A European Solution to America’s Basketball Problem: Reforming Amateur Basketball in the United States

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I. INTRODUCTION

In America, we place an importance on our athletic pursuits and achievements that is reserved for little else. We immortalize star athletes, in our minds and in our culture, and keep their names alive for generations after they have disappeared from the game.\(^1\) We crowd around the television for major sporting events, foregoing other important things to get a glimpse at our best athletes competing at the highest level.\(^2\) Our professional leagues are billion-dollar ventures that dominate and set the standards in their respective sports.\(^3\) And on a personal level, we develop relationships, build ourselves, find an escape and learn lessons about life through sports and athletics.\(^4\) From the moment we can hold a ball and grasp the rules of the game, we are learning and growing through the prism of sports.

Just as sports have the ability to build up an individual and teach them necessary skills for a successful life, they also have the capability, if abused and used for ill means, to break someone down and destroy the hope and promise that is inherent in all young lives. Recently, our headlines have been dominated by the stories of unfulfilled athletic promise and our system of athletics taking advantage of athletes, swallowing them up before spitting them out.\(^5\) Athletics


\(^2\) 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 (2000) (comparing sports to religion noting his impression “that as many adults are zealously devoted to “the game” on any given day as are devoted to a worship service at a religious institution”).


\(^5\) See Harvey Araton, *Star-to-be who never was*, N.Y. TIMES (March 3, 2012), http://www.nytimes.com/2012/03/04/sports/basketball/lenny-cooke-star-to-be-who-never-was.html?pagewanted=all&_r=0 (detailing the story of Lenny Cooke, former top prospect whose personal struggles and influences, magnified without a support system, derailed his career); George Dohrmann provides an in-depth expose of the shady side of AAU basketball that primarily covers the journey of one AAU basketball coach, Joe Keller, and his star recruit, Demetrius Walker. Walker, lauded as one of the top players in the country while in middle school, has immense talent but, under the burden of improper coaching and influence, flames out of several college programs and sees his dreams of the NBA fall by the wayside. GEORGE DOHRMANN, *PLAY THEIR HEARTS OUT: A COACH, HIS STAR RECRUIT, AND THE YOUTH BASKETBALL MACHINE* (Ballantine Books, 2012).
is big business and an easy way to profit\textsuperscript{6} off an uninformed workforce.

Yes, there are a multitude of success stories in American sports: stories that can be seen on the news every single day. There are many young men and women who make it to the pinnacle of their profession and see their goals fulfilled. In the same stroke, there are many professionals and adults engaged in the business of youth sports and athletics who are mentors, caregivers, and teachers. However, for every success story, there is a contrasting tale of an athlete whose potential went unfulfilled, whose goals were left unattained, and whose development was stunted by unscrupulous and unmonitored adults.

While other sports in America (most notably American football) generate comparable interest and have developmental systems suffering from their own inherent flaws and risks, this paper focuses solely on basketball, specifically the Amateur Athletic Union (“AAU”) and National Collegiate Athletic Association (“NCAA”) organizations and the developmental systems that have all grown to dominate the youth and amateur levels of the sport.\textsuperscript{7} In terms of coaching and development at the middle and high school level, basketball in America has, for a variety of reasons, distinguished itself from other sports and systems of athletics.

First, over a sustained period of time, a unique system of talent management and development has firmly entrenched itself within the youth basketball apparatus. This system, embodied in organizations such as the NCAA and AAU, has helped organize and spread basketball across the country but has also brought with it an underbelly rife with corruption, greed, and immoral behavior.\textsuperscript{8} Second, basketball is one of two high school and college sports

\begin{footnotes}
\item[7] See generally DAN WETZEL & DON YAEGER, SOLE INFLUENCE: BASKETBALL, CORPORATE GREED, AND THE CORRUPTION OF AMERICA’S YOUTH (Warner Books, 2000) (for an examination of the influence of AAU basketball and the quid pro quo relationship that exists between the organizations operating under the AAU banner, shoe and apparel companies, and NCAA universities).
\end{footnotes}
(the other being college football) that has developed substantial connections with national broadcasters and is shown consistently during primetime on major television networks. This has contributed greatly to the spread of the game and its popularity. However, it has also injected unprecedented money and promotion into a system that is supposed to be, at these levels, an amateur endeavor. This money has not only greatly enriched the universities and their athletic programs but has also attracted agents, publicists, and other professionals, looking to make money off of the on-court successes of impressionable young men and women.

Finally, the connection between basketball and the Black culture in America has created serious issues of socioeconomic and racial exploitation at the collegiate and amateur levels. Many of the young athletes most at risk are minorities from unstable backgrounds and poor communities. In a ten-year study conducted by Joshua Kjerulf Dubrow of the Polish Academy of Sciences and Jimi Adams of Arizona State University, which focused on NBA player and their backgrounds, it was found that among African-Americans, a child from a low-income family has 37 percent lower odds of making the NBA than a child from a middle- or upper-income family. In addition to this, socioeconomically disadvantaged white athletes are 75 percent less likely to become NBA players than middle-class or well-off whites. Despite the risks and small odds, these kids pursue a basketball career because it is seen as one of the few

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9 In 2010, the NCAA signed a 14-year, $10.8 billion dollar contract with CBS and Turner Broadcasting for the rights to the NCAA’s highly popular men’s basketball tournament. The move was estimated to net NCAA member schools nearly $740 million dollars annually. Brad Wolverton, NCAA Agrees to $10.8 Billion Dollar Deal to Broadcast Its Men’s Basketball Tournament, THE CHRONICLE OF HIGHER EDUCATION (April 22, 2010), http://chronicle.com/article/NCAA-Signs-108-Billion-De/65219/. Individual NCAA conferences, including the Big East, Big 12, and Pac-12, also negotiate their own lucrative and long-term television deals for the rights to their basketball games. Those three conferences, for example, have sold their rights to major networks, including ESPN and Fox Sports 1, for the foreseeable future as the Big East signed a twelve-year deal in 2013. Steve Lepore, Fox Sports 1 Gambles with Massive Big East Basketball Deal, SBNATION.COM (Sept. 6, 2013), http://www.sbnation.com/college-basketball/2013/9/6/4700268/big-east-2013-tv-schedule-basketball-fox-sports-1.

10 According to Forbes, the three most valuable teams in college basketball, in 2013, were the University of Louisville Cardinals, the University of North Carolina Tar Heels, and the University of Kansas Jayhawks (worth $36.1 million, $29.6 million, and $28.2 million respectively). Chris Smith, College Basketball’s Most Valuable Teams, FORBES (Mar. 12, 2012), http://www.forbes.com/sites/chrissmith/2012/03/12/college-basketballs-most-valuable-teams/.

proven ways for them to escape the poverty around them. These athletes, with few other choices, are susceptible to manipulation and exploitation: often by the very institutions that regulate and provide order to the system.

The system of amateur and collegiate basketball in America has some serious flaws. Every year, thousands of young men and women pursue their basketball dreams under the shadow of a multi-million dollar, predatory business model. This paper will first discuss the history of the NCAA and AUU organizations and pinpoint where these current problems first originated. Integral to telling this history are recruiting horror stories and other examples of young talents who were taken advantage of by unscrupulous actors, both of which continue today. The paper will continue to discuss the three separate factors that heavily influence and buoy this unfair system. These factors include the power of athletic shoe and apparel companies, such as Nike or Under Armour, the rampant commercialization of young basketball talent, and finally, the money behind both the NCAA and the universities and colleges who play under its banner.

Each of these factors plays a huge role in bolstering and perpetuating the current system of youth basketball that has developed in America. After identifying the inherent problems with each of these different factors, we will conclude by discussing what we can do to solve the issue. First we address the hotly-debated proposition of paying college athletes, offering possible solutions for the impasse between the play-to-pay advocates and their detractors. In addition to this, we will touch on other, smaller initiatives that could make a difference in the process. Finally, the paper concludes with a look to the European system of amateur athletics and the radical solution of reforming the current system to more resemble the sports academies that can


\[13\] As a membership organization, the NCAA implements policies created and pushed forward on behalf of the member institutions. How We Work: NCAA Membership & the National Office, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/how+we+work/ncaa+membership+and+the+ncaa+national+office (last visited April 21, 2014).
be found abroad. With the amount of money and power behind the current system, reform will not be easy. However, if we are to protect and best assist our nation’s youth, reform of these systems is not only necessary, but it is vital.

II. THE HISTORY OF THE AAU AND NCAA ORGANIZATIONS

A. AAU Basketball: The Roots of the Game

For over a hundred years, the Amateur Athletic Union has been providing structure and organization to youth sports across the United States. Founded on January 1, 1888, the organization is “dedicated exclusively to the promotion and development of amateur sports and physical fitness programs.” The organization originally represented amateur athletic interests on the international stage, but the Olympic and Amateur Sports Act (“Amateur Sports Act”) of 1978, sponsored by then-Senator Ted Stevens, shifted the responsibility of Olympic amateur regulation away from AAU. In response to this legislation, the AAU’s presence quickly shifted to providing opportunities for over 1.1 million members in over thirty competitive sports. Recently, the AAU has been most associated with its youth basketball programs, although its history with the sport runs much deeper. It held the first men’s national basketball championship in 1897 and the first women’s basketball championship 29 years later. Nowadays, basketball can be considered the major driver of the AAU, with nearly 50 percent of the 1.1 million memberships devoted to the sport.

Within amateur basketball, AAU programs involve select teams of elite basketball

16 Wood, supra note 14.
18 Id.
players who compete on a national scale during the high school basketball offseason. The nation’s best high school players form incredibly talented teams, often affiliated by regional or geographic proximity, and play in sponsored, highly lucrative tournaments over the summer months. After the recent restructuring of the NCAA recruiting calendar, summer basketball has been more strongly emphasized than traditional high school ball. AAU and non-AAU summer tournaments now serve as one primary evaluation window for college coaches. Summer basketball is now colloquially referred to as "AAU basketball" and has become a large, separate industry, supporting coaches, insiders, and agents during the basketball offseason. In recent years, the AAU system has faced several scandals and widespread allegations of improper behavior by coaches, mentors, and others associated under the wide-ranging AAU banner. Often these scandals can be linked to one of four different inherent problems that often give a black eye to the AAU basketball system.

The first of these is the often unfettered and unevenly regulated access that power brokers, agents, and unprincipled coaches are allowed to have with kids competing on AAU basketball teams. While seedy details about such relationships come out during every recruiting cycle, an illustrative example of the corrosive nature of these arrangements can be found in the story of Ben McLemore, a former player for the University of Kansas Jayhawks and currently of the NBA’s Sacramento Kings. As he entered college, McLemore, who was one of the top recruits in his high school class, faced allegations that he had received almost $10,000, was gifted free trips to Los Angeles, and held meetings with agents with the help of his AAU coach, Darius Cobb, and a man, Rodney Blackstock, known in the industry as an “agent runner”.

22 See Dohrmann, supra note 5, at 382.
25 Eric Prisbell, AAU Coach: I Took Money Intended to Steer Ben McLemore, USA TODAY SPORTS (June 21, 2013), http://www.usatoday.com/story/sports/ncaab/big12/2013/05/04/kansas-jayhawks-ben-mclemore-darius-
Agent runners, who can often be AAU coaches,²⁶ act as middle-men between agents, who are barred by the NCAA from talking to players until they declare for the draft, and players, who face sanctions and punishment if the NCAA determines that they receive improper benefits from agents.²⁷ They have often been described as some of the most toxic players in the game of college basketball.²⁸ Agent runners are often paid well, $100,000 or more, in order to talk to players, influence them on major career decisions, and pass along the agent’s message, often disguised as advice on what school to choose and which agent to sign with.²⁹ McLemore, and the University of Kansas, faced serious NCAA violations for this relationship that were eventually a non-issue for the university and player.³⁰ But McLemore’s story is not unique. Rather, it provides an example of the kinds of people that can gain access to high-level players through the AAU system and the destructive influence these people can have.

The second problem is the lack of oversight of many coaches in AAU and the ability for many coaches to mold and create their own teams with their personal goals in mind. Certification as a coach by the AAU requires a $16 fee and completion of a background check and online clinic.³¹ This relatively low bar of membership has allowed many different types of people, some with self-serving and destructive goals, to gain legitimacy and access.

One particularly riveting account was detailed by Sports Illustrated writer and Pulitzer Prize winner George Dohrmann in *Play Their Hearts Out: A Coach, His Star Recruit, and the__

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²⁹ *Id.*
Youth Basketball Machine. Over the course of eight years, Dohrmann followed the story of Joe Keller, a grassroots Southern California-based AAU coach with unscrupulous and often damaging tactics, and Demetrius Walker, the star basketball player, once ranked as the top eighth grade player in the country, who fell under Keller’s influence and led his team to AAU dominance. The book paints a vivid picture of Keller’s relationship with Walker and the rest of his team, a relationship often marred by betrayal, anger, and distrust. Less a coach and more of a master showman, Keller recklessly used the team, and the talents of his star players, to make a name for himself in AAU circles and obtain sponsorships and funding from major shoe companies. He was eventually able to do so, but at the price of the basketball careers of some of his players, including Walker (who never lived up to his potential and has left several Division I programs in controversy). Dohrmann’s writing depicts Keller as someone who should never have an influential role in the development of young basketball players, let alone someone who gains great success and makes a living off of it. Keller’s approach is not unique to the grassroots basketball system either. Other stories, which are detailed both in Dohrmann’s book and in other sources, make this reality painfully clear.

In addition to this, many of these AAU teams require a great deal of funding and the rules and regulations behind the sources of money for these teams are uneven and rarely enforced very heavily. None of the players in the AAU system are paid and teams that are formed, such as Joe Keller’s team, are often mislabeled as amateur programs. In fact, they generate huge sources of income for their coaches and managers. Keller, for instance, was shown to have landed a

32 Dohrmann, supra note 5.
33 Dohrmann, supra note 5, at 24-25, 46, 54-55.
35 Dohrmann, supra note 5, at 44-46 (for a discussion of the shady tactics and models used to entice players employed by other AAU coaches, including Pat Barrett, a man deemed “Southern California’s AAU kingpin,” and the Pump brothers, David and Dana. These coaches, and others, were integral parts of the growth of AAU basketball in Southern California but also contributed to the seedy methods that have become commonplace throughout the system.).
compensation package with Adidas that was in the six figures.\textsuperscript{36} While the AAU code and the NCAA does not permit these athletes to be paid directly, neither regulating body does much to restrict the amount of other expenses, such as apparel, trips, and meals, that are showered on these teams and their players.\textsuperscript{37} Determining whether these benefits reach the level of a violation is often left to the NCAA, who rarely comes down hard in such cases.\textsuperscript{38} So while money freely flows into these AAU teams, and often into the coach’s pockets, the NCAA and AAU have essentially turned a blind eye.\textsuperscript{39} Beyond the money itself, professionals, such as apparel company executives and agents, are buying influence in this realm. And it is this influence that has allowed them to entrench themselves into the process, a move that has done much to cause many of the problems facing basketball development in the United States today.

