

THE FACULTY-DRIVEN MOVEMENT TO REFORM BIG-TIME COLLEGE SPORTS

**Sequel to the Brief:
Reclaiming Academic Primacy
In Higher Education**

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FOREWORD

Frank Splitt's sequel to his earlier paper, "Reclaiming Academic Primacy in Higher Education," draws on recent events such as the University of Colorado recruiting scandal and the University of Georgia exam scam to examine more closely why reform is so difficult in intercollegiate athletics. The serious damage big-time college sports causes to higher education is painfully apparent to academic leaders, elected public officials, the sports press, and a growing fraction of the public. Yet greed, fanatic sports fans, an apathetic public, and inconsistent government policies allow this commercially driven enterprise to grow unchecked.

A century of efforts to reform college sports have been largely ineffective. It is time to acknowledge that working through athletic organizations such as the NCAA, the conferences, or the athletic departments is futile. These are led or influenced by those who have the most to gain from the further commercialization of college sports. It is my belief that you will never achieve true reform or control through these organizations, since the foxes are in firm control of the hen house. Instead, reform efforts might more effectively proceed through *academic* organizations, characterized by the academic interests of higher education rather than the commercial values of the entertainment industry.

Ironically rather than attempt to reform college sports, reigning in its excesses, both higher education and government alike continue to treat intercollegiate athletics as a special case, shielding coaches from the personnel and conflict of interest policies governing other university staff, ignoring the all-too-frequent misbehavior of college athletes, and providing generous (and questionable) tax policies that fuel further commercialization.

Yet, all hope is not lost. There is one important ally remaining that could challenge the mad rush of college sports toward the cliff of commercialism: the university faculty. After all, in the end, it is the governing faculty that is responsible for the academic integrity of a university. Faculty members have been given the ultimate protection, tenure, to enable them to confront the forces of darkness that would savage academic values. The serious nature of the threats posed to the university and its educational values by the commercialization and corruption of big-time college sports has been firmly established in recent years. It is now time to challenge the faculties of our universities, through their elected bodies such as faculty senates, to step up to their responsibility to defend the academic integrity of their institutions, by demanding substantive reform of intercollegiate athletics.

Athletics programs should not be allowed to interfere with or undermine academic policies and principles. For example, the admission of college athletes, their academic standing, and their eligibility for athletic competition must be controlled by the faculty *and be open to public view*. Universities must insist that competitive schedules are compatible with the academic calendar, even if this has significant revenue implications. There should be a ban on special academic support activities for "student athletes" that further isolate them from the rest of the student body and the university, such as special counseling services or academic support (eligibility) centers under the control of the athletics department.

As Splitt concludes, reform will only occur when concerned faculty demand that college sports be mainstreamed into the university and realigned with academic values, and when citizens demand that public bodies such as governing boards, state government, and federal government cease the special treatment that shields intercollegiate athletics from the rules that govern the rest of higher education.

This sequel joins Splitt's first paper as a must-read for those concerned about the future of higher education in America.

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The Faculty-Driven Movement to Reform Big-Time College Sports

Sequel to the Brief: Reclaiming Academic Primacy in Higher Education

ABSTRACT

Despite many wakeup calls and warnings about college sports over the years, the beat goes on. Things seemed to have gotten as bad as they were going to get in intercollegiate athletics when the manuscript for the brief, “Reclaiming Academic Primacy in Higher Education,” was released to the publisher at year-end 2003. Not so! Today we find the situation with college sports much worse than many could ever have imagined. This raises the question: How can this be? To find the answer, this Sequel looks at the usual suspect – money. Big money, together with greed, avid sports fans, an apathetic public, as well as government policies, make for a lucrative and growing tax-free business enterprise. Key enablers for the continuing growth of the big-time, college-sports business are a relatively ineffectual NCAA, and facilitating government policies – involving privacy law and the subsidy of athletic departments and related projects via favorable tax treatment. These enablers are discussed after reviewing some recent flaps and scandals. Actions related to the faculty-driven movement to reform big-time college sports are also discussed. Special focus is placed on the Drake Group’s initiative to help restore academic integrity by working to change the Family Educational Rights and Privacy Act that currently shields academic corruption in college athletics from public view.

I. INTRODUCTION AND BACKGROUND

October 24, 2004 will mark the 75th Anniversary of the *Chicago Tribune* headline story on the Carnegie Report’s indictment of college sports [1]. This archetypal report on the need for reform focused on the negative influence of big-time college sports on higher education stating that: “(Big-time college football) is not a student's game as it once was. It is a highly organized commercial enterprise. The athletes who take part in it have come up through years of training; they are commanded by professional coaches; little if any initiative of ordinary play is left to the player. The great matches are highly profitable enterprises. Sometimes the profits go to finance college sports, sometimes to pay the cost of the sports amphitheater, in some cases the college authorities take a slice for college buildings” [2].

Despite the 1929 wakeup call and like warnings over the years, the beat goes on. I thought things had got as bad as they were going to get in intercollegiate athletics when the manuscript for the brief, “Reclaiming Academic Primacy in Higher Education” [3], was released to the publisher, especially so when an Afterword with “late-breaking-news” was added just prior to the release. I really should have known better. This sequel provides an update and reflections as well as a focused perspective on post-publication events and corrective actions aimed at reforming big-time college sports.

My current thinking concerning the management of intercollegiate athletics by the National Collegiate Athletic Association (NCAA), university presidents, athletic directors and coaches, as well as conference commissioners, has been strongly influenced by additional research – including a careful reading the works of Walter Byers [4], Allen Sack & Ellen Staurowsky [5], Murray Sperber [6], Rick Telander [7], John Watterson [8], and Andrew Zimbalist [9]. It has become all the more apparent that, through the persistent efforts of coaches and athletic directors, big-time college sports have been structured to emulate their professional counterparts – creating a demand for top quality, quasi-professional athletes. In many cases this demand has been satisfied, without regard to either short or long-term institutional and societal costs. Also, the litany of reported wrongdoing grew longer by the day. Thus, in the ensuing months, I have come to concur all the more with Jim Duderstadt’s belief that the blame for the corruption of big-time college sports lies at the heart of the universities themselves, with their presidents, governing boards, and faculty [10]. Put another way, I am now convinced that many university presidents and their boards sacrificed academic integrity when, over the years, they made what amounts to a Faustian-like bargain with the entertainment industry to tap into a huge source of money.

The presidents still seem unwilling to face up to the pressures and risks associated with reforming intercollegiate athletics – losing their job tops the list. Many speak of integrity and reform in public but do what they can behind the scenes to preserve the status quo with its attendant rewards – big money, power and prestige. Oregon professor James Earl, the “Beowulf Scholar” [3] and an organizer and former co-chair of the Coalition on Intercollegiate Athletics (COIA) [11], a national coalition of faculty governance leaders, says presidents need to renounce “the voices of temptation that come to them day and night from donors, fans, alumni and trustees who love sports more than education” [12]. Governing boards are often populated with individuals who serve at the pleasure of the president and are not only big donors, but have local corporate/commercial interests as well. Too often, board members are athletics boosters, or are influenced by boosters and/or rabid fans. All can come under the influence of state officials.

For the most part, faculty members are still preoccupied with their graduate students, research and publications. Consequently, they appear to be unaware of the decline in undergraduate education and the educational impact of the extortion-like, fund-raising mechanisms employed by their school’s athletic department [3]. Many faculty members have all but abdicated responsibility for student activities beyond the classroom. The reform task is formidable and the related work is really not the faculty’s “day job” – faculty members were certainly not hired to worry about college sports. However, in the long run, tenured

faculty members offer the “best,” if not the only, chance of realizing serious reform. Simply stated, university presidents and governing boards are not likely to respond to the leadership challenge. Although both know that those that live by the sword will die by the sword, they should be getting to know that schools that live by college sports will die by college sports – likely a painful death by a thousand cuts on the academic body.

We had a saying about the ups and downs in the business marketplace: “Things have to get worse before they can get better.” With this in mind, the long litany of wrong doing in intercollegiate athletics over the years, coupled with a continuation of the saga this past year, leads me to the following “either-or” proposition: Either higher education in this nation is on an irreversible decline toward the total prostitution of its colleges and universities, in a never ending quest for more money, power, and prestige, or, the institutions now recognize that they are losing their integrity, are on a fool’s quest, and henceforth, will work in concert to restore academic primacy and integrity to their institutions and to the whole of higher education.

