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“OPPORTUNITY AND OVERSIGHT: THE NIL AND COLLEGE FOOTBALL THROUGH
THE LENS OF OLE MISS”

by

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A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of
the requirements of the Sally McDonnell Barksdale Honors College.

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ABSTRACT

“OPPORTUNITY AND OVERSIGHT: THE NIL AND COLLEGE FOOTBALL THROUGH THE LENS OF OLE MISS”

Since 2021, student-athletes have been reaping financial benefits of the commercialized use of their name, image, and likenesses (NIL). In addition to engaging in direct endorsement contracts with third party businesses, student-athletes are likewise working with NIL collectives to secure novel forms of funding opportunities. In this thesis, the current system of Name, Image, and Likeness (NIL) utilized in collegiate athletics will be examined. While NIL can be a beneficial source of income and exposure to student athletes across the country, the set of rules, or lack thereof, in effect is not substantial enough to maintain a safe and healthy environment for those directly affected.

A review of the published literature review was reviewed in this thesis along with court cases of NIL were investigated through established Law Reviews from Cornell and Harvard. Additionally, an analysis of information and opinion from sites including ESPN, NPR, and The Los Angeles Times and daily news updates on legislation and interviews from athletes and administrators on their impact. Finally, interviews with key stakeholders were conducted and included in a documentary. A 20 minute documentary highlighted the intricacies of different perspectives and issues of the current NIL structure. This thesis and documentary will explore the hypothesis that an increase in oversight and structure needs to be made for collegiate athletics to continue in this direction.

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“Opportunity and Oversight: The NIL and College Football Through the Lens of Ole Miss”

Introduction

Support of collegiate student-athletes has taken many forms since the first collegiate sports began at Yale University in 1843. As the sports developed and changed, so has student-athlete support. Its current evolution, Name, Image, and Likeness will be investigated by reviewing publications on the subject. This thesis is an exploration of NIL in its many forms and the paths, not all successful, taken by its present day application. Terms will be defined and a timeline of the legal and practical developments through February of 2024 will be detailed. Interviews with key stakeholders currently in collegiate athletics will serve as the basis for a documentary which will discuss issues and opportunities within collegiate athletics today. These interviews will highlight the benefits of NIL as well as the challenges and uncertainty that it has created based on their individual perspective and position.

Chapter 1: The Emergence of Name, Image, and Likeness

The emergence of Name, Image, and Likeness (NIL) in collegiate athletics provides new avenues for student-athletes to monetize personal brands. Athletes can now promote products and endorse services just as professional celebrity athletes have done for decades. As NIL becomes ingrained into the collegiate athletics landscape, administrators and legislators are confronted with unprecedented issues. The student challenges associated with NIL are legal,

financial, and emotional. They include avoiding illegal inducement of potential student-athletes and navigating the mental health concerns stemming from managing further demands and pressures on student athletes' time and self-image. The institutions also face challenges. Compliance with existing laws and regulations has always been an institutional responsibility. However, compliance becomes elusive when the rules change rapidly and are often only guidelines. "NIL laws are a patchwork across states. Some states have no NIL laws, forcing colleges within their borders to rely on the loose guidelines the NCAA provided at the last minute" (Moody, 2022). In this very liquid environment, the schools face competing needs to follow the rules and to maintain their athletic program's competitive position. It is the responsibility of schools to avoid illegal recruiting, yet they stand to benefit from the presence of a strong NIL reputation. As such, institutions find themselves in volatile gray areas where they must walk a fine line between controlling boosters who want to invest money toward that reputation and allowing legitimate opportunities to attract and retain athletes. Is this their mission?

The National Collegiate Athletic Association (NCAA) did not anticipate the changing position wherein its athletes would be paid and still maintain amateur status. Ensuring fairness and preventing exploitation necessitate strict oversight, clear rules, and regulatory structure to maintain balance and preserve the essence of traditional amateurism within collegiate athletics.

The stated Mission and Priorities of the (NCAA) provides confirmation. There is no mention of commercial opportunities for its athletes and no tangible guidance for the application of NIL by the institutions (NCAA, 2024). At the highest level, the NCAA Mission and Priorities fail to address NIL and its application to student-athletes or institutions.

Figure 1 NCAA Mission and Priorities

NCAA Mission - Provide a world-class athletics and academic experience for student-athletes that fosters lifelong well-being.

NCAA Priorities

Coordinate and deliver safe, fair, and inclusive competition directly and by Association members

Provide world-class services to student-athletes and members that leverage the NCAA's collective scale

Grow the college sports ecosystem

Deliver sustainable funding for the NCAA mission

Revenue for intercollegiate athletic programs, particularly in Power 5 Conferences, has risen to the level of many large commercial businesses. The Power Five conferences are the Atlantic Coast Conference (ACC), Big Ten Conference, Big 12 Conference, Pac-12 Conference, and Southeastern Conference (SEC). This has sparked public criticism and increasing complaints that college athletics is no longer about duty to a school and its heritage as much as a financial commercial pursuit. As the monetary value has soared, public criticism has become more strident, and “the most repeated complaint about college athletics is that it is a “business” or “commercial activity” (Osborne, 2014, p. 143). Past revenue sources such as ticket and clothing sales have been completely overshadowed by industries such as merchandising, media, broadcasting, and video games. Television rights alone have become a multi-billion dollar entitlement. The 10 Football Bowl Subdivision (FBS) conferences and Notre Dame finalized a new \$1.3 billion television contract for the 2026 College Football Playoff alone that will net an estimated \$22 million to each of the 10 FBS conferences (College Football Playoff Deal).

