

NCAA Athletics: Are Its Amateurism and Financial Assistance Policies Ethical?

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In 2014, more than 450,000 student athletes at approximately 1,100 universities participated in 23 National Collegiate Athletic Association (NCAA) sports. While at least 150,000 of these student athletes participated in college athletics without any financial assistance, scholarship athletes at NCAA Division I and Division II colleges and universities were awarded more than \$1.5 billion in scholarships in 2013. Scholarships typically covered the cost of tuition, books, and room and board and had an average value of \$13,821 for Division I schools in 2013. Student athletes in some sports could receive partial scholarships that provided less than the average \$13,821 scholarship amount. The possibility of a future collegiate athletic scholarship was a motivating force to excel for many families and young athletes competing in Pee Wee, Little League, middle school, and high school sports.

College sports were regulated by the NCAA, which in 2013 recorded revenues of nearly \$913 million and a budget surplus of \$61 million. In 2013, the NCAA also had net assets of \$627 million, which included an endowment balance of \$326 million. The NCAA's revenues were generated primarily from NCAA Division I men's basketball tournament marketing and broadcast rights and from ticket sales for other championship events. The NCAA's 2013 expenses of \$852 million included distributions to Division I member schools of \$527.4 million. Some observers argued that the NCAA exploited the student athletes whose performances made revenue-generating sporting events possible, despite the financial support it provided to member universities.

In 2014, the NCAA was fighting a unionization movement at Northwestern University that was led by former quarterback Kain Colter, and it faced various lawsuits challenging its amateurism and financial assistance policies, which barred student athletes from receiving compensation for sports participation. The National Labor Relations Board (NLRB) ruled in March 2014 that college players had the right to organize as unions to bargain with schools as employers. Northwestern players voted on unionization in April 2014, but ballots were to remain sealed until an appeal of the NLRB ruling was resolved.

The Ed O'Bannon and Sam Keller lawsuits filed in 2009 charged that the NCAA illegally prevented players from receiving compensation from universities while their names and identities were used to generate billions in revenues for the universities, the NCAA, video game producers, and broadcasters. Keller was a former quarterback at Arizona State and the University of Nebraska, and O'Bannon played basketball at UCLA. The NCAA settled the Keller case in June 2014 and agreed to pay \$20 million to current and former college athletes whose images and likenesses were used in EA Sports video games. In September 2013, EA Sports and Collegiate Licensing Company, the nation's largest collegiate trademark licensing firm, had agreed to a \$40 million settlement in a similar case. In July 2013, the NCAA had ended its licensing agreement with EA Sports, which had produced NCAA football video games since 1998.

The O'Bannon lawsuit differed from the Keller suit in that it asked the judge to force the NCAA to

alter its amateurism and financial assistance rules that prohibited college athletes from receiving compensation for use of their names and likenesses in broadcasts and video games. The NCAA's defense during the summer 2014 trial centered on the long-term economic value of a college education. The plaintiffs' case was summarized by an expert witness, Stanford economist Dr. Roger Noll, who testified that "the NCAA is a cartel that creates a price-fixing agreement among the member schools."¹ The NCAA's chief legal officer, Donald Remy, commented to reporters outside the courtroom that "by [Noll's] definition, every amateur organization would be a cartel."² After 15 days of testimony, on July 24, 2014, the NCAA and the O'Bannon plaintiffs were required to wait for Judge Claudia Wilken's decision. Regardless of the outcome of the trial, the NCAA was forced to evaluate the ethics of its amateurism and financial assistance policies.

A BRIEF HISTORY OF AMATEURISM AND FINANCIAL ASSISTANCE FOR COLLEGE ATHLETES

The idea of giving some sort of compensation to college football players for playing a sport had been around almost since players began playing collegiate football. In the early 1900s, coaches and universities had "access to trust funds that they would allocate to male athletes who could not otherwise play football, attend college, and hold down a campus job because of the demands of the sport."³ For years, members of the NCAA could never come to a consensus on the issue of scholarships and amateurism. Some universities gave no athletic scholarships, while others gave full benefits to student athletes.

The first movement toward a uniform system for all member institutions of the NCAA occurred in 1948, when the NCAA introduced the Sanity Code. The Sanity Code "abandoned the NCAA's forty-two-year-old commitment to amateur principles and allowed financial aid to be awarded on the basis of athletic ability."⁴ Although this measure ultimately failed because a few NCAA members did not adopt the policy, it did signify the feeling the majority of NCAA members had toward compensation for its student athletes.

