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# PAYING NCAA ATHLETES

DAVID J. BERRI\*

## I. INTRODUCTION

The NCAA has recently faced unprecedented legal challenges that could fundamentally alter the labor market it faces. The most prominent of these is the case brought by Ed O'Bannon.<sup>1</sup> United States District Court Judge Claudia Wilken ruled in 2014 that NCAA amateurism rules violate federal antitrust laws and players were entitled to \$5,000 per year for name, image, and likeness rights.<sup>2</sup> In 2015, the Ninth Circuit of the United States Court of Appeals reduced the \$5,000 payment to a simple cost of attendance payment<sup>3</sup> (which many schools already provide).<sup>4</sup>

Another case, *Jenkins v. NCAA*,<sup>5</sup> directly attacks the NCAA rules limiting the pay of athletes to the cost of attendance. This case—argued by Jeffrey Kessler—asserts that the NCAA violates antitrust laws when it limits how schools compensate their student-athletes.<sup>6</sup>

And then there was the proposed union for football players at Northwestern University. In February 2014, the National Labor Relations Board (NLRB) held a hearing to decide if football players were employees and, therefore, had the right to unionize.<sup>7</sup> The NCAA contended football players were

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1. See generally *O'Bannon v. NCAA*, 7 F. Supp. 3d 955 (N.D. Cal. 2014), *aff'd in part*, 802 F.3d 1049 (9th Cir. 2015). O'Bannon starred at UCLA from 1991 to 1995. Years later he discovered his likeness being used in a video game by EA Sports. O'Bannon sued both EA Sports and the NCAA for using his likeness without his permission and without compensation.

2. *O'Bannon*, 7 F. Supp. 3d at 1007–08.

3. See *O'Bannon*, 802 F.3d at 1076–79. The Ninth Circuit, though, did affirm that the NCAA rules violated federal antitrust laws. Michael McCann, *What the Appeals Court Ruling Means for O'Bannon's Ongoing NCAA Lawsuit*, SI, <http://www.si.com/college-basketball/2015/09/30/ed-obannon-ncaa-lawsuit-appeals-court-ruling> (last updated Oct. 2, 2015).

4. McCann, *supra* note 3.

5. See generally *Jenkins v. NCAA*, 311 F.R.D. 532 (N.D. Cal. Dec. 4, 2015).

6. Liz Mullen, *Kessler: Ruling in O'Bannon Will Aid in NCAA Antitrust Case*, SPORTS BUS. J., Oct. 12, 2015, at 15.

7. The Author served as an expert witness for the union at the original NLRB hearing on this issue.

“student-athletes”; the term was actually invented by the NCAA in the 1950s in response to a claim by a former NCAA football player who demanded workers’ compensation.<sup>8</sup> Walter Byers (the executive director of the NCAA from 1951 to 1987) noted in his 1995 autobiography, “We crafted the term student-athlete, and soon it was embedded in all NCAA rules and interpretations as a mandated substitute for such words as players and athletes. We told college publicists to speak of ‘college teams,’ not football or basketball ‘clubs,’ a word common to the pros.”<sup>9</sup>

The initial NLRB ruling rejected the NCAA’s contention and supported the argument that college athletes are employees who have the right to unionize. In 2015, though, the NLRB refused to rule on the appeal in the case. By refusing to rule, the players were effectively denied the right to unionize.<sup>10</sup>

At the moment, the NCAA does not appear to be losing these cases. Therefore, something akin to the status quo is being maintained. But it seems unlikely that these legal challenges will cease. And if one is successful, the labor market in college sports could fundamentally change.

The purpose of this Article is to answer three questions related to how changes in the labor market could impact the future of college sports:

1. Why did schools decide to dramatically limit the pay of student-athletes? This first question must be answered to understand the current market.
2. How does this practice impact the level of competitive balance in college sports? This second question directly addresses the NCAA’s assertion that labor market restrictions are necessary to maintain competitive balance.
3. How much would student-athletes be paid if schools did not limit their compensation? This last question examines what a free market for labor would look like for the “student-athletes” (i.e., employees) the NCAA employs.

The answers to these three questions will reveal that much of what the NCAA

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8. Opinion, *The O’Bannon Ruling: ‘Student-Athlete’ Is History*, N.Y. TIMES (Aug. 13, 2014), <http://www.nytimes.com/2014/08/14/opinion/the-obannon-ruling-student-athlete-is-history.html>.

