. Mike Azzarelli was a close friend of Williams and has known his family for many years. *Id.*

[139] Thomas R. Kobin, *The National Collegiate Athletic Association's No Agent and No Draft Rules: The Realities of Collegiate Sports are Forcing Change*, 4 SETON HALL J. SPORTS L. 483 (1994).

[140] *Id.*

[141] *Id.*

Jones v. NCAA addressed the fundamental question of whether the Sherman Act covers the NCAA in setting eligibility standards. The *Jones* court held that the Sherman Act did not reach the NCAA eligibility rules.[142] In Jones, an action was brought by a Northeastern University student-athlete against the NCAA in which he sought to enjoin the NCAA from declaring him ineligible to play intercollegiate hockey.[143] During the last three years of high school and for the two hockey seasons between his high school graduation and admission to college, Jones had played for a succession of Canadian and American amateur hockey teams.[144] During this time, Jones received compensation for his services.[145] Although the compensation was minimal,[146] Jones was found to be in violation of the NCAA rules of amateurism.[147] He was therefore ineligible to play intercollegiate hockey.[148] Jones then brought forth an antitrust claim alleging violations of Section 1 of the Sherman Act.

In deciding that Section 1 of the Sherman Act did not apply to this case, the court relied on precedent which stated that the Sherman Act was aimed primarily at commercial objectives.[149] Antitrust law was not a mechanism for the resolution of controversies in the liberal arts or learned professions.[150] Therefore, since Jones was a student-athlete, he was not a competitor of the NCAA in any type of business sense.[151] The competition which Jones sought to protect did not originate in the marketplace, but rather was a sports program at a University.[152]

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[142] *Id.*
[143] Jones v. National Collegiate Athletic Association, 392 F. Supp. 295, 296 (D. Mass. 1975).
[144] *Id.*
[145] *Id.* at 297.
[146] *Id.* 1969-70 & 1970-71 seasons, Verdun Maple Leafs--$10 living expenses, $25 room and board; 1971-72, Manchester Monarchs--$60/week, $500 signing bonus and $500 tuition expenses *directly* to Jones' family; 1972-73, Montreal Bleu--$60/week, Blanc Rouge--$500 tuition expenses, LaValle Nationals--$60/week; and 1973-74 Manchester Monarchs--$20/game travel expenses. *Id.*
[147] *Id* at 298.
[148] *Id.*
[149] Klor's Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959).
[150] *Goldfarb v. Virginia State Bar*, 497 F.2d 1, (4th Cir. 1974).
[151] Kobin, *supra* note 139, at 491.
[152] *Jones*, 392 F. Supp. at 304.

After finding that the Sherman Act did not apply to NCAA eligibility standards, the court went on to assume, hypothetically, that the NCAA was within the view of the Sherman Act.[153] In finding that the NCAA was not involved in a group boycott, the court stated that the NCAA eligibility rules were not designed to coerce students into staying away from intercollegiate athletics, but rather to implement the NCAA's basic principles of amateurism which have been at the heart of the NCAA since its founding.[154]

In *McCormack v. National Collegiate Athletic Association*,[155] the Southern Methodist University football team was suspended for the entire 1987 football season and restrictions were imposed on it for the 1988 season.[156] A class action suit was filed by an attorney and alumnus on behalf of SMU, its graduates and current students, several members of its football team, and several cheerleaders.[157] The complaint alleged that the restrictions on compensation to football players constituted illegal price fixing in violation of the Sherman Act, and the suspension of SMU constituted a group boycott by other NCAA members.[158] The NCAA argued that its eligibility rules were not subject to the antitrust laws because the eligibility rules have purely noncommercial objectives.[159] The court decided the case by assuming that the antitrust laws did apply to eligibility rules. The NCAA rules restricting benefits to be awarded to student athletes were reasonable, and thus did not violate Section 1 of the Sherman Act.[160]

The court held that the NCAA's rules prescribing the way in which its members compete with one another should be analyzed under the rule of reason analysis rather than the *per se*

