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## A Plan for Compensating Student-Athletes

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# A Plan for Compensating Student-Athletes

## I. INTRODUCTION

Intercollegiate athletics have been a part of the university system for many years. Successful athletic programs are a way of instilling pride in the student body, and bringing prestige, name recognition, and funding to the university. An unfortunate by-product of college athletics has been the exploitation of student-athletes. This paper will discuss some ways in which student-athletes have been exploited and why reforms are needed in college athletics. We will discuss some of the methods the NCAA (National Collegiate Athletic Association) has employed in an attempt to cure this exploitation and explain why further steps need to be taken. Since professional and college sports are inevitably intertwined, we advocate that professional sports leagues assist in protecting student-athletes. This paper introduces a plan that would allow monetary compensation for student-athletes. This plan will fairly compensate student-athletes for their work while preserving the amateur nature of college athletics.

## II. BACKGROUND

As college athletics have become more lucrative, their significance often overshadows the institution's academic purposes. Indeed, college athletics have become big business. In 1989, the NCAA signed a seven-year, one billion dollar television contract giving CBS the exclusive right to televise all NCAA basketball tournament games.<sup>1</sup> The NCAA has a multimillion-dollar annual budget and it negotiates and administers for itself or its members for regular season sports over \$20,000,000 a year in television contracts.<sup>2</sup> For this reason, Hunter R. Rawlings III, president of the University of Iowa, has suggested that television controls university athletics.<sup>3</sup> "TV determines

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1. *CBS Lands Sole Rights to NCAA*, BINGHAMTON PRESS AND SUN BULL., Nov. 22 1989, at C1.

2. William B. Briggs & Deborah E. Klein, *Proposition 48 and the Business of Intercollegiate Athletics: Potential Antitrust Ramifications Under the Sherman Act*, 67 DENV. U. L. REV. 301, 309 (1990).

3. Hunter R. Rawlings III, *Why Did We Take So Long?*, SPORTS ILLUSTRATED, Jan. 21 1991, at 72.

the times and sites of our games, controls our athletic departments' budgets, and dictates conference membership and realignments."<sup>4</sup> Many teams also bring in money through local television coverage. Ticket sales to sell-out stadium events produce additional revenue.

In addition to direct revenue, successful college athletic programs use their name recognition to market merchandise adorned with their school names and logos throughout the country. They further generate substantial revenue by converting their athletic programs' prestige and notoriety into generous alumni donations and increased enrollment.<sup>5</sup> At the center of all this money are the student-athletes who are prohibited from sharing in the revenue that they generate. Exploitation results from universities' focus on potential revenue that athletes might bring to the school, rather than the student's personal and educational welfare.

### III. NCAA EXPLOITATION OF ATHLETES

The ideal university is a composite institution which is primarily an intellectual agency. It has been argued that the role of student athletes is inconsistent with this ideal.<sup>6</sup> In most cases, the underlying purpose of a college education is to prepare students for their chosen careers. However, students who have chosen a career in athletics will find many restrictive barriers placed in their paths. These barriers make it difficult for student-athletes to achieve career goals. Even though universities do not offer degrees in football or basketball, they recruit people specifically for these programs. One purpose for recruiting these athletes is to enhance the university's athletic programs, thereby increasing profits.<sup>7</sup> "Hundreds of thousands of dollars are generated for the benefit of the university that can field a team of talented 'amateurs,' but the players themselves sacrifice everything, including education and physical abilities for a chance to play with the pros."<sup>8</sup> The intellectual

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4. *Id.*

5. Lee Goldman, *Sports and Antitrust: Should College Students Be Paid to Play?*, 65 NOTRE DAME L. REV. 206 (1990). See also Jensen, *Taxation, the Student Athlete, and the Professionalization of College Athletics*, 1987 UTAH LAW REV. 35, 44 & n.39 (1987).

6. Robert N. Davis, *Academics and Athletics on a Collision Course*, 66 N.D. L. REV. 239 (1990).

7. *Id.*

8. *Id.* at 252.

life for which the university is assumed to exist has been overshadowed by the business, industry, journalism and salesmanship of organized athletics on an extensive commercial basis by the university and the NCAA, the predominant governing body over major college athletics.<sup>9</sup>

Article 2.6 of the NCAA's Constitution provides, "[s]tudent-athletes shall be amateurs in an intercollegiate sport and their participation should be motivated primarily by education and not by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and *student-athletes should be protected from exploitation by professional and commercial enterprises.*"<sup>10</sup>

However laudable these goals, this definition assumes that NCAA institutions themselves are not commercial enterprises and would not exploit student-athletes. This is a natural, yet incorrect assumption most likely perpetuated by the simple fact that students who take part in athletics are not permitted to receive direct monetary compensation for their participation.

