



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

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I. INTRODUCTION

In America, athletic pursuits and achievements receive almost unparalleled regard and importance. We immortalize star athletes in our minds and in our culture, keeping their names alive for generations after they retire.¹ We crowd around the television for major sporting events, foregoing other important things to get a glimpse of our best athletes competing at the highest level.² Our professional leagues are multibillion-dollar ventures that dominate and set the standards in their respective sports.³ On a more personal level, we develop relationships, build ourselves, find an escape, and learn lessons about life through athletics.⁴ From the moment we can hold a ball and grasp the rules of the game, we learn and grow through sports.

¹ See Raymond L. Schmitt & Wilbert M. Leonard II, *Immortalizing the Self Through Sport*, 91 AM. J. SOC. 1088, 1090 (1986).

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, 9 (2000) (comparing sports to religion and 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").

³ See generally Brad R. Humphreys & Yang Seung Lee, *Franchise Values in North American Professional Sport Leagues: Evidence from a Repeat Sales Method* (N. Am. Ass'n of Sports Economists, Working Paper No. 09-14, 2009) (discussing the valuation of professional sports teams and the overall upward trend of league value and revenues).

⁴ Andy Rudd, *Which "Character" Should Sport Develop?*, 62 PHYSICAL EDUCATOR 205, 206 (2005).

Just as sports have the ability to build up an individual and teach skills necessary to achieve success, they also have the capability, if abused, to break someone down and compromise their future promise. Stories of our athletic system taking advantage of and breaking its promises to athletes can make the headlines.⁵ Athletics is big business and an easy way to profit⁶ off an uninformed workforce. There is, of course, a multitude of success stories in American sports: stories appear in the news every single day advertising the many young men and women who make it to the pinnacle of their profession and see their goals fulfilled. In addition, there are many professionals and adults engaged in the business of youth sports and athletics who are mentors, caregivers, and teachers. However, those success stories should not preclude examination of their counterparts, stories of athletes whose promise went unfulfilled, whose goals were left unattained, and whose development were 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 grown to dominate the youth and amateur levels of the sport.⁷ In terms of coaching and development at the middle and high school level,

⁵ See e.g. Harvey Araton, *Star-to-Be Who Never Was*, N.Y. TIMES (Mar. 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, a former top prospect whose personal struggles and influences, magnified without a support system, derailed his career); GEORGE DOHRMANN, *PLAY THEIR HEARTS OUT: A COACH, HIS STAR RECRUIT, AND THE YOUTH BASKETBALL MACHINE* (2012) (providing 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, had immense talent but, under the burden of improper coaching and influence, encountered trouble at several college programs and ultimately failed in his NBA aspirations).

⁶ Maureen Weston, *The Fantasy of Athlete Publicity Rights: Public Fascination and Fantasy Sports' Assertion of Free Use Place Athlete Publicity Rights on an Uncertain Playing Field*, 11 CHAP. L. REV. 581, 589 (2008) (noting that as technology develops, so do “opportunities for emerging and lucrative markets for sports-themed products”).

⁷ See generally DAN WETZEL & DON YAEGER, *SOLE INFLUENCE: BASKETBALL, CORPORATE GREED, AND THE CORRUPTION OF AMERICA'S YOUTH* (2000) (examining 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).

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 to organize and spread basketball across the country, but has also brought with it an underbelly rife with corruption, greed, and other immoral behavior.⁸ Second, basketball has developed substantial connections with national broadcasters and is shown consistently during primetime on major television networks.⁹ This connection between college sports and mass media has contributed greatly to the spread and popularity of the game. However, it has also injected unprecedented money and promotion into a system that is supposed to be, at those levels, an amateur endeavor. This wealth has not only greatly enriched the universities and their athletic programs, but has also attracted agents, publicists, and other professionals looking to profit from the on-court successes of impressionable young men and women.¹⁰

Many of the young athletes most at risk to the perils of the system are minorities from unstable backgrounds and poor communities: a ten-year study conducted by Joshua Kjerulf Dubrow of the Polish Academy of Sci-

⁸ Dohrmann, *supra* note 5, at 87-88; see also Eric Prisbell & Steve Yanda, *It's a Whole New Ballgame, and Maryland's Williams Isn't Playing*, WASHINGTON POST (Feb. 13, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/12/AR2009021202299.html?sid=ST2009021102913>.

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. Brad Wolverton, *NCAA Agrees to \$10.8-Billion Dollar Deal to Broadcast Its Men's Basketball Tournament*, THE CHRONICLE OF HIGHER EDUCATION (Apr. 22, 2010), <http://chronicle.com/article/NCAA-Signs-108-Billion-De/65219/>. The move was estimated to net NCAA member schools nearly \$740 million dollars annually. *Id.* 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, 1:54 PM), <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, 10:49 AM), <http://www.forbes.com/sites/chris-smith/2012/03/12/college-basketballs-most-valuable-teams/>.

ences and Jimi Adams of Arizona State University, which focused on NBA players and their backgrounds, 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.¹¹ Even outside of racial minorities, socioeconomic statuses still greatly influence one's success; for example, socioeconomically disadvantaged white NBA-caliber athletes are 75 percent less likely to become NBA players than similarly talented middle-class or well-off whites.¹² Despite the risks and tremendous odds, thousands of young men and women every year pursue their basketball dreams under the shadow of a multi-million dollar, predatory business model.¹³ These athletes are susceptible to manipulation and exploitation, often by the very institutions that regulate and provide order to the system.

This paper will first discuss the history of the NCAA and AAU organizations and pinpoint where the current problems of commercialization and professionalization originated. Integral to telling this history is relating horror stories of recruiting and other examples of young talents who were taken advantage of by unscrupulous actors, both of which continue today. The paper will then analyze the three factors that heavily influence and buoy this unfair system. These factors include the power of athletic shoe and apparel companies to influence the tactics and organization of the youth game, the rampant commercialization of young basketball talent, and the money behind both the NCAA and the universities and colleges who play under its banner.¹⁴ Each of these factors plays a huge role in bolstering and perpetuating the current system of youth basketball in America.

After identifying the inherent problems with these different factors, we will discuss what we can do to solve the issue. In this section, we first address the hotly-debated proposition of paying college athletes, offering possible solutions for the impasse between the pay-to-play advocates and their detractors. In addition to that discussion, 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

¹¹ Joshua K. Dubrow & Jimi Adams, *Hoop Inequalities: Race, Class, and Family Structure Background and the Odds of Playing in the National Basketball Association*, 47 INT'L REV. FOR SOC. SPORT 43, 52 (2010).

¹² *Id.* at 51-53.

¹³ See *College Basketball & Scholarship Opportunities*, <http://www.scholarshipstats.com/basketball.htm> (last visited Apr. 21, 2014).

¹⁴ 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/about/who-we-are/national-office> (last visited Apr. 21, 2014).

the radical solution of reforming the current system to more resemble the sports academies that can 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 necessary.

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 provided structure and organization to youth sports across the United States. Founded on January 1, 1888,¹⁵ the organization is “dedicated exclusively to the promotion and development of amateur sports and physical fitness programs.”¹⁶ The organization originally represented amateur athletic interests on the international stage, but the Olympic and Amateur Sports Act (“Amateur Sports Act”) of 1978 shifted the responsibility of Olympic amateur regulation away from the AAU.¹⁷ In response to this legislation, the AAU's presence quickly shifted to providing opportunities for over 1.1 million members¹⁸ in over thirty competitive sports on the domestic stage.¹⁹ 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 twenty-nine years later.²⁰ Today, basketball can be considered the major driver of the AAU, with nearly 50 percent of the 1.1 million memberships stemming from that sport.²¹

Within amateur basketball, AAU programs involve select teams of elite basketball players who compete on a national scale during the high

¹⁵ Ryan Wood, *The History of AAU Basketball*, USA BASKETBALL (Mar. 29, 2010), <http://www.usab.com/youth/news/2010/03/the-history-of-aau-basketball.aspx>.

¹⁶ *FAQs*, THE AMATEUR ATHLETIC UNION, <http://www.aausports.org/FAQs> (last visited Oct. 31, 2014).

¹⁷ *Amateur Sports Act of 1978*, TEAM UNIFY, <http://www.teamunify.com/eznslsc/UserFiles/File/Background%20-%20Amateur%20Sports%20Act%20of%201978.pdf> (last visited Nov. 29, 2014).

¹⁸ Wood, *supra* note 15.

¹⁹ Paul Pogge, *Full Court Press: Problems Plaguing Youth Basketball in the United States and an Aggressive Plan to Attack Them*, 8 U. DENV. SPORTS & ENT. L.J. 4, 5 (2010).

²⁰ *Id.*

²¹ Wood, *supra* note 15.

school basketball offseason.²² 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 basketball.²³ AAU and non-AAU summer tournaments now serve as one primary evaluation window for college coaches.²⁴ 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.²⁵ The monetary aspects of AAU basketball have had some negative effects on the program. 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.²⁶ These scandals often can be linked to one of four different inherent problems in AAU basketball system.

The first of these problems is the little-regulated access that power brokers, agents, and unprincipled coaches are allowed to have with kids competing on AAU basketball teams. Agent runners, who can often be AAU coaches,²⁷ act as intermediaries 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).²⁸ They have often been described as some of the most toxic actors in the game of college basketball.²⁹ 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

²² Mike Salerno, *Traveling Violation: A Legal Analysis of the Restrictions on the International Mobility of Athletes*, 25 N.Y. INT'L L. REV. 1, 29 (2012).

²³ Wood, *supra* note 15.

²⁴ See Dohrmann, *supra* note 5, at 382.

²⁵ Wood, *supra* note 15.

²⁶ Michel Martin, *The Seamy Side of Youth Basketball*, NPR (Mar. 9, 2012, 12:00 PM), <http://www.npr.org/2012/03/09/148299513/the-seamy-side-of-youth-basketball>.

²⁷ Josh Peter & Dan Wetzel, *Agents and AAU: Unrequited Love*, YAHOO! SPORTS (Mar. 11, 2009), <http://sports.yahoo.com/ncaa/basketball/news?slug=ys-agents031109>.

²⁸ Eric Prisbell, *AAU Coach: I Took Money Intended to Steer Ben McLemore*, USA TODAY SPORTS (June 21, 2013, 3:37 AM), <http://www.usatoday.com/story/sports/ncaab/big12/2013/05/04/kansas-jayhawks-ben-mclemore-darius-cobb/2131775/>.

²⁹ Tom Keegan, *Opinion: McLemore Case Exposes the Seedy Underworld of College Basketball*, KUSPORTS.COM (May 6, 2013), <http://www2.kusports.com/news/2013/may/06/opinion-mclemore-case-exposes-seedy-underworld-col/>.

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 in the press that he had received almost \$10,000 in cash, was gifted free trips to Los Angeles, and had meetings with agents with the help of his AAU coach, Darius Cobb, and Rodney Blackstock, known in the industry as an "agent runner."³⁰ An agent runner is often paid \$100,000 or more in order to talk to a basketball player, influence him on major career decisions, and pass along the agent's message, often disguised as advice on which school to choose and with which agent to sign.³¹ McLemore and the University of Kansas faced serious NCAA violations for the relationship with the agent runner, although no sanctions were eventually levied.³² 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 agent runners can have.

The second problem is the lack of oversight of many coaches in the AAU, which allows those 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.³³ This relatively low bar for membership has allowed many different types of people, some with self-serving and destructive goals, to gain legitimacy and access to the program and to young players.

One particularly riveting account of a coach taking advantage of this system was detailed by Sports Illustrated writer and Pulitzer Prize-winner George Dohrmann in *Play Their Hearts Out: A Coach, His Star Recruit, and the Youth Basketball Machine*.³⁴ Over the course of eight years, Dohrmann followed the story of Joe Keller, a Southern California-based AAU coach with unscrupulous and often damaging tactics, and Demetrius Walker, a 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

³⁰ Prisbell, *supra* note 28.

³¹ *Id.*

³² Prisbell, *supra* note 28.

³³ AMATEUR ATHLETICS UNION, HOW TO START AN AAU ATHLETICS PROGRAM, available at <http://image.aausports.org/dnn/athletics/2013/2013AAUAthletics-Get-StartedPacket.pdf>.

