

7-1-1997

Reform from a Student-Athlete's Perspective: A Move Towards Inclusion*

Jay Jordan

Follow this and additional works at: <http://repository.law.miami.edu/umeslr>



Part of the [Entertainment and Sports Law Commons](#)

Recommended Citation

Jay Jordan, *Reform from a Student-Athlete's Perspective: A Move Towards Inclusion**, 14 U. Miami Ent. & Sports L. Rev. 57 (1997)
Available at: <http://repository.law.miami.edu/umeslr/vol14/iss1/4>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Entertainment & Sports Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

REFORM FROM A STUDENT-ATHLETE'S PERSPECTIVE: A MOVE TOWARDS INCLUSION*

JAY JORDAN**

I. INTRODUCTION

*"In the end, what the NCAA is about, what your institutions are about, is the development and education of young people. We cannot, we should not allow any other principles to overshadow that mission."*¹

Cedric W. Dempsey, NCAA Executive Director

He was reviewing a game film when he received a call from a coach at a Division I university. That night he was offered a scholarship to play "big-time" college football. The dream he had been working toward since his early childhood had finally become a reality. Football was his means to a college education. His parents could not afford to send him to college, and the only other option presented to him was military service. He thought signing a Letter of Intent to play college football was the more attractive option.

He reported to fall practice in early August as a wiry eighteen year-old who could not wait to immerse himself in all the promise he believed would come from participating in big-time college athletics. He saw an opportunity to better himself through an education that was only made possible through his receipt of an athletic scholarship. He also envisioned an opportunity to make a name for himself among influential fans who might turn out to be future employers. The opportunity to simply play the game he loved was

* The participants in "big-time" college athletics refer to those schools which participate at the Division I level in football, basketball, and all other athletic endeavors. Division I draws my attention because of the massive commercialization and high-profile nature of athletics at that level. The experiences described and recommendations posited herein should be construed as gender neutral, although examples are primarily from football and men's basketball.

** J.D. 1997 from Southern Methodist University School of Law. The author gratefully acknowledges the friendship, critical suggestions, and opportunities provided by Professor Timothy Davis.

1. Cedric W. Dempsey, *State of the Association Address*, NCAA NEWS, Jan. 20, 1997, at 6, 17.

enough to propel him forward and to keep him loyal to his school and to the NCAA. He could not lose; he had finally made it.

He was as enthusiastic as any freshman on the team bus heading to his first road game. The seniors on the team scoffed at him and told him that everything would change by the time he was their age. He was appalled at their defeatist attitudes, but over time their prophecies came true.

Indeed, it took one football season to dash his visions of hope and opportunity. He struggled to adjust to the rigors of a college athlete's schedule. It quickly became apparent that academics was for his spare time and energy. As his coaches repeatedly reminded him, he was at college to play football. Football was no longer just a game that he played; it was his life. Moreover, he soon learned that the only promise that would not be broken was his commitment to the school to play for four years. Finally, it became painfully obvious that he was powerless to control his own destiny.

He watched friends with the same hopes and dreams leave before their eligibility expired because the coach arbitrarily decided not to renew their scholarships.² He feared the same would happen to him. Upon his signing with this university, the coaches promised that summer school would be available to help make up credits that he failed to earn during the season. This promise was broken after his first year.³ The school decided to make budget cuts affecting the availability of funds for student-athletes who had either used up their eligibility but were still seeking a degree, or who had become injured and could no longer participate in their sport. Although more than 300 student-athletes signed a petition objecting to this measure, they were not permitted to deliver it to the university's president.

As the time for graduation approached, he reflected upon his years as a participant in big-time college athletics. He had given his soul and body (a reconstructed knee, five shoulder separations, eight weeks in ankle casts, and a career-ending neck injury) to the school and to the game. Each day had been filled with more disappointment. The vision of a land of opportunity became a distant

2. The athletic scholarship is given in the form of a one-year renewable grant. 1996-97 NCAA MANUAL art. 15.3.3. This financial aid is renewable at the discretion of the coach of the particular sport. However, during recruitment, scholarships are only discussed in the context of four or five years.

3. The summer school money became available only to athletes who were on the verge of becoming academically ineligible. As a consequence, students in good academic standing fell off schedule for graduation in four years.

memory. However, he was left with the distinct impression that with a few reforms, a system that delivered on that vision might be created.

The athlete portrayed in the above narrative is also the author of this article. The observations and conclusions reached herein are based on my experiences as a student-athlete at a Division I university. Many articles have been written from the standpoint of administrators, faculty and observers, but few have written with the viewpoint of the student-athlete as the focus. It is in this spirit that I present the following article.

Currently, the most urgent problem in college athletics is not the intrusion of athlete agents,⁴ the low test scores of entering athletes,⁵ or the lack of sportsmanship shown on the field of play.⁶ Rather, it is the failure of the NCAA and its member institutions to implement reforms aimed at improving the student-athlete's quality of life. Efforts to reform college sports are meaningless if the lives of student-athletes are not improved as a result. The following article outlines a three-step reform package designed to help ensure improvement in the student-athlete's college experience.

Part II of this article examines the structure of the NCAA and the significant structural reform implemented in 1996. A survey of the NCAA's governance structure highlights the powerlessness and isolation of the student-athlete. Part II.C recommends this isolation be remedied by granting a legislative role to student-athletes, thus enabling them to have a voice in directing their own futures. As a further remedy, Part II.C defines student-athletes'

4. State legislatures have pursued legislation imposing civil and criminal liability on proscribed agent conduct. In addition, some states are considering the passage of various forms of agent-restrictive legislation, including stringent registration requirements. Ronald D. Mott, *State Legislatures Consider Ways to Address Sports-Agent Issue*, NCAA NEWS, Feb. 5, 1996, at 1. The NCAA Special Committee on Agents and Amateurism has proposed a three-part plan to combat agent violations. *Agents Committee Proposes Three-Part Initiative*, NCAA NEWS, Aug. 5, 1996, at 1. The plan focuses on educating student-athletes about potential pit-falls, providing financial flexibility to top-notch athletes (including a loan program to borrow against future earnings), and more effective enforcement measures. *Id.*

5. See Timothy Davis, *African-American Student-Athletes: Marginalizing the NCAA Regulatory Structure?*, 6 MARQ. SPORTS L.J. 199, 208 (1996) (discussing the controversy surrounding increasing initial eligibility requirements and the rejection of Proposal 19 at the 1996 NCAA Convention).

6. The theme of the 1996 NCAA Convention was sportsmanship and ethical conduct. 1996 NCAA CONVENTION PROC., at 70. During the convention's proceedings, Cedric W. Dempsey, NCAA Executive Director, stated that continued efforts towards improving the conduct of players were of key importance in meeting the challenges facing college athletics. *Id.* at 70-71.

interests in college athletics and proposes that their interests become the central premise of all NCAA legislation. If legislation is drafted to protect student-athletes' interests, such legislation will safeguard against continued domination of policy by administrators and will help define the expectations of student-athletes as they enter a big-time college program. Finally, Part III will unveil yet another plea for compensation of student-athletes.

