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Note

***861** REEVALUATING AMATEURISM STANDARDS IN MEN'S COLLEGE BASKETBALL

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This Note argues that courts should interpret NCAA conduct under the Principle of Amateurism as a violation of § 1 of the Sherman Antitrust Act and that courts should order NCAA deregulation of student-athletes' indirect financial activities. Part I of this Note discusses the history of NCAA regulation, specifically its Principle of Amateurism. Part II discusses the current impact of antitrust laws on the NCAA. Part III argues that the NCAA violates antitrust laws because the Principle of Amateurism's overall effect is anticompetitive. Part IV argues the NCAA could institute an amateurism standard with a net pro-competitive effect by allowing student-athletes to pursue business opportunities neutral to college budgets; potential revenue sources would include: summer professional leagues, endorsement contracts, and paid-promotional appearances.

Duke University decided during the 1994 college basketball season to sell sweatsuits bearing the name and likeness of its star player, Grant Hill. [\[FN1\]](#) The Duke bookstore never asked Hill's permission to use his image and it never offered to share profits with him. [\[FN2\]](#) Instead, Hill was told that, just like any other student, he could have a sweatsuit for \$120. [\[FN3\]](#) Hill could get the money from his parents, but not from his fans. [\[FN4\]](#) He could earn money during the summer, but not by accepting pay to play basketball, endorse products, or promote events. [\[FN5\]](#) He could continue generating revenue for Duke University and the National Collegiate Athletic Association (NCAA). However, Hill would lose his college basketball eligibility forever if he generated revenue for himself because that would violate the NCAA Principle of Amateurism. [\[FN6\]](#)

The NCAA Principle of Amateurism is an agreement between the 1271 member institutions of the NCAA that shapes the ***862** relationship between NCAA member schools and their 361,175 student-athletes. [\[FN7\]](#) The Principle of Amateurism forbids its members from directly paying student-athletes and sanctions student-athletes that receive monetary or in-kind compensation from outside sources. [\[FN8\]](#)

By placing labor-market restrictions on student-athletes, the Principle of Amateurism reduces labor supply in four markets: college sports, summer minor league sports, product endorsements, and event promotions. [\[FN9\]](#) These inflated labor costs are likely passed to consumers in the form of more expensive game tickets, products and events. In addition, by not paying student-athletes, the Principle of Amateurism leads to windfall profits for college coaches and administrators, who receive disproportionately high salaries and additional endorsement/promotion opportunities.

College basketball players are especially hurt by the Principle of Amateurism, as NCAA basketball yields the highest revenue-per-player of any collegiate sport. [\[FN10\]](#) Not only are college basketball players at a financial disadvantage compared to their professional counterparts, but the rules also disadvantage college basketball ***863** players compared to both multi-sport athletes and the general student body. [\[FN11\]](#)

The public is similarly hurt by the Principle of Amateurism, because the practice leads to inefficient allocation

of labor resources as well as to a negative societal effect. By colluding to restrain the financial opportunities of student-athletes, Amateurism influences star college basketball players to leave school without graduating in favor of professional leagues. [\[FN12\]](#) Many of these players are unprepared to perform on the professional level, as indicated by many young players' poor on-the-court performance and frequent legal trouble off it. [\[FN13\]](#) This early exodus to the NBA on the part of high school and college basketball players is to the public detriment because it leads to an inferior basketball product. Given these anticompetitive effects on the various basketball markets, Amateurism is the type of conduct antitrust law is intended to prevent. [\[FN14\]](#)

***864** This Note argues that courts should interpret NCAA conduct under the Principle of Amateurism as a violation of § 1 of the Sherman Antitrust Act [\[FN15\]](#) and that courts should order NCAA deregulation of student-athletes' indirect financial activities. [\[FN16\]](#) Part I of this Note discusses the history of NCAA regulation, specifically its Principle of Amateurism. Part II discusses the current impact of antitrust laws on the NCAA. Part III argues that the NCAA violates antitrust laws because the Principle of Amateurism's overall effect is anticompetitive. Part IV argues the NCAA could institute an amateurism standard with a net pro-competitive effect by allowing student-athletes to pursue business opportunities neutral to college budgets; potential revenue sources would include: summer professional leagues, endorsement contracts, and paid-promotional appearances.

I. The History of NCAA Regulation and the Principle of Amateurism

The NCAA was initially formed as a quasi-governmental body, responsible for preventing student-athletes from on-the-field injuries. [\[FN17\]](#) Today's NCAA, however, is more like the headquarters of a commercial cartel. [\[FN18\]](#) Today's NCAA maximizes profits beyond a competitive rate and maintains wealth in the hands of a select few administrators, athletic directors, and coaches. [\[FN19\]](#) The NCAA ***865** achieves such goals through its Principle of Amateurism, [\[FN20\]](#) an outdated vision of college athletics that prevents student-athletes from profiting from their athletic abilities. [\[FN21\]](#)

Amateurism principles are specifically defined in Article 12 of The NCAA Bylaws. [\[FN22\]](#) The thrust of Article 12 is that NCAA basketball players are not only forbidden from accepting college basketball salaries, but these players are also prohibited from enjoying the potentially profitable externalities of playing college basketball. These include summer basketball employment, endorsement contracts, and paid-promotional appearances. Restraints of this nature are obviously atypical and indicate an uncompetitive market.

The Principle of Amateurism is an artifact from a different era, when college athletics were truly amateur and regulatory action ***866** served a more benign purpose. Chartered on March 31, 1906 as the Intercollegiate Athletic Association and renamed the NCAA in 1910, the organization began as a group of sixty-two schools that monitored college football rules. [\[FN23\]](#) In 1905 alone, intercollegiate football resulted in eighteen deaths and over 100 major injuries. [\[FN24\]](#) In late 1905, President Theodore Roosevelt called for two White House conferences to encourage reforming football rules to benefit safety. [\[FN25\]](#) The NCAA soon after was created to serve that function. [\[FN26\]](#)

Despite Roosevelt's efforts, through the 1920s collegiate sports regulation remained primarily a function of student-athletes and faculty, with the NCAA playing a minor role in developing on-the-field rules and organizing championship events. [\[FN27\]](#) In the years between World War I and World War II, commercialization began to appear in collegiate sports, as football coaches such as Red Grange began actively recruiting players. [\[FN28\]](#)

After World War II, with a dramatic increase in access to higher education, largely through government support for returning military personnel to attend college, public interest in collegiate sports expanded dramatically. [\[FN29\]](#) According to Rodney Smith, a law professor at University of Memphis and a former member of the NCAA Infractions Appeals Committee:

Increased interest, not surprisingly, led to even greater commercialization of intercollegiate athletics. With the advent of television, the presence of radios in the vast majority of homes in the United States, and the broad-

casting of major sporting events, these pressures further intensified. [\[FN30\]](#)

More colleges started athletic programs, while others expanded existing programs, in an effort to respond to increasing interest in intercollegiate athletics. An even greater increase in NCAA governance and authority resulted when the NCAA promulgated *867 additional rules when faced with a series of gambling scandals and recruiting excesses. [\[FN31\]](#)

In the 1950s, the NCAA significantly increased its scope as both a regulatory body and as a commercial enterprise. [\[FN32\]](#) New NCAA Executive Director Walter Byers established the NCAA Committee on Infractions, which granted itself broad sanctioning authority. [\[FN33\]](#) Byers also signed the NCAA's first million-dollar television contract, which signified a major shift in the NCAA's role, from a regulatory body to a commercial entity. [\[FN34\]](#)

Over the past two decades NCAA commercialization has grown rampant, as the once safety-oriented body has emerged as the headquarters of professional-like sports enterprise. Recent NCAA commercialization is evident by the 2001-02 NCAA budget, which anticipates \$346 million revenue, of which \$271 million comes from television contracts, \$37 million from championship events and \$27 million from licensing rights. [\[FN35\]](#) A significant portion of NCAA television revenue emerges from a \$6 billion contract, which allows CBS to televise the college basketball championship tournament from 2003-13. [\[FN36\]](#)

At the 94th Annual NCAA Convention, held from January 8-11, 2000 in San Diego, CA, the NCAA adopted two amendments to its bylaws, further signifying its transition to commercialism. First, the NCAA now allows athletic departments to license a university's name and logos to commercial products without the explicit approval of the university president. [\[FN37\]](#) By eliminating the need for college presidents' approval in signing licensing agreements, this amendment will enable NCAA licensing growth comparable to the recent growth in NCAA broadcasting revenue. Second, NCAA member schools may now accept monetary donations from *868 professional sports organizations, [\[FN38\]](#) fortifying the NCAA role as a minor league in which professional sports leagues maintain a developmental stake. An alliance between professional sports leagues and the NCAA would exasperate the existing labor market problems by dissuading professional sports leagues from developing minor league systems, which would otherwise compete against the NCAA for young athletes' labor.