Despite the NCAA's stated purpose, the main goal of many university athletic programs is to generate money . . . big money. The money generated and the manner in which it is administered, would likely qualify the NCAA itself as one of the commercial enterprises warned of in the NCAA Constitution.<sup>11</sup> It has been argued that the NCAA violates the Sherman Antitrust Act,<sup>12</sup> due process,<sup>13</sup> a student-athlete's right to contract,<sup>14</sup> and its own constitutional provision against commercial enterprises.

Another of the stated purposes of the NCAA is to preserve the amateur nature of college athletics.<sup>15</sup> This supposedly protects the image and unique nature of college athletics.<sup>16</sup> However, this is not the only effect of these amateurism rules. Because of the large amounts of money generated by college athletics, the NCAA, as well as individual universities, utilize

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9. *Id.* at 239.

10. NCAA CONST. art. 2.6, *National Collegiate Athletic Association Manual 1990-91*, at 4 (emphasis added).

11. *Id.*

12. Briggs & Klien, *Supra* note 2.

13. Robin J. Green, Note, *Does the NCAA Play Fair? A Due Process Analysis of NCAA Enforcement Regulations*, 42 DUKE L. J. 99 (1922).

14. Derek Q. Johnson, Note, *Educating Misguided Student Athletes: An Application of Contract Theory*, 85 COLUM. L. REV. 96 (1985).

15. *Id.* at 307.

16. *Id.*

many of these amateurism rules to protect their profits rather than their athletes. Amateurism rules that purport to protect the student-athlete are actually used to protect a university's investment in the athlete. These rules are an attempt to keep the student-athlete eligible and generating money for as long as possible.

Scholarships are not altruistic and benevolent gifts of money to athletes. If an athlete fails to perform and play up to expectations, the scholarship is lost. This is not due to academic failure but because potential earnings for the school have faltered.

Money from college athletics is generated predominantly through the labor and efforts (and at the expense of) the college athlete. "The expected and actual market consequences of the NCAA's Rules are a reduction in the wages of student-athletes, greater profits for colleges, [and] a transfer of income from low-income athletes to higher income coaches . . ."<sup>17</sup> Without adequate compensation of student-athletes, the NCAA and individual universities actively exploit their athletes. This is done first, through their failure to educate athletes,<sup>18</sup> and second, by the failure to adequately compensate them for their services. Looking at college athletics in this light, the NCAA Constitution is extremely hypocritical.

#### IV. AN NCAA ATTEMPT TO ERADICATE STUDENT-ATHLETE EXPLOITATION

##### A. *Excluding Academically Incapable Athletes*

Student-athletes are exploited when schools admit athletes who clearly cannot meet the university's minimum academic demands. In an attempt to eliminate this exploitation, the NCAA passed Proposition 48. As initially passed, Proposition 48 required incoming freshman student-athletes to have at least a 2.0 high school grade point average, and a score of at least 700 on the Scholastic Aptitude Test in order to be eligible for competition in intercollegiate sports during their freshman

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17. Goldman, *Supra* note 5.

18. See Knight Foundation, *Commission on Intercollegiate Athletics, Keeping Faith With the Student Athlete*, 16 (1991)(indicating that only between 33% and 37.5% of the athletes in a Division I basketball or football program ultimately graduate).

year.<sup>19</sup> This rule was ratified amid great debate at the 1993 NCAA Convention.

Some argued that the SAT exam was racially discriminatory against black athletes.<sup>20</sup> Others argued that students were exploited for their athletic skills. Before the passage of Proposition 48, many argued that student-athletes were exploited by being admitted into college with no real prospect of classroom success or obtaining a college degree.<sup>21</sup> The single purpose of their admittance was to bolster the college's athletic program, thereby bringing more revenue to the school. Without even an education to redress the student-athletes, they went largely uncompensated.

