

LEGISLATION FOR THE GLORY OF SPORT: AMATEURISM AND COMPENSATION

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*"Ancient Amateurism is a myth."*¹

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I. AMATEURISM

A. Introduction

Recently, college athletics has been plagued by more scandal than probably any other time since the creation of the National Collegiate Athletic Association (NCAA).² The earliest concerns in collegiate sports involved safety. In fact, the deaths and injuries associated with the fledgling sport of

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1. D. YOUNG, *THE OLYMPIC MYTH OF GREEK AMATEUR ATHLETICS* 7 (1985).

2. For a history of the National Collegiate Athletic Association (NCAA), created in 1905, see J. FALLA, *NCAA: THE VOICE OF COLLEGE SPORTS* (1981); P. LAWRENCE, *UNSPORTSMANLIKE CONDUCT: THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION AND THE BUSINESS OF COLLEGE FOOTBALL* (1987).

collegiate football led President Theodore Roosevelt to urge that the leaders of college football reform the game.³

Now, as we enter the last decade of the twentieth century, legislators are again becoming more involved in the reformation of college athletics. The most extensive legislation has been targeted towards the sports agent and the role which agents may take in collegiate athletics.⁴

This new legislation serves largely as a reaffirmation of the rules forbidding compensation of collegiate athletes. Although the conclusion may be harsh, reality suggests that many of the NCAA rule violations occur because student athletes require more income than they are allowed to receive under the present NCAA rules. This article examines the reasons why student athletes are not receiving the necessary compensation, whether such payment is required or deserved, and why legislators routinely support a long standing and antiquated interpretation of amateurism. The author suggests that compensation to student athletes should not only be increased but also that legislators should put their limited resources to better use rather than concentrating their efforts on feeble attempts to police outdated concepts of amateurism.

The very act of defining the term "amateur" causes one to focus on many of the controversies surrounding the amateurism issue. Usually, the definition of an amateur is left up to whatever governing body is regulating the particular athletic event or organization.⁵ This definition generally appears in the organization's constitution or bylaws. Most popularly, an amateur is defined as someone who participates, and always has participated, in sports solely for pleasure and for the attendant physical, mental or social

3. J. FALLA, *supra* note 2, at 14.

4. The following statutes are examples of legislation affecting sports agents promulgated in the 1980s: *See, e.g.*, ALA. CODE §§ 41 *et seq.* (Supp. 1988); CAL. LAB. CODE §§ 1500-1528 (West Supp. 1989); FLA. STAT. §§ 468.451-.457 (West Supp. 1989); GA. CODE ANN. §§ 43-4A-1 to 18 (Supp. 1988); IND. CODE ANN. §§ 35-46-4-1 to 4 (West Supp. 1988); IOWA CODE ANN. § 9A.1-.12; § 722.11 (West Supp. 1989); KY. REV. STAT. ANN. §§ 518.010-.080 (Supp. 1988); LA. REV. STAT. ANN. §§ 421-430 (West 1987 & Supp. 1989); MD. ANN. CODE, art. 56, §§ 632-640 (Supp. 1988); MICH. COMP. LAWS ANN. § 750.411e (West Supp. 1989); MINN. STAT. ANN. § 325E.33 (West Supp. 1989); MISS. CODE ANN. §§ 73-41-1 to 23 (Supp. 1988); N.C. GEN. STAT. §§ 78C-1 to 62 (West 1988); OHIO REV. CODE ANN. §§ 4771.01-.99 (Supp. 1988); OKLA. STAT. ANN. tit. 70, §§ 821.61-.71 (West 1986); PA. STAT. ANN. tit. 18, § 7107 (West Supp. 1989); TENN. CODE ANN. §§ 49-7-2101 to 2109 (Supp. 1988); TEX. REV. CIV. STAT. ANN., art. 8871 (West Supp. 1989).

Texas has also passed legislation not specifically directed at sports agents but at any offer, receipt, solicitation or confirmation of a "benefit" that influences an individual to enroll in an institution. *See* TEX. PENAL CODE § 1 Ch. 32, Subch. D, § 32.441 *et seq.*

For an overview of the issues sports agent legislation should address *see, e.g.*, Sobel, *The Regulation of Sports Agents: An Analytical Primer*, 39 BAYLOR L. REV. 701 (1987).

5. *See* J. WEISTART & C. LOWELL, *THE LAW OF SPORTS* 7 § 1.04 (1979). Various athletic organizations such as the International Olympic Committee (IOC), Amateur Athletic Union (AAU) and the NCAA may have similar yet slightly varying definitions of the term "amateur." *Id.* *See* UNITED STATES OLYMPIC COMMITTEE CONST., art. II, § 5; AMATEUR ATHLETIC UNION CODE, art. 1, § 101.3(I) (1975); CONSTITUTION OF THE NCAA, art. 12, § 12.02.1 (1990).

benefits. The amateur receives no financial gain of any kind for his athletic prowess either directly or indirectly.⁶ The amateur participates in sport for the glory of sport alone.

The payment of money to amateur athletes has traditionally been viewed to be contrary to the very essence and true meaning of amateurism.⁷ When payments are made, questions are raised. Often alumni, boosters, sports agents, and the schools themselves, make payments to student athletes when it is perceived to be advantageous. Some agents seek a competitive advantage by paying student athletes to sign representation agreements with them. There is some logic to the idea that if the institutions themselves are legally allowed to pay the athletes then the illegal payments from agents, boosters and alumni will appear less attractive. This supply and demand theory postulates that by legitimizing what was once the enticement, the opportunity to cheat will be reduced. NCAA Executive Director Richard Schultz is of a different opinion, however, and maintains that payments by the schools will simply serve to raise the ante for third parties.

Paying the student athlete is particularly prevalent in situations where the student athlete is from an economically disadvantaged background. Ironically, the NCAA rules prevent any student athlete who receives a scholarship from working during the academic school year. The scholarship athlete is thus forced to go elsewhere for money in order to pay for incidental living and social expenses. If the athlete's family cannot offer any economic assistance, the athlete may be tempted to explore other less legitimate avenues. A willing "donor" often presents itself in the form of a sports agent, booster or alumnus. Although such payments are against NCAA rules and many state laws, it is important to understand why these illegal payments take place and how the demand for these payments may be reduced.

The issues involving payment prohibitions and motivation of amateur athletes appear to have their roots in ancient Greek athletics. This view, however, is what experts in the area refute as a common misconception. The next sections examine that myth and further explore the origins of amateur athletes and the rules forbidding compensation.

