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Who can a Baller Trust? Analyzing public university response to alleged student-athlete misconduct in a commercial and confusing environment

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WHO CAN A "BALLER" TRUST? ANALYZING PUBLIC UNIVERSITY RESPONSE TO ALLEGED STUDENT-ATHLETE MISCONDUCT IN A COMMERCIAL AND CONFUSING ENVIRONMENT

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&

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Universities are increasingly faced with a Hobson's choice: charged with a duty to protect students from themselves and from the misconduct of their fellow students, they must nonetheless avoid treading on the privacy rights of students and they must provide adequate due process in the prosecution of alleged misconduct.[1]

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[†] Both authors contributed equally to this article.

[1] John Friedl, *Punishing Students for Non-Academic Misconduct*, 26 J.C. & U.L. 701, 723 (2000).

Is Erickson out there winning with criminals again?[2]

> Fraschilla's policy, though forward-looking, doesn't go far enough. I say Fraschilla and all college coaches should be even bolder and suspend players for a week the minute they sign their letters of intent. Why take the chance a nasty episode will come up at an inopportune time say the start of the conference tournament and take a key player from the team just when you need him the most?. [3]

College athletics not only enjoy great popularity, but surely have become big business. To understand this, one only needs to look at the amount of money generated. A recent National Collegiate Athletics Association ("NCAA") report explained that the average athletic revenue generation at Division I schools rose from $17.8 million in 1997 to $21.9 million in 1999 while expenses rose from $17.3 million to $20 million.[4] Over those same years, NCAA member schools brought in over $3 billion and spent $4.1 billion.[5] NCAA statistics also show that overall athletic salaries and benefits rose 35 percent, and spending on athletic facilities expanded by 31 percent.[6] Additionally, the five universities with the largest athletic budgets—Ohio State University, University of Nebraska, University of Florida, University of Michigan and the University of Texas—collectively spent over $248 million in the 1999-2000 fiscal year.[7]

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[2] Personal Communication, 2001.

[3] Jim Gordon, *The Anti-fan: Keeping the Thugs Eligible*, SANTA FE NEW MEXICAN, Aug. 20, 2001, at C1.

[4] Doug Alden, *Nebraska Paying Big Bucks For Athletic Success*, ASSOCIATED PRESS NEWSWIRES, July 19, 2001. A quote from the article best sums up what athletic departments have become: "'The days of the old coach being promoted to be the athletics director have changed,' he said. 'We're running multimillion dollar businesses now.'"

[5] *Id.*

[6] *Survival of the Richest? As College Sports Becomes Bigger and Bigger Business, Schools Are Scrambling to Generate as Much Revenue as Possible to Keep Up in the 'Arms Race'*, TIMES-PICAYUNE, August 25, 2001, at 06 (hereinafter *Survival*).

[7] Allen, *supra* note 4. Specifically, Ohio State spent $72 million, Florida

The move toward big business does not end there. The Big 12 Conference, one of the most prominent conferences in Division I sports, has managed to designate an "official" soft drink, tire, cookie, oil company, communications firm, and sports equipment provider as corporate sponsors.[8] Of the more than $75 million distributed by the conference to its members, $5 million was listed as corporate sponsorship.[9] Further consider that the four largest college football bowl games, which form the Bowl Championship Series, collectively pay out $100 million annually.[10] Finally, the NCAA recently signed a lucrative television contract with CBS worth an estimated $585 million to annually televise the Division I men's basketball playoff tournament.[11]

These are great times financially for the college sports world. However, with such immense popularity and financial growth comes unwanted scrutiny. Specifically, there appears to be an outbreak of embarrassing disciplinary incidents involving student-athletes. These incidents have included illegal gambling, theft, rape and other acts of violence.[12] Consequently, there is

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$48.8 million, Michigan $43.7 million, Texas $42.2 million and Nebraska $41.5 million. *Id.*

[8] Lee Barfknecht, *Selling of Sports is Criticized, Knight Commission Report Says Colleges Shouldn't Run Sports Like "Big Business,"* October 3, 2001, OMAHA WORLD-HERALD, at 1C. The members of the Big 12 Conference are the University of Texas, Texas A&M University, Baylor University, Texas Tech University, University of Oklahoma, Oklahoma State University, University of Colorado, University of Nebraska, University of Missouri, Kansas State University, University of Kansas and Iowa State University.

[9] *Id.*

[10] *Survival, supra note 6.* The Bowl Championship Series is comprised of the Rose Bowl (Pasasdena, California), Tostitos Fiesta Bowl (Phoenix, Arizona), FedEx Orange Bowl (Miami, Florida), and the Nokia Sugar Bowl (New Orleans, LA).

[11] *Id.*

[12] *See, e.g.,* Michael DiRocco, *Dupay Done at UF, Troubled Guard Ruled Ineligible*, FLORIDA TIMES-UNION, September 8, 2001, at D1 (discussing the plight of Teddy Dupay, a University of Florida basketball star, who was implicated in an illegal gambling scheme); *Indiana Basketball Player Sentenced*, ASSOCIATED PRESS NEWSWIRES, February 2, 2001 (hereinafter *Indiana Player Sentenced*) (detailing the case of Rachael Honegger, an Indiana University women's basketball player who embezzled money from a local grocery store); *Two Minnesota Football Players Charged With Sexual Assault*, ASSOCIATED PRESS NEWSWIRES, August 17, 2001

increased pressure on academic institutions to show greater authority over student-athletes for their non-academic conduct. Understandably, schools have struggled with determining the proper response. Many schools have responded by automatically suspending players who have pending allegations of misconduct.

Three court cases, two of which were decided by the United States Supreme Court, have outlined the process a school must go through in order to take action against a student for conduct violations. In *Dixon* v. *Alabama State Board of Education*[13], the Fifth Circuit Court of Appeals held that tax-supported institutions are required to provide notice and a hearing to a student facing suspension.[14] In *Goss v. Lopez*,[15] the Supreme Court formalized *Dixon*'s proposition regarding tax-supported institutions,[16] and in *Board of Curators of Missouri v. Horowitz*[17], the Court held that due process requirements in student misconduct suspension cases must meet a more stringent constitutional standard than for academic dismissals.[18]

This Comment examines whether schools offend the due process rights of student-athletes when they are automatically suspended, based on alleged misconduct, from participating in their chosen sport. This Comment will examine only state universities and colleges, as case law has distinguished an important difference in the relationship between private institutions and their students.[19] Part I will look at case law discussing a student's right to due process in non-academic suspensions. Part II will examine some of the more interesting

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(hereinafter *Minnesota Players Charged*) (discussing the pending sexual assault case against two football players and subsequent University of Minnesota response); *Casey Charged With Assault*, SAN ANTONIO EXPRESS-NEWS, May 16, 2000, at 02C (hereinafter *Casey Charged*) (describing assault charges filed against Rashard Casey, a star member of the Penn State University football team).

[13] 294 F.2d 150 (5th Cir. 1961).

[14] *See id.* at 158.

[15] 419 U.S. 565 (1975).

[16] *See id.*

[17] 435 U.S. 78 (1978).

[18] *Id.* at 85.

[19] Lisa Tenerowicz, *Student Misconduct at Private Colleges and Universities: A Roadmap for "Fundamental Fairness" in Disciplinary Proceedings*, 42 B.C. L. REV. 653, 663 (2001).

and controversial incidents involving student-athletes. Part III will analyze, in light of the stated case law, whether automatic suspensions of student-athletes meet constitutional muster. Part IV will provide recommendations for state universities in handling alleged misconduct of student- athletes. This Comment concludes that when state universities automatically suspend student-athletes without the requisite notice and hearing, they offend the student's due process rights .

I. Case Law Related To Due Process And Student Discipline

Three separate cases have created the boundaries for determining what rights a student has when an institution takes action related to his or her alleged misconduct. The issue was first considered in *Dixon v. Alabama State Board of Education*.[20] In *Dixon*, a number of Alabama State College students took part in a protest at a local eatery.[21] Subsequently, based on investigative evidence provided by the President of Alabama State College, the Director of Public Safety for the State of Alabama and the investigative staff of the Alabama Attorney General, the Alabama State Board of Education voted to expel nine of the students and place the twenty other students on probation for their roles in the protest.[22] Acting pursuant to the Board's action, the college president notified all of the students of the sanctions.[23] The president's letter to each student never specifically identified what misconduct brought about these

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[20] 294 F.2d 150.