After years of capitalizing on student-athletes in this manner, the conference delegates (university presidents and chancellors) resolved to protect student-athletes from exploitation.<sup>22</sup> However, only the Division I schools promulgated Proposition 48 as a "Bylaw."<sup>23</sup> This indicates the lack of concern

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19. See NCAA, *Proceedings of the Annual Convention of the National Collegiate Athletic Association*, 119 (1983) [hereinafter NCAA Proceedings (1983)]. As amended in the 1992 NCAA convention, Proposition 48 now requires a minimum high school G.P.A. of 2.5, and a sliding test score index allowing those who score higher than 700 on the SAT to be eligible with a G.P.A. lower than 2.5. William F. Reed, *The NCAA Gets Even Tougher on Athletes' Academics*, SPORTS ILLUSTRATED Jan. 20, 1992, at 7.

20. *Id.* The discrimination argument is beyond the scope of this paper. The purpose of discussing Proposition 48 here is to demonstrate an attempt by the NCAA to alleviate some of the exploitation of student-athletes.

21. Kevin M. McKenna, *A Proposition With a Powerful Punch: The Legality and Constitutionality of NCAA Proposition 48*, 26 DUQ. L. REV. 43 (1987).

22. *Id.* Dr. Harry Edwards, a Sociology of Sports professor at The University of California at Berkeley, stated that "[t]here are thousands of athletes being passed through college without regard for academic progress. That is exploitation, not assistance." *Id.* at 44, n.6.

23. See NCAA Proceedings (1983), *Supra* note 19, at 124. The Bylaw provides:

Effective August 1, 1986, in order to be eligible for practice, participation in regular-season competition and athletically related financial aid during the first academic year in residence, a student entering a Division I NCAA member institution directly out of high school must have:

(i) Graduated from high school with a minimum grade-point average of 2.000 (based on a maximum of 4.000) in a core curriculum of at least 11 academic full-year courses, including at least three in English, two in mathematics, two in social science and two in natural or physical science (including at least one laboratory class, if offered by the high school) as well as a 700 combined score on the SAT verbal and math sections or a 15 composite score on the ACT, or;

(ii) Presented more than the minimum standard set forth in the preceding paragraph for either the core-curriculum grade-point average or required test score, in which case eligibility may be established during the specified time periods on the basis of the following eligibility indices:

with exploitation at Division II and III level schools. Grambling State University's Joseph B. Johnson asked the unanswered question: "Why are we not setting standards for all of the NCAA instead of just Division I?"<sup>24</sup> The obvious answer is that these schools do not generate as much money as Division I schools, therefore, exploitation is less likely. The money made in Division I schools is the major difference separating them from Division II and III schools. This is further evidence that the NCAA recognizes that money is the driving force behind exploitation of student-athletes.

Despite the general sentiment that "this legislation is not only appropriate but indeed is necessary to preserve the organizational integrity of the NCAA as well as the institutional integrity of our member institutions,"<sup>25</sup> the convention fell short of its goal to end exploitation. Many current NCAA restrictions aid or allow exploitation of student-athletes. The executive Director of the NCAA, Richard Schultz has stated, "[I]t is time for us to take stock of what we have created, save the positives but immediately rid ourselves of the negatives and develop a new, innovative approach for athletics that places it in perspective and allows athletics to be a vital, honorable part of higher education."<sup>26</sup> Proposition 48 was a helpful, though inadequate, attempt to carry out the desires of Director Schultz.

### *B. Protection of Student-Athletes Admitted to College*

Proposition 48 prevents exploitation of those athletes who cannot meet entrance requirements. It does not, however, protect student-athletes who are ultimately admitted to college. They are exploited in many ways. For example, college sports programs:

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For those freshmen entering subsequent to August 1, 1986 and prior to August 1, 1987:

GPA	SAT	ACT
2.2000-above	600	13
2.100-2.199	680	14
2.000-2.099	700	15
1.990-1.999	720	16
1.800-1.899	740	17

See, NCAA Guide for the College-Bound Student Athlete, at 14 (Feb. 1986).

24. See NCAA Proceedings 1983, at 103 *supra* note 19.

25. *Id.*

26. Richard Shultz, address to 84th NCAA Convention, *NCAA NEWS*, Jan. 10, 1990, at 3.

often control the daily lives of scholarship athletes. The [programs] schedule mandatory practices, weight training sessions, and team meetings. These constraints, as well as the intrusions on class and study time from road trips, seriously impair the student-athlete's opportunity to acquire a meaningful education."<sup>27</sup>

Proposition 48 does not provide for remuneration of athletes, nor does it give them quality education and career preparation. In other words, Proposition 48 merely reduces the pool of athletes available for NCAA exploitation. It also partially eliminates one of the methods of exploitation—the selection of potential student-athletes based solely on athletic merit.