B. Origin of the Rules Against Compensation

1. Ancient Greeks

A common misconception held by many people today is that the foundation of collegiate amateurism had its genesis in the Olympic model of the ancient Greeks. In 1929, an extensive study of the relationship of athletics

6. Olympic Rules and Regulations, rule 26(I) (1972). Receipt of a scholarship will not render an athlete ineligible as long as the financial assistance received is tied to the completion of academic obligations and not to athletic achievements. *Id.* R. 26(III)(3).

7. See YOUNG, *supra* note 1, at 7.

and the American university was conducted by the Carnegie Foundation.⁸ The typical and generally incorrect theories for the basis of amateurism are explored in this work.⁹ The "myth" of ancient amateurism held that there was some society, presumably the Greeks, that took part in sport solely for the associated glory while receiving no compensation for either participating or winning.¹⁰ In his book, *The Olympic Myth of Greek Amateur Athletics*¹¹, classicist David C. Young reported finding "no mention of amateurism in Greek sources, no reference to amateur athletes, [and] no evidence that the concept of 'amateurism' was even known in antiquity. The truth is that 'amateur' is one thing for which the ancient Greeks never even had a word."¹² Young further traces the various levels of compensation that were awarded in these ancient times including a monstrous prize in one event that was the equivalent of ten years worth of wages.¹³

The absence of compensation was not an essential element of Greek athletics.¹⁴ Specifically, the ancient Greeks "had no known restrictions on granting awards to athletes."¹⁵ Many athletes were generously rewarded. Professor Young asserts that the only real disagreement among classical scholars is not whether payments were made to the athletes but only when such payments began.

The myth concerning ancient Greek athletics was apparently developed and perpetuated by the very same individuals that would ultimately benefit from the implementation of such a system.¹⁶ The scholars most often cited for espousing these views of Greek amateurism were those who sought to promote an athletic system they supported as being derived from ancient precedent.¹⁷ In his work, Professor Young systematically proves these theo-

8. H. SAVAGE, *AMERICAN COLLEGE ATHLETICS* (1929).

9. *Id.* In discussing the development of amateurism it was found that "[t]he essential differences between the amateur and the professional in athletics were clearly understood among the ancient Greeks." *Id.* at 3.

10. YOUNG, *supra* note 1, at 7.

11. *Id.*

12. *Id.*

13. *Id.* He notes later that in a single running event the winner received enough money to buy six or seven slaves, 100 sheep or three houses. *Id.* at 127.

14. *Id.* at 7.

15. E. GLADER, *AMATEURISM AND ATHLETICS* 54 (1978).

16. YOUNG, *supra* note 1, at 8.

17. Professor Young cites an article written by classical scholar, PAUL SHOREY, in *THE FORUM* as an example of one of the first misstatements of the actual history:

And here lies the chief, if somewhat obvious, lesson that our modern athletes have to learn from Olympia . . . They must *strive* . . . *only* for the complete development of their manhood, and their sole prizes must be the conscious delight in the exercise . . . and some simple symbol of honor. They must not prostitute the vigor of their youth for gold, directly or indirectly . . . [T]he commercial spirit . . . is fatal, as the Greeks learned . . . Where money is the stake, men will inevitably tend to rate the end above the means, or rather to misconceive the true end . . . the professional will *usurp the place of the amateur* . . . [emphasis in original]. *Id.* at 9.

ries false by countering with direct evidence and an analysis of the motivation for presenting inaccurate information. Similar faults by other scholars led to the inevitable development of fallacious cross-citations with each relying upon the other for authority.¹⁸ One scholar is believed to have actually created a detailed account of an ancient Greek athlete which Professor Young concluded was a "sham" and "outright historical fiction."¹⁹ The reasoning behind such deliberate falsehoods was apparently designed to serve as "a moral lesson to modern man."²⁰

In simplest terms, these scholars were part of a justification process for an elite British athletic system destined to find its way into American collegiate athletics. "They represent examples of a far-flung and amazingly successful deception, a kind of historical hoax, in which scholar[s] joined hands with sportsman[s] and administrator[s] so as to mislead the public and influence modern sporting life."²¹ With amateurism widely proclaimed by the scholars of the day, the natural tendency was for non-scholars to join in and heed the cry as well.

The leading voice in the United States espousing the strict segregation of pay and amateurism was Avery Brundage, former President of both the United States Olympic Committee (USOC) and the International Olympic Committee (IOC).²² Brundage believed that the ancient Olympic games, which for centuries blossomed as amateur competition, eventually degenerated as excesses and abuses developed attributable to professionalism.²³ "What was originally fun, recreation, a diversion, and a pastime became a business. . . . The Games . . . lost their purity and high idealism, and were finally abolished. . . . [S]port must be for sport's sake."²⁴ Brundage was firmly against amateurs receiving any remuneration, justifying his belief upon the Greek amateur athletic fallacy. Brundage took extraordinary action during his tenure as president of the USOC and the IOC to ensure such

Shorey's article was written prior to the first modern Olympiad held in Athens in 1896 and it was directed at the potential Olympians. *Id.* at 9. Young maintains further that this was not, in fact, the first revival of the Olympics. *Id.* He writes that as early as 1870 a modern Olympiad took place in Athens in which cash prizes were awarded. *Id.* at 31.

18. *Id.* at 12.

19. *Id.* at 12, 13. See H. HARRISS, *GREEK ATHLETES AND ATHLETICS* (1964).

20. YOUNG, *supra* note 1, at 13. The lesson is apparently somewhat self-serving and designed to present in a favorable light the values of the gentlemen amateur athletes of Victorian England. *Id.*

21. *Id.* at 14.

22. *Id.* at 85. Brundage was in strong opposition to Jim Thorpe recovering his forfeited Olympic medals. The irony behind his losing the medals is evident in Thorpe's own statements referring to the semi-professional baseball games in which he participated. "I did not play for the money . . . but because I liked to play ball." *Id.* While other athletes participated in the same games under a variety of aliases, Thorpe did not even realize he was jeopardizing his amateur and Olympic eligibility. See PACHTER, *CHAMPIONS OF AMERICAN SPORT* 195 (1981).

23. A. BRUNDAGE, *USOC REPORT OF THE GAMES OF THE XIV OLYMPIAD* (1948).

24. *Id.*

a prohibition. One such step involved stripping Olympic hurdler Lee Calhoun of his amateur status for accepting wedding gifts given in conjunction with his appearance on the television show *Bride and Groom*.²⁵

Professor Young and other like-minded scholars contend that the development of the present day system of collegiate amateurism is not modeled after the ancient Greeks. Rather, today's amateurism is a direct descendant of the Avery Brundages of the world and is actually much more reflective of the practices developed in Victorian England than those originated in ancient Greece.