[21] *Id.* at 152. Twenty nine students, including the six plaintiffs, entered the eatery, which was located in the basement of the county courthouse in Montgomery, Alabama, and asked to be served. *Id.* When they were refused service, the students refused to leave and the police were called. *Id.* The students were ordered out of the eatery where "they remained in the corridor of the courthouse for approximately one hour." *Id.*

[22] *Id.* at 154. At the Board meeting, the President of the college reported that these types of protesting activities were having a "disruptive influence on the work of other the students at the college and upon the orderly operation of the college in general," and that "in his opinion, he as president of the college could not control future disruptions and demonstrations." *Id.*

[23] *Id.*

sanctions.[24] Prior to the Board's action, there had been no formal charges levied against the students nor were they granted a hearing.[25] The plaintiffs (six of the nine expelled students) brought suit alleging that their expulsion violated the Due Process Clause of the Fourteenth Amendment because they had not been afforded any notice, hearing, or appeal.[26] The State responded that (1) the facts set out in the plaintiffs' case did not constitute a violation of the Due Process Clause, (2) the plaintiffs had no constitutional right to attend Alabama State College, and (3) the authorities acted in good faith in determining the sanctions.[27] The District Court upheld the suspension of the students, stating that "[t]he right to attend a public college or university is not in and of itself a constitutional right."[28] The plaintiffs appealed the decision to the Fifth Circuit Court of Appeals. The appellate court reversed and remanded the case. The court opined that due process requires notice and some opportunity for hearing before a student at a tax-supported college could be expelled for misconduct.[29]

The holding in *Dixon* was refined in the Supreme Court case *Goss v. Lopez*.[30] *Goss* involved students in the Columbus Public School System who had been suspended for 10 days for disruptive

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[24] *Dixon*, 294 F.2d. at 151-52. In his letter to the students, the president remarked that, "As reported through the various news media, The State Board of Education considered this problem of Alabama State College at its meeting on this past Wednesday afternoon. You were one of the students involved in this expulsion-directive by the State Board of Education. I was directed to proceed accordingly." *Id.* at 152 n.2.

[25] *Id.* at 154.

[26] *Id.* at 151. Specifically, "The complaint alleges that 'Defendant Trenholm on March 4, 1960, notified plaintiffs of their expulsion effective March 5, 1960, without any notice, hearing, or appeal,' and further avers: 'Expulsion from Alabama State College came without warning, notice of charges, opportunity to appear before defendants or at any other hearing, opportunity to offer testimony in defense, cross-examination of accusers, appeal, or other opportunity to defend plaintiff's right not to be arbitrarily expelled from Defendant College." *Id.* at n.1.

[27] *Id.* at 151.

[28] *Dixon*, 294 F.2d at 156.

[29] *See id.* at 154-59.

[30] 419 U.S. 565.

or disobedient behavior.[31] Prior to their suspensions, none of the students received a hearing nor were they given an opportunity to appeal the suspensions.[32] The students brought a class action suit against the Columbus Public School System seeking a declaration that the Ohio statute permitting such suspensions violated the Due Process Clause of the Fourteenth Amendment.[33] A three judge panel of the United States District Court for the Southern District of Ohio held that the students were denied due process and that the statute was unconstitutional.[34] The school system appealed and the Supreme Court affirmed. Justice White, writing for the majority, held that: (1)10-day suspensions were not *de minimis*, (2) to impose such a suspension without a hearing was in complete disregard of due process and, (3) that

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[31] *Id.* at 569. The Court stated in its opinion that "[t]he proof below established that the suspensions arose out of a period of widespread student unrest in the CPSS [Columbus Public School System] during February and March 1971." *Id.*

[32] *Id.* Six of the students, Rudolph Sutton, Tyrone Washington, Susan Cooper, Deborah Fox, Clarence Byars and Bruce Harris attended Marion-Franklin High School. "None was given a hearing to determine the operative facts underlying the suspension, but each, together with his or her parents, was offered the opportunity to attend a conference, subsequent to the effective date of the suspension, to discuss the student's future." *Id.* at 570. One of the other students, Betty Crome, was present at a demonstration at a school other than her own and was arrested. *Id.* "Before she went to school on the following day, she was notified that she had been suspended for a 10-day period. Because no one from the school testified with respect to this incident, the record does not disclose how the McGuffey Junior High School principal went about making the decision to suspend Crome, nor does it disclose on what information the decision was based. It is clear from the record that no hearing was ever held." *Id.* at 570-71.

[33] *Id.* at 568-69 n.3. "Ohio law, Rev. Code Ann. § 3313.64 (1972) provides for free education to all children between the ages of six and 21. Section 3313.66 of the Code empowers the principal of an Ohio public school to suspend a pupil for misconduct for up to 10 days or to expel him. In either case, he must notify the student's parents within 24 hours and state the reasons for his action. A pupil who is expelled, or his parents, may appeal the decision to the Board of Education and in connection therewith shall be permitted to be heard at the board meeting. The Board may reinstate in [sic] pupil following the hearing. No similar provision is provided in § 3313.66 or any other procedure of state law for a suspended student. Aside from a regulation tracking the statute, at the time of the imposition of the suspensions in this case of the CPSS itself had not issued any written procedure applicable to suspensions." *Id.* at 567.

[34] *Goss*, 419 U.S. at 565.

"[n]either property interest in educational benefits temporarily denied nor liberty interest in reputation, which is also implicated, is so insubstantial that suspensions might be constitutionally imposed by any procedure the school chooses, no matter how arbitrary."[35] Further, Justice White clearly stated that "[a]t the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing."[36]

The third and final case is *Board of Curators of the University of Missouri v. Horowitz*.[37] The case involved a medical student at the University of Missouri-Kansas City.[38] The medical student, who had received numerous negative evaluations in her first and second years of medical school, was dismissed for academic deficiencies and faculty dissatisfaction with her performance.[39] After her case was considered and suspension upheld by the Dean, the medical school Coordinating Committee and the Provost for Health Sciences, the student filed suit in the United States District Court for the Western District of Missouri

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[35] *Id.* at 575-76.

[36] *Id.* at 579.

[37] 435 U.S. 78.

[38] *Id.* at 79.

[39] *Id.* at 79-82. Specifically, during the student's first year of medical school, some faculty members were not satisfied with her clinical performance during a pediatrics rotation. *Id.* at 80-81. Even though faculty members expressed these concerns, the Council on Evaluation advanced the student to her second and final year on a probationary basis. *Id.* at 81. In her second year, the student's faculty advisor found her performance "unsatisfactory" and the Council on Evaluations met again in the middle of the year and held that the student would not be allowed to graduate and that "absent 'radical improvement,' respondent be dropped from the school." *Id.* The student, as an appeal, was allowed to take oral and practical examinations with seven practicing physicians." *Id.* Of the seven physicians, two recommended the student be allowed to graduate on schedule, two recommended that she be immediately dropped from the medical school, and three recommended that she not be allowed to graduate, but be allowed to continue on probation ending further reports on her clinical progress. *Id.* The Council of Evaluations reaffirmed its prior decision. *Id.* After further evaluation, the Council forwarded its recommendation to the medical school Dean and Coordinating Committee, which both affirmed the decision. *Id.* at 82. The student appealed to the University's Provost for Health Sciences, who sustained the earlier decisions. *Id.*

claiming a deprivation of her due process rights.[40] That court ruled in favor of the board of curators and the student appealed.[41] The United States Court of Appeals for the Eighth Circuit reversed the decision.[42] The Board of Curators appealed to the United States Supreme Court, which reversed.[43] Justice Rehnquist, writing for the majority, stated that the school "fully informed respondent of the faculty's dissatisfaction with her clinical progress and the danger that this posed to timely graduation and continued enrollment. . . .These procedures were sufficient under the Due Process Clause of the Fourteenth Amendment."[44] Of greater importance, the Court drew a distinction between the procedural requirements necessary to remove a student for failure to meet academic standards and those required to remove a student for the failure to abide by rules of conduct. "The need for flexibility," wrote Justice Rehnquist, "is well illustrated by the significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct. This difference calls for far less stringent procedural requirements in the case of an academic dismissal."[45]

II. Controversial Cases Involving Alleged Student-Athlete Misconduct

> FSU hardly stands alone at the magistrate's office. In recent years, North Carolina, N.C. State and many other schools have needed an assistant athletics director for 2 a.m. lockup. The episodes raise questions about the athletes some colleges admit and ultimately about the colleges' aims.[46]

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[40] *See id.* at 79-80.