Things may already have got as bad as they are going to get, but there is still little if any evidence that things are getting better, or, if they ever will – a troubling situation to say the least. On that note, consider the following stage-setting remark by the philosopher Alfred North Whitehead, “The task of the university is the creation of the future, so far as rational thought, and civilized modes of appreciation, can affect the issue.” Princeton Professor Stanley Katz used Whitehead's remark to initiate his questioning the role of the modern university. “But for many of today's academics, rationality is in question, civilization is anathema, and universities have not created, for themselves or for their societies, the future Whitehead envisaged. What, then, are we about? If, as Stanley O. Ikenberry, former president of the American Council of Education, has claimed, American universities are ‘at the top of their game,’ then just what game are they playing, and what's the prize?” [13].

Ikenberry’s “at the top of their game” descriptor for American universities could be the ultimate in denial. According to Byers [4], it was Ikenberry, in his role as the president of the University of Illinois at Urbana-Champaign, who led the Illinois side of a no-holds-barred dispute with the Big-Ten Conference in 1980. The dispute ended in a unanimous vote by the conference's faculty representatives to put Illinois on probation for three years along with other sanctions. Soon thereafter, Ikenberry, as chairman of the Big-Ten Council of Ten presidents, set out to hire a new Big-Ten commissioner. Years later, Ikenberry rose to the presidency of the American Council of Education – becoming the spokesperson for our nation's higher education institutions. That is how the game seems to be played with a combination of big money, power, and prestige as the prize.

All of this brings to mind a quote that I used when writing the opening to an essay, *Creating Our Common Future* [14], some thirteen years ago. It came from the Club of Rome’s Aurelio Peccei and Alexander King and goes as follows: “If the ways of God are inscrutable, the path of man has become incomprehensible. Modern man, despite the wonderful body of knowledge and information that he has accumulated and the means to apply it, appears to be muddling ahead as if he were blind or drugged, staggering from one crisis to another.”

There was a reason why I used the Barbara Tuchman quote, “Telling the truth about a given condition is absolutely requisite to any possibility of reforming it,” at the front end of the “Reclaiming” brief. Faculty members and the press can really help to reform intercollegiate athletics by telling the truth about coaches, school administrations, and governing boards that cast a blind eye toward infractions in their desire to win at any cost and about the NCAA that continues to provide academic cover for a commercial entertainment enterprise.

So today we find the situation with college sports much worse than the writers of the *Carnegie Report* could ever have imagined. How can this be? To find the answer one need look no further than the usual suspect – money and lots of it. Big money, together with greed, avid sports fans, an apathetic public, and government policies make for a lucrative and growing tax-free business enterprise. Key to the continuing growth of the big-time, college-sports business are a relatively ineffectual NCAA, and facilitating government policies – involving privacy law and government subsidy of athletic departments and related projects via favorable tax treatment. These enablers will be discussed after a review of some recent flaps and scandals. The Sequel goes on to provide an update on the faculty-driven movement to reform college sports, with special focus placed on the Drake Group’s initiative to help restore academic integrity by working to change the Family Educational Rights and Privacy Act that currently shields academic corruption in college athletics from public view.

II. RECENT FLAPS AND SCANDALS

A. The Notre Dame Alumni Letter – A *Chicago Tribune* column by Avani Patel covered the stern letter to the school's trustees that was endorsed by several hundred Notre Dame alumni [15]. The letter re-illuminated one of the core problems in intercollegiate athletics – the desire to win at any cost. Winning requires the acquisition of top athletic talent, apparently with the recruitment of top talent by any means necessary – so long as there is a basis for official deniability and evidence of a widely promulgated handbook for athletes and administrators that spells out the school's zero tolerance policy re: violations of NCAA, Conference, and school rules and regulations. The recruiting scandal at the University of Colorado (CU), discussed in the following section, should be a lesson, not only for the Notre Dame alumni, but also for alumni and boosters across the land. Mike Imrem, did a superb job addressing the Notre Dame letter flap in a satirical *Daily Herald* column [16].

B. The University of Colorado at Boulder (UCB) – The UCB scandal just about obliterated the above story about the ND alum’s letter. It is somewhat ironic that some five years ago, Gary Barnett was hired away from Northwestern to coach UCB's football team with the goal of ending an era of loose recruiting practices and returning the football team to national prominence. Professor Ira Chernus, UCB Department of Religious Studies, wrote an essay, “Football and Sex at Colorado,” that captured the essence of our nationwide problem with big-time intercollegiate athletics where schools do what it takes to recruit and retain top talent [17]. Alcohol, sex, gifts, and money are simply generally accepted table stakes required for playing and winning in big-time college sports.

Clearly, the reputation of UCB has been tarnished of late as a consequence of being caught. Unfortunately, all of the work that UCB Professor and National Academy of Engineering Member Frank Barnes and his colleagues have done, to bring the school’s Undergraduate Engineering Program to a point where it can serve as a model of excellence in engineering education, does not grab headlines. And this is only one of a number of superb academic programs at the school. Also, no doubt overshadowed by scandal headlines, there was the February 24, announcement that Barnes was the recipient the National Academy of Engineering's top educational honor, the \$500,000, Bernard M. Gordon Prize recognizing innovation in engineering and technology education. A highly informative opinion piece by Carl Wieman, UCB Physics Professor and a Nobel Laureate, describes the university as “an academic appendage to the football program” [18], see Appendix I.

C. University of Rhode Island (URI) – A February column by Stefan Fatsis focused on the yearlong self-investigation into academic, recruiting, and other shenanigans at URI, [19]. The timing of the column could not have been better, coming on the heels of the recruiting scandal at UCB. With reference to URI, Fatsis said: “the university got them (the athletes) in and helped them stay in.” Universities that stay in the game to reap attendant money and prestige, as well as to satisfy their boosters, fans, and, in some cases, state officials, do so at the risk of getting caught when things get out of hand. But, will they be punished?

D. The Hornung Flap – As reported in the Wall Street Journal, during the course of a radio interview, Paul Hornung, the former Notre Dame Heisman Trophy winner, opined that his alma mater's football team can't afford to “stay as strict as we are as far as the academic structure is concerned because we've got to get the black athlete” [20]. The fact is Notre Dame has black athletes in abundance. A Notre Dame official called the remarks “generally insensitive and specifically insulting” to all African-Americans who have worn the Irish jersey. Although he subsequently apologized, what Hornung implied in his remarks was that lower standards are OK for black students.

The Hornung flap came in midst of the NCAA’s 2004 “March Madness” basketball tournament that focused national attention on how too many of our colleges and universities already practice what Hornung seemed to be advocating – allowing our colleges and universities to exploit black athletes. Put another way, they make big money off the black athletes they admit to their schools knowing most will never see a college degree. In a pair of hard-hitting columns [21], the *Boston Globe's* Derrick Jackson noted that the majority of teams in the tournament hid behind privacy provisions to avoid even reporting their African-American graduation rates. Final Four participant Georgia Tech, for example, listed a white rate of 60% and an overall rate of 27%. What does that tell you about where the African-American graduation rate must be? The columns provided abundant evidence of the power of a full-court press to drive the NCAA's spin machine to record-level, situational rhetoric.

E. The University of Georgia Test Flap – The final exam questions on basic basketball knowledge, e.g., How many points is a 3-pointer? – triggered a NCAA investigation [22]. This was the only test for a 2001 class on Coaching Principles and Strategies of Basketball. The 20-question test and transcripts of interviews with some of the students in the class were among 1,500 pages of documents released by the University of Georgia. The names of students who were interviewed were blacked out in the papers. The university admitted wrongdoing in its response to the NCAA about alleged rules violations, which included academic fraud and improper benefits. The basketball coach resigned after he was suspended. The coach who taught the class lost his job as an assistant and the school kept the team out of the Southeastern Conference and NCAA tournaments. The NCAA concluded that the assistant coach “fraudulently awarded grades of A to three men's basketball student-athletes” enrolled in the course – allowing them to miss class and tests. All the students in the class were given an A. The coach’s attorney said they would not comment. A federal lawsuit, accusing university officials and others of defamation, has been filed.