Student-athletes have become increasingly aware of their value in this commercial bonanza, raising questions if they are being exploited for private profit. As coaches and institutions receive millions, their student-athletes had been specifically prohibited by the rules established by the NCAA targeted at ensuring amateurism in collegiate sports.

Chapter 2: NIL Gets Its Start

Name, Image, and Likeness (NIL), was a term coined in a 2009 lawsuit filed by UCLA basketball player, Ed O’Bannon. In “O’Bannon v. NCAA,” the former player alleged “violations of Section 1 of the Sherman Antitrust Act” (Dunson, 2022). O’Bannon’s likeness had been used in an NCAA-themed basketball video game created by Electronic Arts. The character in question, while identical to O’Bannon in height and skill on the court, had no name attached to what was clearly O’Bannon’s face. This led to further exploration on not only O’Bannon’s part but other NCAA athletes’ who had their name used for promotional purposes without their consent.

Figure 2 NIL TIMELINE

1956 – NCAA begins to allow student-athletes to receive athletic scholarships without regard for their academic ability or financial hardships.

1975 – The NCAA updated its regulations limiting scholarships to tuition, books and board.

1984 – In a 7-2 decision, the U.S. Supreme Court declared that the NCAA’s control of college football television broadcast rights violated the Sherman and Clayton Antitrust Acts. The ruling gave member schools more autonomy to negotiate broadcast rights agreements.

2009 – Former UCLA basketball standout Ed O’Bannon was a plaintiff in a class action against the NCAA. O’Bannon and the other plaintiffs claimed an

EA Sports video basketball game used their likenesses without consent or compensation.

2014 – Northwestern University football players petitioned the National Labor Relations Board (NLRB) to classify them as employees and permit them to unionize and directly benefit from commercial opportunities. The NLRB petition was unsuccessful, but the NCAA and member schools were put on notice about limiting the monetization of NIL by student-athletes.

2015 – Federal district and appellate courts upheld the arguments of O’Bannon and the other plaintiffs, ruling that the NCAA’s amateurism rules were an unlawful restraint of trade. As a result, the NCAA increased the grant-in-aid limit to the full cost of attending school and allowed up to \$5,000 per year in additional compensation.

2019 – California became the first state to pass NIL legislation in the “Fair Pay to Play Act” which prohibited the NCAA or member schools from punishing student-athletes who earn NIL compensation. The new measure was set for enactment in 2023.

2020 – Colorado, Florida, Nebraska, New Jersey, and several other states pass laws permitting college student-athletes to monetize their NIL. These new regulations are scheduled for enactment in 2022 and 2023.

2020 – The National Association of Intercollegiate Athletics (NAIA) passed regulations allowing NIL compensation for its student-athletes. The NAIA regulates collegiate athletics at 252 member institutions that field 77,000 student-athletes in 27 sports.

2021 – In *NCAA vs. Alston*, the U.S. Supreme Court rejected an NCAA appeal of its antitrust lawsuit, finalizing the lower court decision that the NCAA is not exempt from antitrust regulations. This ruling opened the floodgates for additional academic-related compensation and led to the NCAA’s ultimate decision to quickly adopt an Interim NIL Policy that allowed, for the first time, student-athletes to benefit financially from their name, image, and likeness without fear of NCAA penalty.

2022 – The NCAA Board of Directors issued NIL guidance to member schools which reinforced the prohibition of any recruiting incentives offered to student-athletes linked to potential NIL arrangements.
(Dalimonte, 2023)

Chapter 3: The National Collegiate Athletic Association

As the governing body over collegiate sports and athletes, the NCAA considered the use of athletes' likeness to be within its purview and authority since both the institutions and the athletes were a part of their constituency. Decades of this apparent authority had not been questioned with any rigor. The NCAA also considered that, because of the nature of their organization, paying the players for this promotion was out of the question. "The NCAA requires that its participants...maintain amateur status," resulting in the prohibition of student-athlete compensation (Dunson, 2022). According to the Merriam-Webster Dictionary, an amateur is "one who engages in a pursuit, study, science, or sport as a pastime rather than as a profession." This statement implies that the activity is not performed for monetary gain. The NCAA also continues to maintain its federal nonprofit status. "As a nonprofit organization, the NCAA puts its money where its mission is: equipping student-athletes to succeed on the playing field, in the classroom, and throughout life" (NCAA Finances, 2024). The NCAA receives most of its annual revenue from two sources: television and marketing rights for the Division I Men's Basketball Championship and ticket sales for all championships. Annual NCAA revenues reached a record high of \$1.3 billion in 2023 (USA Today, February 2024). The NCAA was not originally intended to be a financial regulatory agency. Originally formed in 1906 to combat player injuries and deaths in football, the Intercollegiate Athletic Association of the United States, was the precursor to the NCAA.

The need for a regulatory body originally arose after the drastic increase in traumatic brain injuries resulting from playing football. It was considered in the public interest to establish rules for a safe playing environment for coaches and athletes. Originally formed in 1906 to combat player injuries and deaths in football, the Intercollegiate Athletic Association of the

United States, was the precursor to the NCAA. At its official emergence, the National Collegiate Athletics Association was created to “maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body” (NCAA). The NCAA ensured athlete safety and the idea that athletics programs were “motivated primarily by education and by the physical, mental, and social benefits to be derived” (Novak, 2021, p. 1). Through checks and balances on matters “such as student-athlete eligibility, financial aid, scholarships, and compensation,” the NCAA kept all student-athletes exactly where they wanted them (Novak, 2021, p. 2).