[41] *Board of Curators*, 435 U.S. at 80.

[42] *Id.*

[43] *Id.*

[44] *Id.* at 85.

[45] *Board of Curators*, 435 U.S. at 86.

[46] Lenox Rawlings, *FSU Woes: Bowden Says He Has Control of the Program*, WINSTON-SALEM JOURNAL, August 14, 2000, at 1 (discussing, at length, the negative publicity surrounding the Florida State University football teams).

As mentioned earlier, several student-athlete suspensions made the front pages of America's newspapers. One case involved Derrius Monroe, a defensive end on the Virginia Tech football team. Monroe, 21, was suspended indefinitely from the football team after being charged with felony distribution of cocaine.[47] According to sources, the player was charged in connection with the arrest of two former Virginia Tech football players.[48] School policy required that any student-athlete charged with a felony face automatic suspension from participating in his or her chosen sport.[49] Further, under the school's policy, if Monroe were found guilty or pled guilty to the charges, he would be dismissed from the team.[50]

A second case involved members of the University of Maryland football team. Marlon Moye-Moore, a starting linebacker, and Andrew Smith, a backup cornerback, were indefinitely suspended from the football team for their alleged role in a violent incident in February 2001 at a suburban Washington, D.C. nightclub.[51] Specifically, the two players allegedly took part in the robbery and assault of a nightclub patron.[52] Both men were charged with felonious assault and robbery and were immediately suspended from the team.[53] Both

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Over a two year period, ten members of the team have been arrested. *Id.*

[47] Angie Watts, *Va. Tech Suspends Monroe Indefinitely*, WASH. POST, Feb. 11, 2000, at D06

[48] *Id.* The Roanoke Times reported that Manny Clemente, 22, who left the football team prior to the 1998 season, and Jermaine Hinkson, 20, who left the team in mid-September 1999 were indicted on similar charges. *Id.*

[49] *Id.*

[50] *Id.*

[51] Josh Barr, *Terps' McCall Quits; Friedgen Suspends 2 Football Players*, WASH. POST, April 6, 2001, at D01.

[52] *Id.* "According to court documents filed by Prince George's County police, Smith and Moye-Moore confronted the victim in the bathroom area of the nightclub in the 1900 block of University Boulevard. The documents state that Moye-Moore asked the victim, 'Were you the one messing with my sister last year?' When the victim replied, 'No, you got the wrong guy,' according to the document, Smith and Moye-Moore began punching and kicking the victim about his head and body without provocation... 'After assaulting and robbing the victim, [Moye-Moore] told the victim, 'If you tell the police, we will get you.'" *Id.*

[53] *Id.* Smith was charged with robbery, conspiracy to commit robbery, second-degree assault, conspiracy to commit second-degree assault, theft of less

players were allowed to stay in school and participate in team study hall and tutoring sessions.[54] Even though Ralph Friedgen, the University of Maryland's head football coach, would not comment on why the players were suspended, [55] under the Terrapin Student-Athlete Code of Conduct, players charged with felonies are not allowed to participate in on-field activities until their cases have been resolved.[56]

San Diego State University dealt with a similar issue during the summer of 2001. Two football players, Loo Heather and Ryan Iata, were allegedly involved in a fracas with a fraternity student.[57] Originally, Iata was arrested and charged with felony battery for hitting the student and was automatically suspended from the team.[58] Eventually, Iata the charges against Iata were dropped because the District Attorney determined there was no evidence of Iata's involvement.[59] Heather, the other player allegedly involved, was arrested after the charges against Iata were dropped and was charged with felony battery against the student.[60] Per university guidelines, Heather was suspended indefinitely until the matter could be resolved.[61]

Another situation involved Rachael Honegger, a former Indiana University women's basketball player and a single

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than $500 and conspiracy to commit theft of less than $500. *Id.* If convicted, Smith faces a maximum prison term of 53 years and up to $6,000 in fines. *Id.* Moye-Moore was charged with robbery, first-degree assault, second-degree assault, theft of less than $500 and intimidating/influencing a juror. *Id.* Moye-Moore faces a maximum of 61 ½ years in prison and/or up to $13,000 in fines if he is found guilty on all charges. *Id.*

[54] *See id.*

[55] *Id.*

[56] *Id.* "Smith could face additional penalties because of a previous incident in which he was charged with theft and assault. Those charges were placed on an inactive docket but could be recalled because of Smith's latest run-in with authorities." *Id.*

[57] Ed Graney, *Heather pleads not guilty to charges*, SAN DIEGO UNION & TRIB., October 19, 2001 at D9. Allegedly there was a fight with a fraternity student in which the victim suffered a broken jaw. *Id.*

[58] *Id.*

[59] *Id.* "Part of the defense Iata's attorney offered in court was a signed confession from an SDSU player admitting to throwing the punch." *Id.*

[60] *Id.*

[61] Graney, *supra* note 57.

mother. Honegger, who was a fifth-year senior, was suspended for four games during the 2000-2001 season after she pled guilty in October 2000 to stealing $13,000 from a local grocery store.[62] Interestingly enough, Honegger had continued to play for Indiana University even after she pled guilty and was not suspended until after she received her sentence.[63] The media attention was so intense from the incident that the Indiana athletic department adopted a code of conduct for athletes even before Honegger entered her guilty plea.[64] Initially, Honegger's suspension was deemed to be indefinite.[65] Eventually, Honegger was dismissed from the team after a subsequent arrest.[66]

At the University of Minnesota, two football players, Steven M. Watson and Mackenzy Toussaint, were suspended from the football team after they were charged with the first- and third-degree sexual assault of a 19-year old woman at a university dormitory.[67] The incident went unreported for more than two weeks.[68] University of Minnesota policy calls for athletes to be

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[62] *Indiana Player Sentenced*, *supra* note 12; *Indiana Dismisses Honnegger From Team*, ASSOCIATED PRESS NEWSWIRES, March 5, 2001 (hereinafter *Indiana Dismisses Honegger*). Honnegger had worked in the grocery store during the off-season for a number of years. *Indiana Player Sentenced*, *supra* note 12. She was sentenced to a three year jail sentence, but had all but six months of that sentence suspended. *Id.* Hence, she would be required to complete six months of house arrest and pay restitution to the grocery store. *Id.* "A State Police detective said Honegger confessed to forging money orders and taking cash from the store, saying she needed the money because she was planning to marry." *Id.*

[63] *Indiana Dismisses Honegger*, *supra* note 62.

[64] *Indiana Player Sentenced*, *supra* note 12. "In September, the university adopted a code of athletic conduct that says in part that athletes are expected "to exhibit a higher standard of behavior than might be expected of other students . . . and to avoid conduct that is likely to appear improper." *Id.*

[65] *Indiana Dismisses Honegger*, *supra* note 62.

[66] *Id.* Honegger was arrested for violating the terms of her house arrest. *See id.* Honegger's basketball coach, Kathi Bennett said that she was dismissed from team because she had violated the conditions of her team probation. *Id.*

[67] *Minnesota Players Charged*, *supra* note 12. The criminal complaint stated that all three students "were engaged in horseplay until both men made sexual advances on the victim. When she tried to leave, they cornered her, keeping her in the room. The two then allegedly forced her to have oral sex with Toussaint. Later, Watson allegedly forced her to have intercourse." *Id.*

[68] *Id.*

automatically suspended if arrested or charged with sexual misconduct or domestic abuse.[69] Glen Mason, the head football coach at the University of Minnesota, said the two players were suspended from the team for what were termed as "possible violations of team rules."[70]

The most high-profile incidents, however, occurred in the shadows of two of America's most storied collegiate football programs. The first involved Peter Warrick, a star receiver on the 1999 number one ranked Florida State University football team and front-runner for college football's most cherished individual award, the Heisman Trophy. On October 7, 1999, Warrick, along with fellow teammate Laveranues Coles, was arrested and charged with felony grand theft after the two players paid only $21 for over $400 worth of clothes from Dillard's department store.[71] Pursuant to university policy, Warrick was automatically suspended from the team, while his teammate Coles was dismissed from the team altogether.[72] Instantly, there was a barrage of media coverage surrounding the star receiver's arrest.[73] A firestorm of criticism was hurled at Florida State University President Talbot "Sandy" D'Alemberte for his delay in