E. Comments –UCB is by no means alone. Kathy Redmond had a reason for founding the National Coalition Against Violent Athletes. Nonetheless, Coach Barnett provided UCB officials with a convenient scapegoat by saying the wrong thing the wrong way at the wrong time. Most likely, Barnett was doing what most, if not all, coaches at his level do to recruit and keep the athletic talent they need to win ... win, or be fired by the president at the behest of a board that is influenced by unhappy boosters, alumni, and/or legislators who threaten to withhold financial support. At a minimum, university presidents and their boards need to know that they all share in the responsibility for their school’s environment that can lead to scandals. Sad to say, schools can't win at the highest levels without compromising their educational mission and doing things that would never win them any merit badges. Dan Le Batard, made the point when he said: “the coach now has a choice of recruiting thugs or losing to them” [23]. Chicago’s *ABC7* investigative reporter, Chuck Goudie, remade Le Batard’s point and more in a column, “Rap sheets are the new stat sheets for today's college athletes” [24], that was followed up by the author’s, “College

Sports Mess Cries for Reform” [25]. Mike Imrem has said: “If only fans and the media were interested in whether players are taught as well as coached. If only universities were as concerned with graduating athletes as with using them to win games, attract attention and generate revenue,” [26]. Taken together, Chernus, Wieman, and Imrem summarize a sad state of affairs – providing apt descriptions of what the faculty-driven movement to reform big-time college sports is working to change.

III. THE NCAA: STRUGGLING TO PRESERVE THE MYTH OF AMATEURISM

Sam Walker, the *Wall Street Journal* Sports Editor, appeared to take aim at the NFL with comments on the judgment that threw out the league's 3-years-out-of-highschool restriction on eligibility – freeing Maurice Claret for its draft [27]. One might ask why in the world would the NFL appeal the court ruling and then fight with such vigor to have the restriction upheld if not to protect a no-cost minor-league system managed, in large part, by the NCAA? To be exact, there would be LeBron James types of missed opportunity costs, but what a small price to pay for a proven feeder system that provides a steady stream of well seasoned and more physically mature “student-athletes.” Walker said: “Maybe the collective weight of all those stadium subsidies, television billions and increasingly ostentatious half-time shows have helped the courts see the harmless little NFL for what it really is: a slick and hugely profitable monopoly that's got a bit arrogant.” What about the NCAA? In a nutshell, it's struggling to keep up – putting the best possible face on reprehensible conduct and events related to college sports.

Anyone who thinks that Colorado University is the only school that operates as alleged recently, probably believes that college sports is not a big business, that all athletes come to college to earn degrees, that all athletes are students first – amateurs participating for love of the game – and that the NCAA regulates college sports to make this really happen. The reality is that college sports are organized around a myth of amateurism promoted by the NCAA cartel – a moneymaking juggernaut that acts as a powerful front organization for the commercial-entertainment interests of its member schools – managing “minor-league” teams for the NFL and NBA while operating as a not-for-profit institution of higher education [9, 28]. Since the NCAA also makes the rules, investigates infractions, and imposes penalties, it suffers from a megadose of self-conflict, especially when it comes to serious reform. Something has to give, and as we will see, that something is enforcement.

A. Talk About Reform – Current NCAA President, Myles Brand, must indeed be frustrated as he is shamelessly positioned to play the role of a serious reformer. On the one hand, he has vowed to make schools pay for not educating their athletes with new penalties – ranging from loss of scholarships to banishment from participation in March Madness. And, on the other hand, he is paid big money, not to reform college sports, but rather to protect the NCAA cartel's vital economic interests – economic interests that include the tax benefit related to the NCAA's classification as a nonprofit institution of higher education. A sign of his frustration is his recent vilification of the reform-minded Drake Group [29]. “Critics see over-commercialization,” Brand told Liz Clarke of the *Washington Post*. “I would be happy to have dialogue and work cooperatively (with The Drake Group), but it's not clear to me they want to work cooperatively as opposed to being critics,” Brand told Indianapolis Star reporter Mark Alesia [30]. An informative Pro/Con “debate” between Brand and Linda Bense-Meyers, the Director of the Drake Group, on the question: “Can the NCAA effectively reform college sports?” is featured in Tom Price's recent article in the *CQ Researcher* [31]. Price also includes a tail-end section, “Can Brand Reform the NCAA?,” wherein Wake Forest University President Thomas K. Hearn Jr. is quoted as saying: Brand is a fine leader, the question is: Can the organization be led?

Brand took action on the recruiting scandal at Colorado [32], announcing the formation of a task force that will reexamine the NCAA's recruiting rules – saying it was “an interesting coincidence” that he took an ethical stand the same day when he took part in a public discussion on the Texas Christian University campus. “But ethical concerns are really at the heart of what the NCAA and college sports are all about,” said Brand. He went on to say: “College sports is not a business. It's about educating young men and women in the field and in the classroom. And that has serious ethical implications.” And, on the occasion of the BCS agreement to add a fifth bowl game, he said: “This agreement is a significant victory for college sports and higher education” [33]. But, exactly how might this be so?

These statements seem to fit the NCAA's characteristic pattern of saying all the “right” things for public consumption. But as its long history indicates, it will only do the minimum so as to protect its moneymaking enterprise. Put another way, history teaches that the NCAA will only do what it deems absolutely necessary to avoid intervention by outside parties such as the government and the Presidential Coalition for Athletics Reform – first protecting itself and its cartel members from antitrust and other challenges and then worrying about what's best for so called “student-athletes.”

B. Enforcement – Walter Byers, who served as the executive director of the NCAA from 1951 to 1987, dedicated an entire chapter to enforcement in his tell-all book [4]. Byers, who titled the chapter, “Rules Are Not for Enforcing,” tells how, coaches, athletic directors, presidents and conference commissioners who attempt to enforce the rules are treated as if they are out-of-touch and made to suffer dire consequences. Tough enforcement matters are left to a woefully understaffed NCAA infractions committee that operates with threats of expensive lawsuits by litigious-minded universities who can challenge every charge no matter how well grounded, for example, see [34].

Zimbalist put it this way: “NCAA enforcement has many problems, . . . but its fatal failure is that it does not enforce a system of sanctions that effectively deters flouting of rules. . . . The NCAA needs to triple or quadruple its enforcement staff, improve their training, and offer them salaries sufficiently attractive to keep them on the job” [9]. The NCAA’s recently announced plan for a 50% staff increase, from 12 to 18, is a step in the right direction, but in no way adequate to the task. This all but assures business as usual – walking loudly, but carrying a small stick.

C. More on Academic Reform – The NCAA is now in the midst of another one of its mostly fruitless, periodic, efforts to put the student back in the “student-athlete” via its highly acclaimed academic-reform program with incentives/disincentives [35]. The COIA Steering Committee sees this Division I program as “a significant step forward in addressing the manifold problems of intercollegiate athletics [11]. The COIA commentary goes on to say: “These reforms can better focus schools and their athletics programs on the academic needs and goals of athletes, but only if faculty and administrators at each school accept accountability for ensuring that the standards are honestly met. The NCAA has played a leadership role by adopting these policies; now it’s up to everyone involved in education to translate them into campus cultures that support athletics as a complement to academics.” On the other hand, Marc Isenberg believes the plan opens the door to even more abuses while providing loopholes besides – joining many others by arguing for freshmen ineligibility and a reduction in midweek games to assure that school athletes have a reasonable opportunity to succeed in the classroom [36].

It remains to be seen how this program will fare given the enforcement challenge and the propensity of some schools to develop ingenious countermeasures to foil even modest NCAA reform efforts. Schools will be asked to judge themselves, but who will judge the judges? Still the program may be able to net the most egregious offenders. No doubt, it will see a demand by coaches for low passing bars and other mechanisms that will allow them to obtain and maintain professional-level rosters of college athletes. In 1999, a federal judge threw out the NCAA’s standardized-test-score requirement on the grounds that it had a “disparate impact” on African-Americans. The *Wall Street Journal* stated: “Never does it seem to occur to these champions of political correctness that the real answer here is not to lower academic standards at the university level but to address the crisis in the urban public education system that is responsible for this disparate impact” [20].

Brand lashed out at real and imagined critics of the NCAA’s “landmark” reform package in a thinly veiled rebuttal to Isenberg [37], saying: “But before the ink is dry on the documents, and before these new standards can be implemented, the self-anointed radical reformers and incorrigible cynics are criticizing the National Collegiate Athletic Association and its member universities for a faulty reform effort. Some, clearly, want the N.C.A.A. to fail. Some want to turn collegiate sports into professional sports. Others have some pet solution, like freshman ineligibility, that they think is a silver bullet to solve complex, multifaceted problems.”

Surprisingly, he again vilified the Drake Group saying: “The Drake Group, consisting of a small number of faculty members with an eye for publicity, wants to end university support of intercollegiate athletics. They want to turn college sports into minor leagues for professional teams. Others want the universities to pay student-athletes. None of these approaches, however, would stop the most talented athletes from leaving campus for lucrative professional contracts or solve the problem of poor academic performance and poor graduation rates. The primary argument put forward by these critics is that the tougher academic standards embodied in the new N.C.A.A. rules will lead to academic fraud. . . .” *The Wall Street Journal’s* Stefan Fatsis aptly attributed the remarks to a Howard Dean moment by Dr. Brand [38].