II. RESTRUCTURING

During my junior year in college, the recruiting coordinator called me into his office. The coordinator told me that he had been nominated to fill a position on the school's athletic council.⁷ The athletic council consisted of key administrators and coaches who set the direction of athletics at the institution. I was thrilled at the prospect of having a voice in decisions that affected me and my fellow athletes. But my enthusiasm was short-lived.

The seat offered on the athletic council was one of two reserved for athletes. Student-athlete representatives could be from any sport and were to represent the views of more than 400 athletes on campus. Further, the positions were non-voting. Student-athletes were present in an advisory capacity only. Though a student-athlete could voice her opinion on issues discussed, she would have no power to effectuate her opinion.

This was the culmination of the most frustrating aspect of college athletics. Day after day, I observed "the system" operating with only the input of faculty members and administrators. Curiously, I had never seen any of them at a practice, in a pre-practice meeting, in the weight room, at summer workouts, at winter workouts, at study table,⁸ or even at one of the fifteen meals served each week in the athletes-only dining facility. Yet with each passing year, new rules were established by persons who professed to be improving a system they had never viewed firsthand.

The responsibility for the decisions which shape college athletics is left solely to those who are housed in a central campus office, far away from the stadium and arena. At the national level, student-athletes are just as isolated from the decision-makers,

7. Most schools employ a decision-making body consisting of high-ranking university administrators, athletic administrators, and faculty members.

8. Study table was the mandatory study hall for all freshman and academically challenged upperclassmen. The study hall operated for two hours each weeknight, during which time tutors for various courses were available and class notes were reviewed by coaches and graduate assistants.

given that the decision-makers occupy the same positions as campus athletic council members. A glance into the decision-making structure of the current NCAA system (effective until August 1997) and the newly restructured system illustrates the isolation of the student-athlete in the decision-making process. But, within the restructured system, a ray of hope emerges.

A. *The Current Structure of the NCAA*

The three key decision-making bodies in the NCAA are the Council, the Presidents Commission, and the Executive Committee.⁹ Examining both the persons who constitute these bodies and the powers given to the respective bodies reveals the difficulties student-athletes confront in attempting to affect the content of NCAA legislation.

The Council consists of forty-four members; the NCAA president and secretary-treasurer are ex-officio members.¹⁰ The Council is comprised of twenty-two Division I representatives, eleven Division II representatives, and eleven Division III representatives.¹¹ At least six chief executive officers must be on the Council (two from each division).¹² To be eligible to serve on the Council one must be "on the staff."¹³ "On the staff" refers to individuals from member institutions who receive a regular salary and perform a regular staff function.¹⁴

The Council is vested with significant power in determining the direction of the Association. Its charge is to: 1) establish and direct the general policy of the Association in the interim between Conventions;¹⁵ 2) appoint committees as necessary for executing the provisions of the constitution or bylaws;¹⁶ 3) make interpretations of the constitution and bylaws in the interim between conventions;¹⁷ 4) review and approve policies and procedures governing the administration of the enforcement program;¹⁸ 5) adopt non-controversial legislative amendments during the interim between annual conventions;¹⁹ and 6) adopt administra-

9. 1996-1997 NCAA MANUAL art. 4.

10. 1996-1997 NCAA MANUAL art. 4.1.1.

11. *Id.*

12. *Id.*

13. 1996-1997 NCAA MANUAL arts. 4.1.2, 4.02.3.

14. 1996-1997 NCAA MANUAL art. 4.02.3.

15. 1996-1997 NCAA MANUAL art. 4.1.3.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

tive regulations for the efficient implementation of the Association's general legislative policies.²⁰

The Council is also vested with the power to interpret the rules and establish the policy under which the NCAA operates. Student-athletes seeking to express their views on proposed or enacted legislation should target the Council. Given the diversity and sheer numbers of student-athlete views, a targeted effort at expressing the student-athlete's view to the Council may be logistically impossible. Further, it is unlikely that student-athletes would have the time or the resources to coordinate meetings, prepare positions, or travel to a central location.

The Presidents Commission consists of forty-four presidents of member institutions with the same Division breakdown as the Council.²¹ The Presidents Commission, like the Council, enjoys significant power. The relative duties and responsibilities of the Presidents Commission are to: 1) review any activity of the Association;²² 2) place any matter of concern on the agenda for any meeting of the Council or for any NCAA Convention;²³ 3) propose legislation directly to any convention;²⁴ 4) establish the final sequence of legislative proposals in any Convention agenda;²⁵ and 5) call for a special meeting of the Association.²⁶

The oversight function of the Presidents Commission gives it the opportunity to direct the legislative process to benefit student-athletes. The Presidents Commission could carry the views of student-athletes into the decision-making process if a conscious effort was made to do so. Proposing legislation that represents views supported by a consensus of student-athletes would be an easy and effective way to afford student-athletes representation in the decision-making process. The presidents of universities could make an effort to discuss proposed legislation with student-athletes either in their respective athletic council meetings or in an individual capacity. In fact, it would also be possible for university presidents to employ agents who could gather student-athletes' opinions on legislative matters.

However, university presidents have interests and philosophies about the role of intercollegiate athletics that are equally

20. *Id.*

21. 1996-1997 NCAA MANUAL art. 4.5.1.

22. 1996-1997 NCAA MANUAL art. 4.5.3.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

important to the decision-making process. Protecting the academic integrity of the university, overseeing a fiscally-sound operation, while maintaining college sports as an integral part of the university, are university-wide goals that must be factored into the decision-making process. Without input from university presidents, the legislative process becomes incomplete, just as it is incomplete without a representative voice for student-athletes.

The Executive Committee is composed of fourteen members who must also be "on the staff."²⁷ The president and secretary-treasurer of the NCAA are ex-officio members.²⁸ The Executive Committee has duties and responsibilities in three general areas. First, it is responsible for transacting the business and administration affairs of the Association in accordance with the policies of the Association and Council.²⁹ Second, it is responsible for managing the finances and budget of the Association.³⁰ Finally, it is responsible for the policy and the administration of all NCAA championships.³¹

The Executive Committee essentially holds the purse strings; its policy influence is felt as it sets the spending priorities of the Association. Because spending priorities undoubtedly affect student-athletes, giving such students an opportunity to voice their opinions on spending policies would serve student-athletes' interests.

The bottom line is that these NCAA bodies, vested with power to make decisions which shape college athletics, have excluded student-athletes and their perspectives from the decision-making process. The exclusion and isolation of student-athletes from this process is exacerbated by the increasing commercialism in college sports.³²

Commercialism is probably best exemplified in the pervasive influence of corporate endorsements of particular programs. Michigan, Colorado, Penn State, and Florida State are a few of the schools that, in exchange for cash payments, wear equipment pro-

27. 1996-1997 NCAA MANUAL arts. 4.2.1, 4.2.2.