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[153] Kobin, *supra* note 139, at 491.
[154] *Jones*, 392 F. Supp. at 304. The court went on the state that "any limitation on access to intercollegiate sports is merely the incidental result of the organization's pursuit of its legitimate goals. *Id.*
[155] McCormack v. National Collegiate Athletic Association, 845 F. 2d 1338 (5th Cir. 1988).
[156] *Id.* at 1340. The NCAA found that SMU had violated its rules limiting compensation for football players to scholarships with limited financial benefits. *Id.*
[157] *Id.*
[158] *Id.*
[159] *Id.* at 1343.
[160] Gaines v. National Collegiate Athletic Association, 746 F. Supp. 738, 744 (M.D. Tenn. 1990).

approach.[161] Under the rule of reason approach, the essential inquiry was whether the challenged restraint enhanced competition.[162] The eligibility rules create the product and allow its survival in the face of commercializing pressures.[163] The goal of the NCAA is to integrate athletics with academics, and its requirements reasonably furthered this goal.[164] Therefore, the NCAA eligibility rules with respect to compensation were pro-competitive because without the amateurism and educational components collegiate football might perish due to a lack of distinction from professional football.[165]

In *Justice v. National Collegiate Athletic Association*,[166] the NCAA imposed sanctions on the University of Arizona football team.[167] Arizona was declared ineligible to participate in postseason competition or make television appearances for two years.[168] The sanctions were issued because of numerous violations of the NCAA constitution and bylaws.[169] The plaintiffs alleged that the vote by members of the NCAA to sanction Arizona constituted an agreement by Arizona's competition to exclude it from television coverage and postseason play.[170] Arizona argued that this constituted a group boycott in violation of Section 1 of the Sherman Act.[171] Although the NCAA conceded that it was not entitled to a wholesale exemption from the Sherman Act, it did argue that the sanctions at issue in this particular case were not a restraint of

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[161] *McCormack*, 845 F.2d at 1343.
[162] *Id.* at 1344.
[163] *Id.*
[164] *Id.*
[165] Kobin, *supra* note 120, at 496.
[166] Justice v. National Collegiate Athletic Association, 577 F. Supp. 356 (D. Ariz. 1983).
[167] *Id.* at 360.
[168] *Id.*
[169] *Id.* at 362. The infractions committee report documented numerous occasions on which staff members and representatives of the University football program (including the then head coach of the football team) provided compensation or extra benefits to student athletes who were either in the University's football program or being recruited for the program. Specifically, the football staff was found to have provided the student athletes with benefits such as free airline transportation between school and their homes, free lodging, and cash and bank loans for the athletes' car payments, rental payments, and personal use. *Id.*
[170] Kobin, *supra* note 120, at 493.
[171] *Justice*, 577 F. Supp. at 363.

"trade" or "commerce" and were not subject to antitrust law.[172] However, the court found that the national scope of the NCAA's regulatory activity was sufficient to establish the requisite interstate involvement.[173]

After finding that the NCAA's sanctions were applicable to antitrust laws, the court then had to decide whether or not these sanctions constituted a group boycott under the Sherman Act. The plaintiffs contended that the *per se* rule was applicable here because the sanctions were a direct affront to competition, or "naked restraint," rather than action that merely had an incidental effect on competition.[174] However, the sanctions at issue in this case pertained solely to the NCAA's stated goal of preserving amateurism and enhancing fair competition among the NCAA's member institutions. Therefore, the sanctions had to be reviewed under the rule of reason analysis because they lacked an anticompetitive purpose. The court then found that the sanctions imposed by the NCAA were reasonably related to the legitimate goals of preserving amateurism and promoting fair competition in intercollegiate athletics.[175] The fact that the sanctions might have an incidental anticompetitive effect on coaches or athletes did not in itself render them unreasonable restraints under the rule of reason.

Justice also makes clear for the first time that the NCAA is involved in two very distinct types of rulemaking activity: rules pertaining to the protection of amateurism and rules with a discernible economic purpose.[176] The sanctions at issue in this case are clearly of the rulemaking type of activity. Because the sanctions evinced no anticompetitive purpose, were reasonably

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[172] *Id.* at 378.
[173] *Id.* The court goes on to state that, "The NCAA schedules games and tournaments that call for the transportation of teams across state lines, and regulates recruiting that takes place on a nationwide basis. In addition, the NCAA controls bids involving hundreds of millions of dollars for the interstate television broadcasting of intercollegiate sports events. *Id.*
[174] *Id.* at 379.
[175] *Id.* at 382. NCAA regulations designed to preserve amateurism and fair competition has previously been upheld as reasonable restraints under the rule of reason. *See* Jones v. NCAA, 392 F. Supp. at 304.
[176] *Id.* at 383.

related to the NCAA's central objectives, and were not overbroad, the NCAA's action did not constitute an unreasonable restraint under the Sherman Act.