Over a hundred years later, the NCAA has become the powerhouse of collegiate athletics. Revenues have continued to increase annually as the number of sports and athletes falling under the NCAA purview has grown. The popularity and quality of recorded live events have dramatically increased revenues. The athletes on the field and in front of the camera, where the money is made, have previously benefited only indirectly from these increased revenues. Every year (since at least 2019), Division I, II, and III athletic departments report well over a billion dollars in revenue, much of which goes back into the process of continuing to run the business that is an athletic department. A billion dollars is an exceptional amount of money, though, and the only way these revenues are generated is through a mutual relationship between the work of the athletes, coaches, and administrators.

Chapter 4: The Student-Athlete

When you first think about a student-athlete, you think of the word “student.” The NCAA and athletic departments emphasize the student portion of the description before the athlete nomenclature. It is important to recognize the origin of the term. The origins of the term can be traced back over six decades to a 1953 Colorado Supreme Court case when Ernest

Nemeth suffered a football practice injury. A University of Denver football player in 1950, Mr. Nemeth claimed he was hired by the university to play football and his injury was a result of his employment. “The Colorado Supreme Court upheld a ruling by the state Industrial Commission that Nemeth was indeed an employee as defined by Colorado’s worker’s compensation statute. The Court determined that Nemeth’s compensation for playing football—an athletic scholarship, housing, meals, and a campus job—was contingent upon his ability to perform on the field, and therefore the university was obligated to provide workers’ compensation for his football-related injury (Organization of American Historians).

The value of also being a student continues to have significant worth. “Fewer than 2 percent of NCAA student-athletes go on to be professional athletes (NCAA Recruiting Facts). In reality, most student-athletes depend on academics to prepare them for life after college. Education is important. “The average bachelor’s degree...in 2001-2005 is \$25,122 annually, averaging about \$100,000 in total, not considering inflation from 2001 to now (Trostel, 2010, p. 224). The benefit gained from being a student-athlete, according to the NCAA, is the degree received at the end of the athlete's four years of eligibility. Upon further research though, it can be discovered that “most student-athletes do not receive a full-ride scholarship - in fact, only 1 percent do” (Next College Student Athlete [NCSA]). As a result, the majority of these athletes must pay for a substantial portion of their degree just to be able to compete. These athletes are precluded by NCAA rules from earning money during their collegiate career.

College and professional athletes are similar in their dedication to a single sport. The dividing line can be considered where the professional athlete may have a singular focus where the college athlete must share time between his sport, academics and finances. The average annual NFL player is paid around \$2.8 million (Abdalazem, 2024). Their job and their singular

focus is performance on the field. It could be argued that they are not required to balance academic and athletic performance and earn adequate funds for daily life. Their monetary compensation is tied directly to their sport.

College sports, on the other hand, expect most of an athlete's hours to be applied toward their sport while, at the same time, maintaining an academic standard. It could be argued that At the highest level, collegiate players perform at a comparable level to professional athletics. The challenge of overcoming both hurdles without pay, or even scholarships, could be an unacceptable choice. This constant burden can result in “Student-Athlete Burnout.” “The pressures to do and achieve more keep growing, and far too rarely is consideration given to the costs of operating in this non-stop fashion” specifically for collegiate student-athletes (NCAA). Professional athletes are expected only to focus on their sport, leaving the time necessary for rest and diversion available to avoid this burnout that so many college athletes face at some point in their careers. The struggles of the student-athlete have continued in this way for decades without ceasing, until the proposition of a bill that would change college sports forever. Changes that many consider “It’s a disaster even though it benefits us at Ole Miss” (Jones, 2024).

Chapter 5: NCAA and California Disagree

California passed legislation in 2019, introduced by Sen. Nancy Skinner that, starting in 2023, prohibits schools from punishing athletes who accept endorsement money while in college. California stated in their legislation that “college athletes in the state [could] ‘earn [] compensation as a result of the use of the students' name, image, or likeness’ as long as such compensation does not violate team rules” (Bunner, 2020, p. 355). The legislation was intended to be equitable for all those involved, but the NCAA was not in complete agreement.

The NCAA responded first with a letter enumerating their concern. “The 1,100 schools that make up the NCAA have always, in everything we do, supported a level playing field for all student-athletes. This core belief extends to each member college and university in every state. California Senate Bill 206 would upend that balance. If the bill becomes law and California's 58 NCAA schools are compelled to allow an unrestricted name, image, and likeness scheme, it would erase the critical distinction between college and professional athletics and, because it gives those schools an unfair recruiting advantage, would result in them eventually being unable to compete in NCAA competitions” (NCAA Media Center, 2019).

An important change occurred in October of 2019 when the NCAA Board of Governors voted unanimously to “permit students participating in athletics the opportunity to *benefit* from the use of their name, image, and/or likeness” (Bunner, 2020, p. 356). This decision was a revelation to the NCAA and collegiate athlete relationship. However, the NCAA contradicted the statement by requiring that compensation could not be a part of NIL. This contradiction stifled the advancement of NIL. The NCAA Board closed by reiterating that student-athletes could under no circumstances receive financial compensation for their NIL. This NCAA stated position continued to face state legislative challenges including, The Student-Athlete Level Playing Field Act, the Student-Athlete Equity Act, and one court case, NCAA v. Alston. These actions resulted in changes that would provide compensation for collegiate athletics (Ewing, 2024).