Finally, the AAU system has faced charges that the people allowed to coach and gain significant access to the best high school basketball players in the nation have criminal records and pasts that should preclude them from any sort of youth development and leadership role. In August 2013, Curtis Malone, founder and coach of “D.C. Assault”, a prominent Washington D.C.-area AAU team that counts several NBA players among its alumni, was arrested on drug trafficking charges.\textsuperscript{40} Malone, who pleaded guilty and currently faces five to ten years in jail\textsuperscript{41},

\begin{footnotesize}
\begin{enumerate}
\item Salerno, \textit{supra} note 20, at 29.
\item Violations are often handed down for improper behavior on the part of the university or an agent and rarely on any conduct through the AAU team. \textit{Id.}
\item See \textit{id.} (noting that any violations generally stem from universities providing improper benefits to a player, not the AAU program). NCAA investigations usually revolve around payment of money and other benefits such as cellular phones or cars to AAU players. See, e.g., Eric Crawford, \textit{The Vault: The Marvin Stone-NCAA Saga}, COURIER-JOURNAL BLOG (May 31, 2010), http://blogs.courier-journal.com/ericcrawford/2010/05/31/the-vault-the-marvin-stone-ncaa-saga (discussing an NCAA investigation into an AAU basketball player who allegedly received improper benefits from a university).
\end{enumerate}
\end{footnotesize}
was described as a “power broker” for youth basketball in and around D.C., despite having a history of legal problems and NCAA sanctions for improper benefits. While it may be shrugged off as an isolated incident, the presence of such individuals in positions of considerable power among youth basketball circles is a troubling development.

These problems have all contributed to create a broken system of basketball development. The corrosive side effects of the AAU system have been publicly acknowledged at the professional and collegiate levels. Every year during the lead up to the professional basketball draft, young athletes are analyzed, dissected, and critiqued to a high degree. Some teams, including the NBA’s San Antonio Spurs, have even moved away from drafting and developing American players who came up through the AAU system. Their strategy has been defined, in part, by a perceived disinterest in American players who, in their mind, have been ruined by playing AAU basketball and participating in a system that glosses over fundamentals in favor of highlight plays and empty showcases of talent. Their penchant for drafting international players, and the sustained success they have obtained in doing so, has certainly influenced other NBA teams in varying degrees. While no other teams have completely adopted the Spurs model, their approach certainly speaks to a greater mindset present in the NBA that at least questions, if not outright critiques, the model of AAU basketball in America.

Colleges and college basketball coaches feel the downsides of the AAU system even more directly. When asked about AAU coaches and their role in the hierarchy of youth and amateur basketball, Duke University basketball coach Mike Krzyzewski, one of the most well-respected and decorated basketball coaches in NCAA history, expressed his misgivings on their

42 Id.
44 Id.
45 The philosophy of Spurs coaching and management has spread as students of its system have taken over coaching and General Management positions throughout the NBA. Spurs’ GM/Coaching Tree Expands To 11, REALGM WIRETAP (Aug. 13, 2013), http://basketball.realgm.com/wiretap/229378/Spurs-GM/Coaching-Tree-Expands-To-11.
role and their goals for the kids on their teams. “They don't answer to anybody,” Krzyzewski said in a newspaper interview. “Who is funding them [and] what are their goals? What race are they running? You know what race a high school coach is running for his or her school.”

Krzyzewski’s comments, while demonstrative, also reflect the possibility of conflicts of interest inherent in a system that exists as a third-party beneficiary to the college and professional athletics systems. Without a doubt, the AAU basketball system has a number of institutional problems that have contributed to the problems that plague the U.S. amateur system. However, the NCAA also has its own substantial role to play in the process.

B. The NCAA and the Big Business of College Basketball

The National Collegiate Athletic Association has its beginnings in the early 20th century. In response to the growing popularity and complexity of college sports (particularly football) and the lack of standardized college rules, the White House and Congress created the International Athletic Association (“IAA”), which was charged with reforming and creating intercollegiate sporting rules. The IAA changed its name to the National Collegiate Athletic Association in 1910 and began fulfilling its mandate. For much of its early existence, the NCAA was charged with merely creating and maintaining the rules and had little oversight or governance features.

As college sports became more popular and lucrative in the mid-20th century and the NCAA obtained football television contracts, the organization took on a greater role and

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47 See Welch Suggs, Tragedy and Triumph in Title IX, Vand. J. Ent. L. & Prac. 421, 424 (2005) (describing AAU basketball programs as complex series of tournaments and camps that increasingly prioritize athletic skills to the detriment of academic and social development).

48 Smith, supra note 2, at 12.


50 Smith, supra note 2, at 13.

51 Id.
increased not only its governance capabilities but also its enforcement capacity. The NCAA is currently “an unincorporated association consisting of approximately 960 public and private universities and colleges [that] adopts rules governing member institutions' recruiting, admissions, academic eligibility, and financial aid standards for student athletes.” The NCAA regulates all aspects of intercollegiate athletics, including recruiting, eligibility, and academic standards. In addition, the NCAA supervises and coordinates regular season and sponsors post-season competitions and championships.

The rise of commercialization, increased innovations in television and broadcast media, and greater interest in sports across the nation led to the NCAA developing greater control mechanisms for college sports. Court decisions, such as 1988 Supreme Court case NCAA v. Tarkanian, freed the NCAA from much due process scrutiny and empowered the organization to take greater steps in enforcing regulations and restrictions on not only athletes but universities and athletic departments. As a voluntary organization, the NCAA cannot be sued as a state actor. While the NCAA suffered other defeats in the federal court system, particularly on the issue of antitrust allegations, it nonetheless expanded its mandate and grew exponentially along with the growth of interest in amateur athletics. Today, the NCAA is charged with administering

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52 Id. at 14 (citations omitted).
57 NCAA v. Tarkanian, 488 U.S. at 199 (holding that the NCAA was not a state actor, freeing the NCAA from defending against due process allegations brought by Coach Jerry Tarkanian). Other actions of the NCAA are also protected due to its categorization as a noncommercial activity. For other NCAA legal victories, see also R.M. Smith v. NCAA, 266 F.3d 152, 159 (3rd Cir. 2001) (holding that through its enforcement of an eligibility bylaw, which prohibited a student-athlete from participating in intercollegiate athletics at a postgraduate institution other than the one from which her undergraduate degree was obtained, the NCAA did not engage in commercial or business activities).
58 See Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma, 104 S. Ct. 2948 (1984) (holding that NCAA rules are subject to antitrust scrutiny and should be upheld if they foster economic competition while ruling that the NCAA television plan violated the Sherman and Clayton Antitrust Acts).
and governing college sports in America and has done much to protect its position and the benefits it has received from the meteoric rise of revenue in college sports, due to increased television and broadcast agreements.\(^{59}\)

Much of what the NCAA does, especially concerning college basketball, is indeed beneficial. College basketball has become a huge business with expanding revenues, growing fan bases, and increasing pressure on not only on college players, but universities and coaches. However, there are also three issues within the NCAA system that have contributed to the current poisonous state of amateur athletics in the country. The first of these issues is the rules that place heavy restrictions on the mobility of college athletes, not only between amateur and professional levels but also between different universities. On the amateur-professional divide, in the 2005 incarnation of the NBA's Collective Bargaining Agreement (CBA), the NBA Players Association and the NBA agree to “raise the age floor for draft entry from 18 to at least 19 years of age, effective in the 2006 NBA Draft.”\(^{60}\) As a result, amateur players would no longer be able to jump directly from high school to the NBA, and instead would have to wait at least one year from the date of their high school graduation. This mandatory year-in-waiting following graduation strengthened the position of the NCAA, creating the expectation that this year would be spent playing collegiate basketball.\(^{61}\)

While the NCAA had little control over whether this regulation was actually implemented and the manifestation of the year-in-waiting, it benefitted greatly from it. With the new NBA commissioner, Adam Silver, now considering raising the minimum age again by one more year,\(^{62}\) assuring that athletes must wait two years after graduating high school before

entering the NBA, the NCAA only stands to benefit more by agreeing to these measures. Restricting athlete movement in this manner creates a whole host of issues, including the risk of injury jeopardizing an athlete’s career or draft status and the immense financial benefit universities and the NCAA stand to gain with popular basketball stars being forced to stay on campus another year.\textsuperscript{63} While the stated goals of this action, which include giving players more seasoning in the game and added maturity before being thrown into the professional pressure cooker, are in some ways legitimate, such regulations unfairly punish the athletes and fly in the face of established data on player development (which suggests that players develop more in the NBA than they would in an extra few years in college).\textsuperscript{64}

In addition to this proposed expansion of the minimum age rules, the NCAA has also placed unfairly harsh transfer laws on basketball players who wish to leave one program and attend another.\textsuperscript{65} Whereas a basketball coach can leave one program and coach another in one year’s time\textsuperscript{66}, a player often has to sit out for one year, unless they receive a transfer exception by the NCAA. For many players, this puts them at a disadvantage of losing both prime playing years and setting them back in terms of exposure and playing time. Both of these restrictions on athlete mobility have placed undue burden on many players and forced them to make difficult, unnecessary decisions in their careers. They have also both added an extra layer of pressure on athletes, which creates indecision on which negative influences, such as agents and agent runners, can exploit.

The second issue is the profit off of the names, likenesses, and on-field successes of college athletes with no compensation. This ongoing issue has only become more pronounced with the increase of television broadcasts of college games, the jump in sales of sports

\begin{flushleft}
\textsuperscript{63} Id.
\textsuperscript{64} Id.; see also Kevin Pelton, \textit{NBA Develops Players Better}, ESPN (March 11, 2014) http://insider.espn.go.com/nba/story/_/id/10588150/nba-why-nba-develops-players-better-college
\textsuperscript{66} Id.
\end{flushleft}
merchandise through the university, and the development of video games focused on college sports. These developments have flooded universities, their athletic departments, and the NCAA itself with an unprecedented amount of money. In 2013, it was reported that the NCAA had recorded a near $71 million surplus in its 2012 fiscal year, an all-time high for the organization.\textsuperscript{67} In the same financial statement, the year-end net assets of the NCAA were totaled at $566 million, double the amount that was calculated at the end of the fiscal year in 2006.\textsuperscript{68} And of the NCAA’s 2012 revenue, which totaled around $872 million, almost $709 million came from television and marketing rights fees.\textsuperscript{69} While expenditures by the NCAA and member schools have also seen a corresponding jump,\textsuperscript{70} the vast amounts of money generated in this system has made the model untenable and unfair in its current form.

The NCAA and member schools are certainly allowed to expand their league and brand with lucrative television deals, broadcast agreements, and merchandising opportunities. However, the controversy and argument has grown over the fact that these increased profits and revenue streams have been born and developed on the backs of talented players who are, for all intents and purposes, unpaid labor.\textsuperscript{71} Two legal challenges appear primed to bring the NCAA’s established model of financial and economic success to the brink. One suit, brought by former UCLA basketball star Ed O’Bannon, has received great publicity in its challenge of the NCAA’s antitrust mechanism.\textsuperscript{72} In concert with this, a recent win by Northwestern football players to be recognized as possible union employees by the National Labor Relations Board has put the

\textsuperscript{67} Berkowitz, supra note 59.
\textsuperscript{68} Id.
\textsuperscript{69} Id.
\textsuperscript{70} In 2012, big-time athletic programs increased operational spending by $665 million, matching a $385 million increase in revenue. Steve Berkowitz & Jodi Upton, NCAA Member Revenue, Spending Increase, USA TODAY (July 1, 2013), http://www.usatoday.com/story/sports/college/2013/05/01/ncaa-spending-revenue-texas-ohio-state-athletic-departments/2128147/.
\textsuperscript{71} See discussion infra Section III.
amateurism model of the NCAA under the spotlight.73

Finally, the NCAA has created an enforcement and punishment structure that puts undue pressure on young, easily manipulated, college athletes. From what gifts they can except to what food they can eat, NCAA athletes are heavily monitored by the entire organization and face punitive punishments, in the form of financial remuneration or game suspensions, if caught with improper benefits.74 In a recent concession, the NCAA allowed member schools to supply their athletes with unlimited food and snacks.75 This move was met with widespread ridicule, given its delay and ineffective solution to the much more insidious problem of unpaid labor. Rather than a system that places the onus of decision-making and maturity on 18 and 19 year old athletes, we should have a system in place that prevents them from falling into such scenarios in the first place and isolates them from negative influences.

### III. FIXING THE BROKEN SYSTEM: THE PROBLEMS AND THEIR SOLUTIONS

It has been acknowledged, even by the AAU and NCAA institutions and leading individuals within those institutions,76 that the system of basketball development in America has serious, fundamental problems. These problems have plagued both the AAU and NCAA for a number of years and have led to many stop-gap solutions that have done little to stem the tide or erase the seedy elements of the system’s underbelly. The problems are numerous and often

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73 Both of these legal challenges will be discussed later, but each has tremendous implications for the NCAA’s economic and regulatory model.


76 See Smith, *supra* note 2, at 16-17 (noting that “university presidents increasingly found themselves caught between the pressures applied by influential members of boards of trustees and alumni, who often demanded winning athletic programs, and faculty and educators, who feared the rising commercialization of athletics and its impact on academic values”); see also Rodney K. Smith, *Reforming Intercollegiate Athletics: A Critique of the Presidents Commission’s Role in the N.C.A.A.’s Sixth Special Convention,* 64 N.D. L. Rev. 423, 427 (1988).
amorphous, spread out across the country and rearing their head in many different situations and circumstances. Sports reforms activists are focused on a vast array of problems within the intercollegiate landscape including damage to the integrity of higher education, academic fraud, harm to non-athletes, exploitation of athletes, gender inequities, and the perpetuation of racial injustices. These more specific issues of the system can be traced to two overarching problems that have, in part, shaped and defined much of the current landscape of college basketball: the commercialization and professionalization of college athletics. Academics attribute the causes of these overarching professionalization and commercialization problems to our runaway sports culture, commodification, the political economy of college sports, or university administrators. Regardless of the cause, each of these problems, while wide-ranging, are also matched by overarching reforms that could do much to repair the American amateur basketball system. The overarching frameworks and recasting as commercialization and professionalization allow us to then turn to the European system of basketball for approaches to redefine amateurism and reform the American basketball system.

