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The United Student-Athletes of America: Should College Athletes Organize in Order to Protect Their Rights and Address the Ills of Intercollegiate Athletics?

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March 31, 2007, the most anticipated "Final Four" in the history of the NCAA basketball tournament is about to begin. In the opener, the Duke Blue Devils and the North Carolina Tar Heels will meet for the fourth time this season. The first three games were decided on last second shots including a desperation half-court Carolina buzzer beater three weeks ago in the ACC Tournament championship game. The Kentucky Wildcats and the Indiana Hoosiers, two border rivals and college basketball powerhouses, will battle in the nightcap. Kentucky triumphed over Indiana in a triple overtime thriller in December, partially due to a pivotal and controversial call by long time NCAA official John Clougherty. Clougherty is scheduled to referee the contest between the Wildcats and Hoosiers. For the first time in the history of the NCAA Tournament, all four number one seeds have made it to the "Final Four." The featured schools share seventeen national championships. Longtime college basketball analyst Dick Vitale died

learned of a similar players' strike. That game was never played.

Fortunately, CBS replaced the NCAA basketball coverage with a Survivor Greenland marathon, but your anger persisted. The absence of labor strife and money demands is the reason why you loved college sports. As your guests left the failed party, you muttered to yourself, "Why would college athletes want to strike?"

The events may seem incredible or unlikely.¹ However, Ramogi Huma, a former UCLA linebacker, along with current and former UCLA football players, recently formed a "student advocacy group".² On January 18, 2001, with the support of the United Steelworkers of America,³ Huma announced the formation of the Collegiate Athletes Coalition (CAC), which is believed to be the first attempt to organize student-athletes.⁴ The Reverend Jesse Jackson recently joined the cause after the deaths during or after football workouts of Korey Stringer, an all-pro with the

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- By Marc Jenkins*

of a heart attack the night before while excitedly describing the match-ups for ESPN.

You and your friends have organized all the elements for an outstanding evening of viewing college basketball. The keg of Budweiser is tapped, the filets are due to be off the grill any minute, and the Phillips High-Definition Television with surround sound is functioning better than the salesman at Best Buy described. The CBS pre-game show sends the telecast down to the floor of the Georgia Dome to commentators Jim Nantz and Billy Packer. Nantz makes a chilling announcement. "Ladies and gentleman it appears that tonight's games will not take place unless the demands of the Collegiate Athletes Coalition are met by the NCAA." "Not again!" you scream at your \$12,000 television.

Just three short months ago in celebration of a successful IPO completion, the corporate practice group of your law firm had just enjoyed a five star meal at Commander's Palace in New Orleans and were on the way to seats on the Fifty yard line for the NCAA College Football Championship between Texas and Florida when you

NFL's Minnesota Vikings, Rashidi Wheeler of Northwestern, Eraste Austin of Florida, Devaughn Darling of Florida State, three high school students and an eighth grader.⁵ The deaths of Wheeler, Austin, and Darling led the CAC to urge the NCAA to institute immediate reforms to protect college athletes.⁶ They want the NCAA to establish and enforce safety standards governing voluntary and mandatory workouts.⁷ They also want schools to expand health and life insurance benefits for student-athletes.⁸

Generally, Huma and the coalition's proposals are fairly modest. They refer to the organization as a "student advocacy group" rather than a union.⁹ In addition to the expanded life and health insurance, they seek to eliminate all employment restrictions during the academic year, and increase scholarship stipends to more accurately reflect the actual cost of attending college.¹⁰ Huma feels these proposals will help increase graduation rates and improve the welfare of student-athletes.¹¹ Huma says he does not intend to strike,¹² however, "[w]e'll definitely have tactics that, if necessary, would be effective enough to bring about

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changes. We're being tight-lipped in case we have to use them."¹³ This statement seems to indicate that the nation's fifth largest union might have a role to play. Also, the presence of Jesse Jackson and Johnnie Cochran on the scene would seem to make lawsuits more likely than cooperation.¹⁴

This note will focus on the legal feasibility and practicality of forming a student-athlete players association or union. It assumes that a strike is a possible avenue the CAC may take in the future. Unlike the professional sports unions, the make-up of athletes on college campuses is in constant flux. This will obviously make it harder to initiate a strike. Part I of the note will concentrate on the realities of major college sports and the athletes that play them. This background will establish why student-athletes may want to form a players association. Part II will analyze the NCAA governing structure and how a players association may fit among this myriad of rules. Part III will analyze labor law and how it relates to the formation of a student-athlete players association. Part IV will compare the famed Knight Commission with the CAC and decide which one is better suited to lead an intercollegiate athletic reform movement. Finally, the proper role of a student-athlete association will be suggested.

Introduction

Division I college football and basketball make up a \$60 billion industry.¹⁵ CBS's television contract for the NCAA basketball tournament from 2003 to 2013 is for \$6.545 billion.¹⁶ Big Ten and Southeastern Conference football teams regularly draw greater attendance than NFL teams, and make millions of dollars from home games.¹⁷ The individual schools, conferences, and the NCAA have been reaping the benefits of television contracts for college football since 1984. Prior to 1984, the NCAA controlled all college football telecasts.¹⁸ In 1984, the United States Supreme Court ruled in favor of the University of Georgia and the University of Oklahoma by holding that the NCAA's control of telecasts constituted an illegal monopoly.¹⁹ Since that ruling, college football programs have been permitted to negotiate their own TV deals.²⁰

The College Football Association, consisting of universities from the major athletic conferences and major independents such as Notre Dame, was formed to negotiate TV contracts.²¹ In 1991, Notre Dame became the first school to leave the association when they negotiated the first of three individual national television contracts for college football games with NBC.²² The latest renewal was for \$37.5 million.²³ In January of 1994, the Southeastern Conference negotiated a lucrative deal with CBS worth \$500 million for broadcast rights over 5 years.²⁴ The recent formation of the Bowl Championship Series, spearheaded by Big Ten Commissioner Jim Delany and SEC Commissioner Roy Kramer, led to a \$525 million contract for seven years

with ABC for the broadcasting rights to four postseason bowl games.²⁵ In the 2001 college football season, the 50 colleges and universities that participated in bowl games received a total of \$161 million.²⁶ These contracts and other arrangements provide a steady source of income for conferences, schools, and the NCAA.²⁷

The SEC splits the revenue from college football bowl games, revenues from the NCAA basketball tournament, and its television contracts among its member institutions. According to Commissioner Kramer, the CBS deal increased the individual payout to universities in the conference from \$1 million to \$6 million.²⁸ For the 1999 college bowl season, the SEC distributed \$1.2 million to each of its schools in addition to the individual amounts the schools received from their bowl berths.²⁹ One member institution, Vanderbilt University, has not been to a bowl since the 1982 Hall of Fame Bowl, but it continues to receive a hefty annual payment.³⁰ During Kramer's tenure as conference commissioner, the SEC has distributed \$540 million to member institutions.³¹ Combining this with the revenues at the gate for SEC basketball and football games, the universities derive massive revenue from college sports and the student-athletes that represent them on the playing field.

While the student-athletes do not reap any direct rewards from the millions of dollars they help generate, their coaches certainly do. Mike Krzyzewski, Duke University's college basketball coach, received a \$1 million signing bonus, a \$375,000 salary, and company stock options from Nike for having Duke's men's basketball players wear Nike shoes.³² This does not include any compensation received from Duke and other endorsements such as his weekly coaching show and local television ads.³³ His players do not receive a dime for wearing Nike shoes. These realities have caused many to charge that college athletes are being exploited.³⁴ It provides fuel for the CAC's argument that student-athletes need better insurance benefits given the revenues they directly help produce.

The blue-ribbon panel known as the Knight Commission on College Athletics has been the most vocal critic of the commercialism of college athletics.³⁵ The twenty-eight-member panel consists of past and present university presidents, corporate executives, and the executive director of the NCAA, Cedric Dempsey.³⁶ Ten years ago, the same commission urged university presidents to regain control of their athletic programs.³⁷ The Commission has voiced its opinion that college sports are a "disgraceful environment" that has "distorted" the missions of institutions of higher education.³⁸ Since the Commission's suggested reforms of ten years ago, more than half of the NCAA Division I athletic programs have been sanctioned or placed on probation for the violation of NCAA rules,³⁹ the graduation rates for Division I basketball players is 42% and 51% for football players.⁴⁰ Further, the graduation rates

at the power conferences and schools are generally even worse.⁴¹ The Knight Commission has also publicly decried the "arms race," which refers to the recent \$4 billion construction boom for athletic facilities.⁴² Part of their recent recommendations include cutting coaches' salaries, scaling back television contracts, and de-emphasizing marketing and corporate sponsorships.⁴³ Even James Duderstadt, the former President of the University of Michigan, which has arguably the best all-around athletic program in the country⁴⁴ and has an annual athletic budget of \$47 million,⁴⁵ has expressed his dissatisfaction with college sports.

Other critics view Division I college sports as an environment that exploits student-athletes. Some compare intercollegiate athletics to a plantation system where student-athletes are the equivalent of slaves⁴⁶ and have simply traded picking cotton for picking footballs.⁴⁷ Stanley Eitzen charges that student-athletes do not receive a wage in the form of an athletic scholarship that is commensurate with the returns they produce.⁴⁸ Economist Andrew Zimbalist has written, "big-time intercollegiate athletics is a unique industry. No other industry in the United States manages not to pay its principal producers a wage or a salary."⁴⁹

Some would like to point out that they do get a salary in the form of a free education as well as books and housing.

However, according to the CAC, athletic scholarships fall about \$2,000 short of the full cost of attending a university.⁵⁰ The UCLA athletes who formed the CAC

advantageous for young athletes.

