

Senior Honors Thesis

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**Should Division I Football and Men's Basketball Student-Athletes be Paid?**

An Historical, Economic, and Legal Analysis of the “pay for play” Debate in Intercollegiate  
Athletics

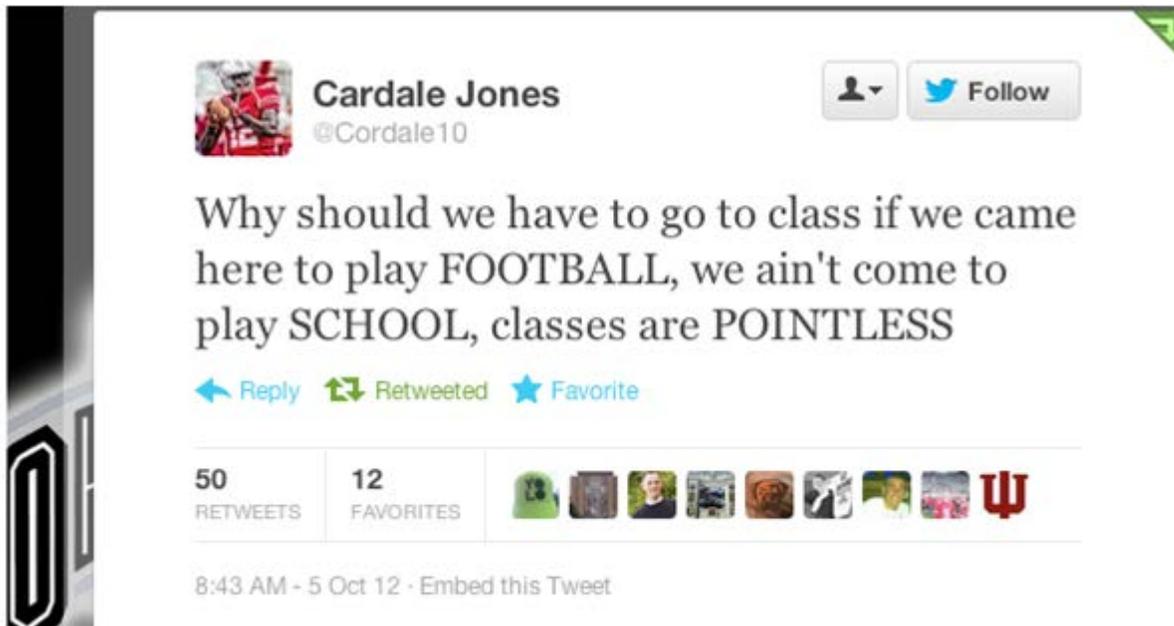
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-Cardale Jones, 2012, Quarterback of Ohio State University's football team that won the first ever College Football Playoff Championship

**“Championships (athletics) enhance the student-athlete experience”**

-Mark Emmert, 2011, President of the NCAA, discussing the value of intercollegiate athletics to amateur athletes across all divisions and universities of the NCAA.

**“A college wants students, it wants popularity, and above all it wants money and always more money.”**

-Carnegie Foundation Study, 1929

## Thesis Abstract

Division I men's college athletics has become a mainstay in American culture. On Saturdays in the fall, people come together to watch their alma mater or a regional football powerhouse play their rival for bragging rights, generating prime marketing opportunities for beer, car, and fast food companies and millions of dollars in advertising revenue for broadcasters. Every spring, the entire country is engulfed in "March Madness" as the NCAA basketball tournament unfolds. People root for their own teams and wait with anticipation to see which mid-major team upsets a major power to become the "Cinderella Story" of the tournament.

While amateur athletics emerged as a way to "enhance the educational experience of students<sup>1</sup>," over time it has become a significant profit-generating venture. Universities are making millions of dollars off of their football and basketball programs, yet the student-athletes do not receive any compensation aside from free tuition and other perks (for those lucky enough to receive scholarships). Should college athletes who generate millions of dollars for their universities, for large corporations, and broadcasters, be paid? In the past few years, many journalists, lawyers, labor specialists, academics, and college athletes have begun to wrestle with this question. The goal of this thesis is to provide some historical context for this debate.

This topic will give an historical viewpoint on the "pay for play" debate. It addresses the ethical compass of the NCAA as a governing body, the economics behind Division I Collegiate Football and Men's Basketball, and the challenge universities face recruiting and retaining the best athletes. The economics behind intercollegiate athletics is the driving force behind the "pay for play" debate. This research explores the history of television contracts with particular

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<sup>1</sup> Mark Emmert, 2011, President of the NCAA

universities, conferences, and the NCAA as a whole. In addition, it examines how money has challenged the ethical structure of the NCAA leading ultimately to the recent threat of unionization by college athletes, and the place of race and class in the debate over “pay for play”.

Despite the recent boom in popularity on this issue, “pay for play” existed within Division I revenue generating sports (Men’s Basketball and Football) for over a century. Moreover, this history is relevant for understanding why the option of compensating these particular student-athletes is a more realistic possibility today rather than any other time since the Sanity Code. This report culminates with an in-depth discussion of possible policy changes for the NCAA to adopt, but ultimately suggesting a new, original model: The Distribution Model. This thesis will help to lay the foundation for a fair and just decision to be made on the “pay for play” argument in intercollegiate athletics.

## Key Definitions

For the purpose of report, there are several terms that must be defined in order to provide the necessary background information required for understanding the comprehensive view of the “pay for play” debate. The following list is not exhaustive, but for the purpose of this report is complete.

- National Collegiate Athletic Association (NCAA) – The body governing colleges and universities who wish to be members in order to participate in their intercollegiate athletics championships. The NCAA sets academic and athletic standards for its member institutions to adhere for the purpose of competitive equality. There are three divisions (Division I, Division II, and Division III) which are based on school size, football program, stadium capacity, and athletic, competitive factors.
- Division I – The highest division within the NCAA. Within this division, Football and Men’s Basketball are the primary focus of revenue generation within collegiate athletics.
- Student-Athlete – A term used by the NCAA to define the participating individuals of each team and sport within the NCAA. Athletic participants are to be recognized and associated with as students first with their athletic endeavors as a supplement to their educational experience at their institution.
- Amateurism – A status for any athlete not competing at the professional level. Amateur status means the athlete is unable to profit specifically from an employer as a result of their performance. This is the main point of contention within the pay-for-play debate: whether student athletes at Division I revenue generating sports in fact amateur athletes.
- Commercialism – A prominence of maximizing profit. With regard to intercollegiate athletics, this emphasizes gaining the highest profits possible at the expense of student-athletes through “commercial” endeavors such as broadcasting deals, ticket, merchandise, and concession sales, and apparel deals<sup>2</sup>.
- Grant-In-Aid Scholarship – A scholarship given to student-athletes based on their athletic and academic abilities. A scholarship can range anywhere from a “full-ride” in which tuition, room and board, and books are paid for, to a partial scholarship which covers only part of tuition.
- Walk-On – A student-athlete at the Division I revenue generating sports level that chooses to play on the team without receiving any sort of scholarship. Walk-ons typically are not highly recruited nor are they typically making meaningful contributions on their respective teams in terms of competition.
- Stipend – A set amount of money a student-athlete could potentially receive in addition to a grant-in-aid scholarship. This is a proposed solution to the pay-for-play debate.

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<sup>2</sup> “Commercialism”, *College Sports 101*, Knight Commission

Currently, universities such as Northwestern implement an athlete specific funding opportunity where student-athletes in need of money to travel home, buy dress clothes, or extra money for textbooks. While this is not a direct stipend where the student-athletes can use the money however they choose, this is the closest thing to a student-athlete receiving a stipend.

- Salary – An agreed upon amount of money to be paid to someone for services performed. This is another proposed solution to the pay-for-play debate: universities negotiate contracts with student-athletes to receive compensation for their athletic services.
- Knight Commission – A committee organized by the NCAA to aid in determining the problem areas of governance within the NCAA’s structure and how to collaborate with member institutions to better follow the bylaws set forth regarding student-athletes’ status and recruiting compliance. From 1990 through 2011 there were three (3) separate Knight Commission reports, each of which dealing with the status of student-athletes and how the NCAA should foster a relationship with them.
- Booster/Runner – Professional sports agent or sports manager making illegal contact with, and providing benefits to, amateur athletes with the hope of gaining them as clients upon their entry into professional sports. Benefits include cash and gifts for the student-athlete or their family.
- National Labor Relations Board (NLRB) – Independent federal agency with the power to safeguard the rights of employees to organize and determine whether to have unions as a bargaining representative. In the context of this report, the NLRB acted as the deciding group in the Northwestern football players versus Northwestern University case.
- National Labor Relations Act (The Act) – Enacted in 1935 with the goal of protecting the “rights of employees and employers, encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy<sup>3</sup>”
- Title IX – A 1972 law passed to require gender equity for boys and girls in every educational program that receives federal funding. With regard to intercollegiate athletics, Title IX increased women’s participation in sports, granted more scholarships to female student-athletes, and increased opportunity for competition at a higher level of athletics<sup>4</sup>.
- “Power 5” Conferences – Within Division I, these approximately 60 schools within five (5) conferences, with the addition of other schools not in these conferences, make up the primary teams generating revenue. The conferences of the “Power 5” are: The Atlantic Coast Conference (ACC); Big Ten Conference (Big 10); Big Twelve Conference (Big 12); Pacific Twelve Conference (PAC 12); South Eastern Conference (SEC). In addition to these conferences and their institutions, the following universities demonstrate exceedingly high revenues in the revenue generating sports: Notre Dame; Brigham

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<sup>3</sup> National Labor Relations Act of 1935

<sup>4</sup> TitleIX.info, *Athletics Under Title IX*

Young University (BYU); Boise State University; Wichita State University; Virginia Commonwealth University (VCU); Butler University

- Bowl Championship Series (BCS) - In operation from 1998-2013, this was the selection system that created five post-season bowl games for the Top 10 Division I Football teams to play in at the end of the regular season. In addition to these five major games, there are 30 other bowl games for schools to compete in, which remained in effect despite the ending of the BCS era. Bowl games distribute cash payouts for participation, a major source of revenue<sup>5</sup>.
- College Football Playoff (CFP) – This replaced the BCS as Division I Football’s post-season system. In this new format, the top four (4) teams play a seeded playoff with the winners of the first two games playing in a Championship Game. This playoff format adds two extra bowl games which add greater exposure and monetary value for the universities that qualify for the playoff. There are still 35 other bowl games being played for universities that qualify for post-season play.
- March Madness – The NCAA’s Division I Men’s College Basketball tournament comprised of 68 teams. Every game of the tournament airs on CBS and Turner Broadcasting networks. The NCAA and these networks negotiate a television deal for the broadcasting rights of these games and in return the NCAA receives a substantial amount of revenue that is then distributed between its member institutions and for its own use.
- College Athletes Players Association (CAPA) – Organization formed to represent the rights of student-athletes at member institutions within the NCAA. During the Northwestern players versus Northwestern University case, CAPA represented the players to the NLRB.

