

ARE COLLEGE ATHLETES ECONOMICALLY EXPLOITED?

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INTRODUCTION

College sports are major businesses. For example, the National Collegiate Athletic Association (“NCAA”) receives \$771 million annually from the television contract for its Division I Men’s Basketball Championship tournament¹ and \$125 million annually from the television contract for its Football Bowl Championship Series.² Individual conferences and schools also have their own television contracts. For example, the Pac-12 Conference has a twelve-year, \$3 billion football and basketball contract with FOX and ESPN;³ the Southeastern Conference has a fifteen-year, \$2.5 billion contract for multiple sports with ESPN;⁴ and the Big Ten Conference has a ten-year, \$1 billion football and basketball contract with ABC/ESPN, a twenty-five-year, \$2.8 billion

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1. Steve Weiberg, *NCAA President: Time to Discuss Players Getting Sliver of Revenue Pie*, USA TODAY (Posted Mar. 29, 2011, 6:00 PM; Updated Mar. 30, 2011, 10:48 PM), http://www.usatoday.com/sports/college/mensbasketball/2011-03-29-ncaa-pay-for-play-final-four_N.htm.

2. Michael Smith, *TV Fee Boosts BCS Payout 22 Percent*, SPORTS BUS. J. 1 (Jan. 24, 2011), <http://www.sportsbusinessdaily.com/Journal/Issues/2011/01/20110124/Colleges/BCS-payout.aspx>.

3. Tom FitzGerald, *Viewers Get More Options than Ever with New TV Deal*, S.F. CHRON., May 5, 2011, at B1, available at 2011 WLNR 8730959. The rest of the Pac-12 Conference’s football and men’s basketball games will be broadcast on the new Pac-12 Network. *Id.*

4. *National TV Rights Deals for Division I-A Conferences*, SPORTS BUS. J. (Dec. 6, 2010), <http://www.sportsbusinessdaily.com/Journal/Issues/2010/12/20101206/SBJ-In-Depth/National-TV-Rights-Deals-For-Division-I-A-Conferences.aspx?hl=sec%20espn&sc=0>.

contract between the Big Ten Network and FOX, and a ten-year, \$200 million basketball contract with CBS.⁵

NCAA and conference revenue-sharing plans often give colleges with successful teams a greater share of this television revenue.⁶ Also, colleges can generate tens of millions of dollars from ticket sales to athletic events.⁷ Not surprisingly, therefore, colleges compete to get the best student-athletes to attend their schools.⁸ In an unregulated market for college athletes, this competition would at least partly take the form of colleges trying to outbid other colleges for valuable athletes.

The NCAA, however, restricts such competition. NCAA bylaws explicitly limit the compensation that colleges can give to student-athletes. In particular, they mandate that college athletes cannot receive an athletic scholarship of more than the value of a “full grant-in-aid,”⁹ which is defined as “tuition and fees, room and board, and required course-related books.”¹⁰ In addition, in October 2011, the Division I Board of Directors approved a

5. *Id.*

6. *See, e.g.*, NCAA, 2010–11 REVENUE DISTRIBUTION PLAN 7, <http://www.ncaa.org/> (search “2010–11 Revenue Distribution Plan”; then follow “2010–11 REVENUE DISTRIBUTION PLAN” hyperlink) (money from the NCAA basketball fund is distributed based on a school’s performance over a six-year rolling period in the Division I Men’s Basketball Championship tournament); David Nubben, *Unequal Revenue Sharing Will Remain*, ESPN.COM (June 2, 2010, 5:00 PM), http://espn.go.com/blog/big12/post/_/id/13032/unequal-revenue-sharing-will-remain (noting that the Big 12 conference distributes half of its television revenue equally among its member schools, but gives a greater share of the other half to the schools that appear in more televised games).

7. NCAA, REVENUES AND EXPENSES: 2004–2010 NCAA DIVISION I INTERCOLLEGIATE ATHLETICS PROGRAMS REPORT 30 tbl.3.8 (2011), <http://www.ncaapublications.com/productdownloads/2010RevExp.pdf> [hereinafter 2010 REVENUES AND EXPENSES] (noting that the median total ticket sales was over \$24 million for the highest expense quartile of Division I Football Bowl Subdivision schools in fiscal year 2010.)

8. Athletic conference rules that require sharing of revenue by their member colleges might reduce colleges’ incentives to compete for athletes. Robert W. Brown, *An Estimate of the Rent Generated by a Premium College Football Player*, 31 ECON. INQUIRY 671, 672–73 (1993); *see also* Scott Dochterman, *Big Ten Revenue-Sharing Model Could Impact 9-Game Football Discussion*, GAZETTE (Cedar Rapids, Iowa) (May 17, 2011, 10:34 AM), <http://the-gazette.com/2011/05/17/big-ten-revenue-sharing-model-could-impact-9-game-football-discussion> (explaining that Big Ten schools share 35 percent of football gate revenue from league games, with a per-game ceiling of \$1 million and floor of \$300,000).

9. NCAA, 2011–12 NCAA DIVISION I MANUAL: CONSTITUTION, OPERATING BYLAWS, ADMINISTRATIVE BYLAWS art. 15.1, at 194 (2011), <http://www.ncaapublications.com/productdownloads/D112.pdf> [hereinafter 2011 NCAA MANUAL].

10. *Id.* art. 15.02.5, at 193; *id.* art. 15.1, at 194.

measure giving athletic conferences the option of adding up to \$2,000 in spending money to full athletic scholarships.¹¹

Colleges also may provide student-athletes with certain other benefits. For example, the NCAA requires that schools make available general academic counseling and tutoring services to all student-athletes.¹² In addition, schools may provide their student-athletes with medical expense benefits (including medical insurance) incidental to their athletic participation¹³ and with four free tickets to intercollegiate athletic events in the athlete's sport, regardless of whether the athlete actually competes in those particular events.¹⁴

These NCAA restrictions likely result in many student-athletes receiving compensation far below what they would receive in a free market for their athletic services.¹⁵ Thus, it can be argued that these bylaws facilitate economic exploitation of these student-athletes by their colleges. The question of whether student-athletes are economically exploited is timely. There have been recent "calls—from inside college athletics and out—to find ways for athletes to share in the proceeds of their sports' popularity."¹⁶

This Article examines the existing evidence regarding whether student-athletes are economically exploited by their colleges. Since there is no settled definition of the term "economic exploitation" as applied to student-athletes, two possible definitions are used in this Article. First, one might consider a student-athlete exploited if the athlete's cost to the college—including the cost of providing the athletic scholarship—is much less than the revenue that the athlete generates for the college. Second, one might deem a student-athlete exploited if the value of the athletic scholarship to the student is much less than the net

11. *NCAA Panel Approves Major Changes*, ESPN.COM (Oct. 27, 2011, 11:03 PM) http://espn.go.com/college-sports/story/_/id/7156548/ncaa-panel-approves-major-scholarship-rules-changes. Student-athletes may also receive other financial aid that is unrelated to athletic ability, as long as the total financial aid received does not exceed the "cost of attendance" at the school. 2011 NCAA MANUAL, *supra* note 9, art. 15.1, at 194. The cost of attendance "includes the total cost of tuition and fees, room and board, books and supplies, transportation, and other expenses related to attendance at the institution." *Id.* art. 15.02.2, at 192.

12. *Id.* art. 16.3.1.1, at 221.

13. *Id.* art. 16.4, at 221.

14. *Id.* art. 16.2.1.1, at 220.

15. *See infra* Part I.

16. Weiberg, *supra* note 1.

revenue (i.e., revenue minus costs) that the student generates for the college. This second definition also recognizes that the true value of an athletic scholarship to a student might differ from the cost to the college of providing that scholarship.