2. England

In 1866, the Amateur Athletic Club of England published a definition of the term "amateur".²⁶ Although the term had been in use for many years, this was, perhaps, the first official definition of the word. The definition which was provided by that particular sports organization required an amateur to be one who had never engaged in open competition for money or prizes, never taught athletics as a profession, and one who was not a "mechanic, artisan or laborer."²⁷

The Amateur Athletic Club of England was established to give English gentlemen the opportunity to compete against each other without having to involve and compete against professionals.²⁸ However, the term "professional" in Victorian England did not merely connote one who engaged in athletics for profit, but was primarily indicative of one's social class.²⁹ It was the dominant view in the latter half of the nineteenth century that not only were those who competed for money basically inferior in nature, but that they were "also a person of questionable character."³⁰ The social distinction of amateurism, attributable to the prevailing aristocratic attitude at the time, provided the incentive for victory. "When an amateur lost a contest to a working man he lost more than the race . . . [h]e lost his identity . . . his life's premise disappeared; namely that he was innately superior to the working man in all ways."³¹ Thus, concepts of British amateurism developed along class lines, were reinforced by the "mechanics clauses" that existed in amateur definitions. These clauses typically prevented mechanics, artisans and laborers from participation in amateur sport. The reasoning behind the "mechanics clause" was the belief that the use of muscles as part of one's

25. YOUNG, *supra* note 1, at 87 n. 84.

26. GLADER, *AMATEURISM AND ATHLETICS* 100 (1978).

27. *Id.* at 100. See also H. HEWITT GRIFFIN, *ATHLETICS* 13-14 (1891); H.F. WILKINSON, *MODERN ATHLETICS* 16 (1868).

28. YOUNG, *supra* note 1, at 19.

29. *Id.*

30. GLADER, *supra* note 26, at 15. The title "amateur" became a badge for upper class gentlemen seeking to evidence their good social standing. YOUNG, *supra* note 1, at 18.

31. YOUNG, *supra* note 1, at 18 n. 17.

employment offered an unfair competitive advantage.³² Eventually, under the guise of bringing order to athletic competition, private athletic clubs were formed that effectively restricted competition "on the basis of ability and social position" and not on the basis of money.³³ Over the years this distinction has been used to identify those athletes who are ineligible for amateur competition because their ability to support themselves based solely on their athletic prowess has given them a special competitive advantage.³⁴ It is from these antiquated rules that the modern eligibility rules of the NCAA evolved. Any remaining negative connotations regarding professionalism owe their continued existence to these distinctions.

3. United States

The amateur/professional dilemma confronting today's American universities is based on the presumption that if a college competes at a purely amateur level it will lose prestige and revenue, as it loses contests. However, open acknowledgement of the adoption of professional athleticism would result in a loss of respectability for the university as a bastion of academia. The present solution to this dilemma has been for collegiate athletic departments to "claim amateurism to the world, while in fact accepting a professional mode of operation."³⁵

Two sports, baseball and rowing, were the first to entertain the questions of professionalism versus amateurism in the United States. Initially, the norm for organized sports in this country was professionalism. Baseball was played at semiprofessional levels as early as 1860 and the first professional team, the Cincinnati Red Stockings, was formed in 1868.³⁶ The first amateur organization, the New York Athletic Club, was established in the United States in 1868.³⁷

In 1909, the NCAA (which had successfully evolved from the Intercollegiate Athletic Association established in 1905) recommended the creation of particular amateur/professional distinctions.³⁸ With the subsequent adop-

32. GLADER, *supra* note 26, at 17. See also R.A. SMITH, *SPORTS & FREEDOM: THE RISE OF BIG TIME COLLEGE ATHLETICS* 166 (1988) (stating that the eligibility rules of the British Amateur Rowing Assoc. in 1870 contained a similar clause).

33. *Id.* The laborer was classified as a professional due to his unfair physical advantage. *Id.*

34. *Id.*

35. SMITH, *supra* note 32, at 166. Although the reference is made to a "professional mode of operation," university scholarship athletes are not allowed to receive compensation above what amounts to tuition, room, board and educational fees. *Id.*

36. SAVAGE, *supra* note 8, at 36.

37. YOUNG, *supra* note 1, at 22.

38. SAVAGE, *supra* note 8, at 42. Specifically:

1. An amateur in athletics is one who enters and takes part in athletic contests purely in obedience to the play impulses or for the satisfaction of purely play motives

tion of these proposals, England's Victorian amateur and professional delininations were incorporated into American intercollegiate athletics.

Prior to the adoption of the NCAA proposals, "professionalism" abounded. For example, in the 1850's Harvard University students rowed in a meet offering a \$100 first prize purse and a decade later they raced for as much as \$500.³⁹ Amateurism, at least as historically conceived, was largely absent from college sports in the beginning of the twentieth century. Competition for cash and prizes, collection of gate revenue, provisions for recruiting, training and tutoring of athletes, as well as the payment of athletes and hiring of professional coaches had invaded the arena of intercollegiate athletics.⁴⁰ Professionalism had infiltrated collegiate sports and had perverted amateurism as it was understood in the nineteenth century."⁴¹

The sheer number of competing American educational institutions was, in itself, a major reason that athletics in the United States developed far beyond the amateurism still displayed at the learned British counterparts. In England, an upper level education meant one of two places, either Oxford or Cambridge. With each institution policing the other, the odds of breaching the established standards of amateurism were not high. In the United States, while the Ivy League schools competed strongly amongst themselves, there was also the rapid emergence of many fine public colleges and universities.⁴² Freedom of opportunity, a pervasive factor in the genesis of American collegiate athletics, made it increasingly more difficult for the Harvards and Yales to maintain themselves as both the athletic and the intellectual elite within the United States.⁴³

According to some scholars, the English system of amateurism, "loosely" derived from the Greeks, simply did not have a chance of success

and for the exercise, training, and social pleasure derived. The natural or primary attitude of mind in play determines amateurism.

2. A professional in athletics is one who enters or takes part in any athletic contest for any other motive than the satisfaction of pure play impulses, or for the exercise, training or social pleasures derived, or one who desires and secures from his skill or who accepts of spectators, partisans or other interests, any material or economic advantage or reward.

Id.

39. SMITH, *supra* note 32, at 169 (citing Alexander Agassiz, *Rowing Fifty Years Ago*, HARV. GRADUATES MAG., Vol. XV, at 458 (March 1907)); see also Charles W. Eliot, *In Praise of Rowing*, HARV. GRADUATES MAG., Vol. XV, at 532 (March 1907); B. W. Crowninshield, *Boating*, F.O. VALLE; H.A. CLARK, *THE HARVARD BOOK* 263 (1875).