9. WALTER BYERS & CHARLES HAMMER, UNSPORTSMANLIKE CONDUCT: EXPLOITING COLLEGE ATHLETES 69 (4th ed. 1998) (emphasis omitted); accord *The O’Bannon Ruling: ‘Student-Athlete’ Is History*, *supra* note 8.

10. Ben Strauss, *N.L.R.B. Rejects Northwestern Football Players’ Union Bid*, N.Y. TIMES (Aug. 17, 2015), <http://www.nytimes.com/2015/08/18/sports/ncaafootball/nlrbsays-northwestern-football-players-cannot-unionize.html>.

claims regarding athlete compensation runs counter to the empirical evidence.

## II. BRIEF HISTORY OF COMMERCIALIZATION IN COLLEGE SPORTS

There is a tendency to think the commercialization of college sports is something that has only recently happened. In fact, though, college sports have been commercialized for more than a century. For example, in 1890, Woodrow Wilson, then-president of Princeton University (and future president of the United States), told the alumni of his school, “Princeton is noted in this wide world for three things: football, baseball, and collegiate [instruction].”<sup>11</sup>

Football was certainly big business for Princeton. In the late 1880s, the Princeton–Yale game attracted 40,000 paying spectators.<sup>12</sup> The 1893 Thanksgiving game between these two schools generated \$13,000 in revenue for each school,<sup>13</sup> or \$313,297 in 2014 dollars.<sup>14</sup>

The revenue generated by sporting events leads to what should be an obvious question: How much revenue should be paid to the athletes who the fans are paying to see?

In every other business in American society, workers must be paid at least a minimum wage from the revenue generated by the firm. Colleges and universities, though, have gotten around this practice by relabeling the workers’ titles. Rather than call the athletes competing on the field “workers,” colleges and universities utilize the term “student-athlete.” In addition, schools also argue that student-athletes are “amateurs”<sup>15</sup> and, therefore, are not entitled to be paid.

Meanwhile, the revenues generated by college sports keep increasing. In 2014, NCAA revenues were nearly \$1 billion.<sup>16</sup> Much of this revenue is

11. ANDREW ZIMBALIST, UNPAID PROFESSIONALS: COMMERCIALISM AND CONFLICT IN BIG-TIME COLLEGE SPORTS 7 (1999) (quoting ARTHUR A. FLEISHER III ET AL., THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION: A STUDY IN CARTEL BEHAVIOR 45 (1992)).

12. *Id.*

13. Kavitha A. Davidson, *The Ivy League Origins of Thanksgiving Football*, BLOOMBERG VIEW (Nov. 26, 2015), <http://www.bloombergvew.com/articles/2015-11-26/the-ivy-league-origins-of-thanksgiving-football>.

14. The real value of dollars in 1893 was determined via the GDP deflator. See generally Samuel H. Williamson, *Seven Ways to Compute the Relative Value of a U.S. Dollar Amount - 1774 to Present*, MEASURING WORTH, [https://www.measuringworth.com/m/calculators/uscompare/result.php?year\\_source=1893&amount=13,000&year\\_result=2014](https://www.measuringworth.com/m/calculators/uscompare/result.php?year_source=1893&amount=13,000&year_result=2014) (last visited June 9, 2016).

15. The word “amateur” tends to have a very circular definition when applied by the NCAA. As Patrick Hruby has noted, “[C]ollege sports are amateur because otherwise they wouldn’t be college sports, which are amateur.” Patrick Hruby, *Court of Illusion*, SPORTSONEARTH (Oct. 10, 2013), <http://www.sportsonearth.com/article/62747894/>.

16. Steve Berkowitz, *NCAA Nearly Topped \$1 Billion in Revenue in 2014*, USA TODAY (Mar. 11, 2015), <http://www.usatoday.com/story/sports/college/2015/03/11/ncaa-financial-statement-2014-1-billion-revenue/70161386/>.

generated from the sale of media rights.<sup>17</sup> These media rights exist because fans enjoy watching college athletes compete. Because of NCAA rules, though, compensation of the athletes who generate the revenue is significantly restricted.