In 2021, Ed O’Bannon and Shawne Alston returned NIL to the courts. Alston, “a former West Virginia Mountaineers running back,” once again stood as a representative for student-athletes (Bumbaca, 2021). Ultimately, the decision the courts granted was one regarding the Sherman Act. In the Alston case, the court, influenced by the decisions of O’Bannon v. NCAA, “led to the conclusion that the NCAA had almost complete monopoly power over the collegiate

athletics market” (Poyfair, 2022). The Supreme Court in its ruling noted “that the NCAA enjoys monopsony control in the relevant market— such that it is capable of depressing wages below competitive levels for student-athletes and thereby restricting the quantity of student-athlete labor” (Supreme Court of the United States Syllabus, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION v. ALSTON ET AL., 2021). In a monopsony, a single buyer (the NCAA) controls or dominates the demand for goods and services. Both a monopoly and monopsony can result in high profits for the dominant entity but are often considered illegal because they inhibit competition. The NCAA did not contest this position held by the Supreme Court in its decision.

Under its monopoly power, the NCAA generated nearly \$1.3 billion in revenue for the 2022-23 fiscal year, with \$669 million distributed back to Division I members. These distributions are not currently available to be used as pay for student-athletes. It is enlightening to recognize that the majority of this revenue, \$945 million, was directly from media rights and marketing of championship events. In particular, CBS and Warner Bros. Discovery rights to the men's Division I basketball tournament are responsible for \$900 million annually. These television revenues will increase annually and exceed \$1 billion in 2025 (Associated Press, 2024).

There is no other controlling authority for those student-athletes wanting to participate at the “amateur” level of collegiate sports. The NCAA controls the revenue streams and the entire sphere of amateur athletics in America. “There is no current viable substitution” as the court case states on the nature of the “unreasonable level of regulatory control” held by the NCAA (Poyfair, 2022). Supreme Court Justice Kavanaugh states this clearly in his concurring opinion. “The NCAA has long restricted the compensation and benefits that student-athletes may receive. And with surprising success, the NCAA has long shielded its compensation rules from ordinary

antitrust scrutiny. Today, however, the Court holds that the NCAA has violated the antitrust laws. The Court's decision marks an important and overdue course correction, and I join the Court's excellent opinion in full" (Kavanaugh, 2021).

Once the NCAA's policies were overturned, several states followed California's "Fair Pay to Play Act" in their pursuits of the right to NIL. "At least 19 other states have passed similar laws in the years following...each passed legislation [] would allow student-athletes in those states to receive compensation for the use of their NILs" (Novak, 2021, p.ii).

Chapter 6: Fair Pay to Play Act

The California Fair Pay to Play Act, effective January 1, 2023, "will require four-year colleges and universities in California to allow college athletes to earn compensation from the use of their names, images, or likenesses. It also mandates that the NCAA and any other "athletic association, conference, . . . group or organization with authority over intercollegiate athletics" allow student-athletes in California to profit off of their names, images, or likenesses. The law also requires that the NCAA and partner organizations allow colleges and universities that permit students to earn such compensation to participate in intercollegiate athletics.

The law will not permit colleges and universities to pay its student-athletes or to compensate them directly for the use of their names, images, or likenesses, but it will allow student-athletes to try to capitalize on the fleeting fame some of them realize as college athletes and to hire a licensed agent or lawyer to help them do so" (Bank, 2024)

It seemed to athletes and some college programs that justice had finally been served. However, a greater problem arose. Each of the 18 initial states that passed legislation created slightly different rules and statutes. To date, 32 states have passed NIL laws. Their laws have been modeled on California's Act. Some states passed prohibitive laws on "their schools licensed

As athletes recognize the financial opportunities available through NIL, they also realize that the potential for monetary gain is substantial. The natural progression then becomes a financial competition that rewards movement between teams. The result then, is seeing “players who are ...comfortable with their current teams [] transferring just because there is not enough money being granted to them at their original school” (DiCalogero, 2023). It becomes hard for these athletes and managers to keep up with the legislation in every state they transfer. Before NIL, athletes may transfer once in their career due to compatibility issues between players and school or coach. Now, we are seeing “players who have transferred to their fourth different school by senior year” (DiCalogero, 2023). Transfer rules have continued to evolve. Generally, the transfer restrictions have moved in a more lenient direction allowing more transfers and additional windows. On April 8, 2024, it was reported that the “NCAA Division I Council could adopt emergency legislation this month for a new transfer rule that would allow all undergraduate athletes to transfer and play immediately if they meet specific academic requirements” (Dinich, 2024). The number of transfers would also not be limited. NIL legislation and laws are being reviewed and revised across more than thirty participating states. As a result, student-athletes and institutions face continued uncertainty in compliance and competition for players.

Chapter 7: NIL Tax Implications and Student-Athlete Payments

The NCAA currently holds a tax-exempt status, because it is a registered nonprofit and adheres to the rules of its IRS charter. The NCAA itself is “exempt from federal income tax as [a] ‘charitable organization’” but its members are classified differently (Bunner, 2020, p. 360). Some hold the same charitable status for tax exemption while others “are generally tax-exempt under the doctrine of intergovernmental immunity” (Bunner, 2020, p. 360). The crux of both the

NCAA and each member on retaining this status is their focus on “the promotion of education...[and] ‘fostering...amateur athletics’” (Bunner, 2020, p. 360). The nature of athletics may face modification based on the compensatory changes NIL brings about. This could, in turn, completely change the tax status of the NCAA and its member schools. It is unclear how this will directly affect the athletes benefiting from NIL.

