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COLLEGE ATHLETES: WHAT IS FAIR COMPENSATION?

ERIC J. SOBOCINSKI

I. Introduction

This article analyzes the current state of college athletics, considering its commercialization and exploitation of the student-athlete. It presents various proposed reforms, including the National Collegiate Athletic Association's (NCAA) increased academic requirements, and addresses whether student-athletes should be reclassified as employees. Finally, this article develops a strategic reform for college athletics designed to compel colleges and universities to complete their mission to educate.

A. The Current State of Intercollegiate Athletics

Although it seems that the American public only recently became aware of the "scandal" and commercialization surrounding college athletics, controversy has existed ever since the first intercollegiate event took place in the United States. The Boston, Concord & Montreal Railroad sponsored a crew race that pitted Harvard against Yale in August, 1852, on Lake Winnipesaukee, New Hampshire. The railroad enticed the two schools to join in the event by promising them "lavish prizes and unlimited alcohol." Surprisingly, the victorious Harvard
team was presented with gold-leafed oars and jeweled trophies valued at over $500, which also compromised the team's amateur status.  

However, concern over the conflict of sponsoring an amateur athletic event for profit was lost somewhere in between the pre-race festivities and the post-race celebration. So what is all the fuss about today? The first intercollegiate event in the United States was staged for the same reasons that most intercollegiate events are staged today: commercialization and profit. However, this focus goes entirely against the mission of the institution of higher education. Therefore, it is not surprising that ever since intercollegiate athletics has existed, there have been attempts at reform to prevent the overemphasis of athletics and promote academics.

This article will increase the reader's awareness of a basic conflict colleges and universities in the United States face today: whether participating in intercollegiate athletics distracts from fulfilling their mission of

4. Id. at 56-57.
5. Id. at 57.
6. Id. "Although most people refuse to believe it, death, cheating, lying, bribery and cowardice were all integral parts of intercollegiate athletics one hundred years ago." Id.
7. Central to the mission of the institution of higher learning is the duty to provide an education. Most colleges and universities state this on the front cover of their student guidebooks or application materials. The mission statement at Villanova University reads:

The University is a community of persons of diverse professional, academic and personal interests who in a spirit of collegiality cooperate to achieve their common goals and objectives in the transmission, the pursuit and the discovery of knowledge. This community serves society by developing and sustaining an academic environment in which the potentialities of its members may be realized. Villanova is committed to those same high goals and standards of academic integrity and excellence as well as personal and corporate achievement that characterize all worthy institutions of higher learning. VILLANOVA UNIVERSITY BULLETIN 1994-95, 6 (1994) (emphasis added) [hereinafter BULLETIN].

8. In 1929, the Carnegie Foundation conducted a study on college football abuses and found "athletes who didn't attend classes, recruiting violations and over-commercialization of the sport." Gerald Eskenazi, Panel Tells College Heads to Take Control of Athletics, N.Y. TIMES, March 20, 1991 at D25 (taking a historical look at past studies done on intercollegiate athletics). See also Charles Farrell, Historical Overview, in THE RULES OF THE GAME: ETHICS IN COLLEGE SPORT 8 (Richard E. Lapchick et al. eds., 1989)(discussing various ethical improprieties in college athletics).

The Knight Foundation Commission on Intercollegiate Athletics (Commission) also conducted a study on college athletics in 1991, and concluded that "big-time college sports are out of control, with powerless university presidents and with underachieving athletes being shovede[d] through a system primarily beholden to outside financial interests like television networks and booster clubs." Eskenazi, supra at 25. See infra notes 105-43, and accompanying text, for a historical view of reform attempts in intercollegiate athletics.
providing education. The emphasis on sport in American society obviously impacts how colleges and universities deal with this conflict. Just as advancement in science and technology forces us to move ahead with "the times," so does the magnification of the importance placed on athletics by society. However, the only hope is that the rights of the student-athlete are not pushed aside for the glory of the school and for the almighty dollar.

1. The Student-Athlete is the Victim

Reform movements have consistently challenged two aspects of intercollegiate athletics: overemphasis and duty to the student-athlete. Challenges have been posed to both the NCAA and its member colleges and universities for failing to provide the proper academic environment

9. Many universities approach the duty conflict by rationalizing that "highly visible sports teams . . . would act as magnets, pulling in alumni money and attracting new students." William C. Rhoden, *Sports of the Times; A Publicity Machine Gone Awry*, N.Y. TIMES, Mar. 28, 1992, at A31, col. 1 (discussing inability of universities to control self-created ad machine-athletic teams). Criticism of the intercollegiate system has also come on reform, saying that improprieties will never be eliminated by reform "because of the incongruity of placing a mass entertainment medium in an academic setting." Barry Temkin and Ed Sherman, *Playing With Failure; Eligibility the Sport Schools and Athletes Engage in Off the Field*, Chi. TRIB., Nov. 28, 1993, at 1 (discussing various abuses and favorable treatment of athletes).

10. The growth of athletics in American society has been well documented. There is not a day that goes by without coming in contact with a sports report on television, radio or in the newspaper. More frequently, sports have moved from the "back page" to the "front page" of the newspaper. The articles do not just focus merely on the reporting of the scores, but have become an in-depth chronicle of the lives of the athlete. This is strikingly apparent with the massive overdose of O.J. Simpson stories over the past two years, the off-the-field examination of such athletes as Daryl Strawberry, Dwight Gooden, Lawrence Phillips, Michael Irvin, Steve Howe, Jennifer Capriatti, and countless others. It begs the question, have we gone too far into making heroes out of athletes? But that discussion should, and I expect will, be taken up later by others.

There have been many instances in which student-athletes have graduated with grade school reading levels or never graduated because they were not directed to pursue any specific degree path. These scenarios are unfair to the student-athlete and paint a grim picture of the integrity of higher learning as a whole.

The plight of the student-athlete is mind-numbing to the unbiased onlooker. Most colleges participating in athletics have a "relaxed" admission standard for student-athletes. Although some argue that these talented student-athletes deserve the reward of admission in return for the school's use of their services as a player, there is an unfortunate "catch." Often, the student-athlete is thrown into a competitive academic environment without proving that he or she can achieve at the same academic level as his or her peers. This "sacrifice" of the student-

12. The NCAA has been criticized as being "fundamentally a fair-trade organization that is designed to prevent unfair competition between colleges in the sports exhibition business. Any idea that the [NCAA] has any overt concern with the good and welfare of college athletes is ludicrous." Richard J. Gradkowski, Just Call College Sports Show Business, N.Y. TIMES, at A28 (commenting that the NCAA is oblivious to athletes' welfare as evidenced by "graduation rates and academic prowess").

13. Two well-publicized examples of athletes who left college after four years illiterate include Billy Don Jackson, a former student at the University of California at Los Angeles, and Dexter Manley from Oklahoma State University. Critics say that big-time college athletics "fosters a double standard that erodes the integrity of institutions whose mission includes the pursuit of truth... [and in citing graduation figures] they accuse colleges of turning themselves into apprenticeship programs for professional football and basketball..." Temkin and Sherman, supra note 9. See infra notes 200-11 and accompanying text for a complete discussion of the duty to educate.

14. Athletes consistently score lower, on average, in all standards of admission to colleges, including scores on the Scholastic Aptitude Test (SAT) and (ACT). See Ed Sherman and Barry Temkin, An Uneven Playing Field; Athletes Win in Admissions Double Standard, CHI. TRIB., November 29, 1993, sec. 4 (discussing lessened standards for admitting athletes at American colleges today). Advocates of the relaxed admission policy for athletes have argued that it is akin to allowing a specially talented musician or thespian to be admitted based on "special criteria" which is immeasurable. As one director of admissions put it "I think anyone with specialized skills [aids the campus]... one of the many things that improves quality of campus life is winning athletics...[w]e have our heads in the sand if we ignore that." Id.

15. As an example, consider a quote from Sherrell Ford, a Kinesiology major and basketball player at the University of Illinois-Chicago, who enrolled in the university lacking many fundamental skills that should have been learned in high school: "In some spots, the professors are talking about things I never heard of. It throws me off a bit. I am a little disadvantaged." (upon considering his anatomy and physiology classes in which he is enrolled alongside pre-med students). Barry Temkin and Ed Sherman, Blackboard Jumble: It's Up to Advisors to Keep Athletes Eligible, CHI. TRIB., Nov. 30, 1993 at 1 (analyzing various techniques used by academic advisors to assist student-athletes in getting an education).
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athlete is done because it is expected that the athlete will help the school win, thereby producing revenue for the school.\(^{16}\)

The pressure on schools to win athletic contests has always existed to some extent. However, in the past, schools and its alumni enjoyed the boost that winning gave for school morale. But today, winning is potentially lucrative due to the rich payoffs from a given event and from the resulting exposure of television coverage.\(^{17}\) The many sanctions imposed against colleges guilty of ethical abuse is striking evidence of a "win-at-all-costs" attitude.\(^{18}\) This emphasis on winning unfortunately takes away from the school’s incentive to attract the best students it possibly can, irrespective of athletic ability.

2. The Fantasy of Being a Professional Athlete

As a result of the change in focus towards winning, college athletics has become a breeding ground for professional athletics. Sadly, however, only a small percentage of collegiate athletes will ever sign a professional contract, let alone make a career out of professional sports.\(^{19}\) Despite this fact, the priorities of the student-athlete are still twisted. The student-athlete no longer relishes the opportunity to develop his or her mind and body because there is a premium placed only on athletic development and little concern for academic achievement.\(^{20}\)

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16. The emphasis is so much on winning that schools which abuse the relaxed admission policy are placing the student-athlete in a high-risk category for completing a degree. The admission/graduation dilemma is summed-up best in a quote by Clem Haskins, men's basketball coach at the University of Minnesota, "I'm upset about all the pressure to graduate. It's not important. It's important to win. You can graduate 100 percent of your players, and if you don't win, you're not going to keep your job." See Sherman & Tempkin, supra note 14.

17. Winning the big bowl games or the NCAA basketball tournament means that schools “cash-in” on revenue and improved visibility. See Murray Sperber, College Sports Inc.: The Athletic Department vs. The University 139 (1990)(arguing that success in college sports does not help academic prestige or student enrollment). See infra notes 83-97 and accompanying text for a complete discussion on the commercialization of college athletics and its impact on the mission of the schools and its student-athletes.