To explore whether student-athletes are exploited under these definitions, this Article proceeds in three parts. First, it examines how much revenue student-athletes generate for their colleges. Second, it investigates athletes' cost to colleges, including the costs of providing athletic scholarships. Finally, it examines the true value of athletic scholarships to athletes.

As noted above, sports generate a great amount of revenue for colleges.¹⁷ However, this revenue comes primarily from just two sports: football and men's basketball. For fiscal year 2010, football teams in the Division I Football Bowl Subdivision ("FBS") generated a median of \$3.1 million more in revenue than expenses, including scholarships.¹⁸ Men's basketball teams in these schools generated a median of \$788,000 more in revenue than expenses.¹⁹ For every other men's and women's sport, the median team's expenses exceeded its generated revenue.²⁰ In other words, colleges generally report losing money on every sport except football and men's basketball. Thus, economic exploitation of student-athletes, if it occurs, is most likely to occur among collegiate football and men's basketball players. This Article, therefore, focuses exclusively on those two sports.

I. HOW MUCH REVENUE DO ATHLETES GENERATE FOR THEIR COLLEGES?

The first step in determining if athletes are economically exploited is to determine how much revenue they generate for their colleges. Football and men's basketball teams can produce large revenues from sources such as television contracts, ticket sales, royalties, advertising, and corporate sponsorships.²¹ In fiscal

17. See *supra* pp. 69–70.

18. 2010 REVENUES AND EXPENSES, *supra* note 7, at 36 tbl.3.11.

19. *Id.*

20. *Id.*

21. See RANDY R. GRANT, JOHN LEADLEY & ZENON ZYGMONT, THE ECONOMICS OF INTERCOLLEGIATE SPORTS 258–59, 261, 281 (2008); see 2010 REVENUES AND EXPENSES, *supra* note 7, at 30 tbl.3.8.

year 2010, in the Division I FBS, the median amount of revenue generated by football teams was \$16.2 million and by men's basketball teams was \$4.8 million.²² Some teams, however, produced much more. The top decile of football teams generated revenue ranging between \$56.7 and \$93.9 million,²³ and the top decile of men's basketball teams generated revenue ranging between \$15.4 and \$25.9 million.²⁴

All athletes on a particular team do not generate the same revenue for their school. Winning teams generate more revenue than losing teams and better players increase a team's chance of winning more than lesser players do.²⁵ In other words, better players have higher marginal revenue products than do lesser players.²⁶ Indeed, several studies have found that top football and men's basketball players produce large revenue for their colleges. These studies estimate the marginal revenue product of these players by regressing teams' generated revenues against the number of players on the team who were later drafted into the respective professional sports league, i.e., the National Football League ("NFL") or the National Basketball Association ("NBA").²⁷ This approach uses the number of future draftees as a proxy for the number of top players on a team.²⁸ For example, using data from the 1995 college football and 1995–1996 college basketball seasons, Robert Brown and Todd Jewel estimated that future NFL draftees produced an average of over \$400,000 each in *annual* revenue for their college teams, and future NBA draftees produced an average of almost \$1.2 million each in annual revenue for their college teams.²⁹

22. 2010 REVENUES AND EXPENSES, *supra* note 7, at 26 tbl.3.4.

23. *Id.* at 43 tbl.3.20.

24. *Id.* at 44 tbl.3.21.

25. See George Langelett, *The Relationship Between Recruiting and Team Performance in Division IA College Football*, 4 J. SPORTS ECON. 240, 241, 244 (2003) (finding that recruiting better players causes college football teams to be more successful).

26. A player's marginal revenue product is the increase in revenue that the college generates from adding that player to the team. See Brown, *supra* note 8, at 671–73.

27. See *id.* at 672.

28. *Id.* at 673.

29. Robert W. Brown & R. Todd Jewel, *Measuring Marginal Revenue Product in College Athletics: Updated Estimates*, in *ECONOMICS OF COLLEGE SPORTS* 153, 160 (John Fizek & Rodney Fort eds., 2004); see also ARTHUR A. FLEISHER, BRIAN L. GOFF & ROBERT D. TOLLISON, *THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION: A STUDY IN CARTEL BEHAVIOR* 93 (1992) (estimating in a less rigorous fashion that superstar basketball player Patrick Ewing increased Georgetown University's revenues by a total of about \$12 million

Given the increase in the revenue generated by college football and men's basketball over the last fifteen years, the marginal revenue product of top football and basketball players is very likely much higher today.³⁰ In addition, those studies did not measure the financial benefit that a very successful football or men's basketball team might bring to the rest of a university. For example, in 2006, George Mason University's men's basketball team unexpectedly reached the Final Four of the Division I Men's Basketball Championship tournament.³¹ Robert Baker, Director of the Center for Sport Management at George Mason, estimated that the team's performance generated over \$677 million worth of free media publicity for the university.³² George Mason reportedly garnered—among other benefits—a 22 percent increase in freshman applications, a 25 percent increase in active alumni, and a greater than 52 percent increase in fundraising by the Patriot Club, the George Mason athletic department's fundraising arm.³³

during his time there); Brown, *supra* note 8, at 679 (using data from the 1988 season to estimate that college football players who were eventually drafted by an NFL team each generated an average of at least \$530,000 in annual revenue for their college football teams); Robert W. Brown, *Measuring Cartel Rents in the College Basketball Player Recruitment Market*, 26 APPLIED ECON. 27, 32–33 tbl.5 (1994) (using data from the 1988–1989 season to estimate that college basketball players who were eventually drafted by NBA teams each generated an average of at least \$870,000 in annual revenue for their college teams).

30. See Daniel L. Fulks, REVENUES AND EXPENSES OF DIVISIONS I AND II INTERCOLLEGIATE ATHLETICS PROGRAMS, FINANCIAL TRENDS AND RELATIONSHIPS—1995, at 15 tbl.3.3, 16 tbl.3.7 (1996), http://fs.ncaa.org/Docs/library/research/i_ii_rev_exp/1996/index.html [hereinafter 1995 REVENUES AND EXPENSES] (showing that in fiscal year 1995, football teams in Division I-A—now Division I FBS—reported a median revenue under \$6 million and a maximum revenue of almost \$22 million); 2010 REVENUES AND EXPENSES, *supra* note 7 at 26 tbl. 3.4 (noting that in fiscal year 2010, Division I FBS football teams reported a median revenue of over \$16 million and a maximum revenue of almost \$94 million); 1995 REVENUES AND EXPENSES, *supra* note 30, at 15 tbl.3.3 & 16 tbl.3.8 (showing that in fiscal year 1995, Division I-A men's basketball teams reported a median revenue of under \$2 million and a maximum revenue of under \$4 million); 2010 REVENUES AND EXPENSES, *supra* note 7, at 26 tbl.3.4 (noting that for fiscal year 2010, Division I-A men's basketball teams reported a median revenue of almost \$5 million and a maximum revenue of almost \$26 million).

31. See *The Business of Being Cinderella: Mason Releases Study on Final Four*, GEORGE MASON U. (Mar. 14, 2008), <http://eagle.gmu.edu/newsroom/670> [hereinafter *Business of Being Cinderella*].

32. *Id.* Baker made this estimate by multiplying the amount of broadcast time that George Mason received in television coverage and the number of column-inches it received in print articles by the advertising rates of those media outlets. *Final Four Press Earned Mason \$677 Million in Free Publicity, Study Finds*, CONNECT2MASON (Jan. 13, 2008, 2:56 PM), <http://www.connect2mason.com/content/final-four-press-earned-mason-677-million-free-publicity-study-finds>.