A. Entering the NBA Draft

In the NCAA basketball context, college athletes have the opportunity to forego their college education at any time. This has led to an explosion of underclassmen declaring their eligibility for the National Basketball Association's draft. The recent trend has been for high school students to bypass the college game altogether for the NBA Draft. The lucrative contracts that wait are hard to decline. In the 2001 NBA draft, forty-seven underclassmen and a record six high school students took part in the draft.⁵⁴ Kwame Brown, the first pick in the 2001 NBA draft who had signed with the University of Florida Gators, explained, "my initial plan was to go to college for a year or two, but there's not much education in going to college for a year, so I decided why not go ahead and go to the NBA."⁵⁵ Other recent high school graduates, Tyson Chandler and Eddy Curry, were chosen with the number 2 and 4 picks respectively and became America's newest millionaires without even a single question from Regis Philbin.⁵⁶

Tony Key is a name you will not hear this professional or college basketball season. Key, a seven-foot high school graduate from California, declared for the NBA draft, but went un-drafted and forfeited his college eligibility in the process.⁵⁷ Like Key, many student-athletes have not heeded the advice of others who have discouraged them from entering the NBA draft. These unfortunate athletes have found themselves un-drafted and without college eligibility. Almost half of the players who have declared early since 1971 have not played in a single NBA game.⁵⁸ In the 2000 NBA draft, fifty-six players applied for early entry and only twenty-four were actually drafted.⁵⁹ Scotty Thurman, who made a key shot in Arkansas's 1994 NCAA championship victory over Duke, ignored the advice of NBA Director of Scouting Marty Blake among others and entered early. He has been relegated to minor basketball leagues and does not possess a college degree.⁶⁰ He probably would have been a high draft pick the next year and a college graduate. Huma's organization intends to address these concerns by stating, "we want to do what we can to change policy. But we also want to change the whole culture in NCAA sports so education becomes the priority. We want to focus on the 99 percent who do not make it to the [professional league]."⁶¹

Early entry into the NBA draft is one avenue that some athletes have taken in response to what they see as hypocrisy in college athletics. Others have sought to cash in through payouts from agents and boosters. Sports agents have a reputation as one of the seedier elements

"BIG time intercollegiate athletics is a unique industry. No other industry in the United States manages not to pay its principal producers a wage or salary."

receive \$820 month for room and board but cannot earn more than \$2,000 during the school year.⁵¹ Many student-athletes get support from home, but many others do not because they do not come from privileged socio-economic backgrounds. These athletes would most likely not have the opportunity to attend a university without the athletic scholarship. Furthermore, a study sponsored by the NCAA in 1988 revealed that 61% of African American and 40% of non-African American Division I football and basketball players had less than \$25 per month for personal expenses.⁵² Student-athletes often have to take out student loans so that they can go out on dates or enjoy a meal away from campus.⁵³ A reasonable argument can certainly be made that these athletes deserve a little extra. Unfortunately, when that little extra is not available, the market has ways of providing it, and the sources are not always the most

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lurking around college campuses and major athletic programs. If one were to look up the definition of an undesirable⁶² sports agent in the dictionary, he or she would likely find a picture of Tank Black.⁶³

B. Unscrupulous Agents

Tank Black's recent scandal involving the University of Florida and his NFL clients is evidence of why many do not want sports agents around college campuses. The potential presence of like-minded individuals strengthens the argument to increase student-athlete stipends and remove the temptation of associating with individuals like Black. Black's company, Professional Marketing Incorporated, has represented more than thirty-five NFL players as clients and signed an unprecedented five first round draft picks in the 1999 NFL draft.⁶⁴ However, Black's biography will likely not open with this accomplishment.

Black is also the subject of a civil suit filed by the Securities and Exchange Commission alleging fraud as well as a federal indictment in Gainesville, Florida for money laundering, conspiracy, and criminal forfeiture, in what federal investigators claim is the biggest case of agent fraud in the history of sports.⁶⁵ The affair began when he made under the table payments to University of Florida football players in the mid-to-late nineties.⁶⁶ He had runners give monthly cash payments of \$500 to \$600 to Gator football players Tim Beauchamp, Reggie McGrew, Johnny Rutledge, Fred Taylor, Reidel Anthony, Ike Hilliard, Jacquez Green and Dock Pollard in 1998.⁶⁷ He purchased a \$133,500 Mercedes S600V for Jevon Kearse, the 1999 NFL defensive rookie of the year, another Florida Gator star.⁶⁸ However, these illegalities were the least of Black's worries.

Black cheated the athletes he represented out of \$15 million as part of a larger \$314 million offshore Ponzi scheme in which new investors' money was used to fund early investors returns.⁶⁹ Taylor lost his entire \$3.6 million signing bonus in this scheme.⁷⁰ Furthermore, Black was recently sentenced to 82 months in prison⁷¹ for his involvement in a cocaine-trafficking ring and his role in laundering the drug money to offshore accounts.⁷² His co-conspirator was the subject of a Fox Television's *America's Most Wanted* segment and a national manhunt before he committed suicide while being pursued by St. Louis police officers.⁷³ Facts like these make clear that reforms that would improve the lives of student-athletes in such a manner that curtails the influence of individuals like Black are worth pursuing.⁷⁴

C. Boosters and Alumni Problems

If Tank Black is the textbook example for an agent run amuck, then the recent scandals in Memphis involving the University of Alabama and the University of Kentucky football programs provide textbook example of booster

and alumni problems.⁷⁵ The involvement of the coaching staffs of each university in each scandal also sends a message that the athletes sought are commodities and not human beings seeking an education. In the fall of 1999, Albert Means of Trezvant High School in Memphis was a blue-chip high school lineman sought by all of the major college football programs in the country.⁷⁶ Lynn Lang and Milton Kirk, his high school football coaches, allegedly sold Means to the highest bidder.⁷⁷ Realizing that Means was one of the nation's top prospects, Lang demanded cash, cars, and a house from college recruiters at Alabama, Arkansas, Florida State, Georgia, Kentucky, and Michigan State.⁷⁸ The bidding allegedly started at \$60,000, two cars, and a house for Means' mother.⁷⁹ Jim Donnan, who was the head football coach at Georgia at the time was not allowed to visit with Means because he would not promise cash and cars.⁸⁰ The bidding allegedly ended when Logan Young, a Memphis businessman and Alabama booster, agreed to pay Lang \$115,000.⁸¹ Lang bought a \$48,500 Ford Explorer, acquired alleged total compensation of \$200,000 and did not share the loot with Means' mother or his co-conspirator Kirk.⁸² As a result, Kirk squealed resulting in his own indictment for conspiracy and a nine-count indictment of conspiracy, bribery, and extortion against Lang.⁸³ The FBI is currently investigating the involvement of Logan Young.⁸⁴ Meanwhile, Alabama received five years of NCAA probation including a two-year postseason bowl ban, and the loss of 21 scholarships. Means transferred to the University of Memphis and Means' mother and five children were almost evicted.⁸⁵

Kentucky's abuses seem minor compared to the Means debacle. Claude Bassett, Kentucky's former recruiting coordinator, sent former Memphis Melrose High School coach Tim Thompson \$1,400 in money orders in an attempt to induce Thompson to have his players sign with the Wildcats.⁸⁶ Head Coach Hal Mumme resigned after self-reporting over three-dozen violations to the NCAA.⁸⁷ The majority of these violations involved the recruitment scandals at Melrose and Trezvant High in Memphis. One day before the NCAA announced Alabama's sanctions, Kentucky was placed on three years of probation and lost nineteen scholarships. Forty young men will not receive an athletic scholarship and have the opportunity to receive a college education because of these misdeeds.

D. Academic Scandals

Unfortunately, some scholarship athletes do not receive an education worthy of the academic institution they attend. A college athletic scholarship is given to recipients so that they can receive a quality education free of cost. However, the actual receipt of a quality education is often not achieved. Some feel that the overemphasis of college athletics is to blame. A recent academic scandal at the University of Minnesota illustrates this point. In March

of 1999, Jan Ganglehoff, a former academic counselor in Minnesota's athletic department, admitted to writing over 400 papers, assignments, and take-home examinations for 20 Minnesota basketball players with the knowledge and support of head basketball coach Clem Haskins.⁸⁸ In March of 1997, shortly after Minnesota's appearance in the "Final Four," Courtney James turned in one of Ganglehoff's papers to Assistant Professor Sander Latts who considered it the best paper he had read in his forty years at the University of Minnesota.⁸⁹ Ganglehoff suggested that at least sixty-five Minnesota professors should have noticed that the players were plagiarizing papers and committing academic fraud and did nothing.⁹⁰ These "friendly faculty" are not unique to the University of Minnesota.⁹¹ Bobby Jackson, a star guard for Minnesota's 1997 Final Four team and the current starting guard for the NBA's Sacramento Kings, received four hours of independent study credit for typing "basketball" into a database and listing the articles that resulted from the search.⁹² During Haskins' tenure at Minnesota from 1986 until his forced resignation in 1998, only twenty-three percent of his players graduated.⁹³ Haskins has been banned from coaching in the NCAA until 2007⁹⁴ for his actions, which were in clear violation of NCAA rules concerning student-athlete welfare.⁹⁵

These recent scandals are extreme examples of problems with college athletics. They illustrate that there are some major problems with intercollegiate athletics, and it is unfortunate that student-athletes are caught in the middle. They also illustrate that reform is needed. The CAC is seeking to improve the welfare of student-athletes. The reforms they propose will hopefully increase graduation rates, provide better insurance for athletes, and, by increasing the room and board stipend and allowable employment earnings, remove some of the temptations and sleaziness that accompany successful college athletes. The first major obstacle the CAC will face in achieving these goals is an enormous bureaucracy located in Indianapolis, Indiana known as the NCAA, and its amateurism rules.

The NCAA and the Promotion of Amateurism

The National Collegiate Athletic Association is a voluntary unincorporated association consisting of over 1,100 private and public universities in the United States.⁹⁶ The NCAA is divided into three separate divisions based on size, scope, and competitive level of athletic programs.⁹⁷ Division I is the domain of big-time college athletics and is

the focus of this note.

Among the NCAA's many roles are to adopt playing rules, to establish academic eligibility standards, to regulate the recruitment of college athletes, to conduct championships, and to promulgate rules about the size of athletic squads and coaching staffs.⁹⁸ One of the NCAA's stated purposes is to "initiate, stimulate and improve intercollegiate athletics programs for student-athletes and to promote and develop educational leadership, physical fitness, athletics excellence and athletics participation as a recreational pursuit."⁹⁹ The CAC shares the goal of stimulating and improving programs for student-athletes.

THE NCAA's basic purpose is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by doing so, retain a clear line of demarcation between intercollegiate athletics and professional sports."

The NCAA's basic purpose is stated in its fundamental policy section of article I of the NCAA Constitution. The NCAA's basic purpose is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports."¹⁰⁰ References to amateurism can be found throughout the NCAA manual. However, bylaw 12 is the most comprehensive. This provision of the NCAA manual defines "a clear line of demarcation between college and professional sports."