18. See Davis I, supra note 1, at 752.

19. See Temkin & Sherman, supra note 15. The reality of most college athletic programs is that, generally “athletes usually attend college because it’s where they must go to pursue professional sports careers, so it stands to reason that their academic goals don’t extend beyond being eligible . . . ” Id. Only two percent of college athletes ever sign professional contracts in football, basketball or baseball. Id.

20. There is, of course, a grave concern on the part of the college to keep the student-athlete eligible. The NCAA requires all Division-I athletes to maintain a minimum grade point average throughout the academic year, as well as a minimum number of credit hours. NCAA Division I Operating Manual, Bylaw § 14.01.1, 14.01.1.1 (1994-95)[hereinafter NCAA Manual].
The student-athlete's role within college has significantly changed from its ideal as characterized by the NCAA:

The University, it is suggested, has given the student-athlete an opportunity to obtain a college education, and the student-athlete is promoted as an amateur, participating in sport for the love of a particular game; the university, on the other hand, bestows a scholarship on the athlete that will allow for the continued development of the athlete's academic and athletic potential.21

Unfortunately, the student-athlete is faced with the demands of two full-time jobs: full-time student and big-time athlete:

From their first day of college athletes face a conundrum—how to be a 'student-athlete'—that few can solve. Their only response is to erase one of the terms and to highlight the other: neglect a meaningful education and pursue sports full-time, or, in a few cases, drop out of intercollegiate athletics and seriously go to school.22

The rise in the popularity of sports in American Society, coupled with its high profit margin for the colleges due to commercialization, has altered the focus of the student-athlete. By now, a student-athlete in a big-time athletic program is fully aware that every time the athlete either appears on national television or dons a logo on his uniform, someone is profiting.23 This has caused the student-athlete to wonder why he or she should not be profiting from the relationship in concentrating on athletic performance in preparation for a future professional career.24 It was once considered that "[a]thletics is young men and women competing, sweating, bleeding and learning. [However] . . . the ugly conveyor belt of sports takes young talent off the vine and makes instant millionaires of 21-year-olds with brawn but no perspective."25 What caused intercollegiate athletics to stray so far from the ideal? The next section sheds

22. Sperber, supra note 17, at 8.
23. John Weinstart, law professor at Duke University, comments "[i]t's becoming harder and harder to talk about the athletes as students, because it looks like they're really just engaged in money-making enterprise for the university." Dan Cray, Colleges Score Windfall Selling Ads on Athletes, L.A. Times, May 9, 1994, at A1 (delving into the latest commercialization techniques of college athletic programs).
24. It is difficult for goal-oriented student-athletes, who have succeeded athletically most of their lives, not to continue on the next level, the pro's. There are only a talented few who can excel at both athletics and academics. Former professional basketball players turned politicians Bill Bradley, a Rhode Scholar, and Tom McMillan, as well as former professional basketball player turned attorney, Len Elmore, are modern examples.
some light on this question as it outlines the importance of sports in American society today.

B. The Meaning of Intercollegiate Sports in America

The importance of sports in America has grown steadily over the past one-hundred and ninety some-odd years since it has been organized. While, on its face, it seems that the growth in popularity of sports is a good thing and should be promoted, it has nevertheless had its opposition due to its negative impact on the participants. The obvious corruption is seen in the overemphasis on athletics at the expense of other values, especially education.  

Overemphasis leads to competitiveness. As a result, "competitiveness can lead to polarization of winning and losing, where winners are overpraised and losers denigrated, and where opponents can develop feelings of animosity, as though competitors were a kind of enemy." This "chain of corruption" is exactly the direction in which college athletics is heading. "We are living in a time when college athletics are honeycombed with falsehood, and when the professions of amateurism are usually hypocrisy. No college team ever meets another with actual faith in the other's eligibility." This section will attempt to explain how the increased importance of sports in society has caused this to happen.

Intercollegiate athletics has become such a large part of the American life, it is hard to imagine life without it. For example, many intercollegiate athletic events are viewed as almost American holidays: college football bowl games, the NCAA basketball tournament, otherwise known as the "Big Dance," which takes place in the early spring, as well as the annual homecoming event which takes place at most schools in the fall. It is clear from this year-round intercollegiate activ-

27. Id.
28. Id. This "chain of corruption" is hardly the road that college athletics should travel down.
30. Americans spend almost $100 billion a year on sports, including professional and amateur athletics. ANDRE & JAMES, supra note 26, at ix.
31. The NCAA tournament is recognized by some to be the most perfect athletic spectacle due to the unpredictability of the outcome and the tournament’s precise seeding arrangement in which all the teams are ranked and the highest-ranked team plays the weakest.
32. ANDRE & JAMES, supra note 26, at ix. Homecoming has been widely recognized for bringing together students, alumni, whole states and regions, for parades, bonfires, music, food, and cheers. This activity all focuses on “The Big Game.” Id.
ity that Americans thoroughly enjoy the "pageantry" of sports and have
great fun.\textsuperscript{33}

But there must be something more which compels people to drop
everything they are doing to attend a game. The first, and most notable,
is that fandom unites people.\textsuperscript{34} The combined rooting of thousands of
people holding a common desire for the same team to win is a very pow-
erful experience of solidarity.\textsuperscript{35} It becomes a great outlet for an individ-
ualistic society.\textsuperscript{36} Rooting for a team provides the fan with a vicarious
sense of greatness or popularity determined by the outcome of the game.

The act of spectating has a high level of intensity derived from the
spectator's involvement and identification with the sport or the team
participating.\textsuperscript{37} Former participation in athletics is almost a pre-requisite
to arriving at true fandom.\textsuperscript{38} However, many spectators are interested in
athletics because they are amazed and appreciative of the great athletic
ability which the athletes possess, and even view sports as an art form.\textsuperscript{39}
The modern perception of athletics as art was obtained from the Greeks,
who were great lovers of athletics.

\textbf{C. The Meaning of Sport in Greek Society}

For the Greeks, athletics took on a greater importance than in Amer-
ican culture.\textsuperscript{40} In fact, athletics took on a unique cultural importance in
ancient Greece.\textsuperscript{41} Athletics were connected to the Greek religion and
expressed sacred meanings, values and purposes that were used to shape

\begin{itemize}
  \item \textsuperscript{33} The "pageantry" of a collegiate athletic event is clearly apparent throughout the na-
tion, whether it be during a Big East Conference Basketball Championship at Madison Square
Garden in New York City or any regular-season game at Nyland Stadium in Knoxville,
Tennessee.
  \item \textsuperscript{34} \textit{ANDRE} & \textit{JAMES}, supra note 26, at 6.
  \item \textsuperscript{35} \textit{Id}.
  \item \textsuperscript{36} \textit{Id}. People tend to be engaged in excessive individualism throughout the course of
their lives: when do I "make it," when will I be able to afford this car or this house or even
when is someone going to appreciate all the good that I do for others.
  \item \textsuperscript{37} \textit{ANDRE} & \textit{JAMES}, supra note 26, at 7. Both experience and attention give rise to the
involvement and identification of the spectator with the sport or the specific team involved.
  \item \textsuperscript{38} The spectator with former experience is "better able to see the excellent play." \textit{Id}.
  \item \textsuperscript{39} Author Joseph Kupfer claims that appreciating a game is, at least partly due to, the
game's dramatic elements. \textit{Id}. at 7. A game has a plot and characters, which is only under-
standable by the knowledgeable fan. \textit{Id}. "The drama of sport emerges from the story-like
dimensions it shares with such narrative arts as novels, plays, and films." \textit{Id}.
  \item \textsuperscript{40} Lawrence J. Hatab, \textit{The Greeks and the Meaning of Athletics}, in \textit{Rethinking Col-
  \item \textsuperscript{41} \textit{Id}. In academic circles today, sports is tolerated as satisfying people's enthusiasm for
games rather than seeing it as part of the culture and therefore part of the educational mission
of colleges.
\end{itemize}
their culture. Most significantly, athletics were considered to be part of the Greek education system, teaching lessons about life and reality. The American higher educational system can learn the importance of incorporating athletics into its academic curriculum and attaching to it its proper value from the Greeks.

1. A Historical Perspective

In the early Greek world, religion was celebrated and worshiped through athletics. The Greek myths and religious images were representative of what society held as sacred, meaningful, and worthy of recognition for worship. It focused almost entirely on what occurred in the “lived world”:

It [Greek religion] reflects the full range of experiences and situations in human existence as we have it, the drama of human pursuits and predicaments between birth and death, without any otherworldly “beyond” that resolves or overcomes the conditions of earthly life. Its sacred forces reflect worldly achievement and power, visual beauty, and the plurality of competing forces that mark the existential setting of the human condition.

The Greek religion was based on the agon, which means a context or struggle for excellence. The agon became significant when viewed within the context of the heroic ideal. The heroic ideal provided a fo-

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42. Id.
43. Id.
44. Id. at 32.
45. Id. The Greek religion was quite a bit different from religion as known in American society. The Greek religion, polytheism, focused on all the different forces in life, and as a result, its major premise was that the unpredictable ways of the gods proved to the people that there was a greater force which controlled lives. Id.
46. Id.
47. Id. This analysis of the Greek religion will become important in understanding the place of athletics in Greek society. Athletics became the vehicle by which the Greeks personified the message of the Greek gods.
48. Id. at 33. The importance of the contest in Greek religion was found in the arts and oratory as well as athletics. Id.
49. Id. There are four cultural assumptions which characterize the heroic ideal — they are that:

(1) humans are essentially mortal and subject to fate;
(2) despite this, humans can receive the worldly compensation of honor, glory, and fame;
(3) honor, glory, and fame are achieved by risking one's life and facing death on the battlefield; and
(4) such courage and risk isolate the hero from the normal course of life, but also elevates him above the rest of humanity, giving him his stature and status as protector, defender, and noble exemplar.
rum in which humans could test their abilities and limitations when in the face of death. This view of human achievement is known as "positive fatalism," meaning that "morality, limits and opposition are inseparable from the meaning and value of excellence." This will become significant in comparing the Greek philosophy on athletics to the importance placed on athletics in modern America.

