

MARKET·ABILITY: The History and Impact of Name, Image,  
and Likeness Legislation on Intercollegiate Athletics

by

QUINN VAN HORNE

A THESIS

Presented to the Department of Business  
and the Robert D. Clark Honors College  
in partial fulfillment of the requirements for the degree of  
Bachelor of Science

June 2021

## **An Abstract of the Thesis of**

Quinn Van Horne for the degree of Bachelor of Science  
in the Department of Business to be taken June 2021

Title: Market Ability: The History and Impact of Name, Image, and Likeness  
Legislation on Intercollegiate Athletics

Approved: Steffen Jahn, Ph.D.  
Primary Thesis Advisor

Name, Image, and Likeness (NIL) is the largest impending change coming to intercollegiate athletics. As the history of college sports has shown, the NCAA has long acted as the regulatory body that governs changes within the sport, but they do not allow student-athletes to earn revenues from their time in college. As the NCAA and its member institutions have raked in billions of dollars in revenue from these games, a former NCAA player, Ed O'Bannon sued the organization to allow athletes to earn revenues from endorsement and sponsorship deals. O'Bannon won the lawsuit in 2014 and the NCAA and federal law began to be written to account for this new decree.

Currently, there are only state laws and proposed federal bills for Name, Image, and Likeness, but no national standard approved by the NCAA has passed. Through my qualitative content analysis, I identify five key factors of 1. NIL education for athletes, 2. clear definitions of rules, 3. Communication channels with athletes, 4. The use of advisory boards and NIL staff, and 5. Equity protections for non-revenue sports. Through these factors, we can see some of the core tenants of NIL and speculate for what paths the future of intercollegiate athletics could take in the coming years.

## **Acknowledgements**

I would first like to thank my family for helping inspire me to always strive to achieve my best and for supporting me in my dreams of attending and graduating from college. I would also like to thank my primary thesis advisor Professor Steffen Jahn for always supporting my crazy ideas and helping me find new sources and perspectives at every turn. Thank you, Professor Barbara Mossberg, my Clark Honors College advisor, for helping me find focus in my abstract ideas to my thesis' core argument. I would also like to thank my second reader Professor Caroline Lundquist for always being a step ahead and helping me logically form my arguments. Together, my committee has helped me create this thesis and inspired me to continue asking questions about the future of college sports in the United States. I would also like to thank John Brewer, Jody Sykes, Kit Morris, and Jeff Hawkins for providing me with the guidance to learn more about NIL legislation and agreeing to be a part of my research process. Thank you to the University of Oregon and the Robert D. Clark Honors college for allowing me to pursue this incredible education and degree. It has been an amazing four years and I'm so thankful to be a Duck.

Lastly, thank you to former Oregon running-back Jeremiah Johnson for running 83 yards on a November night in Corvallis, OR. Little did you know, but that one play made all of this possible.

## Table of Contents

Introduction: A Guilty Passion	1
Chapter 1: The NCAA Sheriff Comes to Town	6
Chapter 2: “Student-Athlete” – A Court’s Mantra	14
Chapter 3: “Hey, That’s Me.” – Name, Image, and Likeness	27
Chapter 4: Charting the Unknown – Key Factors for NIL Implementation	40
1. Education Availability to Athletes	43
2. Clear Definitions of Terminology and Rules	49
3. Communication channels with athletes on NIL matters	53
4. The use or advent of advisory boards/internal NIL staff for athletes	57
5. Equity Protections and Revenue Distribution across sporting programs	61
Chapter 5/Conclusion: The Great Compromise, Moving Goalposts, and the Failure State	67
Appendix	74
Bibliography	79

## Introduction: A Guilty Passion



Figure 1 Getty Images 2008

### **College sports have always been a huge part of my life.**

From as far back as I can remember, I've worn Oregon Ducks football jerseys on Saturdays, yelled as loud as I could in Matthew Knight Arena during Oregon basketball games, and enjoyed the sunshine during Ducks baseball and softball games. Growing up I didn't care as much for professional athletics, only watching NFL and NBA playoff games when they were on TV. But every college football Saturday, March Madness, and College World Series, I was captured by the competition and atmosphere of college athletics. I remember first falling in love with college sports when Oregon running-back Jeremiah Johnson took a carry 83 yards in the Oregon vs. Oregon State rivalry game to help extend a lead over a great Oregon State team, who ended up being denied a spot in the Rose Bowl in part to this run. I can still recall word for word the call from the announcer for Versus sports:

*“3<sup>rd</sup> down, 19 yards to go. Oregon State has used their allotment of timeouts to stop the clock as they hope to get the ball back but Johnson! He takes it and goes! First down and more, Jeremiah Johnson! He’s going to go the route! Touchdown! 83 yards Jeremiah Johnson! He’s now gone over 200 yards in the first half!”*

In the grand scheme of things, the play and the day were inconsequential. But not to an 8-year-old kid in Portland, Oregon. That play began a lifelong love of college sports that remains to this day.

**But that isn’t to say there is not some level of guilt involved.**

As I grew up, I started to become more aware of the world and how business and societal systems operated. With my love of sports, I wanted to learn everything that I could about intercollegiate athletics. I watched documentaries, read articles, spoke with athletic department and collegiate staff, and what I found was horrifying.

College athletics has long been held up by the notion that ‘student-athletes’ are not university employees but are amateur athletes who play for the love of the game.<sup>1</sup> The top-level athletes receive full-ride athletic scholarships to help them attend college, but do not see a return of the revenue they have labored to achieve. Athletes are asked to train, practice, go to class, complete their homework, compete in games, and be good students all while receiving very little benefit for their work. I read interviews when athletes speak about hungry nights; trying to help support their families without any compensation while attending college and playing sports at some of the highest levels in the country. As a long consumer of intercollegiate athletics, I was ignorant to the flaws

---

<sup>1</sup> Loretta8. “*Friendly Reminder: The NCAA Invented The Term ‘Student-Athlete’ To Get Out Of Paying Worker’s Comp* - Inside NU.” InsideNU, January 28, 2014

and issues facing student-athletes across generations. I felt guilty for my love of college sports. I was a part of the problem.

Over time as I became more adept in understanding the history of oppression towards student-athletes and the vices of the collegiate amateurism model, my guilt was replaced by drive. I cannot just be a consumer; I need to help actively push the NCAA and intercollegiate athletics towards a positive future. I can be vocal and help amplify the voices of student-athletes who need to be heard. I reconciled my love for college sports with my understanding that it needed to change on a fundamental level.

One of the changes I helped advocate for is termed Name, Image, and Likeness (NIL) legislation. In short, it allows student athletes to accept endorsements and sponsorships on the open market. Sponsorship is a cash and/or in-kind fee paid to a property in return for access to the exploitable commercial potential associated with that property.<sup>2</sup> In essence, sponsorship is the link between a non-sports property (e.x. Coca Cola) and a sports organization or figure. Sponsorship-linked marketing efforts are rising and with the increased social media presence of athletes, companies are seeking more opportunities to work individually with athletes, thus companies have keen interest in the outcomes of NIL. NIL has been a hot button issue since being ruled on in the federal court case O'Bannon v. NCAA that the NCAA must allow athletes to pursue NIL opportunities in the near future. Since 2014, it has been the impending meteor set to shake up the college sports world and bring about new change. I have been vocal

---

<sup>2</sup> Cornwell, T. "Sponsorship-Linked Marketing Development." *Sport Marketing Quarterly* 4 (January 1, 1995): 13-24.

with my support of NIL, but I wanted to figure out what is going on behind it. How did we get to this point? Where are we going from here?

After speaking to industry experts, I am as knowledgeable of the history and impact of Name, Image, and Likeness as the heads of the NCAA and collegiate sports leaders who are actively writing the bills to implement in the near future and feel I am able to partially answer these questions. This thesis was the opportunity for me to speak on a subject I have always been incredibly passionate about and a way to answer the questions that have plagued me for years: How will Name, Image, and Likeness impact intercollegiate athletics? What are the factors that will determine its success? Where does and should college sports go from here?

Using the strategies of qualitative content analysis, I created five factors that I believe encapsulate the many remaining questions around NIL and help us predict where the impacts of the new legislation will be felt:

1. Financial/Brand/Contract Education available to athletes
2. Clear definitions of responsibility from athletes to athletic departments
3. Direct and clear communication lines with athletes on NIL matters
4. The use or advent of advisory boards/internal NIL staff for athletes
5. Equity and revenue distribution across sporting programs

Over the course of this thesis, I will demonstrate how these factors will determine the impact of NIL while providing background, facts, and the understanding I have gained during this process. I will explore the history of the NCAA, the origin of the term ‘student-athlete’, the start of the NIL movement, understanding the key factors for success, and ending with further questions left for charting the future of

intercollegiate athletics. While this topic is changing every day, I believe these factors for success and prescriptions for the implementation of NIL will help elevate the future of college athletics and empower student athletes in the process.

## Chapter 1: The NCAA Sheriff Comes to Town

As of 2021, college athletics are highly visible and heavily regulated. Major college football and basketball games bring in millions of viewers per contest, college athletes have become household names and are admired like professional level athletes in major sports. Athletic Departments rake in millions of dollars in revenue every cycle, all from supposed amateur athletics. But to truly understand why college athletics has become the industry that it is today, we need to understand the founding of the NCAA and the origins of intercollegiate athletic contests. This information will help us understand how the NCAA formed bonds with its athletes and member institutions. Using these themes, we can see how these relationships have fractured during the over 100-year history of intercollegiate athletics and offer what changes will be needed to mend these bonds in the future.

College athletics began as a “Wild West”, with games and teams being unregulated. Mostly, games were simply a part of student life; something similar to intramural sports of today in the relaxed nature of the teams and rules. As early as 1830, college presidents began to mandate athletics as a necessary part of student life at wealthy, white, male colleges like Harvard, Yale, Amherst, and Williams.<sup>3</sup> For smaller schools that did not have students from the same privileged backgrounds, it would be required to work such as in landscaping, managing boiler rooms, and other hard labor jobs. Many presidents at the time were in favor of this method. Wealthy students, who

---

<sup>3</sup> Smith, Rodney K. “A Brief History of the National Collegiate Athletic Association’s Role in Regulating Intercollegiate Athletics” 11 (n.d.): 15.

had significant more influence, opted to begin participating in student-created athletic events as a recreation.

The first organized college sports club in the US was established in 1843 when Yale University students created the Yale Boat club and organized regattas between Harvard, an event that is still held annually in 2021.<sup>4</sup> These races started intercollegiate athletic competition, and through ticket prices, schools of similar stature began to search for ways to create athletic events and generate the revenue possible to sustain and grow these sports. In the 1850s, bat and ball sports began to become popular in the United States and baseball became an established pastime at universities. Teams would play longer schedules that weren't organized, typically playing with teams in-state and nearby states to keep travel costs low. In order to keep a uniform schedule and allow teams to schedule more than a few weeks out, the first intercollegiate baseball league was formed in 1879.<sup>5</sup> From there, cricket, track and field, and soccer matches began to be played amongst US colleges and universities.

While other sports were popular and helped grow the scope of intercollegiate athletics, no sport possessed the power of American football within that space. American football had existed in a limbo state after being brought over to the American colonies by the British as their national game football (soccer). The sport began to change and more closely resembled rugby, with a version called "ballown" was played on Princeton's college campus as a hazing ritual for upperclassmen to beat newly

---

<sup>4</sup> Smith, Rodney K. "A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics" 11 (n.d.): 18

<sup>5</sup> Ibid.

enrolled freshmen.<sup>6</sup> Other schools referred to these games as “class rushes” with the stark differentiation in violence distinguishing them from England’s football.

In the fall of 1869, the first sanctioned intercollegiate football game between Rutgers University and Princeton University took place under the guidance of both school’s administrations. The game didn’t resemble today’s modern form of football. Teams kicked and ran the ball down the field, with no forward pass allowed. The Targum, a Rutgers college newspaper quotes about the game in 1869:

*“To sum up, Princeton had the most muscle, but didn't kick very well, and wanted organization. They evidently don't like to kick the ball on the ground. Our men, on the other hand, though comparatively weak, ran well, and kicked well throughout. But their great point was the organization, for which great praise is due to the captain. The right men were always in the right place.”*<sup>7</sup>

As college football and athletics grew, many East Coast schools expanded their gridiron presence, two significant developments arose: the use of “ringers” and significant injuries on the football field.<sup>8</sup>

The term “ringers” refers to professional or semi-professional athletes being used in amateur athletic play to earn a significant advantage on the other team. While college athletes were not paid at the time and were considered regular students by the school with no special designation, schools that had significant revenue from tickets could use excess profits to “pay” for players to come and play for their program for a game or two to earn a key win against a rival school. With no national rule standard or

---

<sup>6</sup> Unlisted. Dribble, Hack and Split: The origins of Soccer and Rugby. Pro Football Research Association. 2000

<sup>7</sup> Unlisted. *The Targum, Rutgers College Press* (New Brunswick, New Jersey), November 1869

<sup>8</sup> Zezima, Katie. “How Teddy Roosevelt Saved Football.” *Washington Post*, May 29, 2014.

governing organization, teams did not have to submit rosters or prove the identity to the opposing team or officials. This practice was kept under the table, and the limited information recorded is based on speculation and abnormalities with a team's roster and score from week to week. Harvard and Yale both were accused of using ringers in their annual football game from 1890 to 1904.<sup>9</sup> Cumberland college (Atlanta, GA) and their head baseball coach George Allen were one of the few teams caught in this scandal.<sup>10</sup> They played an entire team of semi- professional Nashville Volunteers baseball players dressed in Cumberland uniforms and handily beat their opening opponent, Georgia Tech, 22-0 in 1915.<sup>11</sup> Funny enough, head baseball and football coach for Georgia Tech, John Heisman, responded the next year by beating Cumberland college 222-0 in football, the largest margin of victory in collegiate football history and an unbreakable record for points scored.<sup>12</sup>

Ringers posed a significant threat to the unregulated amateur status of college sports. By paying players, teams could gain a significant advantage on opponents, but also lost some of the revenue the university needed to keep the program running. This type of rampant cheating challenged the very foundation the sport was built upon. These instances were not documented by opposing schools, local newspapers, and other outlets. Much of the cheating went unnoticed by the general populous, but the same cannot be said for the horrific injuries displayed by early football.

---

<sup>9</sup> Smith, Rodney K. "A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics" 11 (n.d.): 18

<sup>10</sup> Bois, Jon. 222-0. *PRETTY GOOD, EPISODE 10.*, 2016.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

The game of football today strays far away from the rugged, violent, malicious games of the early 1900s and 1910s.<sup>13</sup> The use of leather helmets was mostly required in rules, but exceptions could be made for players who did not have a helmet made for their head size. Players with obvious concussion symptoms by today's standards were overlooked and told to keep playing the game, sometimes with limp limbs and complete disorientation on the field. The aforementioned John Heisman had a quote that summed up this era perfectly: "It is better to have died a small boy than to fumble this football."<sup>14</sup> The Washington Post published an article in 1905 discussing the difficulties of playing intercollegiate football and the injuries sustained by players:

*"Nearly every death may be traced to 'unnecessary roughness.' Picked up unconscious from beneath a mass of other players, it was generally found that the victim had been kicked in the head or stomach, so as to cause internal injuries or concussion of the brain, which, sooner or later, ended life."*<sup>15</sup>

From 1900 to 1905, over 45 football players died due to injuries sustained on the field; a tragic death toll for a ball sport in this era. In the 1905 season alone, 18 players died and over 100 sustained serious life-altering injuries.<sup>16</sup> This doesn't even mention the repercussions of chronic traumatic encephalopathy (CTE), a brain degeneration caused by repeated trauma to the head or neck area which was undiscovered at the time.<sup>17</sup> While this is new research, it is estimated that over 91% of today's college

---

<sup>13</sup> Unlisted. Dribble, Hack and Split: The origins of Soccer and Rugby. Pro Football Research Association. 2000

<sup>14</sup> Bois, Jon. 222-0. *PRETTY GOOD, EPISODE 10.*, 2016.