This new line of income in NIL creates a new federal government Internal Revenue Service (IRS) view of collegiate athletics. Revenues made from promotion with NIL no longer further the idea of an education-based program, which makes them an “‘unrelated business income’ and therefore subject to federal income tax” (Bunner, 2020, p.360). Most student-athletes, and regular college students for that matter, have never thought about taxes, and “planners warn that the sudden wealth has created a ‘wild west’ in which some players don't realize the need to set aside portions of the money they receive as independent contractors for taxes” (Salinger, 2023). On top of this, some student-athletes “receive athletic scholarships covering all or part of the cost of tuition and fees,” as previously discussed (Bunner, 2020, p. 361). This could remain tax-exempt, as long as no portion contributes to a “pay for play” compensation. However, if the scholarships become an avenue used to recruit and pay players, the tax status and formative aspects of the NCAA are at risk. No longer would these student-athletes be considered “amateurs.” A redefinition of athletes from amateur to professional status.... According to Dr. Ike Brunner, an Assistant Professor at the University of Mississippi, “leads to the idea that NIL regulated on a state-by-state basis “will be problematic for the national collegiate athletic system” (Bunner, 2020, p. 363).

There is no simple or obvious solution for the students or the institutions. The IRS has the authority to interpret and apply its rules. While it is not expected, outlawing NIL would be the

simplest way to eliminate the problems. However, making NIL illegal would not stop those with monetary means from pursuing an advantage. It is often said that some players have accepted financial benefits from university boosters for decades. Pay-for-play practices can be traced back to the mid-1800's. For athletic programs like Harvard and Yale, "collegiate football was a commercial enterprise employing athletes for pay -- 'tramp athletes' who 'roamed the country making cameo athletic appearances' for pay" (Hiltzik, 2023). These practices, ingrained into the landscape of collegiate athletics since 1852, have become "a substantial underground economy that's likely to be unstoppable" (Los Angeles Times, 1989). The reality is that this financial relationship may contribute to the success of the athletes who serve these programs. The prediction that athletes should be paid and the potential impact on the NCAA was made as far back as 2011. "A leading civil-rights historian makes the case for paying college athletes—and reveals how a spate of lawsuits working their way through the courts could destroy the NCAA" (Branch, 2011).

Some payments have been allowed. The NCAA rules accept certain payments to athletes. "In 2016, NCAA president Mark Emmert raised concerns that University of Texas swimmer Joseph Schooling had recently received a \$740,000 bonus from Singapore for winning a gold medal at the 2016 Olympics" (Solomon, 2018). This payment, while substantial, was perfectly permissible under NCAA rules, which since 2001 have allowed US Olympians to compete in college and receive payments associated with the Olympic competition.

"Most student-athletes do not receive a full-ride scholarship—in fact, only 1 percent do" (NCSA Scholarship Facts). This reality means many athletes must balance an aggressive practice schedule and academics. Little time remains for a paying job. Under the old rules of the NCAA, an athlete was left to pay for everything outside of whatever tuition was granted them. This gap

between paid and owed accounts for “thousands of dollars per year and leave[s] about 85% of players to live below the poverty line” (Britannica 1, 2022). The athletic team is an integral part of the athletic business. The athletes who directly contribute to the success of this amateur sports business have remained at the bottom of the business stakeholders list. Athletes cannot thrive in a program where they are expected to continually exhaust their bodies while in a situation where ordinary living expenses represent a substantial challenge. Some experts hypothesize that the NCAA could have worked to create a more equitable environment for their athletes. Instead, they continue to put “players in poverty and [deny] them ways to earn money, while making millions on their performance” (Britannica 1, 2022). Former Washington State University football player Hamza Abdullah had a scholarship but lacked money for typical daily expenses. “I had to clean the carpets of fraternity and sorority houses to pay for food and gas when I was a #BrokeCollegeAthlete” (Hamza Abdullah (@HamzaAbdullah21) October 16, 2016).

In a 1989 survey of current and former NFL players, “nearly a third...said they accepted illegal payments during college” (Los Angeles Times, 1989). The amount of the payments is not quantified. However, it is important to recognize that two-thirds of the respondents did not accept illegal payments. One common strategy among agents was to find players in need and lend them money to “win contracts through illegal means” (NPR, 2012). This illegal system of pay strung players along, allowing agents to “prey upon those needs and fill those gaps...for a player that could end up being a first-round draft choice and generat[ing] millions” (NPR, 2012). It can be seen that the disadvantages of disallowing NIL far outweigh the advantages. Athletes can now legally make money from their successes without sacrificing their careers for something as simple as the roof over their heads. The athletes are far from the only people affected in the new world of NIL.

Chapter 8: Key Stakeholders

The next thing that should be considered when looking at the landscape of NIL is the rest of its key stakeholders: administrators, coaches, and fans. Collegiate athletics is an ecosystem in its own right, where players rely on administrators to make big business decisions, and fans to contribute their money to the success of the business.