A. Problem #1: Commercialization of Amateur Basketball

As early as a 1929, in a report by the Carnegie Foundation, college athletics have been found to be “highly organized commercial enterprises” and “highly profitable enterprises.” In the report, the authors attempted to diagnose the causes of the cheating and financial scandals associated with college sports. The report concluded that:

the heart of the problem facing college sports was commercialization: an interlocking network that included expanded press coverage, public interest, alumni involvement and recruiting abuses. The victim was the student-athlete in particular, the diminishing of

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77 Robert D. Benford, The College Sports Reform Movement: Reframing the “Edutainment” Industry, The Sociological Quarterly, 48, 9 & 22 (2007) (approaching the analysis by focusing on five major topics: (1) commercialization of intercollegiate athletics; (2) university involvement in the entertainment industry; (3) damage to the integrity of higher education; (4) exploitation of athletes; and (5) harm to non-athletes).

78 Id. at 6.

79 Id. (citing Howard J. Savage et al., The Carnegie Foundation for the Advancement of Teaching, American College Athletics, xi (1929)).

80 Howard J. Savage et al., The Carnegie Foundation for the Advancement of Teaching, American College Athletics (1929).
educational and intellectual values in general. Also, students (including non-athletes) were the losers because they had been denied their rightful involvement in sports.80

This commercialization then creates economic incentives for conduct, which conflict with a university's academic mission and exploit student-athletes.”81 Today, the NCAA continues to ignore the detrimental effects of this collision noting instead “the need for revenue gained through commercial activity associated with intercollegiate athletics is as essential to the successful future of the enterprise as is the continued integration of intercollegiate athletics with the values of higher education.”82

The Ecosystem of College Athletics

The college sports industry today has swelled to $60 billion annually.83 While critics commonly point to the $16 billion generated from television contracts for the NCAA and its conferences,84 the college sports industry as a whole also generates revenue from advertising, ticket sales and sponsorships, and betting wages.85 The economics of intercollegiate sports are particularly robust due to the great number of organizational actors involved in this arena.86

80 JOHN THELIN, GAMES COLLEGES PLAY: SCANDAL AND REFORM IN INTERCOLLEGIATE ATHLETICS, 26 (1994).
81 Matthew J. Mitten et. al., Targeted Reform of Commercialized Intercollegiate Athletics, 47 San Diego L. Rev. 779, 781 (2010).
85 See Zak Cheney-Rice, Here’s How Many Billions College Players Will Make During March Madness This Year, POLICYMIC (March 19, 2014), http://www.policymic.com/articles/85763/heres-how-many-billions-college-players-will-make-during-march-madness-this-year.
86 Benford, supra note 77, at 6. See also Mitten, supra note 81, at 844 n.18 (listing the constituencies of major college sports).
colleges, including their athletic departments, administration, academic units, governing boards, and booster clubs, are united by unifying organizations such as athletic conferences and the NCAA. The broadcasting companies, including television and radio, have lucrative contracts with both the overarching NCAA, individual conferences, and some individual schools. The supporting organizations include service providers such as sports medicine, sports merchandising, and sports media. The individuals within each of these larger players can be members of professional or trade associations such as the National Athletic Trainers’ Association, National Association of Collegiate Directors of Athletics, National Sports Marketing Network, and the College Sports Information Directors of America. Lastly, and perhaps most importantly, companies from a variety of industries can use college athletics as a marketing tool through sponsorships and naming rights.

This college sports economy is then bookended by mirrored economies at the inputs and outputs stages (the high school and professional level), putting more pressure on these actors within the multi-organizational college sports landscape. Linking these economies together, assisting in the movement of athletes from high school and AAU to college and then to the NBA, include individual actors such as sports agents, coaches, and managers.

Viewed through this multi-organizational context, commercialization takes place through

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89 Also note that the National Association of Collegiate Directors of Athletics Official Athletic website is a partner of CBS College Sports Networks, Inc. NATIONAL ASSOCIATION OF COLLEGIATE DIRECTORS OF ATHLETICS, http://www.nacda.com/ (last visited April 22, 2014).
92 Lindsay J. Rosenthal, From Regulating Organization to Multi-Billion Dollar Business: The NCAA Is Commercializing the Amateur Competition It Has Taken Almost A Century to Create, 13 Seton Hall J. Sport L. 321, 327 (2003) (noting that companies who are not the manufacturers of athletic apparel or equipment to get name recognition for their products through sports sponsorship and using Alltel’s sponsorship of the University of Florida athletics department as an example).
93 Mitten, supra note 81.
the relationships of each actor with each other. For example, the interactions of individual universities with sports merchandise companies include multi-million dollar licensing deals, such as the University of Notre Dame's $90 million deal with Under Armour. The University of Texas expansion of its “international brand” implicates its relationship with football fans as well as corporate sponsors. In the licensing context, the NCAA previously sponsored the EA Sports video game series driving part of the $3 billion of revenue that the NCAA generates in licensing revenue. The clients of the Collegiate Licensing Company represent a $3.68 billion retail market for collegiate licensed merchandise. Solo actors, such as coaches and administrators, receive lucrative multi-million dollar contracts and performance bonuses from their respective universities based on team achievements. Even more importantly, these coaches are able to

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93 See Mary Vitale, Financial Exploitation of Student-Athletes: Three Possible Solutions for Leveling the Playing Field Between Division I Men’s Basketball and the NCAA, 1 St. John’s Ent., Arts, & Sports L. J. 73, 75 (2012) (explaining NCAA Division I basketball revenues derived from four sources: university revenue and publicity, broadcasting revenue, merchandise and endorsement deals, and player image and likeness).


96 Andrew B. Carrabis, Strange Bedfellows: How the NCAA and EA Sports May Have Violated Antitrust and Right of Publicity Laws to Make A Profit at the Exploitation of Intercollegiate Amateurism, 15 Barry L. Rev. 17, 20 (2010); The NCAA arguably allowed EA Sports to use the likenesses of current and former athletes in its video games. While the origins of these allegations stem from the O’Bannon lawsuit, the plaintiffs’ focus has shifted almost entirely to game broadcasts. Stewart Mandel, Judge allows Ed O’Bannon v. NCAA to proceed to trial, Sports Illustrated (February 20, 2014), http://sportsillustrated.cnn.com/college-football/news/20140220/ed-obannon-lawsuit-proceeds-to-trial/#ixzz2y8xW0T00.


98 Coaches’ compensation packages not only include substantial base salaries, typically the highest in the university, but also revenues from summer camps, media shows, and shoe and apparel contracts. As James Duderstadt, former president of the University of Michigan, observed, “It is ironic, indeed, that among all the members of the university community, athletics’ coaches are the only ones allowed to profit personally from the reputation and activities of the university.” Benford, supra note 77, at 11.
further capitalize on their publicity with product sponsorships. 99 Perhaps most importantly, the NCAA entered into a 14-year, $10.8 billion deal with CBS/Turner for broadcasting rights to the NCAA Division I men’s basketball championship. 100 Even outside of the NCAA’s organizational confines, universities are able to capitalize on the popularity of their athletic departments. Many universities’ branding rights are not owned by the NCAA, but rather the Collegiate Licensing Company, the nation’s leading collegiate trademark licensing and marketing firm. 101 While a university’s brand as an institution of higher learning is certainly marketable without intercollegiate sports, high-profile athletic departments can substantial increase the value of branded goods. 102 The interconnectedness of the college basketball and the NBA also plays a critical role in commercialization. College basketball plays a pivotal role as the developmental league for the NBA. 103 For individual athletes, these economic incentives to leave school and reach professional status can lead to irrational decisions regarding jumping to the NBA and

99 See e.g., Richard Salgado, Educating Someone Who Can’t or Doesn’t Want to Be Educated: The Shifting Fiduciary Duty Continuum of Big-Time College Sports, 3 Willamette Sports L.J. 27, 34 (2006) (“Duke basketball coach Mike Kryzewski accepts $375,000 annually from Nike in exchange for requiring his players to wear Nike shoes during games.”) (citing R. Hurst and J. Grief Pressley III, Payment of Student--Athletes: Legal and Practical Obstacles, 7 Vill. Sports & Ent. L. Forum 55, 56 (2000)).

100 Wolverton, supra note 9 (in 1999, the NCAA and television network CBS entered into a $6 billion contract, and the previous deal was a $1.725 billion contract between the two organizations). See also Wong, supra note 94, at 1086.


103 Sports reform author Andrew Zimbalist observes that:

[n]either the NBA nor the NFL has player development systems, and their teams do not have substantial player development expenses. Practically all their player development occurs at the college level. . . . Yet neither the NBA nor the NFL contributes a penny to college basketball or football.

Benford, supra note 77, at 11. (citing ANDREW ZIMBALIST, UNPAID PROFESSIONALS: COMMERCIALISM AND CONFLICT IN BIG-TIME COLLEGE SPORTS (1999)).
foregoing years of college. Unfortunately, the NCAA does not allow athletes to receive payment in excess of scholarship dollars or to capitalize on their personal image. However, the fair market value of a college basketball player is about $375,000 while the lost income over a four-year career for the average NCAA Division I men’s basketball player is $1,063,307.

This list of college sports revenue generation is not exhaustive, nor exclusive. Instead, revenue generation illustrates that the relationships between the actors in the college basketball ecosystem are economic in nature. In an overarching manner, this commercialization has distorted the values within higher education not just on college campuses, but within our entire sports culture.

The Effects of Commercialization on AAU

While college athletics have faced criticism and reform efforts since its inception, the pre-college system has received less attention. Scrutiny in this area is usually directed at the coaches, “handlers” of these all-star teams, recruiting violations, and the involvement of college boosters. However, it is shoe and apparel companies, under little oversight from the AAU, who actually play the key role in the inflow and outflow of funds in amateur basketball.

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105 NCAA, NCAA Division I Manual, art. art. 12, at 60-76 (2013-1014); See also NCAA, NCAA Division I Manual, art. 15, at 169-92 (2013-2014) (describing permitted financial aid and limiting an athlete’s compensation to tuition, fees, room and board, transportation, and books).


108 Benford, supra note 77, at 11.
Power of the Shoe Companies: An Example of Commercialization

The power of the shoe companies reveals how both commercialization and the interconnectedness of the AAU system with the rest of the basketball landscape create an environment for exploitation. While organizations such as institutions of higher education or athletic departments mainly act within the intercollegiate athletics framework, shoe companies play a distinct role in being a consistent figure in the pre-college, college, and professional ecosystem. It is a role that has greatly expanded over the past thirty years. There are two names that are synonymous with growth of the shoe business in American professional and amateur sports: John “Sonny” Vaccaro and Michael Jordan. In 1978, with the shoe market dominated by one company, Converse, Vaccaro approached Phil Knight, founder of Nike, with a proposition. With the goal of eating away at Converse’s monopoly in the market, Vaccaro and Knight joined forces and began initiating a plan to connect Nike to some of the biggest college basketball coaches in the nation. The thinking was that if the coaches and the school were on board with Nike sponsorship, the athletes would wear the shoes and become walking billboards for the products.

After some initial success with several schools, Vaccaro and Nike scored its biggest coup with the signing of Michael Jordan in 1984. Although at the time just a college sophomore, Jordan’s signing with Nike has been lauded as a touchstone moment in athlete marketability. Jordan would go on to win six NBA titles with the Chicago Bulls and is acknowledged, by general acclaim, to be the greatest basketball player of all time. Jordan’s role in the growth of the influence of shoe companies stems from his own success. His athletic endeavors, worldwide fame, and marketing prowess combined to redefine the standards of athletic professionalism and the commercial sports market. The world saw the success Jordan had with Nike and scrambled to

109 Dohrmann, supra note 5, at 46-47.
110 Id.
111 Id. at 46.
112 Id.
113 See Wetzel & Yaeger, supra note 7, at 3-5.
114 Id.; see also Dohrmann, supra note 5, at 46.
replicate it, searching for “the next Michael Jordan” to sell.\textsuperscript{115}

While Jordan’s relationship with Nike set the benchmark for the market, it was also Vaccaro’s move to Adidas in 1991 that set the path the market is currently on today.\textsuperscript{116} At Adidas, Vaccaro was also tasked with building the basketball brand and stealing Nike’s market share.\textsuperscript{117} Because the best college programs were already signed with Nike, Vaccaro had to look elsewhere. In Vaccaro’s words, “I had to go younger. The only place I could do battle with Nike was at the youth level.”\textsuperscript{118} Within his first couple of years at Adidas, Vaccaro brokered deals with some of the top high schools and most successful AAU programs in America.\textsuperscript{119} By reaching players this young, Vaccaro was able to snap up much of the market even before they set foot on a college campus.

Nike soon followed Adidas’s lead and, by 1996, the two shoe companies sponsored AAU teams and high school coaches in every urban center in America.\textsuperscript{120} In recent years, they have been joined by other shoe and apparel companies, including Under Armour, in their pursuit for young talent.\textsuperscript{121} It is this competition for talent that has driven the downward spiral that has enveloped much of the youth basketball game. In a market so thoroughly dominated by two behemoths, others wishing to get a piece of the pie have found it necessary to circumvent barriers of entry in ways that have hurt much of the amateur game.

More often than not, the cutthroat nature of getting into the shoe market has now incentivized coaches, agents, and other middle-men to go younger in their search for talent while also spending lavishly, and illegally, on the talented athletes they can sign. With so much

\textsuperscript{115} Dohrmann, supra note 5, at 47.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id. at 46.
\textsuperscript{119} Id.
\textsuperscript{120} Id. at 47.
competition for what is, in one sense, a limited resource, sponsorships and commercialization in
the youth and amateur game has been set on a race to the bottom, where people willing to find
talent at an incredibly young age will have a good shot at gaining sponsorships and endorsements
from two of the world’s largest sports apparel corporations.

The story of Joe Keller, detailed in George Dohrmann’s book, is a great example of the
underbelly in amateur basketball that this intense competition for resources has bred.122 Keller, in
his first efforts to get a sponsorship for his AAU basketball team, faced a paradox: “Without a
shoe deal, it would be difficult to recruit and keep top players. And without great players, he
would never get a shoe deal.”123 To deal with this, Keller went younger, recruiting players, like
his prized star Demetrius Walker, straight from middle school.124 Keller’s efforts were
successful, he became a well-paid coach for a Nike-sponsored AAU team, but his methods
reflect the highly suspect behavior that has become more prevalent in today’s AAU game.125 By
any measure, Keller’s actual coaching ability and basketball knowledge were poor.126 As
depicted by Dohrmann, he was prone to outbursts at his players, enamored by unorthodox and
damaging lineups, and was almost chiefly concerned with his own bottom line.127 Yet while
coaches like Keller should be marginalized or even removed from the youth game, the
sponsorships and financial assistance from shoe companies allow them to stay in business and
reap rewards off of the successes of their young athletes.