In 1951, Walter Byers became the first full-time director of the NCAA. He held the position for 36 years and brought a wealth of changes with him. Under Byers' direction, the NCAA passed a rule specifying that all member institutions had to provide athletic scholarships and grants to cover tuition, room, board, and other miscellaneous fees. The next, and final, major change occurred in 1973, when the NCAA decreed that athletic scholarships were no longer four-year contracts but were scholarships requiring yearly renewal. Student athletes were no longer guaranteed four years of compensation since their scholarships could be revoked for lack of performance on the field. There were minor tweaks throughout the years, but these changes laid the framework for what were considered legal and illegal payments for all student athletes.

In 2014, the NCAA Eligibility Center determined the amateurism eligibility of all student athletes for initial participation at an NCAA Division I or Division II college or university. Student athletes were prohibited from entering into contracts with professional teams, salaries for participation in athletics, prize money, benefits from agents, agreements with agents, or any financial assistance based on athletic talent or sports participation. Division I and Division II athletes were allowed to be reimbursed for travel and other expenses by professional sports teams or from prize money if the activity occurred prior to enrollment with a college or university.

FINANCIAL VALUE OF A SCHOLARSHIP

NCAA Division I and Division II colleges and universities awarded more than \$1.5 billion in scholarships to student athletes in 2013. Scholarships typically covered the cost of tuition, books, and room and board. Student athletes could receive full scholarships or partial scholarships. The number of financial awards to student athletes varied by the type of membership held by the institution. For example, Division I Football Bowl Subdivision (FBS) schools were allowed to provide 85 full scholarships in football, whereas Division I Football Championship Subdivision (FCS) schools were restricted to 65 equivalent full scholarships. Football, basketball, and ice hockey were the only men's head-count sports in 2014. That is, only full

scholarships could be awarded in these sports. Partial scholarship awards were allowable in other men's sports. Women's basketball, gymnastics, tennis, and volleyball were NCAA head count sports requiring full scholarships, while partial scholarships were allowed in other women's sports.

The dollar amount of athletic scholarships offered in men's and women's sports was required to be proportional to the undergraduate enrollment under Title IX of the Education Amendments Act of 1972. For example, a university with a 50-50 proportion of men and women undergraduate students was required to provide equal scholarship dollars and other benefits to men and women student athletes. Title IX implementation at many universities with football programs resulted in the addition of several women's sports and, perhaps, the elimination of some men's sports, to ensure a proportional dollar value of scholarships and other benefits awarded to men and women student athletes. It was also not uncommon for a university with football programs to provide a greater number of scholarships for women's teams than men's teams participating in the same sport to offset the large dollar value of scholarships awarded to student athletes participating in football.

In 2014, there were 346 Division I, 291 Division II, and 439 Division III NCAA member schools. Division III schools did not provide student athletes with scholarships or other athletics-based financial aid. Approximately 150,000 student athletes participated in Division III athletics in 2013. Exhibit 1 presents the scholarship limits for select NCAA Division I and Division II men's and women's sports in 2013.

In 2013, the average number of athletic scholarships awarded by each Division I FBS school was approximately 600, and the average value of a full scholarship for NCAA Division I schools was \$13,821. In the same year, the average full scholarship amount for NCAA Division II schools was \$5,362, and approximately 400 student athletes, on average, participated in sports at each Division II football school. The average number of participants for nonfootball Division II schools was 250 per school in 2013.

According to a study done by Drexel University and the National College Players Association, college athletic scholarships fell short of covering the complete cost of attendance, and additional living expenses for transportation, various school supplies,

and other miscellaneous expenses could exceed \$3,000 per year.⁵ Options for the students to pay for the costs not covered by their scholarships included student loans and Pell Grants. While student loans were available to any student athlete, Pell Grants were restricted to student athletes whose household income was below a certain threshold. Pell Grants up to \$5,700 in 2014 were needs-based and did not require repayment since they were grants rather than loans. Pell Grants were not restricted to student athletes, but many student athletes did apply. Pell Grant spending on all postsecondary education was estimated at \$31.7 billion in award year 2012-2013. The NCAA did not award athletics scholarships, but it did award scholarships to Division I and II athletes on the basis of financial need. The NCAA awarded \$16.2 million in needs-based scholarships through its Special Assistance Fund in 2012.