Athletics Administrators are responsible for the administration of a specific athletics program, project, or function such as facilities management, team operations, event management, compliance, athletic student services, ticketing, public relations, and project management. They oversee every department in athletics and every sport in their program. Their jobs have become increasingly complex as NIL laws and their application are tested and implemented. Nebraska Athletic Director, Trev Alberts, is one of many open about the frustrations associated with the uncertainty of NIL implementation. He explains simply that “everything that we've all known for so long, that formed the foundation of what collegiate athletics was all about, the collegiate model, is done” (Parker, 2022). Not only must they keep their student-athletes in mind with every decision they make, but now also the never-ending stream of new legislation, the bulk of which is focused on maintaining the antitrust nature that the previous system went against. While ideas were awaiting legal definition and implementation, Athletic Directors were hard at work searching for solutions.

The responsibility of the coach, in particular a head coach, extends beyond teaching athletic skills. The coach is the direct authority for promoting compliance with the changing rules and requirements of each regulatory body and ensuring ongoing and effective communications with the administrators. Monitoring of all members of the coaching staff in consultation with the compliance staff demonstrates the coaches commitment to ensuring

compliance. He is also the head of a significant business operation that includes promotion, budgeting, fundraising and operations decisions that directly affect the institution. In this capacity, the coach maintains the image of both recruiting and competition. On field duties include teaching techniques, managing staff, scheduling, and monitoring academic progress of athletes.

College athletics fans live in all fifty states. They provide, directly or indirectly, the cash necessary to fuel NIL. Their support includes ticket and clothing purchases, donations, television views, and other transactions. “Learfield, a provider of media, data, and technology in college sports, compiles specific demographic and psychographic data from over 20 million “Known Fans,” who are fans with a direct relationship with the school through direct ticket purchases, donations, sign-ups and other transactions. In addition, more than 130 million additional “digital” or “anonymized” fans have engaged with athletic department websites” (Learfield, 2021).

Chapter 9: NIL Collectives Make an Appearance

Through much deliberation from Athletic Directors across the nation, athletic departments generally settled on “the formation of collectives at schools that raise funds and facilitate NIL deals” (Silverman, 2023). From The Grove Collective at The University of Mississippi to Arkansas Edge and the University of Arkansas at Fayetteville, NIL Collectives are working to facilitate school-specific athlete compensation. An NIL collective allows for “supporters of the university [to] donate - or become a subscribed member - of the collective pool[ing] the money for distribution” (Cook, 2024).

The biggest reason for collectives is recruiting, which tests if these athletes are considered employees. Many state’s NIL laws specifically prohibit pay for recruiting purposes.

A lawsuit filed by the NCAA in January 2024 against the University of Tennessee's collective called into question "NIL payments being made as an inducement to get a player to enroll at the school" (Cook, 2024). On February 23rd, a decision was made on the status of NIL going forward. After weeks of deliberation, a federal judge in Tennessee "barred the NCAA from enforcing its rules prohibiting name, image, and likeness compensation from being used to recruit athletes" (Murphy, 2024). The repercussions that administrators have been facing since its start are finally catching up to the NCAA, as they take "another blow to the association's ability to govern college sports" (Murphy, 2024).

Name Image Likeness (NIL) collectives are structurally independent of a school, yet fund NIL opportunities for the school's student-athletes. Collectives are not restricted in the way they are organized and may be nonprofits or for-profit entities. Some collectives choose not to apply as a nonprofit due in part to the IRS restrictions for qualifying under IRC § 501(c)(3) tax-exempt status from the IRS. They cannot be formed or controlled by the institution and are typically established by well-known alumni and supporters of the school. Collectives solicit and accumulate revenue through contributions including promotions, boosters, businesses, and fans. They use these funds to create opportunities for student-athletes to leverage their NIL in exchange for compensation. Unlike nonprofits, for-profit collectives are not subject to a cap on reasonable compensation to student-athletes. They may therefore offer student-athletes NIL work at compensation structures not allowable to the nonprofit collectives. Nonprofits are strictly subject to the terms, purpose, and mission identified in their IRC § 501(c)(3) approval. The for-profit collective is not subject to limitations on the type of activities they can facilitate. Therefore, for-profit LLCs have the flexibility to facilitate NIL arrangements including merchandising or endorsement deals that promote commercial activities.

Chapter 10: A New Structure

Administrators have two new considerations with legal and organizational implications:

1) what does life without a governing body look like and 2) what happens when the student-athletes become employees?

The first in the potential alternative is unionization. A NIL collective could be considered a type of union. The word collective is even used in some definitions: “Labor unions stand as an advocate on behalf of the employees and will negotiate with the employers through collective bargaining” (Cornell). Notice here that the word employee is also included.

In a recent motion, Dartmouth Men’s Basketball has petitioned to unionize and has been found free to do so. One member of the National Labor Relations Board found “that the petitioned-for basketball players are employees within the meaning of the [National Labor Relations] Act” (Kinnan, 2024). While statutory law supports unionization as legal, Dartmouth as a school is appealing the motion. Even with the nature of compensation for performance, those in charge are not convinced of student athletes’ status as employees. Maybe these administrators look at student-athletes through the lens of amateurism as the NCAA does.

Unionization could lead to other athletes and programs following their lead and other unexpected legal complications. While the same antitrust issues could arise as in previous lawsuits, athletes would also have more control over administrators. With union representation, athletes would gain “the ability to collectively bargain with the school over compensation and other working conditions” (Sports Business Journal). This could flip collegiate athletics completely from a system put in place to control athletes to a system controlled primarily by athletes.