33. *Business of Being Cinderella*, *supra* note 31.

George Mason's experience, however, might be atypical.³⁴ It is widely believed that successful athletic programs result in increased alumni donations to their colleges. Numerous studies have examined whether this belief is true, however, and overall they have been inconclusive.³⁵ Their findings are "sensitive to which variables are included [in their analyses], whether the model includes university fixed effects, how athletic success is defined, whether the sample includes public or private universities, and so on."³⁶

Regardless of the overall effect on alumni giving, however, it is clear that top basketball and football players generate large revenue for their colleges. These student-athletes, however, also impose costs on their colleges.

II. HOW MUCH DO ATHLETES COST THEIR COLLEGES?

The cost of a student-athlete to a college has a number of components. One of the largest can be the scholarship that the athlete receives. As noted above, a full athletic scholarship covers an athlete's tuition, fees, room, board, required course-related books, and up to \$2,000 in spending money.³⁷ Especially because tuition varies widely across colleges, the face value of a full athletic scholarship also varies greatly. For example, for the 2010–2011 academic year, the average listed cost of tuition, fees, room, board, books, and supplies was approximately \$17,300 at public colleges and \$38,200 at private colleges.³⁸ Because of financial aid to students, however, these list prices were much higher than what

34. See Sarah E. Turner, Lauren A. Meserve & William G. Bowen, *Winning and Giving: Football Results and Alumni Giving at Selective Private Colleges and Universities*, 82 SOC. SCI. Q. 812, 816 (2001) ("Far more has been written about the purported link between athletic success and alumni giving than is justified by the available empirical evidence.").

35. Jonathan Meer & Harvey S. Rosen, *The Impact of Athletic Performance on Alumni Giving: An Analysis of Microdata*, 28 ECON. EDUC. REV. 287, 288 (2009) (discussing studies which examine the correlation between the success of athletic programs and alumni giving rates).

36. *Id.*

37. 2011 NCAA MANUAL, *supra* note 9, art. 15.02.5, at 193. Recall that student-athletes may also receive other financial aid that is unrelated to athletic ability, as long as the total financial aid received does not exceed the "cost of attendance" at the school. *Id.* art. 15.1, at 194.

38. COLLEGE BOARD ADVOCACY & POLICY CENTER, TRENDS IN COLLEGE PRICING 6 fig.1 (2010), available at http://trends.collegeboard.org/downloads/College_Pricing_2010.pdf.

the average student actually paid: approximately \$11,200 at public colleges and \$22,200 at private colleges.³⁹

Commentators have noted that the true cost to a college of an athletic scholarship might be much lower than even the actual amount paid by the average student at that college.⁴⁰ Imagine that a college is deciding whether to admit one additional student-athlete. Unless classrooms are at their physical capacity, the cost of educating the additional student (i.e., the marginal cost) is very low.⁴¹ The same is true for student housing. Unless there are no more beds available in the dormitories, the cost of housing the additional student is close to zero.⁴²

The best measure of the cost of an athletic scholarship likely varies by college. For a college at its enrollment capacity, an additional student-athlete displaces another student. Thus, enrolling a student-athlete causes the college to incur an opportunity cost equal to the amount that the displaced student would have paid to the college.⁴³ The average amount paid by students at that college likely underestimates that opportunity cost. The student displaced by the athlete is one of the last students that would have been admitted to the college and thus would have been less likely to have received grants from the college.⁴⁴ Thus, the opportunity cost to that college of admitting an athlete is likely to be more than the average amount that students actually pay.

39. *Id.* at 6 fig.1, 15 fig.7. To the extent that the student's financial aid comes from a source other than the college, that aid does not reduce the amount the college receives for enrolling the student.

40. *See, e.g.*, Lawrence M. Kahn, *Cartel Behavior and Amateurism in College Sports*, 21 J. ECON. PERSP. 210, 220 (2007); GRANT, LEADLEY & ZYGMONT, *supra* note 25, at 284-86; Brian Goff, *Effects of University Athletics on the University: A Review and Extension of Empirical Assessment*, 14 J. SPORT MGMT. 85, 89-90 (2000).

41. SANDY BAUM, COLL. BD., A PRIMER ON ECONOMICS FOR FINANCIAL AID PROFESSIONALS 30 (2004), available at <http://www.freewebs.com/stevenyeh/Economics-Primer-2004.pdf>.

42. *Id.*

43. *See* Victor A. Matheson, Debra J. O'Connor & Joseph H. Herberger, *The Bottom Line: Accounting for Revenues and Expenditures in Intercollegiate Athletics* 14 (N. American Ass'n of Sports Economists, Working Paper No. 11-01, 2011), available at http://college.holycross.edu/RePEc/spe/MathesonOConnor_CollegeAccounting.pdf.

44. *See* James Monks, *The Impact of Merit Based Financial Aid and Price Illusion on College Enrollment: A Field Experiment* 3-4 (Cornell Higher Educ. Research Inst., Working Paper No. 101, 2007), available at http://www.ilr.cornell.edu/cheri/workingPapers/upload/cheri_wp101.pdf (noting that colleges offer merit awards only to "those students that are identified as most desirable by the institution. . .").

On the other hand, for colleges with significant excess capacity—such as some large, public colleges—there is likely little, if any, opportunity cost to admitting a student-athlete.⁴⁵ For such colleges, an athlete does not displace another student, so the cost to the college of the athletic scholarship is only the additional cost incurred in educating, housing, and feeding the athlete. Because the college has excess capacity, this cost is likely very low.

Athletic scholarships, however, are not the only cost of student-athletes to colleges. Athletic teams incur expenses for items such as team travel, equipment and uniforms, facilities maintenance and rentals, and game expenses.⁴⁶ These costs are high. For example, in public colleges in the Division I FBS, the sum of the median athletic program's team travel expenses and the median athletic program's facilities maintenance and rental expenses exceed the median grants-in-aid (i.e., athletic scholarships).⁴⁷ In fact, among Division I FBS public colleges, median grants-in-aid are only 15.3 percent of the median total operating expenses of athletic programs.⁴⁸ In the Division I FBS private colleges, it is 23.5 percent, likely because of the higher tuition (and thus the higher face value of athletic scholarships) at private colleges.⁴⁹

The highest operating expense for athletic programs is salaries and benefits. In fiscal year 2010, the median salaries and benefits of head football coaches and head men's basketball coaches in the Division I FBS was \$1,383,000 and \$962,000, respectively.⁵⁰ Some coaches, however, make much more. For example, Rick Pitino, head coach of the University of Louisville men's basketball team, received \$6.1 million for the 2010–2011

45. See GRANT, LEADLEY & ZYGMONT, *supra* note 21, at 285–86 (stating that usually only highly selective, private colleges lack excess capacity).

46. 2010 REVENUES AND EXPENSES, *supra* note 7, at 31–32 tbl.3.9.

47. *Id.* For public schools in fiscal year 2009, median team travel expenses were \$3.1 million, median facilities maintenance and rental were \$4.5 million, and median grants-in-aid were \$6.7 million. For private schools, median team travel expenses (\$3.6 million) and median facilities maintenance and rental expenses (\$4.8 million) were similar to those of public schools. Median grants-in-aid at private schools (\$12.3 million), however, were almost double those of public schools. *Id.*

48. See *id.* (showing that median grants-in-aid were \$6.7 million and median total operating expenses were \$43.5 million).

49. See *id.* (noting that median grants-in-aid were \$12.3 million and median total operating expenses were \$52.2 million).