28. 1996-1997 NCAA MANUAL art. 4.2.1.

29. 1996-1997 NCAA MANUAL art. 4.2.3.

30. *Id.*

31. *Id.*

32. Timothy Davis, *African-American Student-Athletes: Marginalizing the NCAA Regulatory Structure?*, 6 MARQ. SPORTS L.J. 199, 214 (1996) (contrasting the increasing commercialism with the NCAA's commitment to amateurism and its contribution to student-athlete's perceptions of NCAA rules).

duced by Nike.³³ Major athletic equipment producers are the most visible of corporate sponsors of intercollegiate athletics, but the influence can also be seen during the college football bowl season.³⁴ Bowl games have primary corporate sponsors, allowing corporations and the participating universities an opportunity to capitalize on the popularity of college football.³⁵

The most articulated justifications for such deals include the need for excess capital to cover spending deficits in athletic departments and the need to fund non-revenue producing sports.³⁶ Although programs today covet the financial boost provided by corporate sponsorship and other commercial ventures, schools must evaluate the ramifications of such financial backing.

In order to gain the fruits of a commercialized program, the emphasis must be on promotion and winning. The most high-profile and successful teams gain the largest portion of the commercial pie.³⁷

Unfortunately, in the scramble for cash, the student-athlete's interests become relegated to secondary status. Returning injured players to the field before they are ready,³⁸ scheduling games overseas,³⁹ and turning players into billboards for corporate sponsors⁴⁰ contribute to the exploitation of student-athletes, leaving them feeling helpless and isolated. An athlete's college experience becomes relegated to his ability to make money for the university. Thus, college athletics become oppressive when decision-making is done in the boardrooms and student-athletes are tools used to accomplish the goals of university presidents and administrators.

33. Mark Asher, *NCAA Schools Search For Shoe Deals That Fit; College Gear Worth Millions To Nike, Schools*, WASH. POST, Nov. 19, 1995, at A1.

34. Late December and early January of each year is referred to as "bowl season," as all the postseason bowl games in college football are played within that span.

35. For instance, the USF & G Sugar Bowl and the Tostitos Fiesta Bowl were among the most high-profile bowl games played last season. See *Bowl Games: NCAA Division I-A Football*, CHRON. OF HIGHER EDUC., Dec. 15, 1995, at A38.

36. Dan Cray, *Colleges Score Windfall Selling Ads on Athletes; Sports; Nike and Reebok Deals Buoy Cash-Strapped Programs, Campus Official Say. Others See Exploitation*, L.A. TIMES, May 9, 1994, at A1.

37. Asher, *supra* note 33.

38. This practice proves to be counterproductive, as players hobble through an entire season, or miss the season altogether due to a more serious re-injury.

39. In 1994, Nebraska played Kansas State in Japan. In 1996, Notre Dame will play the Naval Academy in Ireland. The difficulty of the travel schedule may be disruptive to a student-athlete's academic semester and football season.

40. Cray, *supra* note 36. See also Charlie Vincent, *Swoosh U., Home of the Fighting Interests; Colleges Will Sell Their Names, But Beware the Student Who Tries to Just Do It by Himself*, SPORTING NEWS, Oct. 9, 1995.

The 1996 NCAA Convention brought an overhaul in the decision-making structure of the NCAA. The same parties are involved, but in a different pecking order. The same isolation is prevalent, but a look at the new structure reveals the possibility of changing the norm in the decision-making process.

B. 1996 Convention: The NCAA Restructured

The NCAA Convention, held in January 1996, was highlighted by an overwhelming vote in favor of restructuring.⁴¹ Beginning in 1997, the NCAA's governance structure will continue to consist of three primary policy-making bodies, but the final say on legislative matters will be left to university presidents.⁴² This is the culmination of a movement that has been building momentum since 1984, when the Presidents Council was formed. The inception of the Presidents Commission was viewed as the answer to the moral issues confronting college athletics.

In 1991, the Knight Commission (a group of university presidents assembled to confront issues facing college athletics) issued a report which acknowledged the pervasiveness of problems such as recruiting improprieties, illegal payments to student-athletes, academic abuses, and the loss of institutional control over athletic programs.⁴³ In response to these recognized problems, the Commission proposed a model for governance based upon presidential control.⁴⁴

The directives found in the NCAA Constitution justify the Knight Commission's reliance on presidential control. Article 2.1.1 of the NCAA Constitution states: "The institution's chief executive officer is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures."⁴⁵ The 1996 restructuring has taken this provision to heart. Of those who rose in support of the proposal to restructure, a majority cited complete presidential control as the primary reason for adopting the new structure.⁴⁶

Judith Albino, former chair of the Presidents Commission, characterized the move towards presidential control as an step

41. 1996 NCAA CONVENTION PROC., at A-272, No. 7. The vote in favor of restructuring was 779-79-1. *Id.*

42. See *infra* text and accompanying notes 50-69.

43. Timothy Davis, *A Model of Institutional Governance For Intercollegiate Athletics*, 1995 WISC. L. REV. 599 & n.2 (1995).

44. *Id.*

45. 1996-1997 NCAA MANUAL art. 2.1.1.

46. 1996 NCAA CONVENTION PROC., at 266-79.

"needed to ensure the continuing integrity and success of our intercollegiate athletic programs."⁴⁷ However, other commentators and university presidents feel that the new structure was a power grab by the largest schools.⁴⁸ This sentiment focuses on the federation of the new NCAA. The Division I schools are granted the authority to solve problems unique to programs of their size and influence.⁴⁹ The new structure paves the way for Division I schools to stage high-dollar games and championships and hoard the proceeds for themselves.

The true motivation and rationale for what took place in 1996 most likely lies somewhere in between the two most articulated explanations. The glaring reality is that the new structure touts the inherent benefits of a system that now is in the control of persons who are furthest removed from the day-to-day operations of college athletics. The student-athlete is already isolated from the decision-making process. How much more will the athlete be isolated in the new structure that places control in the hands of university presidents? A brief look at the structure itself will help answer this question.

Beginning in 1997, the governing structure in Division I will consist of an Executive Committee, a Board of Directors, and a Management Council.⁵⁰ The Executive Committee will consist of twenty members drawn from the chief executive officers who serve on the Division I Board of Directors, the Division II Presidents Council, and the Division III Presidents Council.⁵¹ The Executive Committee's duties and responsibilities include: approving and overseeing the Association's budget, employing the executive director, providing strategic planning for the Association as a whole, identifying core issues that affect the Association, and initiating and settling litigation.⁵² In addition to these responsibilities, the Committee may call for a vote of the entire membership on any action that is determined to be contrary to the basic purposes, fundamental policies, and general principles articulated in

47. *Id.* at 267-68.