In essence, the “shoe wars” of the 1990s and early 2000s has allowed for the introduction
of rampant corporate greed into the grassroots basketball game.128 It is a practice that still
continues unabated. Every summer, Nike, Adidas, and other shoe companies compete for the

122 Dohrmann, supra note 5.
123 Id. at 46.
124 Id. at 47.
125 Id. at 333-334.
126 Id. at 24-25.
127 Id.
128 See id. at 46-47; Wetzel & Yaeger, supra note 7, at 12-13.
attendance of best basketball players in the nation at their AAU showcases. These events, such as the Reebok Summer Championships, Nike Main Event, and the Adidas Super 64, allow college coaches and other interested observers an unparalleled look at the skills and abilities of the nation’s top players. However, they also further commercialize and improperly expose unprepared young athletes to the unforgiving basketball economy. Shoe companies also sponsor traveling AAU teams, like Joe Keller’s, as another method to highlight their products and develop connections with the athletes. In the later 1990s, it was estimated that these companies spent $5 million a year on such programs, a number that has only gone up since then.

Shoe companies are also continuing to make their mark outside of these avenues. With the athletes themselves, corporations have embedded themselves in their lives and in the decisions players make about their futures. Recent examples include prep phenom Shabazz Muhammed opting to play for Adidas-sponsored UCLA and Andrew and Aaron Harrison, top-ranked guards in the class of 2013, considering schools sponsored by Under Armour, who had an endorsement deal with their AAU team. This level of influence on players’ decisions and future plans is, up to now, a legal part of the grassroots game.

Giant apparel makers continue to sign deals with schools as well, ensuring their products will be on the feet of some of the nation’s most captivating athletes. In April 2014, the University of Louisville signed a five-year, $40 million shoe and apparel deal with Adidas. This deal is actually dwarfed by deals signed by other schools, including the University of Michigan, whose recent deal with Adidas is worth $82 million over 10 years, and the aforementioned University of Notre Dame, who signed with Under Armour for an average of $9

\[\text{Page 28 of 68}\]
million a year.\footnote{134} 

The current state of the amateur sports climate, not only amateur basketball, allows for these incredibly lucrative deals to be signed and for these schools to solely profit off the careers of their athletes. This issue aside, the actions of major shoe and apparel companies in the grassroots basketball game has had a negative influence on the integrity of basketball development and has contributed to the unfettered commercialization of the amateur basketball game. Any steps to change the system must address this point and work to break the influence these companies have over college, high school, and AAU basketball programs across America.

**Exploitation of College Basketball and the NCAA’s Role as the NBA Minor League**

Within the commercialization context, the exploitation of unpaid college basketball players adds another leg to the table propping up the big business of amateur basketball. Mr. Walter Byers, Executive Director of the NCAA from 1952 to 1987, likens the NCAA to a slave plantation that exploits student athletes in order to reap the profits generated by collegiate athletics.\footnote{135} Other articles similarly express his sentiments when investigating the economics of the collegiate athletic system.\footnote{136} Reformists’ outcries of paying college athletes have gone

\footnote{134}Id. 


unheard. The NCAA claims its policies support amateurism and level playing fields, but they actually are a device to divert the money elsewhere.\textsuperscript{137} By not paying their athletes and creating lucrative national brands off of their accomplishments, the NCAA has reaped incredible profits and has opened the door to rampant commercialization of the sport. With the individuals being marginalized in favor of the teams or schools, the NCAA has attained a monopoly in the market and, in effect, has allowed greed to influence many of their decisions.

Compounding this problem, the NCAA acts as a developmental league for the NBA.\textsuperscript{138} Due to the NBA’s rule restricting players under nineteen from entering the league, the NCAA has experienced increased competition and growth.\textsuperscript{139} More importantly, the NCAA has cemented its status as a training ground and developmental league for entering the NBA draft.\textsuperscript{140} This commercialization is compounded because athletes have no choice but to play in the NCAA -- no longer able to jump from high school to the NBA. While the remuneration that players receive is strictly regulated and enforced,\textsuperscript{141} the NCAA has few regulations in its bylaws limiting

\textsuperscript{137} Pensyl, supra note 135, at 397 (citing Big Money Rules, EX-NCAA Chief Says, LEXINGTON HERALD-LEADER, Aug. 29, 1995, at C1 (quoting WALTER BYERS, UNSPORTSMANLIKE CONDUCT: EXPLOITING COLLEGE ATHLETES (1997)) (internal quotation marks omitted)).

\textsuperscript{138} See Edelman, supra note 136, (describing “the NCAA role as a minor league in which professional sports leagues maintain a developmental stake”). See also Michael A. McCann & Joseph S. Rosen, Legality of Age Restrictions in the NBA and the NFL, 56 Case W. Res. L. Rev. 731, 733-34 (2006) (describing the rule as furthering the NCAA as “the NBA's de facto minor-league system . . . in which players develop skills without financial compensation”); Steve E. Cavezza, "Can I See Some Id?: An Antitrust Analysis of NBA and NFL Draft Eligibility Rules, 2010 Den. U. Sports & Ent. L.J. 22, 49 (2010) (describing the NCAA acts as the NBA's farm system with no cost to the professional league).

\textsuperscript{139} See Chris Mannix, Age Before Beauty: Union Stance Against NBA Age Limit Misses Benefits of Time, Maturity, SPORTS ILLUSTRATED (Dec. 1, 2004), http://sportsillustrated.cnn.com/2004/writers/chris_mannix/12/01/age.limit/index.html (arguing that an NBA age limit would make the college game better because college fans would be exposed to top prospects, and these top prospects would have the chance to develop their talent against a lower level of competition).

\textsuperscript{140} McCann, supra note 138.

\textsuperscript{141} Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of Univ. of Oklahoma, 468 U.S. 85, 102 (1984) (“In order to preserve the character and quality of the ‘product,’ athletes must not be paid, must be required to attend class, and the like.”).
commercial influences on its member institutions.\textsuperscript{142} The revenue created by these rules and regulations generates money shared by the presidents, coaches, and other positions of power within the universities.\textsuperscript{143} It’s in the best interest of these decision-makers to increase revenues or at a minimum, maintain the status quo.

\textbf{B. Problem #2: Professionalization of NCAA Division I College Basketball}

Combined with the economic incentives for success with the minor leagues of college basketball, the professionalization of the student-athlete generates friction between the university’s educational mission and the athletic development of the player. The professionalization takes the form of a deletion or dilution of the academic portion of a student-athlete’s career. This professionalization also seeps into the structures and culture of higher education where the athlete does not receive equal access to education.\textsuperscript{144}

\textit{Missing the Student in “Student-Athlete”}

A major transition away from the NCAA college basketball amateurism and towards professionalization is derived from the pressures of commercialization.\textsuperscript{145} The NCAA plays a substantive role in regulating the education of its athletes.\textsuperscript{146} In a high revenue opportunity environment\textsuperscript{147}, conferences have realigned across even great geographical distances.\textsuperscript{148}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{142} Rosenthal, \textit{supra} note 92, at 321. See generally, Erin Abbey-Pinegar, \textit{The Need for A Global Amateurism Standard: International Student-Athlete Issues and Controversies}, 17 Ind. J. Global Legal Stud. 341, 349 (2010) (citing Lazaroff, \textit{supra} note 136, at 338 (bucketing NCAA regulations into two general categories: (1) rules designed to promote and to preserve eligibility status and (2) rules created for economic purposes)).
\item \textsuperscript{143} McCormick & McCormick, \textit{Race and Interest, supra} note 136, at 24 (“This evidence shows that the players--a largely African American work force--are generating tremendous wealth by creating the product of college sports, but are forbidden from sharing in that wealth. On the contrary, NCAA amateurism rules \textit{guarantee} that the money generated in substantial part by the athletes' arduous and often dangerous work will be reserved to benefit the overwhelmingly European American managers of the college sports industry.”)
\item \textsuperscript{144} Id.
\item \textsuperscript{145} Benford, \textit{supra} note 77, at 14 (citing Diane Carman, \textit{CU Shouldn’t Investigate Its Own Mess}, DENVER POST, Feb. 4, 2004, at 1B.)
\item \textsuperscript{146} Muenzen, \textit{supra} note 49, at 262.
\item \textsuperscript{147} Rosenthal, \textit{supra} note 92, at 323.
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Additionally, schools are scheduling games around the world for marketing and branding purposes. Recently, the Athletic Director of the University of Texas turned down the opportunity to reinitiate the in-state football rivalry with Texas A&M University to instead focus on games in China and overseas to grow University of Texas’s “international brand.” An insightful contrast with the University of Texas agenda is the approach of the Ivy League, which has refused to create a postseason conference tournament for its basketball programs. The Ivy League points to its philosophy of the student-athlete and the logistical issues of that tournament as the prominent reasons for refraining from creating a conference tournament even when the commercial incentives are lucrative. For the other NCAA Division I conferences, the incentives of commercialization and the expansion or realignment of major conferences, the focus of the student-athlete has shifted from the classroom to the basketball court.

The day-to-day schedule of a student-athlete is directly affected by this

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149 Olson, *supra* note 95 (The Athletic Director believes that it is “essential to use athletics as a platform to tell the university's story”).


152 *See Kyle R. Wood, NCAA Student-Athlete Health Care: Antitrust Concerns Regarding the Insurance Coverage Certification Requirement, 10 Ind. Health L. Rev. 561, 580 (2013) (discussing the concept that the Ivy League’s policies prohibiting athletics-based scholarships and foregoing postseason participation foster the high academic standards of the member institutions).*
commercialization, as their schedule is tightly managed by the coaching staff and prioritized based on team-related activities. Even the structure of the basketball season, starting in October and running until “March Madness,” creates a complete year-long intrusion on the academic calendar. The hypocrisy of the “student-athlete” is obvious from the schedule of the player who must squeeze in “student,” when “athlete” is the priority. This emphasis on athletics hurts the student.

**Integrity of Higher Education Institutions**

The commercialized form of college sports, as a high-profile multibillion-dollar business, “coexists uneasily with its host—nonprofit, tax-exempt institutions dedicated to education and research.” In an environment where the professional duties of a player and the academic requirements of a college conflict, ethical issues arise surrounding the academic careers of “student-athletes.” Colleges with revenue-generating athletic programs can compromise the institution’s academic integrity for the sake of competition.

**Eligibility Mills**

Due to this commercialization of college sports and the professionalization of the amateur athlete, institutions of higher education have been caught in cheating scandals. Commercialization creates a high-stakes environment where the overarching integrity of the institution can be tested. In every step of the process, from admissions to eligibility to graduation, the NCAA regulations and the pressure to compete in a high-stakes commercialized environment conflict. The professionalization of the student-athlete occurs when the educational mission of the university conflicts with the economics of college sports, turning institutions of higher education into eligibility mills.

153 See NCAA Division I Manual, 17.3.2.1 Men’s Basketball (2013-2014), available at http://www.ncaapublications.com/productdownloads/D114.pdf (“An institution shall not commence on-court preseason basketball practice sessions before the date that is 42 days before the date of the institution’s first regular season contest.”).

An “eligibility mill” describes academic support services within the athletics program that is “designed and administered to maintain an athlete’s eligibility rather than to provide him/her with the tools to get the most out of available educational opportunities.” Even more perplexing is the dilution of the academic experience for the sake of deeming a college basketball player, a “student-athlete.”

Recruiting in college sports revolves around the AAU. These high school graduates with minimal academic qualifications, are then professionalized via a full-time job as a basketball player at a Division I NCAA school, and “somehow have them get up to college-level reading and writing skills at the same time that they’re enrolled in college-level classes.”

Evidence from Mary Willingham, a UNC Center for Student Success and Academic Counseling employee, examined the achievement gaps between student-athletes and their peers at institutions with major sports programs. Willingham examined the reading levels of 183 UNC-Chapel Hill athletes who played football or basketball from 2004 to 2012. According to her research, 60 percent of the athletes read between fourth- and eighth-grade levels and between 8 and 10 percent read below a third-grade level.

Several headline news scandals serve as a glimpse into some of the unethical tactics of diploma mills. Diploma mills can use cheating tactics, easy courses, classes that do not actually exist, and altered grades to maintain the eligibility of its student-athletes. Several institutions, such as Minnesota, Tennessee, LSU, Texas Tech, Drake, Georgia, Marshall, Ohio State, St. Bonaventure, Alabama, and Auburn, have had their institutional images tarnished by blatant cases of cheating by athletes with the assistance of tutors, academic support services, and

155 Benford, supra note 77, at 15.
156 Id.
157 Id.
faculty.\footnote{Benford, supra note 77, at 13.}

In the late 1990s, former University of Tennessee English Professor Linda Bensel-Meyers reported tutors doing far too much work for athletes who were far too under-prepared for college coursework.\footnote{Sara Ganin, Women who blew whistle in student-athlete cases and what happened next, CNN (Jan. 9, 2014), http://www.cnn.com/2014/01/09/us/ncaa-athlete-literacy-whistle-blowers/; Show 6 transcript: Tennessee - Athletics vs. Academics, ESPN (May 7, 2000), http://espn.go.com/page2/tvlistings/show6transcript.html.} Bensel-Meyers incurred substantial personal and professional costs when she blew the whistle on the cheating scam.\footnote{Ganin, supra note 160; Bensel-Meyers suffers, UT DAILY BEACON (Sep 18, 2000), http://utdailybeacon.com/sports/2000/sep/18/bensel-meyers-suffers/;} In 2005, Louisiana State University instructor Tiffany alleged she was told to change grades to keep football players eligible for a bowl game and later settled a lawsuit with the school.\footnote{Ganin, supra note 160.} In 2009, adjunct lecturer Sally Dear-Healey of Binghamton University reported that she was pressured to change her grading policy for basketball players who were missing classes.\footnote{Id.}

While cheating scandals may be rampant in college sports, these specific examples stem from investigations, whistleblowers, or self-reporting. Graduation rates serve as a universal proxy, at a minimum reflecting the mission of an athletics program and either its focus on the education of its athletes or the lack thereof. Overall, Division I college basketball programs report low graduation rates.\footnote{John Slosson, Restoring Joy to Bracketville: Problems Facing College Basketball Stimulate Responses from the NCAA and the Newly Formed Student Basketball Council, 8 Sports Law. J. 125, 128 (2001).} In fact, historically, the graduation rate for men's basketball is among the lowest of any sport.\footnote{Id. at 132 (citing Press Release, NCAA, Report of the NCAA Division I Working Group to Study Basketball Issues (Aug. 20, 1999).} The graduation rate over a four-year period ending in 1993 was below thirty percent for many schools, including teams such as Arizona (twenty-nine percent), Auburn (twenty-seven percent), and Maryland (thirteen percent).\footnote{Steve Wieberg, Federal Stats show College Athletes Graduating in Record Numbers, USA TODAY (Nov. 18, 2009), http://usatoday30.usatoday.com/sports/college/2009-11-18-graduation-rates_N.htm.}
The graduation rates from Division I programs cut in either direction. Low graduation rates could mean that the academic curriculum at a particular school is arduous enough that a professionalized college player is either unprepared for undergraduate studies or the hours devoted to athletics have priority over the hours needed for academic studies. \(^{167}\) Higher graduation rates may reflect flaws in the institution’s integrity or may be less valuable due to institutional dilution.