II. Analysis of Antitrust Law with Respect to the NCAA

In agreeing to abide by NCAA rules and regulations, the 1271 NCAA member institutions enter into a horizontal agreement, which is an agreement among natural market competitors on the way they will compete against one another. [\[FN39\]](#) Because the principle thrust of the Sherman Act is to prohibit commercial monopolistic conduct, courts have found that many NCAA rules are not restraints in trade, which the law seeks to protect. [\[FN40\]](#) Such conclusions are reached based on an inaccurate assumption that the NCAA is not principally commercial in nature. [\[FN41\]](#)

Thus, when NCAA rules are challenged as restraints in trade in violation of the Sherman Act, courts look closely at the rule of reason [\[FN42\]](#) to determine whether the challenged rule promotes business *869 objectives of the NCAA, which are illegal, or serves the primary objective of maintaining a competitive, amateur athletic league, which are legal. [\[FN43\]](#)

Due to the misconception that amateurism principles have a pro-competitive effect, many courts are too lenient when applying rule of reason analysis against the NCAA. [\[FN44\]](#) When student-athletes file antitrust suits against the NCAA, courts consistently, and perhaps unfairly, hold in favor of the NCAA. [\[FN45\]](#) Banks and Smith are representative of the case law, which show significant deference to the alleged pro-competitive effects of amateurism.

In Banks, the plaintiff, a college football player for Notre Dame who entered the NFL draft with one-year of eli-

gibility remaining, brought an antitrust suit against the NCAA. The plaintiff argued that an agreement between NCAA member institutions that forbids student-athletes from playing college football after entering the NFL draft violates § 1 of the Sherman Antitrust Act. [\[FN46\]](#)

The Banks court applied the rule of reason to hold that an NCAA bylaw, which terminates college eligibility when a player applies to the NFL draft, does not have an anticompetitive effect because the NCAA is not a "purchaser of labor." [\[FN47\]](#) The Banks court argued that none of the eligibility rules restrain trade in the market for college football players because the NCAA does not exist as a training ground for future NFL players, but rather to provide an opportunity for competition among amateur students pursuing an *870 education. [\[FN48\]](#) The court further stated that "[t]he NCAA Rules seek to promote fair competition, encourage the educational pursuits of student-athletes and prevent commercialism." [\[FN49\]](#)

More recently in Smith, the Third Circuit upheld a district court's dismissal of an antitrust claim filed by a post-baccalaureate student who argued that the NCAA restrained trade by limiting her collegiate eligibility to four seasons. [\[FN50\]](#) The plaintiff, a graduate student-athlete, argued that the NCAA Postbaccalaureate Bylaw's restraint is unreasonable. [\[FN51\]](#) As in Banks, the Smith court held that the eligibility restriction "primarily seek[s] to ensure fair competition in intercollegiate athletics" and does not promote business or commercial interests of the NCAA. [\[FN52\]](#)

Examining the Postbaccalaureate Bylaw under the rule of reason, the Court of Appeals in Smith focused on whether the challenged restraint enhances competition. [\[FN53\]](#) The Smith court was persuaded that by encouraging student-athletes to participate as undergraduates and not preserving eligibility for graduate years, the bylaw enhanced the competitive goals of intercollegiate athletics. [\[FN54\]](#)

Such deference to the NCAA is not ubiquitous; courts are more likely to hold the NCAA in violation of antitrust law when the NCAA is challenged by a sub-group of colleges or coaches. [\[FN55\]](#) In NCAA v. Board of Regents, the U.S. Supreme Court held that the NCAA does not have a blanket exemption from antitrust laws, even though it is a nonprofit entity with educational objectives, because the "NCAA and its member institutions are in fact organized to maximize revenues." [\[FN56\]](#) Even though the NCAA was a nonprofit entity, the Court held the NCAA was in violation of the Sherman Antitrust Act, because the member colleges agreed to a television plan that "protects ticket sales by limiting output--just as any monopolist increases ticket sales by decreasing output." [\[FN57\]](#)

Consistent with the ruling in Board of Regents, the Tenth Circuit recently held in Law v. NCAA that an NCAA-imposed cap of *871 \$16,000 on Division I entry-level basketball coaches' salaries is an unreasonable restraint of trade as a matter of law. [\[FN58\]](#) Applying the rule of reason, the court found this salary cap has the naked anticompetitive effect of fixing one of the costs of producing Division I basketball games without furthering product availability or competitive balance among NCAA members in the least restrictive manner. [\[FN59\]](#) Again, the argument for an NCAA antitrust exemption was refuted.

III. The Fallacy of Amateurism as a Pro-Competitive Force under the Rule of Reason

Even though the perceived virtues of amateurism have led some courts to apply the rule of reason in favor of the NCAA, [\[FN60\]](#) today's amateurism includes a significant commercial component, which shifts the balance against the NCAA. [\[FN61\]](#)

Some, such as Michael Acain, are clarifying that the amateurism "model relies on an out-dated notion of amateurism inconsistent with the present environment in college sports" [\[FN62\]](#) and that the rules limiting student-athlete wages operate as a restraint of trade on a relevant commercial market. [\[FN63\]](#) Evidence shows that the NCAA no longer effectively encourages educational pursuits of student-athletes nor prevents commercialism. [\[FN64\]](#)

Rather, the NCAA member *872 schools have become economic competitors that collectively possess monopsony power over the demand for college athletes and monopoly power over the supply of college games. [\[FN65\]](#)

Although the NCAA still claims to protect student-athletes from exploitation, [\[FN66\]](#) it is more likely that today's NCAA serves to exploit student-athletes through corporate athleticism, reaping significant revenues from the players' work product. [\[FN67\]](#) NCAA rules sometimes show blatant disregard for student-athletes' scholastic pursuits. The NCAA allows its member schools to conduct up to twenty hours of formal practice per week. To remain competitive on the field, most teams opt for the maximum number of practice hours. [\[FN68\]](#) In addition, NCAA rules allow team captains to lead practice and weight-lifting sessions, which extend beyond the formal twenty-hour/week limit. [\[FN69\]](#)

Many recorded cases exist of college basketball coaches encouraging their players to take less rigorous courses in favor of athletics and of college admissions officers admitting academically challenged athletes, but failing to provide them with adequate academic services. [\[FN70\]](#) For example, former Drake University basketball player Terrell Jackson filed (and lost) a suit against Drake University after coach Tom Abatemarco allegedly encouraged him to take easy classes and submit plagiarized work. [\[FN71\]](#) Former Creighton University basketball player Kevin Ross filed a more successful lawsuit against Creighton University for various tort and contractual damages after playing four years of college basketball for Creighton despite an elementary-school level education and leaving school unprepared for the workforce despite promises that he would receive an education. [\[FN72\]](#) Among famous athletes, Dexter Manley, a former NFL Defensive All-Pro who admitted that he had *873 entered Oklahoma State University in 1977 unable to read or write, played there for four years, and left illiterate. [\[FN73\]](#)

Furthermore, NCAA rules allow member schools to schedule midweek road games despite the players' conflicting classroom obligations. [\[FN74\]](#) The NCAA Executive Committee exacerbates this problem by scheduling NCAA Basketball Tournament games on Thursdays and Fridays. [\[FN75\]](#) Most disturbingly, the NCAA over the past decade has shown increasing deference to a powerful core of non-academic minded coaches, who advocate an elongated college basketball season at the expense of student-athletes' academic obligations. [\[FN76\]](#)

Scholastic pursuits are sacrificed largely in favor of a member school's commercial motives. [\[FN77\]](#) The tremendous popularity of men's college basketball creates a substantial revenue-generating capacity and the prospect of increased visibility for universities. [\[FN78\]](#) Division I men's basketball revenues closely resemble professional sports, as a significant percentage of the NCAA-budgeted \$346 million revenues and \$336 million expenses involve college basketball. [\[FN79\]](#)

According to National Sports Law Institute Director Matthew Mitten, "[t]he significant economic rewards of winning have generated fierce off-field competition among universities for inputs necessary to produce winning teams (e.g., coaches and players) as well as efforts to fully exploit the economic value of their athletic *874 products by maximizing fan and booster support, television revenues and commercial sponsorships." [\[FN80\]](#)

In college football, the net income for all football games in 1994 totaled \$40.7 million, which was distributed among the participating universities. [\[FN81\]](#) For March Madness, the net income from the 1994 tournament produced \$89 million, in addition to television revenues. [\[FN82\]](#) CBS's exclusive agreement to air the NCAA College Basketball tournament until 2002 is worth \$1.7 billion dollars, while CBS' new 11-year contract is worth \$6 billion dollars. [\[FN83\]](#)

In addition to increasing sports revenues, fielding winning teams has proven as an effective way for colleges to increase undergraduate application rate. [\[FN84\]](#) For example, at Georgetown, Patrick Ewing's basketball performance during the 1982-83 NCAA season helped generate a 47% increase in undergraduate applications and a forty-point rise in freshman SAT scores. [\[FN85\]](#) The same effect is illustrated in football, where Boston College's Doug

Flutie helped raise applications 25% and increase accepted freshman SAT scores by 110 points in 1985-86, the year after Flutie won the Heisman Trophy as the nation's outstanding college football player. [\[FN86\]](#)

Since student-athletes are not allowed to profit from their skills, men's college basketball revenues create a windfall of payments to league administrators, directors, and coaches. [\[FN87\]](#) For example, NCAA Executive Director Cedric Dempsey, who will retire when his contract expires at the end of 2002, currently earns \$647,000 per year plus non-monetary compensation, which includes a corporate jet. [\[FN88\]](#) In addition, many men's basketball coaches earn more than one million dollars in total compensation per year. [\[FN89\]](#) Furthermore, it is becoming commonplace for universities to sign multi-million dollar sponsorship agreements with shoe and apparel companies. [\[FN90\]](#) *875 Florida State University, Pennsylvania State University and the University of Michigan are just three of the many schools that have signed multi-million dollar sponsorship agreements with Nike. [\[FN91\]](#)