48. See Russ Gough, *Do As We Say, Not As We Do. Student-Athletes Got Dissed Again At The Recent NCAA Convention*, SPORTING NEWS, Feb. 5, 1996, at 9 (characterizing restructuring as a being driven by the lust for money). See also Tom Cushman, *NCAA Changes Likely to Help Rich Get Richer*, SAN DIEGO-UNION TRIBUNE, Jan. 16, 1996, at D1 (contending that restructuring was a move by major football conferences to consolidate power and money).

49. 1996 NCAA CONVENTION PROC., at 205, 269.

50. 1996-1997 NCAA MANUAL art. 4.

51. 1996-1997 NCAA MANUAL art. 4.1.1.

52. 1996-1997 NCAA MANUAL art. 4.1.2.

the NCAA Constitution.⁵³ In essence, the Executive Committee is the watchdog. The committee has the power to override actions it deems inconsistent with the overall policies of the Association.⁵⁴

The Board of Directors will be the primary body in the governance of Division I, and will be consisted exclusively of chief executive officers of member institutions.⁵⁵ Fifteen total members will occupy the Board.⁵⁶ Eight of these members will come from the largest Division I conferences (Atlantic Coast, Big East, Big Twelve, Big Ten, Pacific Ten, Southeastern, Conference USA, and the Western Athletic Conference), one from either the Big West or Mid-American, and six from among the various Division I-AA and Division I-AAA conferences.⁵⁷

The duties and responsibilities of the Board of Directors illustrate the extent of the Board's power. The Board of Directors is charged with establishing and directing the general policy of Division I, creating a strategic plan for Division I, and adopting administrative and operating bylaws to govern Division I.⁵⁸ The Board delegates limited legislative powers to the Management Council, and ratifies, amends, or rescinds actions of the Management Council.⁵⁹ The Board also approves an annual budget for Division I.⁶⁰ The above is not an exhaustive list, but it clearly shows that in the new NCAA, presidents will control policy and fiscal matters.

In terms of structure, the Management Council will be situated below the Board of Directors.⁶¹ The Management Council's duties and responsibilities include adopting operating bylaws and rules to govern the division (subject to ratification by the Board of Directors), making interpretations of the bylaws of the division, making recommendations to the Board of Directors, reviewing the enforcement program, and developing and administering the annual budget of the division.⁶²

The Management Council will consist of thirty-four members.⁶³ The members will be athletics administrators, such as

53. *Id.*

54. 1996-1997 NCAA MANUAL art. 4.1.2(j).

55. 1996-1997 NCAA MANUAL art. 4.2.

56. 1996-1997 NCAA MANUAL art. 4.2.1.

57. *Id.*

58. 1996-1997 NCAA MANUAL art. 4.2.2.

59. *Id.*

60. *Id.*

61. 1996-1997 NCAA MANUAL art. 4.5.

62. 1996-1997 NCAA MANUAL art. 4.5.2.

63. 1996-1997 NCAA MANUAL art. 4.5.1.

athletics directors and conference administrators, and faculty athletics representatives.⁶⁴ The Council will be comprised of sixteen representatives from the eight large conferences, two from the Big West, Mid-American, or Division I independents, and sixteen representatives from Division I-AA and I-AAA.⁶⁵

The Board of Directors will be ultimately responsible for enacting new legislation.⁶⁶ The Management Council will develop new legislation and forward it to the Board of Directors for approval. However, proposed legislative changes first must receive majority approval from the Management Council and then be submitted to the member institutions for reaction. After review by member institutions, the proposal will be sent to the Board of Directors.⁶⁷ Unlike the past, member institutions will not vote and will not have a final say on legislation.⁶⁸

The changes made by the restructuring effort clearly establish the university presidents as the power brokers in college athletics.⁶⁹ For student-athletes to gain a voice in the passage of NCAA legislation, they will have to overcome the chasm between the experiences of student-athletes and university presidents. The new structure may be a beginning in bridging the gap between the university presidents and student-athletes.

This new structure has the potential to be a positive move in that it gives a clear chain of command for the passage of legislation. The student-athlete can more readily identify the parties who need to be persuaded to change policy or legislation. The efficiency of the new structure may give student-athletes a greater opportunity to effectuate their views in the decision-making process.

The concerns of student-athletes were expressed on the floor of the 1996 NCAA Convention. Tanya Yvette Hughes, from the University of Arizona and the Student-Athlete Advisory Committee, spoke on behalf of student-athletes.⁷⁰ She expressed concern that student-athletes' input in the legislative process would be reduced by the restructured NCAA.⁷¹ Ms. Hughes stated, "It

64. *Id.*

65. 1996-1997 NCAA MANUAL art. 4.5.1 (a).

66. 1996-1997 NCAA MANUAL art. 4.5.2.

67. 1996-1997 NCAA MANUAL art. 4.5.2 (c).

68. The current process allows the Division I membership to override decisions by the Board of Directors regarding legislation. 1996-1997 NCAA MANUAL.

69. 1996 NCAA CONVENTION PROC., at 266-79.

70. *Id.* at 268.

71. *Id.*

appears that at the Division I Council level [student-athletes'] input into the legislative process will be vastly reduced."⁷² More importantly, she noted that direct access to the Council was essential for the Student-Athlete Advisory Committee to accomplish any of its goals.⁷³ Ms. Hughes claimed, "[T]o effectively meet the needs of student-athletes, you must know personally what they are."⁷⁴ The Student-Athlete Advisory Committee has recently carried the banner of student-athletes to the legislative process, seeking to put an end to the isolation and exclusion of student-athletes and their perspectives from the decision-making process. It is through the influence of this committee that student-athletes will gain a foothold.

1. The Student-Athlete Advisory Committee

The Student-Athlete Advisory Committee was created in 1989 to give student-athletes a voice in the NCAA. The Committee sits as a general committee within the structure of the NCAA.⁷⁵ The Committee consists of thirty-one members, twenty-eight of which are student-athletes.⁷⁶ Of the twenty-eight student-athlete members, twelve are from Division I, and eight are chosen from both Division II and Division III.⁷⁷ The remaining three positions are filled by members of the Council.⁷⁸ Student-athlete members are only allowed to serve for two years, but they can be re-appointed for another two-year term.⁷⁹ The committee's duties are outlined in the NCAA Manual, as follows:

"The committee shall receive information on and explanation of NCAA activities and legislation and, in consultation with former NCAA officers, shall review and react to topics referred to it by other Association committees and by the Council."⁸⁰

At the January 1994 Convention, the Student-Athlete Advisory Committee made strong statements both in favor of and in

72. *Id.*

73. *Id.*

74. *Id.*

75. 1996-1997 NCAA MANUAL art. 21.02.2.

76. 1996-1997 NCAA MANUAL art. 21.3.28.1.

77. *Id.*

78. *Id.*

79. 1996-1997 NCAA MANUAL art. 21.3.28.2.