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[69] *Id.*

[70] *Id.*

[71] Lucy Morgan, *FSU Star Warrick Cleared to Play*, St. PETERSBURG TIMES, October 23, 1999, at 1A; Bruce Lowitt, A Chronology of the Events Involving Warrick, ST. PETERSBURG TIMES, October 23, 1999, at 10A; Associated Press, *Warrick Charged With Grand Theft*, RALEIGH NEWS & OBSERVER, October 8, 1999, at C1 (hereinafter *Warrick Charged*). "Warrick and Laveranues Coles were charged with grand theft along with a Dillard's clerk, 19-year-old Rachel Myrtil. She was accused of letting the two players buy $412.38 worth of clothing for $21.40 Sept. 29." *Warrick Charged, supra.*

[72] *Warrick Charged, supra* note 71. "Warrick will be allowed to practice with the team. But under school policy, he cannot play at least until his case is resolved." *Id.* Coles was kicked off the team because of past academic and legal problems. *Id.*

[73] *E.g.*, Doug Carlson, *Police: No More 'Noles Involved*, TAMPA TRIBUNE, October 9, 1999, at 5; Alan Schmadtke and George Diaz, *Warrick Heisman Hopes Hurt, Felony Charge May Sway Voters*, FT. LAUDERDALE SUN-SENTINEL, October 8, 1999, at 10C. Most of the attention focused on Warrick's chances of still winning the Heisman Trophy and how his possible dismissal from the team would affect the team's national title hopes.

responding to the situation.[74] D'Alemberte responded by announcing that he would consider the charges unresolved, meaning Warrick could not play if he received any jail sentence even if that sentence was delayed until after the season and the charge reduced to a misdemeanor.[75] The media frenzy was so pervasive that the prosecutor in the case, Leon County State Attorney Willie Meggs, stated "I did have a degree of frustration about the hysteria created in the community, the athletic director's office, and in the media about this issue. It was to the point no one cared about the facts: What is the fair, right thing to do."[76] After two weeks of rampant speculation, Warrick's lawyer reached a plea agreement with the prosecutor that reduced the charges from felonious grand theft to misdemeanor petty theft and helped him avoid any jail time.[77] In those two weeks, Warrick watched his chances for the Heisman Trophy disappear and almost lost his opportunity to finish his collegiate football career.

The second incident involved Rashard Casey, the star quarterback of the 2000 Penn State Nittany Lions. In the early morning hours of Sunday, May 14, 2000, Casey was arrested along with another man outside a nightclub in Hoboken, New Jersey.[78] The two men were arrested for allegedly assaulting an

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[74] Thomas B. Pfankuch, *Smooth Ride for FSU President, Despite a Few Bumps D'Alemberte Defends His School Track Record*, FLORIDA TIMES-UNION, September 12, 2000, at A1. "His delay in publicly reacting to the arrest of football superstar Peter Warrick last year drew 900 mostly angry e-mails from alumni and boosters, some of whom threatened to withhold future financial support of the university." *Id.*

[75] *See* Amy Shipley, *'It's Embarrassing'; As Fla. St. Wins, Image Takes a Beating*, WASH. POST, November 13, 1999, at D01.

[76] *Id.*

[77] Associated Press, *Warrick Cleared to Face Clemson – Fla. State Star Escapes Jail Sentence*, NEWARK STAR-LEDGER, October 23, 1999, at 022. "Under the agreement, Warrick will serve one year's probation, donate the clothes to the Children's Home Society, pay $579 restitution, $295 in court costs, have no contact with Dillard's and spend 30 days on a work program where he will probably clean trash from city streets." *Id.*

[78] *Casey Charged With Assault*, SAN ANTONIO EXPRESS-NEWS, May 16, 2000, at 02C; George Dorhmann, *JoePa Knows Best?* SPORTS ILLUSTRATED, August 14, 2000, at 36.

Specifically, Casey and a high school teammate, Desmond Miller, were accused of

off-duty police officer and Casey pled not guilty at his arraignment the following day in Jersey City, New Jersey.[79] Within days of the incident, Joe Paterno, Casey's coach at Penn State, voiced his belief that Casey was innocent of the charges.[80] Neither Paterno nor the university suspended Casey from the team. Thus began months of media speculation about the case and, of course, the wisdom of Joe Paterno's decision not to discipline Casey.[81] As one article discussed, Penn State's football team was a program that had traditionally done things "by the book" and had never encountered such problems.[82] For months, the questions lingered and the program limped through the beginning of its season.[83] No matter how intense the pressure got, Paterno refused to suspend the embattled quarterback.[84] In late October, newspaper stories started to surface that Casey had been indicted on alleged charges by a New Jersey grand jury.[85] The stories turned out to be baseless and on October 31, 2000,

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beating Patrick Fitzsimmons, a white off-duty policeman, because the officer left a nightclub with a black woman. Dorhmann, *supra*.

[79] *Id.*

[80] Eduardo A. Encina, *Paterno Defends his QB; PSU Coach Joe Paterno Said Rashard Casey W ill Be Exonerated of Assault Charges*, YORK DAILY RECORD, May 17, 2000, at B01. "I trust that Rashard will be able to proceed with his academic work in summer school with a minimum of distractions. I hope and expect he will be exonerated when all of the facts are examined." *Id.*

[81] *See* Steve Grinczel, *It's an Atypical Penn State Scene Entering Season*, GRAND RAPIDS PRESS, August 26, 2000, at C3. (discussing Penn State's prospects for the 2000 season with the Rashard Casey incident hanging over the team's head). *See also* Bob Baptist, *Lots of Eyes on Paterno*, COLUMBUS DISPATCH, August 31, 2001, at 03C; Bob Cohn, *Tough Call*, WASHINGTON TIMES, September 17, 2000, at A1.

[82] Cohn, *supra* note 81.

[83] *See* Gordie Jones, *For Openers, a State of Confusion Trojans Capitalize on PSU Errors in Kickoff Classic*, LANCASTER INTELLIGENCER JOURNAL, August 28, 2000, at C1. *See also* Ronnie Christ, *Lions: It's Not Over, But Frustration is Showing in Penn State Locker Room*, SUNDAY PATRIOT-NEWS HARRISBURG, September 3, 2000, at P03.

[84] *See* Jeanie Chung & Herb Gould, *Grand Jury Clears Penn State QB Casey*, CHICAGO SUN-TIMES, November 1, 2000, at 132.

[85] *Id.* Graham B. Spanier, President of Penn State University, stated that, "Virtually every newspaper in the state erroneously reported last week that Mr. Casey had been indicted. Shame on the news media for their atrocious handling of this story." *Id.*

Casey was cleared, as the grand jury was unable to find probable cause.[86] Afterwards, Paterno publicly reiterated his belief in Casey and rebuffed those who criticized him for not suspending the player.[87]

III. Do The Automatic Suspensions Of Student-Athletes For Alleged Misconduct Meet Constitutional Muster?

> In the disciplining of college students there are no considerations of immediate danger to the public, or of peril to the national security, which should prevent the Board from exercising at least the fundamental principles of fairness by giving the accused students notice of the charges and an opportunity to be heard in their own defense.[88]

In light of procedural due process case law and some of the high profile cases discussed above, the question must be asked: "Do the automatic suspensions of student-athletes at state colleges or universities for alleged misconduct meet constitutional muster?"

To qualify for procedural due process protection under the Fourteenth Amendment, a party must demonstrate that a state governmental entity acted to deprive him or her of life, liberty, or property.[89]

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[86] *Id.*

[87] *Paterno Says, 'I told you so,'* LANCASTER NEW ERA, November 3, 2000, at C2. "Paterno said he didn't care if 'people liked me or didn't like me, or newspaper guys thought I was right or wrong. That never even came into the decision. The only thing that came into the decision was, Did I really believe Casey was innocent? I couldn't be sure, obviously, but once I felt that—and everybody on our football team shared the same sentiment—it was a no-brainer. It was an easy decision to make.'" *Id.*

[88] *Dixon*, 294 F.2d at 157.

[89] *See generally Board of Regents v. Roth*, 408 U.S. 564 (1972); *Bishop v. Wood*, 426 U.S. 341 (1976). The Fourteenth Amendment provides, in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law. . ." U.S. CONST. amend. XIV, § 1.