The general principles under bylaw 12 establish the NCAA's view of amateurism. Only amateur student-athletes are eligible to participate in intercollegiate sports.¹⁰¹ The NCAA does not consider a grant-in aid given by a member institution to be pay or a promise to pay for athletic skill. Therefore, NCAA student-athletes can maintain their amateur status while on scholarship.¹⁰² The NCAA defines an amateur as one who participates in sports solely for the love of the game. Fifteen pages of its manual are devoted to more clearly defining what constitutes an amateur student-athlete. Another forty plus pages are devoted to financial aid, awards, and benefits that will affect the amateur status of student-athletes.

In order to maintain amateur status, the student-athlete must comply with these cumbersome and vague guidelines. An amateur student-athlete cannot receive pay-

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ment for his or her athletic skill because this transforms the student-athlete from an amateur into a professional.

¹⁰³ Student-athletes cannot accept a promise of future pay after their college eligibility has passed and cannot sign a commitment to play professional sports while an amateur. ¹⁰⁴ However, the NCAA does allow for student-athletes to be a professional in one sport while an amateur in another. ¹⁰⁵ Regardless, the NCAA rules contain an exhaustive list of items that constitute pay and would cause a student-athlete to forfeit his or her collegiate eligibility and amateur status because these items are deemed to make the individual a professional rather than an amateur. ¹⁰⁶ The NCAA also imposes stringent guidelines for "participating" with professional teams. ¹⁰⁷ The policy seems to be that an amateur's mere appearance with professional athletes will taint them with the professional label and tarnish college athletics and its promotion of amateurism. Since NCAA rules allow athletes to be a professional in one sport while maintaining amateur status in another, these rules seem contradictory and hypocritical. The few exceptions that exist are mainly in place for athletes that participate on either United States or foreign Olympic teams. ¹⁰⁸

The amateurism bylaw also governs student-athlete employment. ¹⁰⁹ Compensation must be for work actually performed and at a reasonable local rate for the services provided. ¹¹⁰ They cannot be compensated because of their

unless it comes from a guardian, is not awarded on the basis of athletic ability, or is awarded through a continuing aid program to students such as the national merit scholar program. ¹²¹ Also, institutions are not allowed to give aid to a student-athlete that exceeds the cost of attendance normally incurred by students at that particular university. ¹²² Cost of attendance includes tuition and fees, room and board, books and supplies, and other related expenses. ¹²³ Division I student-athletes at major programs receive a full grant-in-aid which includes the full cost of tuition and fees, room and board, and required books. ¹²⁴ A student-athlete is not eligible to participate in intercollegiate athletics if his financial aid exceeds the full grant-in-aid. ¹²⁵ The full grant-in-aid is for only one year ¹²⁶ and renewal is not automatic. ¹²⁷ Furthermore, it is not permissible for an institution to assure the student-athlete that the grant-in-aid will automatically continue after the one-year period if the student-athlete sustains an illness or injury that prevents his or her competition in intercollegiate athletics, but it can inform them of a general renewal policy. ¹²⁸ These rules appear to make the relationship between student-athletes and universities employment at-will.

The sheer volume of rules violations by intercollegiate athletic programs raises questions about the legitimacy of the amateurism rules. ¹²⁹ In general, the NCAA's goals of maintaining amateurism conflict with the sizable revenues

they generate in the sports and entertainment landscape. In reality, many Division I football and basketball players probably no longer play for simply the love of the game. The regulations governing The Olympic Games (upon which the NCAA amateurism rules seem to be based) have abandoned this ideal. ¹³⁰ In fact, the

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athletic ability. ¹¹¹ Student-athletes cannot receive money by teaching or coaching their particular sport. ¹¹² Student-athletes cannot be employed to sell equipment related to their sport if they are used to promote the product. ¹¹³ If they are not used to promote the product, then they can be employed at an hourly rate or set salary equal to that of a non-athlete. ¹¹⁴ In any employment, a student-athlete can only earn \$2,000 during the year. ¹¹⁵ The NCAA also regulates the use of student-athletes in promotional activities. ¹¹⁶ Interestingly, a student-athlete cannot appear in commercial or advertisement for athletic equipment, ¹¹⁷ but they are allowed to wear the equipment and logos of these companies on their uniforms and apparel. ¹¹⁸ The NCAA and its member institutions make considerable amounts of money by placing these logos on their athletic team's uniforms. ¹¹⁹

Bylaw 15 specifically deals with financial aid and establishes that the receipt of improper financial aid results in the forfeiture of eligibility and loss of amateur status. ¹²⁰ Financial aid must conform with the amateurism bylaw

modern Olympic Games were built on a misconception that the ancient Greek Olympics consisted of amateur athletes. ¹³¹ A similar misconception seems to exist in collegiate athletics because compensation was awarded in the first ever-documented intercollegiate competition. ¹³² Today, the NCAA is the largest sports organization that prohibits its participants from receiving compensation. The student-athlete participants are the ones who have the most to lose from this vague and enormous set of rules. By violating the rules to the slightest extent, the student-athlete will forfeit his or her eligibility and that will almost always result in loss of his or her scholarship. This is a curious result for an organization with the goal to protect and enhance the physical and educational welfare of the student-athletes. This raises two questions: To what extent are these rules the final say for student-athletes? Can a potential student-athletes' organization designed to address the unfairness of the rules successfully challenge them?

A. Judicial Deference to the NCAA as State Actor

Accomplishing this task will be very difficult because the NCAA is given much deference by the court system regarding the rules that it promulgates. In *NCAA v. Tarkanian*, the Supreme Court held in general that a system of rules and regulations accompanied by reasonable enforcement mechanisms was essential to the conduct of intercollegiate athletics and of fostering competition among amateur athletic teams.¹³³

This landmark case involved Jerry Tarkanian, the legendary basketball coach of the University of Nevada Las Vegas Running Rebels. The NCAA began investigating Tarkanian shortly after he took the UNLV job after a stint at Long Beach State. The battle between Tarkanian and the NCAA ended fifteen years later before the Supreme Court. Tarkanian argued that the NCAA violated his due process rights under the Fourteenth Amendment through their infractions committee investigation that ordered UNLV to suspend him from coaching.¹³⁴ In order for the NCAA to meet the "state action" requirement of the Fourteenth Amendment, the action that violates the due process rights must either be that of an instrument of the state, such as a state funded college or university, or must be accomplished under the color of state law.¹³⁵

The Supreme Court held that the NCAA's suspension of Tarkanian did not constitute state action and was not performed under color of state law.¹³⁶ The NCAA is merely an agent of its member institutions, which as competitors with UNLV, had an interest in the fair enforcement of its regulatory provisions.¹³⁷ Furthermore, the NCAA's investigation, enforcement proceedings, and recommendation to UNLV that they suspend their coach did not constitute state action because UNLV had not delegated the authority to the NCAA to take specific action against a UNLV employee.¹³⁸ Thus, the NCAA could not directly

the function of fostering amateur athletics at the collegiate level was an important public function, but it was neither a traditional nor an exclusive state function.¹⁴¹ Thus, the NCAA's rules and the enforcement mechanisms behind them were deemed to be a reasonable way to regulate intercollegiate athletics.

B. Antitrust Challenge to NCAA Amateurism Rules

Several legal commentators have argued that the NCAA's amateurism rules violate the Sherman Act and Antitrust law.¹⁴² The traditional argument is that the amateurism rules violate §1 of the Sherman Act because the NCAA and colleges and universities have banded together to fix the amount of compensation that college athletes receive (the grant-in-aid), and they boycott those athletes who try to ascertain their market value by consulting with agents, entering professional drafts, and earning more than \$2,000 from employment.¹⁴³ Plus, the NCAA compensation limit denies student-athletes a fair share of the revenues they generate for their schools.¹⁴⁴ This challenge has fallen short in past cases. Courts have been reluctant to apply the Sherman Act to NCAA eligibility rules because they have found that the amateurism rules are not commercially motivated.¹⁴⁵ In other cases, courts have assumed that the rules were subject to antitrust law, but have not invalidated them.¹⁴⁶

In *NCAA v. Board of Regents of the University of Oklahoma*, the Supreme Court held that the NCAA was subject to antitrust scrutiny under a rule of reason analysis. However, this only applied to the ability of member institutions to sell the rights to televise their college football games.¹⁴⁷ The rule of reason analysis requires the court to evaluate the rule's impact on competition.¹⁴⁸ The Court held that NCAA rules should be upheld if they increase economic marketplace competition by preserving college sports.¹⁴⁹ In dicta, the Court indicated that the limited compensation

rules of the NCAA enhanced competition because the rules advanced the noble tradition of amateurism and that this ideal was necessary to preserve intercollegiate athletics.¹⁵⁰ Lower courts often rely on this reasoning to uphold the amateurism rules of the NCAA.¹⁵¹ The amateurism rules have avoided antitrust scrutiny because they

are purely or primarily non-commercial in nature. The right to televise college football games is commercial in nature and is the reason the NCAA found itself subject to the antitrust laws in *Board of Regents*. Generally, the law has historically not been on the side of an active challenge by a student organization.

The current state of intercollegiate athletics lends itself more towards a finding of a Sherman Act violation.

THE NCAA compensation limit denies student-athletes a fair share of the revenues they generate for their schools.

discipline Tarkanian. They could only threaten additional sanctions against UNLV if they did not suspend their coach. Additionally, the source of NCAA rules that were the basis for action taken against Tarkanian came from the collective membership of the NCAA, a multistate organization, and not from the state of Nevada.¹³⁹ The adoption of the rules by UNLV did not make them state rules because UNLV could withdraw from the NCAA and adopt its own standards at any time.¹⁴⁰ The Supreme Court also held that

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The reality of intercollegiate athletics does not square with the amateurism ideal of playing only for the love of the game. The huge revenues generated and the time spent on the practice field and in the weight room supply the evidence. In order to triumph under the Sherman Act, the court must be persuaded that the stated purpose of the NCAA does not conform to the reality of college athletics, and the eligibility rules are commercially motivated.

C. NCAA Division I Manual Seen as Default Rules

The CAC's pleas may not fall on deaf ears. The NCAA Constitution is similar to a corporate charter or a standard form contract agreed to by the institutions and the NCAA. Therefore, these are simply default rules; as in the case of a constitution or a corporate charter, they may be amended. The NBA draft and inquiry exemption,¹⁵² the exemption for ordinary and necessary expenses related to the Olympic games,¹⁵³ the exemption for training expenses for Olympic events,¹⁵⁴ and the exemption for an individual borrowing against his or her future earnings¹⁵⁵ are examples of recent amendments.