C. Cases Involving the 'No Agent' and 'No Draft' Rules

In *Gaines v. National Collegiate Athletic Association*,[177] plaintiff Bradford Gaines entered the NFL draft by submitting a Petition for Special Eligibility and Renunciation of College Eligibility.[178] Gaines then hired an agent.[179] Because of these actions, Gaines was ruled to be ineligible to complete his fourth year of eligibility as a football player at Vanderbilt University. Gaines then filed suit, alleging that the NCAA was engaged in an unlawful exercise of monopoly power.[180] Gaines argued that by preventing college football players like him from returning to college play for which they are otherwise eligible after an unsuccessful bid in the NFL draft, the NCAA had engaged in an unlawful exercise of monopoly power.[181] The NCAA argued, in its defense, that the eligibility rules were not subject to antitrust analysis because they were not designed to generate profits in a commercial activity. Rather, the rules were meant to preserve amateurism by assuring that the recruitment of student athletes did not become a commercial activity.[182] The court recognized that while the NCAA was subject to antitrust scrutiny in certain instances, such as the *Board of Regents* case, it is not subject to antitrust laws when dealing with eligibility rules. The court stated that there was a clear difference between the NCAA's efforts to restrict the televising of college football games and the NCAA's efforts to maintain a discernible line between amateurism and professionalism and to protect the amateur

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[177] *Gaines v. National Collegiate Athletic Association*, 746 F. Supp. 738, 739 (M.D. Tenn. 1990).
[178] *Id.* The paragraph immediately preceding his signature stated: "I hearby renounce any and all remaining college football eligibility I may have. I wish to be eligible for the NFL draft scheduled for April 22-23, 1990."
[179] *Id.* Gaines' agent, Tim Greer, also served as the agent for his older brother who played in the Canadian Football League (CFL). Greer briefly discussed a possible free agency contract with one NFL team. After this fell through, Greer subsequently phoned numerous teams in the NFL and CFL on Gaines behalf, but Gaines never entered into contract with any professional team. Gaines and Greer had also never compensated each other in any way. *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.* at 743.

objectives of NCAA college football by enforcing eligibility rules.[183] The distinction between commercial NCAA rules and primarily noncommercial rules was clearly set forth in *Justice*.[184]

The court also looked to the wording of the NCAA Constitution.[185] It inferred that the overriding purpose of the eligibility rules was not to provide the NCAA with commercial advantage, but rather to prevent commercializing influences from destroying the unique "product" of NCAA college football.[186] In short, the court held that the Sherman Act does not apply to the NCAA's no-draft and no-agent rules because the rules are intended to preserve competition among student-athletes rather than to advance commercial goals.[187]

Notwithstanding the above holding, the *Gaines* court undertook a hypothetical analysis as if the Sherman Act applied to the NCAA eligibility rules.[188] In order for Gaines to succeed on the merits of a Section 2 claim, he must have shown both that the NCAA possessed monopoly power in the relevant market and that the NCAA had willfully acquired or maintained that power.[189] The critical question then becomes whether the NCAA eligibility rules are "unreasonably exclusionary" or "anticompetitive."[190] The NCAA argued that the rules were not anticompetitive and were not in violation of section 2 because there were valid business reasons for their rules.[191] The court, agreeing with the position of the NCAA, stated that the rules benefited both players

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[183] *Id.*
[184] *Justice*, 577 F. Supp. 356. The court pointed out that the NCAA now engages in two types rule-making; one type is rooted in the NCAA's concern for the protection of amateurism; the other type is increasingly accompanied by a discernible economic purpose. *Id.* at 383.
[185] *Gaines*, 746 F. Supp. at 744. The purpose of the NCAA eligibility rules are to maintain amateur intercollegiate athletics "as an integral part of the educational program and the athlete as an integral part of the student body and by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.
[186] *Id.* The court went on the state that the purpose behind the NCAA rules is to preserve the unique atmosphere of competition between "student athletes."
[187] *Id.*
[188] Kobin, *supra* note 120, at 499.
[189] *Gaines*, 746 F. Supp. at 745.
[190] *Id.*
[191] Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585 (1985). "If there were legitimate business reasons for the refusal, then the defendant, even if he is found to possess monopoly power in a relevant market, has not violated the law." *Id.*

and the public by regulating college football by preserving its amateur appeal.[192] Also, the rules made a better "product" available by maintaining the educational underpinnings of college football and preserving the stability and integrity of college football programs.[193] Thus, the legitimate business reasons of the NCAA justifying enforcement of the eligibility rules negated any attempt by Gaines to prove a section 2 claim.[194]