A. Is There State Action?

First, for a suit to be successful, it must establish that the state has taken some form of action against the injured party. For purposes of this Comment, , the institutions in question are tax-supported, state-run colleges and universities acting pursuant to their own promulgated policies. If the decisions were unilaterally made by administrators acting beyond the scope of their authority or the authority of the institutions, then maybe their actions would not be considered "state actions." However, that does not appear to be the case.

B. Is There A Protectable Interest?

Next, the injured party must prove which, if any, interest (life, liberty or property) has been harmed. Obviously, the abovementioned suspensions do not interfere with the deprivation of life. Property interests, on the other hand, "are defined by existing rules or understandings that stem from an independent source such as state law."[90] However, there are no state laws or regulations that confer upon student-athletes the right to compete in their chosen sports.

Therefore, it seems that the only basis for due process protections under these circumstances falls under the rubric of liberty interests. Liberty interests have been defined as, among other things, the right to contract, engage in common occupations, and "enjoy those privileges long recognized at common law as being essential to the pursuit of happiness by free men."[91] The Supreme Court, in *Goss v. Lopez*, further expanded upon the theme of liberty interests. "The Due Process Clause also forbids arbitrary deprivations of liberty," wrote Justice White. " 'Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of the Clause must be satisfied.'"[92]

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[90] *Roth*, 408 U.S. at 577. *See also* Johnson v. Southwest Mississippi Reg'l Med. Ctr., 878 F.2d 856, 858 (5th Cir. 1989); Evans v. City of Dallas, 861 F.2d 846, 850 (5th Cir. 1988).

[91] Meyer v. Nebraska, 262 U.S. 390, 399 (1926).

[92] *Goss*, 419 U.S. at 573 (quoting Wisconsin v. Constantineau, 400 U.S.

Undoubtedly, when student athletes are suspended, their reputations are tarnished and characters questioned. For those athletes looking to move on to professional sports leagues, the "character" stigma can have a negative effect. Sports leagues, now more than ever, are very image conscious and athletes who have had run-ins with their schools or the law could be passed over. A good example is Cecil Collins, a former running back with the Miami Dolphins. Collins was a prized running back at Louisiana State University who was twice charged with unauthorized entry of apartments and failed three drug tests while at LSU.[93] He was dismissed from the team and transferred to McNeese State University.[94] While at McNeese State, he again tested positive for marijuana and was consequently thrown off the team.[95] He spent a month in jail, four months in a halfway house and eventually pled guilty.[96] Even though he was extremely talented, National Football League teams were wary of Collins' past and the Dolphins did not take him until the 134th pick.[97]

A second example is Randy Moss, the star receiver of the Minnesota Vikings. Moss, who left Marshall University after his sophomore season, had previously lost a scholarship with the University of Notre Dame, been dismissed from the Florida State University football team for smoking marijuana, and, along with the mother of his child, had been arrested for misdemeanor domestic abuse.[98] Moss was expected to be one of the top five players taken in the 1998 National Football League draft but was

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433, 437 (1971)).

[93] Paul Needell, *Is He Randy Moss or Lawrence Phillips?*, STAR-LEDGER (NEWARK N.J.), Apr. 11, 1999, at 19; Associated Press, *'Diesel fueling hopes Dolphin desperate for good RB*, CHI. SUN-TIMES, Sept. 5, 1999, at 20 (hereinafter *Diesel*).

[94] *Diesel*, *supra* note 93.

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] Paul Newberry, *Falcons Wonder If Moss Can Be Taken*, ASSOCIATED PRESS NEWSWIRES, Apr. 17, 1998. Moss lost his scholarship with Notre Dame because of his involvement in a fight with a high school classmate. *Id.* The domestic abuse charges were eventually dropped because Moss and the woman both agreed to attend counseling. *Id.*

not.[99] Moss fell down to the number twenty-one pick, which was owned by the Minnesota Vikings, because of what were termed "character concerns."[100]

The character issue is very important to many professional coaches. Tom Coughlin, head coach of the NFL's Jacksonville Jaguars, said, "It's a major issue. How are you going to evaluate people, and are you willing to take chances on people who have any types of incidents in their past that might be reflective of someone who has a propensity for being outside the law?"[101] Dave McGinnis, head coach of the Arizona Cardinals, stated "I'm going to research the character, work ethic, and goal-orientation of everyone we draft. If you overlook that, then you're looking with one eye."[102] Finally, Dave Wannstedt, head coach of the Miami Dolphins, believes, "[C]haracter is the foundation for a lot of different traits that you look for in a draft pick. Character tells you how hard the guy's going to work. Character tells you how disciplined the guy will be on and off the field. The only thing it doesn't tell you is talent. Most reasons why a talented guy doesn't work out is some kind of character issue."[103] Thus, any type of conduct problem could cause a student-athlete to be stigmatized and effect his or her opportunity to continue playing as a professional.

In *Goss*, the Court clearly discussed this issue. "School authorities here suspended appellees from school for periods of up to 10 days," wrote Justice White, "based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment."[104] Accordingly, a student-athlete's reputation is at stake when a school suspends that

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[99] *See id.*

[100] Richard Weiner, *Warrick Waiting to Exhale Florida State Star Hopes Draft Starts Calmer Times*, USA TODAY, Apr. 13, 2000, at 01C.

[101] Donald F. Staffo, *Strategies For Reducing Criminal Violence Among Athletes*, J. PHYSICAL EDUC. RECREATION & DANCE, Aug. 1, 2001, at 3842.

[102] *Quick Study*, OMAHA WORLD-HERALD, Sept. 1, 2001, at 10C.

[103] Todd Archer, *The Ins and Outs of... Draft Day Research Done Long Before Saturday*, PALM BEACH POST, Apr. 15, 2001, at 1C.

[104] *Goss*, 419 U.S. at 156.

athlete for alleged misconduct. As such, due process procedural requirements apply.

Some critics may argue that the ability of student-athletes to participate in sports is not a constitutional right, and there is no obligation on the part of the school to allow such participation. Such thoughts are erroneous. It is well settled law that even though a person may not have a constitutional right to do a certain action, the government cannot prohibit that action outside of the bounds of the Due Process Clause.[105] As was written in *Dixon*, "One may not have a constitutional right to go to Baghdad [sic], but the Government may not prohibit one from going there unless by means consonant with due process of law."[106] Hence, state universities would not be relieved of its duty to present student-athletes with due process protections.

C. What Are The Procedural Requirements And How Do They Apply In This Matter?

As discussed earlier, due process requires that state educational institutions offer its students notice and a hearing.[107] The automatic suspension system utilized by many state-supported colleges and universities seems to fly in the face of case law on the subject and enjoys some of the same procedural flaws as was pointed out in the case law above. In *Dixon* and *Goss*, state authorities took action against students for alleged misconduct. In the automatic suspension system, state authorities are acting against student-athletes based on alleged misconduct. In *Dixon* and *Goss*, the suspending authority relied upon the fact-finding of other entities to make its decision.[108] In

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[105] Slochower v. Board of Education, 350 U.S. 551, 555 (1956). *See also* Wieman v. Updegraff, 344 U.S. 183, 187 (1952); United Public Workers of America (C.I.O.) v. Mitchell, 330 U.S. 75, 100 (1947).

[106] *Dixon*, 294 F.2d at 156.

[107] *Id.* at 158.

[108] *Id.* at 153. In *Dixon*, the Board of Education relied upon information provided by the President of the College, Alabama Attorney General's office and the Alabama Director of Public Safety. In *Goss*, one student Betty Crome, was suspended because she was arrested in connection with a demonstration she was attending. *Goss*, 419 U.S. at 571.

Goss, the Court found that the failure to properly fact-find was a factor in the unconstitutional suspensions.[109] The automatic suspension system allows state institutions to rely upon the fact-finding of others to determine whether a student-athlete should be suspended. In *Dixon* and *Goss*, the suspended students had a liberty interest at stake with their suspensions. Similarly, student-athletes at state colleges and universities have a liberty interest at stake. In *Dixon* and *Goss*, the suspended students were not given an opportunity to present evidence, witnesses or their sides of the story. In the automatic suspension system, student-athletes are not given the opportunity to present evidence, witnesses or their versions of the facts. In *Dixon* and *Goss*, the suspended students were not given an opportunity to appeal their suspensions. Generally, when state institutions suspend student-athletes, the students are not given an opportunity to appeal their suspensions. Accordingly, the automatic suspension system so closely mirrors the unconstitutional actions taken in *Dixon* and *Goss*, that it is apparent that such suspensions do not meet constitutional muster.