In a new system like the one described above, it is difficult to place the role of coaches and fans within the collegiate athletics ecosystem. Their place may fall somewhere between

administrators and athletes, but it is hard to predict. The stakeholders may find common solutions difficult to achieve, which is why the exploration of such might be best carried out through documentary storytelling.

Documentary Storytelling

Documentary storytelling has withstood the test of time over the last century, and risen to its height in the twenty-first century. Originating from the French word *documentary*, “documentary film [is] motion picture that shapes and interprets factual material for purposes of education or entertainment” (Britannica 2, 2024). At their start in 1922, documentaries almost immediately began serving as a revolutionary way of transmitting stories across time and space. From recounting wars to discussing natural disasters, this preservative form of storytelling has captured the minds and hearts of people across the globe.

The persuasive and captivating powers of documentary storytelling were first introduced to sports fans through platforms like NFL Network, PBS, and ESPN. “It is ESPN’s 30 for 30 series, more than any other development, that has shaped this recent transformation” of sports media to documentary storytelling (Malitsky, 2014, p. 211). Originally brought about as a short-term 30-episode series showcasing high-status directors through sports video, 30 for 30’s has become so much more than just a piece in the history of sports cinematography. ESPN showed that the documentary format bridged the gap between entertainment and culture. “These documentaries can position sports within larger social and cultural contexts and offer commentaries about the relationship between sports and the accompanying issues” (Frederick, 2019). In the O’Bannon case alone, one Google search brings up pages of examples of documentary storytelling used in this way. Searching more broadly, the keywords, “NCAA name image likeness videos” elicit about fourteen million results.

It's one thing to say an athlete works hard, seeing hard work applied on the field or the court raises understanding to a different level. That is the second point when analyzing the importance of sports documentaries. "Sports documentaries emphasize the performing body as spectacular attraction...highlight[ing] images that demonstrate sensational bodily affect; and [stressing] the qualities of kinetic movement and stillness within the frame" (Malitsky, 2014, p. 208). In other words, one cannot truly understand how physically, mentally, and emotionally demanding a sport is without visualizing it. "Basic visualization allows us to immediately comprehend a message," which, in the case of athletics, is exactly what is necessary (Lankow, 2012, p. 30). From short-form content to feature-length documentaries on Amazon Prime Video, Apple TV, and beyond, the showcasing of collegiate athletes has already made a huge impact in their fight to be heard and seen.

Chapter 11: Research

To explore emerging thoughts and insights on the evolution of NIL, a documentary reflecting the current points-of-view of different stakeholders provides a relevant discussion of the future direction of NIL. The following research questions were explored:

- (R1) Did the NCAA's inaction to address collegiate athlete compensation contribute to an inequitable system?
- (R2) Is state legislation too varying and inequitable to collegiate athletes and programs?
- (R2) Should NIL regulation be overseen by the United States Congress?

The documentary discussed the evolution of NIL, the current state of NIL and the issues and opportunities from the viewpoints of different stakeholders. Interviews were conducted as research among current and former athletics administrators and coaches, and legal professionals.

Through video and audio recordings, information was gathered and analyzed to add value and impact to this thesis. Through the editing platform Adobe Premiere Pro, a [length of doc] documentary was produced. Included within is original footage taken by creator Emma Harrington, as well as footage gathered and provided by sources like Fox News, ESPN, Ole Miss Sports Productions, and Ole Miss Football Creative Media. This documentary further explores the facts and feelings surrounding the current system of NIL and its evolution.

Interviews among four key stakeholders were conducted as the foundation of a documentary that discusses the development and evolving nature of NIL. The documentary was chosen as a way to represent different points of view and examine the issues through the eyes of different constituents.

Link:

<https://youtu.be/12LPsRN-92Q>

First interviewed was former student-athlete, Athletic Trainer, and University of Mississippi Deputy Athletic Director, Lynnette Johnson. Beginning in the early 1980's, Johnson worked directly with student-athletes, seeing firsthand the struggles of balancing school and athletics with limited outside income or aid. Johnson recognizes the importance of NIL and how beneficial it could have been to the athletes with which she worked. However, she also sees how the system of NIL in place today has been abused. "The toothpaste is already out of the tube," she states, emphasizing the lack of oversight and its detrimental effects (Harrington, 2024). Johnson, the most tenured interviewee included within this documentary, is not alone in her opinions.

To gain the perspective of a provider of NIL transactions, Walker Jones agreed to an interview. Jones, also a former athlete, and Executive Director of The Grove Collective that

supports Ole Miss athletes through NIL transactions was a Rebel linebacker from 1996 to 1999 and was Director of Sports Marketing for world-renown sports gear maker Under Armour. He holds a degree in Business Administration and Management, and joined The Grove Collective in 2022 with over a decade of experience in sports business and marketing. As Executive Director, Jones has seen all of the positive aspects of NIL, but has also seen a system that began and continues with little to no control, going as far as to “[join] four other universities’ name, image, and likeness (NIL) organizations in Washington, D.C. ...to lobby Congress to create uniform NIL laws” (Salers, 2023).