**Learned Helplessness**

Even if the graduation rates of a particular basketball program are high, academic support can contribute to the athlete’s “learned helplessness.”\(^{168}\) In fact, graduation rates may mask the extent to which student-athletes leave college with adequate academic preparation.\(^{169}\) The accommodations and academic advisors take such a paternalistic approach and expect other members of the faculty and staff to make special accommodations on athletes’ behalf.\(^{170}\)

**Devaluation of the Education of Non-athletes**

The devaluation of academic programs can occur regardless of the regulations that the NCAA tries to enforce. Once admitted to institutions, student-athletes are often encouraged and

\(^{167}\) Much low graduation rates do not appear surprising when one considers the amount of time student-athletes devote to sports. Timothy Davis, *An Absence of Good Faith: Defining A University's Educational Obligation to Student-Athletes*, 28 Hous. L. Rev. 743, 756 (1991) (also noting that graduation rates may mask the extent to which student-athletes leave college with adequate academic preparation).


\(^{169}\) Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, 22 Fordham Urb. L.J. 615, 678 (1995) (posing that the unconscious racism fostered by racist athletic stereotypes results in the “devaluation of the African-American student-athlete's academic interest,” thereby raising the issue of the “exploitation of black student-athletes who provide valuable services, yet too often leave their institutions . . . without having obtained the academic preparation necessary ... to cope successfully”).

\(^{170}\) Philip Caulfield, *UNC Tutor reveals Pitiful, 10-sentence Paper that earned Football Player an A-*, N.Y. DAILY NEWS (March 28, 2014), http://www.nydailynews.com/sports/college/unc-tutor-reveals-10-sentence-term-paper-earned-football-player-a-phony-class-article-1.1737861 (“Two former Tar Heels . . . [reported that] . . . UNC athletics officials shuttled them into easy-A courses and even chose their majors for them. Bryon Bishop, a former offensive lineman, said he was handed a predetermined schedule on the first day he stepped on campus. Throughout his tenure, athletic department honchos told him, ‘To stay on course for graduation, you need to take these courses.’")
counseled to take courses that will enable them to maintain their athletic eligibility, even though such courses will not provide them with substantive educational benefits.\footnote{171}{Davis, An Absence of Good Faith, supra note 167, at 757.}

The devaluation of the institutions undergraduate diploma can harm both athletes and non-athletes.\footnote{172}{Indiana English Professor Murray Sperber concluded that [m]any big-time university officials, knowing that their schools cannot provide the vast majority of undergraduates with meaningful educations, try to distract and please these consumers with ongoing entertainment in the form of big-time college sports. For all its high expenses, an intercollegiate athletics program costs far less than a quality undergraduate education. Murray Sperber, \textit{Beer and Circus: How College Sports Is Crippling Undergraduate Education} 224 (2000).} A poignant example of this academic dilution occurred at UNC.\footnote{173}{In addition to the academic scandal, three players were ruled permanently ineligible for sports agent contact. In March 2012, the UNC football team also received institutional punishment in the form of sponsorship limits and post-season bowl bans. A defensive coach was also punished for failing to report outside income from a sports agent. \textit{See} Bruce Feldman, \textit{Despite Being Cleared in Scandal at UNC, Davis Still Waiting for a Gig}, \textit{CBS Sports} (Dec. 11, 2013), http://www.cbssports.com/collegefootball/writer/bruce-feldman/24372078/despite-being-cleared-in-unc-scandal-davis-still-waiting-for-next-gig.} A three-month investigation into academic fraud at the University of North Carolina revealed that not only student-athletes were given added academic benefits within the school's African and Afro-American Studies department.\footnote{174}{Barrett, supra note 154.} Students at large benefited from anomalies specific to the department, such as unauthorized grade changes, forged faculty signatures on grade rolls and limited or no class time.\footnote{175}{UNC also investigated academic misconduct by players, alleging improper assistance on multiple assignments over several terms from tutor Jennifer Wiley, who had also tutored the head football coach’s teen son, and plagiarism on key assignments. \textit{UNC’s Butch Davis Fired}, \textit{ABC 11} (July 28, 2011), http://abclocal.go.com/wtvd/story?section=news/local&id=8274713.} In this same year, UNC’s football team was acknowledged for its 75 percent football graduation success rate, 6 percentage points higher than the national average.\footnote{176}{NCAA Athlete Graduation Rates Top National Average, UNC \textit{General Alumni Association} (Oct. 28, 2010), http://alumni.unc.edu/article.aspx?SID=7915.} This dichotomy illustrates the university’s conflict between maintaining academic integrity and the professionalized college athlete.

This focus on college athletics also directly impacts non-athletes. Instead of increasing the quality of higher education, athletic departments are engaged in the prisoner’s dilemma of
athletic spending, colloquially known as the athletics “arms race.” In his book Beer and Circus: How College Sports Is Crippling Undergraduate Education, Indiana University English Professor Murray Sperber concluded that:

[m]any big-time university officials, knowing that their schools cannot provide the vast majority of undergraduates with meaningful educations, try to distract and please these consumers with ongoing entertainment in the form of big-time college sports. For all its high expenses, an intercollegiate athletics program costs far less than a quality undergraduate education.

Racial Injustices in the College Basketball Landscape

Defenders of the current NCAA model point to the free education that many athletes receive thanks to their scholarships at NCAA member schools. However, the quality of the education that many of these athletes receive is questionable, and the conflict between student and athlete particularly injures African-Americans. First and foremost, the proposition that amateur basketball players receive a free education is challenged by the drastically low graduation rates relative to their non-athlete classmates and in comparison to their athlete peers who are white. White student-athletes continue to graduate at a considerably higher rate than their African-American counterparts.

177 Frank Fitzpatrick & Gilbert M. Gaul, The Rise of the Major-College Athletic Empires, PHILADELPHIA INQUIRER, Sept. 10, 2000, at A1. (quoting Gary R. Roberts, Professor of Law, Tulane University). Jim Delaney, Commissioner of the Big Ten Conference, stated, “If you've got $22 million in revenue, you're going to spend $22 million. If you have $38 million, you'll spend $38 million. Right now, all of the effort is to grow the program. Nobody wants to hear that they don't compete nationally.” Id.

178 Sperber, supra note 172, at 222.


180 McCormick & McCormick, Race & Interest, supra note 136, at 43.

181 In men's basketball, 72 of the 327 Division I programs in the study saw fewer than half their players earn
Generally, the NCAA’s uniform rules and regulations are premised on a notion of colorblindness. Despite their assumed neutrality, the NCAA rules appear to impact black student-athletes disproportionately.183 For example, the NCAA rules limiting the income that an athlete can receive, disproportionately burdens Black athletes, who come from households with lower socioeconomic status.184 Similarly, eligibility rules produce disproportionate injury to African-American student-athletes and their communities.185

While the NCAA eligibility is primarily focused on the prospective athlete’s high school test scores and other high school graduation requirements, the recruiting pool is primarily drawn from the AAU circuit. NCAA recruiting rules also show the focus on recruiting on the AAU circuit and not the high school basketball teams. This exemplifies the hypocritical nature of the NCAA’s made-up mantra of the “student-athlete.” The NCAA is creating the public perception that its regulations support the notion of “student-athlete,” and yet college recruits are ill-prepared for life as a “professionalized” college player with an academic course load of at least twelve credits per semester.

Segregation in the Workplace

The institutional wrong is much grander than professionalization of individual student-athletes and due to the revenue forces at work, the magnitude of the racial injustice is substantial. The exploitation of amateur basketball players has racial undertones, as the college sports

diplomas — including 2010 regional finalists Tennessee (40%), Kansas State (40%) and Kentucky (44%). Steve Wieberg, NCAA Football Grad Rates at All-time High, but Top Schools Falter, USA TODAY (Oct. 27, 2010) http://usatoday30.usatoday.com/sports/college/2010-10-27-ncaa-graduation-rates-study_N.htm

182 Davis, Superspade, supra note 169, at 676.

183 Id. at 660.


185 Davis, Superspade, supra note 169, at 698 (citing Black Caucus Backs Basketball Coaches, DETROIT FREE PRESS, Oct. 20, 1993, at 2C (noting black coaches’ criticisms of uniform rules which more severely impact the interests of African-American student-athletes); Black Coaches Seek Help on Capitol Hill, CLEVELAND PLAIN DEALER, Oct. 20, 1993, at 1D (discussing how several NCAA policies disparately impact African-Americans)).
decision-makers and institutional leaders are White and the players primarily are Black.\(^{186}\) While the integration of college sports is a much better alternative than the previously segregated system,\(^{187}\) the commercial interests of White college administrators drove racial integration in revenue generating sports.\(^{188}\) The self-interest that led to early integration on the playing field, but not within college institutions\(^{189}\) is still reflected in the demographics of coaching staffs and administrators.\(^{190}\) One writer noted that, “[w]hile dominant racial ideology has worked to turn black men into entertainment commodities in sports, it has nearly kept them completely out of management positions in sport organizations.”\(^{191}\) The NCAA is akin to a “company store” and its predominantly Black employees are forced to live below the poverty line.\(^{192}\)

C. Exploitation: The Clash of Professionalization and Commercialization in College Basketball

The commercialization of Division I men’s college basketball has fostered some unintended, but damaging, outcomes. Essentially, it “creates an inherent tension with their academic missions and has the potential to overshadow or marginalize the educational aspects of

\(^{186}\) See McCormick & McCormick, Apartheid, supra note 136, at 14 (“Major college sports in the United States flourish on the basis of an apartheid system . . .”).

\(^{187}\) See, e.g., Davis, Superspade, supra note 169, at 624 (describing the history of formal and informal rules of exclusion in college sports); Lane Demas, Integrating the Gridiron: Black Civil Rights and American College Football, 2 (2010) (“[B]lack athletes . . . endured more than one hundred years of struggle before they could fully participate in college [football,] . . . [and] there were entire decades when [Black] participation was zero . . .”); Charles H. Martin, Jim Crow in the Gymnasium: The Integration of College Basketball in the American South, 10 Int'l J. Hist. Sport 68, 68 (1993) (noting the history of racial exclusion in college basketball).

\(^{188}\) See McCormick & McCormick, Race & Interest, supra note 136, at 25-41 (tracing the history of racial integration in college sports to demonstrate that it occurred when it simultaneously served the economic interests of white-run bowl organizations and universities to field the most competitive teams and thereby to enjoy the consequent financial reward).

\(^{189}\) See id. (reviewing the history of integration efforts in college football and basketball then applying interest convergence analysis to college sports suggesting that the lack of full integration in campus life demonstrated that racial integration was white self-interest, not altruism, prompting the admission of black athletes).

\(^{190}\) See Davis, Superspade, supra note 182, at 653 (describing the limited opportunities for African-Americans within the administrative infrastructure of collegiate athletics and specifically the paucity of African-American executives within the NCAA administration).


intercollegiate athletics." This combination of a professionalized student-athlete and the commercialization of the student-athlete directly causes the economic exploitation of the college basketball player.

Court battles have sought to attack this exploitation and break the NCAA monopoly on two fronts: The O’Bannon lawsuit attacked the commercialization and revenue generating thread and the Northwestern legislation is basically calling for the official professionalization of college football players as “employees.”

*The O’Bannon Lawsuit and the NCAA’s Revenue Model*

One of the most direct challenges to the NCAA’s economic model of commercialization and revenue is an ongoing antitrust suit led by a former NCAA basketball player. In 2009, the suit was originally brought on behalf of Ed O’Bannon, a former basketball star at UCLA in the early 1990s. Originally concerned with the NCAA profiting off of the likenesses of former players in video games produced by Electronic Arts, the case gained national prominence when, in January 2014, a federal judge ruled that current players could also join the action and that plaintiffs could seek damages from everyone that profited or is profiting off of their likenesses. This includes not only the NCAA but their member schools and their conferences. Currently pending, with a strong chance that the deadlock between the sides could send the case to trial, it stands as perhaps the first crack in the NCAA’s amateurism model.

Simply put, O’Bannon v. NCAA threatens to overturn the NCAA’s current business model. At central issue in the case is the revenue generation the NCAA retains from the licensing

193 Mitten, *supra* note 81, at 801.
194 Vitale, *supra* note 93, at 74 (positing that the “NCAA bylaws allow for substantial economic disparity between the NCAA and its players, promoting the exploitation of student-athletes that even borders on the line of illegality”).
195 The O’Bannon lawsuit was later consolidated with a suit brought by former University of Nebraska quarterback Sam Keller to form what is now known as In Re: NCAA Student-Athlete Name and Likeness Licensing Litigation. *In Re* Student-Athlete Name & Likeness Licensing Litig., No. C 09-1967 CW, 2010 WL 5644656, at *1 (N.D. Cal. Dec. 17, 2010).
of its workforce. As currently constructed, the NCAA reaps incredible revenue from the accomplishments and achievements of college athletes. In return, these athletes are cut out of the equation and receive a highly economically unequal amount of reward for their services. As discussed earlier, the fair market value of a college basketball player is around $375,000, while the average NCAA Division I men’s basketball player loses approximately $1,063,307 during a full four year career. While some have argued that the scholarships and education these athletes receive is reward in itself, such flimsy compensation does not stack up to the billions in revenue that the NCAA and its member schools are pulling in each year through lucrative broadcast and media rights packages. While still pending, O’Bannon appears to be the tip of the iceberg of the challenges being mounted against the NCAA model of amateurism and commercialization.

Northwestern Lawsuit & Professionalization

Scholars indicate that amateurism’s historical roots can be traced back to Great Britain, and the term “amateur” was first synonymous with the elite socioeconomic class of that time. Amateurism’s privileged classes engaged in sport “purely for enjoyment and to become well-rounded gentlemen.” In fact, limiting wages was used to control access to soccer in the 19th century. In college basketball today, amateur basketball at the NCAA Division I level is no

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197 See e.g. O’Bannon v. NCAA, Nos. C 09-1967 CW, 2010 WL 445190 slip op. at *2.(N.D. Cal. Feb. 8, 2010) (where plaintiff Keller claims that because the NCAA has rights in perpetuity to images of him during his collegiate career, the NCAA, along with its co-conspirators, fix the price for the use of his image at “zero”); Carrabis, supra note 96, at 19-20 (describing the O’Bannon law suit and noting that licensed products generate roughly $3 billion dollars per year).