However, the great importance that was placed on athletics in ancient Greek times had its costs. An extreme overemphasis on competition and victory began to develop. The overemphasis unfortunately led to the growth of monetary and material incentives and rewards. The notion that athletics was the cultural ideal began to decline and was challenged by a new cultural ideal. The new cultural ideal emphasized "mind and soul over body; reason over emotion and sense experience; conceptual order and unity over the uncertainties and plurality of the immediate lived world; reflective contemplation over action; rational autonomy over divine control and fate; and political notions of common justice over heroic privilege." Immediately, athletics were criticized because it represented the old cultural ideal.

The new cultural ideal, developed by Plato and Aristotle, focused on an ordered and rational conception of reality derived from immediate experience and promoted intellectual virtues. The resulting culture demoted the status of athletics from the center of the religion and festivi-

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50. Id. (citing Homer's ILLIAD).

51. Id. The limitation of death made the heroic life possible, for without it, there was no meaning or challenge.

52. "If it were not for the possibility of loss, a victory would not mean anything." Id. This is important in understanding the importance that is placed on intercollegiate athletics. See infra notes 62-73 for a complete discussion of the Greek influence on modern athletics.

53. Hatab, supra note 40, at 36.

54. Id. This ultimately led to a promotion of professionalism and specialization in particular sports. Full participation of society in sports declined, leaving room for only specialized athletes relegating most to a subordinate position of spectator.

55. Id. The old cultural ideal that overemphasized victory was replaced with a new ideal of total human development; both body and mind. Id. at 35-36.

56. Hatab, supra note 40, at 36. This newly-created cultural ideal stemmed from a new discipline, philosophy. Id. The new philosophers criticized the traditional myth, poetry and religion because it was viewed that the sacred meanings which had been expressed before were obstacles to the new ideal of rational understanding, order and control. Id.

57. Id.

58. Id. The new cultural model held as its highest ideal the "contemplation of eternal principles free from the flux and strife from the lived world." Id.
ties of daily life, to merely a part of the entire learning process. The philosophers advocated physical training in order to achieve a balance between development of the mind and the body. The ideal person was able to achieve in both areas of development. The past emphasis on challenges and contests, on strife and learning experience, was replaced with a movement toward peace and harmony. Although the Greeks may have learned from the past overemphasis on athletics, they were still able to reform their ideals and recognize the value of athletics within development of the entire person.

2. How the Greek Ideals Can Help Reform Intercollegiate Athletics

The intercollegiate athletics system today could be well served by re-evaluating the overemphasis placed on athletics and working towards a proper balance between athletics and academics. The value of athletics should never be underestimated. A person can develop many useful skills while training as an athlete: discipline, sacrifice, cooperation, perseverance, as well as creativity and physical expression. However, as the Greeks believed, an overemphasis on athletics will lead to an improper balance of human development and will promote crudeness. The benchmark of a complete education should be a balanced approach to the development of the mind and the body. Intercollegiate athletics

59. *Id.* The philosophers did not reject the concept of athletics entirely, they merely re-categorized it as being a person's duty to develop oneself both physically and mentally. *Id.* at 37.

60. Hatab, *supra* note 40, at 37. In order to be a complete person, it was recommended that one train both the mind and body simultaneously. *Id.* The absence of one would create an inequity. Overemphasis of the physical led to crudeness, while overemphasis of the mental led to softness. *Id.*

61. *Id.*

62. *Id.* at 37-38. The development of the entire person relies heavily on the foundation of education and intellectual stimulation, immediate experience with real life situations and the development of the physical. *Id.*

63. See generally *Id.* at 37. The promotion of intercollegiate athletics for commercialization and profit, at the expense of the student-athlete's education, is exactly what the Greeks avoided by recognizing that their cultural ideals were mal-proportioned and appropriately changed them to remedy the problem.

64. *Id.* at 38. The importance of health is well documented and widely recognized today, however, the intellect can also be stimulated via athletics by recognizing its aesthetic value. "The aesthetics of the human form and physical motion is often among the finer levels of appreciation in athletic events." *Id.* Amazement and wonder often overwhelm a spectator because he or she understands how difficult it is for the average person to perform at a similar level.
should take a position alongside academic achievement, maximizing development of the "whole" person.65

By using the Greek system as a model, the development of the "whole" person seems within reach. However, its opponents assert that competition, one of the fundamental qualities about athletics, will be jeopardized.66 In order to retain the value of athletics within American culture, a competitive system must be maintained. "[S]triving for success in the midst of limits, opposition, and uncertainty is in many respects the only way we can recognize and appreciate the meaning of an achievement."67 It is on this point that the old Greek cultural ideal can be utilized.68 The old Greek ideal established that limitations and risk are a positive influence on the meaning of athletics—they provide significance to achievement.69 This also sheds a perspective light on the meaning of the Greeks' view that athletics is a cultural phenomenon.70 By setting limitations within which an athletic match can take place, such as parity of ability, outcome was unpredictable.71 Therefore, the Greeks recognized that there was a more powerful driving force behind all aspects of life, a kind of order to all things.72

The modern intercollegiate athletic system should be reformed by keeping the Greek models in mind as well as the institution's mission statement.73 The system should be designed so that a student-athlete receives a complete education of body and of mind. The current intercollegiate athletic system is hardly close to this ideal. The next section will trace intercollegiate athletics from its beginnings to its current dilemma.

65. The role that athletics play in "whole" development should never be underestimated, however, overemphasis of athletics leads to an abortion of priorities, namely the fulfillment of the institution's mission of educating its members.

66. Opponents would assert that athletics under the Greek developmental standard is never necessary beyond the intramural status. Clearly, this would elicit an unending barrage of skepticism. Fortunately, a competitive system can still be maintained under the Greek model.

67. Hatab, supra note 40, at 38. Just as the Greeks acknowledged that a heroic act could only be achieved if faced with death, so too can competition and satisfaction only be achieved by facing uncertainty and failure. See id. at 31-39.

68. See supra notes 44-57, and accompanying text for a complete discussion of the old Greek ideal.

69. Hatab, supra note 40, at 33, 39.

70. Id. at 39.

71. Id.

72. Id.

73. Athletics should certainly be included in the curriculum of institutions of higher learning, for they "present a theatrical expression of the human condition and drama, in a setting of the beauty of embodiment." Id. at 42.
WHAT IS FAIR COMPENSATION?

II. INTERCOLLEGIATE ATHLETICS TODAY

Intercollegiate athletics has become an anomaly within the context of the cultural values of modern American society. While the value placed on education in American society is at its height, many institutions of higher learning, which allegedly exist for the sole purpose of providing education, have prioritized athletics above academics. This is clearly apparent upon visual inspection of a major college. Often, colleges possess a monstrous sixty-thousand seat football stadium, a fifteen-thousand seat basketball arena, and full indoor athletic facilities. These indoor athletic facilities include a training room, academic enrichment centers exclusively for athletes, and facilities until recently banned by NCAA legislation, segregated dormitories with superior dining exclusively for athletes. Athletic departments, typically more autonomous and divorced from the college or university academic structure, exist merely as a “semi-autonomous sports entertainment adjuncts to the parent institution.” Athletic department budgets often rival that of a professional school within a university. The prominence of the intercollegiate athletic program questions the institution’s commitment to fulfilling its mission, to focus all resources and time into the education of its students.

American colleges vary widely in how effective they are in fulfilling their mission. The question becomes, why are some schools better at achieving their mission than others when the standards are the same for every school? The answer is that some schools have set themselves apart from the rest and have established a higher criterion for academics than is required by the NCAA and, more importantly, have set a differ-

74. Today, a college education is almost a requirement in the formula for success in America. The job market is so competitive that, absent a degree, work is difficult to find.

75. THELIN, supra note 11, at 1. This structural arrangement obviously varies among schools, but, for most of the prominent Division I schools, this is increasingly common.

76. See Meggyesy, supra note 29, at 114.

77. Id. The cost of running an athletic department at a college is similar to that of running most professional schools.

78. Id.

79. AGGREGATE NCAA REPORT 613 (1994). The most recent set of available graduation rates was prepared in 1994. The Aggregate Reports by the NCAA represent data compiled from Division I member institutions. Based on the football programs that exist at the institutions, there are 106 Division I-A members, 115 Division I-AA members and 80 Division I-AAA members included. For example, Duke University had one of the highest graduation rates for its student-athletes at about 94%. Id. at 142.

80. The NCAA requires minimum standards for entering student-athletes, minimums for eligibility and for progress towards a degree. See infra notes 153-158, and accompanying text discussing Proposition 16 and eligibility requirements.
ent level of emphasis on athletics. This is not to say that athletics need to be eliminated in order to achieve fulfillment of the college mission, but there should be a balance created between academics and athletics in a nurturing setting. Attempts to compel all universities to arrive at this arrangement have existed for as long as there has been intercollegiate athletics.

A. Commercialization

It is widely recognized by sports historians that the beginning of intercollegiate athletics as we know it began around 1880. Athletics were originally viewed by college faculties as a distraction from the educational system. But by the 1920s, intercollegiate athletics grew in popularity and became a formal part of the institution. This was due, in large part, to the potential benefits that schools could gain from sponsoring teams in intercollegiate athletics. This profit motivation among colleges continued to grow until it reached the point it has today.

1. Profit

Today, intercollegiate athletic programs can potentially generate millions of dollars in revenue. In addition to ticket revenue and conces-

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81. See supra notes 58-61, and accompanying text. The very best colleges will follow the Greek model and attempt to arrive at a perfect balance between the development of the mind and body.

82. See Bulletin, supra note 7.

83. John F. Rooney, Jr., The Recruiting Game 12 (1980)(tracing growth of college athletics and corruption in recruiting system). From 1880 on coaches were generally paid, admissions were charged for games and alumni influence began to appear. Id.

84. Davis 1, supra note 1, at 749 n.36 (citations omitted). In fact, some faculties attempted to abolish football in 1884.

85. Id. at 749 n.37 (citing Davenport, supra note 1, at 8).

86. Id. After World War I, factors such as “rising consumer incomes, increased public interest in intercollegiate athletics, media designation of All-American teams, national rankings of teams by the press, and the desire of radio networks to broadcast athletic events” all compelled colleges to utilize athletics as a means of “attract[ing] enrollment and supplement[ing] their revenues.” Id. at 749, n.38 (citing James V. Koch, The Economic Realities of Amateur Sports Organization, 61 Ind. L. J. 9, 12-13 (1985)).