The existence of high-profile college basketball allows schools to increase profitability, either by raising tuition prices, or by keeping the tuition rate stagnant and reducing academic-related spending on the overall student body. [\[FN92\]](#) A recent study noted that while an average of 3% tuition dollars were allocated as NCAA revenue in 1989, by 1992 the figure increased to 6%. [\[FN93\]](#)

Nevertheless, college basketball players lack monetary incentives to remain student-athletes. College basketball players, not sharing in the revenue generated by their talents, are increasingly forgoing college in favor of the NBA. Over the past 20 years, NBA teams have shown a growing propensity to draft players without college degrees. [\[FN94\]](#) The number of players selected in the first two rounds of the annual NBA Draft without a four-year college education has increased from three players (6.5 percent of the overall drafted pool) in 1980 to 25 players (43 percent of the overall drafted pool) in 2001. [\[FN95\]](#)

Pressure to enter the draft early is strongest among players from low-income families, of whom a disproportionate percent are African-American. [\[FN96\]](#) Low-income basketball players often rush to the NBA because of financial hardship, even when college would prove to be more beneficial in the long run. [\[FN97\]](#) Many players who left school early would have completed their college degrees if NCAA rules did not restrict financial freedom. For example, current *876 Sacramento Kings forward Chris Webber left the University of Michigan as a sophomore in part because he "could not afford to buy fast-food dinner." [\[FN98\]](#)

According to Memphis Grizzlies player Shane Battier, a 2001 Duke University graduate and former Student Basketball Council President, [\[FN99\]](#) many of his teammates are unable to afford "movies and a coke" because the NCAA placed such tight restrictions on student-athletes' earning capacity. [\[FN100\]](#) The NCAA-regulated financial aid packages provide just enough compensation to cover tuition, books, and the most basic needs.

Other players have decided to forgo college in favor of the NBA, because the NCAA prevents student-athletes from seeking immediate and long-term financial stability. [\[FN101\]](#) For example, Orlando Magic forward Tracy McGrady wanted to attend college; however, he turned professional because amateurism rules prevented him from signing an endorsement contract. [\[FN102\]](#) Instead, McGrady signed a three-year, \$4.68 million contract with the Toronto Raptors directly out of high school, and he supplemented his earnings with a six-year, \$12 million Adidas endorsement. [\[FN103\]](#)

Nevertheless, some commentators advocate maintaining amateurism principles and continuing the partial NCAA exemption from antitrust law. They point out that the average Division-I athletic department reports operating losses and that the average student with a college degree earns substantially more per year than a student without a degree. [\[FN104\]](#) These arguments, however, are not entirely accurate when one considers all the relevant facts.

Although the average NCAA Division I program reported a \$823,000 loss in 1996-97, [\[FN105\]](#) many of these

figures are calculated *877 after windfall payments are made to coaching staffs, administrators and the NCAA. In addition, many of these figures are significantly questioned based on accounting procedures, which designate some athletics revenues and expenses to other college departments. [FN106] These figures also do not account for the possibility that profit-generating sports such as mens' basketball subsidize the costs of other Division-I sports, which lose significant amounts of money. [FN107]

Second, even if the average student-athlete increases earning potential by completing college, a prospective professional basketball player is not going to enjoy the same future monetary benefit, as there is no evidence linking professional basketball salaries to level of education. Third, neither corporate profit levels nor future earning potentials of workers are affirmative defenses generally considered in antitrust analysis. [FN108] Finally, there are compelling societal reasons for enforcing antitrust law against the NCAA beyond economic efficiency as the next section demonstrates.

A. Amateurism's Negative Societal Impact

The college basketball industry is not necessarily the only industry that avoids full antitrust scrutiny. [FN109] However, review of the NCAA Principle of Amateurism is imperative, even as compared to the review of other industries' practices, because the Principle of Amateurism has an ancillary negative effect on the development of children's role models. [FN110]

*878 American children idolize professional athletes, including NBA players. [FN111] However, the NBA's young players are disproportionately cited for violence, drug use, and drunk driving, when compared to NBA players overall and personal troubles are highest among NBA players without college degrees. [FN112]

The college experience promotes maturity, independence, and work ethic. [FN113] However, NCAA rules financially influence basketball players into forgoing their college education. [FN114] In addition to inhibiting student-athletes' academic and financial pursuits, NCAA amateurism also reduces the supply of NBA role models. [FN115]

The entertainment industry in its various forms serves as an American connection to heroes. [FN116] Sports figures first emerged as role models in the United States during the 1920s. [FN117] With the advent of television in the 1950s and the Internet in the 1990s, athletes today have an even greater presence in American homes. [FN118] Sports figures play an especially significant role within low-income and African-American communities. [FN119] A recent study of African-American children found that 85% of 10-year olds and 98% of 18-year olds considered a sports figure as their primary role model. [FN120] Basketball players were the dominant role-model choice within that group, named by 63% of ten-year olds and 98% of 18-year olds. [FN121] George Assibey-Mensah, an African-American sociologist, demonstrated that urban African-American children believe the American dream consists of high-salary jobs, like those held by professional athletes. [FN122]

*879 Society's adulation of athletes is unlikely to cease and it is therefore important for American athletes to portray the qualities that we perceive as admirable in role models. A full college education is important for athletes, who, as potential role models, tend to expand their identity, exploring aspects of self, which extend beyond the athlete role. [FN123] Independence, academics, exposure to colleagues, and community service all help athletes to develop these other aspects of self. [FN124]

According to a psychological study, relationships in a college environment have several positive effects. [FN125] First, the student environment leads to growth in academic ability, autonomy and independence. [FN126] In addition, this environment helps students to develop a value system. [FN127]

A consequence of positive college experience is that players with college educations are more likely to engage

in valuable community service. This is evidenced by comparing the collection of players in contention for the NBA Citizenship Award, of which a majority have college degrees, with the list of players cited for violence, drugs, and drunk driving, who are primarily undereducated. [\[FN128\]](#) It follows that many NBA players scrutinized for ***880** disobeying society's mores would become better role models had they grown academically and emotionally in college.

Given that children perceive even the misfit athletes as role models, [\[FN129\]](#) it is in society's best interest to persuade potential NBA players to mature within the college environment. [\[FN130\]](#) NCAA amateurism, which limits student-athletes' financial freedom, discourages student-athletes from attending college, and consequently hinders their maturation process.

B. Searching for an Alternative Solution

A positive externality of applying antitrust law to the NCAA is that it promotes educating society's role models. Recognizing the anticompetitive effect the NCAA has on the various markets and its negative societal outcome, it is important to consider whether an alternative, less-intrusive model for college basketball is feasible.

There are two often-suggested alternatives to amateurism: traditional revenue sharing [\[FN131\]](#) and small "laundry money" stipends. [\[FN132\]](#) Both alternatives would lead to sub-optimal outcomes. True revenue-sharing exacerbates commercialization of college athletics and inhibits compliance with Title IX of the Education Amendment Act, [\[FN133\]](#) while stipends are too limited in scope to effectively reallocate player labor supply. [\[FN134\]](#)

***881** C. The Problem with Traditional Revenue Sharing

Advocates of revenue sharing believe that college basketball players are employees and that antitrust law's primary objective should be to protect players from cartel-like behavior. [\[FN135\]](#) Their solution is the commercial/education model. [\[FN136\]](#) The commercial/education model holds that college sports are a commercial enterprise and therefore should be subject to the same economic considerations as other industries. [\[FN137\]](#) Proponents argue that "[b]y establishing the importance of commercialism and discarding the traditional ideals of amateurism, this model is more sympathetic to the possibilities of rewarding college athletes with monetary compensation." [\[FN138\]](#) The underlying argument is that the NCAA regulations unreasonably restrain trade in violation to § 1 of the Sherman Antitrust Act. [\[FN139\]](#)

Revenue sharing is a familiar principle to the sports world. Major League Baseball, the National Football League, the National Hockey League, and the National Basketball Association all share licensing revenue between players and ownership. [\[FN140\]](#) Moreover, many NCAA conferences already share revenue among their member institutions. [\[FN141\]](#)

According to the traditional revenue-sharing approach, student-athletes should be treated more like employees, coaches, and professors, and they should receive similar legal protection of their economic opportunity. [\[FN142\]](#) The advantage of this approach is that it prevents windfall payments to coaches and administrators because colleges would make tradeoffs between signing high-priced players ***882** and paying coaches and administrators. [\[FN143\]](#) In a free market, schools would compete for college basketball player labor. Market forces would determine each player's salary based on his services' impact on marginal revenue via ticket and concession sales, joint-venture opportunities, and television contracts.

The main problem with traditional revenue sharing is that it would also exacerbate the de-emphasis of undergraduate education in favor of athletics, which University of Indiana Professor Murray Sperber refers to as "Beer and Circus." [\[FN144\]](#) There is an expanding belief among large public universities that it is more cost-effective to

provide non-athlete undergraduates with a four-year vacation, filled with high-caliber sports teams, than it is to provide students with four years of competitive academics. [\[FN145\]](#) Many large universities consequently recruit their undergraduate class by offering a superior college basketball team rather than a talented teaching faculty. [\[FN146\]](#)

As long as it remains marginally cheaper to recruit basketball talent than to improve academics, schools will continue to shift academic resources away from academics and to athletics, improving their bottom-line profits. [\[FN147\]](#) Revenue sharing between college basketball players and the university will likely lead universities to allocate more money to the athletic departments, offsetting payments to student-athletes and further reducing academic expenditures. [\[FN148\]](#)

This traditional revenue-sharing approach would likely result in poorly educated college students so long as the "Beer and Circus" provides a greater financial return than the academic education model. [\[FN149\]](#) Tuition dollars shift from academic expenditure to the athletic department based on its higher perceived internal rate of return. Further, many athletic department expenses may become reallocated to other University divisions, disguising athletic-department losses.