80. 1996-1997 NCAA MANUAL art. 21.3.28.3.

opposition to certain legislation.⁸¹ The committee was able to influence the enactment of legislative proposals involving training-table meals for Division I student-athletes, complimentary ticket-allotment policies, and expense provisions to cover the attendance costs of conference, regional or national student-athlete advisory committee meetings.⁸² Legislation was also enacted to provide an appeals process for student-athletes who are denied permission to contact another institution about transferring.⁸³ Those attending the Convention were forced to recognize the Student-Athlete Advisory Committee's surge in becoming a vital group within the NCAA's committee structure.⁸⁴

At the 1996 Convention, the Student-Athlete Advisory Committee again had an opportunity to affect the passage of legislation. The result this time was a frustrating series of setbacks for the Committee and all student-athletes.⁸⁵ Bridget Niland expressed the reaction of SAAC to the 1996 NCAA Convention, stating, "[F]rom the perspective of the NCAA Student-Athlete Advisory Committee, the membership failed to approve the major proposals that would have had the greatest impact on the lives and welfare of its student-athletes."⁸⁶ Proposals Nos. 20 and 21, which would have allowed partial qualifiers to earn back a fourth year of eligibility, were defeated soundly.⁸⁷ Proposals Nos. 31 and

81. Ronald D. Mott, *Student-Athlete Voices Getting Stronger, Clearer*, NCAA NEWS, Sept. 12, 1994, at 1 (chronicling the Student-Athlete Advisory Committee's history and its role at the 1994 Convention).

82. *Id.*

83. *Id.*

84. *Id.*

85. Bridget Niland, *A Mixed Bag of Results From the Convention*, NCAA NEWS, Jan. 22, 1996, at 4-5. Two proposals did pass that were beneficial to student-athletes' financial and academic interests. First, Proposal No. 65 was adopted, permitting a student-athlete who is enrolled in a graduate or professional school of an institution other than the institution he or she previously attended as an undergraduate to use the one-time transfer exception. 1996 NCAA CONVENTION PROC., No. 65 (No.2-50), at A-147-48. Therefore, the student-athlete can complete his eligibility while attending the graduate school of his choice. Under the prior rules, if a student-athlete who had received a bachelor's degree elected to enroll in a graduate program at a different institution, she would be prohibited from participating in collegiate athletics. *Id.* at A-148. Second, Proposal No. 33 was adopted to provide a financial boost to needy student-athletes. 1996 NCAA CONVENTION PROC., No. 33 (No. 2-74), at A-100. The proposal exempts a Pell Grant from being calculated when determining the permissible amount of a full grant-in-aid. *Id.* This legislation allows a student-athlete to receive the full benefit of a Pell Grant without regard to the NCAA cost of attendance restrictions. *Id.*

86. Niland, *supra* note 85, at 4.

87. Proposal No. 20 was intended to be "a compromise between those who feel that students failing to meet initial-eligibility standards should be penalized as an incentive to academic preparation in high school and those who feel that partial

32 would have allowed a scholarship athlete to work during the school year in order to earn enough money to cover living expenses. These measures were also voted down.⁸⁸ Finally, Proposals Nos. 18 and 19, which would have provided a greater window of opportunity for athletes to achieve partial-qualifier status, were defeated.⁸⁹ The Association, consisting primarily of administrators, chose to reject legislation that would have improved student-athletes' quality of life, in spite of a clear articulation of the importance of these measures to the student-athlete.⁹⁰

The Student-Athlete Advisory Committee resolved in its March 11-12, 1996, meetings to recommend to the NCAA Oversight Committee the inclusion of student-athlete representatives on the management councils.⁹¹ The SAAC was concerned that it might be more difficult to affect legislation in the new structure.⁹²

qualifiers meeting satisfactory progress requirements in college should be allowed to earn a fourth year of competition." 1996 NCAA CONVENTION PROC., No. 20 (No. 2-55), at A-76-78. The proposal would have eliminated the opportunity for partial-qualifiers to practice during their first year. *Id.* However, if a partial qualifier met all satisfactory progress requirements, then he would be rewarded with a fourth year of eligibility. On the other hand, Proposal No. 21 would have allowed a partial qualifier to gain a fourth year of eligibility if he had earned a baccalaureate degree by the beginning of the fifth academic year. 1996 NCAA CONVENTION PROC., No. 21 (No. 2-57), at A-78-79.

88. Proposals Nos. 31 and 32 would have allowed student-athletes to work during the off-season. 1996 NCAA CONVENTION PROC., No. 31 (No. 2-72) and No. 32 (No. 2-73), A-97-100. The earned income would be exempted from the determination of a full grant-in-aid. Proposal No. 32 added a \$1,500 limit to the work income of student-athletes. *Id.* It was intended to help student-athletes from lower and middle-income families meet their financial difficulties. *Id.*

89. The floor for becoming a partial qualifier was a GPA of 2.525 and an SAT score of 690. 1996 NCAA CONVENTION PROC., No. 18 (No. 2-47), at A-74-76. Proposal No. 18 would have lowered the floor to a GPA of 2.250 and an SAT score of 700. *Id.* Proposal No. 19 would have lowered the floor further to a GPA of 2.000 and an SAT score of 700 and above. 1996 NCAA CONVENTION PROC., No. 19 (No. 2-48), at A-75-76. The stated rationale is as follows:

With the adoption of 1995 NCAA Convention Proposal No. 36, as amended, a number of student-athletes who would have been qualifiers under the previous initial-eligibility requirements have been dropped into the status of non-qualifiers. Further, a number of student-athletes who may have attended a high school with strict grading guidelines but have posted respectable ACT or SAT scores may be unfairly categorized as non-qualifiers. This proposal will elevate that group of student-athletes to partial-qualifier status and allow them to receive athletically related financial aid and to practice during their first year in residence. This proposal has no effect on the definition of a qualifier.

Id. at A-76.

90. *Id.*

91. *Student-Athletes Want Representation Within Management Structure*, NCAA NEWS, Apr. 1, 1996, at 1, 24.

92. *Id.*

In a memo to the Oversight Committee (responsible for implementing the new structure), the SAAC pushed for greater inclusion in the legislative process:

In order for the voice of SAAC to be effectively incorporated into the new structure, SAAC strongly recommends that the oversight committee facilitate three actions. First, SAAC believes there should be direct student-athlete representation at the management council level. We propose that there be a student-athlete member of our committee of each division who attends the management council meeting of each division. Second, we want SAAC to report directly to the management council, and not through a cabinet. Third, we believe strongly that the current structure of SAAC must be maintained.⁹³

The above demand, among others, was recently honored by the NCAA membership at the 1997 Convention. The SAAC played a significant role in persuading the member institutions to pass provisions which had been rejected the year before. For Division I schools, Proposal No. 62 allows athletes to work part-time during the academic year and earn the difference between a full grant-in-aid and the cost of attendance.⁹⁴ Proposal No. 68 allows partial qualifiers to earn back a fourth year of eligibility if they earn their degree within four years.⁹⁵ Finally, Proposal No. 28 provides for two members from the SAAC to participate in meetings of the Management Council as non-voting members.⁹⁶

The setbacks spoken of earlier were turned into victories by the tenacious efforts of the SAAC. The voice of the college athlete is now loud enough to have an effect on legislation. However, the SAAC has no formal power; it can only "review and react"⁹⁷ to legislative proposals. The athletes' voices are to be heard only at the discretion of the Management Council. To ensure future gains like those made at the 1997 Convention, the student-athletes' voices must be supported by voting power.