REVENUE GENERATION

The revenues needed to support athletic programs were generated through state appropriations to university budgets, ticket sales, and NCAA revenue distribution. NCAA revenues were generated from television and marketing rights fees, primarily from the Division I men's basketball championship, and from ticket sales for championship events. A small portion of NCAA revenues was generated from licensing fees for college sports video games. More than 90 percent of NCAA revenues were distributed to member institutions to support student athletes. The NCAA distributed \$497.6 million to Division I schools in the 2013-2014 academic year.

Member institutions also collected revenues from ticket sales, concessions, royalties and licensing fees, broadcast fees, and direct institution support. Revenue generation from football averaged 44.3 percent of total athletic department revenues for FBS programs and 24 percent of total athletic department revenues for NCAA Division I FCS programs. Revenues to support university athletics programs varied widely: Division III schools relied almost exclusively on direct institutional support to fund programs, while the top-ranked Division I FBS programs generated between \$50 million and \$100 million each year to fund programs. In 2012, even with revenues from football, the expenses of average Division I schools exceeded revenues by \$10 million to \$12 million, and the average

EXHIBIT 1 Scholarship Limits for Select Division I and Division II Men's and Women's Sports, 2013

Men's Varsity Sports		
Sport	Scholarship Limit	
	NCAA Division I	NCAA Division II
Baseball	11.7	9.0
Basketball	13.0	10.0
Football (FBS)	85.0	36.0
Golf	4.5	3.6
Soccer	9.9	9.0
Tennis	4.5	4.5
Track and field	12.6	12.6
Wrestling	9.9	9.0
Women's Varsity Sports		
Sport	Scholarship Limit	
	NCAA Division I	NCAA Division II
Basketball	15.0	10.0
Field hockey	12.0	6.3
Golf	4.5	3.6
Gymnastics	12.0	6.0
Lacrosse	12.0	9.9
Rowing	20.0	20.0
Soccer	14.0	9.9
Softball	12.0	7.2
Swimming & diving	14.0	8.1
Tennis	8.0	6.0
Track and field	18.0	12.6
Volleyball	12.0	8.0

Source: ScholarshipStats.com.

budget shortfall for Division II schools was between \$3.5 million and \$4.5 million. Exhibit 2 presents the estimated total revenues and expenses for 25 of the top programs in the country for the 2011–2012 year. Median revenue and expenses for all Division I and Division II schools for 2004 and 2008–2012 are presented in Exhibits 3 and 4, respectively.

A DAY IN THE LIFE OF A COLLEGE FOOTBALL PLAYER

A typical day in the life of a college football player was far different from that of the average college student. *The Wall Street Journal* examined the average day of a collegiate athlete in its October 14, 2011, profile of former Michigan quarterback Denard Robinson.

Robinson began the day with a 7 a.m. trip to the training room. Robinson had injured his knee in a game and received daily treatment from personal trainers and physical therapists to ensure that he would be able to participate in the upcoming practices and games. The various treatments lasted just over two and one-half hours, until 9:40. Robinson then rushed to make his first class, which began at 10:10 a.m. After class, he and a few teammates headed to the Michigan Student Union to grab lunch, which consisted of Wendy's spicy chicken nuggets. Following lunch, Robinson had a scheduled meeting with a professor to discuss a paper. At 2 p.m., Robinson headed back to the training room to take an ice bath and then went to a quarterbacks' meeting 30 minutes later. This meeting lasted an hour, and then came practice at 3:30. Once practice was completed, Robinson found himself back in the training room for more treatment on his knee. His final training-room session finished shortly after 7:30 p.m., and then came dinner. After a large meal (Robinson consumed, on average, 14,000 calories per day), he and some teammates headed to the film room to prepare for that week's upcoming game against rival Michigan State. The day finally concluded at 10:30 p.m., nearly 16 hours after it began.⁶

PAYMENT SCANDALS

Under NCAA rules, it was strictly forbidden for players to be paid to play football at an amateur level. That did not mean that they weren't paid, but payment was highly illegal and had been the cause of many scandals at major institutions over the years. There were three main ways that the players were paid, involving three distinct sources. The first source was what was deemed "pay for play." Pay for play was essentially a system in which high-ranking boosters or school officials provided under-the-table money to a recruit or his family in order to secure

EXHIBIT 2 Financial Summary for the NCAA 2013 Preseason Top-25 Football Programs, 2011-2012