87. The motivation for participation in intercollegiate athletics today stems from potential profit. A. Bartlet Giamatti, former president of Yale University and former Commissioner of Major League Baseball, suggested that “intercollegiate athletics has become a huge commercial entertainment conglomerate, with operating methods and objectives totally separate from, and mainly opposed to, the educational aims of the schools that house its franchises.” SPERBER, supra note 17, at xi.

88. See Lee Goldman, Sports and Antitrust: Should College Students Be Paid to Play? 65 Notre Dame L. Rev. 205 (1990)(asserting that intercollegiate amateur athletics is really a revenue-producing venture); but see SPERBER, supra note 17, at 2-3 (asserting that intercollegiate amateur athletics is really a revenue-producing venture).
WHAT IS FAIR COMPENSATION?

sion sales from home events, television contracts, radio contracts and merchandising royalties, colleges profit from the increased endowments to the school. It is clear the NCAA is prospering. According to the 1994 report of the NCAA Treasurer, the Association in 1993-94 had approximately $182 million in revenues and $166 million in expenses. However, colleges also profit from the exploitation of the student-athlete by entering into deals with apparel and shoe manufacturers where athletes promise to wear a certain type of clothing. When colleges and universities are challenged by ethical questions with respect to the pratic
giate amateur athletics do not produce a profit). “Despite the myth that sports are money-makers, the realization is sinking in that if common accounting standards are applied, only a handful of the Division I football and basketball programs have even a chance of supporting themselves, never mind supporting other sports.” Claire L. Gaudiani, Lights, Camera Action and NCAA Reform, Part II., N.Y. TIMES, Dec. 12, 1993, at 9 (suggesting what the NCAA director should focus on). It is estimated that only 41 of 103 NCAA Division I schools make profits when administrative costs are included and gifts to athletics are excluded. Michael Hiestand, Three College Programs Join Pros on Professor’s Top-Dollar List., USA TODAY, Sept. 10, 1996, at C9 (estimating that several college athletic programs are worth as much as some professional franchises). 

89. For example, basketball events can often exceed $300,000.00 in revenue for a single game in a large arena with a ticket price of $20.00. In addition, a berth to the NCAA basketball tournament is quite lucrative (approximately $150,000). But even more attractive is advancing to the Final Four, where each school can make over $1,000,000.

90. Recently, the NCAA completed a one billion dollar deal with the Columbia Broadcasting System (CBS) for the rights to televise all tournament games for seven years. Davis I, supra note 1, at 750. The NCAA distributed $313.4 million to Division I conferences since 1991, $82 million in 1994 alone. THE NCAA News, Mar. 8, 1995, at 1.

91. Revenue produced by agreements to air each game on the radio, if done “in house” by the university, could exceed $500,000. This is, of course, due to the large corporate advertising market which exists.

92. Schools which possess trademark rights on their school logos can generate extremely high revenue from sales of merchandise.

93. There is no way to measure exactly how much money is produced by adoring alumni expressing their generosity to the school. These funds usually come in the form of a promise to fund athletic scholarships or a donation to improve facilities.

94. THE NCAA News, Mar. 8, 1995, at 3. The article also stated that the direct revenue distribution to the membership increased 5.4%, and expenditures for championships and other membership services decreased by 2.4%. Id.

95. The most recent commercialist act by colleges is to sign multi-million dollar licensing contracts with athletic equipment companies. John Weinstart, The 90’s University: Reading, Writing and Shoe Contracts, N.Y. TIMES, Nov. 28, 1993, at 9, col. 2. Under the agreement, colleges agree to adopt the sponsor’s brand as the school’s official brand, licensing the use if its name and logo appear on the T-shirts, sweat pants and jogging suits that the sponsor sells to the public. Formerly, all agreements were made between the merchandise company and the individual coaches. Common bonuses which were given to coaches rose into the several hundred-thousand range per year. The new university-wide agreements can run as high as several million dollars for the school. The University of California, Los Angeles (UCLA) recently completed a six-year deal with Reebok shoe company, producing $4.35 million. Cray, supra note 23, at A1. The agreement provides that the manufacturer will supply all athletic
tice of using amateur student-athletes as billboards for profit, they respond: "Hey, you're putting stuff on the athletes and making money off of it, but they're getting an education here and it's all part of the process of us running a business... we're generating revenue." The increased commercialization forces many to view intercollegiate athletic programs as "firms" in the business of selling athletic entertainment.

2. Competition

The increased profit potential of fielding successful intercollegiate athletic teams has created an extremely competitive environment among colleges and universities. Schools now compete to develop a winning team. This is most effectively achieved by finding the best talent. Therefore, colleges and universities compete for the recruitment of athletes. Herein lies the root for unethical behavior by colleges and universities. The "win at all cost" attitude is emphasized at some universities and colleges, resulting in an extreme compromise of ethics. By overemphasizing winning, colleges and universities compro-

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96. Id. (quoting Mark Brantley, director of corporate relations at the University of Southern California). This would confirm the fact that institutions of higher learning have lost touch with their true purpose, to educate first. It is not only the schools that are profiting from the amateur student-athletes—apparel and shoe manufacturers also profit significantly. Thomas S. Mulligan, Sneaker Makers Pay Big To Adorn Feet of Players on Top Teams, L.A. TIMES, Mar. 19, 1992, at D1. When a manufacturing company has signed an agreement with the school to provide apparel or shoes, if the school's basketball team is good enough to move through the NCAA tournament to the national championship, with the exposure on network television, the exposure for their product line could be worth nearly $15 million ($150,000 per second for thirty seconds). Id.

97. Davis I, supra note 1, at 751 n.47.
98. Id. at 751.
99. Id.
100. Much of the criticism of intercollegiate athletics and many of the regulations placed on its member schools have centered on the recruitment and/or mistreatment of student-athletes. ROONEY, supra note 83, at xv. The NCAA MANUAL devotes over 19 rules to the treatment of recruited student-athletes.
101. See Goldman, supra note 88, at 241 (asserting that competitiveness for athletes leads to recruitment of under-prepared athletes and causes schools to commit academic fraud to keep the athlete eligible).
102. Investigations and sanctions on universities and colleges have been imposed by the NCAA, most notably the suspension of University of Kentucky in 1952 (making cash payments to players), and the imposition of the "death penalty" on Southern Methodist University (SMU) in 1987 (making cash payments to football players).
mise their academic mission of producing true student-athletes. Colleges and universities engaging in neglectful behavior are merely exploiting the student-athlete for their own profit. The graduation statistics from NCAA member colleges and universities confirm the fact that student-athletes are not leaving college with the degree that was promised to them. What has the NCAA, or its member schools, done to remedy this situation and to restore the integrity of the pursuit of colleges and universities?

B. Reform Movements: A Historical Perspective

1. The Carnegie Foundation Report

The first formal attempt at reform came in the form of the 1929 Carnegie Foundation Report (Carnegie Report). The report suggested that recruiting had become corrupt, professionals had replaced amateurs, education was being neglected and commercialism reigned. These characterizations are familiar as they parallel the conclusions of many investigators today. Later generations of reformists have bene-

103. True student-athletes are athletes who also achieve academically and who are not just pushed along through college by being enrolled in every “gut” course that exists and are never challenged academically.

104. Davis I, supra note 1, at 753. See Note, Achieving Educational Opportunity Through Freshman Ineligibility and Coaching Selection: Key Elements in the NCAA Battle for Academic Integrity of Intercollegiate Athletics, 14 J.C. & U.L. 383, 384 (1987) (asserting that universities owe a commitment to student-athletes in exchange for profiting from athlete). See also Grantham, Views of Sort: It's Time to Give College Players a Cut, N.Y. TIMES, Mar. 18, 1990, sec. 8, at 10 (asserting that the current college educational system exploits student-athletes and fails to provide education because it interferes with profit margin). See infra notes 200-211 and accompanying text for a discussion on the duty owed by colleges to educate their athletes.

105. In the most recent graduation report, all NCAA institutions combined had a graduation rate of 57% overall. AGGREGATE NCAA REPORT 613 (1994). All public institutions had a graduation rate of 53%. Id. at 622. Small public institutions had a graduation rate of 48%. Id. at 626. All private institutions had a graduation rate of 70%. Id. at 628.

106. Howard J. Savage et al., American College Athletics, Bulletin No. 23, (1929)(report on concern for state of college sports). The study was based on over 130 college and university sports programs. Id.


More than any other force, [athletics has] tended to distort the values of college life and to increase its emphasis upon the material and the monetary. Indeed, at no point in the educational process has commercialism of college athletics wrought more mischief than in its effect upon the American undergraduate. And the distressing fact is that the college, the Fostering Mother, has permitted and even encouraged it to do these things in the name of education.

sited from the Carnegie Report by utilizing some of its assertions as starting points for their modern investigations. Some concepts proposed in this early report, and then acted upon in later reform movements, include: (1) the plea to get Congressional involvement in reshaping ethical behavior in college athletics; (2) the formulation of the NCAA President's Commission and (3) utilizing the media to expose truly unethical behavior. Despite taking almost sixty years, this report sparked a significant movement in reforming intercollegiate athletics based on the following premise:

I think the temptation is for us to throw up our arms and say we can't possibly change this mess... Such a position is pretty feeble in light of what's happened in Eastern Europe. If the Berlin Wall can come crumbling down, I find it hard to believe we can't deal with the problems of college athletics.

2. The Knight Commission Report

In March 1991, the Knight Foundation Commission on Intercollegiate Athletics (Commission) published the first of three models for reform. In it, the Commission asserted that the loss of control over intercollegiate athletics must be reversed. It suggested that the universities themselves must take control of the system. The Commission concluded that by placing the responsibility of remedying the commercialization and unethical behavior in intercollegiate athletics in the hands of the universities themselves, they can become the model of ethical behavior for students and for society at large. In this first report, the Commission made a proposal for reform based upon the following principle:

This is not an athletics problem. This is a mission problem where the institution has not accepted the athletics program as part and parcel of the educational objectives of the university.