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<sup>5</sup> *Tarnished Heisman: Did Reggie Bush Turn His Final College Season into a Six-Figure Job?*, 67

## Historical Context

The debate over whether or not college athletes in Division I revenue generating sports should be compensated began well before the creation of the National Collegiate Athletic Association (NCAA) in 1906<sup>6</sup>. This idea, however, was quickly dismissed because collegiate athletes are, and have always been considered, amateur athletes. The difference between amateur versus professional athletes is that professionals are part of a free labor market and are being paid to play therefore making it their livelihood. In amateur athletics such as Division I Men's College Basketball and Football, student-athletes are supposed to be students first and athletics are considered to "enhance the educational experience" rather than be considered the reason they attend the university<sup>7</sup>. A couple decades after the formation of the NCAA, intercollegiate athletics transformed from an educational experience for young men to entertainment for the masses and an opportunity for the NCAA and its member institutions to profit. Money flowing through Division I Men's Football and Basketball grew substantially and problems arose in the relationship between the NCAA, its member institutions, and external parties regarding how the money should be exchanged and who should be reaping the benefits from these young men<sup>8</sup>. A series of events including legal decisions, contract negotiations, and expanding commercial deals with broadcasting and apparel companies between 1950 and 1985 strained the NCAA's control over Division I football, but didn't cripple the profits gained by the NCAA due to its control over the Division I Men's Basketball Tournament (March Madness). During the 1990s this issue took center stage as the NCAA became much more profitable due to the exponential growth in popularity of college football and especially basketball as money making ventures. However, due

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<sup>6</sup> *In The Arena: The NCAA's First Century*, 30

<sup>7</sup> "The Myth of the Exploited Student-Athlete." *Journal of Intercollegiate Sport*, 139

<sup>8</sup> Division I Women's Basketball is the only women's intercollegiate where there is potential to make money, but it is limited to a small number of universities such as University of Connecticut, Notre Dame, Tennessee, and Maryland.

to the amateur status of student-athletes and the NCAA regulating bylaws, college athletes do not receive revenue from these ventures. One general side of the argument states that if these student-athletes are generating a tremendous amount of revenue, they should be entitled to a share of what they are producing (or at least to be taken care of if they are injured while doing an activity that generates income). The other, general side of the argument, however, deals with the idea that the majority of Division I Men's Basketball and Football players are attending these universities free of charge through grant-in-aid scholarships. In addition, many Division I athletes receive other benefits such as free food and athletic training<sup>9</sup>. The 2000s demonstrate a significant push by multiple parties to change the current structure of the NCAA and devise a better planned distribution for the billions of dollars generated by amateur athletes. Simultaneously, this era represents a direct challenge to the missions of universities from the Power 5 Conferences: are universities supposed to be profit making entities where athletic success and prominence is paramount or is the purpose of universities to educate young men and women and not compromise educational values for the sake of athletic endeavors?<sup>10</sup> In order to better understand this timeline, this report will proceed by examining the historical, economic, legal, and ethical dimensions of this debate beginning in the late 1800s through 2015.

### Early History

The obsession with intercollegiate athletics began in 1862 with the passage of the Morrill Land Grant College Act followed by the Morrill Act of 1890. Both acts allowed for the creation of colleges specializing in "agriculture and the mechanic arts" through grants of land provided by

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<sup>9</sup> *CAPA versus Northwestern University* NLRB Briefs

<sup>10</sup> Ultimately, it should be possible to be both, but the current structure is clearly not supporting this end.

Congress<sup>11</sup>. The goal of these acts was to stimulate sparsely populated areas with large, public institutions that would attract young men and women to learn professional skills. The military training in the curriculum of these land-grant colleges led to the establishment of the Reserve Officers Training Corps (ROTC). These universities came to be known as “A&M” colleges which heavily recruited the youth from all across the country by promoting the idea of a known future based on the curriculum. Clearly, the educational aspect of these universities was the most important value.

As post-Civil War industrialization and reconstruction took center stage, the desire of young men and women to attend college increased tremendously in order to have a place in a changing society. Universities, including the newly established A&M colleges, found themselves in a competition to attract these future leaders. Simultaneously, football began to catch on in American society and institutions such as University of Chicago, Yale, and Harvard pioneered the movement of creating teams that represented the institution. This was used as a recruiting tool to demonstrate the importance of enhancing the educational experience. As other universities added football programs, football grew in significance. It was no longer just a recruiting tool for attracting students; it became an important aspect of the community. Spectators traveled from far to socialize and watch this growing game every Saturday. Football games evolved into a staple of the American social experience to the point that team’s win-loss record truly mattered. By the 1890s, intercollegiate football transformed from a recruiting tool. It became an identifying aspect of an institution where the results of the team’s games helped determine how attractive the university was to prospective students.

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<sup>11</sup> "How the NCAA Has Used the Term “Student-Athlete” to Avoid Paying Workers Comp Liabilities." *National Law Forum*

This became evident when in 1892, the University of Chicago became the first university to hire a head coach from outside the university for its first season<sup>12</sup>. Former Yale standout Amos Alonzo Stagg became the head coach at the University of Chicago with one objective given to him by the first university president William Rainey Harper, to “develop teams to send around the country and knockout all other colleges.” Stagg’s salary was twice that of the average professor’s salary at the time<sup>13</sup>. Harper understood that winning football games meant attracting a larger following which would in turn generate a higher desire for people to attend his team’s games, leading to a revenue source for a new university. Football was no longer about attracting students for the education, rather it served a new purpose to demonstrate power and generate a profit. Continuing with this trend, the Yale vs. Harvard game of 1894, the two most prominent programs at the time, generated \$119,000 in ticket and concession sales, which when adjusted to today’s numbers would total \$3 million<sup>14</sup>. Clearly by the turn of the century, intercollegiate football was not only a staple of American society, but it served as a means of revenue generation on a consistent basis.

### Creation of the NCAA and Progressive Ideals

The creation of the NCAA in 1906 was a direct result for the need of increased player protection in the extremely dangerous athletic practices of the time. The initial, loosely molded committee formed by President Theodore Roosevelt simply changed the rules of collegiate football to prevent injury by requiring participants to wear more protective gear and to entice spectators by adding more rules to incorporate exciting plays such as deep passes and field

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<sup>12</sup> *It's Time To Pay College Athletes*, Time, 38-39

<sup>13</sup> "The Shame of College Sports." *Atlantic*

<sup>14</sup> "The Myth of the "Student-Athlete"" *New York Times*

goals<sup>15</sup>. President Roosevelt used his influence to create the NCAA as an organization to challenge the too powerful Intercollegiate Football Rules Committee (Rules Committee) that for the previous 40 years refused to alter the rules of the game due to the ease with which it could control intercollegiate football<sup>16</sup>. Fearing this organization for becoming too powerful and recognizing the need for change in intercollegiate football given its growing popularity amongst its participants and spectators, President Roosevelt directly created the NCAA to challenge the Rules Committee and ultimately end its reign as the governing body of intercollegiate football. President Roosevelt saw the NCAA as a governing body that could generate excitement for the spectators but more importantly promote the health, well-being, and educational experience of sport for the participants first and foremost.

President Roosevelt saw the NCAA as a means to not only govern intercollegiate football, but to also disseminate educational and societal values through sport. One of the key elements of the Progressive Era and progressive politics of the early 20<sup>th</sup> Century was the eugenics movement, which emphasized the strengthening of the human stock mentally and physically in order to build men of stronger character. The aims of exercise in the form of sport in this movement were “hygienic and educative” with the ultimate goal of “improving the nation’s health...to create strong, virile and resolute leaders with moral courage”<sup>17</sup>. President Roosevelt, when creating the NCAA, stipulated that the goal of intercollegiate athletics was to achieve this end. Similar to his sports of hunting and horseback riding, intercollegiate athletics, especially football, were to be an educational tool to improve the individual that participates through lessons of teamwork and discipline while becoming positive influences and leaders within their communities.

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<sup>15</sup> "Theodore Roosevelt's Role in the 1905 Football Controversy," *Research Quarterly for Exercise and Sport* 717

<sup>16</sup> "Theodore Roosevelt's Role in the 1905 Football Controversy," *Research Quarterly for Exercise and Sport* 720

<sup>17</sup> "Theodore Roosevelt's Role in the 1905 Football Controversy," *Research Quarterly for Exercise and Sport* 721

As universities throughout the United States saw the benefits of joining a regulating organization designed to place student-athletes' interests first while supporting the progressive culture and politics, the NCAA was formally incorporated 1921<sup>18</sup>. In order to help dissipate the responsibility of enforcing rules from the young organization, the NCAA encouraged universities in the various regions of the country to create conferences based on location and proximity to other universities which would report directly to the NCAA<sup>19</sup>. By 1925, the NCAA oversaw six conferences with approximately 112 member institutions, all with the goal of utilizing athletics as a means to further educate and develop student-athletes.

In order to follow through on President Roosevelt's desires, a significant contribution by the NCAA to its member institutions in these formative years was the mandate that all universities associated with the NCAA must provide physical education classes as part of the educational experience. Students had to devote part of their educational endeavors to physical exercise to be taught by coaches of the intercollegiate teams. The purpose of this mandate was to provide a broader educational experience due to the lessons sports taught that students would not receive sitting in a classroom. Students that were members of the various intercollegiate teams did not have the same physical education requirements as their participation on their respective teams served as this learning experience.

The growth of the NCAA in terms of its member institutions demonstrated the reach of collegiate football. The 28 year period from 1920-1948 saw collegiate football reach a new level of revenue generation. This was a time frame when collegiate athletics became more popular twofold: as a way for communities to gather and at a time when the American population needed sports as something to rally around given the conclusion of World War I, issues of segregation,

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<sup>18</sup> Mark Emmert, "History of the NCAA," *NCAA Official Website*, National Collegiate Athletic Association, accessed November 4, 2015, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/History>

<sup>19</sup> *In The Arena*, 60

the Great Depression, among many transformative and challenging ideals. Almost over-night, collegiate football players and coaches became role models for the way they represented their institutions and their dedication to providing a team that was committed to winning football games.

### The Popularity of Intercollegiate Athletics Grows

The introduction of the radio fueled the public interest in collegiate athletics, namely basketball and football. Football was the major draw and had its first aired game in 1922<sup>20</sup>. Radio sales during the 1920s skyrocketed from \$60 million in 1922 to more than \$842.5 million in 1929, an increase of 1,300 percent<sup>21</sup>. The NCAA, as the overarching representative on behalf of its member institutions, began to negotiate with radio stations for the rights to broadcast games. The NCAA would receive a monetary reward and distribute the money between the institutions featured in the game and itself for the purposes of running the organization. The growth of game broadcasts was nearly as enormous as the increase in radio sales, and by the end of the 1920s, the NCAA altered its revenue sharing plan to distribute money earned from all games broadcasted in some portion to all member institutions and to itself. In addition to the radio, newspapers also expanded their coverage of college sports to include features on teams, players, coaches, and matchups in both football and basketball. This allowed the American public to satisfy its desire for college athletics, especially football, more constantly.

As the popularity of collegiate football skyrocketed and the NCAA had not established any sort of regulatory rules in terms of equal competition, universities attempted to gain any edge they could over their opponent. One method was for universities to build stadiums on their

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<sup>20</sup> *In The Arena*, 61

<sup>21</sup> "The Shame of College Sports." *Atlantic*

campuses which could hold thousands of spectators. Students and community members would attend games and cheer on their team in order to help them win while continuing to promote a united front based on athletic support. Initially, universities like Harvard, Yale, and University of Chicago invested thousands of dollars (millions translated to today's numbers) on constructing massive stadiums for their teams. Within months, an arms race across the country took place with almost every member institution investing in stadiums<sup>22</sup>. Stadiums had the impact university Presidents and Athletic Directors dreamed of, as home-field advantage became meaningful in the outcome of games. While the stadiums helped with game outcomes and promoting their teams, there was another underlying outcome that universities nationwide realized: charging admission to the games, given the popularity of the sport, could serve as a revenue stream for the university, separate from the NCAA's distribution.

This revenue source was imperative due to the more significant competitive advantage universities exploited during the early years of the NCAA: paying players. In a 1929 Carnegie Foundation report entitled "American College Athletics," 81 out of 112 member institutions used booster programs, supported by alumni and fan donations, and open payrolls in order to attract athletes, many of which didn't have to be full-time students at the university<sup>23</sup>. By 1939, college football deviated from the educational purpose the NCAA hoped for. Athletes, such as freshmen on the University of Pittsburgh football team, would strike because other players were paid more for their services<sup>24</sup>. College football was becoming a business, not an educational experience. As radio broadcasts, ticket prices, and the newly utilized concession and memorabilia stands generated more revenue for universities, players demanded a higher portion. Displeased over this growing issue of losing revenue to players, member institutions looked to the NCAA for support

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<sup>22</sup> "Too Much Football," *University of Michigan College of Literature, Science and Arts Magazine*

<sup>23</sup> Andrew Carnegie Foundation Study, 1929

<sup>24</sup> "The Shame of College Sports." *Atlantic*

on the pay-for-play debate. The irony of this situation is clear: before World War II, universities paid for the services of athletes and after realizing they would lose revenue for paying student-athletes more money as the school performed better, they asked the NCAA to fix this and re-emphasize an educational approach to intercollegiate athletics.