³⁴ Dohrmann, *supra* note 5.

obtain sponsorships and funding from major shoe companies.³⁵ He did so at the cost of the basketball careers of some of his players, including Walker (whose questionable behavior, including fighting with teammates and opponents, he enabled and whom he stopped supporting after Walker lost his usefulness on the court).³⁶ Dohrmann's writing depicts Keller as someone who should never have an influential role in the development of young basketball players. Unfortunately, Keller's approach is not unique to the basketball system, and the other stories that Dohrmann documented make this reality painfully clear.³⁷

To compound the problem of unregulated agent-runners and coaches, many of these AAU teams require a great deal of funding, and the rules and regulations governing the sources of money for these teams are uneven and rarely enforced very heavily.³⁸ None of the players in the AAU system are paid and, as a result, 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 six-figure compensation package with Adidas.³⁹ While both the AAU code and the NCAA do not permit athletes to be paid directly, neither regulating body actively restricts the amount of other benefits such as apparel, trips, and meals that are showered on teams and their players.⁴⁰ Determining whether these benefits reach the level of a formal violation is often left to the NCAA, which rarely levels significant penalties in those cases.⁴¹ So while money freely flows into AAU teams (and often into the coach's pockets), the NCAA and AAU essentially turn a blind eye.⁴² Be-

³⁵ *Id.* at 24-25, 46, 54-55.

³⁶ PJ Carr, *The Cautionary Tale of Demetrius Walker*, ONCAMPUSSPORTS.COM, <http://oncampussports.com/2013/12/cautionary-tale-demetrius-walker/> (last visited Oct. 31, 2014).

³⁷ Dohrmann, *supra* note 5, at 44-46 (discussing 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).

³⁸ *Id.*

³⁹ Taro Greenfeld, *The Fast Track*, SPORTS ILLUSTRATED (Jan. 24, 2005), <http://157.166.253.202/vault/article/magazine/MAG1104412/index.htm>.

⁴⁰ Salerno, *supra* note 22, at 29.

⁴¹ 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. *Id.*

⁴² *See 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

yond the money itself, professionals such as apparel company executives and agents exert influence in this realm. This influence allows them to entrench themselves into the process, representing athletes but not keeping their best interests in mind.

Not only has the AAU been dogged by accusations of impropriety among some of its coaches, it has faced questions over whether a few of its coaches, charged with mentoring some of the nation's best high-school players, have criminal records 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.⁴³ Malone, who pled guilty and currently faces five to ten years in jail,⁴⁴ 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.⁴⁵ While this 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 issue in the industry.

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.⁴⁶ Every year during the lead up to the professional basketball draft, young athletes are analyzed, dissected, and critiqued to a high degree.⁴⁷ Some

to AAU players. See, e.g., Eric Crawford, *The Vault: The Marvin Stone-NCAA Saga*, ERICCRAWFORDSPORTS.WORDPRESS.COM (May 31, 2010), <http://ericcrawford-sports.wordpress.com/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).

⁴³ *AAU Big Shot Arrested on Drug Charges*, FOX SPORTS (June 2, 2014, 3:05 PM), <http://msn.foxsports.com/collegebasketball/story/aau-dc-assault-founder-coach-curtis-malone-arrested-washington-dc-drug-trafficking-charges-power-broker-081213>.

⁴⁴ Rob Dauster, *DC Assault Co-founder Curtis Malone Pleads Guilty, Facing 5-10 Years in Prison*, NBC SPORTS (Mar. 13, 2014, 12:07 PM), <http://collegebasketball.talk.nbcsports.com/2014/03/13/dc-assault-co-founder-curtis-malone-pleads-guilty-facing-5-10-years-in-prison/>.

⁴⁵ *Id.*

⁴⁶ See Eamonn Brennan, *Steve Kerr on the Age Limit and AAU*, ESPN (May 8, 2012, 2:30 PM), http://espn.go.com/blog/collegebasketballnation/post/_id/58828/steve-kerr-on-the-age-limit-and-aau.

⁴⁷ See Zach Braziller, *Prepping for NBA Draft a Grind for Russ Smith*, N.Y. POST (June 23, 2014, 12:58 AM), <http://nypost.com/2014/06/23/prepping-for-nba-draft-a-grind-for-russ-smith/> (telling the story of one NBA hopeful, Russ Smith, and the whirlwind he went through leading up to the 2014 NBA Draft).

teams, including the NBA's San Antonio Spurs, have not only acknowledged these problems but have taken a step further in moving away from drafting and developing American players who come up through the AAU system.⁴⁸ The Spurs' strategy has been defined, in part, by a perceived disinterest in American players who, in team officials' minds, 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.⁴⁹ 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.⁵⁰ 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 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."⁵¹ Krzyzewski's comments, while demonstrative of the lack of inherent accountability and supervision for AAU coaches, 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.⁵² Without a doubt, the AAU basketball

⁴⁸ Seth Wickersham, *Made Not in America*, ESPN THE MAG. (June 11, 2013), http://espn.go.com/nba/story/_id/9364989/san-antonio-spurs-doing-right-drafting-international-athletes-espn-magazine.

⁴⁹ *Id.*

⁵⁰ 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, 5:47 PM), <http://basketball.realgm.com/wiretap/229378/Spurs-GM/Coaching-Tree-Expands-To-11>.

⁵¹ Tom Davis, *Krzyzewski Sees Pros, Cons of AAU*, FORT-WAYNE NEWS SENTINEL (Sept. 30, 2011), <http://www.news-sentinel.com/apps/pbcs.dll/article?AID=/20110930/SPORTS/110939999/1002>.

⁵² See Welch Suggs, *Tragedy and Triumph in Title IX*, 7 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).

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 and associated issues.

B. The NCAA and the Big Business of College Basketball

The National Collegiate Athletic Association began in the early 20th century.⁵³ 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.⁵⁴ The IAA changed its name to the National Collegiate Athletic Association in 1910 and began fulfilling its mandate.⁵⁵ For much of its early existence, the NCAA was charged with merely creating and maintaining the rules and had little oversight or governance features.⁵⁶ 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 increased not only its governance capabilities but also its enforcement capacity.⁵⁷ The NCAA is currently “an unincorporated association consisting of approximately 960 public and private universities and colleges [that] adopt rules governing member institutions’ recruiting, admissions, academic eligibility, and financial aid standards for student athletes.”⁵⁸ 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.⁵⁹

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 and college athletes.⁶⁰ Court decisions, such as *NCAA v. Tarkanian*,⁶¹ freed the NCAA

⁵³ Smith, *supra* note 2, at 12.

⁵⁴ Kristen R. Muenzen, *Weakening Its Own Defense? The NCAA’s Version of Amateurism*, 13 MARQ. SPORTS L. REV. 257, 257-58(2003).

⁵⁵ Smith, *supra* note 2, at 12.

⁵⁶ *Id.* at 13.

⁵⁷ *Id.* at 14 (citations omitted).

⁵⁸ *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 179 (1988).

⁵⁹ *Trustees of Cal. State Univ. & Colleges v. Nat’l Collegiate Athletic Ass’n*, 147 Cal. Rptr. 187, 189 (Cal. Ct. App. 1978).

⁶⁰ Allie Grasgreen, *Tough Choices for Athletes’ Advisers*, INSIDE HIGHER ED (May 9, 2012), <https://www.insidehighered.com/news/2012/05/09/ncaa-academic-rules-frustrate-advisers-athletes>.

from much due process scrutiny and empowered the organization to take greater steps in enforcing regulations and restrictions on not only athletes but also universities and athletic departments.⁶² As a voluntary organization, the NCAA cannot be sued as a state actor.⁶³ While the NCAA suffered other defeats in the federal court system, particularly on the issue of antitrust allegations,⁶⁴ it nonetheless expanded its mandate and grew exponentially along with the growth of interest in amateur athletics. Today, the NCAA is charged with administering 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.⁶⁵

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 college players, but also universities and coaches, to succeed on and off the court. 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 that the rules place heavy restrictions on the mobility of college athletes, not only between amateur and professional levels but also between different universities. In the 2005 incarnation of the NBA's Collective Bargaining Agreement (CBA) on the amateur-professional

⁶¹ 488 U.S. 179 (1988).

⁶² See John P. Sahl, *College Athletes and Due Process Protection: What's Left After National Collegiate Athletic Association v. Tarkanian*, ___ U.S. ___, 109 S. Ct. 454 (1988)?, 21 ARIZ. ST. L.J. 621, 622 (1989) (positing that the NCAA can continue to regulate amateur athletics at the college level free from constitutional restraint).

⁶³ See *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 another NCAA legal victory, see *R.M. Smith v. Nat'l Collegiate Athletic Ass'n*, 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).

⁶⁴ See *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85 (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).

⁶⁵ See Steve Berkowitz, *NCAA Had Record \$71 Million Surplus in Fiscal 2012*, USA TODAY (May 2, 2013, 8:58 AM), <http://www.usatoday.com/story/sports/college/2013/05/02/ncaa-financial-statement-surplus/2128431/>.

divide, the NBA Players Association and the NBA agreed to “raise the age floor for draft entry from 18 to at least 19 years of age, effective in the 2006 NBA Draft.”⁶⁶ 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.⁶⁷ While the NCAA had little control over the creation and implementation of the year-in-waiting, it benefitted greatly from the rule. With the new NBA commissioner, Adam Silver, now considering raising the minimum age again by one more year⁶⁸ and thereby assuring that athletes must wait two years after graduating high school before entering the NBA, the NCAA only stands to benefit further. However, while the NCAA benefits from these increasing age restrictions, such movement and progress restrictions create a whole host of issues for the athletes, including increasing the risk of injury and jeopardizing an athlete’s career or draft status, and the immense financial benefit that universities and the NCAA stand to gain with popular basketball stars being forced to stay on campus another year.⁶⁹ While the stated goals of this action seem legitimate (such as giving players more seasoning in the game and added maturity before being thrown into the professional pressure cooker), such regulations unfairly punish the athletes and actually conflict with established data on player development, which suggests that players develop more in the NBA than they would in an extra few years in college.⁷⁰

In addition to this proposed expansion of the minimum age rules, the NCAA has also placed unfairly harsh transfer rules on basketball players who wish to leave one program and attend another.⁷¹ Whereas a basketball

⁶⁶ Michael A. McCann, *The Reckless Pursuit of Dominion: A Situational Analysis of the NBA and Diminishing Player Autonomy*, 8 U. PA. J. LAB. & EMP. L. 819, 832 (2006).

⁶⁷ Nitin Sharma, *An Antitrust and Public Policy Analysis of the NBA’s Age/Education Policy: At Least One Road Leads to Rome*, 7 RUTGERS J. L. & PUB. POL’Y 481, 485 (2010).

⁶⁸ Rob Mahoney, *NBA Commissioner Adam Silver to Push for Higher Age Limit*, SPORTS ILLUSTRATED (Feb. 14, 2014), <http://nba.si.com/2014/02/14/nba-higher-age-limit-adam-silver/>.

⁶⁹ *Id.*

⁷⁰ *Id.*; see also Kevin Pelton, *NBA Develops Players Better*, ESPN (Mar. 11, 2014, 5:32 PM), http://insider.espn.go.com/nba/story/_/id/10588150/nba-why-nba-develops-players-better-college.

⁷¹ Shannon J. Owens, *Time for NCAA to Relax Transfer Guidelines Student-Athletes*, ORLANDO SENTINEL (Dec. 19, 2011), <http://articles.orlandosentinel.com/2011-12->

coach can leave one program and coach another in one year's time,⁷² a player often has to sit out for one year, unless granted a transfer exception by the NCAA. This puts many players at a disadvantage as they lose a prime playing year and the exposure that comes with it. The two rules have also both added an extra layer of pressure on athletes, which creates indecision that negative influences, such as agents and agent runners, can exploit through gifts, advice, or simply being the voice in their ear.

A second issue is that a number of people and entities, including the NCAA itself, profit off the names, likenesses, and on-field successes of college athletes who receive no compensation other than scholarships to their schools. This ongoing issue has only become more pronounced with the increase in television broadcasts of college games, the jump in sales of sports merchandise through the university, and the development of video games focused on college sports.⁷³ 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.⁷⁴ 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 2006.⁷⁵ Moreover, of the NCAA's 2012 revenue, which totaled around \$872 million, almost \$709 million came from television and marketing rights fees.⁷⁶ While expenditures by the NCAA and member schools have also seen a corresponding jump,⁷⁷ the vast amount 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, controversy and argument have

19/sports/os-shannonowens-ncaa-asu-1220-20111219_1_student-athletes-football-coach-transfer.

⁷² *Id.*

⁷³ See Darren Rovell, *NCAA Holds Firm: No Pay for Play*, ESPN.COM (Dec. 11, 2013, 5:30 PM), http://espn.go.com/college-sports/story/_/id/10119750/ncaa-president-mark-emma-insists-pay-play-model-coming.