108. Id. at 14.
109. Knight Foundation Commission on College Athletics, Keeping Faith With the Student-Athlete: A New Model for Intercollegiate Athletics, 10 (1991) [hereinafter KNIGHT COMMISSION REPORT I].
110. The Commission spent more than a year in study and debate, utilizing the advice of over eighty experts. They sponsored a series of public meetings while interviewing athletics administrators, coaches, student-athletes, scholars, journalists, leaders of professional leagues and others.
111. KNIGHT COMMISSION REPORT I, supra note 109, at 6.
112. Id. at 2 (quoting Jack Lengyel, Athletics Director U.S. Naval Academy).
C. The Knight Commission's One-Plus-Three Model

Reform in intercollegiate athletics has often focused on the curbing of particular abuses rather than re-defining the terms under which athletics will be conducted in a university's name. The Commission proposed what it called the "one-plus-three" model. This consists of "one"—presidential control directed toward the "three"—academic integrity, financial integrity and accountability through certification.

1. Presidential Control

The Commission recognized that in order for reform to be effective, it must begin with presidential control. It viewed the president as having the power to advance academic values, guarantee financial integrity and take responsibility for the actions of the members of the university. The Commission proposed the following:

(1) Trustees should explicitly endorse and reaffirm presidential authority in all matters of athletic governance;

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113. Id. For example, the NCAA MANUAL represents a response to specific abuses or to manage potential abuses in a particular sport. The NCAA MANUAL spends 30 pages on regulations governing the recruitment of student-athletes.

114. Id. at 11.

115. Id. Some of the reforms suggested by the Commission have been effectuated. The Commission helped to enforce preliminary cost reductions, new academic standards, and an athletics certification program. Knight Foundation Commission Report: A New Beginning for a New Century 4 (1993)[hereinafter Knight Commission Report I]. In addition, 1993 saw legislation in the NCAA which created an NCAA Joint Policy Board, made up of the Association's Administrative Committee and officers of the Presidents Commission, which has the authority to review the NCAA budget and legislative agenda and to evaluate and supervise the executive director. Id. Also in 1993, the certification process began, requiring institutions to be evaluated once every five years.


117. Id.

118. Id. at 11-12. The Commission suggested that the basis of the presidential authority is found in the governing board, and he or she must have its backing in order for presidential action to be effective. The Commission suggested that the governing boards:

(1) Delegate the president administrative authority over financial matters in the athletics program;

(2) Work with the president to develop common principles for hiring, evaluating and terminating all athletics administrators, affirming the president's role as the central authority of the university;

(3) Advise each new president of its expectations about athletics administration and facilitate an annual review of the athletics program; and

(4) Work with the president to define the faculty's role, which should be focused on academic issues in athletics.

Id. at 12-13.
(2) Presidents should act on their obligation to control athletic conferences;\textsuperscript{119}

(3) Presidents should control the NCAA;\textsuperscript{120} and

(4) Presidents should control their institution's involvement with commercial television.\textsuperscript{121}

\textit{a. Academic Integrity}

The first of the "Three" for the Commission reform proposal is academic integrity. This area has taken severe criticism over the years.\textsuperscript{122} The concern is that, under the NCAA rules at the time the report was written, it was possible for a student-athlete to remain eligible each year but still be far from a degree after completing five years as a full-time student.\textsuperscript{123} The Commission focused on three areas: (1) admissions, (2) academic progress and (3) graduation rates.\textsuperscript{124} The Commission believed that imposing stricter standards on admissions has had a positive effect on the development of student-athletes and has improved graduation rates.\textsuperscript{125} It believed that Proposition 48 improved the "readiness" of potential student-athletes.\textsuperscript{126} The Commission approved of increasing

\textsuperscript{119} KNIGHT COMMISSION REPORT I, supra note 109, at 13. The Commission believed that the athletic conferences should be directly controlled by the presidents through express voting capacity and take part in shaping the decisions of the conferences.

\textsuperscript{120} Id. The Commission recommended that:

(1) Presidents should take an active approach by attending NCAA conventions and voting personally on the issues, or provide specific voting instructions to its representatives.

\textit{Id.}

\textsuperscript{121} Id. The Commission believed that it is important for the presidents to gain control over the television deals so as to curb any perception that intercollegiate athletics is merely an entertainment industry. It suggested that the president have a say in setting the terms and conditions of the televising of intercollegiate athletics events in order to protect the needs of the student-athlete and assert the academic calendar over the scheduling requirements of the networks. \textit{Id.}

\textsuperscript{122} Barbara Bergmann, an economics professor at American University said, "[w]hat we have to deal with . . . [is] fake students taking fake courses. We have professional athletes on college campuses, and everything flows from that." Ira Berkow, \textit{Sports of the Times; Madness That Goes Past March}, N.Y. TIMES, Mar. 29, 1993, at C3 (suggesting that the KNIGHT COMMISSION REPORT III did not go far enough into reform).

\textsuperscript{123} KNIGHT COMMISSION REPORT I, supra note 109, at 15. Current NCAA legislation requires that a student-athlete declare a program of study toward a specific baccalaureate degree at the school by the beginning of the third year of enrollment. NCAA MANUAL, supra note 20, at § 14.4.3.1.4 (1995). Another rule, adopted in 1992 and revised in 1994, requires that student-athletes earn at least 75 percent of the semester hours required for satisfactory progress during the regular academic year. \textit{Id} at § 14.4.3.1.3.

\textsuperscript{124} Id. KNIGHT COMMISSION REPORT I, supra note 109, at 15.

\textsuperscript{125} Id.

\textsuperscript{126} Id.
standards for admission, such as the current NCAA rule, Proposition 16. The Commission also asserted the following:

(1) That the letter of intent should serve the student as well as the athletic department;

(2) Athletic scholarships should be offered for a five-year period;

(3) Athletic eligibility should depend on progress toward a degree; and

(4) Graduation rates of athletes should be a criterion for NCAA certification.

b. Financial Integrity

The Commission recognized that there has been a steady increase in the cost of operating an athletics program. However, the Commission proposed the following:

(1) Athletic costs must be reduced;

(2) Athletic grants-in-aid should cover the full cost of attendance for the very needy;

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127. Id. The Commission believed that the increased standards for admission helped to insure that more student-athletes are prepared for the rigors of undergraduate study. Id. at 17.

128. Id. at 17. The Commission believed that a student should be released from his obligation to the school in the event that the coach who recruited him or her moves to another institution or if the institution is placed on probation by the NCAA before the student enrolls.

129. Id. at 18. The Commission asserted that student-athletes should be given five years to complete a degree program due to the excessive time restraints on them. It also suggested that the scholarship should be for the entire five years rather than one year renewable.

130. Id. The Commission said that student-athletes should be able to complete a degree program in five years and be able to demonstrate progress towards that degree each semester. Id. Also, it asserted that eligibility should be restricted to the published academic requirements of the institution. Id.

131. Id. The Commission believed that the graduation rates of student-athletes should correspond to the graduation rates of the student body at that institution, otherwise the institution is at fault. Id.

132. Id. at 18-19. According to the 1990 study used by the Commission, 39 of 53 institutions who responded operated at deficits or relied on state funding. Id. at 19 (citing Mitchell H. Raiborn, Revenues and Expenses of Intercollegiate Athletics Programs 53 (1990)).

133. Id. at 19. The Commission suggests reductions in coaching staff size, recruiting activities and the number of athletic scholarships (all of which have been approved at the 1991 NCAA Convention).

134. Id. The traditional grant-in-aid, which includes tuition, fees, and room and board, does not completely cover the entire cost of a college education. The Commission proposed that personal and miscellaneous expenses be included in the package as well. Id.
(3) Eliminate the independence of the booster clubs and athletics foundations;\textsuperscript{135}

(4) The NCAA sharing television revenue from the national basketball championship should be reviewed by university presidents;\textsuperscript{136}

(5) All athletics-related coaches' income should be reviewed and approved by the university;\textsuperscript{137}

(6) Coaches should be offered long-term contracts; and\textsuperscript{138}

(7) Institutional support should be available for intercollegiate athletics.\textsuperscript{139}

c. Certification

The Commission completed its reform proposal by suggesting that the NCAA adopt a process of individual authentication by an outside body focused on the integrity of each institution's athletic program.\textsuperscript{140}

The periodic assessments would examine the pursuit of the athletic program in academic requirements, the expenditures and the assurance that the trustees are committed to academics.\textsuperscript{141} The Commission recommended that:

(1) The NCAA should extend the certification process to all institutions granting athletics aid, and\textsuperscript{142}

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135. Id. at 20. The Commission believed that the autonomous authority of the booster clubs could compromise the authority of the university. Id. In addition, the fund-raising efforts should be channeled into the university financial system and be subject to the same budgeting procedures applied to similar departments at the university. Id.

136. Id. The Commission suggests that the current format should be re-worked in order to filter the revenue into more productive programs, such as academic counseling, catastrophic injury insurance for all athletes, a fund for needy students, and financial support for teams in all divisions. Id. The Commission has as its goal to rid the system of the "winner take all" mentality. Id. at 21.

137. Id. at 21. The Commission believed that the individual income which is produced by coaches outside their duties of coaching for the school should be subject to the scrutiny of the institution. This would eliminate the individual shoe and other apparel deals with the coach and force manufacturers to deal directly with the school. Id.

138. Id. at 21. The Commission believed that this would create an environment which was less focused on winning and more focused on helping the student-athlete.

139. Id. The Commission believed that the general funding notion would reduce the pressure on revenue sports to fund the entire athletics program.

140. Id. The certification process was in fact instituted in the NCAA in 1993 and is showing successful results.

141. Id.

142. KNIGHT COMMISSION REPORT I, supra note 109, at 22. The Commission stated that the certification process depended on the comparison of student-athletes, by sport, with the rest of the student body in terms of admissions, academic progress and graduation rates. Id.
\end{footnotesize}
WHAT IS FAIR COMPENSATION?