### The 1950s: A New Era for Intercollegiate Athletics

Thus, in 1948, the NCAA passed its first major piece of regulatory legislation entitled the “Sanity Code”. The major articles of this act removed concealed and indirect benefits for college athletes; money would only be rewarded to full-time students in need of financial support for education, and any violation of these rules would result in expulsion from the NCAA and competitive sports. Thus began the expansion of the NCAA twofold, in its control over member institutions and in the number of institutions submitting to its rules and procedures. Due to this increasing membership and need for regulation on competitive equality, the NCAA established multiple subcommittees, such as the General Council, Infractions Committee and the Enforcement Committee, to attempt to provide universities with guidance in many facets of collegiate athletics, such as improving and stimulating collegiate athletics, player safety, academic leadership, rules for keeping institutional control, and university financial stability<sup>25</sup>. Furthermore, the growth of the NCAA and its power over hundreds of institutions nationwide required an overarching organization to determine and make operational the specifics of the relationship between the NCAA and its university members. Thus, in 1952, then President Walter Byers, hired in 1951, established an NCAA National Headquarters along with the first

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<sup>25</sup> National Collegiate Athletic Association, NCAA Division I Manual, (2014): Article 2: 3-5.

written Constitution. Byers thus created a structure emphasizing the various, aforementioned unwavering levels of emphasis for collegiate athletics<sup>26</sup>.

The hiring of Byers and the establishment of a national headquarters was only the beginning of a defining decade for intercollegiate athletics. In 1952, Byers and the Infractions Committee established the power of the NCAA by suspending the University of Kentucky Men's Basketball program for the season as well as suspending widely popular and talented Coach Adolph Rupp for recruiting and academic violations<sup>27</sup>. The decision to suspend the most profitable and successful program in men's basketball demonstrated the NCAA's commitment to promoting competitive equality and an academic standard for all students. While this enforcement was a positive step for the NCAA, its newly found credibility and ethical standard would be questioned in the first major legal suit brought against the NCAA.

Ray Dennison was a football player for the Fort Lewis A&M Aggies who tragically died from a head injury sustained during his collegiate playing career. After his death, his wife filed for workmen's compensation death benefits on the grounds that Dennison's football scholarship made the fatal collision a "work-related" accident<sup>28</sup>. As a defense, Byers and the NCAA created the now commonplace term "student-athlete" which soon became "embedded in all NCAA rules and interpretations"<sup>29</sup>. This new term was ambiguous in that college athletes were not students at play nor were they simply athletes in college. Defining them as "high performance athletes" allowed forgiveness of not meeting the same academic standards as the rest of the university population, while being students meant they were not qualified to be compensated beyond the

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<sup>26</sup>Mark Emmert, "History of the NCAA." NCAA committees are filled by representatives of member institutions. This includes Athletic Directors, Associate Athletic Directors, and other members of athletic departments.

<sup>27</sup> *Onward to Victory: The Crisis That Shaped College Sports*, 12

<sup>28</sup> "How the NCAA Has Used the Term "Student-Athlete" to Avoid Paying Workers Comp Liabilities." *National Law Forum*

<sup>29</sup> "The Myth of the Exploited Student-Athlete," *Journal of Intercollegiate Sport*, 141

cost of their education. The Colorado Supreme Court sided with Fort Lewis A&M and the NCAA that Dennison's wife was not eligible for benefits because the college was "not in the football business" and "since the evidence does not disclose any contractual obligation to play football, then the employ-employee relationship does not exist"<sup>30</sup>.

This landmark decision cemented the position of student-athletes as amateurs in the view of the NCAA and the institutions they represented. As amateurs, student-athletes were not entitled to compensation for their athletic successes or revenue they generate. The relationship between the NCAA and its student-athletes, as a result of this case, became one of almost voluntary activity since "the college did not receive a direct benefit from the activities"<sup>31</sup>. However, student-athlete transformed into something more. The NCAA used the term student-athlete as a mantra for promoting education, specifically for these particularly involved students. The NCAA championed the ideals of sportsmanship, discipline, teamwork, and hard work as part of individual development. Student-athletes became the model of developing an upstanding individual by enhancing the academic experience through athletics. Even today the NCAA maintains committed to finding new and innovative ways to incorporate athletics as an educational experience for student-athletes. While many view the Dennison decision as a means for the NCAA to legally avoid conflict, the decision additionally aided in creating a set of values the NCAA holds its student-athletes to, a higher standard than all other collegiate students.

The second significant development of the 1950s was the published work of Allen Jackson entitled "Too Much Football." As a member of the University of Michigan football program, Jackson detailed his schedule during an average semester while in season. Jackson tallied that with six courses, he spent a total of 810 hours going to class, studying, taking exams,

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<sup>30</sup> "Fort Lewis' First Student-Athlete." *The Durango Herald*

<sup>31</sup> "Fort Lewis' First Student-Athlete." *The Durango Herald*

and doing anything else that related to his education. He then totaled his time devoted to football including games, practices, meetings, team meals, and strength and conditioning sessions to 1,350 hours, excluding time spent in the film room<sup>32</sup>. Jackson identified an enormous problem facing institutions in the major conferences: there was too much football and an emphasis on winning at the expense of education and well-being creating a “distortion of the sporting spirit” focused on competition for amateurs and enhancing the educational experience. This testimony demonstrated the lofty expectations of young men who were supposed to be students first. While the NCAA and universities preached educating the youth as its primary goal with the value of sports as a supplement to that education, it became clear that there was more to intercollegiate sports than education. Stadiums were renovated to fit more people, prices for tickets, concessions, and memorabilia increased, and exposure on the radio lauded continuous growth in revenue. This however, was just a stepping stone for the issues of the 1950s.

The final defining moment of the 1950s was the release of the television to the American public. The 1950s brought the television to forefront of American society. Photographers such as Lee Friedlander and Robert Frank traversed America capturing photos of families huddled around their 10 inch television screens. Televisions served not only as a means to keep up to date with news and watch entertainment programs, but also a marker of a families status. Every household needed a television screen since it was the next transcendent invention<sup>33</sup>.

With the “television revolution” came a new means of providing intercollegiate athletics to a broader audience. Initially, however, the NCAA General Counsel and representatives from member institutions believed broadcasting football and basketball games through this medium would hurt universities. People would now stay at home where they didn’t have to pay for

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<sup>32</sup> "Too Much Football," *University of Michigan College of Literature, Science and Arts Magazine*

<sup>33</sup> Professor Linda Benedict-Jones, Carnegie Mellon University, 2/17/15

anything thus taking away steady revenue and potentially hurting the united community aspect universities still sought to instill. At the 1951 NCAA Convention, representatives from member institutions voted 161-7 in favor of outlawing television deals with the exception of a few licensed games each season by the NCAA staff<sup>34</sup>. Thirty years later, this caveat would prove to be the defining factor of the NCAA's relationship with its member institutions and entertainment companies while simultaneously being forced to relinquish a substantial revenue stream.

One year later, the first television contract negotiated between the NCAA and the National Broadcasting Company (NBC) established a one-year agreement to broadcast a "carefully restricted football package" for \$1.14 million<sup>35</sup>. As part of the NCAA's revenue-sharing plan with the member institutions, 60 percent of the proceeds would be absorbed by the NCAA, while the remaining 40 percent would be divided up amongst the Division I football programs<sup>36</sup>. As the NCAA realized that the more games it allowed to be broadcast meant more money flowing into their organization, the "carefully restricted football package" grew to include more games and more games featuring better teams. By 1962, the television deal with NBC was worth \$3.1 million for the season, higher than the National Football League's (NFL) television deal at the time.

The NCAA and its member institutions were pleased with the profits from these television deals. The NCAA used its portion of the revenue to set up an infrastructure, hire employees, and improve its national headquarters. Universities used their share of the profits to fund educational programs and other intercollegiate sports such as soccer, track and field, tennis, volleyball, and swimming. While the revenue universities gained from home football games, the television deals with NBC, and radio deals with local and national stations, college football

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<sup>34</sup> "The Shame of College Sports." *Atlantic*

<sup>35</sup> "NCAA Sanctions: Assigning Blame Where It Belongs." *The American Review of International Arbitration*

<sup>36</sup> "The Shame of College Sports." *Atlantic*

undoubtedly served the purpose as chief provider for universities<sup>37</sup>. The more success a program sustained the greater likelihood it would be on television and gather support from a larger fan base. A larger fan base increased the university's popularity which drove the desirability of attending that institution higher. "A college wants students, it wants popularity, and above all it wants money and always more money."<sup>38</sup>

### Media Expansion

In the era from 1960-1984, television ratings for college football rose exponentially along with advertising revenue for television<sup>39</sup>. The primary factor of this was the Sports Broadcasting Act of 1961, which blacked out professional football from television on Saturdays and in return the NFL received an antitrust exemption<sup>40</sup>. Saturday became synonymous with college football. The combination of this act with increased ratings and revenues created a positive feedback loop where larger negotiated-upon contracts led to a higher revenue stream for the NCAA and member institutions, which led to even larger contracts being negotiated once the previous one expired and to an even larger revenue stream, and so-on. By 1984, member institutions questioned the purpose of the NCAA. In their view, the NCAA reaped a larger benefit of what the universities sent out on Saturdays. Further, the revenue sharing plan in place limited the money coming to major institutions since smaller Division I schools also received money. Revenue was dispensed among the 1,200 institutions similar to the revenue sharing plan in place in the NFL. An anonymous University of Texas official expressed these frustrations in 1980

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<sup>37</sup> *It's Time To Pay College Athletes*, Time, 39

<sup>38</sup> Andrew Carnegie Foundation Study, 1929

<sup>39</sup> "The Shame of College Sports." *Atlantic*

<sup>40</sup> The passage of this law, clearly not supporting anti-trust statutes, is an issue in and of itself, but falls outside the scope of this thesis.

saying they (Texas) “didn’t want Hofstra telling Texas how to play college football”<sup>41</sup>. Always looking for more money, the University of Oklahoma, supported by numerous other institutions from the major conferences, filed suit against the NCAA to eliminate it as the middleman and be able to negotiate directly with the growing number of entertainment companies wanting to broadcast college football.

Saying the 1984 NCAA vs. Board of Regents of Oklahoma University (NCAA v Regents) decision changed the landscape of college football dramatically does not come close to representing its impact. The Regents of Oklahoma University filed suit against the NCAA on the grounds that its negotiation with entertainment companies for the right to broadcast games was a restraint of free trade<sup>42</sup>. The Supreme Court ultimately struck down the most recent NCAA football television contracts, deeming them illegal restraints of trade. Member institutions could now negotiate independent of the NCAA and would not be forced to share revenues with smaller Division I member institutions (Regents decision). The exclusive package of games for broadcast the NCAA negotiated with NBC caused this restraint of trade suit. The NCAA’s strained relationship since that original contract continued to boil until this Regents decision. This report will go into greater detail on the specific ramifications of this decision in the legal analysis and “big-business” discussions.

While universities were now free to negotiate their own deals, it became clear that competition amongst member institutions, especially in the Power 5 Conferences, for broadcasting opportunities and national exposure became almost as important as the game itself. The Power 5 Conferences already dominated the television landscape with different teams

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<sup>41</sup> "NCAA Sanctions: Assigning Blame Where It Belongs." *The American Review of International Arbitration*

<sup>42</sup> "NCAA Division I Athletic Departments: 21st Century Athletic Company Towns," *Journal of Issues in Intercollegiate Athletics* 170

playing on television each week. With the ability to negotiate their own deals, the same teams could be broadcasted every week, thus generating more popularity and more revenue for the university. Prospective recruits yearned to attend these schools for the chance to play on national television at the hopes of being more easily recognized for a potential career in the NFL. The more these schools obtained the top recruits, the better their programs became, the more they were placed on television, and the higher the chances of success increased. Member institutions, knowing the importance of recruiting, wanted to maintain their relationship with the NCAA to police and control amateurism and the leak of illegal funds toward incentivizing players, while also promoting the importance of the student-athlete as a student before an athlete.