In *Banks v. National Collegiate Athletic Association*,[195] Braxton Banks, a senior from Notre Dame University, decided to enter the NFL draft.[196] By placing his name in the draft, Banks lost his amateur status and became ineligible to play intercollegiate football.[197] Banks also was deemed ineligible pursuant to the no-agent rule because he had an oral contract to be represented by an agent.[198] Although no professional team chose Banks in the draft and although he received no compensation from any team or agent except for travel expenses, he could no longer play football for Notre Dame.[199] Banks then filed suit against the NCAA and Notre Dame, claiming that the 'no-agent' and 'no-draft' eligibility rules violated Section 1 of the Sherman Act because they constituted concerted boycotts of his football skills by NCAA institutions and restricted his mobility in the football players' market.[200] In response, the NCAA argued that

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[192] *Gaines*, 746 F. Supp. at 746.
[193] *Id.*
[194] *Id.* The no-agent and no-draft rules have primarily pro-competitive effects in that they promote the integrity and quality of college football and preserve the distinct "product" of major college football as an amateur sport. *Id.*
[195] Banks v. National Collegiate Athletic Association, 746 F. Supp. 850 (N.D. Ind. 1990).
[196] *Id.* at 853. Similar to Gaines, Banks signed the form stating: "I hearby irrevocably renounce any and all remaining college eligibility I may have. I wish to be eligible for the NFL draft scheduled for April 22-23, 1990." *Id.*
[197] *Id.* at 854.
[198] *Id.* Everett Glenn, a family friend and sports attorney, marketed Banks' services by sending the following letter to all twenty-eight NFL teams. "Please be advised that this office will represent Braxston Banks in the upcoming NFL draft. As a fifth-year senior who will receive his bachelor's degree in May, Braxston has petitioned the NFL and been cleared to be included in the upcoming draft…" *Id.* at 854.
[199] *Sherman Act Invalidation of the NCAA Amateurism Rules*, 105 HARV. L. REV. 1299, 1302 (1992).
[200] *Banks*, 746 F. Supp. at 855. NCAA Bylaw 14.14.1 sets out a procedure by which a member institution such as Notre Dame (but not the student-athlete) can petition the NCAA to restore a student-athlete's eligibility. "When a student-athlete is determined to be ineligible under any applicable provision of the constitution, bylaws or other regulations of the Association, the member institution, having applied the applicable rule and having withheld the student-athlete from all intercollegiate competition, may appeal to the Eligibility Committee for restoration of the student's eligibility, provided the institution concludes that the circumstances warrant restoration of eligibility."

because the 'no-agent' and 'no-draft' rules regulated the non-commercial activities of an organization dedicated to fostering amateurism in college sports, the rules are not subject to the Sherman Act.[201] However, after reviewing *Board of Regents*, the court was unwilling to rely on a single district court opinion for the conclusion that the antitrust laws have no application to NCAA regulations concerning eligibility.[202]

Holding that the NCAA bylaws were subject to antitrust scrutiny, the court examined the 'no-agent' and 'no-draft' rules under the rule of reason, which required a court to invalidate practices that decreases competition in the economic marketplace.[203] Banks would have to show that there was a restriction on a market and that the anticompetitive effects of the restriction outweighed the pro-competitive effects.[204] In addition, the threshold issue in any rule of reason case is market power, which is the ability to raise prices above the competition level by restricting output.[205] The court found no evidence that the bylaws at issue affected the salaries paid by the NFL to incoming athletes or the scholarships values that colleges award to student athletes.[206] Therefore, according to the court, the record contained little to support the proposition that the 'no-agent' and 'no-draft' rules injured competition within the market.[207] The NCAA had little market power within the meaning of antitrust analysis.[208]