Proposition 48 sends a clear message to high school student-athletes: They must prepare themselves academically as well as athletically for college. This is a valuable aspect of the proposition, and for this reason it should not be abolished. However, something should be done to impress on college athletes that academic progress is as important as athletics. Proposition 48 is a good rule, but it is not enough to reduce the exploitation of student-athletes once they are admitted to college.

## V. FAILURE TO COMPENSATE

### A. *Scholarship-Compensation Theory*

Universities claim that providing athletes with a scholarship and paying for their education is sufficient compensation. Granted, athletes are benefitted by scholarships; these benefits may even be considered monetary in nature. However, athletes are in a situation unique to that of other non-athlete students due to the large amounts of money they generate for the school. Non-athlete students can also receive scholarships for their special talents, even if these talents are not used to generate money. A prime example of this inequity is the NCAA limited compensation rule.<sup>28</sup> This rule prohibits student-athletes from

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27. Timothy Davis, *An Absence of Good Faith: Defining a University's Educational Obligation to Student-athletes*, 28 HOUS. L. REV. 743, 788 (1991) (citations omitted).

28. NCAA bylaw 12.1.1 provides that:  
An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual: (a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport; (b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate

using the skills developed in their sport to generate money for themselves.<sup>29</sup> An athlete cannot receive any money in the form of salaries, gratuities, bonuses, game receipts, payments for unspecified expenses beyond actual and necessary travel, room and meal expenses, or any other preferential treatment or benefits based on athletic skills or reputation.<sup>30</sup> These rules allow the NCAA and the universities to corner the market on young athletes. Non-athlete students are not placed under the same confining restrictions as their athlete counterparts. For example, if a student majoring in English literature were to write a best selling novel, there would be no restriction on receiving the profits from the sale of the novel simply because English was the intended major. The same would be true of an Engineering student who develops and patents a product while in school. These students would receive their profits from marketing their skills. Why should athletes be held to a different standard? The answer is found in the almighty dollar generated by student-athletes for the school. According to the "scholarship as compensation" theory, as applied to athletes, an English or Engineering student should be precluded from collecting the profits from their products if they are on scholarship.

Another flaw to this theory is its failure to take into account student-athletes who are not on scholarship, the "walk-on" athletes. If scholarships are compensation for the time and effort of athletes, then walk-on athletes are completely uncompensated. Accordingly, they should be allowed to profit from their athletic talents. Undoubtedly, if non-scholarship athletes were allowed this opportunity, the more prominent and talented athletes as well would gladly give up their scholarships in exchange for the same opportunity, which could potentially earn them substantial economic benefit from endorsements or salaries for off-season play. Furthermore, this theory presupposes that none of these athletes are on academic scholarship. If they are on academic as opposed to athletic scholarships, under this theory they should be given exemption from NCAA rules.

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athletics participation; . . . (d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based upon athletics skill or participation, except as permitted by NCAA rules and regulations; . . . .

National Collegiate Athletic Association, 1990-91 NCAA MANUAL (1990) [hereinafter NCAA MANUAL].

29. *Id.*

30. NCAA MANUAL *supra* note 28, Bylaw 12.1.2, at 58-59.

Compensation through scholarships is also inequitable among athletes. It is not an accurate reflection of the worth of a stand-out athlete. An exceptionally talented athlete will be more responsible for the sell-out crowds and the media revenue brought to the school than the player who only sees limited playing time. Despite the difference in revenue generated, both athletes are compensated the same. Some have argued that this is not an inequity since both athletes are required to put in the same amount of time for their sport. However, this argument would be considered ridiculous if applied to the business world. Nobody expects a janitor at a multi-million dollar company to be paid the same as the company's CEO simply because they work the same number of hours. There is no reason to apply this faulty rationale to student-athletes.