These developments put the NCAA in a difficult position. Although no longer having an invested stake in college football, they had to now police conferences and institutions that would do anything possible to make a larger profit than their competitors. Furthermore, they needed to continuously promote the student-athlete as an amateur who attended school for the educational experience. Byers retired in 1987, citing that “greed is gnawing at the innards of college athletics” and the NCAA would have a tremendously difficult time with monitoring, enforcing, and penalizing institutions trying to gain a competitive advantage<sup>43</sup>. He was not wrong. The NCAA would have its hands full in attempting to monitor big-business.

Beyond this competitive advantage, money created a severe imbalance between academics and athletics. Commercialism placed the burden on football programs to provide a high quality and highly entertaining product every Saturday. In order to achieve this standard, student-athletes increasingly sacrificed their studies for successes on the football field given the

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<sup>43</sup> "NCAA Division I Athletic Departments: 21st Century Athletic Company Towns." *Journal of Issues in Intercollegiate Athletics*, 168

demands<sup>44</sup>. Furthermore, the incentive to play well manifested into relationships with program boosters who would supply athletes with “gifts” in the form of money, furniture, a car, or the like with the condition that these athletes would pay them back once they made it professionally or obtained a significant amount of money. As Byers predicted, big-business and commercialism were taking over college sports. What no one saw coming, however, was that they were redefining the purpose, value, and ethics of universities nationwide, all at the expense of amateurs.

Despite losing the television revenue from collegiate football, the NCAA still had multiple sources of revenue. In the late 1980s, the NCAA created “NCAA On Demand” in which DVDs containing highlight reels, significant games, and commentary from historic decades in college football, basketball, and even the smaller sports, were sold to viewers directly to relive the “magical moments” in NCAA history<sup>45</sup>. Another source of revenue came from the NCAA, through IMG College, allowing Electronic Arts: Sports (EA Sports) to produce video games based on college football and men’s college basketball<sup>46</sup>. Since the games were based on amateurs, their names and personalities could not be used, only their likenesses were acceptable. While initially this served as a positive long-term solution, the NCAA would find itself struggling immensely to defend its rationale for profiting off of student-athletes who were forced to sign away their rights and follow NCAA rules to maintain amateur status and not profit from their athletic endeavors.

The most substantial revenue stream flowing into the NCAA after the departure of college football television deals was the NCAA March Madness Men’s Basketball Tournament. March Madness became a licensed term for the NCAA in 1996 after numerous legal battles since

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<sup>44</sup> *The Cartel: Inside the Rise and Imminent Fall of the NCAA*, 57

<sup>45</sup> "The Shame of College Sports." *Atlantic*

<sup>46</sup> "The Shame of College Sports." *Atlantic*

its first utterance during tournament coverage in the 1980s. Prior to the 1980s, March Madness described the once a year basketball tournaments taking place at the high school and collegiate level since the 1930s in which numerous teams nationwide competed and unified a nation, especially in times of crisis such as World War II<sup>47</sup>. The NCAA is a long-time partner of CBS and Turner Broadcasting when it comes to airing the tournament. This tournament doesn't fall under the Regents decision because March Madness is an NCAA sanctioned championship, meaning a committee of member institutions of the NCAA is responsible for determining which teams will participate. During the regular season, universities negotiate their own deals with broadcasting companies like they do for football, but March Madness belongs to the NCAA<sup>48</sup>. The revenue from the contracts negotiated with CBS and Turner Broadcasting go directly to the NCAA, which then utilizes a similar revenue sharing plan to the type used for football before Regents.

The underlying theme of this historical analysis is the exploitation of student-athletes by Division I schools. Whether dealing with the NCAA or their universities, student-athletes are held responsible for creating a product both to consume (watch on television, attend the game, listen on the radio) and to compete at the highest level to achieve success and a winning program. These young men are the cause of these revenue streams, yet they are not entitled to receive a portion of the earnings due to their amateur status. Universities and the NCAA have continuously emphasized the importance of athletics as enhancing the educational experience. If the educational experience is the purpose of a university and the NCAA, why then are student-athletes devoting significantly more time to their sport than to their studies<sup>49</sup>? The answer is

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<sup>47</sup> "March Madness: Keeping Society Sane Since 1908," *NPR*

<sup>48</sup> At some point in the future, this could change and become a system similar to the College Football Playoff given the potential growth in profits for member institutions

<sup>49</sup> This will be addressed in the legal section

simple: the revenue generating sports of collegiate athletics are generating such insane amounts of revenue that support athletics departments in multiple facets. Without this revenue, the ability for universities to support the non-revenue-generating sports would diminish substantially. Young men that are members of revenue generating sports teams in the Power 5 Conferences provide this revenue, yet because of their status as amateurs are not entitled to reap the same benefits as their overseers.

## **Revenue Generating Sports as “Big Business”**

Perhaps the most significant implication of the Regents decision was the diminished opportunity for non-elite Division I football programs. With universities negotiating their own deals and not sharing revenue with the smaller schools, many universities could no longer compete. Smaller schools that were once dependent on football revenues from the NCAA, such as the Ivy League schools and non-Power 5 conferences, no longer had the same revenue stream. These universities generally decided to focus on education and recruiting students to fit their academic standards or academic specialties. Ivy League schools affirmed their 1945 Ivy Group Agreement to not offer athletic scholarships and only give financial aid or scholarships to student-athletes that qualified based on their academic merit. In order to keep the sacredness of the educational experience, Ivy League schools did not form major television deals. Athletics truly served their purpose as a means of enhancing the educational experience. By the Ivy League schools sticking to their values, they solidified their position as not being able to attract the top athletic recruits thereby becoming the model of how intercollegiate athletics played a role in the lives of student-athletes. With respect to non-Power 5 conferences, these universities simply didn't possess the same ability to attract top recruits given their lack of premier athletic facilities coupled with non-successful past programs. These universities were unable to keep up in the arms race of collegiate athletics, thereby rendering them non-competitive with the athletic elite in these major sports.

The other ramifications of the Regents decision are still materializing in today's intercollegiate athletic landscape. The overarching issue was the removal of competitive equality for Division I football and ultimately basketball programs. The Power 5 were able to separate themselves from the rest of Division I football because of the money stream generated from their

television contracts. With an increased money stream, Power 5 universities were able to spend larger amounts of money on stadium renovations, practice facilities, strength and conditioning facilities, and film-room technology to give their schools an edge. These advantages not only helped the current team in preparing for their games, but attracted recruits who desired an opportunity to play meaningful football, be recognized, and hopefully make the NFL.

The investment of universities into their athletic programs helped launch another revenue stream: alumni donations. When a university demonstrates its investment into the betterment of its institution, alumni are more willing to support through monetary means. For many alumni, regardless of which university they attended, athletics played a pivotal part in their collegiate experience. Alumni attended their university at a time when collegiate athletics was growing and rallying around a football or basketball team was a way of showing school spirit and community values. Alumni donations to athletic programs, whether for grant-in-aid scholarship support, building renovations, or general donations, began to soar as universities obtained their own television contracts. Especially at the Power 5 Conferences, alumni donations increased dramatically to support teams that were consistently performing highly and reaching postseason play<sup>50</sup>.

The Regents decision also drastically changed the importance of coaches in collegiate athletics. Head coaches of football and basketball programs held the responsibility of creating programs that centered on high performance which led to higher revenues. High performance meant, in the case of college football, reaching a postseason bowl game. Beyond demonstrating program success on the field, reaching a bowl game meant a substantial payday (Appendix 2). Charged with such a demanding order, coaches were rewarded with contracts larger than ever. Since the Regents decision, contracts of football head coaches in the Power 5 Conferences rose

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<sup>50</sup> *The \$6 billion heist: Robbing college athletes under the guise of amateurism*, 45

750 percent, with an average salary just over \$2 million while the average salary of a basketball coach reached \$4 million<sup>51</sup>. These numbers, while shocking at first, are minuscule compared to the value of Power 5 Conference football programs (Appendix 1).

Where else is the money coming from? First, television deals saw tremendous growth after the Regents decision. Conferences like the Pacific 12 Conference (PAC 12) negotiated a 12 year, \$3 billion contract to have games broadcast on Fox Sports and ESPN<sup>52</sup>. The University of Texas created its own television station, “Longhorn Network,” where viewers could pay for a subscription to continuously broadcast reruns of football games, videoed practices, interviews with players and coaches, and historical analysis of Texas football teams. Stations like ESPN and Fox benefit greatly from airing these games, as they gain a broader audience and are able to generate revenue by enticing businesses nationwide to advertise on their program during the game broadcasts. While CBS and Turner Broadcasting paid \$771 million for broadcasting rights to March Madness, they were able to charge premium rates for advertising spaces, thereby making back the amount they paid and earn a profit.

Second, as collegiate athletics continued to generate wide audiences, apparel companies wanted in. Companies like Nike, Adidas, Under Armour, and Reebok understood that the “college athlete is the most available publicity material” and what better way to promote a brand than to have these young men wear their gear<sup>53</sup>. Nike is commonly synonymous with the University of Oregon while Ohio State University sports Adidas at a price tag of \$11 million per year<sup>54</sup>. Apparel companies jumped in at the opportunity to promote a brand for a successful

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<sup>51</sup> "The Shame of College Sports." *Atlantic*

<sup>52</sup> *It's Time To Pay College Athletes*, Time, 40

<sup>53</sup> *It's Time To Pay College Athletes*, Time, 41

<sup>54</sup> "The Shame of College Sports." *Atlantic*

program, and universities couldn't turn down another multi-million dollar deal at the expense of its student-athletes.

The third major source of revenue comes from increased prices of merchandise, concessions, and admission to games. Since the beginning of collegiate athletics, college football especially served as a social endeavor for the community. Today, the average stadium at a Power 5 Conference seats approximately 70,000, with virtually every game recording a sell-out capacity. Ticket prices constantly rose drastically over the last half-century, leading to today's astounding prices. During the 2012-2013 season, Texas A&M resale tickets sold for between \$375-\$5,000 per ticket<sup>55</sup>. With respect to merchandise, the most commonly purchased item in that same season was Johnny Manziel's number 2 jersey which sold for \$64.75, while the normal jersey price across the Power 5 sold for anywhere between \$30.00 and \$70.00. In total, Texas A&M sold \$72 million of retail, a 20 percent increase from the previous season and continuing with a trend of increased retail sales<sup>56</sup>. It's clear to see that between these major streams of revenue how Texas A&M's football program is valued at approximately \$278.5 million (Appendix 1).