93. Diane Reinhard & Tanya Hughes, *Incorporating the NCAA Student-Athlete Advisory Committee Into the New Governance Structure*, MEMORANDUM TO JOSEPH N. CROWLEY, Mar. 27, 1996.

94. Karrie Farrel et al., *Convention Listened to Concerns of Athletes*, NCAA NEWS, Jan. 27, 1997, at 5.

95. *Id.*

96. *Division III Governance Structure*, NCAA NEWS, Special, The NCAA Convention, Jan. 13, 1997, at 9.

97. *Id.*

C. Further Restructuring

1. The Management Council

I propose that student-athletes be given the voting power they need to enact legislation which will advance their interests in college athletics. With the requisite voting power, legislation like that discussed above will have a greater potential for passage. No longer will the student-athlete be left out of the governance of college athletics. Instead, the goals and interests of all parties intimately involved in college athletics will have an opportunity to be effectuated.

To ensure that the position of student-athletes will be reflected in legislation passed by the NCAA, the Student-Athlete Advisory Committee should be included within the Management Council. Thus, the Division I Management Council would be comprised of thirty-four athletic administrators and thirty-four student-athletes.⁹⁸ Voting power would remain equal between all members. For legislation to pass through the proposed Management Council, there must be a compromise between athletic administrators and the student-athletes. Thus, legislation that is passed by the proposed Management Council would likely promote the interests of the student-athlete, and thus curtail the exclusion of the student-athlete perspective.

The above proposal is necessary to give student-athletes an opportunity to effectuate their interests, but the proposal is probably unrealistic. A meteoric rise from a non-power position to a full grant of legislative power is unlikely to be accepted or even considered by the powers presently in control. Therefore, as a first step, the non-voting positions already created for student-athletes on the Management Council should be turned into voting positions.

With the current inclusion of student-athletes on the Management Council, student-athletes will at least have an opportunity to participate fully in the discussions that will result in legislation that affects their collegiate experiences. Two votes could conceivably be crucial in passing a hotly-contested proposal. However, student-athletes need to be granted greater voting power if their interests are to be protected. The next step is to provide a layer of protection that transcends the legislative process.

98. The SAAC currently consists of 31 members, taken from Division I, II, and III. 1996-1997 NCAA MANUAL art. 21.3.28.1. My proposal requires a separate SAAC to be established for Division I. The Division I SAAC being proposed would consist of 34 members from Division I institutions.

2. The Principle of Student-Athlete Welfare

Article 2 of the NCAA Constitution sets forth a general principle that mandates that all legislation advance one or more of sixteen basic principles.⁹⁹ The basic principle I will discuss is that of student-athlete welfare. However, in any particular legislation, this principle may be ignored or overshadowed by any of the other fifteen principles.

The principle of student-athlete welfare incorporates the following issues: student-athletes' educational experiences; cultural diversity and gender equity; health and safety; the student-athlete/coach relationship; fairness and honesty in communication with student-athletes; and the inclusion of student-athletes in the decision-making process.¹⁰⁰ These headings are indeed relevant to improving the lives of student-athletes. However, a reorganization of the principles and a re-characterization of student-athletes' interests will solidify the goal of protecting the welfare of student-athletes.

The interests of student-athletes can be categorized under three headings: athletic, academic, and financial. The athletic interest can be defined as an interest in developing athletically so as to have an opportunity to participate in college and be given a reasonable chance of advancing to the professional ranks. This does not mean that each athlete deserves equal playing time. It does mean, however, that a coach's promise regarding on-field development should be enforceable to the degree it would be reasonable to rely on.¹⁰¹ A key element in a student-athlete's collegiate experience is to have the opportunity to maximize his athletic ability. The failure to provide such an opportunity can be a major frustration for college athletes.

The student-athlete's academic interest can be stated as an interest in scholarly development, free from encumbrances imposed by participation in college athletics. It is also the primary purpose of the university to provide an educational opportu-

99.1996-1997 NCAA MANUAL art. 2.01. The basic principles include, among others, the principle of gender equity and the principle of diversity within governance structures. See 1996-1997 NCAA MANUAL art. 2.

100. 1996-1997 NCAA MANUAL art. 2.2.

101. Bryan Fortay, formerly a quarterback at the University of Miami, sued the University of Miami for breach of contract where school's athletic officials allegedly promised Fortay the starting quarterback position if he remained at Miami. Timothy Davis, *Student-Athlete Prospective Economic Interests: Contractual Dimensions*, 19 T. MARSHALL L. REV. 585, 610-11 (1994). See also Timothy Davis, *College Athletics: Testing the Boundaries of Contract and Tort*, 29 U.C. DAVIS L. REV. 971 (1996) (focusing on the suit brought by Fortay against the University of Miami).

nity for all of its students. The twenty-hour per week practice limit is in line with the academic interests of student-athletes because it permits an athlete to focus on her development as a student.¹⁰² However, poor oversight efforts by university administrators and coaches may promote circumvention of this rule, thereby hampering the academic interests of the student-athletes.¹⁰³ By setting minimum requirements for credit hours taken, hours earned, grade-point average, and a time limit on designation of a degree program, the NCAA has forced institutions to take an active role in developing athletes academically.

Finally, the student-athlete has a financial interest in her participation in college athletics. A student-athlete should have the same opportunity to make a living and share in the fruits of her labor as any student not involved in athletics. The Association's passage of Proposal No. 62 allowing student-athletes to work during the off-season is in line with the financial interest of student-athletes. Proposition 62 is the first step in fulfilling a complete realization of the student-athlete's financial interests.

The athletic, academic, and financial interests of student-athletes encompass almost the entire existence of a college athlete. Legislation advancing these interests will have a profound impact on the experience of future student-athletes. A secure opportunity to compete in athletics, a clearer path to a college degree, and financial freedom would greatly improve the experience of college athletes.

The principle of student-athlete welfare should be established as the primary principle with which legislation should comply. The general principle articulated in Article 2.01 should be modified in such a way that it establishes student-athlete welfare as the measuring stick for assessing all legislative proposals. In compliance with the student-athlete welfare standard, presidents who sit on the Board of Directors would not be able to pass legislation contrary to the interests of the student-athlete. For instance, a one-year renewable scholarship benefits the coach and institution who reserve the right to improve the team by getting rid of an unproductive player. The player then has no recourse for failure to renew her scholarship. The player is left without a place

102. 1996-1997 NCAA MANUAL art. 17.1.5.1.