<sup>15</sup> Zezima, Katie. "How Teddy Roosevelt Saved Football." Washington Post, May 29, 2014.

<sup>16</sup> Ibid.

<sup>17</sup> "What Is CTE? | Concussion Legacy Foundation."

football players (2019 season) suffer from CTE and other debilitating injuries.<sup>18</sup>

Without proper treatment and satisfactory equipment, that percentage would be higher for those who played during the early 1900's era.

During a November 1905 game, Union College halfback Harold Moore died of a cerebral hemorrhage after being kicked in the head while trying to tackle a New York University player.<sup>19</sup> This and many other deaths caused football to receive overwhelming negative sentiments by fans and administrators. The President of Harvard even equated the sport to "*homicide*". The Cincinnati Commercial Tribune even ran a cartoon depicting a grim reaper standing over a goalpost.<sup>20</sup>

With universities like Duke, Columbia, and Northwestern suspending their programs, many people believed this was the end for American football, at least at the collegiate level.<sup>21</sup> One of the figures rising in opposition was President Theodore Roosevelt. Roosevelt, a Harvard graduate, was also an avid sportsman and enjoyed returning to Massachusetts and watching the Crimson play. Roosevelt was also a first-hand witness to the gruesome side of intercollegiate football. Roosevelt's son, Teddy Roosevelt Jr., received a serious gash over his left eye which was said to be "bleeding profusely" by the Salt Lake Herald on October 15, 1905. From the story in the paper, this opened Roosevelt's eyes to the dangers of American football and the serious consequences it could have on the youth of America. Roosevelt, along with NYU

---

<sup>18</sup> "What Is CTE? | Concussion Legacy Foundation."

<sup>19</sup> Zezima, Katie. "How Teddy Roosevelt Saved Football." Washington Post, May 29, 2014.

<sup>20</sup> Watterson, John S. "The Gridiron Crisis of 1905: Was It Really a Crisis?" Journal of Sport History 27, no. 2 (2000): 291-98.

<sup>21</sup> Zezima, Katie. "How Teddy Roosevelt Saved Football." Washington Post, May 29, 2014.

Chancellor Henry MacCracken, moved to create a standardization of safety procedures and new rules for improving the game of American football.<sup>22</sup>



Figure 2 Cincinnati Commercial Tribune 1905

While Roosevelt's influence over the years have been seen as an exaggeration by historians, his foundational role in establishing the first intercollegiate rules committee over the safety protocols of football, in a sense, saved the sport from being

---

<sup>22</sup> Zezima, Katie. "How Teddy Roosevelt Saved Football." Washington Post, May 29, 2014.

banned nationwide. While competing factions, including Harvard President William Reid Jr. who wanted to reform the game, and Yale Coach Walter Camp, known as the father of American football and wanted to keep the brutal aspects of the game debated for their merits, altered the course of athletics history in America.<sup>23</sup> With neither side being truly satisfied with the changes, or lack thereof, Roosevelt, MacCracken, Reid Jr. and Camp, moved to create the Intercollegiate Athletic Association (IAA), whose sole purpose was to help maintain the safety of intercollegiate sports in the United States and regulate the sport.<sup>24</sup> This change of regulation began a power shift of college sports going from school and regional affiliations to a national entity under the roof of the IAA. With new rules in place, American football became viewed as safer and thus became more popular amongst spectators. The IAA also began to expand its reach over other intercollegiate sports, citing their success in football. Changing to their current name National Collegiate Athletic Association (*NCAA*) in 1910<sup>25</sup>, the organization has maintained its position as one of the cornerstones of American sporting culture and the most powerful body in collegiate athletics.

---

<sup>23</sup> Smith, Rodney K. "A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics" 11 (n.d.): 18

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

## Chapter 2: “Student-Athlete” – A Court’s Mantra

As the NCAA grew its power and reach across college sports, it also looked to define the rules and eligibility restrictions around college athletes. As stated before, a major concern for the NCAA and the basis of college athletics was the use of ringers and ineligible players who would be hired to play for gain and unfair advantage. Before the NCAA, eligibility rules merely required players to be enrolled at the given school in order to play. Many school administrators would work around these rules by allowing semi-professional or professional players to take a fake class, termed a “paper class” to gain eligibility to play.<sup>26</sup> This type of rule-bending needed to be stopped, and the NCAA took on the task of defining what it meant to be a collegiate athlete.

One of the most important terms to understand in regard to NCAA athletes is amateurism. Amateurism is defined as practicing an activity, especially a sport, on an unpaid rather than a professional basis. A secondary definition cites amateurism referring to being incompetent at a particular activity or skill.<sup>27</sup> The idea here is that based on the quality of the activity, a worker or employee would be paid for the level of competence, with college athletes not as skilled as professional athletes. This distinction is still present in legal defenses by the NCAA for the definition of amateurism.

Amateurism has forever been the cornerstone of the NCAA’s assertion that under the state of college sports the labor is unskilled, and players are not creating wealth from their efforts. Under current guides, the NCAA is protected from worker’s compensation laws. Worker’s compensation is a semi-insurance granted to employees

---

<sup>26</sup> Navarette, Monica. “College Athletes Cut Corners with Paper Classes – The Telescope.” Accessed May 3, 2021

<sup>27</sup> Booker, Brakkton. “College Athletes Are Now Closer To Getting Paid After NCAA Board OKs Plan,” n.d., 7

so if they are harmed or injured in the line of work, their employer would be responsible to pay the damages and lost wages. Recalling why the NCAA was formed, even with changes to their main sport of American football, serious injuries and tragedies still took place on the field. Players had debilitating injuries, some of which never allowed them to be able to fully work again. This was the case of Ernest Nemeth, a player at the University of Denver who was significantly debilitated from work.<sup>28</sup> In 1953, he sued his alma mater for lost wages while participating in their football program, arguing with the amount of money brought in by the school and the schedule as a student athlete, he should be classified as an employee and be eligible for worker's compensation. The Colorado Supreme court upheld Nemeth's claim, and he was one of the few players documented to receive a settlement payment from a university for athletic pay.<sup>29</sup> This would open the door for NCAA athletes to classify themselves as employees, meaning that the NCAA would have to pay wages, workers compensation, insurance, and other benefits under law.

The NCAA and university presidents were alarmed by this ruling. This new finding would threaten the backbone of the NCAA's authority and legislation made to create college athletics an amateur endeavor, allowing the universities to keep the lion's share of the profits and power. When a new case arose in Colorado after the *Nemeth v. University of Denver*, the NCAA protected itself and the organization it maintained to run college sports.

---

<sup>28</sup> Smith, Rodney K. "A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics" 11 (n.d.): 18

<sup>29</sup> *Ibid.*

The landmark case was *Dennison v. Fort Lewis A&M*. Ray Dennison was a right guard who played for the Fort Lewis A&M Aggies football team in 1955. On September 24, Fort Lewis A&M traveled to play against Trinidad Junior College in an Empire Junior Conference game.<sup>30</sup> On the kickoff, Dennison went for the tackle on Trinidad's ball carrier and missed, leaving the right knee of the Trinidad player to align perfectly with Dennison's helmet. Dennison's skull was fractured from the top down and shattered at the base between his neck and spine. Dennison was rushed to the Trinidad hospital where he would slip into a coma, eventually dying from his injury 30 hours after the collision. His wife and three children were at his bedside when he passed. Dennison held an on-campus job at the university to help support his family, and they were left with very little after his passing. Billie Dennison, Ray's widow, filed a claim in the state of Colorado to claim worker's compensation for Ray's death playing intercollegiate football, similarly to Ernst Nemeth. Her claim passed the office, classifying Ray as a university employee, and was upheld by the district court in Colorado.<sup>31</sup> The case rose once again up to the Colorado Supreme Court, where the NCAA and the State of Colorado State Compensation Insurance Fund fought the case with a new term which did not exist as a main stay within intercollegiate athletics but would define the next 64 years of the NCAA and its athletes.

In 1957, the term "student-athlete" was born. The reasoning behind the creation of this phrase was to show that Dennison and other athletes were not employees, or even full-time athletes, but their part-time status as a student placed them in a unique,

---

<sup>30</sup> Slothower, Chuck. "Fort Lewis' First 'Student-Athlete.'"

<sup>31</sup> McCormick, Robert A, and Amy C McCormick. "The Myth of the Student-Athlete: The College Athlete as Employee." *Washington Law Review*, n.d., 89.

non-binding position with the university. This defense allowed the NCAA to acknowledge their participants as being more than just students, but also not at a non-amateur level that would allow the classification as an employee. The term was deliberately ambiguous and found the exact middle ground to grant the NCAA the power it needed over its “student-athletes”. The court, with the new term in play, found in favor of the NCAA, stating that Dennison was not an employee and Fort Lewis A&M was not a sports-only institution:

*“Since the evidence does not disclose any contractual obligation to play football, then the employer-employee relationship does not exist... Fort Lewis is not in the football business. In fact, the state-conducted institution, supported by taxpayers, could not as a matter of business enter into the maintenance of a football team for the purpose of making a profit directly or indirectly out of the taxpayers’ money.”<sup>32</sup>*

This ruling is still the most significant in the history of intercollegiate athletics in the United States and the term student-athletes has not just become a legal defense for the NCAA, but also a mantra for how the organization works and operates.

One of the influential minds behind this new phrase was Walter Byers, who was the NCAA’s first Executive director and first ever full-time employee in 1951.<sup>33</sup> Byers and his vision for college sports still largely exists today. He founded the NCAA’s enforcement division which, in the name of amateurism, went after schools and coaches caught breaking the rules. He also worked to help bring college sports to television and

---

<sup>32</sup> Slothower, Chuck. “Fort Lewis’ First ‘Student-Athlete.’”

<sup>33</sup> Coates, Ta-Nehisi. “The Shame of the NCAA.” The Atlantic, October 17, 2011.

helped nationalize the NCAA Men's Basketball Championship tournament into one of the organization's biggest cash cows. It was Byers and the NCAA's legal team who crafted the term "student-athlete" and argued against Billie Dennison. Even with his fame, Byers shied away from the spotlight and rarely attended NCAA tournaments and events, which led some to compare him to an elusive leader of a foreign nation.<sup>34</sup>

While Byers's story is important to understanding how his vision helped shape the future of college sports during his time at the NCAA, what he did after he left the NCAA is perhaps more monumental. Byers left the NCAA embedded in some controversy. After the NCAA lost a Supreme Court case which allowed individual schools and conferences to negotiate television contracts, Byers and the NCAA were dealt a critical defeat and caused the NCAA to lose power they held over the conferences.<sup>35</sup> This led to schools and conferences generating more revenue and the NCAA losing significant power over their member institutions. In an interview in 1986 after the defeat, Jack McCallum of Sports Illustrated asked Byers about what he views as his role in enforcing amateurism in college sports. Byers remarked on how the NCAA needs to find another way to support athletes, and the model of amateurism would no longer be appropriate for college sports.<sup>36</sup> McCallum was shocked and so was the NCAA. For over 30 years, Byers was the largest supporter of amateurism sports, and he struck a first blow against the NCAA's business model. From the records, Byers unceremoniously "retired" from the NCAA two years after this interview.

---

<sup>34</sup> Coates, Ta-Nehisi. "The Shame of the NCAA." *The Atlantic*, October 17, 2011.

<sup>35</sup> Given, Karen. "Walter Byers: The Man Who Built The NCAA, Then Tried To Tear It Down." October 13, 2017

<sup>36</sup> *Ibid.*

Byers did not back down from his sentiment and the new war he began to wage against the institution he worked so many years to form. In 1994, Byers was invited to attend and speak at the Kansas City Sports Commissions annual gala dinner. The commission was honoring Byers with an award for his work towards amateurism sports. In what was supposed to be a simple speech, Byers took the chance to launch a new attack on amateurism, much less subtle than before. Knowing the new Director of the NCAA, Dave Berst, was in the audience, Byers offered a short, but poignant remark:

*"Each generation of young persons come along and all they ask is, 'Coach, give me a chance, I can do it.' And it's a disservice to these young people that the management of intercollegiate athletics stays in place committed to an outmoded code of amateurism... And I attribute that to, quite frankly, to the neo-plantation mentality that exists on the campuses of our country and in the conference offices and in the NCAA. The coach owns the athlete's feet, the college owns the athlete's body and the athlete's mind is supposed to comprehend a rulebook that I challenge Dave Berst, who's sitting down in this audience, to explain in rational terms to you inside of eight hours."<sup>37</sup>*

As one can imagine, nobody applauded. Byers wrote his memoir *Unsportsmanlike Conduct: Exploiting College Athletes* with Charles Hammer in 1995. He viewed the book as a way to tear down the empire that he built in the NCAA and to apologize for how little he could do to fix it.<sup>38</sup>

---

<sup>37</sup> Given, Karen. "Walter Byers: The Man Who Built The NCAA, Then Tried To Tear It Down." October 13, 2017

<sup>38</sup> Given, Karen. "Walter Byers: The Man Who Built The NCAA, Then Tried To Tear It Down." October 13, 2017

But one thing stands above all else: **Walter Byers is right.**

Ever since *Dennison v. Fort Lewis A&M*, the model of NCAA amateurism has never been touched. Student athletes are not allowed to receive any benefits for their play during college or any pay from their injuries. Whether directly or indirectly from the local community or school booster, athletes cannot accept any cash payments, loans, donations, or even gifts-in-kind.<sup>39</sup> This action is viewed as “impermissible benefits”, another commonly used slogan by the NCAA.

It would be one thing if no other sports organizations have shown that a shift from an amateur athletic base to a ‘pay for play’ model was even possible. But there have been during this same time frame of the NCAA’s growth, and one of which encompasses the largest sporting event in the world: The Olympics.

For many years, the Olympics operated under the same principle of the NCAA, only allowing amateur athletes to compete in events. The rules were mixed with a sense of national pride, as even “average joes” could supposedly rise to Olympic immortal glory.<sup>40</sup> But much of the rules were rooted in classism, as to separate the athletes from working people, and giving a “pure” clean image to adopt as a national hero for superior athletic performance. Much like the Greeks who founded the Olympics, the event was huge on the aesthetic value added into the sport:

*“these aesthetics – of classically-sculpted male bodies; mythical flames and torches; flags, ritual ceremonies and mass displays; paintings, sculptures, hymns and poetry; and public incantations of honour and duty – briefly gave*

---

<sup>39</sup> National Collegiate Athletic Association. 1998. *NCAA Division I manual*. Overland Park, KS: NCAA.

<sup>40</sup> Andrews, Ross. “Push to Allow Professional Athletes Took Hold in 1968 Olympic Games.” *Global Sport Matters*, October 15, 2018.

*amateur sport a cultural status that no form of sport in western life ever had in the past.”<sup>41</sup>*

The Olympics, for a long time, defined what amateurism meant in sports. It pioneered the idea of the “pure athlete” that the NCAA adopted into its student-athlete definition. The Olympics began to grow in attention as well as importance. The major global conflicts of World War I and II put a greater sense of national pride tied to the games. The 1936 Berlin Olympics was one example, as the Americans viewed it as crucial to defeating Germany’s Nazi regime. Money and support began to help train and support athletes competing, but under the rules of global amateurism they could not accept such benefits. So many countries began to use performance enhancing drugs (PEDs) in order to gain a clear advantage. Especially since athletes could not support themselves with their endeavors in professional sports, they had to find unique ways to gain advantage in the limited time they were allowed to train. In the 1950s and 60s, steroids were commonly used in Olympic competition by many countries.<sup>42</sup> At the time, doping was seen as acceptable during professional athletics, but blasphemous during the purity of the Olympic games. These amateurs using drugs could present a major problem for the Olympics and their perception to their audience.