The NCAA probably would counter that an organization already exists to address student-athlete concerns. The Student-Athlete Advisory Committee reports to the NCAA management council and consists of one student-athlete representative from each Division I conference.¹⁵⁶ This student-athlete organization is a passive representative of student-athletes and not a strong voice for potential reform.¹⁵⁷ Only two of its members attend each meeting of the management council,¹⁵⁸ of which they are non-voting members.¹⁵⁹ Their duties consist of receiving information, reviewing it, and commenting.¹⁶⁰ Recently, the Student-Athlete Advisory Committee made six proposals to the NCAA management council—all six were rejected.¹⁶¹ If the NCAA truly has student-athlete welfare in mind, then they will let student-athletes voice real concerns and possibly adopt some of their provisions. They should at the very least be willing to engage in an open dialogue. Universities are supposed to be the marketplace of ideas, and the NCAA should be a place where student-athletes can share their ideas for improving the intercollegiate athletics system.

Labor Law Considerations

A. The National Labor Relations Act

The Wagner Act of 1935, better known as the National Labor Relations Act (NLRA), regulates labor relations that effect interstate and foreign commerce. It was designed to encourage collective bargaining and to protect workers for the purpose of negotiating their terms of employment.¹⁶² Employees have a legally enforceable right giving them the freedom to associate, self-organize, and designate representatives for this purpose.¹⁶³ Later, it was

established that the NLRA was also designed to protect employees' rights to collective action in securing satisfactory wages, hours, and employment conditions.¹⁶⁴ The Labor Management Relations Act was added in 1947 to improve upon the previous enactments. It sought to redress the imbalance of economic power between labor and management and to protect employees' exercise of their organizational rights. Complaints under the NLRA are brought to the National Labor Relations Board (NLRB) and any reasonably defensible decisions by the NLRB are given a great deal of deference by the court system.¹⁶⁵

B. Student-Athlete Employees

For the purposes of the CAC, the definition of employee is of utmost importance. Employee under the NLRA means any employee unless otherwise excluded by the Act.¹⁶⁶ The term "employee" as used in the NLRA is not to be stretched beyond individuals who work for another for hire.¹⁶⁷

Students are not generally held to be employees and are not protected under the NLRA. For example, a student paid an apprentice wage full-time during summer and part-time during the school year is not an employee.¹⁶⁸ Despite contrary historical precedent, the NLRB has recently held that hospital interns, residents, and graduate students are "employees" according to the NLRA.¹⁶⁹ Given these results, an argument that student-athletes are employees of the university might be successful. The theoretical argument could be advanced that student-athletes are employees because of mandatory practices during the season and the amount of revenue they generate. However, there is still a fundamental difference between a student-athlete receiving a grant-in-aid, and a student who assists in teaching duties or medical staff functions and is compensated directly for those services. Given courts' deference to the NCAA, and the following decisions in the workers' compensation context, this argument would probably fail.

C. The Worker's Compensation Claim for Student Athlete as Employee

The only significant push to recognize student-athletes as employees is in the workers' compensation context.¹⁷⁰ The first major case to address the issue found in favor of the student-athlete.¹⁷¹ In *University of Denver v. Nemeth*, a University of Denver football player who suffered a back injury was found to be an employee because the benefits he received were conditioned upon him playing football.¹⁷² He performed maintenance work at the university as well as playing football.¹⁷³ However, *Nemeth* was overturned four years later by the Colorado Supreme Court, which held that an employee-employer relationship did not exist between scholarship athletes and a university.¹⁷⁴

Also, a scholarship athlete at a California university was also found to be an employee.¹⁷⁵ He was an ath-

letic scholarship recipient who died in a plane crash.¹⁷⁶ However, in 1965 and 1981 California amended their workers' compensation statutes to exclude student-athletes.¹⁷⁷ While these decisions have been overturned, they do provide a minimal basis for arguing that a student-athlete is an employee and would be helpful in the context of expanded health insurance that the CAC seeks.

The more recent cases have been discouraging to the cause of finding an employment relationship between a university and a student-athlete on scholarship. In *Rensing v. Indiana State University Board of Trustees*, such a claim was made and the state of Indiana employed the NCAA's limited compensation and amateurism rules as a defense.¹⁷⁸ Rensing was paralyzed during a football practice,¹⁷⁹ and he was denied coverage because the Industrial Board did not consider him an employee.¹⁸⁰ The Supreme Court of Indiana found a lack of intent to enter into an employment relationship and found in favor of the school.¹⁸¹ The NCAA language referred to the receipt of tuition, room and board, lab fees, and a book allowance as a grant-in-aid and not payment for athletic participation.¹⁸² The use of NCAA rules in this case strikes a strong blow against viewing student-athletes as employees.

However, this blow may have been softened by the United States Supreme Court, which held that food, shelter, and clothing in lieu of wages constitutes both payment and an employer-employee relationship under the Fair Labor Standards Act.¹⁸³ Generally, the Supreme Court has been friendly to the NCAA in its decisions, therefore while this precedent could be used, it is likely that the Court would

employee as it is to the finding that the amateurism rules violate the Sherman Act. However, the CAC has a voice that needs to be heard, and it is probably the best way for student-athletes to address their concerns and in turn address some of the ills of intercollegiate athletics.

The College Athletes Coalition vs. The Knight Commission

The most outspoken critic of the current affairs of college athletics has been the blue-ribbon panel of past and present university presidents known as the Knight Commission, which issued its first report ten years ago. The most recent report echoes many of the same complaints as the previous one. It seems the Knight Commission is adept at identifying problems but not as skilled at actually coming up with solutions.¹⁸⁶ Some of their latest proposals seem fairly unrealistic given today's climate.¹⁸⁷ The Commission's most recent suggestions include: denying post-season participation to any institution that does not have a graduation rate of at least 50% for its student athletes; eliminating academic exceptions for athletes; encouraging the NBA and NFL to develop minor leagues so athletes who do not wish to attend college do not have to; and reducing coaches salaries to a level more commensurate with the other members of the institution.

Behind many of the proposals seems to be an elitism that seeks not to open the doors of education to student-athletes in Division I basketball and football programs but to close the doors to these miscreants who have brought commercialism to the college campus. The Commission neglects to mention the corporate dollars taken by other departments of the university. Professors receive grants funded by corporations and local businesses—businesses headed by wealthy alumni who donate buildings and great sums of money for research.¹⁸⁸ The rationale for the Knight Commission's proposals appears to be a return an era when athletic programs did not dominate college campuses and educational

pursuits were taken more seriously, when in fact this 'yes-teryear' that they want to re-establish may be a utopia that never truly existed.

When asked in the 1960's if the football program at Alabama was being overemphasized at the expense of educational programs and other aspects of the University, legendary college football coach Paul "Bear" Bryant replied, "Well fellas, maybe, but its awful damn hard to rally around a math class." College football programs in the SEC and in the Big Ten have consistently enjoyed a reverence that the liberal arts program or the undergraduate accounting

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continue to side with the NCAA. The university could argue that the food, shelter, and clothing is not given in lieu of wages but is given as part of a scholarship that many students including non-student-athletes receive. In *Coleman v. Western Michigan University*, a state court followed this reasoning by finding that a scholarship athlete is not an employee but "first and foremost a student."¹⁸⁴

In the most recent workers' compensation decision, a Texas Court unanimously held that a Texas Christian University scholarship athlete was not an employee because no contract for hire existed.¹⁸⁵ Therefore, the law seems as resistant to the finding of a student-athlete as

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school could not achieve in their wildest dreams. This is not meant to suggest that big-time college athletics is the same as it has always been. The money and the problems that go with it are probably bigger today proportionally, and it is possible that if Bryant and his houndstooth hat were around today that he would sharply criticize what has happened to college athletics. The fact that Bryant might join the chorus of past and present university presidents and criticize the commercialization of intercollegiate athletics does not mean that they are the sole leaders in the search for a solution of remedying college athletics.

An organization of student-athletes that has the interests of student-athletes in mind is certainly better than a proposal that suggests having fewer student-athletes obtain an education. The Knight Commission would rather the NBA and NFL fund a minor league to deal with the dumb jocks. Books are to be read and cherished by all not locked up by those who feel that athletes are not worthy of an education because of the tarnished reputation a successful athletic program brings to their hallowed halls. Huma says that his organization is committed to the 99 out of 100 that do not wind up making it professionally and improving welfare for all student-athletes. His organization deserves a chance because as time has proven the Knight Commission is good at proposals but poor with results.¹⁸⁹

University presidents have been criticized for the current state of higher education, and many of these complaints are much louder than complaints about the status of intercollegiate athletics.¹⁹⁰ Therefore, perhaps those individuals are not the best leaders of intercollegiate reform. The student-athlete is the individual who has the most to gain from a reform of intercollegiate athletics, which suggests that those student-athletes who seek to change the system are the correct leaders of reform. The CAC deserves for its voice to be heard by the NCAA and university heads. Through an open dialogue between these two parties, some changes may be possible that improve the welfare of the student-athlete. This would be a better alternative than empty rhetoric and proposals of returning things to the way they once were.

A. Practical Obstacles

There are some potential potholes on the road to reform that any student-athlete organization will face. They have a collective action problem. The only student-athletes with an incentive to join are male athletes from major college football programs and the mid-tier to major college basketball programs. This does not provide a great deal of grass roots support. Furthermore, NCAA student-athletes are a very diverse group.¹⁹¹ Therefore, finding a collective interest could be quite difficult.

Also, it will be extremely costly for universities to even slightly increase the room and board stipend and insurance benefits of its student-athletes because it would

have to be done for every Division I male and female athlete due to Title IX.¹⁹² So, there could also be a free rider problem. Furthermore, one of the main problems with big-time intercollegiate athletics is that it has become a competition between the haves and have-nots. Two-thirds of Division I programs claim to be losing money.¹⁹³ The additional costs incurred by stipends and extended insurance benefits could be disastrous to these programs and would probably cause more programs to run a budget deficit. A stipend of only \$150 would require approximately \$29 million from intercollegiate institutions.¹⁹⁴ The potential added costs do not stop at Title IX. There are potential labor law¹⁹⁵, workers compensation,¹⁹⁶ taxation,¹⁹⁷ antitrust,¹⁹⁸ and vicarious liability¹⁹⁹ issues as well. Therefore, any reform proposals by the CAC, in addition to facing legal hurdles, are going to be potentially costly and controversial.