50. *Id.* at 37 tbl.3.12(a).

season,⁵¹ and Nick Saban, the head football coach at the University of Alabama, received \$5.2 million for the 2010 season.⁵²

Interestingly, the NCAA's limit on student-athlete compensation might be at least partly responsible for coaches' high salaries. Because the direct compensation that colleges can offer athletes is capped, colleges might compete for top athletes by offering greater indirect compensation. Such indirect compensation might take the form of superior coaches or athletic facilities, which can attract athletes to the school.⁵³ Although such facilities and coaching benefit all athletes on a team, they probably are especially beneficial to top athletes. A top athlete, who is expecting a career in professional sports after college, has more to gain. If the coaching or facilities improve that athlete, then he is likely to be drafted higher in the professional sports league. This higher draft position can result in much higher compensation as a professional athlete.⁵⁴

Thus, colleges may use top coaches and state-of-the-art facilities as a form of additional compensation for their athletes. However, using such indirect compensation can be less efficient than providing additional direct compensation—such as salaries—for athletes instead. Because NCAA bylaws prohibit such additional direct compensation, economic theory predicts that colleges will provide too much indirect compensation. In other words, the mix of direct and indirect compensation that athletes

51. *NSLI Coaches' Salary Database*, USATODAY.COM (Mar. 30, 2011, 4:41 PM), <http://www.usatoday.com/sports/college/mensbasketball/2011-coaches-salary-data-base.htm>. Pitino also received over \$1.4 million from non-university based sources. *Id.*

52. *NSLI Coaches' Salary Database*, USATODAY.COM (Dec. 26, 2010, 6:21 PM), <http://www.usatoday.com/sports/college/football/2010-coaches-contracts-database.htm>. Saban also received over \$800,000 from non-university based sources. *Id.*

53. See Todd Brown, Kathleen A. Farrell & Thomas Zorn, *Performance Measurement & Matching: The Market for Football Coaches*, 46 Q.J. BUS. & ECON. 21, 25 (2007) ("Many college coaches are known as outstanding recruiters rather than as on field generals."); GRANT, LEADLEY & ZYGMONT, *supra* note 21, at 299–301 (describing how upgraded athletic facilities are used as a recruiting tool); J. Michael Dumond, Allen K. Lynch & Jennifer Platania, *An Economic Model of the College Football Recruiting Process*, J. SPORTS ECON. 67, 78, 80 (2008) (finding some evidence that college football players choose to attend colleges with larger and newer athletic facilities).

54. Philip L. Hersch, *Does the NCAA Coaching Carousel Hamper the Professional Prospects of College Football Recruits?*, J. SPORTS ECON. 1, 10 (Dec. 2, 2010) (showing that even relatively small differences in how high a player is drafted in the NFL can result in large differences in compensation); see, e.g., *2005 Collective Bargaining Agreement*, NAT'L BASKETBALL PLAYERS ASS'N, exhibit B (Dec. 16, 2009), <http://www.nbpa.org/cba/2005> (showing the same for the NBA).

receive will be more weighted toward indirect compensation than it would be if the NCAA did not cap direct compensation.⁵⁵ Thus, it is likely that the NCAA limit on direct compensation to athletes is at least partly responsible for the very high amount spent on coaches and athletic facilities. Because they cannot give additional direct compensation to athletes, colleges give them additional indirect compensation by overbuilding athletic facilities and overpaying to lure top coaches.⁵⁶

In summary, measuring the exact cost of an athlete to a college is difficult. In addition to the cost of an athletic scholarship, there are numerous other large costs in creating athletic programs. Nevertheless, many football and men's basketball programs generate more revenues than expenses. In fact, in fiscal year 2010, 58 percent of football teams and 56 percent of men's basketball teams in the Division I FBS generated revenues in excess of their expenses.⁵⁷ Some teams were extremely profitable. The top decile of profitable football programs had between \$40.8 and \$70.1 million more generated revenues than expenses, and the top decile of profitable men's basketball programs had between \$9.3 and \$16.8 million more generated revenues than expenses.⁵⁸ Because top players are very likely responsible for a disproportionate share of these revenues,⁵⁹ many football and men's basketball players clearly generate far more revenue than costs for their colleges.

55. See Kahn, *supra* note 40, at 216.

56. See GRANT, LEADLEY & ZYGMONT, *supra* note 21, at 301-02 (noting colleges' expenditures on state-of-the-art facilities likely would be less if colleges paid athletes their marginal revenue products); see also KNIGHT COMM'N ON INTERCOLLEGIATE ATHLETICS, ART & SCI. GRP. LLC, QUANTITATIVE AND QUALITATIVE RESEARCH WITH FOOTBALL BOWL SUBDIVISION UNIVERSITY PRESIDENTS ON THE COSTS AND FINANCING OF INTERCOLLEGIATE ATHLETICS: REPORT OF FINDINGS AND IMPLICATIONS 9, 34-36 (2009), http://www.knightcommissionmedia.org/images/President_Survey_FINAL.pdf (quoting university presidents expressing the view that the increasing costs of coaches' salaries and athletic facilities are some of the greatest threats to the sustainability of athletics at colleges).

57. 2010 REVENUES AND EXPENSES, *supra* note 7, at 28 tbl.3.6.

58. *Id.* at 47 tbls.3.33(a) & 3.34(a).

59. See *supra* pp. 73-74 (studies estimating the large revenue generated for colleges by top football and men's basketball players).

III. HOW MUCH IS AN ATHLETIC SCHOLARSHIP WORTH TO ATHLETES?

Another approach to examining whether a student-athlete is economically exploited is to compare the revenue that the athlete generates for his college to the value to the athlete of the athletic scholarship he receives from the college. Although the value of a scholarship might be different for each person, for purposes of a basic analysis, student-athletes can be divided into three groups: students who would have gone to college even without an athletic scholarship; students who are induced to go to college by the scholarship and graduate from college; and students who are induced to go to college by the scholarship but fail to graduate.

For a student who would have gone to college even without an athletic scholarship, the scholarship saves the student the amount of the scholarship.⁶⁰ A full athletic scholarship covers a student's tuition, fees, room and board, and required books.⁶¹ Thus the value of the scholarship to such a student is what the student would have paid for those items in the absence of a scholarship. As discussed above, this amount differs greatly by school.⁶² For the 2010–2011 academic year, the average cost of tuition, fees, room and board, books, and supplies was approximately \$17,300 at public colleges and \$38,200 at private colleges.⁶³ Because of financial aid to students, however, the average amount actually paid by students was only approximately \$11,200 at public colleges and \$22,200 at private colleges.⁶⁴ To the extent that, in the absence of an athletic scholarship, a student-athlete would have received financial aid, the estimate of the value

60. This assumes that the student would have attended a college that costs the same as the college that gives him the athletic scholarship.

61. 2011 NCAA MANUAL, *supra* note 9, § 15.02.5, at 193. Recall that the Division I Board of Directors recently approved a measure allowing student-athletes to also receive up to \$2,000 in spending money. *See supra* p. 71.

62. *See supra* pp. 76–77.

63. COLLEGE BOARD ADVOCACY & POLICY CENTER, TRENDS IN COLLEGE PRICING 6 fig.1 (2010), *available at* http://trends.collegeboard.org/downloads/College_Pricing_2010.pdf.