Rampant cheating was not the only problem that plagued the Olympics during this time. The line between professional and amateur athletics was becoming very gray. In 1984, four hockey players were banned from competing after lying about playing professionally in the National Hockey League (NHL) in the United States. However,

---

<sup>41</sup> Andrews, Ross. “Push to Allow Professional Athletes Took Hold in 1968 Olympic Games.” Global Sport Matters, October 15, 2018.

<sup>42</sup> Greene, Bob. “What Changed the Olympics Forever - CNN.” CNN, July 23, 2012.

three players were allowed to play with similar backgrounds for Russia, one of whom played over 300 games for the NHL. The International Olympic Committee (IOC) realized their definitions under Rule 26, mandating that “may not have received any financial rewards or material benefit in connection with his or her participation, except as permitted by the international federation” was not concrete or defined for all 151 member countries to follow.<sup>43</sup> Sponsors for the Olympics also pushed hard for a switch to allow professional athletes, as they could invest further in names the world public was already familiar with (e.x. Michael Jordan), which would lead to their increased visibility rather than having to rely on collegiate or amateur athletes who were only known to the public every four years. “The Pros are there for a reason... People will tune in to watch athletes they know. The pro athletes are pre-sold to the public, which means increased viewership,”<sup>44</sup> said journalist Ron Rapoport.

The rules of amateurism had been devastating for American greats like Jim Thorpe, who won the 1912 decathlon and pentathlon, but was forced to give back his medals due to accepting a small amount of money he made playing semi-professional baseball during his college summers, a total amount today equaling less than \$500.<sup>45</sup> The public began to have different sentiments, not caring whether amateur or professional athletes competed in the Olympics. Many questioned if the Olympics were the greatest sporting event in the world, why did we not allow the best athletes to compete in the games? The last stark opposer to professionalism and the Olympics was

---

<sup>43</sup> Greene, Bob. “What Changed the Olympics Forever - CNN.” CNN, July 23, 2012.

<sup>44</sup> *Ibid.*

<sup>45</sup> Andrews, Ross. “Push to Allow Professional Athletes Took Hold in 1968 Olympic Games.” Global Sport Matters, October 15, 2018.

the IOC President Avery Brundage, who said during a 1955 speech on the state of amateurism and the Olympic games:

*“We can only rely on the support of those who believe in the principles of fair play and sportsmanship embodied in the amateur code in our efforts to prevent the Games from being used by individuals, organizations or nations for ulterior motives.”<sup>46</sup>*

Once Brundage left the IOC, the flood gates opened, and professional athletes were allowed to compete with the changing of Rule 26. With the American audience allowed to watch the Dream Team play basketball in the 1992 Barcelona Summer Olympics, the only question left was why these changes were not made sooner.

The Olympics abandoned their concept of amateurism when they saw the writing on the wall about the future of their sport. They created fundamental change and have grown the size and presence of the Olympics to what we see today, with over 4.7 billion viewers worldwide for the Beijing Olympic Games in 2008. The question over the purity of Olympic sports is never brought into conversation anymore. The younger generation today who watch the sport would never know there was a time where professionals were banned.

Surprisingly, this same argument is brought up by the NCAA in court. They claim that people would turn away from college athletics if the athletes were paid. This defense was used recently in the hearing of *Alston V. NCAA*, where the NCAA’s antitrust exemption is being brought into question by the Supreme Court. Justice Bret Kavanaugh brought up this point during proceedings:

---

<sup>46</sup> Andrews, Ross. “Push to Allow Professional Athletes Took Hold in 1968 Olympic Games.” *Global Sport Matters*, October 15, 2018.

*"It does seem ... that schools are conspiring with competitors to pay no salaries to the workers who are making the schools billions of dollars on the theory that consumers want the schools to pay their workers nothing."<sup>47</sup>*

As the NCAA argues that people would turn away from college athletics if the model of amateurism changes, we see through the example of the Olympics, this wouldn't necessarily be the case. While the cases are still being decided, this could be seen as a guide for how the NCAA could change their base and still maintain their support base from boosters, fans, and other consumers. Like the Olympics, this base shift away from complete amateurism to a partial model including NIL may lead to the NCAA increasing their market power with higher profile athletes who no longer need to remain amateurs to compete.

While the merits of amateurism can be debated, one thing that cannot be is the change in the state of collegiate sports dramatically evolving since 1957. In 2017-18, the NCAA eclipsed \$1 billion in operating revenue, a majority coming from the college football playoff and NCAA Division 1 Men's Basketball tournament, March Madness. College sports have become a national spectacle, with the College Football Playoff averaging over 10 million viewers annually over three major games.<sup>48</sup> Member institutions like Texas, Ohio State, and Texas A&M each bring in over \$200 million a year in revenue. Even lower revenue programs brought in revenue; Coppin State still accrued over \$3 million in the 2018-19 school year.<sup>49</sup> These values eclipse previous revenues and offer an important question: As college athletics has undergone

---

<sup>47</sup> Alston v. NCAA. "Docket for 20-512," October 19, 2020.

<sup>48</sup> Cameron, Steve. "The NCAA Brings in \$1 Billion a Year — Here's Why It Refuses to Pay Its College Athletes," n.d., 6

<sup>49</sup> "College Finances - USA TODAY."

fundamental change, why hasn't the NCAA's business model and authority over athletes changed as well?

Student-athletes are more valuable to a school than ever before. A study by Insider found that the average FBS Division 1 Football player is worth over \$163,087 a year to a school using metrics from the National Football League's Collective Bargaining Agreement which mandates certain revenues be shared back with paid professional players. The high values placed on college athletes is immense within all sports categories. With help from social media, Sedona Prince, a women's basketball player at the University of Oregon, gained over 500,000 interactions in March of 2021, after highlighting the gender inequalities between the men's and women's NCAA tournament accommodations.<sup>50</sup> These interaction numbers are rare to reach, and only seen by the top social media influencers who can earn thousands to millions of impressions on their platforms. But due to NCAA rules, Prince earns nothing from her platform. John Oliver narrated a piece about the revenue brought in by the NCAA basketball tournament and freedoms given to athletes:

*"There is nothing inherently wrong with a sporting tournament making huge amounts of money, but there is something slightly troubling about a billion-dollar sports enterprise where the athletes are not paid a penny."*<sup>51</sup>

This is the crux of the issue that is facing intercollegiate athletics. With the NCAA sticking to their non-employee defense and mantra "student-athletes", they are

---

<sup>50</sup> Killian, Ann. "Women's Tournament Exposed NCAA's Sexism, but Will the Calls for Change Be Heard?" San Francisco Chronicle, April 6, 2021.

<sup>51</sup> Oliver, John. The NCAA: Last Week Tonight with John Oliver (HBO), 2015.

actively hurting their student athletes by not allowing them to achieve economic freedoms. There are hundreds of student-athletes who become injured and are not allowed to continue playing professionally or semi-professionally, meaning they haven't reaped any economic benefits for their years of work and effort for their schools. It's impossible for them to manage their demanding schedule with academics and athletics. The NCAA's argument is they risk losing their fanbase with the turn to allowing athletes to profit being supposedly unpopular. This is shown to be false by the example of how the Olympic games shifted their platform and did not lose their power or revenue in the process. Since *Dennison vs. Fort Lewis A&M*, no major changes have come to the fundamental product of college athletics to the benefit of the NCAA and its partner institutions.

**Until now.**

### **Chapter 3: “Hey, That’s Me.” – Name, Image, and Likeness**

The radical change coming to college athletics is called Name, Image, and Likeness, or abbreviated to be NIL. NIL promises to be a great step in altering the business model of the NCAA, its conferences, and member institutions. What allows NIL legislation to be so unique is that it alters the definition of amateurism itself and could begin rewriting many of the rules that govern college athletics and the relationship between universities and their student-athletes. To understand the full scope of NIL, we need to understand the foundations of which these new policies rest on, what wide impact they could have on college sports, how they came into public consciousness and became one of the largest conversations in college athletics. We are currently faced with the implementation of these policies.

Name, Image, and Likeness harkens back to the inability for anyone to be able to sell the use of their name, pictures and images of themselves, and general likeness. In non-sports conversations, this is called the ‘right to publicity’. When star NFL quarterback Patrick Mahomes appears on a commercial for State Farm Insurance, he is selling use of his name and image to have State Farm use him in advertising. When music artist Drake holds an event for fans where he can sign autographs for a small charge and be able to take images with the artist, he is using his NIL rights to leverage profit for himself and his brand. When a social media influencer creates a video featuring themselves holding a certain product which was paid for by the company to include, this is their NIL right to do so. There are federal and state laws in place to allow every individual to use and sell their own name, image, and likeness to help promote and earn revenue from themselves. While most people never earn a status that

gives them the ability to sell these proprietary rights of themselves, it is a large discussion and controversial area when it comes to NCAA student athletes who hold wide acclaim and popularity.

Under the current guide of the NCAA rules, athletes are not allowed to market and sell their own Name, Image, and Likeness for commercial benefit. From the NCAA's student handbook, for D1 athletes they state:

*“To maintain NCAA eligibility, Division I student-athletes may not promote or endorse a commercial product or service, even if they are not paid to participate in the activity... Athletes may use their image to continue participating in non-athletically related promotional activities if they were initiated before college enrollment.”<sup>52</sup>*

The NCAA does, however, grant waivers for athletes who have produced a product or endorsements while not participating in an NCAA event, such as promoting an invention they created. These are few and far between. To protect its idea of amateurism, the NCAA put these restrictions in place to shield itself from brands and other non-sports properties taking interest and advantage of student-athletes. When these rules were constructed, it was well before the creation of the internet and social media. Usually, an endorsement would involve signing autographs down at a local car dealership, being featured in a radio or TV advertisement, or maybe smoking a certain brand of cigarettes. College sports were not a national phenomenon until the Board of Regents v. NCAA 1984 Supreme Court case, where the court ruled the NCAA could not control and mandate the television contracts of their member institutions or

---

<sup>52</sup> National Collegiate Athletic Association. 1998. *NCAA Division I manual*. Overland Park, KS: NCAA.

conferences.<sup>53</sup> This ruling allows for two changes to the sport. With college sports exploding in popularity and the rise of intercollegiate football games broadcast on television, some collegiate stars became larger than some professional players. There was also a massive cash infusion into intercollegiate sports which allowed conferences and NCAA member schools to make massive revenues. College sports went from a basically small profit industry being seen just on the level of the NCAA to a multi-million-dollar cash cow overnight for schools, conferences, and the NCAA, each raising billions of guaranteed revenues each year.<sup>54</sup>

However, the NCAA and its member schools were hypocritical when creating the rules for student athletes to follow and their own course of action when selling student-athletes own likeness for their benefit. As shown earlier, the NCAA wanted to avoid their student-athletes becoming billboards and losing the “purity” of amateur athletics in its entirety. They preached this while also finding ways to increase their advertising and television revenue from their corporate partners to pair with their athletic broadcasts. Companies like Coca-Cola, Pepsi, Anheuser Busch, Coors, Ford, and other prominent companies also established deals with the NCAA and its schools to help promote their products, using college sports as a vehicle to reach consumers. The spectacle around sports began to grow larger and athletes who would only be known regionally became national names.<sup>55</sup> Athletes like Brian Bosworth, a linebacker at

---

<sup>53</sup> Booker, Brakkton. “College Athletes Are Now Closer To Getting Paid After NCAA Board OKs Plan,” n.d., 7.

<sup>54</sup> For example, the University of Oregon earns over \$127 million in revenue during the 2018-19 academic year, they rank 26<sup>th</sup> in the country. The top school Texas earned over \$223 million in revenue in the same year.

<sup>55</sup> Bosh, Chris. “It’s Madness That We Don’t Pay College Athletes” The Players’ Tribune. Accessed April 24, 2021. <https://www.theplayerstribune.com/posts/chris-bosh-ncaa-college-athletes>.

Oklahoma from 1984 to 1986 and his famous pseudonym “The Boz” captured the attention of audiences. While Bosworth couldn’t make any money from his own personality and slogan, Oklahoma became “must watch” television and helped promote the school’s licensing of Bosworth. His unique rainbow mohawk hairstyle was designed onto foam hats and companies wanted to advertise during Oklahoma games. All these assets benefitted the school, the NCAA, and the sponsor company, but not

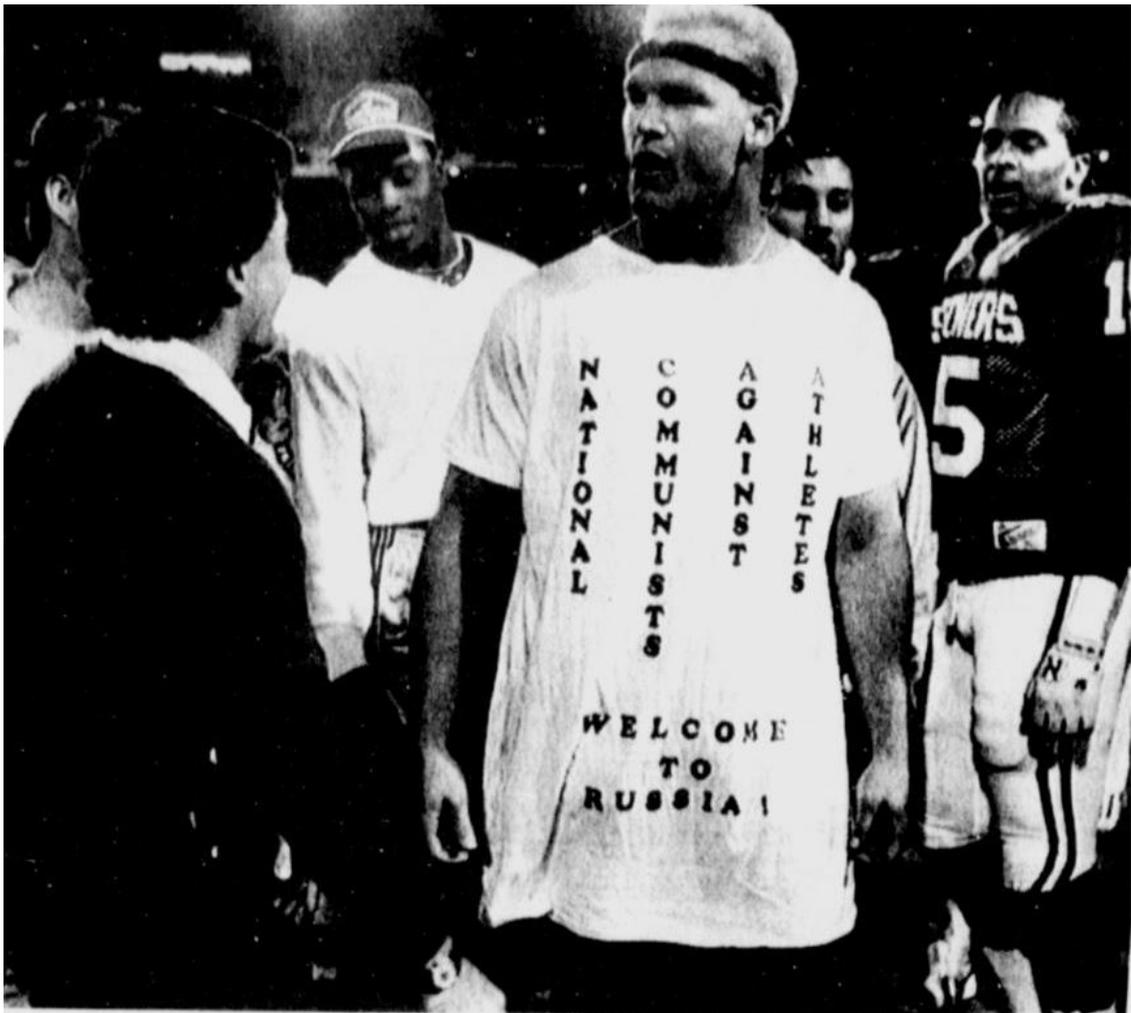


Figure 3 Getty Images 1985

Bosworth himself. In his final collegiate game, Bosworth was suspended due to his use of steroids and wore the infamous “NCAA: National Communists Against Athletes.