⁷⁴ Berkowitz, *supra* note 65.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ In 2012, big-time athletic programs increased operational spending by \$665 million, against a \$385 million increase in revenue. Steve Berkowitz & Jodi Upton, *NCAA Member Revenue, Spending Increase*, USA TODAY (July 1, 2013, 4:25 PM), <http://www.usatoday.com/story/sports/college/2013/05/01/ncaa-spending-revenue-texas-ohio-state-athletic-departments/2128147/>.

grown over the fact that these increased profits and revenue streams have been born and developed on the backs of talented players who are, essentially, unpaid labor.⁷⁸ 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.⁷⁹ In concert with this, a recent win by Northwestern football players seeking to be recognized as possible union employees by the National Labor Relations Board has put the amateurism model of the NCAA under the spotlight.⁸⁰

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 accept 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 they are caught with improper benefits.⁸¹ In a recent concession, the NCAA allowed member schools to supply their athletes with unlimited food and snacks.⁸² This move was met with widespread ridicule, given its delay and ineffective solution to the much more insidious problem of unpaid labor.⁸³ Rather than a system that places the onus of decision-making and maturity on eighteen- and nineteen-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.

⁷⁸ See discussion *infra* Section III.

⁷⁹ *In Re Student-Athlete Name & Likeness Licensing Litig.*, No. C 09-1967 CW, 2010 WL 5644656, at *1 (N.D. Cal. Dec. 17, 2010).

⁸⁰ Both of these legal challenges will be discussed later, but each has tremendous implications for the NCAA's economic and regulatory model.

⁸¹ Dustin Hockensmith, *Worse Violation of NCAA Student-Athlete "Culture": North Carolina or Penn State?*, PENNLIVE.COM (Jan. 29, 2014, 10:16 PM), http://www.pennlive.com/pennstatefootball/index.ssf/2014/01/worse_infringement_on_ncaa_stu.html.

⁸² Matt Norlander, *NCAA Votes to Allow Unlimited Food Supply for Players*, CBS SPORTS (Apr. 15, 2014, 5:54 PM), <http://www.cbssports.com/collegebasketball/eye-on-college-basketball/24528113/ncaa-votes-to-allow-unlimited-food-supply-for-players>.

⁸³ See Kevin Trahan, *NCAA Allows 'Unlimited Meals' (days after Shabazz Napier claimed hunger)*, SBINATION (Apr. 15, 2014, 5:26 PM), <http://www.sbnation.com/college-football/2014/4/15/5618236/new-ncaa-rules-meals-snacks-SNACKS>.

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

Even the AAU and NCAA institutions and leading individuals within those institutions acknowledge that the system of basketball development in America has serious, fundamental problems.⁸⁴ These problems have plagued both the AAU and NCAA for a number of years and have led to many stopgap solutions that have done little to stem the tide or erase the subversive elements of the system.⁸⁵ The problems are numerous and often amorphous, spread out across the country and rearing their heads in many different situations and circumstances. Sports reform 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.⁸⁶ 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, commoditization, the political economy of college sports, or university administrators.⁸⁷ Regardless of the cause, each of these problems, while wide-ranging, can be addressed by overarching reforms that could do much to repair the American amateur basketball system. The overarching framework of commercialization and professionalization allows us to turn to the European system of basketball for approaches to redefine amateurism and reform the American basketball system.

⁸⁴ 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).

⁸⁵ See Michelle Brutlag Hosick, *Board revamps recruiting regulations*, NCAA (Oct. 27, 2011), <http://www.ncaa.com/news/basketball-men/article/2011-10-27/board-revamps-recruiting-regulations>.

⁸⁶ Robert D. Benford, *The College Sports Reform Movement: Reframing the “Edutainment” Industry*, 48 THE SOC. Q. 1, 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).

⁸⁷ *Id.* at 6.

A. *Problem #1: Commercialization of Amateur Basketball*

As early as 1929, in a report by the Carnegie Foundation, college athletics have been found to be “highly organized commercial enterprises” and “highly profitable enterprises.”⁸⁸ 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 educational and intellectual values in general. Also, students (including non-athletes) were the losers because they had been denied their rightful involvement in sports.⁸⁹

This commercialization and increased revenue then creates economic incentives for conduct, which may conflict with a university’s academic mission, and exploit student-athletes.⁹⁰ 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.”⁹¹

The Ecosystem of College Athletics

The college sports industry today has swelled to \$60 billion annually.⁹² While critics commonly point to the \$16 billion generated from television

⁸⁸ *Id.* (citing HOWARD J. SAVAGE ET AL., THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, AMERICAN COLLEGE ATHLETICS ix (1929)).

⁸⁹ JOHN THELIN, GAMES COLLEGES PLAY: SCANDAL AND REFORM IN INTERCOLLEGIATE ATHLETICS 26 (1994).

⁹⁰ Matthew J. Mitten et al., *Targeted Reform of Commercialized Intercollegiate Athletics*, 47 SAN DIEGO L. REV. 779, 781 (2010).

⁹¹ See Nat’l Collegiate Athletic Ass’n Final Report of the NCAA Task Force on Commercial Activity in Division I Intercollegiate Athletics (2009), http://web1.ncaa.org/web_files/DI_Amateurism_Cab/2009/February/Supplement%20No.%207-a.pdf; see also Anastasios Kaburakis et al., *NCAA Student-Athletes’ Rights of Publicity, EA Sports, and the Video Game Industry*, 27 ENT. & SPORTS LAW. 1, 5 (2009).

⁹² See Robert A. McCormick & Amy Christian McCormick, *A Trail of Tears: The Exploitation of the College Athletic*, 11 FLA. COASTAL L. REV. 639, 646 (2010) (citing *The News Hour: Dollars, Dunks and Diplomas* (PBS television broadcast July 9, 2001), available at http://www.pbs.org/newshour/bb/education/july-dec01/ncaa_07-09.html (discussing the prospect of reforming college athletics)); see also Richard G.

contracts for the NCAA and its conferences,⁹³ the college sports industry as a whole also generates revenue from advertising, ticket sales, sponsorships, and betting wages.⁹⁴ The economics of intercollegiate sports are particularly robust due to the great number of organizational actors involved in this arena.⁹⁵ The 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 the overarching NCAA,⁹⁶ 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 actors can be members of professional or trade associations such as the National Athletic Trainers' Association,⁹⁷ National Association of Collegiate Directors of Athletics,⁹⁸ National Sports Marketing Network,⁹⁹ and the College Sports Information Directors of America.¹⁰⁰ Lastly, and perhaps most importantly, companies from a variety of industries can use college athletics as a marketing tool through sponsorships and nam-

Johnson, *Submarining Due Process: How the NCAA Uses Its Restitution Rule to Deprive College Athletes of Their Right of Access to the Courts . . . Until Oliver v. NCAA*, 11 FLA. COASTAL L. REV. 459, 599 (2010).

⁹³ Karen Gullo, *NCAA Can't Argue Keeping Player Revenue Helps Women's Sports*, BLOOMBERG (Apr. 11, 2014, 8:34 PM), <http://www.bloomberg.com/news/2014-04-12/ncaa-can-t-argue-keeping-player-revenue-helps-women-s-sports-1-.html>.

⁹⁴ See Zak Cheney-Rice, *Here's How Many Billions College Players Will Make During March Madness This Year*, MIC.COM (Mar. 19, 2014), <http://www.policymic.com/articles/85763/here-s-how-many-billions-college-players-will-make-during-march-madness-this-year>.

⁹⁵ Benford, *supra* note 86, at 6; see also Mitten, *supra* note 90, at 844 n.18 (listing the constituencies of major college sports).

⁹⁶ See Stephen L. Ukeiley, *No Salary, No Union, No Collective Bargaining: Scholarship Athletes Are an Employer's Dream Come True*, 6 SETON HALL J. SPORT L. 167, 180-81 (1996) (discussing the increased involvement of corporations in intercollegiate athletics).

⁹⁷ THE NATIONAL ATHLETIC TRAINERS' ASSOCIATION, <http://www.nata.org/> (last visited Oct. 31, 2014).

⁹⁸ NATIONAL ASSOCIATION OF COLLEGIATE DIRECTORS OF ATHLETICS, <http://www.nacda.com/> (last visited Oct. 31, 2014). Also note that the National Association of Collegiate Directors of Athletics Official Athletic website is a partner of CBS College Sports Networks, Inc. See *id.*

⁹⁹ NATIONAL SPORTS MARKETING NETWORK, <http://sportsmarketingnetwork.com/> (last visited Oct. 31, 2014).

¹⁰⁰ COLLEGE SPORTS INFORMATION DIRECTORS OF AMERICA, <http://www.cosida.com/> (last visited Oct. 31, 2014).

ing rights.¹⁰¹ 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, are individual actors such as sports agents, coaches, and managers.¹⁰²

Viewed through this multi-organizational context, commercialization takes place through the relationships of each actor with each other.¹⁰³ 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.¹⁰⁴ In another instance, the University of Texas's expansion of its "international brand" implicates its relationship with football fans as well as corporate sponsors.¹⁰⁵ In the licensing context, the NCAA previously sponsored the EA Sports video game series, driving part of the \$3 billion that the NCAA generates in

¹⁰¹ 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 that are not the manufacturers of athletic apparel or equipment get name recognition for their products through sports sponsorship and using Alltel's sponsorship of the University of Florida athletics department as an example).

¹⁰² Dohrmann, *supra* note 5, at 16.

¹⁰³ 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 that NCAA Division I basketball revenues are derived from four sources: university revenue and publicity, broadcasting revenue, merchandise and endorsement deals, and player image and likeness).

¹⁰⁴ Darren Rovell, *Under Armour Signs Notre Dame*, ESPN.COM (Jan. 21, 2014, 3:06 PM), http://espn.go.com/college-football/story/_id/10328133/notre-dame-fighting-irish-armour-agree-most-vble-apparel-contract-ncaa-history; see also Leslie E. Wong, *Our Blood, Our Sweat, Their Profit: Ed O'bannon Takes on the NCAA for Infringing on the Former Student-Athlete's Right of Publicity*, 42 TEX. TECH L. REV. 1069, 1087 (2010) (discussing the University of Kansas Jayhawks's signing of a \$26.67 million contract with Adidas in which it agreed to don its players in jerseys featuring the famous three-stripped logo after winning the NCAA Division I men's basketball championship).

¹⁰⁵ The first-year athletic director has already scheduled a men's basketball game against Washington in China for 2015, and the program will participate in a three-city basketball event with Michigan State, North Carolina and Florida in 2018. Max Olson, *Steve Patterson: Focus not on Aggies*, ESPN (Apr. 1, 2014, 5:10 PM), http://espn.go.com/college-football/story/_id/10710069/texas-longhorns-ad-steve-patterson-not-interested-rivalry-texas-aggies.

licensing revenue.¹⁰⁶ The clients of the Collegiate Licensing Company represent a \$3.68 billion retail market for collegiate licensed merchandise.¹⁰⁷ Solo actors, such as coaches and administrators, receive lucrative multi-million dollar contracts and performance bonuses from their respective universities based on team achievements.¹⁰⁸ Even more importantly, these coaches are able to further capitalize on their publicity with product sponsorships.¹⁰⁹ Perhaps most importantly, the NCAA recently entered into a fourteen-year, \$10.8 billion deal with CBS/Turner for broadcasting rights to the NCAA Division I men's basketball championship.¹¹⁰ 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.¹¹¹ This represents the universities' acknowledgement of collegiate licensing as a

¹⁰⁶ 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 (June 10, 2014), <http://sportsillustrated.cnn.com/college-football/news/2014/02/20/ed-obannon-lawsuit-proceeds-to-trial/#ixzz2y8xW0T00>.

¹⁰⁷ *About CLC*, THE COLLEGIATE LICENSING COMPANY, <http://www.clc.com/About-CLC.aspx> (last visited Oct. 31, 2014).

¹⁰⁸ 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 86, at 11.

¹⁰⁹ 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 Krzyzewski 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)).

¹¹⁰ 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 Wong, *supra* note 104, at 1086.