Sadly, Brand’s wholly inaccurate statements reflect a total distortion of the Drake Group’s Mission and a denial of reality. In effect, the NCAA-cartel is already managing minor leagues for professional teams. Also, an unstated NCAA mission is to maximize revenues by managing teams and leagues behind a facade of “amateurism.” Anyone who speaks out, who tells the truth, seeks disclosure and displays outward signs of intimate knowledge of the sad history of past reform efforts at the NCAA is subject to being labeled as a self-appointed critic. Perhaps Brand is reacting to the Drake Group’s persistent, Toto-like behavior – working for disclosure to pull aside the curtain of secrecy shrouding the NCAA-cartel’s operations.

D. Strategy and Tactics – The NCAA does not appear to lack for an overall “winning” strategy and a multiplicity of tactics to protect its cartel and to co-opt the emerging faculty-driven movement for intercollegiate athletics reform. The NCAA strategy is based on strict adherence to former NCAA President Walter Byers’ original “student-athlete”/collegiate model, despite the fact that Byers no longer believes in the efficacy of the model [4] and that many other NCAA “critics” advocate spinning off big-time college sports programs in a variety of ways [5-10]. Notwithstanding, its new incentives/disincentives and academic-reform program, Bense-Meyers argues that: “The NCAA cannot reform collegiate athletics, but it can reform itself by honestly taking on the job of regulating a farm system independent of higher education” [31].

According to Brand, the collegiate model is education based while the contrasting professional model is profit based. Anyone reading Derek Bok’s book, *Universities in the Marketplace* [39], would be hard pressed to differentiate between the two models in the real world. However, from a monetary point of view, the collegiate model would likely be better described as loss based, if rigorous cost accounting were applied to a college’s big-time athletics enterprise – including its capital expenditures.

In his January 11, 2004, ‘State of the Association’ speech, Brand used the “student-athlete” descriptor no less than 23 times as if to convince the listener/reader that college athletes are really bonafide students – a contention that flies in the face of reality. For example, Zimbalist quotes a football coach as saying: “Not more than 20 percent of the football players go to college for an education. And that may be a high figure.” Russ Grundy’s commentary [3, p. x] gets right to the point: “...to be a consistent winner in the big-time, revenue-producing sports of football and basketball requires that athletes put their sports first and academics second.... Schools with high academic standards are at a real competitive disadvantage. Doing the right thing for their students usually costs a school the big money associated with the top bowl games and participation in “March Madness.” With few exceptions, greater than fifty percent graduation rates will all but guarantee sitting out post-season play, or, post-season play by virtue of an athletic department that knows how to game the academic system.”

The NCAA will likely continue promoting its amateur myth [4, 5] – adhering to the elements of the amateur-based, “student-athlete” strategy that has brought it success in the past – putting its best foot forward at all times. Today it means keeping Brand up-front as its academic face and voice selling tough-sounding but intrinsically weak reform measures, as well as employing their Washington lobbyists to prevent a change in their not-for-profit status, obstruct antitrust challenges, and stifle “sunshine” disclosure. It will also take the lead on calling and hosting meetings with resource-poor groups to gain the “home-field” advantage. Meetings at NCAA’s plush headquarters with articulate, charismatic, and, no doubt, high-powered, Athletic Directors fits the overall set of successful NCAA tactics. For example, see Bill Pennington’s *New York Times* article [40].

E. Comments – Although the *Chicago Sun Time*’s Rick Telander went into a bit more detail than did the *Chicago Tribune*’s Bob Verdi, both sports writers made the point about Brand’s disappointing performance as president of the NCAA [41]. No doubt this is a case of unrealistic expectations. The performance of recent NCAA Presidents really should come as no surprise. Put another way, money talks. As noted by Andrew Zimbalist, [9, p. 181], back in 1997, Brand’s predecessor, Cedric Demsey, had a total compensation of \$647,332 while the next five highest paid NCAA administrators all averaged compensation above \$200,000. According to Zimbalist, the NCAA refused to divulge Dempsey’s Fiscal 1998 or 1999 compensation. It defended his salary as dictated by the market. The not-for-profit NCAA is now paying Brand in excess of \$760,000 – twice what he made as the president of Indiana University. The NCAA’s two top administrators now have average annual salaries of more than \$425,000. Brand’s current compensation package likely exceeded the sum-total compensation of the five or six COIA reform-minded faculty representatives at the January 23, 2004 meeting at NCAA Headquarters.

IV. UNIVERSITY ADMINISTRATIONS AND GOVERNING BOARDS: ARE THEY ABLE TO CHANGE?

A. On Speaking Out for Change – The Knight Commission stated in their second report [42], “if it proves impossible to create a system of intercollegiate athletics that can live honorably within the American college and university then responsible citizens must join with academic and public leaders to insist that the nation’s colleges and universities get out of the business of big-time sports.” Imagine the nation’s university presidents and conference commissioners, and NCAA President Myles Brand, emulating the Reverend Donald Harrington, the president of St. John’s, by recommending suspension of scandal-ridden programs at their own schools, or, in the case of Brand, suspension from the NCAA? Further still, imagine them saying (as did Harrington): “I am going to my board to tell them it’s now my conviction we can’t keep up the hypocrisy. Our values and mission are too important. If the question is, Would you sacrifice your principles rather than face fact? – The answer is no. We will not sacrifice our principles or our mission.”

Telander said: “Not a chance in hell,” [41]. Maybe, maybe not. But at least Fr. Harrington said it. Those quotes would be headline stories, especially if Brand would speak out, but what we hear instead are reiterations or variants of: “College sports is not a business. It’s about educating young men and women in the field and in the classroom. And that has serious ethical implications.” Indeed it does.

If university administrations really want to make sure that they have a clean athletic program, they will need to address one of the root causes of their problem – playing to win in big-time intercollegiate athletics by doing “what everybody does.” They can help themselves by speaking out. However, they could pay a heavy price for their effort, not only angering boosters and fans, but also risking their jobs in the process. With a look toward Vanderbilt’s Gordon Gee and with the support of their governing boards and faculty senates more presidents may take that risk. Going forward, informed governing boards could be of more help than ever.

B. University Governing Boards – The AGB Board of Directors responded to the June 2001 report of the Knight Commission on Intercollegiate Athletics, which called on governing boards to work cooperatively with their chief executives to examine the place of sports in the nation’s colleges and universities, by adopting “The AGB Statement on Board Responsibilities for Intercollegiate Athletics,” this past March [43]. The statement offers best practices to guide governing boards in supporting presidents and chancellors in fulfilling their responsibility to ensure the integrity of their institutions. Though the document applies most directly and urgently to institutions with major basketball and football programs, the AGB board believes it also will be useful to boards and academic leaders at smaller colleges that compete in a range of sports, conferences, and NCAA divisions. Among other things, the document lists questions board members might ask campus officials. However, no mention

is made of Sarbanes-Oxley and other disclosure requirements that would help ensure solid governance structures.

According to Clint Talbott, UCB's President Elizabeth Hoffman has vowed to rein in athletics, but thus far, she has shown an inability to address rational criticism of athletics. Her dismissive comment, "Carl doesn't like athletics" – referring to Carl Wieman's *Daily Camera* opinion piece [18] – casts doubt about the imminence of reform [44]. In his "Golden Buff\$" investigative report, the *Daily Camera's* Talbott tells how UCB's academic programs struggle for funding and campus buildings decay while athletic budget continues to soar. He certainly raises a question as to how much help Hoffman can expect from her governing board once it is informed by the ABG Statement.

Talbott says: "The Board of Regents, like much of Colorado, includes chauvinistic sports fanatics. And the regents have a well-documented conflict of interest. For instance, the nine regents reported to the Secretary of State that in 2003, they received \$31,700 in gifts. All but \$2,600 of those gifts were from athletics. Regent Peter Steinhauer, who chairs the board, has accepted \$20,231 in gifts during the last six years. All but \$70 of those gratuities came from athletics in the form of free game tickets, meals and parties. And the \$20,231 does not include transportation to and lodging at bowl games, at which CU policy dictates a "special guest protocol for regents." These are the regents who appointed the "independent" investigative panel that is probing the scandal, the same regents who will approve — or reject — any recommendation for reform, and the same regents who've allowed athletics to grow disproportionately large. Can we expect these big Buffaloes to change course? Don't bet the farm."