Welcome to Russia!” shirt on the sideline to protest for how he had been taken advantage of by the NCAA.<sup>56</sup>

In order to help with group licensing, the NCAA and its member schools worked to form the Collegiate Licensing Company (CLC) to help sell larger swaths of the NCAA’s licensing rights, such as institution logos, stadium likenesses, and trademarked phrases. This allowed companies to create broader items for all NCAA institutions and not have to bargain with individual schools. One of the companies the NCAA frequently worked with in licensing deals was Electronic Arts, Inc. otherwise known as EA and subdivision EA Sports. EA has a long history with the NCAA in producing two very important works when it comes to Name, Image, and Likeness legislation: NCAA Football and NCAA Basketball.<sup>57</sup>

EA sports first began to produce NCAA licensed video games in 1996 when they produced College Football USA 96. The game first featured the school logos and name of the NCAA’s 108 Division 1-A programs and the four iconic college football bowl games: The Rose, Sugar, Fiesta, and Orange bowls, with conference affiliations. The game would only feature generic randomized players until EA renamed the series NCAA Football 98 and put out yearly installments of the game until 2014.<sup>58</sup> The NCAA sold EA sports the rights to use the college football player’s likenesses, which they could emulate on the field with matching height, weight, hometown, abilities, number, age, etc. The virtual players were almost identical matches to the current players, but the virtual players were named to be “Position, #Number” as to avoid a direct

---

<sup>56</sup> Matula, Thaddeus. “Brian and the Boz | ESPN 30 for 30.” ESPN, October 28, 2014.

<sup>57</sup> Vint, Patrick. “The NCAA Knew EA Sports Had Real Players ‘hidden’ in College Football Games,” n.d., 3.

<sup>58</sup> *Ibid.*

correlation for using the name of the player to earn a profit. Marcus Mariota, while he was at Oregon, was featured in NCAA Football 14 as ‘QB #8’ on the Oregon Ducks. His image was almost identical to his likeness and was one of the best quarterbacks in the game during his Heisman winning season in 2014. It is still unknown the revenue or profit that was collected by the NCAA and the CLC selling their players image and likenesses to EA Sports for the use in the video game, but we do know zero profits were collected by players who “appeared” digitally in the game. Until the game series was cancelled in 2015, the game each year made approximately \$80 million and sold over 2 million units a year.<sup>59</sup> Why was this incredibly profitable game cancelled? It’s because of the work of a former player named Ed O’Bannon and he quickly became the center of the college sports universe.

Ed O’Bannon was a former basketball star at the University of California Los Angeles (UCLA). He helped UCLA win a national championship in 1995 and was named the NCAA tournament’s most valuable player and an All-American. Bannon was selected ninth overall in the 1995 NBA draft, but was never able to find a place in the league and retired from basketball after a brief overseas career at the age of 32.<sup>60</sup> While this is where most sports stories stop, O’Bannon was not done. While he was visiting a friend’s house, he noticed his son playing one of EA’s NCAA video games, specifically their NCAA basketball game. O’Bannon noticed a player on one of UCLA’s historic teams, ‘PF #31’. O’Bannon noticed how the player looked like him,

---

<sup>59</sup> Vint, Patrick. “The NCAA Knew EA Sports Had Real Players ‘hidden’ in College Football Games,” n.d., 3.

<sup>60</sup> Solomon, Jon. “Ed O’Bannon v. NCAA: The Arguments for and against a Class-Action Suit - al.Com.”

played like him, and wore the same number as him. It was him. “Hey, that’s me,” O’Bannon yelled.<sup>61</sup>

O’Bannon took action after this revelation and launched into a lawsuit with the NCAA on behalf of former and current football and basketball players alleging Antitrust violations for the NCAA for not compensating their athletes for using the image and likeness within the video game. Additionally, the NCAA holding onto these rights for many years after the college careers of O’Bannon and others had long ended was also highlighted in the lawsuit.<sup>62</sup>

For the general public of college sports fans, it was the Ed O’Bannon v. NCAA. The case revealed the true nature of college sports and the profitability of the industry behind it with little to no benefit for the athletes. When O’Bannon joined with Samuel Keller, a former Quarterback at Arizona State and Nebraska, who also had a lawsuit against the NCAA with the use of Name, Image, and likeness within EA Sports video games, the joint lawsuit became top news in the college sports world. The lawsuit was to be decided in federal court of the Northern District of California by Judge Claudia Wilken in 2013.<sup>63</sup> In Wilken’s first move, she divided the lawsuit, relieving damages of the NCAA against former players appearing in the EA Sports video games and separated the Antitrust lawsuit of O’Bannon and the right of publicity claims under the Keller suit. One year before the Keller trial in June 2014, the NCAA settled the suit for \$20 million dollars, money which was divided and distributed between former players

---

<sup>61</sup> Oliver, John. *The NCAA: Last Week Tonight with John Oliver* (HBO), 2015.

<sup>62</sup> Solomon, Jon. “Ed O’Bannon v. NCAA: The Arguments for and against a Class-Action Suit - al.Com.”

<sup>63</sup> O’Bannon, Edward C. *O’Bannon V. NCAA* (n.d.).

on the request of the plaintiffs. But the Ed O'Bannon suit was brought to trial and deliberated by the NCAA and O'Bannon's attorneys. They argued over the state of amateurism within college athletics and the role the NCAA covers in controlling the use of Name, Image, and Likeness. Michael Hausfield, the lead attorney for O'Bannon said this during his opening remarks on the state of the trial and rules given by the NCAA:

*"Here, despite the fact it's an antitrust case and not an employment case, you have a single rule that's applied by the NCAA on all conferences and member institutions and licensees... Athletes get nothing. There's no discretion."*<sup>64</sup>

In June 2014, the three-week trial ended with a statement by Judge Claudia Wilken:

*"The NCAA's challenged rules unreasonably restrain trade in violation of Section 1 of the Sherman Act. Specifically, the association's rules prohibiting student-athletes from receiving any compensation for the use of their names, images, and likenesses restrains price competition among FBS football and Division I basketball schools as suppliers of the unique combination of educational and athletic opportunities that elite football and basketball recruits seek. Alternatively, restrain trade in the market where these schools compete to acquire recruits' athletic services and licensing rights."*<sup>65</sup>

It was proven was that the NCAA violated Antitrust laws by prohibiting athletes from being able to market their own Name, Image, and Likeness, particularly within Division 1 programs. The NCAA was shown to not have the right to eliminate price competition and allow themselves to sell the name and image for their own benefit with

---

<sup>64</sup> O'Bannon, Edward C. O'Bannon V. NCAA, 8.

<sup>65</sup> O'Bannon, 71

no derivative benefit offered to the athletes. EA Sports was ordered to no longer sell or create games featuring student-athlete images or likenesses without compensating them for such appearances. EA Sports stopped producing the NCAA Football game in 2013. An injunction was filed by the NCAA shortly after and was granted until the NCAA could work to create Name, Image, and Likeness legislation to address the changes ordered by the court.<sup>66</sup>

One piece not addressed in *O'Bannon v. NCAA* was the state of amateurism within the NCAA. Judge Wilken acknowledged the topic will need to be addressed in the future, and only stated that if the amateurism state of college athletics is to be preserved, then athletes cannot accept sums of money that outweigh their educational costs from their school. At the time of writing, this topic is currently being addressed in the Supreme Court with *Alston v. NCAA*.<sup>67</sup>

Ed O'Bannon changed the course of college athletics forever and started the "gold rush" for NIL legislation and regulation, finding a way to integrate it safely into the collegiate athletic model. For some fans, O'Bannon became the most hated man in intercollegiate sports. He helped lead the charge to cancel the beloved NCAA video game and begin to uproot a long history of amateurism. For the first time since its conception, the rules of college athletics began to change.

While the NCAA began to find ways to continue to push back the goalposts, they filed appeal after appeal against the O'Bannon ruling. They bartered to address what they phrased as "monumental shifts of the collegiate athletic landscape." In my interview with Kit Morris, the Director of College Sport Marketing at Nike, Inc., he

---

<sup>66</sup> O'Bannon, 72

<sup>67</sup> *Alston v. NCAA*. "Docket for 20-512," October 19, 2020.

spoke about the NCAA's relationship with NIL and a link to the rise of Fascism within Europe:

*“During his senior year at Harvard, John F. Kennedy wrote a thesis titled ‘Why England Slept’ which delved into the rise of fascism within Europe. Specifically, Germany. Great Britain never decided to act and help stop what became the greatest threat they had ever seen. In the thesis, Kennedy cites how England’s government failed to act to help prevent World War II and its initial lack of response to Hitler’s threats of war. While this may not be a direct comparison, we see that the NCAA slept on the rise of Name, Image, and Likeness within college sports. The NCAA knew this was coming but they failed to respond appropriately and chose to play defense, like England, rather than being proactive and addressing the underlying currents of the situation. Perhaps that’s what you can title your thesis, ‘Why the NCAA slept’ seeing they are now being passed by federal and state laws for supremacy in the situation.”<sup>68</sup>*

The NCAA, understanding the change in college sports since its inception, knew that the discussions around NIL were coming. They understood the position with antitrust legislation and potential challenges to their amateurism business model with the rising tide of intercollegiate sports interest and profits. The NCAA needed to be ready to adapt and create policy changes to their organization. Instead, the NCAA made no effort to prepare for this possible outcome and have been caught with their head in the sand and not ready to adapt to these changes. The injunctions filed with the courts

---

<sup>68</sup> Morris, Kit. Interview with Kit Morris, Director of Collegiate Sports Marketing at Nike. Zoom Interview, April 1, 2021.

over a temporary stay of the ruling should not have been needed if the NCAA was prepared and equipped for these predictable and foreseeable changes as an organization. Now, they face the challenge of having to play catchup with other legislative bodies as they are starting to write and pass concrete rules around NIL.

As the NCAA slept, the State of California was the first body to propose a substantive law around NIL use in college athletics. The Fair Pay to Play Act, or SB 206, was introduced into the California State Senate on February 4, 2019, and was quickly processed and signed into law on September 30, 2019 by Governor Gavin Newsom. The bill made it illegal for schools to punish athletes at a non-community college level of athletics from accepting endorsements, sponsorships, or otherwise marketing their name, image, and likeness:

*“A postsecondary educational institution shall not uphold any rule, requirement, standard, or other limitation that prevents a student of that institution participating in intercollegiate athletics from earning compensation as a result of the use of the student’s name, image, or likeness. Earning compensation from the use of a student’s name, image, or likeness shall not affect the student’s scholarship eligibility.”<sup>69</sup>*

The California state bill started a tidal wave of bills passing across the country. Even though The Fair Pay to Play Act would not go into full effect until 2023, over 38 states have drafted bills that mirror California’s, ensuring the state would not receive a recruiting advantage with high-value athletes wanting to play in states where they could earn deals for their popularity. Some of the states, like Florida, have NIL bills that go

---

<sup>69</sup> California Legislative Information. “Bill Text - SB-206 Collegiate Athletics: Student Athlete Compensation and Representation.”

into law in July 2021.<sup>70</sup> This presents major issues for the NCAA, as their rules of governance would essentially be unequal and could lead to a host of conflicts with their enforcement committee being held at bay.

Federal laws have also been placed into rotation in the House of Representatives and the Senate respectively. The most popular of these bills is proposed by Senators Cory Booker (D-N.J.), Richard Blumenthal (D-Conn.) and Chris Murphy (D-Conn.) which offers not only the ability for athletes to market their own name, image, and likeness, but also negotiate for other reforms to the collegiate athletic model. In an article with Sports Illustrated, Senator Murphy said this:

*“The college sports industry has a fundamental civil rights issue at the core of its business model, and it’s clear the NCAA doesn’t want to do anything serious to address the inequities that players face... I’m working on legislation to fix this issue by granting athletes the broad ability to make money off of their likeness, and collectively bargain for additional reforms to the system, and am hopeful it will move in this new Congress.”<sup>71</sup>*

This new bill would push far beyond the boundaries of O’Bannon v. NCAA and would delve into challenging the ideas of amateurism within the NCAA. Players would be offered a collectively bargained agreement (CBA), like professional athletes in the United States. With creating a CBA, players would have to form a union and create representation for themselves in these negotiations. This would open the door for more benefits and power given to student-athletes, something the NCAA had avoided for

---

<sup>70</sup> Business of College Sports. “Tracker: Name, Image and Likeness Legislation by State - Business of College Sports,” Updated April 24, 2021.

<sup>71</sup> Booker, Senator Cory. “Why I’m Behind the Athletes Bill of Rights,” n.d., 2

their over 100-year history. While the NCAA slept, the currents of college sports have started to change. They remain committed to reaching a federal law that works in their favor, but they may have missed their opportunity to do so unless they have an ace up their sleeve. With wide bi-partisan support for reform in college athletics, it is likely an athlete-friendly bill will pass.

After a long journey through history, we have reached the present day in April 2021. We await new developments in the Booker/Blumenthal/Murphy Bill in the Senate. The NCAA has recently shared their displeased thoughts about the bill and hope to help amend it after COVID-19 relief is passed in Congress.<sup>72</sup> The clock is ticking down to July 2021, when Florida's law goes into effect. Pandemonium may ensue if a federal law is not passed that would regulate the whole market and not disbalance the system. New information comes out daily on new stances taken on NIL. Athletic departments are beginning preparations for its eventual implementation, and new pundits, taking their stab, adding their opinions on what the eventual legislation would look like. But as the dust begins to settle, we get left with one very important question:

**What will the impact on college athletics be when NIL is eventually implemented?**

---

<sup>72</sup> Dellenger, Ross. "NCAA Athletes Rights: Two Senators Spar with CEO over NIL - Sports Illustrated," January 14, 2021

## **Chapter 4: Charting the Unknown – Key Factors for NIL**

### **Implementation**

The simple answer is nobody has any idea what the impact of NIL will be. Name, Image, and Likeness, as shown through this paper, is an incredibly complex topic with many interweaving factors and vague definitions. From just this recanting of the history and how college athletics arrived at this point offers a journey of many twists and turns, with no straight linear progression to help predict where the industry is going. From the NCAA's own inability to act on the situation and prepare for a future of NIL to now NIL as a broader civil rights issue, and the outcomes of the definition of amateurism are still up in the air, it makes sense why we don't know what will happen, especially given that new developments emerge every day.

From a baseline level of knowledge, I believe it would be challenging, but possible, to find ways to predict where NIL was going to create the greatest impacts across the different landscape of college sports. But with the multitude of different and complex landscapes to inspect from different levels of collegiate schools (Division 1, Division 2, etc.), to gender equality issues, and revenue vs. non-revenue sports programs, one set of NIL rules won't create the same impacts for each group. On top of this, with the incongruent laws being passed in each state and many of the undisclosed materials from federal laws, large impacts across college sports are impossible to see and comes on a case-by-case basis. But those individual cases are incredibly challenging as well, given their basis on a multitude of factors regarding how laws will be enacted and how the NCAA and athletic departments will take and interpret these

new results. In my interview with University of Oregon Senior Associate Athletic Director and Chief Compliance Officer Jody Sykes, she mirrored these thoughts:

*“The issue of NIL is enormous and nationwide, and this change has been needing to happen for a while. But as the date draws closer, it will take two years before we figure out the nuances of the bills, especially given that we don’t know now what’s being discussed in Oregon and Congress... It’s hard to be proactive with NIL, there are (for example) possibly ten factors, and if one changes, that changes the other ten.”<sup>73</sup>*

We will see the impacts of NIL legislation over the next two years across college athletics. It will be well analyzed and discussed by industry professionals how it will impact the future of student-athletes and the college sports model. But taking two steps back allows us to focus on the splits that exist in the paths and answer the questions at this stage in the NIL journey. By understanding the history of NIL and college sports as a whole, we can identify the roots and trunk of the NIL tree, and now we can start identifying the branching paths of the NIL concept and questions or statements that need to be reconciled to reach the leaves; the true outcome of the NIL implementation measures.