198 Huma & Staurowsky, supra note 106.

199 Id.; See also Smith, supra note 10 (using the Equity in Athletics Data Analysis Cutting Tool to value NCAA college basketball teams).


longer a leisure activity. Instead, a player’s commitment is more than 50 hours per week.\textsuperscript{203}

When the NCAA was established in 1905\textsuperscript{204}, the NCAA denied compensation via financial aid or the singling out of students for their athletic achievements.\textsuperscript{205} The notions of amateurism at the time believe that rewards for athletic compensation were intrinsic and not linked to sporting endeavors.\textsuperscript{206} Later, in a shift to allow for granting need-based aid, the NCAA loosened it regulations and allowed for scholarships based solely on need and not to cover room and board.\textsuperscript{207} In 1956, attempting to eradicate scandals and under-the-table payments to athletes, the NCAA voted to allow full-tuition athletic scholarships including room and board and an additional small stipend.\textsuperscript{208} This shift in the ideals of amateurism represents the changing role of student-athletes from intrinsically rewarded persons to paid representatives of the university. Even still, the lack of compensation beyond full-tuition scholarships and room and board, distinguishes NCAA basketball players from their peers in the NBA.\textsuperscript{209}

This intersection between commercialization and professionalization is also reflected in the recent labor law ruling stemming from the unionization efforts of Northwestern University.

\begin{thebibliography}{99}
\bibitem{203} Nw. Univ. Employer & Coll. Athletes Players Ass'n (Capa) Petitioner, 198 L.R.R.M. (BNA) ¶ 1837, 2014 WL 1246914 (N.L.R.B. Mar. 26, 2014). \textit{See also} Vitale, \textit{supra} note 93, at 75 (making a “conservative estimate of a player’s commitment to his team [at] more than 50 hours per week”).
\bibitem{204} Pinegar, \textit{supra} note 142, at 347.
\bibitem{205} Muenzen, \textit{supra} note 49, at 260.
\bibitem{206} Id.
\bibitem{207} Id.
\bibitem{208} Id.
\bibitem{209} Rosenthal, \textit{supra} note 92, at 323 (citing NCAA Bylaws, art. 1.3.1, at 1: The competitive athletics programs of member institutions are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports). \textit{See} NCAA v. Miller, 795 F. Supp. 1476, 1479 (D. Nev. 1992); Gaines v. NCAA, 746 F. Supp. 738, 744 (M.D. Tenn. 1990). \textit{See also}, NCAA Bylaws, art. 2.9, at 5, which states, “Student-athletes shall be amateurs in an 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 commercial enterprises.”
\end{thebibliography}
football players. On Wednesday, March 26, 2014, the Chicago office of the National Labor Relations Board (“NLRB”) ruled on that NCAA football players at Northwestern University were statutory employees for the purposes of the National Labor Relations Act (“NLRA”) and could choose to unionize.

The United States Supreme Court has found that a broad definition of "employee" under Section 2(3) of the NLRA should be applied, and in applying this broad definition it is necessary to consider the common law definition of "employee." Under the common law, an employee is a person who performs services for another under a contract of hire, subject to the other's control or right of control, and in return for payment.

Recognizing that the relationship between these athletes and Northwestern University was economic in nature, the Regional Director found that college football players receiving grant-in-aid scholarships (tuition, fees, room, board and books) from Northwestern University who had not exhausted their playing eligibility are employees under Section 2(3) of the NLRA.

The Northwestern decision contrasted sharply with the NLRB decision in Brown University v. UAW AFL-CIO where the court held that graduate student research and teaching assistants were not employees for the purposes of the NLRA. The critical factors in Brown University regarding the student-university relationship included:

(1) The research assistants were graduate students enrolled in PhD programs.

211 The Director ordered that an immediate secret ballot election be held among the eligible employees in the bargaining unit to determine whether they should be represented by a union, the College Athletes Players Association (CAPA), in collective bargaining with Northwestern. See Id.
213 Under the common law definition, an employee is a person who performs services for another under a contract of hire, subject to the other’s control or right of control, and in return for payment. Brown Univ., 342 NLRB 483, 490, fn. 27 (2004) (citing NLRB v. Town & Country Electric, 516 U.S. at 94). See also RESTATEMENT (SECOND) OF AGENCY § 2(2) (1958).
(2) They were required to perform research to obtain their degree.

(3) They received academic credit for their research work.

(4) Although they received a stipend from the university, the amount wasn't dependent on the nature or intrinsic value of the services they performed or their skill or function, but instead was a form of financial aid.\textsuperscript{215}

The general rationale in *Brown University* was that the relationship between the university and their graduate school student research assistants and teaching assistants was academic and not economic in nature, hence finding the students to not be statutory employees for the purposes of the NLRA.\textsuperscript{216}

Using fact-specific analysis regarding the nexus between Northwestern University and the scholarship football players, the NLRB Director distinguished the college football landscape from the *Brown University* facts.\textsuperscript{217} First, the Regional Director established that “Grant-in-Aid Scholarship Football Players Perform Services for the Benefit of the Employer for Which They Receive Compensation.” The major factor in the Regional Director’s rationale was Northwestern’s control over the players in the Performance of Their Duties as Football Players. The Regional Director pointed to the team and athletic department rules not applicable to the regular student population as distinguishing traits of the college football players from other Northwestern students. Finally, the Regional Director concluded that because of the time devoted to football, Northwestern scholarship football players are not "primarily students," but paid

\textsuperscript{215} *Brown Univ.*, 342 NLRB 483 (2004).

\textsuperscript{216} See *id.* (significantly, the dissent, argued that the majority ignored empirical research that suggests the relationship between graduate assistants and colleges is increasingly economic and consistent with a traditional employer-employee relationship, not a student-teacher relationship).

\textsuperscript{217} The Northwestern NLRB decision can be viewed as a return to the *NYU* decision, which *Brown University* overturned. See *New York Univ.*, 332 NLRB 1205 (2000) (ruling that New York University's (NYU) graduate student teaching assistants were employees within the meaning of the NLRA), overruled by *Brown Univ.* 342 NLRB at 483.
workers.

Although this limited holding only applies to private universities, the principles and analysis behind the decision capture the inertia behind the commercialization and professionalization of college athletics. Furthermore, analysis of NCAA Division I basketball reflects fact patterns that parallel its football brethren.\textsuperscript{218}

\section*{IV. Solutions}

\subsection*{A. The European Club Model of Amateur Sports}

\textit{Overview}

The basketball landscape in Europe differs greatly from the American amateur system.\textsuperscript{219} In Europe, the formal basketball opportunities are nearly non-existent in high schools and colleges, unlike in the United States, which operates on a largely scholastic-based system.\textsuperscript{220} Instead, the club system serves as the formalized European sporting device, serving both amateur and professional functions, at times across multiple sports.\textsuperscript{221} These clubs are affiliated with their localities rather than a particular high school or school system.\textsuperscript{222} As an amateur player advances

\begin{footnotesize}
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\item[\textsuperscript{219}] See generally, Maureen A. Weston, \textit{Internationalization in College Sports: Issues in Recruiting, Amateurism, and Scope}, 42 Willamette L. Rev. 829 (2006) (providing a background into the internationalization of sport in its entirety); Salerno, \textit{supra} note 20, at 26; Pinegar, \textit{supra} note 142, at 343 (“The structure of the laws and regulations of sports organizations overseas differ greatly from the collegiate structure of athletics we have become familiar with in the United States”).
\item[\textsuperscript{221}] Roth, \textit{supra} note 220, at 669.
\item[\textsuperscript{222}] See \textit{e.g.}, Pinegar, \textit{supra} note 142, at 346 (“The United States is the only country in the world with such an
in the club and wants to play more advance competition, the player will eventually play against professional athletes as a member of the professional team.\textsuperscript{223} An amateur player in the European system cannot sign a professional contract until they are eighteen.\textsuperscript{224} This model is known as the “socio-cultural” federalized club-based model contrasting with the “commercialized” sports model of the United States.\textsuperscript{225} Even though these clubs are “financed through membership fees, corporate sponsors, and local government funding...[,] these clubs are not structured by a stark demarcation between amateur and professional players.”\textsuperscript{226}

Ken Foster offers a description of the two models of sport governance.\textsuperscript{227} The European model’s distinguishing characteristics include:

- Sporting competition as the major organizational motive
- Open pyramids with promotion and relegation as the league structure
- Vertical solidarity as the governing body's role
- National leagues, local teams and little to no relocation of teams
- A single representative federal body as governance structure.

In summary, “the socio-cultural model emphasizing traditional values and the educational character of sport still appears to be the major defining factor in EU sport policy, delineating between EU and US sport.”\textsuperscript{228} The European model contrasts sharply with the American system whose distinguishing characteristics include:

- Profit as the major organizational motive
- Closed, ring-fenced league as the league structure

\textsuperscript{223} Weston, \textit{supra} note 219, at 848.
\textsuperscript{224} \textit{See} INTL BASKETBALL FED’N, INTERNAL REGULATIONS 2010, § H.3.4.2 (2010) (declaring that on or after the player's 18th birthday, the club or other organization for which a player is licensed at his 18th birthday has the right to sign the first contract with that young player).
\textsuperscript{226} Pinegar, \textit{supra} note 142, at 348.
\textsuperscript{227} Kaburakis, \textit{supra} note 225. (citing Ken Foster, \textit{Alternative Models for the Regulation of Global Sport, in THE GLOBAL POLITICS OF SPORTS} 63-86 (Lincoln Allison ed., 2005)).
\textsuperscript{228} Id.
• Profit maximization and promotion of elite stars as the governing body’s role
• Franchises without a cultural identity
• Non-existent or minimal interest for international competition, and
• The feature of a league or commissioner as governing structure.

Generally, the European sports context, particularly in relation to amateur sports, is steered against all principle and efforts of commercialization. 229

B. Policy Solutions from the European Club Model

The European club model suggests three key concepts for reform of basketball amateurism in the United States:

1) The creation of a governing organization for pre-college amateur basketball
2) The development of an American basketball club system, and
3) The growth of a workable relationship between a club model and the current NCAA system

(1) America’s National Governing Body for the Regulation of Pre-College Amateur Basketball

While the college game remains under the thumb of the NCAA, there is no organization chiefly tasked with controlling, monitoring, and adjudicating problems in the AAU and pre-college grassroots system. It is in this leadership vacuum that many of the current problems have been allowed to develop and fester.

The European model provides a system for how a national governing body could be created in the United States. The overarching organization governing amateur sports for international competition230 is the Fédération Internationale de Basketball (“FIBA”). 231 As previously mentioned, the “European [m]odel of sport is sponsored through a club-based system, with a national sport federation as its governing body.” 232 Each European country has its own

229 Kaburakis, supra note 225.
230 Pinegar, supra note 142, at 346 (“The [international federations] have the responsibility and the duty to manage and monitor the quotidian operation of the world’s various sport disciplines and the supervision of the development of athletes practicing the sports at every level”).
231 Fitt, supra note 136, at 583.
232 Pinegar, supra note 142, at 348 (citing Weston, supra note 219, at 848 (2006)).
“National Federation” which is a national governing authority that runs the league within its respective country, but these basketball federations adhere closely to FIBA rules and regulations regarding amateurism. Since its foundation, FIBA has allowed for the development of a standardized system of rules and coaching to develop within European amateur basketball. The two major amateurism sports organizations in the world, FIBA and the NCAA, rely on separate amateurism rules to determine athlete eligibility. FIBA prohibits the pay of a player or team during the Olympic Games, but it otherwise permits players to enter into written contracts for payment with club teams. Under FIBA regulations, amateurs can receive stipends, living expenses, housing, and scholarships. The influence of agents is permitted in this process, but agents are regulated; they are required to have clear contractual terms and abide by ethical rulings. Generally, FIBA regulations allow for a free market system of international and intra-national player movement.

235 See id. (publication “to help facilitate the process of measuring progress, assisting the federations and providing guidance in whichever way they can.”).
236 In the U.S. basketball context, the U.S. Olympic Committee relies on FIBA standards in determining amateurism. Pinegar, supra note 142, at 345 (analyzing the differences in amateurism standards between the U.S. Olympic Committee and the NCAA).
237 Fédération Internationale de Basketball, Internal Regulations 2008: Regulation H Rules Governing Players, Coaches, Support Officials, and Players’ Agents (2008), available at http://www.fiba.com/downloads/training/agents/Eligibility_NationalStatus_International_Transfers_of_Players.pdf ("H.1.6 Players may enter into a written contract with a club. This contract may state that the player will receive payment.; H.1.7 Players who participate in professional leagues must belong to organisations which are members of the member federation; otherwise they will not be able to participate in the official competitions of FIBA; H.1.8 No financial remuneration for the performances of a player or a team is permitted during the Olympic Games.").
238 Fitt, supra note 136, at 584.
239 See Fédération Internationale de Basketball, Internal Regulations 2008: Rules Governing Players, Coaches, Support Officials, and Players’ Agents, at H.5.6.2.1(p), available at http://www.fiba.com/downloads/training/agents/Eligibility_Players_Agents.pdf (stating that the agent's duty is “to demonstrate integrity and transparency in all of his dealings with the client”); id. (Annex 1 to Regulation H5 provides a short standard contract between player and agent).
240 See Dustin C. Lane, From Mao to Yao: A New Game Plan for China in the Era of Basketball Globalization, 13 Pac. Rim L. & Pol'y J. 127, 161 *181 (2004) (noting that “according to FIBA’s internal regulations, [a]ny basketball player shall have the right to play basketball in any country in the world”) (internal citations...
When combining the principles of FIBA with the European socio-cultural model, an American national governing body overseeing pre-college athletics participation would provide comprehensive oversight over a longer time horizon than AAU or state high school sports federations.\textsuperscript{241} Especially with government support, a national governing body could provide oversight and clarity to a system that currently has none. The governing body, tentatively identified as the American Amateur Basketball Association (“AABA”), would reflect much of the European model of basketball development and regulation. The system would be a hybrid of FIBA’s overarching mandate of regulating amateurism and the socio-cultural inspiration of European national governing bodies. However, three aspects are critical for the feasibility of implementing such a system: determining the governing body’s mandates, implementing player income under the system, and finding support to implement such a governing body.

**Proposed Mandates and Structure of a Pre-College National Governing Body**

As a regulating body, the strength of the AABA would be in its regulations and procedures. The governing body would have three integral mandates:

- Creating and propagating standardized procedures and rules, including revised coaching methods and qualifying tests for coaches.
- Enforcing rules limiting or at least overseeing the influence of shoe companies, agents, middlemen, and corporate monies
- Implementing a punitive system for agent and coach violations and other impermissible infractions, which would move the onus off of the athletes

Similar to FIBA regulations controlling inter-league basketball disputes,\textsuperscript{242} AABA implementation on a national level would have an inter-league function; regulating high school, select teams, and AAU athletics. The organization would be designed to closely mimic FIBA’s model of centralized management and a clear, concise set of organizational procedures. When

\textsuperscript{241} In the European club system, organized participation in sports can begin as early as three-years-old, with the first competitions occurring in the ten-and-under age group. Pinegar, \textit{supra} note 142, at 348-49.