***883** A second problem with revenue sharing is that any proposal would need careful tailoring to comply with Title IX. [\[FN150\]](#) Title IX requires not only equal opportunities for participation, but also equal treatment. [\[FN151\]](#) Therefore, any university that provides revenue to its male student-athletes must provide it to an equal proportion of its female athletes. [\[FN152\]](#) Generally, Division I universities have substantially more male student-athletes, given the size of football rosters. [\[FN153\]](#) Furthermore, male student-athletes account for a significant percentage of revenue-generation, as men's basketball and football are the two NCAA sports with multi-million dollar television contracts. [\[FN154\]](#) However, it is unlikely that Title IX would allow schools to provide student-athletes in these sports with a revenue share reflective of percent generated. [\[FN155\]](#)

A third problem is that while revenue sharing would improve student-athlete standard-of-living and graduation rates, it fails to resolve the effects of amateurism's ancillary, anti-competitive restraints on the minor league sports, endorsement, and promotion markets. Summer professional basketball leagues such as the United States Basketball League (USBL) could maintain a direct cause of action against NCAA basketball because the Principle of Amateurism, even with revenue-sharing, fails to efficiently reallocate summer basketball labor.

Similarly, all companies using sports endorsers and promoters would have a substantive antitrust claim against the NCAA, arguing that the NCAA Principle of Amateurism, as an agreement among insiders to decrease the supply of college athlete endorsers/promoters to zero, increases the cost to hire members of the inside group, including college coaches as endorsers and promoters, by preventing student-athletes from serving as part of the market's labor supply.

***884 D. The Problem with Stipends**

The discussed alternative to traditional revenue sharing is a stipend, which would provide the student-athlete with a scholarship plus a small amount of money for living expenses. Several stipend proposals exist.

Some have suggested that a nominal amount ranging from \$30 to \$50 per month should be added to all student-athletes' scholarship packages to provide student-athletes with enough disposable income to address concerns of a typical college student, including returning home for a family emergency. [\[FN156\]](#) Others believe that \$900 a year, or "laundry money," would more appropriately compensate student-athletes. [\[FN157\]](#) The "laundry money" stipend provides student-athletes with funds for dating, gas money, and emergencies, without subjecting universities to challenge of their tax-exempt status. [\[FN158\]](#) As a third alternative, Duke's Battier recommends that the NCAA give

student athletes a stipend of at least \$2000 per semester. [\[FN159\]](#)

Under each stipend proposal, the sum of money provides student-athletes with an improved standard-of-living without subtracting enough to impact university academic budgets. Furthermore, if the stipend is distributed in equal amounts to all student-athletes, Title IX requirements are likely met, [\[FN160\]](#) even though a stipend allocation to even non revenue-generating sports becomes expensive. [\[FN161\]](#) A stipend would also prove effective in providing the lowest-income student-athletes sufficient meal money to participate in basic weekend activities, potentially persuading some student-athletes on the poverty fringe to remain in school. [\[FN162\]](#)

The economic effects, however, of stipends are small. Stipends not only fail to adequately address antitrust issues in the minor league sports, endorsement, and promotion markets, but also fail to provide young basketball players enough money to keep them from leaving the NCAA for the NBA. [\[FN163\]](#)

***885** Even Battier's \$2,000 per semester stipend proposal, the most generous among the three, is insignificant when compared to the opportunities available to players that forgo college. Consider, for example, NBA basketball player Tracy McGrady's three-year, \$4.68 million contract and six-year \$12 million endorsement deal. [\[FN164\]](#) Even if stipends serve as adequate welfare payments, providing student-athletes with a slightly improved standard of living, they would still fail to induce student-athletes to remain in school.

IV. The Solution: NCAA Deregulation of Indirect Financial Endeavors

An optimal solution to the conflict between antitrust law and academic integrity is simply the NCAA deregulation of indirect financial endeavors, which is a middle-ground solution between traditional revenue sharing and stipends. Deregulation has several benefits over the alternate models. First, deregulation allows student-athletes to earn close to fair market value without disturbing academic integrity. Second, deregulation facilitates the alignment of student-athletes' pay with the fair market value of their services, without violating Title IX. Third, deregulation removes the ancillary anticompetitive restraints that the NCAA currently imposes on minor league sports, endorsement, and promotion markets. Fourth, deregulation leads to a positive societal externality, as student-athletes are more likely to graduate from college and emerge as positive role models.

In a third-party deregulation model, the NCAA Principle of Amateurism is upheld to the extent that college basketball players remain prohibited from receiving payment directly from colleges. Deregulation meets public policy considerations regarding "Beer and Circus" because college tuition dollars are not shifted to student-athletes in the form of salaries, thereby preventing the drain on academic resources. [\[FN165\]](#) Furthermore, under the deregulation model, NCAA member schools would no longer collude to prevent the off-the-court ventures of student-athletes, allowing them to profit from their fame and talent. Deregulation would also bring ***886** student athletes in line with non-athletes whose off-the-court ventures are unregulated. [\[FN166\]](#)

Under the deregulation model, star college basketball players earn close to fair market value as student-athletes become "free agents" with three highly profitable opportunities: (1) playing in summer professional basketball leagues, [\[FN167\]](#) (2) signing endorsement contracts, and (3) engaging in paid-promotional appearances. Therefore, NCAA deregulation enhances distributive justice within college basketball, while better aligning student-athletes' financial incentives with society's goal of promoting educated role models.

The NCAA ban on college basketball players' paid participation in summer leagues under the Amateurism principle creates a double standard, as college students uninvolved in athletic programs are allowed to pursue extracurricular activities. [\[FN168\]](#) The conventional college experience allows students to work in their preferred field during the summer. Many superstar college basketball players are considering athletic careers. A summer experience in professional basketball would provide an opportunity for these student-athletes to assess a sports career while earning some money, much as other students do.

Currently, it is difficult to predict the viability of summer professional leagues, because few such leagues exist as a result of insufficient labor supply. NCAA reform may lead to market opportunities for student-athletes to compete in summer leagues, as an increased labor supply would make upstart minor leagues logistically feasible. This is especially true given consumer interest in NBA and NCAA men's basketball, [\[FN169\]](#) and the sparse use of indoor basketball/hockey arenas during summer months.

Superstar college basketball players would benefit significantly from endorsement opportunities, as this would prove an effective ***887** way to provide NBA-comparable revenues to elite players. Star college players have similar name recognition as professional players and are therefore almost as marketable. As mentioned above, several premier packaged goods companies are already involved in NCAA men's basketball, [\[FN170\]](#) and others would benefit from linking products or services to a student-athletes' name equity. NCAA players would compete for sponsorships against all other basketball players. Although individual endorsement payments would decline (perhaps except in the case of a super-premium superstar like Michael Jordan) as the pool of basketball endorsees expands, it is possible that a high school graduate would be able to attend college and still negotiate an endorsement deal in the range of McGrady's six-year, \$12 million contract.

Although paid promotional appearances yield significantly less than endorsement contracts, they are still a valuable market opportunity for the next tier of college basketball players. Promotional activities often include business events, charity dinners, store grand-openings, and sports-related ventures. Like endorsement deals, promotional appearances would become available to players based on positive name recognition.

The indirect model to subsidize college basketball players would prove highly effective at aligning the indirect revenue opportunities of college basketball players with those of NBA professionals. Indirectly subsidizing college basketball players would not persuade all basketball players to stay in college. Some student-athletes, for instance, simply do not enjoy college or lack the requisite grades and test scores. Others desire higher-level competition, or believe the NBA's lifestyle and money is superior. However, reevaluating Amateurism would persuade some NBA hopefuls to stay in school, especially for those who heavily weigh financial factors in deciding to turn pro.

Deregulating student-athletes' market ventures would have a small impact on the underlying structure of college basketball. Today's college basketball is already highly commercialized, and schools' revenue streams still would not go to players. College superstars would indeed have larger bank accounts, but this would be based on money earned. Coaches might make less money because they would compete with players for endorsement deals. Coaches, however, would still command high salaries from their respective schools. Moreover, coaches would have an easier time recruiting ***888** professional prospects. Furthermore, the NCAA and its member institutions might become more profitable, as men's college basketball's popularity would benefit from players staying in school for four years.

Deregulation obtains these positive market effects while complying with Title IX. Unlike the revenue sharing and stipend alternatives, deregulation does not involve any payment from educational institutions to student-athletes, and therefore is free from the regulation's scope. [\[FN171\]](#) Deregulation is not a circumvention of equal rights law, but rather a proper understanding of its spirit. Deregulation will not only provide opportunity for star men's college basketball players to earn money, but it will also pave the way for women's minor league sports, and endorsements, and promotion opportunities involving female student-athletes.