I focused on interviews coming from a variety of different opinions and angles on the NIL debate. John Brewer works for #INFLCR, a company partnering with schools who look to help provide NIL for student athletes and provides education on brand building. He helped organize the University of Oregon’s NIL education response group

---

<sup>73</sup> Sykes, Jody. Interview with Jody Sykes, University of Oregon Assistant Athletic Director and Chief Compliance Officer. Zoom Interview, April 13, 2021.

and has knowledge working inside and outside of the collegiate athletic space. Kit Morris works as Nike's Director of College Sport Marketing and has a great prospective with a longtime apparel titan which has dominated the collegiate market and how their organization may shift due to NIL. Jody Sykes is University of Oregon's Senior Associate Athletic Director and Chief Compliance Officer, her knowledge of working with the ramifications of NIL every day and past experience with rule implementations can grant great insights into not just what NIL represents, but how it will be felt, a critical component of my research question. Finally, Jeff Hawkins is the Senior Associate Athletic Director of HDC Administrations and Operations and sits on the advisory panel of Uniform Law Commission, which is working with federal lawmakers to address the finer points of NIL legislation. Hawkins's guidance on what questions are being asked among the committee and where he sees proceedings going in the near future offered amazing insights to my process.

After collecting my data and processing through my research, I used a process called qualitative content analysis which is a mixed message approach to help combine quantitative content into categories for analysis. I started assembling the questions that I had around NIL, including those posed by my interviewees, into long list that I assembled into categories of similar topics and subjects. After that initial structuring of the categories, I was able to find overlaps in these categories and created five factor areas that addressed all the questions and uncertainty around NIL. These factors give the glimpse of what NIL could look like and through analysis, where and what those impacts will ultimately be regarding NIL on intercollegiate athletics.

Below are the 5 key factors that will swing the impacts and outcomes of NIL legislation in the United States:

1. Financial/Brand/Contract Education available to athletes
2. Clear definitions of responsibility from athletes to athletic departments
3. Direct and clear communication lines with athletes on NIL matters
4. The use or advent of advisory boards/internal NIL staff for athletes
5. Equity and revenue distribution across sporting programs

These factors and questions will help determine how NIL will impact intercollegiate sports in the United States. These are not the only factors that will influence how NIL is perceived and enacted, but through the course of my research, these were the most frequent unknown areas found from my interviews and readings. These factors also come from many different areas and only occasionally overlap in their focuses. In addition, some of these questions are in the process of being actively solved, while others are still on the horizon of being addressed by athletic departments, Congress, and the NCAA. The history of this topic and discussions with these factors represent over a year of my research into this topic, and assessment of the changing tide of NIL over that span. In total, I believe these factors holistically represent critical questions and areas that NIL will need to address for it to be viewed as successful from all relevant parties: the student-athletes, athletic departments, the NCAA, and outside sponsors (ex. companies), and other key stakeholders (ex. boosters).

#### **1. Education Availability to Athletes**

Given that part of “student-athletes” includes “student”, it seems repetitive to suggest that having education available to athletes is critical to NIL. These institutions

are universities, and the athletes are already taking classes, but when dealing with NIL, the education aspect is the most critical and industry accepted method of implementation.

Especially with NIL directly dealing with sponsorships and endorsements, it is very important that student-athletes understand the implications and context behind how to form these deals, act on them, and follow up for subsequent payment. Given the way NCAA rules have governed athletes in the past, many have not had experience working with agents or outside companies in preparing contract details and acting upon them. Having this knowledge as a student-athlete will be crucial to finding ways to benefit from NIL and not be exploited by brands and other companies.

Many of these education programs are currently being implemented by athletic departments across the country. At the University of Oregon, John Brewer, former Assistant Athletic Director of Marketing and Sales and current Director of Partnerships for #INFLCR, a company specializing in partnering with athletic departments and providing NIL education, helped form the ‘Emerge’ program which he described as a professional development program for athletes at Oregon who want to pursue future NIL opportunities.

After speaking with Brewer, he said the ‘Emerge’ program contained two key focuses that will impact student athletes and their relationship with NIL: 1. Financial and contract literacy and 2. Building and marketing brands.<sup>74</sup>

---

<sup>74</sup> Brewer, John. Interview with John Brewer, Director of Partnerships of #INFLCR. Zoom Interview, March 31, 2020.

As stated earlier, building financial and contract literacy are very important when dealing with a host of companies and other stakeholders. But the program goes further to help athletes manage their money once they earn it through endorsement deals. Through a joint-study with University of Texas-Austin and Kansas State University, athletes were monitored for their spending and budgeting habits before and after taking a class titled “Money 101” that taught how to budget and maintain fiscal responsibility as college students.<sup>75</sup> 60% of these athletes reported they received little to no financial education in or before high school. Over 21% of those in the program developed a budget and 92% followed the budget well. Other athletes chose other means to track their spending and gained overall confidence to save and use finances efficiently rose and anxiety around money overall decreased, according to the study. With NIL, student athletes who wish to market themselves will receive new sources of income, some being high sums of money for their work and use of their platform. In professional athletics, 78% of NFL players go broke after retiring in two years from the league, compared to 60% of NBA basketball players in five years suffering severe financial hardship.<sup>76</sup> Many education sessions should focus on not allowing student-athletes to go down this cycle of poverty. Having student-athletes confident about using and saving their money is crucial for them benefiting fully from NIL.

The second piece to the Emerge program was the marketing and use of brands. Especially with the advent of social media, the value of student-athletes has been on the rise. As of 2021, top level student athletes have an average post value of anywhere from

---

<sup>75</sup> Rubin, Lisa M, Sonya Britt-Lutter, Daron K Roberts, Arin C Dunn, Fanny Fang, Camila Haselwood, and Taylor R Brown. “Enhancing Financial Literacy Among Student-Athletes: 2018 NCAA Innovations in Research and Practice Grant Final Report,” n.d., 21.

<sup>76</sup> Ibid.

\$2,000 to \$20,000.<sup>77</sup> This metric is calculated looking at social media interactions across platforms, click through rates, and sponsorship value attributes to those root metrics. Opendorse, a company like #INFLCR which helps build athletes brands through social media strategy, conducted a study looking at the values for some of the top collegiate athletes in the 2019-2020 seasons. Figure four shows the power at the top of the ranks, with big name football stars like Trevor Lawrence and Justin Field each capturing over \$10,000 per post but the numbers also demonstrate another interesting trend. Two of the five top valued athletes are female athletes in UCONN basketball player Paige Bueckers (who was in high school at the time of this study), and Oregon softball's Haley Cruise could each earn over \$20,000 and \$4,000 per post. As a note, this study doesn't take into account TikTok where Haley Cruise has a following of over 717,100 and 23.1 million likes across her posts, so in this study of Twitter and Instagram, she is rather devalued. But the trend shows that unlike traditional media coverage like ESPN or Fox Sports which tend to promote high profile male athletes in prominent sports like football or basketball, the social media aspect values the athletes who have constructed a brand for themselves and actively work to promote that brand.

---

<sup>77</sup> Planos, Josh. "How Much Money Could Student-Athletes Make As Social Media Influencers? | FiveThirtyEight." fivethirtyeight, May 15, 2020

ATHLETE, SCHOOL	SPORT	TWITTER/INSTAGRAM		POTENTIAL EARNINGS
		TOTAL FOLLOWERS	POST VALUE	
Paige Bueckers, UConn*	WBB	502,512	\$20,962	\$670,783
Trevor Lawrence, Clemson	CFB	578,027	11,371	454,855
Justin Fields, Ohio St.	CFB	525,058	12,721	407,087
Haley Cruse, Oregon	SOF	290,150	4,210	117,891
Anthony Edwards, Georgia	MBB	192,763	3,865	92,749
Obi Toppin, Dayton	MBB	70,102	1,589	50,832
Spencer Lee, Iowa	WRE	122,422	1,645	26,316
Dana Rettke, Wisconsin	VOL	25,475	438	12,251
Austin Martin, Vanderbilt	CBB	32,264	519	10,372
Rhyne Howard, Kentucky	WBB	12,439	268	6,441
Kendyl Lindaman, Florida	SOF	9,719	164	3,282
Yossiana Pressley, Baylor	VOL	9,550	158	3,165
Patrick Glory, Princeton	WRE	12,560	211	2,533
Spencer Torkelson, ASU	CBB	8,501	155	2,478
Catarina Macario, Stanford	WSOC	11,341	117	2,332
David Egbo, Akron	MSOC	1,923	41	495
Giovanni MontesDeOca, UNC	MSOC	1,200	30	355
Mikayla Colohan, BYU	WSOC	2,629	22	267

\*Currently still in high school.

Numbers of total followers on Twitter and Instagram are as of May 13.

SOURCE: OPENDORSE

Figure 4 Opendorse 2019

A brand refers to a name, term, or symbol that refers to either a sellable good or a widely known piece of property. A logo, like the Oregon ‘O’, is the cornerstone of the Oregon brand being seen as fast, innovative, and creative from all angles. But the definition of a ‘brand’ has grown to encompass a personal brand as well, with individual athletes with their followings as an exposure point for the brand to reach a new level of consumer. A historical example of this is Michael Jordan’s iconic ‘Jumpman’ and Jordan line of shoes and apparel under Nike. But what has evolved is that an athlete like Haley Cruise can create her own brand without the help of an outside sponsor or even an iconic logo: her brand can be herself and the persona shown on social media platforms.

Going back to the educational piece, athletes will have to work to build their own brands via social platforms in order to maximize their benefit from NIL. Brewer had this to say:

*“While what sport you play will matter, a high-profile football player will get good attention. The true benefits of NIL will be from the hustlers, those who want to try unique things and are able to build their brands successfully.”<sup>78</sup>*

Athletic departments providing resources and education to athletes will help grow their own brand via social platforms as essential to making sure their athletes can fully capitalize on NIL and know what to create from their funds afterwards. Teaching athletes how to be ‘hustlers’ as Brewer puts it, will help both parties in the long term. While this seems more definitive in terms of solutions to NIL problems, having athletes learn about these issues increases their likelihood of having success dealing with NIL and lessens an athletic department’s potential burden of having their athlete seen in an unflattering light as a consequence of poor brand management.

As stated, almost all major collegiate athletic departments are creating partnerships with companies like #INFLCR and Opendorse to help bring industry experts and marketing specialists in to help teach and provide athletes a way to learn from brands. They also work with schools in the business and finance departments to help impart the skills needed for fiscal responsibility. Overall, providing education to athletes is essential for successful NIL implementation and has become a broad consensus during the uncertainty surrounding the subject.

---

<sup>78</sup> Brewer, John. Interview with John Brewer, Director of Partnerships of #INFLCR. Zoom Interview, March 31, 2020.

## 2. Clear Definitions of Terminology and Rules

For NIL to be successful, it must be free of many of the vices that have plagued collegiate athletics for years. One of them is the use of unclear and indistinct definitions that work to aid the NCAA in legal defenses. Harkening back to the origin of the term ‘student-athlete’, the NCAA formed the term to be a legal defense against workers compensation with a purposely ambiguous definition to work for their benefit. But in the case of NIL, a vague definition is the worst possible outcome for college sports, the NCAA, and their member athletes.

Looking at the current dilemma between the state and federal laws, there are a multitude of different definitions and protections offered in the variety of bills. While the California SB 206 “Fair Pay for Play” act prohibits the NCAA and member institutions to punish student athletes for accepting endorsement deals, it provides no framework for the sponsorships and other deals to fall under for liability and regulation.<sup>79</sup> Would the further rules be up to the member institutions? Or would that continue under the NCAA’s jurisdiction? Could that be still kept under the rule of state legislatures or federal Congress? There have also been discussions of protection for the Universities and their existing sponsorship interests, prohibiting athletes from taking sponsorships that would compete with their interests. As an example, a University of Oregon student-athlete could not make a deal with Adidas because that would compete with Oregon’s Nike sponsorship. But this provision is only mentioned in a few bills, so how would this be covered across state lines if an athlete wishes to transfer and has to

---

<sup>79</sup> California Legislative Information. “Bill Text - SB-206 Collegiate Athletics: Student Athlete Compensation and Representation.”

abandon a sponsorship due to this? There are so many questions, and the way the current system of NIL is being implemented, there will be more on the horizon.

In order for NIL to be successful, rules must not only be consistent, but clear in the responsibility and enforcement. If NIL is implemented in July with no provisions from the NCAA or Congress with clear enforcement rules, it could become the “Wild West” with athletes able to make deals with little to no oversight about recruiting or booster involvement. In essence, the model of college sports would cannibalize itself from within. This would be the worst possible outcome for college sports. This is a possibility with the current ways the bills are being written. Jody Sykes remarked how the bills are more headline grabbing than actual substance.

*“The bills (referring to the states and federal bills) are not thorough or well-thought through. They are meant to be attention grabbing headlines to help reform college athletics. But what is left we (compliance and athletic departments) will have to get thrown what it is and have to figure it out. We need better and more clear analysis on what we are dealing with to act appropriately.”<sup>80</sup>*

Unlike much of the NCAA’s history and present experiences with NIL, more thought and practicality need to be put into these NIL bills. If major universities are in charge of not only educating, but deciphering, and then enforcing the NIL attention grabbing headline bills that lack true substance, the entire model will be disrupted, and the NCAA will not be ready to help inform and lead during these changes. In a way, the

---

<sup>80</sup> Sykes, Jody. Interview with Jody Sykes, University of Oregon Assistant Athletic Director and Chief Compliance Officer. Zoom Interview, April 13, 2021.

NCAA had 10 years to act on these changes from the O'Bannon case, but by failing to do so, they are now in danger of being uprooted from the very core of their collegiate model.

Some of these definitions have less to do with the enforcement of the rules but more to do with the sponsorship deals in general. As mentioned earlier with the example of Adidas not being allowed to sponsor a University of Oregon athlete, this is an example of a tactic called *ambush marketing* which is an unauthorized association by a business of their names, brand, products, or services usually with a sporting property<sup>81</sup>. This type of marketing works to create association in the minds of consumers with a brand that has no contractual or sponsoring link to a sporting property, in this case a member institution. The links between a student-athlete and their respective institution are deep and difficult to separate in the mind of a consumer. For a professional example, when mentioned on television, Aaron Rodgers is addressed by "Green Bay Starting quarterback Aaron Rodgers," people view him as a part of the organization and then associate the brands he sponsors back to the Green Bay Packers themselves. This is the case in reverse with the University of Oregon as well and their deep-rooted affiliation with Nike being implicated on all of their student-athletes. But this link from student-athletes to school is important, since a sponsorship deal in any capacity cannot fully separate the two properties from each other, and competing brands may look to take advantage and ambush NCAA institutions through their student-athletes if protections are not put in place. Thus, challenging the core of the sponsoring

---

<sup>81</sup> Cornwell, T. "Sponsorship-Linked Marketing Development." *Sport Marketing Quarterly* 4 (January 1, 1995): 13-24.

power of a particular institution which may lead sponsors to seek their money elsewhere. I asked Kit Morris about this during our interview and got this response.