The court then held that, even assuming the NCAA had significant market power, Banks had failed to prove that the harmful effects of the 'no-draft' and 'no-agent' rules outweighed

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Notre Dame refused to request the NCAA to reinstate Banks' eligibility because no college had ever appealed to the NCAA to restore eligibility of a player who entered the NFL draft. *Id.* at 855.
[201] *Id.* at 856.
[202] *Id.* at 857.
[203] *Supra* note 182, at 1303.
[204] Kobin, *supra* note 120, at 500.
[205] *Banks*, 746 F. Supp. at 858.
[206] *Supra* note 182, at 1303.
[207] *Banks*, 746 F. Supp at 860.
[208] *Id.*

their beneficial effects on competition.[209] The court agreed with the NCAA's contention that the 'no-draft' and 'no-agent' rules preserved a clear line between amateur and professional athletic pursuits. The rules advance the goal of focusing student-athletes' attention and energies on collegiate endeavors, both academic and athletic, and have the pro-competitive effect of promoting the integrity and quality of college football.[210] The concept of amateurism, according to the court, was no less central to the concept of amateur college football than was the modest propositions that an athlete must enroll in the college for which he wishes to play, attend class, and maintain a minimal academic standing.[211] In summary, the court concluded that the NCAA's 'no-draft' and 'no-agent' rules are intended to preserve intercollegiate football's amateur nature, and the pro-competitive nature of the regulations outweigh the anticompetitive effects.[212] Therefore, since the NCAA rules at issue did not offend the federal antitrust laws, Banks' case was dismissed for failure to state a claim.[213]

The district court dismissed Banks' claim because he failed to allege that the NCAA rules had an anti-competitive impact on any identifiable market.[214] On appeal, Banks ignored the holding of the district court and asserted that the court found that the rules had an anti-competitive impact on a relevant market.[215] Banks did set forth examples of how the 'no-agent' and 'no-draft' rules restrained trade or commerce,[216] but he failed to show how these rules were

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[209] *Supra* note 182, at 1303. Banks argued that the "no draft" rule would deter better college football players from testing the waters of professional football for fear of finding themselves in the no-man's land in which Banks found himself, unable to play in college or the NFL. In response, the NCAA argued that their regulations are designed to preserve amateurism and to prevent the professionalization of college sports to the extent educational objectives would be overshadowed.
[210] *Banks*, 746 F. Supp. at 861.
[211] *Supra* note 182, at 1303.
[212] *Banks*, 746 F. Supp. at 862.
[213] *Id.* at 863.
[214] *Banks v. National Collegiate Athletic Association*, 977 F.2d 1081, 1087 (7th Cir. 1992).
[215] *Id.* at 1087. The court goes on to state, "We confess that we are somewhat perplexed as to how Banks expects to get a reversal of the district court's judgment without assigning error to its holding." *Id.*
[216] *Id.* These allegations identify two markets: (1) NCAA football players who enter the draft and/or employ an agent and (2) college institutions that are members of the NCAA. *Id.*

anticompetitive on a discernible market.[217] The court noted that the NCAA rules sought to promote fair competition, encourage the educational pursuits of student-athletes, and prevent commercialism.[218] Also, none of the NCAA rules affecting college football eligibility restrained trade in the market for college players because the NCAA did not exist as a minor league training ground for future NFL players, but rather to provide an opportunity for competition among amateur students pursuing a collegiate education.[219] Furthermore, the court did not want to permit the entry of professional athletes and agents into NCAA sports.

The cold commercial nature of professional sports would not only destroy the amateur status of college athletics but more importantly would interfere with the athlete's proper focus on their educational pursuits and direct their attention to the high amounts of money to be made in professional sports.[220] The court concluded that, beyond identifying relevant markets to which the eligibility rules had an anti-competitive impact, Banks failed to illustrate how these rules diminished competition in those markets.[221] The appellate court agreed with the district court's finding that Banks had failed to allege an anti-competitive effect on a relevant market; therefore, he failed to allege a restraint of trade under Section 1 of the Sherman Act.[222]

Just as Bradford Gaines could not finish his fourth year of eligibility at Vanderbilt University and Braxton Banks could not complete his at the University of Notre Dame, Mike Williams could not return to USC. While their stories may be different, their outcomes are all the