### The Knight Commission: An Attempt to Realign Intercollegiate Athletics with Education

During these expansive past decades, the NCAA strived to live up to the Regents decision to police violations of amateurism and promote the student-athlete as a student first and foremost that played sports to enhance the educational experience. Recognizing the rapid growth of television contracts and money flowing through universities, the NCAA created the Knight Commission in 1990 to aid in controlling amateurism amidst major money generation and other

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<sup>55</sup> This includes tickets sold back to the University for resale if a fan could not attend the game, tickets sold through a ticketing website from fan to fan, or through scalping

<sup>56</sup> *It's Time To Pay College Athletes*, Time, 39

intercollegiate athletics scandals. The Commission was comprised of University Presidents and Chancellors (both past and present), Conference Commissioners, college sports writers and analysts, coaches, and former players with the goal of guiding and refocusing intercollegiate athletics programs to operate “within the educational mission of their colleges and universities.”<sup>57</sup>

The Knight Commission wrote its first report to the NCAA in 1991 stating the NCAA should focus on “keeping faith with student-athletes” in order to demonstrate they were not being ignored amidst the revenue generation taking place<sup>58</sup>. By focusing on the student-athlete’s interests, the Commission believed the NCAA would diminish corruption in the form of boosters and granting illegal funds. In 2001, the Knight Commission released its second report stating a failure to regulate this corruption resulting in “growth of corruption, not diminished”<sup>59</sup>. This second report called for the NCAA and its member institutions to reconnect intercollegiate sports with higher education, essentially challenging both parties to remember what the purpose of athletics at a university is. Then in 2011, the Knight Commission released its third and final report, once again recognizing the business of college sports continued to grow, to the point that the Power 5 Conferences were becoming their own sovereign league<sup>60</sup>. The Knight Commission called for the NCAA to put a hold on these conferences, meaning restrict their ability to participate in other NCAA sanctioned events if they did not change their practices. In theory, this was a brilliant idea. The Knight Commission continues their work today like an advisory board to the NCAA. But how could the NCAA monitor and enforce these ideals when they were just as guilty of revenue exploitation?

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<sup>57</sup> Knight Commission on Intercollegiate Athletics

<sup>58</sup> *Knight Commission on Intercollegiate Athletics*

<sup>59</sup> Knight Commission: *A Call to Action-Reconnecting College Sports and Higher Education*

<sup>60</sup> Knight Commission: *Restoring the Balance-Dollars, Values, and the Future of College Sports*

Just like Texas A&M and its merchandise sales, the NCAA continues to generate revenue in that manner. However, in the NCAA Bylaws, it is stated that it is illegal to make a profit directly off a student-athlete and their likeness<sup>61</sup>. However, organizations such as the NCAA and universities are allowed to sell generic jerseys with numbers on them as long as it is not labeled with a player's name or specifically alluding to an individual. This is a common practice by all these organizations as yet another way to make a profit. During the 2012-2013 season, however, the NCAA sold specific Number 2 Johnny Manziel jerseys, the Heisman Trophy winning quarterback from Texas A&M, for \$64.75 on their website<sup>62</sup>. The NCAA violated its own rules for the sake of profiting off a 20 year old student-athlete. Within minutes of ESPN breaking the story of this violation in the summer of 2013, the Shop NCAA portion of their website became unavailable, and the NCAA ultimately released a statement citing its fault.

As discussed earlier, the NCAA's major source of revenue and support system for its member institutions is through March Madness. Over the last 50 years, revenues from March Madness television deals increased 30-fold<sup>63</sup>. Revenue generated from March Madness and other NCAA sanctioned events is distributed based on a prior agreement between the NCAA and that particular conference, known as NCAA/Conference Distributions<sup>64</sup>. An example is the agreement between the NCAA and the Atlantic Coast Conference (ACC) in which for every game a team from the conference plays in March Madness, they earn one unit. The value of a unit is based on the revenue deal with TBS and CBS and is calculated at \$260,525. This means from this year's tournament alone, the ACC teams generated \$3,126,300 through the Sweet 16. Between March Madness for the NCAA, memorabilia sales for both the NCAA and universities

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<sup>61</sup> National Collegiate Athletic Association. *NCAA Division I Manual*

<sup>62</sup> *It's Time To Pay College Athletes*, Time, 39

<sup>63</sup> *It's Time To Pay College Athletes*, Time, 40-41

<sup>64</sup> *NCAA Division I Revenues and Expenses: 2004-2013*

alike, and the aforementioned revenue generating streams, it is evident that intercollegiate athletics acts as a business. According to the NCAA Revenues and Expenses Report, “intercollegiate athletics, and the NCAA as a whole, the [economic] recession did not seem to be particularly detrimental...” The fact that intercollegiate athletics didn’t suffer during America’s greatest recession since the Great Depression demonstrates the prosperity. But where do the profits get distributed? For the NCAA, after distributing the agreed upon portion, the rest of the profit goes into operating expenses (which includes putting on NCAA Championships), employee salaries and benefits, scholarship funds, and other programs. This question of distribution, however, looms large for universities and their surrounding regions.

For smaller counties with large football programs, such as Boise State University in Ada County, Notre Dame in South Bend, and Texas A&M in Brazos County, the money generated by the football and basketball programs funds their infrastructure. During the 2012-2013 season, Brazos County reportedly earned \$86 million<sup>65</sup>. In these smaller counties, intercollegiate athletics continues to grow as a portion of the regional economy, funding small businesses and generating interest in the area. For universities part of “mid-major” conferences, such as Butler, Wichita State, and Virginia Commonwealth University, the exposure and revenue from March Madness creates substantial value. Mid-major universities, through this exposure, are able to market their schools to a wider audience and attract newer, higher quality students than before. Clearly the revenue stream into the counties and smaller universities is paramount to their existence.

Specifically with regard to universities, generated revenues are distributed in a variety of ways, many of which feed back to the respective sports from which they came. A significant portion of the money now goes toward coaches’ salaries. Head football and basketball coaches,

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<sup>65</sup> *It’s Time To Pay College Athletes*, Time, 40

as discussed earlier, are beneficiaries of large contracts. The top 27 coaches in Division I football each make over \$3 million per season, with the top 72 each making over \$1 million per season<sup>66</sup>. A trickle effect takes place because with the rise in head coaching salaries, there is a rise in assistant coaches' salaries, followed by position-specific coaches' salaries, and so-on, all the way down to the strength coaches. Compared to the average salary of a professor today, the top 72 coaches make approximately 11 times more money, substantially larger than the two times larger discrepancy between Stagg at the University of Chicago and the average professor at that time<sup>67</sup>.

Another form of distribution is directly back to the sports at the university. Part of the revenue generated from Division I football and basketball goes toward allowing other, smaller sports such as soccer, swimming, golf, tennis, etc. to have programs, venues, and the ability to compete against other institutions. Further, due to Title IX legislation, these revenues fund predominantly women's sports such as field hockey, softball, and volleyball which would be non-functional if they lost their funding. The money generated from Division I football and basketball allows other student-athletes to enhance their educational experience and treat their collegiate career truly as an amateur endeavor and an opportunity to continue playing the sports they love without the goal of reaching a professional level.

A significantly larger portion, however, goes back into the football and basketball programs. This is seen through stadium and arena renovations, improved locker room and weight training facilities, scholarship endowments for athletes, hiring specialists such as nutritionists and tutors, and toward the academic liaisons for the teams<sup>68</sup>. Universities are reluctant to release the proportion of revenues going to each of these places due to potential scrutiny on the equity of distribution. If the revenues are being widely dispersed, it makes sense to distribute more evenly.

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<sup>66</sup> "The Myth of the "Student-Athlete"" *New York Times*

<sup>67</sup> "The Myth of the Exploited Student-Athlete." *Journal of Intercollegiate Sport*, 140

<sup>68</sup> "The Myth of the Exploited Student-Athlete." *Journal of Intercollegiate Sport*, 136

The money put back into these programs is done so as part of an arms race between Power 5 universities to continuously compete with other Power 5 universities. The exposure and revenues that come with having a premiere football or basketball team place high demands on institutions to create advantages for their teams. Hiring the best coaches, creating top-level facilities, and having specialists is only part of the equation. The other part is: student-athletes. In order to achieve success at any athletic level, teams need to have premiere athletes. The highest ranked prospects for football and basketball are recruited to Power 5 universities, drawn by the allure of these venues, the value of a full grant-in-aid scholarship, and an opportunity to hone their skills under premier coaches for a chance at making the professional leagues<sup>69</sup>. As a result of this arms race, two problems arise: recruiting infractions and the promotion of the “athlete-student”.

When multiple Power 5 universities have interest in a top prospect, they typically offer the recruit the same package: a full grant-in-aid scholarship and admission to the university. Ultimately, recruits are supposed to only choose based on what is legally allowed to be offered along with their recruiting visits, interactions with the coach, and other factors outside of the university. Many universities, however, are found guilty of recruiting violations due to recruit interactions with a runner/booster. This is typically an individual who works as a pseudo-agent for the prospect by providing illegal benefits such as extra money for living, a car, furniture, living arrangements, etc. and in return, the recruit promises to attend the university and ultimately pay back these benefits (hopefully for the booster, after making the professional leagues).

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<sup>69</sup> Between approximately 1-2 percent of college football players turn professional; between approximately 1-3 percent of college basketball players turn professional. *Journal of Issues in Intercollegiate Athletics*

This illegal activity causes athletes, typically from non-privileged backgrounds, to face a pressure filled situation where they can immediately help themselves and their family. This erodes at the idea of ethics not just in collegiate athletics, but in general. An example is with the University of Southern California (USC) and two of its most recognizable modern-day athletes: Reggie Bush and O.J. Mayo (footnote essay last year). The NCAA found USC guilty of “lack of institutional control” for allowing these recruits to receive impermissible benefits, including a house for Reggie Bush’s family, citing a mandate to create a fair opportunity for all students at the university. Stemming from the Regents decision, the NCAA severely punished the institution through removing scholarships for future recruits and banning USC from postseason play in both basketball and football for two seasons. This example serves to illustrate the point that recruiting violations are prominent in collegiate athletics, preying on students, stemming from the need to generate more money.

As the quality of the teams increase, so too does the demand for the top recruits. Coaches begin pushing for a new type of student at their universities, taking into account the athlete portion of their abilities ahead of their academic abilities. Students who normally would not be admitted to these universities suddenly become top candidates given their athletic ability. A notable trend is that these top recruits come from non-privileged backgrounds, where school was not only secondary, but typically never received the support necessary to achieve higher marks in their education. These “athlete-students” may not necessarily be interested in the academic portion of their collegiate lives. Furthermore, they may not be able to succeed at the collegiate level given their lack of support throughout their secondary education<sup>70</sup>. Universities, however, through the work of the academic liaisons, pushiness of coaches and athletic directors, and the

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<sup>70</sup> This brings up a different issue in collegiate athletics surrounding the role of tutors/professors in the lives student athletes and the allegations where athletes are given the easy way out, but this topic falls out of the scope of this thesis

need for premier athletic teams, accept these recruits. The liaisons, being paid through the money generated by these teams, speak directly with admission officers on who to accept and not accept. This brings up an interesting question: if students are being admitted based on their athletic ability only, shouldn't they be paid since academic marks seem to be irrelevant?

## Legal Analysis: Northwestern University

In the early months of 2014, student-athletes of the football team at Northwestern University (Northwestern) took the first significant steps in fighting for players' rights to compensation. While not specifically dealing with pay-for-play, the football players (players) and College Athletes Players Association (CAPA) submitted a brief to the National Labor Relations Board (NLRB) of Chicago against Northwestern, filing for the right of the players to unionize and be represented by CAPA to negotiate health benefits. Northwestern also submitted a brief to the NLRB office in Chicago, contending that the players are not employees of the university and should therefore not be entitled to forming a labor union<sup>71</sup>. Regional Director Peter sung Ohr had the task of deciding this historic case, and his decision would have tremendous implications for the players' rights to compensation, including pay-for-play, moving forward.

CAPA represented the interests of the players, acting as their legal counsel through this case. The reason this dispute went through NLRB is because a question of commerce exists with regards to representation of certain "employees"<sup>72</sup>. CAPA's brief held the position that under section 9(c) of the National Labor Relations Act (the Act); the players met the standards of being classified as employees. Section 9(c) of the Act deals with an employee organization's right to select representatives for the purpose of collective bargaining, rate of pay, hours worked, etc. In order to unionize, a party must be defined as employees according to this section and the party looking to represent the employees must be approved within the meaning of the Act<sup>73</sup>. According to CAPA, these two conditions were met given the definition of "employee" and the appropriateness of CAPA as an organization fit to represent.