B. Political Interest Group Model

This does not necessarily limit the potential effectiveness of the CAC for contributing ideas and pushing the NCAA to consider different proposals and change their rules for the betterment of all student-athletes. It is possible for the CAC to be effective with this admirable but limited goal. Huma and the organization's leaders need to be cognizant of their goals to improve student-athlete welfare and the conditions that drove them to form their organization. When major politicians such as Jesse Jackson and interest groups like the United Steelworkers of America start dominating the picture, the original agenda may be temporarily or permanently pushed aside. The original goals could be forgotten, and the fight could be for someone else's vision and not truly the student-athlete's. This may not be inevitable, but it is an often-repeated scenario.

When strikes or other similar heavy-handed tactics enter the picture, then it is possible that the cause could be lost. The great thing about "March Madness" is that it involves the dreams of the young. On a Friday night in Salt Lake City, an eighteen-year-old kid could hit a game winning shot to defeat the defending national champions. On Tuesday morning, however, he could be just another nervous freshman taking a seat in a much smaller auditorium hoping that he remembers all the formulas for a calculus exam. Strikes would rob college athletics of this picture and in doing so they would hurt college athletics as well as the colleges and universities that support them.

The more appropriate model of organization for student-athletes is a political interest group rather than a labor union. Student-athlete organizations could lobby members of the NCAA Board of Directors as well as the Student-Athlete Advisory Committee about potential NCAA legislation. They could make proposals of their own through this process. Football, basketball, baseball, track and field, female or male, Division II or III, and even different ethnic groups could each have their own "interest group"

if they so desired. The Student Basketball Council organized by the National Association of Basketball Coaches is a model of this type of organization.²⁰⁰ In order to improve intercollegiate athletics, the athletic concept of teamwork must prevail. This requires many voices not just one because there is no "I" in team. Earlier this year, the NCAA was scheduled to meet with the CAC. They cancelled that meeting through their Student-Athlete Advisory Committee after learning of the involvement of the United Steelworkers.²⁰¹ The NCAA should not have cancelled that meeting because an open dialogue could have begun. An example of teamwork that will help achieve reform in collegiate athletics is the recent undertaking of shared initiatives between the CAC and the Drake Group, an outspoken critic of the commercialization of college sports and the NCAA, consisting of faculty members of universities.²⁰²

Conclusion

Intercollegiate athletics is a complex system. Like any complex system, it will have problems that need to be fixed from time to time. Despite the many legal hurdles and practical obstacles that stand in the way of the CAC, it can achieve many of its lofty goals. The sports world teaches us many lessons, among these is that success in sports and life do not come overnight. Rather, they are the product of hard work and courage. The education one receives in college and the lessons learned on the playing field can increase the probability of success in every human endeavor. University presidents, leading scholars, athletic directors and coaches, and hard working student-athletes generally have learned these lessons well and working together they should be able to find a solution to the puzzle that is modern intercollegiate athletics.

A truly valiant effort will be rewarded; the puzzle will be solved; and the goal achieved—sports and life teach this lesson. After centuries of trying, man finally broke the four-minute mile in 1954. It took until the middle of this century before an African-American finally played the American pastime in the major leagues. After three decades of attempting to suppress freedom, The Berlin Wall fell. After a decade of millions of dollars spent, lives lost, muscle and intellectual manpower exhausted, man walked on the moon. Five years after hearing, "you have cancer," a Texan won the Tour de France for the third consecutive time. The obstacles facing the reform of intercollegiate athletics do not require superhuman effort but merely teamwork. Unfair rules and supposed unreachable records are meant to give way. Hopefully, the CAC is an organization worthy of the lofty heights it seeks to reach. Together, the NCAA and an organization looking out for the rights of student-athletes should be able to enhance the welfare of student-athletes and improve intercollegiate athletics.

ENDNOTES

* J.D. Candidate, Vanderbilt University Law School, 2003.; B.A., University of Mississippi, 1999. I would like to thank my many wonderful family and friends who have supported me throughout my life. I have been truly blessed. I am especially thankful for my parents, Dennis and Gloria, for without their support, a note such as this would not be possible. I also thank Travis Crump, Neil Fankhauser, Lance Bell, and Cara Tuttle for their editorial contributions to this note.

¹ In 1994, a Black Coaches Association boycott of basketball games by players and coaches was narrowly averted. See Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, 22 FORDHAM URB. L.J. 615 (Spring 1995). See also Melvin L. Brazier, Jr., *United We Stand: Organizing Student-Athletes for Educational Reform*, 4 SPORTS LAW J. 81 (Spring 1997) (describing three boycotts initiated by college athletes, including the cancellation of a Morgan State football game because of a fear that players would stage a half-time protest, the refusal to practice by University of Oklahoma football players, and participation of University of North Carolina football players in a larger student protest movement).

² Alexander Wolff, *Look for the Union Label?; Ramogi Huma's College Athletes Association is Organizing Division I Players*, SPORTS ILLUSTRATED, Aug. 13, 2001.

³ The CAC now has chapters at every school in the Pac-10 except the University of California, and had chapters at Hawaii, Boise State, Ohio University and Alabama. See Mark Emmons, 's Worst Nightmare, SAN JOSE MERCURY NEWS, Apr. 4, 2002; see also Carolyn Said, 'Defense, SAN FRANCISCO CHRONICLE, Feb. 15, 2002, at B1; see also Joe Arnold, *Athletic Advocacy Group Opens Ohio Chapter*, THE POST, Sept. 26, 2002.

⁴ Sam Farmer, *Union May Put Label on Colleges*, L.A. TIMES, Jan. 18, 2001, at 1D. Prior to the 2000 Division I Men's College Basketball Tournament, the Student Basketball Council was organized. It consists of forty-eight Division I men's basketball players and was established to "address issues affecting NCAA basketball student-athletes." It was organized by the National Association of Basketball Coaches. Thus, it differs from the College Athlete's Coalition in that it was not organized by a major national union. See John Slosson, *Restoring Joy to Bracketville: Problems Facing College Basketball Stimulate Responses From the NCAA and the Newly Formed Student Basketball Council*, 8 SPORTS LAW J. 125 (Spring 2001).

⁵ Diane Pucin, *The Inside Track: Jackson Will Be a Problem, Not Part of the Solution*, L.A. TIMES, Aug. 17, 2001, at 2. See also

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National Beat, ORLANDO SENTINEL, Aug. 17, 2001, at D8.

⁶ *Id.*

⁷ See Wolff, *supra* note 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Pucin, *supra* note 5.

¹² See Wolff, *supra* note 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Sally Jenkins, *Problems Are Real, Proposals Are Not*, WASHINGTON POST, June 30, 2001, at D1.

¹⁶ Larry Stewart, *Deal of the New Century: Television: The Contract That The NBA Is Negotiating Will Point The Way For Other Sports In The Post-Sept. 11 Landscape*, L.A. TIMES, Oct. 19, 2001.

¹⁷ Welch Suggs, *Power Steering: Big Ten's Delany and SEC's Kramer in Driver's Seat of College Football*, DALLAS MORNING NEWS, Dec. 25, 2000.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* See generally MURRAY SPERBER, *SHAKE DOWN THE THUNDER: THE CREATION OF NOTRE DAME FOOTBALL* (Henry Holt and Co. 1995).

²³ See Suggs, *supra* note 17.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Charles Meredith, *Colleges Need to Reconsider Sports Policies*, THE MORNING CALL, Jan. 9, 2002, at B1.

²⁷ See Suggs, *supra* note 17.

²⁸ *Id.*

²⁹ Adam Rubin, *Money for Nothing: Losing Teams Can Also Cash in on Bowl Prize*, N.Y. DAILY NEWS, Jan. 2, 2001, at 50.

³⁰ *Id.*

³¹ Tommy Hicks, *Last Days of An Era*, MOBILE REGISTER, May 27, 2002, at C1.

³² Stephen L. Ukeiley, *'s Dream Come True*, 6 SETON HALL J. SPORT L. 167, 171 (1996).

³³ The comprehensive package that coaches from high-profile Division I basketball and football programs receive frequently makes them the highest paid individual in the state system. The salaries at the major college programs rival and many times exceed that of their professional brethren. For example, Ron Zook recently signed a deal to become the University of Florida's football coach for \$1.5 million a season. Before becoming head coach at Florida, he was defensive coordinator for the NFL's New Orleans Saints. His new salary exceeds that of his former boss, Saints Head Coach Jim Haslett, by \$750,000 a year. See Gerry Dulac, *Former Steelers Assistant, Ron Zook Hired By Florida*, Jan. 10, 2002, available at <http://www/post-gazette.com/steelers/20020110zook5.ssp>

³⁴ See generally Rick Telander, *THE HUNDRED YARD LIE: THE CORRUPTION OF COLLEGE FOOTBALL AND WHAT WE CAN DO TO STOP IT*, (Simon & Schuster 1989) (1996) (criticizing college football for its inherent hypocrisy and the poor lessons it teaches its participants).

³⁵ See Jenkins, *supra* note 15.

³⁶ *Academia's Ogre: College Sports Still an Unchecked Monster*, SAN DIEGO UNION TRIBUNE, July 5, 2001, at B-1.

³⁷ *Id.*

³⁸ George Will, *A Bad Rap on College Sports*, WASHINGTON POST, Aug. 14, 2001, at B-7.

³⁹ *Id.* See also Steve Weiberg, *Football Grad Rates at Top-Tier Programs Don't Measure Up*, USA TODAY, Sept. 19, 2001, at 7C.

⁴⁰ Steve Weiberg, *Football Grad Rates at Top-Tier Programs Don't Measure Up*, USA TODAY, Sept. 19, 2001, at 7C.

⁴¹ *Id.*

⁴² Chester E. Finn, Jr., *The Cost of College Sports*, COMMENTARY,

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Oct. 1, 2001, at 53.

⁴³ See *Academia's Ogre*, *supra* note 36.

⁴⁴ Frank Deford, *Damning Admissions; Two School Presidents Decry College Sports and Hit Upon a Larger Problem*, *SPORTS ILLUSTRATED*, Feb. 5, 2001, at r2. See generally JAMES J. DUDERSTADT, *A UNIVERSITY FOR THE 21ST CENTURY* (University of Michigan Press 2000); WILLIAM G. BOWEN AND JAMES L. SHULMAN ET AL., *THE GAME OF LIFE: COLLEGE SPORTS AND EDUCATIONAL VALUES* (Princeton University Press 2001).

⁴⁵ See *Will*, *supra* note 38.

⁴⁶ D. Stanley Eitzen, *Slaves of Big-Time College Sports: College Athletes*, *USA TODAY*, Sept. 1, 2000, at 26.

⁴⁷ See *Pucin*, *supra* note 5.

⁴⁸ See *Eitzen*, *supra* note 46.