64. *Id.* at 6 fig.1, 15 fig.7.

of the athletic scholarship to that student should be reduced by the amount of that aid.⁶⁵

A second type of student-athlete attends and graduates from college because of the athletic scholarship. Such a student, for example, might not have been able to afford college in the absence of the scholarship. For that student, the value of an athletic scholarship can be estimated as the difference between the present value of his lifetime earnings if he graduates from college and the present value of his lifetime earnings if he had only received a high school diploma. In 2009, the average annual earnings of men whose highest educational attainment was a bachelor's degree was \$72,868; men with only high school degrees earned an average of just \$36,753.⁶⁶ Over the course of a working lifetime, such differences have present values of hundreds of thousands of dollars, even after accounting for the opportunity cost of attending college (i.e., the forsaken income during the years a student is attending college instead of working in a full-time job).⁶⁷

A third type of student-athlete is one who would not have gone to college but for the scholarship, but still fails to graduate. Having attended but not graduated from college increases most people's future income, but by much less than does earning a college degree. In 2009, the average annual earnings of men who had only some college education was \$39,635; men with only high school degrees earned an average of \$36,753.⁶⁸ When the opportunity cost of attending college is included, attending college but failing to graduate could even have a negative present value.⁶⁹

65. These cost figures may still overestimate the student's savings from an athletic scholarship, however, because a student who attends a nearby college might be able to live and eat at his parents' home at a much lower cost than what a college charges for room and board.

66. U.S. Census Bureau, Statistical Abstract of the United States: 2011, at 150 tbl.228 (2011), <http://www.census.gov/prod/2011pubs/11statab/educ.pdf>.

67. For example, making the simplifying assumption that the difference between the earnings in real dollars (i.e., adjusted for inflation) remains constant over time, and using a 3 percent real discount rate and a 33 percent marginal tax rate, the present value of the difference over a working lifetime would be approximately \$440,000.

68. *Id.*

69. Making again the simplifying assumption that the difference between the real earnings remains constant, and using a 3 percent real discount rate and a 33 percent marginal tax rate, the present value for a male who went to college for three years but failed to graduate would be approximately negative \$30,000. This negative value would be

Thus, the value of the academic scholarship depends greatly on the type of student-athlete. What percentage of student-athletes is of each type is unclear. For the 2003 entering class, the graduation success rate in the Division I FBS was 69.2 percent for football players and 66.4 percent for men's basketball players.⁷⁰ Those statistics, however, do not indicate what percentage of these athletes would have graduated from college even without an athletic scholarship.

Estimates of the value of an athletic scholarship to a student-athlete must take into account another factor: playing a college sport might affect how well the student performs academically at college. Playing a college sport requires a great time commitment, which may negatively affect a student-athlete's grades.⁷¹ Studies have found that a student's college GPA is positively correlated with higher future income.⁷² Thus, if athletic participation harms a student's grades, an estimate of the value of an athletic scholarship should take into account the impact of this lower GPA on the student's future earnings. At an extreme, some students who would have graduated if they had not played a sport

at least partly offset if the athletic scholarship saves the student other living expenses (such as room and board). Also, of course, some student-athletes who do not graduate would, in the absence of an athletic scholarship, still have gone to college but not have graduated. For such students, the value of the athletic scholarship is the amount of the scholarship.

70. NCAA, TRENDS IN GRADUATION SUCCESS RATES AND FEDERAL GRADUATION RATES AT NCAA DIVISION I INSTITUTIONS 8 (2010), http://www.ncaa.org/wps/wcm/connect/f015f6004477d89f977cb749973c7da7/GSR+and+Fed+Trends+for+Web+10_26_10+Final.pdf?MOD=AJPERES&CACHEID=f015f6004477d89f977cb749973c7da7. The graduation success rate is a statistic developed by the NCAA to "more accurately reflect the mobility among all college students..." *Graduation Success Rate*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Academics/Division+I/Graduation+Success+Rate> (last visited Sept. 29, 2011). It is the graduation rate of students at a college, including those who transfer into the college. It excludes students who transfer out of the college, as long as they would have been academically eligible to compete had they remained. *Id.*

71. See, e.g., Michael T. Maloney & Robert E. McCormick, *An Examination of the Role that Intercollegiate Athletic Participation Plays in Academic Achievement*, 28 J. HUM. RESOURCES 555, 565-66 (1993) (reporting that college football players must spend between twenty to thirty hours per week on football-related activities during the fall semester).

72. See, e.g., Paul Oehrlein, *Determining Future Success of College Students*, 17 PARK PLACE ECONOMIST 59, 63-66, 63 tbl.1, 65 tbl.2 (2006) (finding that a one point higher college GPA translates into approximately a 14.7 percent higher income); James E. Long & Steven B. Caudill, *The Impact of Participation in Intercollegiate Athletics on Income and Graduation*, 73 REV. ECON. & STAT. 525, 527, 528 tbl.1 (1991) (finding that a one point higher GPA for male college athletes translates into a few percent higher income, at least early in their careers).

might fail to graduate because of the time they spend on the sport. For such students, athletic scholarships would likely have negative present values, making those students financially worse off over the long run than if they had never received athletic scholarships.⁷³

Determining whether participation on football and men's basketball teams has adverse academic effects on students is not easy. Even if such student-athletes earn lower grades in college than do other students, participation in these sports might not be responsible. As a group, football and men's basketball players enter college with lesser academic skills and aptitudes than do other students at their colleges.⁷⁴ Therefore, these athletes might be expected to perform worse academically even if they did not play these sports in college.⁷⁵

Some studies have attempted to control for such differences in athletes' academic backgrounds, such as their SAT scores. These studies provide at least anecdotal evidence that playing college football or men's basketball adversely affects students' GPAs. Michael Maloney and Robert McCormick's study of Clemson University athletes found that Clemson athletes overall earned only slightly worse college grades—0.02 on a 4.00 GPA scale—than did similar non-athletes.⁷⁶ But football and men's basketball players accounted for all of the underperformance (about 0.11).⁷⁷ As a group, the rest of the athletes did not underperform their peers.⁷⁸ Furthermore, all of the underperformance by football players occurred in the fall semester, during football season.⁷⁹ Football players underperformed their peers by more than half a point (0.54)

73. This assumes that the students would not have played their college sports in the absence of the athletic scholarships.

74. See *infra* pp. 88–89 (discussing the large admissions preferences that colleges give to athletes).

75. See, e.g., Eddie Comeaux, *Predictors of Academic Achievement Among Student-Athletes in the Revenue-Producing Sports of Men's Basketball and Football*, SPORT J. (2005), <http://www.thesportjournal.org/article/predictors-academic-achievement-among-student-athletes-revenue-producing-sports-mens-basketb> (finding that high school GPA and verbal SAT scores are predictors of college GPA for football and men's basketball players).

76. Maloney & McCormick, *supra* note 71, at 561 tbl.3, 562.

77. See *id.*

78. *Id.*

79. *Id.* at 566, 567 tbl.6.

during the fall semester, but actually outperformed their peers during the spring semester by 0.13 points.⁸⁰ Also, John Fizel and Timothy Smaby found that Penn State University football players earned 0.15 lower GPAs than did comparable students, but Penn State male basketball players only had a statistically insignificant 0.03 lower GPA than did comparable students.⁸¹ Penn State athletes in non-revenue sports, however, overall had virtually the same GPA as did comparable students.⁸²

These studies suggest that the time student-athletes spend on basketball and especially football might reduce their grades.⁸³ Although these studies did not examine why participation in other sports does not adversely affect grades, a possible reason is that football and men's basketball players face greater time and other pressures than do other student-athletes.⁸⁴

Although playing football or basketball might reduce students' grades, it does not appear to reduce their likelihood of graduating. Football and men's basketball players have lower graduation rates than do other students, but overall their graduation rates are not lower after controlling for students' demographic characteristics.⁸⁵ One can speculate why these

80. *Id.*

81. John Fizel & Timothy Smaby, *Participation in Collegiate Athletics and Academic Performance*, in *ECONOMICS OF COLLEGE SPORTS*, *supra* note 29, at 163, 171 tbl.4.