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<sup>71</sup> *CAPA versus Northwestern University* NLRB Briefs

<sup>72</sup> National Labor Relations Act of 1935

<sup>73</sup> National Labor Relations Act of 1935

Northwestern's case rested on the student-athlete notion, though not explicitly using that term as its defense. Northwestern contended that football players receiving grant-in-aid scholarships are not employees under the Act due to their acceptance of scholarship funding<sup>74</sup>. Furthermore, Northwestern argued that if anything, these student-athletes were only temporary employees not eligible for collective bargaining due to their temporary status. For Northwestern, the players' argument to unionize and negotiate for health benefits should only deal with student-athletes currently enrolled, but because they wouldn't be attending the University permanently, they would not be eligible to receive benefits.

After reading both briefs, Regional Director Ohr sided with CAPA and the players citing "under section 2(3) of the Act, only football players with grant-in-aid scholarships, who have not exhausted their eligibility, are found to be employees of Northwestern"<sup>75</sup>. Furthermore, Northwestern held the burden of proof to demonstrate its students were not employees, and Director Ohr found they did not. One month later on April 25, 2015, NLRB national office granted a Request for Review in this case, whereby a committee will review, deliberate, and reach a unanimous decision on the Regional Director's decision. This appeal came as no surprise to either party and the decision is still in process.

Regardless of the decision, however, the CAPA brief shed light on the demands of student-athletes, especially Division I football players as part of a revenue generating sport, ultimately causing Director Ohr to side with the players. 85 of the 112 football players at Northwestern receive some form of grant-in-aid scholarship which covers tuition, fees, room and board, and books. The NCAA permits universities to grant 4-year scholarships, with a review process at the end of each year. A scholarship can be revoked at any time for a variety of reasons

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<sup>74</sup> *CAPA versus Northwestern University* NLRB Briefs

<sup>75</sup> *CAPA versus Northwestern University* NLRB Briefs and National Labor Relations Act of 1935

such as violation of team or university policy, not meeting academic standards, or no longer performing well athletically, though injury is not included as a reason for revocation. Prospects sign a letter of intent to a university, which also states they understand the rules of governance of the NCAA, as well as a legal tender whereby the school becomes obligated to the recruit, but the recruit is allowed to attend another university as long as they have yet to register for classes. A full grant-in-aid scholarship at Northwestern is worth \$61,000<sup>76</sup>. However, Northwestern can also distribute additional funds through their Student Assistance Fund to help students pay for health insurance, dress clothes, and traveling home.

Similar to signing the letter of intent, Northwestern, along with other Big-10 Conference universities, forces their players to sign waivers signing away their rights. This is used as a means of enforcing the amateur nature of student-athletes, reminding them that their focus is on school first and athletics second. As a result of the waiver, the Big-10, like the NCAA, can sell generic jerseys with their numbers as well as use their pictures and videos in promotional activities<sup>77</sup>. Before even beginning their athletic careers, student-athletes seem to already be giving up a lot in terms of their rights to do what they want with their own image. Succumbing to these special rules was the first step in Regional Director Ohr's decision.

The next set of proof comes from the documentation of football schedules and academic schedules. In the NCAA bylaws, there is a restriction on the amount of time athletes are allowed to spend playing their respective sports per week known as the Countable Athletically Related Activities (CARA). This is a tool used by the NCAA to enhance the academic aspects of the student-athlete experience. By putting a cap on the amount of time for athletic related activities, the NCAA is essentially forcing student-athletes to spend time getting the academic help they

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<sup>76</sup> *CAPA versus Northwestern University* NLRB Briefs

<sup>77</sup> *CAPA versus Northwestern University* NLRB Briefs

may need. According to the CAPA brief, however, the CARA limit of 20 hours per week is well exceeded throughout the entire year<sup>78</sup>. In preseason, players at Northwestern documented 50-60 hours per week of football related activity. Once school and the regular season begins, the hours dwindle to 40-50 hours per week through the end of the season, usually in late December or early January. There are a multitude of activities that are not counted against CARA limitations, and while they are not mandatory for players to participate, not doing so most likely results in a forfeiture of your spot on the depth chart and potentially a scholarship. During the team's offseason, football related activity hours per week are cut in half until Spring Practice in April when the hours shoot back up to the same of the regular season.

With this significant amount of time spent doing football related activities, students seem to have very little time for their academic loads. Northwestern is a prominent academic institution, known for its rigor and reputation as a high quality university<sup>79</sup>. Students spend 20 hours per week simply attending class, with many additional hours spent in tutoring, studying, and completing coursework. As the NCAA supports, the athletic experience is supposed to enhance the overall educational experience of student-athletes. Students are required to maintain a minimum GPA standard as well as be enrolled as full-time students in order to be eligible to even compete<sup>80</sup>. Northwestern, in their team handbook, also supports academics first, stating the value of a Northwestern educational experience and that football is a privilege, not a right<sup>81</sup>. To ask the NCAA to police every minuscule, grey-area abuse of CARA is implausible given the amount of resources it would need to do this effectively. Universities are abusing their power over student-athletes to create better athletic programs that generate more money.

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<sup>78</sup> *CAPA versus Northwestern University* NLRB Briefs

<sup>79</sup> Northwestern boasts a 97 percent graduation rate and an extremely high retention rate of its students; *CAPA versus Northwestern University*

<sup>80</sup> National Collegiate Athletic Association. *NCAA Division I Manual*

<sup>81</sup> *CAPA versus Northwestern University* NLRB Briefs

The pressures of being a student-athlete at a Power 5 university such as Northwestern are daunting. Kain Colter, Northwestern quarterback from 2010-2013, documented a conversation with head coach Pat Fitzgerald wherein Colter was advised not to take a particular class because it conflicted with football practice. Colter ended up falling behind in his major (he was originally pre-med) and was forced to change to a less demanding major (psychology)<sup>82</sup>. Coach Fitzgerald testified that if class was necessary for a particular player's degree, they would be allowed to leave early, with a meal, in order to attend class. Colter testified that on occasion, Coach Fitzgerald would move practices for academic reasons. On weekends where the team would play an away contest, Coach Fitzgerald's team handbook permitted students to spend 2-3 hours maximum doing school work in order to "get their mind right to get ready to play"<sup>83</sup>. How can a team handbook support academics first but limit the amount of time a student can spend on their studies? This concept of time commitment to athletics significantly greater than academic commitment was the second peg in deciding in favor of the players and CAPA.

The next piece of evidence Regional Director Ohr considered was the revenues and expenses report provided by both parties. As discussed during the "big business" section of this report, Northwestern generated its revenues from 2003-2012 through ticket sales, TV and radio broadcast contracts, merchandise sales, and licensing agreements. In this 10 year period, the players generated 235 million dollars in revenues with expenses calculated at 159 million dollars<sup>84</sup>. During the 2012-2013 season alone, the players generated 30.1 million dollars in revenue while accumulating 21.7 million dollars in expenses<sup>85</sup>. The profits went toward funding all other sports, except men's basketball, specifically focused on Title IX compliance. Expenses

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<sup>82</sup> *CAPA versus Northwestern University* NLRB Briefs

<sup>83</sup> *CAPA versus Northwestern University* NLRB Brief: CAPA Report

<sup>84</sup> *CAPA versus Northwestern University* NLRB Brief: CAPA Report

<sup>85</sup> *CAPA versus Northwestern University* NLRB Brief: CAPA Report

included the salaries of coaches, tutors, and academic liaisons, as well as scholarship funding while excluding stadium refurbishment since that was handled at a separate time during the year<sup>86</sup>.

Using this information, Regional Director Ohr applied the common law legal standard of the term “employee” as it pertains to section 2(3) of the Act to justify his decision. Under the common law, an employee is a “person who performs services for another under a contract of hire, subject to the other’s control or right of control, and in return for payment”<sup>87</sup>. According to Ohr, receiving scholarships to perform football related services for Northwestern, after having signed the tender agreement, making scholarship (compensation) subject to Northwestern’s (employer’s) control qualified the players as employees at the university under the Act<sup>88</sup>. Walk-ons, however, did not qualify as employees in this decision because they do not receive compensation. While all players on the team perform valuable services for the benefit of their employer, scholarship players are the only ones receiving compensation. Furthermore, these scholarship players are subject to the employer’s control in the performance of their duties as football players. Their tender agreement was originally signed with the intent to perform on the football field, not as a student. Lastly, despite the finite amount of time spent as a student-athlete, Ohr stated that the four to five year period of the scholarship is a substantial amount of time, therefore allowing for compensation.

The implications of this case are drastic, regardless of the appeal decision. The NCAA, its member institutions, and student-athletes are at a crossroads. The landscape of collegiate athletics is going to change. The more universities continue to profit off student-athletes, the more likely it is other student-athletes and recruits will voice their concerns over their own well-

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<sup>86</sup> *CAPA versus Northwestern University* NLRB Brief: CAPA Report

<sup>87</sup> *CAPA versus Northwestern University* NLRB Decision

<sup>88</sup> *CAPA versus Northwestern University* NLRB Decision

ing. As already mentioned, many of the top prospects are coming from less-privileged families, where the chance to be a star, or at least a major contributor, for a college team could mean the opportunity to make a living for their families. For many of these youth, this is the only way out and potentially their only chance to make a tremendous impact on their futures financially.

Additionally, the amount of time these student-athletes devote to their team compared to their academics is astounding. No matter how many rules the NCAA creates trying to force student-athletes to actually be students first, universities' athletic programs continue to abuse their control over student-athletes. Northwestern players took the first major step in achieving compensation for student-athletes. Moving forward, the NCAA and its member institutions will be forced to consider change. It is no longer possible to ignore the monetary value of college athletics. The idea of a student-athlete simply participating in an extra-curricular activity as a means of enhancing their education is still valid and should continue to be the base of any potential compensation plan. Ultimately, universities need to challenge themselves to remember why they were formed and what their purpose is. Education needs to be the driving factor of admission decisions. However, the monetary value of athletics cannot be ignored, and neither can the fact that student-athletes produce millions of dollars every year. Over the past 15 years, intercollegiate athletics reporters, historians, and enthusiasts began to create possible compensation plans for the NCAA to implement in this quickly changing arena. The following section will analyze the major proposals followed by a new proposal based on this report.

## Proposals:

The main risk of providing any sort of compensation for student-athletes stems from one critical question: are students in revenue generating sports different than other students? The immediate, intuitive response is no. Student-athletes are like every other student that participates in a club or organization outside of their academic work. This is a challenging question, one that will lay at the foundation of any change to NCAA policy. The mission of every university, regardless of division, is to educate all students that attend in order to provide them with the opportunity succeed beyond their education from that institution. Adopting any sort of proposal that benefits student-athletes more so than the average student demonstrates a university's standpoint on particular students and what that university values. What makes student-athletes in revenue generating sports different than the rest of the student body is the exposure and money they bring to their university. Given this monetary value, do universities thus have an obligation beyond education? It would seem that universities may have more of a vested interest in their student-athletes in revenue generating sports given their significance in promoting the university. If there truly is a deeper interest in these particular students, then changes in terms of compensation must be made.

Not only does there *seem* to be a more vested interest in these particular students, but there actually *is*. For these student-athletes that are generating billions of dollars over their four year careers, universities owe a moral obligation beyond the tender "contract" the two parties agree upon during the recruiting process. The money generated by the student-athletes is clear evidence that universities and the NCAA are gaining a tremendous advantage as a result of the contract, one that a student-athlete may not foresee upon entering the agreement. Furthermore, student-athletes continue to provide value to their alma mater; they are marketable products for

these institutions to demonstrate the success of athletics in producing high quality individuals for the professional world whether that is in athletics or industry. This invokes a moral obligation known as the Stakeholder Theory, which states that as long as relationships endure, both parties are still obligated to each other<sup>89</sup>. Furthermore, the relationship between these parties endures because of the student-athletes' vulnerability to long-term health effects. In certain relationships it is necessary to go above and beyond the specifications of the contract, especially in circumstances where the Stakeholder Theory is prevalent. The NCAA nor its member institutions, at the moment, demonstrate interest in fulfilling their moral obligations.