IV. Social Stigmas, Labeled Decisions And Student-Athletes: A Theoretical And Empirical Context

Becker(1963) and Goffman(1959) are eminent contributors of labeling theory. Both scholars articulate that labels are attached to socially deemed deviant populations. In fact, Becker conducted field research and participant observation studies of musicians. He concluded that their role conflicts as a performer/entertainer and radical challenger of the status quo positions them as contradictory (the oxymoron term 'student-athlete') in a system founded on political ideologies that are hypocritical (i.e., big-time college sports in American higher education). This relates to the daily and life socialization of the big-time varsity student-athlete in higher education.

In terms of extending social stigma theory, one group of theorists stated that "relatively little research has focused on the

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[109] *Goss*, 419 U.S. at 580 n.9.

subjective experience of members of stigmatized groups. Understanding the consequences of social stigma requires an understanding of the phenomenology of being stigmatized."[110] We argue throughout this Comment that the selected high profile cases of student-athlete disciplinary legal situations are a vessel of stigmatized expression and experiences.[111] We are in no way excusing the individual responsibility of the student-athletes in our case by case analysis. However, there appears to be a "structural communication gap" between the student-athlete, universities, the NCAA, and the law.[112] The following study and data summary by Harrison and Hart support the notion the many student-athletes lack a knowledge of right and wrong in terms of the NCAA rules and regulations that governing student athletics. Briefly, here is a description and overview of the study and its relations to the major claims articulated in this paper.

Ninety student-athletes were recruited from one northwest Division I university and 60 student-athletes completed the questionnaire for a response rate of 66.7 percent. The student-athlete sample was 68.3 percent male and 31.7 percent female. The sample consisted of 10.0 percent freshman, 11.7 percent sophomore, 28.3 percent junior, 36.7 percent senior, and 13.3 percent graduate. Of the sample 56.7 percent were student-athletes on full scholarship, 25.0 percent receiving partial scholarships, and 18.3 percent were not scholarship recipients. Ethnic diversity within the sample was 63.3 percent African American, 33.3 percent White, and 3.3 percent multiracial. Student-athletes were asked to answer 14 statements and items regarding their general beliefs about the NCAA rules and regulations. In addition respondents were asked to answer 14

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[110] J. Crocker, K. Voelkl, M. Testa, & B. Major, *Social Stigma: The Affective Consequences of Attributional Ambiguity*, J. OF PERSONALITY AND SOC. PSYCH., 218 (1991).

[111] *See generally* J. COAKLEY, SPORTS IN SOCIETY (2001); D. Gragg, *NCAA Compliance and the African-American Male Student-Athlete*, Presentation, North American Society for the Sociology of Sport Annual Meeting, October 31-November 3, 2001; R. Lapchick, *Crime and Athletes: New Radical Stereotypes*, SOCIETY, 14 (2000).

[112] *See generally* A. Hart, *Student-athletes perceptions of the NCAA rules and regulations*, Master's Thesis, Washington State University, 1997.

knowledge statements and items related to NCAA and its rules and regulation

It is notable that 70 percent of the student-athletes in the sample had a negative attitude toward the NCAA. Over 53 percent of the student-athletes felt the overall job performance of the NCAA was bad. Sixty five percent of the student-athletes did not believe the NCAA represented them as the voice of college sports.

Table 1

Beliefs of Respondents about the NCAA

Belief Questions	Agree	Neither	Disagree
1. NCAA's executive board is demographically similar to today's student-athlete. (Demographics refers to persons of color, women, and persons with disabilities.)	13.3%	11.7%	75.0%
2. The NCAA is effective at penalizing violators of its rules and regulations.	26.7%	10.0%	63.3%
3. The NCAA is consistent in penalizing violators of its rules and regulations.	25.0%	8.3%	66.7%
4. Student-athletes should receive financial assistance in addition to the athletic scholarship.	80.0%	10.0%	10.0%

Table 1 Continued

Belief Questions	Agree	Neither	Disagree
5. The NCAA takes the feelings of student-athletes into consideration when making rules and regulations.	3.3%	23.3%	73.3%
6. The experience of a student-athlete governed by the NCAA is generally a positive experience.	16.7%	6.7%	76.7%
7. The NCAA should require that member universities hold core classes (math, science, labs) at special times that are convenient for student-athletes.	63.3%	8.3%	28.3%
8. The alumni should be allowed to give student-athletes gifts.	23.3%	58.3%	18.3%
9. A student-athlete's scholarship should be based upon individual need.	56.7%	26.7%	16.7%
10. The NCAA offers adequate financial support for student-athletes that need assistance for degree completion.	18.3%	8.3%	73.3%

Table 1 Continued

Belief Questions	Agree	Neither	Disagree
11. The NCAA is effective at educating student-athletes of its rules and regulations.	5.0%	16.7%	78.3%
12. Intercollegiate athletic programs are conducted in a manner designed to protect and enhance the physical and educational welfare of student-athletes.	36.7%	13.3%	50.0%
13. The minimum required score of 700/17 on the SAT/ACT to be considered a qualifier in NCAA should be changed.	30.0%	43.3%	26.7%
14. Student-athletes should be provided with team travel outfits or other items of clothing that are not sports-related practice or competition apparel.	48.3%	3.3%	48.3%

Based on the sample size of 60, the following data were computed and analyzed. Table 1 provides the percentage of respondents who responded "agreed", "disagreed" or "neither" with each belief statement. Overall, at least 70 percent of the respondents disagreed with five of the statements. Nearly 78.3

percent of the student-athletes felt that the NCAA was not effective at educating them of its rules and regulations. Seventy-five percent of the student-athletes disagreed that the NCAA's executive board is demographically similar to the make-up of today's student-athlete.

A similar proportion, 76.7 percent, disagreed that the experience of the NCAA student-athlete was generally positive. Also, 73.3 percent of respondents did not believe the NCAA had taken their feelings into account when making rules and regulations. Student-athletes did not believe the NCAA offered adequate financial support for degree completion (73.3 percent). Eighty percent of the student-athletes agreed that the NCAA should provide more financial assistance however, there was a split between student-athletes who agreed (48.3 percent) and disagreed (48.3 percent) with the practice of providing team travel outfits or other items of clothing not sports related.

Table 2[113]

Percentage of Respondents Who Answered Each Question Correctly

Knowledge Question (correct answer)	Proportion of Respondents Answering Correctly
1. Alumni can give student-athletes gifts. (F)	85%
2. A student-athlete can receive financial assistance in addition to the athletic scholarship. (T)	83.3%

[113] The numbers represent the mean number of correct answers per individual. The scale used for belief questions was 1 = strongly disagree, 2 = moderately disagree, 3 = neither, 4 = moderately agree, and 5 = strongly agree. For purposes of this table, the agree responses and the disagree responses were combined.

Table 2 Continued

3. The NCAA requires member universities to hold core classes (math, science, lab) at special times that are convenient for student-athletes. (F)	73.3%
4. Student-athletes can receive financial assistance outside of scholarship and financial aid. (F)	45.0%
5. A student-athlete must score a 700/17 on the SAT/ACT to be considered a qualifier in NCAA-governed intercollegiate athletics. (T)	51.7%
6. A student-athlete's scholarship is based upon individual need. (F)	68.3%
7. An institution may provide a student-athlete $10 cash per day to cover unitemized incidental expenses incurred in a foreign tour in his or her particular sport. (T)	26.7%
8. The NCAA was founded in 1906. (T)	20.0%
9. The NCAA is an abbreviation for the National Collegiate Athletes Association. (F)	31.7%
10. Walter Byers was the executive director of the NCAA for 36 years.	40.0%

Table 2 Continued

11. A student-athlete receiving institutional financial aid after becoming permanently ineligible due to a violation of NCAA regulations may receive aid through his or her athletic department.	16.7%
12. An institution may reimburse a student-athlete for expenses incurred while driving to an institiution off-campus competition site if parents, family or friends accompany the student-athlete. (F)	55.0%
13. An institution may not provide student-athletes team travel outfits, blazers, or other items of clothing that are not sports-related practice or competition apparel. (F)	55.0%
14. Complimentary tickets to professional sports contests may not be provided to student-athletes unless tickets are provided by the institution.	76.7%

Overall, respondents answered 7.29 out of 14 knowledge questions correctly. Table 2 provides the percentage of respondents who correctly answered each of the knowledge questions. Eight of the 14 questions were answered correctly by over 50 percent of the student-athletes. For example, over 80 percent of the respondents knew that alumni may not give gifts to student-athletes and that student-athletes can receive

financial assistance in addition to the athletic scholarship.