"... here is my theory on all scandals that take place in big-time college athletics: If the president, athletic director and coach knew what was going on, fire them. If they didn't know what was going on, fire them." – John Feinstein [45]

V. GOVERNMENT POLICIES: FACILITATING THE BIG-TIME COLLEGE SPORTS BUSINESS

A. The Buckley Amendment: Shielding Academic Corruption – New York Time's writer George Vecsey has said: "In the United States, people know all about the corruption, the phony admission standards, the payoffs, the boosters that permeate college sports. University administrators know. Fans know. We all go along" [46]. But where do we find the evidence to back up this seemingly universal knowing? This information would focus more on what the academic institutions are doing as opposed to what the students are doing. But this kind of information has been kept shrouded in secrecy by the law. The law involves the Family Educational Rights and Privacy Act of 1974 (FERPA) – sometimes known as the Buckley Amendment.

An unintended consequence of the Buckley Amendment, is that it allows evidence of academic corruption and shenanigans in big-time college sports to not only be hidden from real public scrutiny, but also allows the NCAA and schools (via waivers) to exploit and control their athletes while only releasing news favorable to themselves. For example, witness the touting of the Final Four's Most Outstanding Player's 3.8 grade point average in finance. But Emeka Okafor plays for a UConn team where barely a quarter end up with degrees. Perhaps worse yet, the Buckley Amendment has allowed schools to deny awareness of academic "crimes" committed on behalf of their athletic departments.

B. The IRS Tax Code: Providing Economic Fuel for the Big-Time College Sports Business – Jim Duderstadt was quoted by Dave Kindred [47] as saying: "We're headed for a train wreck. It'll be financial because how much worse than the Colorado scandal can you get?" According to Kindred, Duderstadt reckons the financial wreck could be caused by a federal antitrust lawsuit or by arrogant athletic departments overtly cannibalizing student programs to keep football and basketball programs. In my view, it is more likely that the "financial wreck" will come from a serious IRS study/audit of the favorable tax treatment of the commercial activities of athletic departments – including "quid pro quo contributions."

The large income stream stemming from the "sky-box boom" has been assisted in large part by a 1999 IRS ruling that allows boosters to deduct most of the donations they make to lease skyboxes ... donations estimated to account for billions of dollars to Division I universities [48]. Zimbalist, [9, pp. 125-148], discusses the commercial connections and government subsidies to college sports – providing the story behind the gutting of Unrelated Business Income Tax Law ... law that was written to provide for the taxation of the activities of a nonprofit organization that are not substantially related to the exempt purpose for which it was formed.

Although the NCAA already regulates farm systems for the NFL and NBA, it is unlikely that it would willingly give up its tenuous affiliation with higher education and the millions of dollars in tax benefits stemming from its not-for-profit status. Consequently, an in-depth IRS audit would be the NCAA cartel's worst nightmare – having the potential to fully expose its Achilles' Heel – the extremely weak educational basis for the current financial structure of big-time college sports. This would not only force very major reform, but provide unassailable "cover" for reform-minded university presidents and governing boards as well.

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VI. THE FACULTY-DRIVEN REFORM MOVEMENT

The Knight Commission's second report noted that when their first report circulated ten years prior, Bo Schembechler (University of Michigan football coach, 1969-89) said that the proposed reforms would sound great for a while, but “by the turn of the century, things will return to their normal state. This hubbub will pass, as will the so-called reformers.” Although, the first part of Schembechler's statement was essentially on target, the second part was not. The hubbub and the so-called reformers have not passed from the scene – there is an ongoing faculty-driven effort aimed at reform in college sports.

Faculty members represent the real strength of our colleges and universities. They can make a major contribution to a clean up of college sports. Unfortunately, disparate, independent-minded faculty groups are now outgunned by powerful “forces” at the various conferences, the NCAA, the BCS, as well as the athletic departments and administrations at their own schools. These forces not only benefit from the flow of money occasioned by the commercialization of higher education, but also will work to co-opt any serious reform effort even under the guise of helping, often with the support of alumni and “booster” groups.

A. Current Focus – The “Reclaiming” brief has received wide exposure. Father Hesburgh's Foreword along with strong backing from him, Jim Duderstadt, and the Drake Group have certainly helped. My Northwestern colleague, Carol Simpson Stern, a former president of AAUP, distributed some 400 copies at the 2004, Annual Meeting of the AAUP in Washington. This distribution combined with those at the Fordham Forum, AAHE, ECEDHA, Drake Group, and Knight Commission meetings, as well as distribution to the COIA and AGB directors, selected faculty members, government officials, and the press, has accounted for some 1500 copies. All parties have been encouraged to network the “message” behind the faculty-driven movement to reform college sports via Web access to the brief [3].

A current focus of this effort is on galvanizing disparate, but like-minded faculty groups – advocating for a coherent effort to work together rather than remaining separate and working alone. These groups include the Drake Group, the COIA, the American Association of University Professors (AAUP), and the American Association for Higher Education (AAHE). Ultimately, we in the movement aim to restore academic integrity to college programs – raising the quality of education for all college students, including today's exploited athletes. With the help of the national press, various professional meetings and forums, we are making strides in illuminating critical issues surrounding college sports.

For example, Fr. George Hunt, S.J., director of Fordham University's Archbishop Hughes Institute on Religion and Culture, moderated the Institute's April 27, forum on “Organized Sports” that addressed the question of whether or not organized sports can recover the honor, respect, discipline, integrity and fairness that once was associated with the word ‘sports.’ Many insights have been garnered from the work of Kevin Braig who laid out a game plan to address the growing pressures on high-school athletics caused by television, recruiting to win, and the economic value of winning [49].

The Drake Group's current focus is on an initiative to help restore academic integrity by working to change the Family Educational Rights and Privacy Act that currently shields academic corruption in college athletics from public view. Clearly, this and other initiatives to reform intercollegiate athletics are not headline grabbing topics such as the recruiting scandal at UCB and those associated with almost all levels of college sports. The scandals supply colorful stories for the press and other media – providing reality-TV-like entertainment for the general public. But, there can be a long lasting benefit associated with the pressure generated by such scandals on the NCAA, university presidents, governing boards, conference commissioners, and, hopefully, on accreditation boards as well. The recruiting scandal at UCB provides a good “for instance.”

B. The UCB Faculty Assembly Proposal for Reform – On May 6, the Special Committee on Athletics Reform of the UCB Faculty Assembly submitted a Proposal for Reform of Intercollegiate Athletics at the University of Colorado at Boulder to faculty delegates [50]. Adam Schrager, *9News* legislative reporter and Jim Hughes of the Denver Post covered the story [51]. A hyperlink to the proposal can be found in Schrager's Web report. The proposal dispels several myths about the advantages of big-time college sports before calling for fewer athletic scholarships, increases in academic requirements for student athletes and more oversight of the athletic department.

According to Scott Adler, the committee chair and one of the authors, the proposal is intended not only to serve the needs of UCB, but to serve as a model for other schools as well. He told faculty delegates, who were unanimous in their approval of the proposal: “The plan puts CU (Colorado University) on the map as the place that actually “got it right.” A *Rocky Mountain News* OP-ED column by Adler and others summarizes key elements of the faculty proposal [52], see Appendix II. The UCB Faculty Assembly is a member of the COIA that has 36 member schools that joined via a vote by their faculty senates. CU, along with Nebraska, Oklahoma State and Texas, are the Big-12 Conference schools represented in the COIA.

“...after we won the national championship in 1966, the Rev. Theodore M. Hesburgh, then president of Notre Dame, refused to let the team play in a postseason bowl game, because that would make it difficult for us to prepare for final exams – an inconceivable stand for a president of a Division I institution to take today. And back then, the National Collegiate Athletic Association still barred freshmen, even those with exceptional academic credentials, from participating in varsity competition. Although we had to endure the rigors of fall and spring practice, the freshman-ineligibility rule gave young athletes a year to adjust to college life with minimal interference from athletics. What's more, athletics scholarships were guaranteed for four years, regardless of whether the recipient actually competed in sports.” – Allen L. Sack [53]

Notwithstanding the scandals and the recommendations of their investigative panel, the UCB has reinstated Coach Barnett and has retained President Hoffman, Chancellor Byyny, and Athletic Director Tharp, [54]. This does not bode well for execution of UCB's recently approved action plan for the reorganization and oversight of intercollegiate athletics at UCB [55]. It is difficult to imagine that all the members of the “old guard” have now “got religion” and will take a proactive, by-the-book, stance on requisite changes.