¹¹¹ The Collegiate Licensing Company represents nearly 200 colleges, conferences, bowl games, and athletic conferences. *About CLC*, THE COLLEGIATE LICENSING COMPANY, <http://www.clc.com/About-CLC.aspx> (last visited Oct. 31, 2014).

substantial revenue driver that incorporates the entire university. While a university's brand as an institution of higher learning is certainly marketable without intercollegiate sports, high-profile athletic departments can substantially increase the value of branded goods.¹¹² The interconnectedness of 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.¹¹³ For individual athletes, the economic incentives to leave school and reach professional status can lead to irrational decisions regarding jumping to the NBA and foregoing years of college.¹¹⁴ Unfortunately, the NCAA does not allow athletes to receive payment in excess of scholarship dollars or to capitalize on their personal image.¹¹⁵ However, the fair market value of a college basketball player is about \$375,000¹¹⁶ while the lost in-

¹¹² The top selling merchandising royalties from universities represent some of the top athletic programs in the country. See *Collegiate Licensing Company Names Top Selling Universities and Manufacturers for First Fiscal Quarter of Fiscal Year 2013-14*, THE COLLEGIATE LICENSING COMPANY (Nov. 11, 2013), <http://www.clc.com/News/Archived-Rankings/Rankings-Q3-2013.aspx>; Press Release, National Association of Collegiate Directors of Athletics, *Stanford Wins 2012-13 Division I #LSDC* (June 27, 2013) (available at http://grfx.cstv.com/photos/schools/nacda/sports/directorscup/auto_pdf/2013-14/misc_non_event/June27release.pdf).

¹¹³ 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 86, at 11 (quoting ANDREW ZIMBALIST, UNPAID PROFESSIONALS: COMMERCIALISM AND CONFLICT IN BIG-TIME COLLEGE SPORTS 197 (1999)).

¹¹⁴ See Nick Sugai, *The Effect of Early Entry to the NBA* 47, <https://www.amherst.edu/media/view/329619/original/Sugai-EffectEarlyEntrytoNBA.pdf> (explaining that only the top-five American high school players benefit from jumping to the NBA). But see Chris Johnson, *Examining the Results of College Basketball's One-And-Done Era*, SPORTS ILLUSTRATED (Apr. 11, 2014), <http://www.si.com/nba/2014/04/11/nba-one-and-done-history-zach-lavine> (documenting the outcomes of “one-and-done” NBA draft picks who declared for the draft after a year playing in the NCAA).

¹¹⁵ NCAA, NCAA DIVISION I MANUAL, art. 12 (2013-14); see also *id.* at art. 14-15 (describing permitted financial aid and limiting an athlete's compensation to tuition, fees, room and board, transportation, and books).

¹¹⁶ RAMOGI HUMA & ELLEN J. STAUROWSKY, NATIONAL COLLEGE PLAYERS ASS'N & DREXEL UNIVERSITY SPORT MANAGEMENT, *THE \$6 BILLION HEIST: ROBBING COLLEGE ATHLETES UNDER THE GUISE OF AMATEURISM* (2012), available at <http://www.nccpanow.org/news/articles/the-6-billion-heist-robbing-college-athletes-under-the-guise-of-amateurism>.

come over a four-year career for the average NCAA Division I men's basketball player is \$1,063,307.¹¹⁷

This list of college sports revenue generation is neither 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.¹¹⁸

The Effects of Commercialization on AAU

While college athletics has 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" or "agent runners" 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.¹¹⁹

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.¹²⁰ In 1978, with the shoe market dominated by one company, Converse, Vaccaro approached Phil Knight, founder of Nike,

¹¹⁷ *Id.*; see also Chris Smith, *College Basketball's Most Valuable Teams 2014: Louisville Cardinals On Top Again*, FORBES (Mar. 17, 2014, 9:29 AM), <http://www.forbes.com/sites/chris-smith/2014/03/17/college-basketballs-most-valuable-teams-2014-louisville-cardinals-on-top-again/> (using the Equity in Athletics Data Analysis Cutting Tool to value NCAA college basketball teams); *College Athletics Union Could Put Billions at Stake*, NBC SPORTS (Apr. 9, 2014, 4:13 PM), <http://www.nbcsports.com/basketball/nba/college-athletes-union-could-put-billions-stake>.

¹¹⁸ Benford, *supra* note 86, at 11.

¹¹⁹ See generally Wetzels & Yaeger, *supra* note 7.

¹²⁰ Dohrmann, *supra* note 5, at 46-47.

with a proposition.¹²¹ 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.¹²² 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.¹²³

After some initial success with several schools, Vaccaro and Nike scored its biggest coup with the signing of Michael Jordan in 1984.¹²⁴ Although at the time he was just a college sophomore, Jordan's signing with Nike has been lauded as a touchstone moment in athlete marketability.¹²⁵ 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.¹²⁶ 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. Nike's competitors saw the success Jordan had with the company and scrambled to replicate it, searching for "the next Michael Jordan" to sell.¹²⁷

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.¹²⁸ At Adidas, Vaccaro was tasked with building the basketball brand and stealing Nike's market share.¹²⁹ 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."¹³⁰ 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.¹³¹ By reaching players that young, Vaccaro was able to snap up much of the market even before the players set foot on a college campus.

¹²¹ *Id.*

¹²² *Id.* at 46.

¹²³ *Id.*

¹²⁴ See Wetzel & Yaeger, *supra* note 7, at 3-5.

¹²⁵ *Id.*; see also Dohrmann, *supra* note 5, at 46.

¹²⁶ *Legends profile: Michael Jordan*, NBA.com, March 4, 2013, <http://www.nba.com/history/legends/michael-jordan/>.

¹²⁷ Dohrmann, *supra* note 5, at 47.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 46.

¹³¹ *Id.*

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.¹³² In recent years, they have been joined by other shoe and apparel companies, including Under Armour, in their pursuit for young talent.¹³³ 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. 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.¹³⁴ Keller, in his first efforts to get a sponsorship for his AAU basketball team, faced a paradox: "[w]ithout a shoe deal, it would be difficult to recruit and keep top players. And without great players, he would never get a shoe deal."¹³⁵ To deal with this, Keller went younger, recruiting players, like his prized star Demetrius Walker, straight from middle school.¹³⁶ 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.¹³⁷ By any measure, Keller's actual coaching ability and basketball knowledge were poor.¹³⁸ 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.¹³⁹ 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 the successes of their young athletes.

¹³² *Id.* at 47.

¹³³ Sarah Meehan, *Can Under Armour Eat into Nike's Basketball Dominance with Stephen Curry Signing?*, BALTIMORE BUSINESS JOURNAL (Oct. 1, 2013), <http://www.bizjournals.com/baltimore/news/2013/10/01/can-under-armour-eat-into-nikes.html?page=all>.

¹³⁴ Dohrmann, *supra* note 5.

¹³⁵ *Id.* at 46.

¹³⁶ *Id.* at 47.

¹³⁷ *Id.* at 333-34.

¹³⁸ *Id.* at 24-25.

¹³⁹ *Id.*

In essence, the “shoe wars” of the 1990s and early 2000s have allowed for the introduction of rampant corporate greed into the grassroots basketball game.¹⁴⁰ It is a practice that still continues unabated: every summer, Nike, Adidas, and other shoe companies compete for the attendance of the best basketball players in the nation at their AAU showcases.¹⁴¹ 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.¹⁴² 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 late 1990s, it was estimated that these companies spent \$5 million a year on such programs, a number that has only gone up since then.¹⁴³

Shoe companies are also continuing to make their mark outside of these avenues. Corporations have embedded themselves in the lives of the athletes and the decisions they make about their futures. Recent examples include prep phenomenon Shabazz Muhammad 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.¹⁴⁴ This level of influence on players’ decisions and future plans is, as of 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.¹⁴⁵ 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 ten years, and the aforementioned University of Notre Dame, who signed with Under Armour for an average of \$9 million a year.¹⁴⁶

¹⁴⁰ See *id.* at 46-47; Wetzel & Yaeger, *supra* note 7, at 12-13.

¹⁴¹ Dohrmann, *supra* note 5, at 383.

¹⁴² *Id.*

¹⁴³ Lee C. Bollinger & Tom Goss, *Cleaning Up College Basketball*, N.Y. TIMES (Sept. 5, 1998), <http://www.nytimes.com/1998/09/05/opinion/cleaning-up-college-basketball.html>.

¹⁴⁴ Tom Gieryn, *Is It All in the Shoes?*, DUKE CHRONICLE (Oct. 3, 2012), <http://www.dukechronicle.com/articles/2012/10/04/it-all-shoes>.

¹⁴⁵ Brett McMurphy, *Sources: Louisville Stays with Adidas*, ESPN (Apr. 17, 2014), http://espn.go.com/mens-college-basketball/story/_/id/10795147/louisville-cardinals-receive-40-million-5-year-deal-adidas.

¹⁴⁶ *Id.*

In sum, the current state of the amateur sports climate, not only amateur basketball, has allowed for these incredibly lucrative deals to be signed and for these schools to 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.¹⁴⁷ Other articles similarly express his sentiments when investigating the economics of the collegiate athletic system.¹⁴⁸ Reformists' sugges-

¹⁴⁷ Bradley S. Pensyl, *Whistling A Foul on the NCAA: How NCAA Recruiting By-laws Violate the Sherman Antitrust Act*, 58 SYRACUSE L. REV. 397, 398 (2008) (citing Dave Zirin, *The Madness of March: Heroes Don't Get Paid*, L.A. TIMES, Apr. 2, 2006, at M2 ("The coaches own the athletes' feet, the colleges own the athletes' bodies and the supervisors retain the large rewards. That reflects a neo-plantation mentality on campuses.") (internal quotation marks and alterations from original omitted)).

¹⁴⁸ See, e.g., Symposium, *The Uniform Athlete Agents Act*, 13 SETON HALL J. SPORTS L. 345, 374 (2003) (where attorney and sports agent Craig Fenech calls NCAA athletes the "last indentured servants of our society"); Robert A. McCormick & Amy Christian McCormick, *Major College Sports: A Modern Apartheid*, 12 TEX. REV. ENT. & SPORTS L. 13 (2010) (describing the NCAA as a system of apartheid with the NCAA effectively sanctioning the exploitation of African American men); Amy Christian McCormick & Robert A. McCormick, *Race and Interest Convergence in NCAA Sports*, 2 WAKE FOREST J.L. & POL'Y 17, 18 (2012) (describing college football and men's basketball teams as a "regime [that] adversely burdens African Americans who are required to relinquish the pecuniary fruits of their labor"); Virginia A. Fitt, *The NCAA's Lost Cause and the Legal Ease of Redefining Amateurism*, 59 DUKE L.J. 555, 568 (2009) (positing that college play can resemble major league tryouts with ever-escalating potential salaries and bonuses); see also Marc Edelman, *Reevaluating Amateurism Standards in Men's College Basketball*, 35 U. MICH. J.L. REFORM 861, 862 (2002) ("[B]y not paying student-athletes, the Principle of Amateurism leads to windfall profits for college coaches and administrators, who receive disproportionately high salaries and additional endorsement/promotion opportunities."); Sarah M. Konsky, Note, *An Antitrust Challenge to the NCAA Transfer*

tions of paying college athletes have been rejected. The NCAA claims its policies support amateurism and level playing fields, but they actually are a device to divert the money elsewhere.¹⁴⁹ By not paying their athletes and creating lucrative national brands off their accomplishments, the NCAA has reaped incredible profits and 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 its decisions.

Compounding this problem, the NCAA acts as a developmental league for the NBA.¹⁵⁰ Due to the NBA's rule restricting players under nineteen from entering the league, the NCAA has experienced increased competition and growth.¹⁵¹ More importantly, the NCAA has cemented its status as a training ground for future NBA players.¹⁵² This commercialization is compounded because athletes have little choice but to play in the NCAA—no longer able to jump from high school to the NBA and other options, including overseas basketball, drastically affect their chances at being drafted. While the remuneration that players receive is strictly regulated and en-

Rules, 70 U. CHI. L. REV. 1581, 1585 (2003) (“[T]he NCAA maximizes profits beyond a competitive rate and keeps the windfall in the hands of select few administrators, athletic directors, and coaches.”); Daniel E. Lazaroff, *The NCAA in its Second Century: Defender of Amateurism or Antitrust Recidivist?*, 86 OR. L. REV. 329, 357 (2007) (noting several commentators’ belief that the “economic impact of the NCAA’s amateurism rules creates a wealth transfer from the players to their schools”).

¹⁴⁹ Pensyl, *supra* note 147, at 397 (citing *Big Money Rules, Ex-NCAA Chief Says*, LEXINGTON HERALD-LEADER, Aug. 29, 1995, at C1 (internal quotation marks omitted)).

¹⁵⁰ See Edelman, *supra* note 148, at 867 (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*, 9 U. DENV. SPORTS & ENT. L.J. 22, 49 (2010) (describing the NCAA acts as the NBA’s farm system with no cost to the professional league).