40. SMITH, *supra* note 32, at 171.

41. *Id.* An early and graphic illustration of the benefits bestowed upon athletically successful students involved Yale football team captain, James Hogan. *Id.* at 188. After playing his final game in 1904 Yale rewarded Hogan by sending him to Havana, Cuba for a luxurious vacation. *Id.*

42. *Id.* at 173.

43. *Id.* Refusal to compete against other athletically developing schools would have caused Harvard and Yale to lose their athletic "esteem and prestige." *Id.*

in the United States. As noted above, one factor contributing to its demise was increased competition among a larger number of institutions. Another was the difference in egalitarian beliefs between the two nations:

The English amateur system, based upon participation by the social and economic elite . . . would never gain a foothold in American college athletics. There was too much competition, too strong a belief in merit over heredity, too abundant an ideology of freedom of opportunity for the amateur ideal to succeed. . . . It may be that amateur athletics at a high level of expertise can only exist in a society dominated by upper-class elitists.⁴⁴

In spite of the ideological conflicts, the early post-formative years of the NCAA were spent attempting to enforce the various amateur standards. The first eligibility code sought only to insure that those who participated in collegiate athletics were actually full time registered students who were not being paid for their participation.⁴⁵ This initial set of amateur guidelines was largely ignored by the NCAA member institutions. After establishing this initial code the NCAA sought on numerous occasions to further define its views on amateurism. An intermediate step was the formal adoption of the Amateur Code into the NCAA constitution.⁴⁶ The impetus behind the adoption was "to enunciate more clearly [the NCAA's] purpose; to incorpo-

44. *Id.* at 174.

45. NCAA CONSTITUTION, art. VII, ELIGIBILITY RULES (1906). The first NCAA Eligibility Code is set forth below:

The following rules. . .are suggested as a minimum:

1. No student shall represent a college or university in any intercollegiate game or contest, who is not taking a full schedule of work as prescribed in the catalogue of the institution.

2. No student shall represent a college or university. . .who has at any time received, either directly or indirectly, money, or any other consideration, to play on any team, or. . .who has competed for a money prize or portion of gate money in any contest, or who has competed for any prize against a professional.

3. No student shall represent a college or university. . .who is paid or received, directly or indirectly, any money, or financial concession, or emolument as past or present compensation for, or as prior consideration or inducement to play in, or enter any athletic contest, whether the said remuneration be received from, or paid by, or at the instance of any organization, committee or faculty of such college or university, or any individual whatever.

4. No student shall represent a college or university. . .who has participated in intercollegiate games or contests during four previous years.

5. No student who has been registered as a member of any other college or university shall participate in any intercollegiate game or contest until he shall have been a student of the institution which he represents for at least one college year.

6. Candidates for positions on athletic teams shall be required to fill out cards, which shall be placed on file, giving a full statement of their previous athletic records.

Id.

46. P. LAWRENCE, UNSPORTSMANLIKE CONDUCT: THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION AND THE BUSINESS OF COLLEGE FOOTBALL 24 (1987).

rate the amateur definition and principles of amateur spirit; [and] to widen the scope of government."⁴⁷ As the monetary resources of the NCAA grew, so too did its enforcement power. The prime targets of those enhanced enforcement powers were the principles of amateurism as incorporated into the NCAA constitution.

The motivation to cheat existed even in the formative years of collegiate sports. Winning athletic programs had the potential to return high revenues to the institution. In its early years as a national football power, Yale University made \$105,000 from its successful 1903 football program.⁴⁸ Thus, the financial incentive to succeed existed even then, and has continued to serve as a strong incentive for many schools to break the rules in order to obtain the best talent.

The revenue sources for NCAA member institutions increased with the advent of television and radio. Increased media revenue led to increased incentives to violate NCAA recruitment and payment standards. In 1948, a so-called "Sanity Code" was adopted by the NCAA.⁴⁹ The code restricted the awarding of athletic scholarships on a needs basis only rather than based on athletic ability.⁵⁰ The ultimate goal of the code was to put an end to the unbridled spending by member institutions in their efforts to recruit and retain student athletes.

Widespread violations of the code by member universities during the post-war era resulted in the Association's attempts to suspend certain institutions for rule infractions.⁵¹ At the 1950 NCAA convention the membership was unable to gather the two-thirds majority vote necessary to suspend those institutions.⁵² Two years later, the Sanity Code was dropped and scholarships reverted from a needs basis back to one based on athletic ability.⁵³ The pressures to succeed more than outweighed the risk of detection and possible suspension. Given the opportunity to enforce its own rules the Association often failed to do so. In light of these developmental problems, the NCAA continues to prohibit compensation to student athletes above room, board, tuition and educational fees.

The NCAA was an organization formed to promote safety in collegiate sports. It later adopted the prevailing views of amateurism and is currently the largest sports organization to prohibit member athletes from receiving compensation. The lack of compensation for the student participant perme-

47. *Id.* (citing 1922 NCAA PROCEEDINGS at 10.)

48. RADER, AMERICAN SPORTS FROM THE AGE OF FOLK GAMES TO THE AGE OF SPECTATORS 268-269 (1983).

49. LAWRENCE, *supra* note 46, at 41. It was referred to as such due to the belief that the adoption of these rules would return sanity to the conduct of recruiting and compensating student athletes. *Id.*

50. *Id.*

51. RADER, *supra* note 48, at 268.

52. *Id.*

53. *Id.*

ates virtually all decisions in collegiate athletics today. Although the NCAA does not deliberately promote or associate itself with the tales of Greek amateurism, nothing has been done to correct popular misconceptions.

4. Athlete's View

Other scholars recognize the professional-amateur hybrid as being unique to American collegiate sports.⁵⁴ From 1983 to 1985 the Center for Athlete's Rights and Education conducted a study of collegiate athletes.⁵⁵ The study sampled 644 student athletes at forty-seven different colleges and universities ranging from Division I to Division III. One segment of the study concerned student athletes and their perceptions of amateurism and compensation.

One question asked was whether it was wrong to accept "under the table" payments for traveling, living and other expenses.⁵⁶ Of those surveyed, 42% saw nothing wrong with accepting those types of payments.⁵⁷ When asked whether they deserved a share of the television revenues which they generate for their universities, 43% responded affirmatively.⁵⁸ When questioned on their motivation for participation, 40% of the Division I student athletes surveyed responded that they participated for the "fun of it."⁵⁹ Interestingly, 81% of the Division III athletes who responded said they participated for the "fun of it."⁶⁰

Another interesting statistic is that 69% of the Division I athletes interviewed felt they were adequately rewarded for their involvement in college athletics. The rational thought by some scholars to be responsible for this seemingly incongruous result is that those student athletes who need additional inducements to play more often than not have access to a clandestine payment network funded by wealthy alumni.⁶¹ Thus, by forcing such payments underground, "the NCAA has been able to protect the myth of amateurism."⁶²

The system of amateurism in the United States has evolved projecting the image, particularly at the collegiate level, that those who play the sport for enjoyment alone are somehow purer than one who earns an income or

54. Sack, *College Sport and the Student-Athlete*, 11 J. SPORT & Soc. ISSUES 31-48, Fall/Winter (1987-88).

55. *Id.* at 32.