Given all of the above considerations, the NCAA and its members institutions will need to change their policies. Before this can be done, however, there needs to be a thorough analysis of multiple proposals. No matter what potential plan it adopts, there will definitely be drawbacks. No model will be perfect because not every party involved will feel like it receives everything it truly wants. The biggest challenge with adopting any proposal will be the simple fact that the NCAA must acknowledge the demise of the term student-athlete, meaning the idea of athletics as a way of enhancing the educational experience is no longer the principal role of intercollegiate athletics. While this is an unfortunate result, potential resolutions could hinder less this demise, and may be more acceptable.

The first proposed solution is the "Associate Students" remedy, first reported by the New York Times in a report calling into question whether or not the student-athlete model still exists. In this proposal, student-athletes are still recruited to play at universities, but are admitted as different types of students. As an associate student, these particular student-athletes would take fewer classes while in season, though still being held to a minimum GPA requirement in order to

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<sup>89</sup> Danielle Wenner, Carnegie Mellon University Philosophy Department

stay eligible<sup>90</sup>. Grant-in-aid scholarships would still be given, with possible revocation options still in place. The main difference with these students is after their collegiate athletic careers are finished, they would have completed enough academic coursework to have an associate degree, which they would then use to apply for admission either to the university they just attended or to another university in order to complete their bachelor's degree. Simply put, student-athletes trend more toward athlete-students, though not completely giving up on their academic obligations.

One of the positives of this solution is that while the academic standards in terms of classes taken and level of education diminishes, the idea of the student-athlete remains relatively intact. Secondly, for the NCAA and its member institutions, there is no compensation involved, which allows the generated revenues to remain in the control of the same present stakeholders. At the same time, this fact makes this proposal problematic. The main point of contention between the NCAA, universities, and players is whether or not student-athletes should be compensated, so not even addressing the issue is an unrealistic way to solve the problem. The other major drawback of this proposition deals with the lower academic standard. This clear separation allows universities to lower their standards and diminish their academic reputations almost comparable to junior colleges, which serve the same purpose as this proposal.

The next proposed solution is the "Olympic Model" which is derived directly from how Olympic athletes are able to profit from their athletic endeavors. The major supporters of this model are former student-athletes who value the student-athlete ideals of the NCAA but recognize a growing need for compensation. If this model were to be adopted, student-athletes would be allowed to profit from sponsorships and endorsements from their own name<sup>91</sup>. They would not be paid by the university, allowing universities to keep their existing revenue streams

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<sup>90</sup> "The Myth of the "Student-Athlete"" *New York Times*

<sup>91</sup> *It's Time To Pay College Athletes*, Time, 41

while also stipulating a certain percentage of the player's deal goes back to the university. Another advantage of this model is that universities and the NCAA can implement academic standards to still be met in order for players to receive their compensation. Challenges with the Olympic Model center on the notion that allowing individuals to capitalize off their own success diminishes the value of team athletics and the educational aspect of intercollegiate athletics. The NCAA would have to remove the prohibition of starting a company or brand from student-athletes that are amateurs. Despite this issue, the Olympic Model is growing in popularity because there are many ways to incorporate the standing values of the NCAA and universities.

The "Free-Market Model" is a possible solution where universities are allowed to negotiate contracts with recruits and players, similar to the professional leagues<sup>92</sup>. Highly recruited athletes, their families, and third-party organizations such as apparel companies and agencies are the chief proponents of this model. This allows universities to better position themselves for success if they are able to offer more lucrative contracts to the top recruits. Contracts, like the grant-in-aid scholarships, can be negotiated to have certain criteria met such as academic standards, community service, and minimum dates of service. The NCAA would in effect become the regulatory body responsible for determining salary caps and still trying to maintain competitive equality. The glaring problem with this plan is that schools with more money, namely the Power 5, will completely eliminate all smaller schools' ability to attract recruits, thereby drastically reducing competitive equality. Further, this model completely obliterates the value of education not only at the collegiate level, but secondary education as well. Knowing their athletic ability is what matters, recruits will devote more time to their respective sport and less to their education which leads to the problem of universities admitting students who would not normally gain admission.

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<sup>92</sup> *It's Time To Pay College Athletes*, Time, 42

The final proposal with the most traction is the “stipend model” which carries the most support from universities that realize changes must happen given the big business nature of intercollegiate athletics. In this model, student-athletes would receive an agreed upon amount of money in addition to their grant-in-aid scholarship to use as they see fit. This solution is accepted as a strong option for a short-term solution to the pay-for-play debate. Universities would not be forced to give up a tremendous portion of their revenues, while student-athletes would receive a monetary value as a form of compensation. Problems may arise when defining how much money a student-athlete would get and in determining what the cut-off line is for particular sports or student-athletes in those sports such as soccer, volleyball, women’s basketball, etc. As a long-term solution, the stipend model alone will not survive. As schools continue to make millions and billions of dollars off of student-athletes, the amount the stipend is worth would have to increase in order to equally compensate their value. At a certain threshold, a stipend worth a substantial amount of money will be basically equivalent to a free-market model which, with the stipend restriction, could create greater opportunities for boosters or runners to continue their illegal practices.

### **My Recommendation: The Distribution Model**

After reviewing the above models as well as their variations, I will now introduce my original proposal, the Distribution Model, which takes the “stipend model” as a starting point and adds two new dimensions: basic health coverage for revenue-generating collegiate athletes plus broader distribution of monetary proceeds within the university community. The main reasons supporting this proposal, particularly the additional benefits, are the millions of dollars generated by Division I football and basketball players, their inability to capitalize on the wealth they generate, the substantial time commitment that far exceeds the allotted amount by CARA, the

growing long-term health concerns associated with sports (especially football), and the ethical travesty of years of exploitation of student-athletes.

Beyond a grant-in-aid scholarship, regardless of the amount, under this proposal student-athletes would receive an agreed upon stipend per semester to cover expenses beyond the scholarship. This idea is already partly implemented at institutions like Northwestern and the University of Alabama where student athletes are able to receive money upon request for certain reasons. In my model, the difference is the money is available to the student-athlete at the beginning of every semester and can be used at their disposal. There would be a cap set at how much money a university can distribute per year, a number that all universities in Division I can feasibly reach in order to maintain competitive equality.

The more controversial aspect of my model deals with providing certain benefits for student-athletes not available to the general student population. These benefits would include compensation for injury, insurance, pediatric services, preemptive health and wellness services, etc. As already established, universities have a different obligation to their student-athletes since they are generating a tremendous amount of money. Universities should protect these student-athletes who could injure themselves during an athletic activity representing their school. These forms of compensation would last during the tenure of the student-athlete while they are still athletically eligible, and could potentially last longer depending on a variety of determinants such as whether or not they turn professional, their role on the intercollegiate team, the number of games they played, and the level of their scholarship. The issue of long-term care within my model is an extremely contentious point, but this is an important aspect given the university's obligation to student-athletes who are being used to generate billions of dollars.

In addition, the Distribution Model calls a more equitable distribution of revenues generated by the football and basketball teams within the university community. Instead of pumping money right back into the athletic department only, the money should be more evenly distributed to other organizations and departments within the university. A more equal distribution demonstrates that the athletic department understands the commitment to educational opportunities within the university, whether that's athletics or other clubs and organizations that provide similar enhancement outside of the classroom. Moreover, the funds spread more evenly to other parts of the university will help in showing that student-athletes are not separate from their classmates. Money would also be specifically set aside for student-athletes who need to pay for tutoring, summer classes, and graduate school preparatory courses.

As part of this model, the NCAA would have an increased role in monitoring its member institutions. The NCAA must act as the overarching structure that monitors and aids its institutions in following this model. Advisory Boards, led by NCAA officials, should be created for every Power 5 conference, with a sixth board monitoring the major independent schools or specific programs that generate more money than their counterparts in their conference. This would include universities like Notre Dame, Brigham Young University (BYU), Boise State University, San Diego State University, and other universities that meet a minimum threshold. The role of these Advisory Boards would be to closely monitor these universities and ensure they are in actuality providing the basic coverage of health benefits, paying their stipend, and not participating in illegal activity to gain a competitive advantage such as offering extra benefits or more money. Further, the NCAA and these Advisory Boards will be responsible for academic standards and promoting financial education. Receiving an education is supposed to be the paramount reason for attending a university. Subject to academic performance, stipends and

scholarships can be diminished or revoked under this proposal, and it will be monitored by the NCAA and its Advisory Boards. These Boards will also be responsible for teaching financial literacy to its student-athletes, especially to those receiving stipends. Student-athletes would be required to learn the basic principles of handling money to make them better equipped not only with their stipend, but beyond college.

The final major task of the NCAA and its Advisory Boards would be to tightly monitor the allocation of revenues from these sports. Since part of the proposal is to more evenly distribute money into other organizations and departments within the university, member institutions will submit yearly reports to the NCAA documenting their allocation of every dollar earned from these sports. Penalties would include failure to report, tampering, fraud, misallocation, or anything that demonstrates the lack of commitment by the athletic department to the rest of the university and the educational experience. The already established Committee on Infractions would oversee these violations and deem penalties.

While I think this is the best and most realistic solution, I acknowledge the potential flaws. Giving more power to the NCAA at a time when its ethical compass is being severely questioned would be viewed as problematic. Further, it would be difficult to force universities to agree to stipends and basic health benefits since many universities would see this as detrimental to their profits. With respect to basic health benefits, the problem here deals with how long universities would be responsible for coverage. Should a student-athlete make it to a professional league, the burden would surely be off the university. But for vast majority of student-athletes that do not turn professional, how long should universities be liable? The other disagreements are the same as in every proposal: paying student-athletes in any way ruins the sanctity of amateur athletics and how does this proposal change the current problems with academic standards?

With respect to the current academic standards, this proposal provides incentive for student-athletes to perform better academically. Failure to meet academic standards results in a loss of a stipend, which no longer allows the student-athlete to enjoy the new benefits of the extra money. As for ruining the amateur aspect of intercollegiate athletics, that idea will never be beat. All there is to say is that change is coming not because anyone disagrees with the value of amateur athletics and its promotion of education, but rather because student-athletes' educational experiences became profit-making ventures for the NCAA and its member institutions.

## **Conclusion:**

The successful programs of the Power 5 Conferences are a direct result of the players at these programs. Yes, it helps to have highly paid coaches, world class athletic facilities, and grant-in-aid scholarships to offer recruits, but without the athletes there is no success. There is no “product” to put on the field every Saturday or during March Madness. Power 5 Conferences created a business within intercollegiate athletics, forcing these universities to constantly compete both on and off the athletic fields in the name of intercollegiate athletics rather than who could provide the best possible education. Furthermore, universities must revisit their purposes and mission statements. Universities are supposed to educate and prepare their students for their lives beyond college. The current message the Power 5 are sending prospective students is that athletics are more important than education. This message is wrong. While education should always trump athletics, that doesn’t mean the pay-for-play debate is obsolete. Power 5 universities are continuing to make billions off their revenue generating student-athletes and these particular student-athletes are entitled to a piece of their labor.

With that in mind, no matter how much money universities and the NCAA make off of student-athletes, there is something to be said about the sacredness of amateurism in intercollegiate athletics. Student-athletes have always been considered students first, and intercollegiate athletics have always felt more pure than professional sports since athletes are not being paid. Additionally, most grant-in-aid scholarship recipients of athletic teams are receiving a “free education” which in the long run is worth significantly more and can never be taken away from a person. Big 12 Conference Commissioner Bob Bowlsby said in best, “this is higher education and it always ought to be higher education”<sup>93</sup>. The value of intercollegiate athletics

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<sup>93</sup> *It's Time To Pay College Athletes*, Time, 42

beyond Division I football and Men's College Basketball cannot be monetized. Being a student-athlete in non-revenue generating sports in Division I, II, or III, both men's and women's, continues to be an educational experience. The participants in these sports choose to play for the joy of their sport and to hone their character building attributes, just as President Roosevelt intended over 100 years ago. The revenue generating sports of the Power 5 are too engrossed in money making ventures to pretend that the ideals of being a student-athlete for the other divisions and non-revenue generating sports exist.