¹⁵¹ See Chris Mannix, *Age Before Beauty: Union Stance Against NBA Age Limit Misses Benefits of Time, Maturity*, SPORTS ILLUSTRATED (Dec. 1, 2004), http://sport-sillustrated.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).

¹⁵² McCann & Rosen, *supra* note 150.

forced,¹⁵³ the NCAA has few regulations in its bylaws limiting commercial influences on its member institutions.¹⁵⁴ The revenue created by these rules and regulations generates money shared by the presidents, coaches, and other people in positions of power within the universities.¹⁵⁵ It is in the best interest of these decision-makers to increase revenues or at a minimum, maintain the status quo.

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.¹⁵⁶

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.¹⁵⁷ The NCAA plays a substantive role in regulating the education of its athletes.¹⁵⁸ In a high revenue opportunity environment,¹⁵⁹

¹⁵³ *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla.*, 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.").

¹⁵⁴ Rosenthal, *supra* note 104, at 321; *see generally* Erin Abbey-Pinegar, *The Need for A Global Amateurism Standard: International Student-Athlete Issues and Controversies*, 17 *IND. J. GLOBAL LEGAL STUD.* 341, 349 (2010) (citing Lazaroff, *supra* note 148, 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)).

¹⁵⁵ McCormick & McCormick, *Race and Interest*, *supra* note 148, 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 *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.").

¹⁵⁶ Benford, *supra* note 86, at 14 (citing Diane Carman, *CU Shouldn't Investigate Its Own Mess*, *DENVER POST* (Feb. 4, 2004) at 1B).

¹⁵⁷ Muenzen, *supra* note 54, at 262.

¹⁵⁸ Rosenthal, *supra* note 101, at 323.

conferences have realigned across even great geographical distances.¹⁶⁰ Additionally, schools are scheduling games around the world for marketing and branding purposes, using the collegiate athletes as professional promoters. Recently, the Athletic Director of the University of Texas turned down the opportunity to reinstate the in-state football rivalry with Texas A&M University, choosing instead to focus on games in stadiums across China and overseas to grow University of Texas's "international brand."¹⁶¹ An insightful contrast with the University of Texas agenda is the approach of the Ivy League,¹⁶² which has refused to create a postseason conference tournament for its basketball programs.¹⁶³ 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

¹⁵⁹ Vadim Kogan & Stephen A. Greysler, *Conflicts of College Conference Realignment: Pursuing Revenue, Preserving Tradition, and Assessing the Future* (Harvard Bus. Sch., Working Paper No. 14-073) available at http://www.hbs.edu/faculty/Publication%20Files/14-073_ea70abf6-d99c-4529-96b2-e8bef262a4e6.pdf.

¹⁶⁰ Overall, the 25 relocations examined yield a 21% total net increase in travel mileage; however, Boise St. and San Diego St. account for about half of that total figure. Removing those two programs from consideration, the remaining conference-movement results in a mere 10.6 % total mileage increase. *NCAA Conference Realignment and Travel Mileage*, WIN AD (March 1, 2012), <http://winthropintelligence.com/2012/03/01/conference-realignment-and-travel-mileage/>. See also Steve Berkowitz, *Las Vegas becomes Hot Spot for Conference Hoops Tourneys*, USA TODAY (March 3, 2011), http://usatoday30.usatoday.com/sports/college/mensbasketball/2011-03-03-las-vegas-conference-tournaments-cover_N.htm (discussing three conference championship tournaments being held in Las Vegas due to the "[f]an experience, destination city and the revenue it generates"); Jon Wilner, *Pac-12 Basketball: More Sunday Games, Tough travel and Fan-unfriendly Scheduling . . . Send Your Complaints to the CEOs*, MERCURY NEWS (Jan. 23, 2014) <http://blogs.mercurynews.com/collegesports/2014/01/23/pac-12-basketball-more-sunday-games-tough-travel-and-fan-unfriendly-scheduling-send-your-complaints-to-the-ceos/>. For analysis of travel during the NCAA Division I Men's Championship Tournament, see Matt Norlander, *MAP: Locations, Travel Distances for 2014 NCAA Tournament Teams*, CBS SPORTS (March 19, 2014) <http://www.cbssports.com/collegebasketball/eye-on-college-basketball/24491591/map-locations-and-travel-distances-for-this-years-ncaa-tournament-teams>; John Branch, *After Filling the Brackets, Finding the Charters*, NY TIMES (March 23, 2014), http://www.nytimes.com/2014/03/24/sports/ncaabasketball/after-filling-the-brackets-figuring-out-the-charters.html?_r=0.

¹⁶¹ Olson, *supra* note 105 (the Athletic Director believes that it is "essential to use athletics as a platform to tell the university's story").

¹⁶² *About The Ivy League*, THE IVY LEAGUE, <http://www.ivyleaguesports.com/history/overview> (last visited December 3, 2014).

¹⁶³ Marc Beck, *Ivy League Drawbacks*, YALE DAILY NEWS (Oct. 28, 2009), <http://yaledailynews.com/blog/2009/10/28/ivy-league-drawbacks/>.

when the commercial incentives are lucrative.¹⁶⁴ Additionally, the Ivy League declines to offer athletic scholarships for their student-athletes.¹⁶⁵ 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 commercialization, as their schedule is tightly managed by the coaching staff and prioritized based on team-related activities.¹⁶⁶ In college basketball today, amateur basketball at the NCAA Division I level is no longer a leisure activity. Instead, a player's commitment is more than 50 hours per week.¹⁶⁷ Even the structure of the basketball season, starting in October¹⁶⁸ and running until "March Madness," creates a complete year-long intrusion on the academic calendar. The hypocrisy of the "student-athlete" system colleges and the NCAA trumpet is obvious from the schedule of the player who must squeeze in "student," when "athlete" is the priority.¹⁶⁹ This emphasis on athletics hurts the student.

¹⁶⁴ 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).

¹⁶⁵ *Prospective Student-Athletes Information*, THE IVY LEAGUE, <http://www.ivyleaguesports.com/information/psa/index> (last visited December 3, 2014).

¹⁶⁶ See e.g., *Compliance Corner: A Typical Day's Work*, INDIANA UNIVERSITY ATHLETICS (September 18, 2013), <http://www.iuhoosiers.com/sports/c-varsityclub/spec-rel/091813aaa.html>.

¹⁶⁷ *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). See also Vitale, *supra* note 103, at 75 (making a "conservative estimate of a player's commitment to his team [at] more than 50 hours per week").

¹⁶⁸ See NCAA Division I Manual, 17.3.2.1 Men's Basketball at 240 (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.").

¹⁶⁹ See generally *2014-2015 Schedule*, UConn Men's Basketball, <http://www.uconnhuskies.com/sports/m-baskbl/sched/conn-m-baskbl-sched.html> (last visited Dec. 4, 2014); *2013-2014 Schedule*, Kentucky Men's Basketball Archive, <http://www.kyathletics.com/sports/m-baskbl/archive/kty-m-baskbl-sched-2013.html> (last visited Dec. 4, 2014); *Men's Basketball 2013-2014 Schedule*, ArizonaWildcats.com, http://www.arizonawildcats.com/SportSelect.dbml?SPSID=750089&SPID=127128&Q_SEASON=2013 (last visited Dec. 4, 2014).

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.”¹⁷⁰ 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 the 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 educational mission of the university conflicts with the economics of college sports, and some universities prioritize the latter, turning institutions of higher education into eligibility mills.

Even more perplexing is the dilution of the academic experience for the sake of deeming a college basketball player a “student-athlete.” An “eligibility mill” describes academic support services within the athletics program that are “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.”¹⁷¹ On its face, maintaining eligibility seems like an admirable goal, but combined with the yearlong game schedule this encourages a façade for student-athlete success.

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 are “somehow [supposed to] get up to college-level reading and writing skills at the same time that they’re enrolled in college-level classes.”¹⁷²

¹⁷⁰ Paul M. Barrett, *In Fake Classes Scandal, UNC Fails Its Athletes—and Whistle-Blower*, BLOOMBERG BUSINESS WEEK (Feb. 27, 2014), <http://www.businessweek.com/articles/2014-02-27/in-fake-classes-scandal-unc-fails-its-athletes-whistle-blower>.

¹⁷¹ Benford, *supra* note 86, at 15.

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Evidence from Mary Willingham, a University of North Carolina (“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 college athletes currently read between fourth- and eighth-grade levels and between 8 and 10 percent read below a third-grade level.¹⁷³

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 grades¹⁷⁴ to maintain the eligibility of their student-athletes. Several institutions, such as Minnesota, Tennessee, Louisiana State University, 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 faculty.¹⁷⁵

In the late 1990s, former University of Tennessee English Professor Linda Bense-Meyers reported “tutors doing far too much work for athletes who were far too under-prepared for college coursework.”¹⁷⁶ Bense-Meyers incurred substantial personal and professional costs when she blew the whistle on the cheating scam.¹⁷⁷ In 2005, Louisiana State University instructor Tiffany Terrell-Mayne alleged she was told to change grades to keep football players eligible for a bowl game and later settled a lawsuit with the school.¹⁷⁸ 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.¹⁷⁹

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

¹⁷³ *Id.*

¹⁷⁴ Julia Sims, *Former UNC-Chapel Hill professor indicted in academic scandal*, WRAL.COM (Dec. 3, 2013), <http://www.wral.com/former-unc-chapel-hill-professor-indicted-in-academic-scandal/13172648/>.

¹⁷⁵ Benford, *supra* note 86, at 13.

¹⁷⁶ Sara Ganim, *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>.

¹⁷⁷ Ganim, *supra* note 176; *Bense-Meyers suffers*, UT DAILY BEACON (Sept. 18, 2000), <http://utdailybeacon.com/sports/2000/sep/18/bense-meyers-suffers/>.

¹⁷⁸ Ganim, *supra* note 176.

¹⁷⁹ *Id.*

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.¹⁸⁰ In fact, historically, the graduation rate for men's basketball is among the lowest of any sport.¹⁸¹ Between 1999 and 2002, the graduation rate for more than a quarter of the 320-plus men's Division I basketball programs stood at less than 50 percent, including at traditionally elite programs like the University of Texas and the University of Kentucky.¹⁸²

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.¹⁸³ The statistics do not reflect students who forgo college for the NBA, as "the NCAA no longer penalizes schools in graduation-rate reports for players who leave early for the pros, as long as they were in good academic standing."¹⁸⁴ Higher graduation rates may reflect flaws in the institution's integrity or this statistical marker 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."¹⁸⁵ In fact, graduation rates may mask the extent to which student-athletes leave college with adequate academic preparation.¹⁸⁶ The accommo-

¹⁸⁰ 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).

¹⁸¹ *Id.* at 128 (citing Press Release, NCAA, Report of the NCAA Division I Working Group to Study Basketball Issues (Aug. 20, 1999)).

¹⁸² 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.

¹⁸³ Many 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, 756-58 (1991) (also noting that graduation rates may mask the extent to which student-athletes leave college with adequate academic preparation).

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¹⁸⁵ Benford, *supra* note 86, at 3 (citing Martin E. P. Seligman & Steven F. Maier, LEARNED HELPLESSNESS: A THEORY FOR THE AGE OF PERSONAL CONTROL (1995)).

¹⁸⁶ Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, 22 FORDHAM URB. L.J. 615, 678 (1995) (positing that the unconscious

dations and academic advisors take a paternalistic approach and expect other members of the faculty and staff to make special accommodations on athletes' behalf.¹⁸⁷

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 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.¹⁸⁸

The devaluation of an institution's undergraduate diploma can harm both athletes and non-athletes.¹⁸⁹ A poignant example of this academic dilution occurred at University of North Carolina.¹⁹⁰ A three-month investigation into academic fraud at the University of North Carolina revealed that

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").

¹⁸⁷ 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-aphony-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 pre-determined 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.'").

¹⁸⁸ Davis, *An Absence of Good Faith*, *supra* note 183, at 757.

¹⁸⁹ 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, *BEER AND CIRCUS: HOW COLLEGE SPORTS IS CRIPPLING UNDERGRADUATE EDUCATION* 224 (2000).

¹⁹⁰ 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 scholarship limits and post-season bowl bans. A defensive coach was also punished for failing to report outside income from a sports agent. See Bruce Feldman, *Despite Being Cleared in Scandal at UNC, Davis Still Waiting for a Gig*, CBSSPORTS.COM (Dec. 11, 2013), <http://www.cbssports.com/collegefootball/writer/bruce-feldman/24372078/despite-being-cleared-in-unc-scandal-davis-still-waiting-for-next-gig>.

student-athletes were not the only students given added academic benefits within the school's African and Afro-American Studies department.¹⁹¹ 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.¹⁹² 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.¹⁹³ This dichotomy illustrates the university's conflict between maintaining academic integrity and capitalizing on the professionalized college athlete.