56. *Id.* at 41.

57. *Id.*

58. *Id.* at 42.

59. *Id.* at 43.

60. *Id.* at 42. Division III schools generally are not as competitive as their bigger Division I counterparts, and therefore, fail to generate anywhere near the same athletically related income levels. *Id.*

61. *Id.* at 45.

62. *Id.*

makes a living from participation. There are, however, other amateur organizations besides the NCAA that allow athletes to receive compensation.

C. Existing Regulations

1. Trust Funds

Athletes involved in non-NCAA track and field competitions are allowed to receive appearance and endorsement fees. This is acceptable only if the money, over and above actual travel and living expenses, is properly maintained in a trust fund. Professional athletes are also now allowed to participate in certain Olympic events, tennis being the prime example.⁶³ Following the 1988 Olympics, reports were common that some countries paid their athletes additional cash bonuses for medals won.⁶⁴ Payments for Olympic performances has not gone unnoticed and has received its fair share of criticism.

The most visible "paid" amateurs are track and field athletes. In the United States, The Athletics Congress (TAC) regulates the dollar amounts track and field athletes may receive.⁶⁵ The athletes receive their appearance monies and endorsement revenues through individualized "TACTRUST" funds.⁶⁶ The TACTRUST sets forth eleven specific instances whereby funds can be withdrawn from the account. Included are the costs associated with training and competition, health care and agents' commissions.⁶⁷

Even those sports that many people associate with the purest forms of amateurism provide compensation to athletes. A vivid example is the sport of fencing.⁶⁸ Like many Olympic sports, there is no professional level of fencing for the athlete to aspire to. Furthermore, the participation expenses of training and travel at the amateur level are tremendous. As a result, in August of 1988 the governing bodies of fencing approved financial awards

63. See, e.g., *Pros, Cons of Amateurism*, Washington Post, Sept. 16, 1988, at E2, col. 1 (noting that pros from ice hockey, soccer, tennis, and basketball may participate in the Olympics in the future. Volleyball and boxing are two sports where pros are not allowed to compete); Denlinger, *These Days, It's Take the Money and Run for the Gold*, Washington Post, Sept. 16, 1988, at E2, col. 3; Dolson, *Let's Leave the Olympics to the True Amateur*, Phila. Inq., Sept. 20, 1988, at C10, col. 1.

64. Denlinger, *supra* note 63. The Soviet Union pays its Olympic heroes approximately \$19,000 for a gold medal. *Id.* A French gold medal is worth over \$30,000. Dolson, *supra* note 62.

65. Denlinger, *supra* note 63.

66. *Id.*

67. TACTRUST HANDBOOK (1986-87). These trust funds were harshly criticized by a Canadian Commission organized to investigate amateur sports in the wake of the well publicized 1988 Olympic disqualification of Canadian sprinter Ben Johnson. SPORTS INDUSTRY NEWS 112 (April 14, 1989). Commission Chairman Charles Dugin referred to the trust funds as "pure subterfuge," with special comment reserved for Ben Johnson's \$257,000 Ferrari and \$150,000 Porsche. *Id.*

68. See *A Farewell to Amateurism*, N.Y. Times, July 15, 1989, at 47, col. 1.

based on the participants competitive performances.⁶⁹ Such actions, however, need not evoke concern in those who fear the contamination of amateuristic ideals. Pure amateurism is as unfair as it is unrealistic; if nobody got paid, only the rich could afford to compete.⁷⁰

2. NCAA Pay Restrictions

The irony of the NCAA rules is best expressed by Pennsylvania State University football coach Joe Paterno in his autobiography *Paterno By The Book*.⁷¹ In his book, Paterno wrestles with the notion that "Carl Lewis . . . became a millionaire while remaining an amateur. All kinds of endorsement money was dumped on him, and all legal as long as the money was paid to a trust fund instead of directly to Lewis. That's legal in track, but not in football. Don't ask me why."⁷²

The NCAA maintains monetary restrictions on student athletes. Also subject to the restrictions are commercial endorsements and opportunities for outside employment.⁷³ The NCAA rule regarding payments to athletes, bylaw 12.1.2, mandates that a student-athlete will be penalized by loss of amateur status and concomitant eligibility through receipt of payment, which under the rule, is classified as encompassing a wide array of specific practices.⁷⁴

69. *Id.*

70. Denlinger, *supra* note 63.

71. PATERNO & B. ASBELL, *PATERNO BY THE BOOK* 184 (1989).

72. *Id.*

73. *Id.*

74. See 1990 NCAA MANUAL, BYLAW 12.1.2. Bylaw 12.1.2 specifically prohibits acceptance of:

(a) Educational expenses not permitted by the governing legislation of this Association;

(b) Any direct or indirect salary, gratuity or comparable compensation;

(c) Any division or split of surplus (bonuses, game receipts, etc.);

(d) Excessive or improper expenses, awards and benefits;

(e) Expenses received from an outside amateur sports team or organization in excess of actual and necessary travel, room and board expenses . . . for practice and game competition;

(f) Actual and necessary expenses or any other form of compensation to participate in athletics competition (while not representing an educational institution) from a sponsor other than an individual upon whom the athlete is naturally or legally dependent or the nonprofessional organization that is sponsoring the competition;

(g) Payment to individual team members or individual competitors for unspecified or unitemized expenses beyond actual and necessary travel, room and board expenses and for practice and competition;

(h) Expenses incurred or awards received by an individual that are prohibited by the rules governing an amateur, noncollegiate event in which the individual participates;

(i) Any payment, including actual and necessary expenses, conditioned on the individual's or teams' place finish or performance or given on an incentive basis, or

The NCAA rules prohibiting employment are aimed at limiting the opportunity for boosters, alumni, agents or prospective agents to "assist" the student athlete. The rule provides that an athlete on full scholarship may not work during the school year or any time that class is in session.⁷⁵ NCAA Bylaw 15.2 limits the amount of financial aid a student may receive to "tuition and fees, room and board, and required course-related books."⁷⁶ The NCAA bylaws specifically include, as sources of funds which must be considered in this amount, "employment during semester or term time."⁷⁷