*“(Nike) would definitely have to reconsider and reevaluate its position and where it stands within the collegiate landscape. We would need to find ways to sure up our investments in college sports or move those dollars elsewhere with a greater ROI (return on investment).”<sup>82</sup>*

Schools would want to create ways to define which sponsors they could work to protect. One way is through category exclusivity, a type of sponsorship which allows a sponsor to become an “official provider” or “official supplier” or a certain type of product. Exclusivity is very important for sponsors, it has been shown to lead to the best return on sales and leave the greatest impact on the consumer.<sup>83</sup> For the definitions, exclusivity could be described as a type of brand holding this niche marketing category and would not be allowed for student-athletes to sign deals competing with this category. This would shore up the high-level investments of member schools as well as giving athletes opportunities to sign with other brands that do not compete. Other aspects like illegal form ambush marketing need to also be defined to help identify when a sponsor’s exclusive rights are being encroached upon.

Many of these definitions such as illegal ambushing and category exclusivity, represent just the tip of the iceberg of NIL. The placement of these definitions, however, is very important. Many of these deals will have to define these terms in their written deals, but without national oversight over these terms, they could vary based on

---

<sup>82</sup> Morris, Kit. Interview with Kit Morris, Director of Collegiate Sports Marketing at Nike. Zoom Interview, April 1, 2021.

<sup>83</sup> Cornwell, T. “Sponsorship-Linked Marketing Development.” *Sport Marketing Quarterly* 4 (January 1, 1995): 13–24.

region, school affiliation, or target sponsor. In order to protect against mismanagement across state lines or other competition implications in conferences, there must be nationally regulated definitions over the basic key terms of these sponsorship deals and the rule implications and enforcement of NIL procedures. It may be best to also define different standards for sport types and division designations if those overarching definitions don't exist nationally. However, making clear examples and definitions will greatly impact the early success from NIL, as it will become easier to monitor, enforce, and regulate from the school and NCAA level.

### **3. Communication channels with athletes on NIL matters**

One of the longest-standing and more fervent criticisms of how the NCAA rules over college sports is the lack of input by the largest collection of participants, the athletes themselves. The rules from the NCAA have always come top down, with sometimes very little to no evaluation given by the athletes themselves. The best example of these decisions is during the COVID-19 pandemic, where the revenue sports were given the full-go to be able to participate, some areas with fans, with little to no consultation of the student-athletes who actually need to compete. While student-athletes were allowed to opt out with “no penalty”, by taking a year off of competing they could risk losing their starting spot to a younger player or potentially jeopardizing professional opportunities down the line. Some players, including Duke forward Jalen Johnson, were chastised for “quitting” on their respective team and some anonymous NFL General Managers said they would not draft players who opted out saying he

doesn't draft "quitters".<sup>84</sup> When college football teams were given the option to additionally 'opt out' of bowl games, interim head coach of South Carolina Mike Bobo said on the team possibly taking a vote, "There's no vote in the SEC" despite players bearing all of the risk for playing an additional game.<sup>85</sup> The NCAA routinely brushed aside the comments and input of athletes to pursue their own interests. But that cannot persist with the era of NIL.

In regard to NIL, none of my interviews or contacts showed there have been extensive conversations between student-athletes, their member institutions, and the NCAA about NIL legislation and how it will affect them. University of Oregon has set up a student-athlete leadership council to help communicate among student-athlete upcoming events and activities around the Emerge programming, but not to directly consult over possible rules and outcomes of NIL.<sup>86</sup>

The large reason for this needed shift is due to the changing landscape and voice of the college athlete. More broadly in sports, we are in what is known as the 'Age of the Voice of the Athlete' where an athlete and their voice is more important than ever. Athletes have always been involved in heavy political conversations from Muhammad Ali spurning the draft, to Jesse Owens speaking about the divisions of race, and Colin Kaepernick taking a knee during the national anthem to protest police brutality. No matter what side of the coin people fall on these issues, the cultural impact of athletes has only grown over time, and sports stars are no longer just celebrities in their

---

<sup>84</sup> Lamb, Nathan Kalman, Derek Silva, and Johanna Mellis. "We Are Being Gaslit': College Football and Covid 19 Are Imperiling Athletes." *The Guardian*, n.d., 6.

<sup>85</sup> Ibid.

<sup>86</sup> Brewer, John. Interview with John Brewer, Director of Partnerships of #INFLCR. Zoom Interview, March 31, 2020.

respective sports but are cultural icons as well. With LeBron James promising to not ‘Shut up and dribble’ and world cup star Megan Rapinoe fighting for equal pay between the US men’s and women’s national soccer teams, the era of athletes being silent on social issues is over.

These trends are no different at the collegiate level, especially when it comes to student-athletes speaking out against the NCAA and their systems of amateurism. Brian Bosworth was one of those athletes wearing his “National Communists Against Athletes” shirt as discussed earlier. But more recently, athletes have tried to find their place at the table. The Northwestern football team attempted to unionize and form the College Athletes Players Association in January 2014 but was ultimately thwarted by an internal vote that was suspected to have been influenced.<sup>87</sup> The players union was designed after that of the NFL and NBA respective players associations, working to help protect athletes and their interests.

While the PAC-12 football season was placed on hold in Fall of 2020, PAC-12 players formed the #WeAreUnited group that made demands to the PAC-12 conference in an effort to return to play, but only under certain conditions as spelled out in a Player’s Tribune article:

*“Because any player who does not feel comfortable playing this season should be free to opt out without losing their scholarship or any eligibility,*

*#WeAreUnited.*

*Because immoral rules would punish us for receiving basic necessities or compensation for the use of our names, images and likenesses, while many of us*

---

<sup>87</sup> Loretta8. “Friendly Reminder: The NCAA Invented The Term ‘Student-Athlete’ To Get Out Of Paying Worker’s Comp - Inside NU.” InsideNU, January 28, 2014.

*and our families are suffering economically from the COVID-19 fallout,  
#WeAreUnited.*

*Because we should be included in equitably sharing the revenue our talents  
generate, especially in a pandemic, #WeAreUnited.*

*Because unjust rules prevent the 98% of college football and basketball players  
who won't go pro from capitalizing economically on what would otherwise be  
the most valuable years of our lives, including many Black players from low-  
income homes, #WeAreUnited.*

*Because eliminating lavish salaries and facility expenditures to preserve all  
sports must be prioritized, #WeAreUnited.*

*Because the NCAA has failed us and we are prepared to ensure that our  
conference treats us fairly whether or not it continues its NCAA membership,  
#WeAreUnited.”<sup>88</sup>*

Among these demands also included mandating a distribution of 50% of each sport's total conference revenue evenly among athletes in their respective sports, fully allowing NIL payments from third parties, six year fully guaranteed athletic scholarships for undergraduate and graduate school, and eliminating policies restricting athlete freedom of speech.<sup>89</sup> The PAC-12 #WeAreUnited movement inspired other movements among college athletes including the #WeWantToPlay push, headlined by Clemson star QB Trevor Lawrence. Ultimately, neither group were able to reach their true demands, but the sport continued to play on. To this day, it is unknown whether

---

<sup>88</sup> PAC-12 Players Union. “#WeAreUnited | By Players of the Pac-12.” The Players' Tribune. Accessed April 24, 2021

<sup>89</sup> *Ibid.*

former PAC-12 commissioner Larry Scott and NCAA president Mark Emmert met with these student-athlete activists after the season to discuss their terms and help chart a future for the conference.

With student-athletes more active in the era of the ‘Voice of the Athlete’, it is important that whatever rules and regulations around NIL are understood and accepted by the athletes who benefit from them. If the athletes do not approve of these measures, the NCAA and their member institutions would once again be on the cusp of athletes mobilizing and actively protesting against these organizations. As the athlete’s power and voice grow, it would be inevitable for them to seek the changes they wish to see. Allowing athletes to have a seat at the table would help provide them a stake in guiding the future of their sports. The NCAA needs to grant athletes a voice, because given these cultural trends around athletes, they will earn one eventually. While the writing of laws and statutes around NIL begins, the decision makers should ask themselves if they have the perspective of those impacted and marginalized most by these rules. Perspective is needed. The NCAA needs to correct their ways and give athletes a greater stake in helping with NIL proceedings and implementation.

#### **4. The use or advent of advisory boards/internal NIL staff for athletes**

As the rules of NIL are being written, a major question is left unanswered: who is left responsible to oversee the deals created by student-athletes? The way the current system of enforcement is set up in college athletics stems from the compliance department, which works to monitor the actions of an athletic department to ensure they fall in line with NCAA rules. At many schools, compliance departments are smaller and have a wide reach across all sports and all areas of the department. If the NCAA

receives a tip or suspects wrongdoing by a school, they can launch an investigation and levy penalties against a program, which would be overseen by the compliance department. In total, the compliance office acts as a lynch pin from a member university or college to the NCAA as a whole.

As of now, no NIL bill offers an explanation as to which group will take responsibility in helping monitor endorsement deals with student-athletes. But like other changes in the past, it is presumed that the compliance department will take a big part in helping shape the legislation moving forward. But with their other major responsibilities within the athletic department system, is this too much to handle? I asked Oregon Compliance Director Jody Sykes this very question:

*“The compliance staff is not large enough to handle all of the NIL cases and review every endorsement deal or approve every 3<sup>rd</sup> party. What we hope is that the universities don’t have a hand at all in these dealing and are actually banned from participating beyond standard advising. As long as student athletes don’t wear Oregon gear, they can be seen as independent endorsement deals apart from the university... But if we have to overlook every deal, we will need help.”<sup>90</sup>*

Barring the NCAA member schools from participating in NIL with students beyond education is part of some proposed federal bills, including the one by Booker/Blumenthal/Murphy Bill in the Senate, but is not mentioned in many state bills. Based on the makeup of the compliance staff, it would be better to allow athletes to act

---

<sup>90</sup> Sykes, Jody. Interview with Jody Sykes, University of Oregon Assistant Athletic Director and Chief Compliance Officer. Zoom Interview, April 13, 2021.

independently of the university, and it would bring NIL dealings to be almost exclusive from NCAA rulings. But is this the best way to go? Would exposing 18–22-year-old athletes to the open market with little to no oversight, even with educational resources, be the most logical and reasonable step? As of now, it is very unclear.

The other option would be creating an NIL training and enforcement exclusive staff, as separate but possibly overlapping with compliance, which can help monitor and assist with NIL related matters. The proposals for this staff include marketing specialists, sponsorship associates representing groups like IMG Learfield which have connections into potential endorsees, and licensed agents which can help represent athletes during negotiations. Once again, there are caveats into these proposals as well, given the potential of athletes to earn more in the future. On the idea of an NIL exclusive staff, Sykes said this:

*“While an idea of an NIL staff is enticing, we need to understand it can be dangerous and risky working with agents. Select athletes who have professional potential could be targeted before their large pay days in the pros so agents could capture the largest possible returns.”<sup>91</sup>*

While there are good agents, there are terrible horror stories in college athletics with agents taking advantage, and in some cases revenge, on partner athletes who don’t sign with them after their first professional contracts. In 2016, top offensive line prospect Laremy Tunsil was prepared to be drafted 6<sup>th</sup> overall in the NFL draft to the Baltimore Ravens, until a video of him wearing a gas mask bong smoking marijuana and screenshotted text messages with asking Ole Miss coaches for money surfaced on

---

<sup>91</sup> Sykes, Jody. Interview with Jody Sykes, University of Oregon Assistant Athletic Director and Chief Compliance Officer. Zoom Interview, April 13, 2021.

his social media feeds. Tunsil plummeted on draft boards and was eventually picked up 13th overall by the Miami Dolphins. While that may not seem like a big drop, he lost an estimated \$7 million in a signing bonus due to his draft position.<sup>92</sup> In SB nation's *Foul Play*, a documentary series by Stephen Godfrey looking at the recruiting violations at Ole Miss University, he exposed it was a rogue agent who Tunsil spoke with during his collegiate career which used his iCloud password and posted the video on Tunsil's accounts as payback for Tunsil never signing with him after his collegiate career was done, denying him the massive potential agent percentage payments earned from professional contracts.<sup>93</sup> While this did occur in a pre-NIL period, exposing more student-athletes to agents would be dangerous, and potentially damaging to both parties. Ole Miss went through an extensive NCAA investigation linked to these Tunsil developments, leading to over 20 violations found by the NCAA and a two-year football postseason ban.

There is no easy solution that seems to satisfy all parties as of yet. The compliance staff at universities are far too small to deal with these issues and possibly runs outside of their wheelhouse. Allowing student-athletes to operate independently reduces the burden from the school but could create cases of athletes being exploited by fraudulent companies for exposure. Creating NIL independent staff solves these issues, but also creates a possibility of athletes to again be taken advantage of. Solving this question of responsibility is critical to seeing how NIL will be implemented and

---

<sup>92</sup> Godfrey, Stephen. *Foul Play: The NCAA Punishes Ole Miss and Avoids Fully Addressing Recruiting's Underground Economy*, 2018.

<sup>93</sup> *Ibid.*

creating safeguards for athletes to be protected. More research will need to be done to find a middle ground in these opposing areas.

## **5. Equity Protections and Revenue Distribution across sporting programs**

When discussing funds and the structure of collegiate athletics, it is very easy to talk about major college football, men's basketball, and end the conversation. These two sports dominate television screens across the United States and the world during their respective championships. As shown through the history of the NCAA, it was founded to help regulate American football and one of their first major events they held was the NCAA men's basketball championship, now known by its moniker 'March Madness'. But more athletes do not play these two sports in the grand scheme of college sports. I understand when writing this paper that key events usually stem from these sports because of the cultural impact and relevance they hold. As the biggest sports, they create the most impact and there is no way to have conversations about NIL without having football and men's basketball at the center of the conversation. But as tides begin to change, it is important smaller emerging sports use NIL to create larger platforms for themselves and their student-athletes.

There are over 430,000 student athletes which compete across 3 divisions, making up over 19,000 teams. Only 21% of those student athletes are men's basketball and football players. Based on NCAA data, here is a breakdown with percentages of participants across NCAA sports in the year 2020:<sup>94</sup>

---

<sup>94</sup> smeyers@ncaa.org. "Estimated Probability of Competing in College Athletics." Text. NCAA.org - The Official Site of the NCAA, March 2, 2015.

<b>Men's Sports (NCAA affiliated)</b>	<b>Total Student-Athlete Participants</b>	<b>% of Participants across all NCAA Sports (Men's+Women's)</b>
Baseball	36,011	8%
Basketball	18,816	4%
Cross Country	14,303	3%
Football	73,712	17%
Golf	8,485	2%
Ice Hockey	4,323	1%
Lacrosse	14,603	3%
Soccer	25,499	6%
Swimming	9,799	2%
Tennis	7,785	2%
Track and Field	28,914	7%
Volleyball	2,355	1%
Water Polo	1,072	>1%
Wrestling	7,300	2%

<b>Women's Sports (NCAA affiliated)</b>	<b>Total Student-Athlete Participants</b>	<b>% of Participants across all NCAA Sports (Men's+Women's)</b>
Baseball	16,509	4%
Cross Country	15,624	4%
Field Hockey	6,119	1%
Golf	5,436	1%
Ice Hockey	2,531	1%
Lacrosse	12,452	3%
Soccer	28,310	7%
Softball	20,419	5%
Swimming	12,980	3%
Tennis	8,596	2%
Track and Field	30,326	7%
Volleyball	17,780	4%
Water Polo	1,217	>1%

For the 80% of other athletes, NIL is not a guaranteed commodity. Harkening back to John Brewer's point about NIL being for the hustlers and not just the top 1%, or 21%, of student-athletes, NIL offers a chance for all 430,000 athletes to benefit from their affiliation as a status with the University of Oregon, regardless of professional prospects in their respective sport.<sup>95</sup> It also grants a way for these sports to be supported like they haven't been before, through the process of revenue redistribution.