*B. Shortcomings of the Scholarship-Compensation Theory*

While athletic scholarships cover a majority of the costs of attending college, other expenses are not covered. Jim Herrmann,<sup>31</sup> a member of the Brigham Young University football team, related the difficulties of earning extra money for things not covered by any athletic scholarship. He noted that because of the time constraints involved with participation in football and keeping up with classes, it was impossible to take on a job to earn extra spending money. Because of this, it was very difficult for some players to do simple things like go to a movie or out for pizza.<sup>32</sup>

Travis Bice,<sup>33</sup> an ex-member of the UNLV basketball team, added that many of the players who come from economically disadvantaged backgrounds can not afford a plane ticket to return home for the holidays. NCAA rules even prohibit any financial assistance for situations as those described by Mr. Herrmann and Mr. Bice.<sup>34</sup> It is doubtful that any sanctions would be brought against a non-athlete who accepted a plane

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31. Interview with Jim Herrmann, former defensive lineman for the B.Y.U. football team during their national championship year in 1984, and then for the Dallas Cowboys and the Cincinnati Bengals in the NFL (Feb. 16, 1993). Mr. Herrmann is currently working on his Juris Doctorate degree at BYU.

32. *Id.*

33. Interview with Travis Bice, former player for the University of Las Vegas basketball team from 1988 to 1991 and member of their 1990 national championship team (Feb. 21, 1993). Mr. Bice is currently working on his Masters of Business Administration at UNLV.

34. See NCAA Proceedings, *supra*, note 24 and accompanying text.

ticket home from the university. It seems ironic that athletes who are responsible for generating so much money cannot even partake of some of these simple pleasures.

A sad example of this type of exploitation occurred in the 1992 college basketball Final Four Tournament. The Final Four is used as a selling vehicle for college basketball. The NCAA throws lavish parties for sponsors, coaches, reporters, and various school officials. The tournament is also a great source of revenue for the host city. The root of all this money, the players, are often overlooked, and in 1992, two members of the Cincinnati basketball team did not even have a single family member in attendance at the game.<sup>35</sup> So many people making so much money, while those most responsible for the large income stream cannot even afford plane tickets for their families.

It is true that a student athlete who does not want to be exploited can walk away from the program. However, where does this leave the athlete with the desire and potential talent to play professional sports? College athletic programs are used by professional sports as a minor league proving grounds. The chances of athletes reaching the professional level are virtually non-existent without the proper forum to display their talents.

### C. *Unworthy Athletes Take Seats of Worthy Students*

Because the primary goal of colleges should be to provide higher education, an argument has been advanced that academically unworthy student-athletes take up seats in colleges that should go to other academically oriented students. One writer has stated, "[f]or every point guard in the NBA, I'll bet there were 10 potential doctors who never got further than the street corner."<sup>36</sup> This is a misconception about college athletics. In reality, the revenues generated by the sports program directly and indirectly help to expand universities and provide educational opportunities for more people.

A good example can be found at BYU, where the athletic department, because of their success, was able to make a generous donation toward the costs of expanding the BYU law library. Successful sports programs also bring notoriety and

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35. Phil Taylor, *Players Have Rights Too*, SPORTS ILLUSTRATED, Nov. 23, 1992, at 124.

36. Tony Kornheiser, *Drawing the line at U-Md.*, THE WASHINGTON POST, May 2, 1991 Final ed., at B-1.

prestige to a school. This, in turn, translates to higher enrollment that increases school revenue. The increased revenue can then be used for expansion, making more seats available for potential doctors to leave the street corner and enter the classroom. Therefore, the money generated by the premiere athletes in college athletics is actually benefitting academically oriented students; meanwhile, the athletes themselves are not benefitted to the extent of their contribution.

## VI. A PLAN FOR COMPENSATING STUDENT ATHLETES

Because student-athlete generate substantial revenue, they should receive some form of compensation. Both Mr. Bice and Mr. Herrmann agreed with this view, however, both were concerned with how this would be done. We believe that it is important to preserve the amateur qualities of college athletics. We also believe that college athletics should not be detached from the universities.

The relationship between college athletics and professional sports leagues has been beneficial to both and we believe this is why the separate organizations should work more closely together. The colleges receive greater attention because they provide a good showcase of the future talent to be seen in the professional leagues. The professional leagues benefit from a testing grounds to assist them in their competitive selection of talent.

### A. *Education of the Student-Athlete*

Simply admitting athletes into college does not guarantee that they will receive an education.<sup>37</sup> The demands of "big time" college athletics detours student-athletes away from giving proper attention to their academic responsibilities. College athletic programs insist on winning teams, which require practicing upwards of 30 hours a week, season competition lasting five months, extensive travel, and also adequate school grades.