The student athlete on full scholarship may not be paid for his or her athletic prowess and is prohibited from working for additional spending money. The antiquated ideal of the aristocratic amateur is clearly evident from these restrictions. Should the student athlete have adequate funds, the ideal situation would be not to work. Clearly, such a student athlete would have more time to concentrate on academic studies. However, if the lack of money is an issue, what happens if the athlete desires to make a purchase which requires funds over and above the resources provided by the limited scholarship? Critics have curiously noted that other college students such as those in the drama, art or computer science departments are not faced with these same restrictions. Should those students desire to work, there are no prohibitions preventing them. Similarly, if a philharmonic orchestra or a computer science firm wanted to pre-employ a student before graduation, there is nothing to prevent them from doing so.

receipt of expenses in excess of the same reasonable amount for permissible expenses given to all individuals or team members involved in the competition;

(j) Educational expenses provided to an individual by an outside sports team or organization that are based in any degree upon the recipient's athletic ability, even if the funds are given to the institution to administer to the recipient;

(k) Cash, or the equivalent thereof (e.g., trust fund), as an award for participation in competition at any time, even if such an award is permitted under the rules governing an amateur, non-collegiate event in which the individual is participating. An award or a cash prize that an individual could not receive under NCAA legislation may not be forwarded in the individual's name to a different individual or agency;

(l) Preferential treatment, benefits or services (e.g., loans with deferred pay-back), because of the individual's athletic reputation or skill or pay-back potential as a professional athlete, unless such treatment, benefits or services are specifically permitted under NCAA legislation, and

(m) Receipt of a prize for participation (involving the utilization of athletic ability) in a member institution's promotional activity that is inconsistent with the provisions of 12.5 or official interpretations approved by the NCAA Council.

Id.

75. See 1990 NCAA BYLAW 15.01. In the case of football this includes preseason practice sessions. *Id.* at 15.2.6.

76. *Id.* at 15.2.

77. *Id.* at 15.2.6. The NCAA is now discussing allowing student-athletes in track and field and gymnastics to earn endorsements and other income. See SPORTS INDUSTRY NEWS 325 (Oct. 21, 1988); Krupa, *NCAA May Ok Endorsements*, SPORTS INC., Oct. 17, 1988, at 50.

These restrictions on the student athlete often provide a window of opportunity that may be seized by boosters, alumni or sports agents. One NCAA official noted that "[g]ood agents abide by the rules, which only provide inroads for the unscrupulous agents. The good agents say . . . [the rules] work to . . . [the unscrupulous agent's] advantage."⁷⁸ However, some view payments that are in violation of NCAA rules as synonymous with other "victimless crimes."⁷⁹

One opponent of the present system succinctly stated that "[K]eeping the players the only amateurs in an otherwise thoroughly professional production merely encourages agent 'loans' and other shenanigans that occupy sports page headlines."⁸⁰ The reference is to the obvious evolution that has taken place in college athletics. College sports is synonymous with big time entertainment. Everyone involved in the enterprise is reaping cash benefits. Everyone, that is, except the athlete himself. The fact that the scholarship athlete has the opportunity to receive a valuable education cannot be ignored. However, the fact that the athlete receives no cash payment for being the focal point of the entertainment enterprise should not be ignored either.⁸¹

Should the NCAA ever consider a system of athlete compensation, two important elements need to be addressed. The first is the pragmatic opportunity issue. Should funds for needy student athletes come directly from the member institutions, boosters, alumni or sports agents? Second, since student athletes are the initial generators of the funds, should they receive a greater share of the dividends?⁸²

78. SPORTS INDUSTRY NEWS 170 (May 29, 1987). See also Black, *A Hard Look at Agents, Part II*, SPORT, Dec. 1979, at 77 (former sports agent Mike Trope admittedly provided cash payments to players). *Id.*

79. *Palmer Says He Accepted Payments*, Phila. Inq., July 23, 1988, at D1, col. 6. Paul Palmer, a running back in the National Football League, admitted receiving payments from an agent while playing for Temple University. *Id.* "Some people did it for greed. . . . If there was anything, [I did it based more on] need. . . ." *Id.*

80. Wall St. J., Sept. 4, 1987, at 13, col. 1.

81. According to one view, "the student athletes are generating millions for the institutions. It's not fair for a kid like this not to have enough money to enjoy the college experience. Most kids get money from their parents. The kids from poor backgrounds can't" Telephone interview with Professor Philip Closius, Associate Dean, University of Toledo School of Law.

82. The total revenues from the 1990 NCAA Division I men's basketball tournament were \$76,178,792. NCAA DIVISION I MEN'S BASKETBALL CHAMPIONSHIP GENERAL INFORMATION (1990). Each school participating in the tournament was guaranteed \$294,468 and, if the team was skillful and fortunate enough to make it to the Final Four, the school's take was \$1,472,339. *Id.* [Eds. Note: The Seton Hall University men's basketball team was the runner-up to the 1989 National Championship University of Michigan squad and received an estimated \$1,374,224.] Beginning in 1991, revenues for member institutions will be supplemented by a seven year, one billion dollar contract recently signed with the CBS television network. See Shropshire, *Investment Advice for the NCAA*, WHARTON ALUMNI MAG., Spring 1990, at 36. The percentage share

However, when considering such a "trickle down" theory, it is important to note that not all NCCA member institutions are financially prosperous in their athletic endeavors. A fair number of athletic departments actually operate at a deficit. Potential loss must be considered in any analysis of increased compensation to the student athlete.

There is no clear explanation why NCAA student athletes continue to remain uncompensated for their athletic prowess. The next section looks at possible reforms that would allow some manner of increased compensation to reach the student athlete.

II. FORMS OF COMPENSATION

With no legitimate basis for the Greek ideal of amateurism, why hasn't the condition of the collegiate athlete steadily improved utilizing the available funds? This section sets forth methods that could be instituted to ensure that compensation actually reaches the student athlete.

A. Pay

Remuneration for the student athlete should progress naturally given the long standing policy of employing and paying coaches.⁸³ Not only were college coaches paid but they often earned more than most professors, as is the case today, while also enjoying greater campus visibility than even the college presidents.⁸⁴ Furthermore, "[i]ntercollegiate athletics, almost from the first, had the professional spirit."⁸⁵ Amateurism, in its purest form, would have had the athletes coach themselves. In the lesser extreme, graduate students would be employed as coaches rather than paid professionals. Today, a salary above \$100,000 is not uncommon for the successful collegiate coach.⁸⁶

One practical solution offered to solve the ethical and economic crisis which plagues collegiate athletics today would be to segregate the revenue

of each school participating in the 64 team tournament has been revised according to newly promulgated guidelines. See NCAA Memorandum, Oct. 21, 1990.