103. Without a conscientious administrator or an NCAA official present to calculate hours, the 20-hour rule can be easily circumvented. Student-athletes may fear reporting abuses if the consequences of reporting can be a reduction in playing time and the non-renewal of a scholarship. Compliance with the 20-hour rule needs to be monitored by a disinterested entity.

to play, or a place to go to school. The academic and athletic interests of the student-athlete are placed in jeopardy by a rule that allows such conduct. If the principle of student-athlete welfare, in the form mentioned above, were to be the measuring stick, then the one-year renewable scholarship would have to be modified in a way that advances, instead of hinders, the academic and athletic interests of the student-athlete.

With voting power in the decision-making process and the protection of student-athlete interests as the basis of policy in the NCAA, student-athletes will have achieved full integration into the decision-making process in college athletics. Future student-athletes would be given the power and the responsibility to help create a system that benefits all parties involved. The isolation and hopelessness felt by student-athletes in the current system may dissipate.

III. PAY FOR PLAY

My second season in college football was a rough one. After an unexpected position change, I severely injured my left shoulder in a special teams drill. The result was a 90% loss of strength in my left arm and no guarantees that it would return to full strength. For the first time in my career, I found myself at home on the weekends instead of traveling with the team.

A familiar problem began to arise—hunger. I was an under-sized linebacker trying to maintain a 210 lb. frame, but the athletic dining hall was not open on weekends. I was given seventy-five dollars per month to use as weekend food money. However, if I made any long distance telephone calls, then the charges were made against the seventy-five dollar allotment. The allotment often ran out before the month ended, as I needed money for gas,¹⁰⁴ laundry, and any entertainment expenses. During periods of the spring of my first year and the fall of my second, I often found myself without money or food.

My usual solution was to buy a pizza and try to make it last the whole weekend. Sometimes I just did not have the money to buy food, so I waited until Monday morning when the dining hall opened again. On one occasion, in order to have a meal, I found a family that needed some work done on their house. Although I

104. Fortunately, my grandmother had given me a car for college. There were many who had no transportation, so my car became community property. Pooling of resources is a common way that student-athletes attempt to overcome the financial inequities of college athletics.

had not recovered from my shoulder injury, I decided a meal-for-work exchange was worth any risk to my eligibility. I spent all day painting the trim on a house so that I could have a home-cooked meal that night. That night as I enjoyed the meal, I wondered why a student-athlete should be in a situation where hunger was an issue.

Donnie Edwards, a former UCLA linebacker, apparently came to the same conclusion. Edwards was suspended for one game during the 1995 season for accepting \$150 in groceries from an agent.¹⁰⁵ With meager amounts of money to cover living expenses, inadequate access to school meals, and parents who are unable to provide the needed excess, a student-athlete can be left hungry and angry.¹⁰⁶ Edwards stated:

We've been working our whole lives to have money in our pocket to buy clothes, to buy food, to buy a piece of pizza. Now, all of a sudden, we can't work. We are making all this money for the school, but we can't have a job or have any money in our pockets. That's confusing. What do you do?¹⁰⁷

Meanwhile, the NCAA and its member institutions continue to set revenue records.¹⁰⁸ College coaches have incentive to win, as they may be rewarded with tremendous financial packages,¹⁰⁹ while student-athletes who actually score the touchdowns or make the winning baskets could not, until 1997, persuade the membership to allow them to work during the academic year. This inequity has bred resentment and anger in the ranks of student-athletes. Furthermore, consider how the three most prolific schools in athletic spending have programs whose operating budgets total \$77.7 million collectively.¹¹⁰ Consider the fact that the NCAA has had to deal with a budget surplus in the last year that exceeded \$28 million.¹¹¹ One explanation for a budget surplus comes from television revenues. For example, CBS recently

105. *UCLA's Edwards Calls For Player's Strike*, ESPN ET SPORTSZONE, 1995.

106. *Id.*

107. *Id.*

108. The NCAA earned \$29 million in surplus during the 1994-95 fiscal year. *Revenues Exceeded Projections by 2.68 Percent in '94-95*, NCAA NEWS, Jan. 8, 1996, at 10. Conservative projections for the next seven years suggest increased revenues, partly due to television rights fees. *Id.*

109. WALTER BYERS, UNSPORTSMANLIKE CONDUCT: EXPLOITING COLLEGE ATHLETES 9-11 (1995).

110. Florida spent \$27.2 million in 1993, Tennessee spent \$25.4 million, and Michigan spent \$25.1 million. *Florida, Tennessee, Michigan Spend Most on Athletics*, NCAA NEWS, Sept. 18, 1995.

111. *Revenues Exceeded Projections by 2.68 Percent in '94-95*, *supra* note 107.

agreed to pay the NCAA \$1.725 billion over eight years to televise the NCAA men's basketball tournament.¹¹²

Outstanding individuals can be a financial boost to a university's budget as well. Patrick Ewing played basketball at Georgetown in the early to mid-1980's. During his stay at Georgetown, revenues were estimated to have increased by \$12 million.¹¹³ At Auburn University, Bo Jackson's participation on the football program was given credit for an increase in ticket sales.¹¹⁴

Through sponsorships, corporations are investing in college athletics. Nike is the largest player in the corporate endorsement market.¹¹⁵ Numerous schools have Nike shoe contracts for their basketball programs. Often a shoe contract is an additional enticement for a high-profile coach. For top programs, a shoe package averages around \$300,000.¹¹⁶ Nike's partners include Michigan, North Carolina, Penn State, Miami, Southern Cal, Colorado and Illinois.¹¹⁷ Michigan's deal is the largest, at around \$8 million.¹¹⁸ Under the terms of the agreement, Michigan will receive almost \$2 million in cash, shoes, uniforms, and endowments.¹¹⁹ Also, Nike is obligated to design a new logo for Michigan, to be owned by the university at the end of the contract.¹²⁰ In exchange, Nike gets the rights to advertise in game-day programs, arenas, and on player uniforms. Nike also was granted the exclusive right to provide equipment for Michigan athletes.¹²¹ Student-athletes have become walking billboards, yet they receive no direct financial benefit for their efforts.¹²²

The foregoing examples of the amount of money involved in college athletics are not intended to indict college sports as a haven for greedy, exploiting opportunists. Instead, they are

112. *Id.* Over the next six years the payments by CBS will account for 80-85% of total revenues. *Executive Committee to Focus on Special Assistance Fund*, NCAA NEWS, April 29, 1996.

113. Matthew J. Mitten, *University Price Competition for Elite Students and Athletes: Illusions and Realities*, 36 S. TEX. L. REV. 59, 60 (1995).