⁴⁹ *Id.* See generally Andrew S. Zimbalist, *Unpaid Professionals: Commercialism and Conflict in Big-Time College Sports*, (Princeton Univ. Press 1999) (1999).

⁵⁰ *The Game's Afoot: Have College Sports Been Corrupted? Can They Be Fixed?*, *U.S. NEWS & WORLD REPORT*, July 30, 2001, at 12.

⁵¹ See *Wolff*, *supra* note 2.

⁵² See Stephen M. Schott, *Give Them What They Deserve: Compensating the Student-Athlete for Participation in Intercollegiate Athletics*, 3 *SPORTS LAW J.* 25 (Spring 1996).

⁵³ James Malone & Daren Lipinsky, *'s Miller-Ayala Act*, 17 *LOYOLA ENT. L. J.* 413 (former UCLA and Dallas Cowboy Wide Receiver Mike Sherrard describing how tough it was for himself and others to meet their daily needs with the room and board stipend from student loans).

⁵⁴ Rodney McKissick, *School's Out: As Stars Migrate to the NBA, The College Game Suffers an Identity Crisis*, *BUFFALO NEWS*, June 27, 2001, at D1; Todd Jones, *Teen-Agers Selling their Youth to Enter the NBA Meat Market*, *COLUMBUS DISPATCH*, June 27, 2001, at E1.

⁵⁵ *Id.*

⁵⁶ Ken Davis, *Coming of Age in the NBA; Has the Youth Movement Gone Too Far?*, *HARTFORD COURANT*, July 1, 2001.

⁵⁷ Mark Stewart, *Some Early Entries Take A Tumble; Gamble Fails For Those Taken Later*, *MILWAUKEE J. SENTINEL*, June 28, 2001.

⁵⁸ See *Jones*, *supra* note 54.

⁵⁹ Kevin B. Blackstone, *Fashionably Early: Trendy Kids See NBA Draft as All the Rage*, *DALLAS MORNING NEWS*, May 23, 2001. Underclassmen can declare early for the NFL draft. Perhaps, simply due to the nature of professional football, underclassmen often wait to their junior year to apply for the NFL draft. The ones who apply normally achieve much more success than the individuals who opt for the NBA draft. See Scott R. Rosner, *Must Kobe Come Out and Play? An Analysis of the Legality of Preventing High School Athletes and College Underclassmen From Entering Professional Sports Drafts*, 8 *SETON HALL J. SPORTS L.* 539 (25 underclassmen declared themselves eligible for the NFL draft; 21 were drafted and 8 went in to lucrative first round).

⁶⁰ Randy Covitz, *NBA Draft is Risky Place To Rush Your Shot*, *KANSAS CITY STAR*, Mar. 24, 1999.

⁶¹ See *Wolff*, *supra* note 2; see also Lee J. Rosen, *Proposition 16 and the NCAA Initial Eligibility Standards: Putting the Student Back In Student-Athlete*, 50 *CATH. U.L. REV.* 175 (Fall 2000) (establishing that only one out of every ten thousand high school, athletes will ever play professionally and only 200 of the 18,000 that are fortunate enough to play division I basketball and football will play professionally).

⁶² Some commentators would find the term "undesirable" far too kind. See Charles W. Ehrhardt & J. Mark Rodgers, *Tightening the Defense Against Offensive Sports Agents*, 16 *FLA. ST. U.L. REV.* 634, 634 (1988) (referring to agents as "vipers, parasites, charlatans, vultures, blood-suckers, and leeches").

⁶³ However, Tank Black's discretions are not a new phenomenon. See David Lawrence Dunn, *Regulation of Sports Agents: Since it First Hasn't Succeeded, Try Federal Legislation*, 39 *HASTINGS L.J.* 1031 (July 1988). Dunn describes some of the most notorious agent scandals. Joe Courrege signed NFL players Bill Bates, Jeff Rohrer, Steve Wilson, and Anthony Dickerson by preaching virtues of Christianity. Then, Courrege defrauded them by creating sham corporations and false identifications in order to complete fourteen real estate deals. The four athletes lost a total of \$200,000 in the wrongdoing. Norby Walters and Lloyd Bloom should thank Tank Black personally because they will no longer be the most widely publicized agent scandal in history. Bloom and Walters paid and signed fifty-eight student athletes to agent representation contracts before their eligibility expired. They induced some of the players by offering drugs and prostitutes in addition to cash advances. After signing, they threatened the players and other agents with violence if the players switched agents. They actually carried out violence against a competitor's secretary. They also participated in tax evasion. The signing of student-athletes and the resul-

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tant loss of eligibility was so widespread that the NFL had to hold a special supplemental draft in 1987. Future NFL Hall of Famer Cris Carter participated in this draft. Richard Sorkin represented fifty athletes in the 1970's. He placed himself in charge of all of his client's financial affairs. Unfortunately, Sorkin was a horrible investor and an even worse gambler. His gambling debts exceeded \$600,000 and his stock market losses approached \$300,000. He eventually pleaded guilty to seven counts of grand larceny. See also Landis Cox, *Targeting Sports Agents with the Mail Fraud Statute: United States v. Norby Walters & Lloyd Bloom*, 1992 DUKE L.J. 1157 (Apr. 1992) (describing the Walters and Bloom trial and recommending that the NCAA and intercollegiate athletics undergo serious reform rather than novel federal criminal charges being brought against sports agents as a way to remedy the problems of unsavory individuals such as Black, Courrege, Walters, and Bloom).

⁶⁴ L. Jon Wertheim, Don Yaeger, & B.J. Schecter, *Web of Deceit: Smooth-Talking Agent Tank Black Allegedly Ensnares Nearly Two Dozen NFL and NBA Players, Including Vince Carter In a Mind-boggling Series of Scams and Defrauded Them of Some \$15 Million*, SPORTS ILLUSTRATED, May 29, 2000.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*; see also Terry Foster, *Racial, Cash Cards Are in Play in Court Case*, DETROIT NEWS, June 21, 1999, at F2.

⁶⁹ ST. PETERSBURG TIMES, Oct. 16, 2001, at 5C.

⁷⁰ See Wertheim, Yaeger, & Schecter, *supra* note 64.

⁷¹ ATLANTA J. CONSTITUTION, June 15, 2001, at 7F.

⁷² *Id.*; see also Wertheim, Yaeger, & Schecter, *supra* note 64.

⁷³ Heather Radcliffe, *Gunman's Suicide Here Ended National Manhunt; His Final Victim, A Hostage, Felt Pity*, ST. LOUIS POST DISPATCH, Sept. 28, 2001, at B1.

⁷⁴ Agents are regulated by several state statutes and by the player's associations of every major professional sports league. See Dunn, *supra* note 63 (describing some of the regulatory schemes and ultimately suggesting federal legislation as the proper manner in which to regulate the behavior of sports agents). See also Malone & Lipinsky, *supra* note 53 (analyzing California's regulatory scheme and comparing it to other states). Alternatively, commentators have argued for deregulation of agents. See Jan Stiglitz, *A Modest Proposal: Agent Deregulation*, 7 MARQ. SPORTS L.J. 361 (Spring

1997) (comparing the deregulation of agents to the decriminalization approach to drugs). See also NCAA Bylaws, *supra* note 95, at Art. 12.3 (2001-02) (detailing rules violations for contact made by student-athletes with agents).

⁷⁵ See Kenneth J. Martin, *The NCAA Infractions Appeals Committee: Procedure, Precedent, and Penalties*, 9 SETON HALL J. SPORTS L. 123 (providing case summaries of some of the schools who have committed violations in recent years).

⁷⁶ See generally Mark Schlabach, *College Recruitment Tale of Greed; Means Scandal Leads to Bribery, Extortion Charges*, ATLANTA J. CONSTITUTION, Sept. 23, 2001, at F11; Wes Smith, *The Selling of Albert Means: A High School Football Star, A Federal Grand Jury, And One Mighty Amazing Allegation in The Fair City of Memphis*, U.S. NEWS & WORLD REPORT, Sept. 10, 2001, at 25.

⁷⁷ Wes Smith, *The Selling of Albert Means: A High School Football Star, A Federal Grand Jury, And One Mighty Amazing Allegation in The Fair City of Memphis*, U.S. NEWS & WORLD REPORT, Sept. 10, 2001, at 25.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Mark Schlabach, *'s Involvement; Record Appears To Clear Georgia; Recruiting Scandal in Memphis*, ATLANTA J. CONSTITUTION, Sept. 23, 2001, at F17.

⁸¹ See Schlabach, *supra* note 76.

⁸² *Id.*

⁸³ *Godsey a Nominee for Unitas Award?*, ST. PETERSBURG TIMES, Aug. 31, 2001, at 10C.

⁸⁴ Schlabach, *supra* note 76; Smith, *supra* note 76.

⁸⁵ *Id.*

⁸⁶ Tony Barnhart, *COLLEGE FOOTBALL: Inside Colleges: Coaches Confident SEC Can Overcome Scandals*, ATLANTA J. CONSTITUTION, Aug. 12, 2001, at D6.

⁸⁷ *Id.*

⁸⁸ L. Jon Wertheim and Don Yaeger, *The Passing Game; Friendly Faculty Looked the Other Way While Minnesota Basketball Players Turned in 400 Written Papers Allegedly Written for Them by a University Staffer*, SPORTS ILLUSTRATED, June 14, 1999 (the topics ranged from premenstrual syndrome to acid rain, had earned grades as high as an A+, and were

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at the time of the allegations still stored on Ganglehoff's hard drive; Ganglehoff claims Haskins approved a \$3,000 payment for her efforts and was asked to "dummy down" her papers).

⁸⁹ Paul McEnroe, *Professor Describes Doubts About Star's Stellar 1997 Paper; He Says He Was Sure Courtney James Did Not Write It, But He Had No Proof*, STAR TRIBUNE, Mar. 12, 1999, at 14A.

⁹⁰ See Wertheim & Yaeger, *supra* note 88, at 90.

⁹¹ See *id.* Many academic counselors who work with athletes are all too familiar with professors who help out athletic departments. "I call them friendly faculty, and in my opinion, 75 percent of student-athletes at big-time schools are nurtured by them," says Lynn Lashbrook, former President of the National Association of Academic Advisors of Athletics and one time head of academic counseling for athletes at Missouri, "Every school has them, and every athletic department knows who they are." *Id.*

⁹² See *id.* (Discussing Minnesota's lack of adherence to academic standards was not a recent revelation in the education of student-athletes); see also Landis Cox, *supra* note 63 (Iowa star football player Ronnie Harmon was allowed to compete by the university during his fourth year despite the fact that he was on academic probation and not working towards a degree. Also, Paul Palmer, star running back for the Temple Owls, was certified as eligible to compete by the university despite failing remedial writing four times); see Ukeiley, *supra* note 32 (describing the infamous case of Dexter Manley, a former all-pro defensive end with the Washington Redskins, who graduated from Oklahoma State in spite of being illiterate).