83. SMITH, *supra* note 32, at 147. The professional coach has been a part of college athletics since 1864. *Id.*

84. *Id.*

85. *Id.*

86. Gup, *Playing to Win in Vegas*, TIME, April 3, 1989, at 57.

In 1987, Jerry Tarkanian, head basketball coach at the University of Nevada at Las Vegas, earned a base salary of \$173,855 plus a percentage of the revenues from post season championship competition. *Id.* Tarkanian also had the free use of a Cadillac and benefits from several other promotional and endorsement arrangements including a Nike contract reportedly worth over \$150,000 per year. *Id.* See also The Newark Star Ledger, Nov. 21, 1990, at 37. Today, nearly every coach at a major Division I program has an extremely lucrative shoe and/or clothing contract in which he is paid in exchange for his team wearing a specific brand of sneakers or uniform. N.Y. Times, Nov. 11, 1990, at D23, col.1.

generating athletic entity from the traditional university community.⁸⁷ The result would be a type of minor league professional franchise located within the university system.⁸⁸ The mechanics of such a system would allow the teams to utilize the university athletic facilities while giving the players the ability to share in the revenues produced for the university.⁸⁹ The open professionalism of collegiate sports such as football and basketball at the Division I level would thereby act to eliminate the hypocrisy and unethical recruiting practices which prevail under the current regime.⁹⁰

"Paid amateur athlete" is no longer an oxymoronic term. Few would argue that the financial plight of the collegiate athlete is not paradoxical. Can the genuine financial concerns of these athletes be solved? A remedial attempt has been made with the creation of the Pell Grant. This grant is for a maximum of \$1,700 per year and is awarded to student athletes based purely on need.⁹¹ This represents not only an acknowledgment of the problem but positive steps towards a solution.

Extremists recommend that student athletes be paid an outright salary. In their eyes, college athletes provide essential farm system services for the professional sports of football, baseball and basketball. Again, the argument is raised that college athletics earn millions of dollars for the institutions that otherwise might not exist were it not for the efforts of the student athletes.⁹²

Some economists view the NCAA as a cartel, or an entity that "increases the profits of its members by assigning quotas that reduce production and raise prices."⁹³ The bylaws and regulations promulgated by the NCAA effectively reduce the competition between member universities for

87. ROONEY, *THE RECRUITING GAME*, at XV (1987).

88. *Id.* at 178.

89. *Id.*

90. *Id.*

91. 1990 NCAA BYLAW 15.2.4.1. The maximum allowable under the Pell Grant was recently raised from \$900 to its present level for Division I institutions. *Id.*

92. Stanford University economist Roger Noll provides support for this position. Noll, *The Economics of Intercollegiate Sports* (unpublished manuscript on file with the author). He cites to the case of John Paye, a star quarterback with the Cardinal in the 1980's. *Id.* In Paye's senior season, the Stanford football team had a record of eight wins and three losses while also participating in the post season Gator Bowl. *Id.* Noll notes that the following year, with Paye graduated but many other star players remaining, the Cardinal record fell to four wins and seven losses. *Id.* Even with the necessary economic corrections and adjustments factored into the equation, Professor Noll estimates that the net operating revenues associated with football declined by \$400,000 the year after Paye's departure. *Id.* In this instance, \$400,000 is the value that one economist attributes to a single athlete receiving a scholarship valued at \$17,000. *Id.* The argument could be raised that if the amount legitimately paid to the athlete is substantial enough much of the opportunity to entrap the athlete via agent contracts and cash payments would be removed. *Id.*

93. See BECKER, *THE NCAA: A CARTEL IN SHEEPSKIN CLOTHING* 24 (1987).

athletes, television contracts and tournament appearances.⁹⁴ The members are then able to maximize profits without having to pay the higher prices that a truly free market system would require. Thus, universities are naturally opposed to the idea of compensating student athletes due to the erosion effect wages would have on member institution's profits.

Given the circumstances surrounding athletic recruiting and the personal stake in winning, it is not difficult to understand why cheating is so prevalent. Many in the profession consider the NCAA investigations and penalties to be a normal cost of doing business.

Many athletes perceive college as merely a stepping stone to a successful professional sports career. Some have grown to expect something extra for their "athletic services." Even with acceptable levels of remuneration, payments from agents would still exist. As NCAA Executive Director Richard Schultz contends, only the ante would be raised. The segment of athletes that will always accept the payments are not those borne of "need" but, rather, those borne out of "greed."⁹⁵

Some proponents of the compensation system view participating in a revenue producing sport as "no different than a student working on behalf of the university. In such instances, the athlete should be paid for what they do."⁹⁶ Under this scenario an environment could be created where one pays for the work performed. The athlete would determine what classes to take and once those decisions were made he or she would then pay only for those classes. Thus, the athlete would receive exactly what was paid for, further allowing the student athlete to budget both time and funds. An additional benefit under this system is that non-student athletes would not continue to be under the impression that athletes receive special treatment. By providing the student athlete with a salary based on services rendered to the university, and then allowing the athlete the discretion to spend the income on educational needs as time permits, some of the illusory value of the athletic scholarship would be removed.⁹⁷

While an outright salary is probably not a method that will be adopted by the conservative collegiate sports reformers, there are other alternatives. One possibility would be to set aside some sort of lifetime retirement or

94. *Id.* University of Chicago Economics Professor Gary Becker argues that the NCAA's restrictions on competition and revenue constitute an unlawful conspiracy in violation of the Sherman Antitrust Act. *Id.*

95. Edward V. King, Jr., a San Francisco attorney who has represented athletes in a number of different lawsuits, believes that athletes accept illicit payments because of individual egotism. Interview with Edward V. King, Jr., (Sept. 3, 1989). He contends that providing a systematic method of compensation will have little or no effect. *Id.* "It has to do with bragging rights and ego massage. None of these guys take money because they're hungry. . . ." *Id.*

96. Interview with Anita DeFrantz, President, Amateur Athletic Foundation, (Oct. 10, 1989).

97. *Id.*

medical benefits plan.⁹⁸ Below are some of the more "acceptable" reforms that warrant serious consideration.

Short of paying a full salary, a frequent recommendation is that all student athletes be eligible for "student life" stipends. This stipend would recognize that the student athlete requires more than room, board, tuition and educational fees in order to lead a normal student life. Such a stipend could be used for social activities and might operate to prevent illicit athlete payments.

NCAA Executive Director Richard Schultz thinks a stipend may be appropriate, provided it is designed only to elevate the student athlete to an equivalent financial level as the other students.⁹⁹

B. Loans

A loan fund established by the NCAA or the professional leagues might be another alternative. The professional leagues are especially aware of which college athletes possess the highest future earning potential. Utilizing this knowledge, the leagues could then assess the possibility of a loan with the repayment later deducted from the particular athletes professional salary.