Deregulation also achieves these results while asserting efficiency in the minor league, endorsement, and promotion markets. Unlike the revenue sharing and stipend proposals, which ameliorate antitrust concerns only within the myopic scope of the college labor-market, deregulation also removes the NCAA-imposed labor restraints on these ancillary markets. The anticipated net results of deregulation include the emergence of more minor league sports, which will drive down ticket prices for each event, and an increased labor market for endorsers and promoters. This larger labor pool will reduce the overall cost of such services and pass on the savings to the final cus-

tomers in the form of cheaper products and events.

Finally, deregulation would help achieve the important societal goal of promoting higher role-model graduation rates. Student-athletes would have the opportunity to mature in a college environment and would then enter the NBA prepared to serve as role models. Most likely, violence, drug use, and drunk driving among NBA players would decline, as incoming players' maturity would more closely mirror that of today's players with college degrees. As a result, American society would find true role models in the athletes that our children idolize.

Admittedly, the problem with deregulating student-athletes' third-party ventures is that deregulation fails to address the educational needs of student-athletes. Although deregulation does not adequately address the special academic needs of some student-athletes, it is still a welcome reform, as it will persuade some of the top college basketball players to stay in school. Those student-athletes who choose to stay in school are more likely predisposed ***889** toward academic achievement. Furthermore, additional income will facilitate the hiring private tutors and the purchasing of study aids for those students not predisposed to academics.

Lastly, deregulation skeptics should consider all the positive impacts of such a simple, easily implemented solution. Deregulation effectively resolves market efficiency not only in the student-athlete labor market, but also in the minor league sports, endorsement, and promotions markets. Deregulation achieves such results without drastic departure from existing principles of education, college athletics, market efficiency, and civil rights. Consequently, deregulation solves many, albeit not all, problems caused by amateurism with a single, non-revolutionary court mandate.

Conclusion

The changing economics of college athletics has played a significant role in the emergence of the NCAA as a cartel, which agrees to maintain wealth in the hands of a select few administrators, athletic directors, and coaches. Such cartel activity has led to inefficient allocation of basketball labor resources across the college, professional and minor league basketball markets, as well as the product endorsement and event promotion markets. Because the virtues of amateurism, which once saved the NCAA from Sherman Act Section 1 antitrust scrutiny, are no longer relevant, antitrust law should correct market inefficiencies that it has allowed to develop by refusing to sanction NCAA cartel-like conduct. Beyond traditional market inefficiencies, the courts must also consider ancillary societal effects caused by the NCAA, including amateurism's impact on the development of sports role models.

Although there are two often-discussed reform movements to amateurism in college athletics--revenue sharing and stipends--neither is of a wide enough scope to improve efficiency across all relevant markets, maintain academic integrity, and comply with Title IX.

A superior reform to both revenue sharing and stipends is the deregulation of indirect financial endeavors by student-athletes. Deregulation would provide student-athletes with the opportunity to profit from summer professional sports leagues, endorsement contracts, and paid-promotional performances. Likewise, deregulation will achieve market efficiency across sports and endorsement/ ***890** promotion markets, without shifting academic resources to athletic departments or violating the spirit of Title IX.

Overall, deregulation is an easily implemented solution that offers a wide range of efficiency and distribution advantages over traditional amateurism. As college athletics enters its second century, it is important for courts to interpret the NCAA Principle of Amateurism as a violation of the Sherman Antitrust Act, and to order the NCAA to make the transition into an era of deregulation.

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Michigan; J.D. (cand.) University of Michigan Law School. This note is dedicated to my parents, Steven and Sandy Edelman, and to my brother David for encouraging me to pursue my dreams. Special thanks to Rebecca Westphal and the University of Michigan Journal of Law Reform editors for their assistance on this note.

[FN1]. Paul C. Weiler & Gary R. Roberts, *Sports and the Law: Text, Cases, Problems* 735 (2d. Ed. 1998).

[FN2]. See *id.*

[FN3]. *Id.*

[FN4]. See *infra* note 22 and accompanying text.

[FN5]. *Id.*

[FN6]. See *infra* note 20 and accompanying text.

[FN7]. See Composition of the NCAA (Mar. 1, 2002) available at http://www1.ncaa.org/membership/membership_svcs/membership_breakdown.html (illustrating, in addition, that the NCAA oversees 148,614 Division I athletes in 321 schools). See generally Matthew J. Mitten, Essay, [Applying Antitrust Law to NCAA Regulation of "Big Time" College Athletics: The Need to Shift from Nostalgic 19th and 20th Century Ideals of Amateurism to the Economic Realities of the 21st Century](#), 11 *Marq. Sports L. Rev.* 1, 2-3 (2000) (explaining that although the NCAA regulates various men's and women's sports across three divisions, the NCAA devotes significant attention to Division I schools, which produce the highest revenue events and are most likely to host future professional athletes).

[FN8]. Michael P. Acain, [Revenue Sharing: A Simple Cure for the Exploitation of College Athletes](#), 18 *Loy. L.A. Ent. L.J.* 307, 313-17 (1998).

[FN9]. If the Principle of Amateurism did not exist, star student-athletes would likely earn revenue in each of these three markets. See *infra* note 167 and accompanying text. Summer sports leagues include: the United States Basketball League (USBL), which plays a late April-through-June season and the Arena Football League (AFL), which plays a late April-through-July season. These Leagues would be ideal opportunities for student-athletes, since both compete on the minor-league level and have minimal overlap with the college, academic school year.

[FN10]. Presently, a tremendous percentage of intercollegiate revenue comes from men's football and basketball. See generally Raymond Schneider, *College Students' Perceptions on the Payment of Intercollegiate Student-Athletes*, 35 *C. Student J.* 232 (2001). A disproportionate percentage of college basketball revenue emerges from television coverage rights to the NCAA Men's Basketball Tournament. In November 1999, the NCAA sold Tournament television rights from 2002-13 to CBS for \$6 billion (\$550 million annually). *Broadcast Rights to Major Sports Properties*, in *Sports Business Journal: By the Numbers, The Authoritative Annual Research Guide and Fact Book* 58 (2002).

[FN11]. Amateurism principles allow a partial exemption for multi-sport athletes, which permits such athletes to declare themselves professionals in one sport while remaining amateurs in the other, thereby permitting them to enjoy free market opportunities as they pertain to their professional sport. Furthermore, amateurism principles do not extend to other extracurricular activities. For example, actress Brooke Shields was allowed to participate in Princeton drama productions even though she received over \$1 million from a movie studio while she was in college. Andrew Zimbalist, *Unpaid Professionals: Commercialism and Conflict in Big-Time College Sports* 17 (1999).

[FN12]. Disparate financial opportunities are increasing the burden of staying in school. In 1971, American Basket-

ball Association superstar Spencer Haywood won an antitrust suit against the NBA, striking down a four-year waiting period after high school before entering the draft. See [Denver Rockets v. All-Pro Management, Inc.](#), 325 F. Supp. 1049 (C.D. Cal. 1971). What became known as the "Haywood" ruling impacted few players in its early years, as financial incentives to enter the NBA draft were significantly lower in the early 1970s than they are today. See Weiler & Roberts, *supra* note 1, at 390; Let the Madness Begin!: In the Throes of March Madness, We All Must Wonder: What Are These Kids Really Worth!, *Bus. Wire*, Mar. 14, 2001 available at Lexis-Nexis Academic Universe. Over the past thirty years, NBA players' net worth has skyrocketed, not only from salaries, but also from endorsement deals and public-appearance contracts. See Mark Asler, *If the Shoe Fits: Commercial Relationships With Would-Be NBA Stars Cultivated Early*, *Wash. Post.*, July 25, 2001, at D01. Many of today's players earn more money from endorsements than traditional salaries. Cf. Phil Schaaf, *Sports Marketing: It's Not Just a Game Anymore* 288 (1995) (discussing Shaquille O'Neal's 1993 estimated earnings). For example, in 1997-98, the league's highest-paid player, Michael Jordan, made \$33 million in salary as compared to \$45 million in endorsements. See Weiler & Roberts, *supra* note 1, at 390.

[FN13]. See generally note 128, *supra*.

[FN14]. Antitrust law is centered on certain principles. Its primary principle is that society is better off if markets behave competitively. E. Thomas Sullivan & Jeffrey L. Harrison, *Understanding Antitrust and its Economic Implications* 1 (3d. ed. 2000). Congress was most concerned with monopoly and cartel conduct that restricts output, increases prices to consumers, and results in monopoly profits. *Id.* at 5. High output, low prices, and acceptable quality are popular goals. Monopoly profits are condemned for causing allocative inefficiency or income redistribution from consumers to producers. *Id.* at 6. See generally Mitten, *supra* note 7.

[FN15]. The Sherman Antitrust Act §1 states: "Every contract, combination ... or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." An Act to Protect Trade and Commerce Against Unlawful Restraints, ch. 647, 26 Stat. 209 (codified as amended at [15 U.S.C. §1 \(2000\)](#)).

[FN16]. One can categorize student-athletes' financial activities as either direct or indirect. Direct financial activities, which are not advocated in this Note, include payment from college and booster accounts directly to student-athletes as compensation for competing in college athletics. Indirect financial activities, which are advocated, include payments from third parties to college athletes in exchange for performing a service, such as performing in summer professional leagues, endorsing a product, or promoting an event.

[FN17]. See Rodney K. Smith, [A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics](#), 11 *Marq. Sports L. Rev.* 9, 12 (2000) [hereinafter Smith, *Brief History*].