### III. THE COMPETITIVE BALANCE STORY

The limit on player pay in college sports is officially related to the drive to promote competitive balance or relative equality in the strength of the competitors in each competition. As Jim Peach notes,

Promoting competitive balance is a major concern of the NCAA. Three of the NCAA's core principles directly address competitive balance. These are core principles 2.10 The Principle of Competitive Equity, 2.11 The Principle Governing Recruiting, and 2.12 The Principle Governing Eligibility. These principles state, in part:

- Core Principle 2.10: The structure and programs of the Association and the activities of its members shall promote opportunity for equity in competition to assure that individual student athletes and institutions will not be prevented unfairly from achieving the benefits inherent in participation in intercollegiate athletics.
- Core Principle 2.11: The Principle Governing Recruiting. Regulations shall be designed to promote equity among member institutions . . . .
- Core Principle 2.12: The Principle Governing Eligibility. Eligibility requirements shall be designed to assure proper emphasis on educational objectives, to promote competitive equity among institutions, and to prevent exploitation of student athletes.

. . . In a meaningful sense, the principles governing recruiting and eligibility were adopted by the NCAA in order to promote competitive balance. Indeed, the principle of amateurism and various regulations concerning financial aid

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17. *Id.*

are also intended to promote competitive balance.<sup>18</sup>

Despite this objective, though, Peach notes that competitive balance does not characterize college sports.<sup>19</sup> This point is established by looking at who generally wins in various sports. For example, Peach notes,

- From 1950 to 2006, 50.4% of all final four appearances in NCAA men's basketball were made by thirteen different schools.<sup>20</sup> There are more than 300 schools in Division I-A eligible to play in the NCAA tournament, but less than 5% of these schools dominate the Final Four.
- From 1982 to 2005, 51% of all final four appearances in NCAA women's basketball were made by just six schools.<sup>21</sup>
- From 1947 to 2005, 50% of all appearances in the championship game of the NCAA college world series were made by just seven schools.<sup>22</sup>
- From 1982 to 2005, 58.3% of all appearances in the championship games of NCAA women's softball were made by just two schools.<sup>23</sup>
- From 1970 to 2005, 61.1% of the appearances in the championship game in NCAA men's volleyball were made by just three schools.<sup>24</sup>
- From 1981 to 2005, 58.3% of all appearances in the championship games in NCAA women's volleyball were made by just four schools.<sup>25</sup>

College football has historically not had a championship. However, in looking at the top eight slots in the final Associated Press poll, Peach reports

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18. Jim Peach, *College Athletics, Universities, and the NCAA*, 44 SOC. SCI. J. 11, 14 (2007) (emphasis omitted) (citation omitted).

19. *See id.* at 15–20.

20. *Id.* at 17.

21. *Id.* at 19.

22. *Id.* at 17–18.

23. *Id.* at 19–20.

24. *Id.* at 18.

25. *Id.* at 19–20.

that 51.6% of those slots from 1950 to 2005 were held by just twelve schools.<sup>26</sup>

In sport after sport, Peach found that a small collection of schools dominated. It was not the same schools in each sport, but in each sport, there are a collection of schools that appear to control the competition. In sum, college sports do not have competitive balance.

It appears the restriction on pay is the primary reason for the lack of balance. The Duke Blue Devils won the 2015 NCAA Men's Basketball Championship with three players—Tyus Jones, Jahlil Okafor, and Justise Winslow—who were selected in the first twenty-four picks of the 2015 NBA draft. The University of Kentucky reached the Final Four in 2015 with six players selected in the NBA draft—a list that included Karl-Anthony Towns (first pick), Willie Cauley-Stein (sixth pick), Trey Lyles (twelfth pick), and Devin Booker (thirteenth pick). In contrast, of the 351 schools that played Division I-A basketball, 320 did not have a single player selected in the 2015 NBA draft.

Why do the top schools have so many drafted players? The key is whom they recruit. Each year the top high school players are ranked by a variety of different experts. The Recruiting Services Consensus Index<sup>27</sup> summarizes these rankings to create a consensus listing of the top players each year.<sup>28</sup>

As one can see, from 2009 to 2014, John Calipari, head coach at the University of Kentucky, was able to recruit twenty-seven of these players. So far, only one of these players stayed at Kentucky long enough to graduate. Of the remaining twenty-six, twenty were drafted by an NBA team, many after only playing one season at Kentucky.