Our proposed plan would allow student-athletes to receive compensation for their athletic talents. While this would not eliminate all of the obstacles that college athletics places before student-athletes trying to receive an education, it would be helpful in solving some of the problems. A possible positive

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37. See Briggs & Klien, *supra*, note 2.

effect of paying student-athletes could be that more athletes would stay in school to finish their degree programs. Financial pressures would be alleviated and the lure of the big money of professional sports might be less tempting to student-athletes.

### *1. Assistance from professional leagues*

College and professional sports act together in many ways. As stated above, colleges serve as a minor league for professional sports, especially basketball and football. The NBA and NFL benefit from receiving quality athletes. Because of their close ties, and the powerful influence of the professional leagues, the NCAA should work in conjunction with professional sports to help encourage student-athletes to get their degree before leaving college.

A recent concern in professional sports is the escalating contracts demanded by athletes. The rookie that holds out for more money has become commonplace in professional sports. For example, the 1993 basketball season began with two first round draft picks, Alonzo Mourning of Georgetown and Jimmy Jackson of Ohio State University, sitting out the beginning of the season in a battle for more money. Problems of this sort have caused concern among the NBA owners. One of the suggested solutions to this problem is to impose a salary cap on all rookies that enter the league. This idea could be expanded to give incentives to college athletes to stay in school and receive a college degree.

At the last few NBA All-Star games, the NBA has put on a "Stay in School Jam" to encourage younger students to get a good education. In contrast, the big money of professional basketball lures the college student away from education. Working together, and using the salary cap concept, the NBA and NCAA can encourage student-athletes to finish their education.

### *2. The Salary Cap Schedule*

The Salary Cap plan involves a series of caps placed on rookies entering the NBA.<sup>38</sup> The further athletes progress in their college education, the higher the cap. The lowest level salary cap would be applied to athletes who leave college before

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38. For easier treatment with this part of our plan, we will deal with the NBA as an example. However, this can be applied to all sports that recruit from colleges.

their senior year. Salary for these athletes could be limited to \$500,000 for the first year, and \$700,000 the second, for example.

Another cap would be set for those athletes that complete four years of college, but do not receive their degree. This cap could be set at \$750,000 for the first year, and one million dollars the second. This cap would encourage students to complete their four years of college.

The final cap would be applied to those student-athletes that not only complete their four years of college, but also receive their degrees. We would limit these students to a one year cap of 1.5 million dollars. This would be a significant incentive for student-athletes to complete their college educations. Just as Proposition 48 sent a message to high school students to take their education seriously, the salary cap schedule would encourage college athletes to work hard toward obtaining their degrees. This would be of great use to those who make it into the NBA as well as those who do not.

This schedule would be beneficial to the NBA by helping to curb the excessive salaries paid to rookies and set a new base for starting salaries to work from. The colleges will be benefitted by retaining money generating athletes, who would be encouraged to stay in school longer. Finally, and most importantly, student-athletes are benefitted if they decide to complete their education and receive their degree.

Because of the way the present system works, this plan will likely meet resistance from college athletes, especially those with a promising outlook to play at the professional level. Student-athletes today are accustomed to the big money offered for entering professional sports. They are not likely to willingly accept such limitations. However, this plan still allows student-athletes to negotiate lucrative deals after their second year.

The plan might also be more easily accepted by student-athletes if implemented in combination with our plan to compensate them while in college. The money they receive in college would help facilitate their education. A salary cap on rookies is already something being considered by the NBA. The NBA has the power and the influence on the student-athlete to make this plan work. This plan would also help eliminate some of the salary problems that the NBA is experiencing.

A possible downfall of the plan is the potential loss of players to other leagues such as the European leagues. A salary cap should be imposed on these players if they return to play in the

NBA. We do not think that most athletes would try to skirt the salary cap by playing in Europe, if they knew it meant sacrificing the prestige and earning potential associated with playing in the NBA and the imposition of a salary cap upon their attempted transfer from the European leagues to the NBA.

It is important to encourage athlete's to complete their education. This plan accomplishes that goal with an endorsement of the NBA. The salary cap will encourage more students to finish their education and receive their degrees. This will then alleviate some of the exploitation of student-athletes because a college education can be viewed as partial compensation. The salary cap amounts may be varied, but the structure should be maintained.