The focus on college athletics also directly impacts non-athletes in other ways. Instead of increasing the quality of higher education, athletic departments are engaged in a cycle of increased spending, colloquially known as the athletics "arms race."¹⁹⁴ 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."¹⁹⁵

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.¹⁹⁶ However, the quality of the education that many of these athletes

¹⁹¹ Barrett, *supra* note 170.

¹⁹² Sara Ganim, *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>.

¹⁹³ *NCAA Athlete Graduation Rates Top National Average*, UNC GENERAL ALUMNI ASSOCIATION (Oct. 28, 2010), <http://alumni.unc.edu/article.aspx?SID=7915>.

¹⁹⁴ 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.*

¹⁹⁵ Sperber, *supra* note 189, at 222.

¹⁹⁶ See Sally Jenkins, *NLRB ruling on Northwestern football players opens up more questions than answers*, WASHINGTONPOST.COM (March 29, 2014), <http://www.wash->

receive is questionable, and the conflict between student and athlete particularly injures African-Americans.¹⁹⁷ 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.¹⁹⁸ White student-athletes continue to graduate at a considerably higher rate than their African-American counterparts do.¹⁹⁹

Generally, the NCAA's uniform rules and regulations are premised on a notion of colorblindness. Despite their assumed neutrality, however, the NCAA rules appear to impact black student-athletes disproportionately.²⁰⁰ For example, the NCAA rules limiting the income that an athlete can receive disproportionately burden black athletes, who come from households with lower socioeconomic status.²⁰¹ Similarly, eligibility rules produce disproportionate injury to African-American student-athletes and their communities.²⁰²

ingtonpost.com/sports/colleges/nlr-ruling-on-northwestern-football-players-wont-help-what-ails-college-athletics/2014/03/29/054e2942-b6af-11e3-b84e-897d3d12b816_story.html; Pat Forde, *Myth of Exploited, Impoverished Athletes*, ESPN.COM (July 18, 2011), http://espn.go.com/college-sports/story/_/id/6779583/college-athletes-far-exploited.

¹⁹⁷ McCormick & McCormick, *Race & Interest*, *supra* note 148, at 43.

¹⁹⁸ In men's basketball, 72 of the 327 Division I programs in the study saw fewer than half their players earn 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.

¹⁹⁹ Davis, *Superspade*, *supra* note 186, at 676.

²⁰⁰ *Id.* at 660.

²⁰¹ In contrast to their white counterparts, black student-athletes come from families with lower incomes and less educated parents. See Robert M. Sellers et al., *Life Experiences of Black Student-Athletes in Revenue-Producing Sports: A Descriptive Empirical Analysis*, ACA ATHLETIC J. 20, 32–33 (1991); Am. Insts. for Res., Rept. No. 3: Experiences of Black Intercollegiate Athletes at NCAA Division I Institutions 13, 32–33 (1989); Davis, *Superspade*, *supra* note 186, at 698.

²⁰² Davis, *Superspade*, *supra* note 186, 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)).

Segregation in the Workplace

The institutional wrong is much broader than professionalization of individual student-athletes; 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 decision-makers and institutional leaders are primarily white and the players primarily are black.²⁰³ While the integration of college sports is a much better alternative than the previously segregated system,²⁰⁴ the commercial interests of white college administrators drove racial integration in revenue-generating sports.²⁰⁵ The self-interest that led to early integration on the playing field, but not within college institutions,²⁰⁶ is still reflected in the demographics of coaching staffs and administrators.²⁰⁷ 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.”²⁰⁸ The NCAA is akin to a “company

²⁰³ See McCormick & McCormick, *Apartheid*, *supra* note 148, at 14 (“Major college sports in the United States flourish on the basis of an apartheid system . . .”).

²⁰⁴ See, e.g., Davis, *Superspade*, *supra* note 186, 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).

²⁰⁵ See McCormick & McCormick, *Race & Interest*, *supra* note 148, 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).

²⁰⁶ 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).

²⁰⁷ See Davis, *Superspade*, *supra* note 186, 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).

²⁰⁸ Jean A. Coakley, *SPORT IN SOCIETY: ISSUES AND CONTROVERSIES*, 255 (5th ed. 1994).

store” and its predominantly black employees are forced to live below the poverty line.²⁰⁹

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 intercollegiate athletics.”²¹⁰ This combination of a professionalized student-athlete and the commercialization of the student-athlete directly causes the economic exploitation of the college basketball player.²¹¹

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 players’ attempt at union certification calls for the official classification 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. The suit was originally brought in 2009 on behalf of Ed O’Bannon, a former basketball star at UCLA in the early 1990s.²¹² Originally concerned with the NCAA profiting off the likenesses of former players in video games produced by EA, 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 their likenesses.²¹³ This includes not only

²⁰⁹ Robert A. McCormick & Amy Christian McCormick, *The Myth of the Student-Athlete: The College Athlete as Employee*, 81 Wash. L. Rev. 71, 78–79 (2006).

²¹⁰ Mitten, *supra* note 90, at 801.

²¹¹ Vitale, *supra* note 103, 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”).

²¹² 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 Litigation*. In re NCAA Student-Athlete Name & Likeness Litig., No. C 09-1967 CW, 2010 WL 5644656, at *1 (N.D. Cal. Dec. 17, 2010).

²¹³ Mandel, *supra* note 106.

the NCAA but its member schools and their conferences as well. After EA and the college athletes reached a \$40 million settlement in May 2014, this case stands as perhaps the first crack in the NCAA's amateurism model.²¹⁴

Simply put, *O'Bannon v. NCAA* threatens to overturn the NCAA's current business model. Centrally at issue in the case is the revenue generation the NCAA retains from the licensing of its workforce.²¹⁵ 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 relatively paltry amount of reward for their services. As discussed earlier, the fair market value of a star college basketball player is around \$300,000,²¹⁶ while the average NCAA Division I men's basketball player is worth approximately \$1,063,307 for a full four-year career to his school.²¹⁷ While one may argue that the scholarships and education these athletes receive are rewards in themselves, such flimsy compensation is wholly disproportionate to the billions in revenue that the NCAA and its member schools are making each year through lucrative broadcast and media rights deals. 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.²¹⁸ Amateurism's privileged classes en-

²¹⁴ Tom Farrey, *Players, Game Makers Settle for \$40M*, ESPN (May 31, 2014, 1:22 PM), http://espn.go.com/espn/otl/story/_/id/11010455/college-athletes-reach-40-million-settlement-ea-sports-ncaa-licensing-arm.

²¹⁵ See, e.g., *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, No. C 09-1967 CW, 2010 WL 445190, 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 106, at 19-20 (describing the *O'Bannon* lawsuit and noting that licensed products generate roughly \$3 billion per year).

²¹⁶ Huma & Staurowsky, *supra* note 116.

²¹⁷ *Id.*; see also Smith, *supra* note 10 (using the Equity in Athletics Data Analysis Cutting Tool to value NCAA college basketball teams); *The Value of One Year of a Division I Men's Basketball Scholarship*, USA TODAY (Mar. 29, 2011, 10:53 PM), <http://usatoday30.usatoday.com/sports/college/mensbasketball/2011-value-of-college-scholarship.htm>.

²¹⁸ Benjamin A. Menzel, *Heading Down the Wrong Road?: Why Deregulating Amateurism May Cause Future Legal Problems for the NCAA*, 12 MARQ. SPORTS L. REV. 857, 858 (2002).

gaged in sport “purely for enjoyment and to become well-rounded gentlemen.”²¹⁹ In fact, limiting wages was used to control access to soccer in the 19th century.²²⁰ When the NCAA was established in 1905,²²¹ the NCAA forbade compensation via financial aid, or the singling out of students for their athletic achievements.²²² The notions of amateurism at the time were that rewards for athletic compensation were intrinsic and not linked to sporting endeavors.²²³ Later, in a shift to allow for granting need-based aid, the NCAA loosened its regulations and allowed for scholarships that were based solely on need and did not cover room and board.²²⁴ 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.²²⁵ This shift in the ideals of amateurism represents the changing role of student-athletes from intrinsically rewarded persons to paid representatives of the university. However, the lack of compensation beyond full-tuition scholarships and room and board distinguishes NCAA basketball players from their peers in the NBA.²²⁶

²¹⁹ Laura Freedman, *Pay or Play? The Jeremy Bloom Decision and NCAA Amateurism Rules*, 13 *FORDHAM INTELL. PROP. MEDIA & ENT. L.J.* 673, 676 (2003) (quoting Kay Hawes, *Debate on Amateurism Has Evolved Over Time*, NCAA NEWS (Jan. 3, 2000, 4:07 PM), <http://fs.ncaa.org/Docs/NCAANewsArchive/2000/association-wide/debate+on+amateurism+has+evolved+over+time+-+1-3-00.html>).

²²⁰ Brian Phillips, *The Northwestern Decision: An Explainer*, GRANTLAND (Apr. 1, 2014), <http://grantland.com/features/northwestern-ncaa-college-athletics-union/#fn-1>.

²²¹ Abbey-Pinegar, *supra* note 154, at 347.

²²² Muenzen, *supra* note 54, at 260 (citing ALLEN L. SACK & ELLEN J. STAUROWSKY, *COLLEGE ATHLETES FOR HIRE: THE EVOLUTION AND LEGACY OF THE NCAA'S AMATEUR MYTH* 32 (1998)).

²²³ *Id.*

²²⁴ *Id.* (citing ANDREW ZIMBALIST, *UNPAID PROFESSIONALS: COMMERCIALISM AND CONFLICT IN BIG-TIME COLLEGE SPORTS* 23 (1999)).

²²⁵ *Id.* (citing ANDREW ZIMBALIST, *UNPAID PROFESSIONALS: COMMERCIALISM AND CONFLICT IN BIG-TIME COLLEGE SPORTS* 23 (1999)).

²²⁶ See Rosenthal, *supra* note 101, at 323 (citing Nat'l Collegiate Athletic Ass'n, 2002-03 NCAA DIVISION I MANUElart. 1.3.1, at 1 (2002) [hereinafter NCAA Bylaws] (“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.”)); Nat'l Collegiate Athletic Ass'n v. Miller, 795 F. Supp. 1476, 1479 (D. Nev. 1992); Gaines v. Nat'l Collegiate Athletic Ass'n, 746 F. Supp. 738, 744 (M.D. Tenn. 1990); see also NCAA Bylaws art. 2.9, at 5 (“Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and

The intersection between the commercialization and professionalization of collegiate athletics is also reflected in the recent labor law ruling allowing the unionization efforts of Northwestern University football players to continue.²²⁷ On Wednesday, March 26, 2014, the Chicago office of the National Labor Relations Board (“NLRB”) ruled 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.²²⁸

Recognizing that the relationship between these athletes and Northwestern University was economic in nature, the Regional Director of the NLRB found that college football players receiving grant-in-aid scholarships (tuition, fees, room, board and books) from Northwestern University who have not exhausted their playing eligibility are employees under Section 2(3) of the NLRA.²²⁹

The Regional Director applied the Supreme Court’s broad definition of “employee” under Section 2(3) of the NLRA and in doing so considered the common law definition of “employee.”²³⁰ 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.²³¹

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.²³² The critical factors in *Brown University* regarding the student-university relationship included:

- (1) The research assistants were graduate students enrolled in PhD programs.
- (2) They were required to perform research to obtain their degree.

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.”).

²²⁷ Nw. Univ. Emp’r & Coll. Athletes Players Ass’n (Capa), No. 13-RC-121359, slip op. at 1, 198 L.R.R.M. (BNA) ¶ 1837 (N.L.R.B. Mar. 26, 2014).

²²⁸ *Id.* 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.*

²²⁹ *Id.* at 21.

²³⁰ *Id.* at 12 (citing *NLRB v. Town & Country Electric*, 516 U.S. 85, 94 (1995)).

²³¹ *Brown Univ.*, 342 N.L.R.B. 483, 490 n.27 (2004) (citing *NLRB v. Town & Country Electric*, 516 U.S. at 94); *see also* RESTATEMENT (SECOND) OF AGENCY § 2(2) (1958).

²³² *Brown Univ.*, 342 N.L.R.B. 483 (2004).