**Table One: Top Ranked High School Players Recruited by John Calipari at the University of Kentucky: 2009–2014**

Recruiting Year	RSCI Rank	Player	Outcome (as of June, 2015)
2009	2	John Wall	Drafted
2009	3	DeMarcus Cousins	Drafted
2009	16	Daniel Orton	Drafted
2009	55	Eric Bledsoe	Drafted
2009	58	Jon Hood	Stayed in school for five years
2010	5	Brandon Knight	Drafted

26. *Id.* at 15–16.

27. RSCIHOOPS, <https://sites.google.com/site/rscihoops/home> (last visited June 9, 2016).

28. *Basketball-Reference* reports the RSCI rankings. See *Recruiting Services Consensus Index (RSCI) Rankings - 2015*, BASKETBALL-REFERENCE, [http://www.basketball-reference.com/awards/recruit\\_rankings\\_2015.html](http://www.basketball-reference.com/awards/recruit_rankings_2015.html) (last visited June 9, 2016).

2010	10	Terrence Jones	Drafted
2010	25	Doron Lamb	Drafted
2010	43	Stacey Poole	Transferred
2011	1	Anthony Davis	Drafted
2011	3	Michael Kidd-Gilchrist	Drafted
2011	7	Marquis Teague	Drafted
2011	18	Kyle Wiltjer	Transferred
2012	1	Nerlens Noel	Drafted
2012	8	Alex Poythress	Still at Kentucky
2012	12	Archie Goodwin	Drafted
2012	39	Willie Cauley-Stein	Drafted
2013	2	Julius Randle	Draft
2013	4	Andrew Harrison	Drafted
2013	6	Aaron Harrison	Undrafted, signed to NBA team
2013	9	Dakari Johnson	Drafted
2013	11	James Young	Drafted
2013	16	Marcus Lee	Still at Kentucky
2014	2	Karl-Anthony Towns	Drafted
2014	5	Devin Booker	Drafted
2014	9	Trey Lyles	Drafted
2014	18	Tyler Ulis	Still at Kentucky

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Why do all these players attend Kentucky? Because schools cannot pay a player more than the cost of attendance, players need another criterion to select which school to attend. It appears this choice is often motivated by the desire to win. And how do you know which schools are likely to win? It appears players are looking at who won in the past.

And that means the very rule designed to promote competitive balance (i.e., restricting pay) is having the opposite effect. Restrictions on pay are actually promoting competitive imbalance as the very best talents join each other on the same small collection of teams.

#### IV. THE EXPLOITATION STORY

So if restricting pay does not promote competitive balance, what does this rule accomplish? The answer is simple: exploitation.

Are college athletes exploited? Here is an answer the Author gave during the NLRB hearing regarding the Northwestern football union case: "There is an

economic definition of the word ‘exploitation[]’ . . . . A worker is exploited . . . if their economic value is greater than their wages. . . . By that definition, they are exploited.”<sup>29</sup> The definition the Author quoted in the NLRB hearing comes originally from the work of economist Joan Robinson. Looking at the data, it is clear that many college athletes are generating more revenue than they are being paid.

Consider the basketball players employed by Duke University. The men’s basketball team of Duke University won the 2015 NCAA Men’s Basketball Championship. According to data from the Department of Education—submitted by Duke University—this team generated \$33.7 million in revenue.<sup>30</sup> Of this, \$6.04 million went to Mike Krzyzewski (the team’s head coach).<sup>31</sup> In other words, Duke paid 17.9% of team revenue to its coach.

To put that in perspective, Gregg Popovich led the San Antonio Spurs to the NBA title in the 2013–2014 season. That year he was reportedly paid \$8 million.<sup>32</sup> Forbes, though, reported the Spurs had \$170 million in revenue in the 2014–2015 season.<sup>33</sup> So Popovich—who coached the Spurs to five NBA titles in twenty years—is only paid 4.7% of team revenue. If Krzyzewski was paid the same percentage of team revenue, his salary would only be \$1,570,797.

What explains the difference? The NBA’s collective bargaining agreement states the NBA players are to be paid approximately 50% of league revenue. In contrast, Duke University cannot pay its basketball players more than the cost of attendance. According to Duke University, this amount is \$67,654.<sup>34</sup> During the 2014–2015 season, twelve different players received minutes for Duke University. If each player was paid the cost of attendance, then Duke University would have paid all of its players \$811,848. In other words, Duke would only have paid its players 2.4% of its revenue.