While 45 percent of the respondents were aware they could not receive financial assistance outside of the athletic scholarship, 40 percent correctly responded to Walter Byers serving 36 years as executive director of the NCAA. Twenty percent of the respondents knew the date of the founding of the NCAA, and only 16.7 percent of student-athletes were aware they could receive financial aid from their athletic department if they were rendered permanently ineligible.

In terms of these data in Table 1, there are some key findings. In summary, the communication between the rules, the rule enforcers, and the "ruled"(student-athletes) leaves much to be desired. Specifically for the purposes of this paper, items 3, 5, 8, 11, and 12 in Table 1 demonstrate strong evidence that student-athletes will systematically engage in infractions. This seems to flow both directly and indirectly from how student-athletes and coaches interpret the rules. Item 4 in Table 2 clearly indicates that less than half of the Division I student-athletes in our sample correctly answered whether or not they can receive financial assistance outside of scholarship and financial aid.

QUALITATIVE DATA FOR SUBJECTIVE VOICES (See Figure 1.1, Questions 1, 2, 3, and 4)

Within the questionnaire, student-athletes were asked four open-ended questions after they completed the structured questions that relate to the data aforementioned. The questions were as follows:

1) Have you ever been hindered academically by a rule you did not know?,

2) Have you ever been hindered athletically by a rule you did not know?;,

3) Do you believe the NCAA is an appropriate "Voice of College Sports?" and,

4) Do you feel the people making the decisions for the student-athlete's welfare recognize the diversity (ethnic, gender, disabilities, etc.) of intercollegiate athletics?

The following were the major themes of 38 total quotes from the sample of student-athletes based on the four questions:

Controlling/Manipulative, Exploitation, and Unaware/Ignorance of NCAA Rules. The following section will outline the specific themes and give direct quotes from the student-athletes' responses.

Question 1: Have you ever been hindered academically by a rule did not know?

Category	Narrative
Misunderstood Rules	"No, I have not. However, I have teammates that have been ineligible because of rules they did not understand."
Student-athlete Responsibility	". . .because it's up to the students to get their education."
Balance/Commitment	"Many athletes are hindered academically in that some can not major in the field they would like to because of practice or their sport demands too much of them, prohibiting them from participating in things like internships or work-study while competing."
Institutional Control	"No, but it is a way for them to control us."
Lack of Awareness of Rules	"Yes, I was not aware of a rule and it made me ineligible for a few practices."
Institutional Control	"It is a way to keep athletes under control and limits our outside activities."
Misunderstood Rules	"Yes, it was my coach's fault because he did not know the NCAA rule and that cost me."

Institutional Exploitation	"No, but there are many athletes at this school that are ineligible everyday. . .[T]his whack institution hides it so they can juice them and throw them away after their eligibility is used up."
Institutional Exploitation	"No, because I mean too much to my team."
Institutional Exploitation	"Yes, but this school wants to use me so they took care of my academic mistakes."
Institutional Exploitation	"It really does not matter because coaches and athletic administrators will pull strings if you are important to them."
Rule Hindrance	"All student-athletes are hindered by rules everyday. That's what's messed up about the school, coaches and the damn NCAA."
Rule Hindrance	"It seems like all the rules are made to hinder us because we can't major in the areas that we want."
Academic Advisor Misunderstood Rules	"No, but the uninformed and unaware academic advisors are a hindrance to all the athletes at this university."
Athletic Priority	"It is hard to say because the coaches fix it for us if it is broken."

The first major theme, Controlling/Manipulative, reveals the consciousness and awareness of student-athletes in "the machine" of big-time athletics. The NCAA is a non-profit

organization that has fiscal expenditures that yield annual profit. This amateur sport contradiction is very salient to this particular student-athlete, as articulated through the sub-theme of balance commitments and student-athlete hindrance:

"Many athletes are hindered academically in that some cannot major in the field they would like to because of practice or their sport demands too much of them prohibiting them from participating in things like internships, or work study while competing."

The next sub-theme under the umbrella of Controlling/Manipulative refers to the institutional control and unequal treatment of which two student-athletes are fully aware of the constraints and politics placed upon the time management of athletic participants:

"It is a way to keep athletes under control and limits our outside activities."

". . .because it's up to the students to get their education."

Exploitation. The second major theme deals with one of the most sensitive issues of college sports in American higher education. Two student-athletes responded to the ideology of institutional exploitation and the revenue sport question after being asked if they have personally been affected by a rule:

No: But there are many athletes at this school that are ineligible everyday, but this whack institution hides it so they can juice them and throw them away after eligibility is used up.

Yes: but this school wants to use me so they took care of my academic mistakes.

The second sub-theme refers to the NCAA exploitation and revenue question and the awareness of another student-athlete of the power dynamics:

The NCAA governs hundreds of institutions. There is no way that they can accurately be the voice of college sports. I think there needs to be better communication (direct link) between the NCAA and the student-athletes. Often the student-athletes' opinion or voices are not heard by the NCAA when they go through the schools athletic administration.

Finally with the second theme of Exploitation, one student-athlete poignantly and intensely describes this labor relationship:

They keep all the money that us hard-working student-athletes make.

Unaware/Ignorance of NCAA Rules. The third and last major theme illuminates the skills or lack thereof by athletic administrators and coaches in the pressure to win environment such as the effects and relationship of misunderstood rules and coaches:

Yes it was my coaches' fault because he did not know the NCAA rule and that cost me.

Coaches are not the only ones to blame. Clearly the communication breakdown suffers between athletic administrators and student-athletes. The unawareness of a rule and its impact on a student athlete:

My eligibility was affected by a rule I was not aware of that compliance knew about but handled incorrectly in a situation I was involved in.

The last example of Unaware/Ignorance of NCAA Rules, is the affect of academic advisors misunderstanding or apathy and neglect towards academic matriculation:

Dealing with the credit load you carry each semester, it was not very clear in explaining that the 12 credits must all be degree applicable. If you end up having to make a pre-requisite course for a degree applicable class, often those classes do not go towards your degree, meaning you are not able to maintain the minimum credit load, meaning ineligible. Often you don't realize this because counselors tell you that you're on track and you're eligible. Often you find out that your ineligible after the last day to add classes.

What might these anecdotes mean? First, every student-athlete in the study did not respond to each of the four questions asked. This is primarily due to the sensitive nature of exposing the NCAA, coaches and athletic administrators. Also, it is difficult to generalize the quotes and narratives beyond the single-institution in our study. However, some facts appear clear from the feelings by some of the 60 student-athletes in their own words. Nearly 70% of the participants in our sample are African-American student-athletes in the sports of football, basketball, baseball, and track and field. These are the sports that African-

American males and females are primarily recruited to perform in. Coupled with this fact is that Division I revenue sports take place mostly at predominantly white institutions. Big-time college sports have a "machine" ideology of winning, marginal educational expectations, and cheating.[114] These facts translate into environments that have skewed priorities and a monolithic focus on athletic prowess. Our qualitative and quantitative data reveal miscommunication and misbehavior at a single institution. However, if the same ideologies exist in the same conference, affiliations, and rival teams, what types of related problems and issues exist in the entire system?

[114] *See generally* DEREK SPARKS, LESSONS OF GAME: THE BETRAYAL OF AN ALL-AMERICAN FOOTBALL STAR (Game Time Publishing 1999), ANDREW ZIMBALIST, UNPAID PROFESSIONALS 31-32 (Princeton University Press 1999), & MURRAY A. SPERBER, COLLEGE SPORTS INC. (:Henry Holt Press 1990).

IS RACE A FACTOR IN THIS GAME OF GAMES?

Question 2: Have you ever been hindered academically by a rule did not know?

Category	Narrative
Academic Advisor Misunderstood Rules	"Dealing with the credit load you carry each semester, it was not very clear. . .that the 12 credits must all be degree applicable. If you end up having to make a prerequisite course for a degree applicable class, often those classes do not go towards your degree, meaning you are not able to maintain the minimum credit load, meaning ineligible. Often you don't' realize this because counselors tell you that you're on track and you're eligible. Often you find out that you're ineligible after the last day to add classes."
Unaware of Rule	"My eligibility was affected by a rule I was not aware of that Compliance knew about but handled incorrectly. . ."
Misunderstood Rule	"I missed a game because of a rule I did not understand."
Misunderstood Rule	"No, but I have teammates that have missed games because they did not understand a rule."