Preseason Rank (2013)	University	Total Football Revenue (2011-2012)	Total Football Expenses (2011-2012)	Net Revenue (2011-2012)
1	Alabama	\$ 81,993,762	\$36,918,963	\$45,074,799
2	Ohio State	58,112,270	34,026,871	24,085,399
3	Oregon	51,921,731	20,240,213	31,681,518
4	Stanford	25,564,646	18,738,731	6,825,915
5	Georgia	74,989,418	22,710,140	52,279,278
6	Texas A&M	44,420,762	17,929,882	26,490,880
7	South Carolina	48,065,096	22,063,216	26,001,880
8	Glemson	39,207,780	23,652,472	15,555,308
9	Louisville	23,756,955	18,769,539	4,987,416
10	Florida	74,117,435	23,045,846	51,071,589
11	Notre Dame	68,986,659	25,757,968	43,228,691
12	Florida State	34,484,786	22,052,228	12,432,558
13	LSU	68,804,309	24,049,282	44,755,027
14	Oklahoma State	41,138,312	26,238,172	14,900,140
15	Texas	103,813,684	25,896,203	77,917,481
16	Oklahoma	59,630,425	24,097,643	35,532,782
17	Michigan	85,209,247	23,640,337	61,568,910
18	Nebraska	55,063,437	18,649,947	36,413,490
19	Boise State	15,345,308	8,537,612	6,807,696
20	TCU	25,984,011	25,984,011	
21	UCLA	25,168,004	19,193,346	5,974,658
22	Northwestern	27,547,684	20,148,403	7,399,281
23	Wisconsin	48,416,449	24,231,297	24,185,152
24	USC	34,410,822	23,123,733	11,287,089
25	Oregon State	20,666,946	11,903,213	8,763,733

Source: Alicia Jessop, "The Economics of College Football: A Look at the Top-25 Teams' Revenues and Expenses," *Forbes*, August 31, 2013, www.forbes.com/sites/aliciajessop/2013/08/31/the-economics-of-college-football-a-look-at-the-top-25-teams-revenues-and-expenses/.

the recruit's commitment to play football for the school in question. The second source of payment came in the form of what was called "impermissible benefits." Impermissible benefits could be anything from clothes to tattoos given to players for free or at a discounted price due to their status as a football player or in return for signed memorabilia. The third source of payment was professional sports agents who paid current collegiate players or their families in order to secure the player's commitment to sign with the agent's agency whenever the player decided

to become a professional football player. This problem had become more prevalent in recent years due to the absurdly high price of rookie contracts, but usually a few star players, guaranteed to command a large contract, were involved.

There had been hundreds of pay-for-play scandals throughout the past 50 years that resulted in penalties for university teams, ranging from probation to vacated victories and bowl bans, but one scandal of boosters and school officials' paying players stood above all others. In the early 1980s,

EXHIBIT 3 Median Revenue and Expenses for NCAA Division I Athletic Programs, 2004 and 2008-2012

	2004	2008	2009	2010	2011	2012
Football Bowl Subdivision						
Total revenues	\$22,864,000	\$30,494,000	\$32,264,000	\$35,336,000	\$38,781,000	\$40,581,000
Total expenses	28,991,000	41,363,000	45,887,000	46,688,000	50,774,000	56,267,000
Median net revenue	\$ (5,902,000)	\$ (8,089,000)	\$ (10,164,000)	\$ (9,446,000)	\$ (10,282,000)	\$ (12,272,000)
Football Championship Subdivision						
Total revenues	\$2,047,000	\$ 2,978,000	\$ 2,886,000	\$ 3,289,000	\$ 3,439,000	\$ 3,750,000
Total expenses	7,810,000	12,115,000	12,019,000	13,091,000	13,218,000	14,115,000
Median net revenue	\$ (5,907,000)	\$ (7,937,000)	\$ (8,643,000)	\$ (9,189,000)	\$ (9,581,000)	\$ (10,219,000)
Nonfootball programs						
Total revenues	\$1,469,000	\$ 2,125,000	\$ 2,099,000	\$ 1,993,000	\$ 2,244,000	\$ 2,206,000
Total expenses	7,147,000	10,347,000	10,502,000	11,562,000	11,930,000	12,983,000
Median net revenue	\$ (5,266,000)	\$ (8,031,000)	\$ (8,340,000)	\$ (8,597,000)	\$ (9,330,000)	\$ (9,809,000)

Source: NCAA Division I Intercollegiate Athletics Programs Report, 2013.