\textsuperscript{242} See Lane, \textit{supra} note 240, at 143 (discussing Chinese basketball players’ national team obligations and the FIBA regulations that oblige the NBA teams to honor arrangement).
deciding who would comprise the leadership of the AABA, members of the NBA’s executive and coaching ranks, appropriate government agencies, and basketball figures, whether in the media or in the retired coaching and playing ranks, would add to a diverse pool of candidates for the organization’s key management positions. Funding for such an organization would be best served coming from the NBA, which has a pronounced interest in the revitalization of the grassroots game, or from government agencies (especially under initiatives concerning childhood exercise and fighting obesity).

In addition to a sustainable structure, AABA’s core mandates are crucial to combat the problems of grassroots basketball. The current oversight provided under the AAU system is woefully subpar. Many programs that purport to be under the AAU banner do so in name only and have little connection to the athletics organization trusted with youth sports in America. In a model that mimics FIBA’s success in the European game, a U.S. amateur basketball governing organizations has three key mandates. First, it must be chiefly concerned with propagating and enforcing standardized rules and coaching methods. With the rules simply reflecting the already generally accepted rules of high school basketball, the more important task here involves the regulation and oversight of not only generally accepted coaching principles and tasks but also a strict adherence to coaching excellence. Under the FIBA system, coaches are required to undergo intensive testing and clinics before being allowed to coach under the banner. As seen in the case of coaches like the aforementioned Joe Keller, requiring American coaches to meet the same standards would be a vital step.

Second, AABA must concern itself with introducing rules to limit or at least oversee the influence of shoe companies and agents as well as the flow of corporate money into the grassroots game. If access by these entities, especially shoe companies, is allowed, coaches and teams under this system must register their affiliations and gain approval before a relationship between corporation and team can be established. Denying access to these elements would be a drastic step and could run afoul of competition and fair market rules that have been generally accepted in the United States. However, similar to the FIBA model, all commercial business for this hybrid model should flow through a relevant committee for examination and approval.

Finally, enforcement and punishment mechanisms, similar to the NCAA’s model, must
also be developed and incorporated. However, such procedures would be chiefly aimed at possible violations on the part of coaches and other team individuals, not the players. Coaches and team officials should be incentivized to protect their players from these elements and, as the adults closest to possible violations, should be placed with the heaviest burden of following organizational rules and procedure. The implementation of such an expansive organization will be a challenge, especially considering the entrenchment of the current AAU mentality in the grassroots game. However, following FIBA’s pan-European model, such a governing body would be the necessary first step in controlling and overseeing a grassroots basketball model that, through greed and improper regulation, has been allowed to fall into disrepair.

Paying for Player Expenses before College in an American FIBA-based Model

Second, such a governing body must consider if basketball players under the AAU banner should be paid and, if so, how they should be paid. One of the main differences between the American scholastic model and the European club model is that payment is forbidden in the scholastic model and allowed (and, at times, expected) in the club.243 As previously mentioned, athletes under the FIBA model are able to openly receive stipends, free gear, and tournament money.244 Yet in the current U.S. understanding of “amateurism”, such payments would violate the integrity of the game and unduly professionalize these young athletes.

However, these athletes are already being professionalized, even without the ability for them to make money off of their own talent. In fact, an argument can be made that athletes are already being paid before they step foot on college campuses. The financial support that shoe and apparel companies provide for AAU teams has been discussed earlier. It is a trend that has been increasing since the advent of post-Michael Jordan era of athlete marketing. In the late 1990s, several future NBA players, such as Tracy McGrady, signed contracts with shoe companies that

243 Roth, supra note 220, at 670; see also Pinegar, supra note 142, at 349 (explaining the conflict with NCAA “amateurism” standards when international student-athletes are given stipends, receive free gear, and obtain prize money for competition).

244 Id.
ranged in the millions of dollars, all before they entered the NBA.\textsuperscript{245} More recent prospects, such as prep phenom Andrew Wiggins, have been rumored to be facing deals that break $100 million, even before they make a decision on whether to enter the NBA draft.\textsuperscript{246}

Even beyond these deals, many athletes receive free gear, trips, food, and other gifts from these corporations through the guise of their AAU teams. For example, Jabari Parker, one of the top recruits in the nation in 2013 and future high NBA draft pick, has gotten free Nike gear, and been obligated to wear it on the court, since he was a sophomore in high school (as a result of a deal between the apparel maker and Parker’s high school coach).\textsuperscript{247} As part of the deal, Nike provides Parker’s high school with nearly $26,000 worth of merchandise every year but reaps nearly $1 million worth of exposure and press off of Parker’s exemplary play.\textsuperscript{248} Deals such as this are common, across all sports, and toe the line separating improper benefits from proper sponsorships.\textsuperscript{249}

The commonplace nature of such deals, indeed the connections that have grown between shoe companies, AAU programs, and the nation’s best basketball players, has been chiefly derived from the intense competition that has materialized between the largest shoe makers in the country. The “shoe wars” of the early 1990s and the resulting race between companies to sign the best players and reap the biggest market share have allowed a culture to materialize where sponsorship of youth athletes and their AAU teams is accepted. Indeed, there is a strong

\textsuperscript{245} Travis Mewhirter, \textit{AAU Basketball Teams Attracting Corporate Money}, GAZETTE.NET (July 18, 2013), http://www.gazette.net/article/20130718/SPORTS/130719108/1122/germantown/AAU-basketball-teams-attracting-corporate-money&template=gazette.


\textsuperscript{248} Id.

\textsuperscript{249} Amy Donaldson, \textit{High School Sponsorship Contracts Raise Concerns, but also Benefit Programs}, DESERET NEWS (March 5 2013), http://www.deseretnews.com/article/865574959/Sponsorship-contracts-raise-concerns-benefit-programs.html?pg=all
argument that the current relationship between shoe manufacturers and the AAU system is simply the fruits of a naturally occurring free market.

A governing body must decide whether this free market system should persist. In the current system, where money dominates the conversation, players are wooed by great facilities and the best coaches: all things that money can buy. Under this proposed framework, it would be in the best interests of all parties for rules to be laid down to allow for such athletes to get paid, under the framework offered by FIBA, but to mandate the AABA to tightly enforce how and when such payment can be handed down.250

Support for the Implementation of a National Governing Body

Finally, it must be determined where to derive the support for AABA. Taking a look at the current basketball landscape, and the lessons learned from FIBA’s evolution, one primary supporter of such a system emerges -- the National Basketball Association. For years, there have been stories of NBA teams dissatisfied with the toxic culture of AAU basketball in America. Most famously, the NBA’s San Antonio Spurs have demonstrated their distrust by constructing a team that primarily consists of international players while also publicly denigrating the AAU system.251 Some of the NBA’s most prominent players, like Lebron James, Chris Paul, and Carmelo Anthony, have also voiced their displeasure in the current AAU game and have attempted to combat the problems by financing their own teams.252 In truth, there is little similarity between the NBA and AAU game, the latter of which sacrifices many of the team concepts that are essential to success in the former.253 There have been repeated calls for the

253 Tjarks, supra note 251.
NBA to supplant shoe companies as the main drivers of the AAU game. With an improvement to the AAU structure comes a corresponding rise, in these young athletes, in overall talent level, maturity, and personal development, both on and off the court. A rise in overall talent level and development is attractive to the NBA for two salient reasons.

First, a rise in the overall talent level begets a corresponding rise in the overall play on the court. In a league that relies on the singular talents of its players perhaps more than any other and markets its product over 100 times a year based on those talents, this is incredibly important. Second, the NBA is primed for expansion. With the price of league franchises skyrocketing and open markets, like Seattle, Washington, openly pining for another team, the league is in an enviable position of being able to exploit this potential tremendous growth in the next decade. However, an increase in the number of teams requires an increase in the number of available, talented players that can support a new franchise. With worries that the current NBA talent pool is not deep enough, such thoughts about expansion have been tabled. However, with support of a grassroots system, the NBA can work to assure an influx of talent into its system in the near future; talent that may not have been nurtured under the current AAU model. For the NBA, explosive growth cannot be built on a weak base. By funding and helping create a governing body for the AAU, the base of basketball talent in the nation, on which the NBA can expand and grow, would be greatly enriched.

While the NBA should be considered as the main driver behind the governing body, the FIBA model also suggests one other area of support -- the communities, whether local or regional, geographically surrounding these basketball programs. Under the FIBA model, clubs are closely tied to their communities, with many players joining the clubs based around the areas

254 Id.
257 Is Expansion Good or Bad for NBA?, ESPN (Feb. 13, 2014) http://espn.go.com/nba/story/_/page/5-on-5-140213/expansion-right-nba
they hail from and communities developing close connections to the teams who represent them. Replicating, or at least emulating, such a model would allow for community-wide involvement in the process and support their local teams, a crucial factor for many current AAU teams that are based around certain hotbeds of basketball talent. Increasing the connection between communities and these teams also serves as an oversight function in itself. If you get a community involved in the management or control of a team, there are simply more people invested in the team and the players. While major funding cannot be expected to come directly from the community, save for a donation or sponsorship program, tying the program to communities would help greatly in ensuring the continued health of the grassroots game.

(2) The American Club Basketball System: Basketball Academies

Beyond the grassroots level of the game, the European model of basketball development also provides the framework for what can be considered a more drastic overhaul of the amateur basketball system. Namely, it provides a structure for the implementation of a U.S. basketball club model. Under such a system, the nation’s best basketball players would play for 15-20 regional teams in a developmental basketball league. Centered on America’s urban centers, this league and system would provide a strong alternative to college for many of the nation’s best and would allow them to gain the necessary schooling while also maximizing their chances for basketball development. Such a model has been advocated for, or at least hinted at, by several prominent voices in the basketball world. These clubs would be the next step in basketball development in American and address many of the inequalities and problems, such as labor disputes and unequal commercialization, which has infected much of the NCAA model.

The Impetus for a U.S. Club Basketball System

While the implementation of a governing body for the pre-college amateur basketball would be a significant step towards regulatory progress, further solutions to the problems

258 Kaburakis, supra note 225.
260 See Dohrmann, supra note 5, at 434-435.
plaguing American amateur basketball would be realized with the creation and support of an American club basketball system, based nominally on the European model.

There has been a groundswell in recent years for age-related solutions to the problems inherent in the relationship between the NBA and the NCAA. Recently, new NBA commissioner Adam Silver began discussions with NBA owners and NCAA executives concerning raising the minimum age requirement for NBA players from 19 to 20. The previous “one and done” rule, implemented in the late 2000s in response to the growing evidence that the prep-to-pro’s system was producing problems in talent and maturity, has done much to change the landscape of amateur basketball. Players who would have previously been allowed to jump straight to the NBA are now mandated to stay on campus and generate revenue for the schools as unpaid labor. Such movements indicate a general discomfort in professional basketball circles with the current system, both in terms of basketball development and professional preparedness.

The model addresses the exploitation of college basketball players – the results of commercialization and professionalization that plague the current NCAA. Specifically, the model works to rectify both the lack of revenue sharing and the artificial merge of higher education with minor league professional athletics. The current model of understanding concerning the worth and rights of college athletes is woefully outdated. Enacting a club system to combat these problems may appear to be a drastic solution. However, accounting for the financial and economic enormity of the current NCAA issues, such a solution stands as a credible and appealing alternative.

**A Plan for Building the U.S. Club System: Lessons from the European Model**

While the U.S. club system is based upon the European model, it would be created with

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262 Mahoney, *supra* note 62.
several unique characteristics that would be aimed at righting many of the wrongs inherent in the current basketball system. First, the clubs would be based around 15-20 areas of either substantial urban populations or demonstrated high levels of historical basketball talent. Los Angeles and New York can be considered the two poles of this system and could, along with other major metropolitan areas, support more than one club team. The clubs under this league would be heavily tied to the community, through their names and their players. Players themselves would be matched with the team that best represents their home region.

The club system would be limited to the top 150-200 players in the nation. Identifying these players is already a cottage industry in amateur basketball, with some rankings going as low as eighth grade to determine the nation’s best players. Setting the cutoff at the top 150 or 200 players would allow for a sizable, sustainable league to develop. It would also focus efforts on players who drive much of the industry when it comes to commercialization of amateur basketball. The top recruits in the nation are the ones signing incredibly lucrative contracts and providing their schools, and simultaneously the shoe companies, with unparalleled exposure. Under a club system, this commercialization could be much better regulated and controlled.

However, these players would not be mandated to play under the club system. Upon senior year of high school, they would instead be presented with a choice to attend college for a possible two years under the NCAA model or join their regional club. While the more traditional college approach would appeal to some players, the clear professional and development advantages of the club system, expounded on below, make it a more appealing option, especially considering the NCAA’s current attitude towards player compensation and movement.

As part of the club program, players would play year-round for their clubs for a maximum of two years. This two-year requirement reflects the predicted rule change, on behalf of the NBA, that is going to require college athletes to stay in school for two years, as opposed to the current “one-and-done” rule. Club league games would be played primarily during the summer months, mimicking the current AAU model. During the two years under the club

263 Dohrmann, supra note 5, at 113-116.
system, players would be required to follow an intensive curriculum of core university classes, taught by educators hired under the club’s direction, and sit through mandatory training on the rigors of professional basketball life. The latter programs would be extensions of programs already instituted by the NBA, such as the Rookie Transition Program. In essence, the best form of this system would serve as a developmental league for the NBA. Recent analysis conducted by ESPN strongly suggests that learning under an NBA regimen is actually more beneficial for a young player than learning under the college game. The league has already begun expanding operations in the NBA Developmental League for the very goals pursued by a U.S. basketball club model - increased talent level among American players and stable system of basketball development.

As mentioned previously in the context of the establishment of a governing body, the NBA has real incentives to improve the U.S. amateur basketball system. By financing and supporting a club system, the NBA would be taking a major step forward in defeating many of the problems in AAU and NCAA basketball that have begun to affect their own operations. While it would contain necessary educational requirements, this club system would be centered around the development of the country’s best basketball players, as talents and as professionals. Within this club system, players, who have already been identified as future professional prospects, will simply enter professional life and skip the amateur status currently enforced under the NCAA. As part of the club, players will be given a small stipend but will be able to generate most of their income off of their skills and likenesses, core rights currently being fought for by college athletes across the nation. The previously created governing body, AABA, would also be tasked with implementing and regulating this club system. The dearth of many other professional sports options during the summer months, save for baseball, bodes well for the marketing and television options that the club league may encounter, options that would further convince the NBA to fund its operations.