The third interview conducted was with Assistant Coach for Defensive Backs at Western Kentucky University (WKU) Football, Da’Von Brown. Graduating in 2019 from Florida Atlantic University, the former defensive back himself missed the benefits of NIL completely by only two years. In his coaching capacity, Brown has closely followed NIL’s evolving rules and practices while working directly in college football. He now directly struggles with NIL in his recruiting for WKU. As a coach at a smaller school, NIL money is not as plentiful as the collectives of top ten football programs. The balancing of money and talent is a new challenge coaches are facing in the NIL ecosystem, and one that greatly impacts Brown’s opinions of the system seen in the documentary.

The fourth and final interview conducted was that of Juris Doctorate, Martin Edwards. A graduate of Duke University Law School, Edwards is highly educated in antitrust legislation and has published a paper on the topic. As a life-long sports fan and Assistant Professor of Law at the University of Mississippi Law School, Edwards has a unique perspective on NIL, and informed views of what its future looks like. He provides clarification and a legal perspective on the future path of NIL.

Chapter 12: Discussion

As a form of immersive storytelling, documentaries have the unique power to put viewers directly into the story. These “audiovisual narratives have prov[en] to be extremely effective in causing strong emotions among [their] users,” as if the fans were seated courtside themselves (Uskali, 2021, p. 2). Through documentaries, audiences have a front-row seat and a behind-the-scenes look at their favorite sports and athletes. Documentaries can provide what college athletes need more than ever: buy-in. As with any sort of video representation of realistic situations, the duty of the storyteller is to create an emotional connection with the audience. The end goal is to place the viewer in a situation where they are “able to live under the illusion that they are witnessing the ‘real’, everyday lives of the show’s characters, [and] viewers are able to convince themselves that they know these characters and have a sort of “relationship” with them” (McLaughlin, 2021). This relationship formed through visualization of cultural issues in collegiate athletics is essential to creating agents of change in viewers as advocates for the men and women who have no voice under the NCAA’s rulings and no better understanding of the situation in which they’ve been placed.

These eighteen to twenty-one-year-olds are on their own in an environment that is not only strict, competitive, and volatile, but also completely unprecedented territory. This is what the public needs to understand. The use of athletes’ name, image and likeness has been legal for less than five years now, and we are no closer to finding a system that works justly and equitably for all parties involved. Case after case has proven the NCAA’s monopolistic tendencies and behaviors while each new bill raises more complex issues. While college provides a sense of freedom that is good developmentally, the stakes remain high as athletes sign million-dollar NIL deals.

Chapter 13: Future Implications

No matter the person, occupation, or background, each individual interviewed does agree on one thing: NIL is a complex system in desperate need of stricter oversight. The NCAA has traversed multiple paths to stop or slow its implementation with very limited success. NIL becomes more ingrained and inevitable. Through cases like O'Bannon's and Alston's, the Supreme Court has continued to rule in favor of the athlete's ability to profit from their work. Finally, the NCAA accepted its fate and issued rules for governing NIL. Their failure, though, was to define and issue adequate rules to wrangle a system now referred to as "The Wild Wild West." This is what has to happen in order to best preserve the role of student-athletes and college athletics as a whole going forward. Working together, key stakeholders, collectives, and student-athletes, can make a new law of the land of NIL that is better and brighter for everyone.

Future research should include the student athlete perspective. [add]

Chapter 14: Conclusions

The future of NIL is uncertain, but those interviewed in the documentary agree that oversight is needed to apply NIL on a fair and consistent basis. There were some limitations to the documentary and its subject matter. The documentary does not include the perspective of the players, as none asked were willing to interview on camera. Most interviewed also have Ole Miss and Football connections, so discussion of sports beyond football and Mississippi was limited. The documentary, however, still addressed the research questions.

(R1) Did the NCAA's inaction to address collegiate athlete compensation contribute to an inequitable system?

The NCAA has long held its position to establish, interpret and control the majority of the rules of collegiate athletics. The financial position of student-athletes has long been at the core of these rules. During this time of uncertainty, they have held that no inequity exists since the student-athletes could not be paid for their play. Inaction was a strategy that had been effective to stem the pressure. Whether as a result of long standing history or entrenched power, the NCAA has held on to this authority and worked tenaciously to avoid fundamental changes in its tenets and definition of the amateur collegiate athlete. This inaction has fostered a system where real revenues from the sports have continued to rise even in the face of increased promotion by the regulator, the NCAA, while continuing to foster the idea of no pay for play for the athletes that fundamentally make the revenue possible.

(R2) Is state legislation too varying and inequitable to collegiate athletes and programs?

State legislatures are influenced by voters and collegiate sports hold influence in every state. However, there are 50 state legislatures made up of thousands of individual legislators. With no rulebook available, consistency in how each of these bodies establish the framework for something as new and untested as NIL, uncertainty in its application is inevitable. Transfers among and between institutions is a key element of NIL. The disparity in size and financial strength, even within divisions, is significant. When coupled with differences in legislation, the financial capacity of the programs create inequities that can make building competitive teams problematic.

(R2) Should NIL regulation be overseen by the United States Congress?

The documentary discussed the evolution of NIL, the current state of NIL and the issues

Facing pressure from fans, student-athletes, institutions, and the NCAA, some system of common and consistent control is critical to the stable future of collegiate sports. Student-athletes participation on these teams have now become legally binding commercial transactions. Since no single state nor the NCAA can consistently exercise authority of every student-athlete, some binding authority is needed and is necessary. This authority is not equally available at the state level and does not exist at the NCAA level. While the specific regulation is not yet clear, it can be debated, defined, and adopted in an appropriate form at the level of the United States Congress.

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