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

(4) Although they received a stipend from the university, the amount was not 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.²³³

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 not to be statutory employees for the purposes of the NLRA.²³⁴

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.²³⁵ First, the Regional Director established that “[g]rant-in-[a]id [s]cholarship [f]ootball [p]layers [p]erform [s]ervices for the [b]enefit of the [e]mployer for [w]hich [t]hey [r]eceive [c]ompensation.”²³⁶ 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.²³⁷ The Regional Director pointed to the team and athletic department rules, which are not applicable to the regular student population, as distinguishing traits of the college football players from other Northwestern students.²³⁸ Finally, the Regional Director concluded that because of the time devoted to football, Northwestern scholarship football players are not “primarily students,” but paid workers.²³⁹

²³³ *Id.*

²³⁴ *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).

²³⁵ The Northwestern NLRB decision can be viewed as a return to the *NYU* decision, which *Brown University* overturned. *See* N.Y. Univ., 332 N.L.R.B. 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 N.L.R.B. at 483.

²³⁶ Nw. Univ. Emp’r & Coll. Athletes Players Ass’n (Capa), No. 13-RC-121359, slip op. at 12, 198 L.R.R.M. (BNA) ¶ 1837 (N.L.R.B. Mar. 26, 2014).

²³⁷ *See id.* at 13 (describing the schedules of the players throughout the calendar year and the amount of control the coaches and administration exert over their schedules).

²³⁸ *Id.*

²³⁹ *Id.* (“[I]t cannot be said that they are ‘primarily students’ who ‘spend only a limited number of hours performing their athletic duties.’”).

Although this limited holding only applies to private universities, the principles and analysis behind the decision reveal the staying power behind the commercialization and professionalization of college athletics. Furthermore, analysis of NCAA Division I basketball reflects fact patterns that parallel football.²⁴⁰

IV. SOLUTIONS

A. *The European Club Model of Amateur Sports*

Overview

The basketball landscape in Europe differs greatly from the American amateur system.²⁴¹ In Europe, 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.²⁴² Instead, the club system serves as the formalized European sporting device, serving both amateur and professional functions at times across multiple sports.²⁴³ These clubs are affiliated with their localities rather than a particular high school or school

²⁴⁰ See Lee Goldman, *Sports and Antitrust: Should College Students Be Paid to Play?*, 65 NOTRE DAME L. REV. 206 (1990) (comparing Division I football and basketball revenues); Christopher L. Chin, *Illegal Procedures: The NCAA's Unlawful Restraint of the Student-Athlete*, 26 LOY. L.A. L. REV. 1213, 1223 (1993) (discussing the pooling and distribution of profits from intercollegiate football and basketball).

²⁴¹ See generally Maureen A. Weston, *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, *supra* note 22, at 26; Abbey-Pinegar, *supra* note 154, 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.”).

²⁴² Salerno, *supra* note 22, at 26 (citing Athanasios Laios, *School Versus Non-school Sports: Structure, Organization and Function in Greece, Europe and the USA*, 9 INT’L J. EDUC. 4, 6 (1995) (noting that a minimal portion of money spent on education in Europe supports school sports)); see also Marc Isenberg, *A Thorough Exam of the Euro*, BASKETBALL TIMES, at 28, 28 (2009), available at <http://www.moneyplayersblog.com/files/bt-eurocamp-0906.pdf> (acknowledging that Europe does not have college basketball); Zachary R. Roth, *International Student Athletes and NCAA Amateurism: Setting an Equitable Standard for Eligibility After Proposal 2009-22*, 46 VAND. J. TRANSNAT’L L. 659, 670–71 (2013) (explaining that eligibility to participate in NCAA-sponsored athletic competition arises in part from educational performance prior to enrollment in an NCAA institution).

²⁴³ Roth, *supra* note 242, at 669.

system.²⁴⁴ As an amateur player advances in the club and wants to play more advanced competition, the player will eventually play against professional athletes as a member of the professional team.²⁴⁵ An amateur player in the European system cannot sign a professional contract until he or she is eighteen.²⁴⁶ This model is known as the “socio-cultural” federalized club-based model, contrasting with the “commercialized” sports model of the United States.²⁴⁷ 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.”²⁴⁸

Ken Foster offers a description of the two models of sport governance.²⁴⁹ 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; and
- A single representative federal body as governance structure.²⁵⁰

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.”²⁵¹

The European model contrasts sharply with the American system, whose distinguishing characteristics include:

- Profit as the major organizational motive;

²⁴⁴ See, e.g., Abbey-Pinegar, *supra* note 154, at 346 (“The United States is the only country in the world with such an extensive system of competitive sports teams connected to colleges and universities.”).

²⁴⁵ Weston, *supra* note 241, at 848.

²⁴⁶ See Int’l 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).

²⁴⁷ Anastasios Kaburakis, *The US and EU Systems of Sport Governance: Commercialized v. Socio-Cultural Mode Competition and Labor Law*, 3 INT’L SPORTS L. J. 108, 109 (2008).

²⁴⁸ Abbey-Pinegar, *supra* note 154, at 348.

²⁴⁹ Kaburakis, *supra* note 247, at 119 (citing Ken Foster, *Alternative Models for the Regulation of Global Sport*, in THE GLOBAL POLITICS OF SPORT 63, 63-86 (Lincoln Allison ed., 2005)).

²⁵⁰ *Id.*

²⁵¹ *Id.* at 111.

- Closed, ring-fenced²⁵² league as the league structure;
- 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
- A league or commissioner as governing structure²⁵³.

Generally, the European sports context, particularly in relation to amateur sports, is steered against the principle and efforts of commercialization.²⁵⁴

B. Policy Solutions from the European Club Model

Three key concepts stem from the European club model that American basketball amateurism should consider in its reform:

1. The creation of a governing organization for pre-college amateur basketball;
2. The development of an American basketball club system; and
3. The fostering 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 Basketball for international competition²⁵⁵ is the Fédéra-

²⁵² "Ring-fenced" is a term stolen from finance terminology and refers to the static structure of the league where the teams remain constant from year to year. This contrasts with some European leagues, which promote the best teams from a lower division into a higher division while relegating the worst teams from a higher division into a lower division.

²⁵³ Kaburakis, *supra* note 247, at 119 (citing Ken Foster, *Alternative Models for the Regulation of Global Sport*, in *THE GLOBAL POLITICS OF SPORT* 63, 63-86 (Lincoln Allison ed., 2005)).

²⁵⁴ *Id.*

²⁵⁵ Abbey-Pinegar, *supra* note 154, at 346 ("The [international federations] have the responsibility and the duty to manage and monitor the quotidian operation of

tion Internationale de Basketball (“FIBA”).²⁵⁶ 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.”²⁵⁷ Each European country has its own “National Federation,”²⁵⁸ which is a national governing authority that runs the league within its respective country, but adheres closely to FIBA rules and regulations regarding amateurism.²⁵⁹ Since its foundation, FIBA has allowed for the development of a standardized system of rules and coaching to develop within European amateur basketball.²⁶⁰ The two major amateurism sports organizations in the world, FIBA and the NCAA, rely on separate amateurism rules to determine athlete eligibility.²⁶¹ FIBA prohibits compensation of a player or team during the Olympic Games, but it otherwise permits players to enter into written contracts for payment with club teams.²⁶² Under FIBA regulations, amateurs can receive stipends, living expenses, housing, and scholarships.²⁶³ The influence of agents is permitted in this process, but agents are regulated: they are required to have clear con-

the world’s various sport disciplines and the supervision of the development of athletes practicing the sports at every level.”).

²⁵⁶ Fitt, *supra* note 148, at 583.

²⁵⁷ Abbey-Pinegar, *supra* note 154, at 348 (citing Weston, *supra* note 241, at 848).

²⁵⁸ See *FIBA National Federations and League Search*, FIBA.COM, <http://www.fiba.com/pages/eng/fc/FIBA/fibaStru/nfLeag/p/openNodeIDs/984/selNodeID/984/search.html> (last visited Jan. 10, 2014).

²⁵⁹ See *National Federation Manual*, FIBA.COM, <http://www.fiba.com/pages/eng/fc/FIBA/fibaProg/NFManual.asp> (last visited Jan. 10, 2014).

²⁶⁰ See *id.* (publication “to help facilitate the process of measuring progress, assisting the federations and providing guidance in whichever way they can.”).

²⁶¹ In the U.S. basketball context, the U.S. Olympic Committee relies on FIBA standards in determining amateurism. Abbey-Pinegar, *supra* note 154, at 345 (analyzing the differences in amateurism standards between the U.S. Olympic Committee and the NCAA).

²⁶² Fédération Internationale de Basketball, *Internal Regulations 2008: Regulation H Rules Governing Players, Coaches, Support Officials, and Players’ Agents* (2008), 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 organizations 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.”).

²⁶³ Fitt, *supra* note 148, at 583-84.

tractual terms and abide by ethical rulings.²⁶⁴ Generally, FIBA regulations allow for a free market system of international and intra-national player movement.²⁶⁵

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.²⁶⁶ Especially with government support, a national governing body could provide leadership and clarity to a system that currently has none. The governing body, tentatively identified here 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 principal 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 mandate; 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:

1. Creating and propagating standardized procedures and rules, including revised coaching methods and qualifying tests for coaches
2. Enforcing rules limiting or at least overseeing the influence of shoe companies, agents, middlemen, and corporate monies

²⁶⁴ See Fédération Internationale de Basketball, Internal Regulations 2008: Rules Governing Players, Coaches, Support Officials, and Players’ Agents, at H.5.6.2.1(p), 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).

²⁶⁵ 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, 134 n.40 (2004) (“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 omitted).

²⁶⁶ 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. Abbey-Pinegar, *supra* note 154, at 348-49.

3. 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,²⁶⁷ AABA implementation on a national level would have an inter-league function, regulating high school 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 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 organization 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.²⁶⁸ As seen in the case of coaches like the aforementioned Joe Keller, requiring American coaches to all 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

²⁶⁷ See Lane, *supra* note 264, at 143 (discussing Chinese basketball players' national team obligations and the FIBA regulations that oblige the NBA teams to honor the arrangement).

²⁶⁸ Questions & Answers Concerning FIBA Certified Coaches, FIBA.COM, <http://www.fiba.com/pages/eng/fc/expe/coac/fibaCertCoac/p/openNodeIDs/20492/selNodeID/20492/qa.html> (last visited Jan. 10, 2014).

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 procedures. 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

Initially, 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 sometimes expected) in the club model.²⁶⁹ As previously mentioned, athletes under the FIBA model are able to openly receive stipends, free gear, and tournament money.²⁷⁰ 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 their own talent. In fact, athletes are already being provided for before they step foot on college campuses.

²⁶⁹ Roth, *supra* note 241, at 669-70; *see also* Abbey-Pinegar, *supra* note 154, 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).

²⁷⁰ *See* Abbey-Pinegar, *supra* note 154, at 349.

The financial support that shoe and apparel companies provide for AAU teams has been discussed earlier and is a trend that has been increasing since the advent of the post-Michael Jordan era of athlete marketing. In the late 1990s, several young NBA players such as Tracy McGrady, Alonzo Mourning, and Cherokee Parks benefitted from relationships with shoe companies very early in their career.²⁷¹ More recent prospects such as prep phenomenon 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.²⁷²

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).²⁷³ 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 Parker's exemplary play.²⁷⁴ Such deals are common and toe the line separating improper benefits from proper sponsorships.²⁷⁵

The commonplace nature of these deals, indeed the connections that have grown between shoe companies, AAU programs, and the nation's best basketball players, comes chiefly from the intense competition that has materialized between the largest shoemakers in the country. As discussed earlier, 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

²⁷¹ Travis Mewhirter, *AAU Basketball Teams Attracting Corporate Money: Apparel Companies Offer Free Gear to Top High School Athletes to Build Brand Loyalty*, GAZETTE .NET (July 18, 2013), <http://www.gazette.net/article/20130718/SPORTS/130719108/1027/aa-u-basketball-teams-attracting-corporate-money&template=gazette>.

²⁷² *Report: Adidas Ready to Throw \$180 Million at Andrew Wiggins*, CBS SPORTS (Oct. 15, 2013, 2:20 PM), <http://www.cbssports.com/collegebasketball/eye-on-college-basketball/24088008/report-adidas-ready-to-throw-180-million-at-andrew-wiggins>.

²⁷³ *How Nike Scored Exclusive Rights to Jabari Parker's Feet*, CHICAGO SUN-TIMES (Feb. 22, 2013, 12:00 AM), <http://voices.suntimes.com/business-2/grid/jabari-parker-simeon-nike-basketball-high-school-chicago/#.U1LaVvldWS0>.