82. *Id.* at 170 tbl.3. Fizel and Smaby define non-revenue sports as all sports except football and men's and women's basketball. *Id.* at 166.

83. These studies were limited to particular colleges and thus might not apply more generally. Indeed, the Assistant Director for Academic Counseling of a football team at another Division I FBS school told me that the football players at her school have higher grades in the fall semester than in the spring semester because the players' schedules in fall are more structured, causing them to study more efficiently.

84. See Steve Wieberg, *Should Players Get Some of It?*, USA TODAY, Mar. 30, 2011, at 1A, available at http://www.usatoday.com/printedition/news/20110330/1apayplayers30_cv.art.htm (statement of Ohio State Athletics Director Gene Smith) ("The hardest thing for [the NCAA] to do is treat [college football and men's basketball players] differently [from other college athletes] . . . But you know what? Their lives are different. They're different than the field hockey athlete. They're different than the swimmer. They're under different pressures.").

85. Victor A. Matheson, *Athletic Graduation Rates and Simpson's Paradox*, 26 *ECON. EDUC. REV.* 516, 518–19 (2007) (finding that Division I white football scholarship athletes have higher graduation rates than do white non-athletes and that Division I black football and men's basketball scholarship athletes have higher graduation rates than do black non-athletes; however, Division I white basketball scholarship athletes have lower graduation rates than do white non-athletes); see also Long & Caudill, *supra* note 72, at 529 (finding that male athletes overall are 4 percent more likely to graduate than are similar non-athletes); Patrick James Rishe, *A Reexamination of How Athletic Success Impacts Graduation*

student-athletes might have lower grades but not lower graduation rates. For example, athletes might be encouraged by coaches to at least satisfy the NCAA's minimum academic standards required to maintain athletic eligibility.⁸⁶ They also might be encouraged to stay in school by the additional academic support they receive, such as tutoring and mandatory study halls.⁸⁷ Also, athletic scholarships might give some students the financial resources necessary to stay in school until graduation. In addition, student-athletes might be more likely to stay in college because they enjoy college more than do non-athletes, perhaps because they enjoy playing their sports or have closer friends from playing on a team than do other students.

Athletic scholarships might also provide student-athletes with additional financial benefits beyond college degrees. For example, participating in college sports might increase student-athletes' "drive to succeed, increas[e] their self-discipline, improv[e] their teamwork skills and abilities to work with others, and build[] up their work ethic."⁸⁸ Because such skills are transferrable to many jobs, honing these skills might increase their future income. Indeed, there is some evidence that former college athletes who do not become professional athletes earn higher salaries than do similar students who were not college athletes. James Long and Steven Caudill found that ten years after starting college, male former varsity athletes averaged 4 percent higher annual incomes than did similar non-athletes.⁸⁹ Using a different methodology, however, Daniel Henderson, Alexandre Olbrecht, and Solomon Polachek found that, ten years after starting college, male former varsity athletes averaged less than 1 percent higher annual incomes than did similar non-athletes.⁹⁰ But they also

Rates, 62 AM. J. ECON. & SOC. 407, 413 (2003) (finding that college athletes have higher graduation rates than do non-athletes of the same race and gender).

86. See Rishe, *supra* note 85, at 425.

87. See *id.*

88. Alexandre Olbrecht, *Do Academically Deficient Scholarship Athletes Earn Higher Wages Subsequent to Graduation?*, 28 ECON. EDUC. REV. 611, 615 (2009).

89. Long & Caudill, *supra* note 72, at 529. The difference between female former varsity athletes and similar non-athletes was smaller and not statistically significant. *Id.* at 527.

90. See Daniel J. Henderson, Alexandre Olbrecht & Solomon W. Polachek, *Do Former College Athletes Earn More at Work? A Nonparametric Assessment*, 41 J. HUM. RESOURCES 558, 568 (2006). The authors did not examine the income of female former athletes. *Id.* at 563.

found that the premium differed by profession. Former athletes in certain careers—business, military, or manual labor—earned, on average, 1.5 percent to 9 percent more than their peers earned.⁹¹ These are careers in which it is reasonable to believe that the skills gained in athletics would be especially useful.⁹² However, former athletes that became high school teachers earned 8 percent less than their peers earned.⁹³ Partly because former college athletes disproportionately enter high school teaching, the median former athlete actually earned less than comparable non-athletes.⁹⁴ Nevertheless, at least after controlling for career choice, overall these studies indicate that college athletes might gain skills that translate into higher earnings.

Yet these studies have important limitations. Even if former student-athletes later earn more than their peers because they possess certain transferable skills, this does not mean that athletes acquire these skills from playing college sports. Causation might run in the opposite direction. In other words, people with more self-discipline, a drive to succeed, and an ability to work as part of a team might be more likely to play college sports. In addition, even if those skills were acquired from playing sports, they might have already been gained before college. Very few college football and basketball players were not also members of their high school teams.⁹⁵ Thus, those transferable skills might have already been learned largely from playing high school sports.

Another service that all colleges provide to their student-athletes is athletic coaching and access to athletic facilities. As discussed above, colleges might even compete for athletes by offering top coaches and facilities.⁹⁶ Valuing this benefit to

91. *Id.* at 572.

92. *Id.* at 569.

93. *Id.* at 572.

94. *Id.* at 568, 572. Henderson et al. speculate that one reason former college athletes might be more attracted to high school teaching is because of the athletic coaching opportunities in high schools. *Id.* at 571.

95. See NCAA, *Estimated Probability of Competing in Athletics Beyond the High School Interscholastic Level*, NCAA.ORG, http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Academics+and+Athletes/Education+and+Research/Probability+of+Competing/Probability+of+Competing (last visited Sept. 30, 2011) (showing that even high school athletes are very unlikely to play college sports, as only 6 percent of high school senior boys playing interscholastic football later play football at NCAA member institutions, and only 3.1 percent of high school senior boys playing interscholastic basketball later play basketball at NCAA member institutions).

96. See *supra* pp. 78–79.

student-athletes, however, is difficult. One recent estimate of its value was \$70,000 per year for basketball players, the amount charged by top basketball training facilities used by professional and college basketball players.⁹⁷ The value to the student-athlete, however, likely depends to a large extent on the athlete. For a student-athlete who has a significant possibility of playing a professional sport after college, the coaching and facilities to which he has access in college might lead to higher future earnings as a professional athlete. In particular, they might make the athlete a better player, causing him to be a higher draft pick in the NFL or NBA.⁹⁸ In contrast, a student-athlete without a chance at a professional sports career likely gains no future financial benefit from strong coaching or facilities.⁹⁹

Colleges with well-publicized sports programs can offer their athletes another benefit: media exposure. Successful, popular teams appear often on national television, giving media exposure to the student-athletes on the team.¹⁰⁰ As with strong coaching, this media exposure might result in a student-athlete being drafted higher by a professional sports league than he otherwise would.¹⁰¹ Thus, for athletes with a chance at a professional sports career, the exposure from participating on a well-known college team may increase their future earnings.¹⁰² For student-athletes without a chance at a professional career,

97. *The Value of One Year of a Division I Men's Basketball Scholarship*, USATODAY.COM (Mar. 29, 2011, 10:53 PM), <http://www.usatoday.com/sports/college/mensbasketball/2011-value-of-college-scholarship.htm>.

98. Recall that higher draft picks receive higher salaries as professional athletes. *See supra* note 54 and accompanying text. Better college coaches might also help their players' draft prospects because these coaches' assessments of their players might be given more weight by NFL or NBA scouts. Hersch, *supra* note 54, at 6.