It would not take a big leap for UCB to simply follow the NCAA's successful tactics in such matters – see little, walk and talk loudly (about reform) while carrying a tiny stick – absorbing media punishment as a “cost” of doing business. As a further example of this tactic, consider the fact that the NCAA recently determined that infractions in the University of Rhode Island's basketball program were either isolated or inadvertent – accepting the trivial corrective and punitive measures URI has taken, such as the loss of one scholarship for three years [56]. Again, “Rules are not for enforcing.” Likely, Scott Adler and his reform-minded colleagues in the UCB Faculty Assembly as well as the whistle blowers at URI are already suffering almost unbearable levels of frustration.

Graduation Rates and Disclosure

Much has been written about graduation rates for big-time college athletes ... rates that must be disclosed by virtue of a federal statutory requirement. The recent hubbub about the pitiful graduation rates for most of the teams participating in March Madness again focused more attention on the athletes than on the academic corruption that enables intercollegiate athletics to operate as it does – driven by greed and hypocrisy – and where horrific misdeeds are treated like speeding violations; it's only wrong when you get caught. Therefore, one is led to inquire as to the nature and extent of the complicity of school presidents, administrations, and faculties in this corruption. Just how do they get away with it? Here is how they do it and what can be done to help stop it.

In their present form, graduation rates are a poor metric for gauging academic outcomes and for exposing academic complicity. What's more, as presently constituted, they provide a weak link in the NCAA's planned incentives-disincentives process. This highly touted process is supposed to hold institutions and individual sports programs accountable. Without proper safeguards, the use of grad rates at some schools can do more harm than good, since more pressure will be put upon faculty to pass poor (or worse) students, raise grades and otherwise compromise their academic integrity by fashioning courses and degree tracts for the sole purpose of meeting eligibility and graduation-rate requirements for their athletes.

Also, rates can be gamed by deceitful athletic directors and school administrators, for example, via academic counseling and support provided by the athletic department. Coaches can stuff their squads with a cohort of athletes that value academics as well as their sport, but don't see much, if any, conference-level game time. Should push come to shove, large football team rosters of 85 and more make attainment of a minimum 50% graduation rate a no brainer. For the sake of a past-present roster-size comparison, the National Championship Notre Dame teams of the late 1940s had a travel-team roster limit of 38 players. Just think of the cost reduction that could be affected by an incremental reduction of football team rosters to at most 48 players. Disclosing graduation rates is not a complete waste of time since they provide a hook for the press to hang a truth-telling story that can be easily understood by the general public. They represent an imperfect tool that can be improved upon once a foothold has been secured for a transition into disclosure of more meaningful information. Without disclosure there will never be serious and enforceable reform.

C. Cleaning Up Buckley – Thanks to Matthew Salzwedel and Jon Ericson, we now have an approach to resolving the vexing problem presented by the Buckley Amendment. Salzwedel and Ericson co-authored a breakthrough *WISCONSIN LAW REVIEW* Article, “Cleaning Up Buckley: How The Family Educational Rights and Privacy Act Shields Academic Corruption In College Athletics,” [57]. The authors first explain the Buckley Amendment and its impact in painstaking detail and then go on to make a compelling case for simple changes. These changes would permit an appropriate level of disclosure ... disclosure that would neither be harmful to students nor represent an invasion of their privacy. Nonetheless, the changes would lead to exposure of institutional misbehavior via publication of information about the academic courses that athletes take, as well as their choice of professors and academic majors. The author's proposed mechanism would be to: 1) Modify Buckley (or related

regulations) by inserting the word "courses" after the words "major field of study" as directory information, or, 2) Add to (or replace) the (current) statutory requirement of disclosure of graduation rates with the phrase: "academic records of members of student groups such as athletic teams sufficient in number to protect the privacy of individual students."

Over time, the changes would work to ensure that college athletes are getting a legitimate college education. My recommendation would be to argue for both modifications with the "add to" variant in the second recommended modification. In any case, I wholeheartedly agree with the authors closing statement: "And now, more than ever, these changes are needed to protect the public trust from the closed society of higher education." Surely, the changes would minimize the need for "whistleblowers."

In view of the rising number of scandals attending the realm of college sports, and the increasing ineffectiveness of the NCAA to regulate competition while preserving the educational rights of athletes, we of the Drake Group have come to believe that changes to the Buckley Amendment require governmental intervention. To this end, the Drake Group made a formal request to LeRoy S. Rooker, Director of the U.S. Department of Education Family Policy Compliance Office, for a review of the Buckley Amendment to Section 438 of the Federal General Education Provisions Act. Additional background and context for the request was also provided – demonstrating the need for a review of the Buckley Amendment in the light of the present state of college sports and the publication of the Salzwedel and Ericson *Wisconsin Law Review* article. Similar requests were made to the chairs of cognizant House and Senate Committees as well as to select members of the House and Senate.

"In the sprawling NCAA, no change comes easily, so Dr. Brand deserves some credit. If his plan leads schools to pay honest attention to how they educate athletes, terrific. But it won't alter the root problem in big-money college sports: the pressure on athletes, coaches and administrators to win. So it isn't unreasonable to predict, as the Drakies did, that some schools will cut more corners to ensure their point guards and linebackers make the new NCAA-mandated grade. Dr. Brand says that's cynical, that cheaters won't prosper, that faculty have integrity. But scandals erupt. Gut courses, grade changes and transcripts heavy on the sixth and ninth letters of the alphabet are common. Faculty and others who whistleblow are marginalized. Internal probes are suspect, NCAA ones limited by a small staff and ample loopholes.

A lack of sunshine doesn't help. It will be hard to evaluate claims of academic improvement without knowing the classes players take, the names of instructors, and overall course and team GPAs. Right now, access to such information is blocked by a 1974 federal law known as the Buckley Amendment. "It's naïve to raise academic standards without a concomitant public accountability," Drake founder Mr. Ericson says. The NCAA hasn't called for revising Buckley, in part because its "philosophical concept" – privacy – "is one that is hard to argue," an official there says. The Drake Group is starting to lobby to get the law changed. It means business, too." – Stefan Fatsis, [38].

VII. REFORM REDUX

Paul Hornung's verbal fumble was picked up by an editorial in the *Chicago Tribune*, "What Hornung should have said" [58] – providing a segue for a reform redux. The editorial claims that "NCAA exploitation of student athletes is a national scandal, especially for black athletes." *The Atlanta Journal Constitution's* Kelly Simmons reports that Damon Evans, who is replacing outgoing Athletics Director Vince Dooley, will become the first University of Georgia athletics director included in the president's cabinet [59]. According to Simmons, Evans, the first African-American heading a Southeastern Conference sports program, welcomes the changes in the role, saying: "In order for us to be successful, we have got to bring athletic concerns and academic concerns closer together, we're here first and foremost for education."

The NCAA's proposed reforms in the wake of the UCB recruiting scandal came under critical review at a House Energy and Commerce subcommittee hearing that was called by Chairman Cliff Stearns, R-FL, to examine the NCAA response to the recruiting practices and policies of intercollegiate athletics. Chairman Stearns mentioned a possible motivational tool for Congress to get what it wants: the tax-exempt status of NCAA programs. He was quoted by Mark Alesia as saying: "They all benefit from the tax code, raking in millions of dollars through the commercialization of sports. If we went to their not-for-profit status, that would change this dramatically, if they did not come up with a policy here" [60]. These remarks spawn hope that the NCAA and its members will have to tell the truth about its financial operations. Representative Jan Schakowsky, D-IL, said: "I'm concerned that some of the new proposals don't go far enough." [61].

In a June 22, Senate Finance Committee (SFC) hearing on nonprofit practices, abuses and ways to improve oversight, the IRS said it would examine some 400 foundations to determine whether the philanthropic institutions were complying with tax laws. It is understood that this effort is part of the SFC's contribution to a broad regulatory effort to better police the nonprofit sector, which controls billions of tax-exempt dollars. As reported by Stephanie Strom of the *New York Times*, SFC Chairman Senator Charles E. Grassley, R-IA, promised to introduce legislation in the fall to strengthen regulation at the federal and state levels, increase the responsibility of boards, stiffen penalties for conflicts of interest and other failures to comply with tax laws and

enhance disclosure, saying: "It's obvious from the abuses we see that there's been no check on charities; big money, tax free, and no oversight have created a cesspool in too many cases," [62].