(2) Universities should undertake comprehensive, annual policy audits of their athletics program.\textsuperscript{143}

In all, the First Commission Report produced an extremely viable plan for the reform of intercollegiate athletics. To date, there has been a significant amount of NCAA policy reform as a result. At the 1996 NCAA Convention in Dallas, Texas, taking the advice of the Knight Foundation, the Association voted to replace the current governance structure controlled by coaches and athletic directors, with a system that puts college presidents in charge of all planning and policy activities.\textsuperscript{144}

\section{D. The NCAA's Role in Reform}

1. Proposition 48

During the decade of the 1980s, it became convincingly clear to the NCAA that reform was necessary. The impetus was found in the low graduation rates among athletes nationwide,\textsuperscript{145} as well as widespread academic abuses.\textsuperscript{146} The admissions policies were excessively lenient for athletes during this period of time.\textsuperscript{147} As a result, colleges and universities merely used the players for four seasons worth of athletic competition and gave them nothing in return.\textsuperscript{148}

\subsection{a. The Requirement}

In 1983, the NCAA adopted a highly controversial set of academic requirements called Proposition 48.\textsuperscript{149} Effective on August 1, 1986, Proposition 48 required that an incoming student-athlete at the Division

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\item \textsuperscript{143} \textit{Id.} The Commission suggested the review of student-athletes' admissions records, academic progress and graduation rates, as well as the athletics department's management and budget. \textit{Id.}
\item \textsuperscript{145} E.M. Swift, \textit{Propping Up Student-Athletes}, \textit{Sports Illustrated}, Dec. 5, 1994, at 88 (discussing the impact of Proposition 48 on college academic performance). Division I scholarship athletes in the early 1980s were 33\% for basketball players and 37.5\% for football players. \textit{Id.}
\item \textsuperscript{146} \textit{See} Kemp v. Ervin, 651 F. Supp. 495 (N.D. Ga. 1986) (where a college professor filed suit against the university claiming she was terminated for not giving preferential treatment to athletes).
\item \textsuperscript{147} As recently as 1989, the University of Minnesota allegedly admitted a "student-athlete" who had received a 490 on the Scholastic Aptitude Test (SAT) (an examinee receives 400 for merely signing). Sherman & Temkin, \textit{supra} note 14, at 1.
\item \textsuperscript{148} \textit{See infra} notes 197-209 for a discussion on the duty to educate.
\item \textsuperscript{149} \textit{See Toner, A Statement of NCAA Policy and Intentions Regarding Proposal 48}, 131 C. BOARD REV. 13, 13-14 (1984) (stating that the NCAA was committed to setting academic standards for student-athletes).
\end{enumerate}
I level must have maintained a minimum grade-point average of 2.0 in eleven core academic courses and a SAT score of 700 or 17 on the American College Test (ACT), in order to be eligible to practice, play and receive athletically-related financial aid. The 1989 NCAA Convention, Proposition 42 was passed which tightened the rules that govern scholarships. Both of these enactments caused a major uproar among college coaches, administrators and players claiming that the SAT was unfairly biased against blacks, and that a standard, such as Proposition 48, would also be discriminatory.

2. Proposition 16

The NCAA was pleased with the results of Propositions 48 and 42, believing that the entrance requirements improved graduation rates and re-focused high school student athletes on academics. The NCAA then instituted a more strict standard in the form of Proposition 16. It requires entering student-athletes to take two more core courses (13) than Proposition 48, and has grade point average and SAT or ACT minimums. These strict standards are aimed at motivating parents,

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150. NCAA Manual, supra note 20, at § 14.3.1.1.
151. See Davis I, supra note 1, at 758. Proposition 42 eliminated the "loophole" of allowing partial qualifiers to participate. A partial qualifier is a student-athlete who did not meet Proposition 48 standards with regard to the SAT. Id. at 760 n.101. Under Proposition 48, the partial qualifier, assuming he had a 2.0 high school grade point average, could receive an athletic scholarship only if he agreed not to play or practice with the team as a freshman. In this instance, the partial qualifier would lose one year of eligibility. The partial qualifier could also elect to be classified as a non-qualifier, which meant that he could participate in all team activities, except games, but receive no athletic scholarship. Id.
152. The Proposition 48 discrimination discussion is beyond the scope of this paper. For a discussion of graduation rates for black athletes; see Edwards, The Black "Dumb Jock": An American Sports Tragedy, 131 C. BOARD REV. 8, 9 (1984); Kroll, Race Becomes the Game: A Defiant Coach Challenges the NCAA's Rule Book, NEWSWEEK, Jan. 30, 1989, at 56. Dr. Leroy Walker, the first black president of the United States Olympic Committee and member of the Knight Commission, responded to the argument that standardized testing is culturally biased by stating that:

You're asking me to tell all black high schoolers, 'You're too dumb to get a C average, too dumb to get a 700 on the boards,' I don't feel inclined to do that ... to claim otherwise [that standardized testing is culturally biased] is to ignore the accomplishments of the 1.2 million black undergraduates now enrolled in Division I schools who have no involvement in athletics.

Swift, supra note 145. However, in light of the criticism on the overemphasis on standardized tests, the NCAA modified Proposition 42 at the 1990 convention, permitting partial qualifiers to receive need-based financial aid. Davis I, supra note 1, at 761 n.105.
153. Swift, supra note 145.
155. Proposition 16 institutes a "sliding scale" approach to minimum testing and grade point averages. NCAA Manual, supra note 20, at § 14.3.1.1.1. For example, if an incoming
coaches and teachers, as well as students into taking their secondary education seriously. Ultimately, the message the NCAA wants to send to the student-athlete is "if you're good enough in the classroom, there will be a place for you—whether you're an athlete or not." 157

3. Recent Reform

In January 1996, the NCAA began to implement its "restructuring" plan which was motivated by some of the ideas brought about by the Knight Commission studies. Through this plan, the NCAA anticipates shifting control away from the athletic administrators and towards presidential or university control. Each conference will designate representatives for the Division I Board of Directors and Management Council. This group, along with the NCAA Presidents Commission and Council, will be the actual leadership of Division I athletics. 159

4. Other Proposals

Since the NCAA admissions standards have caused significant controversy, and have not exorcised all of the evil out of intercollegiate athletics, there has been a suggestion of eliminating standardized entrance requirements altogether. This has been proposed by reformists who feel that overregulation is counter-productive to the solution of reshaping intercollegiate athletics. They assert that all admissions criteria should be set by each individual institution. In this system, all of the power is placed in the hands of the university president and his or

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156. William F. Reed, Reform School; The NCAA Gets Even Tougher on Athlete's Academics, SPORTS ILLUSTRATED, Jan. 20, 1992, at 7.
157. Swift, supra note 145.
158. David Pickle, supra note 144, at 1. The representatives will advise the NCAA Presidents Commission and Council. Id. at 18.
159. Id. at 5. The restructuring plan recommends the use of four “cabinets,” which would oversee the following areas:
   (a) Academics/Eligibility/Compliance; which includes: academic requirements, eligibility, financial aid and amateurism, interpretations, legislative review, recruiting, and two-year college relations;
   (b) Championships/Competition; which includes: basketball officiating, professional sports liaison, special events, championship committees and sports committees;
   (c) Strategic Planning; which includes: review and planning, and student-athlete advisory; and
   (d) Business/Finance; which includes: executive (budget and planning functions).
161. Id.
162. Id.
her administration.\textsuperscript{163} This would allow the institution to balance for itself the academic prestige of the university, based upon the segment of potential students the individual institution chooses to attract.\textsuperscript{164} Interestingly, this would take the responsibility of graduation rates away from the coaches and athletics departments, and into the hands of the admissions office.\textsuperscript{165}

III. \textbf{What is Wrong with College Student-Athletes Getting Paid?}

Reform proposals in intercollegiate athletics have recently included making the student-athletes professional "employees" of the university.\textsuperscript{166} Advocates of the employee theory argue that in all other areas of college life, students are allowed to make money from what they are learning.\textsuperscript{167} In addition, support for this theory comes from the notion that amateurism has already been erased from the intercollegiate athletic system anyway:\textsuperscript{168}

\footnotesize

\begin{itemize}
\item \textsuperscript{163} Id.
\item \textsuperscript{164} Id.
\item \textsuperscript{165} McGinnis, supra note 160. This theory makes sense in many respects, and even parallels suggestions made in the \textit{Knight Commission Report I}, but could never stand strong in a battle against the almighty NCAA.
\item \textsuperscript{166} See Ray Yasser, \textit{Are Scholarship Athletes at Big-Time Programs Really University Employees?—You Bet They Are!}, 9 \textit{Black} L. J. 65, 1984 (asserting student-athletes should be considered employees of a university thereby enabling them to be covered by workers' compensation).
\item The NCAA \textsc{Manual} embodies the university's expectation of its relationship with the student-athlete:
\begin{itemize}
\item 12.02.1 \textbf{Amateur Student-Athlete}- An amateur student-athlete is one who engages in a particular sport for the educational, physical, mental and social benefits derived therefrom and for whom participation in that sport is an avocation.
\item 12.01.1 \textbf{Eligibility for Intercollegiate Athletics}- Only an amateur student-athlete is eligible for intercollegiate athletics participation in a particular sport . . .
\item 12.02.4 \textbf{Professional Athlete}- A professional athlete is one who receives any kind of payment, directly or indirectly, for athletics participation except as permitted by the governing legislation of the Association . . .
\item 15.01.7 \textbf{Maximum Institutional Financial Aid to Individual}- An institution shall not award financial aid to a student-athlete that exceeds the cost of attendance that normally is incurred by students in a comparable program at the institution.
\end{itemize}
\textsc{NCAA Manual}, supra note 20.
\item \textsuperscript{167} \textsc{Andre \& James}, supra note 26, at 11. "Engineering professors encourage their students to get summer internships; teaching hospitals pay student nurses after they have achieved a certain level of competence; music departments take pride in students enough to command a fee." \textit{Id.}
\item \textsuperscript{168} John Underwood, \textit{Reading, Writing and Remuneration}, \textsc{N.Y. Times}, Sept. 11, 1994, at sec. 8, 13 (stating that money madness has infiltrated intercollegiate athletics).
\end{itemize}
Amateurism is a nostalgic term applied as an economic principle to control the marketplace for colleges... [A]thletes should have the same access to the commercial marketplace that the supervisors and overseers as well as other students have. In light of the hypercommercialization of today's college athletics, dramatic changes are necessary to permit athletes to participate in the enormous proceeds.169

The point of departure for the employee theory will be in establishing the student-athlete as an employee. In litigation, student-athlete plaintiffs have proceeded on a contract theory in order to prove their status as an employee.