A common designation between NCAA sports beyond their title and athletes' class is revenue vs. non-revenue sports. Revenue sports generate income and are typically self-sustaining to operate and market. Oregon football is a revenue sport as it generates massive profits for the University of Oregon and the athletic department. Non-revenue sports are sports that usually do not turn a profit when factoring in travel, coach's salary, equipment, food, and other matters. Revenue sports take some of their profits and help build the revenues up of smaller sports, allowing them to operate without losses. This balance is critical to maintain the integrity of a school's athletic department and provide for student athletes the sports they want to play.<sup>96</sup> During hard financial times, schools look to cut non-revenue sports to support their revenue sports large budgets so they can turn a profit from them when they resume playing. This was the case in July of 2020 when Stanford University cut 11 of their varsity sports, including men's and women's fencing, wrestling, rowing, and squash just to name a

---

<sup>95</sup> Brewer, John. Interview with John Brewer, Director of Partnerships of #INFLCR. Zoom Interview, March 31, 2020.

<sup>96</sup> Sykes, Jody. Interview with Jody Sykes, University of Oregon Assistant Athletic Director and Chief Compliance Officer. Zoom Interview, April 13, 2021.

few.<sup>97</sup> But proposals with NIL have been drafted to take a certain percentage of every athlete's NIL revenue and grant them back to the non-revenue athletic programs, giving them special classification and an extra stream of revenue coming from the student-athletes themselves. While taking revenue from the student-athletes is questionable, it is said to also act as a way to help support an internal NIL staff which is highly suspect, as mentioned in the above section. But this revenue could be put to use well in these other sports and create opportunities to improve facilities and offer the same amenities of revenue sports student athletes.

The second piece of this thought stems from the federal provision Title IX, a federal civil rights act passed in 1972 as a part of a set of education amendments. In short, Title IX grants that nobody shall be discriminated based on sex in educational programs or activities that receive federal money. This same goes for college sports and assures that the number of scholarship male student athletes must be equal to female scholarship student athletes. These provisions help determine what non-revenue sports a school can participate in and not upset this delicate balance of policy. In order for NIL to be successful, Title IX must be protected and maintained. I have done similar studies looking at the massive growth in girl's youth soccer as a direct result of Title IX, and the benefits and opportunities that it provides should not go away as they relate to the NCAA.<sup>98</sup> While the basis for NIL only grants more power to the athletes, there need to be written protections verifying it under the same statutes and ensuring it keeps its place

---

<sup>97</sup> University, Stanford. "Stanford Athletics Varsity Sport Reductions: FAQ." Stanford News, July 8, 2020. <https://news.stanford.edu/2020/07/08/athletics-faq/>.

<sup>98</sup> Mak, J. Y. (2006). The impact of Title IX on athletics development in the United States. *Journal of Physical Education & Recreation*, 12(1), 34-38.

in the churning collegiate landscape. NIL doesn't directly threaten Title IX, but other proposed collegiate models do, which will be discussed later.<sup>99</sup>

All of these factors offer important and relevant points to the discussion of NIL and its new relationship with intercollegiate athletes. They offer questions that are essential to be answered, proposed solutions to reach a more equitable and secure foundation for student-athletes and overlapping themes of how NIL could impact the collegiate landscape. As July approaches and NIL comes into full swing, all of these points will need to be addressed respectively to ensure a safe and successful start to a new era of intercollegiate athletics.

---

<sup>99</sup> Sykes, Jody. Interview with Jody Sykes, University of Oregon Assistant Athletic Director and Chief Compliance Officer. Zoom Interview, April 13, 2021.

## **Chapter 5/Conclusion: The Great Compromise, Moving Goalposts, and the Failure State**

With NIL approaching, the future is still very murky for how collegiate athletics will continue to morph and change. The upcoming challenges to the amateur status of intercollegiate athletics will become a root of conversation, especially with the root of *Alston V. NCAA* currently being debated in the US Supreme Court. NIL is the tip of the iceberg when it comes to collegiate athletics reform, but it also represents something more when it comes to the broader arguments made around the ethical and foundational implications of its existence.

NIL doesn't represent this large swing away from the history and origins of intercollegiate athletics, nor does it completely ignore the plights of student athletes and the faults within the NCAA system. NIL is not just a piece of legislation or a new rule for the NCAA to follow, it is the great compromise of the system. As seen through the history of the NCAA, the organization has been born out of a need for control, but also regulation and safety, over athletes and their dealings before their possible professional careers. Many advocates push for throwing out the entire system of the NCAA, and wish for collegiate athletics to become more semi-professional, allowing athletes to earn salaries from schools, take endorsement deals, freely transfer and negotiate with teams for benefits and other related matters, and place education on the back burner for athletes to complete if they elect to.<sup>100</sup> Others push for maintaining the existing NCAA framework, citing the continued success of athletes in and out of professional sports as a

---

<sup>100</sup> Akabas, Lev. "COLLEGE ATHLETE ENDORSEMENT PAY GETS MILD PUBLIC SUPPORT: DATA VIZ," n.d., 5.

justification for their actions, and how uprooting a 100+ year history of intercollegiate athletics would be devastating, and to lose its educational tie would make schools not in the education business, but professional units comparable to NFL and NBA teams. NIL sits between these two worlds and arguments; it presents a way to hold onto the existing model of college athletics and allow athletes to earn profit from their high status within their respective programs. For what intercollegiate athletics is now, it's the perfect starting point to enact enough drive to change the system, but not enough to completely abandon the organizations as a whole.

While NIL offers student-athletes an opportunity to create revenue for themselves, some view this as a slippery slope to lose the amateur status of college athletes and abandon other components of the current collegiate athletic model like full-rise academic scholarships. Athletic scholarships grant enormous benefit to athletes, and this can only exist under the current collegiate model or the model with NIL freedoms to athletes. If schools were forced to pay athletes a competitive salary, they would reallocate their funds from athletic scholarships to funding these salaried positions. With sports like football earning massive revenues and bringing in a financial value to a school, the salaries for these players would be astronomical and take up a significant portion of the revenue that would have otherwise gone to non-revenue sports programs as devised earlier. Title IX would evaporate in college sports, as the money allocated to the football team would far outweigh the salaries given to women's sports. Large brands could leave their sports contracts to sign individual deals with top-end players, leaving the schools without revenue to support their programs. Chances are that some schools would drop all their sports except football and basketball to consolidate their revenue

streams and pour all their resources into their cash cow sports. College athletics wouldn't just change, it would die.<sup>101</sup>

The reason that I didn't bring up many of these factors when discussing what the potential impacts of NIL could be with the exception of Title IX, is that NIL won't influence or lead collegiate athletics down this road. It allows athletes to make money while not challenging the larger institution of the NCAA. This allows it to be the optimal solution for now, while also opening the door for other reforms to come through and allow for better treatment and freedoms to student-athletes.

Throughout my research process, I have been challenged on my own thoughts about NIL, the state of college athletics, and where the entire system goes from here. I had to grapple with the fundamental changes to what I could fully understand with the impacts of NIL and how I could contribute to this new era of college sports in the United States with this paper. By looking to answer some of the most critical questions surrounding NIL, I have offered a glimpse at the light through the dark caverns of the unknown state of NIL to a future of a better balanced and managed intercollegiate athletic association and its member institutions. However, that is if the provisions I proposed are thoroughly accessed and enacted.

Implementing measures for evaluation is not a particular strong suit of the NCAA and its member institutions. Throughout the COVID shortened 2020-21 football season, the NCAA and the Power 5 conferences pushed forward the notion that they will play the football season even with a global pandemic. With teams and players opting out, even the PAC-12 and BIG 10 opting out shortly before resuming play with

---

<sup>101</sup> Sykes, Jody. Interview with Jody Sykes, University of Oregon Assistant Athletic Director and Chief Compliance Officer. Zoom Interview, April 13, 2021.

the rest of the conferences, the season was deemed a success. *How?* Many players got sick with the virus, some having to retire from football entirely due to long-term health effects like myocarditis. Games were cancelled and players were put under massive strain, including having to be away from family around the holidays, just to play a sport which they earned little from the risk/reward ratio.<sup>102</sup> How was this season called a success? A trick the NCAA and college sports like to play is a “moving goalpost”, meaning they set an initial goal for success but changed it halfway through to better account for the circumstances, typically leading to achieving the moved goal but losing the integrity they placed in the earlier metric.<sup>103</sup> This way, the NCAA and its schools look successful no matter the outcome. In the case of a COVID football season, no goal posts were put in place. No measure for how many players would get sick, how many teams quarantined, how many games would be cancelled before the season and the COVID protocols put in place by schools were deemed ineffective or the season was reevaluated to see if play was truly possible. With no failure state defined, it was impossible for college football and the NCAA, the state, to fail.

With NIL, a clear set of guidelines need to be defined to measure its success. It’s unclear what those current guides could be. Looking at the average NIL revenue per athlete from the revenue and non-revenue sports, how many different brands look to become involved in the new marketplace, and the long-term health and stability of athletes going forward. I’m not in a position to define what the failure state of these circumstances will be, but just as definitions for what NIL will entail need to be clear,

---

<sup>102</sup> Lamb, Nathan Kalman, Derek Silva, and Johanna Mellis. “‘We Are Being Gaslit’: College Football and Covid 19 Are Imperiling Athletes.” *The Guardian*, n.d., 6.

<sup>103</sup> Hall, Spencer, and Jason Kirk. “The Failure State.” *The Shutdown Fullcast*, n.d.

there need to be scenarios and desirable outcomes that are worked to be achieved by the NCAA. This level of goal planning would help the NCAA and its member schools respond to large changes coming from NIL and know where they can improve. A “moving goal post” is no longer an option for the NCAA, a failure state must be defined and worked vigorously to protect student athletes and college sports.

In total, NIL presents a new path for the NCAA and its member institutions to follow. The great compromise by being able to maintain the benefits of the current system of college athletes while also allowing for greater liberties from athletes that could shift power from the NCAA to the athletes themselves, allowing for a fairer and more democratic regulation of college sports. With many questions that need to be answered to understand the true impacts of NIL, my proposals of key factors can help lawmakers reframe their arguments from attention grabbing headlines to practical, well thought-out rules which can benefit not only the athletes, but the NCAA as well. My hope is that my research can be used to also help athletic departments frame themselves around the impending NIL changes and use the limited time they now have to help prepare for a NIL future. The factors I presented will help reform their stance and administration around a positive impact of new legislation. College athletics will change, hopefully for the better. For the knowledgeable fan, they can now watch the sport and not feel the guilt they are supporting an inequitable system with athletes not earning their value. While NIL doesn't solve the problem completely, it is a first step toward more reforms to benefit student-athletes in the near future.

Coming back to my research question, what will the impacts of NIL be on intercollegiate athletics, there is still too much uncertainty with no clear path the new

legislation will follow. However, using the five key factors I proposed around NIL, we can critically examine various factors and offer up answers to the various questions and conundrums that the NCAA and lawmakers would have to solve to see what the potential impact will be. NIL will allow the athletes to increase their own power relative to their schools, as they could garner a large market that support them, not having to rely solely on their school to do so. With proper equity protections for non-revenue sports, we can see the effects of NIL not just being directed towards the top 1% of revenue sport athletes but made for the hustlers who want to work to increase their own brand notoriety. If rules around ambush marketing and category exclusivity are defined, schools can actually work to increase their revenue dollars from sponsorships as being a category sponsor. Having an exclusive pool of high-level athletes who can work to endorse would be incredibly powerful, and schools can begin the charge sponsors for those opportunities. NIL would also be a great middle ground versus abandoning the amateur athletic model entirely and losing benefits like athletic scholarships that help athletes gain education and pursue their athletic dreams. Given that proper financial education and brand building knowledge is shared, athlete could use NIL money as a barrier between them and an injury that could derail their career, allowing them to use the money to help support them and their families while they reacclimate themselves to work as a professional versus playing as one. NIL would give key protections to athletes while not uprooting the entirety of the sport and undermine the NCAA's authority in these situations. What is left to see is if these positive changes, where intercollegiate athletics continue to thrive, will be felt under this new legislation by

anticipating and addressing my five factors. These are the impacts that can be felt by intercollegiate athletes coming from NIL.

As I continue my work in college athletics, I hope to contribute and advocate for these changes from the inside. College sports holds a special place in my heart that professional sports can't achieve with regional intensity and wide-spread availability of the sport. I want to help inspire a new generation of college athletics fans and athletes from my position and work to rid the sport of inequities and mismanagement by the NCAA and its member institutions. While this process won't be easy or completed overnight, I want to make sure that fans everywhere can enjoy the sports as I once did as a young kid, always supporting the teams they love and knowing the sport is supporting the brave student-athletes who always compete. NIL is the start of a movement, but the real work has only just begun.

## Appendix

### 1. Jody Sykes Interview

#### **What is your background dealing with NIL Legislation?**

- NIL is world of the unknown
  - Something that needs to be addressed and changes
- Hoping educational program will be the comprehensive house for NIL activity
- But as of now, we don't know what we are dealing with exactly
- What can we do now with stuff in the air, and down the road
- Educational matters it eh only way that things go right now, doesn't changes from differences in laws, contracts, agents, agreements, basic definitions and branding, making money on social media and streaming
- How do we help student athletes understand this is not something the U of O can do for you, you have to develop brand and followers to get something for you
- Every time, we make process, it gets pulled back because something changes
- Provide the education in a format in a way a student will want to understand
- Emerge program to create short videos for student athletes to watch when they are ready
- Some education will evolve overtime, there for those who are ready
- It's really hard to know
- January was the goal line for the NCAA, DOJ letter
- Where is the level or responsibility on the program to help the athletes build or inform their brand and education
- Could be integrated into existing coursework, but it is so complex
- How do we alert students this will be a reality, who is a possible target for this from companies when the deadline hits

#### **Has your opinion/perspective for NIL changed over time?**

- As senior, student athletes were not allowed to have jobs at all, rule eventually dissolved
- Boosters giving wages
- 99% of rules came from 10% of what the population was doing
- Change has been needed with NIL rules, just trying to figure out how that works in some kind of collegiate amateur model
- What happens to gender equity, Title IX, revenue distribution non-revenue sports (if that revenue needs to be used elsewhere)
- Semi-pro model, they would have to pay for travel and pay for own degree
- Somewhere in all of this, there is a middle ground
- No own entity has the exact right approach, it's hard to get on the same

#### **What are some of the factors that will determine success for NIL from the various perspectives?**

- Help find the best world, not effecting the collegiate model with NIL allowed for athletes
- Hate: the number of student athletes who earn a degree because they earned a scholarship is great, wouldn't have gone to college, we need to find a way to keep these scholarships
- The skills you learn as a SA translate to workplace, need to allow for the middle ground

**When NIL goes into place, how do you anticipate your role changing?**

- Compliance staff is not large enough, the infrastructure needs to be there
- The 6-month time gap is no longer there
- The changes depend on what happens
- NCAA put in a request for a 3<sup>rd</sup> party to monitor, we don't know status of it
- If the student athletes don't wear Oregon gear, it doesn't seem Oregon's problems
- The issue is that its enormous, nationwide, change needs to happen, but I feel like it will be two years before we figure out the nuances
- If it falls on compliance staff to monitor and verify, I don't know hows it's going to work. We can find additional time for education, but we can't vet every deal
- No talk of exclusive staff for NIL "we will need help"
- Depend on what actually passes
- It's hard to be proactive, there are 10 factors and if one changes, it changes the other 10.
- The bills are not thought through, headline grabbing, we get thrown whatever it is, and we figure it out