Perhaps Senator Grassley will soon be next on a list of “self-appointed critics” – joining the Drake Group, the *Chicago Tribune*, and the likes of Mark Alesia, Derek Bok, Walter Byers, Jim Duderstadt, Stefan Fatsis, Bob Gilbert, Mike Imren, Derrick Jackson, Robert Lipsyte, Allen Sack, Jan Schakowsky, Murray Sperber, Ellen Staurowsky, Cliff Stearns, Rick Telander, Andrew Zimbalist, and a host of other writers, journalists, and government officials who have made valiant efforts to penetrate the veils of secrecy and hypocrisy shrouding big-time college sports and the NCAA cartel

“Big-time college sports, however, is all about entertainment – and, as the recent books remind us, no important constituency seems to care. Fans love such commercial spectacles, and alumni rank them among their most memorable college experiences. Faculty members are too preoccupied with research to give the decline of undergraduate education much thought. Powerful board members know that the classroom experience of athletes is far from ideal, but console themselves with the belief that the lessons learned on the court and playing field are more important anyway. Presidents generally acquiesce in the decisions of trustees and alumni.” — Allen L. Sack [53].

VIII. CONCLUDING REMARKS

Surmounting the formidable barriers that have heretofore shielded intercollegiate athletics from serious reform will require simultaneous work on many fronts with many alliances – a Join-or-Die effort in the sense that no one organization can do it alone. However, at this time, no person or organization has the sort of time, energy, and money that is required to mount and coordinate a “full-scale” national effort to restore integrity in higher education. This a difficult “burn-out” causing venture. For example, Earl has stepped back from his leadership role in COIA saying: “I've had it up to here for four years. So be glad that I'm going back to the Dark Ages, where nothing I learn can do anyone any harm or interfere with anyone's profits” [12]. Nevertheless, the Internet can be used as a binding force that will partially offset the lack of a physical office and funds to support full-time staff to concentrate on the tasks ahead.

Those who still see the NCAA as an engine for serious reform need only listen to what the NCAA folks say and then watch closely to see what is actually done and not done [3, p. 6]. Are they advocating for academic integrity and disclosure, e.g., by supporting the changes to the Buckley Amendment recommended by Salzwedel and Ericson [57, p. 1113]? Or, are they leaving such matters to the school's “old guard” to judge? Are they working to see that college athletes are provided a real, not pretend, education by reducing the number of athletic events that infringe on student class time, by requiring athletes to maintain at least a 2.0 GPA – quarter-by-quarter or semester-by-semester – in accredited, degree-track courses in order to participate in college sports, or by expressing team graduation rates as a weighted average based on conference-level playing times? Unless forced by the government, it is highly unlikely that we will ever see such bellwether NCAA actions to ensure progress and continuous improvement, or such logical reform measures as:

- Replacing one-year, play-for-pay, athletic scholarships with five-year, need-based, scholarships that can't be revoked because of injury or poor performance;
- Requiring that academic support for athletes be mainstreamed with the same control for all students;
- Requiring that the athletics department of member schools employ a standard uniform system of accounting that includes capital expenditures and is subject to public financial audits;
- Restoring freshmen ineligibility for varsity teams – a potential Occam's Razor “solution”, see [3, p.9]

One can find a thoughtful list of reform measures such as those outlined above at the end of the many books and articles on the subject of reform. By now it should be clear that, no matter how appropriate any one of a number of these reform measures may be, or how bad college sports related scandals may become, or how intense the urging of the Knight Commission, there is little likelihood that these kinds of measures would be adopted on a voluntary basis. The reason is simple: Universal adoption would likely prove to be successful in curbing the rampant excesses of the college sports business – restoring academic integrity to our nation's colleges and universities, but putting at risk the big, tax-free money flow into the NCAA cartel. What we have instead are clever efforts to avoid reform by creating the illusion of reform. Substantive reform measures all seem to make sense to the reform minded, but not to those that are to be reformed – setting the stage for endless debate. Nothing of real consequence ever happens in the way of substantive reform

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And yet, there is no cry from the public to put an end to the excesses and corruption of college sports, nor will there be. Who really cares? James Michener provides us with an insight into our national obsession with college sports in his best seller, 12

Sports in America [63]. With reference to injuries and fatalities in high school and college football, Michener put the reason for the lack of public reaction this way: "... because every society decides what it is willing to pay for its entertainment, and if football injuries and deaths do not markedly exceed the present rate, they will not be considered excessive.... Football has been so enshrined as a spectator sport...that it would be impossible for revisionists to alter it without protests of an almost revolutionary character."

The public's "don't-care" attitude with respect to the "win-at-any-cost" operating strategy that is employed by colleges to compete successfully in big-time, revenue-producing sports is a major concern. The American public needs to better understand the long-term consequences of our nation's obsessive behavior with respect to college-sports-based entertainment as well as our government's policies that enable big-time college sports to thrive as a business. These consequences include, but are not limited to: the loss of integrity in our institutions of higher education, the loss of public tax revenues, the loss of American "brain jobs" jobs to foreign competitors, and the ultimate erosion of American industrial competitiveness, not to mention an increasing reliance, by ever younger athletes, on performance enhancing drugs. What a high price to pay for sports entertainment and the prevalence of the "beer-and-circus" campus party scenes connected to big-time intercollegiate athletic events and their effect upon many undergraduates at large, public research universities [6]. All of this is to be contrasted with the obsession of our nation's foreign competitors with high quality education at all levels.

"Neither let us be slandered from our duty by false accusations against us, nor frightened from it by menaces of destruction to the Government nor of dungeons to ourselves. Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it." – **Abraham Lincoln**, 1860

So, with a public now fatigued with terrorist related threats and numbed by grievous wrongdoing, scandals, and cover ups in their financial and political worlds, it would be a wonder to find members of Congress willing to take on the tasks of championing disclosure via "cleaning up Buckley" and triggering a serious IRS study/audit of the NCAA cartel – risking the wrath of their usually apathetic constituents. But, you never know what can happen, especially after seeing the strong statements made by Reps. Stearns and Schakowsky. Their efforts, buttressed by compelling arguments for reform by faculty and other groups, as well as intensive scrutiny of college sports by the media, can make a difference. The Knight Commission, the AGB, the NCAA, members of the Academy, Congress, the Department of Education, and the media all have vital roles to play in the challenging reformation process.

Hopefully, this sequel to the brief, "Reclaiming Academic Primacy in Higher Education," will help inspire additional efforts to open the machinations of the big-time college sports business to public view and so stimulate successful reform. The obstacles are formidable. All the more reason for the faculty-driven movement to reform college sports to persist in its "right-makes-might" effort to bring about change with the Drake Group's focus on disclosure and the restoration of academic integrity.

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AFTERWORD

When the Commonplace is Instructive

As Frank Splitt concludes, it is commonplace that the public does not care about the corruption in college sports. Nor, embarrassingly, do faculty. Nearly a century of failed reform documents the indifference. Failure can also be instructive.

Instruction 1: Focus not on reforming college sports but on restoring academic integrity in college sports. The public, or at least the faculty might care about that.

Reviews of former President Reagan's career credit part of his success to focusing on one big issue at a time such as his proposed tax cut when he was elected as contrasted with former President Carter's decision to send multi-proposals to Congress. The results are instructive.

Accompanying the news of President Reagan's death were reports that Maytag Corporation was in trouble. For years, Maytag had a winner. The company focused on MAYTAG appliances, specifically, washers, dryers, and refrigerators. As one analyst said: "Then they picked up Amana, Hoover, Jenn-Air, Magic Chef and Admiral. Maytag is in trouble." Maytag's experience is instructive.

Instruction 2: Focus not on a multi-point list of proposals to address the corruption in college sports, but on one key idea. Problem-Solving 101 suggests the one big idea should be exposing the lie that is the basis for the academic corruption in college sports:

[Bob] LEY [on ESPN's "Outside the Lines"] – Well Tom [McMillen, former Knight Commission member], you brought up the issue of academic integrity. I'm going to bring in a piece of tape with Jon Ericson of the reform minded Drake Group; what he calls the big lie having to do with college athletics.

ERICSON – It is that you can take an under-prepared student [who] does not have the skills to do academic work in higher education, then, take that student, give him a job 30 hours a week where he will be tired when he does come to class -- he's also excused for maybe seven -- maybe eight or nine classes and expect him to acquire anything close to what we would call a university education.

LEY – Is that true?

MCMILLEN – It's absolutely true.

Absolutely true? It is commonplace. As co-chair of the Knight Commission William Friday said: "What has happened with grades and courses seriously threatens the integrity of the institution. The university cannot tolerate these practices."