Southern Methodist University (SMU) was a football powerhouse in the Southwest conference. The university had a rich history of game victories, All-American players, and even a Heisman Trophy winner. In 1984, the SMU team was put on probation when an investigation discovered that SMU boosters and assistant coaches had paid an out-of-state recruit to commit to joining the university's football team in 1983. The team was placed on probation again for the 1985 and 1986 seasons, a probation that, among other penalties, banned the team from bowl games in those seasons.

In 1987, disaster struck the SMU program. Through a series of investigations ranging back to 1986, it was discovered that numerous SMU players were receiving illegal benefits from university boosters and coaches. These benefits ranged from a rent-free stay in a high-end Dallas apartment to a cash payment of \$25,000 for a player to play at SMU. The money was coming from a so-called slush fund provided by high-ranking boosters. It was later discovered that high-ranking university officials and even the governor of Texas knew about the slush fund long before it was brought to public attention.

EXHIBIT 4 Median Revenue and Expenses for NCAA Division II Athletic Programs, 2004 and 2008-2012

	2004	2008	2009	2010	2011	2012
Football programs						
Total revenues	\$ 383,600	\$ 587,400	\$ 540,600	\$ 578,900	\$ 618,000	\$ 624,100
Total expenses	2,884,600	4,473,500	4,521,600	4,839,300	5,056,700	5,276,500
Median net revenue	\$ (2,359,700)	\$ (3,637,500)	\$ (3,906,700)	\$ (4,004,200)	\$ (4,235,100)	\$ (4,521,600)
Nonfootball programs						
Total revenues	\$ 153,600	\$ 305,600	\$ 256,700	\$ 259,100	\$ 296,500	\$ 314,200
Total expenses	2,221,400	3,157,700	3,102,300	3,449,000	3,644,500	4,014,900
Median net revenue	\$ (2,000,200)	\$ (2,836,000)	\$ (2,926,200)	\$ (3,186,300)	\$ (3,351,600)	\$ (3,539,900)

Source: NCAA Division II Intercollegiate Athletics Programs Report, 2013.

Given the nature of the violations at SMU, it was determined that the university would be punished with what was called the "death penalty." The death penalty essentially crippled the SMU football program for the next 20 years. Among the punishments doled out to the SMU team was a full cancellation of the 1987 season, a reduction of 55 scholarships over four years, and a ban from bowls or live television. Due to these penalties, SMU ended up canceling the 1988 season as well. While the situation at SMU was an extreme example of the effect that a pay-for-pay scandal can have on a university, there were multiple universities receiving lesser penalties every year for illegally paying players through boosters or university officials.

College football players at major universities were already high-profile young men, meaning items such as their memorabilia and autographs were in high demand. Many athletes and universities were punished because players had provided signed memorabilia or rings in order to receive various items. The fact that amateur athletes could not legally profit from their own signature, but the universities and athletic governing bodies could, was a major point among those in favor of providing some type of financial compensation for players.

A more recent major scandal involving impermissible benefits occurred at Ohio State University in 2010. It was discovered that eight Ohio State players had received roughly \$14,000 worth of cash and tattoos in exchange for signed jerseys, memorabilia, and rings. It was later discovered that the Ohio State head coach had received information regarding the illegal activities of his players before it was made public and chose to remain silent about it. Following an investigation that discovered the illegal activities, the Ohio State team received a punishment that included a bowl ban, vacated wins, and a scholarship reduction. The Ohio State head coach lost his job because he had failed to inform a university official about the activities of his players despite his prior knowledge of those activities.

Another source of illegal payments to amateur athletes was professional agents. Agents would identify athletes who had the potential to be money-makers at a professional level and would offer them or their families illegal benefits in order to ensure that the athletes would sign with the agent's agency when they decided to go professional. The most famous case of this type occurred with Reggie Bush and the University of Southern California

(USC). Bush was a star player at USC. He was an All-American and Heisman Trophy winner who was drafted in the first round of the 2006 NFL draft. It was soon discovered that Bush and his family had received illegal benefits totaling over \$290,000 from a professional sports agent. As a result, a full-scale investigation was launched into the USC athletic program, and it found that a high-profile basketball player had received similar benefits.