[FN18]. See Zimbalist, *supra* note 11, at 98-101; see also [NCAA v. Bd. of Regents of the Univ. of Okla.](#), 468 U.S. 85, 88 (1984) (holding that the NCAA's agreements with broadcasters regarding the televising of college football games involved unreasonable restraints on trade in violation of the Sherman Act).

[FN19]. See generally Murray Sperber, *Beer and Circus: How Big-Time College Sports is Crippling Undergraduate Education* 229-30 (2000) [hereinafter Sperber, *Beer and Circus*]; Murray Sperber, *College Sports, Inc.: The Athletic Department v. The University* 174-82 (1990) [hereinafter Sperber, *College Sports*]; Zimbalist, *supra* note 11, at 181-84.

[FN20]. The Principle of Amateurism states:

Student-athletes shall be amateurs in intercollegiate sport, and their participation should be motivated primarily by education and 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 com-

mercial enterprises.

2001-02 NCAA Division I Manual, Constitution §2.9 available at http://www.ncaa.org/library/membership/division_i_manual/2001-2002/A02.pdf.

[FN21]. See generally Mitten, *supra* note 7; Christopher W. Haden, Foul! The Exploitation of the Student-Athlete: Student-Athletes Deserve Compensation for Their Play in the College Athletic Arena, 30 J.L. & Educ. 673 (2001).

[FN22]. Section 12.1.1 of the NCAA Bylaws states:

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 athletic 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 athletics participation,
- (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received;
- (d) Receives, directly or indirectly, a salary, reimbursement of expenses, or any other form of financial assistance from a professional sports organization based upon athletic skill or participation, except as permitted by NCAA rules and regulations;
- (e) Competes on any professional athletics team and knows (or has reason to know) that the team is a professional athletics team (per Bylaw 12.02.3), even if no pay or remuneration for expenses was received; or
- (f) Enters into a professional draft or an agreement with an agent.

2001-02 NCAA Division I Manual, Operating Bylaws §12.1.1 available at http://www.ncaa.org/library/membership/division_i_manual/2001-2002/A12df [hereinafter NCAA Operating Bylaws §12.1.1].

[FN23]. For background on this, see generally Kay Hawes, NCAA Century Series Part I: 1900-39 'Its Object Shall Be Regulation and Supervision,' The NCAA News, Nov. 8, 1999, and also Smith, Brief History, *supra* note 17, at 12.

[FN24]. Smith, Brief History, *supra* note 17, at 12.

[FN25]. *Id.*

[FN26]. *Id.*

[FN27]. *Id.* at 13.

[FN28]. *Id.* at 14.

[FN29]. *Id.*

[FN30]. *Id.*

[FN31]. *Id.*

[FN32]. *Id.*

[FN33]. *Id.*; see also Gary T. Brown, NCAA Answers Call to Reform, 'The Sanity Code' Leads Association Down Path to Enforcement Program, The NCAA News, Nov. 22, 1999, at A1 (explaining the history leading to the establishment of the committee on infractions).

[FN34]. Smith, Brief History, *supra* note 17, at 15.

[FN35]. The NCAA 2001-02 Approved Budget, available at http://www.ncaa.org/financial/2001-02_budget.pdf.

[FN36]. See Andy Gardiner, Small Arenas Lost in NCAA Site Shuffle, USA Today, April 3, 2001, at 3C.

[FN37]. 2000 NCAA Convention Proceedings amend. 59 at A-69. The proceedings state that the intent of the amendment is: "[t]o eliminate the prohibition of athletics department's staff members using the institution's name or logo in the endorsement of commercial products or services for personal gain without prior approval by the institution's chief executive officer."

[FN38]. 2000 NCAA Convention Proceedings amend. 61 at A-70. The proceedings state that the intent of the amendment is to: "delete the list of conditions that preclude a member institution from accepting funds from a professional sports organization."

[FN39]. Stephanie M. Greene, Regulating the NCAA: Making the Calls Under the Sherman Antitrust Act and Title IX, 52 Me. L. Rev. 82, 83 (2000).

[FN40]. *Id.*

[FN41]. *Id.*

[FN42]. Courts review antitrust claims using two types of analysis, *per se* and rule of reason. In [Nat'l Society of Professional Engineers v. United States, 435 U.S. 679, 692 \(1978\)](#), the U.S. Supreme Court explained:

There are ... two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality--they are "illegal *per se*" ... in the second category [Rule of Reason] are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed. In either event, the purpose of the analysis is to form a judgment about the competitive significance of the restraint....

Unless cooperation, interdependence, or integration is needed to produce off-setting efficiencies, direct agreements to fix price and restrict output are *per se* illegal. Sullivan & Harrison, *supra* note 14, at 140. Wage-fixing restraints are treated as price-fixing restraints cognizable under the Sherman Act, because wage restraints reallocate labor resources to other markets where employees are able to earn fair market value. See [Mackey v. Nat'l Football League, 543 F.2d. 606, 616-17 \(8th Cir 1976\)](#).

[FN43]. Greene, *supra* note 39, at 83; see also [NCAA v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85 \(1984\)](#). The Court in Board of Regents held that it would be inappropriate to apply the *per se* rule to the NCAA; instead, it decided to apply the Rule of Reason which takes surrounding circumstances of the trade restraint into consideration.

[FN44]. Compare [Banks v. NCAA, 977 F.2d 1081 \(7th Cir. 1992\)](#) (holding that college football player failed to state a violation of the Sherman Act when based on the withdrawal of NCAA eligibility when he choose to enter the NFL draft) and [McCormack v. NCAA, 845 F.2d 1338 \(5th Cir. 1998\)](#) (dismissing the plaintiff's antitrust complaint because the athletic eligibility rules of the NCAA were reasonable and did not violate the Sherman Act prohibition against unreasonable restraint of trade) with [NCAA v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85 \(1984\)](#) (asserting a violation of the Sherman Act when the NCAA member institutions created a horizontal restraint by placing a ceiling on the number of games a member institution can televise).

[FN45]. See [Smith v. NCAA, 139 F.3d 180 \(3rd Cir. 1998\)](#); [Banks v. NCAA, 977 F.2d 1081 \(7th Cir. 1992\)](#).

[FN46]. [Banks v. NCAA, 977 F.2d at 1083.](#)

[FN47]. [Id. at 1091.](#) The Majority disagreed with the Dissent, arguing that grant-in-aid scholarships to college athletes are based on the school's tuition, not by the supply and demand for players.

[FN48]. [Id. at 1089-90.](#)

[FN49]. [Id. at 1090.](#)

[FN50]. [139 F.3d 180, 186 \(3rd Cir. 1998\)](#); see also Greene, *supra* note 39, at 84.

[FN51]. [Smith, 139 F.3d. at 184.](#)

[FN52]. [Id. at 185.](#)

[FN53]. [Id. at 186.](#)

[FN54]. [Id. at 187.](#)

[FN55]. See [NCAA v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85 \(1984\)](#) (challenged by the University of Oklahoma and the University of Georgia); [Law v. NCAA, 134 F.3d 1010 \(10th Cir. 1998\)](#) (challenged by basketball coaches and particular NCAA member institutions).

[FN56]. [468 U.S. 85, 100 n.22 \(1984\)](#); see Mitten, *supra* note 7, at 3.

[FN57]. [468 U.S. at 116-17.](#)

[FN58]. See [Law v. NCAA, 134 F.3d. 1010 \(10th Cir. 1995\).](#)

[FN59]. [Id. at 1020](#); see Mitten, *supra* note 7, at 4-5.

[FN60]. Compare [Banks v. NCAA, 977 F.2d 1081, 1091 \(7th Cir. 1992\)](#) (arguing that the court "should not permit the entry of professional athletes and their agents into NCAA sports because the cold commercial nature of professional sports would ... destroy the amateur status of athletics") with [NCAA v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85, 120 \(1984\)](#) (holding that despite the need to preserve the tradition of amateurism, "rules that restrict the output are hardly consistent with this role;" accordingly, the Court found Sherman Act violations).

[FN61]. See generally Acain, *supra* note 8, at 310-13 (comparing the amateur/education model with the commercial/education model).

[FN62]. [Id. at 311.](#)

[FN63]. [Id. at 328](#); see also Richard J. Hunter & Ann M. Mayo, [Issues in Antitrust, the NCAA, and Sports Management](#), 10 *Marq. Sports L.J.* 69, 80-85 (1999).

[FN64]. See Alan Edelstein, *Everybody's Sitting on the Curb: How and Why America's Heroes Disappeared 72-73* (1996). Edelstein points out that commercial successes are often of greater importance than are the scholastic abilities of the athletes. The sports fan's desire to see winning teams creates "dubious ethics and financial excesses" in American sports. See Dean A. Perdy et al., *Are Athletes Also Students? The Educational Attainment of College Athletes*, 29 *Soc. Problems* 439, at 439 (1982) (arguing that the NCAA, the organization responsible for policing university athletic programs, has mistakenly focused on violations of amateurism, and has neglected to examine the education college athletes receive). See generally Sperber, Beer and Circus, *supra* note 19, at 71-148.

[FN65]. Mitten, *supra* note 7, at 2-3; see, e.g. [NCAA v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85, 104-13 \(1984\)](#); Hunter & Mayo, *supra* note 65, at 75-80.