Any potential model adopted by intercollegiate athletics must also be able to fulfill Title IX requirements. Men cannot be the only athletes paid, nor can other athletic programs be dropped if schools focus only on football and basketball. The opportunity for female student-athletes must continue to grow at every institution, regardless of Division. While select Women's Division I Basketball programs operate at a profit, most women's athletic programs do not. However, it is likely that the momentum of Title IX coupled with the increased popularity of Women's Basketball will eventually cause more basketball programs to become profitable and consider the Distribution Model.

A new era of intercollegiate athletics is arriving. There will be changes in policy, questioning of ethical standards, and multiple attempts to find the right system. The NCAA and its member institutions must adapt to the world they've created, for the ethical imperative they have to support student-athletes is being questioned in the current model. Adoption of any proposal, whether in this report or not yet conceived, is a step in the right direction. The days of the amateur student-athlete should make way for the compensated student-athlete.

## Appendix

### Sticker Shock

The value, in millions, of major-conference college-football programs, plus Notre Dame and BYU:

Rank	SCHOOL	VALUE	Rank	SCHOOL	VALUE	Rank	SCHOOL	VALUE	Rank	SCHOOL	VALUE
1	Texas	\$761.7	19	Oregon	\$264.6	37	Virginia	\$146.3	55	Mississippi St.	\$99.3
2	Michigan	\$731.9	20	Washington	\$259.9	38	Purdue	\$145.1	56	Maryland	\$96.0
3	Florida	\$599.7	21	Michigan St.	\$224.8	39	N.C. State	\$143.0	57	California	\$92.6
4	Notre Dame	\$597.4	22	Texas Tech	\$211.0	40	Indiana	\$142.7	58	Syracuse	\$91.4
5	Ohio St.	\$586.6	23	Oklahoma St.	\$209.1	41	Iowa St.	\$140.3	59	Texas Christian	\$76.6
6	Auburn	\$508.1	24	Kansas St.	\$207.1	42	Minnesota	\$139.7	60	Louisville	\$75.4
7	Georgia	\$481.8	25	Colorado	\$202.9	43	BYU	\$136.1	61	Washington St.	\$73.4
8	Alabama	\$476.0	26	Kentucky	\$202.7	44	Arizona	\$126.8	62	Baylor	\$71.3
9	LSU	\$471.7	27	Clemson	\$201.8	45	UCLA	\$125.8	63	Rutgers	\$64.1
10	Oklahoma	\$454.7	28	USC	\$197.8	46	Utah	\$119.7	64	Duke	\$62.0
11	Iowa	\$384.4	29	Georgia Tech	\$188.4	47	Oregon St.	\$118.8	65	Pittsburgh	\$59.6
12	Tennessee	\$364.6	30	Virginia Tech	\$171.5	48	Illinois	\$117.3	66	Vanderbilt	\$57.3
13	Nebraska	\$360.1	31	Arizona St.	\$164.6	49	Mississippi	\$111.7	67	Missouri	\$56.4
14	Arkansas	\$332.0	32	West Virginia	\$159.4	50	Boston College	\$110.2	68	Cincinnati	\$48.9
15	S. Carolina	\$311.9	33	Florida St.	\$159.0	51	Kansas	\$103.4	69	Temple	\$46.9
16	Penn St.	\$300.8	34	Miami (Fla.)	\$157.7	52	Connecticut	\$101.8			
17	Wisconsin	\$296.1	35	Northwestern	\$148.8	53	South Florida	\$101.2			
18	Texas A&M	\$278.5	36	Stanford	\$148.7	54	North Carolina	\$99.8			

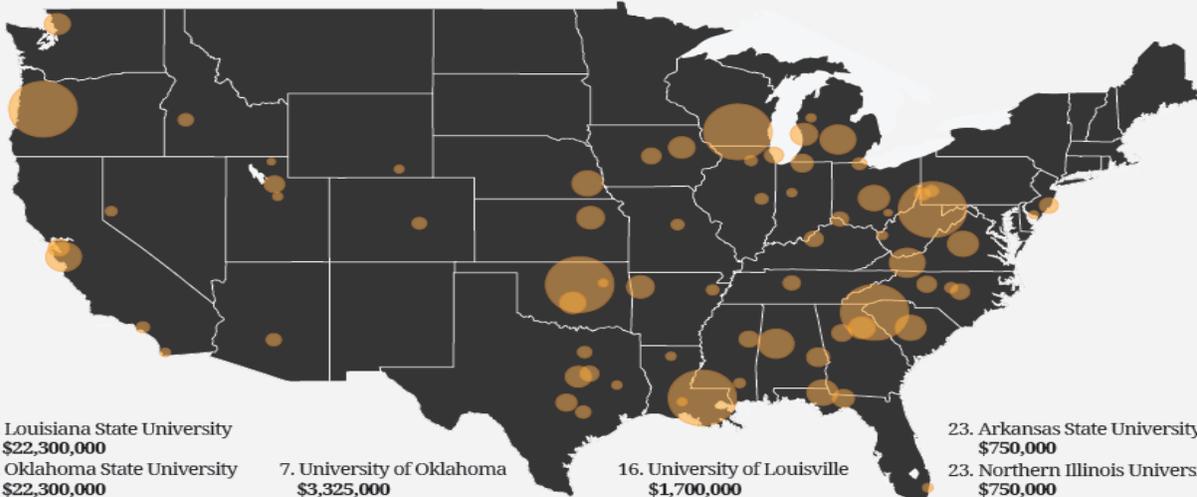
Source: Ryan Brewer, Indiana University-Purdue University Columbus  
Note: Excludes Wake Forest

### Appendix 1

Value in millions of major college football programs by Ryan Brewer, 2013, *Wall Street Journal*, <http://online.wsj.com/news/articles/SB10001424127887324391104578225802183417888>

# Bowling For Cash

The map below shows the locations of every school playing in one of this season's bowl games. The circles at each location are sized according to how much money\* that school will receive from its bowl game. Full amounts are listed below the map.



- |   |  |  |  |
|---|--|--|--|
| 1. Louisiana State University<br><b>\$22,300,000</b>  | 7. University of Oklahoma<br><b>\$3,325,000</b>            | 16. University of Louisville<br><b>\$1,700,000</b>           | 23. Arkansas State University<br><b>\$750,000</b>            |
| 1. Oklahoma State University<br><b>\$22,300,000</b>   | 8. University of Florida<br><b>\$2,275,000</b>             | 16. North Carolina State University<br><b>\$1,700,000</b>    | 23. Northern Illinois University<br><b>\$750,000</b>         |
| 1. University of Oregon<br><b>\$22,300,000</b>        | 8. Notre Dame University<br><b>\$3,250,000</b>             | 16. Texas A&M University<br><b>\$1,700,000</b>               | 24. University of Southern Mississippi<br><b>\$650,000</b>   |
| 1. Clemson University<br><b>\$22,300,000</b>          | 9. Baylor University<br><b>\$3,175,000</b>                 | 17. University of Cincinnati<br><b>\$1,437,500</b>           | 24. University of Nevada<br><b>\$650,000</b>                 |
| 1. University of Wisconsin<br><b>\$22,300,000</b>     | 9. University of Washington<br><b>\$3,175,000</b>          | 17. Vanderbilt University<br><b>\$1,437,500</b>              | 25. University of Tulsa<br><b>\$600,000</b>                  |
| 1. West Virginia University<br><b>\$22,300,000</b>    | 10. Auburn University<br><b>\$2,932,500</b>                | 18. University of Missouri<br><b>\$1,150,000</b>             | 25. Brigham Young University<br><b>\$600,000</b>             |
| 2. University of Alabama<br><b>\$6,100,000</b>        | 11. Florida State University<br><b>\$2,275,000</b>         | 18. University of North Carolina<br><b>\$1,150,000</b>       | 25. Purdue University<br><b>\$750,000</b>                    |
| 2. Stanford University<br><b>\$6,100,000</b>          | 11. Ohio State University<br><b>\$2,275,000</b>            | 19. Arizona State University<br><b>\$1,100,000</b>           | 25. Western Michigan University<br><b>\$750,000</b>          |
| 2. University of Michigan<br><b>\$6,100,000</b>       | 12. University of California-Berkley<br><b>\$2,075,000</b> | 19. Boise State University<br><b>\$1,100,000</b>             | 26. Florida International University<br><b>\$537,500</b>     |
| 2. Virginia Tech University<br><b>\$6,100,000</b>     | 12. University of Texas<br><b>\$2,075,000</b>              | 19. Penn State University<br><b>\$1,100,000</b>              | 26. Marshall University<br><b>\$537,500</b>                  |
| 3. University of Nebraska<br><b>\$4,550,000</b>       | 13. Georgia Tech<br><b>\$2,000,000</b>                     | 19. University of Houston<br><b>\$1,100,000</b>              | 27. San Diego State University<br><b>\$500,000</b>           |
| 3. University of South Carolina<br><b>\$4,550,000</b> | 13. University of Utah<br><b>\$2,000,000</b>               | 20. Air Force Academy<br><b>\$1,000,000</b>                  | 27. University of Louisiana at Lafayette<br><b>\$500,000</b> |
| 4. University of Virginia<br><b>\$3,967,500</b>       | 14. Mississippi State University<br><b>\$1,837,500</b>     | 20. University of Toledo<br><b>\$1,000,000</b>               | 27. Louisiana Tech University<br><b>\$500,000</b>            |
| 5. University of Arkansas<br><b>\$3,625,000</b>       | 14. Wake Forest University<br><b>\$1,837,500</b>           | 21. University of Pittsburgh<br><b>\$962,500</b>             | 27. Texas Christian University<br><b>\$500,000</b>           |
| 5. Kansas State University<br><b>\$3,625,000</b>      | 15. Iowa State University<br><b>\$1,800,000</b>            | 21. Southern Methodist University<br><b>\$962,500</b>        | 28. Temple University<br><b>\$456,250</b>                    |
| 6. University of Georgia<br><b>\$3,500,000</b>        | 15. Rutgers University<br><b>\$1,800,000</b>               | 22. University of California-Los Angeles<br><b>\$837,500</b> | 28. University of Wyoming<br><b>\$456,250</b>                |
| 6. Michigan State University<br><b>\$3,500,000</b>    | 16. Northwestern University<br><b>\$1,700,000</b>          | 22. University of Illinois<br><b>\$837,500</b>               | 29. Ohio University<br><b>\$320,000</b>                      |
| 7. University of Iowa<br><b>\$3,325,000</b>           |  |  | 29. Utah State University<br><b>\$320,000</b>                |

\*NOTE: Some payouts are approximate and not released directly by bowls or universities at time of publication.

Research by: DAN TREADWAY Graphic by: CHRIS SPURLOCK

HUFFPOST SPORTS

## Appendix 2

Value of payout football programs receive based on which bowl game they played in, Chris Spurlock and Dan Treadway, 2012, [http://www.huffingtonpost.com/2011/12/29/bowl-game-payouts-map-2011-2012-bcs\\_n\\_1174808.html](http://www.huffingtonpost.com/2011/12/29/bowl-game-payouts-map-2011-2012-bcs_n_1174808.html)

**Addendum:**

The purpose of this addendum is to further detail aspects of my thesis. Despite the academic school year as a time frame, this report would be more complete if there was more time to conduct a more thorough analysis. If given more time, I would conduct interviews with current and former employees of the NCAA, athletic directors in all three divisions, and with student-athletes in revenue generating sports. I would also contact supporters and dissenters of each proposal to further investigate their reasoning. With regard to research, I would delve further into the history of the NCAA revenues to track a pattern of where the revenue they generate goes in terms of percentages to its own organization and its member institutions. I would also devote more research to the ethical and moral obligations an employer owes to an employee. There is extensive literature on the ethics and morality of exploitation and employer-employee relations which, if given more time, would have been a separate section on its own within this work.

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