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29. *Economist: College Football Like NFL--But for No Pay*, USA TODAY (Feb. 19, 2014), <http://www.usatoday.com/story/sports/ncaaf/2014/02/19/college-football-nfl-player-pay-student-athletes-northwestern/5624651/>.

30. *Duke University: Revenues and Expenses*, U.S. DEP’T EDUC., <http://ope.ed.gov/athletics/index.aspx> (follow “Get data for one institution” hyperlink; then search “Duke University” in “Name of Institution” field, then click the “Duke University” hyperlink, then follow the “Revenues and Expenses” hyperlink) (last visited June 9, 2016).

31. Steve Berkowitz et al., *NCAA Salaries: NCAA Coaches*, USA TODAY SPORTS, <http://sports.usatoday.com/ncaa/salaries/mens-basketball/coach/> (last visited June 9, 2016).

32. Dan Feldman, *Phil Jackson and the Knicks Are Changing the Coaching-Salary Game*, NBC SPORTS (June 9, 2014), <http://nba.nbcsports.com/2014/06/09/phil-jackson-and-the-knicks-are-changing-the-coaching-salary-game/>.

33. *The Business of Basketball: San Antonio Spurs*, FORBES (Jan. 2016), <http://www.forbes.com/teams/san-antonio-spurs/>.

34. *Cost: 2015-2016 Estimated Cost of Attendance (Student Budget)*, DUKE FIN. AID, <https://financialaid.duke.edu/undergraduate-applicants/cost> (last visited June 9, 2016). These numbers are for the 2015–2016 academic year. The numbers from the 2014–2015 academic year are likely a bit less.

If Duke was forced to pay its players 50% of its revenue—as required in the NBA—then the average pay of each player would be \$1.4 million. And if a different allocation besides a perfectly equitable split was chosen, some players would be worth substantially more.

For example, Duke could pay its players based on time spent on the court. If Duke took this approach, a player like Quinn Cook would be worth nearly \$3 million.<sup>35</sup> In other words, Cook would be paid nearly forty-four times the amount Duke is currently paying him.

**Table Two: The Economic Value of the 2014–2015 Duke University Men’s Basketball Players: Value According to Minutes Played**

Player	Minutes Played	Estimated Economic Value of Player
Quinn Cook	1395	\$2,974,961
Tyus Jones	1322	\$2,817,891
Jahlil Okafor	1143	\$2,432,747
Justise Winslow	1135	\$2,415,534
Matt Jones	847	\$1,795,862
Amile Jefferson	831	\$1,761,435
Rasheed Sulaimon	386	\$803,956
Marshall Plumlee	375	\$780,288
Grayson Allen	322	\$666,251
Nick Pagliuca	17	\$145,716
Semi Ojeleye	64	\$145,716
Sean Kelly	11	\$145,716
<b>TOTALS</b>	<b>7,848</b>	<b>\$16,886,073</b>

Of course, players are not generally just paid for their time. Players in sports tend to be paid according to productivity. Following the methodology of the Author,<sup>36</sup> the number of wins each player produced on Duke’s 2014–2015 team

35. As noted, the NBA model results in 50% of revenue going to players. The NBA also imposes a league minimum. The league minimum is about 10.4% of league average salary. Larry Coon, *Table of Contents: What Are the Players’ Salary Restrictions?*, NBA SALARY CAP FAQ, <http://www.cbafaq.com/salarycap.htm#Q16> (last updated July 8, 2015). Following this approach, Nick Pagliuca, Semi Ojeleye, and Sean Kelly—whose minutes were quite limited—were given the estimated minimum salary. To ensure player values do not exceed 50% of team revenue, the remaining players saw their estimated value reduced by an amount that would keep the sum of all player values at 50% of Duke revenue.