[FN66]. See Acain, *supra* note 8, at 311-12; Timothy Davis, [Intercollegiate Athletics: Competing Models and Conflicting Realities, 25 Rutgers L.J. 269, 278 \(1994\)](#).

[FN67]. See Zimbalist, *supra* note 11, at 19 (pointing out that schools receive revenues when star college athletes can generate more than \$1 million dollars, but only receive compensation for \$10,000-\$40,000).

[FN68]. See Sperber, Beer and Circus, *supra* note 19, at 30-32.

[FN69]. See *id.*; 2001-02 NCAA Division I Manual, Operating Bylaws §17.1.5.1.

[FN70]. *Id.* at 26-28; Purdy et. al., *supra* note 64, at 439-40.

[FN71]. [Jackson v. Drake Univ., 778 F. Supp. 1490 \(S.D. Iowa 1991\)](#).

[FN72]. *Ross v. Creighton Univ.*, 957 F.3d 410 (7th Cir. 1992).

[FN73]. Sperber, Beer and Circus, *supra* note 19, at 26.

[FN74]. See generally 2001-02 NCAA Division I Manual, Operating Bylaws §17.5.5 (explaining that member institutions shall limit its regular season to twenty-eight games, but does not limit the days or times of games). But see *id.* at §17.1.5.1 (limiting the daily and weekly hour limitations of four hours per day and twenty hours per week); see also Sperber, College, Inc., *supra* note 19, at 302-06.

[FN75]. For a listing of 2001-02 NCAA Tournament first round game scheduled on Thursday and Friday, see NCAA Preview, *Newsday*, Mar. 11, 2002, at E14; see also Zimbalist, *supra* note 11, at 47 (explaining that in March 1996, Coach John Calipari brought his University of Massachusetts Minutemen to New York for a Final Four Game on a Wednesday when the first game was on Saturday).

[FN76]. Zimbalist, *supra* note 11, at 47. In 1990, the NCAA caved to a powerful core of coaches led by Bobby Knight and Rick Pitino and ruled against a proposal to shorten the season for the sake of student-athletes' academic obligations. *Id.*

[FN77]. See Sperber, Beer and Circus, *supra* note 19, at 28-30 (quoting Isaiah Thomas: "When you go to college, you're not a student athlete but an athlete-student. Your main purpose is not to be an Einstein but a ballplayer, to generate some money, put people in the stands.").

[FN78]. See Mitten, *supra* note 7, at 2.

[FN79]. The NCAA 2001-02 Approved Budget, *supra* note 35.

[FN80]. See Mitten, *supra* note 7, at 2.

[FN81]. Acain, *supra* note 8, at 309.

[FN82]. *Id.*

[FN83]. *Id.*; See generally Gardiner, *supra* note 36.

[FN84]. See generally Sperber, Beer and Circus, *supra* note 19, at 60-68.

[FN85]. See Weiler & Roberts, *supra* note 1, at 796.

[FN86]. See Sperber, Beer and Circus, *supra* note 19, at 60-62.

[FN87]. See Zimbalist, *supra* note 11, at 52; see, e.g. Sperber, College, Inc., *supra* note 19, at 148-202.

[FN88]. *Id.*

[FN89]. See Thomas R. Hurst & J. Grier Pressley III, Payment of Student-Athletes: Legal and Practical Obstacles, 7 Vill. Sports & Ent. L. Forum 55, 56 (2000). Total compensation often includes money from endorsement contracts. For example, Duke coach Mike Krzyzewski enjoys a \$6.6 million sneaker endorsement contract, which pays him \$375,000 annual salary with a \$1 Million signing bonus for requiring Duke basketball players to wear Nike shoes. *Id.*

[FN90]. See generally Schneider, *supra* note 10.

[FN91]. *Id.*

[FN92]. See generally Sperber, Beer and Circus, *supra* note 19, at 69-148.

[FN93]. See generally Schneider, *supra* note 10.

[FN94]. See Michael Marot, Early Departures are Changing the Face of Recruiting, Detroit News, July 14, 2001 available at [http:// detnews.com/2001/college/0107/14/college-247471.htm](http://detnews.com/2001/college/0107/14/college-247471.htm).

[FN95]. See The Official NBA Encyclopedia 333-34 (3d ed., 2001); 2001 NBA Draft Selections, Associated Press & Local Wire, May 28, 1999.

[FN96]. See Kenneth Shropshire, Compensation and the African American Student-Athlete, in Racism in College Athletics 272-73 (Dana Brooks & Ronald Althouse eds., 2000) [hereinafter Shropshire, Compensation]. For a more detailed account of the comparison of Black versus White graduation rates in college athletics, see also Kenneth Shropshire, In Black and White: Race in Sports and America 126 (1996) (demonstrating the four-year average graduation rates of black versus white student-athletes at top-25 football programs).

[FN97]. One disturbing example of a player that was rushed into the NBA is Leon Smith, a former ward of the State of Illinois, who in 1999 was selected directly from high school and traded to the Dallas Mavericks. Smith lasted just one Mavericks practice before his immaturity led to a confrontation with the coach. On November 15, 1999, Smith was taken to a Dallas psychiatric ward after professional pressures led him to overdose on aspirin. See Roscoe Nance, Troubled Smith Rebounds in the CBA, USA Today, Jan. 4, 2002, at 6C.

[FN98]. Brad Young, Questions Continue Over Paying College Athletes, The Digital Collegian, Apr. 12, 1995, available at [http:// www.collegian/psu.edu/archive/1995/04/04-12-95tdc/04-12-95dsports4asp](http://www.collegian/psu.edu/archive/1995/04/04-12-95tdc/04-12-95dsports4asp).

[FN99]. The Student Basketball Council is a group of about fifty men's players. The National Association of Basketball Coaches formed the group to pass recommendations from players' points-of-view on to the NCAA. See Cason Bufe, College Players Seek Greater Say with NCAA, The Daily Northwestern, Apr. 7, 2000 available at <http://www.dailynorthwestern.com/daily/issues/2000/04/07/sports/basketballcouncil.shtml> (last visited July 5, 2002).

[FN100]. George Bullard, Let's Get Real and Pay College Ball Players a Decent Wage, Detroit News, Mar. 25, 2000 at 3C.

[\[FN101\]](#). See Zimbalist, *supra* note 11, at 140-141.

[\[FN102\]](#). *Id.*

[\[FN103\]](#). *Id.*

[\[FN104\]](#). See, e.g., Schneider, *supra* note 10.

[\[FN105\]](#). See Zimbalist, *supra* note 11, at 150; Sperber, Beer and Circus, *supra* note 19, at 216-29 (explaining that although the revenues from Division I college athletics and their commercial endorsements are high, most college sports programs lose money).

[\[FN106\]](#). See *id.* at 152-65.

[\[FN107\]](#). *Id.* The University of Michigan is a prototypical example of a school where one sport subsidizes the remaining sports' athletic budgets. In 1994-95, Michigan reported just \$2.7 million in net income with its football team subsidizing money-losing sports. Michigan's positive net income that year resulted from a surplus generated by its football team of \$10 million. *Id.* at 159.

[\[FN108\]](#). See Sullivan & Harrison, *supra* note 14, at 63-72 (explaining the defenses to antitrust suits that include first amendment defenses and common law defenses).

[\[FN109\]](#). See *id.* at 75-77. Specific industries that are directly regulated by government, such as insurance, railroads, agriculture, and fisheries, enjoy statutory exemption from antitrust law. In addition, Major League Baseball benefits from the only non-statutory industry exemption from antitrust law as a result of Justice Oliver Wendell Holmes' ruling in [Fed. Baseball Club of Baltimore, Inc. v. Nat'l League, 259 U.S. 200 \(1922\)](#). In that landmark opinion, the Court held that baseball was not interstate commerce and exempted baseball from antitrust statutes. See generally Jerold J. Duquette, *Regulating the National Pastime: Baseball and Antitrust*, 31-32 (1999).

[\[FN110\]](#). See, e.g., Edelstein, *supra* note 64, at 65.

[\[FN111\]](#). See *id.* at 71-75.

[\[FN112\]](#). See generally note 128, *supra*.

[\[FN113\]](#). See Burton R. Clark et al., *Students and Colleges: Interaction and Change* 301-07 (1972); Chris Brown & Duane L. Hartley, *Athletic Identity and Career Maturity of Male College Student Athletes*, 29 *Int'l J. of Sport Psychol.* 17, 22 (1998).

[\[FN114\]](#). See Shropshire, *Compensation*, *supra* note 96, at 272-73; cf. NCAA Operating Bylaws §12.1.1, *supra* note 22.

[\[FN115\]](#). See Edelstein, *supra* note 64, at 65-66 (arguing that with increased celebrity, publicity, mostly negative, helps increase notoriety and commercial appeal).

[\[FN116\]](#). *Id.* at 65 (explaining that the publicity surrounding a star athlete feeds on his celebrity status).

[\[FN117\]](#). *Id.* at 67. The 1920s, marked by the arrival of Babe Ruth in Major League Baseball, is often referred to as "The Golden Age of Sports." *Id.*

[\[FN118\]](#). See *id.* at 67-68.

[FN119]. See George O. Assibey-Mensah, *Role Models and Youth Development: Evidence and Lessons from the Perception of African-American Youth*, 21 *W.J. of Black Stud.* 242, 244 (1997).