Although the investigation determined that the university itself had no knowledge of the illegal benefits being received by its players, it concluded that since the players had such high profiles, the university should have known. Normally, the punishment for playing an ineligible player (Bush was ineligible due to receiving illegal benefits) would be vacated wins in the games that player had played. In this case, because the university should have known what was going on, it was punished further, with probation, a scholarship reduction, and a two-year bowl ban. Bush was forced to give back his Heisman Trophy.

EFFORTS TO PAY PLAYERS IN 2014

The debate over possible compensation for football players became more widespread in 2014 because of not only the various lawsuits against the NCAA over player compensation but also the National Labor Relations Board decision to allow college football players to unionize. In 2014, Northwestern football players had formed the College Athletes Players Association (CAPA) and filed a case with the NLRB in which they argued that they were, in fact, employees of the university and not student athletes and thus had the ability to form a union. Northwestern player Kain Colter argued, among other things, that playing college football was like a job due to the fact that players must spend over 50 hours a week preparing for games.⁷ Colter did not argue for compensation specifically but just for the right to unionize. The Northwestern players hoped they would be able to engage in collective bargaining with their university similar to the type of negotiations that the NFL Players Association had with the NFL owners.

Once Colter and the CAPA brought their case to the NLRB, it took the board about a month to come to a decision. The local branch of the NLRB decided that players at Northwestern University did, in fact,

have the right to unionize. This decision backed up the CAPA's belief that football players were employees of the university, rather than just student athletes. (Note: This ruling applied only to private schools. Players at public schools were subject to a different set of rules; if they wanted to unionize, they had to bring their case to their state's labor board.) The NLRB ruling was under appeal by Northwestern University in mid-2014.

The NCAA president, Mark Emmert, commented on unionization of college athletes during the 2014 State of the NCAA annual news conference:

To be perfectly frank, the notion of using a union-employee model to address the challenges that exist in intercollegiate athletics is something that strikes most people as a grossly inappropriate solution to the problems.

While it was clear that Emmert and the NCAA leadership did not agree that players unions were appropriate, they didn't seem to be overly worried about them either. The general consensus among NCAA leaders was that, due to the complicated legal nature of unionization, there would not be any serious implications from players unions in the near future. Despite Emmert's opposition to players unions, he did seem open to some form of extra payment for players. In fact, he proposed a \$2,000 stipend that would cover the extra costs that aren't covered by a scholarship. Emmert's proposal was eventually rejected by the NCAA board of directors.

Many observers recognized the NLRB ruling as a landmark event in college athletics. It marked the first legally recognized effort to consider independent unionization for a collective group of college athletes. However, not only did the ruling apply only to student athletes at private schools, but it did not address athletes' ability to unionize in any sports other than football.

There was one more issue that was being addressed by the NCAA in 2014 that would possibly have had an effect on the players: The NCAA was considering an overhaul of its governance system and introduced an initiative that would give conferences autonomy over how to use certain portions of their TV revenue. The initiative essentially said, "It's really this simple: If Ohio State wants to provide its athletes with a full cost of attendance scholarship—which it can easily afford—it doesn't feel it should need permission from Stony Brook."⁸ The initiative

covered the following items, and thus the schools would decide whether to provide them to their student athletes:

- Financial aid, including full cost of attendance and scholarship guarantees
- Insurance, including policies that protect future earnings
- Academic support, particularly for at-risk student-athletes
- Other support, such as travel for families, free tickets to athletics events and expenses associated with practice and competition (such as parking)⁹

WHY FOOTBALL PLAYERS?

No matter what the college sport was, a strong work ethic and an immense amount of talent were required for an athlete to be successful. Every student athlete in university-sponsored sports gave maximum effort for his or her team, both on and off the field. However, there were several reasons that the compensation issue focused on football players. First, football was, far and away, the most profitable sport in college athletics for some schools. While men's basketball could also generate positive revenue, there were some instances in which the revenue generated from a football program heavily contributed to the net revenues needed to support other athletic programs.

A second common argument for compensation for football players centered on NFL rules that did not allow players to enter the NFL draft unless they were three years out of high school. The NBA required that players spend only one year out of high school before entering the NBA draft. This essentially meant that college basketball players were required to spend only a semester or two in college before turning professional. Basketball players also had the option of playing professional basketball in another country for a year and then entering the NBA draft. In other sports, such as baseball and hockey, players had the option of playing professionally directly after high school, skipping college altogether.