⁹³ Randy Furst, *Haskins Appeals Coaching Ban*, STAR TRIBUNE, Nov. 23, 2000, at 11C. Many view low graduation rates at top basketball programs as an epidemic. Lou Henson, Jim Boeheim, Norm Stewart, George Raveling, Denny Crum, and John Chaney are regarded as some of the finest college basketball coaches of all-time, and they have combined to win more than 3,000 games total. Coaching basketball is their talent; however, seeing that their players graduate is not. The graduation rates for players who entered the aforementioned coaches programs in 1985 are as follows: Henson 13%; Boeheim 21%; Stewart 25%; Raveling 20%; Crum 27%; and Chaney 36%. See Braziel, *supra* note 1.

⁹⁴ See Braziel, *supra* note 1.

⁹⁵ Nat'l Collegiate Athletic Ass'n, 2001-02 NCAA Division I Manual, Art. 22, section 22.2.4.3 (hereinafter "NCAA Bylaws") (stating as part of the athletics certification pro-

cess, universities must comply with this section. The section establishes that institutions are to conduct their athletics program "in a manner designed to protect and enhance the physical and educational welfare of student-athletes." In order to meet this goal, institutions must treat students fairly in their academic role.) Many actions taken by coaches, the adult role model in student athlete's lives, can also create a picture in the mind of young athletes that what they really want is to get rich and do not have their young athlete's best interests in mind. See also Rosen, *supra* note 61, at 208 (blaming coaches for part of the exploitation of college athletes due to their receipt of millions of dollars in salary and endorsements) See also PETER GOLENBOCK, *PERSONAL FOULS* (Carroll & Graf 1989) (sympathizing with student-athletes who want to receive a piece of the pie when they constantly see their coach trying to make as much money as he possibly can).

⁹⁶ Richard J. Hunter & Ann M. Mayo, *Issues In Antitrust: The NCAA and Sports Management* 10 MARQ. SPORTS L.J. (Fall 1999).

⁹⁷ See Schott, *supra* note 52.

⁹⁸ *Id.* The Intercollegiate Athletic Association of the United States was the forerunner of the modern NCAA. The IAAUS was formed in 1910 to address problems related to collegiate football. There were eighteen collegiate football fatalities on the playing field in 1905. There were no standardized rules for college football until the emergence of the IAAUS. The NCAA's regulatory function quickly expanded to include not just rules for the play of football but also eligibility rules, recruiting rules, and financial aid rules. See generally Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time For a New Game Plan*, 46 ALA. L. REV. 487 (Winter 1995). Broyles also criticizes the enforcement of NCAA rules by the NCAA. He feels they are too voluminous and vague. Plus, there is no independent finder of fact or law in an NCAA enforcement proceeding, and the statute of limitations is uncertain. 46 ALA. L. REV. at 507-508.

⁹⁹ NCAA Bylaws, *supra* note 95, at Art. 1, § 1.2(a).

¹⁰⁰ *Id.* at § 1.3.1.

¹⁰¹ *Id.* at Art. 12, § 12.01.1.

¹⁰² See *id.* at Art. 12, § 12.01.4.

¹⁰³ *Id.* at § 12.1.1(a). A student-athlete refers to a student whose "enrollment was solicited by a member of the athletics staff or other representative of athletics interests with a view towards the student's ultimate participation in

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the intercollegiate athletics program.” § 12.02.5. A professional athlete is an athlete that receives any kind of payment directly or indirectly for participation in athletics except as permitted by the NCAA. § 12.02.3. Pay is the receipt of funds, awards, or benefits not permitted by the NCAA for athletic participation. § 12.02.2.

¹⁰⁴ *Id.* at § 12.1.1(b). See also §§ 12.1.1 (c), (g) (prohibiting signing a contract or signing with an agent while an amateur student athlete), and §§ 12.2.5- 12.2.5.1 (forfeiting eligibility even if commitment to play is not legally enforceable or binding on the professional sports team).

¹⁰⁵ See NCAA Bylaws, *supra* note 95, at Art. 12, § 12.1.2. Although it is not for the same sport, this seems to suggest that the real motivation behind the rules is not preserving amateurism, but economics. NCAA football and basketball compete in the sports and entertainment marketplace with all of the major professional leagues. The context in which the professional athlete exemption comes up the most is when the student-athlete is a professional baseball player, usually in the minor leagues, during the summer and a collegiate football player during the fall. Thus, they no longer can play collegiate baseball but are allowed to excel on Saturdays in the much more visible environment of college football. Examples of these athletes include 2000 Heisman Trophy Winner Chris Weinke of Florida State University, who played minor league baseball for several years before deciding to play college football, Drew Henson of Michigan, who eventually decided to forego college and pursue a career with the New York Yankees. College football stars Josh Booty of LSU, Quincy Carter of Georgia, Mark Farris of Texas A & M, and Kelley Washington of Tennessee all gave sports “the old college try” after a few years in baseball’s minor leagues.

¹⁰⁶ *Id.* at §§ 12.1.1.1.1-12.1.1.1.7 (banning indirect or direct salaries and gratuities; division of bonuses or game receipts; educational expenses not permitted by NCAA rules; excessive awards, expenses, or benefits; payment of expenses conditioned upon team performance; receipt of expenses in excess of that given to other team members; any preferential treatment due to athletics skill; any prize for participating in a promotional activity; see also § 12.1.1.2 (barring receiving prize money from competitions involving the use of overall athletics skill); see also § 12.1.1.2 (barring receiving prize money from competitions involving the use of overall athletics skill); see also § 12.1.1.3 (loss of amateur status for track or cross country athletes who receive prize money for winning a road race).

¹⁰⁷ The regulation of contact by professional teams with the NCAA provides a good example of how difficult it is to comprehend the NCAA rules and the policies behind

them. Compare § 12.2.3.1 (participation with an amateur team against a team of professionals will generally revoke one’s amateur status) with § 12.2.3.2 (allowing student-athletes to compete with professional teams in tennis, golf, synchronized diving, and beach volleyball as long as they do not receive any remuneration for their participation). See also § 12.2.3.2.1 (allowing student-athletes to participate with professionals in summer basketball leagues as long as neither the professionals nor the student-athletes receive payment of any kind) and § 12.2.1.2 (losing their eligibility if a student-athlete tries out for a professional team or a professional athletics team conducts a medical examination of the student-athlete while enrolled at a university as a full-time student. However, a non-full time student can get around this rule as long as expenses are not paid by the professional team) and § 12.2.1.2.1 (allowing a single scouting bureau of the NHL, NBA, NFL, or Major League Baseball to conduct a medical examination without the student-athlete losing their eligibility) See also NCAA Bylaws, *supra* note 95, at Art. 12.2.1.1 (2001-02) (retaining eligibility if participating in a professional tryout before enrollment and the expenses did not exceed actual and necessary expenses).

¹⁰⁸ See generally *id.* at § 12.1.1.4.

¹⁰⁹ *Id.* at § 12.4

¹¹⁰ *Id.* at § 12.4.1 (a)-(b).

¹¹¹ NCAA Bylaws, *supra* note 95, at Art. 12, § 12.4.1.1. The NCAA also limits when a student-athlete can be paid on a commission basis. It is only allowed if the student-athlete pays for his own training program (the ability to do this is unlikely); the employed personnel consist of both student-athletes and non-athletes; the company does not use the student-athlete to promote its product; and the company is able to document that the non-athletes receive earnings from sales at a rate that is roughly equivalent to that the student-athlete receives. § 12.4.1.2(a)-(d). The student-athlete could lose their eligibility for violating any of these provisions. Having an eligibility decision hinge on the knowledge of this rule by student-athletes and their employers is absurd.

¹¹² *Id.* at § 12.4.2.1. This has since been revised.

¹¹³ *Id.* at § 12.4.2.3.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at § 15.2.6.1.

¹¹⁶ See generally *id.* at § 12.5. They can promote charities, Olympic organizations, non-athletically related entities, and

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other minor promotions subject to stringent guidelines.

¹¹⁷ NCAA Bylaws, *supra* note 95, at Art. 12, § 12.5.2.3.2. See also § 12.5.2.1(a)-(b) (eliminating the eligibility of athletes who participated in promotions or advertisements prior to college enrollment) and § 12.5.2.2 (allowing for no forfeiture of eligibility if the advertisement or promotion was used without the athlete's permission and the student-athlete and his university take affirmative steps to stop the use of the advertisement); see Ukeiley, *supra* note 33, at 175 (preventing a local deli from serving sandwiches bearing a student-athlete's name because a student-athlete's name may not be used for commercial gain).

¹¹⁸ NCAA Bylaws, *supra* note 95, at Art. 12, § 12.5.4.

¹¹⁹ The University of Michigan led all universities with over \$5 million earned from royalties associated with athletic merchandise. See Timothy R. Hurst & J. Grier Pressly, *Payment of Student Athletes: Legal & Practical Obstacles*, 7 VILL. SPORTS & ENT. L.J. 55 (2000).

¹²⁰ NCAA Bylaws, *supra* note 95, at Art. 15, § 15.01.2.

¹²¹ *Id.* at § 15.01.3(a)-(d).

¹²² *Id.* at § 15.01.7.

¹²³ *Id.* at § 15.02.2.

¹²⁴ *Id.* at § 15.02.5.

¹²⁵ NCAA Bylaws, *supra* note 95, at Art. 15, § 15.1. See also § 15.1.1 (a)-(g) (calculation of the grant-in-aid includes employment during the school year; government grants; outside scholarships; gifts or athletic scholarships; gifts for athletic accomplishments; certain loans; and money from a professional sports organization received for athletics participation).

¹²⁶ *Id.* at § 15.3.3.1.

¹²⁷ *Id.* at § 15.3.3.1.1.

¹²⁸ *Id.* at § 15.3.3.1.2.

¹²⁹ See Schott, *supra* note 53, at 28 (during the 1980's, 57 out of 106 division I-A football schools were either sanctioned, censured, or placed on probation for NCAA rules violations).

¹³⁰ *Id.* at 32.

¹³¹ See *id.* The ancient Greek Olympians had to be profes-

sional athletes in order to compete.