²⁷⁴ *Id.*

²⁷⁵ Amy Donaldson, *High School Sponsorship Contracts Raise Concerns, but also Benefit Programs*, DESERET NEWS (Mar. 5, 2013, 9:30 AM), <http://www.deseretnews.com/article/865574959/Sponsorship-contracts-raise-concerns-benefit-programs.html?pg=all>.

their AAU teams is accepted. Indeed, the current relationship between shoe manufacturers and the AAU system sometimes is seen as 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. It would be in the best interest of all parties for rules to be laid down to allow for such athletes to be paid, under the framework offered by FIBA, but to mandate the AABA to tightly enforce how and when such payment can be handed down.

Support for the Implementation of a National Governing Body

Finally, the AABA must have a source of support. Reviewing 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.²⁷⁶ Some of the NBA's most prominent players, like LeBron James, Kobe Bryant, Chris Paul, and Carmelo Anthony, have also either directly voiced their displeasure with the current AAU game or have attempted to combat the problems by financing their own teams.²⁷⁷ 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.²⁷⁸ There have been calls for the NBA to use its power to supplant shoe companies as the main drivers of the AAU game.²⁷⁹ With an improvement to the AAU structure comes a corresponding rise, in these young athletes, in overall talent, maturity, and personal development—on and off the court.

²⁷⁶ Jonathan Tjarks, *The AAU System and How the NBA Could Fix It*, REALGM.COM (Aug. 30, 2013, 3:38 PM), <http://basketball.realgm.com/article/229624/The-AAU-System-And-How-The-NBA-Could-Fix-It>.

²⁷⁷ *NBA Stars Take Stand to Clean Up AAU Basketball's Image*, NBA.COM (June 11, 2010, 2:51 PM), <http://www.nba.com/2010/news/06/11/nbastars.aau.ap/index.html?rss=true>; see also Matt Norlander, *Chris Paul, Melo, Other Pros Redefining AAU-NBA Relationship*, CBS SPORTS (July 27, 2013, 1:38 PM), <http://www.cbssports.com/collegebasketball/eye-on-college-basketball/22913196/chris-paul-carmelo-anthony-other-pros-fostering-strong-roots-between-aau-and-nba>.

²⁷⁸ Tjarks, *supra* note 276.

²⁷⁹ *Id.*

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 at least 82 times a year based on those talents,²⁸⁰ overall play 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.²⁸¹ However, an increase in the number of teams requires an increase in the number of available, talented players who can support a new franchise. With worries that the current NBA talent pool is not deep enough, such thoughts about expansion have been tabled.²⁸² 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 to 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 tied closely to their communities, with many players joining the clubs based around their homes and communities developing close connections to the teams who represent them.²⁸³ Replicating, or at least emulating, such a model would allow for community-wide involvement in the process; communities could 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 a community becomes 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 commu-

²⁸⁰ Tom Hoff, *NBA Teams Rely on Stars*, THE HOYA (Nov. 1, 2013), <http://www.thehoya.com/nba-teams-rely-on-stars/>.

²⁸¹ Brian Windhorst, *Adam Silver: Seattle's Hopes on Hold*, ESPN (Feb. 12, 2014, 2:07 PM), http://espn.go.com/nba/story/_/id/10442963/nba-commissioner-adam-silver-talks-expansion.

²⁸² *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.

²⁸³ Kaburakis, *supra* note 247.

nity, save for a donation or sponsorship program, tying the program to communities would help ensure 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 fifteen to twenty regional teams in a developmental basketball league.²⁸⁴ Centered on America's urban centers, focusing on youths aged thirteen to eighteen, 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.²⁸⁵ These clubs would be the next step in basketball development in America and would address many of the inequalities and problems that have infected much of the NCAA model, such as labor disputes and unequal commercialization.

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 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.²⁸⁶ Recently, new NBA commissioner Adam Silver began discussions with NBA owners and NCAA executives concerning raising the minimum age requirement for NBA players from nineteen to twenty.²⁸⁷ The previous

²⁸⁴ See Christopher M. Parent, *Forward Progress? An Analysis of Whether Student-Athletes Should Be Paid*, 3 VA. SPORTS & ENT. L.J. 226, 230 (2004) (“[A] minor league system for both football and basketball ought to be developed.”).

²⁸⁵ See Dohrmann, *supra* note 5, at 434-35.

²⁸⁶ Matt Moore, *NCAA President Mark Emmert Meets with NBA Owners on Age Limit Issue*, CBS SPORTS (Apr. 18, 2014, 2:33 PM), <http://www.cbssports.com/nba/eye-on-basketball/24531693/ncaa-president-mark-emmert-meets-with-nba-owner-on-age-limit-issue>.

²⁸⁷ Mahoney, *supra* note 68.

“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 previously would have 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 proposed model addresses the exploitation of college basketball players—the result of commercialization and professionalization that plague the current NCAA. Specifically, the model works to rectify both the lack of revenue sharing and the artificial merger 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 would be based upon the European model, it would be created with several unique characteristics aimed at righting many of the wrongs inherent in the current basketball system. First, the clubs would be based around fifteen to twenty areas of either substantial urban populations or demonstrated high levels of historical basketball talent. Los Angeles and New York can be considered the two anchors of this system and could, along with other major metropolitan areas, support more than one club team. The clubs under this league would be tied heavily 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.²⁸⁸ Setting the cutoff at the top 150 or 200 players would allow a sizable, sustainable league to develop. It would also focus efforts on helping the 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.

²⁸⁸ Dohrmann, *supra* note 5, at 113-16.

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 joining a club 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 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.²⁸⁹ 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 a 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 their skills and likenesses, core

²⁸⁹ Pelton, *supra* note 70.

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 completely reverse much of the current thinking on basketball in America. Despite its multiple 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 would be incredibly important to developing 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

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.

There are a number of reasons any change to the system will require the full support of these actors. 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, the value of each dollar a company spends on the sponsorship is diluted unnecessarily. While some teams may have several star players, heading for big-time college programs, there are several other players, whom the company are outfitting *gratis*, 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 due to their regional status and connection to the players, 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 the NBA, the shoe companies, and agents 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 these companies' abilities to contract 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 a \$30 million sponsorship from the NBA and NCAA, have been non-starters because they relied on these

companies to work together.²⁹⁰ 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 more money to flow into the system in a heavily controlled manner.

The path for including sports agents in the process is much stickier. Agents, as currently regulated,²⁹¹ 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.²⁹² The current regulatory system places the interests of the NCAA above the interests of the athlete.²⁹³ 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 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 profes-

²⁹⁰ Dohrmann, *supra* note 5, at 400.

²⁹¹ See, e.g., Sports Agent Responsibility and Trust Act, 15 U.S.C. § 7805 (2012) (providing NCAA member schools with a private cause of action against sports agents that pay college athletes).

²⁹² Unlike the United States, most countries do not regulate sports agents. See Anastasios Kaburakis & Jacob Solomon, *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. See also Roth, *supra* note 241, 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.").

²⁹³ Edelman, *supra* note 148, at 147-48.

sional 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 accounted for the AAU culture in their drafting and development analysis by preferring to draft international players over players in the AAU system.²⁹⁴

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.²⁹⁵ Involving these players, including LeBron James and five-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 ones 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 it 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 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 percent of which was generated from the NCAA

²⁹⁴ Tjarks, *supra* note 276.

²⁹⁵ *List of Pro Players Sponsoring Youth Basketball Teams*, ORLANDO SENTINEL (July 24, 2012, 4:06 PM), http://articles.orlandosentinel.com/2012-07-24/sports/os-hs-aa-u-sponsors-box-20120724_1_youth-basketball-amar-e-stoudemire-dwight-howard.

Division 1 men's basketball tournament.²⁹⁶ Television contracts for the Division 1 tournament are worth over \$680 million alone, accounting for a large portion of the NCAA's overall revenue.²⁹⁷ In the past two decades, the NCAA's revenue stream has exploded, from approximately \$230.7 million in 1996 to \$912.8 million in 2013.²⁹⁸ 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 improper role of agents in its composition.²⁹⁹ However, the NCAA has no such interest in this European model being implemented alongside their current structure and acting as another path for young players to reach the NBA. Several elements of this relationship must be identified and prepared for before implementing 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-documented 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.³⁰⁰ 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.³⁰¹ Jeremy Tyler similarly left high school early, spending the equivalent of his senior year of high school and first year of

²⁹⁶ Mark Alesia, *NCAA Approaching \$1 Billion per Year Amid Challenges by Players*, INDIANAPOLIS STAR (Mar. 27, 2014, 11:06 PM), <http://www.indystar.com/story/news/2014/03/27/ncaa-approaching-billion-per-year-amid-challenges-players/6973767/>.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ Davis, *supra* note 186.

³⁰⁰ 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 Bobcats. See Pete Thamel, *Basketball Prospect Leaving High School to Play in Europe*, N.Y. TIMES (Apr. 22, 2009), <http://www.nytimes.com/2009/04/23/sports/ncaabasketball/23prospect.html>.

³⁰¹ Warren K. Zola, *Transitioning to the NBA: Advocating on Behalf of Student-Athletes for NBA & NCAA Rule Changes*, 3 HARV. J. SPORTS & ENT. L. 159, 172

college overseas before becoming draft eligible in 2011 when the Charlotte Bobcats selected him in the second round.³⁰² 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.³⁰³

While courts have denied the existence of a market for the services of student-athletes,³⁰⁴ 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 their own likenesses. Plaintiffs in the O’Bannon lawsuit are requesting that trust funds be set up for players’ compensation following their amateur careers.³⁰⁵ Another method of compensation is a “revenue sharing program that would entail sharing profits produced by a sport and disbursing those profits by percentages based on seniority.”³⁰⁶ If the NCAA accepts and propagates such measures, 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 or-

n.80 (2012) (citing Chris Broussard, *Exchange Student*, ESPN (Dec. 8, 2008, 9:44 AM), <http://sports.espn.go.com/espnmag/story?id=3715746>).

³⁰² *Id.* (citing Thamel, *supra* note 300).

³⁰³ *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.”).

³⁰⁴ Tristan Griffin, *Payment of College Student-Athletes at Center of Legal Battles*, 75 TEX. B.J. 850, 852 (2012) (citing Lazaroff, *supra* note 148).

³⁰⁵ Michael McCann, *O’Bannon Expands NCAA Lawsuit*, SPORTS ILLUSTRATED (Sept. 1, 2012), <http://www.si.com/more-sports/2012/09/01/obannon-ncaa-lawsuit>; see also Stephen M. Schott, *Give Them What They Deserve: Compensating the Student-Athlete for Participation in Intercollegiate Athletics*, 3 SPORTS LAW. J. 25, 45 (1996); Kenneth L. Shropshire, *Legislation for the Glory of Sport: Amateurism and Compensation*, 1 SETON HALL J. SPORT L. 7, 18 (1991) (suggesting trust funds for college athletes modeled after the International Olympic Committee’s (IOC) practice of setting up trust funds for amateur athletes).

³⁰⁶ Mary Catherine Moore, *There is no “I” in NCAA: Why College Sports Video Games do not Violate College Athletes’ Rights of Publicity Such to Entitle Them to Compensation for Use of Their Likeness*, 18 J. INTELL. PROP. L. 269, 280 (2010) (citing Michael P. Acain, Note and Comment, *Revenue Sharing: A Simple Cure for the Exploitation of College Athletes*, 18 LOY. L.A. ENT. L.J. 307, 337 (1998)).

ganization 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 those schools 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.³⁰⁷ An increase in entertainment and viewership of college basketball requires a change in the rules, not a change in the overall talent level. As a sociological point, fan identity is based upon the benefits it provides in a community sense.³⁰⁸ For an individual, being a fan of a team offers strong feelings of "camaraderie, community, and solidarity."³⁰⁹ 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.³¹⁰ Graduat-

³⁰⁷ Brian Goff, *College Basketball Unlikely to Solve Physical Play Problem*, FORBES (Mar. 11, 2013, 10:59 AM), <http://www.forbes.com/sites/briangoff/2013/03/11/college-basketball-unlikely-to-solve-physical-play-problem/>.

³⁰⁸ Beth Jacobson, *The Social Psychology of the Creation of a Sports Fan Identity: A Theoretical Review of the Literature*, 5 ONLINE J. SPORT PSYCHOL. 1, 2 (2003).

³⁰⁹ *Id.*

³¹⁰ See Forde, *supra* note 196 (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 Goldman, *supra* note 240, at 228 (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.").

ing from an institution or growing up in the institution's region each result in fandom that would not be defeated easily 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 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.

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 in resolving the issues so prevalent in America's amateur basketball environment.