In December 2016, Judge David Hamilton of the Seventh Circuit Court of Appeals sent a shot across the bow of the National Collegiate Athletic Association (NCAA), and by doing so, he sparked the possibility of a forthcoming court ruling that could lead to monumental changes in intercollegiate sports. Agreeing with the court's overall opinion in Berger v. NCAA (2016) that non-scholarship women's track and field student-athletes were not eligible for minimum wage as employees under the Fair Labor Standards Act (FLSA), Judge Hamilton noted separately that he did not necessarily feel that all student-athletes were not employees. Indeed, he wrote that he was “less confident” that the court’s reasoning “should extend to students who receive athletic scholarships to participate in so-called revenue sports like Division I men's basketball and FBS football” (p. 293).

Thus far attempts to use antitrust law (see O'Bannon v. NCAA, 2015) and unionization (Northwestern University & College Athletic Players Association (CAPA), 2015) to force the NCAA and member colleges and universities to pay college athletes have largely failed. However, Judge Hamilton’s statement left the door wide open for a football or men's basketball player to potentially use minimum wage laws to force the NCAA to provide compensation to student-athletes beyond scholarships and grant-and-aid consideration.

Around this time, such a lawsuit did arrive on the scene when former linebacker Lamar Dawson sued the NCAA and the Pac-12 Conference to have the court declare Division I football players as employees, thus requiring schools to pay these student-athletes a minimum wage and overtime (Dawson v. NCAA, 2016). While Dawson’s suit was originally dismissed in the lower courts, Dawson has appealed the case’s dismissal to the Ninth Circuit Court of Appeals. The case still has a long way to go before a decision as to whether Dawson and other former intercollegiate football players were school employees, but should the Ninth Circuit agree with Judge Hamilton and refuse to dismiss the case it would foreshadow a willingness for the court to break prior precedent and give student-athletes the employment status that would require schools to pay them at least minimum wage.

The Dawson case—at least as it is presently situated at the Ninth Circuit—has a number of flaws that may thwart Dawson’s goals to broadly reshape the landscape of intercollegiate sports, particularly in Dawson's attempts to use the Ninth Circuit's ruling in O'Bannon v. NCAA (2015) in his favor (see Mitten, 2017; Meyer and Zimbalist, 2017; Berry, 2016; 2017). Given the strong deference shown by the Ninth Circuit towards employees, Dawson may have some chance to win and in doing so potentially kill off the concept of amateurism in high-revenue intercollegiate sports for good.

Even on a micro-level the consequences of such a ruling could be catastrophic for universities in both implementation and effect if the Ninth Circuit does find that Dawson and other football student-athletes are employees. University athletic departments will be forced to rapidly adjust their budgeting schemes to accommodate the athletes’ new-found rights to minimum wage and figure out how to comply with the FLSA’s various recordkeeping requirements. It is of vital importance for sport managers to look ahead to what may happen if a court does rule that student-athletes are employees.

This presentation aims to explore the potential effects of a Dawson victory through several different legal and economic lenses, focusing on legal and logistical concerns for individual universities and the NCAA under both the FLSA and other relevant statutes. By exploring the potential wide-ranging effects of a Dawson victory, sport management practitioners can begin to prepare themselves for the possible eventuality of a court ruling forcing the payment of college athletes in high-revenue sports.

First, this presentation will investigate which colleges and universities may be affected by a court finding that student-athletes are employees given the text of the FLSA and its various statutory and court-made exemptions. While public employers are generally held to the FLSA’s minimum wage and overtime requirements (U.S.
Department of Labor, 2011), the Supreme Court held in Alden v. Maine (1999) that public schools located in many states cannot be sued for these violations. However, private schools still may be liable under the statute, and schools that have outsourced their athletic department administration to private non-profit corporations—including the University of Florida (see Knight Commission, 2009)—may have subjected themselves to legal liability through these actions. Even if only a few schools are affected by these new requirements, this presentation theorizes that the NCAA may have to step in and require all schools to pay minimum wage regardless of legal necessity for competitive balance purposes.

Finally, in this presentation I will analyze existing research that has explored the NCAA’s claim in O’Bannon v. NCAA that fans will stop watching college sports if players are no longer amateurs (see Solomon, 2013). While the NCAA predicts that TV ratings would drop substantially if players are paid, other popular press polls have shown that consumer behavior will not be affected by the payment of modest salaries to college athletes (Moore, 2015; Marist Poll, 2014; see also Greenblatt, 2014). I examine the current literature that has predicted consumer behavior trends in the antitrust context (see Edelman, in press; Baker & Watanabe, 2017) and extrapolate that analysis to determine whether payment of college athletes—regardless of the legal route used to get there—would cause fans to stop consuming intercollegiate sports.

This presentation is the first of its kind to explore the possible effects of a potentially landmark case in intercollegiate sports. Through the use of empirical legal research and an analysis of relevant literature, this presentation aims to add to sport management literature by previewing a wide-array of concerns that are inherent to any discussion about paying college athletes and testing how truly influential these effects might be should the court decide that college athletes are employees. In doing so, this presentation invites future research—both in measuring the predicted effects of Dawson prior to such a court ruling, and analyzing the actual effects if and when Dawson is decided.