Even though it was the dream of every college football player to one day play in the NFL, the odds of that happening were very slim. According to the NFL Players Association, out of the roughly 9,000 football players leaving college to possibly play in the NFL, only 315 were invited to the NFL Combine to show

off their skills to potential draft suitors. The NFL draft consisted of only 254 picks, so only 2.8 percent of the eligible players were drafted, with a small group signing on as undrafted free agents. If a player was lucky enough to make an NFL roster, that did not mean that the player would instantly become a millionaire. In 2012, the NFL player minimum salary was \$390,000 a year, and the average career for an NFL player was only three and one-half years.¹⁰ Obviously, there were exceptions for the superstars in the league, but these were the numbers for most players.

An additional argument made by those who favored compensation for college football players was the fact that the risk of a long-term injury in football was much higher than that in any other sport. Of course, there was an injury risk for any player who played a sport at a competitive level, but the risk of injury, specifically head injury, was much higher in football. Concussion awareness had greatly increased in recent years at all levels of football as head injuries had greatly changed the way the sport was perceived. Measures had been taken, from penalties for targeting the head to improved helmet padding, to limit concussions, but they still occurred. College football players had to take a serious look at whether they wanted to put their bodies at risk day after day for the chance of, hopefully, playing professional football one day. Many individuals felt that amateur players who are putting their bodies at risk to such an extent deserved some type of compensation. Such thoughts mainly stemmed from the fact that universities and governing bodies were profiting from the players, who risked injury every day, yet the players themselves could not profit. However, student athletes in every sport had received career-ending injuries, with some suffering from limited mobility for the remainder of their lives.

Commenting on the various efforts to compensate student athletes for participation in NCAA football

and basketball, Big 12 Conference commissioner Bob Bowlsby stated, "It is hard to justify paying student athletes in football and men's basketball and not recognizing the significant effort that swimmers and wrestlers and lacrosse players and track athletes all put in. Football and basketball players don't work any harder than anybody else; they just happen to have the blessing of an adoring public who is willing to pay for the tickets and willing to buy the products on television that come with the high visibility. We have both a legal obligation and a moral obligation to do for female student athletes and male Olympic sports athletes just exactly what we do for football and basketball student athletes. I don't think it's even debatable."¹¹

CONCLUSION

While the settlement of the Keller lawsuit had resulted in an agreement to pay approximately 100,000 former Division I men's basketball and FBS football players \$400 to \$2,000 each for the possible inclusion of their likenesses in EA Sports video games, the issue of student athlete compensation was yet to be resolved. The ramifications of the O'Bannon lawsuit had the possibility of radically changing the nature of college athletics, and it was still uncertain how a final NLRB ruling concerning player unionization would affect universities and the NCAA. Also, the success of litigation against EA Sports and the NCAA had the potential to give rise to new lawsuits claiming that unethical or illegal student athlete policies were created and enforced by the NCAA. The developments of 2014 required that the NCAA closely evaluate its amateurism and financial assistance policies to ensure that the organization could meet the ethical expectations of the universities it represented and the consumers who enjoyed attending and viewing collegiate sporting events.

ENDNOTES

¹ As quoted in Ben Strauss and Steve Edler, "NCAA Settles One Video Game Suit for \$20 Million as a Second Begins," *New York Times*, June 9, 2014, www.nytimes.com/2014/06/10/sports/ncaafootball/ncaa-settles-sam-keller-video-game-suit-for-20-million.html?r=0.

² Ibid.

³ Ellen J. Staurowsky, "A Radical Proposal," *Marquette Sports Law Review*, May 8, 2012.

⁴ Ibid.

⁵ Ramogi Huma and Ellen J. Staurowsky, *The Price of Poverty in Big Time College Sport*, September 2011.

⁶ online.wsj.com/news/articles/SB10001424052970204002304576629182093236092.

⁷ www.huffingtonpost.com/2014/04/06/mark-emmerit-union_n_5102239.html.

⁸ college-football.si.com/2014/04/24/ncaa-board-of-directors-governance-restructuring/?eref=sircr.

⁹ Ibid.

¹⁰ www.nflplayers.com/About-us/FAQs/NFL-Hopeful-FAQs/.

¹¹ As quoted in "Big 12 Commissioner Bob Bowlsby Says 'Cheating Pays' in Today's NCAA Landscape," *Bleacher Report*, July 21, 2014, <http://bleacherreport.com/articles/2137073-big-12-commissioner-bob-bowlsby-says-cheating-pays-in-todays-ncaa-landscape>.