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[217] Kobin, *supra* note 182, at 503.
[218] *Banks*, 977 F.2d at 1089.
[219] *Id.* at 1090. The no-draft rule and other like NCAA regulations preserve the honesty and integrity of integrity of intercollegiate athletics and foster fair competition among the participating amateur college students.
[220] *Id.* at 1092. The court went on to state that the no agent and no draft rules are vital and must work in conjunction with other eligibility requirements to preserve the amateur status of college athletics, and prevent the sports agents from further intruding into the collegiate educational system.
[221] *Id.*
[222] *Id.*

same. The NCAA rules clearly state that as soon as a college athlete enters a professional draft or hires an agent, they renounce all remaining years of eligibility to play at the collegiate level.

V. WHY THE COURT AND THE NCAA WERE CORRECT IN THEIR RESPECTIVE RULINGS

A. The NFL's Eligibility Rule

What gets lost in all of the legal speak of appeals, injunctions, motions, stays and petitions is the fact that Clarett and Williams were both barely 20 at the time all of this was happening. In the media frenzy that swirled around Clarett's case, it was easy to overlook some of the common sense, practical reasons as to why the eligibility rules were put into effect in the first place. The NFL is an extremely physical and punishing league that is very hard on players, both mentally and physically. For eight months every year, players put themselves through an extremely rigorous and demanding schedule that many teenagers probably would not be able to handle. The NFL had these issues in mind when presenting their case before the court. Unfortunately, these facts were overlooked by both the district and appellate court when making their decisions.

In Clarett's case before the district court, the NFL provided a number of justifications for the eligibility rule. The NFL argued that the rule protects underclassman, the people it ultimately excludes, because they "are not sufficiently mature, either physically or psychologically, to endure the rigors of professional football."[223] Further, the NFL argued that the eligibility rule protected the member clubs who might suffer financial adversity resulting from younger players' peculiar susceptibility to injury.[224] Here, the NFL says that, for the most part, younger players are not as physically developed as men a few years older. The younger the player is, the higher

[223] *Clarett*, 306 F. Supp. 2d 379 at 387.
[224] *Id.*

the likelihood of him being injured. This would be especially true, the NFL argues, if players started to come out of college at an even younger age. The NFL went on to argue that the eligibility rule "protects young players who, if they declare but are not drafted, would lose their eligibility to play college football or might over-train or experiment with performance-enhancing drugs to speed their athletic development."[225]

The district court dismisses these arguments out of hand. The court states that while these arguments presented by the NFL may be reasonable concerns, none are reasonable justifications under the antitrust laws. The court goes on to state that while the NFL's concern for the health of younger players is laudable, it had nothing to do with promoting competition.[226] And from a legal standpoint, the district court was right. There was no legal justification to the NFL's argument about the concern for a player's well-being, but that does not mean that the issue need not be addressed. And while the district court may have dismissed these issues out of hand, at least it was discussed. The appellate court did not so much as mention any of these issues in its opinion.[227]

It is natural to be skeptical as to what the NFL's true intentions were when they imposed the eligibility rules. It can be argued that the NFL, being a multi-billion dollar enterprise whose major interest is making money, has ulterior motives when arguing that they are looking out for the health and safety of underclassmen. It can be argued that the true reason behind the eligibility rule is to keep college football acting as the NFL's minor league. Currently, the NFL does not have a minor league system like those of the National Hockey League and Major League

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[225] *Id.*
[226] *Id.* at 408.
[227] *Clarett*, 369 F.3d at 125. "Because we find that the eligibility rules are immune from antitrust scrutiny under the non-statutory labor exemption, we do not express an opinion on the district court's legal conclusions that Clarett alleged a sufficient antitrust injury to state a claim or that the eligibility rules constitute an unreasonable restraint of trade in violation of antitrust laws." *Id.*

Baseball, and there is no need for such a league. Players develop their skills in the highly competitive arena of college football. The eligibility rule, it can be argued, is in place to ensure that prospects stay in college at least three years to ensure that they are fully developed and prepared for the rigors of the NFL. While this argument does have merit and is worth mentioning, it still does not take away from the fact that if younger players were allowed in the league, most would be severely outmatched. If the league's eligibility rule were struck down, there would be kids entering the NFL draft directly out of high school that would be undersized and at risk of suffering serious injury.