114. *Id.*

115. Nike sold \$5.2 billion of collegiate apparel during fiscal year 1994-95, with \$50 million of that coming from sales of authentic college team apparel. Asher, *supra* note 33.

116. BYERS, *supra* note 108.

117. Asher, *supra* note 33.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. Cray, *supra* note 36.

intended to show the contrast between the financial livelihood of the student-athlete as compared to those who run college athletics. The realities of college athletics for the NCAA and member institutions establish a polar opposite to that of the student-athlete. The student-athlete sees a tremendous amount of money being made because of his contribution to the product put on the field, but then is restricted from sharing in the wealth.

All scholarship participants in college athletics should receive a stipend. The distribution of funds should be made to the student-athlete based upon his experience level, not his talent level. The money for the distributions should be pooled from those revenues directly attributable to the product the student-athletes place on the field. Merchandise sales, television contracts, shoe contracts, corporate sponsorship deals, ticket sales, and post-season rewards are all related to the play of student-athletes and should be considered as potential sources of revenue that could flow to the student-athletes. For instance, football championships could earn a large portion of funds which could also be used toward this effort.¹²³

Though the above proposal is ideal, the proposal would most likely fail at this time. Many Division I athletic programs operate at a deficit.¹²⁴ The spoils of college athletics are unevenly distributed, thus precluding a cohesive commitment to provide stipends. However, the challenge to provide greater financial assistance to student-athletes should not be ignored.

It is my contention that student-athletes are entitled to share in the proceeds derived directly from their efforts. Therefore, it is vital that the NCAA begin a study of how best to finance a stipend for all Division I student-athletes. The study should carefully assess the ability of the member institutions to produce needed revenue. The results of such a study would provide data to make an educated recommendation as to the proposed structure and administration of the stipend.

In the meantime, the NCAA has implemented at least two stop-gap measures that should be utilized to their fullest extent. First, athletes now have the opportunity to work. As mentioned above, the 1996 proposal to allow athletes to work was voted down

123. Gough, *supra* note 48.

124. DANIEL L. FULKS, REVENUES AND EXPENSES OF INTERCOLLEGIATE ATHLETIC PROGRAMS 19 (1993). According to 1993 fiscal year data accumulated by Fulks, 72% of all programs reported a profit, whereas 24% reported a deficit. *Id.* at 19. Sixty-seven percent of all Division I football programs report profits, while 33% report deficits. *Id.* at 20.

at the 1996 Convention.¹²⁵ Proposal No. 62 allows student-athletes to earn employment income during regular school terms, up to the difference between the student-athletes' other financial aid and the cost of attendance at the institution.¹²⁶ The enactment of the aforementioned proposal evinces the growing support for increasing the funds available to student-athletes.

Opponents may be concerned about the time a job would take away from a student-athlete's studies. However, a \$5/hour job over the roughly five months that an athlete is not "in-season" would require only fifteen hours per week to reach an income of \$1,500.¹²⁷ Fifteen hours of work, coupled with the dubious eight hours of training allowed by NCAA rules,¹²⁸ accounts for roughly the same commitment that most non-athlete students make to their part-time jobs. Given that working is an option and not mandatory, the student-athlete who can manage both school and the rigors of a competitive season can likely handle working and training in the off-season.

Besides the fact that the opportunity to work and earn a living should attach to every member of society, another justification was put forth by Student-Athlete Advisory Committee member, Dan O'Callaghan.¹²⁹ According to O'Callaghan, the opportunity to work allows student-athletes to be better prepared for the real world by adding valuable work experience to their resumes.¹³⁰ This becomes especially poignant when one realizes that roughly 95% of all student-athletes do not enter the professional ranks.¹³¹

Legislation allowing a student-athlete to work is a viable stop-gap measure that will cost the university nothing. The second measure that should be implemented revolves around use of the NCAA's special assistance fund.

The NCAA special assistance fund was created to provide student-athletes from low-income families with funds to cover expenses related to emergencies. The fund is available to a limited number of student-athletes, but is a potential source for providing stipends to eligible student-athletes. The NCAA Executive Committee has recently approved changes in the fund that will

125. 1996 NCAA CONVENTION PROC., A-99.

126. Niland, *supra* note 85.

127. An estimated amount based on the legislation from the 1996 Convention.

128. 1996-1997 NCAA MANUAL art. 17.1.5.2.

129. Dan O'Callaghan, *NCAA in a Bad Position on Athlete Work Issue*, NCAA NEWS, Mar. 18, 1996, at 4.

130. *Id.*

131. *Id.*

increase the pool of eligible student-athletes from 37,000 to as many as 61,000.¹³²

Changes were made in determining which athletes qualify to receive special assistance funds and what uses will be permitted. Pell Grant-eligible student-athletes remain eligible for aid, but the new definition will include student-athletes who are receiving athletically-related financial assistance and who have demonstrated financial need as determined by federal methodology.¹³³ Up to \$500 of the funds may be used for clothing and other essential expenses.¹³⁴ In addition, funds may be used to cover costs of expendable academic course supplies and rentals of non-expendable supplies, medical and dental costs not covered by another insurance program, and costs associated with student-athlete or family emergencies.¹³⁵

The NCAA special assistance fund provides money to needy student-athletes. It is intended to provide a safety net for those who cannot support themselves for reasons beyond their control. Coupled with legislation that removes the work restriction, most student-athletes will be able to meet their financial needs. The special assistance fund pulls student-athletes to a level where work would truly become an option, and not a necessity.

The stop-gap measures mentioned above are the minimum that should be implemented by the NCAA. The trend seems to be a more liberal approach towards payment of student-athletes.¹³⁶ A thoughtful study of the issue should result in a plan which addresses all concerns, including a provision for stipends to student-athletes. In the meantime, giving student-athletes the freedom to earn money like all other students, and providing a subsidy for those economically-disadvantaged should help to alleviate some of the dissatisfaction harbored by today's student-athletes.

IV. CONCLUSION

Reform is a difficult process. The results are never certain and until they are, we are reluctant to change. However, there are times when change is necessary. College athletics is a won-

132. *Athletes Gain Greater Access to Assistance Fund*, NCAA NEWS, May 13, 1996, at 1.

133. *Id.*

134. *Id.*

135. *Id.*

136. Jim Naughton, *NCAA Panel Seeks to Allow Athletes to Borrow Against Future Earnings*, CHRON. OF HIGHER EDUC., Aug. 2, 1996, at A29.

derful part of American culture and has provided an opportunity for many student-athletes to gain an education and to gain personal glory on the field of play. It also has been a stepping stone for those few superstars who have gone on to have successful professional careers.

A voice in the governance of the NCAA, a promotion of those interests that are shared by all student-athletes, and economic relief, are essential moves toward the inclusion of student-athletes in the decision-making process. Integrity and honesty involve a realistic assessment of the state of the Association and require action in concert with those findings. Hopefully, the most recent round of restructuring will go further and make brave changes.