¹³² See *id.* An 1852 Harvard and Yale crew race was the first intercollegiate competition to take place. A local business funded the race and awarded the winning team an expensive set of oars.

¹³³ National Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 198 n. 18 (1988).

¹³⁴ *Id.* at 187.

¹³⁵ *Id.* at 191-92; see also 42 U.S.C. § 1983 (2002).

¹³⁶ Tarkanian, 488 U.S. at 199.

¹³⁷ *Id.* at 194.

¹³⁸ *Id.* at 195-196.

¹³⁹ *Id.* at 194.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 198.

¹⁴² Note, *Sherman Act Invalidation of NCAA Amateurism Rules*, 105 HARV. L. REV. 1299 (1992); See also Hunter & Mayo, *supra* note 96; see also Lee Goldman, *Sports and Antitrust: Should College Students Be Paid To Play*, 65 NOTRE DAME L. REV. 206, 306 (1990).

¹⁴³ See Note, 105 HARV. L. REV. 1299, *supra* note 142.

¹⁴⁴ *Id.*

¹⁴⁵ See Gaines v. NCAA, 746 F. Supp. 738, 743 (M.D. Tenn. 1990); Jones v. NCAA, 392 F.Supp. 295, 303 (D. Mass. 1975).

¹⁴⁶ McCormack v. NCAA, 845 F.2d 1338, 1344 (5th Cir. 1988); Banks v. NCAA, 746 F. Supp. 850, 856 (N.D. Ind. 1990); United States v. Walters, 711 F.Supp. 1435, 1442 (N.D. Ill. 1989).

¹⁴⁷ 468 U.S. 85, 117 (1984).

¹⁴⁸ *Id.* at 104.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ See McCormack, 845 F.2d at 1344; see Banks, 746 F. Supp.

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at 856; see *Walters*, 711 F.Supp. at 1442.

¹⁵² NCAA Bylaws, *supra* note 95, at Art. 12, § 12.2.4.2.1 (adopted Jan. 11, 1994; became effective Apr. 16, 1997).

¹⁵³ *Id.* at § 12.1.1.1.4.3.1 (adopted Nov. 1, 2000).

¹⁵⁴ *Id.* at § 12.1.1.4.4 (adopted Jan. 10, 1991, and revised Apr. 27, 2000).

¹⁵⁵ *Id.* at § 12.1.1.3.1 (effective Sept. 1, 1997).

¹⁵⁶ *Id.* at § 21.6.7.5.

¹⁵⁷ See Braziel, *supra* note 1, at 99 (charging that the Student-Athlete Advisory Council is not an effective independent voice for student-athletes and suggesting the formation of an independent student-athlete organization).

¹⁵⁸ NCAA Bylaws, *supra* note 95, at Art. 21, § 21.6.7.5.3.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at § 21.6.7.5.4.

¹⁶¹ See Braziel, *supra* note 2, at 109 (the proposals included two that would have allowed student-athletes to earn additional money beyond the grant-in-aid).

¹⁶² 29 U.S.C. § 151 (2002).

¹⁶³ *Id.*

¹⁶⁴ *Radio Officer's Union of Commercial Tel. Union v. NLRB*, 347 U.S. 17 (1954).

¹⁶⁵ *Ford Motor Co. v. NLRB*, 441 U.S. 488, 495 (1979).

¹⁶⁶ 29 U.S.C. § 152(3) (2002).

¹⁶⁷ See *Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 168 (1971).

¹⁶⁸ *Firmat Mfg. Co.*, 255 N.L.R.B. 1213, 107 L.R.R.M. 141, 1980-1981 N.L.R.B. Dec. (CCH) P 18,037 (1985).

¹⁶⁹ *Boston Medical Center Corp.*, 330 N.L.R.B. 152 (1999) (finding that hospital interns, house staff and residents are employees even though they are also students); *New York University*, 330 N.L.R.B. 111 (2000) (ruling that most of university's graduate students are statutory employees).

¹⁷⁰ See generally William C. Baton, *Scholarship Athlete Injured During Varsity Football Game Was Not Held To Be A University Employee and Was Therefore Stripped of a Workers Compensation Award - Waldrep v. Texas Employers' Insurance Ass'n*, 21

S.W. 3d. 692 (Tex.App. 2000) *petition for review denied* (Tex. Nov. 16, 2000), 11 SETON HALL J. SPORT L. 155 (2001); Jason Gurdus, *Protection Off the Playing Field: Student-Athletes Should Be Considered University Employees for Purposes of Workers' Compensation*, 29 HOFSTRA L. REV. 907 (Spring 2001).

¹⁷¹ *University of Denver v. Nemeth*, 257 P.2d 423, 423 (Colo. 1953).

¹⁷² *Id.* at 424-26.

¹⁷³ *Id.*

¹⁷⁴ *State Compensation Ins. Fund v. Industrial Comm.*, 314 P.2d 288 (Colo. 1957).

¹⁷⁵ *Van Horn v. Industrial Accident Comm.*, 219 Cal.App. 2d 457 (Cal. Ct.App. 1963).

¹⁷⁶ *Id.*

¹⁷⁷ See Donald Paul Duffala, Annotation, *Student Athlete As 'Employee' of College or University Providing Scholarship or Similar Financial Assistance*, 58 A.L.R. 4th 1259 (2000).

¹⁷⁸ 444 N.E. 2d 1170, 1173 (Ind. 1983).

¹⁷⁹ *Id.* at 1170.

¹⁸⁰ *Id.* at 1171.

¹⁸¹ *Id.* at 1174.

¹⁸² *Id.* at 1173.

¹⁸³ *Alamo Foundation v. Secretary of Labor*, 417 U.S. 290 (1985).

¹⁸⁴ 336 N.W. 2d 224, 228 (Mich. Ct.App. 1983).

¹⁸⁵ *Waldrep v. Texas Employers Insurance Ass'n*, 21 S.W. 3d. 692 (Tex.App. 2000), *petition for review denied* (Tex. Nov. 16, 2000).

¹⁸⁶ In fact, identifying problems associated with the commercialization of intercollegiate athletics has been going on for decades without any real results. See Braziel, *supra* note 1 (noting that the 1929 Carnegie Foundation Study, the 1952 President's Report for the American Council on Education, George Hanford's 1974 Study for the American Council on Education, and the 1991 Knight Foundation Commission Study all had the following common conclusions: the imbalance between education and athletics is increasing, athletes need to receive a proper education, stu-

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dent-athletes are an important part of the university, institutional control must come from university presidents; and each warned against commercialization and professionalism).

¹⁸⁷ See Jenkins, *supra* note 15.

¹⁸⁸ Lee Barfknecht, *Selling of Sports Is Criticized: Knight Commission Report Says Colleges Shouldn't Run Sports Like 'Big Business'*, OMAHA WORLD HERALD, Oct. 3, 2001, at 1C.

¹⁸⁹ The Knight Commission is not without its backers. See Eric J. Sobocinski, *College Athletes: What is Fair Compensation?*, 7 MARQ. SPORTS L.J. 257 (1996) (concluding that reform in the intercollegiate athletics system must come from university presidents and not from within the NCAA).

¹⁹⁰ See Will, *supra* note 38.

¹⁹¹ Over 300,000 NCAA student-athletes participate in twenty-one different sports in different divisions and conferences. The large majority of these in non-revenue producing sports. See Brazier, *supra* note 1.

¹⁹² Title IX requires not only equal opportunities for participation but also equal treatments and benefits for athletes within collegiate programs. Stipend payments or expanded benefits to Division I men's basketball and football programs would not stand. Considering that women's basketball is the only women's sport that produces revenue for some universities, this could be a heavy price tag. See Hurst & Pressly, *supra* note 119.

¹⁹³ See C. Peter Golerpud, *1996 Spring Symposium: Issues Facing College Athletics: Stipends for Collegiate Athletics: A Philosophical Spin on a Controversial Proposal*, 5 KAN. J.L. & PUB. POL'Y 125 (Spring 1996). See also Schott, *supra* note 52 (establishing that powerhouses Nebraska, Auburn, and Michigan have all recently run a budget deficit).

¹⁹⁴ See Golerpud, *supra* note 193.

¹⁹⁵ *Id.*'s grant-in-aid package, this would add support to the student-athlete being considered an employee under the NLRB. Student-athletes would have the right to collective bargaining. Stipend payments, commercial endorsements, and frequency of practices would all be negotiable. See also Hurst & Pressly, *supra* note 119, at 70.

¹⁹⁶ See Golerpud, *supra* note 193. See also Hurst & Pressly, *supra* note 119, at 69-70. The payment of a stipend to college athletes would most likely result in the recognition of student-athletes by state workers' compensation laws. Division I football often results in debilitating injuries such

as paralysis and can involve expensive payoffs for sophisticated medical procedures and loss of future earnings in the athletic context. NCAA member institutions would most likely contract with a private insurance carrier or pay into the state workers' compensation fund.

¹⁹⁷ See Hurst & Pressly, *supra* note 119, at 73-75; See also Golerpud, *supra* note 194, at 130. The stipend would likely be taxable income. In that case, the university would have to pay federal withholding on each stipend check given to student-athletes.

¹⁹⁸ See Golerpud, *supra* note 193, at 129. Setting the stipend at a figure such as \$150, which would be fiscally responsible, could lead to liability under antitrust laws for price fixing.

¹⁹⁹ See Hurst & Pressly, *supra* note 120, at 76. Universities could be potentially liable for the misconduct or injuries caused by their student-athletes turned employees. See also Charlotte Rauche, *Can Universities Afford To Pay for Play? A Look At Vicarious Liability Implications of Compensating Student Athletes*, 16 REV. LITIG. 219 (Winter 1997).

²⁰⁰ Slosson, *supra* note 4.

²⁰¹ See KNOXVILLE NEWS SENTINEL, *NCAA Cancels Its Meeting With Student-Athlete Group*, Jan. 14, 2002.

²⁰² CHRONICLE OF HIGHER EDUCATION, *An Unlikely Pairing Aims To Reform College Sports*, Nov. 22, 2002, at 59. A list of some of the Drake group's proposals for reforming college athletics is available at <http://www.thedrakegroup.org/02props.html> (last viewed Mar. 13, 2002). See also ALLEN L. SACK & ELLEN J. STAUROWSKY, *COLLEGE ATHLETES FOR HIRE: THE EVOLUTION AND LEGACY OF THE NCAA'S AMATEUR MYTH*, (Praeger 1998) (Sack is a member of the executive committee of the Drake Group, and his book provides a good background of the group's views).

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