[FN120]. *Id.* Assibey-Mensah's study included 4500 African-American youths currently in school, ranging from ages 10 to 18, and living in towns and cities in 22 states and the District of Columbia that had a population of at least 50,000 and where African-Americans constituted at least one-third of the population. *Id.*

[FN121]. *Id.*

[FN122]. *Id.* at 245.

[FN123]. See Brown & Hartley, *supra* note 113, at 118; see, e.g., Clark et al., *supra* note 113, at 301-07.

[FN124]. See Brown & Hartley, *supra* note 113, at 118.

[FN125]. Clark et. al, *supra* note 113, at 302.

[FN126]. *Id.* at 305. This effect is known as "accentuation."

[FN127]. *Id.* at 306. Clark refers to this effect as "conversion."

[FN128]. During the 2000-01 NBA season, many of the NBA's young superstars whom had entered the NBA draft without college degrees were either arrested or found in violation of the NBA code of conduct. Jason Kidd (domestic violence), Marcus Camby (on-the-court violence), Lamar Odom (violation of NBA drug policy), Jason Williams (violation of NBA drug policy), J.R. Rider (violation of NBA drug policy), and Rod Stickland (third DWI conviction) all showed the immaturity common to players without college degrees. See Bob Baum, *Kidd Admits Striking His Wife*, *Detroit Free Press*, Jan. 20, 2001, at 7C; *Camby Suspended Five Games, Fined*, *Detroit News*, Jan. 18, 2001, at 6E; *Martin McNeal, Williams Smacked with Suspension: Kings Star Violated NBA Drug Program*, *Sacramento Bee*, July 21, 2000, available at <http://classic.sacbee.com/sports/kings/articles/2000/jul/20000721kings1.html> (last visited July 5, 2002); *Roundup--Briefly*, *Detroit News*, Mar. 8, 2001, at 5E; Tim Brown, *Portland has Technical Difficulties; Pro basketball: Rasheed Wallace, a Mountain of Talent, is a Volcano of Emotion with 41 Technical Fouls*, *Los Angeles Times*, Apr. 20, 2001, at D1.

Conversely, the three finalists for the NBA's 1998-99 Citizenship Award (Brian Grant (homeless meals project), Jerome Williams (unprivileged children's charities), and Dikembe Mutumbo (assorted African charities)) are NBA players with college degrees. See *Blazers' Grant wins NBA's Community Service Award*, *Associated Press & Local Wire*, May 28, 1999. Furthermore, the winner of the NBA Citizenship Award has been a college graduate for seven consecutive seasons, from 1992-93 through 1998-99--Terry Porter, Joe Dumars, Joe O'Toole, Chris Dudley, PJ Brown, Steve Smith, and Vlade Divac. See *The Official NBA Encyclopedia*, *supra* note 95, at 344 (listing the winners of the NBA J. Walter Kennedy Citizenship Award).

[FN129]. See Paul Weiler, *Leveling the Playing Field* 89 (2000) (explaining that the very reason athletes are paid so much for endorsements is because they are important role models for young fans and future consumers); Edelman, *supra* note 64, at 65-66.

[FN130]. Tom Weir, *Too Young to Play? Analysis Find Players Who Join the NBA Reap Big Benefits*, *USA Today*, Jun. 30, 1999, at 1C (noting that NBA Commissioner David Stern does not want the NBA or its rookie pay scale to provide an incentive for college players to leave school early).

[FN131]. See Acain, *supra* note 8, at 335-45.

[FN132]. See Haden, *supra* note 21, at 679-81.

[FN133]. See [20 U.S.C. §1681\(a\) \(2000\)](#). Title IX of the Education Amendment Act states: "No person ... shall on the basis on sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

[FN134]. See generally note 130, *supra*.

[FN135]. Acain, *supra* note 8, at 331.

[FN136]. *Id.* at 312; Timothy Davis, [Intercollegiate Athletics: Competing Models and Conflicting Realities](#), 25 *Rutgers L.J.* 269, 279-81 (1994).

[FN137]. Acain, *supra* note 8, at 331.

[FN138]. Acain, *supra* note 8, at 312. Michael Acain, an advocate of the traditional revenue-sharing, proposes a plan with four components: (1) a seniority based pay system, (2) post-season compensation, (3) prize money for athletic and academic All-Americans, and (4) shared team and player endorsements. *Id.* at 336-43.

[FN139]. *Id.* at 323-35; Davis, *supra* note 136, at 306-11.

[FN140]. Acain, *supra* note 8, at 336; Julie A. Garcia, [The Future of Sports Merchandising and Licensing](#), 18 *Hastings Comm. & Ent. L.J.* 219, 226-30 (1995) (explaining the revenue sharing approaches of the National Football League, the National Basketball Association, the Major League Baseball, and the National Hockey League).

[FN141]. Acain, *supra* note 8, at 336; Sperber, Beer and Circus, *supra* note 19, at 219 (reporting that schools in the six major conferences - the Atlantic Coast, Big East, Big Ten, Big 12, Pacific 10, and Southeastern--pulled in 94% of the total \$144.6 million paid out by the twenty-three college football bowls in the 1999 season).

[FN142]. See Haden, *supra* note 21, at 674-75; Hurst & Pressly, *supra* note 89, at 58-59.

[FN143]. See Acain, *supra* note 8, at 343-45.

[FN144]. Sperber, Beer and Circus, *supra* note 19, at ix-xv (arguing that colleges and university funnel vast resources into their graduate programs, while neglecting the undergraduate program and creating a party scene surrounding college sports that Sperber calls "beer and circus" to keep the students coming).

[FN145]. *Id.* at 112-14.

[FN146]. *Id.* at 75-80. Under this approach, faculty hiring focuses primarily on research, and pay scales are aligned with research contribution rather than teaching performance.

[FN147]. *Id.* at 230-38.

[FN148]. *Id.* at 273-75.

[FN149]. *Id.*

[FN150]. See generally [20 U.S.C. §1681\(a\)\(2000\)](#) (promoting gender equity in all programs of an educational institution that receive any federal aid).

[FN151]. See Zimbalist, *supra* note 11, at 69-73.

[\[FN152\]](#). Acain, *supra* note 8, at 347.

[\[FN153\]](#). *Id.* at 349.

[\[FN154\]](#). See Zimbalist, *supra* note 11, at 69-73.

[\[FN155\]](#). *Id.* at 70 (explaining that the absolute growth in average operating expenditures per school on men's sports in Division I between 1990-91 and 1995-96 was 63 percent greater than the total amount of operating expenditures per school on women's sports in 1995-96).

[\[FN156\]](#). Hurst & Pressly, *supra* note 89, at 78-82.

[\[FN157\]](#). Haden, *supra* note 21, at 679-81.

[\[FN158\]](#). *Id.* at 680-81.

[\[FN159\]](#). Dance with the Blue Devils, *Maxim*, Mar. 2001, at 78-81.

[\[FN160\]](#). See Hurst & Pressly, *supra* note 89, at 72.

[\[FN161\]](#). *Id.* at 72.

[\[FN162\]](#). *Id.* at 79-80; C. Peter Goplerud III, [Stipends For Collegiate Athletes: A Philosophical Spin on A Controversial Proposal](#), 5 *Kan. J. L. & Pub. Pol'y* 125, 130 (1996).

[\[FN163\]](#). See, e.g., Weir, *supra* note 130, at 1C (citing the statistic that the number of early entries to the NBA draft who did not attend college rose from 19 in 1995 to 42 in 1996, to the high of 47 in 1997).

[\[FN164\]](#). See Zimbalist, *supra* note 11, at 141. In 1997, eighteen year-old Tracy McGrady was the sixth pick in the NBA draft pick.

[\[FN165\]](#). See Sperber, Beer and Circus, *supra* note 19, at 274-75.

[\[FN166\]](#). See *supra* text accompanying note 22; Zimbalist, *supra* note 11, at 17-19.

[\[FN167\]](#). For background on the United States Basketball League, see generally United States Basketball League Expands for 2002 Season, *Bus. Wire*, Dec. 19, 2001; Michael Dobie, *It's All for the Game; Not NBA, but Reese at Home in USBL*, *Newsday*, June 27, 2001, at A68. For background into the National Basketball Development League (NBDL), see generally National Basketball Development League Announces Inaugural Roster of National and Regional Marketing Partners and Licensees, *Bus. Wire*, Nov. 15, 2001; Aaron Beard, *NBDL Grooming Players On, Off Court in First Year Venture*, *Associated Press, State & Local Wire*, Mar. 9, 2002; Randy King, *Living Large in the NBDL, Dazzle's Biggest Star Working Toward Return Trip to the NBA*, *The Roanoke Times*, Dec. 7, 2001, at C1 (all wire and news reports generally available at Lexis-Nexis Academic Universe).

[\[FN168\]](#). See Zimbalist, *supra* note 11, at 17-19.

[\[FN169\]](#). NCAA Division I basketball games drew 24 million people in 2001. See 2001 National College Basketball Attendance (NCAA Division I), available at http://www.ncaa.org/stats/m_basketball/attendance/2001_basketball_attend.pdf (last visited June 18, 2002).

[\[FN170\]](#). Such corporations include American Express, General Motors, and Holiday Inn. See Becky Yerak, *March Madness Adds Slip*, *Detroit News*, Mar. 16, 2001, at B1.

[\[FN171\]](#). See Acain, *supra* note 8, at 347.

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