Representatives of the NFLPA feel the same way, stating that "players are better off staying in college and giving both their bodies and minds time to fully mature. That way, they'll enter the league with their earning potential at its highest-a wise decision, given the brevity of the typical pro career."[228] Even those who believe that underclassmen should be allowed to enter the NFL admit that there are only a select few who would actually make it.[229] The bottom line is that young players need time to develop their skills and their bodies for the challenges that await them at the next level, and the NFL eligibility rules give kids the time to do just that.

It is interesting to note that at the same time everything was happening with Clarett and Williams, another standout underclassman was attempting to enter the NFL draft. Larry Fitzgerald, a sophomore from the University of Pittsburgh, announced his intentions to forego his two remaining years of eligibility and declare himself eligible for the 2004 NFL draft. Fitzgerald, a wide receiver like Williams, was extremely successful at Pittsburgh. He finished the

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[228] Justin Mann Ganderson, *With the First Pick in the 2004 NFL Draft, the San Diego Chargers Select...?: A Rule of Reason Analysis of What the National Football League Should Have Argued in Regards to a Challenge of its Special Draft Eligibility Rules Under Section 1 of the Sherman Act*, 12 U. MIAMI BUS. L.REV. 1, 10 (2004).
[229] *Id.*

2003 season with eighty-seven catches for 1,595 yards and twenty-two touchdowns.[230] Because Fitzgerald was a sophomore, it was widely considered he would not be eligible for the 2004 draft because of the league eligibility rules. However, Fitzgerald played a year of prep school football after high school in addition to his two years at Pittsburgh.[231] Thus, Fitzgerald was three years removed from his high school graduating class and was therefore eligible for the draft. The NFL delayed its announcement granting eligibility to Fitzgerald until after the district court's decision in the Clarett case because it did not want to complicate matters.[232]

B. The NCAA's 'No-Agent' and 'No-Draft' Rules

The reasons for the NCAA's eligibility rules can be summed up by a quote taken from *NCAA v. Board of Regents of the University of Oklahoma*:[233]

> The NCAA seeks to market a particular brand of football—college football. The identification of this "product" with an academic tradition differentiates college football from and makes it more popular than professional sports to which it might otherwise be comparable, such as, for example, minor league baseball. In order to preserve the character and quality of the "product," athletes must not be paid, must be required to attend class, and the like. And the integrity of the "product" cannot be preserved except by mutual agreement; if an institution adopted such restrictions unilaterally, its effectiveness as a competitor on the playing field might soon be destroyed. Thus, the NCAA plays a vital role in enabling college football to preserve its character, and as a result enables a product to be marketed which might otherwise be unavailable. In performing this role, its actions widen consumer choice—not only the choices available to sports fans but also those available to athletes—and hence can be viewed as procompetitive.[234]

This quote is extremely important because it stresses the importance of the need for intercollegiate athletics to remain amateur in nature. The quote states that the NCAA plays a vital role in enabling college football players to preserve their character. Also, the character and

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[230] ESPN.com News Services, Record-Setting Sophomore Will Gain Early Entry, ESPN.com (Jan. 18, 2004), *at* http://sports.espn.go.com/ncf/news/story?id=1711902.
[231] ESPN.com News Services, Fitzgerald Announcement Likely a Formality, ESPN.com (Feb. 01, 2004) *at* http://sports.espn.go.com/ncf/news/story?id=1724779.
[232] *Id.*
[233] 468 U.S. 85, 101-102 (1984)
[234] *Id.*

quality of the product must be preserved by athletes attending class and not being paid, or else the integrity of college athletics would lose its very essence. Mike Williams did exactly what this quote warned against. He did not attend class. He hired an agent. He received benefits from that agent. Williams broke the NCAA rules on their face. While it was commendable for him to enroll in classes and terminate relations with his agent immediately after learning of the reversal in the Clarett case, it was too little too late. Williams knew that the Clarett case was going to be appealed. He could have stayed in school, continue to take classes, and wait until the final ruling on the Clarett appeal before taking action. Just as the above quote states, the NCAA seeks to market a particular brand of football—*college football*. The NCAA is concerned with respecting the integrity, character, and quality of collegiate athletics by instituting amateurism rules. It was important for the NCAA to stand by their rules and ensure their enforcement.