36. David J. Berri, *A Simple Model of Worker Productivity in the National Basketball Association*, in 3 THE BUSINESS OF SPORTS 18–22 (Brad R. Humphreys & Dennis R. Howard eds., 2008). This methodology was later updated. See DAVID J. BERRI & MARTIN B. SCHMIDT, STUMBLING ON WINS: TWO ECONOMISTS EXPOSE THE PITFALLS ON THE ROAD TO VICTORY IN PROFESSIONAL SPORTS 148–54 (Kirk Jensen et al. eds., 2010); see also *How to Calculate Wins Produced*, WAGES WINS J., <http://wagesofwins.com/how-to-calculate-wins-produced/> (last visited June 9, 2016).

was estimated. The results indicate that Jahlil Okafor was worth nearly eight wins to this team or 25.1% of the team's total wins. If Okafor was paid 25.1% of the revenue designated to the players (i.e., 50% of team revenue), then Okafor's value would be \$4.13 million. And that means Okafor would be paid approximately sixty-one times the cost of attendance.

**Table Three: The Economic Value of the 2014–2015 Duke University Men's Basketball Players: Value According to Wins Produced**

<b>Player</b>	<b>Wins Produced</b>	<b>Estimated Economic Value of Player</b>
Jahlil Okafor	7.97	\$4,130,034
Justise Winslow	6.64	\$3,424,432
Tyus Jones	5.83	\$2,992,423
Amile Jefferson	5.12	\$2,613,257
Quinn Cook	3.34	\$1,668,938
Marshall Plumlee	1.91	\$910,642
Grayson Allen	0.87	\$357,736
Rasheed Sulaimon	0.58	\$205,745
Nick Pagliuca	0.06	\$145,716
Semi Ojeleye	0.01	\$145,716
Sean Kelly	-0.04	\$145,716
Matt Jones	-0.51	\$145,716
<b>TOTALS</b>	<b>31.78</b>	<b>\$16,886,071</b>

Remember, if Coach Krzyzewski was paid according to the NBA model, his pay would decline from over \$6 million to about \$1.57 million. If Okafor was paid according to the NBA model for his production of wins, he would make 2.6 times as much as his coach.

Such a result appears to be consistent with the NBA model. The San Antonio Spurs paid Tony Parker, Tim Duncan, and Tiago Splitter more than Gregg Popovich for the 2013–2014 season.<sup>37</sup> That same season, the Miami Heat reportedly paid Eric Spoelstra \$3 million<sup>38</sup> while paying both Chris Bosh and LeBron James \$19.1 million.<sup>39</sup>

Such a pattern actually makes sense.<sup>40</sup> LeBron James reached the NBA

37. 2013-14 San Antonio Spurs Roster and Stats, BASKETBALL-REFERENCE, <http://www.basketball-reference.com/teams/SAS/2014.html> (last visited June 9, 2016).

38. Berkowitz et al., *supra* note 31.

39. 2013-14 Miami Heat Roster and Stats, BASKETBALL-REFERENCE, <http://www.basketball-reference.com/teams/MIA/2014.html> (last visited June 9, 2016).

40. Published research has shown that most NBA coaches do not alter player performance. See generally David J. Berri et al., *The Role of Managers in Team Performance*, 4 INT'L J. SPORT FIN. 75

Finals six times with three different head coaches. One suspects a big reason why these teams found success was the play of LeBron. In fact, LeBron made this somewhat clear when he overruled his latest head coach David Blatt and then proceeded to hit a game winning shot in the 2015 NBA playoffs.<sup>41</sup>

Given what viewers see in the NBA, it is not surprising to see evidence that top players in college are so valuable. But it is important to emphasize that this pattern does not just apply to the top players.

Consider the case of the University of Wisconsin-Milwaukee. According to the Department of Education, this program earned \$2.1 million in revenue in the 2014–2015 academic year. If 50% went to the players, then the thirteen players who saw minutes would receive an average salary of \$82,971. Because the cost of attendance is \$33,738,<sup>42</sup> this means the average player on this team is worth more than twice the money the school gives him.

Turning to the players' production of wins, we also see evidence that one player is worth more than the coach. Rob Jeter, the team's head coach, was paid about \$450,000 in 2014, or more than 20% of the team's revenue.<sup>43</sup> Looking at the player's productivity, though, Matt Tiby produced 6.5 wins on a team that won fourteen games. That means Tiby is worth nearly \$500,000.

As seen with Duke, the University of Wisconsin-Milwaukee players are also, on average, generating more revenue than they are being paid to attend the school. In addition, the top player on this team is worth more than the coach. In sum, whether looking at big or small schools, it is evident that players are exploited by the current system in college sports.