**Where are their areas of concern for concern with NIL?**

- They shouldn't be afforded the opportunity at the cost of anyone else
- The greater good, is every student athletes who wants it wants a degree, those who wanted to go pro they could
- Protecting those
- Companies trying to come in and capitalize on NIL, but they don't' know what it may look like
- **Hope:**
- Institutions are barred from assisting student athletes with opportunities, Title IX concerns, ethical behaviors concerns,
- Let the market do what market does
- Can't do anything other than education, only way to preserve college model
- Disgruntled people turn themselves in to the NCAA

**Did the NCAA drop the ball?**

- Yes, they could have prevented what we are struggling with right now if we addressed it better 10 years ago

- If semi-pro, athletes not mandated would go to school
- Power 5 executive leadership
  - Own rules and bylaws would be formed
  - Individual sports may break off
- Data shows that applications go up when a team wins a national championship

## 2. Kit Morris Interview

### **What has your background been dealing with the NCAA/Collegiate sports?**

- Tremendous control over college sport, the root of everything
- Football television committee, 2 games a week, Georgia Oklahoma lawsuit, opened up landscape and the beginning of string of legal defeats that the NCAA has had over the years
- NCAA has lost almost every major lawsuit
- Power and control shift from central NCAA to conferences to make individual deals, grew to huge revenue boost for those entities, control of revenue is under those P5 conferences
- Divided leadership over diminished role for the NCAA, autonomy P5 conferences have been fine in NCAA as rule making body, want to rake in cash and distributed
- 1980's every NCAA employee on business trip flew first class, no longer in place

### **How do you view the current state of amateurism in college sports?**

- Frustration, there is a big mistake in associating sport with work, the joy of participating for the love of the game is real "recreation", while it has become more uniform with demands for time are extreme, there have not been enough guardrails to separate the opportunities to participate with the obligation to participate
- 1987-88-89, AIR, survey for NCAA thousands of student athletes on insights, women athletes didn't care if they were coached by men or women, by best coach; biggest complaints that they didn't have enough time to be like other students, shortly after 20 hrs. per week to pick up, but some obliged to commit more time than that
- Olympics use of classism to separate working person from athletes
- It has seemed to work for a long time
- Universities: Only place where sports is not the main business, its education
  - Looked to consolidate with educational values
- Sought to not commercialize college sports at Nike, but always inevitable with designs

### **What has your background knowledge been of name, image, and likeness legislation?**

- It's a losing argument to say you can't own your own name, image, and likeness
- How do you provide that opportunity without moving into may for play model?

- Some laws require disassociation with school
- Jodi Foster ran cross country at Harvard, didn't have to give up money from acting to play sports
- Talent and quality should not be circumscribed in any way
- Fear in some corners, NIL will be used as trojan horse to pay for play to get access and certain skills that will be comparable to salaries, needs to be guardrails
- Some has protection for footwear and apparel providers, looking to exempt certain categories, not to jeopardize relationship with schools
- Nike, 45,000 student athletes each year, garner benefits for doing so, If someone wanted to secure a single athlete, would cost less
- Looking to protect our space, athletes could wear competitive footwear, would dampen enthusiasm for the industry
- Which is the greater good, the one for less money or all for more?
- Affiliation of the top athletes vs. the solidarity with a broad-based spectrum of athletes across variety of sports

**How do you believe sports businesses will respond to NIL rule changes?**

- Respond and react, where do we want to be? Not a simple problem

**What do you view the future of college athletics being, especially looking at Alston V. NCAA for allowing greater economic freedom to athletes?**

- Association's reluctance to turn down the dampers, unilateral self-regulation
- Whole enterprise would benefit from colling off, re-set that would allow greater freedoms in some to be who they are versus being a pre-professional, has that ship sailed?
- The only safe harbor for decisions making is to make the student athletes at the center of the conversation
- A threat to the future of college athletics, pay for play, athletes should not be employees
- Highest paid employees used to be surgeons at medical school, students pay large amounts of money to g through the schooling, how is it any different
  - There are situations of parallel, is this a learning opportunity
- Athletics will never be part of the academic life of Yale, but should and must be part of educational life
- 

**John Kennedy thesis**

- Why England Slept with the rise of fascism in Germany
- Could be a great analogy with the NCAA, why did they not respond and choose to not act after so many decades, playing defense, rather than taking affirmative action

### **3. John Brewer Interview**

#### **What is your background dealing with NIL Legislation?**

- College athletics models broken, revenue stream and age of them impacts the whole
- Doctoral thesis on paying college athletes, didn't make sense 15 years ago, wasn't a priority with the model
- As salaries and arms race begins, it has come to forefront
- Everyone should be thinking about it
- Professional development program "Emerge"
- INFLCR focused on NIL legislation, help manage strategy and business side

#### **As we stand now, do you believe that NIL freedom allowed to athletes will be beneficial for just the top athletes, or all revenue and non-revenue athletes?**

- The divide is going away, female vs. male sports, it isn't true anymore
- The hustlers will get the benefits, not just the top 1% of athletes
- Getting influencer student athletes, those who are willing to jump into the marketplace
- It's going to affect the number of people who want to take action
- It's about engagement, not just views, high engagement will drive the day

#### **Where are their areas of concern for concern with NIL?**

- Not a structure in place to regulate it, compliance departments have to build and interpret structure without having NCAA black/white oversight in rules areas
- Expecting Federal government and supreme court to make decisions
- Recruiting perspectives, can make more money elsewhere, college coaches become Governors
- Revenue streams don't match, revenue and non-revenue, do departments have to pay to use their athletes?
- Revenue sharing demands
- Fair market values, can set value but it doesn't matter for the worth that someone is willing to pay, arbitrary, brand will want to use high numbers as marketing vehicle

## Bibliography

- Akabas, Lev. "COLLEGE ATHLETE ENDORSEMENT PAY GETS MILD PUBLIC SUPPORT: DATA VIZ," n.d., 5.
- Andrews, Ross. "Push to Allow Professional Athletes Took Hold in 1968 Olympic Games." *Global Sport Matters*, October 15, 2018.  
<https://globalsportmatters.com/mexico/2018/10/15/professional-athletes-1968-olympic-games/>.
- California Legislative Information. "Bill Text - SB-206 Collegiate Athletics: Student Athlete Compensation and Representation." Accessed April 24, 2021.  
[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB206](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB206).
- Bois, Jon. *222-0. PRETTY GOOD, EPISODE 10.*, 2016.  
<https://www.youtube.com/watch?v=doZzrsDJo-4>.
- Booker, Brakkton. "College Athletes Are Now Closer To Getting Paid After NCAA Board OKs Plan," n.d., 7.
- Booker, Senator Cory. "Why I'm Behind the Athletes Bill of Rights," n.d., 2.
- Branch, Taylor. "The Scandal of NCAA College Sports - The Atlantic." Accessed April 24, 2021. [https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?single\\_page=true](https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/?single_page=true).
- Brewer, John. Interview with John Brewer, Director of Partnerships of #INFLCR. Zoom Interview, March 31, 2020.
- Cameron, Steve. "The NCAA Brings in \$1 Billion a Year — Here's Why It Refuses to Pay Its College Athletes," n.d., 4.
- Coates, Ta-Nehisi. "The Shame of the NCAA." *The Atlantic*, October 17, 2011.  
<https://www.theatlantic.com/entertainment/archive/2011/10/the-shame-of-the-ncaa/246775/>.
- "College Finances - USA TODAY." Accessed May 3, 2021.  
<https://sports.usatoday.com/ncaa/finances>.
- Cornwell, T. "Sponsorship-Linked Marketing Development." *Sport Marketing Quarterly* 4 (January 1, 1995): 13–24.

Dellenger, Ross. "NCAA Athletes Rights: Two Senators Spar with CEO over NIL - Sports Illustrated," January 14, 2021.  
<https://www.si.com/college/2021/01/14/ncaa-athlete-rights-compensation-congress-nil>.

Alston v. NCAA. "Docket for 20-512," October 19, 2020.  
<https://www.supremecourt.gov/docket/docketfiles/html/public/20-512.html>.

"Everything You Need to Know about the NCAA and NIL Debate," n.d.

"Finances of Intercollegiate Athletics \_ NCAA.Org - The Official Site of the NCAA.Pdf," n.d.

Given, Karen. "Walter Byers: The Man Who Built The NCAA, Then Tried To Tear It Down." Accessed May 3, 2021.  
<https://www.wbur.org/onlyagame/2017/10/13/walter-byers-ncaa>.

Godfrey, Stephen. *Foul Play: The NCAA Punishes Ole Miss and Avoids Fully Addressing Recruiting's Underground Economy*, 2018.  
<https://www.youtube.com/watch?v=JKGStxRyvhl&t=1487s>.

Greene, Bob. "What Changed the Olympics Forever - CNN." CNN, July 23, 2012.  
<https://www.cnn.com/2012/07/22/opinion/greene-olympics-amateurs>.

Hall, Spencer, and Jason Kirk. "The Failure State." The Shutdown Fullcast, n.d.  
<https://podcasts.apple.com/gb/podcast/the-failure-state/id738433869?i=1000505238178>.

The Players' Tribune. "It's Madness That We Don't Pay College Athletes | By Chris Bosh." Accessed April 24, 2021. <https://www.theplayertribune.com/posts/chris-bosh-ncaa-college-athletes>.

Killion, Ann. "Women's Tournament Exposed NCAA's Sexism, but Will the Calls for Change Be Heard?" San Francisco Chronicle, April 6, 2021.  
<https://www.sfchronicle.com/sports/annkillion/article/Women-s-tournament-exposed-NCAA-s-sexism-but-16078481.php>.

Lamb, Nathan Kalman, Derek Silva, and Johanna Mellis. "'We Are Being Gaslit': College Football and Covid 19 Are Imperiling Athletes." *The Guardian*, n.d., 6.

Loretta8. "Friendly Reminder: The NCAA Invented The Term 'Student-Athlete' To Get Out Of Paying Worker's Comp - Inside NU." InsideNU, January 28, 2014.  
<https://www.insidenu.com/2014/1/28/5355988/ncaa-student-athlete-kain-colter-union-workers-comp>.

- “Mak - The Impact of Title IX on Athletics Development in.Pdf.” Accessed May 3, 2021. <https://core.ac.uk/download/pdf/232722861.pdf>.
- Mak, Jennifer Y. “The Impact of Title IX on Athletics Development in the United States.” *Journal of Physical Education*, n.d., 6.
- Matula, Thaddeus. “Brian and the Boz | ESPN 30 for 30.” ESPN, October 28, 2014.
- Mccann, Michael. “The Supreme Court on Monday Declined to Hear O’Bannon v. NCAA, Leaving the Future of Amateurism in College Sports in Murky Waters for Now.,” n.d., 2.
- McCormick, Robert A, and Amy C McCormick. “The Myth of the Student-Athlete: The College Athlete as Employee.” *Washington Law Review*, n.d., 89.
- Meghamez, John A. “An All-Encompassing Primer on Student-Athlete Name, Image, and Likeness Rights and How O’cannon v. NCAA and Keller v. NCAA Forever Changed College Athletics” 9 (n.d.): 61.
- Morris, Kit. Interview with Kit Morris, Director of Collegiate Sports Marketing at Nike. Zoom Interview, April 1, 2021.
- Navarette, Monica. “College Athletes Cut Corners with Paper Classes – The Telescope.” Accessed May 3, 2021. <https://www.palomar.edu/telescope/2019/03/04/college-athletes-cut-corners-with-paper-classes/>.
- “O’Bannon - UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCU.Pdf.” Accessed May 3, 2021. <https://cases.justia.com/federal/appellate-courts/ca9/14-16601/14-16601-2015-09-30.pdf?ts=1443632733>.
- O’Bannon, Edward C. O’Bannon V. NCAA (n.d.).
- Oliver, John. *The NCAA: Last Week Tonight with John Oliver (HBO)*, 2015. <https://www.youtube.com/watch?v=pX8BXH3SJn0>.
- PAC-12 Players Union. “#WeAreUnited | By Players of the Pac-12.” The Players’ Tribune. Accessed April 24, 2021. <https://www.theplayerstribune.com/articles/pac-12-players-covid-19-statement-football-season>.
- Paule, Amanda L., and Todd A. Gilson. “Current Collegiate Experiences of Big-Time, Non-Revenue, NCAA Athletes.” *Journal of Intercollegiate Sport* 3, no. 2 (December 2010): 333–47. <https://doi.org/10.1123/jis.3.2.333>.

- Planos, Josh. “How Much Money Could Student-Athletes Make As Social Media Influencers? | FiveThirtyEight.” *fivethirtyeight*, May 15, 2020.  
<https://fivethirtyeight.com/features/how-much-money-could-student-athletes-make-as-social-media-influencers/>.
- Ross, Terrance. “What Gender Inequality Looks Like in Collegiate Sports.” *The Atlantic*, n.d., 7.
- Rubin, Lisa M, Sonya Britt-Lutter, Daron K Roberts, Arin C Dunn, Fanny Fang, Camila Haselwood, and Taylor R Brown. “Enhancing Financial Literacy Among Student-Athletes: 2018 NCAA Innovations in Research and Practice Grant Final Report,” n.d., 21.
- Sanderson, Allen R., and John J. Siegfried. “The Case for Paying College Athletes.” *Journal of Economic Perspectives* 29, no. 1 (February 1, 2015): 115–38.  
<https://doi.org/10.1257/jep.29.1.115>.
- Shugerman, Emily. “The Prevalence of Coronavirus during the Preseason Suggests What Could Happen When Schools Reopen.” *LOG IN*, n.d., 7.
- Slothower, Chuck. “Fort Lewis’ First ‘Student-Athlete.’” Accessed April 24, 2021.  
<https://durangoherald.com/articles/79431>.
- smeyers@ncaa.org. “Estimated Probability of Competing in College Athletics.” Text. NCAA.org - The Official Site of the NCAA, March 2, 2015.  
<http://www.ncaa.org/about/resources/research/estimated-probability-competing-college-athletics>.
- Smith, Rodney K. “A Brief History of the National Collegiate Athletic Association’s Role in Regulating Intercollegiate Athletics” 11 (n.d.): 15.
- “Snapshot.” Accessed May 3, 2021.  
<https://www.palomar.edu/telescope/2019/03/04/college-athletes-cut-corners-with-paper-classes/>.
- Solomon, Jon. “Ed O’Bannon v. NCAA: The Arguments for and against a Class-Action Suit - al.Com.” Accessed April 24, 2021.  
[https://www.al.com/sports/2013/06/ed\\_obannon\\_v\\_ncaa\\_the\\_argument.html](https://www.al.com/sports/2013/06/ed_obannon_v_ncaa_the_argument.html).
- Sykes, Jody. Interview with Jody Sykes, University of Oregon Assistant Athletic Director and Chief Compliance Officer. Zoom Interview, April 13, 2021.
- Business of College Sports. “Tracker: Name, Image and Likeness Legislation by State - Business of College Sports,” April 24, 2021.  
<https://businessofcollegesports.com/tracker-name-image-and-likeness-legislation-by-state/>.

University, Stanford. “Stanford Athletics Varsity Sport Reductions: FAQ.” Stanford News, July 8, 2020. <https://news.stanford.edu/2020/07/08/athletics-faq/>.

Vint, Patrick. “The NCAA Knew EA Sports Had Real Players ‘hidden’ in College Football Games,” n.d., 3.

“What Is CTE? | Concussion Legacy Foundation.” Accessed May 3, 2021. <https://concussionfoundation.org/CTE-resources/what-is-CTE>.

Zeizima, Katie. “How Teddy Roosevelt Saved Football.” Washington Post, May 29, 2014. <https://www.washingtonpost.com/news/the-fix/wp/2014/05/29/teddy-roosevelt-helped-save-football-with-a-white-house-meeting-in-1905/>.