Question 3: Do you believe the NCAA is the appropriate "Voice of College Sports"?

Category	Narrative
Size of System Too Large for NCAA	"No, because the NCAA cannot effectively input a system of checks and balances in each and every school, college or university that has an athletics program."
NCAA Exploitation	"NCAA runs a plantation-type mentality that does not take into consideration the student's athlete's plight."
Appropriate as Overseeing Body	"I believe they are but only generally speaking for all universities. It's a broad concept."
NCAA Exploitation	"They are not what they pretend to be."
NCAA Exploitation	"Hell no. Where does all the money from tournaments and bowl games go?"
Appropriate as Overseeing Body	"It keeps a guideline for all universities to abide by."
Size of System Too Large for NCAA	"The NCAA governs hundreds of institutions. There is no way that they can accurately be the voice of college sports. I think there needs to be better communication (direct link) between the NCAA and the student-athletes. Often, the student-athletes' opinion or voices are not heard by the NCAA when they go through the school's athletic administration."
Size of System Too Large for NCAA	"So many schools. I think it is a tough job, but they are not doing so hot."

NCAA Not Effective	"The equality in sports is very bad, and the NCAA is not doing their job."
Appropriate as Overseeing Body	"Yes, because they made the guidelines for their voices to be heard."
NCAA Not Effective	"Are you crazy? There are so many problems in college sports and the NCAA is at the root of most of the problems."
NCAA Secretive	"Who knows. They are so secretive about what they do. Student-athletes are left out of the loop."
NCAA Exploitation	"They keep all the money that us hard-working student-athletes make."
NCAA Exploitation	"I wish they would let us have more money, but they probably kept the extra money for themselves."
NCAA Not Representative of Student-Athlete	"I wish the NCAA was a better representative of the student-athlete. It could make our experience so much better."
NCAA Exploitation	"The NCAA pimps student-athletes, coaches and athletic departments."

Question 4: Do you feel the people making the decisions for the student-athlete's welfare recognize the diversity (ethnic, gender, disability, etc.) of intercollegiate athletics?

Category	Narrative
Not Effective or Diverse	"Although there have been attempts to improve this, they are not very effective. The people making the decisions are often not those of different ethnicities or are often primarily the same gender (male). A better outreach to multicultural athletic departments is needed."
NCAA not recognizing diversity	"Everyone is not the same, and I feel they shouldn't be treated the same [by the NCAA rules]."
College Athletics a Business	"College athletics is a business of numbers, and it's clearly evident in graduation rates."

In a capitalist and oppression equation, race, gender, class, and image should never be excluded from the analysis and problem solving sequence. In terms of collegiate sports, two major themes of the African-American experience deals with labor and policy. First, Sack and Staurowsky:

> At first glance, the dominant role of blacks in collegiate sport would seem to provide further evidence that sport is indeed an elevator to success. A closer look, however, reveals that universities have been far more concerned with exploiting the athletic talent of the black community than with nurturing its academic potential.[115]

This labor ideology has been less convincing to some African-American male student-athletes, specifically in the revenue-producing sports. The "fruits and spoils" of college sports that many institutions, coaches, and boosters benefit from are too visceral and enticing to convince young student-athletes that they are receiving a "free education" in exchange for their athletic

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[115] ALLEN L. SACK & ELLEN J STAUROWSKY, COLLEGE ATHLETES FOR HIRE 104 (Praeger Publishers 1998).

exploits. The marginal treatment and low academic and scholarly expectations of African-American male student-athletes in revenue sports is captured by scholar Andrew Zimbalist:

> Neither the NCAA nor universities in general should be expected to solve the problems of U.S. society. Educational deficiencies based in broken families, cultural violence, and poorly funded schools cannot be redressed by the university alone. Nor will incentives from the NCAA suffice to inspire young athletes to do their homework. These problems must be attacked at their roots and not wished away by ratcheting down academic standards.[116]

The major variable from the contradictions is that not many infractions involving African-American male student-athletes are a racial phenomenon. Culturally, there seems to be more substance of what may be taking place. As previously discussed and documented, the environment of college sports in the selected few sports that African-Americans participate in is a confusing, chaotic, and commercially-driven mantra. African-American male student-athletes in the final analysis are just human beings that are prized pawns in huge game of the American dream: winning, and success. Logically, these prized recruits reach for their "piece of the pie" and sometimes get caught. As Figure 1.2 demonstrates, their behaviors that are labeled "deviant" by the powers that be are not exclusive of a context that cultivates, somewhat expects, and produces deviant behavior.

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[116] ANDREW ZIMBALIST, UNPAID PROFESSIONALS 31-32 (Princeton University Press 1999).

Figure 1.2 Deviant Behaviors on College Game Day

Violence
Alcohol abuse
Vulgar language
Ticket scalping
Cheating
Gambling
Sexism
Racism

WHAT STEPS ARE NECESSARY TO CORRECT THE CURRENT TREND?

Based on the legal and statistical analysis, there are a number of ways in which schools can deal with the embarrassment of alleged student-athlete misconduct and still safeguard their constitutional rights. First, institutions should follow the lead of some of the larger schools and create a separate and distinct code of conduct for athletes. The code would address both on- and off-field behavior. The conduct code would clearly outline the type of behavior that is expected of each student-athlete and be unambiguous about the kind of behavior that will not be tolerated. For instance, many schools suspend a student-athlete when they have been charged with a felony. In an ideal student-athlete conduct code, schools should consider all criminal activity, be it misdemeanor or felony, a violation of the code. The sanctions for violations of the student-athlete code should be unmistakable.

Next, student-athletes should be required to attend seminars where they would be thoroughly briefed on the code of conduct and given an opportunity to ask pointed questions. Once they have attended such a seminar, they should be required to sign a form stating that they understand the code of conduct and understand the consequences of violations of the code. This would, at least theoretically, place some of the responsibility squarely on the athletes.

Third, there should be a student-athlete consultant group

formed by the universities. The body would exist to give athletes and opportunity to give the administration feedback on the effectiveness of the code of conduct, point out strengths and weaknesses with the code, as well as properly give the student-athletes a voice in the behavior module. As discussed in subsection (a), student-athletes feel that they do not have a voice in the rulemaking process and this consultant group would hopefully eviscerate such feelings.

Fourth, the schools should prepare a review board especially to hear violations of the student-athlete code of conduct. The review board would consist of a member of the athletic department, a faculty member, a student, and a Student Affairs Division representative. The panel would always be on-call and would convene within 24 hours of outside legal charges being brought against a student-athlete. The purpose of the hearing would be to hear the charges that have been brought against the student-athlete, give him or her the opportunity to present witnesses and evidence in support of the case, and assess whether he or she does not pose a threat to his/herself, teammates or the university community. Based on the strength of the evidence and the severity of the charges, the board would vote on whether to suspend the athlete from participating in his or her chosen sport during the pendency of the charges. The board would not be concerned with the athlete's innocence or guilt, would not relieve the athlete of any pending legal action or action by the university's conduct review process. The basic purposes of the board would be to give the athlete an opportunity to explain the outside charges to meet the university's due process obligation and to make the necessary suspension determinations within a reasonable time.

Finally, schools should appoint a "behavior compliance officer" to serve in the athletics department. This person would be responsible for continually monitoring student-athlete behavior, developing ways to improve upon the student-athlete code of conduct, and serving as a contact for athletes and administration with regards to conduct issues. This person would serve as the enforcing authority for all decisions of the conduct board described above and would also serve as a consultant to the board.

Implementation of these suggestions would not only bring school responses to student-athlete alleged misconduct into constitutional compliance, but would also serve to reverse the trend in the rising numbers of student-athlete incidents.

CONCLUSION

When the Due Process Clause of the Fourteenth Amendment is applied against the policy of automatically suspending student-athletes for alleged misconduct utilized by most state institutions of higher education, these policies fail to meet constitutional muster. These policies fail because the student-athletes have a liberty interest at stake and schools have ignored the requisite need for notice and a hearing before the athlete is

suspended. The risk of stigmatizing innocent student-athletes is too great for schools to continue ignoring due process. With all the money being made by state universities and colleges, they should not forget their responsibility to those who have an integral part in that process. This is the stretch run for state institutions and they should step to the plate and properly insure the rights of student-athletes.