99. If, however, strong coaching increases such an athlete's transferable skills (such as perseverance) then, as discussed above, this could lead to higher future income outside a professional sports career. *See supra* pp. 85–86 (discussing studies suggesting that college athletes might gain transferrable skills that result in higher future income).

100. *See* Hersch, *supra* note 54, at 6 (“[W]inning programs may afford players greater visibility.”).

101. *See id.* (stating that football players on winning teams may be drafted higher because of the players' greater visibility).

102. *See supra* note 54 and accompanying text (noting that higher draft picks receive higher salaries as professional athletes); *see also* Dumond, Lynch & Platania, *supra* note 53, at 83 (finding that college football players choose to attend colleges that offer them greater media exposure).

however, this media exposure is unlikely to provide any future financial benefit.¹⁰³

Some student-athletes also receive another benefit from their colleges: they gain admission to colleges that are academically superior to those that they would have attended if they were not athletes. Many colleges have special admissions programs designed to admit students who fail to satisfy “standard or normal entrance requirements.”¹⁰⁴ Although the NCAA requires these special programs to offer the same opportunity to non-athletes as they do to athletes, in 2009, an Associated Press review of admissions data found that athletes were much more likely to gain admission under these programs than were other students, including “at least 27 schools [in the Division I FBS] where athletes were at least ten times more likely to benefit from special admission programs than students in the general population.”¹⁰⁵

As a result of such programs and other admissions preferences, athletes have a large advantage in admissions. For example, from 2003–2005, the average SAT score of University of Texas freshmen football players was 945, which was 320 points less than the typical University of Texas freshman.¹⁰⁶ Similarly, Thomas Espenshade, Chang Chung, and Joan Walling’s study of admissions in three academically elite universities found that recruited athletes were approximately four times more likely to be admitted than were similar non-athletes, an advantage comparable to having scored about two hundred points better on the SAT.¹⁰⁷

103. See Thomas R. Hurst & J. Grier Pressley III, *Payment of Student-Athletes: Legal & Practical Obstacles*, 7 VILL. SPORTS & ENT. L.J. 55, 59 (2000) (“Opponents to proposals to pay student-athletes also argue that the athletic scholarship is adequate compensation because collegiate athletics can act as a stage for scouts from the NFL, NBA and the WNBA, where lucrative professional careers await student-athletes. The reality is that an extremely low number of collegiate athletes will parlay their athletic scholarships into professional sports careers.”).

104. *Report: Exemptions Benefit Athletes*, ESPN.COM (Dec. 30, 2009), <http://sports.espn.go.com/nfl/news/story?id=4781264>.

105. *Id.*

106. *Id.*

107. See Thomas J. Espenshade, Chang Y. Chung & Joan L. Walling, *Admission Preferences for Minority Students, Athletes, and Legacies at Elite Universities*, 85 SOC. SCI. Q. 1422, 1428–29 tbl.2, 1431 (2004); see also M. Tae Phillips, *Un-Equal Protection: Preferential Admissions Treatment for Student Athletes*, 60 ALA. L. REV. 751, 758 (2009) (“Division I athletes in ‘high-profile’ sports such as football and basketball at public universities average almost 250 points lower on SAT scores than regular students.”).

Thus, athletes often receive admission to better colleges than they would have if they were not athletes.

The value of this admissions preference to the athlete, however, is unclear. Student-athletes might benefit financially from the preference if graduating from academically superior colleges results in higher future income than does graduating from lesser colleges. The academic competition is stronger at academically superior schools, however, so a student-athlete's GPA, class rank, or both might be higher if the student attends a lesser school. If employers and graduate school admissions officers give great weight to a student's grades, a student-athlete might be better off attending a lesser school and achieving better grades. In addition, a student-athlete who would have attended and graduated from a lesser school is certainly worse off if he goes to a better school yet fails to graduate because of the stiffer academic competition.

In general, people who have graduated from academically superior colleges have higher earnings than do people who have graduated from lesser colleges.¹⁰⁸ However, this does not mean that going to a better college improves one's future earnings. People with strong high school grades and SAT scores, for example, likely have greater earnings prospects in addition to being more likely to be admitted to academically superior colleges. If this completely explains the correlation between college quality and future earnings, then admissions preferences for college athletes do not boost student-athletes' future incomes.

Even when student characteristics such as high school GPA and SAT score are controlled for, however, studies find that students who attend better colleges still have higher future earnings.¹⁰⁹ However, because these observable high school credentials are incomplete measures of student quality, this still is not strong evidence that attending a selective college leads to higher future earnings. College admissions officers consider more than just GPAs and SAT scores in deciding whether to accept

108. Mark C. Long, *Changes in the Returns to Education and College Quality*, 29 *ECON. EDUC. REV.* 338, 346 (2010).

109. Stacy Dale & Alan B. Krueger, *Estimating the Return to College Selectivity Over the Career Using Administrative Earning Data 3* (Feb. 16, 2011) (unpublished manuscript) (IZA Discussion Paper No. 5533), available at <http://ssrn.com/abstract=1771255>.

students. For example, the student's application essays, college interview, letters of recommendation, extracurricular activities, and other aspects of a student's background provide insight into his or her "motivation, ambition and maturity" and thus affect admissions decisions.¹¹⁰ These personal characteristics are unobservable to researchers. If these unobservable characteristics also affect a student's future income, there would be a positive correlation between students attending a highly selective college and their future income even if the quality of the college does not cause the higher income.¹¹¹ In other words, attending a better school might be merely a sign that a student has characteristics—other than just a high GPA and SAT score—that are also predictive of higher future earnings.

A recent study by Stacy Dale and Alan Krueger found that controlling for such unobserved student characteristics might eliminate the relationship between college quality and future earnings.¹¹² They controlled for unobserved characteristics by including as explanatory variables the number of colleges to which the student applied and the average SAT score of those colleges.¹¹³ They reasoned that students with strong characteristics not visible to a researcher will apply to more and better schools than would students with the same visible characteristics (like SAT scores and high school GPAs) but who lack strong invisible characteristics.¹¹⁴ They found that when the average SAT scores of colleges that students apply to are controlled for, the estimated benefit of attending a highly selective school essentially disappears.¹¹⁵

This suggests that, in general, attending a better school does not result in substantially higher earnings.¹¹⁶ This might be

110. Stacy Berg Dale & Alan B. Krueger, *Estimating the Payoff to Attending a More Selective College: An Application of Selection on Observables and Unobservables*, 117 Q.J. ECON. 1491, 1495 (2002).

111. Similarly, high school students with greater ambition might be more likely both to apply to academically superior colleges and to earn more in the future than their less ambitious peers with similar high school credentials. Dale & Krueger, *supra* note 109, at 2.

112. *Id.*

113. *Id.* at 6–7.

114. *Id.*

115. *Id.* at 23–24.

116. See also Mark C. Long, *College Quality and Early Adult Outcomes*, 27 ECON. EDUC. REV. 588, 601 (2008) (finding, after controlling for unobserved student characteristics, that college quality affects students' educational attainment, but failing to find consistent evidence that college quality affects students' future wages).

because a student who chooses to attend a better school is likely to end up with a lower class rank due to the stronger competition at that school.¹¹⁷ If employers and graduate school admissions officers consider both the quality of the student's college and the student's class rank, then the benefit from attending a better school might be offset by the student's lower class rank.¹¹⁸

Dale and Krueger found an exception, however, for students who were black, Hispanic, or whose parents were not highly educated. For these students, attending a selective college resulted in substantially higher future income.¹¹⁹ Dale and Krueger speculate that such students might benefit because attending a selective college provides them networking connections they would not otherwise have.¹²⁰ Because a large percentage of college football and basketball players are minorities, this suggests that many student-athletes might benefit financially from gaining admission to better schools.¹²¹

CONCLUSION

This Article's purpose is to examine if college athletes are economically exploited by their colleges. This is a difficult question to answer concisely. The answer depends not only on

117. Dale & Krueger, *supra* note 110, at 1512 (finding that, all else equal, students would fall five to eight percentage points in class rank if they attended a college with a one hundred point higher average SAT score).