Though the NCAA does not have eligibility control over the athlete once turned professional, an NCAA loan program would appear more legitimate than the agent "loan program" which already exists. The NCAA presently allows student athletes to obtain bank loans to purchase disability insurance protection.¹⁰⁰

C. Employment

The greatest irony existing within the NCAA rules is that the athlete on full scholarship is not allowed to earn income from general employment. The paternalistic attitude of the NCAA is admirable in that the student athlete should be studying rather than working. The reality of the situation is that the athlete's practice time leaves little room for other activities. Implicit in the rule is the assumption that the student athlete is unable to budget time and necessarily would be working instead of studying. The rule fails to recognize that student athletes are not members of a homogenous

98. Interview with Reginald Wilkes, former collegiate and NFL player, (Sept. 11, 1989).

99. Speech by Richard Schultz, Executive Director, NCAA, to the Sports Lawyers Association, in Washington, D.C., (May 12, 1989).

100. Agent Bob Woolf suggests that the schools should provide this insurance. The buying of a policy to protect the athlete against a career ending injury is one technique used by some agents to attract clients. B. Woolf, *Agents on Campus, THE RULES OF THE GAME: ETHICS IN COLLEGE SPORT*, 105 (R. LAPCHICK & J. SLAUGHTER, 1989). See also Asher, *NCAA Implements Plan for Disability Insurance*, *The Daily Camera*, Nov. 10, 1990, at D3.

group that requires twenty-four hour guidance. In either case, introductory time management classes might better accomplish the desired goals.

Certainly, there are those athletes who would not accept payments if they were allowed to earn money themselves. The amount the athlete would be paid is obviously of great concern. The NCAA wants to avoid situations where the athlete receives \$100 per hour from an alumnus or booster to shovel snow at the University of the Mojave Desert. This scenario is separate and distinct from the sports agent problem. The NCAA presently monitors summer employment for work violations and could easily manage to do the same for year round employment as well.

D. Endorsements

The revenue potential for endorsements has increased dramatically.¹⁰¹ Allowing student athletes to take advantage of endorsement opportunities would provide them with much needed income. At present, however, the image and likeness of student athletes may only be used by the member institution and booster clubs. The athlete receives none of the revenue.¹⁰²

On the other hand, it is interesting to contrast the lucrative endorsement contracts that are presented to college coaches.¹⁰³ *USA Today* reported in 1986 that payments for sneaker endorsements comprised a large part of the yearly income for collegiate basketball coaches.¹⁰⁴ Former North Carolina State basketball coach Jim Valvano reportedly earned up to \$750,000 per year in endorsement and other opportunities. Other successful

101. *Playing the Money Game*, TIME, Mar. 21, 1969, at 94. Former New York Giants football player Mel Hein told *Time* that "1938 was my big year. I got \$150 for endorsing Mayflower Doughnuts. When I won the Most Valuable Player award, some pipe company sent me a set of pipes. Free!" *Id.*

102. 1990 NCAA BYLAW 12.5.2. For example, Jarvis Redwine, a former University of Nebraska and NFL running back sought an injunction to prohibit pirates from profiting over sales of items bearing his likeness. Eventually the unauthorized sales were stopped, however, NCAA rules prohibited Redwine from recovering any award constituting the value obtained from the use of his likeness and image.

Another example of endorsement rule violations involved former Indiana University basketball player Steve Alford. Alford was suspended for violation of NCAA rules when he posed for a charity fund raising calander. The rules have since been changed to allow for charity exceptions. See 1990 NCAA BYLAWS 12.5.1.1

Former LaSalle University standout basketball player Lionel Simmons represents yet another example of using an athlete's likeness and image without his receipt of any monetary benefit. When Simmons opted to stay his senior season and forego the immediate opportunity to pursue a lucrative NBA career, the University ran an advertisement featuring Simmons, which read, "It's hard to say how much a LaSalle degree is worth. But we know it's . . . at least \$2 million!" The University was directly capitalizing on Simmons reputation and athletic ability while he was prohibited from sharing in any profit generated at his expense due to NCAA regulations.

103. See *supra* note 86 and accompanying text.

104. See Wieberg, *Shoe Companies Make an Imprint on College Basketball*, *USA Today*, Dec. 11, 1986, at C1, col. 3.

coaches of Division I basketball programs who have cashed in on footwear contracts include Louisiana State University's Dale Brown (\$300,000 per year from LA Gear), Duke's Mike Krzyzewski (\$260,000 per year from Adidas), and Georgetown's John Thompson (in excess of \$100,000 from Nike).¹⁰⁵ Furthermore, it is estimated that over seventy-five college coaches averaged \$30,000 to \$40,000 in sneaker revenue per year.¹⁰⁶

III. CONCLUSION

An increase in compensation to student athletes would constitute a major transition by the members of the NCAA. Such a transition, however, would not be without precedent. The adoption of the NCAA sanity code was largely a result of blatant disregard by member institutions of those rules forbidding subsidies.¹⁰⁷ Initially, the sanity code required that awards be based solely on need. When the colleges ignored this limitation the member institutions voted in 1952 to allow the awards to be based on athletic ability without regard to need.¹⁰⁸ Once again, it appears time to re-evaluate the situation and increase the compensation in some manner.

If direct payment to the student athlete is too unattractive, the NCAA might take guidance from TAC and that organization's TACTRUST. From an NCAA established trust fund the student athlete could receive a student life stipend. The account could be used as an incentive to graduate as well.

Obviously, there is much unfairness involved with the amount of compensation the student athlete receives. Furthermore, the original idealistic premises upon which the rules against compensation are based have been shown to have been blatantly misinterpreted. Various forms of compensation have long been associated with amateur sports. The Greek model did not bar compensation. Social status seemed to be the controlling factor in the British model. "Many casual observers believe that the NCAA endorsed the participation of amateurs to keep intercollegiate athletics pure, but we cannot ignore the fact that it was cheaper to allow amateur rather than professional participation."¹⁰⁹

The level of compensation that student athletes are allowed to receive should be re-evaluated, particularly when viewed in light of the amounts received by Olympic athletes. Legislators should proceed with caution. College athletes require more money than allowed under the existing rules. There is no viable reason why they should continue to be kept "the equivalent of barefoot and pregnant."¹¹⁰

105. The Newark Star Ledger, Nov. 21, 1990, at 37.

106. Wieberg, *supra* note 104, at C1, col. 3.

107. LAWRENCE, *supra* note 46, at 48-52.

108. *Id.*

109. *Id.* at 22.

110. Klein, *College Football: Keeping 'em Barefoot*, The Wall St. J., Sept. 14, 1989, at 1.