Implementing such a basketball club system would be a massive undertaking that would

264 Pelton, supra note 64.
completely reverse much of the current thinking on basketball in America. In addition to its unique qualities, there would also be several similarities between the American model and its European cousin. First, it would be built around a regional approach. The regional aspect is incredibly important so as to develop legitimate ties between the clubs and the areas they are located, something that NCAA member schools have been doing over decades. Second, it would be centered around the players and their connections to their families and communities. The club system would place great emphasis on the professional, emotional, and athletic development of participating athletes. Finally, the U.S. club system would, similar to its European counterpart, serve as a feeder for professional leagues. The current model of the student-athlete is dying. The commercialization and professionalization of high school and college basketball has revolutionized the worth of star basketball talent and has built an industry on what was previously a wholly amateur endeavor. The club system proposed here would embrace the current nature of basketball amateurism and, while doing so, correct many of the problems that have been allowed to fester under the archaic NCAA system.

**Challenges of Structuring a U.S. Club System in the Current Amateur Context**

Yet, as tempting as it is to advocate a complete replacement of the current amateur basketball apparatus under this proposed system, there are elements of the current system that, due in part to their dominance in the current landscape, must be incorporated in any establishment of a club system. Any discussion on a club system requires the inclusion of shoe companies, agents and the NBA, three of the most powerful entities currently involved in the process. As the current system is constructed, each of these groups is inexorably tied to the basic reality of amateur basketball. Although a total overhaul may seem appealing, there are a number of reasons any change to the system will require their full support. First, as previously mentioned, these entities have become cornerstones of basketball development in America. With the rise of Michael Jordan and the brand-name athlete, shoe and apparel companies have firmly entrenched themselves as necessary parts of the basketball market. For the NBA and sports agents, the dependence is of a more professional nature - the NBA is the ultimate goal for many of these athletes and agents are required to represent the athlete and deal with NBA front offices.

Second, any change to the system as we have proposed requires a large amount of
financial support. Much of the funding and support of this system should be derived from the
NBA and, in small part, from shoe companies, both of whom have a legitimate interest in a new
club model. For the NBA, the benefits, which have already been touched on, are numerous. The
club model would propose a more regulated and controlled system of basketball development.
With their guidance, clubs could act as incubators for basketball talent. And as a rising tide lifts
all ships, a healthier grassroots game would also help increase, even incrementally, the talent
level and maturity of new NBA players. For shoe companies, supporting these clubs would
mimic the support they already provide for AAU and high school teams, with one mitigating
difference. With AAU and high school teams, there is a dilution of the value of each dollar a
company spends on the sponsorship. While some teams may have several star players, heading
for big time college programs, there are several other players, who the company is outfitting for
free, who may never help the company in terms of exposure or marketing their product. With
club teams, which would consist of the best players from different parts of the country, shoe
companies would be getting unparalleled access to not only the best teams but also all of the best
players under one organization or team. While government funding is a possibility, giving the
NBA and shoe companies a seat at the table, which they are incentivized to accept, would solve
many of the financial issues that would arise with the implementation of an entirely new model
of grassroots basketball.

Beyond the general acceptance of these groups into this new model, each could have a
special role to play in the club system. The shoe and athletic apparel industry has grown
exponentially with the rise in popularity and prevalence of amateur basketball in America.
Legislating and regulating the access these companies can have in making contracts with
underage professionals, or organizations nominally comprised of underage basketball players,
would be a bold first step in correcting the problem of unfettered influence these corporations
have on the grassroots game. However, it is important to note that such a system should not
require these shoe companies to work together. As Dohrmann intimates in Play the Hearts Out,
previous youth basketball initiatives, including $30 million sponsorship from the NBA and
NCAA, have been non-starters because they relied on these companies to work together.\textsuperscript{265} The shoe wars and the current race to sign the best players fostered a sense of intense competition between Nike, Adidas, and other groups. There are only two solutions in this area: either keep the companies out completely or accept the competition and build a system around it. The latter option is more realistic, embraces the power of the market and allows for more money to flow into the system in a heavily controlled manner.

With sports agents, the path for including them in the process is much stickier. Agents, as currently regulated\textsuperscript{266}, already operate under strict rules that govern how much contact they can have with players, who they can support, and when they can meet with players or their representatives.\textsuperscript{267} The current regulatory system places the interests of the NCAA above the interests of the athlete.\textsuperscript{268} In the proposed club system, sports agents would be extremely essential to the process. Under a new club system, agents would be necessary for the promulgation of a free market while adhering to an ethical standard similar to their European counterparts. The players in the club system could use sports and marketing agents to capitalize on their abilities and generate more income.

Finally, as previously discussed, the NBA, from the team owners to players, must play a huge role. The reality is that many of the basketball players who would be most affected and targeted by the implementation of a European club model, say, the top 150 players in the

\textsuperscript{265} Dohrmann, \textit{supra} note 5, at 400.


\textsuperscript{267} Unlike the United States, most countries do not regulate sports agents. \textit{See} Anastasios Kaburakis & Jacob Solomon, \textit{Mind the Gap}, 1 Int'l Sports L.J. 37, 44 (2005) (discussing how NCAA member institutions wishing to recruit foreign athletes should be aware that many foreign agents are unregulated and may be related to club teams). For example, under the FIBA and the Union of European Basketball Leagues (ULEB), agents often have relationships with specific clubs and may sign players as young as twelve-years old in order to compete with those clubs. This is an important fact because FIBA organizes most basketball competition worldwide and ULEB establishes the Euroleague for top European club teams. Thus, international student-athletes in the sport of basketball are raised under a system in which they can sign with sports agents at an early age. \textit{See also} Roth, \textit{supra} note 220, at 670 (“Agents have access to athletes at a very young age in a club system, while under the American system, involvement with agents does not exist because of the contract-less nature of scholastic competition.”).

\textsuperscript{268} Edelman, \textit{supra} note 136, at 147-48.
country, have a legitimate shot of playing professional basketball in the future, whether in the NBA, the NBA’s Developmental League, or overseas. As the premier professional league in the world, one that has had demonstrated issues with player development on and off the court, it is in the interest of the NBA to support a stronger and healthier amateur basketball system. In recent years, many NBA organizations and people have decried the AAU basketball system and the corroding influence that the current system has on the entire system of basketball in America. Organizations, such as the San Antonio Spurs, have taken the AAU culture into their drafting and development analysis, preferring to draft international players over players coddled in the AAU system.269

Some NBA players have already made a mark in the AAU system by sponsoring their own teams and running some of their own star-studded summer camps.270 Involving these players, including reigning NBA MVP Lebron James and 5-time NBA champion Kobe Bryant, adds a sense of legitimacy to the process, especially when it comes to reaching young basketball players. From the perspective of young players, NBA players are the goal. They are the guys who have made it and been successful in this process, despite the underbelly of the system that can bring so many talented players down. Getting current and former NBA players to support the club system, either as coaches or financial benefactors, would help the clubs reach out to the best players in the nation. In essence, it would paint the clubs as the best possible pipeline for NBA talent to reach the highest professional leagues.

(3) Reconciling the European Model and the Current NCAA System: Creating a Sustainable Framework

Perhaps the most important consideration in implementing the club basketball model is the relationship each will have with the current NCAA system. As it currently stands, NCAA basketball is firmly entrenched, both financially and socially, in America’s cultural landscape. Teams from across the nation fill arenas every year with rabid supporters. Every March and

269 Tjarks, supra note 251.
April, the NCAA tournament captures the attention of much of the nation and is the NCAA’s biggest cash cow. In 2013, the NCAA made $912.8 million in revenue, 84% of which was generated from the NCAA Division 1 men’s basketball tournament.\footnote{271 Mark Alesia, NCAA Approaching $1 Billion per Year Amid Challenges by Players, INDIANAPOLIS STAR (March 27, 2014) http://www.indystar.com/story/news/2014/03/27/ncaa-approaching-billion-per-year-amid-challenges-players/6973767/.} Television contracts for the Division 1 tournament are worth over $680 million alone, accounting for a large portion of the NCAA’s overall revenue.\footnote{272 Id.} In the past two decades, the NCAA’s revenue stream has exploded, from $230 million in 1996 to $912.8 million in 2013.\footnote{273 Id.} This rapid influx of revenue has served as the impetus for much of the recent outrage concerning the relationship between the NCAA and its unpaid athletes. Much of the influx is driven by the popularity of the men’s college basketball game, which has grown expansively on what is now an untenable model.

The NCAA certainly has a vested interest in seeing a governing body such as the AABA being created. The NCAA has a direct interest to have a stable organization below them, helping young basketball players mature and grow in a healthy basketball environment. Many college coaches have spoken out against the AAU basketball system and the problems it creates for them in recruiting and coaching their players.\footnote{274 Davis, Superspade, supra note 169.} However, it has no such interest in this European model being implemented alongside the current NCAA and acting as another path for young players to reach the NBA. Several elements of this relationship must be identified and prepared for in advance of any implementation of a U.S. club system.

First, the environment for a free market must develop, fashioning a choice between the NCAA and the club system. The well-document cases of Brandon Jennings and Jeremy Tyler are certainly examples of a competitive free market with a player-option between club basketball and the NCAA route.\footnote{275 The other interesting example of taking this rule to the extreme was the case of Jeremy Tyler--a high school standout from San Diego who decided after his junior year to play overseas in 2009. This decision meant that he would be paid for two years and then was draft eligible for the 2011 draft--selected in the 2nd round by the Charlotte Hornets.} Brandon Jennings graduated high school in 2007, and then spent the
2008 season playing professionally overseas before returning to the NBA in the 2009 NBA Draft. Jeremy Tyler similarly left high school early, spending the equivalent of his senior year of high school and first year of college overseas before becoming draft eligible in 2011 when he was selected in the 2nd round by the Charlotte Bobcats. Currently, few basketball players use the existing European clubs as a way to receive income and hone their basketball talents while waiting to become eligible for the NBA draft.

While courts have denied the existence of a market for the services of student-athletes, our policy proposal would fill the market void for a minor league system free from the guise of “amateurism” and the exploitation of young athletes. Once players leave the club system, they would enter the draft like their collegiate counterparts. A regional draft system, in which the clubs are direct feeders into the franchises in their geographic area, is tempting but with the expansion and growth of basketball scouting in the past decade, talent is surely able to be identified, regardless of source.

Second, substantial changes could transform the NCAA if players received compensation off of their own likenesses. Plaintiffs in the O’Bannon lawsuit are requesting trust funds be set up for player’s compensation following their amateur careers. Another method of

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277 See id. (citing Thamel, supra note 275).

278 See id. at 172 (discussing how the NBA age restriction “essentially mandates that every domestic basketball player go to college where he must abide by the rules and regulations of the NCAA.”).

279 Tristan Griffin, Payment of College Student-Athletes at Center of Legal Battles, 75 Tex. B.J. 850, 852 (2012) (citing Lazaroff, supra note 136).

compensation is a “revenue sharing program that would entail sharing profits produced by a sport and disbursing those profits by percentages based on seniority.”281 If such measures are accepted and propagated by the NCAA, it would level much of the playing field in terms of providing these athletes with equal treatment and the best possible chance at professional development. However, the organization appears highly reluctant to embrace such changes and scrap their incredibly lucrative economic model. Barring an unforeseen shift in thinking by NCAA leaders, the relationship between the NCAA and a proposed club system will be one defined by an extreme disadvantage on the part of the former. Regardless of the manner of compensation, the proposed U.S. club system could use market forces and collective bargaining to ensure just player compensation.

Finally, a concern with the club model is that it would result in the nation’s best talent, the players people pay for tickets to see, being stolen from NCAA schools, effectively denying them a chance at the best on-court product and the huge swaths of revenue and endorsements that come with interested viewership. However, this concern is mitigated by two factors. First, the club system, as we have proposed, will not be mandatory. The debate will be framed as the player’s choice of joining a system that is geared towards professional success or one that relies on an archaic model of amateurism. Undoubtedly, some top players will still elect, for personal reasons, to attend a traditional university format and will be allowed to under this system.

Second, it is dubious whether these players not playing for university teams will actually greatly affect the popularity of the college game. Critics have recently criticized the college game of unappealing and diluted play, even with the participation of some of the country’s best players.282 An increase in entertainment and viewership of college basketball requires a change in the rules, not a change in the overall talent level. And as a sociological point, fan identity is

based upon the benefits it provides in a community sense. For an individual, being a fan of a team offers strong feelings of “camaraderie, community, and solidarity.” In essence, for many college basketball supporters, they have a personal connection to their favorite teams that is not based upon their favorite players on that team. Graduating from an institution or growing up in the institution’s region each result in fandom that would not be easily defeated by a perceived lack of basketball talent. This concern and the other possible points of contention mentioned above are interesting wrinkles to this model but do not support sufficient argument against the necessary establishment of a U.S. club basketball system.

V. CONCLUSION

The current system of amateur basketball in America faces dire problems at every level. In the AAU game, a lack of oversight and rampant corporate influence have improperly commercialized and professionalized the grassroots game. This has blurred the amateur status of young basketball players and created an underbelly of unscrupulous agents, coaches, and middle men. At the NCAA level, an untenable inequality has developed between the organization, its member schools, and the collegiate athletes playing under the NCAA banner. The current economic model enforced by the NCAA relies exclusively on the idea of amateurism, effectively shutting out athletes and denying them the ability to profit off of their own successes and talent. With historic increases in revenue and growth in college sports in the last decade, and the immense financial potential of college sports, we have reached a breaking point. Lead by two landmark legal challenges, this unfair system faces extinction.

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284 Id.
285 See Forde, supra note 179 (explaining that college sports are more popular than minor league sports because “[m]ost college sports fans identify more with the school than the players. They root for the place they attended, or grew up with -- the old front-of-the-jersey cliché.”). See also Lee Goldman, Sports and Antitrust: Should College Students Be Paid to Play?, 65 Notre Dame L. Rev. 206, 228 (1990) (positing that even if professional athletes were included in the same market as the NCAA, “the small number of professionals relative to college athletes still would leave the NCAA with substantial market power”).

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As discussions on the status of these amateur athletes dominate the national conversation, it has become apparent that the ground is set for a drastic change to the system. To find solutions for these problems, we must look eastward to the lessons learned from the European model of basketball management. Our proposed model is twofold. First, we advocate the formation of a governing body, charged with regulating and protecting American amateur basketball and controlling the influence of corporate elements. In concert with this governing body would be the establishment of a U.S. club basketball system. This club league would act as a professional feeder system open to the nation's best basketball players, while also mandating that players receive proper education and professional development essential for a successful transition to adult life. These steps would signal an overhaul of the current thinking of sports in America. However, they have become necessary considerations and would best solve the issues so prevalent in America’s amateur basketball environment.