A. Are Student-Athletes "Employees" Anyway?

Advocates of the employee theory suggest that the current NCAA principles of amateurism are a farce and that student-athletes are employees.170 However, some courts have denied worker's compensation benefits on the basis of a successful argument by universities that no employer-employee relationship exists because their goal is to educate the student-athletes.171 Conversely, courts have been reluctant to establish that a duty to educate exists in educational malpractice suits and breach of contract actions.172 Courts should either impose a duty to educate or require student-athletes to receive the full benefits of employment.173

1. Employer-Employee Relationship

Courts have debated over whether the student-athlete may be defined as an employee within the context of worker's compensation.174 Student-athletes have been denied protection under worker’s compens-
sation statutes due to their tax-exempt status.\textsuperscript{175} However, in \textit{University of Denver v. Nemeth},\textsuperscript{176} the Colorado Supreme Court determined that Nemeth, a full-time enrolled student and football player, was an employee who was injured in the course of his employment and was entitled to worker's compensation benefits.\textsuperscript{177} In return for his services as a football player and in lieu of an athletic scholarship, Nemeth had a part-time job cleaning the campus tennis courts and taking care of the dormitories.\textsuperscript{178} As a result, the court determined that the fact that Nemeth would have lost his job but for his participation on the football team was sufficient consideration.\textsuperscript{179} Therefore, Nemeth was in fact an employee of the university whose injury arose out of his employment.\textsuperscript{180}

However, the Colorado Supreme Court in \textit{State Compensation Insurance Fund v. Industrial Commission}\textsuperscript{181} denied worker's compensation benefits for an injury sustained by an athlete on scholarship during a football game.\textsuperscript{182} The plaintiff, Dennison, was employed by Fort Lewis A & M College to manage the student lounge and work on the college farm. In return, he was paid a student work-study wage in addition to the athletic scholarship. The Court determined that Dennison's consideration was not in return for playing football, and that, because the college was not in the football business, it could not be considered an employer.\textsuperscript{183} Taken together, \textit{Nemeth} and \textit{Dennison} offer no consistent posture by the Colorado High Court.

In \textit{Van Horn v. Industrial Accident Commission},\textsuperscript{184} California State Polytechnic College (Cal Poly) recruited Van Horn to play football and offered him a job on campus as well.\textsuperscript{185} After Van Horn was killed in an airplane crash while returning from a game, his widow and minor children applied for benefits under the California Workmen's Compensation

\textsuperscript{175} Hilborn, \textit{supra} note 170, at 762.
\textsuperscript{176} University of Denver v. Nemeth, 257 P.2d 423 (Colo. 1953).
\textsuperscript{177} \textit{Id.} at 423.
\textsuperscript{178} \textit{Id.} at 424.
\textsuperscript{179} \textit{Id.} at 426. \textit{Nemeth} is important because it established that the courts will examine the true nature of the relationship between the student-athlete and the university which the student-athlete competes for. Yasser, \textit{supra} note 166, at 68.
\textsuperscript{180} \textit{Id.} at 288 (Colo. 1957).
\textsuperscript{181} \textit{Id.} at 288.
\textsuperscript{182} \textit{Id.} at 290-92.
\textsuperscript{184} Van Horn worked in the college cafeteria, and received $50.00 at the beginning of each school semester and $75.00 rent money during football season. \textit{Id.} at 171.
Act. The California appellate court looked beyond the form of the relationship to its substance and found that Van Horn was being paid to play football. The court used similar reasoning to the Nemeth court, and recognized a contractual relationship between a student-athlete and university wherein the student received financial assistance in return for participating in athletics. Therefore, the student was considered an employee under the worker's compensation statute. However, if the court views the student as an amateur, there will be no finding of an employer-employee relationship. In Rensing v. Indiana State University Bd. of Trustees, Rensing accepted an athletic scholarship to play football. Rensing sustained injuries while playing football which rendered him a quadriplegic. Rensing filed a claim under the Indiana Workmen's Compensation Act for recovery of permanent disability and hospital expenses. The Indiana Court of Appeals reversed the Board's ruling that there was no basis for the claim and that Rensing was an employee. The Indiana Supreme Court held that an intent for a contract to exist was required to establish the employer-employee relationship and found none in this case. A failure to find that Rensing was an employee of the university, receiving compensation in return for athletic performance, misrepresents the meaning "in the service of" and is contradictory to the common agreement in intercollegiate athletics.

Therefore, the test that the courts should apply is the contractual test of whether the student's performance of athletic services is consideration.

186. The Industrial Accident Commission, California's worker's compensation board, denied benefits, stating that Van Horn was not an employee.
187. Id. at 174. The court determined that where the parties bargain for a package of benefits, an employer-employee relationship may be created. Hilborn, supra note 170, at 763.
188. Yasser, supra note 166, at 70.
190. The scholarship provided that he would receive a grant for tuition, room and board and books for a year. Rensing, 444 N.E.2d at 1179.
191. Id.
192. IND. CODE ANN. § 22-3-1-1 (Michie 1974).
193. The Industrial Board found no basis for a claim. Rensing, 444 N.E.2d at 1171.
194. Id.
195. Id. at 1173: [t]here must be a mutual belief that a contract of employment, either express or implied, did exist . . . It is evident from the documents which formed the agreement in this case that there was no intent to enter into an employee-employer relationship at the time the parties entered into the agreement.
196. Yasser, supra note 166, at 77 n.72 (noting that an athletic scholarship is not a four-year guarantee, but rather a renewable year-to-year agreement, based upon the performance of the athlete).
for an athletic scholarship.\textsuperscript{197} Taken this way, courts will find that the student-athlete university relationship is clearly an employee-employer relationship. This would establish a clear-cut opportunity for the advocates of the professional employee model to defuse the impact of this theory on the sacred "amateurism" of intercollegiate athletics.\textsuperscript{198} In a positive sense, the student-athletes would then be able to benefit from an employee status by being compensated for injuries sustained while playing.\textsuperscript{199}

B. The Duty to Educate

Do institutions of higher education have a duty to educate their student-athletes? At a minimum, based upon universities' mission statements, it would seem that educating is clearly the goal of most, if not all institutions.\textsuperscript{200} However, there are numerous cases in which student-athletes depart from an institution without a degree, without any social skills or without more than a grade school reading level. The issue of blame, however, becomes difficult to decipher due to the subjective nature of the educational process and the varying degrees of student initiative.

1. Educational Malpractice

Educational malpractice suits have generally been analogous to medical and legal malpractice.\textsuperscript{201} Suits have been grounded in the notion that academic institutions have a legal obligation to instruct students in such a manner as to impart a minimum level of competence in basic

\textsuperscript{197} Id. This has been recognized by the courts in Nemeth and Van Horn.

\textsuperscript{198} If the intercollegiate athletic system was recognized for what it truly is, an employer-employee relationship, then the advocates of the status quo amateurism would be challenged on their argument that professionalism would destroy the integrity of the system.

\textsuperscript{199} Providing benefits to injured student-athletes would provide much needed relief to those who cannot afford health benefits.

\textsuperscript{200} See BULLETIN, supra note 7 (discussing the mission statement).

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Student-athletes bringing suit on this theory desire an opportunity to gain substantive educational benefits during college.

Courts have rejected suits by student-athletes on the basis of various policy reasons. However, criticism of the courts' use of these policy reasons has been well documented. The types of misconduct alleged by student-athletes do not challenge educational methods, but rather claim the university engaged in both active and passive conduct which impeded their ability to acquire an educational opportunity. The improper conduct alleged has generally been: (1) failing to provide sufficient study time or independent and satisfactory counseling and tutoring, (2) disregarding student-athletes' progress towards education, (3) channeling student-athletes' progress towards education, (4) channeling student-athletes into classes which lack substantive education merit and (5) passing student-athletes to higher levels to maintain their academic eligibility.

In proving that schools have been in dereliction of their educational duty, courts have generally looked at the following factors:

202. Id. In Ross v. Creighton Univ., 740 F. Supp. 11319 (N.D. Ill. 1990), aff'd 957 F2d. 410 (7th Cir. 1992), a former Creighton University basketball player filed suit against his former school alleging that it had committed educational malpractice and had breached the duty of good faith and fair dealing which was allegedly implied in the express contract between the university and Ross. Ross, 740 F. Supp. at 1322-23. Specifically, Ross claimed that Creighton University wrongfully recruited him, despite the fact that it knew that he would be unable to handle college-level studies and had very little chance at obtaining a degree. Id. at 1323. Ross also claimed that Creighton University had failed to provide adequate tutoring or other remedial support while enrolled at the university. Id. at 1323. According to Ross, Creighton had failed to provide him with a reasonable opportunity to obtain a meaningful education. Id. Ross attended Creighton University on a basketball scholarship. Id. at 1319. After four years, when his eligibility expired, Ross had earned 96 out of the 128 credits required to graduate. Id. at 1322. He maintained a "D" average while his reading ability was estimated to be that of a seventh-grader and his overall language skills that of a fourth-grader. Id.

204. Some policy considerations which have been noted include: (1) an inability to create a standard of care; (2) the difficulty of establishing causation; (3) courts lack the expertise to formulate workable standards for teaching and learning; and (4) excessive litigation. See Davis II, supra note 201, at 75-78.

205. Id. at 79.

206. Id. at 79-80.

207. See Davis I, supra note 1, at 789-90.
(1) the breadth of the student-athlete's curriculum; (2) the type of guidance offered; (3) the number of absences occasioned by the athletic commitments; (4) compilation of exams, papers and assignments; (5) a record of complaints by the student and/or his guardian; (6) the school's standing and reputation in a given athletic sport; (7) evidence of passing grades in courses never attended; and (8) evidence tending to show that the student placed an inordinate degree of trust in the coach and his staff.

In order for student-athletes to prevail, they have been required to overcome evidentiary obstacles in establishing their claims. The evidentiary obstacles include that the student: (1) did not attend class; (2) missed tutoring sessions; (3) failed to complete assignments; (4) showed a non-cooperative attitude; and (5) did not participate in class or tutoring sessions. However, these requirements set by the courts do nothing to help remedy the problem of institutions admitting under-prepared students and placing heavy time limitations on them afterwards, ignoring any chance they might have at academic achievement.

IV. PROPOSALS TO REFORM WHICH ADVOCATE PAYING STUDENT-ATHLETES

As early as 1980, reform suggestions included the professionalization of revenue-producing intercollegiate athletics. Advocates proposed that professionalization would serve as a practical solution to the ethical and economic problems of big-time athletics. Specifically, the revenue-producing sports would be separated from the traditional form of university control and actually become a formal "minor league" to the National Football League (NFL) and National Basketball Association (NBA).
A. Creation of the “Super League”

Advocates of professionalization argue that unethical practices would be eliminated, the hypocrisy of the “student-athlete” would disappear, and there would be no need for watered-down courses, academic advisory staff, tutors, transcript tampering, or jock-favoring by professors. In addition, it is argued that big-time college athletics would be an honest business of entertainment.