### *B. No Direct Payment From Universities*

In preserving the amateur nature of college athletics, our plan would not allow payment of athletes to come directly from university sources. If direct compensation of student-athletes were allowed, student-athletes' choice of which university to attend would be determined mostly, if not completely, by who could offer them the most money. This would create an imbalance in college athletics. The schools with the most money would be able to buy up all the talent. Factors currently used in deciding which school to attend would become far less important. These factors which maintain a balance of power between the universities include: quality of education, personal attachments, state or school pride, family tradition and background. Furthermore, allowing schools to pay athletes would cause an even greater emphasis on sports over education.

Another problem would be determining the relative value of the athletes. If contract prices were to escalate as they have at the professional level, it would cause financial devastation at most universities. Higher tuition would probably be charged in order to pay for these salaries. This would place an unfair burden on the non-athlete students. The athletic programs of many schools are not profitable. Our goal is to eliminate exploitation of the student-athlete, while increasing the profit potential of the university. We feel that under our plan these important factors could be preserved.

### C. Allow Endorsements

Currently, student-athletes are not allowed to receive endorsements under the NCAA rules.<sup>39</sup> This funnels endorsement money to the coaches and away from the athletes who more directly generate interest in the products. By allowing endorsements, the free market system will be allowed to determine the worth of the athletes. The better players will receive greater endorsements than the less "famous" players. This is more equitable to all concerned. The athletes who generate the money could receive it and be benefitted for their abilities and talents in an equitable way. The more prominent athletes will receive the larger national endorsements, while the less prominent athletes will probably receive smaller endorsement offers from local businesses.

As the situation now stands, all the endorsement money goes to the coaches. We believe that there is no valid reason for the coaches to reap such a windfall from the notoriety of his players. College basketball and football coaches at major institutions frequently earn salaries that are several times greater than salaries paid to university presidents.<sup>40</sup> This is usually because of the endorsement money a coach receives. Allowing student-athletes to receive endorsements would balance, to a small extent, the coaches' earnings with the earnings of the university presidents, as well as the athletes. Presently, companies are paying coaches large sums of money to encourage them to have their players use the companies' products. The athlete, not the coach, is the one producing the endorsements and should be the one receiving the payments.

By allowing endorsements, universities need not contribute any money. All of the money comes from outside companies that wish to promote their products. The student-athletes benefit according to their talent while the schools are not harmed, nor burdened with extra administrative expenses. The athletes would negotiate separately with companies that want the athletes to endorse their products. An added benefit to athletes are the "real world" experiences they will receive in negotiating and dealing with endorsement companies.

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39. See, NCAA Proceedings 1983, *supra*, notes 24 and 25 and accompanying text.

40. Ethan Lock, *Unreasonable NCAA Eligibility Rules Send Braxton Banks Truckin*, 20 CAP. U. L. REV. 645-6 (1991).

Another benefit of this plan could be the reduction of "under the table," and dishonest deals that the NCAA is currently being plagued with.<sup>41</sup> For the past several years, there have been many major scandals that have cost universities millions of dollars. For example, the University of Maryland's (UM) coaches were accused of giving cash payments to athletes and providing improper transportation.<sup>42</sup> UM was subsequently banned from post-season tournament competition for two years, which cost the school approximately \$3.8 million in revenue.<sup>43</sup>

If student-athletes could receive endorsement money, they would be less likely to accept payments considered illegal under NCAA rules from recruiters, alumni or coaches. This would reduce the number of NCAA sanctions which cost universities millions of dollars. Granted, allowing endorsements is not the complete answer to the "corruption" problem but it would be a movement away from the status quo and in the right direction.

#### *D. Allow Athletes to Retain Agents*

If athletes are allowed to seek endorsements, it will be necessary to allow them to retain agents. It is difficult to understand the rationale behind the prohibition of agents. Agents will be very helpful in assisting athletes with the complexities of dealing with endorsement contracts. Travis Bice stated that the "no agent" rule was ridiculous even absent the need for assistance with endorsements. He stated that student-athletes need an agent just to understand the NCAA rules. Travis cited the case of a teammate at UNLV, Anderson Hunt, who declared himself eligible for the draft in hopes that he would be recruited after his junior year. When he was not drafted, he lost his senior year of eligibility. Travis felt that if Hunt would have been allowed to consult an agent, his decision would have been better informed and he might not have lost his senior year of eligibility. Pressures and intricacies of dealing with attorneys and businessmen pursuant to endorsement contracts will make it essential to allow student-athletes to consult with an agent.