What is to make of the athletes who are not generating substantial revenue? Colleges have actually insisted for over a century that athletics are a legitimate part of a student's education. So just as society does not expect students in other disciplines to generate revenue to justify their education, it also does not make sense to expect athletes in non-revenue-generating sports to do the same. To do so would suggest that colleges have not been entirely honest about why athletics are part of college education in the first place.

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(2009).

41. Dan Gartland, *LeBron James Overruled David Blatt's Play Call Before Hitting Buzzer Beater*, SI, <http://www.si.com/nba/2015/05/10/lebron-james-david-blatt-play-call-final-shot> (last updated May 11, 2015).

42. *College Profile: University of Wisconsin - Milwaukee*, COLLEGEDATA, [http://www.collegedata.com/cs/data/college/college\\_pg03\\_tmpl.jhtml?schoolId=1702](http://www.collegedata.com/cs/data/college/college_pg03_tmpl.jhtml?schoolId=1702) (last visited June 9, 2016).

43. Lori Nickel, *'Stick to the Plan': UWM Coach Rob Jeter Never Wavered*, MILWAUKEE J. SENTINEL (Mar. 15, 2014), <http://www.jsonline.com/sports/panthers/stick-to-the-plan-uwm-coach-rob-jeter-never-wavered-b99225500z1-250486541.html>.

## V. A FREE MARKET FOR COLLEGE SPORTS LABOR

So it seems clear that college athletes are frequently exploited by the NCAA. It also seems clear that the obvious solution is for the NCAA to abide by the same rules we see in labor markets in non-sports industries. Specifically, it is illegal—outside of sports—for firms to collude to limit the compensation of employees.

A free market for labor in college sports would likely limit the ability of teams like the University of Kentucky to dominate college basketball. As noted, the 2014 edition of this team had six different players drafted by the NBA. Four other players were ranked in the top twenty of their respective high school recruiting class.

Kentucky's roster during the 2014–2015 season had ten highly ranked basketball prospects, which meant at any given time, five players sat on the bench at Kentucky who would likely have started for most of the other 350 Division I-A teams.

Kentucky was able to stockpile this talent because the compensation of all college athletes is capped. But what if that was not the case? If teams faced a free market for labor, then the wages of these athletes would likely be increased to a point where wages approximated economic value. And as we noted, that economic value—if colleges followed the NBA model—often exceeds \$1 million for the stars. It is unlikely Kentucky would give \$1 million to an athlete who does not play full-time. And that means some of these players who attended Kentucky during the 2014–2015 season would have gone elsewhere in a free market.

Those who remained, though, would be paid more. Where would this money come from? One obvious source is the salaries paid to the head coach. Again, John Calipari's wage rivals what we see in the NBA. But revenues for Calipari's program do not justify such a wage. This wage is only possible because players are not paid according to the free market.

The decrease in coaches' salaries would not be the only impact of a free market for college athletes. Essentially anyone currently benefitting from the present labor market might see his or her benefits reduced. And if the courts ever agreed that collusion in college sports is indeed illegal, that would likely be the outcome.

There is, though, a legal way for colleges and universities to limit pay even if the current arrangement was ruled illegal. Professional sports leagues have a number of institutions that would clearly be illegal in non-sports settings. These institutions include reverse-order drafts, restricted free agency, and salary caps. Outside of sports, a firm could not collude to determine where a worker works and how much he is allowed to be paid, but these institutions

are legal in sports because the existence of these institutions results from collective bargaining with unions.

The NCAA has resisted a players' union because it believes its current arrangement will not be changed. If that turns out not to be true, though, the NCAA will definitely want players to unionize. That means the NCAA—contrary to its position in the Northwestern football union case—should be in favor of college athletes forming a union.

## VI. CONCLUDING THOUGHTS

College athletics have been commercial for over a century. And for over a century, colleges and universities have refused to share the bulk of the revenue sports generate with the athletes who make this possible.

The NCAA's argument that this is necessary to promote competitive balance is simply not consistent with the empirical evidence. What the evidence indicates is that these rules have resulted in the economic exploitation of many college athletes.

Thus far the NCAA has been able to successfully defend this system from multiple legal challenges. If one of these challenges succeeds, though, the NCAA will be faced with the same labor market seen outside the world of sports. And just as firms thrive in this labor market in the rest of the economy, we can expect the NCAA to continue to thrive as well. The only difference will be that the players will get more, while those who benefit and promote the current system will get less.