The economic realities of professionalizing intercollegiate athletics restricts the number of schools which can be included. Realistically, there are only a few viable markets in which teams can be established. What then would become of the remaining institutions who are not part of the “super league?”

1. The Opposition

This scheme has nothing to do with education, the purpose for which colleges and universities exist. The whole idea of intercollegiate athletics is that the teams represent their institutions as true members of the student body, not as hired hands. This reform would create “just another professional league” and would forever alter the spectacle of college sports. What makes the college game unique is the enthusiasm spectators show for their school.

Other barriers exist for the theory of professionalization including the most obvious position of opponents, that it would violate the mission statement of institutions of higher learning. However, viable arguments can be presented to show that this has already occurred under the current system.

at 160. Football team sizes would be cut to approximately fifty or sixty, as well as the size of coaching staffs. Id.

215. ROONEY, supra note 83, at 159-60.

216. Id.

217. Id. at 161. The NFL cities would be an obvious barrier to fielding a team. In addition, such marketing concerns as television and population play a large factor in which schools would be chosen. Id.

218. KNIGHT COMMISSION REPORT I, supra note 109, at 11.

219. Id.

220. ANDRE & JAMES, supra note 26, at 58. Criticism of the current intercollegiate athletic system suggests that it is “just another professional league” right now, and that by calling it by a different name is insignificant. Id.

221. Id.
**B. The Other Extreme: Eliminate Athletic Scholarships**

Reform at the other end of the radical spectrum is a call for a return to purity in major intercollegiate athletics. This proposal suggests that all intercollegiate athletic programs should adopt the same rules that are set out in Division III or the Ivy League. These leagues do not allow financial assistance based on athletic ability, but only based on economic need. This system, presumably, allows the prospective student-athlete to make his or her college choice based on educational needs rather than the amount of athletic scholarship offered. This would achieve several important goals of reform. According to the advocates, this reform would re-focus the athlete's attention on academics and reduce the school's overemphasis on athletics while eliminating the ethical improprieties that are currently associated with intercollegiate athletics. Although this theory has considerable merit and high moral intentions, it is severely limiting and too radical. In addition, the system is not necessary.

1. The Opposition

Intercollegiate athletics has generally been maligned for its deplorable record, both in integrity and fulfilling an educating requirement. However, there are many schools operating on a higher moral level under the current system. So, the radical reform proposed here is obviously unnecessary because schools have proven to be successful under a scholarship arrangement.

There are other problems with this proposal. The first is a practical problem. The amount of potential revenue that can be produced by intercollegiate athletics is far too attractive for schools to give up. It is argued that athletic scholarships are necessary to attract the top athletes.

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222. *Id.*
223. The NCAA's Division III rules prohibit athletically-related financial aid. The Ivy League consists of Columbia University, Dartmouth University, University of Pennsylvania, Brown University, Princeton University, Yale University, Harvard University, and Cornell University. This League was formed with the intention of emphasizing academics over athletics, although athletics is an important part of the school's function.
224. *André & James, supra* note 26, at 59.
225. *Id.* Although athletics would be considered in admission of the prospective student-athlete, it would only be a factor in the credentials and only be weighed as much as extraordinary ability in music or drama. *Id.*
226. Some schools have been able to strike a balance between producing winning athletic programs while at the same time achieving exceptional graduation rates. *NCAA Aggregate Reports* at 142 (1994).
227. *Id.*
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in order to compete at a level appealable to the public. Benefits of exciting competition include: money and support for the university; enthusiasm and cohesion to the university community; and enjoyment for the region and entire nation.

V. CONCLUSION

A. Recommendations for Reform

Intercollegiate athletics has been most severely criticized for its change of emphasis on athletics as a valuable part of a college education, to athletics as a source of revenue, support and visibility. In order to reap these benefits, colleges and universities must win, and therefore must compete for the most athletically talented students. This, in turn, causes an exploitation of student-athletes by emphasizing athletic performance rather than academic performance. This jumbled focus is the same problem which plagued the Greek culture, causing them to change their cultural ideal.

Perhaps reform should be modeled after the Greek's reform of sports as a cultural ideal. Greek reform was shaped by a change in philosophy. The culture began to change its focus of athletics as a personification of human struggle and competition, to athletics as part of a balanced education, training both the body and the mind. The American higher educational system holds as its mission the balanced approach of the development of the student—why should this not be fulfilled? If all intercollegiate athletic programs were to arrive at the ideal ethical standard of enforcing educational values and respect for student-athletes, wouldn't the quality of excellence, the enthusiasm and the excitement which characterize the institution still be preserved?

228. Id. However, is appealability to the public for purposes of producing revenue the focus of intercollegiate athletics? At this time it is.
229. Id.
230. ANDRE & JAMES, supra note 26, at 56.
231. Id.
232. Id.
233. See supra notes 44-61 and accompanying text for a discussion on the importance of sports in Greek culture.
234. See supra notes 44-61 and accompanying text.
235. 233 See supra notes 52-61 and accompanying text.
236. ANDRE & JAMES, supra note 26, at 38.
237. See supra note 7 for an example of the mission statement.
1. Student-Athletes Should Get What They Deserve

Student-athletes should be provided with what they contracted for, an education. The current system does not effectively provide this. The duty to educate may be one avenue to follow in producing reform, however policy changes must be implemented to guarantee education.

2. How to Implement the Reform?

Reform in intercollegiate athletics has been targeted mostly toward the athletics department itself, via NCAA control. However, effective reform will not be established through these means. The best models for reform have focused on concern of the student-athlete, placing the power for change into the hands of the university president, and are aimed at restoring the educational mission. Reform should eradicate non-academic prohibitions and focus on academic constraints on the student-athlete.

3. Additional Ideas for Reform

The Knight Commission has been the impetus for a significant movement in reforming intercollegiate athletics. Its basic philosophy of the "one" plus "three" model for reform is a solid approach. Once those goals are achieved, it will become even more important to maintain the "new" system and continue to nurture student-athletes in order to enable them to fulfill their academic potential. However, resources for this enrichment must already be in place for them to flourish.

In return for devoted sacrifice of both time and individual freedoms, the student-athlete should be provided an atmosphere which fosters academic achievement. This is best achieved by improving the academic enrichment centers at the institution itself. Portions of the athletics-generated revenue could be used to fund this. Specialized programs which monitor the academic progress of each student-athlete have

238. See Johnson, supra note 208, at 96.
239. See AGGREGATE NCAA REPORT, supra note 79 for current graduation statistics.
240. See KNIGHT COMMISSION REPORT I, supra note 109 for a discussion of the report.
241. Id.
242. Id.
243. Each institution should have a suitable center for academic enrichment in which student-athletes can be provided with tutoring, use of computers, specialized lectures on time management and study techniques, and lectures in dealing with success and failure as an athlete, as well as career advisement.
proven to be successful at many institutions.\footnote{At Villanova University, and some other institutions, the athletics department has instituted a monitoring program for its freshman student-athletes. The program at Villanova was developed and administered by Mrs. Nancy A. White, Associate Director of Academic Advising for Athletics. In essence, each freshman student-athlete is required to complete an evaluation form on his or her academic course load. In addition, the student-athlete is challenged through a five to ten minute questioning period in which he or she must discuss their progress in each course. Advisors, usually former athletes who are now in graduate degree programs at the university, provide assistance in developing study techniques, time management techniques, and even career choices.} Once the schools and the student-athletes become fully responsible for academic success, then great strides in reform will appear.

The institution certification process should be strictly tied to the graduation record at each institution. If institutions do not reach the level of graduation percentage for its student-athletes that it has achieved for its undergraduate student body, then certification should be suspended. In addition, revenue sharing rights from NCAA television contracts should be suspended as well.\footnote{This would be the strongest impetus for reform at each institution.}

Finally, the student-athlete must be “mainstreamed” into the general cultural and social environment of the college community. This would include the elimination of “jock” dormitories\footnote{Athletes are no longer allowed to be housed in one dormitory, however this sometimes occurs during summer school sessions. See NCAA MANUAL, supra note 20, at § 16.5.2.2.} and pseudo “jock” dormitories,\footnote{Pseudo jock dormitories are where clumps of athletes are housed together, effectively the same as completely jock dormitories.} and “training tables.” At all times, the athletes should be housed, if possible, with the general student body in order to help them assimilate into the community—make them feel like a student first, and an athlete, second.

These changes, coupled with those reform proposals mentioned through the \textit{Knight Commission Report}, provide a solid framework in which intercollegiate athletics can withstand the intense scrutiny directed towards it in recent years. The increased revenue potentially gained by participating in intercollegiate events makes the need for reform more difficult, but at the same time necessary. It is difficult because the institutions who are profiting under the current system will want to remain within the status quo. It makes it necessary because the true “student-athletes” will become extinct unless change is implemented. They will merely become hired hands for the institution, rather than significant and contributing components to a unique entity. Athletics can improve the quality of the college environment, however, abuse and overempha-
sis can destroy it as well. A balance must be achieved, just as the Greeks had recognized:

At its best intercollegiate athletics allow for development, reinforcement, and expression of desirable traits of character—the virtues. In addition, they provide a test of mind and body for participants and an example for the rest of community trying to achieve excellence. At its best, the university is a place where standards of truth and excellence are formulated, defended, and applied in the arts, sciences, and humanities. Competitive sports provide a clear institutional framework in which the concern for achieving excellence through challenge is demonstrated and reinforced. In addition, intercollegiate athletics helps to make a university a community by providing fun and recreation for its members. Intercollegiate athletics, then, can support the basic mission of the university as a refuge for teaching, scholarship, and research.248

The ideal for modern intercollegiate athletics can be achieved. Academic integrity, enthusiasm for sports and fanaticism can all co-exist. However, the burden of achieving this must be placed on the universities as a whole, beginning with the presidents and ending with the student-athletes themselves. Presidents should remain focused on performing their mission, to educate all of their students. Student-athletes should be made aware of the value of a truly balanced education and the unlikelihood of professional athletic careers. However, student-athletes should never be cheated out of the wonderful experience of developing their minds while, at the same time, developing and experiencing all that athletics has to offer.

248. Andre & James, supra note 26, at 66.