But presidents, faculty, and Boards of Governance do tolerate these practices. Not only tolerate them, they cover them up. Frank Keating, former Oklahoma governor, in his resignation from the national lay review board studying the clergy sex abuse crisis, said: "To suppress the names of offending clerics, to deny, to obfuscate, to explain away, that is the model of a criminal organization, not my church."

For those who wish to restore academic integrity in college sports, Mr. Keating's comments are instructive. Until the lie that is protected by the closed society of higher education is exposed, efforts to reform college sports will continue to fail. As Professor Splitt makes clear: No disclosure, no reform.

Jon Ericson

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Mr. Ericson was a founder of The Drake Group and is a co-author (with Matthew Salzwedel) of the Wisconsin Law Review article, "Cleaning Up Buckley: How The Family Educational Rights and Privacy Act Shields Academic Corruption In College Athletics," [57].

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APPENDIX I – 'University' label no longer applies: CU's an appendage to the athletic department

By Carl Wieman

The Daily Camera

February 8, 2004

Recent events should encourage the citizens of Colorado to reflect on the condition and purpose of their "flagship" institution of higher education. The University of Colorado is facing tremendous difficulties and many critical issues. State support has been dropping precipitously, budgets are being slashed, and the state government has set limits on tuition and spending that constrain the ability of the university to respond to these cuts. The Law School faces loss of accreditation because of its dilapidated building; the replacement of which has been repeatedly delayed by the reversals of the Colorado Commission on Higher Education and the Legislature.

The very survival of CU as a public university is being threatened by the constraints imposed by the TABOR amendment and other mandated requirements on state revenues and spending. So in this time of crisis, how are our regents and top administrators spending their time? This is remarkably easy to find out. One only need look at the front page of the newspaper every morning to get full coverage of their activities. They are (again) devoting all of their time and efforts to defusing the latest embarrassing incident coming out of the football program. Every day we see the president, chancellor, provost and regents holding press conferences, speaking with countless reporters, meeting with legislators and the governor, all in an effort to deal with this issue.

Meanwhile, the other problems facing the university are neglected. However, I do not see this choice of priorities as an indication of their personal flaws. The current group of regents and high-level administrators may well be the best we have had during my 20 years at CU. Their response is exactly the same as what we have seen with other administrators many times in the past and tells us not about them, but rather the true nature of what we have become as an institution. I would say that it indicates how corrupt our values as a university have become, except that I am not sure we can claim any longer to be a "university." An "academic appendage to the football program" would seem to be a more honest description.

The actual details of the latest scandal and the validity of the charges and counter-charges are not particularly relevant in this regard. What is relevant is that over the past few decades, there have been a steady series of incidents involving the football program that have received large amounts of publicity and brought embarrassment to the university. Each time they occupy the leaders of the university to the near-exclusion of everything else. If the athletic program were subsidiary to the university, rather than vice-versa, it would be run in a much different fashion. Any incident bringing bad publicity to the university would result in the people in charge in the athletic department being quickly replaced for being deficient in an essential aspect of their jobs. Meanwhile, the leading CU administrators would continue to focus on the health and well-being of the university as an educational institution.

Sadly, in the latest response and in the actions of prior administrations, there is not even the pretense that athletics should play such a subsidiary role. I happened to work with a former CU president during two brief periods that coincided with the replacement of the chancellor of the Boulder campus and the replacement of a football coach. The president devoted enormously more attention and effort to the latter. During both processes, the president was in regular consultation with the regents, and neither the president nor the regents ever gave any indication that they might have the slightest doubts as to the appropriateness of these priorities.

It may be unrealistic to hope that we can ever return to being a university first and an athletic program second. However, the citizens of Colorado should ask themselves if this really is what they want in the lead institution charged with educating their children and future employees.

The views expressed above are those of the author and (unfortunately) not necessarily those of the University of Colorado.

Carl Wieman, 2001 Nobel Laureate in Physics, is distinguished professor of physics at the University of Colorado.

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APPENDIX II – Panel's endorsement of faculty plan a recognition of lingering problems

By E. Scott Adler, Elizabeth Bradley and Theodore P. Snow

Rocky Mountain News
May 22, 2004

The faculty at the University of Colorado at Boulder recognizes that intercollegiate athletics and the student-athletes who participate in them play an important and beneficial role in a vibrant educational community. But for an athletic program to support and complement the university's academic mission, its culture and structure must fit into the educational purpose of the institution.

The Boulder Faculty Assembly has long been concerned that athletics at CU (and many other universities) has drifted away from this central principle. With this in mind, the BFA undertook its own examination of the university's Department of Intercollegiate Athletics.

The Independent Investigative Commission, empowered by the Board of Regents to examine the football program's recruiting practices, reached the same conclusion as the BFA report: The operations and governance of CU athletics require profound restructuring. Better yet, the commission specifically adopted a number of BFA proposals that we believe will provide the basis for much-needed reform.

For years BFA has been concerned that the athletic department does not operate within the campus organizational structure. For instance, the athletics budget does not undergo the same oversight and procedures as every other unit on campus. Additionally, there have been a number of instances in which the actions of athletics administrators, coaches and sometimes even student-athletes have demonstrated that the athletic department does not always share the academic values and goals of the rest of the university. For example, coaches at times have recruited athletes who have little interest in the educational opportunities at CU and leave the university as soon their playing eligibility ceases or other athletic opportunities present themselves. This often occurs mid-semester and is not limited just to football. Coaches in the past have also approved competition during the final exam period. These problems foster a disconnection between academics and athletics and, as a result, the whole university -- and particularly the students -- suffers. The faculty's reform plan focuses on four main areas of concern:

- Ensuring the well-being of our student-athletes.
- Guaranteeing that student-athletes are given the same opportunities to succeed academically as any other CU student.
- Clarifying institutional control and accountability by integrating the athletic department into the campus organizational structure, and
- Increasing faculty involvement in planning and policy-making for academic matters in the athletic department.

The BFA report also dispels broadly held misperceptions about athletics. For example, not only does the athletic department not make a profit for the university, it consistently drains millions of dollars annually from the university's general funds and student fees.

The investigative commission's core set of recommendations was that CU adopt nearly all of the proposals in the BFA report. The faculty's proposed changes would alleviate concerns that CU athletics has become too autonomous by requiring the athletic department report to the university provost, the chief academic officer on campus. If implemented, the reforms will return athletics to its proper place as a component of the educational process, not an end unto itself. The reforms that we propose will also serve as a model for other universities, many of which face similar challenges and currently look to us for guidance.

The Boulder faculty supports its students, including its student-athletes, and places their welfare and education above all other considerations. But the point that must not be lost in the current debate over the future of CU athletics is that student-athletes are first and foremost students. When we propose that coaches be held accountable for the academic performance of their student-athletes, it is not for the sole purpose of penalizing individuals. Rather, our objective is to compel coaches and athletic administrators to recognize that education is the reason student-athletes are at CU, and educational activities must take precedence over athletic competition.

We are aware of concerns that our proposals, if implemented, might cause the competitiveness of some of our teams to suffer. However, we strongly believe it is possible to remain highly competitive in the Big 12 and nationally even under the proposed reforms. Several of our academic reforms are also being adopted by the NCAA and will be applied to every university. In time, as procedures are implemented and refined, and as our reputation recovers from the recent negative publicity, CU's attractiveness to athletes as a university that offers a well-rounded education will increase and we should regain any temporary loss of competitive ability. CU will eventually be able to recruit the top scholar athletes specifically because of its academic integrity and quality and leadership in a new approach to intercollegiate athletics.

The Boulder faculty recognizes that many factors contributed to today's state of affairs on campus. There are serious issues that must be addressed beyond athletics reform in order for our campus to repair its reputation and move forward. These issues include strengthening our academic programs; addressing the problems caused by alcohol abuse; and ensuring a safe, secure and respectful campus environment, as well as larger issues of financing and economic security. Our reform proposals are the first step in addressing the many issues we face.

It is time that the administration and regents implement the reforms called for in the BFA and commission reports, as endorsed by special athletics liaison John DiBiaggio. The faculty are committed to the Boulder campus, and pledge our full participation in shaping the future of the University of Colorado at Boulder.

E. Scott Adler is associate professor of political science at the University of Colorado at Boulder and chair of the Boulder Faculty Assembly's Committee on Athletics Reform. Elizabeth Bradley, professor and chair of CU's department of computer science, and Theodore P. Snow, professor of astrophysical and planetary sciences, are also members of the committee.

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"If we can't be goaded or reasoned into doing the right thing, maybe we can be shamed into it. Embarrassment may be as good a prod as logic. I hope it is." – Rick Telander [7].

The views expressed above are those of the author and not necessarily those of Northwestern University

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