118. *Id.* (finding that, all else equal, students who graduate seven percentage points higher in class rank earn about 3 percent more, and noting that this effect may "largely offset any advantage of attending an elite college on earnings").

119. See Dale & Krueger, *supra* note 109, at 21–22 (finding that, for black or Hispanic students, attending a college with a one hundred point higher average SAT score results in approximately 12 percent higher future income); see also Jere R. Behrman et al., *The Impact of College Quality on Wages: Are There Differences Among Demographic Groups?* 18 (Oct. 1996) (unpublished manuscript) (Discussion Paper 38), available at <http://sites.williams.edu/wpehe/files/2011/06/DP-38.pdf> (using a different methodology and finding that the "estimated wage benefits from higher college quality and more time in college tend to be highest for nonwhite males and next for nonwhite females, then white females and least for white males").

120. Dale & Krueger, *supra* note 109, at 24.

121. See ERIN ZGONC, NCAA, NCAA STUDENT-ATHLETE ETHNICITY REPORT: 1999–2000 TO 2009–2010, at 8–9 (2010) [hereinafter NCAA ETHNICITY REPORT], available at <http://www.ncaapublications.com/p-4214-student-athlete-ethnicity-2009-10-ncaa-student-athlete-ethnicity-report.aspx> (reporting that in 2009–2010, only 45.1 percent of football players and 30.5 percent of men's basketball players in Division I were white).

how economic exploitation is defined, but also on which particular athlete is examined.

College football and men's basketball teams often generate great revenue for their colleges. In exchange for their athletic services, however, many players on these teams receive substantial benefits from their colleges. Primary among them is a free college education for those students who receive full athletic scholarships. For students who would not have gone to college without the scholarship, this can provide a large financial benefit: a lifetime of much higher earnings. For students who fail to graduate, however, the scholarship is likely to have only a minor effect on their future earnings. For students who would have gone to college even without an athletic scholarship, the value of the scholarship is still large: it is what they would have paid for their college education without the scholarship.

In addition, student-athletes are often admitted to better colleges than are students with similar academic backgrounds. There is evidence that these admissions preferences result in higher future income, at least for students who are minorities. Student-athletes in many programs also receive high-quality coaching and media exposure; however, these benefits likely result in higher future income only for the few students who eventually play professional sports. Also, it is unclear if playing college sports provides student-athletes with skills that are transferrable to non-sport careers.

Even after accounting for all the benefits provided to the athletes and the other costs of running the programs, however, Division I FBS football and men's basketball programs are generally profitable, and can be extremely profitable. In addition, for a college with excess capacity, the true cost of an athletic scholarship is probably much less than the cost reported by the college.

In summary, at least top football and men's basketball players generate much more revenue than costs for their colleges. Although it can be persuasively argued that these players are economically exploited, it is clear that the large majority of student-athletes are not exploited. Although football and men's basketball teams are profitable for most Division I FBS colleges, it must be remembered that these colleges have many sports

teams.¹²² The vast majority of college sports generate little, if any, revenue for their colleges.¹²³ These sports are typically not televised and their ticket sales are low. In addition, colleges often incur large costs—such as travel, equipment, and coaches' salaries—to operate those sports programs.¹²⁴ Despite the fact that these sports lose money for their colleges, many of the athletes who play them receive athletic scholarships.¹²⁵ Thus, most student-athletes very likely generate less revenue than costs for their colleges. Indeed, at most colleges, the athletic program as a whole is unprofitable.¹²⁶ Thus, one can argue that top college football and basketball players are not exploited by their colleges, but are instead merely subsidizing other student-athletes at their colleges.

Nevertheless, this subsidization might be troubling for at least two reasons. First, it is not voluntary. NCAA bylaws limiting the size of athletic scholarships prevent these subsidizing athletes from instead choosing to receive a greater portion of the revenue they produce for their schools. Second, there is a racial component to this subsidization. For example, although 54 percent of male college basketball players and 48 percent of football players who receive athletic scholarships are black, only 8.5 percent of other male college athletes who receive athletic scholarships are black.¹²⁷ Because the top football and men's

122. See *id.* at 36 tbl.3.11 (listing major sports programs in Division I FBS).

123. See *id.* (listing median generated revenues by sport for Division I FBS programs).

124. See *id.* at 36 tbl.3.11 (listing median expenses by sport for Division I FBS programs).

125. For Division I FBS, the median total value of grants-in-aid for female athletes is 76 percent that of the median total value of grants-in-aid for male athletes. *Id.* at 31 tbl.3.9. Also, of course, many of the male athletes are playing sports other than football or basketball.

126. In fiscal year 2010, the athletic programs of 82 percent of the colleges in the Division I FBS and 100 percent of the colleges in the Division I FCS reported higher expenses than generated revenues. *Id.* at 27 tbl.3.5, 53 tbl.4.5. As discussed earlier, however, the costs of educating student-athletes are likely often much lower than the costs reported by colleges. See *supra* pp. 75–77. Thus, if the true costs to colleges of athletic scholarships were used in the calculation of the costs of athletic programs, more such programs likely would be reported to be profitable. See Chad W. Pekron, *The Professional Student-Athlete: Undermining Amateurism as an Antitrust Defense in NCAA Compensation Challenges*, 24 *HAMLIN L. REV.* 24, 58 (2000).

127. Matheson, *supra* note 85, at 518 tbl.1. Using percentage of athletes, rather than percentage of athletes with scholarships, yields similar numbers. In the 2008–2009 academic year, 60.4 percent of male basketball players and 45.6 percent of football players were black, but only 12.7 percent of all other male athletes were black. See NCAA ETHNICITY REPORT, *supra* note 121, at 100.

basketball players generate the most revenue for their schools, and because the top players are much more likely than other players to become professional athletes, a better measure of the racial element of this subsidization might be the percentage of professional athletes who are minorities. Those numbers are even more pronounced: 78 percent of NBA players and 67 percent of NFL players are black.¹²⁸ So, the athletes that generate the most revenue for their colleges are disproportionately black.

In summary, the NCAA's limitation on student-athlete compensation results in many football and men's basketball players receiving much less compensation from their colleges than they would in an unrestricted market for their athletic services. Although colleges often use these savings to fund other athletic programs, this practice raises fairness concerns and causes minority student-athletes to subsidize white student-athletes.

128. RICHARD LAPCHICK ET AL., THE INST. FOR DIVERSITY AND ETHICS IN SPORT, THE 2011 RACIAL AND GENDER REPORT CARD: NATIONAL BASKETBALL ASSOCIATION 5 (2011), http://www.tidesport.org/RGRC/2011/2011_NBA_RGRC_FINAL%20FINAL.pdf; RICHARD LAPCHICK ET AL., THE INST. FOR DIVERSITY AND ETHICS IN SPORT, THE 2011 RACIAL AND GENDER REPORT CARD: NATIONAL FOOTBALL LEAGUE 3 (2011), http://tidesport.org/RGRC/2011/RGRC_NFL_2011_FINAL.pdf.