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41. See Davis, *Supra* note 6 at 240.

42. *Id.* at 239.

43. *Id.*

*E. Allow Pay for Playing in Off Season*

Another amateurism rule restricts student-athletes from receiving payment for off-season play.<sup>44</sup> Similar to allowing endorsements, allowing student-athletes to receive off-season pay would not cost schools any revenue. All levels of athletes, stars and non-stars, should be allowed to receive some compensation for their talent. It seems inequitable that other students are allowed to use their talents when the athlete is not. Music majors, business majors, drama majors, law students, etc., are all allowed to use their talents to help pay for their education.

In a study sponsored by the NCAA, football and basketball players reported having less money available after expenses than non-athlete students.<sup>45</sup> Almost fifty-eight percent said the money they have is inadequate.<sup>46</sup>

Athletes have developed their talents and earned their reputations through their own efforts. They should be allowed to capitalize on those efforts. Some claim that it is the school that gives the athlete a forum to display his talents, that without the school he would be nothing. This recognition is argued to be adequate compensation. This is clearly a two way street. Without these athletes, athletic programs would not be financially successful. It is hypocritical for the NCAA to restrict off season pay for student-athletes when its member universities continue to seek new ways of increasing revenues at the expense of the athlete. There is no need to place restrictions on athletes' use of their talents that are not placed on non-athletes.

Off-season pay would be a partial payment for their hard work and efforts. The time has come to eliminate the inequities placed on student-athletes that are not placed on other students. To say that the athletes are not receiving fair treatment is an understatement.

*F. Sharing Tournament and Bowl Game Awards  
with Athletes*

The biggest money generated by college athletics comes from championship tournaments and football's annual bowl

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44. See NCAA Proceedings, *supra*, notes 24 and 25 and accompanying text.

45. Center for the Study of Athletics, *Summary Results from the 1987-88 National Study of Intercollegiate Athletes: Report No. 1* at 32-33 (Nov. 1988).

46. *Id.*

games. The teams that make it to these special post season games are paid well. In the case of football, the higher ranked schools are often involved in a bidding war by the more prominent and wealthy bowl game organizers and sponsors. Some of this money should go to the athletes who earned the rights to play in these post-season games. The money need not go to the athletes as cash payments, but could go to them indirectly.

A program could be set up so that some of the money could be used to pay the expenses of two people of each athlete's choice to attend the games. This would avoid the situation that occurred with the Cincinnati players in the 1992 Final Four basketball tournament. Care should be taken to avoid abuses of these awards such as scalping.

## VII. CONCLUSION

Student-athletes are exploited not only through universities' failure to educate them, but also through the amateurism rules that deny them compensation for their talents and services. Proposition 48 was an attempt by the NCAA to deal with a small part of the exploitation problem, and was a step in the right direction. However, this rule does not compensate student-athletes, but only protects them from one form of exploitation. Student-athletes who commit to a sport and spend most of their time practicing, traveling and playing the game should be compensated for their efforts and talents as well as protected from other forms of exploitation.

The NCAA and professional sports leagues can both benefit by working together. A graduated salary cap based on college completion will help the professional sports leagues deal with the rising salaries of professional athletes, and also help colleges keep their players in school longer and increase their revenue. The revenue colleges receive will be less offensive if student-athletes are better provided for. More importantly, student-athlete will be encouraged to complete their college educations and earn degrees. This education will be further compensation for the time student-athletes dedicate to their sport.

Through endorsements and pay in the off season, student-athletes will be further compensated in proportion to their talent. Universities will also be able to continue educating and providing school spirit through sports events without additional financial burdens. While schools do provide some student-athletes with scholarships, this is not adequate compensation.

The NCAA needs to follow its own constitution and protect student-athletes “from exploitation by professional and commercial enterprises”<sup>47</sup> such as the NCAA and its member universities. The combination of payment and the salary cap will give strong incentives to student-athletes to stay in school and earn a degree. Not only will athletes be compensated through endorsements, but through education. A more proper emphasis will then be placed where it should be—on academic achievement.

*Steve Murphy & Jonathan Pace*

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47. NCAA CONST. art. 2.6, *supra* note 10.